the novice in law in so far as it assists him to distinguish between what is enforceable as a rule of law, and what has been the basic material which leads to the formulation of what is enforceable.

How ever, in view of the definition of the term «sources» adopted above, we can determint the important sources of law generally as follows:

1 - Religion.

2 - Custom.

3 - Equity.

4 - Judicial Decisiuns.

5 - Juristie opinions.

6 - Legislation.

From the point of view of Iraqi law, not all of these sources are delevant. Thus, Article (1) of the Iraqi Civil Code states the «authoritative» sources of Iraqi law, that is those allowed by the courts as of right, to be legislation, customs, religion as represented by Islamic law, and equity. Judicial precedents and juristic opinions are authoritative in all this only as a guide for enforcing or rejecting a particular application of a rule derived from the previously mentioned sources.

However, all sources of law merit some discussion, This will be done briefly in the following sections, according to the general enumeration formerly set out.

1 - RELIGION

In the coneption of Islam, religions are either «divine». that is revealed unto a prophet, such as the religions of Islam, Christianity, and Judeism, or «non - divine», which include positive religions founded

by social reformers in a way not revealed by God, like Bodhism, Zoroasstrianism, and all the various forms of Pagan religions.

Whether divine or not, religions differ in the extent of regulating matters that lie within the domain of law as we understand it nowadays. This can easily be shown from contrasting Islam and Christianity, the two important religions in this country.

In Islam law and religion are strongly interwoven one with another.. Islamic law is founded upon the revelations of the Prophet as recorded in the Quran supplemented by the Sunna (Traditions of the prophet, his spoken words and action). Al - Ijma' (consensus of opinion) and al - Qiyas (reasoning by analogy) are the third and fourth sources of Islamic law. Despite the differences of Islamic jurists in this connection, and whatever the present application of Islamic law may be, one fact is clear. It is that Islam does not only include matters of purely religious flavour that is, regulating the relationship of the individual to God, such as prayers, fasting, piligrimage and the like - but also legal rules for the regulation of human conduct between the individuals themselves. Such are the rules regulating marriage, divorce, inheritance, civil transactions, crimes, matters of public law, such as the doctrine of government and state, and the principles to be observed in international relations, Thus, it is indeed justifiable to designate Islam as being «a religion and a State».

In Christendom, law does not find its source in religion. The Christian has not as such a peculiar law, for the founder of the Christian Faith did not, like the Prophet, establish a State and give laws to his followers. He confined himself to laying down moral principles and teaching spiritual doctrines. Thus there does not exist any body of Christian law in the same sense that there exists a law for Muslims of a professedly religious origin. The Christian States of Modern Europe

have inherited the traditions of the Roman Empire in this respect. In that Empire, the spread of Christianity did not disturb the existing law, except so far as its moral influence tended to affect legislation. So, law remained secular in Eurpean countries, existing independently of religious obligation, and its authority rests upon the power of the State. Indeed, certain secular provisions of Eurpean law (e. g, in marriage and divorce) may be traced back to a Christian religious origin. But this fact may be explained on the basis that these provisions have arisen not from the existence of any specifically religious law which all Christians are bound to obey, but from the growth of the ecclesiastical power of the Church which enabled it to extend its jurisdiction and enforce the Canon law at the expense of the State and State law.

The central and remaining question to be considered is: What parts of Iraqi law are directly governed by Islamic law and the rules followed by other religious monorities?

From a historical view point, Iraq after its independence, inherited from the Ottoman Empire a dual legal system. We see, on one side, laws derived from Western sources, and on the other laws of purely Islamic origin. The legal field over which Islamic law dominates is that of «Personal Status». This is governed by the Law of Personal Status No. 188, 1959, as amended by the law No. 11, 1963. Matters of personal status include those of marriage, divorce, separation legitimacy, alimony, inheritance (testate, and intestate), and guardianship. In addition, the institution of «waqf» is also governed by Islamic law, for, after all, it is purely Islamic. More over, a most important event in the history or the Iraqi legal system is that the Civil Code No. 40, 1951, has recogrised Islamic law as the third source of law after legislation and custom. In fact, there are numerous Islamic provisions in the Code, co - existing alongside those derived from Western sources.

have inherited the traditions of the Roman Empire in this respect. In that Empire, the spread of Christianity did not disturb the existing law, except so far as its moral influence tended to affect legislation. So, law remained secular in Eurpean countries, existing independently of religious obligation, and its authority rests upon the power of the State. Indeed, certain secular provisions of Eurpean law (e. g, in marriage and divorce) may be traced back to a Christian religious origin. But this fact may be explained on the basis that these provisions have arisen not from the existence of any specifically religious law which all Christians are bound to obey, but from the growth of the ecclesiastical power of the Church which enabled it to extend its jurisdiction and enforce the Canon law at the expense of the State and State law.

The central and remaining question to be considered is: What parts of Iraqi law are directly governed by Islamic law and the rules followed by other religious monorities?

From a historical view point, Iraq after its independence, inherited from the Ottoman Empire a dual legal system. We see, on one side, laws derived from Western sources, and on the other laws of purely Islamic origin. The legal field over which Islamic law dominates is that of «Personal Status». This is governed by the Law of Personal Status No. 188, 1959, as amended by the law No. 11, 1963. Matters of personal status include those of marriage, divorce, separation legitimacy, alimony, inheritance (testate, and intestate), and guardianship. In addition, the institution of «waqf» is also governed by Islamic law, for, after all, it is purely Islamic. More over, a most important event in the history or the Iraqi legal system is that the Civil Code No. 40, 1951, has recogrised Islamic law as the third source of law after legislation and custom. In fact, there are numerous Islamic provisions in the Code, co - existing alongside those derived from Western sources.

A side from the religion of Islam, other religions, too, are sources of law in the sense we are considering. The Proclamation of the Commander of the British forces of Occupation of December 28, 1917, and the repealed Iraqi constitution of March 21, 1925 (Articles 75, 78, 79 and 80) recognised the right of Christian and Jewish minorities to refer to their own spiritual tribunals for the decision of personal status cases. Spiritual figures were relied upon for the deduction of the applicable rules, which were not known to most litigants and advocates. It was there fore, considered necessary by the Legislature to obligate those minorities in the law for the Organization of Religious courts for Christian and Jewish Minorities No. 32, 1947, to record the applicable rules and publish them under the auspices of the Ministry of justice during a specified period. Other wise, the Minister of justice was given the power to with draw the Religious courts Jurisdiction and assign it to the Civil Courts. In fact, the Jewish minority responded to the provisions of the law No. 32, 1947, but after the Palistinian war of 1948 and the withdrawal of Iraqi nationality from the majority of Iraqi jews, the jurisdiction was referred to the Civil Courts Similarly, some Christian factions published their religious rules, but others refused to do so under the pretext of difficulty and the unity of their religious teachings all over the world. In any case, however, the jurisdiction to decide cases of personal status for all Christians has been assigned to the «Court of Personal Status» which is a civil court. The applicable Law is still the same that was followed in the period prior to the law No. 32, 1947, that is to say the Proclamation of 1917 supplemented by the rules deduced by the religious heads of the minorities.

2- CUSTOM

When we talk of custom as a source of law, we mean legal custom. «Legal custom» is distinct from other social customs social in

that its obligatory sanction is complete and uniform.

Although custom is an important source of law in early times, its importance continuously diminishes as the legal system grows. However, it is a misunder standing of the evolution of law and the conditions of primitive societies to regard customs merely as «positive morality» until they have been expressly ratified by some determinate law - making authority. The great majority of customs are non - litigious in origin, and their rise and observance depend on de facto conduct and repitition.

The importance of custom as a source of law is not entirely confined to the early stages of social growth; in all civilized jurisprudence it has always been recognized as greatly influencing the development of legal institutions. Roman law, though its theory in this respect was not entirely clear or consistent, attributed an important function to custom, constantly recognizing its effect both in substantive and adjective law, though assigning to it a secondary position as compared with the supreme legislative instrument of the imperial régime.

In modern jurisprudence the Historical School of Savigng found in custom the true source of all law, deriving it from the common consiousness of the people, We have seen that in the view of this School law is valid and just only in so far as it makes known and embodies in concrete forms the inherent legal instincts of the community which it purports to govern. This view needs modification, for it seems impossible to attribute all customs to general conviction among the community of their necessity. rightness, and appropriateness. Customs are often the product not of a widespread conviction but of the convenience or interest of a ruling class which imposes its will on the majority of society. Many are purely legal in origin, and many are the result of mingled influences which cannot be called peculiary popular or national.