

“O mankind, surely we have created you from male and female, and made you tribes and families that you may know one another.”
(Quran 49:13)

PROGRESSIVE ISLAM

*A monthly publication dedicated to the promotion of knowledge concerning
Islam and modern thought.*

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THE INDUSTRIALIZATION OF ISLAMIC SOCIETY

Eversince the 18th century, the modern world with its focus in Western Europe, is experiencing one of the most momentous events in the history of its development. This process, whose culmination we are not certain about, is the rapidly increasing industrialization of those countries belonging to the Western European civilization. The development of science and technology, being both a cause and effect of the industrial revolution, had made possible the technological unification of the world which is, at the moment, if not culturally and politically, at least scientifically dominated by Western Europe and those countries belonging to the Western civilization such as Canada, the United States of America, and also Australia. This technological unification of the world, together with its various means of communication, is perhaps the most influential factor in revitalizing the non-European societies or even in their disintegration. What is communicated from Europe to the other parts of the world are not only human beings and material things, but also various kinds of thoughts and ideas, attitudes, and problems confronting the life of man in general which the peoples of the Western European civilization happened to face earlier than the others. Sooner or later, what is now operating in the West, would also emerge in Asia and Africa. The good as well as the bad

king itself felt in various parts of the world. This would also spread to the other parts of the world. One of those important contributions of the West towards the modern world is now making is the so called industrialization.

There is hardly any of us members of the Islamic community who doubted the importance and

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necessity of industrialization in our respective countries. The process itself had started and we could already discern the benefits and disadvantages connected with this industrialization. I shall not dwell with the benefits of industrialization such as increase in production and employment, and a host of other very obvious results. This fact is too clear to be overlooked. But there are those dark sides of industrialization of which we have to be very cautious. Factors like the depersonalization of the individual, the mechanization of life, the disharmonious growth of towns and cities, political instability, the crises of values and modes of thought, the spread of nihilism, the multiplication of what Ortega y Gasset called the mass man,¹⁾ the decrease in creative intelligence, the dependence of a greater and greater number of people on a comparatively small group of men controlling the vital centres of industries and government administration, etc. etc., are all, in one way or another, closely related to the whole process of industrialization. The rise of facism and dictatorships in 20th century Europe is a good example of how industrialization lowered the rational capacity of human beings to take indepent decisions for themselves when it concerns the vital issues of life. By their inability to solve their own problems, they felt the need of surrendering themselves to powerfull leaders whom they believed could offer the right solutions to their problems. Industrialization had been probably the most dominant factor in diminishing our capacity to make what, Karl Mannheim, one af the best minds of the age, called substantial rationality. This is the ability to form independent judgement or, let us say, to think creatively. This decrease in substantial rationality, as Mannheim explained, was due to the fact that the mind of the average man had unconsciously adopted another habit of thinking and looking at things. This new habit was generated by the social situation in which modern man found himself. His society had become highly complex and dynamic. This complexity and dynamic nature of society are the direct outcomes of industrialization. Life is organized in an increasingly complex manner. To meet the normal requirements of life, we have to exercise a lot of mental energy, with that new habit of thinking which laid the emphasis on the co-ordination of

action with reference to definite goals instead of evaluating the meaning or the merit of those goals. In other words, people are learning more the manner of obtaining certain things than to evaluate the thing itself. In contrast to substantial rationality, Mannheim called this functional rationality. Let us now hear what Mannheim had to tell us how industrialization is related to both the types of rationality. „Increasing industrialization, to be sure, implies fuctional rationality, i.e. the organization of the activity of the members of society with reference to objective ends. It does not to the same extent ‘promote substantial rationality’, i.e. the capacity to act intelligently in a given situation on the basis of one’s own insight into the interrelations of events. Whoever predicted that the further industrialization of society would raise the average capacity for independent judgement must have learned his mistake from the events of the past few years. The violent shocks of crises and revolutions have uncovered a tendency which has hitherto been working under the surface, namely the paralyzing effect of functional rationalization on the capacity for rational judgement”²⁾. Once the average individual is deprived of insight and intelligence, he is bound to become ineffective in planning and directing the course of social development, so much so that he has to transfer the responsibility of doing this to the few organizers who are at the helm of affairs. As society became more complex under the pressure of industrialization, more and more people could not think rationally. The individuals who could think rationally became few. They were the organizers, who, by the mere fact that they understood the management of complex organizations in a dynamic society, were assured a key position in it. As the complexity of society increased, the gap between these few individuals and the rest of the people widened. It became more difficult for the average man to climb to the key position. Unable as he was to make a proper judgement concerning vital issues of life, and far as he was from the vantage points from which he could perceive the development of his society, modern industrialized surrendered his duty and responsibility of making decisions to those who are on the top. From this it is only a short step to surrender to a powerful leader. Explaining these facts and their

relation to industrialization, Mannheim wrote the following: „This is the state of affairs which has led to the growing distance between the élite and the masses, and to the ‘appeal to the leader’ which has recently become so widespread. The average person surrenders part of his own cultural individuality with every new act of integration into a functionally rationalized complex of activities. He becomes increasingly accustomed to being led by others and gradually gives up his own interpretation of events for those which others give him. When the rationalized mechanism of social life collapses in times of crises, the individual cannot repair it by his own insight. Instead his own impotence reduces him to a state of terrified helplessness. In the social crises he allows the exertion and the energy needed for intelligent decision to run waste. Just as nature was unintelligible to primitive man, and his deepest feelings of anxiety arose from the incalculability of the forces of nature, so for modern industrialized man the incalculability of the forces at work in the social system under which he lives, with its economic crises, inflation, and so on, has become a source of equally pervading fears”³⁾.

Erich Fromm, the well known American social psychologist had also given a lucid description between the relation of industrialization and the rise of totalitarianism⁴⁾. His helplessness amidst the forces of society which he could neither understand nor master, made modern industrialized man feel very greatly, the needs of surrendering

himself to a powerful personality in order to feel secure. This phenomenon was greatly enhanced by the influence exerted by industrialization on the depersonalization of the individual.

The darker sides of industrialization which we had modestly attempted to put forward, are however, not the only ones. There are numerous other cases which should deserve profound attention from the people of Islam. *We must not allow our countries to be industrialized without the introduction of a sound planning and a vigilant watch on its development.* We must be thankful to God for providing us the opportunity to learn from the experience of the Western European countries. With sincere efforts and a modest attitude, we should try to avoid their mistakes and appraise their achievements in so far that their salutary effect on human welfare are beyond any doubt. *Our outlook on human development, which our noble faith of Islam had engendered in us, is such that receptiveness to the virtue of others, and disdain to the evil in ourselves, are considered as parts of our noble ideal that would set our lives in motion and make us long still more for the perfect society wherein many an ‘Insan el-Kamil’ shall guide the ummat of Mohammed to its cherished destiny.*

¹⁾ Ortega y Gasset, The Revolt of the masses.

²⁾ K. Mannheim, Man and society in an age of reconstruction. Page 58.

³⁾ Ibid. Page 59.

⁴⁾ E. Fromm, The Fear of Freedom.

SOUTH EAST ASIA CO-OPERATION

We are printing below an address of Mr. Mohd Roem to the Foreign Policy Association in New York delivered on the 16th. of March, 1955. Mr. Mohd. Roem is a leading Muslim of Indonesia belonging to the Masjumi party, an Islamic political party striving for the realization of the Islamic ideals in the life of the state and the individual.

Mr. Roem had formerly served Indonesia as minister of foreign affairs and minister of the interior.

Regional co-operation is a must in South and South-east Asia. Progress and the achievement of a higher living standard depend alike on the emphasis on regional co-operation. And in order to study the possibilities of working together

within a regional setting, we should first of all turn our attention to two factors of equal importance. The first of these factors is the cultural background of the peoples concerned. The second factor is their present condition as studied in

terms of their daily lives, their economic status, their social position and the amount of progress they have achieved.

Common Cultural Background

When we pay attention to the history of the nations in South- and South-east Asia, from ancient times to the present day, we see that their cultures are closely intertwined. This sameness is apparent in their religious beliefs, in their philosophy of life, and in their customs and usages. Indeed, these common links extend even to the political field; for as will be seen later, there has been in recent times a common political history among the nations of this area. They have learned much from each other; in times of stress and strain, they have gone to each other's aid.

A point of interest which deserves our attention is the fact that the stream of religious and other influences which has come west to east. Although China, with its ancient civilization and its political history, has been in constant touch with the greater part of this region from the earliest times, is a strange but true fact that there are no traces of Chinese influence, either in the field of religion or in the manner of thinking, in South- and South-east Asia. This is all the more surprising when one remembers the degree of intimacy that has existed between China and those lands situated to the east of the Bay of Bengal. One is inclined to believe that Chinese influences — and they must have been many — were either eroded by the passage of time, or that they disappeared in the face of assaults by other and later cultural invaders.

The religions that came to South and South-east Asia, originated either in the region itself — that is from India — or found their way in from further west, that is from the Middle East or beyond it.

About two thousand five hundred years ago, Hinduism began to spread eastwards, and at the beginning of the Christian era it had taken firm root in Indonesia and the countries in between. Buddhism, coming next, began to replace Hinduism in many areas, with the exception of Indonesia. But Buddhism, in turn, lost ground to another religion that has come to exercise a potent influence on the lives of millions and millions of people in this area.

Generally speaking, Hinduism and Buddhism, even if they have disappeared from countries such as Indonesia, have left behind a cultural heritage noticeable in the daily lives of the people. On the other hand, while Buddhism has only a handful of followers in India the land of its birth, this religion holds sway in Ceylon, Burma, Thailand, China and Japan. Hinduism is still to be found in one small area of Indonesia — among the inhabitants of the famed island of Bali.

When we in Indonesia look back upon our history, we find that one peak of national greatness was achieved during the time when Buddhism placed Indonesia in the forefront of the countries of South and South-east Asia. Universities and schools of higher learning flourished in profusion; scholars criss-crossed the islands, enlarging their knowledge of religion and of culture and education. It was customary in the Asia of old, as was the practice in Europe of the Middle Ages, for students of religion to traverse the entire continent in quest of knowledge. One such student was a Chinese who has left a written record of his travel from his own country to India. He says that he broke journey in Indonesia, and spent two years studying at the University of Sriwijaya. After that he touched Ceylon before proceeding to India.

It was in the eleventh century after Christ that Islam began to get a foothold in India. It spread with such speed in that country that, a hundred years later, missionaries faced the perils of the Himalayas and the dangers of the Indian Ocean to transplant it in China and Indonesia. An Arab historian named Ibnu Batutah has described the growth of Islam in Indonesia and China; and his views have been confirmed by Marco Polo.

When Marco Polo and Ibnu Batutah visited the kingdom of Peurlak in Sumatra in the twelfth century, they found a rich and flourishing country, whose ruler and inhabitants were all Muslims. Slowly but peacefully Islam spread over the thousands of islands big and small that go to make up Indonesia, until today ninety out of every hundred Indonesians profess Islam. As the total population of Indonesia is put at eighty-one million people, about seventy-two or seventy-three million Indonesians — equal to roughly

half the number of inhabitants of the United States — are Muslims.

Pakistan is another country with a big Muslim population, while Muslims in India and China are counted by the tens of millions. The isolated Maldiv Islands, which lie a little to the west of Ceylon, are entirely Muslim in population. And sizable communities of Muslims are to be found in Ceylon, Burma, Thailand, Indo-China, Malaya and the Philippines.

One interesting factor about South and South-east Asia is the religious tolerance to be found there. Europe of the Middle Ages was filled with religious strife. In South and South-east Asia, on the other hand, Muslim mosques, Hindu temples and Buddhist pagodas stood side by side, setting the pattern for peace and harmony among the peoples whose needs they served. In recent times the impact of the West upon Asia has brought Christianity with it; and today all over the vast region of which I have been speaking you will see church and mosque, temple and pagoda, in close proximity to one another.

Because Hinduism, Buddhism, Islam and Christianity are to be found in all the countries of South and South-east Asia — in differing proportions of course — these religions serve as links between the various peoples of this area. In addition to the unifying force of religion, there are other ties which cut across frontiers. For centuries and centuries there has been a constant interchange of ideas between the different countries of this region. One is struck by a similarity in the way of thinking by almost identical patterns of culture and civilization; by a surprising likeness in costumes and ceremonies. These, then, are the silken bonds that tie the nations together in South and South-east Asia.

We of South and South-east Asia — Hindu or Buddhist, Christian or Muslim — are a profoundly religious people, and this strong and constant emphasis on religion has been a factor of considerable importance in our general development. This religious outlook, even if expressed in different countries, has been directed to a common end, namely, to make the way of life conform to the will of God. We believe — and this is of course, a subjective evaluation (1) — that as a result of keeping God in the forefront we have achieved a clarity of thought that has

brought in its train certain benefits. These benefits are visible in our philosophy, our arts, in the development of our literature, and in the day-to-day existence of our people. And as the motivating force in South and South-east Asia has been the same, it is no matter for surprise that there exists in this area common cultural ground.

Advent of Colonialism

With the exception of Thailand which the British and the French agreed to leave as a buffer state, the fate of the rest of South and South-east Asia — whether in good times or bad — has an underlying similarity. In the golden age of their freedom they were equally free; then when they became the victims of colonial greed, they were equally slave. Today most of the countries of South and South-east Asia are free. Their common sufferings in the past are another bond to tie them together. In all the countries that had a colonial status just before and after the second World War, there was an awakening of the old understanding of each other that had remained dormant during the years of colonial suppression. As a result, they looked to each other for inspiration and guidance in their struggles to recover their lost independence. This awakening of understanding of which I have spoken went further and manifested itself in a desire to help each other, even if the assistance given was purely moral in nature. I am sure you will remember how in December 1948, while the security Council of the United Nations was seized of the Netherlands-Indonesian dispute, the Dutch suddenly launched a surprise military attack upon us. India immediately called an Inter-Asian Conference, and the resolutions passed by that conference had a great influence on subsequent action taken by the United Nations.

Situation Today

To reiterate: religion first of all laid the basis for bringing together the peoples of South and South-east Asia. Arising directly out of this religious background, came a flow of thoughts and ideas, and closer regional communications. A similar fate overtook most of this area when slavery came in the form of colonial rule from the West. But it was also from the West that we received the kind of knowledge so necessary to

equip us for living in the modern world. Our cultural heritage, plus a modern education, can together provide the incentive for close co-operation among the nations in this part of the world. This is all the more true because these nations are not at cross-purpose, and their main ambitions are to build up their countries, to achieve progress, to raise the living standards of their peoples and, wherever possible, to make up for the time lost over centuries of stagnation.

Need for Regional Co-operation

In order to achieve these ends, the desired co-operation can be strengthened by utilising this regional cultural heritage as the common denominator and as the stepping-stone to wider endeavours. Travelling along this road will bring in its train material benefits for the individual countries in the South and South-east Asia region and contribute towards the achievement of a better way of life, as I shall try to show later on in my talk. It is most important that this cultural background should be strengthened at this time in order to facilitate the desired co-operation. And the co-operation we seek can be secured by reviving old contacts through the exchange of students, by cultural missions undertaken by professors, through permanent cultural seminars, and by educated individuals from the different countries meeting their opposite numbers. These ventures can be carried out with private financing or under the auspices of the various governments. Tourism, of course, is important in this connection, as also are visits by religious teachers, and outstanding figures in the national life. Cultural exhibitions and the exchange of cultural works should also prove useful in keeping our cultural heritage intact.

Common Regional Problems

The standard of living in the South and South-east Asia region has remained exceedingly low because of factors I have already outlined. The primary reason was that existence under a colonial regime, or being exploited for the benefit of others, or working merely in the interests of others, did not provide the individual with the opportunity to make his own life flower and expand. It is indeed most difficult for me to por-

tray to you the poverty of the peoples in the region we have under discussion. It is almost impossible for those of the Western world to visualise how destitute is the lot of our peoples. The very fact that the per capita income is so low is in itself evidence of the widespread poverty, and in computing per capita income no comparison could be made with the middle class — as, for instance, in the United States — because such a class simply does not exist. In many parts of South and South-East Asia the poverty I have told you about is not due to a deficiency in natural resources, because — to give two examples — Burma and Indonesia rank as countries singularly blessed by nature. The cause of our poverty is a run of very bad luck which has resulted in our being visited by one calamity after another. First came colonialism and the exploitation that goes with it; next came war, and finally, as is the case with Indonesia, the armed struggle for independence during which, because our colonial rulers would not bow to the inevitable, the country was impoverished.

Indonesia's Desire for Peace

This poverty has brought about certain attitudes and a particular political standpoint which, though shared by many countries in the area of South and South-east Asia, are yet not understood by the people of the West. Having traced our poverty to a succession of calamities that visited us one after another, we are so frightened of becoming involved in another calamity that we have so ordered our political lives as not to take sides. (2) Many of you of the West are upset. You do not understand why we will not stand on your side and be counted against Communist totalitarianism and materialism. Neither are we willing to be considered as leaning toward the other side. Difficult as you may find our attitude to be, you must realize that poverty itself is an evil, especially when the poverty I speak about is something different from what you experience here, but poverty that means lack of food for sufficient nourishment, poverty that means just enough clothes to cover the body, poverty that may well mean the inability to buy medicine in times of sickness.

In the United States poverty means an insufficiency by comparison with those who are well off, but for us poverty means not having anything at all. Most of the countries in South and South-east Asia have achieved independence, but that does not mean an automatic, economic well-being. Poverty goes hand in hand with the economic ills inherited from the colonial system. The young and newly independent countries are determined to do away with these evil legacies, and they are confident that they can. Having won their political independence, the countries of this region are in the midst of a great struggle to achieve freedom from poverty, freedom from economic backwardness and hunger, and the freedom to organize the means to bring about progress.

Need for Foreign Aid

The task ahead is indeed difficult and gigantic. War has to be waged against the evil of poverty and the ills we have inherited from the days of colonial subjugation. Meanwhile we have to secure the progress that will place us on the same level with countries which have had a head-start of centuries over us. The key to all this is capital. And where is this capital to come from? Some of it can be raised from savings, but the rest will have to be obtained in the form of loans from the advanced countries. Somehow or other we shall have to work out a system which will speedily give us what we are striving for.

While there is no gain saying the fact that the technological advances of the West can play a vital role in the advancement of our countries, not everything the West has to offer can be used to advantage in the region of South and South-East Asia. This sometimes is due to environmental factors; at other times it has become apparent that to make technology pay dividends, the requisite tools needed — of which you have an abundance in the West — are not to be found in our countries. This factor is of special significance in terms of the co-operation we must have to make good use of technical skill.

Regional Sharing of Skills

Taking all this into consideration, we pin our hopes on regional co-operation. Special skills available in one country and lacking in others

should be placed at the service of those requiring them. Look at how much can be achieved if certain facets of higher education or of research into fixed subjects could be carried out on a co-operative basis in the country or countries that lend themselves best to such projects. Such co-operation can be fostered by the joint efforts of the countries in this region, with the aid and initiative of certain countries outside the area of South and South-east Asia, or by the specialized agencies of the United Nations. Such outside aid would place the emphasis on what can be done within the region itself, and could take the form of seminars and the like.

Burma, shall we say, has achieved high yields of rice and, as climatic conditions in Ceylon and certain parts of India are almost similar, these two countries could profitably learn much from Burma. Without going into details, it can be said that India, Indonesia and every other country in the region has some particular skill to share with the others.

The sharing of skills need not necessarily be confined to the field of economics, but can be extended to the teaching and acquisition of science. Employing these means, we can speedily press forward with plans for raising the living standard of the peoples of this region. Yet none of these plans can come to fruition without the necessary capital. This capital can be raised from savings and by calling upon the people to practice thrift. Nevertheless how much thrift can people practice when they do not have enough to live upon?

Need for Stable World Prices for Raw Materials

That is why you always have the people of South and South-east Asia asking for stable prices for the commodities they produce. As is well known, most of the countries of this region are producers of raw materials. To purchase our raw materials at a slightly higher price, thus providing a fair return and a small profit to those who produce them, will mean not only an increased standard of living but also an incentive to the development of the whole region. The slogan should be: „Trade first, not only aid”. When prices are such that they supply the producing countries with a fair income, the way is opened to

the accumulation of savings which can be devoted to constructive work including regional co-operation.

Even when domestic capital has been used up, there will still be many projects left untouched, and at this point foreign capital can assist tremendously in a speedy building up of the country. It is necessary to stress again that the poverty and backwardness of this region is not only a matter of concern for just the countries affected, but a matter of equal concern to other democratic nations who are moved by the ideals of peace and plenty for the whole world. Poverty is an evil that can breed more evils.

Results to be achieved through regional co-operation

The work of regional co-operation has much ground to cover. The efforts directed by the United Nations in this field are visible in the work carried out by ECAFE, ILO and other specialized agencies. Similarly the Colombo Plan, in addition to economic assistance, is placing the emphasis on technical assistance within the field of regional co-operation. Much has been done, but very much more remains to be tackled. In fact, the co-operation so far achieved is merely the initial phase, and increased success will depend upon greater domestic and foreign interest. From what I have said it is plain that regional co-operation is one of the essential conditions to accelerate the development of this region, and to usher in stability and security. Because of the large population contained in the area of South and South-east Asia, stability and security in this region will have a profound influence on global well-being.

If regional co-operation can be built up by utilizing the common religious background of this area, and if economic reconstruction can similarly be advanced, we shall have brought into being something new in the history of the welfare of the world's peoples, and a new conception in the relationship between nations. It will be a tightly knit co-operation in a new kind of atmosphere, yet it will not be an attempt to form a new bloc alongside the existing blocs. The new relationship I have described will be a bastion of strength among those nations that have both

freed themselves from imperialist exploitation and are keeping themselves free of Communist influence.

I am convinced that this will become a fact, thanks to our common cultural background, the given political and economical situation, and the wisdom of the West which we of South and South-east Asia have imbibed.

- (1) This is of course not without truth. The existence of partial subjectivity cannot be denied. But nevertheless, it is not completely subjective. The tenets of religion in general and Islam in particular, rest ultimately on objective foundations similar to science and philosophy. From the psychological point of view, the works of William James and C. G. Jung and William MacDougall on this subject are illuminating and instructive./ED.
- (2) Amongst the Muslim leaders in Indonesia, opinions differ as to the soundness and advisability of taking sides with the Communist or the Western bloc. But there is hardly any leader of an Islamic organization who believes that Communism and Islam are reconciliable. All the existing Islamic organizations in Indonesia are positively in violent disagreement with Communism. Even the Muslim parties who supported the present government in Indonesia do not believe in 'peaceful co-existence' with the Communist party of Indonesia. As long as Communism aims to exterminate religion and to dominate those who differ with them by employing means totally devoid of ethical consideration, no Muslim shall believe in the 'peaceful co-existence', similar to our Christian brethren and the others who cherished the same humane and democratic ideal. From the point of view of his own cultural heritage and system of beliefs and values, no Muslim would hesitate to say that Islam is definitely more akin to the Western conception of a social order than to a Communist dictatorship based on a ruthlessly materialistic philosophy and the unbridled utilization of power by the ruling group. Thus the neutrality which Mr. Roem mentioned is solely confined to avoiding participation in the formation of power blocs or involvement in a war./ED.

EDITORIAL CORRESPONDENCE

The editor regrets to announce that due to unavoidable circumstances he is forced to delay replying the letters sent to him from various parts of the world. The editor hopes that those who had kindly written to him would excuse him for his delay in replying their letters.

RECONSTRUCTION OF ISLAMIC LAW

Bij Hamidullah Siddiqi, M.A., LL.M.

Mr. Hamidullah Siddiqi is a Muslim of Pakistan. He was formerly professor of law at the University Law College, Lahore, and also lecturer in international law at Punjab University (1948). In 1954 he was elected as the vice-president (first) to Iqbal Society. He is at the moment engaged in a promising research into Islamic law and the various problems connected with it. The readers of *Progressive Islam* shall certainly find the writings of Mr. Siddiqi instructive and thought provoking./ED.

With the prospects of Pakistan being an Islamic Republic, the question of the reconstruction of Islamic Law had become both important and urgent.⁽¹⁾ A world outlook, in order that it may become real, must aim at changing its environment suitably. This it does mostly through the agency of law. Any constructive effort in the direction of enforcing Islamic Law in our society must have as its ultimate end the creation of such conditions as may assimilate Islam's point of view. Law, therefore, will act as an operative factor in evolving the type of society which will reflect Islamic values in all walks of life.

Obviously the expression "reconstruction of law" implies a re-examination of the bases of law. It will be a process through which, without losing the principle involved, a fresh conception of its limitations in relation to the historical situation of Islam will be formulated. To conceive it in a way other than this would be anything but reconstruction. In other words, the product of any intellectual effort that may be made to comprehend the spirit of Islam in the domain of positive law must on no account lose touch with the centrality of its own tradition. A point of departure based on mere negation is bound to be insubstantial and in consequence worthless.

Points for research

Research scholars may find the following hints of some use: —

(1). The relation of Islamic Law to the pre-Islamic customs of the Arabs, the Roman Law and the Judaic Law would bring out clearly the points on which they are similar and dissimilar. This comparison and contrast will further indicate the

reasons implicit or explicit, therefor: — It would be found that some of the principal customs of the Arabs were retained by Islam while others were rejected, being either discordant with its own view of good and evil, or they were unsuitable for the sort of social order which it wanted to bring into existence.

Roman law in the East

There are two conflicting views as to the nature of the relation between the Islamic Law and the Roman Law in force in the Byzantine Empire when Muslims conquered its territories. One group of scholars, almost exclusively consisting of Orientalists as, for instance, Goldziher, Von Kremer, Amos and Emilio Bussì, think that Islamic Law is an extension of the Roman Law, with modifications here and there. Lee says: „Mohammadan Law is nothing but the Roman Law in the Eastern Empire adapted to the political conditions of the Arab dominions". (*Historical Jurisprudence*). On the other hand, there are scholars like Faiz-ul-Khourī, Arif Nakdī and Sheikh Mohd. Suleman who flatly deny that Roman Law had anything to do with its development. Yet another group of scholars has steered a middle course. Prominent amongst them are Mohd. Hafiz Sabri, Ahmad Amin and Dr. Shafiq Shahata.

Comparative study

A comparative study of the two legal disciplines would reveal certain resemblances amidst significant differences. Research on this point is necessary, so that we may have an idea as to whether or not Islamic Law owes any debt to the Roman legal institutions. If the answer is in the positive, the

next question is to find out the extent to which Muslim Law has borrowed its rules and juridical principles. In my opinion, barring a few similarities between them bearing on certain legal rules common to mankind in their dealings with one another, the Muslim Law has an identity of its own, unaffected by any of the specifically legal ideas of Roman Jurisprudence. A comparative examination of the detailed rules of law relating to the rights of women, adoption, repayment of debt, inheritance, succession, pre-emption, etc. would show pre-eminently that Islam in building up its law, has not placed itself under any obligation to the Roman Law. In its last analysis, Muslim law will be found to have been derived from the Quran, the Sunnah and other sources subordinate thereto. It would appear that the early legal thinkers of Islam knew very little about books on Roman Law; for, if they had ever benefited by them they would have certainly made references to them in their works. In fact, books on Fiqh contain no allusion to the Roman Law anywhere. On the other hand, the Muslim lawyers were hostile to sources other than those of the Quran and Sunnah.

The Judaic tradition

According to Kremer, the influence of the Roman legal ideas permeated into the Islamic system through the Judaic tradition and the customs of the conquered peoples. Undoubtedly, certain rules of Judaic and Muslim Law are identical in some respects. This is, however, no reason for holding an opinion like that of Kremer, because it is a cardinal principle with the Muslim Jurists that Islam, being in continuity with the earlier monotheistic tradition, they could legitimately adopt any principle or practice of Judaic Law when confirmed by the textual law of Islam or Ijma, or which was found not to be in conflict with them.

Vastness of difference

One is impressed by the vastness of difference between their respective rules of law bearing on certain important legal topics, in spite of stray resemblances here and there (i.e. I d d a t) pertaining to details, not to principles. For instance, according to the Judaic Law a man could marry, the

daughter of his sister — a thing which, as we all know, is prohibited by the Quran.

As to the other channel through which Islamic Law is said to have been affected by the Roman Law, suffice it to say that the Muslim Jurists, on discovery of such ancillary sources of law as Juristic Equity, Public Good and Consensus, in their endeavour to broaden the structure of Islamic Law in the shape of definite legal rules to meet the demands of concrete situations in Syria, Iraq, Persia and Egypt, did adopt such local customs as were not against the Shariah. There are instances of repudiation by them of certain prevalent customs on this basis. In this way, it was quite natural for them to incorporate some of the usages of the conquered peoples of Syria, Egypt, Iraq, Persia and Turkestan. An instance amongst others was a custom prevailing in Turkestan which became the basis for the recognition of what is known in Hanafi Law as *Bai ul-Wafa*.

To conclude, we may say that, as it is impossible for peoples to live an insulated existence, it is quite natural as a result of their social, economic and cultural intercourse to imbibe each other's influence. Accordingly, the effect of the Muslim conquests is no exception. It is generally agreed that the Muslim culture is a glaring example of the deep absorption of the cultures of the conquered peoples' to which in return it gave a specifically Muslim orientation and complexion. For history has recorded their impact on them in transforming their institutions and modes of living.

Quran and Sunnah

(2) The main sources of Islamic Law are the Quran and the Sunnah. There are not more than 200 Quranic verses bearing on legal relations. The Sunnah of the Holy Prophet, whose authority in interpreting the Quran is supreme, is equally binding. It means the deeds as well as the sayings of the Holy Prophet. These two sources are called the "Nass". The Laws promulgated by the Quran and those entertained in the Sunnah could not be expected in the fitness of things to cover several new situations which the Muslims had to meet in the course of their life. Particularly, when they came

into contact with peoples of the conquered territories, they had to solve their new legal problems, which arose from time to time as a result of their living among them. So search for sources other than these started when guidance was not forthcoming from the Texts. They found justification in Islam for employing Analogy as a third source of law. It consists in applying a rule of law already ascertained to a similar situation. The Muslim scholars discussed threadbare the principles of analogical deductions in respect of legal problems. They made very good use of the Greek logic in formulating the doctrine. Analogy is not the same thing as Interpretation of the Text, for the former has an independence as a source, whereas the latter is concerned only with the elucidation of the meaning of the Texts.

Consensus of jurists

The *Ijma* is yet another, but by far the most fruitful, source of law. It consists in arriving at a decision of a law point through the consensus of Jurists at a particular time in the community's history. When no direct guidance from the other sources is available in solving a question, the matter is taken up by those who by all canons are intellectually qualified to opine by virtue of their competence. Their agreement on a particular line of action at once elevates the underlying rule to the dignity of law no less deserving of our respect and observance than the one derived from a NASS.

Potent instrument

The institution of *Ijma* is one of the most original contributions to the legal thought. Inasmuch as Muslim Jurists have to exert themselves in arriving at decisions within the limits prescribed by the Quran and the Sunnah, the Consensus is not only valid but also a potent instrument for the extraction of Shari Values as well as a principle of conservation of those values. In the democracy which *Ijma* as one of the fundamental sources of Islamic law is destined to produce, the lead shall always remain in the hands of enlightened people, quite unlike the democracies which we see all round us, where only the numbers count.

Cohesion of culture

No culture bears promise of survival unless it contains within it such elements as would ensure its cohesion. It is also true that it must have sufficient

flexibility so as to accommodate the demands of changing conditions. A civilization which is founded only on the notion of permanence must become fossilised before long and will therefore cease to inspire men. If on the other hand an outlook has no permanent anchorage of its own, its reduction to a few abstract generalities is almost certain. There is no doubt that for quite a long time the Islamic Law has remained static and no new developments have occurred in it as may enable the Muslims to use it as an effective instrument for the realization of Islamic ideals.

In my opinion there is nothing amiss with the traditional sources of law. They can be depended upon to provide the community adequately with rules to empower them to successfully cope with infinite varieties of social developments in which may originate infinite complex legal relations.

Highly democratic

The arrest of the growth of our legal thought, I think, has been due firstly to the highly democratic principle of *Ijma* being avoided by secular authorities in the past. For full enforcement of it would have made a short shrift of their despotism. The institution of *Ijma* accordingly has proved far ahead of the temper of those times and I fear that, even for a pretty long time to come, its concretisation and functioning, for similar reasons, may not be probable. In the second place, the doctrine of *Taqlid*, as invented and developed by later Jurists, is chiefly responsible for its decadence. This doctrine found much favour, and quite rightly so, with the learned men and also with the preponderant majority of the community at a time when the entire body politic of Islam had to face gravest threats to its very existence. New opinions arising amongst the members of a nation when it is engaged in a life-and-death struggle would necessarily lead it to disintegration. There was, however, no justification for the legists to continue clinging to this doctrine after the necessity no longer existed. For it was — as actually it happened — bound to commit them to the preposterous belief that the law as perfected by the great Imams and their immediate disciples was the last word, not admitting of modifications.

Principle of Ijtihad

Iqbal has highly designated Ijtihad to be the

principle of movement in the Islamic culture. If the texts and the *Ijma* provide elements ensuring the community's permanence, the principle of *Ijtehad*, namely, the formulation of fresh rules of law to solve legal problems in domains other than those already covered by the Texts, would truly enable Muslims to adapt themselves to their changed circumstances. It is, therefore, indispensable that the gate of *Ijtehad*, kept closed for so many centuries, should now be reopened. Juristic equity; notion of Public Good; Usages; Customs; and Reason, provide ample material for *Ijtehad* to operate upon. It is apparent that Islamic Law, with such a broad base and rich heritage, can place at our disposal powerful weapons with which we can successfully fight our battles in the field of creative legal thought. Peoples perish not when they become extinct in the physical sense of the term as a result of some unfortunate catastrophe, but only when they take a holiday of their obligation of continually reassessing their thought potential.

Constructive work

In my view, constructive work should start on the following lines: —

(1). Restatement of the basic juridical notions of Islam should be taken in hand with a view to ascertaining what extended meaning they are capable of bearing with regard to the conditions in which the community finds itself at present. Since this task would involve in a very vital and essential sense the integration of law with the world-view fostered by Islam, it is imperative that those who so engage in this gigantic mission have faith in Islam and are intellectually competent to discharge their responsibilities.

(2). As pointed out above, the main task must be supported by adopting the principle of elimination. It means that the character of relationship of Islamic law to the other legal disciplines existing at the advent of Islam in the conquered lands should be clearly delineated. This will help a great deal by way of contrast and comparison in making us acquire a proper perspective about Islam's attitude towards legal situations.

Compare and contrast

(3). In order to throw juridical concepts of Islam

into a greater relief, it is incumbent on modern scholars to compare and contrast them with those of the contemporary systems of Jurisprudence, namely, the Sociological Jurisprudence at present mustering support in America; Analytical Jurisprudence; Metaphysical Jurisprudence; and Communistic Jurisprudence. Their comparative study will, I am sure, reveal to any unprejudiced scholar the inherent vigour and dynamic quality of the Islamic law both in respect of its flexibility and comprehensiveness.

Law of evidence

(4). The substantive Islamic Law at the stage at which it has been left by our legal giants is varied and rich and therefore lends itself for treatment in innumerable intellectual dimensions. Only an integral mind is required to manipulate the resources with dexterity and imagination. As regards the adjectival law, the position appears to be a little unfavourable. The procedure and the constitution of courts as evolved against the social background in the past might have been adequate then but most of it now requires a complete overhauling to suit the requirements of modern needs. The Law of Evidence in particular needs our urgent attention.

Benefits of Qisas

(5). The notion of *Qisas* can be very usefully synthesised both with the Civil and Criminal branches of the Islamic legal code. It would remove the inequities which underline the Anglo-Muslim Law now in force in Pakistan. The wholesome effect of the adoption of *Qisas* as a legal principle would be felt most in the law of torts in view of its purveyance of social and legal security to the victims of civil wrongs in a manner and to the extent hitherto unknown to the Western European Law.

(1) Mr. Siddiqi wrote this in 1954. According to him this article was taken up by the daily 'Khyber Mail' of April 24th. 1954. We deem it desirable to publish the articles of Mr. Siddiqi again for the benefit of our readers outside Pakistan./ED.

CORRECTION

Vol. 1, no. 10, page 9, 4th paragraph: Kerensky instead of Lenin.