

Foreign Elements in the Methodologies of Usul Fiqh: Analyzing the Orientalist Thought

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Abstract—The development of Islamic jurisprudence since the first century of the hijra has fascinated many orientalists to explore the historiography of Islamic legislation. The practice of usul fiqh began during the lifetime of the Prophet Muhammad and was continued by the companions as the legal reasoning due to the absence of the legal injunction in the Qur'an and Sunnah. The orientalists propagated that the Roman and Jewish legislation were transplanted into Islamic jurisprudence and it was the primary reason for its progression. We used qualitative and comparative methods to analyze the orientalists' views. Results showed that many erroneous facts were propagated by Goldziher and Schacht by claiming the parallels between the principles, methodologies, and fundamental concepts in Islamic jurisprudence and Roman Provincial law. The orientalists claimed that Islamic jurisprudence was derived from the corpus of Jewish Mishnah and Ha-kol. These judgments are used by the orientalists to prove the inferiority of Islamic jurisprudence. Nevertheless, many evidences have proven that Islamic legislation is capable of developing independently without any foreign transplant.

Keywords—Foreign transplant, ijthad, orientalist, usul fiqh.

I. INTRODUCTION

THE development of Islamic jurisprudence since the first century of Hijra was a significant event in the history of Islamic law. Many principles of usul fiqh were introduced by the Muslim jurists to accommodate the progressiveness in Islamic law. The engrossment of Orientalism in Islamic jurisprudence has begun in 1874 by Edward Sachau, who produced a lot of research and articles on Islamic law [34]. His contribution became a stepping-stone for Western orientalists who showed their enthusiasm and admiration by continuing their research concerning the history of Islamic jurisprudence [1]. Hence, many orientalists were conducting research on the origins of Islamic law that were concluded with prejudice findings towards Islamic law. The involvement of Ignaz Goldziher, Joseph Schacht, Patricia Crone, H.A.R. Gibb, and Snouck Hurgronje left numerous books and articles on Islamic jurisprudence which required the Muslim researchers to analyze and examine the erroneous facts which ultimately contributed to negative impressions from the Western standpoint towards Islamic law. Simultaneously, many fabricated facts were found by orientalist scholars in Islamic jurisprudence and they declared that the principles and methodology of usul fiqh were derived from Christianity, Jewish and Roman law [2]. Thus, this article focuses on the involvement of Ignaz Goldziher [3] and Joseph Schacht [4] in their research on Islamic law. Ignaz Goldziher was the earliest western scholar besides Theodore

Noldeke and Christian Snouck Hugronje who made research on Islamic law and Hadith. His writing was considered as a 'Sacred Book' among western scholars due to the comprehensive coverage of Islamic law. In 1873, he furthered his studies in Egypt and became the first non-Muslim student at the University of Al-Azhar. He was respected by Muslim scholars due to his competency and knowledge of Islamic law [3]. Joseph Schacht was one of his followers who used reference to Goldziher's books and ideology to broaden his research. He was recognized as the *father of Islamic Legal Studies* by western scholars due to his knowledge in the field of Islamic law. His book titled *The Origins of Muhammadan Jurisprudence* was well acknowledged among western scholars for his claim that the practice of legal reasoning or Ijtihad was completed and closed during the fourth century of Hijra [5]. As a consequence, his claims on the *Closing of the Gate of Ijtihad* ramblingly gave negative impressions towards Muslim scholars who were illustrated by the West as naïve, regressive, and benighted due to their complete reliance on earlier Ijtihad, which was prepared by previous Muslim scholars. Consequently, Western orientalists considered Islamic law as stagnant, recessive, and not socially, politically, and legally compatible to govern the next generation [6]. Furthermore, Goldziher, Schacht, and many orientalist scholars believed that Islamic law and the epistemology of usul al-fiqh were transplanted from the dogma of Christianity, Jewish, and Roman law [7]. For that reason, the theory of Legal Transplant introduced by Alan Watson [8] was used by Western scholars to indicate that Islamic law was originally derived and transplanted from other religious elements.

This article is prepared to analyze, and to identify fabricated facts in the principle of Islamic Jurisprudence mentioned in the books of Ignaz Goldziher, and Joseph Schacht. This research is focusing on the books titled *Introduction to Islamic Theology and Law* by Ignaz Goldziher and *An Introduction to Islamic Law* by Joseph Schacht. Some articles from Alan Watson and other scholars referring to the theory of legal transplant, and the books of *Tarikh Tasyri' Islam* are primary references used in this article. The facts are analyzed by using the deductive and comparative methodology. The analysis is prepared under two major points; (1) The principle of Sunna and Ijtihad (Legal Reasoning) from Goldziher and Schacht's perspective, (2) The origins of Sunna and Ijtihad from the *Tarikh Tasyri' Islam*.

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II. OVERVIEW OF THE DEFINITION

A. The Meaning of Legal Transplant

The legal transplant was introduced by Alan Watson in 1970. It was referring to the moving of a rule or system of law from one country to another, or from one people to another [9]. In this matter, laws were often strongly rooted in the past and were transplanted and invented in other societies or places. The definition has been followed by other comparative legal scholars, with different names given to legal transplant such as legal transposition, legal borrowing, and imitation [10]. Thus, according to Watson, most of the global legal development was based on legal transplants and the result of borrowing from other countries or religions. Western orientalist believe that Islamic law is one example of a legal system that is developed progressively from the influence of other legal systems [11].

The orientalist believe that the epistemology of *usul fiqh* was originally rooted in the law practiced in Christianity, Jewish, and Rome. It is generally argued by Western academic scholars that Islamic law is involved in 'systematic borrowing' from or 'indebted' to various foreign non-revealed laws such as Persian, Roman, and Roman Provincial Law [2]. Thus, the findings made by Goldziher and Schacht proved that the legal precepts in the Qur'an were insufficient to accommodate any new problem or issue. Therefore, they believed that a legal transplant from other non-divine religions was crucial to accommodate the new generation. Goldziher mentioned that "...the dogmatic development of Islam took place under the sign of Hellenistic thought, in its legal system the influence of Roman law is unmistakable, the organization of the Islamic state as it took shape during the Abbasid caliphate shows the adaptation of Persian political ideas..." [3]. While, Schacht insisted that the Roman law was comprehensive and pertinent to be transplanted in Islamic law, "...the concept of the *opinio prudentium* of Roman Law seems to have provided the model for the highly organized concept of the 'consensus of the scholars' as formulated by the ancient schools of Islamic law..." [4].

B. The Principles of Sunna and Ijtihad from Perspective of Goldziher and Schacht

The principle of Islamic jurisprudence has been used in the history of Islamic law since the Prophet Muhammad's time. The Sunna and Ijtihad were practiced by Prophet Muhammad in the state when there were no rulings or *hukm* revealed in the Qur'anic verses on emerging problems or issues [12]. While Goldziher and Schacht mentioned in their books that Prophet Muhammad was incapable intellectually, and politically, as a messenger to present new rules and regulations to the pagan Arabs [4]. As a religious reformer, Prophet Muhammad was known among the orientalist as a 'God's spokesman' and they believed that Prophet Muhammad did not create a new system of law in Islam but he used to transplant the customary law or the law of Arabia. Eventually, Goldziher and Schacht stated that the epistemology of *usul fiqh* was only begun during the second centuries of Hijra, and they were certain that the principles of Islamic jurisprudence or *usul fiqh* were never accomplished

during the lifetime of Prophet Muhammad, but it has thrived during the second and third centuries of Hijra [13].

Many orientalist scholars suggested that the Jewish law influences have been transplanted into early Islamic law including the sources of *hukm* or the four roots of Islamic law which are Qur'an, Sunnah, *Ijma*, and *Qiyas* [6]. Although the sources of Islam began during the early days of Islamic law, Schacht and Goldziher insisted it was only been recognized and refined by Imam Shafi'i as principles in *usul fiqh* during the middle of the second centuries of Hijra [4]. The geography of the Hanafi school at Kufa was located nearby to Jewish academies of Sura and Pumbedita which was referring to the location of scholars who studied the Talmud throughout the formative period of Islamic law. Good social relationships among the Muslims, Jews, and others while sharing communication in the Aramaic became the cornerstone for the transplanting of legal elements from Jewish law towards Islamic jurisprudence. Goldziher and Schacht provided few examples to prove that linguistically and conceptually Islamic jurisprudence was transplanted from Jewish, Christianity, and Roman law. For that purpose, the orientalist scholars believed that it was concrete evidence for the influences of foreign elements in Islamic jurisprudence [13].

C. The Origins of Sunna from the Perspective of Goldziher and Schacht: An Analysis

Goldziher and Schacht strongly believed that the Sunna was originally produced and transplanted from foreign elements, thus it was molded and claimed as a Sunna derived from the Prophet Muhammad. They stated that Hadith was referring to the law, custom, theology and political doctrine derived from Islam and other religions. In addition, Goldziher declared that any passages from the Old and New Testaments, rabbinic sayings, quotes from apocryphal Gospels, doctrines of Greek philosophers and Indian wisdom gained entrance into Islam disguised as utterances of the Prophet Muhammad [13]. Similarly, Schacht gave equivalent understanding with Goldziher by claiming that Sunna was referring to the precedent or normative custom of ancient Arab which was reasserted itself in Islam.

In the Islamic perspective, the messages conveyed by Prophet Muhammad were revealed by Allah through the Qur'anic revelation which guides Prophet Muhammad to communicate rationally, professionally, and intellectually with the Arab Muslims. It is a historical fact that the Arabs were acquainted with Roman law, particularly through the Jews which were influenced by Roman. Good relationships in business, social, and politics with the Jewish in Medina were the vital reasons for Prophet Muhammad to be acquainted with the Jewish customs and law [14]. Yet, it was not an indicator that Prophet Muhammad transplanted the Jewish law into Islam. Thus, the statements from Goldziher and Schacht prejudicially claimed the utterances and Sunnah of Prophet Muhammad originally derived from the elements of Old and New Testaments or other foreign foundations were denied. Furthermore, the contents of al-Qur'an were comprehensively perfected by Allah and Prophet Muhammad was responsible to

convey and interpret the divine book to the Muslim as in a Hadith and Sunna [12]. Therefore, the statements from orientalist claiming that Sunna and Hadith of Muhammad were derived from Torah as opposed to *Tarikh Tasyri' Islam*.

The Companions of Prophet Muhammad, Abu Bakar al-Sidq upon being chosen as Khalifah firmly mentioned the authority of Sunnah, "...Obey me as long as I obey Allah and His Messenger, and if I disobey Allah and His Messenger you are under no obligation to obey me." While Umar al-Khattab also considered the Sunnah to be binding. And he was committed to ensuring the Sunnah was preserved and practiced by the Governors and administrators [15]. The practice of Khalifah during the first and second centuries of Hijra to demand the binding of Sunnah demonstrates their commitment to preserving the Sunnah of the prophet Muhammad from any fabrication. Therefore, the ideology of legal transplant in the Sunnah with the foreign elements as provoked by orientalist is opposed from the Islamic perspective.

Schacht and other orientalist claimed that Islam has evolved and transplanted the ancient Arab Sunna to be practiced as Sunna in Islam. In addition, Schacht believed that Islamic law was the greatest innovation that was created by Prophet Muhammad. In the Islamic perspective, Sunna refers to the normative practice set up by the Prophet and it is practiced in succeeding generations for their usage in early Muslims as representing the Sunnah of the Prophet. The companions of Prophet Muhammad carefully transmitted, documented, and preserved the Sunnah to protect its originality from any fabrications [16]. Thus, the companions play a vital role in protecting the transmission of the Hadith and Sunnah of Prophet Muhammad by carefully protecting the chains and the narrator of the Hadith. During pre-Islamic Arabia, the Arabs used the words Sunnah about the ancient and continuing practice of the community which they inherited from their forefathers. It means that the pre-Islamic tribes of Arabia had each their Sunnah which was considered as a basis of their identity and pride [17].

From the above clarification, it is clear that the Sunnah is referring to the messages from Prophet Muhammad. Thus, the primary life of Prophet Muhammad in the community of Arabs before the emergence of Islam exposed him to various customs, culture, theology, and idol devotion which differed from the Islamic morality [18]. Therefore, Prophet Muhammad insisted to enhance and substitute gradually the lifestyle of Arabs imbued with the values of Islam [19]. His mission was misconstrued by the orientalist and they prejudicially claimed that Prophet Muhammad invented and transplanted the rules and customs of pre-Arab into Islamic law. Simultaneously, Sunnah is a source of Shari'ah which is divinely inspired by Allah [12]. Thus, the rules and regulations, morality, and the theological concept mentioned by the prophet Muhammad were originally divine and were not invented or transplanted from other elements as propagated by Goldziher and Schacht.

A skeptical view of Goldziher and Schacht towards Prophet Muhammad is shown in their claim that Muhammad did not invent any new ideology. In this matter, Goldziher's mentioned that the Sunna is effectively the embodiment of the views and

practices of the oldest Islamic community and its elaborated Qur'anic text. It was referring to the saying and actions of the Prophet Muhammad which were recorded verbally by the companions of Muhammad [3]. In another aspect, Goldziher claimed that the content of Sunna and Hadith were authentically doubted, as it could have been fabricated by the companions during the progress of documentation.

Goldziher was certain that messages from Prophet Muhammad were an eclectic composite of religious ideas and regulations which originally came from the contracts between Muhammad and Jewish, Christianity, and other elements which seemed to Muhammad capable to awaken an earnest religious mood among the Arab Muslims. Thus, Schacht observed several equivalent between Roman and Islamic law which are not only restricted to positive law but extended to legal concepts, principles, and fundamentals of legal science [4].

The orientalist scholars claimed that the Sunnah is conceptually identical to the Jewish *Mishnah*. They claimed that both Sunnah and *Mishnah* practically were based on the corpus conveyed orally before it was documented in proper writing [20]. The *Mishnah* was referring to the codification of the rules of the Jewish oral law which reflects the practice of teaching in oral tradition before it was committed to writing. Skeptically, the orientalist found that Sunnah in the contexts of law extracted from the Hadith which was reported by the Muslim jurists was similar to the *Mishnah*.

The corpus in *Mishnah* was orally transmitted by the Jewish *Rabbi*. Technically, Sunnah and *Mishnah* were similar only in the transmission process, which was orally transmitted by the prophet to the companions, and *Mishnah* was transmitted by the Jewish *Rabbi* to the laymen. In Islamic historiography, the Hadith was transmitted orally by the Prophet Muhammad, and the oral tradition became the main source of information transmission during his lifetime [21].

To safeguard the validity of Sunna, the Muslim jurists will trace back the *Isnad* positions in unbroken chains of tradition [22]. The process was claimed prejudicially by western orientalist as the practice transplanted from the Jewish oral law, as to Wegner's statement, "...the second-century editors of the *Mishnah* had made a point of including a "blanket" chain of tradition back to Moses, specifying the generational links from Sinai to the editing of the *Mishnah*" [20].

In conclusion, the similarity between Sunna and *Mishnah* were in the transmission process, yet the contents of Sunnah were preserved strictly by the companions to prevent any substitute of words during the transmission process. Whereby the Jewish claimed that the contents of *Mishnah* were derived from the Prophet Moses. Simultaneously, it was doubtful since the contents of Torah were the interpretation and ideology of the *Rabbi* which was claimed as the guidance from God as the fabricated ascended in the holy book of Torah [23].

D. The Foreign Transplant in Ijtihad from the Perspective of Goldziher and Schacht

The development of Islamic jurisprudence after the demise of the Prophet Muhammad had left the companions and their successors to develop the Islamic jurisprudence by referring to

the al-Qur'an and Sunnah, and the methodology of legal reasoning or Ijtihad. Islamic law developed with the emergence of new problems that arose from social, political, and geographical expansions. Thus, the process of interpretation, analysis, and determining the laws under the varying circumstances were significant among the companions and the successors. Therefore, the ijtihad became the vital methodology in Islamic jurisprudence in the first century of hijra. Ijtihad has been defined by scholars as an endeavor of qualified jurists to discover the injunctions of Shari'ah on legal questions [24].

Schacht observed several equivalents between Roman and Islamic law which he calls *too numerous and too striking to be a coincidence*. Goldziher and Schacht claimed that the Ijtihad or legal reasoning was transplanted or invented from the concept of *opinio prudentium* of Roman law which was provided the highly organized concept of the 'consensus of the scholars'. Both of them agreed that Islamic jurisprudence was invented and the influence of Roman law 'transplanted' in its methodology and principles [3], [4]. They also prejudicially insisted that these inventions of Roman elements in Islamic jurisprudence reached Islam as early as the second Islamic century and contributed new elements to the intellectual world of Islam. Schacht claimed that the Islamic jurisprudence was derived from Roman and Jewish law, and that phenomenon was not an isolated case because he insisted that Roman law was transmitted to Islamic law since the door of Islamic civilization had opened wide to the transmitters of legal concepts. He believed that the methodology of Ijtihad such as *ijma'*, *qiyas*, *istihsan*, *istislah* and other principles of legal reasoning had entered into Islamic jurisprudence by Jewish law [25].

The questions here are: Is it possible for Islamic law to borrow or be transplanted from Roman or Jewish law? And if the Islamic jurisprudence was originally derived from Roman law, can it persist and be compatible with the Qur'an and Sunnah? In this research, the ideology of '*transplanted Islamic jurisprudence with the Roman law*' as proposed by Alan Watson was referring to the orientalist negative paradigm to prove the inferiority of Islamic law in the legislation. There is no concrete evidence to prove the claims made by Schacht, Goldziher, and other orientalist scholars for the Roman legislation to have been transplanted into Islamic jurisprudence. Hence, *opinio prudentium* in Roman law as insisted by Goldziher and Schacht has never existed in Roman law. The Romans knew of *interpretatio prudentium* and *responsa prudentium*, but neither has any relation with the usual fiqh methodologies such as *ijma'*, *qiyas*, and *istihsan* [25].

Historically, the earliest Western scholars to point out analysis on Roman and Islamic law were Domenico Gatteschi and Sheldon Amos who wrote on the Roman influence on the Shari'ah in 1865 and 1883, respectively [25]. They both prejudicially claimed that there were not many legislation verses in the Qur'an, yet the Hadith of the prophet Muhammad has been formulated with the foreign elements. They alleged that many foreign elements were transplanted into Islamic law, thus it was the reason how Islamic law could have developed progressively [25]. Furthermore, Snouck Hurgronje employed another similarity between Jewish and Islamic law such as the

roles of Muslim scholars which was parallel with the role of Jewish *Rabbi*, and the subjects in the Shari'ah were related to the *Mishnah* [26].

The assumption that Muslim scholars were backward, naïve, and incapable of legislation was firmly rooted in the orientalist paradigm. Besides, there was stated in the history of the development of Islamic jurisprudence or *Tarikh Tasy'ri' Islam* that the principles of Islamic jurisprudence had begun during the lifetime of the Prophet as early as the first century of hijra [15], and it contradicted with Goldziher and Schacht statements that Islamic jurisprudence was invented from the Roman law since the second century of hijra.

In Islamic historiography, many evidence discovered that Islamic law is capable to develop independently with the guidance from the Qur'an as a major divine source of Shari'ah. The Qur'an, the Sunnah, and the juridical wisdom of Muslim scholars provided essential coherence to the jurisprudence of Islam [22]. The legal and constitutional insights of Muslim jurists developed within the matrix of the Qur'an and the Sunnah, and were anchored both in temporal expediency and historical continuity [27].

The practice of Ijtihad initially began during the prophet Muhammad lifetime. Many evidence shows that the practice of legal reasoning was begun by the prophet in the circumstances of the absence of any divine revelation to interpret the *hukm* arose. Simultaneously, the Companions contributed significantly to the exercise of reason and personal opinion in legal matters [28]. The Prophet himself provided examples by accepting the Ijtihad of Companions in matters where the revelation was not obtainable.

The practice of Ijtihad during the early time of the Prophet Muhammad has proven that the practice of legal reasoning began during the first century of hijra, which the orientalist insisted that it began after the demise of the Prophet Muhammad. Hence, the claim that Islamic jurisprudence was 'transplanted' or invented by Roman law was a negative, stigmatic opinion from orientalists and was incorrect. Consequently, Islamic jurisprudence is perpetually flexible [29] according to the changes in situations, environments, and socials which required intellectuals of the scholars to interpret and analyze in the absence of the Qur'anic verses or traditions when problems or issues are encountered. Thus, the use of Ijtihad among the scholars was restricted with the special prerequisite to the mujtahid to assurance their intellectuality and high responsibility towards Islamic law [30]. These criteria are obviously an indicator that the methodology of Ijtihad was not invented from the elements of Jewish or Roman, yet it was divinely inspired by Allah to Prophet Muhammad in the absence of the Qur'anic verses on the problem arising. For example, on the occasion of Badr, the Prophet chose a specific place for the encampment of the Muslim forces. One of the Companion, Hubab b. al-Mundhir asked Prophet Muhammad whether he had chosen that place on his judgment (*ra'y*) or on revelation from God. The Prophet replied that he had done so on his own judgment. When the Companion suggested a strategically better location, the Prophet told him, "You have made a sound suggestion" [31]. It indicated that Ijtihad was

begun during the Prophet's lifetime and he himself presented an example by accepting the opinion of the Companions in matters of no directed revelation from Allah. The Ijtihad was actively practiced by the Companions after the demise of the Prophet Muhammad. The problems encountered were intricate and the practice of legal reasoning became crucial during the second and third century of hijra. Thus, the orientalist's skeptical opinion that Ijtihad was transplanted with the Roman law was not proven to be true. Yet the practice of legal reasoning was required by Muslim jurists to analyze and interpret the legislation based on the injunctions in Qur'an, Sunnah, and Ijtihad.

E. The Invention of Ijma' from the Opinio Prudentium of Roman Law

Goldziher and Schacht speculated that the methodology of Ijtihad such as *ijma'* and *qiyas* was invented from the Roman law *opinio prudentium*. *Ijma'* or consensus is a unanimous agreement of the Mujtahidun of the Muslim community from any period following the demise of the Prophet Muhammad on any matter which was not mentioned in the Qur'an and Sunnah. The orientalist's claimed that *Ijma'* is a regular source of Rabbinical law which was conceptually equivalent to be expressed in the Talmud by the word *Ha-kol* [32].

Ha-Kol refers to the opinion and interpretation of the rules by the *Rabbi* which was not mentioned in the Talmud and Torah. However, *Ha-Kol* was not required unanimous agreement among the *Rabbi*, yet the formal appearance of the ruling's text needs to be recorded. Obviously, it was contradicted with the *Ijma'* which required unanimity agreement among the Mujtahidun as a pre-requisite to authenticate new regulations. In Islamic jurisprudence, *Ijma'* plays a crucial role in the development of Shari'ah. It ensures the correct interpretation of the Qur'an, the faithful understanding and transmission of the Sunnah, and the legitimate use of Ijtihad among the Mujtahid [33].

Ijma' was practiced and developed in the first and second centuries of Hijrah after the demise of the Prophet Muhammad. The majority of the fuqaha believed that *Ijma'* is a *hujjah shar'iyah* (decisive legal argument), and it was regarded as the third source of Islam after the Qur'an and Sunnah [22]. Historically, the first jurist who discussed *Ijma'* as a legal principle was Abu Hanifah. He has discussed *Ijma'* as a source of fiqh with his students in his book, *Kitab al-Ra'y*.

The orientalist's presumed that Abu Hanifah school of law originated from Kufah and it became the center of Talmudic learning. This situation has led Western scholars to believe that Jewish legal concepts were absorbed into the Islamic jurisprudence as theories and principles in Islamic legislation. Hence, the similarity was in the origins of the religion (Divine religion), but it was not an indicator or evidence of Islamic law implementing the Jewish legal system. During the formative period, the Prophet and Companions were faced with many legal problems which required the creativity and advancement of the intellect in legal reasoning as a vital process in Islamic jurisprudence. Furthermore, Islamic jurisprudence emerged as an independent legal system based on moral and legal precepts

stated in the Qur'an and exemplified in Prophet Muhammad's conducts and legal decision. Thus, Islamic jurisprudence could not have developed by relying on foreign legislations as the problem advancement required the creativity, and critical and intellectual thinking of the scholars to validate the legislation.

The skeptical perspective from Schacht, Goldziher and other orientalist's to Islamic jurisprudence as an invention and transplanted from the Roman and Jewish legislation was actually 'an invention and transplant' ideology created by them to portray the Islamic jurisprudence's origins and evolution in a negative light.

III. CONCLUSION

The development of Islamic jurisprudence since the Prophet Muhammad's time presented the progressiveness and flexibility of Islamic legislation in adapting to situational and social issues. Thus, the Companions of the Prophet Muhammad were eye-witnesses to several events that required creative and personal reasoning from Prophet Muhammad in inventing the hukm in the absence of Qur'anic verses. The practice of usul fiqh was aggressively practiced among the Companions and their predecessors after the demise of the Prophet Muhammad. It required high-level intellect and creative thinking among the scholars to analyze and interpret issues by legal reasoning or Ijtihad methodology.

Goldziher, Schacht, and other orientalist's prejudicially claimed that Islamic jurisprudence was originally derived from Roman and Jewish law. They insisted that the Sunnah, and Ijtihad or legal reasoning were transplanted from the Jewish legislation known as *Mishnah* and *Ha-Kol*. Schacht persistently claimed that Islamic jurisprudence began to develop by the second century of Hijra. Islam and Jewish were similar in the theology concept and divinely revealed to the Prophet Muhammad and the Prophet Moses. Undoubtedly, the legislation in Islam was developed independently with guidance from the book of Qur'an, Sunnah, *Ijma'*, *Qiyas*, and based on Muslim scholars' ideology. Much evidence shows a large amount of jurisprudential work of the companions and predecessors during the first and second centuries of Hijra.

To encapsulate, the ideology of legal transplant is not applicable in the Islamic jurisprudence as it is developed independently with the legal reasoning of the Muslim scholars. The orientalist's propagated the invention of foreign elements in Islamic jurisprudence to insinuate an inclination and dependence of Islamic jurisprudence towards western elements.

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