

CAN SHARIA BE APPLIED?

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About this book:

This book tackles a thorny, complicated issue in a deep, objective manner. It begins with a chapter on the difficulties of codification, as phrasing the Sharia¹ in the form of rigid laws preventing free Ijtihad² that was practiced by imams, and preventing ordinary people, as well, from the liberty of choosing from these views generated by Ijtihad. Accordingly, the application of Sharia would be in that case done by the rulers and not through the Quran, and this would be a grave mistake.

¹ "way" or "path" refers to the "way" Muslims should live or the "path" they must follow. Sharia is derived from the sacred text of Islam (the Qur'an), and Traditions (Hadith) gathered from the life of the Islamic Prophet, Muhammad. Traditionally, Islamic jurisprudence (Fiqh) interprets and refines Sharia by extending its principles to address new questions. Islamic judges (Qadi) apply the law, however modern application varies from country to country. Sharia deals with many aspects of life, including crime, politics, economics, banking, business, contracts, family, sexuality, hygiene, and social issues. During the Islamic Golden Age, classical Islamic law may have influenced the development of common law and also influenced the development of several civil law institutions. (source: Wikipedia.com)

² Free thought and views on Islamic issues. is a technical term of Islamic law that describes the process of making a legal decision by independent interpretation of the legal sources, the Qur'an and the Sunnah. The opposite of ijthihad is taqlid "imitation". Same source

In the second chapter, obstacles and cautions that prevent the application of Sharia are tackled, like the fact that people are unready for this - despite their zeal for it - and the fear of the rise of a religious state, as well as the fear of disregarding the non-Muslim minorities in Egypt.

In the third chapter, the important issue of the exchanged influences between Sharia and faith is tackled, while emphasizing the fact that Islam consists of both Sharia and faith, with the latter as a main source, and the former as a branch of it. Therefore, Sharia is strongly influenced by faith.

The fourth chapter presents an example of Ijtihad in the application of Sharia: Ijtihad in the Islamic punishment law for theft. This punishment (cutting the thief's hand) could be in certain circumstances suspended and replaced by fining and reprimand. Another example cited here is that Islamic punishment laws can be suspended in the case of people who steal or fornicate for the first time.

The fifth chapter ensures that deepening Faith should precede the application of Sharia; otherwise, Sharia will not be better than any

deterrent laws formulated by people. This chapter presents a new vision of faith that differs from the traditional concepts of it.

In the sixth and last chapter, the nature of Sharia is tackled, as it is, according to religious scholars themselves, the embodiment of justice and general benefit of the human being. This chapter cites words of scholars like Ibn Al-Qayyim³, Al-Eez Ibn Abdel Salam⁴, and Nagm El-Deen Al Tofy⁵, and cites as well Quranic verses concerning the fact that God has given us the Truth, and justice is considered as the application of this Truth.

Another important point mentioned by the author is that justice cannot be applied unless within the atmosphere of liberty. The Islamic community has lost this liberty in the year 40 A.H. with the rise of hereditary monarchy (i.e. caliphate) instead of the free, democratic choice of a ruler. Hence, justice, and accordingly Sharia, was not applied, although the Quran acknowledges all liberties, especially the liberty

³ **Ibn al-Qayyim (1292-1350CE / 691 AH - 751 AH) was a famous Sunni Islamic jurist , commentator on the Qur'an , astronomer , chemist , ... (source: www.wikipedia.com)**

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of thought and belief, and this is exhibited in more than 100 Quranic verses. The Sunni and behavior of Prophet Muhammad applied all this. Yet, all this was discarded due to the tyrannical individual rule that followed the era of the prophet and the two caliphs after him, and so Sharia was not applied properly in the Islamic history after 40 A.H.

The author infers a doubtless rule that any talk about justice without the existence of liberty is utter nonsense. This lack of liberty renders justice as a mere text not a reality, as liberty is the only means to allow the application of the mechanics of justice.

FOREWORD

This booklet shows that the cherished aim of applying Sharia can be achieved, but in a different way from that held by the general Muslims of the Salafist⁶ thought. To apply Sharia, we must overlook the traditional, Salafist framework of the current Islamic thought, which is called for by all Islamic organizations and the religious institution. This would give Sharia a new momentum to suit the modern age. Yet this does not mean overlooking the Quran and the verified Sunni, as we cannot accept in this serious issue unverified hadiths. We believe that Sunni is not the source of prohibition and allowing of things, and of course not a source of legislation. Sunni does not have the immortality of the Quran. We mean by not overlooking the Quran the sacred Quranic text itself, and not the numerous interpretations of it done by ancient religious scholars, who had their own culture and circumstances in their ancient eras, and whose interpretations are not valid now and sometimes it would go contrary to the Quranic text itself.

In this respect, this book infers two things:

- 1) *Sharia is essentially nothing but justice and general benefit for the sake of all people.*

⁶ Salafi is a Sunni Islamic movement that takes the pious ancestors, the *Salaf* of the patristic period of early Islam, as exemplary models. Salafis tend to use a stricter interpretation of scripture

2) *Liberty is a prerequisite to ensure the aim of applying Sharia;*

Otherwise, this application is impossible. Examples from the East and the West are cited within this book to cover that point. Hence, Sharia can be presented and applied in a way that does not ignore the two major sources, the Quran and the Sunni, and it would be considered as a constructive contribution to solve social problems. Without liberty and discarding of Salafism, Sharia cannot be applied properly, and it might be applied by the authority and the desire of rulers not by the criteria of the Quran. The Salafist view of Sharia is old and invalid now in the modern era. No power whatsoever can stop progress and development, which are among the norms set by God in the human community at large.

Things are made clear, and each of us is free to believe or disbelieve.

GAMAL AL-BANNA

Chapter One

DIFFICULTIES OF CODIFICATION

The application of Sharia is a well-known motto, assumed by all Islamic institutions, however different in their approach, and all of them consider rejection the notion of the application of Sharia as a rejection of faith.

All these institutions believe that applying Sharia is a unanimous demand and an Islamic obligation strongly requested by all people. Laws to achieve this already exist, formulated by many committees, but such a project remained locked in drawers and has not see the light of day.

Looking closely at this issue, we see that it is more difficult and complex than imagined by any Islamic institution. Many factors should be taken into consideration and many obstacles should be surmounted before we can apply Sharia. Otherwise, the current conditions would prevent the application of Sharia or render it futile.

A close look into history shows that applying Sharia - with the exception of the era of Prophet Muhammad - relied on free Ijtihad⁷ and did take the form of laws, until in recent history Turkey tried to codify Sharia in legal terms and items. History tells us that there were many unsuccessful attempts to codify Sharia in the Umayyad and Abbasid caliphates. For instance, the caliph Omar Ibn Abdel-Aziz ordered the writing of the Sunni lest it should get lost with the passage of time. An Arab historian mentions that, *"Caliph Omar Ibn Abdel-Aziz wanted to unify the rulings in all Islamic countries, and in every country there were some of the prophet's companions who approved or disapproved of court rulings of judges, and people of these countries were content with such rulings in their affairs... II* This text shows that the caliph Omar Ibn Abdel-Aziz wanted to write down Sunni, traditions, laws...etc. to impose a kind of obligatory code on people; yet, his caliphate did not exceed two years. His former caliph Al Walid Ibn Abdel-Malik attempted the same endeavor, but it failed, as it

⁷ is a technical term of Islamic law that describes the process of making a legal decision by independent interpretation of the legal sources, the Qur'an and the Sunnah. The opposite of *ijtihad* is *taqlid*, Arabic for "imitation".

could not stand against the dominant unwritten conventions of Fiqh⁸.

Another similar story in the Islamic history is about the Abbasid caliph Abou Jaffer Al-Mansur, who, during the pilgrimage season, asked Malik Ibn Anas to copy his volume of Sunni, so that it would be sent to all Islamic countries to be their law and never exceed this kind of knowledge in their legal system. The caliph thought that volumes of Sunni written by people of Medina were the rightful sources of Islamic law. Yet, Malik Ibn Anas⁹ refused this suggestion and told the caliph that every community in every country applied and believed in certain number of hadiths, and in certain Sunni traditions as well as deeds of the prophet's companions. He advised the caliph to leave people to their beliefs that were hard to change, and the caliph took his advice. Ibn Al-Moqaffa mentions in one of his books that court rulings differ a great deal in various countries, and he suggested a unified code written in one volume to be distributed in all countries of the

⁸ **Fiqh is Islamic jurisprudence. It is an expansion of the Sharia Islamic law—based directly on the Quran and Sunnah Fiqh deals with the observance of rituals, morals and social legislation**

⁹ **is known as "Imam Malik," (c. 711 – 795) (93 AH – 179 AH) He was one of the most highly respected scholars of fiqh in Sunni Islam**

Islamic caliphate. Yet, of course, this attempt was unsuccessful as well.

It is noteworthy that all these initiatives and attempts brought about by rulers and their retinue and courtiers, because these attempts help give them more authority and legitimacy to their rule. Historically, the climate of freedom at the time led to a chaotic state of rulings and judgments, and the caliphate could not leave this chaos continue; hence, rulers had strong motivation to codify Sharia, but they failed as this task was more complex than they had thought. Ancient religious scholars opposed these attempts because they felt that these attempts would undermine their authority and would hand it over to the caliphate, even if some of these scholars were serving as judges in this Islamic state, but scholars were the ones formulating court rulings.

This historical stage gave the free reins to Fiqh and Ijtihad, and this freedom was unquestionable and unrestrained, as it had stemmed from a deep faith of these scholars in their mission and their role within the Islamic community.

The Islamic community at the time staunchly believed that it was natural to let Sharia and Fiqh to thrive and flourish in a

climate of liberty among laymen and scholars alike. This was in order to preserve the freedom of ordinary people and their right to reject or accept the views of this or that scholar, as well as the liberty of adhering to one doctrine. This diversity and plurality were within the framework of the Quran and all Muslims were unified in their original source of law, the Quran.

This stage of liberty refused any kind of strains, yet it rejected any innovations as well, and was like an unbridled steed. Of course, such open-minded liberal communities, where people and scholars took pride in their faith and distanced themselves from the central authority of the state that imposed its will on all people and laws, could not continue to be, although such freedom contained all differences. Norms of community, progress and development would not allow such liberty to go on, and the passage of time made this a mere stage of history that ended. Even if we imagine that scholars might have relented to a certain extent to the wishes of caliphs, reaching the required codification entailed adopting one doctrine and discarding the other doctrines, and this was exactly what scholars could not possibly allow to happen. If this codification would be based on selective criteria, this would be impossible to achieve, as

the differences among the doctrines is fundamental **especially in rules of governance.** **Such differences prevent melting the** doctrines in one crucible to formulate one Fiqh and one unified Sharia for all people in all times. This impossible unification overlooks the paramount aim of Sharia, which is general *interest* and *benefit* in the view of Imam AI-Tofy and general *objectives* in the view of Imam AI-Shatby. That is why all the above mentioned attempts failed.

Rulers found themselves caught in a labyrinth that would not lead to the desired destination, and they could not resolve this issue until the Ottoman Empire adopted the Hanafi¹⁰ doctrine as the formal one of the caliphate, whereas the Safavid Dynasty¹¹ in Iran adopted

¹⁰ The Hanafi school is one of the four *Madhhab* (schools of law) in jurisprudence (Fiqh) within Sunni Islam. (The other three schools of thought are Shafi'i, Maliki, and Hanbali.) The Hanafi madhhab is named after Abu Hanifa an-Nu'man ibn Thābit (699 - 767CE / 89 - 157AH), Among the four established Sunni schools of legal thought in Islam, the Hanafi school is the oldest. It has a reputation for putting greater emphasis on the role of reason and being slightly more liberal than the other three schools.

¹¹ The Safavids were one of the most significant ruling dynasties of Iran. They ruled the greatest Iranian empire since the Islamic conquest of Persia and established the Ithnā'ashari (Twelver) school of Shi'a Islam as the official religion of their empire, marking one of the most important turning points in the history of Islam, and ruled Iran from 1501/1502 to 1722 From their base in

the Ja'fari doctrine¹². Of course, this adoption of doctrines occurred after Ijtihad was banned ages ago, and the era of liberty of thought and belief ended, while imitation of the ancient scholars prevailed and paved the way to this step of adopting one doctrine as the source of Sharia.

This solution was imposed by the caliphate without any struggle whatsoever due to decadence of that age in the Ottoman Empire, whereas in Iran, this solution entailed a bloody battle against other Sunnite doctrines.

Ardabil, the Safavids established control over all of Persia and reasserted the Iranian identity of the region, thus becoming the first native dynasty since the Sassanids to establish a unified Iranian state. Despite their demise in 1736, the Safavids have left their mark down to the present era by establishing and spreading Shi'a Islam in major parts of the Caucasus and West Asia, especially in Iran. (source: wikipedia.com)

¹² Jafarī school of thought, Jafarī jurisprudence or Jafarī Fiqh is the school of jurisprudence of Shi'a Muslims, derived from the name of Jafar as-Şādiq, the 6th Shi'a Imam. It differs from the four schools of Sunni jurisprudence in its reliance on ijtihad, the use of reason to interpret Islamic laws, as well as on matters of inheritance, religious taxes, commerce, personal status and the allowing of temporary marriage or mut'a. However, despite these differences, there have been numerous fatwas regarding the acceptance of Ja'fari *fiqh* as an acceptable Muslim *madhhab* by Sunni religious bodies. These include the Amman Message and a fatwa by Al-Azhar. (same source)

This imposition by the authority of the state to apply and codify Sharia, even with including Fiqh scholars in the ruling system, led to corruption on all levels. Sharia lost its vibrant spirit and authority made it stagnant and invalid, and everything in the affairs of the state had one source or reference: the desire of rulers.

The general perspective to Sharia would change if the major factor in applying Sharia would be faith. The factor of faith was replaced by the Ottomans with the factor of total submission to rulers and their concept of Sharia; accordingly, Sharia lost its sanctity and holiness and reduced to mere laws issued by the state and implemented by force.

Did callers of applying Sharia think of these hypotheses and development of the desired application of Sharia?

Some people who considered these hypotheses rejected the idea of applying Sharia, to leave it as a mere thought among people to influence them, instead of being a codified entity imposed on them by the state.

This was advocated especially that punishments have a marginal role on the rules of Sharia, and they would not be applied in many cases, except By Ijtihad of judges.

Dr. Radwan Saeed said that:

"... in sum, the motto of applying Sharia might lead to results contradictory to the proposed aims. Application of Sharia entails writing Fiqh as a codified law and this reduces the holiness of Sharia and its social function, as it would be reduced to repressive laws. This sort of law would give the state new additional oppressive authority, which would contradict the historical experience of the Islamic nation as a group based on liberty. This imposition of Sharia creates a new system of values that only suits the state..."

These above-mentioned cons do not negate the pros of applying Sharia, as the stage of free Ijtihad cannot possible come back again, as this stage led to so many contradictory rulings and judgments within the same place.

This dilemma necessitates a new Ijtihad to save Sharia from causing this grave error. This new Ijtihad is presented in this book.

Chapter Two

OBSTACLES AND PRECAUTIONS

Sharia cannot be applied unless with radical changes in its content and form, and a similar change in the vision of faith as well. This new vision should first be deepened and the majority of people should believe in it, before Sharia can be applied.

Yet, there are obstacles and precautions, outside the framework of Sharia and faith, and they should be taken into consideration. We should find solutions to the problems and answers to the queries posed by these obstacles and precautions.

Among these obstacles and precautions are the following:

Lack of readiness of the community to accept Sharia now:

Some claim that applying Sharia is a popular demand, people are prepared for it wholeheartedly ages ago, and governments are

to blame for not heeding this demand. Codification of Sharia was attempted in a project presented in 1987 in Egypt, but it was not submitted to the People's Assembly despite the fact that there were one hundred members supporting the project, as the Nasserist head of the Assembly locked the file of this project in his drawers for many years, and he died without ever submitting it. He might have held grudges against the project, but he, unaware, had saved the Egyptian community from an experience that was bound to fail.

In fact, this 'popular' demand was not the demand of people, but rather of the Salafists, traditional Islamic bodies and organizations. Their vision of the draft of this project of codifying Sharia did not suit our modern age anyway.

In fact, the Egyptian community, and other Arab ones as well, had many political and theoretical experiences that were applied without prior preparation, studies, or even agreement. Leftist, socialist, Marxist, capitalist, and many other ideologies streamed in Egypt by the class of intelligentsia, who owned means of mass communication. They conveyed western thought and theories, and they quarreled with

one another. What they offered was alien to the Arab mind, and they gained a few supporters for limited periods. Of course, Islamic thought surpassed all other kind of thought, and it gained the support of ordinary, simple people, due to the genius of the martyred imam Hassan Al-Banna¹³ and his rare talent in organizing the Muslim Brotherhood Organization. Great aims and hopes were pinned on this organization, but when its leader was assassinated in 1949, and with the advent of the 1952 revolution, the government became hostile toward this organization. The Brotherhood remained silent for a long while, as it was declared outlawed. Other minor Islamic groups and organizations emerged as a reaction to unbearable torture in the prisons of Nasser¹⁴. People who were

¹³ Hassan al-Banna (October 14, 1906 – February 12, 1949) was a schoolteacher and an Egyptian social and Islamist political reformer, best known for founding the Muslim Brotherhood, one of the largest and most influential 20th century Muslim revivalist organizations. Al-Banna's leadership was critical to the growth of the brotherhood during the 1930s and 1940s.

¹⁴ Gamal Abdel Nasser (15 January 1918 – 28 September 1970) was the second President of Egypt from 1954 until his death. He led the bloodless coup which toppled the monarchy of King Farouk and heralded a new period of modernization and socialist reform in Egypt together with a profound advancement of pan-Arab nationalism. Through his actions and the charisma of his speeches,

disillusioned about any mottoes, and many groups and organizations were forced to perform their activities in secret.

Nasserist regime fell out of favor with the Egyptian defeat in 1967 war, and all idols of nationalism and Nasserism fell down as well. Later on, with the 'open door' policy of Sadat, economical conditions flourished but parasitic blood sucking capitalists thrived as well. People floundered about between this liberal environment and those who clung to authority and Nasserist ideology and heritage.

Because of all these accumulated events and failed experiments, people became disillusioned and distrustful of any sort of movements and mottoes. People succumbed to bourgeois, materialistic, and consumerist culture, while the filthily rich became richer, and those who are under the poverty line struggled to maintain their existence and lived from hand to mouth.

Accordingly, the Egyptian community became distrustful of any Islamic approach, unlike the case in the past. Yet, the religious

Nasser's version of pan-Arabism, also referred to as Nasserism, won a great following in the Arab world.

trend was still strong but it oscillated between zealotry and Salafist, conservative thought. Frustration prevailed and no one was enthusiastic about applying Sharia.

The Egyptian community today is unready for proper application of Sharia, as most of those who have Islamic trends of thought are Salafists and traditionalists. Their view of Sharia is both unacceptable and inconceivable in the modern age. They think they represent true Islam and they resist any innovation trends or any kind of reform. As for other social strata, they are either nouveau-riche with their entourage, who amassed wealth for the last twenty years and imposed their entity and dominion over media, or the remaining proponents of Nasserism, the Left, Nationalism...etc. who compensate the failure of their ideologies by bigotry, void claims, and high voice.

It will be a long way before Sharia would reach groups of people who would staunchly believe in it. Sharia must surmount many obstacles and difficulties; chief among them is discarding Salafism and traditionalism to reach a new understanding of faith, creed, Sharia, and even the whole system of Islamic knowledge. This hard mission would take a long time.

If Sharia would be applied, a sound, true image of it must be presented, and this image is radically different from what is presented by Salafist Fiqh, and differs from what is presented by callers of jihad. Sharia has to walk a long path to gain supporters of the majority of believers. This would take a long time and much effort.

Fear from the rise of the Islamic state, and the secular one:

On the national and international levels, there is an inherent fear from the rise of a religious state in any Arab country, especially in Egypt. Europe accepted reluctantly the rise of religious states like Israel, Iran, and Saudi Arabia, due to certain historical conditions. If a religious state would be established in Egypt, the foreign powers would not accept that and they would conspire against it.

In fact, applying Sharia could not lead to the rise of a religious state, because Sharia is a collection of rulings entailed by justice and applied via democracy in a democratic state. This fact almost vanished due to the inherent notion of Islamists about the Sharia, as they assume that the rise of the religious, Islamic state is an

integral part of Sharia. This false notion is 'truth' taken for granted by all people now, Islamists and others. Eradication of this false notion of the 'Sharia State' from the minds of people entails consistent, exhausting efforts, based on two principles. Firstly, application of Sharia does not mean the rise of a religious state, as we have mentioned before. Secondly, the concept of the religious state does not pertain to Islam at all. Islam, as a religion, does not aim at establishing a state, but rather aims at guiding human beings. The state cannot offer anything to Islam as a religion, because if the state wanted to apply Sharia without people's belief in it, this would render this application futile and fruitless. Accordingly, Sharia would lose its spirit and aspect of faith, as it would be transformed into mere laws of the state, applied by force of authority. What is important to Sharia is not the state but people, because when they believe in Sharia, it will be applied via democratic means, and this would be a popular demand, representing the will of a nation. When Sharia would be applied this way, it would bear fruit. Once again, this plan is impeded by the deep-seated false notion of the 'holy' religious state.

We have mentioned in our book titled, "*Islam as a Religion and a Nation, not as a State*", that Islam did not establish a state except in the era of Prophet Muhammad in Medina. This state did not have the common features of ordinary states of our age: no army, no police, no prisons, nor oppressive powers, no taxes ... etc. Not to mention the fact that the head of that state was Prophet Muhammad, who was aided and guided by the divine revelation. Establishing a state in Medina community was not part of the Islamic faith and certainly not part of Sharia, but it occurred due to the context and sequence of certain events.

After the era of Prophet Muhammad, this state continued for twelve years under the caliphs Abu Bakr¹⁵ and Umar Ibn Al-Khattab¹⁶.

¹⁵ **Abu Bakr As-Siddiq (c. 573 CE – 23 August 634/13 AH) was Muhammad's father-in-law, one of the closest companions and adviser. Abu Bakr succeeded to the Prophet's political and administrative functions (632 – 634CE) , thereby initiating the office of the caliphate.**

¹⁶ **Umar Ibn Al Khattab (c. 586-590 CE – 7 November 644), also known as Umar the Great or Farooq the Great was the most powerful of the four Rashidun Caliphs and one of the most powerful and influential Muslim rulers. He was a sahabi (companion) of the Islamic prophet Muhammad. He succeeded Caliph Abu Bakr (632–634) as the second Caliph of Rashidun Caliphate on 23 August 634. He was an expert jurist and is best**

When the latter was assassinated, this ideal form of rule ended, and Muslims waged wars against one another. Eventually, Ibn Abu Suffian established the hereditary tyrannical rule of the caliphate in 40 A.H., which was abolished much later in 1924 A.D. by Mustapha Kemal Ataturk in Turkey. Islam resembles very much secularism, as it has no clerical hierarchy or foundation, no Pope or Patriarch who has the right to legalize or prohibit, and it has no secret rituals like baptism and confession ... etc.

The Islamic mosque is simple and it could be just a fenced piece of land, and anyone can be an imam in prayers as long as he has memorized some chapters of the Quran. Even marriage in Islam, though a holy and intimate human relation, is just a consensual contract between two adults.

known for his justice, that earned him the title *Al-Farooq* (*The one who distinguishes between right and wrong*) and his house as *Darul Adal* (*house of justice*). Also, Umar was the first Caliph to be called Amir al-Mu'minin (Commander of the Faithful or Prince of the Believers). Under Umar the Islamic empire expanded at an unprecedented rate. It was Umar who for the first time in 500 years since expulsion of Jews from the Holy Land, allowed them to practice their religion freely and live in Jerusalem. He was assassinated in 644 CE by Abu Lulu, who was assigned the mission of assassinating Umar.

These above-mentioned facts are well known, but the Salafist's thought does not accept nor understand them. Yet, we have no other option except exerting every possible effort to eradicate false notions to save people from romantic dreams of religious fervor, zealotry and bigotry on one hand, and unwillingness to accept change and innovation on the other hand. Although we acknowledge the fact that this endeavor would take much time and effort, the central idea is that essentially the notion of the rise of an Islamic state is excluded, and we should not have fear from its specter.

State as a concept in Islam is a civil and secular state, whose axis is justice and implementing the will of people, and this state has a real role in society and life, not in the fields of religion and virtues.

The existence of non-Muslim minorities:

Statistics show that Muslims are either 100% or 99% of the total population of some Arab countries and there is 4% of this population of non-Muslim minorities, whereas in Egypt, between 5% -10% of the population are Copts. The only exception among the Arab countries is

Lebanon, as the percentage of non-Muslims is 40% of the population.

When Prophet Muhammad came to Medina, he established what modern thinkers call today "Medina Constitution", historically known as "Charter of Reconciliation". This charter stated that original residents of Medina, immigrants from Mecca to Medina, who were welcomed new comers who fled persecution done by the polytheists, and the Jewish community of Medina, who worked in trade and industry and kept a treaty with people of Medina, were three categories that form one nation in Medina. The charter dictated that for every category its religion to keep, and all these categories would cooperate in peace to defend the city together and never to wage war against one another.

The Jews did not respect or keep the stipulations of that charter, as they looked down upon Arabs, who are descendents of Ishmael, and the Jews thought they were 'the chosen seed' of God and prophecy dwelt exclusively in their progeny. The worst act of treachery done by the Jews was when they held a treaty with the polytheists against Muslims in the Battle of the Moat. The Jews were punished by Muslims by banishing them from Medina. When the era of

Prophet Muhammad ended, Muslims conquered many countries, and the Islamic empire was vast and comprised many people of different races and religions. Muslim rulers agreed to give all people liberty of faith and belief, so that they kept their religions, houses of worship, customs, traditions, in return for a tribute paid to contribute in the mission of defending them, they were called *dhimmis*¹⁷ (i.e. non Muslims) and this system was called *dhimmitude*¹⁸. Religious minorities within the Islamic empire enjoyed liberty in the religious, economic, and civil spheres within this system. Later on, some dhimmis attained higher positions in the Islamic

¹⁷ the people of the *dhimma* or pact of protection. A dhimmi is a non-Muslim subject of a state governed in accordance with sharia law. The term connotes several restrictions, such as a poll tax known as the *jizya*, which complemented the Islamic tax paid by the Muslim subjects, called *Zakat*, a restricted freedom of religion and worship, and required political loyalty to the ruling empire. This status applied to millions of people living from the Atlantic Ocean to India from the 7th century until modern times. (source: wikipedia.com)

¹⁸ *Dhimmitude* is a neologism first found in French denoting an attitude of concession, surrender and appeasement towards Islamic demands. It is derived by adding the productive suffix *-tude* to the Arabic language adjective *dhimmi*, which literally means *protected* and refers to a non-Muslim subject of a sharia law state. (same source)

caliphate in the sphere of politics, science and knowledge.

Muslims did not invent this system of paying tributes, as all minority groups used to pay it in all eras before the advent of Islam and after it.

Even Jesus Christ himself paid tribute money to the Romans and ordered his followers to do the same. Hence, paying tributes was a system that existed before the advent of Islam, and Muslims applied it as it was firmly established in the human community at large. The Muslims' contribution to this system was that they reduced tributes to the least possible amount, making them confined to men, whereas women, children, elderly people, priests, monks, nuns ...etc. were the categories of dhimrnis exempted from it. This was a kind of development and progress in terms of that age, and Islamic justice made minorities prefer living within the Islamic rule to any other foreign rule. Ruling systems in Europe at that time never allowed the existence of minorities who had different religious doctrines that was not the ruler's, even if this doctrine was within Christianity. Pogroms and massacres, among other atrocities, and war between different

Christian sects are well known in European history, between Catholics and Protestants on one hand, and between Protestants and Jesuits on the other hand, to mention a few examples.

Before the advent of Islam in Egypt, Egyptian Copts embraced the Orthodox doctrine that differed from the doctrine of Byzantines, and thus they were severely persecuted. When Amr Ibn Al-'As conquered Egypt, the Coptic Patriarch was hiding from the Byzantine persecution, but Amr Ibn Al-'As restored all authorities to the Patriarch and told him about Islamic tolerance regarding other religions, and we can say that the Coptic church was reborn since that moment.

Egyptian Copts specialized at the time in some professions like collecting taxes, since the advent of Islam in Egypt until the reign of Muhammad Ali and his descendents. This dynasty in particular paid special care and respect to the Coptic Patriarch, and they donated money and lands to establish charity projects and schools for Copts. Yet, Egyptian Copts were subject to the eccentricities of some other rulers, whose weird, errant behavior harmed all Egyptians, Muslims and Copts alike, and harmed other minorities too. In other eras, some Copts

reached the high positions in the state like being ministers. In sum, Copts in particular never had tensions with Muslim rulers of Egypt, and they lived in peaceful coexistence with their fellow Muslim compatriots side by side, with no difference at all except in places of worship.

Times of tensions were the exception and not the order of the day, and these tensions were not related to sectarianism or to religions at all, but they are regarded as a natural social phenomena, as people used to have disputes among themselves, regardless of their religions. Egypt has inherited the Ottoman decree of banning the building of new churches, and that aroused sensitivities concerning the freedom of worship and expression. We believe that the state should let go of the 'obsession with security' and let all people erect mosques and churches as they please. However costly the experiment may be, but it would prove that building too many places of worship is wrong. We should eradicate any sensitivities and misunderstanding by logic and reason. We say that Coptic fears of applying Sharia are groundless, for establishing a religious state is excluded as we have mentioned before. Applying Sharia, in the way explained in the last chapter of this book, is nothing but a project of

establishing the principle of justice to make it the axis of all relations and values in the Egyptian community. Applying Sharia must be done via democratic means and legitimate channels, like elections. We believe that a Copt would be eager when the hadiths and Quranic verses that exhort respecting the rights of non-Muslim minorities are applied, so that the Muslim majority in the legislative council would not be able to harm the interests of Egyptian Copts.

Chapter Three

MUTUAL INFLUENCES BETWEEN FAITH AND SHARIA

Sharia, however important, does not represent the whole entity of Islam or even the greater part of it. Islam is based on both Sharia and faith. Faith is the source, whereas Sharia is a branch of that source, according to Sheikh Shaltout, and this is logical and normal. Faith is based on the belief in God, His prophets, His holy scriptures, and the Day of Judgment. This is the distinctive, essential feature of religions. In some cases, there are religions with nothing but faith; even Islam itself in the Mecca period (thirteen years) was based at the time on faith without Sharia, which appeared in the period of *Hegira* (immigration) to Medina. This is clear evidence that Sharia is a branch of faith.

Islamic faith, in its essence, has reached the ultimate simplicity, depth, and clarity in its notion concerning God and His attributes, and that is why this faith enters the hearts of people easily. The focus on the Last Day of Resurrection in the Islamic religion was more than the focus

on it in any other celestial religions (i.e. Judaism and Christianity), and this fact lends the Islamic faith more scope and depth.

As for Sharia, it is concerned with worldly, secular matters like the regulation of relations among people and their community, and the relation between men and women, the rulers and the ruled people ... etc. and Sharia stipulates that the ruling, prevalent value in any community should be justice.

Faith has mechanisms, nature and aims that differ from those of Sharia; yet, both are interrelated to the extent that they represent one entity. As for the subject of this book, we believe that faith influences Sharia and vice-versa, and accordingly the last word or the final decision is a result of this mutual influences. However, the influence of Sharia on faith is far lesser than the influence of faith on Sharia. On one hand, faith largely modifies Sharia, and on the other hand, faith lends the religious attribute and holiness to Sharia.

* * *

The influences of faith on Sharia:

One of the main influences of faith on Sharia is that it grants sanctity and dignity on human

beings, preserving their material entity and moral character from any sort of tampering. This is a basic tenet in Islam, which is the religion descended from God for the sake of humankind. The human being in Islam is the aim and the end, whereas religions are the means to achieve that end, and their general aim is to guide that human being and resist any kind of evil. This means that Sharia - i.e. religious laws - never harms or denies the character of human beings, unless within the boundaries stipulated in faith and creed, which protect humanity and never allow any harm done to it, except when people commit crimes, and hence the importance of justice in defining crimes in the human community. The influence of faith on Sharia is manifested in the fact that faith makes punishments stipulated in Sharia as means to atone for crimes and achieve repentance and purification. This was shown in the era of Prophet Muhammad, when people would sin by committing adultery and would go to the prophet and insist on making the prophet purify and redeem them from sin by punishing them according to the stipulations of Sharia laws.

The influence of faith on Sharia is manifested as well in the fact that it defines

crime and punishment by means of confession of the sinner or the guilty one. This admission of guilt or sin, without coercion or pressure, is the primary means of atonement, before exacting punishments. This confession is associated with the desire of the sinners to purify themselves and absolve themselves from their sin. Many well-known hadiths assure that Prophet Muhammad said that this confession must be done twice before exacting the punishment, and if the sinner denied committing any sins after one admission before exacting the punishment, no punishment is due. In one incident, a fornicator escaped from the punishment of stoning in the era of Prophet Muhammad. The prophet told people to let go of him and not to stone him. Prophet Muhammad said to people, "*Leave him so that he might repent, and may God accept his repentance*".

This incident of stopping the punishment of sinners raises an important issue. In cases of fornication and theft, it is possible to stop punishments of stoning and cutting the right hand (both are consecutively punishments for both crimes) without violating Sunni. This means that these punishments can be stopped in certain cases without considering this as a flagrant violation of divine laws. This means as well that

judges might stop exacting these punishments in certain cases of denial and for those who have committed such sins for the very first time after learning a lesson and achieving repentance. Faith influences Sharia in this respect as the judge may try to make sinners refuse to admit to their sins, especially in cases of theft and fornication, to have mercy on people as done by Prophet Muhammad in that well-known incidence. On the other hand, sinners might insist, in some cases, on purification and exacting punishments on themselves to repent from their sins. This occurred in other incidents in history in the era of Prophet Muhammad, who sympathized with those sinners who made people deterred by these punishments when they insisted on purification and repentance.

It is noteworthy that Prophet Muhammad never asked in such incidents about the other partners in the crime of fornication, though they deserve the same punishment. That asserts the fact that Prophet Muhammad was not keen on exacting punishments, and he preferred that people would repent on their own accord and will to lead a sinless life later on. That is why it is wrong to watch over people and look for sinners to present them to judges and scandalize them.

Prophet Muhammad said that we should not exact punishments unless people confess willingly and insist on purification by being punished, and never to expose sinners and punish them by force and coerce them to repent. This prophetic guidance widens the scope for dealing freely with matters of punishments without coercion and without resorting to courts. Resorting to courts, we believe, should be for reconciling quarreling parties, who willingly want to achieve just and peaceful reconciliation among people to settle their problems. The ultimate influence of faith on Sharia is not just in refusing to exact punishment on whoever confessed once and not twice, but also in the fact that a judge could instruct and dictate the accused one to deny the sin or Crime, so that the judge would set him/her free. This is mentioned in the book on Fiqh by sheikh Sayed Sabek, in the chapter titled "*instructing thieves to deny theft stops exacting punishment*"

"... The judge can instruct the one accused of theft to deny the act, and so he would not be punished... It was said that prophet Muhammad told a confessed thief who had nothing stolen with him that he might have stolen for once, but the thief told prophet Muhammad that he stole many times

before...Many accused ones of theft were instructed to deny the accusation to be acquitted, in the era of prophet Muhammad, and his two consecutive caliphs..."

This way of dealing with the accused by caring for their welfare is peerless in any legislation, as it is not found except in Islamic Shari, whose theory is that the accused one is a victim of the community, who ought to repent not to be punished. Only when the sinner was bold enough to confess twice and insist on being punished to attain purification, punishments were exacted. This ideal state was ruined with the advent of hereditary rule of caliphate, and when conditions and faith of Muslims deteriorated in history, Sharia deteriorated as well. Accordingly, Salafist Fiqh books do not mention the merciful measures we find in the books of Sunni and hadiths. Even later books of legislature and codification of Sharia in the modern age do not mention such mercy, as they are not influenced by faith, as they should have been. Books of Islamists on Sharia do not mention such mercy as well. Abdel-Qader Ouda says in his book on Sharia, when he compares and contrasts between Islamic criminal laws and man-made laws:

".. Medina in the era of prophet Muhammad was a veritable utopia for the contemporary generations, and similar ideal conditions cannot reoccur now, and that is why this blissful era is better than later ones..."

There are many Quranic verses that urge for repentance, which purify and deliver people from sins. *"Excepted, however, shall be they who repent and attain to faith and do righteous deeds: for it is they whose erstwhile bad deeds God will transform into good ones - seeing that God is indeed much-forgiving, a dispenser of grace"* (25:70)

Religious scholars held different views on the impact of repentance. We believe that this is a relation between the human being who sinned and God Himself. Sincere repentance with willingness not to commit sins any more absolves all sins. God forgives repented sinners and God will have mercy on them. Among conditions of full repentance is that one has to make amends whenever possible to the wronged party, and in that case the sinner can go unpunished.

Among the influence of faith on Sharia is the existence of other alternatives to physical punishment of sinners by acts of worship, like fasting, giving food to the poor. .. etc. as known

from the following Quranic verses "... who takes advantage of a pious visit before pilgrimage shall give whatever offering he can easily afford, whereas he who cannot afford it shall fast for three days during the pilgrimage and for seven days after your return: that is ten full days ... "(2:196), "It is not conceivable that a believer should slay another believer, unless it be by mistake. It is upon him who has slain a believer by mistake there is the duty of freeing a believing soul from bondage and paying an indemnity to the victim's relations, unless they forgo it by the way of charity. If the slain .. belonged to a people who are at war with you, the penance is confined to freeing a believing soul from bondage...and he who does not have the wherewithal shall fast for two consecutive months"(4:92), "God will not take you to task for oaths which you may have uttered without thought...but for oaths which you have sworn in earnest...breaking of an oath must be atoned for by feeding ten needy persons with the same food you give to your own families, or by clothing them or by freeing a human being from bondage, and he who has not the wherewithal shall fast for three days ... "(5:89), "For those who would separate themselves from their wives by saying 'Thou art as unlawful to me as my mother', and would go back on what they have said, their atonement shall be freeing of a human being from bondage before the couple may touch one

another... and he who has not the wherewithal shall fast for two consecutive months before the couple may touch one another again, and he who is unable to do it shall feed sixty needy ones... "(58:3-4)

These alternatives to familiar physical punishments like flogging, imprisonment, and fining are merely acts of worship that uproots evil from the psyche of sinners and purify them. Yet, once gain we observe the impossibility of applying this in the human community in the modern age in form of laws.

These influences of faith on Sharia could be applied by understanding of judges that human beings is the end and aim of Islam, and that they are to be spared from physical punishment especially when there are alternatives available to redress sins like repentance and performing good, benevolent deeds, and acts of worship ... etc.

The influences of Sharia on faith:

Sharia is essentially a number of laws aiming at the protection the human community, its moral principles and norms. This mission cannot be overlooked, and it is maintained by the complementarities between Sharia and faith in

the reform process. The reform of the individual is the way of faith, whereas the reform of a whole community comes from Sharia laws, and hence both faith and Sharia complement each other.

Reform of the human community helps a great deal to deter individuals from committing evil deeds, sins, and crimes. William Temple mentioned that in his lecture on 'Ethics of Punitive Measures':

".. If we said we cannot rectify people by issuing laws in the parliament, this would be a risky half-truth. A parliamentary law might pave the way for values to develop without obstacles..."

Another British writer mentioned in her article in the daily London based *Hayat* newspaper (issue of 28-10-1997) that measures of obliging city authorities to register black students in high schools prevented the continuation of enmity between the white people and the black people. Imposing such a law paved the way to accept black people with the passage of time.

Accordingly, we cannot belittle the impact of rectifying people via laws - including Sharia laws - as laws are essential part of the rectifying

process, and if we do without them, this process would be weakened and destroyed gradually by corruption.

Clearly, the validity of laws is achieved by people who obey and honor them, to preserve peace of the human community and to prevent any disruption by individuals to the laws and to the human community at large.

That is why Sharia has a role to play, which is characterized by firmness and objectivity, aiming at the welfare and interest of the human community, and the dominance of laws. Deterrent punishment for violations of laws preserves the order and system of the human community. Punition should be done by authority figures in the state. The exacting of punishments is for the violation of the principles and disruption of the system by transgressing one's limits. For instance, as in the act of theft, when the punishment is still the same even if it was a petty theft or a big one. This is from Sharia perspective, but from the perspective of faith, the punishment might be mitigated in many cases, as we have mentioned before in this chapter.

The Islamic nation has but one ruling value, which is justice, and this value entails that the

spirit of justice does not have contradictory "does and don'ts". Sharia stipulates, for example, that thieves should have their hand cut off, but at the same time, it stipulates paying Zakat¹⁹ for the impoverished people. Omar Ibn Al-Khattab did not cut off hands of thieves who stole out of hunger, as they were penniless, and said that this punishment should be applied if people had enough food and money, and yet they stole out of greed.

Sharia laws preserve the general interests of the human community at large, and before those of the individual, which come in the second place. Yet, in most crimes, Sharia gives to judges the liberty to decide on the required punishment. Judges are to observe the nature of each individual criminal case, to evaluate the limit and measure of punishment and of mercy, according to the circumstances of the accused one and of the community at the time.

Accordingly, we can say that Sharia takes in mind the interests and benefits of the human community at large by defining deterring punishment for certain crimes. Yet, by the intervention of faith, and by mercy on part of

19

judges, we see that Islam wants to combine many criteria so as we have many perspectives to consider, before exacting punishments. Most petty crimes need mercy to rectify and reform first timers, and to encourage them to return to the righteous path. Punishments, be they physical or just reprimand, are exacted on the accused when found guilty, and do not extend to other people related to him/her, according to the Quranic principle: "*... whatever wrong any human being commits rests upon himself alone, and no bearer of burdens shall be made to bear another's burdens...*" (6: 164) that is why Islamic justice of not making the sins of the fathers visit their sons has been established and asserted before the modern era.

Chapter Four

IJTIHADS IN THEFT PUNISHMENT

If we examine punishments included in the Quran, as they constitute an essential part of Sharia, we would find that the theft punishment - which is cutting off one hand of the thief - is the most controversial and profound, yet effective. Theft is the root of all other crimes, and the most dangerous of all crimes as it disrupts peace of the human community.

Spread of theft endangers life and system of the human community, causing lots of damage and losses. Theft makes the state invest in expensive means and ways of resisting and struggling against it, especially that theft has metamorphosed into organized crime with its own hierarchies and systems. Theft, here in this book, means a wide scope of various crimes like counterfeiting, fraud, swindle, forgery, robbery... etc.

It was inevitable, in order to preserve the community and the sovereignty of law, to impose such a punishment for theft - by cutting

off one hand of the thief. This punishment is nauseating and terrifying. One time, when it was executed in the era of Prophet Muhammad, the prophet's face was contorted with pain, and he wept after seeing it happening. The prophet advised people that it is always better to resort to reconciliation between the accused and the accuser before taking the case to judges.

This kind of deterrent punishment is so terrifying that it would prevent stealing, theft, robbery ... etc. before such crimes would occur. This would eradicate such crimes from the very beginning, unlike imprisonment, which makes thieves return to their evil ways once more only to return to prison eventually, and to go back to theft, in an endless vicious circle.

Imprisonment and any other punishments are not deterrent enough. Imprisonment has other negative psychological effects and does not lead to rectifying prisoners. In fact, prisoners come out of prison more adamant to continue in the evil route. Prisons have become schools for crimes all over the world; they are no longer tools of rectifying prisoners but tools of their corruption. Prisoners learn from one another more evil ways of corruption and fraud. Prisons

are no longer a place of punishment; they are now similar to cheap hotels or lodgings.

Likewise, fining is not a suitable punishment for theft, as thieves are either too poor to pay huge fines, or would pay petty fines that are not deterrent enough for such crimes.

Another possible punishment is flogging, as it focuses on the accused people and not on their families (who are deprived of seeing their imprisoned family members), and this sort of punishment is of course deterrent. Yet, Sharia wants more that deterrence for such crimes like theft, because this crime is widespread, and its punishment should be the most punitive and deterrent one. That is the way Sharia preserves cutting one's hand off as an exclusive punishment for theft, whereas flogging is for other crimes such as fornication and calumny.

Prophet Muhammad advocated forgiveness and having mercy on people and not applying punishments in most cases, although he said that if his daughter Fatima stole, he would cut her hand off himself, but he said so to counteract the deviance and corruption spread due to theft. Considering thieves as social victims is not

enough, for if they are victims, they are perpetrators of crimes at the same time as well, and if they were forgiven many times this would endanger peace of the human community.

That is why Sharia stipulates this horrid punishment for theft, because

it is deterrent enough to eradicate such a crime, by making any thief reconsider and think twice before stealing. If people accused of theft were convicted, they would have their hands cut off. Thus, theft as a crime would vanish from society.

This punishment, however horrid, should not make us forget how horrid as well imprisonment is. Imprisoned people are like savage animals shackled and chained in cages. In the final analysis, imprisonment is crueller than the theft punishment in Sharia, as confinement deprives people from freedom, and it impedes sexual activity. This might lead to homosexuality and other forms of sexual deviances. Prisons are now like schools for teaching crime, whose instructors are old-timers and whose pupils are novices. Prisoners have families that are left without their breadwinners. This might lead them to paths of deviance and might render

them homeless. This is costly on the part of any government.

When socialist states discovered that imprisonment as a punishment is not deterrent enough, they replaced it by execution. This occurred in the early history of the USA, when horses were stolen, and they were the major capital and wealth of the new American citizen at the time. Horses' thieves used to be hung on tree branches for all people to see to be deterred. Eventually, the only options left for us to punish thieves are execution and cutting hands off. That is why we prefer cutting hands off, and we assert that Sharia is right in stipulating that severe punishment. It is right to apply this Sharia laws in Egypt, as it is deterrent in this densely populated country to cut a few hands off annually. Yet, we do not advocate this punishment for just petty theft crimes, but for old-timers in theft who insist on it and are incorrigible. This punishment should be applied yet withheld with justice and mercy in many cases. This severe punishment should be extended to fraud and cheat in alimentary items and building material. ..etc. as cheat in such items leads to many deaths.

Sharia and faith must go hand in hand to make this severe punishment accepted as the only deterrent one in our contemporary Egyptian community, which will be spared many evils as a result. Historically, there were many crimes in Britain punishable by death, and so was the case in many European countries throughout history. Even when laws were changed by legal and judiciary reforms and became less severe, they are still honored and revered, although the capital punishment is almost abolished everywhere. This was the direct result of that historical period of severe laws. Revering and abiding by laws became an inherent trait among Europeans.

Thinkers raised a point concerning virtue spread by fear, and this makes it lose its essence. This point is true concerning the individual conscience, which is based on piety and belief in religious faith. However, as for the social conscience, the complexity of the human community entails the element of reward and punishment. Human beings are not flawless. Other factors that influence human beings are hereditary traits, and the surrounding environment that might lead someone to deviant paths. Human community has to have a

powerful defense-line to protect itself from evildoers. We cannot exclude deterrent punishments totally, as they prevent the widespread of crime. However cruel these deterrent punishments are, they are a kind of mercy to the human community and a way to insure its safety. We must ignore social hypocrisy and admit the fact that the domain of crime is dirty in nature, and there are corrupt, incorrigible people. Such evil people resemble a cancerous growth that mushrooms into the body of the human community and it had to be removed like tumors to save the body from severe pains, corruption and moral death.

* * *

Factors concerning the act of theft led to many Ijtihads historically by ancient scholars and contemporary ones. These Ijtihads are written in many references. Queries have been raised in the press about applying the Sharia punishment of theft by cutting one hand off.

Conditions in Sharia to apply this punishment:

- 1) The accused one has to be a rational adult.

- 2) The accused one must have known the value of the stolen item(s).
- 3) The accused one has done the act on one's own accord without coercion from anyone else.
- 4) There is no link between the accused one and the stolen item(s). No punishment is due if a son stole his father or vice versa, or when a partner might take something from a common capital shared by certain partners.
- 5) The accused one was not obliged to steal to preserve life of oneself or lives of others, and the accused one is not ordered by another powerful human being to steal.

Conditions of the stolen item(s):

- 1) It should have monetary value. The punishment cannot be applied in cases of kidnapping, stealing pictures, idols, a copy of the Quran, other books, musical instruments... etc. and the like.
- 2) It could be moved and hidden. The punishment cannot be applied in cases of stealing from markets, hotels, restaurants, during their working time, but in cases in

which such establishments are closed at night or at day.

- 3) The punishment cannot be applied in cases of stealing things belonging to mosques and churches, unless they have a ward to guard them. The punishment cannot be applied as well in the case of stealing the belongings of the worshippers. The same goes for any temples, places of worship, schools, cafes ... etc. as they are not places of amassing and storing money or something of monetary value.
- 4) It should not be something *halal* (religiously lawful or permitted) to catch, like fish, birds, meat, fruits, vegetables. It should not be something that might be unripe, easily used up or corrupted like firewood, crops... etc.

Special cases in the act of theft:

- 1) If the thief stacked the stolen thing(s) and did not get out with it, and was arrested before doing so, the punishment cannot be applied, as the act of theft is not completed.
- 2) If the thief passed the stolen things(s) to another thief from a window or a door, the

punishment cannot be applied, as the first thief did not get the stolen thing(s) out of the place, and the second thief did not break into the place.

- 3) If the thief said the stolen thing(s) belong(s) to him, the punishment cannot be applied, as the robbed person would be accused of stealing and keeping stolen thing(s), and the judge has to examine this new case.
- 4) If a thief stole cattle from its pasture, the punishment cannot be applied, as the cattle are unguarded.
- 5) If the thief cut a hole into a wall and stretched his hand or a stick into this hole to get the stolen thing(s), the punishment cannot be applied, as he did not break into the place, and the act of theft is not complete.

In our contemporary time, Islamic thinkers emerged with new Ijtihads in this domain. Chief among them is the Azharite sheikh Abdel-Met'aal EISaadi, who was renowned for his liberal writings. He writes:

"... Although the time is not ripe for Ijtihad yet, and people are used to rejecting innovations and views that differ from those of the ancient scholars, however strange and peculiar they might be. However

right the new contemporary views might be, and however severe they might be resisted as heresy, but I found myself driven by obligation not to hide my views on the Sharia punishment, for the service and benefit of our religion and our life. I will not be affraid of public censure. I am not presenting my views as one hundred per cent right, but to raise many questions, and as an attempt to reach the right path and the truth. People want to apply Sharia with a few modifications, among them not to apply Sharia punishments like cutting off hands of thieves, stoning and flogging adulterers... etc. Some might say, like westerners, that such punishments are savage and barbarian, yet all over the world we see the capital punishment being applied in many crimes such as murder, espionage, armed rebellion... etc. There are many cruel punishments acknowledged in the modern human legislation, no less severe that the capital punishment, such as sentences of hard labor, for long years, in tatters and in shackles, with lack of proper nutrition. How could we consider such a punishment humane while cutting off thieves' hands is considered cruel? Humane or cruel as punishments are, there is no room for sentiments in the applying of legislations.

Hence, Islamic Sharia punishments are defended, but it remains to raise many questions calmly concerning applying them in new ways to apply Sharia. We should do this by reconsidering and

reinterpreting the Quranic verses that mention such Sharia punishments. Let us consider these two verses as examples: **"...the man who steals and the woman who steals, cut off the hand of either of them in requital for what they have wrought, as a deterrent ordained by God, for God is Almighty, Wise, but as for him who repents after having thus done wrong and makes amends, behold, God will accept his repentance: verily, God is much-forgiving, a dispenser of grace"**(5:38-39) **"As for the adulteress and the adulterer-flog each of them with a hundred stripes, and let not compassion with them keep you from carrying out the law of God, if you truly believe in God and the Last Day, and let a group of believers witness their chastisement..."**(24:2)

We cannot overlook such clear commands, and we should make both punishments for fornication and theft either obligatory or permissible, or both obligatory and permissible. Ancient scholars did not say that, as all obligatory or permissible things are subsumed within one category known as divine commands, like in the following verse, **"O children of Adam! Beautify yourselves for every act of worship and eat and drink freely, but do not waste: verily He does not love the wasteful"**(7:31) Hence, theft punishment in Sharia would be obligatory in all cases of theft, however changeable are the conditions, places and times. Another possibility is considering this

punishment as the extreme one in a continuum, and in some cases, it might be suspended and replaced by less severe punishments like imprisonment, to consider the changeable conditions, places and times. The same mercy might be applied in the case of fornication. Some ancient scholars denied the punishment of stoning, as it was never mentioned in the Quran, which dictates flogging only for fornicators. Could we add flexibility and mercy to the Sharia laws in all domains in our contemporary life? Thus, it would be suitable to all places and times. Flexibility and simplicity are preferred to strictness and rigidity. Religion exhorts tolerance and mercy and not severity..."

Although this writer began with what might be said in opposition to his views and said that he does not oppose the applying of Sharia punishments, he insisted that these severe punishments should be the maximum among other less severe punishments, as this goes with the flexibility and mercy of Sharia. Yet, his controversial views were severely resisted and refuted, as they claimed that he made punishments mentioned in the Quran optional and not obligatory. He has refuted such claim and said:

".. .I never meant to let go of the Quranic commands... this claim is wrong and bad intentions are behind this accusation of me... besides, this claim of optional punishments was mentioned in many books of ancient revered scholars, printed until today. My views were not something new, and they should not stir such controversy... my purpose in my previous article was to mention the few cases in which the theft punishment might be suspended, and other cases in which it might be controversial, cancelled, or replaced by other punishments. These cases are mentioned in many books of ancient scholars, they are not figments of my imagination or my thought. I meant to say that cutting hands off is the maximum punishment for theft, and in some cases, this punishment should be replaced by other deterrent punishments. I did not mean to discard the punishment of cutting altogether. The replacement of this punishment by other ones was mentioned in Fiqh books by ancient scholars in certain conditions of time, place, stolen items, and circumstances... etc. of the crime of theft. In sum, all ancient scholars said that not all thieves to be subject to this punishment. Hence, there is no generalized view of applying this punishment to all cases of theft. This does not mean abolishing this punishment altogether, nor applying it in all cases. Some cases, as seen and perceived by judges, deserve to suspend this punishment and

replace it by other punishments, while considering the circumstances, time, and place of each case. Omar Ibn Al-Khattab suspended this punishment in times of famine and in times of war. Hence, any other claims and warped interpretations of these views are refuted. Here are some texts and sayings of Islamic history that assert that applying punishments of fornication and theft was suspended and substituted in certain cases:

- * Imam Fakhr EI-Deen EI-Razi said that Imam EI-Shafie said that the thief might be able to return the stolen thing and be fined. Applying punishments cannot happen in that case. Fines are to be determined according to the financial status of the accused, according to imam Malik. Repentance before applying punishment suspends its execution.*
- * Ibn Al-Araby said in either his book that Imam Abou Hanifa said that judges should accept either fining or applying the punishment, according to each case individually, as both could not be applied together.*
- * Al-Zeileiy said in his book that either fining or the punishment should be applied, with the latter preferred if the stolen thing(s) would be restored. The presence of a person who would pay a bail and guarantee that the accused one would not return*

to stealing would suspend the punishment, leaving the choice to judges instead of the robbed person

- * Imams of the doctrine of Ibn Hanbal said that fining suspends the punishment, and applying the punishment suspends fining.*
- * Hence, we believe that heavy fining and severe rebuke might replace the punishment, in certain and not all cases. Some ancient scholars preferred fining and restoration of stolen item(s) to applying the punishment.*

When AI-Azhar formed a committee to interrogate this writer, this committee enclosed in its report the above-mentioned reply of the writer and in the conclusion, the writer mentioned the following paragraph:

"... let history be my witness that the crime of theft could be punished by cutting off hands, heavy fining, or imprisonment, as the available options to be chosen from according to the circumstances, time and places. Cutting hands off is not the only Sharia punishment available for the crime of theft. Let history be my witness that I did not commit a mistake when I said that cutting hands off is not the only Sharia punishment available for the crime of theft... "

** * **

Another writer who tackled the same subject and was misunderstood was Dr. Maarouf EI-Dawalibi. He told his story as such:

*".. In my book on Fiqh, I mention that the theft punishment by cutting hands off is not the only Sharia punishment available for the crime of theft. This punishment could be replaced by other punishments according to the circumstances, times, and places. Judges could modify this punishment for the interest and benefit of the public and the human community, even if this modification is against the texts of the Quran and Sunna. In many cases in history, Sharia punishments were suspended, especially that of theft, according to certain conditions, of course, and not according to the whims and wishes of some people, otherwise, people would go astray. The Quran says, **"And since they cannot respond to this thy challenge, know that they are following only their own likes and dislikes, and who could be more astray than he who follows his own likes and dislikes without guidance from God? Verily, God does not grace with His guidance people who are given to evil doing!"**(28:50). People misunderstood me and accused me of overlooking Sharia, Sunni, and text of the Quran, but this claim is not true. My book has many clear texts and passages to refute this claim and falsehood. Among these passages and texts are the following:*

Firstly, I mention in my book that interest and benefit are two notions to be considered in cases in which there is no Sunni or Quranic text concerned with them, and there are no examples to follow them concerning these cases in Sharia. *Secondly*, considering notions of benefit and interest does not necessarily mean following whims or overlooking Sharia laws, but they are part of Ijtihad. *Thirdly*, Islamic Sharia leaves matters of legislation to legislators who have the authority to do so. *Fourthly*, changing Sharia laws happens when there is no stable, clear text concerning a case, but a law driven by circumstances in a historical context in certain times and places. *Fifthly*, it is a sort of precise and minute Ijtihad to change Sharia laws and legislations with the passage of time. This task requires a higher sensitivity and care for the benefit and interests of people, so that Ijtihad would not lead to chaos in legislation and courts. *Sixthly*, ancient religious scholars of Fiqh held different views toward the holy texts and the Sunni, and formed four well-known doctrines. If Ijtihad was a means to suspend texts and Sharia laws altogether, and might lead to chaos in applying Sharia, without considering the benefit and interest of people, like the case in the doctrine of Al-Tofy, we can oppose such Ijtihad as done by the four imams of the four well-known doctrines who discarded the doctrine of Al-Tofy. *Seventhly*, when the Islamic state was

firmly established, Omar Ibn AlKhattab suspended the application of a text, which is giving money to non-Muslims who might pose a threat to Muslims. This occurred not because he annulled a Sharia law following a whim, but the need for that was not present at the time, as this divine order in the Quran was when Islam was weak in the early days. Conditions and circumstances changed and the Islamic state was strong and hence the annulment of this law. Another Ijtihad by Omar Ibn Al-Khattab is the time when he suspended the Sharia punishment for theft in times of famine. Such texts and passages in my book assert that Sharia laws might be modified according to changes in times, places, conditions, and circumstances, and for the general benefit and interest of people at large. This does not mean annulling all texts at any whims, but considering circumstances and times by people of judgment and religious scholars. Hence, Sharia laws might be suspended in cases that require considering the benefit and interests of people at large, even if that meant suspending Sharia laws. This differs from the false view of annulling any Sharia laws whimsically in a chaotic manner and overlooking the Quran and Sunni. I hope by that I dispelled any misunderstanding of my book and my views, which were repeated before in history by Ilwiny scholars.

* * *

Another contemporary writer who presented his Ijtihad in the topic of theft punishment was Abdullah El-Alayli in his book *"Where wrong is?"*. He says in his book that, in sum, the Sharia punishments in the holy texts do not mean the literal execution of them, but their purposes and aims are more important. He says, in details:

"... This does not mean that cutting hands off as punishment of theft would be suspended, but means that all punishments aim at deterring wrong doers, and theft punishment is the maximum one among other alternative punishments, among them flogging and imprisonment. Punishments mentioned in the Quran might be taken figuratively and not literally. My view is achieving deterrence and placing it above the literal physical punishment itself, which should be applied in case of returning many times to theft, after gaining a general pardon and a less severe punishment. There is a hadith supporting this view, "...Petty sins might turn into grave ones with many reoccurrences and adamant refusal to repent. Grave sins would be forgiven by repentance and asking for God's pardon... Yet, suspending Sharia punishment altogether in all cases is wrong and was never advocated by anyone; otherwise, this claim would contradict the spirit of the Quran, which sets

*punishments to ensure the safety, security and welfare of the human community, and not to create a community of disfigured human beings. Even these punishments in Sharia for theft and fornication should not be applied unless the accused are caught in the act, or red-handed. That is why the Quranic text mentions doers in the verses of punishments for theft and fornication, be they male or female, like in 'adulterer', 'adulteress'... etc. Yet, another verse might be cited to suspend the theft punishment, as it occurs directly after the verse containing the theft punishment, "**...who repents after having thus done wrong and makes amends, behold, God will accept his repentance: verily, God is much-forgiving, a dispenser of grace**" (5:39) and it means that there is room for repentance and mercy, and for reforming one's bad behavior. Another Quranic verse supporting this is the following, "**...for him who, nonetheless, willfully transgresses the bounds of what is right, there is grievous suffering in store**" (2:178) this means that after repentance, pardoning and less severe punishments, if the person was not deterred and returned on one's own accord and adamantly to the undesirable, deviant behavior (theft or fornication), this person should be punished severely by applying Sharia laws.*

* * *

Another Ijtihad was presented by Dr. Ismael Ali Maatouq, who was a member of the People's Assembly (Senator) in a project of a new law submitted to the People's Assembly, aiming at modifying the punitive law to be in accordance with the Islamic Sharia laws:

*".. Article no. 312: the words referring to male and female 'thieves' in the Quranic text are adjectives and not verbs, which means that Sharia punishment for theft is to be applied for those who stole many times and they are incorrigible. Those who stole for one time and those who repented from this sin should not be subject to Sharia punishment for theft, as they are not included in the meaning of the words referring to male and female 'thieves' in the Quranic text. The end of the verse of theft punishment supports this view, "**...as for him who repents after having thus done wrong, and makes amends, behold, God will accept his repentance...**"(5:39) and repentance is for those who committed crimes of theft due to their ignorance, according to the following verse, "**Verily, God's acceptance of repentance relates only to those who do evil out of ignorance and then repent before their time runs out...**"(4:17). The woman whose hand was cut off by the order of Prophet Muhammad was a regular thief who never restored the stolen items she purloined. It was said that Omar Ibn El-Khattab ordered the cutting of the hand of a young thief and*

the mother of this young man said to Omar that he should pardon him, as this is his first time to steal. Omar said to her that if this were his first time, God would have hidden it from eyes of people to give her son a chance to repent and atone for his sin. All stories in Islamic history concerning stealing and theft punishment assert the notion of repetition of the act of theft before applying the Sharia theft punishment. Cutting hands off in the first occurrence of theft by someone never happened by the prophet nor his companions, or, in fact, by anyone in the history of Islamic state. Sharia theft punishment was applied in the case of that woman in the era of Prophet Muhammad because she used to steal many times and in the case of a man who stole a garment from the mosque as he sinned in a holy place. Despite these two incidences in the era of Prophet Muhammad, ancient scholars asserted that first-timers in theft should not be subjected to Sharia theft punishment. This is mentioned in law article no. 311 in the laws of the submitted project. This is done to give sinners the chance to repent and be good, sinless citizens who would lead a guiltless life. Current punishments of theft are not deterrent and might make the accused one an incorrigible criminal later on. If first-timers in theft were pardoned, after being rebuked and told that next time they would have a hand cut off, this would be deterrent enough. There is a Quranic verse to

support this view, ***“As for those who avoid grave sins and shameful deeds-even though they may sometimes stumble behold, thy Sustainer is abounding in forgiveness”***(53:32). Many interpreters of the Quran said that this means sins that were perpetrated and then people who committed them repented for good, and said that all sins are pardonable by God except polytheism.

No doubt that Prophet Muhanunad, his companions, especially Abou Bakr and Omar, used to dictate the accused people to deny the accusation of theft leveled against them to prevent the execution of Sharia theft punishment. This is unlike ancient religious scholars in later eras, which were sometimes eager to cut off hands of the guilty ones, without resorting to such verses that show the mercy of God..."

Chapter Five

DEEPENING FAITH BEFORE APPLYING SHARIA

-I-

The specific nature of Sharia as a branch of faith is well known clearly now. This fact that Sharia is stemmed from faith gives it the specific nature that makes it distinctive in comparison to laws phrased and formulated by human beings in European states and any other states, as these laws have no religious basis, unlike the case in Sharia laws that are based on religious faith. Yet, the laws set by man are revered as well, but not as sanctified as Sharia laws. Human laws might preserve specific interests, whereas divine Sharia laws preserve the interest of all people at large. The religious basis of Sharia gives it holiness and makes commitment to it part of faith.

Although faith is the thing behind hallowing and revering Sharia, some Islamic thinkers were fascinated too much by Sharia alone, regarding it as a number of ideal concepts and laws that prevent fractures in the human community. Sometimes, this over-fascination with Sharia

would increase to the extent that it would surpass faith in importance, and eventually faith is rarely mentioned when Sharia is tackled. It is as if Sharia can perform its role solely in the human community to make it ideal. This is a false notion, of course.

The idea of applying Sharia by codifying it in laws items and articles aims at applying Sharia in daily life. This is achieved by formulating a penal code based on Sharia, by the authority of the state, which has the right to issue legislations. This concept is not flawless. This context of premises and results seemed apparently natural and right; but in reality, if this application of Sharia would not be combined with the nature of faith, this would render Sharia mere hollow laws that could be manipulated and distorted later on for the benefit of a few people of authority and wealth. Accordingly, with no faith, there would be no Sharia, but there would be human laws with civil systems.

We have said that faith is the origin and source, whereas Sharia is a branch stemmed from it. Hence, it is natural that deepening of faith comes as a prerequisite to applying Sharia laws. This is logical due to the fact mentioned in the first line in this paragraph, but this is true as

well because this occurred historically in the early era of Islam. Faith emerged first in the Mecca period that covered thirteen years of the life of Prophet Muhammad. During this Mecca period, there was no Sharia, no laws, no punishments, and no armed jihad. There was jihad only in the sense of fighting against the whims and caprices of oneself. If a Muslim died in that period, even if he used to drink wine, he would not be punished in the Hereafter, as laws emerged in the Medina period and community, and this is the time and place of the emergence of Sharia. The natural sequence is that faith emerged first, and was deepened in the souls and in the people's minds, and later one Sharia was applied based on unshakable faith and staunch belief.

Faith is indispensable because of the following:

- 1) Faith makes people accept the legal and forbidden things dictated by Sharia; otherwise, one would follow one's caprices and whims, and might get used to usury, drinking wine, and other illicit, unlawful things in the Islamic Sharia. Faith ensures that people would observe voluntarily, and obey

Sharia laws on their own accord without obligation.

- 2) Understanding of Sharia in light of faith would define priorities and solve problems, with a guarantee against deviance and the right way of applying Sharia. Hence, Sharia and faith would complement each other, and would melt in one crucible.
- 3) Religious belief is the fruit of deep faith, and faith provides the driving force to transform beliefs into action and behavior. Thus, faith gathers momentum to believers to save time and succeed in leading a righteous life. Faith is the positive energy latent inside all believers to generate momentum and action to transform ideas into real projects and action for the welfare of all people at large.

Hence, we perceive the supreme importance of faith and belief.

Faith does not only provide momentum for action, but it ensures the right way to apply Sharia without error or deviance. This is a logical sequence of these priorities. Those who give more importance to Sharia are those interested in the power and allure of authority, as it would enable them to achieve greater projects. Yet, they

tend to forget that authority cannot possibly ingrain and engender faith in the people's souls, however great its projects aiming at the welfare of people.

Islamic organizations and socialist ones in Egypt aimed at reaching authority, and both parties lost their cause because of the scramble for rule and authority. Even the martyred imam Hassan Al-Banna was very cautious in tackling this point. He said that his Muslim Brotherhood Organization did not aim to assume authority in Egypt instead of the current ruler, however strong the desire of the masses to achieve this. He said that rule and authority chase members of Muslim Brotherhood Organization, who should not aim at assuming any ruling authority. He used to differentiate between power and revolution, and he liked the former and disliked the latter. His focus was to build the inner psyche of people, to make it based on faith and discipline. After his assassination, the Brotherhood swerved to a different route and aimed at assuming authority. As for socialists, they tried to imitate their spiritual leader, Lenin, who achieved his aim to assume authority. He used authority to establish and apply tenets of socialism. Yet, his authoritarian tyrannical rule,

and seventy years of socialist rule was not enough to achieve an ideal society, and socialism underwent a disgraceful downfall. We can say that the ten-year period of the Medina community in the era of the prophet Muhammad was more influential than the period of Lenin and his successors, and the period of the Fabian Society, that used to promulgate socialist tenets and principles.

Authority and its evil and allure had led people like Stalin, Lenin, and Mao Tse Tong, to commit atrocious crimes, to kill thousands of people, and to oppress all liberties. This transformed the 'paradise' of socialism into a hellish existence.

These horrible experiences of bloodshed, atrocities and tyrannical rule were due to the maniacal passion with authority (and revolutions) we find in people like Lenin. Authority, and its evils, is the poison of any good ideology and thought, however noble it might be, and however staunch the belief in it. This brought about the harrowing, disgraceful end of socialist thought and ideology.

Leaders of Islamic movements and calls should believe that the allure of worldly and rule

authority is valueless without staunch basis and belief in the authority of the Quran and faith. If their edifice would not be built on a solid basis of deep faith, it would miserably crack and fall down. This explains the point of the sterility of authority and power, if religious scholars did not reach a way to spread faith and deepen it among the Muslim masses. Authority, by its nature, is for a minority that form an elitist group that rule without the consent of the masses, and this group might resort to dictatorship and tyranny to subjugate people. This elitist group cannot spread their ideology by force, and corruption in the political and social spheres would ensue. Parties of hypocrites and opportunists would be formed and the edifice of rule would be eroded by corrupting power, influence and nepotism, tyrannical authority, and finally bureaucracy. Even if there were a religious party among the political parties of such authority, it would be swept by other corrupted bodies and groups. This is the fault done by Lenin, Stalin, Nasser, and later on advocated by the martyr Sayed Qotb in his books, which presented Islamic rule as similar to a Leninist party.

Leaders of contemporary Islamic movements and calls did not understand that if there is not a

majority, which believes strongly in faith, and Sharia, any attempt to apply Sharia is bound to fail, and it would have negative impact on Islamic calls.

If deepening faith is the prerequisite of applying Sharia, the next problem or question is:

Which faith should be adhered to?

-II-

This question is considered redundant and strange by some people. We have kept talking about faith and belief without presenting a proper definition. Again, what is faith that we have talked about in this book?

There is a fact that we did not mention previously in this book, though it is mentioned a lot in our previous books. This truth is that our understanding of Islam, not just Sharia and faith, but also Quran, Sunni, interpretations, hadiths, Fiqh... etc, which form a system of knowledge taken for granted by the religious institution in Egypt, AI-Azhar, by the masses of believers, and advocated by different movements and calls, is a Salafist understanding of Islam.

This Salafist understanding of Islam differs from the Quranic one and that of Prophet Muhammad. In sum, the Salafist understanding of Islam belongs to our ancestors. It underlies four conditions:

- 1) Adhering to the four major Sunni doctrines.
- 2) Accepting old interpretations of the Quran by ancient religious scholars and other branches of knowledge related to it.

- 3) Accepting all branches of knowledge related to hadiths and Sunni and accepting all hadiths without questioning the authenticity of any of them.
- 4) Honoring the 'good' ancestors and drawing on their knowledge.

Sometimes, people sanctify these ancestors and their views are hallowed.

Any other calls and movements that advocate otherwise are considered deviant and are subject to a wide range of accusations, including being heretic. The Islamic Revival Movement advocates overlooking of all Salafist thought altogether. Salafism hinders progress, and it is equal to stagnation and rigidity, leading to backwardness. This requires the reconsidering, rereading and rewriting of the entire system of Islamic knowledge, in its three main branches Sunni, hadith, and Fiqh. This is shocking and overwhelming but true and inevitable. No mending, examining, or removing would be of any avail if such biases and prejudices were not removed; otherwise, any attempts would be like pain killers and not the real cure.

Why this is inevitable? Because without it, backwardness would result on all levels imaginable.

Evidence: backwardness is the main trait found wherever Salafist Muslims are found. This deteriorated, degenerate state of affairs poses the following question: does our faith represent Islam as it was descended in the era of Prophet Muhammad? In that era, Islam made people refined and elevated. Why the opposite is true now in modern times?

This is a troubling analysis, but it is unavoidable. Why should we be panic or deny this fact? The heritage of our ancestors of religious scholars was not set by faultless angels. They were not infallible people, nor were their words and views sacred or descended from heaven. They were mortal men who might sometimes be right or wrong in their views. We have in modern times more advanced tools and means that were not available to our ancestors, due to the cultural revolution of information available in the modern era.

In our book titled "*Renewing Islam*", we have set the basis and major, primary outlines of such project of rewriting the system of Islamic

knowledge. In sum, this project tackles the following:

Firstly, Islam was made for the sake of human beings, and not the vice versa. Human being is the deputy of God on earth; angels prostrated themselves before him by the order of God, as had the reasoning faculty of the mind. Man knows how to differentiate between good and evil because of his mental faculty. Islam is the way to remove people from the darkness of ignorance to the light of knowledge, and liberate humanity from its shackles. Islam is essentially a message to the masses and the prophet was in fact a leader of the people. The aim of Islam is the human beings and their benefit, and to prepare them to be the deputies of God on earth.

In our book titled "*Renewing Islam*", we have mentioned that all celestial religions saved people from slavery and tyranny, as Judaism did with the Jews in Pharaonic Egypt, and Christians in the tyrannical Roman rule. In the same book, we have proved that the ideal Medina community was the only true image of Islam that lasted ten years. This Medina community was human and humane at the same time. It provided people with dignity, security, and safety. Muslims at the time understood their

religion very well and their community was based on values like equality and justice. The authority was controlled by the acceptance of people of it as it represented them truly and justly. There were no such concepts as civil liberties and human rights, though they were present in other names, as every age has its notions, and religions had their own terms. The concept of the original innocence and what is *halal* (lawful, allowed) and *haram* (illegal, forbidden), provided liberty unmatched in other societies.

Other values that ensured the welfare of this community were like Zakat paid by the rich to the poor, to provide social solidarity. There were no police or prisons in that Medina community. This utopia exceeded what was described by any philosophers. This idyllic existence ended abruptly when Omar Ibn El-Khattab was assassinated and political turmoil ensued for many years, resulting in the hereditary tyrannical caliphate rule, which began in the year 40A.H.

That very moment was a turning point in the history of Islam that marked a new stage of tyranny, overlooking many values and ideals, and letting go of many liberties that were

advocated and practiced even before an Islamic empire was formed.

This long period of tyranny was marked as well by the emergence of deviant, erroneous philosophies and doctrines derived from the cultures of the non-Arab Muslims, who were influenced by Greek philosophies and logic as well. This period witnessed the formulation of the Islamic knowledge system. Even religious scholars felt obliged to obey rulers and modulate their Fiqh according to the wishes and whims of tyrannical rulers. The era of the human being as the center of Islam ended, and Islam was adulterated to suit the desires of the ruling authority class to advocate blind obedience and flowing to rulers. Zakat was ignored, while prayers were made overly holy in a pagan degree of blind devotion. The phrase, "*what is known from religion by necessity*" advocated erroneous notions foreign to the true spirit of Islam, especially about the inferiority of women. This was done to set the pillars of the empire and ruling regime firmly.

The Islamic Revival Movement has discovered a serious historical conspiracy of the people who feigned embracing Islam in order to destroy it, by inserting fabricated hadiths. They

knew they could not modulate the Quran because people memorized it by heart. This conspiracy was foretold in the following Quranic verse, *"Those who are bent on denying the truth say unto one another, 'Do not listen to this Quran, but rather talk frivolously about it, so that you might gain the upper hand'"*(41 :26).

Scholars of hadiths cared about the sequence of hadith narrators, and not the phrasing of these hadiths, and so the scheme of the enemies of Islam to spread false hadiths among Muslim nations succeeded. False hadiths included ones assuring the inferiority of women, blind obedience of rulers, lack of several liberties, especially liberty of thought and belief.

The Islamic Revival Movement has the courage to declare this, and it offers the remedy for this problem. Sunni and hadith must be controlled and sifted via the Quranic text as the criterion or a measure-stick to identify and exclude fabricated hadiths attributed falsely to Prophet Muhammad.

Another important issue is discarding Salafist views, which are not suitable to our age and they are sometimes against the Quranic text. We must admit that ancient scholars were not

infallible. Our modern tools of knowledge provide us with means to reinterpret the Quran in a way that suits the modern age. The Islamic Revival Movement has not come with something new in presenting these solutions, as the Quran is the backbone of Islam, and this is a call to return to its true spirit with a new, innovative perspective after discarding Salafism and adopting Ijtihad using wisdom as a main source of Islamic views. This source is mentioned many times in the Quran as well.

This new vision of Islam excludes all ancient and current interpretations of the Quran - from the very first scholar to write his book of interpretation, Ibn Abbas, until the contemporary Sayed Qotb - as these interpretations forced a misleading vision of the Quran and they are based on false hadiths as well. Old interpreters could not move away from inherited Salafist thought, and they could not avoid doctrines and visions of their era.

The Islamic Revival Movement advocates the notion that we should not interpret the Quran but rely on its very text to understand true Islam. As for Sunni, it should be controlled and sifted by Quranic criteria. When any hadith contradicts these criteria, and appears contrary to

logical thought and reason, it should be discarded and dismissed as a false one.

Moreover, Sunni is not all about Sharia or legislation. Sunni does not legalize or forbid things, as it is not as authoritative and eternal as the Quranic text. It is inconceivable to discard the eternal Quranic text and adopt a hadith that might be false.

The Islamic Revival Movement believes that the Quran and the true, verified Sunni of Prophet Muhammad are the two main components that unify the Islamic nations, which differ in races and languages. Prophet Muhammad was the ideal human being and he remains the role model to all these people.

The new item presented by the Islamic Revival Movement is wisdom, described as a source of legislation and Ijtihad. Wisdom is mentioned in many Quranic verses. Wisdom is the new, open gate of Islam in the modern age. This new basis and vision of Islam presented by the Islamic Revival Movement liberates the Quran of age-old interpretations and frees the Sunni from insertions and fabricated hadiths. Islam in that way would be revived to be as it was in the Medina community to guide people to

the righteous path. Accordingly, Islam would be flexible and suitable to all eras and places, as it would not be stagnant or rigid, but forever renewable and would adopt what suits it from all cultures and modern ways. Thus, Islam would restore the position of humanity in the center of the earth and the pivot of God's creation. Human benefit and welfare are the aims of Islam. Islam would no longer be a source of trouble, but rather a vivid, renewable source of wisdom and prosperous life and existence, to add what is missing in the modern civilization that suffers spiritual void.

Chapter Six

SHARIA PRESENTED WITH LIBERTY, AIMING AT JUSTICE AND BENEFIT

We would suppose that the efforts described in the last chapter would bear fruit, and people would be united in the staunch belief in the true faith and Sharia, to establish the ideal community resembling that of Medina in the era of Prophet Muhammad and his two successors. This era cannot be recreated fully, as the prophet had died, but we can regain many good aspects of that foregone utopia when our community would respect faith and Sharia, so that accused ones would want to be cleansed by atonement for their sins and judges would be merciful and not too eager to exact punishments.

We believe that such liberal ideas of reestablishing Islamic thought would not be applied or believed except by a few people in this era, our hope are pinned on the next generations. The Islamic Revival Movement

would face many accusations of heresy, many claims of being false ... etc. and the public opinion would not change unless after at least fifty years or more to formulate a majority that believes in these ideas.

Yet, this is our first step in a long route of reform that needs generations to be covered completely. We would not rely on the current generations. We present via the Islamic Revival Movement the theorization and leave the application to future generations. Our hope, as far as applying Sharia is concerned, is pinned on two elements:

Firstly, Sharia would be honored and revered, but not sanctified and made holy in the way of Salafism and old ages of the Islamic empire in history. This honoring would be above the European reverence of laws as well. **Secondly**, Sharia would change in form and content with the exclusion of old interpretations of the Quran. New modern interpretation of the Quran and Sunni would suit the current development. The fundamental basis is that any text in the Quran and Sunni exists for certain wisdom.

When circumstances change, the text might not be applied, as in the cases of Zakat branches, and theft punishments mentioned in the time of the caliph Omar Ibn El-Khattab. If certain conditions required applying of a text that has not been applied for a long time, let it be applied. If conditions changed and a text could no longer be applicable, let it be not applied. For instance, the Quran tackles the issue of slavery. There is no slavery now, and hence, no application of the text on slavery is required.

Considering this verse ***"but thereafter set them free either by an act of grace or against ransom"*** (47:4), we know about the merciful treatment of slaves even those who were enslaved in wars. Setting slaves free was urged as means to atone for sins. This cannot be applied now in the modern age. Islam did not abolish slavery as it was firmly established and could not be done without abruptly, but it paved the way for its abolishment later on in history. This is a manifestation of the divine wisdom, which considers and cares for the development of the human communities.

Hence, after the abolishment of slavery, Quranic and Sunni texts concerning it are not applied, as they have no justification to exist.

They were useful and were applied in former eras. It is ridiculous to teach these commands in Fiqh books in our contemporary era.

The same applies for texts on giving Zakat to non-Muslims to stop them from attacking Muslims, and texts on spoils of war and paying tributes. Progress of the human community abolished all these phenomena. The basis of citizenship now is the land, and not religious affiliation. This was done in the treaty between Prophet Muhammad and the people of the Medina, Muslims and Jews. Zakat was obligatory for the rich to be given to the poor to achieve human solidarity in the era of the prophet, but with the advent of the tyrannical rule of caliphate, Zakat was not distributed and organized by the state. Zakat was replaced by taxes collected by the Sultan. Zakat was ignored despite its importance, and despite the fact that Abu Bakr fought those who tried to stop giving it.

In this case, tyrannical rule distorted and discarded something important and original in Islam. Before the advent of Islam, women in the pre-Islamic era were marginalized as tools for pleasure and carrying children. Such pagan community was based on wars, drinking, and

gambling. People used to kill their daughters so that they would not work in prostitution when taken as slave-girls. This is expressed in the verses:

"... whenever any of them is given glad tidings of the birth of a girl, his face darkens, and he is filled with suppressed anger, avoiding all people because of the alleged evil of the glad tidings which he has received, and debating within himself shall he keep the child despite the contempt or shall he bury it in the dust? Oh, evil indeed is whatever they decide!" (16:58-59)

Islam grants many rights for women, which were not given to them before Islam, like their share in inheritance. Women in the era of the prophet used to pray in mosques with him, and used to be nurses of injured men at wars. Some women fought in wars, including Aisha the wife of the prophet, and the one who provided most of the sound, true hadiths.

The Quranic verse legalizing polygamy was misunderstood, it says, *"And if you have reason to fear that you might not act equitably towards orphans, then marry from among the women lawful to you two or three or four, but if you have reason to fear that might not be able to treat them with equal fairness, then only one – or from among those whom*

you rightfully possess. This will make it more likely that you will not deviate from the right course" (4:3) and that means to legalize such cases of polygamy on very rare occasions with specific conditions stipulated to protect women. The same chapter in the Quran asserts the right of women to have divorce if they want it. This preceded modern claims of the liberalization of women by feminist movements.

The Quran makes the testimony of two women equal to that of one man, and the inheritance of the sister is half of what the brother would have. This is not demeaning of women, as these commands are with certain conditions and stipulations. As for testimonies of female witnesses, two women might remind each other of what they had witnessed. As for the issue of inheritance, that is because men are the ones who are to support women financially and not the vice versa. Rights of women in Islam preceded those advocated in any later eras in Europe. Yet, these rights were overlooked in the later eras of deterioration on all levels in Islamic caliphate. Although the Quran presented rights of women to a certain extent, it opens the door for further developments later on in the human community. The Quranic verses have two levels:

the meaning in the historical context of each verse, and the latent meaning and signs applicable in all times. All verses lay the founding principles that set the values of equality among people, regardless of race, wealth, and ancestry. This is shown in this Quranic verse, *"As for the believers, both men and women - they are close unto one another, they all enjoin the doing of what is right and forbid the doing of what is wrong, and are constant in prayer, and render the purifying dues, and pay heed unto God and His Apostle. It is they upon whom God will bestow His grace: verily, God is Almighty, Wise"* (9:71) hence, the Quran contains hidden signs of principles to be discovered to suit the modern age and every coming era with more progress and open-mindedness.

In modern age, women are becoming more active, and in some cases, they are the sole breadwinners of their families and children. Modern changes would entail different interpretations of the Quran and later on suspension of some commands in it due to changed circumstances, as in the above mentioned examples. The Quranic text should be seen as dynamic and flexible in a way that suits the present and the future. Ancient scholars

could not possibly reach this aims of Sharia. Ezz Ibn Abdul Salam was the imam that said that there are hidden wisdoms behind commands of the Quran that would be discovered by later generation and their own experience. Such enlightened scholars like Ezz Ibn Abdul Salam, Nagm EI-Deen EI-Tofy, and Ibn AI-Qayyim foretold this development and that flexibility of different interpretations that would suit every coming era.

These men recognized the notion of the benefit and interest of all human beings at large that would be the criteria of Ijtihad, and overlooking the text for the sake of the general benefit of people with the passage of time and the change in conditions and circumstances. This is part of what makes Sharia flexible and suitable to all eras. These liberal views were strongly opposed by traditional scholars who refused to apply or discuss them at all at the time.

This was the notion of utility, as advocated later on by the British thinker Bentham, whose aim in his theory was to maximize benefit for the largest number of people. When Nagm EI-Deen EI-Tofy tackled such notion of utility, he was strongly opposed and criticized by his contemporaries.

Ibn Al-Qayyim said that Sharia should represent the spirit of justice. As this is the ultimate value, alongside the truth, sent by God via his prophets in celestial religions, in many manifestations, methods and means throughout different eras. He said that Sharia is based on the benefit and interest of humanity at large, and it should have the values of mercy, justice, truth, and wisdom; otherwise, Sharia would lead to chaos and rigidity, and it might open the door for the inclusion and adoption of false interpretations.

Therefore, Ibn Al-Qayyim measured Sharia on the balance of justice and utility, and he called to suspend any Sharia laws or Ijtihad that contradict justice, as it is the ultimate purpose of Islamic Sharia.

This is a true, original principle that showed the true essence of Islamic Sharia. It is noteworthy that Ibn Al-Qayyim mentioned these ideas in the context of changing fatwas²⁰ according to different times, places and circumstances of each case, to provide flexibility and conditioning to renew Islamic jurisprudence to suit all times. These three figures wrote these

20

useful ideas amid myriads of Salafist traditional scholars who opposed their views and refused adamantly to discuss them, and among tyrannical rule. That is why their liberal ideas had no influence on people. In sum, they advocated that Sharia has two fundamental pillars: justice and utility.

Many verses support this view:

"Verily, We have sent thee, O Prophet, with the truth as a bearer of glad tidings and a warner. Thou shalt not be held accountable for those who are destined for the blazing fire "(2: 119)

"All mankind were once one single community, then they begin to differ, whereupon God raised up the prophets as heralds of glad tidings and as warners, and through them bestowed revelation from on high, setting forth the truth, so that it might decide between people with regard to all on which they had come to hold divergent views. Yet none other than the selfsame people who had been granted this revelation began, out of mutual jealousy, to disagree about its meaning after all evidence of the truth had come unto them. But God guided the believers unto the truth about which, by His leave, they had disagreed: for God guides onto a straight way him that wills to be guided "(2:213)
"Behold, We have bestowed upon thee from on high this divine writ, setting forth the truth, so that thou

mayest judge between people in accordance with what God has taught thee, hence, do not contend with those who are false to their trust" (4: 105) "He who has sent forth His Apostle with the task of spreading guidance and the religion of truth, to end that He may cause it to prevail over all false religions - however hateful this may be to those who ascribe divinity to aught beside God"(9:33) "Say, O Prophet: 'O mankind! The truth from your Sustainer has now come unto you, whoever, therefore, chooses to follow the right path, follows it but for his own good, and whoever chooses to go astray, goes but astray to his own hurt, and I am not responsible for your conduct"(10: 108) "Behold, from on high have We bestowed upon thee this divine writ, setting forth the truth for the benefit of all mankind. And whoever chooses to be guided thereby does so for his own good, and whoever chooses to go astray, goes but astray to his own hurt, and thou hast not the power to determine their fate"(39:41) "Thou art but entrusted with Our message, and so We have revealed unto thee a discourse in the Arabic tongue in order that thou mayest warn the foremost of all cities and all who dwell around it... "(42:7) "...and whenever you judge between people to judge with justice... "(4:58) "... We bestowed revelation from on high, and a balance so that men might behave with equity... "(57:25)

These verses show that the ultimate value is the truth, represented by the Quran, and that truth should be used to judge matters of people. When truth is applied, this is called justice. Justice is associated with the balance in the Quranic text, to denote the act of giving all people their due, just share. However, to apply truth, that would be justice, we need a prerequisite to that, and without it, not just application of truth would be possible. Of course, this prerequisite is liberty.

* * *

In our book titled "*The theory of Justice in Islamic Thought and European Thought*", have we mentioned that justice was not one of the prevalent values in the European civilization; rather its two fundamental values were liberty and power. On the contrary, justice is the predominant value in Islam, as its main quality, its eminent mark, and its major contribution.

The two values of liberty and power were united to push the European community into achieving power in every aspect. For instance, body power in many sportive activities, political power in colonialism, and mental power that allowed Europeans to make use of natural power and energy, and acquire science and knowledge to be used in means of production. The

atmosphere of liberty in Europe allowed all this. Now the Europeans managed to make use of the atomic energy. European freedom has allowed people to satisfy their whims and desires in many ways, and it has enabled scientists to think without limits in any topic.

In sum, Europe has created its great achievements that made it superior and distinguished among other civilizations thanks to the value of liberty. Yet, justice was not one of the dominant values in the European civilization, and the unbridled, limitless freedom, along with power, enabled the strong to crush the weak, and the rich to manipulate the poor.

This state of affairs marred the European civilization in certain eras. However, liberty allowed the powerful to reach the means of power and it allowed the weak as well to reach the same means, after many sacrifices and failed experiments. For instance, workers, within four generations, managed to form unions and syndicates to curb the overwhelming, independent capitalism, and to sit at the table of negotiations to set their conditions.

Liberty allowed workers to form their party, and after half a century of toil and struggle, in Britain, this party ousted the victorious Churchill and became the ruling party. Thus, if liberty for a

certain period, allowed the powerful to manipulate the weak, it allowed the weak to unite and compensate for their weakness by uniting their collective power to attain justice.

Women attained their rights in the way workers did. They formed unions and societies to claim their rights, especially the right to vote, and when governments gave them the deaf ear, women resorted to violence until they got their rights.

Another example is the sailors of the British fleet, who were deprived of their rights and their measly stipends used to be paid late, and they would be punished by flogging, when they went on a strike and dared to defy the daunting British Empire, they finally got their rights.

Liberty that enabled the mighty to manipulate others is the same liberty that enabled the weak to organize their efforts to gain power and justice. Justice was not among the value system of the European civilization, yet liberty enabled the Europeans to reach their goals and impose their rights by force and power.

Let us examine the state of affairs in the Islamic community at large.

Although justice is theoretically the prevalent value in Islam, it is ironic that justice did not prevail practically in the Islamic community except during the era of the prophet and the era of two caliphs, namely Umar Ibn EI-Khattab and Umar Ibn Abdel-Aziz.

How did this happen?

This happened because the Islamic community did not enjoy liberty, especially liberty of thought and belief, since the year 40 A.H. until the end of the caliphate rule system.

All the above mentioned paragraphs quoted from our book titled "*The theory of Justice in Islamic Thought and European Thought*" are not mere digression, but they are related directly to the topic of this chapter.

They reveal the tragic irony, which is the non-application of justice although it is the dominant value and obligation in Islam.

Hence, any talk about justice - which is the true spirit of Sharia - is meaningless if not associated with liberty. The non-existence of liberty will prevent the application of justice, as it would remain a theoretical value in the texts only.

Thus, liberty is a prerequisite to applying Sharia, and this cannot be done without and there are no other alternatives. Without liberty, any speech about justice and Sharia is nonsensical and hollow.

When some ancient religious scholars devised the so-called punishment for Muslims who converted to any other religion, and phrased the well known motto "*Those who deny what is known in faith by necessity*", are considered apostates, they paralyzed the liberty of thought, and liberty was the only power that would realize justice. Hence, the hereditary caliphate was established firmly and it stopped and quelled any progressive thought. The above-mentioned motto was a crime against Islam, and it was devised by ancient religious scholars aiming at defending Islam, yet ironically, they did much harm to it. Their harm exceeded more harm done by enemies of Islam.

The call for liberty in the Quran and in the acts and deeds of Prophet Muhammad is not less in holiness than the call for justice. There are many verses to assert this, "***... what is amiss with these people that they are in no wise near to grasping the truth of what they are told?***"(4:78).

Even when a man came to Prophet Muhammad to ask him what to do with his sons

who converted to Christianity, Prophet Muhammad said to him the following verse, *"There shall be no coercion in matters of faith. Distinct has now become the right way from the way of error..."* (2:256) Truth and justice are values mentioned many times in the Quranic text, and in fact, they are two faces of the same coin. Justice cannot be realized and protected without liberty. Liberty is not the exclusive property of thinkers, but the whole people in any community, in the present and in the future. Liberty is the condition that cannot be rejected, excluded, replaced or compromised if we want to apply Sharia.

* * *

The image of Sharia when applied, after the new establishment of the system of Islamic knowledge, would be very different from the image present in ancient times and references, because of the following:

Firstly, people would consider the practice of liberty - especially liberty of thought and expression, including the freedom to establish parties, unions, organizations, societies, syndicates, as well as liberty of expression in the press and media - as an essential part of Sharia, and liberty would be the mechanism through

which Sharia would be applied. **Secondly**, Sharia would not apply texts literally, rather. It would interpret them in light of the two values, justice and general benefit, as advised by brilliant, enlightened religious scholars and dictated by the Quranic verses and hadiths of Prophet Muhammad.

This new establishment would be based on a firm foundation of the Quranic verses and hadiths of Prophet Muhammad, as well as sayings of Abou Bakr and Omar Ibn El-Khattab, so that no one would cast doubts on this new establishment of Sharia.

Thus, Sharia would be applied and it would emerge with a shield of liberty, aiming at justice, the general benefit of all people, and there would be virtually no problems. Sharia would combine the holiness and sanctity of religion and the benefit of all people in this life on earth.