Islam and the Political Order

by
Muhammad Said al-Ashmawy

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Preface
George F. McLean

It is the sign of an exceptionally fine work, in art, in literature, and especially in social thought, that it transcends place and time to speak to the concerns of many peoples at diverse points in history. Such transcendence is particularly important in this period of rapid change, for at such times one is greatly in need of wise guidance that does not lock one into the past—even the recent past in which a work may have been written—but continues to open new horizons as the road unfolds ahead. One test then of a work of exceptional importance for our times is that its message does not soon become dated, but takes on new significance in response to the changing questions raised by the rapid contemporary evolution of objective circumstances and subjective human sensibilities.

This would appear to be true of the present work, *Islam and the Political Order,* by Judge Muhammad Said al-Ashmawy, Chief Justice of the High Court of Egypt, which provides wise insight and guidance in the two contexts whose contrasting emphases constitute the rupture that characterizes our time preeminently as one of change.

Concretely, we seem now to be moving beyond the modem period focused upon scientific reason and its particular competencies, i.e., what it enables us to do or to make, to another age concerned rather with cultural identity, its change and interchange with others, i.e., with what we are and would become. It is a sign of the richness of the present work that it can be read in both these contexts, and continue to shed light as times and questions progress. Let us then look more closely at these two contexts and at the two readings of the present text they suggest. One is limited to the establishment of a distinct political order, while the other is concerned as well with its cultural and religious foundations.

The first reading begins from the fact that the modern era has been marked by the Enlightenment and that this appears essential for the processes of development now sought in many areas of the world. Light is, of course, a primary symbol in all religions: the Bible lists it as the work of the very first day of creation and the basis of all to follow. Modern times have focused upon the light of human reason to such a degree that they have been characterized as an age of rationalism and manifest corresponding strengths, achievements, and eventual weaknesses. By focusing upon reason, especially as delimited by Descartes to ideas that are or can be made clear and distinct to the human intellect, rationalism channeled inquiry into process of scientific discovery, and human freedom into processes of legal codification.

This had many important implications. Through the development of the resulting sciences it has been possible to make the earth more fruitful, and thus capable of supporting and protecting much larger populations. The development of education and communication expanded the horizons of human life and intensified interaction between peoples. The appreciation of responsible freedom as characterizing the person provided for the development and codification of legal rights before the power of the state and for democratic participation in government. Indeed, the modern state, as instituted by its citizens, came to be seen as ruling at their discretion and consequently as accountable thereto. Physically, intellectually and politically mankind made swift and dramatic progress.

This work by M. Said Al-Ashmawy is an integral part of that progress. In its light the text can be read as humanistic in the open sense of identifying the ways in which the implications of the modern recognition and protection of the human person have been translated into legislative and

legal structures in the context of the Islamic culture of Egypt. It is first and foremost an eloquent defense of this work against any temptation to compromise or subvert it

It would be wrong to interpret this text of M. S. al-Ashmawy as a substitution of the rule of man for that of God. Rather, it is a call for man to take up his proper responsibility in the light of the emerging awareness of the person now active in the world. As new dimensions of human freedom open with time it is man's high task to shape his exercise of that freedom by justice and love, forgiveness and mercy. This should image God and thereby manifest His glory; but the message of the present text is to insist that it belongs properly to man to determine how this can be done and to carry it out. In so doing it contributes importantly to a main task for modern Islamic legal and social theory by showing how this new sense of human responsibility for the public order can generate a legal and parliamentary system within the context of the Koran.

Were this all that was implied by the Enlightenment it would be difficult to understand the historically strong negative reaction to the Enlightenment in Islamic circles. There was, however, also a reductionist dimension to the Enlightenment according to which it not only provided new levels of rational clarity, but also closed off other dimensions of human meaning. The letters "ism" which conclude the term "rationalism" reflect this unfortunate restriction. Thus, for many, Descartes' notes of clarity and distinctness became more than positive goals to be achieved to the degree possible according to the matter at hand. They were attributed valuational and normative power as well, in such wise that whatever of human knowledge could not be formulated in clear and distinct scientific ideas was not considered trustworthy, and whatever of human freedom could not be subject to clear legal formulation by the state was to be excluded from public life. The effect of this in both communitarian and liberal states was an aggressive secularism.

In its communitarian (read communist) form all that transcended the state was denied so that there remained only what the state might aspire to control, namely, this world—implying secularism. Correlatively, the whole civic order of public social life was either suppressed or absorbed by the state which became all—implying totalitarianism.

Liberalism took another route, but to the same end. By rejecting in the name of humanism all that surpassed man, it too proceeded to exclude religion from public life, which thereby was rigorously secularized. As liberal, however, through its emphasis upon individual freedom, it left a private realm where religion could find refuge—as long as it remained a willing prisoner therein.

In view of this Western secularizing history, some readers—either from the liberal perspective or, in sharp contrast, from the perspective of integralism—interpret the present text as part of the effort to remove religion from public life. This seems, however, not to be its intent, which is focused rather upon two essentially conjoint steps, namely, first, to identify what is the properly human task in the political order and, second, to reject as blasphemous and idolatrous any and all efforts to provide religious warranty for particular political positions and actions.

In a third and correlative step it would admit that this is situated within a broader and deeper horizon which sees the many human modes in which mankind builds its socio-political structures as ways in which, in common with all creatures, man gives glory to God. This appears when, against political fundamentalism, the text asserts that an authentic fundamentalism would be rational in the sense of adaptive to circumstances and also spiritual in relation to the original and properly religious inspiration of Islamic culture.

In sum then, the first reading of this text would interpret it as part of the modern project to engage men in their task of constructing a new and democratic rule of law. In doing this it looks to the spiritual strength of the Islamic religious context to protect this project from the danger of reducing religion to the merely human. This it fears from the practice of calling upon religion and

the Koran, not only as the ultimate warranty, but as the proximate source of each provision in the construction of a modern state.

In that first reading the term "fundamentalism" could have been introduced for only tactical reasons, namely, as a defense against the charge of secularism. There may be reasons, however, why so external a reference to fundamentalism would appear less adequate, for the text's call for an authentic, that is, rational and spiritual, fundamentalism suggests also a second, complementary and particularly contemporary reading of this text. Beyond seeking merely to open a distinctive space for the political order as a human realization, this second reading would see implied by the text a concern to deepen the foundations and meaning of this human work by tieing it back into the spiritual roots of the culture. Such a reading finds its stimulus, less in the search for rational clarity at the beginning of modern times, than in recent disillusionment with the results of that search.

To see this it is necessary to bear in mind that by the end of the first third of this century a devastating war had left a chaotic Europe sliding precipitously toward a second World War. Science had provided weapons of mass terror and would soon produce the atomic bomb. Liberal capitalism had subjected vast regions to colonial service of other nations. Some countries had fallen into Fascist totalitarianism; others, along with vast numbers of the working class, were calling for a communist version of the same.

Before this Armageddon it became clear that something very essential had been forgotten in the modern enlightenment project. This appreciation generated the seeds of a new search, phenomenological in method, for the dimensions of reality which rationalism had omitted, namely, for personal self-consciousness, freedom and responsibility. Eventually, this would lead to a shift from fascination with vast impersonal human constructs to a renewed attention to personal dignity and responsibility; the search for social cohesion would shift from external material forces to the interior spiritual bases of human commitment. Thus, the way would open to awareness of the cultures men freely create through the complex of their free decisions and the pattern of values and virtues these decisions entail.

In turn, this awareness would point further to the deeper virtues of love and religion as the basic orientations from which a culture derives its cohesion and engages the constant and persistent commitment of its people. Thus, one notes recently across the vast expanse of the world, from Indonesia in the East, through Asia, Africa and Europe, to the west coast of the Americas, joint processes of de-secularization, on the one hand, and of renewed emphasis upon religious foundations, on the other. These processes are found at the same time in such diverse places and cultures as those of Islam and Christianity (constituting concurrent contemporary processes of re-Islamization and re-Christianization); they emerge through such dramatic revolutionary changes as those at work in the liberation of Eastern Europe and in the revitalization of Islam.

In view of this the earlier liberal reading of fundamentalism in simply negative terms of regression into past tribalisms appears itself blind and dangerously unrealistic. The sweeping and urgent desire to return to cultural foundations requires a much more proximate and pressing concern, namely, the flight from the cataclysmic effects of the cultural uprooting which a secularizing totalitarian rationalism pressed upon the human spirit and the corresponding need to rediscover the bases of a new or renewed sense of freedom. Thus, a vast new effort is underway to mine the resources of human cultures for their deeper religious and humanizing principles needed to reconstruct personal and social life for the IIIrd millennium.

In view of the dramatic peaceful revolution against secular Communism in the years immediately following the first publication of the present text in 1987, the cultural and religious

dimensions of the text now appear more salient than in the first reading noted above. In the mid '80's the text appeared to be an eloquent call for recognition of the distinctive character of man's social and political efforts. It continues to be such, but now a second and notably more integral and cohesive reading seems indicated.

Beyond its initial message, now, in relation to the efforts of re-lslamization to rediscover and reaffirm the religious roots of all human life, the text appears to perform two further and essential functions. First, in identifying the task of constructing a political and civic order as proper to man it extends the perennial call of Islam to mankind to reflect the divine attributes in all places and circumstances in the work of creative social construction. Second, at the same time, in warning against too easily identifying any particular human political creation or action as a direct and proper command of God it protects the role of religion in criticizing, correcting and inspiring human efforts. The contemporary culturally oriented context makes attention to the spiritual and religious foundations much more central than had been the case even in the mid '80's. It renews the call of Islam to every person, community and social structure to reflect ever more fully and in their proper manner the divine attributes. If responded to in a combined sense of temporal urgency and spiritual piety this could signal an authentic religious revival.

This would imply actively fashioning, and participating in a public life that reflects the divine. Concretely, it would call for substituting education for indoctrination in schools, honesty for exploitation in business, suasion for demagoguery, for manipulation or for coercion in politics. Muhammad SaId al-Ashmawy sees in this an authentic fundamentalism characterized both by rationality and spirituality.

Thus, in such a second reading the call for authentic fundamentalism shifts from being merely an appendix to a political concern, to being the root of the central concern—the very heart of the matter. In the process the multiple elements of the text achieve greater importance, foundation and cohesion; the text seems to live and progress with the times.

Appreciating the basic coherence of these two readings involves many deep issues, which indeed go to the very essence of the nature of religion. According to S.H. Nasr, in his *Ideals and Realities of Islam* (London: Allen & Unwin, 1966), this consists centrally in the "relation between man and God, or the relative and the Absolute" (p. 16).

In this light, one can see how the modern attention to man, were it to turn in upon itself and become a closed humanism, would exclude God and become a secularism in flagrant contradiction to the core conviction of Islam regarding the centrality of the One God and the unity of all in Him. It is crucial then that this new appreciation of man not be dissociated from the religious and metaphysical context in which the issue of its relation to God is central.

In opening that field of inquiry Parmenides had seen immediately that in order to be able to stand against nonbeing it is necessary that being, in its first instance, be One and eternal, Absolute and unchanging. This strong affirmation of the One imposed upon Plato the challenge of showing how there also could be many beings. His answer was that they were indeed actual and that this could be possible only to the degree that they imaged the One and depended for their being (participated) therein. In Plotinian form this insight became central to the Islamic philosophical tradition through the work erroneously entitled, *The Theology of Aristotle*.

Work upon this relationship which is central to every religion is central also to every metaphysic and philosophy of religion. These, in turn, are required for a resolution of the ambiguities opened by each step in human progress—which is another way of saying, for finding the religious significance of human history.

Thus, the present text raises the issues of how one is to take account of the new appreciation of man and be authentically humanistic without closing off man's relation to God as would a secular humanism, of how one can draw upon the developing importance of human reason without entrapping man in a closed rationalism, of how one can return to the religious foundations of one's culture without, on the one hand, abandoning the real responsibilities of each person for life in his or her day and without, on the other hand, elevating their proper actions to divine and hence absolute status.

Approaching this from the side of tradition, Nasser (p. 98) would insist on the timeless immutability of the law and its extension to the socio-political order. Coherent with Gadamer's hermeneutics, he would call for its "application" to contemporary circumstances, insisting that this is not a compromise of the law, which is perennial, but its fulfillment. It would be part of the search to live according to the Truth, to apply its principles to the concrete conditions of one's life and to integrate all of one's tendencies and activities within a divinely ordained pattern.

But if this be the human responsibility and if indeed social disasters follow from failure to carry it out, then in this task man must make some proper contribution; man's work must then have some identity, and in this sense some autonomy. Does this provide the space required for the legislative and administrative tasks M.S. al-Ashmawy describes?

The continuing task of resolving these issues and ambiguities derives from the effort of each person and community to face life in a manner that is rational, humane and founded in the resources of one's culture and in one's God. That task, however, belongs to other disciplines; it requires a metaphysics for the esoteric as well as the exoteric, the *tariqah* as well as the *shari'a* (Nasser, pp. 121139). Thus, it goes beyond the goals of the present text whose terrain is rather to identify the concrete progress made by mankind, to warn against its misinterpretation or compromise, and to articulate the principles for further progress.

Which then of the two readings of the text is correct, or should we see them as complementary and learn from the answers they provide to both questions and look for more in the future? Contemporary hermeneutics would suggest that a text of great value contains the answer to many questions--many more than the author may or could have had in mind. These questions emerge only serially through time in the minds of its readers. It is thus that classical texts retain and even expand their significance through many generations and quite different circumstances.

On the one hand, this process is one of internal dialogue between the reader and the text as the reader formulates his or her question in a way that succeeds in taking account of part, but not all, of the elements in the text. The issues which remain invite the reader to reformulate the question until his or her horizon converges more adequately with that of the text and reveals a coherent meaning for more of its elements.

On the other hand, this process is made possible through changing circumstances and hence new awareness on the part of the reader. This allows the questions brought to the text to evolve with the times. With such development in the questions there develop as well the answers which the text provides; thus the text truly lives through time with its series of readers.

It would appear to be the measure of the value of this text that it responds not only to the first horizon focused on the development of the political order, but also provides guidance in the present process of de-secularization and re-Islamization of the political order sought at this turn of the centuries. That such a second reading is as true or perhaps even more true of the text than was the first seems indicated by the fact that to the degree the text is read as being deeply and creatively faithful to the cultural and religious roots of Islam its many dimensions and concerns coalesce to form a more rich and coherent whole.

Which of these two readings was actually intended by the author when he wrote these words in the mid 80's? That question is more appropriate to God than to man. Hermeneutics would dissuade the reader from this issue, which in any case would be only of historical interest; it would direct attention instead to the text itself.

Thus, for example, in writing the American Constitution Thomas Jefferson could not have foreseen or intended the present age of communications. It is enough, indeed marvelously so, that he would have written a document so suffused with perduring truths about justice in political life that it would continue to provide wise guidance two centuries later in our quite different times.

Much the same can be said of *Islam and the Political Order* by Judge Muhammad Said al-Ashmawy. It provides wise guidance for many people with concerns which range from building the political order to enabling Islam more fully and effectively to play its proper role in this process. In the dialogue between the two this text of Justice al-Ashmawy has moved beyond judicial interpretation to draw upon both Islam and universal human experience to provide perduring principles upon which true social progress can be based. For this he has both our deep admiration and our gratitude.

Introduction
Muhammad Said al-Ashmawy

God intended Islam to be a religion, but men have attempted to turn it into politics. Religion is general, universal, holistic; whereas politics is partial, tribal and limited in space and time. Hence, to restrict religion to politics is to limit it to a confined area and group, a specific region and moment. Religion tends to inspire man to the best that he can be; politics arouses his worst instincts. Hence, to carry on politics in the name of religion is to transform the latter into conflicting groups and interminable struggles; it is to reduce its goals to a search for prestige, positions of power, and financial gain.

For these reasons, if the transformation is not done out of ignorance, only evil and perverse spirits would attempt the politicization of religion or the sacralization of politics. Both come down to basing in religion opportunism and cupidity, to inventing Koranic justification for injustice, to lending wickedness a vague aura of faith and to disguising as acts of Holy War *(jihád,* see chapter III below) the unjust taking of blood.

When the Prophet—may the love and salvation of God be upon him—directed the lives of the believers, every deed, question and word was under the direction and control of divine Revelation. This explains the Moslem conviction that divine Revelation governed the believer. Nevertheless, on a number of occasions Muhammad contradicted that belief. Once, he stated that his action had been dictated by a war and by his own tactical response; another time he admitted to an error in judgement: 'You understand worldly affairs better than I." There are undoubtedly many other occasions when, if the question had been raised, he would have responded unequivocally that his decision had not been dictated by Revelation but was the fruit of his own reflection.

It is true, nonetheless, that the government of the Prophet—if it should be called that, for the term used in the Koran is "emirat" *(imara)—was* the quite special government of God, in conformity with divine Revelation. That government or that "emir" was chosen by God without those governed, namely, the "believers", being engaged in the decision. In pronouncing the Islamic profession of faith they had handed over to the Prophet the direction of their affairs. Furthermore, the government was arbitrational; men turned to it freely and preferred to carry out its decisions. It was not, then, a government based on authority which in the name of the law forced men to follow its representatives, obey their orders and carry out their directives (even in order to protect themselves).

The government of the Prophet was, thus, a government of God founded upon religious values and moral principles; it never deviated toward becoming a mere matter of rules of political behavior. It can exist only to the degree that there is a prophet, but there was no prophet after Muhammad.

The government (or "emirate") of 'Umar b. al-Khuttâb (634-644), the second of the first four (or "the well-directed"), seemed to situate itself outside the laws of nature. This was an ideal period made possible by an exceptional being and special circumstances which could not be reproduced, and in fact never has been. The Prophet said of 'Umar that he was "one who received a word" *(muhaddath),* that is, that he was inspired almost as a prophet. The truth was in 'Umar's heart and on his tongue; if there was to be a prophet after Muhammad it would be Umar, to such a degree was he an exception or sort of visionary. In fact he opposed in word as well as deed that law of earthly existence according to which when religious people mix in politics or approach doing so it is the latter which prevails. Under 'Umar religious values and principles continued to

dominate, afterward those who allowed the natural to dominate treated the virtues of faith like earthly appetites.

Indeed, 'Umar understood how Islam would reflect the course of events and build the future, where necessary even going against rules of the Koran. Hence, he ruled out temporary marriage and suppressed the rights to alms on the part of the tribes who joined Islam later although these institutions were based upon explicit verses of the Koran.2 Similarly, he forbade conquerors to appropriate the lands of those conquered, though this was against the views of the majority of believers and was based upon the Koran and a tradition established by the Prophet in partitioning the conquered lands of the Kaybar oasis.

After his assassination things once again took their natural course. Just as in economics, according to Gresham's law, bad money drives out good money, so in politics bad behavior tends to supplant higher moral values and principles. In economics an authority may succeed for a time in holding back the application of a law and set a fixed price for merchandise when there is an imbalance between supply and demand; but the laws of economics always regain their force, even through the black market if necessary. Similarly, in politics it can happen that an authority will successfully impose religious values, but once these are mixed with politics the laws of earthly life inevitably regain their sway and politics exploits for its own purposes all that derives from religion.

Thus the successor of 'Umar, 'Uthmân b. 'Affân (644-656), doubled the pensions paid to combatants and then authorized leading believers to establish themselves outside of Medina. 'Umar had always forbidden this for fear that they would act as viceroys, coveting even greater booty and rivaling each other in the pursuit of purely political objectives. This, in truth, is just what happened. Further, 'Uthman favored his clan, the Umayyads, who had dominated Mecca before Islam, and put at their service the resources of the public treasury. This invited the opposition of the Hashemites, led by 'All b. Abi Tâlib, upon whom the Caliphate (656-661) naturally devolved at the assassination of 'Uthman. Since that time, the history of Islam has been dominated by tribal type political conflicts hidden under the mantel of religion. Thus, the conflict between the Umayyads and the Hashemites gave rise to the Umayyad empire; afterward this was toppled by the Alides and the Abbasids who then fell to fighting between themselves, and so on.

To limit political conflict only to the political realm and call it by its proper name situates things in terms of truth and falsehood: the government or the opposition are either in truth or in error. But once one introduces a religious dimension the debate shifts to the very delicate terrain of the licit *(halal)* and illicit *(haram)*. Everything done by the one who possesses power becomes licit and legitimate; it is founded upon the Koran and situated in *shari'a* (see Ch. VI below). Inversely, all his adversary says or does is declared illicit and illegitimate, and one turns to the Koran and *sharVa* or Islamic Law for the means to refute him.

Thus, all the great political and historical conflicts of Islam have been formulated in a religious manner which hides their essentially political character. Each sect pretended to a monopoly of truth and of sincere faith, accusing the others of being in error and of rejecting God and religion. In the divisions which followed, the values and ideals of the Koran were eclipsed by disrepute and false-hood, and Moslems returned to pre-Islamic morals: vainglory based upon lineage and tribal identity, quarrels over words or persons, ruthless battles to gain possession of earthly goods, and stupefaction through the pleasures of the senses. Even such sacred prohibitions as those which surrounded the dead were violated. Refusing him burial with Moslems, the murderers of 'Uthmân b. Affân profaned his mortal remains, then buried him in the Jewish cemetery—it was not until the Caliphate of Mu'âwiya (66 1-680) that the two cemeteries were reunited. The remains of the grandson of the Prophet Husayn b. 'All were left exposed to serve as an example. Those of Zayd

b. 'All Zayn al-'Abidin were exhumed and nailed to a gibbet until they decomposed. After their victory the Abbasids exhumed the bodies of the Umayyad Caliphs and had them scourged. Abul'Abbas al-Saffah, the first 'Abbasid, invited to his palace those Umayyads who had survived and executed them in the most ferocious manner. Then he had spread over their still warm bodies rugs and table cloths, ate with his officers and declared that he never had a more exquisite meal.

Such pagan behavior, totally foreign to Islam, has been unfortunately a constant characteristic of its political history since the death of 'Umar, with the exception of the reign of 'All b. Abi Tâlib (656-661) which was characterized by confusion, and the too brief reign of 'Umar b. 'Abd-al-AzIz (7 17-720). Thus, for all sorts of reasons, many Moslems and non-Moslems live with the conviction that this political system is an integral part of Islam, and even one of the pillars of the faith. Though this confusion between Islam and its political manifestations may well have extended for 14 centuries, it is no less true that it is based upon an error. For that reason, Islamic history has become the history of struggles between tribes, principalities (for example the *taifas* of Moslem Spain), sects and nationalities. The strong emotive charge received by these conflicts from religion rendered them all the more violent.

As a result of this confusion, the Caliph did not come to power by means of an oath of allegiance, an election or some analogous procedure. Instead, he transformed himself both *de jure* and *de facto* into the representative of God, infallible and despotic, possessing the power of life and death over his subjects and the patrimony of the state. This had considerable impact upon Islamic jurisprudence *(fiqh).* Jurists, as servants of rulers, turned the ruler's faults into good works, closed their eyes to the ruler's vices and made religious judicial rulings *(fatwa's)3* against their enemies and adversaries. These were termed infidels, atheists and corrupters in order that their blood might be legally spilled. In addition, in order to defend and justify the acts of the Caliphs, they applied to the Caliphs verses which in the Koran were addressed to the Prophet. Thence arose that disastrous confusion in Islamic thought between the dignity of the Prophet and the office of Caliph. Other jurists, preferring to avoid power, avoided treating anything which proximately or even remotely touched upon authority; they turned away from issues of public rights and concentrated upon such futile questions as whether natural impurity made praying illicit, etc.

Thus, whereas, on the one hand, *fiqh* or Islamic jurisprudence remained at a distance from everything effecting power, on the other hand, it structured itself in terms of the sole concern of pleasing the one who held power. In the end it was left without a clear political theory of an elaborated political system. Today, this attitude still characterizes Islamic thought which prefers to focus upon the person of the leader and his moral qualities—even if they be debateable. It fails to take account of the need to elaborate a clear and just political system functioning according to precise and well-defined procedures in which the leader serves only as the facade or visible part of the system—active, certainly influential, but not a substitute for a system.

At the level of civil society, politicization of the religious and sacralization of politics divided Moslems into factions and sects, each appealing to a particular verse of the Koran or to a particular action or saying of the Prophet *(hadith)* or one of his early followers (tradition), and hiding behind the religious opinion *(fatwa's)* of the jurists. The violent conflicts between them, though apparently religious inasmuch as they accused each other of infidelity, atheism and corruption, were in reality political. Murderous political injustices, always justified by appeal to the Islamic Law *(sharia)* and religious rulings *(fatwá's)*, led Moslems to withdraw from public life in favor of their private affairs. As a result, interest in public action, the sense of sacrifice for the community, the spirit of initiative and the sense of solidarity, all were lost. Each person turned in upon his or her particular interests, family and retainers, generating in the process egoism, laxity, corruption,

recriminations, flattery, opportunism and especially an absence of any project or vision for the future. Thence also came the dichotomies in the Islamic personality between speech and action, actuality and appearance, and between what is hidden and what is publicly manifest.

Such was the condition of Islam and Moslems until March 3, 1924, the date when Mustafa Kemal Ataturk abolished the Caliphate, the institution in which all the aspects of religious politics had been crystallized. From that point onward the tendencies to politicize religion and to sacralize politics assumed another yet more dangerous form. In effect, once the Caliphate had been abolished everyone began to fight over its legacy. Ruling houses aspired to it, while various groups called for its reestablishment in favor of one or another family or leader. In the fever of the competition forces came together and divided, alliances were made and dissolved everything in political life became troubled and confused: one could no longer distinguish who was loyal or disloyal, self-seeking or selfless, wise or ignorant.

As all had but a simple objective, namely to inherit the Caliphate at all cost, whether *de facto* or *de jure,* Islamic efforts began to concentrate upon politics. This extinguished the flame of religion and destroyed its vigor to the point of snuffing out its nascent intellectual life and spiritual renewal. For a fundamentalist current did exist which was both rationalist and spiritualist, and which rejected deceit and compromise. But a political tendency permeated by the mores of politicians and immersed in the tumult of partisan divisions came to seize the whole terrain and to do everything possible to impede any such developments.

The slogans of religious politics took on diverse forms: sovereignty belongs only to God *(al-hákimiyya lilláh),* to the exclusion of man; a religious government is necessary in order to instill an Islamic regime; "the missing obligation" of *Jihad* or Holy War must be reestablished in order to combat governments and intellectuals who are hostile to the movement and to annex the "territory of war" *(dar al-harb)4* to the "territory of peace" *(dár al-salâm)* or "territory of Islam" *(dâr al islam);* society must apply the law of Islam, *shari'a,* if not, war will be declared against society, or society must impose the tribute upon non-Moslems, otherwise it is pagan and impious; the Islamic solution will resolve all the national and international problems of society; Islam is both a religion and a state *din wa-dawla;* a Moslem must have no other nationality than Islam, no other allegiance than to the Islamic community or *Umma,* to the exclusion of his country or nation.

All these elaborate formulas functioned according to the rules of propaganda, being repeated and driven home to the level of indoctrination without any consideration for authentic moral values. Their sober consideration illustrates the distance separating political and activist Islamic fundamentalism from any authentic fundamentalism, which would need to be rationalist and spiritualist.

The confines of the present work do not permit the treatment of certain questions which, nevertheless, for completeness need to be evoked rapidly in this introduction.

1. Whether deliberately or not, Moslem thought has long confused the need for the community of believers to be endowed with a government with what is termed the Caliphate, Imamate, or Islamic government. It goes without saying that every society requires a government. Every human group, even if it consists of but three persons, needs a chief, *emir* or commander for reasons well-elaborated by modern political philosophy. Similarly, ethology has shown the need for some dominant figure in any group of animals.

However, arguments based upon this necessity hide the indispensable debate regarding the nature and the form which the government should take: should it be that of a single person with absolute power, or one based upon certain institutions of which the ruler is but the visible part, the facade of the system? Who is qualified to govern today when the institutions of a modern state are

diversified and the sciences, including those of religion, are so specialized that no single person can be capable in all of them; is it only the *ulamas* or could it be any good Moslem? Should such governments be considered as *de jure* or *de facto,* infallible and sacred, or something simply mortal? Is a government responsible to its people or only to God? Moslems can no longer avoid these questions by hiding behind the generic need of every society for a government, if what they really want is to establish the basis for a religious government which would be the endowment of only some persons.

2. An Islamic renaissance is of vital importance for Islam and Moslems as well as for the whole of humanity, but it must be based upon a renewal and modernization which assimilates in depth the past, present and future, the laws of science, logic and history. It would be extremely dangerous for Moslems—and humanity in general—were Islam to be emptied of its religious dimension and reduced to political Islam for, as noted above, that would be tantamount to transposing the political process to the field of religion. Moreover, a primacy of political action over spiritual and intellectual efforts would turn any Islamic renaissance into mere expansionism in the sense of a purely material, blind and uncontrollable movement. It is astonishing to find that the leading advocates of such religious politics appear to have some awareness of this as is indicated by their use of the term a "religious wave."

3. It goes without saying that every state must be based upon the principles and religious values of the majority of its people. In this sense one can interpret the formula "Islam is both a religion and a state" as signifying simply that both state and society should share the same religious and human values. This requires that the society and each of its members work seriously and sincerely both in word and in deed to realize these values. For values and moral rules must flow from the structures and practices of social life; this cannot be imposed from above. Indeed, governments image their people, who, in turn, "have the leaders they merit."

Distinguishing politics and religion, we would stress that political action is the work of simple mortals who are neither sacred nor infallible; governments are elected by people, not by God. To call that distinction laicism, that is, atheism, can only be partisan fanaticism which confuses the cards and mixes different matters, for this distinction is indispensable for uplifting Islam, impeding its exploitation for political ends and avoiding the numerous errors which have marked its history.

4. It must be understood that Islam is more than its historical manifestations, whether good or bad. This understood, one can proceed to evaluate correctly its problems. Thus, the Caliphate in particular and the political regime in general are only concrete social forms which have appeared alongside religion and which assumed its appearance. Even if they were to be totally or partially corrupt that would not invalidate Islam as a religion. On the contrary, it is the confusion between the two levels which, in allowing the evils of the former to be attributed to the latter, corrupts and invalidates Islam. Only once one has well distinguished the basic religious reality from its form, religion from its historical manifestations, can one identify the historical errors and corrupt forms and separate them from Islam in order to envisage a more wise and sane practice.

Unfortunately for such a project, a strange tendency has arisen affirming that Islamic history has been falsified. According to this theory, the *abbasids* would have deformed the work of the *Urnayyads,* the *Shiites* that of the *Sunnites*, and so on. One might expect that such an idea would have originated with non-Moslems or a so-called lay Moslem tendency. But this is not at all the case for it reflects, rather, the partisans of the politicization of religion. Like Oedipus who gouged out his eyes in order not to have to confront reality, they defend the theory in order to avoid facing the injustices committed by the successors of "the well-directed" Caliphs or by their lieutenants.

However, in hiding such deeds as unflattering to Islam one increases the risk of their being reiterated, whereas on the contrary it is important to denounce them and declare them contrary to Islam. Worse still, one opens the way to rejecting the whole Islamic heritage. When one accuses such and such a dynasty or Caliph of having falsified history, that accusation redounds on the institution of the Caliphate and upon the entire *Umma* or Islamic community. It implies that the Caliphs have not lived in the fear of God and that this community, rather than refuting these calumnies, built its history on illusions and lies. If that accusation is well-founded, must one throw away the *History* of Tabari (839-923) and that of Ibn alAthir (1163-1239) on the grounds that their authors were beholden to the powers of their times and falsified history? What then would become of the interpretation of *Tafsir* of Tabari, the *chef d'oeuvre* of Koranic exegesis? To what Moslem work could one continue to refer? Our modern Oedipuses can pluck out their eyes if they will, but their accusation is baseless. In his or her faith the authentic Moslem should reject all that is contrary to Islam and Islamic Law *(shari'a)* even if it comes from those in leading positions and seems true on the basis of having been constantly repeated.

5. The Third World, which includes Egypt and the whole Middle East, is going through grave economic and social crises. These are due largely to the disorganization of political and admin istrative power in those countries since the '50s, to the lack of social cohesion and to new values. By lack of seriousness, maturity and realism as well as by ignorance, political powers too often have squandered the resources and exhausted the life forces of the nation without being concerned with authentic development. Worse still, they have corrupted the people by not being accountable to them—at least in the short term or while they govern. This allows the masses to run wildly after their aspirations, rather than holding themselves to the capacities of the country. All are given to consumption without caring about the proportion of their income to their work, or their aspirations to their means. The accumulation of goods has become the gauge of social status at the expense of the social, economic and political orders. But nothing can quench this thirst for consumption, for an individual endlessly discovers new needs or some social privilege had by others from which he or she is excluded. The result is a permanent sense of frustration.

Persons in Islamic politics exploit these crises and frustrations in order to achieve their own ends. Thus, they claim that the application of divine law, which they alone can guarantee, will resolve the crises and fulfill all hopes, ignoring that other law of earthly life: "to each according to his works." In support of their political promises they invoke the verse from the Koran: "If the inhabitants of that city had believed, if they had feared God, we would certainly have given them the blessings of heaven and earth" (VII, 96). But perhaps for lack of understanding, they do not mention that divine blessings are inseparable from work on which they depend and for which there is no substitute. Islam ennobles work: it relates faith to pious works, which certainly include ritual obligations, but especially every service which is useful for life and for mankind. In the words of 'Umar b. al-Khattâb: "I would rather die among my people searching hither and yon for my daily bread than die in combat." In other words, work is more meritorious than Holy War, *Jihad* (see Ch III below for a clarification of this term).

Any authentic Islamic fundamentalism should reunite the human spirit and renew religious thought, especially by affirming the following.

a. In the present situation preaching demographic increase in the Islamic community *(Umma),* particularly in Egypt, will weaken society and menace Islam. Attention must be focused upon the duality of Life. All individuals must give of themselves unstintingly, while not consuming beyond their means. For lack of planning, current demographic trends impede development and threaten to undermine the entire social structure.

b. Work is a duty for all. Pious works include not only ritual obligations, but especially all useful and honest occupations of whatever sort. The true believer is one who keeps his aspirations in proportion to his capacities, who does not seek material accumulation as a sign of social status, who is not envious of the social status of others and who does not generate envy in others.

c. "Prayer forbids all immoral or guilty action"; the goal of ritual obligations is moral well-being, for morals are the cement of society. They bind each individual to their group and each group to the whole, thereby facilitating work and multiplying energy. The true believer not only refrains from doing evil to others, but works efficaciously to prevent evil, to help all and to construct tomorrow's society.

d. Each action should be integrated with all others at the level both of society and of all humanity in order to achieve a high level of civilization oriented toward the Almighty, and in which each man or woman in the world should be a center or pivot.

e. Certain persons, including those who adhere to religious politics, call for the substitution of allegiance to the Islamic community or *Umma* by allegiance to the nation, which they consider to be pagan. This is nihilist and anarchist for it saps Egyptian patriotism and leads the country toward dissension: no more obedience to the government, taxes, conscription, social services, etc. Where the Moslem community constitutes a stable visible unity, a switch to such an Islamic allegiance could not take place without long preparatory work. It is not by destroying what exists in order to jump into the unknown that one constructs the desired Islamic state. On the contrary, anarchy and disorder would reign in the transitional period and from such disorder no viable social entity could be expected to evolve. Besides, one need but look at Islamic history to note that particular allegiances have always existed, that allegiance to one's country has always been recognized, and that the Islamic state has always been an aggregate of disparate entities and quasi-independent governments.

It is not the intent of this work to take a position in favor of any particular *politique* or government. In one way or another all political and economic systems, whether in Egypt and the Middle East or anywhere else, are deficient and corrupt and in need of radical changes. But such changes must be built upon serious, well-considered and healthy foundations. These must have a humanistic base and an elevated vision; in the long run they must prepare for an international society.

Finally, this essay would like to join others in contributing to enlightening Islamic thought, to renewing religious reflection based upon rational and spiritual Islamic fundamentalism, and to elaborating clear and well-defined political and juridical positions.

God, the Highest, is the master of success.

Chapter I
The Sovereignty of God from Tyranny to Fanaticism

In the *Psychology of the Masses,* Gustave Le Bon shows how human collectivities, whatever be the value of the individuals of which they are composed, inevitably tend to allow themselves to be guided by words and symbols, even if these are manifestly erroneous. Sooner or later from this come the disasters and catastrophies witnessed by contemporary history both East and West. Based on this peculiar trait, adds Le Bon, the masses tend to allow themselves to be guided by tyrants who are deeply aware of how to awake dreams and illusions by manipulating language and symbols, without even proposing precise projects. The tyrant, he continues, employs the logic of propaganda, creating a slogan for every occasion. His language is brutal and exaggerated; to logical discourses he prefers rumors, to pardon he prefers threats. In his mouth defeat becomes victory, retreat becomes redeployment and all is taken in stride. He acts only to destroy, treating all troublemakers who unmask him as the agents of foreign powers, and those who oppose him as enemies of the nation.

If the politics of the tyrant are extremely dangerous for the people, they become even more so when, through recourse to religious discourse, he claims to speak in the name of God, to represent Revelation and to hold a monopoly upon religious exegesis. Whoever denounces this manipulation and trickery is no longer simply a traitor or an agent: he becomes an infidel, a heretic, an atheist renegade. Manifestly, as we shall see, all these procedures are at work among the modern practitioners of the politicization of religion through violence and terror. They specialize in confusing throne and pulpit; they barter the word of God and the prophetic tradition in order to nourish the treasury of their state.

In Egypt, political Islam was born at the end of the 1920s, but only recently has it begun to be inspired by similar ideology born on the Indian sub-continent. In that region of contradictions and on the basis of complex historical circumstances there emerged an Islamist trend through crossbreeding the inferiority and persecution complexes of minorities, the hate of colonialism and an erroneous understanding of Islam. Its best known representative was Abul-Ala al-Mawdudi, author of, among others, *The Islamic Government (Alhukiima al-islâmiyya).* This work is based upon a series of unexamined postulates the sole object of which is to provide a basis for the conclusions of the author. Its reasoning is entirely closed in upon itself, amounting more to an apology than to a reasoned analysis. On this basis he draws from the religious patrimony whatever serves his argument and skips the rest in silence. He prefers his own suspicious exegesis to that of authoritative writers, and third rate jurists to the masters of Islamic jurisprudence *(fiqh).* He twists verses from the Koran, citing them out of context, and passes mutely over the circumstances of Revelation when they contradict his interpretation. In the end, it amounts to exaggeration, fanaticism and a contrived conception, unchanging and imprisoned by his imagination.

These troubling theories were spread throughout Egypt in the I 960s where they were promoted by circumstances analogous to those in which they had been born in India. In *Signs of the Road (Ma 'alm fil~tariq)* 5 one finds the same apology and, in a more palatable style, the same conclusions. Finally, they were taken up by a group with the violence and extremism of their Indian predecessors. Though adapted to their own conditions, the theories remain totally contradictory to the Egyptian people and the tolerant and merciful spirit of Islam.6

A Fossilized Thought

This doctrine provides premises on which all is founded *a priori,* and which it is not permitted to discuss or verify. On that basis it constructs a predetermined edifice whose coherence is assumed to demonstrate its validity in advance. But the alert reader will not fail to notice that the construction collapses once its premises are discussed, and that its conclusions are unable to withstand even the most summary examination.

From another point of view readers of works in philosophy or jurisprudence are well aware that these doctrines generally are constructs of the spirit and quite distant from concrete considerations. Though in themselves coherent and well-founded, critical comparison with other intellectual constructs of the same order raises questions. That is why the believer must read much and reflect broadly and deeply in order to sharpen his insight and form his judgment so as to accept critique and reject fanaticism.

Aware of the risks they would run in discussing their *a priori* positions, those engaged in political Islam employ the tools of tyrants, that is, propaganda and indoctrination. They allow their positions to be discussed rationally neither by their followers nor by their adversaries. Nor is it allowed to become interested in any other thought or logic than their own—if these be the correct terms. Like tyrants they reason in terms of the dictum "whoever is not with us is against us." That is, whoever does not behave within our objectives is a criminal outside the law~ whoever blocks our way is an impious renegade.

Psychiatry characterizes schizophrenia as an abuse of logical discourse leading to affirmations according to one's special logic, rather than those which pertain to common sense. This incapacity to correspond to reality results in a dichotomy between the real world and oneself. If one transposes the pathology of schizophrenia from the personal to the collective level one has his finger on the nature of the sickness which taints the politicization of Islam with violence and terror.

Despite its multiple defects this ideology through manipulation and indoctrination appears in the eyes of many to be closest to the truth. Its followers believe that it is sufficient to continue without cease to hammer home slogans in order for their dreams and hopes soon to become reality. Despite, or rather because of that, the orientation they represent should be examined more closely, whatever be the dangers to which the researcher who dares to enter into this area exposes him or herself. If they want to reflect effectively they will understand that only by subjecting their ideas to the test of scientific examination will they be able to understand themselves and their doctrine. One can understand oneself or others effectively and be sure of the truth only on the basis of deep examination. To know the other's point of view, even if it be erroneous, is the only scientific manner by which to become convinced and thereby to have confidence in oneself and to have views which are true and strong. As said by 'Umar b. al-Khttâb: "One who ignores where error is located deserves to fall into it."

The principle slogans of political Islam are: "Sovereignty belongs only to God, the sole judge and legislator; and he who says or thinks otherwise is an infidel"—"Government must be according to divine Law solely and entirely; none of its provisions can be amended, suspended or considered relative or obsolete; if the texts are obscure one should refer them to the *ulamas* who alone are able to interpret them and pronounce judicial rulings, religious opinion *(fatwa's),* and judgment."— "Contemporary society is pagan and must be eliminated entirely"—"There are only two parties: that of God*(hizb Allah),* that is, the leaders of political Islam and their followers, versus the party of Satan (all their adversaries); the former should carry on a Holy War *(Jihad)* everywhere and without quarter or mercy until the government of God is installed."

Let us discuss these slogans one by one.

God Alone Is Sovereign

When in the course of one of the battles against 'Ali b. Abi Tâlib, Mu'âwiya b. Abi Sufyân felt that victory was slipping away, his men brandished their Korans on the ends of their lances, thereby calling for a cessation of combat and recourse to arbitration *(tahkim)*. Giving in to the wishes of one part of his troops against his own preferences 'Ali accepted arbitration. The other part of his troops, who opposed this decision, took up arms against him and the Moslem community, and thus came to be called *Kharijites*. On that occasion they first framed the slogan "God is the only sovereign" *(Ia hukm illâ lilláh).*

In that specific context the expression signified that recourse to arbitration was contrary to the divine will; that the war should have been carried through until the judgment *(hukm)* of God had designated a winner. To those who opposed him with this slogan he was accustomed to respond: "The statement is true, but you employ it erroneously." Today that response still remains best, for if no one, especially in these times of violent fanaticism, can contest that sovereignty *(al-hâkimiyya)* belongs only to God, this certainly is not so in the sense in which the Kharijites understood it. That would amount to denying the free will God had given to man, and to undermining the punishment due evil-doers in this world and in the next. Still more broadly, that erroneous conception can be traced to the philosophic-theological doctrine of divine predetermination *(alquadá'wal-qadar),* according to which to affirm that man can be the free author of his acts amounts to placing him on the same level as God—which would be a form of polytheism. If that be so then on what basis could man be judged here and in the life beyond?

Every being endowed with reason understands that beyond his own will there is that of God. But he understands also that the divine will does not abrogate his own free will and responsibility. This is according to all revealed religions: man decides what he wishes and if his will corresponds to that of the Almighty what he wishes will happen. But man remains responsible before God for his acts and choices; he cannot escape this under the claim that it is the divine will. When this discussion appeared at the time of the Prophet he forbad Moslems to engage in it, aware of the risks of division this quarrel among sophists would raise in his community. Certain persons once again evoked it in the time of 'Umar, which provoked his anger and warnings against them.

One cannot keep from recalling here the defendant appearing in the criminal court of Upper-Egypt who said to the judge: "It is not I who killed, it is God. . . . If God hadn't wanted it, I wouldn't have done it. I was but an instrument of His will." What society could survive, what law could be applied in terms of such foolishness? Certainly, in the last instance sovereignty belongs only to God, the sole master of wills and of the final judgment; but in this world it belongs to man.

The History of the Idea of the Sovereignty of God

The slogan "God alone is sovereign" arose on the occasion of a political conflict where it served as a tyrannical political strategy for seizing power. Each time it has reappeared since then it has had the same meaning. Thus, numerous Kharijite sects have appeared in history: Azraquites and Najadat, Ibadates and Sonfrites, etc., ... All have always been looked upon by other Moslems as Kharijites, that is, as dissidents who by murder and terror have excluded themselves from Islam and from the unanimous consensus *(ijma')* of the Moslem community. All this unfolds as if forgetting the origin of the designation in the conflict in which they opposed 'Ali, which manifests

their true nature as dissidents of Islam. In this sense, the term Kharijite is less a name designating a group of sects than a qualifier for all those who, by manipulating language and exploiting religion in order to arrive at their political ends, place themselves outside of Islam and its law.

The Kharijites have sometimes pretended that they have taken up arms against society because it was not governed by 'Ali, but that was only a political maneuver on their part. In fact, throughout history they have remained opposed to 'Ali as to all governments; they have denied any legitimacy to governments and refused to recognize any merit in them. They have done so because at the heart of their doctrine lies the rejection of any government which does not arise from their ranks. Thus, they authorize themselves to spread terror and violence in the community, to spill blood, to outrage every honor and to steal goods.

In reality, the doctrine of the sovereignty of God in its political derivations has nothing to do with Islam. It appeared first in ancient Egypt where the Pharaoh was considered the image of God on earth and the sole source of legitimate political and religious authority. Thus, when the courts condemned anyone to death, the sentence was deferred to the Pharaoh as the sole person who, in virtue of his priesthood, had the right to take the life of one of his subjects. If he confirmed the sentence it became literally a "judgment from God".

Julius Caesar, when occupying Egypt, was seduced by this concept of power and wished in turn to become a divinized sovereign. This provoked a revolt by his lieutenants and ultimately his assassination by his natural son, Brutus. Later in the Middle Ages philosophers and theologians turned to this same notion to legitimate the power of European princes and kings, explaining either that the prince is the shadow of God on the earth, or that they govern in virtue of a divine right, or that their accession to the throne and their acts are directed or supported by the will of God. In all these cases, the sovereignty of the prince was confused with that of God.

In contrast, one of the greatest achievements of Islam was precisely to free humanity from adoration of any human authority, whether prince, priest or some other chief. Islam neither recognized nor imposed upon man adoration of anyone other than God. It considered all servitude of man by man, whether freely consented to or imposed, as a renunciation of the Almighty and His law. For this reason, there is no verse or *hadith* concerned with organizing political power, granting specific rights to governors or endowing clerics with any competencies. Islam has an acute consciousness that political power based upon a religious right, tends toward a tyranny in which men substitute the adoration of a prince or cleric for the adoration of the one sole God.

Partisans of political Islam are the first to recognize this as the first effect of Islam. Their devotion begins once they require their followers and then the rest of humanity to fall in behind their chiefs and their interpretation of the religion. As 'Ali saw very well, beginning from a true word one comes to an erroneous interpretation in which men are no longer the servants of God but of another man whom they call guide, *imam*, *emir*, etc.

Having appeared with the Kharijites, the notion of the exclusive sovereignty of God was subsequently exploited by the Caliphs in order to provide religious legitimation for their power. *Mu 'awiya b. Abi Sufyán,* the first Umayyad, said: "The world belongs to God and I am His lieutenant. Consequently, all that I take belongs to me, and all that I leave to men is purely the effect of my favor." One century later, *Abu Ja'far al-Mansür,* the second Abbasid *(754-755),* said the same thing in other terms: "0 people! We have become your chiefs and we command you in terms of the right which God has conferred upon us and of the authority he has given us. I am the lieutenant of God on His earth, and the guardian of His property." The confusion arises, as is evident, from the fact that the Caliph *(khalifa)* came to consider himself the *lieutenant* of God and not the fifth *successor* of the Prophet, according to the original sense of that term. Further, that

formulation is only an Islamic version of the theories cited above, where they were described as foreign to the spirit and letter of Islam.

Only too naturally the doctrine against which 'Ali b. Abi Tâlib, good Moslem that he was, had struggled till death, became a key weapon by which the usurpers endowed their power with divine legitimation and which rebels against all manner of authority used to found their claims. Both these cases imply imposing upon God and a transgression against Islam in the name of Islam, for in reality it is only men who govern and who struggle to gain this power. Only during the reign of the Prophet was government that of the sovereign God, for according to Islamic dogma Mohammed acted under the control and direction of divine Revelation. After his death there remained only men, all equal, none of whom was, like him, inspired directly by Revelation. Their government is merely one of men: some gain merit when they follow the righteous path, others draw guilt upon themselves when they stray therefrom. Any other doctrine serves only to surround a government or its opposition with a halo of infallibility and with a sanctity whose effect is to relieve it of all responsibility.

Islam and Judaism

The instauration of a government of God would mean, it is claimed, the exclusive and integral application of His law, for he alone would hold title to the right to judge and to legislate. Upon analyzing this thesis we will see that it is strongly influenced by Judaic conceptions which penetrated Islam through what has come to be called the Jewish traditions *(isrá'iliyyat)*. In effect, of the five books of the Pentateuch (Genesis, Exodus, Leviticus, Numbers and Deuteronomy) which tradition attributes to Moses, the last three contain very precise rules of law. Due to the very pronounced juridical character of the Pentateuch, Moses was called the "legislator" and the Torah has been called the "Mosaic Law". Moreover, Judaism became especially concerned with relations between men *(mu 'âmalât')* to the point where the term *shari'a* signifies in Judaism the field of law and the jurisprudence related thereto. In contrast, in its primary sense as indicated by its root, *shari'a* is the way or path laid out for us.

In contrast to that of Moses, the prophetic work of Mohammad is essentially in the moral order; only in an auxiliary manner does it have a juridical dimension. As he said himself: "I am the prophet of mercy" and "I have been sent for the development and perfection of moral virtues." The term mercy *(rahma)* and its derivatives are found 79 times in the Koran, in contrast to merely four occurences of the term *shari'a* and its derivatives. This shows clearly that mercy is at the heart and the source of the Islamic way:

> Peace be upon you. Your Lord has prescribed for Himself mercy. For whosoever of you does evil and thereafter repents and acts rightly, God is forgiving, compassionate and merciful (VI, *54).*

Of the 6000 verses which compose the Koran, hardly 700 involve legal prescriptions either in matters of practices of cult or *('ibadât)* in matters of relations between men *(mu'ámalát)*. If one limits oneself to these latter, one finds only 200, or one thirtieth of the Koran, and if of these one puts aside 200 which were abrogated by later revelations only 80 remain in force.

Nevertheless, neglecting that basic difference between the two prophecies, Islamic thought concentrated on the rare juridical questions treated by the Koran, elaborating around them reflexions, judgments and judicial rulings and fatwâ's. All of this became an integral part of

the *shari'a* or Islamic Law to the point that today by *shari'a* is understood essentially Islamic jurisprudence *(fiqh)*. Forgotten is its primary sense of the way or route laid out: "Then we placed you upon a road coming from our command; so allow it" (XLV, 18). This is an indisputable judgment upon Islam, namely that it is a deviation from the proper nature of Mohammad's prophecy.

What rules of law does one find in the Koran? In penal matters there are only four Koranic penalties or punishments*(hudud):* for theft *(sariqa),* for fornication *(zind),* for callumnious imputation of fornication *(quadhj),* and for brigandage*(hiraba)—plus* the law of the talon specified only for homicide (its application to assaults and personal damage is the result of the Judaic imprint). In civil matters there is one verse about selling: "Allah has permitted selling and forbidden usury" (II, 275), which does not determine the precise sense to be given to these notions, and another on obligations: you who behave, write down the debt you incur along with its stated time . . . (II, 282). Finally, regarding personal statutes the Koran fixes the rules of marriage, divorce and inheritance, all of which have occasioned important efforts at interpretation in Islamic jurisprudence.

If the legislative aspect had been more important than the ethical aspect for the Koran it would have contained much more numerous, precise and complete legal rules. Certainly, the prescriptions found there must be applied and in a proper manner; but there is no reason to focus upon them to the neglect of the most important part of the Koran, namely, ethical values and mercy. The Koran is concerned above all to form the conscience of the believer and to render him vigilant as regards his own behaviour, "Yes, God ordains justice, beneficence and liberality regarding one's relatives; He forbids indecency, dishonor and rebellion" (XVI, 90); "He will surely demand an account of all, namely hearing, sight and heart—all of those shall be examined" (XVII, 36); "Read your book! It is sufficient today for giving an account of yourself' (XVII. 14). Finally, it must be stressed that even the verses with a legal sense do not stop at stating rules, but always insist on faith and moral conscience which should have precedence over these rules:

> If you divorce wives before you have touched them and you have already paid what is due them, give them one half of what you have appointed, unless it be they forego it or the one who holds the marriage contract does so. To forego is more in keeping with piety. Forget not to exercise generosity one toward the others. God sees perfectly what you do (II, 237).

The Notion of *Hukm* in the Koran

The term *hukm* in the context of the Koran does not mean political authority as it would in modern languages, but the judiciary in the sense of deciding instances of litigation ("God commands you to pay back deposits and to judge and in accord with justice when you judge between men" (IV, 58) and "God will *judge* between them and resolve their differences" (XXXIX, 3), or wisdom:

"When Joseph attained maturity we gave him wisdom and knowledge" (XII, 22), or as regards the prophet: "Those are the ones to whom we have given the Book, *Wisdom,* and Prophecy" (VI, 89). The idea of political authority is expressed in the Koran by the term *amir* (authority, command), whence *amir* (chief or "emir"). This designates the one who holds political authority, whence the title of *amir al-mu'minin* (commander of the believers) given to the Caliphs since

'Umar b. al-Khattâb. This is corroborated by the usage of these terms by the first Moslems as indicated by the words of *Abu Bakar al-Siddiq,* the first Caliph (632-634), a little before his death:

"I would have preferred on the day of the *saqifat Bani Sa' idas* to abandon the Command *(hadho l-amr)* to 'Umar b. al-Khattâb or to *Abu 'Ubaydda b. al-Jarrah* so that he would have been the chief *(amir)* and me his lieutenant *(wazir).* In the same sense, when Abu Bakr wished to make 'Umar b. al-Khattâb his successor he said to the Companions: "Deliberate among yourselves regarding the Commander *(hadho l-amr)."* One finds this expression numerous times and always in the same sense in the proposals of 'Umar b. al-Khattab and of 'Alib. Abi Tâlib.

In a Koranic context then one cannot interpret the notion of *hukm* in the modern sense without gravely altering its meaning.

The Usupration of the Dignity of the Prophet

Let us return now to the judiciary: if one claims that only God can judge disputes between men, we must note once again that the rules of law of divine origin found in the Koran are insufficient in number or precision to enable one to decide cases. Thus, one is forced to have recourse to elements drawn from human sources.

Those who follow political Islam always invoke the same verses in this regard, namely, "No! by Lord! They will not believe till they make thee judge regarding their disagreement. Then they will not find in themselves the possibility of escaping what you have decided and will surrender totally" (IV, 65)—and "We have sent down on thee the Book with the truth, so that you mayest judge between people according as God has shown you" (IV, 105). In those two verses God addressed the Prophet and him alone. The first denies the name of believer to Moslems who do not make Mohammad the judge of their disputes, or who would not enforce his decision. There is nothing surprising there: the Prophet who received the revelation should be the sole arbiter of differences arising in the society of the first believers in order to guarantee its stability. One cannot say on that account, however, that one loses the character of being a believer if he does not hand over voluntarily to another man, no matter how wise and highly placed, the settling of his affairs. There would be in this a strange abuse of power indicating that one who suggested it had no sense of the field of justice. More gravely, it indicates that he would assume for himself a competency explicitly reserved by God for the Prophet. God addressed only the Prophet and no being endowed with reason could pretend to the vision that God declared he had given to Muhammed.

An analogical interpretation of verses exclusively concerned with the Prophet is an extremely grave matter, for it results in effect in usurping both the dignity of the Prophet and the prerogatives of God. What is remarkable here is that the preachers who use such a procedure consider themselves in a privileged relation to divine Revelation. Sometimes they suggest to their close associates that a new idea has been revealed to them through direct access to the heavenly spheres. At other times this appears indirectly through a slip which allows the claim to be seen explicitly. Thus, one of them wrote that once his group had won, "the warlike Surahs would come tumbling down and the clack of their verses would announce the rumbling of arms." Such implicit claims that the speaker has received or prepares to receive as a new revelation closes off any further discussion.

Perhaps it was to such usurpers that the following word of God was destined— "Say: shall I tell you whose acts are the most useless and who will be the greatest losers in their life in the world although they think they acted well?" (XVIII, 103-104). The least offensive aspect of such an attitude is not that it is difficult to know whether such ignorance is pretended or real. Whichever it

is, it clashes with the attitude of the Prophet whom Islam has always considered to be in a permanent relation with Revelation but, nonetheless, who always affirmed that his judgment could not be likened to a divine judgment. As the *hadith* or prophetic verbal tradition specifies: "If faced with two positions, and I happened to judge wrongly in favor of the most eloquent person, he would not for that reason escape that part of hell which he deserves." In other words, the judgment of Muhammad, despite his dignity as a prophet, remains that of a man and not of God.

The Proper Method of Koranic Exegesis

Those who insist upon the thesis of the sovereignty of God refer constantly to a verse according to which "those who do not judge people according to what God has revealed" are "unbelievers," "unjust" and "perverse" (V 44-48). This is perhaps the most revealing example of the deception to which, for purely political purposes, they subject the meaning and purpose of the Koran. To understand the real meaning of a Koranic text one must attend to the circumstances of its revelation *(asbab al-nazal).* Specifically, those verses were revealed when the Jews of Medina, after having asked the Prophet to arbitrate a matter of fornication concerning one of their people, hid the penalty of stoning foreseen by Judaic law for such cases. As the best exegetes have seen clearly,9 the people of the Book are the sole referents of these verses. But when one cites those exegetes to those who wish to pervert the sense of these verses in order to excite the crowd, they try to escape by slight of hand or unknown glosses—if they do not purely and simply impose upon these verses their personal interpretation. But may one interpret the Koran and the Islamic Law *(shari'a)* in this manner without any rule or method?

The first rule to respect in the exegesis of a Koranic verse is that it must be related to an examination of the circumstances of Revelation. The early Moslems understood that very well. It is reported that 'Umar in a moment of solitude asked himself why divergent opinions arose within the Islamic community *(Umma)* although it had only one Prophet and one *qibla.* He confided in *Ibn 'Abbâs,* who told him:

> The Koran was revealed to us and each time we read a verse we know what is behind the revelation. But after us will come peoples who will continue to read these verses while having forgotten the context. This will provoke divergent readings which will degenerate into internecine quarrels.

That is why the Companions and the Followers were careful to record the circumstances of Revelation; when that was lost they preferred to refrain altogether from commenting on the passage. To those who would ask for clarification they would say "fear God and be pious, because those who knew how the Koran was revealed to us are no longer of this world." Is there any better response than this to the conflicts which today divide the political scene in the name of religion?

What is taking place today in Egypt and in the whole Islamic world goes far beyond a simple quarrel regarding exegesis. It is really two visions, two radically opposed methods, which confront each other. The first method which has been recognized by famous exegetes is that of the Companions and Followers who had no other objective than to realize the true religion. The second is that of the schismatics and tyrants whose only concern is to upset people so as to seize power in the name of religion.

An essential characteristic of the second method consists precisely in detaching the verses from their context on the basis of the rule of Islamic jurisprudence *(fiqh)* in terms of which "the

general sense of a Koranic term should take precedence over that suggested by its circumstances." On this basis they interpret a verse in an absolutist and historically developed manner on the sole basis of its internal semantic construction.

It should be noted that this latter approach is only a rule of Islamic jurisprudence *(fiqh)* posed by jurists and not a prescription of Islamic Law *(shari'a)* issuing from the Koran or the Islamic community *(Umma).* It began to be imposed with the birth of the literalist current which, in turn, it nourished. Today it has become the favorite exegetical method of preachers. Jurists who proposed this literalist rule, however, always neglect to specify that the Koran is one whole of which each part should be interpreted in the light of all the others. This contradicts the literalist approach which, were it to prevail, would reduce the Koran to no more than a conglomeration of scattered and often even self-contradictory verses. In sum, one would come to conclusions foreign to Islam and unintended by the Koran. The best example of this would be taking the term 'to judge' *(yahkum)* in V, 44-48 in the modern sense of governing.

The sole alternative to this exegetical method elaborated by classical jurists and now in favor among the extremist current is that of our pious ancestors and of the Koran itself. For if one responds to the extremists in like manner, one reinforces their argument and falls into the same impass as those jurists *(ulema's)* whom they accuse of contradictions, abandoning the foundations of Islamic jurisprudence *(fiqh)* and being at the service of power. In fact, there is one element of truth in these accusations because the extremist preachers accept the principle of literal exegesis in order to isolate the verses from their context, so that they could be used in their political slogans with a broad meaning they do not possess. But just as the jurists who proposed the rule were not able to restrict its application within the limits of a proper exegesis, neither were they in position after the fact to oppose such twisted utilization by extremists.

The Temporal Relativity of Juridical Rules

Those who follow political Islam claim to follow an integral application of divine law and deny man all power for creating norms. They do not allow that any disposition of divine law can be amended, suspended or considered relative. Any such enterprise is considered by them to arise from infidelity *(kufr),* as are the laws of Egypt and the other Islamic countries. Such affirmations could come only from people ignorant both of Islamic jurisprudence and of Egyptian law.

In fact, as seen above, the prophecy of Muhammad is above all a prophecy of mercy; to limit it to its normative dimensions would be to make Islam an Arab version of Judaism. If God had wanted to leave man a definitive and atemporal Law, prescriptions concerning everyday life *(mu'âmalát)* would have sufficed to fill the Koran. But in his great wisdom, he expressly left to the Islamic community *(Umma)* the work of legislating on the basis of reason in function of the needs of place and time. Because rules of law by their very nature cannot have that universal application characteristic of religion, the Koran is limited to general rules. This protects Islam from becoming, as did Judaism, a temporary tribal Islamic Law*(shari'a)* whose original rules needed to be corrected and amended in the Talmud in order to be able to continue to be applied.

When in the 9th century the Imam, al-Shâfi'i, left fraq to take up residence in Egypt, he understood well the need to modify his legal doctrine and did not hesitate to do so. What transformation will be needed today then, some twelve centuries later, when Islam has come to be diffused throughout the entire world?

A Law Developed by Men and for Men

Muhammad, who understood perfectly the nature of his prophecy, himself practiced *ijtihâd* or independent opinion and urged his companions to do so. The Islamic community *(Umma)* has developed its laws through interpretations of jurists, governors and judges and on the basis of the general laws enunciated by the Koran: that body of legislation is none other than Islamic jurisprudence *(fiqh),* which is wrongly termed Islamic Law *(sharia).*

Thus, in matters of personal law, original thinking or independent opinion *(ijtihâd)* led to the intervention by a judge in divorce (which according to the Koran is pronounced only by the husband), to the ability of the spouse to declare divorce herself (whereas the marriage contract confers on her the *'isma* or marital rights), and to the legal definition of the reasons for divorce (material difficulties, harm suffered and absence). Similarly, 'Umar b. al-Khattâb made irreversible a divorce by a triple declaration making this the equivalent of three successive divorces. This rule was later inverted by the institution of*muhallil,"* which is contrary to the spirit of the Islamic Law (shari'a) and the prescriptions of the Koran.

It was also on the basis of original thinking or independent opinion (ijtihad) by jurists that the rights to succession of a brother and half-brother were equalized and endowments (waqfs) initiated. Thereby an owner can unconditionally render his possessions inalienable, whereas the tradition regarding the Prophet foresaw only a charitable waqf based upon putting goods at the service of charitable works. In reality, private waqfs serve especially to escape the rules of inheritance.

In civil matters, because the Koran states only two general rules (the prohibition of usury and proof of debt) practically all civil and commercial relations have come to be structured on the basis of independent opinion (ijtihad) by jurists.

In penal matters the Koran prescribes only four penalties (for robbery, calumnious accusation of fornication against a married woman, fornication and plunder). Jurists have subsequently determined the conditions for the application of these penalties. They have extended the penalty for the calumnious imputation of fornication to cases concerning men. On the basis of the tradition regarding the Prophet (Sunna), they imposed the penalty of stoning for fornication whereas the Koran foresaw only scouraging and theoretically Koranic prescriptions should prevail over those of the traditions regarding the prophet (Sunna). They also prescribed the conditions for the application of the legal penalty for apostasy mentioned in the two hadiths.

Lastly, it was 'Ali b. Abi Talib who set the penalty for taking alcohol. Though the Koran and the Sunna or tradition regarding the prophet had forbidden alcohol to Moslems they had not specified a penalty for one who broke the prohibition. This then is not a Koranic penalty (hadd) as is generally claimed, but a civil one (ta'zir). This last institution (ta'zir), itself a creation of the jurists, permits to the religious law, to penalize any act they judge dangerous to the community.

In other words, looked at from the point of view of Islamic jurisprudence, all the penal legislation actually in effect in Islamic countries comes from civil penalties.

There is nothing surprising here given the extreme practical difficulty of finding, realized simultaneously, all the conditions for the application of Koranic penalties. In fact, when the Koran applied the principle of the talon exclusively to injuries, wounds, blows and homicide, the jurists turned to the adage "the religious Law of our predecessors is valid also for us' in order to adopt the principle of the talon ('an eye for an eye, a tooth for a tooth") found in the Torah. In view of the above, who could pretend that the Moslem community does not set for itself its principles and rules of law, in other words, that it does not govern itself?

The Suspension of Koranic Prescriptions

Let us pass now to the thesis that to suspend a Koranic prescription or assert its relativity in time is equivalent to a profession of infidelity. That accusation is contradicted both by religion and by historical reality. The very principle of abrogation *(naskh),* which is stated in the Koranic rules relating to everyday life *(mu'âmalat)* in virtue of which a newly revealed rule abrogates its predecessor, attests to the relativity in time of certain provisions and that the supreme legislator sees the need that they be changed once the reason for their establishment ceases to exist. This holds true only for the verses which effectively have been abrogated. But instead of mechanically replacing the abrogated rules by new ones as do most jurists, there is need to reflect on the implications of this notion of abrogation. In this light it can be seen to support a principle of real evolution of norms. This means that in reality Islamic legislation is in perpetual movement which Moslems must constantly follow. In reality they have always done so through the intermediary of Islamic jurisprudence *(fiqh).* Rather than state clearly its general theoretical basis, however, they have preferred often to take refuge in subterfuge and evasion.

One example concerns the Arab tribes which did not immediately convert to Islam. The Koran recommends that Moslems buy their neutrality and goodwill by giving them a part of the alms.

> The alms are only for the poor and needy, those whose duty is to collect and dispense them, those whose hearts are to be enlisted, the ransoming of captives, debtors, for the fight for God's way, and the traveller. Thus God ordains, who knows and is just (IX, 60).

Muhammad and then Abü Bakr applied this law, but 'Umar b. al Khattãb stopped paying these parts of the alms although the relevant verses were of divine obligation and no later verse could be considered to have abrogated them. Yet no one ever claimed that 'Umar was an infidel because he thought that a Koranic prescription might be tied to specific circumstances and consequently might cease to be applied. On the contrary, Islam should be proud of that initiative which clearly demonstrated the importance of independent opinion *(ijtihâd)* and showed that it could go as far as interrupting the application of a Koranic rule not abrogated by a later verse.

It was by an exercise of independent opinion *(tjtihâd)* also that 'Umar b. al-Khattâb decided during a year of famine to suspend the application of the penalty for theft. It has been claimed that he did not in fact suspend it, but only scrupulously respected the conditions for its application. That thesis is not seriously tenable, however, for it implies that 'Umar continued to examine case by case the instances of theft insisting in a more exigent manner that the condition for the application of punishment be scrupulously verified. But that was not at all the case. 'Umar simply proceeded to suspend the penalty. Since then and through the whole history of Islam that penalty has been applied only most exceptionally. This shows that under his influence Islamic doctrine itself veered toward a total suspension of that penalty. Nevertheless, no one pretends that 'Umar and after him the entire Islamic community *(Umma)* had renounced the faith.

Finally, 'Umar forbade "marriage for pleasure" *(zawáj al-mut'a),* a form of temporary union which did not involve any of the ordinary effects of marriage. This did not impede the Shiites from authorizing such a marriage based on the verse: "Pay the marriage portion prescribed for women whom you have enjoyed" (IV, 24). Though 'Umar's interdiction constituted a suspension of an unabrogated Koranic rule, should this be considered as an act of infidelity on his part and all the

Sunnites? Under the banner of an integral application of the Islamic Law *(shari'a)* should one reinstitute that form of marriage?

Another example is the initiation of private endowments *(waafs).* It was noted above that this introduced a modification in the law of succession amounting to a suspension of a Koranic rule. The surprising thing is that Islamic thought considers this institution, though contrary to the rules of Islam, to constitute one of its integral parts. Indeed, it has achieved such importance that in more than one Moslem country a government ministry has been constituted for this.

Finally, the Koran says that "God has permitted selling and forbidden usury" (II, *275).* Though that authorization of selling is unequivocal, the Islamic jurisprudence has nonetheless forbidden certain forms of selling such as selling as a single unit the fruit from a tree *(muzâbana),* sale before harvesting *(muhaqala),* the sale of a set portion before the harvest *(muzâra'a),* etc. This has considerably restricted the authorization in the Koran, but has not caused any accusation of infidelity. Similarly, there is no doubt that the Koranic dispositions regarding slavery could avail only while slavery existed and should not survive its abolition. To offer the contrary would amount to saying that slavery must be forever a part of Islam, that its regulation is not subject to the circumstances of history and therefore that its abrogation (in Egypt by the decrees of August 4, 1877 and January 21, 1896) was heresy.

All these examples show that the tendency to create norms by means of independent opinion *(ijtihâd)* is based on the Koranic notion of abrogation.

Egyptian Law Corresponds to Islamic Law *(Shari'a)*

As we have seen, the term *shari'a,* which in the Koran signifies "The Way", came to designate all Islamic jurisprudence as this has developed through history. Egyptian law is in conformity with the Islamic Law *(shari'a)* and with the Islamic jurisprudence this involves. In regard to statutes concerning the person Egyptian laws affectively are borrowed directly from the rules of the Koran and the tradition regarding the Prophet *(Sunna),* along with the juridical principles our legislature has judged to be in accord with the needs of Egyptian society. Similarly, in civil and commercial matters all law is in conformity with Islamic jurisprudence *(fiqh)* and the Islamic Law *(shari'a),* except on two points, namely, (a) the question of interest, which some liken to usury which was prohibited and (b) insurance contracts, which some claim are speculative contracts. Such questions need to be resolved by serious independent opinion *(ijtihád)* on the foundations of justice and not by polemical quarreling. In penal matters all Egyptian legislation is based on what Islamic jurisprudence *(fiqh)* calls civil *(ta'zir)* penalties for inability to fulfill all the conditions for the application of Koranic punishments.

In these circumstances to say that the Law of God ought to be applied integrally, and that to fail to do so—even in regard to one aspect—is to be an infidel, is but a low political maneuver to which the extremist theoreticians of political Islam turn when they are forced to move beyond generalities and to state just what they mean by "the application of the Islamic Law *(shari'a)".* It would seem they have no other plan than to brand as infidel Egyptian as well as any other society, and that in order to do so all means are good and any manner of attack is permitted.

In this regard a favorite argument for accusing the Egyptian legislature of infidelity is that it does not forbid the consumption of alcohol. Certainly, the Koran invites the believer to abstain: "Wine, games of chance, idols and divining rods are abominations and works of Satan; avoid them . . . " (V, 90). But neither the Koran nor the tradition regarding the Prophet *(sunna)* specify a sanction. Thus, in the eyes of Islam, it is a sin from which the believer is invited to abstain, and in

this regard he is responsible before his soul, conscience and God. This is the best way to prohibit alcohol. As can be seen from the communal prohibition of alcohol earlier in the United States and of drugs now throughout the world, penalizing this type of behavior, rather than suppressing it, only intensifies criminality.

Faithful to the approach of the Koran, the Egyptian legislature considers the consumption of alcohol not as a bad act, but as a sin whose remedy it leaves to religious education and to the conscience of the believer. As we have seen, the penalty for the consumption of alcohol foreseen by Islamic jurisprudence is not found in the Koran, but is civil. It is set by the Islamic community *(Umma)* according to the circumstances, and is subject to modification or emendation by the legislature as it judges. This is exactly what Egyptian penal law did when it penalized public drunkenness and its related conduct.

Can Laws Themselves Be Infidel?

The thesis according to which Egyptian laws might be termed "infidel" and those who apply them "unbelievers" is an open appeal to revolt; moreover, it is absurd. Rules of law, in contrast to scientific laws or mathematical theorems, are pure norms. It would be absurd to qualify them as faithful or unfaithful any more than one could call the products of technological civilization (such as television) infidel or heretical. These norms, theories or structures are only neutral instruments which, according as they are correctly or incorrectly employed, can be conducive either to faith or to infidelity. Those who accuse of infidelity Egyptian laws and all who submit to them only hurl anathemas without advancing the least beginnings of proof. For Egyptian laws are in conformity with the Islamic Laws *(shari'a)* no matter what sense one gives it, except on some points where independent opinion *(ijtihád)* suffices to resolve any inconsistencies.

If by the infidelity of Egyptian law one means the fact that it has been borrowed from the French legal system, then one manifests an ignorance and fanaticism which can only damage Islam. In truth, Egyptian law has borrowed only its form from the French legal system, while its basic positions are exactly those determined by the different schools of Islamic jurisprudence *(fiqh).*

Islamic civilization has borrowed in many ways from preceding civilizations (Persian, Byzantine, Indian, Egyptian . . .) without Moslems ever considering such borrowing to be impious. The Koran itself has not hesitated to draw its norms from the common resources of civilization whenever it considers this helpful for Moslem society. Thus, the amputation of a hand, the Koranic penalty for theft ("cut off the hands of male and female; it will be retribution for what they have committed and a punishment from God" IY~ 38]), was used in ancient Egypt against tyrants and rebels to dissuade them from taking arms. Later it was extended to forgeries of public or religious documents. One finds it again in the code of Hammourabi for one who raises his hand against his parents. Finally, it was practiced before Islam in the Arabian peninsula, notably at Mecca. In all those cases one finds the idea that to amputate the hand eliminates the instrument by which the crime was committed.

If the Koran is not forbidden to borrow from "pagan" legal systems why should borrowing from the laws of a Christian country be considered infidelity if such borrowing would be technically more effective for the solution of extra-religious questions, and in ways that do not contradict the *shari'a?*

The Notion of Infidelity *(Kufr)*

The original meaning of the term *"kafara"* was to cover or hide, whence its sense of ingratitude ["Some of you assign partners to I or treat other things equally with] their lord, showing thereby contempt [*kufr*] for what we have given them" [XVI, *54-55]).* This means to deny God or ingratitude toward God, and thus though it could mean to be unfaithful or unbelief, its meaning is not resricted to that. Thus, in the dictionary *Lisan al-'Arab* under the root *kufr* one reads that Muhammad said:

> I saw that the majority of the denizens of hell were women by reason of their ingratitude. When he was asked if this was ingratitude toward God (that is to say, unbelief or *kufr)* he responded: no, their ingratitude for the good done for them by their spouses.

Taken in this sense, the famous verse: "Unbelievers are those who do not judge man according to what God has revealed" (V, 44) signifies that those people of the Book who do not judge according to the norms set by their Book are hiding or ignoring their own Book, but not that they are infidels before God.

Hence, taking account of the Koranic sense of the term, a true Moslem should proceed with the greatest caution. He should keep in mind the prophetic verbal traditions *(hadith),* according to which "when a Moslem treats his co-religionist as an infidel, he himself is the infidel (if the accusation is not justified)." Moreover, it is nonsense to say that laws, theories and other inanimate objects are "infidel" since one cannot demand that they believe in God; that term must be reserved to beings imbued with conscience.

From the dawn of Islam, *kharijites* have tended to employ this term wrongly and too freely. On the basis of divine commandments they feel justified in treating as infidels all their adversaries, and even more generally all those who according to them commit the slightest fault or the slightest violation of religious law. This is contrary to the word of God: "You who have fallen into excesses to your own detriment, do not despair of God's mercy; God forgives all sins; He is the All-forgiving and All-merciful" (XXXIV, *53)* and God will not forgive associating anything at all with Him; of less serious sins he forgives whomever He wills" (LV, 48).

It is nonsense to call a law "infidel", but to say this of those who apply it and submit to it is to incite to crime and anarchy; it is a declaration of war on Moslem society. All such actions are the work of persons who know nothing about law and the Islamic Law *(shari'a).* One can but regret that in their hands Islam, a religion of tolerance and of mercy, is transformed into an instrument of terror. It is that image of hate, which always attracts the most attention, that both Moslems and non-Moslems retain of Islam.

The Absence of Clergy in Islam

A central thesis of political Islam (found also among certain jurists who wish to arrogate to themselves a monopoly of the true religion and to institute a clergy in Islam) is that the only authoritative exegesis, religious opinions *(fatwâ)* and judgments are those of the experts in the religious sciences *(ahl al-dhikr),* that is to say, themselves. They say this in virtue of the verse "Ask the experts in the religious sciences if you do not know" (XVI, 43 and XXI, 7).

In reality, what does this expression mean? In the Koran the term *dhikr* (remind or invocation) can have many meanings. Sometimes it means the divine word in general: "We who have sent down the Remembrance, and we are its guardians" (XV, 9). At this point it is the Koran itself: "We have made to descend upon you Remembrance so that you could make clear to mankind what was sent down to them" (XVI, 44). At still other times it is the Torah "we have written in the Psalms, after Remembrance: 'Truthfully, my just servants shall inherit the earth" (XXI, 105). In the two verses cited here it is the Torah or the whole set of books prior to the Koran which is referred to. There the verses say, in effect:

"Earlier we sent men whom we inspired. Ask those to whom the Remembrance was addressed, if you do not know." That is, ask the Jews and the Christians about the prophets whom God has inspired. Naturally, at the time of Muhammad, religious jurists or *ulamas* did not exist who could be the ones referred to by those verses. Those who today twist their sense in order to serve their personal ambitions can hardly hide their desire to corrupt the juridical and political orders of society.

Islam has always managed to avoid constituting a clergy under whatever form; for Islam, every pious Moslem is a cleric. Christianity, in contrast, does have a theology, that is, an ensemble of speculative thought constituting a dogmatic science in the study of which their doctors of religion are specialized. Islamic dogma is so clear and simple that it is available to each person without philosophical effort or theological theorizing. There is in Islam then no science/religion (theo-logy) of which the *ulamas* could be considered to be the proprietors. Instead, there are only some sciences relating to religion, such as Koranic exegesis, philology, Islamic jurisprudence *(fiqh)* and its theory *(usul al-fiqh),* the science of the traditions of the prophetic verbal traditions *(hadith),* etc. Only, through an incorrect use of language, could one be called a specialist in one of these sciences or a doctor of religion in general.

In Praise of Difference

The political lslarnists claim that by integrating the opinions and doctrines of Islam around their own doctrine they will give it greater force. That idea is proven false by the entire history of Islam which shows, to the contrary, that very fortunately Islam always has been and always will be a crucible of the most varied schools, doctrines and ideas. From the dawn of Islam the first savants disagreed on questions whose evolution seems now so evident that it is difficult to imagine that they could be disputed. Today, some would have us believe that every dissident opinion is impious, whereas the Koranic expressions are not set immutably and for all eternity, but are composed of words which everyone tends naturally to understand and interpret according to his or her own outlook.

These divergences of opinion can concern the meaning of a term. Thus, in the verse "Be assiduous at prayers and at the middle prayer" (II, 238), "middle prayer" can equally well be understood as that of noon because it falls in the middle of the day, or that of the afternoon because it falls between the two morning and the two evening prayers, or that of sunset because it includes a median number of prosternations or, finally, that of evening which is situated between the two prayers and which must not be abbreviated, etc. Similarly, in the verse "The Spirit proceeds by the command of my Lord" (XVII, *85),* "the Spirit" is understood by some as the spirit of man and of animals. But for Ibn 'Abbâs, cousin of the Prophet, it meant Gabriel (because he is the Holy Spirit, whereas for his grandson, Hasan b. Ali, it meant the Koran as in the verse "Thus we have revealed a Spirit which comes by our command" (XLII, *52).*

Judicial prescriptions also have given rise to multiple controversies. To cite but one example, let us look at the prohibition of alcohol *(khamr).* When 'Umar b. al-Khattâb resolved to punish a Moslem named Aba Jandal who admitted to having imbibed, Abu Jandal defended himself by invoking: "The food and drink of those who believe and do good does not involve sin," "provided that they fear God, that they believe, and that they do good," and then "so fear God and believe" (V, 93). Feeling that he satisfied these conditions, Abu Jandal pretended he had not done anything illicit. However, on the basis of a disputed interpretation of this verse by Ibn Abbâs—according to which it applied only to Moslems who had consumed forbidden drinks prior to the revelation of the prohibition—Umar decided not to accuse Abu Jandal of infidelity but to apply a civil penalty.

At the beginning of the second century of the Hegira the dispute took on greater breadth. A majority of jurists, on the basis of the etymology of *khamr,* interpreted the prohibition as covering everything that obscures one's reason. They invoked the prophetic verbal traditions *(hadith)* : "Everything that makes one drunk is illicit, just as it is illicit to consume a small quantity of that which inebriates when taken in large quantity." They disagreed in this with Abu Hanifa for whom the meaning of *khamr* should be limited to "fermented drinks produced from grapes," the only type known to the Arabs at the time of Revelation. According to him no drink obtained by the fermentation of such licit materials as wheat, barley, corn, honey, figs or sugar cane qualified as *khamr* and should be declared illicit. Nevertheless, by analogy whatever inebriates should be punished by the same penalty. In other words, it is not the product itself which is illicit, but the drunkenness which results when it is abused.

That was the situation at the time of triumphant Islam: opinion against opinion, independent opinion against independent opinion *(ijtihâd),* even on the most delicate issues. The Islamic community *(Umma)* accepted this with a remarkable breadth of vision and openness of spirit, without anathemas or calls for anyone's murder. Such calls were heard only when the tyrants usurping power, or rebels coveting it sought to exploit religion for political goals. This is the case at present with those who would support by violence and terror the politicization of religion. Except for such situations, the Islamic community has always been a model of tolerance and freedom of expression.

Extra-Political Causes of Extremism

Today, extremism is a universal phenomenon, and one can consider Moslem extremism as a part of that world-wide wave. What constitutes its originality, however, is its aspirations to seize power, which, like Kharijism, is characterized by a confusion of religion and politics. Though the political element is decisive here, other essential factors of a cultural, social, intellectual or psychological order should not be neglected in explanations of this phenomenon.

Bedouin Islam Against Urban Islam

Currently, the Bedouin Islam of the first century of the hegira is contrasted to the urban Islam of the following two centuries. The contrast of these two successive models holds true when seen synchronically, and in the Islamic world today both models are found. On the one hand is the Bedouin type: introverted, tending to absolute sovereignty and stressing what are improperly called religious sciences; on the other hand is the urban type: extroverted and stressing humanist values and profane sciences. Each of these models is conducive to different comportments and attitudes.

In Egypt the minority Bedouin model has been reinforced by a massive emigration of its workers towards countries suddenly enriched by income from oil where that model predominates. Upon return to their country these expatriates bring back Bedouin values and behavior which they

parade ostentatiously as a sign of social distinction. Thus, there exists now in Egyptian society one group whose customs are civilized, flexible and open, and another which is distinguished by its rude, even gross, comportment and its narrow spirit.

The norms and attitudes of the urban model seem quasi-identical (even including those aspects subject to criticism) to reconstructions of the classical Moslem ages based on such masterpieces as the *Book of Songs* of Abül-Faraj al-Isfâhani, or the *Collar of the Dove* of Ibn Hazm. In contrast, those who today adopt the "neo-Bedouin" model differ greatly from their ancestors of First Century Medina and the Hegira. They should be compared rather to the pre-Arab, pre-Islamic Arabs*(jâhiliyya)*12 whose behavior and conceptions they have adopted: tribal chauvinism, prodigality, taste for ostentation, grossness of spirit, and verbal and physical violence which can be unleashed upon the least pretext. But though none are more pre-Islamic *(jâhili)* than they, they characterize all humanity, and especially Moslem society, as *jâhili*. In psychology this is called projection: the psychopath projects on others his own sickness. Thus, the "neo-Bedouins" out of their inability to understand the urban model reject it and retreat behind primitive comportment; they pretend to practice the pure Islam of their ancestors when in reality they are steeped in the most pure pre-Islamism *(jáhiliyya)*.

Upper Middle Class Against Lower Middle Class

The upper layer of the Egyptian middle class, who had access to the key posts after being formed in Western type educational institutions (often European universities), assimilated liberal political and democratic principles. Those who aspire to the same privileges without being able to achieve them shifted the debate to the religious terrain. They accuse the educational system of being lay, which for them means atheist, although it implies simply a separation between the profane and the sacred. They oppose liberalism and political democracy in the name of Islam and the Islamic Law *(shari'a)*. Islam, however, was one of the greatest liberal revolutions of history and through its notion of consultation the Islamic Law*(shari'a)* contains the best of all calls for democracy. Nevertheless, they prefer to play on words without attending to their real meaning. For them liberalism *(libiráliyya)* and democracy (dimuqrâtiyya) signify colonialization and paganism; they are neologisms, foreign to the Arab language.

Since the 1950s the offspring of the lower layer of the dominant class have begun to accede to key positions. Having joined the class they had opposed, they assimilated its norms on the surface without attempting to eliminate the differences by which they were opposed to it. On the contrary, whether by weakness, lack of comprehension, or in order to defend their interests, more often they tended to exacerbate the conflict.

Oppression Accepted

In the XVIth century the Middle East, whose Islamic civilization had been in the decline for six centuries, fell under the Ottoman yoke, which imposed upon its subjects a pre-Islamic *(jâhiliyya)* obscurantist regime. Regretting the intellectual and scientific achievements of their predecessors, in time Moslems came to believe that the Ottoman occupation was the guarantee of Islam and that the Caliph of Istanbul, though he did not even speak Arabic, symbolized the unity of the Islamic community *(Umma)*. Confounding religion with the political regime imposed by the occupying power, they became defenders of obscurantism and of the pre-Islamic mores *(jahiliyya)* imposed on them in the name of Islam. This bound them to the past so

that they refused all innovations which they considered to be an "intellectual invasion" and a "destruction of the heritage". In the end, those who lived too long in the shadows came to fear the light; those who had remained too long in prison came to refuse freedom. Nevertheless, the same people who refused every new idea fell avidly and precipitously upon all the new consumer goods without taking account of how profoundly these products influence and conspire to transform their life, whether they like it or not.

The Flight from Self

The *Koran* attaches essential importance to the formation of the will of the believer which ought to strengthen itself and become more sensitive in order to face the temptations of earthly life: "An account surely will be required of all: of sight, of hearing and of heart" (XVII, 36). This is not an easy task; on the contrary, constant work upon oneself is indispensable for one's spiritual, psychological and intellectual development. Many prefer to avoid the work of reflection and turn to the ready-made responses of clerics and institutions. The complexity of modern life reinforces this tendency and imposes a "ready-made-thought" that functions on the bases of manipulation of languages. This excites the emotions rather than stimulating work; it anesthetizes compliant spirits and spreads physical and intellectual terrorism.

Contemporary Applications of the *Sharia*

The Sudan provides the best example of the disastrous consequences which can result from a leader's *politique* of manipulating the Islamic Law *(shari'a)*. The crimes committed in its name by the regime of Marshal Numeiry are too well known to repeat the details. We would note here, however, that when Numeiry celebrated the first anniversary of the application of the *shari'a* in the Sudan all the Egyptian heralds of political Islam, accompanied by various religious dignitaries, rushed to Khartoum to praise the "just application" of the *shari'a* and to praise to the heavens its inspired initiator. Hardly had he fallen and the application of the *shari'a* or Islamic Law been suspended, however, than the chorus of praises ceased abruptly and those invited to the anniversary made themselves as inconspicuous as possible. Such hypocrisy raises many questions: what is the "just application" of the *shari'a?* How can it be put into operation? Would those who once praised the Sudanese experience make it a model? All these questions are too important for one simply to accept their recantations and evasions.

Beyond that caricature, other Moslem countries claim to apply the Islamic Law *(shari'a)* and govern according to divine Revelation, supporting materially and morally the current of political Islam. By means of the *shari'a,* it is said, these countries guarantee the security of persons and goods and develop a revolutionary Islamic economic system. Before taking all this at face value, however, a certain number of things must be clarified. First of all, the Islamic Law *(shari'a)* is not a few bloody penalties, but essentially a certain idea of justice on the political, social and judicial levels. Such justice has been lacking in all the Islamic countries, Egypt being perhaps the only country which for over a century has tried to realize this ideal. It has met with more or less success, but surely it is far in advance of others. While one may criticize the Egyptian efforts, at least they had the merit of existing, which was not the case in many other Moslem countries.

At the heart of the Islamic Law *(shari'a)* lies the idea that its property is the patrimony of the Islamic community, and that this should be disposed of through the intermediary of its representatives and in conformity with what the community considers to be its best interests. The

idea that the governor is the sole owner of public goods and can, alone or with his associates, dispose of them freely is absolutely contrary to the *shari'a.*

Has one ever seen the penalty of amputating a hand applied to a rich or powerful person in the countries which pretend to apply the *shari'a*? Nevertheless, a prophetic verbal tradition *(hadith)* says that: "In truth, your predecessors have perished because they let the rich steal while they chastised the poor." What is more important for the Moslem community: petty thievery or the embezzlement of the goods of the state and the payment of millions of dollars or *dinars* as "commissions"? In contrast to other masters of Islamic jurisprudence *(fiqh)* Imam Malik held that the theft of public goods was subject to the Koranic penalty. But only in Egypt can one evoke that opinion of Malik: it is never mentioned in Moslem countries where embezzlement of public goods, commissions and bribes of all sorts are the rule.

Those countries, moreover, do not correctly apply the other Koranic penalties. Their jurists consider that the fornicator should not be stoned but guillotined or shot, while recognizing that such a penalty is not Koranic but civil. But if they are authorized to practice this type of substitution, why cannot Egypt substitute arrest and confinement in cases of theft as the Koranic penalty, especially when all the conditions for the application of that penalty are not fulfilled?

To claim that public safety is assured in such or such a country by the deformed application of one or two penalties is superficial and simplistic. The penalty is only one factor contributing to assuring safety, and a single infraction cannot serve as a measure of crime in society, for the forms of criminality vary greatly from one society to another. For example, in Upper Egypt there are many homicides but very few attacks upon a person's goods or honor, which is almost the inverse of the situation in Cairo and on the northern coast. Further, one must be circumspect with regard to official criminal statistics. As these are developed outside of any social control and with no international criterion, they can be deliberately falsified or can pass over in silence certain infractions—of morals, for example—which everyone knows to be common in those countries.

Those who admire the level of security enjoyed in those countries should remember that other countries, namely, the socialist ones, have obtained remarkable results in the same domain quite simply because they do not recognize freedom. It is a well established law of criminal science that the criminality of a given society tends to grow in proportion to the degree of freedom it provides to its members.

As regards the so-called Islamic banks, they are not at all revolutionary. Therefore, they have developed only some juridical artifices by which their income from capital is now called *murabaha* (sale followed by repurchase at a higher price) and the interest on debt is called indemnification *(ta 'whid).* What is more, those banks do not search out productive investments, but speculate on the European and American markets and return to their depositors only a small part of the profits realized. Another artifice for masking the nature of their dividends consists of modifying the tax each year in order that there not seem to be any interest. All these subterfuges enable them to drain considerable sums which, far from serving the interests of the Islamic community, is prejudicial thereto to the measure in which these funds, rather than being placed at the service of development, wind up in Western financial markets.

The Party of God against the Party of Satan

The greatness of the prophets lay in withdrawing at the height of their prophecy from the societies in which they lived in order thereafter to endow them with solid values and maturely prepared projects, thereby transforming them step by step from within. Although it pretends to be

inspired by this glorious model, the political current in Islam is befuddled by its own crude slogans and elaborate formulas which are a hundred leagues from any serious or reasoned program. Thus, it is incapable of transforming and elevating men. Thus far, it has only made attempts on the lives of its enemies and declared war on the national and international society. This, in turn, it presents as the "party of Satan," opposed to the "party of God", of which political Islam would be the representatives.

If for a time the national society could tolerate this current, the reactions of the international society risk being less peaceful. However, one should not say that it is the Western world which is aggressive as regards Islam, when in reality the West is constrained to defend itself against those who have initiated these hostilities. This "world culture" diffused by the West is not basically bad; it defends a certain number of values such as order and precision, integrity and altruism. In addition it has a certain taste for research which, contrary to what one often hears, implies an authentic spiritual dimension. It merits not only respect, but being cultivated; its spirit should be absorbed no matter what one's race, religion or ethnic group.

The pretended cultural invasion can succeed only when it attacks intellectual and moral structures which are weak and in decline. Free and healthy thought has nothing to fear from such "invasions". On the contrary, contact with another strain of thought should be the spur and stimulant by which cultures consolidate and enrich themselves.

Only by a vice of the spirit can a determined person or group pretend to possess a superiority or tutorage over the rest of the world in virtue of which it can impose its convictions upon them by force. The same major vice gave birth to the fascist and Nazi movements which led to such horrors and destruction. All should meditate on the verse: "Should I tell you whose acts will be the most useless? And those whose effort is wasted in the life of this world while they think that they have acted well?" (XVIII, 104-105).

Chapter II
Islamic Government

In the Moslem world today, more and more numerous voices are raised calling for an Islamic government. This is presented as the remedy for all the evils suffered by the Islamic community: it would make possible the purification of society, the promotion of cultural progress, the realization of justice and the hearing of the word of God. Others, on the contrary, consider that such a government would necessarily be a sort of theocracy in which power would be concentrated in the hands of clerics and their allies. This would be based upon a strange notion of religion and would be in great risk of sliding toward totalitarianism.

What is meant by Islamic government? Why has this slogan had such success? What would be the consequences of setting up such a government? Finally, would it be religious or civil?

The Meaning of the Term: "Islamic Government"

By government *(hukuma)* modern political science understands the exercise of political power over the members of a given collectivity in the context of a state. In this sense, *hukuma* concerns the administration of public affairs, especially by the executive branch. In the Koran, on the contrary, that term designates exclusively the administration of justice. The exercise of political authority and the administration of public affairs are expressed by *amr,* which signifies command and authority. But when today Moslems speak of *hukuma* they employ the term in its contemporary meaning rather than in that which it had for their forebears.

That distinction between the exercise of political authority and the administration of justice is of crucial importance, because it enables one to bring out the real meaning of the Koranic verses relating to this question. For example, those who propose Islamic government often refer to the verse "Unbelievers are those who do not *judge (yahkum)* according to what God has revealed" (V 44). In translating *yahkum* as "governor" one burdens the Koranic verse with all the later historical developments, a shift in meaning which is pregnant with consequences.

Reasons in Support of Islamic Government

The popularity of that claim has multiple and varied reasons of which it is difficult, though indispensable, to draw up a list.

The History of Colonialism

The confrontation between West and East goes back to the invasion of Egypt, then of Syria and Persia by Alexander the Great who wished to unify the world under the *aegis* of Hellenic culture. As the Greek conquerors did not concern themselves with the compatibility of Greek and oriental cultures, the conquered peoples felt the cultural domination more sharply than the military occupation. They thought that the West, in this case Greece, had undertaken to destroy their customs and their roots; the flow of history would show them to have been correct. In the find century, B.C., Rome replaced Greece as the colonial power and the *Pax Romana* was imposed by its legions encamped in the various regions and able to intervene in case of a revolt This enabled

the Romans to establish a certain stability in the empire, but at the same time profoundly traumatized the peoples subject to Rome and the Romans themselves.

The confrontation continued in the context of Christianity. The opposition between the Roman and Eastern Churches crystallized in the debate regarding the nature of Christ. The Roman Church adopted the dogma of the double nature, human and divine, of Christ, while the Coptic Church remained monophysite. These divisions are still alive today. Later, with the coming of Islam and its rapid expansion in Syria and Egypt, then across North Africa and through the Iberian peninsula, the conflict shifted toward the West till the Moslem armies were stopped at Poitiers in 732.

This was followed by the Crusades (1095-1291), then in the opposite direction the Ottoman expansion through Asia Minor and Eastern Europe. The last episode took place at the end of the XVth century when, soon followed by Great Britain, France invaded Egypt. Those two powers quickly divided the Middle East and followed with a *politique* greatly resembling the Crusades. Two types of liberation movements developed. One was of liberal orientation based upon the values of the humanist tradition, accentuating education and the principles of democracy and equality. The other took an extremist and activist orientation calling for a restoration of the Caliphate, which had been abolished in 1924, and the establishment of an authentically Islamic government. This alone, it was claimed, would be able to protect the Islamic community *(Umma)* from Western aggression.

The Foundation of Pakistan

In the XIth century the Mongols began to penetrate the Indian subcontinent, and in the XIIIth century founded the Sultanate of Delhi. Warriors by nature, these central Asian Moslems were not steeped in the spirit of Islam, so they left the conquered peoples no alternative between conversion and death. They should rather have required of non-Moslems the payment of a tax simply as a guarantee of their allegiance to the new regime. This would have been in conformity with the custom of the first Moslems as well as to the spirit and letter of Islam, for the Koran expressly forbids forced conversion to Islam.

Whatever the case, on the Indian sub-continent relations between the Hindu majority and the Moslem minority from then onward have always been difficult and tumultuous. The essential reason lies in the difference between the two religions: whereas Islam is monotheistic and recognizes a proper identity on the part of God, in Hinduism there is a multitude of divinities attached to the different elements of life. These are ruled not by a superior God, but by a type of cosmic spirit, without individuality and not much related to the idea of a unique God with identity. Moreover, reincarnation, which is a central dogma to Hinduism, is not admitted by Islam except for certain sects and certain Sufis. Islam constitutes a coherent whole little inclined to open to external elements, whereas Hinduism is freely syncretic. Finally, whereas Islam has a universal destiny, Hinduism, like most ancient religions, mixes religion and nationality: it is the religion only of Hindus. This explains the tendency of certain Moslems on the Indian subcontinent to liken the competition between the two religions to one between two nationalisms.

All this led a part of the Moslem minority to call for a separate Moslem state, which led eventually to the creation of Pakistan in 1947, the first state in modern history to be founded according to solely religious criteria. Today it still retains its originating mentality of a persecuted minority, constantly on the defensive and even on a war footing. It seeks to spread throughout the Islamic world its particular conception of Islam, which it treats as dogma.

The Creation of the State of Israel

Till the end of the last century most Jews were convinced that the Diaspora was the will of God, who would not gather them together again till the coming of the Messiah. With Zionism there appeared a new reading of history in terms of which it was up to the Jewish people to realize the will of God here and now by reestablishing the Jewish state. That interpretation progressively imposed itself on the majority of Jews and has become an integral part of their dogma. It was concretized in the creation of the state of Israel (1948) in Palestine, a country with a Moslem majority. Whereas that event constituted for the Jews the realization of the will of God, for the Moslems evicted from their land it was an act against divine justice. The conflict could not pretend to be without a religious dimension.

Although both the United States and the USSR immediately recognized the new State on May 15, 1948, the Soviets thereafter did everything to make the Arabs forget this episode in order to make them its allies against the West. At the same time, Israel and the Western *politique,* particularly that of America, managed to convince a large number of Moslems that the institution of the State of Israel was an extension of the Western colonization of the Middle East. That certain Christians, like the American Christian Zionists, took up the principles and objectives of Zionism helped to exacerbate the religious dimension of the conflict.

Finally, the Arab defeats in a series of Arab-Israeli wars, especially that of 1967 which ended with the occupation of Jerusalem, increased the level of frustration. Soon new voices were heard claiming that only the establishment of an Islamic government could provide Moslems with final victory. Arab nationalism was thus transformed into Islamic nationalism.

Military and Semi-Military Regimes

The majority of Moslem countries are under the direction of military or semi-military governments. These always seek to create an external peril in order to deflect people's attention and thereby reduce the risk of a *coup d'etat* or revolution. In that regard, the colonization and then the creation of the State of Israel were very useful to such regimes. Moreover, they are fierce adversaries of humanism and of the free use of reason; in this too the loss of confidence in the West by Moslems serves their interests.

In the absence of democracy and of freedom of expression, the moderate tendencies which would make it possible to shape popular demands in a positive direction did not find a mode of public expression. People had no other alternative than the two extremes: communism on the left, which was unacceptable in an Islamic context, and religious extremism on the right.

Corruption

Some believe that it would be sufficient to install an Islamic government in order definitively to eradicate corruption. Everyone knows, however, that that scourge always has and always will exist in all societies; the issue then is its degree and nature. In too many Moslem countries, authoritarianism and an absence of independent forces permit leaders, with complete impunity, to divert public funds and foreign aid for their personal profit. When their subordinates take up similar habits a wave of corruption submerges the whole society. Such a wave cannot be stopped by an Islamic government, no matter how pure its intentions. Only greater freedom, education and efficacious controls will do the task.

The Decline of the West

Since the appearance in 1918 of the work under that title by Oswald Spengler, the expression has become a commonplace which one hears everywhere, notably in the Middle East. Behind this, however, lie some hostile echoes and dreams of grandeur. Many Moslems make "The Decline of the West" a purely political slogan by which they persuade themselves that soon, under the direction of authentic Moslem governments, the Islamic world will take the relay from the West and inherit the flame of civilization. But if there be decline in the West, it is not evident why that should mean automatically the ascent of the East, or of the Moslem world in particular. In order for such a resurgence to take place a conjunction of many factors is required, an idea of which can be gained by rereading the history of the first four centuries of Islam.

Oil Riches

The Moslem world has become the premier world producer of the petroleum on which the industrialized countries depend. The increase in the price of oil since the Israeli-Arab war in 1973 considerably enriched the oil producing nations and gave them new weight on the international scene. All this contributed to reaffirming their national identity, which more often was confused with Islam or assimilated to it. Among these nations some are ready to support any movement, party, financial institution or government which promotes the installation of an Islamic regime. This holds true no matter what type of Islam it proclaims and whether or not it is an authentic one. In their eyes only one thing counts, namely, the label Islamic.

Frustrations of Technology

The industrialized nations, above all the United States, refuse to share the new technologies they have mastered; these nations prefer instead to export finished products to the Third World. Thus, technology becomes a taboo, locked in a strong box to which the West holds the key. The people of the Third World are thereby reduced to consuming its products. It is true that most of those countries have not yet managed to put in place educational systems capable of preparing their people to assimilate the scientific bases of Western technologies in order to create original ones. In this regard, some reforms are necessary if one wishes to save future generations from these errors. To consume without producing inevitably induces the negative and deviant behavior which is unfortunately common in the Third World. One easily blames this on television, when the real causes are the collective mentalities which differ completely between those who produce technology and those capable only of consuming it.

In brief, technology is perceived in the Moslem world as a malediction against which the sole protection is an Islamic government. The industrialized countries which exploit their technology for purely commercial goals are partly responsible for this situation through failure to promote a progressive transfer of technology to the Third World, especially to Moslem countries. If the countries do not assimilate the technological spirit and become able in turn to produce rather then merely to consume products, the perils for all humanity can but worsen.

The Growing Disorder of the International System

Since the 1960s the international system has been marked by recurrent civil wars, the development of terrorism and the flowering of separatist movements. All these factors of disorder have combined to create a pervasive sense of insecurity. This can easily give birth to a religious type reaction, for faith enables one to rediscover the security and integration lost elsewhere. One can understand in these terms how the slogan "Islamic government' speaks to all Moslems who feel the need for points of reference, security or hope. They believe that salvation can be found through separating from a world in which they sense themselves to be strangers. That sentiment of insecurity should be channeled productively in a humanist sense through a veritable spiritual revolution. Unfortunately, people remain stuck in the superficial aspects of religion which appear unacceptably formalist and chauvinist.

Sexual Morality

Moslems and Westerners have very different conceptions of sexuality. In the Near East sexual relations outside marriage, even if they exist, are always taboo; this is not the case in most Western countries. Moreover, the Western manner of thinking about sexual relations has been transformed so that they now are considered a natural and psychological need which should be satisfied. Most Moslems reject these conceptions and attitudes which they see as outside any moral norms. Even those who have a more serene view of Western sexuality see it as a menace to their morals. At the other extreme, for others who feel that the sexual comportment in the West is simply decadent and see its cause in Christianity and Judaism, the only bulwark against such decadence is Islamic government.

In reality, the Western attitude regarding sex is but the result of a particular historical development of Western civilization. Who remembers that in Moslem Spain it was the Christians who berated the immorality of the Moslems?

The Founding of the Imam in Iran

Since the revolution of 1979, Iran has lived under a government called Islamic. Today, this regime confronts many problems and is manifestly incapable of renewing Islamic concepts and structures as required for the construction of a modern state. Nevertheless, the establishment of that regime has raised great hopes among those who seek elsewhere to establish similar regimes. The Iranian powers themselves have attempted to export their revolutionary model through the Moslem world. Though some see this as an ecumenical attempt to surpass the classical differences between Shiites and Sunnites, clearly it redounds to the special profit of the former. A state founded on the *imam* may fit the Shiites who are Iranians, but in no case could it be transposed to Sunnite Islam. We shall return later to the reasons for this incompatibility.

The Meaning of An "Islamic Government"

Under that vague expression, "Islamic Government", everyone understands what he wishes. In the West one perceives it most often as a menace for non-Moslems. In the Moslem world it provokes emotional reactions which combine pious wishes, respect which goes as far as sacralizing the period of the Prophet and the good Caliphs, and flagrant ignorance of history. One can,

nonetheless, delineate a general usage for the term, namely, as a system based upon the application of Islamic Law (shari'a) and headed by a religious leadership. Let us note first of all that the term is not employed today in its original sense. In ancient times and in the Koran it signified the way or the road which was laid out. By extension it came to designate the Koranic prescriptions and those contained in the examples of the Prophet and Companions *(Sunna).* Finally, it came to include all of Islamic jurisprudence as that came to be developed in history with all its diversity. At that point, for most Moslems, to apply the Islamic Law *(shari'a)* is to apply Islamic jurisprudence as it has developed in Islamic history through a process of codifying its rules.

In order to establish the superiority of a government founded on the Islamic Law (shari'a), appeal always is made to the example of the government of the Prophet and of 'Umar b. al-Khattab, the second Caliph. To do this is to confuse the juridical system of early Islam with the elevated norms and moral values which held sway at that time. The period was indeed exceptional in many respects, but it was extremely brief in comparison to the fourteen centuries which followed. One cannot deduce the validity of a political system on the basis of two idolized decades and neglect all the rest of history. Moreover, one errs in deducing the validity of a system from the attributes of the personnel directing it; this simply will not do. What strikes one when studying the history of Islam is the contradiction between the ideals and elevated norms of the Islamic ethic, on the one hand, and, on the other hand, the political practice which generally has been hostile to the people and out of keeping with the prescriptions of the Koran. It is not at all useful to profess a desire for an "Islamic government" if we are not able to draw the lessons of history.

This leads us to another question: if Islamic government is that which is founded on justice and morality and which seeks to propagate the faith, could not every government based on the same principles and having the same objective be characterized as Islamic? In fact, no government can last if it is not based on a principle of justice and a system of values, and all regimes, except for those which profess atheism, respect the religious beliefs of their citizens. This is found in the prophetic verbal traditions *(hadith):* "a polytheist kingdom can last, but not an unjust kingdom."

Today, all constitutions and codes of national rights theoretically state as their object the establishment of justice. They can be judged truly only on the basis of the degree to which they practice this.

Further, if an Islamic government is one which applies the Islamic Law *(shari'a),* it is necessary to ask what this means and how such a government would put it into practice. A serious study of the Islamic Law *(shari'a)* (in the sense of Islamic jurisprudence, *fiqh)* brings out immediately that it is not fundamentally very different from the other great legal systems. This is because basically law is only a logical form of human relations; hence if human thought and language are universal the basic structures of law must be so also. All legal systems depend upon the same logic; they differ only because this legal logic is applied in different contexts. Elsewhere we have been able to show that Egyptian law is in overall conformity with Islamic Law, except for rare exceptions which do not entail a radical change in this legal system. We have much greater need for authentically independent opinion *(ijtihád)* based on hearing all opinions, examining these rules of law from their earliest usage, and taking into account the real needs of persons and of societies.

At the beginning of his prophecy, Muhammad was only a preacher, a "reminder" according to the Koranic expression. Only after the hegira, (622) for the last ten years of his life, did he become a political chief. If one considers that authority to be one of governance *(huküma)* this is by reference to modern sense of the term which refers to the political authority. As we saw above, however, the term itself refers properly to the administration of justice. During the Prophet's

regime every new rule of law was dictated to him by Revelation, which also controlled its application. Further, the government of that period was a government of God, by the intermediary of the Prophet whom God had chosen. Upon the death of the Prophet (632), Abu Bakr took the title of Caliph *(khalifa)* which could signify either or both the legitimate or the chronological successor. For Abu Bakr, only its second sense could be true because he could not inherit the qualities of the Prophet. Nevertheless, the two senses of the term later became confused in Moslem thought and the Caliphs were perceived as successors of the Prophet in the sense even of being endowed with certain of his attributes.

A generation after the death of the Prophet, the Moslem state was transformed into an empire of which the Caliph was emperor. Its lawyers concentrated their reflection upon the issue of legitimacy, in order to consolidate this they attributed to the Caliph all the rights which belonged to the Prophet. Islamic public law thus began to make the rights and prerogatives of the Caliph its essential concern, largely ignoring the rights of the governed or giving them only a theoretical recognition bereft of any practical force. Thus, in Islamic history and contrary to the spirit of Islam, public law has always been applied at the expense of the people. He who governs served only his personal interest and those of his family and entourage. Master of both justice and of the public goods, he dispensed both at will without those governed having any rights. If at times the interests of the people corresponded to his own that was only pure coincidence.

Thus, throughout all of Islamic history the caliphate remained a tribal institution, both in Sunnite as in Shiite Islam. The Quraysh, the tribe of the Prophet, claimed that the Caliphate belonged exclusively to its members and effectively held onto it for six centuries. The question of the tribal identity of the Caliph raised controversies between schools of Sunnite Islamic jurisprudence *(fiqh),* where for long the dominant opinion was that qurayshite lineage was a condition for the legitimacy of the authority of the Caliph. However, this did not later impede the Ottoman Turk sovereigns from assuming the title of Caliph. In any case, from the Umayyads to the Ottomans the Caliphate always remained the privilege of one family. In one sense, that type of doctrinal controversy does not have much to do with the spirit of Islam, in another sense, however, the restriction of the Caliphate to a particular clan or lineage is in flagrant contradiction of the Koranic verses which call for equality between all men without any distinction of race, tribe, etc.13

In Shiism the question is resolved differently: religious and political leadership belongs to the Imam who should be a descendant of the Prophet, and more particularly of his daughter Fatima and his son-in-law, 'Ali b. Abi Tàlib. Within Shiism there arose numerous divisions between the sects according as they gave preeminence to one or another descendant of Ali and Fatima. In the twelve-rule Shiism (the most important branch, which includes the Iranian Shiites), the twelfth Imam has been "hidden" since 329/940. In awaiting his return, the one who governs is considered his representative—as is the case in Iran today. Shiite dogma makes the Imam the sixth pillar of the faith, added to the five pillars of Sunnism (profession of faith, prayer, fasting, alms and pilgrimage). The Imam, chosen and guided by God, is considered infallible, although according to the Koran even the Prophet himself was not infallible.

Although Sunnism never made the Caliphate a point of dogma, it acquired in practice a significant religious weight to the degree that it became a doctrine that it is necessary for the "defense and protection of the Islamic community *(Umma)."*Although its infallibility was never admitted in principle, in fact the Caliph has always been considered to be such, even after the four "well-directed" Caliphs. In fact, within Islam, men were most often treated not as citizens or brothers in religion, but rather as subjects. For example, the Caliph could impose a tribute on Moslems—such as that which the Ottomans imposed on Egypt—beyond the tax they had to pay

as Moslems. Participation and consultation was left to the good will of the Caliph who could disqualify and eliminate any opposition by declaring it heretical. For this reason Islamic history presents itself as a series of intrigues, massacres and civil wars between those who hold power and those who would seek to grasp it.

In external affairs, the successors of the first four Caliphs, in order to consolidate their power and augment their riches conquered immense territories, thereby constituting a veritable empire. But if the conquering Moslems often were more clement than others, this was first of all because these conquests, carried out in the name of God, corresponded to civil ambitions and only secondarily were intended to propagate Islam. Thus, three or four centuries after its conquest, Egypt still was not converted to Islam, and in Moslem Spain the majority of the population remained Christian eight centuries after the Moslem arrival. Only later, in order to provide a religious legitimation for that *politique* of conquest, did Moslem jurists invent the famous division of the world between the "territory of peace" *(dar al-salam)* and the "territory of war" *(dar-al-harb).* That division is not at all part of dogma; it is time that it be reexamined if Islam would regain its true image as tolerant and as promoting equality and peace.

The Moslem invasions of the Iberian peninsula by the Arabs, of Eastern Europe by the Turks and of India by the Mongols left wounds which have never healed. Many non-Moslem historians still hold that the power established by the Moslem conquerors was cruel and arrogant, that is to say, decadent, as, for example, in Moslem Spain. While non-Moslems who submitted to a Moslem power were not really persecuted, nevertheless they did suffer discrimination. While they were permitted to practice their religion under the control of Moslems, they were deprived of their political and social rights. Here again it is time for Moslems to make manifest the true face of Islam according to which all men are equal and the rights of all are to be equally respected.

The Caliphs and all the other Moslem political leaders bear heavy responsibility for the retarded character of the Islamic world. Disrespectful of culture, too often they created obstacles to the development of any education worthy of the name. Education for Moslems consisted entirely in memorizing some *surates, hadiths* and legal opinions. The result was extensive illiteracy at the very time the West was engaged in the industrial revolution.

Authentic Islam is fully conscious of the results of utilizing religion for political goals. It refuses to allow people to be reduced to serving the personal interests of governors who pretend to be following the will of God when nothing in the Koran or the tradition regarding the prophet *(sunna)* calls upon Moslems to adopt a specific political system, whether Caliphate, Imamate or other. Every political system depends on its socio-historical conditions and, according to the principles of justice, equality and tolerance extolled by Islam, should express the needs of the people and their times. The Prophet having died, true Islamic government could be only that of the people: freely elected, open to popular participation, and subject to regulations and controls, in brief, a government which accepts political change without violence or anathemas.

Theocracy

Ancient Egypt was the first civilization to have known a theocracy. The Pharaoh first considered himself to be a manifestation of God, but later come to be understood as the son and incarnation of God; in virtue of this his decisions, acts and words were thought to be infallible. That theocratic model has been repeated almost everywhere and at all stages of world history, as recently as present-day Japan.

It was elaborated above all by the clergy in medieval Europe in order to legitimate the absolute power of sovereigns under diverse theories: the sovereign as manifestation or shadow of God on earth, his election by divine providence, and finally monarchy as being by divine right.

These doctrines were categorically rejected by authentic Islam for which no man, not even the Prophet, partakes of the divine substance or can be considered infallible. This principle was correctly applied during the regime of the first four Caliphs (632-661). Then came the Umayyad empire of which the capital was Roman Damascus. This was exposed to Byzantine influences in juridical and political matters. Mu'awiya and his successors who needed a theory in order to legitimize their power obtained it from the jurists who since then have never failed to respond to the will of their masters. Thus they permitted the Caliph to extend his power without limits as to land, goods and men. Considered as infallible, he was not responsible to the people and could not be deposed. These theories, in which one finds, quite literally, elements of medieval European thought, came to provide the basis for the Islamic conception of politics. They became an integral part of Islam although they were in total contradiction to the letter and spirit of that religion.

Those who appeal today for an Islamic government ignore the facts of history and sociology. Fascinated by the past glory of the Caliphate they misinterpret the relevant social, human and religious factors. What Moslems should call for today is not a new version of the Islamic government of the well-directed Caliphs, but another form of government. Instead of taking advantage of Islam, it would put itself at the service of Islam; it would be a government founded on realities and not on slogans. In medieval times interior and exterior security were the sole important functions of government. Today with its functions multiplied, the medieval forms are no longer sufficient, nor can one judge a political system on the sole basis of certain of its juridical provisions. What ought to be considered is its general conformity to the spirit of Islam.

If however, Islam does not recommend any particular form of government, it does nevertheless oppose the theocratic type. Islam is interested in men and consciences, not in systems and legal rules; it is concerned with the spirit, not the letter. A government inspired by the principles of Islam would be founded on justice and human values. It could be only a civil government emanating from the people and working in the interest of all without exclusion or discrimination. It would give all its attention to education, culture, science, the arts, history and civilization. It would encourage mutual comprehension and cooperation, work and planning, sacrifice and success. It would produce acts and not slogans, facts and not promises. It would understand Islam as mercy, not as menace, and present it to humanity as a way toward God and toward progress. Thus, it would open Islam to every human being and every human being to Islam, becoming thus the nucleus of a new world government embracing all humanity. Of such a government the Highest would be the pivot, and man the goal.

Chapter III
Jihad*:* Holy War

Of all the key notions of Islam, that of is certainly the most controverted. For non-Moslems it means that a Holy War has been declared against them. For most Moslems it is a religious imperative which implies bringing non-Moslems to Islam by good example and persuasion. For an extremist minority it is an absent religious imperative in virtue of which Islam ought to be imposed, and by force if necessary, on 'non-Moslems," that is, Moslems who do not share their views. To clarify the debate we will proceed in the form of three questions: What is the primary meaning of the term How did it evolve? What is its actual meaning?*jihad jihad?*

The Primary Meaning of Holy War *(Jihad)*

In Arabic the etymology of indicates an effort directed toward a determined objective. From this derived many meanings to apply oneself with determination to a task, obstinately to resist in adversity, or simply to fight for survival, eventually by combating an adversary.*jihad*

During the Meccan period of the Koranic Revelation (610-622) the term had an essentially moral and spiritual meaning. It meant to face bravely the plots of the pagans, to preserve the nascent Moslem faith, and not to give in to despair. These senses appear in the verses: "We will guide in our way those who shall have fought for us God is with those who do good (XXXIX, 69); "If (your parents) force you to associate with me that whereof you have no knowledge, do not obey them" (XXIX, 8); and "Do not submit to unbelievers, but struggle against them with force" (XXV, *jihad (Jahado) (Jahadaka) (Jahedo) 52).*

During the Medanese period (622-632) the term went beyond a simple moral sense to include, among others, personal and collective struggle against the pagans of Mecca. The Prophet and the new community of believers, under threat by the pagans were forced to undertake the or emigration whereby they installed themselves at Medina 500 kilometers north of Mecca. With the development of the Medanese community, acquired a material sense: it came to mean not only resisting aggression, but giving the community the means to subsist and to organize itself by financial contributions. This meaning for is found in the verses: "The only true believers are those who believe in God and in His Prophet—without ever doubting later—whilst they have struggled in the way of God with their wealth and their lives; these were the true believers" (XLIX, 15); who "struggled in God's way with your possessions and your lives" (IX, 41).*jihad hejira jihad jihad (Jahado) (Jahado)*

In view of the circumstances, the original ethical and spiritual sense of the terms gave way to a material sense which in time would predominate. The Prophet himself, aware of that evolution, continued to insist on the spiritual meaning of for the Moslem community. Thus, in 624, after Badr where the Moslems won their first great battle against the pagans, he said to them on the road back to Medina: "We return from the minor and go now towards the major In other words, for Muhammad, important though it was, that battle constituted only a minor The most important battle remained, namely the moral and spiritual that is, the continuous effort of self-discipline to vanquish avarice and cupidity, fear and laxity, tyranny and ignorance, submission to desires and passions. is then the refusal of comfort and ease and of a vain and meaningless existence.*jihad jihad jihad." jihad. jihad, Jihad*

From to Holy War*jihad*

In the course of the Meccan period the Prophet was asked through Revelation to endure permanently the trials which the pagans of Mecca inflicted on him and not to oppose violence with violence: "Remind them; you are only a reminder; you are not charged to oversee them" (LXXXVIII, 22), "support them with a noble patience" (LXX, 5); "But if you cry out at lies, nations before you have done the same; the messenger need only believe the message with all clarity" (XXIX, 18). Finally, the first Moslems are described as "those who encourage each other to search for the truth and to endure" (CIII, 3).

When the situation became untenable the Prophet and his faithful emigrated to Medina. Thence they menaced the Meccan caravans coming from Syria, attacking them in order to force recognition of their community and the right to visit Mecca where their families and goods remained. For the Moslems, Mecca had always been the center of gravity of Islam; it was the place where Abraham and Ismael constructed the Kaàba to which the pilgrims came each year.

But the Meccans intransigently refused any compromise with Muhammad. In 624 they raised an army of a thousand, three times more than the Moslems, and headed north to annihilate them. It was in this context that acquired its new meaning of Holy War. The revealed Koranic verses authorized this war while defining its limits:*jihad*

Full authorization is given to defend themselves to those who have been attacked in unjust oppression—God has the strength to help them—and to those expelled from their homes only for professing: "Our Lord is God" (XXII, 39).

Fight in the way of God those who fight against you. Do not be transgressors; God loves not the aggressors. (II, 190).

Thus as a Holy War should be subject, according to the Koran, to precise limits: a well-defined cause and enemy, strict limits and an ethics of war. Here, the cause was the unjust treatment inflicted upon the Moslems by the pagans of Mecca; the enemy was those Meccans who had expelled them from their birthplace; the Koran specified that only those were to be fought who in effect had fought against the Moslems and sought to eliminate them; finally the most important ethical rule, namely, that the Moslems should not be the first to unleash hostilities.*jihad*

Two years later, while the Meccans laid siege to Medina, the Banu Qurayza, a Jewish tribe of Medina, betrayed the Prophet and made an alliance with those by whom the Moslems were besieged. At that point they were in a weak position and risked being vanquished and decimated. A verse was then revealed which ordered them to combat the Jews who had broken their commitments:

Fight those who do not believe in God and the Last Day, and do not forbid what God and His Messenger have forbidden; those who, among the people of the Book, do not practice the true religion. Fight them until they pay the tribute directly after having been humbled (IX, 29).

From this verse it is clear that the combat against the people of the Book is not general and absolute, but limited by precise conditions: it must be against only those who do not believe in God and the Day of Judgment, and who do not forbid what God has forbidden through His Envoy. The sole goal of this combat is to force them to pay tribute to Moslems; the Koran does not speak about either the conversion or elimination of the people of the Book.

After the conquest of Mecca (630), the notion of in the sense of Holy War underwent a new development when it became a matter of forcing the Meccans to convert to Islam:*jihad*

Kill (the transgressors) wherever you come upon them, and expel them from where they expelled you—persecution is worse than murder—do not fight them at the Holy Mosque, at least

if they do not fight you there. If they fight you (there), kill them; such is that recompense of unbelievers (II, 191); fight them till there is no more persecution and the cult of God is reestablished. If they stop, cease fighting, except against those who are unjust (II, 193); and fight the idolaters totally (IX, 36).

Jihad had become an open war against the pagans of Mecca in response to their intransigence and with a view to obtaining their conversion, whether willingly or by force.

On the contrary, as regards the people of the Book, consists simply in the imposition of a tribute which materializes their submission to the Moslem community and their commitment not to rebel against it. has the sense of combat only as regards those among them who break that engagement. Later, in medieval history, the tribute paid by the Jews and Christians living in the Moslem community acquired another function: it became a substitute for recruitment into the army to which non-Moslems were not admitted—for at that time the state in both the Islamic and the Christian worlds was religious.*jihc2d Jihad*

The semantic evolution of can be sketched then as follows:*jihad*

1. At first, designated the immense effort which should be made by a Moslem against adversity in order to survive and to affirm his manner of life in the face of the polytheists: in a hostile environment he has to maintain both his faith and his peace of mind.*jihad*

2. The term next acquired the sense of active resistance, both collective and individual, in confrontation with the polytheists of Mecca, in showing strength of spirit before their aggression and in materially supporting the Moslem community.

3. From the time the Meccans unleashed total war against the Moslems, took on the meaning of combat, those Moslems not fit for combat being obliged to contribute financially.*jihad*

4. After the conquest of Mecca, the term implied the imposition of Islam, but only on the Meccan polytheists: they were obliged under penalty of death to make the profession of Moslem faith: "There is no other divinity than God, and Muhammad is his Prophet."

5. Upon the treason of a Jewish tribe Moslems considered them as infidels to their own faith. In this context, came to signify combat against these infidels to force them to submit to the Moslem community and to pay a tribute as a symbol of that submission. Later, the tribute would be imposed on all the people of the Book and would come to be perceived by the state as a substitute for conscription.*jihad*

6. Beyond these changes, the basic sense of remained, that is, as the Prophet explained, the continued fight of the soul against contrary elements in order to prevail in force and in serenity. Such is the major holy war (in the sense of physical combat) is only the minor *jihad jihad; jihad.*

The major signified, unquestionably, an elevation of the soul to overcome the self. This basic sense was not understood by the jurists however, and came to be deformed by political practice during the classical age. Many jurists, including the most influential, conceived only as a war against non-Moslems which would end only with the conversion of the entire world to Islam. War thus became a permanent state rather than only a temporary one. That conception of constitutes a serious departure from its initial sense and derives from a bad reading of one verse and two *jihad jihad (jihad) hadiths.*

The verse is the following: "0 believers, fight the unbelievers who are near you" (IX, 123). In examining this verse closely it is clearly not an order to combat all non-believers (all non-Moslems) in every time and place. It is rather a strategic advice to combat those unbelievers who live close to Moslems in order to assure the security of the Islamic community and protect it against

the enemies who surround it and wish to injure Islam. Certainly, the art of war teaches that the best defense is an attack. Thus, a little before his death (632), when the Prophet raised an army to combat his enemies to the north, he carried out the order implied in this verse. In effect, as the Byzantine empire and the Sassanid empire to the east menaced the Moslem community at that time, the best defensive strategy was to attack.*(Umma)*

In addition, the poor interpretation of two contributed to the deformation of the exact sense of First, it is reported that before the the prophet, when provoked by the Meccans, replied: "People of Quraysh, I have brought you massacre." First, the authenticity of the is very doubtful. Then, even if it were authentic, it concerns only a part of the Qurayshites, and was pronounced at a time when the Prophet was carried away and lost his composure. After the defeat at Uhud seeing the Meccans carry in triumph the body of his uncle Hamza b. ʿAbd al-Muttalib, he threatened to kill two Meccans for every Moslem victim. But then a verse was revealed directing him not to chastise beyond the extent of the wrong caused ("If you chastise, chastise even as you have been chastised" XVI, 126). However that may be, unequivocal verses of the Meccan period ordained the Prophet to prove his strength of soul under the aggression of the pagans, and without question the last word belongs to the Koran.*hadiths jihad. Hegirahadith (625),*

According to the second the Prophet said, "I received the order to combat people until they bear witness that there is no other god than God and that Muhammad is his prophet." Here the question is to know what should be understood by "people". For many exegetes in Koranic usage that term does not refer to humanity in general, but only to the Meccans. Thus understood, this is in perfect agreement with the Koranic verse which orders Moslems to combat the Meccans until they convert (LX, 36).*hadith, hadith*

"Umar, the second Caliph (634-644), hesitated for a long time before attacking the Roman and Persian Empires, and was finally forced to do so only in order to protect the Moslem community. But starting from the Umayyad dynasty, less than a half century after the death of the Prophet, the Moslem State was transformed into an empire in which the Caliphate was transmitted as a family inheritance. The Caliph-emperors often followed a conquest in order to augment their power, riches and the number of their subjects, or to protect these gains. They employed the call to Holy War to galvanize their armies and spread the idea that they were engaged in a battle cry in the name of Allah in order to give Islam more power and to guide other peoples toward the truth. Though Moslem conquerors were generally more merciful than others, it remains that many conquests were made for purely temporal goals, which the call to a Holy War under the banner of Islam sought to legitimate.

It is often wrongly believed that the first objective of these wars was to propagate Islam. Without doubt that objective was not totally absent from thought, but the first goal of the conquests was the personal enrichment of the Caliphs, their entourage and their court. As an example, three centuries after their conquest the mass of Egyptians were not yet converted to Islam. In Spain under Moslem domination the majority of the population remained Christian certainly this is proof of tolerance, but also that the first goal of the conquests of the Caliphs was not the propagation of Islam. Rather, these conquests were of an essentially political order; in no case could they be qualified as a jihad.

For their part, dissidents within the Moslem empire have qualified their opposition to the Caliphs and have sought to convince their partisans that should apply not only to the unbelievers but also to those whom they considered to be unjust rulers. A third interpretation was thus forged by the fanatics and terrorists for whom signified the elimination of all who opposed them, whether free thinkers or individuals who defended independent thought.

Today, after all these improper uses, Moslems have a most confused idea of Most ignore the real sense of the notion, and are not able to submit it to critical examination.

Authentic Jihad

In sum, has two meanings: the original one which is of a religious nature, and one acquired in the course of history which is of a political nature and is characterized by imprecision. The first usage of is an individual ethic; its acquired sense, however, is that of a war against non-Moslems which in many cases is against Moslems. We do not doubt that the original sense will triumph in the end, so that will become an instrument of justice and mercy, not of violence and war.

Chapter IV
Islamic Fundamentalism

In the United States Christian groups who decide to retire from society in order to live the abstemious community life of the first Christians, with the intent of returning to original Christianity, are characterized as fundamentalist. Under the influence of this Anglo-Saxon terminology, certain Arab authors have characterized as Islamic fundamentalism *(usuliyya)* the extremist currents of thought which fix upon certain formal and marginal aspects of Islam and seek to impose them by force.

Such a direct transfer into an Arab-Islamic context of an expression borrowed from the North American intellectual and social context loses sight of the important differences between original Christianity and Islam as lived by the first Moslems. As can be seen from the Gospels and especially from "The Acts of the Apostles", Christians in the first three centuries lived a simple communitarian life. This was separate from Roman civilization, which they considered pagan and impure. It was separate also from Jewish society which they criticized for its literalist application of the Mosaic law at the expense of its spiritual dimension. For a long time these first Christians acted simply as a new Jewish sect, not doing anything to develop their own religious Law, to found a new state, or to resist oppression by the Romans who were throwing them to the lions. That situation prevailed till 325 when Constantine declared Christianity the religion of the Empire.

In Islam the situation was very different. Since the time of Medina under the government of the Prophet, the first Moslems, far from submitting to the polytheists, fought them and worked to spread the new faith and to reshape their world. As a result, before the end of the first century when they were centered in Damascus, and even more during their following period in Baghdad,14 they constructed a new Islamic civilization. Hence if, as with the North American Christians, fundamentalism means seeking to revive the life of the first Christians, then this expression cannot be applied to Moslem extremists who today impose by violence ways of thinking and acting which have nothing to do with those of the first Moslems.

If, nonetheless, one wishes to continue to speak of Islamic fundamentalism, one must clearly distinguish its two forms in contemporary Islam. On the one hand, there is *activist political fundamentalism.* Far from proposing an authentic renewal of religious thought, this battles only on the political terrain and with its arms, thereby lowering Islam and Islamic Law *(shari'a)* to the level of common politics. On the other hand, there is *rationalist spiritualist fundamentalism.* This can be traced back to Islam as understood by the first Moslems according to the teachings of the Koran and the normative behavior of the tradition regarding the Prophet *(sunna).* It uses these to renew the spiritual life of Moslems, to restore the values of work and of independent opinion *(ijtihad),* to rediscover an active role in world civilization and, finally, to shape the political and juridical institutions of society in a way that avoids both excessive sacralization and destructive nihilism.

Let us compare these two fundamentalisms on five levels.

Semantic Derivation

The meaning of words is not fixed once and for all. Like living beings, words evolve and change in the course of history to the point of acquiring at times a sense completely different from the original one. Thus, "democracy" signified in early Greek thought government by the uncultured masses, before coming to designate government by the majority of citizens. When today one

characterizes as a "police" state a country which depends more on its security apparatus than upon legal authority one is far from the original sense of *polis* as city-state.

Similarly in Islam, with time such terms as *shari'a, hukm* and *Umma* have acquired meanings radically different from their origins. Thus, the term *shari'a* (Islamic Law), which in the Koran meant the way or the route laid out by God, came to designate also the ensemble of practical juridical directives in the Koran, to which was later added the *sunna* or tradition regarding the prophet, and finally also the opinion of the jurists and the unanimous consensus of the community *(ijma),* in other words, Islamic jurisprudence *(fiqh).* There is, however, an essential difference between the two senses: whereas the first points to the way that God, through the Koran, invited believers to follow, the second refers only to the opinions of jurists. In other words, to confuse the two senses is to confuse what is of divine origin with that derived from human sources. Such confusion loses touch with Islam and approaches polytheism.

Finally, to protect itself against this confusion and to avoid a deformed or adulterated interpretation of Revelation, rationalist Islamic fundamentalism thinks it important to rediscover the meaning which the Koranic terms had at the time of Revelation and to hold to that sense. On the contrary, activist fundamentalism takes those terms in a derived or conventional sense which is totally absent in the Koran, thereby generating confusion and deformation.

The Circumstances of Revelation

When 'Umar asked Ibn 'Abbâs why divergence of opinion arose within the Islamic community, he responded:

> The Koran was revealed to us and every time we read a verse we know what was behind its revelation. But after us will come people who will continue to read the verses having forgotten their context. That will provoke differences in reading which will degenerate into internal quarrels.

Rationalist fundamentalism seeks to rediscover the foundations laid by the Koran and followed by the first Moslems in their interpretation of the revealed Word. It does this by following Ibn 'Abbas in situating each verse in the circumstances in which it was revealed. In contrast, activist fundamentalism neglects the context in which particular verses were revealed and interprets them solely on the basis of their literal sense and in virtue of the principle that "the general sense of a Koranic term should prevail over its circumstantial sense." However, the principle is merely a rule of Islamic jurisprudence *(fiqh)*created by jurists; it is not a provision of Islamic Law *(shari'a)* coming from the Koran or the *sunna.* Hence, its application weakens the coherence of the Koranic message. As the Koran constitutes a whole, each part needs to be interpreted in the light of the others; this is in conformity with the fundamentalist method of the first Moslems. As Ibn 'Abbas predicted, the faulty method of the activists led to differences and quarrels about the sense of the Koranic verses. One example concerns the interpretation of the verse: "The unbelievers are those who do not judge *(yahkum)* men according to what God has revealed" (V. 44); this was revealed when the Jews of Medina turned to the Prophet to judge a case of adultery committed by two members of their own community, but hid the rule prescribed by the Torah for that case, namely, stoning. That is why the best exegetes think, on the authority of Ibn 'Abbas and the Prophet, that this verse concerns only the people of the Book. It signifies only that those among them who do not decide their cases in conformity with their own law are deniers of

their books. Activist fundamentalism, on the basis of the principle cited above, ignores the circumstances of Revelation and departs from the interpretation of the Prophet and recognized exegetes and uses this verse like a slogan. In their faulty interpretation the term *yahkum* is taken to mean "to govern", whereas in the Koran it signifies "to judge", and as a result, they accuse all governments of infidelity.

Islam, Religion of the Just Mean

An essential characteristic of Islam is its rejection of all forms of excess and extremism in fulfilling religious prescriptions: "People of the Book, do not exaggerate in your religion" (IV, 171). In that sense, it is said of the Prophet that each time that he could choose between two possibilities he chose the one which was easiest on people. It is reported that ʻUmar b. al-Khattâb, seeing in a market a man holding in his hand a lost fruit and looking for its owner, said to him: "You do this not out of piety but affectation." The following are but some examples of the tolerance and spirit of equilibrium in authentic Islamic fundamentalism.

When Muhammad was traveling with the Moslem army from Medina to Mecca during the month of Ramadan in the eighth year of the Hegira, one part of the believers, including the Prophet, did not fast. This was in conformity with the Koran which authorized breaking the fast during a voyage. Others, more exigent than Muhammad himself, strictly observed the fast. That situation lasted several days without either group reproaching the other in the least.

Another example: it is reported that a Bedouin came to find the Prophet and said to him: Envoy of God, I always have some affairs that occupy me during the hours of prayer; could you suggest some way of replacing them? The Prophet responded: Pray the dawn prayer and the sunset one but not that of the noon, afternoon and night. This story shows how muhammad himself practiced independent opinion *(ijtihád)* and creative thinking, even in what concerned ritual obligations in order to make them easily practicable for believers.

A last anecdote: One very cold morning after ʻAmr b. al-ʼAs said the dawn prayer without his ritual ablutions, Muhammad asked him: "Have you not read the verses devoted to ablutions?"— "Yes, Envoy of God," he responded, "but I also read: ʻDon't expose yourself, by your own hands, to destruction"ʼ (II, 195). The Prophet laughed heartily and willingly recognized the excuse.

Rationalist Islamic fundamentalism thinks it necessary to return to these essential traits of Islam, namely, mercy, tolerance, the attenuation of human suffering and the rejection of all excesses and forms of extremism. This is the precise opposite of activist fundamentalism.

Islam, a Religion of Progress

At the heart of Islam there is continued movement toward the future, the will to march forward toward the establishment of a humanist civilization. The phenomenon of abrogation *(naskh)* in the Koran, that is the substitution of one verse by another in the face of new developments, is the surest index of this constant movement of adaptation to realities and an active will to change life. The first Moslems understood perfectly that they had a religion of action thanks to which they were able to build a great civilization of universal scope.

"God does not change anything in a people, until they change what is in themselves" (XIII, 11): the first Moslems understood the true sense of this verse, so that authentic change begins to operate within each person and is followed by constructive action and creative work. In order to be efficacious this must not stop at the surface of things but must effect their essence. That is why

the early Moslems opened to all the civilizations of their time, studied all the sciences and worked in all fields. A generation after the death of the Prophet they had abandoned the life of the Bedouin and, through their faith in Islam, had become the agents of their history.

At the end of the IVth-Xth centuries, the Brethren of Purity defined the perfect Moslem as one who is: "Arab in religion, Iraqi in taste for life, Hebrew in experience, Christian in method, Syrian in asceticism, Greek in science, Hindu in vision, Sufi in conduct, angelic in morality, sovereign in reflection, and divine in his knowledge." In other words, the true Moslem was both humanist and universalist. Open to all cultures and all forms of knowledge, he is tolerant with regard to all Divine Laws, and knows how to choose what is best from each approach. But in the Vth-Xth centuries a change took place: Moslems ceased to progress and for the following nine centuries entered into a state of stagnation in which they too often lost the capacity to act with a clear and conscious vision. Rationalist Islamic fundamentalism, holding to the essence of Islam, wanted to be humanist and universalist; they valued movement toward the future. In contrast, activist fundamentalism, turning toward memories of the past and shriveling to positions it neither could nor wished to surpass, became hostile to all progress.

Political Power According to Islam

For the first Moslems, political power was not a religious emanation from God, but a civil work of human will. For them the governor was an individual like other men. They designated him as governor through some agreed upon process; and in theory at least they could review his work and dismiss him from his functions. His acts, orders and opinions were not from celestial revelations, but were solely his judgments and those of his counselors. Upon his investiture, Abu Bakr gave this speech to the believers; "I have been designated as your head, but I am no better than you: if I act well, help me, and if I act badly, correct me". In the same circumstances his successor, ʿUmar b. al-Khattâb, declared: "If you note in me any deviation whatever, correct."

In all of Islamic history no jurist, *ulama* or exegete has claimed to have particular authority, to be inspired by God in his judgment or to be gifted by infallibility or sanctity. All knew that Islam rejected all these forms of domination of man over man and likened them to polytheism. In contrast, despotic political power too often has claimed an aura of infallibility and holiness. Though some may find this judgment excessive, it remains true that, although unjust rulers have always pretended the contrary, in practice everything happens as if God the Highest made them Caliphs in order to express His will and act in conformity with it. It is as if they were not simply the "Commanders of the believers," designated by them and responsible to them. Thus after the first four Caliphs and against the teachings of original Islam, political authority in Islam became *de facto* a theocracy in which rulers exercised personal inherited power. In the absence of all controls they were able to transgress the religious Law as they saw fit. Moreover, though in principle hostile to Shiism, they were influenced by Shiite conceptions which made the sovereign an infallible being elected by God, for these ideas served their interests.

Rationalist Islamic fundamentalism considers it necessary to return to the Koran and the traditions of the first Moslems in order to purify Islamic political though from its errors. On this basis it would establish political authority as coming from the will of men who have the right to participate in it, control it and remove it if it contravenes the relevant laws. Activist fundamentalism believes something other than it professes and acts contrary to what it says. For in affirming political authority to be an integral part of Islam it confers upon it a *de facto* infallibility in such wise as to transform it into a religious authority. Furthermore, for

rationalist Islamic fundamentalism every person versed in the sciences relating to religion remains nonetheless a simple individual and his opinions, words and judgments bind only himself. In contrast, the activist fundamentalist acts as if the opinion, word or judgment of the one he takes as chief, guide or *imam* is an inspired vision from God. On this basis he makes his chief into a lord, imitating thereby the people of the book who are stigmatized by the Koran: "They have taken their doctors and their monks as well as the Messiah, Mary's son, as lord in the place of God" (IX, 31).

There are then two radically opposed Islamic fundamentalisms: the one, rationalist and spiritualist, proposes a rediscovery of the original thought processes and spiritual life. In this it attaches itself once again to the essence of Islam and to the spirit of modern civilization. The other fundamentalism, activist and political, is an aggregate of confused and irrational tendencies. Under cover of a return to the holy ancestors, it preaches a facade of rigorism and a return to by-gone modes of life. In this there is neither a rational direction, spiritual renewal, nor authentic teaching. The past is quite dead, and the present is in permanent movement: though the river may be the same, one never enters twice into the same water.

Chapter V
Pan-Islamism

In the 1940s one of the ideologues of political Islam undertook to preach what he called "Pan-Islamism" *(aI qawmiyya al-islâmiyya).* This was intended to make Islam a privileged bond between Moslems, erasing forever all allegiance to country or nationality. Since then the partisans of this theory and those participating in its derivative groups *(jamâ 'a)* or influenced by its thought have been called Pan-Islamists.

This false conception, based on a confusion of terms is profoundly damaging to Islam, which is foundationally a general and universal teaching and way; in no case can it be limited to a privileged community or nation, to a specific party or political system. One famous verse says: "0 mankind, we have created you male and female, and have constituted you in peoples and tribes, that you may know one another. The noblest among you in the sight of God is the most pious" (XLIX, 13). This supports the prophetic verbal traditions *(hadith).* "An Arab cannot have more merit than a non-Arab except on the basis of his piety." This verse and *hadith,* among other sources, show without doubt that Islam rejects all tribal, ethnic or nationalist temptations. It is a religion open to all on an equal footing, without any discrimination between peoples.

To reduce Islam to a nationalism *(qawmiyya)* is contrary to its nature, and a grave misconception of modem political realities and of the terms in which these are expressed. Nationalism is a political movement that proclaims the right of each nation to constitute itself as an independent political entity. That movement, born and developed in XIXth century Europe, allowed Germany and Italy, and then the people of the Balkans, to constitute themselves as independent national states. If one applies this definition to Pan-Islamism one must define it, despite its proponents, as an ideology according to which Islam is a political movement which would constitute Moslems as an independent political entity. In that way, Islam as a religion, rather than being open to the entire world, would remain closed off to non-Moslems, closed in to a limited people and region; it would be transformed into a political movement which, whatever its form, would be the natural enemy of all other ethnic groupings and nationalities.

These natural consequences of a poor comprehension of Islam have made their mark upon all contemporary Islamic movements. All have become nationalist movements rather than religious, political rather than spiritual, pre-Islamic *(jahili's)* rather than Islamic.

The Sources of Pan-Islamism

This ideology has its source in Judaism, which penetrated Islam by the interpreters of the Jewish traditions *(isrá' iliyyát).* In contrast to Islam, Judaism is a national religion, the religion of the Jews. In the Old Testament Yahweh is the God of the Jews; only later, in the last Books (Isaiah, David and Malachi) did Yahweh become the God of all men. That ethnic or national character of Judaism is especially manifest in the fact that if one is not bom a Jew it is extremely difficult to adopt the Jewish religion, whereas to become Moslem a profession of Moslem faith suffices.

From the dawn of Islam until today, some Moslems have not grasped this basic difference between the two religions. This has been so since the first conquests, even in the time of the Caliphate of 'Umar. Certain Moslems of Medina wished to impose the payment of tribute *(jizya)* on all conquered non-Arabs, including those who had converted to Islam. This would have made ethnic identity more important than Islamic identity. Understanding the universal

vocation of Islam, 'Umar rejected that point of view and affirmed that the tribute could be imposed only on non-Moslems, whether Arab or not.

Unfortunately, that true understanding of Islam was put in doubt a little after 'Umar's death. Muhammad had done his best, as is shown by the Koran and the tradition of the prophet *(Sunna),* to break the force of ancient habits and to open to the Arabs of the Peninsula broader horizons than the tribal chauvinism in which they had hitherto been confined. However, he did not want to upset certain customs and conceptions, being conscious of the weakness of the human spirit and of the difficulty of breaking free from all former prejudices in one stroke. Perhaps because of this, one witnesses some of the newly converted Arabs rapidly regressing from Islam to the morals of their pre-Islamic state *(jahiliyya)* with a resurgence of the spirit of clan and of tribal chauvinism.

That tendency, which has been visible since the Caliphate of 'Uthmân, regained full vigor during the Umayyad Caliphate. This was marked by an exacerbation of the ethnic Arab domination, especially that of the Umayyad clan, over the other Moslems in contradiction of verse XLLX, 13 cited above. Consequently, during the Abbasid Caliphate the provocations by the Arab element gave birth notably in the Persian ethnic group to a counter nationalism which took the form of the movement called a "return to the people" *(shu'übiyya),* a term designating the conflict between Persians and Arabs. In that conflict Islam, rather than playing its proper unifying role, served as a slogan by which to reject one's adversaries and rally the troops.

More generally, the confusion between religion and ethnicity had disastrous consequences for Islam, both on the political and on the religious plane. On the political plane it permitted the Umayyad Caliphs, in order to legitimate their pretensions to the Caliphate and keep it for themselves, to affirm that "the Imams must be qurayshites."15 On their side, the Persians combatted the situation by inserting themselves into the entourage of the Caliph—all the Abbasid Caliphs, except three that had non-Arab, mostly Persian, mothers—and thereby assuring control of the army and the high administration. This was true to such a point that it could be said without exaggeration that during the second half of the Abbasid Caliphate the Caliph was nominally Arab while the Persians exercised the real power.

On the religious plane, that confusion is responsible for the division between Sunnism and Shiism, which in its origin had been essentially political. The term designated the partisans of 'Ali b. Abi Tâlib who thought that the Caliphate should return to him and after him to his sons, Hasan and Husayn, rather than to the Umayyads. Thence, Shiism gradually became a religious tendency adopted especially by the Persians in order to distinguish themselves from Arabs; into it they introduced largely their own doctrines and traditions.

If the difference between Shiism and Sunnism had been of a truly religious nature it would have limited itself to certain interpretations of one or another Koranic prescriptions. But as it was a matter of a conflict between two nationalisms, it was natural that the dominant ethnic group sought by all means to differentiate itself from its rival. For this reason the Shiite Ulamas, in a spirit of contradiction, often adopted positions which differed from those of the Sunnites. One of them, al-Kulayni, even said that "all that goes counter to the unanimous consensus *(ijma)* of the Sunnis is authentic." Thus, it is not surprising that in the eyes of the Sunnis certain Shiite doctrines are seen as contradictory to the precepts and foundations of Islam.

From Pan-Islamism to Pan-Arabism, and Vice Versa

Beginning from the XIIth century, the conflict between Arabs and non-Arabs shifted definitively in favor of the latter. The Islamic state was dominated successively by Persians, Turks,

Mongols, Tartars and Kurds before winding up in the hands of the Turks of the Ottoman dynasty, which claimed to be heirs of the Abbasid Caliphate.

The Ottoman Caliphate was masked by nationalism and ethnicity, which became progressively stronger. Gradually, the Ottoman power began to treat its subjects as a conquering and dominating power. It affirmed its own ethnic superiority, contrary to the teachings of Islam which recognized both the right of every Moslem to exercise political authority and the obligations of government to treat all subjects as brothers in religion. Such "Ottomanism" naturally gave birth to a counter-nationalism, namely, to the emergence at the beginning of the century of Pan-Arabism. This emerged first in the "Arab revolt" of 1916 and was later institutionalized in the foundation of the Arab League on March 22, 1945.

The Arab states were happy to see Egypt take up the Pan-Arabist ideology and join in the founding of the League. In view of its strategic position between North-West Africa (*Maghreb*) and the Middle East or West Asia (*Mochrek*), its role was to be the *avant-garde* of African Moslem peoples, and its political, cultural, demographic and economic weight. The national income of Egypt was itself higher than that of all the other Arab countries combined. All that made Egypt the natural leader of the states united in the Arab League.

In 1956, the triple aggression and nationalization of the Suez canal gave an enhanced vigor to the Pan-Arab tendencies. The Arab masses hoped for a political unification of the Arab world under the leadership of President *(rais)* Gamal Abdel Nasser. To certain regimes that wave represented a serious danger, raising questions regarding their very existence. The Arab world divided itself then into two opposed camps. The first, led by Nasser, under the banner of Pan-Arabism, worked to install an Arab State unified on the basis of an "Arab socialism". It characterized itself as progressist, while its adversaries accused it of being pro-Soviet and lay, which according to them meant anti-religious. The second camp, rather than envisaging a political unity, proposed the constitution of religious blocks. It rejected socialism and qualified itself as religious or conservative. Its adversaries accused it of being reactionary and at the service of Western imperialism.

Thus Pan-Arabism led to a new division of the Arab world, and finally to a resurgence of Pan-Islamism. In the ideological war between these two camps, Saudi Arabia made of Islam an arm with which to fight the other camp. It accused it of being atheist or at least non-Islamic, and subject to an infidel state, namely, to Communism, which rejected Islam. To reinforce its camp, Saudi Arabia stimulated the creation of the Organization of the Islamic Conference and of the Islamic League, institutions destined to regroup all the Moslem states and develop among their peoples a sense of belonging to Islam. Aware of the objectives of these institutions, Nasser fought them and refused Egyptian membership in 1966, before finally accepting it in 1969.

In the meantime there intervened the 1967 defeat, which undermined especially the direction taken by Nasser. His adversaries did not fail to exploit the situation. In this they were aided by events, for in 1967 the Israeli occupation of Jerusalem, third Holy City of Islam, was a shock to the entire Moslem world. From that point onward, all Arab leaders, of whatever camp, took advantage of Islamic solidarity against Israel and transformed the conflict between Arabs and Israelis into a conflict between Jews and Moslems.

In 1970, Anouar El-Sadat succeeded Nasser and quickly modified radically Egyptian politics: the expulsion of the Soviets, new ties with the West and in particular with the United States, and a policy of tightening the links with the Arab states opposed to Nasser, and especially with Saudi Arabia whose power was reinforced by the rise in the price of oil. On the interior level, the exclusion from power of Nasser's socialists opened the way for Islamist groups to become more

active and to gain some power. Certain members of the association of Moslem Brethren close to the presidency *(rais)* persuaded it to allow them to act in the name of so-called common interests. Thus, the Moslem Brotherhood returned from Saudi Arabia and other Arab countries where they had emigrated under Nasser and reentered politics, commerce and finance, while cultivating close ties with those who had protected them when they had been threatened.

For all these reasons, Pan-Islamism became active once again in Egypt, but under a new allegiance and on a broader and more intensive scale than before. The policy of economic openness, notably with the establishment of the so-called Islamic banks and the massive emigration of Egyptians toward the oil producing Arab countries also favored this tendency. On the whole, the new Pan-Islamism thus found in Egypt a propitious climate for realizing its objectives, which at times were contrary to those of Egypt. This was possible by means of financial institutions and the media, or by the judgment of certain Ulamas who were well remunerated by the Islamic banks of which they were designated advisors or by the states which called upon their service.

Being essentially nationalist rather than religious, the Pan-Islamic trend had an exclusively political objective, namely, to come to power everywhere and by any means. To do that, it presented a single model as being ideal for Islamic government and as needing to be accepted as a whole and without discussion, and they attributed to Islam this political system and certain Arab customs which come, rather, from pre-Islamic Arabs *(jahiliyya)*. Worse still, having Islamized the banks, they threw themselves into Islamizing the sciences and institutions, as if it sufficed to suffix the label Islamic to a corrupt political system, a hypocritical economic system or a profitable commercial enterprise in order for it to be rendered virtuous.

By all these manipulations, it is Islam which one destroys and falsifies for the benefit of neo-nationalism as a resurgent "return to the people" *(shu 'übiyya)*. Logically, that degeneration of Islam into an Arab neo-nationalism would give rise to a counter-nationalism. It is then an irony of history that, as twelve centuries earlier, there is Persian nationalism . . . and so on in endless repetition.

Contemporary Proponents of Pan-Islamism

The Iranian revolution of 1979, which toppled a regime pretending to be the successor of the ancient Persian Empire, did not take long to reveal its true nationalist nature. Under its "Islamic" appearances, the regime deriving from the revolution of 1979 only continued the policy of its predecessor. To this it added a clearly expansionist perspective, and thenceforward proceeded to export this model outside of Iran. In turn, this would lead to exacerbating, once again, antagonisms between the Arabs and the Persians and between the Shiites and the Sunnites, each attempting, as in the past, to hide under the banner of authentic Islam and the true faith. Inevitably, that antagonism would degenerate into an open war, namely the long Iran-Iraq war. Though quieted today, someday this will against burst into flames in one or another form.

All unfolds as if the ethnic political conception of Islam, since the very beginning of its history, leads inevitably to exhausting its spirit through fractioning its community *(Umma)* into tribes, factions and mini-States. The contemporary politicization of the region seems to return to tribalism and the squabbling between groups. All this is done under the most diverse uses of the term "Islamic," but finally, all are based on the spirit of nationalism.

In today's Islamic world at least three "Pan-Islamisms" emerge, and there is reason to fear that this number will increase in the future.

Arab Pan-Islamism takes as Islamic principles the typically Arab mentalities and attributes, which for the most part are pre-Islamic *(jahiliyya)* and have no foundation in the Koran or in the Islamic community *(Sunna).* On the contrary, it seeks to diffuse a particular mentality and conception which it pretends to be *the* Islamic mentality, the Islamic conception of things. In the same way presenting a certain model of government as being the Islamic ideal, this pan-Islamism strives to eliminate the others—which it characterizes as lay—so that all the government systems of the Islamic countries will be subject to this pseudo-ideal. Under the cover of Islam it preaches a nationalism aimed at surpassing allegiances to existing parties and nationalities in order to substitute allegiance to a neo-nationalism, promoting the belief that it will be the center of Islam. In fact, it is itself deeply bound to its own ethnicity and arises from a political and institutional current profoundly dangerous for Islam and all Moslem peoples.

Persian Pan-Islamism has Iran for its center, but having been joined by Libya it forms an Iranian-Libyan axis. That axis attacks Arab Pan-Islamism on a twin ethnic and religious basis, accusing its adherent of having remained *qurayshite*chauvinists, never having been civilized by Islam, having regressed to pre-Islamic paganism *(jáhiliyya),* and finally of having completely confused Islam and Arabness.

Persian Pan-Islamism presents the Iranian model as the ideal form of Islamic government and attempts to export it to neighboring countries. It claims to be revolutionary, accusing other regimes of being reactionary and of supporting imperialism. Numerous Islamic movements aspire one day to imitate its model of seizing power by mass manifestations, and their leaders dream of that type of clerical government. On the religious level, Persian Pan-Islamism seeks to spread the Shiite doctrine, considered as the sole authentic faith. It would claim to provide the right path to the Sunnites who have wandered since the death of the Prophet.

Despite the important doctrinal divergences which separate Sunnism from Shiism, certain Islamic groups, notably in Egypt, have been strongly influenced by certain Shiite conceptions: its myth of the Messiah *(al-mahdi al-muntazar)* who will return to fill the world with justice after it has been filled with injustice, secret groups, the tendency to attribute *de facto*infallibility to their leader and to the jurists *(ulamas)* who inspire them after the manner of Ayatollahs, and integration of the political system into religious dogma.

African Pan-Islamism, still young, was born in the United States in the special conditions of Black Americans. It is poorly defined and still in search of its proper identity. Basically, it reflects the desire of Blacks for an identity distinct from that of other Americans and external to Western civilization. They felt they had found this in the ideology of Africanness and their African roots, but that did not allow for self-affirmation in the American context. Under its contemporary form of political nationalism, Islam provided what they lacked, namely, a nationalist ideology, and so they became Moslems. The political character of this Pan-Islamism is still clearer than the two preceding ones. These Moslems have only a vague and superficial idea of Islam, and their practice is limited to formal ritualism. In brief, for them Islam is first of all a weapon in their struggle against American nationalism.

Arab and Persian Pan-Islamisms both seek to seize control of the African model, notably through financial support and personal relations, in order to establish a sphere of influence at the very heart of the United States. They are helped in this by the fact that by nature Pan-Islamism urges its followers to substitute for allegiance to their native country allegiance to the centers of Pan-Islamism, and to consider themselves closer to their distant Moslem brothers than to those with whom they share their daily lives.

Because of this nationalist reduction which characterizes it today, Islam has lost its universal and humanist dimension, its tolerance and spirit of openness. For this reason the contemporary Islamist wave lacks unity in goal and action, limiting itself to a series of disparate movements without clear method or project. The groups distrust or are outright hostile one to another. They are characterized as either ethnic or nationalist with all that implies of chauvinism, violence, hostility to other ethnic groups, persecution and superiority complexes, etc.

Those who follow such pre-Islamic *(jahili)* nationalism reject the prophetic verbal tradition *(hadith)* according to which "love of country is part of the faith"; instead, they fanatically repeat such slogans as "apply the Islamic Law *(shari'a)"* or "sovereignty belongs to God." They join in weakening national allegiance which they transfer to the centers of the new Pan-Islamism. They erase political and legal traditions and make governments into puppets manipulated by the chiefs and priests of the new ideology at the service of the tribe, whichever it might be.

Islam and Egypt are in danger. . . . Islam is deformed and politicized under the pretext of nationalism, and under the cover of Islam Egypt is on the way to seeing its soul destroyed, its history erased, and its children rendered subject to some other nationality. Some people work toward this end clearly and openly, whether they be agents of the new nationalism, unaware of what is happening, or in search of reward from powers which quite openly and wildly spread their money.

It is the national duty of Egypt to be wary of this, to call it to the awareness of others and to work with all its power to restore the true essence of Islam as a general, tolerant and universal religion, without fanatic chauvinism, insidious racism and tribal backwardness. The Islam that can be a light to humanity and model of civilization does not divide but unites; it does not threaten but protects; it does not alienate and reject but embraces. This is the Islam which pervades the heart of each individual, raising it ever higher. It enables one to penetrate deeply into the meaning of things beyond obscure details, beyond form without content and beyond formulas which prove to be as brilliant as they are empty.

Chapter VI
Shari'a: The Codification of Islamic Law

Since the adoption of the Egyptian Constitution in 1971, which article stipulates that "the principles of Islamic Law*(shari'a)* are a principle source of legislation," the question of the codification of the *shari'a* has taken on a political dimension. This concerns the ruling as well as the opposition parties, the moderate jurists *(ulamas)* as well as preachers who know how to play upon tensions. Because of such politicization discussion of the law does not rise above the level of political agitation and of superficial reflection and feelings. This politicization is to the detriment of serious approaches which seek to be impartial.

Thus, the first Egyptian Congress of Justice organized in Cairo in April, 1986 proposed in one of its recommendations "the elaboration of projects of law drawing from the *shari'a* and a revision of all laws in effect in order to bring them into conformity with the *shari'a."*

That recommendation raises many questions. Is it true, as has been said here and there, that the recommendations of the Congress reflect more the opinion of the jurists than of the judges, and if so is one speaking of the opinion of all the judges or of only a part of them? Is it a matter of applying the *shari'a* in a sense that implies the abrogation of all Egyptian laws and their recodification in a specific manner—or is it a matter of maintaining present laws once they have been amended so as to suppress any dispositions contrary to the *shari'a?* Was the recommendation adopted on the basis of serious and impartial studies or did it reflect merely the conflicts which trouble Egyptian political life? Finally, should one conclude that our judiciary has renounced the prestigious patrimony it built up during a whole century and which is rightly its pride and that of all Egypt?

Our people—or better still, the entire Arab people—hold a very high opinion of the Egyptian judiciary. They have the right to expect, when it faces a matter as delicate as this, that it does so with the seriousness and serenity which ordinarily characterize its work. They expect to find in its recommendations the rigor and logic it devotes to editing and researching its judgments.

It is with such serenity and rigor that we intend to reflect here on the problems posed by the codification of the *shari'a.*First, we shall give the term a precise definition. To do so we shall refer to the dispositions of the Koran and the prophetic tradition regarding the Prophet *(sunna),* and then to the Egyptian legislative and constitutional texts in which it is mentioned. By comparing its senses in these two types of norms we shall be able to determine to what degree the two understandings are concordant or contradictory. Only then will we know how to modify or complete our legislation.

The Term Shari'a in the Koran

The term *shari'a* appears as such only once in the Koran: "Then we set thee upon an open way *(shari'a)* of the Command; therefore follow it" (XLV, 18), but one finds there three other terms from the same root (XLII, 13; V, 48; XLII, 21). In all these places *shari'a* signifies not judicial norms but the route or the way. The Koranic sense is the one given in all the dictionaries of the Arab language: the verb *shari'a* signifies to go to water, and the names *shir' a* and *shari'a* mean either to give to drink or the road or the slope leading down to the water.'6

At first *shari'a* was used in the sense of a path or way of God. To this were integrated the legal rules revealed in the Koran; then those which appear in the prophetic verbal

traditions *(hadith),* and later the exegesis, glosses, opinions, personal opinions *(ijtihads),* religious opinions *(fatwas)* and judgments—in brief, all that completes and clarifies these fundamental rules in order to constitute Islamic jurisprudence *(fiqh)* as this has taken shape in history. In the profane sciences, one can use a word in the sense it has acquired in the course of a long history; nothing authorizes us to do so when it is a matter of a Koranic term. There any changes of meaning lead inevitably to deforming the sense of the text and thus to corrupting Revelation. Authentic Islamic fundamentalism should always begin by rediscovering the sense had by the Koranic terms at the time of their revelation, based upon the Koran itself and on the ancient sources. To restrain oneself to only their present sense leads to grave danger for Islam and for the whole society.

The Term *Shari'a* in Egyptian Law

In article 7 of the penal code of 1937 one finds "In no case are the dispositions of the present Code to limit the personal rights defined by the *shari'a";* moreover, article 1, A 2 of the 1948 Civil Code states that "in the absence of any applicable legislative decision, the judge will rule according to precedent, or lacking that, according to the principles of the *shari'a,* or where this is silent the judge will have recourse to natural law and the rules of equity." That text introduced for the first time in Egyptian legislation the expression "principles of the Islamic *shari'a".* The legislation did not clarify what is to be understood by that expression. Nevertheless the preparatory work of the Civil Code show that it means the combination of principles common to the different schools of Islamic jurisprudence.17 In other words, in 1948 the legislature chose the usual meaning of the term.

Since then Article 2 of the 1971 Egyptian Constitution ("the principles of the Islamic *shari'a* are a principal source of legislation"), were modified by the constitutional amendment of May 22, 1980: "The principles of the *shari'a* are *the*principle source of legislation". Although the 1971 Constitution is not accompanied by an explanatory memorandum or a collection of preparatory works permitting one to know what the legislature understood by "principles of the Islamic*shari'a",* there is every reason to think that in the constitution this expression has the same meaning as in the Civil Code: in this sense the report of the *ad hoc* commission charged with preparing the 1980 amendment indicates explicitly that "by this expression the commission has in mind the set of principles common to the school of Islamic jurisprudence."

It is not necessary to state that there is nothing in the preparatory works, or in similar references, which aid in knowing the intention of the legislator in using the phrase, "principles of Islamic *shari'a",* which could be considered as contradicting the text. In effect, if the text does not allow us to decide between the two senses of the term *shari'a,* it is only such documents that allow us to know what was willed by the legislator. It would be purely arbitrary to say that this text makes implicit allusion to the first sense of *shari'a.* There is no reason why the legislator would make allusion in such legislative texts as the Constitution or the Civil Code to "the way of God." Such terms come naturally from morality and piety, but have nothing to do with legal language. Furthermore, the word "principles" signifies properly the essential bases on which something is founded and nothing else, whereas the way of God constitutes an indivisible whole which includes at the same time both the foundations and the edifice constructed thereupon. At most one could say that the principles or foundations are moral or cultural rules; that they are not, in any case, legal norms.

Consequently, the expression "principles of the Islamic *shari'a"* designates without the shadow of a doubt "the set of principles common to different schools of Islamic jurisprudence."

If, despite that objective demonstration, one continues to think that it designates the only Koranic legal norms, we would say that these norms cannot constitute the principles or foundations of the *shari'a* because they are fashioned in different places and are not general norms. Moreover, they cannot serve as a basis for other norms if they are considered as the totality of the norms. That would be possible only if one understands by this that they constitute the bases from which Islamic jurisprudence deduces and derives its other norms, in which case one returns to our point of departure, namely, that the "principles of the *shari'a"* designate the totality of the norms common to the different schools of Islamic jurisprudence*(fiqh).*

This does not dispense us from examining the legal norms mentioned in the Koran and comparing them with Egyptian legislation to see to what point they are or are not in conformity and whether or not it is necessary to codify and rework Egyptian legislation in order to remove any lack of conformity.

Legal Norms in the Koran

Of some 6000 Koranic verses, only 200 have a legal aspect, that is, approximately one-thirtieth of the Koran, including the verses which were abrogated by subsequent ones. This shows that the principle object of the Koran is moral in nature: it is concerned to inscribe the fault in the soul of the believer, to elevate his conscience and morality in order that it might be its own proper *shari'a* in the sense of the way leading to God. Also, even when a Koranic law is applicable this should be in the context of faith and justice, beyond any judicial partiality or deviation. On the other hand, judicial norms being by nature local and temporary, God more often left expressly to men the work of regulating the details and the freedom to review them with a view to possibly substituting others in function of the needs of each country and epoch. Let us examine these norms.

In civil matters, the Koran contains only one normative verse: "God has permitted selling, and forbidden usury" (II, 275),but it does not specify what should be understood by selling and by usury. Despite this general authorization of selling, the exegetes from the strictest to the moderate, basing themselves on certain *hadiths,* had prohibited certain forms of selling such as the sale of the entire fruits of a tree *(muzábana),* a sale before the harvest (*muháqala*), the sale of a fixed portion prior to the harvest *(muzâra'a),* etc.

We have shown elsewhere18 what distinguishes usury which is forbidden by the Koran from the regulations concerning interest in Egyptian law: in substance, illicit usury is in reality only a loan at excessive cost. By exploiting the need of the borrower this results in his having to reimburse many times over the cost of the principal and could result in his being enslaved if he proved incapable of paying off the debt. It is reported that the prophet himself had ordered the enslavement of a man named Sorak because he had not paid off the loan he had contracted.

As that verse was the only one containing an objective norm in civil matters, all provisions regarding relations between men*(mu'âmalât)* had to be worked out by Islamic jurisprudence. That is why the Egyptian legislature was able to indicate in its preparatory work for the Civil Code that most of the dispositions of the Code "could easily be induced from the different dispositions of the schools of Islamic *shari'a."* And when in 1981, in the context of projects of Islamization of law, the project of the code of behavior *(mu'âmalât)* intended to replace the actual Civil Code was presented to the general assembly of the Supreme Court of Cassassion its report stated: "If our Constitution stipulated that the *shari'a* is the principle source of legislation, that does not imply

that we should reject our Civil Code of 1948 whose elaboration lasted over twenty years and whose solutions, resulting from deep study, are derived in large part from norms of the *shari'a.* This is pointed out in the explanatory memorandum which, moreover, makes explicit the foundation in Islamic jurisprudence of a number of these dispositions." Thus that assembly, as true representative of the Egyptian judiciary, decided definitively the question of the codification of the *shari'a* in civil matters.

There remain nonetheless two problems which merit closer examination: that of interest on debts, which for some constitutes a form of usury prohibited by religious law, and that of insurance contracts which some consider—wrongly in our view—as speculative contracts and hence as illicit. These two questions should be the object of a debate, as open as possible, to which the judges and all jurists should contribute, a debate that is really free and limited solely by a frame of authentic free opinion *(ijtihâd)* as described above.

In matters of procedure, the Koran has only one verse relative to the proof of debts: "0 believers, when you contract a debt one upon another for a stated term, write it down ... with the certification of two male witnesses" (II, 282). The sense of this verse, limited to the certification of a debt, has been extended by Islamic jurisprudence to all evidence, including that in penal matters. One can legitimately hold then that that extension is valid in one specific country and epoch and not in other circumstances. The objective of jurists when they have imposed a specific form of evidence in relation to Koranic punishments was to restrict as much as possible their application so that the civil punishments could be applied to all crimes, including those subject to a Koranic punishment.

In the matter of personal law, all Egyptian legal prescriptions relative to marriage, divorce and inheritance are taken explicitly from the Koran, the prophetic tradition regarding the Prophet *(sunna),* and some prescriptions of Islamic Law which the legislature has considered to be the most adequate to the needs of society.

In penal matters, the Koranic penalties *(hudud)* strictly speaking are four: theft (amputation of the hand), calumnious accusation of fornication (80 lashes), adultery (100 lashes) and brigandage (execution, crucifixion, banishment or jail). The penalties for apostasy and drinking alcohol are not strictly speaking Koranic penalties, as the first is based on the two*hadiths* and the second was set by 'Ali b. Abi Tâlib by analogy with the penalty for the calumnious accusation of fornication.

At any rate, many conditions must be fulfilled in order that these Koranic penalties be applied. The most important is that one be in a community of pious and honorable believers who have installed political, economic and social justice. This is necessary so that the judgment rendered in the name of religious law not be utilized for other purposes, and that the chastisements imposed in the name of Islam not be applied to Moslems by unjust governments or by harsh tribunals on the basis of arbitrary arrests or false witness, as has been too often the case throughout Islamic history and even more so in our day.

Contrary to a broadly accepted idea, Islam does not require that society apply systematically the Koranic punishments. On the contrary, it enjoins it to show tolerance and clemency. Thus, Muhammad said: "Strive to be merciful one to another in the application of Koranic punishments." Each time society, by tolerance, avoids the application of Koranic punishments it acts according to the spirit of Islam and the request of its Prophet. That same rule specifies that when a judge is presented with a crime subject to a legal punishment he should withhold application of that punishment if any doubt subsists as regards the facts, the witnesses, the victims or the author of the crime, according to the prophetic verbal traditions *(hadith):*"Avoid the application of the legal

penalty *(hudud)* in case of doubt." Thus it is reported that under the Caliphate of ʿUmar b. al-Khattâb, a woman came and admitted in the presence of ʿAli b. Abi Tâlib to having committed adultery subject to the legal punishment ʿAli said to ʿUmar: "Commander of the believers, this woman does not take account of the gravity of her words." And they agreed that there was therefore doubt which would withhold the Koranic punishment despite her admission.

These Koranic punishments are so surrounded by conditions that in practice they are practically inapplicable; moreover to these general conditions are added particular conditions for each penalty. Take for example theft: the object of theft must be marked by the seal of the owner and be in a well-guarded place, which excludes pilfering, open plundering and pickpocketing; it must have a money value; the robber must not be in great need; finally, for the majority of jurists the Koranic punishment for theft cannot be applied if the robber has some "quasi-ownership" on the goods stolen, as is notably the case with public goods. For the punishment of fornication, there are required four reliable witnesses who have seen the crime with their own eyes from beginning to end and can swear "that a thread could not have passed between the man and the woman"—conditions which have not been satisfied once in the whole history of Islam. As for the punishment for robbery, all schools of Islamic jurisprudence *(fiqh)* agree that it should not apply if the bandit repents before having been apprehended, in conformity with the end of the verse regarding that punishment: "except for such as repent, before you have power over them" (V, 34).

More broadly, the majority of jurists think that the Koranic punishments cannot be applied against one who repents after the crime and before the execution of the punishment: an adage says for example "no amputation for the repentant." This is because for the Prophet these chastisements are purificatory punishments which should be applied only with the consent of the sinner and should be withheld if he repents, that is, if he wishes to escape it. Thus, the Companions came one day to find the Prophet in order to report that a woman guilty of fornication had begun to be stoned but had fled; being caught again the punishments had been inflicted till death. The Prophet then became angry and said: "Why did you not abandon her to her fate?" It is better then not to apply a penalty to a guilty person who does not willingly accept it.

As regards the law of the talon, the Koran refers to it only in the case of injuries, wounds, blows and homicide: "0 believers, prescribed for you is retaliation, in the case of murder" (II, 178). As regards the talon for blows and wounds, it is evoked only in a verse alluding to a Jewish law and not as a rule to be applied to Moslems ("We have prescribed for them [i.e., for the Jews a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth. Wounds fall under the law of the talon" V. *45).* The law "An eye for an eye, a tooth for a tooth" was introduced in Islamic Law by jurists on the basis of the adage "The Law of our predecessors binds us as well except for what was abrogated" and a prophetic verbal tradition*(hadith)* which alludes to it without mentioning it explicitly. Thus, Islamic thought confuses *shari'a*—that is to say, the Koranic norm—with Islamic jurisprudence *(fiqh)—that* is to say, what results from the free opinion *(ijtihad)* of jurists. As a result it has thought the law "An eye for an eye, a tooth for a tooth" to be a religious prescription and an integral part of the*shari'a.* In fact, if that law was a fundamental law which God wished to impose on Moslems it would not have been left to the evaluation of jurists, but clearly stated in the Koran. Further, jurists who cite the adage "the law of our predecessors binds us as well except for what was abrogated" use it in a selective manner. They ignore it in the case of numerous earlier prescriptions which were not abrogated—for example, that which condemns to death one who strikes his parents.

The law of the talon poses another problem: it is not applicable when the victim or those responsible for him pardon the guilty person, whether or not that person has made financial

recompense *(diya)*. But to admit that a pardon may annul the penalty is, in our modern societies, extremely dangerous, for one risks thereby encouraging the guilty to put all sorts of pressure on the victim to obtain their pardon and to escape chastisement. It is enough to know a little of penal justice to know the extent to which pressure can be put upon victims in order that they modify or falsify their testimony so that the evidence can be subject to controversy in the judicial process. What will happen if these pressures would make it possible to stop the process itself? Our judicial system authorizes the retraction of an action as a civil matter, but not in a criminal matter for that would threaten the whole society, which is the reason why such a retraction is reserved solely to the public prosecutor. That system is better adapted to actual social conditions and does not contravene *shari'a.*

Since the Revelation, its four or six penalties *(hudud)* have never sufficed to stop criminality, which has always taken many forms. Islamic doctrine had to invent another institution, that of civil penalties *(ta' zir)*. Through these, public authority—executive or legislative as the case may be— could designate as criminal any act it judged prejudicial to public security, to the rights of persons, to their goods or to their honor. It could punish such acts by the penalty it considered necessary, including even capital punishment. In our opinion, these civil penalties constitute the heart of the Islamic penal system. This very flexible system allows for the repression of all forms of criminality according as they appear. It can apply itself also to crimes punished by Koranic punishment wherever their conditions are not fulfilled. It permits the application of punishment for infractions under the law of the talon even when those culpable have been pardoned by the victim or those responsible for him, as is foreseen in the Egyptian penal code now in force. In other words, our entire penal law depends upon civil penalties and thus does not infringe at all upon *shari'a.* The penal code differs only in the results to which its free opinion*(ijtihâd)* concludes in conformity with the social conditions of the epoch.

It is thus, in substance, that the issue of the codification of the *shari'a* must be posed: taking into account the profane as well as the religious points of view. The whole issue of conflict between the penal code and the *shari'a* is false, for Egyptian civil law, its penal law and its personal statutes are in conformity with the dispositions of *shari'a* and Islamic jurisprudence*(fiqh).* But when it comes to a political slogan, a pretext for self-seeking or a springboard to power, what was revealed by God is mixed with what was created by man. Such a mixture risks destroying not only Islamic jurisprudence but the Egyptian legal system which has resulted from a century of jurisprudential and doctrinal development.

Before concluding, we would suggest here some issues directly involved in our subject.

1. Those who accuse the Egyptian legislature of having turned things upside down in 1883 by replacing the provisions of the *shari'a* by the actual legal system should begin by studying more closely the legal system in force in Ottoman Egypt (1517-1883), which they abusively liken to *shari'a.* During that period, the law, which derived from the sultan, ceased upon his death. If certain provisions remained in vigor, that was by the sole force of custom. The magistrates named by Istanbul were not remunerated, but could place a tax upon trials. Of this they kept a part for themselves and sent the rest to the Minister of Foreign Affairs with a view to assuring the renewal of their appointment—a system designed by nature to seriously corrupt the judiciary. The competence of judges was limited to civil affairs. During the entire Ottoman period there were only two known cases of an application of the Koranic punishments and in these the principle, "Avoid the application of the legal punishment *(hadd)* in case of doubt," was not well understood. As regards civil punishment, the judge could enter in only when there was a conflict between two people. His competence was limited to establishing the facts; the police authority pronounced

judgment and carried out its execution. Further, if a criminal endangered the security of the State the judge lost all competence in favor of the police authorities. Judges had no independence, the instructions and charges were not organized, the judgments—whether from the judge or from an entirely different authority—were not provided with reasons and there were neither procedures of appeal nor a system of defense for the accused.

Could one say that the Egyptian Legislature of 1883 wanted to reject the *shari'a* when it sought to reform a corrupt state in which absolute power was the rule? This it did by elaborating a legal system which was clear, healthy and modern, and founded upon legislative codes over which the Egyptian judiciary has watched for a century. Should one accuse it of having substituted order for disorder, the power of the judiciary for that of the prince, modernity for backwardness?

2. Islamic jurisprudence is certainly general and exhaustive, but it dates from the first centuries of Islam. Since the IVth-Xth centuries, the door of independent opinion *(ijtihad)* was closed and Islamic thought ceased to enrich itself, to develop and innovate. By contrast, since 1883 in Egypt jurisprudence and legal theory have developed an original and modem outlook which, drawing on the best in Islamic Law, have given it a new completeness, variety, precision and force. That theory and jurisprudence have spread through numerous Arab countries, thus constituting an imposing patrimony which everyone today—people, judges and governments—should protect and not allow to be endangered.

3. Regarding the verse, "When news comes to them, be it a matter of security or fear, they broadcast it; if they had referred it to the Messenger and to those in authority among them to ask their advice they would have known if they should trust it, for one refers habitually to their opinion" (V, 83), exegesis cites this dialogue between the Prophet and Mu'âdh b. Jabal, his governor in Yemen: "How do you decide litigation between persons?" Muhammad asked him. "By means of the Koran," he responded . . . "And if not?". . . "By means of the tradition regarding the Prophet *(sunna)"* . . . "And if not?" . . . "By the opinion that I form through my efforts at independent opinion *(ijtihad)*."

On the basis of this verse and tradition it is said that independent opinion *(ijtihad)* constitutes an obligation for Islam. This has been surrounded with such restrictions that it has come down to repeating the judgments of the predecessors and sustaining the privileges proper to an elite. Because of the confusion between *shari'a* and Islamic jurisprudence *(fiqh)* and between rules relating to cultural practices *('ibadât)* and rules concerning relations between men *(mu 'âmalat),* this group has come to constitute itself into a kind of clergy.

Because of such confusion, Islamic jurisprudence *(fiqh)* lost sight of the fact that independent opinion *(ijtihdd)* could not be practiced in the same way in matters regarding cult and those between people *(mu'âmaldt).* As regards the first, being regulated by the foundations of the law *(usul)*—that is to say, essentially the Koran and the tradition regarding the Prophet*(sunna)—the* only free opinion possible is that of reasoning by analogy on the basis of these laws *(usul).* As the second was practically absent in these foundations and must govern deeds and situations unknown at the time of the Prophet and the first development of Islamic jurisprudence *(fiqh),* it is logical, even necessary, that it be the object of a free interpretation*(ijtihâd).* In such cases this must go beyond simple analogy or deduction on the basis of earlier opinions; with a view to the general welfare and in response to social conditions it must be truly creative. If jurists had been capable of theorizing the experience of 'Umar b. al-Khattâb, they would have left us a theory of the temporality of norms. Unfortunately, with but a few exceptions, they did not go beyond a casuist logic.

One finds nonetheless, among some, the beginnings of this type of reflection in this sense. Thus the great Hanéfite jurist, Ibn 'Abidin, wrote: "Numerous legal rules change in function according to the times, by reason of the modification of customs, of necessity or of the change in times. If they do not change they would cause difficulties and harm men, thereby restricting the rule of *shari'a* which directs us to smooth out difficulties and to avoid all prejudice." A similar observation can be found from Ibn al-Qayyim: "God the All-Powerful did not limit the pointers and directives of justice to but one path, rejecting the others as useless; on the contrary, from this Law it appears clearly that His intention is to establish law and justice; also, when one finds this path one should prescribe to what it decides and declares to be necessary." On his part, the Hanbalite, *al-Towfi',* specifies:

> If a text implies any damage to the general interest *(maslaha),* it is the latter which should prevail. — But some say, that is against the text. — On the contrary, it reinforces the text, which was revealed in order to safeguard the welfare of men. — But, some would say, the text is better situated to know where their welfare lies, because it comes from God or his Prophet. — The text is unchanging, whereas human concerns are changing. To take into consideration that interest is to take into consideration that text in its integrity, and to respect the prophetic verbal traditions *(hadith):* "You are more in touch with worldly affairs."

Does Egyptian common law, aside from some exceptions, propose anything other than the installation of justice in society? Does not the action of the Egyptian judiciary, developed by serious and persevering work, seek to establish justice, law and security? If there is still someone who, after all that, could pretend that Egyptian courts and laws impede *shari'a* and the government of Divine Revelation, we would refer to what we have said above regarding the terms *shari'a* and *hukm,*19 and recall the adage of Islamic jurisprudence according to which: "Where one finds the common interest there is situated the Law of God." Politics is the art of being in conformity with the spirit of that Law, and not with its letter; general welfare comes before the letter of the law. Supposing—and this is only a supposition—that there did exist in Egyptian legislation a text contrary to such and such a text or opinion of Islamic jurisprudence *(fiqh)* would not the opinion cited above justify recourse to a decision in the interest of society—for example, in order to avoid discord or to avoid an ordeal which might not help anyone?

4. In a recent article, a judge wrote: "We should note that when the codes still in force were promulgated it was not specified that they were founded upon the dispositions of *shari'a,* which shows that there was no such intention on the part of the legislator. But the application of the *shari'a* requires the existence of an intention for anything related to religion. Hence, we should revise these dispositions which do not seem to contradict the *shari'a* and then repromulgate the whole Code."20

That position is untenable: if in Islam in matters of cult the proclamation of intention is obligatory for individuals—though not for states and governments—in matters of daily behavior *(mu 'amalat)* only external acts are considered ("God alone knows inner thoughts"); contracts and transfers of property have force without their authors having to make known their intentions. No one has even pretended that a public official had to declare his intention in order that the laws he promulgates be valid. And how could that be done? Must that intention be proclaimed by the Chief of State or the government, by the Speaker of the People's Assembly or the presidents of the legislative commissions, or must it be subject to an examination of conscience

by members of the legislative assembly? Must one be content with the majority opinion or require unanimity? Must one say that the lack of intention or a doubt in that regard suffices to render the law illicit?

Such proposals would constitute a prohibited innovation *(bid'a)*. We have established, with great effort to overcome all doubt, that there is no contradiction between Egyptian legislation and Islamic Law *(shari'a)*; or if not that it is so small that it can be transcended either on the basis of independent opinion *(ijtihad)* or because of the general welfare and the need to avoid discord and trouble command one to recognize reality as it is. Would one now present that *bid'a* pretending that Egyptian legislation, though in conformity with *shari'a,* does not specify the intention of the legislator and hence that the intention needs to be proclaimed before promulgating that legislation anew? That would mean suppressing the Egyptian laws in order to repromulgate them in a given sense in order that certain persons would have a special right of surveillance or guardianship. Would that not mean dismantling our entire legal and judicial system in order to rebuild them upon new bases and intentions made up from all sorts of pieces which are neither those of the ancients nor those of anyone else . . .

Such political conceptions of religion are extremely dangerous for Islam and for its *shari'a.* They imply the worst threats to Egypt; they would break in two its legal and judiciary systems, as well as the country itself, and declaring an end to contemporary Egyptian Islamic Law, all without this being required by anything in religion or in *shari'a*.

NOTES

1. According to Islamic tradition the name of the Prophet is always followed in the original text by this expression, which will be omitted henceforth in order not to complicate the English translation.

2. See Chap. I below.

3. An opinion on a point of Islamic law handed down by an *ulema* of recognized authority, called a *mufti.*

4. The non-Moslem world.

5. The key work of the Egyptian Islamist, Sayyid Qutb, who was executed in prison in 1966.

6. The author refers to the Islamist Egyptian groups responsible among other things for the assassination of President Anuar el-Sadat in 1981.

7. The *summa* division of Islamic law contrast practices related to cult *('ibadat)* from those related to the relations between men *(mu 'áamadat),* the religious character of the first being naturally more marked.

8. The day after the death of Muhamaad his companions met at a hall *(saqifa)* of a Mdedanise clan, the Banü Sâ'ida, and after much discussion designated Abe Bakr as their chief.

9. Cf. *Tafsir al-Qurtubi,* ed. Dâr al-Sha'b, p. 185; Abu-Hasan al Wahidi, *Asbdb al-nuzu,* p. 131ff; al-Suyutu, *Asbab al-nuzül,* p. 72ff; *Tafsir al-Baydawi,* p. 177ff; *Tafsir al-Nadafi,* p. 220ff. *Tafsir al Tabarik,* I, p. 616.

10. The work of reflection by the believer in the interpretation of the religious law.

11. After a triple repudiation, the spouse becomes forbidden *(haram)* for her ex-husband, that is, he can no longer remarry her. Certain jurists, however, authorized such a remarriage on the conditions that the rejected spouse have been in the meantime married to a third person and that this marriage has been broken. This would permit the husband who desired to recuperate his ex-

spouse and legally remarry her by making her marry a figurehead, called *muhallil* ("the one who renders Iicit") which she in turn repudiates.

12. 'Gentile,' that is, the state of civilization of the Arabs before Islam.

13. "0 mankind, We have created you male and female, and appointed you races and tribes, that you may know one another. Surely the noblest among you in the sight of God is the most godfearing of you" (XLIX, 13).

14. Damascus was the Capital of the Umayyad empire (661-750) and Baghdad that of the Abbasid Empire (750-1258).

15. In Arab, *aI-a'imma mur Quraysh:* this adage, considered sometimes as a *hadith,* was employed by later Moslem publicists such as al-Anmawardi (1058) to legitimate at the same time both the Umeyyad and the Abbasid Caliphate, belonging to the qurayshite tribe serving as a kind of least common denominator of the two dynasties. Here *"imam"* should be understood in the general sense of "guide" or "chief," and not in reference to the Shiite sense of the term.

16. *Lisân aI-'Arab,* art. *"Shara'a".*

17. Collection of Preparatory Work for the Civil Code I, pp. 184, 189, 191.

18. See M. S. al-Ashmawy, *al Riba wal-fâ'ida filis1am* [usury and interest in Islam] (Cairo: Dãr Sinâ, 1988).

19. See Chapter I above.

20. *Majallat al-qudat* (n. 34, March-April, 1986), p. 44.

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