

Crime Prevention In Islam



Bangladesh Islamic Law Research and Legal Aid Centre

CRIME PREVENTION IN ISLAM

[Proceedings of the Symposium held in Riyadh]

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**Bangladesh Islamic Law Research
And Legal Aid Centre**

CRIME PREVENTION IN ISLAM

Proceedings of the Symposium held in Riyadh, KSA

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Publisher's Note

All praise is due to Allah. May peace and blessings be upon His Messenger Muhammad, his family and companions. The content of this publication is an English version of the proceedings of the Seminar on "The Effect of Islamic Legislation on Crime Prevention in Saudi Arabia", held in Riyadh, Capital city of Kingdom of Saudi Arabia, from 9 to 13 October 1976. The papers reflect the ideas of Islam on the issue of preventing crime based on the Islamic Law.

Bangladesh Islamic Law Research and Legal Aid Centre is decisively working for disseminating knowledge on Islamic Law and the judiciary in the society. The Centre is a registered research and legal aid organization, working since 1995 for the above purpose. The Centre publishes the original writings, research works, translation of important original text of famous works and seminar proceedings, which are used as references for teachers, students, researchers, jurists, lawyers and thinkers.

The Centre is going to publish this compilation of the selected articles focusing the issue of crime prevention in Islam. The compilation will, as we think, go a long way to create awareness among all citizens regarding the importance and necessity of the Islamic Shariah Code on crime prevention, which is undoubtedly a crucial need of the day.

We believe that the subject matter of this book will be able to adequately address the aims and goals as well as meet the demand of the truth seekers. Every scholar has the right to propagate the knowledge on Islamic

legislation to all people. Through this they can help make the human society free from delinquency and crime, which afflict the humanity in the modern days to an unprecedented degree in human history.

Finally, we hope that once the teachings of this book are taken into account sincerely by the policy makers it will create an opportunity for them and all other peace loving people throughout the world in tackling the problem of delinquency and crime wave in modern society in a pragmatic manner. And then, we believe that, the Islamic legislation will be regarded as the main source of peace and welfare to humanity.

We believe that the concerned scholars will find in this book the answers to their query in this field. Moreover, the book may awaken the stakeholders and concerned people to rethink about the necessity of establishing the Islamic Law on crime prevention to have a peaceful and crime free society.

We are thankful to all concerned individuals for publishing this book. May Allah reward them properly in this world and hereafter. May Allah grant us mercy and accept this humble contribution in the cause of Islam.

Sincerely

Advocate Muhammad Nazrul Islam

General Secretary

Bangladesh Islamic Law Research And Legal Aid Centre

Preface

The world today experiences a horrific scenario of crime, violence, killing and various forms of evil attempts to destroy the very fabrics of social order. The peace, tolerance, harmony and human dignity are under alarming threats. The lives of millions around the world have been ruined and are going through an unbearable syndrome of traumatic suffering and ruthless devastation. The misuse of modern technology has given rise to a global institution of a criminal order which is the most critical challenge to the humanity.

The world is dearly searching for ways to prevent, combat and control the raging storm of crime in various ways including enactment of laws and strengthening the law enforcing agencies. As crime and punishment are subjects that concern humanity, Islam has fully dealt with them. Islam 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. According to Muslim perception, Islamic civilization and social order are based upon revealed principles. In Islam punishment and retribution laws are applied under specific rules and regulations.

The laws and judgement set by man for himself and which do not comply with Allah's injunctions deal with crime after its commission rather than with its prevention. 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. Islam addresses the matter in all its aspects with an integrated approach: 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.

In Islam, the development of the set of religious and moral precepts is collectively known as Shariah. It covers almost all aspects of life. The penal system of Islam has some moral influence on the individual and social consciousness of Muslims, even when it is not enforced. This influence may act as a constraint that inhibits crime and consequently contributes to the low crime rate of Islamic societies. Islamic criminal laws are, in fact, deterrent in nature.

The application of Shariah has become a matter of controversy in Islamic societies. The secular forces strongly oppose the enactment and implementation of Islamic Shariah while the Islamic revitalization camps emphasize bringing Islamic values to bear in regulating society. However, there are difference of opinions on the interpretations of Islamization and Shariah. Traditional Islamists are loyal to the reading of Shariah that was developed by early Muslim scholars and jurists. Modern Islamists, in contrast, criticize the thesis of the continued validity of the juristic rulings developed by early scholars to respond to the necessities of their age. There is, of course, in Islam scope for new research and rulings.

During recent decades the socio-economic structure of Islamic societies has been modernizing and has changed dramatically. Religion, however, has

remained an influential force in the social life of Muslims. They still show great concern for obeying Allah's will and observing Quranic teachings in their everyday life. It seems that the voices of modern Islamists have had louder echoes than before. Nonetheless, the modernist approaches to Islamic revitalization tend to present a more moderate interpretation of Islamic law.

If religious sentiments, in a general sense, function to control criminality, then it may be argued that when the level of development (modernity) and other variables affecting crime are controlled, perhaps Islamic societies will continue to experience lower crime rates than their counterparts.

This book is a product of collection of number of articles produced by Islamic scholars that contains Islamic legislation and its implementation relating to crime prevention in Islam. All the essays were presented in an international symposium held in Riyadh, KSA organized by the Government of the Kingdom of Saudi Arabia. 16-21 Shaawal 1396 A.H. [9-13 October 1976]. Experts of international organizations, researchers, judges and scholars of different countries from all over the world participated in the symposium.

This book ends with an appeal to all Bangladeshi readers to benefit from the teachings of Islam regarding crime prevention and make efforts to apply these laws through the competent authority to our society with a view to enjoying the much needed peace, security and stability.

Dr. Mohammad Ayub Miah

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Definition Of Crime According To Islamic Law And Islamic Legislative Sources

Shaykh Muhammad Ibn Ibrahim Ibn Jubair*

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:

- 1) Prophetic teachings "Sunnah" supplementing the Quran
- 2) Consensus of jurists' opinions "Ijma' "
- 3) Analogy "Kias"
- 4) Equity "Istihsan"
- 5) Legally unsettled questions of common interest "Maslaha Mursala."

For fourteen centuries, generation after generation, the learned Doctors of Islam and Jurisprudents 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

* President of the Court of Appeal, Kingdom of Saudi Arabia (1976)

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 Allah who is aware of man's needs and means of reforms that such a glorious civilization was possible.

﴿أَلَا يَعْلَمُ مَنْ خَلَقَ وَهُوَ اللَّطِيفُ الْخَبِيرُ﴾

Should not He Who has created know? And He is the Most Kind and Courteous (to His slaves) All-Acquainted (with everything).
(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 daily 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", crime treatment and crime control.

Crime according to Islamic law

The Arabic word crime "Jarima" is derived from the root "Jurm" 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:

﴿وَيَا قَوْمِ لَا يَجْرِمَنَّكُمْ شِقَاقِي أَنْ يُصِيبَكُمْ مِثْلُ مَا أَصَابَ قَوْمَ نُوحٍ﴾

"And O my people! Let not my Shiqaq cause you to suffer the fate similar to that of the people of Nuh (Noah)".

(Chapter 11, verse 89)

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:

﴿وَلَا يَجْرِمَنَّكُمْ شَنَاَنُ قَوْمٍ عَلَىٰ أَلَّا تَعْبُدُوا اللَّهَ إِنَّهُمُ آخَرُونَ لِلتَّقْوَىٰ﴾

And let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety. (Chapter 05, verse 08)

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:

﴿إِنْ تُبْدُوا هَيْبَةً أَوْ تُخَفُّوهُ فَإِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا﴾

"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 Allah'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 Allah 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 Allah'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 Allah 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 Allah cannot tolerate shortfalls on the part of single individuals or groups of people.

According to Islamic legislation meting out punishments is one of Allah'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'etat.

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

Allah'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:

﴿ إِنِّي مَعَكُمْ لَئِنْ أَقَمْتُمُ الصَّلَاةَ وَآتَيْتُمُ الزَّكَاةَ وَآمَنْتُمْ بِرُسُلِي وَعَزَّرْتُمُوهُمْ وَأَقْرَضْتُمُ اللَّهَ قَرْضًا حَسَنًا لَأُكَفِّرَنَّ عَنْكُمْ سَيِّئَاتِكُمْ وَلَأُدْخِلَنَّكُمْ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ فَمَنْ كَفَرَ بَعْدَ ذَلِكَ مِنْكُمْ فَقَدْ ضَلَّ سَوَاءَ السَّبِيلِ ﴾

I am with you if you perform As-Salat (Iqamat-as-Salat) and give Zakat and believe in My Messengers; honour and assist them, and lend to Allah a good loan. Verily, I will remit your sins and admit you to Gardens under which rivers flow (in Paradise). But if any of you after this, disbelieved, he has indeed gone astray from the Straight Path. (Chapter 05, verse 12)

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:

﴿ وَلَا تَعْتَوُوا فِي الْأَرْضِ مُفْسِدِينَ ﴾

Nor do evil, making corruption and mischief in the land.

And Prophet (PBUH) has said:

Do not do others any harm, nor cause any harm to be done to others.¹

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

1. Musnad Ahmad, Hadith No-7222

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 eighty 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 (kisas) 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 Allah's prerogative not to tolerate shortfalls from man. These crimes are: Apostasy; Attempted coup d'etat; 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 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 Allah'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 etc 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 wife of another man. He believed that bribery was a constraint to ordinary administration procedure. 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 and verse 33 as follows:

﴿إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا
أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ﴾

The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled 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 Allah? 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:

﴿إِنَّ الَّذِينَ يُجِبُونَ أَنْ تَشِيخَ الْفَاجِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ أَلِيمٌ فِي الدُّنْيَا
وَالْآخِرَةِ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ﴾

Verily, those who like that (the crime of) illegal sexual intercourse should be propagated among those who believe, they will have a painful torment in this world and in the Hereafter. And Allah knows and you 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 (PBUH) 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:

﴿ وَمَنْ يَزِدْ مِنْكُمْ عَنْ دِينِهِ فَيَمُتْ وَهُوَ كَافِرٌ فَأُولَئِكَ حَبِطَتْ أَعْمَالُهُمْ فِي الدُّنْيَا
وَالْآخِرَةِ وَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ ﴾

And whosoever of you turns back from his religion and dies as a disbeliever, then his deeds will be lost in this life and in the Hereafter, and they will be the dwellers of the Fire. They will abide therein forever. (Chapter 02, verse 217)

6. Alcohol-Drinking

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

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْرَبُوا الصَّلَاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ ﴾

O you who believe! Approach not As-Salat (the prayer) when you are in a drunken state until you know (the meaning) of what you utter. (Chapter 04, verse 43)

and

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رَجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ۝ إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَن ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنتُمْ مُنْتَهُونَ﴾

O you who believe! Intoxicants (all kinds of alcoholic drinks), gambling, Al-Ansab, and Al-Azlam (arrows for seeking luck or decision) are an abomination of Shaitan's (Satan) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful. Shaitan (Satan) wants only to excite enmity and hatred between you with intoxicants (alcoholic drinks) and gambling, and hinder you from the remembrance of Allah and from As-Salat (the prayer). So, will you not then abstain?

(Chapter 5, verses 90 and 91)

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 Allah 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 among Muslims and distract them from the remembrance of Allah. 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 (PBUH) has said in this connection that in a state of exclusive submissiveness to Allah, a true believer is not to touch a single drop of alcohol.² He further described wine-drinking as the deadliest sin because it induces man to evil deeds. Caliph Othman (RA.) is reported to have said:

إِيَّاكُمْ وَالْخَمْرُ فَإِنَّهَا مِفْتَاحُ كُلِّ شَرٍّ

Beware of wine, for it is the root of all evils.³

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, and then slept with the woman, then killed the boy, then burned the book and at last he knelt to the idol.⁴ This story

2. Saheeh Al-Bukhari, Hadith No-2343

3. Sunan Al-Baihaqui Al-Kubra, Hadith No-17117

4. Sunan Al-Baihaqui Al-Kubra, Hadith No-17117

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 Muhammad (PBUH) 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 Muhammad (PBUH) 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 Shariah which were endorsed by the Prophet (PBUH) 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 followings:

- 1) The Holy Book (The Quran)
- 2) The Sunnah (Prophetic reports)
- 3) Ijma (The Consensus of Opinion)
- 4) Kias (The Analogy)
- 5) Istihsan (Equity)
- 6) Maslaha Mursalah (Textually Unspecified Interests of the Public)

- 7) Avoidance of Harm (Sad Al-Dharai')
- 8) Compatibility of Means and Ends (Istishab)
- 9) 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.

1) The Quran (The Holy Book)

The Quran is the divine word of Allah revealed to His Apostle Muhammad son of Abdulla by the Angel, Gabriel, in the Arabic language to verify that Muhammad is Allah's Messenger. It is the chief source from which Islamic law is derived and it is the root of all other sources of Islamic legislation. Abdulla Ibn Omar (RA.). (Well known companion of prophet PBUH and a jurist) says that he who teaches the Quran has caught a glimpse of prophethood in his heart. Also Al-Shatby (a famous Maliki jurist-teacher of Muslim Andalusia) in his book "Al-Muwafaqat" says:

"The Holy Quran is in spirit and character the epitome of Shariah (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 Allah or salvation except through the Holy Quran".

All these need not to be expressly stated or evidenced since it is all embodied in the religion of Islam. However, those who wish to comprehend all about the Shariah and probe into the details of Islamic law should take it as a life-long companion. Classifications of the Quranic rules:

- 1) Rules relevant to the Islamic faith: Belief in Allah, 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 Allah 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 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, dignity, 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 (RA) 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 Allah'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:

﴿ وَالْجُرُوحَ قِصَاصٌ ﴾ "And wounds equal for equal".

(Chapter 05, verse 45)

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:

﴿ وَلكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ ﴾

And there is (a saving of) life for you in Al-Qisas (the Law of Equality in punishment), O 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 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:

﴿ إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ
يُعْطِكُم مَّا تَدْرُكُونَ ﴾

Verily, Allah enjoins Al-Adl⁵ and Al-Ihsan⁶, and giving (help) to kith and kin⁷: and forbids Al-Fahsha⁸ and Al-Munkar⁹, and Al-Baghy¹⁰, He admonishes you, that you may take heed. (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 Muhammad did not utter things of his own whim or fancy. "It is naught else but a divine inspiration sent down on him".

2) The Sunnah (Prophetic reports)

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

- 1) Whatever Prophet Muhammad (PBUH) uttered on different subjects and occasions.
- 2) The actions performed by the Prophet, such as saying the prayers five times a day.

5. i.e. justice and worshipping none but Allah Alone - Islamic Monotheism.
6. i.e. to be patient in performing your duties to Allah, totally for Allah's sake and in accordance with the *Sunnah* (legal ways) of the Prophet (PBUH) in a perfect manner.
7. i.e. all that Allah has ordered you to give them e.g., wealth, visiting, looking after them, or any other kind of help, etc.
8. i.e. all evil deeds, e.g. illegal sexual acts, disobedience of parents, polytheism, to tell lies, to give false witness, to kill a life without right, etc.
9. i.e. all that is prohibited by Islamic law: polytheism of every kind, disbelief and every kind of evil deeds, etc.
10. i.e. all kinds of oppression.

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 (PBUH) does not seem to have qualified the witness given by a man and two women. The Sunnah explains what is meant by "Qasama"¹¹ and the procedures by which Judgements are ascertained on evidence or refuted on suspicion. In conclusion, the Prophet (PBUH) 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.

3) Ijma' (The Consensus of Opinion)

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

11. 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

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 judicial 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-Shafi 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 (R.A.)¹².

4) Kias (The 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 identical incidents necessitate identical judgements. The Glorious Quran applies

12. The second Caliph succeeding Prophet Muhammad (PBUH) who used to refer controversial issues to them.

the principle of equality to identical cases and identical occurrences are equally judged. In the Quran the Almighty Allah says:

﴿ أَقَلَّمْ يَسِيرُوا فِي الْأَرْضِ فَيَنْظُرُوا كَيْفَ كَانَ عَاقِبَةُ الَّذِينَ مِنْ قَبْلِهِمْ دَمَّرَ اللَّهُ عَلَيْهِمْ
وَالْكَافِرِينَ أَمْثَلَهَا ﴾

Have they not travelled through the earth, and seen what was the end of those before them? Allah destroyed them completely and a similar (fate awaits) the disbelievers.

(Chapter 47, verse 10)

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

﴿ أَمْ حَسِبَ الَّذِينَ اجْتَرَحُوا السَّيِّئَاتِ أَنْ نَجْعَلَهُمْ كَالَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ سَوَاءً
مَحْيَاهُمْ وَمَمَاتُهُمْ سَاءَ مَا يَحْكُمُونَ ﴾

Or do those who earn evil deeds think that We shall hold them equal with those who believe (in the Oneness of Allah Islamic Monotheism) and do righteous good deeds, in their present life and after their death? Worst is the judgement that they make.

(Chapter 45, verse 21)

In another context Allah says:

﴿ أَمْ نَجْعَلُ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ كَالْمُفْسِدِينَ فِي الْأَرْضِ أَمْ نَجْعَلُ الْمُتَّقِينَ
كَالْفُجَّارِ ﴾

Shall We treat those who believe (in the Oneness of Allah Islamic Monotheism) and do righteous good deeds, as Mufsidun¹³ on earth? Or shall We treat the Muttaqun (pious), as the Fujjar (criminals, disbelievers, wicked, etc)?

(Chapter 38, verse 28)

Shafi's friend, Al-Muzani 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

13. Those who associate partners in worship with Allah and commit crimes.

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 opinion that Analogy is undoubtedly employed for passing judgements on Ta'zir crimes for which no defined punishments are described by Allah 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 (PBUH) 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 everyone's 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 clearly 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 Muhammad allowed Muaaz Ibn Jabal (RA) to exercise his own individual judgement which is but one aspect of intellectual thinking. In the well-known letter addressed to Abu Musa Al-Ashariy

(RA.), Omar Ibn Al-Khattab (RA) 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 (PBUH) said of one charged with wine-drinking: "Beat him 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 (RA.) 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 Allah's exclusive domain.

5) 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 jurists 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.

6) Maslaha Mursalah (Textually Unspecified Interests of the Public)

In the terminology of basic jurisprudence "Maslaha Al Mursalah" 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 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 kinds of difficulty. Allah says in the Holy Quran:

﴿وَمَا جَعَلْ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ﴾

And He has not laid upon you in religion any hardship.

(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 (RA.) maintained that the punishment for adding water to milk (which is considered a fraud) should be 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 abounding 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. Muhammad Idn Sa'ad Al-Rasheed

Praise be to Allah and blessings and peace be on Muhammad, 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 Shaykh Muhammad Ibn Jubair, 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. Hussain Hamad Hasan, 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 Shaykh Muhammad Ibn Jubair. 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 wrong-doing such as, envy and hatred of somebody who does not deserve it, are considered as crimes punishable in this world and in the hereafter. The more precise definition of crime is committing a prohibited act punishable by fixed punishments "Hudoud" or 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 as punishment is explicitly defined in the Quran or Sunnah for crimes punishable by "Hudoud" and Retaliation, or implicitly mentioned as the majority of "Ta'zir" (Discretionary) crimes. In the precise definition of 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 his 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 the Quranic text: ﴿ وَلَا تَعْتُوا فِي الْأَرْضِ مُفْسِدِينَ ﴾ "Commit no evil in the land intent to do mischief," (Chapter 02, verse 60) 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 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'etat.

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 Shariah (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 (pecuniary 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:

﴿وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ﴾

And let a party of the believers witness their punishment.

(Chapter 24, verse 02)

- 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. Allah says in the Quran:

﴿وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ﴾

And We have sent you (O Muhammad) not but as a mercy for the 'Alamin (mankind, jinns and all that exists).

(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 Allah and therefore people comply with it not only out of fear of the authorities but also of the punishment in the hereafter. This proves 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:

﴿وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِّثْلُهَا﴾

The recompense for an evil is an evil like thereof.

(Chapter 42, verse 40)

In another verse it says:

﴿وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ﴾

And there is (a saving of) life for you in Al-Qisas (the Law of Equality in punishment), O men of understanding.

(Chapter 02, verse 179)

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

﴿وَلَا تَكُونُوا كَالَّذِينَ هُمْ يُرْسِلُوكُمْ آخَرَىٰ﴾

And no bearer of burdens shall 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 (PBUH) said

إِنَّمَا أَهْلَكَ الَّذِينَ قَبْلَكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكُوهُ وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ وَإِنَّمَا اللَّهُ لَوْ أَنَّ فَاطِمَةَ بِنْتُ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا

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 Allah that if my daughter, Fatima, committed theft I would have her hand amputated.¹⁴

- 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. Hussain Hamid Hasan

Praise be to Allah, the Lord of the Worlds and His blessings and peace be on His Apostle, Muhammad, his family and Companions. I have the pleasure to participate in the discussion of this valuable research prepared and lectured by His Eminence Shaykh Muhammad Ibn Ibrahim Ibn Hubair, 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 ".

14. Saheeh Al-Bukhari, Hadith No-3288

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 disciplines coupled with his ingenious legal deliberations are exceedingly substantial evidence that problem which cropped up in his lifetime was 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 in 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 in 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 Shariah has the advantage that its criminal laws are not only 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 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 discipline 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 Shaykh Khalil (A famous Egyptian Maliki scholar) 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. Shaykh 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.

Shaykh Muhammad Ibn Ibrahim Ibn Jubair

I am grateful to both Dr. Muhammad Sa`ad Rasheed and Dr. Hussain Hamid Hasan for their kind comments on my 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. Muhammad Rasheed and Dr. Hussain Hasan my subject has become full and useful. It was my intention to make a comparative study between Islamic legislations (Shariah) and other laws but I kept to the title as originally set by the symposium, i.e. "Implementation of Islamic Shariah in the Kingdom of Saudi Arabia", for I believe that the comparative study between Islamic Shariah and Western laws needs a special symposium. As we in Saudi Arabia implement Islamic Shariah I did not see any reason to tackle other laws.

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

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:

﴿لَا إِكْرَاهَ فِي الدِّينِ﴾

Let there be no compulsion in religion. (Chapter 02, verse 256)

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 honor. 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 plans. In order to safeguard the entity of the nation, its interests and sacred beliefs the Prophet (PBUH) 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 Shariah has explicitly stipulated that an apostate has no legal entity within his nation, and therefore he has to be condemned to death.

The Prophet (PBUH) narrated (in the Hadith):

لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّي رَسُولُ اللَّهِ إِلَّا بِأَحَدٍ ثَلَاثٍ
(ومنها) وَالْمَارِقُ مِنَ الدِّينِ التَّارِكُ لِلْجَمَاعَةِ

No Muslim who testifies that there is no Allah but Allah and Muhammad 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.¹⁵

So the Prophet (PBUH) 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-Muslims 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 Discetionary punishments.

Conductor

I thank Dr. Hamad Al-Kobaisi for his suggestions and I invite Shaykh Muhammad Ibrahim Jubair to comment.

Shaykh Muhammad Ibrahim Jubair

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

Shaykh Atia Muhammad Salim

Praise be to Allah, 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

15. Saheeh Al-Bukhari, Hadith No-6484

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 woman 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 Shariah besides the Quran, Prophet's Tradition, Analogy, Consensus and "Maslaha Mursala" (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 Shariah a method approved by the Prophet (PBUH) 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 Shaykh Jubeir said that Ali Ibn Abi Talib (RA.) fixed the punishment for intoxication on analogical consideration and thus that punishment became legal. Also Omar Ibn Al-Khattab (RA.) 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 judicial tradition. The individual and collective reasoning capacity of the "Khulafa Rashideen" as a source of our legislation gives Islamic jurisprudence the power to handle any problem. Once Al-Shafie told the citizens of Makkah that, he was prepared to answer any of their questions by quoting from the Quran. One of the Makkahns asked: "What about the "Muhrim"¹⁶ 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-Shafi 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 reason for the criticism is attributed to the ignorance of the critics of the true nature of "anticipatory

16. Muhrim is one who wears "Ihram", i.e. two pieces of white untailed cloth with which a Muhrim wraps up his naked body while performing pilgrimage or "Umra".

jurisprudence". Malik narrated that the Prophet (PBUH) once sent a man with a slaughterable animal to Makkah. The man asked the Prophet (PBUH) what he should do if the animal got hurt, wounded or disabled. The man was still in Madinah and had not set out for Makkah. The Prophet (PBUH) 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 Shaykh Bardiri (a Maliki scholar who wrote a commentary on the text known as Mukhtasar by Khalil) wonders what the case would be if a man says 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 Ramadan. 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 Shaykh Jubair's paper.

Professor Ahmad Muhammad Jamal

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

Both His Eminence Shaykh Jubair and Dr. Muhammad 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:

﴿لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ﴾

There is no compulsion in religion. Verily, the Right Path has become distinct from the wrong path. (Chapter 2, verse 256)

﴿وَقُلِ الْحَقُّ مِنْ رَبِّكُمْ فَمَنْ هَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيُكْفُرْ﴾

And say: "The truth is from your Lord." Then whosoever wills, let him believe, and whosoever wills, let him disbelieve. (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. 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. Tawfiq Al-Shaiwi

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 contribution on the subject of Islamic criminal law. Shaykh Jubair's study dealt essentially with two points, namely the concept of criminality in Islamic legislation and the sources of Islamic Shariah. The speaker pointed out that Islamic Shariah 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 Shariah.

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 Shariah and the diversity of crimes. Some distinguished speakers may have questioned the stance of Islamic Shariah 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 Shariah 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 Shariah keep on developing and growing to the extent that they encompass all Discretionary crimes and the concept of 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 Shariah and rendered it less dependent on textual references.

The subject which concerned us most 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".

Shaykh Rasheed Ibn Salih Khunain

Praise be to Allah and peace and blessings be on His Apostle. My due thanks to the author of today's paper and the distinguished commetators. 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 Shariah 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 (PBUH) who speaks not out of whim or caprice. Islamic law originates from the Book of Allah.

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

His Eminence Shaykh Manna Al-Kattan

Praise be to Allah 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 Shariah 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 Shariah. This factor makes Islamic Shariah 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, Shaykh Jubair, the comentators, Dr. Al-Rasheed and Hussain Hasan and all the participants who readily responded to our invitation.

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.

Defining Crime Responsibility According To Islamic Legislation

Dr. Muhammad Salam Madkour*

Praise be to Allah who revealed Islam unto His Prophet as the seal of all other preceding religions. May Allah's blessings and peace be upon Allah's Messenger. Allah has chosen Muhammad (PBUH) to convey the heavenly message to all mankind in order to cultivate love and understanding amongst them. May Allah's blessings be upon the Prophet's Companions who, with their exemplary Islamic conduct, disseminated the divine word of Allah. 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 all kind of 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 unique 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

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encompass all modes of behaviour, expressly and simply, individual and collective. These teachings are basically derived from flexible sources. Allah has urged everyone, particularly learned scholars, to exercise 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 Allah'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 Shariah. The Egyptian people, represented by the Egyptian People's Assembly demanded the implementation of the Shariah 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 Allah. In this connection the Quran says:

﴿ وَقُلْنَا يَا آدَمُ اسْكُنْ أَنْتَ وَزَوْجُكَ الْجَنَّةَ وَكُلَا مِنْهَا رَغَدًا حَيْثُ شِئْتُمَا وَلَا تَقْرَبَا هَذِهِ الشَّجَرَةَ فَتَكُونَا مِنَ الظَّالِمِينَ ۝ فَأَزَلَّهُمَا الشَّيْطَانُ عَنْهَا فَأَخْرَجَهُمَا مِمَّا كَانَا فِيهِ وَقُلْنَا اهْبِطُوا بَعْضُكُمْ لِبَعْضٍ عَدَاؤُكُمْ فِي الْأَرْضِ مُسْتَقَرًّا وَمَتَاعًا إِلَىٰ حِينٍ ﴾

And We said: "O Adam! Dwell you and your wife in the Paradise and eat both of you freely with pleasure and delight of things therein as wherever you will, but come not near this tree or you both will be of the Zalimun (wrong-doers)." Then the Shaitan (Satan) made them slip therefrom (the Paradise), and got them out from that in which they were. We said: "Get you down, all, with enmity between yourselves.

(Chapter 2, 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:

﴿وَلَقَدْ خَلَقْنَاكُمْ ثُمَّ صَوَّرْنَاكُمْ ثُمَّ قُلْنَا لِلْمَلَائِكَةِ اسْجُدُوا لِآدَمَ فَسَجَدُوا إِلَّا إِبْلِيسَ لَمْ يَكُنْ مِنَ السَّاجِدِينَ ○ قَالَ مَا مَنَعَكَ أَلَّا تَسْجُدَ إِذْ أَمَرْتُكَ قَالَ أَنَا خَيْرٌ مِنْهُ خَلَقْتَنِي مِنْ نَارٍ وَخَلَقْتَهُ مِنْ طِينٍ ○ قَالَ فَاهْبِطْ مِنْهَا فَمَا يَكُونُ لَكَ أَنْ تَتَكَبَّرَ فِيهَا فَاخْرُجْ إِنَّكَ مِنَ الصَّاغِرِينَ﴾

And surely, We created you (your father Adam) and then gave you shape (the noble shape of a human being), then We told the angels, "Prostrate to Adam", and they prostrated, except Iblis (Satan), he refused to be of those who prostrate. (Allah) said: "What prevented you (O Iblis) that you did not prostrate, when I commanded you?" Iblis said: "I am better than him (Adam), You created me from fire, and him You created from clay. (Allah) said: "(O Iblis) get down from this (Paradise), it is not for you to be arrogant here. Get out, for you are of those humiliated and disgraced.

(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 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 Shariah 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:

﴿وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ﴾

And there is (a saving of) life for you in Al-Qisas (the Law of Equality in punishment). (Chapter 2, verse 179) and ﴿وَالْجُرُوحُ﴾
﴿قِصَاصٌ﴾ "And wounds equal for equal". (Chapter 5, verse 45)

The punishment for theft, which is a transgression against one's property, is specified in the Quran by saying:

﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا﴾

Cut off (from the wrist joint) the (right) hand of the thief, male or female. (Chapter 5, verse 38)

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

﴿وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً﴾

And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes. (Chapter 24, verse 4)

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

﴿الرَّازِيَةُ وَالرَّازِيَةُ فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِئَةَ جَلْدَةٍ وَلَا تَأْخُذْ كُفْرُ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ﴾

The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes. Let not pity withhold you in their case, in a punishment prescribed by Allah.

(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:

﴿ إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا
أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَخُوا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ
فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ۝ إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ فَأَعْلَمُوا أَنَّ اللَّهَ
عَفُورٌ رَحِيمٌ ﴾

The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter. Except for those who (having fled away and then) came back (as Muslims) with repentance before they fall into your power; in that case, know that Allah is Oft-Forgiving, Most Merciful. (Chapter 5, verses 33 and 34)

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 Shariah 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 Allah 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 Shariah 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 Allah'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 Shariah 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 Shariah 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 more serious nature;
- 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. Allah's Messenger exercised "Ta'zir" by desertion with regard to the three men mentioned in the Quran :

﴿وَعَلَى الثَّلَاثَةِ الَّذِينَ خَلْفُوا﴾

He (Allah) turned in mercy also to the three who were left Behind. (Chapter 9, verse 118)

The Prophet (PBUH) 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 (RA.).

"Ta'zir" punishments can be exercised by exhortation, censure and confinement. The Prophet (PBUH) 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 Hanafi 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 Hanafi jurist, as well as the Maliki jurists maintain that the head of the state may impose pecuniary 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 Allah's peace and blessings be, is reported to have said:

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنِ الصَّبِيِّ حَتَّى يَبْلُغَ وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنِ الْمَعْتُوهِ حَتَّى يَبْرَأَ

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.¹

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

1. Sunan Abu Daud, Hadith No-4404

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 Shariah. 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 entire 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:

﴿مَنْ عَمِلْ صَالِحًا فَلِنَفْسِهِ وَمَنْ أَسَاءَ فَعَلَيْهَا﴾

Whosoever does righteous good deed it is for (the benefit of) his ownself, and whosoever does evil, it is against his ownself. (Chapter 41, verse 46)

To quote the Quran again:

﴿وَلَا تَكْرِهُوا وَزِرَةً وَأَكْرَهَى﴾

And no bearer of burdens shall bear another's burden.

(Chapter 35, verse 18)

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:

﴿ وَاللَّاتِي يَأْتِيَنَّهَا الْفَاحِشَةُ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَامْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا ۝ وَالَّذَانِ يَأْتِيَانَهَا مِنْكُمْ فَادُّوهمَا فَإِنْ تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا ﴾

And those of your women who commit illegal sexual intercourse, take the evidence of four witnesses from amongst you against them; and if they testify, confine them (i.e. women) to houses until death comes to them or Allah ordains for them some (other) way. And the two persons (man and woman) among you who commit illegal sexual intercourse, punish them both. And if they repent (promise Allah that they will never repeat, i.e. commit illegal sexual intercourse and other similar sins) and do righteous good deeds, leave them alone. Surely, Allah is Ever the One Who accepts repentance, (and He is) 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-Samit (RA.) reported that the Prophet (PBUH) had said:

خُذُوا عَنِّي خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لِهِنَّ سَبِيلًا الْبِكْرُ بِالْبِكْرِ حَلْدُ مِائَةٍ وَنَفَى سَنَةٍ وَالتَّيْبُ
بِالتَّيْبِ حَلْدُ مِائَةٍ وَالرَّحْمُ

Learn from me the teachings of Islam, Allah 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.²

An adulterous married man or woman shall be stoned to death. The learned Companions of the Prophet (PBUH) and all learned scholars in the Muslim world and in all the ages since the Prophet, with the exception of the "Khawarig" (Khawariz: a Muslim extremist religious-political sect; some of its scholars disagreed with Muslim consensus and argued that married and unmarried adulteresses should be flogged according to the Quranic text on this matter) 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 (RA.) during his lifetime punished an adulterous married man by both flogging and stoning to death. Ibn Abbas, Ubay Ibn Ka'ab, Abu Zarr (RA.), Al-Hassan, Ishaq, Da-wood 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 (RA) are reported to have only stoned to death married adulterous men. Al-Nakhie', Al-Zuhari, Al-Awza'ie, Al-Shafie, Abu Ishaq Al-Jawrqani, Abu Bakr Al-Athram and many other scholars held the same view of punishing the adulterous man only by stoning him to death. Jabir (RA.) relates that Prophet Muhammad

2. Saheeh Muslim, Hadith No-4509

(PBUH) ordered stoning to death only as a punishment for the man and the woman who confessed to have committed the crime of adultery.

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

الرَّائِيَةُ وَالرَّائِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِئَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَيْشَهِدَ عَدَايَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

The woman and the man guilty of illegal sexual intercourse, 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 (RA.), Ata'a, Tawous, Al-Thawri, Ibn Abu Laila 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 (PBUH) said in this connection:

لَا يَحِلُّ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ تَسَافِرُ يَوْمًا وَلَيْلَةً إِلَّا مَعَ ذِي رَحِمٍ مِنْ أَهْلِهَا

A woman who believes in Allah and in the hereafter cannot travel for one day and one night except in the company of "Zi Rahim"^{3,4}

If the adulteress is banished in the company of a "Mahram"⁵ this is bound to inflict undue punishment on the "Mahram" who is not guilty of adultery.

Abu Hanifa and Muhammad Ibn Al-Hassan asserted that no adulterous man or woman should be banished, for Ali (RA.) said that banishment itself would allure them to further

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3. Zi Rahim is the nearest kinsman whom a woman cannot legally marry.
 4. Musnad Ahamd, Hadiith No-7222
 5. Another term for the nearest kinsman whom a woman cannot legally marry.

lewdness. It is reported that Omar (RA.) banished a man for having committed a "Hadd" crime to the town of Khaibar. There the guilty man joined Hercules and embraced Christianity. Therefore, Omar (RA.) 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-Shafi, 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 (PBUH) 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 (PBUH)

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 (PBUH) 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 (PBUH) 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 (PBUH) about his fear. The Prophet (PBUH) said: "Well done! Leave her until she recovers".⁶

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 (80) 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:

﴿وَالَّذِينَ يَزُمُونَ الْمَحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْتَدُوا وَهُمْ تَكَايُنٌ جُلْدَةٌ وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ ۝ إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

6. Saheeh Muslim, Hadith No-4547-4548

And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are the Fasiqun (liars, rebellious, disobedient to Allah). Except those who repent thereafter and do righteous deeds, (for such) verily, Allah 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 (RA.) charged his wife with adultery in the presence of the Prophet (PBUH) 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 (PBUH) kept on saying : **الْبَيِّنَةُ أَوْ حَدٌّ فِي ظَهْرِكَ** "Either produce witnesses or you have to be flogged". Hilal then said: "I pray Allah that He reveal unto thee a Quranic verse which will save my back from flogging, for I am saying but the truth".⁷

Immediately afterwards the "Lia'an" verses were revealed to the Prophet (PBUH):

﴿ وَالَّذِينَ يَزْمُونَ أَرْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ○ وَالخَامِسَةَ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ○ وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعٌ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ○ وَالخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ ﴾

And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak the truth. And the fifth (testimony) (should be) the invoking of the Curse of Allah on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allah, that he (her husband) is telling a

7. Saheeh Al-Bukhari, Hadith No-4470

lie. And the fifth (testimony) should be that the Wrath of Allah be upon her if he (her husband) speaks 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 Hajar 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 (RA.) 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 (RA.) 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.

Ahmad Ibn Hanbal (RAH.) 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 (RA.) 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 (PBUH) 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:

خُذِي مَا يَكْفِيكِ وَوَلَدِكَ بِالْمَعْرُوفِ

Take enough money to provide yourself and your child with sufficient sustenance.⁸

Similarly Huzaifa Ibn Al-Yaman (RA.) passed a legal opinion exonerating Walid Ibn Oqba (RA.) from being flogged for drunkenness when he commanded the Islamic army to Byzantine. Omar (RA.) 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

8. Saheeh Al-Bukhari, Hadith No-5049

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 (PBUH) said that while tenderness invests anything with beauty, unkindness makes it defective and ugly. The Shariah therefore stressed the combatting of crime and digression with tenderness in order to divert the offender from his evil course. The Prophet (PBUH) 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 Shariah advocates the following:

1. Formulation of a cultivated public opinion. Hence the Shariah called upon Muslims to do a good turn and abstain from evil, and the Shariah 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 (PBUH) said: "If you feel no shame, then do as you wish".⁹
3. Discourage people to spread scandal. The Prophet (PBUH) is reported to have said: "O ye people if anyone committed a dirty immoral act and kept it hidden within himself, Allah

9. Saheeh Al-Bukhari, Hadith No-3296

will not disclose him. But if he publicized it, a punishment shall be inflicted upon him".¹⁰

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 (PBUH) said: "If a sin is not disclosed it will harm but the offender; but if disclosed it would invoke Allah's wrath".

The Quran in this connection says:

﴿إِنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ أَلِيمٌ فِي الدُّنْيَا وَالْآخِرَةِ
وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ﴾

Verily, those who like that (the crime of) illegal sexual intercourse should be propagated among those who believe, they will have a painful torment in this world 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 (RAH.) 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 the offender could be criminally held responsible. In deciding on "Ta'zir" penalties, the Shariah has invested the state with a discretionary authority as it was mentioned above.

10. Saheeh Al-Bukhari, Hadith No-5721

Social defence in the sense of rehabilitating and curing the offender by eradicating crime has origins in Islamic Shariah. 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 Shariah 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 Shariah 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 Allah's message to his Prophet as in the following Quranic verse:

﴿ إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ وَلَا تَكُنْ لِلْخَائِبِينَ
خَصِيْبًا ﴾

Surely, We have sent down to you (O Muhammad (pbuh)) the Book (this Qur'an) in truth that you might judge between men by that which Allah has shown you (i.e. has taught you through Divine Inspiration), so be not a pleader for the treacherous.

(Chapter 4, verse 105)

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

﴿ أَلَمْ تَرَ إِلَى الَّذِينَ يَزْعُمُونَ أَنَّهُمْ آمَنُوا بِمَا أَنْزَلَ إِلَيْكَ وَمَا أَنْزَلَ مِنْ قَبْلِكَ يُرِيدُونَ
أَنْ يَتَّخِذُوا إِلَى الْفِتَاغَةِ وَقَدْ أُمِرُوا أَنْ يَكْفُرُوا بِهِ وَيُرِيدُ الشَّيْطَانُ أَنْ يُضِلَّهُمْ
ضَلَالًا بَعِيدًا ۝ وَإِذَا قِيلَ لَهُمْ تَعَالَوْا إِلَىٰ مَا أَنْزَلَ اللَّهُ وَإِلَى الرَّسُولِ رَأَيْتَ الْمُنَافِقِينَ
يَصُدُّونَ عَنْكَ صُدُودًا ﴾

"Have you seen those (hypocrites) who claim that they believe in that which has been sent down to you, and that which was sent down before you, and they wish to go for judgement (in their disputes) to the Taghut (false judges, etc.) while they have been ordered to reject them. But Shaitan (Satan) wishes to lead them far astray. And when it is said to them: "Come to what Allah has sent down and to the Messenger (Muhammad)," you (Muhammad) see the hypocrites turn away from you (Muhammad) with aversion.

(Chapter 4, verses 60 and 61)

To put it in a nutshell the Shariah 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 Shariah, security has been strongly established, and everyone lives peacefully under the protection of the Shariah 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 Shariah. In fact, by doing so, they respond to Allah's commandment.

It is our sincere hope that Muslim governments respond to the wish of their people by implementing the Shariah. We beseech Almighty Allah to guide the Muslim peoples along the right path. Allah, 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:

﴿وَأَنَّ هَذَا صِرَاطٌ مُسْتَقِيمٌ فَاتَّبِعُوهُ وَلَا تَتَّبِعُوا السُّبُلَ فَتَفَرَّقَ بِكُمْ عَنْ سَبِيلِهِ ذَلِكُمْ
وَصَّأَكُمْ بِهِ لَعَلَّكُمْ تَتَّقُونَ﴾

And verily, this¹¹ is my Straight Path, so follow it, and follow not (other) paths, for they will separate you away from His Path. This He has ordained for you that you may become Al-Muttaqun (the pious). (Chapter 6, verse 153)

11. i.e. Allah's Commandments mentioned in the two Verses 151 and 152

Comments by Other Speakers

Conductor of Discussions

Due thanks to both Professor Dr. Muhammad Salam Madkour, author of the paper, and Shaykh Ibrahim Nasir who read the paper before the seminar.

This paper showed us how the Shariah insists on the maintenance of the five indispensables (Religion, Life, Intellect, Offspring and Property).

Professor Manna Al-Kattan

In the name of Allah and praise be to Him and peace be upon His Apostle. I thank Dr. Madkour for preparing this paper and Professor Ibrahim Nasir 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 Shariah. 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 Shariah as regards the five indispensables (to which reference has often been made before). He made a comparison between "Hudud" 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. Shaykh Al-Islam Ibn Taymiya (RAH.) 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 Shariah 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 Shariah 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 Shaykh Moham-mad 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.

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 Shariah punishes offenders for materialized crimes and Allah 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 Shariah 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 Allah Almighty to crown our efforts with success and guide us to the right path. Allah's peace, blessings and mercy be upon you.

Dr. Abdul Karim Zaidan

Praise be to Allah, the Cherisher and Sustainer of the Worlds, and blessings and peace be upon Muhammad, 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 partial.

The general remarks concern the ordering and coordination 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 coordinating their subject matter. A scholar may find himself at a loss trying to find a particular point. He may 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 Shariah 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 (PBUH) says: "He who rejects his religion shall be punished with death".¹²

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" 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 Shariah 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"¹³ would not have existed in Islam.

12. Al-Mu`zam Al-Kabir, Hadith No-479

13. Al-Zimmah was a special treatment for non-Muslims. In fact non-Muslims were known as "Ahl-Al-Zimmah" (people of Al-Zimmah)

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 it 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 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 Shariah 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 Allah 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 (PBUH) 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 Shariah texts. He may choose the punishment appropriate to the crime. Therein lies the wisdom behind the Shariah 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 (PBUH) 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 (PBUH) 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 Hajjaj 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 (RA.) 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 Shariah. 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?

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 (RA.) stopped the punishment for theft. Frankly such matters leave the reader at a loss about concrete facts.

In the interest of the army, Islam and Muslims, punishment should be postponed until after the end of the war. Omar (RA.) 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.

Allah's peace be upon Muhammad, 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 this appreciable effort for preparing his research work. However, I would like to make some comments on this valuable 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 Allah 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.

Dr. Kubaisi

Dr. Madkour stated that the Shariah 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 Shariah 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 Wail 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 (PBUH) to settle the matter. The woman told the Prophet (PBUH) 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 (PBUH) 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 (PBUH) told the woman that Allah forgave her for the adultery, and spoke well of the person who tried to rescue her. Then Omar asked the Prophet (PBUH) to have the man who confessed stoned but the Prophet (PBUH) answered that since he confessed his sin Allah 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 (Madina) Allah would have accepted it".¹⁴

The second text: Abu-Dawood and others narrated on the authority of Wathila Ibn Al-Asqa' that once Wathila was in the presence of the Prophet (PBUH) when a man approached him saying that he had committed a "Hadd" offence. The Apostle of Allah averted him. That man repeated this three times and each time the Prophet (PBUH) averted him. Then prayer time came and after the prayers were performed the man approached the Prophet (PBUH) for the fourth time confessing his crime. Thereupon the Prophet (PBUH) said: "Did you not perform ablution and pray with us just now?". The man answered in the affirmative. The Prophet (PBUH) said: "You are pardoned, for performing your prayers in the

14. Saheeh Muslim, Hadith No-4527-4529

best manner is in itself your atonement for your sin". In another version the Prophet (PBUH) is said to have said: "Allah has forgiven you for your sin".¹⁵

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 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 Salih Khunain

I thank Dr. Kubaisi for his remarks on the two texts. With regard to the second text narrated by Abu Dawood on the authority of Wathila Ibn Al-Asqa' about the man who approached the Prophet (PBUH) 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:

إِنْ تَحْتَبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ

15. Musnad Ahmad, Hadith No-22286, Sunan Abu Daud, Hadith No-4383

If you avoid the major sins which you are forbidden, We will remove from you your lesser sins. (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 (PBUH) 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 (PBUH) 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.

Shaykh Salih Al-Luhaidan

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

With regard to the incident narrated by Wathila (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 (PBUH) 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 is narrated by Alaqama Ibn Wail. As regards the incident related by Ibn Al-Asqa`, 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.

Shaykh Rashid Salih

In addition to the explanation made by Shaykh Salih Al-Luhaidan 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 (PBUH) each time did not want to punish him. The Prophet (PBUH) at last asked him: "What do you want from me?" Maiz replied: "I want you to purge me".¹⁶

Professor Gerhard Mueller

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.

16. Saheeh Muslim, Hadith No-4527

We must admit that if Islamic Shariah 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 Shariah 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.

Shaykh 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 Shariah in Saudi Arabia and its effect on crime prevention.

Allah'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 any-thing 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 Shariah. But I do say that we have many things in common, and that a fruitful dialogue can be established between us.

Shaykh Ahmad Muhammad Jamal

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

I would like to add some more remarks to those of Dr. Abdul Karim Zaidan 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 jurists, 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. Prophet Isa (AS.) said:

﴿ وَمُصَدِّقًا لِمَا بَيْنَ يَدَيْ مِنَ التَّوْرَةِ وَأُولَٰئِ لَكُمْ بَعْضُ الَّذِي حُرِّمَ عَلَيْكُمْ ﴾

And I have come confirming that which was before me of the Taurat (Torah), and to make lawful to you part of what was 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 Allah 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 and sound, 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 nondisclosure 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.

Shaykh 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 precede 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 Allah 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.

Allah the Exalted One, controls everything. His Divine Will embraces every action whether favoured or unfavoured by Allah. Legal Will is what Allah expects of mankind such as obedience and worshipping. It is through the Legal Will favoured by Allah 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 Shariah in Saudi Arabia is that Islamic Shariah is implemented on all residents. Saudis and non-Saudi Muslims have their rights as well as obligations. Non-Muslims have their rights, too. Islamic Shariah is equally applied to every one without any discrimination between one Muslim or another or between Muslims and non-Muslims.

Shaykh Rashid

First of all I would like to thank Professor Mueller for his understanding of many Islamic laws, particularly those concerning crimes and punishment. Likewise, I thank Sir Arthur Peterson for his remarks. Let me reiterate Shaykh 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 or common 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 Shaykh Manna that Islamic Shariah 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 it 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 (PBUH) 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 (PBUH) 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 (PBUH) 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 Allah.

May Allah crown our efforts with succes.

Means Of Evidence In Islamic Law

Shaykh Salih Ibn Muhammad Al-Luhaidan*

Praise be to Allah whom we beseech for help and forgiveness. We seek His protection from evil temptations. Without Allah's guidance we are doomed to go astray. We testify that there is only One Allah, the Peerless. He is the Lord of the Worlds. We testify also that Muhammad is Allah'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 (PBUH) 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 Allah 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

* Member of the Council of the Supreme Court, KSA (1976)

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

﴿ أَقْتُمُونَ مَنُورَ بَعْضِ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ فَمَا جَزَاءُ مَن يَفْعَلُ ذَلِكَ مِنكُمْ إِلَّا خِزْيٌ فِي الْحَيَاةِ الدُّنْيَا ﴾

Then do you believe in a part of the Scripture and reject the rest? Then what is the recompense of those who do so among you, except disgrace in the life of this world.

(Chapter 2, verse 85)

Although atheism and non-compliance with the Shariah 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 Allah's commandments is considered a mortal sin which should be made good before the wrath of Allah is incurred upon us, for verily Allah the Almighty expects to see His injunctions unviolated and His Shariah 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 when they will be accursed with famine and fear?

There is no doubt that this great and all-embracing Shariah was decreed by Allah, 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 Shariah aspires to make the divine word of Allah far superior to the word of unbelievers and idol worshippers. People cannot expect to be happy or prosperous unless they worship the One Almighty Allah, for He created them in order to worship Him.

To quote the Quran in this connection:

﴿ وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ ﴾

And I (Allah) created not the jinns and humans except they should worship Me (Alone). (Chapter 51, verse 56)

In other verse we read the following:

﴿ وَلَقَدْ بَعَثْنَا فِي كُلِّ أُمَّةٍ رَسُولًا أَنِ اعْبُدُوا اللَّهَ وَاجْتَنِبُوا الطَّاغُوتَ ﴾

And verily, We have sent among every Ummah (community, nation) a Messenger (proclaiming): "Worship Allah (Alone), and avoid (or keep away from) Taghut¹. (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 Allah 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 Allah's ordainment as in the following Quranic verse:

﴿ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ﴾

Verily! Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice.

(Chapter 4, verse 58)

1. All false deities, etc. i.e. do not worship *Taghut* besides Allah.

And in conformity with the following verse:

﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ﴾

And whosoever does not judge by what Allah has revealed, such are the Kafirun². (Chapter 5, verse 44)

So a judgement not based on the injunctions of the Quran is an act of irreverence to Allah, 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 Shariah. 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 (PBUH) 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".³

Al-Bukhari and Muslim⁴ reported that Ibn Abbas (RA.) said that the Prophet (PBUH) 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.

2. i.e. disbelievers - of a lesser degree as they do not act on Allah's Laws.

3. Saheeh Al-Bukhari, Hadith No-4277, Saheeh Muslim, Hadith No-4567

4. Famous Muslim scholars and compilers of Prophet's Traditions.

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 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. Allah has warned that those who conceal evidence or give false witness shall be punished. The Quran says:

﴿وَلَا يَنْبَلِكُ الَّذِينَ يَدْعُونَ مِنْ دُونِهِ الشَّفَاعَةَ إِلَّا مَنْ شَهِدَ بِالْحَقِّ وَهُمْ يَعْلَمُونَ﴾

And those whom they invoke instead of Him have no power of intercession; except those who bear witness to the truth (i.e. believed in the Oneness of Allah, and obeyed His Orders), and they know (the facts about the Oneness of Allah).

(Chapter 43, verse 86)

In another quotation from the Quran:

﴿وَمَا شَهِدْنَا إِلَّا بِمَا عَلَّمْنَا﴾

And we testify not except according to what we know....

(Chapter 12, verse 81)

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

﴿وَلَوْ أَنَّهُمْ إِذْ ظَلَمُوا أَنفُسَهُمْ جَاءُوكَ فَاسْتَغْفَرُوا اللَّهَ وَاسْتَغْفَرَ لَهُمُ الرَّسُولُ لَوَجَدُوا اللَّهَ تَوَّابًا رَحِيمًا﴾

When they had been unjust to themselves, had come to you (Muhammad (pbuh)) and begged Allah's Forgiveness, and the Messenger had begged forgiveness for them: indeed, they would have found Allah All-Forgiving (One Who accepts repentance), Most Merciful. (Chapter 4, verse 64)

Also the Prophet (PBUH) praised the woman who confessed her crime of adultery. People are encouraged to disclose facts in the 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 nor 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 that 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 Allah if he is a liar. The "Lia'an" is described in the following Quranic verse:

﴿وَالَّذِينَ يَزْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعٌ
شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ﴾

And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak 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 Yousuf (AS.). Zulaikha tried to seduce him. Yousuf (AS.) 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 Yousuf (AS.); it was a plausible accusation for Yousuf's dress was disarranged. However, as Yousuf'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 Yousuf'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 Shariah 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 Shariah, 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 Shariah 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 Allah'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 Shariah did not leave a crime unpunished or a controversial issue unsettled. The Prophet (PBUH) is reported to have said:

فَدَّرَ تَرْكُكُمْ عَلَى الْبَيْضَاءِ لَيْلَهَا كَنَهَارَهَا

"I have left you a teaching as clear as daylight".⁵

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

5. Musnad Ahmad, Hadith No-17142, Sunan Ibn Mazah, Hadith No-43

the Quran and the Sunnah that they began suffering from the terrible consequences arising from not abiding by the Shariah.

When Muslims wake up from their slumber and take religion seriously only then they will 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 Shariah 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, Allah willing, keep on being the bulwark for Islam and its teachings.

I pray that Allah unite the Muslims against their enemies. Allah 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.

Shaykh Abdul Qadir Shaybat Al-Hamd

Praise be to Allah, the Cherisher and Sustainer of the Worlds. Blessings be upon Muhammad, 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 Shaykh Al-Luhaidan 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 is 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 Ibn Al-Khattab (RA.) is reported to have said in the mosque of the Prophet (PBUH) (in Madina) in his last Friday sermon on the occasion of the nomination of his successor: "Stoning to death is decreed by Allah in the Quran ".⁶

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 (RAH.) according to whom the Prophet (PBUH) 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".⁷

6. Saheeh Al-Bukhari, Hadith No-6442

7. Saheeh Muslim, Hadith No-4567

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 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 this 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 Yousuf (AS.) 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 Yousuf (AS.) is binding upon us, too. In this connection the Quran says:

﴿ قَالَ هِيَ رَاوَدْتَنِي عَنْ نَفْسِي وَشَهِدَ شَاهِدٌ مِّنْ أَهْلِهَا إِن كَانَ قَبِيضُهُ قَدْ مِّن قَبْلِ فَصَدَقْتَ
وَهُوَ مِنَ الْكَافِرِينَ ۝ وَإِن كَانَ قَبِيضُهُ قَدْ مِّن دُبُرٍ فَكَذَّبَتْ وَهُوَ مِنَ الصَّادِقِينَ ﴾

... He [Yusuf (Joseph)] said: "It was she that sought to seduce me," - and a witness of her household bore witness (saying): "If it be that his shirt is torn from the front, then her tale is true and he is a liar! "But if it be that his shirt is torn from the back, then she has told a lie and he is speaking the truth!

(Chapter 12, verses 26 and 27)

Thus if she caught hold of Yousuf's (AS.) 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 (PBUH) is reported to have narrated the story of Sulaiman (AS.) and Dawood (AS.). 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. Dawood (AS.) ordered the child to be given to the elder of the two women. When Sulaiman (AS.) came, he asked Dawood (AS.) 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.⁸

This is a good example of circumstantial evidence.

The second story took place during the reign of Ali (RA.) (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

8. Saheeh Al-Bukhari, Hadith No-3244

know him at all". Then Ali (RA.) asked the woman's guardians if they accepted a Judgement on this matter. When Ali (RA.) 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 (RA.) 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 Madina 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 (PBUH) lauded a woman who had committed and confessed adultery. I wish the lecturer had given the reason why the Prophet (PBUH) did this. As a matter of fact the Prophet (PBUH) lauded the woman not only because she confessed her crime but also because she had wholly surrendered her life and

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

In another narration Khalid Ibn Al-Walid (RA.) 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 (PBUH) 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 seventy (70) sinners of the town of Madina".⁹

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 (PBUH) 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:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِّنكُمْ أَوْ آخَرَانِ مِّنْ غَيْرِكُمْ﴾

O you who believe! When death approaches any of you, and you make a bequest, then take the testimony of two just men of your own folk or two others from outside.

(Chapter 5, verse 106)

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

9. Saheeh Muslim, Hadith No-4529

Shaykh Ali Al-Mihanna

Praise be to Allah who has revealed the Book to His Prophet and made it plain and straightforward. I testify that there is but One Allah, the Peerless, and that Muhammad is His servant and Apostle who was sent with divine guidance. Allah's blessings be upon the Prophet, his family and Companions. Thanks be to Allah Who has crowned with success all the efforts made by the lenders of this country ever since the late King Abdul Aziz Ibn Abdul have spared on effort for the dissemination of the word of Allah 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:

﴿الَّذِينَ إِنْ مَكَّنَّاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ وَأَمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنِ الْمُنْكَرِ وَاللَّهُ عَاقِبَةُ الْأُمُورِ﴾

Those (Muslim rulers) who, if We give them power in the land, (they) order for Iqamat-as-Salat¹⁰, to pay the Zakat and they enjoin Al-Ma'ruf¹¹, and forbid Al-Munkar¹² And with Allah rests the end of (all) matters (of creatures).

(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 the 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

10. i.e. to perform the five compulsory congregational *Salat* (prayers) (the males in mosques).

11. i.e. Islamic Monotheism and all that Islam orders one to do

12. i.e. disbelief, polytheism and all that Islam has forbidden) [i.e. they make the Qur'an as the law of their country in all the spheres of life]

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 Shariah. The other part is the means of legal evidence in the Shariah. 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 Shariah will confess if he commits a crime. This confession is originally motivated by his genuine belief in Allah 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 (PBUH) to confess her adultery and each time the Prophet (PBUH) averted her. The Prophet (PBUH) 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 (PBUH) to plead her crime and be stoned to death. Referring to this incident the Prophet (PBUH) said that such a repentance would have sufficed seventy persons of Madina.¹³ 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

13. Saheeh Muslim, Hadith No-4529

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 lecturers 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.

Shaykh Salih Ibn Muhammad Al-Luhaidan

Praise be to Allah and peace be upon the Prophet, his descendants and Companions. I wish to extend my heartfelt thanks to His Eminence Shaykh Abdul Qadir Al-Hamd for his additions and comments. May Allah bountifully reward him. I also thank Shaykh 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 (RA.) 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 (RAH.) and before him Ibn Taymiya (RAH.) 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 "Muiaz" 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 (PBUH) 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 Shaykh 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 (PBUH) and his followers. A servant (or a slave) whom the Muslim vanguard had taken prisoner, was taken to the Prophet (PBUH) and asked about the number of the unbelievers' army. He replied that he had no idea. The Prophet (PBUH) then asked how many sheep they slaughtered each day. He replied between nine and ten. The Prophet (PBUH) considered this as 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.

His Eminence Shaykh Al-Mihanna dealt with the procedural steps leading to confession. He referred to the case when Prophet Muhammad (PBUH.) praised the adultress who con-

fessed her adultery. The Prophet (PBUH) 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 (70) sinners of the town of Madina, for the woman had wholly given up her life to Allah.¹⁴ In another narration the Prophet (PBUH) 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, Allah 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 (PBUH) that he had committed adultery.

The Prophet (PBUH) turned to his Companions and said: "Perhaps his mind is deranged". They replied that he was very sane. Then the Prophet (PBUH) 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 Shaykh Abdul Qadir for any mistakes I may have made in my study. May Allah the Almighty show us the right path.

Shaykh Mansur Ibn Hamad Al-Malik

Praise be to Allah and peace and blessings be upon Allah'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

14. Saheeh Muslim, Hadith No-4529

Allah 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 Allah, worship the One Almighty Allah 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 Allah protects a person from falling into pitfalls and crimes.

The stronger the faith the less disobedience against Allah 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 Allah 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 Allah, His Book and the Sunnah that can protect our society from the danger of crimes.

Shaykh Atiyah Muhammad Saalim

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

My sincere thanks are 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 footprints. 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.

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 Muhammad Mahmoud

Apart from the Maliki jurists none of the other jurists agree that Islamic Shariah 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 ibn Abdul Aziz (RAH.) 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-Kubaisi

In fact, I have two points to deal with. The first one has already been tackled by Dr. Jamal Al-Din Muhammad 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 is 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 is less witness. 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:

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا وَلَا يَغْتَبَ بَعْضُكُم بَعْضًا أَيُحِبُّ أَحَدُكُمْ أَن يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ تَوَّابٌ رَّحِيمٌ ﴾

O you who believe! Avoid much suspicions, indeed some suspicions are sins. And spy not, neither backbite one another. Would one of you like to eat the flesh of his dead brother? You would hate it (so hate backbiting) . And fear Allah. Verily, Allah is the One Who accepts repentance, 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 Shariah 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 (PBUH) expressed the same opinion when he said:

"Whoever conceals another Muslim's sin will be rewarded by Allah in this world and hereafter".¹⁵

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 Shariah.

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

15. Sunan Ibn Majah, Hadith No-2546

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 practiced. 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 Shariah, 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 Muhammad 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.

Shaykh Rashid Ibn Khunain

My heartfelt thanks to ShaykhSalih Al-Luhaidanfor 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 already 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 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 (PBUH) 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 Shariah.

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 Allah'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.

Al-Maamoun Mubarak Aman

Praise be to Allah, the Cherisher and Sustainer of the Worlds and blessings on the nobles of Allah'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 on 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 (PBUH) 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. Muhammad Ibn Sa'ad Al-Rasheed

Praise be to Allah the Cherisher and Sustainer of the Worlds and blessings and peace be upon Prophet Muhammad, 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 reasonable 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 (PBUH) is reported to have said:

"If all people's claims are heeded, they would claim the lives and properties of others".¹⁶

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

16. Saheeh Al-Bukhari, Hadith No-4277, Saheeh Muslim, Hadith No-4567

of witnesses in each crime. I expected the author to give an account of each crime and the methods of legal evidence of each.

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 Courts may be referred to by the Judge when trying a case. I believe Islamic law differs from other traditional 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.

Shaykh Nasir 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 Madina in a bag made of oxhide. When the Prophet (PBUH) asked him where the money was, Huyay replied that it had been spent during the Khaibar battle. The Prophet (PBUH) is reported to have said the money was much and the time between collecting it and the Khaibar battle was too short. This was sufficient evidence to prove that Huyay had told a lie and therefore the Prophet (PBUH) ordered Zubeir Ibn Al-Awam (RA.) 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 (RA.) on the instructions of the Prophet (PBUH) 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.

Shaykh Attiya Muhammad 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.

Shaykh Salih Al-Luhaidan

Praise be to Allah and peace be upon Muhammad, the noblest man created by Allah, 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 (PBUH) 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 Shaykh 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) punishment 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 severe. The Companions of the Prophet (PBUH) disagreed on this matter. Some of them said that a sodomite should be hurled down from the highest site in the country as Allah did with the people of Lut (AS.) 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 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 (PBUH) referred even to journey as a sort of torture.

As Shaykh 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 Shariah which came as 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 Allah (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 (PBUH) 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 (PBUH) ordered that the confessor be condemned to death. The Prophet (PBUH) 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 (PBUH) 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 Allah to lead all of us and the Muslim nation on the right path and help us to implement the Shariah in all walks of life. May Allah the Almighty make this symposium fruitful to all who seek the Truth! Peace be upon our Prophet Muhammad, his family and Companions.

Chairman

Due thanks to the Eminent Shaykh, the author of the paper.

Effect Of Religion Against Crime

Shaykh Manna Khalil Al-Kattan*

Effect of Religion against Crime

In the name of Allah, Praise be to Allah the Almighty and Peace be upon Allah's Messenger, Prophet Muhammad. The discussion on the influence of worship on crime prevention requires an accurate definition of worship "Ibadah", and its general concept in Islam and its influence on the behaviour of man.

Definition of worship

In Arabic "Ibadah" (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 Allah 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-Ragib¹ in his book Dharia says that "Ubudiya" (slavery) is a manifestation of humbleness and "Ibadah" (worship) is the ultimate and lofty degree of humbleness and Allah the Almighty is the only One worthy of being adored and worshipped.

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

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1. Al-Ragib Al-Isfahani was one of the Imams of the Sunnite sect. He died around 1108 A.D

the book of Lisan Al-Arab² the original meaning of "Ubudiya" (slavery) was submissiveness and humbleness. According to Abu Hurira³, the Prophet (PBUH) said: "No one should call his servant a slave; only Allah hath the right to do so".⁴

Shaykh Al-Islam Ibn Taymiya⁵ 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 Allah 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. Allah 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 Allah is false. In this connection the Quran says:

﴿ قُلْ إِنْ كَانَ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ وَإِخْوَانُكُمْ وَأَزْوَاجُكُمْ وَعَشِيرَتُكُمْ وَأَمْوَالٌ اقْتَرَفْتُمُوهَا وَتِجَارَةٌ تَخْشَوْنَ كَسَادَهَا وَمَسَاكِينُ تَرْضَوْنَهَا أَحَبَّ إِلَيْكُمْ مِنَ اللَّهِ وَرَسُولِهِ وَجِهَادٍ فِي سَبِيلِهِ فَتَرَبَّصُوا حَتَّى يَأْتِيَ اللَّهُ بِأَمْرٍ ۗ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الْفَاسِقِينَ ﴾

Say: If your fathers, your sons, your brothers, your wives, your kindred, the wealth that you have gained, the commerce in which you fear a decline, and the dwellings in which you delight ... are dearer to you than Allah and His Messenger, and striving hard and fighting in His Cause, then wait until

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2. 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
 3. Abu Hurira was one of the Prophet's Companions. He died around 676 AD
 4. Musnad Ahmad, Hadith No-9729 (First part of the Hadith).
 5. Ibn Taymiya (1263-1328) was a Hanbalite jurist. His full name is Takyaddin Ahmed Ibn Taymiya

Allah brings about His Decision (torment). And Allah guides not the people who are Al-Fasiqun (the rebellious, disobedient to Allah). (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 Allah's cause we must choose to love Allah 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 Shariah and obedience to Allah as a result of love and persuasion. Man must love what pleases Allah and detest what displeases Him. The Prophet's Tradition says: "He who loves and hates for the sake of Allah his faith is complete". In the Saheeh "Tradition there are three elements to complete a man's faith: Allah and His Apostle are to be loved more than anyone else, man's love for another person should stem from his great love of Allah and that he should refrain from regressing to ignorance after having been delivered by Allah (related by At-Tabarani, one of the author of hadith collections).

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 Allah both explicitly and implicitly. This involves all walks of life in compliance with the Shariah and in pursuit of Allah's favour. On this basis Ibn Taymiya defines worship as an act that comprehends all that pleases Allah 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 Allah and His Apostle, fear of Allah, faithfulness to Islam, being patient with Allah's Judgements, praising Allah for His blessings, having trust in Allah, having faith in His mercy and fear of His punishment. Thus worship, according to this concept, includes obedience to Allah 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 Allah'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 Allah. It is narrated that a man passed briskly by the Prophet (PBUH) and his Companions. Some of them commented "O Allah's Apostle! Would it not have been better if this man's energy and zeal were for the cause of Allah"? The Prophet (PBUH) 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 Allah; but if he is just showing off and swaggering he will be satisfying the cause of Satan".⁶

It is also narrated that the Prophet (PBUH) said:

"Allah will reward those who cultivate and thereby satisfy the hunger of birds, men and animals."⁷

According to Allah those who work in pursuit of a livelihood are not less than those who take up arms for the sake of Allah. The Quran says:

6. Al-Mu'zam Al-Kabir lit-Tibrani, Ka'b Ibn Uzrah, Hadith No-282

7. Saheeh Muslim, Hadith No-4051

﴿وَأَخْرُوجُ يَضْرِبُونَ فِي الْأَرْضِ يَبْتَغُونَ مِنْ فَضْلِ اللَّهِ وَآخَرُونَ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ﴾

Others travelling through the land, seeking of Allah's Bounty; yet others fighting in Allah'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 Allah. Allah says in the Quran:

﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ﴾

And I (Allah) created not the jinns and humans except they should worship Me (Alone). (Chapter 51, verse 56)

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

﴿يَا قَوْمِ اعْبُدُوا اللَّهَ مَا لَكُمْ مِنْ إِلَهٍ غَيْرُهُ﴾

O my people! Worship Allah! You have no other Ilah (God) but Him. (Chapter 7, verse 59)

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

﴿وَلَقَدْ بَعَثْنَا فِي كُلِّ أُمَّةٍ رَسُولًا أَنِ اعْبُدُوا اللَّهَ وَاجْتَنِبُوا﴾

And verily, We have sent among every Ummah (community, nation) a Messenger (proclaiming): "Worship Allah (Alone), and avoid (or keep away from) Taghut (all false deities, etc. i.e. do not worship Taghut besides Allah).

(Chapter 16, verse 36)

﴿وَمَا أَرْسَلْنَا مِنْ قَبْلِكَ مِنْ رَسُولٍ إِلَّا نُوحِي إِلَيْهِ أَنَّهُ لَا إِلَهَ إِلَّا أَنَا فَاعْبُدُونِ﴾

And We did not send any Messenger before you (O Muhammad (pbuh)) but We inspired him (saying): La ilaha illa Ana [none has the right to be worshipped but I (Allah)], so worship Me (Alone and none else). (Chapter 21, verse 25)

Muslim jurists classified the Shariah 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 Allah 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 Allah, 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:

﴿وَلَا تَقْرُبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ﴾

... come not near to Al-Fawahish⁸ whether committed openly or secretly.

(Chapter 6, verse 151)

In another verse it says:

﴿قُلْ إِنَّمَا حَرَّمَ رَبِّي الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ﴾

8. Shameful sins, illegal sexual intercourse, etc.

Say (O Muhammad (pbuh)): "(But) the things that my Lord has indeed forbidden are Al-Fawahish⁹ whether committed openly or secretly.
(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.

﴿ إِنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ أَلِيمٌ فِي الدُّنْيَا
وَالْآخِرَةِ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ ﴾

Verily, those who like that (the crime of) illegal sexual intercourse should be propagated among those who believe, they will have a painful torment in this world and in the Hereafter. And Allah knows and you 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 Allah; trespass is a violation of truth; aggression is a violation of justice in dealing with others; and an unlawful deed is an act disapproved by law and reasoning.

The Quran in this connection says:

﴿ قُلْ إِنَّمَا حَرَّمَ رَبِّي الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَالْإِثْمَ وَالْبَغْيَ بِغَيْرِ الْحَقِّ ﴾

Say (O Muhammad (pbuh)): "(But) the things that my Lord has indeed forbidden are Al-Fawahish¹⁰ whether committed openly or secretly, sins (of all kinds), unrighteous oppression.

(Chapter 7, verse 33)

and

﴿ إِنَّ الَّذِينَ يَكْسِبُونَ الْإِثْمَ سَيُجْزَوْنَ بِمَا كَانُوا يَفْعُرُونَ ﴾

Verily, those who commit sin will get due recompense for that which they used to commit. (Chapter 6, verse 120)

and

﴿ وَيُنْفِئُ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ ﴾

9. Great evil sins, every kind of unlawful sexual intercourse, etc.

10. Great evil sins, every kind of unlawful sexual intercourse, etc.

And (Allah) forbids Al-Fahsha¹¹, and Al-Munkar¹² and Al-Baghy¹³. (Chapter 16, verse 90)

and

﴿وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ﴾

But transgress not the limits. Truly, Allah likes not the transgressors. (Chapter 2, verse 190)

and

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ﴾

Help you one another in Al-Birr and At-Taqwa (virtue, righteousness and piety); but do not help one another in sin and transgression. (Chapter 5, verse 2)

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-Raghib said that there are three kinds of wrong-doing:

First: Wrong-doing against Allah, particularly denying His existence, belief in another partner with Allah 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:

﴿وَلَا تُحْسِبَنَّ اللَّهُ غَافِلًا عَمَّا يَعْمَلُ الظَّالِمُونَ إِنَّمَا يُؤَخِّرُهُمْ لِيَوْمٍ تَشْخَصُ فِيهِ الْأَبْصَارُ﴾

Consider not that Allah is unaware of that which the Zalimun (polytheists, wrong-doers, etc.) do, but He gives them respite up to a Day when the eyes will stare in horror.

(Chapter 14, verse 42)

11. i.e all evil deeds, e.g. illegal sexual acts, disobedience of parents, polytheism, to tell lies, to give false witness, to kill a life without right, etc.
12. i.e all that is prohibited by Islamic law: polytheism of every kind, disbelief and every kind of evil deeds, etc.,
13. i.e. all kinds of oppression.

and

﴿وَلَقَدْ أَهَلَكْنَا الْقُرُونَ مِنْ قَبْلِكُمْ لَمَّا كَلَمْتُمْ﴾

And indeed, We destroyed generations before you, when they did wrong. (Chapter 10, verse 13)

and

﴿وَتِلْكَ الْقُرَىٰ أَهَلَكْنَاهُمْ لَمَّا ظَلَمُوا وَجَعَلْنَا لِمَهْلِكِهِمْ مَوْجِدًا﴾

And these towns (population, 'Ad, Thamud, etc.) We destroyed when they did wrong. And We appointed a fixed time for their destruction. (Chapter 18, verse 59)

and

﴿وَلَا تَرْكَبُوا إِلَى الَّذِينَ ظَلَمُوا فَتَمَسَّكُمُ النَّارُ﴾

"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:

﴿وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ﴾

And do not kill anyone which Allah has forbidden, except for a just cause. (Chapter 17, verse 33)

and

﴿وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا﴾

And whoever kills a believer intentionally, his recompense is Hell to abide therein. (Chapter 4, verse 93)

and

﴿وَلَا تَقْرَبُوا الزَّيْنِ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا﴾

And come not near to the unlawful sexual intercourse. Verily, it is a Fahishah [i.e. anything that transgresses its limits (a great sin)], and an evil way (that leads one to Hell unless Allah forgives him). (Chapter 17, verse 32)

and

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

Whereas Allah has permitted trading and forbidden Riba (usury).
(Chapter 2, verse 275)

and

﴿الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ﴾

Those who eat Riba (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitan (Satan) leading him to insanity. (Chapter 2, verse 275)

and

﴿وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ﴾

And eat up not one another's property unjustly (in any illegal way e.g. stealing, robbing, deceiving, etc.).

(Chapter 2, verse 188)

and

﴿الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِئَةَ جَلْدَةٍ﴾

The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes. (Chapter 24, verse 2)

and

﴿وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ لَمَّا لَا يَأْتُوا بِالْبَيِّنَاتِ وَالشَّاهِدَاتِ فَاجْلِدُوا لَهُمْ ثَمَانِينَ جَلْدَةً﴾

And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes. (Chapter 24, verse 4)

and

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ﴾

O you who believe! Al-Qisas (the Law of Equality in punishment) is prescribed for you in case of murder.

(Chapter 2, verse 178)

and

﴿وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ﴾

And there is (a saving of) life for you in Al-Qisas (the Law of Equality in punishment), O men of understanding.

(Chapter 2, verse 179)

and

﴿ إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا
أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ﴾

The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land.

(Chapter 5, verse 33)

and

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ
فَاجْتَنِبُوهُ ﴾

O you who believe! Intoxicants (all kinds of alcoholic drinks), gambling, Al-Ansab , and Al-Azlam (arrows for seeking luck or decision) are an abomination of Shaitan's (Satan) handiwork. So avoid (strictly all) that (abomination).

(Chapter 5, verse 93)

and

﴿ وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ ﴾

Cut off (from the wrist joint) the (right) hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allah.

(Chapter 5, verse 38)

The Sunnah explains the aforementioned Quranic verses in more detail and elucidates the five major human rights which are protected by the Shariah; 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:

مَنْ حَمَلَ عَلَيْنَا السَّلَاحَ فَلَيْسَ مِنَّا وَمَنْ غَشَبَنَا فَلَيْسَ مِنَّا

"He who uses arms against us or cheats us is not one of us ".¹⁴

"Muslim"¹⁵ narrated:

"Every wrong-doer shall be marked on the Day of Judgement and shall be announced: He committed an offence against so-and-so".¹⁶

"Eschew the seven deadly sins". When the Prophet (PBUH) was asked what these seven sins were, he replied:

الشِّرْكَ بِاللَّهِ وَالسُّحْرُ وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَأَكْلُ الرِّبَا وَأَكْلُ مَالِ الْيَتِيمِ
وَالتَّوَلَّى يَوْمَ الرَّحْفِ وَقَذْفُ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ الْغَافِلَاتِ

"Belief in another partner with Allah, use of magic, taking life which Allah 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".¹⁷

"The Prophet (PBUH) curses the usurer and his agent".¹⁸

"An apostate deserves to be condemned to death".

خُذُوا عَنِّي خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهْنُ سَيْلِ الْبِكْرِ بِالْبِكْرِ جَلْدَ مِائَةٍ وَتَفَى سَنَةً
وَالفَيْبُ بِالْفَيْبِ جَلْدَ مِائَةٍ وَالرَّجْمُ

"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".¹⁹

Saib Ibn Yazid narrated that during the time of the Prophet, the reign of the Caliph Abu Bakr (RA.) and the early period of Omar (RA.), a drunkard was beaten with bare hands, footwear and hard cloth. Later, in Omar's Caliphate, the drunkard was

15. Imam Muslim b. al-Hajjaj, the second most famous Hadith Collector. His Book Saheeh is only second to Bukhari's Book

16. Saheeh Muslim, Hadith No-4631

17. Saheeh Al-Bukhari, Hadith No-2766

18. Saheeh Muslim, Hadith No-4176

19. Saheeh Muslim, Hadith No-4509

flogged with forty stripes, and if he continued drinking the punishment increased to flogging with eighty stripes.

It is also narrated that the Prophet (PBUH) said:

"Anyone who unjustly takes possession of a piece of land shall bear the weight of seven earths".²⁰

And the Prophet (PBUH) 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.²¹

It is incumbent upon Muslims to abide by the teachings and commandments prescribed in the Quran, the Sun-nah and the Shariah 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 Allah 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:

20. Saheeh Al-Bukhari, Hadith No-3198

21. Saheeh Muslim, Hadith No-313

﴿إِنَّ الصَّلَاةَ تَنْهَى عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ﴾

... Verily, As-Salat (the prayer) prevents from Al-Fahsha²²
and Al-Munkar²³. (Chapter 29, verse 45)

The Prophet (PBUH) 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".²⁴

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 Allah and in the direction of one Qibla,²⁵ consolidates the unity of the Muslim nation. The Quran says in this connection:

﴿إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ﴾

The believers are nothing else than brothers (in Islamic religion). (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 Allah 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.

22. i.e. great sins of every kind, unlawful sexual intercourse, etc.

23. i.e. disbelief, polytheism, and every kind of evil wicked deed, etc.

24. Saheeh Al-Bukhari, Hadith No-528

25. Qibla is the direction of the Ka`bah shrine in Makkah towards which all Muslims turn in ritual prayer- (Translator`s note).

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:

﴿ وَمَنْ يُوقِ شَحْ نَفْسِهِ فَأُولَئِكَ هُمُ الْمُفْلِحُونَ ﴾

And whosoever is saved from his own covetousness.

(Chapter 59, verse 9 and Chapter 64, verse 16)

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:

﴿ خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا ﴾

Take Sadaqah (alms) from their wealth in order to purify them and sanctify them with it. (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:

﴿ إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمَوْلَىٰ قُلُوبُهُمْ وَفِي الرِّقَابِ
وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ ﴾

As-Sadaqat (here it means Zakat) are only for the Fuqara' (poor), and Al-Masakin (the poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allah's Cause (i.e. for

Mujahidun - those fighting in the holy wars), and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise.

(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 (the ninth month of the Islamic year observed as sacred with daily fasting from dawn to sunset) 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.

Allah allowed man to eat and drink and enjoy the good things of life but without excess or extravagance. The Quran says:

﴿وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ ۝ قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ

لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ قُلْ هِيَ لِلَّذِينَ آمَنُوا فِي الْحَيَاةِ الدُّنْيَا خَالِصَةً يَوْمَ الْقِيَامَةِ ۞﴾

And eat and drink but waste not by extravagance, certainly He (Allah) likes not Al-Musrifun (those who waste by extravagance) Say (O Muhammad (PBUH)): "Who has forbidden the adoration with clothes given by Allah, which He has produced for his slaves, and At-Taiyibat [all kinds of Halal (lawful) things] of food?" Say: "They are, in the life of this world, for those who believe, (and) exclusively for them (believers) on the Day of Resurrection (the disbelievers will not share them). (Chapter 7, verses 31 and 32)

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:

﴿فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَنِّي وَثَلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً﴾

Then marry (other) women of your choice, two or three, or four but if you fear that you shall not be able to deal justly (with them), then only one or (the captives and the slaves).

(Chapter 4, verse 3)

and

﴿نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَأَتُوا حَرْثَكُمْ أَنْ شِئْتُمْ﴾

Your wives are a tilth for you, so go to your tilth (have sexual relations with your wives in any manner as long as it is in the vagina and not in the anus), when or how you will.

(Chapter 2, verse 223)

But during Ramadan a Muslim's sexual activity is limited to night-time as the following Quranic verse ordains:

﴿أَجَلٌ لَّكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثِ إِلَى نِسَائِكُمْ هُنَّ لِيَابَ لَكُمْ وَأَنْتُمْ لِيَابَ لَهُنَّ عَلِمَ اللَّهُ أَنَّكُمْ كُنْتُمْ تَخْتَانُونَ أَنْفُسَكُمْ فَتَابَ عَلَيْكُمْ وَعَفَا عَنْكُمْ فَالآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ وَكُلُوا وَاشْرَبُوا حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الْأَبْيَضُ مِنَ الْخَيْطِ الْأَسْوَدِ مِنَ الْفَجْرِ ثُمَّ أَتَمُوا الصِّيَامَ إِلَى اللَّيْلِ﴾

It is made lawful for you to have sexual relations with your wives on the night of As-Saum (the fasts). They are Libas²⁶, for you and you are the same for them. Allah knows that you used to deceive yourselves, so He turned to you (accepted your repentance) and forgave you. So now have sexual relations with them and seek that which Allah

26. i.e. body cover, or screen, or *Sakan*, (i.e. you enjoy the pleasure of living with her - as in Verse 7:189) *Tafsir At-Tabari*.

has ordained for you (offspring), and eat and drink until the white thread (light) of dawn appears to you distinct from the black thread (darkness of night), then complete your Saum (fast) till the nightfall. (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 (PBUH) is reported to have said:

مَنْ لَمْ يَدَعْ قَوْلَ الزُّورِ وَالْعَمَلَ بِهِ فَلَيْسَ لِلَّهِ حَاجَةٌ فِي أَنْ يَدَعَ طَعَامَهُ وَشَرَابَهُ

"He who does not refrain from telling lies and falsities there is no reason for him to abstain from eating and drinking".²⁷

The Prophet (PBUH) has also said:

"There are many fasting Muslims who apart from hunger and thirst, do not understand the real significance of fasting".²⁸

In the following verse the Quran has permitted a Muslim to repay an injury in the same manner:

﴿وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا﴾

The recompense for an evil is an evil like thereof.

(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.

27. Saheeh Al-Bukhari, Hadith No-1903

28. Musnad Ahmad, Hadith No-9685

When a person resists the temptation for one month, to respond to an injury, such as anger, which is permitted by Allah, 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 Allah (Ka'aba) where the devotee visits other sacred places such as Safa, Marwa and Arafa²⁹. From 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 Allah and His Shariah and confirm their belief in One Allah who has no other partners and recite: "Here I am at Your service O Almighty Allah 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

29. Safa and Marwa are two rocky sites at Makkah 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 Makkah where pilgrims perform some rites on the penultimate day of their pilgrimage.

nobody knows. All this represents a union of hearts believing in One Allah and one Shariah. The circle moves between Safa and Marwa reviving the history of the Prophet Ibrahim and his son Ismail (AS.). Then the pilgrim stands on Mount Arafat in awe and submission with his hands raised towards heaven beseeching Allah'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 image³⁰ of the Day of Judgement when people are brought to book in the presence of Allah. In the Quran we read:

﴿يَوْمَ تَجِدُ كُلُّ نَفْسٍ مَّا عَمِلَتْ مِنْ خَيْرٍ مُّحْضَرًا وَمَا عَمِلَتْ مِنْ سُوءٍ تَوَدُّ لَوْ أَنَّ بَيْنَهَا
وَبَيْنَهُ أَمَدًا بَعِيدًا﴾

On the Day when every person will be confronted with all the good he has done, and all the evil he has done, he will wish that there were a great distance between him and his 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 (PBUH) said:

مَنْ حَجَّ لِلَّهِ فَلَمْ يَرُفْثْ وَلَمْ يَفْسُقْ رَجَعَ كَيَوْمِ وُلِدَتْهُ أُمُّهُ

"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".³¹

Faith and its Influence on Crime Prevention

The foregoing forms of worship which help crime prevention are rooted in firm faith in Allah Who has ordained these

30. Mozdalifa is a location near Makkah between Mina and Arafat where pilgrims spend one night and on the other hand, Mina lies east of Makkah on the way to Arafat.

31. Saheeh Al-Bukhari, Hadith No-1521

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 Allah and perform religious obligations. The reason is that such societies perform religious rituals just as a custom handed down (Narrated by Bukhari, Ahmad 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 Allah. 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:

﴿ وَمِنَ النَّاسِ مَن يَقُولُ آمَنَّا بِاللَّهِ وَبِالْيَوْمِ الْآخِرِ وَمَا هُمْ بِمُؤْمِنِينَ ۝ يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلَّا أَنفُسَهُمْ وَمَا يَشْعُرُونَ ﴾

And of mankind, there are some (hypocrites) who say: "We believe in Allah and the Last Day" while in fact they believe not. They (think to) deceive Allah and those who believe, while they only deceive themselves, and perceive (it) not!

(Chapter 2, verses 8 and 9)

and

﴿ إِنَّ الْمُنَافِقِينَ يُخَادِعُونَ اللَّهَ وَهُوَ خَادِعُهُمْ وَإِذَا قَامُوا إِلَى الصَّلَاةِ قَامُوا كَسَالَى يُرَاؤُونَ النَّاسَ وَلَا يَذْكُرُونَ اللَّهَ إِلَّا قَلِيلًا ﴾

Verily, the hypocrites seek to deceive Allah, but it is He Who deceives them. And when they stand up for As-Salat (the prayer), they stand with laziness and to be seen of men, and they do not remember Allah but little.

(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.

﴿وَأَنَّ فَرِيقًا مِّنْهُمْ لَيَكْتُمُونَ الْحَقَّ وَهُمْ يَعْلَمُونَ﴾

But verily, a party of them conceal the truth while they know it - [i.e. the qualities of Muhammad (PBUH) which are written in the Taurat (Torah) and the Injeel (Gospel)].

(Chapter 2, verse 146)

Genuine faith is reflected in man's speech and deeds; it is a profound belief, without any doubts, in Allah the Almighty, His Apostle and in the Hereafter. The Quran says:

﴿إِنَّمَا الْمُؤْمِنُونَ الَّذِينَ آمَنُوا بِاللَّهِ وَرَسُولِهِ ثُمَّ لَمْ يَرْتَابُوا وَجَاهَدُوا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فِي سَبِيلِ اللَّهِ أُولَئِكَ هُمُ الصَّادِقُونَ﴾

Only those are the believers who have believed in Allah and His Messenger, and afterward doubt not but strive with their wealth and their lives for the Cause of Allah. Those! They are the truthful.

(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:

﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يَحْكُمُونَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا﴾

But no, by your Lord, they can have no Faith, until they make you (O Muhammad (PBUH)) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission.

(Chapter 4, verse 65)

Man has no option in his decision as regards the commands of Allah and His Apostle. The Quran says:

﴿وَمَا كَانَ لِلْمُؤْمِنِ وَلَا الْمُؤْمِنَةِ إِذَا قَضَىٰ اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ﴾

It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in 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 human behaviour.

On the other hand the Islamic Shariah receives its authority from Allah 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 (PBUH) said:

أَنْ تُؤْمِنَ بِاللَّهِ وَمَلَائِكَتِهِ وَكُتُبِهِ وَرُسُلِهِ وَالْيَوْمِ الْآخِرِ وَتُؤْمِنَ بِالْقَدَرِ خَيْرِهِ وَشَرِّهِ

"You must believe in Allah, His Angels, His Books, His Messengers, the Last Day and the Destiny whether good or evil".³²

32. Saheeh Muslim, Hadith No-102

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. Allah created man from clay and his offspring from his semen. Allah knows the origin of man's creation and those who are possessed with piety or ingratitude. The Quran says:

﴿ هُوَ أَعْلَمُ بِكُمْ إِذْ أَنْشَأَكُمْ مِنَ الْأَرْضِ وَإِذْ أَنْتُمْ أَجِنَّةٌ فِي بُطُونِ أُمَّهَاتِكُمْ فَلَا تُزَكُّوا أَنْفُسَكُمْ هُوَ أَعْلَمُ بِمَنِ اتَّقَى ﴾

He knows you well when He created you from the earth (Adam), and when you were fetuses in your mothers' wombs. So ascribe not purity to yourselves. He knows best him who fears Allah and keep his duty to Him [i.e. those who are Al-Muttaqun (pious)]. Chapter 53, verse 32)

It is unthinkable that Allah does not know the invisible minute details of His creations. The Quran says:

﴿ أَلَا يَعْلَمُ مَنْ خَلَقَ وَهُوَ اللَّطِيفُ الْخَبِيرُ ﴾

Should not He Who has created know? And He is the Most Kind and Courteous (to His slaves) All-Aware (of everything).

Chapter 67, verse 14)

Allah is equally aware of what we conceal and what we reveal, for the Quran says:

﴿ يَعْلَمُ مَا فِي السَّمَوَاتِ وَالْأَرْضِ وَيَعْلَمُ مَا تُسْرُؤْنَ وَمَا تُعْلِنُونَ وَاللَّهُ عَلِيمٌ بِذَاتِ الصُّدُورِ ﴾

He knows what is in the heavens and on earth, and He knows what you conceal and what you reveal. And Allah is the All-Knower of what is in the breasts (of men). (Chapter 64, verse 4)

Those who commit offences in secret without being caught shall not escape Allah's punishment. The Quran says:

﴿ أَلَمْ تَرَ أَنَّ اللَّهَ يَعْلَمُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ مَا يَكُونُ مِنْ نَجْوَى ثَلَاثَةٍ إِلَّا هُوَ رَابِعُهُمْ وَلَا خَمْسَةٍ إِلَّا هُوَ سَادِسُهُمْ وَلَا أَدْنَى مِنْ ذَلِكَ وَلَا أَكْثَرَ إِلَّا هُوَ مَعَهُمْ أَيْنَ مَا كَانُوا ثُمَّ يُنَبِّئُهُمْ بِمَا عَمِلُوا يَوْمَ الْقِيَامَةِ إِنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ ﴾

Have you not seen that Allah knows whatsoever is in the heavens and whatsoever is on the earth? There is no Najwa (secret counsel) of three, but He is their fourth (with His Knowledge, while He Himself is over the Throne, over the seventh heaven), nor of five but He is their sixth (with His Knowledge), not of less than that or more, but He is with them (with His Knowledge) wheresoever they may be; and afterwards on the Day of Resurrection, He will inform them of what they did. Verily, Allah is the All-Knower of everything .

(Chapter 58, verse 7)

Also Allah is aware of the dark suggestions that assail man in secret, for the Quran says:

﴿وَلَقَدْ خَلَقْنَا الْإِنْسَانَ وَنَعْلَمُ مَا تُوَسْوِسُ بِهِ نَفْسُهُ وَنَحْنُ أَقْرَبُ إِلَيْهِ مِنْ حَبْلِ الْوَرِيدِ﴾

And indeed We have created man, and We know what his ownself whispers to him. And We are nearer to him than his jugular vein (by Our Knowledge). (Chapter 50, verse 16)

Man's deeds, whether small or great, are recorded in Allah's Book. The Quran says in this connection:

﴿وَكُلُّ شَيْءٍ فَعَلُوهُ فِي الزُّبُرِ ۝ وَكُلُّ صَغِيرٍ وَكَبِيرٍ مُسْتَقَرٌّ﴾

And each and everything they have done is noted in (their) Records (of deeds). And everything, small and big is written (in Al-Lauh Al-Mahfuz already beforehand i.e. before it befalls, or is done by its doer). (Chapter 54, verses 52 and 53)

Pious men are noted for their devotion to Allah. Quran says in this connection :

﴿مَنْ خَشِيَ الرَّحْمَنَ الْغَيْبِ وَجَاءَ بِقَلْبٍ مُنِيبٍ﴾

Who feared the Most Beneficent (Allah) in the Ghaib (unseen): (i.e. in this worldly life before seeing and meeting Him), and brought a heart turned in repentance (to Him - and absolutely free from each and every kind of polytheism).

(Chapter 50, verse 33)

The 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:

﴿ أَفَلَا يَعْلَمُ إِذَا بُعْثِرَ مَا فِي الْقُبُورِ ۖ وَحُصِّلَ مَا فِي الصُّدُورِ ۖ إِنَّ رَبَّهُمْ بِهِمْ
يَوْمَئِذٍ لَّخَبِيرٌ ﴾

Knows he not that when the contents of the graves are brought out and poured forth (all mankind is resurrected). And that which is in the breasts (of men) shall be made known. Verily, that Day (i.e. the Day of Resurrection) their Lord will be Well-Acquainted with them (as to their deeds), (and will reward them for their deeds).

(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:

﴿ وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَدِّيًا فَجَزَاءُ جَهَنَّمَ خَالِدًا فِيهَا وَعَذَابُ اللَّهِ عَلَيْهِ وَلَعْنَهُ وَأَعَدَّ لَهُ
عَذَابًا عَظِيمًا ﴾

And whoever kills a believer intentionally, his recompense is Hell to abide therein, and the Wrath and the Curse of Allah are upon him, and a great punishment is prepared for him.

(Chapter 4, verse 93)

As regards those who wage war against Allah the Quran says:

﴿ إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا
أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ
فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ۖ إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ فَاعْلَمُوا أَنَّ اللَّهَ
عَفُورٌ رَحِيمٌ ﴾

The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in

the Hereafter. Except for those who (having fled away and then) came back (as Muslims) with repentance before they fall into your power; in that case, know that Allah is Oft-Forgiving, Most Merciful. (Chapter 5, verses 33 and 34)

As regards the crime of theft the Quran says:

﴿ وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ ط وَاللَّهُ عَزِيزٌ حَكِيمٌ
 ○ فَمَن تَابَ مِن بَعْدِ ظُلْمِهِ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ عَفُورٌ رَّحِيمٌ ﴾

Cut off (from the wrist joint) the (right) hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All-Powerful, All-Wise. But whosoever repents after his crime and does righteous good deeds (by obeying Allah), then verily, Allah will pardon him (accept his repentance). Verily, Allah is Oft-Forgiving, Most Merciful.

(Chapter 5, verses 38 and 39)

On the use of usury the Quran says:

﴿ الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقْوَمُونَ الرَّبِّيَّ إِلَّا كَمَا يَقْوَمُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذُلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَن جَاءَهُ مَوْعِظَةٌ مِّن رَّبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ ﴾

Those who eat Riba (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitan (Satan) leading him to insanity. That is because they say: "Trading is only like Riba (usury)," whereas Allah has permitted trading and forbidden Riba (usury). So whosoever receives an admonition from his Lord and stops eating Riba (usury) shall not be punished for the past; his case is for Allah (to judge); but whoever returns [to Riba (usury)], such are the dwellers of the Fire - they will abide therein.

(Chapter 1, verse 275)

On desertion of the Holy War the Quran says:

﴿ وَمَنْ يُؤَلَّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلَّا مُتَحَرِّرًا أَوْ مُتَحَرِّرًا إِلَىٰ فِتْنَةٍ فَعَدَّ بَاءً بِغَضَبٍ مِّنَ اللَّهِ وَمَا وَاهُ جَهَنَّمَ وَبُنُسِ الْمَصِيدِ ﴾

And whoever turns his back to them on such a day - unless it be a stratagem of war, or to retreat to a troop (of his own), - he indeed has drawn upon himself wrath from Allah. And his abode is Hell, and worst indeed is that destination!

(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 Shariah, 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 (PBUH) is reported to have said:

وَالْإِنَّمُ مَا حَاكَ فِي صَدْرِكَ وَكَرِهْتَ أَنْ يُطْلَعَ عَلَيْهِ النَّاسُ

"Crime is hatched in one's breast and the potential offender loathes to reveal it".³³

The Shariah, 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 Allah's Judgement in order to be absolved from the offence he committed. The woman who repeatedly came to the Prophet (PBUH) 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 (PBUH) with her baby who had a piece of bread in his hand. Then the Prophet (PBUH) ordered Khalid Ibn Walid (RA.) to stone the adulteress. When her blood touched Khalid's face he cursed the woman. On hearing this the Prophet (PBUH) said:

33. Saheeh Muslim, Hadith No-6680

"Hold your tongue, O Khalid, I swear by the Lord that she has repented so truly that had the worst offender repented like her Allah would have pardoned him".³⁴

Then the Prophet (PBUH) said a prayer on her before burying her. Imran Ibn Husain narrates that Omar (RA.) is reported to have questioned the Prophet (PBUH) as to why he prayed on an adulteress. The Prophet (PBUH) replied:

"Her repentance is so true that if it were divided over seventy sinners of the town of Madina Allah would forgive them. Is there a more virtuous person who confesses of her own will and offers her life to Allah?"³⁵

Also "Ma'iz" had to confess four times before the Prophet (PBUH) consented to have him stoned.

The Prophet (PBUH) 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 (PBUH) 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

34. Saheeh Muslim, Hadith No-4528

35. Saheeh Muslim, Hadith No-4529

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 Shariah. To conclude I will recite the following Quranic verse:

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ فَإِنْ تَوَلَّوْا فَاعْلَمُوا أَنَّمَا يُرِيدُ اللَّهُ أَنْ يُصِيبَهُمْ بِبَعْضِ ذُنُوبِهِمْ وَإِنَّ كَثِيرًا مِنَ النَّاسِ لَفَاسِقُونَ (۱) أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِقَوْمٍ يُوقِنُونَ﴾

And so judge (you O Muhammad (PBUH)) between them by what Allah has revealed and follow not their vain desires, but beware of them lest they turn you (O Muhammad (PBUH)) far away from some of that which Allah has sent down to you. And if they turn away, then know that Allah's Will is to punish them for some sins of theirs. And truly, most of men are Fasiqun (rebellious and disobedient to Allah). Do they then seek the judgement of (the Days of) Ignorance? And who is better in judgement than Allah for a people who have firm Faith. (Chapter 5, verses 52 and 53)

His Eminence Shaykh Muhammad Al-Sabbagh

Praise to be Allah. We thank Allah and beseech His help and support. We seek refuge with Allah to protect us from our evil thoughts and deeds. He whom Allah guides cannot go astray.

I thank the author for his valuable paper which he presented in a marvellous manner. May Allah 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 Allah, 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 (PBUH) explained this in a better way by saying that no man who has firm faith in Allah'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 Allah 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 Allah he should not eat Allah's provisions, should not abide on Allah's land, should not be seen by Allah 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 Allah'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, Allah's Scripts, His Apostles, Angels and Fate are the greatest deterrents against crime. The commandments and prohibitions of the Shariah were revealed only when the people's faith was well prepared. Bukhari narrates that Aisha³⁶ is reported to have said that the first Quranic verses revealed to the Prophet (PBUH) were concerned with Paradise and Hell. When people

36. Aisha (603-698) was the daughter of Abu Bakr, the first Caliph, and wife of Prophet Muhammad. She and other wives of the Prophet (PBUH) were known as "Um Al-Muamanin" (Mother of the Believers).

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 prohibiting 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 Ahmad and Abu Dawood two contestants went to the Prophet (PBUH) to settle a matter of inheritance between them although neither of them possessed any evidence. The Prophet (PBUH) 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 (PBUH) 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".³⁷

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 Shariah which is "to do a good turn and eschew mischief".

Man's submissiveness to Allah together with love are important factors in crime prevention. The Prophet (PBUH) 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:

﴿وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعِدًّا فَعَجْرًاؤُهُ جَهَنَّمَ خَالِدًا فِيهَا﴾

37. Sunan Abu-Dawood, Hadith No-3585-87

And whoever kills a believer intentionally, his recompense is Hell to abide therein. (Chapter 4, verse 93)

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 Allah and religion and by the Shariah doctrine "to enjoin what is good and refrain from evil deeds".

If after all this a man still commits an offence the Shariah 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:

﴿إِنَّ اللَّهَ لَا يَغْفِرُ أَنْ يُشْرَكَ بِهِ وَيَغْفِرُ مَا دُونَ ذَلِكَ لِمَنْ يَشَاءُ﴾

Verily! Allah forgives not (the sin of) setting up partners in worship with Him, but He forgives whom he pleases sins other than that. (Chapter 4, verse 116)

and

﴿قُلْ يَا عِبَادِيَ الَّذِينَ أَسْرَفُوا عَلَىٰ أَنْفُسِهِمْ لَا تَقْنَطُوا مِن رَّحْمَةِ اللَّهِ إِنَّ اللَّهَ يَغْفِرُ الذُّنُوبَ جَمِيعًا﴾

Say: "O 'Ibadi (My slaves) who have transgressed against themselves (by committing evil deeds and sins)! Despair not of the Mercy of Allah, verily Allah forgives all sins.

(Chapter 39, verse 53)

The Prophet (PBUH) 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 Shariah and it was confirmed that his repentance could be accepted by Allah he was relieved and ceased to be a murderer."³⁸

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 Allah, for the Quran says:

﴿إِنَّ اللَّهَ يُحِبُّ التَّوَّابِينَ وَيُحِبُّ الْمُتَطَهِّرِينَ﴾

Truly, Allah loves those who turn unto Him in repentance and loves those who purify themselves (by taking a bath and cleaning and washing thoroughly their private parts, bodies, for their prayers, etc.).
(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 Shariah. 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.

38. Musnad Ahmad, Hadith No-11170

Gentlemen! Through educational curriculum 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 Allah. By furthering the meaning of faith in Allah 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 curriculum 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.

Shaykh Muhammad 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 Allah and the Last Day shall honour his guest. He who believes in Allah and the Last Day shall honour his neighbour and he who believes in Allah and the Last Day shall speak well of others or keep quiet".³⁹

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 Muhammad 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 and invisible force restraining and curbing him. As faith

39. Saheeh Al-Bukhari, Hadith No-6019

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 orientalists 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 poiver 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 you who have faith in me" does not imply degrading and blind submissiveness but a feeling of trust. By loving Allah in the true sense one tries to do what pleases Him and avoid what displeases Him. Thus wherever a faithful worshipper may go, eastwards or westwards, he will find a place to worship Allah 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 Shariah 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 Allah. 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, media and other programmes in such a way as to instill the concept and importance of faith in the minds of the people.

His Eminence Shaykh 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 are 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 Allah 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 Shariah 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:

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ ۝﴾

O you who believe! When you contract a debt for a fixed period, write it down. Let a scribe write it down in justice between you. Let not the scribe refuse to write as Allah has taught him, so let him write.

Until it says:

﴿ وَأَذَىٰ الْأَ تِزَاتُ إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهَدُوا إِذَا اكْتَبْتُمُ ۝﴾

Save when it is a present trade which you carry out on the spot among yourselves, then there is no sin on you if you do not write it down. But take witnesses whenever you make a commercial contract.

(Chapter 2, verse 282)

There are many such cases which show a lack of link between us and our glorious Islamic legal heritage.

Shaykh Atiya Muhammad Salim

Praise be to Allah 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 (PBUH) said that only the pilgrim, whose money comes from honest sources, can receive Allah'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 (PBUH) left Madina for seven days, spent four days in Makkah, 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 (PBUH) made the following statement which must be a reminder to every pilgrim:

إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ حَرَامٌ عَلَيْكُمْ كَحَرَمَةِ يَوْمِكُمْ هَذَا فِي شَهْرِكُمْ هَذَا فِي بَلَدِكُمْ هَذَا

"You should realize that your lives, properties and honour are as sacred as this day, this month and this abode".⁴⁰

40. Saheeh Muslim, Hadith No-3009

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. Shaykh Al-Sabbagh, in this connection, referred to this matter by quoting the Hadith: "No believer with faith can commit adultery etc...".⁴¹

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 Allah 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 Outrive

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

41. Saheeh Al-Bukhari, Hadith No-2475

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 Allah and peace be upon Allah'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 Allah 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 Shaykh Muhammad 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 Shariah means faith in Allah 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 Allah. 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 (PBUH) 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 (RA.) who lost his temper with one of the Prophet's Companions. When the Prophet (PBUH) 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 Allah. 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 are to the author of the paper for his contribution and his emphasis on faith and worship as a spiritual bond between Allah 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 Shaykh Manna Al-Kattan be kind enough to explain the effect of the fundamental principle of the Sharia, i.e. belief in One Almighty Allah and in Muhammad as His Messenger, on the conduct of the Muslim as regards crime prevention.

Shaykh Salih Al-Laheidan

Praise be to Allah and peace be upon the Prophet (PBUH) 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 Shaykh Muhammad 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, "Adhab", 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.

Shaykh Ibrahim Abdullah

Due thanks are to Shaykh Al-Kattan for his valuable paper and to Shaykh Sabbagh, Shaykh 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 Shaykh Salih Al-Luhaidan 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 physical, financial and other undertakings as required by the Shariah. 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 Allah.

Shaykh Muhammad Al-Ghazali

As regards the saying "Faith serves as a restraint against aggression", I heard it from the late author Ahmad Shaker, who based his statement on "Al-Musnad" by Imam Ahmed Ibn Hanbal (RAH.) ('Al-Musnad' meaning reference is a Hadith collection compiled by Imam Ahmad Ibn Hanbal (RAH.)) 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 Bukhari and Muslim. I hope I shall present the "Al-Musnad" shortly.

Shaykh 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.

By faith and worship it is meant that believers have to abide by Allah'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 Allah, for this means that only Allah 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.

Shaykh Rashed Ibn Khabir

Praise be to Allah and peace be upon the Prophet.

The Prophet (PBUH) said:

"My people shall be pardoned what offence they have in mind provided they do not commit it or utter anything offensive".⁴²

In another Hadith the Prophet (PBUH) said:

"Allah 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 Allah. If he does commit the offence it shall be a point against him".⁴³

He who does a good act has ten points in his favour. This is one of the advantages of the Shariah.

There is another point which I would like to clarify concerning the Hadith quoted by Shaykh Sabbagh. The Hadith says that a man with faith does not commit the crime of adultery or theft,

42. Saheeh Al-Bukhari, Hadith No-2528

43. Saheeh Muslim, Hadith No-349

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 Allah to forgive or punish the culprit either in this world or in the Hereafter.

Faith, according to the Sunnah authorities, increases with obedience to Allah and decreases with disobedience to Him. But this does not mean the culprit shall be treated like an apostate. As Shaykh Manna has pointed out, the Muslim jurists classified religious duties into three parts: worship, dealing with others and abiding by Allah's legislation.

Finally, I would like to thank you all for your comments and Shaykh 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 Allah grant us success and lead us on the right path. Allah's peace, mercy and blessings be upon you all.

Influence Of The Quranic Teaching “To Enjoin The Good And Refrain From Evil Deeds” On Crime Prevention

Shaykh Nasir Ibn Hamad Al-Rasheed*

This paper included the following major points:

- Positive laws are not concerned with crime prevention before it is committed while Islamic Shariah has succeeded in achieving this scope reasonably well.
- Positive laws have failed to control the commission of crime.
- Islamic Shariah has succeeded in combating 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 Allah's commandments and restrain them from committing crime.
- This same doctrine implements the injunctions of the Shariah as regards crime prevention.
- Quotations are from the Holy Quran and the Sunnah, original sources of Islamic legislation to illustrate the Shariah's copious references concerning crime prevention and prompting the believers to lead a life of rectitude.

Some prophecies of the Prophet (PBUH) as regards the future of the Muslim nation who will live in peace and free from crime thanks to the implementation of the Shariah. The Kingdom of Saudi Arabia is an excellent example of the

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fulfillment of the Prophet's prophecy. Due to strict adherence to Shariah 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:

﴿وَكَانَ الْإِنْسَانُ أَكْثَرَ شَيْءٍ جَدَلًا﴾

But, man is ever more quarrelsome than anything.

(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 Allah, 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 Shariah 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. Allah is most compassionate with His creatures.

As regards retaliation punishment the Quran says:

﴿لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ﴾

Deal not unjustly, and you 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. Allah does not leave the responsibility of disciplining mankind and settling its disputes to a few individuals. So Allah 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:

﴿تَنْزِيلٌ مِنَ الرَّحْمَنِ الرَّحِيمِ ۝ كِتَابٌ فُصِّلَتْ آيَاتُهُ قُرْآنًا عَرَبِيًّا لِقَوْمٍ يَعْلَمُونَ ۝ بَشِيرًا وَنَذِيرًا فَأَعْرَضَ أَكْثَرُهُمْ فَهُمْ لَا يَسْمَعُونَ﴾

A revelation from Allah, the Most Beneficent, the Most Merciful. A Book whereof the Verses are explained in detail; A Qur'an in Arabic for people who know. Giving glad tidings [of Paradise to the one who believes in the Oneness of Allah (i.e. Islamic Monotheism) and fears Allah much (abstains from all kinds of sins and evil deeds) and loves Allah much (performing all kinds of good deeds which He has ordained)], and warning (of punishment in the Hell-Fire to the one who disbelieves in the Oneness of Allah), but most of them turn away so they hear not.

(Chapter 41, verses 2, 3 and 4)

Again we read in the Quran:

﴿الرَّ كِتَابٌ أُحْكِمَتْ آيَاتُهُ ثُمَّ فُصِّلَتْ مِنْ لَدُنْ حَكِيمٍ خَبِيرٍ﴾

Alif-Lam-Ra. (This is) a Book, the Verses whereof are perfected (in every sphere of knowledge, etc.), and then explained in detail from One (Allah), Who is All-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:

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ﴾

Let there arise out of you a group of people inviting to all that is good (Islam), enjoining Al-Ma'ruf (i.e. Islamic Monotheism and all that Islam orders one to do) and forbidding Al-Munkar (polytheism and disbelief and all that Islam has forbidden). (Chapter 3, verse 104)

and

﴿كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَنَهَوْنَ عَنِ الْمُنْكَرِ﴾

You [true believers in Islamic Monotheism, and real followers of Prophet Muhammad (PBUH) and his Sunnah (legal ways, etc.)] are the best of peoples ever raised up for mankind; you enjoin Al-Ma'ruf (i.e. Islamic Monotheism and all that Islam has ordained) and forbid Al-Munkar (polytheism, disbelief and all that Islam has forbidden).

(Chapter 3, verse 110)

and

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ﴾

Help you one another in Al-Birr and At-Taqwa (virtue, righteousness and piety); but do not help one another in sin and transgression. (Chapter 5, verse 2)

The teaching of "enjoining what is good and refraining from evil deeds" was stipulated in the famous Islamic historical event during the Aqaba¹ fealty plighting. The Prophet's followers asked him what they should pledge and the Prophet (PBUH) replied:

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1. Not to be mistaken with the Jordanian port on the Red Sea, this Aqaba is a location between Mina and Makkah in the Hejaz where 70 citizens of Madina plighted their fealty to the Prophet

"You have to obey me in enjoining what is good and refraining from evil deeds".²

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 Allah'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 Allah 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 (RA.)³ narrated that once a man was asked to choose among three alternatives: kill a youth, commit adultery or drink alcohol. He chose to drink alcohol first, and 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 Shariah 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 aggression leads to innumerable crimes; therefore this teaching eliminates the original cause that may lead to other crimes. The Shariah, for example, prohibits women to make a dazzling display of themselves in front of

2. Musnad Ahmad, Hadith No-14456

3. 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

male strangers and enjoins the women to be modest in their speech lest they provoke men to commit untold offences. The Quran says:

﴿وَلَا تَكْبُرْنَ كُنْتَرُوحَ الْجَاهِلِيَّةِ الْأُولَى﴾

And do not display yourselves like that of the times of ignorance.
(Chapter 33, verse 33)

and

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوْ التَّابِعِينَ غَيْرِ أُولِي الْإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ﴾

And not to show off their adornment except only that which is apparent (like palms of hands or one eye or both eyes for necessity to see the way, or outer dress like veil, gloves, head-cover, apron, etc.), and to draw their veils all over Juyubihinna (i.e. their bodies, faces, necks and bosoms, etc.) and not to reveal their adornment except to their husbands, their fathers, their husband's fathers, their sons, their husband's sons, their brothers or their brother's sons, or their sister's sons, or their (Muslim) women (i.e. their sisters in Islam), or the (female) slaves whom their right hands possess, or old male servants who lack vigour, or small children who have no sense of the shame of sex. And let them not stamp their feet so as to reveal what they hide of their adornment.
(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 (PBUH) 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 (PBUH) said:

"A woman who believes in Allah and the Last Day shall travel only in the company of a near blood relation whom she cannot marry".⁴

When a man reported to the Prophet (PBUH) that his wife had gone on pilgrimage while he was engaged in the Muslim army, the Prophet (PBUH) advised him to go and join his wife.

The Prophet (PBUH) said:

"Whenever a man and a woman meet in privacy the Devil is always present with them".⁵

Ibn Majah and Al-Bayhaqi related that the Prophet (PBUH) had said to Ibn Abbas (RA.) that the more the crime of adultery increases, the more death rates soar. Also the Prophet (PBUH) is reported to have said where adultery and usury prevail the people shall get the deserved punishment from Allah.

It is a known fact that the immoralities, which are forbidden by Islam, are preceded by a dazzling display by 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:

4. Saheeh Al-Bukhari, Hadith No-1088, Saheeh Muslim, Hadith No-3324, 3331, 3332, 3334

5. Sunan At-Tirmidhi, Hadith No-2165

﴿لُعِنَ الَّذِينَ كَفَرُوا مِنْ بَنِي إِسْرَائِيلَ عَلَى لِسَانِ دَاوُدَ وَعِيسَى ابْنِ مَرْيَمَ ذَلِكَ بِمَا عَصَوْا
وَكَانُوا يَعْتَدُونَ ۝ كَانُوا لَا يَتَنَاهَوْنَ عَنْ مُنْكَرٍ فَعَلُوهُ لَبِئْسَ مَا كَانُوا يَفْعَلُونَ﴾

Those among the Children of Israel who disbelieved were cursed by the tongue of Dawud (David) and 'Iesa (Jesus), son of Maryam (Mary). That was because they disobeyed (Allah and the Messengers) and were ever transgressing beyond bounds. They used not to forbid one another from the Munkar (wrong, evil-doing, sins, polytheism, disbelief, etc.) which they committed. Vile indeed was what they used to do.⁶

(Chapter 5, verses 78 and 79)

When this Quranic verse was revealed the Prophet (PBUH) 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 Allah will inflict His punishment on the whole of the community, and when the members of that community invoke Allah'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 (PBUH) narrated the following example to illustrate the significance of the teaching "enjoining what is good":

"The person who enjoins Allah's Shariah 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".⁷

6. 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).

7. Saheeh Al-Bukhari, Hadith No-2493

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 (PBUH) 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:

وَاللَّهِ لَيَتِمَّنَّ هَذَا الْأَمْرَ حَتَّى يَسِيرَ الرَّكِيبُ مِنْ صَنْعَاءَ إِلَى حَضْرَمَوْتَ لَا يَخَافُ إِلَّا اللَّهَ أَوْ الذِّئْبَ عَلَى غَنَمِهِ

"By Allah this teaching shall be fulfilled and stability shall be so secure that a passenger will be able to travel safely from Sana'a to Hadramaut⁸ without any fear except Allah's punishment for any offences he may commit and the wolf that might attack his sheep".⁹

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 Allah'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:

﴿وَعَدَ اللَّهُ الَّذِينَ آمَنُوا مِنْكُمْ وَعَمِلُوا الصَّالِحَاتِ لَيَسْتَخْلِفَنَّهُمْ فِي الْأَرْضِ كَمَا اسْتَخْلَفَ الَّذِينَ مِنْ قَبْلِهِمْ وَلَيُمَكِّنَنَّ لَهُمْ دِينَهُمُ الَّذِي ارْتَضَى لَهُمْ وَلَيُبَدِّلَنَّهُمْ مِنْ بَعْدِ خَوْفِهِمْ أَمْنًا يَعْبُدُونَنِي لَا يُشْرِكُونَ بِي شَيْئًا وَمَنْ كَفَرَ بَعْدَ ذَلِكَ فَأُولَئِكَ هُمُ الْقَاسِقُونَ﴾

Allah has promised those among you who believe, and do righteous good deeds, that He will certainly grant them succession to (the present rulers) in the earth, as He granted it to those before them, and that He will grant them the

8. Sana'a is the capital of Yemen. Hadramaut is the region east of Aden

9. Saheeh Al-Bukhari, Hadith No-3612

authority to practise their religion, that which He has chosen for them (i.e. Islam). And He will surely give them in exchange a safe security after their fear (provided) they (believers) worship Me and do not associate anything (in worship) with Me. But whoever disbelieved after this, they are the Fasiqun (rebellious, disobedient to Allah).

(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 Shariah on the part of the King, the Government and the people in compliance with the following Quranic verse:

﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ﴾

Help you one another in Al-Birr and At-Taqwa (virtue, righteousness and piety); but do not help one another in sin and transgression.

(Chapter 5, verse 2)

Indeed the implementation of the Islamic Shariah is the only successful remedy for humanity against crime, which is the source of human misery and disorder. The Quran says:

﴿يَا أَيُّهَا النَّاسُ قَدْ جَاءَكُمْ مَوْعِظَةٌ مِّن رَّبِّكُمْ وَشِفَاءٌ لِّمَا فِي الصُّدُورِ وَهُدًى وَرَحْمَةٌ

لِّلْمُؤْمِنِينَ﴾

O mankind! There has come to you a good advice from your Lord (i.e. the Qur'an, ordering all that is good and forbidding

all that is evil), and a healing for that (disease of ignorance, doubt, hypocrisy and differences, etc.) in your breasts, - a guidance and a mercy (explaining lawful and unlawful things, etc.) for the believers. (Chapter 10, verse 57)

and

﴿وَنُنزِّلُ مِنَ الْقُرْآنِ مَا هُوَ شِفَاءٌ وَرَحْمَةٌ لِّلْمُؤْمِنِينَ﴾

And We send down from the Qur'an that which is a healing and a mercy to those who believe (in Islamic Monotheism and act on it). (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 Allah will punish those who violate His Divine Law. In this connection the Quran says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا أَنفُسَكُمْ وَأَهْلِيكُمْ نَكَرًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ﴾

O you who believe! Ward off from yourselves and your families a Fire (Hell) whose fuel is men and stones, over which are (appointed) angels stern (and) severe, who disobey not, (from executing) the Commands they receive from Allah, but do that which they are commanded.

(Chapter 66, verse 6)

Allah 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:

﴿وَمَنْ أَضَلُّ مِمَّنِ اتَّبَعَ هَوَاهُ بِغَيْرِ هُدًى مِنَ اللَّهِ إِنَّ اللَّهَ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ﴾

And who is more astray than one who follows his own lusts, without guidance from Allah? Verily! Allah guides not the people who are Zalimun (wrong-doers, disobedient to Allah, and polytheists). (Chapter 28, verse 50)

The Jews were cursed by Allah because they followed their lust and deviated from their true religion. In this connection we read the following Quranic verse:

﴿ أَفَتُؤْمِنُونَ بِبَعْضِ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ فَمَا جَزَاءُ مَنْ يَفْعَلْ ذَلِكَ مِنْكُمْ إِلَّا خِزْيٌ فِي الْحَيَاةِ الدُّنْيَا وَيَوْمَ الْقِيَامَةِ يُرَدُّونَ إِلَى أَشَدِّ الْعَذَابِ وَمَا اللَّهُ بِغَافِلٍ عَمَّا تَعْمَلُونَ ﴾

Then do you believe in a part of the Scripture and reject the rest? Then what is the recompense of those who do so among you, except disgrace in the life of this world, and on the Day of Resurrection they shall be consigned to the most grievous torment. And Allah is not unaware of what you do.

(Chapter 2, verse 85)

Would it not be better to implement the Shariah strictly in order to win Allah'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 Allah 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 Shariah? I pray Allah that it does. Allah's peace, mercy and blessings be upon you all.

COMMENTED BY**Shaykh Mansour Ibn Hamad Al-Malik**

Praise be to Allah whom we invoke to support and guide and forgive us. We seek refuge with the Lord from our mischief. And such as Allah guides there can be none to lead astray, and those whom Allah leavens to stray no one can guide. I testify that there are no other Allah's but One Allah and Muhammad is His apostle. May Allah 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 (PBUH) 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 Shariah has already dealt with this matter to save people from crime. Likewise, the Shariah has prescribed appropriate punishments for each crime. I believe it would have been better if the paper had started with the Islamic Shariah whose source and base are the Quran and the Prophet's Sunnah.

This symposium was originally organized to show that (the Islamic Shariah 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 Shariah 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 Shariah.

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 Allah "enacted" punishments after the commission of the

offence and that Allah is better aware of what is most suitable to be enacted for his worshippers. Now my objection concerns the use of the Arabic word "enactment". He could easily have used other terms common in the Shariah 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 "Allah imposed obligations and fixed punishments". Therefore, in my view, it would have been better if the author had confined himself to the Shariah 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 Shariah 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 Shariah was established by Allah 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 crimes 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 is reasonable and logical. Whoever is legally reasonable and considered logical is right. But what is right? It comprises all religious duties, optionals and morals- Forbidding what is wrong signify forbidding whatever reason finds undesirable and rejected by the Shariah.

Those, who order others to enjoin what is good, merit a prominent position in Islam- Allah praises those people and defines them as the finest people.

So the person who orders people to enjoin what is right occupies an important position and can take the responsibility 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 Allah 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.

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 combating 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.¹⁰ 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 Shariah and positive laws, this matter will be discussed at this symposium. Now, I give the floor to Dr. Peider Konz.

Dr. Peider Konz

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 Shariah 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 Shariah amongst the Muslims and the Shariah experiment amongst modern societies, especially in the Third World, and its effect on

10. 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.

positive laws. As observers in this symposium we try to understand the Islamic Shariah. 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 Shariah has been general, whereas we wish it had been more intensive and deeper. However, we shall continue to study the Shariah profoundly in order to discover its effect on Muslim societies and the Third World.

From the discussions it appears that the Islamic Shariah 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 Shariah. While in Ethiopia I came across some people trying to transmit certain principles to Muslims that run counter to the Islamic Shariah because these people were not sufficiently versed in its real meaning.

In order to understand the Shariah we must know its essence and its implementation. I am rather concerned about the gap that exists between the true concept of the Shariah and what people think about it. In order to render it more effective the Shariah should be clearly defined and well construed. I believe that the Islamic Shariah 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 Shariah 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 (meaning major European languages). Thank you.

Conductor of discussions

Thanks to Dr. Kons for his interest in the Islamic Shariah and I give the floor to the Vice-Chairman to reply to the queries.

Vice-Chairman

I Thanks to Dr. Kons 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.

Shaykh Manna Al-Kattan

I Thank Shaykh Nasir 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 behaviour. However, I would like to make the following comments:

First : One of the main functions of the teaching of "enjoining which 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 leaves 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 Shariah 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 kept 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 Muhammad preached in the verse: "Will ye not then be filled with awe?" and in the Quran we also read the following verse :

﴿إِن أُرِيدُ إِلَّا الْإِصْلَاحَ مَا اسْتَطَعْتُ وَمَا تَوْفِيقِي إِلَّا بِاللَّهِ عَلَيْهِ تَوَكَّلْتُ وَإِلَيْهِ أُنِيبُ﴾

I only desire reform so far as I am able, to the best of my power. And my guidance cannot come except from Allah, in Him I trust.
(Chapter 11, verse 88)

and

﴿فَقُولَا لَهُ قَوْلًا لَّيِّنًا لَّعَلَّهُ يَتَذَكَّرُ أَوْ يَخْشَى﴾

And speak to him mildly, perhaps he may accept admonition or fear Allah.
(Chapter 20, verse 44)

This refers to the approach of Musa and Haroun (AS) 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?

﴿قُلِ اللَّهُ وَإِنَّا أَوْ إِيَّاكُمْ لَعَلَىٰ هُدًى أَوْ فِي ضَلَالٍ مُّبِينٍ﴾

Say: "Allah, And verily, (either) we or you are rightly guided or in a plain 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 Shaykh Nasir 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 gene: are responsible for preaching Islam, otherwise non-Muslims would have an excuse for their ignorance. The Quran says :

﴿وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ رَسُولًا﴾

And We never punish until We have sent a Messenger (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 Allah'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 Allah, 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 Shariah 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 Shariah 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 Allah that you succeed in persuading your respective countries to implement the Islamic Shariah.

Shaykh Idris Al-Zerwely

-Representative of the kingdom of Maghrib

Praise be to Allah from Whom all prosperities spring. Peace be upon our Prophet Muhammad, 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:

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ﴾

Let there arise out of you a group of people inviting to all that is good (Islam), enjoining Al-Ma'ruf¹¹ and forbidding Al-Munkar¹². And it is they who are the successful. (Chapter 3, verse 104)

11. i.e. Islamic Monotheism and all that Islam orders one to do.

12. Polytheism and disbelief and all that Islam has forbidden.

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)".¹³

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 Allah'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

13. Saheeh Muslim, Hadith No-186

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 Shariah 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.

Shaykh Nasir Ibn Hamad Al-Rasheed

I thank Dr. Mnsur Hamad Al-Malik commencing his comment 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 Shaykh Mansur Ibn Hamad regarding starting my speech with an introduction on other nations' concern with crime prevention instead of with the Islamic Shariah, although I wholly agree with the commentator on the advantages of the Shariah, 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 Shariah, 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-rau" (to establish) I used the same word in the Quranic verse:

﴿أَمْ لَهُمْ شُرَكَاءُ شَرَعُوا لَهُمْ مِنَ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ﴾

Or have they partners with Allah (false gods), who have instituted for them a religion which Allah has not allowed ?

(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 Shariah 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 Shariah, do not give so much thought to crime before its commission. The Shariah 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, Shaykh Mansur and Shaykh 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 Shariah 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 :

﴿قَدْ أَفْلَحَ مَنْ زَكَّاهَا ۖ وَقَدْ خَابَ مَنْ دَسَّاهَا﴾

Indeed he succeeds who purifies his ownself (i.e. obeys and performs all that Allah ordered, by following the true Faith of Islamic Monotheism and by doing righteous good deeds). And indeed he fails who corrupts his ownself (i.e. disobeys what Allah has ordered by rejecting the true Faith of Islamic Monotheism or by following polytheism, etc. or by doing every kind of evil wicked deeds). (Chapter 91, verses 9 and 10)

And

﴿قَدْ أَفْلَحَ مَنْ تَزَكَّى ۖ وَذَكَرَ اسْمَ رَبِّهِ فَصَلَّى﴾

Indeed whosoever purifies himself shall achieve success. And remembers (glorifies) the Name of his Lord (worships none but Allah), and prays (five compulsory prayers and Nawafil additional prayers). (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 Allah 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:

﴿إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ﴾

Verily, As-Salat (the prayer) prevents from Al-Fahsha¹⁴ and Al-Munkar¹⁵.
(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 Allah 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 (PBUH) said to his Companions:

"By Allah, 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 Allah will inflict His punishment on the whole of the community, and when the members of that society invoke Allah's name He will not answer".¹⁶

Therefore if we do not persuade and compel the answer sinner to repent and abide by the teachings of Islam of his own accord we will be responsible for his sins, and Allah forbid will be subjected to Allah'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.

14. i.e. great sins of every kind, unlawful sexual intercourse, etc.

15. i.e. disbelief, polytheism, and every kind of evil wicked deed, etc.

16. Sunan At-Tirmidhi, Hadith No-2169

I hope that I have answered Dr. Van Outrive's query. As for Shaykh 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 lies 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.

Allah's peace and mercy be upon you.

Influence Of Islamic Education On Crime Prevention

Shaykh Muhammad Qutb*

Praise be to Allah, the Cherisher and Sustainer of the Worlds, and peace be upon the Prophet, the best of Allah's Messengers.

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:

﴿أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِقَوْمٍ يُوقِنُونَ﴾

Do they then seek the judgement of (the Days of) Ignorance?
And who is better in judgement than Allah for a people who
have firm Faith? (Chapter 5, verse 50)

Judgements are classified into two categories: Allah's Judgement and that of the Days of Ignorance. The Judgement set by man for himself and which do not comply with Allah's injunctions is 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

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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 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 Shariah does not act with haste and each case of theft is dealt with separately.

The Prophet (PBUH) 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."¹

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

1. Sunan At-Tirmidhi, Hadith No-1424

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 Shariah 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 Makkah and later in Madina, did not confine himself only to saying what Allah 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 Shariah 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 Allah. 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 hpves 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 Allah had created from the beginning. The Quran says:

﴿لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ ۝ ثُمَّ رَدَدْنَاهُ أَسْفَلَ سَافِلِينَ ۝ إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ﴾

Verily, We created man of the best stature (mould), Then We reduced him to the lowest of the low, Save those who believe (in Islamic Monotheism) 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 Allah who has no other partners. He is the Allah, as the Prophet (PBUH) 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 Allah but it also means to act accordingly. Faith, according to Islam, has its prerequisites, objectives and morals. Let us consider the following Quranic verses:

قَدْ أَفْلَحَ الْمُؤْمِنُونَ

"Successful indeed are the believers."

Well, who are the believers and what are their characteristics?
The believers are

﴿ قَدْ أَفْلَحَ الْمُؤْمِنُونَ ○ الَّذِينَ هُمْ فِي صَلَاتِهِمْ خَاشِعُونَ ○ وَالَّذِينَ هُمْ عَنِ اللَّغْوِ مُعْرِضُونَ ○ وَالَّذِينَ هُمْ لِلزَّكَاةِ فَاعِلُونَ ○ وَالَّذِينَ هُمْ لِعَفْوِهِمْ حَافِظُونَ ○ إِلَّا عَلَىٰ أَرْوَاحِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ ○ فَمَنِ ابْتَغَىٰ وَرَاءَ ذَلِكَ فَأُولَٰئِكَ هُمُ الْعَادُونَ ○ وَالَّذِينَ هُمْ لِأَمَانَاتِهِمْ وَعَهْدِهِمْ رَاعُونَ ○ وَالَّذِينَ هُمْ عَلَىٰ صَلَوَاتِهِمْ يُحَافِظُونَ ○ أُولَٰئِكَ هُمُ الْوَارِثُونَ ○ الَّذِينَ يَرِثُونَ الْفِرْدَوْسَ هُمْ فِيهَا خَالِدُونَ ﴾

Successful indeed are the believers. Those who offer their Salat (prayers) with all solemnity and full submissiveness. And those who turn away from Al-Laghw². And those who pay the Zakat. And those who guard their chastity (i.e. private

2. Dirty, false, evil vain talk, falsehood, and all that Allah has forbidden.

parts, from illegal sexual acts) Except from their wives or (the captives and slaves) that their right hands possess, for then, they are free from blame; But whoever seeks beyond that, then those are the transgressors; Those who are faithfully true to their Amanat³ and to their covenants; And those who strictly guard their (five compulsory congregational) Salawat (prayers) (at their fixed stated hours). These are indeed the inheritors. Who shall inherit the Firdaus (Paradise). They shall dwell therein forever. (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:

﴿ أَفَمَنْ يَعْلَمُ أَنَّمَا أُنزِلَ إِلَيْكَ مِنْ رَبِّكَ الْحَقُّ كَمَنْ هُوَ أَعْلَىٰ إِنَّمَا يَتَذَكَّرُ أُولَٰئِكَ الْأَلْبَابِ ۝
 الَّذِينَ يُؤْفِقُونَ بِعَهْدِ اللَّهِ ۝ وَلَا يُنْقِضُونَ الْمِيثَاقَ ۝ وَالَّذِينَ يَصِلُونَ مَا أَمَرَ اللَّهُ بِهِ أَنْ يُوصَلَ
 وَيَخْشَوْنَ رَبَّهُمْ وَيَخَافُونَ سُوءَ الْحِسَابِ ۝ وَالَّذِينَ صَبَرُوا ابْتِغَاءَ وَجْهِ رَبِّهِمْ وَأَقَامُوا
 الصَّلَاةَ وَأَنفَقُوا مِمَّا رَزَقْنَاهُمْ سِرًّا وَعَلَانِيَةً وَيَذَرُونَ بِالْحَسَنَةِ السَّيِّئَةَ أُولَٰئِكَ لَهُمْ عُقْبَى
 الدَّارِ ۝ جَنَّاتٌ عَدْنٍ ۝﴾

Shall he then who knows that what has been revealed unto you (O Muhammad (PBUH)) from your Lord is the truth be like him who is blind? But it is only the men of understanding that pay heed. Those who fulfill the Covenant of Allah and break not the Mithaq (bond, treaty, covenant); Those who join that which Allah has commanded to be joined (i.e. they are good to their relatives and do not sever the bond of kinship), fear their Lord, and dread the terrible reckoning (i.e. abstain from all kinds of sins and evil deeds which Allah has forbidden and perform all kinds of good deeds which Allah has ordained). And those who remain patient, seeking their Lord's Countenance, perform As-Salat (Iqamat-as-Salat), and spend out of that which We have bestowed on them, secretly and openly, and defend evil with good, for such there is a good end; 'Adn (Eden) Paradise (everlasting Gardens). (Chapter 13, verses 19 to 23)

3. all the duties which Allah has ordained, honesty, moral responsibility and trusts etc.

So the believers are those who recognize that whatever comes from Allah is the Truth, and as a result of this knowledge do not fail in fulfilling the covenant of Allah and joining together the things which Allah has commanded to be joined, say regular prayers, spend from the gifts Allah has bestowed, worship Allah 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 Allah, Prophet Muhammad, was an ideal example not only for the Muslims but for all of mankind. The Holy Quran says:

﴿لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِّمَن كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ اللَّهَ
كَثِيرًا﴾

Indeed in the Messenger of Allah (Muhammad (PBUH)) you have a good example to follow for him who hopes in (the Meeting with) Allah and the Last Day and remembers Allah much.
(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 Allah wants thereby to educate the Muslim, and imbibe him with the teachings of the Quran. The first and greatest example of the teachers in Islam is the Prophet (PBUH) himself, and the early Islamic society composed of the pious Companions and their follows, 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 inmsmitting religious topics on the radio and television every day, morning and evening, or teaching religion at school or writing about religion in the newspapers. Now, all this would be of little avail unless these teachings are nipped with concrete and tangible examples of behaviour in 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 (Abu Sufian was an opponent of the Prophet (PBUH) 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 (PBUH) conquered Makkah. In 636 A.D. he took part in the battle of Yarmouk against the Byzantines) regarding the Prophet (PBUH) (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 Muhammad, the Prophet. It is well known that the Prophet (PBUH) 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, Allah 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 Allah'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 (PBUH) 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 Allah 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:

﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ﴾

And I (Allah) created not the jinns and humans except they should worship Me (Alone). (Chapter 51, verse 56)

and

﴿ قُلْ إِنَّ صَلَاتِي وَنُسُكِي وَمَحْيَايَ وَمَمَاتِي لِلَّهِ رَبِّ الْعَالَمِينَ (۱) لَا شَرِيكَ لَهُ وَبِذَلِكَ أُمِرْتُ وَأَنَا أَوَّلُ الْمُسْلِمِينَ ﴾

Say (O Muhammad (PBUH)): "Verily, my Salat (prayer), my sacrifice, my living, and my dying are for Allah, the Lord of the 'Alamin (mankind, jinns and all that exists). "He has no partner. And of this I have been commanded, and I am the first of the Muslims. (Chapter 6, verses 161 and 162)

A man who remembers Allah 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 Allah. When the Quranic verse prohibiting taking alcoholic drinks was revealed all the Prophet (PBUH) needed was the public announcement in Madina 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 Allah. This is the Islamic education which prevents the commission of crime or at least restrains it.

Shaykh Ibrahim Al-Dabbas

Allah'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 Shaykh Muhammad 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 (PBUH) said that every child is born innocent.

The Prophet's saying is a clear reference to the fact that Allah 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 Allah 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 (PBUH) urged us to frequent good and to avoid bad company. The Prophet (PBUH) resembled good company to a musk-carrier.⁴

4. Musk is a substance with a penetrating odour, that is derived from a male musk deer.

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 Allah'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 Allah 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 Allah's punishment, how on earth can that person ever dare to commit an offence? In this connection the Holy Quran says:

﴿ يَا مَعْشَرَ الْجِنِّ وَالْإِنْسِ إِنَّ اسْتَطَعْتُمْ أَنْ تَنْفُذُوا مِنْ أَقْطَارِ السَّمَاوَاتِ وَالْأَرْضِ فَانْفُذُوا
لَا تَنْفُذُونَ إِلَّا بِسُلْطَانٍ ﴾

O assembly of jinns and men! If you have power to pass beyond the zones of the heavens and the earth, then pass (them)! But you will never be able to pass them, except with authority (from Allah)!
(Chapter 55, verse 33)

And

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ ﴾

O you who believe! Ward off from yourselves and your families a Fire (Hell) 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:

﴿ وَلَا تَقْرُبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ
ذَلِكُمْ وَمَا كُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ ﴾

Come not near to Al-Fawahish (shameful sins, illegal sexual intercourse, etc.) whether committed openly or secretly, and kill not anyone whom Allah has forbidden, except for a just cause (according to Islamic law). This He has commanded you that you may understand. (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:

﴿ وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَدِّيًا فَجَزَاءُوهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا ﴾

And whoever kills a believer intentionally, his recompense is Hell to abide therein, and the Wrath and the Curse of Allah are upon him, and a great punishment is prepared for him.

(Chapter 4, verse 93)

Also Islam fixes a penalty for those who exceed their limit. The Quran says:

﴿ وَلَكُمْ فِي الْقِصَاصِ حَيَاتٌ ﴾

And there is (a saving of) life for you in Al-Qisas (the Law of Equality in punishment). (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:

﴿ وَلَا تَقْرَبُوا الزَّوْجَ إِذَا كَانَ فَاِحْشَةً وَسَاءَ سَبِيلًا ﴾

And come not near to the unlawful sexual intercourse. Verily, it is a Fahishah [i.e. anything that transgresses its limits (a great sin)], and an evil way (that leads one to Hell unless Allah forgives him). (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 appropriate punishment has been prescribed for the offender as in the following Quranic verse:

﴿الرَّائِيَةُ وَالرَّائِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِئَةَ جَلْدَةٍ﴾

The woman and the man guilty of illegal sexual intercourse, 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:

﴿وَلَا تَجَسَّسُوا وَلَا يَغْتَب بَّعْضُكُم بَعْضًا أَيُحِبُّ أَحَدُكُمْ أَن يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ تَوَّابٌ رَّحِيمٌ﴾

And spy not, neither backbite one another. Would one of you like to eat the flesh of his dead brother? You would hate it (so hate backbiting). And fear Allah. Verily, Allah is the One Who accepts repentance, 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:

﴿وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ﴾

And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are the Fasiqun (liars, rebellious, disobedient to Allah). (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 wherewith 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 Allah's punishment. Surely all these reasonings act as a brake against evil and the commission of crime. The Islamic worships which comprise almsgiving, prayers, belief in one Allah 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:

﴿إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ﴾

And perform As-Salat (Iqamat-as-Salat). Verily, As-Salat (the prayer) prevents from Al-Fahsha' (i.e. great sins of every kind, unlawful sexual intercourse, etc.) and Al-Munkar (i.e. disbelief, polytheism, and every kind of evil wicked deed, etc.). (Chapter 29, verse 45)

and

﴿وَاسْتَعِينُوا بِالصَّبْرِ وَالصَّلَاةِ﴾

And seek help in patience and As-Salat (the prayer).

(Chapter 2, verse 45)

May Allah guide us to what He favours. Allah's peace, mercy and blessings be upon you.

Shaykh 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 Allah'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:

﴿وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ رَسُولًا﴾

And We never punish until We have sent a Messenger (to give warning). (Chapter 17, verse 15)

Therefore the Prophet (PBUH) 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 Allah'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 Allah 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 Allah 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 Shariah 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 Mumins is like that of the various parts of a building, each supporting the other ". Then he clasped his fingers.⁵

"The relationship between the Mumins 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".⁶

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 cooperate 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 Shaykh Qutb mentioned that the Prophet (PBUH) said:

"Every newly born child is innocent; it is his parents who turn him into a Jew or a pagan, etc."⁷

5. Saheeh Al-Bukhari, Hadith No-481

6. Saheeh Al-Bukhari, Hadith No-6011

7. Saheeh Al-Bukhari, Hadith No-1358

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 (PBUH) imparted his knowledge to his Companions at Makkah gives us a clear picture of this interaction between education and a pure soul. He wanted his Companions to raise their children at Makkah 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 Makkah, the Prophet (PBUH) decided to migrate to another environment (Madina) 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 Allah, 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 effected.

I pray Allah 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 Allah protect this country as an ideal example of Islam. Peace be upon the Prophet, his family and Companions.

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 Shaykh Muhammad Qutb lias 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 Shaykh 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 Shariah 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.

Shaykh Muhammad Juweid – Representative of Somalia

Praise be to Allah, the Cherisher and Sustainer of the Worlds and peace be upon the Prophet.

Thanks to Allah for having provided us with this auspicious opportunity to discuss the implementation of Allah's legislation in obedience to His Wish. Likewise, I thank the Kingdom of Saudi Arabia for implementing the Islamic Shariah serving the true religion and also the Ministry of Interior for organizing this symposium.

Lastly I extend my thanks to Shaykh Muhammad Qutb, the author of the paper and the two commentators. Islamic education means that a man must acquire numerous virtuous qualities as Allah has commanded us to be virtuous.

The Prophet (PBUH) said:

"Verily I have been sent by Allah to teach people gracious morals".⁸

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.

8. Musnad Ahmad, Hadith No-8939

In the following Quranic verse Allah ordered Muslims to tell the truth:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَكُونُوا مَعَ الصَّادِقِينَ﴾

O you who believe! Be afraid of Allah, and be with those who are true (in words and deeds) (Chapter 9, verse 119)

The quality of being truthful is used in the Quran for other prophets, such as Ibrahim, Idris, Ismael and others (AS.). This means that telling the truth is a quality of Allah's messengers and prophets.

The Prophet (PBUH) 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".⁹

The Prophet (PBUH) 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 Allah 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 Allah as a profligate and false".¹⁰

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.

9. Saheeh Al-Bukhari, Hadith No-33

10. Saheeh Al-Bukhari, Hadith No-6094

The Prophet (PBUH) 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".¹¹

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.

Shaykh Nasir 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 Allah 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 Allah, and that he acts accordingly.

Abu Huraira¹² reported that the Prophet (PBUH) said :

"Whoever wholeheartedly says there are no other gods but Allah shall enter the Paradise ".¹³

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"

11. Sunan Abu-Dawood, Hadith No-495

12. Abu Huraira was one of the companions of the Prophet who died in 676 A.D. (Translator's note)

13. Al-Mu'zam Al-Kabeer, Hadith No-5074

there are no other gods but Allah". I am sure that the author and the commentators are also fully aware of these implications but I just wanted to remind them of this clarification.

Salim 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 Shaykh Muhammad 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 built up first 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 Muhammad Al-Shawy

Praise be to Allah 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 incline 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 legislation 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. Where is 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.

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.)

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 Shaykh Muhammad Qutb did not have time yesterday to answer the commentators' remarks and queries he will do so today.

Shaykh Muhammad Qutb

Praise be to Allah 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:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ ٱلْأَ تَعْدِلُوا ٱغْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ﴾

O you who believe! Stand out firmly for Allah and be just witnesses and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety.

(Chapter 5, verse 8)

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. I 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 (RA.) 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 Allah 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 Allah, then a good citizen is not the same as a good man.

Shaykh Sadik 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 are to all of you for listening to me.

Allah's peace, mercy and blessings be upon you

Chairman

Our thanks to the eminent scholar, Shaykh Muhammad Qutb, for the clarity and precision of his comments, and for the explanations he contributed to the discussions of both yesterday and today.

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