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# Law and Islam

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## *Law in earlier societies*

Aristotle defined man as a political animal, meaning thereby that it is an essential part of his nature to live in a polity or organised society. He cannot live either as a god in splendid Divine isolation, or as an animal engrossed in his individual biological necessities. But within the very nature of man there lurks an inner contradiction which needs to be resolved – he is an anti-social social animal. As someone rather cynically said about the attitude of man towards women, ‘you cannot live with them, and you cannot live without them.’

A pure individual without any social reference is a mere abstraction. If you take away everything that he owes to society, and drop his positive or negative attitudes towards others, he will be left only with a psychical vacuum. Law [that is] either definitely formulated and codified or [is] in the shape of custom, is an indispensable condition of human existence even in its most primitive stages. At the same time man may also be defined as a religious animal. The primitive man's world was filled with gods and spirits and his customs, having mostly a biological origin or necessitated by the instinct of self-preservation, individual and collective, were determined and regulated by superstitions and magic which formed the sum total of his religion.

The connection between custom or law and religion is so [deeply] rooted that even in [a] very advanced stage of civilisation, the bond has not been completely severed. Even under Western secularism, some of the most vital laws that govern fundamental relations like marriage are rooted in religious beliefs.

The world's earliest codified laws in the code of the Babylonian king Hammurabi (who reigned from 2213 to 2080 BC), although obviously originating in the wisdom and experience and the sense of justice of this great legislator-king, are given as an inspiration from the gods whom he and his people worshipped.

The following is an excerpt from the Preamble:

When Anu, the supreme, the king of Annunaki, and Bel, the Lord of heaven and earth, who fixes the destiny of the universe, had allotted the multitudes of mankind to Merodach, the first-born of Ea, the divine master of Law, they made him great among the Igigi. They proclaimed his august name in Babylon, exalted in the lands. They established for him within it an external kingdom, whose foundations, like heaven and earth, shall endure. Then Anu and Bel delighted the flesh of mankind by calling me, the renowned prince, the god-fearing Hammurabi, to establish justice in the earth, to destroy the base and the wicked, and to hold back the strong from oppressing the feeble – to shine like the Sun-god upon the black-headed men, and to illuminate the land.

Hammurabi, the elected shepherd of Bel, am I, dispenser of riches and abundance.

The prudent king [the] favoured of Shamash the powerful... guardian king of the city, brother of the god Zamama...

The divine urban king, the wise, the prudent... possessor of sceptre and crown, whom the wise Mama has created... the pure prince whose prayers are heard by Adad... who has instituted pure offerings for Ea and Damgal-nunna, because they have exalted his sovereignty... the exalted one who humbles himself before the great gods... when Merodach had instituted me governor of men to conduct and to direct Law and Justice I established in the land for the good of the people.

At the end of the code there is an epilogue in which blessings are promised for the kings who rule according to the code and dire curses are pronounced on those who disregard these laws :

The Lord Hammurabi has risen as a true father to his people, the will of Merodach, his god, he has made to be feared. In after days, and for all time, the ruler who is in the land shall observe the words of justice which are written upon my pillar. He shall not alter the law of the land which I have

formulated, or the statutes of the country that I have enacted. If that man needs my words that I have engraved on my pillar, departs not from my laws, alters not my words, changes not my sculptures, then may Shamash make the sceptre of that man to endure as long as I, the king of justice, and to lead his people with justice.

But if that man heed not my words that I have written upon my pillar. If he has scorned my malediction, nor fear the curse of God. If he has annulled the law that I have given, or altered my words, or changed my sculptures, or erased my name in order to write his own; or if from fear of these curses he has commissioned another, then that man, whether he be king, or lord, or viceroy, or a man of any other title, may the great Ann, the father of the gods, who has decreed my reign, extinguish the glory of his throne, may he shatter his sceptre, may he curse his end.

The other great system of law which was promulgated as a Code of Divine Origin is that which is attributed to Moses. It is now believed by all independent scholars that the well-known narratives of Genesis [a book in the Old Testament], such as the two accounts of Creation and the stories of the Flood, are merely excerpts from Babylonian, cosmogony and Babylonian mythology.

Now the discovery of Hammurabi's Code has made the scholars seriously ponder over the possibility whether the legislation of the Pentateuch in the Old Testament is not also of Babylonian origin. The Jews attributed this legislation to Moses who lived about five centuries later than the Babylonian lawgiver. In the life legend of Moses also the story of a Babylonian monarch, Sargon of Azende, who flourished about 2660 BC is almost identically repeated. He [upon his birth is said to have been exposed in an ark of bulrushes upon the river Euphrates, whence he was resumed, and grew up to be the ruler of all Babylonia.

Modern scholarship has dissected the Hebrew Pentateuch into several superimposed layers, ranging in date from about the eighth century BC to the time of Alexander the Great. Dr. Driver, in his book *An Introduction to the Literature of the Old Testament* (Edinburgh, 1894), has given the details of this dissection, which establish the existence in the so-called Books of Moses of at least four systems of legislation, in the following order:

- (1) The Book of the Covenant = Exodus, 20-23:33, (to which is related Exodus, 34:11-26).
- (2) The Book of Deuteronomy.
- (3) The Law of Holiness = Leviticus 17-26
- (4) The Priest's Code = the balance of the Mosaic legislation.

I summarise here below the views of Chilperie Edwards who made a comparative study of the Code of Hammurabi and the Pentateuch.

According to him, the Priest's Code is the latest and most important constituent of the Pentateuch. It cannot be earlier than the time of Ezra, while it received additions at even later dates.

The Law of Holiness is a distinct code in itself, resembling the two previous codes by opening with sacrificial instructions and closing with paren[the]tic exhortation. The closest affinities of this stratum of the Pentateuch are with the Prophet Ezekiel, to whose time it probably belongs. Deuteronomy is evidently the "Book of the Law" which Hilkiah, the High Priest of Jerusalem, professed to have found in the Temple in the eighteenth year of Josiah (621 BC). The author of Exodus says that it was dictated to Moses by Yahweh himself 'from the mount of Sinai, to the accompaniment of thunder and lightning.

The awe and reverence for this book, however, does not seem to have been shared by the author of Deuteronomy who covers the same ground with alterations and interpolations. The scribes do not seem to have any hesitation in tampering with the texts. (This modern criticism of the texts of the Bible, was anticipated by the Qur'an which, affirming the truth of the original revelation of the Israelite prophets, complained that the scribes wrote certain things and palmed them off as revelation of the prophets.)

After making a detailed comparison of the texts of the Pentateuch and the Code of Hammurabi, Edwards has come to the conclusion that the resemblance and parallelism are decisive and the Babylonian Code being much earlier, possibly the [book of] Hebrew[s] has borrowed much from the earlier Babylonian [Code]. The similarities are simply overwhelming. Out of thirty-two ordinances in the Book of the Covenant, twenty-one are in accord with the Babylonian Code, most being practically identical, and the others being quite in the Babylonian spirit. The inference, therefore, is that the Hammurabi Code must have been the immediate or remote progenitor of the Hebrew legal system.

The compiler of the Book of the Covenant adopted such of the older laws as suited his purpose, and added to them sundry regulations of a ritual character together with general moral precepts. The laws themselves are treated as quite subordinate, and the interest of the

compiler centres in theological matters, such as the proper methods of sacrifice and the regulation of the periodic festivals. The Israelites did not preserve all the Babylonian laws. Some were inapplicable and others implied a more advanced stage of civilisation and morality than was to be found in the kingdoms of Israel and Judah.

We have quoted examples of two codes of law that governed important parts of the ancient world. Hammurabi's Babylonian kingdom was much larger and had a much more developed civilisation. But the Pentateuch, although meant for a nation numerically very small, has immense significance because of its belonging to that religious background from which two great religions, Christianity and Islam, emerged as a continuation and a development. Christianity started as a kind of sect or heresy within the Hebrew prophetic tradition, though it, by slow degrees, drifted into something, and [was] even antagonistic to Judaism. The Prophet of Islam claimed to be the last link in that golden chain. The Qur'an has repeatedly emphasised this continuity of and essential identity with the prophetic revelations of Moses and Jesus and that glorious iconoclastic monotheist Abraham, whom one may legitimately consider to be the father of all the three creeds.

Some Western critics have [even] dubbed Islam as a Christian heresy, but in the same manner it should be allowed to call Christianity a Jewish heresy. In all probability orthodox Jews view it as such.

Two other great religions which emerged out of a long religious development need only be touched here briefly. Brahmanism developed various trends which ran together without any logical harmony. It developed pantheism carrying in its bosom ancient polytheism. And it preached the unity of all existence and the identity of the *atman* and the *pramatman*, (the individual soul and the universal soul) [and] at the same time splitting humanity and almost pulverising it anatomically into sects and castes with an injunction to keep them untouchably apart. The Brahminic laws and customs were codified into *Shastras*, the most influential of them being Manu's codes. They reflect the socio-political situation with which they deal.

The white Aryans despised the coloured races of India. They became conquerors and rulers and put at the top of society the priestly and the military castes relegating the rest of society into two or more lower strata, the process

of descent culminating in a large mass of outcasts. These divisions were so rigid and firmly rooted in the religious and cultural consciousness of the Hindus that even during the present century, the forces of democracy and secularism have not been able to effect a breach in this citadel. The Indian Constitution and some reformed legislation have attempted to remedy this sorry state of affairs, but in actual practice, the forces of conservatism are still very strong. A liberal religious Hindu is still in a small minority, that believes in the spiritual side of Hinduism without accepting ancient *Shastras* to be eternal and infallible codes of individual and social conduct.

Buddhism arose as a revolutionary phase in the development of Indian philosophy and religion. It accepted the acosmism [point of view?] of monistic [a viewpoint or theory that reduces all to one principle] *Vedanta* and the law of *Karma* as valid in the unreal phenomenal world, but repudiated the caste system of the Hindus and the codes of law that were mainly based on it. For Buddhism, Ultimate Reality is suprasensual, supravital and suprarational, and the purpose of whatever we call life is to negate itself by the annihilation of all desire and the will to live in order to attain the state of *Nirvana* about which nothing could be said or understood because no category of being applies to it. So long as this phenomenal life continues as an evil necessity, men are exhorted to keep away from its activities as far as possible. Those who are caught in this net of illusion are to be pitied. Therefore love and mercy replaced every other injunction. But it could be only remedial or palliative love. It could not be constructive or creative love because all [of] creation is [an] illusion according to this world view.

There are some points of affinity between Buddhism and early Christianity, which, according to the Muslim view [and] now adopted by a large number of liberal Christians, was a misinterpretation of the outlook of Jesus. The world-negating and life-annihilating view of Buddhist metaphysical religion could not be expected to exhort people to build up an ethical or spiritual civilisation. Buddha had renounced family life and [the] Buddhist ideal man, in imitation of him, was a *bhikshu* (monk), who was engaged in no worldly profession and could not undertake the propagation or amelioration of the human race. Buddha denounced the mortification of the flesh or the spirit as a useless and harmful method of salvation. Nor did Jesus preach or practise the horrible practices that the Christian saints, down to the end of the medieval ages, considered necessary for salvation or

purification of the soul.

Both religions, Buddhism and Christianity, the former with its ontology and [with] the latter illogically misunderstanding Jesus, adopted asceticism or a negative attitude towards life. The Christians, for three centuries, lived as a despised and persecuted minority in the Roman Empire. They could not identify themselves with the Roman State. They could not recognise the sanctity or validity of the Roman jurisprudence. They could not worship the Roman Emperor as a god. They were, perforce, compelled to dissociate themselves from the Greco-Roman culture. Living in slums and catacombs, they had neither the necessity nor the power to create or adopt a legal system. Early Christians believed that the world was shortly coming to an end, [so] why make any serious efforts to mend a sorry scheme of things that was about to be shattered [for] after that only Hell and Heaven will be left.

Jesus was not a legislating prophet like Moses or like Muhammad who had great points of affinity with Moses. He was well aware that religious as well as mundane life has to be governed by laws. But he had an eternally valid spiritual vision that good laws properly understood must have a basis of love – laws cannot fulfil themselves – it is love that informs, enlightens and fulfils them.

The priest-ridden Jewish nation was suffering from the disease which sooner or later infects all religions – the worship of the letter to the disregard of the spirit, and identifying religion with ritualism and external observances, institutional religion taking the place of an inner reality expressed in spiritual attitude. The Jewish nation was in the grip of legalism and ritualism. Their superabundant ordinances, in the words of the Qur'an, had become halts and shackles hindering a healthy development of moral as well as physical life.

Jesus was no violent revolutionary and [he] made no frontal attack on the entire system of Jewish law. He wanted to spiritualise it and internalise it by [promoting] new attitudes. Only in the matter of divorce he seems to have said something that went against the accepted Jewish law. Otherwise we find him saying, "*it was said unto you but I say. ...*" Whatever he adds does not contradict the previous law but adds a necessary inner attitude towards it. When he was found not observing a ritual or following a law that the rigid priesthood demanded, and [was] asked whether he had come to destroy the law, he said that he had not come to destroy but to fulfil it.

Violation of the Sabbath was punished with death and most of the normal healthy and innocent activities of human beings were characterised as work and thus incurred the penalty of death. The original spirit of the Sabbath, which is quite rational, was to keep apart a day in the week. The usual mundane seeking of gain should give way either to rest and recuperation, or spiritual meditation, or selfless work done for the benefit of others who need it. But Jewish legalism had made it a cruel and irrational thing and Jesus had to protest with one of his wise utterances, saying that the Sabbath is made for man and not man for the Sabbath.

Laws are devised in the interest of [a] better life, and where they begin to hamper life they must give way to the demands of life for which they were only instruments. Take, for instance, the casuistry and the complicacy of the regulations and prohibitions of the Sabbath. It had become an overgrown forest of perplexing mazes and vexing brabbles [squabbles]. In the Priestly Code (Exodus, 42:12-17) it is enjoined upon the people that they keep the Sabbath Day holy: "*Every one that defileth it shall surely be put to death. For whosoever doeth any work therein, that soul shall be cut off from among his people.*" Such dire consequences of violation make it necessary to determine very carefully and minutely as to which should be regarded as work. Is feeding the cattle on the Sabbath work or shall it be exempted as a necessary and unavoidable duty? Is pulling an ox out of a pit work? How about feeding one's family or nursing the sick? As the years passed new situations, called for additional answers so that by the time of Jesus, the accumulation of detail on the acceptable way of keeping the Sabbath had become bewildering and oppressive. The following passage from the historian Schurer indicates what development of the Law meant at the beginning of the Christian era:

On the whole thirty-nine kinds of work were prohibited but very few are of course anywhere alluded to in the Pentateuch. These thirty-nine prohibited works are: (1) sowing; (2) ploughing; (3) reaping; (4) binding sheaves; (5) threshing; (6) winnowing; (7) cleansing crops; (8) grinding; (9) sifting; (10) kneading; (11) baking; (12) shearing wool; (13) washing; (14) beating; (15) dyeing; (16) spinning; (17) warping it; (18) making two cords; (19) weaving two threads; (20) separating two threads; (21) making a knot; (22) untying a knot; (23) sewing two stitches; (24) tearing to sew into stitches; (25) catching a deer; (26) killing; (27) skinning; (28) salting it; (29) preparing its skin (30) scraping off hair; (31) cutting it up; (32) writing two letters; (33) blotting out for the purpose of writing two letters; (34) building; (35) pulling down; (36) putting out a fire; (37) lighting a fire; (38) beating smooth with a hammer; (39) carrying from one tenement to another.

Each of these chief enactments again requires further discussions concerning its range and meaning. And here, properly speaking, begins the work of casuistry [rationalization]. We will bring forward just a few of its results. According to Exodus 34, ploughing and reaping were among the forbidden works. But to gather a few ears of corn was already looked upon as reaping. When on one occasion the disciples did this on Sabbath, they were found fault with by the Pharisees, not on account of plucking the ears, which was permitted (Deuteronomy 23-26), but because they were guilty of this reaping work on the Sabbath (Matthew 12:1,2; Mark 2:23-24; Luke 6:1, 2). The prohibition of making and untying a knot was much too general to remain satisfied with. It was also necessary to state to what kind of knot this applied to and what it did not.

What was it that made the Jews lay such an extraordinary emphasis on Law? It was in 637 BC that a royal decree of Cyrus, king of Persia, after his successful campaign against Babylon, allowed the Jews to return to their homeland after a long exile. After the Restoration, they dreamed of building a new Jerusalem from its ruins. During this period of Restoration, various leaders shouldered the burden, but the real work of rehabilitation occurred under the leadership of Nehemiah and Ezra. The heroic efforts of the Jewish nation restored the Temple in 616 BC, and the walls of Jerusalem were built in 444 BC

In the post-Exiled period, politically the Jews were reduced to insignificance and so the centre of their energies was shifted from politics to religion. Now, religion was not only one aspect of life but the whole of life. They became essentially a religious community and political relations were determined by religious ideas that were dominant and officially authoritative.

When religion becomes the dominant factor in the life of a community, [the] details of life from birth to death and all kinds of human relations are dictated by institutionalised practices. The most effective way to make certain that religious behaviour and practice will follow a prescribed course is to develop a body of laws that will be compulsory for all adherents of the faith. The development of the Law, therefore, became the most distinguishing feature of Judaism. In the five hundred years from the Exile to Christ, Law was the most important factor in the life of the Jewish nation.

It is a characteristic of law that it disregards the inner life of an individual and concerns itself only with external

acts and observances. This develops legalism which, far from being spiritual and concerned with mental attitudes, even falls below genuine morality. A curious phenomenon comes into existence that externally a man becomes very scrupulous in the prescribed religious conduct and worship without being moral even on the average level. The course of Jewish religion after the Exile followed along the lines laid down by Ezekiel and prophecy of the spiritual type of Deutero-Isaiah did not make much impact upon Hebrew religion and was not fully appreciated before the time of Jesus. In fact, prophecy waned until it almost disappeared in the priestly legalism that came into being. After the Exile and the rebuilding of the Temple, there were further additions of the written Law. They are rightly called the Priestly Code because it is mainly concerned with worship and the functions and status of the priests.

The process in the development of legalism was not confined to written Law or Torah. A large body of oral law accumulated which consisted of rulings or [the] application of the written Law to some new and unexpected situations. These rulings and precedents gradually acquired the authority and sanctity of the written Law. After such developments, a religion becomes so cumbersome in applications and interpretations that only a special professional class [can] develop who specialises in it. Thus a priestly class becomes necessary and well entrenched.

This happened in Hinduism also, and although Islam did away with any professional priesthood, the accumulation of Law here also made the juristic theologians pretend to be the privileged class in possession of all that is necessary for religious life, which really meant the whole of life. Among the Jews there grew up professionals called the "Scribes," who were learned in the Law. After the time of Christ the oral material was codified [standardized] and brought together in written form and called the Mishna, but even in the preceding period, although unwritten, it was a binding authority.

Jesus protested against the burdening of the soul with excessive legalism, but the protest was not emphatic enough to shatter this overgrown and complicated structure. A large part of it actually needed to be razed to the ground so that the liberated human soul could breathe freely. The mission of great prophethood is the liberation of the human soul from [the] chains [that were] welded by rigid traditionalism and shackles forged by man himself. Jesus said he had come not to destroy the Law but to fulfil it and whoever violates a jot or tittle

of the Law shall go to Hell. But this fulfilment, in order to be effective, needed considerable destruction [and] as Rumi said, “you cannot build a new house [with] a new plan unless you destroy the old structure.”

St Paul and others after Jesus did not hesitate to draw the logical conclusion from the outlook of Jesus with respect to 'Law as Life. They began to say in open words, without mincing matters, that the Law was a curse and that the advent of Jesus had superseded it by Love.

But Love by itself may be a sufficiently regulative principle among a community of saints, though it is doubtful that even there it could suffice if the saints, ascetics or monks want to live well-regulated lives in a monastery. As we have already stated, during the first three centuries of the Christian era the Christian community without a State required no civil or criminal law. During this period all the laws that they required were those necessary for the organisation of the Church. During these centuries Christianity was a non-legal religion but with the sudden acquisition of political power by conversion to Christianity of the Emperor Constantine, it was impossible to continue this indifference to [the] Law. Jesus had given them no laws and had exhorted them to follow the Jewish law adding only inner spiritual attitude to external observances.

As Christianity found its feet and became more and more independent of Judaism, although the Old Testament continued to be revered as a revealed scripture, yet the legal part of it was almost completely shed. State and society cannot exist without a legal system, so the vacuum [which was] thus created had to be filled. Society, like Nature, abhors a vacuum. It is not our purpose to survey the history of laws in Christendom. Christendom lived under dual authority of the Church and the State, both trying to extend the areas of their Jurisdiction. The history of their alliances and conflicts forms an important chapter of the history of Christendom. Even in the predominant secularism of the Western nations, the conflict is not yet completely resolved.

We pass on now to Islam which was a continuation of Judaism and Christianity.

### ***Law in Islam***

It is a universally admitted fact that Islam does not consist merely of matters of faith regarding the nature of God and the world; it believes in the existence of the

Unseen and [in] the life [of the] hereafter but it is not an other-worldly creed. Ascetic creeds like Buddhism, Brahmanism and early and medieval Christianity had a supramundane outlook and considered this life either as illusory or a dark reality to be shunned. They did not consider it necessary to grapple with the real problems of culture or civilisation, so they tended to adopt a predominantly negative attitude towards life.

Nietzsche classified religions into those that say ‘yes’ to life or affirm it and those that say ‘no’ to life and make an attempt to negate it. Of all the great world religions, Islam was categorically emphatic in affirming the reality of all existence and the reality of human life. Religious life, as something apart from and antagonistic to human affairs, does not exist. According to Islam, religious life is this very life lived with a new attitude. It always envisages an individual as an integral part of society. Its prescribed system of daily prayers is primarily congregational, [al]though individual prayers in isolation are not barred where a person stands alone before his God.

Another pillar of institutional Islam is the Pilgrimage to Mecca at least once in a lifetime for whosoever has the physical and financial capacity to undertake it. It is the greatest international gathering where the faithful of all nations and every status meet, dressed and wrapped in a single sheet of simple cloth. The fast for one whole month in the year has also a social reference besides some benefits that it confers on the individual as such. The rich man voluntarily avoids taking food, which he can well afford to enjoy, in order to put himself on a level with the indigent on whom dire poverty sometimes imposes starvation. *Zakat*, the prescribed levy on surplus wealth, is meant mainly to assist the have-nots to fulfil the fundamental needs of life. The Muslim God is also a social God Who is directly and perpetually concerned with human affairs, prescribing ways of living and watching over His creatures to see who fulfils them and who violates them. Islam is primarily a creed of ethical monotheism. It is not mystical because it lays no emphasis on mysteries. It is not metaphysical in the sense of encouraging speculation about noumenal [perceived by thought] reality. The God of Islam is a living God living in close association with man. Who, in the words of the Qur'an, is nearer to man than his own jugular vein.

A critic of the Qur'an, who was fond of mystical and metaphysical aspects of religion, complained that the Qur'an, like some portions of the Old Testament, is full

of fight. It must be acknowledged that it is so because Islam envisaged human life as a battleground of good and evil and the purpose of life is to combat evil in thought, word and deed. The Prophet of Islam was engaged in this struggle all his life and fought the evil that he found around him by wisdom, by love, and when there was no other alternative, he did not hesitate to curb violent evil by violence. He is reported to have said : **"When you see any evil, remove it with your hands by doing something actively about its eradication. If you cannot do that, then cry aloud against it in protest. But if you feel so helpless that you cannot even shout against it, then detest it in your heart – this last alternative is the weakest side of faith."**

The writer on Islam in *The Encyclopaedia Britannica* called Muhammad the most successful of all the prophets, and [Thomas] Carlyle chose him as a hero among all the prophets in his lectures on Heroes and Hero worship. All heroism demands fortitude and fight. A mere mystic, or a philosopher or a sermonising moralist, does not become heroic by flights of thought or depth of feeling. In heroism, it is the strength of will more than thought and feeling that counts. In comparison with such a prophet the greatest of philosophers, poets and artists create only evanescent ripples on the stream of human destiny. Islam believes in a disciplined and regulated life. Only by [the] canalising of energies are maximum effects produced. He became the guide, philosopher and friend of those who believed in him, and sought guidance from him in matters great and small. This guidance was either directly revealed to him by the Guiding Spirit of all Existence, (about Whom the Qur'an says that He not only creates but guides not only men but everything in His Creation) or he was himself granted the wisdom to guide.

God prepared him to act as a guide by making him pass through as many phases of human life as are granted to [only a] few. Born as a poor posthumous child, he lived his early life as an orphan first protected by his grandfather and then by his uncle. He knew by experience the sad plight of the orphan, even when his protectors are kind. He passed many years of his youth as a wage earner, then as a commercial agent of a well-to-do widow who, impressed by his honesty and wisdom, offered him her hand in marriage. He knew thereby the life of the merchant and had a practical experience of right and wrong dealings.

Then he spent about twelve years as a persecuted prophet setting an example of trust in God and belief in the

ultimate triumph of Truth which requires only patience and perseverance. In Medina he had an opportunity of organising his followers for peace as well as self-defence against hostile tribes whose animosity was intensified in proportion to the prospects of his success. Now, society had to be organised as a State of which he was the Divinely commissioned head. Every situation and every aspect of life required laws and regulations, for which there were now two sources – Revelation and his own insight into human affairs.

The Qur'an continued to be revealed with longer or shorter intervals and dealt with situations as they arose or answered the questions put to the Prophet. The Muslim science of law or Jurisprudence called Fiqh, whose literal meaning is 'understanding,' bases itself on six foundations, on four of which there is almost universal agreement: (1) the Qur'an (2) the *Sunnah* or the precepts and practices of the Prophet (3) *Ijma* or consensus (4) *Qiyas* or analogical reasoning, and (5) *Istihsan* expediency or equity, or common weal, based on general principles of human welfare in matters about which the Qur'an and the *Sunnah* are silent or not explicit, and further, about which analogical reasoning does not work as no consensus is available.

Let us take the Qur'an first which is the fountainhead of the Islamic faith. The Qur'an does not present any elaborate and systematic code of laws; it does not call itself a book of laws. It characterises itself as the book of wisdom – it is *Kitab-ul-Hakim* and not *Kitab-ul-Ahkam*. The laws and regulations found in the Qur'an are few and far between. Nor is it a book of any detailed rituals – necessary rituals about Pilgrimage and a few other essential practices are found in the Qur'an, but the general attitude of the Qur'an is that it has clearly pronounced ritual to be of a very secondary importance not to be identified with righteousness itself.

*"It is not righteousness that while offering prayers you turn your face towards the East or the West." (Qur'an 2:177)*

The essence of righteousness is virtuous conduct. For instance, the Qur'an considers the essence of religious life to consist in *Salat* and *Zakat*, i.e. prayer and an obligatory tax on surplus wealth, but in both cases, notwithstanding constant exhortation, it prescribes no details. This reflects the wisdom of the Qur'an because, as the Book has itself indicated, the essence of prayer (individual or congregational) does not lie in its external forms but in the sincere devotion with which it is

offered.

And as to taxation on surpluses, anything rigid would have been nullified by changes in the economic situation in different times and different places. Spiritually, prescriptions about inheritance should be of [a] lesser significance, but the Qur'an gives them in great details to determine the share of every heir to avoid rancour and dispute which might disrupt [the] family relationship.

Let us try to pick up some salient points about the nature and function of the law as given in the Qur'an itself.

(1) The Qur'anic revelation styles itself as law of liberty, an act of mercy vouchsafed by God to mankind in order to soften the rigidities of previous systems of law. It suppresses the austerities and the numerous interdictions imposed on the Jews by the Mosaic law or the accretions and interpolations of the scribes who attributed them to Jehovah and Moses.

(2) The Qur'an has a positive attitude towards life, disapproving [of] the exaggeration of austerity, which weakens the body and suppresses the natural instincts of man. It exhorts the believer to enjoy the good things of life provided he observes the due measure. The Professor of Islamic Laws and Institutions in the University of Rome, who has contributed an admirable article on the subject in the *Legacy of Islam*, has also come to the conclusion that the spirit of Islamic law is allowing as large a latitude in human conduct – as is possible within the limits of reason and morality.

He says, "We may agree with the Muslim jurists, when they teach that the fundamental rule of law is liberty. . . . God has set a bound[ary] to human activity in order to make legitimate liberty possible for all; without the 'bounds of God' liberty would degenerate into license, destroying the perpetrator himself along with the social fabric. This 'bound[ary]' is precisely what is called law which restrains human action within certain limits, forbidding some acts and enjoining others, and thus restraining the primitive liberty of man, so as to make it as beneficial as possible either to the individual or to society." To quote Professor Santillana further: "Whatever their form, these rules tend to the same end and have the same purpose, that is, the public weal (*maslahah*). Accordingly, law, divine in its origin, human in its subject-matter, has no other end but the welfare of man – even if this end may not at first sight be apparent, for God can do nothing which does not express the wisdom and mercy of which He is the supreme source."

(3) According to the Qur'an, law has a utilitarian basis. Its main purpose is to promote human values the realisation of which creates inner and outer peace leading to God Who is also called Peace (*Salam*) in the Qur'an. In the few rules of laws given in the Qur'an, the fundamentals of jurisprudence are not repeated in every instance. But when once a general basis is formulated and definitely given, it should be applied even in those instances in which the bare law is given without its rationale.

For instance, prohibiting alcoholic drinks and gambling, it says that in some cases they might benefit some individuals but they must be shunned in the interest of common weal, their injuries far outweighing their benefits. Law should not take account of individuals. It is the nature of law to have a universal character. When Bentham and Mill desired to promulgate or improve the laws on the basis of utilitarianism, defining it as the greatest happiness of the greatest numbers, they were repeating only what the Qur'an had laid down as the basis of all legislation that benefits and injuries must be weighed and a course of action allowed or prohibited solely on this basis.

In amplifying the law given in the Qur'an or based on the *Sunnah*, to meet the demands of a growing and complex civilisation, the Muslim jurists kept this principle in view. Imam Abu Hanifah, in his doctrine of *Istihsan* and Imam Malik, in his doctrine of *Masalih Mursalah* accepted it as a basis of fresh laws and rulings.

(4) In the matter of law, as well as the general outlook on life, one finds in the Qur'an and the corollaries drawn from its basic teachings, that man should not sunder [divide] what God has joined. This teaching is found in the New Testament as well, and is one of the most pregnant utterances of Jesus. Unfortunately, it received a very narrow and misleading interpretation at the hands of Christian theologians and was taken to be a categorical prohibition of divorce even if a marriage may have turned out to be an irredeemable failure. Marriage as a sacrament was believed to have been made in Heaven making its sanctity inviolable, forgetting that some marriages appear to have been contracted in Hell, or Hell seems to have supervened on them later. The Qur'an has affirmed the duty of man not to sunder what God or Nature has joined, almost on the phrase uttered by Jesus but has given it a much wider and more rational interpretation.

Take a few instances in which the Qur'an has applied this



doctrine. Some religions and philosophies had sundered God and His creation to such an extent that God in His absolute transcendence had become something like the Neoplatonic One or the *Nirguna Brahman* of *Advaita Vedanta*. In ascetic creeds, the flesh and the spirit were believed to be engaged in perpetual hostility so that the fulfilment of the needs of the one required the active suppression of the other. God had become hostile to one part of His own creation, as one of the ascetic mystics said that after creating the world, God has never cast even a backward glance towards it. In the Iranian dualistic creed, God and the Devil, Yazdan and Ahriman, are engaged in perpetual strife, each trying to extend his territory and jurisdiction at the cost of the other.

The Qur'an derived the unity of existence and also the unity and solidarity of humanity from its monotheism. If God is the Beginning as well as the End, the Outer as well as the Inner aspect of existence, which metaphysics calls Appearance and Reality, then appearances of opposites in life or in nature are not rooted in eternal contradictions. Light and darkness are not two primeval principles, but alternations like the day and the night. Hence the Qur'an says that the alternation of the day and the night is a Sign of God.

I have given the exposition of this Islamic outlook at some length in my book *Islamic Ideology* and will not repeat it here. I propose to restrict this discussion to the question of the relation of law and love. All existence is governed by law and the law about every aspect of existence is as abiding as the phase of reality to which it applies. The unalterable laws of life and nature are designated in the Qur'an as *Sunnat-Allah* or [the] behaviour of God and it is repeatedly said that you shall not find any change or alteration in this.

Understanding the abiding nature of eternal laws and moulding one's life according to them is defined as true religion. The second assertion in the Qur'an is also a universal proposition and that is that God essentially is Love – *Rahman* as Creative Love – and *Rahim* as Love exercised in Mercy. Certain attributes of God as given in the Qur'an are absolute and others are relative. It is only the quality of mercy that God has enjoined on Himself which means that it is eternally an essential part of His nature. But God's Love is not blind. It cannot be symbolised as a blind Cupid, throwing his darts at random. It is enlightened Love. In God, love and reason are identified. But reason is a law apprehending, law-making and law-abiding faculty. Therefore, life originating in love must find its manifestation in law.

Human love, at a lower level of existence, tends to become lawless and human laws tend to become loveless. Love like war is supposed to justify breaking of all laws of morality or decency. This is because in the limitations of human life neither love nor reason is perfect. In their imperfection they lose their identification with each other.

The essential reality is life and, therefore, law as well as love are to be judged by the criterion of life. The purpose of life is more life, higher life, better life, augmenting itself intensively as well as extensively. Life in its preservation and evolution, creates new laws out of its vital urge. Bergson, the protagonist of life against logic, makes the cosmic vital urge creative and evolutionary and in his book on two sources of morality and religion identifies it with love – which is the intuitive life of prophets and saints. For him the evolutionary urge is creative. It does not, however, create according to any previous laws and plans but laws and patterns emerge[d] out of it as secondary products.

A plant does not grow according to the laws of botany, but a science of botany becomes possible when life has created a plant. It is the same with language which does not develop out of a preconceived grammar, but grammatical patterns can be discovered in even the most primitive dialects. The Qur'an seems to be in accord with this viewpoint, giving priority to love although not neglecting the necessity and reality of law.

Note the sequence of God's attributes in the opening verses of the Qur'an about which we have already said something. The verses open with the conception of a beneficent and merciful God Who is the Lord and Sustainer of all the worlds that He creates. This perpetual providence or sustenance implies love for what is sustained, because one nourishes only that which one loves. Forgiveness is also implied in love because only love can be forgiving. But having emphasised these attributes, another attribute of God follows that He is the Lord of the Day of Judgment. He is the Supreme Judge Who first made the laws and then watches life to see whether it is following those laws.

Natural laws cannot be violated because material existence is not endowed with free will. The sun and the moon and the stars follow their prescribed courses as determined by the law inherent in their nature, planted by the power that created them. Free-will emerges as a novel phenomenon during the course of an emergent evolution. Human life is lived at two levels in quite

different dimensions. Free-will makes man a denizen of two worlds – the world of necessity and the world of freedom. Of the God's creation only man is to be judged. In the symbolic description in the Qur'an the rest of creation, when offered this risky gift, shuddered at the idea of its acceptance and were contented to exist in their eternal modes wherein no violation of law is possible.

The Qur'an also depicts spiritual beings as angels who are inherently incapable of defying the will of God. They perform their functions in absolute obedience. Rationality and free-will are two distinguishing characteristics of man, but his rationality can be blurred and his freedom misused, making him tyrannical and ignorant because of the improper use of these gifts.

In the Quranic conception of man, he may rise above the angels or sink below the animals. To the 'ideal man' as depicted in the Qur'an, the angels have to submit if he realises his ideal humanity and infinite possibilities, and entire 'nature' is a field for conquest through knowledge. But when he sinks, he sinks to a level [which is the] lowest of the low. His minutest thoughts, feelings and actions are weighed with precision in the sensitive balance [which has been] planted in his own nature in which, according to the words of the Qur'an, even atoms of deeds are weighed and his life is determined by the balance of good and evil.

Taking into account the predicament in which man is placed, no one is expected to be absolutely good and no one could be an embodiment of absolute evil. Even as good a man as Jesus would not attribute absolute goodness to himself. As related in the Gospel, when someone called him good, he, with [the] humility characteristic of a genuinely spiritual man, replied that not he but his Father is good. So was the Holy Prophet of Islam conscious of his shortcomings, and [he] constantly prayed [for] forgiveness.

God, Who creates out of Love and sustains out of Love, is also a judge of good and evil. Human life in its own interests has to be judged. Constantly sentences are pronounced – some are rewarding and the others are punishing. Not on account of vindictiveness, but because of the demands of life itself. Moral laws are real and God is the Legislator as well as the Judge. Love apart from law and reason is an abstraction, and 'law,' devoid of the foundation of love, would become a tyranny and a burden, hampering life instead of advancing it.

Reverting again to the opening prayer in the Qur'an, having asked man to recognise God as the Lord and Sustainer of all the worlds, of entire existence in all its variety and gradation, acknowledging Him primarily as Beneficence, Love and Mercy, creating life not as a haphazard phenomenon but regulated by law, in this aspect, God manifests Himself as Legislator and Judge in the natural as well as the moral realm. It proceeds further to draw a corollary that only such a Being is exclusively worthy of worship and service, and assistance is to be sought ultimately from this Source. It directs man to pray, not for any particular goods or privileges, but to be guided in this Straight Path which combines love and law, following which the blessed ones have attained to Beatitude. Deviation from which has led others to stray and draw upon them[selves] the wrath which is the natural result of wrong thinking and wrongdoing.

The Qur'an points towards two varieties of law – the eternal, the unchangeable and the variable – but identifies the essence of religion with the former. "*In the laws of God's creation there is no change; and this is right religion emerging from the nature of God Himself on which has been moulded the nature of man.*" (Qur'an 30:30) It points towards the uniformities of physical 'nature' as a Sign that the Ground of Creation is orderly and the ways of the Lord, called in the Qur'an the habits of God, are not subject to alteration.

There is a definite trend in the Qur'an to seek God, not where the regularities of nature appear to have been set aside in an event that appears to be miraculous, but in the common observable and understandable uniformities. In the realm of morals, a new factor enters – the mysterious gift of free-will which could go against the divinely-prescribed right course. Man may swerve from the right path but thereby the moral law is not violated. Even when man prefers evil to good, the moral law still holds which consists only in this that good and bad actions shall necessarily be followed by appropriate consequences, some of which may be immediate and others remote, some of them obvious and others concealed from common experience, but still unobtrusively operative.

It is an undeniable fact that not only customs and manners but even morals have been undergoing changes from epoch to epoch and from nation to nation. In this realm there appear to be only subjectivity and relativity. The Sophists of Greece emphasised this aspect of morals drawing from this the conclusion that

ethics could have no objective basis. Socrates and Plato spent half a century of philosophical discussion to prove that ethics is rooted in the inalterable nature of human life. Everyone instinctively seeks the good, but some people ignorantly seek it in the wrong direction. Physical science is based on the uniformity and objectivity of Nature, but all superstition is rooted in the misapprehension of the law of cause and effect. Man's subjectivity does not nullify the objectivity of physical Nature. The case is the same with moral law. There has been evolution in man's knowledge of physical Nature as there has been an evolution in man's idea of God.

Similarly, there has been evolution in man's moral nature, but it is a reality that has evolved. There could not be evolution of the unreal. The course of evolution constantly sheds away unrealities as has been so beautifully depicted in the two similes used about natural selection and survival of the fittest as already quoted by us in the discussion of the evolutionary teaching of the Qur'an.

In the Quranic conception of Reality and Appearance, both of which are conceived as Divine, changes occur in appearances, not in realities. But the changes are also subject to unchanging laws rooted in reality. Everything changes but the law of change does not change. According to the Qur'an, revelation has been changing in the matter of laws and regulations of conduct, but it denotes no fickleness or unreliability on the part of the Creator. Laws have been promulgated by revelation and also abrogated by revelation when, due to change of circumstances, they ceased to be helpful for life and their continuance would have thwarted the course of human development.

In the words of Jesus, the Sabbath is made for man and not man for the Sabbath. The Qur'an exhorts its believers to have faith in the Divine origin of all previous revelations but it also teaches that laws have been changing. In the words of Lord Tennyson, which echo this view of Islam, "*Old order changeth, yielding place to new, and God fulfils Himself in many ways, lest one good custom should corrupt the world.*" The Quranic verse about this is as follows: "*We abrogate not a verse unless We replace it with something similar,*" meaning thereby something not the same in all respects but having a similar object or purpose. "God negates as well as affirms," but changing revelations are in accordance with the abiding Source Book which the Qur'an, designates as the "Mother of Books" (13:39). This is the eternally abiding Divine consciousness, the Divine knowledge of

the Laws of Being and Becoming, according to which changing manifestations take place. Ancient philosophies in the East and the West stigmatised the world of change as unreal, a cosmic Maya or illusion identified with dark matter or *Avidya* (ignorance) which can afford no knowledge of the Eternally Real.

The Qur'an considers all existence to be real because it is the creation or manifestation of the Eternally Real. Hegel has endorsed this world view by enunciating the formula that the Real is rational and in the dialectic of history, it is the Absolute that is unfolding itself, constantly promulgating and abrogating and advancing life by the synthesis of opposites. It follows from this that no system of laws could be eternal. To quote Tennyson again, these systems have their day and then cease to be:

*They are but broken lights of Thee  
And Thou O Lord art more than they.*

Human history has created and transcended so many systems of laws, some believed to have a direct Divine origin, and others the creation of the human sense of rationality and social justice, which properly directed is also Divine. All systems set a seal of eternity on themselves and for long periods held sway as unchanging realities, having systemised human relations once [and] for all. Hindu *Shastras*, the Babylonian Code of Hammurabi, the proverbially unchanging laws of the Medes and the Persians and the Pentateuch were believed to be Divine and eternal. But no modern State or society considers them now to be sacrosanct. The Romans, who had a genius for lawmaking, believed to have offered the world a perfect code. They were all [well and] good in their own times but changing circumstances have abrogated a major part of them, some of them having been scrapped altogether.

We have already indicated the attitude of Jesus and Christianity towards Law. Jesus said that he had not come to destroy the law of Moses but to fulfil it. Jesus was not a legislating prophet. His main function and mission was to turn humanity towards the spirit more than the letter of the law. That is probably what he meant by fulfilling the law. Soon after him Christianity unburdened itself of the cumbersome corpus of almost the entire Jewish law. But when [the] Christian Church became powerful and Christianity became a State religion, laws were required both for religious and for secular life. The State legislated for its own necessities and the Church developed Canon Law. There was clash

of jurisdictions which has not disappeared after the conflict of centuries even in predominantly secular Christian States.

Islam did not believe in this dichotomy of jurisdictions. Life had to be regulated as an indivisible organic whole. Therefore it never developed a Church with a hierarchy of priests. Its system was neither theocratic nor secular in the Western Christian sense. In the Islamic system, law originates in religion and every law is given either as a part of religion or has to justify itself on the basis of the fundamentals of Islam.

In the present-day Muslim Law, some laws are derived directly from the Quranic injunctions, others are based on the teaching and practice of the Prophet and a much larger portion is the elaboration and amplification of eminent jurists of the early centuries of Islam. Religion, morality and legality are all integrated in one mass. Submission to law is a social as well as a religious duty. Infringement of law is a violation of the will of God, because it is a principle inherent in the Islamic conception that rights and duties ultimately originate in the will of God and there is no right in which God has not a share. Jurisprudence is rooted ultimately in theology.

But how much of Muslim Law is to be taken as eternally valid, and how much is subject to alteration if the changing circumstances demand it. Being rooted in theology, Muslim Law is rigid. Could a Muslim make a distinction between the spirit and the letter of the law and alter the law in conformity with the spirit if circumstances demand it? Is the application and implementation of a principle as binding as the principle itself? Are rituals as important as the spirit that they are supposed to embody in external observances?

In answer to these vital questions the ways of rigid orthodoxy and Muslim liberalism part. Essential Islam is based on the Qur'an, but the Qur'an cannot be called a book of laws. The civil and criminal laws given in the Qur'an are not numerous. In comparison with the whole body of Muslim Law, they are only fragments. The Qur'an professes to be a complete teaching for the essential and abiding aspects of life. Therefore it is legitimate to believe that what is not prescribed in the Qur'an is a variable element. Even if the Prophet gave some rulings and directions, they may have been related to the situations with which he was dealing. If they were meant to be valid for all times irrespective of circumstances, they should have formed part of the Quranic revelation, otherwise it shall have to be accepted

as an incomplete book which no Muslim is prepared to hold.

A large body of orthodox Muslims believe that, even during the two decades that the Qur'an was revealed, changes in situations and circumstances caused some of the injunctions to be abrogated and replaced by others that would suit the circumstances better. There are others who do not think that anything in the Qur'an is abrogated. What is considered to be [a] substitution is only an amplification of what was given before as a simpler injunction.

The orthodoxy that believes in abrogation even during the short period of the prophetic revelation should consistently hold the belief that circumstances alter laws, even according to revelation. But it does not apply this principle after the finalisation of a direction given in the Qur'an. Not resting here, it extends the belief about finality still further. Whatever is derived from the precepts or practices of the Prophet is also believed to be equally binding for all times.

After this comes the consensus of the Companions of the Prophet. That too is unchangeable. Then come the jurists who amplified the Muslim code by innumerable additions during the dynamic period of Islam, which is supposed to have terminated after the fourth century of Islam. According to the views of rigid orthodoxy, the door of *Ijtihad* or free legislation according to the spirit of Islam has been closed for all times. From the point of view of law, Islam has been made a static religion which it was never meant to be. None of these jurists claimed finality for their views and even their own close disciples openly differed from them about many vital questions.

From the point of view of law, Muslims may be divided into the following classes:

- (1) Those who believe that essential Islam is embodied in the Qur'an and only the Quranic injunctions are binding. This is at present a small but a growing body.
- (2) Those who believe the injunctions given by the Prophet but not found in the Qur'an to be equally binding.
- (3) Those who accept the *Sunnah* of the Prophet but are critical about its trustworthy transmission. They consider it to be a historical or biographical record in which a lot of objectionable matter has been interpolated

and needs thorough sifting to separate the grain from the chaff. Besides, in the majority of cases, a matter is related in the words of the narrator and maybe he has narrated it as he had understood it. Laws demand precision and nobody claims precision in the statements of *Hadith* literature. But even if a ruling is believed to have originated in the Prophet, he was not giving it as an eternally valid revelation but something that met a particular situation.

(4) Those who consider the rulings and interpretations of the *Imam* they accept as [an] authority in legal matters, to be unconditionally binding on the followers.

(5) Those who consider it allowable to choose from among the rulings of those orthodox jurists whom they believe to be preferable as conforming more to the dictates of Islam, or more reasonable. This kind of legal eclecticism is gaining ground among less rigid theologians in many Muslim countries.

(6) The *Shi'ahs*, who form a majority only in Iran and are found in small numbers in almost all Muslim countries, believe in apostolic succession, and follow their own ancient *Imams* on whatever their authority is available. For the day-to-day rulings, they have to accept the verdict of their *Mujtahids* who are authorised to interpret or amplify the law as new situations and new needs arise.

(7) In recent history, the Kemalist Turks have taken an unorthodox and daring step in the creation of a secular State in imitation of European models. They call themselves "the Protestants of Islam" who have cut themselves away from all theological authority in the matter of legislation. Their contention is that law, even if associated with religion, is no[t] [an] inalienable part of it.

The early laws of Islam were meant to regulate a society and a State which do not exist now. Social, economic and political structures have changed beyond recognition and that which suited the conditions of Arabian or early Islamic society has become inapplicable to modern life. As the Roman Catholic Church believes that renouncing the authority of the Church is tantamount to the renunciation of Christianity, so Muslim orthodoxy censured the modern Turks as having gone out of the pale of Islam. But a Turk[']s protests that he is as good a Muslim as any other believer in the unity of God and the prophethood of Muhammad. He believes the fundamentals of Islam to be true religion, but laws promulgated in a particular epoch are no essential and

eternal part of Islam. They pray and fast and go on Pilgrimage as do the other Muslims, but [they] consider themselves free with respect to [the] legislation.

In their secularism, they do not think it necessary to connect their new laws with their religious beliefs. They respect the slogan of Individualistic Protestantism that religion is a matter of conscience and is a personal affair – an outlook which cannot be endorsed even by the most liberal Muslims elsewhere. During the last one hundred years in Turkey, systematic attempts were made to bring in new laws or modify the old ones by a liberal interpretation of classical juristic principles in the light of changed circumstances, but these attempts ceased with the advent of a secularist Turkey.

The general Muslim belief is that Islam gave the Muslims a comprehensive and perfect code of private and public behaviour and gave them the necessary laws for all times. They quote the Quranic verse in support of this belief: "*This day your religion has been perfected for you.*" It all depends on what one understands by religion. Religion according to the Qur'an itself, is an eternal and unchanging reality. This eternal religion, based on unchanging laws of existence, was also the religion of Abraham, Moses and Jesus and all the numerous monotheistic prophets, mentioned or not mentioned in the Qur'an. Their religion too was perfect although they promulgated or followed different laws.

It follows logically that this variable element in religion could not be that which the Qur'an calls Islam, the contention of rigid orthodoxy is that God revealed and changed laws when human societies were in a less advanced stage, and with the finality of the prophethood of Muhammad and the last and final Quranic revelation, unchanging laws were finally given for the whole of humanity. But this contention is untenable both, from the point of view of the Qur'an and the attitude of the Prophet himself.

He was conscious of the fact that no code could be comprehensive enough to cover the infinitely varying situations of life, and he did not want humanity to be burdened with too many rigid laws. While he was sending Mu'adh ibn Jabal as governor of Yemen, he asked him by what law he would decide the cases. Mu'adh replied, "According to the directions in the Qur'an." The Prophet asked him further, "What would you do if there is no Quranic injunction about it?" On this Mu'adh replied that he would then follow the precedent of the Prophet himself. "But how would you proceed if

the situation is so novel that neither the Qur'an has envisaged it nor have I ever encountered it?" asked the Prophet. Mu'adh replied that he would then follow his own conscience or good sense. The Prophet approved of it and blessed him.

All the later Muslim jurists have followed this advice of the Prophet. When they found anything definite in the Qur'an, they accepted it as authoritative. After this if they could get hold of something said or done by the Prophet and believed it to be authentic and truly transmitted, they would not add or subtract anything from it. But with respect to that for which there was no positive or negative injunction, they exercised their free judgment within the boundaries of the spirit of Islam. They did a good job and formulated principles that could make Muslim jurisprudence as one of the most liberal systems.

I have already quoted Professor Santillana of the University of Rome as an impartial European authority on Muslim law. He says: "Considering its spirits, therefore, we see that the tendency of Islamic Law is to allow human action the widest limits, and we may agree with the Muslim jurists, when they teach that the fundamental rule of law is liberty."

Compare the scanty legislation in the Qur'an with the other cumbersome codes of legalistic religions. The few laws given are also characterised by elasticity. Prayer in solitude or congregation is essential but no form is prescribed. It is not essential to pray in a mosque, as the Prophet said that one of the distinguishing characteristics of our religion is that the entire earth has been made a mosque for us; temples and synagogues are not a necessity though they may be convenient places for congregations. Similarly, a privileged class of priests is not recognised as an institution indispensable for worship. Islam has no sacraments; even marriage is a civil contract. While praying, if one finds standing physically inconvenient, one may sit down even while the others are standing. If due to some physical inability even the sitting posture is painful, one may lie down.

Turning one's face towards the central mosque of Mecca as a historical nucleus and geographical focus of Islam, is recommended for its psychological and sociological advantages, but the Qur'an has said in so many words that turning your face in this or that direction is not the essence of righteousness. This is Qur'an's attitude towards all rituals. Fasting is prescribed for one month in

a year, but it is not compulsory for the old and the sick and the traveller or others who are genuinely unable to stand it, because of the nature of their duties whether in war or in peace. They may observe it on other days when their physical fitness or circumstances allow, or feed the poor instead.

*Zakat* or compulsory charity is prescribed only for those who have surpluses, but the Qur'an has not gone into details because details would not suit all types of economic circumstances. Pilgrimage is prescribed only for those who could conveniently do it. This is the spirit of the Quranic laws and injunctions given in various verses.

- *God desires to create conveniences and not prescribe hardships for you. (2:185)*
- *God prescribes no duty for a soul which is beyond its capacity. (2:233)*
- *O God, spare us the burdens with which the former nations were burdened. (2:286)*
- *We will make the way of good smooth for you. (87:8)*
- *We have made the Qur'an easy to remember, but is there anyone to take it? (54:17, 22)*
- *O Prophet, We have made this revelation in your tongue easy for you. (19:97)*
- *We have made this Qur'an easy in your tongue so that they (those addressed) may understand and follow. (44:58).*
- *O Prophet, We will make the way easy for you. (80:20)*
- *The Prayer of Moses: My Lord, open up my breast (enlighten my consciousness) and make my affair easy for me. (20:25-26)*
- *Recite from the Qur'an whatever you find easy. (73:20)*
- **Religion is convenience** (a saying of the Prophet).

Many more verses of identical import could be quoted from the Qur'an to show that, according to this revelation, the purpose of religion is not to create obstacles and hurdles for man but to show that the way of righteousness is fundamentally aimed at well-being.

The good may have to struggle for its realisation and triumph, but there is more inherent torture in the life of evil. The ease that evil seeks is illusory and short-lived, but the peace of mind sought through [a] good life is more real. The Qur'an is not oblivious of the fact that a person trying to lead a good life and actively struggling

against the forces of evil, has to suffer hunger, pain, loss of worldly good, and has to be prepared for all types of supreme sacrifices. The life of the struggling Prophet and his Companions who spent more than a decade of living martyrdom, is a witness to this eternal fact.

The Prophet is reported to have said that it is the prophets who suffer the greatest persecution in this life. These sufferings are inevitable, but why add to them self-imposed mortification like the pathological ascetics who were revered by all the great religions before and contemporaneous with Islam?

Why make spirituality equivalent to the violent suppression of natural instincts, which could benefit neither oneself nor others? Why dichotomize life into religious and mundane spheres? Why burden the soul with unnecessary ritualism? Why create a class of priests and monks and religious mendicants who burden others with their maintenance? Why have a Sabbath in which good and harmless labour, even for the benefit of others, is tabooed, exposing the doer of good to death penalty? Why make laws which do not take account of circumstances in which their violation may be necessary for the preservation of life and for social welfare? Why make divorce unlawful even when the lives of the partners are being wrecked and frustrated by extreme incompatibility and conflict? Why make a fetish even of monogamy, when in extraordinary circumstances it is preferable to give the status of a legal wife to another woman [thus] giving her an honourable status's [rather] than keeping her as a mistress [and] attaching the stigma of illegitimacy on innocent children [who are] the victims of an-illicit relation[ship]?

Hostile critics of Islam could find no reason for the rapid success and propagation of Islam [other] than the use of the sword. There could be no greater calumny [slander] than this unjust charge against a religion which by revelation announced to the world that there must not be any compulsion in the matter of religion, and whose Prophet and his immediate successors granted charters of religious liberty to Christians (which could be studied by any scholar as authentic documents of early Islam). If Islam had resorted to violence, eight centuries of political dominance in Spain and four centuries of Turkish rule in Eastern Europe would not have left a single non-Muslim there. A Turkish Sultan once proposed this un-Islamic act, but the theologians themselves thwarted him by pointing out that Islam as revealed in the Qur'an does not allow it. As a result of this Islamic Ideology, the Muslims remained a small

minority in both wings of Europe and having lost military strength were either forcibly converted or driven out.

Similarly, about seven centuries of political dominance in India left them as a small minority even in the seats of their government. Those who attribute the spread of Islam to the sword should look to the Continent of Africa, partitioned among Western Christian powers in the nineteenth century. Extensive Christian missionary activities accompanied or followed this political annexation and economic exploitation. Thousands of missionaries rushed to the explored and unexplored regions of this vast continent offering educational and medical facilities and economic uplift to the savages and the heathen.

As compared with these advantages and privileges, the scattered Muslims had nothing to offer except a simple faith which had no enigmatic dogmas and mysteries. They had no church and no organised missions. They offered to the heathen only belief in One Merciful Creator and Sustainer of the universe Whose unity should be reflected in the unity and solidarity of humanity. They practised more than preached the brotherhood of man which recognises no racial superiority and special privileges because of the pigment of the skin.

The result has been that the concerted missionary zeal of all the Western nations has not achieved one-tenth of the success of Islam. These [people who depicted Islam] with the sword in one hand and the Qur'an in the other, should honestly ponder over this phenomenon and dive into the real causes that attract to Islam civilised as well as uncivilised races and individuals. Sir Thomas Arnold's book on The Preaching of Islam would tell them how Islam spread in the world. In India, the tyranny of the Hindu caste system drove millions of the lower-caste people to join a brotherhood with social equality.

Islam was a movement of all-round liberation from the very beginning. Its outlook and its laws were humane and simple and its theistic creed without mystical and metaphysical subtleties was easy to grasp, and socially its global brotherhood is genuine. [Arnold] Toynbee, the great British historian, has said that racialism [racism] is the most deadly poison in the body of the Christian West, from which Islam is completely free. Islam has solved this problem more successfully than any other religion or culture.

We revert again to the principle of liberty as the foundation of Muslim jurisprudence. In the Islamic Law, the list of prohibitions is very small, and even about these the law is not very strict, and the general principle holds good about all prohibitions that necessity makes lawful what is forbidden. Normally one must not eat a dead animal, [but] still it would be worse to die of hunger. Al-Ghazzali applied this principle to the toleration of absolute monarchies when the political ideal of Islam as a democratic republic became a practical impossibility. He asks, under the existing circumstances, which is to be preferred: anarchy and the stoppage of social life for the lack of a properly constituted authority, or acknowledgment of the existing power, whatever it be? Of these two alternatives the jurist cannot but choose the latter.

Islam is a practical religion. In the words of Renan, it is a religion for human beings. It does not content itself with presenting only the ideal. The nature of every ideal is such that it cannot be completely actualised in any single embodiment, but [the] actualities of life must perpetually move towards this ever-receding and ever-beckoning goal.

Islam takes note of human predicaments and provides for meeting diverse situations. It is uncompromising only in its ideals and resilient about their partial and incomplete fulfilment. The Muslim is justified in believing that the Shari'ah or the way indicated in the Qur'an and illustrated by the life of the Prophet has a finality about it. But the finality is the finality of the principle and the spirit, and not its implementation in a particular form in a particular epoch or a particular situation which may not recur. I heard the sage of modern Islam, the Philosopher-Poet Iqbal, sum up his view of Islam in the[se] words: "Islam is an aspiration and is not to be completely identified with its fulfilment in a particular epoch in a particular shape." Life is a creative urge that perpetually creates the forms and perpetually transcends them. He said that the worship of forms is idolatry and [that] Islam is basically is iconoclastic.

To understand Islam and the foundations of its jurisprudence, one must find out its trends. It put the feet of humanity on the right path to walls on which the Muslim prays for Divine assistance at least five times during the day and night. These trends are the essence of the Shari'ah, which he believes to be final. The Prophet himself was conscious of the fact that due to the limitations of the community he was trying to guide and reform he could not do [along with] many things that he

would have liked to accomplish. He said he would have liked to remodel the architecture of the Ka'bah, but he hesitated because of the deep-rooted memorial sentiment of the Arabs associated with its present structure which was likely to receive a shock. One could guess that there must have been many more steps of reform in various directions of life which he could not take because his contemporaneous humanity was not yet ripe for it.

Let us take as an example the institution of slavery. Almost the entire structure of the civilised, as well as the uncivilised, world was bound up with this institution which deprived a large portion of humanity of a moral or civil status. No religion, no law, no culture ever thought of abolishing it. Great thinkers like Aristotle considered it to be an incarnation of Divine reason, held it to be a natural institution, because according to them Nature created quite a large number of human beings to serve as slaves. The democracy of Athens was a government of free men for free men. It was not a government of the people, for the people and by the people, because three-quarters of the population were slaves. The Romans, having a special genius for jurisprudence, never contemplated abolishing this curse of humanity. The slaves were treated as chattels, and the masters enjoyed a legal right of life and death over them.

What did Islam do about it? It could not abolish it at a stroke. It gave injunctions to mitigate its rigour along with directions that would gradually abolish it altogether. It took away the master's right of life and death over his slave and made maltreatment also punishable. It made the emancipation of a slave a great act of merit. For a large number of major and minor sins the emancipation of a slave was made an expiation, an atonement and a judicially imposed fine. The Prophet allowed his followers to retain their slaves only on the explicit condition that they were fed and clothed like their masters. This was given as an ideal for the relation of master and servant which some socialistic societies have moved towards in modern times.

Following the Islamic trend, the great successor of the Prophet, the Khalifah 'Umar, issued two orders successively. First, that no Muslim shall be enslaved and, second, that no Arab shall be enslaved. He would certainly have proceeded further given another few years, but by the irony of fate, a Persian slave resident in Medina assassinated him. Who knows that a group of vested interests may have instigated him.



Counter-revolutionary forces were not extinct. The capitalists, the slave-owners, the corrupt officials suppressed by the prestige of the Prophet and the might of 'Umar, later on managed to poison another pious Khalifah, the namesake of the former 'Umar because he had attempted to bring back the Muslims to the original Islam from which they were deviating. Muslim governments forgot that the program of Islam was to do away practically with slavery altogether and Umar had enjoined that a part of the *Zakat* tax was to be spent on the emancipation of slaves.

Did Islam accomplish nothing in this respect? Surely Muslim law and society raised the status of the slave to unprecedented heights. In a Muslim household you could not easily distinguish the slave from the master. The slaves became teachers of free men, jurists, ministers and commanders-in-chief of armies. They were allowed to advance till they became founders of monarchical dynasties. There flourished a Slave Dynasty in India and the Mamluks of Egypt were descended from slaves as their very name denotes. The mighty Mahmud of Ghazni had a similar origin and his favourite minister Ayaz was a slave. When one talks of slaves in Islam, one must not forget that it was not the same thing as found elsewhere down to the nineteenth century.

There is quite a substantial part of Islamic Law dealing with the regulation of the institution of slavery. It would be ridiculous to say that slavery was meant to retain an abiding part of the Islamic Shari'ah so that no part of Islamic Law should be abrogated for lack of an institution that it was meant to regulate. With the abolition of slavery, made possible in the modern economic structure of civilised nations, one object of Islam is fulfilled. When the free wage earner and the free servant also get better and egalitarian human treatment, another part of Islam will be fulfilled.

Who could distinguish the domestic servant of the Prophet from the master in any essential respect? The Prophet said : "Assist your servants in their tasks." He swept his own floor and milked his own goat and mended his own shoes and considered no work beneath him. He set an example in this respect for what is now called dignity of labour – labour can be dignified only if dignified people are prepared to engage in all kinds of labour. Laws are meant to regulate certain situations, [yet] if the situation changes, the law must change. If an institution is negated by the dialectic of history, the law regulating it becomes a dead letter. It may happen to many another law and many another institution.

European Orientalists almost uniformly state their opinion that enclosed within a rigid frame of dogma. The system of Islamic Law cannot be reduced to the formulae of Western jurisprudence. The dogma being invariable, the laws based on it must be quite incapable of development. There is a confusion here which must be removed. In the first place Islam is almost free of what the Western mind understands by a dogma. The basis of entire Islam is its uncompromising monotheism. But is monotheism a dogma? It would be better to call it a view of life, its origin and its goal.

The Qur'an is full of evidences and arguments and what it calls the "Signs" of God pointing to a refined and beneficent Creator. The second essential belief is that God reveals Himself not only generally in His creation but also specially to certain gifted souls called the prophets, and Muhammad was the last of them. Has not history justified this belief? Islam is the last great religion founded on prophethood. Here and there prophets continue to emerge and gather a small following [yet] claiming nothing that was not already revealed in its essentials to former prophets. Many of them bring in good, bad or indifferent variations or accretions of little importance. They create new religious groups more or less segregated on the basis of inessential dogmatic differences. None of them attains the stature of an Abraham, a Moses, a Zoroaster or a Jesus or a Buddha or a Rama or a Krishna believed to be incarnations. None of these small prophets becomes a revolutionary force changing the entire outlook on life of those who profess and practise it.

History has justified Muhammad in his assertion that that phase of prophethood terminated with him because the fundamental truths have been given or clarified once for all. After him, he said, the function of prophethood shall be shared by men of learning who will be like the Israelite prophets the majority of whom were moral and social reformers inviting people to be religiously pure in spirit and socially just. So, according to Muhammad himself, one aspect of prophethood is finished, but the other aspect must continue for the revival of faith in God and social Justice.

If belief in God is a dogma, it is shared by all theistic religions. And is there any spiritual religion that does not accept it as an essential fact that some gifted souls are in closer communion with the Universal Soul in which Reality, Truth, Love and Justice are rooted and Who is a Creator and Preserver of values which are human and Divine at the same time? These are the facts

of life unless one takes God and communion with Him to be a widespread illusion. Outside [of] these beliefs Islam has nothing that could be called a dogma. There is no doubt that Islam has laid down the foundation of a comprehensive system indicating directions and trends for all the essential aspects of life, but within the framework of its ideals it is an open system. If it were a closed system from the very beginning, all Islamic Law could have been enclosed within half a dozen pages of the Qur'an, but we have seen that the Qur'an gives very few laws and very little ritual, removing the rigidity of laws by latitudes and permissions to suit various circumstances and pronouncing ritual to be a secondary affair and variable in varying situations.

The Qur'an was supplemented by the rulings and practices of the Prophet. If he had meant to eternalise them, he would have ordered them to be meticulously and scrupulously recorded as a code for all times. But neither he nor his immediate successors ever thought of doing it. There are very few traditions or sayings of the Prophet, related by his close associates and co-builders of the Islamic system, like his two immediate successors, Abu Bakr and 'Umar. 'Umar was mortally afraid of collecting and relating them lest they replace the Qur'an or supplement it in a doubtful manner. He threatened to punish Abu Hurairah, the most prolific of Hadith narrators. When a Governor appointed by him was leaving to take charge of one of the provinces, he escorted him on foot to a long distance and then said that he wanted to give him an important advice. You are going to a people who constantly recite the Qur'an and you hear them like the buzzing of the bees. Don't confuse them by relating too many sayings and doings of the Prophet."

He wanted the Muslims to concentrate on the Qur'an – which was sufficient for the essentials of their faith and the way of life prescribed for them. It was about two centuries after the Prophet that some scholars dared or thought it necessary to collect them. By this time it had happened what the great 'Umar, a man of extraordinary vision, had feared. These assiduous collectors gathered thousands of them and rejected the large mass for lack of proof of authenticity. They retained only a small number which, according to their lights, stood the test of historical criticism. We bow respectfully to their piety, integrity and assiduity but cannot accept the infallibility of their judgment, from which subjective factors and their personal limitations could not be thoroughly eliminated.

After them these collections gathered a sanctity of almost revealed truth. As a source of Islamic Law they

stand only next to the Qur'an. Their importance reached such a degree of exaggeration that, instead of being tested on the criterion of the Qur'an, some of them were believed to have superseded some injunctions of the Qur'an, as, according to them, the Qur'an itself had abrogated some of its own injunctions. They based this on the belief that the Revelation granted to the Prophet was not confined to the Qur'an. If it were so, how curious it is that the Prophet himself, who is commanded by God to deliver to humanity whatever is revealed to him, along with the assurance that this Revelation is guaranteed by God to be preserved and [did] not run the risk of alteration or addition at the hands of the scribes (as had happened in the case of all previous revelations) should have neglected his extra-Qur'anic revelation and left it to the gropings of biographical research scholars to be sifted two centuries after him out of a mass of mostly unreliable material transmitted through the shifty medium of verbal transmissions running the gauntlet of eight generations.

Surely these traditionist research scholars have done a very valuable and necessary piece of work, but it must remain open to any scholar to sift [through] and criticise this transmission again with better and more objective historical information, keeping the Qur'an mostly as the most reliable and stable criterion. Even if some ruling, practice or precept is trusted to have been tolerably reliably reported, the question remains whether it was meant to meet a particular situation or was valid as an eternally unalterable law. If it is something that is to be taken as universally valid forever irrespective of circumstances, it should have been a part of the Quranic Revelation which claims to be a perfect and comprehensive book for eternal verities [truths] and human relations.

The position of the Prophet was such that every advice given by him was not only accepted unconditionally by those who sought it, but also tended to be accepted as a verdict [that was] valid for his followers for all times. He did not want to burden his Ummah with an ever increasing burden of laws. He is reported to have said with a measure of righteous indignation: **'Don't put unnecessary questions to me, because my position is such that any answer given by me shall be taken as binding for my followers for all times to come, thereby curtailing the liberties of people in matters in which God has left them free to judge for themselves. He is a tyranniser over humanity who puts to me unnecessary questions instead of exercising: his own honest free judgment.'**

The different juristic sects in Islam have arisen on the basis of accepting or rejecting or neglecting or interpreting various sayings and doings of the Prophet, which means that in dependence on Hadith a Muslim does not stand on the *terra firma* [solid ground] of incontrovertible injunctions. Take for instance the systems of land tenure which are so vital in agrarian civilisations.

The founders of [the] four orthodox schools of Muslim Law have moved in opposite directions in this respect. One would allow share-cropping and the other would consider it unlawful. One would allow cash rents, [whereas] the other would not. There are others who say owning more land than one could cultivate without hired labour was disapproved by the Prophet. Some find justification for the nationalisation of land and others have no objection to big landlord types almost feudal in character. All of these conflicting schools of thought fortify themselves on the most vital economic problem on the basis of Hadith. The Qur'an does not deal with land tenure and rightly so, because the teaching meant for all times and all climes, could not enjoin any one system in preference to other actual or possible systems.

The agrarian problem becomes different in different countries. In a newly opened continent of virgin soil like U.S.A., Canada, or Australia in the opening stages, unlimited land could be had free for whosoever could cultivate it. There was no pressure of population on land. Where there is enormous pressure of teeming millions on limited areas of cultivable land, the problem becomes utterly different. Any solution in one case would be irrelevant in the other case. If the law of inheritance pulverising a piece of land is applied rigidly, cultivable land is very soon fragmented into uneconomic holdings.

Any reference to conflicting Hadiths or *Kittab al-Kharaj* compiled by Imam Abu Yusuf, the eminent jurist of the time of Harun al-Rashid, could not serve as a practical guide. The Qur'an says that land belongs to God and God is used in Muslim jurisprudence as equivalent to and guardian of common weal and social justice. In another verse it is said that benefits of land are meant for all who require them. God is substituted in the Muslim concept for the old idea of *civitas* [a political community or government] in Roman jurisprudence.

All dynamic societies are perpetually engaged in the reconstruction of their laws. The laws get petrified only when society becomes static or fossilised. There have been roughly almost six centuries of Muslim dynamism,

among which the legal codes took shape by the end of the fourth century. There was a constant effort at interpretation and amplification. Disciples freely differed from their teachers and none of them claimed infallibility. They formulated excellent principles of legislation which would make it a living and growing reality constantly adapting itself to new and unexpected situations. The principle of *Ijtihud*, which means applying one's judgment to matters on which God and His Prophet have left the men of knowledge free to judge, was a universally accepted tenet.

*Qiyas* or analogical reasoning to make new laws was accepted by the most eminent school of jurists, the Hanafi school. They were accused by their opponents of opening the door to individual caprice, because reasoning could lead the people in opposite directions, as is the case in philosophical thinking. But when society became static or decadent, the followers of this very school became diehards in the matter of law; proclaiming the belief which reflected their own intellectual impotence, that the world now cannot produce legal geniuses like the great Imams, therefore henceforth up to the Doomsday only commentators shall be allowed who shall originate nothing. Thereby these inert followers put these juristic systems practically on a par with the Qur'an and the *Sunnah*. The other liberal principle of *Istihsan*, whose nearest Western equivalent is Equity, was approved in various degrees by Imam Abu Hanifah and Imam Malik. It is derived from the root *hasan* which means goodness as well as beauty.

The Malikis define it as "turning towards expediency and justice". Imam Shafi'i was apprehensive about accepting this principle and the reasons were the same as advanced against *Qiyas* or analogical reasoning that every judgment based on equity would be the opinion of an individual judge which could not be binding on others. This fear could have been mitigated or eliminated if Muslim States had developed a parliamentary system or a council of jurists to come to an agreement about [the] law of equity and iron out individual differences by free discussion.

The principle of consensus as a source of law is found in all books of Muslim jurisprudence as a valid principle, but no Muslim State ever attempted to give it a practical shape. Consensus of truly representative people, respected for their integrity, learning and experience, deliberating on the basis of the fundamentals of the Qur'an and the actualities of a given situation. Using the

principles of analogical reasoning and broad considerations of equity and expediency could have continued the original dynamism of Islam wherein even fixed laws could again be thrown into the melting pot to meet unexpected and unprecedented situations.

It would not have been a violation of the foundations of the Islamic *Shari'ah* because the Qur'an itself has prescribed the exercise of rational judgment both for the knowledge of reality and the moulding of human life. Believers are "*those who listen to all that is said and choose that which appears to be the best*" (Qur'an 39:18). And about consensus, the Prophet said that the agreement of a whole community of believers cannot be wrong, and whatever the Muslim community considers good for itself is also good in the sight of God.

Islam, without being a theocracy in the sense in which the West uses this word, insisted on the common foundation of religion, morality and law. In Islamic society, law cannot be secular in the sense that it should renounce any connection with religion. For a Muslim religion is an all-comprehensive reality. Personal morality, social relationship[s], private law, public law, inter-faith or international relations must be justified or referred back to the fundamentals of Islam. This connection may be explicit or implicit. It may accord with definite texts or may be derived from its basic principles. If Islam had been only metaphysical and left human relations to be determined by churches or if it were poor in content confining itself to mere moral exhortations or religious dogmas, rituals and sacraments, it would not be different from many another creed which confined itself mostly to metaphysical beliefs or ultra-rational mysteries.

Inculcating belief in the Unseen as a postulate of religion in the very first lines of the Qur'an, in actual practice it dealt mostly with the life that human beings have to live in this world of sensible phenomena. The Qur'an enjoins the Muslim to pray for well-being right here in this world as the partial fulfilment of human destiny in preparation for a still greater fulfilment in the life hereafter.

The Prophet said: "**He who is blind here shall be blind in the hereafter.**" The Prophet of Islam was granted opportunities to deal with all aspects of life and set an example of the actualisation of ideals to the extent that it was possible within the limitations of circumstances. He was himself once a wage-earner and, therefore, announced to the world a maxim that the wage-earner is a friend of God. He kissed the hand of a labourer gnarled by hard labour. He would not allow the believers to

indulge in long prayers to the neglect of what were called worldly duties by ascetic religions which had separated spirituality from the demands of normal human nature. He prescribed religious practices, removing all rigour from them and making a full life lived in this world with a spiritual attitude a religious life. He entered this life as an orphan and spent his childhood as an orphan. In later life when he could have well afforded to live a life of affluence, he preferred voluntary poverty living like the poorest of the poor, going several days without a square meal. He was not an ascetic. He adopted simple living [so as] to nourish his energies for higher tasks. His simplicity reduced his physical needs, releasing his energies for the stupendous task of creating an all-round revolution in human affairs. His example witnessed to the world [was] that the head of a State must not assume the privileges and prerogatives of kingship. When he walked in the company of others, he would not keep a single pace ahead of them. From his dress, no one could distinguish him from others. He asked for no wages. The world is now making democracy into a religion, and for many it has become almost a substitute for it. But has the world seen a better democrat than him exemplifying healthy egalitarian trends? He owned no property and said, as reported by his friend and first successor Abu Bakr, that the Prophets have only the use of things and not their ownership. They inherit nothing and none inherit from them. On his death-bed he asked if there was any money in his mud-hut and when told that there were a few coins still left there he ordered that they must be given away in charity immediately: "**I do not want to face my Lord as having hoarded anything.**"

Those who say that the creed of Muhammad is worn out and left behind by the advancement of humanity, should answer this question, whether they could conceive of any democratic republic better than the one that he tried to bring into being, in which the head of the State lives the life of a poor citizen and is as much subject to the law as anyone else. He said to his daughter: "**Law is no respecter of persons; as the daughter of the Prophet you are not exempt from anything. If you steal anything you will be dealt with by law as a common thief.**" Who could be a greater democrat or a greater egalitarian than him who emphasised it as a basic principle that a healthy society must be a classless society without racial cleavages or divisions based on the inequality of wealth?

Fearing that the Arabs may feel intoxicated by power that the success of Islam brought about, he warned them by

his famous utterance that an Arab as such has no superiority over a non-Arab, nor a non-Arab as such is superior to the Arab. **"You are all the descendants of Adam and Adam was made of clay."** The Qur'an emphasises the unity and solidarity of humanity by pointing towards the common origin of all human beings, men and women, black and white, high and low. Men must be judged according to their characters and not the pigment of their skins or the length of their purses.

Now-a-days it is held almost as an axiom that all politics is basically economics, and there is a good deal of truth in this assertion. The Qur'an laid the foundation for all healthy economic systems, by two fundamental principles which should govern all planning and reconstruction. The first principle is that even in freely and legitimately created wealth, all surpluses must revert to the purposes of general amelioration and common weal. The second principle is that economic planning must see to it that wealth does not circulate in [only] a few hands. According to these principles, Islam tried to block all avenues of exploitation that existed in the epoch. There was a capital levy on surplus wealth, and extravagance in expenditure was condemned as a sin. The use of gold and silk was prohibited for men, to protect them from luxury and effeminacy. Usury, the chief source of tyrannical exploitation and accumulation of unearned wealth, was declared as waging a war against God, Who, as already stated, stands in Muslim jurisprudence as an equivalent of *civitas* or common weal.

The way of feudalism was barred by prohibition of primogeniture. Ecclesiastical domination was warded off by non-recognition of a class of priests. There is no equivalent in Arabic, or any Islamic language, for the word "church," as an institution of ordained priests, or a religious body of believers, a conception which the Quakers and Mormons have tried to embody in their systems.

Fourteen centuries after Islam, the United Nations have issued a charter of fundamental human rights agreed to at least in theory by all nations. The chief items of these fundamental rights were already there in basic Islam.

Democratic, socialistic and egalitarian principles and trends run through the warp and woof of Islamic ideology and the laws formulated by most of the eminent Muslim jurists. From the point of view of implementation of

these precepts, Muslims may have much to learn from other nations who, as a result of experimentation and conflicts (particularly during the last few centuries) have discovered ways and means of embodying these principles in laws and constitutions. But so far as the basic ideas and trends are concerned, they have to go back to original Islam to find them embodied in its foundations. The superstructures raised on these foundations partly reflect the mental, social and political level and exigencies, but the implementation in a particular epoch, proposed by a jurist and accepted by his school of thought, could not be accepted as an eternal and abiding part of a religion which is believed to be valid for all times and for all nations.

Western writers diagnosing the present all-round backwardness of Muslim societies and States, often come to the conclusion that Islam's theocratic system,

which does not sunder the functions and jurisdictions of the Church and the State, is responsible for this stagnation, and they advise the Muslims to follow in the wake of the West [which was] to cut asunder what the God of Islam and His Prophet had joined. Their advice is based on their own history and faith. They do not see that Islam sanctions no such institutions as the Church, and an Islamic State, completely disregarding the foundations of Islam, cannot be envisaged as a consistent entity.

Certainly the Muslims have their theologians, but they are not vested with any authority. What the Muslims want is not any [such] segregation of the Church and the State, but [rather] enlightened and liberal interpreters of Islam who should be able to derive out of the basic principles of Islam any progressive adaptations or additions which socio-political changes and altered economic structures demand.

The Muslims are suffering now from that very disease from which Christendom suffered right up to the end of the Medieval Ages even when scientific hypothesis and established scientific facts had to be accepted or rejected on the criterion of biblical texts. The message of Jesus was interpreted by a conservative and reactionary Church, and individual believers were more tightly in the grip of theocracy than the Muslims have ever been. A wrong view of Christianity created inquisitions and every nonconformist was in the danger of being burnt alive as a heretic.

There have been a few cases in Muslim history in which some thinker or jurist was persecuted by his fanatical opponents. Muslim history is free from the institution of inquisition and religious wars which caused such havoc in Christendom after the rise of Protestantism. Wars among Muslim nations were waged for the lust of conquest by rulers or military adventurers. It was a Europe [that was] utterly sick and disgusted [and] caused by wars and persecutions in the name of religion, that made the human thinkers demand the complete segregation of the Church from the State.

The Muslims in every country have their [own] reactionary and obscurantist theologians, but they are not a well-knit organised body wielding any real power. And no Muslim government at present is run by a set of theologians, not even Pakistan (that has declared itself an Islamic Republic and embodied it in the Constitution that every such legislation shall be *ultra vires* that is considered by the Muslims to be un-Islamic).

All theologians are not reactionary and therefore the reactionary views of some individuals or groups can be counteracted by progressive liberals, who are not secularists in the Western sense, but believe that the tenets of Islam, liberally interpreted, can cope with all problems and make State and society develop in healthy directions. Islam envisages all human life and, one could say, all existence as one indivisible unity emerging from the unity of its Creator and Sustainer. Irreligious or a-religious secularism cannot be accepted by any community or nation that professes Islam. Moral, legal and economic principles must derive their authority from fundamental religious beliefs about the destiny of man.

It was a Christianity divorced from the spirit of Jesus that allowed Christian nations to promulgate and practise ridiculous and tyrannical laws before the rise of modern rationalism. Take for instance some of the British laws which have governed a Christian society for long centuries and have been reformed only in modern times.

Some laws about marriage and divorce were thoroughly irrational. Some of them have been reformed, and others shall have to wait for long before they are scrapped by the development of rationality and justice. Islam made marriage a civil contract in which the parties could impose conditions not repugnant to the fundamentals of religion and morals. Christianity, making marriage a sacrament, disallowed divorce under any circumstances, thereby causing incalculable hardship in many cases. Even now when it is allowed, it is hedged in by irrational conditions, to fulfil which lawyers suggest subterfuges and evasions and the parties are compelled, to resort to patent falsehoods and hypocrisies. And how much linen has to be made dirty in court to secure a judicial decision? Then it was not very long time ago that a married woman ceased to have any independent economic status the moment [after] she was led to the altar. All her assets [were] passed to the husband, and it was a principle of British law that in law husband and wife are [considered to be] one person and that one person is the husband.

Islam, thirteen centuries before, had granted her independent economic status. She received a prescribed share in inheritance, a sister receiving half of the share of the brother because he was duty bound to be a supporter of the family out of his possessions and earnings, while the woman kept all to herself what she received or earned. We hear now-a-days a maxim, which is universally accepted, that there is no real liberty

without economic liberty. Islam had envisaged it long ago and therefore strengthened the rights and status of the woman by making her economically independent, [yet] still retaining the duty of the men to support her. Instead of her wealth passing to the husband because of wedlock, it was the husband who was enjoined to part with a portion of his wealth.

*Mehr* or *Sadaqah* [which has been] mistranslated as bride-price, was really meant to give her some status and economic security. The Muslim law is so strict about the fulfilment of this obligation that out of the assets of a deceased husband, no heir and no creditor can receive anything before the unpaid *Mehr* is paid to the widow. If the marital debt was so large that after this payment, nothing is left for other heirs or creditors, they shall have no legal right to claim anything.

To give one more instance of laws getting disconnected from the spirit of a spiritual religion, take the British penal law about theft that was repealed only about a century ago because of its unspeakable cruelty. According to this law, anyone, [whether] child or adult, convicted of theft of even as small a sum as one guinea received capital punishment. Every thief was hanged. This was the law of a Christian nation which listened to the Sermon on the Mount in their churches in which the Prince of Love and Peace had enjoined his followers to hand over even his shirt to one who had taken away his coat instead of handing him over to law to be stoned or hanged.

The hostile Western critic of Islam criticises Islamic Law from two contradictory viewpoints. Some Islamic laws are denounced on the basis of their laxity and others on the basis of their rigour or cruelty. For instance, they would say that the Quranic injunctions are very lax about murder, because the murderer can be let off if the kinsfolk or heirs of the murdered person are prepared to accept compensation instead of insisting on life for life. Then turning to another penal injunction they would say Islam is cruel because it prescribes that a thief's hand should be cut. We will deal with the penal law of Islam in another place, but we cannot help remarking here that this accusation ill befits the mouths of those whose Christian ancestors for centuries were hanging even children for small thefts. We do not accuse the religion of Jesus for all these irrationalities and cruelties because Jesus was a rational man who could not have tolerated the sacrifice of human life to cruel laws. He was averse to stoning to death even one who was caught in adultery. How would he have looked at a society worshipping him

and hanging children for small thefts at the same time? Every cruelty is the result of a deviation from a spiritual religion.