

Appendix 3

Thursday, Nov. 27, 2008

India's Muslims in Crisis

By Aryn Baker

<http://www.time.com/time/world/article/0,8599,1862650,00.html>

The disembodied voice was chilling in its rage. A gunman, holed up in the Oberoi Trident hotel in Mumbai (formerly Bombay), where some 40 people had been taken hostage, told an Indian news channel that the attacks were revenge for the persecution of Muslims in India. "We love this as our country, but when our mothers and sisters were being killed, where was everybody?" he asked via telephone. No answer came. But then he probably wasn't expecting one.

The roots of Muslim rage run deep in India, nourished by a long-held sense of injustice over what many Indian Muslims believe is institutionalized discrimination against the country's largest minority group. The disparities between Muslims, who make up 13.4% of the population, and India's Hindus, who hover at around 80%, are striking. There are exceptions, of course, but generally speaking, Muslim Indians have shorter life spans, worse health, lower literacy levels and lower-paying jobs. Add to that toxic brew the lingering resentment over 2002's anti-Muslim riots in the state of Gujarat. The riots, instigated by Hindu nationalists, killed some 2,000 people, most of them Muslims. To this day, few of the perpetrators have been convicted. (See pictures of the terrorist shootings in Mumbai.)

The huge gap between Muslims and Hindus will continue to haunt India's — and neighboring Pakistan's — progress toward peace and prosperity. But before intercommunal relations can improve, there are even bigger problems that must first be worked out: the schism in subcontinental Islam and the religion's place and role in modern India and Pakistan. It is a crisis 150 years in the making.

The Beginning of the Problem

On the afternoon of March 29, 1857, Mangal Pandey, a handsome, mustachioed soldier in the East India Company's native regiment, attacked his British lieutenant. His hanging a week later sparked a subcontinental revolt known to Indians as the first war of independence and to the British as the Sepoy Mutiny. Retribution was swift, and though Pandey was a Hindu, it was the subcontinent's Muslims, whose Mughal King nominally held power in Delhi, who bore the brunt of British rage. The remnants of the Mughal Empire were dismantled, and 500 years of Muslim supremacy on the subcontinent came to a halt.

Muslim society in India collapsed. The British imposed English as the official language. The impact was cataclysmic. Muslims went from near 100% literacy to 20% within a half-century. The country's educated Muslim elite was effectively blocked from administrative jobs in the government. Between 1858 and 1878, only 57 out of 3,100 graduates of Calcutta University — then the center of South Asian education — were Muslims. While discrimination by both Hindus and the British played a role, it was as if the whole of Muslim society had retreated to lick its collective wounds.

Out of this period of introspection, two rival movements emerged to foster an Islamic ascendancy. Revivalist groups blamed the collapse of their empire on a society that had strayed too far from the teachings of the Koran. They promoted a return to a purer form of Islam, modeled on the life of the Prophet Muhammad. Others embraced the modern ways of their new rulers, seeking Muslim advancement through the pursuit of Western sciences, culture and law. From these movements two great Islamic institutions were born: Darul Uloom Deoband in northern India, rivaled only by Al Azhar University in Cairo for its teaching of Islam, and Aligarh Muslim University, a secular institution that promoted Muslim culture, philosophy and languages but left religion to the mosque. These two schools embody the fundamental split that continues to divide Islam in the subcontinent today. "You could say that Deoband and Aligarh are husband and wife, born from the same historical events," says Adil Siddiqui, information coordinator for Deoband. "But they live at daggers drawn."

The campus at Deoband is only a three-hour drive from New Delhi through the modern megasuburb of Noida. Strip malls and monster shopping complexes have consumed many of the mango groves that once framed the road to Deoband, but the contemporary world stops at the gate. The courtyards are packed with bearded young men wearing long, collared shirts and white caps. The air thrums with the voices of hundreds of students reciting the Koran from open-door classrooms.

Founded in 1866, the Deoband school quickly set itself apart from other traditional madrasahs, which were usually based in the home of the village mosque's prayer leader. Deoband's founders, a group of Muslim scholars from New Delhi, instituted a regimented system of classrooms, coursework, texts and exams. Instruction is in Urdu, Persian and Arabic, and the curriculum closely follows the teachings of the 18th century Indian Islamic scholar Mullah Nizamuddin Sehgalvi. Graduates go on to study at Cairo's Al Azhar or the Islamic University of Medina in Saudi Arabia, or they found their own Deobandi institutions.

Today, more than 9,000 Deobandi madrasahs are scattered throughout India, Afghanistan and Pakistan, most infamously the Dara-ul-Uloom Haqaniya Akora Khattak, near Peshawar, Pakistan, where Mullah Mohammed Omar and several other leaders of Afghanistan's Taliban first tasted a life lived in accordance with Shari'a. Siddiqui visibly stiffens when those names are brought up. They have become synonymous with Islamic radicalism, and Siddiqui is careful to dissociate his institution from those who carry on its traditions, without actually condemning their actions. "Our books are being taught there," he says. "They have the same system and rules. But if someone is following the path of terrorism, it is because of local compulsions and local politics."

Sir Syed Ahmad Khan, who founded the Anglo-Mohammedan Oriental College at Aligarh in 1877, studied under the same teachers as the founders of Deoband. But he believed that the downfall of India's Muslims was due to their unwillingness to embrace modern ways. He decoupled religion from education and in his school sought to emulate the culture and training of India's new colonial masters. Islamic culture was part of the curriculum, but so were the latest advances in sciences, medicine and Western philosophy. The medium was English, the better to prepare students for civil-service jobs. He called his school the Oxford of the East. In architecture alone, the campus lives up to that name. A euphoric blend of clock towers, crenellated battlements, Mughal arches, domes and the staid red brick of

Victorian institutions that only India's enthusiastic embrace of all things European could produce, the central campus of Aligarh today is haven to a diverse crowd of male and female, Hindu and Muslim students. Its law and medicine schools are among the top-ranked in India, but so are its arts faculty and Quranic Studies Centre. "With all this diversity, language, culture, secularism was the only way to go forward as a nation," says Aligarh's vice chancellor, P.K. Abdul Azis. "It was the new religion."

This fracture in religious doctrine — whether Islam should embrace the modern or revert to its fundamental origins — between two schools less than a day's donkey ride apart when they were founded, was barely remarked upon at the time. But over the course of the next 100 years, that tiny crack would split Islam into two warring ideologies with repercussions that reverberate around the world to this day. Before the split became a crisis, however, the founders of the Deoband and Aligarh universities shared the common goal of an independent India. Pedagogical leanings were overlooked as students and staff of both institutions joined with Hindus across the subcontinent to remove the yoke of colonial rule in the early decades of the 20th century.

Two Faiths, Two Nations

But nationalistic trends were pulling at the fragile alliance, and India began to splinter along ethnic and religious lines. Following World War I, a populist Muslim poet-philosopher by the name of Muhammad Iqbal framed the Islamic zeitgeist when he questioned the position of minority Muslims in a future, independent India. The solution, Iqbal proposed, was an independent state for Muslim-majority provinces in northwestern India, a separate country where Muslims would rule themselves. The idea of Pakistan was born.

Mohammed Ali Jinnah, the Savile Row-suited lawyer who midwifed Pakistan into existence on Aug. 14, 1947, was notoriously ambiguous about how he envisioned the country once it became an independent state. Both he and Iqbal, who were friends until the poet's death in 1938, had repeatedly stated their dream for a "modern, moderate and very enlightened Pakistan," says Sharifuddin Pirzada, Jinnah's personal secretary. Jinnah's own wish was that the Pakistani people, as members of a new, modern and democratic nation, would decide the country's direction.

But rarely in Pakistan's history have its people lived Jinnah's vision of a modern Muslim democracy. Only three times in its 62-year history has Pakistan seen a peaceful, democratic transition of power. With four disparate provinces, more than a dozen languages and dialects, and powerful neighbors, the country's leaders — be they Presidents, Prime Ministers or army chiefs — have been forced to knit the nation together with the only thing Pakistanis have in common: religion.

Following the 1971 civil war, when East Pakistan, now Bangladesh, broke away, the populist Prime Minister Zulfikar Ali Bhutto embarked on a Muslim-identity program to prevent the country from fracturing further. General Mohammed Zia ul-Haq continued the Islamization campaign when he overthrew Bhutto in 1977, hoping to garner favor with the religious parties, the only constituency available to a military dictator. He instituted Shari'a courts, made blasphemy illegal and established laws that punished fornicators with lashes and held that rape victims could be convicted of adultery. When the Soviet Union invaded neighboring Afghanistan in December 1979, Pakistan was already poised for its own Islamic revolution.

Almost overnight, thousands of refugees poured over the border into Pakistan. Camps mushroomed, and so did madrasahs. Ostensibly created to educate the refugees, they provided the ideal recruiting ground for a new breed of soldier: *mujahedin*, or holy warriors, trained to vanquish the infidel invaders in America's proxy war with the Soviet Union. Thousands of Pakistanis joined fellow Muslims from across the world to fight the Soviets. As far away as Karachi, high school kids started wearing "jihadi jackets," the pocketed vests popular with the *mujahedin*. Says Hamid Gul, then head of the Pakistan intelligence agency charged with arming and training the *mujahedin*: "In the 1980s, the world watched the people of Afghanistan stand up to tyranny, oppression and slavery. The spirit of jihad was rekindled, and it gave a new vision to the youth of Pakistan."

But jihad, as it is described in the Koran, does not end merely with political gain. It ends in a perfect Islamic state. The West's, and Pakistan's, cynical resurrection of something so profoundly powerful and complex unleashed a force that gave root to al-Qaeda's rage, the Taliban's dream of an Islamic utopia in Afghanistan, and in the dozens of radical Islamic groups rapidly replicating themselves in India and around the world today. "The promise of jihad was never fulfilled," says Gul. "Is it any wonder the fighting continues to this day?" Religion may have been used to unite Pakistan, but it is also tearing it apart.

India Today

In India, Islam is, in contrast, the other — purged by the British, denigrated by the Hindu right, mistrusted by the majority, marginalized by society. There are nearly as many Muslims in India as in all of Pakistan, but in a nation of more than a billion, they are still a minority, with all the burdens that minorities anywhere carry. Government surveys show that Muslims live shorter, poorer and unhealthier lives than Hindus and are often excluded from the better jobs. To be sure, there are Muslim success stories in the booming economy. Azim Premji, the founder of the outsourcing giant Wipro, is one of the richest individuals in India. But for many Muslims, the inequality of the boom has reinforced their exclusion.

Kashmir, a Muslim-dominated state whose fate had been left undecided in the chaos that led up to partition, remains a suppurating wound in India's Muslim psyche. As the cause of three wars between India and Pakistan — one of which nearly went nuclear in 1999 — Kashmir has become a symbol of profound injustice to Indian Muslims, who believe that their government cares little for Kashmir's claim of independence — which is based upon a 1948 U.N. resolution promising a plebiscite to determine the Kashmiri people's future. That frustration has spilled into the rest of India in the form of several devastating terrorist attacks that have made Indian Muslims both perpetrators and victims.

A mounting sense of persecution, fueled by the government's seeming reluctance to address the brutal anti-Muslim riots that [killed more than 2,000 in the state of Gujarat in 2002](#), has aided the cause of homegrown militant groups. They include the banned Student Islamic Movement of India (SIMI), which was accused of detonating nine bombs in Mumbai during the course of 2003, killing close to 80. The 2006 terrorist attacks on the Mumbai commuter-rail system that killed 183 people were also blamed on SIMI as well as the pro-Kashmir Pakistani terrorist group Lashkar-e-Toiba (LeT). Those incidents exposed the all-too-common Hindu belief that Muslims aren't really Indian. "LeT, SIMI — it doesn't matter who was behind these attacks. They are all children of [Pervez] Musharraf," sneered Manish Shah, a Mumbai resident who lost his best friend in the explosions, referring to the then President of Pakistan. In India, unlike Pakistan, Islam does not unify but divide.

Still, many South Asian Muslims insist Islam is the one and only force that can bring the subcontinent together and return it to pre-eminence as a single whole. "We [Muslims] were the legal rulers of India, and in 1857 the British took that away from us," says Tarik Jan, a gentle-mannered scholar at Islamabad's Institute of Policy Studies. "In 1947 they should have given that back to the Muslims." Jan is no militant, but he pines for the golden era of the Mughal period in the 1700s and has a fervent desire to see India, Pakistan and Bangladesh reunited under Islamic rule.

That sense of injustice is at the root of Muslim identity today. It has permeated every aspect of society and forms the basis of rising Islamic radicalism on the subcontinent. "People are hungry for justice," says Ahmed Rashid, a Pakistani journalist and author of the new book *Descent into Chaos*. "It is perceived to be the fundamental promise of the Koran." These twin phenomena — the longing many Muslims feel to see their religion restored as the subcontinent's core, and the marks of both piety and extremism Islam bears — reflect the lack of strong political and civic institutions in the region for people to have faith in. If the subcontinent's governments can't provide those institutions, then terrorists like the Trident's mysterious caller will continue asking questions. And providing their own answers.

— With reporting by Jyoti Thottam / Mumbai and Ershad Mahmud / Islamabad

Appendix 4

Jihad – Myth & Reality

Arif Humayun

No religion in the modern world is as feared and misunderstood as Islam. It haunts the popular Western imagination as an extreme faith that promotes authoritarian government, female oppression, civil war, and terrorism. Karen Armstrong asserts that the [this] fastest-growing faith is a much richer and more complex phenomenon than its modern fundamentalist strain might suggest.¹ The heightened interest for better understanding Islam is important not only for the non-Muslims but is critical for Muslims who have grossly misunderstood and misrepresented their religion. Jihad is one example of this lack of understanding which, in addition to tarnishing the image of Islam, has done incalculable damage to Muslim's economic and political interests around the world. This misrepresented doctrine is primarily used to recruit young, ignorant Muslims to commit terrorist acts with the guarantee to heavens if they die. It is important to state the facts about the original concept of jihad and demolish the myth.

The gap between the Qur'anic teachings of peace, tolerance, and social justice are obvious by their absence in the conduct of Muslims as a group or community. The common understanding and practice of jihad by Muslim communities today is diametrically opposed to that practiced during the life of Prophet Mohammad^{sa*}. Starting from his life time and continuing for several centuries, Muslim societies were known for their social justice, tolerance, multiculturalism and had become centers of excellence in sciences, arts, and literature and made significant contributions to mathematics, astronomy, medicine, etc. Today, Muslim societies lack the basic ingredients that made them successful in the earlier days.

In the Middle East and Europe, for example, the Muslim Empire provided a safe home for the Jews when they were persecuted by the Christians. Similarly, the integration between Hindus and Muslims in the Indian subcontinent during the Mughal Empire demonstrates excellent examples of Muslim tolerance and diversity. Karen Armstrong accurately captures the recipe for the rapid rise and success of Muslim Empire as "... the Quran, gave them a historical mission. Their chief duty was to create a just community in which all members, even the most weak and vulnerable, were treated with absolute respect."²

As already stated, jihad is the one Islamic concept which has conveniently been distorted by Muslims and non-Muslims alike: Muslims use it to justify terrorism and acts of violence around the world, both against non-Muslims and amongst themselves while non-Muslims use it to identify Islam with violence, condemn it for its barbarism, and confirm their jaundiced view that Islam supports terrorism. A critical review of jihad from the initial days to the present shows how the understanding of jihad has changed in response to specific political events when the strain of violence was interjected by a handful of supposedly well intentioned but naïve individuals; this transition is summarized in this article.

¹ Karen Armstrong "Islam: A Short History" dust jacket comment

* Customary salutation meaning peace be on him

² Karen Armstrong "Islam: A Short History", p x-xi

John Esposito asserts that the doctrine of violent jihad is not the product of a single authoritative individual or organization and its emergence in the mainstream is a recent phenomenon [~150 years old]; it is a product of diverse individuals and self-styled authorities interpreting and applying the principles of sacred texts to specific historical and political contexts.³ Ironically, while the enactment of these twisted pronouncements and misguided reactions, in response to specific political events may be explainable as reactionary and desperate moves for that specific event, their acceptance as part of the faith is simply repugnant to Islamic teachings. Even more detestable is the fact that mainstream Muslims did not reject these un-Islamic innovations and did not prevent them from being introduced into the faith. In fairness to the Muslims, it must be admitted that considerable discussion and opposition occurred within the Muslims of the time. A 22 May 1900 article, forcefully rejecting any justification of terror as part of Jihad has since been discovered. It is strange that even current Western research was unable to discover this document which strongly condemned all forms of violence and prohibited violent jihad in Islam. Either these research efforts were superficial or the article was purposely overlooked as it undermined the common Western view of Islam being a violent religion. This article will trace how violence became ingrained with Jihad and was conveniently used by terrorists as a religious obligation which confused many Muslims.

The arguments about the Qur'an sanctioning violence and killing of non believers is viscous propaganda and is readily rejected by several Muslim and non-Muslim scholars alike. Al-Qaida and Taliban radicals and their ilk can cherry pick and selectively quote Qur'anic references to support their untenable positions but that does not change the factual position that Islam does not sanction violence. According to Karen Armstrong, "The Qur'an began to urge the Muslims of Medina to participate in a jihad. This would involve fighting and bloodshed, but the root JHD implies more than a 'holy war'. It signifies a physical, moral, spiritual and intellectual effort. There are plenty of Arabic words denoting armed combat, such as *harb* (war), *sira'a* (combat), *ma'araka* (battle) or *qital*, which the Qur'an could easily have used if war had been the Muslims' principal way of engaging in this effort. Instead it chooses a vaguer, richer word with a wide range of connotations. The jihad is not one of the five pillars of Islam. It is not the central prop of the religion, despite the common Western view. But it was and remains a duty for Muslims to commit themselves to a struggle on all fronts – moral, spiritual and political – to create a just and decent society, where the poor and vulnerable are not exploited, in the way that God had intended man to live. Fighting and warfare might sometimes be necessary, but it was only a minor part of the whole jihad or struggle. A well-known tradition (hadith) has Muhammad^[sa] say on returning from a battle, 'We return from the little jihad to the greater jihad,' the more difficult and crucial effort to conquer the forces of evil in oneself and in one's own society in all the details of daily life."⁴ John L. Esposito corroborates Armstrong's views.⁵

The Qur'an, the Supreme law for Muslims, was revealed to Prophet Muhammad^{sa} over a 22-23 year period in short revelations; fortunately its original compilation exists in Arabic language and has no variants. The Prophet's life was a living example of Qur'anic teachings; his practices (*sunnah*) and sayings (*hadith*) exemplified those teachings in practical terms. Since the *sunnah*

³ John L. Esposito "Unholy War: Terror in the name of Islam" p 64

⁴ Karen Armstrong "Muhammad: Biography of a Prophet", p 168

⁵ John L. Esposito "Unholy War: Terror in the name of Islam" p 28

* Customary salutation meaning peace be on him

and hadith were recorded at a later date, the possibility of bias and error exists, although scribes took great pains to ensure their authenticity and accuracy. These are however, subordinate to Qur'anic teachings and can be rejected if contrary to the Qur'an.

The Qur'an outlines fundamental principles and explains the logic behind their adoption. It does not go into implementation details which are left to the community leaders, [who] in consultation with the people, [and] always keeping in mind the overall good of the community [devise implementation details]. The Qur'an prescribes only those details which are essential; it thus leaves considerable room for development and safeguards against restrictive rigidity. Indeed, it warns against seeking the regulation of everything by express Divine command, as that might make the framework rigid and inelastic and, therefore, burdensome.⁶ "O ye who believe, do not keep asking about things which, if they were expounded to you, would become troublesome for you....Allah has left them out. Allah is Most Forgiving, Forbearing. A people before you made such demands, and when they received the directions they repudiated them"⁷. Without forcing adherence to its teachings the Qur'an encourages people to ponder why the teachings are beneficial. Its message is of peace; it abhors violence, killing, exploitation, and injustice while promoting human rights, service to humanity, and freedom of conscience, equality, and justice.

Prophet Muhammad^{sa} practically demonstrated the concept of jihad during his lifetime (570-632 CE). He fought defensive wars and only after receiving Divine authorization. He accepted the enemy's offer for peace, even though it appeared disadvantageous for the Muslims⁸, he did not harm non combatants and the elderly, preserved all places of worship, treated prisoners with respect and kindness. He forgave his enemies when he captured Mecca without a fight and without any casualties.⁹ As already stated, Prophet Muhammad^{sa}, urged Muslims to leave the "lesser" jihad and engage in the "greater" (intellectual) jihad which is against the individual's arrogance, ego, and other selfish traits. He thus left a great example for Muslims to follow.

Several centuries later, Saladin demonstrated the same spirit of jihad after the capture of Jerusalem. According to Karen Armstrong, "On 2 October 1187 Saladin and his troops entered Jerusalem as conquerors. The sultan kept his word. Not a single Christian was killed. The barons could easily afford to ransom themselves, but the poor people could not, and they became prisoners of war. Large numbers were released, however, because Saladin was moved to tears by the plight of the families who were being separated when they were taken into slavery. Al-Adil, Saladin's brother, was so distressed that he asked for a thousand prisoners for his own use and released them on the spot. All the Muslims were scandalized to see the richer Christians escaping with their wealth without making any attempt to ransom their fellow countrymen. When the Muslim historian Imad ad-Din saw Patriarch Heraklius leaving the city with his chariots groaning under the weight of his treasure, he begged Saladin to confiscate this wealth to redeem the remaining prisoners. But Saladin refused; oaths and treaties must be kept to the letter. "Christians everywhere will remember the kindness we have done them." Saladin was right. Christians in the West were uneasily aware that this Muslim ruler had behaved in a far more "Christian" manner than had their own Crusaders when they conquered Jerusalem. They evolved

⁶ Zafrulla Khan "Islam And Human Rights", p 14-15

⁷ Quran Ch 5, verses 102-3

⁸ Karen Armstrong "Muhammad: A Prophet for Our Times" p 175-189

⁹ Ibid, p 198-205

legends that made Saladin a sort of honorary Christian; some of these tales even asserted that the sultan had been secretly baptized.”¹⁰

The above examples clearly show that the jihad practiced by the early Muslims was different from that practiced by the radicals today. Let us now explore how the peaceful concept of jihad was subsequently turned on its head and used to justify terrorism. Esposito¹¹ and Armstrong¹² correctly identify the founders of Egyptian Brotherhood, Jamaat-i-Islami, and Islamic Jihad, as the main culprits for innovating and interjecting violence in jihad. Unfortunately, these and similar other groups are still the torch bearers for propagating this sad and destructive phenomenon. Esposito documents how a handful of supposedly well intentioned but naïve individuals were able to transform jihad from a noble and peaceful concept to a destructive tool for terrorist organizations to justify their cruel actions.

Some detail is necessary to fully understand the events and the indefensible reasoning used by these individuals for interjecting violence in jihad.

The Kharijites represent early examples of the way in which dissent could turn to unholy war in the name of Islam. Initially Ali’s followers, the Kharijites turned against him and subsequently assassinated him for accepting arbitration to settle a long, drawn-out war with Muawiyah, the ruler of Syria. As a separate community, on the margins of mainstream Islam, they proclaimed a radical, militant form of jihad believing that the Qur’anic mandate to “command the good and forbid evil” must be applied literally, rigorously, and without qualification or exception. Their world was divided neatly between belief and unbelief, Muslims (followers of God) and non Muslims (enemies of God), peace and warfare. Any action that did not conform rigorously to the letter of their interpretation of the law constituted a grave or mortal sin. Sinners were guilty of unbelief and thus excommunicated *takfir*, (exclusion for unbelief), became apostates, guilty of treason and meriting death unless they repented. The Kharijites viewed other Muslims who did not accept their uncompromising viewpoint as infidels or idolaters, and thus the enemies of God who must be killed.¹³ The Kharijites thus assumed the role of judging the person’s belief by their own flawed standards and excommunicating them from Islam – a practice forbidden by the Qur’an (no compulsion in religion) and frowned upon by Prophet Muhammad^{sa}. Being on the fringe of mainstream Islam, it is ironic that they assumed that role! Furthermore, after excommunicating the “unbelievers” they went on to sanction their death – again in total contradiction to Qur’anic injunctions. Fortunately, the Kharijites’ viewpoint did not gain currency at among mainstream Muslims but their rationale was to be revived by future radical groups.

Ibn-Taymiyya (1268-1328), a medieval scholar and political activist, lived through the most disruptive period of Islamic history. He was forced to flee to Damascus after Baghdad, his native town, fell to the Mongols. He hated the Mongols and through a *fatwa* (religious decree) declared them unbelievers (kafirs) and thus excommunicated (takfir) from Islam. His action was based on the Kharijite doctrine. He also added another deviant concept of *dar ul Islam* and *dar*

¹⁰ Karen Armstrong “Jerusalem: The City of Three Faiths” p. 293-294

¹¹ John Esposito “Unholy War: Terror in the name of Islam” p 43-64

¹² Armstrong Brotherhood and JI

¹³ John L. Esposito “Unholy War: Terror in the name of Islam” p 41-42

ul harb to that flawed concept. Dar al-Islam represented the land of Islam where the Islamic Law was fully practiced and Dar al-Harb, the Land of Non-Muslims which had to be subdued through occupation or treaties. Ibn Taymiyya established a dangerous precedent of declaring Mongols as non Muslims and apostates – despite their claim to be Muslims – and hence the lawful object of jihad. Ibn Taymiyya decreed that Muslim citizens were required to revolt against them, to wage jihad to kill them.¹⁴ Like the Kharijites, he also went against the fundamental teaching of Islam (there is no compulsion in religion) and established a very dangerous precedence by assuming the right to certify a person's faith! This ridiculous "authority" is still exercised by several Muslim groups and haunts the Muslim world. Ibn Taymiyya thus justified and expanded the scope of the Kharijites' un-Islamic viewpoint after almost six centuries.

Muhammad ibn Abd al-Wahhab (1703-1791; founder of Saudi Arabia's Wahhabi sect) reinforced violence in Islam and built on Ibn Taymiyya's doctrine. He joined his religious zeal with military might as he allied with Muhammad Ibn Saud (founder of the Kingdom of Saudi Arabia), a local tribal chief, to form a religio-political movement. Ibn Saud used Wahhabism as a religious ideal to legitimate his jihad to subdue and unite the tribes of Arabia, converting them to his puritanical version of Islam. Like the Kharijites, the Wahhabi viewed all Muslims who resisted as unbelievers (who ought to be fought and killed). They were therefore to be subdued in the name of Islamic egalitarianism.¹⁵

Muslims in India were subjected to severe atrocities by the British after the Indian War of Independence in 1857. Dejected Muslim survivors from Delhi founded an influential but depressingly narrow-minded Wahhabi-like madrasa at Deoband, 100 miles north of Delhi in order to return to what they regarded as pure Islamic roots. Ironically, one hundred and forty years later, the Deobandi madrasas in Pakistan and Afghanistan created the Taliban who formed the most retrograde Islamic regime in modern history, a regime that in turn provided the crucible from which emerged al-Qaeda, and the most radical and powerful Islamic jihadi movement.¹⁶

The concept of violence propagated by the Kharijites and expanded by Ibn Taymiyya and Saudi Arabia's Wahabi movement appealed to the modernist Islamic movements – Muslim Brotherhood of Egypt and Pakistan's Jamaat-i-Islami (Islamic Society) – who combined religious reform and political mobilization. They framed their struggle in a call for a jihad against British imperialism and corrupt Muslim rulers and the adoption of the expanded Kharijites doctrine gave them the power to condemn people for being non Muslims and then justifying their murder.

It is noteworthy that both organizations – Muslim Brotherhood and the Jamaat-i-Islami, established in 1928 and 1941 respectively – were formed within Muslim societies in crisis. Hasan al-Banna, a teacher, and Maulana Abul Ala Maududi, a journalist, were both educated individuals with traditional Islamic religious backgrounds and knowledge of Western thought. Placing the primary blame for the ills of their society and for the decline of the Muslim world upon European imperialism and westernized Muslim elites, they initially called for moral and

¹⁴ John L. Esposito "Unholy War: Terror in the name of Islam" p 46

¹⁵ Ibid p 47-48

¹⁶ William Dalrymple "The Last Mughal: The fall of a dynasty, Delhi 1857" p 485

social reform of the society but soon also became embroiled in political activism and opposition. Maulana Maudoodi was a leading proponent of violent jihad. According to him: “The Messenger of Allah invited the Arabs to accept Islam for 13 years. He used every possible means of persuasion, ... When every method of persuasion had failed, the Prophet” took to the sword. That sword removed evil mischief, the impurities of evil and the filth of the soul. The sword did something more – it removed their blindness so that they could see the light of truth, and also cured them of their arrogance; arrogance which prevents people from accepting the truth, stiff necks and proud heads bowed with humility. As in Arabia and other countries, Islam’s expansion was so fast that within a century a quarter of the world accepted it. This conversion took place because the sword of Islam tore away the veils which had covered men’s hearts.”¹⁷ Needless to say, this interpretation is absolutely contrary to the Quranic teachings.

When Hasan al-Banna (1906-1949) established the Egyptian Muslim Brotherhood and Mawlana Mawdudi (1903-1979) created the Jamaat-i-Islami in undivided India, few in the West or in their own societies took serious notice. Both al-Banna and Mawdudi recognized that change would be slow to come, and expecting rejection and persecution, focused on training future generations. [They established themselves in educational institutions and were very successful in achieving their goal.] Sayyid Qutb (1906-1966) built upon and further radicalized the deviant ideas of al-Banna and Mawdudi and created an ideological legacy that incorporated all the major historical forms of jihad, from the reforms of Muhammad to the extremes of the Kharijites. Within a few short decades, the ideas of al-Banna’s Muslim Brotherhood and Mawdudi’s Jamaat-i-Islami, often viewed through the prism of Qutb’s more radicalized interpretation, became the primary models for new activists and organizations across the Muslim world.¹⁸

Just as the interpretations of Hasan al-Banna and Mawdudi were conditioned responses to the political and social realities of their times, so too Sayyid Qutb’s Islam grew out of militant confrontation between the repressive Egyptian state and the Brotherhood in the late 1950s and 1960s. Increasingly radicalized by Gamal Abdel Nasser’s suppression of the Brotherhood, Qutb transformed the ideology of al-Banna and Mawdudi into a rejectionist revolutionary call to arms.¹⁹

Muhammad al-Farag, a member of the radical organization Islamic Jihad, the group that killed Egypt’s President Anwar Sadat, drew heavily from al-Banna, Mawdudi, and especially Ibn Taymiyya and Sayyid Qutb and articulated this ideology in “The Neglected Duty”. Farag believed that the decline of Muslim societies was made possible by those who had lulled the community into believing that jihad was nonviolent; the restoration of the Muslim world to the straight path of Islam hinged on reclaiming the true meaning of jihad, the forgotten or neglected requirement of Islam. Farag maintained that jihad was the sixth pillar of Islam, forgotten or obscured by the majority of ulema and Muslims. Farag maintained that conducting jihad was the task of a minority, a vanguard who must be prepared to fight against unbelief and apostasy, prepared to suffer and die for their faith. Looking at the state of the ummah, he concluded that

¹⁷ Al-Jihad fil Islam, 137-8.

¹⁸ John L. Esposito “Unholy War: Terror in the name of Islam” p 49-50

¹⁹ Ibid, p 56

unbelief and apostasy were endemic diseases and the punishment for the apostasy is loss of all rights, including their right to life.²⁰

It is thus evident that while the concept of violence in the name of Islam, which first emerged few years after the Prophet Muhammad's death during the first Islamic civil war (also known as the first *fitna*, 658-661 CE), stayed out of the mainstream Islam; it was an imprudent reaction by those who rejected Ali's decision to compromise and make peace with Muawiyah. Ali was following Prophet Muhammad^{sa}'s example when he made peace with the Arabs under seemingly disadvantageous terms. Till the twelfth century (Saladin's conquest of Jerusalem), there is no evidence of this deviant concept coming up in Islamic history. It emerged again, in the thirteenth century after the Mongols captured Baghdad and was reinforced by Ibn Tayyimma but there is no evidence of its acceptance by mainstream Islam. It was not till the beginning of the twentieth century, in response to the fall of the Ottoman Empire and the European colonization of the Muslim lands, that radical groups like Egyptian Brotherhood in Egypt and Jamaat-i-Islami in undivided India reinvigorated this concept of violence and adopted this destructive doctrine which was widely distributed through modern publication and information sharing technologies. European colonizing powers were blamed for the Muslim's economic and political decline and the Muslim youth were urged to wage jihad against them. Also targeted for the violent jihad were moderate Muslims who did not accept their convoluted doctrine of violence.

Thus in less than a century, these four individuals successfully transformed the original concept of jihad from a peaceful and constructive doctrine to a violent and destructive ideology. More than that, they also succeeded in getting tactical acceptance of their actions from mainstream Muslims who were confused because of their ignorance. Frustration, disillusionment and lack of education and critical examination of facts by the lay people were extinct in Muslims when Egyptian Brotherhood and Jamaat-i-Islami were propagating violent jihad. After decades of propagating violent jihad as their only hope for redemption, Muslims and non Muslims are simply baffled at the unintended consequence of the irresponsible and short sighted ideology which allowed the terrorists to hijacked Islam and justify terror under the Islamic façade.

As mentioned earlier, considerable discussion occurred among mainstream Muslims during the past century as these violent and un-Islamic innovations were being proposed for political and social reforms. Against this caustic backdrop of increasing hatred against non-Muslims, a leading Muslim scholar, Mirza Ghulam Ahmad published an article on 22 May 1900 denouncing violence in the name of jihad and stating that this Islamic concept has been misunderstood and misrepresented both by Muslims and non Muslims alike.²¹ Furthermore, he opined that Islam never sanctioned violent jihad and prohibited its practice from this point forward. He urged people to adopt intellectual jihad for moral and social reformation which Prophet Muhammad himself had referred to as the greater jihad. Against the backdrop of the recent tragic and destructive events, his denunciation of violent jihad and the adoption of intellectual jihad make perfect sense. Sadly, mainstream Muslims did not accept his view then; in hind sight, that was probably the gravest mistake that the Muslims made in the current era.

²⁰ Ibid, p 62

²¹ <http://www.alislam.org/library/books/BritishGovt-and-Jihad.pdf>

The histories of Islamic fundamentalism and Western Imperialism have, after all, often been closely, and dangerously, intertwined. Edmund Burke . . . , rightly stated: those who fail to learn from history are always destined to repeat it²². It is important that we now learn from history and stop this vicious and destructive cycle of violence. Muslims must shun violent jihad and instead, adopt the intellectual jihad for social and moral restructuring of their societies. They should not use contrived religious arguments for resolving political matters. This will enable Muslims to adopt the spirit of the early days of Islam and use it to reform and reconstruct societies based on social justice, multiculturalism, tolerance and peace, in accordance with Qur'anic teachings and Prophet Muhammad's^{sa} practices. Adopting the original spirit of Islam will enable Muslims to implement human rights, eliminate corruption and create an atmosphere of cooperation and brotherhood which is a prerequisite for education, growth and development. By no means, this will be an easy road but that surely will be the right direction.

²² William Dalrymple "The last Moughal:: The fall of a dynasty, Delhi 1857 " p.486

Appendix 5

Enforcing the Shariat

(Dawn, 29 August 2004; <http://www.dawn.com/2004/08/29/op.htm#1>)

By Anwar Syed

In Muslim writings *hasba* (or *hisba*) refers to an inspectorate whose business it was to see that conduct in the public realm conformed to Islamic criteria. The MMA government in NWFP plans to establish such an inspectorate and, to this end, it intends to bring a bill to the provincial assembly. Mr Akram Khan Durrani, the chief minister, says that he and his associates were elected to Islamize governance and society. Furthermore, the Quranic injunction to enjoin right and forbid wrong ("*amr bil maroof, wa nahi anil munkar*") requires them to launch this project.

The text of the proposed bill has not been published, but its contents appear to have been leaked out to certain newspapers. It is said to authorize the chief minister to appoint an inspector, to be known as *mohtasib*, at the provincial level and one in each district. He will be an *alim* (learned in theology and law), with a diploma from a recognized seminary. He will be empowered to force persons to do what they are required to do, and desist from doing or saying that which, in his judgment, is unIslamic. He will have a body of policemen under his command to carry out his orders.

Beyond enforcing piety among the generality of Muslim citizens, the *mohtasib* will function as an overseer of probity and propriety in government. He may undertake investigations on his own initiative or on the basis of complaints filed with him. He may require persons to appear before him to testify or answer questions. Disregard of his summons or orders will be treated as contempt of his office, and punished, as contempt of the superior courts is.

The *mohtasib* may impose penalties (fine, flogging, imprisonment) on the spot, so to speak. Some reports have it that his findings and decrees will not be subject to judicial review. It is said also that the *hasba* law will override all other laws to the extent that they may conflict with it.

In addition to his general authority to spread virtue, the *mohtasib* will be asked to do the following: (1) discourage commercial activity or any kind of "fanfare" outside the places where Friday congregational prayers are held; (2) end negligence in performance of Friday prayers; (3) enforce respect for *azan* (call to prayers) and performance of obligatory prayers; (4) reform public servants and stop them from patronizing activities of which the Shariat does not approve (e.g., singing and dancing); (5) stop togetherness of unrelated men and women; (6) discourage ostentatious spending; (7) discipline those who disobey their parents; (8) require stores and other establishments to close at prayer times.

Organizations of lawyers are concerned that the project will create a parallel legal and judicial system. We already have three systems at work: statute law and a hierarchy of courts to enforce it; Shariat courts and benches; customary law and the "*jirgas*." One more system will, indeed, compound the existing confusion, but it is not anything catastrophic.

Other critics have cautioned that the *mohtasibs* and their enforcers will actually become "witch-hunting" vigilante. This is a distinct possibility. Still others believe that the MMA wants, mainly,

to create lucrative jobs for preferred members of the Islamic establishment (ulema). There may be some truth in that. Let us move on to some of the more serious problems.

First, it should be noted that the injunction in the Quran (III, 110, 114) to enjoin right and forbid wrong is not addressed specifically, or exclusively, to governments; it is addressed equally to all believers. True, the Quran says also (III, 104) that the believers should let a "band of people" arise who will enjoin what is right and forbid what is wrong. Such a "band of people" we have indeed allowed to arise, and it is called the National Assembly. None of these verses can be invoked to justify a band of men who will go out and flog, fine, or imprison Muslims whom they, in their discretion, consider to be wrongdoers.

The office of the mohtasib is by no means an integral part of an Islamic administration. We encounter no such official in the Prophet's (pbuh) time or during the pious caliphate. He is at work in the earlier period of Abbasid rule, trying (in vain) to stop drinking and gambling, and monitoring the performance of Islamic duties such as fasting during Ramazan and joining the Friday prayers. But this role is gradually abandoned, and the mohtasib becomes primarily a "market supervisor" who monitors business transactions, weights and measures, and prices. He stops cruelty to animals that carry merchandise. He guards against cheating in the bazaar and fraudulent practices in the professions and crafts.

It should be understood that the shariat, as conceived by many of our professional theologians, is an unedited collection of laws, injunctions, recommendations, counsel, and expositions of values and principles. The binding authority of some of its provisions is eternal, while the relevance of others is situational, that is, addressed to a certain time and place. They derive from a variety of sources, namely: God, the Prophet (pbuh), jurists (fuqaha), consensus of the community (or the learned), and speculation. They cannot all be equally authoritative. They stand in need of reconciliation when they seem to point to different ways in regard to the same subject. Much of the Shariat is, thus, open to interpretation.

If the reports concerning the finality of the proposed mohtasib's decrees and actions are correct, he will be, at once, pope and Caesar; not the present pope but the one who for many centuries claimed supremacy and infallibility on issues of Christian doctrine, theology, and morality. Considering that Islam does not admit of an institutionalized church and, instead, contemplates something closer to a "priesthood of all believers," it would be preposterous for a mohtasib, or any alim, to arrogate to himself conclusive authority to interpret and enforce the Shariat.

We all know of the sectarian divide among Muslims. Let me mention just a couple of problems it poses. The Sunni pay Zakat to the government, the Shia don't. The latter combine the noon and mid-afternoon, and then again the evening and late evening prayers, but the Sunni don't. There may be people out on the street, or in places of work, at a prescribed prayer time. Will the mohtasib check and establish that each one of them is a Shia before shoving him into a mosque or a jail?

Islam concedes the individual a private domain that remains beyond the reach of public authorities. Private is that which the individual wants to keep hidden from others and, in addition, that which he alone has the right to decide or settle. His home is his private space and,

at initial consideration, it may be said that whatever he does within its four walls, including neglect of divinely ordained duties, is his affair and none of anyone else's business. Any sin committed in private is between him and God; for him to repent and for God to forgive. This position is fortified by the injunction that one is not to probe into another person's private affairs and, further, that if one does come to know of his/her sins one is not to spread this information to others.

Even if we make the improbable assumption that the MMA's mohtasib will honour Islam's stipulations on behalf of the individual's right to privacy, it has to be noted that the domain of one's home is very small. It can be made even smaller if the mohtasib suspects that a crime, or something hurtful to the public interest, is being done there.

The private domain extends to public places with regard to matters which are within the individual's right to settle: for instance, his choice of a field of study, occupation, spouse and, to some degree, the clothes he will wear, the food he will eat (in a restaurant), the means by which he will travel. But even here the mohtasib may bring his interpretations of the public interest, morality, or modesty to interfere with the individual's right to choose.

The proposition that "Islam is a complete code of life," including the most private of relationships and interactions, should not be interpreted to mean that all of this "code" is left to the public authority to enforce. The great bulk of it is in the nature of advice and suggestion, not law, and it is for the individual to follow as best as he can. But unless matters subject to government regulation are specified and enumerated, the danger is clear and present that the mohtasib will regard all aspects of a person's life as being open to his inspection.

Values and principles, even more than law and injunctions, are open to interpretation. There is no reason to assume that the mohtasib's understanding of Islamic values (social justice, equality, accountability, moderation, brotherhood, neighbourliness, chastity, modesty, frugality and austerity among others) will be conclusive or any more reliable than that of many other Muslims. The way Mr Akram Khan Durrani envisages his mohtasib's role, this functionary may emerge as a vicious tyrant.

Mr Durrani says he wants to reform the society. Good idea, but he should first identify the specific wrongs that he wants to right. It would also be more effective to go one step at a time instead of adopting an open-ended agenda. We would recommend the eradication of bureaucratic and political corruption as the first object of his reforming zeal.

Want of precision and specificity can defeat the purposes of law and justice. Those who want to enforce the Shariat should select portions that are clearly meant to be enforced by governments and have them made into laws so that enforcers and judges have a settled text that enables them to exclude arbitrariness from its interpretation and application.

The writer is professor emeritus of political science at the University of Massachusetts at Amherst, USA.

<http://www.dawn.com/2004/08/29/op.htm#1>

Appendix 6

It frightens the West, but what really is Shariah?

International Herald Tribune, Sat-Sun, March 15-16, 2008

Islamic law began as check on rulers

By Noah Feldman

Last month, Rowan Williams, the archbishop of Canterbury, gave a nuanced, scholarly lecture in London about whether the British legal system should allow non-Christian courts to decide certain matters of family law. Britain has no constitutional separation of church and state. The archbishop noted that "the law of the Church of England is the law of the land" there; indeed, ecclesiastical courts that once handled marriage and divorce are still integrated into the British legal system, deciding matters of church property and doctrine.

His tentative suggestion was that, subject to the agreement of all parties and the strict requirement of protecting equal rights for women, it might be a good idea to consider allowing Islamic and Orthodox Jewish courts to formally handle marriage and divorce.

Then all hell broke loose. From politicians across the spectrum to senior church figures and the ubiquitous British tabloids came calls for the leader of the second-largest Christian denomination in the world to issue a retraction or even resign.

Needless to say, the outrage was not occasioned by Williams' mention of Orthodox Jewish law. For the purposes of public discussion, it was the word "Shariah" that was radioactive.

In some sense, the outrage about according a degree of official status to Shariah in a Western country should come as no surprise. To many, the word conjures horrors of hands cut off, adulterers stoned and women oppressed. By contrast, who today remembers that the much-loved English common law called for execution as punishment for hundreds of crimes, including theft of any object worth five shillings or more? As for sexism, the common law long denied married women any property rights or indeed legal personality apart from their husbands. When the British applied their law to Muslims in place of Shariah, as they did in some colonies, the result was to strip married women of the property that Islamic law had always granted them -hardly progress toward equality of the sexes.

In the Muslim world, the reputation of Shariah has undergone an extraordinary revival in recent years. A century ago, forward-looking Muslims thought of Shariah as outdated, in need of reform or maybe abandonment. Today, 66 percent of Egyptians, 60 percent of Pakistanis and 54 percent of Jordanians say that Shariah should be the only source of legislation in their countries. Islamist political parties, like those associated with the transnational Muslim Brotherhood, make the adoption of Shariah the most prominent plank in their political platforms.

The sway of the scholars

To understand Shariah's deep appeal, we need to ask a crucial question that is rarely addressed in the West: What, in fact, is the system of Islamic law? In his lifetime, the Prophet Muhammad was both the religious and the political leader of the community of Muslim believers. His

revelation, the Koran, contained some laws, pertaining especially to ritual matters and inheritance; but it was not primarily a legal book.

When the first generation of believers needed guidance, they went to Muhammad. He either answered of his own accord or, if unsure, awaited divine guidance in the form of a revelation.

With the death of Muhammad, the role of the political-religious leader passed to a series of caliphs (Arabic for "substitute") who stood in the Prophet's stead. That left the caliph in a tricky position when it came to resolving difficult legal matters. The caliph possessed Muhammad's authority but not his access to revelation. If the Koran did not speak clearly to a particular question, how was the law to be determined?

The answer that developed over the first couple of centuries of Islam was that the Koran could be supplemented by reference to the Prophet's life - his "sunna," his path. His actions and words were captured in an oral tradition, beginning presumably with a person who witnessed the action or statement firsthand. Accurate reports had to be distinguished from false ones.

But of course even a trustworthy report on a particular situation could not directly resolve most legal problems that arose later. To address such problems, it was necessary to reason by analogy from one situation to another. There was also the possibility that a communal consensus existed on what to do under particular circumstances, and that, too, was thought to have substantial weight.

This fourfold combination - the Koran, the path of the Prophet as captured in the collections of reports, analogical reasoning and consensus - amounted to a basis for a legal system. But who would be able to say how these four factors fit together? Indeed, who had the authority to say that these factors and not others formed the sources of the law?

The caliphs were faced with a growing group of specialists who asserted that they, collectively, could ascertain the law from the available sources. This self-appointed group came to be known as the scholars -and over the course of a few generations, they got the caliphs to acknowledge them as the guardians of the law. By interpreting a law that originated with God, they gained control over the legal system.

Among Sunnis, this model took effect very early and persisted until modern times. For Shiites, who believe that the succession of power followed the Prophet's lineage, the Prophet had several successors who claimed extraordinary divine authority. But once they passed, the Shiite scholars came to occupy a role not unlike that of their Sunni counterparts.

Under the constitutional theory that the scholars developed to explain the division of labor in the Islamic state, the caliph had paramount responsibility to fulfill the divine injunction to "command the right and prohibit the wrong." But this was not a task he could accomplish on his own. It required him to delegate responsibility to scholarly judges, who would apply God's law as they interpreted it. The caliph could promote or fire them as he wished, but he could not dictate legal results: Judicial authority came from the caliph, but the law came from the scholars.

The caliphs - and eventually the sultans who came to rule once the caliphate lost most of its worldly influence - still had plenty of power. They handled foreign affairs more or less at their discretion. And they could also issue what were effectively administrative regulations -provided these regulations did not contradict what the scholars said Shariah required.

The upshot is that the system of Islamic law as it came to exist allowed a great deal of leeway. Modern advocates of Shariah as the source of law are not actually recommending the adoption of a comprehensive legal code derived from or dictated by Shariah -because nothing so comprehensive has ever existed in Islamic history.

To the Islamist politicians who advocate it or for the public that supports it, Shariah generally means establishing a legal system in which God's law sets the ground rules, authorizing and validating everyday laws passed by an elected legislature. In other words, for them, Shariah is expected to function as something like a modern constitution.

Human and divine rights

So in contemporary Islamic politics, the call for Shariah does not only or primarily mean mandating the veiling of women or the use of corporal punishment - it has an essential constitutional dimension as well. But what is the particular appeal of placing Shariah above ordinary law?

The answer lies in a little-remarked feature of traditional Islamic government: that a state under Shariah was, for more than a thousand years, subject to a version of the rule of law. And as a rule-of-law government, the traditional Islamic state was legitimate, in the dual sense that it generally respected the individual legal rights of its subjects and was seen by them as doing so. These individual legal rights, known as "the rights of humans," included basic entitlements to life, property and legal process -the protections from arbitrary government oppression sought by people all over the world for centuries.

Of course, merely declaring the ruler subject to the law was not enough on its own; the ruler actually had to follow it. For that, he needed incentives. As it happened, the system of government gave him a big one, in the form of a balance of power with the scholars. Because the scholars were in charge of the law, and he was not, the ruler could pervert the course of justice only at the cost of being seen to violate God's law -undermining the very basis of his rule.

By controlling the law, the scholars could limit the ability of the executive to expropriate the property of private citizens. This, in turn, induced the executive to rely on lawful taxation to raise revenues, which itself forced rulers to be responsive to their subjects' concerns. The scholars and their law were thus absolutely essential to the tremendous success that Islamic society enjoyed from its inception into the 19th century. Without Shariah, there would have been no Haroun al-Rashid in Baghdad, no golden age of Muslim Spain, no reign of Suleiman the Magnificent in Istanbul.

But if Shariah is popular among many Muslims in large part because of its historical association with the rule of law, can it actually do the same work today? Here there is reason for caution and

skepticism. Rulers now govern as if they were above the law, not subject to it, and the scholars who once wielded so much influence are much reduced in status.

How the scholars lost their exalted status as keepers of the law can be summed up in the adage that partial reforms are sometimes worse than none at all. In the early 19th century, the Ottoman Empire responded to military setbacks with an internal reform movement. The most important reform was the attempt to codify Shariah.

Once the law existed in codified form, however, the law itself was able to replace the scholars as the source of authority. Codification took from the scholars their all-important claim to have the final say over the content of the law and transferred that power to the state. To placate the scholars, the government kept the Shariah courts running but restricted them to handling matters of family law.

With the scholars out of the way and no legislature to replace them, Sultan Abdulhamid II found himself in the position of near-absolute ruler. This arrangement set the pattern for government in the Muslim world after the Ottoman Empire fell. Law became a tool of the ruler, not an authority over him.

A democratic Shariah?

The Islamist movement's vision for bringing Shariah to bear incorporates two common features of modern government: legislature and constitution.

The mainstream Sunni Islamist position, found, for example, in the electoral platforms of the Muslim Brotherhood in Egypt and the Justice and Development Party in Morocco, is that an elected legislature should draft and pass laws that are consistent with the spirit of Islamic law. On questions where Islamic law does not provide clear direction, the democratically chosen legislature is supposed to use its discretion to adopt laws infused by Islamic values. The result is a profound change in the theoretical structure underlying Islamic law: Shariah is democratized in that its care is given to a popularly elected legislature.

In case the assembly gets it wrong, however, the Islamists often recommend the judicial review of legislative actions to guarantee that they do not violate Islamic law or values. What is sometimes called a "repugnancy clause," mandating that a judicial body overturn laws repugnant to Islam, has made its way into several recent constitutions that seek to reconcile Islam and democracy. It may be found, for example, in the Afghan Constitution of 2004 and the Iraqi Constitution of 2005. (I had a small role advising the Iraqi drafters.)

Islamic judicial review transforms the highest judicial body of the state into a guarantor of conformity with Islamic law. The high court can then use this power to push for a conservative vision of Islamic law, as in Afghanistan, or for a more moderate version, as in Pakistan. Islamic judicial review puts the court in a position resembling the one that scholars once occupied.

What the Islamists generally do not acknowledge is that such institutions on their own cannot deliver the rule of law. The executive authority also has to develop a commitment to obeying legal and constitutional judgments. That will take real-world incentives, not just a warm feeling

for the values associated with Shariah. How that happens is one of the great mysteries of constitutional development worldwide.

It is possible to imagine the electoral success of Islamist parties putting pressure on executives to satisfy the demand for law-based government embodied in Koranic law. This might bring about a transformation of the judiciary, in which judges would come to think of themselves as agents of the law rather than as agents of the state.

The odds of success in the endeavor to deliver the rule of law are never high. Nothing is harder than creating new institutions with the capacity to balance executive dominance - except perhaps avoiding the temptation to overreach once in power.

Still, with all its risks and dangers, the Islamists' aspiration to renew old ideas of the rule of law while coming to terms with contemporary circumstances is bold and noble -and may represent a path to just and legitimate government in much of the Muslim world.

Noah Feldman, a contributing writer for The New York Times Magazine, is a law professor at Harvard University and an adjunct senior fellow at the Council on Foreign Relations. This essay is adapted from his book "The Fall and Rise of the Islamic State," which will be published this month.

Appendix 7

THE CONTROVERSY

The genesis of the controversy that led to the disturbances is to be found in what has been described in official documents as 'the Ahrar-Ahmadiya controversy', which had existed since long before the Partition. But this description was objected to, in fact resented, before us by all non-Ahmadi parties, on the ground that differences with the Ahmadis are not confined to the Ahrar and are common to all sects of Musalmans. Similarly the use of the word 'Ahmadi' exclusively in respect of the followers of Mirza Ghulam Ahmad was resented by non-Ahmadis for the reason that all Musalmans are Ahmadis, being the followers of the Holy Prophet Muhammad, whose other name was Ahmad, and that it has been wrongly usurped by the followers of Mirza Ghulam Ahmad. We have decided to use the word 'Musalman' to distinguish the general body of Muslims who do not believe in Mirza Ghulam Ahmad from those who believe in him and the word 'Ahmadi', 'Qadiani' or 'Mirzai' for the Qadiani section of Ahmadis who believe that Mirza Ghulam Ahmad was a prophet (*nabi*).

AHMADIS

In Part V we will deal in greater detail with the doctrinal and social differences between the Qadianis and Musalmans. Here we content ourselves with only giving a brief account of the Ahmadiya movement, which was founded by Mirza Ghulam Ahmad, a grandson of Mirza Ghulam Murtaza who was a General in the Sikh Darbar. Mirza Ghulam Ahmad was born on 13th February 1835, at Qadian, a village in the district of Gurdaspur, which exclusively belonged to his family in proprietary rights. He learned Persian and Arabic languages at home but does not appear to have received any Western education. In 1864 he got some employment in the District Courts, Sialkot, where he served for four years. On his father's death he devoted himself wholeheartedly to the study of religious literature, and between 1880 and 1884 wrote his famous 'Buraheen-i-Ahmadiya' in four volumes. Later he wrote some more books. Acute religious controversies were going on in those days and there were repeated attacks on Islam, not only by Christian missionaries but also by preachers of Arya Samaj, a liberal Hindu movement which was becoming very popular.

In March 1882 Mirza Ghulam Ahmad claimed, to have had a revelation (*ilham*) to the effect that he had been entrusted by God with a special mission, in other words, that he was a '*mamoor-Illin-Allah*'. In 1888, again under an *ilham*, he demanded homage (*bai 'at*) from his adherents. Near the end of 1890, Mirza Sahib again received an *ilham* that Jesus of Nazareth (Isa Ibn-i-Maryam) had not died on the Cross, nor lifted up to the Heavens but that he was taken off the Cross in a wounded condition by his disciples and cured of his wounds, that thereafter he escaped to Kashmir where he died a natural death, that the belief that he will reappear in his original bodily form near the Day of Resurrection was wrong, that the promise relating to his appearance merely meant that another man with the attributes of Isa Ibn-i-Maryam would appear in the *ummat* of the Holy Prophet of Islam and that this promise had been fulfilled in the person of Mirza

REPORT OF THE COURT OF INQUIRY CONSTITUTED UNDER PUNJAB ACT II OF 1954 TO ENQUIRE INTO THE PUNJAB DISTURBANCES OF 1953

Sahib himself who was *Maseel-i-Isa*, and thus the promised Messiah. The publicity given, to this doctrine created a stir among the Musalmans because this was contrary to the generally accepted

belief that Isa Ibn-i-Maryam was to descend from Heaven in his bodily form, and gave rise to strong opposition among the Muslim theologians. Subsequently, Mirza Sahib also claimed to be the promised Mahdi, not the Mahdi who was to engage himself in conquest and bloodshed but the reasoning Mahdi who would vanquish his opponents by argument. This new claim gave further impetus to the opposition to Mirza Sahib and theologians began to pronounce *fatwas* of *kufir* against him. In 1900 he expounded another doctrine that thereafter there was to be no *jihad bis saif* and that *jihad* was to be confined to efforts to convince the opponent by argument. In 1901 Mirza Sahib claimed to be a '*zilli nabi*' and by an advertisement '*Ek ghalali ka izala*', explained the doctrine of *khatam-i-nubuwwat* to mean that after the death of the Holy Prophet of Islam no nabi would appear with a new *shari'at* but that the appearance of a new prophet without a *shara'a* was not contrary to the doctrine of *khatam-i-nubuwwat*. In a public lecture in Sialkot in November 1904, Mirza Sahib also claimed to be a *Maseel-i-Krishan*.

The Jama'at-i-Ahmadiya was founded in 1901 and at Mirza Sahib's own request was shown as a separate Muslim sect in the census records of that year. The present number of the *jama 'at* is stated to be in the neighbourhood of 2,00,000 in Pakistan, Ahmadiis are also to be found in other Muslim countries and in India, Europe and America.

The new movement had attracted substantial support in Mirza Sahib's own lifetime, including several men of consequence and influence. On Mirza Sahib's death in 1908 Maulvi Nur-ud-Din became the first *khalifa* of Jama'at-i-Ahmadiya. On Khalifa Nur-ud-Din's death in 1914, Mirza Ghulam Ahmad's son Mirza Bashir-ud-Din Mahmud Ahmad, the present head of the Ahmadiya community, became the second *klwlifa*. His succession as a *khalifa* caused a split in the *jama 'at* and a section of the *jama'at* led by Khwaja Kamal-ud-Din and Maulvi Muhammad Ali, seceded and formed a separate party, called the Lahore party, the difference between the two being that whereas the Qadiani party believes Mirza Ghulam Ahmad to have been a prophet, the Lahore party deny this status for Mirza Sahib and hold that he was no more than a *mujaddid* or *muhaddas*. The seceders set up in Lahore an organisation called 'Ahmadiya Anjuman-i-Isha'at-i-Islam'. Both parties are engaged in extensive missionary work in foreign countries.

THE AHRAR

The Ahrar were a party of nationalist, Muslims who seceded from the Congress and in a meeting held in Lahore on 4th May 1931 I founded the Majlis-i-Ahrar-i-Islam. They first came into prominence during the Kashmir agitation of 1931 when on 30th October in that year Mazhar Ali Azhar led a determined band of one hundred volunteers from Sialkot to march into the Jammu territory. The Kashmir agitation in the Punjab was a spontaneous expression of sympathy with the Kashmiri Muslims who were being subjected to ruthless oppression by the Dogra Darbar. The grievances of Kashmiri Musalmans comprised the

REPORT OF THE COURT OF INQUIRY CONSTITUTED UNDER PUNJAB ACT II OF 1954 TO ENQUIRE INTO THE PUNJAB DISTURBANCES OF 1953

appropriation by the State of a number of mosques, graveyards and other places sacred to Muslims, the exclusion of Muslims from public offices, the restrictions imposed on the observance of their religious ceremonies and the absence of a properly constituted legislature in which Muslims could be represented in accordance with their numerical proportion in the State. A campaign in the press against these grievances resulted in a communal riot in Srinagar on 13th

July 1931. Attempts to take charge of the agitation, resulting from this riot were made both by the Majlis-i-Ahrar and by a body styled "The All India Kashmir Committee", which came into being on July 26, and included in its personnel Doctor Sir Muhammad Iqbal, Nawab Sir Zulfiqar Ali Khan, Khwaja Hasan Nizami, Nawab Ibrahim Ali Khan, Mirza Bashir-ud-Din Mahmud Ahmad, the present head of the Ahmadiya community, and Abdur Rahim Dard, an Ahmadi, as Secretary. The subsequent conflict between the Ahrar and the Ahmadis was largely due to the mutual hostility arising from their having been in opposite camps during the period of the Kashmir agitation. The Ahrar arranged to celebrate the 14th of August as the 'Kashmir Day', and on the following day officially announced that they had taken up the agitation on behalf of their co-religionists in Kashmir. As already stated, on October 30, Mazhar Ali Azhar with one hundred followers entered the Jammu territory. This dramatic act at once brought the Ahrar into prominence.

Though they had cut themselves off from the Congress, the Ahrar continued to flirt with that body right up to the Partition. One of the resolutions passed by the Working Committee of the Majlis-i-Ahrar which met at Delhi on 3rd March, 1940, disapproved of the Pakistan plan, and in some subsequent speeches of the Ahrar leaders Pakistan was dubbed as 'Palidistan'. In a press statement issued on 29th November 1940 Maulana Daud Ghaznavi announced the decision of the Ahrar to merge themselves into the Congress. In the resolution passed by the Punjab Provincial Ahrar Conference held at Gujranwala from 17th to 19th March 1943, and in a subsequent resolution passed at Saharanpur in the same year they declared themselves against the proposed Partition which they described as vivisection of the country. In every important speech one leader of theirs or another criticised the Muslim League and its leadership, including the Quaid-i-Azam for whom they had little love and who in those days had come to be regarded as the sole and undisputed leader of the Muslim nation. They took mean advantage of his liberal views and lack of ostentation in religious matters by calling him an infidel. The author-ship of the couplet-

'Tk kafira ke waste Islam ko chhora [for an infidel, he deserted Islam]

yeh Quaid-i-Azam, hai keh hai kafir-i-azam' [Is he a great leader? or a great infidel?]

is attributed to Maulana Mazhar Ali Azhar, a leading personality in the Ahrar organisation, who had the audacity to assert before us that he still held that view. References were made in the speeches of the Ahrar not only to Quaid-i-Azam's marriage with a Parsi lady but also to his not having gone on pilgrimage to Mecca. In 1945, they attempted to revive the Sunni-Shia controversy and Mazhar Ali Azhar and his son Mustafa Qaisar left Lahore for Lucknow on 16th November to re-open the Madah-i-Sahaba agitation. In the elections of 1946, three Ahrar candidates stood against the

REPORT OF THE COURT OF INQUIRY CONSTITUTED UNDER PUNJAB ACT II OF 1954 TO ENQUIRE INTO THE PUNJAB DISTURBANCES OF 1953

Muslim League candidates but they were all defeated. From the subsequent direct action which the Muslim League started in the Punjab they kept themselves completely aloof. One of the main activities of the Ahrar was their opposition, in one form or another, of the Ahmadis. It may indeed be said that the Ahrar took their birth in the hatred of the Ahmadis. Only two years after they founded the Majlis-i-Ahrar, they passed a resolution that no Qadiani should be elected to any public body. Qadian, as already stated, was, before the Partition, almost exclusively an Ahmadi town. In 1934, the Ahrar decided to hold a conference in Qadian itself but on the meeting having been banned, they held the conference on 21st October of that year in the

playground of the Dayanand Anglo-Vedic High School in Rajada, a village only a mile away from Qadian, where they attracted an audience of many thousands. In that conference the popular Ahrar speaker Sayyad Ata Ullah Shah Bukhari delivered a 5-hour diatribe against the Ahmadis in the course of which he said "things which could have no other effect but to rouse hatred of the Ahmadis in the minds of the hearers", the professions of peace in his speech alternating with abuse and wit of a very low order. Bukhari was prosecuted for this speech and convicted at the conclusion of a sensational trial which created more interest and anti-Ahmadiya feelings than the speech itself. Since then every Ahrar speaker of note has been saying one thing or another against the Ahmadis, their leaders and their beliefs.

The Partition of 1947 and the establishment of Pakistan came as a great disappointment to the Ahrar because all power passed to the Congress or the Muslim League, and no scope for activity was left for the Ahrar in India or in Pakistan. The new Muslim State had come to them as a shock, disillusioned them of their ideology and finished them as a political party. For some-time they found themselves in a state of frustration, completely bewildered as to their future. Two of their leaders, Maulvi Abdul Ghani Dar and Maulana Habib-ur-Rahman, decided to stay on in India; Sheikh Husamud-Din, another equally important leader, wavered for some time and eventually decided to come over to Pakistan to take charge of a hotel, known as the Vira Hotel, in Lahore, which a Congressman Parbodh Chander by name had handed over to him. Master Taj-ud-Din Ansari of Ludhiana and Maulvi Muhammad Ali of Jullundur also came over to Pakistan, and while the former settled at Sialkot, the latter went to Multan. Even Sayyad Ata Ullah Shah Bukhari who belongs to Gujrat, shifted to a village in the Muzaffargarh district. Maulana Mazhar Ali Azhar renounced politics. Sahibzada Faiz-ul-Hasan took to a secluded life in his village Alo Mohar in the Sialkot district.

In November 1947, the Ahrar held a meeting of the Working Committee at Khangarh, where Sayyad Ata Ullah Shah Bukhari had settled, to consider what their future programme should be, but could come to no decision. The same was the result of a subsequent meeting held in December 1947, in Lahore where three possible courses, namely, of dissolving the party of giving up politics and confining themselves to religious activities, and of keeping the party alive, were discussed but the only decision taken was that an All-Pakistan Majlis-i-Ahrar should be founded. In the first conference after this, held in May 1948 at Lyallpur, faint references were made to Ahmadis and loyalty to Pakistan was affirmed. More distinct sentiments in favour of Pakistan were expressed in the next meeting in Lahore in June 1948, accompanied by a hint that the Ahrar were not

REPORT OF THE COURT OF INQUIRY CONSTITUTED UNDER PUNJAB ACT II OF 1954 TO ENQUIRE INTO THE PUNJAB DISTURBANCES OF 1953

joining the Muslim League because of the un-Islamic beliefs of men like Chaudhri Zafrullah Khan and Mian Iftikhar-ud-Din. Their most important gathering since the Partition was on the occasion of the Ahrar Defence Conference which was held from 12th to 14th January 1949 at Lahore and at which they announced their decision to cease functioning as a political party and to continue their future activity as a religious group. In political matters, they announced, they would follow the Muslim League. After this they began holding their conferences under the label of Tabligh Conferences, and a series of such conferences was held at Okara, Lyallpur, Maghiana, Chiniot, Sialkot, Gujranwala, Gujrat, Pind Dadan Khan, Jhelum, Shujabad, Burewala and Mullan. The demand for the declaration of Ahmadis as a non-Muslim minority was first made at a conference in Rawalpindi and reiterated

at a public meeting held at Pind Dadan Khan on 1st May 1949. After this, criticism of the founder of the Ahmadiya community and Chaudhri Zafrullah Khan became a regular feature of all Ahrar addresses and they began to feel that it was not necessary for them to seek the help of the Muslim League and that they could in future function as a separate party. The Muslim League also adopted a friendly attitude towards them because the Working Committee of the Pakistan Muslim League in its meeting held in Karachi on 27th December 1949 excluded, the Ahrar from the list of nineteen parties which were tabooed for Muslim Leaguers.

Appendix 8

Excerpts of Direct Testimony of several Muslim “ulema” to the Court of Inquiry constituted under the Punjab Act of 1954 to enquire into the Punjab Disturbances of 1953 (aks Munir Commission Report). Commission members were Chief Justice Mr. Mohammad Munir and Justice Mohammad Kayani of the Supreme Court of Pakistan.

The generally accepted view [of the scholars] is that the fifth verse to Sura-i-Tauba (Sura IX) abrogated the earlier verses revealed in Mecca which permitted the killing of kuffar only in self-defence. As against this the Ahmadis believe that no verse in the Qur’an was abrogated by another verse and that both sets of verses, namely, the Meccan verses and the relative verses in Sura-i-Tauba have different scopes and can stand together. This introduces the difficult controversy of nasikh and mansukh, with all its implications.²³

Evidence of Maulana Abul Hasauat Sayyad Muhammad Ahmad Qadri, Maulana Ahmad Ali, Mian Tufail Muhammad and Maulana Abdul Haamid Badayuni.

Maulana Abul Hasanant on being questioned on the subject stated as follows:—

- “Q[uestion] If we were to have an Islamic State in Pakistan, what will be the position of the *kuffar* (non-Muslims)? Will they have a voice in the making of laws, the right of administering the law and the right to hold public offices?
- A[nswer] Their position will be that of *zimmies*. They will have no voice in the making of laws, no right to administer the law and no right to hold public offices.
- Q[uestion] In an Islamic State can the head of the State delegate any part of his powers to *kuffar*?
- A[nswer] No.”

Maulana Ahmad Ali, when questioned, said :—

- “Q[uestion] If we were to have an Islamic State in Pakistan, what will be the position of the *kuffar*? Will they have a hand in the making of the law, the right to administer the law and the right to hold public offices?
- A[nswer] Their position will be that of *zimmies*. They will have no say in the making of law and no right to administer the law. Government may, however, permit them to hold any public office”.

Mian Tufail Muhammad [Jam’at-i-Islami] stated as follows :—

- ‘Q[uestion] Read the article on minorities’ rights in the ‘Civil and Military Gazette’ of 13th October, 1953, and say whether it correctly represents your view of an Islamic State? (It was stated in the articles that minorities would have the same rights as Muslims).
- A[nswer] I have read this article and do not acknowledge these rights for the Christians or other non-Muslims in Pakistan if the State is founded on the ideology of the Jama’at”.

²³ Ibid, pg 223

The confusion on this point in the mind of **Maulana Abdul Haamid Badayuni**, President, Jami'at-ul-Ulama-i-Pakistan, is apparent from the following: -

- “Q[uestion] Have you ever read the aforesaid speech (the speech of the Quaid-i-Azam to the Constituent Assembly of Pakistan on 11th August, 1947)?
- A[nswer] Yes, I have read that speech.
- Q[uestion] Do you still agree with the conception of Pakistan that the Quaid-i-Azam presented to the Constituent Assembly in this speech in which he said that thereafter there would be only one Pakistan nation, consisting of Muslims and non-Muslims, having equal civic rights, without any distinction of race, religion or creed and that religion would be merely a private affair of the individual?
- A[nswer] I accept the principle that all communities, whether Muslims or non-Muslims, should have, according to their population, proper representation in the administration of the State and legislation, except that non-Muslims cannot be taken in the army or the judiciary or be appointed as Ministers or to other posts involving the reposing of confidence.
- Q[uestion] Are you suggesting that the position of non-Muslims would be that of *zimmies* or any better?
- A[nswer] No. By *zimmies* are meant non-Muslim people in lands which have been conquered by an Islamic State, and the word is not applicable to non-Muslim minorities already living in an Islamic State. Such minorities are called *mu'ahids*, i.e. those people with whom some agreement has been made.
- Q[uestion] What will be their status if there is no agreement with them?
- A[nswer] In that case communities cannot have any rights of citizenship.
- Q[uestion] Will the non-Muslim communities inhabiting Pakistan be called by you as *mu'ahids*?
- A[nswer] No, not till the absence of an agreement with them. To my knowledge there is no such agreement with such communities in Pakistan.”

So, according to the evidence of this learned divine, the non-Muslims of Pakistan will neither be citizens nor will they have the status of *zimmies* or of *mu'ahids*.²⁴

“... This being the position, the State will have to devise some machinery by which the distinction between a Muslim and a non-Muslim may be determined and its consequences enforced. The question, therefore, whether a person is or is not a Muslim will be of fundamental importance, and it was for this reason that we asked most of the leading *ulama* to give their definition of a Muslim, the point being that if the *ulama* of the various sects believed the Ahmadis to be *kafirs*, they must have been quite clear in their minds not only about the grounds of such belief but also about the definition of a Muslim because the claim that a certain person or community is not within the pale of Islam implies on the part of the claimant an exact conception of what a Muslim is. The result of this part of the inquiry, however, has been anything but satisfactory, and if considerable confusion exists in the minds of our *ulama* on such a simple matter, one can easily imagine what the differences on more complicated matters will be”.²⁵

²⁴ Ibid, pgs 213-214

²⁵ Ibid, pgs 214-215

Earlier we have pointed out that one of the doctrines on which the Musalmans and Ahmadis are at variance is that of jihad. This doctrine at once raises a host of other allied matters such as the meanings of *ghazi*, *shahid*, *jihad-bis-saif*, *jihad fi sabili'llah*, *dar-ul-Islam*, *dar-ul-harb*, *hijrat*, *ghanima*, *khums* and slavery, and the conflict or reconciliation of these conceptions with modern international problems such as aggression, genocide, international criminal jurisdiction, international conventions and rules of public international law.

An Islamic State is *dar-ul-Islam*, namely, a country where ordinances of Islam are established and which is under the rule of a Muslim sovereign. Its inhabitants are Muslims and also non-Muslims who have submitted to Muslim control and who under certain restrictions and without the possibility of full citizenship are guaranteed their lives and property by the Muslim State. They must, however, be people of Scriptures and may not be idolaters. An Islamic state is in theory perpetually at war with the neighbouring non-Muslim country, which at any time may become *dar-ul-harb*, in which case it is the duty of the Muslims of that country to leave it and to come over to the country of their brethren in faith.

We put this aspect to **Maulana Abul Ala Maudoodi** and reproduce his views

Q[uestion] Is a country on the border of *dar-ul-Islam* always *qua* an Islamic State in the position of *dar-ul-harb*?

A[nswer] No. In the absence of an agreement to the contrary, the Islamic state will be potentially at war with the non-Muslim neighbouring country. The non-Muslim country acquires the status of *dar-ul-harb* only after the Islamic State declares a formal war against it'.

Q[uestion] Do you call your migration to Pakistan as *hijrat* in the religious sense?

A[nswer] Yes"²⁶

The law relating to prisoners of war is another branch of Islamic law which is bound to come in conflict with International Law. As for instance, in matters relating to the treatment of prisoners of war, we shall have to be governed by Maulana Abul Ala Maudoodi's view, assuming that view is based on the Qur'an and the sunna, which is as follows :—

“Q[uestion] Is there a law of war in Islam?

A[nswer] Yes.

Q[uestion] Does it differ fundamentally from the modern International Law of war?

A[nswer] These two systems are based on a fundamental difference.

Q[uestion] What rights have non-Muslims who are taken prisoners of war in a *jihad*?

A[nswer] The Islamic law on the point is that if the country of which these prisoners are nationals pays ransom, they will be released. An exchange of prisoners is also permitted. If neither of these alternatives is possible, the prisoners will be converted into slaves for ever. If any such person makes an offer to pay his ransom out of his own earnings, he will be permitted to collect the money necessary for the *fidya* (ransom).

Q[uestion] Are you of the view that unless a Government assumes the form of an Islamic Government, any war declared by it is not a *jihad*?

²⁶ Ibid, pgs 221-222

A[nswer] No. A war may be declared to be a jihad if it is declared by a national Government of Muslims in the legitimate interests of the State.”²⁷

Maulana Abul Hasanat Muhammad Ahmad Qadri’s view on this point is as follows:—

Q[uestion] Is there a law of war in Islam?

A[nswer] Yes.

Q[uestion] Does it differ in fundamentals from the present International Law?

A[nswer] Yes.

Q[uestion] What are the rights of a person taken prisoner in war?

A[nswer] He can embrace Islam or ask for *aman*, in which case he will be treated as a *musta’min*. If he does not ask for *aman*, he would be made a slave”.

Similar is the opinion expressed by Mian Tufail Muhammad of Jama’at-i-Islami who says:—

Q[uestion] Is there any law of war in Islamic laws?

A[nswer] Yes.

Q[uestion] If that comes into conflict with International Law, which will you follow?

A[nswer] Islamic law.

Q[uestion] Then please state what will be the status of prisoners of war captured by your forces?

A[nswer] I cannot reply to this off hand. I will have to study the point. Of course *ghanima* (plunder) and *khums* (one-fifth) if treated as a necessary incident of *jihad* will be treated by international society as a mere act of brigandage.

REACTION ON MUSLIMS OF NON-MUSLIM STATES

The ideology on which an Islamic State h desired to be founded in Pakistan must have certain consequences for the Musalmans who are living in countries under non-Muslim sovereigns. We asked Amir-i-Shari’at Sayyad Ataullah Shah Bukhari whether a Muslim could be a faithful subject of a non-Muslim State and reproduce his answer:—

Q[uestion] In your opinion is a Musalman bound to obey orders of a kafir Government?

A[nswer] It is not possible that a Musalman should be faithful citizen of a non-Muslim Government.

Q[uestion] Will it be possible for the four crore of Indian Muslims to be faithful citizens of their State?

A[nswer] No.

The answer is quite consistent with the ideology which has been pressed before us but then if Pakistan is entitled to base its Constitution on religion, the same right must be conceded to other countries where Musalmans are in substantial minorities or if they constitute a preponderating majority in a country where sovereignty rests with a non-Muslim community. We, therefore, asked the various *ulama* whether, if non-Muslims in Pakistan were to be subjected to this discrimination in matters of citizenship, the *ulama* would have any objection to Muslims in other countries being subjected to a similar discrimination. Their reactions to this suggestion are reproduced below:-

Maulana Abul Hasanat Sayyed Muhammad Ahmad Qadri, President, Jami’at-ul-Ulama-i-Pakistan:—

²⁷ Ibid, pg 225

Q[uestion] You will admit for the Hindus, who are in a majority in India, the right to have a Hindu religious State?

A[nswer] Yes.

Q[uestion] Will you have any objection if the Muslims are treated under that form of Government as *malishes* or *shudras* under the law of Manu?

A[nswer] No.

Maulana Abul Ala Maudoodi:—

Q[uestion] If we have this form of Islamic Government in Pakistan, will you permit Hindus to base their Constitution on the ham of their own religion?

A[nswer] Certainly. I should have no objection even if the Muslims of India are treated in that form of Government as *shudras* and *malishes* and Manu's laws are applied to them, depriving them of all share in the Government and the rights of a citizen. In fact such a state of affairs already exists in India."

Amir-i-Shari'at Sayyad Ata Ullah Shah Bukhari:—

“Q[uestion] How many crores of Muslims are there in India?

A[nswer] Four crores.

Q[uestion] Have you any objection to the law of Manu being applied to them according to which they will have no civil right and will be treated as *malishes* and *shudras*’

A[nswer] I am in Pakistan and I cannot advise them.”

Mian I Tufail Muhammad of Jama'at-i-Islami:

“Q[uestion] What is the population of Muslims in the world?

A[nswer] Fifty crores.

Q[uestion] If the total population of Muslims of the world is 50 crores, as you say and the number of Muslims living in Pakistan, Saudi Arabia, Yemen, Indonesia, Egypt, Persia, Syria, Lebanon, Trans-Jordan, Turkey and Iraq does not exceed 20 crores, will not the result of your ideology be to convert 30 crores of Muslims in the world into hewers of wood and drawers of water?

A[nswer] My ideology should not affect their position.

Q[uestion] Even if they are subjected to discrimination on religious grounds and denied ordinary rights of citizenship? :

A[nswer] Yes.”

This witness goes to the extent of asserting that even if a non-Muslim Government were to offer posts to Muslims in the public services of the country, it will be their duty to refuse such posts.

Ghazi Siraj-ud-Din Munir:

“Q[uestion] Do you want an Islamic State in Pakistan?

A[nswer] Surely.

Q[uestion] What will be your reaction if the neighbouring country was to found their political system on their own religion?

A[nswer] They can do it if they like.

Q[uestion] Do you admit for them the right to declare that all Muslims in India are *shudras* and *malishes* with no civil rights whatsoever?

A[answer] We will do our best to see that before they do it their political sovereignty is gone. We are too strong for India. We will be strong enough to prevent India from doing this.

Q[uestion] Is it a part of the religious obligations of Muslims to preach their religion?

A[answer] Yes.

Q[uestion] Is it a part of the duty of Muslims in India publicly to preach their religion?

A[answer] They should have that right.

Q[uestion] What if the Indian State is founded on a religious basis and the right to preach religion is disallowed to its Muslim nationals?

A[answer] If India makes any such law, believer in the Expansionist movement as I am, I will march on India and conquer her.”

So, this is the reply to the reciprocity of discrimination on religious grounds.

Master Taj-ud-Din Ansari:—

“Q[uestion] Would you like to have the same ideology for the four crores of Muslims in India as you are impressing upon the Muslims of Pakistan?

A[answer] That ideology will not let them remain in India for one minute.

Q[uestion] Does the ideology of a Muslim change from place to place and from time to time?

A[answer] No.

Q[uestion] Then why should not the Muslims of India have the same ideology as you have?

A[answer] They should answer that question.”

The ideology advocated before us, if adopted by Indian Muslims, will completely disqualify them for public offices in the State, not only in India but in other countries also which are under a non-Muslim Government. Muslims will become perpetual suspects everywhere and will not be enrolled in the army because according to this ideology, in case of war between a Muslim country and a non-Muslim country, Muslim soldiers of the non-Muslim country must either side with the Muslim country or surrender their posts.

The following is the view expressed by two divines whom we questioned on this point:—
Maulana Abul Hasanat Sayyed Muhammad Ahmad Qadri, President, Jami’at-ul-Ulama-i-Pakistan:—

“Q[uestion] What will be the duty of Muslims in India in case of war between India and Pakistan?

A[answer] Their duty is obvious, namely, to side with us and not to fight against us on behalf of India.”

Maulana Abul Ala Maudoodi:—

Q[uestion] What will be the duty of the Muslims in India in case of war between India and Pakistan?

A[answer] Their duty is obvious, and that is not to fight against Pakistan or to do anything injurious to the safety of Pakistan.”

Maulana Abdul Haamid Badayuni considers it to be a sin (ma'siyat) on the part of professors of anatomy to dissect dead bodies of Muslims to explain points of anatomy to the students. The soldier or the policeman will have the right, on grounds of religion, to disobey a command by a superior authority. **Maulana Abul Hasanat's** view on this is as follows:—

‘I believe that if a policeman is required to do something which we consider to be contrary to our religion, it should be the duty of the policeman to disobey the authority. The same would be my answer if ‘army’ were substituted for ‘police’.

Q[uestion] You stated yesterday that if a policeman or a soldier was required by a superior authority to do what you considered to be contrary to religion, it would be the duty of that policeman or the soldier to disobey such authority. Will you give the or the soldier to disobey such authority. Will you give the whether the command he is given by his superior authority is contrary to religion?

A[nswer] Most certainly.

Q[uestion] Suppose there is war between Pakistan and another Muslim country and the soldier feels that Pakistan is in the wrong and that to shoot a soldier of the other country is contrary to religion. Do you think he would be justified in disobeying his commanding officer?

A[nswer] In such a contingency the soldier should take a fatwa of the “ulama.”

We have dwelt at some length on this subject of Islamic State not because we intended to write a thesis against or in favour of such State but merely with a view to presenting a clear picture of the numerous possibilities that may in future arise if true causes of the ideological confusion which contributed to the spread and intensity of the disturbances are not precisely located. That such confusion did exist is obvious because otherwise Muslim Leaguers, whose own Government was in office, would not have risen against it; sense of loyalty and public duty would not have departed from public officials who went about like maniacs howling against their own Government and officers; respect for property and human life would not have disappeared in the common man who with no scruple or compunction began freely to indulge in loot, arson and murder; politicians would not have shirked facing the men who had installed them in their offices; and administrators would not have felt hesitant or diffident in performing what was their obvious duty. If there is one thing which has been conclusively demonstrated in this inquiry, it is that provided you can persuade the masses to believe that something they are asked to do is religiously right or enjoined by religion, you can set them to any course of action, regardless of all considerations of discipline, loyalty, decency, morality or civic sense.

Pakistan is being taken by the common man, though it is not, as an Islamic State. This belief has been encouraged by the ceaseless clamour for Islam and Islamic State that is being heard from all quarters since the establishment of Pakistan. The phantom of an Islamic State has haunted the Musalman throughout the ages and is a result of the memory of the glorious past when Islam rising like a storm from the least expected quarter of the world— wilds of Arabia—instantly enveloped the world, pulling down from their high pedestal gods who had ruled over man since the creation, uprooting centuries old institutions and superstitions and supplanting all civilisations that had been built on an enslaved humanity. What is 126 years in human history, nay in the history of a people, and yet during this brief period Islam spread from the Indus to the

Atlantic and Spain, and from the borders of China to Egypt, and the sons of the desert installed themselves in all old centres of civilization—in Ctesiphon. Damascus, Alexandria, India and all places associated with the names of the Sumerian and the Assyrian civilizations. Historians have often posed the question: what would have been the state of the world today if Muawiya's siege of Constantinople had succeeded or if the proverbial Arab instinct for plunder had not suddenly seized the mujahids of Abdur Rahman in their fight against Charles Martel on the plains of Tours in Southern France. May be Muslims would have discovered America long before Columbus did and the entire world would have been Moslemised; may be Islam itself would have been Europeanised. It is this brilliant achievement of the Arabian nomads, the like of which the world had never seen before, that makes the Musalman of today live in the past and yearn for the return of the glory that was Islam. He finds himself standing on the crossroads, wrapped in the mantle of the past and with the dead weight of centuries on his back, frustrated and bewildered and hesitant to turn one corner or the other. The freshness and the simplicity of the faith, which gave determination to his mind and spring to his muscle, is now denied to him. He has neither the means nor ability to conquer and there are no countries to conquer. Little does he understand that the forces, which are pitted against him, are entirely different from those against which early Islam had to fight, and that on the clues given by his own ancestors human minds has achieved results which he cannot understand. He therefore finds himself in a state of helplessness, waiting for some one to come and help him out of this morass of uncertainty and confusion. And he will go on waiting like this without anything happening. Nothing but a bold re-orientation of Islam to separate the vital from the lifeless can preserve it as a World Idea and convert the Musalman into a citizen of the present and the future world from the archaic in congruity that he is today.

It is this lack of bold and clear thinking, the inability to understand and take decisions which has brought about in Pakistan a confusion which will persist and repeatedly create situations of the kind we have been inquiring into until our leaders have a clear conception of the goal and of the means to reach it. It requires no imagination to realize that irreconcilables remain irreconcilable even if you believe or wish to the contrary. Opposing principles, if left to themselves, can only produce confusion and disorder, and the application of a neutralizing agency to them can only produce a dead result. Unless, in case of conflict between two ideologies, our leaders have the desire and the ability to elect, uncertainty must continue. And as long as we rely on the hammer when a file is needed and press Islam into service to solve situations it was never intended to solve, frustration and disappointment must dog our steps. The sublime faith called Islam will live even if our leaders are not there to enforce it. It lives in the individual, in his soul and outlook, in all his relations with God and men, from the cradle to the grave, and our politicians should understand that if Divine commands cannot make or keep a man a Musalman, their statutes will not.²⁸

²⁸ Ibid, pgs 226-232