

The Efficacious Path

Abdul Wahid

I begin with an anecdote recorded by Margery Perham, a writer who thrived on British imperialism. The context is the transition period from Muslim to British rule in northern Nigeria in the first half of this century. With Margery Perham (M.P.) is a British District Officer (D.O.) and an Alkali (A.), alkali being the Hausa term for al-Qadi or the Muslim judge.

M.P.: How do you handle cases of adultery?

A.: According to the law, both are to be stoned to death.

M.P.: But not now?

A.: Now I sentence the man to two years' imprisonment and a beating.

D.O.: But I have lately persuaded you to reduce it to one year and a beating.

M.P.: Were you stoning people to death just before the British came?

A.: I do not remember a case, nor does my father, nor did my grandfather, but it is the law.

D.O. Why did you put up such a strong opposition to recognizing the lesser penalty?

A. Because the other was the law.

From many standpoints, a most instructive exchange indeed.

Here we can see the overweening confidence of the British who came to stamp out all that is "repugnant to natural justice, morality and the law of the Protectorate and all that involves inhuman punishments".

We can feel the sense of horror on the part of M.P. ("But not now?")

that such inhuman and barbaric punishments could still be contemplated under the new and more enlightened dispensation. We can discern the feeling of exasperation on the part of the D.O. at having to cope with a rather recalcitrant native, a D.O. who is determined not merely to reduce the penalty for adultery but who might have been quite happy not to recognize it as a crime anyway. What a splendid way to get rid of a particular crime - legalize it!

We can also see the quiet confidence of the Alkali, who although reduced to practical impotence, yet maintains a deep respect for the superiority and the sanctity of the Shari'ah - "it is the law". Such a respect is a necessary condition for any system of law to operate efficiently. And clearly from

the above exchange, it is apparent that under Muslim rule, knowledge of and respect for the Shari'ah must have been at a rather high level not only among the judiciary but also among the populace at large if neither the alkali, nor his father, nor his grandfather could recall a case where the sanction against adultery was ever invoked. Backed up by the institutional muscle of the state, the law obviously meant something.

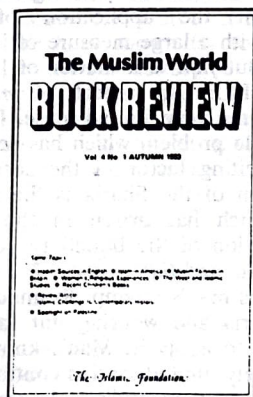
By contrast, under the new British dispensation, there could be no such certain knowledge and respect for the shifting and ever-changing bases of laws and regulations and we can picture the disturbed alkali having to contend with corrosive crimes against honour and chastity, the family and society. How troubled he must have been, how perplexed, perhaps even how angry? As the upholder of the Shari'ah (literally meaning 'The Path'), he must have been secure in the knowledge that he was treading the path of Divine justice and equity. Now, as a functionary of a native court under the British, he had in effect to tread on the Shari'ah, to trample it underfoot, to suppress it, to

speak of it in the past tense - "it was the law".

He was not alone. Many watched in dismay as the bases of law crumbled, as public order deteriorated, as cases of theft and corruption increased.

Today, in Nigeria as elsewhere, Muslims are concerned to speak of the Shari'ah in the present tense. Many are aware of the processes by which the Shari'ah has been detoured into the byways of our existence, of how many Muslim societies have taken the path of least resistance, concentrating on matters of minor import while ignoring or side-stepping what is obligatory and crucial and in the process losing a sense of balance and a sense of priorities - something the Shari'ah is very much concerned about.

Many realise that the Shari'ah provides the basis for individual felicity and societal stability. It has an irreducible core which is unchangeable as well as elements of movement that allow for meeting contemporary challenges. While trained minds grapple with these challenges at the cutting edge between the present and the future, the fundamental questions for the actualisation and the efficacy of the Shari'ah remain, questions which our Alkali was obviously acutely conscious of. The most fundamental of all questions in this regard for each individual and each society to decide is: to whom or to what is responsibility and accountability ultimately due.



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