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ISLAMIC LAW AND THE DEVELOPMENT OF AGRICULTURAL SETTLEMENT IN OMAN. On the Question of Tradition and Development

Introduction - The Anthropological Perspective

The term Islam comes from the "slm" root in Arabic. From a religious point of view that has to do with worship, worship in the sense of submitting oneself to what is given by God. Islam literally means "submission", "resignation", from the verb "aslama", "to resign oneself" (Hans Wehr, Arabic-English Dictionary:426). (1.) The submissive principle will also apply to Islamic Law because in Islam Law and religion is fundamentally the same thing. There is no difference between law and religion. They are both revelations of the will of God. Islamic law is "Sharia" which literally means "way", "road", "track", or "path", originally the "path" or "track" by which the camels were taken to the drinking place, but the idea of Islam as guidance, as showing the correct "way" or "road" is a very important notion in the Quran. The "Al Fatiha" the opening chapter (sura) of the Quran reads: "Show us the straight way" - "Guide us in the straight path" which is repeated at each of the five times of prayer (Waddy 1976:3).

However what matters here is not so much Islam or Islamic law as such. That is just one approach to the subject. What matters here is how ordinary people make a living. The anthropological view on the matter will be that coming from experiencing everyday life. Here, life as it is found to be lived by farmers in a traditional agricultural settlement in northern Oman. If religion and law are important elements in the life of those farmers, then such matters are interesting to the present anthropologist author too. (2.)

The anthropologist author is only interested in the development of rural settlement, in farming, in the world of the farmer and the more practical issues he is dealing with, such as the growth of the crop, dates, wheat, alfalfa, tomatoes, Omani onions, garlic or whatever, the flow of water for irrigation, the state of the irrigation canals, whether additional water shares should be bought, the digging of a well, how to deal with insects in dates and tomatoes, the grazing for goats, sheep and cattle, the market price of water, seeds, melons and alfalfa, and then perhaps he is wondering which camel will win the next National Day camel race.

It is therefore fair to say that the actual, anthropological, interest in Islamic law is purely circumstantial, practical. General ethics, theoretical principles or the more philosophical discussion of rights and principal justice, the juridical approach per se, is not the issue here. The same goes for the juridical-sociological or the historical-sociological approach. To study the law system internally or to look for the sociological-historical effects on the system are projects of great value, but they belong to another discourse, a different horizon, and the approach involved is the opposite of anthropology. (3.)

The anthropological view, most probably, will also be the view of the typical farmer. He would

hold a village perspective. His interests are quite simple and practical, and related to his agricultural affairs: how to secure land and property, water rights, labor, access to markets, fair dealings, reasonable pricing, assured standards of measuring, etc. Securing the basis of survival and wellbeing of the family is what matters to him. In this he will be dependent on others. He and the family will have to arrange themselves with neighbors, make mutual agreements. They might have to share the same water source, their lands might be adjoining, they might have to work together to manage some complicated and demanding task that none of them could do alone like digging a well, building a house or terracing the fields.

The important technical functions and the direct practical value of law in this connection are obvious: securing the integrity, legal position, of property, deeds, and farming contracts on sharecropping, labor, or water. So to provide an important ordering body, proper regulations in the layout and functioning of farming society, and thereby adding to the stability of a sound farming environment, seems more or less to be what there is to say about law in this context. But that is far from being all there is to it, although concentrating the efforts on exact cases - as opposed to pure speculation, looking for general principles - would be much in accordance with the spirit of Islamic law itself. In seeking a more elaborated understanding of the issue, it seems to be possible to say that the indirect effects of Islamic law are just as important as the direct ones when discussing the development of agriculture and rural settlement in Oman. These indirect, epiphenomenal or contingent, effects are those related to the kind of society that Islam and Islamic law helped to preserve, forms of organizations and general social principles, qualities, that are also somehow interacting with the more basic structures and relationships that were directly referred to or influenced by the law itself.

To return to the beginning of this introduction we could say that as Islamic law is given once and for all as a divine command, then: "There can be no notion of the law itself evolving as a historical phenomenon closely tied with the progress of society" (Coulson 1964:2). Whatever that may be, what matters here is to see things the other way around; that modern development, "the progress of society", constructive development, can be very much evolving from more or less authorized influences; from established traditions of culture, arts, crafts, etc., to less assertive forms, of everyday life, ways of dealing with one another, of greetings, habits, customs, gestures, taste, and preferences in a way - for engaging in a conflict or more pleasant social intercourse - are all dispositions that were preserved and developed much to the credit of, somehow interacting with, "closely tied with", - a system, a code of law (or religion for that matter), that itself has to be kept clear of all the molding effects of society - Islamic Law - Sharia.

It appears to be a common perception in the West that Islam and Islamic law can only lead to a frozen and immobile society where everything is strictly controlled and where no progress or freedom is possible. Such views are outside views and projected images that won't survive the meeting with social reality at village level, the anthropological truth, the direct experience that evolves in anthropological fieldwork. Anthropological fieldwork among Omani farmers will open up for a complete different perspective on things, of feeling for what Islam and Islamic law means to people going about managing their own affairs and businesses - cultivations. The study

of the development of rural settlement in Oman demonstrates that the official projections as a reality is far from being the truth.

The rest of the paper will be separated in two parts, the first on the affairs explicitly referred to and comprised by Islamic law, and the second on the more implicit effects, or what the author has experienced as the epiphenomenal effects associated with Islam and Islamic law.

Islam and Agricultural Settlement in Oman

The Arab people in Oman were among the first groups to embrace Islam. That took place around the middle of the seventh century AD (first century AH) when Islam was firmly established in the country. But long before that rural settlement based on subsistence agriculture had been developed (Berthoud and Cleziou 1983, Costa and Wilkinson 1987, Frifelt 1976, Wilkinson 1977). There is archaeological evidence of agricultural settlements in the third millennium, but early in the second millennium there seems to have been an abandonment of sedentary life in favor of nomadism based on the camel, possibly due to agricultural decline (Hourani 1991:124). Then a revival took place after about 800 BC and the first irrigation systems with canals tapping underground sources, aquifers, were constructed. With the development of reliable systems of irrigation a complete agricultural system evolved, a mode of production we could say, with a distinct settlement pattern. That system stayed virtually unchanged for more than a thousand years. Actually, fundamental development and changes in this traditional mode of production was not brought about until the more recent times, and that is to be seen as the result of the formulation of a specific agricultural development policy, and the successful performance of government programs that has been the characteristic feature of the renaissance that has been taking place in Oman during the last 25 years. (4.)

Because the traditional agricultural system has shown such stable resilience and because of the importance it has today the historical view on agricultural development does not have to operate with more than one transitory phase, the present, where both traditional, modern and mixed farms exist. Therefore the description of agriculture as it existed in late pre-Islamic times will be made with direct reference to more recent developments.

The Development of Agriculture and Settlement in Oman

Agriculture in northern Oman was established in two major areas. Along the Batinah coast and in the interior regions, Dhahirah, Dakhliya, and Sharqiya. In the Batinah region a fairly contiguous area of farmland was developed on the littoral strip, 2-5 miles deep, leading from the north west and some 250 km down to Ras Al Hamra a few miles from Muscat. These farms depended on wells for irrigation. In the interior conditions were much less favorable for agriculture and settlement because of the rocky terrain. Here settlements would naturally have to be much more scattered and isolated. By far most of the land suitable for cultivation was in the Batinah region.

The kind of agriculture and farming established in the whole area had to be very much water related. Water is so important because rain fed agriculture is no where possible. Securing water for irrigation has always been the absolute precondition for any type of agriculture in Oman. Therefore irrigation and water management was, is, and will continue to be, a primary task for the Omani farmer. Water and water management was clearly the most influential factor in determinating the topography of settlement and the particular field system of cultivation that developed. Water also had a strong influence on social organization, especially in settlements based on irrigation systems where many users had to share the same source of water. Water would account for the similarities as well as the differences in the agricultural systems. The geological and geographical conditions differ between the coast and the interior and so does the conditions of establishing systems of irrigation.

Accordingly two different irrigation systems were established. One based on wells at the coast, and one based on the tapping of surface or groundwater sources in the interior, the so-called "falaj" (pl. *aflaj*) systems (FIG 1 and 2.). But in spite of the degree of adversity of the two systems, this did not have differentiating effects on the basic forms of in-field cultivation. Animal husbandry and the general cultivation practice was quite uniform. There were only minor local and regional differences in the selection of crops and these differences were first of all to be related to the variation in climatical conditions, temperature and humidity, prevailing at the coast and in the interior. The cultivation techniques as well as the outlay of farms, field design and crop structure, more or less followed the same standards, and these standards were first of all influenced by the fact that all cultivations had to be irrigated, more than they were influenced by the particular kind of management system established before water would be reaching arable lands.

The traditional pattern is so that the most important crop, that is the tree crops such as dates and lime, will be growing where water first will be reaching arable land. A few vegetables such as tomatoes and onions could be grown under the date trees together with wheat and barley. This area is considered the main garden, "al bustan", and outside it, surrounding it, or placed in extension, will be the area for the cultivation of field crops such as alfalfa, barley and wheat, called "al awaby" (FIG. 1.). Also vegetables can be grown in the field crop area. This agriculture-farm design is most clearly visible in the interior because settlements are scattered and the whole cultivated area belonging to one settlement will be divided in the classical way, in al bustan and al awaby. The same pattern is repeated in a smaller scale for the serial lines of individual farms that were plotted along the Batinah coast. All the old farms maintain this traditional pattern laid down more than a thousand years ago, and of the new farms established, lets say during the last 10 to 15 years, most of them stick to the old farm design.

The uniformity of the traditional agricultural systems in northern Oman has something to do with the possibility to grow the same crop under conditions of irrigation. Everywhere fields had to be flooded. That was the only way, and therefore fields would have to be made into basins with ridges, and the design would be the same; round or square. Normally the round basins (*ghayl*) will be of some 1-2 m in diameter and always reserved for tree crops with one standing in each. The square ones (*gelba*) are for field crops and vegetables, but they can also be used in al bustan

FIG. 1. SKETCH OF A TYPICAL FALAJ COMMUNITY

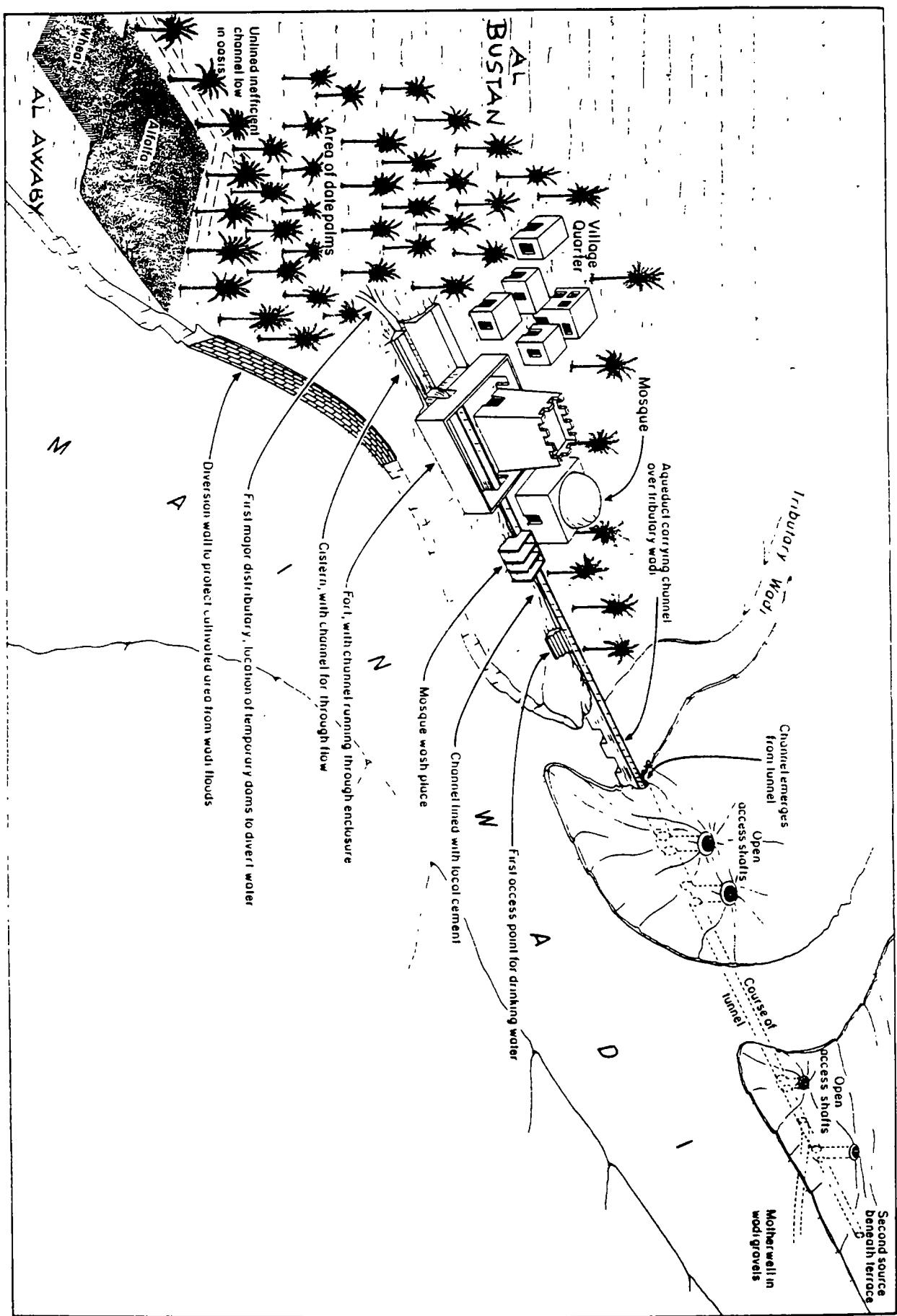
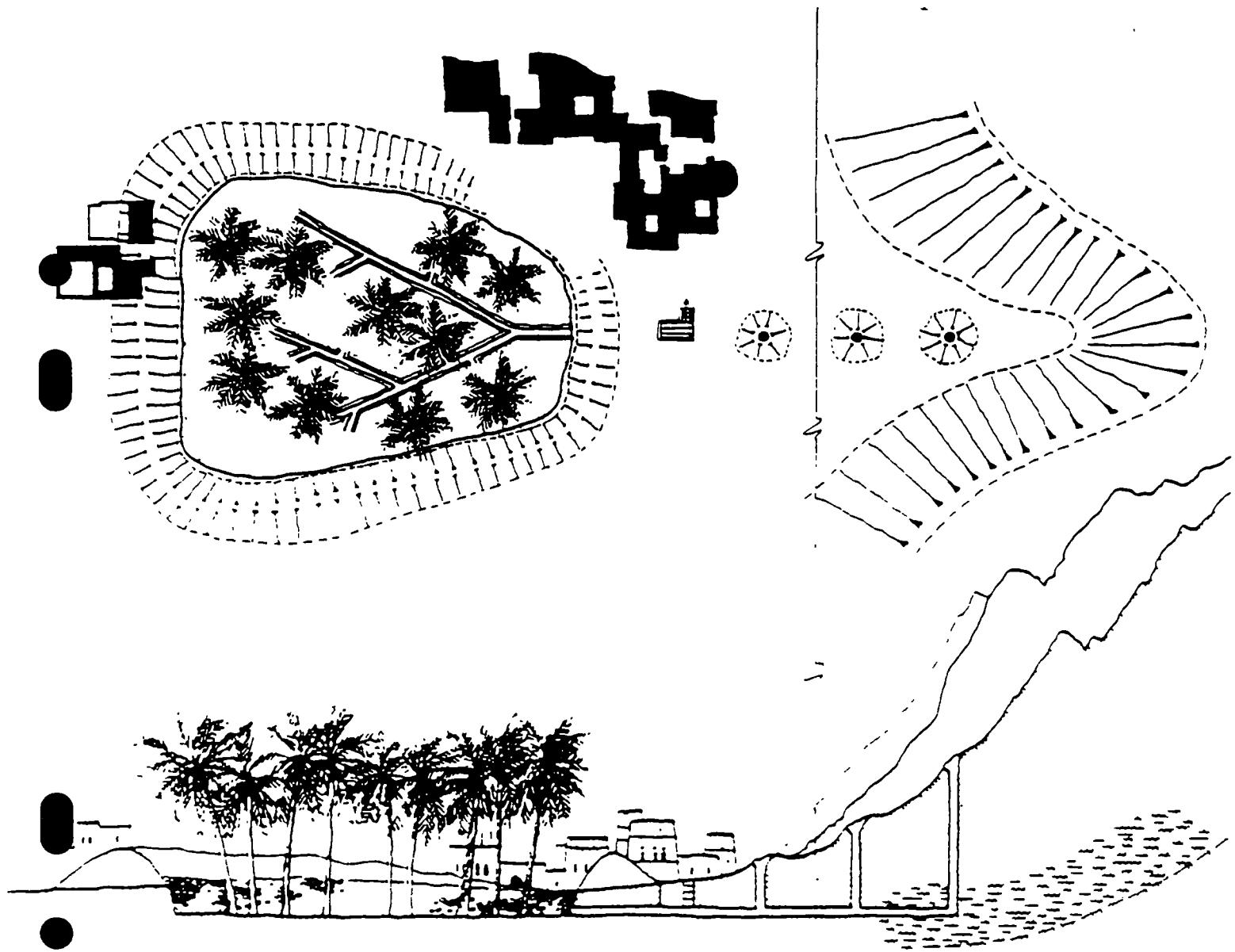
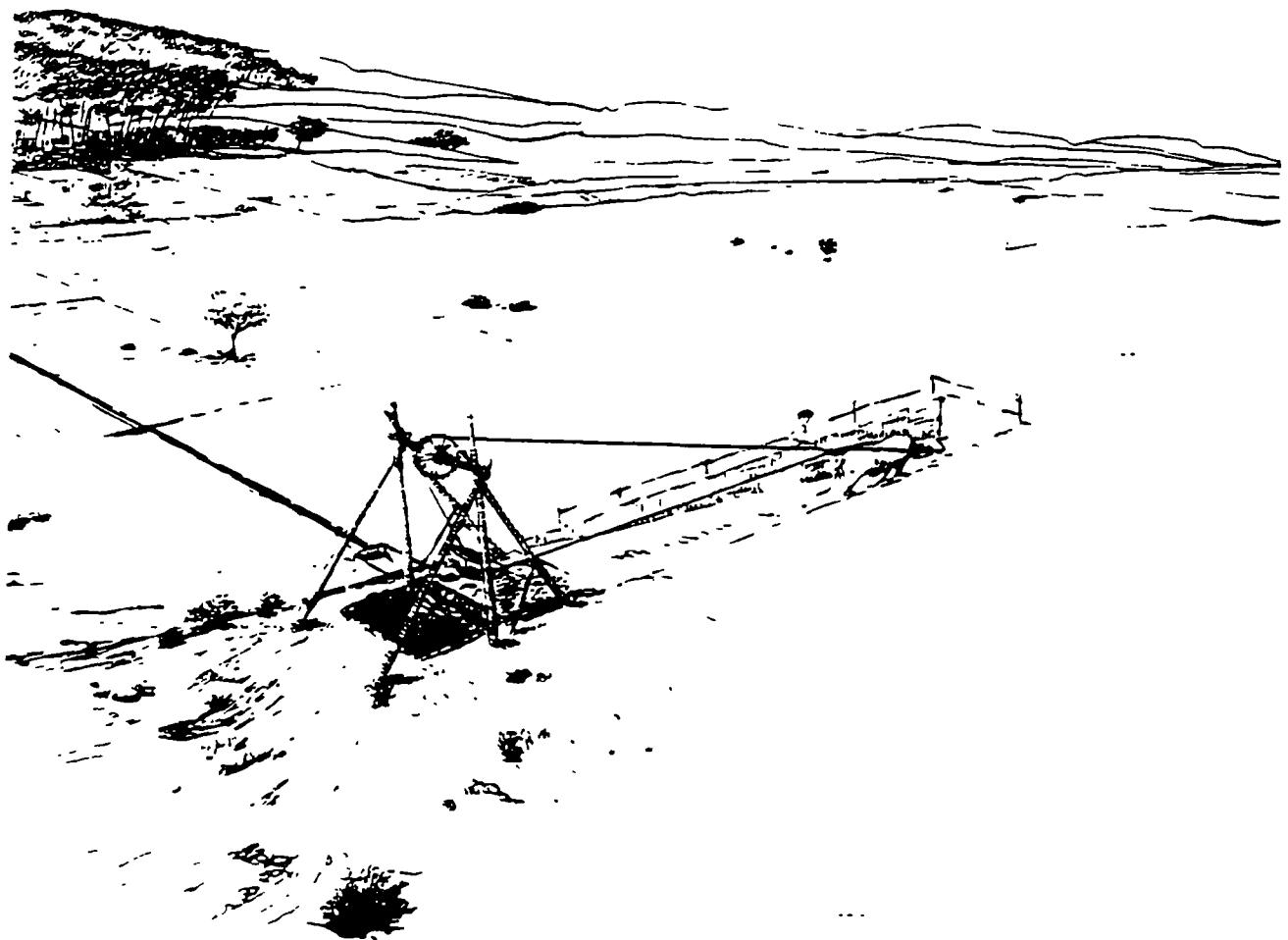


FIG. 2. SCHEMATIC FALAJ COMMUNITY



This is a typical falaj community sketch similar to FIG.1. but above there is no "al awaby" field crop area. This basic pattern and layout is typical of Omani agricultural settlements and only few changes have taken place; settlements are expanding, buildings are renewed, new constructions come up, but the typical falaj community design prevails.

FIG. 3. TRADITIONAL "MANDJUR" OR "ZIGARA" WELL SYSTEM



when under-cropping takes place. Gelba basins show great variation in size, from about 4 up to 40-50 m². Typically, though, they are quite small. Awaby fields in interior villages are normally 4-5 m² when grown with barley or wheat. If grown with alfalfa they will be bigger, 8-20 m², sometimes more. In this system a considerable part of the field can be occupied by ridges. When fields are small 30-40%.

The uniformity of the field system and cultivation is related to water, the simple flooding technique. The differences between the agricultural settlements in the coastal and interior areas, on the other hand, are also, and primarily, related to water. Not to the in-field use but to the way pre-field water exploitation was organized.

The wells that had been dug along the coast line were the dominant system of irrigation in that area. Different names - "jazira" or "mandjur" - had been given to these well systems but they were all of the same type (FIG. 3.). A pair of yoked bullocks or donkeys (sometimes only one) would draw water to the surface by means of a rope which runs over a wooden cog fixed vertically on a tripod above the well shaft, or between two triangular stone/mud brick walls. Water would be drawn with a skin bucket that collapses when it enters the water. As the animals descend an excavated slope the skin tightens and the bucket is raised and tilted into a small basin (lilil) in front of the well mouth, and a canal (zakiye) system then distributes the water to the fields by gravity. This traditional way of raising water was common practice for more than a thousand years and remained as it was, unchanged, until recently. Only during the last 20 to 30 years these wells have been fitted with mechanical pumps and most often that is the only change made to it. The support structures still stand and water is poured into the same small receiving pond, and from there diversions lead to the fields. Because of the limited output volume produced by these systems, when worked by animal power, there had to be a high number of wells, approximately one for every 2-3 acres (feddan) of permanent cultivation. (5.)

When suddenly these wells are fitted with diesel driven (and now also electrical) pumps, - and that is what has happened to a majority of them during, let's say, the last 30 to 40 years or so, - then the possible effects and disturbances are obvious. A much larger area can now be irrigated from the same well but at the same time the possibilities of excess use and wastage increases enormously. In addition to this a considerable number of new wells have been sunk in the period after 1970. Salt water intrusion has been the result, so now, no new wells in the Batinah region will be permitted and there can be no further extension of the area under cultivation.

In the interior wells were also dug but they were of much less importance and most often functioning as a complementary support for the aflaj irrigation system that came to dominate the interior (FIG 1 and 2.). This has to do with geological factors and the dominant feature in that respect is the Hager ("mountain") Range running east-west, parallel to the coast line, from south of Musandam down to Jabal Khamis and Ja'alan. Irrigation systems were constructed in many of the wadis, that is the rocky watercourses leading run-off water from the mountain range and out towards the coast or into the desert. None of these wadis have perennial flow, but after heavy rains considerable amounts of water will be running through them and in that case flooding often takes place. (6.) Few settlements were established between the wadis but some

had been placed up on the side of the mountains where springs had been located. In a falaj system water is transported by gravity alone and there are three basic forms of aflaj depending on the type of source feeding the main canal of the system. Water will either be coming from one or more man made underground canals leading water from a main source, a "mother well" (umm al falaj) that has been dug to tap the aquifer. This is a qanat falaj. Or water will be coming from one (or both) of the two types of shallow sources known in Oman. This will be a ghrayl or an ayn falaj (or some kind of combination). A ghrayl falaj will be taking its water from the perennial flow in the surface gravel of a wadi bed, whereas ayn is simply water coming from a spring (ayn means spring or eye). In all three cases water will be led in a main canal before being distributed by a network of smaller diversions onto the fields.

The qanat falaj system is the most important in terms of output/area covered. This is because the qanat system does not depend on existing sources as they are. A ghrayl or ayn falaj is the direct connection of a canal, plus distributor system, to a natural outlet, a surface source, shallow or spring, whereas qanat represents a constructed access to a stored natural, but underground, re-source in the form of aquifers, and therefore the potential output of the qanat falaj is much bigger than the other two. If the necessary human resources are available, canals can be constructed to more than one mother well and thus several aquifers can be tapped. A typical falaj might have an output of 20-50 liters per second (l/s) whereas a oxen driven well lift system would give 1-2 l/s or less. A diesel pumped well will give 5-10 l/s but often less as water is not enough for continuous pumping. The biggest falaj systems have a continuous output of up to 200 l/s and in the old times supported communities of up to 8 - 10.000 people, like Nizwa for instance. It is estimated that irrigation requirement for one hectare of farmland is 1.2 l/s in the interior and 1.0 l/s at the coast (Ministry of Water Resources).

Irrigation by well water, or by systems tapping a shallow source/aquifer, would have no differentiating effects on the cultivation or irrigation technique applied, as mentioned above, but the relative size of a matching field systems would be affected. In the interior settlement, dependence on one principal feeding source meant that the whole area under cultivation had to be divided into al bustan and awaby land, and then individual holdings would tend to be split up so that one family holding would consist of a piece of the al bustan as well as a piece of the awaby. In the coastal areas well watering meant that many independent, although contiguous, plots could be cultivated and each farm would have both a date garden and a field crop area. However, the major and most marked effects of the difference in pre-field arrangements would be on the organizational aspects of the community. From that point of view well watering is simple and aflaj are complex. As a one-source-one-user-system a well does not require much organization, once it is there, as it would tend to involve the owner/user and his household dependents only, whereas a big falaj system is a one-source-multiple-users-system, perhaps irrigating hundreds of acres of farmland and supporting a population of several thousand, and therefore the organizational aspect becomes paramount. As it turned out, the amount of communal energy and the degree of attention directed towards this end, securing water and a fair/correct distribution of it, took precedence of the more productive and economical aspects, such as actual water use and cultivation. (7.)

So even though the actual cultivation and in-field irrigation technique of the two systems did not differ, the difference between a one-source-one-user-system and a one-source-multiple-users-system was a difference that really made a difference. It is therefore fair to speak of two hydraulic systems, or modes of water procurement, in terms of the adverse effects they had on the design and composition of settlements, and with regards to the complexity of the organizational affairs involved. Well based agriculture would tend to have settlements consisting of aggregate farm units, whereas falaj based settlements would be consisting of joint units. The scope of relative independence is much wider in well farming whereas elaborate forms of cooperation will have to exist for a falaj system to work (when there is more than one user that is - small systems might only have one). A falaj system will need forms of organization and strong instances that are able to work out the necessary degree of permanence and stability, nowadays sustainability. To establish rights and statutory instruments (some form of law-system) pertaining to the water-land relationship situation is therefore obvious. Clearly law regulations would have to concentrate on that - water rights and land rights. But what would matter in the end would be the actual set up of a combination of these two fundamental agricultural assets, water and land. Land without water would be worthless - nothing but a haphazard grazing opportunity. Things have to match. (8.)

As described in the previous section, the basic development of a suitable agricultural system, or the "mise en valeur of natural resources" (Wilkinson 1977:239), had been accomplished in pre-Islamic times during periods of Persian rule. With the coming of Islam by the mid seventh century, and with the revival and communal strength so fostered, the Persians were soon (before the turn of the century) evicted by the Arabs (Omanis) that for centuries had been coming in migrating waves from north and south and settled in and around the Persian communities. The Omanis then took over the productive assets, the agricultural system, as it was and saw no need for fundamental changes. Islamic law should be regarded in that perspective, not as an innovator, but as a preserver, pre-existing, as a god-given statutory instrument, above society and settlement. But this agricultural preservation only took place as far as the fundamentals are concerned. What was taken over was agriculture as a productive asset, not the way of life that was supported by it. Social structure and organization among the Arabs differed completely from the Persian system. The Arab were organized in tribes and tribalism was characterized by some strong egalitarian and democratic elements, and a horizontal social structure, as compared to Persian feudalism with a pyramidal class structure and a serfdom organization of agricultural labor. What took place, then, was a replacement of social systems. One system was evicted and another installed. The traditional agricultural system that existed in Oman was matched with a completely different social system, and that system was not in any way tailored to the particular needs of that particular mode of production. Islamic law was not adapted or in any way designed to suit the needs of the existing agricultural system. Islam was brought to Oman by groups that had a tribal organization, and a Bedouin orientation and background. That on the other hand was a perfect match; Islam, tribalism, and a Bedouin way of life, ideology (Wilkinson 1977:208 ff. Hourani 1991:24 ff.). What mattered was the continued survival and strength of a social system and values, and not the productive asset that had to support them. This situation, however, did not mean that suitable laws and regulations pertaining to agricultural production could not develop under the auspices of Islam and Islamic law. On the contrary. Water rights and land

laws were duly established so that things could work out and be matched in a way acceptable to the farmers. Islamic law (sharia) was not only exercising a strict will to order, of "going by the book", but also flexibility and cooperation. This came about because a complex process of development could take place whereby Islam and Islamic law allowed for a re-codification of traditional forms of organization and practice. Islamic law was confronted with traditions - established practice -but conflicts were avoided by assimilating traditions when ever possible. In the case of aflaj systems and irrigation it has even been noted that: "The decisions reached nearly always derive from custom rather than from the fundamental rulings of Islamic law (usul al-fiqh)." (Wilkinson 1977:121) So, when necessary in dealing with complicated matters, in cases where Islamic rulings were not clearly prescribed, customary law, that prescribed by tradition (áda), as well as established common usage ('urf), could be recognized as valid statutory instruments. This complex jurisdiction was instrumental in generating productive agricultural development in the old settlements and the strategy could be defined as the **constructive assimilation of tradition.** (9.)

In other cases the Islamic religious scientists, the learned ('ulama), that is those recognized as qualified to deal with questions pertaining to Islamic law, could proceed on the basis of the Holy Quran and sunna (traditions verifiable by reference to the sayings and doings of the Prophet), and by intense independent Islamic reasoning (ijtihad) (10.), using analogy (qiyas), they could reach consensus rulings (ijtma') (Vesey-Fitzgerald 1955:85-97 and Coulson 1964:76-81). This is of course a very rough description of something very complicated, Islamic jurisprudence (usul al fiqh) with the interaction of the four roots (usul) of Islamic law: the Holy Quran, sunna, ijtihad and qiyas. Yet, even this is enough to indicate a sympathetic drift towards closer interaction with the social, meeting the quest for a reasonable compromise, moderation: "which was a part of the Prophets own character" (Vesey-Fitzgerald 1955:86).

There are records of collected Islamic rulings (jámi') dating back to the First Imamate (133-280 AH/748-893 AD) dealing with falaj irrigation and agricultural affairs; water rights, shares, access, re-excavation (hafr) of damaged low-flow aflaj, falaj maintenance, agricultural contracts and tenancy (Wilkinson 1977:258-65). (11.)

The Omani falaj organization and terminology was established during the First Imamate. The Islamic rulings of that time indicate a preponderance of conflicts related to re-excavation (ramm) of abandoned or low-flow aflaj. There are no rulings on new falaj constructions. The standard arrangement on the re-excavation of a falaj determined as ruined (damir) and abandoned (ramm) is that the one who resumes the responsibility for repair would be holding the water rights for ten years after completing the job. The falaj could also be handed over to the community for a stipulated sum, and in that case the responsibility for maintenance would go with it and the rent would have to be paid for ten years no matter if the flow became much less due to poor maintenance or for other reasons not attributable to the re-excavation work. There would have to be a formal contract specifying the exact terms. This was also emphasized regarding paid repair work. The exact terms had to be specified by a formal contract. Normally surface work would be paid by the day and underground work by the hour because of the difficulties involved in estimating the work. Generally excavation work was uncertain (majhul) and therefore the

terms could not to be fully specified by contract (*thábit*). In cases, however, it was done by classifying the material as solid rock (*safá*), gravel (*hashá*), or clay (*madar*). There would be force majeure clauses in the contract defining liability in case of sand blowing, collapse, or flooding affecting the falaj flow.

Rulings emphasize the corporate responsibility, that all members of the falaj community are responsible for falaj operation and maintenance relative to their shareholding. Decisions to undertake major repair work would have to be taken by all or at least all the principal shareholders (*jubá*). No doubt the same corporate principles would apply to communal construction works in general. Should conflicts arise in these matters a formal inquiry by an impartial investigator would take place and the case presented to the Islamic judge (*qádi*).

There were rulings regarding the bounding area (*harim*) of various forms of property and infrastructural assets. Access tracks to water was fixed at three *dhra'* (cubit, about 2/3 of a meter, or the length of a forearm), minor village passages at four, eight between quarters (*harat*), and forty for roads and wells. For aflaj the *harim* was normally 500 *dhra'* (160 meters on each side of the main canal) on the stretch before subdivisions. This was for the protection of the feeding source. Some rulings in cases where intake for a new *ghrayl* aflaj have been too close to an old one. Access to the headwaters of a falaj should be kept open to all.

Contracts

There were specified terms for all sorts of agricultural work and activities related to it; all aspects of date cultivation, weeding, pruning, plowing, harvest, etc.; for bird-scarers, guards, look-outs, and shepherds. For instance a shepherd would be entitled to the full per capita pay should the owner sell some of the goat and sheep before contract termination. Other contracts dealt with conditions of loans, preemptions, and options. There were detailed regulations on the kind of social contracts that we call taxation.

There were strict rules appertaining to contracts stipulating the terms of tenancy (*qa'ádat al ard*) and agricultural labor. In disputes between landlord and tenant it was a basic principle that tenancy agreements cover an activity with a great degree of uncertainty (*majhul*). The risk involved in any kind of cultivation had to be shared and this meant that rent could only be taken as a part of the produce. The standard share that the tenant should be given by the land owner was set at one sixth of the produce, sometimes even more. This was a direct continuation of pre-Islamic practice. Water could be rented for money. The landlord would be responsible for maintaining the water supply and for paying the tax on the produce from his land. In general extenuating circumstances would protect the tenant much more than it would the landlord. The tenant would also be protected against many undue practices. Various forms of contracts existed covering rent of not only arable and cultivated land. Trees could be rented separately and in cases where the renter would not be able to look after them himself (if a Bedouin for instance) a contract regarding that could be made with a laborer or perhaps the owner.

Private Ownership of Agricultural Assets

Real property is classified into some main types: private ownership (mamluka); state-owned (amiriyya); common land (matruka); dead land (mawát); and land as religious foundation (waqf). The most important objects with ownership rights in agriculture are land and water, and such ownership could be bought, sold, rented, or mortgaged. All land that had been brought under cultivation or used for buildings would have ownership rights (usul). Uncultivated land (mawát) outside the community settlement could also be claimed and in rare cases abandoned land where ownership was untraceable. Private ownership (mulk) could be claimed and then such rights could be sold, bought, placed as security (rehn), given for rent, etc., but in every case such transactions should be registered in a properly drawn up document. If land for some reason went out of cultivation or was abandoned, the ownership rights would remain and anybody wanting to re-cultivate it had to negotiate with the original owner. If original ownership was not known any longer, untraceable, or if the owner had disappeared, or died without leaving an heir, land would normally be public property (bait al mal) and administered by the religious leader (Imam) for the benefit of the poor and needy. In some cases the ruling would be that the land belonged to the dead (hashriya) and therefore could not be touched. Private ownership could only be possible in cases where the land was declared dead (mawat). At a later stage, during the seventeenth and eighteenth centuries, re-cultivation and re-clamation became less restricted and such lands would be declared as dead unless contrary evidence could be produced.

Mediation

To secure law and order, or justice, is a general but formal expression of what law is all about. If justice is taken as fairness then a less abstract level is indicated, and to secure fairness, a fair distribution of common goods, is perhaps the strongest requirement in Islamic law pertaining to agriculture in Oman. From a more general point of view sharing (a meal, table and bed, goods) is perhaps even the most common social standard we can think of, but, from another point of view it might be problematic. Maintaining social standards is not necessarily good for business, economy and production. In that way conflicting objectives can be observed in law application. The Islamic law of inheritance is an example. The law demands that property be distributed, or split up, among all the heirs following a proportionate key. Continuous fragmentation will lead to smaller and smaller holdings and make economically sound management rather difficult if this tendency is not somehow counteracted. A kind of mediation will be possible and take place if the negative effects of the law are up against something else in society, and that might be other social standards, in this case individual freedom, social balance that is. Fieldwork data indicate that very small holdings tend to be sold off in favor of more appropriate ones if the owner feels too dependent, if a proper balance between family coherence and individual freedom is not achieved (Barth 1983:123-24). The extended family network is a strong unity in rural settlements, but this does not necessarily mean that such units are corporate. If they were, joint holdings by close relatives would of course be the ideal. In Oman the honor and freedom of men, manhood, is a strong traditional asset. So is water and land, but there are limits!.

Everyday life is regulated by systems, systems of Islamic or customary law for instance but there are other things too. The interesting experience is the actual working of the systems, their enforcement and penetration of society, and how their effectiveness, assertion, is somehow mediated and meddled up with all sorts of interferences. Also the less conspicuous moments of every day life are assertive, and so this becomes a salient yet unnoticeable kind of social constructivism whereby development can take place on traditional terms. A process whereby neither the established traditions nor the introductions are left undisturbed. Nothing ever stays the same.

Transition - Predispositions

The short reference presentation of some Islamic law is just to give an indication as to how the new order established was constructive as well as comprehensive in terms of coverage of possible areas of conflict in settlements based on agriculture. The kind of traditional agriculture that developed at such an early stage did not undergo principal changes until the more recent period of modernization and renaissance. The solid and well-considered nature and intervention of Islamic law has played an important role in maintaining this system stability. What we experience now is a phase of transition in which Omani agriculture is developing from a very long period of traditionalism and onto something else. There is no doubt that Islamic law, as a solid foundation, will continue to play an important role and that the law-technical strategy of assimilation, whereby the basic system at the early stage allowed for a customary supplement, will secure the necessary coverage by incorporating new supplements. However this discussion is outside the scope of the present paper. In the discussion of what agricultural modernization is all about, and when considering the significance and role of Islamic law, then it is worth noting the traditional background on which development is taking place.

In stead of focusing on the more technical aspects, the law technical aspects for instance, or other materiel innovations that might take place,- or are taking place, such as the introduction of whole variety of new crops, overall mechanization, new technology in improved irrigation and cultivation, etc.,- then in stead it is worth contemplating traditional agriculture as more of a predisposition - to its own development. This will be of particular relevance when development is perceived as re-development. It is to emphasize the need for a theoretical outlook that sees the historical continuity.

From that point of view the significance of Islamic law will be moving from the technical or direct implications to the more indirect ones, the epiphenomenal contingency effects.

These effects would fall among two sets of predispositions. One regards economics, the formal assets of production and exchange, economy in a more strict sense. The other will be regarding the less formal aspects, assets of a different nature, **social economy**, referring to forms - of organization, interaction, and social standards. The main economic predispositions are listed below:

- private property as the principal form of ownership of land;
- even distribution of land in the form of small family holdings;
- market economy with elaborate contract regulated systems of exchange (buying, selling, tenancy, rent, mortgage);

There is no general concept to guarantee development, economic or otherwise. But if there were, the three orderings, principles, mentioned above most certainly would be on the list of necessary (although not sufficient) preconditions that would go with it. Sound and solid economic development of agriculture has (so far) only taken place in countries where these preconditions have been present. Nowhere has it been possible to establish complete systems of collectivization (planned economy, communism), or communalism that worked as the way of organizing agricultural production on a national scale (Somebody once said that organizing peasants was difficult because the internal cohesion tend to be kind of loose, peasants are like a sack of potatoes). Especially the international development during the last 5-6 years has proven that going for a liberal market economy seems to be the only way there is. At least that is what almost all countries are doing now.

In Europe the three preconditions mentioned above were only established during the last 200 years or so. Before that feudal systems with serfdom were predominant. In Denmark serf ascription was only lifted in the 1780's when 10% of the population owned 90% of the land. Hundred years later 65% of the population owned 90% of the land. In Oman there seems to be a unique situation because the general preconditions stated were developed more than a thousand years ago. In Europe industrialism and agricultural development was brought about after a long battle to free capital, land, and labor from the cultural, communal, etc., ties (*Naturwüchslichkeit*) that prevented new economic interaction. Oman is a very unique case because preconditions have been brought about without the necessary cost of having to disintegrate what we could call traditionalism completely.

It is evidently so that Islamic law has been instrumental in preserving sound economic preconditions in Oman, and that this was in a way possible because feudalism was avoided. Feudalism was evicted with the Persians, so to say, back in the seventh century, and the strength behind that achievement was Islam. The coming of Islam fuelled a tremendous energy into Arabic bedouin culture and society (Hourani 1991).

Now we have come to the second set of development predispositions. The principal assets of the social economy would be those listed below:

- the precedence of the social above the economic, or the social accentuation of economic affairs;
- the fairness demand in sharing/distributing common property;
- cooperative interaction without cooperatives, or the extreme association of communalism and individualism.

It is easy to make this all into one sentence saying that the asset the Omanis have here is; **a social system with traditional forms of organization securing that commons are managed fairly, and that the social in that respect is absolute in regarding economy as nothing but a social aspect of reality**. Perhaps the real asset is even the simple realization that the social is more important than economics and natural resources: **Fairness before field work!** - could be the motto of the traditional Omani farmer.

The association of social responsibility and private ownership rights is what makes resources common. We often say: "the distribution of common property" and by doing so we should consider the unfortunate implications to management because no property is common as such, by nature. Therefore "the common distribution of certain kinds of property" would be a much more appropriate phrase. However, common(s) perspectives in that respect are fundamental in Islamic law. In Islamic law ownership is only possible of things that have been socially appropriated, integrated in human interaction and then property cannot be as absolute as in Roman law where ownership rights is the right to use as well as to mis-use. According to Islamic law the owner cannot use property disregarding common and social responsibility. Therefore the idea that property also has to be managed for the common good is generally recognized and a basic principle that has been operating in Oman since the coming of Islam, unlike in the West where such principles only developed slowly during the last 200 years, and which are now up against a revitalization of traditional liberalism. Actually the movement towards a more "green" economy and environmental protection in Europe are currently experiencing a set back because of EU liberalism. In Oman restrictions regarding free access to and use of common property, for instance the use of water and free access to apply it onto agricultural lands, are being brought into effect. The implementation of such measures will benefit from a strong Islamic tradition whereby social responsibility, which is considerate environmental care par excellence, has been emphasized for so very long.

This situation will of course also benefit from the basic principle of fair sharing as well as the notion that the social takes priority over the economic. Traditionally it is so in Omani agriculture that maintaining a fair distribution and other social criteria have been emphasized before entertaining any kind of economic considerations. In general it seems also to be so that

environmental strategies for the betterment of nature and the environment, or economic strategies for the production of goods, suffer when it is not realized that environmental or natural conservation is a social issue **first of all**. This is exactly where environmental organizations in Europe fail, and they do it because they tend to have NATURE standing as the ultimate referent for all their assertions. (12) An Islamic approach could benefit from the idea that nature and natural assets are the gift of God. Even though there might be a shortage of water, "Water" or "Nature" is not really the issue here. The real issue here is to have proper and fair human standards for organizing distributions. That's all there is to it! In places like Europe, in Denmark for instance, it is a serious problem to get fishermen and farmers to put up with tight regulations, enforced quotas and land fallowing, just like that. No wonder! - because such regulations touch the very fundamentals of their way of life, the ideology that keeps them alive so to speak (Vestergaard 1994). (13.)

Would it not have made a big difference if we, in Europe, had been "ahl as'shurah" - "people of consultation" ?

The process of organizing proper sharing is similar whether it is water from a falaj or fish in the sea we are talking about. It all needs a lot of talk and a lot of meetings, social interaction. That's all, and a bit of organizational skill perhaps. But what are meetings? Meetings is simply the Omani (Arabic) definition of a society. Meeting is *igtamá* and society is *magtáma* - "the place of meetings" - "where meetings take place". It is simply not possible to find a stronger and more precise term for what the social is all about.

Holding meetings is basicly what a traditional tribal sheikh will do; sit in the village maglis (meeting hall) all day receiving his tribesmen, listening to their complaints and propositions, sorting out public opinions. In that way traditional Omani society is a palaver society, and the sheikh is appointed to endure the eternal fuss and bother that goes with the most common democratic procedure of all. The principle of mutual consultation is affirmed in the Quran (e.g. Sura 42, v. 37, The Quran 1975:486) and so the tribal way of organizing the affairs of the community is firmly rooted and endorsed by Islamic tradition and the Prophet himself (Hourani 1991).

It will not be without profound significance also that the Omani sheikhs for more than a thousand years have had the possibility to consult a specialized group of people (the learned - ulema) who were devoted to the most strenuous exercises of human effort (*ijtihadj*) to test and ascertain the rules of justice and fairness.

It has been suggested here that the principles of form organizing the common affairs, or the affairs of commons, in the traditional Omani agricultural community could be characterized as "cooperation without cooperatives". It is too early to conclude firmly on the basis of fieldwork material as it is at present but so far it definitely indicates that falaj organization as well as the organization of other communal activities take place in a tribal setting and that tribal organization is remarkable in uniting the opposite principles of extreme individualism and strong communalism. A tribe is something more than a family and less than a nation. A community

may consist of members of the same tribe only, there might be two or more tribes represented, and there might be many, it depends, but as a family would be a group of people with whom one has a guaranteed degree of positive social contact, a supportive network, so it is with the tribe, is somebody from the same tribe, then OK!: "he is one of us". Tribesmen always stand together, at least against any outside threat or for vengeance. Yet situational internal fragmentations of the tribe do occur regularly. The complete segmentarianism is well expressed in this typical phrase: "I against my brothers; I and my brothers against my cousins; I and my cousins against the world (Patai 1973:42). This is a very precise indication of the system delimitation of tribal group cohesion. So, when tribes men do unite, what are the bonds between them? What kind of union is this? Is it a "society", a "union", an "organization", an "authority", a "cooperation", an "association", a "system", or a "club"? A tribe is a tribe (Qabila), it is not a cooperative (ta'aawen), or an organization (munadma), it is not an authority (hayya), it is definitely not a union (nakaabaat), it is not a club organization (itihaad). A tribe is a tribe, but what? Formally there is no other name. It is something in between a society - an association (gama'iyya) - and a grouping together, a collection of individuals, (tegmi'aat = a serial one by one grouping, an aggregation; tegmin = to add). Since this is going to be at the level of assumptions anyway, then it is suggested to say that the close interaction of tribesmen is cooperative, and that the tribe is not a cooperation because association is in a way situational. It seems to be so that the tribe is uniting on the terms of extreme individualism and that the strong collectivism, communalism, is an aggregate composition where there is no representation. The tribe does not represent it's members, nor does the sheikh. As stated any tribal member would have direct access to the sheikh to present his case, but in no way will it be possible for him to be represented. Therefore formations like "unions", political "parties", as well as political "organizations", are not a common thing in Oman and introducing them would not be a good idea when considering that there is a strong indigenous tradition for settling things in a democratic way. Tribalism is "open democracy" and as a democratic principle at least as fungible as the organizations that grew up elsewhere, in a different context. The focus on forms of association and cooperation is based on the experience we have as regards agricultural development preconditions that we do not know of for certain to be so, absolutely, but at least some things seem to be among the preconditions; private property, market economy, etc., as well as cooperatives in some form. In all the most developed countries, from an agricultural point of view such as the northern part of Europe, Denmark, Holland, and U.S.A., we see that cooperatives are extremely important (Omezzine 1995). It is not possible to explain Danish agriculture without a very strong reference to the cooperatives that were actually responsible for the modernization of agriculture in the second half of the eighteenth century. But cooperatives as they grew up in Denmark or the U.S.A would not be suitable for a transplantation to Oman or similar places and it would be futile also because there are so strong and viable traditions that could take over the same functions.

NOTES:

(1.)

As with all arabic roots it must be noted here also that there is a long associative chain of meanings stemming from that same root; "peace" (resigning from war), and "greetings" (resigning from conflict) as in 'asselamu aleikum' - "peace be upon you". Associated are the meanings; to be safe, unimpaired, intact; integrity and welfare.

(2.) The research interests as well as the more personal interests of the anthropologist are often identical. To the present author this has something to do with a combined anthropological and farming background. The research involved in the present context is that of a ph.d. study on "Farm Strategy and the Development of Agriculture in the Traditional Settlements in Oman" funded by the Danish International Development Agency (DANIDA). The project involves the Dept. of Ethnography and Social Anthropology, University of Aarhus, Denmark, and the Dept. of Agricultural Economics and Rural Studies, College of Agriculture, Sultan Qaboos University, Oman. All fieldwork activities are carried out in close cooperation with the Ministry of Agriculture and Fisheries from where a research permit has been granted. The research program involves a comprehensive survey (June-December 1994) of agricultural settlements in northern Oman, i.e. the regions Batinah, Dahirah, Dakhliya and Sharqiya, and a detailed study (April 1995-april 1996) of selected settlements. The project is scheduled to take three years starting from 1 February 1994. The author has been resident in Oman since June 1993.

(3.)

Leaving out a more abstract and theoretical discussion of Islamic law as a legal system does not mean that the author is not in the position to recognize the value and need of studying Islamic law as a subject of its own right. On the contrary. Living for long time in an Islamic country and doing long term fieldwork in farming communities not only points to the direct and practical effect/use of Islamic law at village level. The anthropological experience almost inevitably gives the feeling that the indirect effects of Islamic law on society are of profound importance. This involves a fascination of Islamic law and jurisprudence, and spurs the interest for the qualities and values, the inner meanings, in the Islamic law system itself. But the interest is still practical, the point of view is still that of a fieldworking village-anthropologist interested in social life and how it works. Only the level of thinking is different. What is suggested here is just to note the important difference between a historical-sociological, a judicial-sociological, and then the anthropological approach. But also these aspects are important. Historical studies of the origin and development of Islamic law have been instrumental in generating the necessary renewal of Islamic law-thinking in the twentieth century (Coulson 1964:5-7).

(4.)

A note will have to be made on the sources and background of the information on agriculture and community/settlement in Oman. Only very little material exist produced by the handful of scholars that have been studying or doing fieldwork in the area. Before 1970 Oman was one of the most isolated countries in the world and since then only a limited number of people have succeeded in carrying out fieldwork. There are as yet no anthropological or sociological studies

on agriculture in Oman. In the 70s a team of geographers from the University of Durham carried out some "Research and Development Surveys in Northern Oman", University of Durham (1978 and 1982). On the history and development of rural settlement, as related to the aflaj irrigation systems in the interior (and this is the closest we get to a study on agriculture and settlement), there is one line of works that have to be mentioned. The orientation is cultural-geographical and they are all produced by Dr. John C. Wilkinson, Professor, Department of Geography, University of Oxford (see the list of references). The work of Professor Wilkinson is outstanding and it has been a major source of inspiration to the present author. It has provided the necessary background information for the Ph.D. study on which this article is based. All information and data on the recent development and on the present status of agriculture in Oman has been obtained through the fieldwork and data collection that has taken place during the period of study in Oman starting in June 1993. More than 120 farms in 87 different villages/settlements were visited during a survey of agricultural systems in northern Oman, that is the four regions mentioned earlier: Batinah, Dhahirah, Dakhliya and Sharqiya. Data and information has also been obtained from the College of Agriculture, Sultan Qaboos University, and from the Ministry of Agriculture and Fisheries. The survey was carried out assisted by engineers from 20 of the 36 Agricultural Development Centres in the four regions.

(5.)

The ancient Arabic/Middle Eastern land measure 'feddan' (60 X 70 m or 4200 m²) is almost equal to an acre (4047 m²). Originally an acre was the size of land that a yoke of oxen could plow in a day. In Oman the same explanation is given for the feddan.

(6.)

The wadis are the only natural travel routes leading to and from the mountains. Controlling these access routes was earlier a very important strategical asset to the local tribes and numerous watchtowers are dotted in the wadis and on the mountains overlooking them. The wadis are still like main roads but during recent years they have been supplemented by gravel roads leading to the otherwise quite isolated villages up in the mountains. The risk of flooding makes it impossible to use asphalt. Therefore the gravel wadi beds of the most important wadi-ways are constantly being prepared by graders. In other places transportation is extremely difficult even by the 4WDs. The wadis are of extreme natural and cultural beauty. With peculiar geological rock formations, ponds and caves, as well as the many traditional villages and date gardens lining these wadis, and with the terraced fields and fantastic views higher up, these wadis are the most popular touring, picnic and camping attraction in Oman. But every year there are floodings, cars get washed away, visitors get stuck, some are often seriously injured, and sometimes there will be cases of drowning as well.

(7.)

This situation is reflected in the falaj terminology. The term falaj is derived from the ancient Semitic root plg which has something to do with "division" and "distribution" (Wilkinson 1974:5). The meaning of the Arabic verb falaja is described as "dividing something into two halves" or to "share out" (Utray 1983:173). Today the typical answer given by Omanis to the question of original meaning will be that falaj means to have a gap in between ones front teeth.

(8.)

Without water agricultural land will have to be abandoned whereas cultivation will always be possible once there is water. The most important crops, dates, limes, alfalfa, onions, etc., can be grown in sand, and in gravel and rocky), soil and organic matter can be brought in, almost no matter the distance. That is a one time job. On the other hand there will be limits to the distance water can be transported. As always in arid climates, water will decide where agricultural settlements are possible. Today we can see that new cultivations arise in the desert and mountains where ever there is water, and they are discouraged in coastal and other areas with scarcity of water.

(9.)

At a more general level a similar process of assimilation took place as is obvious from the gradual change of meaning in a central concept such as "sunna". During the first century of Islam sunna meant local custom or traditional practice. Then for the early schools of law it denotes the generally accepted doctrine of the school, and later sunna refers to the model behavior of the Prophet, the practice he endorsed and the precedents set (Coulson 1964:240).

(10.)

The original meaning of ijtihađ is to make a strenuous effort, to exert oneself, endeavor, intense concentration. Hadj (pilgrimage to Mekka) and jihad (holy war) comes from the same jhd root.

(11.)

The principal Arabic sources on early Islamic jurisprudence (fiqh) concerning 'aflaj' are jámi' (collected rulings) and almost all pre mid-sixth/twelfth century (Wilkinson 1977:258). The examples of Islamic law given in the text are based on Wilkinson's presentation. The study of the Arabic and other sources on the early developments in falaj matters and agricultural affairs is a minor activity to the Ph.D. project compared to data collection through fieldwork.

(12.)

From that point of view the Brundtland Report was a major disaster in the history of the development of environmentalism considering the maxim the Report that natural and environmental considerations in the future would have to stand above social and cultural factors. Even when judged from the point of view of the report itself this was a strategical blunder because only when the social reality is considered will it be possible to deal with the problems of nature. The background of the confusion seems to be this: by maintaining nature as the ultimate reference it is possible to maintain a certain type of sociality, Western liberal economy, as nature.

(13.)

Why do some Italian businessmen commit suicide the first night after being remanded for possible corruption?

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