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"If the mountain will not go to Mahomet, let Mahomet go to the mountain"

An Appeal to the British Press

A distasteful cartoon was published in The Times, London, for 25 October 1966, in which the Prime Minister of Great Britain, Mr. Harold Wilson, was depicted as the Prophet Muhammad squatting in the farthest left-hand corner and General de Gaulle as the mountain based upon the English proverb, "If the mountain will not go to Mahomet, let Mahomet go to the mountain."

Since then a spontaneous wave of resentment and anger has swept the Islamic world. Some of the protests that are being lodged by the Islamic organizations both within and without Great Britain have come to the notice of the British public. But the tears we have seen in the eyes of individuals will go unnoticed. They are the tears of pain and helplessness.

It is very sad that every now and then such incidents happen in the West which, though inadvertently, put the clock back in the field of human relationship.

The average British sense of humour fails to understand why the Muslims flare up immediately anything even slightly derogatory is said about the person of Muhammad. Instead of trying to understand the psychological and ethnological reasons for such a reaction, the matter is brushed aside by declaring the Muslims as fanatics.

Religion, according to some, is no longer important enough to waste one's time on. But surely, at least sociologically, it is very important to understand the religious susceptibilities of a society which makes up about one fifth of the world population.

There are not many wilful sadists in the world. But there is many a naïve who fails to appreciate the fact that ignorance can result in equal cruelty.

The cartoon of The Times, most probably published innocently, is an example of such a cruelty. Even a cursory
study of the origin and the implications of the proverb of Muhammad and the mountain will show why.

Sir Francis Bacon (d. 1626 C.E.) has made a reference to this proverb in his Essay No. 12 on “Boldness”. He says: “There is in human nature generally more of the fool than of the wise; and therefore those facilities by which the foolish part of men’s minds is taken are most potent. Wonderful like is the case of boldness...; men that undertake great cures, and perhaps have been lucky in two or three experiments but want the grounds of science and therefore cannot hold out. Nay, you shall see a bold fellow many times do Mahomet’s miracle.”

Bacon then goes on to deride the so-called Muhammad’s miracle in these words: “Mahomet made the people believe that he would call an hill to him, and from the top of it offer up his prayers for the observers of his law. The people assembled: Mahomet called the hill to come to him, again and again; and when the hill stood still, he was never a whit abashed, but said, If the mountain will not come to Mahomet, let Mahomet go to the mountain.”

He concludes: “So these men, when they have promised great matters and failed most shamefully, yet (if they have the perfection of boldness) they will but shift it over, and make a turn, and no more ado. Certainly to men of great judgment, bold persons are a sport to behold; nay and to the vulgar also, boldness has somewhat of the ridiculous.”

It should not be difficult to see that Bacon, in his famous Baconian attempt at apprehension of generalized character of an instance, has depicted Muhammad as one of the impostors who “promised great matters, failed shamefully but slighted it over through his perfection of boldness”.

Harvey, one of Bacon’s critics, thinks that Bacon writes “like a Lord Chancellor”. In fact he was the Lord Chancellor of England. Although we are not concerned with Bacon’s personal character, it will not be out of place here to mention that his own career came to a bold man’s shameful end when, in 1621, he was impeached on a charge of accepting bribes and deprived of his offices. But in spite of all this, his distinguished place in English literature cannot be denied.

No wonder that the subsequent writers and the compilers of dictionaries accepted the proverb of Muhammad and the mountain without question. No one seems to have appreciated the fact that those who put a proverb into circulation are neither historians nor are they sociologists.

As far as the history of Islam is concerned the fairy tale of Muhammad calling the mountain to himself is a myth.

Some years ago this proverb was used in an Assembly of the United Nations and was objected to. At that time someone came forward with the explanation that the proverb was associated with a Turkish sultan with the name of Mehmet — the Turkish version of Muhammad. But this does not seem to be true, nor does the common usage of the proverb suggest its association with any Turkish king. It is to all intents and purposes meant for the Prophet Muhammad.

For a Muslim any criticism of the teachings of Islam or the text of the Qur’ân is a theological matter which can be dealt with by the theologians. Even a blasphemy against God is not his responsibility because God is Omnipotent and is capable of looking after Himself. But Muhammad the man, the last Prophet, is the pivot of all that is sentimental in him.

The followers of many other religions have defied their prophets and worship them in some form or the other. But a Muslim’s prophet was a human being. This concept creates in him a strong sense of mutual belonging on a much more intimate level than is psychologically possible between man and the gods above. He is proud of this relationship. The very fact that Muhammad was a man and not a god shifts the responsibility of defending his honour over to each and every Muslim.

After all, when the modern sophisticated society is allowing others to attribute divinity to their prophets, why should a Muslim be grudged the privilege of paying homage to Muhammad as a man — albeit the greatest man?

Muslims have been inculturated with a very sacred image of not only the Prophet Muhammad but also of all prophets before him. They all were sinless. That is why it can be proudly said of the Muslims that they never say anything derogatory against any prophet. It is a condition of their faith in Islam to respect equally and to believe in all prophets. Even when they see some Christians exercising their sense of humour at the cost of Jesus Christ, they resent it and consider it in bad taste.

It is worth knowing that any kind of portraiture of the Prophet Muhammad is a red rag to the average Muslim. He is very zealous to nip the evil of image worship in the bud. The absence of any visual impression of Muhammad in the form of a drawing or a statue leaves him with an unrestrained scope of imagination. A Muslim’s mental image of Muhammad is much more sublime, noble, and beautiful than the brush of any painter or the hands of any sculptor could ever create. In view of this, one can imagine an average Muslim’s abhorrence of even the most artistic graphic description of Muhammad, leave aside the comic distortion of a figure called the cartoon.

In our age the organized religions of the world have come much closer together in a spirit of mutual compassion and understanding. There is great work being done by the various inter-religious movements all over the world. Most of such movements owe their inception to Great Britain. Thousands of good Christians are working hard to extirpate the deeply entrenched prejudices between the Christians and the Muslims. The Imam of the Shah Jehan Mosque, Woking, the premier mosque in Great Britain, and as a representative of the Woking Muslim Mission and Literary Trust, is in a very privileged position of co-operating with and appreciating such noble activities of the Christians in Great Britain. In fact, the Woking Muslim Mission and Literary Trust is simply trying to co-operate with other religious like-minded bodies on the basis of the words of the Holy Qur’ân (3 : 63): “O People of the Book (Jews and Christians) come to an equitable word between us and you, that we shall not associate aught with Him and that some of us shall not take others for lords besides God.”

But unfortunately the impact of this humanitarian work is as yet confined to the intellectual circles only. The masses overseas seldom hear of these activities. On the contrary, any sensational story in the British press travels far and fast in the world. The present reaction to the Times’ cartoon is an example which should serve to make the British press realize its added responsibility.

In case the British press is under-estimating its power to do good to humanity, it should at least be made to realize that it still possesses a great power to undo the good that others are trying to do.
The Impact of Western Education on the Muslim World

Some Major Problems Facing it

The Qur'an (chapter 10) sums up the all-round Philosophy of Education

By Dr. MUHAMMAD FADHEL JAMALI

"We owe much to the great German educator Georg Kirchensteiner, who showed the importance of the integration and harmony in the education of the hand and the mind with moral and civic attributes and traits. The Muslim world certainly should study Kirchensteiner and Heinrich Pestalozzi more thoroughly if they wanted to profit from Western educational thinking."

Before dealing with the subject I wish to define my terms. By education I mean all those influences directed to shape and guide the lives of men in all aspects of life, physical, emotional, social, intellectual, artistic, moral and spiritual. It embodies all the organization, methods and techniques and content of educational activity.

As for the term Western education, I mean those educational methods and contents flourishing in Western Europe and spreading from Europe to America and Russia and the rest of the world.

One may question, however, if there is such a thing as Western education, for Western education, as we know it, did not start in the West, nor did it stop within Western boundaries. Isn't Western education, after all, a stage in the development of human education having its roots in Hellenic, Roman and Semitic origins? Is there any education which is cent per cent localized and regional? Hasn't there been a diffusion of education and culture going on among the various peoples of the world from the earliest dawn of history? Aren't we all indebted to ancient Greece, Rome, and the prophets of Judaism, Christianity and Islam? Aren't we all indebted to the culture of ancient Persia, India and China? Aren't we indebted to the cultural contributions of Baghdad and Spain in the Middle Ages? Isn't Western education today a product of the development and interaction of all the cultures that preceded it? Still, it is useful, I believe, to use the term Western education for modern educational systems of Western Europe and America, and it is the impact of these systems on the Muslim world that we wish to discuss today.

As for the Muslim world, it includes all peoples, mainly in Asia and Africa, with a few in Europe and America, who have adopted the religion of Islam. They are roughly estimated to number around 500 million people spread from the Far East to the Atlantic Ocean. Thus some populous nations like Indonesia and Pakistan, and some middle-sized and small ones like Malaysia, Afghanistan, Turkey, Iran, the 13 Arab states, Mauritania, Nigeria, Somalia, Eritrea, Senegal and others, have predominantly Muslim populations. The Muslim peoples, if united, would form a mass of population comparable to that of China, India, the Soviet Union, Western Europe, or the Americas.

To understand the impact of Western education on the Muslim world one must have a grasp of the fundamentals of Islam.

To understand and appreciate the impact of Western education on the Muslim world one has to have a grasp of the basic fundamentals and characteristics of Islam and their bearing on education. Islam is the final stage in the evolutionary development of the monotheistic religions. It is a development of the religious thinking of our father, Abraham, who was both the father of the Arabs, descendants of Ishmael, and the father of the Jews, descendants of Isaac, father of Israel. It was the Prophet Abraham who broke the idols and preached the concept of one God, Lord of the Universe. It was the descendants of Abraham who initiated the religions of Judaism, Christianity and Islam.

The word "Islam" means submission to the will of God, the One and Only, the Source of all Creation. The religion of Islam has some fundamental characteristics which I wish very briefly to point out for their direct bearing on the education of the Muslim world.

Islam is a totalitarian religion. It includes the whole life. There is no separation of religion from the State in Islam. Man's whole life, physical, civic, social, moral and spiritual, are all embraced by Islam. Thus Islam dominates the outer and inner life of man and attempts to direct it towards goodness and order. It also integrates his individual life with

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that of his fellow men and with nature. It subdues all to the will of God, the great Creator of the Universe as expressed in natural, scientific laws, in the moral laws embodied in the Qur'ān, and in the teachings of the Prophet Muhammad.

Islam preaches moderation and emphasizes the golden mean in matters of human conduct and morality. It does not shun nature but admonishes moderation in the enjoyment and exploitation of nature. Its social, civic and moral codes are well balanced, with scope for individual necessity and cases of emergency. Obligations fall (are lifted) in cases of necessity and emergency. Human nature is not bad in itself. It could be made good or bad by education.

Islam strikes a middle way between individualism and collectivism. The responsibility of the individual is well established and recognized in Islam. But the individual has to attend to the needs of the group and has to learn to be a useful member of society. In other words, he should be a social individual. Brotherhood, co-operation and mercy are greatly emphasized in the teachings of Islam. Every individual is required to exchange admonition and advice with his fellow-brethren encouraging them to do the good and avoid the evil. Private property is recognized by Islam, but private property is first of all a gift of God, and therefore public, the poor and needy, have their fair share in that private property. Thus Islam, while rejecting Communism as an excessive, anti-human, anti-individual system, taxes private property, depresses exploitation of people, and shuns hoarding of wealth and usury. Philanthropy and spending for public welfare is an item of faith in Islam. Every Muslim must practise charity and pay his tithe.

Islam promotes international brotherhood and the basic human rights. Thus it recognizes the full legal rights of women and acknowledges their autonomous personality. There is to be no discrimination among Muslims as to race, colour, class or sex. Race hatred, class struggle, or the subjugation of women, have no place in Islam. Islam promotes sobriety and decency in personal conduct. A Muslim should not drink alcoholic beverages, should not gamble, and should not commit adultery.

Islam emphasizes the importance of acquisition of knowledge

Islam emphasizes very strongly both learning and thinking. The Holy Qur'ān and the sayings of the Prophet of Islam contain a wealth of material exalting learned men and learning. It encourages thinking and the cause of wisdom. Science and wisdom are greatly esteemed in Islam. The search for truth and commanding truth to others is the duty of every Muslim. In the early days of Islam some Muslims were even held back from going to fight in self-defence in order to instruct their brother Muslims in the affairs of faith. Prisoners of war were made free after they had taught a number of Muslims to read and write.

As soon as the Muslims came in contact with the old cultures of Greece, Persia and India, a great movement of translation into Arabic and a movement of analysis and criticism of the new learnings were encouraged. Baghdad in Iraq, and Cordova in Spain, are well-known as medieval seats of Muslim learning.

The Caliphs of Baghdad and Spain were the champions of such learning. The Caliph al-Ma'moun (d. 833 C.E.), the son of the great Caliph Haroun al-Rashid (d. 809 C.E.), was a learned philosopher who presided over what we might call today an academy of learned men. A new Muslim civilization came into being. This civilization integrated old cultures of the past and made its new contribution to human thinking and knowledge. Muslim scientists, philosophers and jurists provided some world figures whose names the history of science and civilization will always carry. Al-Kindi (9th century), al-Farabi (d. 950 C.E.), al-Razi (d. 932 C.E.), Avicenna (d. 1037 C.E.), Avemroes (d. 1198 C.E.), al-Ghazzali (d. 1111 C.E.), Ibn Khaldoun (d. 1406 C.E.), Ibn al-Haytham (d. 1039 C.E.), are only a few of the well-known names.

I was delighted to come across an Arabic translation of a recent German book, Allah's Sonne über dem Abendland, by Dr. Sigrid Hunke, a German friend of the Muslims and the Arabs today. This book describes the great Muslim-Arab contributions to Western civilization. I believe such books render immense service in creating international understanding and good relations among peoples.

A few distinct characteristics of Islamic education in the Middle Ages and the causes that led to its decline

It is well known that science and learning flourished in the world of Islam in the Middle Ages, and many Western scholars travelled to Muslim centres of learning in the pursuit of knowledge. Islamic education in those days had some distinct characteristics:

1. It was many-sided in character and more or less encyclopaedic.

2. It encouraged debate, analysis and criticism with all the moral courage and freedom of thought which is required for such practices.

3. Access to education was free for all those who aspired to have it, and who had the competence to acquire it.

4. It was learning for the sake of learning and for the sake of increasing human knowledge and wisdom. Moral and spiritual motivation for learning was the rule, rather than material profit or acquisition of position and rank.

5. Scholars had the freedom of choice of their professors and the hours of study and the kind of study. They were not harrassed by examinations and the acquisition of (competition for) grades and diplomas. Learning was free, and it was learning for learning's sake.

It is to be pointed out, however, that, while thinking observation and experiment were encouraged at the height of Muslim culture, a period of decline came when authoritarianism, memory work and dogmatism prevailed. Nevertheless, individual scholars with their independent judgment and individual point of view were never entirely lacking at any time in the history of Islamic education.

The continued development of the flourishing medieval world of Islam was thwarted by foreign invasions, internecine wars, and lack of the stability and peace required for the promotion of learning. The Mongol invaders of Baghdad dumped all the city's great libraries into the Tigris River to the extent that the water ran black with ink. A dark night overtook the Muslim world. It was a period of cultural stagnation, a period of cultural slumber and hibernation.

The rise of the West and its influence on the Muslim world

The Muslims were awakened by the noise of Western guns bombarding them and dominating them after Europe had gone ahead with its scientific inventions and geographic explorations. There is no doubt that the machine age which developed in the West provided the West with the power of conquest and economic exploitation. By the end of the First
World War nearly all the Muslim lands had been conquered by the Western powers. There were no more than three or four more or less independent Muslim states at that time.

Under Western civilization, relatively few Muslims had the opportunity of having a Western education. The occupying powers opened some state schools, and Christian missions were encouraged to establish schools here and there. But there was no attempt to provide education for the whole people. Many of those who did acquire Western education did so in order to serve the occupying power, to become functionaries of the government, clerks, superintendents, interpreters, teachers, doctors, lawyers, army officers, etc. Very few, if any, were interested in pure science, engineering or technology.

The independent states began to adopt Western methods of administration. They also copied Western systems of education, but in many cases they copied the form rather than the spirit.

After World War I, and after the Wilsonian principle of the self-determination of peoples had been widely propagated, many Muslim peoples began to agitate for freedom from the Western yoke. Education became a means of propagating nationalism. Thus education acquired a new impetus and a new importance, and nationalism became a new force in the Muslim world.

Although Islam recognizes national characteristics of peoples it does not discriminate between nations or races except in the degree of piety and the service rendered to humanity by any people. In other words, Islam supports the positive aspects of nationalism and rejects national pride, chauvinism and imperialism.

Nationalism in the Muslim world was promoted through education, and itself gave new significance to education. The Muslim world began to look to the West for a pattern to follow in national liberation and unification. Many are those who studied the growth of nationalism in modern Europe, looking to nationalism as a liberating and unifying force. The unification of Germany and Italy provided a model for many a Muslim nationalist to follow.

By the end of the Second World War and the adoption of the Charter of the United Nations, the era of Western domination over Muslim lands came to a gradual close. In the twenty years following the end of the war practically all the Western empires achieved self-liquidation. Practically all Muslim lands attained political freedom and independence. There are some 30 independent Muslim states today.

The world of Islam is facing a new dawn. Western domination itself provided the education which undermined Western domination. The idea of nationalism, freedom and democracy, which came with the foreign education provided by Western occupying powers or Christian missionaries, began to be used in the struggle for liberation from the Western powers.

The Second World War brought new forces into the Muslim world besides the force of national liberation. The new forces ranged from the concept of the welfare state developed through peaceful, democratic methods to that of sanguine class struggle, subversion and revolution as preached by Communism.

The dilemma of the pattern of education in the Muslim world

Education in the Muslim world today, being mainly an imitation of Western patterns, is in a dilemma about which way to achieve social and economic justice. Should the Muslim countries follow the path of democracy and peaceful evolution through education, or the path of harsh and inhuman extermination and class warfare?

Muslim rulers, themselves being mostly overwhelmed by the forces of world ideological currents, are sometimes swept off their feet. Some of them are drifting this way and that, without a solid ideological ground on which to stand. Education in some Muslim states today is being used more and more as a political tool to serve the prevailing winds and whims of the times.

The effect of elementary, secondary and higher education in Muslim countries

There is a universal cry and demand today for modern Western education throughout the Muslim world. One hears everywhere of the need of more schools, of shortage of qualified teachers, of shortage of buildings, school books and equipment. The Muslim world, being mostly poor and underdeveloped, can hardly satisfy the people's need of more education. Elementary education, although universal and obligatory by law in several Muslim states, has not yet reached the majority of elementary schoolchildren in most Muslim countries.

Secondary education is mainly of the academic and literary type with relative neglect of technical schools and trade schools, a fact which shows that the overwhelming majority of those who pursue secondary education aim at government employment and similar white-collar jobs.

Higher education is provided in local colleges and universities or by sending students to Western institutions in Europe and America. Local universities generally suffer from difficulties in providing qualified professors and adequate facilities, libraries and laboratories. But the most important deficiency may be the lack of a university tradition of high scholarship and intellectual discipline.

I will always remember asking a Western visitor to the Medical College of Baghdad before the Second World War his candid opinion about medical education in Iraq. His answer was that there was much to be desired in the way of promoting the scientific spirit and professional ethics. This judgment may be considered harsh, but it contains a grain of truth. Fortunately conditions have improved a good deal since those days. But it is necessary to lay ceaseless emphasis on the scientific spirit and professional ethics throughout the Muslim world. Men of science and morality deserve all possible encouragement and support.

As for those who are sent abroad for their higher education, some of them suffer from maladjustment to Western surroundings and therefore become lax in their studies. Some of them may be treated leniently by their hospital professors to the disadvantage of the nation from which the students come. As for those who prove quite proficient and well-qualified, some of them are induced not to return to their native lands. Many of those who do return to their native lands feel frustrated by the conditions of work at home and the jealousies and intrigues of those who had no opportunity for studying abroad, not to speak of political instability and insecurity due to recurring coup d'états and upheavals. One might also add that some of those who return from Western universities are arrogant and pedantic, claiming to be superior and all-knowing, which itself is a sign of superficial education. They are in a hurry to occupy high positions and soon
abandon their line of scholarship. They enter political life, sometimes to the detriment of scholarship and scientific pursuits.

Fortunately the majority of the students return home to do constructive work, and not a few have shown outstanding technical and professional ability.

Adult education and anti-illiteracy campaigns are thought of here and there in the Muslim world. In some places excellent results are being achieved through the use of television, the cinema and the press, although more and better adult education is to be desired.

One encouraging step in promoting the cause of literacy was taken this year by His Majesty the Shahanshab of Iran, who dedicated one day's expenditure from the army budget to combating illiteracy. His Majesty's action deserves to be emulated by all the nations of the world.

**Western influence on the education of women in Muslim countries**

Another example of Western influence in Muslim education is the education of women. Girls go to school everywhere now and, in principle, are given the same opportunities for self-development as the boys. Of course, there is a loud cry in the conservative camps that this is not the right education for girls, and that a girl's first duty is to be prepared for building new homes. There is no doubt that good child education in the homes is much desired in Muslim lands. Poverty, disease and ignorance do not provide the right surrounding for the moral and sane growth of children. We believe that the improved education of girls and the liberation of women will certainly contribute to better child education and provide a sound basis for Muslim family life in modern society.

For many years women have pursued higher education in several Muslim lands, and the participation of girls in the general educational system is moving at a fast pace. Not long ago it was interesting to read that the number of girls going to school in Su'di Arabia had jumped from less than 5,000 to some 50,000 in the last few years. This is certainly a social revolution of the right kind. All this goes to prove a growing enthusiasm for Western education throughout the Muslim world.

The objectives of education in state schools during the time of foreign domination were the preparation of government clerks and the promotion of loyalty and identification with the foreign culture of the ruling power, and especially its language. The aim in the mission schools was the propagation of Christianity.

The new objectives of education are the rapid development of the new independent states in the economic, social and political fields along Western patterns. It should be understood that the term “Western” here includes the patterns prevailing in the U.S.A. and the U.S.S.R., both of which started from European origins. The newly-independent states are in a hurry to develop. They are in a hurry to develop cadres. There is not much time for original thinking. The process is mostly one of adoption with some adaptation.

We wish to point out, however, that each successive stage in educational development did not completely replace the previous stage. Thus, in most Muslim countries today you may find the old traditional schools existing side by side with the foreign schools, religious or secular, established in the days of foreign domination, and all these exist side by side with the new national school established by the newly-independent national governments.

**Some major problems facing the Muslim world in following the pattern of Western education**

We may now turn to the major problems facing the Muslim world as a result of the impact of Western education. This does not mean that the Muslim world has not already benefited greatly from the influence of Western education, whether in its foreign form or its nationally adopted form. Certainly Western education has greatly contributed to broadening the horizon of the Muslim people's experience by making them conscious of their place in the world, and desirous of participating in a world of which they are an integral part. Western education has already contributed a great deal to the development of health, economy, civic and military discipline, and organization. But Western education, in spite of its many blessings, carries with it germs of social and moral and spiritual disintegration for the Muslim world. That is why it should be critically studied.

The troubles and dangers of Western education, as applied in the Muslim world, come either from the way Western education is hurriedly and superficially adopted without the necessary integration with indigenous conditions of the people, or they may be inherent in Western education itself.

First, we shall take up some of the problems arising from the poor adaptation of Western education.

1. The adoption of Western education without due integration with the national educational background which includes one's religion, national language and history, and native art and literature, has created a sort of schism and dualism in the social and intellectual structure of the people. Evidently, when you have some people who think and talk in modern terms and others who think and talk in old terms, you are apt to have a lack of harmony and a lack of cultural unity. This is what has happened, and it is in itself a great social, political and cultural problem.

2. Western education, especially that provided by foreign schools or national schools upholding foreign patterns, quite often neglects the national language. The result is that the educated class use a foreign language amongst themselves, a fact which is repugnant to nationally sensitive people.

3. In adopting Western education it is the form rather than the spirit that is being emphasized and cared for. A Muslim student worries more about the academic certificate and title than he does about the discipline and hard effort required in pursuit of truth in the libraries, in the laboratories and in the field.

4. In adopting Western education, emphasis is put on memory work rather than on thinking, acting and searching. Here again it is the form rather than the spirit of Western education that is emphasized.

5. Some of those who acquire a smattering of Western education become arrogant and pedantic. Others are misfits. This is especially true when public education of the masses lags, and the number of those who have attained higher educational standards is small.

6. It is mainly the literary and academic type of Western education that has been emphasized at the expense of scientific and technical education. As a result there is a great surplus of white-collar young men who are unemployed.
and who turn into agitators. For example, the number of lawyers in some Arab countries is quite out of proportion to the needs of society because access to the study of law is made easy.

7. Many of those who acquire a Western education know very little, if anything at all, of their religion and culture. They are culturally uprooted. Besides, they may acquire habits of drinking alcoholic beverages and indulging in moral laxity. This has been a curse resulting from the misunderstanding and misapplication of Western education.

A young Muslim and the Western educational philosophies

A young Muslim who goes to a foreign school does not learn anything about his own religion. He may not realize that a Western man acquires his religion in the church or in the home, if not at school. Foreign education does a great disservice when a Muslim student does not receive instruction in his religion or get any other form of solid moral and spiritual education. As an uprooted, restless individual he often becomes a pessimist and a destructive agitator.

As for the problem inherent in some Western educational philosophies, I shall mention only the following:

1. Western educational systems are often based on dualistic philosophies. They separate Church from the state, soul from the body, the individual from society. A secular education may easily lead to agnostic, materialistic and atheistic attitudes of mind. Once a young Muslim is subjected to this kind of education, he becomes completely alienated from his society and lives in a spiritual vacuum. I believe that dualism in Western education becomes a curse, especially when it separates Church and state, body and mind, thought and action, science and religion, etc.

Islam does not separate the Church from the state, nor God from science, nor science from morality. Government, science, morality and action must all be unified and integrated by natural and moral laws which are all essentially divine. A Muslim who is not versed in his own religion may fall a victim to the dualistic philosophy practised in the West. Many a Muslim has already been victimized by a one-sided Western education.

2. Western education, while lacking intercession and unification, suffers from lack of harmony. The West certainly has produced great scientists, great moralists, great artists, great literary men, great administrators and organizers. Each is excellent in his own field, but each is rarely concerned with interaction and balance with others. Each carries his specialization to excess without due contact and due regard for others. A scientist may not worry much about moral values. A politician or an administrator may formulate his own practical moral standards. The education of the mind may not give due consideration to the building of character or good taste. There is a great danger in Western education of forgetting the spiritual attributes of man and emphasizing his physical, social and political life. There is certainly a lack of harmony in Western educational systems due to a lack of emphasis on the moral-spiritual development of man.

This relative neglect of the moral-spiritual aspect of man is adopted by the new educational systems of the Muslim world today. There is certainly a lack of emphasis on the moral-spiritual development of the new generation of Muslim youth as compared with the emphasis on the academic, intellectual and physical aspects of human life. The result is a sub-human product of education.

To educate man, the whole man, as recommended by all the great philosophers of education, is still a dream to be realized.

The importance of studying Georg Kirchensteiner and Pestalozzi

We owe much to the great German educator, Georg Kirchensteiner, who showed the importance of the integration and harmony in the education of the hand with the mind with moral and civic attributes and traits. The Muslim world certainly should study Kirchensteiner and Heinrich Pestalozzi more thoroughly if they wanted to profit from Western educational thinking.

3. The lack of integration and harmony leads to excess in emphasizing certain aspects of human life at the expense of others. One goes to extremes. You are either this or that. You are either purely intellectual or purely spiritual. You are either extreme individualists or complete collectivists. You are either an extreme nationalist, or a complete internationalist. You are either an intellectual or a hand-labourer.

This either-or attitude of going to extremes at the expense of the golden mean has divided humanity in general, the Muslim world included, into warring camps. It has shattered humanity from end to end.

Alien movements, social and political, that appeal to violence instead of debate — and use hatred instead of love — have their roots in educational systems that do not promote a faith leading to moderation, reasonable thinking and self-control. The Holy Quràn over and over again emphasizes these qualities. But educational systems adopted from the West have produced a crop of ideologues all one-sided, and often lacking in love, reason and moderation.

4. While some Western systems of education have produced ideologues who do not practise tolerance and moderation, others have contributed to moral laxity. Drinking alcohol, use of drugs and lack of chastity are tolerated. Moral standards have become relative and subject to individual caprice and whims. Self-control is at its lowest.

A Westerner may practise some moderation or decency even in an atmosphere of complete freedom. A Muslim who comes from a very strict social environment, once exposed to this free atmosphere, is often in danger of losing self-control and turning licentious. Not a few are the Muslim victims of heavy drinking and lax moral standards.

5. The confusion of ends and means. Western educational systems often confuse ends and means. Of course, means are themselves ends until realized. But once an end is realized, it should be recognized as a means for a higher end. Are examinations and certificates ends or means? Of course they are means. But many a teacher and many a student considers them as ends, and with them his learning is finished and stopped. Is knowledge itself an end or a means? Knowledge should also become a means. It is a means for action, and action is a means for better living. Better living must be a means for moving towards higher existence and approaching God. God is the highest end to whom all our education should lead. This is the teaching of the Quràn. But many a Muslim brought up in Western educational institutions thinks of the examinations, the diploma, then of the job he occupies and the money he makes. STOP! THAT IS THE END!

But the aim of life should be much greater than money, and much greater than selfish comfort and pleasure. Money
is good if it is used as a means to higher ends, not as an end in itself. Education must help the younger generation distinguish ends from means, and choose good means for the highest ends.

Some conclusions

From this very brief exposition of the problem facing the Muslim world, whether because of poor adaptation of the Western system, or because of inherent gaps and weakness in the Western system itself, we wish to draw the following significant conclusions:

1. The religion of Islam is not fundamentally antagonistic to Western education. On the contrary, the scientific and technical spirit of Western education, and its humanitarian achievements, are part and parcel of Islam itself. Islam, however, is incompatible with some of the excessive materialistic and anti-human tendencies and the moral laxities which sometimes are mistakenly considered as essential features of Western education.

2. The problem of education is a human problem. It is the problem of man as an individual and as a species.

   How can education perform the function of developing man to the best and highest level possible?

   How can it help to fulfill his mission on this earth as God's agent (as stated in the Holy Qur'an), or as a being created in the image of God (as stated in the Holy Bible)?

   How can the West and Islam co-operate to bring about this noble and sublime function?

3. The West has the opportunity of looking at itself as reflected in a mirror. It can start self-examination and self-criticism by studying the application of the Western system of education in Muslim lands with its great achievements and its great faults.

   The same self-examination is needed by Muslim countries who adopted Western systems in a hurry, and sometimes with great superficiality. They may find out how much they have lost and are still losing by ignoring their spiritual and cultural heritage.

4. On deeper self-analysis and self-examination, the Muslim world will find it necessary to probe still deeper into the content and spirit of Western education in order to adopt any elements of strength that have been neglected in the past, and to avoid some of the great faults.

   It might also do the West a great deal of good to study Islam and to appreciate and adopt much of what it contains about human nature; the balanced integration of the moral, social and material with the spiritual; and the purity and simplicity of its metaphysics.

   In other words, educational exchanges should normally be a two-way traffic. This should be an age of give and take, friendship and co-operation, between cultures and peoples.

5. This is no time to indulge in the discussion of the need of a new outlook on education from a human and international standpoint — the need of a philosophy of education which treats mankind as one integrated whole, respecting and integrating its diverse nationalities, religions and cultures. Such a philosophy of education surely must develop man as an integrated whole — integrated within himself, integrated within his own nation, race and religion, integrated with humanity at large, integrated within the universe, and integrated with the Creator of the Universe.

Integration, harmony and evolution are three basic concepts for any sound philosophy of education, Muslim and Western alike. A spiritual life and a morality based on love and mercy and the golden mean are fundamental for any sane philosophy of education. It is here, unfortunately, that Western education, whether applied in the West itself or adopted by the Muslim world, has shown its greatest weakness.

A short chapter of the Qur'an which sums up the all-round philosophy of education

To conclude, I wish to quote a small chapter of the Holy Qur'an (chapter 103) which I consider a fine summary for any inclusive, all-round philosophy of education proper to be adopted by all mankind:

"In the name of God the Beneficent, the Merciful (Swear) by the Time
Most surely man is in loss
Except those who believe and do good
And enjoin on each other truth,
And enjoin on each other patience."

In this little chapter we find four requirements that should form the four cornerstones of any solid and sound foundation for an educational structure:

1. Faith, which is based on faith in the Great Designer and Creator of the Universe.

2. Doing good, which means action and good deeds for oneself, one's family, city, country, nation and humanity.

3. Enjoining truth on each other, which includes scientific pursuits and the propagation of sound knowledge.

4. Enjoining patience on each other, which includes the development of self-control, and the overcoming of passion and violence. Self-control is really the key to all moral behaviour.

Faith, action, science and morality have to go hand in hand in an integrated and harmonious manner. This is the great ideal for a philosophy of education suitable not only for the Muslims, but for all humanity, not only for our times, but for all times!
CODES REGULATING PERSONAL STATUS AND SOCIAL EVOLUTION IN CERTAIN MUSLIM COUNTRIES*

Modifications to Succession Rights and to Clauses of Wills in Iraqi, Tunisia, Syria, Morocco and Egypt

By M. BORRAMANS

The institutions of inheritance from intestate persons and the testamentary will are traditionally linked with Personal Status. Hereditary devolution is fixed by religious law and is not based on the tacit wish or desire of the deceased (the de cujus). Generally speaking, its régime cannot be modified by human agency. In Islam the right of succession is strictly regulated vis-à-vis the family organization. And it is because of these close ties with Family Law that it will be interesting to describe in this article the reforms which it has undergone.

1. SUCCESSION RIGHTS

Up to modern times these have remained exactly as they were developed by that vast juridical organization known as Fiqh. We know that two great traditions were brought together in the Muslim system of succession. One of them was ante-Islamic, and it gave the lion’s share to the agnates (“universal” heirs — ‘asabāt). It was superseded by another really Muslim system, which granted inheritance in priority and in fixed proportions (shares or fard‘i'dh) to certain relatives, mostly women and relations through women. It is this “modified agnatic succession” — in operation for thirteen centuries — which has been embodied in the modern Codes and dealt with in its most minute details and including the most unique cases. An exception is the Iraqi Code, which has made some striking innovations in this connection.

Nothing has been changed either in the basic principles or in the form: the ensemble of the succession clauses remains identical, and the character of the “scholastic repetition” of certain chapters, such as the one on Exclusion (haib), always surprises the non-Muslim reader. The most “feminist” of Codes have in no way dared to attack the time-worn “principle of masculinity”, so often affirmed in the Qur’ān: male descendants inherit twice the portion which is given to women, when they are both of the same degree of relationship.

Two of them, however, make use of the procedure known as radd (return) in order to benefit the “reserve” heirs, usually women, vis-à-vis other heirs. This occurs when there is no agnate heir (‘āsīb = “universal” in Tunisian terminology). The whole of the patrimony is then shared between the fards (“reserve” or “Qur’ānic” heirs) and all other categories of heirs are excluded, whether they are “children of the womb”, that is to say, near blood-relations, who in the Hanifite and Hanbalite schools can inherit after the two preceding categories (and this is the case in the Syrian Code, Article 289), or whether it is the Bayt al-Māl (State Treasury), according to the Malikite school of Muslim law. This rule is not a Qur’ānic one. The Book fixes only the shares due to persons which it declares eligible to inherit because of exemptions from the agnostic system. In fact, it is only in a Hadith that we find the clause which is the logical consequence of the system: “Give the fard to those who are entitled and the remainder to the nearest male relation...” When there is no ‘āsīb (agnate) the absence of any text has given rise to differing opinions among doctors of law. A large majority are in favour of radd. That is to say, that the remainder of the inheritance, which cannot go to the ‘āsīb, should go to the heirs who have already received their legal share (a “return” or radd). This entails another partition. Each recipient has his share increased, although the proportion between the different shares allowed by the Sacred Book cannot be altered. However, the husband, as such, does not benefit from radd. The Syrian Code still follows those authorities on which were based the rulings of the Hanifite and Hanbalite schools: “If the legal shares (fards) do not absorb the whole of the inheritance, and there are no relations on the father’s side, the remainder goes to those claimants, other than spouses, in the proportion of their legal (obligatory) shares (fards)” (Article 288.1). Here the innovation, or “reform”, consists in allowing the husband to benefit from radd in cases where there is no other “reserve” heir (fard), nor any other person who can inherit (agnate relative = ‘āsīb, or relative on the mother’s side). The

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1 For the previous instalment see The Islamic Review for October 1966.
remainder of the succession is re-assigned to one of the husbands where there are no paternal relatives, or any claimant to a share because of paternal or uterine relationship (Article 288.2).

The Tunisian Code

The Tunisian Code, following the same lines as the Syrian Code, and in consequence breaking away completely from the Malikite tradition, goes even farther, since the husband is in no circumstances excluded from "return". In the absence of "agnate" heirs, and whenever the succession is not entirely shared out by the "reserve" heirs (fard), the balance is returned to these latter, and is shared between them in proportion to the shares they originally received (Article 143(a).1). Further, if we take into account the fact that the new Tunisian legislation has not recognized the subsidiary vocation of the dhawi l-Arhûm, we notice that the surviving husband is much better treated than he is in Iran or India (or even in Syria), since he is a co-claimant, with the other fard, to a share of the balance. He can even retain the whole of the inheritance when there is no 'disib relative,' and the claims of the "people of the womb" cannot come before his, as is the case in Syria.

But the Tunisian Code innovates even more than this in the second paragraph of this Article 143(a), an article which..."... seems to be in its entirety a supplement to the chapter on 'Exclusion' (hajib)". It already excluded the State (Public) Treasury — now it excludes agnate heirs in favour of "supplementary" advantages to certain "reserve" heirs, to whom it intends to be generous: "The daughter, the daughters, the grand-daughters of the paternal line ad infinitum benefit from the 'return' of the surplus, even when there exist 'agnate' heirs from among the various brothers, paternal uncles and their descendants, and also the Treasury." The radd, which we have previously studied, left intact the "respect due to amination" (nasabhiyyah). "By introducing the idea than a line of descendants precedes in importance a line of collaterals, the new law shakes the very foundations of Muslim successoral law. It reveals its preference for a cognatic conception of the family. The estate left by the father, and inherited by the daughter to the detriment of her uncles and great-uncles, eludes the amination family and passes into the hands of the children of the daughters on the death of their mothers."57

There is no doubt that the giving of a fard share to a daughter was already prescribed in the Qur'an, and indicated a tendency which traditional law had in no way enlarged upon. It is a rule of Muslim successoral law that the son excludes the brothers of the deceased, whatever they may be, but this rule which gives precedence to the descendants over the collaterals operates only with regard to "agnates". A daughter excluded her uncles and other amination relatives only with the "connivance" of her brother, who alone was the reason for the exclusion. Today in Tunisia a daughter or a grand-daughter has no further need of the presence of a brother, for she also is now a reason for exclusion. Thus the lot of the daughter has been ameliorated "as much in practice as in theory"; even if the reform has not the scope of the one carried out some time ago by the Shi'ites, and more recently by the Iraqi Code. In any case, the daughter does not exclude her grandmother, nor her nenhews, nor even her niece. In spite of criticism, the Tunisian modifications to succession rights have a certain importance, since they tend to strengthen family ties in the strict sense, and to give to daughters and grand-daughters (through the sons, be it noted) the same rights as those given to sons and grandsons (also through the sons).

Further, if the Syrian Code (Article 264.2), the Moroccan Code (Article 228) and the Iraqi Code (Article 1199 of the Civil Code, which became Article 74 of the Code regulating Personal Status) maintain that there is "... no inheritance between persons of different religions..." (ikhiltif al-din), the Tunisian Code makes no declaration on this permanent principle of traditional law; it even seems as though, even in cases where it could be applied, the religion of people who inherit is discreetly "un-mentioned", in order that there will be no possible obstacle or delay to a succession.99

2. CLAUSES OF WILLS

In this article we will not go too deeply into the question of voluntary wills, which remain the same as when they were dealt with by traditional law. We know that the difference of faith (ikhiltif al-din) was never an obstacle to an inheritance, and it is the same today in the Syrian Code (Article 215.1), the Tunisian Code (Article 174), and the Moroccan Code (apparently). However, the Iraqi Code "has, somewhat oddly, restrained the right to inherit granted to the non-Muslim" by differentiating, curiously enough, between personal property and real estate: "When the testator and the inheritor are not of the same religion, only a will dealing with personal property is valid" (Article 71).

On the other hand, this same Iraqi Code, following the example of the Egyptian legislators who had already dealt with this matter, carried out an innovation. It allowed a person "to make a will in favour of an heir (in the same way as he would have done with regard to a non-heir), leaving him one-third of his property. This portion cannot be exceeded, except by permission given by the heirs" (Article 1108.2 of the Civil Code, which became Article 73 of the Code). We know that in Muslim law "... the law does not protect heirs against the donations of the deceased, who can dispose of the whole of his property in this way. But on the question of donations (legacies), all the heirs, both fard and 'disib, are 'reserve' heirs. One can only dispose of one-third of one's property as bequests." Here again the four schools are in agreement when they prohibit all bequests made to an heir when they are part of this third part which is not reserved for heirs.51 Morocco (Articles 176 and 179.1) and Tunisia (Article 179) recall in their Codes that "... a will cannot be made in favour of an heir..." unless, of course, all the co-heirs agree to this. The Syrian Code, without either prohibiting or allowing this, has arranged so that these "assignments" of property, acceptable after death, are included in the share-parts of the inheritance, and thus are not to the detriment of any of the heirs (Articles 219 and 259).

The institution of "obligatory will" in the Syrian, Moroccan and Tunisian Codes

Nevertheless, the essential reform of the Syrian, Moroccan and Tunisian Codes resides in the institution of the "obligatory will". Here they have supplied a long-felt want, a fundamental defect in Muslim successoral law: the absence of any kind of "representation". Successor representation is unknown in Muslim law, in so absolute a manner that in no author, no rite, do we find those dissonant views, those isolated opinions, which are the supreme resource of those who try to discover some justification for theories or ideas which official Muslim law has never countenanced."93 Certainly it is logical "... that on the death of the head of a
family his property should go to the nearest male relative, that is to say, his son, who is more often than not an adult, or about to become one. It is equally logical that, if grandsons live with sons in the same household, the only persons entitled to share in the estate are descendants in the first degree.” But this solution becomes unjust if, where there are sons, it is applicable to grandsons of pre-deceased sons, who are already excluded by the death of their sire. In Shi‘ite law, they would be able to “... act in the place of their deceased father and receive his share of the sire”. For Sunni Muslims, nothing has been provided. The “affection of their grandfather” could give them satisfaction only up to the limit of one-third of his patrimony. “It is well to recognize that the practice of donating gifts to grandchildren is very widespread. But this fact itself shows how much resentment is caused by the injustice of a rule which has no Qur‘anic basis, and, in the present state of society, has all the appearance of an illogical survival.”

Taking as a basis a personal interpretation of Ibn Hazm, the Egyptian legislator, “... without making any change in the traditional Muslim system regarding inheritance ab intestat”, and refusing “... to create a veritable successor representation”, which would appear to be a much too revolutionary kind of reform, conceived the idea of an obligatory legacy (Articles 76 to 79 of the Law No. 71 of 24 June 1946). It is thought that “the grandfather has the duty of making a will in favour of his grandchildren. If he has not actually done this, the obligation does not die out with him, and the grandchildren are, so to speak, creditors. They are entitled to claim their share as if he had expressed this in a will, and the legacy is now considered to be so obligatory as to be tacit.” Following the example of Egyptian legislation, the Syrian Code (Article 257), the Moroccan Code (Articles 266 to 269), and the Tunisian Code (Articles 91 and 92), have adopted the obligatory legacy, utilizing various methods of application.

Who are the beneficiaries of this arrangement? In Egypt and in Tunisia they are “... the children of the pre-deceased son or daughter of the defunct, whatever their sex, whenever there exists a living son who, under the previous legislation, would have inherited the estate.” In Syria and in Morocco only the boys and girls of a pre-deceased son can benefit from a legacy of this kind, to the exclusion of the children of a pre-deceased daughter. With the exception of Tunisia (where the obligatory bequest is inherited only by “the first line of grandchildren”), those who benefit are the descendants ad infinitum of the son (and not of the daughter), when the males by whom they are related to the deceased have died before him, and there exist descendants more closely related, who would have inherited the estate, either wholly or in part. The value of this obligatory bequest is “equivalent to the successorial share which would have been received by their father (or their mother in Egypt and Tunisia), or their grandfather if he had survived the de cujus. However, the amount “cannot exceed one-third of the total assets of the succession”. Further, it is specified that “... all legitimate claimants of the male sex receive double the amount received by female claimants, each generation automatically excluding its own descendants, and not those of others, and each line of descendants receiving only the share due to its particular generation.”

The beneficiaries of this obligatory “legacy” have not “the right to it if they inherit from the ‘sire’ of their father, whether this be their grandfather or their grandmother, or if this sire has given them, through a will or by a deed of gift (between living persons), the amount to which they would have been entitled by this obligatory will, or if through a will he has given them less than this latter amount. (In which case the sum must be increased to the full amount.) If he has given them more, the consent of the heirs must be obtained before they can take possession of the surplus. If by a will he has given only some of them, the obligatory testament will operate for the others, to the amount of the share to which they are entitled, according to the methods which shall be specified.” Finally, it is laid down that this obligatory bequest “takes precedence over the voluntary bequest”.

By this manipulation of the law “successorial representation” is assured, although, it is true, within certain limits. Here we encounter a legal device which is a combination of both testamentary will and intestate succession, which seems to conform more to the principles of the latter than to the rules of the former. There is no doubt about it being a bequest, since it may not exceed one-third of the value of the estate, it takes precedence over all other bequests, and it does not require the beneficiary to be of the same religion as the deceased. But is it really a bequest, since there is neither a will nor any evidence of the wishes of the deceased, nor is anyone concerned whether the legatee accepts the bequest or has the qualifications necessary for this acceptance? Again, here we are dealing with the very essentials of successor law, since the amount of the bequest is always equal to the successorial share which the son (or the daughter) would have received, or the pre-deceased grandsons if they had survived, and since males receive double the share which goes to women. “The legislators could not openly modify the laws of succession without the risk of being accused of brazenly inventing something entirely unknown to the four Schools of Law. It seemed to them more tactful to camouflage what is, after all, an innovation, under the disguise of an obligation imposed on the deceased,” namely, an “obligatory bequest”.

3. THE IRAQI REFORM

The Iraqi Code has not had to borrow from radd (return), even in a simplified form, or from the “obligatory bequest” — the juridical instruments of a reform which remains, after all, only partial. Since Iraq already enjoys a more evolved type of legislation for its amiriyyah territories, a system which dates back to the Ottoman Land Code (Code Foncier), of 1858, which, “in many ways resembles the Ja‘farite (Shi‘ite) system for intestate successions”, it has only been necessary to extend its scope of application, stipulating that “the clauses which shall be enforceable are those laid down in Articles 1187 to 1199 of the Civil Code concerning the nomination of heirs and the calculation of their shares of the real estate and personal property comprising the succession” (Article 74). This system differs so much from the one practised in Sunni Muslim law that we feel here the need to give an outline of its principal features.

“Heirs are divided into three main orders: first of all, the descendants of the deceased, then the father and mother of the deceased, and their ancestors, and finally, the grandfathers and grandmothers and their descendants. Each of these three orders excludes the one following it, and within each order the heir who is the nearest in relationship to the deceased excludes an heir who is farther removed. This arrangement is only broken in favour of the father and mother, who, where there are children or other descendants of the deceased, receive one-sixth of the estate, which they share
individually and equally. Similarly, the existence of a husband entails some change in the normal procedure: if he is a 'rival' with heirs of the first order, he receives one-fourth of the estate, if he is a 'rival' with heirs of the second order, he receives one-half of the estate."  

But the twofold unorthodoxy of such a system lies in the fact that it challenges the "principle of masculinity", and permanently guarantees "successor representation". As for that which has to do with the claims of heirs to estates, care will be taken to see that any heir of the male sex receives the same share as an heir of the female sex, whatever may be the importance given to her claim. Similarly, with all the orders, care will be taken to see the descendants take the place of their ancestors, in cases where he has died before the de cujus (the person leaving the estate) (Civil Code, Article 1194).

This article had already been written when we were able to have access to the actual text of a new Iraqi law (Law of 8 March 1963), abrogating Article 74 of the Code regarding Personal Status, thus making obsolete the whole system of succession dealt with here (see note in the Appendix).

All that has been dealt with in this article concerning the strenuous efforts made in Egypt, Syria, Tunisia and Morocco to minimize or modify whatever may shock the modern conscience in traditional successor law finds an echo in this twofold "originality" of the Iraqi Code. In differing ways the tendency is to seek after more justice and equity between heirs on the one hand and between the sexes on the other. Progress in this direction has perhaps not been entirely uniform, but everywhere the efforts made have been directed towards the same objective, and there is no doubt that this will lead to even more important developments of the law on these particular issues.

**APPENDED NOTE**

A new chapter has been introduced into the Iraqi Code for Regulating Personal Status, entitled "Clauses dealing with successor matters". It comprises six Articles (Articles 86 to 91). It stipulates that the "allotment of rights and shares among heirs on the grounds of relationship will be made in conformity with the Shariat clauses which were in force before the promulgation of the Law regulating Personal Status of the year 1959" (Article 90). So that once more Iraqis are made subject to the rules of traditional law.

Nevertheless we should "note carefully" Article 89. This classifies the following persons as "heirs on the grounds of relationship" in the following order, as recognized by Shi'ite law : The father and mother, the children ad infinitum, all heirs of the male sex having a share equal to that of two persons of the female sex. Secondly : the grandparents, the brothers and sisters, and the descendants of brothers and sisters. Thirdly : paternal uncles and aunts, also relations "by the women" (Article 89). Thus there will be no priority for "dsab males over daughters who are sole heirs to an estate."

It is interesting to note that in all these arrangements the "principle of masculinity" is again in evidence, as stipulated in traditional law: for the husband, a share double that of the wife; and for the son, a share double that of the daughter (Articles 91 and 89, 1 in fine). Nevertheless, "successor representation" remains a recognized procedure.

Did the reform or innovation of the Code of 1959 go too far? The gist of the argument put forward in criticism of this law, one of the first promulgated by the Government set up after the Revolution of 14 Ramadan 1389 C.E. (February 1963 C.E.) is that "The most shameful of the 'deviations' perpetrated by the Qasim government was this abolition of the Shariat clauses relating to inheritance . . . ."

This revision, although only partial, is none the less significant. It shows how hazardous an undertaking it is to carry out reforms which are too sweeping in their scope, to modify too profoundly firmly-established juridical customs. Social evolution and juridical evolution go hand-in-hand, the one preceding the other, each in its turn. The gap which now separates them, however wide it may appear to be, must not prevent them from joining.

**FOOTNOTES**

78 See L. Millot, Introduction a l'Etude du Droit musulman, Paris, Sirey, 1933, under heading "Les Successions", pp. 444 to 490. "The Muslim law of succession is relatively simple, there being a fundamental distinction between heirs receiving a fixed share, and residuary heirs having total claims; a liquidation and a distribution free from all complications" which is the procedure current in many other Codes (p. 445).

79 "It is a general (and justified) opinion which regards the creation of obligatory shares (or fard) for the benefit of certain categories of heirs as a generous effort in favour of the cognatic family. It is well-known that with Muslims the fundamental system is the agnatic or patriarchal system. Basically, the only link of relationship which counts is the one which joins a man to his descendants or collaterals of the male sex who are not separated from him by any intermediary of the female sex. This fundamental system is modified by a series of Qur'anic clauses or precepts which declare it obligatory to give to certain relatives and to the husband a share of the estate of the deceased. We can thus distinguish two groups of heirs: first, those who hold their right by reason of the law of Islam (this condition having been validated by Islam), such heirs being termed asabah, or agnatic; secondly, those to whom the Qur'an has assigned a share. These are termed fard, or Qur'anic heirs" (J. Roussier, "Le statut successoral en droit Tunisien en Studia Islamica, XII, 1960, p. 132).

80 "The chapter on haib is actually only a kind of summary of all that is contained in the chapters on the farā'id and ta'sib which precede it on the majority of treatises. A study is made of the case of each heir, and the author explains what happens when this heir has a 'rival' in the form of another legal claimant. This chapter fulfils the same function as the summarized or synopsis tables . . . for students preparing their examinations" (J. Roussier, cit., p. 139).

89 Girls get half of the share given to boys, not because of the principle of masculinity as suggested by the author of the article, but because the girls always get a share from their husbands when they get married (The Editor, The Islamic Review).

81 Cf. The Qur'an, 4:12: "(Here is what) God orders regarding your children: to the male, a share equal to that of two females . . . ." Idem, 4:175: "If there are brothers and sisters, to the male a share equal to that of two sisters." This principle of masculinity emphasizes the principle of agnation, and, in fact, enhances its importance. This explains how the grandchildren of a daughter do not inherit from their grandparents.

82 "Where there are no legitimate claimants to the succession, or paternal male relatives, the estate of the deceased goes to the relatives on the mother's side. Relatives on the mother's side are relatives other than those having the right to legal recognition or those having a paternal male relationship (mentioned above)" (Article 289).
83 The Moroccan Code remains silent on these specific points, but we know that "in all matters for which the clauses of the Code do not furnish a solution, recourse will be had to the most probable, the most well-known, and the most utilized solutions of the rite of the Imam Malik." (Article 297, a repetition of Articles 172 and 82). It seems therefore that in Morocco the Public Treasury can inherit, by virtue of being an "agnate," "Malik and Shafi'i" are of the same opinion as Zayd ibn Thabit... who opposed radd. As he also refused to give legal recognition, even of a subsidiary nature, to the 'people of the womb', he awarded directly to the Bayt al-Mal (State Treasury) what remained of the estate after the distribution of the legal shares, and even the whole of the patrimony, if there were no legal shares to distribute (i.e. where there were no 'dibsh or agnate relatives of the deceased" (J. Roussier, art. cit., p. 130).

84 Thus, in a succession where the only heirs are the mother and the daughter of the deceased, the mother's share being one-sixth, and the daughter's one-half (or three-sixths), there remain two-sixths. From this remainder the daughter will be given a share which will be three times the share given to the mother, according to the proportion between their respective shares, established by the Qur'an. In other words, the mother and daughter would share the whole of the estate in the proportion of one to three, that is to say, each would ultimately have as many quarters as the Book gave her sixths (D. Luciani, Traité des successions musulmanes, Algiers 1890, p. 516).

J. Roussier, art. cit., p. 134.

85 In this way, the Public Treasury is excluded (mahuj), even though it is regarded by this same Code as an agnate relative, having the status of "universal heir" (heir to the totality of the estate) (cf. Articles 114 and 115 in fine). For, according to Article 143, "if we take this literally, we should have to conclude that radd would function only if there were no longer a Public Treasury in Tunisia, an hypothesis which we could not seriously ascribe to the legislators of this Republic... Radd will operate in Tunisia as it does elsewhere (except in Maliki countries) for the benefit of "half-share" heirs and to the detriment of the Bayt al-Mal, or whatever organization takes its place... The Tunisian Public Treasury will receive only the estates to which there are no farid or 'asib heirs. On balance, it will take preference over the "people of the womb" (J. Roussier, art. cit., p. 138).

J. Roussier, art. cit., p. 140.

86 We should also point out that two of the above-mentioned Codes raise obstacles to all inheritance between their own nationals (Muslims or non-Muslims) and the nationals of other States (Muslims or non-Muslims), unless there is reciprocity between them, but having regard always to the clauses concerning "difference of religion" (Syrian Code, Article 264, Iraqi Code, Article 1199 of the Civil Code). The Moroccan and Tunisian Codes have not been seen fit to pronounce on this question, but it seems they both give it an identical interpretation.

90 L. Milliet, op. cit., p. 462.

91 And this has as its basis a Hadith attributed to the Prophet Muhammad and pronounced by him during his last sermon. "God has assigned to each of the legitimate claimants the share due to him, not a legacy for the benefit of the heir" " (J. Roussier, art. cit., p. 102).

92 It is a matter of common knowledge that the Muslim who wishes to show favour to one of his heirs can always have recourse to a deed of gift (between living persons), with the hazards which this entails, or to a waqf (or habous), wherever the private habous has not been prohibited by the State (see further on).

93 Y. Linant de Bellefonds, Immutabilité du droit..., p. 18.

94 J. Roussier, art. cit., p. 118.

95 J. Roussier, art. cit., p. 119.

96 It is said in the Qur’an 2:176: "When death approaches one of you, if he leaves property, he should make a will in favour of his father and mother and his nearest relatives, in the recognized (convenient) manner. (This is) an obligation for the Believers. Contrary to the majority of interpreters who consider this verse totally abrogated by the Qur’an 4:12-15, which attribute a fixed successional share to a dozen relatives, including the father and mother, Ibn Hazm insists on the obligation of making a will in favour of those “nearest relatives” not mentioned in chapter 4."

97 J. Roussier, art. cit., p. 121.

98 This implies that the Moroccan Code, unlike the Syrian and Tunisian Codes, has inserted the chapter on "Obligatory Wills" in its book on "Succession.

99 Y. Linant de Bellefonds, Immutabilité du droit..., p. 20.

100 It is doubtless because it excluded from the obligatory legacy the grandchildren who have issued from a predeceased daughter that the Moroccan Code has maintained the institution of tanzil (instution or substitution of heirs) in the Book on "Wills": "There is the creation of an heir when the testator says: 'Such-and-such a person will inherit with my son or my children', or include him (or her) among my heirs', or 'Let him (or her) inherit (some) of my property', or in a case where the testator has a grandson who has issued from his deceased son, 'Let him inherit in the place of his father" (Article 212). Although this is a question of a legacy, the "principle of masculinity" is maintained ("in such a way that the man receives double the share given to a woman" (Article 215)). Note that tanzil can operate for the benefit of all "non-successive" persons and is not reserved only for grandchildren.

101 Linant de Bellefonds, Le Code israélien..., pp. 128-129.

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NOVEMBER 1966
Cultural Influence of the Immigration of the Moors into Tunisia after their Expulsion from Spain in 1609 C.E.

By KURT VORDERMAIER

One of the most eminent sections of the Tunisian aristocracy was of Spanish origin, and comes from that part of Spain which was known in the Middle Ages by the name of "al-Andalus", and where the original "Andalusi" comes from. This name is still to be found in the Iberian Peninsula and denotes the southern region of Andalusia.

The mass immigration of the Moors into Tunisia began in 1609 C.E. during their expulsion from Spain. At that time Tunisia was a Turkish province under the rule of the Dey 'Uthman. In few other countries did the Moors find such a good refuge and such a warm-hearted reception as they did in Tunisia, where gradually 80,000 refugees arrived. Although they were of various origins and professions, they all had one thing in common — their incapability of understanding their old Arabic mother tongue, their diligence and skills.

They are divided into three groups. The largest group, because of its social or intellectual status, wealth and culture, stayed in the capital of Tunis, where it formed the "Barrio de Espana" (Maumut al-Andalus), which nowadays is still known by the same name, as well as the streets "al-Andalus" and "Riyad al-Andalus".

The farmers and tradesmen received a great deal of support and were helped to keep on with their professions near the capital and places like Ariana, Djedeida and Tebourba grew into centres, which today are small towns.

The rest of the Moorish people were distributed in the region of Cape Bon, towards the north, and in other less populated regions. This people, who had a wide experience in farming and a good knowledge of agriculture, sought with preference places along the banks of the river Medjerda or alongside the ruins of Roman cities, where they could settle down. That is how settlements like Medjaz al-Bab, Testour, Slugia, Galaat al-Andalus (al-Andeless), Zaguan — where windmills were erected, reminding one of Spain and Don Quixote — Soliman, Grombalia (which is actually the capital of the district of Cape Bon) and other less important villages, were founded, or to be more exact, refounded.

As always happens in history, there grew a mutual exchange of ideas and points of contact between the native and Moorish population, in which the respective groups adopted those new traditions or customs which best suited their own way of life. The Moors, who adapted themselves to their new surroundings in which they had settled down, slowly gave up their Spanish way of dressing and took on the Turkish attire. They also found it necessary to learn Arabic, their ancestral mother language, which was like a foreign tongue to them.

The great progress of the country in the first half of the 17th century is due entirely to the presence of the immigrant Moors, who built roads, gardens and plantations, introduced new cultures and trades, enriched music and folklore, in addition to a great influence on the vocabulary and customs.

One of the main trades introduced by the Andalusian Arabs was the production of the chechia, the typical Tunisian red cap with a long tassel which reaches down on to the back. Its production reached the large number of 40,000 dozen a year. The chechia trade employed 13,000 persons. Although the younger generation hardly ever wears this headgear nowadays, mostly going about bareheaded, the production of this cap is still relatively high and is one of the most produced articles in the old city, al-Medina, in Tunis.

The well-known traveller Paysonnel visited Tunisia in the second half of the 18th century and has left us passages in his book which give his impressions of the Moorish influences in Tunisia. These influences are to be especially noticed in their (the Moors) politeness and generosity, as well as the pomp with which they used to organize the wedding feasts or bodas, this Spanish word being still in use today. Paysonnel says that he heard the Moors of Soliman and Grombalia still speaking Spanish, and that he had personally known people who wrote poems in the same language. And this traveller and author travelled through Tunisia more than a hundred years after the immigration of the Moors into that country!

Even today, three hundred years later, a considerable number of Spanish words exist in the spoken language of Tunisia, e.g., in names of people and places. In Testour, the place where animals are kept is called corral (Spanish corral). This city, near the hill Chachtel (Spanish castillo), on the banks of the river Medjerda, stretches out into a big fertile plain called barquil (Spanish vergel) by the natives.

In Tunis there is a square called the Murkat (Spanish mercado = market). Near the Bab Souika in Tunis there is a district called Biga, which is the distorted pronunciation of the Spanish vega. In the streets of Tunis one can discern in the Arabic-Tunisian conversation Spanish words like duro (a piece of coin, seguro (sure) and veinte (twenty).

Three kilometres away from Tunis is the Bardo, the old residence of the Beys, which is the Arabic-Tunisian pronunciation of the Spanish Prado. Inzaguan, which on account of its geographic layout reminds one a lot of the Spanish

Continued on page 34

THE ISLAMIC REVIEW
The Slavic Empire

The wind blows cold across the steppe,
Cold upon our faces and our hands,
And our fleet ponies run into the bitter wind,
As we ride out to watch our restless herds.

We are the men of the great steppes,
The men of the far outlands, the windswept plains,
For we were born in the saddle,
Born on horseback to live as free men.

But what has come over us?
We are no longer free.
Once, long ago, I took a great journey
Across the plateau of Iran
And through the mountain gates.
Many men and women, and children, too,
We came down through the passes,
And it warmed a man’s heart
To look back and see the multitude
Moving, as a river moves,
Down from the snows and the great heights,
Down, down to the plains of the Tigris
And beyond the rivers to the desert
And the goal of our journey — the Sacred City.

Now what do we do?
Our mosques have been turned into stables
And our children must study Marx.
*Das Kapital* and not *al-Qur’an*
Is to be the textbook of the new generation.
Have we no friends?
Egypt could put pressure on Moscow,
But nothing has been done.
Damascus could champion our cause,
But it has done nothing.
Do they not know that we also worship God?

What good does it do them
To enter the mosques
And bow down before God
If they have no care for their brothers?

I have seen the wistful faces,
The faces of old men, turned toward Mecca
And in their eyes I have read this message:
“We cannot go; they will not let us go.
As little children we looked forward to the Journey,
As young men we selected our horses,
In middle life we questioned the heavens,
And now we are old
And we know that nobody cares.
It seems that as we have lived in Central Asia,
So shall we die, afar from the Sacred City.”

Brethren, far away, take heed:
Many loyal Muslim hearts still beat in Russia;
Many peasants and herdsmen long for the Sacred Journey.
Has the world outside our spacious prison
No care whether we are free or slaves?
Slaves of the Slavs — is that to be our destiny?

*Norman Lewis.*

*November 1966*
Kris and Crescent

or

The Muslims of the Philippines

By PETER G. GOWING

"Indeed it is already becoming clear that the resurgence of Islam has helped unite the Moros with their fellow Filipino citizens. Due to the revival of Islam, the Moros have a new self-confidence as a religious minority and have achieved a heretofore rare organizational cohesiveness, as a result of which they have begun to seek their rights peacefully rather than belligerently, and with a good measure of success."

What the Muslims of the Philippines are

When reports of savage skirmishing between American soldiers and Filipino warriors drifted back to the United States intermittently during the fifteen years prior to World War I, the American public would have been hard put to it to explain what the fighting was all about. All most people knew was that the United States had just acquired the islands from Spain, that a captain named Pershing was doing a fine job and that a hand gun called the Colt .45 had been developed to bring down certain fanatical warriors who were terrifying the troops with wild suicide charges. They also knew, vaguely, that the warriors were called "Moros".

Considering that these same Moros today constitute a body of Muslims more numerous than the population of either Kuwait or Libya and that they occupy an area larger than Denmark, this vague memory scarcely did them justice. Yet there has always been something unforgettable about the fierce courage of the Moros. In frail praus they ranged over the southern seas in quest of plunder and wrote a savage page in history as pirates and raiders. Armed with little more than the kris — a long, serpentine dagger that is as much symbol as weapon — the Moros went out to win tribal honours by killing wild elephants. With the same simple but deadly weapon they fended off Spanish conquistadors for more than three centuries, fought American doughboys to a standstill for 15 years and harrassed the imperial troops of Japan throughout the period of occupation in World War II.

To remember the Moro only as a fierce warrior, however, is not entirely fair. For the kris is not his only symbol; indeed it is not even his most important symbol. Of much greater significance is the crescent of Islam, the mark of the Muslim faith. The very name "Moro", in fact comes from Spain's identification of the Muslims they found in the Philippines with the Moors of North Africa who conquered much of Spain in the name of Islam and planted the crescent in Spanish soil for eight centuries. And it is the crescent, adorning the domes and pinnacles of Moro mosques in the Philippines and embedded deep in the hearts of believers, that has shaped, inspired and preserved Moro unity, and is today having a strong impact not only on the future of the Moro peoples, but on the entire Philippine nation.

1 Courtesy, the Editor, Aramco World, New York, for July-August 1966.
Introduction of Islam into the Philippines in 1380 C.E.

Islam, curiously enough, came to the Philippines not on an Arab dhow, but on a Chinese junk. That was about 1380 C.E., when, according to tradition, one Sharif Aliya Karim al-Makhdum, an Arab missionary, who probably sailed to the Philippines via the Arab trading centre in Canton, stepped ashore at Bwansa on Jolo Island in the Sulu Archipelago and began to spread the teachings of Muhammad. Ten years later Raja Baguinda, a Muslim prince from Sumatra, appeared off Jolo and — since he commanded a fleet of praus and a company of armed adventurers — easily persuaded the islanders to accept them as their leader. Fifty years later still a third Muslim came. He was Sayyid Abu Bakr of Mecca, an authority on Islamic theology and jurisprudence and — he claimed — a direct descendant of the Prophet Muhammad. Abu Bakr married the young daughter of the ageing Raja Baguinda, inherited his rule, assumed the authority of a Caliph, crowned himself Sultan of Sulu and claimed all of Jolo for his own. When this did not entirely suit the local dutus (chieftains) the new Sultan proposed a compromise.

"I will take all the land within the sound of my great gong, as well as the coast, the coastal waters and all that is in them," he told the chieftains. "And the rest of the island will be yours."

Forgetting, apparently, that the island's rich deposits of pearls lay in those same waters, the chieftains agreed. So began what was in effect a constitutional monarchy that was to last until 1915 when Jamalul Kiram II, the 25th direct descendant of Abu Bakr, surrendered his temporal sovereignty over Sulu to the United States government in exchange for a pension of $6,000 annually.

The Sultan of Sulu, as he and his successors came to be known, undoubtedly played the most important role in the Islamization of the islands. They were generally the most powerful of the Moro leaders. But there were others too. At one time, in fact, there were more than 30 sultanates, of which the most important was the sultanate of Mindanao, founded in 1475 C.E. by Sharif Muhammad Kabinesuwon, son of an Arab father and a Malay mother. In addition, although the islands were not on the usual trade routes of the Arab dhows, many Arabs and Persians dropped anchor in the Philippines and along with their cargoes of merchandise unloaded ideas and customs as well. More missionaries came and gradually the Arabic influence seeped into all aspects of what had been primarily a Malay culture. Tales from The Arabian Nights crept into the folklore. Arabic words slumbered into the dialects. The Qur'an became the source of law, and Arabic calligraphy replaced Malay script as the written language. With immigration continuing right through the unrest on the Arabian Peninsula in the 1920's, the Philippinones today can boast not only of Arab ancestors, but of a substantial Arab population.

Moros are not to be equated with the Arabs

It would be a mistake, however, to equate Moros with Arabs. Despite the strong influence of individual Arabs in planting the seeds of Islam, the most important thrust came from Malaya, one of the many places to which fervent Arab missionaries had carried the Muslim faith centuries before. Moros, in fact, are indistinguishable from other Filipinos who are generally a blend of southern Mongolid, Indonesian and Malay stocks, with the Malay strain predominating. The Moros, furthermore, are split into ten ethnolinguistic groups which differ from each other almost as markedly as the Moros collectively differ from Philippine society as a whole. Even their dialects are not always mutually understandable.

Among these groups are the colourful Yakam, who are thought to be of Polynesian origin, the Badpao — "sea gypsies" — who live in communities of houseboats like the sampans of Hong Kong, and other seafaring Moros who live in bamboo-frame houses perched on stilts above

In the Philippines Islam has begun to play a dynamic role in the future of the Moros, who have now launched a campaign to shed the name "Moro" — they want to be called Muslims — the water and connected to each other and to the land by narrow catwalks. And although most Moros — 92 per cent — belong to the four major groups (the Maranao of Lanao, the Maguindanao of Cotabato, the Tau Sug of Sulu and the Samals of South Sulu and Zambanga) there are still great differences among them. The Tau Sug, for example, wear tight putese while the Samals wear loose, baggy trousers and the Maranao and Maguindanao wear large oblong cloths that wrap around the waist and hang to their ankles like skirts. Some Moros are farmers who live inland and cultivate rice, coconuts and hemp. Others are fishermen riding their bright winged vintas far out to sea in search of fish. And many are artisans. The Maranao and Maguindanao, for instance, are
SIDELIGHTS OF THE EVERY DAY

A Marawi girl weaving a beautiful malong, a traditional garment of the Moros of Maranao

Blacksmith in Bangoa shapes swords and knives in homemade forge

A Marawi artisan carving

Handsome Maranao mosque of great natural beauty, given to the 1,600,000 M south
LIFE OF THE FILIPINO MUSLIMS

In a bogo, a boat carved from one log, a Badjao woman kneads cassava bread flour.

Skilled hands that once shaped weapons today turn out fine brass trays for sale to tourists.

Traditional designs in wood...
serious problem in the Philippines and it goes back a long way — to 1565 when Spain, at the apex of its power, established its rule in the islands and began to impose Christianity on all Filipinos. In general the Spaniards were successful; most Filipinos swapped their vague paganism for Christianity with little protest. With the Moros, however, there was trouble. Miguel Lopez de Legaspi, the captain-general of the first wave of conquistadors, ran into strong opposition from Raja Sulayman, the Muslim prince who governed what was then a small town called Manila. In 1571 war broke out. Sulayman was killed and his followers were driven from the northern and central islands forever. In the southern islands, however, the Moros dug in deep and not only held out against the Spaniards for the next 300 years, but continued, during that period, to expand into the interior of Mindanao and other southern islands and to unite the new converts with the older sultanates in a war against the invaders and the newly-converted Filipinos.

It was a bloody, savage war, with no quarter given on either side. The Moros waged what is now a familiar kind of warfare — fast, mobile, guerrilla attacks out of jungle and mountain and sporadic, swift raids from the sea. Cruelty and reckless slaughter were not the monopoly of either side, but to this day the image of the Moros as a merciless foe remains sharp in the non-Muslim Filipino mind, and is the most difficult barrier to understanding between the Moros and other Filipinos. This image developed partly because of the particular ferocity exhibited by the Moros against the Filipinos who accepted Christianity — thus becoming "infidels" — and partly because of juramentados.

renowned for fashioning splendid brass trays, urns and betel nut boxes. The people of Sulu are famous for their exquisite carving of boat prows, grave markers, wall panels, furniture and the handles of weapons and tools. Moros are famous too in making fine-bladed weapons — particularly the kris — and have won a measure of fame for rattan mats and such musical instruments as the gabbang, a bamboo xylophone, the suling, a six-hole flute, and the kulintangan, a scale of brass gongs.

For all their internal differences, however, the Moros, 1,600,000 strong, still form a distinct united religious minority. This is apparent in the domes, mosaics, richly-tiled flooring and ornately carved pulpits of the mosques.

It is also apparent in the existence of special laws passed by the Republic of the Philippines permitting the Moros to practice polygamy and divorce — in accordance with Islamic teachings. It is equally evident in the political structure which is only now beginning to change. At the top of this structure are the sultans and those of royal blood. Below them are the datus and below these the freemen. There are traces, too, of the days when the Sultan's chief adviser was an official called a kadi, a man well-versed in Islamic jurisprudence, who exercised general supervision over religious courts and over the preachers and teachers. Although not recognized by the Philippine government, these courts continue to function, adjudicating both civil and criminal cases, particularly divorce and property settlement, according to a blend of Islamic law and local custom.

The Moros and Spaniards

This isolation from Philippine society as a whole is a
power and drove the Moros into the countryside. It was as much of a victory as they ever achieved. They controlled the towns but the Moros controlled the countryside, and so matters stood when, in 1898, Spain ceded the islands to the United States at the end of the Spanish-American War.

The Moros were no more ready to obey Americans than they were to the Spaniards, and so it wasn’t long before American troops took up where the Spanish had left off. In the process they developed the Krag rifle and Colt .45 — both weapons having tremendous hitting power — specifically to stop the juramentados. They also took part in some of the most savage campaigns American troops had ever faced. On Jolo, for example, 800 soldiers were ordered to take a mountain top called Bud Daho which was held by 1,000 Moros. Although armed with only krises, spears and a few rifles, the Moros refused to surrender and American soldiers had to call up artillery before launching their charge. When it was over only six Moros had survived.

Faced with that kind of unyielding courage, the United States had to adopt a new policy. In 1914 the Moro areas were transferred to civilian control. Under the influence of progressive programmes of education, medical care and road construction, and a guarantee of religious freedom, the Moros gradually accepted the new American rule. So effective was that policy that when the Philippine Commonwealth was inaugurated — the first step toward independence — the Moros pleaded that they be permitted to remain under American control or at least form their own government. Neither request was granted and before further steps could be taken Japan had swept over the Philippines and the Moros had once again picked up their krises and gone back to war.

The Moro community today

In view of this history, it is remarkable that the Moros are not even further apart from Philippine society as a whole. It is even more remarkable since Islam, as a driving force in the life of the Moros, has had an unparalleled resurgence in the Philippines since the end of World War II. Responding to the influence of Muslim missionaries and visitors from

Moros and the American occupation of the Philippines

In the 1860's, with the introduction of steam-driven gunboats, the Spanish broke the back of Moro sea
the Arabian Peninsular, Egypt, Pakistan, Indonesia and Malaysia, and the flood of tracts and other publications pouring in from the Ahmadiyah Movement in Pakistan, Moro communities have begun to construct mosques at a surprising rate, to attend services and to observe religious obligations. Attendance is at an all-time high. Two Muslim schools of higher learning have been founded: Kamisol Islam Colleges in Marawi City and the Philippine Muslim College in Jolo. Muslim organizations like the Muslim Association of the Philippines, the Knights of Muhammad and the Sulu Islamic Congress have been formed. The number of Muslims who make the pilgrimage to Mecca annually is now in the hundreds, and religious practices have been reformed along orthodox lines. Moros have even launched a strenuous campaign to shed the name “Moro”, they want to be called “Muslims”.

Non-Muslim and Muslim Filipinos

Among the non-Muslims of the Philippines there is some concern about this resurgence of Islam, a concern lest the Filipino Muslims link up too closely with Muslims in Indonesia, a country with which the Philippine Republic has had difficulties.

Actually this concern has little basis. Indeed it is already becoming clear that the resurgence of Islam has helped unite the Moros with their fellow Filipino citizens. Due to the revival of Islam, the Moros have a new self-confidence as a religious minority and have achieved a heretofore rare organizational cohesiveness, as a result of which they have begun to seek their rights peacefully rather than belligerently, and with a good measure of success. In Jolo recently, for example, an imam requested use of public school facilities for religious instruction of Muslim children. His request was readily granted.

In other ways, too, the separateness of the Moros is being overcome. They are increasing in numbers and, consequently, are able to exert more political power. As possessors of vast acres of rich agricultural land desperately needed by the rest of the Philippines, they have an additional power. More youngsters are taking advantage of education opportunities and the lower classes in Moro society have already discovered that a schooling is a social and economic escalator. Many Moros have studied in the United States on Fulbright and other scholarships. Transistor radios carry news, information, opinions and ideas deep into the most remote areas of “Moroland.” Marawi City has a Rotary Club, Cotabato City has a Junior Chamber of Commerce and one of the most active organizations in Jolo is the Bud Daho Masonic Lodge. More and more Christian Filipinos are moving into the Moro areas, bringing with them ideas and opinions that, despite inevitable clashes, have already begun to break down the isolation that has surrounded the Moros and to cross the barriers that time and history have erected.

The changes are not taking place painlessly, of course, but they are inescapable, and most leaders of the Moros know it and have begun to prepare for it. Some datus, for example, have sought elective office so that their influence as tribal chieftains can be brought to bear on the central government. Others have been appointed ambassadors, judges, commissioners and even cabinet officers. Still others work with such groups as the Commission on National Integration, which concerns itself with finding ways of uniting the Moros more closely to the rest of the Philippines.

These leaders know that the change will be slow. To transform a free, dauntless people, proud of their traditions and independence, into settled, sedentary citizens requires time and evolution. But they also know that if the Moros are to play a significant role in the future of their country the crescent, not the kris, must be their symbol.
The Turkish Judiciary
Under the Second Republic

By ROBERT DEVEREUX

"The Constitution is still too new to make any meaningful judgment as to how effective it will prove over the long run and, specifically, whether the provisions relating to the judiciary and courts will ensure their independence to the extent desired. The substance of those provisions and the innovations they incorporate would certainly appear to be well suited to accomplish their purpose. As Kemal Karpat has observed: 'The democracy of Turkey is not complete by any means. . . Yet the experiment offers grounds for optimism; for the history of Turkey is a chain of attempts at democratization, each one stronger and lasting longer than the previous one.'"

The 1924 Constitution, the Menderes régime and the Committee of National Unity

On 14 May 1950, in Turkey's first completely free and honest elections, democracy seemed finally to have triumphed in that Middle Eastern country. The long one-party rule of the Republican People's Party came to an end as a new Democrat Party administration under Adnan Menderes as Premier and Jelal Bayar took office.¹

Democracy had indeed triumphed but, as events were to prove, only temporarily. Following a second Democrat Party electoral victory in May 1954 there began a steady drift back towards the authoritarian, one-party rule which had supposedly ended in May 1950. Slowly but surely partisan considerations began to erode the nascent Turkish democracy and to colour every action taken by the government. Using its heavy majority in the Grand National Assembly, the Menderes régime enacted law after law that restricted personal rights, ruthlessly curbed the freedom of the press and made virtually impossible normal activity by opposition groups and individuals, including the opposition deputies in the Assembly. Even the traditionally independent and inviolable Turkish judiciary did not escape the partisan interference of the Menderes administration.

Although election results indicated that the Democrat Party continued to enjoy widespread support, unrest increased steadily. The fate of the Menderes régime was sealed when the leaders of the Armed Forces, feeling that they could no longer in good conscience support the régime, joined the ranks of the opposition. On 27 May 1960, the Committee of National Unity (CNU), a military junta headed by General Jemal Gürsel, effected a coup d'etat which brought the ten-year Menderes régime to an end.²

In broadcasts and published statements, the CNU stressed that its actions were in no sense a power grab by the military but had been motivated solely by the necessity of ending the arbitrary and unconstitutional acts of the ousted Democrat administration and of returning Turkey to the ranks of free and democratic nations. The CNU as a body and General Gürsel personally — he had assumed the dignity of Head of State and Government³ — pledged that power would be returned to an elected civilian administration at the earliest possible moment which would, in any case, not be later than 29 October 1961. These statements and promises were more than faintly reminiscent of those made by other military officers after they had seized power in their own countries, but there was one basic and significant difference: Gürsel and his CNU colleagues were sincere.

The CNU, as one of its first acts after assuming power, had abrogated the larger part of the existing 1924 Constitution;⁴ and as an initial step towards the formation of the Second Republic, it shortly thereafter appointed a commission of university professors to draft a new constitution. This task was completed by mid-October 1960.⁵ The next step was the convening in Ankara on 6 January 1961 of a Constituent Assembly,⁶ which, in addition to normal legislative functions, had responsibility for giving final form to the new charter. Approval of the definitive text⁷ was voted on 27 May; and in a national referendum on 9 July, the Turkish electorate

³ On 26 October 1961, after civilians had resumed control of the government, General Gürsel was elected President of Turkey for a seven-year term, in accordance with Article 95 of the new Constitution. On 28 March 1966 the Grand National Assembly declared Gürsel, who had been in a coma since 8 February, to be no longer physically capable of holding office. The Assembly proceeded to elect General Jeydet Sunay, former Chief of the Turkish General Staff, as Turkey's new President.
⁴ The text is widely available in works on Turkey. See, for example, Donald E. Webster, The Turkey of Ataturk, American Academy of Political and Social Science, Philadelphia, 1939, pp. 297-306, or Lewis V. Thomas and Richard N. Frye, The United States and Turkey and Iran, Harvard University Press, Cambridge, 1951, pp. 156-166.
approved the new Constitution by a margin of slightly less than two to one. Shortly thereafter the Constituent Assembly announced that general elections for members of parliament would be held on 15 October and that power would be transferred and the Second Republic formally inaugurated two weeks later on 26 October. This timetable was maintained and the CNU thus made good its promises.

It was generally recognized in Turkey that the conduct of the Menderes régime had been made possible largely by the inadequacies of the 1924 Constitution. That is, the 1924 Constitution failed to provide any mechanism which could prevent an administration supported by a large legislative majority from violating with impunity both the letter and spirit of that instrument. The Constitution of the Second Republic reflects that awareness in its provisions, especially in those dealing with the judiciary, which henceforth is to assure not only justice but also respect for the constitutional order.

The remainder of this article is devoted to an examination of the judicial provisions of the new Turkish Constitution, that is, those provisions designed to assure the independence of courts and judges and those prescribing the establishment and stipulating the jurisdiction and competence of such courts as are to enjoy the status of constitutional organs. These terms of reference, it should be noted, exclude discussion of those clauses which, while possessing a judicial flavour, are more properly viewed as part of the Turkish "Bill of Rights," for example, Art. 33, which prohibits the enactment of any ex post facto law. Also excluded is any discussion of the Turkish court structure as a whole; only those courts expressly mentioned in the Constitution are considered.

I. GENERAL PROVISIONS

The judicial power, declares Art. 7, is exercised by independent courts in the name of the Turkish nation. This is not an innovation, for the 1924 Constitution proclaimed the same principle in its Art. 8. This time, however, the principle is fortified by an array of other provisions and arrangements designed to ensure that the nation will no longer have to depend solely on the good faith of its political rulers for observance and enforcement of that principle.

Judges, the Constitution asserts in Art. 132, are independent in their duties and they render their decisions solely according to the Constitution and law and on the basis of justice and conscience. No organ, official, authority or individual may give orders or instructions or send recommendations or suggestions to courts and judges concerning the exercise of judicial authority. No questions may be asked or debated or any statement made in the Legislative Chambers on any matter which is set before the courts, and no legislative, executive or administrative organ can in any way change or delay a court decision, which they must enforce.

At the same time, judges are guaranteed security of tenure. By virtue of Art. 133, they cannot be dismissed except as provided by law in the case of those who are convicted of an offence entailing expulsion from the profession and those who for reasons of health are no longer able to perform their duties. The retirement age for judges will be 65 (a special law shall fix the retirement age for military judges) and they cannot be retired before that age except at their own request (Art. 134). As a further guarantee the Constitution provides in Art. 133 that, once appointed, a judge may not be deprived of his salary even if his position is abolished. Moreover, by virtue of Art. 144, the abolition of a position or court is henceforth to be strictly judicial, not a political, decision (see discussion of the Supreme Council of Judges in Section III below).

Aside from these provisions, the Constitution states in Art. 134 that the qualifications, appointments, rights, duties and promotions of judges, temporary or permanent changes of their duties or places of duty, initiation of disciplinary actions against them, inquiries about offences allegedly committed by them and the decision to try them, and malfeasances and non-feasances requiring dismissal are all to be regulated by law in accordance with the principle of judicial independence. The stipulation that these matters are to be regulated by laws enacted by a politically constituted parliament appears, at first glance, to detract from the independence of the judiciary which the Constitution purports to guarantee, but that is not at all the case. The Constitution expressly states that these laws are to be in accordance with the principle of judicial independence; hence, any such law that violated this principle would be declared unconstitutional and thus null and void by the new Constitutional Court (see below). Furthermore, once enacted, these laws are to be applied not by the Ministry of Justice, a political organ, but by the Supreme Council of Judges, a judicial organ.

According to Art. 135, court hearings are to be open to everyone, although the courts are empowered to hold closed hearings when they decide that public morals or public security so require. A special law will govern the trials of minors. Every court decision, regardless of the issue involved, must be accompanied by the reasons therefor.

Except in so far as the subject is covered by the provisions of the Constitution, the establishment of courts, their duties and competence, their operations and their trial procedures are to be regulated by law (Art. 136). However, no court may refuse to examine a case which falls within its competence and jurisdiction (Art. 31) nor may any person be brought before any judicial authority other than the one which, by law, has jurisdiction over the matter involved (Art. 32). Art. 32 further amplifies this latter provision by explicitly prohibiting the creation of any extraordinary tribunals.

II. THE HIGH COURTS

The 1924 Constitution provided (Arts. 61-67) for the establishment of only one court — the High Tribunal — and made reference (Art. 61) to only one other, i.e. the Court of

6 Because of time considerations, members of the Constituent Assembly were not elected by the people but by organizations and groups. See Robert Devereux, "Turkey and the Corporate State," Surat, Spring 1962, pp. 16-24.
7 For Turkish text see Rezmi Gazette, No. 10859, 20 July 1961. An official English translation has been issued as Constitution of the Turkish Republic. Translated for the Committee of National Unity by Sadik Balkan, Ahmet E. Uysal and Kemal H. Karpat by MBK Sovra, and Komo (CNU Social Affairs Commission), Ankara, 1961. There are more differences than similarities between the draft constitution and the final, approved text.
Cassation. In contrast, the new Constitution, in a section titled “The High Courts (Yüksek Mahkemeler)”, provides for the establishment of seven. (One of these, the Supreme Council of Judges, is actually not a court per se but rather a quasi-judicial body, hence it is discussed in Section III.) In some cases considerable detail is given concerning their organization and functions, while for others only the broad outline is sketched, with the details to be provided later by laws to be enacted by the Grand National Assembly of the Second Republic.

Constitutional Court

The principal judicial innovation provided for by the new Constitution is the establishment of a Constitutional Court (Anayasa Mahkemesi) which, although the analogy is not entirely correct, may be compared in function and purpose to the U.S. Supreme Court. The Constitutional Court’s principal duty is to serve as a guardian of the Constitution and thus prevent a recurrence of the unconstitutional actions that caused the 27 May 1960 Revolution. So that it may properly fulfill this duty, the Court is granted full competence to determine whether laws and the Internal Regulations of the Legislative Chambers (i.e., the National Assembly and Republican Senate which, together, make up the Grand National Assembly) are in conformity with the Constitution (Art. 147).

In fulfilling this major duty, the Constitutional Court will, by virtue of Art. 151, serve as a court of appeals when lower court decisions are contested on the grounds of unconstitutionality. If a lower court trying a case concludes that the provisions of the law to be applied are unconstitutional or that an allotment to that effect by one of the parties in the case merits serious consideration, it must suspend the trial until the Constitutional Court has ruled on the issue, which it must do within three months of the time the issue is referred to it. If it fails to render a decision within this time period, the lower court itself will rule on the issue according to its own judgment and the trial will resume. However, if the Constitutional Court should belatedly hand down a ruling, the lower court must comply therewith, provided the ruling is received before the lower court has made a final verdict in the case before it.

While lower court decisions appealed to the Constitutional Court will arrive there through normal judicial channels, certain individuals and groups are granted the right under Art. 149 to petition the Court directly for a ruling on an issue allegedly involving a question of constitutionality. The President of the Republic, political parties that received at least 10 per cent of the valid vote in the last general election of deputies or have representatives in the Grand National Assembly or their Assembly groups, at least one-sixth of the total membership of either of the Legislative Chambers, the Supreme Council of Judges, the Court of Cassation, the Council of the State, the Military Court of Cassation and the various Turkish universities may, in matters connected with their own existence and duties, directly file suit of annulment with the Constitutional Court on grounds that laws or the Internal Regulations of the Grand National Assembly or certain of their articles and provisions are contrary to the Constitution. However, Art. 150 stipulates that this right must be exercised within 90 days of the day of publication in the Resmi Gazete (Official Gazette) of the law or regulation which the petitioner wishes to have annulled.

Similarly, when one of the legislative chambers waives the legislative immunity of one of its members or declares him no longer to be a member, the member concerned or any other member of either chamber may, within one week of such decision, apply to the Court for an annulment thereof on grounds that it conflicts with the Constitution or the Internal Regulations of the chamber involved (Art. 81). In such cases, the Court must hand down a ruling within 15 days.

The right of direct petition to the Court, however, may not be exercised by anyone as regards an international treaty which has become effective in the manner provided by law (Art. 65).

The Constitutional Court also has competence in certain political matters, that is to say, it will serve as a watchdog over Turkey’s political parties. The Constitution directs in Art. 57 that parties must account to the Court for their sources of income and their expenditure; the manner in which they will account to the Court and the method by which the Court will make its financial audit are to be regulated by law. Art. 57 also provides that the Court has exclusive authority to ban permanently any party which fails to conform to the constitutional requirement that its by-laws, programme and activities must accord with “the principles of the democratic and secular Republic which is based on human rights and freedom and with the basic principles of the indivisibility of the State’s territory and people”. Another provision (Art. 19) empowers the Court to ban permanently any organization or political party which “exploits or misuses religion or religious feelings or things considered sacred by religion in any manner whatsoever with a view to resting the basic social, economic, political or legal order of the State, even partially, on religious rules or for the purpose of securing political or personal advantages and influence”.

This latter provision may be viewed to a degree as simply a restatement of the secularism which has been an official tenet of the State since the First Republic was founded by Atatürk in 1923. The more immediate reason for its insertion into the new Constitution, however, was a growing concern in Turkey over the resurgence of reactionary Islam, a movement which the former Menderes régime was generally considered to have encouraged or, at least, to have tolerated for political reasons.

According to Art. 152, the Court’s decisions are to be final in all cases and are to be published immediately in the Resmi Gazete, at which time they become binding on the legislative, executive and judicial organs, on the administrative authorities and on the real and judicial persons of the State. Laws and regulations which the Court determines to be unconstitutional will become invalid on the date of the decision unless the Court expressly fixes another date, which may not be more than six months from the date of the decision; retroactive decisions are expressly prohibited. On issues of constitutionality which arise in the course of trials in lower courts and are referred to it for decision, the Court may at its discretion limit the effect of its decision to that particular case and to the parties concerned therein.

Except when sitting as the High Tribunal, the Court is to conduct its examinations on the basis of files, although it is

9 Turkey’s first Constitution, promulgated on 23 December 1876 by Sultan Abd al-Hamid II, also provided for the establishment of a High Tribunal and made reference to the already existing Court of Cassation as well as to a Court of Appeals. See Robert Devereux, The First Ottoman Constitutional Period, A Study of the Millet Constitution and Parliament, John Hopkins Press, Baltimore, 1963, pp. 73-74. For the text of the 1876 Constitution, see Great Britain, House of Commons, Accounts and Papers, Vol. XC (1877), Cmd. 1641. Turkey, No. 2 (1877). Correspondence Respecting the Convention at Constantinople and the Affairs of Turkey, 1876-77, pp. 123-30.
empowered to hear arguments and explanations when it deems this necessary (Art. 148). This is the only procedural directive relating to the Court to be found in the Constitution, which stipulates, also in Art. 148, that a special law is to regulate the Court’s establishment and its trial methods.\(^9\) However, the Court itself is charged with responsibility for drawing up the regulations which will govern its manner of operation and the division of work among its members.

Details of the composition of the Court are covered in Art. 145, the third longest in the entire document. The Court is to consist of 15 regular and 5 alternate members. By a secret absolute majority vote of its full membership, the Court of Cassation will elect four regular and two alternate members from among its own President and members and the Chief Prosecutor of the Republic, while the Council of State will similarly elect three regular and one alternate member from among its President and members and the Chief Law Spokesman. The General Assembly of the Court of Accounts will elect one regular member from among its own members, also by secret absolute majority vote. The National Assembly will elect three regular and one alternate member and the Republican Senate two regular and one alternate member. The remaining two regular members will be appointed by the President of the Republic.

The members elected by the National Assembly and the Republican Senate may not be members of either chamber but must be chosen from among candidates who have been nominated by secret ballot by the law, economics and political science teachers of Turkey’s universities and who must number three times the number of persons actually to be elected. Election by the chambers will be by a two-thirds majority of their full memberships and by secret ballot; but if a two-thirds majority is not forthcoming in the first two balloting, an absolute majority will then suffice. One of the members appointed by the President of the Republic must be from among three candidates nominated by a secret majority vote of the Plenum of the Military Court of Cassation.

The Constitutional Court itself elects from among its own members by a secret two-thirds majority vote a President and a Vice-President. They serve for four years and are eligible for re-election.

To qualify as either a regular or alternate member of the Court, a person must be at least 40 years of age and must have held office as President or member of the Court of Cassation, Council of State, Military Court of Cassation or Court of Accounts or have served as Chief Prosecutor of the Republic or Chief Law Spokesman or have been for at least five years a university teacher in the field of law, economics or the political sciences or have practised law for at least 15 years. As in the case of other judges, those elected to the Constitutional Court will have security of tenure until they reach the retirement age of 65 (Art. 146). However, membership on the Court will end automatically upon conviction of an offence necessitating dismissal from the judicial profession. Also, the Court itself, by an absolute majority vote, may terminate the membership of any of its members upon its being definitely established that he is unable to perform his duties because of health reasons.

Court of Cassation

The Court of Cassation (Yargıtay), a Turkish tribunal with a long history, is continued by the new Constitution as the final appeals authority for decisions and sentences handed down by civil and criminal courts. The pertinent article (No. 139) of the Constitution describes the Court as “the final competent authority to examine the decisions and sentences of the courts of justice [i.e., as distinct from administrative courts].” It is also empowered to sit as a court of first and last instance in such cases as may be provided by law.

The Constitution is silent as to the Court’s size, stating that a special law shall regulate its establishment, its manner of functioning and the qualifications of its president and members and its other personnel.\(^11\) The Constitution does stipulate, however, that the members of the Court shall be elected by the Supreme Council of Judges and that its President, Vice-President and the Chief Prosecutor of the Republic shall be elected by the Court itself. In all cases election is to be by secret ballot and by an absolute majority of the full membership of the electing body.

Council of State

Like France and most other European countries, Turkey has long had a system of administrative courts in addition to its regular criminal and civil courts. These courts control by judicial means the conformity to law of all acts and conduct of the State’s executive and administrative organs and resolve all disputes arising out of executive and administrative functions.

High Tribunal

The 1924 Constitution provided (Art. 67) that a High Tribunal (Yiice Divan) was to be constituted by decision of the Grand National Assembly whenever necessary to try certain categories of officials and was to consist of 11 judges from the Court of Cassation and 10 members of the Council of State (Art. 62). The new Constitution also provides for a High Tribunal but henceforth, according to Art. 147, the Constitutional Court will sit as the High Tribunal whenever occasion demands. Specifically, the High Tribunal is to be convened to try for crimes connected with their functions the President of the Republic, members of the Council of Ministers, the Presidents and members of the Constitutional Court, Court of Cassation, Council of State, Military Court of Cassation, Supreme Council of Judges and Court of Accounts, the Chief Prosecutor of the Republic,\(^11\) the Chief Law Spokesman and the Chief Prosecutor of the Military Court of Cassation.

Art. 147 also provides that the Chief Prosecutor of the Republic shall serve as prosecutor in trials heard by the High Tribunal. It fails to indicate, however, who shall serve as prosecutor in the event that the Chief Prosecutor of the Republic should himself be on trial.

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9 This special law was approved by Parliament on 22 April 1962 as Law No. 44 on the Organization and Procedures of the Constitutional Court and was promulgated in Resmi Gazete, No. 11091, 25 April 1962, pp. 7197-7203. The provisions of Law No. 44 are examined in some detail in Robert Devereux’s “Turkey’s New Constitutional Court”, Sais Review, Vol. 7, No. 2 (Winter 1962), pp. 19-29.

10 The principal legal officer of the Court of Cassation, roughly comparable to the U.S. Solicitor General, and the highest ranking member of Turkey’s corps of public prosecutors. For a discussion of the organization and status of the said corps and its relationship to the judiciary, see the present writer’s “New Status for Turkey’s Public Prosecutors”, Bulletin of the International Committee of Jurists, No. 25, March 1966, pp. 36-42.

11 The Court of Cassation of the First Republic has continued unchanged under the Second Republic. The Court has nine civil, seven criminal, one commercial and one enforcement-bankruptcy chambers, with each chamber having a president and four members plus as many alternate members as may be necessary.
Under the First Republic the apex of the administrative court system was the Council of State (Danıştay), which, in one form or another, has been an important Turkish governmental organ since the Tanzimat Era. The new Constitution provides for the continued functioning of this organ. But whereas the 1924 Constitution treated it principally as an advisory body serving the executive branch of the government and placed the pertinent articles (51 and 52) in Chapter III: Executive Powers, the new Constitution emphasizes its judicial character by including the relevant provisions in the section titled "The High Courts".

According to Art. 140 of the new Constitution, the Council of State is "an administrative court of first and, in general, senior degree for matters not assigned by law to other administrative judicial authorities". Specifically, it is charged with responsibility for examining and deciding administrative suits and conflicts, expressing its opinion on draft laws submitted to it by the Council of Ministers, examining draft regulations which the government or its various components propose to issue, examining the terms of State contracts and concessions, and performing such other duties as may be assigned to it by law.

The President and members of the Council of State as well as its Chief Law Spokesman (i.e., the counterpart of the Court of Cassation's Chief Prosecutor of the Republic) are elected from among persons possessing the qualifications stipulated by law by a board comprised of the regular and alternate members of the Constitutional Court (the 24th Constitution had provided that the Council's members were to be elected by the Grand National Assembly). Election will be by a secret two-thirds majority vote; but if a two-thirds majority is not forthcoming in the first two balloting, an absolute majority will then suffice. The electing board must confine its choices to candidates nominated by the Council of Ministers and the Plenum of the Council of State, each of which will separately nominate candidates equal in number to the number of vacancies. (The stipulation that the Council of State itself will nominate candidates presents no difficulties, since, as noted above, the Council is already in existence.)

The Constitution directs, finally, still in Art. 140, that the organization, procedures and trial methods of the Council, as well as the appointment, qualifications, rights, duties, salaries and allowances of its personnel and the disciplinary actions relating to them will all be regulated by law in accordance with the principles of the independence of courts and judges.

Military Court of Cassation

The final appeals authority for decisions and sentences rendered by military courts will be, according to Art. 141, a Military Court of Cassation (Askeri Yargıtay), which is also empowered to hear as a court of first and last instance such cases involving military affairs as may be provided by law. The Court's members and its chief prosecutor are to be appointed by the President of the Republic from among three times as many candidates as there are vacancies, the candidates to be nominated by a majority vote of the Court's existing members. Candidates must be qualified to serve as judges, must be at least 40 years old, and must have served for at least 15 years as military judges or prosecutors. The Court's size and organization, its procedures and trial methods, and the disciplinary actions to be applied to its members when necessary, are regulated by law in accordance with the principle of the independence of courts.

The Constitution also provides (Art. 138) that a special law shall regulate the establishment of lower military courts and the personal status of military judges in accordance with the principle of the independence of courts, the constitutional guarantees accorded judges, and the requirements of the military services. Similarly, special laws are to specify the offences and persons over which military courts have jurisdiction in times of war and martial law. The Constitution expressly states that under ordinary circumstances military courts are responsible solely for military offences which are committed by and against military personnel or which take place in military districts or which are connected with military service and duties. They are empowered to try non-military personnel only for such military offences as may be explicitly provided by law. A majority of the members of a military court must be qualified judges, regardless of the issues or persons involved.

Court of Conflicts

A Court of Conflicts (Uyumsuzluk Mahkemesi) is established by Art. 142 to hear and resolve definitively cases involving conflicts of jurisdiction and competence that may arise among the judicial, administrative and military courts. The size of the Court and the method of appointment of its members are not stipulated and presumably are to be covered by the special law which, according to the Constitution, shall regulate the "establishment and functioning" of the Court. Aside from this, the Constitution provides only that the Constitutional Court shall designate one of its regular or alternate members to serve as President of the Court of Conflicts.

III. QUASI-JUDICIAL ORGANS

In addition to the High Courts discussed above, the Constitution provides for the establishment as constitutional organs of three other bodies which, while not courts in the ordinary sense, have some judicial functions.

Supreme Council of Judges

The Constitution's second major judicial innovation — the Constitutional Court must certainly be ranked first — is the establishment, by virtue of Arts. 143 and 144, of a Supreme Council of Judges (Yüksek Hakimler Kurulu), designed to prevent political tampering with the judiciary through politically motivated appointments, transfers, promotions, retirements, etc., such as were alleged to have occurred under the Mençeşes régime. Thus, while the Constitutional Court will guard the constitutional order, the Supreme Council of Judges will guard the independence of the courts and of judges.

To enable the Council to discharge the important mission assigned to it, the Constitution accords the Council under Art. 144 exclusive authority over such matters as: (1) all decisions pertaining to the personal status of judges; (2) dismission of a judge from his profession for any reason whatsoever; and (3) abolition of a court or a judicial position or the changing of a court's jurisdiction and competence. Disciplinary actions against judges also fall within the Council's exclusive purview, but in this case the Constitution explicitly authorizes the Minister of Justice to petition the Council to initiate such action whenever he deems it necessary.

Art. 143 provides that the Council will consist of 18 regular and 5 alternate members. Six regular members will be elected by the full membership of the Court of Cassation from among its own members, while six others will be elected from amongst themselves by judges of the first class. The National Assembly and the Republican Senate will each elect three members from among persons who have served as High Court judges or are qualified to do so. Two of the alternate members will be elected by the Court of Cassation and one each by judges of the first class, the National Assembly and the Republican Senate. In the case of both regular and alternate members, election will be by secret ballot and by an absolute majority of the total membership of the electing body.

The Minister of Justice is authorized to participate in the Council's meetings but without the right to vote.

Members of the Council are to be elected for four-year terms, with half being renewed by election every two years. Members elected while serving as judges are ineligible for two successive terms. The Council designates one of its members to serve as President. To assure that the Council's members devote full time and attention to their duties, the Constitution expressly forbids them to undertake any other work or duties during their term of membership (Art. 143). Art. 143 also provides that a special law shall regulate all other matters pertaining to the Council, specifically, its organization and working methods, quorum requirements for meeting and adoption of decisions, and the salaries and allowances of its President and members.14

Supreme Electoral Council

As a means of assuring that elections in the Second Republic will be honest and orderly, free of any taint of corruption or irregularities, the Constitution directs in Art. 75 that all elections must be held under the general direction and control of judicial organs. To this end it provides, also in Art. 75, for the establishment of a Supreme Electoral Council (Yüksek Seçim Kurulu) which, from the beginning of an election campaign until the election is declared completed, will have the responsibility of applying or having applied all procedures provided by law concerning the conduct and honesty of elections. In this connection, the Council is expressly charged with examining and giving final decisions on all alleged irregularities, complaints and objections involving electoral matters, including any challenges that may be made about the legality of the election of a deputy or senator.

The Council, states Art. 75, is to consist of seven regular and four alternate members, of whom six will be elected by the Plenum of the Court of Cassation and five by the Plenum of the Council of State from amongst their respective members by secret vote. The eleven Council members so elected then designate by secret ballot and simple majority vote two of their number to serve as President and Vice-President. The Court of Cassation and Council of State contingents each select by lot, in which the Electoral Council President and Vice-President do not participate, two of their number to be alternate members.

The Constitution provides that a detailed delineation of the powers and duties of the Council as well as of the subordinate (i.e., provincial, district, precinct) electoral councils shall be regulated by a special law.15

Court of Accounts

Despite its name, the Court of Accounts (Sayıstay) is not a court per se but rather an appendage of the Grand National Assembly with responsibility for controlling on behalf of that body the State's revenues and expenditures and the property of the governmental departments operating under general or annexed budgets. As such it is the Turkish equivalent of the U.S.A.'s General Accounting Office. Although the new Constitution, like its predecessors,16 treats the Court of Accounts in the section devoted to fiscal matters, it imposes on the Court, as the others did not, certain judicial functions. Specifically, Art. 127 charges the Court of Accounts with examining and giving a final verdict on the accounts and operations of those having possession of or spending and administering State funds and property and with making investigations, exercising control and rendering judgments in such cases as may be placed within its competence by law.

The Constitution does not stipulate the size of the Court or the manner in which its members are to be appointed, merely providing, as it does in the case of some of the other organs discussed in this article, that a special law shall regulate its organization, operations and procedures, as well as the qualifications, appointments, duties, authority, rights, responsibilities and security of tenure of its President and members.

The Constitution is still too new to make any meaningful judgment as to how effective it will prove over the long run and, specifically, whether the provisions relating to the judiciary and courts will ensure their independence to the extent desired. The substance of those provisions and the innovations they incorporate would certainly appear to be well suited to accomplish their purpose. As Kemal Karpat has observed:

"The democracy of Turkey is not complete by any means... Yet the experiment offers grounds for optimism; for the history of Turkey is a chain of attempts at democratization, each one stronger and lasting longer than the previous one."17

14 This special law was approved by Parliament on 22 April 1962 as Law No. 45 on the Supreme Council of Judges and was promulgated in Resmi Gazette, No. 11091, 25 April 1962, pp. 7203-7213. The provisions of Law No. 45 are examined in some detail in Robert Devereux's "Turkey's Judicial Security Mechanism", Die Welt des Islam, Vol. X, Nos. 1-2 (1965), pp. 33-40.
15 Enacted by the Constituent Assembly on 26 April 1961 as Law No. 298 on Basic Electoral Provisions and Electors' Rolls, even before the Assembly had voted final approval of the text of the Constitution (27 May). That the Supreme Electoral Council is proving effective in keeping elections honest is demonstrated by the results of the 10 October 1965 general election. The election, reminiscent of that of 14 May 1950, saw the opposition Justice Party (the successor to the now outlawed Democrat Party) oust the incumbent Republican People's Party administration.
16 Arts. 105-107 of the 1876 Constitution and Arts. 100 and 101 of the 1924 Constitution.
17 Karpat, Turkey's Politics, p. xi.
Influence of Islam and the Spread of Islamic Learning in West Africa

Contributions of E. W. Blyden to the Islamic Studies—1

By Dr. A. R. I. DOI

The spread of Islam in North and West Africa

The influence of Islam and the Arabic language became very prominent in Africa as early as 670 C.E., when al-Qayrawán was founded. Mu'awiyyah (d. 680 C.E.), the founder of the Umayyad dynasty, sent his agent 'Uqbah Ibn N'affâ for operations against the Berber tribes. 'Uqbah went as far as the Atlantic and died near Ziskra in Algeria in the year 683 C.E. Slowly and gradually the Arabs overpowered Iriqiyiyah (Africa) through the statesmanship of Hasan Ibn al-Nu'mán al-Ghassâni, who died in the year 700 C.E. The Byzantines were driven from Carthage in the year 698 C.E. and finally in the year 703 C.E. the Berbers of Iriqiyiyah were subjugated when their beautiful but hypocritical prophetess al-Kâhinah, the diviner and priestess whose real name is unknown, was finally defeated.

The Berbers belonged mainly to the Hamitic race, and had inherited their ancient culture from the Hamites, which may well have been a corrupted form of the Semitic. Before the advent of the Arabs they were all Christians, and St. Tertullian, St. Augustine and St. Cyprian were venerated among the Christian fathers. As Professor Hitti says: "In spite of their having love for these fathers they were not deeply touched by Roman civilization, as the Romans and the Byzantines continued living mainly in the coastal towns and represented a culture that was quite foreign to the mentality of the North African nomads." Berbers were akin to the Semitic Arabs and the Phoenicians. It was easier for the Arabs to establish closer relationship with their Hamitic cousins. This, perhaps, is one of the reasons why the language of Iriqiyiyah was easily Arabized and their religion was Islamized.

Wherever the Muslims went, they took their culture with them. Arabic formed almost a part of their religion, as the Qur'an was written in Arabic. By the acceptance of the Berbers of Arabic, and due to the influence of neighbouring Islamic territories, Arabic was either accepted by some African people or it indirectly influenced a great deal of their local languages. We can see this influence quite clearly in languages like Swahili, Hausa, Togolese and Dahomese. The influence of Islam is very great in West Africa, as the Sahara and North Sudan belt are widely Islamized. People of the Southern Sahara, most of whom are Negroes, some Moors, Tuareg and Teda, are fully Islamized. Also the inhabitants of the Western Sahara, the Bidân or Whites consisting of Berbers, Arabs and Black (Sûdân) are mostly Muslims.

From the 13th century, groups of Hassân Ma'qil Arabs erupted into southern Morocco and moved progressively southwards, reaching Senegal at the beginning of the 15th century, and within a short time they made Senegal a centre of Islamic learning.

The Tuaregs living in the mountains of the central Sahara and the Nigerians inhabiting the desert north of the Niger buckle and the Guruma region are also Islamized, and their language bears a great influence of Arabic. Living with other tribes, especially the Negroes, they have mixed complexion and can hardly be distinguished from Senghay and Hausa.

The Teda-Daza or Rubu, the people of Tibesti who inhabit a vast area of the Eastern Sahara from the Libyan desert in the east to Hagar in the west, and from Fezzan in the north to the Chad region in the south, are mainly Muslims. The people of Northern Sudan, the Fulbe, who are divided into two groups — Wodebe, the red, and Palebe, the black — are also Muslims. Among the Futas, Toro, Bondu, Jalon, Mesina, Hausaland and Adamawa, Jihad, or religious war, was a regular feature, and Islam has penetrated to a large extent. The Senegalese groups of the Wolof, Tokolor, Serer and Jola, and the Hausa belonging to the Chado-Hamitic family, are almost all Muslims. In the Guinean Zone, a region of higher civilization stretching from the Ton of the Ivory Coast to Benin in Nigeria has been greatly influenced by Islam, and there is a significant number of Muslims among the Yoruba of south-western Nigeria. The people of the upper Guinean Zone, Kisi, Loma, Kpelle, Manon in French Guinea and Mendé and Temne in Sierra Leone, are all Muslims.

Senegal, Guinea and Mali

The combined population of Senegal, Guinea and Mali is about 11 million. According to Alphonse Gouilly in his L'Islam dans l'Afrique Occidentale (Paris 1952), Muslims make a total of a little more than 74 million of the population. In other words, the Muslim population of Senegal is 85 per cent and of Mali between 65 to 70 per cent. Ibn

1 Qayrawán comes from the Persian word کرمان, which is used in the English language as "Caravan".
2 The Arabs used the Iriqiyiyah for Africa. They specifically called the eastern part of Berbery as Iriqiyiyah and the Western part as the Maghreb.
4 She gave her life but instructed her son to embrace Islam and make common cause with the Muslims.
Houqal (d. 977 C.E.), gives the earliest account of Senegal when he visited Ghana in the 10th century. At that time the kingdom of Teckrour, on the lower part of Senegal, was a dependency of Ghana. It is claimed that the well-known Almovaride school was originally founded on a Senegalese island by ‘Abdulláh Ibn Yásín, and it was the Almovarides who subsequently freed the Senegalese from the suzerainty of Ghana.

It was in the 14th century that the influence of Mali was first felt in Eastern Senegal, and it made very rapid strides in spreading Islam throughout West Africa during the next two centuries. But Mali was defeated by the Takurins in the Senegal valley. During the years 1854 to 1865 the Moors dominated the lower Senegal. But internal strife among the various ethnic groups, each of whom was an aspirant for power, had greatly weakened the solidarity of the country — until the French general Faidherbe conquered the country after defeating the Muslim ruler al-Háji ‘Umar Téll.

Similarly, Timbuktoo has been a seat of Islamic learning in Mali. It was founded by the Tuaregs some time between 1076 and 1087 C.E. The Songhai Negroes for a time ruled over an empire which included Timbuktoo, where the Tuaregs were to the north, the Songhai to the east, and the Mandingo tribe or the Bambara to the west. The latter brought the town under a strong Muslim cultural influence in 1336 C.E. The great Mandingo eminence of Mali, Mansa Musa, built the first mosque in 1307 C.E., where provisions were made for improving higher Islamic and secular education. The great traveller Ibn Battutah (d. 1377 C.E.) visited Timbuktoo in 1353 C.E. and was amazed to see the wealth of Islamic literature in this part of the Muslim world.

Edward Blyden, a West African Negro’s efforts to educate Muslims

As Islamic literature flourished in West Africa, the Arabic language became an important instrument of conveying their thoughts. A large number of books were written on different subjects of advanced Islamic studies such as the exegesis of the Qurán, the Traditions of the Prophet, the Fiqh or Islamic jurisprudence, ethics and history. But the political changes which took place in West Africa unfortunately resulted in the colonization of West Africa, and with French and English having become the official languages of West Africa, these Arabic works were almost thrown into oblivion. Once again, in our present century, a number of Orientalists have begun their search of this lost treasure in West Africa, trying their best to collect even a fragment from the old manuscripts.

The task of a systematic and scientific way of collecting Arabic manuscripts and translating and interpreting them, as is done by modern Orientalists, began with a great Arabic scholar whose contribution to Arabic learning has almost been neglected and forgotten. The name of the scholar, an illustrious West African Negro, is Edward W. Blyden.

Edward W. Blyden was born in the West Indian island of St. Thomas in 1832. He was always proud of himself, and rightly believed that the Negro race, if given the opportunity, was in no way inferior to other races. He reacted strongly against the persecution of the Negroes and finally migrated to West Africa at the age of 19 and settled in Liberia, and “dedicated his life to promoting the advancement of the Negro race,” and championed the cause of Islam while seeking to foster Muslim-Christian co-operation. Blyden began his work in order to achieve his objective, and proceeded firstly to the Muslim kingdom of Timbo and then to the pagan kingdom of Falaba.

West Africa was influenced by Islam long before the migration of Blyden to the West Coast of Africa. Blyden was deeply impressed by the Islamic intellectual religious movements which since the late 18th century had been appearing in West Africa, and which had resulted in a remarkable spread of Islam and a higher order of social and political organization in those areas brought under Muslim control. But Blyden knew that there was widespread, although ill-founded, Christian contempt for Muslims. He set out to dispel the prejudice against West African Muslims and to build a bridge of communication between them and the Christians.

The opposition to Blyden by Muslims

Like Sir Sayyid Ahmad Khan (d. 1898 C.E.) of the Indian sub-continent, Edward Blyden began to encourage Muslims to set up schools at all levels where Muslims could learn English and the Christian might be taught the Arabic language and Islamic literature. The Muslims during this period strongly resented any such move, as they, strangely enough, believed that the learning of a Western Christian language and literature would decrease their Islamic enthusiasm. Sir Sayyid Ahmad had to face a similar problem in India, and succeeded in opening the Anglo-Mohammedan College, which is now Aligarh Muslim University. Edward Blyden, likewise, undertook to teach Arabic at Libera College, and set up a Liberian school at Boporo. Later, between 1874 and 1877, he became the Principal of Alexander High School at Harrisburg, on St. Paul’s River, and taught English to Muslims and Arabic to Christians. From 1880 to 1884, Blyden became the President of Liberia College and reintroduced Arabic into the curriculum, and invited Muslim scholars to the college to familiarize them with the activities of the college in order to foster Muslim-Christian co-operation.

Afterwards, Blyden centred his activities in Sierra Leone, where he was really enjoying the confidence of the Muslims. Having convinced them that there was no harm in learning the English language, and that knowledge of the Western sciences entailed no harm to one’s faith, he began to teach English to Muslim students and taught Arabic to English-speaking Sierra Leoneese during the years 1887 to 1895 C.E.

In 1896 Blyden travelled to Nigeria, as he was appointed Agent of Native Affairs in Lagos. During that time, like the Muslims in other parts of West Africa, the Muslims of Nigeria were also reluctant to send their children to any Western kind of institution or any institution established on the Western pattern. Since Blyden came in his official capacity to teach Muslims English, he applied the same methods as he

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8 C.O. 267312, Blyden to Pope-Hennessy, 4 March 1872 : Report of the Expedition to Falaba.
10 Blyden to Walter Lowrie, 6 January 1877, Presbyterian Board of Foreign Missions, No. XI; also cf. Hollis R. Lynch’s article, Pioneer West African Nationalist, J.A.H., VI, 3 (1965), p. 381.
12 C.O. 147/142, Blyden to Denton, 10 April 1899.
had employed before. Blyden once again procured English-speaking Muslims, called Malams, as teachers to teach the Muslim students. Further resistance of the Muslims was towards accepting the uniform for the students, which again was different from their native dress. Blyden waived this condition and allowed the Muslim students to retain their native dresses and customs. Blyden by this time had become an expert in Arabic, and had great leanings towards Islam. It has been suggested that he had even embraced Islam and was known as 'Abdul Karim. Blyden was so successful at this school that the Muslim communities of Ibadan, Ijebu-Ode, Badagri, Epe and other places sent requests to the Inspector of Schools, Henry Carr, asking him to open similar schools in their respective towns where English education could be given side by side with Arabic and Islamic education. Unfortunately, Blyden could not continue any longer in this position because of ill-health, and he resigned his post in 1897.

Blyden’s efforts to impart Arabic education to non-Muslims and English education to Muslims did not stop on leaving Lagos. In 1899, Blyden wanted to continue his successful experiments in this field. Blyden, therefore, wrote to the British Government to establish a Central Institution for the elementary and higher training of Muslim youths. Blyden was later appointed a Director of Mohammedan Education in Sierra Leone in 1901, but due to the shortage of money it was impossible for him to run the institution successfully. But he was the last man to be disheartened, and continued his efforts by making pleas to the British Government. In 1903 he made yet another plea for the establishment of a West African Institution at Sierra Leone for the secondary education of Muslims in Western ideas. Unfortunately, he could get no success.

Blyden tries to establish a strong sense of co-existence between Muslims and Christians

There exists a number of letters exchanged between Blyden and the Governor Pope Hennessy which were published in a supplement to The Negro Newspaper and reprinted in pamphlet form by the Negro Press, in which Blyden had suggested the establishment of a West African University. He suggested that a “University in the interior of Sierra Leone would come within the range of the moving frontier of Islam. . . . These educated Muslims will prove especially valuable in training the future African elite, because they lacked the sense of inferiority which often marred the Western-educated African.” During his seventies his travels in Sierra Leone had revealed to him the comparatively powerful Muslim politics of the Southern Sudan, and he was bent upon achieving the Muslim-Christian cooperation. He felt strongly that it was through education that a strong sense of co-existence could be achieved in West Africa. For this purpose he worked hard to learn Arabic, and reached a degree of perfection which certainly deserves everybody’s appreciation. More often than not he met with frustration in his projects, but he never gave up his mission. He continued as Director of Mohammedan education in Sierra Leone until July 1907, when finally he retired from this position at the age of 75. His book, Christianity and Islam in the Negro Race, which was published in 1887, bears witness to the fact that Blyden said frankly whatever he believed to be true. He was so undaunted that his main thesis in the book was that whereas Islam had had a salutary effect upon the Negro, Christianity had had, on the whole, a degrading and depressing influence. In 1901 Blyden was associated with Liberia College as a Senior Lecturer, and then became President of the same Institution, where he was a special lecturer on the Principles of Mohammedanism and Polygamy. The rest of the members of the staff protested so strongly against it that he was forced to resign. But Blyden continued to give expression to what he believed was right. Along with his teaching he continued his research in Arabic literature and was very keen to acquire and collect valuable Arabic manuscripts and interpret and translate them.

Blyden’s encounter with an English Orientalist

When Blyden journeyed from West Africa to Palestine he carried with him a large number of Arabic manuscripts. We are told in his famous work, From West Africa to Palestine, that he met a scholar from Trinity College, Cambridge, who had held a fellowship at Trinity College and was a scholar of the Arabic language and literature. Blyden met him on the ship and showed him these Arabic manuscripts “written by natives of West Africa.” Blyden reports: “He seemed to have no difficulty in reading them. One which he found somewhat obscure was a defective lexicon. They both tried to read it together, but with very unsatisfactory results. He requested me to allow him to take the manuscripts home with him and give them a little more attention, promising to forward them to my London address.”

Blyden mentions at length this anonymous scholar’s perseverance. It seems that he worked hard on these manuscripts and sent back the manuscripts to Blyden’s London address. Blyden gives an account of his researches in his book From West Africa to Palestine. He has quoted from the letter of the Cambridge scholar about one of the many valuable manuscripts as under:

“Dear M.,

You must have begun to wonder what had become of your MSS., and even to console yourself for their loss by the lesson you may have learnt to think twice another time before entrusting your treasures to the first stranger on board a steamer who may take a fancy to them. The reason I have not sent them before is, partly, that I have not worked very hard; and, chiefly, that one of them is rather so — rather hard, I mean. This is the little square on which, as I said, is in verse, though in verse of a structure I did not perceive. It looks as if it were a series of couplets, every second line rhyming in (ami), but it is really a series of tetristichs fourth line rhyming in (am), and the three rhyming among themselves. The last stanza of the first sheet makes a good example just above the catch word (layth):

Khalqaq sabiyan
Khulqaq Maliyan
Nujutu fasihan
Ahlan al-balad

for I think the final vowel, i, is not meant to be pronounced. This is not one of the regular classical metres (Wallace, ii, 262-269), but is a good one for learning the art: and it seems to me that the whole thing is a bit of a sort of propriq quae maribus, dealing not with words, however, but with phrases, and consisting of a list of allowable combinations of substantives with their epithets; nouns with other nouns in statu constructo;

13 See Lagos Weekly Record No. 9 for 14 May 1898.
14 See C.O. 147 public 142, Blyden to Denton, 10 April 1899.
15 See C.O. 267 public 471, Blyden to Antrobus, 4 July 1903.
16 See C.O. 267 public 471, Blyden to Antrobus, 4 July 1903.
17 The paper’s title is significant because Blyden wished it to stress the racial bond between colonies and tribal Africans. See H. S. Wilson’s article on the Changing Image of the Sierra Leone Colony in the works of E. W. Blyden, Sierra Leone Studies for December 1958.

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and verbs with their complements. There has been a certain attempt to put like things with like, either in sense or in sound, or, if possible, both. When the sound is alike, the object is partly, I suppose, to contrast homonymous words, as in the instance I gave above, in which (khalq) is distinguished from (khulq), and which may be, not quite literally, rendered

A fair nation.
A fine nature.
A free tongue (Lit. facunda oratio)
Excellent of speech.

"The fourth line is thrown in to finish off the third, which has nothing to do with the first two. This is very manifest in the middle stanza of the page before (p. 3).

A beautiful face.
An eye tinted with kohl.
Umbrageous shade.
Over man and beast.

"Umbrageous shade" is meant for (zillun zallun) which Freitag expressly gives in his smaller dictionary multa vel perpetua imbra. I admit, by the way, that my translation (from Swift’s Art of Singing, I think) implies a false criticism.

Freitag or the author of the Qamus thought (zallil) might come from the other tense of the root, that of permanence. If I am right in the character I have attributed to the paper, it is probable that the phrases would mean of them be very idiomatic, and that one could not make them out from such a poor lexicon as the small Freitag, still less from my knowledge of the language. For instance, it is very likely I have rendered (khalq) wrong above. So I have not thought it worth while sending you my translation, such as it is, of the rest. But I have taken the liberty of copying the original; and if I find myself in the presence of a better lexicon, either at the British Museum or elsewhere, I shall consider it a good opportunity of picking up a number of phrases; an opportunity for which I am much obliged to you. Happily there is no difficulty in reading the text, except in a very few instances. But there are some peculiarities which, as you may wish to look over it yourself, I will mention. According to Wright, i, p. 89, 1167, the participle active of (hada is hadin) (of course), and this (Rem. b. 314, p. 202) becomes hadi in statu constructo. Well, before al the final l is pronounced short (p. 19, 20 (2)), though always written long. But our author writes it short, as in the first two lines and passim. He never marks (tashhid), except once, p. 7, 1, 3, so when you see a very short word you must be prepared for the second letter being doubled. He leaves out the dots on the final nun and ja.

"It is obvious to remark that we have not got the beginning of the piece, because there is no Bigmlilah. But at the beginning of the second sheet, in the margin, is written (huna nisf al-kitab). Hic dimidium libri. Now the second sheet ends with a catch-word. Therefore our middle is the true middle, but our end is not the true end; therefore our beginning is not the true beginning, but we have the two middle sheets. So much for what I take the liberty of calling MS. A.

"As to MS. B, the one we did on board, I send such a translation as I can make of it, with notes which set forth my doubts and difficulties, and contain all I have to say except that I don’t know what to make of the names at the end, which may be a mixture of Arabic and Mandingo. I don’t even quite give up the notion I had on board the Lagos. It seems excessively absurd to mention the West Coast of Africa in connection with ‘Othman; but, after all, the third Khalifa may not be the person intended; besides that, nothing is too bad for Mussulmans in the way of anachronism. I send also a pointed copy and a translation of all I could make out of ‘C’."

"Some of the forms are curious philologically.

"My references to the Ko’ran are nearly all obtained by means of Fligel’s Concordance; I know very little of the Ko’ran myself.

"This is a dreary day. In the foreground we have this dreary weather that makes one wish oneself back in the south at any price, and in the background that dreary war... The political sky will not clear, I suppose, while you are in the country; the actual one, I hope, may do so very soon. I should like, if you come down here? If you can come please let me know what day will suit you. The railway is the Great Northern, and you start from King’s Cross. Our station is B—. Very truly yours,"

Blyden promises us in this book to give an account of this learned scholar and his manuscripts collected from West Africa “on some future occasion,” but unfortunately we find nothing further on these manuscripts.

One really wonders whether this great treasure of Arabic manuscripts still remains deposited somewhere in some library of the world and we are unable to trace it.

In my next article I shall endeavour to give the texts of some important Arabic letters on the political situation of West Africa translated by Blyden and my translations of some important West African manuscripts.

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The cultural influence of the immigration of the Moors into Tunisia after their Expulsion from Spain in 1609 C.E.

Continued from page 16

landscape of the “Serranía de Ronda” or “Alpujarra,” one still eats the olla and the banadech (Spanish empanadas = pastries), and the confectionery shops there offer bazaban (Spanish mazapan = marchpane).

Among the names of people one finds many of Spanish origin: Arruich (Ruiz), Barin (Marin), Elkundi (el Conde), Filibu (Felipe), Mador (Amador), Marku (Marcos), Medina (Medina), Saburta (Saportas), Sai (Sáez), Sirisi (Cerezo), Yuryi (Jorge), etc.

A moving testimony of the sentimental perseverance of a language is apparent from the fact that in the beginning of this century in Testour, plays of the Spanish playwright Lope de Vega were still performed in Spanish on festive occasions, although the majority of the audience and the actors themselves did not understand them. Some of them, maybe, could still remember vaguely, having heard the expression Sierra la puerta (Shut the door in their childhood.)
Some Aspects of Studies in Muslim Civilization in India

The Gifts of the Muslim Rule to India

By M. W. GAZDER

The first beginnings of Indo-Arab relations in the 8th century C.E.

Modern Indian civilization has developed from the action and reaction of so many races and creeds upon each other that it is extremely difficult to say which of its features is due to a particular influence. Hardest of all to assess is the influence of Islam, for the various Muslim incursions into India brought comparatively few people of an alien race into India. The first famous conqueror of Sind, Muhammad Ibn Qasim, brought 1,700 Muslims with him to Sind in the year 712 C.E., and even the great Moghul Zahiruddin Babur (d. 1530 C.E.) brought with him some 12,000 soldiers. Of the 100-odd million Muslims before the partition of India in the year 1947, they had grown to form a quarter of the population of India. For the great majority of the Muslims is descended from the Hindu stock, and retains certain characteristics common to Indians as a whole. Yet because the invaders came as conquerors, rulers and missionaries, they made such an impression, especially in the north, that many Europeans and Americans and the characteristic life and architecture of India must seem to be Islamic. John Marshall, in his famous Cambridge History of India, observes: “Seldom in the history of mankind has the spectacle been witnessed of two civilizations so vast and so strongly developed, yet so radically dissimilar, as the Muhammadan and Hindu, meeting and mingling together. The very contrasts which existed between them, the wide divergence in their culture and their religions, make the history of their impact peculiarly instructive.”

Indo-Arab relations in the 8th century C.E. started when Muhammad Ibn Qasim conquered Sind and Multan and also made them the extreme eastern province of the vast Arab empire of the Umayyads of Damascus.

Cultural relations between India and the Muslim world began in 771 C.E., when an Indian cultural mission reached Baghdad and presented a copy of Brahma Sidhant to the Caliph al-Mansur.

Mr. E. B. Havell, an eminent historian, vehemently objects to the term “Indo-Saracenic” as an unscientific classification based on the fundamental error which vitates the works of most European historians of the Indian civiliza-

Occupation of the Punjab by the Muslims in the 10th century C.E.

The Ghaznavid occupation of the Punjab (977-1117 C.E.) served as the key to unlock the gates of the interior. Big cracks were made in the great fabric of Indian polity, and it was no longer a question of whether but when that age-old structure would fall. Either the Arabs nor the Ghaznavids succeeded in adding more to the growing empire of Islam, but they paved the way for that final struggle which overwhelmed the Gangetic kingdoms some two hundred years later.

First, the early Muslims in India were divided among themselves in religious beliefs and practices. While the large majority of Muslims belonged to the Sunni fold, there were dissonant sections, as_for instance the Karamathian and the Mulhid, who upheld “Alid legitimate traditions and pioneered a movement for social reform and justice, based on equality”. Under the rulers of Ghor in Central Asia the mountain principality became a centre of their propaganda. In the 13th century C.E., Gujarat, Sind and the Gangetic valley became seats of their secret propaganda and in the year 1235 C.E. they attempted a rising in Delhi under the leadership of a Turk named Nur, but were routed and massacred. Almost the principal stronghold of the more formidable branch of the Assassins was destroyed by Hulafa Khan (d. 1865 C.E.), but this sect spread in India and Persia.

1 Cambridge History of India, Vol. 3, p. 568.
2 The Kanil of Ibn Athir, Vol. 4, pp. 118-119.
3 Al-Biruni, Book of India, p. 208.
4 Indian Architecture, p. 121.
where small coteries of them carried on their activity until the reign of Sultan Firoz Shah Tughlaq.

Under the Sultan 'Ala'uddin Khalji (d. 1296 C.E.), another section of heretics described as the Ibahatiyan and Buddhians were active in Delhi. The rationalists who flourished in Delhi encouraged the Muslims to heresy by their unorthodox interpretation of the Holy Qur'an.

This tendency of not conforming to the faith was perhaps developed by closer contact with the Hindu philosophers and ascetics, so that under Firoz Shah Tughlaq pantheistic preachers arose among the Muslims. During his reign some Muslims in the city of Delhi fell under the spell of Brahmanism and were attracted to the idol-worship in his house.

This religious non-conformity was matched in the political field by a spirit of faction among the more powerful, jealousy among the different clans, and political alignments irrespective of religious considerations. The Muslim power was threatened with disintegration in its very inception. The Sultan Balban had to cope with the hostility of powerful war-lords like Kishlu Khan and Qutlugh Khan of Oudh, who united their forces to overthrow his power. The Khaljis were hated by the Mamluke Turks and Jalaluddin Firoz Khalji had to use all his tact and wit to disarm their opposition. Thus one Muslim chief was jealous of another, and one clan acted in opposition to another. This division amongst the early Muslims forced them into alliance with Hindu rajahs and to dependence upon the levies of Indian troops. The Ranas of Chittor are regarded as the champions of Hindu orthodoxy; but Chittor continued for ages to be the sanctuary of Muslim fugitive chieftains.

After the invasion of the Sultan Mahmud of Ghaznaw and the Sultan Muhammad Ghuri (1191 C.E.), innumerable Muslim scholars poured into India. It is beyond the scope of this article to deal with all of them, but commanding personages like Ali Ibn 'Uthman Hujwiri, the Shaykh Isma'il Bukhari, the great Muslim traditionists, Fariduddin 'Attar, Khwaja Mo'inuddin Chishti of Ajmer, the Shaykh Jalaluddin Tabrizi and Baba Farid of Pakpattan, Qutbuddin Bukhtivari. They were the bulwark champions of Islam. By their strenuous efforts and indomitable energy they succeeded in transforming the base metal of the Muslim into gold. Through their incessant efforts, personal contact and influence, spread the Islamic philosophy through the length and breadth of India, with the result that Islam became deeply ingrained in the socio-cultural and political life of the sub-continent.

THE GIFTS OF THE MUSLIM RULE TO INDIA

Muslims differed from previous invaders in that they did not get submerged in the vast ocean of India's creeds

Before the advent of Islam, the Greek, Scythian, Mongolian and Partian invaders had a few generations of their settlements in India. They had, however, been completely Hinduised in name, speech, manners, religion, dress and ideas. The Muslim continent of India differed fundamentally from all preceding invasions in one respect. The Muslims came as a new element which the Indian society could not assimilate. This was the cardinal difference between the Muslim settlement in India and all other foreign immigrations that had gone before it. Instead of getting submerged into the ocean of creeds and religious communities of India, they unleashed forces that synthesized the old social, political, economic and cultural order with their own by their strongly monotheistic religious and socio-economic principles. Because of this the gifts of the Muslim period to India are unsurpassed. Muslim saints were the distinguished pioneers of the introduction of Islam into India. Wherever they went, their influence pervaded the atmosphere. In them they carried and radiated the spark of religious fervour. The commanding personages of Islam stamped their impress deeply upon their own age and cast their shadow over several subsequent centuries.

Administration

The practices of the "Pious Caliphate" had degenerated with the passage of time. Originally the Caliphate was meant to be elective, and virtually it was a truce reposed in the Caliph and was not at all to be localised with his family or tribe. But now exactly the opposite had taken place. Instead of being known as a vicegerent of the Prophet, the Caliph styled himself the vice-regent of God. In spite of these changes, the very basis of the theory of succession to the Prophet remained intact, i.e., the Caliph was the one who protected and enforced the Shari'ah — no matter whether he was elected or not and arrogated to himself the title of Khalifah Allah, not approved by the orthodox theory of government. From the second quarters of the tenth century C.E. the political power of the Caliph had begun to decline. But even so, his legal supremacy over the orthodox Muslim world remained unchallenged. The Muslim rulers found it expedient to pay lip service to the Caliph's legal powers so as to keep the orthodox Muslim contented.

The great Sultan Mahmud of Ghaznaw (d. 1303 C.E.) deemed it an honour when the titles of Amir al-Millah were conferred upon him by the Abbassid Caliph Qadir Billah. Similarly the Sultans of Delhi followed the convention of paying homage to the Caliph of Baghdad to confer a sort of legality on their rule. Iltumish (d. 1230 C.E.) was the first king of Delhi to be honoured with the title of Sultan by the Caliph Mustansir, in whose name also the coins were struck. But the Moghul rulers under the Persian influence dis-associated themselves from paying any theoretical homage to the institution.2 Akbar assumed the lofty title of Khilafah Allah. Dr. Tripathi, in his well-known book Some Aspects of Muslim Administration, writes: "Whatever might have been the legal status of the Muslim Empire in India during various stages of its life, it was always governed according to Muslim Law. The Muslim believed in the supremacy of Divine Law (Shari'ah) and held that it was eternal and immutable in its essence. It is based on the Holy Qur'an and the Sunnah. The Holy Qur'an is believed by every Muslim to be the 'Word of God', revealed to their prophet Muhammad. Not even the Prophet, could change it. The Prophet could only explain and interpret it. The interpretations of the Prophet form the traditions which cannot be ignored by his followers. It is on these two rocks, the Holy Qur'an and the traditions, that is built the structure of Islamic Law: the law was thus sovereign in Muslim lands. No one, not even a Sultan or an Emperor, was above it. It is not only permitted but enjoined that a Muslim should disobey the ruler if the orders of the ruler violated the law. Thus even the desire to see the sovereign in full enjoyment of his prestige and power due to local factors did not imply unadulterated despotism. Any attempt on the part of the monarch to interfere with institutions recognized by Muslim Law or to change arbitrarily well-established customs or dismiss men of recognized ability and loyalty was wrong. Such actions were as much resented as their due maintenance appreciated."

6 Barni Ziyeddin, Torikh Ferozshahi, p. 336.
7 Travels and Adventures of Sidi 'Ali Rais, p. 38.
Law and justice

Nothing like modern legislation, or a written code of laws, existed in the Muslim period. The only notable exception to this were the twelve ordinances of Jahangir and the *Futūd-i-ʿAlamgiri*, a digest of Muslim Law prepared under Aurangzeb’s (d. 1707 C.E.) supervision. The judges chiefly followed the Qur’anic injunctions or precepts, the *Futūd* or previous interpretations of the Law by eminent jurists, and the customary laws, and sometimes followed principles of equity. Above all, the Emperor’s interpretations prevailed; provided they did not run counter to the sacred laws. The Moghul Emperors regarded speedy administration of justice as one of their duties, and their office did not enjoy any special protection in this respect under anything like administrative law. The love of justice of Emperors like Jahangir, Shahjahan and Aurangzeb has been testified to by some contemporary European travellers. They each allowed a claim with bells to be hung outside their palace to enable petitioners to bring their grievances to the notice of the Emperor.

The chief Qadhi was the principal judicial officer in the state. He appointed Qadhis in every principal capital. The Qadhi made investigation into and tried civil as well as criminal cases of both the Hindus and the Muslims; the Muftis expounded the Muslim law; and the *Mīr ʿAlīs* drew up and pronounced judgments. The Qadhis were expected to be “just, honest, impartial, to hold trials in the presence of the parties and at the court house and the seat of government, not to accept presents from the people where they served, nor to attend entertainments given by anybody and everybody, and they were asked to know poverty to be their glory”.

Departments

Though the Moghul Emperors had absolute powers, they appointed a number of officers in the different departments of the government for the transaction of its multifarious affairs. The chief departments of the State were: (a) the Imperial Household under the Khan-i Sāmān; (b) the Exchequer under the Diwan; (c) the Judiciary under the Chief Qadhi; (d) Religious Endowments and Charities under the Chief Sadr or Sadr al-Sudur; and (e) the Censorship of Public Morals under the Muhtasib. The Diwan or Vizier was usually the highest officer in the state, being in sole charge of revenues and finance. The Bakshi discharged a variety of functions. While he was the Paymaster-General of all the officers of the state, who “theoretically belonged to the military department”, he was also responsible for the recruiting of the army, and for maintaining lists of mansabaars and other high officials; and when preparing for a battle he presented a complete muster roll of the army before the Emperor. The Muhtasibs or Censors of Public Morals looked after the enforcement of the Prophet Muhammad’s commands and the laws of morality.

All the twenty provinces of the Moghul Empire were governed by means of exactly the same administrative machinery with exactly the same procedure and official titles. Persian was the official language used in all office records, *formans* (edicts), grants and dispatches. The same monetary standards prevailed throughout the Empire, with coins having the same names, the same purity and the same denominations, and differing only in the name of the mint town. The civil and military officials of the government were transferred from one province to another. The native of one province felt at home in another province, and the traders passed easily from city to city, and all realized the imperial oneness of this vast country. Political unity and administrative uniformity were the legacy of the Muslim rule in India. India for the first time pulsed as a corporate whole.

Toleration, equality, justice, liberty, were the distinctive characteristics of the Muslim rule in India.

Impact of Islam on Hinduism and Indian society

The Hindu Indian society before the advent of Islam stood divided, fragmented into watertight castes: the Brahmans (the priestly class), the Kashtriya (the soldiers and warriors), Vaishas (the traders) and Sudras (the untouchables). In proportion to the growth of the Brahman tyranny, the lot of the Sudras worsened. They led a sub-human life. Under such conditions, the light of Islam appeared on the Indo-Pakistan horizon. It came with a message of universal brotherhood and heralded a new era in the religious and cultural life of India. The influence of Muslims who despised the assured sanctity of Brahmans and authoritatively proclaimed the unity of God began gradually to operate on the minds of the multitudes in India. The universality and dynamism of the Muslim culture made a deep impression on a decadent and superficial society. It had a tremendous effect upon the evolution of Indian culture. The two ideals of Islam that overcame all religious barriers fired the imagination of a part of Hindu society were its “monothesism” and its denunciation of the caste system. Both ideas were so penetrating that the decadent society of India soon succumbed to a new order of life. The Sufi Muslims, who stood for all-consuming love for the Divine Being and the complete merger of the self in the existence of God, afforded a common platform for Hindus and Muslims to meet. Thus a new movement arose in India known as Bhakti which stood for the unity of God, *tasawwuf* (Islamic mysticism) and universal brotherhood. (Kabir (16th century C.E.), Guru Nanak (d. 1529 C.E.) and Chaitanya (d. 1534 C.E.) gave rise to the Bhakti movement and thus a neo-Hinduism was born under the impact of Islam. A milder attitude to the laws of the caste system was adopted and the saints of Bhakti also condemned the caste system both by word and deed.

Social life at the Court of Moghuls

The Moghuls brought to India a new theory of kingship. They were the descendants of Timur and Changiz. According to the *A'in-i Akbari*. Akbar considered royalty a “light emanating from God, a ray from the sun, the illuminator of the universe, the agreement of the book of perfection, the receptacle of all virtues”. The role of the kins is described fully by Abul Fadl, who writes: “He is the shadow of God. He receives light directly from Him. He fears Him alone, and trusts Him alone; he seeks His help, receives it and attributes success to Him. God is to him the doer and he only the medium. On earth he is supreme in his sphere. His power as a ruler is absolute and indivisible, because sages and politicians who had regard for the reposes of mortals consider that reposes bound up with one rule, one guide, one aim, and one thought.”

In the public *darbar* (court) hall the Emperor sat in state. The Moghuls constructed spacious halls in their capitals, wherein they held their daily *darbar*. Generally two halls were built: one was called the *ʿAmm-ʾi Khās* (the public audience hall) and the other the *Khalwat Khanah* (the private audience hall). In the former all the nobles, the officials of

8 J. Sarkar, *Moghul Administration*.
9 Tripathi, *Some Aspects of Muslim Administration*, p. 138.
the state and the public gathered to pay their homage to the Emperor, while in the latter only the select few were permitted.\textsuperscript{10}

The same arrangement continued in the reign of Akbar’s (d. 1605 C.E.) successors with slight variations in the construction of the hall. During Jahangir’s reign there were two railings, one of silver on the three sides of the hall, and the other a red-painted wooden railing a little farther. In Shah Jahan’s (d. 1666 C.E.) reign the audience hall was very big, with a high projected platform in the back wall, where the Emperor sat in state. The name of the hall was Jharoka’e Khass-o’-Amm. Princes stood on the platform near the Emperor. They were separated from the select gathering below. Sometimes the most favoured of the grandees were given a special privilege.\textsuperscript{11}

Under Humayun (d. 1556 C.E.) a select bodyguard of men in armour stood in the darbar. Under Jahangir 40 men, carrying hatchets and whips, wearing gilded caps different from all others, were present. In Shah Jahan’s reign the bodyguard consisted of sturdy Uzbeks, carrying spears in their hands.\textsuperscript{12}

Under Humayun taslim (salutation) was performed. Kamran paid reverence to his elder brother by saluting him with three taslims. Under Akbar three taslims were executed at the time of leave and presentation, the granting of mansab or a jagir, the bestowing of bakshish and the dress of honour, presentation of a horse or an elephant. When sijdah (prostration) was first introduced by Akbar, there was naturally intense opposition from the religious people.

A strict code of good behaviour was maintained and anybody infringing it was severely punished. When Lashkar Khan appeared in the court of Akbar drunk and misbehaving, he was led around the city tied to a horse’s tail and later imprisoned.\textsuperscript{13}

The reception of an embassy depended mostly upon the good will of the Emperor towards the ruler of the country the ambassador was representing and to some extent upon the tact and diplomacy of the representative. When the news of the ambassador’s arrival in the Moghul Empire was received, proper arrangements were made to escort him to the court. A nobleman was sent with a robe of honour to greet him at an earlier stage of his journey. If the Emperor was in the capital, he was presented to him there, otherwise instructions were issued to send him to the court or to keep him in the capital. Usually he was called to the court wherever the Emperor was camping. When the ambassador approached the court, he and his retinue were received by one or more noblemen. They stayed in the quarters allotted to them. When they were called to the audience, they paid respect according to the custom of their country, if permitted, otherwise they had to perform obeisance according to the Moghul rule at each stage of the approach to the Emperor. They had to appear in the Khil’at (robe) given to them, unless they had obtained previous permission to appear in the dress of their own country, as was done by Sir Thomas Roe.\textsuperscript{14}

The routine of the Emperor Shah Jahan’s activities were more elaborate, but were arranged with an eye to the prayer times. He distributed the hours of a day more systematically, keeping in mind his frequent appearances in public, and he gave audience six times a day. He appeared in both the audience halls twice a day.

\textbf{Arts and architecture}

It has rightly been said that “the consciousness of a race changed organically in all parts together”. Art is perhaps a more sensitive indication of change than even religion; for the former is objective whereas the latter is subjective in its nature.

The vital creative impulse which inspired any period of Indian arts had its sole source in the traditional Indian culture planted in Indian soil by the Aryan philosophy, and influenced the greatest works of the Muslim period as much as any other. Thus it is not justified to maintain that everything really great in Indian art has been suggested or introduced by foreigners.

Between the Hindu and Muslim ideals there is a great gulf; for there exists a fundamental antagonism between the Hindu and Muslim religious beliefs. The Hindu faith is intensely personal and individualistic. The Hindu architecture is the objectification of this character of faith. Its main symbols are mystery and splendour of deity. The Muslim consciousness is immensely different from that of the Hindu. The Muslim is neither personal or individualistic. He is resigned to God and all his actions indicate collectivism. The transcendence and masterfulness of the Reality, the abstractness of thinking, devotion to pure ideas, quiet resignation and a calm of dignified submission to the divine will find expression in his buildings.

As in literature and religion, so in art and architecture the Moghul period was not entirely an age of innovation and renaissance, but of a continuation and culmination of processes that had their beginnings in the later Turko-Afghan period. In fact, the art and architecture of the period after 1226 C.E., as also of the preceding period, represent a happy mingling of Muslim and Hindu art traditions and elements. Sir John Marshall observes: “Indo-Islamic art is not merely a local variety of Islamic art. Broadly speaking, Indo-Islamic architecture derives its character from both sources, though not always in an equal degree.” The Muslims brought with them definite formulae of art and architecture, but they had to employ Indian craftsmen and sculptors. In the earlier period the materials of Hindu and Jain temples had to be used for the construction of the mosques, and sometimes the temples themselves were slightly modified to suit the peculiar needs of Muslim worshippers. Thus in every province a distinct style was evolved. At Delhi the Muslim traditions were mostly maintained. At Jaunpur, on the other hand, and in the Deccan, the local styles enjoyed greater ascendancy, while in Bengal the conquerors not only adopted the established fashion of building in brick but adorned their structures with chiselled and moulded enrichments frankly imitated from Hindu prototypes. The Qutb group of mosques offers the best specimens of the Delhi style.

In Bengal the Adina Masjid of Pandua enjoys a high reputation for its magnitude and beauty. Of the famous mosques of this province the two Sona Masjids of Ghor and the Qadam Rasul deserve notice here. Ahmad Shah of Gujrat was a great builder. His Tin Darwaja Masjid and Jani’ Masjid possess all the charms of the Gujrat school. The Grand Minar of Daulatabad shows unmistakable signs of

10 Bargabh, The Court Life of the Mughals, p. 129.
11 Travels of Peter Mundy, p. 209.
12 Hawkins, Early Travels in India, p. 115.
14 The Embassy of Sir Thomas Roe to the Court of the Mughal, p. 108.
15 Cambridge History of India.
Indian influence, but the most noble specimen of that style in the Deccan is to be found in the college of Mahmud Gawan at Bidar.

**Architecture**

Moghuls were the great patrons of art and architecture. During their rule architecture touched the peak of its glory. They used white marble in their buildings, which added lustre to the glory of their buildings. Fatehpur Sikri, in Agra district, the Red Fort and the Jama Masjid at Delhi, the fort at Agra, the Badshahi Masjid, the Jahangir's tomb and the Shalamar gardens at Lahore are the marvels of the age. Above all is the Taj Mahal, a dream in marble. It is a tomb on the bank of the Jumna at Agra constructed by Shah Jahan as a monument to his wife, Mumtaz Mahal. He himself lies buried in the same tomb. The Taj Mahal is the symbol of illustrious architecture *par excellence*. Its beauty of proportion knows no parallel in world history. Aurangzeb built two mosques, one at Lahore and another at Delhi, known as Zinah al-Nisa's mosque.

**Painting**

Before the establishment of the Moghul school of painting by the close of the 16th century, a Western or Gujarati school of painting did exist. Some of the works of unknown masters have survived in the caves of Ajanta and Bagli. This same style served as the background of the late Hindu painting which is generally labelled as the Rajput or Rajasthani school; under the patronage of Moghul princes a composite style, in which Persian and Hindu influences are perceptible, came into existence. Humayun brought with him two Persian painters of great repute, and their art made great progress under the munificent patronage of Akbar. Abul Fazl says: “More than a hundred painters have become famous masters of the art, while the number of those who are middling is very large. Few indeed in the whole world are found equal to them.” Of the painters of Akbar's time ‘Abdus Samad, Mir Sayyid 'Ali and Farrukh Beg deserve mention here. Jahangir himself was a great *connoisseur* of art, and the most famous painters of his time were Abul Hasan, who obtained the title of “Nadiruzzaman”, and the *Ustad* Mansur, who bore honorific title of *Nadir al-Asr*. About the former the Emperor says: “At the present time he has no rival or equal. If at this day the masters 'Abd al-Hayy and Biszad were alive, they would have done him justice.” Jahangir took great interest in animal life, and when some rare birds were presented to him he ordered that painters should draw them in the *Jahangir-Namah*.

**Calligraphy**

The art of calligraphy has been looked upon with great respect and care in Persia, China and in India. Baburi, a new style of writing, is said to have been invented by Babur himself. During the short period of his reign, Humayun paid very little attention towards the art.

Akbar encouraged this art very much. According to an historian, namely Farishta, he ordered his calligraphists to write the *Fable of Ameer Hamzah* in a beautiful hand. Further, he engraved inscriptions on his coinage. Jahangir, too, like his father, patronized penmanship. He used to pay very high prices for attractive manuscripts. During the Shah Jahan's reign, Mir Hashim was famous as an extraordinary painter as well as a good calligraphist.

Aurangzeb, himself being a skilled calligraphist, took a keen interest in this art. It is said that he used to meet a portion of his personal expenses by the sale of copies of the Holy Qur'an, transcribed by his own hand. Jawahir, a librarian, was well-known in the art of writing in the days Aurangzeb.

When the Muslims conquered India and made it their home, they spoke Persian. The daily contact with the indigenous people of the land gave rise to a new language which is now called "Urdu". This new language evolved and developed with the expansion of Muslim influence. It gradually enveloped the whole of the sub-continent and became the state language, a fruit of peace and economic prosperity under the Muslim rule in India.

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16 A'ini Akbari.
What Our Readers Say . . .

EVOLUTION IN THE RIGHT OF REPUDIATION AND DIVORCE

3 Abbots Crescent,
Enfield, Middlesex,
England.
27 October 1966.

Dear Sir,

I was extremely saddened and disturbed to read in Mr. M. Borromans’s article on “Evolution in the Right of Repudiation and Divorce” in The Islamic Review for September 1966 that “the exclusive right of a husband to end the bonds of marriage whenever it suits his purpose, without any obligation to go to law, is still practised over-excessively in all classes of Muslim society”.

It seems beyond understanding how this evil practice, which is clearly against the plain teaching of the Holy Qur’an and all the simple canons of human justice, can have prevailed almost unchanged up to the present day.

The Qur’an contains no mention of any arbitrary divorce formula, but on the contrary, insists that the discretion of the husband shall be subject to a tribunal representing both the parties concerned: “And if you fear a breach between the two, then appoint a judge from his people and a judge from her people.” (4:25). If the desired reconciliation is not then effected, the divorce may be finalised after a waiting period of three months, and must be confirmed in the presence of witnesses: “So when they have reached their prescribed time, then retain them with kindness or separate from them with kindness, and call to witness two men of justice from among you, and give upright testimony for God.” (65:2). Surely in modern society such procedures would require the services of a court of law.

The above Qur’anic verse reiterates the necessity for kindness in this matter, and verse 30:21 says: “And one of His signs is that He created mates for you from yourselves, that you may find quiet of mind in them.” Yet what kindness or quiet of mind can there be for the wife who must live with the knowledge that the law permits her husband to divorce her when he wishes, whether or not for any valid reason, and entirely at his own private discretion? She is always faced with the possibility, at least, that through no serious fault of her own she may find herself arbitrarily banished from her home, husband and children, around which her whole life revolves. It is obvious that no amount of financial provision, however materially helpful, could form an adequate compensation for such a terrible loss, and cannot be offered as a valid defence for the practice of repudiation.

The fact that the Qur’an urges the necessity for kindness and justice in this connection cannot possibly be effective if no legal provision exists to ensure that these conditions are met in practice. Non-judiciary repudiation cannot ensure this, and must further tend to reduce the position of the wife to the level of a servant who may be arbitrarily dismissed. In fact, it may not be so favourable, since a good servant is seldom dismissed without valid reason, while the facility of repudiation might tempt an unscrupulous husband to divorce his wife simply because he fancies a change, or perhaps a younger and more attractive wife than the one who has possibly devoted many years of her life to his comfort and welfare.

The rather meagre and partial reforms described by Mr. Borromans are relative only to the procedures of repudiation, and have done nothing to alter its basic character, so that it is indeed very sad that the criticisms of reformers such as the great Muhammad ‘Abduh and many others have borne such poor fruit in this respect. Even in Egypt, which is often rightly regarded as an exemplar of much that is good in modern progress, the Civil Tribunal of Cairo could decree as late as 1952 that “it is a principle of Muslim law that repudiation is subject only to the will of the husband”. Yet since this statement is in plain contradiction to verse 4:35 of the Qur’an quoted above, it cannot be held to stem from the teaching of Islam as such but must come from other source.

It is not, of course, difficult to discover this source, and Mr. Borromans’s article does in fact state that “Muslim law . . . and masculine psychology have for many years tended to join forces in defending a privilege which custom has always recognized as a man’s prerogative”. And indeed, the custom of arbitrary repudiation, which the Qur’an tried to eradicate, stems from pre-Islamic days when women were regarded as the chattels of their menfolk, and had no personal rights. The popularity of this ancient custom can be measured by the fact that it has survived, in defiance of the Holy Qur’an and even under the guise of Muslim law, down to the present day. Surely it is now time for this custom to be frankly recognized for what it truly is.

It seems regrettable that in those countries — Turkey and Tunisia — where repudiation has been abolished in favour of judiciary divorce, this necessary reform had to be effected by strong secular leaders in the face of opposition from religious groups. Is it too much to hope that other Muslim countries will also soon adopt the same reforms, but with the co-operation even or the rightful leadership of those who are devoted to the Faith?

Yours sincerely,

(Mrs.) MALIKA CITRINE.

THE ISLAMIC REVIEW
Books on Islam and Allied Subjects (Continued)

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