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SCHOOL OF CRIMINOLOGY AND CRIMINAL JUSTICE

ISSUES OF LAW AND PUNISHMENT IN ISLAM

THEORY, PRACTICE, DISCUSSION

By

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This study seeks to identify the major trends that have shaped the past history and present development of Shari'a ("Islamic Law") approaches to criminal justice and penology. It further attempts to show how the record of Islamic legal thought contrasts to the simplistic Western image of "Islamic law" as characterized by, or even limited to, harsh public punishments for minor offenses or sexual conduct of a sort no longer criminalized in the West.

The history and intellectual development of Muslim thought in the areas of criminal justice and penology are traced from early Islamicate times to the present day.[1] The extensive development of Shari'a family, business, and other "civil" law through Islamicate history is contrasted to the general nonapplication of Shari'a criminal law by Muslim rulers who judged it overly lenient and procedurally demanding for their needs, or even their subjects' protection. Only with the advent of the Western challenge — which was felt in some parts of the Muslim world as

[1]This usage, borrowed from Hodgson (1974) distinguishes features of Islam as a faith (called here "Islamic") from those which are characteristic of predominately Muslim cultures, but are not part of Islam per se, which will be called here "Islamicate."

early as the eighteenth century — was renewed attention given to the study of Islamic criminology and penology. At the present date, no serious effort to codify and systematize Islamic criminal law has yet been made. The future development of an Islamic legal code, and the West's response, will be an important element in shaping the future relations of the Muslim world and the West. This study has been aimed at bringing the Islamic World into the literature of criminology and criminal justice—it fill a gap in the literature in this field.

CHAPTER I

INTRODUCTION

To most people in the West today, the phrase "Islamic justice" carries a negative connotation. In the popular Western mind, the image of "Islamic justice" is one of death, mutilation, or other harsh punishments, meted out by irregular tribunals of religious fanatics or "revolutionary guards." Those so punished, even when not wholly innocent victims of arbitrary police abuse, are imagined to be largely petty criminals, or persons who have committed sexual offenses no longer normally punished as crimes in the West. Trials and punishments, in the popular Western image, are often arbitrary, and are carried out under summary conditions, in front of jeering, bloodthirsty mobs.

In short, the image of "Islamic justice" in the West is one that contains and combines long–standing Western stereotypes of Muslims with new stereotypes that have arisen out of the Western perception of contemporary events (Lippman, McConville, and Yerushalmi 1988: ix). On the one hand, Muslims are often seen by Westerners as "backwards," even "medieval." Their concepts of criminal justice and penology are imagined to be similar to those associated with the Inquisition or witch–trials. On the other hand, Muslims are pictured as "radicals" or "terrorists," who take hostages and subject them to summary "revolutionary" trials and punishments.

Indeed, the Western image of "Islamic justice" owes itself largely,

perhaps, to the role of one man, the Ayatollah Khomeini. To millions of Americans and other Westerners, the Ayatollah and his followers came to embody the "Great Satan." He used religious language which most Westerners no longer expect to employ in judicial or other public discourse. His regime was guilty (at least in Western eyes) of widespread human rights abuses.

These abuses were not confined to the security and police forces, but (again in Western eyes) deeply infected the judicial system as well — indeed, were integral to them. Western readers were exposed to accounts such as this one, originating from Iranian opponents of Khomeini:

> Another legal problem from the religious angle that Khomeini's regime has been facing lately involves the execution of virgin girls ... the troubled conscience of ... Islamic judges was pacified when one Islamic authority ruled that the virgin girls sentenced to death could be married off to Islamic Revolutionary Guards for a few hours. After defloration by their temporary husbands, the girls could then be executed "Islamically" without pangs of religious conscientiousness.
>
> (Irfani 1983: 266–67)

To many in the West, this passage sums up their concept of Islamic justice. Although Westerners have heard, vaguely, of the terms "Shia" and "Sunni", they are not at all aware of how far Khomeini is from being any sort of religious authority among Sunni Muslims.

At the same time, Westerners are aware that "Islamic justice" has taken root far beyond Iran. In recent years "Islamic" punishments have been imposed with great fanfare in countries such as Pakistan and Sudan. In the latter,

> In one fifteen-month period fifty-four suspected criminals lost hands, and sixteen others lost two limbs as repeat offenders ... on three occasions men were sentenced to posthumous crucifixion after hanging ...
>
> (Lamb 1987: 120)

Moreover, news reports have made it clear to many Westerners that — far from being horrified by these examples — large sections of popular opinion throughout the Middle East are highly supportive of the expansion of Islamic legal systems and the imposition of Islamic punishments on wrongdoers. In those Muslim countries which have moved toward democracy and broader popular participation in politics, the result has been the emergence into popularity and influence of Islamic parties and movements whose platforms call for the imposition of Islamic law.

Thus, Islamic judicial and penal ideas, their application in the Middle East, and their perception in the West, have become important components in the shaping of tension, misunderstanding, and hostility between the West and the Muslim worlds. The Western popular image of Islamic punishments promotes the belief that "Islam" as a whole is harsh, backwards, and antimodern. At the same time, the popular resurgence of Islam throughout the Muslim world encourages Western fears that "Islam" is both inimical and threatening. With the disappearance of Communism as a global threat to the West, there is even the implicit suggestion that its place might now be taken by an "Islamic menace," fueled by a combination of oil wealth and fanatical believers.

Significance of the Study

What is truly meant by such expressions as "Islamic justice," and "Islamic penology" are thus questions that go far beyond the technical issues raised by international comparative criminal law or penology. They are questions not merely of interest to the lawyer, the policeman, the criminal–justice administrator, or the penologist. To understand what is meant by "Islamic justice" and the concepts of an Islamic penology is to understand many of the fundamental features of Islamic belief and civilization that can potentially lead it into conflict with Western values.

Such conflicts are not merely conflicts of "interest," comparable to debates over the appropriate price of oil. Islamic and Western civilizations have in common a deep traditional commitment to justice. Other ancient traditions and philosophies, held in many parts of the world, hold that the material world is ultimately an illusion, or that our rights and wrongs in this life are reduced to minor changes in a personal karma that stretches through eternity.

Both Muslim and Western traditions, in contrast, hold that this world, this life, are the unique stage upon which we confront ourselves and our God. Even those Western philosophies that ignore a personal God still uphold the uniqueness of the individual and his or her ultimate responsibility for the conduct of life. Both Westerners and Muslims, then, are heirs to deep traditions of seeking — of demanding — justice. If the differences in their concepts of justice cannot be resolved, this common tradition threatens to lead them into conflicts that cannot be resolved through practical compromise, since fundamental moral principles are held to be at stake. If Westerners and

Muslims cannot find some measure of common ground on the question of justice, then the difficulty of living alongside one another in friendship will become much greater.

Purpose of the Study

The purpose of this study, then, is to briefly outline the origins and historical development of "Islamic justice," and the pattern of its development in the modern world, in a manner which will be meaningful and understandable to Westerners. In the process, it is hoped that this study will refute several common Western misperceptions regarding Islamic legal and penological traditions, practice, and thought.

To begin with, we may sketch out what I suspect would come close to being the prevailing Western preconceptions regarding the past history and present development of Islamic law and punishment. We will examine and correct these preconceptions at greater length in the following chapters. For now it will be sufficient to point out briefly how these preconceptions differ from the reality.

Most Westerners make little distinction between "Arabs" and "Muslims." They have, for example, little awareness that Iranians are a non–Arab people. They have a stereotype of Islam as vaguely "medieval." To my knowledge, however, no one has concentrated a study on Western stereotypes regarding the history of Islamic faith and the Islamicate civilization. Therefore the following few paragraphs represent my own interpretation of Western preconceptions.

This interpretation is necessarily impressionistic. Students of Western–Islamicate relations, e.g. Lippman, McConville, and Yerushalmi (1988) appear to take the existence and character of Western stereotypes of Islam for granted. My own experience of reading and watching news reportage in the United States, and of talking to Americans through fifteen years of residence here, is my source for the following study.

In the Western view, "Islamic law" is the form of law that was practiced by Muslims before they were exposed to liberal ideas from the West. In substance, Westerners imagine, Islamic law combines primitive retributive justice ("an eye for an eye") with harsh public punishments exacted even for minor offenses. Both the principles of Islamic law and its punishments are assumed to be comparable to those used by the West in its ancient and medieval pasts, and in the rest of the non–Western world until the coming of Western dominance. Hence Islamic law is seen as backwards and "medieval."

It also seems to be assumed by many Westerners that Islamic law is an entirely religious law, drawn word–for–word from the Qur'an, unchanged since the Prophet's day, and administered by clerics. Again, this is suggestive of the popular image of the medieval West, reinforcing the popular negative stereotypes. Furthermore, Islamic law is assumed to be vaguely similar to the sort of biblical law that would be proposed by some Christian fundamentalists. Hence, any Muslim who calls for an adoption of Islamic law is seen as a "Muslim fundamentalist." To the majority of Westerners who are not Christian fundamentalists, this analogy only adds to the threatening image of Muslims.

In addition to all the negative emotive stereotypes that this image of the

background of Islamic law promotes, it further encourages the belief that Muslims are unwilling or unable to come to grips with the modern world. If Islamic law is imagined as having been in force for a thousand years before the rise of Western influence, then it will be further imagined as antiquated and unsuited to modern conditions.

That, once again, represents what I believe to be the prevailing Western stereotype of Islamic law. The reality, as we shall show in the following chapters, is very different.

It is true that Islamic law is rooted in the Qur'an and the recorded sayings of the Prophet Muhammad and his early followers. It is also true that legal ideas are much more central to Islam than they are to Christianity, because the central thrust of Islam is teaching men and women to lead Godly lives within the framework of family and social life.

But Islamic law, Shari'a, is not entirely contained in Scripture. It was developed, over a period of several centuries, by scholars and jurists from around the Islamicate world. In addition to the heterodox Shia legal tradition, four main orthodox Sunni schools of Islamic thought developed. Because Islamicate civilization was a worldly civilization; commercial, cosmopolitan, urban and urbane, the "civil law" component of Shari'a underwent a full and complex development. It proved fully capable of dealing with the myriad of legal questions that arose in great mercantile cities with worldwide trading connections.

The criminal law of the Muslim world, however, was not for the most part Shari'a law. The unified Islamic religious and political community

fragmented by the tenth century CE,[1] and the criminal–justice and penal administration fell into the hands of local military rulers. These rulers judged Shari'a to be too strict in its procedures, its evidentiary standards, and its protections for the accused. They also judged it in absolute contradiction to contemporary Western stereotypes to be too lenient in its punishments.

> .... the Shar'i criminal law was so mild that most pre–Modern Muslim rulers felt bound to save their subjects from the results of applying it intact.
>
> (Hodgson 1974: 339)

For this reason, the development of Shari'a criminal law was effectively stunted. Shari'a courts operated as a sort of independent judiciary, upheld by the community because of its prestige, but restricted to civil, family, and commercial disputes. Police matters were left to the ruler, and no strong institutional tradition of criminal law ever developed, since the ruler's police administration lacked the prestige and Islamic moral standing of the Shari'a civil–court system.

Thus, "Islamic law" has not been the basis of criminal justice administration or penal practice in most of the Islamicate world through most of its history. In fact, it is impossible for Islamic countries to "go back" to Shari'a criminal law and penology, because the criminal–justice side of Shari'a never shared the extensive development of the other branches of Shari'a. The

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[1]CE ("Common Era") is equivalent to the date AD. It is preferred in cross–cultural scholarly usage because it avoids the religious connotation of Anno Domini ("Year of our Lord"). Muslims use a dating system based on the Prophets flight from Mecca (CE 622), and also use lunar years, different in length from the solar year of the CE/AD system.

creation of a full–fledged criminal–justice code and a penology based on Shari'a principles is a task for our own day.

The cultural challenge of the West has been felt in law as in other areas of life in Islamicate society. The effort began as early as the eighteenth century in Muslim India, which was then falling under British domination. The practical challenge of creating a Shari'a–based system of law (civil as well as criminal) is an enterprise which has led to great new creativity in Islamic scholarship.

We thus cannot say what the criminal–justice and penological dimensions of "Islamic law" look like, because there is no mature, established system of Shari'a–based law now operating anywhere in the world.

In some Muslim countries, an effort has been made to establish "Islamic law," by revolutionary fervor or by dictatorial fiat. (In Saudi Arabia, it was established by a reformist royal government ruling a previously tribal region.) Public administration of some canonical Shari'a penalties — by no means necessarily preceded by trials adhering to Shari'a standards — has been a highly visible and politically popular feature of such efforts. But it is a grave error to imagine that these highly publicized but superficial efforts give anything like an accurate image of Islamic legal principles in action. It would be even a worse error to permit the distorting image of such measures to deepen the misunderstanding that already exists between the West and the Islamic believers of the world.

Islamic Law and the Theory of Law

Before going on to trace the historical and contemporary development of Islamic criminal and penal law, it may be useful to generally place Islamic law in the context of the theories of law which have developed in the West. These theories seek to address a fundamental question: What is law? Is law, at least in principle, universal? Is it inherent in human nature, whether by divine plan or by virtue of the basic conditions of human life? Or is law fundamentally arbitrary, existing simply because it has been enacted and enforced?

Western legal theory, as it has developed in the past few centuries, has in fact taken the form of a dialog or debate between these two positions, known respectively as the natural–law school and the positive law. As we shall see, the more closely the distinction is examined, the more complex it appears to be. Assuming for the moment, for example, that law is rooted in the will of God, does the divine law embody rules which God judged to be those specifically necessary for the proper governance of human beings, given their nature (as He created them)? Or is that will in some sense arbitrary — is the divine law simply what God settled upon, for His own mysterious reasons? In the former case, divine law is an instance (a very special one, to be sure) of positive law; in the latter case, divine law is an expression of natural law as set down by the creator of Nature itself. This distinction is directly relevant to Islamic law. All Islamic jurists hold the view that Shari'a, Islamic law, is rooted in the revelation of God. But that said, Shari'a might still be understood as either a form of natural law or as a form of positive law.

The distinction between natural law and positive law may also be said to exist, in some sense, between different parts of the law — regardless of which view, philosophically speaking, is adopted with respect to the concept of Law as a whole. Consider for example, as instances of two ends of the spectrum of law, the law regarding murder and the law of traffic regulation. Even the firmest proponent of positive law would be likely to admit that some prohibition of murder is, if not "natural," at least almost inevitable in any human society. Civil society can hardly function if individuals are free to kill one another at will, and the most arbitrary legislator is likely to keep this in mind.

In a broad sense, the same may be said of traffic regulation. In a society in which automobiles are common, it is a practical necessity to have some regulation as to which side of the road people will drive on. However, the choice as to whether to drive on the right or left side of the road seems to be almost entirely arbitrary. In historical fact, some nations have chosen one side, some the other. There seems to be no "natural" reason why one or the other should be preferred. A legislator introducing a traffic code where automobiles were previously rare or absent might well flip a coin to decide. (In practice, to be sure, driving on the right has been the more usual solution, and might be preferred for international consistency. But this is essentially an accident of history.) There are very large sections of the law where much the same thing might be said. Some regulation in many areas of conduct is a practical necessity, but what regulation is chosen is arbitrary.

Development of Western Legal Theory

A fundamental characteristic of Western law is that it is essentially secular in character. This is not to deny that the beliefs of the Christian religion have influenced Western law since the official adoption of Christianity by the Roman Empire in the fourth century CE, and continuing at least until the last couple of centuries. Certainly many specific laws have been rooted in Christian religious beliefs. But the general systems and categories of the law, both the common–law tradition of the English–speaking world and the Roman–based law of the "civil–law" countries, were developed by secular authorities based primarily on secular reasoning. Even where the government was in the hands of a religious authority, as in the Papal States, a civil code existed quite independently of Canon Law (David and Brierley 1968: 395n21).

Indeed, even the Canon Law itself, the internal law of the Catholic Church, was of secular origin. There was no claim that Canon Law was rooted in Christian Scripture, and the Church fathers made no attempt to create a "Christian law" to supplant Roman Law (David and Brierley 1968: 394–95). There have been only a few scattered efforts in Western history to create a system of law based on Christian scripture; for example, in the early history of some of the American colonies (David and Brierley 1968: 337).

For this reason, the philosophical basis of Western law, from the Middle Ages until about the nineteenth century, was the theory of natural law. The medieval scholars who revived and developed the Roman law tradition believed that it was rooted in reason. St. Thomas Aquinas, in the thirteenth

century CE, argued that the findings of reason were generally consistent with Christian revelation, and this became the orthodox view of Western Christianity. This freed Roman law of any suspicion on account of its pagan origins, and legitimized the natural–law doctrine as suitable for a Christian society (David and Brierley 1968: 30). Although England developed its own distinctive Common Law tradition, it could be justified on the same grounds.

In the seventeenth and eighteenth centuries, Christianity was largely dethroned from its position as the central ideology of the West, in favor of secular philosophies. But these philosophies were themselves rooted in the idea of natural law, which was strengthened by the success of science in enlarging the range of phenomena in nature that could be shown to behave in regular and predictable way — and thus argued to be subject to the laws of nature. But the secularization of society and thought had little direct impact on legal thinking, since this thinking was already secular in its roots. The "law of Nature and of Nature's God" was not changed by the fading of emphasis on the second half of the phrase.

Criticism of Natural Law

By the nineteenth century, however, the traditional Western understanding of natural law was coming under increasing intellectual criticism. In its early development, natural law had been not only descriptive, but teleological: all things in nature were held to normally behave in a way that led them toward their natural purpose or end. Thus, in Aristotelian physics, a stone fell because it was proper and "in its nature" for it to seek the lowest possible

position for itself.

This sort of purposefulness was gradually rejected as the philosophical basis of natural law. Today, indeed, the above statement about the "nature" of a stone sounds strange to our ears. With respect to the world of living things, however, we still tend implicitly to think that way. It does not sound particularly strange or archaic to say that the natural purpose of an acorn is to grow into an oak tree (Hart 1975: 185).

Along with the decline of teleology in the understanding of natural law, however, went a change in the understanding of what "natural law" itself meant. Increasingly, "natural law" no longer was seen as an expression of an "ought," but simply as an expression of an "is." In this respect, natural laws are today seen as quite fundamentally different from human laws. By definition, natural laws cannot be violated. If an astronomer finds that a planet is not where the law of gravity and planetary motions says it ought to be, he does not call NASA and request that a space mission be sent to ticket the planet for a violation, nor ask the International Astronomical Union for an injunction to order the planet back into its place. Nor does he conclude that the law itself is in error. Instead he concludes that our understanding of the law is in error, either because of weakness in our theory (not the "law" that the theory attempts to describe) or because of some undetected factor (such as perturbation by another, yet–undiscovered planet) is causing the observed motion to deviate from prediction.

By contrast, the essence of human law is that it can be violated; the very purpose of the law is to define possible violations and establish appropriate sanctions against them. There is no law anywhere against travelling into the

past to change history and therefore alter the present in the time traveller's favor, because this is impossible. The law against murder, on the other hand, is universal or nearly so precisely because it is so readily possible for us to kill one another. If human beings resembled turtles, and were more or less physically invulnerable to one another, then homicide would be a rare and freakish event, and there might well be no need seen for a law against it (Hart 1975: 190).

The changing understanding of what was meant by "natural law" broke the previously assumed philosophical continuity between the rules of human behavior, imposed by legal authority, and the rules of natural behavior which were simply generalized from observation. Nor was the largely secular Western society of the nineteenth century inclined to turn back toward explicitly religious principles as the basis of law. Thus the school of legal realism grew up, which held that the law was simply whatever the authorities enacted as law. "In natural law, the source [of law] is nature, or Reason; in positive law, the human will" (Ebenstein 1969: 82).

The positive school of law became dominant in the nineteenth century, but it did not wholly displace the natural law school, which is now enjoying a revival (David and Brierley 1968: 82–83). The absolute enthronement of legislation is not only unsatisfying to many (there being a widespread popular sense that law should have some relationship to "justice"), but it was also found inadequate in practical terms. Legislation is never complete; it must be interpreted in some way by jurists, who must therefore reach beyond the legislation itself. The social sciences, such as psychology and economics, have been called upon for the development of contemporary forms of

natural-law theory (Jones 1969).

Islamic Law as Natural Law

Where does Shari'a fit into this Western philosophical spectrum? It differs from all forms of Western law in being explicitly rooted in Divine Revelation. It is true that there are limits upon this. According to a contemporary Saudi scholar, "the religious essence and value of the Shari'a must never be overestimated," and he cites a classical scholar's acknowledgment that large segments of Shari'a could be overridden in the "public interest" (Yamani 1388 AH: 10). Nevertheless, it is fair to say that Shari'a is far more intimately linked to Islam as a whole than any form of Western law is to Christianity or any other religious faith.

As argued earlier, divine law can be interpreted either as a form of natural law (God's provision for regulation based on human nature) or as positive law (God's arbitrary will). In practice, the consensus among Islamic legal scholars seems to be that Shari'a falls into the category of natural law. That is, the provisions of Shari'a criminal law (for example) are held to be not simply the arbitrary will of God, but ordinances created by God specifically in response to the known characteristics of human beings. Thus, for example, both the Islamic law of marriage and the punishments provided for sexual offenses are justified not only by reference to Scripture, but the importance of suitable regulation of this aspect of life for the good of civil society (Siddiqi 1979: 14–22). Likewise, the efficacy of the Shari'a penalty for theft is supported by reference to the low crime rate in Saudi Arabia (Siddiqi 1979: 32).

The above views are taken from a conservative scholar. But a scholar of quite different views, one willing to suspend the practical application of Shari'a in the modern world, argues this point only on the grounds that non–Muslims may not accept the reasoning behind Shari'a punishments (Na'in 1990: 114). He rejects the application of the punishments not because he himself regards them as indefensible by reason (he clearly accepts their validity on religious grounds), but because he admits that non–Muslims might reject the line of reasoning.

In both cases, it must be stressed, however, that the "natural law" arguments offered in favor of Shari'a are secondary to the fundamental religious argument. Although both the scholars just cited appear to agree that Shari'a can be justified by reason as well as by Scripture, Scripture alone is sufficient to establish their validity. Thus, the position of contemporary Islamic scholarship would appear to be that while Shari'a is in fact natural law, it has just as much validity if it is interpreted instead as a form of positive law rooted entirely in the will of the Divine Legislator.

Organization of the Study

The organization of this study is as follows. The second chapter is devoted to tracing the history of the Shari'a legal tradition, emphasizing the contrast between developments on the "civil" and criminal sides of the law. The third chapter examines modern theoretical developments of Shari'a criminal law and penology, and contrasts them to contemporary political practice in Muslim countries. The fourth chapter addresses the issue of universal human

rights standards and their relation to Islamic legal principles. Finally, the fifth chapter summarizes the findings of this study and argues their significance in the broader arena of relations between the Islamicate world and the West.

CHAPTER II

ISLAMIC LAW IN THEORY AND HISTORY

In the eyes of many in the Western world, "Islamic law" is arguably virtually synonymous with certain "canonical" punishments, punishments which (in liberal Western eyes) are harsh, backwards, even barbaric: floggings, severing of hands, beheadings, the stoning to death of adulteresses (Lippman, McConville, and Yerushalmi 1988: ix). Ironically, it is precisely the reaction of Western sensibilities to these punishments which, perhaps, most recommends them to cynical politicians in the Muslim world.

Serious efforts by Muslim reformers and intellectuals to construct a modern system of Islamic criminal jurisprudence and penology, by contrast, receive essentially no attention in the Western mass media. (In my experience, I have never seen any discussion of these topics in the American mass media.) This is neither surprising nor necessarily due to any anti–Muslim prejudice. Coverage even of American penology in the American popular press, in my own experience, is confined largely to polemical debates about the death penalty, and cries for "getting tough" on the one side and prison–condition "exposes" on the other side.

In fact, however, strictly criminal jurisprudence has received rather little attention from Islamic legal thinkers. There are two reasons for this. One is that the existing body of Shari'a ("Islamic law"), and Islamic jurisprudential tradition, is overwhelmingly directed towards what an American would call

"civil law," for reasons to be discussed below. As will also be discussed below, these are the areas of greatest interest to legal theorists. Thus, Islamic criminal law has received rather little serious attention from modern Islamic legal thinkers — as well as from their traditional forebears — and penology even less. Thus, the field of "Islamic justice" in criminal law and penology has been largely left to politicians, not to jurists.

Western opposition elevates the infliction of these punishments into a form of defiance of Western dominance. The rigorous punishment of sexual misconduct in particular (ranging from adultery to the wearing of revealing clothing by women) is a convenient way to score political points with a lower–middle–class to poor urban population which is not only offended in moral terms by these things, but which associates them socially with the nightclub culture of the Westernized rich and their foreign friends. Finally (as can be seen in American society as well), harsh punishments are a cheap and convenient "law and order" measure for politicians who cannot or will not take effective measures to reduce crime rates in crowded, anonymous cities (Jansen 1979: 142).

A politician can thus proclaim his intention of imposing "Islamic law" on a country, and gain great publicity by carrying out a few heavily publicized canonical punishments. Yet he may take few if any measures to actually establish Islamic legal principles in any broader way to the criminal–justice system (Jansen 1979: 142). These principles call for high standards in the conduct of trials and the standards of testimony. An ambitious politician who proclaims "Islamic law" may likewise fail to take serious action in the general realm of family and commercial law — which, much more than criminal law

— is central to the concepts and tradition of Islamic jurisprudence.

Therefore, before turning to examine contemporary Islamic thought on criminal justice and penology, and the real or feigned application of Islamic principles to penology in present–day Muslim countries, it is important to outline some of the principles which underlie Islamic jurisprudence, and to examine the historical development of law in the Islamic world.

Historical Development of Islamic Law

Very broadly, the development of Islamic jurisprudence can be divided into four periods. The first is the period of origination, which can be taken as comprising the time of the Prophet's life work, and the first few generations of the Muslim community. The second, and by far the longest, is the period of development and establishment, beginning roughly with the foundation of the Ommayyid Caliphate and continuing thereafter for about a thousand years. This is a period in which Muslims were masters of their own lives, and faced the full range of legal problems posed by a vast and cosmopolitan civilization. The third period is that of Western colonial or neocolonial encroachment. During this period, Islamic jurisprudence was supplanted in most of the Muslim world by Western–derived legal practice, whether imposed by Western colonial powers (as in Pakistan) or by Westernizing reformers (as in Iran). Only a few Muslim countries—notably Saudi Arabia — substantially escaped this encroachment. The fourth period, that of Islamic legal reassertion, has only begun in recent years, and the form which that reassertion will take is still far from decided.

Our concern in this chapter is with the first two periods, in which Muslim civilization came into being and took a mature form. In particular, the first few centuries of the second period—the caliphal period—is the era in which Islamic jurisprudence was largely defined, both in theory and in practice.

To begin with, what exactly is "Islamic law?" One of the most familiar statements about Islam, found in some form in virtually every introduction to Islam written for Westerners, is that Islam is not a compartmentalized religion in the narrow sense, as Christianity tends to be in the modern West, but a complete way of life. Christianity grew up as a persecuted minority faith in a vast empire; its adherents looked forward to a future life, and were not primarily concerned with developing a plan for living in the everyday world. In particular, Christians did not take the reins of political power for three centuries, when they inherited the Roman political and legal system in a fully–developed form. "Render unto Caesar" establishes a sort of separation of church and state in the text of Christian scripture. Even after Christianity became politically dominant, monasticism, an escape from the ordinary round of life, remained a common goal of pious Christians.

In contrast,

> Islam could not be a community of hermits ... on the contrary, part of God's command was precisely that persons should live in community, should worship together, should marry and bring up children, and even should see to it that right and justice prevailed in the earth among all human beings. The substance of human beings' obligation to God was to be God's viceregents on earth, ordering all things aright.
>
> (Hodgson 1974: 320)

Thus, from the beginning, Islam could not be indifferent to the worldly concerns of this life, as Christianity could be. Whereas the implicit duty of the Christian was to turn from the things of this world in order to prepare for the hereafter, the explicit duty of the Muslim was to prepare for the hereafter through Godly conduct in every feature of earthly life. Because Islam was to be a way of life in this world, ethics, rather than more abstract and theoretical studies such as theology or philosophy, were central to the development and articulation of the faith. But ethics, in a practical sense, is closely related to law. Thus

> Among the Islamicate intellectual disciplines, only Islamic law is both practical and theoretical, concerned with human action in the world, and (strictly speaking) religious. In this sense, Islamic law and legal theory must be the true locus of the discussion of Islamic ethics.
>
> (Reinhart 1983: 186)

In this respect, Islam might be much more closely compared to traditional Judaism than to traditional Christianity. As Jewish communities faced the need to regulate the lives of individuals and the affairs of their community in a way pleasing to God, and thus evolved the Talmud, so did Muslims face a comparable need to apply their religious principles to a vast range of practical problems. But the Muslim problem was even broader in scope than the Jewish one. The Jews viewed themselves as a Godly community set off from the larger world. Muslims view themselves as a Godly community fully involved with the larger world.

Muhammad himself was a statesman as well as a prophet, and within a few years of his death his community had established itself as the ruling

element in their own empire. Obviously, then, the practical problems of law in all its forms — from the "constitutional" problem of legitimate government to criminal, commercial, and family law — presented itself early on to Muslims.

This background and mission implies at once a fundamental difference between "Islamic law" (the reason for placing the phrase in quotes will be made clear below) and Western law. "Islamic law" is by nature affirmative; its goal is not just to regulate society so as to minimize friction, but to promote Godliness. Thus, ibn Khaldun could write that

> If ... laws are laid down by men of intelligence and insight, the polity is founded on reason [and subserves the temporal well–being of the subjects.] But if they are laid down by God and promulgated by an inspired Lawgiver, the polity is founded on religion and is beneficial both for this world and the next.
>
> (Bannerman 1988: 71)

Shari'a, the Arabic word which is commonly translated as "Islamic law," means literally "the path to water" (Reinhart, 1983: 188). As a usage developed by a desert people, this expression vividly conveys the quality which Islamic jurisprudence is supposed to have. By contrast, Western law is essentially negative: it seeks to prevent disruptive behavior and eliminate or manage conflicts, but does not generally seek to impel those under its jurisdiction towards particular patterns of conduct.

Sources of Islamic Law

However, the Muslim Revelation did not include a detailed code of law. The Qur'an, the most authoritative source of Revelation, is not a lawbook; only a few verses contain specific rules, and these are often hedged by hard–to–interpret explanatory passages (Bannerman 1988: 34). (These passages do include the so–called canonical punishments; "canonical" precisely because they are specified in the actual text of the Qur'an. These will be discussed further below.) Many other passages in the Qur'an contain no specific laws, or even specific legal concepts, but rather general principles of Godly conduct from which legal concepts can be derived.

Thus, no comprehensive code of "Islamic law" could be derived directly from Scripture. As Islam spread, and Muslims became the dominant community of an empire, a vast set of legal problems had to be solved. Where direct guidance from the Qur'an was lacking, the first generations of Muslims in the seventh century CE turned naturally to the reported practice of the Prophet Muhammad, his associates, or his earliest followers, and the compilation of such hadith reports (and the winnowing–out of forged or questionable ones) was an important scholarly and jurisprudential activity. By about the fourth century AH (eleventh century CE), the standard compilations of hadith reports had come to be regarded as inspired by God, and thus as scriptural in force, though of lesser standing than the Qur'an itself (Reinhart 1983: 190).

A third potential source of law, which eventually became authoritative, was ijma, or consensus. A well–known hadith report holds that "my community does not agree on an error" (Hourani 1965: 13). The force of this hadith

was increased by the natural presupposition among precedent–minded legal scholars and jurists that what earlier scholars and jurists generally agreed upon should not lightly be tossed aside. "Consensus," is, of course, a tricky concept. Does the standard of consensus require absolute unanimity? If so, then how is this to be determined? Does it mean a consensus of all Muslims, or simply of those most likely to have an informed view of the subject (i.e., scholars). The natural tendency of the scholars was to choose the latter, not simply out of a sort of professional bias, but because only the scholars' view was likely to be available for reference at a later date. Thus, in the words of one medieval expert, al–Ghaffari, the basis of ijma was

> the agreement of independent scholars of Muhammad's Community in a particular period upon a legal decision.
>
> (Hourani 1965: 17)

Different schools of Muslim thinkers and legal scholars had varying views about which hadith reports should be regarded as valid, and about which sort of consensus, when and by whom, should be properly regarded as a legitimate basis for ijma.

Schools of Islamic Legal Thought

First of all, we must distinguish between the Sunni majority of Muslims and the Shi'a minority. This distinction, though it has come to apply to the practice of worship and the organization of religious institutions, was in origin not "theological" but practical and historical: the Shi'a rejected from the start the entire Omayyid Caliphate (see Glossary in Appendix A) and traced the

rightful imamate (roughly, the religious authority of the caliph minus his temporal, political authority), to Ali, the son–in–law of the Prophet Muhammad, and thence to the series of twelve historical Imams, the last of whom vanished in the third century AH. These Imams were held to be infallible, and their recorded opinions thus held a high status among the Shi'a which was entirely rejected by Sunni Muslims (Bannerman 1988: 73–74). In turn, naturally enough, the Shi'a rejected ijma that derived from the consensus of the Sunni (and in Shi'a eyes, heretical) majority of the ulama after the death of Ali.

Sunnis also differed among themselves as to which hadith reports should be accepted as reliable, and the period through which ijma should be regarded as valid. Most Muslims eventually came around to the view (originally a Shi'a view) that after the first four Caliphs, the Omayyid caliphs (but not the caliphal authority in principle) lost much of their moral standing, and many Sunnis felt that the Muslim community as a whole had fallen away from high standards after the first few generations from the time of the Prophet. Thus, of the four main Sunni schools of legal thought, the Hanbali school, the strictest, rejected ijma save for the consensus of the Prophet's own companions, and took a restrictive view of which hadith reports should be regarded as valid (Bannerman 1988: 245).

The preeminent school of legal thought was the Shafi'i school, named after the Muhammad b. Idris al–Shafi'i, a scholar of the second century AH. He produced carefully reasoned arguments to show that the Prophet Muhammad was not only the deliverer of the Qur'an, but also and necessarily its interpreter, thus providing a strong basis for the acceptance of hadith reports which referred back to his actions (Hodgson 1974: 327ff). A body of

isnad ("chain of transmission") criticism evolved in the Shafi'i school to analyze and determine the validity of any given hadith report.

Thus, by two or three centuries after the time of the Prophet, a broad body of legal principles had been amassed, comprising the Qur'an itself, numerous (differing by school) hadith reports of Muhammad and the early Muslim community, and (also differing by school) ijma, or earlier consensus opinions of Muslim scholars. This, taken as a whole, was the Sunna, and was the source for Shari'a, "Islamic law."

This body of materials, however, was obviously very far from being a "code of law" in the strict sense of something to which a judge could refer directly in resolving most legal cases. Rather, it provided a source from which an informed legal judge could reach an opinion in a given case. Fiqh, "understanding" or "discerning," had to be applied to this source material to reach a decision in any given case (Reinhart 1983: 187ff). An analogical reasoning process, qiyas, had to be performed in order to achieve fiqh in application to a case. During the earlier Islamic centuries, a broader form of independent reasoning, ijtihad, was also applied to legal problems. After about the fourth century AH, however, the general view of Sunni scholars was that the "gates of ijtihad were closed," and stricter adherence to past precedent was thenceforth expected (Bannerman 1988: 38–39).

Even with the "closing of the gates of ijtihad," however, the development of Islamic legal practice did not end. Fiqh, "not exactly case law, but law case by case" (Hodgson 1974: 336) provided an organic system of legal reasoning and development by which general principles and legal precedent could be used to gradually broaden the range and scope of Shari'a, "Islamic

law," and deal with new legal problems and situations.

Although in its affirmative purpose of moral guidance, Shari'a is profoundly different from Anglo–American law, the structure and development of Shari'a may be illuminated by a general comparison to the structure and development of American law. The Constitution stands in American jurisprudence roughly in the place that the Qur'an does in Islamic jurisprudence; while few if any American legal scholars would claim it to be a revelation from God, it is the final and incontrovertible authority in American law. (Thus, if an American lawyer wishes, say to argue against the death penalty, he refers not to Christian scripture or some other reference, but to the "cruel and unusual punishment" clause of the Constitution.)

The Federalist Papers, and other recorded statements or actions of the American Founding Fathers, are not quite a lesser force of "revelation" alongside the Constitution, as hadith reports are alongside the Qur'an, but their legal role resembles that of hadith reports in being a means by which modern legal scholars can interpret uncertain constitutional passages by analyzing what the framers of the Constitution did in various situations. The Supreme Court, like a Shi'a imamate, can rule authoritatively on the meaning of a constitutional passage.

Finally, a body of case law and established rules of legal reasoning are used to apply constitutional concepts to legal problems not directly addressed in the Constitution, and perhaps not imagined in the time of the framers. It should be noted, following this analogy, that almost all schools of Muslim legal thought are "strict constructionists," at least since the "closing of the gates of ijtihad."

The above analogy must, it should be emphasized again, be understood only in limited terms. Islam is obviously far more comprehensive and central to the lives of Muslims than the Constitution is to the lives of Americans, beginning with the fundamental fact that Muslims regard the Qur'an and valid hadith reports as God's Revelation. The point, rather, is to demonstrate the relationship between the sources of Islamic faith and the Shari'a, or "Islamic law."

Punishment in Traditional Islamic Law

We may now turn again to punishment, and the place of the canonical punishments, and penology in general, in Islamic jurisprudence. In doing so, we must begin by realizing that criminal law in general is, in all legal systems, only a small (and in a strictly legal sense, not very important) part of the whole body of the law. We tend to overemphasize it because criminal law and criminal penalties are dramatic — the canonical Muslim punishments being particularly dramatic, even shocking, to contemporary Western sensibilities.

Because they are dramatic, criminal law and penalties receive widespread popular attention. American television and movie courtroom dramas, for example, commonly deal with murders or other violent crimes, not with business disputes or inheritance cases. Yet "civil law" is the largest part of the law, and the most difficult and sophisticated legal reasoning is frequently called for in civil cases.

This is particularly the case in Islamic jurisprudence, for—in spite of

those heavily publicized canonical punishments—Shari'a is primarily concerned with "civil law," particularly family and commercial law, rather than with criminal law. Indeed, Shari'a has scarcely any well–defined component of criminal law, beyond the few "canonical punishments" set forth in the Qur'an. This is due not only to the greater complexity of civil–law cases and problems, but also to an irony in Islamic history. Muhammad was a statesman, and his successors as leaders of the Muslim community, the caliphs, soon exercised supreme political authority over so vast a region that the word "caliph" has, to Westerners, much the connotation of "emperor" (though, to be sure, with specifically Muslim religious overtones). But, from early on, political authority was far removed from the primary concerns of the Shari'a.

> Once the position of caliph was recognized by the Shari'ah, large discretion was left to him in practice to decide many matters of public policy without explicit reference to shar'i principles. The Shari'ah covered, in the first place, matters in which the Arab soldiery [of the early Caliphate] had a direct interest, and then also those in which the merchants were interested — family and commercial law, above all; other matters were globally covered under the principle that actions not expressly prohibited in the Shari'ah were to be tolerated.
> (Hodgson 1974: 336)

The early Muslims did not, like Caesar in Gaul, conquer and unite small and backwards communities. They instead found themselves a small ruling minority in vast territories that had been highly organized under the Byzantine and Sassanid Persian empires, and the Muslims inherited their administrative systems—including those for the administration of criminal justice—essentially intact.

Shari'a jurisprudence had a strong concept of individual rights, particularly including what might be called a "right of privacy":

> Though minute prescriptions were worked out covering the most private acts, the qadi [judge] was given jurisdiction only over what was brought to his attention without prying (unless the rights of an innocent party were being infringed). The Shari'ah was above all the norm of the Muslim community as a community. However ... this was a public order in which individual rights, as we shall see, often took precedence over collective interests.
>
> (Hodgson 1974: 336)

The law, then, was not to intrude upon private lives. It was up to the individual believer to regulate his own behavior; the law was to step in only when an individual's misconduct became a matter of concern to the community.

However, though this code had appealed to the early, independent–minded Muslim soldiery, and continued to appeal to the influential merchant class, Shari'a procedures and punishments were not particularly suitable, in the eyes of the caliphs and their officials, for keeping masses of the urban poor and of peasants in line.

> From a pre–Modern point of view, the shar'i criminal law was so mild that most pre–Modern Muslim rulers felt bound to save their subjects from the results of applying it intact. It required quick procedure ... and safeguarded the accused in ways that in the Agrarian Age, devoted to the use of torture and of Shrecklichkeit, seemed dangerously soft on criminals.
>
> (Hodgson 1974: 339)

In particular, Shari'a jurisprudence had high standards of evidence, normally requiring testimony by honorable witnesses. (The penalty for adultery, for example, requires testimony by four witnesses—a requirement which, in

the nature of things, can seldom be met in practice.) Such rules could easily be adapted to business law, where the use of notaries provided such witnesses in advance if a business deal went awry and ended up in court, but it was not convenient for the administration of authoritarian criminal justice.

Moreover, by the time the majority of the populations under Muslim rule had themselves become Muslim, the time for a comprehensive Islamic analysis of governmental administration in the affirmative, "constitutional" sense had passed. Thus,

> Building for an audience which could hope for little political role (under pre–Modern agrarianate conditions) save possibly the essentially negative intervention of street mobs on behalf of one or another ruling faction, the ulama scholars turned their interests ever more to questions of private life or perhaps of factional dogma.
>
> (Hodgson 1974: 336)

This tendency of the Shari'a legal scholars to isolate themselves from political concerns was accentuated by the view, which became general among Muslims, that the caliphs had fallen off sharply from the early standards of piety as they became potentates sitting in splendor amid Byzantine– or Persian–style courts. The dissociation of Shari'a jurisprudence from government became even stronger as the centrality of the Caliphate itself broke down, and effective power fell into the hands of local governors and emirs.

The result was the emergence in the Muslim world, by the age of the Abbasid Caliphate (750 CE to tenth century CE) of a system of dual courts (Hodgson, 1974: 345ff). The Shari'a courts were the courts of the marketplace, and of the middle– and "lower—middle" (respectably poor) classes in the cities. They were the courts that handled business cases, family–law

cases, and which oversaw the general maintenance of public morals. Alongside these courts, working by fatwa precedent, and managed by qadis trained in Shari'a jurisprudence, were governmental courts that were more administrative than strictly legalistic in character. In principle, Shari'a concepts were to be followed, but this was often honored in the breach more than in the observance.

Most criminal cases must have come under the governmental courts. Yet they had only a very limited sort of "legitimacy," and never evolved into a tradition of jurisprudence that might challenge Shari'a jurisprudence. Governmental authority was tolerated by the ulama as a practical necessity, but it had little "legal" standing.

> No other legal system [than Shari'a] could rise above the level of an ad hoc equity which each individual could apply and develop at discretion, and which accordingly had little binding force in the public expectation. If the very court of law in which the vizier passed judgement was not fully legitimate, then if the next vizier disregarded the precedents of the last, he was in any case no worse than any other vizier.
>
> (Hodgson 1974: 349)

In effect, the Shari'a courts became a sort of independent judiciary, one having more influence on the day–to–day lives of the urban middle classes—the main bearers of Muslim civilization—than the shifting and arbitrary impositions of caliphal officers or of later local governments. In business and family life, in private quarrels among acquaintances that escalated into criminal acts, the parties or the victims could apply to Shari'a courts for a justice that was well–rooted in Muslim values and based on known

precedents and established procedures. So far as concerns the government's police and courts, most people simply hoped — as they have throughout history, and continue to hope through most of the world — that they would not fall afoul of them.

Thus the reality of Shari'a jurisprudence through most of Islamic history was very far indeed from the off–with–his–hand, off–with–his–head, stone–her spectacle of public punishments that modern Westerners (with considerable help from cynical politicians in the Muslim world) have learned to associate with "Islamic law."

For the serious Muslim criminal–law reformer or penologist, however, the history of the Shari'a does pose a difficult question. As a system of civil law, including such basic requirements of a modern society as family law and business law, Shari'a is as well–developed as any legal tradition of the pre–modern era, and can be regarded as fully the equal in sophistication of, say, Roman law in its pre–modern development. Shari'a affords ample materials to the modern Islamic legal theorist or reformer seeking to construct a distinctively Islamic legal basis for a modern society. Because of the commercial orientation of the Arab people and of Muslim culture, it is perhaps particularly well–suited to serving as the basis of a modern system of business law.

But the modern Islamic thinker will find much greater difficulties when he turns to the criminal law, and to penology. In these areas, Shari'a was hardly developed at all, essentially because it was so largely excluded from the government–run criminal law and penal systems of states in traditional Islamdom. Instead it was community law, largely independent of government.

The modern Islamic reformer, whether a serious and devout intellectual, or even a cynical politician, will wish to create (or, in the latter case, will wish to claim he is creating) an Islamic state — something for which, as we have seen, there is really hardly any precedent in Islamicate history after the Prophet's own day. It is to the modern experience in creating, or attempting to create, an Islamic criminal jurisprudence and penology that we must now turn.

CHAPTER III

ISLAMIC PENOLOGY: CONTEMPORARY THOUGHT AND GOVERNMENTAL PRACTICE

We may now turn from the historical development of the Shari'a, "Islamic law," to consider the development of a contemporary Islamic criminal jurisprudence and penology, and attempts to apply Islamic principles in contemporary state practice.

Beginning in the last century, reformers in various parts of the Islamic world sought to find ways by which Islamdom could meet the Western challenge, which was then reaching a pitch and intensity never before seen in the long relationship between the two civilizations. These reformers were found primarily in Egypt, long an intellectual center of Islamdom, and in British India, where Islam had its own distinctive experience, and faced the special challenge of adapting itself to conditions as the "crown jewel" of the British Empire, where British–style jurisprudence was established in the fullest degree. The earliest reformers tended to be either "Westernizers," prepared to adopt Western ideas wholesale, including Western jurisprudence and penology, or traditionalists, who called for rejection of the West, but did not feel themselves called upon to develop in detail new Islamic formulations — a return to the pristine past being judged sufficient. Since that time, a number of "neotraditionalist" reformers have emerged, calling neither for Westernization nor a simple return to a (real or imagined) past, but for construction of a

new society rooted in basic Islamic values. It is among thinkers of the last group that discussion of a modern Islamic jurisprudence has emerged.

In addition, a number of Muslim (or Muslim–dominated) states have, in recent years, moved with great fanfare to adopt "Islamic law" and punishments. These include, most notably, Iran, Pakistan, Saudi Arabia, and Sudan. These states present us with most of our available evidence of the application, or attempted application, of Islamic criminal procedure and penology in the modern world.

Even for these states, the actual information available regarding procedure and punishments is extremely limited. There is considerable reportage in the Western press of the more dramatic impositions of Islamic punishments of the sort that shock right–thinking Westerners — beheadings, stonings, amputations of hands. Actual, detailed information about the rates of imposition of various punishments, about criminal–court procedures, and other features about criminal procedure and penology are, however, largely lacking. In many cases this information may not have been compiled at all; even if it has been, it is not readily available to investigators. Thus, our information on actual governmental practices is largely anecdotal rather than systematic; as we shall see below, our information on "normative" practice is even more limited for historical reasons which were outlined in the previous chapter.

The first general point we must note is that, everywhere in the Islamic world, the application of an Islamic criminal law and penology is a very recent development. Between the eighteenth and twentieth centuries, most of the Muslim world fell under either Western colonial rule or "neo–colonial" Western cultural domination. Under Western rule or influence, preexisting

legal systems were in large measure scrapped and replaced by Western–style practice in police procedure, courtrooms, and the philosophy and application of criminal punishment.

Even after direct Western domination began to recede, Western influence remained paramount in the criminal justice systems of the Islamic world. The first generation of post–colonial leaders were, overwhelming, "modernizers." Their orientation might be "bourgeoise" (e.g., the early leadership of Pakistan) or it might be socialist–revolutionary (e.g., Egypt's Nasser). In either case, however, their concern was to apply Western techniques in the pursuit of nationalist goals; the furthest thing from their minds was to look back to the institutions and practices of the pre–Western past — which, in their minds, had produced the very weakness that left their societies open to Western exploitation.

Moreover, even if they had chosen to look to the Islamic past, they would have found very little to guide them in the areas of criminal justice and penology. As we saw in the previous chapter, the Islamic judicial tradition was minimally concerned with questions of criminal law and penology. The Qu'ran did, indeed, contain a few "canonical" punishments — such as death by stoning for adulterers — that were applied in the earliest Islamic community to specific crimes, along with some (quite strict) standards of evidence in criminal proceedings and a requirement for speedy trial. In later Islamic times, however, criminal justice had been almost entirely in the hands of arbitrary governmental authorities. According to Hodgson (1974: 339), these authorities tended for the most part to reject shari'a procedures (and punishments) as too mild for the practical conditions of authoritarian government in

the pre–Modern age.

Thus, as previously explained, when modern Islamic reformers have sought to create a system of "Islamic justice" for their criminal court systems, there has been no real tradition of Shari'a criminal justice to which they could turn for guidance. Their task, instead, has been to create, out of a handful of references in the Qur'an and general Islamic concepts of justice, a new system of criminal justice that could meet Islamic standards and answer to the practical needs of a modern society. This task is necessarily very difficult. In contrast, it has proven very much easier for politicians to proclaim the establishment of "Islamic justice," and carry out a few spectacular punishments in order to satisfy a frustrated urban lower–middle class and show their defiance of the West.

The first modern Islamic legal reformer to have a broad impact was probably Muhammad Abduh, who lived 1849–1905 CE, and who served as Mufti (chief Shari'a judge) of Egypt (Esposito, 1987: 47–49). He was a modernist reformer, who called for wholesale adoption of Western legal and juristic ideas. Therefore, he represents an important strain of Islamic thought regarding criminal justice. Notably, he was one of the few prominent thinkers to have actual courtroom experience as a senior Shari'a jurist. However, he cannot strictly be called a theorist of a new Islamic jurisprudence, since he made little reference to Shari'a in his thinking.

Even earlier, in Muslim India, Shah Wali Allah (1703–1762 CE) had called for sweeping reform, though along orthodox lines. He was firmly set against "extremism," and used materials from all four traditional schools of interpretation as sources (Bannerman 1988: 110ff). A later Indian reformer,

however, Abdul A' la Maududi, set the mainstream of Indian Muslim thought back on a strictly conservative and orthodox path. He said of the Shari'a that "nothing is superfluous, nothing is lacking" (Bannerman 1988: 123) — a perspective which offered little scope for further analysis and development of legal thought. His critics argued that he made "idealism ... and end in itself" (Bannerman 1988: 128). In effect, thinkers such as Maududi paved the way for the rather shallow imposition of "Islamic law" found, notably, in contemporary Pakistan. This same tendency was found in Egypt in the views of Hassan al Banna (1906–1944), founder of the Muslim Brotherhood (Bannerman 1988: 142ff). By arguing, in effect, that actions are more important than ideas, he tended to further isolate the practice of "Islamic regimes" from contemporary serious thought on Islamic principles of law.

Possibly the most thorough contemporary exposition of Islamic ideas as applied to law, including criminal law, is found in 'Abd Allah Ahmed Na'in, Toward an Islamic Reformation (1990). Na'in devotes a long chapter of his book to the problems of Islamic criminal law and punishment. He begins by identifying traditional categories of offenses and punishments (104–6). Hudud are specifically named offenses for which specific punishments are also defined. Jinayat are crimes such as homicide or causing of bodily harm, for which qisas—"exact retaliation" (e.g., an eye for an eye) is provided. Ta'zir are offenses which fall under the "residual discretionary power of the ruler," and for which diya, or monetary compensation, is among the available penalties.

Islamic scholars differ as to which offenses are so specifically defined in the Qu'ran as to qualify as hudud. These are crimes such as adultery and

bearing false witness. Whether or not apostasy from Islam falls into this category is in dispute. In any case, however, the number of hudud offenses are very few (see p. 49). By far the bulk of the criminal law would necessarily fall under the category of ta'zir—"residual discretion" of government, for which shari'a makes minimal provision. Indeed, Na'in notes that the broad encroachment of Western concepts into the criminal law of Muslim countries is due largely to the lack of a previously established shari'a criminal law:

> It may even be suggested that [Western] influence was the consequence rather than the cause of the diminished role of Shari'a in the administration of criminal justice.
>
> (Na'in 1990: 104)

Contemporary Muslim Legal Perspectives

Contemporary Muslim writers on the theory of criminal law and penology demonstrate a broad spectrum of views. Some, such as Na'in (1990) show a high degree of concern for the problems of applying Islamic law to non–Muslims, and also to what may loosely be called the international reputation of Islamic law. Thus, according to Na'in (1990: 102),

> One of the reasons Muslim countries are obligated to respect the standards set by international documents, especially in relation to the administration of criminal justice, is that they must protect the rights of aliens within their borders. All of these states have a significant number of aliens, some of whom are non–Muslims, who are subject to the criminal jurisdiction of the country. Criminal jurisdiction is not confined to nationals of the country and normally includes whoever happens to be within the territory of the state, even if they are there

> for a short time. Thus, even Saudi Arabia, which purports to restrict its citizenship to Muslims alone, has a significant and highly influential number of non–Muslims subject to its criminal jurisdiction. Under contemporary economic and political conditions, no country in the world is religiously monolithic, however traditional and "closed" it may wish to be.

We will return to Na'in's views of the problem of Islamic law and non–Muslims below.

A quite different tone is struck by Siddiqi (1979: 4), who proceeds from two premises: first, that Islam is the basis of morality, and second, that the absence of morality is fatal to the individual and the social order alike:

> Human behavior over thousands of years endorses this fact that the people who do not consider themselves as answerable and responsible to Allah, who act on this presumption that life is but of this world only, who measure one's success or failure according to the attainments achieved in this world in respect of wealth, power and popularity, who depending upon their materialistic views reject Allah's Guidance, do become a symbol of wickedness. They live like animals paying least regard to any moral values. Actually their moral values follow the footsteps of their desires and selfish ends. To achieve these ends, they commit every sort of cruelty and injustice. Their misdeeds convert the whole universe into a hell for others. All the mischief was introduced by Evil.
>
> (Siddiqi 1979: 4)

Siddiqi goes on to forcefully defend the canonical Shari'a punishments to which, in his view, Westerners unfairly object:

> The above [canonical) punishments especially those prescribed for theft and adultery have been condemned severely by the Western people. They often say, "Can we apply today the same barbarous punishments which were inflicted long ago in the desert. Is it permissible to cut a thief's hand for five shillings [sic]?" It is rather

> astonishing that this objection is raised by those who justified most inhuman act of history, the subjection of mankind to nuclear weapons whereby hundreds of thousands of men, women, children and even babies, all wholly innocent persons, were within no time put to death. How is it that the twentieth century permits the slaughter of forty thousand innocent people in North Africa but condemns the rightful punishment of one single criminal!
>
> (Siddiqi 1979: 26–27)

Siddiqi's argument here does not appear to be as strong as it might be. It is certainly true that the history of the West in the twentieth century affords grounds for arguing that the contemporary West is not the culmination of human civilization. But to some degree, at least, Siddiqi in rejecting Western criticisms of Islamic judicial punishments by pointing to the warlike violence of the West in recent decades could be said to be guilty of comparing apples and oranges.

If we are to restrict ourselves (as in this context we should) to criminal justice and penology, a more relevant criticism of the West would surely be the very high crime rates in some Western countries, most notably the United States itself. The twenty–five thousand or so murders in the United States each year would appear to constitute a much sharper criticism of Western attitudes (or at any rate American attitudes) towards criminal jurisprudence and penology than the forty thousand killed in North African political violence (Siddiqi 1979: 27). (Siddiqi does not make it clear what events he is referring to; possibly he means the Algerian war of independence against France.)

Siddiqi does address this aspect of comparative Western and Islamic penology more directly, though from the other side of the coin, by pointing to

the experience of Saudi Arabia:

> That the amputation of hand does in fact prove a deterrent will appear from the conditions prevailing in a country where it is now in force, that in Saudi Arabia. It is well known that in that country you can leave your house open and go to another town, and you can leave your shops, even jewelry shops unguarded when you go away to say your daily Prayers. Gorden Gaskell says: "Foreigners consider this a horrible punishment but even they admit that it has made Saudi Arabia the country with the lowest crime rate in the world."
>
> (Siddiqi 1979: 32)

In any case, however, Siddiqi is not concerned primarily with justifying Islamic punishments in secular Western terms. It appears to be sufficient, in his view, to firmly set forth a firmly religious Muslim view of penology.

> It appears that the criticism on the severity of punishments is due to a failure to realize the spiritual nature of punishment. A punishment is not cruelly inflicted on one man by another. It is a sacrifice offered by Society for maintaining the purity of its moral life and it is also, at least so far as Muslims are concerned, an atonement, and both these, that is, the sacrifice and the atonement are acts of the highest spiritual merit.
>
> (Siddiqi 1979: 31–32)

Na'in, however, does not consider it sufficient to justify Islamic penology in purely Islamic and religious terms. Indeed, as we shall see below, the problem of non–Muslims subject to Islamic penal law is a major concern of his. Na'in also offers harsh criticism of (unnamed) Islamic neo–traditionalists who seek to impose Shari'a criminal and penal law wholesale. In his view, these advocates are guilty of misuse of Islamic sources in a way that, to Na'in, verges upon intellectual dishonesty. He admits that their view is

popular among Muslims, but insists that the problem of justifying Islamic practice in non–Islamic terms is one that cannot be dismissed.

> Since attaining independence, mainly after World War II, however, many Muslim countries experienced mounting demands for the application of Shari'a criminal law. In response to criticisms of Shari'a criminal law as archaic and inadequate, the proponents of the total and immediate application of this branch of Shari'a have resorted to "anachronistic projections of modern principles of criminal justice back into a legal order in which they were completely unknown." In so doing, Muslim writers of this group display a high degree of eclecticism, quoting major figures of historical Islamic jurisprudence along with minor ones, jurists of the main schools along with ones from minor or extinct schools, Sunni scholars along with Shi'i ones, reformers along with traditionalists.
>
> Despite the scholarly weakness, if not intellectual dishonesty, of the proponents of the total and immediate implementation of the criminal law of Shari'a, the strong influence of their religious logic upon the hearts and minds of Muslims should not be underestimated. Ordinary Muslims are usually torn between a sense of religious duty to comply with Shari'a and the practical difficulties of performing that duty. They are therefore likely to accept a misrepresentation of Shari'a that claims to resolve any ambivalence or anxiety on the particular issue rather than face the responsibility of reinterpretation and reformulation of Shari'a itself. Nevertheless, the substance and essential validity of the objections raised by the opponents of the modern application of the criminal law of Shari'a must be admitted and addressed.
>
> (Na'in 1990: 106–107)

Acutely aware of how alien and harsh the traditional canonical punishments seem to contemporary non–Muslims, Na'in emphasizes that — however much Muslims may accept them as revelation — if they are to have any acceptability in the eyes of non–Muslims, they must be justified in other than

religious terms.

He argues that, in general, we (Westerners, and secularminded Muslims as well) use sociological reasoning and value judgements in evaluating the appropriateness of punishments:

> When applied to hudud, this analysis may lead to the following conclusions. Our independent human sense of justice may find that, for example, amputation of the right hand is excessively harsh punishment for sariqa (theft). Again, we may feel that stoning to death is excessively harsh punishment for zina (fornication) by a married person. Such views of the appropriateness of the hudud punishments are based on our value judgment [sic] of the moral culpability and social consequences of the conduct in question. From the religious point of view, however, a believe must hold any human value judgement to be subordinate to divine judgement as expressed in revelation. He or she should accept divine value judgement and seek to justify and understand it rather than reject it on the basis of his or her own independent human value judgment.
>
> Given this religious imperative, a Muslim is supposed to believe that the specified hudud punishments are appropriate and will achieve any conceivable social and personal good because God prescribed them. From this point of view, it is futile to look for cultural indication of hudud punishments. For the believer, the punishment is strictly prescribed because God said so.
>
> Nevertheless, and however convincing religious logic may be to a believer, it should be conceded that it has no validity for a nonbeliever. Unless hudud can be justified on rational grounds, these laws cannot be reasonably enforced against non–Muslims because they would not appreciate their religious rationale and would not be able to benefit from their ultimate religious good.
>
> (Na'in 1990: 113)

In short, there is a lively debate among contemporary Muslim legal and penal scholars regarding the place of Islamic punishments in the modern

world. Na'in and Siddiqi may be taken as reflective of two broad positions, which we may — borrowing from contemporary American dialog on penology and the role of religion in public affairs in general — respectively characterize as "liberal" and "conservative."

The liberal position, as typified by Na'in (1990), does not call for the wholesale rejection of Shari'a, including the canonical punishments. It does, however, accept "modernity" as imposing new imperatives which a justice and penal system must meet, and calls for a broad rethinking of Shari'a in order to adapt it to the multi–religious and multi–cultural contemporary world. In contrast, Siddiqi (1979) has no hesitation in reaffirming traditional Shari'a punishments in their full force, with no concession to possible Western or secularist sensibilities. In Siddiqi's view, it is rather the West and the secularists who must adapt.

The Purpose of Punishment

In the modern West, the philosophy of penology has changed a number of times in recent decades — most recently, tending to go from seeking "rehabilitation" back towards reaffirming a purely punitive goal. A friend from California has remarked that California state prisons' names reflect these changing attitudes, shifting over the years from "Prison" to euphemisms like "Men's Colony" and back most recently to "Prison."

Siddiqi (1979: 9–12) presents a firmly traditionalist view of the goals of Islamic punishment:

Humiliation for the convict and the lesson for the public is the purpose of punishment. Thus the object of punishment is:

1. To award punishment to the culprit equal to the magnitude of his guilt.

2. To prevent him for [sic] repeating the crime.

3. To serve as a lesson for others so that inclinations of crime be removed through this operation and none may dare commit crime.

4. Punishment be given publicly so that the officer may not favour any one while inflicting punishment. This public display will have deterrent effect, and all those in the public who had inclination of committing crime will know that they will have to endure such punishment if they commit a crime.

5. Preservation of honour and chastity.

6. Preservation of Life.

7. Preservation of Property.

He goes on to list what he views as some basic characteristics of Islamic punishments, characteristics which in his view are given insufficient attention by critics of Islamic penology.

Punishments prescribed by Islam have been severely objected to by the opponents of Islam [for their severity]. But apart from being severe these punishments have some prominent characteristics which are not usually taken into account while making this objection. Some of the chief characteristics are:

1. These punishments are inflicted as a last resort.

2. These punishments are inflicted to serve as an example to others.

3. These punishments are reformative.

4. These punishments are retributive, and redressive.

(Siddiqi 1979: 13)

Nevertheless, recent Islamic legal theorists have tended to lay a particularly strong stress on the reformative aspects of Islamic criminal justice and penology. (This, of course, was a stress that was most highly acceptable to the West in the period from the 1950s to the 1970s). Indeed, one recent writer finds it necessarily to stress that rehabilitation is not the sole purpose of punishment.

> There is now such an increased emphasis on the reformation and rehabilitation of the offender in Islamic law that many people have mistakenly believed that those are the only objectives of the system. However, that view does not accurately reflect reality or represent the wishes of Muslim societies. For crime is not just an event which provides an occasion for rebuilding the character of the criminals, but an evil which the criminal intentionally and voluntarily inflicted on society. It is thus necessary for society to respond to such acts with punitive measures sufficiently painful to deter the criminal from walking in the criminal path again and to deter others. If reform were the only objective of punishment, it would frequently be unnecessary to punish. Also it would mean that those who could not be reformed could [sic] be punished.
>
> (al–Alfi 1982: 231)

The final line is clearly a misprint in the original text; al–Alfi surely intends to say that if rehabilitation were the sole purpose of punishment, it would not be appropriate to punish incorrigibles — since they would presumably fail to learn or heed the intended lesson. He goes on to list three general objectives of punishment, objectives which are highly consistent with Siddiqi's list:

> It seems clear that punishment must have the following three objectives: justice, general deterrence, and reformation or rehabilitation.
>
> (al–Alfi 1982: 231)

Equality before the law with respect to punishment is a basic Islamic principle (al–Alfi 1982: 230). Class, wealth, standing in the community, and other factors are not to be taken into account when administering punishment. (However, as we will see below, Na'in (1990) has raised questions regarding the application of Islamic punishments to non–Muslims.) Indeed, Siddiqi (1979: 10) gives the need to show that no inequality or favoritism is being given in penal administration as one reason for public administration of punishments.

Even "sovereign immunity" from punishment is not generally accepted by Islamic jurists, though there is a lack of unanimity on this point:

> Most jurists agree ... that in accordance with the equality concept, the Hadd punishment can be imposed even on the Imam (Head of State). A few jurists hold, however, that if the Imam commits an act punishable by Hadd, punishment should not be carried out because the authority to punish is derived from him, and because the social strife which might ensue from punishing the Head of State is likely to outweigh the benefit of such execution.
>
> (al–Alfi 1982: 230)

Standards of Evidence

The questions of criminal court procedure and standards of evidence in criminal trials are not, in the narrowest terms, aspects of penology per se.

However, in evaluating the significance and impact of Islamic punishments, it is important to bear in mind the very severe restrictions on the conditions under which a finding of guilt to specified Islamic offenses can or must lead to such punishments.

The following is a brief tabulation of hadd and qisas offenses, the standard of evidence required, and the punishment provided for in scripture (from Lippman, McConville, and Yerushalmi 1988: 42–44).

Hadd offenses:

Adultery: Four witnesses or confession

Penalty: Death by stoning if married; otherwise one hundred lashes.

Defamation (false accusation of adultery): Unsupported accusation

Penalty: Eighty lashes (forty for a slave)

Apostasy: Two witnesses or confessions

Penalty: Death by beheading for a male; imprisonment until repentance for a female.

Highway robbery: Two witnesses or confessions

Penalty: With homicide: death by beheading; otherwise amputation of right hand and left foot.

Use of alcohol: Two witnesses or confessions

Penalty: Eighty lashes.

Theft: Two witnesses or confessions

Penalty: First offense: amputation of hand.
Second: amputation of other hand.
Third: amputation of foot.

Rebellion: Two witnesses or confessions

Penalty: Death if captured; if surrendered or arrested, state discretion (Ta'zir).

Qisas offenses:

Willful murder (with weapon): Two witnesses or confessions

Penalty: Victim's kin choice; death or compensation.

Voluntary manslaughter: Two witnesses or confessions

Penalty: Fine, exclusion from inheritance, religious expiation, or pardon.

Homicide by misadventure: Two witnesses or confessions

Penalty: Fine, exclusion from inheritance, religious expiation, or pardon.

Homicide by intermediate cause: Two witnesses or confessions

Penalty: Compensation; loss of inheritance.

Intentional bodily harm: Two witnesses or confessions

Unintentional bodily harm: Two witnesses or confessions

Penalty: Compensation.

It will be noted that, in general, only eyewitness testimony or confessions — the latter repeated at least twice in public—are sufficient to convict.

Certainly the occasions on which there are four adult male eyewitnesses to adultery must be rare in the extreme! (I have read, but unfortunately could not relocate the source, that convictions on adultery are almost invariably the result of presumably--remorseful confession.)

In general, eligibility to serve as a witness is restricted to adult Muslim males of good reputation in the community. Judges are free to dismiss witnesses who, for any reason, they find unreliable.

> Noel J. Coulson writes of a qadi who disqualified a witness who was a close personal friend. The qadi had concluded that the friend lacked the capacity for objectivity because on one occasion he was romantically attached to a female slave, and rather than temper his feelings for the prospective witness purchased her for an amount far in excess of her market value.
>
> (Lippman, McConville, and Yerushalmi 1988: 69–70)

Islamic rules regarding "circumstantial evidence" are extraordinarily strict. Documents have no standing, and only eyewitness testimony in the strongest sense of the term is considered sufficient. One wonders how many contemporary American criminal cases would result in convictions if held to the following standard:

> Islamic rules of evidence stipulate that should there be no confession, a defendant's guilt must be established by direct rather than circumstantial evidence; documents have no independent evidentiary value. A homicide, for instance, cannot be proved by the fact that witnesses overheard a violent struggle, saw the accused emerge from his house with a bloodstained knife, and then discovered the victim's body in the house. Circumstantial evidence is termed "suspicion" and will only support a conviction where it is so strong that it is considered conclusive, or when it is supported by fifty confirmatory oaths (either oaths taken by fifty people or a total of fifty oaths by

> less than fifty people) taken by the relatives of the victim swearing to the guilt of the accused.
> (Lippman, McConville, and Yerushalmi 1988: 70)

Some schools of Islamic legal thought allow for presumptive evidence of guilt, but only under relatively narrowly–drawn conditions.

> Jurists differ as to whether a qadi may rely upon circumstantial presumptions to establish a defendant's guilt. The Maliki school permits fornication to be legally established by the birth of a child to a female who has never been married and who has not made a prior claim of rape. Possession of stolen property and the odor of alcohol on the breath are recognized by some jurists as presumptions that establish the crimes of theft and drinking alcohol.
> (Lippman, McConville, and Yerushalmi 1988: 70–71)

The last point, alcohol on the breath, is highly suggestive of the standards now commonly used for presumptive evidence of drunk driving in the West, save that machines have been substituted for the judgement of an arresting officer. The source does not make it clear, unfortunately, whether possession of stolen property per se is regarded as presumptive, or whether it is a defense that the possessor bought the goods under conditions under which he had a good–faith reason to suppose they were not stolen. (In any case, bear in mind that there is no universal agreement that this constitutes presumptive evidence.)

Some Problems in Islamic Penology

It will be appreciated that only a relatively small number of offenses fall directly under the established provisions of Islamic criminal law. The hadd

crimes, for which no variance of punishment is permitted, are as noted earlier only six or eight in number. Qisas crimes are also relatively few. Most of the criminal law is necessarily ta'zir offenses, and since the Shari'a makes minimal provision for these, an Islamic legal system is free to adopt whatever procedures and punishments are consistent with general Islamic principles and with the values of the society.

One interesting problem raised by Islamic penology, however, regards jinayat, or crimes for which qisas, "exact retaliation," is provided in Shari'a. These penalties are to be imposed at the discretion of the victim (or his or her kin); who have the option of accepting compensation, diya. This element of "victim's discretion" in the carrying out of criminal penalties is something entirely alien to contemporary Western law, of course; in the modern West, all criminal cases are brought by the State as complaintant, and only civil cases are preferred by private persons. (It is worth noting, however, that a recent trend in the United States has been to give victims a larger role and some voice in the criminal–justice process, including the penalty phase.)

Na'in addresses himself in some detail to the problem of victim discretion in jinayat cases, and concludes that while the final prosecutorial discretion in criminal cases should lie with the State, Shari'a requires retention of the victim's role.

> [W]ho should have the final word on whether to prosecute and whether qisas or diya should be imposed in case of conviction? Is it possible to vest the power to make final decisions on these matters in official organs (prosecutorial decisions in an executive office and sentencing decisions in the courts) provided that such organs act in light of the circumstances of the offense and the antecedents of the

> offender? The main problem with this approach is that it may be seen as infringing on the rights of the victim or his or her kin entrenched by the clear and definite [texts of the Qu'ran] ....
>
> The answer proposed here is that official reaction to the private wishes of the victim (or his or her kin) should depend on the nature and reasonableness of those wishes. If the private person(s) wish to forfeit her (their) interest, the state may still wish to prosecute to enforce its view of the public interest. This may be done through the discretionary power of ta'zir. If, however, the victim (or his or her kin) insists on prosecuting under circumstances which, in official estimate, do not warrant a prosecution, the official organs could decline to prosecute on the grounds that the conditions necessary for the exercise of private discretion had not arisen. If a prosecution was warranted and conviction followed, the terms of [the Qu'ran] would not permit denying the victim (or his or her kin) the choice between qisas or diya.
>
> (Na'in 1990: 117–18)

Islamic Criminal Law and Non-Muslims

A much more sensitive and fundamental question, under modern conditions of mobility and intermixture of populations (Na'in 1990: 102), involves the subjection of non–Muslim citizens or residents of Muslim states to Islamic criminal law. The central issue is the degree to which it is appropriate — or politically possible — to impose a law which is based explicitly on religious revelation upon those who do not accept that revelation.

Those who hold the conservative perspective, such as Siddiqi, have no difficulties upon this account. As we saw earlier, Siddiqi (1979: 4) holds what might be called a "natural law" view of Islamic law. Morality is a

natural necessity for human social life; Islam holds the key to morality; therefore, reason as well as faith provides a sufficient grounds for the imposition of Shari'a on all persons, Muslim or non–Muslim.

Na'in (1990) appears to have some sympathy for this reasoning. Nevertheless, he acknowledges that this sort of argument is ultimately only persuasive to Muslims:

> Taking the example of the hadd punishment for zina (fornication), [Ustadh Mahmoud] said that since "the fornicator sought easy pleasure without regard for Shari'a [law], he [she] is made to suffer pain in order to recover his [her] senses. An individual tends to lean more towards pleasure than towards pain. By pulling the self to pain, when it succumbs to prohibited pleasure, he [she] reestablishes a certain equilibrium and avoids recklessness and folly."
>
> This reasoning may or may not be convincing to non–Muslims. It must be emphasized, however, that Muslims' belief that hudud are in the best interests of non–Muslims as well as Muslims is irrelevant from the point of view of non–Muslims, who do not share in that belief. Yet there is high authority in Shari'a for the enforcement of certain hadd punishments on non–Muslims. On the understanding that stoning to death for zina by a married person is part of Jewish law, the Prophet is reported to have applied this punishment to Jews under his rule in the Medina state. Does this mean that enforcement of the criminal law will depend on the religion of the offender? Who has the competence to determine the religious law of non–Muslims, and according to which sources and interpretation? Is Jewish or Christian religious law, for example, to be determined by Jewish or Christian theologians from their own sources or is it to be determined by Muslims with reference to Muslim sources on what the law is supposed to be?
>
> (Na'in 1990: 114)

One can imagine the difficulties involved in applying this type of reasoning with respect to modern Westerners. Within the United States, Christian

denominations and groups run a range from the very strict to the very liberal. One section of the population is entirely secular and non–religious in its beliefs, while an indeterminate larger section comprises nominal believers who seldom if ever practice any part of their religion. Do they, then, truly "belong" to and "believe" in that religion.

Na'in notes that other practical problems are also raised by the imposition of a religious test for the application of Islamic criminal law:

> To exempt non–Muslims from the application of hudud may create other serious practical problems of enforcement, including the question of determining the religious affiliation of the offender. If hudud apply only to Muslims and ridda (apostasy) is not punishable by death, as suggested earlier, an offender may attempt to avoid a hadd punishment by repudiating his or her faith in Islam. Could this problem be resolved by relating the imposition of hudud punishments to the religious belief of the offender as it was objectively determined to have been at the time of the commission of the offense and not at any subsequent point?
>
> Such an approach to criminal punishment may be challenged as discrimination on grounds of religion in violation of the constitutional right of equality before the law. In other words, a Muslim citizen may object to be subjected to punishments not applicable to non–Muslims. Can this objection be sufficiently answered by the voluntary nature of the negative consequences of discrimination? Can it be convincingly argued that a Muslim has voluntarily accepted being subjected to hudud by becoming or remaining a Muslim in the knowledge that such religious belief will make him or her subject to the prescribed punishment?
>
> (Na'in 1990: 114)

There is a certain logic to this position. The decision to regard oneself as a Muslim does reasonably imply a willingness to accept the strict standards of Muslim conduct, in turn for which the believer presumably expects to receive

the spiritual compensations of Muslim belief. And if, in fact, apostasy is to be punished by death (as a hadd offense), then there presumably will be no practical difficulty due to believers abjuring their faith in order to escape punishment for other Shari'a offenses. Na'in, however, does not believe that apostasy should be regarded as a hadd offense, and as we saw earlier there is a long–standing debate on this question. Even if apostasy is not punishable, it could be argued that the differential application of the religious law is then a test of faith: the believer who strayed will accept punishment in this life in turn for the benefits of steadfast faith in the hereafter. Nevertheless, Na'in finds the problem to be insuperable in practice. He therefore argues in favor of restrictions upon the application of Shari'a in practice in the modern state, and justifies those in religious terms by an appeal to broader Islamic principles:

> In conclusion, I would suggest that purely religious rationalization of hudud is insufficient justification for including these offenses and their punishments in the criminal law of a modern nation–state. Yet no effort has been made to justify hudud in cross–cultural, cross–religious penological and sociological terms. From an Islamic point of view, I would argue that the fundamental Islamic principles of freedom of religion and justice in government clearly indicate that Islamic penal measures should not be imposed on non–Muslims against their will.
>
> (Na'in 1990: 114–115)

Indeed, Na'in finds an argument in long–standing Muslim tradition for restriction on the application of Shari'a criminal law. The extremely strict standards of evidence, discussed above, argue in favor of a general Islamic predisposition to avoid the strict application of the penal law as far as

possible.

> Moreover, penological and sociological justification of hudud is relevant at another level. As suggested above, Muslim religious obligation to accept hudud in principle is consistent with efforts to restrict their practical application. A desire to restrict the application of hudud in practice seems to be the reason behind the elaborate technical requirements developed in historical Islamic jurisprudence.
> (Na'in 1990: 115)

Thus, in the end, Na'in is confident in putting the case for restriction on the application of Shari'a criminal and penal law.

> The general conclusion of this section is that there is too much uncertainty and potential for abuse for hudud to be enforced under the current state of Shari'a on the subject.
> (Na'in 1990: 115)

It is worth noting that the problem of applying Islamic criminal law to non–Muslims is by no means a new one in Islamic history. The Umayyad and Abbasid Caliphates, and later the Ottoman Turkish Empire, were all in the position of Muslim states which held political authority over long–established communities totalling millions of non–Muslims (Hodgson 1974). These states followed a broadly consistent practice in their dealing with non–Muslims: these communities tended to be granted a wide latitude of local communitarian self–government so long as they acknowledged the overarching authority of the Muslim state. A well–established general approach to "multiculturalism" within a state is thus available to Muslim thinkers.

Muslim citizens as a whole constitute the Ummah, or Islamic

> nation. Therefore, non–Muslims are not politically part of that nation. In no way does this affect equality before the law or equal justice. All who live under the protective covenant of the Shari'a are entitled to all privileges and immunities without distinction of race, religion, or national origin ... The distinction remains one of administration and not of human rights. Translated in terms of the modern socio–political context, the Muslims constituting the majority govern and legislate but cannot affect matters specifically left to the minorities by the Qu'ranic mandate or by covenant. Islam foresaw the possibility of the majority repressing the minority and specified certain rights for the non–Muslim minorities which cannot be tampered with even by the ruling majority.
>
> (Bassiouni 1982: 21)

However, an arrangement which worked well in the pre–modern era, when mobility and social contacts were limited, and populations might be physically separated into different "quarters" of a city, poses much greater difficulty under modern conditions. The experience of the imposition of Shari'a criminal law in the Sudan encourages Na'in (1990) in his view that contemporary conditions are not suited to the broad imposition of Shari'a criminal law.

> Given current penological and sociological thinking, it may seem extremely unlikely that non-Muslims and secularist Muslims would ever accept hudud and qisas punishments. Nevertheless, obtaining the consent of these segments of the population to the application of these punishments is the only fair and practical approach. As has been clearly demonstrated by the recent experience of the Sudan, imposing Shari'a punishments on non–Muslim citizens against their will is a clear violation of their fundamental rights. It is the obligation of religious Muslims who favor the application of these punishments to find ways of convincing non–Muslims and secularist Muslims of the validity and utility of these punishments.
>
> It has been suggested that the application of Shari'a punishments

> should be restricted to Muslims. But this approach may not be acceptable to the Muslim majority because it is contrary to Shari'a. Moreover, as explained earlier, linking the application of penal laws to religion raises serious practical difficulties in daily enforcement.
> (Na'in 1990: 136)

It is clear, however, that a more conservative thinker such as Siddiqi (1979) would not agree with this sort of restriction. It also seems reasonable to argue that, at any rate under contemporary conditions, public opinion in Muslim–majority countries tends to favor the broader rather than the more restrictive application of Shari'a.

It is possible, however, that these views will change, particularly if a modern Shari'a legal tradition of practice is developed. Present–day "Islamic fundamentalism" seems to be in substantial part a reaction to a long period of imperialism or neo–imperialism and humiliation at the hands of the West. As this period fades into the past, and the Islamicate world gains confidence in itself, Muslims may lose some of the defensiveness which they now seem sometimes to display.

General Remarks on Modern Islamic Legal Values

How would a mature Islamic system of criminal justice and penology appear to a Westerner? This is not, of course, a question at all central to Islamic theorists, whose natural concerns are with the religious validity of their ideas, and with what their own community thinks of them. But it is of some interest, given the role of "Islamic justice" in countries like Iran of reinforcing hostile stereotypes. One rather unsympathetic observer has ar-

gued that contemporary Islamic human–rights advocates "are in effect rejecting the bulk of the Islamic legal tradition" (Mayer 1991: 55). But there is no inherent reason why an Islamic penology should, in principle, be as shocking to Western sensibilities as they have been in such cases as that of Numieri's Sudan. It is far from inevitable, then, that a serious, mature, modern Shari'a–based criminal jurisprudence and penology would resemble that of Numieri's Sudan.

It is worth noting the importance of monetary compensation (diya) in Shari'a, as a (preferred) alternative to qisas punishments. These concepts lend themselves to an extensive application of "recompensation" and "community service," ideas that are only now beginning to come into vogue in the West, and which are highly consistent with general Islamic values and principles. Na'in has no explicit discussion of this approach, but it follows logically from his discussion. On the other hand, there is little shari'a basis for the most typical form of criminal punishment in the West, imprisonment. As we shall see below, the Saudis have interpreted life imprisonment for some offenses as analogous to "exile," provided in the Qu'ran, but in general Shari'a punishments — in the rather few cases where such were specified — were corporal or compensatory in nature.

In examining "Islamic justice" in practice, it must be noted that modern attempts to impose it in criminal cases have, for the most part, taken place in a revolutionary or quasi–revolutionary context. The most dramatic instance of this is Khomeini's Iran, where, as we shall see, revolutionary "Islamic" justice has for the most part been imposed by local komiteh bodies, barely or not at all answerable to any central authority. In other countries, such as

Pakistan and Sudan, "Islamic" criminal courts and penalties have been roughly superimposed alongside Western–style courts and practices by individual rulers. In spite of their superficial Islamic gloss, these courts and the penalties they mete out bear much closer comparison to the arbitrary governmental impositions of the pre–Western Islamic world than they do to the practice of pre–Western Shari'a courts, whose ambit was so largely limited to "civil" cases.

"Islamic Law" in Practice

We may now turn to examine what is known about the application of "Islamic" penology in four Islamic countries: Saudi Arabia, Iran, Pakistan, and Sudan. Each of these represents a distinct situation; the profound differences among them may be summarized as follows:

Of these states, only Saudi Arabia did not adopt "Islamic justice" in conscious reaction to previous Western domination and Western–style courts and penalties. In that sense, Saudi Arabia could be said to be the only instance in the modern world of a "pristine" Islamic criminal legal system. Even in Saudi Arabia, however, present practice is not built on any long tradition of Islamic criminal practice. The Arabian Peninsula was not united through most of its history; such criminal justice as there was, was local, frequently tribal. The Kingdom of Saudi Arabia came into being only in the twentieth century. Moreover, the Saudi state was and is based on the strict Wahhabi interpretation of Islam, and Wahhabism is a radical reformist movement in the Islamic context, and cannot be regarded as constituting the

mainstream of Islamic thought. Nevertheless, only in Saudi Arabia has a Shari'a–based system of criminal justice operated on a regular basis for a substantial period of time; only in Saudi Arabia, therefore, can we speak of anything like "standard" governmental practice.

In Iran, "Islamic justice" was imposed in the wake of the revolution of 1979; it therefore has much more in common with "revolutionary justice" as encountered in revolutionary societies in other parts of the world than it does with the standard procedures of established legal systems. Ideologically, it is based largely on the writings of the Ayatollah Khomeini and the views of his followers.

In both Pakistan and Sudan, "Islamic justice" was imposed in the 1980s, not in the wake of a broad social revolution, but by the fiat of military rulers, Zia in Pakistan (in power 1979–1988) and Numieri in Sudan (1971–1985). In the case of Pakistan, it can be said that there was indeed an extensive pre–existing body of thought about what Islamic justice should mean, since Islamic reformers and intellectuals have been active in Pakistan since independence (1947), and they operate in a modern tradition which goes back to the nineteenth century, when Muslims in British–ruled India began to respond intellectually to the Western challenge. In contrast, Sudan has no deep local intellectual tradition on which to draw. Thus, while the imposition of Islamic law in both countries was done by the fiat of military rulers, it has a much more arbitrary character in Sudan. This character is only accentuated by the conflict within Sudan between the Arab and Islamic north, which dominates, and the black, predominantly Christian and animist south of the country, where there is no local base of support for the imposition of Islamic legal

ideas.

Saudi Arabia

As outlined above, Saudi Arabia represents our only case of an Islamic legal system which was developed in a context other than that of conscious response to previous Western domination. Instead, the formation of Saudi Arabia was, for practical purposes, an initial state formation in a region previously fragmented and largely tribal, but almost entirely Islamic in overall culture and values.

Abdul Aziz ibn Sa'ud, the first King of Saudi Arabia, began to consolidate this state in its early years, officially founded it in 1932, and ruled until his death in 1953. He did not hesitate to use Western techniques and tools — often alongside more traditional institutions and practices — in establishing Saudi authority across most of the Arabian Peninsula. Thus, his original forces included both an army trained and equipped in Western fashion, and the Ikhwan, an armed force of Wahhabi zealots. (Once securely in power, the Ikhwan was suppressed as a threat, but the Wahhabi orientation of the state remained and remains strong; see the extensive account of modern Saudi Arabia's foundation in Lacey 1982.)

A similar parallelism operates today in Saudi legal, police, and security institutions. Saudi Arabia has a national police force which is trained and equipped in essentially Western fashion. This is a practical necessity; regular police existed neither in traditional Islamic society nor in any other premodern society (including that of the West; the first police force in the modern sense was the London metropolitan police founded by Sir Robert Peel, and still

called "Bobbies," a term derived from Peel's first name). Alongside this, however, operates the Mutawa, the "Society for the Prevention of Vice and Encouragement of Virtue" — more commonly called the religious police, organized under the ultimate control of religious leaders long associated with the royal family.

In a general sense, the Mutawa can be regarded as derived from the long–standing tradition of "market police" in the Islamic world. Such market police were traditionally answerable primarily to Shari'a courts, and were charged primarily with overseeing the smooth operation of the markets, assurance of honest weights and measures, on–the–spot resolution of minor disputes, and summary punishment of minor infractions. The scope of their police and penal activities were, in practice, limited by the government, which reserved major punishments for itself, but which — as discussed in the previous chapter — commonly deferred to the convenience and prestige of Shari'a process in regulating the ordinary operations of the bazaar.

The Mutawa can be said to operate in much the same way today. Legally, they are not empowered to make arrests, and must call the regular (Western–style) police for this purpose, though this limitation is evidently not always honored. They are, however, armed with canes, and regularly use these to administer summary correction of such religious offenses as wearing of inappropriate clothing or failure to suspend other business and pray in a public place when the call to prayer is made. Especially during the Gulf War, numerous minor incidents were reported between Mutawa members and Western troops in Saudi towns, but no serious incidents stemming from the Mutawa have been reported.

It will be appreciated that the type of summary minor punishments administered by the Mutawa are entirely alien to Western legal and penal practices and categories, though it might be argued that the actual practice of American police in minority neighborhoods — "rousting" and "hassling" of youths, for example — bear some comparison to the Mutawa administration of informal street justice in minor cases.

More serious cases are referred to the regular police, who arrest, investigate, and interrogate in conventional Western oriented style. Police judicial procedures tend to reflect Civil Code practice (derived from Roman law and the Code Napoleon) rather than Anglo–American practice; for example, suspects are required to make a statement to the police without access to a lawyer. The courts to which suspects are referred on "probable cause" are, however, Shari'a courts. Until 1969 the court system was presided over by the Grand Mufti, head of the Saudi ulama. Upon the death of the last Grand Mufti, direction of the court system was given to the Ministry of Justice; thus, somewhat paradoxically, Shari'a law is interpreted and handed down by a quasi–secular body (al–Yassini 1985: 115). Judges are chosen by the government from top law–school graduates; they are reported to be "widely respected for their incorruptibility" (Lamb 1987:117). Standards of evidence appear to follow Shari'a standards, but the speedy–trial requirement seems to be ignored;

> Suspects can be held for months, even years, while investigations are conducted at a leisurely pace.
>
> (Lamb 1987: 117)

The strict requirements of evidence in adultery cases—four eyewitnesses

to the act — are evidently followed, and punishments for this offense are generally based on confession by the accused, the only alternative basis for conviction provided by Shari'a.

In any legal system, confessions provide great opportunity for abuse by courts and police authorities, who can coerce confessions, or fabricate them outside. Western observers of Saudi Arabia, however, seem to be generally agreed that abuse of this sort is not the practice in Saudi courts, though it may occur in some politically–charged cases.

Where execution or corporal punishment — ranging from amputation of limbs to floggings — are provided for specific offenses by the Qur'an, these are carried out in public, in front of the mosque, following Friday services. For other offenses, for which the canonical punishment was exile, Saudi jurists have interpreted life imprisonment to be the modern equivalent of exile. In general, there has been increasing use of imprisonment as a penalty in Saudi Arabia, a practice at one time virtually unknown. Accordingly, the administrative manpower (including guards and other staff) devoted to the prison system has expanded greatly in the last couple of decades (Heper and Israeli 1985: 33–35).

Gradually, moreover, non–religious courts have come to infringe increasingly on the administration of justice in Saudi Arabia, primarily in response to situations which were not contemplated in Shari'a tradition, and for which no suitable procedure or punitive action could be derived from Islamic sources. Traffic regulations are the most familiar of these new situations; Islamic legal traditions have little guidance that can be applied to situations such as speed limits or keeping to one side of a road. Others arise in areas of business

regulation, particularly where certain international standards must be met (e.g., assignment and use of radio frequencies), essentially for the sake of convenience, but cannot be logically placed in the framework of Islamic jurisprudence. The role of these non–religious courts may be compared, roughly, to the role of administrative hearings in American governmental practice. The distinction between such courts and proper courts of law is carefully acknowledged; such courts enforce "regulations," not laws.

Western observers sympathetic to Saudi practice have argued in its defense that it helps produce a very low crime rate and a sense of everyday personal security unknown in the contemporary United States. In 1982, Saudi Arabia reported a total of 14,220 crimes, major or minor (presumably not counting minor infractions summarily dealt with by the Mutawa). In that same year, Los Angeles County alone (of population comparable to Saudi Arabia) reported 499,499 arrests (not counting crimes for which no suspect was arrested). Saudi Arabia had 91 premeditated murders; L.A. county reported 1,415 (Lamb 1987: 116).

It must be pointed out, however, that the Saudi criminal justice system alone may not be responsible for Saudi Arabia's low crime rate. Saudi Arabia is a wealthy society, which reduces the motivation for economic crimes such as theft or robbery. It is also a highly homogenous society, and therefore lacking many of the social tensions that lead to crimes in countries with more ethnically and culturally diverse populations. It is also worth noting that most Arab countries have low rates of common crime, for which the religious, family–oriented Arab culture may ultimately deserve the chief credit, regardless of whether the justice and penal systems are "Islamic" or

secular and Western–oriented.

However the effectiveness of the Saudi criminal justice system is evaluated, it must be said that it is the sole example in modern times of a regular, established, "normal" operation of an explicitly Islamic, Shari'a–based system of criminal justice and penology.

Iran

The same cannot be said of Iran, where Islamic justice was imposed in a revolutionary context following the fall of the Shah in 1979 and the rise of the Islamic Republic regime. The Islamic regime in Iran is still less than fourteen years old, too short a period under any conditions for a radically new system of justice to become regularized, and certainly far too short under the chaotic revolutionary conditions that have prevailed. In the past couple of years, since the death of Khomeini, the economic and foreign policy lines of the government have become more "moderate" but it remains unclear whether the current and future development will lead to a similar moderation and regularization of the administration of Islamic justice in Iran, or whether Iran will at some time revert to something like the secular, Western–style justice system which prevailed before the revolution.

A further consequence of the Iranian revolution, the passions it has aroused, and the isolation of Iran, has been that we have a wealth of anecdotal and polemical reportage of the administration of justice and punishment in revolution, and a dearth of formal information. Thus, we are told that

> ... one of the constant themes of Khomeini's speeches during the struggle against the Shah's regime was to accuse the Shah of building more and more prisons ... Khomeini promised that the Islamic regime would convert the prisons into parks and museums.

But a government document reportedly showed that

> ... the Khomeini regime has 'converted the existing parks, stadiums ... and even stables and workshop sheds for apprentices into prisons for its political prisoners.'
>
> (Irfani 1983: 266)

Irfani also reports on the conduct of the revolutionary regime towards women prisoners:

> Another legal problem from the religious angle that Khomeini's regime has been facing lately involves the execution of virgin girls. According to opposition sources, many religiously oriented Islamic judges believed that carrying out the death sentence against virgin females was 'Un–Islamic'. It is believed that the troubled conscience of such Islamic judges was pacified when one Islamic authority ruled that the virgin girls sentenced to death could be married off to Islamic Revolutionary Guards for a few hours. After defloration by their temporary husbands, the girls could then be executed 'Islamically' without pangs of religious conscientiousness.
>
> (p. 266–67)

Irfani reproduces a document (1983: 267) purporting to have been issued by the Chief Prosecutor of the Islamic Regime in October, 1981, authorizing the draining of blood from condemned children before their execution so that the blood could be used in transfusions into Revolutionary Guards at the front in the war with Iraq.

It is impossible to fully evaluate the degree of truth in allegations such as this. If even a fraction of these allegations are true, it should be understood

that they fall under the category of revolutionary outrages, as they have been seen in many parts of the world, rather than as expressions of "Islamic Justice" that would be acceptable to most Muslims, including Shi'i Muslims.

> Today, as the revolution proceeds, the most radical religious elements in the coalition which backed Khumayni's [sic] rise to power are eliminating their rivals.
>
> (Lapidus 1983: 38)

Pakistan

Another country in which an "Islamic" criminal–justice and penal system have been imposed in recent years is Pakistan. On one level, the imposition of "Islamic justice" can be taken as simply reflecting the political agenda of the regime of General Zia, but political and juristic Islam in Pakistan does have deeper and more complex roots. As we noted earlier, Muslims in India (then including what is now Pakistan) were active in thinking about and discussing an Islamic response to the West, sharing leadership in those activities with Egypt. Thus, Pakistan inherited at its founding a well–developed modern tradition of Islamic thought.

> Islamic revival in Pakistan differs profoundly from that in Turkey, the Arab world, and Iran. Pakistan is the only contemporary Muslim state to be founded in the name of Islam.
>
> (Lapidus 1983: 38)

Lapidus (1983: 39) continues by noting that

> Pakistan came into being with two widely held, divergent

> concepts of what was meant by an Islamic state. The political elite considered Islam a communal and national identification only — a political identity stripped of religious content. But a large segment of the populace, led by the ulama and other religious leaders, believed the new state should be dedicated to the formation of a society whose constitution, institutions, and routines of daily life were governed by Islamic law.

The Western–oriented elite did not act on any such program after Pakistan gained independence. Only after the overthrow of Zu'fiqar Ali Bhutto and the rise of Zia al–Haq were Islamic criminal punishments and an Islamic court system established.

> The new regime's strong commitment to Islam ... suggests an almost desperate need to legitimate an unpopular government.
> (Lapidus 1983: 41)

The death of Zia interrupted the move towards Islamization, and the current situation in Pakistan is in flux. It must be emphasized, however, that criminal punishments play only a very small part in the serious program of Islamization advocates in Pakistan; thus, one recent discussion of "the Application of Islamic Laws in a Modern State" (Weiss 1986) does not discuss punishments or criminal law at all, but concerns itself primarily with business and family law. This, as we have seen, aptly reflects the historical development and emphasis of Shari'a law in Islamic history.

The emphasis on "civil" as opposed to "criminal" law may, indeed, reflect not only the circumstances under which Islamic law has historically developed, but the inherent bias of Islamic social thought. The criminal law, broadly speaking, comes only into play when unofficial, non–criminal social supports and sanctions fail to guide or restrain the behavior of individuals.

Many in the modern, liberal West would be sympathetic to the view that the place to check potential criminal tendencies is in the family and the community. Where the family and the community are effective in shaping behavior, steering persons away from crime, the role of criminal justice is correspondingly reduced.

In the case of Saudi Arabia, as we have seen, the crime rate is extremely low by U.S. standards. This, we suggested, is due in large part to conditions unique to Saudi Arabia. However, crime rates are relatively low throughout the Muslim world, and we suggested earlier that this might be a consequence in part of the nature of Muslim societies. There can be little doubt that the Islamic social ideal is a society in which the criminal–justice and penal systems are of relatively little prominence in society, because crime itself is rare.

Sudan

The final country to be considered in this survey of the contemporary practice of Islamic punitive law is Sudan, where Islamic law was imposed by the Numieri regime. Numieri, previously known as a heavy drinker,

> suddenly and inexplicably found God sometime in early 1983. He may have been reacting to political pressure from the fundamentalists or to his own ill health and the desire to make his final peace.
> (Lamb 1987: 119)

Sudan's Western–style legal system was replaced by "decisive justice courts" charged with implementing the Shari'a. However, these courts were each composed of a policeman, a soldier, and a civilian judge, scarcely the

organization of courts prescribed by Shari'a principles.

> In one fifteen–month period fifty–four suspected criminals lost hands, and sixteen others lost two limbs as repeat offenders ... In two cases, appeals courts added amputation to a lesser sentence ... and on three occasions men were sentenced to posthumous crucifixion after hanging ...
>
> (Lamb 1987: 120)

The most notorious execution was of a Muslim scholar, Mahmoud Mohammed Taha, who was put to death for heresy and apostasy for "nonviolently opposing Islamic law." In 1985, Numieri was overthrown. After his fall, crowds broke into a prison, freed prisoners, and chanted "no more amputations, no more amputations!"

Save in the case of Saudi Arabia, it must be said that all these instances of application of Islamic penology strike the observer as cynical. A political leader

> ... suddenly, and for obvious reasons of political convenience 'gets religion.' They are educated, sophisticated men — professional politicians, professional men or generals, men of the world. But not knowing the deeper truths of their religion all that they have recourse to are the easily available appurtenances of Islam — its system of punishments.
>
> (Jansen 1979: 142)

We thus cannot really judge Islamic criminal jurisprudence in practice, since it has for the most part never been tried. It may be said, indeed, that we are only at the beginning of the development of an Islamic criminal jurisprudence and penology. In the pre–modern Islamicate world, the criminal justice system quickly fell out of the hands of specifically Islamic institutions, into

those of first the Caliphate, and later of local rulers, who made little more than a public nod (if that) to following Islamic principles and Shari'a rules in the conduct of criminal justice and penology.

In the modern world, only Saudi Arabia has a legal system structured significantly along Islamic lines. Yet Saudi Arabia must be regarded as a unique case. Even though Islam arose in what is now Saudi Arabia, through most of Islamicate history, the tribal society of the Arabian peninsula was remote from the mainstream of Islamicate social development. In modern times, Saudi Arabia has been likewise unique in having essentially no experience of Western imperialism and cultural encroachment.

Thus, while Shari'a "civil law" has experienced a very full development, both intellectually and in courtroom practice, Shari'a criminal law has not yet come fully into being. The task of the contemporary Islamic reformer is not simply to impose "Islamic law," in the criminal sphere, but to analyze Islamic principles from which a criminal law can be articulated. The work of 'Abd Allah Ahmad Na'in (1990) shows the type of direction in which such an effort might go. Certainly it is both unrealistic and unfair to judge "Islamic law" by examples such as Zia's Pakistan or Numieri's Sudan.

CHAPTER IV
HUMAN RIGHTS ISSUES

By the standards of Western human–rights activists — and of many Muslims as well — several countries in the Muslim Middle East are alleged to have very bad "human–rights" records. In the last chapter, in our discussion of "Islamic law" in contemporary practice, we gave some instances of conduct which would surely be regarded as outrageous and indecent in Western eyes. Much of this conduct — most notably, perhaps, the alleged rape of young women prisoners in Iran in order to render them ostensibly suitable for execution — would perhaps appear even more outrageous and indecent in orthodox Muslim eyes.

Human rights violations in the Middle East continue. Amnesty International, in its Annual Report Summary (1990), reported sharp increases in the number of executions in Iran, Iraq, Saudi Arabia, and Yemen. Torture was reported to be widespread in Morocco, Iran, Egypt, Iraq, and Saudi Arabia, and also was reported in Algeria, Yemen, Bahrain, Jordan, Kuwait, Lebanon, Syria, Tunisia, and the United Arab Emirates.

To the Western public, these are all grouped together as Muslim (or even as "Arab") nations and societies, and all of their human–rights abuses are liable to be laid at the door of Islam. Yet it will be noted that many of the worst Middle Eastern human–rights abusers are under non–Islamic — often, indeed, rigidly secular — regimes. The plainest examples of this are Iraq and

Syria, ruled by different wings of the socialist Baath Party. Socially, both have a veneer of secular Westernism — active cafe and nightclub cultures, for example. In spite of Saddam Hussein's wartime effort to present his effort (against a coalition with many Muslim member states) as a jihad, Islam has had no place in the political agenda of Iraq or Syria.

Nor, of course, is the Middle East alone in human–rights violations. Amnesty International (1990) reports abuses in every part of the world, and the Middle East accounts for only a relatively small part of the total report summary. Clearly, human–rights abuses are a global problem, in no way confined to or particularly associated with the Islamic world. Indeed, even as this chapter is being written, press reports are indicating that nominally Christian Serbians are in the process of committing severe human–rights violations — verging, perhaps, on genocide — against their neighbors of different ethnic or religious background. Indeed, Muslims are among the principal victims of current Serbian abuses.

In the last chapter, we examined the modern development, in theory and practice, of Islamic penology. In this chapter, we will consider more specifically the "human–rights" issues that are raised by the imposition of Islamic criminal–law codes and Islamic punishments in Muslim countries.

General Remarks on "Human Rights"

There are several aspects to the question of human rights. First, what, precisely, do we mean by "human rights?" In strict formality, most international considerations of human–rights questions are framed in terms of the

Universal Declaration of Human Rights, as adopted by the United Nations in 1948. This, for example, is the standard which the organization Amnesty International uses as its yardstick in evaluating the human-rights performance of various governments around the world.

More informally and impressionistically, what Westerners at least tend to mean by human-rights violations is any conduct that outrages their familiar standard of proper governmental or judicial conduct. Torture, whether judicially imposed or carried out informally by security officers, is perhaps the archetypal instance of a human-rights violation. So is the use of (especially) deadly force in a civil disturbance situation when it goes beyond the minimum needed to quell the disturbance—admitting that defining the "necessary" level of force is a highly subjective exercise.

But in Western eyes, human-rights violations also comprise punishments for crimes not generally recognized in the West, or punishments that seem out of proportion to the punishments which Western court systems would typically impose for similar crimes. In the eyes of Western public opinion, such conduct is apt to be regarded as a "human-rights" violation regardless of how carefully procedural standards were followed, or how broadly the community in which the act occurred agreed that the act was a crime and deserving of the punishment given.

The example which most clearly demonstrates the Western view of Islamic law and justice as inherently in violation of "human rights" is the Qur'anic punishment of adultery, which is death by stoning. In many Western eyes, this is a "medieval" punishment for behavior which is the frequent subject of comedies in the Western mass media. It makes no difference, in

Western eyes, that by Islamic standards this crime can only be proven by the eyewitness testimony of four adult male witnesses, or by the willing confession by the person to be punished (Al–Thakeb and Scott 1981: 2).

In practice this heavy burden of proof means, of course, that (in legal systems where Shari'a procedure is seriously followed) conviction and punishment can only follow from a confession by an accused who is well aware of the penalty. The very imposition of this penalty for this act is, in the prevailing Western view, not only wrong in itself but taken as justification for every popular prejudice regarding "Islamic law" as a whole.

Western Defined Human Rights Standards

To what degree, then, do Western–defined human–rights standards simply represent the imposition of Western norms as "universal" standards (Little, Kelsay, and Sachedina, 1988: 4)? Non–Western critics of Western human–rights claims have often pointed out that these standards contain large elements of Western bias not only with respect to specific crimes and penalties, but in the overall weighing of rights and responsibilities. Thus, in high–crime societies, the victims of crimes are not regarded as "human–rights victims. This point was forcefully made by an Iranian representative in addressing human–rights allegations before the United Nations:

> From what sources have we brought our human rights? From the religious sources? From the Roman law? From the convention of some heads of state? From where? Look at the secular societies all over the world and see the shocking crime rates in the papers and

scientific reports.

(Khorasani 1981: 5)

In the case of Iran, this question may be regarded as a case of special pleading, but — whatever the source — these are questions which many Muslims (and others) around the world would have regarding Western views of "human rights."

Before going on to discuss specific Western–Islamic philosophical differences (and similarities) on human–rights questions, it is worthwhile to first address the general issue of human rights in the Third World, and how that relates to the political conditions of Muslim countries.

Human Rights in the Third World

In general, human–rights abuses appear to be much more serious and widespread in the Third World than in the advanced industrial countries. This might be dismissed as merely an instance of bias — save for Japan, all of the "advanced industrial countries" are Western. But it can hardly be doubted that the degree of political and police violence is higher in many parts of the Third World, including the Islamicate world, than in most of the West. The relative poverty of much of the non–Western world is arguably one major cause of this. Non–Western but wealthy countries such as Saudi Arabia tend to have low crime rates. But a more fundamental cause may be the fragility of political institutions in much of the Third World, including the Middle East.

Most Western countries have long–established political regimes which

enjoy a high degree of legitimacy; that is, their general right to govern is accepted by almost all of those under their rule. Great Britain has not had a serious challenge to its basic regime since 1688, and the United States since 1865. France has had a more interrupted history, but its institutions have roots going back to 1789. The current regime in (Western) Germany goes back only to 1945 — but Germany is closely tied to the Western community, and its institutions gain stability from this and from the recent disastrous German experience of different institutions.

Very few non–Western countries can claim comparably deep roots for their political regimes. Many gained independence only after 1945, and their first post–colonial regimes were either in fact neo–colonial, imposed by the departing Western colonial power, or were imposed by successful anti–colonial rebels whose only real claim to legitimacy was that they threw out the colonial power. In many parts of the world, indeed, national boundaries are artificial constructions. This is true, indeed, in the Middle East, where most current "national" boundaries were established by Western powers after World War One.

Even in regions not colonized, the existing regimes often have no deep roots. A notable example is Saudi Arabia. As noted in the last chapter, colonial humiliation played no part in the Saudi experience. But the Saudi state is nevertheless a twentieth–century creation, imposed by a tribal and Wahhabi reformist religious movement upon a region which had since the Prophet Muhammad's time been in a nearly continual state of anarchy.

Nearly all Third World states, in and out of the Middle East, thus suffer from a near–permanent crisis of legitimacy. Their subject populations often

have minimal "national" feelings, and even less feeling of loyalty to the existing regime. In these conditions, three factors may impel regimes into a pattern of harsh rule which results in numerous human–rights abuses. These are their own fear of domestic or foreign enemies, the desire to put these enemies in a comparable fear of themselves, and ideological zeal.

The first two are closely related. Having shallow roots, these regimes often are correct in perceiving themselves to be surrounded by enemies. Their nation's recent histories often reveal a pattern of coups or other violent changes of regime, and the losers of these contests often suffered not only loss of position and power, but lost their lives. Living in fear, and unable to count on any depth of loyalty from the populations they govern, they are likely to fall back on fear as a policy, as a means of keeping their enemies at bay.

The third characteristic source of human–rights abuses in Third World countries is revolutionary fervor. In those countries where revolutionary regimes come to power bearing an ideological agenda, they are likely to resort to extreme measures to impose that agenda. By definition, after all, revolutionary leaders are those who were willing and able to resort to desperate and forceful measures in order to take power in the first place.

This pattern is of significance for the way in which it bears on the "Islamic" regime which has garnered the greatest public attention in the West; Islamic Republic of Iran. In this case, the revolutionary ideology was Shia Islam.

Problems of Legitimacy in Muslim World

In the case of the Muslim world, the problem of legitimacy may be said to have very deep roots. In an earlier chapter we noted that the implementation of Shari'a law had from early times been effectively independent of government. The same conditions that led to this independence also left most governments in the Muslim World with a very weak claim on moral legitimacy. At the beginning of Islamic history the Caliphate embodied the moral leadership of the community of the faithful. Within a few generations, however, the Caliphs lost their moral preeminence, and within a few centuries they lost most of their effective political power as well. Power fell into the hands of local military rulers.

Such rulers could not claim to speak for Islam, and strong local patriotic feelings seldom developed to provide the sort of "national" legitimacy that European royal families began to win as early as the Middle Ages. Individual rulers, such as Salah al–Din ("Saladin") might win broad legitimacy for their services to Islam as a whole, but they could not pass their personal legitimacy on to their successor. In fact, Saladin's dynasty lasted less than a century. There is thus no long–enduring model of legitimacy to which Muslim governments can link themselves in the quest for moral legitimacy. In its absence, they find themselves in a state of chronic insecurity. This insecurity, as argued above, characteristically leads to patterns of human–rights abuse.

This points up a paradox in the history of the Muslim community. A sharp distinction between "church" and "state" has always been implicit in Christianity, which for its first three centuries was a persecuted minority faith

in the pagan Roman Empire. In contrast, Islam was from the first a social and political community as well as a community of faith (Sfeir, 1988: 441).

Yet, with the early decline of the moral prestige of the Caliphate, the governments actually in power over Muslim communities seldom could speak with any authority on Islamic questions. It fell upon the Muslim community itself, through the leadership of the learned ulama (see Glossary in Appendix A), to settle questions of Islamic law through the process of shura, or "consultation and deliberation" (Sfeir 1988: 443). And with the "closing of the gates of ijtihad a thousand years ago, development of Islamic law was frozen until modern times.

The problem of insecurity suggests that the only way in which most governments in the Muslim world can hope to win a broad sense of legitimacy among the people they govern is through adoption of an Islamic identity and agenda. Certainly there is a very strong movement, visible in most of the Muslim world, for a reassertion of Islamic identity, a movement currently associated for the most part with what the Western media have dubbed "Islamic fundamentalism." The contemporary move toward Islamization (however defined by its supporters) finds its strongest supporters among the masses and the young, while its chief opponents are drawn from the Westernized upper classes (AlThakeb and Scott 1981: 1–2).

A mature Islamic regime, then, could hope to win the sort of broad public acceptance that would render its violent overthrow an unlikely prospect, and therefore allow the government itself the degree of security that would remove the fears, and the temptation to answer threats with fearsomeness, that leads to human-rights abuses. In short, an Islamic state is the most likely

environment, in much of the Muslim Middle East, for a government able and willing to uphold human–rights standards.

But is it even possible for an Islamic state to uphold human–rights standards, at least as Westerners understand them? This question in turn leads us back to the concern we raised at the beginning of this chapter: are "universal" standards of human rights, or are they a purely Western construct? We have noted in earlier chapters that much of Shari'a law — notably its insistence on strict standards of evidence and protection of the rights of the accused — is highly consistent with prevailing human–rights standards in the West.

The most important difference between Islamic and liberal Western judicial values appears in the relative weighing of the rights of the accused against the right of the community to some sense of security (Yamani, 1388 AH: 15ff). And one particular area in which this difference has been examined is that of "freedom of conscience" and of worship. This is guaranteed in Article 18 of the Universal Declaration of Human Rights — and it is notable that even at the time of its adoption, before the modern resurgence of "Islamic fundamentalism" in the Muslim world, Muslim countries sharply questioned the adoption of this article (Little, Kelsay, and Sachedina 1988: 4ff).

Their objection was based on the provisions of Shari'a which address the issue of apostasy, or rejection of Islam by formerly–believing Muslims. This is a hadd offense, with a mandatory penalty of death. Moreover, while Shari'a provides for official toleration of "Peoples of the Book" — non–Muslim monotheistic believers — this toleration does not extend to full legal equality with Muslims. Nor does it embrace atheists or non–monotheists. Westerners, accustomed to "separation of church and

state," have great difficulty with this component of Islamic law.

Some insight can be obtained by a study of the history of Western thought on freedom of conscience (Little, Kelsay, and Sachedina 1988: 13ff). As early as St. Thomas Aquinas, the argument was made that faith could only be freely chosen, not forced. Nevertheless, Aquinas embraced the use of compulsion to prevent apostasy. The expansion of freedom of conscience occurred only slowly, and was greatly enhanced by the Protestant Reformation and the growth of rival Christian sects with somewhat differing articles of belief. Islam, never as centralized a faith as medieval Catholicism, has never undergone a comparable experience.

Moreover, it can be argued on the basis of texts in the Qur'an that the strict provisions of the anti–apostasy rules—like those for jihad, "holy war," are framed in the context of defense of the community of the faithful (Little, Kelsay, and Sachedina 1988: 28ff). All societies, including those of the liberal West, reserve the strictest penalties for acts of treason and rebellion. Other Qur'anic texts suggest that the punishment of unbelievers is properly left to God.

It is, moreover, worth noting that Shari'a law has the potential for a great deal more flexibility than has been popularly associated with it in the West. Islam was from the beginning in part a practical guide to life in accordance with the will of God — and practical requirements can change according to circumstances. Indeed, the classical Hanbali scholar Al Imam Al Tufi argued that the public interest overrides all else, including specific Qur'anic provisions (Yamani: 1388 AH, 10). In modern times, the government of Kuwait used arguments drawn from the Qur'an as the basis for rejecting the specific

provisions of Shari'a in drafting its commercial code (Sfeir 1988: 438).

Thus the potential for flexibility and development does in fact exist within Islamic law. Moreover, it can certainly be argued that the emergence of Islamic states — something not seen since the early generations of the Islamic community — requires a degree of development and analysis of Shari'a not seen since before the "closing of the gates of ijtihad." Nor does the current character of "revolutionary" Islam any more reflect the nature of a mature Islamic state than the French Revolution reflected the nature of a mature Western liberalism.

Resolution of Human Rights Issues Between Muslim World and the West

Naturally, however, the development of Islamic criminal law and penology, and their adaption to the contemporary world, cannot take place as a mere reaction to Western pressure, from human–rights activists or others. Little, Kelsay, and Sachedina (1988: 8ff), referring specifically to the question of religious freedom, suggest that there are, broadly, four ways in which the differences between the West and the Muslim world relating to human–rights issues can be resolved.

1: Abandonment of the claim to "universal" principles. Accept a position of pure moral relativism, and that no nation must answer to any foreign agency on any moral issues.

2: Allowing states to establish their own definitions of human–rights standards. The effect of this policy would be to keep the letter of human–rights provisions while rendering them meaningless in practice.

3: Enforcement by the West of its own standards. This is offered as a theoretical alternative. The failure of colonialism, however, demonstrates all too clearly that the West can no longer impose its will on the peoples of other regions. Successful Western involvements in the Middle East, as the Gulf War demonstrated, are now possible only with the aid of Middle Eastern coalition partners.

Either of the first two "solutions" amounts to the abandonment of the human–rights concept. The third, if seriously contemplated, could only lead to renewed conflict between the communities and in all probability to large–scale human–rights violations on both sides.

4: Dialog between the two communities.

That leaves the solution of dialog and mutual understanding.

> We might use the contemporary debate between Westerners and Muslims ... as an occasion for reconsidering the foundations and character of a belief in [religious] freedom both in the West and in the Islamic tradition. If, upon careful, critical examination, the conflict between Western and Islamic views ... turns out to be much less clear and consistent than has been alleged, then we shall, it seems, have some reason to begin to call into question the "limited applicability" of human rights declarations.
>
> (Little, Kelsay, and Sachedina, 1988: 8)

The above writers were specifically addressing the question of freedom of conscience and religion, but it is arguable that it applies as well to many other grounds of difference between the West and the Islamic worlds. In particular, these four alternative approaches are applicable to the human–rights issues raised by differences in Islamic and Western criminal law and penology.

Muslims pray to God, the Merciful, the Compassionate. In the historical past, as we have seen in earlier chapters, Islamic law was rejected by rulers not as too harsh, but as too lenient. Contemporary "Islamic" excesses can be attributed to either political cynicism or revolutionary passion and extremism.

CHAPTER V

SUMMARY AND CONCLUSIONS

The present day emerges as one of the most important and creative in the history of Islamic law, and especially of the criminal–justice and penal elements of Islamic law. The current wave of interest in an Islamic penology represents a practical consideration of possible Islamic solutions to enduring problems of just government and just criminal administration. Such an effort to meet Muslim ideals in practical government has hardly been seen since the first generations of the Muslim community.

From the time of the Prophet Muhammad, in the early seventh century CE, Islam has been a religion of faith in action. Islam does not seek to set religion and its ideals off in a separate mental chapel, away from the rest of life. Instead, the symbol of Islam might be the prayer rug, the place of worship which the worshipper can carry with him through the course of his daily life. Islam teaches its believers to follow the path of righteousness day by day in their social relations with others.

Islam thus has, in principle, a public and "political" component. And indeed, the early Muslim community was a political entity as well as a community of faith. Its law, Shari'a, evolved in the first instance as a practical law, designed to apply both religious principles and common sense to the problems — from business disputes to family law to crime and punishment — that arose in the community of the faithful. Even where Shari'a set down

rules for private conduct, these were not to come under the active purview of the law unless brought to public attention "without prying," or unless an innocent party was injured (Hogdson 1974: 336).

Because it is a practical law as well as a law rooted in religious principles, Shari'a is not necessarily to be seen as a law fixed by God that cannot be altered or developed. According to Ahmad Zaki Yamani (1388 AH: 10), "the religious essence and value of the Shari'a must never be overestimated." Note, incidentally, that this seemingly radical view is put out under the auspices of the Saudi Publishing House, a quasi–official organ of supposedly arch–conservative Saudi Arabia. Indeed, Muslims regard the Prophet himself as a human inspired by God, not as a divine being. The various schools of legal interpretation that have grown up have differing views on the degree to which Qur'anic rules can be set aside. According to some Hanafi scholars, as we noted earlier, the whole of the Shari'a can indeed be set aside, if shura, "consultation and deliberation" (Sfeir 1988: 443) leads to a consensus that the public good requires such an alteration. Shari'a thus contains, at least in some traditional views, provisions for its own amendment.

Shari'a is in principle universal, suited (perhaps with amendments for the public interest) to all the needs of legal regulation in society. In spite of this universal scope in theory, the evolution of Islamic law in practice has been limited by political developments in the early centuries of Islam. The Caliphate lost its moral prestige within a century of the Prophet's death. Shari'a then became something with no real equivalent in Western history, a "community law" administered independently of the State (Hodgson 1974: 345ff)

Recent Trends in Muslim World

In recent years, several trends have emerged. The call for a restoration of Islamic legal institutions, including an Islamic criminal justice and penology, has become widespread and popular throughout the Muslim world. In some countries, such as Pakistan and Sudan, the imposition of some canonical criminal penalties allowed military rulers to proclaim that they had introduced "Islamic law" into their countries.

The excesses of the Zias, the Numieris of the Muslim world have led to an exaggerated Western fear of "Islamic law." To many, perhaps most in the West, Islamic law is reduced to nothing but its harshest criminal penalties (Lippman, McConville, and Yerushalmi 1988: ix). The Western public imagines itself familiar with "Islamic justice" in the form of these penalties. At the same time, the uneducated masses in some Muslim countries eagerly accept the imposition of a few canonical penalties — without any broader implementation of Shari'a — as sufficient. In their minds, we may suggest, the imposition of these punishments has powerful symbolism as a defiance of the West, and of the Westernized elites in the Muslim world that tend to resist the Islamicizing movement.

Yet the emphasis on human-rights abuses in some countries such as Pakistan and Saudi Arabia, where "Islamic law" has been applied has tended to draw attention away from the very serious efforts being made in various parts of the Muslim world to confront the practical problems of criminal justice and penology in the modern world, and devise means to apply Shari'a principles in solving those problems.

Comparable efforts are being made to examine and interpret every part of the Shari'a. Taken as a whole, then, this effort represents a coming to grips with Islamic legal principles that has not been seen in most of the last thousand years. Indeed, whether or not particular Islamic students or teachers might wish it, the sum effect of their work has been to throw open again the gates of ijtihad.

Modern Debates in Shari'a

A wide range of schools of thought have emerged in the course of the modern debate on Shari'a. Some Islamic modernists, such as Na'in (1990), call for extensive revision or even abandonment of large sections of Shari'a on the grounds of an overriding public interest. Others, neo–traditionalists such as Siddiqi (1979) seek to minimize interpretation and draw as close as possible to the pristine practice of the generations that personally knew the Prophet Muhammad. But even the strictest neo–traditionalists, merely by calling for a new attention to and enforcement of Shari'a, are playing their part in urging forward the modern debate. Thus the gates of ijtihad are driven further open even by those who might most wish to close them. It should be noted that if a community of explicitly Islamic states is to emerge in the Muslim world, they will be compelled to develop Shari'a to deal with the fullest range of contemporary problems and needs. This could thus be, in legal thought and perhaps in many other fields as well, the beginning of a brilliant Islamic renaissance.

In some respects, issues of criminal law and penology would seem to be

only relative minor features of the vast contemporary encounter of the West and an awakened Islamic world. Most people in Western and Muslim societies alike go through their lives having little contact with the administration of criminal justice. For those who do fall afoul of the criminal–justice and penal systems, their fates may depend less on the theory behind the administration of criminal justice than on police–court practice. This is because in many countries around the world, the safety of the public and the rights of the accused are protected in theory by the strictest of safeguards, while human–rights abuses are widespread in practice. Western and Muslim differences in philosophy of criminal justice, and their differing views of what constitute appropriate penalties for particular crimes, thus might seem to be of little practical importance. The central problem of criminal justice and penology in the Third World, we suggested in the last chapter, is the problem of creating legitimate government.

Only those governments which are firmly rooted in the beliefs and ideals of the people they govern can ever hope to adhere to high judicial standards. For unstable governments, justice must always take second place to security. We suggested, therefore, that the spread of Islamic government though the Muslim world would tend to favor the improvement of human–rights conditions in the long run. Even where Western critics might disagree with certain elements of Islamic criminal law, most would greatly prefer to see a legal system that called for strict norms of procedure and high standards of evidence in preference to the arbitrary police power commonly found in the Middle East today.

Penology Among Westerners and Muslims

Yet the role of criminal law and penology in shaping relationships and attitudes between the West and the Muslim world is in many ways much broader. The West's and the Muslim community's differing views of criminal justice and penology seem to symbolize much broader attitudes. We have already seen, for example, that a caricature of Islamic criminal justice has become a major part of the West's stereotype of Islam (Lippman, McConville, and Yerushalmi 1988: ix). The image of hands or heads being cut off in the public square at Friday prayers is proof to the West that Muslims are "medieval."

This belief is held in the West with a mixture of condescension and fear. If Muslims are "backwards," on the one hand, then they can be kept weak, and brought into line with occasional air strikes. On the other hand, the "medieval" stereotype of Islam calls the Western mind back to its own medieval past. There it finds folk traditions of real or imagined Muslim threats.

> Present–day attitudes reach back to and reawaken atavistic stereotypes. In their more vague form these are the echoes and resonances of such evocative words as "Moor," "Turk," "Arab," "dervish" ... and "mad mullah." The mental pictures evoked are of green banners fluttering over Turkish cavalry galloping into the heart of Europe up along the Danube, of those same green flags flaring over the camel–riding hordes of the Mahdi trying to break the British military square....
>
> "The earliest Christian reactions to Islam were something like those of much more recent date. The tradition has been continuous, and it is still alive."
>
> (Jansen 1979: 13)

Today, episodes of confrontation between the West and Muslims automatically bring these memories to the Western mind. The word jihad, commonly (and to some degree misleadingly) translated into English as "Holy War," has become instantly recognizable by all Western followers of newspapers and television news. "Terrorism" and the alleged "spread of Islamic fundamentalism" are mixed into the pot, from which the Western popular culture draws a stew of images of menacing Muslims.

"They" control Middle East oil. "They" blow up airplanes and commit other terrorist acts. "They" are immigrating in vast numbers into France and other Western European countries. "They" are out for revenge against the West. And, just as "they" punish by the sword, so will they seek to rule by the sword.

The harsh image that the West holds of Islamic criminal punishments particularly reinforces those stereotypes which present Islam as dangerous or threatening. When "Islamic terrorists" anywhere commit violent acts and attribute them to an Islamic demand for justice, this may reawaken the long–standing Western stereotypes identified by Jansen (1989: 13). To a mind whose views of Islam are shaped by these stereotypes, every problem in the Middle East can be implicitly blamed on Islam. Even when a Saddam Hussein, champion of a secular Baath ideology, commits violent acts, these may be vaguely associated in the West with "Islam."

Such stereotyped views are by no means unique to Westerners, however. Similar distorted images are held by Muslims about the West. Like Westerners, Muslims have a history and historical legends of threats from the West. In medieval times, the Crusades swept out of Western Europe to spread fire

and death through the Middle East. In the nineteenth century they imposed their domination of most of the Muslim world, and in the twentieth century they have sought to dictate to Muslim peoples. Westerners are seen as preaching self–righteously about law and justice to others, even though they dare not walk the streets of their own cities for fear of crime.

Questions of criminal justice and penology are thus integral to the stereotypes that both Westerners and Muslims hold of one another. Philosophically, too, some of the issues raised by criminal justice come close to the central areas of potential conflict — or of potential understanding — between Westerners and Muslims. If Muslims are outraged by the seemingly fatalistic Western acceptance of crime, so are many Westerners. Entire genres of popular American movies deal with the fear of urban crime, and the deep–rooted desire for an enforcer of justice who will set matters to right.

What Can West Learn from Islam

As the West grapples with the problem of crime, Westerners can perhaps profit from giving a hearing to Islamic views on crime, criminal justice, and penology, rather than dismissing them in favor of popular stereotypes. The Islamic view of justice in society, indeed, is rooted in values of regard for the individual which have much in common with Western values. Indeed, a whole school of Muslim scholars, "occidentalists," have sought to emphasize the common "Mediterranean" roots of Western and Muslim values and attitudes (Fakhry 1977: 102ff).

One of the features of Islam as a faith, and of Islamic law as a judicial

system, is its emphasis on community. According to some long–established interpretations of Islamic law, as we noted in the last chapter, the whole formal structure of Shari'a law could, in principle, be overridden by concern for the public good (Yamani 1388 AH: 10). More generally, Islamic law seeks to balance the rights of the individual accused with the preservation of the right of the community as a whole to live unmolested by crime and the fear of crime.

Yet the emphasis on community in Islam does not mean that the individual is viewed only, or even primarily, as a group member. Islam is about the individual's relationship with God, a relationship shaped by life in society, but still an individual relationship. Every Muslim is ultimately responsible for his or her soul. This is not different from the underlying values of Western liberalism. Surely the Muslim effort to balance the rights of individuals accused of crimes with those of their neighbors is not irrelevant to the Western effort to resolve this same problem.

Attitudes Regarding Crime, Justice and Punishment Between Westerners and Muslims

Attitudes and images regarding crime, justice, and punishment are in some ways metaphors for the broader mutual understanding (or, too often, misunderstanding) between Westerners and Muslims. In another respect, too, the learning of mutual understanding and respect in the area of criminal justice and penology could be a model for the broader question of how Islam and the West should coexist.

The principle by which the safety of the members of a Muslim community are to be protected from the internal threat of crime is closely related to that principle by which the Muslim community as a whole is to be protected from external threats. This provision, in turn, is critical in the evolution of relations between the Muslim world and the West. To some radical Muslims, the protection of the Muslim community justifies their claim that their conflict with the West deserves the status of jihad. In doing so, of course, these radical Muslims stir anti–Muslim sentiments in the West, and thus seem to justify anti-Muslim prejudices and actions.

It is thus entirely too easy to imagine a future in which Western and Muslims fears and misunderstandings escalate in a vicious cycle. Such a vicious cycle might eventually end in wider conflict between the Muslim world and the West — a conflict that would be a catastrophe for both communities, indeed for all humanity, in a time of weapons of mass destruction.

But remember the example of the problem of "freedom of conscience," which we examined in the last chapter. Islamic law is strict towards apostates and threatening unbelievers, but the measures prescribed are intended for defense. The Muslim emphasis is in fact not on aggression, on forcible expansion of the Muslim community, but on defense of the Muslim community of faith from external and internal threats. Where Muslims are not threatened, Islamic law and Muslim custom specifically calls for toleration and acceptance of non–Muslims. The question of how a modern Islamic legal system would deal with non–Muslims thus becomes a theoretical framework for a discussion of the whole broad question of how the modern Islamic and Western communities can best live in peace and mutual goodwill.

Relations Between Modern Islamic and Western Communities

Historically, Muslims and Westerners have in fact lived in peace and mutual goodwill. Indeed, they have done so in most places, most of the time. In this respect, the history and legends of war which both communities remember — and which shapes their mutual fears and suspicions — are very misleading. For some thirteen centuries, Muslims and Christians have encountered another all through and around the Mediterranean world. It is not surprising that there has more often than not been trouble between the communities somewhere in that vast area. Nor is it surprising that large–scale episodes of war have taken place (Hodgson 1974).

But these wars, local and general, have been only interruptions to the general pattern of peaceful contact. Islamic society was a commercial society, and in the Middle Ages the West became equally commercial. Commerce brought Westerners and Muslims together in everyday relationships that required a considerable degree of mutual trust and understanding.

Westerners and Muslims have also long encountered one another on the level of intellect. To grasp the extent of this contact, Westerners need only recall that important branches of modern Western knowledge, such as chemistry and algebra, preserve in their names their Islamic origin. Peaceful Western influences on the Muslim world, from early times up to the present, have been equally broad.

One of the features which the West and the Muslim community share in common — at least on the level of their ideals — is a deep concern for the dignity of the individual. We have seen how this affected Shari'a (Hodgson

1974: 336). Westerners tend to express this concern in secular or Christian terms. Muslims, of course, express it in Muslim terms. Much of what they find abhorrent is the same. Shari'a, like Western liberal codes of law, calls for high standards of evidence and careful attention to procedural safeguards. A legal system operating on Islamic principles would not tolerate arbitrary arrest and detention, or human-rights abuses in the backs of police station houses, but would strive constantly to root these evils out. A mature system of Islamic justice would seem no more strange or harsh, in most respects, than (for example) continental European "Civil Law" procedure seems to a person whose experience is with Common Law procedure.

It is a sad irony, however, that it is precisely those values which Muslims and Westerners hold nearly in common that have exacerbated their conflicts in the past. Numerous Muslim and Western scholars, physicians, and merchants have dealt with one another peaceably over the centuries, and do so today. Even soldiers and statesmen have more often came to terms than to blows. But when "human-rights activists" — clergymen preaching the Crusade, or militant mullahs — seized on those features of their values in which they differ, both Westerners and Muslims have given in to the temptation to demonize each other. Westerners must be on guard against the danger of similarly demonizing Islamic governments and movements. Likewise, contemporary Muslims must consider the requirements of Islam and of the modern world in an atmosphere of thoughtfulness, without demonizing the West.

Penology and criminal law have become a symbol of all that divides the West and the Islamic world. Yet the principles of Islamic law, Shari'a, embody values similar in many respects to those of the Western tradition. Both

Western and Muslim students of penology and criminal law can grow to understand one another, and to learn from one another in an atmosphere of discussion and dialog. In the process, both Muslims and Westerners may encounter insights that will assist them both in the construction of societies that more nearly reflect their shared values. This study has been aimed at bringing the Islamic world into the literature of criminology and criminal justice—it fills a gap in the literature of this field.

Recommendation For Further Study

An increasing number of individuals from Islamic countries are traveling to and living in Western countries. They are required to abide by Western laws and are subject to Western punishment for the violations of these laws. This study has dealt primarily with the manner in which Western society can better understand Islam. A study might be conducted in order to explain how members of the Islamic faith can appropriately fit themselves into, or accommodate to Western law since it is indeed different from their own. Thus, as more Islamic nationals come to Western societies, they also need to have a greater understanding of Western laws. It is recommended that attention be given to how Islamic law can be integrated into Western societies, especially in terms of handling criminal offenders and punishments.

APPENDIX A

GLOSSARY

Abbasid: Descendant of Al–Abbas, Muhammad's uncle. In 750 A.D. the Abbasid family seized the Caliphate.

Abdul Aziz Ibn Saud: The first king of Saudi Arabia.

Ali: First cousin of Muhammad, first legitimate Imam or Khalifah, successor of the Prophet, the Prophet's son–in–law.

Ayatullah: "Sign of God", a title conferred by his followers upon a distinguished mujtahid.

Baath party: Came into being in the early 1940's under the guidance of the Syrian political leader Michel Aflaq.

Bathism: Is a form of Pan–Arabism, the notion that the Arab nation is a single entity stretching from Morocco to Iraq, which has been divided artificially by colonialism, imperialism and Zionism.

Byzantine: (330 A.D. to 1453) Refers to the new Rome founded in the eastern half of the Roman Empire. Rome fell to the Barbarians in 476 A.D. but western civilization survived in Byzantium. The Byzantines contributed to the arts and sciences, religions and administration.

Caliph: The descendant or successor of the Prophet – the elected ruler of the Islamic nation.

Cadis: Qadi (Kazi), an Islamic judge.

Dervish: Darwish is commonly explained as derived from Persian and meaning "seeking doors", i.e., amendicant. Fakir Ikhwan "Brethren".

Diya: Payment in cash or some form of transferred wealth, in compensation for the death of an individual, whether voluntary or involuntary homicide.

Emir: Anier, Commander, Governor, Prince, ruler.

Fatwa: Formal opinion of a jurisconsult; judicial declaration.

Faqih: Jurist.

Fiqh: The science of law, jurisprudence.

Hadith: Tradition or report of a saying or action of the Prophet Muhammad; one of four sources of Islamic law.

Hanbali: Referring to the Sunni legal school ascribed to Ahmad Ibn Hanbal.

Hadd (Pl: Hudud): A crime against the law of God for which there is a fixed penalty – wine drinking, fornication, theft, slander, highway robbery, apostasy.

Ijma: The consensus of qualified legal scholars in a given generation.

Ijtihad: General process of endeavor to comprehend the divine law.

Imam: The leader, applies to the leader of the Muslims. The leader of a school of jurisprudence, head of state.

Imamate: Supreme leadership of the Muslim community after the death of the Prophet.

Isnad: Chain of authorities, an essential part of the transmission of a tradition. The collections of traditions which were complied mainly in the 3rd/9th century onwards give complete Isnads.

Jihad: A holy or just war.

Jinayat: The legal term for all offenses committed against the person such as murder, wounding, drowning.

Khomeini: Leader of revolution in the Islamic Republic of Iran.

Komiteh: Committee.

Kurdish: Tribes of nomadic and semi-nomadic Moslem, tribes of indeterminate ethnic origin, most of whom live in Turkey, Iran and Iraq.

Mullah: Mollah refers to Moslem "clergy".

Mufti: Councelor; a jurisconsult.

Mujtahid: Refers to a scholar of Moslem jurisprudence one who exercise his own opinion, traditionally on the basis of analogy in resolving prob-

lems of legal principle.

Muslim: One who has received Islam.

Ommayyid: Ommiad, great–grandfather of the first Caliph in the dynasty, any of a dynasty of Moslem Caliphs who ruled in Damascus from 661 to 750 A.D.

Qisos: Quesas, Qisas, crimes against the person, e.g., murder, homicide, maiming. The law of retaliation.

Qiyas: The method of deduction by analogy, reasoning by analogy, the fourth source of Muslim law.

Quran: The Holy book, the principle source of Islamic law.

Saddam: President of Iraq.

Saladin: Sultan of Egypt (1174 – 1193); lived 1138 – 1193, captured Jerusalem, opposed the Crusades.

Shafii School: One of the four Sunni schools of jurisprudence.

Sharia: The track or the road; a term used to describe the sacred law.

Shia: Followers of the Shiite school comprising approximately 10% of all Muslims.

Shiite: This school believes that the Imam is divinely inspired. As such, he is permitted to reinterpret the laws of the Shariah. It also considers Imam as the natural leader of society.

Shura: The principle of democratic participation; consultation; the assembly.

Sunnis: Followers of the Sunni school (to which the vast majority of Muslims belong); a traditionist, they acknowledge that the first four Khalifahs to have been the rightful successors of Muhammad.

Talmud: To learn, the collection of writings constituting the Jewish civil and religious laws.

Tazir: Prohibition, instruction; that discretionary correction which is administered for offense, for which Haddor fixed punishment has not been appointed.

Ulama: The learned men of the religious law of Islam; religious scholars.

Vizier: Bearer of burdens, the vizier bears the duties actually incumbent upon the ruler in Moslem countries, a high officer in the government, a minister of state.

Wahhabi: Refers to a follower of Sheikh Mohammad b. Abd al–Wahhab (1702 – 1787), who founded a puritanical religious movement. Wahhabism remains the official form of Islam in Saudi Arabia.

Zina: The act of adultery and fornication; sexual intercourse between persons who are not in a state of legal matrimony.

APPENDIX B

The following is a list of Institutions, Individuals and Embassies which were contacted for the purpose of gaining information concerning punishment in the Islamic Legal System

A. Embassies:

J.A. Adegoroye
for Ambassador
Embassy of Nigeria
2201 M. Street, N.W.
Washington D.C. 20037

Abdallah Fouad Hafez, Counselor
Embassy of the Arab Republic of Egypt
Press and Information Bureau
1825 Connecticut Avenue, N.W.
Suite 216
Washington D.C. 20036

Dr. Hatim Hosaini
Palestine Information office
1326 18th Street, N.W.
Washington D.C. 20036

Niaz Zamman
Educational Attache
Embassy of the Peoples Republic of Bangladesh
Washington D.C. 20007

Mohammad Saleem
Second Secretary of Information Embassy of Pakistan
2315 Massachusetts Avenue N.W.
Washington D.C. 20008

Saudi Arabian Information Office
Suite 404
1455 45th Street N.W.
Washington D.C. 20005

Embassy of Algeria
Iranian Interests Section
2139 Wisconsin Ave.
Suite 200 N.W.
Washington D.C. 20007

Embassy of Afghanistan
2341 Wyoming Ave. N.W.
Washington D.C. 20008

Embassy of Kuwait
2940 Tilden St. N.W.
Washington D.C. 20008

Embassy of Libya
1118 22nd Street, N.W.
Washington D.C. 20037

Embassy of Jordan
319 Wyoming Ave. N.W.
Washington D.C. 20008

Embassy of Oman
2342 Massachusetts Ave. N.W.
Washington D.C. 20008

Embassy of Qatar
Suite 1180, 600
New Hampshire Ave. N.W.
Washington D.C. 20037

Embassy of Syria
2215 Wyoming Ave. N.W.
Washington D.C. 20008

Embassy of Yemen
Suite 860,
600 New Hampshire Ave. N.W.
Washington D.C. 20037

B. Institutions in the U.S.A.

Dr. Nasr Seyyed Hossein
Department of Religion
Temple University
Philadelphia, Pennsylvania 19122

Professor Sachedina Abdulaziz
Department of Religious Studies
University of Virginia
Charlottesville, Virginia 22903

Professor Scott Joseph E.
Department of Sociology
The Ohio State University
1800 Cannon Dr.
Columbus, Ohio 43210

Dr. Schacht, J.
School of Law
Columbia University
116th Street and Broadway
New York, New York 10027

Dr. Liebesny, Herbert J.
Professional Lecturer in Law
National Law Center
George Washington University
Washington D.C. 20052

Professor Mayer, Ann
Wharton School
University of Pennsylvania
Philadelphia, Pennsylvania 19104

Professor Khadduri Majid
School of Advanced International Studies
The John Hopkins University
1740 Massachusetts Avenue N.W.
Washington D.C. 20036

Professor Newman Graeme
School of Criminal Justice
State University of New York,
Albany, New York 12222

Professor Bassiouni M. Cherif
College of Law
Depaul University
25 East Jackson Boulevard
Chicago, Illinois 60604

Ziadeh Farhat L., Chairman
Department of Near Eastern
Languages and Literature
University of Washington
Seattle, Washington 98195

Professor Forte David
Cleveland Marshall College of Law
Cleveland State University
Cleveland, Ohio 44115

Professor Ohlin Lloyd E.
School of Law
Harvard University
Cambridge, Massachusetts 02138

Professor Murphy John F.
School of Law
The University of Kansas
Lawrence, Kansas 66045

Professor Mostofi Khosrow, Director
Middle East Center
The University of Utah
Salt Lake City, Utah 84112

Professor Algar Hamid
Department of Near Eastern Studies
University of California
Berkeley, California 94704

Professor Rahman Fazlur
Department of Near Eastern Languages and Civilizations
University of Chicago
5801 South Ellis Ave.
Chicago, Illinois 60637

Professor Anita K. Head
Associate Professor of Law
University of Kansas
Lawrence, Kansas 66045

Professor Billy Graham
Department of Religion
Harvard University
Cambridge, Massachusetts 02138

C. Institutions Abroad

Professor Fahed Al–Thakeb
Department of Sociology and Social Work
Kuwait University
Kuwait

Mr. Mubarak Yahia Abbas
P.O. Box 1741
Khartoum, Sudan

Mr. Ali Akbar Hassani
Journal of Islamic School
Qum, Iran

Professor Nettler Gwynn
Department of Sociology
Edmonton, Alberta, Canada

Dr. C.Van Den Wijngaert
Professor of Criminal Law
The Free University Of Brussels
Brussels, Belgium

Abdullah Al–Zayed
Kingdom of Saudi Arabia
Islamic University
Medina, Saudi Arabia

Professor Noel Coulson
School of Oriental and African Studies
University of London
London, England

Al Azhar University
Cairo
Egypt

Charles J. Adams
Center for Islamic Studies
McGill University
Montreal, Canada

D. Libraries

Dr. Zuhair E. Jwaideh
Chief of Law Library
Near Eastern and African Law Division
The Library of Congress
Washington D.C. 20540

Anita K. Head
The Law Library
National Law Center
The George Washington University
Washington, D.C. 20052

Pamela Ross
Head of Interlibrary Loans
Harvard Law School Library
Cambridge, Massachusetts 02138

Interlibrary Loans
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School of Criminology
Florida State University
Tallahassee, Florida 32306

Professor Clarence R. Jeffery
School of Criminology
Florida State University

Professor T. Grant Brown
Department of Education, Curriculum and Instruction
Florida State University

Professor Peter Garretson
Department of History
Florida State University

Professor Ruth Katz,
Department of Religion
Florida State University

Professor Laura Jepson
Department of Modern Languages
Florida State University

Professor Vernon Fox
School of Criminology
Florida State University

Professor Alexander Bassin
School of Criminology
Florida State University

Professor Laurin A. Wollan Jr.
School of Criminology
Florida State University

Professor Gordon Waldo
School of Criminology
Florida State University

Professor Marc G. Gertz
School of Criminology
Florida State University

F. Others

Dr. Belmonte Joseph
Chief, Centers and Research Section
Division of Foreign Studies
U.S. Department of Education
Room 3923, Office Building 3
7th and D street, S.W.
Washington, D.C. 20202

Dr. Walker Paul E.
Executive Director
American Research Center in Egypt (ARCE)
40 Witherspoon Street
Princeton, New Jersey 08540

Begum Aisha Bawany Wakf
Educational and Welfare
4th Floor, Bank House, No. 1
Habib Square M.A. Jinnah Road
Karachi–z (Pakistan).

Ministry of Justice
Ministers Office
Islamic Republic of Iran
Tehran, Iran

M. Serage El Din
Under Secretary of State
Ministry of Justice
Arab Republic of Egypt
Cairo, Egypt

Supreme Council for Islamic Affair
9 Nabatat Street
Garden City, Cairo

Islamic Center
2551 Massachusetts Avenue
Washington, D.C. 20008

Abdel–Rahman Osman, Director
The Muslim Community Center, Inc.
15200 New Hampshire Avenue
Silver Spring, Maryland 20904

Iranian Student Association
Florida State University
Tallahassee, Florida 32306

Muslim Student Association
Florida State University
Tallahassee, Florida 32306

Amnesty International U.S.A. Publication
c/o Mid Atlantic
Book Service Incorporated
5 Lawrence Street
Bloomfield, New Jersey 07003

United Nations Educational, Scientific and
Cultural Organizations
Headquarters: 7, Place de Fontenoy
France 75700, Paris

United Nations Office of Public Information
Center for Economic and Social Information
Director, Leonardu S, Mazairac
New York, N.Y. 10017

APPENDIX C

Letters of Permission
and
Personal Communication

DEPARTMENT OF RELIGIOUS STUDIES
COCKE HALL

TEL. (804) 924-3741

May 17, 1982

Mr. Ali Akbar Rahmatian
P.O. Box 3617
Florida State University
Tallahassee, Florida 32313

Dear Mr. Rahmatian:

I sincerely apologize for delay in replying your letter of March 31, 1982. I hope that has not caused any inconvenience to you.

As for the materials in the area of penal code in Islamic legal system you might have to depend on Arabic and Persian sources which are plentiful. I am not sure if you can use any one of these two languages. In English, I would suggest that you look at the works of J.N.D. Anderson; A.A.A. Fyzee; Kemal A. Faruki; Fazlur Rahman (especially his Islamic Methodology in History); J. Schacht, N.J. Coulson and Ahmad Hasan. None of these sources deal directly with Islamic Penal code and hence, you will have to do meticulous readings in order to dig out material relevant to your work. A number of articles are listed in Index Islamicus, which is an excellent work of reference. If you are reading French, than, a book on Islamic Shī'a law has been translated by A. Querry, Droit musulman, 2 Vols. (Paris, 1871-2). For a comprehensive bibliography on your subject see the detailed list of works on Islamic Law in J. Schacht, Introduction to Islamic Law, p. 215-285.

I hope the above information will be of use to you.

With best wishes,

Yours sincerely,

Abdulaziz Sachedina

AS/wp

SCHOOL OF ADVANCED INTERNATIONAL STUDIES
THE JOHNS HOPKINS UNIVERSITY
1740 MASSACHUSETTS AVENUE, N. W. WASHINGTON, D. C. 20036

Mr. Ali Akbar Rahmatian
P.O. Box 3617
Florida State University
Tallahassee, FL 32313

May 17, 1982

Dear Mr. Rahmatian,

I am glad to learn that you are working on criminal law in Islam. Although I do not know whether your interest lay in classical or modern Islam, I do suggest to study thoroughly the classical background. As for my own writings are concerned, I would suggest two of my books:

1. Khadduri, Islamic Jurisprudence (Baltimore, Johns Hopkins Press, 1961).
2. Khadduri and Liebesny (eds.), Law In the Middle East (Washington, The Middle East Institute, 1955).

If you are more interested in modern law, then you have to get texts of modern criminal laws of the various Islamic countries. In this resepct I suggest writing to the Library of Congress in Washington, DC.

Best wishes,

Sincerely yours,

Majid Khadduri
Professor Emeritus

Cornell University Press INCLUDING COMSTOCK PUBLISHING ASSOCIATES

124 Roberts Place, P.O. Box 250, Ithaca, New York 14850-0250 *Phone* 607-257-7000 *Telex* 937478

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April 7, 1983

Ali Rahmatian
P. O. Box 3617
Florida State University
Tallahassee, Florida 32313

Dear Ali Rahmatian:

Gibb and Kramers (eds.): Shorter Encyclopaedia of Islam

Thank you for your letter of March 17, in which you requested permission to quote from the above in the appendix of your doctoral dissertation. We have no objection provided that we own the rights to the material; however, before we can grant formal permission and in order to determine whether we do in fact hold the rights, we need to know specifically how much and which material you intend to quote. Please let us know the applicable page numbers and opening and closing phrases.

I look forward to hearing further from you.

Very truly yours,

Nancy Couto

Nancy Couto
Subsidiary Rights Manager

/nlc

Ali Rahmatian
P.O. Box 3617
Florida State University
Tallahassee, Florida 32313
April 29, 1983

(Baker Library), Reference
Book Pubs.
300 Fairfield Rd.
P.O. Box 1308
Fairfield, N.J. 07006

Dear Sir:

I am a doctoral candidate completing my dissertation research at the Florida State University, School of Criminology. I am developing a glossary for various Islamic terms in the area of punishment, in the Appendix section of my dissertation.

At this point, I would appreciate having your permission to quote from T.P. Hughes, Dictionary of Islam, the following pages according to the proper acknowledgements of copy right law:

"Abu Bakr ... died August 22nd, A.D. 634", p. 7
"A'isha ... mother of the believers", p. 27
"Al-Rishwa ... unlawful to accept it", pp. 43-44
"Apostasy ... until she recant", p. 16
"Banishment ... upon highway robbers", p. 35
"Blasphemy ... to death in Islamic countries", p. 43
"Breach of Trust ... discretion of the judge", p. 43
"Burglary ... carry out the property", p. 44
"Companions Ashab ... Muhammad", p. 23
"Dirham ... ten qirats", p. 85
"Shurb ... forty stripes", p. 100
"Eye for eye: Ayn ... if fifteen camels", p. 114
"Fornication: Zina ... or fifty for a slave", p. 130
"Hell ... thirty times", p. 170
"Highway Robbery ... the whole band", p. 174
"Ijma ... silence or interference", p. 197
"Ijtihad ... council of divines", p. 197
"Imam ... the Sunni's do", p. 203
"Inspiration Wahy ... law obtain it", p. 213
"Islam .. life time", p. 220.
"Istihsan ... without squeezing", p. 221
"Istishab ... law-giver", p. 222
"Jinayah ... drowing", p. 248

"Khamr .. include tabacco", p. 269
"Qisas ... murderer's estate", pp. 481-482
"Lapidation ... 100 lashes and stoning", p. 608
"Larceny ... suffer imprisonment", pp. 284-285
"Misqal ... that weight", p. 353
"Mizan ... will suffice", p. 353
"Muhammad ... seal of the prophets", pp. 367-339
"Murder ... should be drowned", pp. 420-421
"Muslah ... retaliation", p. 423
"Nisab ... be paid", p. 434
"Oath ... known or understood", p. 437
"Punishment ... of the Qazi or judge", pp. 476-477
"Qatlu'l-Amd ... as an act of piety", p. 421
"Qazf ... four-score stripes", p. 479
"Qiyas ... instead of goat", p. 482
"Repentance ... a true conviction", p. 536
"Shahadat al-Zur ... unto his brother", p. 115
"Shariah ... sayings of Muhammad", p. 572
"Shophist: Sufi ... Tasawwuf", p. 608
"Shirk ... on other than God", p. 579
"Suicide ... rites to a suicide", p. 622
"Sunnah ... of the prophet", p. 622, 639
"Sunni ... the prophet", p. 623
"Surah ... the chapter of iron", p. 623
"Tazir ... is no responsibility", p. 632-634
"Usu'l ... of these four dunfamentals", p. 656
"Usury ... occasion to usury", pp. 656-657
"Zina ... to the married woman", p. 11

Thank you very much for your prompt attention to my request.

Very truly yours,

Ali Rahmatian

Ali Rahmatian

5/5/83

Hughes A DICTIONARY OF ISLAM was first published in 1885; it is in the public domain and no permission is necessary for the free use of any material in it.

AUGUSTUS M. KELLEY, PUBLISHERS
300 FAIRFIELD RD.
FAIRFIELD, N.J. 07006

Ali Akbar Rahmatian
phone (904) 663-4419
P.O. Box 141
Chattahoochee, Fl.
32324

Organization of the Islamic Conference-OIC
Kilo 6 Mecca Rd
POB 178
Jeddah, Saudi Arabia
687-3880

Dear Sir:

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically , I am interested in obtaining books, articles, documents, papers, and research materials on the subject of Islamic Law and punishment. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in different Islamic nations.

I am seeking information directly from you rather than studying out-of-date library references because I want the most current information possible in light of the rapidly changing world situation.

Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

Ali Akbar Rahmatian
P.O. Box 141
Chattahoochee, Fl.
32324

phone (904) 663-4419

Embassy of Quatar
600 New Hampshire Avė. N.W.
Washington, D.C. 20037
(202) 338-0111
Charge´ d´ Affaires Saleh Al-Nesef

Dear Mr. Al-Nesef:

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically , I am interested in obtaining books, articles, documents, papers, and research materials on the subject of Islamic Law and punishment. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in different Islamic nations.

I am seeking information directly from you rather than studying out-of-date library references because I want the most current information possible in light of the rapidly changing world situation.

Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

Ali Akbar Rahmatian-

Ali Akbar Rahmatian
4011 Golf Village Loop Apt. #6
Lakeland , FL 33809
Phone (813) 859–5674
January 22, 1992

Dr. Abdalla Idris
Dean Faculty of Law
University of Khartoum
POB 321, Khartoum, Sudan

Dear Dr. Idris,

I am writing to request materials for use in research for my Doctoral Dissertation. I am a Doctoral Candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically, I am interested in obtaining agency documents, articles, books, papers, and research materials on the subject of punishment in the Islamic Law in Sudan. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in four Islamic Nations. (Iran, Pakistan, Sudan, and Saudi Arabia)

Your assistance in obtaining this information will be very much appreciated.

Sincerely:

Ali Akbar Rahmatian

Ali Akbar Rahmatian
P.O. Box 141
Chattahoochee, Fl.
32324

phone (904) 663-4419

Embassy of Tunisia
1515 Massachussetts Ave. N.W.
Washington, D.C. 20005
(202) 862-1850
Counselor Nejib Hachan

Dear Mr. Hachan:

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically , I am interested in obtaining books, articles, documents, papers, and research materials on the subject of Islamic Law and punishment. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in different Islamic nations.

I am seeking information directly from you rather than studying out-of-date library references because I want the most current information possible in light of the rapidly changing world situation.

Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

Ali Akbar Rahmatian

Ali Akbar Rahmatian
P.O. Box 141
Chattahoochee, Fl.
32324

phone (904) 663-4419

Embassy of United Arab Emirates
600 New Hampshire Ave. N.W.
Washington, D.C. 20037
(202) 338-6500
First Secretary Ali Mohammed Ali

Dear Mr. Ali:

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically , I am interested in obtaining books, articles, documents, papers, and research materials on the subject of Islamic Law and punishment. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in different Islamic nations.

I am seeking information directly from you rather than studying out-of-date library references because I want the most current information possible in light of the rapidly changing world situation.

Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

Ali Akbar Rahmatian

Ali Akbar Rahmatian
P.O. Box 141
Chattahoochee, Fl.
32324

phone (904) 663-4419

Embassy of Pakistan
2315 Massachussetts Ave N.W.
Washington, D.C. 20008
(202) 939-6200
Ministar Tariq Fatemi

Dear Mr. Fatemi:

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically , I am interested in obtaining books, articles, documents, papers, and research materials on the subject of Islamic Law and punishment. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in different Islamic nations.

I am seeking information directly from you rather than studying out-of-date library references because I want the most current information possible in light of the rapidly changing world situation.

Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

Ali Akbar Rahmatian

Ali Akbar Rahmatian
P.O. Box 141
Chattahoochee, Fl.
32324
phone (904) 663-4419

Embassy of Algeria
Iranian Interest Section
2137 Wyoming Ave. N.W.
Washington, D.C. 20008
(202) 265-2800

Dear Sir:

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically , I am interested in obtaining books, articles, documents, papers, and research materials on the subject of Islamic Law and punishment. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in different Islamic nations.

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Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

Ali Akbar Rahmatian

Ali Akbar Rahmatian
P.O. Box 141
Chattahoochee, Fl.
32324

phone (904) 663-4419

The United Nations
United Nations Plaza
New York, N.Y. 10017
(212) 463-1234

Dear Sir:

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically , I am interested in obtaining books, articles, documents, papers, and research materials on the subject of Islamic Law and punishment. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in different Islamic nations.

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Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

Ali Akbar Rahmatian

Ali Akbar Rahmatian
P.O. Box 141
Chattahoochee, Fl.
32324

phone (904) 663-4419

Amnesty International of the USA
(Human Rights)
322 Eighth Ave
New York, N.Y. 10001
(212) 807-8400
John Nealey - Executive Director

Dear Mr. Nealey,

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically , I am interested in obtaining books, articles, documents, papers, and research materials on the subject of Islamic Law and punishment. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in different Islamic nations.

I am seeking information directly from you rather than studying out-of-date library references because I want the most current information possible in light of the rapidly changing world situation.

Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

Ali Akbar Rahmatian

Ali Akbar Rahmatian
P.O. Box 141
Chattahoochee, Fl.
32324
phone (904) 663-4419

Organization of the Islamic Conference-OIC
Kilo 6 Mecca Rd
POB 178
Jeddah, Saudi Arabia
687-3880

Dear Sir:

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

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I am seeking information directly from you rather than studying out-of-date library references because I want the most current information possible in light of the rapidly changing world situation.

Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian
Ali Akbar Rahmatian

Ali Akbar Rahmatian
P.O. Box 141
Chattahoochee, Fl.
32324

phone (904) 663-4419

Embassy of Saudi Arabia
601 New Hampshire Ave. N.W.
Washington, D.C. 20037
(202) 342-3800
Minister Badr Bakhsh

Dear Mr. Bakhsh:

I am writing to request materials for use in research for my Doctoral Dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University in Tallahassee Florida.

Specifically , I am interested in obtaining books, articles, documents, papers, and research materials on the subject of Islamic Law and punishment. My focus is on normative practice (what punishment ought to be, according to Islamic Law) versus official governmental practices in different Islamic nations.

I am seeking information directly from you rather than studying out-of-date library references because I want the most current information possible in light of the rapidly changing world situation.

Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

Ali Akbar Rahmatian

SCHOOL OF ADVANCED INTERNATIONAL STUDIES
THE JOHNS HOPKINS UNIVERSITY
1740 MASSACHUSETTS AVENUE, N. W. WASHINGTON, D. C. 20036

Mr. Ali Akbar Rahmatian
P.O. Box 3617
Florida State University
Tallahassee, FL 32313

May 17, 1982

Dear Mr. Rahmatian,

I am glad to learn that you are working on criminal law in Islam. Although I do not know whether your interest lay in classical or modern Islam, I do suggest to study thoroughly the classical background. As for my own writings are concerned, I would suggest two of my books:

1. Khadduri, Islamic Jurisprudence (Baltimore, Johns Hopkins Press, 1961).
2. Khadduri and Liebesny (eds.), Law In the Middle East (Washington, The Middle East Institute, 1955).

If you are more interested in modern law, then you have to get texts of modern criminal laws of the various Islamic countries. In this resepct I suggest writing to the Library of Congress in Washington, DC.

Best wishes,

Sincerely yours,

Majid Khadduri
Professor Emeritus

THE UNIVERSITY OF KANSAS

School of Law
Lawrence, Kansas 66045
(913) 864-4550

September 10, 1982

Ali Akbar Rahmatian
P.O. Box 361
Florida State University
Tallahassee, FL 32313

Dear Mr. Rahmatian:

In response to the request in your letter of August 3 for materials on punishment in the Islamic Legal Systems, I would suggest you obtain a copy of The Islamic Criminal Justice System, edited by M. Cherif Bassiouni and published by Oceana in paperback in 1982. You will find the writings in that book helpful to your project, and the book also has a bibliography.

Sincerely,

John F. Murphy
Professor of Law

JFM:sp

THE UNIVERSITY OF UTAH

MIDDLE EAST CENTER
BUILDING 413
SALT LAKE CITY, UTAH 84112
801 581-6869
TWX 910-925-5283
ANSWERBACK UNIV-UTAH-SLC

September 28, 1982

Mr. Ali Akbar Rahmatian
P. O. Box 3617
Florida State University
Tallahassee, Florida 32313

Dear Mr. Rahmatian:

In response to your inquiry of August 26, 1982, re the Islamic legal system, all I can suggest is that you apply to the U. S. Department of Education for a research grant either for field work in the Middle East or at a University, such as ours, with a strong Middle East library. The deadline for pre-doctoral research applications is October 29. The best country in which to do research under present political conditions seems to be Egypt. If you wish to go there, the American Research Center in Egypt is another possible source of funding. Dr. Joseph Belmonte of the U. S. Department of Education, and Dr. Paul Walker of ARCE, whose addresses and phone numbers are attached, can give you further information.

I am sending a copy of your letter to Mr. Ragai Makar, our Middle East Librarian, who may be able to give you further suggestions.

With best wishes,

Sincerely,

Kh. Mostofi

Khosrow Mostofi
Director

KM:tkl
Enclosure

cc: Mr. Ragai Makar, Middle East Librarian

DR. JOSEPH BELMONTE
Chief
Centers & Research Section
Division of Foreign Studies
U. S. Department of Education
Room 3923
Regional Office Building 3
7th and D Street, S. W.
WASHINGTON, D. C. 20202

Telephone: (202) 245-2356

DR. PAUL E. WALKER
Executive Director
American Research Center in Egypt
(ARCE)
40 Witherspoon Street
Princeton, NEW JERSEY 08540

Telephone: (609) 921-3797

CLEVELAND STATE UNIVERSITY
CLEVELAND, OHIO 44115

CLEVELAND-MARSHALL COLLEGE OF LAW (216) 687-2344

June 19, 1984

Mr. Ali Akbar Rahnatian
514 Hancock Bridge Parkway
Cape Coral, Florida 33904

Dear Mr. Rahnatian:

I have received your letter of June 8, 1984, and am pleased to give you what information I can on the subject of punishment in Islamic law. I enclose for you a copy of a recent article that I did in the Encyclopedia of Crime and Punishment. You may also wish to consult a book by Cherif Bassiouni entitled The Islamic Criminal Justice System. Other sources include, Graeme Newman, Khomeini and Criminal Justice: Notes on Crime and Culture, 73 J. Crim. L. & Criminology, 561 (1982); The Effect of Islamic Legislation on Crime and Prevention in Saudi Arabia 1978; M. B. Vincent, Etudes Sur La Loi Musulmane: Legislation Criminelle (1842); O. B. Loutfy, De L'Action Penale en Droit Musulman: Rite Hanefite (1899); A. H. Jung, The Administration of Justice of Muslim Law (1926, reprint 1977); The Hedeya, translated by C. Hamilton (1795 edition). In my own research on the Islamic criminal justice system, I am relying on many works done by jurists which have been translated, particularly in French. You may wish to consult the work by Sidi Khalil (translation by Perron), the work by Nawawi, entitled Minhaj et Talibin, and the work on Shi'ite law by A. Querry published in 1871. You may also be familiar with the work by Wahed Husain, entitled Administration of Justice During the Muslim Rule in India.

In terms of your information regarding Durkheim and Weber, I am afraid that this is in an area in which I have little expertise.

Sincerely,

David F. Forte
Professor of Law

DFF:ljc

Enclosure

Vrije Universiteit Brussel
Centrum voor Internationaal Strafrecht
Dir. : Prof. Dr. S. de Schutter
Pleinlaan 2
1050 Brussel
☎ 641.26.31 / 641.26.44

25th August 1982

Ref. : V98A/CVDW/LD/92

Mr. Ali Akbar Rahmatian
P.O. Box 3617
Florida State University
Tallahassee, FL 32313
U.S.A.

Dear Sir,

Thank you for your letter of August 3, 1982. Unfortunatley, I cannot help you. I have, however, passed your name to one of our foreign doctoral candidates who is doing research in a related field. He might get in touch with you soon. Otherwise, I advice you to contact Professor Bassiouni at De Paul University in Chicago who is highly qualified in the matter.

Sincerely yours,

Dr. C. VAN DEN WIJNGAERT

With Compliments
of the
Saudi Arabian
Information Office
H. C.

Suite 340
1155 15th Street, N.W.
Washington, D.C. 20005

THE RELIGON OF ISLAM

A Standard Book, Compendium and Introductory to the Koran

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By
Dr. AHMAD A. GALWASH, M.A., Ph. D.

FOURTH EDITION

AL MAAS PRINTING HOUSE
CAIRO

EMBASSY OF THE 142
PEOPLE'S REPUBLIC OF BANGLADESH
Washington, D.C.

From: Niaz Ali Zaman
Educational Attache.

No.ED/1-6/81/SA

May 11, 1982.

My dear Secretary,

We have received a request from Mr. Ali Rahmatian, a doctoral candidate in the Criminology Program at the Florida State University. He is interested in obtaining books, articles, documents, papers and research materials in the area of Punishment in the Islamic Legal System,

We would be grateful if you would kindly send us relevant material so that we may forward the same to Mr. Rahmatian.

With regards,

Yours truly,

Niaz Ali Zaman

(Mrs. Niaz Ali Zaman)

Secretary,
Law, Land Administration
and Land Reforms,
Law and Parliamentary Affairs,
Land Administration and Reforms,
Dacca.

cc: Secretary, Religious Affairs Division, Ministry of Education, Religious Affairs, Sports and Cultural Affairs, Government of Bangladesh, Dacca.

Legal Adviser, Ministry of Foreign Affairs, Government of Bangladesh, Dacca.

Mr. Ali Rahmatian, P.O. Box 3617 Florida State University, Tallahassee, Fl. 32313.

N.Z

(Mrs. Niaz Ali Zaman)
Educational Attache.

Ali Rahmatian
P.O. Box 3617
Florida State University
Tallahassee, FL 32313

April 30, 1982

Dr. J. Schacht
School of Law
Columbia University
116th Street and Broadway
New York, New York 10027

Dear Professor Schacht,

I am writing to request materials which may be of use to me in the writing of my dissertation. I am a doctoral candidate in the Criminology Program at the Florida State University. Specifically, I am interested in obtaining books, articles, documents, papers and research materials in the area of Punishment in the Islamic Legal System.

Thank you very much for your assistance.

Sincerely,

Ali Akbar Rahmatian
Ali Akbar Rahmatian

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JUN - 8 1982

Dear Mr. Rahmatian:

This is in reply to your letter of June 1, 1982, concerning punishment in the Islamic legal system.

To obtain books and other research materials you may inquire with Interlibrary Loan, Library of Congress, Washington, D. C. 20540. For photocopies of non-copyrighted material you may contact the Photoduplication Service, Library of Congress, Washington, D. C. 20540 for an estimate. We are enclosing for your convenience a Loan Division Interlibrary Loan Services pamphlet and a Photoduplication Service order form and price list.

Sincerely,

Zuhair E. Jwaideh
Chief

Mr. Ali Akbar Rahmatian
Florida State University
P. O. Box 3617
Tallahassee, Florida 32313

بسم الله الرحمن الرحيم

ARAB REPUBLIC OF EGYPT

MINISTRY OF JUSTICE
MINISTER'S OFFICE
1.152
234

Mr. Ali Rahmatian
P.O.B 3617
Florida State University
Tallahassee, Fl. 32313.

May 16, 1982.

Dear Mr. Rahmatian.

In reply to your letter dated may 4, 1982 We would like to inform you that materials related to the subject of your studies can be obtained from the:

Supreme Council for Islamic Affair.
9 Nabatat street,
Garden City, Cairo.

This council will be of great help to you for it can supply you with materials of great importance to your studies.

Kindly accept my best complment, wishing you all the succes.

Sincerely
Under Secretary of state
Ministry of Justice
M. S. ELDIN
M. Serage El Din.

EMBASSY OF THE ARAB REPUBLIC OF EGYPT
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June 8, 1982

Ali Rahmatian
P.O. Box 3617
Florida State University
Tallahassee, FL 32313

Dear Mr. Rahmatian:

This is in response to your letter of May 3 requesting information on punishment in the Islamic System.

We suggest that you contact the Islamic Center at the address below:

Islamic Center
2551 Massachusetts Avenue
Washington, D.C. 20008

Thank you for your interest in Egypt.

Sincerely,

Abdallah Fouad Hafez
Counselor
Press and Information Bureau

AFH
ah:lda

Ali Akbar Rahmatian
4011 Golf Village Loop # 6
Lakeland, Florida 33809
(813) 859-5674
January 22,1992

Ambassador Ejaz Azim
Embassy Of Pakistan
2315 N.W. Massachusetts Ave.
Washington, DC 20008

Dear Ambassador Azim

I am writing to request materials for use in research for my Doctoral Dissertation. I am a Doctoral Candidate in the Criminology Program at the Florida State University in Tallahassee, Florida.

Specifically, I am interested in obtaining agency documents, articles, books, papers, and research materials on the subject of punishment in the Islamic Law in Pakistan.

My focus is on normative pratice (what punishment ought to be, according to Islamic Law) versus official governmental pratices in four Islamic Nations. (Iran, Pakistan, Sudan and Saudi Arabia)

Your assistance in obtaining this information will be very much appreciated.

Sincerely;

Ali Akbar Rahmatian

بسم الله الرحمن الرحيم

150
EMBASSY OF PAKISTAN
2315 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20008

NO.INF:830/82 May 18, 1982

Mr. Ali Rahmatian
P.O. Box 3617
Florida State University
Tallahassee, FL 32313

Dear Mr. Rahmatian,

Please refer to your letter of May 2, 1982 regarding information about punishment in the Islamic legal system.

We enclose photo-copies of two articles on the subject on the implementation of Shariah laws in Pakistan. We hope you will find the articles useful.

Yours sincerely,

(Mohammad Saleem)
Second Secretary (Information)

Enclosures

DePaul University

College of Law | 25 East Jackson Boulevard, Chicago, Illinois 60604 | 312/321-7700

August 18, 1982

Ali Akbar Rahmatian
P.O. Box 3617
Florida State University
Tallahasee, FL. 32313

Dear Mr. Rahmatian:

In response to your letter of August 4, 1982, requesting materials. Please be advised the book entitled The Islamic Criminal Justice System, by M. Cherif Bassiouni, Oceana Publications, 75 Main Street, Dobbs-Ferry, New York.

Sincerely,

M. Cherif Bassiouni

M.C.B:gd

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June 2, 1983

Ali Rahmatian
P. O. Box 3617
Florida State University
Tallahassee, Florida 32313

Dear Ali Rahmatian:

Gibb and Kramers (eds.): Shorter Encyclopaedia of Islam

Thank you for providing page references for the definitions from the above that you wish to quote in the appendix of your doctoral dissertation. We have no objection to your use of this material and ask only that you give proper acknowledgment of the source.

Please note that if you ever arrange for publication of your dissertation and wish to include these definitions, you will need to seek additional permission, both from us and from the originating European publisher, E. J. Brill, Leiden, Netherlands.

Very truly yours,

Nancy Couto

Nancy Couto
Subsidiary Rights Manager

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Washington, D.C. 20052 / National Law Center, The Law Library / (202) 676-6646

August 24, 1982

Mr. Ali Akbar Rahmatian
P.O. Box 3617
Florida State University
Tallahassee, Florida 32313

Dear Mr. Rahmatian:

We regret to tell you that your request is not of a kind to which we can respond.

Sincerely yours,

Anita K. Head
Professor of Law
and Law Librarian

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BIOGRAPHICAL SKETCH

Ali Akbar Rahmatian was born in Zaghmarz, Iran, on April 5, 1954. He attended public schools in Attar Zaghmarz, Panzdah Bahaman, Hedayat National High School in Behshahr and graduated from Mehregan National High School in Sari, Iran in 1973. In August, 1976 he received a Bachelor of Arts degree in law from College of Qum, University of Tehran, Iran. He was awarded his M.A. degree in Criminal Justice Administration from Oklahoma City University at Oklahoma City, Oklahoma in December 1978. He was also awarded his M. Ed degree in Guidance Counseling from Florida A&M University at Tallahassee, Florida in August 1990. He received a Doctorate of Philosophy degree in Criminology from Florida State University at Tallahassee, Florida in May 1993. In addition, he has studied at the School of Human Behavior, United States International University at San Diego, California, during the Spring quarter of 1979 and University of South Florida in Ft. Myers, Florida during the Fall and Spring of 1985.

While pursuing his Doctorate, he held graduate research assistantship in the School of Criminology at Florida State University which provided him experience in such areas as capital punishment, gun control and correctional institutions. He has also served as a teacher at both elementary and secondary high school levels in Iranian school system, center for participant education at Florida State University, Suncoast Elementary, Dunbar Middle and Coloosa Middle in Ft. Myers, Florida. His professional responsibilities have

included public assistance specialists at the economic service of H.R.S in Ft. Myers; Mental Health technician at the Lee Mental Health Center, Date Residential program in Ft. Myers; group treatment leader at the Price Half-way House in Ft. Myers; Human Services Counselor at the G. Pierce Wood Memorial Hospital in Arcadia and Florida State Hospital in Chattahoochee; Psychological Specialist at Sunland Center in Marianna; Psychological specialist (Forensic) at Polk Correctional Institution in Polk City, Florida.

The author has taught, as an adjunct faculty, the following courses at Florida State University and University of South Florida: Introduction to Corrections; Methods of Offender Treatment and Theories of Criminal Behavior.

Mr. Rahmatian's article, "Televised Violence and Children" appeared in the L.A.E. Journal of American Criminal Justice Association. Other articles in preparation for publication include: The Changing Role of Correctional Officers; Islamic Law in Theory and History; Punishment: Its Character and Role in Islamic Law: Imposition of Punishment within Islamic Countries; Islamic Penology; Contemporary Thought and Governmental Practice and Islamic Law and Human Rights.

The author is a member of the American Society of Criminology; American Criminal Justice Association; International Society of Criminology; Florida Nursing Association; and Florida Council on Crime and Delinquency. His future plans include full–time teaching in a university setting; post–doctoral studies in comparative criminology, law, and psychiatry.