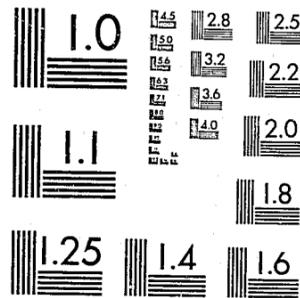


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8/24/83

THE EFFECT OF ISLAMIC LEGISLATION ON CRIME PREVENTION IN SAUDI ARABIA

Proceedings of the
Symposium held in
Riyadh, 16-21 Shawal
1396 A.H.
[9-13 October 1976]

87248
87256

Publisher: MINISTRY OF INTERIOR,
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(Crime Prevention Research Centre)

U.S. Department of Justice
National Institute of Justice

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THE EFFECT OF ISLAMIC
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SAUDI ARABIA

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*Translated, edited and printed in collaboration with the
United Nations Social Defence Research Institute
(UNSDRI)*

Rome, 1980

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INTRODUCTION

The content of this publication is a verbatim translation of the proceedings of the Seminar on "The Effect of Islamic Legislation on Crime Prevention in Saudi Arabia", held in Riyadh from 9 to 13 October 1976.

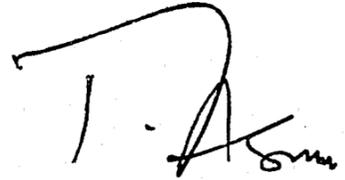
The United Nations Social Defence Research Institute, in pursuance of one of its objectives of international co-operation in the field of the prevention of crime and treatment of offenders, has undertaken the translation of the proceedings from Arabic into English, French and Spanish.

It should be stressed that, within the general framework of UNSDRI's legislative mandate, another objective which is being served by this publication is the dissemination of information to the international community regarding the prevention of crime and the treatment of offenders. Indeed, without this volume, apart from those who participated in the Seminar, non-Arabic speaking persons would be unaware of the Seminar and of the proceedings.

While we are glad with this international co-operation and the dissemination of this important information, it must be stated that the proceedings reflect the ideas of the Islamic world on the subject of

crime based on the Islamic Law and therefore the views expressed by the various participants in the meeting are not necessarily shared by this Institute.

The publication is informative and provides food for thought.



TOLANI ASUNI
Director

PART ONE

IN THE NAME OF GOD, MOST GRACIOUS,
MOST MERCIFUL

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PREFACE

by

HIS ROYAL HIGHNESS PRINCE AHMAD IBN ABDUL AZIZ

Deputy Minister of Interior

and

CHAIRMAN OF THE SYMPOSIUM

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This book is the product of a serious undertaking unique in its kind, for it contains a number of specialized scholarly papers that treat the relationship between the Islamic legislation as it was revealed to the Holy Prophet around fourteen centuries ago and the pragmatic implementation of this legislation in the Kingdom of Saudi Arabia.

This study presents researches made by a selected group of scholars of Saudi Arabia and the Arab world. At the same time it contains the comments and discussions made by prominent scholars some of whom were Arabs, other non-Arab Muslims and some were non-Muslim western scholars concerned with legal matters, sociology and criminology in different parts of the world.

We trust that the subject matter of this book meets the objective of Truth seekers. Every scholar has the right to extend the Islamic legislation to all people and thereby deliver mankind from delinquency and crime which afflict humanity to an unprecedented degree in human history.

The papers and discussions contained in this book are concluded in a field research made on the effects of implementation of Islamic legislation on crime prevention in the Kingdom of Saudi Arabia, which fact has led to security, stability and low crime rates throughout the Kingdom of Saudi Arabia. This is clearly illustrated by the comparative statistics which the reader will find later in this book. These statistics demonstrate that during 1386—1395 A.H., corresponding to 1966—1975 Gregorian year, crime rates were far less in the Kingdom than in other countries. It is obvious that due to the developed modern age, deve-

loped crime methods and the indifference of society in many countries towards the teachings of religions, crime rates amongst these societies have considerably soared.

We trust the concerned scholars will find in this book the answers to their query in this field. In order to give universal interest to the contents of this book we recommended its translation into English, French and Spanish for the benefit of those who cannot read Arabic.

Finally, we hope that this book will give the opportunity of tackling the problem of delinquency in modern societies in a more pragmatical manner, and that the Islamic legislation will be regarded as a source of peace and welfare to humanity.

INTRODUCTION

by

DR. FAROUK ABDUL RAHMAN MOURAD

*Director-General, Crime Prevention Research Centre,
Ministry of Interior, Saudi Arabia*

Some nations glorify the relics of their ancestors, some boast of their material wealth or military prowess. Some admire the natural beauty of their country or vaunt their industrial or artistic skill. But Saudi Arabia, of all the countries on the earth, is proud of its adherence to the teachings of Islam and the Holy Quran.

The application of the Islamic legislation in Saudi Arabia is reflected through the realization of social justice, as preached by Islam, goading people to do good, spreading love and understanding, not doing harm to one's neighbours and dissemination of brotherhood spirit and the feeling of responsibility for the welfare of humanity everywhere. Furthermore, the Kingdom of Saudi Arabia is blessed with stability and order never known before by any society, except during the early days of the Muslim rule when justice and peace reigned.

Until recently this blooming security was taken for granted and did not need to be referred to. However, after increasing contacts with other peoples and after the Kingdom resumed playing a pioneering role in the welfare of the Islamic people and humanity everywhere, the attention of the world was drawn to this unique kind of security which the country enjoys and which has enabled the country to implement with success development, construction and industrialization plans. People everywhere became interested in the criminal policy adopted by the Saudi Government that has achieved such a blissful security.

Conscious of a sense of duty to explain the merits of the Islamic legislation and its effect on crime prevention the Saudi authorities decided to convene a symposium at

an international level to discuss the subjects rationally and scientifically with a view to introduce to the world the Islamic legislation as regards delinquency and crime and the practical application of the Islamic penal law which, as in Saudi Arabia, has led to low crime rates and a sense of security by the citizens.

Experts of international organizations, judges, university professors, scholars and researchers from all over the world were invited and participated in this symposium.

This book contains the papers presented at the symposium and the participants' comments discussed with so much interest. It also contains the opening statement delivered by His Royal Highness Prince Naif Ben Abdul Aziz, Minister of Interior, being the highest authority responsible for security in the Kingdom. His reference to the fact that any shortfall the society may suffer is due to inadequate execution and not to any flaw in the legislation, which is divine, is a proof of the sagacity of His Royal Highness on the subject under discussion.

This book ends with a plea to all the world to benefit from the teachings of Islam which, if rightly applied, would allow societies to enjoy the much needed security and stability.

It is our sincere hope that this book will be widely circulated in order to serve the objectives of the symposium.

Contents

1. Opening statement by H.R.H. Prince Naif Abdul Aziz, Minister of Interior.
2. Statement by Dr. Abdul Wahab Al-Ashmawy, Secretary-General of the Arab Organization for Social Defence against Crime (Brief description at the end of the session).
3. Session on Proceedings (Brief description of the minutes).

4. First symposium (Definition of Crime according to Islamic legislation and the sources of the Islamic Penal Law), by Sheikh Mohammad Ibn Ibrahim Ibn Jubeir, President of the Court of Appeal.

Discussions of the first symposium.

5. Second symposium (Defining Crime responsibility according to Islamic legislation) by Dr. Mohammad Salam Madkour, Head of Islamic Law Department, Faculty of Law, University of Cairo.

Discussions of the second symposium.

6. Third symposium (Means of evidence in Islamic law) by Sheikh Saleh Ibn Mohammad Al-Laheidan, Member of the Council of the Supreme Court.

Discussions of the third symposium.

7. Fourth symposium (Effect of religion on crime) by Sheikh Manna Al-Kattan, Director of the Higher Judicial Institute, Imam Mohammad Ibn Saud Islamic University.

Discussion of the fourth symposium.

8. Fifth symposium (Effect of the Quranic teaching "to enjoin the good and refrain from evil deeds" on crime prevention) by Sheikh Nasser Ibn Hamad-Al-Rasheed, Director-General of Female Education.

Discussions of the fifth symposium.

9. Sixth symposium (Influence of Islamic education on crime prevention) by Sheikh Mohammad Qutb.

Discussions of the sixth symposium.

OPENING SESSION OF THE SYMPOSIUM

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OPENING STATEMENT

by

HIS ROYAL HIGHNESS PRINCE NAIF BIN ABDUL AZIZ

Minister of Interior

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IN THE NAME OF GOD, MOST GRACIOUS,
MOST MERCIFUL

Praise be to God and Peace be upon God's Holy Prophet

On behalf of the Government of His Majesty and the people of Saudi Arabia I have the pleasure to welcome you to this meeting rich with its participants, topics, and scopes. Indeed we were looking forward to a meeting at this level where learned men could meet with those in charge of security to discuss objectively the principles of the implementation of Islamic legislation to penal cases and their effect on the achievement of security and stability in our blissful society so that we may offer all the facilities to your unique meeting and acquaint you with our methods for the application of Islamic legislation in our public and private lives and the justice and security that have resulted therefrom.

We do praise God for this achievement.

Brethren!

All of you are aware that Islamic legislation is the framework of our life in this country. It is the source of our material and moral strength. Not only does it represent the source of the various bodies which govern our policies and regulations on criminal matters and legislative procedures but it is also the source of all our laws. Moreover, it is the source of human ideals which govern the behaviour of the people towards each other, towards their family, their society and the world around them.

Until King Abdul Aziz came our country used to be plagued by anarchy and plunder. Following the path of his fathers and forefathers King Abdul Aziz restored the Islamic legislation to all parts of the country with a view to extending justice to all, protecting the people's rights and fighting chaotic conditions that the society suffered from before he united the country. As the people of this country believe in God and in the Holy Quran they complied with the Islamic legislation, and consequently they are reaping its fruit, i.e. security and safety.

The late King Feisal, the great pioneer of our modern movement, started to consolidate the foundations of the society already enjoying justice and stability.

His Majesty King Khaled is going ahead with the past achievements by opening new horizons for the Saudi society. In this connection I would like to remind you that without a serious adherence to Islamic legislation in public and private affairs no stability could have been possible; and as you know stability is a fundamental prerequisite for the development of any society. Construction and progress cannot be achieved where anarchy and terror reign. In order to work, a citizen should feel that his life, property and honour are not threatened. This is exactly what the Islamic legislation endeavours to do.

We believe that the people living in this vast country enjoy security more than many other people in the world through God's grace and the implementation of the Islamic legislation to everybody without any discrimination. In this symposium we shall give direct and indirect proofs on the positive effect of the implementation of Islamic legislation in the Kingdom. We leave to you the research work, deliberations and useful conclusions.

I should like to reiterate that if there are any shortfalls in our life and regulations man is to be blamed but not the divine legislation.

The Islamic legislation in itself is complete and whole with all the fundamentals of justice. It covers all aspects of life and behaviour. The blame for any flaw in its implementation should be put on those who implement it.

Brethren!

This symposium is a contest in the field of scholarly research work. We put at your disposal all our facilities to discern the whole truth and to transmit your findings to the countries where you come from. I hope that this symposium will be followed by other similar ones with a view to completing research work and opening the path to those who desire to know the truth and practise it.

I wish you every success in your noble task.

Peace be upon you

STATEMENT DELIVERED

by

DR. ABDUL WAHAB AL-ASHMAWY

*Secretary-General of the Arab Organization
for Social Defence against Crime*

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Your Royal Highness, Prince Naif Abdul Aziz, Minister of Interior, distinguished guests and members of the symposium.

The Kingdom of Saudi Arabia has convened this symposium on the Islamic legislation as a challenge to the civilizations, systems, legacies and ideologies of the whole world. It does so by leaving the discussion door wide open for every scholar trying to find out the danger threatening the world as a result of delinquency and crime and the endeavours to get rid of this explosion which has become a menace to man's safety in his own country and the safety of mankind all over the globe. Your Royal Highness, while I am addressing myself to such a distinguished group of scholars, jurists, sociologists, learned men, researchers and men of security I would like to recall the recent past when you with your farsightedness and deep faith sowed the seed for this gathering under the sponsorship of the late King Feisal and his great successor, His Majesty King Khaled Ibn Abdul Aziz and Crown Prince Fahd Ibn Abdul Aziz who from the outset supported the idea. Now the plant is ready to yield its fruit. These distinguished people have responded to your invitation and they are here to see for themselves the pioneering experiment being made in this blessed land. I cannot but express my gratitude to you and, on behalf of the Arab Organization for Social Defence against Crime, express my appreciation to you for convening this symposium and thereby we are once more indebted to the Kingdom of Saudi Arabia for its pioneering role for the welfare of humanity in general and the Muslim people in particular.

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Finally, allow me, Your Royal Highness, to state on behalf of the members of the symposium that we pledge to live up to the trust you have in us and we hope that it will attain many achievements as you have given your sponsorship to it and that this symposium will be able to show humanity the best ways to a safer and more care-free society where man's way of thinking, property, honour and work are left unmolested. We pray God to help us to see the right path and lead us to the Truth and enlighten the people through learning.

After this statement Dr. Farouk Abdul Rahman Mourad announced the end of the opening session. H.R.H. Naif Ibn Abdul Aziz, Minister of Interior moved to the reception hall where the members of the symposium and other guests had the honour to greet the Prince.

The meeting was adjourned at 10.40 a.m.

SESSION OF PROCEDURES

On Saturday 16 Shawal 1396 H at 11.30 a.m. Dr. Farouk Abdul Rahman Mourad announced the opening of the session with the discussion of the first item on the agenda which was the election of the chairman of the symposium. The floor was given to the head of the Egyptian delegation.

HEAD OF THE EGYPTIAN DELEGATION

Gentlemen,

In appreciation of the role of the Ministry of Interior of Saudi Arabia in holding and organizing this symposium the delegation of Egypt has the pleasure to nominate H.R.H. Prince Ahmad Ibn Abdul Aziz, Deputy Minister of Interior and Head of the Saudi delegation, as chairman of the symposium.

HEAD OF THE DELEGATION OF PALESTINE

On behalf of the Palestine Liberation Organization I second the nomination of H.R.H. Prince Ahmad Ibn Abdul Aziz as chairman of the symposium.

DR. FAROUK ABDUL RAHMAN MOURAD

So I have pleasure in announcing the election of H.R.H. Prince Ahmad Ibn Abdul Aziz, Deputy Minister of Interior and Head of the Saudi delegation, chairman of the symposium. I invite His Royal Highness to the rostrum to chair the session.

CHAIRMAN OF THE SYMPOSIUM

On behalf of the Saudi delegation and the Government of Saudi Arabia I thank you for your confidence in me and electing me chairman of this symposium which we hope will be successful with God's grace and that it will achieve the objectives we look forward to, i.e. revealing the truth regarding Islamic legislation and its importance and practical feasibility, particularly its effectiveness against crime and for fostering order and justice in the country.

I have the pleasure to reiterate the Saudi Government's welcome to the participants and that it will put at the disposal of the symposium every possible facility for its success. The participants should not feel they are strangers in this country, and they should not hesitate to ask any assistance that the secretariat of this symposium or the Saudi delegation could afford. I hope that our gathering together will be positive and constructive to comprehend and attain the Truth.

DR. FAROUK ABDUL RAHMAN MOURAD

This week the symposium will meet in the morning and in the evening. This week's working programme is as follows:

This evening — Definition of crime according to the Islamic legislation and Islamic penal law.

Sunday 17 Shawal

Morning session — Crime responsibility according to Islamic law.

Evening session — Means of evidence in Islamic legislation.

Monday 18 Shawal

Morning first session — Effect of religion and faith on the prevention of crime.

Morning second session — Effect of the Quranic teaching "to enjoin the good and refrain from evil deeds" on crime prevention.

Evening session — Influence of Islamic education on crime prevention.

Tuesday 19 Shawal

Morning first session — Islamic punishments and the methods of their execution in Saudi Arabia:

1. Punishment of Retaliation, blood money and act of atonement.

Morning second session — Islamic punishments and the methods of their execution in Saudi Arabia:

2. Fixed punishments "Hudoud" and Discretionary punishments "Ta'zir".

Evening session — Implementation of Islamic legislation and its affect on crime prevention in Saudi Arabia (a field research work).

Wednesday 20 Shawal

Morning session — Set for the work of the symposium's rapporteur and secretariat.

Evening session — General meeting. Presentation of the rapporteur's report and the concluding session of the meeting.

PROCEDURES IN THE SYMPOSIUM

I would like to add here that as the symposium is of a scholarly nature that the subjects on the agenda are discussed by the participants. Each topic will have a deliberation committee conducted by a committee chairman. The speaker

presents his subject for half an hour to be followed by the first commentator for quarter of an hour and then by the second commentator for another quarter of an hour and then the floor is given to the participants either to add to the speaker's subject, make comments or make queries. The floor is asked in an orderly manner in accordance with appropriate formalities.

Thus we end our discussion regarding the symposium and the way the procedures take place there. Due thanks to the chairman.

CHAIRMAN

As H.R.H. the Minister of Interior is on a mission abroad and I have personal engagements at the Ministry of Interior I may not be able to attend some of the sessions. Therefore I propose to nominate a Vice-Chairman.

HEAD OF THE JORDANIAN DELEGATION

As an appreciation to Dr. Ibrahim Al-Awaji, Under-Secretary of the Ministry of Interior and Deputy-Head of the Saudi delegation, for his tremendous efforts in organizing this symposium on which we harbour great hopes, on behalf of the Jordanian delegation I propose to nominate Dr. Ibrahim Al-Awaji as Vice-Chairman.

HEAD OF THE DELEGATION OF BAHREIN

I second the nomination of Dr. Ibrahim Al-Awaji as Vice-Chairman.

CHAIRMAN

I announce the election of Dr. Ibrahim Al-Awaji as Vice-Chairman. Now we have to nominate a rapporteur of the symposium.

DR. IBRAHIM AL-AWAJI

The Saudi delegation has the pleasure to nominate Dr. Abdul Wahab Al-Ashmawi as the rapporteur of the symposium due to his wide experience and role in organizing this symposium.

HEAD OF THE DELEGATION OF BAHREIN

Praise be to God and peace be upon Prophet Mohammed, his family and Companions. God's peace, mercy and blessings be upon you all.

On this blessed day, the day of our auspicious meeting in the interest of Islam and humanity, I express, on behalf of the Bahrein delegation, our deep gratitude to the Government of Saudi Arabia for organizing this symposium. Of course this is not surprising for the Government of Saudi Arabia and its King, Khaled Ibn Abdul Aziz, have consistently given aid to different Muslim countries and organizations everywhere to raise the banner of Islam. Indeed His Majesty has faithfully fulfilled his task. May God reward him.

On this occasion I would like to convey to you the greetings of the Emir and people of Bahrein who look to this gathering as a great Islamic event and they expect from you fruitful results to enhance the Muslim nations. Without assimilating the Islamic legislation we cannot expect the Muslim society to enjoy stability and order.

Islamic jurisprudence has provided us with an undeniable wealth in all aspects of life. It is a genuine jurisprudence adaptable to life at all times and in every place, and as such can contribute a lot to the jurisprudence of every country. What we need now is that this great jurisprudence should be the first and last source for Arab and Muslim legislations and laws, and that it should be a beacon for other nations in this respect. We trust that this symposium will raise the conception of Islam. The Islamic

nations cannot chart their course well without the implementation of Islamic legislation and doing away with borrowed legislations. Thank you again and my due respects to all of you and may God reward you.

CHAIRMAN

Thank you very much and pray God that our aspirations will come true. The Saudi Government feels that it is its duty to organize such symposiums on Islamic legislation since it is blessed with the most sacred places of Islam. This is the birthplace of Islam and therefore it is the duty of the Kingdom to carry the banner of this doctrine and preach it. I hope that our efforts will be fruitful in attaining the Truth and discuss the subjects with depth and acumen. Everybody will have a chance to make enquiries and ask questions.

Our next meeting will be this evening at 4 p.m. to start the first symposium.

The meeting was adjourned at 11.55 a.m.

FIRST SYMPOSIUM

FIRST PAPER

87249

DEFINITION OF CRIME ACCORDING TO ISLAMIC
LAW AND ISLAMIC LEGISLATIVE SOURCES

Presented by

HIS EMINENCE SHEIKH MOHAMMAD IBN IBRAHIM

IBN JUBEIR

President of the Court of Appeal

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Other speakers were:

Dr. Mohammad Al-Sa'ad Al-Rasheed, Dean of the Faculty
of Islamic Law, King Abdul Aziz University, Mecca.

Dr. Hussein Hamed Hussan, Head of the Higher Legal
Studies, Faculty of Islamic Law, King Abdul Aziz University,
Mecca.

Conductor of Discussions

Sheikh Abdulla Ibn Suleiman Ibn Mani, Member of
Supreme Board of Jurists and Member of the Permanent
Committee of Academic Research and Legal Verdicts.

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Foreword

Islamic legislation is characterized by the diversity of its sources and thereby it is easy to deduce solutions and legal judgements. In addition to the Holy Quran the following are the other sources:

Prophetic teachings "*Sunnah*" supplementing the Quran

Consensus of jurists' opinions "*Ijma'*"

Analogy "*Kias*"

Equity "*Istihsan*"

Legally unsettled questions of common interest "*Maslaha Mursala*"

For fourteen centuries, generation after generation, the learned doctors of Islam and jurists have devoted themselves to the studying of Islamic legislation and they have ended up with a huge wealth of Islamic legislation which has no precedence in the world. As long as people have complied with Islamic legislation it has not failed them in their daily affairs.

When Islamic legislation was practised by the followers of Islam they had the upper hand over other nations and other peoples embraced this religion in masses. Now the time has come again that Islam should occupy its previous summit place overlooking a sea of conflicting doctrines and ideologies. It is proved now that the civilization built on these doctrines is shaky and cannot achieve happiness for mankind. Corruption, immorality, decay and crime are common features in most of the so-called civilized societies.

How different this false civilization is from the civilization built by Islam which has strived to attain the noblest ideals, justice, security and real happiness for mankind. It is thanks to the divine Islamic legislation, made by God who is aware of man's needs and means of reforms that such a glorious civilization was possible.

*Should He not know
He that created?
And He is the One
That understands the finest
Mysteries (and) is
Well-acquainted (with them).*

(Quranic verse) Chapter 67, verse 14.

The Kingdom of Saudi Arabia has taken the initiative by undertaking a marvellous experience in the implementation of Islamic legislation in all aspects of everyday life, *inter alia*, crime prevention. The result of this experience is the prevailing security in the towns, villages, country and the deserts of the Kingdom. This security and social and economic stability in Saudi Arabia are commended by friends and foes alike.

In this paper we shall deal with some aspects of Islamic criminal law:

1. Definition of crime according to Islamic legislation and types of crimes.
2. Extent of crime in everyday life, personal matters and civil life.
3. Criminal aspects of each individual delinquency and its effect on social disorder and corruption.
4. Sources of the Islamic criminal law.
5. Common interest "*Maslaha Mursala*" and crime treatment and crime control.

Crime according to Islamic law

The Arabic word crime "*Jarima*" is derived from the root "*Jarm*" which has two meanings: severance and profit. It seems that in the old days this word was used for a profit from a detested deed. Later it meant committing something wrong and sinful. Hence the following Quranic verse:

*" And O my people
Let not my dissent (from you)
Cause to sin lest you suffer
A fate similar to that
Of the people of Noah "*

In other words do not let yourselves be carried away with disputes lest you suffer punishment and face the fate of your predecessors who rejected their prophets.

In another Quranic verse we read the following:

*" And let not the hatred of others
To you make you swerve to worry
And depart from justice. Be just;
That is next to piety "*

Therefore the word crime may be used for any deed contrary to right and justice. The words "*Ijram*" and "*Ajrama*" are derived from the same root.

The first word means the very act of "committing crime" and the second one is the past tense which means "committed a crime". In the following verses of the Holy Quran in Chapter 83, verse 54 we read:

*" Those in sin used
To laugh at those
Who believed "*

and

*" Truly those in sin
Are the ones
Straying in mind, and mad "*

So the semantic origin of the Arabic word "crime" is any deed that is detested. Now as all the laws of Islam are approved by the legislator and any disobedience of God's commandments is considered a crime. In other words, "crime" is a prohibited deed that could be punished if committed, or a person who refrains from acting in consistency with what God has decreed may be punished as committing a criminal act. However, this definition of crime is rather general, for both this word and sin and wrongdoing imply the same meaning, i.e. disobedience of God's commandments irrespective of the fact whether the punishment is meted out soon in this world or later after death. According to some jurists there is a further difference between crime, sin and wrongdoing. Crime is punishable in this world by the legislator. The well-known jurist, Abu Ya'ala, considers crimes as acts prohibited by God and punishable by *Fixed "Hudoud" or Discretionary "Ta'zir"* punishment. Fixed punishments "Hudoud" are divine punishments; a "Hadd" is a fixed punishment without a minimum or maximum limit. Verily God cannot tolerate shortfalls on the part of single individuals or groups of people.

According to Islamic legislation meting out punishments is one of God's prerogatives in order to protect humanity from evil and attain peace and security for them.

The crimes punishable by fixed punishments "Hudoud" are seven, viz.

1) Adultery, 2) Defamation, 3) Alcohol-drinking, 4) Theft, 5) Highway robbery, 6) Apostasy from Islam, 7) Attempted coup d'état.

Crimes related to those punishable by fixed punishments "Hudoud" are the crimes punishable by Retaliation and blood money:

1) Premeditated murder, 2) Semi-premeditated murder, 3) Murder by error, 4) Premeditated offence against human life short of murder, 5) Offence by error against human life short of murder.

Offence against human life short of murder is any offence that does not cause death, such as beating up a person and injuring him. Discretionary punishment "Ta'zir" is the right punishment to be meted out for offences not punishable by fixed punishments "Hudoud" or Retaliation "Kisas". We have already mentioned that fixed punishments "Hudoud" are God's prerogative. Instead Discretionary punishments "Ta'zir" are meted out by the State's competent authority. The word "Ta'zir" originally meant the consolidation of social ties.

It is derived from the word "Azzara" meaning "to strengthen" or "to support". "Ta'zir" in this sense is mentioned in the Holy Quran, Chapter 5, verse 13:

*" If ye (but)
Establish regular Prayers,
Practise regular Charity,
Believe in My apostles,
Honour and support them,
And loan to God
A beautiful loan,
Verily I will wipe out
From you your evils,
And admit you to Gardens
With rivers flowing beneath".*

It would be incorrect to think that "Ta'zir" punishments were not expressly mentioned in the sources of Islamic legislation, for all such punishments are meted out to prevent evil deeds and foul practices as recommended in the Holy Quran and the prophetic teachings "Sunnah". To quote the Quran, Chapter 26, verse 183:

*" Nor do evil in the land,
Working mischief".*

And Holy Prophet has said: "Do not do others any harm, nor cause any harm to be done to others". These punishments are left to the exclusive discretion of the ruler of the country. He enacts the laws for such punishments as he deems appropriate. This is not inconsistent with the famous norm that there are no crimes or punishments without a law defining them. The penal code was basically enacted for unspecified crimes. Muslim jurists agree that "Ta'zir" punishments are not meted out to other defined punishments. For example, theft is punishable with the amputation of the culprit's hand; offences connected with money are not punishable in the same way. Defamation is punishable with eight lashes. Cursing is not punishable in the same manner. All this is in conformity with the principle mentioned in the prophetic report "Hadith" to the effect that "He who transgresses the limit of a punishment is himself an offender". Hence, giving the right to rulers to mete out "Ta'zir" punishments does not conflict with the norm "no punishments without a law".

Crimes in Terms of Concerned Interests

We have already explained that a crime originally meant violation against concerned interests as indicated in the Quran, Tradition, Analogy or Equity. According to the Islamic legislation concerned interests include the protection of religion, life, intellect, offspring and property. Therefore the offences are classified into: offences against religion, life, intellect, offspring and property.

Crimes According to Punishments Meted Out

These are divided into three classifications:

1. Crimes punishable by fixed punishments "Hudoud".

2. Crimes punishable by Retaliation or blood money.
3. Crimes punishable by "Ta'zir" (Discretionary punishment).

1. *Crimes Punishable by Fixed Punishments "Hudoud"*

These crimes are punishable by "Hudoud" as revealed in the Holy Quran. The punishments cannot be modified or altered. It is God's prerogative not to tolerate shortfalls from man. These crimes are:

Apostasy; Attempted coup d'état; Adultery; Defamation; Theft; Highway Robbery; Alcohol-Drinking.

2. *Crimes Punishable by Retaliation and/or Blood Money ("Kisas and Diya") such as assault and causing physical injuries*

As the punishments for these crimes are laid down in the Quran by the Almighty Legislator they cannot be modified or altered. However, the victim or his caretaker may pardon the offender. In this case the culprit has to pay blood money and might be liable to "Ta'zir" punishment.

These crimes are: premeditated murder, semi-premeditated murder, murder by error, premeditated offence against human life short of murder and offence by error against human life short of murder. The last two offences are offences that do not cause death such as beating up a person and causing him injury.

3. *Crimes Punishable by "Ta'zir"*

These crimes are not specifically quoted in the Holy Quran or in the Prophet's "Sunnah". However, they are punishable because they represent acts of disobedience to God's commandments and lead to wrongdoing. Though

they are not specified Islamic legislative sources have mentioned some of them, such as usury, treason and cursing. In the interest of the community the competent authority may pardon the culprit from "Ta'zir" punishments provided this act does not prejudice the individual victim's rights. The victim may forgive the culprit as far as his own rights are concerned without prejudicing the public rights exercised by the competent authority of the country.

How Crime Appears in Daily Life, Personal Relations and Civil Life

Ibn Taimiya, an authority on Muslim jurisprudence, has referred to a number of sins which cannot be atoned for, such as a man kissing a woman who is not his wife, having sexual intercourse with her, eats prohibited things, such as blood and dead corpses, accuses people of adultery just to defame them, steals even though paltry objects, betrays people's faith in him, cheats when he sells foodstuffs or garments, gives short weight or measure, gives false witness, accepts bribery before reaching a verdict or other prohibited actions. People committing such offences will be subject to Discretionary punishment or chastisement and censure as the competent authorities deem fit depending on the gravity of the sin.

Other sins pointed out by Ibn Taimiya are espionage by a Muslim in favour of a non-Muslim enemy and inducing people to contrivance and witchcraft. Other offences punishable by fixed punishments "Hudoud", according to Ibn Taimiya, are also woman's disobedience and sleeping with a woman of another man. He believed that bribery was a constraint to ordinary administration procedures. He condemned those who try to conceal the defects of commodities they sell and depriving buyers from the legitimate right of options. The maxim that says "Cheating spoils everything" is true because it invalidates any stipulated contract.

CRIMINAL FEATURE IN EACH CRIME

1. *Criminal Feature in Theft*

The act of theft is an aggression against the property and security of the people. When a burglar breaks into a house people get frightened and others get alarmed and therefore spend large amounts to fortify their houses to protect their properties. If the burglar is armed women and children get panicky. Therefore the proper punishment for theft is hand amputation to get rid of this noxious social disease.

2. *Highway Robbery*

This is a robbery committed on a public highway against travellers to either rob them or commit any other serious offences depending on the force of the attackers. The punishment against such robbers is mentioned in the Holy Quran, Chapter 5, verse 36 as follows:

*"The punishment of those
Who wage war against God
And His Apostle, and strive
With might and main
For mischief through the land
Is: execution, or crucifixion
Or cutting off of hands,
And feet from opposite sides,
Or exile from the land".*

This severe punishment is quite appropriate to this type of crime in order to safeguard security on roads, for they are important for the economic and social development of a country.

3. *Adultery*

The evil consequences of adultery are many. It is bad for the offspring and if widely practised it transmits diseases to the innocent and brings doubt to the Muslims. As a result of adultery deformed children are born and children do not know who their fathers are. Men start doubting if they are the natural father of their children and consequently both the family and society disintegrate.

How many genealogical trees an adulterous woman has caused to be lost? How unfaithfully she has acted towards the living creature in her womb and towards God? Therefore flogging an adulterous woman and stoning her to death are appropriate punishments for such a horrible crime that makes the earth and heavens tremble.

4. *Defamation*

Defamation is committed when a criminal accuses a pious man or a chaste woman of adultery and consequently the accused woman loses her respect and dignity in the society. Woman's reputation is the most precious virtue she possesses. It is the same for a man although an adulterous man is less disrespected (in most modern societies) than a woman. Defamation may lead a person to commit adultery. In the Holy Quran, Chapter 24, verse 19 we read the following:

*" Those who love (to see)
Scandal published broadcast
Among the Believers, will have
A grievous Penalty in this life
and in the Hereafter: God
Knows, and ye know not " .*

Hence the punishment is appropriate to the crime according to the Islamic legislation in order to protect the

society from dangerous wide-spreading of scandal, defend man's reputation and encourage virtue amongst the members of the society.

5. *Apostasy from Islam*

Apostasy is renunciation of the religion of Islam either by words or deeds, such as the disbelief in the doctrine of monotheism and worshipping other gods, or rejection of the commandments of the Islamic religion such as saying the regular prayers, giving charity (Zakat), and abstaining from taking alcohol, adultery and usury.

Disparaging remarks against the Prophet who is universally acknowledged or anyone slighting one of the angels or the Holy Book can be very grave on the belief of others and therefore the just punishment is to kill such a man and get rid of him in order to protect the Islamic religion. The Holy Quran refers to this offence as follows:

*" And if any of you
Turn back from their faith
and die in unbelief, their works
Will bear no fruit in this life,
And in the hereafter. Everlasting Hell
will abide them " .*

6. *Alcohol-Drinking*

The following Quranic verses demonstrate clearly the Islamic stance towards alcohol-drinking:

*" O ye who believe!
Approach not prayers
With a mind befogged,
Until ye can understand
All that ye say " .*

Chapter 4, verse 43.

and

*" O ye who believe
Intoxicants and gambling,
(Dedication of) stones,
And (divination) by arrows,
Are an abomination, —
Of Satan's handiwork:
Eschew such (abomination)
That ye prosper.
Satan's plan is (but)
To excite enmity and hatred
Between you, with intoxicants
And gambling, and hinder you
From the remembrance
Of God, and from prayer:
Will ye not then abstain? "*

Chapter 5, verses 93 and 94.

Whoever ponders deeply over these Quranic verses will notice that they refer to the major risks resulting from alcohol-drinking. The verse ordering believers not to approach prayers with a mind befogged has already given the reason for it, and that is the praying person will not understand what he says. In other words, wine makes one lose his reasoning to a degree that the drunkard may have delirium tremens induced by excessive use of alcohol. This fact is indeed an insult to one's intellect which is the greatest thing God has bestowed on humanity. Hence alcohol destroys the man's intellect and his manly qualities.

The next verse that prohibits alcohol-drinking altogether is because intoxicants and gambling are an abomination of

Satan's handiwork. They excite enmity and hatred between Muslims and distract them from the remembrance of God. Intoxicants corrupt a man morally, socially and from the religious point of view.

Recent medical studies have proved the dangers of alcohol on the human body. Alcohol causes chronic inflammation in the mucous membrane of the stomach and deprives it from the acid necessary for digestion. So an alcoholic constantly suffers from indigestion. Alcohol also tends to destroy the liver and at the same time forms fatty substances on it, and so it cannot carry out its vital function, i.e. relieving the body of toxins.

Alcohol also causes the formation of fatty substances on the muscles of the heart on which a person's health, energy and vitality depend.

Medical studies have further proved that excessive alcohol-drinking might be lethal owing to alcohol poisoning and excessive use of it may cause mental disorder.

Criminologists have found that a high percentage of nervous and mental diseases, as well as perversion and immorality, are due to excessive use of alcohol by the addict or inherited from one of the parents who happened to be an alcoholic. Drunkenness also may lead to unpremeditated crimes.

The least effect of alcohol on the individual is to make him indifferent and irresponsible to moral and religious values. The Holy Prophet has said in this connection that " in a state of exclusive submissiveness to God, a true believer is not to touch a single drop of alcohol ". He further described wine-drinking as the deadliest sin because it induces man to evil deeds. Caliph Othman * is reported to have said: " Beware of wine, for it is the root of all evils ".

* Caliph Othman was the third Caliph after Abu Bakr and Omar who succeeded Prophet Mohammad (Translator's note).

He gave the following example. A man was summoned to him and asked to choose either to burn a book, or kill a boy, or kneel to an idol, or drink a glass of wine or sleep with a woman. He made his easiest choice by drinking the glass of wine first, then slept with the woman, then killed the boy, then burned the book and at last he knelt to the idol. This story could be symbolic but it certainly shows how wine can intoxicate the brain and induce the person to commit all kinds of sins for having lost the distinction between good and evil.

Sources of Islamic Criminal law

The Articles and Deliberations of the Islamic law were not recorded in written form but they were revealed to Prophet Mohammad in the form of clear *Commandments* and *Prohibitions* associated with the causes and circumstances which occasioned them according to the situation. Islamic law does not introduce or impose rules of law in isolation. In fact, when an Islamic order or prohibition is given it is always accompanied by the *cause* and *wisdom* which have occasioned it.

Islamic law highlights the various dimensions of the legal rules. It explicitly introduces the Quranic text which is further understood when we get acquainted with the circumstances of its revelation. Reference is also made to the specific Quranic text, its interpretation and implementation by the Prophet. In other words, Islamic Shari'a (law) did not cause any perplexity as far as legal rules are concerned. Before his death Prophet Mohammad had made clear all the ambiguities that might arise of the implementation of Islamic law either through explicit statements or general rulings. Muslims deduced legal rules from Quranic texts and basic principles of the Sharia which were endorsed by the Prophet who pronounced: "I have delineated for you the basic principles of the true faith; its apparently ambiguous aspects

have been made as clear as daylight". The sources of the Islamic law are the following:

- The Holy Book (Quran)*
- The Sunnah (Prophetic reports)*
- The Consensus of Opinion (Ijma')*
- The Analogy (Kias)*
- Equity (Istihsan)*
- Textually Unspecified Interests of the Public (Mulsaha Mursala)*
- Avoidance of Harm (Sad Al-Dharai')*
- Compatibility of Means and Ends (Istishab)*
- Checking what is permissible and prohibited.*

The fundamental principle is that everything is permissible (Halal) unless it is specifically prohibited, condemned, disapproved or even frowned upon.

The Holy Quran

The Quran is the divine word of God revealed to His Apostle Mohammad son of Abdulla by the Angel, Gabriel, in the Arabic language to verify that Mohammad is God's Messenger. It is the chief source from which Islamic law is derived and it is the root of all the other sources of Islamic legislation. Abdulla Ibn Omar * says that he who teaches the Quran has caught a glimpse of prophethood in his heart. Also Al-Shatby ** in his book "Al-Muwafaqat" says: "The Holy Quran is in spirit and character the epitome of Sharia (Islamic legislation); it is the chief pillar that sustains the Islamic faith, the divine spring of wisdom, the sign of apostlehood, the revealing light of eyesight and insight and there is no other path to approach God or salvation except

* A well-known prophet's companion and jurist (Translator's note).

** A famous Maliki jurist-teacher of Muslim Andalusia (Spain) (Translator's note).

through the Holy Quran ". All this need not be expressly stated or evidenced since it is all embodied in the religion of Islam. However, those who wish to comprehend all about the Sharia and probe into the details of Islamic law should take it as a life-long companion.

Classification of the Quranic rules:

1) Rules relevant to the Islamic faith: Belief in God, His angels, His revealed Books and Apostles, the Day of Judgement and Fate whether good or evil.

2) Ethical rules: Virtues every Muslim should cherish and vices he should abstain from.

3) Practical rules: Concerning what a Muslim says or does and his behaviour. This third classification is known as the Quranic jurisprudence which the Basics of Jurisprudence aims at attaining.

Quranic rules are divided into two groups:

1. Rituals of worshipping, such as daily prayers, fasting, almsgiving, pilgrimage, oath-taking and the dedication of all sacrificial offerings to God and all such forms of worshipping meant to discipline man's relationship with his Lord.

2. Rules dealing with everyday life, such as business transactions, modes of behaviour, felonies, statements and everything other than rituals of worshipping disciplining the relationship between Muslims and Muslim communities. Everyday dealing rules vary according to relevant issues. Crime rules are those related to acts of crime committed by adult Muslims and the punishments they deserve in order to protect life, property, honour and rights of the individual and the relationship between the victim, the criminal and the community.

The Holy Quran has stated the rules regarding fixed punishment "Hudoud" and Retaliation meted out to those

charged with adultery, theft, defamation and highway robbery. Reference is made in the Quran to the punishment assigned to intoxication. Ali Ibn Abi Talib * deduced the amount of flogging to be inflicted upon the drunkard on the Analogy of the punishment of defamation. For the punishment to be inflicted upon the husband who accuses his wife of adultery the Quran explains in detail the procedure of "Al-Li'an" (Cursing) in which the husband and his wife are summoned before the magistrate and swear to the invocation of God's curse and wrath upon the liar.

The Quran also explains what is meant by Retaliation in crimes punishable by death and amputation of limbs. Such punishments are either clearly specified or inferred from the general rule in the Quran: "And wounds equal for equal".

The Quran clearly underlines the right a claimant has to any punishment and how much he is legally entitled to that right, and the cases where the claimant may pardon the accused or claim blood money. The Quran also explains the wisdom for conferring the right to retaliate on the claimant or his guardian. The Islamic penal law is based on the right to retaliate. This is stated in the Quran:

"In the Law of Retaliation

There is (saving) of Life

To you, O ye men of understanding".

Chapter 2, verse 179.

The Quran deals with the crime of murder by error and its punishment whether the murderer is a believer or not, an enemy of believers or a person belonging to a people with whom there is a pact or a pledge. The Quran, furthermore, gives an account of judgements ordained for

* Ali Ibn Abi Talib — Prophet Mohammad's cousin and fourth Caliph succeeding the Prophet (Translator's note).

murders by error and the maximum amount of punishment for unpremeditated crimes. The Sunnah (prophetic reports) specifies where retaliation could be claimed.

The Quran refers to some acts of disobedience and the relevant punishments. These acts of disobedience are transgressions against the interests which the Islamic religion wanted to protect, such as religion, life, intellect, property and offsprings. Some of these acts of disobedience are explicitly stated in the Quran. Others are inferred from other Quranic verses. The words "*Fuhsh*" *exaggeration* and "*Baghi*" *transgression* carry all criminal associations, for the very act of committing a crime is in itself a permanent transgression. On this occasion the Holy Quran says the following:

*" God commands justice, the doing
Of good, and liberality to kith
And kin, and He forbids
All shameful deeds, and injustice
And transgression: He instructs you
That ye may receive admonition "*

Chapter 16, verse 90.

Scholars of Quranic studies maintain this verse is the most comprehensive of all verses.

If all disobediences in the Quran have been mentioned explicitly or in general terms no one can allege that crimes are left unspecified. Although some of the verses may not be very explicit and are capable of different interpretations yet the Commandments and Prohibitions in the Quran are crystal clear. The Sunnah, later on, expounded these Commandments and Prohibitions in even plainer form. Indeed Prophet Mohammad did not utter things of his own whim or fancy. " It is naught else but a divine inspiration sent down on him ".

The Sunnah

The Sunnah, meaning reported prophetic practice, is what the Prophet said, did or agreed to. There are three kinds of the Sunnah:

- 1) Whatever Prophet Mohammad uttered on different subjects and occasions.
- 2) The actions performed by the Prophet, such as saying the prayers five times a day.
- 3) The Prophet's implicit approval of the sayings and deeds of some of his companions.

The Sunnah, of course, comes next to the Quran in Islamic legislative sources. A scholar resorts to the Sunnah only if he cannot find a relevant commandment in the Quran.

As regards the criminal law the Sunnah has explained in general terms the judicial procedures practised in cases of crimes and delinquency. It has explained about murder for a cause and fighting back the assailant in self-defence, and methods for evidencing crimes punishable by Retaliation "*Kisas*" which have to be given by two witnesses. The Prophet does not seem to have qualified the witness given by a man and two women. The Sunnah explains what is meant by "*Qasama*" * and the procedures by which Judgements are ascertained on evidence or refuted on suspicion. In conclusion, the Prophet rendered the religion crystal clear.

If any judgement is not mentioned in the Quran or the Sunnah then inference is made to the general rulings of Islam and attained on the basis of "*Kias*" the *Analogy*.

" Ijma' " Consensus of Opinion

Consensus of Opinion is the unanimous agreement reached by Muslim scholars, during any period after the

* *Qasama* is the summoning of forty inhabitants of the place where a person is murdered and swear they do not know who the murderer is. Then the deceased is allowed to be buried and no retaliation is claimed by the heirs of the deceased (Translator's note).

Prophet's death, on any legal judgement bearing upon a particular situation or incident.

The four principles of "Ijma'" Consensus of Opinion are:

1) That at the time of the incident there should be a number of scholars, for Consensus cannot be reached without varied opinions, each one approving the others.

2) All Muslim scholars have to unanimously agree on the judicial judgement at the time of the occurrence of the incident irrespective of the country they come from, race and school of thought. In other words Consensus is not legally binding without a general consensus of ideas.

3) The "Mujtahideen" (Muslim scholars) should each express their viewpoint clearly and openly concerning the occurrence in question. Consensus is formulated on any judiciary issues after hearing the opinions individually or collectively with open-mindedness and that they are not inconsistent with each other.

4) Consensus could be formulated only if the viewpoints are unanimously agreed upon. No Consensus is established if only the majority agree upon it. The Consensus thus reached shall be an indisputable authority which cannot be challenged even if disagreement arises over the identification of the scholars who formulated the Consensus, and the location where it took place.

Al-Shafie and Ahmad are rather inclined to disprove the existence of the Consensus except at the time of the Prophet's companions and on matters of basic religious rites. Muslim jurists unanimously agree on the Consensus reached by the Prophet's companions particularly during the reign of Omar* who used to refer controversial issues to them.

* Omar was the second Caliph succeeding Prophet Mohammad (Translator's note).

Analogy

Analogy is the inference that if two or more things agree with one another in one or more respects they will agree with yet other respects. If, in a certain respect a particular judgement was passed and the reason for passing this judgement was indisputably acknowledged one way or the other, it follows that the same judgement should be applied to a similar incident provided that the cause of the incident is known. The judgement lies where the cause lies and identical incidents necessitate identical judgements. The Glorious Quran applies the principle of equality to identical cases and identical occurrences are equally judged. In the Quran the Almighty God says:

*" Do they not travel
Through the earth, and see
What was the End
Of those before them
(Who did evil)?
God brought utter destruction
On them, and similar
(Fates await) those who
Reject God".*

Chapter 47, verse 10.

If occurrences are not identical, judgements cannot be identical either, as in the following Quranic text:

*" What! do those who
Seek after evil ways
Think that We shall
Hold them equal with
Those who believe and*

*Do righteous deeds, — that
Equal will be their
Life and their death?
Ill is the judgement
That they make ”.*

Chapter 45, verse 21.

In another context God says:

*“ Shall We treat those
Who believe and work deeds
Of righteousness, the same
As those who do mischief
On earth? Shall We treat
Those who guard against evil,
The same as those who
Turn aside from the right? ”.*

Chapter 38, verse 28.

Al-Shafie's friend, Al-Muzni said: " Muslim jurists as far back as the Prophet's time have been making use of Analogy in all their judgements on religious matters, and they agreed that good is equal good and evil is equal evil ". This in fact is Analogy in the true sense. We do not want to consider differences among jurists nor do we like to disprove the jurists' assertion that Analogy is an infallible legal authority. We share the public's opinion that Analogy is undoubtedly employed for passing judgements on Ta'zir crimes for which no defined punishments are described by God but are left to the discretion of the authority who administers the law.

Some Discretionary " Ta'zir " punishments have been derived from the general and specific judgements available in the Quran and the Sunnah. Some punishments are traced back to the Prophet and some to his companions blessed with the Prophetic guidance when the Quran was revealed.

The four Imams (founders of Islamic law schools) unanimously agreed to consider these judgements authoritative if they cannot be traced in the Quran. Al-Shafie, one of the four leading doctors of Islam, says: " The opinion of the Prophet's companions is definitely better than ours and therefore to be taken as a basis for Analogy since the main objective is the preservation of public interests and the administration of everyday affairs in a better and just manner ". The validity of Discretionary punishments in accordance with Analogy is an undisputed matter, for these punishments are exclusively left to the individual discretion of the magistrate who administers the law. The maximum limits for crimes punishable by fixed punishments " Hudoud " and Retaliation " Kisas " are defined in the Quran. And Discretionary punishments can be administered on the basis of Analogy. But can crimes punishable by fixed punishments " Hudoud " and Retaliation be proved on the basis of Analogy?

Some jurists maintain that they could be proved by Analogy because it is one of the methods of correct and sound deduction and just judgement. It is confirmed that Prophet Mohammad allowed Muaaz Ibn Jabal * to exercise his own individual judgement which is but one aspect of intellectual thinking. In the well-known letter addressed to Abu Musa Al-Sharie, Omar Ibn Al-Khattab said: " Judge things in relation to their counterparts ". Moreover, the Prophet's Companions ascertained the " Hudoud " punishment for alcohol-drinking on the basis of Analogy. The Prophet said of one charged with wine-drinking: " Beat him

* Well-known Prophet's companion, judge and jurist (Translator's note).

up or flog him", but he did not specify the amount of chastisement. The Prophet's Companions specified the extent of chastisement by each giving his own individual opinion. Ali Ibn Abi Talib voiced his opinion when he said of one accused of intoxication: "If a man drinks he will get intoxicated, and if he does he will lapse into hallucination and commit transgression. Therefore he will be chastised for transgression". Some jurists believe that crimes punishable by "Hudoud", Retaliation and Atonement cannot be confirmed on the basis of Analogy since they are specified in particular crimes which cannot lend themselves to analogical considerations.

As punishments of Hudoud and Kisas are associated with the subject matter and since they cannot be estimated they do not lend themselves to analogical considerations.

Unless rid of the element of suspicion judgements cannot be legalized.

Analogy, however authoritative, cannot constitute an undisputed and final authority; it cannot be applied to "Hudoud" crimes. "Hudoud" in origin are primarily prescribed for specific crimes and as such cannot be divided or inferred on analogical basis because they fall within God's exclusive domain.

"Istihsan" or Equity

Literally "Istihsan" is to consider a thing to be equitable. In the terminology of fundamentalist jurists it means the rejection by the Muslim scholar of a concealed Analogy or a general judgement in preference to an exceptional judgement occasioned by an evidence dawned upon his mind.

Kinds of Istihsan

1) Rejection of a concealed Analogy in favour of a clearly evidenced one.

2) The exception of a particular item from a general judgement on the basis of clear evidence.

The examples given by the purists on "Istihsan" are many. For instance, if a person is wounded by someone, the offender should be punished by Retaliation. This is absolutely necessary. But Retaliation would not be possible since a completely identical wound could not be inflicted on the body of the offender. Therefore, Istihsan would call for a compensatory blood money along with, where applicable, a Discretionary punishment. However, some jurists do not advocate "Istihsan" on the assumption that it implies deduction of legal judgements by fancy or whim. It is beyond our scope to go into further details on this matter.

"Maslaha Al Mursala" (Unspecified Interest of Common Good)

In the terminology of basic jurisprudence "Maslaha Al Mursala" means any interest of common good which does not originally exist in the Quran or the Sunnah and for which no legal reference is available to consider or neglect. It is called "Maslaha" because it is not based on substantial evidence to prove its acceptability or cancellation. Of these interests instituted by the Prophet's Companions were coin minting, prison installations and other interests deemed necessary for which no legal reference is available to cancel or legitimize them. The difference between "Maslaha" and "Istihsan" is that the first one is instituted by virtue of the public good which it aspires to fulfill. "Istihsan" is not imposed by virtue of a certain element inherent in it. It rests on an evidence alien from it which is Analogy. The exercise of Analogy through "Maslaha Mursala" is part and parcel of the doctrines of Imam Ahmad and Imam Malik. According to them the legal policy rests on the implementation of interests of common good at large.

In fact the "Maslaha" is considered by all jurists, but the difference between the jurists lies in considering it as

an independent entity. The doctrines of Hanafi and Shafi introduced "Maslahas" in Analogy whereas Malik and Hanbali considered "Maslaha" an independent authority not necessarily attachable to other authorities, provided that:

1) The "Maslaha" should be compatible with the objectives of the law-maker as a whole in the sense that it should not run against any of the divine tenets or final deliberations. "Maslaha" should be consistent with the common good meant to be achieved by the Divine Legislator. Therefore "Maslaha" should be akin and not alien to the common good conceived by the Divine Legislator.

2) "Maslaha" should be formulated and implemented within the normal limits of reason. It should emerge only when necessary so that it can be accepted by reasoning.

3) When "Maslaha" is implemented it should lead to the elimination of some difficulties of a religious character. If it is unreasonably carried out it may pose some kind of difficulty. God says in the Holy Quran:

*"and HE (God) has
Imposed no difficulties on you
In religion."*

Chapter 22, verse 78.

"Maslaha" and Crime Prevention

Many legal deliberations, particularly those concerned with the prevention of crimes arose from thoughtful consideration of the common good. Omar Ibn Al-Khattab maintained that the punishment for adding water to milk (which is considered a fraud) should be by spilling the milk in order to deprive the cheater of any illegitimate profit. Doctors of the Hanbali doctrine resolved that the punishment for intoxication during the month of Ramadhan should be doubled in deference to this holy month. The Prophet's Companions, their followers and Muslim jurists

agreed that prostitutes and procurers had better be expelled to protect the society from their mischief.

Undoubtedly this punishment sprang from the common interest of the society. Books on Islamic jurisprudence are abound with similar examples. Heads of Muslim countries may work on this pattern to safeguard the state and the community on condition that the positive laws should take into consideration the common interests as prescribed by the jurists.

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COMMENTS BY THE PARTICIPANTS

Dr. Mohammad Ibn Sa'ad Al-Rasheed

Praise be to God and blessings and peace be on Mohammad, the noblest of all prophets and messengers, his family and Companions.

This most enlightening research work has dealt with the subject under discussion from all its aspects. This is not surprising because his Eminence Sheikh Mohammad Ibn Jubeir, who presented the paper, is a judge and a scholar and has devoted a number of years studying, collecting and investigating Islamic jurisprudence. I could imagine the seemingly insurmountable difficulties he encountered when he set to write this paper.

Instead of writing his paper in the style of dogmatic jurists crammed with the terminology of jurisprudence he preferred a more lucid and straightforward style free from incomprehensible or misleading terminology. The topic under discussion was handled in a style surprisingly appropriate to the nature and objectives of the symposium.

As the subject under discussion consists of two parts I have agreed with my colleague, Dr. Hussein Hamed Hassan, that I comment on the first part of the study, viz. "Concept of Criminality" and he will comment on the second part, "Sources of Islamic Legislation" in order to avoid repetition.

The Concept of Criminality

I do not want to probe deeply into the nature of criminality. I just would like to give some glimpses on the conception of the Islamic legislation as already discussed by Sheikh Mohammad Ibn Jubeir. However, I would add a few hints which the nature of the seminar may require for the sake of some of the participants who are not familiar with the Islamic jurisprudence or the fundamentals of the Islamic legislation.

The lecturer mentioned that crime, according to Muslim jurists, is committing an act which is punishable or the abandonment of an act which should have been carried out. In this general definition of crime, according to Islamic

jurisprudence, disobedience, sin and other acts of wrongdoing, such as envy and hatred of somebody who does not deserve it, are considered crimes punishable in this world and in the hereafter.

The more precise definition of crime is committing a legally prohibited act punishable by fixed punishments or "Hudoud" Discretionary punishments "Ta'zir". In other words, crime is the commitment of a forbidden act or the abandonment of an act which should be carried out. Such a punishment is explicitly defined in the Quran or the Sunnah for crimes punishable by "Hudoud" and Retaliation, or implicitly mentioned as the majority of "Ta'zir" (Discretionary) crimes. In the precise definition of crime the western laws coincide with Islamic jurisprudence that crime is the commitment of a punishable act or the abandonment of an act which should have been carried out.

At this point I would like to go back to the problem whether Discretionary punishment "Ta'zir" has been expressly specified.

The lecturer has maintained that Discretionary punishment is expressly delineated in the Quran and the Sunnah by quoting the Quranic text: "Commit no evil in the land with intent to do mischief," and the Prophet's Report "Neither do you cause any harm nor eliminate it by causing more harm." He further added that punishments expressly mentioned in the Quran, such as "Hudoud" and Retaliation, have been considered the basis for Discretionary punishments which are not expressly mentioned in the Quran. The fact that no direct mention is made and no specific punishment is prescribed for "Ta'zir" crimes has in most cases allowed the judge more freedom and elasticity to think out a penalty more appropriate to the circumstances of the criminal and of the crime itself.

Western laws may not have this advantage. Hence a judge may be confronted with a case for which there is

not enough evidence that the accused has committed the offence. The judge may, under the pressure of rigid and inadequate legal texts, acquit the accused who thus escapes the due punishment. Unlike these laws the Islamic penal system does not allow a criminal escape punishment. Despite the wide variety of criminal offences in the Islamic law, crimes and punishments are explicitly mentioned. The intricate formalities of the western laws do not exist in Islamic jurisprudence. In Islamic jurisprudence crimes are classified into "Hudoud", "Kisas" (Retaliation) and "Ta'zir".

"Hudoud" crimes are:

1. Adultery,
2. Theft,
3. Highway robbery,
4. Wine-drinking,
5. Defamation,
6. Apostasy from Islam,
7. Attempted coup d'état.

Although some jurists classify those crimes differently yet I would rather prefer the first classification.

Retaliation is inflicted against the human self. However, I do not want to waste much time on this particular point, but I would like to add some hints on the "Ta'zir" crimes.

"Ta'zir" embraces almost all crimes mentioned in Islamic Sharia (legislation). The judge's authority in "Ta'zir" is so wide in order to investigate the circumstances which motivated the crime and deliberate on the nature and extent of the punishment accordingly. Punishments for "Ta'zir" crimes may be light, but in some rare cases the punishments could even be heavy.

The punishments are: exhortation, censure, intimidation, deportation, public denunciation, payment of fine or confiscation of property (financial penalties). The convicted person may be confined or flogged or even on rare occasions (such as espionage) be condemned to death.

Islamic jurisprudence evidently classifies crimes in a different manner from western laws which usually classify crimes into: penal, misdemeanour and contravention. Some other laws, such as the English law, classify crimes on the basis of relevant legal institutions and prosecution procedures. In other words they are classified into two groups and are primarily based on the extent of punishment as if the specification of the crime is a part of the punishment. Islamic law bases punishment on the gravity of the crime and its threat to the five necessities mentioned by the lecturer, i.e. religion, life, offspring, intellect and property. This gives the Islamic law its permanent and consistent character. Islamic law differs considerably from other laws as regards civil offences.

In other laws a civil offence does not reach the status of a crime, whereas in Islamic law it is often considered a Discretionary crime even if it results in civil prosecution. The judge may inflict a Discretionary punishment on the convicted. The compensatory aspect in these civil contraventions is completely excluded in Islamic law, for intended transgression and gross negligence endanger the interests of individuals and communities. Islamic law is meticulously keen on the preservation of the five indispensable necessities and it does not hesitate to inflict severe punishment on anyone who dares to violate them. In this connection I would like to refer to disciplinary offences which some laws do not consider as crimes. According to the Islamic jurisprudence they are of criminal nature and thus punishable.

Let us have a quick glance at the objectives of punishment in the Islamic law.

- 1) To serve as a deterring and discouraging factor against crime to the criminal and others. Hence the public execution of chastisement. In Islamic law all punishments for crimes committed should be executed in public and before a large crowd. In reference to this point the Quran

says: "The execution of punishment inflicted upon the convicted should be witnessed by a host of believers".

2) The criminal should receive due punishment for the crime he has committed. This is clearly prescribed in "Hudoud" and Retaliation punishments.

3) Rehabilitation of the criminal; this is self-evident, particularly in the cases of highway robbery. It may also be evident in refusing to accept the defamer's witness unless he has turned over a new leaf. Punishment in Islamic legislation is based on mercy. God says in the Quran: "We sent thee not, but As a Mercy for all creatures". (Chapter 21, verse 107).

Although chastisement may be painful it serves as a cure. When a person realizes that he will be chastised before a large crowd he will be deterred from committing even the slightest offence.

As it is important to focus attention on the preliminary steps due attention should also be given to the consequences of any crime. The main characteristics of Islamic criminal legislation are:

1) Islamic legislation is revealed by God and therefore people comply with it not only out of fear of the authorities but also of the punishment in the hereafter. This explains why there are not many crimes in the Kingdom of Saudi Arabia.

2) The existence of equality between crime and punishment as the Quran says:

*"The recompense for an injury
Is an injury equal thereto (in degree)"*

Chapter 42, verse 40.

In another verse it says: "There is life for you in retaliation O ye men of understanding".

3) Punishment is inflicted only upon the person who perpetrated it, and no one is held responsible for another's guilt. The Quran says:

*"Nor can a bearer of burdens
Bear another's burden"*

Chapter 35, verse 18.

4) All people are equal before the law of Islam. There is no distinction between a man of good descent and another of low birth, between employee and employer or between a master and a servant. The Prophet said "The people before you were destroyed because they used to pardon nobles caught stealing, and punish others coming from lower strata of the society. I swear by God that if my daughter, Fatima, committed theft I would have her hand amputated".

5) Consolidation of ethical values and the up-bringing of the society in accordance with Islamic teachings.

6) The preservation of general rules and the principles of Islamic legislation.

Dr. Hussein Hamid Hassan

Praise be to God, the Lord of the Worlds and His blessings and peace be on His Apostle, Mohammad, his family and Companions. I have the pleasure to participate in the discussions of this valuable research prepared and lectured by His Eminence Sheikh Mohammad Ibn Ibrahim Ibn Jubeir, President of the Court of Appeal, a man noted for his studies in Islamic jurisprudence and long experience in this field and whose style combines excellent representation with easy and precise expressions. If I have any comment to make on this study it will be no more than an elaboration of a principle or a representation of a text mentioned in this valuable research. The sources of Islamic

legislation in general and penal laws in particular are distinctively advantageous over other western laws, a fact agreed even by objective critics of Islam. Though of varied sources and methods of deduction Islamic legislation is sublime, perfect and universal.

Not a single case, event or incident occurs in our present time wherever it may be in the criminal field is left unconsidered by the Muslim jurists in the books of Islamic jurisprudence. If the deductions are not explicitly stated in these books they can be traced in the general principles and rules of Islamic law. In this connection we may cite Imam Al-Shafie in his introduction on the Basics of Jurisprudence in the following words: "Whatever incident happens to a Muslim there is a binding judgement, i.e. in the Quran, and a fair solution for it".

The Imam further adds that any problem, controversy or happening which occurs to a Muslim must be clarified in the light of the Quranic guidance. In the Quran there is a solution for every problem no matter how insoluble it may seem to be. This was not just a theory on the part of the Imam. The extensive and intensive knowledge on jurisprudence Imam Al-Shafie collected and dictated to his disciples coupled with his ingenious legal deliberations are an exceedingly substantial evidence that no problem which cropped up in his lifetime was not settled or solved by him or any of his contemporary jurists through the aid of the Quran or the Sunnah.

But if theories and principles regarding criminal law proved unchangeable it is because all such theories and principles originate from the early Muslim jurisprudence.

The following are some detailed examples of the advantages of Islamic criminal law over other positive laws:

First:

The Islamic penal system is more privileged than other systems in references and sources. The sources

of Islamic criminal law are not confined to prohibitions but also there are commandments. Therefore, Islam ever since it was revealed equalized between prohibitions and commandments concerning punishment. Abstention from carrying out a command is considered as sinful as committing a forbidden act. The contemporary laws today are inclined to approach this line, and the modern criminal codes now recognize the crime of "omission". Islamic law considers the rejection of a divine commandment and the commitment of a prohibited act equally punishable. Muslim jurists maintain that any person who withholds food or drink from a hungry or thirsty person until the suffering man dies, is considered a criminal and should suffer Retaliation. The Maliki school and Ibn Al-Qayyim (a Hanbali jurist) assert that if a person saw a wounded man bleeding and could have taken him to the nearest hospital for treatment but declined to do so and the suffering man died of his wounds, such a person shall be condemned to death, if his crime is proved, or he has to pay blood money. And a person who refuses to accommodate another man chased by a lion and running to find a refuge, is punishable by retaliation.

So the Islamic criminal jurisprudence has rich sources of both prohibitions (such as against murder, theft, adultery and alcohol-drinking) and commandments if not executed are considered disobedience and the culprit shall be punished. This is the main advantage of the Islamic penal system over other systems of law therefore the Islamic law is qualified to handle any penal case of the present day. Surely it is fair enough to equalize the crime of abstaining from saving a person from death with the actual slaying of a person or dismembering him.

Second:

Unlike other laws Islamic Sharia has the advantage that its criminal laws are not inferred from the Quran

or Sunnah only but also deducted from other sources which are logical. For example, the Quran enjoins that the orphan's money is to be safeguarded and prohibits its misuse and waste. The crime of doing so is punishable by a Discretionary punishment " Ta'zir ". The Divine Legislator by his commandments and prohibitions wants to take care of the interests of his subjects. When He prohibits that the orphan's property be dissipated the object is the preservation of the orphan's property. Consequently any squandering of the orphan's property is considered a crime. Analogy is used as a source of criminal injunctions by the scholars who stick to their opinions. Single evidences are not taken for a certain criminal injunction but a group of evidences do help in reaching the deliberation of such injunctions.

Accordingly, the Prophet's Companions formulated a legal opinion whereby a band of people taking part in the murder of an individual should be condemned to death. This legal opinion is based on the assertion that the Divine Lawmaker forbids murder in order to preserve human life. Therefore as self-preservation is a legal objective it is lawful to condemn to death any person or persons who cause the murder of a single man. Hence the methods of individual reasoning, deduction and legal rules based on the texts of the Quran and Sunnah have enabled the Islamic penal jurisprudence to cope with the people's requirements, take care of their interests and protect them from mischief.

An outsider may think that a number of penal injunctions and modern theories and principles may not exist in the books of Islamic jurisprudence and might have been unknown to Muslim jurists. This idea may be due to the lack of adequate legal terminologies in Islamic jurisprudence. For example, the crime of " omission " is not found in the Quran, Sunnah or in any other jurisprudence books. On the other hand one comes across in such books the injunction that anyone capable of saving a person from death but who fails to do so is guilty of manslaughter. This crime of " omission "

is implied in elementary books on jurisprudence and the manuals prescribed for the beginners in Islamic law.

If a law student endeavours to find, for instance, what modern jurists call the theory of " moral doer " he will most likely fail to trace it in the books on Islamic jurisprudence. This problem cropped up in some European countries when the culprit was criminally irresponsible or unpunishable either because he was under age or insane or the crime lacked the element of " intention ", and that the crime was committed at the instigation and provocation of another person who masterminded it. Naturally such a problem called for a solution that lawyers wanted. The jurists contended that anyone who instigates another person to commit a crime and that person is either insane and unable to discriminate between right and wrong or who does not harbour any criminal intention, the instigator would be held responsible for the crime. The right and exact legal term may not exist in Islamic jurisprudence. But if we consider the opinions expressed by Islamic scholars on theft, for example, we could detect an implicit reference to this crime. The Muslim scholars state that he who instigates a young boy or an insane person to commit a crime, is responsible for the offence of theft and the actual executor of the crime is but an instrument viciously utilized by the instigator. This is the significance of the theory of the " moral doer " as it exists in the west and practised in some Arab countries following western legal patterns.

The second reason which leads some western lawyers to believe that the Islamic jurisprudence falls short of complying with the needs of the Muslim world is due to the fact that Islamic jurisprudence follows a different methodology from that used in the west. For example, a student of other laws may find a certain case under a specific context, but if he tries to look it up in the Islamic jurisprudence he may not find it under the same context. Naturally every jurist has a different methodology. Therefore those who would like

to be acquainted with Islamic jurisprudence should be familiar with the methodology of Islamic jurisprudence.

Let us cite an example to illustrate this point. One is inclined to look for the crimes of leaving a bleeding person to die, letting another man's property be destroyed (such as leaving a house to burn down or a sheep to die) under the headings of Retaliation (Manslaughter) and Liability respectively. This is what a researcher is inclined to do, but the said crimes could be looked up under the headings of Hunting and Animal Slaughters. In Maliki jurisprudence there is a text ascribed to Sheikh Khalil * which stipulates that if an animal is shot at and is wounded but is still alive then anyone who sees it must slaughter it even if the owner is unknown in order to protect the property of the group. Slaughtering a wounded animal is the responsibility of any passerby, for the meat of the wounded animal cannot be eatable until it is slaughtered. Anyone found guilty of failing to slaughter a wounded animal will be fined with a sum of money equal to the value of the animal. Sheikh Khalid further adds that anyone who comes across a wounded animal (a sheep, a deer, a camel or any other eatable animal) and fails to slaughter it shall pay the owner of the animal what the animal is worth.

This illustrates that Islamic jurisprudence with its varied sources and methodologies, is quite adequate to meet the needs of Muslim. However, Muslim jurists have the task of presenting the jurisprudence in an attractive, easy and intelligible style with a view to helping researchers to pursue their studies of Muslim jurisprudence.

Sheikh Mohammad Ibn Ibrahim Ibn Jubeir

I am grateful to both Dr. Mohammed Sa'ad Rasheed and Dr. Hussein Hamid Hassan for their kind comments on my

* A famous Egyptian Malaki scholar (Translator's note).

paper. As a matter of fact, due to the limited time for my lecture I had to be very brief with my subject.

However, thanks to the enlightening explanations given by both Dr. Mohammad Rasheed and Dr. Hussein Hassan my subject has become full and useful. It was my intention to make a comparative study between Islamic legislation (Sharia) and other laws but I kept to the title as originally set by the symposium, i.e. "Implementation of Islamic Sharia in the Kingdom of Saudi Arabia", for I believe that the comparative study between Islamic Sharia and western laws needs a special symposium. As we in Saudi Arabia implement Islamic Sharia I did not see any reason to tackle other laws.

Conductor of the Discussion

Due thanks to Sheikh Jubeir for his lecture and with this we conclude the first part of our symposium. We shall meet after "Maghrib" (sunset) prayer.

The meeting was adjourned at 5.45 p.m. and reconvened at 6.25 p.m.

Chairman

We resume the discussion of the first topic. We shall give the floor to some of the participants to make their comments on the subject.

Dr. Hamad Al-Kobaisi

Upon giving a brief glance at the paper presented by Sheikh Mohammad Ibrahim Jubeir I believe paragraph 5 on page 7 of the paper needs more elaboration and clarification. According to comparative academic studies the offence of apostasy and defection from Islam is inconsistent with the freedom of belief as stipulated in the Quran: "Let there be

no compulsion in religion". On this point I would like to add the following explanatory observations:

1) Apostasy from Islam is considered a criminal act in order to safeguard the interests of the society, for the integrity of belief is man's prerogative. Therefore any offence against man's integrity of belief is an offence against his honour. Rebellion against one's belief (Islam) represents a grave threat to the whole social structure by the fact that the individual loses his faith in the basic heritage and his allegiance to the ideals that the religion preaches. The individual's allegiance to his nation's faith is his commitment to the interests and principles of the nation to which he pertains, and it is a token of his compliance with the views of the majority and his willingness to defend these. Should a person defect from his belief it means his desertion of his people and all the grave consequences that result from such a defection. There is no difference between a person who defects from Islam and the person who joins the enemy whether on ideological or practical planes. In order to safeguard the entity of the nation, its interests and sacred beliefs the Prophet has ordained that an apostate be condemned to death unless he denounces his apostasy and declares his atonement and behaves accordingly in words and deeds.

2) Apostasy from Islam is inconsistent with the natural rights of citizenship and the legal status of the apostate, since the apostate is neither a non-Muslim to be treated accordingly, nor a Muslim because he has defected from Islam. Therefore an apostate is an outlaw and his crime is not different from high treason punishable by death.

3) Islamic Sharia has explicitly stipulated that an apostate has no legal entity within his nation, and therefore he has to be condemned to death. The Prophet narrated (in the Hadith): "No Muslim who testifies that there is no God but Allah and Mohammad is His Apostle can be condemned

to death except in three cases — and one of them is an apostate who defects from his religion and community". So the Prophet equalized an apostate from religion with a defector from one's own people.

I trust that such hints on some of the aspects of the topic under discussion would meet your consideration in order to highlight the wisdom inherent in Islamic legislation which considers apostasy from Islam a crime, for apostasy appears to be inexplicable to non-Muslim scholars. May I suggest that the Arab Social Defence Organization convene a special symposium to discuss the "Hudoud" punishment and clarify the ambiguities concerning Retaliation and Discretionary punishments.

Conductor

I thank Dr. Hamad Al-Kobaisi for his suggestions and I invite Sheikh Mohammad Ibrahim Jubeir to comment.

Sheikh Mohammad Ibrahim Jubeir

I thank Dr. Kobaisi for his valuable remarks which I suggest to be considered as complementary to my study in this field.

Sheikh Attia Mohammad Salim

Praise be to God, the Cherisher and Sustainer of the Worlds, and peace and blessings be upon His Apostle, his family and Companions.

I would like to reiterate my heartfelt thanks to the organizers of this symposium and I would like to express my appreciation to those who spared no effort to realize this gathering. Also due thanks to the eminent scholar for his lecture and for leaving the door open for further contributions and comments. I also thank the participants, including Dr. Al-Kobaisi for clarifying some of the vague points.

With regard to apostasy from Islam, Dr. Kobaisi has saved me from indulging in it any further. However, I would like to add just one more point. Apostasy, in the eyes of custom and society, is a crime even on the political level. Apostasy in its political connotations means a person who changes political parties. Such a man loses his identity and is known as a turncoat.

Apostasy from Islam creates the same serious situations like a man giving up his nationality in favour of another country. If a group of people decided to do such an act in a given country, it would surely create a problem for the authorities.

Islam has granted lawful rights to the Jews and Christians. If a Muslim, who by virtue of his religion, is entitled to lawful inheritance married a Muslim women and then turned a Christian the Muslim property will end up in the Christian lap. Of course this will lead to unfavourable repercussions amongst the Muslim community. Therefore apostasy is a crime from social, legal and religious points of view.

The other point which the distinguished scholar has left open for discussion is the Sunnah of the first four Caliphs who succeeded the Prophet. This Sunnah is one of the reliable sources of Islamic Sharia besides the Quran, Prophet's Tradition, Analogy, Consensus and "Maslaha Mursla" (Unspecified Interest of Common Good). Doctors of Islam have unanimously agreed to consider the Sunnah of the "Khulafa Rashidein" (the four Caliphs succeeding the Prophet) as a reliable source of Islamic Sharia—a method approved by the Prophet himself. What concerns us most is the effect of the Caliphs' Sunnah on Islamic legislation and jurisprudence. As regards the criminal legislation in particular, His Eminence Sheikh Jubeir said that Ali Ibn Abi Talib fixed the punishment for intoxication on analogical consideration and thus that punishment became legal. Also Omar Ibn Al-

Khattab said that the amputation of limbs could be suspended whenever necessity justifies it. This is now put in practice in modern laws. I am not trying to make a comparison between the Islamic legislation and non-Islamic laws.

The British judiciary law stipulates that if a court reasons out a verdict concerning a case not specified in the law, and if such a verdict is reached after a long series of reasoning processes it becomes part and parcel of the judiciary tradition. The individual and collective reasoning capacity of the "Khulafa Rashidein" as a source of our legislation gives Islamic jurisprudence the power to handle any problem. Once Al-Shafie told the citizens of Mecca that he was prepared to answer any of their questions by quoting from the Quran. One of the Meccans asked: "What about the "*Muhrim*" * who kills a wasp?" Al-Shafie replied by reciting this verse from the Quran: "So take what the Apostle assigns to you, and deny yourselves that which he withholds from you". He also quoted the Prophet's commandment: "Cling fast to my Sunnah and the Sunnah of the Khulafa Rashidein (Meek Caliphs) who will succeed me" Al-Shafie relates that Omar (the second Caliph) was once asked: "What punishment is inflicted upon a "*Muhrim*" who kills a wasp?" Omar replied "Nothing".

Al-Shafie considered the tradition of the Caliphs as part of the Prophet's Sunnah which in turn is based upon the Holy Quran. The tradition of the Caliphs has enriched Islamic legislation, and this is traceable in "anticipatory jurisprudence", one of the most distinctive features of Islamic jurisprudence in which jurists anticipated the results of a certain incident long before it took place. This distinctive feature of Islamic jurisprudence, namely "anticipatory jurisprudence" has been harshly attacked by critics of Islam and the

* Muhrim is one who wears "Ihram", i.e. two pieces of white untailored cloth with which a Muhrim wraps up his naked body while performing pilgrimage or "Umra" (Translator's note).

reason for the criticism is attributed to the ignorance of the critics of the true nature of "anticipatory jurisprudence". Malik narrated that the Prophet once sent a man with a slaughterable animal to Mecca. The man asked the Prophet what he should do if the animal got hurt, wounded or disabled. The man was still in Medina and had not set out for Mecca. The Prophet replied if that happened he should slaughter the animal and leave it to be eaten by the people. This is the Maliki school's approach to inconceivable issues that did not take place.

In his footnotes Sheikh Bardiri* wonders what the case would be if a man said his prayers in an airlifted swing which is suspended in the air and not hung from a ceiling or a tree. Would his prayers be proper? And how could he work out the direction of the "Qibla?" The answer to this question was reached in the form of a practical performance inside the aeroplane which is like a swing suspended in the air.

Another question was posed regarding a man who flew from the east to the west during the month of Ramadhan. Would his fast be proper if the sun went down in the country of his destination before it went down in the country where he came from? The correct answer to this question is that he should break his fast when the sun sets in the country of his destination. "Anticipatory jurisprudence" is a distinctive feature of the Islamic law.

This is my humble contribution to the discussion of Sheikh Jubeir's paper.

Professor Ahmad Mohammad Jamal

Praise be to God and His blessings and peace be on the Apostle, his family and followers.

* A Maliki scholar who wrote a commentary on the text known as Mukhatasar by Khalil (Translator's note).

Both His Eminence Sheikh Jubeir and Dr. Mohamīnad Sa'ad Al-Rasheed, the first commentator, have explained the wisdom behind inflicting punishment in public. The reason is that such a punishment should serve as a deterrent to the public. The other reason is that psychotherapists have recently discovered that criminals, unless punished in public, will go back to their old crimes. This subject has been dealt with in detail by Dr. Ibrahim Al-Rawi in the magazine called "Islamic Civilization". Thus, as I have already stated the objective in punishing the criminal in public is not defamatory, as some critics of Islam have alleged, but to serve as a deterrent to both the public and the criminal himself.

So much for the execution of penalty in public. Now I would like to comment on another point raised during the discussions, namely the question of apostasy from Islam provoked by Kobaisi who said that some critics allege that there is an evident contradiction between the penalty inflicted upon the apostate and the following Quranic verses:

*" Let there be no compulsion
In religion: Truth stands out
Clear from Error "*

Chapter 2, verse 256.

*" Say: ' The Truth is
From your Lord '
Believe, and let him
Who will, reject (it) "*

Chapter 18, verse 29.

I would like to add to Dr. Kobaisi's statement that apostasy is punishable by death, for the apostate alienates himself from the community and gives up his citizenship.

I want to say something more in this respect. The religion of Islam has given man complete freedom to choose between belief and disbelief before embracing Islam; but once converted or born as a Muslim he cannot have this choice because his rejection of the Muslim faith would be humiliating and derogatory to Islam. An apostate is not only like one who has alienated himself from his community or forsaken his right to citizenship or abandoned a political party in preference to another, but he who has decried Islam as being inconsistent, incomprehensive and full of flaws. Hence such a person must be punished in order to rid Islam of such false allegations.

Dr. Tawfuq Al-Shawi

I seize this occasion to express my sincere thanks to all those who have participated in convening this symposium and also to all the distinguished speakers and commentators for their invaluable contributions on the subject of Islamic criminal law. Sheikh Jubeir's study dealt essentially with two points, namely the concept of criminality in Islamic legislation and the sources of Islamic Sharia. The speaker pointed out that Islamic Sharia is characterized by its varied sources and he also spoke about diverse crimes in Islamic law. What concerns me is the inter-relationship between these two aspects of Islamic Sharia. Speakers who will, in the course of this symposium, present their papers had better concentrate on this indissoluble relationship that exists between the variety of sources of Islamic Sharia and the diversity of crimes. Some distinguished speakers may have questioned the stance of Islamic Sharia with regard to the concept of criminality or the norm that "there is no crime or punishment without a text". Such a norm exists in western laws.

It is permanent and applied to both grave and minor crimes. The matter is quite different in Islamic legislation

where an obvious graduality exists between its significance and the strict adherence to textual evidence in "Hudoud" and Discretionary crimes. The Quranic and Sunnah texts give more importance to "Hudoud" crimes than other sources of Islamic legislation which give greater consideration to Discretionary crimes.

The diversity of sources of Islamic Sharia is not without a purpose or devoid of wisdom. The widened scope of "Ta'zir" sources is primarily meant to connect Discretionary crimes with the ever increasing growth of the society. The judge or the head of the state who decrees a certain act as a crime must, as Muslim jurists assert, consider the living conditions and social circumstances of the community before exercising his discretionary powers. When a certain crime is wide-spread the magistrate must choose the severest punishment; but when this particular crime decreases in the course of time punishment should become lighter. The sources of Islamic Sharia keep on developing and growing to the extent that they encompass all Discretionary crimes and the concept of crime responsibility. Tomorrow we shall be listening to another paper on crime responsibility. In "Hudoud" crimes the specifications of responsibility are far sterner than in the Discretionary ones. The diverse sources of Islamic law have enriched Islamic Sharia and rendered it less dependent on textual references.

The subject which concerned us most this evening was the value and significance of texts as regards Islamic penal legislation. The value differs depending on the kind of crimes, whether they are "Hudoud" or "Ta'zir".

Sheikh Rasheed Saleh Khnein

Praise be to God and peace and blessings be on His Apostle. My due thanks to the author of today's paper and the distinguished commentators. I would like to comment on a few matters which need further elaboration:

First:

In most cases an apostate is hostile to Islam. He exercises his evil powers to undermine Islam and perpetuate false conceptions about it and then spreads these misconceptions among his people to discourage them from adopting the true religion. Therefore the Islamic Sharia has ordained that an apostate be condemned to death. In this connection I would like to add that he who really comprehends the true teachings of Islam and is convinced that it is the divine religion no other religion will interest him.

Second:

The Quran and the Prophet's Sunnah are considered the most authoritative sources of Islamic Sharia, particularly with regard to crime and punishment. The Prophet's Tradition is infallible because it comes through the Prophet who speaks not out of whim or caprice. Islamic law originates from the Book of Allah.

I wanted to elucidate these two points. May God bless you and guide us all on the right path.

His Eminence Sheikh Manna Al-Kattan

Praise be to God and peace be upon the Prophet. I thank the author of the paper and the participants for their discussions, comments and valuable contributions. I would also like to add three points.

First:

The main subject of this symposium is the Islamic criminal law and its effect on crime prevention. As you know a thing has to be conceived before a reasonable judgement of it is passed. Every research has its preliminary considerations to demonstrate its components before they are pieced together in the final conclusions. Therefore this

evening's subject is considered the essence of the papers of the symposium, for it deals with crime and sources of Islamic legislation.

Second:

The punishments for serious crimes are fixed and specified by the Quran and Hadith, and therefore they are not subject to any alterations or modifications. This fact gives Islamic legislation continuity and validity. The punishments are inflicted on those who violate public rights which every man in any society should enjoy. These rights are, as the distinguished speaker referred to, the protection of life, property, religion, offspring and intellect. The fixed punishments are inflicted on transgressors of these rights which are the same in any place or society. This proves the flexibility of the Sharia and a factor of its suitability to all times. In some countries, for instance, alcohol-drinking was banned for a period of time and then the ban was lifted. In the same manner assault against one's honour may be considered a crime at one time and may not be so at another time.

Third:

Discretionary punishments (" Ta'zir ") are meted out to include all crimes except those crimes for which punishments are specified by the Sharia. This factor makes Islamic Sharia integrated and comprehensive and applicable to all the requirements of the society. The Muslim judges " Qadhi " are in a position to judge the criminal act and fix the punishment for it.

Conductor of the Seminar

We thank again the lecturer, Sheikh Jubeir, the commentators, Dr. Al-Rasheed and Hussein Hassen and all the participants who readily responded to our invitation.

My I call upon the Vice-Chairman to conclude this session and fix the date for the second session.

Vice-Chairman

Thanks to you for having taken part in these illuminating discussions which undoubtedly have shed light on some points which appeared partially obscure. We trust that in the forthcoming sessions more attention will be focussed on the points raised in this paper. Our next meeting will take place tomorrow at 8 a.m. and I hope that all the participants will be present before that time, say a quarter of an hour earlier, in order to save time and cover the subject we shall be discussing.

The meeting was adjourned at 7.35 p.m.

SECOND SYMPOSIUM

SECOND PAPER

17250

DEFINING CRIME RESPONSIBILITY ACCORDING TO
ISLAMIC LEGISLATION

by

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Commentators

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Dr. Abdul Karim Zeidan, Professor of Islamic Law, Department of Islamic Theology, Faculty of Arts, University of Baghdad.

Conductor of Discussions

Dr. Rashid Ibn Rajih, Dean, Faculty of Sharia and Islamic Studies, King Abdul Aziz University, Mecca.

Owing to the delay of Dr. Mohammad Salam Madkour's arrival from Cairo at the scheduled time, the lecture was delivered on his behalf by Sheikh Ibrahim Al-Nasser.

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Praise be to God who revealed Islam unto His Prophet as the seal of all other preceding religions. May God's blessings and peace be upon God's Messenger. God has chosen Mohammad, the Seal of all prophets to convey the heavenly message to all mankind in order to cultivate love and understanding amongst them. May God's blessings be upon the Prophet's Companions who, with their exemplary Islamic conduct, disseminated the divine word of God. May Allah's peace be upon the soul of Imam Ja'far Al-Sadeq who said in his last will to his friends: " You should be silent preachers ". They asked him how this could be possible and he answered: " You have to comply with the Commandments and Prohibitions of Allah, and lead a pious life so that others will recognize the superiority of our religion ".

All heavenly religions were revealed for the good of society and to lead mankind towards righteousness and protect them from evil and sins. Islamic legislation was revealed in the interest of humanity and is consistent with the natural evolution of living standards, for Islamic legislation is universal in its nature and it is the seal of all legislations.

As Islamic legislation is infinitely comprehensive its injunctions are often broad and flexible, and are usually confined to the laying down of foundational rules. And since Islam comprehends the two facets of life, the religious and secular, its instructions encompass all modes of behaviour, worldly and unworldly, individual and collective. These teachings are basically derived from flexible sources: God has urged everyone, particularly learned scholars, to exercise

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the function of " Ijtihad " (individual reasoning) and to investigate every human issue within the framework of Islamic legislation, such as the principle of " ease " and " removal of embarrassment " in matters related to belief. It is evident that individual opinion is a serious moral responsibility. One should have the courage to express his opinion with clarity, sincerity, honesty and objectivity. Individual opinion, when needed to settle issues of daily occurrence, is far too serious, particularly when it is conducive to the rendering of a divine injunction intelligibly clear.

Life, according to Islam, is a moral structure based on the dissemination of virtue and eradication of vice. Life in Islam assumes moral, political, economic and social aspects. In its moral sense, life upholds virtue and denounces vice. In its political sense, it is a justice inspired existence. In its social sense, life springs from the family which is the social nucleus and is promoted by co-operation among the individuals and communities. In its economic sense, life is sustained by labour and productivity. If Muslims sincerely adhere to their religion and comply with its injunctions, the elaboration on God's divine orders, according to the scholars, becomes a pressing must so that deeds reflect words and beliefs.

Muslims in many Muslim countries have long been looking forward to the implementation of the Sharia. The Egyptian people, represented by the Egyptian People's Assembly demanded the implementation of the Sharia in all aspects of life commencing with " Hudoud " punishments. In fact, the Egyptian Ministry of Justice formed a committee composed of senior counsellors, university professors and legal men to review the existing laws and reform them in the light of Islamic law.

The aforementioned committee has actually started considering " Hudoud " and Retaliation penalties. A popular outcry for the rejuvenation of Islamic law and the urgent

need for its application is the major aspiration of Muslims throughout the Muslim world. This move has become more pressing by the apparent indifference towards penalties meted out by existing positive laws. Owing to this increasing recklessness crime flourished to such an extent that security is seriously threatened.

If one ponders over the injunctions adopted by all religions for the prevention of crime, one cannot fail to find such an infinite and unfathomable wealth of resources in the religions, particularly in Islam, to deter the criminal from committing crime. The deterrence of a person who is inwardly susceptible to commit a crime even before executing it and suffering its due punishment, is realizable through the potential, reformatory and healing power of the invaluable treasures of Islam which, if steadfastly kept in the human soul, will ultimately divert man from evil and transgression. Crime as a sinful and forbidden deed is innate with man and was known since time immemorial when Adam and his wife ate from the forbidden tree and disobeyed God. In this connection the Quran says:

*" We said: ' O Adam! dwell thou
And thy wife in the Garden;
And eat of the bountiful things therein
As (where and when) ye will; but
approach not this tree,
Or ye run into harm and transgression'.
Then did Satan make them slip
From the (Garden), and get them out
Of the state (of felicity) in which
They had been. We said:
Get ye down, all (ye people)
With enmity between yourselves " .*

Chapter 3, verses 35 and 36.

Thus punishment was known with the first crime ever committed by man. Not only that, but the Quran relates that crime existed long before it was committed as in the following verses:

*" It is We Who created you
And gave you shape;
Then We bade the angels
Bow down to Adam, and they
Bowed down; not so Iblis *;
He refused to be of those
Who bow down.
(God) said: 'What prevented
Thee from bowing down
When I commanded thee?'
He said: 'I am better
Than he: Thou didst create
Me from fire, and him from clay'.
(God) said' Get thee down
from this; it is not
For thee to be arrogant
Here: get out, for thou
Art of the meanest (of creatures)'.
Chapter 7, verses 11, 12 and 13.*

In the early days punishment was held to be the exclusive prerogative of the offended party. It was a personal revenge, and it was not confined to the offender but sometimes included the tribe to which he belonged if they tried to defend him. Punishment was therefore not personal. If

* Iblis means Satan (Translator's note).

the family of the deceased could not take vengeance the families of the victim and offender compromise a sort of peaceful settlement by selling the right of revenge to the family of the deceased. This was known as "reconciliation price for murder" or what the Arabs term "blood-money".

Later, crimes took another turn and punishment became the exclusive right of the state. In modern legal systems penalty is inflicted in the name of society by implementing a court judgement upon the culprit. Punitive measures must be in line with the spirit of Islam and must be against the wrong-doer and not anyone else; and people have the right to be treated equally without any discrimination. The judge, within his discretionary power, may prescribe the appropriate penalty and order it to be executed. Crime has become a widespread social problem which society endeavours to face and combat. Evil is inborn in the individual and therefore it is incumbent upon society to fight crime in order to protect itself from its consequences.

The rules of Islam which regulate individual and community relationships are quite adequate and comprehensive. The main objectives of the Sharia are the protection and preservation of religion, life, intellect, offspring and property. Both the Quran and Sunnah have specified the crimes related to these issues. With regard to crimes against human life, murder and dismemberment, the Quran says: "There is life for you in Retaliation" Chapter 5, verse 179 and "Wounds equal for equal" Chapter 5, verse 48. The punishment for theft, which is a transgression against one's property, is specified in the Quran by saying:

*" As to the thief
Male or female,
Cut off his or her hands".*

Chapter 5, verse 41.

The punishment for defamation is stated in the following Quranic verse:

*" And those who launch
A charge against chaste women
And produce not four witnesses
(To support their allegations),
Flog them with eighty stripes "*.

Chapter 24, verse 4.

The punishment for adultery, which disrupts family relations, is specified in the following Quranic verse:

*" The woman and the man
Guilty of adultery or fornication,
Flog each of them
With a hundred stripes:
Let not compassion move you
In their case, in a matter
Prescribed by God "*.

Chapter 24, verse 2.

The Sunnah explicitly specified the punishment for fornication and alcohol-drinking. As regards highway robbery and mischief on earth the Quran says:

*" The punishment of those
Who wage war against God
And His Apostle, and strive
With might and main
For mischief through the land
Is: execution, or crucifixion,*

*Or the cutting off of hands
And feet from opposite sides,
Or exile from the land:
That is their disgrace
In this world, and
A heavy punishment is theirs
In the Hereafter;
Except for those who repent
Before they fall
Into your power "*.

Chapter 5, verses 36 and 37.

If these crimes are proven and legally substantiated by evidence the punishments are fixed and cannot be changed or modified. Other crimes come under "Ta'zir" (Discretionary) classification. The punishment for these crimes is left to the discretion of the concerned authority in the Muslim State.

In order to protect the five important indispensables in Islam (religion, life, intellect, offspring and property) Islamic law has provided a worldly punishment in addition to that in the hereafter. Islam has in fact adopted two courses for the preservation of these five indispensables: the first is through cultivating religious consciousness in the human soul and the awakening of human awareness through moral education, and the second is by inflicting deterrent punishment which is the basis of the Islamic criminal system. Therefore "Hudoud", Retaliation (Kisas) and Discretionary (Ta'zir) punishments have been prescribed according to the type of the crime committed.

If some of the "Hudoud" punishments seem to be severe it is only for the good and interest of society as a whole. If some are inclined to look upon the offenders of

"Hudoud" crimes rather with pity and compassion we have also the interest of the society to consider. Nevertheless, Islamic law is very strict and meticulous in the identification of "Hudoud" crimes. Furthermore, Islam forbids the execution of "Hudoud" penalties on grounds of suspicion for it is a basic rule of the Islamic law of evidence that "Hudoud punishments are not to be executed on suspicious grounds". It is less harmful to pardon by error than inflict a punishment by mistake.

Past and present experiences have proved that when Sharia is implemented and "Hudoud" punishments are inflicted, people have enjoyed peace and order. Conversely, when these punishments were relaxed mischief and delinquency have thrived. Modern legal systems and divine legislations agree that the ultimate objectives of the institution of crime and punishment are solely the protection of society and the preservation of social order.

As already stated sound ethical values constitute the fundamental basis of the society. As western laws have no explicit religious basis, they are not primarily concerned with ethical or moral values. On the other hand, divinely inspired legal systems (such as the Islamic legal system) are attributed to One Source, i.e. Almighty God Who strays not, forgets not. But modern laws are merely man-made, and man is prone to err.

If we compare "Hudoud" punishments of the Sharia and the contemporary theories of punishment we find that the conventional theory is based on the principle of collective utility, i.e. punishment is instituted to secure community interests which cannot be otherwise secured except through public and private prohibitions. According to modern trends punishment is based upon the concept of absolute justice on the assumption that the objective of punishment lies in the attainment of full justice. There are other theories which attempt to compromise the two schools of thought by

maintaining that punishment is based on the concepts of absolute justice and utility.

The entire Islamic legal system is based on the concept of justice in its Islamic sense. Since "Hudoud" (Fixed) punishments are God's exclusive and unimpeachable right they cannot be questioned, altered or suspended, as long as the judge's verdict is based on accepted evidence.

Crime in Islamic law is the commission of a prohibited act or the omission of a duty that is commanded. It is punishable by death, retaliation, chastisement or any discretionary punitive measure. In defining crime both western laws and Islamic Sharia do not differ.

Punishment is ordained to deter the individual from the commission of an act that is forbidden or the omission of a duty that is commanded. Before the commission of a crime punishment serves as a warning and afterwards as a deterrent. Punishment in itself is not intrinsically harmless; and as it is harmful it may lead to ward off mischief and protect the interests of society. For immaterial offences, such as envy and malice, the Sharia has decreed a purely unworldly punishment in the hereafter since these offences cannot be evidenced and judged by a court nor can the punishment be administered by the state.

In the Islamic penal system worldly punishment falls into two categories: *a*) fixed punishment for the more serious; *b*) discretionary punishment which is left to the judge's (or the concerned authority, i.e. legislative authority) own discretion provided that he (the judge) weighs up the circumstances in which the crime was committed. "Ta'zir" or Discretionary crimes are the most common as they include all Islamically forbidden acts which are not punishable by Fixed or Kisas punishments. Ibn Al-Qayyim says: "Ta'zir" punishment is inflicted for crimes that do not come under "Hudoud", depending on the gravity of the crime and the delinquency of the criminal".

He further said that "Ta'zir" punishments vary according to the circumstances; they change from time to time and from place to place. They vary according to the gravity of the crime and the extent of the criminal disposition of the criminal himself. The Maliki jurists maintain that "Ta'zir" punishment can exceed "Hudoud" for a similar crime. Ibn Abidin quoted the Hanifi jurists as approving that if a person committed a crime not punishable by death, the Imam is empowered to condemn that person to death should he perpetuate the same crime again. The Imam is also empowered to increase the specified "Hudoud" penalty if he feels it appropriate. This approach is consolidated by what had been reported of Omar Ibn Abdul Aziz who said: "People get prosecuted in the proportion they indulge in transgression" "Ta'zir" punishment, says the author of "Mu'in Al-Hukkam", is not inflicted for just committing certain acts or saying certain words. God's Messenger exercised "Ta'zir" by desertion with regard to the three men mentioned in the Quran, Chapter 9, verse 118:

*"He (God) turned in mercy also
To the three who were left Behind";*

The Prophet exercised "Ta'zir" by deportation from the land and also imprisonment. Later the Prophet's Companions inflicted "Ta'zir" by burning and destroying the tools of mischief and imposing a fine. The last one was exercised by the Caliph Omar.

"Ta'zir" punishments can be exercised by exhortation, censure and confinement. The Prophet is reported to have had a person imprisoned for committing a crime. Muslim jurists maintain that a man may be confined for unpaid debts or for defaming his wife until he partakes of "Li'an" before the judge or testifies to the false allegations he had fabricated against his chaste wife.

The Hanifi jurists interpreted deportation as to be similar to imprisonment.

As already stated the punishments of flogging and decapitation come under "Ta'zir" penalties. Muslim jurists have decreed that the head of the state can condemn a criminal to death as a "Ta'zir" punishment if the crime was repeated. According to Abu Yousuf, the great Hanifi jurist, as well as the Maliki jurists maintain that the head of the state may impose financial fines as "Ta'zir" punitive measures. The victim or his guardian cannot stop the execution of a "Ta'zir" verdict because it is not his exclusive right but rather of the entire community. The judge exercises "Ta'zir" on behalf of the Muslim community. The competent authorities have the right to specify the crime and punishment they deem fit, and they can set the minimum and maximum punishment. The judge may impose the appropriate punishment within the set limit.

The Prophet, on whom God's peace and blessings be, is reported to have said: "Three classes of offenders are not to be punished: the child before coming of age, the sleeper until he wakes up and the insane until he becomes sensible". Al-Amidi says: "Men of wisdom maintain that an offender is held responsible if he is a mature adult and able to distinguish. Although a child, who has not come of age, may understand more than another one who lacks the ability of distinction between the evil and good, yet this normal child cannot be expected to discern things in their true sense. The Divine Legislator considered the age of puberty as a precondition for full understanding". By inference Al-Amidi asserted that the inadvertent and drunkard are both mentally worse than a normal child but under age, as regards their defective response to the injunctions of the Sharia. Compulsion to act against one's own free will liberates man from criminal responsibility.

Criminal responsibility in Islamic law is based upon two principles:

a) Punishment is a social necessity imposed to protect the society and safeguard man's interests. Punishment is estimated and decreed for the protection of society.

b) Punishment is inflicted on a person who is sensible and able to exercise his own free will. This does not mean that appropriate measures should not be adopted to protect the society against the dangers of crimes committed by criminally irresponsible offenders. As, according to Islamic law, criminal responsibility has been confined to the real living, sensible and free-willed man, any institutionally legal personality shall not be held to bear criminal responsibility. If the offence is committed by a person in charge of the interests of this legal personality, such a person shall be held criminally responsible for the offence. Such an act would inevitably lead to the protection of the community interests.

Likewise, among the conditions in Islamic law is that the injured must be protected, and the victim cannot be involved in another's crime. One of the basic rules of Islamic law is that no one bears the burden of another's offence. Criminal responsibility is established once an offence is committed and the offender is sensible and able to exercise his own free will. As we stated above, criminal responsibility is purely a personal one. The Quran says:

*"Whoever works righteousness
Benefits his own soul;
Whoever works evil, it is
Against his own soul".*

Chapter 41, verse 46.

To quote the Quran again:

"No one bears the burden of another"

Chapter 35, verse 18.

The Prophet says: "No man bears the guilt of his father's or brother's crime". Justice upon which the "personalization of responsibility" was based requires that the criminal's family or tribe should share blood-money with the offender's semi-intentional crimes or crimes by error. It would be a gross injustice to the offender if he were to pay up all the blood-money by himself. In order to guarantee the rights of the injured and alleviate the burden of the crime which was not intended by the offender, the criminal's family or tribe should shoulder the blood-money.

Although the contemporary laws recognize the principle of "personalization of criminal responsibility", in many cases a person is held responsible for the actions of others. For example, the Egyptian law considers the chief editor of a newspaper criminally responsible for what is published in his paper even during his absence. Anyone joining a gathering and aware of the real reason behind the gathering, is held responsible for any crime committed by a member with a view to achieving the objective of the rally. As already mentioned before, "Hudoud" crimes and the relevant punishments, apart from exceptional cases, are tried and inflicted when they have an intentional and premeditated nature, and the punishments are not retroactive.

But "Ta'zir" (Discretionary) punishments, which include every forbidden act for which no specific Quranic text is available, or they are available but the conditions of the punishments are not mentioned or due to dubious circumstances, these punishments vary according to the common interests of the society and the psychic factors which motivate the criminal to commit his offence.

Islamic law considers the circumstances that motivate the criminal into the actual commission of his crime, and urges that the attitude towards the criminal should vary in the light of these circumstances. Therefore in Islam the punishment for adultery varies depending whether the culprit

is married or single. The punishment for the crime of adultery is severer for the married man or woman. A married adulterous man or woman is stoned to death whereas an unmarried man or woman is flogged.

At the dawn of Islam a divorced woman guilty of adultery was punished by house confinement whereas an adulterous virgin was defamed and severely reproached. The Quran says:

*" If any of your women
Are guilty of lewdness,
Take the evidence of four
(Reliable) witnesses from amongst you
Against them; and if they testify,
Confine them to houses until
Death do claim them,
Or God ordain for them
Some other way.
If two men among you
Are guilty of lewdness,
Punish them both.
If they repent and amend,
Leave them alone; for God
Is Oft-returning, Most Merciful ".*

Chapter 4, verses 15 and 16.

Ibn Qudamah relates, on the authority of some learned scholars, that the Quranic term "*any of your women*" meant divorced women, for two punishments have been prescribed one severer than the other; the severer punishment is for divorced women and the lighter one for virgins. This was

superseded when Ubada Ibn Al-Samet reported that the Prophet had said: " Learn from me the teachings of Islam, God has ordained for them some other ways: an unmarried adulterous woman is to be flogged one hundred stripes and banished for one year; a divorced woman guilty of adultery is to be flogged one hundred stripes and stoned to death ". An adulterous married man or woman shall be stoned to death. The learned Companions of the Prophet and all learned scholars in the Muslim world and in all the ages since the Prophet, with the exception of the " Khawarig ",* agree on the necessity of stoning the adulterer and adulteress to death. Stoning means the adulterous woman or man must bleed to death by throwing stones, pebbles or other things at the culprit. During the Prophet's lifetime a man named " Maiz " and a woman called " Al-Ghamidiya " were stoned to death for having committed adultery.

Ali Ibn Talib during his lifetime punished an adulterous married man by both flogging and stoning to death. Ibn Abbas, Ubay Ibn Ka'ab, Abu Zarr, Al-Hassan, Ishaq, Dawood and Ibn Al-Munzir all agreed to this kind of punishment, i.e. flogging plus stoning to death. There is another school that contends that an adulterous married man should be only stoned to death and not flogged. Omar and Othman are reported to have only stoned to death married adulterous men. Al-Nakhie', Al-Zuhari, Al-Awza'ie, Al-Shafie, Abu Ishaq Al-Jawraqani, Abu Bakr Al-Athram and many other scholars held the same view of punishing the adulterous man only by stoning him to death. Jabir relates that Prophet Mohammad ordered stoning to death only as a punishment for the man and the woman who confessed to have committed the crime of adultery.

* Khawarig: a Muslim extremist religious-political sect; some of its scholars disagreed with Muslim consensus and argued that married and unmarried adultresses should be flogged according to the Quranic text on this matter (Translator's note).

All agree that an unmarried adulterer must be flogged, for the Quran says:

*"The woman and the man
Guilty of adultery or fornication,
Flog each of them
With a hundred stripes".*

Chapter 24, verse 2.

Most scholars are of the opinion that the culprit should also be expelled from his land for one year in addition to flogging. Those who held this view were the Four Caliphs (Khulafa Rashidein) who succeeded the Prophet, Ubay, Abu Dawod, Ibn Masoud, Ibn Omar, Ata'a, Tawous, Al-Thawri, Ibn Abu Leila and Al-Shafie'. Malik and Al-Awza'ie were of the opinion that only the adulterous man should be banished and not the woman because she needs to be looked after and needs more care. The Prophet said in this connection: A woman who believes in God and in the hereafter cannot travel for one day and one night except in the company of "Zi Rahim" * If the adulteress is banished in the company of a "Mahram" ** this is bound to inflict undue punishment on the "Mahram" who is not guilty of adultery.

Abu Hanifa and Mohammad Ibn Al-Hassan asserted that no adulterous man or woman should be banished, for Ali said that banishment itself would allure them to further lewdness. It is reported that Omar banished a man for having committed a "Hadd" crime to the town of Khaibar. There the guilty man joined Hercules and embraced Christia-

* Zi Rahim is the nearest kinsman whom a woman cannot legally marry (Translator's note).

** Another term for the nearest kinsman that a woman cannot marry.

nity. Therefore, Omar said that he would never again banish a Muslim.

Having delineated the punishment prescribed for the married adulterous man and woman and having reviewed the opinions of the leaders of Islamic jurisprudence, however different their opinions are, we are concerned with the wisdom underlying the different punishments specified for the married and unmarried men and women. The difference is based on the circumstances, psychological factors and the causes which motivate a person to commit adultery. An unmarried man who cannot legally satisfy his irresistible sexual instinct has a kind of excuse for committing adultery. Hence his punishment is lighter than that inflicted upon the married man who, through lawful marriage, has a legitimate outlet for his sexual drive. Such a person has no excuse to commit adultery and hence deserves severer punishment. Illegal sexual indulgence reflects a deeply corrupted soul and an unmanageable sexual aberration. It is worth noting here that Islamic law is sublime and merciful, and there is a legal rule for the suspension of the execution of "Hudoud" punishments in dubious cases. It calls for the consideration of the circumstances relevant to the crime at the time of the execution of punishment.

Abu Hanifa, Al-Shafia, Ahmad and the majority of Muslim scholars maintained that a pregnant unmarried woman, whether she is a resident or a stranger, forced into fornication or yielded of her own will, is not stoned to death unless she confesses her crime, or until it is proved beyond the slightest doubt to avoid the execution of penalty in dubious cases. The human nature of Islamic law is exemplified in the story of the adulteress named Al-Ghamidiya who went to the Prophet to confess that she had committed adultery and asked to be stoned in order to be purged of her sin. As she was pregnant the Prophet refused to have her stoned to death in respect for her unborn child. The

"Hadd" punishment was postponed till after the birth of the child. After the birth of the child the punishment was once more deferred until the child was weaned. After the child was weaned the Prophet agreed to have the adulteress stoned only after one of his Companions agreed to take care of the child and bring him up.

Furthermore, in consideration of the circumstances of the criminal, punishment may be deferred. A sick man is not flogged until he has fully recovered. Ahmad, Muslim, Abu Dawood and Al-Tirmidhi narrated that the Prophet's female servant committed adultery and the Prophet commanded a companion of his to flog her. When he went to flog her he discovered that she had recently given birth to a child. He feared that she might die if he flogged her. So he reported to the Prophet about his fear. The Prophet said: "Well done! Leave her until she recovers".

Islamic law also considers the circumstances of the criminal whether he is male or female.

As regards the punishment for defamation the Islamic penal system distinguishes between the punishment inflicted on the husband for defaming his wife and falsely accusing her of adultery, and the punishment for a stranger who accuses a chaste woman of the same offence. The punishment for the stranger who defames a chaste woman is flogging with eighty stripes. The measure to be taken against the husband who defames his wife is that he has to undertake the "Lia'an". The Quran says in this connection:

*" And those who launch
A charge against chaste women,
And produce not four witnesses
(To support their allegations),
Flog them with eighty stripes;
And reject their evidence
Ever after: for such men*

*Are wicked transgressors:
Unless they repent thereafter
And mend (their conduct);
For God is Oft-Forgiving,
Most Merciful".*

Chapter 24, verses 4 and 5.

Once this injunction was decreed it was hard for husbands to produce four witnesses to confirm the defamatory charges they launched against their wives. When Hilal Ibn Umayyah charged his wife with adultery in the presence of the Prophet he was asked to produce evidence to confirm his accusations, or else he would be flogged. Hilal asked the Prophet: "Need a man, who has seen a man mounting his wife, search for witnesses to confirm his wife's adultery?" The Prophet kept on saying: "Either produce witnesses or you have to be flogged". Hilal then said: "I pray God that He reveal unto thee a Quranic verse which will save my back from flogging, for I am saying but the truth. Immediately afterwards the "Lia'an" verses were revealed to the Prophet:

*" And for those who launch
A charge against their spouses,
And have (in support)
No evidence but their own,
Their solitary evidence
(Can be received) if they
Bear witness four times
(With an oath) by God
That they are solemnly
Telling the truth;
And the fifth (oath)*

*(Should be) that they solemnly
 Invoke the curse of God
 On themselves if they
 Tell a lie.
 But it would avert
 The punishment from the wife
 If she bears witness
 Four times (with an oath)
 By God, that (her husband)
 Is telling a lie;
 And the fifth (oath)
 Should be that she solemnly
 Invokes the wrath of God
 On herself if (her accuser)
 Is telling the truth".*

Chapter 24, verses 6 to 9.

Islamic law differentiated between husbands and others on the matter of defaming chaste spouses. The charge against the chastity of a woman, who is not the accuser's wife, is considered a grave sin. The husband's charge is treated differently, for the husband may under conjugal distress accuse his wife with infidelity and reject to father an illegitimate child unbegotten by him.

On the whole, "Hudoud" punishments were basically instituted in consistency with the human soul and with careful consideration of man's instincts and propensities. "Hudoud" punishments were decreed to prevent crimes and protect society against impending dangers. Punishments which favour individual interests at the expense of those of the community become ineffective in both cases. Although Islamic legislation gives priority to the interests of the community, yet at the time of the implementation of punishment,

the criminal's circumstances and psychological factors are taken into consideration. In his book "Al-Zawajir Min Iqtiraf Al-Kabair" (Deterrent Factors Against Committing Serious Crimes) Ibn Hagar Al-Haytami said that Muslim scholars maintained: "Many felonies and crimes differ in nature according to a number of factors, such as whether the offender premeditated his crime or not, whether it was by error or with intent, forced or voluntary. Not all criminals could be judged at the same level and with the same criterion".

Some light may be shed on the humanitarian aspect of Islamic law by the fact that Omar Ibn Al-Khattab once stopped the execution of "Hadd" penalty for the crime of theft when a Muslim in the famine year was forced to steal. Considering the thief's circumstances no "Hadd" punishment was inflicted. Furthermore, Ibn Abbas passed a legal opinion (Fatwa) whereby hand amputation was forbidden for anyone who stole or slaughtered a beast of burden in order to satisfy his hunger.

Ahmed Ibn Hanbal said that the hand of a thief should not be cut off if it is proved that he stole in order to satisfy the pangs of hunger. Omar is reported to have said: "A thief's hand should not be cut off when there is famine". When Ahmed was interrogated about this he replied that neither would he cut off a thief's hand if he was compelled to resort to stealing. It was reported that if a woman, whose husband does not provide her and her children with sufficient sustenance, was forced to commit theft, she would not be liable to "Hadd" punishment. In confirmation of this, Hind (a certain woman) narrated that she went to the Prophet and said to him: "My husband is stingy and does not provide me and my child with sustenance, bearing in mind that all his money is at my disposal. What am I to do?" Replied the Prophet: "Take enough money to provide yourself and your child with sufficient sustenance".

Similarly Huzaifa Ibn Al-Yaman passed a legal opinion exonerating Walid Ibn Oqba from being flogged for drunkenness when he commanded the Islamic army to Byzantine. Omar is reported to have written to the governors of Muslim provinces asking them that no army commander should flog any soldier lest the flogged soldier desert the army and join the enemy.

All these examples demonstrate that Islamic law laid emphasis on the fact that not all offences should be considered with the same criterion. Furthermore, Islamic Penal Law urged on crime prevention before its commission, and this could be achieved only through moral education and upbringing. Only through betterment of ethical values of an individual can he comprehend the conception of good and refrain from evil and thus comply with the teachings of Islam.

Needless to say, tender and gentle words are quite effective in guiding stray souls. The Prophet said that while tenderness invests anything with beauty, unkindness makes it defective and ugly. The Sharia therefore stressed the combatting of crime and digression with tenderness in order to divert the offender from his evil course. The Prophet urged his Companions not to reproach the criminal lest he withdrew from the believers and lapsed into more sins.

In Islam there is no one who is incurably ill. Even the worst criminal can be rehabilitated. He can repent and achieve absolution. Islamic law did not only leave the door open for repentance, it strove to cure the criminal's morale. To consolidate moral values the Sharia advocates the following:

1. Formulation of a cultivated public opinion. Hence the Sharia called upon Muslims to do a good turn and abstain from evil, and the Sharia holds the morally sound responsible for the immoral person if the latter does not try to turn over a new leaf. If the Muslims exchanged amongst

themselves good counsel, mischief will be eliminated and they will behave humanely towards each other.

2. Pudency and modesty should be cultivated. Stirring up and activating modesty in the heart of a criminal is considered an optimum cure, for it will discourage him to commit further offences. The Prophet said: "If you lack pudency, you will be brazen enough to commit any offence".

3. Discourage people to spread scandal. The Prophet is reported to have said: "O ye people if anyone committed a dirty immoral act and kept it hidden within himself, God will not disclose him. But if he publicized it, a punishment shall be inflicted upon him". Ancient men of wisdom said: "If you fall into a moral scandal, hide it from the people". This is a clear hint that hiding an immoral act will divest it of its weight and will help people to abstain from it. Revealing a crime in Islam implies two offences: committing the crime and announcing it. The Prophet said: "If a sin is not disclosed it will harm but the offender; but if disclosed it would invoke God's wrath". The Quran in this connection says:

*"Those who love (to see)
Scandal published broadcast
Among the believers, will have
A grievous Penalty in this life
And in the Hereafter".*

Chapter 24, verse 19.

This is a clear indication against crime before it spreads.

These are the three basic moral tenets which, if adhered to, will create a cultivated public opinion condemning vice. Herein lies the Islamic approach towards the spiritual

education of the individual by unifying the people with a spirit of universal love.

Imam Al-Ghazali quotes ethicists that if some ethical methodology were strictly applied, the human soul will be liberated from all the sediments of evil.

If anti-crime social defence conception is the modern criminal policy which is based on the necessity of practical understanding of crime and the criminal, Islamic law had long ago advocated this policy and considered the motives of crime and whether the offender could be criminally held responsible. In deciding on "Ta'zir" penalties, the Sharia has invested the state with a discretionary authority as it was mentioned above.

Social defence in the sense of rehabilitating and curing the offender by eradicating crime has origins in Islamic Sharia. In summary they are:

First: *Crime prevention before its commission* through the following measures:

- a) Guide people to have faith in religion to protect them from deviance.
- b) Cultivate the love of doing good in the people.
- c) Do a good turn and abstain from evil.
- d) Social and cultural guidance.
- e) Encourage the love of collaboration and exchange of counsel.

Second: *Crimes must not be disclosed so that moral scandals are not broadcast and the offender does not continue with his crimes.*

Third: *"Hudoud" punishments to be inflicted on offenders but dubious cases should be averted. Likewise, "Ta'zir" punishments to be decreed on the offender provided that his circumstances are taken into consideration.*

Fourth: *Repentance to be allowed to the offenders without any restrictions.*

Fifth: *The offender must not be barred from the society and he should not be reproached for his crime.*

Sixth: *Offenders should be encouraged to have their offences pardoned.*

Seventh: *Care should be given to the Sharia injunctions promoting social reciprocal responsibility as regards financial and moral aspects with a view to guaranteeing a prosperous life to everyone.*

As crime is a plague that threatens societies and every country endeavours to get rid of it, it is incumbent upon Muslim countries to delve into Islamic Sharia for wisdom and legislation before thinking of borrowing laws and dogmas from the East or the West.

Through the Quran the early Muslim generations were considered the best on the earth. There is no reason why the existing generations do not become like the early ones if they resort to their pure nature and to the teachings of the Quran and have complete faith in God's message to his Prophet as in the following Quranic verse:

*" We have sent down
To thee the Book in truth,
That thou mightest judge
Between men, as guided
By God: so be not (used)
As an advocate by those
Who betray their trust ".*

Chapter 4, verse 105.

Referring to the hypocrites who fail to carry out the Sharia injunctions the Quran says:

*" Hast thou (Mohammad) not turned
Thy vision to those
Who declare that they believe
In the revelations
That have come to thee
And to those before thee?
Their real wish is
To resort together for judgement
(In their disputes)
To the Evil One,
Though they were ordered
To reject him.
But Satan's wish
Is to lead them astray
Far away (from the right).
When it is said to them:
" Come to what God hath revealed,
And to the Apostle ":
Thou seest the Hypocrites avert
Their faces from thee in disgust "*

Chapter 4, verses 60 and 61.

To put it in a nutshell the Sharia urges:

- 1) Complete faith in Divine injunctions.
- 2) Implementation of these injunctions by individuals and governments.

True faith embraces both the ideological and behavioural aspects of a person. We would like to draw your attention to two considerations:

1. Ever since the Kingdom of Saudi Arabia implemented the Sharia, security has been strongly established, and everyone lives peacefully under the protection of the Sharia without the slightest danger against his life or property.

2. Other Muslim peoples, having lost hope in other laws, feel to resort to the implementation of the Sharia. By doing so, in fact, they respond to God's commandment.

It is our sincere hope that Muslim governments respond to the wish of their people by implementing the Sharia. We beseech Almighty God to guide the Muslim peoples along the right path. God, the Exalted One, said of those who fail to implement the divine laws as lewd, infidel and transgressors. To conclude my paper I would like to quote this verse from the Quran:

*" Verily this is My Way,
Leading straight: follow it:
Follow not (other) paths:
They will scatter you about
From His (great) Path:
Thus doth He command you,
That ye may be righteous "*

Chapter 6, verse 153.

Conductor of Discussions

Due thanks to both Professor Dr. Mohammad Salam Madkour, author of the paper, and Sheikh Ibrahim Nasser who read the paper before the seminar.

This paper showed us how the Sharia insists on the maintenance of the five indispensables (religion, life, intellect, offspring and property). Before giving the floor to the commentators may I draw your attention to the following:

The session will be adjourned for a quarter of an hour, after which the discussion will be resumed in the same manner as yesterday.

Those who wish to take part in the discussions are kindly requested to write to us in advance so that the conduct of the discussions will be more regular. Also the commentators and other speakers are requested to speak calmly and slowly so that simultaneous interpreters can follow them for the benefit of these who do not understand Arabic.

Professor Manna Al-Kattan

In the name of God and praise be to Him and peace be upon His Apostle. I thank Dr. Madkour for preparing this paper and Professor Ibrahim Nasser for reading it.

One feels rather embarrassed to comment on a paper whose author is absent. This could be excusable if we know that people debate in order to find out the truth. Constructive criticism aims at finding the truth *per se*. Our predecessors followed a sound academic methodology: they explained, scrutinized and commented on works of scientific, theological and literary value. The author dealt in length with the general aspects of the Sharia. We mentioned the ultimate aim to which it aspires. He touched upon crime and punishment, whether it is a personal right or the right exercised by the state. He also dealt with the objective of the Sharia as regards the five indispensables (to which reference has often been made before). He made a comparison between "Hudoud" punishments in both Islamic Criminal Law and contemporary legal systems. He made a specific definition on crime and punishment and classified punishment in relation

to crimes. He touched upon "Ta'zir" (Discretionary) punishments. Before ending the introduction to the paper he came to the core of his treatise, i.e. Defining Crime Responsibility according to Islamic Legislation, at the end of page five of the paper. On page four the author referred to the stiffness of some "Hudoud" punishments, though exercised within a very limited scope which allow a wide margin for tolerance.

I wish the author had treated the question of "dubious cases" with more detail. In our daily life we witness frequent occurrences of these cases. We know that if a person's limb contracts a disease and specialists decide that in order to save the life of the diseased that particular limb is to be cut off, any wise man will not hesitate to have the limb amputated without delay. If this is true for the life of an individual the same applies to the life of a nation which is even more important than that of an individual.

Undoubtedly crime, as an abnormal pattern of human behaviour, is a chronic disease; and unless measures are taken fast to overcome the disease, it will contaminate the entire society. Hence the reason for the severe punishments decreed by Islamic Penal Law in order to save the society and the Muslim nation.

The author divided crimes, according to Islamic law, into two kinds:

1) *Major or real crimes;*

2) "*Ta'zir*" crimes; the author treated these as if they were not crimes in their true sense. It would have been better if the crimes were classified into crimes with specified texts and "Ta'zir" crimes without definite texts. Neither did the author explain the reason why "Ta'zir" crimes have no specific punishments in texts.

This is of paramount importance, for there is a limit to legal texts whereas incidents and offences are endless. An aberrant human brain may invent new kinds of offences

every day. Islamic law has attached considerable importance to "Ta'zir" crimes, known as everyday offences. Sheikh Al-Islam Ibn Taymiya mentioned a number of "Ta'zir" offences, such as violation of faith and confidence, fraud, giving short measure and weight, bribery and other similar offences. Punishments prescribed for the vast majority of "Ta'zir" crimes were left unspecified by the Sharia which empowered the competent authority of the state to decree discretionary penalties in accordance with the people's general interests, bearing in mind that his powers are not absolute. They are governed by reference rules, the proportion between crime and punishment plus the fact that any decision must not be inconsistent with the texts of the Sharia and its general rules. The author dealt with the three elements of crime.

These are:

- 1) *Legal element* which has the element of prohibition.
- 2) *Moral element* in the sense that the offender is criminally responsible for his offences.
- 3) *Material element* in the sense that the offender commits an act of criminal nature.

Some contemporary scholars, including Sheikh Mohammad Abu-Zahra, maintain that crime has one element and two conditions. The element is the commission of crime and the two conditions are:

- a) the criminal act is prohibited and punished by a text;
- b) the offender is criminally responsible for his offence.

Sheikh Abu-Zahra's opinion that the moral and legal elements are preconditions of crime is worth considering.

I wish the author had given more details on the elements of crime, for this is the focal point of his study, and I wish he had explained fully the principle in Islamic Criminal Law "There can be no crime or punishment without a text".

It is a well-known fact that this principle was not stipulated in modern laws until the Declaration of Human Rights during the French Revolution in 1789. Before this date magistrates used to exercise absolute authority in specifying crimes and meting out punishments without letting the people know their rights and obligations. This means that western legal systems started implementing the principle, i.e. crimes and punishments cannot be defined without a text, over ten centuries after the Muslim lawyers had been practising it.

Even now the implementation of this principle in Islamic law is more precise, accurate, elastic, closer to the basic needs of the people and more effective in protecting order and security than other legal systems.

Up to the French Revolution the moral element in crime, i.e. the criminal responsibility of being mentally sane and free-willed, did not exist in the western laws. Anyone or anything that led to the commission of a crime was held responsible whether it was a person or an animal. Even the dead, children and mentally disabled were subject to punishment.

If the modern legal systems have recently implemented the principle of "relative choice", Islamic law was, and still is, much more logical and more precise. It considers punishment as a social necessity and a means to protect the society.

Islamic law distinguishes between the free-willed and the person under coercion, and the sensible and insane person. Islamic law does not inflict punishment on the person for his evil thoughts and intents unless they are materialized into criminal acts. Islam gives the person the benefit to rid himself of evil thoughts. Anyhow there is no punishment just for the evil thoughts one harbours.

This same principle was applied even with regard to the Hypocrites who feigned to be Muslims when in fact they were infidel. Islamic Sharia punishes offenders for material-

ized crimes and God Almighty reserves punishment for hidden offences.

Planning and the preparation for the commission of a crime does not constitute a material act. However, if the preparation for an offence is prohibited does the person concerned deserve punishment? For example, if a man flirts with a woman who is not his wife in an attempt to seduce her, he shall be punished even if no adultery is committed. The punishment will be a "Discretionary" or "Ta'zir" one. In accordance with the principle of "relative choice" to which the majority of jurists agree, punishment is inflicted for every preliminary step taken towards the commission of the crime. So, as the author of this paper pointed out, the Islamic Sharia does not decree penalties for the preliminary steps taken before the actual commission of the crime, unless those very steps constitute discretionary crimes punishable by the state.

These are the main points that came to my mind while studying this paper. I beseech God Almighty to crown our efforts with success and guide us to the right path. God's peace, blessings and mercy be upon you.

Dr. Abdul Karim Zeidan

Praise be to God, the Cherisher and Sustainer of the Worlds, and blessings and peace be upon Mohammad, his family and Companions.

My remarks on this paper, whose author is a well-known person in the field of Islamic jurisprudence, are both general and particular (or partial).

The general remarks concern the ordering and co-ordination of the subject matter. As a research work has to stick to its title there should not be much digression from it except when necessary or when a particular point calls for further exploration.

Contemporary writers criticize our forefathers for not co-ordinating their subject matter. A scholar may find himself at a loss trying to find a particular point. He may have to read a lot before reaching his objective. Well, in this paper something of this sort has indeed occurred.

The title of the paper is Defining Crime Responsibility according to Islamic Legislation. Only very little has been mentioned about criminal responsibility. He dealt in great length with social defence against crime. He did the same thing with the material element, preliminary steps, punishments, etc.

Consequently the reader does not end up quite satisfied. This may be due to too many irrelevant redundancies interwoven into the tapestry of this study at the expense of the basic subject matter.

I shall mention my other observations just to verify an opinion or correct a distortion. As we are dealing with Islamic law which is religion in itself, one has to be careful to be very precise and specific. A researcher in the field of Islamic law is only a reporter and not a creative thinker. He cannot add more or abridge the sense and distort the meaning with phrases and expressions which would suggest inaccuracy.

The author of the paper mentioned that the Sharia had been primarily revealed to sustain the five indispensables, namely religion, life, intellect, offspring and property. He did not cite a single example on the preservation of religion. The Prophet says: "He who rejects his religion shall be punished with death". Muslim jurists agree unanimously with regard to the punishment inflicted on anyone who rejects his faith and joins the infidels. However, they differ on one point whether the apostate from Islam is to be condemned to death. The majority of the jurists contended that the apostate be allowed to repent and be given a grace of three days' time to make his decision. If the apostate goes back to the fold of Islam he will be pardoned but if

he insists on his apostasy the death penalty shall be inflicted on him. According to the Hanafi school repentance is a desirable matter though not compulsory. "Jihad" (holy war) is also another manifestation for the preservation of Islam.

It may be said that the punishment for an apostate is inconsistent with the Islamic maxim "No one is coerced to believe in Islam". Does not the punishment for the apostate imply that religious freedom is restricted? The answer to this is very simple. The Sharia does not compel a non-Muslim to embrace Islam, neither is he killed if he refuses to believe in Islam. There are many non-Muslims who live amongst Muslim communities without being forced to become Muslims. Had non-Muslims been coerced into becoming Muslims, the practice of "Al-Zimmah" * would not have existed in Islam.

How are we then to rationalize the apostate's punishment? In fact the apostate's crime does not differ from adultery. The crime of apostasy involves two offences; the first is that the apostate renounces the teachings of Islam, which means he violates the obligations by which he was committed. Since this violation is considered a crime according to legal terms and its offender is liable to punishment, so is an apostate from Islam; his punishment is death. Let us illustrate this better in the following example. If a contractor, who has an obligation to supply an army with foodstuffs, fails on purpose to fulfill his obligations, he shall be condemned to death. So when a Muslim renounces his faith and turns an apostate he violates his commitments to Islam. However, despite this gross violation the apostate is given three days' grace to repent. The second offence which apostasy involves is its announcement. An apostate

* Al-Zimmah was a special treatment for non-Muslims. In fact non-Muslims were known as "Ahl-Al-Zimmah" (people of Al-Zimmah) (Translator's note).

who does not disclose his apostasy is a hypocrite and passes unnoticed. But when he declares his apostasy then it means he is impudent enough to regard the Islamic faith with disdain and indifference. Therefore, if he is left unpunished he will be dangerous to society since others, who are not devout believers, may follow suit.

Therefore the punishment of an apostate is the preservation of one of the five indispensables.

The other crime is "transgression" which some jurists consider amongst the "Hudoud" crimes and its punishment is death. Other jurists believe differently. The other point which I would like to stress is "Ta'zir" crimes. These are innumerable and their punishment is left to the state. The Sharia has followed two methods on crimes and punishments: (a) definition of crime and its due punishment; this method is known as "Hudoud" crimes which are punishable by death, retaliation, blood-money and at times expiation; for example if a Muslim breaks his fast on purpose during the month of Ramadan he shall be punished by "expiation"; (b) offences according to Islamic law are acts of disobedience to God the Almighty; in other words disobedience is the commission of a prohibited deed or the omission of a duty that is commanded; this principle is known in Islamic law as "No harm should be done, and no harm should be eliminated by causing further harm".

Crimes punishable by "Hudoud", retaliation and blood-money are specified in the Quran. Confinement is mentioned as one of the prescribed punishments. In evidence of this the Prophet passed a confinement sentence on those charged with arson or causing damage to property; for example the person who set fire to the "Zalam" mosque was punished by confinement. There are also "Ta'zir" punishments, for example women who are disobedient to their husbands may be censured or conjugally forsaken. Such punishments are mentioned in the Quran. The judge cannot inflict a punishment not mentioned in the Sharia texts. He may

choose the punishment appropriate to the crime. Therein lies the wisdom behind the Sharia rule "No crime or punishment without a text".

It may be said that some "Ta'zir" punishments are exceptionally prescribed for offences which do not fall within the category of "Ta'zir" crimes. For example, if some permissible but harmful act is committed the offender shall receive a "Ta'zir" punishment. The Prophet once sentenced a person to confinement in the interest of the public. Confinement is a punishment and a punishment is not inflicted until a person is found guilty. How did then the Prophet order this particular person to be confined? This is a proof that a person may be punished if the public interest so requires. The story of Nasr Ibn Hajaj is evidence in this respect. He is said to have been exceptionally handsome with a lot of sex-appeal. He committed no crime but as women adored him Omar Ibn Al-Khattab had his hair shaved off and banished him to Basra.

The other point which needs further elaboration is blood-money and its being shared with the criminal's family or tribe. The author of the paper did not put this issue very precisely. He said that the justice upon which the principle of the personalization of responsibility is based requires that the criminal's family or tribe should share the blood-money with the criminal. The fact that the criminal's kinship should share the blood-money with him does not need justification because the way it has been expressed makes it apparently inconsistent with the personalization of punishment. That is to say, punishment should be inflicted on the criminal himself and not be extended to his family or kinsmen. If the criminal is punished for a crime he has committed how is it that his kinsfolk should share the punishment with him?

Some jurists attempted to answer this query in two ways. First, they suggested there should be no retaliation but consolation. In other words, the offender's family or

tribe should console the injured party. But how could consolation be a tribal necessity when the crime is purely an individual wrong? The jurists answered that no objection is raised against consolation being personal.

They added that giving charity "Zakat" implies a practical sort of consolation to the needy ordered by the Sharia. Other jurists asserted that the criminal's kinsmen commit a serious error by letting the criminal with whom they are bound fall into the pitfall of crime.

The second thing is that the author of the paper mentioned that the injured should be protected by law, without identifying the motive or criminal responsibility. This point lacks a number of elements, such as offence with intent, error, direct or probable intention, effect of ignorance, coercion and the injured party's consent to the offence, i.e. if somebody asked to be killed or wounded, would there be a criminal responsibility? Then how could the criminal responsibility be defined if more than one person were involved in a crime? Suppose a person committed a crime in collaboration with an indirect partner, who will bear the criminal responsibility?

These are the focal points of the subject which should have been dealt with in some length.

Then the author of the paper mentioned the material element of crime. Since he did so he should have dealt with it rather comprehensively. What punishment could be inflicted on five persons who take part in the murder of one man? Would all of them be subject to retaliation? I wish the author of the paper had dealt with these issues and sufficiently elaborated on them.

I also noticed that the author of the paper mentioned some apparently insignificant but rather perplexing irrelevancies. For example, he mentioned that the commander of the army should not be penalized during the battle and that Omar stopped the punishment for theft. Frankly such matters leave the reader at a loss about concrete facts.

I believe that the writer may have based the incident of the army commander not being exposed to the "Hudoud" punishment on the Prophet's Hadith: "Hands are not to be cut off on military expeditions". The intended purpose is that "Hudoud" punishments should be deferred until the expedition is over. So, in the interest of the army, Islam and Muslims, punishment should be postponed until after the end of the war. Omar did not stop a "Hadd" punishment. He simply realized that the conditions for implementing the text did not exist. I suggest that writers had better avoid cramming their studies with irrelevant, insignificant and controversial issues so that truth could be rendered as clear as possible.

God's peace be upon Mohammad, his family and Companions.

Dr. Abdul Qader Shaybat-al-Hamd

I wish Dr. Salam Madkour, the author of the paper, was here to hear our high opinion of his appreciable efforts for preparing his research work. However, I would like to make some comments on this invaluable study. He said that crime is a sinful act and that criminal acts have been committed since man was created. He quoted the incident when Adam and Eve disobeyed God by eating from the forbidden tree. This statement, in fact, is inconsistent with the opinion of criminologists who maintain that the first crime ever committed was when Cain (Adam's son) killed his brother Abel. Furthermore, according to criminologists every crime is an act of disobedience while the contrary is not true. The author himself defined crime as the commission of a forbidden act or the omission of a duty commanded, and the guilty shall have a "Hadd" or "Ta'zir" punishment.

In this case Adam's disobedience does not come within the definition of crime.

Conductor of Discussions

Thanks to His Eminence, Dr. Abdul Karim Zeidan, for his enlightening remarks. As already said we wish Dr. Madkour was here to reply to some of the queries raised. In half an hour's time we shall resume our discussions.

I call upon the Vice-Chairman to announce the adjournment of the session for a break. (The meeting was adjourned at 10 a.m. and resumed at 10.30 a.m.).

Chairman

We resume our discussions by inviting Dr. Rashid Al-Sharif to conduct the session.

Conductor

We resume the second session of the symposium. I confirm the Chairman's suggestion that we should try to be objective in our comments, and observe the time allocated for the speakers. In an hour's time, at 11.30 a.m., we shall adjourn the session. Now I call on the commentators to express their views.

Dr. Kobaisi

Dr. Madkour stated that the Sharia preceded other penal systems in taking into consideration the criminal's circumstances which motivate crime. He also quoted many examples to support his views.

The close consideration of the criminal's circumstances, known in contemporary criminological terminology as the "*individualization of punishment*", falls within the scope of the criminal policy of Islamic law. It calls upon the judge to consider the circumstances of the criminal to find out the real motives that drove him to commit the crime. Thereupon the decisive measures are taken by the judge. Punishment is decreed and inflicted in proportion to the

amount of harm done and in relation to the criminal's conditions. The criminal's harsh punishment may be substituted by a lighter one. He may receive medical treatment or moral edification. Islamic Sharia does not object to any procedure leading to the disclosure of the criminal's motives either through medical examination or investigations.

These are fixed facts deducted from the incidents which occurred during the ages. However, I would like to raise the question of two significant texts known as "Judge's collective function" and "individualization of punishment". The author of the paper did not quote these texts or allude to them.

The first text: Alqama Ibn Walil narrated that a woman was raped by a stranger on her way to the mosque just before dawn. When she shouted for help another man came to her rescue while the first one took to his heels. Then many people came to rescue her and seized the man who came to her help. In the meantime the first man had outrun the rescuers. All of the people involved went to the Prophet to settle the matter. The woman told the Prophet that the man who came to her rescue raped her. The man replied that he was only trying to rescue her from her raper when the people came to drag him off. The woman said that he was telling a lie because he was the real raper. Thereupon the Prophet ordered the man to be stoned to death. At that instant a man rose from the midst of the crowd and shouted: "Do not stone him. It is I who should be stoned, for I committed the crime". Then the Prophet told the woman that God forgave her for the adultery, and spoke well of the person who tried to rescue her. Then Omar asked the Prophet to have the man who confessed stoned but the Prophet answered that since he confessed his sin God will forgive him. Ibn Omar in his version of the incident went on to say: "If such an expiation had been made by the people of Yathrib (Medina) God would have accepted it".

The second text: Abu-Dawood and others narrated on the authority of Walil Ibn Al-Athqa' that once Walil was in the presence of the Prophet when a man approached him saying that he had committed a "Hadd" offence. The Apostle of God averted him. That man repeated this three times and each time the Prophet averted him. Then prayer time came and after the prayers were performed the man approached the Prophet for the fourth time confessing his crime. Thereupon the Prophet said: "Did you not perform ablution and pray with us just now?". The man answered in the affirmative. The Prophet said: "You are pardoned, for performing your prayers in the best manner is in itself your atonement for your sin". In another version the Prophet is said to have said: "God has forgiven you for your sin".

Now, to what extent do the judges and jurists in Saudi Arabia — the pioneer country in implementing Islamic law — apply the philosophy underlying these two texts? The author pointed out the sublimity of Islamic law, particularly the legal rule which stipulates that "Hudoud" punishments should not be inflicted in cases of doubt. Now the dubious cases where punishments could not be inflicted are numerous. Our jurists have not considered the lapse of time except in "Hudoud" crime witnesses. Any testimony not given within a prescribed time is considered null and void. If a witness gave his testimony long after a case was tried in the law court, his testimony would not be valid. Since in this case the witness's testimony would favour the defendant's case, therefore the testimony (given long after the trial in the court) would be disregarded.

Rashid Ibn Saleh Khunein

I thank Dr. Kobaisi for his remarks on the two texts. With regard to the second text narrated by Abu Dawood on the authority of Walil Ibn Al-Athqa' about the man

who approached the Prophet four times to confess his sin, according to the Hadith the crime he had committed was no more than kissing a woman and trying to seduce her but excluding the act of fornication which constitutes a "Hadd" punishment.

It is a known fact that minor offences may be atoned for by performing the five daily prayers, Friday congregational prayers and other prayers during the month of Ramadan. This is consistent with what has been explicitly stated by the Prophet. The Quran says:

*" If ye (but) eschew
The most heinous
Of the things
Which ye are forbidden to do,
We shall expel
Out of you
All the evil in you "*

Chapter 4, verse 31.

As regards the first text about the woman who was raped on her way to the mosque and the confession of the real raper, this man wanted to protect the life of a man who was about to be put to death for a crime not committed by the condemned but by the raper. Islamic law is clear on the fact that a genuine repentance is sufficient to avoid a "Hadd" punishment. In the case of "Maiz", ordered to be stoned by the Prophet for having committed fornication with a Jewess, who cried when he was under heavy attack of stones to be taken back to the Prophet. No one took any notice of his pleas. When the Prophet was informed of this fact he answered that he should have been given the benefit of repentance. This principle of not inflicting

punishment in dubious cases is actually in force in the Kingdom of Saudi Arabia.

Sheikh Saleh Al-Labeidan

Praise be to God, and blessings and peace be upon the Prophet, his family and Companions.

With regard to the incident narrated by Walil (related by his father) about the man who tried to confess four times, it is much disputed. The scholars versed in the Hadith have questioned the authenticity of the narrator because Alqama's father, Walil, could not have related this incident to his son as he was dead at the time of the incident. Not only is the authenticity of Alqama's version disputed but also the text itself. According to the Hadith, the Prophet is said to have ordered that the man concerned should be stoned to death. A criminal cannot be stoned unless he confesses his crime of adultery, or there is substantial evidence testifying his adulterous crime. Without either of these conditions stoning to death cannot be inflicted. As regards the case of the man who pleaded guilty for committing adultery in defence of an innocent suspect, and repented of his crime, will his repentance be taken into consideration or will he be subject to a "Hadd" punishment? Jurists said that whoever confesses a punishable crime and does not ask for a "Hadd" punishment shall not be punished.

So much for the incident narrated by Alaqama Ibn Walil. As regards the incident related by Ibn Al-Athaq, about the man who confessed four times and then prayed in the company of the Prophet, Muslim scholars maintain that whoever commits a crime and does not disclose it does not suffer any punishment. But in cases like "Maiz" and the "Ghamidiya" who confessed their crime of adultery they should be subject to punishment prescribed for adultery. The criminal will not be asked to furnish the details of his crime.

May God crown our efforts with success and guide us to the right path.

Sheikh Rashid Saleh Ibn Khunein

In addition to the explanation made by His Eminence Sheikh Saleh Al-Laheidan that a criminal who confesses his crime may not be subject to punishment, I would like to say that when "Maiz" thrice confessed his crime of adultery the Prophet each time did not want to punish him. The Prophet at last asked him: "What do you want from me?" Maiz replied: "I want you to purge me".

Professor Gerhard Mueller

Mr. Chairman

Members of the Symposium

First of all I would like to express my thanks to the Government of the Kingdom of Saudi Arabia for having invited us to this symposium.

I have been deeply impressed by every single word I have heard since this symposium started. In fact mankind today is in dire need of protection from the economic and social upheavals that are the causes of the ever increasing number of crimes which threaten man's life and security.

We must admit that if Islamic Sharia is applied on a wider scale it would help a great deal to protect man against all evils and provide peace and security. I am delighted to see, at a close distance, the social and technological progress made in this country. Actually we were not aware of the tremendous efforts made in this country in the field of crime prevention. All non-Saudis attending this symposium wonder how it is that they had not been acquainted with such a social progress achieved in this part of the Muslim world.

I have read as much as I could of the contents of these papers. Of course there are many things that other countries have to be acquainted with. History has taught us that in order to prevent crime all human efforts should be combined. Once Islamic law is known to other jurists and criminologists, they may take the provisions to fill in the gaps in some western laws. Certainly new articles and conditions will be added to the English law as regards crime prevention. These conditions could be compared with the provisions in Islamic law, particularly those concerning procedural matters so that the British people may absorb them with regard to permitted and prohibited deeds. In England judicial authorities are still influenced by antiquated laws.

The other point I would like to clarify is that many of our colleagues all over the world interpret Islamic law, particularly the Islamic penal system, in a manner entirely inconsistent with the spirit of Islam. They should comprehend the psychological and sociological aspects in order to realize that you are absolutely right that "Ta'zir" and "Hudoud" punishments as prescribed in the Quran and the Sunnah are sound and logical.

With great flexibility you have referred to the procedures to be adopted in the implementation of Islamic Sharia and the definition of criminal responsibility, particularly with regard to the moral and material elements of crime, in a manner that can guarantee the detection of crime and exaction of due punishment. Here I would like to lay stress on the necessity of consolidating economic and social aspects through the implementation of Islamic law and the Islamic penal system to attain human rights for everybody. Once the flexible Islamic penal system is implemented the whole world may be led on the right path. Through a close study of the criminological data I have become aware of the active role of Islamic law in overcoming crime in Saudi Arabia.

Indeed I will transmit all these facts about Islamic law to the concerned bodies of the United Nations.

Sheikh Manna Al-Kattan

We feel the urgent need to advertise Islamic law throughout the world to make humankind in this age of civilization and scientific progress familiar with it. If the world, despite its scientific advancement, suffers from the tragic consequences of crime the reason lies in erroneous search for means of crimes and the exaction of the right and deterrent punishments.

Many people ignore all about the Islamic penal system and have no idea of the effect of its implementation in our Muslim country. Therefore, this symposium has been convened so that scholars and lawyers should get acquainted, at a close distance, with the implementation of Islamic Sharia in Saudi Arabia and its effect on crime prevention.

God's peace, His Mercy and Blessings be upon you all.

Sir Arthur Peterson

Mr. Chairman

Members of the Symposium

Thank you for all these most valuable research works which I have had the pleasure to listen to. Also due thanks to the Government of Saudi Arabia who gave us the chance to get acquainted with the implementation of Islamic law in this country and other matters related to the conduct and rights of individuals.

As a matter of fact I am not a lawyer nor have I anything to do with legal matters. However, I do believe there are many similarities between the English law and Islamic law, particularly as regards criminal responsibility.

As I said, legal matters are not my field of specialization and I am not in a position to criticize, comment or praise Islamic Sharia. But I do say that we have many things in common, and that a fruitful dialogue can be established between us.

Sheikh Ahmad Mohammad Jamal

Praise be to God, the Cherisher and Sustainer of the Worlds and peace and blessings be upon Prophet Mohammad, his family and Companions.

I would like to add some more remarks to those of Dr. Abdul Karim Zeidan on the paper of Dr. Madkour.

Though Dr. Madkour's paper is most enlightening and valuable, yet it contains many generalizations which though quite apprehensible to students of Islamic law and Islamic criminal provisions, the ordinary listener or reader may take these generalizations at their face value and a misinterpretation of the meaning may result. For example, the author of the paper said that all religious procedural measures on crime prevention have been represented in Islam since Islam itself has attested all preceding religions. This is quite a sweeping statement. The teachings of other religions, particularly of Judaism and Christianity on crime prevention, are not represented in Islam in the sense that Dr. Madkour has mentioned to attest other preceding religions. The codes of the three religions (Judaism, Christianity and Islam) are not identical. Attestation is relevant to matters of belief. Christ said:

*" (I have come to you)
To attest the law (Scriptures)
Which was before me
And to make lawful
Part of what was
(Before) forbidden to you "*

Chapter 3, verse 50.

Successive religions include lawful and forbidden enjoinders. Forbidden behavioural patterns are not the same in all the three religions. The fact that the Quran

attests the Scriptures (Torah) and the Bible or that the Bible attests the Scriptures does not mean that prohibitions are the same in these three religions. In my view this too liberal generalization should have been restricted.

Also Dr. Madkour mentions in his paper that western laws do not differ from Islamic law as regards "Discretionary" punishments since both have the same objective of protecting the social order. This is, likewise, a general statement, for if western and Islamic law agree on the protection of the social order then it means there is no distinction between the Divine Law and man-made laws.

Dr. Madkour also pointed out that the only distinction between western laws and Islamic law lies in the source of each, i.e. the source of Islamic law is the Quran while western laws are enacted by man. He did not mention that there are other differences: qualitative, quantitative, estimation of psychological motives and differences due to circumstances and social customs. Finally, Dr. Madkour mentions that penalty is not inherently good but it is bad. I believe that it is absolutely wrong to consider a penalty decreed by God as being bad. Punishment is described to be just and right. Whether punishment is decreed in the Quran or meted out by man, it cannot be considered, from a logical point of view, as bad and corruptive.

Dr. Mustafa Al-Awaji

Criminal responsibility in Islamic law is based on the principle of "free choice" and "free will". In the midst of conflicting theories on theological "determinism" and "fatalism", Muslim jurists hold man responsible for his actions for choosing the bad thing and rejecting the good one. Furthermore, the Islamic legal system does not entertain retroactivity of laws. Hence no act is punishable without a law prohibiting the act when it was committed. To establish the criminal responsibility of a criminal, Islamic law

prescribed that the offender should be a mature adult, mentally sane, that the offence was not committed under coercion and there was criminal intention. Offenders who are under age, mentally insane, not free-willed or those who cannot distinguish between good and bad, cannot be held criminally responsible. Criminal responsibility in Islamic law is an individual matter. Innocent people shall not bear the guilt of others. Islamic law holds a very important principle which other Arab countries are trying to implement. This principle stipulates that whoever refrains from helping one in serious trouble shall be subject to punishment. This punishment shall be commensurate with the amount of damage caused to the person from whom assistance was withheld.

I wonder whether the Islamic law implemented in Saudi Arabia is of a personal or regional nature. Is it implemented on Muslims alone or also on non-Muslim residents and to what extent is it implemented?

It has been pointed out, too, that Islam urges non-disclosure of criminal acts. This emphasizes man's responsibility not only towards society but also towards his Lord, for if man is not punished in this world he shall be definitely punished in the hereafter.

Disclosing crimes has a negative effect on the society, and this negative effect may outweigh the positive effect of not disclosing them.

Sheikh Manna Al-Kattan

Comparing between western laws and Islamic law is only a tentative attempt on our part. As a matter of fact, western laws in their most recent forms have just lately reached Islamic legal standards which precedes these laws by several centuries.

It is a known fact that these western laws have been influenced by Islamic legal thinking which was transmitted

to the West through Constantinople in the East and Spain in the West. In this connection, I would urge upon all the countries and peoples who believe in One God to adopt Islamic law and judge man's behaviour accordingly. There is a difference between the Universal Will and the Legal Will. Dr. Mustafa Al-Awaji raised this question in his comment.

God the Exalted One, controls everything. His Divine Will embraces every action whether favoured or unfavoured by God. Legal Will is what God expects of mankind such as obedience and worshipping. It is through the Legal Will favoured by God that man has the right to choose between good and evil. Man is accordingly judged for his choice and will. There is a difference between a trembling hand of a sick man and the controlled movement of a hand stretched out in an act of aggression.

The answer to Dr. Mustafa Al-Awaji's query regarding the implementation of Islamic Sharia in Saudi Arabia is that Islamic Sharia is implemented on all residents. Saudis and non-Saudi Muslims have their rights as well as obligations. Non-Muslims have their rights, too. Islamic Sharia is equally applied to every one without any discrimination between one Muslim or another or between Muslims and non-Muslims.

Sheikh Rashid Ibn Khunein

First of all I would like to thank Professor Mueller for his understanding of many Islamic laws, particularly those concerning crimes and punishments. Likewise, I thank Sir Arthur Peterson for his remarks. Let me reiterate Sheikh Manna's statement concerning Islam's seniority over other western laws. It is a Divine Legislation which is valid from the time of its revelation to the Day of Judgement. Confirming this, both Professor Mueller and Sir Arthur Peterson mentioned that there are many things in common between

Islamic law and the existing English law. We trust that this will encourage learned scholars not to spare any effort in the dissemination of Islamic teachings throughout the world. I also beseech researchers, scholars and lawyers, when they want to find out facts about Islam, to resort to authentic sources. I also would like to backstop Sheikh Manna that Islamic Sharia in Saudi Arabia is implemented on all without any distinction. As for non-Muslims living in Saudi Arabia they have to comply with the laws and religious rites of the country.

In this connection is worth mentioning the story of the Jew and Jewess who committed adultery in the lifetime of the Prophet. When they confessed their crime, the Prophet asked them how adultery was punished according to the (Torah) Scriptures. The answer was blackening the face of the guilty person and disclosing the offence in public. The Prophet ordered a copy of the Torah to be brought and read out to him. The Jewish reader set his hand on the text prescribing stoning to death for anyone committing adultery. Then the Prophet ordered the guilty Jewish couple to be stoned to death, and the punishment was duly executed. When the Jewish reader was asked why he tried to conceal the text concerning the punishment of stoning to death, some of the Jews present said that stoning to death was inflicted on people of low descent while nobles were exempted from it. This is an intentional distortion of the Scriptures revealed by God.

May God crown our efforts with success.

THIRD SYMPOSIUM

THIRD PAPER

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87251

MEANS OF EVIDENCE IN ISLAMIC LAW

by

HIS EMINENCE SHEIKH SALEH IBN MOHAMMAD
AL-LAHEIDAN

Member of the Council of the Supreme Court

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87251

Commentators

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Conductor of Discussions

Dr. Jamal Sadeq Al-Marsifawi, President of the Egyptian Court of Cassation.

Praise be to God whom we beseech for help and forgiveness. We seek His protection from evil temptations. Without God's guidance we are doomed to go astray. We testify that there is only One God, the Peerless. He is the Lord of the Worlds. We testify also that Mohammad is God's Servant and Apostle, the best chosen amongst His creatures, who was sent after a long chain of His Messengers to deliver mankind from darkness. Through the divine message the Prophet made his people see the Truth. The Prophet, peace be upon him, did his best against injustice, transgression and disbelief, and he strove hard to restore to his people their glory in order to lead the perplexed world to the sublime objective, i.e. faith in God and compliance with His Orders.

Before going into the details of the subject of my paper: " Means of Evidence in Islamic Law ", I would like to cast a brief glance at the fact that humanity is in need of a trustworthy leadership that can combat social problems with comprehension, strength and courage. This leadership should carry in one hand the prescribed medicine and in the other the surgical instruments to eradicate the roots of crimes. This could be achieved if Muslims complied with the Quran and the Sunnah by combatting crimes, atheism, heresy, immorality and aggression against life, honour and property.

In order to prevent crimes, which are innumerable, difficult to surmount and dangerous, we cannot restrict our belief only to some parts of the Quran and disregard others. This partial belief in the Quran cannot eradicate or decrease

crimes but on the contrary the results could be risky. The Quran says in this connection:

*" Then is it only a part of the Book
That ye believe in,
And do ye reject the rest?
But what is the reward for those
Among you who behave like this
But disgrace in this life? "*

Chapter 2, verse 85.

Although atheism and non-compliance with the Sharia are considered far more serious than individual offences against life, property and honour, yet because they are personal offences they are not protected by the state. How can a Muslim expect to have part of his difficult problems solved when he does not abide fully by the teachings of the Quran? I am quite aware that all the participants in this symposium look forward to attaining a cure whereby crime can be eliminated and thus save their people from the dangers that threaten their countries.

Likewise, I am fully aware that you are not happy to see your nation following its enemies like a beggar imploring them for a cure to solve its problems although it possesses all the answers by complying with the injunctions of its sublime religion. Also I am sure that every Muslim is distressed to see the indifference in his country towards Islamic teachings as regards jurisprudence, ethical values, customs, educational matters and other aspects of life. We know that any violation against God's commandments is considered a mortal sin which should be made good before the wrath of God is incurred upon us, for verily God the Almighty expects to see His injunctions unviolated and His Sharia

implemented. However, he is not impatient to inflict immediate punishment on those who go astray, for He is Most Merciful and Oft-forgiving and therefore He gives the sinners time to ponder over and repent of their sins. Should the sinners insist on their mischief then they will be accursed with famine and fear.

There is no doubt that this great and all-embracing Sharia was decreed by God, the All-Wise, to bring happiness to all mankind in this world and the hereafter, reform their societies and organize their affairs and relationships. Islamic Sharia aspires to make the divine word of God far superior to the word of unbelievers and idol worshippers. People cannot expect to be happy or prosperous unless they worship the One Almighty God, for He created them in order to worship Him.

To quote the Quran in this connection:

" I created the Jinn and men only to worship Me ".

In other verse we read the following:

*" For We assuredly sent
Amongst every People an apostle,
(With the Command), Serve
God, and eschew Evil "*.

Chapter 16, verse 36.

True worship, which consists of an act of veneration tendered to a Divine Being, cannot be genuine if people do not have firm faith in God and do not live and collaborate in peace. Therefore punishments are decreed to warn them before committing an offence and to serve as an element of deterrence for the offenders, provided they are inflicted

with justice and sagacity in conformity with God's ordainment as in the following Quranic verse:

*" God doth command you
To render back your Trusts
To those whom they are due;
And when ye judge
Between man and man,
That ye judge with justice ".*

Chapter 4, verse 58.

And in conformity with the following verse:

*" If any do fail to judge
By (the light of) what God
Hath revealed, they are
(No better) than Unbelievers ".*

Chapter 5, verse 47.

So a judgement not based on the injunctions of the Quran is an act of irreverence to God, and to inflict a punishment before it is substantially evidenced is nothing but injustice and transgression. No stable rule can be based on injustice.

The glorious and eternal religion of Islam, if well administered, has provided a cure for every crime without leaving any negative aftermath. Islamic criminal law has defined every crime that may be committed, and when and how punishments should be inflicted; also the means of legal evidence are clearly spelled out in the Sharia. Nothing has been left to the whims and caprices of the people. They are not empowered to incriminate and inflict punishment for any acts of disobedience they choose according to their discretion. No offender is punished unless evidence is

produced to prove that he has committed the crime. All this is clearly mentioned in the Quran and detailed in the Sunnah.

The Prophet is reported to have said: " If people are allowed their own way of having their claims, they will claim the lives and properties of others; and it is up to the defendant to take the oath that he has not committed the crime for which he has been incriminated ". Al-Bukhari and Muslim * reported that Ibn Ibbas said that the Prophet had ordered that if no substantial evidence was produced by the plaintiff, the defendant should take a solemn oath that he had not committed the act for which he is tried and then shall be released.

Evidence, whether rational or palpable, is defined as an evident indication of the commission of an offence by a certain person. It is called " *evidence* " because it tends to reveal the hidden criminal intention of the offender. This evidence could be either a testimony, or a confession by the offender, or a solemn oath taken by the plaintiff, or a testimony given by the plaintiff himself, such as the " Lia'an " when the husband launches a charge against his chaste wife. At times the evidence is established by close scrutiny of conjectures and circumstances connected with the crime in order to lay the guilt on the defendant. A testimony is defined as being a report of what the witness has seen or heard, the word " witness " can be used both as a verb and a noun.

The word for "oath" in Arabic is " *Yamin* " which literally means " right ", opposite of left, because one offender used to strike his right side with that of the other offender. Circumstantial evidence is connected with, and indicative of, the crime for which punishment is claimed. Where circumstantial evidence exists, it is a proof of the commission of a crime. A spouse is indicative of, and associated with,

* The two most famous Hadith collectors (Translator's note).

the person to whom she is wedded. Such is circumstantial evidence which is closely associated with the crime for which punishment is claimed.

Gentlemen! One of the distinctive features of Islamic law is its ability to solve all the problems of mankind. It appeals to both the human intellect and sentiment; it stirs human conscience and admonishes people of punishment in this world and retribution in the hereafter when they will be brought to book, on the Day of Judgement, for the offence they have committed. Therefore a witness should not give false testimony, nor should a person confess a crime he has not committed lest he expose his own life to punishment or danger, for he has no right to forfeit his life. God has warned that those who conceal evidence or give false witness shall be punished. The Quran says:

*" And those whom they invoke
Besides God have no power
Of intercession; only he
Who bears witness to the Truth
And they know (it) "*

Chapter 43, verse 86.

In another quotation from the Quran:

*" We bear witness only to
What we know... "*

Chapter 12, verse 81.

The Sharia decrees that anyone who commits a crime has to repent of his sin. This is evidenced in the following Quranic verse:

*" If anyone does evil
Or wrongs his own soul*

*But afterwards seeks
God's forgiveness, he will find
God Oft-forgiving,
Most Merciful "*

Chapter 4, verse 10.

Also the Prophet praised the woman who confessed her crime of adultery. People are encouraged to disclose facts in the law-courts and are warned against concealing them. The conditions imposed on a witness are that he should be a mature adult sane Muslim and be objective in his testimony. The testimony of an unbeliever against a Muslim or that of an insane, or a lewd person ignorant of the facts of the case cannot be taken into consideration. Neither can testimony be accepted from a defendant or the person who witnesses in cases where his father or his children are involved. The testimony by a non-Muslim against other unbelievers could be accepted provided it conforms to their traditions and customs and their own conception of justice. The testimony of children under age could be accepted provided they had not been contacted and influenced by their parents or kinsfolk.

The evidence of crimes differs from one case to another. Some crimes need only two witnesses while others require four witnesses, such as adultery. Some crimes are legally proved by only oath-taking such as in " Qasamat " where fifty solemn oaths are taken by claimants to prove a punishable crime. " Qasamat " is not undertaken unless a charge is established.

Other crimes are proved by the testimony of the claimant, such as in " Lia'an " when a husband accuses his chaste wife of adultery but he has no witnesses to testify. The husband testifies four times that his spouse has committed adultery and on the fifth time he invokes the curse of

God if he is a liar. The "Lia'an" is described in the following Quranic verse:

*" And for those who launch
A charge against their spouses,
And have (in support)
No evidence but their own, —
Their solitary evidence
(Can be received) if they
Bear witness four times
(With an oath) by God
That they are solemnly
Telling the truth ";*

Chapter 24, verse 6.

Some crimes are proved by the offender's own confession provided he is held criminally responsible. In this case a confession has a stronger validity than evidence, for no sane person confesses what could be harmful to him unless he is telling sheer truth. A confession must not be given under compulsion which may invalidate or disqualify it.

Circumstantial evidence is illustrated in the Quran in the story of Joseph. Zulaikha tried to seduce him. Joseph scorned her love and made for the door. In her passion she ran after him and tugged at his garment to detain him. In the struggle she tore a piece of his garment. Zulaikha's husband happened to be nearby so she accused Joseph; it was a plausible accusation for Joseph's dress was disarranged. However, as Joseph's shirt was torn at the back and not at the front, it was deduced that he was retreating and no one doubted the guilty party. The way Joseph's shirt was torn was circumstantial evidence against Zulaikha. This example shows the importance of circumstantial evidence, since most criminals usually do not commit their crimes in public.

The Sunnah emphasizes the significance of circumstantial evidence which, if neglected would result in serious consequences. The Sharia was revealed originally to prevent crime, ward off evil and uproot corruption. Crimes are repelled before their commission and deterred after being committed. The early jurists, eager to realize the objective of the Sharia, attached great importance to circumstantial evidence. No one can deny its significant role in the service of Islam, it is like a beacon which sheds light for people who need it.

The Sharia stipulated that a criminal has to be punished for his crime once he is convicted. There are many ways to make the criminal confess his crimes. He may be confined or cross-examined before he is persuaded to confess. Punishment in a sense is a gesture of mercy towards criminals to discourage them from committing further crimes and invoke God's wrath in the hereafter. Furthermore, society can live in more peace and security once it gets rid of crimes and criminals. It is an established fact that Islamic Sharia did not leave a crime unpunished or a controversial issue unsettled. The Prophet is reported to have said: " I have left you a teaching as clear as daylight ". For a period of time, due to the strict adherence to Islamic law and infliction of just punishments, Muslims were not plagued by crimes and criminals. Atheists and heretics did not dare to scorn the tenets of Islam. Whoever sought divine guidance found it in the Quran and those who went astray were put to capital punishment.

It was only when Muslims started to treat Islamic law with indifference and did not heed the teachings of the Quran and the Sunnah that they began suffering from the terrible consequences arising from not abiding by the Sharia.

When Muslims wake up from their slumber and take religion seriously only then will they be able to restore their

past glory and pride and gain victory over their enemies. The advantages the Muslims will reap by implementing the injunctions will certainly be enormous and the consequences will be far-reaching. The best example we may cite to prove this statement is the Kingdom of Saudi Arabia where the Sharia is strictly observed. This puritan Islamic state has ably resisted the various irreligious currents, and has become like a fortress of Islam implementing its teachings in every walk of life. It will, God willing, keep on being the bulwark for Islam and its teachings.

I pray that God unite the Muslims against their enemies. God is the Mighty one and praise be to Him the Lord of the Worlds, and peace be upon the Prophet, his family and the Companions.

Sheikh Abdula Qadir Shaybat Al-Hamd

Praise be to God, the Cherisher and Sustainer of the Worlds. Blessings be upon Mohammad, the Seal of God's Messengers, his family and Companions. We are grateful to the Government of the Kingdom of Saudi Arabia for organizing this symposium in order to enable the participants to have a close view of the order and stability prevailing here thanks to the implementation of Islamic law which indeed aims at establishing a happy, peaceful and stable society; a law that safeguards one's life, property, honour and work by trying to wipe out crime.

We also thank Sheikh Al-Laheidan for his most valuable paper. The fact that he is a very busy person makes the task of producing such a research even more appreciated.

The subject matter of the paper is "Means of Evidence in Islamic Law", but the distinguished lecturer spent two-thirds of his time treating the importance of the implementation of Islamic law which, though a noble digression, was at the expense of the title of the subject matter.

I have some observations to make:

The author of the paper maintains that evidence is necessary to prove a crime. This is quite true. Evidence is fundamental before the offender is convicted. However, the author confined the detection of crime to evidence alone which, according to him, embraces all methods of proof, such as confession, giving a statement, testimony, oath-taking and circumstantial evidence. Such an interpretation of the word "evidence" is in fact too sweeping. As a matter of fact some scholars favour such an interpretation.

But in an authentic narration by Al-Bukhari, Omar Al-Khattab is reported to have said in the mosque of the Prophet (in Medina) in his last Friday sermon on the occasion of the nomination of his successor: "Stoning to death is decreed by God in the Quran". He emphasized this fact so that future generations will not have any doubts about the validity of this punishment for people who commit adultery. He identified confession with evidence and regarded pregnancy almost as indicative of adultery as substantial evidence. Most Muslim jurists classify methods of legal evidence into four categories.

The Evidence

It is considered quite synonymous with testimony which is the claimant's right. His Eminence the author pointed to the Tradition of Al-Bukhari and Muslim according to whom the Prophet is reported to have said: "If people were free to make their own claims, they would claim the lives and property of others. The defendant is obliged to take a solemn oath rejecting the responsibility for a punishable act". It is up to the claimant to produce evidence or a witness testifying that the crime was committed by the defendant. It is easy for the judge to act upon an oath if he is sure that the witness is telling the truth, that he is disinterested in the case and not related to the claimant.

Although oath-taking is essentially required of the defendant, the claimant is sometimes required to take an oath too.

Making a statement is confined to the person who testifies, provided it is free of false information and does not contain a charge against the defendant.

Circumstantial evidence is the most serious procedure the judge may have to follow. This procedure requires a particular aptitude, disposition to investigate and scrutinize, and a knowledge of human psychology and the motions of human bodies. Furthermore, the judge has to have an acute sense of observation; for example, just by looking at a suspect he should be able to tell what the man had concealed in his testimony. On the whole, circumstantial evidence is not an appropriate method of proof, but judges may resort to it in the absence of a testimony.

Circumstantial evidence serves as a subsidiary means for proving a crime. I wish the author of the paper had cited more examples to highlight the legal significance of circumstantial evidence, for this is the most delicate issue of evidence in cases when a witness is not available.

The author gave the parable of Joseph as an example of circumstantial evidence. Muslim theologians maintain that the legislation of our predecessors apply to us as well unless it is explicitly stated that it was meant for past generations. Without such a clarification the legislation of the foregone generations apply also to the succeeding ones. Thus the parable of Joseph is binding upon us, too. In this connection the Quran says:

*" ... And one
Of her household saw (this)
And bore witness, (thus)
'If it be that his shirt
Is rent from the front, then
Is her tale true,*

*And he is a liar.
But if it be that his shirt
Is torn from the back,
Then is she the liar,
And he is telling the truth".*

Chapter 12, verses 26 and 27.

Thus if she caught hold of Joseph's shirt from the back it proves that he was running from her; but if he was coming towards her against her will she would have seized the shirt at the front. The author of the paper also pointed out that circumstantial evidence is mentioned in the Sunnah for criminal cases.

In this connection I would like to cite some examples. The Prophet is reported to have narrated the story of Solomon and David. One day two women claimed to be the legitimate mother of a certain child. Apparently they had left their children in a solitary place, but when they returned they found only one child and the other had been devoured by a wolf. Each woman claimed the surviving child as her own. David ordered the child to be given to the elder of the two women. When Solomon came, he asked David to leave the matter to him to settle it. He asked for a big knife and said to the two women that he would rip the child into two and give each a half. The elder woman hurried to fetch the knife. This gesture was sufficient to prove that she was not the child's mother, and therefore he gave the child to the younger woman. This is a good example of circumstantial evidence.

The second story took place during the reign of Ali (the fourth Caliph) when a dark-skinned man came to him and said: " This woman is my mother but she denies it ". When Ali asked the woman, who was white-skinned, if the young man's allegation was true she replied: " He is not

my son, and I do not know him at all ". Then Ali asked the woman's guardians if they accepted a judgement on this matter. When Ali got an affirmative answer he asked his servant to get him some money which was given to the young man to be used as his dowry to marry the woman in question. Ali said to the man: " Do not come tomorrow without getting properly wedded ". Thereupon the woman protested saying that she would rather be tortured in Hell than be married to this young man, for he was her son. When asked why she had denied him before, she had to tell the whole story. The young man's father had emigrated to Medina from Abyssinia. Her parents thought so highly of him that they agreed to espouse her to him.

Soon after he had to leave on a military expedition in the cause of Islam and met a martyr's death. Before long she became pregnant but she concealed her pregnancy until the baby was delivered. Then she carried the baby to some Bedouins and entrusted them with the baby, but she recommended them to conceal all this from the child when he grew up. However, when the child became a young man he realized that she was his real mother so he came to her claiming that she was his mother.

This kind of circumstantial evidence is not very common, and only a person with an exceptionally intellectual alertness is able to trace it. Through psychology a person may unmask, at a mere glance, what a claimant may have concealed and judge him accordingly. Although circumstantial evidence could be very helpful, it is such a delicate matter that not every judge is able to detect and make the best use of it.

The author of the study referred to the incident when the Prophet lauded a woman who had committed and confessed adultery. I wish the lecturer had given the reason why the Prophet did this. As a matter of fact the Prophet lauded the woman not only because she confessed her crime but also because she had wholly surrendered her life and

soul to God. " Offering one's own life to God is the most sublime of all offerings ".

In another narration Khalid Ibn Al-Walid is reported to have picked up a stone and threw it at the head of an adulteress who was being stoned to death. Blood gushed out from her wounds and some blood stained Khalid's dress, which fact made him furious with the adulteress. When the Prophet saw this he tried to calm Khalid and said to him: " Take it easy, Khalid, she has sincerely repented of her sin and her repentance would be enough to purge the souls of all the sinners of Medina ".

Therefore the confession of the adulteress was not the real cause of the Prophet's praise, but the fact that she wanted to die with a shrived soul that led the Prophet to praise her.

The last point I would like to comment on is what the author mentioned on page four of his paper that the evidence given by a non-believer against a Muslim is not accepted, and that the non-believer's evidence may be accepted only if it is given against fellow non-believers. However, the Holy Quran states that the non-believer's evidence against a Muslim may be accepted in some circumstances:

*" O ye who believe
When death approaches
Any of you, (take) witnesses
Among yourselves when making
Bequests, — two just men
Of your own (brotherhood)
Or others from outside ".*

Chapter 5, verse 109.

Muslim jurists unanimously agree that the testimony given by a non-Muslim is accepted should the Muslim defendant be in a non-Muslim country.

Sheikh Ali Al-Mihanna

Praise be to God who has revealed the Book to His Prophet and made it plain and straightforward. I testify that there is but One God, the Peerless, and that Mohammad is His servant and Apostle who was sent with divine guidance. God's blessings be upon the Prophet, his family and Companions. Thanks be to God Who has crowned with success all the efforts made by the leaders of this country ever since the late King Abdul Aziz Ibn Abdul Rahman Al-Saud, the founder, and his loyal sons. They have spared no effort for the dissemination of the word of God and the implementation of Islamic law which has resulted in the prevalence of peace and security in this vast country, the cradle of Islam. Before the advent of Islam, injustice, transgression and idolatry were rife in the country. The Quran says in this connection:

*" (They are) those who,
If We establish them
In the land, establish
Regular prayer and give
Regular charity, enjoin
The right and forbid wrong:
With God rests the end
(And decision) of (all) affairs ".*

Chapter 24, verse 41.

Due thanks to those who organized this symposium, particularly H.R.H. Prince Naif, son of Abdul Aziz, Minister of Interior, and the Deputy Minister Prince Ahmed, son of Abdul Aziz, who have given us this opportunity to participate in this symposium.

I also thank the author of this paper for his invaluable study by tackling an important aspect of the Islamic criminal

law and its effect on crime prevention. No wonder the research has been enlightening because of the author's past experience and scientific activity.

The research is divided into two parts. The first part focusses on the importance of adherence to Islamic law to be implemented in all walks of life; and Muslims are warned against any disobedience of the dictates of the Sharia. The other part is the means of legal evidence in the Sharia. The speaker dealt with both aspects within the scheduled time. He pointed out the state of order and security in the country which every Muslim, nay every human being, wishes for his own country. However, due to the limited time he had, the speaker could not deal at great length with this particular issue. Each single method of proof is detailed in the books on Islamic jurisprudence. Of course, the details of these methods of proof cannot be included in this short essay. The only point I would like to stress is the criminal's own confession (one of the many methods touched on by the speaker). A Muslim who adheres to the tenets of the Sharia will confess if he commits a crime. This confession is originally motivated by his genuine belief in God and his desire to purge himself of his sins. This fact is demonstrated in the example of the woman who repeatedly came to the Prophet to confess her adultery and each time the Prophet averted her. The Prophet gave her time to consider her confession and at the same time to protect the Islamic society from a hidden mischief. However, she willingly went back to the Prophet to plead her crime and be stoned to death. Referring to this incident the Prophet said that such a repentance would have sufficed seventy persons of Medina. Such a strong desire to confess exists only in Muslim society.

Gentlemen! In this brief survey on the methods of proof, justice appears prominent. No innocent person can be charged with a crime he did not commit unless he is proved guilty, unlike other non-Muslim countries where

judgements are based on conjecture and rather doubtful grounds. I wish I had more time to comment on some points at a greater length. In conclusion I reiterate my sincere thanks to the lecturer and all the organizers of this symposium. I wish you the best of luck.

Conductor of discussions

Before giving the floor to the next commentator may I point out two aspects of legal evidence: written statements and the information collected by the judge before assuming his office, while in office or afterwards. These points were not tackled by the lecturer whom I now call on to comment.

Sheikh Saleh Ibn Mohammad Al-Labeidan

Praise be to God and peace be upon the Prophet, his descendants and Companions. I wish to extend my heartfelt thanks to His Eminence Sheikh Abdul Qadir Al-Hamd for his additions and comments. May God bountifully reward him. I also thank Sheikh Ali Al-Mihanna for his valuable comments. I have some reservations to make on the points he raised. With regard to the statement attributed to Omar that "adultery is proved if genuine evidence is produced or pregnancy is ascertained", it is well-known to Arabic scholars of eloquence that the "general" joins the "particular". It follows that pregnancy does not mean it is different from evidence, but it is part of it. In Islamic law evidence is defined as anything that makes truth evident whether through changes of one's physical constitution, evidences, witnesses, testimony or faith. To confine evidence narrowly to testimonies is not semantically correct. However, this is a controversial issue amongst Arabic philologists. Imam Hafiz Ibn Al-Qayyim and before

him Ibn Taymiya maintained that evidence is anything that makes truth evident. Many of their predecessors held the same view. As for circumstantial evidence, I shall cite only one example to illustrate it. It is best illustrated in the story of "Mui'az" and "Mu'awwaz Ibn Afra" concerning the murder of Abu Jahl. Both men approached the Prophet, each one claiming that he had murdered Abu Jahl. The Prophet said: "Show me your swords". When he saw their swords he saw that blood on one of the swords was more evident than on the other. This fact provided circumstantial evidence that he was the actual murderer. What the learned Sheikh said in this connection is irrelevant to circumstantial evidence, but it is closely associated with one's exceptional ability to make accurate guesses. The judge, being endowed with this exceptional ability, can follow the procedural steps which force a person to make his own confession. There is a difference between coercive confession and circumstantial evidence. The above story is one example of circumstantial evidence. Another example is that of the inhabitants of Badr. The idol worshippers had approached Badr to wage war against the Prophet and his followers. A servant (or a slave) whom the Muslim vanguard had taken prisoner, was taken to the Prophet and asked about the number of the unbelievers' army. He replied that he had no idea. The Prophet then asked how many sheep they slaughtered each day. He replied between nine and ten. The Prophet considered this as an evidence that the enemy's number was approximately between nine hundred and one thousand fighters.

It is out of my scope to enumerate examples of circumstantial evidence. As regards the testimony given by Christians and Jews against Muslims, it is a well-known fact that rules are established according to majority, and not minority, opinion. What the commentator said is applied for cases where property and money are involved but not criminal cases.

The commentator pointed out that I made some irrelevant digressions during my lecture on legal means of evidence, but he too made digressions in his comments. I believe this is inevitable when one addresses a crowd of people.

His Eminence Sheikh Al-Mihanna dealt with the procedural steps leading to confession. He referred to the case when Prophet Mohammad praised the adultress who confessed her adultery. The Prophet is reported to have said to Khalid, upon seeing blobs of the woman's blood on Khalid's garments, that the woman's genuine repentance was such as would suffice seventy sinners of the town of Medina, for the woman had wholly given up her life to God. In another narration the Prophet is reported to have said that the reward for one who publicly confesses his sin is greater than that for he who fails to confess his offence. If anyone indulges in a filthy worldly sin and confesses it, his confession will atone for his sin only after the "Hudoud" penalty is inflicted upon him. But if the sinner conceals his sin and does not confess it, God may punish him or pardon him.

He who confesses his sin and is punished is better than the person who conceals his sin and does not get the penalty he duly deserves. So confession and punishment atone for the committed sin. We are familiar with the story of "Maiz" who confessed to the Prophet that he had committed adultery.

The Prophet turned to his Companions and said: "Perhaps his mind is deranged". They replied that he was very sane. Then the Prophet ordered to see if his mouth smelt of wine to find out if "Maiz" had been drinking.

Apparently the smell of wine or vomiting due to excessive drinking is indisputable evidence of alcohol intake.

I apologize to Sheikh Abdul Qadir for any mistakes I may have made in my study. May God the Almighty show us the right path.

Sheikh Mansur Ibn Hamad Al-Malik

Praise be to God and peace and blessings be upon God's Apostle. Due thanks to the lecturer for his valuable study. I was deeply impressed with his introduction.

The author referred in his introduction to the importance of an enlightened and farsighted leadership that sincerely believes in God and is merciful, strong and valorous. This is a good point on the part of the author, for the ruler should set a good example for his subjects who would follow the ruler if he adhered to the teachings of the Quran, the Sunnah and abide by the tenets of Islam in words and deeds. Hence the interests of the Muslim community could be safeguarded and crimes be prevented or decreased. Then the people may collaborate to rehabilitate the society and eliminate all that leads to mischief and damage, and thus the objective of this symposium could be attained, i.e. crime prevention and elimination.

Then the lecturer pointed out that the best cure for crime prevention is to have sincere faith in God, worship the One Almighty God and adhere to the tenets of the Quran and the Sunnah. This is indeed a good point on the part of the author, for faith in God protects a person from falling into pitfalls and crimes.

The stronger the faith the less disobedience against God and less crimes. On the other hand, the weaker the faith the more a person is exposed to committing crimes. I believe that such an introduction to the research was necessary. The fact that the author devoted so much time and space to stressing this point does not undervalue the significance of research work. Faith in God and strict adherence to the Quran and the Sunnah have to be stressed first before proceeding to the methods of legal evidence, for it is the faith in God, His Book and the Sunnah that can protect our society from the danger of crimes.

Conductor of Discussions

Thanks to the distinguished commentator. We shall have a break to perform prayers and then resume our discussions.

Chairman

The meeting is adjourned for prayers.

(The meeting was adjourned at 5.30 p.m. and reconvened at 6.20 p.m.).

Sheikh Attiab Mohammad Salem

Praise be to God, the Cherisher and Sustainer of the Worlds and peace and blessings be upon the noblest of all prophets and God's messengers, Prophet Mohammad, his descendants, Companions and followers.

My sincere thanks to the author of this valuable paper in which he briefly and efficiently dealt with the various methods of evidence. There are other methods of evidence which the conductor of discussions referred to. Such methods embrace written statements and other controversial methods such as "tracking" and drawing lots. Other recent methods have been introduced such as finger-prints, photographs and sound recordings. Other methods are still being experimented such as blood group and hair analysis. What concerns us is what Muslim jurists in the past thought about drawing lots as a method of legal evidence though overlooked in criminal legislation.

With regard to finger-prints as evidence, human morphology has proved that no two finger-prints are identical even on one hand. Such is "tracking" which helps in detecting the criminal by following and analysing his foot-prints. As for sound recordings or photographs they are subject to changes or make-up to change facial features. A

photograph, for example, can be taken side by side with a non-existent person.

If the lecturer could include these points in his study, his research would be rendered more comprehensive.

Regarding "Qasama" as a legal evidence, the Imams in the past held controversial issues. What concerns me is whether "Qasama" changed the normal procedure which requires that the claimant should produce evidence and the defendant has to take a solemn oath that he committed no crime. Three Imams agree upon the judicial procedure whereas those who advocate "Qasama" maintain that it has run counter to the original procedure in that it required that the claimant should take a solemn oath and the defendant should be asked to disprove the claimant's charge.

In public cases the position of the defendant is more powerful than that of the claimant, for the defendant is originally innocent until he is proved guilty. "Qasama" involves the material symptomatic evidence of murder which makes the position of the claimant stronger.

Dr. Jamal Al-Din Mohammad Mahmoud

Apart from the Maliki jurists none of the other jurists agree that Islamic Sharia decreed that the offender be inflicted "Ta'zir" (discretionary punishment) in order to force him to confess his crime. However, "Hudoud" and retaliation crimes may be evidenced either by a legal testimony or a voluntary confession. I recall a case of a jurist who was counselled whether a thief should be beaten up in order to confess. He gave a negative legal verdict in this connection. When the jurist heard later that the thief was coerced to confess and the stolen property was recovered, he said that never in his life had he seen such a wrong-doing have a semblance of right.

As regards "Qasama" I wish the author had pointed out that some scholars disregarded it as a means of legal

evidence. Abu Kalaba Al-Tabi rejected it in the presence of the Caliph Omar Abdul Aziz because he believed that it was inconsistent with the principle of legal evidence which stipulates that it is up to the defendant to take solemn oath; the Hanafi jurists are of the same view, too. Furthermore, "Qasama" does not call for retaliation punishment but only for blood-money.

Dr. Hamad Al-Kobaisi

In fact, I have two points to deal with. The first one has already been tackled by Dr. Jamal Al-Din Mohammad Mahmoud regarding the consensus of opinion held by Muslim jurists against coercive confession. I wrote an article on the "Invalidity of Confessions exacted by Coercive Methods".

Then I wish the study had treated another important matter. What would happen if a witness, after having given his testimony prior to the criminal's conviction or afterwards, came back with a different version of testimony? Sometimes the judge's stance does influence the testimony itself. What are then the circumstances that impel the judge to intervene to influence the testimony to prevent it from using it as a means for proving the crime committed? What would be the consequences if a suspect went back on his previous confession? Should the judge take his confession for granted or are there other implications?

I wish the study had dealt further with this point.

Dr. Mustafa Al-Augi

I would like to make a few additions on the advantages of the original evidence in Islamic legislation. The graver the crime the stronger are the measures to establish evidence. This is of considerable importance in "Hudoud" crimes where indisputable evidence should be established. The punishment for adultery is inflicted only when four witnesses are produced. The penalty for defamation, on the other

hand, can be executed even if there are less witnesses. Witnesses are required to be fully aware of their role in proving a crime by giving testimonies which they have seen with their own eyes.

I recommend that testimonies should be strictly scrutinized, for they are not only means of proving crimes but also help the identification of the elements of crime and punishment as well.

Islamic law has laid particular stress on the moral aspect in exacting an evidence. In other words, a witness should not spy or resort to non-ethical contrivances in his attempt to produce evidence. In this respect the Quran says:

*" O ye who believe
Avoid suspicion as much
(As possible): for suspicion
In some cases is a sin:
And spy not on each other,
Nor speak ill of each other
Behind their backs. Would any
Of you like to eat
The flesh of his dead
Brother? Nay, ye would
Abhor it ... But fear God:
For God is Oft-Returning,
Most Merciful "*

Chapter 49, verse 12.

So in order to exact legal evidence the witness must have moral integrity. I would like to add another advantage of Islamic Sharia relating to the witness, based on the texts and the opinions of Muslim jurists; this lies in the fact that a witness should refrain from reporting if his testimony may cause more damage than good to the society. The

Prophet expressed the same opinion when he said: "Whoever conceals another Muslim's sin will be rewarded by God in this world and hereafter".

There is yet another point to be discussed. How are witnesses exculpated before giving their testimony? And what is the value of a testimony to be heard in the presence of a judge? The testimony given by an adversary in a case is not accepted in Islamic Sharia.

I would like to support Dr. Al-Kobaisi on the matter of confession which should not be forced out of a suspect. However, further elucidation on the matter would be recommended. Then there is another point, i.e. what would happen if a suspect afterwards denied his confession?

Professor Salem Al-Koswani

Thanks a lot to the lecturer for the appreciable efforts he has made in his research. I would like to point out that the academic approach of this symposium from the very outset proves beyond doubt that Islam is exceedingly rich in legal matters.

All sorts of evidences have their texts in the Quran and the Sunnah. Besides, Muslim jurists have mentioned them in their works. However, the constant evolution of legal judgements in the light of novel events calls for arduous work on the part of Muslim jurists to deduce new judgements. While all aspects of Islamic jurisprudence need continuous individual studying, the criminal law calls for even further studying due to varying methods of crimes and their implications which require a special penal system to be devised.

The basic principles of penalty procedures, which concentrated on the exposition and analysis of evidence, have touched upon an important issue, i.e. conviction of the judge when an evidence is not very clear; for example, he has the right to base his judgement on testimony. Undoubtedly

this legal principle has its origin in the Quran. I wish the lecturer had referred in his research to the judge's personal conviction when he does not have ample proof to condemn a criminal. The same thing applies to finger-prints, criminal laboratory analysis and blood groups. We should like to hear an Islamic view on such matters. I have no doubt that by adopting the modern methods to attain truth it does not contradict the principles of Islamic legislation.

Dr. Tawfiq Al-Shawi

I thank the lecturer for his paper, and at the same time I would like to join the other commentators in disagreeing with him on the matter of inflicting "Discretionary punishment" on the offender even before he is proved guilty. I am afraid this may lead to mischief which many people are aware of its danger to society. I am afraid that the researcher is not quite familiar with the extent of mischief which takes place in the countries where torture and persecution are widely practised. He is lucky for ignoring these facts. It would not be a bad idea if the researcher consulted his references and compared them with the ethics and moral principles of the Sharia, such as those which forbid the witness to spy or commit illegitimate acts in the course of attempting to find evidence. If this applies to ordinary individuals, the more so does it apply to judges and rulers. Omar Ibn Al-Khattab's example may be cited in this connection. Standing on a roof he apologized to the defendants that all the proceedings taken against them were unfair, and declared that any confession exacted through compulsion was wrong, and that neither the judge nor the ruler had any right to be unfair.

General Mohamamad Al-Hadiqa

I appreciate the lecturer and the commentators for their valuable discussions. I asked for the floor because since my

knowledge on the modern methods of criminal investigation, such as finger-prints, foot-prints and hair analysis, is very scanty I wish the discussions dealt fully with these scientific methods and references made to Quranic verses.

Sheikh Rashid Ibn Khunain

My heartfelt thanks to Sheikh Saleh Al-Laheidan for his efforts, and I realize his special circumstances which did not help him to give a more detailed study.

I would like to comment on some points that other commentators have raised.

First: The fact that the convicted should be punished for the crime he committed has to be considered with some limitations. Perhaps the lecturer wanted to say that the condemned should not be punished until he confessed or offered all the evidence in his possession. In my view this is applied only in some cases where there is circumstantial evidence indicating the crime of which the condemned is charged. Then the condemned may be given some light punishment to produce the evidence he may have. This reminds us of the story of a thief who did not deny the money he had stolen but lied that he had spent it. The Prophet said: "The money is plenty but the time for spending it is limited". The thief was handed to some of the Prophet's Companions to give the thief a light punishment. Thereupon the thief showed where the stolen money was.

There is another story about a woman who carried a message to the Quraish regarding some secret information on the Muslims. The Prophet sent two persons to get the message from the women. When she refused to hand the Prophet's men the message, one of the Companions ordered either she had to deliver the message or be stripped of her

clothes. Thus she had to give in and handed the message to the Prophet's men.

What I would like to point out is that light punishment is not explicitly mentioned in the Sharia.

The second point is that if a crime (according to the speaker), cannot be proved by a testimony, circumstantial evidence would be sufficient to prove it. The lecturer apparently did not mean all types of crimes. As regards "Hudoud" crimes, the offender who had confessed is asked to go back on his confession. Circumstantial evidences in "Hudoud" crimes are not accepted. If any of God's rights are violated the accused must not be coerced to confess; but if man's rights are concerned the accused may be confined or given some light punishment until he confesses of his own accord.

There is another point which I would like to elucidate lest it may be misinterpreted. The speaker said that some crimes may be proved by the criminal's own confession. This statement may imply classification of crimes although the speaker certainly did not mean this. He meant to say that when a crime is committed it may be proved by the criminal's confession or by other methods.

If confession is made without any coercion it can sufficiently prove the crime provided the suspect does not withdraw it before a judgement is passed.

Mr. Al-Maamoun Mubarak Aman

Praise be to God, the Cherisher and Sustainer of the Worlds and blessings on the noblest of God's Messengers. I am pleased to note that my views on the matter of confession are identical with those of Dr. Jamal and Dr. Hamad. Modern laws regard the confession made by the accused under no coercion and persuasion as an evidence in the law courts, still the accused cannot be condemned guilty of the crime on the basis of confession only. Consequently, the

accused should not be punished in the light of his confession alone.

According to the Sudanese penal code if a criminal confesses a crime punishable by death, the judge should note in the register that the accused is not guilty and should resume other penal procedures to produce witnesses to confirm the innocence of the suspect. Although it is true that there is hardly any person who would willingly endanger his life, still a person may give a false confession in order to save the life of his father, brother or someone dear to him. This is not very strange because it actually took place in the Sudan. Therefore could such a confession be considered a positive evidence and sufficient to condemn an accused person? I would like to stress the fact that Islamic jurisprudence has been our source regarding this matter in the well-known case of "Maiz" who had to confess four times and the Prophet had to make sure that "Maiz" was sane and sober before inflicting the due punishment on him.

As far as circumstantial evidence is concerned, it could well be used to prove a crime, but I believe that to take it absolutely for granted might be risky. What one judge considers to be a circumstantial evidence and bases his judgement on it, another judge may consider as an ordinary matter. But if we consider circumstantial evidence as an inseparable chain of evidences then the judgement based on this concept could be fair enough.

Dr. Mohammad Ibn Sa'ad Al-Rasbeed

Praise be to God the Cherisher and Sustainer of the Worlds and blessings and peace be upon Prophet Mohammad, his family and Companions.

Other commentators have already commented on the subject of administering some light punishment to the accused to exact a confession from him. I have but very little to add. I would like to confirm what the commentators have said

that the accused is innocent until his guilt is proved beyond doubt. This is a legal and unalterable rule. The parable of Huyay Ibn Akhtab and the woman with a message for the Quraish do not sufficiently prove the legitimacy of exposing the accused to some kind of light punishment, for the two incidents took place during the time of war. Originally the claimant is required to produce evidence and the defendant to take a solemn oath, as is the case in the Kingdom of Saudi Arabia at present. The author of the paper, who is one of the most renowned judges in Saudi Arabia and who has a vast experience in this field, knows quite well that in Saudi Arabia, where Islamic law is strictly implemented, a confession cannot be considered valid if some dubious circumstances are involved, such as coercion and persuasion and other means. The Prophet is reported to have said: "If all people's claims are heeded, they would claim the lives and properties of others". If this could be applied to civil claims it should apply to penal cases as well. One of the prerequisites of a confession in Islamic jurisprudence is that it should be made voluntarily and without any coercion. In this connection I wish the speaker had dealt with the conditions involving confession and testimony as well as the conditions involving the confessor himself.

In some exceptional cases a judge may have to subject the accused to some administrative procedure if he believes that there are strong dubious circumstances involved or that strong circumstantial evidence is produced against the accused which does not amount to a substantial legal proof. In such cases, especially if the accused has a criminal record, he is subjected to some kind of punishment but short of being tortured because the amount of torture may exceed the amount of punishment prescribed for the crime the offender is charged with.

I would like to make some passing remarks in this connection. I wish the author, who is a well-known judge,

had pointed out the prerequisites of confession, testimony, confessor and witness. It would have been a good idea if the author or the first commentator had explained the wisdom underlying the invalidity of the testimony given by a non-Muslim, and the testimony given by a Muslim against a non-Muslim. Since the first commentator made some allusion to justice I wish he had shed more light on the conception and prerequisites of justice. I wish also the author had explained the method of giving testimony, for this is very important in other legal systems. Likewise, he should have made some reference to the selection of witnesses in each crime. I expected the author to give an account of each crime and the methods of legal evidence of each. Had he done this it would have saved us many queries. Also I wish he had dealt in greater detail with the question of taking an oath.

Some participants queried as regards documents and written statements. Although I would not like to overstep the author, yet as reference was made to them in the first meeting it would not be a bad idea to refer to them again in this connection. It is a known fact that originally documents cannot substitute a confession or testimony to prove a crime. However, such documents as those kept in law-courts may be referred to by the judge when trying a case. I believe Islamic law differs from other modern laws on the authority of written statements which can be considered only as circumstantial evidences and not as evidences in themselves. As regards other material evidences, such as finger-prints and foot-prints, reference is made to them in Islamic jurisprudence though with some formal differences.

Now the question is: what are the crimes that could be proved by circumstantial evidence? I wish the author and the commentators who followed him had referred to this matter. I know that "Hudoud" crimes need very strict and clear evidence to prove the offences committed. Other

crimes may be proved by circumstantial evidence, such as pregnancy in adultery, and the smell of alcohol and vomiting for excess drinking to prove the offence of drunkenness. As regards drawing lots referred to by the author, it cannot be taken as a proof in criminal cases and what the first commentator said does not apply to criminal cases.

Sheikh Nasser Hamad Al-Rasheed

The commentators expressed their disagreement on the matter of inflicting "Ta'zir" punishment on the accused to lead him to confess his guilt. According to my understanding the author did not intend it either. Furthermore, there is no text supporting this in the Quran, the Sunnah or in the saying of any authoritative Muslim jurist. What we often come across is that "Ta'zir" punishment is prescribed for the accused if there is some evidence proving his guilt. The parables of Huyay Ibn Akhtab and the woman on the palanquin are clear proofs of this rule. Huyay Ibn Akhtab is said to have carried money from Medina in a bag made of oxhide. When the Prophet asked him where the money was, Huyay replied that it had been spent during the Kheibar battle. The Prophet is reported to have said the money was much and the time between collecting it and the Kheibar battle was too short. This was sufficient evidence to prove that Huyay had told a lie and therefore the Prophet ordered Zubeir Ibn Al-Awam to subject the liar to a light punishment. Thereupon Huyay confessed and led Zubeir to the place where the money was hidden. Here light punishment was administered to force the offender to show the place where the money was hidden and not just to exact a confession.

In the case of the woman who was ordered on the palanquin by Zubeir Ibn Al-Awam — on the instructions of the Prophet — either to deliver the message she carried or be stripped of her clothes, the purpose was to discover the truth and not mere confession.

So, if someone states that property is stolen or looted, or a camel has gone astray and says where it could be found, this means a confession on his part. The "Ta'zir" punishment is administered not just to know about the stolen property, but rather how it could be recovered. Authoritative jurists still resort to this kind of judgement which is accepted and considered valid.

Sheikh Attiya Mohammad Salem

I apologize for taking the floor for the second time. I would like to elaborate on what the Sudanese judge, Al-Mamun Mubarek Aman, said that in the Sudanese penal code, confession alone is not sufficient evidence to condemn the confessor for the crime he alleges to have committed. This is exactly what Muslim jurists had said, for the confessor might be acting in collusion with the real criminal to defend him. For example, a group of persons may be charged with murdering a man and one of the group (who is not the real murderer) may volunteer and confess that he was the murderer. Therefore the confession for murder must be disregarded by the judge. It is reported that a man was accused of having stolen one thousand Dinars, which he promptly confessed. The investigating judge entertained doubts about the validity of the prompt confession. The judge asked both the claimant and the defendant to leave and come back the next day. When some of the jurists present asked the judge why he let the accused go after he had confessed, he replied that they would know the result the next day. The next day a man came and informed the judge that his son confessed he had stolen one thousand Dinars but the judge still had doubts. Later the boy's mother came and told the judge that she would pay the stolen money to save her son from confinement. Surely the boy's quick confession had given doubts to the judge that he was not the real thief but that he had acted to save someone dear to him.

These cases existed in Islamic jurisprudence even long before they were known in certain modern laws.

Sheikh Saleh Al-Laheidan

Praise be to God and peace be upon Mohammad, the noblest man created by God, and on his family and Companions and all those who followed his teachings. I would like to thank those who commented on my paper as regards the administration of light punishment to exact a confession leading to recover something, "Qasama", testimony of witnesses and the judge's attitude towards a confession about which he is not satisfied and the witness who goes back on his testimony. I shall explain the points raised by the commentators without mentioning their names.

As regards "Qasama", I stated that the practice existed, but I did not recommend it. I said that the matter was controversial although according to the Islamic law the murderer should be condemned to death. The Caliphs adopted it as in the case of Abu Qalaba. Abu Qalaba's opposition to Qasama cannot be taken as authoritative. However, as the matter is controversial I refrained from recommending it.

Some Muslim scholars maintained that a man cannot be condemned to death by "Qasama"; others held a contrary view. However, the practice is that if "Qasama" has all the prerequisites a murderer can be condemned to death according to Imam Ahmed. The Prophet said that the defendant was to take a solemn oath to defend his innocence. Muslim scholars, however, maintained that an oath should be taken by the contestant, whose legal position is stronger. With reference to Sheikh Attiya's statement I would like to point out that an oath is taken by the party whose legal evidence is not complete and an element of doubt exists on his side. He has to take the oath stating he is innocent or that his opponent is guilty.

If a written statement is made by the offender it is considered as a confession. If a man is persuaded to state the truth, his confession is considered valid and accepted. On the other hand if he is asked to state only part of a deed or a thing, his confession is turned down.

What difference does it make when a witness goes back on his testimony? Does it matter if a witness changes his testimony before or after an offender is convicted in crimes punishable by retaliation or offences involving property and other felonies?

Jurists maintain that if a person is beheaded as a result of a false testimony, the witness shall meet death in the same manner.

If a witness gives a testimony which causes an accused to be condemned to death and later confesses that he had made an error, he shall pay blood-money, for his deed is considered as manslaughter by error. In cases involving money and property, an erroneous testimony before a sentence is passed shall be exonerated. But after the court's sentence the witness shall pay a fine. Since the early days of Islam Muslim judges resorted to the tactics of impugning a testimony and cross-questioning witnesses if they had any doubts about the veracity of their testimonies, for witnesses may be giving testimonies to get personal gains, or trying to ward off some harm, or trying to defend people who are guilty of an offence.

The matter of exacting evidence comes within the scope of testimonies. A judge who may have doubts regarding the testimony of a witness has the right to ask him to give further details of his testimony. The amount of testimony and number of witnesses differ from one offence to another. I have already given a brief reference to this matter. Some crimes, such as sodomy and adultery, need at least four witnesses. Abu Hanifa asserted that for sodomy, unlike adultery, a "Ta'zir" (discretionary) punish-

ment is prescribed. The Imams of the other three schools (Hanbali, Shafi'i and Maliki) maintained that sodomy should be treated like adultery and its punishment be the same. Other scholars asserted that sodomy is worse than adultery and thus its punishment should be severer. The Companions of the Prophet disagreed on this matter. Some of them said that a sodomite should be hurled down from the highest site in the country as God did with the people of Lot when their country was completely devastated.

Other crimes, such as murder, need two "just" witnesses. I have no time to go into the details of the true conception of a "just" man. I would like to point out that its conception differs from one age to another. A "just" man at the time of the Prophet's Companions is not the same as today, for each age has its own particular conditions and circumstances. Many deeds which were considered offences in ancient times, are regarded today as accepted norms of life. Using the ancient criterion of a just man, his behaviour today would be unjust. Also the conception of a just person differs from one nation to another.

Regarding the torturing of an accused person I would like to clarify that also the conception of "torture" is not the same as today. Crimes today are dealt with by investigators and many are connected with the security of the state. In the past it conveyed the real Arabic definition which meant "any harm to man was a kind of torture". The Prophet referred even to journey as a sort of torture.

As Sheikh Rasheed has pointed out, I did not mean torture as known in this age. I intended the torture practised during the early days of Islam and stipulated by Islamic Sharia which came as a deliverance for humanity. If anybody was subjected to torture it was a mercy for him to protect him from harm and save him from the punishment in the hereafter. Furthermore, nobody could be tortured

except those against whom there existed a strong undeniable charge. If a person known to be a pious and peaceful man and not bent on harming anyone, was accused of murder or theft, the charge was disregarded. In this case, according to the view of the Maliki jurists, the claimant and not the defendant got tortured, for the claimant made a false accusation and defamed the defendant. Torture in the Islamic practice was not harsh. It was administered in a manner to achieve justice for those who deserve it. As I said only those against whom a strong charge is proved are tortured and in a way that they can stand it and that does not cause any physical damage to them. Also those who commit sins vis-à-vis God (not connected with human beings) are not subject to torture. As I have said before those who conceal such sins will be rewarded in the hereafter.

As regards the story of the offender inside the mosque who said to Omar that he had made a mistake, this has no reliable source, and is not used in any judicial cases. It was related only by some writers of novels.

It was important that witnesses be recommended, for only just and honest witnesses were accepted. Unknown witnesses had to have someone who could vouch that they were honest, trustworthy and performed their prayers regularly. If such qualities of the witness were unknown, the claimant was asked to furnish further evidence for his charges whether they be regarding offences against life, honour, property or other matters.

Muslim scholars differ in their view regarding hearsay evidence which is not based on the personal knowledge of the witness, for the true meaning of a testimony is what the witness personally saw with his own eyes. If a person says he saw a man murdering another, there is no book, consensus of opinion or analogy that can disprove his statement.

With regard to circumstantial evidence, it is reported that two men quarrelled at the time of the judges Elias Ibn Ma'wiya and Shuraih during the early period of Islam. One of the two contesters claimed that the other had taken his green and red velvet. One of the two judges (I do not recall which) ordered the hair of each man to be combed. He gave the red velvet to the one in whose hair red particles were found and gave the green to the person whose hair contained green particles. This is an example of circumstantial evidence. As I mentioned in my study there are innumerable examples of circumstantial evidences. There are other modern ways of evidences, such as finger-prints, foot-prints, blood groups and sperm analysis. These are strong evidences to prove "Ta'zir" crimes and crimes punishable by retaliation and crimes punishable by confinement.

As regards written statements and their validity as evidence I wonder what kind of a written statement the commentator had in mind. Did he mean written statements regarding payment of debts or a confession of an offence? The Quran and the Sunnah validate written statements for matters involving money. While modern laws recognize verbal confessions only for sums not exceeding a certain amount and any amount above that must be done in writing, for it is believed that a witness may forget the exact amount by the passing of time, Islamic law on the other hand, validates testimonies given by witnesses for any amount. Likewise, written statements are recognized in penal cases.

In Islamic law there is no time-limit for giving a testimony provided it is given without any distortions. It is reported that a man led another person to the Prophet saying that the other had murdered his brother. The murderer confessed that while they were gathering wood he got so furious with the man that he picked up his axe and hit him on the head. Thereupon the Prophet ordered that the

confessor be condemned to death. The Prophet accepted the accused's confession and delivered him to the claimant to take charge of the execution of his death.

In another story a Jew is reported to have murdered a slave-girl and when he confessed it he was ordered by the Prophet to be beheaded. Of course, a judge has to be careful to distinguish false statements from genuine confessions. For example if a man alleges that he murdered a person on a given date while that particular man had died in his bed of a disease before then, or if he alleges that he murdered a man who had been killed even before he was born, such cases are obviously to be rejected. I had already given a brief account of such confessions which are not true.

In the end I beseech God to lead all of us and the Muslim nation on the right path and help us to implement the Sharia in all walks of life. May God the Almighty make this symposium fruitful to all who seek the Truth! Peace be upon our Prophet Mohammad, his family and Companions.

Chairman

Due thanks to the Eminent Sheikh, the author of the paper. As the subject matter was very interesting we went beyond the scheduled time. I would like to remind you that our next meeting is tomorrow, God willing, at 8 a.m., and the title of the paper is: Influence of Faith on Crime Prevention which will last till 10 a.m. and then at 11 a.m. we shall be having another paper on the Effect of the Norm of doing a Good Turn and Prevention of Evil on Crime Prevention.

In the evening we shall listen to another study on the influence of Islamic Education on Crime Prevention. May God's peace and mercy be upon you all.

(The meeting was adjourned at 7.45 p.m.).

FOURTH SYMPOSIUM

FOURTH PAPER

EFFECT OF RELIGION AGAINST CRIME

by

HIS EMINENCE SHEIKH MANNA KHALIL AL-KATTAN

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2 OF 7

Effect of Religion against Crime

In the name of God, Praise be to God the Almighty and Peace be upon God's Messenger, Prophet Mohammad.

The discussion on the influence of worship on crime prevention requires an accurate definition of worship "Ibada", and its general concept in Islam and its influence on the behaviour of man.

Definition of worship

In Arabic "Ibada" (worship) denotes submissiveness and veneration tendered to the Divine Being. Worship comprises resignation, submissiveness and humbleness, all of which are closely related. The maximum degree of submissiveness is worship. Likewise, whole-hearted obedience to God mixed with resignation and humbleness is worship.

Worship is a lofty form of submissiveness worthy of a person with a gift of spiritual reasoning and insight. Al-Ragheb* in his book *Dharia* says that "Ubudiya" (slavery) is a manifestation of humbleness and "Ibada" (worship) is the ultimate and lofty degree of humbleness and God the Almighty is the only One worthy of being adored and worshipped.

There is a difference between "Ubudiya" (slavery) and "Ibada" (worship). While slavery means absolute resignation, worship implies a lofty kind of submissiveness that glorifies the Supreme Being through humble obedience

* Al-Ragheb Al-Isfahani was one of the Imams of the Sunnite sect. He died around 1108 A.D. (Translator's note).

and adoration. According to the book of Lisan Al-Arab * the original meaning of " Ubudiya " (slavery) was submissiveness and humbleness. According to Abu Hurira ** the Prophet said: " No one should call his servant a slave; only God hath the right to do so ".

Sheikh Al-Islam Ibn Taymiya *** in his treatise added another element to the definition of worship: love coupled with humbleness, obedience and submissiveness. The varying phases of love are: sympathy (which is an affinity between two persons), infatuation, falling in love and lastly enthrallment, which means to be held spellbound. So enthrallment actually means being enslaved to the adored person. Ibn Taymiya adds that worship requires two elements: submissiveness and true love. Verily only God is worthy of such submissiveness and love. So it follows that submissiveness without love is not worship; nor is love without submissiveness considered as worship. Love without submissiveness is like a person who loves his son or friend. God should be our ultimate object of love and submissiveness. Any love which is not divine is not true love and any veneration not directed to God is false. In this connection the Quran says:

*" Say: If it be your fathers,
Your sons, your brothers,
Your mates, or your kindred,
The wealth that ye have gained;
The commerce in which ye fear
A decline: or the dwellings*

* Lisan Al-Arab (Tongue of the Arabs) is a book of 20 volumes on Arabic philology compiled by Ibn Al-Mandhur who died in 1311 A.D. (Translator's note).

** Abu Harira was one of the Prophet's Companions. He died around 676 A.D. (Translator's note).

*** Ibn Taymiya (1263-1328) was a Hanbalite jurist. His full name is Takyaddin Ahmed Ibn Taymiya (Translator's note).

*In which ye delight —
Are dearer to you than God,
Or His Apostle, or the striving
In His cause; — then wait
Until God brings about
His Decision ".*

Chapter 9, verse 24.

In other words, if a man's heart clings to his kith and kin, wealth and prosperity, commerce, noble buildings and comfort and these are a hindrance in God's cause we must choose to love God even if it involves the sacrifice of all else.

Ibn Taymiya continues his discourse on the very nature of submissiveness and the commitments to the Sharia and obedience to God as a result of love and persuasion. Man must love what pleases God and detest what displeases Him. The Prophet's Tradition says: " He who loves and hates for the sake of God his faith is complete ". In the " Sahih " Tradition there are three elements to complete a man's faith: God and His Apostle are to be loved more than anyone else, man's love for another person should stem from his great love of God and that he should refrain from regressing to ignorance after having been delivered by God.*

The concept of worship in Islam

Worship in Islam embraces all aspects of the Muslim religion. As stated by Ibn Taymiya it means blindfold obedience, humbleness and pure love of God both explicitly and implicitly. This involves all walks of life in compliance with the Sharia and in pursuit of God's favour. On this

* Related by Al-Tabarani, one of the authors of Hadith Collections (Translator's note).

basis Ibn Taymiya defines worship as an act that comprehends all that pleases God in words or deeds whether expressed or concealed such as saying prayers regularly; giving charity "Zakat"; fasting; pilgrimage; telling the truth; fulfilment of trust; kindness to parents and relatives; keeping promises; doing a good turn and avoiding evil; conducting holy war against infidels and hypocrites; good treatment of one's neighbours, orphans, the poor, wayfarers and the possessions of others; praying, reciting the Quran and such like...

Worship includes also the love of God and His Apostle, fear of God, faithfulness to Islam, being patient with God's judgements, praising God for His blessings, having trust in God, having faith in His mercy and fear of His punishment. Thus worship, according to this concept, includes obedience to God and resignation to His Will in all matters of religion whether they are obligations or optional matters (Nawafel), and Muslim relationship with others during peace or war time. True worship consists in obeying God's commandments and prohibitions whether in belief, deeds or speech, and refraining from pursuing one's own instincts and caprices.

Worship is not just limited to the aforementioned commandments, such as saying prayers, giving charity, fasting, pilgrimage, recital of the Quran, etc., but has a much wider concept. A man may worship while carrying on his daily routine affairs if his intention is clean and lawful. A man who works for himself and his family in pursuit of a legitimate livelihood is considered a worshipper of God. It is narrated that a man passed briskly by the Prophet and his Companions. Some of them commented "O God's Apostle! Would it not have been better if this man's energy and zeal were for the cause of God"? The Prophet replied: "If he is using his energy in pursuit of a livelihood for his little children, his old parents or for himself then he is indeed

using his energy for the cause of God; but if he is just showing off and swaggering he will be satisfying the cause of Satan". It is also narrated that the Prophet said: "God will reward those who cultivate and thereby satisfy the hunger of birds, men and animals". According to God those who work in pursuit of a livelihood are not less than those who take up arms for the sake of God. The Quran says:

*"Others travelling through the land,
Seeking of God's bounty;
Yet others fighting
In God's cause".*

Chapter 73, verse 20.

Therefore worship in Islam involves all aspects of human activities and thus a Muslim's goal in life is obedience to God.

God says in the Quran:

*"I have only created
Jinns* and men, that
they may worship Me".*

Those who want human self to be freed from fetters and shackles and exclusively consecrate themselves to the adoration of God are actually following the example of other prophets. The Quran says:

*"O my people!
Worship God! ye have
No other God but Him".*

Chapter 7, verse 59.

* Jinns are invisible spirits (Translator's note).

All prophets sent by God before Prophet Mohammad called their people to devote themselves to the worshipping of One God. In the Quran we read the following:

*" For We assuredly sent
Amongst every People an apostle,
(With the Command), Serve
God, and eschew Evil "*

Chapter 16, verse 36.

*" Not an apostle did We
Send before thee without
This inspiration sent by Us
To him: that there is
No god but I; therefore
Worship and serve Me "*

Chapter 21, verse 35.

Muslim jurists classified the Sharia injunctions into religious obligations and relations with other men. This is merely a methodological division in order to distinguish between the two types of injunctions: one concerning religious obligations ordered and specified by God where no modifications can be introduced. The other type regulates the relationship between the people in their daily lives. Regulations of this type have been clearly spelled out by the Divine Lawmaker. These are adaptable to the changes of time. Both of these types are forms of worship. However, this classification, which is purely technical, has prompted many people to assume that worship is only the observation and practising of religious obligations to the exclusion of daily dealings with people. The truth is that both are but an integral part of worship which is not complete without total adherence to the Sharia.

Significance of the foregoing general concept of worship as regards crime prevention.

If worship in its general concept means all the commandments and prohibitions ordered by God, it follows that compliance with His commandments and prohibitions is imperative in order to fulfill the requirements of the Sharia. Islam prohibited all kinds of offences whether minor or serious. These prohibitions were expressed in various ways in the Quran and the Sunnah, sometimes implicitly and other times in detail.

Islam prohibited all kinds of mischief and shameful deeds whether concealed or open. The Quran says:

*" — come not
Nigh to shameful deeds,
Whether open or secret "*

Chapter 6, verse 151.

In another verse it says:

*" Say: The things that my Lord
Hath indeed forbidden are:
Shameful deeds, whether open
Or secret "*

Chapter 7, verse 33.

In order to protect society from mischief the following Quranic text was revealed giving stern warning against those who try to spread scandal and offence.

*" Those who love (to see)
Scandal published broadcast
Among the Believers, will have*

*A grievous Penalty in this life
And in the Hereafter: God
Knows, and ye know not".*

Chapter 24, verse 19.

The Quran prohibited the commission of sins, trespass, aggression and unlawful deeds. A sin is a deed which is prohibited by God; trespass is a violation of truth; aggression is a violation of justice in dealing with others; and an unlawful deed is an act disproved by law and reasoning. The Quran in this connection says:

*" Say: The things that my Lord
Hath indeed forbidden are:
Shameful deeds, whether open
Or secret, sins, trespasses
Against truth or reason ".*

Chapter 7, verse 33.

and

*" Those who earn sin
Will get due recompense
For their earnings ".*

Chapter 6, verse 120.

and

*" And He (God) forbids
All shameful deeds and injustice
And trespass ".*

Chapter 16, verse 90.

and

*" And do not transgress limits
For God loveth not transgressors ".*

Chapter 2, verse 190.

and

*" Help ye one another
In righteousness and piety
But help ye not one another
In sin and rancour ".*

Chapter 5, verse 3.

Islam opposed wrong-doing in all its forms and warned that it could lead to the decline and fall of societies which practise wrong-doing. Wrong-doing is violation of a law, command or duty. The jurist Al-Ragheb said that there are three kinds of wrong-doing:

first — wrong-doing against God, particularly denying His existence, belief in another partner with God and hypocrisy;

second — wrong-doing towards other people;

third — wrong-doing against oneself, and this comprises all other wrong-doings as well.

The Quran says:

*" Think not that God
Doth not heed the deeds
Of those who do wrong.
He but giveth them respite
Against a Day when
The eyes will fixedly stare
In horror ".*

Chapter 14, verse 42.

and

*" Generations before you
We destroyed when they
Did wrong ".*

Chapter 10, verse 13.

and

*" Such were the populations
We destroyed when they
Committed iniquities; but
We fixed an appointed time
For their destruction ".*

Chapter 18, verse 59.

and

*" And incline not to those
Who do wrong, or the Fire
Will seize you ".*

Chapter 11, verse 113.

Islam has sustained human rights and decreed punishments for those committing offences. These rights are known as the five indispensables, the preservation of which had been ordered by other divine religions. These are the preservation of religion, honour, life, property and intellect (reasoning).

The Quran says:

*" Nor take life — which God
Has made sacred — except
For just cause ".*

Chapter 17, verse 33.

and

*" If a man kills a Believer
Intentionally, his recompense
Is Hell, to abide therein
(For ever) ".*

Chapter 4, verse 93.

and

*" Nor come nigh to adultery:
For it is a shameful (deed)
And an evil, opening the road
(To other evils).*

Chapter 17, verse 32.

and

*" But God hath permitted trade
And forbidden usury ".*

Chapter 2, verse 275.

and

*" Those who devour usury
Will not stand except
As stands one whom
The Evil One by his touch
Hath driven to madness ".*

Chapter 2, verse 275.

and

*" And do not eat up
Your property among yourselves
For vanities ".*

Chapter 2, verse 188.

and

*" The woman and the man
Guilty of adultery or fornication,
Flog each of them
With a hundred stripes ".*

Chapter 24, verse 2.

and

*" And those who launch
A charge against a chaste woman,
And produce not four witnesses
(To support their allegations),
Flog them with eighty stripes ".*

Chapter 24, verse 4.

and

*" O ye who believe
The law of equality
Is prescribed to you
In cases of murder ".*

Chapter 2, verse 178.

and

*" In the Law of Equality
There is saving of Life
To you, O ye men of understanding ".*

Chapter 2, verse 179.

and

*" The punishment of those
Who wage war against God
And His Apostle, and strive
With might and main
For mischief through the land
Is: execution, or crucifixion,
Or the cutting off of hands
And feet from opposite sides,
Or exile from the land ".*

Chapter 5, verse 36.

and

*" O ye who believe
Intoxicants and gambling,
(Dedication of) stones
And (divination by) arrows
Are an abomination *
Of Satan's handiwork.
Eschew such (abomination) ".*

Chapter 5, verse 93.

and

*" As to the thief,
Male, or female,
Cut off his or her hands:
A punishment by way
Of example, from God,
For their crime ".*

Chapter 5, verse 41.

The Sunnah explains the aforementioned Quranic verses in more detail and elucidates the five major human rights which are protected by the Sharia; offences are prohibited to be committed either by speech or by deeds.

The following are some excerpts from the Sunnah reported to have been said by the Prophet:

" He who uses arms against us or cheats us is not one of us ".

* The stones referred to were altars on which oil was poured for consecration. Such idolatrous practices are condemned by Islam (Translator's note).

" Muslim " * narrated:

" Every wrong-doer shall be marked on the Day of Judgement and shall be announced: He committed an offence against so-and-so ".

" Eschew the seven deadly sins ". When the Prophet was asked what these seven sins were, he replied: " Belief in another partner with God, use of magic, taking life which God has made sacred except for just cause, taking usury, taking possession wrongfully of orphans' properties, deserting one's army on the day of advancing, and launching charges against chaste women ".

" The Prophet curses the usurer and his agent ".

" A true believer does not backbite, curse, practise lewdness or utter obscene words ". Tarmadhi narrated:

" An apostate deserves to be condemned to death ".

" Take it from me: an unmarried adulteress shall be flogged with one hundred stripes and banished for one year and a married adulteress shall be flogged with one hundred stripes and stoned to death ".

Said Ibn Yazid narrated that during the time of the Prophet, the reign of the Caliph Abu Bakr and the early period of Omar, a drunkard was beaten with bare hands, footwear and hard cloth. Later, in Omar's Caliphate, the drunkard was flogged with forty stripes, and if he continued drinking the punishment increased to flogging with eighty stripes.

It is also narrated that the Prophet said: " Anyone who unjustly takes possession of a piece of land shall bear the weight of seven earths ". And the Prophet said that a man who commits suicide shall be cast into Hell and stay there for ever. He who takes his own life with a rod of iron shall be tortured in Hell for ever with the same weapon.

It is incumbent upon Muslims to abide by the teach-

* Imam Muslim b. al-Hajjaj, the second most famous Hadith Collector. His Book Sahih is only second to Bukhan's Book.

ings and commandments prescribed in the Quran, the Sunnah and the Sharia in order to eradicate the roots of crime.

Significance of the Rites of Worship according to Muslim Jurists

The varying forms of worship whether saying prayers, giving alms, fasting or pilgrimage aim at giving man moral education in all walks of life in order to avoid falling into pitfalls and discouraging him from committing offences.

1) *Prayer*

It is a solemn and humble approach to Divinity in word or thought. Muslims say prayers five times a day so that they keep in constant touch with their Lord. They start their day with the dawn prayer by invoking God in varying positions of standing, kneeling, prostrating and sitting upright and thereby they purge themselves of any sins and offences they may have committed, and thereafter they start their daily worldly life after being armed with this spiritual sustenance. Then they say their noon prayer, followed by afternoon prayer, sunset prayer and finish the day with the nightfall prayer.

In the Quran we read about the effect of prayer on purifying the soul and keeping away shameful deeds in the following verse:

*" ... for Prayer
Restrains from shameful
And unjust deeds ".*

Chapter 29, verse 45.

The Prophet illustrated the effect of prayer in the following comparison: " Saying prayers five times a day is like having a stream near one's house where he can wash himself five times a day. As in the latter case no dirt stays on his body, so his soul would be purified of all unjust deeds ".

It is recommended that prayers be said at the mosque together with other Muslim brethren standing in one row behind an imam (religious leader). In the congregation Muslims socialize with each other and this adds a spirit of brotherhood to the religious value of the prayer, and hence creates an atmosphere of security and order. The fact that all Muslims are close to each other, pray together behind one imam (religious leader), reciting the same prayer, invoking One God and in the direction of one Qibla,* consolidates the unity of the Muslim nation. The Quran says in this connection:

*" The Believers are but
A single Brotherhood "*

Chapter 49, verse 10.

A Muslim who says his prayers five times a day is bound to be a good-hearted man of clean conscience who cares for others as he does for himself, who fears God openly and in secret, and therefore is not tempted to commit an offence which is detrimental to others and at the same time will send him to Hell.

2) " Zakat " (Alms)

Giving alms is a financial and social manner of worship, which purifies the soul from avidity and greed and the love of hoarding money for itself. The Quran says:

*" And those saved from
The covetousness of their own
Souls "*

Chapter 59, verse 9 and
Chapter 64, verse 16.

* Qibla is the direction of the Ka'aba shrine in Mecca toward which all Muslims turn in ritual prayer (Translator's note).

Many people commit offences against others out of greed and covetousness to take possession of their money or property. Giving alms to the needy and the poor tends to overcome these offences. A Muslim who gives charity to the needy would not be tempted to covet the property of others and envy will not devour his soul.

On the other hand, when the needy gets his portion of the wealth of the rich man he will not become envious or bear grudge against the rich, for charity quenches the venom of hatred and rancour by decreasing the gap between the " haves " and the " have-nots ". In this connection the Quran says:

*" Of their goods take alms,
That so thou mightest
Purify and sanctify them "*

Chapter 9, verse 103.

As previously stated, by narrowing the gap between the poor and the wealthy there will be no ground for hatred and rancour on the part of the poor; neither will there be any reason for class struggle. In the Quran we read the following:

*" Alms are for the poor
And the needy, and those
Employed to administer the (funds);
For those whose hearts
Have been (recently) reconciled
(To Truth); for those in bondage
And in debt; in the cause
Of God; and for the wayfarer;
(Thus is it) ordained by God,
And God is full of knowledge
And wisdom "*

Chapter 9, verse 60.

This financial right of the poor imposed on the rich generates a feeling of social equilibrium which is antithetic to aggression and committing crimes.

3) Fasting

Fasting for one month during Ramadan* has its educative effect on harnessing the whims of the flesh and keeping a check on offences. Crimes may be attributed to three factors: gastronomic impulses, libidinal urges and nervous drive and reaction. Fasting has a restraining effect on these impulses and drives.

God allowed man to eat and drink and enjoy the good things of life but without excess or extravagance. The Quran says:

*" — Eat and drink
But waste not by excess,
For God loveth not the wasters.
Say: who hath forbidden
The beautiful (gifts) of God,
Which He hath produced
For His servants;
And the things, clean and pure,
(Which He hath provided)
For sustenance?
Say: They are, in the life
Of this world, for those
Who believe, (and) purely
For them on the Day
Of Judgement "*

Chapter 7, verses 31 and 32.

* Ramadan is the ninth month of the Islamic year observed as sacred with daily fasting from dawn to sunset (Translator's note).

As a matter of habit one eats three times a day: at breakfast, lunch and dinner, and eat and drink whenever one feels hungry or thirsty.

During Ramadan a devout Muslim abstains from eating and drinking from dawn to sunset even if he feels the pangs of hunger and thirst and with delicious food and drink in front of him. If a man who is fasting can abstain from food and drink that are not in themselves unlawful, the more a person will know that he should not touch or take possession of other people's foodstuffs and goods.

Although sexual intercourse with one's wife is allowed in the Quran a fasting Muslim cannot touch his wife in Ramadan during the daytime. He may do so only from sunset till before dawn. The Quran on this matter says:

*" Marry women of your choice,
Two, or three, or four;
But if ye fear that ye shall not
Be able to deal justly (with them),
Then only one "*

Chapter 4, verse 3.

and

*" Your wives are
As a tilth unto you;
So approach your tilth
When or how ye will "*

Chapter 2, verse 223.

But during Ramadan a Muslim's sexual activity is limited to night-time as the following Quranic verse ordains:

*" Permitted to you,
On the night of the fasts,
Is the approach to your wives,*

*They are your garments
And ye are their garments,
God knoweth what ye
Used to do secretly among yourselves;
But He turned to you
And forgave you;
So now associate with them,
And seek what God
Hath ordained for you,
And eat and drink,
Until the white thread
Of dawn appear to you
Distinct from its black thread;
Then complete your fast
Till the night appears".*

Chapter 2, verse 187.

So the lesson that a Muslim should learn from this is that if he is ordained not to touch for one month of Ramadan, what is lawful otherwise, he should be trained not to be carried away by sexual and other unlawful impulses throughout the year.

The same principle applies to what a Muslim utters. A fasting Muslim restrains himself when he is tempted to curse and use obscene words. While the practice of cursing is prohibited this rule should be even more strictly adhered to during the month of Ramadan when the fasting Muslim abstains even from food and drink. In this connection the Prophet is reported to have said: "He who does not refrain from telling lies and falsities there is no reason for him to

abstain from eating and drinking". The Prophet has also said: "There are many fasting Muslims who, apart from hunger and thirst, do not understand the real significance of fasting". In the following verse the Quran has permitted a Muslim to repay an injury in the same manner:

*"The recompense for an injury
Is an injury equal thereto".*

Chapter 42, verse 40.

However, the fasting Muslim need not exchange injury with injury or retaliate accusations. Instead he should respond in a well-behaved and decent manner. The Prophet said: "The fasting man's recompense is paradise when he refrains from approaching his wife, using bad words or quarrelling with others". When a person resists the temptation for one month, to respond to an injury, such as anger, which is permitted by God, he will be trained to abstain from other kinds of aggression during the rest of the year. Thus fasting is considered an optimum way for the cultivation of man's will, restraining his whims and checking his instincts. Therefore it eliminates the causes of evil and crime.

4) Pilgrimage

This is both a physical and spiritual journey of a Muslim to the House of God (Ka'aba) where the devotee visits other sacred places such as Safa, Marwa and Arafa*. From

* Safa and Marwa are two rocky sites at Mecca which were sacred even before the advent of Islam, because Hagar, Ismael's mother, found water between these two sites. Arafa (or Arafat) is a hill near Mecca where pilgrims perform some rites on the penultimate day of their pilgrimage (Translator's note).

the outset of the pilgrimage Muslims become anxious to purify themselves from their sins and other offences. They shed their habitual clothes and instead wear a seamless garment reminding them of the day they were born naked, pure and innocent. At the same time they ponder over the inevitable end, sooner or later to come, and they wrap themselves in seamless winding sheets as used for the dead.

Then the pilgrims reaffirm their obedience to God and His Sharia and confirm their belief in One God who has no other partners and recite: " Here I am at Your service O Almighty God Who Hath no other partners, here I am at Your Service. Praise and Glory be to You Who Hath no other partners "

Pilgrimage is considered the most comprehensive form of worship, the significance of which is not grasped in detail although its rituals are very symbolic. The pilgrim moves around the Ka'aba which is the direction of all his prayers, and he sees other people of different races, colour, languages and nations doing likewise. They all form one circle whose end nobody knows. All this represents a union of hearts believing in One God and one Sharia. The circle moves between Safa and Marwa reviving the history of the Prophet Abraham and his son Ismael. Then the pilgrim stands on Mount Arafat in awe and submission with his hands raised towards heaven beseeching God's forgiveness and mercy. He then starts throwing stones as an expression of his abhorrence of Satan, the root of all offences. His presence on Mount Arafat and passage to Mozdalifa * and Mina ** is an image

* Mozdalifa is a location near Mecca between Mina and Arafat where pilgrims spend one night (Translator's note).

** Mina lies east of Mecca on the way to Arafat (Translator's note).

of the Day of Judgement when people are brought to book in the presence of God. In the Quran we read:

*" On the Day when every soul
Will be confronted
With all the good it has done,
And all the evil it has done,
It will wish there were
A great distance
Between it and its evil "*

Chapter 3, verse 30.

After this spiritual replenishment the pilgrim returns home with a clean soul and with a serious intention to turn over a new leaf, for the Prophet said: " He who performs pilgrimage and does not approach women (in an unlawful manner) and does not commit mischief shall be as pure as the day his mother delivered him " *.

Faith and its Influence on Crime Prevention

The foregoing forms of worship which help crime prevention are rooted in firm faith in God Who has ordained these religious rituals considered to be a base for human discipline and good behaviour. These rituals are intended to cultivate human conscience. One may ask why crimes are rampant even among the societies which believe in God and perform religious obligations. The reason is that such societies perform religious rituals just as a custom handed down

* Narrated by Bukhari, Ahmed and Nasai.

from their forefathers and those rituals are devoid of the real and true spirituality, whereas Islam instils in Muslims a deep sense of understanding and earnestness about God. It is this sense, and not mechanical religious rituals, that has an educative influence on man against crime.

Likewise, faith does not yield fruit unless it is imbibed with genuine belief in speech and deeds. The Quran refers to those who claim they are religious with their tongue but without any real zeal and religious feeling on their part, for we read the following in the Quran:

*" Of the people there are some who say:
We believe in God and the Last Day;
But they do not (really) believe.
Fain would they deceive
God and those who believe,
But they only deceive themselves,
And realize it not "*

Chapter 2, verses 8 and 9.

and

*" The Hypocrites — they think
They are over-reaching God
But He will over-reach them:
When they stand up to prayer,
They stand without earnestness;
To be seen of men,
But little do they hold
God in remembrance "*

Chapter 4, verse 142.

In the following verse the Quran refers to those who know the truth but their gross arrogance prevents them from submitting to it.

*" but some
Of them conceal the truth
Which they themselves know "*

Chapter 2, verse 146.

Genuine faith is reflected in man's speech and deeds; it is a profound belief, without any doubts, in God the Almighty, His Apostle and in the Hereafter. The Quran says:

*" Only those are Believers
Who have believed in God
And His Apostle, and have
Never since doubted, but
Have striven with their
Belongings and their persons
In the Cause of God;
Such are the sincere ones "*

Chapter 49, verse 15.

Indeed this kind of faith turns a man into a new person and moulds him into a person with unshakable conviction and who is submissive, of his own free will, to his Lord. The Quran says:

*" But no, by thy Lord,
They can have
No (real) Faith
Until they make thee judge*

*In all disputes between them,
And find in their souls
No resistance against
Thy decisions, but accept
Them with the fullest conviction".*

Chapter 4, verse 65.

Man has no option in his decision as regards the commands of God and His Apostle. The Quran says:

*" It is not fitting
For a Believer, man or woman,
When a matter has been decided
By God and His Apostle
To have any option
About their decision".*

Chapter 33, verse 36.

This kind of faith tends to cultivate manners and consolidate the principles of justice and equity, safeguard rights, eradicate causes of anarchy, mischief and evil, and unite the true believers with the bond of love and understanding. This great bond is greater than the bond of race, language, neighbourhood or common interests. People whose faith is strong enjoy greater order and stability than those whose faith is shaky.

It is true that man has achieved great material progress in all aspects of life, but at the same time the rate of crime and terrorism has increased to an unprecedented degree in the history of mankind. Although practical and theoretical sciences have made strides towards progress, yet this advancement has thus far failed to find a satisfactory solution to the problem of men's behaviour towards each other.

Extensive psychological studies that cover all stages of human evolution and man's psychological impulses (such as child psychology, adolescence psychology, educational psychology, and criminal psychology), and sociological studies that deal with the effects of environment, heritage, customs, family, village and town on man, and the legal studies in administration, organization, penalty, politics, government, domestic relations, civil affairs and international relations, yet all these studies have not achieved a successful solution as regards crime prevention and eradication of the roots of crime. On the contrary, the world statistics show the ever increasing number of offences. In some cases governments resorted to the use of harsh measures and severe punishments to control crimes. Although some governments, in their campaign against drugs, imposed heavy fines and life imprisonment, these punishments unfortunately did not adequately act as deterrents.

The fact that humanity, at the peak of its civilization, should be plagued with crimes and perversions should not be a matter of great surprise, for man, despite his great advancement, has not been able to penetrate the core of human conscience which is of paramount importance for the equilibrium of human nature, and to cultivate his love and appreciation for what is good, true and spiritually beautiful. Any reform which does not take this important issue into consideration will fail to achieve its target. Human science and philosophy cannot penetrate the conscience and make it respond to ethical values, in fact the most they can do is to put a check on the external side of human life by inflicting harsh punishments for those who divert from the right path. Man has another life that is concealed and which controls his behaviour. Within this second part, which no other man can penetrate, the powers of good and evil struggle and the winner subdues man to its power. Which human power can control this concealed and secret conscience?

Since by nature man dislikes submission to another man for he believes all men are alike, how can he then abide by the laws made by a man like himself?

He may abide by positive laws in order to avoid worldly punishment. In the absence of strict implementation of the laws man may ignore them and try to violate them. The judicial authority has no way of knowing about hidden crime, and as the worldly authority does not extend to the life after death the potential offender does not care much for these authorities. This is where the positive laws and human systems fail in controlling man's behaviour.

On the other hand the Islamic Sharia receives its authority from God Who created human beings and who is the possessor of greater knowledge. Divine laws depend on human conscience, and Islam preaches the cultivation of human conscience. In the Hadith the Prophet said: " You must believe in God, His Angels, His Books, His Messengers, the Last Day and the Destiny whether good or evil ".

Obedience to the Divine Legislation is not confined to appearances and fear of worldly punishments. The potential offender is afraid of punishment in the Hereafter.

God created man from clay and his offspring from his semen. God knows the origin of man's creation and those who are possessed with piety or ingratitude. The Quran says:

*" — God knows
You well when He brings
You out of the earth,
And when you are hidden
In your mothers' wombs
Therefore justify not yourselves:
He knows best who it is
That guards against evil ".*

Chapter 53, verse 32:

It is unthinkable that God does not know the invisible minute details of His creations. The Quran says:

*" Should He not know
He that created?
And He is the One
That understands the finest
Mysteries (and) is
Well-acquainted (with them) ".*

Chapter 67, verse 14.

God is equally aware of what we conceal and what we reveal, for the Quran says:

*" He knows what is
In the heavens
And on earth;
And He knows what
Ye conceal and what
Ye reveal: yea, God
Knows well the (secrets)
Of (all) hearts ".*

Chapter 64, verse 4.

Those who commit offences in secret without being caught shall not escape God's punishment. The Quran says:

*" Seest thou not that
God doth know (all) that is
In the heavens and
On earth? There is not*

*A secret consultation
Between three, but He
Makes the fourth among them, —
Nor between five but
He makes the sixth, —
Nor between fewer or more
But He is in their midst,
Wheresoever they be:
In the end will He
Tell them the truth
Of their conduct, on the Day
Of Judgement. For God
Has full knowledge
Of all things ”.*

Chapter 58, verse 7.

Also God is aware of the dark suggestions that assail man in secret, for the Quran says:

*“ It was We Who
Created man, and We know
What dark suggestions his soul
Makes to him: for We
Are nearer to him
Than (his) jugular vein. ”*

Chapter 50, verse 16.

Man's deeds, whether small or great, are recorded in God's Book. The Quran says in this connection:

*“ All that they do
Is noted in (their)*

*Books (of Deeds):
Every matter, small and great,
Is on record ”.*

Chapter 54, verses 52 and 53.

Pious men are noted for their devotion to God. The Quran says in this connection:

*“ Who feared (God)
Most Gracious unseen,
And brought a heart
Turned in devotion (to Him) ”.*

Chapter 50, verse 33.

Divine control is most pronounced when a Muslim sees what is locked up in his own breast scattered and manifested on the Day of Judgement as a testimony for or against him. The Quran says:

*“ Does he not know,
When that which is
In the graves is
Scattered abroad
And that which is
(Locked up) in (human) breasts
Is made manifest —
That their Lord had been
Well-acquainted with them,
(Even to) that Day? ”*

Chapter 100, verses 9, 10 and 11.

Thus in Islam the retribution in the Hereafter is associated with the worldly punishment. So even if one escapes punishment in this life, he will receive it in the Hereafter.

As regards taking another man's life the Quran says:

*" If a man kills a Believer
Intentionally, his recompense
Is Hell, to abide therein
(For ever): and the wrath
And the curse of God
Are upon him, and
A dreadful penalty
Is prepared for him ".*

Chapter 4, verse 93.

As regards those who wage war against God the Quran says:

*" The punishment of those
Who wage war against God
And His Apostle, and strive
With might and main
For mischief through the land
Is: execution, or crucifixion,
Or cutting off of hands
And feet from opposite sides,
Or exile from the land:
That is their disgrace
In this world, and
A heavy punishment is theirs
In the Hereafter;
Except for those who repent*

*Before they fall
Into your power:
In that case, know
That God is Oft-forgiving,
Most Merciful ".*

Chapter 5, verses 36 and 37.

As regards the crime of theft the Quran says:

*" As to the thief,
Male or female,
Cut off his or her hands;
A punishment by way
Of example, from God,
For their crime:
And God is exalted in Power.
But if the thief repents
After his crime,
And amends his conduct,
God turneth to him
In forgiveness; for God
Is Oft-forgiving, Most Merciful ".*

Chapter 5, verses 41 and 42.

On the use of usury the Quran says:

*" Those who devour usury
Will not stand except
As stands one whom
The Evil One by his touch*

*Hath driven to madness.
That is because they say:
Trade is like usury,
But God hath permitted trade
And forbidden usury.
Those who after receiving
Direction from their Lord
Desist shall be pardoned
For the past; their case
Is for God (to judge);
But those who repeat
(The offence) are Companions
Of the Fire: they will
Abide therein (for ever) ”.*

Chapter 1, verse 275.

On desertion of the Holy War the Quran says:

*“ If any do turn his back
To them on such a day —
Unless it be in a stratagem
Of war, or to retreat
To a troop (of his own) —
He draws on himself
The wrath of God,
And his abode is Hell, —
And evil refuge (indeed) ”.*

Chapter 8, verse 16.

Although positive laws have classified crimes and prescribed punishments for each of them, these laws (which are not divine) lack the force of restraining potential offenders from attempting to commit an offence in the absence of watchmen or those pertaining to judicial authorities.

On the other hand the Islamic Sharia, through its influence on the human conscience, has the power to eradicate the evil before it prompts man to commit crime. The power of conscience is much stronger than any other external force. On the definition of crime the Prophet is reported to have said: “ Crime is hatched in one’s breast and the potential offender loathes to reveal it ”.

The Sharia, through its penetration in the conscience of the believer, purifies him from the roots of evil. The offender, even if not seen by anyone, insists on confessing to get God’s judgement in order to be absolved from the offence he committed. The woman who repeatedly came to the Prophet to confess her adultery (the Ghamidiya) is a case in point. Her punishment was delayed until she gave birth to a child and then she went to the Prophet with her baby who had a piece of bread in his hand. Then the Prophet ordered Khalid Ibn Walid to stone the adulteress. When her blood touched Khalid’s face he cursed the woman. On hearing this the Prophet said: “ Hold your tongue, O Khalid, I swear by the Lord that she has repented so truly that had the worst offender repented like her God would have pardoned him ”. Then the Prophet said a prayer on her before burying her. Omran Ibn Husein narrates that Omar is reported to have questioned the Prophet as to why he prayed on an adulteress. The Prophet replied: “ Her repentance is so true that if it were divided over seventy sinners of the town of Medina God would forgive them. Is there a more virtuous person who confesses of her own will and offers her life to God? ”. Also “ Ma’iz ” had to confess four times before the Prophet consented to have him stoned. The

Prophet for the first three times avoided him in order to save him the "Hadd" punishment, but "Ma'iz's" conscience insisted that he should be purified of the crime of adultery.

Islam insists on the importance of human conscience for the prevention of crimes. The judge does not know the internal conscience of the contestors; he usually judges according to external evidence only. In passing judgement the judge does not give a legal verdict on the legality or illegality of a case. Surely offenders endowed with eloquence and forceful logic may be able to conceal the truth and get away with their offences. Those who adopt this manner shall be punished on the Day of Judgement by the Lord of the Worlds. It is reported that the Prophet once heard some arguers outside his door so he went out to tell them that he was only a human mortal and therefore could be persuaded by the eloquence of someone concealing the truth. If he judges in favour of an offender then he shall receive a piece of hell. Therefore he can take his judgement or reject it. This is Islam's way of controlling crime. Is there any other manner that could reach sublimity as in Islam?

Gentlemen! Without faith no society can achieve happiness, and faith exists only in the conscience of man, and only Islam can revive human conscience.

I believe it is time that those societies which deviated from the right path and alienated themselves from the Quran and the Sunnah should turn to their Lord and come back to the fold of the Sharia. To conclude I will recite the following Quranic verse:

*" And this (He commands):
Judge thou between them
By what God hath revealed,
And follow not their vain
Desires, but beware of them*

*Lest they beguile thee
From any of that (teaching)
Which God hath sent down
To thee. And if they turn
Away, be assured that
For some of their crimes
It is God's purpose to punish
Them. And truly most men
Are rebellious.
Do they then seek after
A judgement of (the Days
Of) Ignorance? But who,
For a people whose faith
Is assured, can give
Better judgement than God?*

Chapter 5, verses 52 and 53.

His Eminence Sheikh Mohammad Al-Sabbagh

Praise to be God. We thank God and beseech His help and support. We seek refuge with God to protect us from our evil thoughts and deeds. He whom God guides cannot go astray.

I thank the author for his valuable paper which he presented in a marvellous manner. May God reward him.

I start my comment with a word on faith and its significance, for worship is part and parcel of it. Worship and faith are closely linked with each other.

Faith in God, in His existence and His Omnipresence and Ubiquity and His severe and prompt punishment certainly discourages a potential offender from committing an offence. The Prophet explained this in a better way by saying that no man who has firm faith in God's absolute

power to know and see even the most hidden matters, can commit adultery, steal, take intoxicants or commit other sins. Who dares to disobey the Omnipotent God when one is convinced that He controls and sees everything? We do not dare to violate a simple traffic regulation when we are face to face with a policeman let alone disobeying the Lord of the Worlds Who is constantly watching us?

It is said that a pious man succeeded in awakening the conscience of a man who was indifferent with the result that the indifferent man was reformed. The pious man said to him that if he wanted to disobey God he should not eat God's provisions, should not abide on God's land, should not be seen by God when he commits an offence and when death approaches he should ask it to come later until he has had time to repent, and after death when he is ordered to go to Hell he should decline to do so. This was enough to awaken the conscience of the indifferent man, for he knew that he could not eat or live without God's help. Neither could he be unseen, or delay death or decline to go to Hell afterwards. This made him overcome any thought of disobedience and he became a good man. Indeed faith in the Last Day, God's Scripts, His Apostles, Angels and Fate are the greatest deterrents against crime. The commandments and prohibitions of the Sharia were revealed only when the people's faith was well prepared. Bukhari narrates that Aisha * is reported to have said that the first Quranic verses revealed to the Prophet were concerned with Paradise and Hell. When people embraced Islam lawful and unlawful issues were delineated. If the verses dealing with prohibitions had come first people would have said that they would never give up consumption of alcohol. According to the Sunnah, later on Muslims spilled wine when the verse pro-

* Aisha (603-698) was the daughter of Abu Bakr, the first Caliph, and wife of Prophet Mohammad. She and other wives of the Prophet were known as "Um Al-Muamanin" (Mother of the Believers) (Translator's note).

hibiting it was revealed and they said that they would never touch a drop of wine again.

On the other hand an advanced country, such as the United States of America, also attempted the prohibition of intoxicants with all the means at the disposition of the Government (magazines, newspapers, lectures, illustrations and the cinema) demonstrating the harm and evil caused by the use of alcohol. Although the American Government spent \$60 million on the anti-alcohol campaign for the publication of propaganda material amounting to about 10 billion pages, and spent \$250 million for the implementation of the Alcohol Prohibition Law for 14 years, and 300 people were sentenced to death and 532, 335 were sentenced to imprisonment, and the fines levied amounted to \$16 million, and the amount of intoxicants confiscated amounted to \$404 million, yet the prohibition made the people more obstinate and keener on the use of intoxicants. Finally the Government had no alternative but to abolish the Prohibition Law in 1933 and to make alcohol consumption legal.

Taking intoxicants is a symptom of psychological frustration and lack of faith; it is a form of recklessness and apathy. There are hardly any vices where genuine faith in religion prevails. Therefore judges in the early period of Islam rarely encountered offences.

Gentlemen! I believe it is pertinent to relate to you the Hadith already mentioned by the author.

According to the narrators Imam Ahmed and Abu Dawood two contestants went to the Prophet to settle a matter of inheritance between them although neither of them possessed any evidence. The Prophet said to them: "Do not forget that I am a mortal like you, and therefore I am bound to be influenced by the more persuasive eloquence and I shall judge accordingly. If I act on this basis I shall be offering a piece of hell to the person who succeeds in talking me into giving him the right to possess the inheritance".

Upon hearing this, each one claimed that the inheritance belonged to the other.

The Prophet then said: " You may go and divide the inheritance equally between yourselves and make the choice by drawing lots to take the portion that goes to the other ".

This story has demonstrated that belief in the Last Day and fear of Hell led the two contestants to be tolerant with each other.

I would like to dwell a little on Ibn Taymiya's superb definition of worship, i.e. absolute submissiveness plus unflinching love. This in fact is the true meaning of worship in the Arabic language. So it follows that love without submissiveness, or the reverse, is not worship. This definition includes the commandments and prohibitions which constitute an important aspect of the Sharia which is " to do a good turn and eschew mischief ".

Man's submissiveness to God together with love are important factors in crime prevention. The Prophet compared society to a ship and the offenders are those who damage it and therefore it is incumbent on every passenger to prevent such damage.

As already mentioned prayer is a bond between the Lord and man. Prayer restrains man from shameful and unjust deeds. A man who often hears Quranic verses cannot stay uninfluenced. It is said that once a man had premeditated the murder of a relative but when he went to the mosque to say his dawn-time prayers he heard the Imam reciting the Quranic verse:

*" If a man kills a Believer
Intentionally, his recompense
Is Hell to abide therein
For ever ".*

This verse made the man change his mind and he did not commit the planned murder.

Likewise, fasting trains a man to be patient and strong-willed and this restrains his anger. Forgiving the offences of others is one of the greatest elements against committing crime. Worship teaches man to acquire a clean and sublime behaviour. Habits have a lot to do with a man's behaviour. If he is brought up in an honest and clean atmosphere it would not be easy for him to abandon it and commit offences and mischief. It is said that " there is no knowledge without learning nor clemency without magnanimity ". The probabilities of mischief and crimes decrease in a society which is greatly influenced by faith in God and religion and by the Sharia doctrine " to enjoin what is good and refrain from evil deeds ".

If after all this a man still commits an offence the Sharia gives the offender a further chance and hope through repentance. Repentance, indeed, is a sublime way to rehabilitate an offender to a decent and respectable life. Crime, in Islam, is not a thing that sticks to a person for ever. With the exception of the belief of joining other gods with Allah, there is no offence that cannot be pardoned. The Quran says:

*" God forgiveth not
The sin of joining other gods
With Him; but He forgiveth
Whom He pleaseth other sins
Than this ".*

Chapter 4, verse 116.

and

*" Say: O my servants who
Have transgressed against their souls.
Despair not of the Mercy
Of God for God forgives
All sins ".*

Chapter 39, verse 53.

The Prophet is reported to have said: " A person who had killed ninety-nine people consulted a pious man who, unfortunately, told the murderer that he was beyond the stage of repentance and so the murderer in despair killed him, thus the number of the victims reached one hundred. But the thought of repentance kept recurring. At last when he met another man with more knowledge of the Sharia and it was confirmed that his repentance could be accepted by God he was relieved and ceased to be a murderer. Criminals and other offenders do not form, in the eye of Islam, a separate caste, the door of repentance is always open for them, and they can always join the society of good people who frown on mischief and transgression. Repentants are welcomed by God, for the Quran says:

*" For God loves those
Who turn to Him constantly
And He loves those
Who keep themselves pure and clean " .*

Chapter 2, verse 222.

Gentlemen! The foregoing deterrent measures of faith and worship can be efficient for people of higher intellectual level. Punishments are inflicted on the offenders who do not seem to heed the injunctions of the Sharia. If offenders continue to commit crimes then punishment is recommended instead of forgiveness. An offender does not deserve compassion if he is indifferent to exhortation and advice. As a man accepts willingly to have a diseased part of his body amputated in order to save his life so it is the case with an offender who should be punished to protect society from further crimes. In retaliation punishment there is life for the whole of society. Faith and worship tend to eradicate the roots of crime.

Gentlemen! Through educational curricula and mass media, such as the press, radio, television and the cinema, we have to intensify and deepen in our society the significance of faith in God. By furthering the meaning of faith in God and belief in the Last Day it is hoped that we may revive the early days of Islam when offences were very rare. Through educational curricula and mass media the significance of worship in one's behaviour can be deepened and thus society can be shielded from the causes of crime.

Sheikh Mohammad Al-Ghazali

From what we have been listening to about faith it is not just an abstract intellectual or sentimental concept. It is a deterrent element against offences and a force that keeps man away from crime. Faith is not merely a passive silent concept in the conscience but is a dynamic power in society against evil. When the interpreters of the Quran tried to explain the Quranic verse " O ye who have faith " they had the above meaning in their mind. This Quranic verse was followed by commandments and prohibitions. This means that faith has an active force and it has its prerequisites of perfection.

In the Prophet's Hadith we come across the following statements:

" He who believes in God and the Last Day shall honour his guest. He who believes in God and the Last Day shall honour his neighbour and he who believes in God and the Last Day shall speak well of others or keep quiet " .

This illustrates that faith is not a treasure hidden somewhere without benefitting anybody but that on the contrary it is full of force, wealth and fertility for the good of everybody. Prophet Mohammad said that faith is a restraint against aggressiveness. A man may be provoked by his own force or by an opponent and tempted to beat him with all his

strength, but then he feels an invisible force restraining and curbing him. As faith restrains aggressiveness so a faithful believer refrains from attacking like a wild beast. What the author and the commentator tried to elucidate is that faith is not transmitted to us without consciousness, but it is rather an ability perfected by continuous training, consciousness and insight.

I reaffirm the point made by some speakers that worship is submissiveness combined with love and reverence. I would like to stress this definition because some orientalist have hinted with some malice that in Islam the relation between the believers and their Lord is that of submissive degradation towards a mysterious tyrant, whereas Christianity, they say, is based on love, sacrifice and generosity, etc. But in Islam, as Ibn Taymiya has described, worship consists of love and submissiveness. A man may show submissiveness to somebody whom he detests. The people of a country may hate their ruler but they show submissiveness towards him for the authority he wields. This kind of submissiveness has no relationship with worship because worship implies submissiveness to the person one adores and love in turn leads to submissiveness. This is expressed by an Arab poet in the following lines:

*"Thou inspire me with awe
With thy majestic influence
Though thou hast no power over
Me still I am spellbound by thee".*

It is this wonderful combination of sublime love and submissiveness that worship in Islam is based upon. The Quranic verse "O ye who have faith in me" does not imply degrading and blind submissiveness but a feeling of trust. By loving God in the true sense one tries to do what pleases Him and avoid what displeases Him. Thus wherever a faith-

ful worshipper may go, eastwards or westwards, he will find a place to worship God and show his obedience to Him and thus eschew mischief and evil.

One of the mistakes of the Muslims is that they attach special importance to the religious rituals (prayers, fasting, pilgrimage) and place less emphasis on the relationship between men and their relationship with the universe. This relationship should be made more evident so that worship becomes perfect in every sense of the word.

All religious rituals support ethical values of nobility and equality that tend to thwart crime in society.

The advantages of the five religious rituals are:

Faith: is a force against atheism and moral decadence.

Prayer: is a force against shameful and unjust deeds.

Fasting: has the purpose of training people not to tell falsehoods.

Charity (Zakat): trains believers to avoid being greedy and lovers of hoarding money.

Pilgrimage: keeps people away from gossiping and promiscuity and trains people to lead a life of rectitude.

Faith, unlike legal verdicts, either approves all or rejects a behaviour altogether. This means that Islam, unlike positive laws, has given clear and unambiguous judgements on offences. For example, intoxicants in the eye of Islam are prohibited whether a man gets drunk or stays sober. Islam prohibits the cause of drunkenness whereas positive laws regard drunkenness as a crime but not the intoxicants. In many societies drinks consumed at home and not disturbing others are not prohibited. The same applies to sexual matters. In some Muslim countries (excluding Saudi Arabia) alien laws are implemented as regards adultery which is

considered an offence if committed against one's will but adultery or fornication between willing couples is not an offence.

The difference lies in the concept of faith and worship between Islam and other positive laws which try to improve the bad concept of an offence or vice versa. There is a further difference between the Sharia and positive laws in the following example: if a burglar stops breaking into a house because of the presence of a policeman there that man, according to the law is not considered a criminal, and most likely he will not be convicted. On the other hand, Islam not only prohibits the crime itself but also the secret intention to commit it. According to the Hadith both the person who takes a life and his victim shall go to hell, if both had their swords with them, because even the victim would have been a murderer if he had had the chance.

So according to the Islamic concept of worship a secret intention to commit an offence is a crime.

It is narrated that a certain person was well spoken of although he had committed adultery. The reason is that after having committed the offence he felt he could not live amongst people and he preferred death to a life with shame. Now this man is well spoken of because the crime committed was not part of him.

We Muslims decline to admit that the crime rate has decreased due to our prescribed legislation "Hudoud" and retaliation punishments. The number of laws enacted against crime does not imply that a society is prosperous. On the contrary, perhaps a limited number of legislations in a society is a proof of its greatness.

The first and last proofs of the greatness of a society is the prayer niche "Mihrab", conscience and faith in God. It is a man's conscience that prompts him to commit an offence or prevents him from doing so. Verily it is this *faith*

which builds societies and protects them from crimes, anarchy and perversion. Now we must plan our educational curricula, broadcasting and other programmes in such a way as to instill the concept and importance of faith in the minds of the people.

His Eminence Sheikh Shazly Burquiba

Although I had a lengthy speech in mind but due to the little time left I want to confine it to two proposals only.

The first proposal emerges from today's subject. My due appreciation and admiration to the author for his valuable paper and to the commentators. As for the first proposal, although the two commentators have already preceded me I see no reason why I should not reiterate it as it deals with the effect of faith and worship on crime prevention. I believe that in order to render the work of the symposium more practical it should end with recommendations that the Muslim governments represented in this symposium (apart from Saudi Arabia which has already done so) should commit themselves to undertake the enactment of such laws that would reinforce the Islamic faith amongst their people and make the teaching of the Islamic religion compulsory in all stages of education, i.e. elementary, secondary and higher schools, as well as being publicized in all popular gatherings, for God uses His authority as a means of restraint for what He does not restrain through the Quran. It is not enough to take the significance and effect of the religion for granted but efforts should also be made to deepen its teachings to secure the desired effects, which are the scope of this symposium and Islam in general.

The other proposal is the formation of committees at the level of the Arab League and that of the Muslim World League to undertake the collection of our judicial heritage

in abridged forms, and retain valuable encyclopedias for researchers and scholars.

Our glorious heritage, which is our source of pride, is threatened to be forgotten and lost because it is scattered in volumes without order and thus the younger generation is unable to benefit from it, especially as the educational curricula are so crammed with the teaching of languages and other difficult subjects. The younger generation are so dazzled by the western culture that they have no time for the original Islamic and Arabic cultures; they foolishly are under the impression that all sound theories are derived from the West and this has created a sort of inferiority complex towards the westerners. I would like to narrate two examples which are both shameful and ridiculous.

I read a book by a Muslim Arab author on civil law. In his reference to the principle of acquisitive and extinctive prescription he alleged that the Islamic Sharia did not recognize the prescriptive right. Apparently this Arab author had never read the Muslim jurists' researches on acquisition. This reminds me of another author who claimed that the rule of exempting merchants from putting their transactions in writing (which exists in the commercial law) was first prescribed by a German man of law in the 18th century, whereas Islam preceded the German professor by twelve centuries on this matter. Apparently the author was not familiar with the following Quranic verse:

*" O ye who believe
When ye deal with each other,
In transactions involving
Future obligations
In a fixed period of time
Reduce them to writing".*

Until it says:

*" But if it be a transaction
Which ye carry out
On the spot among yourselves,
There is no blame on you
If ye reduce it not
To writing".*

Chapter 2, verse 282.

There are many such cases which show a lack of link between us and our glorious Islamic legal heritage.

Sheikh Attiya Mohammad Salem

Praise be to God and peace be upon the Prophet, his family and Companions. Like others, I also express my thanks to the author and the two commentators. There is a point made by the speaker concerning the religious duties of worship with special emphasis on faith. It seems to me that in dealing with pilgrimage he was rather brief either because of time limitation or because pilgrimage in general does not need further elaboration. However, I would like to point out that there are certain aspects of pilgrimage directly related to crime prevention. Money used for the performance of pilgrimage must come from a lawful source and earned by honest means. The Prophet said that only the pilgrim whose money comes from honest sources, can receive God's blessing. The purpose behind this is to put a restraint on acquiring money by foul and dishonest means.

The second aspect of pilgrimage is the prohibition of sexual intercourse during a fixed period. The duration of this prohibition is equivalent to that of the fasting period of Ramadan. This fixed period is fifteen days because the

Prophet left Medina for seven days, spent four days in Mecca, one day on Mount Arafat and with the three days of the feast the number of the days total fifteen, equivalent to the days of Ramadan in a month of thirty days and nights. The idea behind imposing restraint on sexual urges during the pilgrimage is to train pilgrims against sexual offences.

The third aspect concerns the prohibition of hunting during the period of pilgrimage. The idea is that if killing animals (which are usually permitted for hunting) is prohibited during a short period, the pilgrim should be mentally trained not to contemplate taking the life of his fellow-men during the rest of the year.

In his farewell speech the Prophet made the following statement which must be a reminder to every pilgrim: " You should realize that your lives, properties and honour are as sacred as this day, this month and this abode ".

No other prohibition was stressed three times as this one. The pilgrim initiates his pilgrimage by abstaining from the crime of illegally acquired money, and then completes his pilgrimage by abstaining from sexual intercourse and blood shedding. The other point concerns crime prevention, prior to its commission, with the aid of faith. Sheikh Al-Sabbagh, in this connection, referred to this matter by quoting the Hadith: " No believer with faith can commit adultery, etc. ... ".

It is narrated that three people were trapped in a cave. A young man among them started speaking of his love for his cousin. Later when he approached her she told him that he should fear God and not touch her before they were legally united. The young man left her quietly.

I imagine it is difficult to feature in adequate words the psychological condition relevant to this incident. It is the power of faith that compelled the young man to leave the girl intact although he passionately loved her; it was not the fear of law, society or any other considerations. It was just mere faith that restrained him from committing adultery.

Professor Lode Van Ostrive

I would like to express my thanks to the Saudi authorities for having organized this symposium and for inviting me from Belgium to discuss matters regarding crime prevention and criminal laws. It is important for us to attend this great symposium in a country where spiritual values play a fundamental role in society and in the implementation of penalties and the ethics of justice. Now I would like to ask the author of the paper a question. He said that, apart from Saudi Arabia, the crime rate in the world is continuously increasing despite the modern measures that are employed to control it. The author added that crimes have increased because both faith and love are on the wane. Now the question is: what causes faith to fade and wither? Are the causes economic and social or are there other causes? Do people find it difficult to adjust themselves to the rapid changes occurring in the world? The speaker referred to the problem of importing alien habits and values. My question is: what are the causes of the weakness of faith and love which is the main reason for increasing crime?

Dr. Jamal Al-Din Mahmoud

In the name of God and peace be upon God's Messenger.

Due thanks to the author for his valuable paper and the conclusions he reached in a brief statement, i.e. the close bond between Islamic penal legislations and faith in God and that worship is the greatest motive for abiding by this legislation. This clear case, which Islam presents in a plain manner, is not only a theoretical matter or a case that concerns Islam alone, but it has been one of the thorniest problems baffling positive laws. For a long time jurists of positive laws have been trying to find a justification requiring people to submit themselves to human laws and subjecting them to obey laws enacted by their rulers. Some scholars,

including the French jurist, Maurice Horio, asserted that consent is the basis of submissiveness, but other jurists disagreed with him contending that while consent may guarantee the continuity of submissiveness, it does not essentially create it.

Others, such as Harold Laski, argue that the basis of submissiveness is the conviction of the people that the authorities try to take care of their interests. However, others contend (as Sheikh Mohammad Al-Ghazali has pointed out) that the people's conviction may change into a belief that their authorities are corrupt while the condition of submissiveness continues.

The third part reflecting the logic of Islam maintains that man does not submit voluntarily to somebody's will unless it represents a divine source. Islam decrees that abiding by the Sharia means faith in God which is the source of all worship. A Muslim accepts this submissiveness willingly and regards it as a source of pride and superiority in front of other non-Muslims, for he is subject to no-one except God. This voluntary submissiveness arises from consent, happiness and a sense of pride. It is this feeling that transformed the converted Muslims during the time of the Prophet into people ready to stop drinking wine and other vices merely by being ordered to do so, bearing in mind that these same people previously committed offences at the least provocation or sexual impulses. The stories of Maiz and Ghamidiya are good examples of sinful people ready to confess and meet punishment of their own accord. Equally illustrative is the story of a certain Abu Dharr who lost his temper with one of the Prophet's Companions. When the Prophet reprimanded him, he put his cheek on the ground asking the Companion to absolve him from his sin. There are many other examples which are indicative of the aloftness of the Islamic logic that submissiveness must be shown only to God. The fact that the Islamic penal code

is based on this submissiveness represents a source of pride for the Muslim and constitutes the first cornerstone against crime.

Sayyed Salem Al-Hasewani

Due thanks to the author of the paper for his contribution and his emphasis on faith and worship as a spiritual bond between God and man. This bond prepares man spiritually, makes him more refined and protects him from crime. As Islam is a complete religion and characterized by social justice, indiscrimination and providing equal opportunities for everyone, a Muslim does not think of committing an offence since everyone enjoys justice and equality.

The author referred to giving charity "Zakat" as a religious duty. In my view it is more than that. It has its social importance in Islam.

As the theme of the subject is the effect of faith and worship on crime prevention, some forms of worships, such as charity, have significant consequences and impacts on Muslim society, for it is considered a sort of financial religious duty. As today we shall be discussing the effect of the doctrine of enjoining what is right and forbidding what is wrong and the influence of Islamic education on crime prevention, I believe that Islam as a social and economic order illustrates to us the significance of this order on crime prevention. I daresay most of the offences in the world today may be attributed to the feeling of deprivation, poverty and oppression which in turn lead to psychological disorders. I am sure the implementation of the social and economic system of Islam could eliminate the causes of crime.

General Adnan Raouf Hassan

Would Sheikh Manna Al-Kattan be kind enough to explain the effect of the fundamental principle of the Sharia,

i.e. belief in One Almighty God and in Mohammad as His Messenger, on the conduct of the Muslim as regards crime prevention.

Sheikh Saleh Al-Laheidan

Praise be to God and peace be upon the Prophet and his followers. I thank the author of the paper and the commentators for their contributions concerning the effect of faith and worship on crime prevention.

I have nothing to add here except a simple issue concerning the Hadith quoted by Sheikh Mohammad Al-Ghazali that "faith serves as a restraint against aggression". Although this saying is correct, I do not believe it to be a quotation from the Hadith.

The other point is the definition of "torture". As the author has pointed out torture in Arabic, "A'dhab", has several meanings and Ibn Taymiya, the Muslim jurist, added another definition to it. Likewise, the original meaning of prayer in Arabic, "Salat", was a "request" or "demand", but in Islam it has come to mean both request and performance of good acts.

Sheikh Ibrahim Abdulla

Due thanks to Sheikh Al-Kattan for his valuable paper and to Sheikh Sabbagh, Sheikh Ghazali and others for their contributions.

I was going to enquire about the source of the saying "Faith serves as a restraint against aggression" but it seems Sheikh Saleh Al-Laheidan has already clarified this point.

The other point is that I wish the discussion on faith as a restraint against crime could have been further elaborated. Faith should not be confined to belief and speech; it should be associated with action. In other words faith implies bodily, financial and other undertakings as required

by the Sharia. So faith includes the intention, words and actions of a believer. I wanted to clarify this point, for it is a common idea among the people that faith consists only in belief in the existence of God.

Sheikh Mohammad Al-Ghazali

As regards the saying "Faith serves as a restraint against aggression", I heard it from the late author Ahmed Shaker, who based his statement on "Al-Musnad" by Imam Ahmed Ibn Hanbal.* As this author is a well-known scholar, I have no doubt of its authenticity. I must admit that I did not come across it in the versions written by Bokhari and Muslim. I hope I shall present the "Al Musnad" shortly.

Sheikh Manna Al-Kattan

I thank the gentlemen for their comments and the points they have raised. I shall try to answer the queries very briefly. I touched on crime and the modern and scientific methods used, without much success, in combatting it. Unfortunately the western civilization is devoid of religious and spiritual inspiration. Had this civilization been associated with religious faith it could have been used in the interest of humanity as a deterrent against crime. Instead, the modern civilized man is a materialistic creature indifferent to the rights of others. This is the main reason why modern civilization has failed to achieve order and stability.

I have pointed out that the social function of giving charity "Zakat" is to solve the problem of poverty and the gap between the different classes, and thereby eliminate rancour and class struggle. After mentioning the sources of charity I mentioned that through "Zakat" even the poor have a right to the rich man's wealth.

* "Al-Musnad" meaning (reference) is a Hadith collection compiled by Imam Ahmed Ibn Hambal (Translator's note).

By faith and worship it is meant that believers have to abide by God's commandments and prohibitions in all walks of life. The effect of faith on the conduct of the Muslim arises from his belief in One God, for this means that only God the Almighty has absolute power in this universe on all matters and thus mankind is subjected to this Great Power. Worship means the performance of all religious duties, such as prayer, giving charity, pilgrimage and meditation. However, the general concept of worship implies all activities of life as well.

Sheikh Rashed Ibn Khabir.

Praise be to God and peace be upon the Prophet.

The Prophet said: "My people shall be pardoned what offence they have in mind provided they do not commit it or utter anything offensive". In another Hadith the Prophet said: "If a person is tempted to commit an offence and does not actually commit it, it shall be a point in his favour provided he abstained from the offence out of love and fear of God. If he does commit the offence it shall be a point against him".

He who does a good act has ten points in his favour. This is one of the advantages of the Sharia.

There is another point which I would like to clarify concerning the Hadith quoted by Sheikh Sabbagh. The Hadith says that a man with faith does not commit the crime of adultery or theft, etc. My understanding is that faith is a big deterrent against the commission of crime. This does not mean that mere thieving or fornication would deprive the offender of his faith. This is not the interpretation of the Sunnah authorities. What is meant is that a person of faith does not dare to commit offences, but by no means does it mean that he shall be excommunicated. It is up to God to forgive or punish the culprit either in this world or in the Hereafter.

Faith, according to the Sunnah authorities, increases with obedience to God and decreases with disobedience to Him. But this does not mean the culprit shall be treated like an apostate.

As Sheikh Manaa has pointed out, the Muslim jurists classified religious duties into three parts: worship, dealing with others and abiding by God's legislation.

Finally, I would like to thank you all for your comments and Sheikh Shadhly Buraquiba for his recommendation to make the teaching of Islamic legislation compulsory at schools in Muslim countries, and that the laws in these countries be based on the Quran and the Sunnah instead of positive laws which are not revealed by the Quran or the Prophet. I trust that the delegates at this symposium will do their utmost with their own governments to attain this aim.

May God grant us success and lead us on the right path. God's peace, mercy and blessings be upon you all.

(The meeting was adjourned at 10.45 a.m.)

FIFTH SYMPOSIUM

FIFTH PAPER

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INFLUENCE OF THE QURANIC TEACHING " TO
ENJOIN THE GOOD AND REFRAIN FROM EVIL
DEEDS " ON CRIME PREVENTION

by

Sheikh Nasser Ibn Hamad Al-Rasheed
Director-General of Women Education

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Commentators

Mansour Ibn Hamad Al-Malek, Vice-President of the Court of Appeals.

Sheikh Manna Al-Kattan, Director of Higher Judiciary Institute.

Conductor of Discussions

Sheikh Ibrahim Abdullah Al-Nasser, Prosecutor, Ministry of Justice.

This paper included the following major points:

Positive laws are not concerned with crime prevention before it is committed while Islamic Sharia has succeeded in achieving this scope reasonably well.

Positive laws have failed to control the commission of crime.

Islamic Sharia has succeeded in combatting crime before its commission by imparting a sound education to the Muslims.

The teaching of "enjoin the good and refrain from evil deeds" is one of the most influential Islamic doctrines in teaching the Muslims to abide by God's commandments and restrain them from committing crime.

This same doctrine implements the injunctions of the Sharia as regards crime prevention.

Quotations from the Holy Quran and the Sunnah, original sources of Islamic legislation to illustrate the Sharia's copious references concerning crime prevention and prompting the believers to lead a life of rectitude.

Some prophecies of the Prophet as regards the future of the Muslim nation who will live in peace and free from crime thanks to the implementation of the Sharia.

The Kingdom of Saudi Arabia is an excellent example of the fulfillment of the Prophet's prophecy. Due to strict adherence to Sharia there is hardly any crime in this country.

As crime causes terror and is one of the main causes of the decline of any civilization, because it destabilizes security which is the cornerstone of the social system of a society, governments resort to various methods to combat

crime. They enact special anti-crime laws which are, now and then, revised in order to cope with the spread of crime. The scope of most of these laws is crime control after and not before its commission. Punishment is inflicted after the commission of crime in the hope that it may curb its spread but facts do not confirm this. In fact, events have proved that punishment alone is not a sufficient deterrent against crime.

The criminal who premeditates a crime also plans how to get away with it without being arrested and how to escape if he happens to be arrested. He also plans how to cheat investigators and resorts to other dishonest means to distort facts. The Quran says:

*" But man is in, most things,
Contentious "*

Chapter 18, verse 54.

Thus, most societies, in their crime control, lack an important element to prevent the commission of offences and to contain it in order to deprive it of its terrifying character. There is no doubt that the human intellect alone cannot supply a legislation that can cope with crime prevention before the commission of the offence.

Therefore it is incumbent on man to turn to God, the Creator of life, in order to seek a solution for crime prevention. I have already mentioned that positive laws have thus far failed to prevent crime and even due punishments are not enough, since offenders often continue to commit crimes even after punishment was meted out.

The Sharia has prescribed effective and adequate penalties for crimes, such as the amputation of the thief's hand, provided there are positive legal proofs which convict the culprit. God is most compassionate with His creatures.

As regards retaliation punishment the Quran says:

*" Deal not unjustly
And ye shall not
Be dealt with unjustly "*

Chapter 2, verse 279.

Certainly a large segment of criminals would not hesitate to commit theft or aggression on others were it not for fear of the dreadful punishment of amputation of their hand or fear of retaliation punishment. God does not leave the responsibility of disciplining mankind and settling its disputes to a few individuals. So God sent the most complete Book to the best of all prophets. The Quran changed all the old legislations that were obsolete and antiquated and retained and adopted those that were suitable. Thus the Quran is considered the most complete Book of legislations. In the Quran we read the following:

*" A revelation from (God),
Most Gracious, Most Merciful;
A Book, whereof the verses
Are explained in detail; —
A Quran in Arabic,
For people who understand;
Giving Good News
And Admonition "*

Chapter 41, verses 1, 2, 3 and 4.

Again we read in the Quran:

*" (This is) a Book,
With verses basic or fundamental
(Of established meaning),*

*Further explained in detail,
From One Who is Wise
And well-acquainted (with all things) ”.*

Chapter 11, verse 1.

As it is outside the scope of this paper to discuss all the aspects involving crime before and after its commission to which there are many references in the Quran and the Sunnah, I would like to concentrate on one aspect only, i.e. the Quranic teaching of enjoining what is good and refraining from evil deeds. The Quran says:

*“ Let there arise out of you
A band of people
Inviting to all that is good,
Enjoining what is right,
And forbidding what is wrong ”.*

Chapter 3, verse 104.

and

*“ Ye are the best
Of Peoples, evolved
For mankind
Enjoining what is right,
Forbidding what is wrong ”.*

Chapter 3, verse 110.

and

*“ Help ye not one another
In sin and rancour:
Fear God: for God
Is strict in punishment ”.*

Chapter 5, verse 3.

The teaching of “ enjoining what is good and refraining from evil deeds ” was stipulated in the famous Islamic historical event during the Aqaba * fealty plighting. The Prophet's followers asked him what they should pledge and the Prophet replied: “ You have to obey me in enjoining what is good and refraining from evil deeds ”.

One of the most important features of the teaching of “ enjoining what is good ” is to inculcate a firm belief amongst people to believe in the life after death and in Hell and Paradise and Purgatory and in the fact that happiness depends on God's displeasure and pleasure. Thus this belief becomes a real deterring factor against committing a criminal act. Naturally there is no comparison between this spiritual deterrence and that imposed by man-made positive laws.

The intensity of belief in God and in His punishments differs from one person to another. Some may not hesitate to commit minor offences which eventually may lead to more serious crimes, as in the case of drinking alcohol. Othman Ibn Affan ** narrated that once a man was asked to choose between three alternatives: kill a youth, commit adultery or drink alcohol. He chose to drink alcohol first, then killed the youth and finally he committed adultery under the effect of alcohol. Since then alcohol was regarded as the root of all evils. The teaching of “ enjoining what is good and refraining from evil deeds ” forbids a person to take intoxicants and prohibits the manufacture and sale of alcoholic drinks. Thus the Sharia does not only prohibit the offences due to alcohol but also its consumption. The other important aspect of the teaching of “ enjoining what is good ” is the protection of people's honour. Undoubtedly sexual aggres-

* Not to be mistaken with the Jordanian port on the Red Sea, this Aqaba is a location between Muna and Mecca in the Hejaz where 70 citizens of Medina plighted their fealty to the Prophet (Translator's note).

** Othman Ibn Affan was the third Caliph after the Prophet's death. He ordered the collection of all the chapters of the Quran during his reign 644-655 A.D. (Translator's note).

sion leads to innumerable crimes; therefore this teaching eliminates the original cause that may lead to other crimes. The Sharia, for example, prohibits women to make a dazzling display of themselves in front of male strangers and enjoins the women to be modest in their speech lest they provoke men to commit untold offences. The Quran says:

*" and make not
A dazzling display, like
That of the former Times
Of ignorance ";*

Chapter 33, verse 33.

and

*" and not display
Their beauty except
To their husbands, their fathers,
Their husbands' fathers, their sons,
Their husbands' sons,
Their brothers or their brothers' sons,
Or their sisters' sons,
Or their women, or the slaves
Whom their right hands
Possess, or male servants
Free of physical needs,
Or small children who
Have no sense of the shame
Of sex; and that they
Should not strike their feet
In order to draw attention
To their hidden ornaments ".*

Chapter 24, verse 31.

When Muslims abide by these lofty ideals of morality the causes for committing offences become almost nil.

The other noble moral ideal of the Divine Legislation is the separation of women from men. The Prophet ordered men not to violate women's privacy. When he was asked if this applied even to the woman's brother-in-law, his reply was in the affirmative. Also the Prophet said: " A woman who believes in God and the Last Day shall travel only in the company of a near blood relation whom she cannot marry ". When a man reported to the Prophet that his wife had gone on pilgrimage while he was engaged in the Muslim army, the Prophet advised him to go and join his wife. The Prophet said: " Whenever a man and a woman meet in privacy the Devil is always present with them ".

No immoral society can escape punishments. Omar narrated that Prophet Mohammad said: " A society whose members are immoral shall be inflicted with plague and pains unknown by their forefathers ".

Ibn Majah and Al-Bayhaqi related that the Prophet had said to Ibn Abbas that the more the crime of adultery increases, the more death rates soar. Also the Prophet is reported to have said where adultery and usury prevail the people shall get the deserved punishment from God. Amr Ibn Al-A'as * reported that the Prophet said people inflicted with adultery are doomed. Buraidah narrated that the Prophet said: " God punishes people with death when they give themselves away to immorality ". 'Aisha narrated that the Prophet said: " My people are safe as long as they are free from adultery and immorality, but once immorality spreads among them God's punishment shall be inflicted upon them ".

It is a known fact that the immoralities, which are forbidden by Islam, are preceded by a dazzling display by

* Amr Ibn Al-A'as was one of the most famous Prophet's Companions. He died in 663 A. D. in Cairo (Egypt) (Translator's note).

the woman, mixing of the sexes, insinuations, touching and kissing, all of which are forbidden by the teaching "enjoining what is good and refraining from evil deeds".

If we compare two societies, one which implements this great divine teaching and the other one which ignores it, the first society will be nearly free of offences whereas the second will be plagued with crime rates.

The doctrine of "enjoining what is good and refraining from evil deeds" inculcates in the people love for virtues and abhorrence of vices. To this end campaigns are launched to rehabilitate the people inclined towards fraudulent practices and disseminate virtue amongst the population in order to curb crime and protect society from its causes.

In this connection the Quran says:

*"Curses were pronounced
On those among the Children
Of Israel who rejected Faith,
By the tongue of David
And of Jesus the son of Mary:
Because they disobeyed
And persisted in Excesses.
Nor did they (usually)
Forbid one another
The iniquities which they
Committed: evil indeed
Were the deeds which they did".**

Chapter 5, verses 81 and 82.

* There are bad men in every community, but if leaders connive at the misdeeds of the common people, and even worse if the leaders share in the misdeeds, then that community is doomed (Translator's note).

When this Quranic verse was revealed the Prophet told his Companions that they had to enjoin what is right and forbid what is wrong and handle the offender with firmness and compel him to lead a life of rectitude, as otherwise God will inflict His punishment on the whole of the community, and when the members of that community invoke God's name He will not answer.

The teaching of "enjoining what is good and refraining from evil deeds" is a bulwark against most crimes. The Prophet narrated the following example to illustrate the significance of the teaching "enjoining what is good": "The person who enjoins God's Sharia and he who violates His laws are compared to a group of persons sailing in a vessel, some of whom are on the upper deck and the others on the bottom deck. Those on the bottom deck want to get water by digging a hole in the hold of the vessel. Now if the people on the upper deck prevent those on the bottom from digging they would all be safe, otherwise the vessel would sink and the passengers would perish".

Evidently this Islamic teaching does not in any way conflict with personal liberties which are greatly misunderstood in many Muslim countries to the point that the doctrine of "enjoining what is good" is not implemented any more due to misconception of the significance of liberties.

Thanks to this doctrine the Islamic nation has enjoyed order and security. The Prophet prophesized about the future of Islam at its very inception when his followers complained of the oppressions from which they suffered. He said to his Companions: "By God this teaching shall be fulfilled and stability shall be so secure that a passenger will be able to travel safely from Sana'a* to Hadramaut without any fear except God's punishment for any offences he may commit and the wolf that might attack his sheep".

* Sana'a is the capital of Yemen. Hadramaut is the region east of Aden (Translator's note).

It is reported that the Prophet said to Adiy Ibn Hatim Al-Tai: * " Maybe you are discouraged to embrace Islam by the fact that it has few followers but many foes. But by God you would be surprised to hear that even a woman can travel from Qadisiya ** to this mosque (Mecca) on her camel without any fear of highwaymen ". Adiya said: " I lived to see this prophecy to be true ". If the teaching of " enjoining what is good " is not strictly implemented crime rates certainly increase. The blame should be put on the people themselves who do not abide by God's teachings.

The stronger people believe in religion and the stricter the teaching of " enjoining what is good " the more they enjoy security and prosperity. The Quran says:

*" God has promised to those
Among you who believe
And work righteous deeds, that He
Will, of a surety grant them
In the land, inheritance
(Of power) as He granted it
To those before them; that
He will establish in authority
Their religion — the one
Which He has chosen for them;
And that He will change
(Their state), after the fear
In which they (lived), to one*

* Adiy Ibn Hatim was a Christian who embraced Islam in 630 A. D. He was the son of the famous pre-Islamic period poet, well-known for his courage and generosity.

** Qadisiya is a town in Iraq where the Muslims under the commander of Sa'ad Ibn Abi Waqas defeated the Persian army. The Muslims were only 16,000 while the Persians had an army of 80,000 in this battle (Translator's note).

*Of security and peace:
They will worship Me (alone)
And not associate aught with Me.
If any do reject Faith
After this, they are
Rebellious and wicked ".*

Chapter 24, verse 55.

We have pointed out how the Muslim nation enjoyed order and security by abiding by the teaching of " enjoining what is good and refraining from evil deeds ". It would be a long discussion to cite further examples to substantiate this thesis. It should suffice to cite Saudi Arabia where crime has almost disappeared; it is the safest and most stable country as regards criminality. I trust that some statistics to be recorded in the minutes as supporting documents will emerge from this symposium.

The potentialities of this country (Saudi Arabia) do not exceed those of other countries, and in some cases they are even less. But its distinctive characteristic is its adherence to the doctrine of " enjoining what is good and refraining from evil deeds " and the implementation of the Islamic Sharia on the part of the King, the Government and the people in compliance with the following Quranic verse:

*" Help ye one another
In righteousness and piety,
But help ye not one another
In sin and rancour ".*

Chapter 5, verse 3.

Indeed the implementation of the Islamic Sharia is the only successful remedy for humanity against crime,

which is the source of human misery and disorder. The Quran says:

*" O, mankind there hath come
To you a direction from your Lord
And a healing for the (diseases)
In your hearts, — and for those
Who believe, a Guidance
And a Mercy".*

Chapter 10, verse 57.

and

*" We send down (stage by stage)
In the Quran that which
Is a healing and a mercy
To those who believe".*

Chapter 17, verse 82.

It is a pity that there are some countries which profess Islam as their religion but do not apply it in practice, and hence these countries have become hotbeds of crime.

Muslim countries, which do not apply the religion of Islam as a way of life, cannot expect to enjoy security and stability because they lack a very vital element in crime prevention, i.e. firm conviction that God will punish those who violate His Divine Law.

In this connection the Quran says:

*" O ye who believe
Save yourselves and your
Families from a Fire
Whose fuel is Men
And Stones, over which*

*Are (appointed) angels
Stern (and) severe,
Who flinch not (from
Executing) the Commands
They receive from God,
But do (precisely) what
They are commanded".*

Chapter 66, verse 6.

God does not tolerate those who adhere to some of His legislations and ignore others, for this is considered following one's own whims and is equivalent to idol worshipping. The Quran says:

*" And who is more astray
Than one who follows his own
Lusts, devoid of guidance
From God? For God guides not
People given to wrong-doing".*

Chapter 28, verse 50.

The Jews were cursed by God because they followed their lust and deviated from their true religion. In this connection we read the following Quranic verse:

*" Then is it only a part of the Book
That ye believe in,
And do ye reject the rest?
But what is the reward for those
Among you who behave like this
But disgrace in this life? —*

*And on the Day of Judgement
They shall be consigned
To the most grievous penalty.
For God is not unmindful
Of what ye do".*

Chapter 2, verse 85.

Would it not be better to implement the Sharia strictly in order to win God's favour and eternal bliss in the Hereafter and thus to enjoy security and order as our forefathers did in the past? By doing so the Prophet's prophecy will come true in having a crime-free society and thus a traveller could ride thousands of miles without any fear apart from the fear of God and the wolf who might attack his flock of sheep. This way of life of our forefathers is now being implemented in the Kingdom of Saudi Arabia. Will the day come when the whole of mankind will start implementing the Islamic Sharia? I pray God that it does. God's peace, mercy and blessings be upon you all.

Sheikh Mansour Ibn Hamad Al-Malik

Praise be to God whom we invoke to support and guide and forgive us. We seek refuge with the Lord from our mischiefs. And such as God guides there can be none to lead astray, and those whom God leaves to stray no one can guide. I testify that there are no other gods but One God and Mohammad is His apostle. May God bless him and all his followers till the Day of Judgement.

My due thanks to the Ministry of Interior for organizing this symposium and for having extended invitations to a large number of scholars to attend it. I heartily trust that this symposium will attain its objective and that the participants will reach a positive conclusion and return to their countries with the conviction that there is no alternative for

humanity to get rid of crime but by adhering to the teachings of the Holy Quran; no falsehood can approach it from the front or the rear. It is sent down by One Full of Wisdom worthy of all Praise. We must abide by the Sunnah of the Prophet to the exclusion of all other sources.

I also thank the author of the paper for his valuable research work and for his emphasis on the importance of the teaching "enjoin what is good and refrain from evil deeds" which is a great restraining factor against crime. No wonder that the speaker dealt with the subject so well in such a short time, for he is a well-known author on the doctrine of "enjoining what is good and refraining from evil deeds". Nobody can deny the author's ceaseless efforts to reform society and combat the evils that could cause damage to it. He has a reputation for his religious zeal and his contribution to protect the Muslims of this country from all evils.

With the author's permission I would like to voice some comments on the matter. First, the author started his speech by referring to the care some nations have given to the prevention and control of crime. In my view the Islamic Sharia has already dealt with this matter to save people from crime. Likewise, the Sharia has prescribed appropriate punishments for each crime. I believe it would have been better if the paper had started with the Islamic Sharia whose source and base are the Quran and the Prophet's Sunnah.

This symposium was originally organized to show that the Islamic Sharia is the source to be referred to for preventing crime. Usually a listener or a reader is more attentive at the beginning, so if the paper had started with the Sharia and later referred to other nations it would, in my view, have had a better impact. However, this observation is only marginal and does not affect the core of the matter. The author may have his own reasons for commencing with the reference to other nations rather than the Sharia.

My second observation is regarding his statement that punishment could serve as a deterrent against commission

of crimes. Over ages facts have proved that this is not true and that deterrence in itself cannot restrain offenders from committing crime. When I was listening to the author it seemed to me that this statement was too brief and needed further elaboration to avoid ambiguities. Perhaps the author meant that punishments inflicted by positive laws are inappropriate and not adequate for the prevention of crime. If this is what was in the mind of the author then we all agree with him. Perhaps the author meant to say that punishment should be associated with exhortation and guidance in order to consolidate the religious restraint in the offender. The punishments prescribed in the Quran and the Sunnah are quite appropriate to the degree of offence committed.

My third observation is regarding the author's statement that God "enacted" punishments after the commission of the offence and that God is better aware of what is most suitable to be enacted for his worshippers. Now my objection concerns the use of the Arabic word "Mukanana" (enactment). He could easily have used other terms common in the Sharia terminology such as "stipulate", "fix", "establish", "prescribe" and such terms. I have never come across the term "enact", in the Quran the word "establish" is used in chapter 42, verse 13, "The same religion has He *established* for you". Then there are other words used such as "God imposed obligations and fixed punishments". Therefore, in my view, it would have been better if the author had confined himself to the Sharia terms used in the Quran and the Sunnah.

My last observation along the same line is the author's statement "But the enactors deviate from the Sharia and establish law". The author put this in a way which implies that an enactor is an establisher of the law. We know that the Sharia was established by God and His Prophet and man cannot be an establisher of laws.

There is another observation I would like to make. When the author touched upon the subject of positive laws

and the desire of some nations to overcome the problem of crime (although I personally believe that these laws are only articles drawn up by men of law and cannot be regarded as a reference for judgement to be used for the eradication of crime), he pointed out that the people who enacted these laws deal with crime after its commission and not prior to it. I am not an authority but I think that every country endeavours to deal with crime both before and after its commission. Every country desires to have a society free from crime. Undoubtedly whatever is broadcast and published and taught at schools and universities appeals to morality. If that is so then where does the defect lie? The blame could be put on the way of life of those countries which do not abide by the teachings of the Quran and the Prophet's Sunnah in order to eliminate the causes of crime before its commission.

Although the author treated his thesis well, the doctrine of "enjoining what is good and refraining from evil deeds" is very wide. It comprises all the religious duties, optionals and morals. Enjoining what is good is an order to do what is reasonable and logical. Whatever is legally reasonable and considered logical is right. But what is right? It comprises all religious duties, optionals and morals. Forbidding what is wrong signifies forbidding whatever reason finds undesirable and rejected by the Sharia.

Those who order others to enjoin what is good merit a prominent position in Islam. God praises those people and defines them as the finest people. Al-Hassan* narrates that the Prophet said: "He who commands others to enjoin what is right and forbid what is wrong is God's successor on the earth and the successor of the Prophet and his Book".

So the person who orders people to enjoin what is right occupies an important position and can take the respon-

* Al-Hassan (830-869 A.D.) was an imam and a scholar (Translator's note).

sibility of reforming others. There are different types of people. Some are good, like fertile land which if well irrigated and watered could turn into a good pasture. This is exactly what happens to good people who, by guiding and advising others, could enjoin what is good. In such a case there is no need for punishment, for faith alone can stand as a restraint against crime. There are others who are inclined towards evil and mischief. They are like a barren land which, even if irrigated, cannot become cultivated. Therefore God has prescribed appropriate punishments for such people. They are like barren stony land, which needs to be dug and cleared to be turned into fertile land after irrigation. Likewise, people with evil intentions must be given appropriate punishments for their crimes. The object of these punishments is to rehabilitate the offenders as they are associated with guidance and exhortation in order to strengthen faith in religion.

These are some of my observations on the author's contribution even though his paper covered fully the subject under discussion.

(The meeting was adjourned at 12.25 p.m. and resumed at 12.50 p.m.).

Conductor of Discussions

I beg those who have asked for the floor to comment, seek clarifications or debate, to kindly observe the time-limit of not more than 2-3 minutes.

Now I give the floor to Dr. di Gennaro.

Dr. Giuseppe di Gennaro

First of all I would like to extend my thanks to the Ministry of Interior of the Kingdom of Saudi Arabia for giving me the opportunity of attending this symposium and for the cordial welcome we have received. I realize that the

more we proceed with the work of the symposium the more benefit we gain by giving us ample time to consider the problems facing us, particularly as regards crime prevention. It is incumbent on us to preserve the human race by protecting it from crime. I ask this symposium to identify the appropriate methods for the combatting of crime and preservation of human values or the setting of new values. We must seek the major sources for the prevention of crime before its commission.

I believe that the Ministry of Justice is also involved in this symposium. This is a good occasion to present our experience in the field of crime prevention. I cannot help drawing comparisons between the discussions at this symposium and what occurs in the world. In the western world a number of laws have been enacted to combat crime in the form of inflicting punishment after the commission of crime. Chemistry, mathematics and many other sciences are utilized to combat crime. However, in our country also religious faith plays a major role as in your country. I would therefore recommend to strengthen the significance of faith so that people could understand the importance of monotheistic religions in organizing society. This is a common belief in our country and the people have started thinking seriously about the adoption of new measures to combat crime and preserve the prosperity of the family and the individual, as they are the nucleus of society and the basis for preservation of social and human values. In conjunction with religion new scientific methods are sought to combat crime and to decrease the rate in the world. Perhaps the present symposium is thinking along these lines. Serious thought must be given to the close relationship between spiritual values and modern sciences.

We could therefore start with new searches not only religious but also scientific and sociological. For example, now we are experimenting with the doctrine inherent in "Social Contract" by the French philosopher, Jean Jacques

Rousseau.* In Saudi Arabia, although up to now only the religious method has been implemented in combatting crime, there is a tendency to try scientific and social methods as well. In my view this symposium is the first step in that direction.

Conductor of discussions

Our thanks to Dr. di Gennaro for his comments. I would like to point out that the Ministry of Justice is well represented in this symposium and its delegates are taking an active part in the discussions. As regards the comparison between the Sharia and positive laws, this matter will be discussed at this symposium. Now, I give the floor to Dr. Peider Könz.

Dr. Peider Könz

Mr. Chairman! It is obvious that here in this symposium we listen and learn more than we talk. I have asked for the floor because I believe the discussions have covered a lot of ground. What concerns us most in the West is to grasp the concept of the Islamic Sharia and the spiritual values which are the cardinal features of Islam which do not exist in our societies. As Director of the United Nations Social Defence Research Institute I invite the Kingdom of Saudi Arabia to participate in our researches.

I thank you for having invited me to this most important symposium, particularly in view of my work at the UN in order to understand the significance of the Sharia amongst the Muslims and the Sharia experiment amongst modern societies, especially in the Third World, and its effect on

* Regarding the inherent equality of men, the general will as the basis of the government, and the corruption and degradation of human nature by civilization (Translator's note).

positive laws. As observers in this symposium we try to understand the Islamic Sharia. I wish we could play a more important role as we were very keen to attend this symposium and we have followed your activities for a number of years. I would like to remind you that our information on the Sharia has been general, whereas we wish it had been more intensive and deeper. However, we shall continue to study the Sharia profoundly in order to discover its effect on Muslim societies and the Third World.

From the discussions it appears that the Islamic Sharia has distinct advantages. It would seem that you would like to spread Islamic culture by modern means. I feel it is necessary to take every precaution that the peoples of the Third World will not misunderstand the meaning of the Sharia. While in Ethiopia I came across some people trying to transmit certain principles to Muslims that run counter to the Islamic Sharia because these people were not sufficiently versed in its real meaning.

In order to understand the Sharia we must know its essence and its implementation. I am rather concerned about the gap that exists between the true concept of the Sharia and what people think about it. In order to render it more effective the Sharia should be clearly defined and well construed. I believe that the Islamic Sharia should be the framework of the laws of the Third World in general and the Arab world in particular.

As regards the influence of the Sharia on the positive laws in the rest of the world, we as foreigners and westerners would like to get a clear definition of terms such as "consensus" and "analogy" in order to add to our codes the most appropriate rules regarding aggression and crime. Finally, I would like to add that we badly need to be furnished with terminologies and definitions in English and French in order to enable us to participate in such meetings in the future and to have some sort of a dialogue. Of course it would be of great help if we could have access to your

researches and Islamic manuscripts if they are produced in other languages.* Thank you.

Conductor of discussions

Thanks to Dr. Könz for his interest in the Islamic Sharia and I give the floor to the Vice-Chairman to reply to the queries.

Vice-Chairman

I thank Dr. Könz for the points he raised. Perhaps you may want to have the proposals implemented in some general form and we shall give this matter due consideration so that all the information presented in this symposium will reach you. I shall try to elucidate the points raised and we do appreciate your great interest in having a more active participation in our meetings. As regards the requested facilities, we are willing to provide you with all the documents, papers, results of the discussions and comments translated into both English and French, and we shall send them to all the participants.

We regret we did not have time to do this before but we were occupied with the preparation of the symposium. However, I assure you that we shall send them to you as soon as they are published. As I have already told Dr. Abdul Wahab Al-Ashmawy, we shall speed up the printing of these researches, publications and Islamic documents so that the non-Arab participants will have all the translated material as soon as possible.

Sheikh Manna Al-Kattan

I thank Sheikh Nasser Ibn Hamad for his valuable paper. When we read or listen to his paper we visualize him as a perfect Muslim in his thinking, conduct and beha-

* Meaning major European languages (Translator's note).

viour. However, I would like to make the following comments:

First:

One of the main functions of the teaching of "enjoining what is good and refraining from evil deeds" is to guide humanity towards what is right and protect them from evil and mischief. There are different grades of what is right, some of which have greater influence on the life, conduct and integrity of man. These rights are called duties; other rights have less influence on man and they are called permissible acts. Likewise, evil deeds have several grades; some have a major corruptive effect on man's character and these are known as prohibited acts and others with a less corruptive effect are known as undesirable.

These five deeds (duties, and acts commended, recommended, permissible and prohibited) are known in the Sharia as *sources of mandate* (Ahkam Taklifiya).

Second:

In Islam the teaching of "enjoining what is good and refraining from evil deeds" is a measure to protect the individual and society before becoming stained with guilt and corruption. If our bodies need preventive medicine, the spirit, on which human values are based, certainly needs greater protection.

Third:

In the eye of Islam the teaching of "enjoining what is good and refraining from evil deeds" is a principle of moral reciprocal responsibility. It is a known fact that if evil is left unpunished it contaminates both the doer and others.

Fourth:

The method of "enjoining what is good and refraining from evil deeds" is so sublime that it does not hurt people's

feelings or keep them away from what is right. The Holy Quran says that regarding this teaching the Prophets before Mohammad preached in the verse: "Will ye not then be filled with awe?" and in the Quran we also read the following verse:

*" I only desire (your betterment)
To the best of my power;
And my success (in my task)
Can only come from God.
In Him I trust "*

Chapter 11, verse 88.

and

*" But speak to him mildly;
Perchance he may take
Warning or fear (God) "*

Chapter 20, verse 44.

This refers to the approach of Moses and Haroun to the Pharaoh.

Is there a more refined style than that expressed in the following verse in the Quran, which is said to have been uttered by the Prophet?

*" It is God; and certain it is
That either we or ye
Are on right guidance
Or in manifest error "*

Chapter 34, verse 24.

Dr. Lode Van Outrive

Mr. Chairman, In my view, the title of the present paper implies restraining a man's conduct. One may behave in an offensive manner due to lack of the doctrine of "enjoining

what is good and refraining from evil deeds". I am inclined to translate this into our western language and say that it has a strong relationship with negative punishments. We in the west are very concerned with the first part of the teaching, i.e. "enjoining what is good" and so I believe positive punishments are better. May I ask the author to give us further clarification on what he calls "good behaviour" which is the pattern most encouraged in this country? Perhaps he could also tell us from his experience how to encourage and promote what is right. My last query is whether there are any data on the effects of the policy aiming at encouraging what is right?

Some speakers said that every society attempts to prevent or combat crime but I am not so sure how true this is. Of course in most societies there are efforts to prevent crime but despite prevention efforts offences are committed in most societies. I think this fact is important for the researchers.

Dr. Hamad Al-Kobaisi

Due thanks to Sheikh Nasser Ibn Hamad for his paper. I refer to the effect of the teaching "enjoining what is good and refraining from evil deeds" on the creation of a better society where all people of different tongues, colours and creeds collaborate to prevent man from being driven to committing crime, and its effect on the public opinion to severely control it. The Arab Organization for Social Defence has carried out commendable efforts in this field by convening a symposium in Tripoli, Libya, in 1972 on the role of the public opinion regarding crime prevention. Many important topics at a high objective level, also relating to the doctrine "enjoining what is good and refraining from evil deeds" were discussed. The author's paper is considered as supplementary to that presented by the Arab Organization

secretary, Dr. Abdul Wahab Al-Ashmawy, who merits our highest appreciation and esteem.

Professor Al-Shazly Burquiba

In connection with this teaching and as a further elaboration on the comments made by the UN representative, I suggest that it be spread to even non-Muslim countries through activation of the teams preaching Islam abroad. This would be the first step in the direction of "enjoining what is good". Most countries, particularly those far removed from Muslim regions, know very little about Islam and its teachings. How could we expect someone born and living on the distant American continent or in China to embrace Islam and implement its teachings when that person has no idea of Islam? I believe that preaching Islam in a logical persuasive manner would produce much better results. We Muslims in general are responsible for preaching Islam, otherwise non-Muslims would have an excuse for their ignorance. The Quran says:

*"Nor would We
Visit with Our Wrath
Until We had sent
An apostle (to give warning).*

Chapter 17, verse 15.

There would not be any excuse for us if we fall short of our mission. I hope that the day is approaching when people enter God's religion in large numbers.

Professor Ibrahim Al-Shura

I would like to express my deep appreciation to the authors for their valuable papers and the commentators for their remarks.

We all know that the first restraint from crime is faith in God, worship and adherence to the teachings of religion

represented by the doctrine of "enjoining what is good and refraining from evil deeds".

The Kingdom of Saudi Arabia is a perfect example of a country which implements the Sharia for the eradication of crime. I am sure you all came to this symposium, which is characterized by objectivity, to see with your own eyes how the Islamic Sharia is being implemented. We urge other Muslim countries to follow the example through your efforts.

In the name of the Muslim World League I thank you all, and pray God that you succeed in persuading your respective countries to implement the Islamic Sharia.

Sheikh Idris Al-Zerwely — Representative of the Kingdom of Maghrib

Praise be to God from Whom all prosperities spring. Peace be upon our Prophet Mohammad, his family and Companions.

After extending my heartfelt thanks to the author for his paper which covered all aspects of the subject and which was presented in a clear and precise style corroborated with Quranic verses and sayings of the Prophet, I have pleasure in raising some queries to which I trust he will kindly reply.

In his introductory remarks on "enjoining what is good and refraining from evil deeds" the author quoted the Quranic verse:

*"Let there arise out of you
A band of people
Inviting to all that is good
Enjoining what is right
And forbidding what is wrong"*

Chapter 3, verse 104.

It is clear that in this Quranic verse the expression "Let there arise" is used in the form of a command whereas the Arabic word "Nadiba" used by the author has the meaning of "summoning" or "inviting". The Quranic verse is further explained by the Hadith in the following statement: "He who sees something wrong must change it with his own hands and if he could not do that with his hands then with his tongue or with his heart (intention)". This confirms the teaching of enjoining what is right and forbidding what is wrong and to change what is wrong by material or moral means. It is incumbent on every Muslim to do this to the best of his ability and not to confine himself just to passive deeds.

Recognizing the important role of the teaching of enjoining what is good and forbidding what is wrong as regards crime prevention and the collaboration of the Islamic governments in this field (some of whom have ministries which supervise religious, cultural and social affairs, as in Maghreb where we have the Ministry of Awqaf and Religious Affairs), I propose that this symposium pass a recommendation inviting Islamic governments to abide by this teaching and that they utilize mass media for the dissemination of Islamic teachings in the Muslim world in compliance with God's order and with a view to combatting and eradicating crime before its commission.

Professor Adnan Raouf Hassan — Head of the Iraqi Delegation

Thanks to the Chairman. I would like to refer to two important points relevant to the teaching of enjoining what is good and refraining from evil deeds. The first is sensitizing and mobilizing Muslims as individuals and groups against crime, which is exactly what modern societies endeavour to do. Conferences and symposiums are convened with this objective in mind. It is the duty of every Muslim to

comply with the teaching of "enjoining what is good and refraining from evil deeds" and thus collaborate in preventing and combatting crime with all the means at his disposition.

The second influence is the result of the first one, and which has already been referred to by Dr. Hamad Al-Kobaisi, i.e. the cultivation of a Muslim public opinion against crime.

There is another point I would like to raise concerning the glossary of some Sharia terms handed to the participants before the symposium started. For example in the English translation the term "wine-drinking" has been used. Wine is only one kind of intoxicant. The word "Khamr" (wine) in the Quran also means alcohol-drinking. I would like the non-Arab participants to know that the word "wine" means all kinds of intoxicants and alcoholic drinks.

Sheikh Nasser Ibn Hamad Al-Rasheed

I thank Dr. Mansur Ibn Hamad Al-Malik for commencing his comments with an apology. I am not in favour of such niceties, as this symposium and knowledge is for everybody. Truth is the result of research and only an ignorant person believes he is perfect.

As for the first point raised by Sheikh Mansur Ibn Hamad regarding starting my speech with an introduction on other nations' concern with crime prevention instead of with the Islamic Sharia, although I wholly agree with the commentator on the advantages of the Sharia, I followed those who first give a general introduction before going into the core of the subject, especially in this cosmopolitan gathering, as this symposium is not confined to us alone.

As for his second comment, I may disagree with the participants that punishment alone is sufficient for legislators as most nations complain about the increasing crime rate.

My reasoning was that if punishment were enough crimes would not have increased. Punishments in the Sharia, such as retaliation and cutting off the thief's hand, are inflicted on offenders who are not restrained by the religious deterrent. Regarding the commentator's third observation on my use of the word "enactment", I am not aware that in Arabic we cannot use this term, bearing in mind that Arabic is a rich language. As for his objection to the use of the word "Yash-raun" (to establish) I used the same word in the Quran verse:

*"What Have they partners
(In godhead) who have
Established for them some
Religion without the permission
Of God?"*

Chapter 42, verse 21.

Going back to the question of "enactment", allow me to say that in this symposium we are discussing human laws and not just local legislations, therefore although the terms mentioned by the commentator are correct Arabic words used in the Sharia terminology I used the word "enactment" to convey the present-day meaning.

I did not say that nations are not concerned with crime before its commission. One of the non-Muslim commentators did mention that in the West they are not so concerned with crime before its commission but I did not say that the other nations are not concerned about crime before its commission. I only stated that positive laws, unlike the Islamic Sharia, do not give so much thought to crime before its commission.

The Sharia that enjoins what is right and forbids what is wrong and has ordained that Muslims should contribute to alleviate damage, prevent thefts, not instigate others to

steal, or to incite aggressors to violate other people's honour and properties and endanger their lives.

Furthermore, Sheikh Mansur and Sheikh Al-Kattan wondered why I confined myself to the question of crime while the teaching of "enjoining what is good and refraining from evil deeds" comprises all religious duties. Needless to say, this teaching is the basis of the Sharia as regards commandments and prohibitions. As a discussion on all the aspects of this teaching was beyond the scope of this paper I limited myself to those aspects dealing with crime and the protection of society.

As regards the remarks of Dr. Lode Van Outrive that my paper lacked clarification concerning the first part of the teaching, I would like to say that other commentators have already elucidated what is meant by this.

Actually it means ordering a believer to do whatever is legally right and good, and this includes the purification of the soul and the elimination of all evil and mischief. In this connection the Quran says:

*"Truly he succeeds
That purifies it (soul)
And he fails
That corrupts it (soul)"*

Chapter 91, verses 9 and 10.

and

*"But those will prosper
Who purify themselves,
And glorify the name
Of their Guardian-Lord
And (lift their hearts)
In Prayer"*

Chapter 87, verses 14 and 15.

For example the teaching "enjoining what is good" includes saying prayers five times a day by performing some established rites. The object of these prayers is to purify the soul and establish a bond between man and his Lord. When a man prays he meditates on the infinity of the Almighty God and ponders over His Commandments and Prohibitions and the Paradise and the Hell that await the pious man and the sinner respectively. During the prayer-time we seek refuge with the Lord from His Wrath and Punishment. Indeed prayer restrains man from shameful deeds. The Quran says:

*" — for Prayer
Restrains from shameful
And unjust deeds "*

Chapter 29, verse 45.

So one of the most important advantages of the teaching of "enjoining what is good" is ordaining man to say his prayers and disciplining he who fails to do so. The man who does not say his prayers and does not heed guidance, advice and warnings, should be subjected to punishment in pursuance of the teaching of "enjoining what is good" until he starts performing his religious duties, for God has ordered man to worship Him, and saying prayers is an important aspect of religion and worship. He who fails to say his prayers is a man who has gone astray and who has lost his religion, for the sinner cuts the bond that links him with his Lord. The Prophet said to his Companions: "By God you should order people to enjoin what is right and forbid what is wrong and handle the offender with firmness and compel him to lead a life of rectitude, otherwise God will inflict His punishment on the whole of the community, and when the members of that society invoke God's name He will not answer". Therefore if we do not persuade and compel the

sinner to repent and abide by the teachings of Islam of his own accord we will be responsible for his sins, and — God forbid — will be subjected to God's Wrath and Punishment.

Another example of the teaching of "enjoining what is good and refraining from evil deeds" is the duty of being kind to one's parents and relatives. Some commandments are compulsory, others are recommended and others are acceptable.

I hope that I have answered Dr. Van Outrive's query. As for Sheikh Idris Al-Zerwely's objection to my using the Arabic word "nadiba" meaning "to summon" or "to invite" as regards enjoining what is good, allow me to say that "nadiba" in the terminology of Islamic jurisprudence has a different significance from that in common usage. In jurisprudence it may mean a desirable or a compulsory action, it has an elastic interpretation. Since the teaching of "enjoining what is good and refraining from evil deeds" is a duty incumbent on every Muslim, so this word "nadiba" conveys a compulsory meaning.

God's peace and mercy be upon you.

Chairman

I thank Sheikh Ibrahim Al-Nasser for the brilliant manner in which he conducted this seminar. I would like to remind you that our next meeting is this afternoon at 4 p.m. and I hope that it will not be too lengthy as the subject is "the influence of Islamic education on crime prevention" which is, in fact, complementary to the two subjects previously discussed. I trust that it will not be too lengthy in order to allow you to have some rest. May God reward you all. God's peace and mercy be upon you.

(The meeting was adjourned at 1.55 p.m.).

SIXTH SYMPOSIUM

SIXTH PAPER

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87253

INFLUENCE OF ISLAMIC EDUCATION
ON CRIME PREVENTION

by

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Commentators

Sheikh Ibrahim Ibn Abdullah Al-Dabbas, Director, Directorate of Researches, Legal Verdicts (Fatwa), Preaching and Guidance.

Sheikh Abdullah Ibn Ibrahim Al-Fantoukh.

Conductor of Discussions

Sheikh Rashed Ibn Khunein, Deputy Minister of Justice.

Conductor of Discussions

We open this meeting to discuss the subject of "the influence of Islamic education on crime prevention". Fortunately, the lecturer is very well-versed in his subject and an authority on the preaching of Islam.

Sheikh Mohammad Qutb — the Lecturer

Praise be to God, the Cherisher and Sustainer of the Worlds, and peace be upon the Prophet, the best of God's Messengers.

Gentlemen, God's peace, mercy and blessings be upon you.

I regret to say that I could not attend this symposium from the beginning, and therefore I am afraid I may now repeat what you have already heard. However, I do not see any harm in this; for the Quran says "repetition of teaching benefits the believers".

Our subject this evening is "The Influence of Islamic Education on Crime Prevention". I would like to start with a brief introduction on the methods used in Islam for the prevention of crime, or to keep it to the minimum, and later I shall concentrate on the subject of Islamic education.

Islam is a complete and comprehensive religion, and its greatness lies in the fact that it embraces all aspects of life. As crime and punishment are subjects that concern humanity, Islam has fully dealt with them. Perhaps Islam is the only religion and system, known to humanity, that tries to combat crime before, and not after, its commission. All other human systems, referred to in the Quran as the systems of the Days

of Ignorance, deal with crime after its commission. In this connection the Quran says:

*" Do they then seek after
A judgement of (the Days
Of) Ignorance? * But who,
For a people whose faith
Is assured, can give
Better judgement than God? "*

Chapter 5, verse 53.

Judgements are classified into two categories: God's judgement and that of the Days of Ignorance. The judgements set by man for himself and which do not comply with God's injunctions are known in the Quran as the judgements of the Days of Ignorance. They deal with crime after its commission rather than with its prevention. Of course Islam does not ignore the importance of inflicting punishments, but it concentrates on the prevention of crime before its commission or at least tries to restrain it. To this end Islam disposes of many methods, *inter alia*, Islamic education. Islam treats the matter in all its aspects: political, economic, social, intellectual, spiritual and educational, without leaving the slightest loophole to admit crime. Therefore we find that the Islamic society has the lowest crime rates even when Muslims do not strictly abide by the teachings of Islam. This is due to the fact, as I have said, that Islam tries to combat crime before its commission.

Let us cite the example of theft, the punishment for which is amputation of the thief's hand. However, this is not the beginning of the solution but its final part when

* The Days of Ignorance (pre-Islamic era) were the days of tribalism, feuds and selfish accentuation of differences in man (Translator's note).

other solutions cease to be effective. The beginning of the solution is the act of inculcating the Muslim with abhorrence of theft followed by setting a system whereby he can earn his bread and butter honestly either through his own labour, or through a system of social welfare. Thus, the Muslim cannot have any excuses for committing theft. But if after all this he does commit theft, then there are no pardonable excuses and he shall be justly punished by having his hand cut off. However, despite the provision of socio-economic solutions with the object of crime prevention, the Sharia does not act with haste and each case of theft is dealt with separately. The Prophet said: " Do not make haste inflicting punishment when there exist doubts ". It is better to acquit an offender by mistake rather than to inculcate an innocent by error.

This is one way in which Islam treats crime before its commission.

As for adultery Islam not only urges the young people to get married early but also tries to secure economic solutions to safeguard the family. The idea of an early marriage is to prevent the youth from committing adultery. As a man may not be satisfied with one woman the Quran allows him to have more than one wife so that he cannot have the least excuse for committing adultery. We all know that in Europe polygamy is not allowed but a man can have scores of mistresses and girl friends instead. Islam, being a more practical and cleaner system, regards this matter seriously and in order to preclude all possible excuses for committing adultery a Muslim can marry up to four wives. If, despite all these measures, a man commits adultery, he shall be subjected to harsh punishment. But, as in the case of theft, punishment is not inflicted until there is positive proof that the offender is guilty of his crime and doubtful cases are disregarded. Similarly, in all other offences the Sharia tries to prevent crime or to restrain it as much as possible and punishment is inflicted only as a last resort.

After this brief introduction I shall now concentrate on the subject of my paper, i.e. The Influence of Islamic Education on Crime Prevention. Islam is actually a system which tries to educate the members of society in accordance with the moral values mentioned in the Quran and the Sunnah. The teachings in the Quran and the Sunnah would remain theories unless used in practical life, and the only way to do that is through "education". The Prophet, first in Mecca and later in Medina, did not confine himself only to saying what God has ordained but did his utmost to translate those teachings into practical examples and setting a pattern of education. Had he not done this the Sharia would have been but a Book of theories.

Islamic education has a well-defined objective, i.e. the upbringing of a righteous man. In this way Islam differs from all other systems (known in the Quran as the systems of the Days of Ignorance) as all these systems aim at bringing up a righteous citizen while Islam aims at bringing up a righteous man. At first sight it may appear that there is no difference between a righteous man and a righteous citizen and that a righteous citizen is essentially a righteous man. This, in fact, is not true: let us consider the present or past systems to illustrate the difference between the two. Perhaps English education prior to the Second World War was an example of an ideal system, as it was closer to the equilibrium Islam aims at. Nevertheless, if this ideal education (with respect to other systems of the "Days of Ignorance" which aim at the upbringing of a righteous citizen) is compared with the Islamic criteria we can see how close to or how distant it is from the concept of a righteous man. British citizens, for example, before the Second World War (I repeat and insist on the term prior to the last World War because since then European society has lost most of its virtues) were known for their ideals and virtues in the UK but behaved contrary to these ideals when sent as colonizers to Egypt, the Sudan or India. In my view, however, they

simply did not change: they had been brought up to be good citizens of the British Empire but were not educated to the worship of God. When in Britain the British citizen worshipped this idol called "Great Britain" through his good conduct; and when he went to the colonies he still adored the same idol by adopting other methods, such as looting, plundering, shedding blood and assaulting the natives' property and women. In doing so, the British citizen had not changed his nature but it was only the second face of the same man who worshipped the idol "Great Britain". I would like to cite two incidents to illustrate the advantages or rather the disadvantages of this kind of education of the "Days of Ignorance".

The first incident occurred during the Second World War in the Western Desert where a bitter battle was waged between the Allied Forces and the Germans, and which ended with Montgomery's victory over Rommel at Alamein. In one of the battles when the Germans were forced to withdraw from Tobruk they planted four fields around that town with mines so that the conquering army of the Allies would sustain the greatest losses possible. In such cases usually camels or donkeys are employed to explode the mines with their hoves and then the vanguard of the army advances with the low casualties. In this very incident (which I still recall for its horror) an Indian army corps was ordered to advance through the mined fields. They were threatened by death from the British machine-guns in their rear and the mines in front of them. In the end the Allies won and occupied Tobruk, and later the war bulletins came out with the news that the Allies had entered Tobruk with very light losses. The Indian army corps, however, was completely annihilated.

This is a good example of a righteous citizen devoted to the worship of an idol with virtuous conduct in his own country while committing horrors abroad.

The second incident is a snapshot of a British cavalryman in India trying to mount his horse not with the aid of a saddle but by standing on the back of an Indian.

These two incidents clearly show the great difference between a righteous citizen and a righteous man. Islam does not educate a person to be a righteous citizen but to be a righteous man, to deal with man as a human being and tries to make man attain the image that God had created from the beginning. The Quran says:

*" We have indeed created man
In the best of moulds
Then do We base him
(To be) the lowest
Of the low,
Except such as believe
And do righteous deeds "*

Chapter 95, verses 4, 5 and 6.

Through faith a man can go back to his original image, which is the best of moulds, and thus he becomes a righteous man. A righteous man educated according to Islamic teachings is not just objective with certain virtues in a certain country, but a man who keeps his virtues wherever he may go either within or outside Muslim society; his righteousness shows in his dealings with his fellow Muslims or with others of any creed or colour. I know an historical event that proves this: Islam spread in Africa South of the Sahara and in the Far East without any battle. How did this happen? Some people were converted by Muslim missionaries but most of the Africans and Asians embraced Islam thanks to Muslim traders, most of whom had come from Hadhramaut (Arabian Peninsula) not to preach Islam but to trade. How come then did Islam spread if the Muslim travellers went to

those distant lands with the scope of trading and not of preaching?

Those people were converted when they saw how spiritually clean the Muslim merchants were. Their good conduct, honest dealings, clean appearance and righteousness were the factors that appealed most to the peoples of the distant lands, and thus encouraged them to embrace Islam in crowds.

Islam teaches people to believe only in one God who has no other partners. He is the God, as the Prophet said, that is Great and Infinite and fills all the space between the heavens and the earth. This is not just something uttered by tongue, Islam is not just uttering the statement that there is but one God but it also means to act accordingly. Faith, according to Islam, has its prerequisites, objectives and morals. Let us consider the following Quranic verses: " The Believers must eventually win through ". Well, who are the believers and what are their characteristics?

The believers are

*" Those who humble themselves
In their prayers;
Who avoid vain talk;
Who are active in deeds
Of charity;
Who abstain from sex,
Except with those joined
To them in the marriage bond,
Or (the captives) whom
Their right hands possess,
For (in their case) they are
Free from blame,
But those whose desires exceed*

*Those limits are transgressors;
Those who faithfully observe
Their trusts and their covenants
And who (strictly) guard
Their prayers;
These will be the heirs
Who will inherit Paradise
They will dwell therein
(For ever)."*

Chapter 23, verses 1 to 11.

One cannot be a believer by merely reciting these verses but must practice all that is mentioned in them.

Let us consider another Quranic verse:

*"Is then one who doth know
That that which hath been
Revealed unto thee
From thy Lord is the Truth,
Like one who is blind?
It is those who are
Endowed with understanding
That receive admonition;
Those who fulfil the covenant
Of God and fail not
In their plight word;
Those who join together
Those things which God
Hath commanded to be joined*

*Hold their Lord in awe;
And fear the terrible reckoning
Those who patiently persevere,
Seeking the countenance of their Lord;
Establish regular prayers; spend
Out of (the gifts) We have bestowed
For their sustenance, secretly
And openly; and turn off Evil
With good; for such there is
The final attainment
Of the (Eternal) Home;
Gardens of perpetual bliss".*

Chapter 13, verses 19 to 23.

So the believers are those who recognize that whatever comes from God is the Truth, and as a result of this knowledge do not fail in fulfilling the covenant of God and joining together the things which God has commanded to be joined, say regular prayers, spend from the gifts God has bestowed, worship God and repel an evil deed by adopting a pious one.

Therefore the belief that there are no other gods but Allah has behavioural and moral values, and it becomes an integral part of the personality of he who testifies truly to it.

I do not mean to say that Islam preaches only the belief that there are no other gods but Allah. Of course, preaching comes to our mind when we discuss education, and there is no doubt that preaching is one of the elements of education, though not a major one. Neither is preaching the most effective factor. The Islamic teachings educate through the setting of good examples in the first

place, and that is by providing an environment conducive to emulation in behavioural terms.

The greatest messenger of God, Prophet Mohammad, was an ideal example not only for the Muslims but for all of mankind. The Holy Quran says:

*" We have indeed
In the Apostle of God
A beautiful pattern (of conduct)
For anyone whose hope is
In God and the Final Day
And who engages much
In the praise of God "*

Chapter 33, verse 21.

After the Prophet, the pious Companions and their followers perpetuated these exemplary values in every Islamic society. The religious teachings are absolutely indispensable for the setting of good examples for society. A Muslim family is composed, according to Islam, of Muslim parents who abide by Islamic morals. Naturally a family that lacks Islamic morals cannot bring up its children in the desired Islamic way, obviously one cannot offer what one does not possess. If the parents are not imbued with the spirit of Islam they cannot be expected to impart the Islamic values and ideals to their children. So the focal point in Islamic education for the prevention of crime or a restraint on its commission is the family composed of devout Muslim parents.

Although both parents must take equal shares in educating their children, the main responsibility lies with the father, for men are the protectors and maintainers of women. The main responsibility for the care of children and ensuring that they receive a real Islamic education lies with the father.

The problem is what textbook can we recommend for the teaching of Islamic education? This textbook should contain the Islamic values, principles and morals.

One of the virtues of this miraculous religion (Islam) is that the mere reciting of the Quran is considered a form of worship and prayer, for God wants thereby to educate the Muslim, and imbibe him with the teachings of the Quran. The first and greatest example of the teachers of Islam is the Prophet himself, and the early Islamic society composed of the pious Companions and their followers, then this Great Book (Quran), which we refer to, resort to and consult in order to derive our morals therefrom.

In accordance with the Quran the family forms the first nucleus of Islamic education, i.e. the Muslim family which brings up the children on the basis of Islamic morals. This education comes from emulation, direction and exhortation. Exhortation, however, is not considered the first factor in Islamic education. We would be wrong if we think that we can achieve an Islamic education through exhortation by transmitting religious topics on the radio and television every day, morning and evening, or teaching religion at schools or writing about religion in the newspapers. Nay, all this would be of little avail unless these teachings are coupled with concrete and tangible examples of behaviour for the society, in other words, the examples given by parents to their children to which the role of exhortation is complementary.

In this connection we would like to quote Abu Sufian * regarding the Prophet (who is the greatest favourite of all men) who said that he had never seen a person so endeared and loved by his Companions and followers as Mohammad,

* Abu Sufian was an opponent of the Prophet whom he fought at the battles of Badr and Uhud; later at Hudeibia he made peace with the Prophet. He embraced Islam on the day the Prophet conquered Mecca. In 636 A.D. he took part in the battle of Yarmouk against the Byzantines (Translator's note).

the Prophet. It is well known that the Prophet was the most beloved person in history and that through this great love he had such an influence on the people. The Prophet's Companions said that he did not bore them with incessant preaching which he did only in small doses. We know very well that too much preaching could have a negative reaction. It is true that it is one of the means of education but too much of it, with little behavioural examples, makes people bored and they may turn off their radio and television sets when the programme of religious talks is announced.

Preaching is quite essential but as already mentioned it should be given in the dose approved by the Prophet. Main stress should be put on the practical example, and not on preaching, so that the child will grow up according to the good example he has seen. Parents should teach their children to tell the truth by not telling lies in front of them. If, for example, one of the parents does something and asks the child to conceal it from his mother or father, such an action will offset all the preachings to which the child has been exposed. In other words, a good example comes first and then comes the secondary role of preaching.

Islam also attaches importance to the cultivation of good habits, the formation of which are most significant in education, for when the child acquires the habit of behaving according to the criteria set by the educator the main scope of education will be attained. Certainly education requires continuous observation and guidance.

To err is human, particularly a child who has not yet developed the ability to distinguish between what is right and what is evil and between what is permissible and what is prohibited. Therefore, the educator, whether he is one of the parents, a teacher or a university professor, must constantly observe the youngster and give him guidance whenever he commits an offence.

Of course, it is important that the educator himself is a person of integrity and has the personality to impose his

behaviour on the child, as otherwise the child will not heed his guidance. Fortunately, due to his small stature compared with that of his parents, the child looks at them with love and a sense of awe. Even at school and university the teacher and the professor have authority to educate and guide their students. The educators' constant duty should be to observe if the youngster commits any offence. If he does, then the educators may resort to some punitive measures by reprimanding and rebuking the offender on the condition that punishment is resorted to when alternative measures have been exhausted. Punishment with cane is not the most effective measure in education and should be used only as the last resort. The most effective means is reward of some kind. The Quran refers first to rewards and later to inflicting punishments when rewards fail to produce the desired results. The Quran says that paradise is the reward for those who do good deeds while torture and punishment await those who commit evil deeds.

Likewise, the educator in his dealings with the youngster must first resort to material rewards until he reaches the age of adulthood when immaterial and moral rewards could be utilized.

Gradually as the child matures he is taught that when he does something good, God is pleased with him.

Moreover, punitive measures must not start by being too harsh. They start with a number of preliminary tactics ranging from showing dissatisfaction, feigned anger, genuine show of anger or threatening to inflict punishment. In other words, actual punishment should be the last resort.

Education comprises formation of good habits, promise of reward in return for doing good deeds and punishment for the commission of evil deeds and the meaningful utilization of spare time, which can be detrimental to a person. Islam tries to fill spare time with the occupation of good deeds so that there is no material time for the contemplation of evil deeds. Muslim adults are ordered to fill their spare

time with fighting for God's cause, or occupying themselves with the management of the affairs of the society, to enjoin what is right and forbid what is wrong. At the same time adults are ordered to work for their bread and butter and perform the religious duties and worship so that they may have the least spare time possible to think of evil deeds.

The Prophet taught his Companions to make full use of their power to do good deeds by saying their prayers, fasting, paying social visits and dedicating themselves to the recitation of the Quran. The object was to make full use of the man's productive power and not to leave him with any spare time which could be misused.

Another method of education in Islam is the narration of parables and anecdotes. The Quran is full of stories about other prophets and ancient times. These stories are purposely narrated, for man usually compares himself with the heroes of the story and puts himself in their place. If the hero happens to be magnanimous the reader or the listener identifies himself with the hero and this may affect his conduct.

But if the hero is a malignant person and meets a tragic end the reader or the listener reflects upon the story and grasps the consequences in terms of cause and effect as narrated.

The objective of these stories is didactic aimed at cultivating virtue and avoiding vice. This is one of the methods which the Quran uses to bring up a good human-being who obeys God not only by performing the religious duties, such as prayers, fasting, alms-giving and pilgrimage, but also in the wider concept of worship. The Quran in this connection says:

*" I have only created
Jinns and men, that
They may serve Me "*

Chapter 5, verse 56.

and

*" Say: Truly, my prayer
And my service of sacrifice
My life and my death
Are (all) for God,
The Cherisher of the Worlds
No partner hath He
This am I commanded
And I am the first
Of those who bow
To His Will "*

Chapter 6, verses 161 and 162.

A man who remembers God at every moment of his life and worships Him by doing what is right will certainly abstain from committing any offence and will consider it below his dignity to commit any criminal act.

Although the Islamic society has deviated a lot from the pure concept of the Islamic teachings of its early days, it is still the least corrupt of all societies.

Before concluding my paper let us consider the question of alcohol, the offence of consuming alcoholic drinks in the Islamic society and the offence of drunkenness during the pre-Islamic and present Days of Ignorance in general. Western society, for example, prohibits drunkenness but not the actual consumption of alcoholic drinks. Drunkenness is apparently prohibited purely on materialistic grounds because it causes road accidents, casualties and loss of material production. But did the preaching and campaign have any effect on decreasing the percentage of drunkards or did it lessen the rate of crimes due to drunkenness? If you examine western reports and statistics you will find that crimes due to drunkenness, such as assaults, murders and

road accidents are steadily increasing. On the other hand we see the Islamic society (the society using the least alcoholic drinks) does not touch drinks because of fear of God. When the Quranic verse prohibiting taking alcoholic drinks was revealed all the Prophet needed was the public announcement in Medina that alcoholic drinks were prohibited. It is reported that the people who had containers full of wine broke them and spilled the contents on the ground, and the people who were drinking it spat it out. These people were abiding by the will of God.

This is the Islamic education which prevents the commission of crime or at least restrains it.

Sheikh Ibrahim Al-Dabbas

God's peace, mercy and blessings be upon you.

I thank the lecturer, an authority on Islamic education, for his eminent research which was of great interest for all of us. In fact Sheikh Mohammad Qutb does not need any introduction or praise. We all know his vast experience in Islamic studies and researches.

The Islamic education is rich with elements for the prevention of crime or for nipping it in the bud, as it is the basis for the purification of man's inner conscience. Islam, with its teachings, ideals, and moral values appeals to the virtuous part of the human soul. In this connection the Prophet said that every child is born innocent.

The Prophet's saying is a clear reference to the fact that God creates man with a nature rooted in religion. This religious instinct could be cultivated and polished or distorted according to the kind of education and upbringing given. In a Muslim house, where Islamic teachings are adhered to, the children usually grow up with a healthy mentality, and even if some of them are perverted they later return to the fold of their parents' education. This fact illustrates the role of the parents and the influence

of the home on children. Similarly, the school plays an important role in the formation of moral values. If the caretakers are righteous and devoutly religious the children will most likely have faith in God and will not be inclined to aggression and offences. Undoubtedly, society has a lot of influence on a person's integrity or his offensive inclination. The Prophet urged us to frequent good and to avoid bad company. The Prophet resembled good company to a musk-carrier * who will either sell you the musk or a lovely penetrating odour will emanate from him. On the other hand bad company is like a blacksmith's bellows which will either burn your clothes or strike you with an awful smell. It is only through Islam that a man's consciousness is aroused and he fears God's wrath and punishment, for Islam commands justice, the doing of good and what is right and prohibits injustice, sin and evil. If a man is sure that the Almighty God constantly watches him, that nothing can be concealed from Him, and knows that there is a reward for good deeds and a punishment for committing offences, that no matter how much he rebels and transgresses he will not escape God's punishment, how on earth can that person ever dare to commit an offence? In this connection the Holy Quran says:

*" O ye assembly of Jinns
And men! If it be
Ye can pass beyond
The zones of the heavens
And the earth, pass ye!
Not without the authority
Shall ye be able to pass! "*

Chapter 55, verse 33.

* Musk is a substance with a penetrating odour, that is derived from a male musk deer (Translator's note).

and

*O ye who believe
Save yourselves and your
Families from a Fire
Whose fuel is Men
And Stones ”.*

Chapter 66, verse 6.

The only protection against a blameful soul and the affliction of dismay and consternation is the Islamic education which prohibits all shameful deeds, whether committed openly or covertly, such as assault on other people's lives, honour and property. The Quran says:

*“ come not
Nigh to shameful deeds,
Whether open or secret;
Take not life, which God
Hath made sacred; except
By way of justice and law;
Thus doth He command you
That ye may learn wisdom ”.*

Chapter 6, verse 151.

Islam in its teachings pays special attention to the education of the conscience which motivates behaviour and acts as a brake against criminal deeds.

In some cases the Quran warns the offenders with punishment in the Hereafter as in the following verse:

*“ If a man kills a Believer
Intentionally, his recompense
Is Hell, to abide therein*

*(For ever): and the wrath
And the curse of God
Are upon him, and
A dreadful penalty
Is prepared for him ”.*

Chapter 4, verse 93.

Also Islam fixes a penalty for those who exceed their limit. The Quran says:

*“ In the Law of Equality
There is (saving of) Life ”.*

Chapter 2, verse 179.

The story of Maez and Ghamidiya (mentioned in previous discussions) is a clear illustration of the effect of Islamic education on crime prevention.

Islam likewise prohibits adultery and explains its detestable consequences. The Quran says:

*“ Nor come nigh to adultery
For it is a shameful (deed)
And an evil, opening the road
(To other evils) ”.*

Chapter 17, verse 32.

As adultery is a shameful deed and opens the road to other evils it is considered a detestable crime and therefore to be avoided, but if this warning does not suffice to prevent a person from committing adultery then the appro-

priate punishment has been prescribed for the offender as in the following Quranic verse:

*"The woman and the man
Guilty of adultery or fornication
Flog each of them
With a hundred stripes".*

Chapter 24, verse 2.

This is as far as the earthly punishment is concerned. In the Hereafter the adulterer and the adulteress will be punished for having committed shameful deeds that open the way for other evils.

Likewise, Islam prohibits defamation, as in the following Quranic verse:

*"Nor speak ill on each other
Behind their backs. Would any
Of you like to eat
The flesh of his dead
Brother? Nay, ye would
Abhor it... But fear God:
For God is Oft-Returning,
Most Merciful".*

Chapter 49, verse 12.

Islam does not stop at giving warnings; a fixed penalty is prescribed for defamators as in the following Quranic verse:

*"And those who launch
A charge against chaste women,
And produce not four witnesses
(To support their allegations)*

*Flog them with eighty stripes;
And reject their evidence
Ever after: for such men
Are wicked transgressors".*

Chapter 24, verse 4.

On reading the Quran we notice that it always directs attention to reasoning and inquiring into the consequences of every act as in the following verses: "Do ye not understand?", "Do ye not recall?", "They have hearts where-with they understand not", "It is those who are endowed with understanding that receive admonition". Islam urges people to use their mind for testing their actions by their consequences. It deals with crime in terms of its effect, the dangers it entails and the fact that the offender cannot escape from God's punishment. Surely all these reasonings act as a brake against evil and the commission of crime. The Islamic worships which comprise alms-giving, prayers, belief in one God and social aspects have a great influence on the rehabilitation of the individual, the society and the nation.

Prosperity and happiness could not exist without adherence to the tenets of Islam. The Quran says:

*"and establish
Regular prayer: for Prayer
Restrains from shameful
And unjust deeds";*

Chapter 29, verse 45.

and

*"seek (God's help)
With patient perseverance
And prayer".*

Chapter 2, verse 45.

May God guide us to what He favours. God's peace, mercy and blessings be upon you.

Sheikh Abdullah Al-Fantoukh

Peace be upon you.

I thank the lecturer for his excellent speech. I would like to quote him on some of the matters he dealt with.

Indeed Islamic education is powerful in exercising its influence on crime prevention and its eradication. In fact all God's messengers were ordered to start with the imparting of education and to leave punishments to the end when it has been proved that education cannot refrain the offender's criminal inclinations. In this connection Islam's glorious Quran says:

" nor Would We

Visit with Our Wrath

Until We had sent

An apostle (to give warning).

Chapter 17, verse 15.

Therefore the Prophet and his successors have to apply education before inflicting various penal measures such as confinement, flogging, beating and capital punishment as well as the warning that the offender's punishment in the Hereafter will be Hell. So Islam starts with education, then upbringing and in the end, when these methods have failed, punishment. Education means the clarification and explanation of God's injunctions in the Quran which penetrate through the heart and remain there unless something else interferes with it. Then this education is personified in the pious behaviour of the teacher and the educator: a teacher must be an educator and vice versa. Teaching and

education are inseparable and the Ministry of Education implies both. Teaching often means the identification of logical problems and the acquisition of that knowledge. Education, on the other hand, is what materializes from teaching. The teacher is expected to be a moving scholar, and his behaviour should reflect his acquired knowledge. This is exactly what God wanted Islam to do.

Islamic education, which aims at crime prevention and elimination, teaches the child the virtues of Islam, establishing a bond between the teacher and God by knowing Him first then by serving and obeying Him. Once this spiritual bondship is established the teacher starts demonstrating the advantages and morals of Islam as mentioned in the Quran and the Sunnah. One of these virtues is chastity. The child is brought up in the Islamic society to be chaste as he sees everybody around him (parents, neighbours, society and government) clean and chaste. In turn, his chastity is passed to his parents, neighbours, family, society, government and the Islamic nation as a whole. Should any of his parents, neighbours, members of his family, government or society behave inconsistently with chastity this will definitely affect the child. In a society where one faith and one Sharia unite the people, all members of society are affected by whatever is done or undone by the other; nobody can escape the results of the interactive process. This phenomenon was narrated by the Prophet: "The relationship between the Muslims is like that of the various parts of a building, each supporting the other". Then he clasped his fingers saying: "The relationship between the Muslims is like the relation of one part of the body with the other; if one part of the body suffers all the other parts will feel pain and suffer from sleeplessness and fever".

Islam is basically a religion of integrity. Children should be educated to be chaste and to be provided with the environment that helps to develop chastity so that it becomes an integral part of their behaviour.

When the methods of education and mass media stir the child's instincts he is faced with contradictions and conflicts; he is torn between Islamic moral values and the teaching disvalues. The danger lies when the family and the authorities concerned with educational institutions are the cause of these disparities between moral values and disvalues. Islamic education teaches people to be co-operative in their dealings with others. They are taught to co-operate and grasp its real meaning, which should start in the family and gradually extend to larger environments. By co-operation we mean that people should be willing to give rather than take, otherwise they will become aggressive. If they are brought up in the Islamic sense of the word, people will not think of violating others' rights, properties or honour. Hence chastity, altruistic co-operation, modesty, integrity and truth are the cardinal features of Islamic morals. I do not have enough time to treat each of these features separately. As Sheikh Qutb mentioned that the Prophet said: "Every newly born child is innocent; it is his parents who turn him into a Jew or a pagan, etc.". According to scholars "innocence" is marked by simplicity, artlessness and candour, unchecked by diffidence or guile. Hence virtuous teachings, a simple education and a pure society are bound to influence an innocent creature. Both pure teachings and an innocent soul reflect each other like a crystal mirror reflecting the body of a person without any distortions. In this manner Islamic religion affects our education. The way the Prophet imparted his knowledge to his Companions at Mecca gives us a clear picture of this interaction between education and a pure soul. He wanted his Companions to raise their children at Mecca in an environment in accordance with the moral and spiritual values of Islamic education. As all of these values were lacking at that time in Mecca, the Prophet decided to migrate to another environment (Medina) where Muslim

youngsters could be raised and educated in this great religion which teaches but the truth.

So if we implement the perfect combination of the three components (religion revealed by God, pure human nature and the teachings prescribed in the Quran and the Sunnah) on individuals, societies and the nation on the whole, crime is bound to be wiped out. But if one of these components are lacking the Islamic nation will be adversely affected.

I pray God the Almighty to sensitize Muslim rulers, scholars, educators and thinkers to create an environment where they and their youngsters could be brought up according to the tenets of Islam and thus preserve their country. May God protect this country as an ideal example of Islam. Peace be upon the Prophet, his family and Companions.

(The meeting was adjourned at 5.50 p.m. and resumed at 6.20 p.m.)

Conductor of Discussions

I give the floor to Sir Arthur Peterson to comment on the speech.

Sir Arthur Peterson

I have some queries regarding education in the Kingdom of Saudi Arabia. Before doing this I would like to touch on the comparisons made by the author of this paper between Islamic and British systems of education. I have a fair knowledge of what took place in India, for my grandfather was a lecturer in the Sanskrit language in an Indian university and my father was the manager of an Indian company there, and he served the Indians well.

Therefore I am afraid to say that I do not agree with the distinguished lecturer regarding British education and the examples he cited about British behaviour abroad.

The British soldier who tried to mount his horse with the help of an Indian cannot be taken as an example of British behaviour or education. I believe that any man should give a hand especially if someone tries to mount an unruly horse. The important thing is the comparison between British behaviour at home and abroad, particularly in India. Although I was not in India when it was under British rule, I do agree that the British used to teach Indians under the threat of being shot.

When the British and Islamic education systems are compared one must be sure that the examples cited are correct and clear. I regret wasting time on this point. I grasped quite well what the three speakers said today about the educational system in Muslim countries although I believe that for us foreigners it would be more important to hear further about the methods for the expansion and propagation of this education in Muslim countries. As far as I know there is no clear, tangible or organized system for the propagation of Islamic education in Muslim countries.

Although the system is well applied in Saudi Arabia we do not know about what takes place in other Muslim countries as regards education and the training of teachers.

The second point is that I would like to know at what age children are taught Islamic education and its effect on the children, bearing in mind that in western countries children commence school at a very early age.

The third point is that I always felt that mosques play a central role in the Islamic educational system and my query is to what extent schools and universities are connected with education in the mosques.

I would be grateful to have replies to my queries.

Vice-Chairman

My intervention at this point is not as a participant but as Vice-Chairman of the symposium. There are some

points which need further clarification. I share your views regarding the examples cited relating to the behaviour of individuals, which is the result of educational factors.

I agree with Sir Arthur Peterson that one cannot judge the conduct of the British abroad just by the misbehaviour of some in the ex-colonies.

However, the main point is, as Sir Arthur Peterson said, that the question of Islamic education has not been treated fully in all its aspects. As Sheikh Mohammad Qutb has described the importance of Islamic education in Saudi Arabia I expect he could give some clarifications on the system in the world in general and the Muslim world in particular, as he is an authority on this matter especially since his paper deals with the influence of Islamic education on crime prevention.

As regards your second query concerning the age children should be taught Islamic education, I would like to inform you that this is taught at all the stages from the elementary through the secondary school.

The author of the paper will shortly provide you with the answers in detail.

Thank you.

Conductor of Discussions

My thanks to the Chairman for his comments. Now I give the floor to Professor Mamoun Mubarak Aman, representative of the Republic of the Sudan, on crime prevention and secular laws.

Due to the shortage of time I would like to ask Professor Mamoun Mubarak Aman to concentrate on the influence of Islamic education on crime prevention unless he wants to show the supremacy of Islamic education by comparing it with the secular laws.

Professor Mamoun Mubarak Aman

Thank you very much. I am aware that the topic under discussion is the influence of Islamic education on crime prevention. What motivated me to ask for the floor is Sheikh Qutb's introductory remarks that secular laws neglected the importance of crime prevention (after the commission of the crime). As a matter of fact I know that in the Sudan and in many other countries much attention has been given to the means of crime prevention although not to the extent of the Islamic Sharia which has embraced all aspects of the problem, something the secular laws have failed to do. Nevertheless, secular laws do deal with crime prevention and are concerned with it.

Sheikh Mohammad Juweid - Representative of Somalia

Praise be to God, the Cherisher and Sustainer of the Worlds and peace be upon the Prophet.

Thanks to God for having provided us with this auspicious opportunity to discuss the implementation of God's legislation in obedience to His Wish. Likewise, I thank the Kingdom of Saudi Arabia for implementing the Islamic Sharia serving the true religion and also the Ministry of Interior for organizing this symposium.

Lastly I extend my thanks to Sheikh Mohammad Qutb, the author of the paper and the two commentators.

Islamic education means that a man must acquire numerous virtuous qualities as God has commanded us to be virtuous. The Prophet said: "Verily I have been sent by God to teach people gracious morals". Gracious morals and Islamic education are two expressions with one meaning. For example, if we consider a character trait of gracious morals, which is the truth, we find that it leads to all that is good whereas telling lies is the root of all evils.

In the following Quranic verse God ordered Muslims to tell the truth:

*" O ye who believe! Fear God
And be with those
Who are true (in word and deed) "*

Chapter 9, verse 119.

The quality of being truthful is used in the Quran for other prophets, such as Abraham, Idris, Ishmael and others. This means that telling the truth is a quality of God's messengers and prophets.

The Prophet said: " You can tell a hypocrite by three things: when he speaks he tells lies, he does not fulfill his promises and he betrays his trust ".

The Prophet also said: " Stick to the truth which leads to piety and this in turn leads to Paradise. A man who sticks to the truth is regarded by God as a truthful person. On the other hand avoid telling lies which leads to dissolution and corruption and these in turn lead to Hell. A man who continues cheating and lying will be regarded by God as a profligate and false ".

We all know that early education is much more effective than that of the later years of adulthood. A young tree with tender branches can be easily straightened, but an old tree whose branches have become thick and knotty will be difficult to straighten.

The same can be applied to a child. If he is brought up in a good environment whether at home, school or university and exposed to an adequate amount of preaching he is bound to grow up as a virtuous person. On the other hand if he grows up in a bad environment it is difficult to reform him and he will be inclined to commit evil deeds. Islamic education starts with the family.

The Prophet stressed this by saying: "When your children are seven years old, teach them to say their prayers; when they fail to say prayers at the age of ten beat them, and separate the beds of the two sexes from then on". This means that when a child is taught these Islamic principles he will grow up imbibed with them, otherwise it would be very difficult to instil such lofty principles.

Sheikh Nasser Ibn Hamad Al-Rasheed

I must admit we have benefitted a lot from listening to the lecture on Islamic education and its influence on the combatting of crime. However, I would like to remark on the comment made concerning the author's reference that it does not suffice to merely utter the statement "There is no god but Allah" but that this should be associated with deeds as well.

In my view whoever utters this statement is either somebody who does not know its real meaning and in that case he is not a real Muslim, or he knows its meaning which is the ultimate degree of love coupled with the ultimate degree of submission to obey and worship the Only Almighty God, and that he acts accordingly.

Abu Hureira * reported that the Prophet said: "Whoever wholeheartedly says there are no other gods but Allah shall enter the Paradise". Thus the statement that there is only One Allah is indivisible. It combines both testimony and action.

Saying regular prayers, alms-giving "Zakat", pilgrimage, co-operation with relatives, obeying parents and abstaining from mischief are all considered part and parcel of the statement "there are no other gods but Allah". I am sure

* Abu Hureira was one of the Companions of the Prophet who died in 676 A.D. (Translator's note).

that the author and the commentators are also fully aware of these implications but I just wanted to remind them of this clarification.

Salem Al-Kaswany

I thank the lecturer for his valuable paper. May I express my own view on the meaning of a good man and a good citizen which is different from that of the lecturer because I treat the subject from an educational point of view.

In my view both terms "a good man" and "a good citizen" are the two faces of the same coin. With due respect to Sheikh Mohammad Qutb I believe that if a man is a good citizen in his own country it goes without saying that he must also be a good man, for education based upon truth and good treatment of others will certainly have its effect on this citizen even if he goes abroad.

Of course, I have no intention of going into a detailed discussion of the incidents cited by the author because I believe that they are related to the policy adopted by the governments of the countries concerned. This is an exception to the general rule. Needless to say, all wars of aggression and their results are immoral. Similarly, colonization, wherever it may be or whatever form it may take, is considered immoral and cannot be taken as a yardstick.

Educationalists know that their educational theories have a relative effect in the sense that individuals react differently when exposed to the same theory. What I would like to stress is that from logical, philosophical and educational points of view there is no difference between a good citizen and a good man. Of course, we have to distinguish between a man's voluntary behaviour and deeds carried out on his government's orders. I do not intend to defend any crime committed in this connection but I am just expressing an educational point of view. I believe that Islam in its

early stage first built up a Muslim citizen wherever he happened to be brought up and later extended its scope to build up a good man from a universal humanitarian viewpoint.

I need not go into details of some negative aspects resulting from immoral deeds which are inconsistent with the principles of Islamic education. This is to say that good behaviour or misbehaviour must be attributed to the individual and not to the system to which that particular individual pertains. It would be unfair to any system in this world if this fact is denied.

Dr. Tawfiq Mohammad Al-Shawy

Praise be to God and peace be upon His Prophet.

First of all I thank the author of the paper for his research.

In all fairness to our colleagues who consider Islamic criminal laws as corresponding to the penal code or criminal law at most, and who believe that the core of the criminal law system is punishment or penalty for crime committed, I fear that some of them feel rather puzzled by today's discussions on Islamic faith, Islamic worship, Islamic ethics, and Islamic education and their roles in the Islamic criminal legislation.

The theme of today's symposium is the Islamic criminal legislation.

Some of the participants were under the impression that if subjects such as Islamic education, Islamic faith and Islamic ethics were dealt with, it would have been advisable to change the title of the symposium to "Influence of Islam" *in toto*, comprising punishment, legislation, morals, worship, etc., on crime prevention; they perhaps did not realize that such subjects fall within the scope of this legislation. I am afraid I do not share their view because I believe that the researches dealt with today on Islamic faith, Islamic ethics,

Islamic education and their roles in crime prevention constitute the very core of criminal legislation in Islam. If this concept differs from that of the secular laws, we must realize that the criminal system in Islam has a special nature different from that of the secular system.

This is the aim of holding this symposium, to see the difference between the Islamic and secular systems.

The difference between the two systems is, as the researchers pointed out today, that the beginning of the Islamic criminal system is quite different from that of the secular system. The secular system starts with punishment and often ends with the execution of punishment. Students of law in our universities are familiar with that, for they start their criminal laws by studying philosophical theories on the secular laws. They read the texts, their implementation and the penalties to be inflicted. They do not study the social system, ethics and matters relating to beliefs concerning the law. Therefore, this lack of interest in the social system, ethics and beliefs has led to shortfalls which have been felt by criminologists all over the world and a new movement has now emerged with a view to introducing crime prevention measures in the criminal law.

Perhaps the representative of the Sudan wanted to refer to this matter when he spoke on the Sudanese law. However, this reference does not by any means indicate that the secular laws have or will ever reach that which the Islamic legislation has attained because of the differences at their starting point. The secular laws start with punishment and consider crime prevention as a modern addition and an exceptional case.

No complete system of preventive measures exists in any Arab secular legislations in force today in Arab countries or non-Arab Muslim countries. If they do exist they are found as exceptional texts which do not change the nature of the criminal penalty system. Whereas the Islamic criminal system, as we know, starts in a completely different

way. We have therefore to base our legislation and standardization of Islamic laws on this concept and on its implications in terms of means and ends. To conclude the researches on Islamic education, faith, worship and ethics, we as men of law may sum up the discussions as follows: the Islamic criminal system is essentially preventive; real punishment "Hudoud" is an exception. Discretionary punishment "Ta'zir" is not considered a penalty by Muslim jurists because it implies education, and as such it is more of a preventive method than a punishment.

So by limiting the Islamic penalty system to fixed punishment "Hudoud" alone, actual punishment constitutes a very small part of the whole integrated Islamic criminal system structure.

Mr. Giuseppe di Gennaro

My thanks to you.

I have no queries on the Islamic fundamental education against crime although I do have one specific query concerning the exact difference between misbehaviour and crime. Misbehaviour in general is the product of early miseducation which in most cases leads to crime, for human nature, especially during childhood, is inclined towards evil. If this is so, the Islamic education, being fundamental, is most significant as education should be regarded as a protection against crime. When children do not receive a sound education during their early years they should be given adult education later.

My question is how can we liberate the individual from misbehaviour and misconduct?

I would be delighted to have an answer to my query.

Conductor of Discussions

I thank Mr. di Gennaro. I regret I cannot give the floor to other participants because of time limits. I believe

the author of the paper can supply the answers to the participants' comments and queries.

However, due to the fact that our time is up, I propose we postpone this until tomorrow, God willing, and then he will be given the opportunity to give the required answers during the first session, so I trust that the participants who made the comments will not fail to attend. We therefore conclude today's proceedings. I pray God to give us success on the right path.

Chairman

Thanks to the author of the paper and all the participants. Indeed your efforts today have been exhausting but they were worthwhile for our aims.

Tomorrow evening's paper will be one of the most important topics of the symposium, as it will deal with the implementation of Islamic criminal legislation in the Kingdom of Saudi Arabia. I therefore trust that all of you will arrive early for the meeting so that we can complete our programme. (On Tuesday 19 Shawal 1366 A. H., corresponding to 12 October 1976, at 8.30 a.m. the meeting was held at the King Feisal Conference Hall at Maathar, Riyadh, Saudi Arabia, chaired by Dr. Ibrahim Al-Awaji, Vice-Chairman of the symposium.)

Chairman

As already pointed out today's paper is very important, as it deals with the implementation of Islamic criminal legislation and its effect on crime prevention in the Kingdom of Saudi Arabia. The first topic will be the implementation of fixed punishment "Hudoud", retaliation "Kisas" and blood money "Diya".

As Sheikh Mohammad Qutb did not have time yesterday to answer the commentators' remarks and queries he will do so today.

Sheikh Mohammad Qutb

Praise be to God the Cherisher and Sustainer of the Worlds and peace be upon the Prophet.

I shall make my comments very briefly on the points raised yesterday, starting with Sir Arthur Peterson's query. Islam teaches us to be fair and free from any sort of prejudice as the following Quranic verse shows:

*" O ye who believe
Stand out firmly
For God, as witnesses
To fair dealing, and let not
The hatred of others
To make you swerve
To wrong and depart from
Justice. Be just: that is
Next to piety".*

Chapter 5, verse 9.

I said that British education was the highest model, outside Islam, that humankind has ever known. I only denounced the British colonization. Sir Arthur himself said that history cannot defend colonization, but once the European mentality is free from the political, economic and military concept of imperialism, by conviction and persuasion then the problem ceases and the case is dismissed.

As to his query concerning at what age the child should be taught Islamic education, my answer is that there is no established age for education, for I did not mean the scholastic education. I meant the education that starts at home and goes on at school, the university and all through one's life.

As regards the application of this kind of education I must admit that a complete and integrated Islamic education, as we would desire, is not being implemented today. However, we are trying to revive the early Islamic society.

We must be frank with ourselves that Islamic society as it was during its early stages does not exist today but we are trying through research throughout the Muslim world to revive it.

As regards Mr. di Gennaro's query as to what age the education should commence I have already answered that, stating that it starts during the tender age of childhood.

How can we prevent an adult from the latent or potential criminal tendencies and overcome them? My answer is what is known as reconstruction of experience in the educative process: the closest analogy to my mind is a piece of magnetic bar when iron particles are rearranged but not created anew, only in such a way it acquires its magnetic effectiveness.

Islam has a somewhat similar effect on the soul of an individual. This happens at any age-level because human nature is malleable to reconstruction. Although it is true that education is more effective in childhood, it continues throughout one's life. A case in point is Omar Ibn Al-Khattab who was a tyrant before embracing Islam and after which, although he was a mature adult, he became the perfect man known in history. In short, there is no fixed age for receiving education and guidance. As regards the objection raised by the Jordanian representative on the distinction I made between a good citizen and a good man, my reply is that such a distinction does not exist when a good citizen lives in the Islamic society which worships God and abides by His legislation.

But if education is based upon regional or racial grounds, such as in the western civilization today which believes in the white man's supremacy and not the concept of pure

worshipping of God, then a good citizen is not the same as a good man.

Sheikh Sadek said that I did not fully discuss the ways of Islamic education. This is quite true. But the topic of this symposium was not the ways of Islamic education but the influence of Islamic education on crime prevention so I therefore concentrated on the influence of Islamic education on crime prevention and not on the ways of Islamic education. Moreover, as you know, the time allocated for my paper was quite short.

I have written two books on Islamic education, one is already published and the second one is being published. It is quite impossible to give a summary of the written material in a few minutes. However, I promise you to make further research and to write another book.

My thanks to all of you for listening to me.

God's peace, mercy and blessings be upon you.

Chairman

Our thanks to the eminent scholar, Sheikh Mohammad Qutb, for the clarity and precision of his comments, and for the explanations he contributed to the discussions of both yesterday and today.

THE EFFECT OF ISLAMIC LEGISLATION ON CRIME PREVENTION IN SAUDI ARABIA

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PART TWO

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IN THE NAME OF GOD, MOST GRACIOUS,
MOST MERCIFUL

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SEVENTH SYMPOSIUM

SEVENTH PAPER

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SHARIA PENALTIES AND WAYS OF THEIR
IMPLEMENTATION IN THE KINGDOM
OF SAUDI ARABIA

First

Retaliation Penalty "Kisas"
Blood Money "Diya"
Expiation "Kaffara"

by

SHEIKH MOHAMMAD IBN IBRAHIM AL-HEWESH

Prosecutor at the Court of Appeal

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Commentators

Dr. Abdul Rahman Abdul Aziz Al-Qasim, Assistant Professor, Faculty of Commerce, Riyadh University.

Sheikh Sa'ad Ibn Mohammad Al-Gharian, Director of the Secretariat, Supreme Council of Scholars.

Conductor of Discussions

Dr. Abdullah Omar Naseef, Deputy President, King Abdul Aziz University.

Introduction

As a pioneering country in the implementation of the Islamic Sharia the Kingdom of Saudi Arabia enjoys security and stability that do not exist in any other part of the world. It spares no efforts to be the living example of the Muslim nation and Muslim society by translating the teachings of Islam from words into action and from theories into practice. Anyone who happened to have been in this vast and sprawling Kingdom which in the past did not have any modern means of communication and who knew the Arab tribes (known for their tribal customs, chauvinism and pre-Islamic hostilities and vendetta) inhabiting this country, and who knew the order and security reigning in this vast country, would realize that this has been feasible thanks to the great Saudi rulers' strict implementation of the Islamic Sharia in all walks of life including government, politics, administration, personal relations, business transactions and social relationships.

Those who live in this country and notice the low rate of crime, despite the existence of the factors, realize that the security, order and safety of life, property and honour have been achieved through the implementation of the Islamic Sharia.

As a result of this security the numerous life assurance companies of different nationalities which opened their branches in this country not only did not flourish but also went bankrupt. This is because by implementing the Sharia the state provides the citizens with a very secure life and

thus they do not feel the necessity to have anything to do with such institutions.

By its implementation of the divine Sharia the state considers itself responsible for providing every citizen in this country with a stable and secure life and thus man's life, property and honour are protected from violation.

By taking a quick glance at the Saudi Government's statistics we can realize how the residents in this Kingdom enjoy prosperity through the implementation of the Sharia. If we compare these statistics with those of other countries, where scores of people have life assurance policies, we can easily find out the great difference in the number and kind of crimes committed in this country and elsewhere.

While the Kingdom of Saudi Arabia takes great pride in these actual gains realized by its adherence to and implementation of the Islamic Sharia in all aspects of life, it invites all Muslim and friendly non-Muslim countries to resort to this divine legislation which provides a more secure, just and equitable life.

This is exactly what motivated the responsible authorities here to convene this symposium and to invite this distinguished group of men of letters, educationalists, men of law and scholars concerned with sociology from all over the world to get first hand experience of what this Kingdom has accomplished in the field of crime prevention.

Retaliation Penalty "Kisas"

Penalty in the Sharia means the penalty meted out to the offender for the commission of a crime.

Crime

Crime in the Sharia is the commission of an act that is forbidden or the omission of a duty that is commanded.

Reason why Penalty was Prescribed

In the Sharia penalty was prescribed not as a torture to the offender but as a disciplinary and reformatory act not only for the offender but also for the Muslim society as a whole, with a view to protecting it from vice and shameful deeds and elevate it to a higher and more virtuous level where security, peace, respect for human relationships, fraternity and mutual understanding prevail.

Examples of the Sublimity of the Sharia and the Nobility of its Objectives

We need not cite examples from the Sharia itself, for we have plenty of examples from other sources. Suffice to say that the Prophet forbade the condemnation of the man who confessed the crime of adultery until the penalty was inflicted upon him and then the Prophet said: "The adulterer sincerely repented and gave up his soul in submission".

Moreover, according to the Sharia, an offender who has received "Hadd" or "Ta'zir" punishment and paid for his crime with such penalties, is no longer considered a criminal. By such an act the Sharia strives to rehabilitate the human soul. We said "the human soul" because this judgement concerns both the Muslims and non-Muslims who live in Muslim countries and who enjoy the Muslim governments' protection and justice.

The Sharia cultivates the Soul and Reforms it

By wiping out the reputation of criminality from the offender after the infliction of the "Hadd" or "Ta'zir" punishment, the Sharia transforms him into a dignified and respectable man. Commission of a crime does not mean that the offender is permanently debased, but it means that he just erred similar to any other human being who is liable

to make errors. The offender thus feels that he still belongs to his own society although he committed an offence and was penalized for it. The punishment inflicted upon an offender is done in his interest and that of the society as well. It is similar to the relationship between a father and his son. The punishment is to be regarded both as a remedy for the offender and a protection for the whole of society. Thus, the Sharia gives a lofty example of restoring self-confidence to the offender in a refined and practical manner.

Penalty as a Means of Discipline in the Islamic Society

Once the Islamic Sharia is implemented by the government and the society in the way mentioned above, punishment becomes a way for repentance and sincere rehabilitation. After the infliction of the punishment the offender suddenly changes, out of persuasion and not fear, to an ideal behavioural pattern reflecting the living image and correct approach of the teachings of his religion and the requirements of his beliefs.

How the Muslim Society was built up

Islamic laws are not like other abstract theories which are not easily put into practice. Islamic laws are characterized by their simplicity and are harmonious and consistent with the basic needs of human nature. They allow human instincts take their natural course without causing harm to others. Those who study the Islamic laws realize that they try to build a Muslim society characterized by amicable relations, virtues and altruism.

In a Muslim society, particularly the society that adheres strictly to the teachings of Islam in form and contents, there can be no place for base sentiments, such as rancour or hostility. All the Islamic laws, whether those concerned

with worship, human relationships, Islamic morals, domestic relations, government, politics or administration, serve one noble goal, i.e. intensification of relationships, between the Muslims themselves.

The concept of equality and togetherness is paramount when regular prayers are said with other people. One God is worshipped, one Prophet is followed, one Qibla is followed, one Quran is held by all and the performance of the prayers is the same. The same obligations are observed by the rank and file without any discrimination between the poor and the rich, young and old, male or female.

The same principle is applied to financial religious duties.

Islamic laws impose the payment of alms "Zakat" to the poor and compel the Muslim to support his kith and kin. A Muslim who commits acts prohibited by the Sharia must pay expiation money which is distributed to the poor. In business transactions the Sharia prohibits the sales which lead to disputes and hostilities amongst Muslims. Pornographic materials and other immoral items are not permitted. The Sharia also orders that Muslims should be lenient in their dealings with their fellow Muslims and have regard for them when they are in financial distress and even give them loans when they are in need.

Likewise, the Sharia urges Muslims to have good manners and polite ways, such as greeting the people, wishing well to the person who sneezes, visiting the sick, and taking part in funerals praying God to have mercy on the deceased, recalling his good aspects, showing respect to his corpse by not treading on his grave or digging out the dead body after internment. Furthermore, Muslims are ordered to offer their condolences to the family of the deceased, treat others with generosity and magnanimity, help the poor, respect the elders, be lenient to the young, console the poor, revere the learned, express affection to one's relatives, support the oppressed and deter the oppressor.

Similarly, the Sharia prohibits Muslims to suspect, humiliate, degrade, envy, curse, reprimand, frighten and backbite fellow Muslims or do anything that might cause harm to them.

In domestic matters the Sharia stresses the importance of reaching an accord on matters like inheritance, alimony, divorce, execution of the will, unalienable property, government, politics and administration. Also the Sharia specifies the process of governing and the qualities that a good ruler must possess and define his powers and the manner to nominate him.

This subject is too vast to be covered in such a brief account. However, we are trying to treat it in general terms. Truly Islam has built such an ideal society that there can be no grounds for commission of offences or emotional disorders, for everybody can enjoy security, justice, freedom as well as respect, loyalty and love on the part of his fellow Muslims.

Hence, when a crime is committed in the Muslim society, it is considered a deviation from the norms of the society, and causes painful reactions from the entire Muslim community.

Reason why a Muslim Commits an Offence

A Muslim's belief is based on a solid foundation of faith in God, His angels, His Books, His messengers, the Day of Judgement, predestination * whether good or evil and the belief that God is aware and has control of everything in this Universe. It encompasses faith in God's knowledge of all that happens in the Universe including whatever man says, does and thinks.

Belief in the Day of Judgement means having faith in resurrection after death. Thus, a Muslim bases his belief

* Predestination is the theological doctrine that all events throughout eternity have been fore-ordained by divine decree or purpose (Translator's note).

on this foundation of faith which underlies that whatever he says is registered and whatever he does is reckoned. The Quran says:

*" God has
Reckoned its (value), though
They may have forgotten it "*

Chapter 58, verse 6.

The Quran stresses the existence of life after death when people will resurrect and emerge from their graves in the following verse:

*" The Day when
The Earth will be
Rent asunder, from (men)
Hurrying out: that will be
A gathering together, —
Quite easy for Us "*

Chapter 50, verse 44.

Every human being will be confronted with his actions and will be rewarded for his good deeds and punished for his evil ones. In this connection the Quran says:

*" On the Day when every soul
Will be confronted
With all the good it has done,
And all the evil it has done,
It will wish there were
A great distance
Between it and its evil "*

Chapter 3, verse 30.

The intensity of this faith differs from one Muslim to another. The Muslim who is imbued with the spirit of this faith becomes a stronghold of fortitude and will not be affected by temptations. On the other hand if his faith is frail, crime finds a fertile soil to penetrate and tempt the Muslim to commit crime.

Thus crime is a sign of the Muslim's frail faith and feeble belief. Therefore Islamic laws have come to strengthen this belief but not to weaken and erode it. The Muslim society which adheres to the real teachings of the Sharia has very low crime rates whereas other Muslim societies, which abide by the Sharia only as regards personal matters but apply secular laws in other aspects of life, do not enjoy the advantages of the Muslim societies abiding by the Sharia. These advantages are order, justice, equality, liberty, brotherly love, stability, prosperity and happiness.

Islamic Sharia is indivisible.

The Sharia is indivisible and cannot be sectioned. He who abides by some laws of the Sharia and neglects the others is like a man who cuts a limb off a body and still considers it whole. The laws of the Sharia are like the parts of the body or supports of the same structure. Any disregarded law of the Sharia will have negative reactions just like a diseased part of the body will affect the whole body or a support of a structure not tended is apt to make the whole building shaky.

The Islamic laws are like pure and sweet waters of rivulets stemming from the same pure source and flowing into the same mouth of the river. He who applies parts of the Sharia and does not abide by the others, is a person who contests God's power and tries to share His exclusive rights of judgement. Only God can command what is right and forbid what is wrong. No wonder, therefore, that those who violate God's laws are bound to lose His bounties, blessings and support.

The Sharia first established the Islamic Society and then organized it

The Islamic society was established by the Sharia before it was organized. The Sharia cultivated the Islamic society in such an idealistic way that it discouraged the commission of crime on the part of the individual.

So the Islamic Sharia, before becoming an organizing legislation, endeavours to create and cultivate the society. Basically this society is spiritually bound with this set of divine laws and the close relationship between the two cannot be loosened in the absence of authority, unlike the individual's relationship with the secular laws which is superficial, and in the absence of vigilance the individual tends to break these laws.

The Sharia is Sublime

In building and organizing the society the Sharia constantly aims at the realization of a society of noble ideals, lofty values and gracious morals that improve the quality of life.

The Sharia is Timeless and Universal

The Islamic Sharia is timeless and universal, for it is not restricted to one race, one colour, one place or one people. It is valid for the whole of mankind on any land, under any sky and at any time, and for all people regardless of their race, colour or language.

The Sharia is Perfect

The Sharia is perfect in its ends and foundation. It cannot be changed or modified because, being a divine law, it is flawless. As the Quran says:

*"Should He not know, —
He that created?"*

*And He is the One
That understands the finest
Mysteries (and) is
Well-acquainted (with them) ”.*

Chapter 67, verse 14.

Through the Islamic Sharia any man, regardless of his colour, race or language can attain sublimity, justice, order, equality, freedom, fraternal love, stability and happiness at any time or place.

Repentance is possible in the Sharia

Although the Sharia administers penalties to the offender for committing a crime, the offender has the possibility of repentance at any time. Thus the Sharia offers the Muslim offender the opportunity to return to the right path. However, if the offender continues committing crimes heedless of the Sharia he shall meet his punishment in this world and in the Hereafter for having defied God's prerogatives and violated His sovereignty.

Crime of Murder

This is one of the most atrocious crimes that a man commits against God and his fellow-man. No man has the right to take the life of he who was created by God. By committing murder man defies God's prerogative and it is therefore considered a very grave disobedience and an unforgivable act of transgression against a fellow-man.

Islamic Juridical Laws Regard Murder as an atrocious Act

All the Sharia laws depict murder in such a horrible manner that they are apt to have a deterrent effect on the potential offenders.

Quranic Verses on the atrocity of Murder

Murder is as old as man himself due to his tremendous greed. The first murder was committed by one of Adam's sons (Cain) * against his brother. This story is very eloquently described in the Quran, which leaves a deep effect on the human soul. The Quran says:

*“ Recite to them the truth
Of the story of the two sons
Of Adam. Behold they each
Presented a sacrifice (to God):
It was accepted from one,
But not from the other.
Said the latter: “ Be sure
I will slay thee ”. “ Surely ”,
Said the former, “ God
Doth accept of the sacrifice
Of those who are righteous.
If thou dost stretch thy hand
Against me, to slay me,
It is not for me to stretch
My hand against thee
To slay thee: for do I fear
God, the Cherisher of the Worlds.
For me, I intend to let
Thee draw on thyself
My sin as well as thine,
For thou wilt be among*

* Cain was the elder brother and Abel the younger who was righteous and innocent (Translator's note).

*The Companions of the Fire,
 And that is the reward
 Of those who do wrong".
 The (selfish) soul of the other
 Led him to the murder
 Of his brother: he murdered
 Him, and became (hi:nsel)self
 One of the lost ones.
 The God sent a raven,
 Who scratched the ground,
 To show him how to hide
 The shame of his brother.
 "Woe is me" said he;
 Was I not even able
 To be as this raven,
 And to hide the shame
 Of my brother? Then he became
 Full of regrets —
 On that account: We ordained
 For the children of Israel
 That if any one slew
 A person — unless it be
 For murder or for spreading
 Mischief in the land —
 It would be as if
 He slew the whole people:
 And if any one saved a life,
 It would be as he saved
 The life of the whole people".*

Chapter 5, verses 30 to 35.

*Causes and Psychological Aspects of the Crime Committed
 by the First Offender*

This crime started as a result of envy and ended with the disobedience of God, show of disrespect to one's father and commission of fratricide. This was the first murder committed and it was followed by many others, and there will always be bloodshed till Doomsday.

It is beyond our ability to give a satisfactory interpretation of the term of the crime of murder. However, we may deduce the psychological emotions related to this crime. The original motive for the first murder was greed and envy. The brothers argued why God should accept the immolation offered by Abel (who was slain) and refuse that offered by Cain (who became a murderer). The envy changed to grudge and then to threat when Cain told Abel that he would slay him. After the commission of the crime he was thrown into desperate self-torture and the more he looked at his brother's dead body the greater his self-torture grew. It was the raven that showed Cain how to bury the corpse of his brother and he said to himself: "Woe is me that I was not even able to be as this raven to hide the shame of my brother". This reflects the profound emotions that overpowered Cain after the commission of murder. This is well expressed in the Holy Quran which is the acme of eloquency and virtue. The Quranic verse depicts quite well the profound and unrelenting remorse that kept pursuing Cain all his life.

Types of Men

The glorious Quranic verse "Aya" shows that there are two kinds of men and there will always be these two different kinds of men till the end of the world.

These two types are:

1) The type who has severed all his ties with God and has gone astray into a desolation of misery, greed and envy; he follows the law of the jungle deprived of moral values and ideals.

2) The type who has not lost his contact with the Almighty God from Whom he seeks guidance and illumination.

It is the second type to which the religion of Islam seeks to convert people so that they may abide by the Sharia and thus refrain from committing crime.

The Sharia strives to develop Man's Intellect, Spirit and Soul

As soon as people, intellectually undeveloped and morally decadent and spiritually debased, adhere to the Islamic Sharia they change into noble, generous, good-hearted and conscientious men. This change is brought about by the worships the Muslim performs. These worships constitute an ideal educational, spiritual and intellectual school where the Muslim changes into an elevated and refined human being.

Some Quranic Verses admonishing People to abstain from Murder

*" If a man kills a Believer
Intentionally, his recompense
Is Hell, to abide therein
(For ever): and the wrath
And the curse of God
Are upon him, and
A dreadful penalty
Is prepared for him "*

Chapter 4, verse 94.

and

*" Those who invoke not,
With God, any other god,
Nor slay such life as God
Has made sacred, except
For just cause, nor commit
Fornication; and any that does
This (not only) meets punishment
But the Penalty on the Day
Of Judgement will be doubled
To him, and he will dwell
Therein in ignominy "*

Chapter 25, verses 68 and 69.

and

*" Take not life, which God
Hath made sacred, except
By way of justice and law:
Thus doth He command you,
That ye may learn wisdom "*

Chapter 6, verse 151.

and

*" Nor take life — which God
Hath made sacred, except
For just cause. And if
Anyone is slain wrongfully,
We have given his heir
Authority to demand Retaliation (punishment)
Or to forgive: but let him*

*Not exceed bounds in the matter
Of taking life; for he
Is helped by (the Law) "*

Chapter 17, verse 33.

and

*" In the Law of Equality (Retaliation)
There is (saving) of Life
To you, O ye men of understanding;
That ye may restrain yourselves "*

Chapter 2, verse 179.

The Prophet said: " Do not slay wrongfully otherwise you will add another reminder to the first murder perpetrated by Cain ", and " A man is still committed to the tenets of his faith until he commits murder ", and " Man is the creation of God, God's curse be upon the person who destroys this creation of God ", and " God would rather lose the world than lose a believer unjustly, for the believer is dearer to God than His Angels ", and " Whoever does not associate a partner with God and does not slay unjustly shall enter the Paradise ", and " The first deed to be reckoned on the Day of Judgement is bloodshed ".

The Prophet, God's peace be upon him, also said: " One of the worst predicaments from which a man cannot find a way out is when he slays another man unjustly ".

The crime of murder is regarded as being so dreadful by the Sharia that some scholars maintain that even when the murderer is inflicted with retaliation punishment (Kisas) his crime will not be expiated, for his punishment does not benefit the slain person but only serves as a lesson for the survivors to disdain the crime of murder.

Considering murder a crime of the first degree, and an unpardonable offence against God's prerogative and the rights of the slain person, against Islamic society and humanity in general, and basing on the fact that the Quran says he who takes the life of another man shall abide in Hell, shall be cursed by God and shall have atrocious torture in the Hereafter, some Muslim scholars maintain that a murderer's repentance (even if he repents) will not be accepted, especially as man's status, according to the Sharia, is closer to God than that of the Angels.

Conclusion

Unlike the view of some scholars on the murderer, our view is that the door of repentance is open even to the wilful murderer. However, it is up to God to accept or reject the murderer's repentance, and this view is the closest to the spirit of the Sharia.

Supportive Evidences relating to a Murderer's Repentance

The Quran says:

1. *" He is the One that accepts
Repentance from His servants "*
Chapter 42, verse 25.
2. *" God forgiveth not
That partners should be set up
With Him; but He forgiveth
Anything else, to whom
He pleaseth "*

Chapter 4, verse 48.

3. The Prophet said: " The door of repentance is always open as long as the sun rises in the east " .

4. The Prophet said: " Give me your pledge not to set up partners with God, not to commit adultery and not to take life which God has made sacred except by way of justice. If the person who commits any of these sins and is penalized his sin will be expiated in this world, but it is up to God to forgive or punish him in the Hereafter " .

5. There is a story in the Hadith about a man who had murdered ninety-nine persons. When he went to seek the advice of a scholar to find out if there was any chance for him to repent, the scholar told him bluntly that there was no hope for repentance. Thereupon he slew the scholar and thus the number of his victims totalled one hundred. Later he went to another scholar who told the murderer that he had a good chance of repentance and advised him to go somewhere where people worship the Almighty God and to repent there. Half way on the road to the place where he was supposed to join worshippers, the murderer met his death. The Angels of Torture and the Angels of Mercy had a heated argument whether the man should be forgiven or not. The Angels of Mercy argued that the man was on his way to repent while the Angels of Torture said that he had never done a good deed. At that point, an Angel came in the form of a man who ordered that the distance be measured. When it was found that the spot where the man died was nearer to the place he was going to, the Angels of Mercy were victorious.

Discussion of the Views

As regards the first view which is evidenced by the Quranic verse: " If a man kills a Believer intentionally... " this verse was revealed following a certain incident. However, we should not single it out as the only criterion. This incident concerns the event when Maquis Ibn Sababa found

his brother, Hisham, murdered at the locality of Beni Najar. As they were Muslims the Prophet was informed. The Prophet sent Maquis in the company of a man from Beni Fahr to the locality of Beni Najar to ask the people of that locality to hand over the murderer. The people of Beni Najar said they had no idea who the murderer was but they were willing to pay a blood money (Diya) of one hundred camels. On his way back to Medina with the camels Maquis attacked Al-Fahri and killed him. Then he rode back to Mecca as an infidel and an apostate. On this occasion the Quranic verse was revealed: " If a man kills a Believer intentionally... " and the Prophet said: " I do not trust him (Maquis) whether in permissible or forbidden matters " . On the day Mecca was conquered the Prophet ordered that Maquis be put to death.

Why the Word " Kisas " is used in The Quran

The Quran says: " In the Law of Kisas (Retaliation) there is saving of life " . The Arabic word " Kisas " is used in the Quran and denotes equality, analogy and equity. It also means looking into a matter, scrutinization and providing the possibility of defence, particularly by the murderer himself. " Kisas " is the legislation of the society, and that is why this word is used in the Quran and not the word " Iktisas " which is the legislation of the individual.

In the Quran the word " Kisas " is used instead of other words such as vengeance " Tha'r " , murder " Katal " or immurement " Kawd " because the first word implies enmity, rancour and unchecked desire to shed blood; the second word was not chosen because it gives the impression mentioned above and that is taking the life of another person as a result of aggression or retaliation (equality); the third word " Kawd " which is immurement implies humiliation and degradation, and a murderer is led like a small camel. Whereas " Kisas " does not imply any humiliation but establishing justice and order.

The Life "Kisas" Seeks to Attain

In the Quran the Almighty God addresses the Believers by saying:

*" In the Law of Equality (Kisas)
There is (saving of) Life
To you, O men of Understanding
That ye may
Restrain yourselves "*

Chapter 3, verse 179.

What kind of life does Kisas seek to achieve although in reality it takes the life of the murderer? Islam, being a just religion which cultivates the man's intellect and soul, does not neglect the instincts, because ignoring these instincts would be burdensome which the Sharia is not intended to be. On the contrary, it is meant to be lenient and easy-going. The Sharia does not place a burden greater than a man can bear, and nobody is ordered to do what is beyond his capacity. If this was the case the Sharia would have been disregarded and hardly anybody would have adhered to it. How could the Sharia be burdensome when it is the most merciful and wisest of all laws which guide the Muslims on the right path?

Islamic legislation takes into account the hard feelings of the relatives of the slain person and takes into consideration the resulting rage which cannot be appeased except by shedding the blood of the murderer in retaliation. This is quite understandable, for the loss of human life is irretrievable. Thus the atrocity characterizing murder has to be penalized by a deterrent of the utmost magnitude, i.e. inflicting capital punishment on the murderer. The commission of murder in the pre-Islamic society, and for that matter in any society, generated undesirable reactions, such as the

killing of a number of the members of another tribe in retaliation for the murder of a tribesman. Alternatively, somebody other than the real murderer, such as the head of the tribe, sect or the family used to be killed. In the case of a murderess a man used be killed instead of another woman. Such vendettas often escalated into armed conflicts which in some cases used to last for decades causing the loss of many innocent victims because the people used to get furious over the killing of someone who was not the real murderer.

Why is Kisas considered a saving of the lives of the Muslim society? Through the Kisas punishment vendettas are appeased and at the same time it is regarded as a deterrent to those who have the evil intention of committing such a horrible crime. Furthermore, Kisas protects the relatives of the murderer from any aggression on the part of the family or tribe of the slain. Through the infliction of Kisas the members of the Muslim society feel a sense of justice and fairness.

Prerequisites of Murder

A premeditated crime must have the following prerequisites:

1. Object of the crime.
2. Instrument used for committing the crime.
3. Criminal intent.

The object of the crime is the victim who is slain. The instrument used to commit the crime is the means whereby the crime is committed. The criminal intent covers the malicious motives behind the act of the crime. If I had more time I would have dealt with this subject in more detail to illustrate how meticulously the Islamic Sharia deals with the investigation aspect of the crime in order to achieve the exact proof of the murderer's guilt and the malicious motives that drove him to commit his act.

Prerequisites of Premeditated Murder and the Necessity of Kisas

In addition to the above-mentioned prerequisites, there are others pertaining to the murderer and to the victim. As regards the murderer he has to be legally eligible and responsible for the crime, that is to be a mature adult and sane in mind and not the victim's father. He is also to be inviolable, which means that he is either a Muslim or one who is granted the right to have taken abode in a Muslim country. The prerequisite of the slain person is that he should be inviolable.

Quasi-Deliberate Murder or Murder by Error

In the absence of one of the prerequisites of murder by premeditation, the crime is considered quasi-deliberate if the missing prerequisite element is the instrument used, or murder by error if the criminal intent is absent.

This classification is advocated by some supreme scholars of the Sharia while other scholars maintain that there are only two clear-cut categories: Premeditated murder and murder by error.

Substitution of Diya (Blood Money) for Kisas (Retaliation)

In cases where murder is quasi-deliberate or by error Kisas is excluded and Diya is prescribed except in cases when the victim's kith and kin forgive the murderer.

Some Evidences

The Quran says:

*" Never should a Believer
Kill a Believer; but
(If it so happens) by mistake,
(Compensation is due)
If one (so) kills a Believer,*

*It is ordained that he
Should free a believing slave,
And pay compensation
To the deceased's family
Unless they remit it freely".*

Chapter 4, verse 92.

and

*" ... If he belonged
To a people with whom
Ye have a treaty of mutual
Alliance, compensation should
Be paid to his family
And a believing slave be freed".*

Chapter 4, verse 92.

Urwa Ibn Zubeir * narrates that Haddifa Ben Al-Yamman who, in the battle of Uhudd **, while fighting in the army of the Prophet, had a terrible experience. The conquering Muslim army mistook his father for an enemy and put him to death although Haddifa was shouting that the man was his father. As the people did not understand him the die was cast. At this point Haddifa's only reaction was that he prayed God to forgive those people, for He is the Most Merciful. When the Prophet heard this he took Haddifa as one of his favourites.

* Urwa Ibn Zubeir was one of the seven most important jurists; he was an authority on narrating incidents related to the Prophet. He died around 717 A.D. (Translator's note).

** Uhudd is a mound about 4 Km north of Medina where the Prophet fought his enemies of Mecca in 624 A.D. (Translator's note).

Murder by the Juvenile or Insane

The juvenile is one who has reached the age of sixteen years as this is the minimum age for legal eligibility.

A person affected with insanity and mentally deranged is considered as being insane. When a juvenile or an insane person commits murder only Diya is applicable, for this crime is considered murder by error because the offender lacks the element of premeditation and criminal intent.

Instrument of Kisas

According to the Sharia Kisas should be inflicted with a sword. The Prophet said: "No capital punishment without a sword". The sword was considered the most appropriate instrument for capital punishment because it puts a swift end to the murderer, it serves as a deterrent and it appeases the feelings of the slain man's family.

The Sharia does not humiliate the Murderer before or after the Execution of the Kisas

In compliance with the noble Sharia to achieve justice, the Sharia has forbidden torturing the murderer before the Kisas or exhibiting and mutilating the corpse after the execution of the Kisas. The Sharia orders that people pray for the deceased murderer and bury him in the Muslim graveyard. The instrument of Kisas should be checked that it is sharp enough to avoid unnecessary torture. In this connection the Prophet said: "Efficiency is desired by God; so when you kill a man or slaughter an animal do it efficiently and swiftly by sharpening your instrument so that the slain person or animal does not suffer unnecessarily". Some scholars were of the opinion that the murderer should be killed in

the same manner that he slew his victim. They base their claim on the following Quranic verses:

*"And if ye do punish
Punish them no worse
Than they punished you"*

Chapter 16, verse 126.

and

*"If then any one transgresses
The prohibition against you,
Transgress ye likewise
Against him"*

Chapter 2, verse 194.

Furthermore, it is reported that the Prophet squashed the head of a Jew between two big stones exactly as the Jew had done to a woman-slave of Ansar.*

Instrument of Capital Punishment in the Kingdom of Saudi Arabia

Kisas punishment is inflicted with a sword or a rifle.

Prerequisites of Kisas

There are three prerequisites:

1) Capital punishment should not be inflicted upon minors or insane culprits.

* Ansar is the name for the people of Medina who supported the Prophet after his migration to Medina from Mecca (Translator's note).

2) Some scholars hold that the relatives of the culprit (men, women and children) should be also convinced that the culprit really deserves the Kisas punishment. Other scholars maintain that the heirs of the culprit are those who should give the last word, for they are the people directly affected by his shameful deed.

3) Kisas does not permit the taking of another life other than that in question. For example, if a woman is pregnant or became pregnant after the sentence was passed, the execution is deferred until she delivers the baby and weans him from the breast.

Execution of the Kisas in the Kingdom

Lawsuits in the Kingdom usually go to the Sharia judges.

Apart from the Lower Courts that deal with minor civil cases, criminal cases go to canonical courts. Judges of such courts usually make a thorough investigation of the case. When the judges feel that the only possible sentence is the Kisas, the case is then taken up to the Court of Cassation for further investigation. When the decision is the Kisas, the case is referred to the Supreme Court where a panel of judges launch a large-scale investigation into the case and the proposed sentence. If they confirm the Kisas the whole case is submitted to His Majesty the King to give his endorsement. Then the final Royal decision and the endorsement of the case are taken to the executive departments for the execution of the Royal sentence. All this shows how detailed and accurate the procedures are in order to secure justice.

The Executor of the Kisas according to the Sharia

The Kisas is executed by someone related to the victim provided he is able to carry out the execution efficiently.

Otherwise, an efficient executioner is delegated by the relatives of the victim. This shall take place in the presence of an official of the authority (or his deputy) and under his supervision.

How Kisas is executed in the Kingdom

The Kisas is executed in accordance with the Sharia. When the sentence is endorsed by the King the murderer is informed to enable him to see to his worldly and religious affairs. The murderer's kin are also notified in order to attend the execution of the Kisas.

The murderer is led to the plaza opposite the Governor's palace where the Kisas is executed in the presence of the Governor of the district or the province where the Kisas takes place.

After announcing the murderer's name, the victim's name and the whole case the murderer is beheaded with a sword. As the relatives of the victim are not usually efficient at executing capital punishment a headman is appointed by the State to carry out the Kisas.

Nevertheless, the Government of Saudi Arabia, in pursuance of the Sharia does its utmost, before the execution of the Kisas, to convince the relatives of the victim to agree to commute the Kisas into blood-money "Diya".

In fact, in some cases members of the Saudi Royal family and other citizens have interceded with the family of the victim to agree to commute the Kisas into Diya in order to prevent bloodshed. In some cases these efforts have succeeded while in other cases they failed and so the Kisas was duly carried out in accordance with the injunctions of the Sharia.

Execution of Kisas on Parts of the Body

In pursuance of achieving the scope of the Sharia in providing justice, order and equality in the Muslim society

the amputation of parts of the body has been legalized instead of capital punishment.

Meaning of Partial Kisas

The amputation of limbs such as hands, feet, eye, ear, nose, teeth, eye-lid, lips or fingers.

Prerequisites of Partial Kisas

- 1) Make sure that justice takes its course.
- 2) Analogy of the parts to be cut off: the right hand of the offender for the right hand of the victim and so on.
- 3) Equality in parts, i.e. it is not legal to cut off a healthy part of the body for a diseased part of the victim.

(Has a sentence ever been passed in the Kingdom in cases of this type?)*

The Wisdom of Diya (blood-money)

Diya is a merciful alternative stipulated by the Islamic Sharia.

Judaism insisted on Kisas, whereas Christianity decreed only Diya. Islam on the other hand, as ever, has resorted to the happy medium. While it has decreed the punishment of Kisas to attain justice and appease the victim's kith and kin and serve as a deterrent against murder, it has at the same time given the opportunity to the relatives of the victim to commute the Kisas into Diya and thus, in return, get God's reward.

* Some cases of this type may occur. However, to avoid injustice in carrying out the Kisas it has often been replaced by Diya.

Quranic Verses and Prophet's Sayings favouring Diya over Kisas

1.

*" But if any remission
Is made by the brother
Of the slain, then grant
Any reasonable demand
And compensate him
With handsome gratitude.
This is a concession
And a Mercy
From your Lord "*

Chapter 2, verse 178.

2.

*" But if
Anyone remits the retaliation
By way of charity it is
An act of atonement for himself "*

Chapter 5, verse 48.

3.

*" And the remission
(Of the man's half)
Is the nearest to righteousness "*

Chapter 2, verse 237.

4.

*" Who restrain anger
And pardon (all) men "*

Chapter 3, verse 134.

5. The Prophet said that whenever a man remits an offence, God cherishes him more.
6. It is reported that Anas Ibn Malik said that whenever a Kisas case was referred to the Prophet he always tried to alleviate the punishment.
7. The Prophet said that he who forgives his offender is elevated by one more step and his sins reduced by one step.

Interceding with the Victim's Kinsfolk to commute Kisas into Diya

As the Sharia favours that Kisas be commuted into Diya it also favours the act of intercession and encourages the mediator to intercede in order to have his great recompense in the Hereafter.

Diya

Originally Diya was a recompense of one hundred camels. Some Sharia scholars believe that Diya is a payment of either one thousand gold Dinars, twelve thousand silver Durhams, or a recompense of two hundred cows, two thousand sheep or two hundred utensils.

Issue of Controversy

The issue of controversy over the above estimates lies in the fact that those who maintain that Diya is a recompense of one hundred camels consider other categories illegitimate, whereas others believe that all the categories are illegitimate.

Diya in Saudi Arabia

The scholars of the Sharia in the Kingdom prefer the Diya to be paid in camels. However, if there are not enough

camels then the equivalent amount of one hundred camels in gold or silver. Therefore, due to the fact that there are not enough camels available in the Kingdom, the Saudi Government, in consultation with the Sharia scholars, has established a fixed amount of money. The value of a camel in gold or silver varies from time to time. During the reign of the late King Abdul Aziz, the Diya was the equivalent of eight hundred Riyals in French silver, then it became three thousand Saudi silver Riyals. Later it rose to sixteen thousand and to twenty-four thousand Saudi silver Riyals. Unofficial sources report that the Diya has risen to forty thousand Saudi silver Riyals.

Reason for the steady increase of Diya

As the price of the camel, which is the basis of the Diya, continues to soar so does the amount of the Diya.

Conclusion

The estimate is taken for the equivalent of one hundred camels. Should the quality of the camels be taken into consideration the estimate will exceed one hundred thousand Riyals.

Expiation "Kaffara"

Kaffara is derived from the Arabic verb "Kaffara" meaning "conceal", in other words placing a barrier between the offender and the offence.

Reason for its Legitimacy

Kaffara was prescribed as a mercy for the whole Muslim nation and to give an opportunity to the Muslim offender who murders by error to purify himself. It is a punishment imposed in order to bring the Muslim back to God.

Kaffara in the Sharia

The Sharia is characterized with the Kaffara inasmuch as the Sharia is an educational, disciplinarian and correctional legislation.

Kinds of Kaffara

In the Sharia there are many kinds of Kaffara. However, at present only the Kaffara of murder concerns us.

Is it a Kaffara for Premeditated Murder or Murder by Error?

Some scholars stress that this Kaffara is confined to murder by error as it was legislated to protect the offender against his feelings of guilt and to eradicate the offence. Other scholars maintain that the Kaffara should be applied in the case of a premeditated crime rather than that of the murder by error.

What is the Kaffara for Murder by Error?

It is the freeing of a believing slave. But those who find this beyond their means then a fast for two consecutive months is prescribed, as in the following Quranic verse:

*" Never should a Believer
Kill a Believer; but
(If it so happens) by mistake,
(Compensation is due):
If one (so) kills a Believer,
It is ordained that he
Should free a believing slave,
And pay compensation
To the deceased's family,
Unless they remit it freely.
If the deceased belonged*

*To a people at war with you,
And he was a Believer,
The freeing of a believing slave
(Is enough). If he belonged
To a people with whom
Ye have a treaty of mutual
Alliance, compensation should
Be paid to his family,
And a believing slave be freed.
For those who find this
Beyond their means, (is prescribed)
A fast for two months
Running: by way of repentance
To God: for God hath
All knowledge and all wisdom".*

Chapter 4, verse 92.

Application of the Kaffara

The Kaffara is applied to anyone, whether Muslim or non-Muslim, when a person is slain.

Dr. Abdul Rahman Al-Qasim

Praise be to God and peace be upon Mohammad the last of the prophets.

The researcher admittedly is one of the most knowledgeable scholars in the country. He chose the three subjects of Kisas, Diya and Kaffara for his research because they are the most important facts of the Sharia; each of these is particularly essential in the life of Islamic society.

We are grateful to the researcher for giving us valuable information. Nevertheless, I should like to take this opportunity to make a few remarks about his treatise.

First, in my view the treatise is not well-proportioned. He treated the subject of Kisas at great length at the expense of the Diya and Kaffara with which he dealt very briefly.

Second, in discussing the Kisas the researcher gave generalizations rather than concentrating on the matter in a scholarly manner. Despite this fact I have to admit that the researcher attained the fundamental objective of his study.

Third, it is important to point out that the treatise did not mention any sources of reference for a researcher.

Furthermore, when the researcher started his treatise after the introduction he gave the title of the subject, namely the Kisas followed by punishment which he defined and then he defined crime without giving a definition of the Kisas which is the focal subject. In my view he should have started with the definition of the Kisas as this was the fundamental subject. He also stated: "There is no room for disagreement" meaning in the Islamic society. But we all know that disagreement is inherent in human nature. It existed even amongst the Prophet's Companions as well as the scholars of juridical legislations on matters connected with jurisprudence or financial transactions.

I would also like to remark on the researcher's sub-title (In case of a murder by quasi-deliberate intent or by error Kisas is dropped and Diya is applied). The word "dropped" implies that the prerequisites of a right exist and for some reason or other the right of Kisas is dropped, for example when Kisas is confirmed and then remitted, then it is dropped. But in the case of murder by error or a quasi-deliberate intent the Kisas is not proved to start with.

The author, furthermore, switched to the Diya without defining it under a separate title. He just mentioned "Wisdom behind its legitimacy". This title is rather vague, for "its" is not conducive to any designation.

When the author referred to the three prerequisites of crime: the object, instrument and criminal intent, he did

not tell us from which reference or text he deducted these prerequisites. In my view, the slain person is the object of the crime, as he too mentioned, but not a prerequisite. Neither is the instrument of the crime a prerequisite. The basic elements of crime, whether according to the Sharia or the positive laws, are three: legal element which states there can be no crime without a text; physical element which is represented in the act of crime (positively or negatively); therefore a man cannot be convicted if he has not contributed to committing murder; and the third element is moral, which is the intention of the criminal. These basic elements were mentioned by a number of scholars, such as the late Abdul Kadir Awda, in his book of Islamic Criminal Legislation. He mentioned a few other prerequisites for each crime, none of which is the instrument or the object. The existence of a physical instrument as a prerequisite for establishing the crime of murder is immaterial, for in some cases one may commit a crime by error without using an instrument. For example, a person may unintentionally cause the death of a pregnant woman through miscarriage by having produced a foul odour, or someone may scare a man to death through falling from a wall because he shouted at him. Muslim juridical scholars have not agreed amongst themselves whether they should lay down certain conditions to define the instrument of murder.

Imam Malik laid no conditions while the other two Imams, Shafi and Ahmed, said that the instrument of murder is whatever puts an end to a man's life. Imam Abu Hanifa added that this instrument is whatever is intended to perpetrate the act of murder. However, if we consider the instrument or the object of the crime (which is the body of the deceased) as prerequisites for a crime then we may end up by saying that in order to establish a crime it is sufficient to find either of the two. But this is not the case. As far as I know it is not necessary to find either the instrument or the deceased's body as long as the judge has proved by legitimate

means that the murderer did cause the death irrespective of whether the body or the instrument was found.

The moral element which, according to modern lawyers is the criminal intent, consists of two parts: general intent, which urges the mind to commit the crime without regarding the result, and thus the offender causes murder by error. The other part of the moral element is the particular intent which urges the mind to take the life of someone. This plus the general intent provide the premeditated murder though there are differences of juridical opinions over this matter.

Before I conclude my comments it is appropriate to refer to the existence of a substantial difference between the Sharia and other legislations. The Islamic Sharia differs from other religions as well as from positive laws. The pre-Islamic religions were confined to some aspects, for example Judaism and the legislation of Moses, concentrated on materialistic aspects, whereas Christianity, the legislation of Jesus Christ, concentrated on the spiritual. But Prophet Mohammad's legislation combined the two aspects. Islam is both a belief and a legislation, a material of learning and a code of action and a religion and a statute of a state. It regulates the affairs of man in this world and in the Hereafter and takes care of him in this life and after death.

Similarly, the Islamic Sharia differs from the positive laws as regards the sources. Positive laws are enacted by man, whereas the Sharia was originally revealed by God. Therefore the positive laws are called subjective, i.e. they alter according to the ideology of the law-makers, rulers and eras. What is good in one country may not be feasible in another, and the laws of a certain period may not be appropriate in another period.

As man is narrow-minded and short-sighted the laws are confined to the relations between individuals in a certain society at a given period.

Instead, God's legislation is perfect, universal and eternal.

Muslim scholars divide the duties into three parts:

— obligations towards God, duties towards other men and joint duties towards God and other men; there are some differences of opinion amongst juridical scholars in this respect.

The obligations towards God consist of sincere worships including expiation, one of the topics of this treatise. The duties towards other men include financial duties, such as the Diya, being the other topic of this treatise. As it is a duty towards other fellow-men, the Diya could even be relinquished. Kisas is one of the joint duties where the major part of it is in the interest of man. That is why the victim's kinsfolk have the right either to substitute Kisas with the Diya or forgive the murderer.

The positive laws have not taken into consideration any of the three mentioned elements. Kaffara is neglected, for it deals with the relation between God and His subjects while positive laws treat only the relations between individuals. Kisas is replaced by capital punishment and the positive laws insist firmly on the inevitability of execution with the condition of premeditation. It goes without saying that the secular system cannot be compared with the Islamic Sharia which necessitates the execution of Kisas as being the right of the kinsfolk of the victim in order to placate vengeance. Thus, the cases of vengeance are manifold in the countries where positive laws apply capital punishment instead of Kisas.

Furthermore, the positive laws prescribe payment of compensation instead of the Diya. There is a big difference between the two: the Diya is an obligation paid for having taken the life of another person and is a fixed amount no matter what position a man may hold.

On the other hand compensation is paid in proportion to the amount of damage or loss the victim has sustained. Thus the compensation judged in accordance with the positive laws differs according to the victim's position. For example, the

compensation for the murder of an engineer or a medical physician is not the same as that for the murder of a simple labourer. Certainly this is not just whereas the Islamic judgement is ideal for mankind. God's peace, mercy and blessings be upon you.

Sheikh Sa'ad Mohammad Al-Gharian

In the name of God and praise be to Him, and peace be upon God's Messenger, Mohammad, his family and Companions.

I extend my heartfelt thanks to the organizers of this symposium and for having provided an appropriate atmosphere for the scholars and researchers to avail themselves of the sources of Islamic Sharia, and I am grateful to the distinguished lecturer for his valuable treatise. I enjoyed listening to him and read his treatise with great interest. I had intended making some remarks but Sheikh Rahman Al-Qassim thankfully covered my points.

Nevertheless, I would like to draw your attention to the way the Kisas is executed in the Kingdom of Saudi Arabia as described by the lecturer.

Jurisdiction in Saudi Arabia is an autonomous body not influenced by any other authorities. So when we say that the sentence is referred to the Court of Cassation and then to His Majesty the King, this does not imply that the sentence is subject to the King's final approval. It just means confirmation on the part of the executive body of the verdict passed by the judiciary body. I repeat that once a sentence is passed no human being can alter or stop it.

As regards the lecturer's detailed description of the Kisas punishment and the fact that he did not treat the other topics in the same way, this is quite normal with scholars who generally treat their first subject in more detail than the others.

I thank you for listening to me and God's peace, mercy and blessings be upon you.

Dr. Jorge A. Montero-Castro

Since the beginning of this symposium I wanted to express to you my appreciation for organizing this meeting and providing us with the facilities to attend it.

We are thus able to ascertain the progress this country has made in cultural matters and verify the effect of the Islamic legislation on crime control and prevention.

However, I decided to defer my remarks until I had assimilated much of what has been discussed. I must admit that my expectations have not disappointed me.

While listening to the excellent treatises by distinguished lecturers I have been struck by the great wisdom and the religious, social and moral ethics inherent in these studies. I say this because it concerns my studies regarding criminal legislations in western societies and their relationship with religious aspects and this is the reason why I am seeking a better criminal legislation. I am confident that a large percentage of crimes have disappeared or dropped out due to the validity of your juridical systems.

In this land of yours I have learned a lot about the Islamic legislation and criminology which will be of great interest to the Latin American Institute.

On behalf of the Institute, the Ministry of Interior of Costa Rica, where I serve as a counsellor, and myself I would like to take this opportunity to thank you and to wish you success.

Mr. Ramanand Singh

Thank you for giving me the floor. I share my Costa Rican colleague's appreciation for the excellent manner in which this symposium has been conducted regarding the

effect of Islamic legislation on crime prevention. The principal topic of the symposium has an urgent nature and is of significant importance to our modern world where crimes are steadily increasing. The subject discussed regarding public order and safety has never been so seriously dealt with elsewhere; this is the reason why we are so grateful to this group which includes a number of lawyers, sociologists and theologians from the Arab world.

We feel greatly honoured by having been invited as observers.

Mr. Chairman, we listened with the greatest interest to all the discussions.

With your unique legislation you have let us hear what you are doing and what you will do to combat and prevent crime in the world.

Certainly the Islamic legislation as revealed by God the Almighty and evidenced by the Prophet's sayings cannot be compared with the positive laws in combatting crime.

The Quran was revealed by God and therefore the rulers have to abide by its holy words and in fact, here in Saudi Arabia, the rulers abide by the teachings of the Quran. Saudi Arabia has proved that the Islamic legislation could be implemented directly through consensus and analogy. As positive laws are enacted by man they change from time to time. I am confident that the Muslim men of law will make an impact on western societies in the future as I am sure that the teachings of the Quran and the Hadith will one day prevail. Although Islamic legislation has a continuity nature it is at the same time flexible in its implementation.

Indeed, the Kingdom of Saudi Arabia has proved that through the application of the Islamic Sharia crime could be prevented.

Mr. Chairman, I believe that Saudi Arabia has heavily contributed to putting noble Islamic ethics into practice in order to combat crime wherever it may be.

Verily, Islam has proved that crime prevention is far more important than the punishment inflicted for crime commission, and that through Islam man can live in a secure and safe crime-free society.

Surely our Indian society needs a similar legislation which should be implemented in the same manner as here. As crime constitutes a major problem for modern society it is incumbent on us to follow the Islamic pattern of life to rehabilitate human nature as you have done through the payment of alms "Zakat", pilgrimage, fasting, prayers and other Islamic tenets mentioned in the Quran.

Mr. Chairman, I can tell you very candidly that following a virtuous life is the best manner to combat crime as is the case in the Kingdom of Saudi Arabia.

You may be interested to hear about the crime rate in my country which, fortunately, is relatively low. Nevertheless, we too have taken some measures to eliminate crime and would like to add to these some of the Islamic laws. I wish there were more profound studies in this field in order to implement the Islamic legislation with all sincerity.

No matter what a man is, whether an engineer, a university professor or a medical doctor, he should be more concerned with the legislation for prevention of crime in order to provide good examples for others. This does not mean that there should be any special treatment for professional people.

In fact, the Government of Saudi Arabia does not discriminate between the ranks of the people as regards the implementation of Islamic legislation.

We are grateful for the hospitality extended to us by the Kingdom of Saudi Arabia.

Professor P. Bouzat

Praise be to God the Cherisher of the Worlds.

As Chairman of the International Association of Penal Law and professor of criminal law I must confess that I am

honoured to chair our great international scientific association which includes men of law from Algiers, Tunisia, Egypt and Syria, and as the Chairman of our Association I would like to greet all the participants at this symposium and to tell you that I am happy to be in the Kingdom of Saudi Arabia and to attend this august meeting.

I believe that the facts discussed in this symposium will have a great effect on the men of law all over the world. It is important to know that a nation without morals is hardly worthy of the name.

During this morning's discussions we learned that punishments are based on moral values in the Kingdom of Saudi Arabia and on the concept of right and evil. This is a significant concept, for he who follows evil shall be punished and he who practices good deeds shall be rewarded. Of course, we do not want this concept to be altered whether in our country or elsewhere.

We believe in the necessity of implementing the criminal legislation on humanitarian, psychological and social factors dominated by righteousness.

I am not confining myself to the Arab world or to Saudi Arabia, but I am referring to the Islamic criminal legislation whereby an offender is punished and a person who does a good act is rewarded.

For example, in France we still have capital punishment. A campaign was launched to abolish this, but we objected to its abolishment whether in France or elsewhere. Fortunately, even the French people maintain that capital punishment should remain. There are some who deplore the beheading of a person, but in my view an offender should be punished just as a man who does a good act should be rewarded. In the French papers we often come across statements such as: "Justice should be based on the theory of good or evil".

I am delighted to have learned so much from this symposium and to know that the concept of good and evil

is practised in this Kingdom and I hope that it will spread all over the world.

Mr. Chairman, I thank you for giving me the floor and I wish this symposium every success and hope that its principles will spread everywhere. I suggest that these researches be translated into French and English so that those who do not know Arabic will be able to benefit from them.

Sheikh Abdul Qader Shaibat-al-Hamd

The author of the treatise mentioned the Quranic verse in the following manner:

*" If a man kills a Believer
Intentionally, his recompense
Is Hell to abide therein ".*

and finished the verse by saying:

*" A painful penalty
Is prepared for him ".*

In the Quran the right word is " a dreadful penalty ". The word " dreadful " carries a more deterring effect than the word " painful ", although certainly all punishment is painful.

The second point is that the author of the treatise mentioned that Kisas in the Kingdom of Saudi Arabia is inflicted with a sword *and* a rifle. He should have said " with a sword *or* a rifle ".

Sheikh Saleh Al-Labeidan

Praise be to God and peace be upon the Prophet, the best of God's worshippers and the seal of the prophets, and peace be on his Companions.

I would like to refer to the objection I raised yesterday quoting the Hadith narrated by Sheikh Al-Ghazaly. I admit I made a mistake, for the Hadith was narrated by Abu Dawoud and Imam Ahmed. This Hadith says: "Faith is a restraint against aggression". There is another Hadith which says: "Capital punishment should be inflicted only with a sword". The Arabic word used in this Hadith is "Qawd" meaning putting an end to a person's life. If capital punishment is to be inflicted it may be done with a sword or a gun. The important thing is that the capital punishment should be executed with maximum efficiency in order to save the convicted any torture. To this end the Prophet said: "God commands that everything is to be done efficiently, and if you execute a murderer you have to carry it out with efficiency".

The Quran says: "And the wounds equal for equal". As regards Kisas short of taking a life the author mentioned that this means the amputation of the offender's limbs but he did not say anything about wounds.

The Diya is estimated in the value of camels, and as the lecturer said under the reign of the late King Abdul Aziz it was worth eight hundred French silver Riyals, then raised to three thousand Saudi silver Riyals and then soared to eight thousand Saudi silver Riyals. The author pointed out that the value has increased due to the scarcity of camels. This is not quite true because the value of camels has increased owing to the increased availability of money and hence inflation. We must not forget that Islam advocates the easiest ways of handling matters. The latest figure of the Diya for murder by error is forty-four thousand silver Riyals and for premeditated murder is forty-five thousand silver Riyals, though this has not been officially approved as yet.

Sheikh Nassir Ibn Hamad Al-Rasheed

The researcher referred to the preference of commuting the Kisas into Diya. The evidence that he produced is a verse

of the Holy Quran concerning divorce before marriage consummation. The Quran says:

*" And if ye divorce them
Before consummation,
But after the fixation
Of a dower for them "*

until it says

*" And the remission
Is the nearest to righteousness "*

Chapter 2, verse 237.

Thanks to the researcher.

Dr. Jamal Al-Din Mohammad Mahmood

I would like to put forward the following points briefly:

First: Not all crimes are symptoms of faint faith on the part of the offender as mentioned by the researcher. Certainly murder by error does not mean that the offender lacks faith.

Second: I think the researcher should have pointed out that if the prerequisites of the Kisas were established the murderer who commits a crime against one of his own kin would be punished (in the absence of Kisas) by Ta'zir.

Third: The Sharia educates the soul and preserves the criminal's right before and after he is convicted and even after the execution of the sentence. Once the Prophet got angry at a mob that gathered around a thief yelling at him; on another occasion he was vexed at the people who kept recriminating and upbraiding Maiz for confessing adultery.

Fourth: Besides Kisas there other punishments for a murderer, such as disinheritance and other Ta'zir penalties

which fall within the discretion of the ruler. The author of the treatise mentioned only expiation " Kaffara ".

He also mentioned that the Kisas is rarely carried out in cases of wounds or bodily injuries. He should produce some statistics indicating the rate of such incidents, because some people maintain that partial Kisas increases the number of the maimed. It would have sufficed if he had said that very few have had a part of their body amputated as a result of the Kisas. Thank you.

Mr. Adnan Raouf Hassan

The lecturer mentioned that the execution of Kisas on juvenile or insane murderers is postponed until the child becomes of age and the insane recovers his sanity. My query is that whether the under-age or the insane can be held responsible for murder charges. I would appreciate it if the author could reply to my query.

Mr. Mamun Aman

Probably Dr. Abdul Rahman Al-Qasim could have covered the topic under question if he had had sufficient time to do so.

The researcher did not refer to the murderer's attitude in self-defence, such as against the assailant against his life, property and honour. He also omitted those who kill in the course of their duty such as policemen who shoot to prevent a crime about to be committed and kill the person whom they chase. In such cases the murder is premeditated and a weapon is used.

Would the researcher be kind enough to explain this point?

Conductor of Discussions

Could Sheikh Huwesh reply to the queries put forward by the commentators.

Sheikh Mohammad Ibrahim Huwesh

To start with I would like to thank Dr. Abdul Rahman Qassem for his high opinion of my treatise, I also thank Sheikh Sa'ad Al-Gharian for defending it and due thanks to Messrs. Singh, Montero-Castro and Bouzat for their kind attention.

I do agree with Sheikh Al-Laheidan as regards the Hadith that capital punishment should be inflicted only with a sword. I used this Hadith just because a sword is one of the instruments of beheading and I did not say that it is the only means. Any instrument that swiftly takes the life of the murderer could be viable.

As regards the subject of the Diya I only mentioned the procedures practised in the Kingdom. Therefore, I consider the remarks of Sheikh Nasser Ibn Hamad complementary to the subject.

I am grateful to Sheikh Abdul Qader and Dr. Jamal Mahmoud for correcting the Quranic verse I quoted by mistake.

As for the point raised by Sheikh Mamoun, I believe I have covered it completely, you must realize that I was limited to the subject of my topic.

Before responding to Dr. Qassim's remarks I would like to cite an old Arabic poetic line which says: " Kharash * saw so many gazelles around that he could not make up his mind which one to hunt ".

I would like to remind you that there are some typing mistakes in the paper, some dots are missing, some words have not been typed and others have been changed. I did not mention the references because I did not have enough time to do so as both the Vice-Chairman and Dr. Farouk Mourad are aware, I was asked to prepare my treatise at

* Kharash is a common Arabic name. The author means that he has so many subjects to tackle that he is puzzled as to where he should start (Translator's note).

the last moment. As regards the expression "Kisas is dropped" this was imposed on the subject. The right expression is "Diya is made binding".

Speaking about the "disagreements amongst Muslims" I meant to say the "disagreement amongst the scholars". There is no reason to have any disagreement amongst the Muslims because the Sharia secures them equity and love, and builds their relations on sound foundations, thus discouraging the breeding of crime in a Muslim society. Crime is something repugnant to the Islamic society which strictly abides by the tenets of the Sharia. Societies which are Islamic only in name but not in deeds lose the ripe fruits of the Sharia, i.e. love, fraternity, integrity and solidarity and consequently they lose faith, justice, freedom and equality.

I thank you for your kind attention. God's peace, mercy and blessings be upon you.

Chairman

I thank the researcher, conductor of discussions, the commentators and all the participants.

(The meeting was adjourned at 10.30 a.m. for half an hour).

(At 11.15 a.m. on Tuesday morning, 19 Shawal 1396, the meeting was convened at King Feisal conference hall under the chairmanship of Ibrahim Al-Awaji, Vice-Chairman of the symposium).

Chairman

Before resuming the next research on the Implementation of Islamic Criminal Legislation in Saudi Arabia I would like to thank the non-Arab commentators for their kind remarks about the Kingdom of Saudi Arabia, the host country, for organizing this symposium in view of the

importance of explaining the reality of the implementation of the Islamic criminal legislation and its influence on crime prevention. Saudi Arabia implements the Sharia in all walks of life. While the Government of Saudi Arabia welcomes you here it feels that your participation in the discussions proves that the symposium has started attaining its desired results. We are always prepared to furnish you with information whether during the meeting or outside. By the way, Sheikh Al-Huwesh has reminded me of a point related to some researches. The researches of Sheikh Nasser Ibn Hamad Al-Rasheed, Sheikh Mohammad Qutb and Sheikh Mohammad Al-Huwesh reached us quite late. The reason for this delay is that the organizing body of the symposium wrote a few months ago to the selected scholars for conducting researches. As the works of the selected researchers did not reach us in time we had to substitute them with the above-named scholars who did their best in such a short time to prepare their treatises. Therefore their contributions are very much appreciated.

There is another point regarding the previous work; it is not a point of disagreement but I feel that it requires further elucidation for those who are not familiar with the Sharia. It is regarding the implementation of the Sharia in the case of a juvenile or an insane person. I know that Sheikh Mohammad Al-Huwesh did not have time to elaborate this point, so would he clarify this matter now, please.

Sheikh Mohammad Al-Huwesh

In the name of God and peace be upon God's messenger and those who follow his Sunnah.

I thank Sheikh Nasser Ibn Hamad for his remark about the Quranic verse

"And the remission

Is the nearest to righteousness".

In fact I did not refer to it as a special but rather as a general example. As regards the question of the juvenile and the insane, I meant that if the juvenile or the insane who has the legal right to ask for the infliction of Kisas upon the murderer then Kisas is usually deferred until the juvenile reaches the age of majority and the insane regains his sanity. Then they can legally claim Kisas to be inflicted upon the murderer.

As a swift and efficient means of execution electrocution has been suggested, but this method has been turned down because the colour of the corpse changes and this fact, in the eyes of the Sharia scholars, is considered harsh treatment after death.

Sharia approves of any method that achieves swift death provided it does not involve any pain while it is carried out or any ill-treatment after death.

EIGHTH SYMPOSIUM

EIGHTH PAPER

CONTINUED

4 OF 7

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SHARIA PENALTIES AND WAYS OF THEIR
IMPLEMENTATION IN THE KINGDOM
OF SAUDI ARABIA

Second

Fixed Penalties "Hudoud"
and Discretionary Penalties "Ta'zir"

by

SHEIKH OMAR IBN ABDUL AZIZ AL-MUTRAK

Under-Secretary of Justice and Juridical Affairs

Commentators

Dr. Mohammad Ibn Ahmed As-Saleh, Assistant Professor, Faculty of Sharia, Imam Mohammad Ibn Saud Islamic University.

Sheikh Attiya Mohammad Salem, Judge at Medina.

Conductor of Discussions

Dr. Abdul Rahman Ibn Abdul Aziz Al-Qasim, Assistant Professor, Faculty of Commerce, Riyadh University.

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Dr. Omar Ibn Abdul Aziz Al-Mutrak

Praise be to God the Cherisher of the Worlds and peace be upon our Prophet, Mohammad, sent by God as a mercy for all creatures and a proof against obstinate transgressors and infidels. God sent His Apostle with guidance and the religion of Truth. The Prophet conveyed God's message and counselled his people to enjoin what is right and forbid what is wrong. He commanded justice and doing good, and forbade all shameful deeds and injustice and left everything clear as crystal for his people and warned those who stray from the right path and transgress that they will meet a dreadful punishment. In this connection the Quran says:

*" But those who disobey
God and His Apostle
And transgress His limits
Will be admitted
To a fire, to abide therein:
And they shall have
A humiliating punishment ".*

Chapter 4, verse 14.

and

*" (For) the sinners will be
Known by their Marks:
And they will be seized
By their forelocks and
Their feet ".*

Chapter 55, verse 41.

and

*" Truly those in sin
Are the ones
Straying in mind, and mad.
The Day they will be
Dragged through the Fire
On their faces ".*

Chapter 54, verses 47 and 48.

In addition to the penalties of the Hereafter the Sharia has decreed worldly punishments for tangible felonies to serve as deterrents. Worldly measures are employed by God to restrain man from crime when such measures are not prescribed in the Holy Quran. Thus, those who fear the punishment in the Hereafter find the admonitions a viable deterrent, but those who follow the worldly pleasures find a strong deterrent in the penalties enforced by the Sharia.

*Penalties Ordained by Islam are not the Only Instrument to
Protect Society from Crime*

The Islamic Sharia does not depend only on penalties to combat crime but it also strives to prevent crime before its commission. No doubt prevention is better than cure. So the Sharia endeavours to fortify the Muslim against falling into the abyss of sin and vice. It does this in the following manner:

First: The Sharia endeavours to reform the individual and purify him with sublime Islamic ideals and lofty morals, and direct him towards good deeds and divert him from the evil ones. There is no doubt that a genuine faith and sincere belief is the best shield against the commission of

mischief and unlawful deeds, for a true believer is fully aware that God watches him and however hard he may try to conceal his sin from men he cannot conceal it from God. Even if he may escape the worldly punishment he will be brought to book in the Hereafter. In this connection the Prophet said: " No true believer can commit adultery, take alcoholic drinks or commit the crime of theft " *.

Second: The Sharia warns people not to commit offences and admonishes the offenders that they will meet a dreadful punishment, and it does so in such a way that frightens the potential offenders so that they will not dare to think of committing crime. Those who violate religion are described in the Quran as apostates. It says:

*" And if any of you
Turn back from their faith
And die in unbelief,
Their works will bear no fruit
In this life
And in the Hereafter;
They will be
Companions of the Fire
And will abide therein ".*

Chapter 2, verse 217.

In connection with murder the Quran says:

*" If a man kills a Believer
Intentionally, his recompense
Is Hell, to abide therein*

* Related by Bukhari, see: Fath Al-Bary by Idn Hajar Asqalani (died in 1448 A.D.) Vol. 12, page 59.

*(For ever): and the wrath
And the curse of God
Are upon him, and
A dreadful penalty
Is prepared for him ”.*

Chapter 4, verse 93.

The Quran forbade adultery, for it says:

*“ Nor come nigh to adultery:
For it is a shameful (deed)
And an evil, opening the road
(To other evils) ”.*

Chapter 17, verse 32.

We also read the following verses in the Quran:

*“ Those who invoke not,
With God, any other god,
Nor slay such life as God
Has made sacred, except
For just cause, nor commit
Fornication; and any that does
This (not only) meets punishment
(But) the Penalty on the Day
Of Judgement will be doubled
To him, and he will dwell
Therein in ignominy,
Unless he repents... ”.*

Chapter 25, verses 68, 69 and 70.

The Quran commands the Believers not to defame others as in the following verse:

*“ Those who love (to see)
Scandal published broadcast
Among the Believers, will have
A grievous Penalty in this life
And in the Hereafter ”.*

Chapter 24, verse 19.

Third: The Sharia orders Muslims to help one another in righteousness and piety and in mutual teaching of Truth and Patience and the combatting of sin, rancour, evil and mischief. The Quran says:

*“ By (the Token of)
Time (through the Ages),
Verily Man
Is in loss,
Except such as have Faith
And do righteous deeds,
And (join together),
In the mutual teaching
Of Truth, and of
Patience and Constancy ”.*

Chapter 143, verses 1 to 3.

The Quran also commands Muslims to:

*“ Help ye one another
In righteousness and piety,
But help ye not one another
In sin and rancour ”.*

Chapter 5, verse 3.

The Prophet said: "A Believer who comes across a wrong deed must combat it with his hands; if he cannot then let him do it with his tongue or at least with his heart as the last resort". In the Hadith related in As-Sahihain by Anas Ibn Malik we read that the Prophet says: "Stand by your fellow-Muslim whether he is just or unjust". When the Prophet was told it was understandable to support a just man but how could an oppressor be supported, the Prophet answered that you stand by him when you prevent him from continuing to be oppressive. The Prophet said: "God's curse be upon the person who gives shelter to an offender". The Prophet also said: "Religion is essentially a duty on the part of the Muslim towards God, His Apostle, the Imams and towards each other".

Thus, if every Muslim abides by the teachings of Islam on combatting mischief by not giving shelter to the offender and not backing him in any way then evil and wrong deeds will disappear and good acts will prevail.

Whoever gives shelter to a murderer or an adulterer and helps him escape the "Hadd" penalty is considered an accomplice.

Fourth: The Sharia not only prohibits commission of offences but it also tries to block the ways leading to it. For example, adultery is prohibited and also whatever may provoke sexual urge. A man is not allowed to be alone with a woman who is not his wife or closely related to him. To ward off temptation the Sharia has also prohibited a woman to travel alone for one day and one night if not accompanied by a relative allowed to accompany her by the Sharia. Muslims are also ordered to lower their gaze in the company of the opposite sex.

The Quran says:

*" Say to the believing men
That they should lower
Their gaze and guard*

*Their modesty: that will make
For greater purity for them:
And God is well acquainted
With all that they do.
And say to the believing women
That they should lower
Their gaze and guard
Their modesty".*

Chapter 24, verses 30 and 31.

Women are forbidden to speak seductively in order to discourage the sexual desire of men. Furthermore, the consumption of alcoholic drinks is forbidden even for medication purposes as a safeguard against its misuse. Therefore the Sharia condemns anyone who sells, produces or deals in alcoholic drinks.

Fifth: When something, like adultery, is forbidden the Sharia allows Muslims other means to satisfy their instincts. The Sharia not only considers marriage lawful but it also urges Muslims to get married. In this connection the Prophet says: "O ye youngsters if you can afford it get married so that ye may lower your gaze in front of the opposite sex and thus guard your modesty, but if you cannot afford it then you have to fast". Those who are not satisfied with one woman may have up to four wives.

Theft is forbidden but, as one of the main factors of theft is hunger and poverty, the Sharia has ordered Muslims to give alms "Zakat" and made it one of the cardinal duties of Islam, and so the poor have a recognized right to the wealth of the rich. The Quran says:

*" And those in whose wealth
Is a recognized right*

*For the (needy) who asks
And him who is prevented
(For some reason from asking) ”.*

Chapter 70, verses 24 and 25.

The Quran further says:

*“Alms are for the poor
And the needy ”.*

Chapter 9, verse 60.

If alms do not satisfy the needs of the poor the state has to provide their necessities by compelling the wealthy to participate in the provision of food, shelter and clothing. To this effect the Quran says:

*“ So give what is due
To kindred, the needy
And the wayfarer ”.*

Chapter 30, verse 38.

and

*“ And do good
To parents, kinsfolk,
Orphans, those in need,
Neighbours who are near,
Neighbours who are strangers,
The Companions by your side,
The wayfarer (ye meet),
And what your right hands possess ”.*

Chapter 4, verse 36.

So God orders Muslims to show consideration to those in need, the wayfarer and what their right hands possess and not to humiliate them.

Again the Quran says:

*“ And what led you
Into Hell-Fire?
They will say:
We were not of those
Who prayed;
Nor were we of those
Who fed the indigent ”.*

Chapter 74, verses 42, 43 and 44.

So in the Quran feeding the indigent is associated with saying one's regular prayers. During the year of famine Omar Ibn Al-Khattab suspended the amputation of a thief's hand because at that time some needy people were compelled to steal to satisfy the pangs of hunger.

A story was narrated that some of Hatib Ibn Ali Bal-ta's servants stole a she-camel from a man of Muzaina. The thieves were brought into the presence of Omar and confessed the theft. When Abdul Rahman Ibn Hatib was summoned Omar told him to take the thieves and have their hands cut off but later he changed his mind because he said: " It is your ill-treatment that has driven these men to turn to thieves. I would have agreed to have their hands cut off if they were treated and fed well ". He was asked by Omar to pay a fine and the man from Muzaina suggested that the fine be four hundred Darhams. Omar, instead, asked that the claimant be paid eight hundred Darhams *.

* The story is narrated in A'lām Al-Muakkin, Vol. 3, page 24.

Sixth: The devotions legislated by God are intended to purify the soul and protect it from sins and vices. Saying regular prayers restrains the believer from shameful and unjust deeds if these are said whole-heartedly and with awe. To this effect the Quran says:

*" and establish
Regular Prayer: for Prayer
Restrains from shameful
And unjust deeds "*

Chapter 29, verse 45.

People who are not regular with prayer will go astray. In this connection the Quran says:

*" But after them there followed
A posterity who missed
Prayers and followed after lusts
Soon, then, will they
Face destruction "*

Chapter 19, verse 59.

On fasting the Quran says:

*" O ye who believe
Fasting is prescribed to you
As it was prescribed
To those before you,
That ye may (learn)
Self-restraint "*

Chapter 2, verse 183.

The Prophet said that fasting is a blessing, for it develops conscience and perseverance in the heart of the believer.

Seventh: Penalty is prescribed to serve as a deterrent to those who are incorrigible due to lack of faith and who do not fear God's punishment. In this connection Al-Mawardi* said: " Fixed punishments (Hudoud) are restraints decreed to retaliate for offences committed and they are not to be taken lightly ". Hudoud punishments are instruments to convince people to adhere to the Commands of the Almighty God for the good of everybody. The Quran says:

*" We sent thee not, but
As a mercy for all creatures "*

Chapter 21, verse 107.

So God's Messenger was sent to save people from ignorance, to guide them on the right path and to protect them from offences.

The Islamic Sharia and its divine teachings are the best safeguard against crime, and this is the reason why the Islamic society has the lowest crime rates in the world.

Types of Worldly Punishments in Islamic Sharia

These penalties fall into three types:

1) Fixed penalties prescribed by God for " Hudoud " crimes, namely adultery, defamation, theft, highway robbery and alcohol-drinking.

2) Crimes of murder are punished either by qisas or Diya and Kaffara. The punishment for these crimes is

* Al-Mawardi's full name was Abdul Hassan Muhammad b. Habib Al-Baghdady (991-1031 A.D.). He was a Shafite jurist and died in Baghdad. His works include a thesis on politics and civil legislation and " Literature and Religion " (Translator's note).

also prescribed by God except that qisas differs from Hadd in some respects, mainly:

First: Once a Hadd is established the offender cannot be acquitted. The Prophet said *: "Try to sort out your grievances amongst yourselves, for when the Hadd is established I have to execute the due punishment". The reason is that Hadd is God's prerogative. Whereas Kisas for the crime of murder or bodily wounds can be forgiven by the victim or his caretaker since it is man's prerogative.

Second: With the exception of defamation, nobody can intercede in the crimes of Hudoud. This is evidenced by the Prophet's saying: "O Osama how dare you mediate in a Hadd punishment which is the prerogative of God?" **. As qisas punishments are man's prerogative mediation is allowed.

Third: The requirements of the "Hadd" are usually established by the Imam or his deputy. To this effect Al-Tahawi *** narrated (based on the original narrator, Muslim Ibn Yassar) the following: "One of the Prophet's Companions said that it is up to the authorities to establish the alms and Hudoud but the qisas has to be decided by the victim or his caretaker. The qisas is meant to satisfy the victim's vengeance whereas the Hudoud are meant to administer reform and justice.

Fourth: Hudoud does not depend on the lodgement of a law-suit by the victim or his attorney (except in cases of defamation and theft) because it is God's prerogative, though there is no common consensus amongst the scholars over this issue.

* Sunan Abi Dawood, part 2, page 446.

** Nayl Al-Awtar part 7, page 143.

*** Al-Tahawi (853-933 A.D.) was an Egyptian jurist and the author of Sharh Ma'ani al-Athar, a treatise on the meaning of Hadith.

Instead, for crimes subject to Kisas the lodgement of a law-suit is necessary for the trial.

Fifth: Hudoud punishments cannot be exchanged, for they are prescribed by God. It is narrated that a man reported to the Prophet saying that his son had committed adultery with another man's wife and after having consulted some scholars it was decided that his son should give, by way of expiation, one hundred sheep. Thereupon the Prophet remonstrated saying that on no account could the sheep replace the punishment prescribed for the crime of adultery, and ordered that the culprit be flogged one hundred stripes and banished for one year. And if the woman involved confessed her sin then she would have to be stoned to death *. This story demonstrates that mutual consent cannot absolve a Hudoud offence and therefore the prescribed punishment has to be inflicted.

3) *Ta'zir Crimes:* These are the crimes for which no fixed punishment has been prescribed by the Sharia. For each Ta'zir crime the ruler has to use his individual interpretation of the Quran to inflict the punishment he deems adequate to serve as a deterrent against the offender and a restraint for others. The punishments differ according to the magnitude of the offence.

Difference Between Hadd and Ta'zir

While Ta'zir is similar to Hudoud in the sense that they are both disciplinary and deterrent, they differ in the following points:

First: Ta'zir differs according to the integrity of the people. Thus, people of low morality get harsher punish-

* Al-Ahkam Al-Sultaniya by Al-Mawardi, page 137, and Sunan Abu Dawood, part 2, page 637.

ment than those of high morals and good reputation. In this connection the Prophet said: "With the exception of Hudoud, Ta'zir punishments may not be inflicted on men of integrity and morals". Hudoud, on the other hand, are applied with the same intensity without discrimination.

Second: If the Ta'zir is connected with a sin committed against God's prerogative then it must be administered. However, it may be forgiven if it calls for intercession. To this effect the Prophet said: "Come to me for intercession, for God passes His judgement through me"*. As Ta'zir is man's prerogative the claimant may even pardon the offender. Once a Hudoud punishment reaches the Imam it cannot be dropped nor can intercession be used except, according to some scholars, for the crime of defamation**.

Third: Hudoud must not be enforced if a judge harbours any doubts regarding the crime. The Prophet said that Hudoud should not be inflicted in case of doubt. On the other hand, the requirement of proof for Ta'zir crimes is less rigid than that required for Hadd crimes.

Fourth: Ta'zir may be administered on children under age and the insane, since the intention is disciplinary and the insane and the juvenile are liable to disciplinary action. Hudoud, on the other hand, can be established only on adults who are mentally sane.

Scope of Penalty

Penalty has been prescribed to combat crime, vice and mischief with a view to protecting society from corruption

* From Subul As-Salam, part 4, verse 38.

** Al-Asbah and Nazair by As-Sayyooty, page 137. As-Sayyooty Jalaladdin (1445-1505 A.D.) was born in Cairo. He was an authority on Hadith and wrote over 500 works (Translator's note).

and offences and preserving the five indispensables, namely religion, offspring, intellect, property and honour as prescribed by all the divine religions. They are called indispensable because without these man cannot be protected from evil and offence. Hadd is prescribed for adultery, theft and highway robbery. Hadd is to protect property, life, defamation and to protect people from slander and is used against alcohol-drinking in order to protect people's minds and their sobriety.

*Excerpts from Al-Ghazaly **

Man's objectives lie in attaining what is right and preventing offences and to achieve these objectives man has to preserve five indispensable matters: religion, life, mind, offspring and property. So qisas is prescribed to safeguard life, alcohol-drinking is prohibited to preserve man's sanity, adultery is forbidden to protect the family structure and theft and highway robbery are prohibited to protect property.

Heresy, murder, adultery, theft and alcohol-drinking are also prohibited by other religions apart from Islam**.

Penalty in Islam is an Act of Mercy

Penalty is a mercy for those who have diverted from the right path. Penalties were decreed not only to punish the offenders but also to restrain others from committing offences. Without penalty criminals would run amok and the world order and security would be in peril and men would

* Al-Ghazaly (1059-1111). Born at Khurasan (Persia); he was dedicated to mysticism and author of many religious works such as "Revival of Theology" (Translator's note).

** Al-Mustasfa, part 1, pages 287-288.

behave like beasts. This is quite natural as evidenced by an Arab poet in the following line:

“ Acts of aggression are inborn in man, and those who do not resort to such acts there must be some reason behind ”.

Penalties may appear as methods of inflicting pain on the offender, but that is not the real intention. The real scope is to serve as a deterrent to others and to be beneficial to the Islamic society by preventing the spread of evil and vice. Therefore the scope is not vengeance but to serve as a cure, like amputating a limb to save one's life. Ibn Taymiya, a famous scholar of Islam, said that penalties are decreed by God to serve as a mercy for His subjects, exactly like a father disciplining his son or a physician treating his patient*. In this respect Al-Izz Abdus-Salam said: “ Usually the reasons for punishment stem from sins and vice. The punishing of offenders leads to the general good of society. For example, although risking one's life is undesirable Jihad** is ordained because it leads to the protection of others' lives. Similarly, taking the life of a murderer and stoning adulterers are examples of measures taken to establish social peace. In the same manner Ta'zir punishments are prescribed to enhance good and ward off evil ”***.

Penalties Serve as Atonement for the Sins of the Offenders

Punishments in Islam also aim at purifying the offender and the expiation of his sins to save him from punishment in the Hereafter. Al-Bokhari said: “ Hudoud is an expiation for those who are punished ”. Ubada Ibn As-

* Ikhtiarat by Ibn Taymiya, page 288.

** Jihad means holy war (Translator's note).

*** Al-Qawaid Al-Kubra, part 1, page 12, quoted from Sheikh Mohammad Abu Zahra's Philosophy of Punishment in Islamic Jurisprudence.

Samit said that once he was in the company of the Prophet when he heard him saying: “ Give me your pledge that you will never associate a partner with God, neither steal nor commit adultery. Those who fulfill all the good requirements shall be amply rewarded by God. Those who commit offences shall be punished and then shall be expiated; as for the concealed offences it is up to God to forgive or punish the offenders ”*.

Quoting the Prophet, Ali Ibn Abi Talib said: “ An offender who is punished in this life will not be penalized in the Hereafter, and God will not go back on His forgiveness in the Hereafter for the person who is protected by Him for having committed a Hadd offence ”**. It is in compliance with the Islamic fair legislation that people such as Ma'iz and Ghamidiya confessed their crime of adultery and voluntarily requested the Hadd punishment to be inflicted upon them that God is aware of their sins and that punishment in this life is much lighter than that in the Hereafter.

Abu Hureira narrates that a certain Al-Aslami came to the Prophet and confessed that he had committed adultery but the Prophet tried to ignore him and the adulterer confessed his crime four times. At the fifth time the Prophet asked him if he really had sexual intercourse with the woman and when the man admitted the act the Prophet ordered that he should be stoned. At the scene of the punishment there were two men who were reproaching Al-Aslami for confessing a hidden offence in order to be stoned like a dog and were rejoicing at the culprit's misfortune. At that moment they saw the carcass of a dead donkey and the Prophet asked the two men to eat of the carcass. When they refrained in

* Fath Al-bary, part 12, page 84.

** Jami' Al-Usul by Termezi, part 4, page 349. Termezi was a Sunnite theologian from Khorasan (Persia) and author of 30 works (Translator's note).

disgust the Prophet told them that their rejoicing at the misfortune of their fellow-man was worse than eating such a foul carcass whereas the adulterer, having been purified after the stoning, would abide in Paradise*.

The above Hadith indicates that penalties in Islam are inflicted with a view of correction and mercy rather than recrimination and hatred. Therefore a punished offender, in accordance with the Sharia, should not harbour any hard feelings towards the society because it is in compliance with God's legislation. This is where the Sharia and the secular laws differ, for in the latter case an offender who is punished harbours rancour against society.

Hudoud Punishments and Prohibition of Intercession

Once an offence is proven the authorities must inflict the Hudoud on the offender regardless of whether the offender is strong, weak, noble, poor, man or woman, without any delay, hesitation or compassion. Hudoud is part and parcel of religious devotions commanded by God as a sign of mercy for his subjects. Abu Huraira narrates that the Prophet said: "A Hadd punishment carried out is much better for the people than forty days of rain"**.

Aisha said: "Whenever the Prophet had two choices he chose the easier one unless it infringed upon a Hadd, for God does not punish unless His prohibitions are violated"***.

An-Nu'man Ibn Basheer quoted the Prophet saying: "The importance of carrying out the Hudoud is illustrated by the story of some people aboard a ship. When those on the lower deck wanted some water to drink they had

* Sunan Abi Dawood, part 2, page 459.

** This Hadith was narrated by Ibn Majah and Nisai, see: Nayl-Al-Awtar, part 9, page 112.

*** Narrated by Boukhary, Fath Al-Bari, part 12, page 86.

to go all the way up to the upper deck. They thought that it would be easier for them if they made a hole on their deck to have easy access to the water. Now if the people on the upper deck let them make a hole they would all drown but if they stopped them they would be saved" *.

Consequently the offenders must be punished to limit the spread of the offence. If the offender is punished only he will suffer the punishment, but if the offence is left unpunished it would harm the whole society. The Holy Quran says:

*And fear tumult or oppression,
Which affecteth not in particular
(Only) those who do wrong".*

Chapter 8, verse 25.

The theologians agree that once the Hadd reaches the Imam there should be no intercession. Abdullah Ibn Amir Ibn Al-Aas quoted the Prophet saying: "Try to sort out the Hudoud amongst yourselves, for once it reaches me I have no alternative but to enforce it" **. In another place Abdullah Ibn Amr quotes that the Prophet said that whoever intercedes in the Hudoud will be defying God's decree ***.

Othman (the third Caliph) said: "Once the Hudoud reaches the authorities God's curse will be upon the mediator and the offender". When Othman tried to mediate with the Prophet for the sake of a woman from Makhzum who had committed theft, the Prophet objected to it harshly and said: "How dare you mediate against God's Hudoud?". And then instantly he rushed out to make a speech saying:

* Narrated by Boukhary and Termezi in Targheeb; see: Tarheeb, part 3, page 225.

** Sunan Abu Dawood, part 2, page 446.

*** By Abu Dawood and Naisi; see: Jami' Al-Usoul, part 4, page 344.

" O ye people, the people before ye were wrong who did not apply Hudoud strictly when dealing with influential people guilty for having committed theft while they inflicted the Hudoud only on the weak. By God if my daughter, Fatima, were caught stealing I would have her hand cut off " *. One day Safwan Ibn Omayya was robbed while sleeping in the Prophet's mosque. When the thief was caught and brought into the Prophet's presence, the Prophet ordered his hand to be chopped off. Safwan wanted the sentence to be dropped as a gesture of mercy, but the Prophet objected saying that that should have been done before bringing the thief to him **.

Whoever succeeds in stopping the application of Hudoud shall meet with God's displeasure. The Quran says:

*But no, by thy Lord,
They can have
No (real) faith,
Until they make thee judge
In all disputes between them,
And find in their souls
No resistance against
Thy decisions, but accept
Them with fullest conviction "*

Chapter 4, verse 65.

Who Establishes Hudoud

The Imam or whoever represents him, such as the Qadhi, Wali or any such official, has the right to establish

* Narrated by Boukhari, in Fath-Al-Bari, part 12, page 87.

** Jami' Al-Usool, part 4, page 344. Safwan Ibn Omayya was one of the Prophet's Companions; he took part in the Yarmouk battle and died in 663 A.D. (Translator's note).

the Hudoud. As Hudoud is decreed in the interest of man its implementation is entrusted to a responsible, trustworthy and learned official. To guard against any injustice Hudoud is not subject to an independent judgement. The presence of an Imam is not necessary when Hudoud is being inflicted.

Once the Prophet said to a man: " Unais, go to that man's wife and ask her if she committed adultery. If she confesses, stone her to death " *.

He ordered Ma'iz to be stoned although he did not attend the act of stoning. When a thief was brought to him he said: " Take him away and chop his hand off " **.

However, the approval of an Imam regarding the Hudoud is imperative as was the case in the days of the Prophet and the Caliphs. This power could be delegated either temporarily on certain occasions or be delegated on a permanent basis such as given to the rulers and men in charge of carrying out the penalty " ***.

Al-Kassany in his " Badai " said **** that an Imam may delegate others to implement the Hudoud, for he cannot afford to do it all by himself, as it is practically impossible to be present in each individual case *****.

Hudoud Crimes and their Penalties

1) *Adultery*

This is a dreadful and shameful crime which ruins the social structure, disintegrates the family and disrupts the marital relationship. It exposes societies to moral corruption and dissuades young men and women from joining each

* Asharh-Al-Kabeer, part 10, page 121.

** Ibid.

*** Criminal legislation, part 3, page 444.

**** Al-Kassany was from Kassan in Turkestan. He died in Aleppo in 1191 A.D. His book " Badai " is a well-known Hanafi manual (Translator's note).

***** Badai', vol. 9, page 206.

other in holy matrimony. Apart from assaulting other people's honour, adultery causes the loss of one's origin and the creation of illegitimate children. In fact, the social disintegration of modern western societies is a living illustration of the consequences of indulging in the unchecked crime of adultery and debauchery. Licentiousness and libertinism have become normal personal matters which have nothing to do with the interests of society.

This is the reason why the legislations of divine religions have prohibited adultery and Islamic legislation, in particular, has spared no effort in disclosing the seriousness of committing this shameful sin and admonished the Muslims against it and warned them of the dreadful penalties for the perpetrators. The Quran says:

*"Nor come nigh to adultery:
For it is a shameful (deed)
And an evil, opening the road
(To other evils) "*

Chapter 17, verse 32.

and

*"Those who invoke not,
With God, any other god,
Nor slay such life as God
Has made sacred, except
For just cause, nor commit
Fornication "*

Chapter 25, verse 68.

This Quranic verse shows the seriousness of adultery as a crime in Islam. So, according to the Sharia, adultery comes next to the atrocious crime of invoking other gods with God and the crime of murder. Imam Ahmed said that he believed no other crime came next to murder except adultery.

Islam is not the only Religion that Punishes the Adulterer with Stoning

Stoning adulterers was decreed in the Old Testament (Torah) but apparently the Jews ignored it. Ibn Omar said some Jews came to the Prophet to report that a man and woman had committed adultery. The Prophet asked them what the punishment was in the Torah. They said that the punishment consisted in disclosing the crime in public and having the offenders flogged. Abdullah Ibn Salam told them that they were not telling the truth, for the Torah decrees the penalty of stoning. When the Torah was brought the Jews tried to hide the part that refers to stoning but they had to admit that the Prophet was right as regards stoning in the Torah. Thereupon the two adulterers were stoned. It was reported that the adulterer was seen shielding the adulteress from stones*.

What was legislated in the Old Testament was also legislated in the New Testament. The Quran says:

*"And in their footsteps
We sent Jesus the son
Of Mary, confirming
The Law that had come
Before him: We sent him
The Gospel: therein
Was guidance and light,
And confirmation of the Law
That had come before him
A guidance and an admonition
To those who fear God "*

Chapter 5, verse 49.

* Sahih Al-Boukhary, part 8, page 143.

Despite some changes stoning still exists in the Old Testament. In Chapter 22 it says that he who discovers that his spouse has committed adultery should stone her at her father's door-step; and he who comes across a man fornicating a woman must put both the offenders to death.

There is a story about a man who was found committing adultery with the fiancée of another man. When they were captured they were led out of the city gates and stoned to death. The girl was stoned because she did not attempt to shout for help and the man was stoned because he degraded his friend's woman*.

The fact that both the Jews and Christians do not apply the penalty of stoning does not mean that it does not exist in their Holy Books. The followers of these two religions cannot blame Islam for prescribing stoning as a penalty for adultery but *they should* be reproached for not abiding by the tenets of their religion.

How Adultery Penalty was Developed

At the advent of Islam adultery was quite rampant in the society. Therefore Islam started applying penalties gradually. In order to render the due penalty more effective and acceptable it was inflicted in the manner best illustrated in the following Quranic verse in the chapter on "Women":

*" If any of your women
Are guilty of lewdness,
Take evidence of four
(Reliable) witnesses from amongst you
Against them; and if they testify,
Confine them to houses until
Death do claim them,*

* Tafsir Al-Manar, part 6, page 395.

*Or God ordain for them
Some (other) way.
If two men among you
Are guilty of lewdness,
Punish them both.
If they repent and amend
Leave them alone; for God
Is Oft-returning, Most Merciful".*

Chapter 4, verses 15 and 16.

The adultery penalty for previously married women was confinement whereas virgins were scathed and reprimanded. Some scholars believe that married women were included in the Quranic verse "Your previously married women"

Two penalties were decreed and they varied in severity: the harsher was for the previously married women and the exile and flogging were meant for virgins*.

As people were still not familiar with the Islamic teachings these penalties were relatively light. However, the Quran anticipated other penalties when it decreed the confinement of the adulteress until God ordains some other way for her. This *other way* came through the Prophet who said: "Listen to me. The penalty for an adulteress virgin is one hundred lashes and exile for one year and the penalty for an adulteress previously married is one hundred lashes and stoning**.

This denotes that the penalty for adultery is divided into two categories: one for the married person and the other for the unmarried. The reason for this distinction is that married people should know the value of honour and the atrocity of violating other people's honour.

* Al-Mughani and Sharh Al-Kabir, part 10, page 119.

** Narrated by Muslim, see: Sharah an-Nawawi, part 11, page 188.

The Penalty of an Unmarried Adulterer or Adulteress

The scholars all agree that the unmarried adulterer or adulteress should be flogged with one hundred lashes in accordance with the following Quranic verse:

*"The woman and the man
Guilty of adultery or fornication
Flog each of them
With a hundred stripes".*

Chapter 24, verse 2.

However, there are three different views regarding the banishment of the person guilty of adultery or fornication:

First: A number of jurists, such as Shafi', Ahmed and Ishaq, believe that the woman and the man guilty of adultery should be flogged as well as banished.

Their sources of evidence were:

(i) Ibada Ibn As-Samit quoted the Prophet saying: "Take heed that virgins committing adultery are to be flogged with a hundred stripes and banished for one year".

(ii) Abu Hareira and Zeid Ibn Khalid said that once an Arab bedouin accompanied by another man came to the Prophet and reported that his son had committed adultery with the other man's wife. He was told that his son had to be stoned. In order to expiate his son's crime he had offered the husband of the adulteress one hundred sheep and one lamb. When he consulted some learned men he was told that his son had to be flogged with a hundred stripes and exiled for one year and the adulteress had to be stoned. Thereupon the Prophet said: "Well, I shall judge in accordance with God's Book. Take back the sheep and the lamb, for your son shall be flogged with a hundred

stripes and exiled for one year. And if the woman confesses her sin, she shall be stoned for her crime*.

This story illustrates that people guilty of fornication were also exiled at the time of the Prophet.

(iii) It is reported that Abu Bakr (the Caliph) had an adulterer flogged and exiled from Medina to Damascus and another adulterer flogged and exiled to Fadak**.

Second: Malik and Al-Awza'i maintained that banishment is imposed on the adulterer, and not on the adulteress merely because she is vulnerable to assaults except when accompanied by a lawful protector. The Prophet said: "A woman who believes in God and the Hereafter should not travel for one day and one night alone except when accompanied by a lawful protector"***.

Exiling a woman without a lawful protector invites temptation and exiling her with a protector is not fair for the protector****. This is in pursuance of the Quranic verse:

*"Nor can a bearer of burdens
Bear another's burden".*

Chapter 35, verse 18.

Third: Banishment is not necessarily imposed on either a man or a woman unless the Imam deems it necessary and then it should be applied as a Ta'zir and not an unalterable Hadd. Imam Abu Hanifa held this view based on the following points:

(i) In the Quran the punishment decreed is flogging.

* Jami Al-Uso'l, part 4, pages 96 and 297.

** Nayl Al-Awtar, part 7, page 495. Fadak is a town in the Arabian Peninsula near Kheibar (Translator's note).

*** Al-Targheeb and Tarheeb, part 4, page 72.

**** Al-Moghny, part 10, page 133.

Banishment is an additional punishment and the Prophet's Hadith cannot supersede the Quran.

(ii) It is reported that Omar Ibn Al-Khattab (the Caliph) once expatriated Rabi' Ibn Omayya Ibn Khalaf to Khaybar where he joined Hercules and embraced Christianity. When Omar heard about it he swore that he would never again expatriate believers*.

So if banishment were legislated Omar would not have sworn to renounce it. I am inclined to take sides with Imam Malik and his colleagues for giving the appropriate evidence.

Proving the Crime of Adultery

As adultery is a dreadful crime and its punishment is very harsh the Sharia has decreed that the penalty cannot be carried out before concrete proof is established. This can be done in two ways:

1) The offender has to swear four times that he has actually committed adultery and in his confession he should give sufficient details to dispel any doubts.

Ibn Abbas related that the Prophet once said to Maiz (the adulterer): "Perhaps you only kissed her or winked and looked at her with sexual desire". When Maiz replied in the negative the Prophet asked him if he did fornicate her. When the answer was in the affirmative the Prophet ordered that he should be stoned**.

In another story narrated by Abu Huaryra the Prophet asked the adulterer if he fornicated the woman. When the answer was in the affirmative the Prophet asked if the adulterer inserted his member deep into her until it disappeared. The man confessed that his member plunged deeply into her exactly as a stick goes into the kohl-jar or a bucket

* Jami' Al-Usool, part 4, page 277 and Al-Moghany, part 10, page 134.

** Narrated by Boukhary.

is plunged into a water-well. Thereupon the Prophet said that he had done something unlawful which a married man lawfully does with his wife. According to Abu Dawood most scholars confirm that a written statement by the adulterer was the only concrete ground upon which Hudoud could be established.

2) There should be four witnesses testifying the act of crime. In this connection the Quran says:

*" And those who launch
A charge against chaste women
And produce not four witnesses
(To support their allegations)
Flog them with eighty stripes "*

Chapter 24, verse 4.

The Quran also says:

*" If any of your women
Are guilty of lewdness
Take the evidence of four
(Reliable) witnesses from amongst you "*

Chapter 4, verse 15.

They have to testify that they actually saw the man's penis in the woman's vagina as a stick in the kohl-jar or a bucket in the water-well. It is not enough to say that they saw the offenders naked and embraced. The punishment of Hudoud for adultery is established on the following grounds:

a) either the offender boasts his lewdness heedless of moral values, and acts like a beast by performing sexual intercourse in public;

b) or the adulterer voluntarily confesses his sin and asks to be punished so that God may forgive and purify him.

Hadd Punishment of Married Adulterer or Adulteress

The word "Al-Ihssan" has many meanings in Arabic. The Quran has used it in four different ways. The first means "Chaste" in the following Quranic verse:

*" And those who launch
A charge against chaste women,
And produce not four witnesses
(To support their allegations),
Flog them with eighty stripes ".*

Chapter 24, verse 4.

The second meaning is "already married" in the following Quranic verse:

*" Also (prohibited are)
Women already married
Except those
Whom your right hands possess ".*

Chapter 4, verse 24.

The third meaning is "free believers" as in the following Quranic verse:

*" If any of you have not
The means wherewith
To wed free believing women ".*

Chapter 4, verse 25.

The fourth meaning is "wedlock" as in the verse: "When they are taken in *wedlock*" (Chapter 4, verse 25).

Ibn Masood said that if a married person commits adultery even once he must be stoned to death. According to the Prophet the penalty is inflicted when the offence is proved in word and action.

The verification of the sexual act on the adulterer's word is confirmed by:

1) Abada Ibn As-Samit, who narrated that the Prophet once said: "Listen to me. There are two different punishments for adulteresses; the virgin shall be punished by being flogged with a hundred stripes and expatriation for one year. The already married adulteress shall be flogged and stoned to death".

2) In the story already narrated regarding the man who came to the Prophet saying that his son had committed fornication with a married woman, the Prophet ordered Anees to go to the woman to see if she confessed her sin, and if so she should be stoned to death*.

As regards actual proof of the crime of adultery the Prophet stoned Maiz Ibn Malik, Al-Ghamidiya and two Jews.

There is no disagreement amongst the Muslims that a married adulterer or adulteress should be stoned to death. Only the Khawarij opposed this verdict by saying that the Quran mentions only flogging; and since stoning is a heavier punishment it would have been mentioned in the Quran if it were lawful. According to them it should be unlawful, for the Quran does not mention it.

Undoubtedly the Khawarij were wrong because stoning is proved in the Prophet's Sunnah. Stoning was practised by the Caliphs even after the Prophet's death.

* Jami' Al-Usool, part 4, page 297.

Once Omar Ibn Khattab (the second Caliph) addressed the people saying: "God has revealed His word to us through the Prophet Mohammad that offenders guilty of adultery or fornication should be stoned. The Prophet stoned some offenders and we followed him. I am afraid that in the future people might believe that stoning is not mentioned in the Quran. I assure you it is a punishment for every adulterer and adulteress when there is clear proof or the offender confesses it. I swear by God that if it were not for the fact that people might say Omar added his own words to the Quran, I would not have hesitated to include the punishment of stoning in the Holy Book *.

How Stoning is Inflicted

Most scholars maintain that the adulterer is stoned in a standing position without a trench or being tied. To this effect Abu Saeed Al-Khadhri said: "When we were ordered to stone Maiz Ibn Malik we took him to Baqui' ** without digging a trench or tying him. We started hurling stones, bones and clay fragments at him until he died. Other people would join stoning if the offender's adultery was eye witnessed but if the adulterer had confessed his sin of his own accord they would not continue stoning him ***.

When people heard that Maiz tried to run away people kept stoning him until he died. When the Prophet heard about it he said: "Could you not have given him some time, for he might have repented and God would have forgiven him ****. In case of an adulteress scholars have not agreed as

* Sahih Muslim — Sharh Anawawi, part 11, page 191, and Sunan Abu Dawood, part 3, page 43.

** Baqui' is the graveyard of Medina (Hejaz) which is visited by the pilgrims during the season of the Haj (Translator's note).

*** Sunan Abu Dawood, part 2, page 460, and Sharh Anawawi of Sahih Muslim, part 11, page 198.

**** Sunan Abu Dawood, part 2, page 457.

regards the digging of a pit for her at the time of stoning. To this effect Abu Yusouf, Abu Thoar and Abu Bakr Ibn Bazeeda narrated that the Prophet ordered a pit to be dug for a woman called Thandawa who was condemned to be stoned *. This was refuted by the Imams Malik and Ahmed following the example of the Prophet who did not dig a pit for Ghamidiya. It was said that a pit might stop her from escaping the painful punishment. She was well clad in order not to be exposed.

The people in charge of stoning an adulterer or adulteress would surround him or her in such a way that they would not hit each other. The stones used were to be neither too big to accelerate death otherwise the whole idea of punishment would be lost, nor too small in order not to prolong the offender's torment. The execution of the Hadd is carried out in a spacious place in the presence of a group of believers in accordance with the Quranic verse:

*" And let a party
Of the Believers
Witness their punishment "*

Chapter 24, verse 2.

The idea of having a group of believers present is to serve as a deterrent for people with evil thoughts.

Treatment of the Adulterer After Being Stoned

After the adulterer's death he is treated like any Muslim. His body is cleansed, placed in a coffin and buried in a Muslim cemetery. People should pray for his soul and nobody is allowed to speak ill of him. The Prophet asked

* Al-Mughani and Sharh Al-Kabir, part 10, page 122.

the believers to invoke God's forgiveness for Maiz Ibn Malik, for his repentance was such that it would have sufficed a nation.

It is narrated that when the Prophet ordered Ghamiya to be stoned, it so happened that Khalid Ibn Al-Walid beat the woman so hard that some drops of blood gushed out and stained Khalid's face. This made him so furious that he started to swear at her. When the Prophet heard him he said: "Hold it Khalid, I swear by Almighty God that this woman has repented sincerely". Then the Prophet ordered the people to pray for her and bury her in a decent way*. In another story the Prophet is reported to have prayed for a certain woman by the name of Juhnaya. When Omar expressed his astonishment at the Prophet's prayer for an adulteress he answered that she repented so sincerely that it would suffice for seventy people of the town of Medina, and asked Omar: "Is there a repentance better than one who offers herself to God?".

Jahir Ibn Abdullah Al-Ansari related that when Maiz died the Prophet prayed for him**.

Crime of Defamation

Defamation "Qazf" means charging someone with adultery or sodomy either by calling him an adulterer or by alleging that he was seen committing the act. Charging chaste men or women cannot be taken lightly, for it could ruin the defamed person and be detrimental to society. Defamation leads to the spread of lewdness and shameful acts and creates suspicion and distrust between married couples and between a father and his children. Therefore, Islam strongly prohibits defamation and curses those who

* Sahih Muslim, Sharh Anawawi, part 11, pages 201-203.

** Boukhary, Fath Al-Bari, part 12, page 129.

indulge in it by admonishing them with a grievous penalty. The Quran says:

*"Those who slander chaste women,
Indiscreet but believing,
Are cursed in this life
And in the Hereafter:
For them is a grievous Penalty".*

Chapter 24, verse 23.

It is reported that Prophet Mohammad said: "Keep away from the seven abominable sins: taking other people's lives, which God has made sacred, except by way of justice and law, devouring usury, squandering the orphan's property, fleeing on the day of Jihad (holy war) and defaming chaste but indiscreet believing women" *.

The Punishment for Defamation

Whoever charges a chaste man or woman with adultery or sodomy shall be flogged with eighty stripes unless the slanderer produces four witnesses testifying his charge. The reason for this penalty is to protect the dignity and good reputation of honest and chaste people. In this connection the Holy Quran says:

*"And those who launch
A charge against chaste women,
And produce not four witnesses
(To support their allegations),
Flog them with eighty stripes;
And reject their evidence*

* Sahih Al-Boukhary, part 8, page 288.

*Ever after; for such men
Are wicked transgressors;
Unless they repent thereafter
And mend (their conduct);
For God is Oft-Forgiving,
Most Merciful ”.*

Chapter 24, verses 4 and 5.

The scholars agree that he who charges a chaste person with adultery shall be given a Hadd punishment, but if he charges that person with sodomy he shall be given a Ta'zir punishment.

One may wonder why Hadd is inflicted on the person who slanders, but not on the person who takes another partner with God or who indulges in hypocrisy, for example. The reason is that slander has undesirable social consequences, especially if the person accused is a woman who has no way to disprove the accusation. Many chaste girls have become victims of vicious slander.

To accuse a man of blasphemy is lighter than charging a person with adultery because the man's attitude and the people's knowledge of him will suffice to dispel the charge.

Reason for Prohibiting Alcoholic Drinks

The Islamic Sharia through the Holy Book, Sunnah and Consensus of the jurists has prohibited the consumption of alcoholic drinks. The Quran says:

*“ O ye who believe
Intoxicants and gambling
(Dedication of stones),
And (divination by) arrows,
Are an abomination, —*

*Of Satan's handiwork:
Eschew such (abomination),
That ye may prosper.
Satan's plan is (but)
To excite enmity and hatred
Between you, with intoxicants
And gambling, and hinder you
From the remembrance
Of God, and from prayer
Will ye not then abstain? ”.*

Chapter 5, verses 93 and 94.

Ibn Omar quoted the Prophet saying: “ Any intoxicant is alcohol and alcohol is prohibited ”*.

Aisha quoted the Prophet saying: “ Any intoxicant is prohibited and even a small amount that intoxicates is prohibited ”**.

All scholars are unanimous on the prohibition of intoxicants. The reason why it is prohibited is that it excites enmity and hatred and hinders people from the remembrance of God and from prayer because it makes them lose their reasoning. An Arab poet wrote the following line on wine: “ I drank wine until I lost my reasoning, and surely this is what wine does to men's reasoning ”. When people lose their mind they cannot distinguish between good and bad, nor between virtue and vice, and so they start committing all kinds of offences such as adultery. Al-Nisai quoted Othman (the Caliph) as saying: “ Avoid alcoholic drinks, for they are the root of all evil. Long ago while a man was saying his prayers a sinful woman sent her slave

* Sunan An-Nasai, part 8, page 297.

** Sunan Abi Dawood, part 3, page 295.

to ask him to be a witness to her mistress. When he reached the woman's house, the woman told him that her real intention was to have a good time with him. Alternatively, he had to choose either to drink a glass of wine or kill a boy there. The man opted to drink so he got drunk and then slept with the woman and finally murdered the boy. Therefore avoid alcoholic drinks because alcohol-drinking does not go with one's faith " *.

The other evil of alcohol is that the drinker loses his self-control and starts divulging confidential matters to the enemy. Al-Qurtaby said: " A drinker becomes a laughing-stock of his companions, as he urinates and defecates in public. Once a drunkard started smearing his face with his urine while praying God to place him among those who cleanse and repent of their sins. The same man once let his filthy dog lick his face while saying to it: May God grace you ". Alcohol makes one lose his health and squander his money **. It may be rightly said that alcohol is the worst scourge to which humanity is exposed. If a survey is made of the number of people who are in hospitals suffering from mental diseases and incurable ailments due to alcohol, and those who commit suicide or slay others and those who suffer from nervous breakdowns and internal diseases, or those who have gone bankrupt or lost properties because of alcohol, the results would be really appalling. Therefore many non-Islamic countries are seriously thinking of prohibiting alcohol.

Dealing in Alcoholic Drinks

Islam has not only prohibited alcohol-drinking but also dealing and producing it and promoting the parties concerned with its sale.

* Sunnan An-Nisai, part 8, page 315.

** Tafsir Al-Qurtaby, part 3, page 52.

Ibn Omar quoted the Prophet saying: " God's curse be upon wine, and those who drink, buy, sell and produce it, as well as those who deal in transporting it " *.

Gradual Prohibition of Alcohol

Some jurists maintain that God did not decree His laws of prohibition all at once. He gradually introduced His laws so that those addicted to drinking would not suffer a shock from abruptly giving up the habit **.

Aisha said: " The first revelations of the Quran focussed on informing the people about Paradise and Hell. Once the people embraced the teachings of Islam the specific prohibitions were revealed. But if the prohibitions had been revealed first the early Muslims would have rejected them "****.

The Quran says:

*" And from the fruit
Of the date-palm and the vine,
Ye get out wholesome drink
And food ".*

Chapter 16, verse 67.

Intoxication meant wine; and the Arabs used the word " intoxicants " for anything that makes people drunk ****.

* Sunnan Abi Dawood, part 2, page 292.

** Tafsir Al-Quratbi, part 3, page 52.

*** Tafsir Ayat Al-Ahkam (Interpretation of the Quranic Verses by Sabouni, part 1, page 273).

**** Wholesome drinks and foods are vinegar, date-sugar, dates and grapes (Translator's note).

In another place the Quran says:

*" They ask thee
Concerning wine and gambling.
Say: in them is great sin,
And some profit for men;
But the sin is greater
Than the profit "*

Chapter 2, verse 219.

This verse indicates that alcohol-drinking has many evils as also has gambling, which is a means of getting something too easily and getting a profit without working for it. Although this verse refers to the prohibition of both alcohol-drinking and gambling yet the prohibition is not absolute. At a later stage another verse was revealed which prohibited alcohol-drinking during the prayer hours with a view to weaning the addict slowly from the habit of drinking. The Quran says:

*" O ye who believe
Approach not prayers
With a mind befogged "*

Chapter 4, verse 43.

This indicates that the prohibition covered only some periods of the day. An incident that took place precipitated the final stage of utter prohibition of alcohol. Sa'ad Ibn Abi Waqqas *, once offered a dinner for a few of the

* He was one of the Ten Companions of the Prophet who participated in many battles against the Persians. He died around 670 A.D. (Translator's note).

Prophet's Companions, including some from Medina (Al-Ansar), during which wine was served lavishly. As he was drunk Sa'ad uttered some bad words that infuriated a man of the Al-Ansar who hit Sa'ad on the nose and broke it. On account of this the following Quranic verse was revealed:

*" O ye who believe
Intoxicants and gambling,
(Dedication of) stones,
And (divination) by arrows,
Are an abomination,
Of Satan's handiwork:
Eschew such (abomination),
That ye may prosper,
Satan's plan is (but)
To excite enmity and hatred
Between you, with intoxicants
And gambling, and hinder you
From the remembrance
Of God, and from prayer:
Will ye not then abstain? "*

Chapter 5, verse 93.

Hadd Punishment for Alcohol-Drinkers

Although Muslim scholars confirm that alcohol drinkers must be punished by flogging yet they do not agree on the number of the stripes that should be inflicted on the offender. Some, including Abu Hanifa and Malik, maintain that the drinker has to be flogged with eighty stripes. They do not agree what has been said about Omar who, upon the recommendation of Abdul Rahman Ibn Awf, ordered the

Hadd to be eighty stripes *. Others hold that the Hadd punishment is forty stripes. This was confirmed by Ash-Shafi who followed the examples set by the Prophet and his successor, Caliph Abu Bakr. Ibn Anas said that the Prophet used to beat wine-drinkers forty times with sandals and palm-fronds **.

As-Saib Ibn Yazeed narrated that in the days of the Prophet and Abu Bakr and the first part of Omar's Caliphate, offenders used to be seized and beaten with bare hands, sandals and thick garments. By the end of the Caliphate of Omar the offenders were flogged with forty stripes and if they persisted in their sin the punishment was doubled to eighty stripes ***.

Muawiya narrated that the Prophet ordered: "Flog alcohol-drinkers, and if they persist in drinking then put them to death". This saying was narrated by five Imams but not by An-Nasai. Nevertheless, Al-Tarmithi said that this punishment was abolished over time.

Crime of Theft

As property is the backbone of a nation and one of the pleasures in this world, the Islamic Sharia has decreed that it should be protected and prohibited people from eating the property of others in vanities, and warned that the offenders will have dreadful punishment in the Hereafter. The Quran says:

*" O ye who believe
Eat not up your property
Among yourselves in vanities:*

* Narrated by Ahmed and Muslim see: Neil Al-Awtar, part 7, page 146, and Sharh Al-Nawawi, part 11, page 215.

** Sahih Muslim Sharh An-Nawawi, part 11, page 215.

*** Sahih Al-Boukhary, Fath Al-Bari, part 12, page 66.

*But let there be amongst you
Traffic and trade
By mutual good-will".*

Chapter 4, verse 29.

Theft is severely penalized as in the following Qu-ranic verse:

*" As to the thief
Male or female,
Cut off his or her hands:
A punishment by way
Of example from God.
For their crime:
And God is Exalted in Power".*

Chapter 5, verse 41.

As theft may be motivated by hunger and need the Sharia sees that the needy are taken care of. And since hunger and need are not the motives of theft amongst Muslims but sheer love of hoarding and greed, therefore the punishment for theft in Islam is severe.

Definition of Theft

Theft is the act of removal of personal property in a hidden manner with intent to deprive the rightful owner of it. However, the hand of the offender who snatches or commits acts of embezzlement, is not cut off for the Prophet made it clear when he said: "The hands of those who dupe or snatch are not cut off". And Jabir said, quoting the Prophet, that a snatcher is not subject to the punishment of hand-amputation.

Hadd Punishment for Theft

The punishment is the cutting-off of the offender's right hand as prescribed in the Holy Quran, the Sunnah and the Consensus of the jurists. The Quran says:

*" As to the thief
Male or female,
Cut off his or her hands:
A punishment by way
Of example from God "*

Chapter 5, verse 41.

The Prophet said the punishment of cutting off the thief's hand starts when the thief steals something worth one-quarter of a Dinar or more. The Prophet said: " The people before you were doomed because if a noble man stole he was set free, but if the thief happened to be a man of low rank his hands were cut off ". Muslim scholars do not differ on the fact that the thief's hand should be cut off, and if he continues then his left leg is to be cut off and if the thief still continues then there are the following punishments according to the Prophet's Companions and the scholars who followed them:

First: his left hand to be cut off and after the fourth time his right leg is to be amputated.

Second: the thief is to be confined; this punishment is subject to some conditions, that the offender is legally responsible and he is mentally sane and that the stolen possessions are claimed by somebody and the value of the property stolen totals three Dirhams or one-quarter of a Dinar or more. If one of these conditions are not met the offender's punishment changes from Hudoud into Ta'zir.

Controversy

The controversy lies in the fact that a thief's hand is cut off while the hand of the embezzler, a snatcher and a bandit are not cut off. The reason is that a thief steals in secrecy whereas a snatcher acts more openly and thus it is easier to recover the stolen property.

Ibn Al-Qayyim said: " There is great wisdom in cutting off the hand of a thief who has stolen something worth three Dirhams or more and not applying the same penalty to embezzlers, snatchers and looters. The reason is that a thief can be guarded against with difficulty, and therefore if he is not given the due punishment, thefts will be rampant and a general feeling of insecurity will prevail. Whereas for a looter, who commits his offence publicly, there is a chance of being caught and the stolen property being recovered. Looters and embezzlers get beaten and jailed. In short, a thief, according to the Sharia, is considered far more dangerous than an embezzler or a duper *. These are punished with stripes and confinement for long periods and recovering the stolen property from them.

Hand-Amputation was Known Before Islam

Hand-amputation was known before the advent of Islam. It was first applied by Al-Walid Ibn Al-Mughira, and the punishment was subsequently decreed in Islam **. It is said that before the rise of Islam Quraish implemented it on a man named Dawbak belonging to the tribe of Ma-leeh Ibn Orwa Ibn Khuaz'a who had stolen the treasure of the ka'aba ***.

* A'alam Al-Muwaqqi'in, part 2, page 62.

** Al-Qurtabi, part 6, page 16.

*** Ibn Kathir, part 2, page 55.

How Hand-Amputation Should be Carried Out

The right hand of the thief is cut off at the wrist. The Prophet defined the hand in accordance with the Quranic verse:

*" And rub therewith
Your faces and hands "*

Chapter 5, verse 6.

A thief's hand is cut off efficiently and swiftly. He is to be seated motionless so that no other part of his body gets hurt. After amputation his wound should be treated immediately to stop the bleeding.

Abu Hureira related that the Prophet once summoned into his presence a man accused of having stolen a scarf. When the man confessed the crime the Prophet ordered that his hand be cut off. When his wound healed he was brought to the Prophet who asked him to repent of his guilt. When the man repented the Prophet said that God accepted his repentance*.

Some people who cannot grasp this point have renounced the atrocity of amputating a thief's hand alleging that this penalty is too brutal for our modern society and because it tends to increase the number of the maimed and the unemployed. In truth, the critics of the wisest and the most merciful legislation fail to understand that those who pose a threat to the people's security and livelihood should be given the punishment they deserve in the best interests of the society. The hand that steals is but an instrument of evil and crime, and if we do not amputate it the peace and security of society will be jeopardized, for the thief may resort to murder in self-defence to avoid being caught.

* Sahih Al-Boukhary, part 1, page 63.

If we draw a comparison between the number of amputated hands in the countries where the Sharia is implemented and the rate of murders and other offences committed due to theft in the other countries, we notice that the number of the maimed is insignificant compared to that of murders, lootings and hold-ups.

Regarding the penalty for theft and the psychological motives that drive the offenders to steal Judge Abdul Qadir Uadah said: " The punishment inflicted upon the thief by the Sharia is the best in the world. Just as it succeeded in preventing crime in the past, it does the same now. It has transformed a chaotic society into a responsible, secure and peaceful society ". Prior to the implementation of the Islamic Sharia the conditions in the Hejaz were one of the worst in the world. The traveller or the resident was afraid for his life, family and property at every hour of the night or day. Thieves and highway robbers were rampant everywhere. But once the Sharia was implemented, the Hejaz was transformed into the safest country in the world. Now goods may be left unattended on the side-streets, nobody would dream of stealing or removing them until a policeman picks them up and restores them to their owner*.

Abul Ala' Al-Ma'arry**, known for his deviation from the tenets of Islam, composed a poem against the amputation of the thief's hand which illustrates his ignorance in matters of jurisprudence. He said:

" How could a hand be amputated for stealing something worth a quarter of a Dinar when the Diya for a hand is five hundred gold Dinars? We cannot but keep quiet and seek refuge with our Lord from the punishment of Hell ".

* Al-Dashri'al Jina'i al-Islami, part 1, pages 653 and 654.

** Abul Ala', Al-Ma'arry (979-1058 A.D.) was born in Syria (Province of Aleppo). He lost his eyesight when he was four. He was a great poet and the author of " Sakt Al-Zand ", " Al-Luzumiyat " and " Risalat Al-Ghufran " (Translator's note).

Other scholars answered Abul Ala' Al-Ma'arry in the following lines:

"Honesty is the most expensive value and treachery is the cheapest. This is our God's wisdom".

The Sharia has imposed a heavy Diya on the offender to deter him from committing the crime of murder, and has decreed the amputation of the hand to discourage the thief from stealing.

Armed Hold-Up and Highway Robbery

Definition of highway robbery: According to Al-Mughni armed robbers are those who halt people on the highway under the threat of arms and rob them of their property in broad daylight. As for the thieves who use arms in towns and villages, according to Abu Hanifa *, they are not considered armed bandits but looters. Other scholars assert that the case is the same whether on the highway or in towns, for the Quranic verse in this regard covers all armed robbers. However, in towns an armed robber has more chance to loot in the terms of the victim's possessions whereas a traveller usually does not have a lot of possessions with him apart from the necessities.

Hadd Punishment for Armed Robbers

The Sharia has decreed four punishments for the crime of armed robbery: execution, crucifixion, cutting off hands and feet from opposite sides or exile from the land, as in the following verse:

*"The punishment of those
Who wage war against God
And His Apostle, and strive*

* Al-Mughni and Sharh Al-Kabir, part 10, page 303.

*With might and main
For mischief through the land
Is execution, or crucifixion,
Or the cutting off of hands
And feet from opposite sides,
Or exiled from the land".*

Chapter 5, verse 36.

The order of the penalties mentioned created some disagreement amongst the scholars. Some believe that they are so arranged to correspond with the magnitude of the crime perpetuated. He who kills without being able to rob is to be executed; he who steals without shedding blood is to have his right hand and left foot cut off; he who kills and robs shall be crucified to serve as a deterrent; he who scares travellers without killing or robbing them shall be exiled.

Some scholars believe that judges can choose any of the said penalties in case of an armed robbery. Imam Malik is of the opinion that a judge has no choice if an armed robber has committed murder. He cannot choose between amputation and exile, but he can choose between execution and crucifixion. If an armed robber has robbed without killing his victim the Imam has the choice between execution, crucifixion and exile. By choice is meant the individual interpretation of the judge. For instance, in the case of a robber who is the master-mind of the band, his execution or crucifixion is inevitable. If, on the other hand, the offender is of a brutal and ruthless nature his limbs are to be cut off from opposite sides. If the offender does not exercise any brutality in the act of robbing, his punishment is less severe, he shall be flogged and exiled*.

* Bedayat Al-Mujtahid, part 2, page 455.

The cause of this discrepancy is the conjunction " or " in the Quranic verse dealing with highway robbery. It is not clear whether the different penalties correspond with the magnitude of the crimes or serve to provide alternative punishments to be decided upon case by case. While Malik prefers to single out a penalty in accordance with the magnitude of the crime other scholars prefer to inflict alternative penalties.

Hadd and Repentance

The scholars maintain that if armed robbers give themselves up before they are caught and brought to the judge, their repentance nullifies the punishment prescribed in the Quran: execution, crucifixion, amputation or exile from the land. The Quran says:

*" Except for those who repent
Before they fall
Into your power:
In that case, know
That God is Oft-forgiving,
Most Merciful "*

Chapter 5, verse 37.

But the rights of the victim in terms of life, injuries or possessions are left to the discretion of the claimant or his heirs. They may claim them or forgive the offender. If the armed robber is involved in murder, execution may be remitted and replaced by Diya pending the decision of the victim's heirs*. On the other hand, it is controversial if an offender's repentance would serve for remitting the

* Al-Mughni and Sharh Al-Kabir, part 10, page 314.

penalty if a Hadd, other than that imposed for armed robbery, is to be carried out. Many scholars agree that repentance may not serve to remit Hadd as evidenced by the Quranic verses and the Prophet's sayings and doings in the reports in this connection. If repentance could have replaced Hadd it would have been mentioned in the Quran. We know that although Maiz and Ghamidiya had repented of their adultery they were stoned by the Prophet. The Imams Shafi' and Ahmed are believed to be in favour of the notion that repentance could nullify the Hadd, basing their view on the following Quranic verses and the Prophet's Hadith:

1. *" If two men among you
Are guilty of lewdness
Punish them both.
If they repent and amend,
Leave them alone "*

Chapter 4, verse 16.

2. *" But if the thief repents
After his crime,
And amends his conduct,
God turneth to him
In forgiveness "*

Chapter 5, verse 42.

3. After the Prophet was told that Maiz tried to escape he said to those who had stoned him: " Did you leave him to repent of his sin so that God would have forgiven him? "

Ibn Taymiya favoured repentance when he said: "He who repents of adultery, theft or alcohol-drinking before being reported to the Imam has his Hadd punishment remitted". The same applies to armed robbery*. Said Al-Qurtaby: "If drunkards, adulterers and thieves repent and amend wholeheartedly and publicly and are referred to the Imam, they should not receive the Hadd punishment. When they are referred to the Imam they should not be treated the way armed robbers would be when captured"**. Ibn Al-Qayyim said: "Where does the consideration of repentance lie before the actual act takes place? And where is the line of demarcation in the textual legislation marking this distinction?". The delineation is a factor that encourages repentance. The underlying significance is the timing of repentance and the concomitant penalty.

Although Maiz and Ghamidiya repented of their sin the Hadd was imposed upon them. The reason for this is that both the Hadd and repentance are soul purifiers and apparently they preferred to be purified with the Hadd in addition to the repentance.

Ibn Taymiya said: "Once a concrete evidence is established regarding the Hadd or Ta'zir the sincerity of repentance will be doubled, which fact renders penalty necessary. Nevertheless, if the offender appeals in person to an Imam and repents, then the Hadd would be dropped"***. Imam Ahmed confirmed this verdict.

Crimes Punishable by Ta'zir

Ta'zir crimes are offences the punishment for which is not fixed, such as perjury, bribery, usury, dishonesty, cheat-

* Collection of Religious Verdicts by Ibn Taymiya, part 4 and Tafsir Al-Qurtaby, part 6, page 158.

** Tafsir Al-Qurtaby, part 1, page 158.

*** Al-Ikhtyarat, by Ibn Taymiya, page 296.

ing, sheltering criminals, slander (excluding defamation of adultery), negligence of religious duties such as prayer, alms and other violations such as thefts in sanctuaries.

Types of Ta'zir

These punishments range from simple reprimands to severe warnings and executions for serious offences. Likewise, other types of Ta'zir are flogging, confinement, payment of fines, termination of service, exile and reprimanding the offender in public. Ta'zir is not, as we said, a fixed punishment and it varies in quality and quantity according to the seriousness of the offence, the condition of the offender, his criminal record and the recurrence of the offence. It is up to the ruler's discretion to decide what punishment should be meted out taking into account the condition of the offender, the psychological motives and gravity of the offence.

Execution as a Form of Ta'zir

Many scholars sponsor the punishment of execution for very serious Ta'zir offences, such as espionage, heresy and innovations contrary to the tenets of the Holy Quran and the Sunnah.

In his note Ibn Abideen quoted Ibn Taymiya saying: "According to the Hanafi doctrine execution is dropped in case of murder by pushing a heavy object on somebody or perverted intercourse in the rectum with one's wife. If the offence is repeated the judge could increase the punishment when he deems it necessary" *.

The scholars based their viewpoints on the practice of the Prophet and his Companions regarding the execution of such offenders, bearing in mind the societal interests.

* Hashia Ibn Abideen, part 4, page 62.

1) In his "Sahih" Muslim quoted A'rfaja Al-Ashjai saying: "I have heard the Prophet say: Execute the man who tries to destroy your solidarity and shatter your unity". In another story the Prophet said: "There will be times when someone will try to divide this great nation of Islam. Such a man shall be killed" *.

2) Imam Ahmed quoted Daylam Al-Hunayri saying: "I told the Prophet that in our country we extract a liquid from wheat which is used against the winter cold. The Prophet asked me if that stuff intoxicates. When I said yes, he ordered me to avoid it. When I said that the people would be reluctant to relinquish it he said then kill those who would not stop taking it".

3) An offender is like an assailant who should be killed if he cannot be stopped from assailing.

There is no disagreement amongst the scholars as regards lashing as a means of punishment, but they did not agree on the number of lashes. There are three views in this respect:

(i) The number of lashes should not exceed ten in pursuance of the Prophet's saying: "Apart from Hudoud the offender should not be given more than ten lashes".

(ii) Lashing should be kept within the number prescribed. In fact, Imams Abu Hanifa, Ash-Shafi and Ahmed and their companions confirmed the following Hadith: "He who gives more lashes than what is prescribed is an aggressor".

(iii) The number of lashes in this case is unlimited. The offender may even be punished with severer penalties than that of Hadd. This was confirmed by Imam Malik as well as Imam Ahmed.

* Sahih Muslim, Sharh Al-Nawawi, part 12, pages 241 and 242.

A theft which involves less than quarter of a Dinar is punishable by Ta'zir. Defamation involving adultery is punishable by Hadd whereas slander short of an accusation of adultery is punishable by Ta'zir.

Evidences supporting the above opinions are:

1) The man who fornicated his slave-girl was ordered by the Prophet to be given one hundred lashes, and due to lack of concrete evidence the Hadd punishment was not inflicted.

2) Omar and Abu Bakr (Caliphs) ordered a man and a woman, who were found in bed together, to be given one hundred lashes each.

3) Omar (the Caliph) ordered one hundred lashes for three consecutive days to be given to the man who forged his official seal and embezzled a large amount of money from the State Treasury *.

The last evidence overrules the other opinions cited above. One may question if this last evidence is correct or how could account be taken of the Hadith that says: "Except in case of Hudoud do not give the offender more than ten lashes". The answer to this question is that the word "Hadd" in this Hadith means an offence. All violations of prohibitions are Hudoud. Hadd is mentioned in the following Quranic verses:

*"Those are
Limits (Hudoud) set by God:
Approach not nigh thereto".*

Chapter 2, verse 187.

* Al-Hisba and Sharia Policy, page 116. Al-Hisba is a book written by Al-Qirshi known as Ibn Al-Ukhwa and was printed in pocket-book series (Cambridge 1937) (Translator's note).

and

*" These are the limits
Ordained by God;
So do not transgress them "*

Chapter 2, verse 229,

Hadd, according to the Quran, is a general term covering all kinds of offences, minor or major.

As to the number of lashes less than ten, these are given to those who have not committed any offence but are given for disciplinary reasons, such as a husband beating his wife or his child as a means of discipline *.

Pecuniary Penalty as a Form of Ta'zir

Many scholars equated Ta'zir with the payment of fines basing their view on certain evidences, such as:

1) The Prophet's saying as quoted by Bahz Ibn Hakim: " There is a camel of burden out of forty she-milching camels. Each has a value whether it is a beast of burden or a producing animal; this is the will of our Lord " **.

2) Al-Tarmithi, Ahmed, Abu Dawood and Muslim quoted Abu Talha saying: " O Prophet of God, I am in possession of wine belonging to orphans ". The Prophet said: " Spill it and smash the vessels " ***.

3) An-Nasai and Abu Dawood quoted Amr Ibn Shueib's grandfather saying: " When the Prophet was asked about the stealing of other people's unattended edibles

* A'alam Al-Muwaqqin, part 2, page 30, and Fath Al-Bari, part 12, page 178.

** Nayl Al-Awtar, part 4, page 138.

*** Fath Al-Bari, part 6, page 46.

he replied that a needy person stealing somebody's food or fruit to satisfy his hunger may go unpunished; but if he takes more than his needs he should be penalized and forced to return the stolen food " *.

Ibn Al-Qayyim said **: " He who maintains that Imams Ahmed, Malik or any other scholar said that pecuniary penalties have been abrogated is mistaken. Nothing mentioned by the Prophet denotes that he forbade pecuniary sanctions. On the contrary, the Caliphs and their close Companions followed the rule after the Prophet's death. The penalties related to Ta'zir constitute a vast scope whereby a ruler has a large number of alternatives. As long as the ruler achieves justice to serve as a deterrent to the offender he has the right of choice.

Effects of Sharia Penalties on Crime Prevention

Our old and modern history illustrates the success achieved in combatting crime through the strict implementation of the Islamic Sharia.

Before the rise of Islam a chaotic state of instability reigned in the country. Tribes looted and assaulted each other and rape was quite common. After the advent of Islam the people were united and love replaced rancour and hatred. Through the implementation of the Sharia the Arabs succeeded in attaining world leadership which lasted for a long time. The world had never experienced such an experience of justice, order and stability.

The Muslim world became a refuge for the oppressed and persecuted. Consequently people embraced Islam in crowds. The actual implementation of the injunctions of the Sharia was the clue for the Muslim victory.

* Nayl Al-Awtar, part 7, page 134.

** Al-Hisba, page 50.

The security, stability and peace that the Kingdom of Saudi Arabia enjoys show the importance of the implementation of the Islamic Sharia and its harsh penalties which, in reality, is a mercy in disguise for humanity.

Before the implementation of the Sharia, the Kingdom of Saudi Arabia was a theatre of anarchy, confusion, instability and looting. It was a place where neither life nor property could be safe. When pilgrims came they used to bid their last farewell to their family thinking they might not be able to return home safely.

Since the strict implementation of the Sharia and its adoption as the Kingdom's constitution, peace has been fostered everywhere and people's lives and properties are safe. It is rare to hear of a case of assassination or kidnapping.

During Mr. Rogers' (US Secretary of State) visit to the Kingdom a few years ago he did not use his armoured car (in which he travelled during his visit to a number of countries) and went to the local market without his body-guard and stated that here in the Kingdom one feels safe and does not need to be guarded*.

Dr. Mohammad Ahmed As-Saleh

In the name of God, praise be to Him, and peace be upon the Prophet, his family and Companions.

I would like to extend my appreciation to the Ministry of Interior and the organizers of this symposium who did their utmost to show how sublime our Sharia is. I believe that a commentator need not compliment a researcher for his study, for this is not the scope of the symposium, nor is it to criticize the researcher. On the contrary, a commentator has to supplement and explain what is necessary. The

* Minutes of the Symposiums on Islamic Sharia held in Riyadh and Paris, page 19.

research under study, however, is quite comprehensive. Still, I would like to put forward a few formal remarks that, due to the shortage of time, I have decided to pass on to my colleagues for presentation.

We have heard Dr. Omar Matrak's treatise on Hudoud and Ta'zir and their effect on crime prevention in our society. The researcher has proved beyond doubt the success of Islamic penalties in curbing crime and creating a peaceful and safe society. My formal remarks consist of drawing your attention to a few misprints and the omission of some words. For example in the treatise the Quranic verse is mentioned in the following manner:

*" Those who invoke not,
With God, any other gods "*.

The correct version is

*" Those who invoke not,
With God, any other god "*.

Chapter 25, verse 68.

The verse ends in

*" and any that does
This meets punishment "*.

The correct version is

*" and any that does
This meets punishments "*.

The researcher has pointed out that the severity of Ta'zir varies in accordance with the magnitude of the crime. There are other factors that affect the penalty, i.e. the social

status of the offender as well as that of the victim, in addition to the circumstances of the crime. What I mean to say is that this wide range of penalties of Ta'zir crimes allows flexibility as regards the severity of the punishment to be imposed.

However, Ta'zir may not necessarily be imposed on all offenders indiscriminately. Some offenders could be corrected through guidance, education or exhortation. The Quran says:

*" As to those women
On whose part ye fear
Disloyalty and ill-conduct,
Admonish them (first)
(Next) refuse to share their beds
(And last) beat them (lightly).*

Chapter 4, verse 34.

Punishment for disloyal women lies in admonishing them and refusing to share their beds.

Due attention was given to the researcher's statement that a married person deserves a severer punishment than a single person because a married person is able to realize the value of honour and the satisfactions and pleasures of marriage. On the contrary, a person who is single cannot realize the full value of honour due to his lack of the experience of marriage. This explains why his or her punishment is lighter. So a married adulterer is like a thief who is not needy but steals out of greed, whereas an unmarried person's crime is similar to a hungry thief who steals to satisfy his hunger.

The author stated that at the scene of stoning the offender is surrounded by the stoners who stand in a row as when they say their prayer. However, he did not describe

the kind of people who are charged with the punishment nor their number. I propose that a special committee be set up to carry out stoning in accordance with the Sharia. This will be in the interests of the offender and the public.

The researcher defined defamation as an accusation of a person of adultery or sodomy. This is not the right definition for the crime deserving the punishment of Hadd. The false accusation of sodomy is punishable by Ta'zir. The researcher did not mention abusive language which is not punishable by Hadd, but which is punishable by Ta'zir. I would propose classifying such language under the abuse of honour and insult of integrity in order to distinguish it from the real term of defamation.

Furthermore, the researcher did not touch on the verdict of some scholars that the thief's hand should not be cut off until poverty is eradicated from Islamic society. It goes without saying that Islam guarantees the essential needs of the people through alms and subsidies for the disabled and the destitute. Moreover, it is incumbent on the authorities to provide employment for everyone in order to make a living. Likewise, Islam enjoins social solidarity and social welfare. Therefore a man living in a society blessed with these amenities and who dares to steal deserves the harsh punishment of hand-amputation.

In our society in the Kingdom of Saudi Arabia we are blessed with abundance of wealth and the opportunity of providing work for everybody, so ascribing theft to poverty in this Kingdom is unacceptable.

Statistics in various countries prove that people steal to spend the money on drugs, gambling, drinks and lecherous pursuits. Also people steal out of greed and for unnecessary luxuries. Such thieves deserve amputation in order to protect people's properties and money.

The researcher tends to advocate the view that once concrete evidence is established regarding Hadd or Ta'zir the sincerity of his repentance would be doubted. But if the

offender appeals in person to a judge and repents, then Hadd is dropped.

On my part I tend to doubt the sincerity of the repentance of such offenders who may resort to confession in order to avoid punishment.

These are some comments regarding the research which I hope will be taken into consideration by this symposium.

Sheikh Atiyya Mohammad Salem

Praise be to God and peace be upon His Prophet and the Prophet's Companions. It is quite natural that every society seeks peace, stability and security to attain a life free from care. Life cannot exist without security, neither can security exist without life. This is confirmed in the following Quranic verse:

*" For the covenants
(Of security and safeguard
Enjoyed) by the Quraish,
Their covenants (covering) journeys
By winter and summer,
Let them adore the Lord
Of this House,
Who provides them
With food against hunger,
And with security
Against fear (of danger).*

Chapter 106, verses 1 to 4.

So it is a great bliss to have both a secure and care-free life. That is why every nation tries its utmost to elevate its living standard.

Therefore, the initiative taken to hold this symposium in the interests of the whole world is greatly appreciated. Furthermore, the topics dealt with have proved how successful the Sharia is in combatting crime.

The other topic examined in this symposium was how to establish the responsibility of an offender. This was followed by the methods to prove the criminal's guilt and how to prevent crime and the effect of the teaching of enjoining what is right and forbidding what is wrong, and the influence of Islamic education on crime prevention. Then the symposium discussed the Sharia penalties and their implementation in the Kingdom of Saudi Arabia. These are divided into two parts: qisas or Diya and Kaffara, and Hudoud and Ta'zir. Both parts are complementary to each other. The study on penalties is divided into two parts (a) qisas and its particulars, (b) Hudoud and Ta'zir.

The first was discussed while the second is the centre of this present discussion and it is considered the major part. The first deals with the personal rights related to the victim's heirs who might renounce this through forgiveness. The present part deals with the obligations towards God and society in many respects and omission of this obligation cannot be forgiven.

I wish the researcher had gone into more detail on this subject, but due to the time-limit the topic was discussed in brief. My comments will be straight to the point and I hope they will benefit the listener as well as the reader.

Before starting my comments I would like to thank the researcher for the great efforts and painstaking work he has put into his research in order to present an accurate treatise on the subject.

The Topic

In his introduction the researcher mentioned that the Sharia, in addition to punishment, has also prescribed means

to prevent crime through social solidarity and enjoining what is right and forbidding what is wrong. In this connection he quoted the Prophet's Hadith: "He who sees an offence has to correct it with his hand; if he cannot do that then let him use his tongue or at least his heart".

The last three treatises discussed the same subject. One may wonder what is the point to combat an offence with the heart and therefore neither tangible nor concrete.

The reason is that God wants to keep the injunction of the teaching of enjoining what is right and forbidding what is wrong alive in the heart of the Muslims so that they may act upon it. This is the last resort when other measures have failed.

The researcher mentioned another factor to prevent crime, that is by blocking the ways that may lead to crime, such as forbidding a man to be alone with a woman lest that may lead to temptation.

This is known by theologians as "Supplementary Doctrine". Every Hadd has a supplement. Drinking is forbidden, even a small amount which does not intoxicate. As adultery is forbidden its enticing preliminaries are also forbidden. Theft is prohibited and so is the minimum amount of material gained illegally.

That is why a separate research should have been set aside for this topic. Instead, the researcher put them all under the subject of "enjoining what is right and forbidding what is wrong".

Then the researcher dealt with the penalties, which he divided into three sections: qisas, Hadd and Ta'zir punishments, and explained the difference between them. He said that penalty in Islam is a mercy. I would like to add that Islam takes man's moral aspect into consideration. The following story illustrates the point: there was a butcher with two lambs. He slaughtered one of them, and when he was about to slaughter the other it escaped. He followed it until he reached a site of ruins where he discovered, much

to his great shock, a blood-stained corpse. As he was holding the bloody knife used for killing the lamb the patrolman thought he had caught him red-handed. He was led to the Wali's presence and accused of murder. Under these circumstances the butcher said that he had killed the man found dead. At the scene of execution a man suddenly emerged shouting: "Do not kill this man; he is innocent, for I am the murderer".

The murderer was asked why he showed up and confessed when somebody else was to be executed instead. He answered: "It is my remorse. I thought to myself: Woe to me. I have killed a man. Why should I cause the death of an innocent? So I decided to confess my guilt". When the butcher was asked why he accepted the accusation he replied that he could not find any possible way to defend himself.

There are two points in this case. The immediate confession on the part of the man drew the judge's attention to the fact that more caution should be used in cases of quick confessions. The second point is that the real murderer was acquitted. The wisdom here lay in the fact that although the murderer had killed a human being he saved the life of another one through his voluntary confession. This shows how the moral factor is taken into consideration.

The researcher has devoted a chapter on the execution of Hudoud and prohibition of mediation. In this connection I have a persistent query: if mediation can be accepted in qisas and Ta'zir why can it not be applied to Hudoud as well?

The researcher mentioned that Hudoud are obligations towards God. In fact this would be an over-estimation of the importance of Hudoud. However, they also imply an obligation towards the society. The obligation towards God is represented in His prohibitions, whereas the obligation towards society is represented in consideration of other people's rights.

Therefore adultery, for example, represents an assault against the family structure as well as the value of the society at large. The social stigma attached to an illegitimate child, who suffers through no fault of his own, has a special significance in this respect. In this connection the Quran says:

*" Let no compassion move you
In their case, in a matter
Prescribed by God, if ye believe
In God and the Last Day:
And let a party
Of the Believers
Witness their punishment "*

Chapter 24, verse 2.

So, although people may ask forgiveness for the offender they should, on behalf of the society, attend the execution of the Hadd punishment.

Hence, the concept in the secular laws that the offence of adultery is a personal matter and that only the husband or the caretaker (to the third degree) of a single woman has the right to sue the fornicator, is invalid. The result is that around seven percent of the children in some countries are illegitimate.

The researcher gave an excellent study on Hadd punishment as regards alcoholic drinks and the danger to one's health and mind. In fact, the prohibition of alcohol is the logic of a sound mind. Even before Islam physicians prohibited its use. One of the pre-Islamic period wise men said: " Although alcohol may have benefits, it bears the seeds of corruption. I swear I will not touch it, nor will I use it to cure a sick man ".

It is scientifically proved that alcohol is harmful to one's liver. I personally made an experiment by leaving a

piece of liver in a jar full of alcohol for five minutes. The result was that the liver changed colour and shape as if it were on fire for about one hour.

The researcher clarified how doubt is eliminated as far as Hadd is concerned and that it existed even in the days before the advent of Islam.

In the anecdote on Joseph the Quran mentions that the punishment for theft existed in ancient Egypt. It says:

*" They said: The penalty
Should be that he
In whose saddle-bag
It is found, should be held
(As bondman) to atone
For the (crime). Thus it is
We punish the wrong-doers "*

and further

*" Thus did we
Plan for Joseph. He could not
Take his brother by the law
Of the king except that God
Willed it (so) "*

Chapter 12, verses 75 and 76.

Those who are sceptical about the penalty for theft applied to a debtor unable to repay his debt, well, who really deserves compassion, an insolvent debtor or a thief?

In some countries a thief is executed if he is caught armed between sunset and sunrise even if he did not kill anyone.

It seems strange that a man commissions another person to defend him against the wisdom of God. Is not God

more merciful than a fellow-man? So the comments on lawyers and defence have no place in our discussions.

Lastly, the researcher cited some examples of the results of executing Hadd. The overall result is the peace and stability which is felt in the Saudi society. My thanks to the researcher for his valuable efforts. May God award him success.

In addition to what the researcher has said I would like to put forward a few brief remarks:

First: When a topic is to be discussed it is usual to give a general definition. The term "Hadd" was neither defined semantically nor legally.

Hadd can be defined as "prohibition" or "prevention". It is narrated that God said to Solomon: "Go to the people of the Earth and prevent them from stubbornness". Whereas Hadd with regard to land and abode implies trespassing.

Second: The difference between "Bekr" (virgin) and "Thayib" (married woman). Apart from the reasons given by the researcher I believe that "Thayib" unlike "Bekr" is more harshly punished because she has already been through the experience of marriage. So her act is considered more shameful than that of "Bekr" who has not had this experience. Jurists are unanimous that "Thayib" is really the "Muhsan" (the already married person; the Hadd punishment as regards the "Thayib" is stoning).

Third: This is related by Omar and adopted by the Malikis but rejected by the Hanbalis. Ibn Qudama related a story proving how Omar had remitted his judgement. Once a girl was seen to be pregnant. When she was asked by Omar how this had occurred, she answered that her parents had betrothed her to a young man. One day he went to see her when her parents were out. Being alone he tried to seduce her and despite her resistance his semen touched her

and she became pregnant. When the young man was called by Omar he admitted that this was so and related the story in detail. At this point Omar remitted his sentence of Hadd on the grounds that pregnancy alone is not sufficient evidence, for pregnancy could take place even without copulation as the girl in this story was found to be virgin. It is a proven fact now that a man can impregnate a woman without sexual intercourse. If a slave-girl becomes pregnant the child would belong to the man who was flirting with her, and his denial of intercourse would be of no avail.

Fourth: The researcher did not mention the condition of possession in case of imposing the penalty for theft. I believe this is an oversight on his part because he did mention it in relation to the execution of the punishment. He merely overlooked it in the definition of theft. Hence, possession is a condition that precedes the penalty for theft.

Fifth: Neglecting one's prayers is a Ta'zir offence. One may delay his prayers or say them alone. Imam Ahmed prescribed the punishment of execution for anyone neglecting his prayers, for this act is considered apostasy. The Imams Malik, Shafi and Abu Hanifa also prescribed execution for anyone who stops saying his prayers.

I reiterate my thanks to the researcher for his valuable study and all those who organized this symposium. I apologize for my rather lengthy comments. I trust the next research, which is a field one, will be of particular interest, for it will provide comparative statistics.

May God grant you all prosperity and success.

Mr. Amir Al-Mukhtar

My thanks to the distinguished researcher and to the commentators for clarifying the subject of Ta'zir which is a flexible system embodying all crimes, including those puni-

shable by Hudoud and qisas. In fact the various provisions, regulations and records of the criminal laws of the Ottoman State and later in the Arab world derive from this flexible system of Ta'zir. These are approved by the legislator who, in the modern systems, takes the place of the Head of the State. This system can accommodate any improvements to the criminal legislations in the Arab countries, as well as the social trend, with its motto "Social Defence by any Means".

Furthermore, the system of Ta'zir not only embraces the concept of "reforming the criminal by punitive and non-punitive measures", which is the principle of free choice attained after the revolution of criminal secular laws, but also embodies more than the criminal law in the contemporary stage demands as regards society and protecting it from crime. This system views all society as the centre around which the legislative, judicial and executive policies revolve with a view to combatting crime.

It is a known fact that modern social systems disapprove of capital punishment whether as a punishment or as a preventive measure, and favours deprivation of the offender's freedom.

These systems coincide with the Ta'zir system. The punishment of execution can be dropped and replaced by a less severe measure. This, as well as the modern trend, aim at social correction and rehabilitation.

I praise God the Exalted that the opportunity has been offered to me to express my sincere thanks to Dr. Ibrahim Al-Awaji who, during a press conference, outlined the role of the Arab Organization for Social Defence against Crime and the efforts of its specialized Bureau to convene a symposium to study the implementation of the Islamic Criminal Legislation and its effect on stability and security in the Kingdom of Saudi Arabia. This was welcomed by the concerned authorities and thus the present symposium is taking place.

Professor Lode Van Outrive

According to my understanding there has been an increase in the crime rate in the Kingdom of Saudi Arabia over the past few years. If this is so, I would like to know the type of crimes that have increased, and if the punishments have increased accordingly. Perhaps the crime rate has increased in the proportion of the decrease of Hudoud punishments. Does this mean that Hudoud crimes in Saudi Arabia have decreased and therefore the Hudoud punishments also? In other words, does this mean that Ta'zir crimes are on the increase? If progress has been made it may be attributed to two main factors: prevalence of security, education and guidance, and the other reason is probably due to the sound thinking of the intellectual people as regards the concept of criminal responsibility which is quite important in the Saudi legislation.

I understand that there is much less poverty in the Kingdom than previously and that job opportunities have increased. However, I believe that the Saudi society has become more complicated and adaptation to the new conditions is becoming increasingly difficult. The intellectual thinkers of other countries might have discovered the causes of the complications, but here the ensuing circumstances might not be caused by man. Indeed, the Saudi society has undergone some changes in line with the altered socio-economic conditions. This implies that the type of crime should also change. As the crime rate in this country is still low this may confirm that the causes are more psychological than material. My question is whether or not this progress really exists. Please correct me if I am wrong in my conclusions but I would be grateful to know the factors which play a major role in conditioning the Saudi society.

Conductor of Discussions

I give the floor to Sheikh Mohammad Ali.

Sheikh Mohammad Ali

In the name of God, Most Gracious, Most Merciful.

*" By the Fig **

*And the Olive,***

*And the Mount ****

*Of Sinai,*****

And this City

Of security".

Chapter 95, verses 1 to 3.

Praise be to God and peace be upon His Prophet. I apologize for the delay in the arrival of our delegation due to travel arrangements.

My due thanks to the Saudi Kingdom for its initiative in convening this symposium. I trust that it will unite the Muslims and unify their legislations under the banner of Islam. I hope that it will succeed in familiarizing non-Muslims with Islam and its legislation. My country proposes the formation of an Islamic and Arab Committee to unify the legislations in Arab and Islamic countries and to follow up the implementation of the Sharia so that we may build a crime-free society guided by God the Exalted. In this way we shall abide by the Hadith which says: " Some Muslims

* A cultivated fig can be an excellent fruit; in its wild state it is nothing but worms and maggots. So, man at his best, has a noble destiny, at worst he is the lowest of the low (Translator's note).

** It is possible that Olive here refers to the Mount of Olives (Translator's note).

*** The mountain on which the law was given to Moses (Translator's note).

**** The City of Security is Mecca, because even in pagan times it was respected as a sacred city (Translator's note).

would still adhere to the right path until they receive God's comand".

Our negligence of Islamic Sharia as regards crime may be interpreted as having doubt in the Sharia. This is but flagrant atheism.

God blamed the Jews for not complying fully with the Torah. In the chapter named " The Table " the Quran describes the Jews as being blasphemous and corrupt. I sincerely hope that the Islamic society gets rid of the slur of corruption and blasphemy by returning to the right path and abiding by the Islamic Sharia in all walks of life.

God's peace, mercy and blessings be upon you.

Mr. Adnan Raouf Hassan

The researcher touched on mediation and mentioned that it is not permitted in Hudoud. Could the researcher give us further clarification and more examples? As Osama related that the Prophet prohibited mediation in the case of theft committed by a woman of noble standing, this may give rise to scepticism regarding Islamic teachings.

Sheikh Mohammad Juweid

My thanks to the researcher for his treatise.

Although he named apostasy among the major crimes he omitted it from the classification into five Hadd offences: adultery, defamation, highway robbery, and alcohol-drinking. We must not forget that apostasy is the most obnoxious of all.

The second point is that when the researcher mentioned Ta'zir crimes he specified the negligence of religious obligations, such as saying prayers and alms-giving.

I would like to add that he who neglects his prayers is but an infidel and this was confirmed by the commentator Sheikh Attiya.

Dr. Abdul Karim Zeidan

The researcher quoted the Prophet's Hadith: " He who sees an offence, let him change it with his hands. If he cannot do so, then with his tongue or at least with his heart " .

Well, according to some scholars an offence could be changed with one's heart by hating it. My query is: how could hatred in the heart change an external evil? It may be said that the change starts with hatred.

The other point is that when the researcher mentioned the five Hudoud crimes he left out apostasy and rebellion. He also stated that by executing Hudoud the offender would be saved from the punishment of the Hereafter and he quoted the Hadith to confirm his statement. I do not agree with him because punishment in this world cannot save the offender from that in the Hereafter without genuine repentance. In this connection the Holy Quran says:

*" The punishment of those
Who wage war against God
And His Apostle, and strive
With might and main
For mischief through the land
Is execution, or crucifixion,
Or the cutting off of hands
And feet from opposite sides,
Or exile from the land:
That is their disgrace
In this world, and
A heavy punishment is theirs
In the Hereafter;
Except for those who repent*

*Before they fall
Into your power:
In that case, know
That God is Oft-forgiving,
Most Merciful " .*

Chapter 5, verses 36 and 37.

This is a clear proof that punishment in the Hereafter cannot be excluded merely by Hudoud without repentance in this world. This is evidenced by the Prophet's example in the Hadith when he referred to the adulteress Al-Ghamidiya: " I swear by God that her repentance was so sincere that it was enough to purify seventy people of the town of Yathrib " *.

Sheikh Nasser Mohammad Ar-Rasheed

One of the advantages of the Islamic legislation is that, apart from execution, all other punishments leave no hatred or rancour on the part of the punished, his relatives or his tribe. This is because there is a deep belief that it is God the Exalted who passed the judgement of punishment. In this respect the Quran says:

*" But no, by thy Lord,
They can have
No (real) Faith,
Until they make thee judge
In all disputes between them,*

* Yathrib is the old name for Medina in the Hejaz where the Prophet emigrated in 622 A.D. and died in 632 A.D. The town is now known as Medina Al-Munawara (the lighted City) (Translator's note).

*And find in their souls
No resistance against
Thy decisions, but accept
Them with the fullest conviction " *.*

This conviction does not, of course, exist as regards secular laws which are not revealed by God. Therefore, whenever a regime changes in a country the new rulers live in fear that their people might not approve of their new laws and regulations. This is due to lack of Islamic legislation in the secular laws. The Quran says:

*" And this (He commands):
Judge thou between them
By what God hath revealed,
And follow not their vain
Desires, but beware of them
Lest they beguile thee
From any of that (teaching)
Which God hath sent down
To thee. And if they turn
Away, be assured that
For some of their crimes
It is God's purpose to punish
Them ".*

Chapter 5, verse 52.

* The test of true faith is not mere lip profession, but bringing all doubts to he in whom we profess faith. When a decision is given we are not only to accept it, but find in our utmost souls no resistance but a joyful acceptance. (Interpretation by Abdallah Yousuf Ali, the Pakistani translator of the Holy Quran).

Apart from blasphemy there is no greater sin than preferring laws enacted by man to those revealed by God the Exalted.

These are some of the points I wanted to add to the researcher's treatise.

Conductor of Discussions

I would like Dr. Omar Ibn Abdul Aziz Al-Matrak to respond to a query I have received as to whether Saudi Arabia benefits from the doctrine of Ibn Taymiya * maintaining that repentance nullifies Hadd. If so in what way does the Kingdom benefit and how could it be put into practice?

Dr. Omar Ibn Abdul Aziz Al-Matrak

Praise be to God and peace be upon His Prophet and the Prophet's family and Companions.

I thank both Dr. Mohammad Ahmed Ibn Salih and Sheikh Attiya Mohammad Salim for their comments and their valuable remarks.

As regards the repentance of the offender who has perpetrated an offence punishable by Hadd, I have gone over this point before and presented the controversy of scholars in this respect. I also referred to the viewpoints of Ibn Taymiya, Ibn Al-Qayyim and Al-Qurtaby.

I personally believe that if an offender repents and confesses before being reported to the judge his repentance is sufficient to drop the Hadd punishment. However, if

* Takiyyadin Ahmed Ibn Taymiya (1263-1328 A.D.) was a Hanbali jurist born at Haran, near Damascus. His doctrine influenced the Muslim reformer Sheikh Mohammad Ibn Abdul Wahab (1703-1787 A.D.), founder of the Wahabi sect in Najd (Saudi Arabia). Ibn Taymiya's works include "The Right Answer for the Person who Changes Christianity", "Divorce" and "Sharia Policy" (Translator's note).

the offender repents after his guilt has been proved and reported to the governor or the judge, then his repentance would be of no use. But if the judge proves that the offender has sincerely repented and there is no concrete evidence of his guilt apart from his own confession, then Hadd would be dropped.

At any rate the issue remains a matter of controversy and needs further study.

Dr. Ahmed Ibn Saleh made his first remark regarding the publishing of the research. His second point was about Ta'zir, regarding which I have stated that it varies according to the gravity, extent and magnitude of the crime. I also said that judgement is left to the discretion of the ruler or the authority commissioned by him.

The third point is the difference between the "Muhasan" (a married person) and the "Bekr" (a single person). I mentioned that a married person who has known the pleasures of marriage should not be tempted to commit adultery. But then one may query what about a person whose wife is dead or who is divorced and commits adultery? As I have already explained his punishment would be harsh because he has gone through the experience of marriage and has known its pleasures.

The fourth point is the false accusation of sodomy. According to Imams Ahmed and Shaf'i the slanderer of sodomy is punishable by Hadd, whereas Imam Abu Hanifa maintained that it should be punished by Ta'zir.

As for Sheikh Salim's remark on the definition of Hadd, I described it as a punishment prescribed by God. Furthermore, I explained the difference between Hadd and qisas and between Hadd and Tazir. It is a moot point whether an unmarried woman who becomes pregnant should be punished by Hadd. Some Imams believe that if a woman does not confess adultery or says that she was forced to commit the crime then her act is not punishable by Hadd. Once an unmarried pregnant woman confessed to Omar (the

Caliph) that one day when she was fast asleep a man slept with her by force. Omar dropped the Hadd punishment from her.

As regards neglecting prayers, in my opinion if a man does not say his prayers for some time, he should be punished by Ta'zir. But if a person neglects his prayers completely then his act is considered as apostasy and should be punished accordingly.

There is a controversy amongst scholars as regards the Muslim who persists in neglecting his prayers. Some believe that he should be given three days to repent and resume his prayers, and if he does not do so then he should be executed.

Professor Lode Van Outrive enquired as to the causes of increasing crime rates in other societies: I believe that the major reason is that these societies have deviated from religion and the children are not given a good education. Undoubtedly the increasing crime rate is a form of God's punishment. The more people deviate from their religion the greater the crime increase. The Quran says:

*" Let those beware who
Withstand the Apostle's order,
Lest some trial befall them,
Or a grievous penalty
Be inflicted on them "*

Chapter 24, verse 63.

Many scholars favour mediation in Ta'zir and the Prophet's Tradition supports it. In the Hadith the Prophet says: " Mediate, for you shall be rewarded by God, for He decreases whatever He wills ".

If a man does not commit a serious offence and is known to be a man of rectitude without a criminal record,

I believe that this man deserves a light punishment and perhaps even freed from Ta'zir.

Could those who fail to attend congregational prayers be excused by the scholars who maintain that attendance at these is obligatory? Some participants have referred to apostasy, on which I did not dwell when I discussed Hudoud. I deliberately omitted this subject because I believe that it deserves a separate research. Scholars unanimously agree that a male apostate should be put to death. Imam Abu Hanifa has a different viewpoint if the apostate is female. I skipped this point because according to some scholars apostasy is not punishable by Hudoud. A blasphemer, however, is executed not so much for his violation of the Hudoud as for his act of blasphemy. Since a blasphemer is no longer considered a Muslim, Hadd is not applied to him. The Hadd purifies a sinner of his sin and therefore, when he is executed his body is duly washed, placed in a white coffin and buried and a prayer is recited, whereas a blasphemer is executed for his apostasy which is considered a more serious matter. Ibn Hajar* mentioned that the Hadd punishment is inflicted only when an offender commits adultery, consumes alcoholic drinks or commits armed robbery. He said that although apostasy is a controversial issue there is no doubt that the offender should be put to death. I thank you all for listening to me and peace be upon you.

Sheikh Salih Al-Labeidan

Praise be to God and peace be upon His Prophet.

I would like to comment on Sheikh Omar's statement that prior to the implementation of the Sharia the country

* Ibn Hajar Al-Haithamy (1504-1567 A.D.) was born in Egypt. He was a Shafi' jurist and his works include: "Important Religious Verdicts" and "Restraints Against the Commission of Major Offences" (Translator's note).

was afflicted with chaos and instability. Perhaps the distinguished speaker did not mean to say this, for the Sharia has been in practice ever since the foundation of the Saudi Kingdom. My next comment concerns Dr. Mohammad Ibn Salih's reference to the "social standing of the offender". This implies that the higher the offender's social standing the less strict the penalty, while in fact, the punishment varies in accordance with the magnitude of the crime. If the crime is not serious and does not involve much harm to others it is regarded as a stumble and can be forgiven provided it does not recur.

In his last comment Sheikh Omar stated that in the case of a Muslim who neglects his prayers his punishment is suspended for three days. Some scholars believe that the offender should be confined, but the correct punishment is execution.

As far as an apostate is considered there is no doubt that he should be put to death.

As regards mediation the researcher referred to the following Hadith: "Mediate and you shall be rewarded". As far as I know the Prophet said this when he noticed that his Companions kept silent when he was asked about mediation. He therefore asked his followers to mediate in order to be rewarded adding that God reveals His decrees through His Apostle. This was not meant to apply to a person due for punishment.

If a crime is perpetrated against others but does not violate God's injunctions, mediation is up to the victim. Anyone who slaps or beats another person and is punishable by Ta'zir the victim has the right to accept mediation. But in the case of shedding someone else's right in vain the victim, according to the Sharia, has no right to drop Ta'zir punishment. This same injunction applies to cases which affect society.

May God grant you all prosperity and success.

Mr. Said Kurdi

I have no juridical questions to ask for the researcher and the commentators have already dealt with all the points of interest. The honourable scholars have given ample proof as to how the Kingdom of Saudi Arabia is implementing a marvellous system which does not stem from the doctrines of the eastern or western blocks. Neither is it based on the theory of the Italian scholar Gramatica or on the theory of Marc Ancel, Counsellor at the French Court of Appeal. The Kingdom's system is based solely on the Quran and the divine Sharia.

I have been working at the combatting of crime for the last thirty-five years. What I am going to narrate is not a fantasy. In 1367 H. (1946 A.D.) a burglar disguised as a policeman broke into a big store using a duplicate key and stole two bags full of silver Riyals (the present notes were not in use then). On discovering the theft the following morning the owner did not report it to the police, but asked his employees to remain in the store overnight. In fact the thief come back again and tried to get away with another bag containing four thousand silver Riyals. He was caught red-handed and turned over to the police, but he denied his previous night's theft. As an investigator I went to the thief's dwelling place and my attention was attracted to a barrel placed near the wall where I found one of the stolen bags. After digging up around the house another bag was found, thereupon the thief confessed and admitted that he had purchased a police uniform for this purpose. After the administrative governor sent the case to the judge the sentence was passed within two weeks to have the thief's hand cut off, after which he was rushed to the hospital for post-amputation treatment.

Two weeks later when I paid a visit to the hospital to see some sick friends I met the offender by chance. When I asked him if he were not angry about the punishment he

said he could not be so with God's judgement and will. This incident clearly illustrates the feelings of the offender being punished by a law decreed by God the Exalted. This reflected the popular proverb: "It is not disgraceful to have one's hand cut off, for that hand will not go back to commit theft again". The promptness in carrying out the sentence in the short period of 15 days (between the date of the commission of the crime and the date on which the sentence was passed) shows the effectiveness of the Sharia. It also shows how an offender accepts his punishment without any feeling of grudge or hatred.

Thank you all and God's Mercy and Blessings be upon you.

Sheikh Attiya Mohammad Salem

I would like to clarify a statement in order to avoid any misunderstanding. The King's endorsement of a sentence is not a political, legislative or legal matter but is an international protocol. The leader of any country usually endorses such sentences. The origin of this practice emanated from the early days of the Prophet when a slave-woman's head was brutally squashed between two large stones by a Jew and the Prophet ordered that the Jew's head should be squashed in the same manner.

It was also said that Omar (the Caliph) ordered his deputies not to pass any sentences without these being brought to his notice.

I wanted to confirm that this practice was originally an Islamic legal practice and not a political one.

Conductor of Discussions

I thank all the participants and now I give the floor to the Vice-Chairman to close the meeting.

Chairman

Before concluding the meeting I would like to refer to Professor Outrive's query on the remittal of crimes punishable by Hudoud into those punishable by Ta'zir. Part of this query has already been dealt with by the researcher, and I hope the remainder will be explained in this evening's meeting which will commence at 5 p.m. As we do not have a dinner engagement we shall have ample time to finalize the discussions tonight.

It would be greatly appreciated if you could be punctual so that we may start the session on time. I am delighted with this morning's session and hope that we will crown the discussions with some concrete results.

Thank you again for your attendance and your positive contributions. God's peace be upon you.

(The session was adjourned at 2.20 p.m.).

NINTH SYMPOSIUM

NINTH PAPER

87256

EFFECT OF THE IMPLEMENTATION OF THE
ISLAMIC LEGISLATION ON CRIME PREVENTION
IN THE KINGDOM OF SAUDI ARABIA
A FIELD RESEARCH

by

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Commentators

Dr. Abdullah Saleh Al-Bunyan, Director-General of
Planning and Studies, Ministry of Labour and Social Affairs.
Sheikh Mohammad Al-Huwesh, Prosecutor at the Court
of Appeals.

Dr. Hassan Al-Sa'aty, Professor and Head of Sociology
Department, Faculty of Arts, Ein Shams University, Cairo.

Conductor of Discussions

Dr. Mohammad Al-Sa'ad Ar-Rasheed.

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Conductor of Discussions

Praise be to God, the Cherisher and Sustainer of the Worlds, and peace be upon Mohammad, the noblest of all the prophets, his kinsfolk and Companions.

In the seventh century A.D. the Arabian Peninsula was blessed with the rise of Islam which elevated the society and reduced crime to the minimum. However, political upheavals over the centuries led to social deterioration, backwardness and the spread of crime. This state of social disorder and instability was worse in the central region of the Peninsula because of non-adherence to the tenets of the Sharia.

Fortunately in the twelfth century Hegira (eighteenth century A.D.), the eminent theologian and reformer, Sheikh Mohammad Ibn Abdul Wahab started preaching to the people to return to the true teachings of Islam and to abide strictly by them. During this same period Imam Mohammad Ibn Sa'ud, * the ancestor of the Honourable Saudi Royal Family, allied himself to this cause and founded a state based on the Islamic faith.

Security, peace and prosperity prevailed through strict adherence to the teachings of the Sharia in a way which can only be compared to the early days of Islam.

Unfortunately due to wars with external forces which attacked the state and the faith, the country underwent an era of weakness, chaos and instability during which crimin-

* Mohammad Ibn Saud was the son of Saud Ibn Muqrin, the eponymous ancestor of the Royal Family. He was the ruler of Diriyah and died in 1747 (Translator's note).

ality increased. When His Majesty King Abdul Aziz took over leadership of the state, strict implementation of the Sharia was ordered, thus following the example of his ancestors.

This treatise shows how the country fared before his rule and how stability was established and crime was curbed. We shall speak of the types of crime common prior to His Majesty's rule and the correlation between the implementation of the Sharia and the low crime rate. We shall reply to the question as to whether crime is increasing or decreasing in the Kingdom of Saudi Arabia.

Dr. Farouk Abdul Rahman Mourad

My thanks to the conductor of discussions.

Before I start presenting this field research I would like you to know that it is the product of the research unit of the Crime Prevention Research Bureau in the Kingdom under the supervision of Dr. Hassan Al-Sa'aty who was responsible for the analysis of the data and who supervised a large part of the report.

He also supervised the training of the surveyors who contributed to this document.

Introduction

During the twentieth century A.D. great strides have been made in unveiling the mysteries of the universe and discovering the laws of nature and this newly-acquired knowledge has been put to both constructive and destructive use by man.

Scientific and technological progress is concentrated on the material aspects, ignoring the social and human viewpoints. Consequently, these latter lagged behind and the gap between the material and moral aspects has widened, thus creating a feeling of restlessness and instability. Man

has therefore failed to organize constructive social relationships that could secure order and social equity: by social relationships we mean its wider comprehensive concepts including economic, family, political, etc.

Conservative societies enjoyed a social organization commensurate with the requirements and material ambitions of their members, but once these societies came under the influence of modern material civilization their members were carried away by its social philosophy and system, and thereby suffered from its disadvantages, i.e. deprivation of social and human values.

As a result man lost confidence in the system and the governing laws. Consequently various types of demonstrations took place against the authorities, for instance uprisings, riots, etc.

Present day societies are suffering from this deterioration and the crime rate is now measured by minutes and seconds. Tremendous resources, both material and human are drained to combat the spread of crime. In fact, crime gnaws at the actual structure of modern societies and this situation has alerted many governments and concerned people to the pressing need to find efficacious solutions to this grave problem. Researches and studies have been conducted, seminars are held, theories are applied, but all to no avail.

Implementation of Islamic Legislation in Saudi Arabia

No sooner had order been established in the Arabian Peninsula, and its remote regions united into a great nation under the banner of a pioneer leader, than the implementation of the Sharia in all walks of life was initiated. Priority was given to security, stability and social justice. Thus, chaos gave away to organization, social unrest and tribal feuds to stability, and anxiety regarding life, honour and possessions to a comfortable feeling of safety. Prior to this the strong

segment of the people were privileged while the others had to protect their rights by sheer force. Now all were equal before the law, and for the first time since the fall of the Islamic state, people started enjoying social justice and real peace.

Peaceful Country

Amidst a world tormented by social problems, in particular the disintegration of the family as a social unit, poor upbringing, delinquency, perversions, economic crises, corruption of local governments and the widespread use of drugs and alcohol, the Kingdom of Saudi Arabia emerges as a peaceful country blessed with prosperity, security and justice.

In 1386 (1966 A.D.) the crime rate in Saudi Arabia was only 32 per thousand of the population, 1966 being used as the basic index year because all the required figures were then available. Since then the rate has curved downwards until in 1395 H (1975) it reached 18 per thousand.

TABLE 1

Crime Rate in the Kingdom over Ten Years (Years in A.H.)

Year	Population	Number of Crimes	Rate per 1,000 Inhabitants
1386 (1966)	5 662 000	1850	32
1387	5 815 000	1670	28
1388	5 973 000	1377	23
1389	6 135 000	1229	20
1390	6 301 000	1401	33
1391	6 472 000	1234	19
1392	6 647 000	1424	22
1393	6 827 000	1376	20
1394	7 012 000	1370	19
1395	7 201 000	1304	18

Source: Statement attached to the Minister of Treasury letter No. 32 dated 16/8/1396 H.

The statistics processed on 29/7/69 were prepared by the Ministry of Interior, Statistics Department.

The crimes committed over the ten years from 1386 to 1395 H (1966-1975) were as follows:

1) *Murder*

This includes premeditated murder, quasi-deliberate murder and murder by error. During this period the rate ranged from 03 to 01 per 1,000 of the population as can be seen in the following Table No. 2.

TABLE 2

Rate of Murder in the Kingdom over Ten Years per thousand of the Population

Year	Number of Murders	Rate per 1,000 Inhabitants
1386 (1966)	169	03
1387	154	03
1388	74	01
1389	40	01
1390	49	01
1391	41	01
1392	54	01
1393	39	01
1394	54	01
1395	70	01

CONTINUED

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2) *Theft*

This covers all kinds of theft including pick-pocketing, petty and attempted thefts and the rate ranged between 0.16 and 0.12 per thousand as per the following table:

TABLE 3

Year	Number of Thefts	Rate per 1,000 Inhabitants
1386 (1966)	879	.16
1387	905	.16
1388	905	.16
1389	791	.13
1390	854	.14
1391	791	.12
1392	980	.15
1393	973	.14
1394	948	.14
1395	873	.12

3) *Assault on Personal Honour (Sexual Offences)*

This includes petty molestation, prostitution, sodomy, adultery and rape. The rate of these offences ranges from .08 to .04 per thousand as under:

TABLE 4

Year	Number of Offences	Per Thousand
1386 (1966)	380	.07
1387	450	.08
1388	300	.05
1389	321	.05
1390	392	.06
1391	345	.05
1392	346	.05
1393	323	.05
1394	239	.05
1395	328	.04

4) *Drugs*

This includes smuggling, trafficking, possession and use of drugs. Only statistics for five years are available while further figures are being prepared and processed. The numbers range between 0.2 and 0.1 per thousand.

TABLE 5

Year	Number of Offences	Per Thousand
1386 (1966)	128	.02
1387	49	.01
1388	34	.01
1389	60	.01
1390	56	.01

5) *Fraud and Forgery*

This includes fraud against individuals and institutions with the intent of achieving illicit gain or forging certificates or documents for various purposes. Over the last ten years the rate of these offences ranged between 0.2 and 0 per thousand.

TABLE 6

Year	Number of Offences	Per Thousand
1386 (1966)	117	.02
1387	48	.01
1388	30	.01
1389	16	0
1390	47	.01
1391	21	0
1392	31	0
1393	26	0
1394	14	0
1395	19	0

6) *Other Crimes*

These include producing, selling, smuggling or consuming intoxicants, etc., and the rate ranged between 0.3 and 0.

TABLE 7

Year	Number of Offences	Per Thousand
1386 (1966)	177	.03
1387	64	.01
1388	117	.02
1389	2	0
1390	3	0
1391	36	.01
1392	24	0
1393	15	0
1394	24	0
1395	14	0

N.B. The rate of these offences in the Kingdom is quite low and it would be useful to compare these figures with those in other countries.

FIELD STUDY REPORT

Preface

Order and stability are well established from north to south and east to west in this vast territory of the Kingdom of Saudi Arabia. A large portion of the Kingdom is under desert and this has a special effect on the inhabitants of the villages and towns, on their way of thinking and living habits within the context of various customs and traditions handed down from their forefathers.

This impressive stability dates back to the reign of His Majesty King Abdul Aziz Al-Sa'ud who transformed the country from a state of anarchy and ignorance in worldly and religious matters into a united and well-established nation. Thus even the most remote population began to feel that they are part of the united independent state with its own sovereignty, i.e. the Kingdom of Saudi Arabia.

The Kingdom is unique for its possessions of the holiest places of Islam, the most important being the Holy Ka'ba towards which Muslims all over the world turn to say their prayers. It is the place to which pilgrims travel from all over the world to perform their religious rites. Every year the number of pilgrims has been increasing and in recent years this has reached approximately two million. Most of these pilgrims come during the months of Zul Qada and Zul Hijja and they return to their homes in the same way as they came. The pilgrimage preparations are organized by the Government and order is ensured during the various stages.

Anyone comparing the situation before the reign of King Abdul Aziz and afterwards will certainly notice a great difference in all matters of order and security, and the reason for this is undoubtedly attributed to the strict implementation of the Islamic law without distinction between the rural and urban inhabitants. This law was implemented by a wise and experienced King, who ruled in accordance with the tenets of the Holy Quran, and the Sunnah of the Prophet.

This is what encouraged the Research Centre for Prevention of Crime, of the Ministry of Interior, to conduct this study so that the results of the effect of Islamic legislation on security and order in the Kingdom could be based on actual facts and not merely on personal impressions.

This research consists of four sections and a conclusion: the first section gives an explanatory outline, the second section describes the social conditions prior to the reign of H. M. King Abdul Aziz, the third section deals with security conditions in that period, while in the fourth section we shall present a picture of the security established on the basis of the implementation of the Shari'a and its impact on social life in general and on security and order in particular.

SECTION 1

RESEARCH PLAN

The research plan consists of five methodological points:

- 1) definition of the research objective and its fundamental concepts;
- 2) fields of research and case studies;
- 3) research methodology;
- 4) method of information collection;
- 5) administrative assistance for the field research.

Furthermore, the plan comprises procedural steps already adopted for conducting the research.

Research Objective and its Fundamental Concepts

The objective concentrates on the investigation of the effects resulting from an organized and comprehensive implementation of the Islamic criminal legislation for the achievement of security in the Kingdom of Saudi Arabia. By organized implementation we mean an integrated system employing judges with certain qualifications for settlement of disputes and the maintenance of records for future reference. Other officials are also employed for the maintenance

The field section of this report was prepared by Dr. H. Al-Sa'aty who also supervised the other sections during Ramadhan 1396 H.

nance of law and order. This calls for the establishment of an organized security system on the basis of a selected staff chosen for their experience, their loyalty to the State and devotion to the welfare of the community. The first person to adopt this system was H. M. King Abdul Aziz, as he was well aware of the conditions of the tribes living in various parts of the desert.

By "comprehensive implementation" we mean that it applies to the five regions of the Kingdom (east, west, north, south and centre) thus uniting the whole population under the King who has the final word over everyone.

Prior to the introduction of this system the tribes lived in small communities feuding amongst themselves for leadership and for material gain.

Fields of Research and Case Studies

In a research such as this, importance is attached to the selection of towns and regions in order to give a comprehensive picture of the Saudi Arabian society. The selected sites were: Ahsa and Qatif (eastern region), Jeddah, Mecca, Taif, Medina and Badr (western region), Qurayyat and Hajr (northern region), and Riyadh, Wadi Dawasir, Qasim and Hail (central region).

It was believed that the selected sites were sufficiently representative of Saudi society in the five regions and were accessible to the nine social surveyors for the collection of the information necessary for the research work.

It is worth mentioning that particular importance is attached to the western pilgrimage towns: Mecca, Medina and Jeddah because of the heavy concentration of pilgrims from all over the world, coupled with commercial activity throughout the year, especially in the period of the Hajj. We have also added the town of Taif in view of its urban link with Mecca and the importance of its location and close interaction with the desert life of the Badiya.

The social surveyors were able to interview twenty-two people who were selected according to the following prerequisites during the period 11-22 Shaban 1356 H (August 1976):

- i) the interviewees had, by virtue of their occupation, experience with the country's social conditions in general and security in particular;
- ii) they were at least 60 years of age so that they could recollect names and incidents;
- iii) they were chosen because they were well-known by the local population;
- iv) despite their age the interviewees demonstrated alertness and lucidity.

The occupations of the interviewees are indicated in Table No. 8 below:

TABLE 8

Occupation	Number of Persons
Civil service	5
Commerce	5
Tribal or Governmental Employees	4
Tribal service	3
Legal	2
Agriculture	2
Pilgrimage attendant	1
Total	22

The ages of 20 interviewees ranged from 60 to 90 and the remaining 2 were 95 and 120 years old; 18 (82%) were above 65.

TABLE 9

Age-Group	Number of Persons
60-65	4
65-70	5
70-75	2
75-80	4
80-85	3
85-90	2
Over 90	2
Total	22

The social surveyors of the Research Centre for Prevention of Crime, Ministry of Interior, were: Ismail Mandaly, Salim Sharary, Suleiman Abdul Karim, Abdullah Al-Mani', Abdullah Al-Muhsin, Ali Wa'lan, Omar Maliki, Awadh Maliki, Falih Ietiby and Hazza' Shamry.

It was sometimes necessary to select two experienced citizens whose information could cover social conditions in

towns and desert regions alike in order to be sure of the information provided. The pattern followed is indicated below:

TABLE 10

Region	Town or District	Number of Persons
Northern	} Qurayyat Hajr	1
		1
Eastern	} Ahsa Qatif	2
		2
Central	} Hail Qasim Riyadh Wadi Dawasir	2
		2
		1
		1
Western	} Jeddah Mecca Taif Medina Badr	1
		2
		2
		2
Southern	} Abha Suburbs	1
		1
Total	—	22

Research Methodology

A descriptive and comparative approach is adopted in this research based on information regarding the social and security conditions existing when the Shari'a was not strictly adhered to and when it also varied from urban to desert regions where tribal traditional customs prevailed. These customs usually deviated from the provisions of the Shari'a

both in letter and in spirit. Furthermore, Islamic criminal legislation was not adhered to due to lack of national cohesion and allegiance on the part of the people. That was prior to the reign of King Abdul Aziz, who succeeded in unifying the various regions of the country into one Kingdom. The research also shows how social and security conditions changed after the foundation of the Kingdom and the implementation of Islamic criminal legislation throughout the country without discrimination between rural and urban inhabitants.

Therefore from this research we may conclude the effect of strict implementation of the Shari'a as regards crime prevention in the Kingdom.

To achieve this objective a new method was devised which we have called "Survey of Experience" and which is actually the collection of specific information with the help of a group of old people who were young when tribal traditions prevailed, but who were familiar with the later period under the reign of King Abdul Aziz.

Method of Information Collection

For the interviews the social surveyors used the social introspection system whereby each interviewee recalled the social and security conditions during the two above-mentioned periods. This was undertaken by means of a questionnaire aiming at evoking the memories during the two periods. The vernacular language was used in these interviews.

The following questions were asked:

1. Do you recall the period before the reign of King Abdul Aziz?
2. How were social conditions then?

3. How were security conditions in urban and in rural areas?

4. What crimes were common in urban and in rural areas?

5. Do you still recall a serious crime committed when you were young?

6. What happened to the offender?

7. How was the Islamic Shari'a applied to offenders convicted of highway-robbery, murder, injuries, sexual offences, theft and alcohol-drinking?

8. Were there other penalties meted out other than those mentioned?

9. Were there any offenders who escaped justice?

10. How did they manage to escape justice?

11. How was order kept in those days? I mean the police, guards, informers?

12. What is your personal impression of that system as regards maintenance of order and security?

13. What are the most important changes that took place under the reign of King Abdul Aziz and afterwards as regards public safety?

14. To what extent was the Islamic Sharia applied to offenders under King Abdul Aziz's reign and since then?

15. Do you remember any examples of how security was ensured at the time of King Abdul Aziz?

16. What is your opinion regarding current security provisions?

17. What did you base your opinion on?

Stages of Research

First: The research plan was drawn up as a field study.

Second: Nine social surveyors were assigned to each region to collect the material.

Third: The social surveyors were trained for personal interviews.

Fourth: The material was collected and the data was processed.

Fifth: The report of the field work was drawn up.

Sixth: The report was prepared as part of a comprehensive research on the implementation of Islamic criminal legislation for the enforcement of security in the Kingdom of Saudi Arabia.

I would like to mention that this research is not based on any documents, references, books, official reports or any other materials. It is exclusively based on personal interviews with people who have had first-hand experience with the conditions. The scientific method employed to obtain the required information by interviewing contemporaries of two eras renders this research particularly valuable.

It is worth noting that despite the fact that the interviewees reside some distance from each other, they almost agree on many points as regards social and security conditions before and after the reign of King Abdul Aziz. This information has not been embellished as is the case with many Arabic and foreign reference books.

SECTION 2

SOCIAL CONDITIONS IN THE ARABIAN PENINSULA BEFORE THE ESTABLISHMENT OF THE KINGDOM

The term "social conditions" means the inhabitants, their locality, their most important characteristics, economic, educational and religious conditions and their local government system. Section 3 is allocated to public security. So our concept of social conditions covers all aspects of life which are interwoven with one another. This section will deal with the various aspects of social life in the Arabian Peninsula before the foundation of the Kingdom.

The Population, their Locality and Main Characteristics

The population of the Arabian Peninsula falls into three main groups: nomadic Bedouins, villagers scattered around wadis or in the vicinity of towns, and urban dwellers in the few towns, most of which are near the Red Sea. The population was relatively small compared with that of the present day. This was due to various factors including: poor hygienic conditions, tribal feuds and family migration to Jordan, Syria, Palestine, Iraq or Yemen.

The Bedouins roam in search of water and pasture for their livestock; they are divided into tribes, each tribe is subdivided into clans and the clans are divided into families. Each tribe, clan and family has a chieftain who represents and rules it while his role is recognized in this

hierarchical structure. Powerful tribes vie for leadership as once overpowered they are relegated to an inferior social standing. The tribes of Harb and Juhana are examples of powerful tribes who achieved leadership over others.

The villagers live near water-wells or where there is enough rainfall for the cultivation of the land; others reside near the Arab Gulf and their main occupation is pearl-diving. Unlike the Bedouins they are hard-working and settled. In order to protect themselves against Bedouin raids they armed themselves and erected fences, for instance in the region of Ahsa, the junction of the Bedouins moving from south to north.

Urban dwellers lived in towns divided into suburbs, districts and quarters: Jeddah, for instance, had a surface area of about 20 sq. km. and a population of 20-25 thousand inhabitants. It was divided into four districts: Mazloun in the east; Bahr in the west; Sham in the north; and Yemen in the south. Due to the small size of the town the population lived like one family with close relationships, perhaps also because of its location as a sea-port. Although not very far from Jeddah, the conditions in Mecca were different. There competition and hostilities amongst the shop-keepers were intense and so was tribal chauvinism, but despite this the relationship between the families and neighbours was cordial and friendly.

Mecca was divided into almost independent quarters and keen competition existed between them especially during the season of Hajj when they vied with each other for the providing of services and merchandise to the pilgrims. This intense competition often led to hatred and envy among the merchants.

It should be borne in mind that although both the villagers and urban dwellers descended from Bedouin tribes they differed in their living habits, but they all had some characteristics in common that may be regarded as national. These traits are family, clan and tribal cohesion and they

all shared the feeling of supporting the oppressed, providing hospitality and giving protection to anyone who sought refuge with them. Family boasting and vengeance have remained prominent social traits. Although Bedouin tribes were always on the move, each had its own territory. The boundaries between neighbouring territories witnessed fierce disputes and wars because some of these happened to have fresh drinking water or happened to be located between Jeddah and Mecca, Mecca and Medina, Mecca and Taif or near the highways linking the eastern, western, northern, southern and central regions.

Economic Situation

It is unanimously recognized that the economic situation in the five regions of the country was deplorably bad. Business transactions were so limited and money was so scarce that any Mecca or Medina merchant was considered very rich if he possessed one thousand Riyals. The staple food of nearly all classes consisted of dates, wheat, maize and milk.

Therefore the destitute people, and in particular the Bedouins, were forced to resort to illicit means, such as theft, plundering and looting, in order to satisfy their needs.

In view of their dire need and near starvation conditions, the people did not heed the Quranic verses and the Hadith prohibiting such offences.

The Qurayyat and Hajar districts in the northern region were inhabited by Bedouins who depended for their survival on camel and sheep raising in the pasture-rich region where water was in abundance. Some of these people took up fishing in the Aqaba Gulf and started salt trading with the neighbouring countries of Palestine, Jordan, Syria and Iraq. Tribal rivalry resulted in fierce raids and fights between the Bedouins and the inhabitants of the northern region. These hostilities led the inhabitants of the region to

become ruthless and unbending, resulting in the depletion of their human and other resources.

In the oases where agriculture thrived the villagers lived in constant fear of the Bedouins and sometimes were even obliged to abandon their crops.

Economic conditions in the urban areas were no better because of the deteriorating security situation and the poor business transactions. The three towns of Jeddah, Mecca and Medina enjoyed prosperity only during the pilgrimage season when they were filled with visitors who spent lavishly while performing their religious duties. The unfair practice of some rulers of imposing heavy taxes on merchants had adverse effects on their economic conditions and when reluctant to pay these taxes they were threatened by the rulers to be expelled from the country.

Educational and Religious Conditions

A few zealous educational and religious scholars tried to find a solution to the socio-economic impasse and courses were organized in Mecca, Medina, Jeddah and Taif; other towns and villages, however, were not so lucky as to have these courses. The fact that the holy places were in Hejaz motivated the scholars to educate the people there about worldly and religious affairs and to teach the Arabic language and the Glorious Quran to the children. Because of the inadequacy of education it was not surprising that most people's knowledge of religious matters was both superficial and distorted. The Bedouins followed their traditional laws in preference to the Shari'a and this led to widespread hostilities, oppression and aggression. On the other hand, the fanaticism of the urban and rural dwellers with their blind adherence to the Shari'a led to deviations from the true tenets of Islam. The following section will present a full account of the chaotic and unstable security situation, which caused social disorder and unrest.

Local Government System

It is almost unanimously agreed that the local government lacked efficiency prior to the creation of the Kingdom by King Abdul Aziz. The Sherif of Mecca who ruled Hejaz was weak and self-interested and the same was true for other regions where the rulers were selected from the tribal chieftains and their main objective was to defend their interests against raids from other tribes. The Bedouins had superiority over the city-dwellers and they raided and plundered the urban centre so often that the population lived in constant fear.

The proprietor of a business concern at Taif, who was previously a teacher there, depicted in detail the social unrest and disintegration that prevailed before the reign of King Abdul Aziz. He said that commerce, communications and urban development, were brought to a standstill, people were suspicious of each other and worst of all was the custom that when the ruler wanted a project carried out this had to be done by his subjects without delay and free of charge, anyone who arrived late was jailed.

In managing the affairs of an area the Sherif or Emir was aided by "Justices of Peace" who exercised undisputed power over the administration. With the help of the Sheikhs of families renowned for their piety and experience, Sherifs settled disputes and reconciled contenders. Such an aide who played an important role in establishing peace was called "Emir Al-Hayy" (Prince of the Quarter).

SECTION 3

SECURITY PRIOR TO THE ESTABLISHMENT OF THE KINGDOM

This section deals with security before the Kingdom was established, the crimes most common at that time, the penalties inflicted and the extent of the implementation of the Shari'a.

Security Conditions

It is unanimously agreed that prior to the establishment of the Kingdom security barely existed. Anarchy reigned and instability and terror were predominant phenomena all over the country, in fact the turbulent conditions were not unlike those that existed before the advent of Islam. The mighty had the power and the Bedouin aggressors raided villages and townships without fear of the Shari'a or the governing rulers. The Bedouin chieftains fought each other for leadership with the resulting influence and material gains in order to enable them to purchase fire-arms and other weapons for defence and attack purposes. The raiders plundered and looted travellers, pilgrims and merchants, as already mentioned there were continuous skirmishes between the Harb and Juhayna tribes in Hejaz. The Harb were usually victorious and consequently they imposed their influence over part of the Juhayna territory, taxing pilgrims passing through that region. Likewise, the Oteiba tribe often waged war against the Qahtan and Mo-

tair, as well as raiding the caravans going to or coming from Taif, even killing the escorts.

A merchant from that town gave a vivid description of how risky travelling was in that area, adding that it was impossible to move from Beni Balik to Taif without being escorted by members of the Beni Harith tribe from the point of departure and received by the Oteiba tribe near Taif. Thus no one dared attack travellers escorted by members of a tribe, as this would have meant an aggression against the tribe concerned as it was customary that repelling attacks on travellers and restoring their looted possessions was very much appreciated by the tribe of the attacked travellers. This was expressed by the raising of a white cloth on market day by the travellers' tribe as a token of admiration for the prowess of the defenders.

Even walled towns were not immune from the raids of the Bedouins. A man from Badr, who participated in raids and other illicit acts but who had later repented during the reign of King Abdul Aziz, related that a Harb tribesman robbed rifles from a guard on duty. For highway robbers plundering was not an act to be ashamed of but was a sign of bravery and thus to be proud of. It is not surprising, therefore, that tribes boasted of these acts and hailed the offenders.

As already mentioned in the previous section, hostility existed among the merchants of Mecca. A pilgrim guide (Mutawwif) from Mecca recounts that people harboured grudges and hatred towards each other, festive occasions were feared because at the simplest pretext the ill-intentioned gave vent to their hatred. During the pilgrimage season security became even worse and more chaotic and pilgrims were attacked, especially when travelling between Mecca, Jeddah and Medina. Tribes controlling these tracts looted and even killed the travellers. The minimum act of aggression was forcing the travellers to buy water at exorbi-

tant prices or else they were wounded or even clubbed to death. No wonder, therefore, that pilgrimage was considered like going to war.

Common Crimes and their Penalties

The most common crimes before the Kingdom was founded were murder, tribal reprisals, highway robbery, serious injuries, theft, sexual assaults, adultery and, in some towns, alcohol consumption. The Bedouins did not abide by the Shari'a, they had their own unwritten laws handed down from their ancestors. Apart from the law of inheritance not even the villagers adhered to the Shari'a, but instead they applied the customary means of justice because of the Bedouin influence.

Application of the Islamic criminal legislation varied from one town to another because of illiteracy and ignorance.

a) Murder and Reprisal

Murder was committed for an infinite number of reasons, ranging from self-defence and defence of honour to raids and looting motivated by greed even for a loaf of bread. The afore-mentioned pilgrim guide "Mutawwif" related that once he was escorting a group of pilgrims in the company of his father when he saw a Bedouin shooting a pilgrim who was slightly removed from the others. When the Bedouin found no money on the dead pilgrim, he lamented for having used a bullet in vain.

In Qurayyat and the northern provinces a murderer had to give the victim's kinsfolk fifty camels and sometimes fifty rifles also in case Diya was the penalty prescribed for the crime.

The reprisal penalty violated the spirit of the Islamic Shari'a, as it was customary that should the victim's kins-

folk be unable to capture the murderer, a relative, even a fifth grand-father, could be the target of reprisal.

A man from Mecca who had taken up various administrative jobs related that owing to frequent tribal disputes and wars, people became chauvinistic regarding their families and villages. A man's name included his five forefathers, which was known as "Khumasiyya" *.

Reprisal stopped only when the victim's kinsfolk managed to kill his counterpart along the ancestral line of the murderer's family.

In Medina a murderer had the choice between giving Diya or exile for ever. However, people in Medina often reconciled the two contending families and Diya was ordered to be paid to the victim's kinsfolk if they agreed. Sometimes the victim's kinsfolk were compelled by the Justice of the Peace, in the presence of some of their members, to accept Diya and this was often very stiff and burdensome.

There were also cases where the victim's family insisted on killing one of the members of the murderer's family who sometimes surrendered by offering a mentally retarded person to be put to death. Sometimes the victim's kinsfolk were not content with the inequality between the victim and the person sacrificed, and this gave rise to a vicious cycle of reprisals.

b) *Injuries*

Head injuries, sometimes causing fractures, were fairly common, for instance during disputes by wilful intent or when the two adversaries met face to face. The previously mentioned Mutawwif related that there was once a row in one of the side-streets of Mecca, and one man was killed and another injured. The custom was that the Justice of the Peace collected Diya from the residents where the mur-

* From the Arabic word "Khams" meaning five (Translator's note).

derer lived and this was then delivered to the victim's kinsfolk. If the Diya was refused the murderer faced life imprisonment or hanging.

A farmer from Badr narrated that it was customary for an injured person to seek a reconciliation group whose members would go to the offender's house. These men would not touch the coffee offered to them unless their request was accepted. A conciliatory type of person usually promised acceptance. After coffee they would discuss the case and the penalty to be imposed on the assailant, which was payment of a certain compensation called "Madfo'" while the balance to be forgiven by the victim was called "Masmouh Bihi Al-Matlob".

c) *Highway Robbery*

Raiding tribesmen continued harrassing travellers and pilgrims not only with impunity but with pride in their prowess. The Red Sea coast witnessed some acts of piracy against vessels carrying wheat and other goods to Yanbu or Amlaj. Using steam-boats, the armed pirates opened fire on the vessels and towed them to the shore for looting.

Owing to extreme poverty, especially in the desert regions, theft was a common crime. These took place at every hour of the day, and nobody was safe from thieves and robbers. An Indian woman wearing gold ear-rings was once on her way to Mecca when she was suddenly attacked by a thief who snatched her ear-rings with his teeth. Near Mecca there is a mount which was then known as "Jabal Lusous" (Mount of Robbers) where professional bandits went to count and divide their loot. There was a mount at Taif which was used as the meeting-place of drunkards. These remote mounts provided hideouts for runaway criminals.

Opinions differed on the penalty to be meted out to a thief. A judge from Ahsa reported that if a thief was

caught he was jailed and taught some sort of trade. At Qasim when a thief was caught after his second offence his hand was cut off, while at Wadi Dawasir even after the first offence amputation was carried out. According to the farmer from Badr a thief did not escape punishment, as his tribe compensated the victim for his stolen possessions instead of recovering them. Sometimes the contending parties (the tribes of the thief and the victim) agreed that the victim forgive the thief for part or all of the stolen possessions. The part paid by the thief's tribe was known as "Madfo'" (paid) and the rest forgiven by the claimant as "Matlob" (required). The same system applied to injuries.

The ex-governor of Bedouin Affairs of Medina related that a thief usually sought a strong man to protect him in return for half of the loot, but if this failed his relatives coaxed the claimant into relinquishing part or whole of his right.

d) *Sexual Assaults*

These offences were limited in scope but many old people still remember those of a serious nature. The penalties varied from location to location: at Qurayyat (northern region) the penalty for rape was fifty camels; sometimes together with fifty rifles; a judge at Qatif related that punishment for rape was immediate public execution; another judge, who was later the mayor of Qatif, related that a couple involved in adultery by mutual consent were flogged and then exiled from the region; at Hail the penalty for attempted rape was execution; in Qasim, where efficient restraints lacked, the place was plagued with sexual offences. Usually the women who consented to commit fornication lacked real religious faith and in such cases both the adulterer and the adulteress were flogged and then released. In

cases of forced adultery the man was flogged and then served a short sentence.

Sexual offences were not very common in Riyadh. An ex-administrator related that he had heard a hair-raising story of a group of persons who murdered a young man in front of his two sisters while they were walking in a village in the central region. The two women were then raped by the group and handed over to another band in the neighbouring village who also raped them and they were completely exhausted when released. These incidents illustrate the degree of moral and security deterioration.

In Hejaz also these crimes were not uncommon and the penalties varied from stoning the offender to death to execution by sword in case of rape. Adulterers, in case of the woman's consent, were executed by shooting. Sometimes the death punishment was commuted to enforcing the family of the adulteress to give a number of sheep and subjecting the adulterer to a punishment known as "Nagar" which meant slightly carving the adulterer's forehead with the point of a sword or dagger so that there were permanent scars. Unfortunately, these scars were a source of pride rather than shame for the offender and his family.

In Abha and Asis (in the south) these offences were rare, but if they occurred they were done in secret and punishment was execution.

Sodomy was reported at Hail; the penalty for the sodomite was to be hurled from the top of a minaret and his head struck with a stone to hasten death.

There were also some rare sodomy cases in Jeddah.

e) *Consumption of Alcohol*

Alcohol consumption was unknown in the desert regions, as the constant fear of raids prompted the Bedouins to be always alert and vigilant, so they avoided the dulling of their minds through alcohol resulting in easy prey for

their foes. The same applied to the villagers who were vulnerable to aggressions and raids from the Bedouins.

Alcohol-drinking was not very common in towns either, except in Hejaz. In Jeddah, Taif and even Mecca and Medina alcoholic drinks were produced. Often the chieftain of a district was an accomplice who protected the producers against governmental control even informing them in advance of any raids so that they could hide the vats. At other times the policemen were bribed so as not to take any action against them. Even if caught the offenders were only imprisoned for a month or two. The governor of Medina not only drank wine but was also lavishly entertained by a number of Indian women.

Crime Prevention and Implementation of Islamic Criminal Legislation

As already mentioned, security measures in the desert regions were inadequate. Each family, clan or tribe maintained its own security through its primitive means. Wars and raids were waged as preventive and curative measures. In the towns the situation was somewhat different, although very simple and poor these had an administrative system for the maintenance of order and safety. As the necessary manpower lacked, the people were prompted to give assistance to their rulers as much as possible. Even the villagers undertook their own defence and protection, as in the case of Wadi Dawasir, south of the central region.

The people interviewed unanimously agree that the Islamic criminal legislation was not implemented in the desert regions for two reasons:

First: the Bedouins had their own traditional laws handed down from their ancestors;

Second: they lived a pre-Islamic era life and, due to illiteracy, their knowledge of the Shari'a was superficial and shallow.

In the towns the implementation of the Shari'a varied from one region to another, and was implemented in a distorted manner greatly influenced by tribal customs. The Shari'a was not adhered to in many cases, such as in murder, retaliating against the murderer's family instead of the murderer himself.

Likewise, the Hudoud was not strictly enforced for crimes of highway robbery, theft, adultery and alcohol-drinking.

Furthermore, the inefficiency of the local authorities in combatting crime made people indifferent towards security measures.

The population lived in constant terror of the aggression of raiders. In Jeddah there was a security headquarters with branches in its four districts: Sham, Yemen, Mazloum and Bahr; the security force was made up of two hundred persons including officers, non-commissioned officers and constables plus some one hundred patrol-men. The Sherif sometimes took charge of security at night-time. If he saw an offence he reported it to the patrol-men for investigation and requested the results. The Justice of the Peace had some authority in the handling of and reconciliation in disputes. If reconciliation did not work out the contenders were placed in custody for twenty-four hours.

The constables were ill-trained and the Sherif was weak and feared the strength of the neighbouring tribes; in Mecca there were some informers in each quarter (known as "Khuznawiya") whose task was to obtain information and convey it to the Emir to act as he deemed appropriate. In Qatif, in the eastern region, an Emir was assigned to every tribe to help the ruler, and an official entrusted with maintaining security was appointed in each village. These officials were known as Mukhtars.

In Medina influential people were engaged to help the ruler maintain security and the outskirts of the city were

patrolled by mounted policemen to chase infiltrators and criminals.

In Qasim the Emir appointed by the ruler was in charge of security, assisted by assistants called "Khouya". Unfortunately, very often the Emir maltreated the citizens, which caused animosity, unrest and malcontent.

As a result of the poor security system many criminals escaped justice and took refuge with other tribes. They had their conniving ways of escape, such as changing their names, the name of their tribe, bribing the constable on duty or disguising themselves as women. Due to inadequate security measures it was quite easy to escape justice.

A person seeking refuge had to follow a particular procedure, an appeal to the tribe chieftain saying: "I seek refuge with God and you to protect me from such and such tribe". The chieftain would then give him shelter and protection for a period of one year, two months and six days, after which he would ask the escapee what crime he had committed, and then offer him food. Once the refugee ate his food the host had to protect him even if he were a criminal. Meantime the chieftain would aim at reconciliation with the tribe of the victim through gifts of rifles or money. If reconciliation was reached the criminal was free, otherwise he would remain until his period of hospitality expired and then take refuge with another tribe, and so on. The refugee could be a murderer, looter, or have committed other crimes but Arab tradition at that time did not care for the Islamic Shari'a or positive laws.

SECTION 4

SECURITY IN THE KINGDOM OF SAUDI ARABIA FOLLOWING STRICT IMPLEMENTATION OF ISLAMIC CRIMINAL LEGISLATION

All the people interviewed in the five regions unaniously agreed that real security was established in all parts of the country after the Kingdom was established as an independent sovereign country. All the inhabitants of the Kingdom felt this enormous change and thus were united in their objectives.

Evidences of Security in the Kingdom

The proof that security prevails in the Kingdom is that a traveller may go anywhere in this vast country without being harassed by tribes, such as the Harb or Juhayna tribes who claimed dues from the people travelling across their territory. Everybody started enjoying a sense of social peace and security. People may carry any amount of money without fear of looters or highway robbers. Thus, security problems which were nightmares for the natives and pilgrims alike have ceased to exist. If a person loses something he is quite sure that he will find it where he had left or dropped it. Fear for life, honour or property is something of the past. Pilgrims returning to their country of origin speak about the stability that reigns in this country. Their tales have become the best source of propaganda for the Saudi experiment in attaining the transformation of a country of terror into one that enjoys security and order.

Reasons for the Prevalence of Security

According to those interviewed there are two main reasons for this security in the Kingdom: the first is the implementation of the Islamic Criminal Legislation without discrimination as regards regions or individuals. Undoubtedly, the implementation of the Shari'a in every aspect of life curbed greed, restrained potential offenders, stirred people's consciences and helped spread prosperity. However, a powerful, just and much revered ruler is necessary to implement the Sharia. King Abdul Aziz possessed all these qualities. He often used to repeat: "I swear by God that all I fear is the prayer of an oppressed person against me and the Kingdom with which God graced me". There are innumerable stories providing evidence of his justice in dealing with his subjects. The organized and comprehensive implementation of the Sharia for all crimes, the prompt trials before trained religious judges and quick execution of the penalties in public were effective in deterring any person contemplating the violation of the injunctions of the Holy Quran and the Prophet's Sunnah. It was a great source of satisfaction to the judges that no everlasting peace and security could be achieved in the Kingdom without strict adherence to the Quran and the Hadith of the Prophet, God's peace be upon him.

The second reason lay in the fact that the affairs of the state were in the hands of an astute ruler, King Abdul Aziz, who lived a long time in the heart of the Arabian Peninsula mixing with the tribes and familiarizing himself with their customs, traditions and behaviour. Since he conquered Riyadh in 1319 H (1900) he spared no efforts to unify his country and his efforts were crowned with success in 1352 H (1933) and that struggle gave him the experience and skills necessary for the successful handling of his country's affairs. He also got to know people whom he could trust for their strong personality and re-

sourcefulness and he relied on these to carry out his policy and relentlessly impose security throughout the country. Thus, rebels were severely punished, highway bandits were wiped out and escapees were chased and brought back to justice. Trust in the measures enforced by the state led to the spread of security under the reign of King Abdul Aziz.

A senior civil servant in Jeddah confirmed that the role played by the King in unifying the five scattered regions into one country was a tremendous achievement in the annals of history. An ex-governor for Bedouin Affairs stated that when security was well established in the country and people started to distinguish between right and wrong, the King adopted a milder policy in place of the previous harsh legislation, and replaced the ruthless governors with others instructed to be more sympathetic and understanding with the people. As he was familiar with the customs of each region he sent a governor suitable for that particular area. This ex-governor cited the following example to prove his point: in the township of Al'ula, which abounds with fresh water springs, fertile land and palm trees, the people had a specific custom of selling the springs and the trees and the transactions were recorded on small sheets of paper. In due time palm trees, cultivated land and springs grew in value and serious disputes arose because the official courts did not recognize these "small written documents". When the King heard of the complaints he ordered that these documents should be officially recognized.

The same administrator cited another example: the people of Al'ula, Wajih, Aflaj and Wadhba belonging to the tribes of Bali, A'nza, Juhaina and Huweitat used to have credit business dealings with the merchants of other towns. Disputes arose due to the intricate wording of the written contracts, which read: "I owe so-and-so and I intend to pay him back when it rains", or "I owe so-and-so and I will repay him when pasture turns lush and green"; these disputes presented difficulties for the judges.

When the matter was brought to the King's knowledge he indicated that these transactions were customary and since they did not contradict the Shari'a they should be recognized as valid. Such was the policy of the King towards his subjects, based on familiarizing the people gradually with order and its many aspects. He also organized the government administrative system, created new police stations in villages and employed scientific methods which facilitated life in many respects. The police system was improved. He encouraged education, built new schools and attached great importance to the teaching of Islamic religious tuition in schools. His son, the late King Feisal, followed his father's example and modernized the Saudi society in the full sense of the word. He paid special attention to all stages of education and colleges and universities were established. The police force received more attention and were provided with equipment, vehicles and manpower, thus improving their image in the eyes of the public as it became more capable of maintaining security and order.

The new policy aimed, first of all, at achieving social peace, which contrasts with the deteriorating security situation of today's societies with their changeable positive laws. This also indicates the correlation between the implementation of the Shari'a and the low crime rate in this country.

It was mentioned in the introduction of this research that a study of the statistics of the offences committed in this country shows how low the crime rate is, compared with that in other countries.

On reviewing the statistics in a given number of countries and comparing it with the low rate of .022 in Saudi Arabia in 1392 H. (1972) it clearly shows the unique security situation enjoyed here.

The following table illustrates the crime rate of offences reported to the police per thousand of the population in the countries listed.

TABLE 11

Crime Rate Per Thousand of the Population

Country	Population	Number of Crimes	Rate Per Thousand	Year
Spain	15 519 899	112 700	7.26	1972
Australia	12 728 461	307 360	75.00	1971
Federal Republic of Germany	6 167 350	2 572 530	41.71	1972
Indonesia	123 000 000	181 407	1.47	1972
Italy	54 642 318	1 136 808	20.08	1972
Bahrein	200 000	7 479	37.393	1972
Tunisia	520 000	41 633	8.00	1972
Denmark	4 975 653	301 142	60.52	1972
Rumania	21 000 000	16 858	5.08	1972
Sudan	1 700 000	42 444	2.50	1972
Ghana	9 000 000	96 505	10.72	1972
France	51 914 600	1 675 507	32.27	1972
Venezuela	11 300 000	77 628	6.86	1972
Finland	4 598 000	292 084	63.52	1972
Canada	21 984 000	1 648 817	75.00	1972
Korea	33 167 000	412 137	12.42	1972
Kuwait	800 000	9 983	12.48	1972
Kenya	12 067 000	57 229	4.74	1972
Lebanon	2 500 000	1 121 972	448.77	1972
Libya	2 257 037	6 780	3.00	1972
Mali	5 000 000	1 661	0.33	1972
Morocco	17 109 133	70 013	4.90	1972
Japan	107 332 000	1 396 032	13.00	1972

Source: International Criminal Police Organization. Interpol International Crime Statistics, 1971-1972, and other National Statistics.

We hope to publish comparative and detailed statistics of various countries and their counterparts in the Kingdom of Saudi Arabia.

Dr. Abdullah Banyan

I do not suppose there is any need to pay tribute to Dr. Sa'aty's efforts in preparing this valuable research. I must admit that I personally have benefitted a lot from listening to it. Dr. Sa'aty's contribution was quite remarkable. However, I would like to put forward some queries at least for my own benefit and to add a few comments to the research.

First — I noticed in the introduction (paragraph two) the researcher said that there is a wide gap between the material, human and social aspects of modern civilization. I believe that there is no contrasting relationship between the material and human aspects, in my opinion the human aspects also progress with the advancement of the material element though not at the same rate. Hence the material element usually makes a more rapid progress than the social aspects.

Second — the statistics regarding the crime rate in the past ten years (Table No. 1) indicate a noticeable decrease. I would like to have a more detailed analysis of the figures in order to obtain a scientific significance.

There is a strong correlation between the rate of material civilization and industrialization on the one hand and the crime rate on the other. In other words, the faster the industrialization process the higher the rate of crimes. As rural dwellers leave their homes to migrate to industrial centres they often acquire undesirable behaviour patterns. Yet, although social life in our industrial centres is intricate the urban dwellers also enjoy social peace and stability. There is a remarkable decrease in the crime rate despite the cultural, industrial and economic progress.

This phenomenon is worthy of consideration. At the UN Conference on Crime Prevention held in Geneva last year I pointed out this particular phenomenon which cap-

tured the attention of a number of commentators. Undoubtedly this is due to the strict implementation of the Shari'a in all aspects of our society.

I wish the researcher had analysed this phenomenon instead of just providing statistics. His presentation of the interviews is not an analytical view that links the past with the present in a scientific perspective. It would have been better if the researcher had given us the age-groups of the offenders and made a comparison between crime rates in the rural and urban areas. I wish he had also elaborated on the efforts involving the economic and social development enjoyed nowadays. Furthermore, the researcher should have cast some light on the approach which he considers unique, namely the survey experience, but he did not fully explain what information he had collected through a specific technique.

In conclusion, I shall be remiss if I do not pay tribute to the efforts made by the researcher specially during the era prior to the reign of King Abdul Aziz. It is obvious that a researcher encounters many difficulties in undertaking a study that covers our vast sprawling country with remote centres of settlements.

Dr. Sa'aty

Thanks to my colleague, Dr. Abdullah Banyan, for his remarks. Let me go through these one by one. As for his first remark, I did not in fact state that there was a correlation between social backwardness and economic or material progress in societies but that attention has been focussed on the material rather than the social aspect of modern civilization. The discrepancy has led to cultural lag which is manifested in the imbalance between the two aspects in our modern societies. Dr. Abdullah Banyan indicated that he would have liked my study to include some

explanations, but eventually he ended up by answering these in two points:

(1) the difficulty of conducting social researches in a vast country like this where these types of studies have just started;

(2) lack of any previous statistics that could facilitate scientific analysis.

There are no data regarding industrialization and urban growth to enable us to discover their relationship with the crime rate and therefore the apparent low rate cannot be ascribed to these. As Dr. Abdullah has mentioned, urban development in modern societies has resulted in an increased crime rate but this is true for societies which lead a life pattern different from ours which abides by the Shari'a. As he remarked, despite urban and industrial development in Saudi Arabia, the crime rate has not increased as might have been anticipated by social researchers.

I agree with Dr. Abdullah that we are in need of further studies to elucidate this unique phenomenon.

Sheikh Mohammad Huweish

In the name of God and peace be upon His Prophet and those who follow his example. I would like to thank Dr. Farouk Abdul Rahman Mourad for his efforts in preparing this research which provides basic information regarding public security in the Kingdom.

The material and details of the research are of high quality, particularly the statistics that show the degree of security and order the Kingdom enjoys in all its regions and at all times.

Statistics undoubtedly play a vital role in many countries for the planning of their economic, social and security systems. Apart from the accurate statistics extracted from

official sources, the research dealt with the situation in the Kingdom prior to the reign of the late King Abdul Aziz. Furthermore, he obtained information from a group of contemporary narrators who had first-hand experience of the King's integrity, wisdom and justice. The section relating to the historical aspect of the research dealt with the economic and public security conditions, as well as the system of government and the juridical procedures at that time. The researcher has also succeeded in shedding light on that era of Saudi history which otherwise would have been neglected. The researcher very skilfully described the chaos, social instability, illiteracy and backwardness which characterized that period.

In a way, this research may be regarded as a valuable document paying tribute to the achievements of King Abdul Aziz who made this country a shining and living example for the world to follow.

By implementing the Shari'a, Saudi Arabia aims at achieving the lofty objectives of an ideal society based on virtue and social co-operation.

Those who lived in the Kingdom and who were acquainted with the Arabian tribes, their traditions, chauvinism and pre-Islamic hostilities, and now witness the prevalence of security and stability, cannot but conclude that such an achievement was realized only by the strict application of the Sharia in all aspects of life, i.e. government, politics, administration, domestic relations, family structure, business transactions and social relationships.

The fact that the crime rate is very low in the Kingdom is proof of what the implementation of the Shari'a can do to a country, which achieves security, prosperity, serenity and stability as well as a sense of safety and confidence.

Consequently, the insurance companies which had opened branches in the Kingdom ended in bankruptcy, because application of the Shari'a guarantees a secure and care-

free life to every citizen and resident. By applying the divine Shari'a the State accepts responsibility for the security, safety and livelihood of all its people.

A quick glance at the Kingdom statistics provides clear evidence of what a country achieves in terms of advantages enjoyed as a result of strict implementation of the Shari'a. A comparative study of the statistics of the Kingdom with those of other countries reveals the difference in the number, magnitude and types of crimes committed. I would like to emphasize the fact that the Saudi people's spiritual linkage with the Shari'a stems from their wholehearted faith in God the Almighty.

Therefore, the convicted accepts the penalty imposed without any grudge, no matter whether this is a Hadd, Ta'zir or other kind. Even if he appeals against it he eventually resigns himself emotionally and morally to the punishment prescribed by God, the judge is merely an instrument of the execution of His law. In this connection I have two remarks to make:

First: This research is focussed on the implementation of the Shari'a from the time King Abdul Aziz unified the country although, in fact, the Shari'a was implemented even before then. Saudi Arabia has passed through three stages: (a) the era of Imam Mohammad Ibn Saud; (b) the era of Feisal Ibn Turki; (c) the era of King Abdul Aziz.

What actually happened was that because of lack of strict and total adherence to the Shari'a, instability and unrest did not completely disappear and the crime rate went down only when the Shari'a was strictly adhered to.

At the time of the Prophet and under the four Caliphs the Shari'a was fully implemented, and therefore there was security, justice, equality and order. Under the Umayyad Caliphate the application of the Islamic criminal legislation was sometimes interrupted and consequently chaos, confusion and instability arose.

Second: I believe that if the research had included some events that took place before and after the reign of King Abdul Aziz this would have been very helpful. He could have given us examples from books, newspapers, tapes, radio talks or facts narrated by the people who lived during the reign of King Abdul Aziz.

Once again I would like to thank Dr. Mourad for his invaluable efforts in the preparation of this research.

Dr. Farouk Abdul Rahman Mourad

Thanks to Sheikh Mohammad Huweish for his comments, additions and explanations. As regards the two points raised by him:

(1) I cannot deny that the Shari'a was implemented even before the era of King Abdul Aziz although I concentrated on the period when the country was finally unified and the Shari'a was totally implemented in all the regions. Our study is not extensive enough to cover the early Islamic days when the Shari'a was strictly adhered to, when, as has been revealed by history a great civilization emerged as a result of the implementation of the teachings of Islam.

(2) I purposely left out detailed accounts of the facts before and after the unification of the Kingdom. Whatever examples I have cited are only a small part as described in books of literature, history and politics.

Dr. Hassan Sa'aty

I am indebted to the Ministry of Interior for honouring me with the opportunity of contributing to this symposium. The objective of the research is to demonstrate the effect of the implementation of the Islamic criminal legislation on Saudi society. The researcher must follow the research either vertically or horizontally: the vertical method

is based on the statistics about the era before the reign of King Abdul Aziz and afterwards, which were not available; the horizontal method is based on the statistical comparison between existing conditions in the Kingdom and in other Arab countries where the Shari'a is not implemented.

Due to lack of the necessary statistics we have to adopt the vertical method.

I owe Dr. Abdulla Banyan my thanks for his comments which enabled me to give an idea about the research to those who did not have the chance of going through the paper.

In fact, the scientific approach is that the crime rates should be given according to specific age-groups. According to Islamic society the statistics should cover ages ranging from fifteen to sixty, other statistics exist for minors under fifteen. Lack of statistics poses a serious problem for researchers, so Arab countries are urged to lay special emphasis on conducting criminal statistics. It is not enough that the police have criminal reports as these should be processed into accurate and scientific data. At any rate, these statistics reveal the situation in the Kingdom compared with other countries where the Shari'a is not implemented. There is no point in comparing urban and rural areas, as that might imply that one of the two does not implement the Shari'a. But we know that Islamic criminal legislation is implemented throughout the country irrespective of location.

The research comprises four sections: In the first, under "Research Plan", the details were discussed in full. We endeavoured to base our research on scientific grounds with the object of elaborating the comprehensive concept of the implementation of the Sharia. We outlined the scope of the research and ensured that the interviewees met the prerequisite that they came from all the five regions of the Kingdom. The method of research which we termed "survey experience" required recognition of the pheno-

menon, indicating the crime rate in different areas. This was accomplished by obtaining as much information as possible from various sources. The research covered all occupations and trades, including tribal raids, meaning that even criminals were interviewed.

Later the social introspection, which is a rather new method, was used. Introspection is a mental process whereby a person recalls past experiences which cannot be labelled right or wrong, it is a verifiable hypothesis and therefore we have endeavoured to gather our information from a wide variety of sources. Although the people interviewed came from locations far apart from each other yet their descriptions did not differ regarding security, economic and social conditions before and after the reign of King Abdul Aziz. This matter is of great importance from the methodological and scientific points of view.

Questionnaires were the instrument used to achieve our objectives. These were not of the "Yes" or "No" type, but contained probing queries to elicit information from the subjects.

Section two deals with the economic conditions of the Saudi people before the unification and relates to life, locality, outstanding characteristics, educational and religious conditions and the local government system.

Section three deals with public security concerning crimes and their penalties before the reign of King Abdul Aziz.

Section four deals with public security after unification under King Abdul Aziz and the implementation of the Islamic criminal legislation.

I would like to reply to the query raised by a western colleague and by Dr. Banyan as regards modernization, especially in Riyadh which is the largest city in Saudi Arabia.

The answer is that Muslims are ordered to adhere to the tenets of the Shari'a by enjoining what is right and forbidding what is wrong, and Islamic education itself di-

scourages Muslims from abiding by any teachings, whether eastern or western, apart from the divine Shari'a.

I was asked about the plight of the numerous aliens who reside in the Kingdom, my reply is that they knew beforehand of the conditions here and that they must abide by the teachings of the Shari'a.

Before concluding I would like to make two brief remarks:

First: those who come here to work know quite well that for the sake of their own livelihood they must not do anything contradictory to the Shari'a.

Second: temptations are limited in Saudi society; for example, prohibition has minimized the occurrence of alcohol consumption and the limited amount of alcohol smuggling is controlled; chastity, which characterizes the Muslim Saudi woman, dissuades sexual offences which are common in other countries.

One of my colleagues drew my attention to the fact that the court defence system does not exist in this country: once an offender is convicted there is no reason why he should be defended; in other countries an offender usually hires a very famous lawyer to help him escape from justice and even provide him with an alibi so that he can be acquitted.

Thank you all for listening to me.

Dr. Farouk Abdul Rahman Mourad

I deeply appreciate Dr. Hassan Sa'aty's contribution to the research.

Dr. Abdul Wahab 'Ata

I would like to discuss two points: the first was referred to by Dr. Hassan Sa'aty that the statistics available

do not include juveniles. The Shari'a devotes special attention to the upbringing of children in order to have any problems corrected at an early age. This is in line with the Prophet's Hadith that all men are responsible for their subjects.

Shari'a also gives attention to the penalties inflicted on juvenile offenders. Legal liability in the Shari'a maintains that the offender is responsible for his crime. The Ministries of Justice and Interior jointly deal with juvenile offences in line with the Islamic legislation applied in the Kingdom.

Special procedures are followed to ensure that juvenile trials are conducted in a quiet atmosphere. It is noteworthy that juvenile offences are too few and trivial to be included in statistics.

As regards social services in Islamic society, the participants in this symposium did mention that Islam is a comprehensive system which endeavours to prevent crime before its commission. Reference has already been made to the different methods the Shari'a implements to prevent Muslims from crime commission. Needless to say, Islam provides a social security scheme to help the needy, but I have noticed that this has not been given due attention, in fact modern societies take a lot of credit for providing a welfare scheme which was practised fifteen centuries ago by the Islamic State.

Sheikh Nasir Ibn Hamd Rashid

The period between the second and the beginning of the third stage of the Saudi State witnessed the deterioration of the social system, chaos, insecurity and lack of religious awareness, specially amongst the Bedouins, all of which led to the weakening of conscience resulting in the growth of crime.

When King Abdul Aziz established the Kingdom he focussed his attention on spreading religious teachings, he built new villages for the Bedouins and assigned a religious instructor to each in order to strengthen awareness. Although credit for the unique Saudi crime prevention administrative system goes to King Abdul Aziz, we attribute this blessing to God in the first place. Thanks to religious awareness, trade, agriculture and handicrafts have thrived in an unprecedented manner. This proves that Islam is the best social system without which chaos and instability would prevail.

Professor Peter Lejins

Mr. Chairman, fellow-researchers, Dr. Mourad and Dr. Hassan Sa'aty.

As already mentioned by my colleagues I too would like to express my appreciation for this most illuminating symposium. The hospitality extended to us is an unforgettable experience.

As I am not an expert on Islamic legislation I have benefitted a lot from this symposium. My knowledge on the theories of criminal legislations has been expanded, and I have been particularly interested in the discussions on these over the past five years in a number of countries. Of course, I will always cherish the conclusions reached in this symposium.

The main issues discussed in this seminar were:

First — Present increase in crime rate and juvenile perversion all over the world together with the population explosion present real problems for the concerned authorities. These items could provide interesting material for future researches.

Second — The researches dealing with crime increase reveal inadequacy and discrepancies. The procedures taken

by the police and the concerned authorities in many countries have become almost ineffective but despite this fact there is a resurgence of religious and spiritual beliefs in some parts of the world, particularly here. However, there is lack of co-ordination in matters concerning moral values; fortunately, however, this lack of harmony is absent in this country and in this symposium. The doctrine of enjoining what is right and forbidding what is wrong is of vital importance for the creation of a peaceful society. I firmly believe that such teachings have transformed the Saudi society into an oasis of security and harmony amidst a world beset with insecurity and disintegration. What can be done to remedy this social rupture in such societies? What is right and what is wrong in these societies? There are no specific answers that can satisfy these questions. For example, in the United States of America the Constitution clearly outlines what is right and what is wrong, but people often cannot grasp this and therefore they do not abide by it. The major problem is whether individual freedom can be maintained in a society whose members do not share the same criteria of values.

Is this possible or will crimes succeed in undermining our societies? This is actually the conclusion reached in this symposium, namely that the proper understanding of moral values is the optimum method whereby crimes could be overcome and controlled.

The experience we have gained in Riyadh as regards crime control is:

First: The Muslim society, through its rulers, maintain that a person's conduct and ideals are closely intertwined.

Second: This value system is not subject to specific qualities but based on spiritual, moral and religious values. The social institutions that adopt this value system reflect their steadfast belief in establishing an ideal society on these solid grounds.

Professor Ahmed Abdullah Al-Babluli

Praise be to God and peace be upon His Prophet. The Sharia was revealed by God as a divine guide for humanity at all times and in all places. The Quran was revealed to uplift, with its comprehensive and sublime teachings, humanity to the heights of honour and dignity. The Holy Book commands Muslims to obey and respect their parents, show compassion towards their kinsfolk and lend a helpful hand to the needy. Muslims are admonished against the commission of any offence, such as theft, highway robbery, murder, adultery and alcohol-drinking, that might lead to disintegration of the society.

Crime has deprived humanity of the political, social and economic advantages it has reaped and drained societies of their physical and human resources. Narcotics and other drugs, alcohol-drinking, usury and embezzlement are some of the principal causes behind crime.

Religious devotions and worship play a major role in combatting crime, they cannot stay side by side, they are like fire and water. A society beset by crime cannot be delivered except by devoting itself to religious devotions.

I do hope that the participants in this symposium will seriously probe the modern methods of crime detection, such as finger-prints, foot-prints, voice recording, photographs and blood groups.

As for foot-tracking and drawing lots, these were verified by some scholars who relied on the incident involving Zayd Ibn Haritha and his son Osama. Shaikhan * quoted 'Aisha saying: "The Prophet entered our home beaming with delight saying that Mahram Al-Mutazhamy, the foot-tracker, could not distinguish between Zayd's and Osama's foot-tracks". The following incident provides an example

* Shaikhan means Bukhari and Muslim in their two books of Hadith (Editor's note).

of drawing lots, Muslim quoted 'Imaran Ibn Husays saying that before dying a man freed six slaves. The Prophet placed these in three pairs and drew lots resulting in the release of only two.

I wish the Saudi Government could organize such symposium more often in order to satisfy those interested in the field of crime prevention.

May God give us guidance and success.

Mr. Nasir Dawlatabani

Mr. Chairman, it is a great pleasure and honour for me to participate in this symposium. Certainly the experience acquired by the Kingdom of Saudi Arabia in the field of criminal legislation is a source of great pride for Islam. I extend my gratitude to the Kingdom for having organized this symposium.

Needless to say, the participation of learned scholars has proved quite beneficial and their exchanges of viewpoints have been significant in developing the crime prevention methods. The aspirations of many governments is to achieve an efficient method to combat crime, to which this symposium has contributed a great deal.

On my part and on behalf of my colleagues I express my appreciation to the Kingdom for the ideals it stands by.

Mr. Peider Könz

Thank you, Mr. Chairman, I shall be brief with my comments.

I shall acquaint the UN Social Defence Research Institute, of which I am Director, with the scientific and methodological points presented by Messrs. Farouk Mourad and Hassan Sa'aty. A number of researches presented in this symposium will be adopted by my Institute as a topic of study for crime prevention. I shall invite the Saudi Go-

vernment to join us, with twelve other countries, on a programme to explore crime trends. This matter is of great scientific importance, particularly with regard to urban populations. It would be very useful if we had accurate figures and statistics showing the extent of crime and its low rate compared with other countries.

I believe that the subject of Islamic criminal legislation still needs further elaboration from the economic point of view. We also need more elaborate researches to complement those already conducted in the south of India and other parts of the world as regards ideological classification in combatting crime.

Emphasis is laid on the relationship between the economic aspect and the vertical and horizontal trends of crime. We should also investigate any correlation between the researches conducted here and in other parts of the world.

Professor Lode van Outrive

Thank you, Mr. Chairman.

I really admire the high quality of topics discussed at this symposium and the contributions made by Farouk Mourad and Hassan Sa'aty.

I am not attempting to go into the subject of statistics, because in order to do that we must have other figures for comparison.

I have some queries: What is the importance of these statistics? Statistics mean real crime rate. Do the figures tally with crimes in the world on the whole, particularly in the third world?

Is there any explanation as to why there are no statistics relating to the penalties of some significance?

Then I would like to repeat the question I asked this morning as to whether or not there is a decrease in Ta'zir

crimes. Are there statistics on Ta'zir crimes? I appreciate the inclusion of social, economic and political analyses in your researches. I trust that western countries will follow suit.

I believe that it is very important to make this addition both quantitatively and qualitatively. I have other queries on the qualitative methods in researches. Does the analysis concern the twenty-two persons interviewed? Do you envisage the continuation of such experiments regarding the types of crimes committed? I believe this is an important point if you are going to have qualitative analyses.

As regards the analyses on public security and the examples cited, may I ask if there is verified evidence in this research? This may exist in theory only. What sort of instructors and counsellors should we contact to improve public security?

There is another point I would like to raise: this afternoon while I was having a stroll in a shopping centre in Riyadh during prayer-time I noticed that all the stores were locked tight. Previously I had been told that the implementation of the Shari'a provides sufficient security for stores to be left unlocked, in fact I was surprised at this contrast.

The implementation of the Shari'a requires further analyses covering not only the towns but villages and desert regions as well.

Mr. Abdul Rabmany

Mr. Chairman,

The Kingdom of Saudi Arabia merits our appreciation for having organized this successful symposium which has proved that the application of the Shari'a has considerably minimized crime in this country. It will also set an example for other Islamic countries to probe into the causes of a high crime rate. The cause will certainly be lack of imple-

mentation of the Shari'a and further because of non-application of modern scientific methods of investigation.

This morning's research on crime prevention shows that this symposium views this matter quite seriously. Once again I would like to congratulate the Kingdom of Saudi Arabia for having organized this symposium.

Professor Tawfeeq Ash-Shawy

Praise be to God and peace be on His Prophet. I would like to know if any data and statistics exist regarding recidivism.

The phenomenon of recidivism is quite common, particularly in developed countries, and criminologists regard this as evidence of the inefficiency of the existing criminal systems in those countries.

The researchers have not as yet identified the flaws in the contemporary criminal systems whereby the offender turns more criminal after imprisonment; they attribute this to a faulty prison and penalty system or the inefficiency of the whole criminal system. The Islamic criminal system, as mentioned before, falls into two categories:

First — prevention, commencing with upbringing, faith, morale and an economic and social system that dissuades a man from committing crime. The fact that the crime rate in this Kingdom is low is a proof of the feasibility of this part of the Shari'a and this phenomenon is unique in the world. In this connection, I would like to ask the symposium organizers to attach more importance to statistics.

I have heard the confirmation of the foreign participants that the preventive system of the Shari'a has been most successful and thus merits detailed consideration to serve as an example for other systems.

Second — the penalty system does not play a major role in Islamic penal legislation although in others it is

considered much more important and is, in fact, the only modern method. The fact that Islamic legislation attaches more importance to prevention is often criticized by outsiders.

The common idea is that corporal punishment has become obsolete and that it contradicts the modern principles of education. The younger generation is indoctrinated along these lines, and thus corporal punishment has been abolished in many countries and many American States.

Professor Bouzat stated this morning that capital punishment is the last penalty resorted to by modern societies but they assert that by abolishing corporal punishment, including flogging and beating, they have attained a great deal of progress.

I would like to draw the attention of those who criticize the Islamic system of corporal punishment to the fact that this system solves the greatest problem faced by developed societies, i.e. recidivism. It would be useful to have statistics on recidivism in the developed countries which resort only to the imprisonment of the offender. We all know how harmful prisons can be to the offenders and to society.

Conductor of Discussions

My thanks to Professor Tawfeeq Ash-Shawy and I now give the floor to Sheikh Saleh Al-Laheidan.

Sheikh Saleh Al-Laheidan

Praise be to God and peace be upon the Prophet, his kinsfolk and Companions. I would like to elucidate some points regarding court sentences referred to His Majesty the King or the Head of the State before their execution. I was asked if the King had the right to abrogate or miti-

gate any Kisas or Hadd sentence. The answer is that the King's role is purely an official routine and once a sentence is passed it is irrevocable and the King has no alternative but to approve its execution.

As for the punishments of amputation of the hand or stoning an adulterer to death, these may be considered brutal only by those who do not realize their good effects on society. But those who are well-versed in the Shari'a and the penalties will see the positive points of these penalties. If offenders are not restrained from committing crime due to lack of faith, the Shari'a sees that they are deterred by the punishments they deserve. During my long career as a judge I never came across one incident of an adulteress or adulterer being stoned to death on the testimony of others, but were on the basis of their own confession and their insistence on the penalty after being cross-examined by the judge. The procedures taken to establish adultery were those followed by the Prophet. In the Kingdom the judge usually attends the punishment of stoning. Should the offender go back on his confession the case is then referred to the court for re-trial. In establishing such a serious penalty the Shari'a displays great caution and accuracy in investigations. The public who attend the punishment of stoning would certainly think more than once before attempting to commit adultery.

Those who, through lack of faith, commit adultery sometimes confess their sin out of fear of retribution in the Hereafter, as Maiz and Ghamidiya did during the time of the Prophet.

Of course the number of those who are stoned is much less than the number of amputations. Those who consider hand amputation a brutal punishment should also realize the damage suffered by the victims who lose their possessions and substance of life. The Shari'a takes care of those who are helpless against the ruthlessness of thieves. Without strict implementation of the Shari'a social peace and security

could not exist, as was the case before the reign of King Abdul Aziz.

In the east or west where the Shari'a is not implemented people worry about their wealth and belongings, and they must have heavy security when these possessions are moved.

I would like to thank Dr. Hassan Sa'aty for the point discussed by him as regards lawyers in this country. People generally avoid protecting or defending an offender once he has confessed his crime and is convicted, for the act of defending a proved criminal contradicts the teachings of Islam. May God grant us His guidance on the right path and peace be upon the Prophet.

Conductor of Discussions

Thanks to Sheikh Saleh for his enlightening explanations. I would like to add one more point in the case of theft and adultery: if the offender goes back on his confession he will not escape punishment altogether, if there is enough evidence of the crime committed the penalty could be commuted from a Hadd to a Ta'zir punishment.

Dr. Giuseppe di Gennaro

Thank you, Mr. Chairman.

In my capacity as President of the UN Committee on Crime Prevention and Control, my colleagues have asked me to express our deep appreciation to the Kingdom of Saudi Arabia for their hospitality. I would like to speak also on behalf of Sir Arthur Peterson and those who could not be present here this evening.

As the task of our Committee is to draft the UN preliminary memoranda on criminal legislation, it plays a significant role in adopting measures to ensure the formulation of a criminal policy for the Member States with a

view to improving security conditions through international co-operation.

Our main objective is to introduce programmes in the criminal legislation in order to create a crime-free society.

It is difficult to identify the many causes that lead to spread of crime, but in my view the main cause is loss of faith amongst many people. The UN has outlined the value of the old heritage in every country of the world as well as the social and political means whereby crimes may be controlled and curbed. I believe that it is incumbent on the United Nations and the specialized organizations to collect information to assist crime prevention in the world.

Our Committee has had a great opportunity to become familiar with the cultural heritage of Saudi Arabia and this fact has enabled us to draw comparisons in order to make important decisions. Although we do not pretend to have collected all the necessary information, we intend to make the best use of methods that have been successfully employed in Saudi Arabia in the campaign against crime.

This Kingdom has illustrated that the Islamic Shari'a has succeeded in controlling crime and thus achieved social peace and security.

How can we link all this with the endeavours of international organizations in this field?

I would like to take this opportunity to express gratitude and appreciation to the Kingdom, the Ministry of Justice and the other authorities concerned with the conducting of this successful symposium.

Dr. Jamal Mahmoud

I shall deal briefly with two points:

First: It has been mentioned that the economic factor plays a major role in reducing crime rate. However, we

notice that the rate in developed and industrialized countries has risen more than in developing and poorer countries, whereas in Saudi Arabia, despite the increasing standard of living, the crime rate has remained low thanks to the implementation of the Islamic criminal legislation.

Second: I thank the researcher for his ingenious methodology whereby contemporaries of two eras were interviewed. His statistics could have also included the sentences relating to murder and other crimes. Capital punishment is a controversial issue between two schools of thought, while one school considers capital punishment a necessity, the other is not in agreement. Islam has a middle road between these two schools: according to the law of Kisas the murderer must be executed, but with the assent of the victim's kinsfolk the murderer could even be forgiven. Verily Islam does not transgress justice by any means.

With regard to assault short of murder statistics on the sentences passed were necessary in order to dispel any doubts held by sceptics about the validity of amputation to curb thefts.

Dr. Abdullah Banyan

I would like to elaborate on a point mentioned by Dr. Hassan Sa'aty in response to my statement that the statistics presented were not detailed enough to draw a parallel between the urban and rural areas. It seems that he misinterpreted my remark as he said that the comparison between the two areas does not come within the scope of the research and the comparison would mean that the Shari'a is implemented only in towns and not in rural areas.

As a matter of fact, what I meant was to confirm the unique experiment conducted by the Kingdom in the field of crime prevention and maintenance of the low crime rate in spite of modern development. This point was elaborated by Dr. Sa'aty himself. This unique experience has captured

the attention of criminologists in international conferences. When I referred to this point I said that if we had statistics for the rural and urban areas we could have understood that the crime rate is low in both areas, despite modern development, due to strict implementation of the Shari'a throughout the Kingdom. We want to prove to the world in terms of figures that the implementation is the main reason why, despite the increasing standard of living, the rate is low in the Kingdom and that it is the same in both urban and rural areas.

Mr. Jabany

Mr. Chairman, I appreciate the efforts made by the Kingdom in conducting this symposium and thank you for having invited us to attend it.

Conductor of Discussions

Now I give the floor to Professor G. Warren, Lecturer, Department of Criminology, Ottawa University, Canada.

Professor Warren

Thank you Mr. Chairman, I shall try to be brief. I have no questions to ask but I would like to congratulate Dr. Mourad for his valuable research.

I would also like to extend my thanks to the Kingdom of Saudi Arabia for having invited me to attend this symposium on the effect of Islamic criminal legislation on crime prevention, and much appreciate the hospitality accorded to us.

Conductor of Discussions

Would Dr. Mourad kindly comment on the points raised during the discussions?

Dr. Farouk Abdul Rahman Mourad

I have a brief statement to make about the latest statistics in the research. We apologize for the oversight of leaving "Morocco" instead of its Arabic version "Al-Maghrib", as the statistics were prepared in English. Most of the comments are valuable contributions that cast ample light on Islamic criminal legislation and how it is implemented in the Kingdom. With regard to Professor Logen's remark on the homogenous societies and the problem of security, Islam in fact did overcome this problem a long time ago. While the majority was entitled to rule, the minority was accorded sufficient freedom for practising its own religion and national rights within the unity of the majority's values, provided these values are just and fair and worthy of respect by the minority.

In response to Mr. Konz's invitation to join the twelve countries which have already agreed to submit their criminological statistics, the Kingdom of Saudi Arabia will consider this invitation bearing in mind that it has just recently started developing the methodology of collecting and processing criminal statistics. As for Professor van Outrive's comment, I would like to say that I am confident that our statistics reflect the offences that have actually taken place, for they are based on criminal reports and not on the sentences passed. This explanation was given in the Arabic but unfortunately omitted in the English version.

However, it must be admitted that no matter how accurate statistics are, some incidents are not reported and hence not included.

Our statistics include Hadd and Ta'zir crimes, such as murder, thefts, etc.

As already mentioned the Kingdom enjoys a great deal of security, one may travel anywhere in the country without fear of being molested or assaulted by highway robbers.

Due to technical difficulties we could not get the researches printed and distributed before the symposium was convened. As for Professor van Ostrive's remark about stores being locked in Riyadh at prayer-time, I would like to emphasize that these are run and operated along modern western lines although there is no need for taking such measures.

Regarding Dr. Tawfeeq Ash-Shawy's remark about recidivism I would say that this is a significant phenomenon closely related to social security.

The Ministry of Interior has embarked on a research on this phenomenon and some preliminary steps have already been taken. The information collected so far indicates that few criminals go back to their crimes and these are usually not serious offences, such as smuggling, drinking and dealing in alcohol, in other words, offences that are not related to murder or highway robbery, although I do not intend to say that dealing in alcohol is in itself a simple offence.

I agree with Dr. Jamal Mahmoud's comment when he mentioned that although Saudi Arabia was a poor country the crime rate was not high due to the implementation of the Shari'a. The application of qisas punishment and hand amputation has so remarkably deterred offenders that the country has been blessed with security and order. We have no statistics on crimes such as murder and maiming, although we are beginning to collect and process these using modern methodology. We have the data but it has not yet been sorted out. As Sheikh Saleh Laheidan said, hand amputation has now become very rare and as far as I know there has been only one incident since 1392 H (1972).

As for Dr. Banyan's comment on Sa'aty's remark, I would like to add that according to the preliminary statistics available, there is no difference in crime rate between towns and villages. You may note that I said "villages" and not the "rural areas" because we do not have any. We have

villages in the mountains, along the coast and in the desert. Although there is no difference in the crime rate, there is a difference in the type of crimes committed. In villages most offences are due to squabbles over minor matters and some incidents of murder between families over agricultural land.

Conductor of Discussions

My thanks to Messrs. Mourad, Sa'aty, the commentators and others who participated in this symposium. I would like to conclude that security can be achieved only through the implementation of the Shari'a, modern societies that resort only to positive laws suffer from social deterioration and a high crime rate.

Chairman

I give the floor to Sheikh Saleh Laheidan.

Sheikh Saleh Laheidan

Praise be to God and peace be upon His Prophet, his kinsfolk and Companions. I would like to elaborate on Dr. Mourad's statement regarding the majority rule: by this he meant that Muslims constituted, throughout the eras of the Islamic state, the majority of the population, the non-Muslims being the minorities whose rights were fully guaranteed and respected. Thank you.

Chairman

I believe Dr. Mourad meant exactly this. I thank all those who participated in today's discussions and I now give the floor to the Honourable Sheikh Rashid Ibn Khi-neen, Acting Head of the Saudi Delegation.

Sheikh Rashid Ibn Khineen

Praise be to God and peace be upon Mohammad, God's Apostle, and the other prophets who preceded him.

This symposium is about to be concluded after having listened to the fruitful researches on the definition of crime, sources of Islamic criminal legislation, determination of criminal responsibility and methods of proving the crime committed, influence of faith, doctrine of enjoining what is right and forbidding what is wrong, influence of Islamic education on crime prevention, method of enforcing penalty in the Kingdom of Saudi Arabia and, lastly, the effect of the implementation of the Shari'a on crime prevention in the Kingdom. All these topics were thoroughly dealt with and different viewpoints were exchanged.

After all this I trust the participants are now convinced of the sublimity of Islamic legislation and its success in combatting crime as evidenced by the low crime rate in the Kingdom.

On the basis of the Islamic faith and the topics presented in this symposium the Saudi Delegation suggests that a recommendation should be made to the peoples of the world to avail themselves of the Islamic Sharia in the best interests of humanity so that the evils of crime and deviation are abolished. May God guide us to the right path.

Chairman

Thanks to the Honourable Sheikh. I would like to draw the attention of the Rapporteur to this point when he submits the minutes to the participants tomorrow. During last Sunday's debate there was some misunderstanding regarding the translation of some Shari'a terms into English. Although we are confident of the high standard of our translators it is not easy to accurately convey the various nuances of some terms when translated into another language. Thus, it seems that it was not possible to give a precise translation of the Arabic

version. Therefore I have requested Dr. Mohammad Ibn Sa'ad Rasheed, who is fluent in English, to elucidate the misinterpreted terms. Before giving the floor to Dr. Rasheed I would like to remind you that the Ministry of Interior has prepared a brief report on criminal investigation and court procedures for the future reference of the participants.

Dr. Mohammad Sa'ad Rasheed

Actually I hesitated to comply with this request because I prefer to speak in Arabic for a number of reasons. But after reading the English version of the papers distributed and realizing the difficulty in the translation of some Shari'a terms I decided to speak in English on Islamic jurisprudence, legislation and ideals.

It is difficult to translate Shari'a terms from Arabic into English and vice-versa despite the high standard of the translators.

I would like to start with the Petition Bureau which is a very important institution in Islamic legislation. This Bureau is administered by men of Islamic legislation under the direction of Sheikh Mohammad Ibn Jubeir, who happens to be here now. Now why was this Bureau set up? The answer is that with the rapid progress made in the Kingdom, new courts and departments dealing with special problems have become necessary.

To what extent should judicial authority be autonomous? Although quite autonomous it is not completely separate from other authorities as maintained by Montesquieu. The system of completely independent authorities has been criticized from the practical point of view. I have dealt with this argument because of the long history of the independence of the Islamic courts. By independence we mean the non-interference by the executive authority in the affairs of justice. King Abdul Aziz gave special rights to the religious scholars by virtue of their qualifications in the

Shari'a. The Saudi judicature is as independent as any other authority in the land and resembles that of the United States of America and other countries. This means that the King has both duties and rights, as the concept of a monarch who has only rights and no duties is unknown to Islamic law. This means that the Islamic courts are independent and there are some procedures that help it remain separate. In brief these are:

First: Selection and nomination of judges of high standard, long experience, capability and loyalty. Judges must be graduates of Shari'a colleges and are appointed by a special Royal Decree. In addition to normal salaries judges are entitled to additional fringe benefits.

Second: The immunity enjoyed by judges means that they cannot be transferred or their services terminated by the executive authority, although the legislative authority itself depends on the prevailing governmental system.

Third: Saudi judges enjoy full protection by the law in order to retain their independence in judgements. Their immunity safeguards them against any form of abuse.

Fourth: Integrity and Impartiality — Judges are restricted as regards their judiciary position, they must be impartial, they cannot pass judgement on matters involving relatives, enemies or personal interests. The judge cannot have contact outside the court with either of the contending parties or their representatives. He cannot participate in any activities that may blemish his reputation, such as an occupation outside his portfolio.

I would like to give you some idea of the administrative system in the Kingdom. There are courts that handle criminal matters and examine specific cases and disputes; there are courts of summary jurisdiction with one judge; the Supreme Religious Court, which consists of seven grand judges, deals with serious offences and crimes;

there are also numerous courts of First Instance as well as two courts of Appeal, one in Riyadh and the other in Mecca, these are known as the Courts of Cassation and many judges are employed to deal with criminal and civil cases; cases related to murder are referred to the Supreme Court which revises the sentences passed by other courts.

How does this system operate? Well, it is quite difficult to distinguish between the preliminary questioning and interrogation regarding a given accusation as both are conducted by the police and are not subject to the jurisdiction of any judicial authority. In this sense there is a great similarity between the British and Saudi systems. In order not to violate the traditions of the Kingdom, the idea of forming a semi-judicial court for investigations was not pursued.

Litigious procedures could be taken by:

1. Individuals who wish to lodge a suit against another individual or authorities;

2. The police; bearing in mind that the Saudi judges conduct open trials in the interest of public morals, and they thoroughly examine all aspects of every case;

3. The presence of all parties concerned and the observance of justice and equality between the two contending parties.

The Prophet said that both contending parties should be present at the trial and each party should be given an equal opportunity to make his point, they should not talk loudly to each other, the poor and the weak should be given the same treatment as the rich and the strong.

4. Passing of judgement.

Each party has the legal right to defend his case. The court does not welcome large crowds in the court-house during the hearings and forbids side consultations which might affect the technical aspects of the trial. Once a crime

is firmly established with concrete evidence the sentence is passed at the end of the session. The defendant and the plaintiff should substantiate the points they want to make with concrete proof. It is worth noting that proof and evidence must be produced by the plaintiff particularly with regard to Hudoud crimes. Proof may be substantiated through the following:

- i) material evidence;
- ii) documentary evidence (exhibit);
- iii) witnesses.

A self-confessed offender should feel completely free to express his views without any restrictions and his confession should not be subject to any pressures. Custody, imprisonment or confiscation of property can not take place without a warrant.

As regards Hudoud crimes Sheikh Saleh Laheidan maintains that withdrawal of self-confession is permissible but in that case another trial is conducted. No consideration is given to anything arousing suspicion during the trial.

The fact that Islamic courts enjoy complete independence in Saudi Arabia makes it strong and forceful.

In Saudi Arabia the accused is innocent until he is proved guilty. This shows that every possible effort is made to ensure that justice is meted out.

Chairman

Thanks to Dr. Mohammad Sa'ad Rasheed for his explanation. I wish you all the best until we meet tomorrow. God's peace be upon you.

(The session was adjourned at 9.25 p.m.).

On Wednesday evening, Shawal 20, 1396 H (13 October 1976) at 5.20 p.m. the closing session of the symposium

sium was convened at the King Feisal Conference Hall, Ma'zir, Riyadh, under the chairmanship of H.R.H. Prince Ahmed Ibn Abdul Aziz.

Chairman

We start this closing session by expressing our appreciation to all the participants and those who took part in researches and discussions elucidating the advantages of the Islamic legislation and its implementation. We trust that these efforts will prove fruitful and beneficial to the whole world.

I give the floor to Dr. Abdul Wahab Al-Ashmawy, Rapporteur, to read the final report.

Dr. Abdul Wahab Al-Ashmawy

H.R.H. the Chairman,

Your Royal Highness and members of this symposium have accorded me a great honour by electing me as the Rapporteur of this symposium. From the outset I realized the magnitude of this responsibility. While performing my task I often resorted to our honourable Shari'a scholars for their assistance and guidance. I hope I have done the right thing.

FINAL REPORT
ON PROCEEDINGS OF THE SYMPOSIUM ON THE
EFFECT OF ISLAMIC LEGISLATION ON CRIME
PREVENTION

1. At the invitation of the Ministry of Interior of Saudi Arabia the symposium was convened in Riyadh from 16 to 20 Shawal 1396 H (9-13 October 1976) and was conducted under the auspices of the Arab Organization for Social Defence of the Arab League and under the supervision of the Research Centre for Prevention of Crime, Ministry of Interior, Saudi Arabia.

Delegations from Arab and Muslim countries, representatives from Arab and Islamic universities and a number of distinguished scholars from various parts of the world attended the meetings.

2. In order to implement policies to overcome crime and moral perversion the Government of Saudi Arabia organized and conducted this symposium, the main objectives of which were:

i. to illustrate how the Islamic Shari'a can overcome the crime problems of the modern world;

ii. to show the social and human advantages achieved by the implementation of the Islamic criminal legislation in terms of stability, justice and security;

iii. to encourage the study of effective solutions provided by the Shari'a to solve the problems that plague modern societies.

3. H.R.H. Prince Naif Ibn Abdul Aziz, Minister of Interior, graciously inaugurated the symposium. In his opening speech he indicated that the Sharia is the overall framework of life in the Kingdom, it is the source of moral strength as well as regulations and legislations and the source of social coherence. His Royal Highness expressed his desire to conduct similar symposia with a view to providing further information to interested parties. The same aspiration was shared by the Secretary of the Arab Organization for Social Defence. In his speech he underscored the Organization's intent to contribute to the efforts made all over the world to control crime and bring social peace and security to humanity.

4. The symposium commenced with the unanimous elections of H.R.H. Prince Ahmed Ibn Abdul Aziz, Head of the Saudi Delegation and Deputy-Minister of Interior, as Chairman of the symposium, Dr. Ibrahim Al-Awaji, Under-Secretary of the Ministry of Interior, as Vice-Chairman, and Dr. Abdul Wahab Ashmawy, Secretary of the Arab Organization for Social Defence as Rapporteur.

The symposium discussed the topics outlined in the following paragraphs, over a period of five days, resulting in some positive recommendations as recorded in this report.

5. Definition of Crime according to Islamic Law and Islamic Legislative Sources

This research, presented by Sheikh Mohammad Ibn Jubeir, concentrated on the definition of crime in Islam, which is the commission of a prohibited act or the omission of a commandment as ordered or forbidden by God and His Prophet. God has prescribed appropriate penalties for the crime perpetrated. This is done in accordance with the injunctions of the Quran which specifies the type of the penalty to be inflicted. Alternatively, judges or the authori-

ties in charge may pass judgements. In Islamic jurisprudence crimes are classified according to the extent of the damage done. In the Islamic Shari'a penalty is characterized by the fact that only the offender is held responsible and punished, offenders committing the same crime get the same punishment and legitimacy must be established; in other words, no punishment can be inflicted unless verified by the Quran or the Hadith. The research referred to the sources of the Islamic criminal legislation, which are the Holy Quran, Sunnah, Imams' Consensus of Opinions, Analogy, Universally Approved Opinions and Unspecified Interest of Common Good. The penalties related to Hudoud and all forms of assaults are determined by the relevant Quranic verses, and those prescribed for other crimes are determined in accordance with other sources. The flexibility which characterizes the Islamic criminal jurisprudence enables it to cope with any type of crime.

The Islamic criminal legislation leaves no room for the offender to escape punishment. Any crime of any description has its prescribed penalty in the Sharia. Penalty in the Sharia is a deterrent and repellent at the same time. The Islamic Sharia is anxious to preserve the five fundamentals of society, namely, religion, life, offspring, property and intellect.

6. Defining Criminal Responsibility according to Islamic Legislation

This research was presented by Dr. Mohammad Salam Madkour. It was made clear that criminal responsibility is based on moral grounds more so than on abstract laws. Punishable crimes are also sins forbidden by religion, and therefore avoiding a sin is not only compliance with the written commandment but it is also a sign of submission to God. Thus everybody is responsible for his own behaviour as the Quran says: "No soul shall bear another's burden".

Islam leaves the way open for the offender to repent so that he will not be stigmatized because of his crime, and after penalization he can return to society as a useful citizen.

7. *Means of Evidence in Islamic Law*

Sheikh Saleh Laheidan presented this research in which he pointed out that an offender's crime may be proved through the testimony of witnesses, self-confession or circumstantial evidence presented to the judge. However, the main methods of proving a crime are self-confession and the testimony of witnesses, the exception to this being circumstantial evidence. As the Sharia is based on justice and righteousness all means leading to the truth should be explored.

The researcher pointed out, however, that circumstantial evidence is the most delicate of all the methods, for this depends exclusively on the judge's estimation of facts and his own discretion and authority. Therefore it is necessary that circumstantial evidence be concrete and used for any offences apart from Hudoud and Kisas punishments.

The punishment meted out to a criminal is commensurate with the efforts made in investigating and proving the crime. Islam is very strict regarding the methods of proving a crime, but once it is proved there is no way for the offender to escape the punishment he deserves. A number of speakers indicated the moral nature of the Sharia as regards the detection of a crime. The integrity of witnesses is a high prerequisite in accepting their testimony. The lengthy discussions revealed that there is no contrast between modern methods of investigation and those followed by the Sharia, whose objective is to attain justice. Islamic criminal legislation has tremendous respect for man's dignity and forbids resorting to any physical or psychological

methods to force a confession as, according to the Sharia, a man is innocent until he is proved guilty.

The research goes into further details on circumstantial evidence and modern methods of detection of crimes.

8. *Effect of Religion against Crime*

This research was presented by Sheikh Manna Kattan who said that the Sharia, which is based on monotheism, fosters a continuous relationship between Man and his Creator.

This relationship deepens man's sense of responsibility and conscience towards other members of his society. Faith sublimates the soul and elevates the human spirit towards integrity, piety and honesty. Worships of any kind are effective means to understand the concepts of good and righteousness in man and lead him on the right path.

Submission to God rather than fear of authority is the real spiritual deterrent. The effect of religion is evident by considering the worldly punishment as an expiation of the offender's act, thereby purifying him in the Hereafter. This undoubtedly helps lessen the temptation of sinking into the abyss of sin, and so creates a sound and ideal society.

Many speakers at the symposium advocated intensifying the Islamic concepts and values because of their great influence on crime prevention.

9. *Effect of the Quranic Teaching "to enjoin the good and refrain from evil"*

This research, which was submitted by Sheikh Naser Ibn Hamd Ibn Rashed, elucidated that the doctrine of enjoining what is right and forbidding what is wrong is one of the most important pillars of education in Islamic societies where children are brought up on solid grounds of

virtue. Likewise, this doctrine is one of the means of forming a righteous public opinion and thus the individual, brought up in this atmosphere, tries to co-operate with society and not deviate from it.

10. *Influence of Islamic Education on Crime Prevention*

Professor Mohammad Qutb presented this research in which he underlined that the main scope of Islamic education is to create a good and virtuous citizen who is in constant touch with his Creator and his country and who endeavours to work for the welfare of society. A man who is brought up on the Islamic ideals avoids committing offences and sins. This explains why Islam urges parents and rulers to set a good example for the young.

Unlike the positive laws, the Islamic Sharia does not start with punishment and end by applying it. On the contrary, Islamic criminal legislation is closely related to faith, and societal social and moral systems. Penalty is inflicted when all other methods of prevention have been exhausted. This topic, because of its particular importance, calls for a separate symposium for further elaboration.

11. *Sharia Penalties and Ways of their Implementation in the Kingdom of Saudi Arabia*

This topic was dealt with by Sheikh Mohammad Ibn Ibrahim Huwesh as regards Kisas (execution), Diya (blood money) and Kaffara (expiation), and by Dr. Omar Matrak on Hudoud (fixed penalty) and Ta'zir (discretionary penalty). These punishments are implemented in the Kingdom as follows:

(a) Premeditated murder is punished by Kisas or Diya if the victim's heirs agree to it. In the case of murder by error the offender must give Diya to the victim's heirs.

(b) The punishments for Hudoud crimes are those prescribed in the Holy Quran and the Sunnah. They are: adultery, punishable by flogging or stoning to death; defamation, punishable by flogging; intoxication, punishable by flogging; theft, punishable by hand amputation; highway robbery, punishable by execution, crucifixion, amputation of one hand and one foot crosswise, or exile; apostasy, punishable by execution. The Court procedures and the execution of penalties are performed in accordance with the provisions of the Sharia. Other crimes, for which no specified Hadd or Kaffara is prescribed, are punishable by Ta'zir penalties which include flogging, imprisonment, fines, expulsion from occupation, exile and defamation in public.

The penalty the offender deserves is imposed at the discretion of the authorities.

All these procedures prove that no innocent person is punished nor can an offender escape justice and punishment. Furthermore, the Sharia endeavours to protect the offender's life until the last moment by trying to convince the victim's heirs to accept Diya in place of execution.

12. *Effect of the Implementation of the Islamic Criminal Legislation on Crime Prevention in the Kingdom of Saudi Arabia*

Dr. Farouk Abdul Rahman Mourad presented this research in which he elucidated the great difference between the era before the reign of King Abdul Aziz, when there was chaos and insecurity, and the period under his reign and afterwards when the country felt social justice, security and prosperity, thanks to the strict implementation of the Sharia on all ranks of the population without distinction.

The statistics presented in the research illustrate that the crime rate in Saudi Arabia in 1386 H (1966) was as low as .32 per thousand and continued to decrease until it

reached .18 per thousand in 1395 H (1975). The participants showed great interest in the statistics.

13. *Points of Agreement Among the Speakers*

a) A number of speakers pointed out that the antedated research methodology used in Islamic jurisprudence fails to unravel the principles of the Islamic Sharia which can be applied despite changed ways of living. Therefore, it was agreed that Islamic jurisprudence should be rendered in a way that could be easily understood by researchers as well as by those who seek to learn more about the Sharia, thus paving the way for countries to implement the Islamic criminal legislation.

b) The participants agreed with H.R.H. Prince Naif Abdul Aziz when he stated at the inauguration of the symposium that he hoped further symposia of this kind would be held, particularly on topics such as criminal responsibility and crime detection. The Arab Organization for Social Defence was requested to follow up the matter in co-operation with the Government of Saudi Arabia.

c) Many other Islamic countries expressed their intention to follow the example of Saudi Arabia in implementing the Sharia in all aspects of life and the idea was also adopted by a number of official and non-official bodies. The necessity of putting this idea into practice was stressed. Of course this would require a lot of initiative in conducting further studies and searches for the treasures of the Islamic jurisprudence. It was recommended that a committee be formed to follow the matter so that the Sharia could be implemented in the Islamic countries.

d) As very few reference books in foreign languages on the Islamic criminal legislation exist the symposium recommended that the Arab Organization for Social Defence, in co-operation with the Kingdom of Saudi Arabia and in conjunction with the United Nations and other interna-

tional research centres fulfil this commitment with a view to propagating the laws of the Sharia.

e) As the effect of Islamic education on crime prevention is very important, it was recommended that study of the Sharia be introduced at all stages of education so that the teachings are inculcated into the minds and hearts of the youth. It was also recommended that the Islamic countries should exchange these studies and to fully cooperate with their mass media and research centres.

14. The participants were cordially welcomed by H. R.H. Prince Fahd Ibn Abdul Aziz, Crown Prince of the Kingdom, who confirmed the Kingdom's support for such symposia. The members expressed their appreciation and gratitude to the Kingdom for convening the symposium.

Before closing, the symposium called upon the peoples of the world, the intellectuals, the men of law and decision-makers to resort to the treasures of the Islamic Sharia to save humanity from the evils of crime and perversion.

Praise be to God, the Cherisher and Sustainer of the Worlds.

Chairman

The Rapporteur will now read the appeal, then we shall have a break for prayer and afterwards we shall meet again to conclude our discussions. If anybody has any remarks to make they are welcome to do so after the prayer.

Dr. Abdul Wahab Al-Ashmawy

Appeal to the world

The Arab Symposium on the Effect of Islamic Legislation on Crime Prevention in Saudi Arabia was held in Riyadh in the month of Shawal 1396 H (October 1976) at

the invitation of the Kingdom of Saudi Arabia. The symposium discussed the provisions of the Sharia on criminal matters and the penalties prescribed by God, such as Hudoud, Kisas and others with a view to deterring offenders from committing crime.

The symposium elucidated how the Sharia laws are more comprehensive and flexible than positive laws. If the divine laws of Islam were adopted, stability, security and prosperity would prevail.

The participating delegates expressed their earnest hope that the Islamic criminal legislation be adopted in order to achieve the desired objectives.

To fulfil its commitment to this cause, the symposium strongly appeals to the nations of the world, intellectuals, men of law and decision-makers, to resort to the Islamic Sharia in order to attain social peace, security and prosperity.

Chairman

We shall break now to say our prayer, after which we shall meet again. (The session was adjourned at 6.0 and resumed at 6. 30 p.m.).

Chairman

The participants who want to speak are kindly asked to be brief as we have very little time left. All the comments and remarks will be recorded by the Rapporteur. Now I give the floor to Mr. Salem Kaswany, Assistant Deputy Minister of Interior, Jordan.

Mr. Salem Kaswany

Thank you, Mr. Chairman.

On behalf of my colleagues of the Jordanian Delegation I would like to express our gratitude to the Kingdom of

Saudi Arabia for having invited us to attend this symposium, and to express our appreciation for your cordial hospitality.

This symposium has proved that the preventive and penal aspects of the Islamic legislation are characterized by flexibility. After a period of chaos, instability and injustice the Islamic jurisprudence has regained its pioneering role in moulding the Islamic laws on solid grounds. Certainly the Kingdom of Saudi Arabia is much appreciated for its initiative in calling upon the nations of the world to follow its example.

I believe that the symposium has reached the following conclusive results:

1. The comparative studies between the Islamic Sharia and western positive laws will serve as a starting point for further explanations of the Islamic criminal legislation.

2. The symposium has succeeded in providing a legal and juridical outline for the legislators in the Arab and Islamic world. This should persuade them of the necessity of implementing the Islamic criminal law, and will undoubtedly have its effect on positive laws in those countries.

3. The field research work proved to the participants that, thanks to the implementation of the Islamic criminal law, the crime rate in this beloved country is very low.

I need not count all the positive results of this symposium but I must admit that I, as a participant, have benefitted a lot from the discussions.

I reiterate my thanks, on behalf of the Jordanian Delegation, to H.R.H. Prince Naif Ibn Abdul Aziz, Minister of Interior, for sponsoring and inaugurating this symposium, to H.R.H. Prince Ahmed Abdul Aziz, Chairman of the symposium, to Dr. Ibrahim Al-Awaji, Deputy Minister of In-

terior and Vice-Chairman who so ably conducted the sessions, to the Rapporteur, to all the commentators, participants, translators, employees of the Ministry of Interior and public relations personnel for their kind attention.
God's peace be upon you.

Chairman

My thanks to you.

Now I give the floor to Sheikh Mohammad Juleid, the Somali Delegate.

Sheikh Mohammad Juleid

Your Royal Highness,
Praise be to God and peace be upon His Prophet, his kinsfolk and Companions. Verily, compliance with the commandments of God and the injunctions of the Sunnah leads man to success and prosperity while disobedience to God drives him to misery and Hell. In this connection the Holy Quran says:

*" We have revealed for you
(O men) a Book in which
Is a Message for you
Will ye not then understand? "*

Chapter 21, verse 10.

and

*" And this is a Book
Which we have revealed
As a blessing: so follow it
And be righteous, that ye
May receive mercy "*

Chapter 6, verse 155.

and

*" O ye who believe
If you will aid
(The cause of) God
He will aid you
And plant your feet firmly.
But those who reject (God)
For them is destruction
And (God) will render
Their deeds astray
(From their mark) "*

Chapter 47, verses 7 and 8.

and

*" God will
Certainly aid those who
Aid His (cause); for verily
God is full of strength,
Exalted in Might
(Able to enforce His Will)
(They are) those who,
If we establish them
In the land, establish
Regular prayer, and give
Regular charity, enjoin
The right and forbid wrong
With God rests the end
(And decision) of (all) affairs "*

Chapter 22, verses 40 and 41.

and

*" And it was due from us
To aid those who believed "*

Chapter 30, verse 47.

As regards the People of the Book (Jews and Christians) the Holy Quran says:

*" If only the People of the Book
Had believed and been righteous,
We should indeed have
Blotted out their iniquities
And admitted them
To Gardens of Bliss.
If only they had stood fast
By the Torah, the Gospel
And all the revelation that was sent
To them from their Lord
They would have enjoyed
Happiness from every side "*

Chapter 5, verses 68 and 69.

The Quran also says:

*" If the people of the towns
Had but believed and feared
God, We should indeed
Have opened out to them
(All kinds of) blessings*

*From heaven and earth
But they rejected (the truth)
And We brought them
To book for their misdeeds "*

Chapter 7, verse 96.

and

*" (And God's Message is)
If they (the Pagans)
Had (only) remained
On the (right) Way
We should certainly have
Bestowed on them Rain *
In abundance "*

Chapter 72, verse 16.

The real cause of poverty, fear, weakness and dissension amongst Muslims is due to the fact that they do not abide by the tenets of the Quran and the Sunnah. Colonialism spared no efforts to discourage Muslims from adhering to the Sharia because otherwise the colonialist powers could not have divided and ruled the Islamic peoples. Unfortunately, those Satanic powers succeeded in their conspiracy by persuading the Muslims to forsake the Quranic teachings and follow the positive laws to the point that some Muslim weaklings say that the Sharia is impractical for this age. Of course this is a great fallacy. We must try to get Muslims back to their Holy Book and the Sunnah.

* Rain (literally water) stands for all kinds of blessings, material, moral and spiritual and the insight into higher things (Translator's note).

The Prophet said: "I have left you God's Book and my Sunnah to be guided by". The Quran says:

*"Truly God loves those
Who fight in His Cause
(In battle array), as if
They were a solid
Cemented structure".*

Chapter 61, verse 4.

The Prophet said in this connection: "Solidarity amongst Muslims gives them unity and strength".

Finally, I would like to thank the Kingdom of Saudi Arabia for the great services it renders for Islam and Muslims. May God bestow His mercy upon the Muslims.

Chairman

Now I give the floor to Professor Shazly Bouraquiba, Head of the Tunisian Delegation.

Professor Shazly Bouraquiba

Your Excellency the Prince,
Before starting my discussion I would like to express my sincere appreciation to the participants, and especially to the Kingdom of Saudi Arabia, the great Protector of Islam. I also owe thanks to the Vice-Chairman who conducted the meetings with great dexterity and ability and the Rapporteur, the pride of Muslim youth, and all the researchers, commentators and participants. Now I have two proposals to put forward:

i. after the participants return to their home countries they should brief their people on the topics discussed in this symposium through various media, such as the press, lectures and local seminars;

ii. the organization of periodical seminars before and during the pilgrimage season each year, at which the Islamic countries should be present to examine the subjects prepared by a committee specially created for this purpose.

Thank you.

Chairman

Thank you.

The floor is given to Professor Adnan Raouf Hassan, Head of the Iraqi Delegation.

Professor Adnan Raouf Hassan

Mr. Chairman, Respectable Participants,

On behalf of the Iraqi Delegation I express my thanks to the Government and people of the Kingdom of Saudi Arabia for their efforts to organize and conduct this symposium in order to reach the objectives desired by the Muslims in serving the divine Sharia. Likewise, we admire the researches and the comments helped in enlightening us about the sublime Sharia laws as regards crime problems and their combatting. I pray God to show us the straight path, the path of those whom He has favoured and not the path of those who earn his anger nor those who go astray, Amen. God's Peace, Mercy and Blessings be upon you.

Chairman

Thank you. Would Professor Idris Zarwaly take over?

Professor Idris Zarwaly

Mr. Chairman,

It was a great event for me to come here, the land to which we are so closely tied through religion, language and Arab fraternity, and to which we turn our faces many times a day (at prayer time). It also gives me great pleasure

to represent my country, the Kingdom of Morocco, at this symposium, on the invitation of the Government of Saudi Arabia. Needless to say the discussions proved beyond any doubt how the Islamic Sharia is effective at all times and all places.

It is worth noting that these discussions were shared by distinguished scholars representing both international organizations and non-Muslim countries. This Kingdom is undoubtedly a pioneer as regards the implementation of the Sharia in the interests of all, through the implementation of which Islam has regained its past glory, security, stability and prosperity. I join the others in extending my sincere thanks to the Kingdom for this blessed initiative and I shall go back home full of satisfaction and delight at the success of this symposium. God's peace be upon you.

Chairman

I give the floor to Dr. Ali Ahmed Mohammad Abu Bakr, Representative of Um-Durman Islamic University.

Dr. Ali Abu Bakr

First of all, on behalf of Um-Durman Islamic University, I would like to thank the Minister of Interior and all the organizers of this symposium for enabling us to attend and meet with the Delegations of the Islamic World. Although I missed the first part of the symposium because of circumstances beyond my control, I had the opportunity of going through the previous researches, and after listening to the final report I am quite satisfied that the Islamic legislation was dealt with from all angles. I am sure that the Muslim participants will not be content with the fact that they attended this symposium, but will also strive to have the legislation implemented in their own countries as well.

God's Peace, Mercy and Blessings be upon you.

Chairman

I give the floor to Professor Said Hikmat.

Professor Said Hikmat

On behalf of my colleagues of the UN Committee on Crime Prevention and Control, Criminal Legislation General Assembly, my country and myself, I extend my thanks to the Kingdom for inviting me to this symposium. Being a Muslim and a representative of my country, Iran, I would like to confirm that our Islamic people are seeking the social and economic system in the interests of world prosperity, but such a system cannot prosper without the inspiration of the Islamic laws. We hope that with the help of His Majesty King Khalid and the scholars in this Kingdom further symposia in this field will be held on a regular basis in order to expand understanding of the principle of the Islamic Sharia which is already in practice in the Kingdom of Saudi Arabia.

Thank you and I wish you all the best.

Chairman

Would Dr. Abdul Kareem Zeidan, Representative of Baghdad University, take over?

Dr. Abdul Kareem Zeidan

I believe that a positive result of this symposium would be the creation of a committee to prepare an encyclopedia on Islamic criminal legislation consisting of three parts:

i) First part: introduction to the Islamic criminal legislation, comprising the broad lines and the principles on which these legislations are based (incidentally most of these points were dealt with by the symposium).

ii) Second part: a detailed description of the Islamic criminal legislation on the pattern of a modern criminal law book.

iii) Third part: a glossary of the definitions and interpretations of Islamic law in simple language.

We must remember that in this way people would be more attracted to find out about Islamic legislation, especially when it is well presented and defined. I suggest that this encyclopedia be compiled within one year, and draft copies be sent to the members of this symposium for their comments, all of which will be collected and sent once again to the participants for further remarks. These will be studied in a symposium to give final approval to the project "Encyclopedia of the Islamic Criminal Legislation" in order to have it printed and published. Then I suggest that the Arabic version be translated into the main foreign languages and distributed to as many countries, organizations and universities as possible. God's Peace, Mercy and Blessings be upon you.

Chairman

Thank you, Dr. Zeidan, for your interesting proposal. Although all suggestions are recorded, I would appreciate it if you could put your proposal in writing.

Dr. Mustafa Al-Awaji

My thanks to God for bringing all of us to this gathering.

The eyes of the world are focussed on the Arab world for its oil, as this is the source of employment and prosperity. We praise God, not only for providing us with this oil, which is the backbone of modern industry, but also with the spiritual power that transcends materialism. We

can certainly let the world learn the moral, spiritual, religious, legal and social principles of the Islamic Sharia so that humanity can change from being materialistic to humanitarian, combining worldly and religious interests.

Those distinguished western scholars who participated in this symposium are well aware that there is no future for a world without a sound moral basis. It is time that the west imported these cultural and moral values in its own interest just as it imports the much needed oil from the Arab world. We shall welcome western scholars and researchers just as their petroleum and mineral engineers who come here looking for oil.

Therefore, we have to encourage researches on the Islamic Sharia and on social, moral and religious principles. Likewise, we should set up departments in foreign and Arab universities, financed by the Arabs, to propagate the Islamic Sharia to students of law. Furthermore, we must support the Arab Organization for Social Defence of the Arab League by augmenting its financial, human and technical resources through a separate fund.

Also we should not forget our fellow-Muslims in Asia and the Far East, who are strict Muslims and recite the Quran though they do not know Arabic. We should foster our ties with these and encourage the study of Arabic in their schools and universities.

On behalf of my colleagues, the participants in this symposium, I would like to express my sincere gratitude to the organizers. Indeed their efforts have been crowned with success. Peace be upon you.

Chairman

Thank you. I would like to bring to the notice of the Tunisian Delegate that seminars are held during the pilgrimage season under the auspices of the Ministry of Pilgrimage.

Now to conclude the discussions, the Rapporteur has a proposal to make.

Dr. Abdul Wahab Ashmawy

I propose that we send a cable to H.R.H. Prince Fahd Ibn Abdul Aziz, the Crown Prince, and another to H.R.H. Prince Naif Abdul Aziz, the Minister of Interior, expressing our sincere appreciation for their kind hospitality and cordial welcome.

Thank you, Mr. Chairman.

Chairman

Do you all agree to this proposal?
(Unanimously agreed).

Chairman

Thank you for your proposal. I would appreciate it if Dr. Ashmawy could draft the text of the two cables.

I trust that this will not be the last occasion on which we will get together, and that this will be followed by other symposia.

On my part, as Chairman of the symposium, I thank everybody who took part, including the researchers, commentators, participants and the staff in charge of the organization.

Now I give the floor to the Head of the Saudi Delegation to give a brief speech on behalf of the Kingdom.

Saudi Arabian Delegate

Praise be to God and peace be upon the Prophet.

I trust the participants will continue to promote the ideas and ideals of the Islamic Sharia, particularly as regards crime prevention. Let the world know about the success

of the implementation of the Sharia in this Kingdom in combatting crime.

I thank all my colleagues for their painstaking efforts for the success of this symposium.

I hope that I will see you again in similar gatherings in the interest of humanity. God's Peace and Mercy and Blessings be upon you.

Chairman

Now to conclude the symposium I wish you all a happy stay and to those who are leaving, a safe trip home. In the meantime, the Kingdom will be all too pleased to supply any facilities and services you may need. A scheduled programme has been prepared for tours to Mecca and Medina for those who have not as yet had the chance to visit these places.

As Chairman, and on behalf of Dr. Ibrahim Al-Awaji, as Vice-Chairman, we are much obliged to you for having placed your trust in us for conducting the symposium.

May God the Almighty grant you prosperity and success.

God's Peace be upon you. I hope to see you again, God willing (Inshallah).

(The session was concluded at 7.10 p.m.).

PARTICIPANTS IN THE SEMINAR ON THE EFFECT
OF ISLAMIC LEGISLATION
ON CRIME PREVENTION

Researchers

1. Sheikh Mohammad Ibn Ibrahim Ibn Jubeir
2. Dr. Mohammad Sallam Madkour
3. Sheikh Saleh Ibn Mohammad Laheidan
4. Sheikh Manna Khalil Kattan
5. Sheikh Nasir Ibn Hamad Rasheed
6. Professor Mohammad Qutb
7. Sheikh Mohammad Ibn Huwesh
8. Dr. Omar Mutrak
9. Dr. Farouk Abdul Rahman Mourad

Commentators

1. Dr. Mohammad Ibn Sa'ad Rasheed
2. Dr. Hussein Hamid Hassan
3. Dr. Abdul Karim Zeidan
4. Sheikh Manna Khalil Kattan
5. Sheikh Ali Mehanna

6. Sheikh Abdul Qadir Shaibat-ul Hamd
7. Sheikh Mohammad Sabbagh
8. Sheikh Mohammad Ghazali
9. Dr. Mansour Hamd Malik
10. Sheikh Abdullah Ibrahim Ibn Fantookh
11. Sheikh Ibrahim Dabbasi
12. Dr. Abdul Rahman Qasim
13. Sheikh Sa'ad Ibn Mohammad Ibn Faryan
14. Dr. Mohammad Ahmed Saleh
15. Sheikh Atiyya Mohammad Salem
16. Sheikh Mohammad Ibn Huweish
17. Dr. Abdullah Banyan
18. Dr. Hassan Sa'aty

Conductors of Discussions

1. Sheikh Abdullah Ibn Manee'
2. Dr. Rashid Ibn Rajih Shareef
3. Justice Mohammad Jamal Marsafawi
4. Dr. Hamad Kobaisi
5. Sheikh Ibrahim Ibn Nasir
6. Sheikh Rashid Ibn Khunayn
7. Dr. Abdullah Omar Naseef
8. Dr. Abdul Rahman Qasim
9. Dr. Mohammad Ibn Sa'ad Rasheed

DELEGATIONS

Hashemite Kingdom of Jordan

- | | |
|--------------------------|--|
| 1. Prof. Salim Kuswani | Assistant Under-Secretary,
Ministry of Interior |
| 2. Major Khalaf Ibn Hani | Director of the Royal Police
Academy |
| 3. Mr. Hani Mansour | Ministry of Justice |

State of Bahrein

- | | |
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| 1. Sheikh Abdul Rahman
Mohammad Rashid
Aal Khalifa | Under-Secretary, Ministry
of Justice and Islamic
Affairs |
| 2. Sheikh Abdul Rahman
Jahir Aal Khalifa | Judge |
| 3. Prof. Ibrahim Hamdi | Advisor, Ministry
of Interior |
| 4. Prof. Issa Abu Khuwa | Public Prosecutor |
| 5. Mohammad Rafa'at
Mohammad Lutfi | Legal Advisor, Ministry
of Interior |

Republic of Tunisia

- | | |
|-------------------------|-------------------------------------|
| 1. Dr. Shazli Buraquiba | President of the Court
of Appeal |
|-------------------------|-------------------------------------|

Kingdom of Saudi Arabia

1. H.R.H. Prince Ahmed Ibn Abdul Aziz Deputy-Minister of Interior
2. Dr. Ibrahim Mohammad Al-Awaji Under-Secretary, Ministry of Interior
3. Sheikh Rashid Ibn Khunain Under-Secretary, Ministry of Justice
4. Dr. Abdul Wahab Attar Under-Secretary, Ministry of Labour and Social Affairs
5. Prof. Nasir Ibrahim Zaid Director-General, Department of Law
6. Dr. Farouk Abdul Rahman Mourad Crime Prevention Director-General
7. Maj. Gen. Sa'eed Suleiman Kurdi Head of Liaison Department, Crime Prevention Bureau
8. Sheikh Suleiman Mohwis Head, Public Rights Department

Democratic Republic of Sudan

1. Maj. Ahmed Fath Rahman Ahmed Central Investigations Bureau
2. Capt. Abdullah Ewadhi Public Relations Department, Ministry of Interior
3. Dr. Mamoun Mubarak Aman Central Investigations Bureau

Democratic People's Republic of Somalia

1. Sheikh Mohammad Julaid Karsha Director of Religious Affairs, Ministry of Justice
2. Sheikh Ali Salan Sheikh Eed Alam Judge, Court of Appeal, Banadir, Mogadisho
3. Sheikh Ahmed Sheikh Ali Ahmed Judge, Court of Appeal, Banadir, Mogadisho

Republic of Iraq

1. Maj. Gen. Adnan Raouf Hassan Director, Legal Department
2. Lieut. Col. Sami Abdul Hamid Raouf Head of Traffic Police
3. Capt. Abbas Hashem Baday Saiidy Instructor, Police Academy

Sultanate of Oman

1. Maj. Saeed Rashid Kalbani Police Officer
2. Maj. Ahmed Masoud Police Officer
3. Naser Sharif Mohammad Jawad Second Secretary, Ministry of Foreign Affairs

Palestine

1. Mr. Abu Hisham P.L.O. Representative in Saudi Arabia

CONTINUED

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|--------------------------------|---|
| 2. Mr. Fathi Abdul Latif Badra | Officer in charge of the Administration of Traffic Department in Saudi Arabia |
| 3. Nasir Mahmoud Hijawai | Information Section, Traffic Department |

State of Qatar

- | | |
|-----------------------------------|---------------------------------------|
| 1. Hammash Nasir Mohammad Sahouni | Assistant Director, Police Commission |
|-----------------------------------|---------------------------------------|

State of Kuwait

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|---------------------------|--------------------------------------|
| 1. Mohammad Khalid Mahlad | Police Officer, Ministry of Interior |
|---------------------------|--------------------------------------|

Arab Republic of Egypt

- | | |
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| 1. Mohammad Nasruddin Kamel | Counsellor, Court of Appeal |
| 2. Dr. Jamal Addin Mohammad Mahmoud | Counsellor, Legislation Department, Ministry of Justice |
| 3. Wajih Saeed Mustafa Hanafi | Attaché, Ministry of Foreign Affairs |

Kingdom of Morocco

- | | |
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| 1. Oores Zarwaly Warthy | Senior Advisor to the Court of Appeals, Maknas |
|-------------------------|--|

Islamic Republic of Mauritania

- | | |
|-----------------------|----------------------------------|
| 1. Hamad Salim Addood | Deputy Head of the Supreme Court |
| 2. Talib Khiari | Deputy of Sheikh Muthanty |

Arab Republic of Yemen

- | | |
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| 1. Ali Muqbil Ghuenim | Director-General, Criminal Investigation |
| 2. Ahmed Ibn Ahmed Abdullah Bahluli | Bureau of Religious Verdicts (Fatwa), Ministry of Justice |
| 3. Mohammad Mahmoud Luqman | Legal Advisor, State Legal Department |

Iran

- | | |
|--------------------------|------------------------------|
| 1. Nasir Dawlat Abadi | Judge, Teheran Supreme Court |
| 2. Dr. Mohammad Muhadhab | |

Islamic Republic of Pakistan

- | | |
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| 1. Abdul Karim Nada | Secretary, Ministry of Law and Parliamentary Affairs |
| 2. Ghulam Kangard | Ministry of Justice |
| 3. Shhory Abdul Rahman | Ministry of Justice |

Republic of Turkey

- | | |
|--------------------------|-------------------------------|
| 1. Muzhaffar Ardam | Deputy-Minister of Interior |
| 2. Ali Naji Tanjar | Director, Ministry of Justice |
| 3. Jihan Bambak Ogheelou | Director, Ministry of Justice |
| 4. Bahaddin Ahloun | Director, Ministry of Justice |

DELEGATION OF ARAB ORGANIZATION
FOR SOCIAL DEFENCE

- | | |
|-----------------------------------|--|
| 1. Dr. Abdul Wahab
Ashmawy | Secretary General of the
Organization |
| 2. Lieut. Col. Amir
Mukhtar | Director General, Arab
International Bureau for
Crime Prevention |
| 3. Maj. Gen. Ahmed
Amin Hadiqa | Director General,
Anti-Narcotics
International Bureau |
| 4. Nassar Wadee' Nassar | Chief, Translation Section,
Arab International
Bureau |

Delegates Representing Universities

- | | |
|--|-------------|
| 1. <i>Medina Islamic University</i> | |
| Sheikh Abdul Qadir
Shaibat-ul Hamad | Lecturer |
| 2. <i>King Abdul Aziz University</i> | |
| Dr. Mohammad Omar
Zubeiry | Rector |
| Dr. Abdullah Naseef | Vice-Rector |

3. *King Feisal University*

Dr. Haseeb Hassan Lecturer
Sannarai

4. *Imam Mohammad Ibn Saud Islamic University*

Dr. Abdul Aziz Abdul Dean, Faculty of Sharia
Rahman Saeed

5. *Riyadh University*

Dr. Mohammad Ahmed Professor, Faculty
Suleiman of Medicine

6. *Academy of National Security*

Abdullah Hassan Senior Lecturer
Bahazeela

Mohammad Nasir Lecturer
Suheibani

7. *Damascus University*

Dr. Mohammad Fadhil Rector

8. *Teheran University*

Dr. Abdul Qasim Karji Lecturer

9. *Um-Durman Islamic University*

Dr. Ali Ahmed Abu Dean, Imam Abu Haneefa
Bakr Faculty of Islamic
 Studies

INDEX OF PART TWO

Seventh Symposium

Sharia Penalties and Ways of their Implementation in
the Kingdom of Saudi Arabia
Part (1) Kisas, Diya and Kaffara
Research presented by Sheikh Mohammad Ibn Ibra-
him Huwesh
Discussions of the symposium.

Eighth Symposium

Sharia Penalties and Ways of their Implementation in
the Kingdom of Saudi Arabia
Part (2) Hudoud and Ta'zir
Research presented by Dr. Omar Matrak, Under-Se-
cretary of Ministry of Justice
Discussions of the symposium.

Ninth Symposium

Effect of the Implementation of the Islamic Criminal
Legislation on Crime Prevention in the Kingdom of Saudi
Arabia

A field research presented by Dr. Farouk Abdul Rah-
man Mourad, Director-General, Research Centre for Pre-
vention of Crime, in association with the Research Team.

Final Report

Appendix: Names of the Delegates representing coun-
tries and organizations and distinguished scholars and per-
sonalities who participated in the symposium.

DISTINGUISHED SCHOLARS WHO ATTENDED
THE SYMPOSIUM

1. Professor Lode van Outrive
Head, Criminal Law Department, University of Brussels, Belgium
2. Sir Arthur Peterson
Permanent Under-Secretary of State, Home Office, London, U.K.
3. Professor Peter Lejins
Director-General, Institute of Criminology, University of Maryland, U.S.A.
4. Dr. Mustafa Ooji
Counsellor, Court of Cassation, Beirut, Lebanon
5. Dr. Giuseppe di Gennaro
Counsellor, Supreme Court, Rome, Italy
6. Dr. Jorge Montero Castro
Director, Latin American Institute for the Prevention of Crime and the Treatment of Offenders, San José, Costa Rica
7. Professor Pierre Bouzat
Dean, Faculty of Law, University of Rennes, France

8. Dr. Jamal Marsafaway
Head, Court of Cassation,
Cairo, Egypt
9. Professor Guy Warren
Head, Criminology
Department, University
of Ottawa, Canada
10. Mr. Peider Könz
Director, UN Social Defence
Research Institute,
Rome, Italy
11. Dr. Gerhard Mueller
Chief, Crime Prevention
and Criminal Justice
Branch, United Nations,
New York, U.S.A.
12. Professor Hassan Sa'aty
Professor of Sociology, Ein
Shams University, Cairo,
Egypt
13. Mr. Ramanand Singh
Attorney-General,
Kathmandu, Nepal
14. Professor Said Hikmat
Professor, University of
Teheran and Member of
Parliament, Teheran, Iran

END