



# PUBLIC DUTIES IN ISLAM

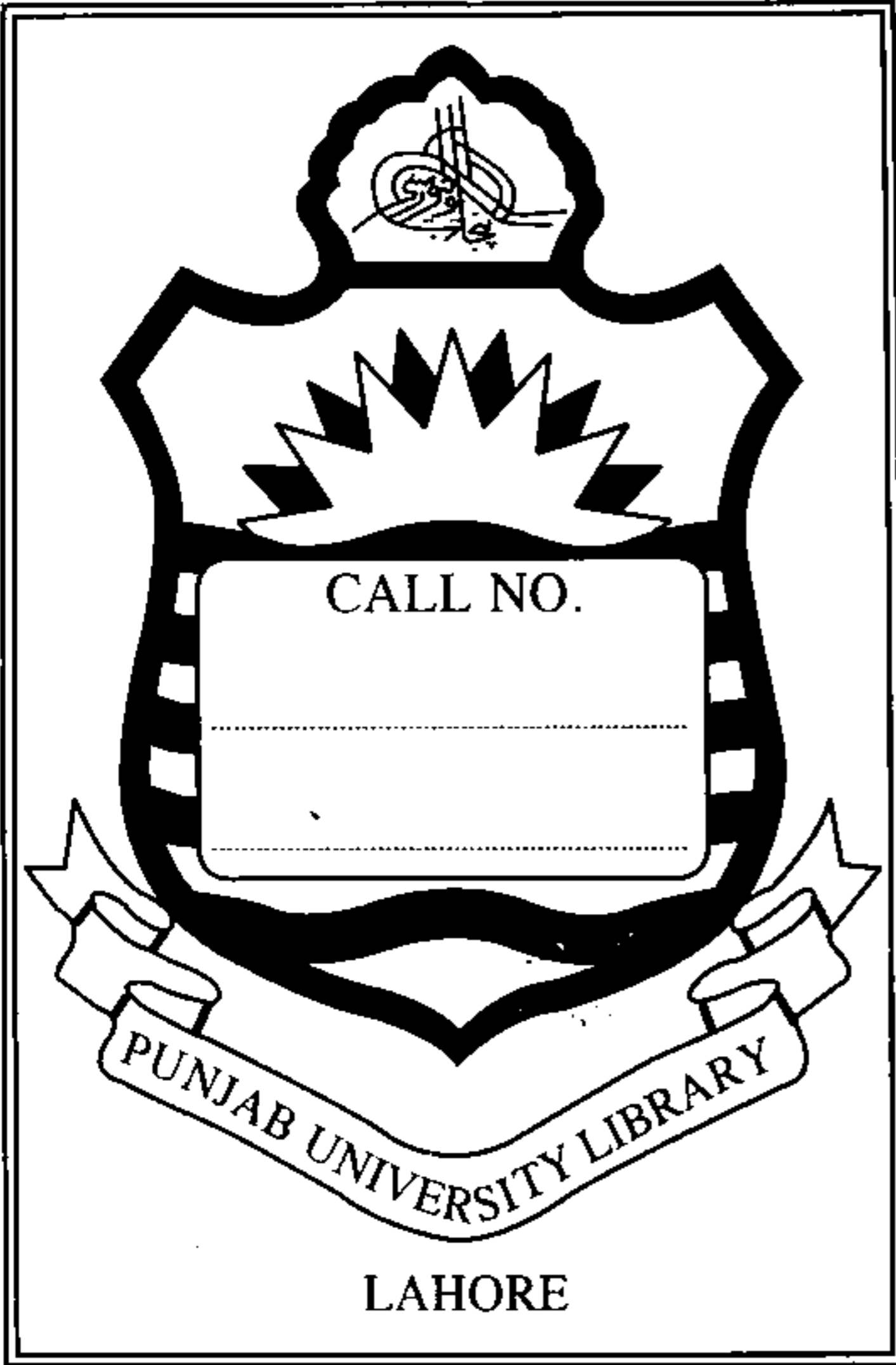
*The Institution of the Hisba*

IBN TAYMIYA

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*The Islamic Foundation*

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# Public Duties in Islam

The Institution of the *Ḥisba*

by

al-Shaykh al-Imām Ibn Taymīya

Translated from the Arabic

by

MUHTAR HOLLAND



Introduction and  
editorial notes by

KHURSHID AHMAD

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In the name of Allah, the Merciful, the Mercy-Giving

## Editor's Preface

The economic challenge of Islamic resurgence has many ramifications; one of them is to develop Islamic guidelines for economic management and policy making in a contemporary Muslim society. Muslim economists and policy makers have a unique role to play. On the one hand they have to study and analyse the problems faced by a contemporary economy and society, and on the other they have to delve into the sources and traditions of Islam to imbibe Islamic values and principles with a view to applying them in seeking solutions to contemporary problems. An Islamic economy in the fifteenth century Hijra is going to be a new and modern experiment directed towards achieving the goals of Islam and translating its values and principles into contemporary practice. The Qur'an and the *Sunna* are the primary sources for this guidance, yet light has to be drawn from the entire classical literature as well as from experiments made in the past. *Al-Hisba* is one such institution which deserves to be examined carefully, both in theoretical as well as historical literature. This is a topic on which quite a wealth of material is available, full of penetrating insights for the modern economists and policy makers.

An Islamic economy has four distinct characteristics:

First, an Islamic economy is an integral part of an Islamic society and state and cannot be studied or managed in isolation. It is the entire social system, and not the economy in isolation, that is the concern of the Muslim policy maker. As such, while

examining and prescribing for the economy, its linkages with the entire social system have to be kept in sharp focus. Instead of an isolationist approach, a more holistic approach has to be adopted in an Islamic framework.

Secondly the material and the physical forces have to be studied in their inalienable relationship with the moral and the spiritual factors. In fact, according to the Islamic approach the material and the moral are two sides of the same coin, and not two different entities. The moral and the spiritual expresses itself in the form of the material and the physical. As such, the moral criteria has to play a decisive role in making the final choice. As ethical principles provide the framework for decision making, policy variables in an Islamic economy are not confined to the physical factors but include moral commitment and all aspects of human motivation as well as ways and means, moral, physical and legal, to influence it. This makes Islamic economics unique.

Thirdly, the Islamic economy is neither wedded to the idea of absolute right of private ownership and enterprise nor to total nationalisation of all means of production and consumption. It affirms the right of the individual to own property and engage in private enterprise but transforms the concept of ownership into that of trusteeship and subjects individual freedom to social regulation and control. An Islamic economy is neither a *laissez faire* economy nor a centrally-controlled command economy. It is a private enterprise economy with social management and guidance.

Fourthly, the real objective of an Islamic economy is the establishment of a just social order. The purpose of social control and management is to see that justice is done to all participants in the economic activity, in fact to all members of the society who are protected against exploitation of every form and order. The rights and obligations of people have been spelled out by the *Shari'a* and an effort has been made to inculcate a new approach in all members of the society to see that while they fulfil their own needs they do not injure anyone else's rights; in fact, they contribute towards fulfilling their rights. The Islamic vision of a just and prosperous society is one of an enterprising and sharing community which values increase in virtue and equity



more than mere increase in the flow of goods and commodities.

The efficient working of such an economy would very much depend upon a high degree of idealism and moral motivation in the individual and the existence of effective social institutions which on the one hand arouse the social consciousness of the people and educate them to follow the rules of the game and on the other are capable of guiding individual and collective action and wherever necessary, influence it in the desired direction. The ideal situation is one of self-management at all levels, but as any human society is subject to human failings, the presence of social institutions including the state is integral to the Islamic social programme, so as to intervene whenever necessary to protect the interests of the weak and to ensure justice for all. *Al-Ḥisba* is one such institution developed by the Muslims to help regulate the society and economy and ensure the full flowering of the Islamic norms of behaviour.

The function of *ḥisba* is integral to the Islamic socio-economic scheme, and the Prophet Muhammad (Allah's blessings and peace be upon him) took pains to see that individual and public conduct of the people in the nascent society of Madina conformed to the moral and legal injunctions of Islam. The function of *ḥisba* consists in maintaining public law and order and supervising the behaviour of the buyers and sellers in the market with a view to ensure right conduct and protect people from dishonesty and malpractices. The purpose was to regulate public life in such a way that a high degree of public morality is attained and the society is protected from bad workmanship, fraud, extortion, exploitation and charlatanism. Initially this function was performed in a number of ways but gradually the institution of *ḥisba* took shape. A special department of *ḥisba* came into existence with a hierarchy of state officers under the leadership of a *Muḥtasib* who was responsible for the maintenance of public morality and economic ethics. Protection of the *sūq* (market) was one of his responsibilities. He was to check not only for bad workmanship or faulty measures or discrepancy in quality but also to see that there was no arbitrary manipulation of the market, by resort to hoarding, under-cutting, over-charging, obstructing supplies, etc. The *Muḥtasib* wielded enormous powers to

reprimand and penalise deviant behaviour. He enjoyed moral as well as legal authority.

There is a wealth of literature dealing with *ḥisba*. This literature can be classified into two groups, one dealing with the theory of *ḥisba*, its rationale, philosophy, functions and limitations and the other providing guidance to the *Muḥtasib* and his functionaries as to the rules of the game. Literature of the latter kind contains many a manual for the *Muḥtasib*, spelling out do's and don'ts for him as well as identifying the types and forms of malpractices he might encounter. Although these manuals are of a practical nature and as such coloured by the practices of a particular period, their theoretical relevance lies in the fact that by cataloguing activities it enables the analyst to formulate a clearer view of the functions of *al-Ḥisba*. This literature remains instructive because although forms may change, functions continue.

It is in view of the importance of the institution of *al-Ḥisba* and its relevance to the problems of managing an economy that we are presenting the English translation of Imām Ibn Taymiya's scholarly work: *al-Ḥisba fī al-Islām*. The book relates to the first category of literature on *ḥisba*, i.e. its theory and philosophy.

Imām Taqī al-Dīn Aḥmad Ibn Taymiya was born at Harran on 10 Rabī' al-Awwal 661 H (22 January 1263) and died in Damascus on 20 Dhu'l Qa'da 728 (26 September 1328). He was a man of sublime character and towering scholarship. A *ḥāfiẓ* of the Qur'ān and an authority on the *Ḥadith* literature, he is acknowledged as one of the greatest thinkers in Islamic history. Although a Ḥanbalī theologian and jurisconsult, his influence is not confined to any one school of Islamic thought. He is accepted as an authentic spokesman of Islam and has been one of the chief sources of inspiration for the revivalist thought and movements during the last seven hundred years.

At the age of 20 he became a professor of Ḥanbalī law and a teacher of the Qur'ānic exegesis. Very soon he was acknowledged as an authority in a number of fields of Islamic learning. He had an innovative mind and was able to reconstruct Islamic thought on the pure foundations of the Qur'ān and the *Sunna*. He was a man of firm convictions and suffered for his independence of thought and action. He spent many years in prison because he

refused to barter his conscience or dance to the tunes of the political courts. Ibn Taymiya was a versatile genius. He authored a large number of books on a variety of subjects, all related to different aspects of Islamic thought and practice. It would be unfair to suggest that *al-Hisba* is one of his major works; yet it remains a lasting contribution in the field of Islamic social studies. Ibn Taymiya did not write this book as a discourse on economics. He delineated upon a cardinal institution of Islam, *al-Hisba*, and expounded its theoretical foundations and its socio-economic functions.

*Al-Hisba* is a moral as well as a socio-economic institution. Its *raison d'être* lies in the Qur'ānic command of *al-'Amr bi'l Ma'rūf wa-n-nahī 'an al-Munkar*, that is, to ordain good and forbid evil. This underscores the need for the state and its different organs. The book spells out different stipulations of *'amr bi'l ma'rūf* and can justifiably be claimed to be a treatise on sociology, political science and economics. It is full of insights for persons belonging to these disciplines. We are offering it in our series on Islamic economics because of the lurid light it throws on some of the critical issues of economics. Yet it would not be fair to assume that the relevance of this book is confined to this field of study.

Ibn Taymiya wrote in an age when economics as a science had not yet been born. But one is astonished at his perception of the market mechanism and the forces of supply and demand and of the problems of market imperfections and distortions and their consequences for the consumers and producers. He is concerned with the questions of monopoly, hoarding and price manipulations and is eager to establish the principle of just price and just wage. His primary concern is with the establishment of a just economic order. He is so concerned with the attainment of justice that he says that a regime committed to justice even if it has certain moral failings is superior to a regime of 'pious tyranny'. He says that "God upholds the just state even if it is unbelieving, but does not uphold the unjust state even if it is Muslim".

Ibn Taymiya expounds a broader concept of *ribā*, to see that exploitation, in all its forms, is brought to an end. He prefers determination of prices by the market forces of demand and supply – provided there is perfect knowledge and the market is free from

rigidities and deformities. If such is not the case, then he does not hide his preference for some kind of intervention in the market to ensure a just price.

Ibn Taymiya expounds a theory of collective good and emphasises that certain industries are in the nature of collective obligation and their development is a must for the progress of the Muslim society. He develops his theory of *ḥisba* in the wider context of a just society and an efficient market economy. It is this concern of the author with economic issues which prompted us to present this book in our series on Islamic economics.

*Public Duties in Islam: The Institution of the Ḥisba* is an English translation of *al-Ḥisba fī al-Islām* by Shaykh al-Islām Imām Taqī al-Din Aḥmad Ibn Taymiya. The present study has been prepared by the Islamic Economics Unit of the Islamic Foundation, Leicester. It has been a pleasure for me to oversee work on this book and finally edit it for publication. The translation has been beautifully done by our brother and colleague Mr. Muhtar Holland, who was with us in the Islamic Foundation as a Senior Research Fellow during 1978-81 and is presently director, Nūr al-Islām Islamic Centre, New York. The preparation of the original manuscript in its present form, its classification into ten chapters, grouped into two parts, all chapter headings, titles for the parts, and division into sub-sections including sectional headings have been done by the editor. As the author had written the entire work as one lengthy discourse it was thought advisable to classify the material into parts, chapters and sections without changing its order or sequence. The author's epilogue which was included in the Arabic edition as an appendix has been incorporated in the English version as the concluding chapter. In suggesting appropriate chapter and section headings, the editor has tried to highlight the relevance of the contents of that section to certain issues and themes of Islamic economics. As the original book was written to expound certain basic concepts of Islam and delineate the spirit and ethos of the social order of Islam the editor thought it fit to pin-point the relevance of this material to economics by inserting appropriate sectional headings. The reader will realise that the author's ideas have great relevance to certain problems of economic policy-making. We also hope this

book will help a modern reader of Islam to understand how a great mind of the seventh century of the Islamic era grappled with some of the socio-economic problems of his time. We have also included as an appendix a paper by Mr. M. Akram Khan, a fellow of the Islamic Economics Unit, on the Institution of *al-Hisba* in Islam.

I would like to take this opportunity to thank Dr. Jamil Qureshi for his help in editing the present manuscript. I am also indebted to Brothers Khurram Murad and Dr. M. M. Ahsan for their co-operation and to Mrs. K. Hollingworth for her secretarial assistance.

Institute of Policy Studies  
Islamabad  
2 Rabi' al-Awwal, 1402  
9 January, 1982

**Khurshid Ahmad**



# Translator's Foreword

It is with a feeling of gratitude to God that I welcome the publication of this modest work of translation, for it is a great blessing to be able to share with others any benefit one has personally enjoyed. For the reader who appreciates a personal note, I may offer a brief account of the circumstances in which I came to read and reflect on Ibn Taymiya's treatise, and to undertake the task of rendering it into my native language:

The ferment of the 1960s left few people unaffected, particularly among the young and especially those in the universities. There was a widespread sense, not only of the need for change in almost all spheres of life, but that change could really be for the better. Above all, there was a definite feeling that such change was actually possible, and that one could make a significant and individual contribution to its achievement. At the same time, one could not fail to be aware that resistance to the changes taking place was powerful and often violent. It was apparent, moreover, that the new movements and currents were by no means always rightly guided.

While applauding many of the developments I was witnessing in the early sixties, and sharing the prevailing mood of optimism, I felt an imperative need to examine the values and goals that might give me a firm base and sure direction. In this process, I derived profound inspiration from the knowledge of Islam which I had begun to acquire as an undergraduate at Oxford in the mid-fifties, and which had been maturing through travel in lands where the Islamic traditions lived on, as well as through friendships with many sincere Muslims.

It was while lecturing on "Islamic and Comparative Law" at

the School of Oriental and African Studies in the University of London, that I encountered the works of Ibn Taymiya. His treatise on *al-Hisba*, although written over six hundred years earlier, seemed so relevant to my own times that I started translating it into English. Various factors conspired to interrupt my work on the translation, which I was not destined to resume and complete until the beginning of the eighties. The general climate was considerably altered by then, as was my personal situation, yet this treatise still seemed relevant to both, perhaps with a certain shift in emphasis. My own perspective was now that of someone who had embraced Islam.

In case all this talk of "relevance" should arouse false expectations, I must hasten to warn contemporary readers, particularly those who are neither Muslims nor students of Islam, that much of the surface texture may well strike them as exotic and archaic. To forestall another possible misunderstanding, I should like to make it clear that I do not necessarily advocate all the *specific* measures proposed by Ibn Taymiya. Many of these were controversial even in his own day, as he himself frequently indicates, and most would be preposterous if applied out of context. Notwithstanding these notes of caution, however, I am confident that many passages will immediately explain, to those who recall the sixties, why I considered the work relevant to the concerns of that decade. One major concern was that people exercising authority should be inspired and restrained by noble ideals and a social conscience. "Authority", says Ibn Taymiya, "for one who assumes it, is a liability for which he is responsible to God, and a duty to perform, as far as possible, the very best of good works". There was also a strong appeal in the concept of a responsible society, with individual ability as the criterion for the duty (not the right) to carry out specific responsibilities: "The responsibility is collective, but becomes individual for the able person when no one else undertakes it."

World events in the seventies and early eighties have stirred up intense popular curiosity about currents of thought and action among the Muslims. It is therefore easy to claim relevance for an author who, paradoxically at first sight, has influenced both "fundamentalists" and "modernists" (to use unsatisfactory, but



widely-applied terms.) In this particular treatise, Ibn Taymiya's main theme is "commanding what is *ma'rūf* (good; fair; right and proper) and forbidding what is *munkar* (evil; unfair; wrong and improper.)" Excessive zeal in this area may horrify some, and be a temptation to others. But if this work has any influence, it should be to reassure the alarmist and restrain the potential fanatic, since the author calls for a moderate and realistic approach, with great stress on the importance of knowledge, gentleness, patience, forbearance and generosity of spirit.

If I knew that only a few sentences of my translation could be preserved, I might choose the following:

These three are essential: knowledge, gentleness and patience. Knowledge precedes command and prohibition, gentleness accompanies it, and patience follows, although all three really go hand in hand . . . As the Prophet, on him be peace, said: "Gentleness beautifies . . . ; harshness disfigures . . ." If one is not forbearing and patient one will do more harm than good.

**Muhtar Holland**



## PART I

### MANAGING AN ISLAMIC ECONOMY AND SOCIETY

This part deals with the concept, principles and mechanisms for the management of an Islamic Economy and highlights how different institutions of Islam play their respective roles to achieve the objectives of justice and freedom in society. One of the central issues discussed in this section relates to price control and administered prices. The style is classical but the issues discussed are of great relevance to a modern economy. **Editor**



## CHAPTER 1

# Basic Principles of the *Ḥisba*

Praise be to God, Whom we beseech for aid, guidance and forgiveness, and to Whom we turn in repentance. We seek refuge with God from the wickedness within us and from our evil deeds. Whom God guides none may lead astray; whom He leaves in error has no guide. We testify that there is no deity save God, Alone without partner. We testify that Muḥammad is His Slave and His Messenger, sent before the Hour as herald and harbinger, summoning to God by His leave, as a lantern shedding light. By him God guided out of error. By him He showed the way from blindness. By him He led out of temptation. By him He opened eyes that were blind, ears that were deaf and hearts that were crusted over. For he delivered the Message, discharged the Trust, counselled the Community, strove truly in God's Cause and worshipped God till Certainty came to him from his Lord. God bless him and his family and keep them safe! May He grant him for our sake the most excellent reward He has ever granted a Prophet for the sake of his community!

### **Sanction for Authority in Islam**

The first essential is to understand that the aim of all authority in Islam is to ensure that all religion shall be God's, and that the Word of God shall be all-high. For God – be He glorified and exalted! – created His creation for this purpose alone. To make it known He revealed the Scriptures and sent the Messengers. In this cause the Messengers and the believers strove. God, Exalted is He, said: "I created *jinn* and men solely to worship Me." (51: 56) And: "We sent no Messenger before you without inspiring in him: 'There is no god but I, therefore worship Me!'" (21: 25) And:

“We sent forth in every nation a Messenger to tell them: ‘Worship God and shun the Tempter!’ ” (16: 36)

Every messenger is reported to have told his people: “Worship God. You have no deity but Him. To worship Him is to obey Him and to obey His Messenger.” This is goodness and piety and devotion and good works and noble deeds and proper conduct.<sup>1</sup> For this Man must fight, as the Exalted One said: “Fight them till there is an end to sedition and all religion is God’s.” (8: 39)

In the two *Ṣaḥīḥ*’s we find these words attributed to Abū Mūsā al-Ash‘arī, may God be pleased with him: “The Prophet, on him be peace, was asked, ‘One man fights from courage, another fights from zeal, a third fights from hypocrisy – which is in God’s Cause?’ To which he replied, ‘Whoever fights that the Word of God shall be supreme, he is in God’s Cause.’ ”

All sons of Adam need, for the perfection of their welfare in this world and the next, society, mutual aid and mutual assistance: both to procure benefits and to ward off injuries. For this reason man is said to be civil by nature. Now when men group together there must be some things they have to do to procure their welfare and some they have to avoid as being harmful, and they will be obedient to one who ordains those desirable objects and proscribes what is injurious.

All sons of Adam, then, are bound to obey one who ordains and proscribes. Therefore those peoples who have not the divine scriptures, nor any religious faith, obey their kings (and rulers) insofar as they consider it conducive to their worldly welfare, sometimes correctly and mistakenly at others. The adherents of corrupt religions,<sup>2</sup> on the other hand, are obedient where they consider it conducive to their welfare both religious and worldly.<sup>3</sup>

Since obedience to one who ordains and proscribes is necessary it is evident that the best thing for a man is to enter into

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<sup>1</sup> We are not here concerned with nice distinctions between these various terms.

<sup>2</sup> Polytheists and those who have received Scripture but cling to it after substitution or abrogation and substitution.

<sup>3</sup> Of those without Scripture some believe in requital after death and some do not believe in it. But whereas this belief is held unanimously only by people of Scripture, all on Earth agree on requital in this world. For no-one disputes that the consequence of wrong is dreadful and that the result of justice is noble. Thus it is related: “God aids the just state even if it be infidel and does not help the tyrannous even if it be believing.”

obedience to God and His Messenger, namely the Gentile Prophet foretold in the Torāh and the Gospels, who ordains what is fitting and proscribes the improper, who makes good things lawful and forbids the bad. Such obedience is the duty of all creatures. God, Exalted is He, said: "We sent no Messenger but to be obeyed by God's leave. If when they had wronged themselves they had come to you and asked God's pardon, and the Messenger had sought forgiveness for them, they would have found God merciful, compassionate. But no, by your Lord, they will not truly believe till they make you arbiter of their dispute and then, with no feeling of distress, accept your decision fully." (4: 65) And: "Those who obey God and the Messenger, they are with those whom God has favoured: the Prophets, the saints, the martyrs and the righteous. What noble company are they!" (4: 69) And: "Those who obey God and His Messenger shall be brought into Gardens beneath which rivers flow, abiding therein for ever. That is the great Success. But he who defies God and His Messenger and transgresses His bounds shall be brought into a fire to stay therein forever, and dreadful is his punishment." (4: 13–14) The Prophet, on him be peace, used to say in his sermon to the congregation: "The best speech is the Speech of God. The best guidance is the guidance of Muḥammad. The worst things are innovations." Addressing the pilgrims he said: "He who obeys God and the Messenger will be directed aright. Whoever defies them hurts only himself; he will never hurt God in the least."

God sent His Messenger Muḥammad, on him be peace, with the most excellent system and laws, revealed to him the most excellent Book, despatched him to the best community ever formed for men, gave him and his community the perfect religion, bestowed on them the fullness of His Grace, and made the Garden of Paradise accessible to none save those who believe in him and his message. Of none will He accept anything but the Submission (Islām) which he brought, so if anyone prefers another religion it will not be accepted of him and in the Life to Come he will be among the losers.

God made known in His Book that He had revealed Scripture and Iron that men might practise equity, saying: "We sent Our

messengers with clear proofs and revealed with them the Book and the Scales that men might practise equity – We also revealed Iron, which is great power and usefulness for men – and that God might know who would assist Him and His messengers, though unseen. God is Strong, Mighty.” (57: 25)

Therefore the Prophet, on him be peace, ordered his Community to appoint authorities over them, and commanded these authorities to fulfil their trusts and when judging between people to judge fairly. He ordered them to obey those in authority in obedience to God, Exalted is He.

In the *Sunan* of Abū Dāwūd we have it on the authority of Abū Sa‘īd<sup>4</sup> that the Messenger of God, on him be peace, said: “When three men go on a journey let them put one of their number in command.” In the *Musnad* of Imām Aḥmad we learn on the authority of ‘Abdallāh ibn ‘Umar that the Prophet, on him be peace, said: “It is not permissible for three men to be in a desert place without putting one of their number in command.”

Now since the Prophet demanded of the smallest groups and most limited societies that one person be put in charge, we must admit the same obligation where greater numbers are involved.

It follows from all this that authority, for one who assumes it, is a liability for which he is responsible to God and a duty to perform, as far as possible, the very best of good works. Indeed, Imām Aḥmad in his *Musnad* attributes these words to the Prophet, on him be peace: “The creature most beloved of God is a just leader. The creature most hateful to Him is a despotic leader.”

### **The Function and Responsibilities of the Rulers**

If the whole of religion and all authority is a matter of ordaining and forbidding, the ordaining with which God sent His Messenger is the ordaining of what is proper and the prohibition with which He sent him is the prohibition of the improper. This is the characteristic of the Prophet and the Believers, as God, Exalted is He, said: “Of the believing men and women some are in charge of others, ordaining what is proper and forbidding the improper.” (9: 71)

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<sup>4</sup> The same report is given in his *Sunan* on the authority of Abū Hurayra.



This is a duty incumbent on every able Muslim. The responsibility is collective, but becomes individual for the able person when no-one else undertakes it. Ability is power and authority, for those who have power are more able than others and so come under obligations which others do not bear. For the measure of obligation is ability, and every man is responsible to the extent of his ability. The Exalted One said: "Fear God as far as you can." (64: 16)

All Islamic authorities have the sole aim of ordaining what is proper and forbidding the improper, whether it be the greater military authority (*wilāyat al-ḥarb al-kubrā*) like the Prime Ministry (*niyābat al-salṭana*), the lesser such as the police (*shurṭa*) and the magistracy (*wilāyat al-ḥukm* or the financial authority,<sup>5</sup> and the *ḥisba* authority. However, some persons in authority are in the position of a trusted witness and what is required of them is integrity: such are the court witnesses, the minister (*ṣāhib al-dīwān*) whose office is the recording of income and expenditure, the intendant (*naqīb*) and the guild warden (*'arīf*) whose job is to keep the ruler informed of the state of affairs. Others are in the position of a trustee commanding obedience and what is required of them is impartiality and justice (*'adl*): such are the commander, the magistrate and the *Muḥtasib*.<sup>6</sup>

With truthfulness in all reports and fairness in performance by word and deed all affairs will prosper. These two are complementary, as God, Exalted is He, said: "The Words of your Lord are perfect in truth and justice." (6: 115) The Prophet, on him be peace, said, speaking of injustice: "If a man calls them truthful when they lie and abets their injustice he is not of me nor I of him. He will not be brought back to the Basin (to drink on the Day of Resurrection). But if a man does not call them truthful when they lie and does not abet their injustice he is of me and I am of him. He will be brought back to the Basin." In the two *Ṣaḥīḥs* these words are ascribed to the Prophet, on him be peace: "Be truthful! For truthfulness leads to piety and piety leads to the Garden. If a man holds to the truth and persists in the truth he will be recorded with

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<sup>5</sup> i.e. the finance ministries (*al-dawāwīn al-mālīya*).

<sup>6</sup> See p. 25.

God as a truthful man. Beware of lying! For lying leads to depravity and depravity leads to the Fire. If a man lies and persists in lying he will be recorded with God as a liar." Therefore the Exalted One said: "Shall I tell you upon whom the devils descend? They descend upon every sinful liar." (26: 222) And: "We shall drag him by the forelock – a lying, errant forelock." (96: 15–16)

Thus it is incumbent on everyone in authority to seek the aid of people honest and impartial. Failing this he must use the best he can find, though falsehood and injustice be present in him, for God will support this Religion through the depraved and through peoples of no virtue. One's duty is only to do what lies within one's power. The Prophet, on him be peace, or 'Umar ibn al-Khaṭṭāb, said: "To confer on a man a turban (of office) when one could find another more worthy of that turban is to betray God, betray His Messenger and betray the Believers." So all that is demanded is the most suitable to be found. The perfect is unlikely to exist, so one should do the best of the best and shun the worst of the worst. This is why 'Umar ibn al-Khaṭṭāb used to say: "I bewail the staunchness of the profligate and the impotence of the trustworthy." The Prophet, on him be peace, and his Companions used to rejoice at the victory of the Christian Byzantines over the Magian Persians despite their both being infidel, because one of the two sides was nearer to Islām. Concerning this, God revealed the *Sūrat al-Rūm* when Byzantium and Persia were at war. The story is very well known. Similarly, Joseph the Truthful was viceroy of the Pharaoh of Egypt though he and his people were polytheists. Joseph wrought what justice and goodness lay within his power and summoned them to the True Faith as far as was possible.

### **Divine Law and Custom**

The general and particular features of the various positions of authority and the privileges enjoyed by those who occupy them depend on verbal usages, circumstances and custom. They are not defined in the Law (*sharʿ*). In some places and at certain times the judicial authority may exercise jurisdiction in matters reserved elsewhere and at other times to the military, and vice

versa; similarly with the *ḥisba* and the financial authority.

All these authorities are fundamentally Sacred Law authorities and religious offices. Whoever deals fairly in the exercise of any of these authorities and administers it with wisdom and justice, obeying God and His Messenger as far as possible, is numbered among the pious and devout. But he who acts unjustly and unwisely is counted with the profligate and tyrannous. Enough to quote the Exalted One's words: "The pious will be in bliss – the profligate in hell." (82: 13)

In the custom prevailing at the present day in these lands of Syria and Egypt the military authority reserves to itself the execution of those prescribed penalties (*ḥudūd*) which involve physical destruction, e.g. the amputation of the hand of the thief, the punishment of the brigand, etc. It also applies penalties not involving destruction, such as the flogging of the wine-drinker. It has jurisdiction, moreover, in adversary litigation, limited partnership and claims based on suspicion without documentary evidence or witnesses. The judiciary, on the other hand, is exclusively concerned with cases where there is documentary evidence or the testimony of witnesses, as also it reserves to itself the establishment of rights/obligations (*ḥuqūq*) and the judgement of cases relating thereto, and the overseeing of the administrators of pious foundations (*wuqūf*) and the guardians of orphans, along with other matters too well known to need mention.

In other countries, like the Maghrib, the military authority has no jurisdiction whatever, its function being merely to execute decrees of the judiciary. This is more in accord with the ancient practice (*sunna*).<sup>7</sup>

### **Duties of the *Muḥtasib***

As for the *Muḥtasib*, he is charged with ordaining that which is fitting and proscribing the improper in those spheres not reserved to the governors, the judges, the administrative officers (*ahl*

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<sup>7</sup> The reasons for these differences, to be sought in the diversity of legal doctrine (*al madhāhib*) and variety of custom (*al-'ādāt*), have been discussed elsewhere.

*al-dīwān*), etc.<sup>8</sup>

The duties of the *Muhtasib* include: ordering the common people to perform the five prayers at the proper times and punishing with flogging or imprisonment<sup>9</sup> those who do not pray; supervising the prayer-leaders and those who give the call to prayer, seeing to it that the former do not neglect the duties of their office and that the latter keep within the legally prescribed form. Should he be unable to enforce his orders he may call upon the military, the magistrate or anyone commanding obedience to help him.

### **Establishment of Prayer**

No action is more fitting than the Prayer. It is the pillar of Islām and the most important of its laws, being coupled with the two professions of faith. God decreed it on the night of the Ascension, communicating it directly to the Messenger rather than sending it by angelic envoy. It was the last bequest of the Prophet, on him be peace, to his Community. It receives special mention in God's Book, in general then in specific terms, as in the Exalted One's words: "Those who hold fast to the Book and establish the Prayer . . ." (7: 170) And: "Recite<sup>3</sup> what has been revealed to you of the Book and establish the Prayer." (18: 27) It is coupled with patience, the giving of alms, the rites of Pilgrimage and the Holy War in many places in the Book, as when God, Exalted is He, says: "Seek the aid of patience and the Prayer" (2: 153); "Perform the Prayer and give alms" (2: 43); "My Prayer and all my acts of worship" (6: 162); ". . . dealing severely with the infidel, but merciful among themselves. You see them bowing and prostrating themselves." (48: 29); and "When you are among them and lead them in Prayer let a group of them perform it with you and let them take their weapons. When these have made prostration let them be behind you while another group who have not prayed come and pray with you: let them be on the alert and take their weapons . . . and when you are out of danger celebrate

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<sup>8</sup> Many religious matters are the common responsibility of all authorities and in these it is incumbent to obey anyone who performs the duty.

<sup>9</sup> The *Muhtasib* is not competent to inflict the death penalty.

the Prayer. Prayer at fixed times is prescribed for the Believers.” (4: 102) Its importance is greater than the mind can grasp, and so it must be the paramount concern of those in authority, taking precedence over their concern with all other acts.

For this reason the Commander of the Faithful, ‘Umar ibn al-Khaṭṭāb, may God be pleased with him, used to write to his governors: “For me the most important part of your duties is the Prayer. Whoever keeps to it and observes it will preserve his Faith; whoever neglects it commits the gravest omission of all.”<sup>10</sup>

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<sup>10</sup> Related by Mālik *et al.*



## CHAPTER 2

# Ethical Guidelines for Regulating Business and Economic Life

The *Muhtasib* not only ordains the Friday Congregation and other communal prayers, he also exacts truthful report and the discharge of trusts. He proscribes such abominations as lying and deceit, including the giving of small measure and weight, and fraudulent practices in industry, commerce, religious matters, etc.

### **Right Weights and Measures**

God, Exalted is He, said: “Woe to the niggardly who exact full measure from other people, but give short measure and weight themselves.” (83: 1) In the story of Shu‘ayb He said: “Give full measure and be not one of those who measure short. Weigh with the true balance and do not deprive people of their due. Do not go about causing mischief.” (26: 182) The Exalted One said: “God does not love a sinful traitor” (4: 107), and “God does not guide the wiles of the deceitful.” (12: 52)

### **Checking Business Frauds**

In the two *Ṣaḥīḥs* we read on the authority of Ḥakīm ibn Hizām that the Messenger of God, on him be peace, said: “The two parties to a sale have the option to rescind so long as they have not parted company. If both are truthful and honest they will be blessed in their sale. But if they are secretive and lie then the blessing of their sale will be destroyed”. In the *Ṣaḥīḥ* of Muslim we learn from Abū Hurayra that the Messenger of God, on him be

peace, came upon a stack of food. He inserted his hand and his fingers reached something moist.\* “What is this, food-merchant?” said he. “It has been affected by the weather, Messenger of God.” “Then why not put it on top of the stack so that people can see it? He who defrauds us is not of us.”<sup>1</sup> Thus the Prophet, on him be peace, made it known that the fraudulent is excluded from the meaning of the expression “People of Religion (*dīn*) and Faith (*imān*)”, just as he said: “The thief cannot thieve and be a Believer (*mu'min*). The wine-drinker cannot drink wine and be a Believer.” He thereby denied him that true Faith which entitles to the attainment of reward and salvation from punishment, even though he has the essence of Faith which distinguishes him from the infidel and rescues him from the Fire.\*\*

Fraud enters into sale with the concealment of defects and the misrepresentation of goods, as when the exterior of the article is better than the inside, like the case which the Prophet, on him be peace, encountered and disapproved. It may also occur in industries, e.g. among those concerned with the preparation of food such as bread, cooked stuff, lentils, grilled meat, etc., or with the making of clothes, like weavers, tailors, etc., or among those who follow some other craft. All must be restrained from fraud, deceit and unlawful concealment.<sup>2</sup>

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\* *Editor's note:* This establishes the principle that the head of the state or his representatives have the authority to supervise the observance of rules of commercial practice laid down by Islam. It is not merely on complaint from any aggrieved party that the machinery of state has to come into action. It should operate on its own initiative and make random checks on business practices.

<sup>1</sup> Another version goes: “He who defrauds *me* is not of *me*.”

\*\* *Editor's note:* This establishes the principle of integration between faith and economic behaviour. Social and economic ethics in Islam is an aspect of faith and not just a secular stipulation. It also provides a self-propelling mechanism for enforcement of these rules by influencing human motivation. But enforcement is not confined to this, the institution of *Muhtasib* ensures the effective enforcement of these rules.

<sup>2</sup> A word here about the alchemists, who counterfeit coins, jewels, perfume, etc. They manufacture gold or silver or amber or musk or jewels or saffron or rose-water etc. in imitation of that which God has created: yet God has not conferred upon His servants the power to create anything as He created it. Indeed God, Exalted is He, said, according to the account of His Messenger, on him be peace: “Who is more wrongful than they who try to copy My creation. Let him create a mote! Let them create a gnat!” Therefore manufactured things like cooked foods, clothes and dwellings are created only indirectly by man. The Exalted One said: “Let it be a sign for them that We carried their offspring in the laden ship and have created the like of it for them to ride”. (36: 41) The Exalted One also said: “Will you worship what you have fashioned, when God



## What Makes Contracts Illegal

Improprieties include those illegal contracts proscribed by God and His Messenger, such as contracts of usury (*ribā*) and hazard (*maysir*). Examples are: speculative sale (*bay' al-gharar*), contracts like the sale of the unborn calf, sale-at-a-touch (*mulāmasa*), sale-at-a-toss (*munābadha*), *ribā* of delay and *ribā* of excess; similarly the practice whereby an accomplice of the seller bids up the price though he has no intention of buying (*najash*),\* tying up the teats of a milch animal, and other kinds of misrepresentation; likewise all usurious dealings, whether two- or three-fold,<sup>3</sup> so long as the final object is the taking of a certain sum of money in exchange for a greater sum to be paid later.<sup>4</sup>

## Some Market Imperfections

Another improper practice is the intercepting of goods before

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### Footnote 2 continued

created you and what you do?". (37:95) It has not been made possible for human beings to manufacture mineral, vegetable and animal creations. They only copy for the sake of fraud. This is the true nature of alchemy: copying what only God can create. It is a big subject about which the experts have written far more than we have space for here.

\* *Editor's note:* This and the following discussions are important as they refer to some of the imperfections of the market which may invite state intervention to see that a just price prevails. The idea of "just price" is integral to the Islamic concept of the market.

<sup>3</sup> Two-fold sale involves two operations, e.g. an interest-free loan is connected with a sale or a lease, or a *musāqāh* or *muzāra'a* [see p. 41]. Now it is established that the Prophet, on him be peace, said: "Unlawful are loan and sale combined, two conditions in one sale, the acquisition of profit from that for which one is not liable, and the sale of what one does not possess." (Tirmidhi considers it a sound *ḥadīth*.) Another example is where A sells B an article with payment deferred and then B sells it back to A. It is reported in the *Sunan* of Abū Dawūd that the Prophet, on him be peace, said: "If someone makes two sales in one then he is either losing by it or making unjustified profit."

An example of three-fold sale is where a third party comes in to legalize the unjustified profit: the usurer buys the article from the third party then sells it to the client with payment deferred; the latter then sells it back to the original owner for the lesser amount which the third party got for it in the first place.

<sup>4</sup> Some of these transactions are unlawful by consensus of the Muslims, e.g. those in which unjustified profit is expressly stipulated, or where the article is resold before the legally required delivery, or where the legal preconditions are not fulfilled, or where a debt is transferred to an indigent (for the indigent must be allowed respite and the Muslims are unanimously agreed that it is not permissible to increase his debt by a transaction or by any other means). Others are disputed by some of the scholars, but it is firmly established on the authority of the Prophet, on him be peace, the Companions and the Successors that all without exception are forbidden.

they reach the market. This was proscribed by the Prophet, on him be peace, because of the risk to the seller: since he does not know the regular price (*si'r*) his goods may be purchased for less than their value. For this reason the Prophet, on him be peace, established his right of option on reaching the market.<sup>5</sup> The doctrine of Mālik, Aḥmad and others accords the right of option in case of deception to the *mustarsil*, i.e. the easy-going customer who does not bargain. Marketeers are not allowed to sell for one price to those who bargain and for a higher price to the *mustarsil* who does not bargain, or to those who are ignorant of the regular price. This is a disreputable commercial practice, mentioned in the *ḥadīth*: "To cheat the easy-going customer constitutes illicit gain (*ribā*)." It is in the same category as the interception of goods, the newcomer being ignorant of the regular price. For this very reason the Prophet, on him be peace, forbade the townsman to sell for the nomad, and said: "Leave people alone and God will see that they provide for one another."<sup>6</sup>

### Hoarding

A similar impropriety is the hoarding of necessities. Muslim in his *Ṣaḥīḥ* reports on the authority of Ma'mar ibn 'Abdallāh that the Prophet, on him be peace, said: "Only the misguided hoard." For the hoarder is one who buys up food which people need and keeps it in store with the intention of putting up the price. He is an oppressor of the buying public. Therefore the authorities are entitled to compel people to sell their stocks for fair value (*bi-qīmat al-mithl*) when they are urgently needed. So, for instance, if someone has food he does not need while people are starving he may be forced to sell it to them for fair value. This is

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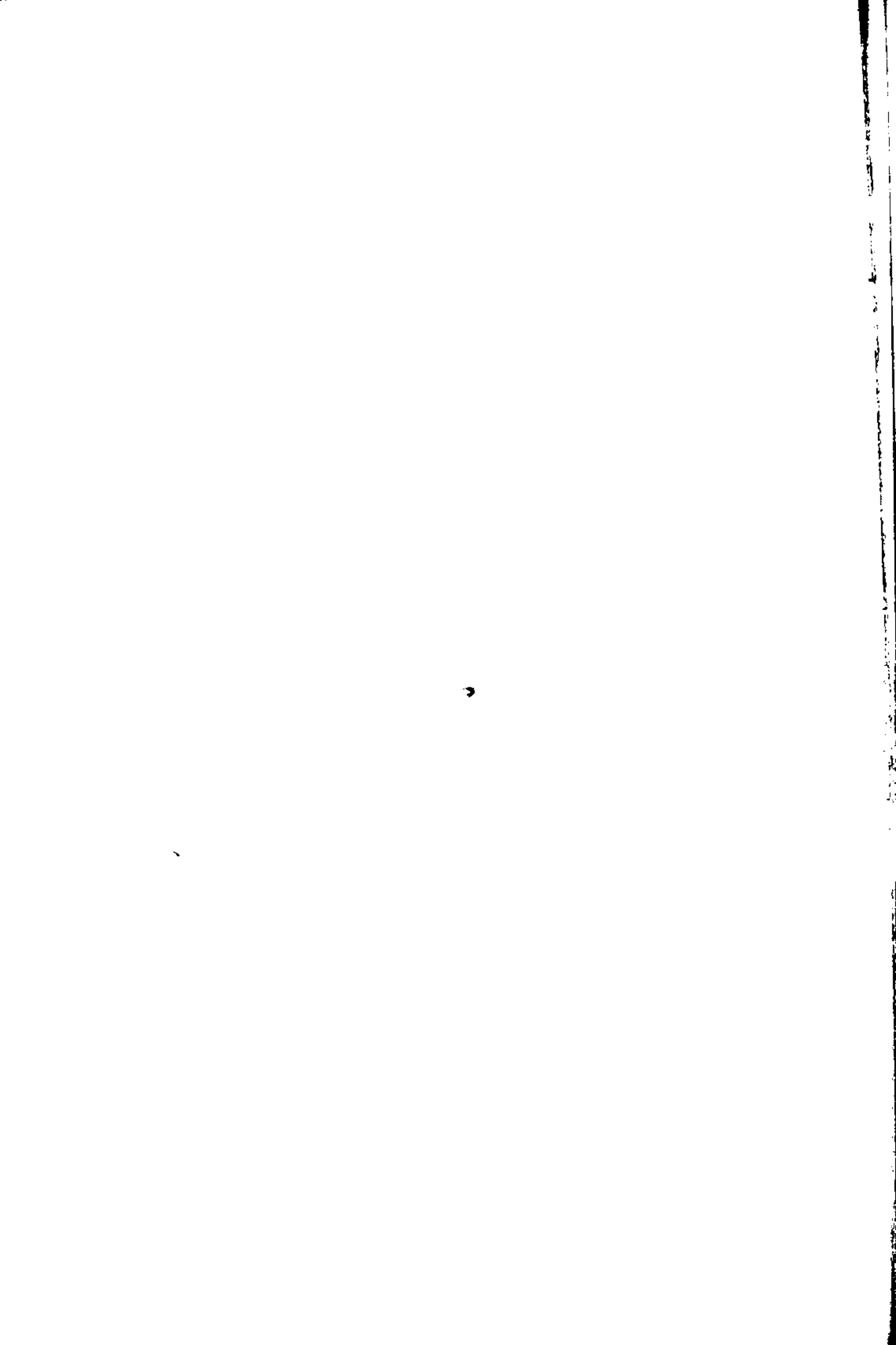
<sup>5</sup> This right is established beyond doubt in case of deception, but the scholars are not agreed whether it applies in the absence of deception. Two doctrines are ascribed to Aḥmad: (i) the right is established (agreeing with al-Shāfi'i); (ii) there is no option because of the absence of deception.

<sup>6</sup> Ibn 'Abbās was asked, "What is the meaning of his words: 'The townsman may not sell for the nomad'?" and he replied: "He may not act as his middleman." This was proscribed because of the possible prejudice to the buyer, for when the resident acts as agent for the newcomer in the sale of some necessary commodity, the newcomer being ignorant of the market price, the buyer may be wronged. Therefore the Prophet, on him be peace, said: "Leave people alone and God will see that they provide for one another."

why the jurists hold that he who is in urgent need of another's food may take it from him, regardless of his wishes, for fair value. Were he reluctant to sell except for more than the regular price he would still be entitled only to this regular price.\*

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\* *Editor's note:* It may be pointed out here that the above discussion is illuminating in establishing the need of protecting the economy from arbitrary manipulation of the market. The idea is to protect the consumer as well as the producer and seller against injustice.



## CHAPTER 3

# Collective Good and State's Responsibility

### Section I: *The Question of Price Control*

From earlier discussion it is apparent that a given price may be an impermissible wrong, or may be just and permissible. If it involves injury to people and forcing them without justification to sell at a price not agreeable to them, then it is illegal. But if it involves just dealing between people, as when they are compelled to do their duty by exchanging for a fair price, and preventing them from doing what is unlawful for them in taking more than a fair consideration, then it is not merely permissible but indeed obligatory.

As for the former case, it is relevant to quote Anas, who related: "The market price rose in the time of the Messenger of God, on him be peace, and they said to him: 'Messenger of God, if only you would fix the prices!' But he replied: 'God is the Taker, the Disposer, the Succourer and the Controller of prices. I very much hope that when I meet God no-one will claim against me for an injury I have caused him in blood or property' ".<sup>1</sup> Therefore if people are selling their goods in a fitting manner, causing no injury, and the current price happens to rise either because of the scarcity of an article or on account of increased demand, then this is a matter for God. To compel people to sell at a particular rate would be unjustified coercion.

As for the second case, an example would be where the owners of merchandise refused to sell except for more than the reasonable value at a time when people were in urgent need. In these circum-

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<sup>1</sup> Reported and pronounced authentic by Abū Dawūd and al-Tirmidhi.

stances it is their duty to sell for fair value. Price-control has no meaning other than compulsion to sell at a fair price. They must be obliged to perform what God demands of them.

A more serious matter than this is where certain people have a monopoly of particular commodities, such that foodstuffs or other goods are sold only to them and then retailed by them, any would-be competitor being restrained either harshly, by imposition, or by some gentler means less open to abuse. In this situation prices must be controlled so that the monopolists sell only for fair value and buy people's goods only for fair value. Not one of the scholars is in doubt on this issue, for if others are restrained from dealing in that commodity it follows that were the monopolists licensed to set their own prices the public would be injured on two sides: the sellers wishing to sell those goods to them on the one hand, and those purchasing from them on the other.

When injustice cannot be avoided altogether, it is a duty to dispel it as much as possible. Therefore, price control in such cases is a indisputed duty. Its true nature is compulsion to sell or buy only for the fair price. This duty occurs in many parts of the Law, for while compulsion to sell is not permitted without justification, there are several occasions where this justification exists: e.g. the sale of property to satisfy a due debt, or to provide due maintenance. Only with such justification may someone be obliged to sell only for the fair price. Examples are where someone is in urgent need of another's food or, for instance, his plants and buildings: in such cases the landowner is entitled to acquire them for fair value and no more. We could give many such instances. Likewise the case of extension (*sirāya*) in manumission, as the Prophet, on him be peace, said: "If someone frees his share in a slave and has enough to cover the whole cost of the slave, then an equitable value will be assessed on him – neither too low nor yet excessive – and he will give his co-owners their quotas, thereby completing the slave's freedom. Otherwise he will manumit what he can." Likewise again the case of one who must buy something for the performance of religious duties, such as equipment for the Pilgrimage, or a slave to manumit, or water for ritual purification. Here he must pay the fair value and is not entitled to insist on buying at the price of his choice. Likewise yet again, the case of

one who requires food or clothing for those he is obliged to maintain. If he finds food or clothes suitable according to custom and offered at a fair price he has no right to seek something inferior in order to get it at the price of his choice. Similar cases are numerous.

It is for this reason that several scholars, like Abū Ḥanīfa and his followers, restrain from forming partnerships those who hire their services as apportioners of real property (*'aqār*) and other things. For if they formed partnerships, their function being a public necessity, they might push up the rate of hire. For stronger reason he restrains those sellers who conspire to sell only at a price determined among themselves; *a fortiori*, he likewise restrains buyers when they conspire to share in the purchases of one of them in order to depreciate people's goods. Moreover, when a group who buy or sell a certain type of commodity conspire to depreciate what they buy and so buy for less than the customary fair price while promoting what they sell above the customary price, and to malign what they buy, this is a graver injustice than intercepting goods, than the townsman's selling for the nomad, and than the device of having an accomplice bid up the price (*najash*). They will have conspired to wrong people so that they would have to sell their goods (for less) and to buy for more than the fair price, people being in need of buying and selling those goods. What the general public needs to buy and sell must be sold only at the fair price when the need of buying and selling it is universal.

## Section II: *Ensuring Essential Supplies: A Collective Obligation*

It may also be that people are in need of the industry of certain individuals: e.g. the public need for farming, weaving and building, for people cannot go without food to eat, clothes to wear, and dwellings to live in. Unless sufficient clothing is imported – as it used to be imported into the Ḥijāz in the days of the Messenger of God, on him be peace, when clothing was imported from al-Yaman, Egypt and Syria<sup>2</sup> – unless the citizens

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<sup>2</sup> Although the people of these countries were infidel, they used to wear what infidels had woven without washing it.

import sufficient for their needs they will require someone to weave their clothes for them. They will require food whether it be imported from outside or obtained from local agriculture, which is more usual. Likewise their need for houses to live in will create a demand for builders. Therefore several scholars<sup>3</sup> have held that these industries are a collective obligation, since the public welfare is incomplete when they are not practised, in the same way as the Holy War is a collective obligation unless it becomes a personal duty, binding on individuals, as when the enemy threatens a town or when the ruler (*imām*) summons someone to enlist.

Study of the divine Law is a collective duty, except where it is incumbent on the individual, e.g. everyone is obliged to find out what God has ordained for him and what He has proscribed for him. This is a duty for each individual. As reported in both *Ṣaḥīḥs*, the Prophet, on him be peace, said: "When God wishes a man well He instructs him in knowledge of Religion." If God wishes a man well He will inevitably instruct him in Religion, so if a man is not versed in Religion God does not wish him well. Religion is what God sent His Messenger to convey. It is that which a man is bound to believe and practise. Everyone owes general credence to Muḥammad's, on him be peace, report and general obedience to his command; then if a report from him is confirmed it must be believed in particular, and if one receives a specific order to a certain effect one must obey it in particular.

Likewise the washing and enshrouding of the dead and praying over them and burying them is a collective duty.

### **Commanding What is Proper and Prohibiting What is Improper**

In the same way it is a collective duty to ordain what is fitting and to proscribe the improper. All the religious authorities, like the Command of the Believers and lesser positions such as kingship, the prime ministry (*wizāra*) and other ministerial offices whether the chancellery or the department dealing with the accounting of income and expenditure in connection with the rations of the troops etc., and such as the military command, the

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<sup>3</sup> Followers of al-Shafi'i and Ahmad ibn Hanbal and others; e.g. Abū Ḥamid al-Ghazālī and Abū'l-Faraj ibn al-Jawzī, *et al.*



judiciary and *ḥisba*, as well as the various branches of these authorities, all exist in Law solely to ordain what is fitting and to proscribe the improper.

In his own Prophetic City the Messenger of God, on him be peace, used to discharge all the functions of authority, while over more distant places he used to appoint governors such as 'Attāb ibn Usayd (Makka), 'Uthmān ibn al-'Āṣ (al-Ṭā'if), Khālid ibn Sa'id ibn al-'Āṣ (Qurā 'Arīna), and 'Alī, Mu'ādh and Abū Mūsā, whom he dispatched to al-Yaman. Similarly, he used to appoint commanders over the troops and to send out collectors of the *zakāh* properties. The latter used to take from those owing the tax and pay out to the entitled beneficiaries named by God in the Qur'an. Then the collector would return to Madina with nothing but his whip: he would bring nothing to the Prophet, on him be peace, if he could find a recipient for it.<sup>4</sup>

The point here is that when only one man performs those tasks which are collective duties they become the personal responsibility of that individual, especially if no-one else is capable of fulfilling them. Therefore if people are in need of farming or weaving or building, the task becomes a binding duty on those capable of performing it, and the authority may exert compulsion if they refuse, setting a fair rate of remuneration.\* He will not

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<sup>4</sup> The Prophet, on him be peace, used to exact a full account of his agents, questioning them as to income and expenditure. Cf. the story given in the two *Ṣaḥīḥs* on the authority of Abū Ḥamid al-Sā'idī: "The Prophet, on him be peace, appointed a man of Azd called Ibn al-Latbiya to collect the alms. On his return he called him to account, and he said: 'This is for you – this was a gift to me.' 'What sort of man is this?' said the Prophet, 'We appoint him to a task with which God has charged us and he says: 'This is for you – this was a gift to me.' Did he then sit down in the home of his father and mother, waiting to see whether or not gifts would be brought him? By Him in Whose Hand is my soul, if we appoint a man to a task with which God has charged us and he embezzles anything at all then surely he will bear it on his neck on the Day of Resurrection, grunting if it be a camel, lowing if a cow and bleating if a sheep!' Then he raised his hands heavenwards and said, 'My God, have I spoken aright? My God, have I spoken aright?' This he repeated twice or thrice."

\* *Editor's note:* This clearly spells out the role of the state which is two-fold: first, enabling and encouraging those who can meet these essential needs of the society to voluntarily provide those services and so serve the community as well as make a reasonable profit for themselves; and secondly, if such needs are not being met voluntarily or through encouragement to use enough force to see that these requirements of the society are met as also to see that they are met without an element of exploitation. The people as well as the producers both should have a fair deal and no one should get an opportunity to exact a remuneration greater than his due, only because of the weakness of the other party.

authorise them to demand more than a fair consideration, nor will he authorise the public to wrong them by giving them less than their due. For instance when the soldiers preparing for the Holy War need to have their land farmed he will compel those whose skill is in farming to work for them. The soldiers will be obliged to deal fairly with the farmers, just as the farmers are obliged to farm for the soldiers.

### Section III: *The Question of Agricultural Arrangements*

Sharecropping (*muzāra'a*) is permissible according to the more correct doctrine of the scholars. It was the practice of the Muslims in the time of their Prophet and in the time of his right-guided caliphs. It was practised by the families of Abū Bakr, 'Umar, 'Uthmān and 'Alī, and by other Muhājir households. It was approved by the leading Companions, like Ibn Mas'ūd, and taught by the jurists who based themselves on *ḥadīth*, like Aḥmad ibn Ḥanbal, Ishāq ibn Rāhawayh, Dāwūd ibn 'Alī, al-Bukhārī, Muḥammad ibn Ishāq ibn Khuzayma, and Abū Bakr ibn al-Mundhir, among others; it was also the doctrine of al-Layth ibn Sa'd, Ibn Abī Laylā, Abū Yūsuf, Muḥammad ibn al-Ḥasan and other Muslim jurists. The Prophet, on him be peace, farmed out to the people of Khaybar on the basis of half the fruit and crops produced, until he died. This agreement remained in force until 'Umar vacated the arrangement of Khaybar. The terms had been that they should cultivate it at their own expense, and that it should be they who provided the seed, not the Prophet, on him be peace. This is why the more correct of the two scholarly opinions is that it is permissible for the active party to provide the seed; in fact one group of the Companions maintained that *only* the active party should do so.

That the Prophet, on him be peace, forbade the form of sharecropping called *mukhābara* and the leasing of land is explained by the fact that they used to stipulate for the landlord the produce of a specified plot, and such stipulations are void in the textual sources and by consensus of the scholars. It is as if specified monies were to be stipulated for the sleeping partner in *muḍāraba* (partnership *in commendam*); this is generally agreed

to be impermissible since business is based on equity. Such transactions belong in the category of partnerships, and partnership is only possible when each partner takes a proportional share, e.g. one third or one half. For either to take a fixed amount would not constitute equity but rather injustice.

One group of scholars took the view that these partnerships belong in the category of leases for an uncertain consideration; they therefore held that – by analogy – they must be made unlawful. Then some of them outlawed *musāqāh* (contract to irrigate in exchange for share in produce) and sharecropping, while permitting *muḍāraba* on the grounds of necessity since money cannot be hired – the view held by Abū Ḥanīfa. Some allowed *musāqāh*, either absolutely (Mālik and early Shāfi‘ī), or on date palms and vines (later Shāfi‘ī), because trees cannot be leased – in contrast to land. They then allowed sharecropping as a necessary corollary of *musāqāh*, either when the land is the greater part (al-Shāfi‘ī) or on the basis of one third (Mālik). However, the majority of the early believers and the jurists of the cities took the view that these are properly classed as partnerships, rather than leases for the purpose of cultivation. For the purpose in both cases is to obtain fruit and crops, and both parties are contributing partners: the one with his physical labour, the other with his property, as in *muḍāraba*.

This is why the correct opinion of the two held by scholars is that when these partnerships are dissolved because of irregularity it is the fair share, not the fair rent, that falls due. Therefore, it is either one third or one half of the profit or increment that becomes due, not a fixed rent, since that might absorb the whole amount many times over. What is due in the case of an irregular contract is exactly equivalent to what is due in one that is valid, and what is due in the latter is not a named rent but a named proportion of the profit, so the equivalent must be due in an irregular contract also. Sharecropping is more reasonable than leasing and closer to fairness and basic principles, for both parties share in the gain and the loss – contrary to leasing, where the landlord gets the rent while the tenant may or may not collect any crops. Scholars differ as to the permissibility of the one and the other, but the correct opinion is that both are permissible.

It makes no difference whether the land is held in fief or not. I know of none among the Muslim scholars – whether of the Four Schools or others – who has said that fiefs may not be leased, and the Muslims have always leased fief land from the time of the Companions down to our own day. But some of our contemporaries have invented the doctrine that, since the tenant of a fief does not own the usufruct, he becomes like a borrower when he lets out borrowed land. This doctrine is mistaken on two counts:

(i) The borrower does not enjoy the usufruct as of right, but only as a favour from the lender. As for the lands of the Muslims as a community, however, their usufruct is a right of the Muslims. The ruling authority is a distributor who apportions their rights among them, not a benefactor like the lender. The holder of a fief is fully entitled to the usufruct, just as the beneficiary of a *waqf* endowment is entitled to the proceeds of the *waqf* – even though he may die and the lease will be annulled on his death, according to the more correct of the two scholarly opinions – it can be argued even more convincingly that the fief-holder is permitted to rent out his fief, even though the lease will be annulled by his death or other causes.

(ii) If the lender authorises leasing, the lease is permissible, and so also with fiefs: the ruling authority authorises fief-holders to lease, for he only assigns them their fiefs so that they may benefit from them, either by share-cropping or by leasing. Anyone who forbids enjoyment of their use by leasing or sharecropping frustrates the religious and worldly interests of the Muslims. Buildings like shops and houses etc. can be useful to the fief-holder only through letting, and as for farms and orchards they are generally put to use by way of leasing, share-cropping and *musāqāh*. *Murāba'a* (leasing for the spring season) is a type of sharecropping. It differs from the latter only when the lease is taken for a fixed amount, but few people do this because of the risk of losing their money and getting nothing. In partnership, by contrast, both parties share in profit or loss. This is closer to fairness and is therefore preferred by sensible natures. But this is not the place for lengthy treatment of these questions.

## Section IV: *The Question of a Fair Wage*

The point here is that if the authority compels craftsmen to put their skills in, for instance, farming, weaving and building at the disposal of the public which is in need of them, then he must determine the fair rate of remuneration. He will not allow the employer to pay the craftsman less than this, nor will he allow the craftsman to demand a higher wage, since the work is assigned to him as a duty. Here we have a case where price control is obligatory.

Similarly, if people need somebody to manufacture equipment for the Holy War, such as weapons and military bridges, they must be employed for a fair wage. The employers are not allowed to abuse them, nor may the workers claim more than their due at a time when they are needed.

This is controlling the cost of labour: as for goods, if people need weapons for the Holy War then the weapons must sell for a fair consideration. They will not be allowed to withhold the weapons till it is a choice between victory for the foe and paying them whatever they like to ask. If the Leader were to designate warriors for the Holy War, it would become a duty for them individually. The Prophet, on him be peace, as cited in both *Ṣaḥīḥs*, said: "Obey the call to arms!" The *Ṣaḥīḥ* also attributes to him the words: "The Muslim male owes complete obedience whether he be rich or poor, whether he find it pleasant or distasteful, even if he be in distress." Since it is a duty to fight in person and with one's goods, how should it not be a duty to sell what is needed for the Holy War for a fair consideration?

Someone who is incapable of participating personally in the Holy War is obliged to do so by means of his wealth.<sup>5</sup> For God has ordained the Holy War with property and the person in several places in the Qur'ān. God, Exalted is He, said: "Fear God as far as you can," (64: 16) and the Prophet, on him be peace, said: "When I give you an order carry it out as best you can."<sup>6</sup> A man's incapacity for physical participation in the Holy War does not relieve him of the liability to contribute his wealth thereto, just

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<sup>5</sup> According to the sounder of the two views of the scholars, which is one of the two versions attributed to Aḥmad.

<sup>6</sup> Cited in the two *Ṣaḥīḥs*.

as one who is incapable of contributing financially remains liable for physical participation.<sup>7</sup>

It may be that people need someone to grind for them and someone to bake for them. In the time of the Prophet, on him be peace, the Medinese had nobody to grind and bake for hire and nobody to sell ground flour or bread, but used to buy the grain and grind and bake it in their own homes. There was consequently no need of price control. Someone would bring grain for sale and people would buy it from the importers. For this reason the Prophet, on him be peace, used to say: "Blessed is the importer and accursed the hoarder," and "Only the misguided hoard." (Related by Muslim in his *Ṣaḥīḥ*.)<sup>8</sup>

The point here is that if people need millers and bakers, two situations may arise: first, they may need their skill as domestic millers and bakers. These are entitled to a wage, and where they are needed they may not claim more than a fair wage, as with other craftsmen. Secondly, the need may be for manufacture and retail, i.e. they may need people to buy the wheat and grind it and others to bake it and sell it as bread, the public needing to buy bread in the markets. If these were allowed to buy imported wheat

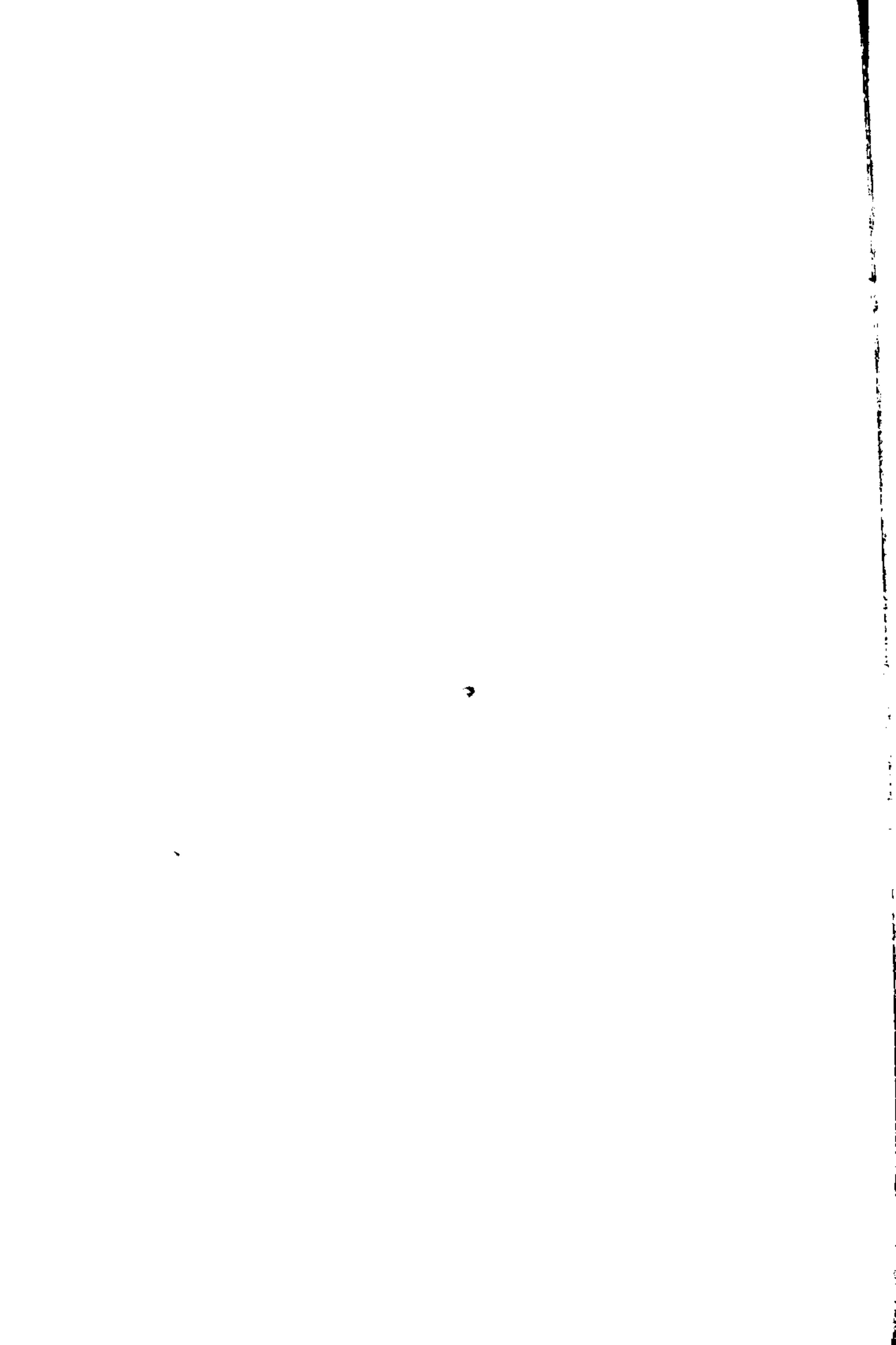
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<sup>7</sup> There is evident contradiction in the view that a man who is disabled is obliged to provide from his property the means to enable another to go on Pilgrimage on his behalf, *and* that Pilgrimage is obligatory for one who has the financial means.

<sup>8</sup> The report that the Prophet, on him be peace, proscribed the miller's measure (*qafiz*) is a weak *ḥadīth* or rather totally false, for there was neither miller nor baker in Madina as they were unnecessary. Similarly, during the Muslim conquests all the farmers were infidels because the Muslims were wholly engaged in the Holy War. Therefore when the Prophet, on him be peace, conquered Khaybar he gave it to the Jews to farm, since the Companions were incapable of farming it as this would have required their settling there. Those who conquered it were those who concluded the pact of acceptance, paying homage beneath the tree: they were about 1400 strong and to them were added the people of Ja'far's ship. It was among these that the Prophet, on him be peace, apportioned the land of Khaybar. Now had a group of them settled there to farm it the welfare of the Religion, for which they were indispensable, would have been neglected. But by the time of 'Umar ibn al-Khaṭṭāb, may God be pleased with him, and the great conquests, the Muslims had multiplied and no longer needed the Jews, whom they therefore expelled. The Prophet, on him be peace, had said: "We shall settle you where we wish" (or in another version: ". . . as God has settled you"). The Prophet, on him be peace, ordered their expulsion at the time of his death, saying, "Expel the Jews and Christians from the Arabian Peninsula." Therefore one group of scholars (e.g. Muḥammad ibn Jarīr al-Ṭabarī) have held that infidels may not settle in Muslim lands on payment of the poll tax unless the Muslims need them. If they can do without them they should expel them like the people of Khaybar. However, this is not the place to discuss this controversial question.

and to retail the flour or the bread at any price they wished, when people needed that wheat, that would be a grave injury. They are merchants who are bound to pay the commercial alms-tax, according to the Four Imāms and the majority of Muslim scholars, just as everyone is obliged to pay it who buys something for the purpose of reselling at a profit, whether or not he works on it, whether he buys food or clothing or livestock, and whether he is a traveller who hawks his wares from town to town, or stays put and holds back his goods till the market is brisk, or has a constant turnover like the shopkeeper. All these must pay the commercial alms-tax.

Since they are obliged to manufacture flour and bread when these are needed by the public they may be coerced in the manner described above, or they may perform voluntarily what is needed of them without any of them being subject to individual coercion. In either event, the price of flour and wheat will be controlled so that they may not sell wheat or flour except at the fair price – the same goes for bread – and will thus make a reasonable profit without prejudice to themselves or to the public.





## CHAPTER 4

# Price Controls: Some Controversial Aspects

When the market price is high and some wish to sell still higher, the Mālikī school restrain them from doing so inside the market. They have two views as to whether they are to be restrained from under-selling. Al-Shāfi'ī and the followers of Aḥmad, such as Abū Ḥafṣ al-Akbarī, the Qāḍī Abū Ya'lā, the Sharīf Abū Ja'far, Abū'l-Khaṭṭāb and Ibn 'Aqīl *et al.*, all ban such restraint.

Mālik bases his argument on the event he relates in his *Muwaṭṭa'* (from Yunus ibn Sayf on the authority of Sa'īd ibn al-Musayyib), according to which 'Umar ibn al-Khaṭṭāb came upon Ḥāṭib ibn Abī Balta'a selling some raisins of his in the market. 'Umar said to him: "Either increase your price or else remove from our market."

Al-Shāfi'ī and those who agree with him retort on the basis of the version cited by him: "Al-Darāwardī reported to us from Ibn Ṣāliḥ al-Tammār from al-Qāsim ibn Muḥammad from 'Umar that the latter came upon Ḥāṭib in the market of al-Muṣallā with two jars before him containing raisins. 'Umar asked their price and he quoted him two *mudd* per dirham. Then 'Umar said to him, 'I have been informed of a caravan arriving from al-Ṭā'if with a cargo of raisins. They will have to go by your price, so either put up your price or else take your raisins home and sell however you wish.' Now when 'Umar returned home he searched his conscience, then he came to Ḥāṭib at his house and said: 'What I told you before was not a positive injunction or decree on my part. I merely wished thereby to secure the welfare of the citizens. You are free to sell where and how you wish.' "

Al-Shāfi'ī comments: "The purport of this *ḥadīth* is not in con-

tradition to Mālik's report. Either he or his reporter narrated only part of the *ḥadīth*, while the second version gives both the beginning and the end of it. On this I base my doctrine, because people are entitled to free disposal of their goods and no-one else has the right to take them from them, in whole or in part, without their free consent, except in cases of binding obligation which does not apply here."

Against the doctrine of Mālik, Abū'l-Walīd al-Bājī says: "That to which anyone who goes below it must be ordered to conform is the rate quoted by the majority. If an individual or a few people go their own way and lower the rate, then they must be ordered to conform to the rate of the majority. For the criterion is the condition of the majority, and sales must comply with it."

Ibn al-Qāsim reports from Mālik: "People are not corrected for (a disparity) of five. In my own opinion," he says, "it is necessary in this connection to consider the extent of the markets, and to ask whether one is to correct those who advance the market (i.e. increase the amount to the dirham, for instance) as one corrects those who do the reverse."

Abū'l-Ḥasan ibn al-Qaṣṣār, the Mālikī, says: "Our colleagues are at variance concerning Mālik's words, 'but he who lowers a rate . . .' The Baghdādīs hold that he meant one who sells five to the dirham while the rest are selling at eight. Some of the Egyptians, however, maintain that he meant one who sells eight while the rest are selling five. In my own view," he says, "both cases are banned, since one who sells eight while the rest are selling five will upset the business of the tradesmen and this may lead to dissension and litigation. Therefore there is advantage in a general prohibition."

Abū'l-Walīd says: "No-one disputes that this rule applies to the traders in the market. As for importers, we read in the book of Muḥammad that the importer is not barred from selling in the market below the current rate."

Ibn Ḥabīb says: "Except for wheat and barley they must sell at the market price or else move on. The importer of wheat and barley may sell as he wishes, though among themselves the rule of the market applies: if a few of them sell cheap they must leave, while if many are selling cheap the rest must be told to conform to

the general rate or move on.” Ibn Ḥabīb says: “This applies to any commodity that is sold by measure or weight, whether food-stuff or not, though not to anything that is not sold in this way because price control is impossible here due to the lack of exact equivalence.”

Abū'l-Walid says: “He means where the thing measured or weighed is exactly comparable, for where there is a difference in quality the seller of higher quality goods cannot be ordered to sell at the same rate as for inferior wares.”

### **The Possibility of a Price Ceiling**

The second question about price control that is disputed by the scholars concerns whether, when people are doing their duty, a limit may be imposed on the traders of the market which they are not to overstep. This is banned by the majority of the scholars, even by Mālik himself according to the reputable doctrine (*mashhūr*). Prohibition is also reported on the authority of Ibn ‘Umar, Sālim and al-Qāsim ibn Muḥammad. Abū'l-Walid attributes a lenient view to Sa‘īd ibn al-Musayyib, Rabī‘a ibn Abī ‘Abd al-Raḥmān and Yaḥyā ibn Sa‘īd, but does not quote their actual words. Ashhab cites Mālik to the effect that the Master of the Market fixes the rate for butchers at one-third of a *raṭl* for lamb and half a *raṭl* for camel-meat: they must leave the market if they fail to comply. “When he fixes their rates it is in order for him to assess by what he sees of their buying, but I should be afraid of their leaving the market.”

Those who uphold this doctrine argue that it is in the public interest to ban sale above the market price and abuse of the customer. They say that people are not compelled to sell, only prevented from selling at a rate different from that determined by the authority in accordance with his assessment of the interests of seller and customer. The seller is not barred from taking a profit, yet he is not authorised to profit to the detriment of the public.

As for the majority, their argument is based on the *ḥadīth* of the Prophet, on him be peace, quoted above (also related by Abū Dāwūd) and other versions such as the *ḥadīth* reported by al-‘Alā’ ibn ‘Abd al-Raḥmān from his father on the authority of Abū

Hurayra, who said: "A man came to the Prophet, on him be peace, and said to him, 'Messenger of God, control our prices!' To this the Prophet said, 'I would rather invoke God.' Then another man came and said, 'Messenger of God, control our prices!' This time he said, 'Oh no. God raises and lowers. I very much hope to meet God with no-one to claim against me for an injury.'" They give the additional reason that to compel people to sell without legal justification or to deprive them of their legitimate enjoyment is injustice, and injustice is unlawful (*ḥarām*).

### **Voluntary Agreement vs Compulsory Controls**

As for the viewpoint of those who allow it, Ibn Ḥabīb says that the Imām must bring together the chief tradesmen of the market where the particular commodity is sold, in the presence of others as a check on their sincerity, and ask them how they buy and how they sell. He will then bring them gradually down to a level which is satisfactory both to them and to the public. Thus voluntary agreement will take the place of compulsory price control. Those who allow price control do so on this basis. Abū'l-Walīd says the point of this is that in this way he reaches an understanding of the interests of sellers and buyers and gives the sellers sufficient profit to support themselves without prejudice to the public; whereas if he controls their prices without their agreement so that there is no profit for them, this leads to black-marketeering (*fasād al-as'ār*), concealment of essential foodstuffs (*al-aqwāt*) and the destruction of people's goods.

These, then, are the points on which the scholars disagree. Now, if people refuse to sell what they are under an obligation to sell, in this case they are ordered to perform and punished for non-compliance. Likewise when someone is under obligation to sell at the fair price and refuses to sell except for a higher sum, in such cases he is ordered to perform and punished for non-compliance. Of this there is no doubt.

Those who rule out price control altogether, arguing from the Prophet's, on him be peace, words: "God is the Controller of prices, the Taker, the Disposer, and I hope that when I meet God none of you will claim against me for having wronged him in

blood or property,” are mistaken, for this is a particular judgement, not a general pronouncement. It says nothing about the case where someone refuses to make a sale when under obligation to do so or to perform an action legally required of him, or where he demands for the same more than a fair consideration.

Of course, people sometimes like to compete in bidding for something. If the owner has offered it for sale in the customary way, but people outbid one another for it, then no price control is to be imposed upon them.

At Madina, as we have mentioned, the food that was sold was mostly imported: local produce was sometimes sold there, but the only local crop was barley. Buyers and sellers were not specific people, nor was there anyone there whose person or property was publicly needed so that he might have to be compelled to carry out a particular task or obliged to make a sale. Far from it: the Muslims were a single class, all striving in God’s Cause. There was no adult Muslim capable of fighting who did not go out to war. They all gave person and property to the fight, or contributed the alms they were given, or booty (*fay’*) or the equipment provided by others. To compel sellers to sell their goods only at a specified price would have been an unjustifiable coercion. Since it was not then permissible to compel the act of sale itself, it was likewise not permissible to define the price.

He for whom sale becomes a personal duty is like the man for whom the Prophet, on him be peace, fixed the price at which he might sell and controlled the rate for him. As we learn from the two *Ṣaḥīḥs*, the Prophet, on him be peace, said: “If someone frees his share in a slave and has enough to cover the whole cost of the slave, then an equitable value will be assessed on him – neither too low nor yet excessive – and he will give his co-owners their quotas, thereby completing the slave’s freedom.” So when he is obliged to transfer to his co-owner the cost of manumitting his unmanumitted share in the slave in order to complete the slave’s freedom, then the consideration is arrived at by a fair assessment, neither too low nor yet excessive, of the value of the whole slave and he is given his fair share of the value: for the co-owner is entitled to half the value, not the value of the half, according to the great majority of scholars like Mālik, Abū Ḥanīfa and Aḥmad.

For this reason these scholars hold that whenever division is impossible the whole must be sold and the price divided, if one of the co-owners demands this, anyone who refuses being compelled to sell.<sup>1</sup>

Now since the Lawgiver used to require the removal of the thing from the ownership of its owner for a fair consideration on account of the co-owner's need to manumit it, the owner having no right to claim more than half the value, how about one whose need is even greater than the need to manumit a share in a slave: for instance, the need of someone in urgent want of food, clothing or suchlike?

This order of the Prophet's, on him be peace, requiring fair valuation of the whole, represents genuine price control.

The co-owner is likewise permitted to remove the half share in which he has a pre-emptive right (*mashfu'*) from the possession of the purchaser for the equivalent of the price paid by him and no more, so as to escape the inconvenience of co-ownership and partnership. This is established by the authentic tradition (*al-sunna al-mustafida*) and the consensus of the scholars. The reason for obliging him to pay that exact price and no more is to achieve the advantage of making one person sole owner: so how about more serious matters, when he had no right to sell to the co-owner for any price he wished, indeed could not demand from the co-owner more than the price at which he made his purchase?

This really belongs in the category of assignment (*tawliya*), which is where the buyer gives the article to another for the equivalent of the price he had paid. This goes beyond sale for a fair price: nevertheless, the buyer is not compelled to sell to a third party other than the co-owner for a price he does not like, since there is then no need for purchase as there is in the case of the co-owner.

### **On Meeting Public and Private Needs**

Now suppose that certain people are in urgent need of lodging

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<sup>1</sup> Some of the Malīkis report this as a consensus, because the co-owner is entitled to half the value as this sound *ḥadīth* indicates, and that can be given him only if the whole is sold.

in the house of a certain person, there being no other accommodation available to them. In such circumstances it is his duty to lodge them. Likewise if they needed him to lend them clothes to keep them warm or utensils for cooking or tools for building or drawing water, he should provide the same free of charge. If they need him to lend them the use of a bucket to draw water or a pot for cooking or an axe for digging, is he obliged to provide them for a fair rent and no more? Two views are held on this point by scholars in the school of Aḥmad and others. The sound view is that he is obliged to provide these things gratis if the owner can do without the use of them and without consideration for them, as indicated by the Book and the *Sunna*. God, Exalted is He, said; “Woe to those worshippers who neglect their Prayer; who make a show, yet refuse small kindnesses!” (107: 4–7) In the *Sunan*, Ibn Mas‘ūd is quoted as saying, “We used to consider as ‘small kindnesses’ the loan of a bucket, pot or axe.” In the two *Ṣaḥīḥs* it is reported of the Prophet, on him be peace, that he said on the subject of horses: “For one man they are a reward, for one man a shield, and upon another a burden. The man for whom they are a reward is he who ties them up praiseworthy and chastely, not forgetting God’s right in their necks and their backs.” In the two *Ṣaḥīḥs* the Prophet, on him be peace, is also quoted as saying: “The right of camels includes the loan of the bucket (with which they draw water) and lending the male to cover.” It is well established that the Prophet, on him be peace, proscribed the hiring of the stallion. In the two *Ṣaḥīḥs* he is reported as saying: “A neighbour may not stop his neighbour from fixing a beam in his wall.” This facility must be given freely, according to the doctrine of Aḥmad and others. If someone needed to let his water flow across another’s land, without injury to the land-owner, could the latter be compelled? On this there are two scholarly opinions, both ascribed to Aḥmad. The traditional reports which allow it go back to ‘Umar ibn al-Khaṭṭāb, who said to al-Muhannā: “By God we will let it flow – even over your belly!” A number of the Companions and Successors have held that the alms-tax on jewelry is paid by lending it. This is one of the two views held in the school of Aḥmad *et al.*

Those facilities which one is bound to provide free of charge are

of two kinds: (i) the obligation attaches to the property – cf. the remarks above concerning horses, camels and the lending of jewelry; (ii) the duty arises because of popular necessity.

Besides, it is obligatory when need arises to provide one's personal services free of charge: e.g. to teach knowledge, to give legal advice, to give evidence, to arbitrate, to ordain what is fitting and proscribe the improper, to fight the Holy War, etc. So there is no reason why it should not be equally obligatory to put the use of one's goods at the disposal of the needy. God, Exalted is He, said: "Let witnesses not refuse whenever they are summoned," and "Let a clerk not refuse to write as God has taught him."<sup>2</sup> (2: 282)

The point here is that since the *Sunna* provides numerous precedents for the owner's obligation to sell his property for a fixed price, whether the fair price or the price he himself paid, the fixing of price is not absolutely unlawful.

### **Divine and Human Rights**

Now what the Prophet, on him be peace, determined in the matter of the emancipator's purchase of his co-owner's share was aimed at the perfection of liberty, which is a Right of God. When there is a universal public need for something, the right in it belongs to God.

Scholars distinguish between the Rights and Limits of God, Exalted is He, and the rights and limits of mankind. Examples of the former are: the rights of mosques, tribute property, alms, endowments in favour of the needy, public utilities, etc; then the prescribed penalties (*ḥadd*: limit) for brigandage, theft, illicit sexual intercourse and wine-drinking.<sup>3</sup> When the Muslims need food, clothing and other such general necessities, the right therein

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<sup>2</sup> The jurists have four doctrines regarding remuneration for testimony, all four views being represented in the school of Ahmad *et al.* (i) it is absolutely impermissible; (ii) it is permissible only in case of necessity; (iii) it is permissible unless it is the person's individual duty; (iv) it is simply permissible, but if he takes a fee for the act of witnessing he gets none for his deposition. However, this is not the place to pursue these questions.

<sup>3</sup> The scholars are generally agreed that he who kills someone for the sake of property is definitely punishable by death. The heirs of the victim have no right of pardon, as opposed to those cases where the murderer kills for a personal reason, e.g. because of hostility between them. In these cases the right belongs to the heirs of the victim, who may kill the murderer or pardon him as they prefer: on this the Muslims are generally agreed.



does not belong to any single individual, so to fix the price at the fair price for one who is obliged to sell is even more justified than to do so in order to secure complete liberty for a slave. The completion of liberty is incumbent on the co-owner of the emancipator, and if the price were not fixed injury might result from the co-owner's demanding of the other whatever price he wished. Whereas here the general public have to buy food and clothing for themselves and if a person whose goods were needed was allowed to insist on any price he wished, the injury to people would be much graver.

### **Private Needs and Public Responsibilities**

Therefore the jurists hold that if a man needs another's food, then this other is obliged to provide it for a fair price. Thus, it is necessary to make a distinction between one who is obliged to sell and one who is not so obliged.

Of all the Imāms, al-Shāfi'ī is the farthest from imposing and determining commutation, yet even he holds it obligatory for a person whose food is urgently needed by another to give it to him for a fair price. His followers disagree as to whether price control is permissible when there is a public need: they have two views on the subject.

The Ḥanafīs hold that the ruler must not resort to price control unless injury to the general public would otherwise result. If brought before the *qāḍī*, the hoarder is ordered to sell what he has in excess of essential provision for himself and his family, taking into account the regular price of the goods concerned, and is forbidden to hoard. If this trader is brought to court again, the judge will imprison him and inflict such discretionary punishment as he sees fit in order to reform him or to dispel the injury. If the food merchants are delinquent and charge outrageously inflated prices, and the *qāḍī* is unable to safeguard the rights of the Muslims by any other means, then he may introduce price control with the advice of wise and clear-sighted counsellors. If anyone transgresses thereafter the *qāḍī* may subject him to coercion.<sup>4</sup>

<sup>4</sup> This runs counter to a dominant opinion of Abū Ḥanīfa where he disapproves of interdiction of a freeman – likewise the two, [i.e. Abū Yūsuf and Muḥammad], unless the interdiction be of specified individuals – and one may validly sell at the price fixed by the authority (imām) because one is not under compulsion to do so.

May the *qāḍī* sell the hoarder's goods for him without his consent? Some say this is the notorious dispute about the property of the debtor. It is also maintained that the judge may sell in this case by general agreement, since Abū Ḥanīfa admits interdiction to dispel general injury.

### Market Price and Fair Price

When the market price rose in the time of the Prophet, on him be peace, he rejected a request that he impose control. However, there was no suggestion that in that instance someone was refusing to sell food in his possession. Indeed the majority of food-sellers were importers who sold their wares on arrival in the market. But the Prophet, on him be peace, forbade the townsman to sell for the nomad – forbade him to act as his middleman – and said: “Leave people alone and God will see that they provide for one another.”<sup>5</sup> He forbade the townsman who knows the market price to act as agent for the nomad who imports a commodity because were he to act as his agent, knowing full well the popular need for that commodity, he might raise the price to the customer. Therefore he proscribed this particular agency, despite the permissibility of agency in general, on account of the danger of price inflation.

The Prophet, on him be peace, also proscribed the interception of imports<sup>6</sup> and gave the seller the right of option on reaching the market.

Consequently most of the jurists took it that he made the proscription to avoid injury to the seller, who is cheated into selling below the fair price. For the Prophet established this seller's right of option. But the question arises whether this right of option applies absolutely or only in cases of deceit. The scholars have two opinions, both attributed to Aḥmad: the more prominent is that the right of option is confirmed only when there is deceit; according to the alternative view the right of option is absolute.<sup>7</sup>

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<sup>5</sup> This *ḥadīth* of the Prophet, on him be peace, is confirmed in the *Ṣaḥīḥ* with multiple authentication.

<sup>6</sup> Ditto.

<sup>7</sup> This is the dominant Shāfi'i doctrine.

Some, however, have held the opposite view, namely that the Prophet's proscription was intended to protect the buyer, since the interceptor buys and ultimately resells.

Looking at it either way, the Prophet, on him be peace, proscribed sale and purchase – generically lawful acts – until the seller knows the market price, i.e. the fair price, and the customer is familiar with the goods.

On the basis of false analogy one might say that the buyer is entitled to buy where he wishes, and here he has bought from the seller. Likewise one might say that the nomad is entitled to appoint the townsman his agent. However, the Lawgiver has considered the general welfare, for if the importer does not know the market price he is ignorant of the fair price and it may be that the buyer will deceive him. Therefore Malik and Aḥmad apply these rules to every *mustarsil* – the *mustarsil* being one who does not bargain and one who is ignorant of the market price – for he is in the same position as the importers who are ignorant of the market price.

Thus it is clear that one may not sell to such people except at the usual market price, that is the fair price, even if they do not necessarily have to buy from that particular seller, on the grounds that they are ignorant of the value or yielding to the seller without bargaining. For in sale we must look for consent and consent follows knowledge: if someone was unaware that he was deceived it is possible that he would have consented anyway, but on the other hand he might not have done so. If he learns that he was deceived, and still consents, that is all right, while if he is not content with the fair price his dissatisfaction is of no account. Therefore the Lawgiver established the right of option in favour of one without knowledge of a defect or misrepresentation. The presumption in sale is validity and that the inside is like the outside. If one buys on that presumption one's consent is only recognized on those terms. If it becomes apparent that the article is misrepresented or defective it is as if the seller had described it in one way and it turned out to be quite the opposite. So he may or may not consent. If he does so, well and good, but if not he is entitled to rescind the sale.

In the two *Ṣaḥīḥs* we find on the authority of Ḥakīm ibn Ḥizām

that the Prophet, on him be peace, said: "The two parties to a sale have the option to rescind so long as they have not parted company. If they are truthful and honest their sale will be blessed, but if they lie and conceal, the blessing of their sale will be destroyed."

In the *Sunan* it is reported that a man had a tree on someone else's land. The landlord suffered from the access of the owner of the tree and complained of it to the Prophet, on him be peace, who ordered the owner of the tree to accept its equivalent or else make a gift of it to the landlord. When he did not comply the Prophet authorized the landlord to uproot the tree, saying to its owner: "You are nothing but a trespasser." In this case, then, he obliged the owner of the tree to sell it, if he would not make a gift of it, which supports the argument in favour of the obligation to sell when the buyer is in need. And how does this need compare with the general need for food?

### **Public Utilities**

On a similar footing are those who trade in food as millers or bakers. And similar again are the shopkeeper and bazaar-keeper and the bath-keeper, since the public needs to make use of these facilities and they are kept only for purposes of commerce. Were the owner to refuse admittance to the public except for the fee he wished, they being in need, he would be restrained and compelled to provide his facilities for a fair rent, just like one who buys wheat and grinds it for commercial purposes, and like one who buys flour and bakes it for commercial purposes when people are in need of his goods – indeed there is better and stronger reason why he should be compelled to sell at a fair price. Moreover, if the failure of a baker or miller to practise his craft should result in injury to the public he may be obliged to practise that craft, as we noted above.

If the public need is satisfied by their producing sufficient to be bought at a reasonable price, then there is no necessity for price control. But if the public need cannot be satisfied except by equitable price control, then control must be introduced, striking a just mean between deficiency and excess.

## CHAPTER 5

# Crime and Punishment

As for fraud and misrepresentation in religious matters, take for instance innovations in word and deed conflicting with the Book and the *Sunna* and the Consensus of the early Community, such as the habit of whistling and clapping in the mosques of the Muslims, or the abuse of the Companions as a body or the Muslims as a body, or the abuse of the leaders and the elders of the Muslims and their officials who enjoyed the general respect of the Community; or for instance, disbelief in the *ḥadīth* of the Prophet, on him be peace, which have been accepted by the scholars, and the ascription to the Messenger of God, on him be peace, of false, forged *ḥadīth*; or such as religious exaggeration, deifying the human being; or permitting deviation from the *Shari'a* of the Prophet, on him be peace; or such as heresy (*ilhād*) concerning the Names and Signs of God, the twisting of words out of context, disbelief in God's Omnipotence and disobedience to His ordinance and proscription by His Decree and His Power; such as the performance of magical tricks and natural sleight-of-hand and other ways of counterfeiting the miracles and signs of grace peculiar to the Prophets and Saints in order to turn people aside from the Way or that goodness may be supposed of the unworthy.

This is a big subject and a full account of it would take a long time. If anyone manifests any of these improprieties he must be restrained and punished, if he fails to repent, with the appropriate penalty imposed by the Law: death, flogging, etc. As for the *Muhtasib*, it is his duty to inflict a discretionary (*ta'zīr*) punishment on anyone responsible by word or deed for such aberrations. He must also prevent assembly in suspicious places. Punishment is only inflicted for a definite offence.

As for restraint and precaution, these are applied on suspicion, as when 'Umar ibn al-Khaṭṭāb restrained the youths from congregating with people suspected of gross immorality. Precaution is appropriate against accepting the testimony of one suspected of lying, giving in trust to one suspected of treachery, and dealing with one suspected of procrastination.

### **Punishments: Statutory and Discretionary**

The ordaining of what is fitting and the proscription of the improper is completed only by means of the legal penalties, for God curbs through the ruling power (*sulṭān*) what He does not curb through the Qur'ān.

The imposition of the prescribed penalties (*ḥudūd*) is incumbent on those in authority. This is achieved by inflicting punishment for omission of duties and commission of illegalities.

Some penalties are fixed: e.g. eighty lashes for the slanderer, amputation for the thief. Other penalties, not fixed, are called *ta'zīr*. These vary in both quantity and quality according to the seriousness of the offence, the condition of the offender, and the rarity or frequency of the offence.

There are different types of *ta'zīr* punishment: it may take the form of rebuke and verbal castigation, or imprisonment, or expatriation, or beating. If beating is inflicted for omission of a duty, e.g. for omission of the Prayer, or for failure to honour liabilities (for instance by failing to satisfy a debt when able to do so), or for failure to restore wrongfully appropriated property or to discharge a trust – in such cases the beating is administered blow upon blow till he performs his duty. This is to be distinguished from the beating which is inflicted day after day. If the beating is for a past offence, as a requital for what he has deserved and as an exemplary warning from God to himself and others, this is inflicted only so far as may be necessary, and there is no lower limit.

As for the maximum severity of *ta'zīr*, there are three doctrines in the school of Aḥmad and others: (i) ten lashes; (ii) just short of the corresponding *ḥadd*, i.e. either thirty-nine or seventy-nine lashes; this is the view of many Ḥanafīs, Shāfi'īs and Ḥanbalīs;

(iii) the limit is not so determined; this is the doctrine of the Mālikis, some Shāfi'is and Aḥmad according to one of two reports attributed to him. However, where there is a fixed penalty for a particular offence, the *ta'zīr* penalty may not be as high: thus the *ta'zīr* punishment for the theft of something worth less than the *niṣāb* may not go as far as amputation, and the *ta'zīr* for gargling with wine may not be as severe as the prescribed penalty for wine-drinking, and *ta'zīr* for slanderous accusation not imputing *zinā* may not be as severe as the *ḥadd*.

This view is the most equitable and is supported by the practice of the Messenger of God, on him be peace, and his right-guided Caliphs, for the Prophet, on him be peace, ordered to be beaten one hundred times a man whose wife had made her slave-girl lawful to him, sparing him from the *ḥadd* by giving him the benefit of doubt (*shubha*). Abū Bakr and 'Umar ordered a hundred strokes each for a man and woman found together in one blanket. 'Umar ordered a man beaten a hundred times for forging a seal and taking from the public treasury – then a hundred times on the second day and a hundred times again on the third. He beat Ṣabīgh ibn 'Asl an uncounted number of times for his heretical innovations.

When execution is the only way in which a man can be stopped from going about causing mischief, then he may be put to death: such are the divider of the Muslim community and the preacher of innovations in the Religion. God, Exalted is He, said: "Therefore We decreed for the Israelites that whoever kills a soul except in just retaliation or for going about doing mischief, it is as if he had slain mankind entire." (5: 32)

In the *Ṣaḥīḥ* we find these words ascribed to the Prophet, on him be peace: "If homage is paid to two Caliphs, then kill the second of the two." He also said: "If someone comes to you and puts you in command of a single man, wishing to divide your community, then behead him by the sword whoever he is." The Prophet, on him be peace, ordered the killing of a man who had aimed falsehood against him, and when Ibn al-Daylī asked him about the man who will not give up wine-drinking, the Prophet said: "If he will not desist then kill him." For this reason Mālik and some of the Ḥanbalīs hold that it is permissible to kill the spy.

And Mālik, supported by some Shāfi'īs, holds it right to kill those who preach heretical innovations.

However, this short treatise is not the place to pursue these questions, for the *Muhtasib* is not authorized to inflict the death penalty or amputation.

One type of *ta'zīr* is banishment and exile. For instance, 'Umar ibn al-Khaṭṭāb used banishment to Khaybar as a punishment for wine-drinking. He banished Ṣabīgh ibn 'Asl to al-Baṣra and expelled Naṣr ibn Ḥajjāj to the same place because women were infatuated by him.

### Financial Penalties

*Ta'zīr* by financial penalties is also lawful in some particular situations in Mālik's school, according to the reputable doctrine (*mashhūr*), while in the school of Aḥmad it is admitted without dispute in some places and controversial in others. One view of al-Shafi'ī upholds it. They differ, however, as to its detailed application. Its lawfulness is attested by the practice of the Messenger of God, on him be peace, e.g. in allowing the spoliation of one who hunts within the sanctuary of Madina to anyone who finds him; in ordering the breaking of the wine jars and the splitting of wine casks; or in ordering 'Abdallāh ibn 'Umar to burn the pair of yellow-dyed garments (he said to him, "Wash them," then, "No, burn them."); or in ordering them on the Day of Khaybar to break the vessels containing asses' meat. On this last occasion he gave permission when they asked if they could spill out the contents. When he first saw the pots boiling with the asses' meat he ordered them to break them and spill out the contents, but they said, "Shall we not empty them out and wash them?" and he said, "Do that." The inference is that either way is permissible, because that particular penalty was not obligatory. Further examples are his demolition of the mosque of al-Ḍirār; or Moses' burning of the deified calf; or the Prophet's, on him be peace, double fine on one who stole from an unprotected place; or the reported burning of the belongings of the traitor and the exclusion of the killer from his spoils because of his transgression against the commander; or the order of 'Umar ibn al-Khaṭṭāb and 'Alī ibn Abī Ṭālib to burn



the place where wine was sold; or the seizure of half the property of one who refuses to pay the alms-tax; or 'Uthmān ibn 'Affān's burning of the Qur'ān volumes conflicting with the authorized version; or 'Umar's burning of the books of the ancestors, and his order to burn down the palace which Sa'd ibn Abī Waqqāṣ built in order to seclude himself from the public – he sent Muḥammad ibn Maslama with orders to burn it down, so he went and burnt it down.

All these judgements are valid and familiar to those versed in such matters. One could give numerous examples of the same kind.

Anyone who says that financial penalties are abrogated, attributing this view to the Mālikīs and Ḥanbalīs, is simply mistaken as to their doctrine. Anyone who says this without qualification, whatever his school, is stating something quite without support. Nothing whatever has come down from the Prophet, on him be peace, to indicate that he made all financial punishments unlawful: indeed the fact that the rightly-Guided Caliphs and his most notable Companions applied such punishments after his death is a sign that they are confirmed rather than abrogated. These forms in general are authoritative with Aḥmad and with Mālik and his followers. Some are upheld by al-Shāfi'ī, all depending on which *ḥadīth* were known to him. The doctrine of Mālik and Aḥmad and others is that financial penalties, like physical penalties, are divided into those in conformity with, and those in conflict with, the Divine Law – neither of them considers financial punishment abrogated. Neither the Book nor *Sunna* provides any argument in support of those who claim abrogation. The fact is that many who contradict the valid texts and confirmed *Sunna* with no argument but the mere pretension of abrogation, if asked to quote the abrogating texts, have nothing to say except that the school to which they belong has ceased to act on some texts, or that they suppose that the lapse is by Consensus and Consensus is enough to prove abrogation. Certainly, if Consensus were established that would be proof of abrogation, for the Community will not concur on an error. But no Consensus to abandon a text is recognized unless the text which abrogates it is known. Therefore it is the case with most of those who claim the

abrogation of texts by what is purported to be Consensus that when the matter is checked the purported Consensus turns out not to be valid – indeed all they really mean is that they knew of no controversy. Then it may be that most of the scholars are opposed to the view of their companions, but they themselves do not know the views of the scholars.

### **Rights of God**

Furthermore, the duties of the *sharī'a* which are Rights of God are of three types: matters of worship, like Prayer, the alms-tax and fasting; punishments, whether fixed or discretionary; and expiations. Each of these groups is again subdivided into physical, financial and composite. Physical acts of worship are, for instance, Prayer and fasting. The alms-tax is an example of the financial kind. The composite is represented by the Pilgrimage. Examples of the three types of expiation are: feeding the poor (financial); fasting (physical); donation of a sacrificial animal (composite). The physical type of punishment includes killing and amputation; an instance of the financial is provided by the destruction of wine-containers; and two examples of the composite sort are the flogging of the thief who steals from an unguarded place plus the imposition of a double fine upon him, and the killing of infidels plus the seizure of their property.

Just as physical punishments may sometimes be in requital for previous crime, e.g. the amputation of the (hand of the) thief, and at others a precautionary measure, e.g. the execution of the murderer, so likewise with financial punishments, some of which come under the heading of the abolition of impropriety. They are sub-divided, like physical punishments, into destruction, alteration, and transfer of ownership.

In the first place, those things which are improper in both essence and attributes may be destroyed in substance as well as in form. For instance, because idols that are worshipped instead of God are improper in their forms it is permissible to destroy the material of which they are made: so if this is stone or wood or suchlike they may be smashed up and burned. Similarly, musical instruments like the *ṭanbūr* may be destroyed, according to the

opinion of most jurists – this being the doctrine of Mālik and the more reputable of two views ascribed to Aḥmad. It is likewise permissible to smash and burn the containers of wine, and also to burn down the tavern where wine is sold. This last is the authoritative doctrine of Aḥmad, as well as the Mālikīs and others, following the confirmed report that ‘Umar ibn al-Khaṭṭāb ordered the burning down of a tavern where wine was being sold belonging to Ruwayshid al-Thaqafi.<sup>1</sup> Similarly, the Commander of the Believers ‘Alī ibn Abī Ṭālib ordered the burning of a village in which wine was being sold<sup>2</sup> on the grounds that the place of sale is the same as the actual vessels. This also conforms with the reputable doctrine of the schools of Aḥmad, Mālik, *et al.*

### Quality Control

A comparable case is the action of ‘Umar ibn al-Khaṭṭāb, who, on seeing that a man had diluted his milk with water, punished him by spilling it away.<sup>3</sup> One group of the jurists who uphold this principle have given this ruling, for it is reported of the Prophet, on him be peace, that he prescribed the watering down of milk for sale — though not for drinking purposes — because if the milk is diluted the buyer does not know the relative quantities of milk and water, and for this reason ‘Umar destroyed it.

A close parallel is the opinion of one group of the jurists who uphold this principle concerning the permissibility of destroying fraudulent work in the crafts: they maintain that badly woven cloth, for instance, may be ripped apart and burned. It was for this reason that when ‘Umar ibn al-Khaṭṭāb saw al-Zubayr’s son wearing a garment of silk he punished him by tearing it apart, and when al-Zubayr said, “Would you terrify the boy?” retorted, “Do not dress him in silk!” Then again, ‘Abdallāh ibn ‘Umar burned his yellow-dyed garment at the bidding of the Prophet, on him be peace.

It is in this way that the part of the body is destroyed which was

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<sup>1</sup> ‘Umar said to him: “You are ‘Fuwaysiq’ (diminutive of *fāsiq*: depraved), not Ruwayshid (dim. of *rāshid*: right-guided).”

<sup>2</sup> The story is related by Abū ‘Ubayda *et al.*

<sup>3</sup> The ascription of this to ‘Umar ibn al-Khaṭṭāb, may God be pleased with him, is confirmed.

the cause of offence: thus the hand of the thief is amputated and the foot and hand of the brigand.

The destruction of that wherein the impropriety subsists prevents any recurrence of that impropriety. However, such destruction is not absolutely obligatory: if the substance is not pernicious it may be permitted to subsist, either for God's sake or to be given in alms. In accordance with this principle, one group of scholars give the opinion that fraudulently misrepresented food – bread, cooked stuff, grilled meat (e.g. bread or other food that is underdone, food that is mixed with bad but displayed to the customer as being of good quality, etc.) – may be given in alms to the poor, for this is tantamount to its destruction. While 'Umar destroyed the milk that had been watered down for sale, there is better reason to give it in alms since this has the effect of punishing the adulterant and cautioning him against repeating his offence, while at the same time for the poor to have the enjoyment of it is more beneficial than its destruction. 'Umar destroyed it because the people had no need of gifts, for in his time the poor in Madina were either very few or even non-existent.

For this reason one group of scholars permit its being given in alms and deplore its destruction. It is reported in *al-Mudawwana* on the authority of Mālik ibn Anas that 'Umar ibn al-Khaṭṭāb used to throw adulterated milk away on the ground as a reprimand for its owner. But Mālik deplored this (in Ibn al-Qāsim's account) and considered it proper that he should give it in alms.<sup>4</sup> Ashhab attributes to Mālik the banning of all financial punishments and says: "No offence can render a person's property violate, even if he takes a life." But the former view is more widely ascribed to him. He deemed it preferable to give away adulterated milk in alms, as this has the effect of punishing the adulterant through the loss he sustains while at the same time benefiting the poor to whom it is given – so the milk is not to be poured away.

Mālik was asked whether he regarded saffron and musk in the same light, and he replied that where there is adulteration in anything comparable it is to be treated like milk.

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<sup>4</sup> The scholars have two views as to whether a trifling amount should be given in alms.

Ibn al-Qāsim says that this applies to a small quantity of the thing, but he does not hold with it where there are large amounts at stake: here the owner himself should be punished, since he would be subject to enormous material loss – i.e. if he had to give away great quantities in alms. But some of the shaykhs say it is all one in Mālik's doctrine whether the amount involved is small or great, since Mālik equated saffron, milk and musk, little or much. Ibn al-Qāsim disagrees, holding that only slight amounts are to be given in alms. This only applies to the actual adulterant, for if someone happens to have one of these commodities in an adulterated condition but is not himself responsible, having bought it or got it as a gift or by way of inheritance, then no-one disputes that in such cases there is no compulsion to give it away in alms.

### **Dealing with Adulterated Bread**

Those whose opinion favours the destruction of adulterated clothing include Ibn al-Qaṭṭān, who held that badly-woven wraps are to be put to the fire. But Ibn 'Attāb gives the opinion that they are to be given in alms, saying that they should be cut up into pieces and given to the poor, if those responsible have been approached and have not desisted. He gives a similar opinion regarding the giving of adulterated bread to the poor, but Ibn al-Qaṭṭān contradicts him, saying it is not permissible to deal thus with a Muslim's property without his authorization. The judge Abū'l-Aṣṣbagh says: "This is a confusion in his response and a contradiction in his words, for his response in the matter of the wraps required their being put to the fire, which is more severe than the giving away of his bread to the poor. Ibn 'Attāb has a firmer grasp of his principle and is more consistent in his words."

If the person in authority does not see fit to punish the adulterant by requiring him to give alms or by destroying his goods, then care must be taken to prevent injury accruing to the public from that adulteration, either by removing that adulteration or by the sale of the adulterated object to someone who is aware of its condition and will not pass it on to others.

'Abd al-Malik ibn Ḥabīb said: "When we were proscribed from

ordering adulterated goods to be given in alms on account of the report of al-Ashhab, I asked Muṭraf and Ibn al-Mājishūn, 'What do you consider the correct way of dealing with one who adulterates or gives deficient weight?' and they replied, 'He may be punished by beating, imprisonment and expulsion from the market. Large quantities of bread and milk and adulterated musk and saffron in any amount are not to be distributed or looted.' ” ‘Abd al-Malik ibn Ḥabīb adds: “The Imām may not restore it to him. He is to entrust its sale to someone who can be relied upon not to misrepresent it. In the case of large quantities of bread he will break it up and hand it over to its owner. Honey, butter and milk which have been adulterated will be caused to be sold to anyone who will eat them, the adulteration being made clear to him. This is also the practice with adulteration in merchandise. This is the clarification given at my request by some Mālikīs and others.”

### **Alteration or Transformation**

As for alteration, take for example the report of Abū Dāwūd from ‘Abdallāh ibn ‘Umar from the Prophet, on him be peace, who is said to have proscribed the breaking of the lawful coin of the Muslims except in dire necessity. If there is a serious shortage of legal dirhams or dīnārs then these may be broken. Another example is the transformation of anthropomorphic and other images – where they have not been trampled – as in the report of Abū Hurayra, according to whom the Prophet, on him be peace, said: “Gabriel came to me and said, ‘I came to you tonight and all that stopped me entering your house was that the house contained the statue of a man, figured woollen curtains, and a dog.’ ” So he commanded that the head of the statue in the house be cut off, leaving it in the form of a tree; he ordered that the curtains be cut up and put into a pair of foot-rests; and he ordered that the dog be evicted. The Messenger of God, on him be peace, complied. The dog, by the way, was a puppy belonging to al-Ḥasan and āl-Ḥusayn, under a bedstead of theirs.<sup>5</sup>

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<sup>5</sup> Reported and pronounced authentic by Imām Aḥmad, Abū Dāwūd and al-Tirmidhi.

It is agreed among the Muslims that anything which in substance or composition is forbidden must be removed altogether or transformed: e.g. the spilling of a Muslim's wine, the dismantling of musical instruments and the transformation of representative forms. The only dispute concerns whether it is permissible to destroy the substance in consequence of the condition. The correct view is that it is permissible, as indicated by the Book and the *Sunna* and the Consensus of the early Community. It is the prevailing doctrine of Mālik, Aḥmad *et al.*

The correct view is that all intoxicants whether solid or liquid are forbidden, including *bita'*, *mizr*, hemp etc.

As for transfer of ownership, take for instance the report of Abū Dāwūd and other *Sunna* scholars, ascribing to the Prophet, on him be peace, the rule that one who steals hanging fruit before it is taken to the drying-place is subject to a disciplinary punishment of several lashes and a double fine, and that one who steals cattle before they are stabled in the byre is subject to a disciplinary punishment of several lashes and a double fine. Likewise, 'Umar ibn al-Khaṭṭāb decreed in the case of the hidden stray camel that the fine should be doubled. This doctrine is held by a group of scholars such as Aḥmad *et al.* 'Umar and others doubled the fine for the theft by hungry slaves of the camel of a bedouin – he imposed the double fine on their master but relieved him of amputation. 'Uthmān ibn 'Affān doubled the penalty in the case of a Muslim who kills a protected non-Muslim (*dhimmī*) with deliberate intent, making him pay twice the blood-money (*diya*), because the blood-money of a protected non-Muslim is only half that of a Muslim.<sup>6</sup>

### **Punishment to Suit the Crime**

Reward and punishment are homogeneous with the deed in God's Decree and His Law, for on such justice rest both Heaven and earth. As God, Exalted is He, says: "If you do good openly or conceal it, or pardon evil, God is All-Pardoning, All-Powerful." (4: 149) And: "Let them pardon and forbear. Do you not like God

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<sup>6</sup> Doctrine accepted by Aḥmad Ibn Ḥanbal.

to forgive you?" The Prophet, God bless him and give him peace, said: "He who shows no mercy will be shown no mercy." And: "God is single and loves the single." And: "God is beautiful and loves beauty." And: "God is good and accepts only good." And: "God is clean and loves cleanness."

This is why the thief's hand is amputated, why it is laid down that the hand and foot of the highway robber should be cut off, and why the law requires retaliation for homicide, damage to property, and physical injuries. When the penalty can be suited to the nature of the offence, this is what is prescribed as far as possible. Take, for instance, the treatment of the false witness ascribed to 'Umar ibn al-Khaṭṭāb, may God be pleased with him: he ordered him to be mounted on a donkey back to front, and to have his face blackened – for having inverted the true story he had his face inverted, and for having figuratively blackened his face by lying, he had it literally blackened.<sup>7</sup>

For this reason, God, Exalted is He, said: "He who is blind here will be blind in the Hereafter, and even further from the road". (17: 72) God, Exalted is He, also said: "He who turns away from remembrance of Me, for him there will be a narrow life, and on the Day of Resurrection, We shall bring him to the assembly blind. He will say: 'My Lord! Why have you gathered me blind, when I used to see?' He will say: 'Even so. Our signs came to you, and you forgot them; and so today you are forgotten". (20: 124–126).

In the *Ḥadīth*: "The tyrants and the arrogant ones will be resurrected in the form of particles of dust, so that people will tread them under foot." Since they abased the servants of God, God will abase them before His servants. Likewise God will exalt those who humble themselves before Him, and so He has made men humbly submissive to Him. God will correct us and the rest of our believing brethren, and will make us and the rest of our believing brethren conform in word and deed to what pleases and satisfies Him. Thankful praise to God, Lord of the Worlds. God bless our master Muḥammad, his Family and all his Companions.

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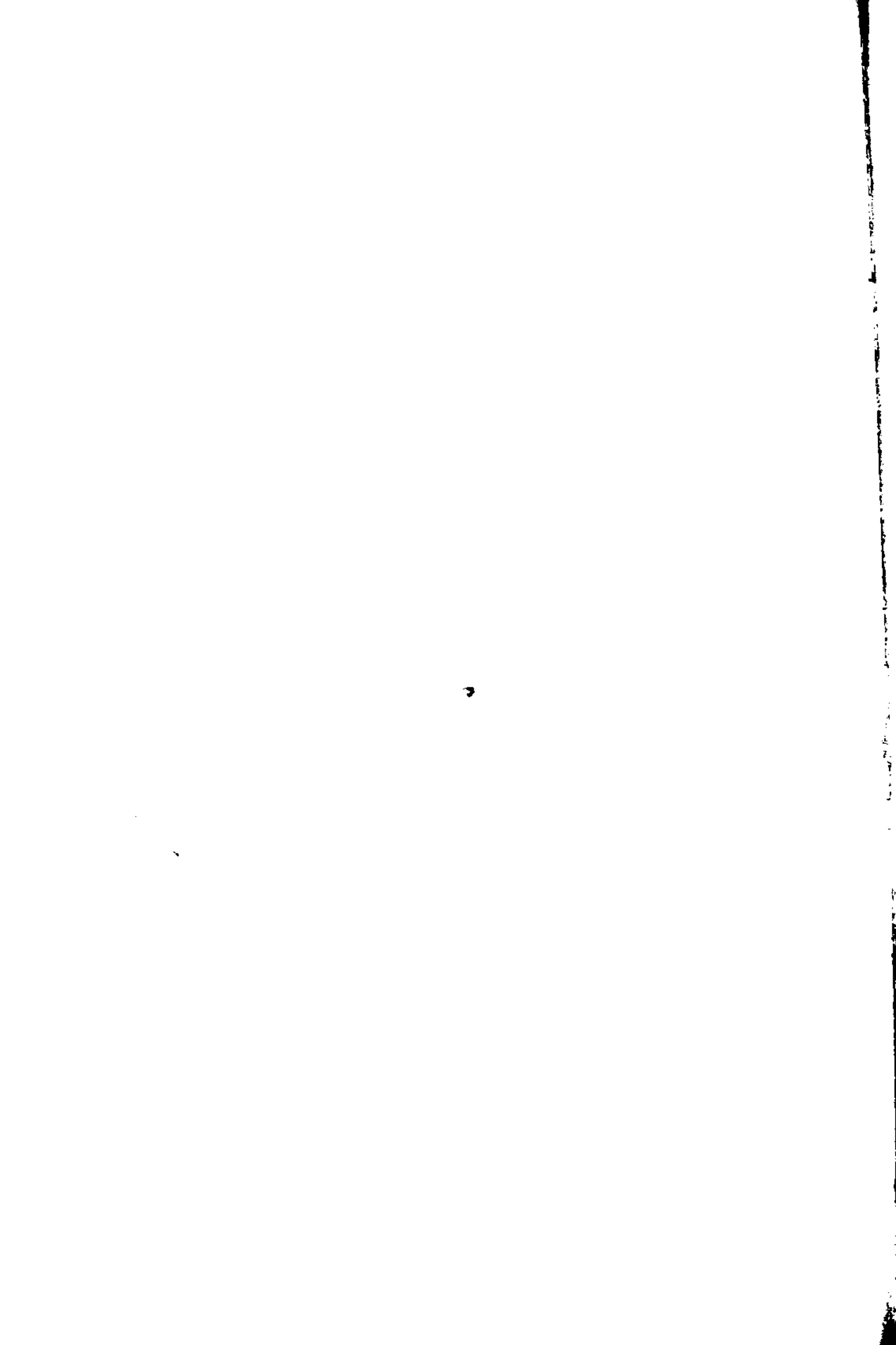
<sup>7</sup> Mentioned by a group of scholars, companions of Aḥmad and others, in connection with the *ta'zīr* of the false witness.



## PART II

### TOWARDS A JUST SOCIETY

If an Islamic society is not a *laissez faire* society, what are the ideals which inspire and regulate its operation; the unique approach of Islam to the affairs of human life. In this second part of this book, Imām Ibn Taymiya has not only spelled out the philosophic foundations of the Islamic society but has also given a powerful exposition of the principal corrective mechanism built into the Islamic scheme of life, i.e. *al-amr bi'l-ma'rūf wa'l-nahī ani'l-munkar* (Commanding what is good and forbidding what is bad). It is through this process that Islam endeavours to establish a just social order, arranging and maintaining human relations in all walks of economy and society in accord with the values and principles of equity. **Editor**



## CHAPTER 6

# Commanding Good and Forbidding Evil

The ordaining of good and forbidding of evil which God has revealed in His Scriptures, and communicated through His Messengers, is part of Religion. God's Message is either information or prescription. The information is about Himself and about His creation: e.g. the affirmation of His Unity, and stories containing the Promise and the Threat. The prescription is command, prohibition and permission.<sup>1</sup>

The words God, Exalted is He, uses to describe our Prophet, on him be peace – “He ordains for them what is good and forbids them what is evil, makes wholesome things lawful to them and makes bad things unlawful.” (7: 157) – are an expression of the perfection of His mission. For the Prophet, on him be peace, is he by whose tongue God has ordained everything good, forbidden everything evil, made every wholesome thing lawful and made unlawful everything bad. This is why he is reported as saying: “I was sent only to perfect nobility of character.” In the generally accepted tradition, he said: “To compare me with the other prophets, suppose a man built a house, completing and perfecting it but for the space of one brick. People would go round it, admiring its beauty and saying: ‘But for the space of one brick . . .’ Well, I am that brick!”

Thus through him was God's religion perfected, comprising the ordering of every right and the forbidding of every wrong, the permitting of every good and the prohibition of every evil. As for the

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<sup>1</sup> Thus it is said that the words: “Say: ‘God is One’” are equivalent to one-third of the Qur'an, because they contain the one-third consisting of the affirmation of God's Unity (the three thirds being: (a) stories; (b) the affirmation of God's Unity; (c) commands).

Messengers who came before him, they had made certain good things unlawful to their communities. As He said: "Through the wickedness of those who followed Judaism, We forbade them certain good things which had been allowed to them". (4: 160) Sometimes they did not make unlawful to them all the bad things. As the Exalted One said: "All food was lawful to the children of Israel, except what Israel made unlawful to itself before the Torāh was revealed". (3: 93)

### **Making Bad Unlawful: Integration of the Moral and the Legal**

The making unlawful of bad things is included in the concept "forbidding the improper", just as making good things lawful is included in "commanding the proper", for the prohibition of good things is part of what God has forbidden. Likewise, the commanding of all that is proper and the forbidding of everything improper is part of that which finds completion only in the Prophet, through whom God completes the nobility of character included in "the proper". God, Exalted is He, has said: "Today I have perfected your religion for you, and completed My grace upon you, and approved Iḡlam as your religion". (5: 3) For God has indeed perfected the religion for us, completed His grace upon us, and approved Islam as our religion.

### **The Unique Mission of the Islamic *Umma***

Likewise He has characterized the Community in the same way as He characterized its Prophet, since He said: "You are the best community ever brought forth for mankind: enjoining the proper and forbidding the improper, and believing in God". (3: 110) The Exalted One also said: "The believers, men and women, are protecting friends of one another: enjoining the proper and forbidding the improper". (9: 71) This is why Abū Hurayra said: "You are the best of mankind for the sake of mankind, in shackles and chains, to make them enter Paradise." For the Glorified One has explained that this Community is the best community for mankind. They are the most beneficial to them, supremely kind towards them, because they have perfected the enjoining on people of what is proper and forbidding them

what is improper, since they have commanded every right and forbidden every wrong to everyone. This they have performed through struggle in God's cause with themselves and with their property, and this is the perfection of benefit for mankind.

Other communities did not enjoin everything proper upon everyone, nor did they forbid to everyone everything improper, nor did they strive to that end. Indeed, some of them did not strive at all [in this direction]. While some – like the children of Israel – did strive, their struggle was generally to repel their enemies from their land, as one fights a wrongful assailant, not to summon the opponents and to enjoin upon them what is proper and forbid them what is improper. As Moses said to his people: “My people! Enter the holy land which God has promised you; but do not turn back and end up as losers.” They said: “Moses! There are ferocious people in it; we shall never go into it until they come out of it – if they come out of it, then we'll be going in.” They said: “Moses! We are not going in there ever, as long as they are still there. So you and your Lord go and fight. We are sitting tight here.” (5: 21–24) And the Exalted One said: “Have you not considered the elders of the children of Israel, after Moses, how they said to a prophet of theirs: ‘Send us a king, then we'll fight in God's cause’? He said: ‘Maybe, if fighting was prescribed for you, you would not fight?’ Said they: ‘And why should we not fight in God's cause’? He said: ‘Maybe, if fighting was prescribed for you, our homes?’ ” (2: 246) Thus they justified fighting on the grounds that they and their children had been expelled from their homes. Even then, they were reluctant to obey the order to fight. Therefore the spoils were not made lawful to them, and they did not take the female captives as concubines.

It is well known that the mightiest of the believing communities before us was that of the children of Israel. The son of ‘Abbas, may God be pleased with them both, said: “The Prophet, God bless him and give him peace, came out to us one day and said: ‘The communities were paraded before me. There passed before me a prophet accompanied by one man, a prophet with whom there were two men, a prophet who had a small group with him, and a prophet unaccompanied. Then I saw a multitude so great that it darkened the whole horizon and I hoped that it might be my

community. But a voice said: 'This is Moses and his people.' Then I was told to look, and I saw a multitude so great that it darkened the whole horizon. Then I was told to look again, this way and that, and I saw a multitude so great that it darkened the whole horizon. 'These,' I was told, 'are your community, and together with these there are seventy thousand who will enter Paradise without a reckoning.' Then the people dispersed without receiving an explanation from him, so the Companions of the Prophet, God bless him and give him peace, conferred together and said: 'As for us, we were born in polytheism, but we came to believe in God and His Messenger. But these must be our children.' When the Prophet, God bless him and give him peace, heard of this, he said: 'They are those who do not take omens from birds, do not cauterise themselves and do not steal, but put their trust in their Lord.' Then up got 'Ukāsha ibn Muḥsin, saying: 'Am I among them, Messenger of God?' 'Yes,' said he. So up got another and said: 'Am I among them?' To this he replied: 'Ukāsha has got there ahead of you.'"<sup>2</sup>

### **The Nature of this Responsibility**

This is why the Consensus (*ijmā'*) of this community has become a decisive argument (*ḥujja*) [in Islamic jurisprudence]. For God, Exalted is He, has made it known that they command everything proper and forbid everything improper. Had they agreed to permit something unlawful, or to let an obligation lapse, or to declare unlawful something permissible, or to report falsely from God, Exalted is He, or His creatures, then they would have been characterized as commanding an improper thing and forbidding a proper one, be it good speech or righteous deed. But no, the Qur'ānic verse makes it a logical necessity that anything the community does not ordain is not something proper, while anything it does not forbid is not something improper. Since it is commanding everything proper and forbidding everything improper, how could it be that the whole of it should command something

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<sup>2</sup> According to the tradition, of agreed authenticity, reported on his authority in the two *Ṣaḥīḥs*.

improper, or that the whole of it should forbid something proper? As God, Exalted is He, has made it known that it commands the proper and forbids the improper, so has He made this binding upon it in the collective sense (*'alā'l-kifāya*), in His words: "That from you there might come to be a community that summons to what is good, commands what is proper, and forbids the improper: they are the ones who will prosper." (3: 104)

When He makes it known that commanding the proper and forbidding the improper is to be done by them, it is not stipulated that the command of the one who commands and the prohibition of the one who prohibits should reach every legally competent individual in the world. This is not even a condition of delivering the Message, so how could it be stipulated for what is one of the consequences of the latter? No, the stipulation is that those who are competent should be in a position to receive it, then if they are remiss and make no effort to receive it, even though the agent performs his duty, the negligence is on their part, not on his.

### ***Jihād*: A Collective Duty and a Call for Change**

Likewise, commanding the proper and forbidding the improper is not incumbent upon everyone individually. It is rather a collective duty, as the Qur'an indicates. And since the *Jihād* is its most complete expression, the same applies to the *Jihād*. Therefore if it is not performed by those whose duty it is, the sin lies with every able person in accordance with his capacity, for it is a duty incumbent upon every human being according to his capacity. As the Prophet, God bless him and give him peace, said: "If one of you sees something improper, let him change it with his hand; if he cannot, then with his tongue; if he cannot, then with his heart. That is the weakest of faith."

This being so, it is evident that commanding the proper and forbidding the improper, and its fulfilment in the *Jihād*, is the supremely proper thing we are commanded to do. That is why it is said: "Your commanding the proper and forbidding the improper should not be improper." It is one of the greatest obligations and recommendations, and where obligations and recommendations are concerned it is essential that the benefit in them should

outweigh the cause of corruption, for this is why the Messengers were sent and the Books revealed. God does not love corruption. No indeed, everything God has commanded is a positive good (*ṣalāḥ*). God has praised such goodness and those who make things good, and those who believe and do good deeds. He has blamed the corrupters in many places. Thus whenever the corrupting effect of command and prohibition is greater than the benefit it cannot be part of what God has ordained. If it happens, a duty has been neglected and an unlawful act committed, since the believer is required to be aware of God where His creatures are concerned and is not required to guide them. This is the meaning of the Exalted One's words: "Believers! For yourselves you are responsible. Those who err will not harm you if you are guided aright." (5: 105) Right guidance is completed only by the performance of duty, so if the Muslim fulfils his obligation in commanding the proper and forbidding the improper, as he fulfils his other obligations, he will not be harmed by the error of those who go astray.

### **The Methodology of *Jihād***

That is achieved sometimes by the heart, sometimes by the tongue, and sometimes by the hand. As for the heart, the duty is there in every case, since its action cannot be detrimental, and he who shirks it is no believer. As the Prophet, God bless him and give him peace, said: "That is the least – or weakest – of faith." He also said: "There is no part of faith behind that, not so much as a mustard seed." And when someone asked Ibn Mas'ūd: "Who is the living dead?" he replied: "He who does not command something proper and does not forbid something improper." Such also is the "crazy one" (*maftūn*) described in the *ḥadīth* of Ḥudhayfa ibn al-Yamān.

Two groups of people are mistaken here:

One group misinterprets this Qur'ānic verse to explain away all obligation to command the proper and forbid the improper. As Abū Bakr the Veracious, may God be pleased with him, said in his sermon: "You recite this verse: 'For yourselves you are responsible. Those who err will not harm you if you are guided aright.'



But you set it out of context. I heard the Prophet, God bless him and give him peace, say: 'If people see something improper and do not change it, God will soon punish the lot of them for it.' "

### **Criticism with Compassion; Change with Continuity**

The second group are those who want to command and forbid by the tongue or by the hand absolutely, without understanding, clemency or patience, with no regard for what is appropriate in the matter and what is not. Consider the *ḥadīth* of Abū Tha'labā al-Kāshānī: "I asked God's Messenger, God bless him and give him peace, about it and he said: 'Indeed, you are to enjoin upon one another what is proper, and forbid one another what is improper, till when you see avarice indulged, passion pursued, things of the world preferred and every man of sense enamoured of his own opinion, and you see no compliance with your command – then look to yourself, and leave off ordering the masses; for after you come the days of patience, when it will be like getting hold of red-hot cinders, when one who can act will get a reward like that of fifty men doing the same work.' " So these people go on commanding and forbidding, convinced they are obeying God and His Messenger in this and supposing themselves within His bounds. Many self-willed innovators (*ahl al-bida' wa'l ahwā'*) have presumed to set themselves up in this way, like the Khawārij, the Mu'tazila and the Rāfiḍa, as well as others who have applied such mistaken doctrines of command and prohibition and of *Jihād*, containing more corruption than positive good. This is why the Prophet, God bless him and give him peace, ordained patient endurance of leaders' tyranny, and forbade armed struggle against them as long as they maintained the institution of ritual prayer, saying: "Accord them their rights, and ask God for your rights."<sup>3</sup>

For this reason the basic principles of the People of *Sunna* and Community have included adherence to the community and renunciation of armed struggle against the leaders, as well as renunciation of civil war. Whereas sectarians – like the Mu'tazila

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<sup>3</sup> We have discussed this subject at length elsewhere.

– regard war on the leaders as one of their religious principles; the five religious principles of the Mu'tazila being: (i) "Strict monotheism" (*tawhīd*), i.e. negation of the divine attributes; (ii) "Justice" (*'adl*), i.e. denial of predestination; (iii) "The Intermediate Position" (*al-manzila bayn al-manzilatayn*); (iv) "Execution of threats" (*infādh al-wa'īd*); and (v) "Enjoining what is proper and forbidding the improper" (*al-amr bi'l-ma'rūf wa'l-nahī 'ani'l-munkar*).

### **Conflict of Rights; Principles for Preference**

I have discussed elsewhere the question of armed struggle against the leaders. The whole matter comes under this general rule: whenever there is conflict or competition between benefits and disadvantages, between the good and the bad, it is necessary to prefer what is best on balance. For, since command and prohibition imply the attainment of benefit and the rejection of what is corrupt, one must examine the other side of the coin. If a command would result in more loss of benefit than gain, or lead to more harm than it prevented, then it should not be given; more than that, it would be unlawful in the latter case. However, the weighing up of relative benefits and disadvantages must be done with the scales of the Sacred Law. And when a person makes his assessment he should do so on the basis of the authoritative sources without deviating from them. Otherwise he will make a personal judgement based on knowledge of similar and analogous cases, but the texts will seldom prove insufficient for one who is well versed in them and the interpretation of them.

Thus if an individual or group should be faced with a problem in deciding between a right and a wrong, or even whether to do both or to do neither, it is not permissible for them either to command or forbid without first making a thorough investigation. Then, if the right is preponderant it should be commanded, even if it entails a lesser wrong. But a wrong should not be forbidden if to do so entails the loss of a greater right. Indeed, such prohibition comes into the category of obstructing the way of God and attempting to prevent obedience to Him and His Messenger and the performance of good deeds. On the other hand, if the wrong is

predominant it should be forbidden, even if this entails the loss of a lesser right, for to command that right with the preponderance of wrong it involves would be tantamount to ordering a wrong and promoting disobedience to God and His Messenger. If right and wrong are equally balanced and inseparable, neither is to be commanded and neither to be forbidden.

Sometimes it is beneficial to command, sometimes to forbid. At other times, where right and wrong are mutually inextricable, it is not beneficial either to command or to forbid. It all depends on the nature of specific cases as they arise.

In equivocal cases the believer must seek clarification until the truth becomes obvious to him. For he may not embark upon an act of obedience without knowledge and intention, while if he leaves it undone he is a sinner, since it is sinful to ignore a necessary duty. It is also sinful to do what has been prohibited, however. The implications of all this are far-reaching and there is neither power nor strength except with God.

Under this category falls the concession made by the Prophet, on him be peace, to leading hypocrites and reprobates like 'Abdullāh ibn Ubayy in view of their numerous support. For to have penalized him in some way for his wrong conduct would have entailed the loss of a greater good, through the fury and chauvinism of his tribesmen and through the aversion people would have felt on hearing that Muḥammad was killing his Companions.<sup>4</sup>

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<sup>4</sup>In the incident known as "The Lie" (*al-īfk*), 'Abdullāh ibn Ubayy and others accused the Prophet's wife 'Ā'isha of infidelity. One of the Companions called for his head to be cut off, but Sa'd ibn 'Ubada – despite his piety – rallied to the defence of his fellow-tribesman.

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## CHAPTER 7

# Strategy for Reform

The basic principle is that man's love of what is proper and hatred of what is improper, his desire for the one and repugnance for the other, correspond to God's love, hatred, desire and repugnance as expressed in the Sacred Law, and that man's performance of what is approved and rejection of what is repugnant are to the measure of his strength and ability. God burdens no soul beyond its capacity, for He says: "Be aware of God as best you can". (64: 16) As for the love, hatred, desire and repugnance in the heart, these must be perfect and absolute. Deficiency here can result only from deficiency of faith.

### **Personal Preparation for the Task of Reform**

Physical action depends on one's capacity. When the desire and repugnance of the heart are complete and perfect, and the creature acts upon them to the best of his ability, he receives the reward due to one who performs perfectly, as we have often explained. For there are some whose love, hatred, desire and repugnance are purely personal feelings, not in accordance with the love and hatred of God and His Messenger. This is a kind of caprice and to follow it is to follow one's own whim: "And who is farther astray than one who follows his own whim without guidance from God?". (28: 50)

The basis of capriciousness is selfish love and hate. This in itself is not blameworthy, since it is beyond our control. It *is* blameworthy to act upon it. As the Exalted One says: "David! We have made you a deputy on earth: so judge between men with justice, and follow no vain whim that will make you stray from God's path". (38: 26) "And who is farther astray than one who follows

his own whim without guidance from God?" (28: 50) The Prophet, on him be peace, said: "Three things are the cause of salvation: fear of God in secret and in public, moderation in poverty and wealth, and speaking the truth whether angry or calm. And three things are the cause of damnation: avarice obeyed, a whim followed, and self-admiration."

Love and hate lead to the acquiring of tastes when their objects are present, to passion, desire and so on. To follow these without the sanction of God and His Messenger is to follow one's whim without guidance from God. Worse, things may escalate to the point where one makes a god of one's whim. Capriciousness in religious matters is more serious than following the whims of the flesh, since the former is the condition of the unbelievers, whether People of the Book or polytheists. As the Exalted One says: "Then, if they do not answer you, know that they are just following their own whims; and who is farther astray than one who follows his own whims without guidance from God?" (28: 50) "He coins you a parable from your own experience: do you have any of those your right hands own (i.e. slaves) as partners in what We have bestowed upon you? No, the evildoers follow their own whims without knowledge". (30: 28, 29) ". . . since He has spelled out for you what He has forbidden to you unless you are forced to it? But many mislead by their whims, without knowledge . . ." (6: 119) "People of the Book! Do not overstep the bounds of truth in your religion; and do not follow the whims of people who went astray in times gone by, who misled many, and strayed from the even way." (5: 77) "The Jews will never be satisfied with you, nor will the Christians, unless you follow their form of religion. Say: 'God's guidance is *the* guidance.' Surely, if you were to follow their whims after all the knowledge that has come to you, you would have no friend or helper against God." (2: 120) "And if you followed their whims after all the knowledge that has come to you, you would then be among the evildoers." (2: 145) "So judge between them according to what God has sent down and do not follow their whims." (5: 49)

This is why those who depart from the requirements of Book and *Sunna* – whether scholars or ordinary people – are classed as People of Caprice, just as they were named by the early believers.

For whoever does not follow knowledge follows his own whim. Religious knowledge is possible only through God's guidance, which His Messenger has conveyed. Thus the Exalted One says in one place: "But many mislead by their whims, without knowledge . . ." (6: 119) And elsewhere: "And who is farther astray than one who follows his own whims without guidance from God?". (28: 50)

### **Love and Hate: the Islamic Perspective**

It is therefore incumbent upon us to examine the nature of our love and our hate and to assess whether it conforms to the command of God and His Messenger, that is to say, to the guidance sent down by God to His Messenger, inasmuch as it is enjoined upon us and not "pushed forward" in the presence of God and His Messenger. For He says: "Do not push forward in the presence of God and His Messenger". (49: 1) In loving or hating before God and His Messenger have commanded it there is a kind of "pushing forward in the presence of God and His Messenger." Simple loving and hating is capricious, but what is actually unlawful is following one's love and hate without guidance from God. This is why He says: ". . . and do not follow whims that will lead you astray from God's path. Those who stray from God's path will have a severe torment". (38: 26) From this we learn that the pursuit of our whims will lead us astray from God's path. This is His guidance conveyed by His Messenger, and it is the way to Him.

### **On Being Sincere and Correct**

Confirmation of this lies in the fact that to enjoin what is proper and forbid the improper is one of the most necessary, most meritorious and most excellent of all actions. The Exalted One says: "That He may test you on which of you is most excellent in action." (11: 7) And the most excellent, as al-Fuḍayl ibn 'Iyād, may God be pleased with him, said, is "the most sincere and most correct." For action that is simply sincere is not acceptable until it also becomes correct. "Sincere" means that it is for God, while

“correct” means that it is in accordance with the *Sunna*. Right action must be intended for the sake of God, Exalted is He, for He accepts no action that is not intended for His sake alone. According to an authenticated tradition the Prophet, on him be peace, said: “God says: ‘I am the Associate most free to dispense with association. If anyone performs an action in which he makes any but Me participate, I have nothing to do with it. It belongs to the one who associates.’”

This is the strict monotheism, that is the first principle of Islam, the religion of God conveyed by all His Messengers. For this He created the creation and it is His right against his creatures that they serve Him and associate nothing whatever with Him. The action must nevertheless be correct, that is, commanded by God and His Messenger. This is obedience, so every act of obedience is a correct action and every correct action is an act of obedience, namely one in accordance with the Sacred Law and the *Sunna* and therefore commanded either as an obligation or as a recommendation. Such action is correct, fine, virtuous and good. Its opposite is disobedience, corruption, evil, wickedness and iniquity.

### **Knowledge and Action**

Action has two essential elements: intention and movement. As the Prophet, on him be peace, said: “The truest names are Ḥārith and Ḥammām.” Because both a “cultivator” and an “anxious and energetic person” have action and intention. However, the laudable intention which God accepts and rewards is that the action be intended for His sake. And the praiseworthy action is that which is correct, i.e. ordered by Him. This is why ‘Umar ibn al-Khaṭṭāb, may God be pleased with him, used to say in his prayer of supplication: “O God, make all my action correct. Let it be sincerely for Your sake alone. Let no-one have any share in it.”

This being the definition of all correct action, it must apply equally in respect of the enjoining of what is proper and the forbidding of what is improper. It will not be done correctly unless it is based on knowledge and profound understanding of the Law. As ‘Umar ibn ‘Abd al-‘Azīz said: “He who serves God without knowledge does more harm than good.” And in the *ḥadīth* of



Mu'adh ibn Jabal, may God be pleased with him: "Knowledge is the Imam of action and action is his follower." This is obvious, for if purpose and action are not based on knowledge they are no more than error, ignorance and capriciousness, as we said earlier. Here lies the distinction between the people of the Great Ignorance (*al-Jāhiliya*) and the people of Islam. It is essential to know the proper and the improper and to distinguish between them. It is also essential to know the condition of what is commanded and what is forbidden. Command and prohibition should rightly lead to the Straight Path. This is the shortest route to attainment of the goal.

### **Gentleness and Patience**

Gentleness is vital in all this. As the Prophet, on him be peace, said: "Gentleness beautifies all that contains it; harshness disfigures all that contains it." "God is gentle and loves gentleness in all things. He rewards it as He does not reward harshness."

One must also be forbearing and patient in adversity. For one will surely encounter hardship, then if one is not forbearing and patient one will do more harm than good. As Luqmān said to his son: "Command what is proper and forbid what is improper, and endure patiently whatever may afflict you, for that is to deal with things resolutely". (31: 17) This is why God enjoined patience upon all His Messengers – and they are the leaders in commanding the proper and forbidding the improper – as He did upon the Seal of the Messengers. Indeed, that is linked with the delivery of the Message itself, for when he was first made a Messenger there was revealed to him the Sūra beginning: "You, wrapped in a cloak . . ." (74), following the revelation of the Sūra beginning: "Recite!" (96) through which he became a Prophet.

"You, wrapped in a cloak,  
Get up and warn!  
Magnify your Lord!  
Purify your garb!  
Defilement shun!  
Do not shower favours to get more,  
but towards your Lord be patient." (74: 1–7)

Thus the verses appointing the Messenger to mankind opened with the instruction to warn, and closed with the command to be patient. The essence of warning is to enjoin what is proper and forbid what is improper, so He taught that the next thing needed is patience: "Patiently await your Lord's decree, for you are in Our sight". (52: 48) "Endure with patience anything they may say, and avoid them nicely." (73: 10) "Be patient, then, just as those steadfast Messengers were patient." (46: 35). "Patiently await your Lord's decree, and be not like him of the great fish." (68: 48) "Be patient, then, your patience being through God alone." (16: 127) "Be patient, for God will not let those who do good go unrewarded." (11: 115)

These three are therefore essential: knowledge, gentleness and patience. Knowledge precedes command and prohibition, gentleness accompanies it, and patience follows, although all three really go hand in hand in these matters. This is in accord with a tradition from one of the early believers, which some trace right back to the Prophet and which is mentioned by the Qāḍī Abū Ya'lā in *al-Mu'tamad*: "One may not command the proper and forbid the improper unless one has a profound legal grasp of what is to be commanded or forbidden, is gentle with what one commands or forbids, and is forbearing towards what he commands or forbids."

The requirement of these qualifications for commanding the proper and forbidding the improper is something many souls find difficult so that they suppose themselves freed from the obligation on this account and simply give it up. There is more harm in this than in commanding without, or with less than, these qualifications. For neglect of duty is a sin, and to shift from one sin to another and greater sin is like jumping out of the frying pan into the fire. Moving from one sin to another is like changing from one false religion to another: the second may be worse than the first, or not as bad, or they may be on a par with each other. Similarly, you may find that, as between one who falls short in command and prohibition and one who goes too far, the offence is greater on this side or on that, or else the two are evenly matched.

## **Sin and Calamity**

We know well from the signs God has shown us on the horizons and in ourselves, and from what He has testified to in His Book, that sins are the cause of misfortunes. The evils of misfortune are the recompense for evil deeds. We also know that obedience is the cause of bounty. Good deeds are well rewarded by God. The Exalted One says: "Whatever calamity befalls you, it is through what your own hands have wrought, although He pardons much". (42: 30) "Whatever good befalls you is from God, and whatever evil befalls you is from yourself." (4: 79) "As for those of you who turned away on the day when the two hosts met in battle, Satan made them stumble only through something they themselves had done, yet God has now pardoned them." (3: 154) "Now that a calamity has befallen you after your having inflicted twice as much, do you say: 'How can this be?' Say: 'It is from yourselves.'" (3: 165) "Or He may let them perish because of what they have wrought, and yet He pardons much." (42: 34) "But if some evil befalls them through what their hands have performed, surely man is ungrateful." (42: 48) "But God would not punish them while you were with them, nor would God be punishing them while they seek forgiveness." (8: 33)

The All-Glorious has told us how He punished the evildoers of various nations, like the people of Noah, 'Ād and Thamūd, Lot's folk, the Midyanites, and Pharaoh's people. He has told us how He punished them in this world, and how in the Hereafter. So a believer who belonged to the family of Pharaoh said: "My people! Indeed I fear for you a fate like that of the factions; a plight like that of Noah's folk, and 'Ād and Thamūd and those after them. Yet God wills no wrong for His servants. And my people! Indeed I do fear for you the day of Summoning, a day when you will turn in flight, having no defender against God: for whom God leaves to stray, for him there is no guide." (40: 30–33)

And the Exalted One says: "Such is the punishment. But the punishment of the Hereafter is greater." (68: 33) "We shall punish them twice, then they shall be given over to an awesome punishment." (9: 101) "We shall surely give them a taste of the milder punishment before the greater punishment, that they may come

around.” (32: 21) “So look out for the day when the sky produces a pall of smoke . . . On the day when We overwhelm them with the greater onslaught, We shall be avenging!” (44: 10–16)

### **Warning and Promise**

Thus God mentions in most of the *Sūras* of warning both how He punished the evildoers in this world and what He has in store for them in the Hereafter. But sometimes He mentions only the threat of the Hereafter, for the punishment of the Hereafter is greater, as is its reward, and it is the Eternal Abode. He mentions worldly reward and punishment only secondarily, as in the story of Joseph: “Thus We empowered Joseph in the land: he had mastery of it as he wished. We touch with Our mercy whom We will, and We do not let those who do good go unrewarded. But the reward of the Hereafter is better for those who believe and are aware of God”. (12: 56) “So God gave them the reward of this world and the good reward of the Hereafter.” (3: 148) “To those who leave home in God’s cause, after suffering oppression, We shall surely afford good lodging in this world; but the reward of the Hereafter is even greater, if they only knew – those who have been patient, and in their Lord place their trust.” (16: 41)

And He says about Abraham, on him be peace: “We gave him his reward in this world; and in the Hereafter he will surely be among the righteous”. (29: 27)

As for His mentioning the punishment of this world and the Hereafter, in *Sūra al-Nāzi‘āt* He says: “By those that pluck out vehemently and to those that draw out violently . . .”. (79: 1–2) Then, referring purely to the Resurrection: “One day the tremor will quake, to be followed by the next one”. (79: 6–7) He goes on: “Has the story of Moses come your way? How his Lord called him in the sacred valley, Ṭuwā: ‘Go to Pharaoh – he has transgressed [all boundaries of what is right]’ . . . In that there is surely a lesson for those who are in awe (of God)”. (79: 15–17, 26) Then He mentions the beginning and the homecoming in detail: “Are you harder to create, or the heaven? He built it . . . So when the great disaster comes . . .” (79: 27, 34) “Then, as for him who was presumptuous, And preferred this worldly life,

Surely Hell will be his abode. But as for him who feared to stand before his Lord, and restrained the soul from lust, Surely the Garden will be his abode . . .” (79: 37–41)

Likewise in *al-Muzzammil*: “Leave me with the gainsayers, enjoying prosperity, and give them respite a little. We have ready chains and a blazing fire, and food that chokes, and a painful punishment . . . as We sent a messenger to Pharaoh, but Pharaoh rebelled against the messenger, so We seized him hurtfully”. (73: 11–13, 15–16)

Similarly in *Sūra al-Ḥāqqa* He tells the stories of the nations, like Thamūd, ‘Ad and Pharaoh. Then the Exalted One says: “So when there is blown on the trumpet a single blast, and the earth and the mountains are lifted and crushed at a single blow . . .” (69: 13) He goes on to complete what He has to say concerning Paradise and Hell.

In the *Sūra* beginning “*Nūn wa’l-qalam*” He mentions the story of the people of the orchard who denied the right of access to their property, and tells how He punished them: “Such is the punishment. But the punishment of the Hereafter is greater”. (68: 33)

Likewise in *Sūra al-Taghābun*: “Has the story not reached you of those who disbelieved in times gone by, and so tasted the ill-effects of their conduct? For them there is to be a painful punishment. That is because their Messengers kept coming to them with all the evidence, but they said: ‘Are mortal men to guide us?’ Thus they disbelieved and turned away; but God has no need of them. God is self-sufficient, ever to be praised . . .” (64: 5–6) “The disbelievers claim that they will not be raised again. Say: ‘O yes, by my Lord, you shall certainly be raised again’”. (64: 7)

In *Sūra Qāf* He mentions the state of those who opposed the Messengers, also the promise and the threat of the Hereafter. Both subjects are mentioned in *al-Qamar* likewise. And again in the “*Ḥā’-Mīm* family”, *Sūras Ghāfir*, *al-Sajda*, *al-Zukhruf* and *al-Dukhān* (40, 41, 42, 43), not to mention countless other examples.

### ***Tawhīd*: the Key to Islamic Civilisation**

For the affirmation of Divine Unity and the promise and threat

constitute the earliest revelations. The following report of Yūsuf ibn Māhik is recorded in the *Ṣaḥīḥ* of al-Bukhārī: "I was with 'Ā'isha, the Mother of the Believers, when a certain 'Irāqī came to her and said: 'What shroud is best?' She said: 'Alas! what ails you?' 'Mother of the Believers, show me your copy of the Qur'ān.' 'Why?' 'So that I may learn how it is compiled together.' (He had been reading it uncompiled.) 'What is wrong with the way you have been reading it? The first part to be revealed was a *Sūra* giving a detailed account of Paradise and Hell. Then, when people entered the fold of Islam, came the revelation of what is lawful and unlawful. Had the first revelation been: 'Do not drink wine,' they would have said: 'We shall never give up wine;' had it been: 'Do not commit adultery and fornication,' they would have said: 'We shall never give up adultery and fornication.' I was a little girl at play when there came down upon Muhammad, God bless him and give him peace, in Makka, the revelation: 'No, the Hour is their appointed time, and the Hour is most calamitous and bitter.' (54:46) But when the *Sūras al-Baqara* and *al-Nisā'* came to be revealed I was already with him as his wife.' Then she got out her copy of the Qur'ān for him and dictated the *āyāt* of the *Sūras* to him."

Unbelief, iniquity and disobedience being the cause of wickedness and hostility, it may happen that when sin is committed by a man or by a group some others say nothing to command or prohibit, thus sinning themselves, while certain others criticize them in a way that is forbidden, so that they also sin. This results in disunity, controversy and mischief. And this has always been one of the most serious trials and misfortunes to afflict us, at present as in the past. For man is very wrongful and very ignorant. Wrongfulness and ignorance are of various kinds, and in the three cases mentioned each party is guilty of a particular type.

Anyone who contemplates the tribulations of discord and dissension that beset us will see that the cause lies there. He will see that this is at the root of what goes on among the leaders and scholars of the Community, involving also the kings and chiefs and their followers among the masses. Implicated also are the causes of error and temptation, namely capriciousness in matters

of religion and in sexual morality – heretical innovations in religion and depravity in worldly life. For the causes of error and temptation are heretical innovations in religion and worldly immorality. These are common, universal to mankind, on account of the wrongfulness and ignorance they imply. For when one person sins he wrongs both himself and others, as in the case of sodomy, and other sexual offences, or wine drinking, or property offences like misrepresentation, theft and extortion, and so on.

As we know, these sinful things may be despicable and reprehensible in reason and religion, yet they also attract our desire. For such is the nature of the lower self that it does not like others to have the monopoly of them, but wants to have the same for itself. This is the milder form of envy, the desire for superiority and control. There is also the malicious envy that wants to see others lose and be deprived of their good fortune. The desire for supremacy, with corruption, arrogance and envy, may lead one to seek the exclusive monopoly of carnal desires; what then if others are seen to have the bigger share all to themselves? The moderate man in this is he who prefers sharing and equality, while the other is wrongful and envious.

### **Equity and Fair Sharing**

Both attitudes occur in relation to permissible things and also in relation to things unlawful in the sight of God. Injustice is the consequence when there is a monopolising of things in the permissible category, such as food, drink, marriage, clothing, transport and goods. The root of stinginess and envy is greed. In the *Ṣaḥīh* the Prophet, on him be peace, is reported as saying: “Beware of greed! For it destroyed those who were before you. It bade them to be miserly, so that they became misers. It bade them be unjust, so they acted unjustly. It bade them sever relations, so they cut them off.”

This is why God, Exalted is He, said in praise of the Helpers (*Anṣār*) who prepared the way for the Emigrants (*Muhājirūn*): “. . . feeling no need in their breasts because of what *they* have been given . . .” (59:9) That is, not feeling envy of what their

brothers, the Emigrants had been given. “. . . but preferring them over themselves even though there was poverty among them . . . those who are protected from stinginess of soul, such are the ones who will prosper.” (59: 9)

‘Abd al-Raḥmān ibn ‘Awf was once seen going around the House [i.e. the Ka‘ba], saying: “My Lord, save me from the greed of my soul! My Lord, save me from the greed of my soul!” When they asked him about this, he said: “If I am saved from the greed of my soul, I shall be saved from stinginess, injustice and alienation,” or words to that effect.

So this greed, which is the extreme covetousness of the lower self, gives rise to stinginess in keeping what one has to oneself, to injustice through the taking of what belongs to others, to the severing of relations and to envy, which is being jealous of what others possess. Envy contains within it both stinginess and injustice, since it is stingy in respect of what others have been given, and unjust in seeking to deprive them of it.

### **Sin and Society**

If this applies to permissible cravings, how about those that are unlawful, such as adultery and fornication, wine drinking and so on? Two attitudes are possible to the monopolising of these: (i) Dislike inspired by the exclusiveness and injustice involved, as in the case of legitimate things; (ii) Dislike prompted by the violation of God’s Law.

Sins are therefore of three kinds:

(a) Those causing injury to others, such as the taking of property and the denial of rights, as well as envy, etc.

(b) Those causing injury to the sinner only, like wine drinking and adultery and fornication, if their harmfulness is limited.

(c) Those combining both forms of injury, e.g. where a public official seizes people’s money and spends it on fornication or wine drinking. Or where somebody has unlawful sexual relations with another in order to gain promotion over people and do them harm, as sometimes happens with those who fancy women and boys. God, Exalted is He, said: “Say: ‘My Lord has forbidden only shameful deeds, be they open or secret, and sin, and



unjustified greed, and the association with God of that for which He has sent down no authority, and the saying against God of what you do not know' ". (7: 33)

### **Justice vs Tyranny**

The affairs of men in this world can be kept in order with justice and a certain connivance in sin, better than with pious tyranny. This is why it has been said that God upholds the just state even if it is unbelieving, but does not uphold the unjust state even if it is Muslim. It is also said that the world can endure with justice and unbelief, but not with injustice and Islam. The Prophet, on him be peace, said: "No sin is more swiftly punished than oppression and the breaking of family ties." For the oppressor is struck down in this world, even if he may be forgiven and receive mercy in the Hereafter. The reason for all this is that justice is the universal order of things. So when worldly administration is just, it works, even if the man in charge has no share in the rewards of the Hereafter. For the soul contains an impulse to wrong others through arrogance and envy towards them and through trespassing on their rights. It also has an impulse to wrong itself through satisfying vile cravings, like the appetite for unlawful sex or noxious food. So it may wrong one who does it no wrong. It may also have a predilection for these cravings even if it does not act on them, so when it sees its equals have done wrong and have satisfied these cravings its impulse towards these things is greatly intensified. It may exercise patience, but this only serves to stimulate more than ever its hatred and envy, its desire to punish the other and deprive him of what he has. It supplies itself with a rational and religious pretext, on the grounds that that other has wronged himself and the Muslims, that there is an obligation to enjoin upon him what is proper and forbid him what is improper, and that to fight for that is a religious duty.



## CHAPTER 8

# Men and Movements

Here we find that people fall into three categories:

(a) Those who live entirely by their own capricious whims, who are content only with what they receive and angry only at what they are denied, so that when any of them gets what he craves – be it lawful or unlawful – his anger departs and gives way to satisfaction. The thing he was denied – so that he wanted it banned and made punishable, and was angrily critical of those who had it – now meets with his approval. He actively participates in it, supports it and opposes those who prohibit and reject it. This is a prevalent human tendency; we see and hear of innumerable instances. The reason for it is that man is very wrongful, very ignorant, and therefore does not act fairly. Indeed, he may often be doubly unjust. You notice how some people criticize the governor for his injustice and hostility towards his subjects, but then he does something to please those critics and they turn into his supporters. The best thing would be for them not to voice their criticism. Similarly, you notice how they criticize those who drink wine, commit illicit sexual acts and listen to musical entertainments, until one of them is let in on the act or given some gratification, whereupon you see that he has become a supporter of those he used to criticize. The latter may get worse as a result of their criticism, improve slightly, or remain just the same.

(b) Those who live according to sound religious principles, sincere in their devotion to God and correct in their behaviour, patiently upright in the face of what they have to suffer. These are the people who truly believe and do good works. They belong to the best Community brought forth for mankind, commanding what is proper and forbidding the improper and having true faith in God.

(c) Those in whom both of the above co-exist. These constitute the majority of the believers. The will to obedience and the will to rebellion are both present in the hearts of those who have within them both religious faith and the lusts of the flesh. Sometimes the one, sometimes the other, has the upper hand.

This three-fold classification corresponds to what has been said about the three-fold nature of the self: domineering (*ammāra*), tranquil (*muṭma'inna*) and censorious (*lawwāma*). The members of the first category are those whose souls are domineering and bid them to evil. The middle group are those whose souls are tranquil and of which it was said: "O tranquil soul, return unto your Lord, well-pleased and pleasing. Enter among My servants. Enter My Garden". (89: 27–30) The last group are those whose souls are censorious, committing a sin and then censuring it. They sometimes go this way, sometimes that, and mix right action with wrong.

In the days of Abū Bakr and 'Umar, whom the Muslims were ordered to emulate (for the Prophet, on him be peace, had said: "Emulate those who come after me – Abū Bakr and 'Umar") people were closer in time to the Message and mightier in faith and rectitude. Their leaders were more scrupulous in the performance of their duty and more stable in serene tranquility. Discord and civil strife did not occur, since these people belonged to the middle category.

In the latter part of the caliphate of 'Uthmān and during the caliphate of 'Alī the third category became more numerous, and passion and suspicion developed among them along with faith and religious devotion. Some of the rulers were affected, as well as some of those in their charge. Then this became widespread, and so discord arose, caused by a failure on both sides to maintain a thoroughgoing devotion and obedience to God. Each party justified itself on the grounds that it was commanding the proper and forbidding the improper, and that it was on the side of truth and justice, but there was a certain capriciousness about this since it was to some extent based on unfounded assumptions and auto-suggestions, although one of the two groups was indeed more in the right than the other.

This is why the believer must turn to God for help and put all

his trust in Him, in order to keep his heart straight and not let it deviate, to make it steadfast in right guidance and devotion, and so that he does not follow his own whims. As the Exalted One said: "Therefore summon (mankind), and take the right course, as you have been ordered to; and do not follow their whims, but say: 'I believe in whatever Book God has sent down; and I am commanded to be just among you. God is our Lord and your Lord.'" (42: 15)

### **Ordeals of the *Umma***

Such is also the condition of the Community regarding the sectarianism within it and the differences in matters of doctrine and worship. These things constitute one of the greatest ordeals the believers have to bear. For they need two things: both to protect themselves from the religious and worldly dissension afflicting their fellows and to contend with the tendency in themselves; because they have lower selves and satanic forces just as others do, and the example of their fellows intensifies their own inclination. This is a fact. And so the impulse is strengthened both by the contents of a person's own soul and his devils, and by the influence of what others like him are doing. How many there are who intend neither good nor evil till they see another – especially someone like themselves – doing it, and then they go and do the same! For it is the nature of human beings to imitate one another, as birds of a feather flock together.

Therefore one who initiates something good or something evil gets the same reward and carries the same burden as those who follow him, as the Prophet, on him be peace, said: "He who establishes a good precedent gets the reward for it, and the reward of all who act upon it till the Day of Resurrection, without diminishing their rewards in the least. And he who sets a bad precedent bears the guilt of it and the guilt of all who act upon it till the Day of Resurrection, without in the least diminishing their guilt." This is because in reality they all participate together, and what applies to one thing applies equally to another like it. What resembles something is attracted to it. If these two impulses are strong, how will it be if two others are added to them? Many

reprobates are fond of those who go along with them in what they do, and dislike those who do not. This is apparent among the corrupt religions, from the way each nation befriends those that see eye to eye with it, but is antagonistic to those who disagree.

Similarly, in matters of worldly power and passion, many will prefer and favour those who participate with them either to help them achieve their ends – as among warlords and brigands and the like – or by falling in with them, as in the case of those who get together to drink wine. For the latter prefer to see everyone in their company drink with them. The reason is either that such people resent anyone standing out from them as a good example, or that they are envious of his superiority and the praise he may attract. Or else it may be that they do not want to give him a pretext to use against them, that they fear he may punish them himself or denounce them to someone who will, that they do not want to be beholden to him, or any number of reasons. God, Exalted is He, said: “Many of the People of the Book would like to turn you back into disbelievers after your having believed, out of their selfish envy, even after the truth has become plain to them” (2: 109). And of the hypocrites He said: “They would like you to disbelieve as they disbelieve, then you would be level”. (4: 89) And ‘Uthmān ibn ‘Affān, may God be pleased with him, said: “The adulteress would like it if all women committed adultery or fornication.”

The desired common participation may be in the same immoral act, like sharing in the drinking, lying or false doctrine; or it may be generic, as when the sexual offender would like to see others also commit the offence, or the thief wants others to steal as well, but not in that same specific instance.

As for the second kind of pressure, they may order an individual to join them in their wrongdoing and then, if he joins in, well and good, but if not they become hostile towards him and hurt him in ways which may or may not involve the use of physical force. Then there are those who prefer to have others participate with them in their bad deeds, or order them to do so and make them help them to get what they want, but who degrade and belittle them afterwards and blackmail them into other things, while if they do not join in they become hostile towards them and

do them harm. This is how it is with the majority of powerful tyrants.

All that applies in the case of what is improper has its counterpart in respect of the proper, only more so. As the Exalted One says: "Those who believe are firmer in their love of God". (2: 165) For the impulse to good is stronger. Man has within him an impulse that summons him to faith and knowledge, to honesty and fairness, to fulfilling the trust. If he finds someone else behaving like this, he acquires a further incentive – especially if it is someone like himself, and more particularly if there is rivalry between them. This is fine and praiseworthy. Then if he finds among the righteous believers someone who enjoys matching him in this and sharing it with him, and hates him if he does not keep it up, this gives him a third incentive. Then if they demand it of him and befriend him for it, but turn against him and punish him for giving it up, he acquires yet a fourth incentive.

### **A Recipe for Reform**

This is why the believers are enjoined to counteract evil deeds with their opposite good ones, just as a doctor counteracts a disease with its opposite. The believer is commanded to correct himself, and there are two ways of going about this: by performing good deeds, and by abstaining from bad ones, in the presence of factors preclusive of the good and conducive to the bad. That makes four modes.

The believer is also enjoined to reform others in these four modes to the extent of his capacity and ability. The Exalted One says: "Time [is a witness]! Man is at a loss except for those who believe and do good works, and exhort one another to truth, and exhort one another to patience". (103: 1–3) Al-Shāfi'ī, may God be pleased with him, is reported as having said: "If everybody were to meditate on *Sūra al-'Asr* [above, 103: 1–3], they would find it sufficient." It is as he said, for God, Exalted is He, has here informed us that all men are at a loss except for one who is himself a believer and doer of good works, and with others an exhorter to the truth and an exhorter to patience. When he is sorely tried that

is to the righteous believer a cause of elevation and mighty reward. As the Prophet, on him be peace, said when he was asked: "Which men are most sorely tried?": "The Prophets, then the righteous, then the next best, then the next . . . A man is tried according to the measure of his religious devotion. If there is a toughness in his religion his trials are increased, while if there is a softness in it he gets off more lightly. The testing of a believer does not cease until he walks upon the face of the earth without a fault." He therefore stands in greater need of patience than others, and that is the source of leadership in religion. As the Exalted One said: "And we made them leaders who would guide others according to Our command, when they were patient and believing firmly in Our revelations". (32: 24)

Patience is therefore essential in performing the commanded good and abstaining from the forbidden evil. This includes patience in bearing hurt and things that are said, patience in adversity, patience when tempted to arrogance in good times, and every other kind of patience.

It is not possible for a creature to be patient unless he has something by which to reassure, comfort and sustain himself. This something is the certainty of firm conviction. As the Prophet, on him be peace, said in the *ḥadīth* transmitted by Abū Bakr the Veracious, may God be pleased with him: "People! Ask God for certainty and good health, for after certainty no gift of His is better than good health, so ask God for both."

Likewise, if one is to enjoin goodness upon another or encourage him to conform to it, or if one is to forbid something to another, one needs to treat that other well and in a way conducive to one's purpose: namely the achievement of what is desirable and the casting out of what is abhorrent. For souls have no patience with bitterness unless there is some kind of sweetener. This is the only way possible. Because of this God, Exalted is He, ordered the reconciling of hearts, even assigning to those whose hearts were to be reconciled a share in the legal alms. The Exalted One said to His Prophet, on him be peace: "Practise forgiveness, command fairness and avoid the ignorant" (7: 199). The Exalted One also said: "And exhort one another to patience and exhort one another to compassion". (90: 17) Patience and compassion are both



essential, therefore, and this is the meaning of courage and generosity.

### **Prayer, Welfare-Due and Patience**

This is why God sometimes links prayer and the alms-due together, this being benefaction to His creatures, and sometimes links these two with patience. All three are essential: prayer, the welfare due and patience. The well-being of the believers depends upon all three, both for their own rectitude and for the improvement of others – and never more so than whenever discord and tribulation are intense, for the need then is all the greater. The need for tolerance and patience is common to all mankind, and these are vital to human welfare in both the religious and worldly spheres.

That is why people always praise courage and generosity in one another – indeed, it is these that the poets extol in their panegyrics – just as they blame one another for stinginess and cowardice. When the whole of humanity unanimously agrees on something, it must be right, as when there is universal agreement to praise truthfulness and justice and to condemn lying and tyranny. Some desert Arabs once begged so importunately of the Prophet, on him be peace, that they forced him into a thorn bush which caught on his cloak. He turned to them and said: “By Him in Whose hand is my soul, if I had a flock as numerous as these thorns I would divide it among you; then you would not find me a miser, a coward or a liar.” However, there is great diversity in all this according to the how and the why, for “actions are judged on intentions and every man is credited only with what he intends.”

### **On Stinginess**

This is also why the Book and the *Sunna* condemn stinginess and cowardice, while praising courage and liberality so long as they are in God’s cause. The Prophet, on him be peace, said: “There is nothing worse in a man than avarice aimless and cowardice shameless.” He once asked: “Who is your chief, Banī Salama?” When they replied: “Al-Jadd ibn Qays, although we

suspect him of stinginess,” he said: “What sickness is more serious than stinginess?” (According to another version, what he said was: “A chief may not be stingy. No, your chief is al-Abyaḍ al-Ja’d al-Barrā’ ibn Ma’rūr.) Likewise in the *Ṣaḥīḥ*, Jābir ibn ‘Abdillāh said to Abū Bakr the Veracious, may God be pleased with them both: “You may either be generous to me or stingy with me.” But he replied: “. . . or be stingy with me,” you say! What sickness is more serious than stinginess?” Thus he classed stinginess with the worst diseases.

We read in the *Ṣaḥīḥ* of Muslim, on the authority of Salmān ibn Rabī‘a, that ‘Umar said: “The Prophet, on him be peace, once gave out shares to some people. ‘Messenger of God,’ said I, ‘By God, there are others more deserving than these.’ But he said: ‘They gave me the choice between their exorbitant request and making a miser of me – and I am no miser.’” In other words, “They ask me to fulfil an unsuitable request, and unless I give them what they ask they will call me miserly. So they put me in a dilemma between two unpleasant choices. My only alternatives are to do something absurd or to be called a miser. The latter is worse, so I avoid it by paying up.”

Stinginess is a general category under which there are various species: some of them major, some minor. The Exalted One said: “Those who are miserly with what God has given them of His bounty should certainly not consider it better for them; no indeed, it will be worse for them: they will have what they were miserly with hanging round their necks on the Day of Resurrection” (3: 180). “Serve God. Do not associate anything with Him. To parents, kindness . . . God does not love those who are conceited and boastful, who are miserly and encourage miserliness in others.” (4: 36–37) “There is nothing to prevent their contributions being accepted from them except that they disbelieve in God and His Messenger, and they come to prayer but lackadaisically, and spend only with reluctance.” (9: 54) “Yet when He gave them of His bounty, they hoarded it and turned away obstinately; so He causes hypocrisy to ensue in their hearts till the day they meet Him.” (9: 76–77) “But he who is niggardly is niggardly only towards himself.” (47: 38) “Alas for the worshippers who are absent-minded at their prayer, who are ostentatious yet refuse

small kindnesses.” (107: 4–7) “As to those who hoard gold and silver and do not spend them in God’s cause – announce a painful punishment on the day when it shall be heated for them in the fire of Hell, and their foreheads and their sides and their backs shall be branded with it. . .” (9: 34–35)

Whenever the Qur’ān enjoins paying up and giving, and blames the failure to do so, it is always stinginess that is held at fault. Cowardice likewise is frequently reproached. For instance: “And whoever turns his back on them on that day – unless manoeuvring for battle or trying to link up with another troop – he surely incurs wrath from God, and his habitation shall be Hell: how vile a journey’s end!” (8: 16). And concerning the hypocrites: “They swear by God that they are indeed of you, yet they are not of you but are a people afraid: could they but find a refuge, or any cavern, or some crevice, they would turn towards it in headlong haste.” (9: 56–57) “But when a decisive *Sūra* is revealed and fighting is mentioned in it, you see those in whose hearts there is a sickness looking at you with the look of a man fainting to death.” (47: 20) “Have you not seen those to whom it was said: ‘Withhold your hands, perform the prayer and pay the poor due’ – but when fighting was prescribed for them, why, some of them stand in awe of men as one should stand in awe of God – or even in greater awe – and say: ‘Our Lord! Why have You ordained fighting for us? If only You would give us respite yet a while!’ Say: ‘The enjoyment of this world is but little, but the life to come is better for those who are aware of God; and you will not be wronged one jot’.” (4: 77)

### **Cowardice vs Courage**

Whenever the Qur’ān encourages *Jihād* and expresses approval of it, while rebuking those who flinch from it and shirk it, cowardice is always the culprit. For the well-being of mankind, be it religious or worldly, cannot be complete without courage and generosity. The All-Glorious has explained that when someone turns his back on *Jihād*, God puts another in his place to perform it: “Believers! What is the matter with you when you are told: ‘March forth in God’s cause!’? Are you weighed down to the ground? Are you more satisfied with this worldly life than with the

life to come? The comfort with this worldly life will mean but little in the Hereafter. Unless you march forth, He will punish you with a painful punishment and exchange you for another people. You will not harm Him at all, for God is Capable of everything". (9: 38–39) "You there are the ones called upon to spend in God's cause, yet among you there are some who hoard. Yet he who hoards, hoards only from himself. For God is the Rich, and you are the poor. If you turn away He will exchange you for another people, and they will not be the likes of you." (47: 38)

In courage and generosity for God's sake the greater merit belongs to those who take the lead, for He says: "Those who spent and fought before the victory are not on a level with you. They are mightier in rank than those who spent and fought afterwards. But to each God has promised good." (57: 10)

He has mentioned *Jihād* in person and with one's wealth in His cause, praising it in more than one Verse of His Book. That is courage and liberality in obedience to Him, Glorified is He. He says: "How many a little band has overcome a multitude by God's leave! God is with the patiently enduring." (2: 153). "Believers! When you meet an army, hold firm and be very mindful of God, that you may succeed. And obey God and His Messenger, and do not dispute with one another so that you falter and become demoralized. God is with the patiently enduring". (8: 45–46)

Courage does not reside in physical strength. A man may be physically strong yet faint at heart. Real courage is stoutness of heart and constancy. For fighting requires a body strong and fit for the task, but also a heart that is stout and skilful in battle. The commendable way to fight is with knowledge and understanding, not with the rash impetuosity of one who takes no thought and does not distinguish the laudable from the blameworthy. Therefore the strong and valiant is he who controls himself when provoked to anger, and so does the right thing, whereas he who is carried away under provocation is neither courageous nor valiant.

### **Patience: An Islamic Virtue**

As we have already said, it is all a matter of patience, for this is

indispensable. Patience is of two kinds: patience in anger and patience in misfortune. As al-Ḥasan said: "A creature can swallow no bigger draught than the draught of forbearance in anger, and the draught of patience in misfortune." That is because the principle is patience with what causes pain. The man who is brave and courageous is one who patiently endures the cause of pain.

If the painful thing is one that can be got rid of, it stirs up anger; if it is something that cannot be removed, it causes grief. This is why the face turns red from anger, due to the excitation of the blood in one conscious of his power, whereas it turns pale with grief due to the depression of the blood in one conscious of his impotence. This is why the Prophet, on him be peace, brought the two together in the authenticated Tradition related by Muslim on the authority of Ibn Mas'ūd, who said: "The Prophet, on him be peace, said: 'What is considered a *raqūb* among you?' They said: 'One to whom no children are born.' – 'That is not a *raqūb*! A *raqūb* is a man who receives nothing from his children. What is considered a *ṣura'a* among you?' We said: 'One whom men cannot throw down.' – 'Not so, a *ṣura'a* is one who controls himself in anger.'" Thus what he mentioned includes both patience in misfortune and patience in anger. God, Exalted is He, says concerning misfortune: "Give good tidings to the patient ones who say, when misfortune befalls them: 'We belong to God and to Him we are returning . . .'" (2: 157) Of anger, the Exalted One says: "None shall attain (such forgiveness) but those who exercise patience (when provoked to anger); none shall attain it but the enormously fortunate". (41: 35)

This conjunction of patience in misfortune with patience in anger is comparable to that between patience in prosperity and patience in adversity, as in the Exalted One's words: "If We let man taste a mercy from Us, then withdraw it, he becomes despairing, disbelieving. If We let him taste prosperity after a dearth which has affected him, he is sure to say: 'The evils have gone from me;' he is indeed joyful, boasting. Except those who have patiently endured and performed good deeds; for them there is forgiveness and great reward". (11: 9–11) "So that you may not regret what has passed you by, nor be overjoyed at what has

come your way.” (57: 23) Such was the character of the émigré Companions as described by Ka‘b ibn Zuhayr, when he said: “They do not exult when their swords strike home, nor are they dismayed when the blow falls on them.” Ḥassān ibn Thābit spoke in similar vein of the character of the Helpers: “No boasting if they smite their foe, and if they are smitten – no panic, no dismay.”

### **In Victory and Defeat**

One of the Arabs said of the character of the Prophet, on him be peace: “Victorious, he shows no conceit; vanquished, he does not fret.”

When Satan was summoning people in either case to exceed the bounds with their hearts, voices and hands, the Prophet, on him be peace, forbade such excess. He had wept on seeing Ibrāhīm in the throes of death, and someone asked: “Are you weeping? Have you not forbidden weeping?” So he said: “I have only forbidden two stupid, brazen sounds: the sound of frivolous music and the flutes of Satan, and the sound in misfortune of the slapping of cheeks, the rending of garments and the uttering of the supplications of the time of Ignorance.” Thus he linked the two sounds.

As for his forbidding that during misfortunes, the Prophet, on him be peace, said: “They are not of us who slap their cheeks, rend their garments and utter the supplication of the time of Ignorance.” And: “I am not of the shearer, the shrieker and the splitter among women.” And: “What is from the eye and the heart is from God, and what is from the hand and the tongue is from Satan.” And: “God does not rebuke the tears of the eye or the grief of the heart, but as for this,” pointing to his tongue, “He may punish or take pity.” And: “One who is lamented with wailing is punished for the wailing done over him.” When women pledged allegiance to him he made it a condition that they should not wail in mourning, saying: “If the wailing woman does not repent before her death, she will wear on the Day of Resurrection a shirt of scabies and a coat of tar.”

Concerning triumph, misfortunes and exultation, he said: “God has prescribed excellence in everything: so if you kill, do the

killing well; if you slaughter, do the slaughtering well – sharpen your blade and give relief to your victim.” And: “Do not mutilate and do not betray, and do not slay an infant.” These are only some of his injunctions regarding fairness and lack of animosity in the *Jihād*, in keeping with the Exalted One’s words: “Do not allow hatred of any people to incite you not to act fairly – that is closer to your duty”. (5: 8) “Fight in God’s cause against those who fight against you; but do not provoke hostility, God does not love aggressors.” (2: 190)

He forbade the wearing of silk clothes and gold rings, and drinking out of gold and silver vessels, as well as making clothes too long, among other kinds of extravagance and conceit in prosperity. He also reproached those who delight in silks and wine and musical instruments, and imposed on them the breaking down and transforming of these. God, Exalted is He, said: “God does not love one who is a conceited braggart”. (4: 36) Of Qārūn He said: “When his people said to him: ‘Do not exult! God does not love the exultant . . .’” (28: 76) These three things, together with patience in abstaining from aggressiveness inspired by passion, are the constituents of this category.

Man sits between what he likes and craves on the one hand, and what he loathes and dislikes on the other. He therefore seeks the former with his love and desire, while repelling the latter with his hatred and aversion. The attainment of the former or the repulsion of the latter makes him happy and cheerful, while the contrary makes him sad. So he needs to restrain himself patiently from going too far in love and desire, in hatred and aversion and in exultation, and from becoming dismayed in misfortune. For the Prophet, on him be peace, mentioned two stupid, brazen sounds: the sound which gives rise to excess in exultation so that a person becomes a braggart; and the sound which causes consternation.

As for the sound which excites anger for God, like the poems chanted in the *Jihād*, these are not made with instruments. Similarly the sounds of passion in rejoicing, where the *Sunna* allows as a dispensation the beating of tambourines at weddings and the festivities of women and children.

Most of the poems which are recited tunefully to stir the souls belong to these four groups. They are: amorous rhapsodies;

poems of anger and zeal, namely expressions of fanatical enthusiasm and satire; poems of misfortune, such as elegies; and poems of celebration and rejoicing, namely eulogies. It is the custom of poets to go in step with nature. As God, Exalted is He, says: "Have you not seen how in every valley they get lovesick, and how they say what they do not do?" (26: 225–226). This is why He tells us that the errant follow them, the errant being those who follow their whims without knowledge. This is to stray in error, and this is the opposite of right guidance. Just as one who strays, not knowing his true interests, is the opposite of one who is guided aright. God, Glorified and Exalted is He, says: "By the star when it sets, your companion has not strayed nor is he misguided". (53: 1–2) This is why the Prophet, on him be peace, said: "Be sure to follow my precedent and that of my rightly guided successors." And so you find them praising courage in general and liberality in general, since the lack of these is absolutely blameworthy, while their presence guarantees the attainment of our goals. However, the ultimate outcome belongs to those who are aware of God. As for the rest, theirs is a temporal outcome only. And although the ultimate outcome is in the Hereafter, it is in this world as well, as the Exalted One says in telling the story of Noah and his escape in the ark: "It was said: 'Noah! Go down with peace from Us and blessings upon you and upon communities of those with you; other communities We shall give enjoyment of life, then there will touch them from Us a painful punishment.'" (11: 48) "Then have patience. The ultimate outcome is for those who are aware of God." (11: 49) "If someone attacks you, attack him just as he attacked you; be aware of God, and know that God is with those who are aware of Him." (2: 194)

The criterion is to praise the part that is praised by God and His Messenger. For God, Exalted is He, is the One whose praise makes fair (*zayn*) and whose blame makes foul (*shayn*), rather than any of the poets and orators or any other. This is why, when a man of the tribe of Banī Tamīm once said to the Prophet, on him be peace: "My praise makes fair and my blame makes foul!", he said to him: "That is God."

God, Glorified is He, has praised courage and liberality in His cause. The *Ṣaḥīḥ* reports, on the authority of Abū Mūsā, that



someone said to the Prophet: "Messenger of God, one man fights out of courage, another out of fanatic zeal and a third out of ostentation: which is in God's cause?" He replied: "He who fights that the word of God may be supreme, he is in God's cause." The All-Glorious said: "Fight them till there is no more persecution, and religion is all God's". (8: 39) That is because this is the very purpose of Creation, as the Exalted One says: "I created the *jinn* and mankind only to worship Me". (51: 56) Therefore everything that is for the sake of the purpose of His Creation is praiseworthy in the sight of God. This is what has enduring value. These are good works.

### **On Dealing with Men**

There are thus four classes of people:

(i) Those who work for God with courage and liberality; these are the true believers and deserving of Paradise.

(ii) Those who work with courage and liberality, but not for God; they benefit by it in this world, but have no share in the Hereafter.

(iii) Those who work for God, but not with courage and liberality; in them there is an element of hypocrisy and lack of faith.

(iv) Those whose work is not for God and is devoid of courage and liberality; for them there is nothing in this world or the Hereafter.

Such moral character and conduct is necessary to the believer generally, but more particularly in times of severe trial and tribulation. For they need to correct themselves and rid themselves of the sins that are contributory causes of the trouble, as well as needing to order and forbid others to the extent of their capacity. Each of these two needs presents its peculiar difficulties, although things become easy for one who has the help of God. This is because God has enjoined faith and good works upon the believer, as the Exalted One says: "God surely supports those who support Him – God is Strong, Powerful – those who, if We empowered them in the land, would perform the prayer and pay the welfare due, and would command what is proper and forbid

what is improper. To God belongs the outcome of events". (22: 40–41) "God has decreed: indeed I shall prevail, I and My Messengers. God is Strong, Powerful." (58: 21) "And that Our army – they would surely be victorious." (37: 173)

### ***Jihād: A Trial***

Since commanding the proper and forbidding the improper, and *Jihād* for the sake of God, are a trial and tribulation that can expose a man to temptation, some will make this a pretext for neglecting their duty on the grounds that they are seeking security from temptation. As He said of the hypocrites: "There are some of them who say: 'Grant me leave and do not tempt me!' Is it not into temptation they have fallen?". (9: 49) It is mentioned in the commentaries that this was revealed about al-Jadd ibn Qays when the Prophet, on him be peace, ordered him to equip for the Byzantine campaign. He said, as I recall: "Would you like to be among the pale-skinned women?" And he replied: "Messenger of God, I am a man who is addicted to women. I am afraid of being tempted by the pale-skinned women, so grant me leave and do not tempt me." It was this al-Jadd who absented himself from the Willing Homage under the tree, hiding behind a red camel. He is referred to in the *ḥadīth*: "All of them are forgiven except the owner of the red camel." Thus it was concerning him that God, Exalted is He, revealed the Verse: "There are some of them who say: 'Grant me leave and do not tempt me!' Is it not into temptation they have fallen?". (9: 49)

He was saying that he wanted to stay at home in order to save himself from the temptation of women. He needed to guard against the unlawful and contend with his inclination towards it, so that he must either torment himself or else give way and sin. For one who beholds and becomes enamoured of beautiful forms will suffer agony of heart if he cannot possess them, whether because the Lawgiver forbids or because of his own impotence. But if he does have them in his power and if he commits the unlawful act, this will be his undoing. Even in lawful dealings with women there is a test, which is why he said: "Do not tempt me!" But God, Exalted is He, said: "Is it not into temptation they have

fallen?" That is to say, he has fallen into grave temptation by his very rejection and shirking of the duty of *Jihād*, by his weakness of faith and the sickness of heart which made him like the idea of giving up the *Jihād*. How then can he seek to escape from a lesser temptation that he has not yet been exposed to by falling into a major temptation to which he has already been exposed? God says: "Fight them till there is no more temptation, and religion is all God's". (8: 39) Therefore one who gives up the fight enjoined upon him by God so that there should be no temptation, has fallen into temptation through the doubt in his heart and the sickness within him, and through ignoring the *Jihād* enjoined upon him by God.

Reflect upon this, for this is a very serious matter. In this respect people fall into three groups:

There are those who command, forbid and fight in order to remove what they claim to be a temptation, although their action constitutes an even greater temptation. Such are the combatants in civil war within the Community.

Others abstain from commanding, forbidding and fighting in order that all religion shall be God's and that the word of God shall be supreme. They abstain so as not to be tempted, but they have already fallen into temptation. This is the temptation referred to in *Sūra al-Barā'a*, which includes temptation by beautiful forms, the reason for the revelation of the Verse. This is the condition of many religious people: they neglect their duty to command, forbid and fight in order that all religion shall be God's and that the word of God shall be supreme, so that they will not be tempted by all kinds of passions. But they have already fallen into temptation far worse than the one they claim to have escaped from. Their duty is to perform their obligation and give up what is unlawful. The two things are inseparable, so the reason for their neglect of duty is that they can only bring themselves to do both together or else to do neither. Such is the case with many who love authority or wealth and the passions of allurements, for if they do their duty in the way of command and prohibition, *Jihād*, leadership and so on, they will inevitably do something unlawful at the same time.

What is required therefore is to consider which of the two

factors is more important. So if it is more meritorious to do what is commanded than to avoid what is forbidden, one should not hold back out of fear of the lesser evil. But if it is more meritorious to avoid what is forbidden, one should not lose the reward for this in the hope of recompense for performing a lesser duty. This all applies to cases where elements of good and evil are combined. We leave the matter here, as it would take a long time to go into all the details.

## CHAPTER 9

# Society and Leadership

Every human being on the face of the earth needs to be subject to command and prohibition, and he must also exercise command and prohibition. Even on one's own, one would command and prohibit oneself. As the Exalted One said: "Indeed the self bids one to evil." (12: 53)

### **The Need for Society and Law**

For to command is to require commission and to will it, while to forbid is to require omission and to will it, and every living being must have in himself a will and a demand with which to instigate action by his own self, and to instigate action by others if he is capable of it. For a man is a living being motivated by his will. Mankind cannot live without social intercourse, and if two or more are together there must be mutual commanding and forbidding. This is why the minimum number for collective prayer is two. As they say: "Two and above form a collectivity." But since this is common participation purely in the ritual prayer, where two are present one of them acts as leader (*imām*) and the other is led (*ma'mūm*). As the Prophet, on him be peace, said to Mālik ibn al-Ḥuwayrith and his friend: "When the time comes to pray, both of you give the Call (*adhān*) and the Signal to begin (*iqāma*); make the elder of the two your Imām, and keep close together in recitation."

As for everyday affairs, it is recorded in the books of tradition that the Prophet, on him be peace, said: "It is not permissible for three to go on a journey without appointing one of them leader."

Since command and prohibition is a necessary part of human existence, anyone who does not command the proper as com-

manded by God and His Messenger, and does not forbid the improper as forbidden by God and His Messenger, who is not subject to those commands and prohibitions, must nevertheless command and forbid and be subject to command and prohibition: either in the opposite sense or in a way which combines the truth revealed by God with falsehood not revealed by Him. The latter would constitute a religion of heretical innovation. Like all human beings, he who adopts it is motivated by his will, a planner and a cultivator. Either one's intention is sound and one's work is good work for the sake of God, or else it is corrupt or not for God's sake and therefore invalid. As the Exalted One said: "Your striving is dissipated". (92: 4)

All such actions are in vain, classed with the actions of the unbelievers: "Those who disbelieve and turn others from God's way, He makes their actions go awry". (47: 1) "But those who disbelieve – their works are like a mirage of the desert. The thirsty man takes it to be water until, when he comes to it, he finds nothing, and finds God beside him, Who pays him his account in full; God is swift in reckoning accounts". (24: 39) "But We shall set upon the work they have done, and make it into scattered dust". (25: 23)

### **Leadership in Muslim Society**

In His Book, God has commanded obedience to Him, obedience to His Messenger and obedience to those of the believers who are in command. As the Exalted One said: "You who believe! Obey God and obey the Messenger and those of you who hold command. If you disagree over anything, refer it to God and the Messenger, if you have come to believe in God and the Last Day. That is better and fairer in the end". (4: 59)

"Those who hold command" are those who wield authority and possess it, they are the ones who govern people. Such command is shared by men of authority and power and men of knowledge and theological learning. Those in command are of two classes, therefore: the scholars (*'ulamā'*) and the captains (*umarā'*).\* If they are sound the people prosper, but if they are

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\* *Editor's note:* That is men with authority, the political, economic and social leadership of a society.

corrupt the people are also corrupted. Abū Bakr said to the pious woman who asked him: "How long shall we continue like this?" — "As long as your leaders keep to the straight path." They include kings, chiefs and bureaucrats. Everyone to whom obedience is paid is one of those in command, and every one of these is under obligation to command what God has commanded and to forbid what He has forbidden. And everyone who owes them obedience is obliged to obey them in obedience to God, and not to obey them in defiance of God. As Abū Bakr the Veracious, may God be pleased with him, said in his address to the people on assuming command of the Muslims: "People! The strong among you is weak in my sight, so that I shall exact from him what is due. And the weak among you is strong in my sight, so I shall exact what is due to him. Obey me as long as I obey God! But if I disobey God you no longer owe me obedience."

### **The Scholar, the Soldier, the Rich**

Since there are two ingredients essential to all good things: that they should be intended for God's sake, and that they should conform to the Sacred Law, this must apply equally in speech and action, to good words and good works, to matters of knowledge and to matters of worship. It is confirmed in the *Ṣaḥīḥ* that the Prophet, on him be peace, said: "The first of three to fuel the fire of Hell is a man who studies and teaches and reads the Qur'ān and has it read, but all so that people will say: 'He is a scholar and a Qur'ān reader.' Then a man who fights and struggles so that people will say: 'He is courageous and brave.' Then a man who gives alms and gifts so that people will say: 'He is generous and openhanded.'" For these three, whose intention is to make a show and win reputation, are in contrast to the three who come after the Prophets, namely the Trustworthy or Veracious ones, the Martyrs and the Righteous. One who studies the knowledge sent by God through His Messengers, and teaches it for the sake of God, is Trustworthy; one who fights so that the word of God may be supreme, and is killed, is a Martyr; and one who gives alms for the sake of God is Righteous. He who squanders his wealth will be asked to return it at his death, as Ibn al-'Abbās said: "He who is

given wealth and does not use it to make Pilgrimage and does not pay the welfare due will be asked to repay it at his death." He then recited the words of the Exalted One: "And spend of that with which We have provided you, before death comes to one of you and he says: 'My Lord! If only You would reprieve me for a little while, then I would give alms and be among the righteous'" (63: 10)

The expert in these matters of theological learning must be versed in what concerns God and the Last Day, what has been and what is to be, truly and correctly; in what He has commanded and forbidden, as communicated from God by the Messengers. For this is the truth, in conformity with the *Sunna* and the Sacred Law and in accordance with the Book of God and the precedent of His Messenger, just as the modes of worship practised by God's servants – if laid down by God and enjoined by God and His Messenger – are true and correct, in conformity with what God has communicated through His Messengers. But what is not like this, whether in knowledge or worship, belongs to falsehood, misleading innovation and ignorance, even if some like to call it science and metaphysics, worship and striving, "tastes" and "stations".

It is also necessary for what is commanded to be for the sake of God's command and what is forbidden to be for God's prohibition; and information given should be that given by God, for it is truth and faith and guidance as communicated to the Messengers. Just so is it necessary for worship to be intended for the sake of God. To speak out of capricious whim or fanatical zeal, to make a show of learning and virtue, or in pursuit of fame and ostentation, this would put a scholar on a par with the warrior who fights from bravado, zeal and ostentation.

It should now be clear to you where many scholars and teachers, devotees and mystics have faltered. For these people often say things at variance with the Book and the *Sunna*, and frequently practise forms of worship not commanded by God – or even forbidden – or which contain something of restricted legality. They often wage warfare which is contrary to the fighting which has been ordained, or which contains some illegitimate element.



Moreover, in each of the three categories: commanded, outlawed and mixed, the person concerned may have a good intention, may be following his own whim, or may combine these two.

These nine sets apply also in relation to the disbursement of public funds: booty and so on; *waqf* endowments; properties bequeathed and dedicated by vow; all kinds of gifts, alms and donations. In all this there is ambiguity between the true and the false, and the confounding of good works with bad.

One who is responsible for something bad may be guilty only of a mistake or of absent-mindedness and is therefore forgiven, just as the jurist who reaches a mistaken conclusion when exercising his judgement is rewarded for his effort and forgiven his mistake. It may be something trivial, atoned for by avoidance of serious offences; or it may be forgiven through repentance or through good deeds cancelling out the bad. It may be atoned for by worldly misfortunes and so on. But the religion of God, which He has revealed in His Books and communicated through His Messengers, has come from the Will of God Alone to promote right action. This is the universal Islam, other than which God accepts from no-one. The Exalted One says: "Whoever seeks other than Islam as religion, it will never be accepted of him and in the Hereafter he will be among the losers". (3: 85) "God is witness that there is no god but He, as are the angels and those with knowledge. Dispensing justice, there is no god but He, the Mighty, the Wise. Surely the religion in God's sight is Islam". (3: 18-19)

### **The Spirit of Islam**

Islam combines two meanings: one of them is surrender and submission, not to be proud; the second is sincere devotion, from the words of the Exalted One: "And a man belonging wholly (*salaman*) to one master". (39: 29) In this second sense it means not to attribute partners to God. Its total meaning is that the creature submits entirely in service to God, Lord of the whole universe. As the Exalted One says: "And who forsakes the religion of Abraham, except one who fools himself? Indeed We

chose him in this world, and in the Hereafter he is among the righteous. When his Lord said to him: 'Surrender!', he said: 'I have surrendered to the Lord of all worlds.' And Abraham charged his sons therewith, and also Jacob: 'My sons, God has chosen the religion for you, so do not die without becoming Muslims'" (2: 130–132) "Say: 'As for me, my Lord has guided me to a straight path, a right religion, the community of Abraham, the upright. He was no associator.' Say: 'My worship and my sacrifices, my living and my dying, are for God, Lord of all worlds; no partner has He. With that I am commanded, and I am the first of the Muslims.'" (6: 162–164)

[In Arabic grammar] the verb from the word Islam is sometimes intransitive and is made transitive by prefixing the particle *li-* to its object, as in these Verses and as in the words of the Exalted One:\* "Turn in repentance to your Lord and submit yourselves to Him before punishment comes to you; then you will not be supported". (39: 54) "She said: 'Lord, I have wronged myself. I surrender along with Solomon to God, the Lord of all worlds.'" (27: 44) "Is it other than God's religion they seek, when to Him submit all those in the heavens and the earth, willy nilly, and to Him they shall be returned?" (3: 83) "Say: 'Shall we call, instead of God, upon what neither benefits us nor harms us, and shall we turn back after God has guided us, like one bewildered whom the devils have beguiled in the earth, who has companions to summon him to guidance, saying: "Come to us!"?' Say: 'God's guidance is the guidance, and we are commanded to surrender to the Lord of the worlds, and to perform the prayer and to be aware of Him.'" (6: 71–72)

It is also used transitively\*\* in conjunction with *Ihsān* (beneficence, performance of good works, charity), as in the Exalted One's words: "They say: 'None shall enter Paradise but those who are Jews and Christians.' That is how they would like it. Say: 'Fetch your proof, if you speak the truth.' Yes, indeed, whoever submits his whole self to God, being a well-doer, he has his reward with his Lord. On such shall be no fear, nor shall they

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\* The grammatical point is not significant in English, but the quotations illustrating it are given here in translation for the sake of their general content. (Translator's note.)

\*\* See preceding note by the translator.

grieve". (2: 111–112) "Who is better in religion than he who submits his whole self to God, being a well-doer, and follows the tradition of Abraham, the upright? God chose Abraham as a friend." (4: 125) Thus He has denied the existence of any religion better than this one, namely Submission (*Islām*) of the whole self to God together with well-doing (*Iḥsān*), and He has informed us that everyone who submits his whole self to God, being a well-doer, has his reward with his Lord and that on such shall be no fear, nor shall they grieve. This comprehensive statement and general proposition conclusively refutes those who maintain that none shall enter Paradise but those who are Jews and Christians.

### **Two Cardinal Principles: Submission and Well-Doing**

These two features – namely submission of the whole self to God and well-doing – are the two principles mentioned above, viz. that work should be devoted entirely to God and that it should be correct, in conformity with the *Sunna* and the Sacred Law. For submission of the whole self to God implies aim and intention for God. As someone said: "I ask forgiveness of God for sins I cannot count, the Lord of men toward whom is the aim and work."

As well as the term "submission of the whole self" (*Islām al-wajh*), the expression "setting the whole self straight" (*iqāmat al-wajh*) is also used, as in the Exalted One's words: "Set your whole selves straight at every place of worship." (7: 29) "So set your whole self to the religion as an upright man – God's natural religion for which He has formed human nature." (30: 30)

Yet another expression is "turning one's whole self to face . . ." (*tawjīh al-wajh*), as in the words of God's friend: "I have turned my whole self to face toward Him Who created the heavens and the earth, as one by nature upright, and I am not of those who attribute partners to Him." (6: 79) Likewise the Prophet, on him be peace, used to say in the supplication with which he opened his ritual prayer: "I have turned my whole self to face toward Him Who created the heavens and the earth, as one by nature upright, and I am not of those who attribute partners to Him." The two *Ṣaḥīḥs* report on the authority of al-Barrā' ibn

‘Azib that one of the things the Prophet, on him be peace, used to say on going to bed was: “O God, I have surrendered myself to You and turned my face towards You.”

The term “*wajh*” in Arabic embraces both the subject who “turns himself to face” and the object towards which he faces, or the direction towards which he turns. Thus one may say in Arabic: “What *wajh* do you want?”, i.e. “What direction or bearing are you taking?” For the two are inseparable: in whatever direction a person turns, his face turns in that same direction. This applies both inwardly and outwardly, so that we have a set of four factors. The inner is fundamental, while the outer is completing and emblematic, for if one’s heart turns to face something one’s outer face follows suit. If the creature’s aim, will and orientation is toward God, this is the proper direction of his will and intention. If he is well-doing also, then he combines right action and not associating anyone with God in his worship. ‘Umar, may God be pleased with him, put it like this: “O God, make all my action right and let it be for Your sake entirely, and give no-one any share in it.” Right action is well-doing (*Iḥsān*), which is what God has ordained, and what God has ordained is what God has made Law, and this is in conformity with God’s practice and the practice of His Messenger. For God, Exalted is He, has told us that one whose intention is purely for God, and who is well-doing in his actions, is deserving of reward and secure from punishment.

This is why the leaders of the early Community used to combine these two principles. Commenting on the Exalted One’s words: “That He may test you on which of you is best in conduct” (11: 7), al-Fuḍayl ibn ‘Iyāḍ said: “The most sincere and the most correct.” They said: “Abū ‘Alī, what is most sincere and most correct?” So he said: “Action, even though correct, is unacceptable if it is not sincere. And if it is sincere but not correct it is not accepted either, until it is both sincere *and* correct. Sincere means that it is for God, while correct means that it is in keeping with the *Sunna*.”

Ibn Shāhīn and al-Lālkā’ī report Sa‘īd ibn Jubayr as saying: “Neither speech nor action is acceptable without intention, and none of these is acceptable unless it conforms to the *Sunna*.” The same two attribute a similar statement to al-Ḥasan al-Baṣrī, who

used the expression “is not appropriate” instead of “is not acceptable”. This contains a refutation of the Murji`a, who held words alone to be sufficient, for it tells us that both words and deeds are essential, because faith is both speech and action and both are necessary. We have discussed this question at length in another place. As we have explained, mere acknowledgment with heart and tongue, accompanied by loathing and arrogance, does not constitute faith – by common consent of the believers – until it is united with confirmation in action.

The root of action is the action of the heart, i.e. love and respect which preclude hatred and arrogance. Then they went on to say: “Neither speech nor action is acceptable without intention.” This is obvious, because if speech and action are not sincerely for God, Exalted is He, God will not accept them. Next they said: “Neither speech nor action nor intention are acceptable unless they conform to the *Sunna*.” That is the Sacred Law, and that is what has been ordained by God and His Messenger. For speech, action and intention, if not sanctioned by precedent or law ordained by God, must constitute an innovation displeasing to Him, and God will not accept it. It will be as inappropriate as the actions of the associators and the People of the Book.

The term “*Sunna*”, as used by the early believers, embraces *Sunna* in practical worship and *Sunna* in matters of doctrine, although many authors refer only to the latter when speaking of *Sunna*. Thus Ibn Mas`ud, Ubayy ibn Ka`b and Abū`l-Dardā`, may God be pleased with them, said: “Moderation in a *Sunna* is better than exertion in an innovation.” And such like.

All praise belongs to God, Lord of all worlds. Blessings upon Muḥammad, his pure family and all his companions.



## CHAPTER 10

# Summing Up on Knowledge, Justice and the Duties of the Rulers and the Ruled.\*

The root of all that is knowledge, for there is no other way to learn of justice and injustice. The whole of religion is knowledge and justice, and the opposite is injustice and ignorance. God, Exalted is He, said: "But man took it on: he is wrongful, ignorant". (33: 72) Since he is wrongful and ignorant – and the brunt of that comes sometimes from those in charge, sometimes from those in their care, and sometimes from others – part of the knowledge and justice enjoined upon us is patient endurance of the injustice and tyranny of leaders, this being one of the principles of the People of the *Sunna* and Community. As the Prophet, on him be peace, commanded in his well-known sayings: "After I am gone you will encounter selfishness, so be patient till you meet me at the Pool of Paradise," – "Anyone who sees in his commander something he finds reprehensible should bear it patiently," and other similar sayings. He also said: "Give them their due, and ask God to give you yours." They were forbidden to take up arms against them as long as they kept up the ritual prayer. That was because they retained the required basis of religion, namely the affirmation of God's Unity and His worship,

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\* *Editor's note:* Although Shaykh al-Islām Ibn Taymiya has written this part as a postscript to the book we are integrating it with it as an appropriate summing up on the two major resources of the *Umma*, knowledge and justice, and as a concluding note on certain critical duties of leadership in a Muslim society.

as well as some good deeds, and abstained from many wickednesses.

As for the injustice and oppression perpetrated by them, and justified by valid or invalid interpretation, it is not permissible to remove them, on account of the further injustice and oppression involved. For the usual psychological tendency is to remove one evil with another that is even worse, and to remove one excess with something even more excessive. Coming out in revolt against them results in injustice and corruption worse than their injustice, so it must be suffered with patience, as in many situations one must exercise patience in commanding the proper and forbidding the improper despite the tyranny of those to whom the commands and prohibitions are addressed. As He says: "Command what is proper and forbid what is improper, and endure patiently whatever befalls you". (31: 17) "Be patient, then, just as those steadfast Messengers were patient." (46: 35) "Patiently await your Lord's decree, for you are in Our sight." (52: 48)

This applies generally both to those in authority and to the people under them. If they command the proper and forbid the improper, they must endure patiently whatever afflicts them in the presence of God, just as those who fight the *Jihād* endure with patience whatever affliction befalls themselves or their possessions. For patient endurance of pain in contingency is by far the better course. The benefit of command and prohibition can be realized in no other way, and what is essential to the performance of duty becomes a duty itself. This involves those in positions of authority, for patience and forbearance are incumbent upon them in greater measure than upon others, as are courage and liberality. The benefit of command can be realized in no other way. And just as the leaders are obliged to endure patiently the offences and wrongs of those under them, this being essential to the common interest since greater corruption otherwise ensues, so likewise is it incumbent on the people to bear with patience the oppression and injustice of the leaders to avoid causing still more corruption.

Both the one in charge and those in his care have mutual obligations to discharge, as someone mentioned in the *Book of Jihād and Judgeship*. Each must be patient and forbearing towards the other in various matters, and liberality and patience



are essential in both. As the Exalted One said: "And exhort one another to patience and exhort one another to compassion". (90: 17) And according to the *ḥadīth*: "The most excellent part of faith is liberality and patience." Moreover, among the Names of God are "All-Forgiving, All-Compassionate". Therefore through forbearance their bad deeds are pardoned, and through liberality benefits accrue to them, so that the acquisition of benefit and the repelling of harm are combined.

As for refraining from injustice towards them, and treating them fairly, the necessity for this is even more apparent and needs no clarification. But God knows best.

### **The Gradations of Sinful Offences**

As for their gradations in the Hereafter, this subject is discussed elsewhere. All that we are concerned with here is their gradations in this world, in terms of blame and punishment. I have previously mentioned that offences involving injustice to others and injury to them, be it in the religious or worldly sense, are more severely punished in this world than those not entailing harm to others, despite the fact that the punishment for the latter may be greater in the Hereafter. For instance, Muslim criminals are subject to harsher penalties than unbelievers enjoying Muslim protection, although in the Hereafter the unbeliever will be punished more severely than the Muslim. The latter may be punished despite his integrity, e.g. one who drinks spirits (*nabīdh*) and justifies his doing so by an interpretation according to which they are not unlawful, or rebels who interpret their revolt as being legitimate, whereas the unrighteous who tries to hide his offence may get off lightly. The propagandist for a heretical innovation, and the exponent of impropriety, will be punished more severely than the hypocrite who conceals his hypocrisy and does not advocate it to others. These examples contrast the unbeliever and the impious, the impious and the honest, the hypocrite and the believer who openly advocates an heretical innovation or offence. The reason is clear: these punishments are designed to protect religious and worldly interests from the wrong of wrongdoers, whereas the punishment of those who wrong only themselves is left to their Lord.

The overall picture is that all sinful offences are wrong, but while it is one thing for a creature to wrong himself, if wrong is done to others it is necessary to have legal sanctions to protect religious and worldly interests against the wrong of the wrongdoer. As the Exalted One said: "Sanction is given to those who fight because they have been wronged; God is indeed Able to give them victory". (22: 39) Thus He makes the fact that "they have been wronged" the legitimate reason for punishing others by fighting them. He also said: "Fight them till there is no more persecution, and religion is entirely God's. But if they desist, then no hostility except against wrongdoers". (2: 193) Here He explains that aggressive action is to be taken against the wrongdoer, that is to say, by overstepping the normal bounds where he is concerned. This is punishment, and this is permissible hostility. As He said: "If someone attacks you, attack him just as he attacked you". (2: 194)

Some say that this is not really hostility, but only called by that name by way of comparison, but there is no need for this – nor for their similar comment on His words: "The recompense for an injury is an injury similar to it" (42: 40) – because unqualified hostility means overstepping the bounds in general, and this is not permissible with regard to anyone unless he has committed aggression, in which case the limit may be exceeded where he is concerned in proportion to his transgression. "Injury" is simply the name for what injures a person, for misfortunes and punishments are equally termed "injury" in several places in the Book of God, Exalted is He.

Wrong is of two kinds: neglect of right, and transgressing the limit. The former is failure to perform what is due to another, such as failure to settle debts, or to discharge other trusts and financial obligations. The second is aggressive conduct, like murder and seizing property. Both constitute wrong. This is why the Prophet, on him be peace, said in a generally accepted Tradition: "Delay in payment by the wealthy is a wrong, and if one of you prosecutes a man who is solvent he may do so." Thus he makes it a wrong to procrastinate, that is, to delay payment when able to pay. What, then, of not paying at all? The Exalted One said: "They consult you about women. Say: 'God pronounces on them for you – and

what is recited for you in the Book – concerning female orphans to whom you do not give what is ordained for them, though you desire to marry them . . . and that you should deal with the orphans fairly.’ ” (4: 127) ‘Ā’isha, may God be pleased with her, said: “This refers to the female orphan under the care of her guardian, who wishes to marry her without treating her fairly in the matter of her dower.” So God calls giving the full dower fair treatment, and the opposite of this is injustice.

This is generally self-evident, unanimously accepted by all the Muslims: that justice may consist in fulfilling an obligation, or in avoiding something unlawful, or in a combination of the two; and that injustice also may consist in neglecting an obligation, or in doing something unlawful, or in a combination of the two. This being well known, it is also common knowledge that justice and injustice may affect a person himself, and may affect the rights of others; as mentioned previously, where I explained that all good deeds are included in justice, and all bad deeds are included in injustice.<sup>1</sup> A number of useful points now emerge.

One of these is that Muslims in positions of authority, whether as scholars or as commanders, as well as their subordinates, all have obligations towards people. Each rank has particular duties which it is required to perform, although these may not be demanded of another grade, being less essential to it and therefore not obligatory. Likewise, certain things may be unlawful to a man by virtue of his rank, while to those of different rank they are either not unlawful at all, or to a lesser extent.

### ***Jihād*: Its Rationale**

The *Jihād* will serve as an example of this, for it is incumbent on the Muslims in general and on a sufficient number of them at any time. It may sometimes become a duty for particular individuals, but the obligation is more definite in the case of those retainers who are given funds out of booty for the sake of the *Jihād*: indeed, it is an obligation on them individually, imposed on them by the

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<sup>1</sup> See my comprehensive treatment of the subject in my earlier works: at the beginning of “Basic Principles” (*al-Qawā'id*) and the latter part of “Notes on Jurisprudence” (*Muswaddāt al-Fiqh*).

Sacred Law and by the contract they entered into when they contracted with those in authority to serve in the *Jihād*, and made binding by the financial consideration. For even if it were not obligatory, by Law or through loyalty to the Imām, it would still be made obligatory by the commutative contract, just as the employee is obliged to work when he accepts his wage, and as the seller is obliged to hand over goods for which he has taken the price. Here the obligation stems from the commutative contract and the taking of a consideration, whereas in the first case the obligation lies in the Sacred Law and the mere act of loyalty to the Imām. It is also incumbent from the point of view of the danger to the Muslims entailed by its neglect, and the harm attaching to them through neglect of it, creates the obligation to act responsibly in respect of what one guarantees.

The "professional soldiers" (*murtaziqa*) guarantee the defence of the Muslims in return for their stipends. People have come to rely on this, and are content to leave their own defence to them, even more than they rely on trustees and agents to manage their affairs and business. If some of those (in whom trust has been reposed) are extravagant and wasteful, therefore, the damage to the Muslims is enormous, for they cause great detriment to both the religious and worldly interests of the Muslims by neglecting their duty to fight for them. This has prejudicial consequences for the Muslims in the religious and worldly spheres alike, affecting themselves, their posterity, and their property to an incalculable degree.

For the fighting men to abandon the *Jihād* on behalf of the Muslims is therefore one of the greatest wrongs possible, in contrast to the harm attaching to one of them, since that is wrong done to himself. Likewise any private offence he commits, such as drinking wine or an act of immorality, for this is wrong done to himself and affecting only him. Therefore his punishment for neglecting the *Jihād*, and the blame he incurs, is greater by far than for the other offences.

If it is not possible to combine the two punishments, the penalty for neglecting the *Jihād* must take precedence over that for other offences, just as the benefit of the *Jihād* to him and all the Muslims would be far greater than the benefit of deterring him from wine

drinking and immorality, if he kept this secret and did not wrong others by it. In this case the greater corruption should be guarded against by tolerating the lesser. Concerning this kind of thing the Prophet, on him be peace, said: "God will support this religion with the aid of the dissolute and people who have no morals." This kind of person is rebuked or rewarded, according to his slackness or extravagance in the *Jihād*, differently from others who are not equipped for the *Jihād*.

### **The Role and Responsibility of the 'Ulamā'**

Similarly with people of learning, who preserve the Book and the *Sunna* for the Community – in form and content. Although this work of preservation is incumbent on the Community in general and on a sufficient number of them at any time, and is to some extent a duty of each individual since some knowledge is a personal necessity for the Muslim, nevertheless the obligation rests on the people of learning who are entrusted with it or make their living by it – individually and as a class – more than it rests on others. For it is required generally by the Sacred Law, and specifically of them because of their capacity for it and the inability of others. Such capacity includes mental disposition, a background of study, familiarity with methods of research from written works, earlier scholars and numerous other sources, and freedom to work without the distractions that others are preoccupied with.

This is why tradition has it that a start made in learning or *Jihād* must be carried through, like starting out on Pilgrimage. In other words, knowledge of religion and practice in *Jihād*, once acquired, must never be lost. For the Prophet, on him be peace, said: "He who reads the Qur'ān and then forgets it will meet God as a leper."<sup>2</sup> He also said: "The deeds of my Community were set out before me – the good and the bad – and I saw among their bad deeds the man to whom God gave a Verse of the Qur'ān, then he went to sleep and forgot it." And: "He who learns archery then forgets it is not one of us."<sup>3</sup>

<sup>2</sup> Related by Abū Dāwūd.

<sup>3</sup> Related by Muslim.

Likewise with a start made in the practice of *Jihād*, for if the Muslims form ranks to face a foe, or lay siege to a fortress, they may not withdraw before victory is theirs. This is why the Prophet, on him be peace, said: "When a Prophet puts on battle-dress for his Community, he may not take it off until God decides the issue between him and the foe."

Those who are equipped for learning, therefore, have a duty to the Community to preserve knowledge of the religion and to communicate it. So if they fail to pass on knowledge of the religion, or lose what they have acquired, that is one of the greatest wrongs to the Muslims. This is why the Exalted One said: "Those who conceal the proofs and the guidance We have revealed, after We have made it plain in the Book, such does God curse, and all who can curse have cursed them." (2: 159) For the damage done by their concealment extends to the beasts, and others, so all who can curse have cursed them, even the beasts.

But the good teacher is blessed by God and His Angels, and everything asks forgiveness for him, even the whales in the depths of the sea, and the birds in the sky above.

Untruth on the part of scholars is likewise a most grievous wrong, as is their propagation of sins and heretical innovations, making their teachings unreliable and turning hearts from following them, while requiring people to go along with them. They deserve greater blame and punishment than others who perpetrate lies, sins and innovations, for although there is some harm in what the unlearned perpetrate it is not as serious as the damage done by the scholar, who prevents the truth appearing and brings out falsehood instead. For iniquity and innovations perpetrated by scholars are equivalent to refusal by all the fighting men to wage the *Jihād* and repel the enemy, not just like the desertion of individual soldiers, so great is the damage they cause the Muslims.

For the people of learning to fail to communicate the religion is like the warriors neglecting the *Jihād*, and for the warriors to neglect their duty to fight is like the learned failing in their duty to communicate. Each is a heinous offence. It is not like neglecting some civil service function, for such neglect is more serious than failure to pay the necessary funds to the entitled recipient. And

the heretical innovations and sins they propagate, preventing acceptance of their teaching, inviting people to conform and obstructing others from commanding the proper and forbidding the improper: all this is more damaging to the Community and to them than the same things perpetrated by others.

This is why God has built into the hearts of the Community a disposition to be horrified when a soldier is cowardly and faint-hearted, neglects the *Jihād* or gives aid to the enemy – much more than where others are concerned; and to be horrified when a scholar is guilty of outrageous behaviour or heretical innovations – also much more than when others do the same. Quite contrary reactions are provoked by iniquitous, unjust and immoral conduct on the part of a soldier, or by a scholar's abstention from physical combat.

So with those in positions of authority, each according to his office, be he governor or judge. For if any of them is lax in attending to his responsibility for the welfare of the Community, or goes too far in the opposite direction and becomes over-aggressive, he will be judged more severely for this than for a private offence.





## APPENDIX

# *Al-Ḥisba* and the Islamic Economy

by  
Muhammad Akram Khan

### 1. *Al-Ḥisba*

The word *ḥisba* has been derived from the root *h.s.b.* and means “arithmetical problem”; “sum”; or “reward”. The verb *hasaba yahsubu* means “to compute”; “to measure”. The verbal form *Ihtasaba* means “to take into consideration”; “to anticipate a reward in the Hereafter by adding a pious deed to one’s account with God”.<sup>1</sup> Perhaps, from here the usage of the noun *Ihtisāb* came to be associated with the activities of a person who invites others to do good (*ma’rūf*) and forbids them from evil (*munkar*) in the hope of getting a reward in the Hereafter. More technically the noun *ḥisba* connotes the state institution to promote what is proper and forbid what is improper ‘*amr bil ma’rūf wa-n-nahī ‘anil munkar*’.<sup>2</sup> Although the Qur’ān visualises every Muslim to play a positive role in the propagation of good (*ma’rūf*) and suppression of evil (*munkar*)<sup>3</sup> but it has been made an obligation on a section of society to remain engaged in it (*farḍ kifaya*).<sup>4</sup> The Islamic state has been enjoined to institute arrangements to oversee the implementation of this injunction.<sup>5</sup>

After the establishment of the Islamic state at Madina part of the task before the holy Prophet (Blessings of Allah and peace be upon him) was to reshape its institutions, lay down norms of behaviour and provide arrangements for the protection and perpetuation of these norms. The pre-Islam norms required drastic modifications as they had evolved in a pagan culture. The Islamic culture, rooted in the foundations of *Tawḥīd*, *Risāla* and

*Ākhira* could not adopt values of *Jāhiliyya*. Of course it did not outrightly reject everything that was in vogue. Some of the conventions and values were retained intact, while others were modified and reshaped and integrated into the cultural fabric of the Islamic society. The process was both fast and comprehensive. It addressed to the totality of the human situation. From such small things as table manners to standards of diplomacy, it did not leave anything out of its orbit.

Besides devising a code of approved behaviour the holy Prophet took care to institutionalise the perpetuation and preservation of this code by enjoining upon everyone to engage in *'amr bil mar'ūf wa-n-nahī 'anil munkar*. In a number of traditions the Prophet has been reported to have emphasised this role for every Muslim.<sup>6</sup> He himself would, so often, undertake inspections of markets to see that the merchants did not engage in improper behaviour. Wherever he would see someone indulging in an evil he would forbid him.<sup>7</sup> This function he carried out both as Prophet of Allah and as head of the Islamic state. In this regard, the Prophet has been termed as the first *Muhtasib* in the Muslim history.<sup>8</sup> Subsequently when his personal engagements increased he appointed Sa'īd b. al-'Aṣ b. al-'Aṣ b. Umayyah as *muhtasib* in Makka and 'Umar b. al-Khaṭṭāb in Madina.<sup>9</sup>

The first four caliphs of Islam carried out the functions of *muhtasib* themselves, although there are reports of the appointment of a market officer by the Caliph 'Umar.<sup>10</sup> The provincial governors during this era acted as *muhtasibs* on behalf of the caliph. A separate department of *ḥisba*, with a full-time *muhtasib* assisted by qualified staff (known as *'Arifs* and *Amīns*) was introduced by 'Abbāsīd Caliph Abū Ja'far al-Mansūr in 157 A.H. He appointed Abū Zakariyah Yaḥyā b. 'Abdullāh as *muhtasib*.<sup>11</sup> With the expansion of the jurisdiction of the caliphate the office of the *muhtasib* also expanded and assumed an increased number of functions. The institution of *ḥisba* moved along with Muslims in the western provinces of Spain and North Africa and remained an integral part of the state even after the split of the Baghdad caliphate. Similarly the office of *muhtasib* was an important department during the rule of Fatimids, Ayyubids, and Ottomans. In India although a formal *ḥisba* department did not exist, yet during

the Sultanate period a *muhtasib* and a *qāḍī* was invariably appointed whenever an area was annexed to the state. The Mughals did not feel easy with the institution of *ḥisba* due to their own lax moral standards and replaced it with the office of *Kotwāl* who had a much limited jurisdiction than the *muhtasib*. The institution of *ḥisba* remained in vogue during the entire Muslim period of history, though it has been termed differently in various regions. For example, in the eastern provinces of Baghdād caliphate the officer in charge was *muhtasib*, in North Africa he was *sāhib al-sūq*, in Turkey, *muhtasib aghāsī* and in India a *Kotwāl*.

In certain cases the offices of *qāḍī* (justice) and the *muhtasib* were entrusted to the same person. At other places the police department (*Shurṭa*) and the *ḥisba* were headed by the same officer. And at still other places the three offices were manned by one man. But the functions of *muhtasib* were clearly distinct from those of a *qāḍī* and a *shurṭa*.<sup>12</sup>

With the advent of Western colonialism most of the Muslim institutions underwent drastic modifications. Like many other institutions, the *ḥisba* also declined in effectiveness. It either disintegrated into a number of departments or remained an ineffective appendage of the state organs. By the 19th century Persia, Turkey, Egypt and India had already transformed the *ḥisba* function into a number of secular departments discarding its religious content as irrelevant. In Morocco the *muhtasib*'s office existed even in the early part of the 20th century. In the present day Muslim societies the secular functions of the *ḥisba* have been assigned to various departments of the government and the religious functions have been relegated to a secondary position. Saudi Arabia is perhaps the only Muslim state which has retained to this day the religious wing of the *ḥisba* intact to a large extent, although it too has distributed the secular functions to different departments and ministries.<sup>13</sup>

Traditionally, the *muhtasib* was a free Muslim male with a high degree of integrity, insight, reverence and social status. He was supposed to be a scholar of the *Shari'a* (most often competent for *Ijtihād*) with a high degree of in-depth knowledge in the social customs and moors.<sup>14</sup> Of the qualities of a *muhtasib* 'Ilm

(knowledge), *Rifq* (kindness) and *Ṣabr* (patience) were considered to be of prime importance.<sup>15</sup>

The functions of a *muḥtasib* could be classified into three categories:

- (i) those relating to (rights of) God.
- (ii) those relating to (rights of) people, and
- (iii) those relating to both.<sup>16</sup>

The first category covered religious activities such as punctuality of prayers, organization of *Jum'a* and *Īd* congregations and maintenance of mosques. The second category related to community affairs and behaviour in the market, such as accuracy of weights and measures and honesty in dealings. The third related, mostly, to affairs relating to municipal administration such as keeping the roads and streets clean and lit at night and preventing the building of a factory or dwelling place which could damage the community interests.

The *muḥtasib* could appoint technically qualified staff who could investigate the affairs of different crafts and trades. The *muḥtasib* received complaints from the public but could also initiate an investigation on his own. He had wide powers, but was required to use them sensibly. There were a number of steps which a *muḥtasib* could take. It could be simple advice, reprimand, rebuke, obstruction by forces (*Taghyīr bil yad*), threat, imprisonment and expulsion from the town. The *muḥtasib* was required to choose a stronger punishment only if a milder one was either ineffective or seemed to carry no weight with the person being admonished.<sup>17</sup> The code of conduct for a *muḥtasib* provides a system of checks and balances. For example, he could not doubt a *prima facie* approved behaviour nor could he engage in secret probing into a doubtful affair. The behaviour of a person should be obviously against the injunctions of the *Sharī'a* before a *muḥtasib* could intervene. Similarly he should not engage in *ijtihād* to punish people; instead he should forbid them from only those actions on which there existed a consensus of the *Umma*. Similarly he should act with wisdom and foresight and not over-zealously. His actions should not invoke a greater mischief than the one he wants to forestall. It means before he intends to obliterate an evil practice of a powerful group he should make suf-

ficient arrangements to counter their reactions effectively.<sup>18</sup> On questions of social convenience the *muḥtasib* should invite community participation and should not impose his personal opinion on the majority.<sup>19</sup>

The institution of *ḥisba* was a Muslim contribution to the human civilisation. It has been claimed by some orientalists that the Muslims borrowed the concept and the office of *muḥtasib* from the Romans. The Romans used to have *agronomos* in their markets who used to perform similar functions as the Muslim *muḥtasib*. But the evidence to show any connection between the two is both scanty and inadequate. There is little reason to believe, in the light of the available evidence, that the Arabs borrowed this institution from the Romans<sup>20</sup> because the Muslim institution evolved from the Qur'ānic injunction of '*amr bil ma'rūf wa-n-nahī 'anil munkar*' and had a much wider scope than the Roman *agronomos* or Byzantinian Prefect.<sup>21</sup> The office of *muḥtasib* was only a logical necessity of the Islamic state to perpetuate and preserve its social norms. It was not merely a secular office to regulate markets and administer municipal services.

### **Essence of *al-Ḥisba***

The literature on the institution of *ḥisba* may be classified into two categories. Part of it deals with the general principles of *ḥisba* and '*amr bil ma'rūf wa-n-nahī 'anil munkar*'. The other category manualises rights and duties of the *muḥtasib*.<sup>22</sup> Books and dissertations of the latter type are operational guides which provide detailed instructions to the *muḥtasib* in respect of possible malpractices in different trades and crafts. Usually the author describes each profession or craft in its technical details and points out the areas which demand the *muḥtasib*'s vigilance.

A cursory glance through this literature may induce one to conclude that the Muslim society, even in its hey-days was rampant with corruption and fraud and the jurists had to inform the *muḥtasib* to be aware of it. But such a conclusion would be both hasty and erroneous. The literature on *ḥisba*, like the rest of material on Islamic *fiqh* needs to be studied in its literary perspec-

tive and intellectual tradition. The early jurists developed principles of *fiqh* and exhibited their operation by applying them to both the prevalent situation as well as to the potential possibilities which may uncover themselves with the course of history. A large number of questions on which the jurists have deliberated were only hypothetical probabilities and not a real-life phenomenon obtaining at that time.

A critical appreciation of the catalogue of the *muhtasib*'s rights and duties suggests that most of the trades and crafts have either disappeared from the economic horizon or have undergone a complete metamorphosis with the advent of industrialisation, mass-scale production, extension of markets and development of modern credit and finance. A listing of these activities of the *muhtasib* would be of little immediate help. However, if we dissect and analyse these functions, at least three main strands appear to exist quite distinctly.

First, the *muhtasib* was responsible to see that the community as a whole had proper organisation and facilities for performance of *'Ibādāt*. The maintenance of mosques, appointment of muezzins and *imāms*, arranging daily prayers, Friday congregations and *'Id* prayers were some of his duties. Similarly he would object to any wilful and volitional non-observance of any other obligation of the *Shari'a* by individuals or by the community.<sup>23</sup> These functions of the *muhtasib* may be adopted even now, if an office to this effect comes into being.

Second, the *muhtasib* was concerned with the implementation of *'adl* (justice) in the society. He would try to enforce fair play among different economic factors to minimise possibilities of exploitation from the economy. Consequently, we find a long list of such instructions which prescribe inspection of weights and measures, metallic content of coins and quality of food products. Similarly the *muhtasib* would check manipulation of prices, supplies and production, monopolistic collusions, cheating, fraud and any other form of inter-sectoral inequity. In brief, he had to intervene wherever the economic flows were manipulated by the economically powerful individual or groups to their selfish ends. This area of the *muhtasib*'s functions needs to be recast to the present day modes of production, distribution and exchange. The

spirit of 'adl has to be preserved while defining roles for various economic agents.

Third, the *muhtasib* paid special heed to various municipal services especially hygienic conditions in the town. Perhaps the *muhtasib* was the only municipal officer in the Muslim society. He would look into the entire municipal administration such as street lighting, removal of garbage, architectural designs of buildings, water supply and antipollution sanctions. Obviously, need for a smooth availability of these services on an efficient scale has only increased these days.

## **2. Implications of *al-Hisba* for the Islamic Economy**

The economic history of the Muslim people has not yet been chronicled in detail. The early historians have mentioned and that too as passing references, the economic conditions of the people during different eras. But the modes of production, distribution, and exchange and the credit system have received little attention. Information on these subjects has not been documented properly to let us have a glance on institutions and operations of the Muslim economies. However, literature on the *hisba*, though written with an entirely different motive, helps us in reconstructing a vision of the economic system of Islam during its hey-day. If we read between the lines there are numerous points which increase our understanding of the functioning of an Islamic economy. The contours of economies as they glisten through the mist of time may enable us to benefit from the wisdom of our elders. In an age when the stupendous onslaught of the Western economic system has almost blurred the faith of most of the Muslims on the ability of successful operation of a *Shari'a*-based economic system, a probe to understand the logistics of the early Muslim economies, which were no less powerful in their own day than the present day Western economies, would lend us a useful insight into the operationality of Islam's economic system. A detailed analysis of this aspect would entail much more space and is outside the scope of this paper. However, some of the salient features of an Islamic economy as visible from the literature on *hisba* are enumerated below:

(a) *Managed Equilibrium*

Many of the *muhtasibs*' functions imply that the economy was actively managed by the state and was not left to the vicissitudes of events. It entailed corrective actions by the state as and when necessary. Economic equilibrium was manipulated to attain a reasonable degree of efficiency and justice. The "invisible hand" was not trusted for an optimum level of production and a friction-free flow of distribution. Obviously this was a more concretely distinct proposition than the classical economists' vision of *lassaiz-faire*.

(b) *Regulation of Supply*

The *muhtasib* regulated production and supply of goods and services in a number of ways. First, he would see that resources did not flow to the production and distribution of goods and services which are categorically *ḥarām* in the *Sharī'a*.<sup>24</sup> Second, the *muhtasib* would keep a strict watch on the supply position of essential articles especially foodstuff. At times of shortage he could compel the hoarders to bring out their stock to the market.<sup>25</sup> Third, all trade had to be done in the open market. Secret dealings by the traders at their homes, warehouses and behind closed doors could disturb the supply flows and thus interfere in the establishment of a natural price level.<sup>26</sup> Fourth, the traders were not allowed to collude to bid up prices artificially.<sup>27</sup> This clearly indicates a necessity for antimonopoly measures by the present day state. Fifth, the traders were not allowed to form groups to push newcomers out of the market. Free access to market was ensured to anyone who wanted to enter the market.<sup>28</sup> Sixth, the urban traders were not allowed to meet the rural suppliers on their way and to buy their products at cheaper rates, keeping them in darkness about the market condition<sup>29</sup> because such an exercise provides undue profit margins to the economically powerful sections at the cost of the unaware villagers. Moreover, this could lead to cut-throat competition between urban merchants to reach the rural suppliers on their way and thus lead to an unhealthy competition. It suggests that a present day *muhtasib* would have to play a decisive role in disseminating market information among the rural suppliers to keep them



abreast of the market trends. This would automatically discourage the tendency to buy cheaply from the ignorant farmers. Seventh, in some of the Muslim countries like Tunis (especially Qairawan) the rural suppliers were provided accommodation, hotels and rest shelters near the market place so that they could hold on for a few days and assess the market for themselves before entering into a bargain.<sup>30</sup> The idea was to strengthen the bargaining position of the rural suppliers who could be exploited in urban centres if they did not have a place to stay for a few days. Eighth, the middlemen, who did not add any utility to the products but only reaped margins from buyers and sellers, were disbanded.<sup>31</sup> This was to eliminate a class of exploiters and to streamline the supply flows. Ninth, the interest of merchants as a class was also protected against dumping in the market by a minority of merchants.<sup>32</sup> If a minority of traders could manage to sell a product at an abnormally lower price than the prevalent market rate, they were prohibited to do so, as such a trend could damage the interest of the majority. It implies that if an individual or a small group of enterprising businessmen introduces cheaper modes of production, it may lead to mass-scale technological obsolescence, unemployment and plant redundancies. To prevent such a situation the introduction of technological innovations may be regulated by the *ḥisba* department. The introduction of modern technology may be phased out so that those who are affected may be accommodated in due course. The state may also provide short-term financing to those who have been adversely affected by force of such events. This would keep the incentives unimpaired and the production flows uninterrupted. Tenth, the traders and craftsmen were not allowed to hide the defects of a product. Nor were they allowed to make false oaths to sell their products.<sup>33</sup> It suggests that the *muḥtasib* may have to regulate the role of advertisements in the present day context. The labels of products and advertisements through commercial media may be scrutinised prior to display to ensure the accuracy of their appeals.

### (c) *Price Controls*

Price controls or *tasṭīr* are not permissible in the *Sharī'a* in

normal circumstances.<sup>34</sup> The holy Prophet (Allah's blessings and peace be upon him) was once requested to fix prices in the Madina market as they had gone up considerably. The Prophet refused to do so on the plea that the prices should have a natural course.<sup>35</sup> Some of the jurists have concluded from this tradition that *tas'ir* is not permissible in any circumstances. But Imām Ibn Taymīya has discussed this question at length. His conclusion is that *tas'ir* may not be resorted to if there are no artificial obstructions in the determination of price level in the market. But if there exists market rigidities so that the price level is being manipulated by the economically powerful class to their benefit, the *muhtasib* has a duty to apply corrective measures.<sup>36</sup> One of the objectives of the *Shari'a* is to implement 'adl<sup>37</sup> and to save the general public from hardship.<sup>38</sup> It is possible, that powerful groups in the market may manipulate prices by withholding supplies, slackening production, dumping output, or by mere collusion. In similar cases the prices may be fixed by the *muhtasib* at a reasonable level which may rehabilitate the natural trends. In the past the *muhtasibs* used to perform this function. There are reports of systems where the prices would be approved by the *muhtasib* periodically and given wide publicity. Delinquent traders were also punished.<sup>39</sup> It implies that in the present day context the *muhtasib* would have to keep himself informed of the overall economic conditions and cost structures in the economy. It may require an independent wing of the *muhtasib's* office to carry out this responsibility adequately.

#### (d) Credit Structure

The *muhtasibs'* manuals describe him checking any transactions involving *ribā*.<sup>40</sup> This may be in cash sales, barter exchange, exchange of precious metals (*Bai' al-Sarf*), advance payments (*Bai' al-Salam*), or loan (*qard*) transactions. Elements of *ribā* may seep into any of these dealings. The *muhtasib* used to lay down forms of agreement permissible in the *Shari'a* and those that may involve *ribā*. This provides ample evidence to us that *ribā* was not in vogue in Muslim economies either in theory or in practice. It disproves the claim of those orientalists who have alleged that lending on *ribā* had been practised throughout Muslim history despite its Qur'ānic prohibition.<sup>41</sup> If literature on

*ḥisba* is any evidence on the Muslim conduct of economies it proves beyond doubt that *ribā* did not exist in the credit structure of these economies. Secondly, it spotlights the nature of credit transactions in the economy. The number of ways credit was provided to the needy as well as to the businessman can be catalogued from the literature on *ḥisba*. It may be a source of inspiration for current research on *ribā*-free credit in the Islamic world. It provides us guidance on the malpractices which the creditors may engage in to exploit the debtors. Thirdly, one of the conventional duties of the *muḥtasib* was to compel debtors to repay their debts on due dates if they had means to do so.<sup>42</sup> In case the debtor was unable to meet the claim till a later date, he would intervene to get extension from the creditor. And in case the debtor was too indigent to honour the debt, the *muḥtasib* would arrange help from the *Zakāt* fund. This shows that the institution of *qarḍ ḥasana* was backed by state guarantees. It provides guidance for planning a workable system of *qarḍ ḥasana* for a modern economy.

#### (e) *Ownership Rights*

It is obvious that the right of private ownership was honoured and protected in Muslim economies. However, the right was not absolute. For example nobody could raise his building to obstruct light or air of his neighbours.<sup>43</sup> Similarly, it was not allowed to install a flour mill or a leather tanning factory in the residential areas as they could pollute the environment. People could not slaughter animals in the streets or houses to avoid unhygienic conditions.<sup>44</sup> It shows that the state had a right to regulate the utilisation of property in the public interest. Secondly, the *muḥtasib* could compel the well to do citizens to contribute finances for arranging water supply, garbage removal or any other communal service if the funds in the public treasury were not sufficient.<sup>45</sup> Thirdly, public places or part thereof such as roads, bazaars, streets, parks, playgrounds, grazing ground, etc. could not be made the exclusive prerogative of any particular person or a group. It implied that public resources would not be deployed to create a privileged group in the society.

(f) *Manpower Utilization*

One of the functions of the *muhtasib* was to check beggary.<sup>46</sup> Voluntary parasitic begging was severely dealt with while the invalids and economically infirm were provided basic necessities of life from the community *Zakāt* and *Şadaqāt*. The *muhtasib* would compel healthy able-to-work individuals to engage themselves in some gainful pursuit. The public works programmes of the government provided ample job opportunities and the problem of unemployment of contemporary dimensions never existed in the Muslim history. However, it would beg a detailed analysis to find out the exact mechanism through which a full employment equilibrium was maintained.

The *muhtasib* felt a special responsibility towards slaves,<sup>47</sup> who provided the bulk of labour power required in trade, industry, agriculture and household. He would ensure that the slaves were provided with basic necessities of life, that they were helped if the work was of a strenuous character and were allowed to take rest after intervals of duty. This was in line with a number of instructions which the Prophet issued for treating slaves with kindness. It has an implication for the present day industrial labour. The labour may be granted sufficient wages to provide them basic necessities of life. It further implies that the working environments and duty hours may be kept congenial to their health.

The *muhtasib* would also interfere if a complaint was brought to him that an artisan had received the agreed fee (*Ujra*) for a job but had not performed the job satisfactorily.<sup>48</sup> He would compel the artisan to fulfil his commitment or refund the fee. This indicates that the labour has also an obligation towards the employer. They should work honestly and to the satisfaction of the employer. Legislation may therefore be framed to enforce necessary discipline on industrial labour.

On occasions the *muhtasib* would also determine wage or *Ujra* of a particular service if the artisan demanded an unreasonably high wage. In such cases the *Ujra* would be often, *ujra mithl* (wage acceptable for a similar work by others).<sup>49</sup> It suggests that the *muhtasib* may intervene in the negotiations between trade unions and entrepreneurs. The trade unions, who wield monopoly power on labour, may be prevailed upon by the *muhtasib* to be

reasonable in their demands. A similar function is carried out by Industrial Relations Commissions in some countries these days.

(g) *Efficiency in the Public Sector*

Traditionally the *muhtasib* felt impelled to invite the ruler to adopt a commendable behaviour and refrain from improper conduct. This was based on the Prophetic tradition that the best of the *Jihād* was to pronounce truth (*al-Ḥaqq*) before an oppressive ruler.<sup>50</sup> Therefore, rarely a *muhtasib* would stop short of admonishing a ruler for an improper act. The convention filtered down to the staff of the *ḥisba* who would come across state functionaries at different echelons of bureaucracy. It endowed the *ḥisba* staff with an undaunted courage and ruthless impartiality in checking malpractices in government offices. They would deal with complaints of bribery and misappropriation of public funds and take action against those found guilty.

The role of state in the economy has expanded manifold and the size of bureaucracy has also bulged significantly. The quantum of funds handled by state functionaries at each level of government is many times more than the past, when most of the financial powers remained vested in the top administration. Similarly the governments make direct investments in trade and industry and their entire business is handled by the salaried staff. Thus the openings for corruption have increased many times. Added to this is the laxity of moral standards which has gripped modern societies because of loose contact with the religion. It has increased the need to strengthen the functions of the *muhtasib* in the public sector.

Some Western countries have introduced the office of Ombudsman to look into complaints against administrative conduct of state functionaries. The Ombudsman also investigates into certain cases at his own initiative.<sup>51</sup> A similar institution adopted to the moral fibre of the present day Muslim societies would be just in the tradition of having a *muhtasib*.

### **Concluding Remarks**

Most of the functions traditionally carried out by a *muhtasib* have been assigned to different departments of the state these

days. But it is unfortunate that the high moral standard and the spirit of *amr bil ma'rūf wa-n-nahī 'anil munkar* are significantly absent, leading to a high degree of corruption, disregard of public funds, a callous indifference towards justice and fair play in dealings and selfish individualism. In all probability a *muhtasib*'s office would also soon imbibe all these vices and thus nullify its own existence. This obviously leads one to raise the question: How to make use of a highly valuable institution which was operated successfully for centuries by Muslim states? There is no simple answer to this question. One way could be to evolve this institution at a natural pace. As a first step, the *muhtasib*'s office could be established with limited functions. Then a process of training in morality and ethics may be started for the professional staff of the *hisba*. Gradually more functions may be added. A powerful council may be established to oversee the work and conduct of the *hisba*. This council may deal with complaints against the *hisba* staff and grant exemplary punishments where necessary. The *hisba* staff may be highly paid so that temptations of worldly life do not coax them away from their statutory role. Another dimension could be widespread dissemination of information on the malpractices of various trades, professions and government departments to raise the level of social consciousness. The increased consciousness on malpractices (*munkarāt*) will generate an active society and discourage offenders of public morality.

To lend a wider acceptability to the institution, grassroot participation of the public is necessary. For example a committee of merchants of a particular trade may be elected but headed by a *muhtasib* staff. The *muhtasib* may influence and pressurise the delinquent traders through this committee. Similarly in government offices *muhtasib*'s staff may be associated with each office who would perform his official duties primarily by persuasion and cooperation of the staff.

The fundamental need is to raise the moral standards at individual level by enforcing a system of training in houses, schools, mosques and offices. The *muhtasib* can succeed only if the society lends him support by its conduct, otherwise he would also drift into the mainstream of corruption and inefficiency.

## NOTES

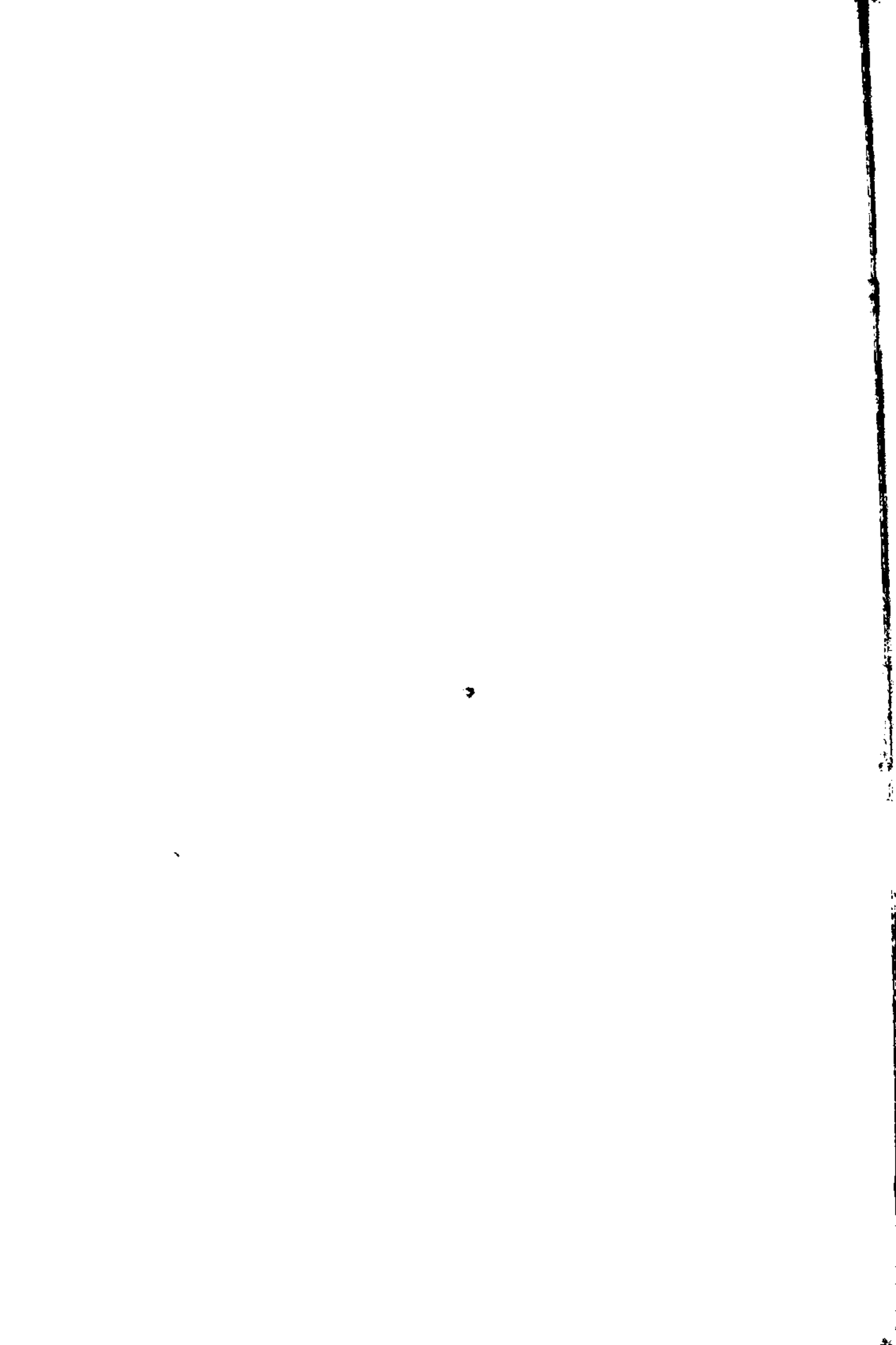
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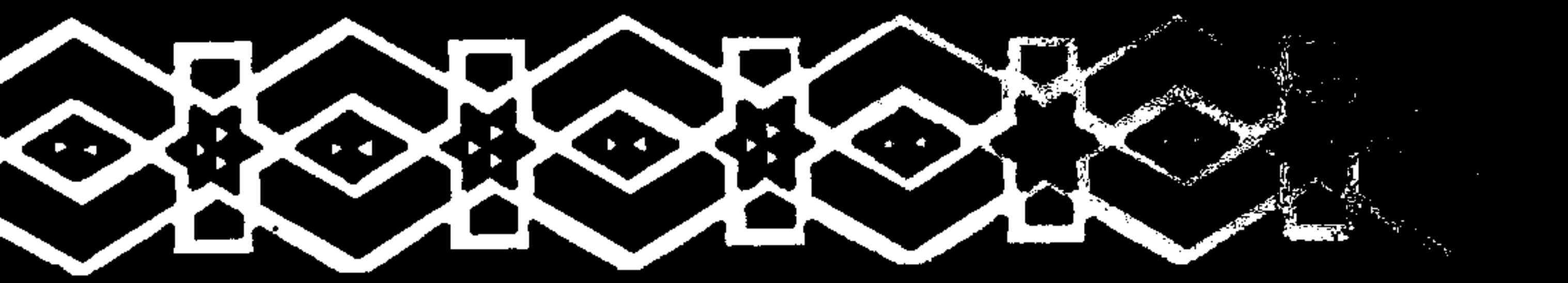
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Shaykh al-Islam Ibn Taymiya (661/1263–728/1328) was one of the most outstanding figures that Muslim history has ever produced. A man of sublime character and towering scholarship, a *ḥāfiẓ* of the Qurʾān and an authority on *ḥadith* literature, he is acknowledged as one of the greatest thinkers in Islamic history. Although a Ḥanbalī theologian and juriconsult, his influence is not confined to any one school of Islamic thought. He is therefore accepted as an authentic spokesman of Islam and has been one of the chief sources of inspiration for revivalist thought and movements during the last seven hundred years.

*Al-Ḥisba fi al-Islām* is one of his scores of writings which is presented here in English translation by Muhtar Holland, presently Director of the Translation and Islamic Centre, Nūr al-Islām, based in New York. Before taking this responsibility, he was Senior Research Fellow at the Islamic Foundation. He has a distinguished academic career and has lectured in Arabic, Turkish and Near Eastern History at the University of Toronto, in Islamic Law at the School of Oriental and African Studies, University of London and has taught classical Arabic and Greek Philosophy at the Institute of Malay Language, University of Malaysia. He embraced Islam in 1969.

The economic challenge of Islamic resurgence has many ramifications: one of them is to develop Islamic guidelines for economic management and policy making in a contemporary Muslim society. *Public Duties in Islam: The Institution of the Ḥisba* being an English translation of *al-Ḥisba fi al-Islām* by Ibn Taymiya is the exposition of the theory of *ḥisba* in the wider context of a just society and an efficient market economy. *Al-Ḥisba* is a moral as well as a socio-economic institution in Islam through which public life is regulated in such a way that a high degree of public morality is attained and the society is protected from bad workmanship, fraud, extortion and exploitation. The book spells out the different stipulations of the Qurʾānic command of *ʿamr bi-l-maʿrūf wa-n-nahī ʿanil-munkar* in lucid terms and is justifiably a treatise on sociology, political science and economics. It presents a wealth of material with penetrating insights for laymen as well as modern economists and policy makers.

