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Moulavi Syed Ali
with the authors
best regards
30/6/1903.

REFORMS,
POLITICAL, LEGAL, AND SOCIAL.

THE
PROPOSED POLITICAL, LEGAL, AND SOCIAL

D. 73.

IN
THE OTTOMAN EMPIRE AND OTHER
MOHAMMADAN STATES.

BY
MOULAVÍ CHERÁGH ALI,
H. H. THE NIZÁM'S CIVIL SERVICE.

*"Let there be people among you who shall invite to good,
and bid that is reasonable, and forbid what is wrong; these
are the prosperous."*

The Korán, Sura III. verse 100.



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DEDICATED

TO

His Imperial Majesty

The Sultan-us-Salatin; wa Khagan-ul-Khawaqin;

Malik-ul-Bahrain; wa Hani-ul-Barrain;

Imam-ul-Muslimeen; wa Ameer-ul-Mumineen;

Khalifa; wa Sultan

ABD-UL-HAMEED KHAN,

The Sultan of Turkey

AND

ITS DEPENDENCIES.

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ERRATA.

PAGE	LINE		
17	27	<i>for</i> repulse	<i>read</i> defence.
18	4	attackers	„ aggressors.
27	23	assert the	„ assert that the
26	23	<i>Radd-ul-Mukhtár</i>	„ <i>Radd-ul-Muhtár</i>
„	26	„ „	
28	14	„ „	„
31	19	„ must	„ should
„	27	„ they hold	„ where they hold
54	25	„ 1881	„ 1880
„	footnote line 4,	<i>for</i> 1881	„ 1880
147	2	<i>for</i> 4	4 and 5
148	10	„ slaves	captives

INTRODUCTION.

THE following pages were written on the perusal of an article entitled "ARE REFORMS POSSIBLE UNDER MUSSULMAN RULE?" by the Rev. Mr. Malcolm MacColl in the *Contemporary Review* of August 1881, in the last quarter of the same year, and are now published for the information of those European and Anglo-Indian writers who, I am sorry to remark, suffer under a delusion that Islam is incapable of any political, legal or social reforms.

It is very unbecoming of English writers to be so ill-informed on a topic of vital interest to England. The British Empire is the greatest Mohamman Power in the world, *i.e.*, the Queen of England, as Empress of India, rules over more Mohamman than any sovereign, not excepting His Imperial Majesty the Sultan of Turkey.*

* The number of Mohamman in British India is estimated at 4,50,00,000; while there are only 1,61,68,000 Mohamman of the Sultan in Europe, Asia, and Africa

"The Indian Muhamman, who are chiefly Sunnis, with an influential Shiah minority, are concentrated chiefly in Bengal, the North-West Provinces and the Panjáb, and number altogether nearly 45,000,000, so that the Empress of India rules over far more Mussulman subjects than any other sovereign in the East"—Asia; by A. H. Keene, edited by Sir R. Temple, page 305. London: 1882.

The ideas that Islam is essentially rigid and inaccessible to change, that its laws, religious, political and social, are based on a set of specific precepts which can neither be added to, nor taken from, nor modified to suit altered circumstances; that its political system is theocratic, and that in short the Islamitic code of law is unalterable and unchangeable, have taken a firm hold of the European mind, which is never at any trouble to be enlightened on the subject. The writers of Europe do not deeply search the foundations of Islam, in consequence of which their knowledge is not only superficial in the highest degree, but is often based on unreliable sources.

I have endeavoured to show in this book that Mohammadanism as taught by Mohammad, the Arabian Prophet, possesses sufficient elasticity to enable it to adapt itself to the social and political revolutions going on around it. The Mohammadan Common Law, or Sheriat, if it can be called a Common Law, as it does not contain any Statute Law, is by no means unchangeable or unalterable. The only law of Mohammad or Islam is the Korán, and only the Korán, which in comparison with the Mohammadan Common Law the Rev. MacColl himself admits to be a code of purity and mercy. *

* "It is not, then, on the Koran simply that the character of the Turk is moulded, and his administration of justice based, but on text-books

The Mohammadan States are not theocratic in their system of government, and the Republican character of the Moslem Law. hammadan law being based on the principles of democracy is on this account a great check on Moslem tyrants. The first four or five Khalifates were purely republican in all their features. The law, when originally framed, did not recognize the existence of a king, of a nobility, or even of a gentry in the sense in which the term was at first understood. The position of the early Khalifs and their authority might be compared to that of the Dictators of the ancient Republic of Rome, each successor being chosen from amongst the people by common consent. The Government of Turkey does not and cannot claim or profess to be theocratic as Mr. MacColl tries to prove.* Sir Henry Elliot, the British Ambassador at Constantinople, writes in his Dispatch of the 25th May 1876 regarding the Softas, "Texts from the Koran are circulated with a view to proving to the faithful that the form of Government sanctioned by it *is properly democratic.*"

founded on the Koran but compared with which the Koran itself, bad as it is, is a code of purity and mercy."—*The Christian Subjects of the Porte*, an article of the Rev. Mr. MacColl in the *Contemporary Review*, November 1876, page 986.

* "Theoretically, the Turkish courts of justice are divided into civil and criminal; but in point of fact, the Government of Turkey is theocratic; the law of the Koran, with its multitudinous developments, dominates all the tribunals"—*The Contemporary Review*, November 1876, Art. "The Christian Subjects of the Porte"; by the Rev Malcolm MacColl, page 977.

There have been several churches, or schools of jurisprudence, developed in accordance with the social and political changes going on around the Moham-madan world, with a view of adapting the law still further to the progressive needs and altered circumstances of the Moslem. But none of these schools was final, all of them being decidedly progressive ; they were merely halting stages in the march of Mohammadan legislation.

The following are the founders of the schools of interpretation or the system of jurisprudence called *Mazhab* :—

<i>Names of Founders.</i>	<i>Dates of Death.</i>
1 Abdullah Ibn Mas-ood	32 A. H.
2 Abdullah Ibn Omar	73 A. H.
3 Ayesha, the widow of the Prophet	85 A. H.
4 Mojahid	Between 100 & 104 A. H.
5 Omer bin Abd-ul Aziz	101 A. H.
6 Ash Shobi	103 or 104 ? A. H.
7 Atá	115 A. H.
8 Al Aamash	147 or 149 ? A. H.
9 Imám Abu Haneefa	150 A. H.
10 Auzáee	157 A. H.
11 Soufian As Sourí	164 A. H.
12 Imám Lais	175 A. H.
13 Imám Málik	179 A. H.
14 Sofani bin Oyenah	198 A. H.
15 Imám Sháfa-ee	204 A. H.

<i>Names of Founders.</i>	<i>Dates of Death.</i>
16 Is-hák Abu Yakub Ibn Ráh-waih.....	238 A. H.
17 Imám Ahmed bin Hanbal.....	241 A. H.
18 Imám Dáood Abu Soleiman al Záhiri	270 A. H.
19 Mohammad bin Jarír Tabari...	310 A. H.

It might be supposed that as the growing needs of the Moslem Empire led to the formation of the several schools of jurisprudence, the various systems of interpretation of the Korán, and the different methods of testing and accepting the authority of the oral traditions; so now the requirements of modern social and political life, as well as the change of circumstances, as is to be perceived in Turkey and India, might be met by a new system of analogical reasonings and strict adherence to the principles of the Korán hitherto not regarded as the sole and all-sufficient guide. Legislation is a science experimental and inductive, not logical and deductive. The differences of climate, character, or history must be observed; the wants and wishes of men, their social and political circumstances must be taken into consideration, as it was done in the various stages of the first days of the growing Moslem Empire.

All the four *Mujtahids*, or founders of the schools of Mohamadañ jurisprudence now in force, and others whose schools have now become extinct, had adhered

The several schools of jurisprudence based on the above principle.

to the principles above referred to, which were moreover local in their applications, and hence could not be binding either on the Mohammadans of India or those of Turkey.

Mr. Sell quoted. The Rev. Mr. Edward Sell writes:—

“The orthodox belief is, that since the time of the four Imáms there has been no Mujtahid who could do as they did. If circumstances should arise which absolutely require some decision to be arrived at, it must be given in full accordance with the ‘mazhab,’ or school of interpretation, to which the person framing the decision belongs. This effectually prevents all change, and by excluding innovation, whether good or bad, keeps Islam stationary.”*

There is no legal or religious authority for such an

Changes not orthodox belief, or rather misbelief, prevented.

nor can it be binding on Moslems in general. In the first place the founders of the four schools of jurisprudence never claimed any authority for their system or legal decisions, as being final. They could not dare do so. They were very far from imposing their analogical deductions or private judgments on their contemporaries, much less of making their system binding on the future generation of the wide-spreading Moslem Empire. In the second place none of the Mujtahids† or Mohaddises would accord such a high position to any of the four Imáms or doctors of jurisprudence.

* *The Faith of Islam*: by the Rev. E. Sell, Fellow of the University of Madras, page 23, 1880.

† *Mujtahid* is derived from ‘*Jahd*,’ same as “*Jihád*,” meaning making efforts of mind to attain the right solution of legal questions.

Mokallids, * (those who follow blindly any of the four doctors or schools of jurisprudence, without having any opinion, insight, discretion, or knowledge of their own) only entertain the belief that since the time of the four Mujtahids there has been no other Mujtahid who can found a school of analogical deductions or a system of interpretation; they say "we are shut up to following the four Imáms, and to follow any other than the four Imáms is unlawful," as quoted by Mr. Sell from *Nehayat-ul-Murad*, and *Tafsir-i-Ahmadi*. Both these books have been the productions of the worst of Mokallids. Mr. Sell, without taking notice, perhaps, of the distinction between Mujtahids and Mokallids, quotes from the latter to show the authority of the four Imáms, and at the same time the finality of their system of legislation and polity to be binding on the whole of the Mohamadan world, the *non-Mokallids*, the *Mujtahids*, and the *Ahl Hadis*. No regard is, however, to be paid to the opinions and theories of the Mokallids.

The *Hanbli* school of jurisprudence, one of the four so called orthodox systems, very emphatically assert that there should be a Mujtahid in each age. Now the Mokallids who consider the *Ijtihád* (the state of being a Mujtahid) to have become extinct since the four Imáms, and will not believe in the possibility of the

* The word is derived from *Taklid*, which means to put a collar round the neck.

appearance of any more Mujtahids ; and their advocate, Mr. Sell, will be very much perplexed to discover the mistake of their delusive theory.

I will, here, refer Mr. Sell to Moulavie Abd-ul-Ali, Bahr-ul-Olúm surnamed *Bahr-ul-Olúm* (the ocean quoted. of sciences!) who spent the latter part of his life at Madras. In his commentary on the *Mosallam-ous-Sabút*, named *Favatih-ur-Rahmut*, treating on the principles of the Mohammadan Common Law, the Moulavie writes :—

“Some people consider that *Ijtihád fil Mazhab*, relative independence in legislation, was closed after the death of Allamá Nasafee, and *Ijtihád Mutlak*, or absolute independence, had become extinct since the four Imáms. These men have gone so far as to make it incumbent on Moslems to follow one of these Imáms. This is one of their many foolish ideas, which can have no authority for itself, nor should we pay any regard to what they say. They are among those in connection with whom the *Prophetical Hadis* has that ‘they award their decision (*fetwa*) without knowledge, they go astray, and mislead others. They have not understood that this assertion is a pretension to know the future which is only known to God.” Referring to Sura xxxiv. 31, which has ‘. . . . but no soul knoweth what it shall have gotten on the morrow.’

The characteristics of each of the four orthodox schools now in force would show that they were never intended to be either divine or finite.

Characteristics
of the schools of
jurisprudence.

IMÁM ABOO HANEEFA* made almost no use of traditions as a source of law, admitting only eighteen of them as authoritative

Hanafites.

* Col. Osborn is incorrect in saying that “His (Aboo Haneefa’s) jurisprudence was founded exclusively on the Koran, and claimed to be logically

in his system. His jurisprudence was exclusively founded on private opinion and analogy called *Rae* and *Qias* respectively. Taking these two principles for the basis, he and most of his disciples spun out a complete legal system. His own teaching was oral, and he compiled no book. All the maxims, theories, hypotheses, logical deductions, inferences and developments worked out by his disciples and their disciples—of whom Aboo Haneefa never dreamt—in their turn, go by his name, and authority. The disciple of Aboo Haneefa named Aboo Yoosoof, was far too prone to set aside traditions in his legal decisions and resolve points of law by means of rational deductions, which in fact destroyed the tradition or Common Law under the pretence of obeying it.

IMÁM MÁLIK.—The system of legislation adopted by Imám Málik was chiefly based on Málikites. “the customs of Medina.” It may be called strictly a Common Law comprising usages and practices of the people among whom he lived, and for whom he wrote the hitherto unwritten law. He

developed therefrom by the method of analogical deduction.”—*Islam under the Khalifs of Baghdad*, page 24. London: 1878. *Vide* also page 52 of the same book. I would not call the casuistry of the Hanafites logical or analogical deductions from the Korán, at all. It was merely a system of analogical reasonings, sacrificing the authority of the Korán, of the Sonnah, and of the ancient Imáms to their own private judgments (*Rae*), or as the word may well signify, to their own ideal speculations. The legal *Kias* (*Qias*) as used by the other sects or schools is not a logical deduction, but is an analogical reasoning.

utilized three hundred traditions in his *Mowatta*. It was, moreover, a system better adapted to the simple modes of Arabian life than the elaborate, artificial and complicated one of the Hanafites. The system of Imám Málik, based, as it was, on the customs of Medina, was purely a local one. The precepts which sufficed for the primitive Arab city were not deemed efficient to cope with the wants of a vast concourse of human beings abroad. But by some chance, the system of Imám Málik prevailed chiefly throughout Spain and Northern Africa.

IMÁM SHÁFAEE.—He was an eclectic. He built up his system on the materials of Sháfites. Aboo Haneefa and Málik. But he was the first person who composed a work on the principles of exegesis and jurisprudence called *Osool*.

IMÁM AHMAD BIN HANBAL discarded altogether the principle of deductions or analogical judgments. In his *Mosnad* he embodied thirty thousand traditions. His system was both in its theological and legal aspects, a reaction of the lax spirit of the age. The Hanafi court jurisconsults under the Khalif Mamoon, by the extreme elasticity which the principle of analogical deductions *

* I have given an instance of such ridiculous deductions at pages 17 and 32 of this work. There is another cited by Col. Osborn in *Islam under the Khalifs of Baghdad*, page 28 "Thus," he writes, "there is a verse in the Second Sura which says, 'God has created the whole world for you.' According to the Hanifite jurists, this text is a deed of gift which annuls all other rights of property. The 'you' means, of course, the true

afforded them, found no difficulty in making the moral doctrines of the Korán subservient to the most wanton excesses of arbitrary power, and pandering to the licentious passions of Khalifs and Ameers. To check this great evil Imám Ahmad had resort to the prophetic traditions which were current amongst the commonalty. Though most of these traditions were unauthentic fabrications, they contained the principles of the Republican form of Government, and hence were well suited to check the profligacies of despotic Khalifs.

I here take the opportunity of mentioning another orthodox system of jurisprudence
 Záhírites. founded by Aboo Soleiman Dáood
 Az-Záhiri, a native of Isfahán, generally known by his surname Az-Záhiri, which means the *exteriorist*.

Believers; and the whole earth has been created for their use and benefit. The whole earth they then classify under three heads :—(1) land which never had an owner; (2) land which had an owner and has been abandoned; (3) *the persons and the property of the Infidels*. From this third division the same legists deduce the legitimacy of slavery, piracy, and a state of perpetual war between the Faithful and the unbelieving world." I have not come across such a fanciful corollary, and I do not think the persons and property of the non-Moslems can come under the divisions of the Earth. Perhaps Col. Osborn was misinformed. Ainee and Shamee do quote the verse (ii 27) under the chapter of the conquest of non-Moslems over Moslem countries, setting forth that the conquerors under certain circumstances shall become the lawful owners of the Moslem property by right of conquest. They refer to the verse to show all things are neutral or common to all for the benefit of mankind, not for the true Believers only, unless they are lawfully possessed by some particular individual.

He was so called because he founded his system of jurisprudence on the exterior or literal meaning of the Koránic texts and traditions. He thus rejected the authority of an Ijmá (the general consent of the Moslems), and the Qias or analogical judgments, the third and the fourth sources of Mohammadan jurisprudence. He was born in 201 or 202 A.H. and died in 270 A.H.* His system was a reaction of the Hanafite school, as he rejected both Ijmá and Qias. Another reaction was that of Ahmad bin Hanbal, who rejected the analogical reasoning, and held an Ijmá, or the unanimous consent of the Mujtahids, at a certain time impossible. Ibn Hazm and Ibn Arabi, the two Spanish writers, as well as Nazzám (died 231), and Ibn Habbán (died 354) have likewise denounced the authority of an Ijmá other than that of the Companions of the Prophet.

This account of some of the important and main schools of jurisprudence will be sufficient to prove that none of the systems was imposed as finite or divine, and that neither the founders of these sundry systems intended them to be so, nor wished their own to bear precedence over others. Every system was progressive, incomplete, changeable and undergoing alterations and improvements. The logical deductions, analogical judgments and capricious speculations which were adhered to for want of information in the

* *Vide* Ibn Khallikan's Biographical Dictionary, translated by De Slane, Vol. I., page 502, note 1.

beginning were wholly done away with in after days, in the system of legislation. Every tendency was centred in legislating with regard to the wants and wishes of the people, and to the changes in the political and social circumstances of the new Empire. Every new school of jurisprudence made legislation experimental and inductive, while the former systems of speculative and deductive legislation were shelved into oblivion. Ahmad bin Hanbal, the last of the four orthodox Imáms, wholly disregarded the fourth principle of Mohammadan legislation, *i.e.*, analogical reasoning or deductive judgment. About a century later, the Zâhirite School set aside the third principle also, *i.e.*, the Ijmá or the unanimous consent of the Doctors of Law in a certain epoch, as the former Ijmás on several points of legislation did not well suit the altered circumstances of later ages. Consequently, the legislation of the Mohammadan Common Law cannot be called immutable; on the contrary, it is changeable and progressive.

I have given a short sketch of the principal schools of Mohammadan jurisprudence in the foregoing pages. I will here review briefly the sources of its civil and canon law. There are three constituent elements of the Mohammadan Common Law: (1) the Korán; (2), the traditions from the Prophet and his Companions; (3), the unanimous consent of the learned Mohammadans on a point of the civil or canon law not to be found in the two

preceding sources. Lastly, the supplemental source is the *Qias*, analogy of the process of reasoning by which a rule of law is established from any of the three elements.

The Korán does not profess to teach a social and political law; all its precepts and preachings being aimed at a complete regeneration of the Arabian community. It was neither the object of the Korán, the Mohammadan Revealed Law, to give particular and detailed instructions in the Civil Law, nor to lay down general principles of jurisprudence. Some points of the civil and political law which were the most corrupt and abused have been noticed in it, such as Polygamy, Divorce, Concubinage, and Slavery. In these as well as other denunciations against immoral practices the Korán has checked and removed the gross levity of the age. A few judicious, reasonable, helpful, and harmless accommodations were allowed by the Korán to some of the civil and social institutions of the Pagan and barbarous Arabs, owing to their weakness and immaturity. These accommodations were set aside in their adult strength, or in other words when they had begun to emerge under its influence from their barbarism into a higher condition of amelioration.

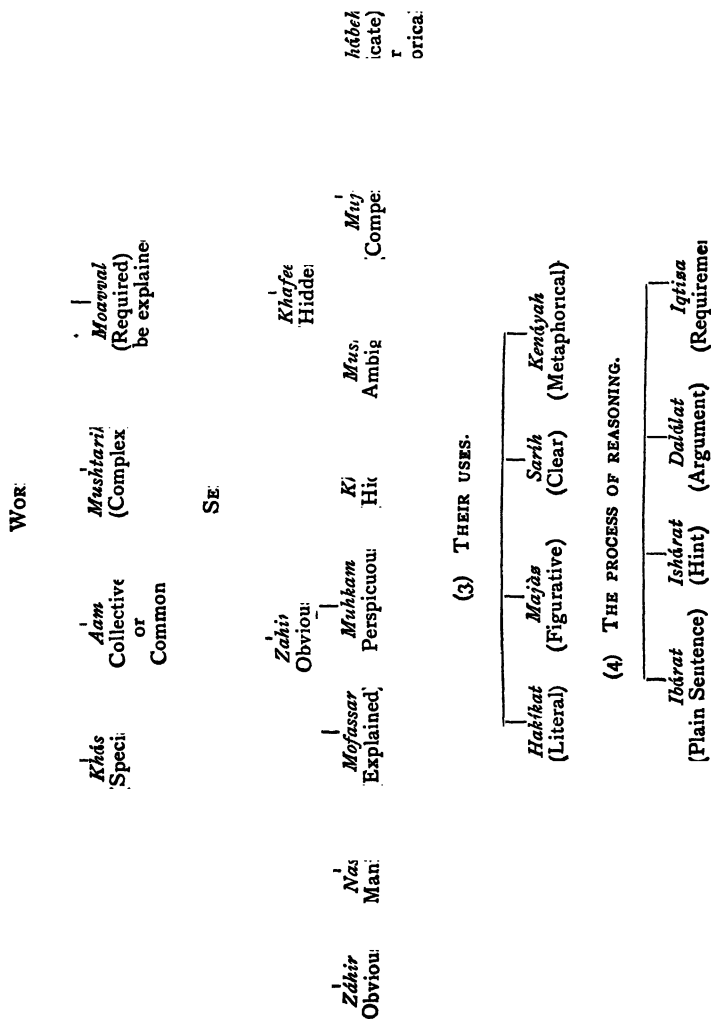
The more important civil and political institutions of the Mohammadan Common Law based on the Korán are bare inferences and deductions from a single word or an isolated

sentence. Slavish adherence to the letter and taking not the least notice of the spirit of the Korán is the sad characteristic of the Koránic interpretations and deductions of the Mohammadan doctors.* It has been said there are about two hundred out of six thousand verses of the Korán on the civil, criminal, fiscal, political, devotional, and ceremonial (canon or ecclesiastical) law. Even in this insignificant number of the *Ayát Ahkám* (law verses), a thirtieth part of the first source of the law, is not to be depended upon. These are no specific rules, and more than three-fourths of them I believe, are mere letters, single words, or mutilated sentences from which fanciful deductions repugnant to reason, and not allowable by any law of sound interpretations, are drawn.†

* The Mahommedan revelation is much more recent, and though any one reading the Koran for the first time would hardly suppose that it was so intended, it has nevertheless been adopted by Mahommedan nations as the basis of their social and political institutions; but the most important of these are rather inferences from its spirit, than exact applications of any specific rule to be found therein. Wherever specific rules are found, and there are a few as regards minor matters, they have been for the most part observed with scrupulous exactness." —*Elements of Law*; by William Markby, M.A., Second Edition, page 37.

† Some of the Mohammadan doctors have exerted themselves, in picking out the law verses, as they are called, and in compiling separate treatises in which they have made an abstract of all such verses of the Korán. They have applied them to the different heads of the various branches of the canon and civil law, giving their fanciful processes of reasoning and the deductive system of jurisprudence.

For the purpose of legal and juridical interpretations
 Exegesis of the Korán, apart from the doctrinal,
 Korán. moral, prophetic and historical inter-
 pretations, the words, sentences, and their uses have
 been divided and sub-divided into four symmetrical
 divisions as follow:—



This will show that the two hundred verses are not specific rules or particular teachings of the Korán on the civil law, most of the deductions being fortuitous interpretations.

In short the Korán does not interfere in political questions, nor does it lay down specific rules of conduct in the Civil Law. What it teaches is a revelation of certain doctrines of religion and certain general rules of morality. Under the latter head come all those civil institutions of the ancient Arabs, as Infanticide, Polygamy, Arbitrary Divorce, Concubinage, Degradation of Women, Drunkenness, Reckless Gambling, Extortionate Usury, Superstitious Arts of Divination, and other civil institutions which were combined with religious superstition and gross idolatry. These all have either been condemned, or ameliorated and reformed. Neither these subjects are treated as civil institutions, nor any specific rules have been laid down for their conduct. But the Mohammadans have applied the precepts of the Korán to the institutions of their daily life to as great an extent as the Christians have done with regard to those of the Bible, and as much as circumstances permitted. There has been a tendency rather to expand than to contract the application of the Jewish law to the wants of modern society. In Christendom theology has been severed from morals and politics only very lately. "The separation from morals was effected late in the seventeenth

The Korán not
a civil or political
code.

century ; the separation from politics before the middle of the eighteenth century." * The enlightened Mohammadans of Turkey and India are in this nineteenth century striving to do the same, and this will, in no way, affect their religion. How futile is the remark of Sir W. Muir who writes, "The Coran has so encrusted the religion in a hard and unyielding case-ment of ordinances and social laws, that if the shell be broken, the life is gone." †

There is a vast ocean of traditions from the Prophet, his Companions and their successors, II. The tradi- tions or Sonna. on the various subjects of the social, political, civil, and criminal law incorporated in the Mohammadan law-books. In fact the Companions of the Prophet and their successors were averse to commit to writing the traditions concerning the private life and public teachings of the Prophet. But naturally the conversation of the followers of the Prophet was much about him. The Companions, and their successors enthusiastically expatiated upon his acts and sayings, specially when the later generations had endowed him with supernatural powers, and the same was the case with the Gospels. Consequently the traditions grew apace. The vast flood of traditions soon formed a chaotic sea. Truth and

* Buckle's *History of Civilization in England*, Vol. I., page 425. London : 1878.

† *The Early Caliphate and Rise of Islam*, being the Rede Lecture for 1881 ; by Sir William Muir, K.C.S.I., LL.D., page 26.

error, fact and fable, mingled together in an undistinguishable confusion. Every religious, social, and political system was defended, when necessary, to please a Khalif or an Ameer to serve his purpose, by an appeal to some oral traditions. The name of Mohammad was abused to support all manner of lies and absurdities, or to satisfy the passion, caprice, or arbitrary will of the despots, leaving out of consideration the creation of any standard of test.

It was too late when the loose and fabricated traditions had been indiscriminately mixed up with genuine traditions, that the private and individual zeal began to sift the mass of cumbrous traditions. The six standard collections of traditions * were compiled in the third century of the Mohammadan era, but the sifting was not based on any critical, historical, or rational principles. The mass of the existing traditions were made to pass a pseudo-critical ordeal. It was not the subject matter of the tradition, nor its internal and historical evidence which tested the genuineness of a tradition, but the unimpeachable character of its narrators and their unbroken links up to the time of the Prophet or his Companions, with two or three other

Sifting of traditions not based upon critical grounds.

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- * (1) Mohammad bin Ismail Bokháree, died 256 A. H.
 - (2) Moslim bin Al Hajjaj Neshápuree, died 261 A. H.
 - (3) Aboo Dáood as-Sajistánee, died 275 A. H.
 - (4) Aboo Eesa Mohammad Tirmizee, died 279 A. H.
 - (5) Aboo Abdur Rahman Nasáee, died 303 A. H.
 - (6) Ibn Mája al-Kazwini, died 273 A. H.

minor observations and technicalities. The criterion of the subject matter, and the application of an intelligent and rational canon was left to others. Hence the critics did not consider the traditions called *Akhbār-e-ahād* (single reports) to be binding on the conscience.

The European writers like Muir, Osborn, Hughes and Sell, while describing the Moham-
 The traditions not generally binding on the conscience. madan traditions, take no notice of the fact that almost all of them are not theoretically and conscientiously binding on the Moslems. This, in fact, demolishes the foundation of the Common Law. But the legists argue that though the traditions carry no authority with them as single reports, they are practically binding on the Moslem world. This is tantamount to our acting in accordance with the traditions even when our reason and conscience have no obligations to do so. The maxim of the critics who had collected and sifted the traditions, that in general however sound and strong their *Isnād* may be, they are not to be believed in, and they do not convey a sure knowledge of what they relate, had in reality left no necessity for them to frame a criterion of truth to test a tradition on the ground of its intrinsic incredibility, or rational principles.

Now, though most of the Mohammadan civil and political as well as the canon laws are
 Mohammad never enjoined to collect traditions. derived from traditions, it is apparent they cannot be unchangeable or

immobile, from the simple fact that they are not based on sure and positive grounds. Mohammad had never enjoined his followers to collect the oral traditions and random reports of his public and private life, nor even did his Companions think of doing so. This circumstance establishes beyond all contradiction the fact that he did not interfere with the civil and political institutions of the country, except those which came in direct collision with his spiritual doctrines and moral reforms. This is certainly an incontrovertible proof that the civil and political system, founded on hazy traditions and uncertain reports, are in no way immutable or finite.

The unanimous consent of all the learned men of the whole Mohammadan world at a certain time on a certain religious precept or practice for which there is no provision in the Korán or Sonnah, is called an Ijmá. If any one of the constituent doctors dissents from the others, the Ijmá is not considered conclusive or authoritative.

Sheikh Mohyyuddeen Ibn Arabi, a Spanish writer of great authority and sanctity (died 1163 A. H.); Abou Soleiman Dáood az-Záhiri, a learned doctor of Isfahán, and the founder of the Záhiriite (Exteriorist) school of jurisprudence; Abou Hatim Mohammad bin Habbán Al Tamimi Al-Basti, generally known as Ibn Habbán (died 354 A. H.); Abou Mohammad Ali Ibn Hazm, also a Spanish theologian of great repute (died 400

Ijmá not authoritative.

A.H.); and according to one report, Imám Ahmad bin Hanbal (died 241 A.H.), denounce the authority of any Ijmá other than that of the Companions of the Prophet; while Ibn Is-hak Ibrahim Ibn Sayyar Al-Nazzám al-Balkhi, generally known as Nazzám (died 231 A.H.), and Ahmad bin Hanbal, according to another report, deny the existence of any Ijmá whether of the Companions or other Moslems in general. Imám Málik, the famous legist and founder of the second school of jurisprudence, admitted the authority of the Ijmá of the Medinites only, and not of any one else. In fact, his theory or system of legislation was based chiefly on the practices and usages of the people of Medina. Imám Sháfaee, the third of the orthodox Imáms, and founder of the school of Mohammadan jurisprudence which bears his name, held that an Ijmá (unanimous consent of all the learned Moslems of the whole Moslem world, at a certain time on a certain point of law) becomes binding on all, only on the expiration of the age in which they who had thus unanimously constituted the Ijmá lived; provided that none of them had ever swerved from the opinions held by him at the time of the Ijmá, as the dissentient voice of a single individual in his after life would dissolve the Ijmá and nullify its authority.

The Ijmá is either *Azimat*, when all the learned men declare their consent to the law point
 Kinds of Ijmá. or maxim agreed upon, or they commence practising the same if it be practicable. It is

called *Rukhsat* when it is tacitly permitted by those who do not give their consent thereto. Under this circumstance it is also called *Sokuti*, silent or mute, but Imám Sháfáee would not admit the latter as authoritative.

It is held by Imám Aboo Haneefa that only that Ijmá can be authoritative on a point of law in which there would have been no disagreement before the Ijmá took place. Such is Karkhee's report. Imám Mohammad does not agree with his master on this point, and Aboo Yoosoof had two verdicts of his own, in one of them he gives his consent to the sentiments expressed by his master, Aboo Haneefa, and in the other with his fellow pupil, Imám Mohammad.

When at a certain period there were two parties differing from one another, it is not allowed at a subsequent period to dissent from both the previous opinions and constitute Ijmá on a third. Such an Ijmá is called *Morakkab*.

A report of Ijmá having taken place must be communicated to posterity by a vast
 How reported. concourse of reporters in each age, so as to remove the doubt of its being spurious. The report of an Ijmá communicated to us as related above is called *Ijmá Motaváter*, but if it is not reported in such a manner, it is styled *Ijmá Ahád*. The former is considered to be binding on the conscience as a true report necessitating implicit obedience, the latter cannot be obligatory, that is, we cannot believe it to be true, yet our compliance thereto is necessary.

This is then the theory of Ijmá, the third principle of the Mohammadan Common Law or system of legislation. But its very foundation is shaken by the most eminent jurisconsults and legists who would not admit in the first place the existence of such an Ijmá, as being practically impossible. In the second place they would not admit its authority except on the strength of the Prophet's Companions. In the third place some of them would not allow any Ijmá whether it be derived from the Companions or from some other source. In the fourth place, supposing that such Ijmás have taken place and exercise universal authority, it is impossible that the transcriptions of their reports will successively reach us, and will be binding on the conscience. It is absurd to believe in its decision, though we do not know certainly whether there was any Ijmá or not.

Mr. Sell has been apparently misinformed on the subject of Ijmá, as it appears in his *Mr. Sell on Ijmá*. "The Faith of Islám." His quotations bearing on the subject are all derived from secondary sources which ought not to be authoritative at all. He quotes from what he calls, "a standard theological book much used in India," as follows:—

"Ijmá is this, that it is not lawful to follow any other than the four Imáms" [page 19].

He writes further on without referring to any "standard theological work"*:—

* This subject has nothing to do with the Mohammadan theological

"The Ijmá of the four Imáms is a binding law on all Sunnis" [page 23].

Now whether there was ever an Ijmá as defined above to follow blindly these Imáms, or these Imáms ever constituted an Ijmá is to be decided. There is no proof for the former; as for the latter, it is unsatisfactory on the bare face of it, for the four Imáms were not contemporaries of one another, how could they then effect an Ijmá?

Qias is wrongly described by Mr. Sell as the fourth foundation of Islam.† The Rev. IV. Qias. gentleman has committed another great mistake in calling it a foundation of the Faith. ‡ Technically it means analogical reasonings based on the Korán, traditions, or Ijmá. It is therefore not an independent source of law, the medium, or as it is called the *Illat* (cause or motive) in the process of reasoning must be found in one of the three sources of law. All these analogical reasonings are doubtful in their origin, and cannot in any way carry weight of authority with them. Notwithstanding this, Qias is the greatest source of the Mohammadan Civil Law. How can it then be called a final or immutable law?

books. The subject falls within the province of Jurisprudence. It is *Fiqh* or *Osool*, and is quite separate from theology or *Iláhiyát* or *Aquáid*. The four Imáms are never called theologians, but they are mere legists or casuists.

† *The Faith of Islám*; by the Rev. E. Sell, page 27.

‡ *Ibid*.

The authority of Qias as a source of law was denounced by Ibn Mas-ood, a Companion of the Prophet (died 32 A. H.) by Aamir as-Shobi, one of the successors of the companions at Kufá (died 109 A. H.), by Mohammad bin Sirin (died 110 A. H.), by Hasan-al-Basra (died 110 A. H.), and by Ibrahim an-Nazzám (died 231 A. H.)* Daood bin Ali Isfhánee, the founder of the Zâhirite sect (died 270 A. H.) and his son Abu Bakr Mohammad Ali, well versed in jurisprudence (died 297 A. H.), and Abu Bakr Ibn Abi Aasin, a jurisconsult who flourished in the fourth century, have also disapproved of Qias or jurisprudential deductions, and have rejected that mode of proceeding.

Hafiz Ibn Mohammad Ali bin Hazm, generally known as Ibn Hazm, a Spanish writer of great repute in Mohammadan theology and jurisprudence (died 400 A. H.), had written a treatise denouncing the validity of *Rae*, "opinion," of *Qias*, "analogical deductions," of *Istihsán*, "a sub-division of Qias as the source of law," of *Taleel*, the ascertainment of the causes or motives of the precepts (and making analogical deductions therefrom), and *Takleed*, "the blind pursuit of one of the four schools of Mohammadan jurisprudence."

There is no doubt that the several codes of Mohammadan jurisprudence were well suited to the then existing state of life in each stage of its development, and

Some chapters of the Civil Law require re-writing.

* *Vide* Ibn Hajar in *Futhul Bári*, a commentary on Bokháree quoting from Ibn Abd-ul-Barr and Dármee, &c.

even now where things have underwent no changes, they are sufficient enough for the purpose of good government and regulation of society. But there are certain points in which the Mohammadan Common Law is irreconcilable with the modern needs of Islam, whether in India or Turkey, and requires modifications. The several chapters of the Common Law, as those on political Institutes, Slavery, Concubinage, Marriage, Divorce, and the Disabilities of non-Moslem fellow-subjects are to be remodelled and re-written in accordance with the strict interpretations of the Korán, as I have shown in the following pages.

Legal, political and social equality on a much more liberal scale than hitherto granted by the several Hatts and Firmans of the Turkish Sultans must be accorded in theory as well as in practice even in the "Shera-ee" or religious tribunals* of Turkey. On the other hand, conformity, in certain points, with foreign laws must be allowed to Moslems, living under the

* "Theoretically the evidence of a Christian is admissible, except before the 'Sheri,' or religious tribunals; practically it is inadmissible in any court."
—Malcolm MacColl in the *Contemporary Review* quoted above, page 978.

"Whenever a Rayah bears witness in a Turkish court, justice is in danger. The evidence of a Bulgarian false witness costs on an average 5 piastres. Thence the objection of *Cadis* to admit it in purely Mussulman cases—cases judged by the Mussulman law. But they do admit it in the mixed tribunals to the great detriment of justice. The reader must also know that in the purely Christian tribunals, Mussulman evidence is not received."—*The Eastern Question in Bulgaria* : by St. Clair and Brophy, page 272. London : 1877.

Christian rule, either in Russia, India or Algiers. Political and social equality must be freely and practically granted to the natives of British India. Political inequality, race distinctions and social contempt evinced by Englishmen in India towards their fellow-subjects, the Natives, is very degrading and discouraging.

Major Osborn writes :—

“The experience of British rule in India shows that where the subtle and persuasive power of sympathy is wanting, where social equality does not or cannot exist, there the gulf which divides the conqueror from the conquered remains unfilled. Within the boundaries of Hindostan we have established peace and placed within the reach of her people the intellectual treasures which the happier West has accumulated, but we are farther than ever from winning their affections. Never, perhaps, did the people of India dislike the Englishman with a profounder dislike than at the present day. There are hundreds of educated Muhammadans and Hindoos in that country who are as clearly convinced as any European of the falseness of their ancestral beliefs, the incompatibility of their old ways of life with intellectual and social progress. But such convictions do not detach them from the external profession of those beliefs, the diligent observance of those obsolete practices. They cling to them as a kind of protest against the conqueror. They prefer to bury themselves in the darkness, than be led towards the light by guides whom they abhor. And why is this? It is because the presence of the Englishman in India is a wound inflicted on their self-respect, which never heals, which the experience of almost every day causes to bleed afresh. The Englishman does not mean to lacerate their feelings. He cannot help conveying in his speech, his manners, and his actions, that calm, undoubting conviction of immeasurable superiority with which he is inwardly possessed; his exclusiveness is due, partly of course, to his insular rigidity, but far more to the constitution of native society which renders free intercourse between the two races simply impos-

sible. But, on the other hand, it is not strange that the native should be unable to make allowances for difficulties of this kind. He only sees an alien race settled in the land which his ancestors ruled, and conducting themselves as though they were beings made of a finer clay than the people whom they govern. He knows and feels that he cannot enter their presence without being reminded at every instant that he is regarded as an inferior. His inability to resent the tacit insult (for so he regards it), his powerlessness to free himself from the strong hand which holds him in his grasp, tend, of course, to intensify the bitterness of his hate. What we have done for India is to convert it into a gigantic model prison. The discipline we have established is admirable, but the people know they are prisoners, and they hate us as their jailers. And until a prison is found to be an effective school for the inculcation of virtue, and a jailer a successful evangelist, it is folly to expect the regeneration of India. Reports on her material and moral progress will, of course, continue to be written, but if we estimate the effects of British rule, not by trade statistics, but by its results on the spirit of man, we shall find that the races of India have declined in courage and manliness, and all those qualities which produce a vigorous nation, in proportion to the period they have been subjected to the blighting influence of an alien despotism. There is no human power which can arrest the progress of decay in a people bereft of political freedom, except the restitution of that freedom. This sentence of doom glares forth from the records of all past history, like the writing of fire on the wall of Belshazzar's palace. It is an hallucination to suppose that British rule in India is a reversal of the inexorable decree." *

But now the question naturally comes up before us,
 Who can effect the proposed reforms?
 who can effect the proposed reforms mentioned above? I reply at once,
 His Imperial Majesty the Sultan.

* *Islam under the Arabs* ; by Major R. D. Osborn, pp. 374-376.
 London : 1876.

He is competent enough to bring about any political, legal or social reforms on the authority of the Korán, just as the former Sultans introduced certain beneficial measures both in law and politics in direct contravention of the Hanafite school of the Common Law. He is the only legal authority on matters of innovation; being a successor to the successors of the Prophet (*Khalifa Khalifai Rasul-allah*), and the *Ameer-al-Momineen*, the *Saut-ul-Hai*, or the living voice of Islam. The first four Khalifs, no doubt, had an arbitrary power to legislate, and of their own authority (*Ijtihád*), they modified at will the yet undeveloped *Leges non Scripta* of Islam. The imaginary Khalif of the Koreish, to be chosen by the Faithful and installed at Mecca to invite the Ulema of every land to a council at the time of pilgrimage for the purpose of appointing a new Mujtahid with a view to propound certain modifications of the Sheriat, necessary to the welfare of Islam, and deducible from traditions, as proposed by Mr. W. C. Blunt,* is not required at all.

It has been stated on high authority, that all that is required for the reform of Turkey is, that the *Quánùn*, or orders of the Sultan, should take the place of the Hanafi Law. The Sultan is competent enough to do so either as a Sultan or a Khalif. The idea that by so doing Islam would cease to be the State religion is groundless, for Islam, as a religion, is not a barrier

* *The Future of Islam*; by Wilfrid S. Blunt, pp. 165-166. London: 1882.

to the good administration of the Turkish Government. As a Khalif, the Sultan is not bound to maintain the Hanafi Law which is said to suit ill the conditions of modern life. All the perfect Khalifs have existed before the compilation of the Hanafi Law, and during the subsequent Khalifates, it was not fully and universally administered, there being different laws in different Mohammadan countries.

I do not agree with Colonel Osborn who remarks that a religious revolution is required before the work of political reform can begin in a Mohammadan state. I will not repeat here my reasons, as I have already fully explained how the social, legal, and political reforms can be introduced in Mohammadan states. But I will briefly discuss here how it is to begin. To what can we appeal?

"There is not a crime or defect in the history of Islam," writes Major Osborn, "the counterpart of which is not to be found in the history of Christendom. Christians have mistaken a lifeless formalism for the vital element in religion ; Christians have interpreted the Gospel as giving a sanction for the worst cruelties of religious persecution ; Christians have done their utmost to confine the intellect and the moral sense within limits defined by a human authority ; but the strongest witness against all these errors has been Christ Himself. Every reformer who rose to protest against them could appeal to Him and His teaching as his authority and justification. But no Moslem can lift up his voice in condemnation of Polygamy, Slavery, Murder, Religious War, and Religious Persecution, without condemning the

Prophet himself ; and being thereby cut off from the body of the Faithful." *

I have protested against Polygamy, Slavery and Intolerance in this book, and have appealed to the Korán and the teachings of Mohammad. The subjects of Murder, Religious Wars and Religious Persecutions I have fully discussed in my other work, entitled "All the Wars of Mohammad were defensive." † See also pages 13 to 16 of the first part of this book.

All the political, social and legal reforms treated of in the following pages are based on the authority and justification of the Korán. The Mohammadans have interpreted the Korán as giving sanction to Polygamy, Arbitrary Divorce, Slavery, Concubinage, and Religious Wars. But the strongest witness against all these errors is the Korán itself. For the Koránic injunctions against Polygamy, Arbitrary Divorce, Religious Persecutions and Wars, Slavery, and Concubinage, consult the following verses :—

Against Polygamy, iv. 3 and 128.

Against Arbitrary Divorce, ii. 226, 227, 229, 230, 237, 238 ; iv. 23—25, 38, 39, 127—129 ; xxxiii. 48 ; lviii. 2, 5 ; lxv. 1, 2, 6.

* *Islam under the Khalifs of Baghdad* ; by Robert Durie Osborn, Major in the Bengal Staff Corps. London: MDCCLXXVII. P. 80.

† Is being printed by Messrs. Thacker, Spink and Co., Calcutta. For the execution of a tribe of Jews, religious persecutions, the alleged assassinations, slavery and concubinage as concomitant evils of war, and religious war, see paras. 27-31, 34-39, 44-56 and 89 to the end.

Against Religious Intolerance, cix. lxxxviii. 21—24; l. 45, 46; lxxii. 21—24; xvi. 37, 84; xxix. 17; xviii. 40; xlii. 47; ii. 257; lxiv. 12; iii. 19; xxiv. 53; ix. 6; v. 93, 99; xviii. 28; xxxix. 16, 17; vi. 107; x. 99.

Against Slavery, xc. 8—15; ii. 172; xxiv. 33; v. 91; xlvii. 4; ix. 60.

Against Concubinage, iv. 3, 29—32; xxiv. 32; v. 7.

The last verse, as it has not been quoted in page 174 of this book, I take the opportunity of quoting here:—

“ And *you are permitted to marry* virtuous women who are believers, and virtuous women of those who have been given the Scriptures before you, when you have provided them their portions, living chastely *with them* without fornication, and not taking concubines.”—*Rodwell's Translation.*

Mr. Stanley Lane Poole remarks in his introduction to Lane's selections from the Korán*:—

“If Islám is to be a power for good in the future, it is imperatively necessary to cut off the social system from the religion. At the beginning, among a people who had advanced but a little way on the road of civilisation, the defects of the social system were not so apparent; but now, when Easterns are endeavouring to mix on equal terms with Europeans, and are trying to adopt the manners and customs of the West, it is clear that the condition of their women must be radically changed if any good is to come of the Europeanising tendency. The difficulty lies in the close connection between the religious and social ordinances in the *Kur-án*: the two are so intermingled that it is hard to see they can be disentangled without des-

* Pp. xcv. and xcvi., Trübner's Oriental Series, No. vii. London: 1879.

stroying both. The theory of revelation would have to be modified. Muslims would have to give up their doctrine of the syllabic inspiration of the *Kur-án*, and exercise their moral sense in distinguishing between the particular and the general, the temporary and the permanent: they would have to recognize that there was much in Moḥammad's teaching which, though useful at the time, is inapplicable to the present conditions of life; that his knowledge was often partial; and his judgment sometimes at fault; that the moral sense is capable of education as much as the intellect, and, therefore, that what was apparently moral and wise in the seventh century may quite possibly be immoral and suicidal in a society of the nineteenth century. Moḥammad himself said, according to tradition, 'I am no more than a man: when I order you anything respecting religion, receive it; and when I order you about the affairs of the world, then I am nothing more than man.' And he seemed to foresee that the time would come when his minor regulations would call for revision: 'Ye are in an age,' he said, 'in which, if ye abandon one-tenth of what is ordered, ye will be ruined. After this, a time will come when he who shall observe one-tenth of what is now ordered will be redeemed.' * "

I have shown here as well as in the second part of this book that Islam as a religion is quite apart from inculcating a social system. The Mohammadan polity and social system have nothing to do with religion. Although Mohammadans in after days have tried to mix up their social system with the *Korán*, just as the Jews and Christians have done in applying the precepts of the Bible to the institutions of their daily life, they are not so intermingled that, "it is hard to see they can be disentangled without destroying both." In effecting

the proposed reforms it is not necessary to modify the theory of Inspiration.

The political and social reforms which I have explained in the first and second parts of this book are neither casuistical deductions, nor fortuitous interpretations, nor analogical constructions of the Korán, but on the contrary, they are the plain teachings, self-indicating evident (*Záhir*) meanings, *Nass*, *Mafassir* or *Muhkam* (obvious) injunctions of the Korán.

In short, the Korán or the teachings of Mohammad are neither barriers to spiritual development or free-thinking on the part of Mohammadans, nor an obstacle to innovation in any sphere of life, whether political, social, intellectual, or moral. All efforts at spiritual and social development are encouraged as meritorious and hinted at in several verses of the Korán.

The Korán not a barrier to spiritual development or political and social reforms.

" . . . Then give tidings to my servants who listen to the word* and follow the best thereof ; they it is whom God guides, and they it is who are endowed with minds."—S. xxix. v. 19.

" And vie in haste for pardon from your Lord."—iii. 127.

" Hasten emulously after good."—ii. 143.

" Be emulous for good deed."—v. 33.

" . . . And others by permission of God, outstrip in goodness, this is the great merit.—xxxv. 29.

" These hasten after good, and are first to win it."—xxiii. 63.

* I have followed Professor Palmer's translation. Mr. Sale and the Rev. Rodwell translate "*my word*." The original text does not warrant the word *my*.

“And that there may be among you a people who invite to the Good, and enjoin the Just, and forbid the Wrong. These are they with whom shall be well.”—iii. 100.

These verses fully sanction the development of the Moslem mind in all spheres of life.

There is a tradition related by the Imám Moslim to the effect that Mohammad the Church and State not combined together. Prophet while coming to Medina saw

certain persons fecundating date-trees.* He advised them to refrain from doing so. They acted accordingly, and the yield was meagre that year. It being reported to him, he said, “He was merely a man. What he instructed them in their religion they must take, but when he ventured his opinion in other matters he was only a man.” †

This shows that Mohammad never set up his own acts and words as an infallible or unchangeable rule of conduct in civil and political affairs, or, in other words, he never combined the Church and State into one. The Arab proverb, “*Al Mulko vad Dīno-tawamán*”—“State and Religion are twins”—is a mere saying of the common people, and not a Moslem religious maxim. It is incorrect to suppose that the acts and sayings of the Prophet cover all law, whether political, civil, social, or moral.

* “By means of the spadix of a male tree which is bruised or brayed and sprinkled upon the spadix of the female by inserting a stalk of a raceme of the male tree into the spadix of the female, after shaking off the pollen of the former upon the spadix of the female.”—Lane’s *Arabic Lexicon*, Bk. I., Pt. i., page 5.

† Vide *Mishkát-el-Masábeeh*, Ch. on *Etisám Bissunna*.

It has been narrated by Tirmizee, Aboo Dáood, and Dármee that Mohammad when deputing Ma-áz to Yemen, had asked him how he would judge the people? Ma-áz said, "I will judge them according to the Book of God." Then Mohammad asked again, "And if you do not find it in the Book of God?" The former returned, "I will judge according to the precedent of the Prophet," but he was once more questioned, "If there be no such precedent?" to which it was speedily replied, "I will make efforts to form my own judgment" (*ajtahado Ráee*).^{*} Mohammad thanked God for this judicious opinion of his delegate.

It is evident from this anecdote of Mohammad that he never intended his teachings to bear a despotic influence on the Moslem world, and become universal obstacles to all kinds of political and social reforms. He did not prevent any change from taking place, and never wished to keep Islam stationary. He did never intend to make legislation purely deductive; on the contrary, he made it inductive. Ma-áz was to rely on his own judgment, which makes legislation purely in-

^{*} The *Isnád* of the tradition by Tirmizee is from Hannad, from Wakee, from Shoba, from Abi Aun, from Harişbin-al-Amr, from the persons in the company of Ma-áz and from Ma-áz himself. Another *Isnád* is from Mohammad-bin-Bishár from Mohammad bin Jáfar and Abdu-ur-Ráhman bin Mahdi, from Shoba, from Abi Aun, from Haris-bin-Aun, and Moghira-bin-Shoba's nephew, from the people of Hems, from Ma-áz.

ductive. The tradition not only sanctions enlightened progress, but encourages an intelligent and healthy growth of the mind, and leads to the search of new truths.

Regarding this tradition Syed Ameer Ali says, "It was 'an age of active principles' which Syed Ameer Ali and the Rev. Mr. Sell. Mohammed ushered in,"* concerning which the Rev. Mr. Sell says :—

"It is true that *Ijtihád* literally means 'great effort,' it is true that the Companions and *Mujtahidín* of the first class had the power of exercising their judgment in doubtful cases, and of deciding them according to their sense of the fitness of things, provided always, that their decision contravened no law of the *Qurán* or the *Sunnat*; but this in no way proves that *Islám* has any capacity for progress, or that 'an age of active principles' was ushered in by Muhammad, or that his 'words breathe energy and force, and infuse new life into the dormant heart of humanity.' For, though the term '*Ijtihád*' might, in reference to the men I have mentioned, be somewhat freely translated as 'one's own judgment,' it can have no such meaning now. It is a purely technical term, and its use and only use now is to express the 'referring of a difficult case to some analogy drawn from the *Qurán* and the *Sunnat*.' "†

Mr. Sell commits a palpable error in saying that the word "*Ijtihád*" translated as "one's own judgment," "can have no such meaning now." His own words show that formerly, that is, in the time of Mohammad and up to the time it was restricted to a jurisprudential or legal technicality, centuries after Mohammad, it

* *A Critical Examination of the Life and Teachings of Mohammed*: by Syed Ameer Ali, Moulvi, M.A., LL.B.; page 290. London: 1873.

† *The Faith of Islám*; by the Rev. E. Sell; page 26.

had the classical or literal meaning of "one's own judgment." We know that in the phraseology of the Mohammadan principles of jurisprudence, a science but of late origin, the word "Ijtihád" is a purely technical term, and its use in that science, is to express the referring of a difficult case to some analogy drawn from the Qurán and the Sunnat. But such was not the case during Mohammad's time. In the classical Arabic it was, and is used to mean making great efforts, and when the word "*Rae*," i.e. opinion, is suffixed to it, it means making effort to form a judgment. Ma-áz said, "*Ajta-hado Rae*," i.e. "*I will make efforts to form my own judgment.*" But Mr. Sell considers that Ma-áz only used the word "Ijtihád," which is now a purely conventional word among the jurists, as a technical term, but this is altogether an absurd supposition. In the first place, Ma-áz did not use the simple word "Ijtihád," which is now restricted to a particular and technical meaning, but he prefixed it with the word "*Rae*," *my own judgment*. Secondly, he did not and could not use it in its subsequent technical sense now in use which got currency among the Legists centuries after Ma-áz.

We lay no stress on the word *Ijtihád*, it simply signifies making effort—moral or mental, but we lay stress on the word "*Rae*," *opinion*, judgment, and thought; and the tradition secures for us a wide field of spiritual development, moral growth,

The tradition secures us enlightened progress and removes the fetters of the past.

an intellectual and enlightened progress, and reformed legislation. It unfetters us from the four schools of jurisprudence, and encourages us to base all legislation on the living needs of the present, and not on the fossilized ideas of the past.

CHERÁGH ALI.

*Hyderabad, Deccan,
27th December 1882.*

PART I.

REFORMS

POLITICAL AND LEGAL.

The Possibility of Reforms, Political and Social, in Islam.

1. THE REV. MALCOLM MACCOLL says that, what we call Mussulman states, are only branches of a cosmopolitan theocracy, and are all bound by one common code of civil and religious rules and dogmas which are essentially and eternally unchangeable ; that, what seemed to the infallible Pontiff of Islam good to decree twelve centuries ago for the guidance of rude and ignorant Arabs must rule for ever the conduct of the Mussulman world ; and that, the inviolable sanctity of his decrees is guarded by a most powerful and wealthy corporation, whose duty and interest it is to prevent the introduction of any of those reforms which European cabinets periodically recommend to the favourable consideration of the Sultan.*

2. The Mohammadan states are not usually considered theocratic in their system of government. The first four or five khalifates were of a republican nature, and after them the system of government was changed with the Omniade dynasty into monarchy and despotism. The early khalifas were appointed by election. Moavia, the sixth khalifa, made the succession hereditary amongst his own descendants. All the khalifas, sultans, and malicks after the republican period are accepted as monarchs and despots. The first four or five khalifas are called *Khulafai-Rashedeen*. Those following them are termed *Moolkan Azoozan*, the tyrannous

* *The Contemporary Review* for August 1881, page 267.

kings or despots, and *Khulafai-jour*, the oppressive khalifas.

Two Mohammadan kings may be professors of the same religion, but that does not prevent them from having political differences and even hostilities with each other. Indian history furnishes abundant examples of instances of this nature.

3. There was no common code or law book for the guidance of the government during the republican period, nor during the Ommiade dynasty. Even there was a total absence of any canon or ecclesiastical law books in those periods, except the Mohammadan Revealed Law of the Korán.

After the overthrow of the Ommiade dynasty in 136 A.H., the Abbasides became khalifas, and the great want of a common code of law was felt. It was required partly for the guidance of government, and the security of person and property, as well as partly to coincide with the wishes of the despots, and to sanction their arbitrary and capricious acts by means of an appeal to the examples of the earlier generations of Islam, whose men were thought most pious by the people in general. Every exertion was made to deduce all the accidents of common life from the Korán by fortuitous interpretation, illustration, construction and corollary, however repugnant such deductions might be to reason and modesty. False traditions were foisted upon people to corroborate the acts of their rulers. Circumstances which had never existed were invented to support the policy of conquest or arbitrary aggressions of the reigning monarchs of the Abbaside dynasty.

4. Still there was no common code of civil and canon law. Some private persons supplied the want

to a certain extent of collecting the various traditions which were in existence; and thus they were enabled to form judgments on matters of jurisprudence for their own private use. Ingenuity and labour were lavishly used in drawing elaborate distinctions, and demonstrating points of casuistry or unimportant trivialities from some single words or half sentences of the Korán, irrespective of their classical or literal meanings and contexts. These self-constituted law-givers rarely attended the courts of the Abbaside khalifs, and they never gave them their notes and collections for circulation, so that they might be adapted to the use of the common folk. They hesitated, nay, they feared very much to lead or force people against their conscience, and to fabricate occurrences and examples that had never happened.

5. Aboo Haneefa, the famous legist, the head and founder of the *Ahlar-rái* branch of jurisprudence, was offered the office of a kázee by Hobaira, the governor of Koofa, but he persisted in refusing to accept it, and was scourged. Khalifa Mansoor, the second of the Abbaside dynasty, tried to induce him to accept the same office, but as he still refused, he was thrown into prison, where he was confined till his death in 150 A.H. Imám Aboo Yoosoof, a disciple of Aboo Haneefa, was exalted by Hároon Arrasheed, the fifth khalifa of the Abbaside dynasty to the post of *Kázee-al-Kozát*, literally "judge of judges," or the chief justice. He was the first individual who ever filled that important post. He instituted courts of judicature for the sole purpose of hearing and determining causes. Before him there was no judicial system of law and courts in practice; all disputes being decided among the Arabs

in a summary way by appeal to the chief of the tribe, and to the Imám of the city or district, who, in the absence of a common code of jurisprudence, gave his decision in accordance with the customs and usages of the country. Aboo Yoosoof, though he differed in a variety of decisions from his master, Aboo Haneefa, generally professed to be guided by his opinion, and appointed kázees to the districts on the understanding that they should decide the cases in conformity with the opinions of Aboo Haneefa. Thus he introduced and enforced the private opinions of Aboo Haneefa in the matter of jurisprudence, which he, Aboo Haneefa, was so reluctant to do. Imám Mohammad, another disciple of Aboo Haneefa, was deputed by the same Khalifa Hároon Arrasheed to superintend the administration of justice in the province of Khorásán. Though he differed in many points from the opinion of his master, Aboo Haneefa, and his fellow pupil, Aboo Yoosoof, the system of jurisprudence practised by these two judges has gone under the name of Hanafia (called by English writers Haneefa) school, notwithstanding their dissent from Aboo Haneefa, and from each other. The opinions of Aboo Haneefa thus became paramount in the matter of jurisprudence in Asia, or in only those provinces which were under the jurisdiction of Aboo Yoosoof. In Africa and Spain, the opinions of Aboo Haneefa were not adhered to, and in Asiatic provinces also they were not yielded a ready compliance by the Moslems, in the private exercise of civil and common law, and in matters of practical divinity. In the law-courts only were the decrees passed according to the opinions of Aboo Haneefa and Aboo Yoosoof.

6. Yet there was no book of written law or codes, nor was any mention made of the private opinions of several Imáms who had voluntarily prosecuted the cause of jurisprudence as binding on the people or the government in general. This was the case up to the end of the second century. The third and the fourth centuries of the Mohammadan era passed on, and still no standard or common code of jurisprudence was in force.*

7. Now, it will appear from the above remarks that the Rev. Mr. MacColl is altogether under a false impression when he speaks of a common code of civil and religious rules and dogmas as *essentially and eternally unchangeable*. The common code of Islam, or the Mohammadan system of jurisprudence, is the unwritten law of the Mohammadan community, compiled at a very late period, so that it cannot be considered as *essentially and eternally unchangeable*; nor can it be binding on any other nation than the Arabs, whose customs, usages, and traditions it contains, and upon which it is based. The Mohammadan Common Law is not to be confounded with the Mohammadan Revealed Law. The Mohammadan Common Law is the unwritten law which has been compiled from a very few verses of the Korán, as well as from the customs and usages of the country, supported by traditions contradictory in themselves, and based on the *Ijmaa*, or the unanimous consent of the Moslems. It is impossible to trace the origin of these early rulings, for they are based chiefly on the analogy of some admitted or acknowledged casuistry, and thus it is but a simple truth to say that

* Compare Shah Valiullah's *Hojjatil Báligha*, chapter IV. of the *Supplement*, page 158.

such decisions or rulings can in no wise be *essentially and eternally unchangeable*.

8. Those writers are greatly mistaken who either confound the Korán, the Mohammadan Revealed Law, with the *Fiquah* or *Cheriat* (*Cheri*), the Mohammadan Common or Civil Law ; or think that the Korán contains the entire code of Islam ; or that the Mohammadan Law, by which is invariably meant the Mohammadan Common Law, is infallible and unalterable. The Mohammadan law books, the fundamental codes of Islam, take very little or nothing from the Korán, and all the Mohammadan jurists, casuists, *mooftis*, and *moojtahids*, have by a tacit consent removed the law points from the text of the sacred book to the jurisdiction of the canon or civil law. Mohammadans rely principally on the later lego-religious books instead of the Korán. Sir George Campbell, M.P., the late Lieutenant-Governor of Bengal, who had a very long practice in dealing with the Mohammadan community in India, and who lately travelled in European Turkey, has fully ascertained the real state of things on this subject. His remarks are as follows :—

“The Koran is by no means a clear and simple book like our Testament—far from it ; it is difficult to make much of it, and Mahammedans rely principally on the later lego-religious books. It is somewhat as if we had no Bible, and were obliged to get our Christianity from the works of the Fathers only—a state of things which leaves room for much dispute, and renders it possible to find texts for almost anything.” *

The Rev. Mr. Edward Sell has taken the same view. He says :—

“So far from the Qurán alone being the *sole* rule of faith and

* *A Handy-book on the Eastern Question* ; by Sir G. Campbell, M.P. London : 1876, page 26.

practice to Muslims, there is not one single sect amongst them whose faith and practice are based on it alone.”*

The Honourable Dr. Hunter is also near the truth when he says:—

“ The Kuran was long ago found inadequate to the necessities of Civil Polity, and a system of Canon and Public Law has been developed from it to suit the exigencies of Musalman nations.”†

But of all authors I have hitherto the honour of quoting, I will now cite the opinions of one on this subject, whose long stay and deep acquaintance of the Mohammadan world entitles his words to a greater veracity and respect. He speaks of the Kōrān:—

“All the world, excepting those who have resided in Turkey and have there examined the subject, knows beyond all possibility of doubt that the Koran is the law of Mussulmans, and that it is administered by priests! The most respectable Reviews assert it almost every month. Mr. Bosworth Smith, an ardent friend of the Mussulmans, and Mr. Freeman, an ardent enemy, both receive it as true. Both are guilty of the same degree of ignorance. The Mussulman code of law, as reduced by Ibrahim Haleby, by direction of Solyman the Magnificent, is accepted as law by all Mussulmans. With its accepted commentaries, it forms many volumes, each one larger than the Koran, and treating upon scores of subjects not referred to in the Koran. The Koran has but little in it that is capable of being law. Where it states a principle capable of being so viewed, it stands as the highest authority, and the codified law will be in accord with it. But how can it be authority in those things to which it makes no reference? Even the whole ritual of prayer is governed by this code and not by the Koran; and so of very many of the religious observances most strictly held.”‡

Further on the author writes:—

“Tradition, rather than the Koran, has formed both law and religion for the Moslems. One is astounded at the temerity, or shall we say ignorance, of J. Bosworth Smith, in taking the Koran as

* *The Faith of Islam*; by the Rev. Edward Sell, page 1 London: 1880.

† *Our Indian Musulmans*; by W. W. Hunter, LL.D., page 139. London: 1871.

‡ *Among the Turks*; by Cyrus Hamlin; London: 1878, pages 82-83.

containing the whole of Islam. He might as well take the four Gospels as containing the whole Roman Catholic system, Jesuits and all."*

9. Islam is capable of progress, and possesses sufficient elasticity to enable it to adapt itself to the social and political changes going on around it. The Islam, by which I mean the pure Islam as taught by Mohammad in the Korán, and not that Islam as taught by the Mohammadan Common Law, was itself a progress and a change for the better. It has the vital principles of rapid development, of progress, of rationalism, and of adaptability to new circumstances. What the Rev. Mr. MacColl calls "the inviolable and absolutely unchangeable law of Islam," and which, he argues, impels the *Ulema* to resist the introduction of European reforms, is only the Mohammadan Common Law, which can in no way be considered infallible. The Common Law of Islam is the *Leges non-Scripta*, and consists of general or particular customs, and certain peculiar or ecclesiastical laws. The only infallible law is *Leges Scripta*, or the Korán.

10. The Rev. Mr. MacColl writes:—

"The institutions of every Mussulman state are necessarily built upon the Koran, and the Koran, being for every Moslem the last expression of the Divine Will, reform is not only superfluous, but presumptuous in addition."†

The institutions of the Mohammadan Common Law, called the *Cheriat* or *Cheri*, are not necessarily built upon the Korán. Very few points of the civil and canon law of the Mohammadan Common Law are founded upon the Korán; all other points of civil and ecclesiastical law being based on general and particular

* *Ibid.*, p. 335.

† *The Contemporary Review* for August 1881, page 268.

Arab customs. Some of them are reformed and improved, while others are simply put down as they were found at the time, to be generally practised, and to be a necessary and inseparable part of the Arab institutions. Had the Prophet thought it incumbent on him to frame a civil and canon law, other than the Revealed one, he would have done so, but in fact he did not accomplish any such thing. "Spiritual power in Islam," says Ubicini truly, "begins and ends with Mohamed," and I agree with the Rev. Mr. MacColl, when he says that "there is no hint of spiritual succession in the Koran, and Mahomed himself excluded any such idea when he was asked to appoint a successor."* This, together with the fact that Mohammad did not compile a law, civil or canonical, for the conduct of the believers, nor did he enjoin them to do so, shows that he left to the believers in general to frame any code, civil or canon law, and to found systems which would harmonize with the times, and suit the political and social changes going on around them.

11. The *Lex non-Scripta*, or the Common Law of Islam, is an unwritten law, that is, not written by Mohammad the Prophet, nor dictated by him, nor compiled in his time, nor compiled even in the first century of the Hejira, comprising those principles, usages, and rules of conduct applicable to the government and security of person and property, which do not depend for their authority, and are not based upon any existing, express and positive, declaration of the Korán or the Revealed Law. It comprises, and mainly consists of old-established Arab civil institutions,

* *Ibid.*

customs, and the traditionary sayings of the Prophet—most of them not genuine—and of his companions; and, of considerations to humanity, reason, common sense, and also the principles of moral fitness, and public convenience included in the words *Ijmaa*, and *Kias*. It also consists in great part of the opinions of famous lawyers and text-writers of the Abbaside age, and was committed to writing after the Commonwealth of Islam ceased to be a republican government, *i.e.*, the undivided Khalifat; and after the overthrow of the Omayya dynasty of the Khalifs from Asia and Africa, but has never been fully acted upon in the times of the Abbaside Khalifs. The Mohammadan Common Law, in its features and principles, resembles very much the Jewish oral law or *Mishna*, and the Roman Civil or Common Law.

12. The Rev. Mr. MacColl in the *Review* referred above says:—

“To talk, therefore, of any reforms under the Sultan’s direct rule which shall alter in any material degree the condition and *status* of the Christian population is in truth to talk nonsense. No reforms of the kind are possible. For the dominions of the Sultan are merely a part of one vast theocratic power which claims divine sanction to reduce all mankind to the alternative of embracing Islam or submitting to servitude or death: servitude in the case of Jews or Christians; death in the case of all other non-Mussulman people, and of Christians who take up arms in defence of their liberty.*

That the Mohammadan states are not theocratic in their system of government has already been explained and proved. There is no precept in the Mohammadan Revealed Law, the Korán, which places before all mankind the alternative of embracing Islam or submitting to servitude. Had there been any such decree in

* *Ibid*, page 270.

it, that would have been tantamount to intoleration, but, on the contrary, the Korán in a good many passages in the Meccan and Medanite suras enjoins universal toleration. None of the genuine and authentic traditions, as they are technically called, instructs the reduction of all mankind to the alternative of embracing Islam, or submitting to servitude or death.

13. The following verses of the Korán treat of the subject of toleration :—

1. Say : O ye Unbelievers !
2. I worship not what ye worship,
3. And ye are not worshippers of what I worship ;
4. And I am not a worshipper of what ye have worshipped,
5. And ye are not worshippers of what I worship.
6. To you your religion ; and to me my religion.

Sura cix.

21. Warn thou then ; *for* thou art a warner only :
22. Thou hast no authority over them.
23. But whoever shall turn back and disbelieve,
24. God shall punish him with the greater punishment.

Sura lxxxviii.

45. We know best what the *infidels* say : and thou art not to compel them.

46. Warn then by the Korán those who fear my menace.

Sura l.

20. Say : I call only upon my Lord, and I join no other being with Him.

21. Say : No power have I for your hurt or benefit.
22. Say : Verily none can protect me against God,
23. Neither shall I find any refuge beside Him :

24. *My sole work* is preaching from God, and his message : and for such as rebel against God and his apostle verily is the fire of Hell ! they shall abide therein for ever !

Sura lxxii.

37. They who had joined other gods with God say, “ Had he pleased, neither we nor our fathers had worshipped aught but Him ; nor had we, apart from Him, declared anything unlawful.” Thus acted they who were before them. Yet is the duty of the apostles other than public preaching ?

14 *The Korânic Injunctions for toleration.*

84. Then if they turn their backs, still thy office is only plain-spoken preaching. *Sura xvi.*

17. * * * But plain-preaching is the only duty of the apostle. *Sura xxix.*

40. Moreover, whether We cause thee to see the fulfilment of part of our menaces to them, or whether We take thee hence, verily, thy work is preaching only, and ours to take account. *Sura xlii.*

47. But if they turn aside from thee, yet We have not sent thee to be guardian over them. 'Tis thine but to preach *Sura xlii.*

257. Let there be no compulsion in Religion. Now is the right way made distinct from error . . . *Sura ii. (Medina.)*

12. Obey God then and obey the apostle : but if ye turn away, yet is our Apostle only charged with open preaching.

Sura lxiv. (Medina.)

19. And say to those who have been given the Scripture, and to the common folk, do you surrender yourselves unto God ; then, if they become Muslims, are they guided aright : but if they turn away, then thy duty is only preaching ; and God's eye is on his servants.

Sura iii. (Medina.)

53. Say : obey God and obey the apostle. But if ye turn back, *still* the burden of his duty is on him only, and the burden of your duty rests on you. And if ye obey him, ye shall have guidance : but plain preaching is all that devolves upon the apostle.

Sura xxiv. (Medina.)

6. If any one of those who join gods with God ask an asylum of thee, grant him an asylum, in order that he hear the Word of God ; then let him reach his place of safety. This, for that they are people devoid of knowledge.

Sura ix. (Medina.)

93. Only would Satan sow hatred and strife among you, by wine and games of chance, and turn you aside from the remembrance of God, and from prayer : will ye not, therefore, desist from them ? Obey God and obey the apostle, and be on your guard : but if ye turn back, then know that our apostle is *only* bound to deliver a plain announcement.

99. The apostle is only bound to preach : and God knoweth what ye bring to light, and what ye conceal. *Sura v. (Medina.)*

28. And say : the truth is from the Lord : let him then who will, believe ; and let him who will, be an unbeliever

Sura xviii.

16. Say : God will I serve, presenting him with a pure worship.

17. But serve ye what ye will beside Him

Sura xxxix.

104. Now have proofs that may be seen, come to you from your Lord : whoso seeth them, the advantage will be his own : and whoso is blind to them, his own will be the loss : and I am not made keeper over you.

107. And had God pleased, they had not joined other gods with Him : but We have not made thee keeper over them, neither art thou a guardian over them.

Sura vi.

99. But if thy Lord had pleased, verily all who are in the earth would have believed together. Wilt thou then compel men to become believers ?

Sura x.

These verses, and especially those promulgated at Medina in the Medinite suras of the Korán, obviously show that the Korán has always, while at Mecca and Medina, preached complete toleration, and perfect liberty of religion and worship to the professors of opponent and different creeds. They are absolutely wrong who allege that the Korán teaches intolerance.

14. Even the Mohammadan Common Law does not claim divine sanction to reduce all mankind to the alternative of embracing Islam or submitting to servitude or death. This policy of extermination is not to be found even in the law books compiled by most fanatical of jurists. The works of these jurists sanctioned the levying of taxes and revenues from the unbelievers conquered by force of arms, leaving the inhabitants as free in their religious and civil rights as they were under their own government, and as Moslems are in their own. It is laid down in the Hedaya :—

“ If those who are called upon to pay capitation-tax consent to do so, they then become entitled to the same protection, and subject to the same rules as Mussulmans, because Alee has declared ‘ Infidels agree to pay capitation-tax only in order to render their blood the same

16 *The wars of Mohammad were defensive.*

as Mussalman blood, and their property the same as Mussalman property.' " *

15. There are certain passages in some of the Medina chapters of the Korán enjoining the believers, —who were subjected to severe persecutions, who were expelled from their native country, leaving their property and their dear homes unprotected at Mecca, and who, when at Medina, were attacked and besieged by the belligerent Koreish and by other surrounding tribes,† —to take up arms in their defence, and to expel force by force; but they were strictly prohibited to be the first aggressors. They were only to fight with those invaders and aggressors who had fought against them, had fomented a conspiracy with a large gathering to attack them, ‡ and had been guilty of breach of trust in not fulfilling the treaties entered upon by Moslems with them, committing outrages at the same time upon their allies.

The wars of Mohammad were purely of a defensive nature, and in perfect conformity with the laws of nature and nations. And besides, all these defensive wars of Mohammad, and the Koránic injunctions regarding them, were all of a temporary emergency, not intended to be used as a universal, inviolable, and unchangeable political or military law. Such an idea is quite repugnant to the nature and spirit of the Korán. It does not profess to show its believers how to wage wars, make conquest, and subdue the whole world, but, on the contrary, its fundamental mission is to preach

* *The Hedaya or Guide. a Commentary on the Mussalman Laws*; translated by Charles Hamilton; Vol. II., p. 144 London: MDCCXCI

† Coreiza and Ghatafan.

‡ Khyber, Honyn, and Tabook.

to mankind "the signs of God, to purify them, and to teach them the Book and the Wisdom."*

16. The author of the *Hedaya*, a jurisconsult of not many eminent parts, and of an inferior grade, *i.e.*, *mokallid*, but an intense fanatic, tries his best to deduce the theory of the waging of war from the Korán, but in vain. He writes :—

"It is established as a divine ordinance, by the word of God, who has said, in the *Korán*, 'slay the infidels one and all, as they slay you one and all'; and also by the saying of the Prophet, *war is permanently established until the day of judgment.*"†

Here the subtlety of this casuist has altogether failed, and his deductions from the Korán in support of his casuistry fall to the ground. The verse, referred to by the author of the *Hedaya*, runs in full as follows :—

"Verily twelve months is the number of months with God, according to God's book, *since* the day he created the heavens and the earth : of these, four are sacred : this is the right usage : therefore wrong not yourselves therein, and attack those who join gods with God one and all, as they attack you one and all : and know that God is with those who fear him."—*Sura ix.* 36.

Now the very words of the verse show that it relates to a defensive war, and the occasion on which this was revealed justifies the construction. To attack "them one and all as they attack us one and all," obviously shows that our attacking is a mere repulse. The Meccans had several times attacked the early Moslems at Badr, Ohad, and Ahzab with superior

* *Vide Sura lxxii.*, verse 2.

† *The Hedaya or Guide: a Commentary on the Mussalman Laws.* Vol. II., p. 140. The translator has not quoted the full sentence of the verse as given in the original *Hedaya*. I have given the omitted part, "one and all as they slay you one and all."—*Vide The Korán*, chapter IX., verse 36.

18 *Equality of rights of Moslems and non-Moslems.*

numbers together with the conjoined forces of their allies of the desert. They attacked the Moslems *one and all*, and the Moslems were advised to attack them, *one and all*, just as their attackers used to do, in their own defence. Consequently, this verse can neither be of any service for a war of conquest, or a defensive one; nor can it be an ordinance for the waging of war in future, as its occasion was but of a temporary nature. The tradition quoted by the author of the *Hedaya* is untrustworthy. It is the saying of Aboo Hureira, and is no authority at all. Some have referred it to the Prophet through Aboo Hureira. But Mak-hool, who narrates it from Aboo Hureira, had heard no traditions from him. Therefore the genuineness of the tradition is questionable. The author of the *Hedaya* often makes such blunders in quoting or referring to wrong or spurious traditions.

17. With reference to the condition of the Christian population, when the Rev. Mr. MacColl passes an injudicious remark that "Equality of rights is forbidden to the non-Mussulman by the Sacred Law,"* I have to observe that never perhaps was a sentence written by an author so derogatory to the dignity of the Korán, as the above one dictated by the deep despair which he feels at the supposed impossibility of reforms among the Mohammadans. The state of the non-Moslem subjects of a Moslem empire is in no way inferior to that of the dominant race, whose subordinates they are. The certain legal disabilities of the non-Mussulmans, noted down in the Mohammadan Common Law as referred to by the Rev. Mr. MacColl in his article in the December number of the *Nineteenth Century*

* The August *Contemporary Review*, 1881, page 269.

1877, (page 834), quoting from the *Multeká*, a work on Mohammadan jurisprudence compiled by Sheikh Ibrahim Halebi in the earlier half of the sixteenth century, are merely imaginary and fantastical. Never were they in force, and never were they intended to be so. They retain their original position in the Common Law of the Moslems, just as bad laws might drag their lives in the Statute-book, long after they have ceased to be operative; and it is no stretch of truth to affirm that these laws were never put to work in any of the countries of Europe, Asia, or Africa, even when the Mohammadan supremacy was at its fullest swing. Everybody knows that these vulnerable points of the Mohammadan Common Law, far from claiming any perfection, are in themselves ridiculous and impolitic; they have no foundations in the Korán, or in the Sonnát,* and cannot be said to have received currency through the practices of Mohammad himself. The policy of the Prophet of Islam was of an exemplary kind. His whole character was marked by principles quite different from what have been generally attributed to him. He preached toleration, and was kind and conciliatory, treating the Jews, Christians, and Moslems, all alike, with a marked impartiality.

Several charters which were granted by Mohammad, while at Medina, to the non-Moslems, *i.e.*, the Jews and Christians, will best illustrate the perfect toleration and equality of rights guaranteed to them:—

A.—Treaties with the Jews.

The charter granted to the Jews of Medina contained the following terms:—

* None of the books of the authentic traditions of the Prophet contain the disabilities detailed in the *Multeká*. [*More of this hereafter.*]

"The Jews shall have aid and succour, they shall not be injured; nor shall any enemy be aided against them. The Jews will profess their religion, and the Moslems theirs, and if attacked each shall come to the assistance of the other."*

The Jews of Khyber were allowed free enjoyment of their possessions, and an unmolested pursuit of their own faith. In none of these do we see the disabilities enumerated by Halebi.

B.—Treaties with the Christians.

In the ninth year of the Hejira, a treaty was concluded with the Christians of Najran :—

"The Prophet, we are told, wrote to the bishop, priests, and monks, saying that every thing great and small should continue as it then stood, in their churches, their services, and their monasteries. The pledge of God and his Prophet was given that no bishop should be removed from his bishopric, nor any monk from his monastery, nor any priest from his priesthood; that their authority and rights should not be altered, nor anything that was customary among them. So long as they conducted themselves peaceably and uprightly, they would not be burdened with oppression; neither should they oppress."†

"In the fourth year of the Hejira (626 of our era), he (Mohammed) granted to the monks of the Monastery of St. Catherine, near Mount Sinai, and to all Christians, extensive privileges and immunities, at the same time declaring that any Mohammedan who should abuse or violate what was there ordered should be counted as 'a violator of God's testament, a transgressor of his commandments, and a slighter of his faith.' By this decree, Mohammed undertook himself, and enjoined on his followers, to protect the Christians from every foe, to defend their churches, the residences of their monks, and their places of pilgrimage, and to guard and shelter them from every hurtful action. They were not to be unfairly taxed. No bishop was to be driven out of his bishopric; no Christian was to be forced to reject his religion; no monk was to be expelled from his monastery; no pilgrim was to be detained from his pilgrimage; nor were the Christian churches to be pulled down for the sake of building mosques,

* *Muir's Life of Mahomet*; New Edition; pp. 192-193.

† *Ibid.*, page 158.

or houses for the Moslems. The Christians were not expected to sally forth with the Mohammedans to resist the enemies of the latter, on the ground that 'tributaries' have nothing to do with war-concerns. Christian women married to Mohammedans were to enjoy their own religion, and not to be subjected to compulsion or annoyance of any kind on that account. 'If the Christians,' continued Mohammed in this remarkable document, 'should become in want of assistance by repairing their churches or hermitages, or for anything concerning their religion, the Mohammedans are to support and favour them. And you are not to consider this as a participation in their religion, but as a mere assistance to their helplessness, and compliance with the ordinances of the Apostle of God, which are made in their favour by the authority of God, and of his Apostle. In time of war, or while the Mussulmans are in a state of hostility with their enemies, no Christian shall be hated or disdained on account of his being resident amongst them (the Mohammedans); and whoever shall thus treat a Christian shall be accounted unjust, obstinate towards the Apostle of God, and disobedient to his will.' . . . Such were the terms granted by Mohammed to the Christians. They form a splendid charter of liberties—one of the noblest monuments of enlightened tolerance that the history of the world can produce." *

In fine, these disabilities are only* dead letters in the books in which they are inscribed, like some penal ones in English Statute-books which have fallen into desuetude and oblivion. They were not put into requisition in legal practices, and never received the sanction of any Sultan. Repeatedly have they been shelved up as useless enactments, and not a few times have they been repealed by the formal denunciations of the several Sultans in their *Khatts*, i.e., the *Hatti Cherif of Gulhaneh* (*Khatte Shareef of Gulkhana*) of 1839, A. D., in the *Hatti-humayoun* of 1856, and in the Constitutions of Midhat under the auspicious reign of His Imperial Majesty Abdool Hameed Khan.

* Cassell's *History of the Russo-Turkish War*; by Edmund Oliver. Vol. I., pp. 176-177.

These Hatts and Constitutions have long before annulled and obliterated the already dead letters of the political section of the Common Law. They promised to the Jews and Christians a perfect security of their lives, their honour, and their properties. All Ottomans* are declared *equal* in the eyes of the Law. They have the same rights and privileges, and owe the same duties towards their country, as the Moslems, without any distinction of castes or creeds, and without any religious prejudices.

18. The Rev. Mr. MacColl again in the same *Review* goes on to say:—

“The Koran accordingly divides the world into Dar-ul-Islam and Dar-ul-Harb—*i.e.*, the country of Islam and the country of the enemy; and it is the duty of the head of the Mussulman faith to compel Dar-ul-Harb—*i.e.*, the whole non-Mussulman world, to embrace Mahommadanism at the point of the sword.” †

This is not only an incorrect but altogether a groundless statement. There is no such division of the world made in the Korán, nor is there any such assertion in it as it is remarked by the reverend gentleman. There are a good many translations of the Korán into English, and other Continental languages of Europe, accessible to any one interested in the subject, to prove that the bold assertion made by the Rev. Mr. MacColl has no earthly existence and is utterly incorrect. The inference drawn by him, that it is the duty of the head of the Mussulman faith to compel the whole non-Moslem world to embrace Mohammadanism

* “The new signification given officially to the word ‘Ottoman’ as descriptive of a Turkish subject without reference to creed or race, carries with it a pledge of equal treatment under the law to all alike.” *Vide The Nineteenth Century*, January 1879, “Passing Events in Turkey: Remarks and Suggestions.” By the Right Hon. Lord Stratford de Redcliffe, page 9.

† Page 270.

at the point of the sword is a gratuitous assumption.

19. The distinction between Dar-ul-Islam and Dar-ul-Harb in the Mohammadan Common Law is only a question of jurisdiction in the law-suits:—

“If a *Mussulman* having procured protection, go into a foreign country, and there purchase goods of an alien upon credit, or dispose of his goods to the alien upon credit, or usurp the property of an alien, or an alien usurp his property, and he afterwards return into the *Mussulman* territory under a protection, in none of these cases is the *Kázee* to pass any decree against one of those in favour of the other:—not in the *first* instance, because the validity of a decree of the *Kázee* rests upon his authority, and here the *Kázee* was possessed of no authority whatever at the time of the debt being contracted, with respect either to the debtor or the creditor, on account of separation of country:—neither is he possessed of any authority with respect to the protected alien at the time of the decree, as the alien has not undertaken to submit to the *Mussulman* laws with regard to acts done in time past, he undertaking only for the *future*, that is from the period of his being admitted to protection:—not in the *second* instance, because the property usurped has become the property of the usurper, as the usurper’s acquisition of power over what he has usurped is an acquisition of power over neutral property, according to what has been before stated.”*

It will appear from the above extract from the *Hedaya*, the code of Henafee law, that the distinction of the two countries is only a matter of jurisdiction. No decree can be passed in a Mussulman court respecting transactions between a Mussulman and an alien (or between two aliens) in a foreign country. The same is the case with a Moslem usurping the property of an alien who after that becomes a Moslem. No decree is to be passed against the former Moslem owing to want of jurisdiction. If a Moslem slay

* *The Hedaya or Guide: a Commentary on the Mussulman Laws.* Vol. II., p. 193.

another Moslem in a foreign country—*i.e.*, in a Dar-ul-Harb, no retaliation is incurred by the killer if he return to the Mohammadan country, for the want of jurisdiction in the hostile or foreign country.

20. Dr. W. W. Hunter in his *Our Indian Musalmans* makes the most of the distinction between Dar-ul-Harb and Dar-ul-Islam. A few years ago, in connection with the Wahhabee movements in India, whether actual or fanciful, the question as to India's now remaining Dar-ul-Islam as before, or its being lapsed into Dar-ul-Harb, was much agitated. Authoritative decisions were required from the Mohammadan doctors of Northern India, as well as from the Muftis of Mecca. The Mohammadan Literary Society at Calcutta took a zealous interest in the subject, and Moulvie (now Navvab) Abdul Latif Khan Bahadoor, its Secretary, a Mohammadan gentleman of high English education, and keen practical intelligence, did good service to his countrymen, co-religionists, and the British Government, in publishing a pamphlet declaring India to be a country of Islam where religious rebellion was unlawful. But, originally, the question of a country being Dar-ul-Islam or Dar-ul-Harb is of the same nature as discussing the question of jurisdiction of the Mohammadan Law courts of civil and criminal administration. It has nothing to do with religious rebellion, or with the prosecution of a religious war of aggression; but as British India has no Mohammadan sovereign, no Mahommadan courts of justice, it is superfluous for the Mohammadan or Christian inhabitants of India to discuss the question. In truth, the Mohammadan Common Law or Fiquah was compiled solely for Mohammadans, and based upon this concep-

tion, that the Mohammadans were a conquering, and not a conquered people. Therefore, India for the Mohammadans of India is neither Dar-ul-Harb, nor Dar-ul-Islam, nor a country under a Moslem ruler. It is simply British India, and as the Mohammadans are subject to, and protected by, the British Indian Government, a subtle casuist may call it a *Dar-ul-Amān*, or *Dar-ul-Zimma*, i.e., a house of security or of protection.*

21. Continues again the reverend gentleman:—

“Islam thus claims to be a universal empire, based on the unchanging and unchangeable law of the Koran, and the Sunnat or supplemental traditions. And the right of citizenship in this world-wide polity is not based on birth, or race, or language, or country; for it recognizes no country but Dar-ul-Islam: it is based on a religious profession.” †

This is not the case. In fact, the right of citizenship—of all the free inhabitants—and security of country called *Hurriat* and *Ismat* (freedom and protection) in the Mohammadan Common Law, are based on nature, i. e., birth. The right of citizenship is not established on a religious profession. Non-Mussulmans are also believed to possess and enjoy the right of citizenship in their respective countries, and also in the country of the Mussulmans if not hostile to the state, and if under king's peace or *Amān*.

The *Hedaya*, the great compendium of the Mohammadan Common Law, says that “protection to the person is established in virtue of humanity” (Book IX., *Institutes*, Chapter VIII., on Capitation-tax,

* This subject has also been ably discussed by the Honourable Syed Ahmed Khan Bahadur, C. S. I., in his *Review on Dr. Hunter's Indian Mussulmans*.

† The *Contemporary Review*, August, 1881, page 270.

p. 217). Again, in the same book (Chapter IV. on Plunder, p. 172), "It is not admitted that the person of the proprietor is under protection 'in consequence of his conversion to the faith,' because it is not *Mokawwima* (i.e., protection which bears a price), but because the molesting of him is originally unlawful." Further on, it is stated in the same book (Chapter VI. on the Laws concerning *Moostámins*, persons residing in a foreign country, under a protection procured from the state, or sovereign of that country)—

"That the *sin-creating* protection is attached to *Islam* is not admitted; for the sin-creating protection is attached, not to Islam, but to the person; because man is created with an intent that he should bear the burthens imposed by the Law, which men would be unable to do unless the molestation or slaying of him were prohibited, since if the slaying of a person were not illegal, he would be incapable of performing the duties required of him. The person therefore is the original subject of protection."

It is also stated in *Fatáwái Záhéria* that the inhabitants of the hostile country are (*Ahrár*, plural of *Hurr*), free men; i.e., possessing the right of citizenship. And the same is the decision of Shámeé in *Radd-ul-Mukhtár*, Vol. III., Book of Jihád, page 246, Chapter "Conquest of Infidels."

Shámeé, a high authority of Syria, says in his *Radd-ul-Mukhtár*, a commentary of *Durr-ul-Mukhtár*, which is again in its turn a commentary of *Tanvîr-ul-Absár*, that the sin-creating protection, when violated, is established in persons by virtue of humanity. Since a person has been created to conform with religion, it is impossible that he will act according to its dictates, unless it is decreed that he should be molested by no body, and that in harmony with the opinion of Zailaee, he should not be killed except by a supervenient reason.

This shows that the non-Mussulman population of Dar-ul-Harb, or of any hostile country, or of the country of an alien, enjoy the same privilege, freedom, and security inseparable from the right of citizenship, as the Islamis possess in their own. It also shows that the right of citizenship is based on birth, *i.e.*, on the grounds of humanity. Every person has the right of citizenship.

22. Some of the Mohammadan jurists, especially those who are intense fanatics, argue that the infidels even in their own Dar-ul-Harb (hostile country) are not *Hurr* or *Ahrár*, *i.e.*, free or citizens, but they are *Rakik*, or *Arikka*, which is an imaginary state between citizenship and slavery. They are perfectly unjust in such an assertion. The most learned, and the least fanatical of jurists do not recognise such a *status* of the inhabitants of the hostile country. An equal amount of intolerance is evinced by other jurists when they proclaim that the people of a hostile country are *Rakik*, without being *Mamlook*, *i.e.*, they are deprived of their right of freedom without their being possessed by any body. Such a state is denied by the more learned and less fanatical jurists, who assert the infidels in their own country, the Dar-ul-Harb of Islam, are free and can command all the rights of citizenship; but when they are conquered and subjugated by a Mussulman sovereign, and before they are taken away by force from their hostile to the Mohammadan country, they are *Rakiks*, which state is immediately transformed into that of *Mamlook* as soon as they are secured to a Moslem sway by imprisonment.

Abdoollah bin Mas-ood, son of Tajushshariat, in his *Sharah Wikayah* (Book of Emancipation, page 138,)

says that "anything may be *Mamlook* to anybody, and may not be *Markook*, but there can be no *Markook* which is not *Mamlook*."

The author of *Durr-ul-Mukhtár* says, quoting from Mulla Shams Mohammad Kahistanee, author of *Jamiurrumooz Sharah Mukhtasir-ib-Wikayeh*, that—

"The instance of *Rikk* without *Milk* is found in the infidels of the hostile country as they are all *Rakiks* without being *Mamlooks*, or acquired property of any body. So when a captive is first taken he is *Rakik* and not *Mamlook*, until he is secured to our country." (*Durr-ul-Mukhtár ala Matne Tanvîr-ul-Absâr*. Book of *Idák*, Manumission.)

Allamáh ibn Abidín in his annotations on *Durr-ul-Mukhtár*, called *Radd-ul-Mukhtár*, says that—

"What the author says 'they are all *Rakiks*,' he means to be interpreted after their being subjugated. But before that time they are free-men. This is according to the *Zaheria*. This shows that the population of Dar-ul-Harb is free."

23. Among the legal disabilities under which the non-Mussulman subjects of a Mussulman government lie, are—according to the Rev. Mr. MacColl's statement—the following :—

1st. "Their evidence is never admissible against a Mussulman."

That the evidence of a non-Mussulman subject against a Mussulman should not be admitted, is neither found ordained in the Korán, which is the Mohammadan Revealed Law, nor in the traditional sayings of the Prophet, which form part of the Mohammadan Common Law. As it is neither in the Korán, nor in the traditions of the Prophet, it could not be admitted as a precept of the sacred and inviolable law. Moreover, it is repugnant to reason and public justice to refuse to admit the evidence of a non-Moslem against a Moslem. Therefore, should custom sanction such a thing, the

Mohammadan Common Law should be reformed in this particular instance.

24. I am glad to say that I do not find this law in the Turkish Civil Code, *Majilla*, published by the authority of the Sultan at Constantinople in 1297 A. H., from which it appears that the legal disability of the non-Moslem subject has been altogether abolished of late in the Turkish Empire.

25. The incompetency of a non-Mussulman to give evidence against a Moslem is set up by the Mohammadan legislators, such as Aboo Haneefa, Shafae, Málik and others, on slender bases. They declare the evidence of several other persons, though Mohammedans, inadmissible. Among them might be mentioned blind men, slaves, and slanderers. The other inadmissible persons to evidence are relations within the degree of paternity, the husband and wife, the master and his slave, and the hirer and his hireling. The testimony of a master cannot be admitted in favour of his slave, nor of one partner in favour of another, relative to their joint concern. The testimony of public mourners and singers is not credible in the eye of Law, nor of ordinary drunkards and falconers, nor of atrocious criminals and immodest persons, nor of usurers and gamblers, nor of persons guilty of indecorum. A *Moostámin*, that is an alien, who has obtained a temporary protection in the Mohammadan country, cannot testify concerning a *Zimmee*, a non-Moslem subject permanently residing in a Mohammadan state. Various reasons have been assigned in each instance of the inadmissibility of evidence of the aforesaid witnesses. Some of the grounds alleged are agreeable to reason and common sense, while others are repugnant

30 *Proofs of the invalidity of arguments against*

to wisdom, almost puerile and childish. The reasons for the non-admission of evidence of a non-Moslem against a Moslem are—(1) that they have no power or authority (*Vilayet*) over the Moslems, and (2) that they are suspected of inventing falsehoods against them. Both of these grounds are insufficient.

Firstly, because the Mohammadan jurists allow the evidence of the *Zimmees*, that is non-Moslem subjects, to be admissible against each other, though of different religions; and against *Moostámins* of various denominations. This proves beyond all dispute that *Zimmees*, or non-Mussulmans, have got sufficient qualification and authority (*Ahliyat* and *Vilayet*) to bear evidence.

Secondly, because the evidence of a *Moostámin* against another *Moostámin* is held valid by the Law, and this circumstance also tends to prove that even the *Moostámins* are competent to bear testimony.

Thirdly, because Mussulmans themselves are no less suspected than Christians and others of falsehood, owing to their hatred, bigotry, and fanaticism.

Fourthly, because in the same manner as there exists an enmity between Mussulmans and *Zimmees*, there also exists an enmity between the followers of other religions, such as the Jews, the Christians, the Magians, and others. It would follow, therefore, that among these the testimony of a man of one creed should not be permissible with relation to others of different persuasions. Inasmuch as it has been declared of sufficient validity, it is evident, that even when the *Zimmees*, i.e., the non-Moslem subjects of diverse

beliefs may not harbour ill-will and dislike against each other regarding the diversity of one faith from another, the religious fanaticism and uncharitable feelings are potent enough to engender reciprocal aversion ; and consequently there is every reason to suspect that they will leave no stones unturned to invent falsehoods against each other. With all these drawbacks in the evidence of a *Zimnee*, it is lawfully sound against his opponent. Hence, as a natural inference, we arrive at the moral truth, that the evidence of a *Zimnee* must be allowed against a Moslem.

Fifthly, because, if the superiority of Moslems against the non-Moslem subjects makes the latter susceptible of coining spurious evidences from the hatred they bear towards their enemies, it follows that in those countries where Moslems are subject to their anti-religionists, either Hindoos or Christians, as in India and Russia, their evidence against their non-Moslem rulers must not be admissible. But such is not the case. Therefore, it is clear that the theory of the Common Law which would not like the admittance of the evidence of a *Zimnee* against a follower of Islam, is quite untenable and unreasonable.

Sixthly and lastly, because these very *Ulema* who would not sanction the evidence of a *Zimnee* against a Moslem, allow the same in some instances, directly or indirectly ; as in the case, they hold legal the evidence of a *Zimnee* against a non-Mussulman slave, the property of a Moslem ; as well as in that of the evidence of a non-Moslem against a free non-Moslem, who is the agent of a Mohammadan. In these two last instances the evidence goes indirectly against a Moslem. The direct evidence of a non-Moslem

against a Moslem is granted in the case of (*Eesaw*) will, and (*Nasab*) paternity of non-Moslems.

26. An instance* of the wholly unreliable and ridiculous interpretation of the Korán by the legists and compilers of the Common Law, when they deduce the theory of non-admissibility of a non-Moslem's evidence against a Moslem fellow-subject, is as follows. They quote* the latter part of the 140th verse of the fourth chapter of the Korán :—

“ God will by no means make a way for the infidels over the believers.”

They deduce a good many fanciful and perverted corollaries from the above portion of the verse. Some in whom intolerance is the highest, think the right deduction to be, that the evidence of a non-Moslem is not admissible against a Moslem, that the former cannot inherit from the latter, that he cannot be a lawful proprietor of an Islami's property when he has taken it by force or conquest, and that a Moslem is not to be killed by way of retaliation for killing a non-Moslem. All such inferences are flimsy and false. The whole verse runs thus, and its part quoted above refers to the Resurrection :—

“Those who watch you narrowly : so if God grant you a victory, they say, ‘ Were we not with you ? ’ And if the infidels meet with a success, they say to them, ‘ Did we not get the upper hand for you ? and did we not defend you from the believers ? ’ God therefore shall judge betwixt ye on the day of the Resurrection, and *God will by no means make a way for the infidels over the believers.*”

There is another word, *minkúm*, in verse 280, Chapter II.—“ And call to witness two witnesses of your people ” : which the legists say, means that the witness-

* Vide *Inayah*, a commentary on the *Hedaya*, compiled by Mohammad Akmulooddeen, Vol. III., page 415. Calcutta : 1830.

es be of your religion. But this is a misrepresentation, and is refuted by another verse (chapter V., verse 105,) which has also "two witnesses:—just men from among yourselves, or two others from among others than yourselves."

Then if chapter II., verse 280, means by *minkum* (from amongst you) a Moslem, the other verse clearly allows the evidence of non-Moslems by the words—*minghairekum* (others than yourselves). But in fact the words *minkum* and *minghairekum* have no essential bearing on religion. They refer simply to the witnesses being either two equitable persons from amongst you; or two others from a different tribe from yourselves.

There is no authentic tradition from the Prophet on the subject of evidence either of a Moslem or a non-Moslem; in which statement I am fully supported by Baihakee.*

27. The arguments which I have adduced prove the invalidity of the theory of the casuists in the matter of non-admission of the evidence of a non-Moslem fellow-subject against a Moslem. As I have shown that this theory is not to be found in the Korán, the *only* Revealed Law of Islam, I conclude that there can be no difficulty in reforming this abuse in the Turkish Courts of Justice, if there be any such law now extant. Finally I will close this subject by citing the opinion of Sir George Campbell on the Mohammadan Law of Evidence:—

"Altogether they have a system of laws not bad according to the lights of the days in which they were compiled. They have very arbitrary and irrational laws of evidence, prescribing the cases in which eye-witnesses are necessary, the number of witnesses required

* Vide *Nail-ul-Autár*: a Commentary of *Muntak-al-Akhhbár*; by Kázee Shoukánée; Part VIII., page 555.

to prove certain facts or offences, the non-admissibility of the evidence of unbelievers for many purposes, and so on. But, after all, we are the last people who can throw stones at them for these follies, seeing how recently our law of evidence was quite as bad, and that it is not by any means completely cured yet. The very point in their law of evidence on which we dwell with such indignation, the exclusion of unbelievers, is almost the last which we have surrendered, if indeed we have yet completely done so. How long is it since the testimony of unbelievers was admitted in English Courts? We have step by step let in one kind of heretic or misbeliever and another. I am not quite certain if all are admitted now; I take it a Mahommedan was excluded till quite the other day. This, then, is no radical part of the Mahommedan religion, nor peculiar to it, but a mere tyranny of the lawyers, such as we are well accustomed to." *

28. The second legal disability, according to the Rev. Mr. MacColl's opinion, under which non-Moslem subjects of a Moslem Government lie, is the alleged intolerance of the Islamitic law. His words are:—

(2) "Religious liberty is forbidden by the unalterable law of Islam." †

The primary question I will ask him, is, "Does the Korán inculcate religious intolerance?" and "Did Mohammad so teach the followers of his faith?" As far as I am able to judge from the Korán and the doctrines of the Prophet, the Mohammadan Revealed Law is the greatest advocate of a diametrically reverse principle, *i.e.*, religious toleration. The several verses of the Korán quoted in the foregoing pages, para. 13, teach toleration in the most obvious and indubitable language. The Turks might not allow the use of church-bells where mixed creeds congregate. They might have refused the erection of a church in the proximity of the dwellings of men of different faiths; they might have molested

* *A Handy-book on the Eastern Question*; by Sir George Campbell, M.P., Second Edition, 1876, page 29.

† *The August Contemporary Review*, 1831, page 272.

ceremonial processions ; the judges and other Turkish authorities might have been guilty of abusive and insulting language towards the " Ghiaours";* they might not have admitted any of the Christian subjects of the Porte to offices of emolument in the local administration, or they might have closed public schools, and charitable institutions to the Christians; even granting that all these grievances reported by the Vice-Consul Maling might be true, does it therefore necessarily follow that they are an outcome of " the unalterable Law of Islam," by which I mean the Revealed Law, the Korán. Some of the narrow-minded and illiberal Turkish fanatics might practise all these things, but no blame therefore ought to rest with the Korán, or the Law of Islam; and hence it follows that these corruptions can be easily reformed. If such religious intolerance is carried on by some bigoted Turks, we are not far from the mark in conjecturing that Russian intrigue might be lurking at its bottom, and Russian hirelings might be at work in this direction.

* It is not allowed by the Mohammadan Common Law to call a Zimnee, a non-Moslem protected subject, " Yá Káfir ! " " Oh Infidel ! " or " Yá Odoo Alláh ! " i.e., " Oh ! Enemy of God ! "

Punishment is ordained for those who address a non-Moslem subject with such abusive language with the motive of annoyance to him. The author of *Durr-ul-Mukhtár* quotes from *Kinya* (a work of Najmuddín Záhidí, who died in 658 A. H.), " that a Zimnee must not be addressed, ' Oh, Unbeliever ! ' The person who addresses him thus, commits a sin if he vex him by this."

The author of *Radd-ul-Muhtár*, a commentary of *Durr-ul-Mukhtár*, notes on the words, " The person who addresses him thus, commits a sin," and says " that an award of legal punishment is destined for the addressers. The same is the opinion of the author of *Bahr*. The author of *Durr-ul-Mukhtár* has also advanced a similar theory to which the author of *Nahr* only objects."—Vide *Radd-ul-Muhtár*, Vol. III., p. 271.

"The English Consul-General at Belgrade, Mr. Longworth, reported to his Government that Christian brigands were introduced into Servia, with orders to assume Mussulman names, and assail the Christians, so as to create a general disturbance." *

29. One of the alleged instances by which religious liberty is forbidden by the unalterable law of Islam, cited by the Rev. Mr. MacColl from the reports of the Vice-Consul Maling, is the denial of the use of church bells, to which the Christians particularly cling, where mixed creeds congregate.† Now the use of bells is not religiously forbidden; on the contrary, it is expressly allowed in the Mohammadan Common Law books. Shamsul-Aimma Sarkhasee, who flourished in the seventh century of the Hejira, and is a high authority of the Hanafite school, has allowed in his *Moheet* the use of bells within the churches. If the use of church bells is not to be allowed where mixed creeds congregate, it is only an administrative measure, as a preventive to a breach of the common peace, but it has nothing to do with religious intolerance.

"The Turks," writes Mr. John Mill, "like the English, have a law which prohibits peals of bells from being placed and rung in steeples of Dissenting churches." "Many people are inclined to think the matter of church bells is of very little consequence," says Mr. Freeman; "not so our diplomatic body; so from Lord Derby the affair is relegated to Sir H. Elliot at Constantinople, and by him brought before the Grand Vizier, who does not care a rap about the matter, but would like to know what Mr. Consul Holmes thought about it, and in reply that gentleman writes:—

"As a matter of fact, the Christians have long enjoyed religious liberty, except in the matter of using bells; but whatever has been conceded to them seems of little account if this privilege is denied,

* *Cassell's History of the Russo-Turkish War*: by Edmund Oliver, Vol I., page 49.

† *The August Contemporary Review*, 1881; page 272.

which they appear to consider as the symbol of their religious liberty and the proof of its recognition. Were the use of bells allowed they would have nothing more to complain of in the matter of religious freedom, and would then begin to feel confidence in the good intentions of the Government. The more intelligent Mussulmans here seem to be quite disposed to concede the point, and Haidar Effendi himself promises to carry it out."

"One is pleased to know that these tremendous efforts were not made in vain. Three weeks later, Mr. Freeman was able to report:—

"I am glad to be able to report that since Sunday last a bell has been rung at the orthodox church in this town, and the Mussulmans seem to have treated the matter with the utmost indifference. It is true it is a very small one, and the sound produced resembles rather the striking of a clock than the ringing of a bell, but now that a beginning has been made the Turks will get accustomed to the sound, and probably make no opposition eventually to a larger and more sonorous bell being used.*"†

30. Another instance of the alleged intolerance is this, that "the liberty to build churches, sometimes without any shadow of reasonable pretext altogether refused, always encounters immense difficulties where mixed creeds dwell in proximity."‡ But the testimony of Consul Palgrave goes quite contrary to this allegation. He reports from Trebizond:—

"With respect to religious freedom and toleration the Christian subjects have no cause for complaint. A firman is, indeed, required for the erection of a new church, but so it is also for a new mosque, and it is granted, perhaps with too much facility in either case. Bells are put up and rung, crosses and pictures carried about, and ecclesiastical dresses worn everywhere and openly."§

31. Under the Common Law, the construction of new places of worship in Mohammadan cities is

"* See "*Affairs of Turkey*," No. III., p. 18, 59, 69, &c., &c."

† *The Ottomans in Europe*; by J. Mill, pp. 103-104. London: 1876.

‡ *The August Contemporary Review*, 1881; page 272.

§ *The Ottomans in Europe*; by John Mill, page 284, London: 1876.

forbidden to non-Moslem subjects, but they are allowed to do so in Mohammadan villages and hamlets.

The author of the *Hedaya* writes :—

“ The construction of churches or synagogues in the Mussulman territory is unlawful, this being in the traditions :—but if places of worship originally belonging to Jews or Christians be destroyed, or fall to decay, they are at liberty to repair them,—because the buildings cannot endure for ever, and as the Imám has left these people* to the exercise of their own religion, it is a necessary inference that he has engaged not to prevent them from rebuilding or repairing their synagogues.”*

I will review this subject under two separate heads ; first, as to the decision of the Common Law books regarding the construction of new churches by Christian subjects in Mohammadan countries ; and, second, as to the authority whence this law is derived.

32. The Mohammadan legists have divided Moslem cities into three kinds :—(1) Cities founded solely by Mohammadans, as Koofa, Basra, Baghdad, and Wasit. In such cities the erection of new churches is not allowable, but if any old ones come within the enclosure of a new-founded city, as Cairo, they are allowed to stand in their places and are not destroyed. (2) Cities conquered by Mohammadans by force of arms. Here no construction of new churches or synagogues is granted, but those already founded there are spared, with provisions for their repair. (3) Cities conquered by a compromise between the contending parties. If the terms of the compromise are that the land may belong to the non-Moslems, and its revenue is payable

* Vide *The Hedaya*, Hamilton's Translation, Vol II., page 219. The very reason adduced for the rebuilding and repairing of churches must allow the construction of new churches also.

to the Moslems, the construction of churches, &c., is held lawful. In case the conditions of the compromise be, that the houses belonging to the conquerors and the conquered must pay the tax, the construction of churches, &c., depend more or less on the provisions of capitulation. If it has been stipulated that the non-Moslem subjects be allowed the building of new churches, they certainly are not to be prohibited from doing so.*

Imám Mohammad, a disciple of Aboo Haneefa, and a very early authority among the Mohammadan jurists of the Hanafee School, allows in his *Seir-al-Kabeer*, the erection of churches to the non-Moslem subjects in the country, where, though the population is a mixed one, the number of them greatly preponderate that of their fellow-inhabitants, the Moslems.†

33. The only authority quoted by the compilers of the Common Law to prohibit the construction of churches and synagogues in Mohammadan cities, is the tradition referred to by the author of the *Hedaya*, which has, *La khisaa fil Islame wa la kanisah*. It is related by Baihakee, who has at the same time weakened its authority. Ibn Adi has related a similar tradition through Omar referring it to the Prophet, but the character of its narrator is very much impeached. No less than three narrators in the chain of this tradition are not reliable. Saeed bin Sanán has been declared as a weak authority by Ahmed, and Ibn Moeen Mohammad bin Attár was condemned by Abu Zará for his mendacity. The third narrator, Saeed bin Abdul

* Vide *Fathul Kadcer* : a Commentary of *The Hedaya*, quoting from the legal text book *Koodooree* ; Vol II , pp 763-764.

† *Ibid.*, page 763.

Jabbár, is also a weak authority (*Zaeef*), and his narration is not accepted (*Matrūk*).*

Ahmed and Abu Daood have related another tradition from Mohammad through Ibn Abbás, "It is not proper to have two *kiblas* in a country." This tradition is a *mursal*, and one of its narrators, Kaboos bin Haseen bin Jondah, is not veracious. Besides, this has nothing to do with the prohibition of constructing new churches. It is rather a sort of moral advice not to have different sects in a religion than an administrative measure or a judicial command. Moreover, the churches or synagogues are not Christian and Jewish *kiblas*. If the tradition has anything to do with them, then no such places of worship ought to be allowed, whether old or new, whereas the Common Law tolerates the old places of worship, and allows their repair, with a provision to erect new ones in conformity with the condition stipulated in a treaty with the conqueror.

There is another tradition of Baihakee from Ibn Abbás to the effect that, "in every city founded by Moslems no churches or synagogues be constructed, and no bells should be rung." This is also not credible. Hanash, its narrator, is a questionable authority, and this Ibn Abbás himself has no legal authority.

34. It will appear from the above criticism that there is no sufficient ground for prohibiting non-Moslem subjects of a Moslem government from building new churches, and that it is an outburst of fanaticism or a misguided zeal under the ostensible ground of religion. The religion of Islam does in no way inter-

* Vide *Binayah fi Sharah Hedaya* ; by Ainee, Vol II., page 884.

dict the construction of new places of non-Moslem worship. If a Moslem Government do not allow the liberty to build churches, when the mixed races dwell in proximity, it is only an administrative measure, the opposition almost always coming from Christians of other sects.

35. Vice-Consul Maling, whom I have had the honour of citing in a preceding para., mentions a second instance of Christian grievances in the following words :—

“ Christian subjects of the Porte, except in one case which scarcely establishes a principle, have not been admitted at any time to offices of emolument in the local administration.”*

In reply to this, I cannot do better than quote the impartial testimony of one whose personal acquaintance with, and acute examination of the Turkish policy sets a high value on his account :—

“ For some fifteen or twenty years, the Ottoman government has been gradually admitting Christian subjects to a share in high offices of state. This has been so often denied, and it has been so often asserted that no rayah is ever admitted to office, that any mere assertion would be of no value.

“ I will therefore present, so far as I can, a list of those who have been raised to office. A complete list could be made out only in Constantinople. The different offices and dignities which each one has borne, will be named in their order. Those who have died are first in the list, and are marked by the letter *d*; retired, by *r*; those in waiting, that is drawing half-pay until appointed to some other office, by *i. w.*; those not marked, still bear the office which is last named.

1. Prince Etienne Vogorides, Prince of Samos, Grand Dignitary of the Empire, Capoukehaya of Moldavia, race Bulgarian, *d*.

2. Djezairli Muggerditch Agha, Collector of the Port of Constantinople, Arm., *d*.

* The August *Contemporary Review*, 1881, page 272.

42 · *A list of Christian officers of Turkey.*

3. Daoud Pasha, Counsellor of Embassy (at Vienna), Governor of Lebanon, Minister of Public Works, Arm., Cath., *d.*

4. Aristarchi Bey (Nicholas), Secretary of Sultan Mahmûd, Grand Logothète, &c., &c., Member of the Grand Council of Justice, Greek., *d.*

5. Franco Pasha, Governor of Lebanon, Syrian, Cath., *d.*

6. Agathon Effendi, Minister of Public Works, Arm., *d.*

7. Prince Caradja, Minister at the Hague, Gr., *d.*

8. Mussurus Bey, Chargé d'Affaires at Turin, Memb. Grand Council of Justice, Gr., *d.*

9. Mussurus Bey (Paul), Memb. of Grand Coun. Justice, Prince of Samos, Memb. of Coun. of State, Gr., *d.*

10. Vartan Pasha, Member of Admiralty, Arm., Cath., *d.*

11. Faik Pasha, Della Sudda, Director of the Military Pharmacies, Lat., Cath.

12. Aristarch Bey (Demetrius), Director of the Press, &c., &c., Vice Governor of Crete, Gr., *r.*

13. Ohannes Effendi, Memb. of Coun. of State, Arm., Cath., *d.*

14. Prince Callimachi, Minister at Paris, Ambassador at Vienna, Gr., *r.*

15. Sefer Pasha, General of Division, Cath., *r.*

16. Muhliss Pasha, Gen. of Div., Orthodox Gr., *r.*

17. Sadik Pasha, Gen. of Div., Cath., *r.*

18. Emile Effendi, Memb. of Ministry of War, Gr., *r.*

19. Aristides Bey (Baltagi), Director of the Public Debt, Gr., *r.*

20. Prince Aristarchi Miltiades, Prince of Samos, Memb. of Coun. of State, *i. w.*

21. John Aristarchi Bey, Ambassador at Berlin, Gr., *i. w.*

22. Ibrahim Pasha, Copoukehaya of the Khedive, Arm., *i. w.*

23. Nubar Pasha, of Egypt, Arm., *i. w.*

24. Odian Effendi, Political Agent at Rustchuk, &c., Under Secretary of Min. of Foreign Affairs, Arm., *i. w.*

25. Diran Bey, Chargé d'Affaires at Brussels, Arm., Cath., *i. w.*

26. Yaver Pasha, Memb. of Min. of War, Memb. of Grand Coun., State Director General of Posts, Arm., Cath., *i. w.*

27. Aristarchi Bey (George), Attaché of Ministry of For. Affairs, Gr., *i. w.*

28. Aristarchi Bey (Alexander), Secretary of Embassy, Gr., *i. w.*

29. Mussurus Pasha (Constantine), Minister at Athens, at Vienna, and now Ambassador at London, Gr.

30. Prince Alexander Vogorides, now Aleko Pasha, Ambassador at Vienna; Greek, by race Bulgarian. Has borne many high offices.

31. Serpos Effendi, Overseer of the Telegraphs, Arm., Cath.

32. Arten Effendi, Dadian Under Secretary of State of For. Aff., has-borne other high offices, Arm., *i. w.*

33. Rustem Pasha, Minister at Turin, and at Florence, Ambassador at St. Petersburg, now Governor of Lebanon, Lat., Cath.

34. Sawar Pasha, Gov. of Crete, &c., &c., now Gov. Genl. of Isles of Archipelago, Gr.

35. Ohannes Effendi Tchamitch, Director of Public Debt, Minister of Commerce and of Agriculture, Arm., Cath.

36. A. Carathéodory Effendi, Under Secretary of State in Dep. of For. Aff., has been Min. to Rome, &c., &c., Gr.

37. S. Aristarchi Bey, Grand Logothète, &c., &c., Senator, Gr.

38. Davidschon Effendi, Senator, Israelite.

39. Anthopoulos Effendi, Memb. Court of Justice, Senator, Gr.

40. J. Photiades Bey, Minister at Rome, now Min. at Athens, Gr.

41. Costaki Pasha, Gov. of Mirabella, Prince of Samos, &c., &c., Under Secretary of State to the Dep. of the Interior, Gr.

42. Reshid Pasha, Commandant of Artillery, Protestant. (For. ?).

43. C. Photiades Bey, Prince of Samos, former Pres. of Galata Serai College, Gr.

44. Serkis Hamamdjian Effendi, Minister at Rome, Chief Secretary in the Ministry of For. Aff., Arm.

45. Servitschen Effendi, Senator, Arm.

46. Blum Pasha, Genl. of Div. of Engineers, Hun., Prot.

47. G. Aristarchi Bey, Director of Political Affairs in Crete, Vice Gov. of Prov. of Smyrna, Minister at Washington, Gr.

48. Etienne Carathéodory Effendi, Chargé d' Affaires at Berlin and St. Petersburg, Min. at Brussels, Gr.

49. Conéménos Bey, Chargé d' Affaires, Athens, St. Petersburg, Gov. of Samos, Con. Gen. at Corfou, Gr.

50. Blaque Bey, Secretary of Em., Con. Gen. at Naples, Min. at Washington, Director of the Press, Memb. of Coun. State, Latin, Cath.

51. Bohor Effendi, Memb. Coun. State, Israelite.

52. Joseph Ikiades Effendi, Memb. of Court Justice, Gr.

53. Yovantcho Effendi, Memb. Coun. of State, Bulg.

54. John Ikiades Effendi, Memb. Coun. of State, Gr.

55. Mihran Bey, Duzoglou, Memb. Coun. of State, Senator, Arm., Cath.

56. Franco Pasha, Director of the Imperial Med. Col., Gr.

57. Bedros Effendi, Couyoumdjian, Commissioner of Forests, Memb. Coun. of State, Arm., Cath.

58. C. Calliades Effendi, Con. Gen., Palermo, Director of the Press, Memb. Coun. of State, Gr.

59. Sakissian Ohannes Effendi, Under-Secretary of State of Commerce, Pres. of Municipality, Memb. Coun. of State, Arm., Cath.

60. Dr. C. Carathéodory Effendi, Memb. Coun. of State, Gr.

61. K. Carathéodory Effendi, Director of Railroads, Gr.

62. Constant. Pasha, Gov. of Hertzgovina, Arm.

63. Faik Pasha, Gabriel Effendi, Memb. of Court of Justice, Bulg.

64. Mourad Bey, Minister at the Hague and at Stockholm, Arm.

65. Vasa Effendi, Vice Gov. Bosnia, Myrdite, Arm.

66. Guatili Pasha, Chief of Imp. Band, Cath.

67. Serkis Effendi, Balian, Chief Architect, Arm.

68. Dr. Mavroyeny Bey, Chief Physician of Sultan, Gr.

69. Jean Axelas Effendi, Con. Gen. at Lyra, Gr.

70. M. Axelas Effendi, Con. Gen. at Athens, Gr.

71. C. Axelas Effendi, Vice Gov. of Prov. in Crete, Gr.

72. Horasandji Ohannes Effendi, Polit. Agent in Min. of For. Affairs., Arm.

73. Etienne Mussurus Bey, First Secretary of Emb. at Lond., Gr.

74. Paul Mussurus Bey, Second Secretary of Emb. at Lond., Gr.

75. Nasri Bey, First Secretary of Emb. at Paris, Syrian, Cath.

76. Falcone Effendi, First Secretary of Emb. at Vienna, Arm., Cath.

77. Xenophon Baltagi Effendi, First Secretary Legation at Washington, Gr.

78. Rustem Effendi, Second Secretary at W., Gr.

79. E. Photiades Bey, Secretary Legation at Athens, Gr.

80. Chrysides Effendi, Vice. Gov., Epirus, Gr.

81. Daniche Effendi, Political Agent at Rustchuk, Con. Gen. at Ragusa, Lat., Cath.

82. Loghades Effendi, Political Agent at Salonica, Gr.

83. Dr. Parnys Effendi, Coun. of For. Aff., Prot.

84. Tarin Effendi, Memb. Coun. of For. Affairs, Cath.

85. Diran Effendi, Political Agent at Smyrna, Arm.

86. Agathone Effendi, Vice Gov. of Erzeroum, Arm.

87. N. Petropoulos Effendi, Consul at Kerteh, Gr.

“This list might be greatly extended, but it could be done accurately nowhere except at the Sublime Porte. The above officers by their direct patronage, or by their influence, introduce many hundreds of Christian employés into positions of a lower grade, and these by their greater capacity and activity, are sure to crowd out the Moslems, and rise into their places. The custom-houses, the public works, the navy yards, the mint, the telegraphs, the railroads, the Sublime Porte itself, are all full of Christian employés of every class. The advance in this direction within ten years has been very great.” *

36. Mohammadan governments in different quarters of the world have been always remarkable for religious toleration, and the Turks especially are the most celebrated in this respect. I cannot do better than quote the evidence of the Rev. Cyrus Hamlin, who has long resided in Turkey as an American missionary. In a lecture delivered at Boston in October 1876, he says :—

“Turkish officials are generally kind-hearted men *All the persecution which Protestant missions have suffered in Turkey originated in the Christian priests, communities, and churches opposed to the Protestants* The Turks are naturally a tolerant people. It is specially provided in the Koran that any ‘religion with a book’—that is, any religion which draws its authority from inspired writing—shall be tolerated; and under this provision the various Christian sects and the Jews find protection There is this difference between Russia and Turkey, that in Turkey all the various Christian sects as well as the Mahometans, are at liberty to manage their own churches and schools, and to carry on proselytism; but in Russia no Russian, under pain of heavy penalty, is permitted to leave the State church, and not even a Pagan or Mahometan Tartar is allowed to be converted to anything but the State church. The Turks are very bloody and savage in war, but are tolerant in peace. It would be decidedly better for the people and the cause of Christianity to have the Turks remain in Europe than to have Russia hold Constantinople.”†

* *Among the Turks*; by Cyrus Hamlin, pp. 370-376.

† *The Boston Journal*, quoted by Baron Henry de Worms, in his *English Policy in the East*. London: 1877, pp. 33-34.

37. Here I take the opportunity of relating some anecdotes of Turkish toleration towards their fellow-subjects, the Jews and Christians, during the past and present ages :—

At the siege of Varna, in 1444 A. D., an event occurred which showed the superior toleration of the Turks as compared with Christians of different denominations. "Hunyades," writes Colonel James Baker, "who was a Roman Catholic, was asked by George Brankovitch, of the Greek Church, what he intended to do if victory declared in his favour. He answered that he would compel every one of the inhabitants to become Roman Catholics. Brankovitch then went to the Sultan, and put the same question, and received the reply that he would build a church near every mosque, and allow the people to bow in the mosques or cross themselves in the churches, according to their respective creeds. The Servians who heard this thought it better to submit to the Turks than be subjected to the Latin Church."* The Sultan was Mahommed II., and in his time most of the nobles of Bosnia and Bulgaria adopted the Mohammadan faith. The powerful Sultan Selim I. was several times restrained in his blood-thirsty purposes by the Mufti, who plainly told him that it was against the sacred law of the Korán either to massacre the Christians, or to prohibit the exercise of their religion; and the Sultan submitted. †

A Mufti was once asked, "If eleven Mussulmans kill, without just cause, a Christian, who is the subject

* *Turkey in Europe*; by James Baker, M.A., page 279.

† Cassell's *History of the Russo-Turkish War*; by Edmund Oliver, Vol. I., page 269.

of the Padishah, and pays tribute, what is to be done?" The Mufti's reply was,—“Though the Mussulmans should be a thousand and one, let them all die.” *

38. Turkey had in fact shown that she was not entirely beyond the influence of modern ideas, which, it is true, penetrated the huge mass of fanatic Moslems with but a very tardy progress, and it could not be said that their influence in any part of Europe was remarkably powerful at the period in question.

“Even in England bigotry and intolerance, though assuming forms more vexatious than cruel, were among the recognized principles of government in the reign of George III. In France, not a hundred years had elapsed since the multitudinous atrocities attending the Revocation of the Edict of Nantes, and a repetition of those atrocities was possible at any moment up to the epoch of the Revolution. In other parts of Europe, Catholics persecuted Protestants, and Protestants persecuted Catholics; while in Russia the Greek Church was the enemy of both. That Turkey should have made any advance, however slight, towards the principles of religious toleration, while in countries far more civilized the advance was not much greater was a hopeful fact, from which a good deal might have been made, if Europe herself had a clearer perception of the principles of justice and reason. It has often been observed that the continual interference of Russia in the affairs of Turkey has aggravated the oppressions from which the Christians have suffered, and has hindered, instead of promoting the arrival of a better day. The state of Christians in the Ottoman Empire has never been so good as during the twenty years from 1856 to 1876, when the Treaty of Paris secured the Turkish dominion from the encroachments of unscrupulous ambition.” †

39. It must always be recollected to the credit of Abdool Majid that he accustomed his Turkish subjects to the idea of toleration. The Earl of Shaftesbury, speaking in the House of Lords on the 10th of March 1854, bore testimony to the liberality with which the Protestants had been uniformly treated by the Sultan

* Baker's *Turkey in Europe*, page 162.

† Cassell's *History of the Russo-Turkish War*, page 269.

then reigning. On that occasion he denounced the assertion contained in a Russian manifesto, that England and France, which were then just entering into an alliance to check the ambition of the Czar, were fighting for Mohammadanism, and that Russia for Christianity. The question, he remarked, was not one of religion, but of justice. If he were compelled to choose between the two, he would infinitely prefer Turkish to Russian civilization. The wrongs suffered by the Christians in Turkey were mainly attributable to themselves, being caused by intrigues and disputes among the sects, or by the ambition of the Greek priests. The Porte had allowed books, missionaries, printing presses, and all the agencies of improvement and proselytism full scope throughout the Turkish dominions ; whereas in Russia the frontier was hermetically sealed against any such importations, and for thirty years not a single copy of the Bible printed in the vernacular tongue had been allowed to circulate. The Earl of Shaftesbury traced the secret motives of the uncalled-for meddling of Russia in Turkish affairs to jealousy of toleration shown by the Turks towards the Protestants, and he proved in the most incontrovertible way that religious liberty had nothing to gain but everything to lose by the substitution of the Muscovite for Ottoman rule.

“ In the administration of justice, in the machinery of government, in the imposition of taxes, in education, and in religious toleration, reforms of the most satisfactory kind have been introduced during the last thirty or five and thirty years, and to some extent, though not completely, carried out. The Firman of 1856, issued at the close of the Crimean War, added greatly to the privileges of the Christians, and authorized the free exercise of religion. Colonel James Baker has observed that it is not necessary to pass new laws, but only to carry out those which already exist. An intelligent Turk told this

gentleman that all his country wanted, was '*Justice within, and justice from without*,' a sentence of admirable truth, terseness, and point." *

40. Turkey, instead of having gone back during the previous thirty years, had made more improvements in the social and moral concerns, and in religious tolerance, than any other country. Of late years, indeed, Turkey has been singularly tolerant. Sir George Campbell, a gentleman well-known in connection with the Indian Civil Service, and a witness not at all favourable to Turkish rule, has declared as the result of his own observations that the toleration of the Ottoman Government towards the Jews and Christians has even been "*excessive*." †

With all these statements to the contrary, the Rev. Malcolm MacColl complains of Turkish intolerance!

41. Even the Mohammadan Common Law, however rigid and intolerant it may be accused of being, is too mild and charitable in allowing the non-Moslem subjects to blaspheme or abuse the Prophet, without withholding the protection which is secured to them on their agreeing to pay the capitation-tax. I will quote a paragraph from the *Hedaya* bearing on this subject:—

"If a *Zimmee*‡ refuse to pay capitation-tax, or murder a *Mussulman*, or blaspheme the prophet, or commit whoredom with a *Muslima*, yet his contract of subjection is not dissolved; because the thing in virtue of which the destruction of *Zimmees* is suspended is the *submitting* to capitation-tax, not the actual *payment* thereof; and the submission to it still continues The argument of our doctors is that the blasphemy in question is merely an act of *infidelity* proceeding from an infidel; and as his *infidelity* was no obstruction to the contract of

* Cassell's *History of the Russo-Turkish War*, pp. 299-300.

† *Ibid.*, page 23.

‡ Non-Moslem subject.

subjection at the time of making it, this supervenient act of infidelity does not cancel it." *

42. The Reverend critic of the Mohammadan reforms quotes the opinion of Sir A. Kemball, who declares that "Christians are exposed to the aversions which are inculcated in the Korán;" and says:—

"Moreover it is death for a Christian to convert a Mussulman, and death also for the converted Mussulman."

There are no aversions inculcated in the Korán against Christians, and I regret to think that a Consul-General like Sir A. Kemball should labour under such a deep ignorance of the Korán. As for death being the penalty of apostasy, it is not the law of the Islamitic Prophet. The Korán does not award temporal punishment for the crime of heresy. I will quote here several verses of the Korán concerning a Moslem's defection from his primitive faith, and the Rev. Mr. MacColl will, perhaps, be astonished to find that none of them enjoins death on apostates; far from it, the Mohammadan Scripture confers pardon on those who convert a Moslem to unbelief.

103. Many of those who have Scripture would like to bring you back to unbelief after ye have believed, out of selfish envy, even after the truth hath been clearly shown to them. Forgive them then and shun them till God shall come with His decree. Truly God hath power over all things.

214. But they will not cease to war against you until they turn you from your religion, if they be able; but whoever of you shall turn from his religion and die an infidel, their works shall be fruitless in this world, and in the next: and they shall be consigned to the fire: therein to abide for aye.—*Sura ii.*

80. How shall God guide a people who, after they had believed and borne witness that the apostle was true, and after that clear proofs

* *The Hedaya or Guide: a Commentary on the Mussulman Laws*, translated by Charles Hamilton. Vol. II, page 221.

had reached them, disbelieved? For God guideth not the people who transgress.

81. These! their recompense is that the curse of God and of angels and of men one and all is on them!

82. Under it shall they abide for ever: their torment shall not be assuaged, nor shall God even look upon them.

83. Save those who after this repent and amend; for verily God is Gracious, Merciful!

84. As for those who become infidels after having believed, and then increase their infidelity—their repentance shall by no means be accepted. And these! they are the erring ones.—*Sura iii.*

59 O ye who believe! should any of you desert his religion, God will then raise up a people whom He loveth, and who love Him, lowly towards the faithful, mightier * towards the unbelievers,† taking pains for the cause of God, and not fearing the blame of the blamer. This is the Grace of God! On whom He will He bestoweth it! And God is all-embracing, omniscient.—*Sura v.*

This is the Mohammadan Revealed Law of perfect toleration towards the apostates; and I do not see why the Sultan may not be able to introduce reform, if there be any such intolerant or oppressive practices regarding apostates in His Majesty's Empire.

43. The Mohammadan Common Law, erroneously called by the Rev. Mr. MacColl the unalterable law of Islam, enjoins death in the case of an apostate, but the jurists differ as to the grounds on which such a step is to be taken. They would pass the sentence of death on an apostate who takes up arms against his sovereign. But this altogether changes the aspect of the case, for the decision is justified not by his falling off from his religion but by his offence of high treason against his ruler.

44. The compilers of the Mohammadan Common Law adduce two reasons for the award of death upon apostates as it is related in the *Hedaya*. The

* In their self-defence and in repelling the attacks of the unbelievers.

† Who fight against Moslems and persecute them.

first is this: that the Korán's dictate is "Kill the polytheists"; while the second consists of a tradition from the Prophet to the effect "Slay the man who changes his religion." Now both of these arguments are unsound and untenable. The invalidity of the first might be established by the connivance it displays at the several verses quoted (in para. 42) specially devoted to the subject of apostasy, by bringing forward only a disjointed piece of the 5th verse of the ninth Sura, which has no connection whatever with the point in question. It refers to the Meccans who had broken the treaty of Hodeïbia, and had outraged a tribe which had sought an asylum under the Moslems from their heavy incursion in spite of a stipulation to the contrary.* Besides, this verse treats of "polytheists," by which appellation the Meccans are designated, and I doubt very much if apostates can be styled polytheists. As for the tradition cited in the second argument, I think it runs counter to the Koránic precepts already quoted above, and is therefore untrustworthy. Moreover, the tradition bears no mark of genuineness according to the law of criticism by which the authentic traditions are sifted from the spurious ones. Bokhárce writes he heard it from Aboonnámán, who heard it from Hammád, who had heard it from Ayyoob, who in his turn related it on the authority of Ikrama, who said that Ibn Abbás referred to the saying of the Prophet, "Him, who changes his faith, kill.†"

* Vide *Sura ix.*, verses 1—15; specially, verses 3, 4, 8, 11 and 13.

† Bokháree's *Book of Repenting of Apostates, &c.*: chapter on Apostates. It is also narrated by the same author from Ali bin Abdoollah, who heard from Sofian, who from Ayyoob, who from Ikrama, as in the text. This tradition is also narrated by Abou Daood, Ibn Maja, Trimizee and Nasae, but not by Moslim.

Now there is a flaw between Ibn Abbás and the Prophet, and Ikrama and Ibn Abbás. Neither Ibn Abbás says he heard it from the Prophet, nor Ikrama says he derived his information directly from Ibn Abbás. Thus the tradition has not a continuous chain of narrators, and consequently it has no claim on our belief. Ikrama's character is of an impeachable nature, for he himself is a man of doubtful veracity.

By the wordings of the tradition relied on, every sort of conversion is liable to be punished with death, whether it be a conversion from a non-Islamitic to another non-Islamitic faith, or to the Moslem religion itself, which is evidently preposterous and absurd !

45. There are some other traditions on the same subject which are equally misguiding and unreliable.

Bokháree and Moslim have related that when Ma-áz came to Aboo Moosa, he saw a man in fetters near the latter, to whom he asked, what was the matter with that person? Aboo Moosa said that that person was a Jew, who had embraced Islam, and reverted to Judaism. Then Ma-áz said he would not sit down until that person was killed, for, he argued, "this is the decree of God and his Apostle." Now, if this tradition be a genuine one, Ma-áz was certainly wrong in attributing his fatal judgment to the decree of God and his Apostle, for we do not find any thing of the kind in the Korán.

Baihakee and Dárkutni have related by several chains of narrators that a woman named Omm Marwán had apostatized, and the Prophet said she should be asked to repent, to which if she did not comply, she should be killed. But it is admitted by critics that the links of the narrative are weak; and I

doubt not that they were concocted for the purpose of serving those who admit that a woman apostate might be killed, against those who urge that the male apostates only are liable to the extreme rigour of punishment.

There is also another tradition from Ayesha on the same subject, in which a woman who had apostatized was said to have been ordered by the Prophet to expiate her crime by penitence on the day of the battle of Ohad, or if not, be killed. This tradition has also been recounted by Baihakee, but its authenticity is of a questionable type.*

46. The case of Ahmed Towfeek Effendi who was, says Mr. MacColl, "condemned to death for the crime of correcting, as a purely literary matter, a Turkish translation of the English book of Common Prayer," † was not one of apostasy. Had he changed his faith, or had he become a Christian, no body would have molested him. The charge with which he was impeached, was that of insulting the Mohammadan religion, and thereby wounding the feelings of the Moslem community. There was every apprehension of a breach of public peace. The Turkish foreign minister had distinctly and clearly written to Sir Henry Layard on the 15th of January 1881, that this case had nothing to do with the religious liberty, the firmans or the Berlin Memorandum, and that, had Ahmed Effendi been a convert to a faith other than his own, no one had any right to molest or maltreat him. ‡

* Vide *Nailal Autár: Commentary of Muntakul Akhbár*; by Kázee Shaúkánée, Vol VIII., page 98.

† The *Contemporary Review* for August 1881, page 273.

‡ Vide *Al Fawaib* of 4th February 1881.

Thus Ahmed Effendi was neither an apostate, nor had he received an award of capital punishment for his defection. The charge against him was such as every Government allow with relation to every religion under its own protection.

47. Mr. Ewald, treating on the English Law on blasphemy, writes:—

“Blasphemy is the denying the existence of God or His Providence. Contumelious reproaches of our Saviour are offences punishable at Common Law; and by a statute of King James I., the prophane-ly or jestingly using the name of God, our Saviour, or the Holy Trinity, in any stage play, is punishable by a fine of £10. A profane scoffing at the Holy Scriptures is also blasphemy. It is punishable by fine, imprisonment, or corporal punishment.”*

“By Statute 9 and 10 Will. III., c. 32, if any person educated in the Christian religion, or professing the same, shall by writing, printing, teaching, or advised speaking, deny the Christian religion to be true, or the Holy scriptures to be of Divine authority, or maintain that there are more Gods than one, he shall incur sundry civil disabilities, and on a second conviction shall be imprisoned for three years.”†

The Mohammadan Common Law is very lenient in setting punishment for the crime of apostasy. The author of *Tanvir-ul-Absár* says:—

“No fetva or legal opinion could be given for a Moslem’s apostasy, when his words might be construed into a good meaning, or when there be a difference of opinion even by the least authentic of traditions.‡

48. Under the Mohammadan Common Law apostasy is tantamount to treason, and hence that subject is treated under the political chapters, and not under those of penal or criminal laws. Apostasy was considered to be equal to hostility against the commonwealth, and was often accompanied with a demonstration of arms. Hence the Common Law does not

* *Our Constitution: an Epitome of Our Chief Laws and System of Government*; by Alex. Charles Ewald, F.S.A. London: 1867, page 81.

† *Ibid.*, pp. 166-167.

‡ Vide *Durr-ul-Mukhtár*, *Kitab-ul-Jihád*, Ch. *Murtad*.

56 *Penalty for apostasy nullified by Turkish Sultans.*

allow the execution of a female apostate, as she is incapable to take up arms and wage war against her sovereign. (Compare *The Hedaya*, Vol. II., page 228.)

49. The attitude of the Common Law towards apostates has been very much changed in Turkey, and there is much more religious liberty evinced towards the Christians of diverse churches there than in Russia. The Rev. Cyrus Hamlin bears testimony to the fact that no penalty for conversion to Christianity is awarded in Turkey. Speaking of the religious liberty in the last half century, he remarks :—

“ Foreign missions from the Catholic and Protestant world have penetrated every part of the empire with their labours, and are protected by government. Proselytes from all Christian and Jewish sects to each other are allowed, and protected. Something has been done towards more freedom for the Moslem to embrace Christianity, as we have shown in a previous chapter. The conversion is not followed by death, as formerly, but the convert has every thing to fear from mob violence. In certain cities, as Constantinople and Smyrna, he will be safe. Freedom for the Moslem *anywhere* to profess Christianity does not yet exist, and can not until the people themselves become more enlightened.” *

50. It was long ago since the penal law against apostates was nullified by the Sultan, and at the same time it was proved that this law comes not under the range of the Korán. The author cited above writes :—

“ Sir Stratford Canning, backed up by all the embassies, except that of Russia, who preferred to reserve her action, demanded in the most positive manner the definitive renunciation of the law with regard to apostates, and solemn promise that no similar case should ever occur, otherwise England would join the enemies of Turkey to secure her destruction. He farther urged, that this infamous law was no part of the Koran, but derived wholly from an uncertain tradition. After much *wriggling* on the part of the Turks,

* *Among the Turks* : by Cyrus Hamlin : pp. 365-366. London : 1878.

the grand vizir gave the required assurance. Sir Stratford then demanded a personal interview with the Sultan, that he, as *Caliph*, successor of the Prophet, should himself sanction it. The vizerial declaration was—

“ ‘The Sublime Porte engages to take effectual measures to prevent henceforward the execution and putting to death of the Christian who is an apostate.’ The next day the Sultan gave his assent in a public audience, adding, ‘neither shall Christianity be insulted in my dominions, nor shall Christians be in any way persecuted for their religion.’

“A copy of the correspondence with the Porte on this subject was furnished to each of the patriarchs, to which was also appended the Sultan’s pledge. Although not then printed, it was translated and recopied many times, and widely circulated among all men of distinction in the empire.

“A lively discussion immediately arose all over the Mussulman and Christian world, whether this, after all, meant any thing? Could the Sultan abrogate or set aside a law of the Koran? It was clearly proved, first, that the law is not in the Koran. And second, that the Koran is not law. It is useless, however, to assert the latter.” *

51. The punishment for apostasy has been borrowed by the Mohammadan Common Law from that of Christians, who, in their turn, have drawn upon the Jews for the same.†

The perversion of a Christian to Judaism, Paganism, and other false religion was punished by Emperor Constantius and Julian with confiscation of goods, to which the Emperors Theodosius and Valentinian added capital punishment, in case the apostate endeavoured to pervert others to the same iniquity.‡ In the time of Bracton, a law writer of the thirteenth century, in England apostates were to be burnt to death.§

* *Ibid.*, pp. 81-82.

† *Vide* Levi. xx. 1—5; Deut. xvii. 2—5. The punishment was death by stoning.

‡ Blackstone’s *Commentaries on the Laws of England*. Book IV., page 43. London: 1841.

§ *Ibid.*

Captain Creagh writes :—

“Not much more than a hundred and fifty years ago, a boy named Thomas Aikenhead, who among some of his friends expressed an opinion that Mahommed was a greater legislator and propagated a more rational religion than Jesus Christ—was hung in Scotland for blasphemy; and even, until quite recently, the testimony in a court of justice of whoever doubted the truth of Christianity or the attributes of the Trinity was considered by the laws of England as useless and unreliable as was that of a Christian by the laws of Turkey.” *

Heretics were capitally punished by Christianity. “Hence the capital punishments inflicted on ancient Donatists and Manichaeans by the Emperors Theodosius and Justinian: hence also the constitution of the Emperor Frederic mentioned by Lyndewode, adjudging all persons, without distinction, to be burnt with fire, who were convicted of heresy by the ecclesiastical judge.” †

52. The Rev. Mr. MacColl thinks that—

“It is a maxim of Mussulman law attested by innumerable *fetwas* of the Ulema, ‘that a treaty made with the enemies of God and His Prophet (*i.e.*, with non-Mussulmans) may be broken.” †

Like all other remarks of the Reverend gentleman, this sentence is also ill-grounded and false. There may be imaginary *innumerable fetwas* to approve the above, magnified with the high-sounding title of a *maxim*, but the Korán, which is to a Moslem the maxim of all maxims, never enjoins upon its followers negligence of faith in covenants with others. On the contrary, it requires of the Mussulmans a strict observance and fulfilment of all solemn engagements contracted by them either with a Moslem, or a non-Moslem nation.

36. And perform your covenant; verily the covenant shall be inquired of.—*Sura xvii.*

* *Armenians, Koords, and Turks*; by James Creagh. Vol I., page 106. London: 1880.

† Blackstone's *Commentaries on the Laws of England*. Book IV., page 45.

‡ The August *Contemporary Review*, page 273.

4. But this concerneth not those Polytheists with whom you are in league, and who have afterwards in no way failed you, and not yet aided any one against you. Observe, therefore, your engagement with them through the whole time *of their treaty*; verily God loveth those who fear him.—*Sura ix.*

Gibbon, in his history, when he narrates the Moslem invasion of Syria, A. D. 632, under the guidance of the first Khalif, Abu Bekr, has also illustrated the strict adherence of believers to their faith when once plighted. On his march the Khalif, delighted at the sight of his vast army, and the anticipation of success at hand, advises his soldiers in the following monitory terms :—

“When you fight the battles of the Lord, acquit yourselves like men; but let not your victory be stained with the blood of women or children. Destroy no palm-trees, nor burn any fields of corn. Cut down no fruit trees, nor do any mischief to cattle, only such as you kill to eat. *When you make any covenant or article, stand to it, and be as good as your word.*” *

Abu Bekr’s successor, Omar, had declared, on his death-bed, his intention to enjoin upon his successor the observance of the treaties and guarantees with the people of the Book, with instructions to defend them by fighting in their cause, and to impose nothing upon them too heavy for their abilities to bear. †

53. The third and fourth alleged legal disabilities, under which non-Mussulman subjects of a Mussulman Government labour, are thus complained of by the Reverend gentleman so often mentioned :—

3. It is unlawful for the Christian subject of a Mussulman Power to bear arms. This is an unrepealable law, and was declared to be such by the Ulema of Constantinople in 1878.

* Gibbon’s *Roman Empire*. Edited by Dr. Wm. Smith. Vol. VI., pp. 301-302.

† Bhokháree’s *Kitábul Manákib*; Chapter, “*Osmán*: ” *Kitábul Fanáís*; and *Kitábul Fihád*.

4. The Christian pays a yearly ransom for the right to live, and the form of the receipt certifies that he is entitled to keep his head on his neck for another year. *

I do not find in the Mohammadan Revealed Law, nor in the Mohammadan traditions, that it is unlawful for the Christian subject to bear arms. I wonder, therefore, how such a provision can be called an *unrepealable law*? It may be a policy of the Government to prohibit the use of arms to a section of its subjects, especially to the insurgents, as a precautionary measure; but it is not therefore a religious ordinance or an *unrepealable law*? The capitation tax, which the Rev. Mr. MacColl is pleased to call a yearly ransom for the right to live, has nothing to do with keeping one's head on his shoulders for a year. It is a tax imposed on male adults in lieu of assistance with person and property, as the non-Moslem subjects are not required by their sovereign to contribute towards any war-expense, nor personally to go to war. So it is laid down in the *Hedaya* :—

“The ground of this is that capitation-tax is due in lieu of assistance, with person and property.” †

The Shafae church holds that—

“The capitation-tax is due either in return for protection to the person, or in return for permission to reside in the Mussulman territory.” ‡

But it is not held by any Moslem jurist or the established churches of Aboo Haneefa and Shafae that it is an annual ransom for the right to live, from which it might be inferred that in the event of any non-Moslem subject refusing to pay it, his head will be severed from his body. On the contrary, if a non-

* The August *Contemporary Review*, 1881, page 273.

† *The Hedaya*, Vol. II., page 212.

‡ *Ibid.*, page 215.

Moslem subject refuses to pay the yearly tribute, his contract of submission is *not* dissolved, as I have already shown at the end of para. 41 from the *Hedaya*. Further, the Common Law shows such leniency in the case of arrears of capitation-tax for two years, that only one year's is levied. The *Hedaya* says:—

“If a *Zimnee* owe capitation-tax for *two* years, it is compounded—that is, the tax for *one* year only is exacted of him:—and it is recorded, in the *Jama Sagheer* that if capitation-tax be not exacted of a *Zimnee* until such time as the year has elapsed, and another year arrived, the tax for the past year cannot be levied. This is the doctrine of *Haneefa*.”*

54. Few Governments would be so liberal as to remit the unrealized tax of a past year as the Mohammadan Government; yet the Rev. Mr. MacColl lays the blame of intolerance at the door of the Mohammadan Common Law. The form of receipt he refers to I cannot say anything about, as I have not seen it, but the provisions of the Common Law are all against such a supposition or construction as he puts on it.

“The tax is paid by the non-Mussulman subjects of the Porte, in consideration of their exemption from military service. The last official estimates of its yield gave an annual sum of £580,432

“A rough estimate of the population of some districts was made in 1854 for this purpose. It was then laid down that the annual levy for the nizam, or regular army, should be one recruit for every 180 male adults, or five and a half per thousand, and that the rayah population should furnish their contingent in money, at the rate of 5,000 piastres (£41 12s.) instead of one recruit. This would come to a tax of 27 $\frac{1}{10}$ piastres, or about 5s. 10d. per head per annum for each Christian. And this is the tax about which such an outcry is made abroad, and it is called an injustice to the Christians who have to pay 5s. 10d. per annum for exemption from military service, while it costs a Mussulman from £45 to £90 to escape similar service!”†

* *Ibid*, page 217.

† *Turkey in Europe*; by James Baker, pages 441-42.

55. The Christians of Turkey are wholly exempt from military service, whatever the reason may be. Either the Sultan is afraid of them, or there is any other reason for this, but the exclusion from military service ought not to have been made a ground of complaint or grievance, as the Mussulmans only pay the tax of blood. It is not the Christian, but the Mohammadan, who suffers terribly under the conscript system, yet it is complained of by the former as a strong evidence of his inequality of position. The Turk deprived of his former privileges of *Timars*, *Ziamets* and *Beys* or fief land for military service, and taxed equally with the Christian fellow-subjects, is moreover forced to serve in the army. Every adult Turk has to serve in the army for a period of five years, in the navy for seven, and after the expiration of the term he is placed in reserve for seven years more. He is almost always under arms, and his active service cannot well be computed under a minimum of ten years. The Turk, however, has the option of buying his exemption by a sum of 10,000 piastres, something more than £95: whereas the price paid by the Christian subject is an average of 25 piastres, or 4s. 6d. for every year of his adult age. To exempt himself from service in the Reserve or *Rediff*, the Turk has besides to pay an additional sum of £150. Messrs. St. Clair and Brophy remark:—

Mehmed Agha of Ayvajik, in Roumelia, possesses land which requires for sowing 300 *kilés* of grain, and he has two pairs of buffaloes; he pays a property tax of 300 Turkish piastres annually, besides the tithe and other imposts.

“Anastaz, of the neighbouring village of Akdere, a Rayah, owns fields which require 500 *kilés* for sowing, and has eight pairs of buffaloes; he, too, pays 300 piastres per annum.

"Thus far the Christian starts with an advantage.

"But Mehmed Agha has six sons, of whom five are serving in the army, and the eldest of whom he has exempted by the payment of 10,000 piastres, and he is forced to replace their labour by hired servants, to whom he pays 3,000 piastres (about £28) a year; whilst the four sons of Anastaz work, or get drunk at one of the numerous Tukhans of Akdere, and pay for the license of either employment only 25 piastres per annum.

"If now we submit this question of the non-service of the Rayah to an arithmetical analysis, its proportions become still more grave.

"Taking the average duration of life here, after twenty years, at twenty years more, that from twenty to forty,* twenty years of the vigour and endurance necessary for constant and sustained labour, we know that the Turk is forced to serve from the age of twenty years, and that the Rayah then begins to pay his *bedel askerîe*, or exemption-tax, of 25 piastres; thus the Mussulman gives to his country ten years of his adult age, or one-half of his most profitable age, whilst the Rayah exempts himself for these twenty years by the payment, in minute instalments, of 500 piastres.

"There is another way of looking at this: since one-half of the Mussulman's adult age is taken from him by the Government, he has but 182 days in the year at his own disposal, whilst the Bulgarian has the whole 365, paying only 4s. 6d. for the privilege; the Christian should then produce, in a corresponding proportion, more than the Turk, but this is by no means the case, and if there is a difference in the amount of corn, &c., raised by the two, it is in favour of the latter. For this strange fact a reason is easily found in the innate idleness of the Bulgarian, and in the peculiarities of the Greek Calendar, for the Bulgarian profits by the gift of half the year, which the Ottoman

* "We do not profess to be actuaries, and if the amount of life we have given to every adult (we do not take into consideration the deaths of infants, which might reduce the general average of life to 33 or 35) seems too little, we beg the curious reader to find out how many 10 years' men there are in the ranks of an English company, and thence to evolve how many 20 years' men there might be. Of course this calculation only applies to the Turks; but, to the Bulgarians, drunkenness is as fatal as the Russian bullets, starvation, or the diseases incident to camp and quarters.

"In one village of 350 souls, 11 men between 20 and 37 years died within the year, most of them from drink."

64 *A Moslem pays ten times as much as a Christian.*

Government makes him to idle during the 183 days of Feast ordained by the Greek Church; while the Turk marches and fights, the Rayah dances and drinks, and his exemption from military service is only a more or less direct encouragement of a gigantic parasitism and an authorized debauch.

"Another phase of the question involves a point which touches Europe more nearly than all the rest—the state of the Turkish finances.

"The Mussulman subject of the Sultan pays as personal taxes (we omit those dependent upon produce and the possession of immovable property) a capitation-tax upon his presumed income, which averages 30 piastres, and he also pays to Government 182 days of labour, which the Government itself values at 500 piastres,* making a total of 530 piastres.

"The Rayah pays the same 30 piastres, and a further sum of 25 piastres for exemption from military service; in all 55 piastres.

"Thus the Mussulman pays in personal taxes in the proportion of 530 to 55, nearly ten times as much as the Rayah,† whence the latter may in justice be said to owe to the Imperial treasury a sum of 475 piastres every year, an addition which would be very welcome to the budget of Turkey, since, taking the number of adult Rayahs at only one-fifth of the whole population of 12,000,000, it would amount to the enormous sum of 1,187,500,000 piastres, nearly ten millions sterling. To us it seems that it would be only just to exact this sum, since it can hardly be denied that if the Ottoman Government taxes its Mussulman population to this extent it has the right to demand an equivalent sum from the Christians."

"* Taken at the exemption price, 10,000 piastres for 20 years equal to 500 per annum."

"† There are various other ways of calculating this difference, each of which tells strongly in favour of the Rayah: for instance, a day's work in Turkey is always worth *at least* five piastres, and counting the working days of the Mussulman year, the year is worth 1,500 piastres instead of 400 piastres. Again, the Mussulman paying for exemption 10,000 piastres, whilst the Rayah pays 25 per annum, buys his liberty at 420 years' purchase, without entering into the calculation of the respective value of the sum paid down and of that paid by instalments. It may be said that the Government feeds and clothes the soldier, but the labourer hired at five piastres a day is also fed by his employer, and the risks of war are certainly worth more than the very indifferent clothing given to the Turkish troops."

“At that time (of Bejazet), when the Turk was in full enjoyment of all his privileges, and the Rayah had neither civil nor political rights, this forced service might have been a hardship; but in the present day, when the Turk is placed exactly on the same footing with the Christian as regards every thing except military service (an exception which threatens the Osmanli race with extinction and ruin), when the Rayah can attain to the highest position and the most lucrative posts, when all Government schools and colleges are open to him, there is no possible or even plausible excuse for exempting him from the tax of labour, whilst the Mussulman pays the tax of blood. As an old Turk said to us the other day, ‘Since they make Giaour Pashas, why don’t they make Giaour *nefers*?’ Decidedly our Government is *deli* or *korkak*.’*”†

56. Most probably the Jews, the Greeks, the Armenians and other non-Mohammadans of Turkey are unwarlike races, only too glad to escape a soldier’s duty, and perfectly willing to compound for their exemption.‡ But they are placed on a footing of equality with their Mohammadan fellow-subjects by being enlisted in accordance with the provisions of the various Hatts. By their mutual aversion and intolerance, the Mohammadans and non-Mohammadans could not be induced to associate themselves with one another in the same rank, and, on the other hand, if they be enlisted in separate battalions or squadrons, collision between the different corps, wherever they might be brought together, would be inevitable. It is

* *Nefers*, private soldiers; *deli*, mad; *korkak*, cowardly.”

† *The Eastern Question in Bulgaria*; by Messrs. St. Clair and Brophy; pp. 131-134.

‡ “A meeting of members of the different non-Mussulman communities was held lately to discuss the subject, and their delegates had subsequently an interview with the Grand Vizier. The result was that the Greeks and Armenians, who were represented by men belonging to the mercantile class, seemed to accept the conditions imposed by the Firman, and preferred to pay the tax; but the Bulgarians, speaking in the name of an agricultural population of three millions, were unanimously ready to vote for admission to military service.”—*Two Years of the Eastern Question*; by A. Gallenga, Vol I., page 194. London: 1877.

the duty of the Government to take measures to bring about a reconciliation, and to remove the barrier which keeps one-half of its subjects asunder from the other. But the animosities between the various races is not so implacable as it is often asserted to be. Neither mistrust, nor contempt at any time prevented the Mohammadans from employing the Christian subjects for military purposes. The *Janissaries*, formerly the nerve of the Ottoman forces, were to a great extent recruited from the Christian population. Their adherence to the creed of their forefathers did not at all disqualify them from the service. "The Janizzaries were often found among the most zealous advocates of Christian interests, and counteracted the unjust predilections the Government evinced in favour of the Mohammedans." *

57. The Rev. Mr. MacColl quotes from Consul Holmes, who, he thinks, cannot be suspected of any strong antipathy to Mussulman rule, from a dispatch dated February 24th 1871 :—

"What will be the lot of foreigners in Turkey were the European Powers to give up the Capitulation? I am convinced that their position, in the provinces at all events, would be intolerable, and that they would quit the country to a man, while the outcry and feeling in Europe against Turkey would ultimately cause her ruin." †

In reply to this I will quote here some passages from the *Twelve Years' Study of the Eastern Question*, by S. G. B. St. Clair and Charles A. Brophy :—

"Ask any foreign resident in Turkey what he thinks of the Capitulations, and you will hear a sermon upon the terrible maladministration or entire absence of justice amongst the Turks, and the impossibility of foreigners remaining in the country if once their

* *Two Years of the Eastern Question* : by A. Gallenga, Vol I., page 192. London : 1877.

† The *August Contemporary Review*, 1881 ; page 274

palladium, consular jurisdiction, were removed or infringed upon. 'As for me,' he will tell you, 'the day that the *saptiehs* of the infidels have the power to lay a finger upon me I shall quit Turkey, never to return,' which of course would be an immense loss to the Ottoman Empire.

"The infatuation in favour of the Capitulations is one of the weak points of the foreign colonies established in Turkey, and indeed of all Europeans, who fancy themselves so far superior to the Turks in all points, that it would be an insult and a degradation for one of their number to be judged by a Mussulman tribunal.*

"Besides, the abolition of the Capitulations would be naturally displeasing to the Consuls, who would thereby not only lose a good deal of their prestige and influence, but also various perquisites and fees, to which they attach a good deal of importance.†

"If we view the Capitulations and their effects by another light than that which filters through the ill-glazed windows of an Eastern Consulate, an analysis based upon common sense, and not upon national prejudices, will show the pernicious influence which they exercise over the relation, between Turkey and other nations, and even upon the welfare of foreigners themselves.

"Their origin is comparatively ancient: when Mohamet II. conquered Constantinople, he granted an '*Aman*,' or Capitulation, to the Greeks and Genoese who inhabited his future capital, in order to induce the foreign merchants to remain in it. Soliman I. granted a Capitulation to the subjects of his ally Francois I.; and in succeeding reigns the other great Powers obtained similar rights of independent jurisdiction over those of their subjects residing in Turkey.

"In the times when these were accorded there was a logical reason for their existence, since the only laws in force in Turkey were those derived from the Koran and its appendices; for this reason, there being no civil tribunals in existence, the Christian Rayahs were permitted to settle their differences and to judge causes amongst themselves. But in our days the laws of the Prophet are no longer the only ones in Turkey, an entire code has been promulgated; and though we may admit that this code is in some points defective, and its administration not all that might be desired, yet such justice as is

* See Mr. Crespigny's letter in the *Morning Post*, Oct. 18, which exactly describes the Levantine class."

† British Consuls may be excepted from this charge, their fees having been in most instances commuted."

to be obtained in a Consular Court is infinitely more faulty and more feeble in its action than that of the worst of the Turkish tribunals.

"One question is, whether or no all the nations to whom Capitulations have been granted have themselves good laws and a good method of administering justice.

"If the Capitulations were merely an insult to Turkey, whom they virtually, but most falsely, accuse of being a barbarous country in which justice is unknown, or if they were granted only civilized States possessing laws compatible with justice and a sound morality, the evil would be less.

"That Western Europe should enjoy such privileges is tolerable, but when Modern Greece obtains the right of judging her subjects by such laws as are in force at Athens, the Capitulations become a premium to dishonesty and a negation of all justice.*

"Let us argue *ad absurdum*, and suppose that his Imperial majesty the Sultan thought fit to grant Capitulations to the Emperor of Timbuctoo or the King of Dahomey, and that the jurisdiction of these cannibal potentates thereby acquired the force of law in Turkey, what would happen? If a subject or a *protégé* of either of these Powers indulged his taste for human flesh, if Sambo or Chimbo made an African stew of a Rayah Papas, or a fat Cadi, the Turkish Government would be as powerless against them as it is against a Hellene or Russian subject. Even if the same gentlemen carried their gastronomical experiments so far as to lunch off slices of English or French missionary, all that the Consuls of the two greatest Powers in the world could do would be to commence a suit against Sambo or Chimbo in the respective Consulates of the anthropophagi; and as the laws of Timbuctoo and the Gaboon permit cannibalism, just as those of Modern Greece or Russia tolerate insurrection against the Porte, Sambo or Chimbo—in spite of the fact that the laws would probably be more strictly interpreted in the black Consulate than in the white—could no more be punished for the homicide committed than Aristides could be made to give up the box which he appropriated by a fraud, or Mr. M. to give up the money due to Messrs. K. Brothers.

"* How much more forcible this observation is now that Russian Consulates have become the capulators, and even centres of revolt and intrigue—in fact, committees of insurrection."

"Sambo and Chimbo are fictitious ; but Aristides, and Mr. M., and the Hellenes, and the manner in which we have described the administration of 'justice' in Hellene tribunals, are all sad realities.

* * * * *

"The Capitulations granted to Greece not only ruin Turkey, by allowing 200 per cent. to be gained by Hellene merchants upon the exports, and a still greater proportion upon the taxes of the country, but give them a species of monopoly of Eastern commerce, based upon the system of administration of justice by the Greek courts, and the impossibility of other nations altering their code in order to fight the Greeks with their own weapons.

"Reading the Greek code, you would naturally think that it is worth twenty such as that of the Turks, but you have yet to learn the laxity of interpretation of which it is capable. A Greek cheats you ; apply to his Consulate, which declines to judge the affair, and refers you to Athens, where the case is settled on the broad and convenient principle that a Greek is never in the wrong as regards a foreigner, and you lose your suit. You appeal, and the decision is confirmed ; or, if the superior court is intimidated by the remonstrances of your minister or *chargé d'affaires*, the tribunal adjourns your cause—to the Greek Kalends. Hence it follows that no conscientious lawyer will advise you to prosecute for fraud, or even for attempted assassination, any individual who claims Hellenic nationality or protection.

"It would seem easy to avoid these difficulties, by transacting business only with Turkish subjects or your own countrymen ; but besides the impossibility of entirely keeping clear of the ubiquitous Hellenic trader, there is another stumbling block, which the case of Mr. M., already alluded to under its commercial aspect, clearly exemplifies ; any Russian, French, Austrian, or other subject can change his passport and become a Hellene with the same facility as did Mr. M. The Rayahs have their protectorate, and they, as well as foreigners, manage to change their nationality oftener than their shirts, and with at least equal ease.

"When a French or English subject is forced to abandon any attempt at obtaining justice against a Greek, it may be imagined how little chance the Turkish subject will have in a Hellenic court of law !

"There is a severe quarantine against the plague, and Turkey is obliged to conform to sanitary laws ; yet she is prevented from putting in force the quarantine of severe laws against the moral contagion daily imported from Greece and Russia to her shores.

“It is impossible for a legitimate commerce to exist, so long as the Capitulations prevent justice being done in any case where the defendant belongs to that nationality whose subjects can do no wrong; and the administration of justice is rendered impossible by the facility with which false witness is procured and admitted in court.

“Even admitting that all the nationalities which exercise the right of independent jurisdiction possess equitable laws, administered by just and upright judges, how is it possible to obtain justice or to engage in business without having studied the codes of a dozen different people? Where can we find a Mezzofanti lawyer who has at his fingers’ ends the codes of all nations, from the hundred volumes of the Russian *Zakons* to that of San Marino? This alone is a strong argument against the Capitulations; but when we recollect that it is owing to them that fraud is the basis of oriental commerce, that they are but a ‘legalisation’ of dishonesty, that they permit the open use of false weights and measures, and that by their extension to a petty nation, whose only strength lies in its absence of conscience, they have rendered the trade of Turkey a Greek monopoly, and through the same power being granted to Russia have rendered Turkey a field of insurrection—it is impossible not to wonder at their existence being tolerated.

“Even the action of the consular Courts of the great Powers is tardy, and occasionally unjust; and the well-grounded complaint is made that, whilst a foreigner is sure of obtaining justice against a Turkish subject, the Turkish subject is always in the wrong when he ventures to go to consular law with a foreigner.

“The following is one of the many methods in which the Capitulations are made to obstruct the path of justice. Three years ago the Pasha of Varna wished to verify the weights and measures of the town, and as most of the traders are foreign subjects or *protégés*, he applied to the different Consuls for their consent; with one single exception (that of the British Consul) they all refused to permit such an interference with commercial privileges, and the Pasha was in consequence obliged to abandon the project entirely; as to compel the Turkish subjects to sell by the proper standard, whilst authorising or at least ignoring the frauds practised by foreigners, would have been simply to ruin the former and still further enrich the latter.

“As regards public order, the Capitulations are as hurtful to the country as they are in point of their encouragement of dishonesty. We have seen a Consul thrashing the police and exacting excuses from

the authorities profiting by the position in which the Capitulations place him to break through the laws of the country with impunity. Let us take another case.

“A certain Mr. B. enlisted in one of the (Christian) Cossack regiments of the Sultan, but finding military life not much to his taste, deserted, and escaped to Greece. There he married an old woman with a little money; but the discipline of matrimony proved as unpleasant as that of the Turkish army, and he ran away again, returning to Turkey, a country which, owing to foreign laws, &c., is the foster-mother of parasitism. Here he contrived to live for some time, though without apparent means, but at last, meeting with some old comrades of the Cossacks, he was arrested as a deserter. His Polish nationality procured him the privilege of remaining a prisoner on parole, but this he broke, and took refuge in the Greek Consulate, which sheltered him from pursuit until means were found to ship him back to Greece.

“If the Capitulations did nothing worse than encourage desertion, Turkey would not have much to complain of, for the Christian soldiers of the Sultan are few in number, nor would their loss be a serious one; but they promote the political disorders and discontent with which Europe reproaches the Ottoman Government, and they prepare the way for insurrection and revolt. A foreign Consul in Turkey, who furnishes arms to the rebels at Crete, or the brigands of Thessaly, is inviolable and unapproachable by Turkish law. Would a Consul (even an American Consul) who was convicted of giving or selling revolvers to Fenians in Ireland be allowed to go unpunished?

“America demands payment from England for the depredations committed by the Alabama: dare Turkey send a battalion to Greece? What foreign vessels of war would venture to do in Irish waters half what Russian ships did on the coast and even in the harbours of Crete?

“An Englishman who should join the Bourbonist reaction in southern Italy and fall into the hands of the Italian authorities would, notwithstanding his quality of ‘Civis Romanus,’ be beyond the reach of official protection from England. In Turkey, Russian agents openly preach revolt and its accompaniments of murder and pillage: the Government is well aware of this fact, but owing to the Capitulations, dare not arrest nor even impede them.

“Two Servians or Wallachians (it matters little which), agents of the Revolutionary Committee of Bucharest, come to Rustchuck in an Austrian steamer; Mithat Pasha determines to arrest them, and

obtains from the Austrian Consul the necessary permission for the police to board the steamer. The two persons in question resist, wound some of the passengers, and are finally shot down by the *saptiehs*; whereupon there is an outcry raised against Mithat Pasha and Turkey, and the Consul (who in behalf of justice relaxed the rigour of the Capitulations) is removed from his post.*

"As Turkey has granted Capitulations to Greece, why does she not accord them to Servia and Wallachia ?

"Europe is not yet sufficiently logical to abolish this great source of evil to Turkey, but at least she might consent to the adoption of one general and rational code of laws, instead of the dozen now existing, such as could be easily understood by the Turks ; for whatever right we may have to think and call Turkey a barbarous country, we certainly are not justified in forbidding it ever to enjoy internal peace or impartial justice. Strangely enough, those who are loudest in their vituperation of Turkish jurisdiction and administration of justice and who impute as a crime the rejection of Rayah false witness in a Mussulman tribunal, are the very persons who protect with all their power the Capitulations—that is, the negation of all justice.

* * * * *

"Supposing the Capitulations to be given up, the application of a general and international code by the Turkish judges becomes simple ; and in the case where a foreigner considers himself wronged by an unjust sentence, he appeals to Constantinople, his Embassy takes up the matter, the cause is judged over again by public opinion, and if the Cadi is found to be in the wrong he is in his turn judged by the Turkish Government.

* * * * *

"The only way to establish justice in the East, amongst both foreigners and natives, is to call in the aid of the justice-loving Mussulman element, and to strengthen its hands by the abolition of the Capitulations."†

58. The Rev. Mr. MacColl says :—

"I am here, however, concerned only with such reforms as would place the Christian subjects of the Sultan on a footing of equal rights with Mussulmans. Now that is a reform which no independent

* * This was written in 1867. After that, how could Turkey ignore the action of the hand of Russia in the late Bulgarian insurrection ?"

† "*The Eastern Question in Bulgaria* ; by St. Clair and Brophy, pp. 212—220. London : 1877.

Mussulman Power has ever granted, and which no Mussulman Power ever can grant, voluntarily, without apostasy." *

How absurd is it to consider that the placing of non-Moslem subjects of a Moslem Government on a footing of equality with Moslems amounts to apostasy! What a splendid judgment is this of the Reverend gentleman! There are many independent Mohamadan rulers who, when they have treated their subjects of various creeds and faiths with a marked impartiality in political, legal and social subjects have never entailed on themselves the censure of apostasy. Under the Mohammadan Law the non-Moslem is guaranteed religious, political, and civil rights with the Moslem, and the very same law asserts that the former is as sacred a subject of his sovereign as the latter. Free exercise of his religion is secured to him in every respect while his agreement of subjection is not broken, even when he openly professes unbelief in the mission and doctrines of Mohammad. At times he enjoys influential high posts in the State, nay sometimes he commands those dignities which even the Moslem subjects are far from gaining. The Turkish Sultans have not a few times, of their own free will, declared safety of person and property, complete religious toleration, and an absolute equality of non-Moslems in legal matters on the authority of the sacred text.

59. The maxims of the Mohammadan Law conferring the safety of person and property, as well as complete religious toleration and an even justice to all the subjects of a king are, "*Dimao-hoom ka-dimae-na va amvalo-hoom ka-amvalena*" and "*Lahum malil moslemin va aleihim ma alal moslemin, Lahum ma*

* *The Contemporary Review*, August, 1881, page 279.

lana va aleihim ma alaina," meaning "their (the non-Moslem subjects') blood is as sacred as ours, and their property is as safe as our own," and "it is for them whatever is for the Moslems, and it is against them whatever is against the Moslems." These golden maxims of placing the non-Moslem subject on a footing of equality with his Moslem brother are the germ and essence of the sacred law of Islam. It is not an individual saying, nor any personal view of the matter. It is, in short, the basis on which the fabric of every law, civil, criminal, fiscal, military, and political, is raised.

60. The Rev. Mr. MacColl in proposing to place Armenia on a footing of equality with Lebanon, under a Christian, or at least a non-Mussulman governor, notwithstanding the larger portion of the population of the former country being Mohammadan, writes :—

"Is it not the fact that a Christian Governor can distribute equal justice to Christians and Mussulmans alike? And is it not likewise the fact that a Mussulman Governor cannot do so, that the more upright a Mussulman he is, so much the worse must he be as a Governor. A bad Mussulman may be bribed to do justice to a Christian. An honest Mussulman must enforce the Sacred Law of Islam, and that means the denial of justice to the Christian. . . .

"But let me not be misunderstood. An honest Mussulman can deal justice to Christian and Mussulman, provided that he is administering a non-Mussulman code, under the orders of a non-Mussulman superior. We know many such Mussulmans in our Indian Empire. But the more conscientious a Mussulman ruler is the less capable is he of doing justice to his non-Mussulman subjects. He is merely the Minister of a law which he believes to be divine and unalterable."*

This is nothing but an instance of sheer calumny against honest Mohammadans. The more upright

* The August *Contemporary Review*, 1881, pp. 279-280.

a Mohammadan is, the greater will be his responsibility in distributing an even-handed justice to subjects of various denominations that come within his jurisdiction, as he is bound to do equal justice to non-Mohammadans by the doctrines of the Korán, by the sayings of the Prophet, by the legal maxims as well as by the teachings of the Common Law. The Korán commands its believers to be kind and just to the non-Moslems:—

“God doth not forbid you to deal with kindness and justice towards those who have not made war upon you on account of your religion, or driven you forth from your homes: verily God loveth those who act with justice.”—*Sura lx*, verse 8.

Aboo Daood* has related a prophetic saying delivered by Mohammad:—

“Beware! He who does injustice to a non-Moslem subject (*lit.*, *Moahid*, i.e., capitulationist) or violates the capitulation, or oppresses him beyond his ability, or takes from him anything without his consent, I will prosecute him on the day of the Resurrection.”

I have already quoted the legal maxims from the Common Law books. Here will suffice one from *Durr-ul-Mukhtár*:—

“For *them* (non-Moslem subjects) is, whatever is for us in doing justice, and to *them* is due whatever is due to us in getting justice.” Or, in other words, they must get their full rights from us and we ours from them.

The author of *Minah-ul-Ghaffár*, a commentary of *Tanvir-ul-Absár*, writes on the words of the text:—

“For *them* is whatever is for us and on *them* is whatever is on us.”

“The text means that they have right on us if we encroach on their persons and property, and we have right on them if they encroach upon our persons and property, just in the same way as any one of us has a right on another when an encroachment is made.”

Is this not a perfect equality before the Law? Is it not the distribution of equal justice to Christian and

* Sonan Aboo Daood, *Kitáb-ul-Khiraj*, Vol. II., page 77.

Mussulmans alike? Is this not the Sacred Law enjoining equal justice? Besides these, have not the Turkish Tanzimáts, Hatts, Firmans, Irades, and Constitutions conferred equal rights on non-Moslem subjects?

Then the natural conclusion one arrives at is, that every Mohammadan governor, be he a fanatic or a religionist, is bound by every law, Revealed, Religious, Common, and Constitutional, to give impartial justice alike to Moslem and non-Moslem fellow-subjects.

61. The Reverend gentleman in his biassed judgment writes :—

“But is the Sultan likely to listen to any proposal giving self-government, under a non-Mussulman Governor, to Armenia? On the contrary, he is bound by the Sacred Law to resist such an encroachment on the domain of Islam until he has convinced himself that superior force will be employed to compel him.”*

There is no encroachment on the domain of Islam in appointing a Christian Governor, and in Turkey, as I have already shown in para. 35, Christians have had several offices of the highest rank and emolument in the capacity of ministers, ambassadors, consuls, secretaries in the civil, political and military administration of Turkey. Under the liberal Government of the Mogul Emperors of India, Hindoos were employed in lucrative posts by thousands and tens of thousands, both in the military and civil functions of the state, while many of the chief ministers claimed Hindoo parentage, and one of the emperors went so far as to appoint a Hindoo General to be the Governor of the Mohammadan Kabul. Even at the present day there is hardly a Mohammadan State which has not many

* The August *Contemporary Review*, 1881, page 280.

Hindoos to transact Government affairs in the highest official ranks.*

62. In Spain in the meridian hour of the Moslem supremacy, the conquered or non-Moslem subjects were on terms of a perfect equality, and enjoyed civil and religious freedom in the same proportion as their conquerors, the Moslems.

"In Spain," writes Prescott, "where the fiery temperament of the Arab was gradually softened under the influence of a temperate climate and higher mental culture, the toleration of the Jews and Christians, as we have already had occasion to notice, was so remarkable, that, within a few years after the conquest, we find them not only protected in the enjoyment of civil and religious freedom, but mingling on terms almost of equality with their conquerors."†

The same discerning historian writes while reviewing the political and intellectual condition of the Spanish Arabs:—

"The policy of the conquerors, after making the requisite allowance for the evils necessarily attending such an invasion, may be considered liberal. Such of the Christians as chose, were permitted to remain in the conquered territory in undisturbed possession of their property. They were allowed to worship in their own way; to be governed, within prescribed limits, by their own laws; to fill certain civil offices, and serve in the army; their women were invited to intermarry with the conquerors; and, in short, they were condemned to no other legal badge of servitude than the payment of somewhat heavier imposts than those exacted from their Mahometan brethren. It is true the Christians were occasionally exposed to suffering from the caprices of despotism, and, it may be added, of popular fanaticism.‡ But, on the whole,

* Compare Sir G. Campbell's *Handy-Book on the Eastern Question*, page 112. Second Edition, 1876.

† *History of the Reign of Ferdinand and Isabella the Catholic, of Spain*; by W. H. Prescott. Vol. II., page 402. London: 1854.

‡ The famous persecutions of Cordova under the reign of Abderrahman II. and his son, which, to judge from the tone of Castilian writers, might vie with those of Nero and Diocletian, are admitted by Morales (*Obras*, tom. x., p. 74,) to have occasioned the destruction of only forty individuals. Most of these unhappy fanatics solicited the crown of

their condition may sustain an advantageous comparison with that of any Christian people under the Mussulman dominion of later times, and a striking contrast with that of our Saxon ancestors after the Norman conquest, which suggests an obvious parallel in many of its circumstances to the Saracens.”*

63. Dr. J. A. Conde, in his history of the dominions of the Arabs in Spain, writes regarding the Mohammadan administration in Spain :—

“But the conditions imposed on the conquered nation were such that the people found consolation rather than oppression in the presence of the conquerors; and when they compared their then fate with that which they had previously endured, could not fail to consider the change a fortunate one. The free exercise of their religion, a careful preservation of their churches from all injury, the security of their persons, with the unimpeded enjoyment of their goods and possessions,—such were the first returns which they received for their submission to the stranger, and for the tribute (a very moderate one) which they paid to their victors. But there was yet more: the fidelity of the Arabs in maintaining their promises, the equal-handed justice which they administered to all classes, without distinction of any kind, secured them the confidence of the people in general as well as of those who held closer intercourse with them: and not only in these particulars, but also in generosity of mind, and in amenity of manner, and in hospitality of their customs, the Arabians were distinguished above all other people of those times.”†

64. Mr. Henry Copee, in his *History of the Conquest of Spain by the Arab-Moors*, says regarding the treatment of the Jews and Christians by the Moslems :—

“I have already referred, somewhat at length, to the treatment of the Jews and Christians. Abstractly considered, the problem was not a difficult one, but practically it was troublesome by religious rancour and prejudice. Rigorous in obeying the requirements of their

martyrdom by an open violation of the Mahometan laws and usages. The details are given by Florez in the tenth volume of his collection.”

* *History of the Reign of Ferdinand and Isabella the Catholic, of Spain*; by W. H. Prescott. Vol I., pp. 331—333. London: 1854.

† *History of the Dominions of the Arabs in Spain*, translated from the Spanish of Dr. J. A. Condé, by Mrs. Jonathan Foster. Vol. I. Preface, p. 6. London: MDCCCLIV.

own creed, and believing all others to be imperfect and false, it is still to be observed that the Moslemah were far more tolerant to unbelievers of every religion, than Christian sects have been in later periods to each other, and than Christians have been in all ages to the Jews. This partial toleration has been one strong reason for the comparative ease with which they have fastened their yoke upon conquered nations. Apostates only were punished with death. Those who paid the required tribute were free in the exercise of their religion. And thus toleration was a generous thought as well as a politic enactment of their Prophet; for it would seem that the very genius of their faith gave them the abstract right to destroy all unbelievers.”*

65. The writer of an article in the *Edinburgh Review* of April 1881, while reviewing von Kremer's work entitled the *Caliphs of Bagdad*, speaks in connection with the financial and legal administration of the Arab dynasties of the Caliphs:—

“The finances gradually came into the hands of the Christians and Persians, when their administration became more complicated. Abd-almalik, fired with the desire to render the whole government thoroughly Arab, dismissed all those employés who were not of that race, but he found that it was necessary to reinstate them, as few Arabs were competent to deal with questions demanding a special education.

“We may tarry for a moment to say a few words with regard to the position of the Christian and other religions under the Arab domination. A special distinction had been made by Mohammed between the Christian and Jewish religions and those of other sects, such as the Manichæans, Zoroastrians, &c. To the former two creeds greater toleration was shown than to the others, and it cannot be denied that, generally speaking, the condition of the two relatively favoured religions was not so hard as has occasionally been asserted. This statement should not be taken too literally, as the treatment of Christians, for instance, varied under different Chalifs and in different countries. The Christians of the town further enjoyed a better position in comparison with his co-religionist who tilled the field.

* *History of the Conquest of Spain by the Arab-Moors, with a Sketch of the Civilization which they achieved and imparted to Europe*; by Henry Copee. Vol II., page 327. London: 1881.

The former was educated to a certain extent, and useful, nay even necessary in the more scientific branches of the government, while the latter had to make good to the treasury the deficits caused by the special exemptions granted to the Moslem. Some weight has been attached to the fact that distinctive dress had to be worn by the Christians, but this mark of difference was not intended as a badge of inferiority merely, but as necessary to distinguish several sects. In language and mode of life, the Christian was in many places similar to his Moslem neighbour; and outward and visible difference was, therefore, considered essentially necessary. The intellectual activity of the Christian remained not without its influence, and to it the Moslems are indebted not only for their acquaintance with the philosophical literature of the Greeks, and for their instruction in medicine and the more subtle arts, but also many of the later divisions in Islamic thought may have derived their origin from similar movements in the Christian Church. The position held by the Nestorian Catholics, and also by the 'Prince of the Captivity' at Bagdad, prove that the Moslem rulers were not wanting in respect to the heads or representatives of those religions which they recognized as worthy of toleration."*

66. Professor J. L. Porter, in his lecture delivered in December 1876 at Glasgow, says:—

"History proves—the history alike of the Sultans of Turkey and the Moors in Spain—that the religious basis of Moslem law, stern as it is in theory, offers no serious obstacle in practice to the complete toleration of all sects. Those who differ from the National faith pay a poll-tax, but in other respects they are free. It is well known, no one can deny it, that large Christian communities,—Armenians, Greeks, Syrians, Maronites—have lived in Turkey from the foundation of the Empire, and still live there, in the enjoyment of full religious liberty. Not only so, but each community has actually the right guaranteed to it by the Sultan, of administering its own affairs, civil or sacred, without let or hindrance. In the provincial and town councils too, each sect is represented by its ecclesiastical head, and by a civil delegate. Can this be called intolerance?

"Compare the history of Turkey in this respect with that of the

* *The Edinburgh Review*, No. 318, for April 1882, Article III. *Culturgeschichte de Orients unter den Khalifen*, pp. 351—352. Von. A. von Kremer. Zwei Bände. Wien: 1875.

Christian nations of Europe. Gibbon truly remarked of one of the earliest of Turkish monarchs—‘The Catholic nations of Europe who defended nonsense by cruelty, might have been confounded by the example of a barbarian, who anticipated the lessons of philosophy.’ Turkey was never disgraced by the systematic horrors of an Inquisition; Turkey never ruthlessly banished whole communities who happened to differ from the national faith; and Turkey afforded an asylum to the poor homeless Jews when plundered, persecuted, and proscribed in succession by Germany, England, France, and Spain.

“It would fare ill with Christianity,” at least with that form of Christianity which is represented in Russia and Greece, “if the method and the spirit of many of the articles which have appeared lately on the Eastern Question, so far as it affects Islam, were applied to it.” When read by enlightened Turks, and by enlightened men of other nations, those articles must tend seriously to damage the character of our country for impartiality and truthfulness.” * * * *

“American Missionaries on Turkish toleration.”

“On the subject of toleration in Turkey, I shall now quote the words of one who had even greater experience than myself—I mean the late Dr. Eli Smith, the celebrated American missionary. He lived fifty years in the country. He travelled through every province of it for the express purpose of studying the character and state of the various classes of the people. He was the most accomplished Oriental linguist of his age; while in sound judgment and high principle he had no superior. Writing of the liberty there enjoyed by non-Moslems, he says:—

“These grounds for the toleration of dissent are certainly not of our taste; but the conclusions to which they lead, when acted upon, practically give to non-Mohammedans in Turkey more freedom of conscience than is enjoyed under almost any Government in Continental Europe.” Again, he says:—“It is liable, indeed, to very great infringements from arbitrary and covert proceedings of corrupt magistrates, and from the violence of a fanatical populace. And there is danger of an extension over the country of the ecclesiastical municipal system prevalent at the capital; especially under the influences that are coming in upon Turkish institutions from the neighbouring Governments of Continental Europe. Were it secure from these contingencies, we are prepared to say that we are content with

the toleration Mohammedan law affords us. The extent of this toleration ought to be known to the credit of the law which grants it, and every influence from abroad tending to curtail it is highly to be deprecated. It is sure that we should have less liberty under any European Government that might be extended over the country, unless it were that of one or two of the most tolerant of the Protestant powers."

"And the Rev. Dr. Goodell, who was thirty years resident in Turkey, chiefly in Constantinople, thus writes on November 6th, 1860:— 'When we first came to Turkey, and for many years afterwards, we could not live in Constantinople proper. . . . Although other Franks had summer residences in different places, still the privilege was, *through the influence of the Armenians, Greeks and Catholics*, denied to us; but the Turks now no longer listen to the representations, or rather misrepresentations of our enemies, and we live without molestation wherever we choose . . . We can open schools and consecrate chapels wherever we please. . . . It is said that the Grand Charter of religious toleration in Turkey exists only in name, and is virtually a dead letter. To this it is sufficient to reply, that before the Hatti Humayoun there were more cases of persecution reported to us every week than there are now in a whole year. . . . Again it is said that the Turks are insincere in their professions of toleration, and it is only under foreign pressure they are ever brought to act in favour of it. But it would be much more in accordance with truth to say that, so far as Protestantism is concerned, it is only under such pressure that they have ever been brought to act against it. There is, and there always has been, ten times (perhaps I should say a hundred times) as much influence exerted upon the Turkish Government against liberty of conscience as has ever been exerted in favour of it. These Armenian, and Greek, and Catholic communities are themselves mighty, and they exert a mighty influence; and they are always exerting it against each other, each endeavouring to enlist the Turk on his side.'" He says further, by way of summing up:—

"Whoever has read the *Missionary Herald* for the last forty years must have seen that perhaps in ninety-nine cases out of a hundred our persecutions have come not from the Turks, but from these corrupt Churches—the Turks never of themselves showing a disposition to molest us."

"This puts Turkish toleration in its true light. Drs. Smith and Goodell were thoroughly conversant with the subject. They had no

wish to cloak the errors, or palliate the misrule of the Turks. They were not influenced by those party feelings which now, unfortunately, run so high, and contribute so largely to warp the judgment of even our greatest men. They wrote, as they laboured, in the sole interests of truth, and they gave the highest possible guarantee of their sincerity by devoting their great talents and their lives to the regeneration of the Christian people of Turkey.

“And even the Bulgarians, some of whom have recently suffered so terribly, were obliged, not many years ago, to appeal to the Turks against the intolerable tyranny of the Greek ecclesiastics, who attempted to deprive them at once of their religious independence, their language, and their individuality as a nation; and this the Greek hierarchy attempted under the patronage of Russia. A Bulgarian gentlemen of education, writing to the *Pall Mall Gazette* in 1868, says of his people:—“Accustomed for centuries to Ottoman dominion, we see in it the protecting guardian of our individuality; we are attached to Turkey by the double tie of habit and self-interest.” It is taken for granted by certain parties in England that the Bulgarians would hail Russia as a protector; I question the truth of this, and I believe, if polled to a man, they would repudiate Russian rule.”*

67. Mr. Charles Williams, in his *Armenian Campaign*, writes:—

“My own observations in Asia Minor concur so exactly with those recorded in his official report by Consul-General Nixon, dating from Baghdad on the 15th of June, 1877, that I cannot do better than quote the passage:—

“I can safely assert that the Turkish authorities in this part of the Ottoman dominions are most tolerant towards their Christian and Jewish subjects, and I have not heard of one single case of ill-treatment or collision. In fact, as far as I can judge, the Mahommedans are far more forbearing towards the Christians than the latter are towards the Mussulman. The Christians have the same rights and privileges as their Mahommedan brethren, and justice seems to be fairly administered, although not very prompt.”†

* *England's Duty in the Eastern Difficulty*: A Lecture delivered by J. L. Porter; pp. 14—19.

† *The Armenian Campaign*: by Charles Williams. *Introduction*, page x. London: 1878.

68. Captain James Creagh writes about the capture of Erzeroum by the Russians:—

"It was impossible, however, to witness the Russian occupation without feeling and seeing beyond a shadow of doubt that the Armenians regarded it as a delivery from the thralldom of their tyrants, and blessed the day on which they marched in.

"The whole population of Erzerum turned out with tears of joy to greet the soldiers of Pashkievitch, in 1828. Women and girls, singing hymns and psalms, threw flowers in the way; and so ardent was the wish of its inhabitants to be delivered from Turkish bondage, that great crowds of Armenians, selling all they had at the vilest prices, followed the retreating Russians across the frontier, and settled under the protection of the Czar.

"The arrival of the Muscovites in the same place at the end of the year 1877 was equally pleasant to the Armenian people, who, with a view to express their satisfaction and pleasing the invading hordes—worked cheerfully, and like menial servants for the soldiers.

"There was nevertheless an exception to this general jubilee; for although the orthodox or Gregorian Armenians are, as I believe I have shown, favourable to the Muscovites—the Roman Catholic Armenians fear the supremacy of their heretical countrymen, or that of their protecting and sympathetic Russian friends.

"They far prefer (at least, so I have always been told by their priests) the Government of the Sultan to that of the Czar. The Pope has told them to hate the Russians more than the Turks, and they do so." *

69. There will be no good in putting Armenia under a Christian ruler. History supplies many instances where the transfer of a Christian community from the rule of the Sultan to that of a sovereign of its own creed has been followed by complaints and regrets. Christians of one denomination have persecuted and are persecuting those of another. In all Mohammadan countries Christians of different sects are more hostile to one another than they are to the non-Christians.

* *Armenians, Koords, and Turks*; by James Creagh. Vol. I., pp. 296-297.

If left free, they interfere with each other more than they would have been interfered with, if left under the Moslem control.

This is the opinion of Mr. R. G. Latham, who, though he holds that the instances referred to above have been exceptional, that the Mohammadan toleration has neither been permanent or complete, and that he believes that, "for any long period of time, the worst Christian Government is for Christians better than the best Mahometan," says:—

"This remark, however, is subject to one qualification. In order for the general statement to hold good, it is necessary that the Christianity should be homogeneous; in other words, that the whole of the population so transferred should be of one religious denomination, sect, or church; all Greek or all Roman Catholic. When there is a division with any approach to equality, it is better for the Mahometan dominion to be retained." *

In Armenia, or rather Turkish Armenia, there is no homogeneous Christianity. The Roman Catholic Armenians are afraid of the superiority of their rival Gregorians.

70. With regard to the proposal of appointing a non-Moslem Governor in Armenia, I would ask why this interference in the interior administration of Turkey? There is a clause in the Treaty of Paris, 1856, which binds the signatory Powers to abstain from interfering in the interior affairs of Turkey. That Treaty not only abated the pretensions of Russia, but gave a more settled character to the Turkish relation with Christendom, as initiated in the Crimean war. To use a French expression, the Porte took her place in the family of European Powers, and an improved

* *Russian and Turk from a Geographical, Ethnological and Historical Point of View*: by R. G. Latham, M. A., M. D., &c., page 434. London: 1878.

charter of reforms, having the two-fold object of the better treatment of the Christian subjects, and the adoption of sounder principles of Government in Turkey, was held a sufficient guarantee to secure her that position. The charter subsequently proclaimed by Sultan Abdul Mejid—the Hatti Humayoun of 1856—had been prepared at Constantinople by a joint conference of the Turkish ministers and European ambassadors assembled at the British residence, and was made part of the general act of pacification under an agreement that its insertion in the Treaty should not be made a pretext for the interference of any foreign power in the internal affairs of Turkey. But the Treaty of Paris is no more binding on the British Government, since it has withdrawn from its share in the engagements of Paris by declaring itself neutral during the late Russo-Turkish war.

71. Under the International Law no nation has any right to interfere in the internal affairs of any State. Vattel, the best writer on the International Law, says:—

“Every nation is mistress of her actions, so long as those acts do not affect the rights of others. Even if a nation is badly governed, yet other states are bound to acquiesce, since they have no right to dictate any course of conduct.”*

He further adds that no sovereign is at liberty to judge of the conduct of another, nor oblige him to change it:—

“If he loads his subjects with taxes, and if he treats them with severity, the nation alone is concerned in the business; and no other Sovereign is called upon to compel him to amend his conduct and to follow more wise and equitable maxims.”†

* Vattel, Prelim., page lxiii., § 10.

† Bk. II., ch. IV., § 55.

72. The Right Honourable Lord Robert Montagu, M.P., after citing the above quotation from Vattel, writes :—

“The Sultan, then, is according to the Law of Nations, an independent or Sovereign Ruler. We have, under the Law of Nations, no more right to interfere in Turkish affairs, (that is to violate his independence or sovereignty), (except at the call of justice) than a man has a right to enter his neighbour’s house, and dispose of his goods according to his own pleasure.”*

It will appear that here the Right Honourable Lord has made an exception or limitation to the duty of non-intervention, that is, it is right to interfere at the “call of justice.” If the Sultan, by oppressing his subjects and invading upon their rights, cause them to rise in insurrection, we may then intervene to defend the right, but not otherwise. That this statement is correct is also proved by Vattel :—

“If the prince becomes the scourge of the state, he degrades himself; he is no better than a public enemy against whom the nation may and ought to defend itself If he be absolute, when his Government without being carried to extreme violence, manifestly tends to the ruin of the nation, it may resist him, pass sentence on him, and withdraw from his obedience.”†

Again, with regard to other States :—

“If the prince by violating the fundamental laws, gives his subjects a legal right to resist him,—if tyranny, becoming insupportable, obliges the nation to rise in their own defence,—every foreign Power has a right to succour the oppressed people *who implore his assistance*. . . . Wherever, therefore, matters are carried so far as to produce a civil war, foreign powers may assist *that party which appears to them to have justice on its side*.”‡

Vattel also lays down the principle which should guide all States in the case of religious disturbances; “when

* *Foreign Policy: England and the Eastern Question*; by the Right Hon. Lord Robert Montagu, M. P., page 54. London: 1877.

† Vattel, Bk. I., ch. IV. § 51.

‡ *Ibid.*, Bk. II., ch. IV., § 56.

a religion is persecuted a foreign nation of that religion cannot do more than intercede for their brethren."

73. By the Law of Nations, then, there is no right of interference unless it can be shown that some treaty has been made with the Porte, by which a right of interference has been conceded, and I have shown in a preceding para. that there is no such treaty; on the contrary, that of Paris debars any such interference. Neither has it been proved that the Porte has been persistently committing injustice and oppression, nor has she been persecuting her Christian subjects on any grounds of religion. Then what right has any power of Europe to meddle with the internal affairs of Turkey? There is no treaty to that effect, and that of Paris, which debarred all interference, has been not strictly adhered to.

74. The Reverend Mr. MacColl writes:—

"If the Armenians are forced to make their choice between their present condition and the annexation to Russia, they will certainly choose the annexation to Russia, and they can and will materially help to bring it to pass." *

The hatred shown by the Armenians towards the Russians is in no way inferior to that towards the Turks, but the Armenians never do prefer Russia to Turkey. They have a greater liking for the Turkish rule, notwithstanding some of their grievances, than to acknowledge the headship of Russia, simply for this reason, that they enjoy greater religious liberty and national freedom in Turkey than they can realize from Russia.

The Armenians enjoy self-government under the Turkish administration, which leaves their language, the education of their children, and their national customs so perfectly untrammelled and free from any official

* *The Contemporary Review*, August 1881; page 280.

interference that they have no wish to change it for the rule of a people who steadily endeavour by carefully devised regulations encroaching on their family life, forcing their inaccessible tongue on them, and making a perfect transformation of them from an Armenian to a Russian nation. In fifty years the Muscovites have done more towards the moral annihilation of the Armenians as a separate nation than has been effected by the Turks in several centuries. Besides, they can trade with greater freedom in Turkey than in Russia, so that many Turkish Armenians have become exceedingly rich and enjoyed a monopoly of the commerce of the whole country. These are great advantages, and notwithstanding certain grievances against their masters, the Armenians do not want to weigh them against those extensions of liberty which, although very plausible at first sight, appear on a closer examination to be in no way compensated for by the several very troublesome and annoying Muscovite, bureaucratic, and centralizing regulations of Russia. The Roman Catholic Armenians far prefer the Government of the Sultan to that of the Czar, and they hate the Russians more than they hate the Turks. The Gregorian Armenians are favourable to the Muscovites only through the Russian conspiracy.

75. Captain Fred Burnaby, in his travels through Asia Minor, narrates his conversation with two influential Armenians at Constantinople, and says:—

“It was easy to gather from the conversation of one of these gentlemen that he was not well-disposed to the idea of possibly one day becoming a Russian subject.

“‘What is your opinion of the wish which General Ignatieff is said to have expressed, about making Bulgaria independent of the Porte?’ I inquired.

“‘That would never do,’ replied one of my visitors, ‘we have difficulty enough, as it is, in keeping our people quiet in Armenia: they will be very indignant if the Christians in Europe are granted privileges which the Armenians in Asia are not permitted to share.’”

“‘The fact is,’ observed the other, ‘that we have no wish to become Russian subjects. Should this happen, we know very well what would be the result. We should not be permitted to use our own language, and considerable pressure would be brought to bear to induce us to change our religion. We are aware of what has been done to the Catholics in Poland; we have no wish to be treated in the same manner.’”

“‘What we require is similar treatment for all sects,’ observed the first speaker, ‘and that the word of a Christian when given in a court of law should be looked upon as evidence, and in the same light as a Mohammedan’s statement. If the Caimacans (Duputy Governors) and Cadis of the different towns in the interior were only compelled to do us justice in this respect, we should not have much cause to grumble. However, if the Russians were to go to Van, our fellow-countrymen would be ten times worse off than they are at present.’”*

76. Mr. Charles Williams writes from his personal observations in Asia Minor:—

“I believe it to be strictly true that the Christians throughout Anatolia and Armenia are far better off in point of privileges and personal security for their homes and property, in time of peace, than the followers of the Prophet. A brother of the quill, who served through the Bosnian campaign of 1876, told me that on one occasion when a murder had been committed, and clearly traced to the joint action of a Mussulman and a Christian, the local pacha hung the former out of hand on the nearest tree, but merely kept the Greek in prison for a few weeks. Being asked why he made the distinction, he replied, ‘I know one is as guilty as the other: but if I hung the Christian, I should be worried out of my life by half a dozen consuls, and held up to execration as the author of another atrocity by a hundred English newspapers.’”

“In like manner, the provincial rulers of Turkey in Asia are not only now and recently, but commonly, far more tender in dealing with the property and the liberty of Greeks, Armenians, Protestants,

* *On Horseback through Asia Minor*; by Captain Fred Burnaby. Vol. 1., pp. 23-24. London: 1877.

and Nestorians, than with those who are of the profession of Islam. It is on the latter that the heavy burden of finding, not only the men, but the bulk of the supplies for the army has been laid; and, like Consul-General Nixon, I have observed that in their dealings with Mussulmans, the Armenian traders and population generally give themselves airs of superiority, which are not justified either by their intelligence, their culture, their honesty, their manliness, or their sincerity. Captain Burnaby's opinion of these so-called Christians I thoroughly endorse, and I venture to add that they are not fit for the autonomy which is sought for them, and which would result, as regards the poorer among them, in lashing with scorpions instead of whips. The Christians exercise the freest possible liberty in Armenia. Their churches bear on high the symbol of the cross, and no attempt has for many years been made to restrict in any manner the observance of their forms and ceremonies. Whatever it may have been in the distant past, Islam is not now given to proselytism; and it tolerates the various bodies calling themselves Christians far more completely than the latter could ever be induced to treat each other. And be it also noted, that the Christians, though still given to occasional grumbling, and cherishing grievances that are little more than sentimental, dread nothing more than the permanent success of their self-constituted champions. In every class and in every community of Armenians that I have met with, there is a horror of Russian annexation of Eastern Turkey. In Erzeroum, it is true that there exists a nest of Armenians who, having been corrupted for many years by the almost open bribery of Mr. Obermüller's consulate, continue to work and plot and lie in the interest of their paymasters; but they are not more than a few dozen in number, and in any country but Turkey they would have been hung or sent to exile long ago as foul traitors. The great mass of the Armenian population desires nothing better than to be let alone, and to continue to share in the administration of the empire without bearing any of its personal burthens. They declare, without hesitation, that they want no Russian annexation, because Russia would make them soldiers; and if they have no great love for the Turks, they have still less for the hereditary foes of the Turks—especially those Armenians who, living in the eastern half of the Province, know what Russian Government in the Caucasus really is. If a plebiscite of the Christian population could be taken to-morrow throughout Armenia, without interference from Turkish officials on the one hand, and Russian agents on the other, I believe

92 *The incapacity of Armenia for self-government.*

not five per cent. of votes would be given for annexation to the overgrown empire of the Czar." *

77. The outbreak of the insurrection in Bulgaria, Bosnia, Herzgovina, and Montenegro, was the direct result of the Russian intrigue stirring up rebellions. But Armenia, with which only I am here concerned, neither revolted, nor took advantage of the late difficulties, notwithstanding its alleged longing after a change. There is no discontent among its citizens ; they raise no complaint, and attempt no revolt, unless it be at the instigation of treacherous neighbours. Bad as the Turks may have been, the Armenians are, in every respect, infinitely worse ; even if they aspired to self-government, they would be utterly unfit for it by their baseness and corruption, by their ignorance and savagery, and, above all things, by their implacable and mutual jealousies, and rancours of race and creed. This may explain the petition addressed by some of the Christian communities, through their ecclesiastical superiors, to the Porte, showing that the autonomy, or reforms, privileges and immunities to be bestowed on the proposals of European Powers on the slavs of Bosnia and Herzgovina would, if granted, have been fraught with danger to the Empire, as these new rights would have seemed a reward to rebel subjects or disloyal vassals for their undutifulness, and an encouragement to the discontented of other races and creeds to break the peace, seeking the same end by the same means, instead of trusting to the spontaneous magnanimity of their beloved Sultan for the redress of such grievances as might really exist.

* *Th. Armenian Campaign* ; by Charles Williams, pp. x.—xiii. *Introduction* London : 1878.

78. There is no doubt that there exists mutual hatred and intolerance between the Turks and Armenians. The Turks entertain social contempt and despite towards the Armenians. Neither the Sultan, nor the Porte, nor Islam is responsible or answerable to this state of social contempt towards the Armenians. This feeling of dislike proceeds not from any religious fanaticism, but may be traced either to the Eastern church or the moral degradation of the Armenians.

"If the Turk despises the Rayahs," write Captain St. Clair and Charles Brophy, the joint authors of *The Twelve Years' Study of the Eastern Question*, "it is not because they are Christians, for he considers the religion of Christ as next best to his own, but on account of their character and morals; and in this he is right, for the most sensitive Rayahphile, after a year's residence among the professors of the Greek rite, will hardly be able to deny that in all points, *even that of Christianity*, the Eastern Christian is far inferior to the follower of Mahomet *" †

The Reverend Henry Fenshawe Tozer, in describing the relations of Mohammadans and Christians in Turkish Armenia and Asia Minor, in the conversation he held with the American missionaries, Messrs. Perry and Hubbard, writes :—

"When I asked whether a Christian's evidence was received in the law courts, the reply was in the negative. At the same time Mr. Perry disclaimed all personal preference for the Christians, for in the ordinary affairs of life the Mahometans, he said, were more agreeable to deal with." ‡

* "A Turk will never use the word 'giaour' to a Bulgarian Roman Catholic, because these people are, as a general rule, Christians, which the other Bulgarians are certainly *not*. The friendly feelings of Turks and Catholics ought to cause statesmen to think, because it is a proof not of an alliance between Rome and the Porte, but of tolerance of real Christianity by the Mussulman."

† *Twelve Years' Study of the Eastern Question in Bulgaria* : page 191. London : 1877

‡ *Turkish Armenia and Eastern Asia Minor*, by the Rev. Henry Fenshawe Tozer, page 182. London : 1881.

Captain Burnaby in his travels through Asia Minor narrates the so-called fanaticism of the Turks towards the Armenians, and justifying their social degradation, he writes:—

“A great fire had taken place in Sivrisa, a short time before. Damage had been done to the Christian inhabitants to the amount of thirty million piastres. The Turks did not willingly receive the Armenians into their houses, but when they did so, subsequently threw their mattresses out of the window, saying that they had been defiled by the contact of a *giaour's* body. This was mentioned to show the fanaticism of the Turks.

“However, during my subsequent travels in Armenia, the impression gradually dawned upon my mind that the Turks were, first, all very wise not to wish to receive the Armenians into their houses: and secondly, if they had been good-natured enough to do so, to destroy the mattresses after the departure of their guests. The Armenians in their habits of body are filthy to the last degree. Their houses and clothes are infested with vermin. The Turks, on the contrary are much cleaner, and are most particular about the use of the bath. An Englishman would not be pleased if his house became filled with what it is not necessary here to mention. If he did under such circumstance admit strangers, he would probably destroy their bedding the moment that they departed.”*

Mr. Farley quotes the opinion of Mr. Arnold, the late editor of the *Echo*, from *his Letters from the Levant*:—

“I have no patience with that cynical obstinacy, which, without examination, lauds Mahommedan practices as more just than those of Christian countries. If I had to choose between dealing with Christians or Turks in Stamboul, unhesitatingly I would prefer the Moslem as generally the more honest and straightforward. But if I had to make choice between the Christian and the Jew, I would for the same reason prefer the Christian. What does this prove? Certainly not that Mohommedanism is better than Christianity; but rather that the lordly Turk, in his long-assured mastery, is not forced to the debasing expedients which have become ingrained upon the character of the

* *On Horseback through Asia Minor*; by Captain Fried Burnaby; pp. 131-132 London: 1877.

subject Christian, and the Jew, still longer the object of oppression." *

79. The Rev. Mr. MacColl has quoted a long passage in an article in the December number of *The Nineteenth Century*, 1877, from a Mohammadan Common Law book called *Multek-ul-Ubher*, compiled by Sheikh Ibrahim Halebi, who died in 956 A. H., from the four text-books, *Kodooree*, *Mukhtár*, *Kanz*, and *Vikayah*,† and treating of the condition of Christian subjects, he (Mr. MacColl) has spoken of it as a transcript of a portion of Khalif Omar's *Amán*. Mr. MacColl further styles it the "perpetual condition of the Christian subjects of the Porte."‡ There are three points to be discussed here :—

1st.—Is the book *Multeká* the legal code of Turkey?

2nd.—Are the disabilities of the non-Moslem subjects contained in the *Multeká*, or other Common Law books, applied or applicable to the Christian fellow-subjects of the Turks?

3rd.—What is the authority for the social and political disabilities mentioned in the Common Law books?

80. *Firstly*—The *Multeká* is not the legal Code of Turkey. It is one of the several treatises compiled by different authors in every age, and in every Mohammadan country, comprising the Mohammadan Common Law. Such compilations are generally mere transcripts of one another, without possessing anything new or original in themselves. The *Multeká* is comprised, as I have already said, of the four

* *Turks and Christians*; by J. Lewis Farley, page 24. London: 1876.

† Hajee Khalifa's *Kashfuzzonoon*, page 326.

‡ *The Nineteenth Century*; December 1877, page 834.

following text-books, *Kodooree*, *Mukhtár*, *Kanz*, and *Vikayah*.

(1) *Kodooree* was compiled by Imám Abul Hasan Ahmed of Baghdad. Its name is *Mukhtasar* of *Kodooree*, or by *Kodooree*, but it is generally called *Kodooree*. The author died in 428 A. H. It is based on the Hanafee Law.

(2) *Mukhtár fi-furoo-il Hanafiá* was compiled by Abul Fazl Majduddin Abdullah Moosalee Hanafee, who died in 683 A. H.

(3) *Kanz*, whose full name is *Kanzuddakáik fi-furoo-il Hanafiá*. It was compiled by Abdullah ibn Ahmed Abul Barakát, generally known by the name of Háfizuddin Nasafee. He died in 710 A. H.

(4) *Vikayah*, or *Wikayatur ravaya-fi-masail-il Hidayah*, by Imám Máhmood Barhán-ush-Shariat ibn Sadrush-Sharea of Khamool. This work is an abridgement of the *Hedaya*, which was compiled by Ali Boorhánuddin of Murghinán, who died in 593 A. H. This work, *i.e.*, the *Hedaya*, is a commentary on the *Bidayah* by the same author. But in fact it contains the *Mukhtasar Kodooree* described above, and *Jame-as-Sagheer* of Imám Mohammad Shaibáni, who died in 187 A. H., and who was a disciple of Abu Hanifa.

All the books on the Mohammadan Common Law are divided into two parts, one treating of the divine worship called *Ibádát*, the other consisting of civil matters, called *Moamalát*. These books are read everywhere in the Mohammadan countries, and new law books, though mere transcripts of the former ones, are compiled by the Mohammadan students even in India, but they are not acted upon, especially in connection with the second part, or the civil portion of

them. This second section contains among other subjects the so-called legal disabilities of the non-Moslem fellow-subjects of Mohammadan sovereigns, given under the political chapter. But they are merely copied like dead-letters. Such is the case with the *Multeká*, *Durr-ul-Mukhtár*, or any other law books published in Turkey, or in any of the Mohammadan countries. The devotional part of the law books, and sometimes the legal one relating to civil condition, as marriage, divorce, inheritance, and contracts are frequently consulted by a Mussulman who vainly searches there to arrive at any definite result as to his doubts, for to his great disappointment everywhere he comes across discrepancies and diversities of opinions on the same subject, and all left unsettled as before. But the criminal, fiscal, and political chapters of the law books are nowhere in force in any of the Mohammadan countries, not even in Mecca and Medina, much less in Turkey.

81. *Secondly*—The so-called legal disabilities of the non-Moslem fellow subjects contained in the Mohammadan Common Law books are not applicable to the Christian subjects of Turkey, as in the first place they have no legal or religious authority, and, in the second, the several Hatts and Firmans of the reforming Sultans have cancelled them.

Successive Sultans of Turkey have proclaimed the establishment of equal rights to all the subjects of the Porte irrespective of their religion. The Khatte Shareef of 1839 did so. Its reforms were declared to be based on three cardinal principles:—

“1. Guarantees which assure to our subjects a perfect security in regard to their life, their honour, and their property.

"2. A regular system of assessing and collecting taxes.

"3. A system equally regular for the enlistment of soldiers, and the duration of their service."

"These imperial concessions," said the Khatt, "are extended to all our subjects without exception to whatever religion or sect they may belong."

"A perfect security," continued the Khatt, "is therefore granted by us to the inhabitants of the Empire, with regard to their life, their honour, and their fortune, as the sacred text of our law demands." *

Another Khatt, called Khatte Homayoun, of 1856, guaranteed to all subjects of the Empire, without distinction of classes, or of religion, for the security of their persons and property, and the preservation of their honour. The latest Imperial Iradé and Firman of 1875, as well as the latest Constitution proclaimed in 1876, have adhered to the same principle. The Constitution holds that all Ottomans are equal in the eyes of the law. They have the same rights and owe the same duties towards their country without prejudice as regards religion. All these Khatts, &c., are fully supported by the Korán, the authentic traditions from the Prophet, and the religious books, though it is not necessary to look for such authorities in political matters or in administrative measures except by way of instruction. "*Dimao-hoom ka-dimae-na va amvalo-hoom ka-am valena*," i.e., "Their (the non-Moslem fellow-subjects') blood is like our blood, and their property is like our property" is the religious maxim of the Mohamadan law, which guarantees the security of person,

* *The Rise and Decay of the Rule of Islam*; by Archibald J. Dunn, page 354. London: 1877.

property and honour of the non-Moslem fellow-subjects. Another maxim is, "*Lahum ma lilmoslem wa aleihim ma alal moslem*;" i.e., "it is for them what is for the Moslem, and it is against them what is against the Moslem," or, in other words, this is their perfect equality of rights and responsibilities, that is to say, the non-Moslem subjects have the same rights and owe the same duty as their fellow-subjects.*

82. The Rev. Mr. MacColl has said that—

"The Hatti Humayoun of 1856, which promised equality of rights to the Sultan's Christian subjects, never received the necessary *fetva*, nor indeed could it, for equality of rights is forbidden to the non-Mussulman by the Sacred Law." †

It is not necessary that the political acts of the Government should have the sanction of the Sheikh-ul-Islam. The office of the Sheikh-ul-Islam is not a religious office. He is neither an ecclesiastical nor a legal functionary. It was only in the ninth century of the Hejira, corresponding to the fifteenth of the Christian era, in the reign of Sultan Morad II., that the post of Sheikh-ul-Islam was created. ‡ The Sheikh is a mere creature of the Sultan, and holds his office

* "If those who are called upon to pay capitation-tax consent to do so, they then become entitled to the same protection and subject to the same rules as Mussulmans, because Alee has declared, 'Infidels agree to a capitation-tax only in order to render their blood the same as Mussulman blood, and their property the same as Mussulman property.'"—*The Hedaya or Guide: a Commentary on the Mussulman Laws*; translated by Charles Hamilton, Vol. II., page 144. London: MDCCXCI.

† *The Contemporary Review*, August 1881, p. 269.

‡ *Vide* extracts from *Al Fawaib*, Vol. VI., page 171. Mr. W. S. Blunt, in "*The Future of Islam*," page 73, seems to be somewhat incorrect in assigning the date of the creation of the post of Sheikh-ul-Islam to the time of Suleiman the Magnificent. Perhaps the office came into greater prominence in the reign of that Sultan.

at the pleasure of the latter. He is often referred to in legal or political matters, but only as a sort of Legal Remembrancer, and has no authority to annul or disallow any act of the Government. Supposing he did not sanction by his *fetva* the Hatti Humayoun of 1856, it mattered very little, as the provisions of the Hatt are supported and sanctioned by every Mohammadan Common Law book, by every religious principle, and by every precedent of good government. Was not the former Hatti Shareef of 1839 proclaimed by Sultan Abdul-Mejid ratifying and confirming the civil reforms of the late Sultan Mahmúd, and did it not establish equality between Christians and Mohammadans based on the "sacred text of the Law," as I have already quoted in para. 81? Was it not proclaimed in the presence of all the Ulema? Were they not made to take an oath to obey it? As the Hatti Humayoun of 1856 was proclaimed by the same Sultan who had established the Hatti Shareef of 1839, it was immaterial whether or not the Hatt of 1856 had the formal *fetva* of the Ulema or the Sheikh-ul-Islam. The Hatt of 1839 had full sanction of the Ulema, and had in itself reference to the "sacred text."

83. Sultan Mahmúd may have issued a protest, in 1827, against the interference of the Christian Powers in the administration of the Ottoman Empire, "the affairs of which," he said, "are conducted upon the principles of sacred legislation, and all the regulations of which are strictly connected with the principles of religion."* But the so-called legal *status* of the non-Moslem subjects of a Moslem Empire, or the awk-

* Quoted by Mr. MacColl in the *Contemporary Review*: August 1881, page 270, foot-note.

ward posture at the time of paying the tax,* are not founded on principles sanctioned by religion. The Rev. Mr. MacColl commits an unpardonable blunder when he confounds the condition and *status* of non-Moslem subjects, as laid down in some of the Common Law books, just in the same manner as some English penal laws are retained in the Statute book long after they have ceased to be operative, with the sacred law of Islam, by which is invariably meant the Korán, or the authentic sayings of the Prophet. Every body knows that the so-called *status* of the non-Moslem subjects, copied by Mr. MacColl from the *Multeká*, referred to above in para. 79, is neither in the Korán, nor in the authentic traditions of the Prophet, nor in the Common Law books exclusively compiled from the traditions.

84. *Thirdly*—The civil or political disabilities of the non-Moslem fellow-subjects of a Mohammadan country, as enumerated in the Mohammadan Common Law books like the *Multeká* or the *Hedaya*,† are merely gratuitous, and have no legal or religious authority for their

* *Vide* para. 87

† “It behoves the *Imam* to make a distinction between *Mussulmans* and *Zimmees* in point both of *dress*, and of *equipage*. It is therefore not allowable to *Zimmees* to ride upon horses, or to use armour, or to use the same saddles, or wear the same garments or head-dress as *Mussulmans*, and it is written in the *Fama-Sagheer*, that *Zimmees* must be directed to wear the *Kisteef* *openly*, outside of their clothes: (the *Kisteef* is a woollen cord or belt which *Zimmees* wear round their waists on the outside of their garments): and also, that they must be directed, if they ride upon any animal, to provide themselves a saddle like the panniers of an ass.”—*The Hedaya or Guide: a Commentary on the Mussulman Laws*. Translated by Charles Hamilton, Vol. II., page 220.

It is to be noted that all these degrading conditions were intended to be observed only in the Moslem cities, and not in Moslem towns and villages.

support, and therefore no body calls them, and they cannot be called, "sacred or unchangeable laws regarding the perpetual condition of the Christian subjects." They are not enjoined in the Korán, and they are not to be found in any of the so many traditions—whether authentic or apocryphal, genuine or spurious—which are ascribed to the Prophet. None of the Mohammadan Common Law books, which are solely or chiefly based on traditions from Mohammad, or his companions, contain these alleged disabilities. The earliest Mohammadan Common Law book, chiefly based on traditions or *Hadeeses* from the Prophet, and on the usages of his companions and of the people of Medina, was compiled by Imám Malik (born 95 A. H., died 179 A. H.), in the second century. He is one of the founders of the four schools of Mohammadan jurisprudence. That book, and even others of as recent a date as the present century, as, for instance, *Muntak-al-Akhhbár*, compiled by Abu Mohammad-al-Makki, who died in 437 A. H., and *Durar-ul-Bahiyya*, by the Kázee-Kuzát Ali bin Mohammad Ashshoukání-al-Yemini, who died in 1255 A. H., do not recognize any such legal disabilities or any disgraceful enactments, or lowly condition of a non-Moslem subject under a Mohammadan rule.

85. The social or legal disabilities of the *Ahluz-zimma*, or the non-Moslem protected subjects in the Mohammadan law-books, are traced only to Khálid, and Omar the second Khalif. It is related in the Fatoohish Shám, or the *Conquest of Syria*, commonly ascribed to Wákidi, that when Khálid conquered Alexandria he imposed several conditions on the people thereof, among which were the following:—

That they must not ride animals, and must not

build their houses higher than those of the Moslems; that they must not speak louder than the Mohamadans; that they should not build a church or synagogue, or repair them if dilapidated; that they should humble themselves before Moslems; that they should bind their *zonnars* on their girdles to show their religion, and that they should not exhibit bell or cross.* But what Khálid did, could not be a law, much less a sacred law unchangeable and inviolable. He had no authority of any kind, and besides he was a soldier unscrupulously cruel and rude.

86. The distinctions in point of dress and equipage alleged to have been imposed by Omar, the second Khalif, on the Christian subjects—if it be proved that he did so, as the traditions are not authentic and trustworthy—were special measures against certain classes of Christian subjects, inferior indeed in their sternness and severity to the English penal laws against the Romanists or Papists, † and which by no means are unalterable or sacred. The laws enacted by Omar only amounted to this, that the Zimmees, or the protected non-Moslem subjects, had to wear a leaden ring ‡ round their necks, and the front of their head was to be shaven, together with an order that they should wear a narrow strip

* *Conquest of Syria*, Vol. II., page 96.

† "Among other disabilities the Roman Catholics were excluded from corporate offices, 1667; from Parliament, 1691, forbidden to marry Protestants, 1708; to possess arms, 1695; &c."—*Haydn's Dictionary of Dates*, Article *Roman Catholics*.

‡ This ring reminds me of the Statute of Edward VI. even as late as the sixteenth century, who had enacted that all the vagabonds should be made slaves, and should wear a ring of iron round their necks, arms, or legs.—(*Blackstone's Commentaries on the Laws of England*, Vol. IV., page 458. London: 1841. *Hadyn's Dictionary of Dates*, page 662.)

round their girdles. * Now this was not intended as a mark of public disgrace, as every man could manage to hide the ring round the neck and cover the shaven front. It was only intended to preserve a distinguishing mark between a Moslem and a non-Moslem subject when they mixed together, having no other national dress than a common one, as in public baths. Besides, these were special conditions, and had nothing to do with the state of non-Moslem subjects in general. Imám Noavee, who was a first-class jurist in the seventh century, writes in his *Minháj* regarding a Zimmee:—"When he enters a public bath, where there are Moslems, or takes off his clothes there, a ring of iron or of lead is to be put round his neck." † Now taking it for granted that Omar once framed such a law, it is obvious that it was a local one. Moreover he had no legal authority, in consequence of which his law is not deemed sacred or unchangeable. He was no more than a Khalif, like the other Khalifs and Sultans who succeeded him. The utmost that can be said in his favour is this, that he was a righteous Khalif, while the rest have been either righteous Khalifs or despotic monarchs. He had no religious authority to make a law, religiously binding on and sacred to all the Moslems; and his administrative measures carried no weight of sacred or divine sanction with them for the future Khalifs or Sultans.

87. The distinction ordered by Omar, the second Khalif, in the dress and equipage of the non-Moslem fellow-subjects, was not imposed out of any motives of

* *Baihakee apud Nailul Autár: Commentary of Muntakal Akhbár;* by Kázee Shaukánée, Vol. VII., page 273. Compare Soyootee in his *History of Egypt and Cairo*, Hasnûl-Moházera fi Akhbár-il-Misr-val-Káhira (Cairo), Vol. I., Chapter on "Tribute," page 68.

† Vide *Tuhfatul Muhtáj fi Sharah Minháj*, Vol. IV., page 175.

intolerance, jealousy or hatred entertained towards them by him. He always kept steadily in his view the superiority of the Arab race in its purity over all other people. His policy, as well as that of the other Khalifs, was to maintain the Arabs as the dominant and warlike race, distinctly separate and excluded from foreign admixture. Possessed with this idea of keeping the Arabs as pure as possible, Omar promulgated several laws. He issued a decree which prohibited all Arabs, beyond the boundaries of Arabia, from acquiring property or pursuing agriculture in a conquered country, and for the same reason he expelled the Jews and Christians from certain districts of Arabia. He also forbade the Arabs being made slaves either by purchase or by misfortunes of war. The Arabs were not to learn or speak foreign tongues, and Christians were not to be permitted to read Arabic or write in the Arabic character. All these measures showed that Omar endeavoured to render the distinction between the Arabs and other races as wide and as permanent as possible. To carry out this policy still more effectually, he enacted certain distinctions in the dress and equipage of the non-Moslem fellow-subjects of the Arabs which the Rev. Mr. MacColl considers to have been disgraceful and derogatory. But it was merely to mark a race distinction. The Khalifs were not successful in this policy, and it is not applicable to Turkey, as there is no pure Arab race there to be held aloof from the others. The author of an interesting article in the *Edinburgh Review* of April 1882, entitled "The Empire of the Khalifs," says:—

"Some weight has been attached to the fact that a distinctive dress had to be worn by the Christians, but this mark of difference was not

intended as a badge of inferiority merely, but as necessary to distinguish the several sects." *

88. The Rev. Mr. MacColl quotes from the *Multeká*, the position of a Zimmee or non-Moslem subject at the time of his paying the tribute, as follows:—

"He must pay the tribute standing, while the collector sits. When the collector takes tribute from him, he should treat him very harshly, as by shaking him, beating him on the breast, or even dragging him on the ground; and should say to him at the same time, 'Give the tribute, O Zimmi; O enemy of Allah,' and this he shall do in order to degrade and disgrace him." †

He calls this the state of law as regards the Christians in Turkey. This enactment of the Common Law is condemned by every judicious Mohammadan jurist, while every body knows that these laws were never in practice, and that they retain their place in the Common Law books only as dead letters, or bad statutes preserved long after they have fallen into desuetude. Some have gone so far as to copy and condemn them in their compilations of Common Law books. Imám Noavee, in the seventh century of the Hejira, has also condemned this particular law. After quoting the above description in his *Minháǰ*, he says:—

"This position is void, and to assert its *Istihbáb* or being preferable, is an *Ashadd* (intensest) fault."

* *The Edinburgh Review*, No. 318, for April 1882, Article III., *Culturgeschichte des Orients unter den Khalifen*. Von A. von Kremer. Zwei Bande, Wien: 1875.

I am much indebted to the author of the above article for the information regarding the policy of Omar in this para. I have preferred to borrow from the article to giving several references to the historical, traditional, and original authorities.

† *The Nineteenth Century*, December 1877, page 834 Major Osborn has also given a similar statement in his *Islam under the Arabs*, pp. 379, 380. London: 1876.

Imám Shahábudeen Ahmed bin Hajr Haitamee Makki, who died in 975 A. H., in his commentary of the above work, writes :—

“ This position is void, as it has no foundation in the *Soonnah*, nor was it practised by any of the Khalifs, and consequently it is plainly stated in the *Omm*, that it (the tribute) must be taken politely, *i.e.*, with benignity, without causing hurt to any one, and without using bad language. Their humiliation * is only this, that they are made to obey the law, but are not to be assaulted or maltreated. As it is an ill-treatment without any reason, it is unlawful so to do.”

89. The work *Omm* referred to above is by Imám Shafae, one of the founders of the four orthodox schools of Mohammadan jurisprudence, who flourished in the second century of the Hejira (born 150, died 204 A. H.). Now the Rev. Mr. MacColl will come

* “ *Humiliation*” is the word used in (Sura ix., 29) “ they pay tribute while they are humbled.” When rumours had reached Medina of warlike preparations and gatherings of the Roman troops on the Syrian frontier of Arabia to invade it the above-quoted verse was published, exhorting the Moslems to defend themselves and to repel the invading force. In that case it was enjoined that the enemy must be made to pay tribute or war indemnity, and be humiliated. But in the first place this verse has nothing to do with the non-Moslem subjects of a Moslem empire, and in the second place the words “ be humbled” have no idea of any of the disabilities enumerated by some of the writers on the Common Law. On the contrary, Mohammadan writers have strongly denounced any such idea to be conveyed in that word, *Saghiron*. Imám Shafae, the author of *Omm*, has already been quoted in the text. He says the “*Sighár*” or *humiliation* of the Christians is *only* this, that they should obey the law.

Hafiz Ibn-al-Kayyim, who flourished in the first half of the eighth century, and who died in 751 A. H., says, referring to the position of paying tribute as quoted by the Rev. Mr. MacColl, that “ there is no ground for this, nor the verse requires so. And this has neither been related from the Prophet, nor from his companions. The more correct interpretation of the word ‘*Sighár*,’ *i. e.*, ‘ humiliation’ in the verse, is the enforcement of the law on them, and the levying of tribute. This is in itself a humiliation, and this opinion has been corroborated by Shafae.”

Vide Navvab Siddik Hasan of Bhopal’s *Fathul Bayán*; Part I., page 237.

to know that this absurd and ridiculous position which he wrongly makes out to be the *status* of the Christians of Turkey was condemned by Imám Shafae as early as the second century, and again by Imám Noavee in the seventh century, all long before the author of the *Multeká* (who flourished in the tenth century of the Hejira), and by Ibn Hajr Makki, a contemporary of Ibrahim Halebi, the author of the *Multeká*.

90. A recent Hanafite author and legist of celebrity in the Syrian, Egyptian, and Turkish schools, of the present century, named Ibn Ábideen Mohammad Amín, the annotator of *Durr-ul-Mukhtár*, writes in his *Radd-ul-Muhtár* that the author of the *Hedaya*, when he says, "that according to one tradition the collector is to seize him by the throat and shake him, saying 'Pay your tax, Zimmee!' is not certain of it, and does not rely upon it." *

Again, the same author says :—

"It is prohibited to call him, 'O Infidel,' and it is also forbidden to seize him by his collar, to shake him, and to slap him. Such a treatment will no doubt cause him annoyance and hence some of the Shafeite critics have rejected it on the plea that it has no foundation in the *Sonnat*, nor was it practised by any of the righteous Khalifs."

Now I hope the Rev. MacColl will calmly review his assertion with an impartial and unprejudiced mind, and will find that the injunction with regard to the manner of taking or receiving the tax under Mohammadan rule, or under the Mohammadan Common Law which he has copied, is a mere dead letter, only to be found in some of the Common Law books, and that it has never been in force, and that the more learned Mohammadan authors have denounced it as unlawful in their works.

* *Radd-ul-Muhtár*, Vol. III., page 471.

PART II.

REFORMS

SOCIAL.

PART II.



Reforms Social.

91. Having shown how futile and unsubstantial are the grounds on which the Rev. Mr. MacColl argues as to the hopeless task of introducing innovations and improvements in a Mussulman state, I will now test the grounds for the utter despondence he professes to feel for any reasonable reforms being introduced into Moslem society as it now exists, and try to establish that had he been guided by the hallowed tenets of the Korán, of which he seems to be so wholly ignorant, he would have left me no room for this present refutation.

The Reverend gentleman has recorded the following sweeping remark :—

“ Apart from its attitude towards subject races, Mohamedanism carries in its bosom three incurable vices which, being of the essence of the system, bar for ever all possibility of reform. These are the degradation of woman, and the institution of slavery : the imprisonment of the human intellect within the narrow circle of knowledge possessed by an able and uncultivated Bedouin of the sixth century ; the inevitable penalty of death for forsaking Islam.” *

I will review all these so-called irremediable “ vices” in the system of Islam.

The Position of Women.

92. The position of woman was ameliorated to a greater degree by the mission of Mohammad than it might have been expected by the dispensations of all reformers and prophets prior to him. Before the social amendments introduced by Mohammad throughout Arabia, an unlimited license of polygamy and capricious divorces

* The August *Contemporary Review*, page 278. 1881.

together with a revolting system of concubinage had been prevalent. Some tribes had the nefarious practice of murdering their infant daughters to avoid the disgrace of being fathers-in-law, and those girls who escaped the horrible doom of their fathers never received any inheritance from them at their death. There were also some other tribes whose people were allowed by custom to marry their fathers' widows, as well as two sisters at one and the same time. The wives of a deceased father were in the eye of his surviving sons a sort of goods and chattels or personal possessions void of life and humanity. They had no respect for the gentle sex, nor showed them any reverence while addressing them; and some, the most savage of them all, went the length of slandering virtuous women with an unbridled and licentious tongue. The dress and demeanour of the females themselves stood in need of improvement. Female orphans, when young, were maltreated by their guardians, who used to marry a great number of them in order to obtain their property, and then to forsake them in an impoverished state, forlorn and friendless. The Kórán gradually improved and elevated the degraded condition of women by curtailing in the first place the unlimited plurality of wives to four, and even this latitude was made strictly conditional on the husband feeling confident that he could deal justly—equitably by them all; and, in the second place, declaring it impossible to deal *equitably* with more than one wife even if men "would fain do so," and thus virtually abolishing polygamy.

93. The new connubial laws imposed by the Prophet of Islam on his followers suppressed the facility of divorce by certain wise, judicious, and discouraging restrictions,

reasonable and consonant to the interests of the parties concerned. The Korán advised and exhorted the Arabs to refrain from their evil practices regarding their wives. Mohammad abolished the institution of concubinage by doing away with slavery,* and countenancing marriage with the then existing female slaves otherwise destined to be concubines. † But against the murder of infant daughters his invectives were trenchant in the highest degree. He abrogated it by reprimanding this unnatural vice in the Korán, and threatening its perpetrators with the future punishment awaiting their crime. ‡ Thus was infanticide exterminated out of Arabia and all parts of the Mohammadan world. The law of inheritance was established for the first time in the Korán in the interest of females throughout Arabia. § Marrying father's widows, and two sisters at one and the same time, were terribly denounced by Mohammad as heinous offences, ¶ and widows were no more to be disposed of as a part of their deceased husband's possessions. ||

Men were enjoined to treat the sex with deference,** and perfect reverence was prescribed to be observed in speaking to them. The suppression of slander was the next subject that engaged the Prophet's attention, and he ordained corporeal punishment on those who calumniated virtuous women. †† Reforms were also introduced in the dress and general deportment of

* Sura xlvii. 5.

† Sura iv. 29; lxx. 29, 30; xxiii. 5, 6.

‡ Sura vi. 152; xvii. 33; lxxxi. 8, 9.

§ Sura iv. 8.

¶ Sura iv. 26.

|| Sura iv. 23.

** Sura iv. 1.

†† Sura xxiv. 4, 6, 23.

women.* Persons entrusted with female orphans during their minority were inhibited from marrying their wards.†

All these beneficial measures were fraught with incalculable advantage to the debased condition of women who, by these innovations in their social sphere of life, were greatly relieved from the miseries and insults they had hitherto suffered at the hands of males.

94. Some verses of the Korán bearing on the subjects above treated are given below :—

1. O Men! fear your Lord, who hath created you of one soul, and of him created his wife, and from these twain hath spread abroad so many men and women. And fear ye God, in whose *name* ye ask mutual favours—and respect women. Verily is God watching you!

3. And if ye are apprehensive that ye shall not deal fairly with orphans, then, of *other* women who seem good in your eyes, marry *but* two, or three, or four; and if ye *still* fear that ye shall not act equitably, then one only: or the slaves whom ye have acquired: this will make justice on your part easier. And give women their dowry as a free gift, but if of their own free will they kindly give up aught thereof to you, then enjoy it as convenient, and profitable.

8. Men ought to have a part of what their parents and kindred leave, and women a part of what their parents and kindred leave: whether it be little or much, let them have a stated portion.

23. O Believers! it is not allowed you to be heirs of your wives against their will; nor to hinder them from marrying in order to take from them part of the dowry you had given them, unless they have been guilty of undoubted lewdness; but deal kindly with them; for if ye are estranged from them haply ye are estranged from that in which God hath placed abundant good.

24. And if ye be desirous to exchange one wife for another, and have given one of them a talent, make no deduction from it. Would ye take it by slandering her, and with manifest wrong?

25. How, moreover, could ye take it, when one of you hath gone in unto the other, and they have received from you a strict bond of union?

* Sura xxxiii. 59; xxiv. 31.

† Sura iv. 3 and 126.

26. And marry not women whom your fathers have married :—for this is a shame and hateful, and an evil way :—though what is past may be allowed.

29. And whoever of you is not rich enough to marry free believing women, then let him marry such of your believing maidens as have fallen into your hands as slaves; God well knoweth your faith. Ye are sprung the one from the other. Marry them then, with the leave of their masters, and give them a fair dower: but let them be chaste and free from fornication, and not entertainers of lovers.

38. Men are superior to women on account of the qualities with which God hath gifted the one above the other, and on account of the outlay *they make* from their substance *for them*. Virtuous women are obedient, careful during the *husband's absence*, because God hath of them been careful. But chide those for whose refractoriness ye have cause to fear; remove them into sleeping-chambers apart, and scourge* them: but if they are obedient to you, then seek not occasion against them: Verily God is High, Great!

39. And if ye fear a breach between *man and wife*, then send a judge *chosen* from his family, and a judge *chosen* from her family; if they are desirous of agreement, God will effect a reconciliation between them: Verily, God is knowing, apprised of all!

126. Moreover, they will consult thee in regard to women: Say: God hath instructed you about them; and His will is rehearsed to you, in the Book, concerning female orphans to whom ye give not their legal due, and whom you refuse to marry; also with regard to weak children: and that ye deal with fairness towards orphans. Ye cannot do a good action, but verily God knoweth it.

127. And if a wife fear ill usage or aversion on the part of her husband, then shall it be no fault in them, if they can agree with mutual agreement, for agreement is best. *Men's* souls are prone to avarice, but if ye act kindly and piously, then verily your actions are not unnoticed by God!

128. And ye may not have it at all in your power to treat your wives with equal justice, even though you fain would do so: but yield not wholly to disinclination, so that ye leave one of them as it were in suspense: if ye come to an understanding, and act in the fear of God, then verily God is Forgiving, Merciful.

129. But if they separate, God can compensate both out of His abundance; for God is Vast, Wise.—*Sura iv.*

* See para. 99.

152. Say: Come, I will rehearse what your Lord hath made binding on you—that ye assign not aught to Him as sharers of His divine honour, and that ye be good to your parents; *and* that ye slay not your children because of poverty—for them and for you will We provide: and that ye come not near to pollutions outward and inward: and that ye slay not any one whom God hath forbidden you, unless for a just cause. This hath He enjoined on you: haply ye will understand.—*Sura vi.*

33. Moreover, kill not your children for fear of want: for them and for you will We provide. Verily, the killing them is a great wickedness.—*Sura xvii.*

4. They who defame virtuous women, and bring not four witnesses, scourge them with fourscore stripes, and receive ye not their testimony for ever, for these are impious persons.

23. Verily, they who throw out charges against virtuous *but* careless women, *who yet are* believers, are cursed in this world and in the world to come, and a terrible punishment doth await them.

31. And speak to the believing women that they refrain their looks, and observe continence; and that they display not their ornaments, except those which are external; and that they draw their kerchiefs over their bosoms, and display not their ornaments, except to their husbands or their fathers, or their husbands' fathers, or their sons or their husbands' sons, or their brothers, or their brothers' sons, or their sisters' sons, or their women, or their slaves, or male domestics who have no natural force, or to children who note not women's nakedness. And let them not strike their feet together, so as to discover their hidden ornaments. And be ye wholly turned to God, O ye Believers! haply it shall be well with you.—*Sura xxiv.*

59. O Prophet! Speak to thy wives and to thy daughters, and to the wives of the faithful, that they let their wrappers fall low. Thus will they more easily be known, and they will not be affronted. God is Indulgent, Merciful!—*Sura xxxiii.*

8. And . . . the damsel that hath been buried alive shall be asked,

9. For what crime she was put to death.—*Sura lxxxi.*

95. The general tenor of the Korán is to establish a perfect equality between the male and female sex, in their legal, social, and spiritual positions, except in physical strength, and possession of wealth.

228. * * * * The same is due to women as it is due from them, but men have precedence over them.—*Sura ii.*

36. * * * * The men shall have a portion according to their deserts, and the women a portion according to their deserts.

38. Men are superior to women on account of the *qualities* with which God hath gifted the one above the other, and on account of the outlay *they make* from their substance *for them*. * * * —*Sura iv.*

35. Truly the men who resign themselves to God, and the women who resign themselves, and the believing men and the believing women and the devout men and the devout women, and the men of truth and the women of truth, and the patient men and the patient women, and the humble men and the humble women, and the men who give alms and the women who give alms, and the men who fast and the women who fast, and the chaste men and the chaste women, and the men and the women who oft remember God: for them hath God prepared forgiveness and a rich recompense.—*Sura xxxiii.*

Even these passages do not exhaust what Mohamad did to better the low *status* of females, for besides his promulgating stringent laws at first against polygamy, and putting restrictions upon the shameful levity of divorce, he stirred up in the minds of his followers the laudable sentiments of love and affection towards women, and inculcated in his Revelations the respect due to them, as well as precepts to secure the mutual comfort and happiness of husband and wife.

20. And one of his signs it is, that He hath created wives for you of your own species, that ye may dwell with them, and hath put love and tenderness between you. Herein truly are signs for those who reflect.—*Sura xxx.*

The social equality of both sexes is implied fully in the simile, “husbands are garments to their wives, and wives are garments to their husbands;” and the very word *Zoujain*, *couple* or *twain*, indicates the propriety of monogamy, and emphasizes the indissolubility of the marriage tie.

96. Compared with Paganism, Judaism, and even Christianity, Islam sanctioned for women a greater stride in civilization and liberty than they had enjoyed

prior to the mission of Mohammad. The Mosaic Law fell short of accomplishing any great good for the moral and social elevation of the Hebrew females, and the New Testament did comparatively nothing towards their worldly preferment. It is only the influence of the codes of the Roman Law, and the innate respect felt by the Teutonic nations for the female sex, and centuries of civilisation, which have raised woman to her proper position in European countries.* The condition of Christian women in Eastern Turkey, Syria, and Palestine is as intellectually and socially depressed, as that of their Mohammadan and semi-Pagan sisters in the East, or Asiatic countries.

97. The subordination, subjection, inferiority and degradation of women were generally believed in, and taught by the Jewish and early Christian fathers in conformity with the laws of the Bible. As the introduction of sin into the world was believed to have proceeded through the instrumentality of women, the blame of human vices lay at her door. Therefore she was considered to have brought on her own degradation by her own hands, and her condition of subordination was turned into subjection. It was also said to her of her husband, "he shall rule over thee" (Gen. iii. 16), a sentence which regarded as a prediction has been strikingly fulfilled in the position assigned to women in oriental countries.

"Shortly before the Christian era an important change took place in the views entertained on the question of marriage as affecting the spiritual and intellectual part of man's nature. . . . In the interval that elapsed between the Old and New Testament periods, a spirit of asceticism had been evolved. . . . The Essenes were the first to

* *Mohammed and Mohammedanism* ; by R. Bosworth Smith, M.A., page 243 London : 1876.

propound any doubts as to the propriety of marriage: some of them avoided it altogether, others availed themselves of it under restrictions (Joseph. B. J. II. 8, § 2, 13). Similar views were adopted by Therapeutae and at a later period by the Gnostics (Burton's *Lectures*, I. 214); thence they passed into the Christian Church, forming one of the distinctive tenets of Encratites (Burton, II. 161), and finally developing into the system of monachism."*

"Another injurious consequence, resulting, in a great measure, from asceticism, was a tendency to depreciate extremely the character and the position of women. In this tendency we may detect in part the influence of the earlier Jewish writings, in which an impartial observer may find evident traces of the common Oriental depreciation of women. The custom of purchase-money to the father of the bride was admitted.† Polygamy was authorised and practised by the wisest man on an enormous scale. A woman was regarded as the origin of human ills. A period of purification was appointed after the birth of every child; but, by a very significant provision, it was twice as long in the case of a female as of a male child. 'The badness of men,' a Jewish writer emphatically declared, 'is better than the goodness of women.' The types of female excellence exhibited in the early period of Jewish history are in general of a low order, and certainly far inferior to those of Roman history or Greek poetry; and the warmest eulogy of a woman in the Old Testament is probably that which was bestowed upon her who, with circumstances of the most aggravated treachery, had murdered the sleeping fugitive who had taken refuge under her roof.

"The combined influence of the Jewish writings, and of that ascetic feeling which treated women as the chief source of temptation to man, was shown in those fierce invectives, which form so conspicuous and so grotesque a portion of the writings of the Fathers, and which contrast so curiously with the adulation bestowed upon particular members of the sex. Woman was represented as the door of hell, as the mother of all human ills. She should be ashamed at the very thought that she is a woman. She should live in continual penance, on account of the curses she has brought upon the world. She should be ashamed of her dress, for it is memorial of her fall. She should be especially ashamed of her beauty, for it is the most potent instrument of the

* Smith's *Dictionary of the Bible*, Vol. II. *Vide* Art. Marriage, pp. 242-243. London: 1863.

† The Korán abolished this custom.—C. A.

dæmon. Physical beauty was indeed perpetually the theme of ecclesiastical denunciations, though one singular exception seems to have been made; for it has been observed that in the middle ages the personal beauty of bishops was continually noticed upon their tombs. Women were even forbidden by a provincial Council, in the sixth century, on account of their impurity, to receive the Eucharist into their naked hands. Their essentially subordinate position was continually maintained.

"It is probable that this teaching had its part in determining the principles of legislation concerning the sex. The Pagan laws during the Empire had been continually repealing the old disabilities of women, and the legislative movement in their favour continued with unabated force from Constantine to Justinian, and appeared also in some of the early laws of the barbarians. But in the whole feudal legislation women were placed in a much lower legal position than in the Pagan Empire. In addition to the personal restrictions which grew necessarily out of the Catholic doctrines concerning divorce, and concerning the subordination of the weaker sex, we find numerous and stringent enactments, which rendered it impossible for women to succeed to any considerable amount of property, and which almost reduced them to the alternative of marriage or a nunnery. The complete inferiority of the sex was maintained by the law; and that generous public opinion which in Rome had frequently revolted against the injustice done to girls in depriving them of the greater part of the inheritance of their fathers, totally disappeared. Wherever the canon law has been the basis of legislation, we find laws of succession sacrificing the interests of daughters, and of wives, and a state of public opinion which has been formed and regulated by these laws; nor was any serious attempt made to abolish them till the close of the last century. The French revolutionists, though rejecting the proposal of Siéyès and Condorcet to accord political emancipation to women, established at least an equal succession of sons and daughters, and thus initiated a great reformation of both law and opinion, which sooner or later must traverse the world," *

98. Mr Bosworth Smith, while admitting and commending the limitation of the unbounded license of polygamy, and the absolute recklessness of the

* Lecky's *History of European Morals from Augustus to Charlemagne*. Vol. II., Chapter V., pp. 337-340.

Eastern divorce, imposed by Mohammad, and the strong moral sentiment aroused by his laws afterwards, says :—

“I do not forget, on the other hand, that Mohammed authorised the corporal punishment of the wife by the husband in extreme cases, provided it was done with moderation ; that he allowed or enjoined the seclusion of women ; that he relaxed in his own behalf the restriction with regard to polygamy which he imposed on others, and that he allowed concubinage with captives taken in war ; and I fully admit that his followers have been far more ready to imitate and obey him in these, the defective part of his teaching and example, than in the more elevated ones ; but I say confidently that, compared with Paganism, and even with Judaism, Mohammed gave women a great advance on their previous position, and so has deserved well of them.” *

I am sorry Mr. Bosworth Smith has been led away by the common and popular notions on these points of defects as he calls them, and has not judiciously investigated the charges as he has done in other cases.

99. (1.) That Mohammad had authorized the corporal punishment of refractory wives by their husbands in extreme cases (*Sura* iv. 38), is true, but it is also a fact worthy of note that this had been the case only during the early stage of the patriarchal form of government† at Medina, when there were no established tribunals of justice or judges, and the head of the family was the only domestic judge. But as soon as the form was changed, when tribunals were

* “*Mohammed and Mohammedanism*,” page 242: Lectures delivered at the Royal Institution of Great Britain in February and March 1874 ; by R. Bosworth Smith, M.A. London : 1876.

† “Aulus Gellius has preserved a passage in which Cato observes, ‘that the husband has an absolute authority over his wife ; it is for him to condemn and punish her, if she has been guilty of any shameful act, such as drinking wine or committing adultery.’”—*History of European Morals from Augustus to Charlemagne* ; by W. E. H. Lecky, M. A., Vol. II., pp. 93-94.

122. Seclusion of women not enjoined by the Korán.

created, and when a systematic administration of justice was carried on, the power given to the husband was abolished, and the contending parties, *i.e.* husband and wife, were required to appeal to the judges, prohibiting the former from taking the law into his own hands. The very next verse, 39, abolishes the former system of husbands having power of beating their wives. The verse is as follows:—

39. And if ye fear a breach between *man and wife*, then send a judge *chosen* from his family and a judge *chosen* from her family; if they are desirous of agreement, God will effect a reconciliation between them; verily, God is Knowing, apprised of all!—*Sura iv.*

100. (2) Mohammad did not allow or enjoin seclusion* of women. He made some improvements in their general dress and demeanour, giving them greater honour and respectability; and he made provisions to save them from the insults of the rude and uncultivated common folk, while going out in the streets. The following are the verses of the Korán on the subject:—

59. O Prophet! Speak to thy wives and to thy daughters, and to the wives of the faithful, that they let their wrappers † fall low. Thus will they more easily be known, and they will not be affronted. God is Indulgent, Merciful—*Sura xxxiii.*

31. And speak to the believing women, that they refrain their looks and observe continence; and that they display not their ornaments

* "The wives of the Greeks lived in almost absolute seclusion. They were usually married when very young. Their occupations were to weave, to spin, to embroider, to superintend the household, to care for their sick slaves. They lived in a special and retired part of the house. The more wealthy seldom went abroad, and never, except when accompanied by a female slave; never attended the public spectacles; received no male visitors except in the presence of their husbands, and had not even a seat at their own tables when male guests were there."—*Lecky's History of European Morals*, Vol. II., p. 287.

† The original word is "*jalábeeb*," plural of "*jilbáb*," which is wrongly translated "*veil*" by Rodwell. It means *women's outer wrapping garment*. Vide *Lane's Arabic Lexicon*, B. I., Pt. II., page 440. Sale translates it "*outer garment*"; "and H. Palmer "*outer wrapper*."

except those which are external, and that they draw their kerchiefs* over their bosoms.* * * *—Sura xxiv.

The Mohammadan Common Law † also takes particular care as to leave the face and hands of respectable females open and unmasked; for these parts of the body are not called "*Aurah*," or nakedness. The whole person of a female, except the face and hands, as well as the feet according to some, are "*Aurah*," and ought to be decently covered.

101. (3) As to the relaxation of the restriction of polygamy by Mohammad in his own behalf, it is simply a wrong and a false idea, and every European author labours under the same mistake. Mohammad did not contract any marriage after he had imposed the limitation of polygamy for the first time (Sura iv. 3) or had virtually abolished the same. (Compare verses 3 and 127, Sura iv.) All his former marriages contracted before the promulgation of the Law were allowed to him to be retained, whilst the other Moslems whose number of wives had exceeded the limit of four (and they were very few) had the option to separate

* The original word is "*khomr*," plural of "*khimar*," which means women's head-covering, a piece of cloth with which women cover their heads.—Lane's *Arabic Lexicon*, B. I., Pt. II., page 809. Sale and Rodwell are wrong in translating "*khomr*" by "*veils*." H. Palmer translates the word by "*kerchiefs*," which is the true meaning.

† "Book XLIV. Of Abominations.—A subject which involves a vast variety of frivolous matter, and must be considered chiefly in the light of a treatise upon *propriety* and *decorum*. In it is particularly exhibited the scrupulous attention paid to female modesty, and the avoidance of every act which may tend to violate it, even in thought. It is remarkable, however, that this does not amount to that *absolute seclusion* of women supposed by some writers. In fact, this seclusion is a result of *jealousy* or *pride*, and not of any *legal injunction*, as appears in this and several other parts of the *Hedaya*. Neither is it a custom universally prevalent in Mohammedan countries."—*The Hedaya or Guide*; translated by C. Hamilton. Vol. I., *Preliminary Discourse*, page lxxxi. . . .

themselves from the rest. This was the special prerogative of the Prophet (Sura xxxiii. 49, 50), because when he offered his wives separation on account of the Law restricting polygamy for the first time to four, they preferred to live with him and refused to be separated (Sura xxxiii. 28, 29, 51), and thus he was allowed to retain the former number, but, on the other hand, for this indulgence he was prohibited to marry any more in the place of the then existing wives, even in the cases of their death or separation, or even when the beauty of other women charmed him (Sura xxxiii. 52). He had only to retain what he already possessed, so there was no relaxation of the law in his favour. He was therefore privileged only so far, that he retained the former number, whilst the others had the option to put away any in excess of the number to which the new law limited them. But he had the disadvantage that any other woman was prohibited to him except those already possessed, whereas other persons were allowed the number of four wives with every liberty of substituting any woman with lawful marriage in the cases of demise or divorce of some of them, within the assigned limit. I think nobody after this will wrongly construe the privilege of Mohammad as a special relaxation of the law in his own favour.

The verse xxxiii. 52 referred to above is as follows:—

“It is not permitted thee to take *other* wives hereafter, nor to change thy present wives for other women, though their beauty charm thee, except those whom thou already possessest. And God watcheth all things.”

102. (4) It is a great mistake on the part of Mr. Bosworth Smith to say that Mohammad allowed concubinage with captives taken in war. I have fully discussed the subject of concubinage in paras. 152-163.

I nowhere find in the Korán Mohammad allowing concubinage with captives taken in war. He has everywhere enjoined marriage either with a free woman or a slave. That there was a good deal of slavery combined with concubinage in actual existence at the time, though not sanctioned by law, cannot be doubted, but everywhere marriage was plainly and impliedly enjoined in the Korán.

103. Mr. Bosworth Smith, in a foot-note to the quotation cited in para. 98, writes:—

“Sale maintains, and he is supported by many Muslim doctors, and, to all appearance, by the words of the Koran (Sura iv. 3), that under no circumstances is a man allowed to take his slaves as concubines, if he have the maximum number of four wives allowed him by the law. Mr. Lane maintains the contrary, and supports his argument by the authority of other Muslim doctors, and by the practice of some of the Companions of the Prophet; but it is surely dangerous to lay stress on this. No Musalman will contend that the Companions are examples to be followed.”

Exegetically Mr. Sale* is quite right in the interpretation of Sura iv. 3, and Mr. Lane is wrong in his translation of the verse. There is no idea of concubinage expressed or implied in the text of Sura iv. 3. It simply and exclusively confines the union of a man with a woman, either free or slave, to marriage only, and within the limited number. The fact is this

* I sought in vain the Rev. Wherry's notes on Sale's translation (*A Comprehensive Commentary on the Qurán*; by E. M. Wherry, M.A., Vol. I., London: Trübner & Co., 1882, page 206). He is as wrong as Mr. Muir whom he quotes. He writes, “Muir (*Life of Mahomet*, Vol. III., p. 303) says, ‘There is no limit, as supposed by Sale, to the number of slave-girls, with whom (irrespective of his four wives) a Moslem may, without any antecedent ceremony or any guarantee of continuance, cohabit.’ But Sale is exegetically right, and he appeals to the express words of the Korán, it is not a mere supposition of his, as I have shown in the text.”

that the verb "*Ankihoo*" of the imperative mood meaning "marry" is mentioned in the first sentence of the verse, and is *understood* in the two other sentences. Thus we are not authorized to place any other verb in these two sentences except what is put down in the first. Mr. Lane has committed the mistake of translating "*Ankihoo*" from "*Nikah*" as "*take*" in the first place instead of "*marry*," and then repeating the same word in parenthesis in the two other places. The verse runs thus :—

"Marry ("*Ankihoo*") of the women who please you, two, or three, or four, but if ye fear that ye cannot act equitably [to so many, marry] one; or [marry] those whom your right hands have acquired."

Mr. Lane translates thus :—

"Take in marriage of the women who please you, two, three, or four : but if ye fear that ye cannot act equitably, [to so many, take] one : or [take] those whom your right hands have acquired." (1) *†

But supposing Mohammad had allowed concubinage with captives taken in war, as Mr. Bosworth Smith asserts, then when he subsequently abolished slavery, and no captives taken in war were to be made slaves (Sura xlvii. 4 and 5), concubinage was also by implication abolished.

Polygamy.‡

104. Polygamy was the indispensable institution of the Arabs before and after the time of Mohammad.

* (1) Kur-án, Ch. IV. v. 3."

† *The Modern Egyptians*; by Lane. Vol. I., page 122. London : 1871.

‡ The account that has been handed down to us of Mohammad's contemporaneous marriages cannot be depended upon, as the biographers have only given us the various numbers vouched for by different authorities without coming to any determination as to what the actual number was. But there is no doubt that it exceeded four (compare Sura iii. v. 4, and Sura xxxiii. v. 48). It must be remembered, however, that all the marriages contracted by Mohammad, except one, took place in and after the fifty-fourth year of his age, and were almost all of them con-

It was no invention of the Prophet of Islam. He found it already deeply rooted in the soil of the Arabian society. For a time he availed himself largely of this social institution, but his sagacious mind soon became alive to its dangerous consequences. He had contracted several marriages only during his stay at Medina, that is during the interval of the seven or eight years of his remaining life. During the greater part of his life, till about the fifty-third year of his age, he had been a monogamist. The early years of his prophetic life were almost taken up with spiritual and moral reforms, at the same time suffering under heavy persecutions at Mecca, and defending himself against the superior numbers of his enemies who were attacking and besieging Medina, the city of his and his followers' refuge. Surrounded that he was with difficulties, the evils of polygamy did not fail to strike his iconoclastic mind,

tracted with distressed and destitute widows. No less than three were the widows of his followers who, under the pressure of persecution at Mecca, had emigrated with their wives to Abyssinia, and died there. The husbands of two others had died at Medina, in the actions fought in defence of Islam. To marry the helpless and homeless widows of friends, who have given their lives in one's cause, and thus to afford them lawful shelter and protection, was and is considered by the Arabs to be an honourable act of generosity and kindness. Lady Duff Gordon writes :—

"I heard a curious illustration of the Arab manners to-day. I met Hassan, the Janissary of the American Consulate, a very respectable good man. He told me he had another wife since last year. I asked, What for?

"It was the widow of his brother, who had always lived in the same house with him, like one family, and who died leaving two boys. She is neither young nor handsome, but he considered it his duty to provide for her and the children, and not let her marry a stranger. So you see polygamy is not always a sensual indulgence : and a man may practice greater self-sacrifice than by talking sentiments about deceased wives' sisters."—(*Letters from Egypt* : pp. 139-140. London : 1866.)

and he set to work to gradually mitigate and finally abolish the institution. This was at first an almost hopeless task, for the reforms he sought were uncongenial to the social constitution of a people he had to deal with. Although it may be pleaded that polygamy was suited to a race like the Arabs in the first stages of their development, and that restricted within certain limits, it might be the means of promoting a purer moral and social existence, yet it must be admitted that the institution is open to serious drawbacks, as Mohammad seems to have been fully aware. This first restriction was no doubt a great step in advance, and for those who could read between the lines, it was tantamount to a mandate in favour of monogamy. But seeing that his followers were not willing to read it in that light, he went a step further, and in his next commandment on the subject, accentuated what was implied in the first by declaring that it was not in human power to treat plurality of wives equitably, however much men might wish to do so.

105. The Koránic injunction about this is found in Sura iv. 3 and 128 * But the final and effectual step taken by Mohammad towards the abolition of this leading vice of the Arab community was his declaring in the Korán that no body could fulfil the condition of dealing *equitably* with more than one woman, though he "fain would do so."

"Certainly you have not in your power to treat your wives with equal justice even though you fain would do so."—*Sura* iv. 128.

This was the virtual abolition of polygamy. But the marriages already contracted by Mohammad and his followers were allowed to be held lawful, as they

* *Vide* paras. 93 and 103.

were performed in compliance with the recognized institution of Arab society. The then existing polygamists were however advised not to quite abandon some of their wives in favour of others in the concluding portion of the above quoted verse :—

“ But yield not wholly to disinclination, so that ye leave one of them as it were in suspense ; if ye come to an understanding, and act in the fear of God, then, verily, God is Forgiving, Merciful.”—*Sura* iv. 128.

106. Those writers are greatly mistaken who think that Mohammad sanctioned the marriage of four wives, or that in curtailing the unrestricted licentiousness which had prevailed in Arabia before him, he partially controlled, but firmly established the practice of polygamy, as if while lightening he rivetted the fetter ; and that in alleviating the evils of plurality of marriage he adopted it himself on the ground that he had received a divine privilege to do so. The restriction of the number of simultaneous marriages was only the first step and a temporary measure. The germ of its virtual abrogation lies in the almost impossible condition of dealing *equitably* with all wives, at the same time declaring men's inability to fulfil it. The practice was so deeply-rooted in Arabia and in other Oriental countries that all he could venture to do was by imposing obligatory behests in the Korán against it.

“ *If ye fear ye cannot act equitably with your wives then marry one only.*”—*Sura* iv. 3.

“ *Certainly it is not in your power to deal equitably with your wives, even ye fain would do so.*”—*Ibid.* 128.

He could not do more than this. No reformer or legislator can do more.

Divorce.

107. In the loose and uncemented society of the Arabs the facility of divorce was the salient and pre-

vailing phase of its evil. The husbands divorced their wives from a sudden caprice or whim, without assigning any reason, and without previous notice of a single hour to the woman thus put away. Some of them, thinking it a great dishonour to see their abandoned wives marrying others before their face, did not let them go after their fantastical separation with them, but reinstated them in their own houses, neglected and suspended. So capricious were they that at one time they would divorce them, and at another take them back; and continue doing so, time after time, without any compassion and in shameful disregard of the feeling of their innocent wives. Passion, interest, or frivolity suggested daily motives for a divorce. An unthought-of word, a whimsical sign, or an angry message might become harbingers of an entire separation. Such a maltreatment of wives engaged the attention of Mohammad at an early period of his mission, and he set to work to check and reform the abuse of the facility of divorce. In the early Medinite Suras he took every step, particular and general, temporary and permanent, to discourage this heinous practice. He pointed out in his Revelations the disgrace and injury attendant on the breach of the sacred tie of marriage to both the parties, and urged upon his followers that such a levity would destroy all mutual confidence, and inflame each trifling dispute in their social circles.

108. In the first place Mohammad reformed the abuse of *Eela*, which was a sort of separation given to his wife by a person with a vow of never approaching her till a certain time. Mohammad fixed the period of four months as the utmost limit of *Eela*, at the end of which they must either become reconciled, or resolve

upon a divorce. By this restriction the period of suspension was much shortened, and consequently the number of such cases was very much diminished. The early Moslems who practised *Eela* as an anti-Islamitic custom began to think it a profane and non-Moslem institution. Thus it resulted in some way to check the easiness with which divorces were obtainable in Arabia. The verse of the Korán on the subject runs thus:—

226. For those who intend to separate from their wives (*or make a vow of separation, Eela,*) shall be a period of waiting for four months; but if they go back from their purpose, then verily God is Gracious, Merciful.

227. And if they resolve on a divorce, then verily God is He who Heareth, Knoweth.—*Sura ii.*

109. The long-established and much-used formula of the *Jahili* or pagan institutions of the Arabs for effecting divorce was vehemently made null and void in the Korán. I mean the "*Zihár*." The word "*Zihár*" is derived from the word "*Zuhr*," which means "the back." In the *time of Ignorance, i.e.*, before the establishment of Islam, "*Zihár*" stood for divorce. They, the Arabs of the period of Ignorance, used to say to their wives (by a peculiarity in the Arabic idiom), "*You are to me like the back (zuhr) of my mother.*" The Korán cancelled the formula of divorce altogether, and imposed punishment for uttering such a falsehood.

The verses are:—

2. As to those who put away their wives *by saying*, "*Be thou to me as my mother's back*—their mothers they are not; they only are their mothers who gave them birth! and verily they utter a blameworthy saying and an untruth.

3. But truly, God is Forgiving, Indulgent.

4. And those who thus put away their wives, and afterwards would recall their words, must free a captive before they can come together

again. To this ye are warned to conform: and God is aware of what ye do.

5. And he who findeth not *a captive to set free*, shall fast two months in succession before they two come together. And he who shall not be able *to do so*, shall feed sixty poor men. This, that he may believe in God and his Apostle; and these are the statutes of God: and for the unbelievers is an active chastisement!—*Sura lviii.*

Under the Mohammadan Common Law, “*Zihár*” cannot occasion divorce, though a husband may intend so.*

The expiation is only for speaking untruth. “If the prohibition occasioned by ‘*Zihár*’ be violated, yet no additional penalty is incurred.”†

110. As there was no limit of divorces and temporary reconciliations, when the husbands were neither willing to have their wives, nor pleased to let them go to marry others, would divorce them and take them again, and thus run a similar course as long as they liked, Mohammad reduced the number of divorce and peace only to two, each with an interval of a long period for reconsideration, the third being irreversible, except under a revolting circumstance repugnant to the Arab honour and jealousy.

229. “Ye may divorce your wives twice: but after that ye must either retain them with kindness or put them away with benefits.”—*Sura ii.*

But if the husbands committed again the same arbitrary deed, that of divorcing their wives for the third time, they were not to settle their quarrel amicably as they had hitherto done. If a wife on her third divorce marry another husband, and become a widow soon after, she is not allowed to return to her former husband. But in case it may so happen that she be married to

* Grady's *Hedaya*, page 117. London: 1870.

† *Ibid.*

another, and notwithstanding all interdictions against divorce, she be divorced from her second husband, then only her former partner can marry her by a fresh marriage.

230. Then if the husband divorce her *a third time*, it is not lawful for him to take her again, until she shall have married another husband; and if he *also* divorce her then *shall* no blame *attach* to them if they return to each other, thinking that they can keep within the bounds *fixed* of God.—*Sura ii.*

This measure, however rough and coarse, was but a temporary one, and it made a marvellous effect upon the rude custom that had obtained in Arabia concerning divorce. This circumstance was very much disagreeable to the first husbands, and consequently it deterred all flighty divorces, and lessened the number of irrevocable separations. This condition was removed after its full effect had been gained.*

111. The payment of the dowry was strictly enforced in the case of divorce, but there was no legal limit to the amount of it. This also served as a preventive against the frequent occurrences of divorce.

237. It shall be no crime in you if ye divorce your wives so long as ye have not consummated the marriage, nor settled any dowry on them. And provide for them—he who is in easy circumstances according to his means, and he who is straitened, according to his means—with fairness. *This is* a duty for those who do what is right.

238. But if ye divorce them before consummation, and have already settled a dowry on them, *ye shall give them* half of what ye have settled, unless they make a release in whose hand is the marriage tie. But if ye make a release, it will be nearer akin to piety. And forget not generosity one towards another; verily God beholdeth your doings.—*Sura ii.*

48. O Believers! when ye marry believing women, and then divorce them before ye have consummated the marriage, ye have no term

* *Sura ii.*, 231, 232.

prescribed you, which ye must fulfil towards them, provide for them and dismiss them with a reputable dismissal.—*Sura xxxiii.*

23. O Believers! it is not allowed you to be heirs of your wives against their will; nor to hinder them from marrying in order to take from them part of the dowry you had given them, unless they have been guilty of undoubted lewdness; but deal kindly with them: for if ye are estranged from them, haply ye are estranged from that in which God hath placed abundant good.

24. And if ye be desirous to exchange one wife for another, and have given one of them a talent, make no deduction from it. Would ye take it by slandering her, and with manifest wrong?

25. How, moreover, could ye take it, when one of you hath gone in unto the other, and they have received from you a strict bond of union?—*Sura iv.*

112. Even under the circumstances of ill-treatment or cruelty on the part of the husband, or refractoriness on the part of the wife, as well as in the general breach and incompatibility between them, the Korán has not allowed divorce as an inevitable necessity.

38. . . . But chide those for whose refractoriness ye have cause to fear, remove them into sleeping-chambers apart, and scourge them*: but if they are obedient to you, then seek not occasion against them: verily, God is High, Great!

* This power was given only during the stage of the patriarchal form of government, when there were no tribunals or judges. The head of the family was the domestic judge. This was the characteristic of the patriarchal state of society. But as soon as this form or system was displaced by the republican form of the government, husbands and wives were required to appeal to judges and act upon their decisions. *Vide* the next verse. The *Motazalas*, an early and rational school of Islam, were of opinion that the order of a judge is in every case necessary to constitute a legal separation. A divorce, therefore, proceeding either from the husband or the wife, is held to be invalid until confirmed by or effected in the presence of the *Hákim-i-Shara*, with his sanction and approval; for, according to the *Mortazalas* "it is contrary to all the principles of public policy to allow man or woman to dissolve the marriage-tie at their own free will and desire."

(*Vide* "The Personal Law of the Mahommedans"; by Syed Ameer Ali Moulvi, M. A., LL.B., page 35.)

39. And if ye fear a breach between *man and wife*, then send a judge *chosen* from his family, and a judge *chosen* from her family ; if they are desirous of agreement, God will effect a reconciliation between them ; verily God is knowing, apprised of all !

127. And if a wife fear ill usage or aversion on the part of her husband, then shall it be no fault in them if they can agree with mutual agreement, for agreement is best. *Men's* souls are prone to avarice ; but if ye act kindly and piously, then verily, your actions are not unnoticed by God.

128. And ye may not have it at all in your power to treat your wives with equal justice, even though you fain would do so ; but yield not wholly to disinclination, so that ye leave one of them as it were in suspense ; if ye come to an understanding, and act in the fear of God, then verily, God is Forgiving, Merciful !

129. But if they separate, God can compensate both out of his abundance ; for God is Vast, Wise.—*Sura iv.*

113. Special measures were taken conducive of reconciliation between husbands and wives. The latter were not to be driven forth from their husbands' houses during the period of divorce. They were to be lodged wherever the husbands themselves lodged.

1. O Prophet ! when ye divorce women, divorce them at their special times. And reckon the time, and fear God your Lord. Put them not forth from their houses, nor let them go forth, unless they have committed a proven adultery. This is the precept of God ; and whoso transgresseth the precept of God, injureth his own self. Thou knowest not whether, after this, God may not cause something new to occur *which may bring you together again.*

2. And when they have reached their set time, then either keep them with kindness, or in kindness part from them. And take upright witnesses from among you, and offer straightforward witness before God. This is a caution for him who believeth in God and in the latter day. And whoso feareth God to him will He grant a *prosperous* issue, and will provide for him whence he reckoned not upon it.

6. Lodge *the divorced* wherever ye lodge, according to your means ; and distress them not by putting them to straits. And if they are pregnant then be at charges for them, until they are delivered of their burden ; and if they suckle your children, then pay them their hire

and consult among yourselves, and act generously. And if herein ye meet with obstacles, then let another female suckle for him.—*Sura lxxv.*

114. Mohammad prevented Zaid from divorcing his wife, and this has been clearly noticed in the Korán, as the example to be followed by all persons in their trying to prevent divorces.

37. And *remember* when thou saidst to him unto whom God hath shown favour, and to whom thou also hadst shown favour, “Keep thy wife to thy self, and fear God.”—*Sura xxxiii.**

I take here the opportunity of quoting the famous tradition of Mohammad, narrated in the collections of Dárkutni from Máaz bin Jabl.

“God has not created anything on earth which He likes better than the emancipation of slaves, nor has He created anything which He dislikes more than divorce.”—*Mishkat*, Book on Marriage, Chapter Divorce, Section 3.

115. These impediments as well as other conciliatory measures rendered separations more rare. Ample time was allowed for mature consideration in the hope of bringing about a happy termination (ii. 228, 229; lxxv. 1, 4). A very odious law, though only as a temporary measure, was enforced (ii. 230), which acted efficiently on the strongest feelings of the proud, jealous, and sensitive Arabs, and proved to be a powerful guarantee against the inconsiderate and thoughtless attempts at divorce. In the meantime the divorced wives were to be kept in the same house with their husbands. Two upright witnesses were to be

* J. M. Arnold, D.D., writes that the Prophet persuaded Zaid to divorce his wife (vide *Islam, its History, Character, and Relation to Christianity*; by John Muehleisen Arnold, D.D., London: 1874, page 110). This is a simply false and barefaced imposition on the verse referred to by him. *Sura xxxiii.* 39 most expressly relates that the Prophet prohibited Zaid from divorcing his wife, admonishing him to fear God and to keep her to himself.

called forth to testify the separation, and generally the husbands were exhorted to be placable, kind, affectionate, God-fearing, and forgiving. (iv. 23, 39, 127, 128). When all these checks and mild provisions, together with the general principles, proved effective in rendering the facility of divorce more scarce and deterred, the temporary obstructions most wise in their results were gradually dispensed with. And hence it is that in the latest legislation on the subject in the Korán, the circumstance of the possibility of the remarriage of a thrice-divorced wife with her former husband under the necessity of her being divorced by her second one is removed altogether.

231. And when ye divorce women, and they have reached the prescribed time, either retain them with generosity, or put them away with generosity: but retain them not by constraint so as to be unjust *towards them*. He who doth so, doth in fact injure himself. And make not the signs of God a jest; but remember God's favour toward you, and the Book and the Wisdom which He hath sent down to you for your warning, and fear God, and know that God hath knowledge of everything.

232. And when ye divorce your wives, and they have reached the prescribed time, hinder them not from marrying their husbands when they have agreed among themselves in an honourable way. This warning is for him among you who believeth in God and in the last day. This is most pure for you, and most decent. And God hath knowledge, but ye know not.—*Sura ii.*

Hence it was that Mohammad cursed both the person who intervened and the person for whom he intervened by marrying the thrice-divorced wife for the purpose of legalizing her reunion with her former husband. This tradition from the Prophet is narrated by Darmee through Abdullah bin Mas-ood, and by Ibn Májá through Ali, Ibn Abbás, and Akba bin Amir.

116. It must be remembered, and there are very few

persons who have bestowed attention on the subject, that even the short-lived measure mentioned in ii. 230; *i.e.*, the circumstance of an intervening marriage and separation for the reunion of a thrice-divorced wife was not a necessary condition to be fulfilled for the purpose of getting reunited. The reunion after three divorces, each of a considerably long interval and thoughtful consideration, was rendered irrevocable. There was no chance of a second coalition except under the circumstances that the thrice-divorced wife may marry another person who notwithstanding all preventions may chance to divorce her. It was not the intention of the Legislator to create a law under the influence of which females had to undergo the disgusting ordeal of being married and divorced by a temporary husband. Such a revolting breach of decorum, such a cruel violation of the modesty of an unoffending wife could not be allowed. It depended only on the surrounding circumstances, and was not made a necessary condition to be observed by the followers of Islam. It was well known that there could have been very few chances of this sort of divorce, as it was the essential motive of the Legislator to discourage, deter, and prevent divorce, and therefore it was impossible to get a temporary husband purposely hired to marry and divorce a wife, merely to make it lawful for her to reunite with her former husband.

117. It will appear from what has been stated in the foregoing paras., that it is a great mistake to suppose that Mohammad gave free allowance to the facility of divorce, or let it pass on the easiest terms. On the contrary, he tried his best to hinder such a practice as far as possible. He never permitted a hus-

band to divorce his wife without any misbehaviour on her part, without any legal procedure, or appearing before a tribunal of justice. All the rules and regulations mentioned in the Korán, specially those of later times in which separation is tolerated, are for the cases of extreme domestic discord, antipathy between the husband and wife, and their strong incompatibility to live together. It is only the Mohammadan Civil Law which has made the Law of Mohammad anything else but a mere abomination on this subject. Although the Mohammadan Civil Law admits respecting divorce that "it was originally forbidden and is still disapproved, but has been permitted for the avoidance of greater evils," * yet it is devoid of the obstructing but conciliatory spirit of the Korán. It takes no notice of the intentions and motives of the Korán regarding divorce, and has embodied in itself all vulgarity and looseness

* Baillie's *Digest of Moohummudan Law*: Book III., Chapter I., page 206. Second Edition. London: 1875.

That the facility of divorce did not produce as much mischief as is commonly supposed, will be apparent from the following extracts:—

"The latitude granted by the permission of polygamy, and the apparent facility of divorce, are not, it must be admitted, accordant with the strict principles of impartial justice; but the evil, I believe, exists chiefly in theory, and but little inconvenience is found to follow it in practice."

"Their (the husband and wife's) sentence of divorce is pronounced with as much facility as was repudiation among the Romans, in case of espousals. There is no occasion of any particular cause; mere whim is sufficient. I have already alluded to the small inconvenience which this facility produces in practice. Where conscientious and honourable feelings are insufficient to restrain a man from putting away his wife, without cause, the temporal impediments are by no means trifling. Dower is demandable on divorce, and, with a view to the prevention of such a contingency, it is usual to stipulate for a larger sum than can ever be in the power of the husband to pay."—(*Principles and Precedents of Moohummudan Law*; by W. H. Macnaghten, Esq., of the Bengal Civil Service, pp. xxii. and xxv.)

of the Arabian customs prevalent before Mohammad, letting all sorts of unprincipled separations between husbands and wives take their random course.*

118. It has been very often contested by Christian writers that Christ has prohibited divorce, and said—

..... Every one that putteth away his wife, saving for the cause of fornication, maketh her an adulteress : and whosoever shall marry her when she is put away committeth adultery.—*Matthew* v. 32.

..... Whosoever shall put away his wife, except for fornication, and shall marry another, committeth adultery : and he that marrieth her when she is put away committeth adultery.—*Matthew* xix. 9.

Whosoever shall put away his wife, and marry another, committeth adultery against her : and if she herself shall put away her husband, and marry another, she committeth adultery.—*Mark* x. 11, 12.

Every one that putteth away his wife, and marrieth another, committeth adultery : and he that marrieth one that is put away from a husband committeth adultery.—*Luke* xvi. 18.

I do not think Christ ever thought of interfering with the social and political institutions of former dispensations or of the country in which he lived.† In

* "The law," says Ibrâhîm Halebî, "gives to the man primarily the faculty of dissolving the marriage, if the wife, by her indocility or bad character, renders her married life unhappy : but in the absence of serious reasons no Mussulman can justify a divorce either in the eyes of religion or the law. If he abandon his wife or put her away from simple caprice, he draws upon himself the divine anger, for 'The curse of God,' said the Prophet, 'rests on him who repudiates his wife capriciously.'"—*Personal Law of the Mahommedans*. Syed Ameer Ali Moulvi, M.A., LL.B. London : 1880.

† The total prohibition of divorce, though now much defended by the Christians, was not originally imposed on Christian nations, upon utilitarian grounds, but was based upon the sacramental character of marriage.

"The absolute sinfulness of divorce was at the same time strenuously maintained by the Councils, which in this, as well as in many other points, differed widely from the civil law. Constantine restricted it to three cases of crime on the part of the husband, and three on the part of the wife ; but the habits of the people were too strong for his enactments, and, after one or two changes in the law, the full latitude of divorce reappeared in the Justinian Code. The Fathers, on the other hand,

denouncing the Divorce question which was put to him by his audience, he simply shared the public opinion regarding the scandalous divorce and marriage of Herod Antipás, which was already denounced by John the Baptist, and against which the public opinion was powerfully opposed. But that was not a case of *bonâ fide* divorce, based on strong grounds of want of mutual peace and harmony, of the irreconcilable character of the parties, and of the unbearable hatred towards each other, on which grounds the Korán, after trying every reconciliatory measure, moral, domestic, and legal, permits divorce. Nor was the case of any different interpretation from the law of Moses regarding divorce, who had permitted it on the ground of uncleanness or nakedness, "*Eravat*," in the wife, of which there were two interpretations. Hillel with his school interpreted the passage in the sense of divorce being lawful for any disgust felt by a husband towards his wife, and was exegetically correct; whereas the school of Shammai explained it to mean that divorce could only take place in the case of scandalous unchastity which was morally right, but exegetically wrong. The case

though they hesitated a little about the case of a divorce which followed an act of adultery on the part of the wife, had no hesitation whatever in pronouncing all other divorces to be criminal, and periods of penitential discipline were imposed upon Christians who availed themselves of the privileges of the civil law. For many centuries this duality of legislation continued. The barbarian laws restricted divorce by imposing severe fines on those who repudiated their wives. Charlemagne pronounced divorce to be criminal, but did not venture to make it penal, and he practised it himself. On the other hand, the Church threatened with excommunication, and in some cases actually launched its thunders against, those who were guilty of it. It was only in the twelfth century that the victory was definitely achieved, and the civil law, adopting the principle of the canon law, prohibited all divorce."—Lecky's *History of European Morals*, Vol. II., page 352.

was simply this, that Herod Antipás, the prince who ruled Galilee, while married to an innocent and undivorced wife, had wedded the guilty but still undivorced wife of Herod Philip, his own half-brother and host, and he had done this without the shadow of any excuse, out of mere guilty passion. Antipás had been, while at Rome, the guest of his brother Herod Philip, not the Tetrach of that name, but the son of Herod the Great, and Mariamme, daughter of Simon the Boëthusian, who, having been disinherited by his father, was living at Rome as a private person. Here Herod Antipás became entangled in the snares of Herodias, his brother Philip's wife; and he repaid the hospitality he had received by carrying her off. Everything combined to make the act as detestable as it was ungrateful and treacherous. The Herods carried intermarriage to an extent which only prevailed in the worst and most dissolute of the Oriental and post-Macedonian dynasties. Herodias being the daughter of Aristobulus, was not only the sister-in-law, but also the niece of Antipás; she had already borne to her husband a daughter, who was now a grown-up woman. Antipás had himself long been married to the daughter of Aretas, or Hareth, the Ameer of Arabia, and neither he nor Herodias was young enough to plead even the poor excuse of youthful passion. The sole temptation on his side was an impotent sensuality; on hers an extravagant ambition. She preferred a marriage doubly adulterous and doubly incestuous to a life spent with the only Herod who could not boast even the fraction of a viceregal throne. Antipás promised on his return from Rome to make her his wife, and she exacted from him a pledge that he would divorce

his innocent consort, the daughter of the Arabian prince.*

In the public opinion Antipás was a double-dyed adulterer, an adulterer adulterously wedded to an adulterous wife. Jesus shared the same public opinion in denouncing Herod without naming him. Had such a case been brought before Mohammad he would have also shared the same public opinion.

Slavery. †

119. The existence of slavery was an established institution of the whole civilized world at the time of the appearance of Mohammad. He found it practised by all nations around him. It was allowed and sanctioned by the laws and usages of every government and country. All the former philosophers and reformers ‡ had never thought of abolishing it. The prophets

* *Vide* Dr. Farrar's *The Life of Christ*: popular edition, 1881, page 182.

Josephus writes:—"Herod the Tetrach had married the daughter of Aretas, and had lived with her a great while; but when he was once at Rome he lodged with Herod, who was his brother indeed, but not by the same mother; for this Herod was the son of the high priest Simon's daughter. However he fell in love with Herodias, this last Herod's wife, who was the daughter of Aristobulus their brother, and the sister of Agrippa the Great. This man ventured to talk to her about a marriage between them; which address when she admitted, an agreement was made for her to change her habitation, and come to him as soon as he should return from Rome: one article of this marriage also was this, that he should divorce Aretas's daughter."

The works of Flavius Josephus, "*Antiquities of the Jews*:" Book XVIII., Chapter V., § I., page 429.

† This subject has been admirably treated by the Honourable Syed Ahmed Khan Bahadur, C.S.I., in a separate treatise for the abolition of slavery according to the precepts of the Korán, in the *Mohamedan Social Reformer*.

‡ "Plato had advocated the liberation of all Greek prisoners upon payment of a fixed ransom, (Plato *Republic* lib. V.; Bodin, *Republique*, liv. I. cap. 5), and the Spartan general Callicratidas had nobly acted

of old, even Moses and Jesus, had done or said nothing against it. It was sanctioned by the law of Moses, and the Christian Emperors allowed and recognized it in their codes. It was only Mohammad, the first and the last among the prophets and reformers, who was bent upon the abolition of the existing and future slavery, together with its concomitant evils.

The only chief source of fertilising slavery was the captives of war; those who escaped execution after the battle was over, being made slaves. Mohammad most distinctly and expressly abolished this by enjoining in the Korán that the captives must either be dismissed freely or ransomed, and thus put a stop to the savage customs of former nations of putting prisoners of war to death or enslaving them.

The verses of the Korán abolishing future slavery run thus:—

4. When ye encounter those who do not believe* then strike off their heads† until ye have massacred them, and bind fast the bonds.

5. Then either free grant (of liberty) or ransom, until the war shall have laid down its burdens. ‡—*Sura* xlvii.

These verses are the charter of liberty, and annihilation of future slavery, but it is a great pity that neither the Moslems (*i.e.*, the Mohammadan common folk), nor the non-Moslems, especially the European writers,

upon this principle (*Grote, Hist. of Greece*, Vol. VIII, page 224); but his example never appears to have been generally followed.”—(*Lecky's History of European Morals*, Vol. II., page 257.) But both of them never thought or taught of the free dismissal of the prisoners of war.
—C. A.

* Meaning the Meccans or other aggressors who used to come and attack Medina.

† Literally necks.

‡ That is, this is to be followed in every battle, until the battles are over. The same practice of granting free dismissal or exacting ransom was to be followed whenever there were prisoners of war.

take any notice of it. Such is the folly of the one and the ignorance of the other party!

120. Mohammad not only did this, which was in itself a grand achievement of abolishing, at least virtually, future slavery, but he took several steps *morally*, *legally*, and *religiously* to do away with the then existing one.

Morally—He morally exhorted the believers to release their captives,* or in other words slaves, as a free grant of liberty to the *de facto* slaves was declared to be a very meritorious act in the sight of God.

8. Have we not made him eyes,
9. And tongue, and lips,
10. And guided him to the two highways?
11. Yet he attempted not the steep.
12. And what shall teach thee what the steep is?
13. It is to ransom the captive,
14. Or to feed in the day of famine
15. The orphan who is near of kin, or the poor that lieth in the dust.—*Sura xc.*
172. There is no piety in turning your faces toward the east or the west, but he is pious who * * * for the love of God disburseth his wealth to his kindred and to the orphans, and the needy, and the wayfarer, and those who ask, and for ransoming : * * * *Sura ii.*

Legally—He rendered it a legal obligation on every slave-holder, to make his slave free whenever the latter wanted to emancipate himself.

33. And to those of your *mancipia* who desire a deed of manumission from you, liberate them, if ye know good in them, and give them a portion of the wealth which He hath given you. * * * —*Sura xxiv.*

* Abdullâh bin Jadâan had many (one hundred) slaves at Makka, and the excitement among them, when Mohammad declared emancipation of slaves, was so great that he found it necessary to remove them from Makka.

He ordained the freedom of the existing slaves in expiation of the crime of manslaughter or culpable homicide.

94. * * * Whoso killeth a believer by mischance shall be bound to free a believing neck (from slavery). * * *—*Sura iv.*

He had raised a fund for manumitting slaves out of the poor-tax from the public treasury.

60. But alms are only to be given to the poor and the needy, and those who collect them, and to those whose hearts are won to *Islam*, and for ransoming, and for debtors, and for the cause of God, and the wayfarer. This is an ordinance from God : and God is Knowing, Wise.—*Sura ix.*

Religiously—He made it a rule to set at liberty slaves in expiation of oaths.

91. God will not punish you for a mistaken word in your oaths : but He will punish you in regard to an oath taken seriously. Its expiation shall be to feed ten poor persons with such middling *food* as ye feed your own families with, or to clothe them ; or to set free a captive. But he who cannot find the means shall fast three days. This is the expiation when ye have sworn. Keep then your oaths : Thus God shows his signs clear to you : Haply ye may be thankful.—*Sura v.*

Also slaves were to be manumitted in expiation of an untruth or a blameworthy saying, which was commonly considered by the Arabs to imply perpetual separation when addressed to a wife by her husband, as I have already described in para. 109. This law was abolished, *i.e.*, made inoperative, but the expiation required for an untruth was the emancipation of a slave. The verse on this subject has been quoted in para. 109, page 131.

121. All these measures adopted by Mohammad in abolishing slavery *de facto* and *de jure* may be summarised under the following heads:—

(1.)—*Politically or by the law of nations*—Prisoners were to be set free either by granting free

liberty, or by ransoming, which included exchange of prisoners.—*Sura* xlvii. 4.

(II.)—*Morally*—The liberation of slaves was declared to be a work of piety and righteousness.—*Sura* xc. 13 ; *Sura* ii. 172.

(III.)—*Legally*—

(1) Slaves were to be emancipated.—*Sura* xxiv. 33.

(2) Slaves were to be set at liberty as a penalty for culpable homicide.—*Sura* iv. 94.

(3) Slaves were to be manumitted from the Public Treasury out of the Poor-Taxes.—*Sura* ix. 60.

(4) Slaves were to be freed in expiation for using an objectionable form of divorce—*Sura* lviii. 4.

(IV.) *Religiously*.—Slaves were to be freed in expiation of an oath.—*Sura* v. 91.

122. I will quote here certain passages which I have been able to collect from the traditions of the Prophet, to show how abhorrent was slavery to him, and how, on every occasion, he denounced it. I am seldom inclined to quote traditions, having little or no belief in their genuineness, as generally they are unauthentic, unsupported, and one-sided, but for the curiosity of those who are fond of them, I have imposed upon myself the task of searching them whenever they denounce slavery in conformity with the Korán. All other traditions recognizing slavery or any of its concomitant evils must be rejected as against the Korán, or as being prior to the abolition of slavery, or relating only to the then existing one, which was of course recognized by Mohammad in the Korán, as *de facto*, but not *de jure*, and consequently cannot serve as a precedent for the exercise of future slavery in Islam.

123. I.—Imám Shafæe, the founder of one of the

four orthodox schools of Mohammadan jurisprudence, who flourished in the latter half of the second century (born 150, died 204 A. H.), Imám Baihakee, a learned traditionist, who flourished in the fifth century of the Hejira (died 458 A. H.), and Imám Tabráni, another eminent traditionist, who flourished in the fourth century, (died 360 A. H.), have related through two independent and separate chains of narrators that "the Prophet had declared on the day of Honain that if it were lawful to enslave the Arab, there would have been many slaves this day." This shows that Mohammad disallowed slavery, and this has been corroborated by history. It has been related by the biographers of Mohammad that he released all the prisoners of the Bani Hawazan after the battle of Honain.*

I know some of the Mohammadan authors contend that in the chain of the narrators in the tradition quoted above there are two of them, viz., Wákidi and Yezid bin Ayaz, of impeachable authority. But there can be no suspicion as to their having forged or concocted the tradition, as it does not serve their purpose. Had it been a support for the lawfulness of slavery, the impeachable character of Wákidi in the one and Yezid in the other tradition, might have made it untrustworthy. But these narrators, like all other Moslems, were advocates of slavery generally and particularly, and as this tradition goes contrary to the prevalent public opinion, there cannot be the least doubt of their having meddled with the subject of the tradition. Besides, we ought not to rely exclusively on the narrators, but we must also look into the subject matter of the tradition. In this case the

* *Muir's Life of Mahomet*, New Edition, page 435

subject matter is supported by the Korán which had abolished all future slavery, *Sura lvii.* 4 and 5.

The above saying of the Prophet is also corroborated by the enactment of Omar during his reign as Khalif II., who said, "No Arab can be made a slave." Ahmed bin Hanbal has related the above tradition, and it is also given by Von A. von Kremer in his "*Culturgeschichte des Orients unter den Khalifen.*"*

124. II.—Ahmed bin Hanbal (died 241 A. H.) and Ibn Abi Sheiba (died 335 A. H.) have related from Ibn Abbás who said that "the Prophet liberated every slave who came to him on the day of the seige of Taif."†

After the battle of Honain, mentioned above in para. 123, the fugitives of the enemy had taken refuge in the fort of Taif, which was besieged by Mohammad. A proclamation was issued by him to the effect that any slave who would come to him from the fort would be free.‡

Sir W. Muir writes regarding Mohammad during the siege of Taif :—

"But he caused a proclamation to reach the garrison which grievously displeased them, that if any slaves come forth from the city, they would receive their freedom. About twenty were able to avail themselves of the offer, and became eventually valiant followers of their liberator."§

Balauzuri writes :—

"Certain slaves of the Taif came down to the Prophet, among whom were Abu Bokra bin Masrooh, whose name was Nofai, Azrak,

* Vide *The Edinburgh Review*, No. 318, for April 1882, page 343.

† Vide Zúrkáni's *Commentary on Movohib of Kustlánec*, Vol. III., page 38.

‡ Vide Ibn Is-hak in the narration or edition of Yoonus, Wákidi and Khateeb Kustlánec in *Zúrkáni* III., 37; and Ibn Sád in *Zád-ul-maád*, by Hafiz Ibn-ul-Kayyim, Vol. I., page 446.

§ Muir's *Life of Mahomet*, page 433, New Edition.

a Greek slave, whose descendants are called Azarikah, and a blacksmith of the name of Abu Nafe bin-al-Azrak al Khaji. They came to the Prophet and were set free.”*

Several slaves availed themselves of this charter of liberty granted by Mohammad, the benefactor of humanity. It is related by Bokháree that twenty-three of them came over to the Prophet and got their liberty. Aboo Daood has named one subsequently known by the nickname of Abu Bokra, *i.e.* “the father of basket,” from an ingenious contrivance employed by him in suspending himself from the walls of the fort in a basket to effect his escape. Wákidi has stated the number of slaves who gained their liberty as nine, and Maghlataee thirteen.

This shows that Mohammad did not consider slavery lawful, otherwise how would he have thought himself justified in liberating the slaves of other persons. According to the Arab law, and the Mohammadan Common Law, a runaway slave does not acquire his freedom, nor a slave who becomes a convert to Islam has the privilege of obtaining his liberty under the Common Law. †

125. III.—Aboo Daood (born 202, died 275. A. H.), Tirnuzee (born 209, died 279 A. H.), and Hakim Neshapooree (born 321, died 405 A. H.), have related that “two slaves had come to Mohammad before the truce of Hodeibia. Their masters said to Mohammad that their slaves had no inclination towards his religion, but had run away from the bondage. The other peo-

* *Fatúhul Boldan*, by Balauzuri, or *Liber expugnationis regionem auctor Imams Ahmed ibn Fatya ibn Djaber-al Beladsori. Lugudni Bata-vorum*, 1866, pp 55-56.

† Vide *Fathul Kadeer : a Commentary on the Hedaya* ; by Ibn Himam, Vol II., page 742 ; and *Ainee*, another annotation of the *Hedaya*, by Akmulooddeen, Vol. II., page 852.

ple who were there testified to this, but the Prophet refused to return the slaves, and said, "They are freed-men of God."

This tradition, like the one preceding, proves that Mohammad did not deem slavery lawful. But the Common Law goes quite contrary to this. The Hanafites say if an unbelieving slave become a Moslem, he is still the property of his master. *

126. The Mohammadan jurisconsults will say that the rebellion of the slave against his master, that is his flight from him without his consent or permission, together with crossing the Dar-ul-Harb, or his going beyond the jurisdiction of his master's country, entitles him to the privilege of being at his own disposal, or in other words taking possession of his own person which he has hitherto not. But neither of these grounds can stand on its legs, for Mohammad had no such views, nor did he ever teach so.

The invalidity of the first ground is this, that inasmuch as a slave is the property of another person, from whom if he become a fugitive, and in so doing become master of himself, he exercises a sort of usurpation on the property of others which he really is. Under the technicalities of the Common Law, the slave cannot be said to be at his own disposal, for he is an usurper.

The second reason is also invalid, as the runaway slave by crossing the infidel's to the Moslem jurisdiction, and *vice versa*, does not renounce the proprietary right imposed upon him by the law, for in this very case the Common Law says:—

"That if the slave comes with his master's permission or under a protection to the Moslem camp, he does not acquire the right of

* Vide *Ghurria Maneefa fi tarjeeh mashab abi Hanafa*, page 27.

freedom ; on the contrary, he is to be sold, and his price is to be kept in deposit at the credit of his alien owner." *

In like manner, if a Moslem slave of a Moslem owner cross the Mohammadan jurisdiction or Dar-ul-Islam, he does not acquire his liberty, but becomes what is technically called the *neutral property*, and any one who takes hold of him becomes his master. This is the legal opinion of both the disciples of Aboo Hanifa.†

127. IV. Hafiz Abul Hasan Dárkutni (born 306, died 386 A. H.), and Ahmed bin Hanbal have related that Ayesha, the widow of the Prophet, said to an Omm Valad of Zeid bin Arkam, regarding him when the former was informed that Omm Valad had sold a slave to Zeid bin Arkam for 800 dirhams on credit, and repurchased the same from him for 600 cash, that bad was her selling and bad was her repurchasing, with orders to inform Zeid that his efforts with the Prophet had all been vanquished unless he (Zeid) repented. This is a very strong argument against slave-lifting. Ayesha denounced it very vehemently, and informed Zeid that he had lost all the merits of his efforts with the Prophet for this act of slave dealing, for she well knew the views of Mohammad on this subject. Now it is a very meagre excuse of the lawyers who say that Ayesha only denounced the sale of a thing on credit, and its purchase at a low price in cash. Imám Shafaei allows such a dealing, and it is very repugnant to reason to denounce such a sale.

* *Vide Radd-ul-Muhtár*, Vol. III., page 246; *Jame-Ramoos*, page 549; and Chalpi on *Mukhtasar Sharah Vakayah*

† *The Hedaya or Guide*; translated by C. Hamilton, Vol. II., page 188 or 190.

128. V.—Bokháree (born 194, died 256 A. H.), has related that the Prophet was with Omm Salma, his wife, and there was an eunuch who said to Omm Salma's brother, "If Taif be conquered to-morrow, I will point out to you the daughter of Ghilán whom you must catch (as a slave)." The Prophet heard this, and said, "This man should never come to you."

This shows how abhorrent the idea of slavery, or taking possession of slave girls, was to Mohammad's mind.

The eunuch, we learn from history, was excommunicated for the whole of his life. He used to live in jungles, and was allowed but once a week of Fridays to enter the city for the purpose of begging alms. This permission was granted to him by Omar the second Khalif on account of the eunuch's great infirmity.*

129. VI.—Bokháree (born 194, died 256 A. H.), has related from Abu Saeed Khudree, who said he was sitting one day with the Prophet, when a man came to him and informed him of his concubinary habits? The Prophet said, "Do you do so? No. It is incumbent upon you not to do so. Any life which God has decreed to come out will surely come out." Here Mohammad has denounced plainly concubinage and slave-trade. The common jurisconsults have tried their best to reconcile their love of concubinage with this teaching, but in vain. They cannot impeach the authenticity of the tradition as it is found in the best and most authentic collection of traditions, *i.e.*, *Saheih Bokháree*. Some say that the word "*la*," *not*, in the second place is superfluous. But this is untenable.

* Vide *Koostlánee*, Vol VI., page 332.

130. VII.—Aboo Daood (born 202, died 275 A. H.) has related that the Prophet in one of his expeditions saw a woman big with child, and referring to her companion asked the people standing near, “He has practised concubinage with her.” The people said “Yes.” The Prophet said “I have endeavoured to curse him with such a curse as will go with him to his grave. How will he inherit his son, he is not lawful to him? How will he exact work from him, he is not lawful to him?”

This is one of the plainest, and at the same time the greatest denouncement against slavery and concubinage.

131. VIII. Ahmed bin Hanbal (Hanni Baal) and Tabránee have related that one Zambaa had maltreated his slave, who went and complained of it to Mohammad. He liberated at once the slave, saying, “Go, thou art free.” The freedman asked him who would be his patron; the Prophet replied, “God and his Apostle”; and enjoined on all the Moslems for his support.

132. IX. Aboo Daood and Ibn Májá have related from Shoeile that one person came crying to the Prophet, and complained of his master’s harsh treatment. The Prophet sent for the master, who could not be found. Then the Prophet addressed to the slave, “Go, thou art free.” The freedman said, “Who will help me if my master again enslave me.” Mohammad rejoined, “It is incumbent on all and each of the Moslems to help thee.”

133. X. Moslim has related from Ibn Masood-al-Badri, who said that he was beating his slave when he heard a voice from behind, and lo! it was the Prophet

himself, saying, "God is mightier on thee than thou art on this young man." Then Ibn Masood replied, "I have made him free for God's sake." Mohammad answered, "If thou didst not do so, the (hell) fire would have taken thee." Now, had Mohammad considered slavery lawful, he would not have liberated other persons' slaves, which was tantamount to destroying other persons' property.

134. It is a mere device of the jurisconsults who argue that slaves are to be liberated when they are maltreated in a very cruel manner. This restriction is quite contrary to the general principles and spirit of the teachings and practices of Mohammad. He even enjoined the liberation of a slave on his being slapped by his master. Aboo Daood and Moslim have related a tradition from Ibn Omar, who heard the Prophet saying, "He who slaps his slave or beats him, his expiation is this, that he must liberate the slave thus injured."

Moslim, Aboo Daood, and Tirmizee have related from Soeid bin Makram, who said, "We of the family of Makram had but one maid servant (a slave), and one of us slapped her. This was reported to the Prophet, who gave orders to liberate her."

The foregoing ten traditions show the hatred and abhorrence Mohammad bore against slavery and concubinage.

135. Besides these traditions Mohammad had enacted certain minor laws by which the slaves, under certain circumstances, had to acquire the right of freedom spontaneously.

The foremost of them, which was a strong measure for abolishing slavery and concubinage, was this: that

the Prophet had made it obligatory, that any slave conceiving by her master, or bearing him an issue, though it be a mere miscarriage or still-born, becomes free after that event, *instantaneously* and *spontaneously*.

Ibn Májá and Dárkutni have related from Ibn Abbás that the Prophet said, referring to a certain slave, Omm Ibrahim, that *her son liberated her*, meaning, when she as a slave gave birth to a son from her master, she acquired her freedom.

Baihakee has another tradition regarding Omm (*mother of*) Ibrahim, that the Prophet said to her, "Thy son hast set thee free."

Mohammad's law was without any reservation; but it was differently acted upon during his life time, and after him the majority of his companions agreed to make unlawful the sale of any slave who had born a child. Omar, the Khalif, gave stringent orders for this in his reign. The Common Law has incorporated this law of Mohammad with some reservation and restriction. It holds that such a slave becomes free on the death of her master only, and during his life she will remain his slave, without being sold. But this is contrary to the spirit of the law of Mohammad, the Prophet. Those traditions which profess to emanate from him, and have the condition that she is free after her master's death, are only from those persons, who hold their sale to be unlawful. In the discussions that issued after the death of the Prophet amongst his companions, regarding the slave who had given birth to a child, they lost sight of what Mohammad had said, and only wasted their energies on the question whether her master could sell her or not. The majority were

favourably inclined to the latter decision, which was subsequently incorporated into the Common Law, and the right of freedom was declared to follow immediately after her master's death. In consequence of this, the most received opinion of the companions, the original tradition from the Prophet himself, declaring Omm Valad to be free, spontaneously and instantly at the birth of her child, are not now taken into consideration.

136. Another law of the Prophet was this, that when ever any slave becomes the property of one who is the nearest kin to him, he, the slave, becomes instantaneously free. Bokháree, Moslim, Aboo Daood, Ibn Májá, and Tirmizee have related a tradition through Samran from the Prophet bearing on the same. Another tradition is given by Nasaee, Tirmizee, Ibn Májá, and Hákim through Ibn Omar from the Prophet to the same effect.

137. Under the Mohammadan Common Law there are several instances in which a slave becomes free spontaneously. They are as follow:—

(1) Any absolute slave (*qin*), whether a Moslem or a non-Moslem, or the property of a Moslem or of a non-Moslem, when he runs away to the hostile country from a Moslem dominion, becomes free, on account of the change of jurisdiction. In the opinion of Aboo Hanifa, even if the runaway slave of a Moslem is captured by aliens, he becomes free, but both of his disciples do not agree with him in this respect. They say that the slave thus captured becomes the property of the captor.

(2) Any Moslem, or non-Moslem slave purchased by a *Moostamin* (an alien who has sought protection under Mohammadan jurisdiction) in a Mohammadan country, when he takes the slave to his own, *i.e.* the

infidel or hostile country, the slave becomes spontaneously free on account of the change of jurisdiction. This is Aboo Hanifa's theory, but his disciples do not agree with him here also.

(3) When the Moslems enter a Mohammadan country by force of arms, and carry therefrom any slave, whether a Moslem or a non-Moslem, and after which if the slave run away to a non-Moslem land, he becomes free on account of the change of country.

(4) When a non-Moslem slave in a country of aliens becomes a convert to Islam, and comes out to the Moslem country he becomes free.

(5) The same, if he joins the Moslem camp, though in a hostile country, he becomes free.

(6) The same, if he is purchased by a Moslem or non-Moslem, Zimmee or Harbi, in hostile country, becomes free. As by exposing to sale the owner compromises his proprietary right in the slave, and slavery not being consistent with Islam, the slave becomes free. This is the theory of Aboo Hanifa, but his disciples hold that the convert will become the property of a Moslem purchaser.

(7) The same, if he is exposed to sale, but the sale is not effected, becomes free by the reasons assigned above.

(8) The same, if Moslems conquer his country, will become free, because he has come under the Moslem protection.

(9) If a slave become the property of a relative within the prohibited degrees, he becomes instantly free.

(10) *Isteelád*: when a master has an issue by his female slave she is entitled to freedom after his death.

(11) When a female slave is emancipated her foetus also becomes free dependently.

(12) A son of the master by his female slave becomes free if the master acknowledge that son.

(13) If a man having issues by her married female slave, purchases her, she becomes free at his death.

138. Another and a great fertilizing source of slavery is the issues of a female slave. The offspring of a female slave by another slave, or by any other free person who is not her owner, or even by her owner if he do not acknowledge himself to be its father, is also a slave. The descendants through a female slave, either of a slave, whether he is the property of her master or of any one else, or by any free person, are the property of the female slave owner! The compilers of the Common Law have borrowed theirs from the Roman Law,* that a child in respect of slavery follows the condition of its mother.† Further they maintain that the foetus depends on the *status* of the mother. The law is invalid and is not supported on any reasonable grounds, and runs contrary to common sense, and against the law of nature. There are two grounds of its invalidity. The first is this that it is an admitted maxim of the Common Law, that "the original condition of the race of Adam is freedom,"‡ and that "a

* "Slaves were incapable of contracting a lawful marriage in the peculiar sense of 'lawful' adopted by the Roman Law, the children of a female slave were necessarily slaves."—Sandar's *Institutes of Justinian*, page 14. Lecky's *History of European Morals*, Vol. I., page 303.

† *The Hedaya. Book of Emancipation*, Hamilton's Translation, Vol. I. *Durr-ul-Mukhtár, Book of Emancipation. Book of Fihád. Jame-Ramoos. Radd-ul-Mukhtár*, Vol. III., pp. 12 and 246. *Tohftatul Muhtáj. Baillie's Digest of Moohummudan Law*, page 365.

‡ *The Hedaya, Book of Institution IX., Ch. of Plunder*, Hamilton's Translation, Vol. II., page 171.

slave is the possession of his owner by the law of property, but not by the law of nature.”* Again it has “that it is not admitted that the person of the proprietor is under protection in consequence of his conversion to the faith, for the molesting of him is originally unlawful.”† “A free Mussulman, also a free Zimmee, are not neutral property, being in their own nature protected and inviolable.”‡ “That the sin-creating protection is attached to Islam is not admitted; for the sin-creating protection is attached, not to Islam, but to the person.”§ “Protection to the person is established in virtue of humanity.”|| Consequently, the descendants of a slave mother or father ought to be naturally free.

139. The second ground is this, that the maxim “the foetus depends upon the *status* of the mother, because it is a part of her” is a fallacy of the law. It is not a part of her but a separate being, specially when it is born there is no reason to consider it to be a portion of its slave mother to follow her condition. The law itself admits that the manumission of the foetus of a slave mother is valid, and it becomes free even before its birth.¶ Therefore it is wrong to make the foetus to be slave dependently of its mother. It must be free originally and naturally.

140. The compilers of the Mohammadan Common Law have committed a grave mistake in following or

* Baillie's *Digest Moohummudan Law*, page 363.

† *The Hedaya*, Vol. II., page 172.

‡ *Ibid*, page 188.

§ *Ibid*, page 201.

|| *Ibid*, page 217.

¶ *The Hedaya* has, “If the master were to emancipate the *foetus* only, and not the mother, the former alone is free, the *embryo* is (with respect to emancipation) altogether distinct from her.” Vol. I., page 435.

accepting the Roman Law in this respect. The latter did not acknowledge the marriage of slaves to be lawful, and consequently had no alternative but this, that the issue was made to follow the condition of the slave mother. Whilst the Mohammadan Common Law allows the validity of the marriage of a slave, and also of a freeman with another slave, there is no necessity, under the circumstance, to make the issue follow the weak person or the wrong side. In the matter of marriage and divorce, a slave is considered to be like a free man,* so his or her issue must be admitted legally and naturally free.

141. There are a good many corollaries from the maxim that an offspring follows the condition of its mother. Under the following heads the child follows the state of its slave mother:—

- (1) Proprietary right.
- (2) Captivity or bondage.
- (3) Freedom.
- (4) Emancipation.
- (5) *Kitábút*, manumission.
- (6) *Tadbir*, liberating a slave by testament.
- (7) *Isteelád*.
- (8) Mortgage.
- (9) Debt.
- (10) *Istirdád*.
- (11) *Seryán Milk*.

The children of a free man by a slave can, in no way, be slaves. There is a maxim that where reconciliation between two antagonists is difficult, then the weaker one must vanish. Consequently, in this case,

* The Koránic injunction for marrying slaves (Sura xxiv.) has been cited in para. 152, page 174.

where freedom and slavery have come into collision regarding the descendant of a free man and a slave, freedom being stronger must, of course, predominate.

142. It is very degrading to the Mohammadan Common Law that it does not take off the bane of slavery from a Moslem who has been under the misfortune of being a slave before his conversion to Islam. It is no good of Islam if it does not remove the imaginary, cruel, and aggressive scourge of slavery from its votaries. The Common Law lays down a maxim that Islam nullifies slavery *ab initio*, or bondage is not established in a Mussulman originally,* but it allows a Moslem to remain a slave all his life and in all his issues as long as his progeny exists, dependently and perpetually, continually and successively.

“A Mussulman may be a subject of bondage in dependence of another person.”—(*Hedaya*, Vol. I., page 171.)

If an unbelieving slave of a Moslem becomes convert to Islam he is not entitled to freedom, whether this be the case in a hostile (non-Moslem) or in a Moslem country.

Even the law does not give protection to a fugitive Moslem slave, who has come to the Moslem country unless he come by an open force against his master, in that case the use of open force against his master's sway and the crossing of the hostile jurisdiction will only make him free, but not his mere conversion to the Moslem faith.

The law only has so much that if a slave of an alien become convert to Islam, and come out to a

* *The Hedaya*. Vol. I., page 345.

“ person who is first a Mussulman cannot then be subjected to bondage as his *Islam* forbids this.”—*Ibid*, Vol. II., page 170.

Moslem territory against his master's will, or joins the Moslem camp; or if the Moslems conquer his country, he is entitled to freedom. But these provisions are of no avail. Islam in itself is not competent enough, under the Common Law, to sanction freedom to a slave who is converted to it, by the mere act of conversion, unless other circumstances, which are thus shown to be more powerful than Islam itself, added together with Islam, make him free.*

The law further allows it to be lawful to a Moslem to be the property or slave of a non-Moslem.

Even the crossing of a hostile country by a slave, and joining a Moslem territory, together with his conversion to Islam, is of no avail to him if his master also come with him, or has already been converted to Islam before his slave. In each case the slave would remain as he was before, the property of his master, notwithstanding all the changes of country and faith.

143. Sir W. Muir writes—

“War, according to the Corân, is to be waged against the heathen. The fighting men are to be slain, the women and children reduced to slavery. . . .

Following upon the wake of war against the unbelievers is the curse of slavery, which, though in a milder and restricted form, has not the less fixed its withering grasp upon the proud master, as well as upon his wretched victim. . . .

And so long as wars and raids last, not only will the existing mass of slaves, through their progeny, perpetuate the curse, but there will be continual addition to their number. The barbarous and enslaving spirit of the Corân, though it cowers before the reproach of Europe, is not dead.” †

* The *Zahiriya* school holds that when he becomes convert to Islam, whether he comes out of the infidel country or not, becomes a free person. Vide *Futhul Kadeer*, a commentary of the *Hedayá*, Vol. II., page 483. The *Zahiriya* school of Mohammadan jurisprudence was founded by one Daood in the 3rd century of the Hejira, and became extinct in the 8th.

† *The Corân : Its Composition and Teaching : and the testimony it bears*

This assertion and imposition against the Korán is not only void of truth, but is literally in contradiction to the plain teachings of the scriptures of Islam, as the Korán in most simple and glaring terms enjoins that the prisoners of war must either be granted a free dismissal, or a ransom might be levied for their freedom. In no place it says that fighting men are to be slain, and women and children are to be reduced to slavery. I challenge Sir W. Muir to quote or point out to me any single verse or verses from the entire Korán to corroborate his own ideal statement. I have already had occasion to quote the 4th and the 5th verses from the forty-seventh Sura of the Korán in para. 119, page 148, and shall copy it here again for ready reference from several translations of the Korán:—

4. "When ye encounter the infidels, strike off their heads, until ye have made a great slaughter among them, and *of the rest* make fast the fetters.

5. And *afterwards* let there be free dismissals or ransomings, till the war hath laid down its burdens. Thus do."

The Rev. Rodwell.

"And when ye meet those who misbelieve—then strike off heads until ye have massacred them, and bind fast the bonds.

Then either a free grant (of liberty) or a ransom until the war shall have laid down its burdens."

Henry Palmer.

"When ye encounter the unbelievers strike off *their* heads until ye have made a great slaughter among them; and bind *them* in bonds: and either *give them* a free dismissal afterwards, or *exact* a ransom, until the war shall have laid down its arms."

George Sale.

I think either Sir W. Muir was quite ignorant of these verses, which is very unbecoming on the part of a critic showing such a vast knowledge of the Korán, or he has intentionally suppressed them, which is even worse than his ignorance of them, but his bringing

forth such an insulting imputation against the Korán is the worst of all. There is, I know, some difference of opinion among the Mohammadan jurists, as the Hanafites and Shafeites, not regarding the meaning of the verses, but about its being repealed or not. But that is a sectarian discussion. Sir W. Muir was not dealing with the Hanafite or Shafeite sectarian opinions. He was dealing with the Korán, and only with the Korán. He, in a fair dealing or by way of honesty, ought not to have suppressed these verses, nor ought he to have made assertions wholly groundless and false against the Korán.

144. Sir W. Muir makes slavery as following the wake of war, but the wars of Mohammad,—all of which he waged in his and his followers' defence, who were persecuted and expelled by the Koreish from their houses, when the right of citizenship, the liberty of conscience, and the safety of their persons were denied them at Mecca, and when taking the example of the Koreish the other Bedouin tribes had risen against them and used to commit raids on Medina, the city of the Moslem refuge, nay had even actually invaded and besieged the city—were in pure self-defence, and it will be found on minute examination that none of the captives was enslaved. On the contrary they were released either after the exaction of ransom as in the earliest defensive battle of Badr, or were let free *gratis* as in the battles of Murasia, Batn-Mecca, Honain, &c. I have detailed all these wars as well as the dismissal granted to the captives of war without being enslaved, in my work entitled, '*All the Wars of Mohammad were defensive.*' *

* Is being printed by Messrs. Thacker, Spink & Co., Calcutta.

In conclusion, I will ask my impartial readers whether Sir W. Muir is justified in saying that "the barbarous and enslaving spirit of the Corân cowers before the reproach of Europe," or whether the Korân had not abolished slavery in the seventh century of the Christian era when the whole of Europe and the entire Christendom had sanctioned and practised it.

The 4th and 5th verses of the forty-seventh Sura have always been acted upon, and were strictly adhered to by Mohammad; since they were revealed no one was enslaved, and he always preferred free grant of liberty to ransom after their promulgation. He used not to insist upon ransoming, as the free dismissal of the would-be slaves was enjoined first in the Korân, and therefore had priority and preference to exacting ransoms. The ransom declared in these verses was only the exchange of prisoners of war.

"Abou Obeida says that Mohammad the Prophet never took ransom in money after the battle of Badr. He used either to set free the captives or exchange them."

"Soheilee says that this was owing to the words of the Korân.

"Ye desire the passing fruitions of this world (Sura viii. 68) *i.e.* ransom in money, though it was made lawful, but what the Prophet did after this by granting free dismissal or ransoming prisoners in exchange was most preferable. Do you not look in the verse, 'either free dismissal afterwards or ransoming.' Now free dismissal has been put before ransom, and therefore the Prophet also preferred the same." *

145. The Rev. Mr. T. P. Hughes is not justified in his remarks that—

"Slavery is in complete harmony with the spirit of Islâm, whilst it is abhorrent to that of Christianity. That Muhammad ameliorated the condition of the slave, as it existed under the heathen laws of

* *Vide* Zorkânee in his commentary on *Movahib*, Vol. II., pages 543. 544.

Arabia, we cannot doubt; but it is equally certain that the Arabian legislator intended it to be a perpetual institution." *

It was only the other day that slavery became abhorrent to Christianity, whilst it was a sanctioned institution in the whole of Christendom up to the nineteenth century. The Islam or the Korán is the only religion which puts deep the hammer to the very root of slavery, and abolishes its chief and only source, that of enslaving the captives of war. No one among the former philosophers, prophets, and moralists could be named who had had even the least thought of abolishing future slavery, and ameliorating the then existing servile institution. Moses not only allowed it, but sanctioned it by divine permission, Christ never said a word against it, and St. Paul recognized the lawfulness of it.† It was only Mohammad in the seventh century who abolished slavery, and not only ameliorated the condition of the then existing slaves, but took every step *politically, legally, morally, religiously, and practically*, as I have described in paras. 120—122 to abolish future slavery *at once*, and to mitigate the number of the existing slaves *gradually*. He enacted every law in all its branches, *political, legal, moral, and religious* to emancipate, set free, and liberate the existing slaves, but he made no law to create new ones.

Practically he liberated all prisoners of war—the would-be slaves ‡—mostly by granting them a free dis-

* *Notes on Muhammadanism*; by the Rev. T. P. Hughes, C. M. S. Second Edition, page 195.

† 1 Timothy vi. 1, 2; Colossians iii. 22.

‡ "Slaves are denominated *servi*, because generals order their captives to be sold, and thus preserve them, and do not put them to death. Slaves are also called *mancipia*, because they are taken from the enemy

missal, and once or twice by taking ransom which was mostly in the shape of exchange of prisoner. But he never enslaved any prisoners of war, nor did he ever purchase a slave. It is not correct therefore to say that he intended slavery to be a "perpetual institution."

146. Mr. Hughes has quoted a tradition to the effect that a man freed his six slaves at his death, and he had no other property besides, but the Prophet ordered that two of them should be freed, and the other four be retained in slavery. This tradition, if it be admitted to be an authentic one, for I have not examined the character of its narrators, has nothing in it to show that Mohammad intended slavery to be a perpetual institution. The future slavery had been abolished in the plain and simple words of the *Sura* xlvii. of the Korán.

It was only the existing slavery which was tolerated in but few cases. Even several measures were taken at that time for the gradual abolition of the then existing slavery. The Rev. Mr. Hughes has also quoted Jábír, who said, "we used to sell the mothers of the children in the time of the Prophet, and of Abu Bakr, but Omar forbade it in his time." This has nothing to do with the alleged intention of the Prophet in making slavery a "perpetual institution." Jábír might have been used to the practice of selling his children as well, but it was not by the sanction of Mohammad. One of the early steps taken by Mohammad for the prevention of slavery was that he forbade the sale of the slave girls who had born children to their masters. Jábír might have committed the act with impunity, until Omar

vigorously executed the Law against it. Mr. Hughes further quotes from *Akhlak-i-Falâli* that for service a slave is preferable to a free man, "but it is no authority at all.

147. The Rev. T. P. Hughes writes :—

"Although slavery had existed side by side with Christianity, it is undoubtedly contrary to the spirit of the teaching of our divine Lord, who has given to the world the grand doctrine of universal brotherhood."*

I do not think that Christ ever thought or spoke a word to denounce slavery, and St. Paul on the contrary has prescribed the reciprocal duties of master and slave in an one-sided manner. (Compare Colossians iii. 22 : I. Timothy vi. 1, 2.)

148. The Rev. Mr. Hughes has quoted Lecky, who says :—

"The services of Christianity in this sphere were of three kinds. It supplied a new order of relations, in which the distinction of classes was unknown. It imparted a moral dignity to the servile classes. It gave an unexampled impetus to the movement of enfranchisement."

But Mr. Hughes has forgotten to quote the other words of Lecky, who says :—

"The prohibition of slavery, which was one of the peculiarities of the Jewish Essenes, and the illegitimacy of hereditary slavery, which was one of the Stoic, Dion Chrysostom, had no place in the ecclesiastical teachings. Slavery was distinctly and formally recognized by Christianity, and no religion ever laboured more to encourage a habit of docility and passive obedience. Much was indeed said by the Fathers about the natural equality of mankind, about the duty of regarding slaves as brothers and companions, and about the heinousness of cruelty to them ; but all this had been said with at least equal force, though it had not been disseminated over an equally wide area,

* *Notes on Muhammadanism* ; by the Rev. T. P. Hughes, C.M.S. Second Edition : pages 196-197.

by Seneca and Epictetus, and the principle of the original freedom of all men was repeatedly averred by the Pagan lawyers.” *

149. Mr. Bosworth Smith writes regarding slavery as it was dealt with by Islam:—

“And how was it with Slavery? Here, too, the advance is incontestable, and much more decisive than in his legislation for women. Mohammed did not abolish slavery altogether, for in that condition of society it would have been neither possible nor desirable to do so; but he encouraged the emancipation of slaves; he laid down the principle that the captive who embraced Islam should be *ipso facto* free, and, what is more important, he took care that no stigma should attach to the emancipated slave in consequence of his honest and honourable life of labour. As to those who continued slaves, he prescribed kindness and consideration in dealing with them † ‘See,’ he said, in his parting address at Mina, the year before his death, ‘see that ye feed them with such food as ye eat yourselves, clothe them with the stuff ye yourselves wear; for they are the servants of the Lord, and are not to be tormented.’

“A slave thus protected by the law and by the highest sanctions of religion was not a slave in the modern sense of the word at all. It is significant, as I have remarked above, that the word itself hardly occurs in the Koran. The phrase that is used, ‘those whom your right hand possesses,’ means only those who have been taken prisoners in lawful warfare, and have lost their freedom. Such captives, if they became Musalmans, were set free; if they retained their own faith, they were, as Mohammed told his followers, none the less their brethren. The master who treated them kindly would be acceptable to God; he who abused his power would be shut out of Paradise. ‘How many times,’ asked a follower of Mohammed, ‘ought I to forgive a slave who displeases me?’ ‘Seventy times a day’ replied the Prophet.

“Concubinage, indeed, with his female captives, Mohammed, like the chiefs of every other semi-civilized state that has ever existed,

* “It is worthy of notice, too, that the justice of slavery was frequently based by the Fathers, as by modern defenders of slavery, on the curse of Ham. See a number of passages noticed by Molhter *Le Christianisme et l’Eslavage* (trad. franc.) ; pp. 151-152.”

History of European Morals; by William Edward Hartpole Lecky, M.A. London: 1877. Vol ii., page 66.

† Sura xxiv. 34, 57.

allowed to their captor, but she who bore her master a child was never to be severed from it. She could never again be sold, and at her master's death she received her freedom. These humane provisions are, as might be expected, in the same plane as those of the Mosaic law, but they are an advance, in many respects, upon it; and they are such as no European or American slave-trading power ever enrolled in its code of laws till the wave of total abolition swept over Christendom." *

I have only to remark that the advance of the Korán in abolishing future slavery, and ameliorating the condition of the then existing slave is not only more incontestable and decisive than in its legislation for women, but it surpasses all the former political, moral, and religious legislation regarding slavery. The beneficial and ameliorating measures taken by Mohammad in the favour of slaves to advance their position and improve their condition were all for the existing slavery, but his putting a stop to the future slavery † was a grand blessing to humanity in which he excelled every law-giver, moral teacher, and benefactor of mankind. And I am sorry to remark that Mr. B. Smith seems to have no or very little knowledge of this.

150. The Rev. W. R. W. Stephens writes:—

"To take the case of slavery for instance; persons filled with admiration of the humane treatment of the slave inculcated in the Koran, and as a rule practised in Mohammedan countries are apt to forget that slavery after all is distinctly recognized by the Koran as an integral part of the social system; that the Mohammedan slave could not look forward like the Hebrew to his release in the seventh year: and that, while the Koran enjoins kindness in general terms, there are not such often-repeated and touching warnings as we find in the Pentateuch against oppression of slaves and hired servants, not such distinct and minute provisions for their happiness and welfare." ‡

* *Mohammed and Mohammedanism*; by R. Bosworth Smith, M. A. London: 1876; pp. 243-245.

† Vide *Sura* xlvii.

‡ *Christianity and Islam, The Bible and the Koran: Four Lectures*; by the Rev. W. R. W. Stephens. London: 1877; pp. 104-105.

I respectfully beg to point out that slavery was never *de jure* recognized by the Korán as an integral part of the social system, but it was *de facto* a recognized institution of the Arabs, and Mohammad did his best to abolish the future slavery as I have already fully shown.

151. Dr. Marcus Dodds writes :—

“Mohammed himself was a man of a compassionate and humane disposition, and there can, I think, be no doubt that he intended to ameliorate the condition of slaves. Had he conceived the idea of emancipating them, he would probably have found it an idea impossible to execute, and in declaring all Moslems brethren, he took the surest means in his power of eventually accomplishing this end, and in the meantime of securing their good treatment. His parting admonitions to his followers on this subject are too important to be omitted. ‘Your slaves!’ he says, ‘see that ye feed them with such food as ye eat yourselves; and clothe them with the stuff ye wear, and if they commit a fault which ye are not inclined to forgive, then sell them, for they are the servants of the Lord, and are not to be tormented. Ye people! hearken to my speech, and comprehend the same; know that every Moslem is the brother of every other Moslem; all of you are on the same equality: ye are one brotherhood.’* And it must be owned that, at least in certain countries, the doctrine of human equality thus proclaimed has received practical exemplifications which are sadly wanting in the parallel region of Christian practice. The Caliph Omar leading his camel while his slave rides; the Prophet’s daughter Fatimah taking her turn at the mill with her own slaves; these are but specimens of the scrupulous observance in general paid by Moslems to the injunctions of their prophet. Unfortunately, whatever kindly intention Mohammed had towards the slave, and whatever beneficial results might have been wrought by his bold proclamation of the equality of all believers, have been frustrated by the Koran’s sanction of concubinage. There is no disguising the fact that it is this allowance which maintains the slave-trade with all its well-known abominations and horrors. It is this system, distinctly sanctioned in the Koran, and practised by Mohammed himself, which is responsible for the degradation and misery which become the life-long lot of the wretched girls who survive the terrible transit down the

* “Muir, IV. 239.”

Nile under the tender mercies of the brutal Gellábs.* Enlightened Mohammedans† themselves are humiliated by the pollutions and misery attaching to this system. They say in so many words that it is 'to the lasting disgrace of the majority of the followers of Mohammed,' that 'slavery has been allowed to flourish by purchase and other means,' ‡ and that the day is come for the Moslems to show 'the falseness of the aspersions cast on the memory of the great and noble prophet, by proclaiming in explicit terms that slavery is reprobated by their Faith, and discountenanced by their Code.' But while we honour the desire of these men to cleanse their religion of so black a stain, how are they to stir a single Mohammedan community to abolish an indulgence to which their 'great and noble prophet' showed them the way, and which is regulated for in the Koran? Slavery can only be abolished when concubinage is abolished; and when concubinage is abolished, the whole character of Islam, and especially its attitude to its prophet and its sacred book, must be altered." §

There is no doubt that the idea of emancipating all the then existing slaves was impossible to realize, but at the same time it is also a fact that Mohammad abolished absolute slavery in his injunctions in the forty-seventh Sura of the Korán. That he never sanctioned concubinage, and that he abolished it from among the Arabs, will be fully shown in the following pages.

Concubinage.

152. Mohammad found it an established social institution among the Arabs to have concubines. He might have tolerated the continuance of it for a time, but at last he did not leave it uncared for. At first he recognized *de facto*, not *de jure*, the existing female slaves, and enjoined the believers to marry their slaves,

* "Lane's *Mod. Egypt*. I. 236."

† "Syed Ahmed, p. 25."

‡ "Syed Ali, p. 259."

§ *Mohammed, Buddha, and Christ*. Four Lectures on Natural and Revealed Religion, by Marcus Dods, D.D. London: MDCCCLXXVIII.

but not keep them as concubines. He did not approve of the marriage of female slaves, but tolerated it as a secondary and indirect step to the abolition of concubinage and hence of slavery. He taught people to abhor concubinage, recognized marriage only as the lawful state of the union of man and woman, and allowed marrying concubines under special and peculiar circumstances. The following verses of the Korán on "Women" plainly enjoin believers to marry female slaves, but do not sanction concubinage:—

29. But whosoever of you cannot go the length of marrying free women who believe, then marry what your right hands possess of your maidens who believe ;—God knows best about your faith. Ye come one from the other; then marry them with the permission of their people, and give them (*the maidens*) their dowry in reason, they being chaste and not fornicating, and receivers of paramours.

30. But when they are married if they commit fornication, then inflict upon them half the penalty for married *free* women; that is for whomsoever of you fears wrong; but that ye should have patience is better for you, and God is Forgiving and Merciful.

31. God desireth to make this known to you, and to guide you into the ways of those who have been before you, and He turneth to you with relenting. And God is Knowing, Wise!

32. And God desireth *thus* to turn Himself unto you: but they who follow their own lusts, desire that with great swerving should ye swerve from the right way! God desireth to make your burden light to you: for man hath been created weak.—*Sura iv.*

These verses manifestly prove what were Mohammad's views regarding concubinage—(1) He did not recognize the state of concubinage; (2) he only recognized marriage to be the lawful state of the sexual intercourse; (3) he considered any other state of sexual intercourse, fornication; (4) the marriage with female slaves was only permitted to those who could not marry free women, and could not abstain themselves; (5) even he advised them not to marry slaves, but keep

patience, for he was going shortly to abolish slavery, at least *de jure*, and therefore did not like to induce Moslems to marry female slaves; (6) lastly, he impressed upon his believers, that those who went beyond this followed their lusts, and “swerved a mighty swerving.” This was more than enough to abolish concubinage.

153. The verses quoted above are the last ones revealed on the subject in the Korán. There may be some earlier verses (lxx. 29, 31; xxiii. 5, 7; iv. 3, 829) in the Korán tolerating concubinage as a lesser evil than adultery or fornication. This seems to have been a natural course to be pursued by a reformer who wanted to extinguish concubinage by degrees, but I doubt whether the quoted verses tolerate the existence of concubinage:—

The verses 29—31 of the Chapter lxx., as well as 5—7 of the Chapter xxxiii. are identical. They are early Meccan verses, and eulogize those who have married either free or slave females, condemning the adulterers and fornicators. It may be that these verses tolerated concubinage in preference to fornication, but finally the Medinite Sura iv. altogether abolished concubinage.

The verses are as follows:—

And those who guard themselves, except for their wives or the slave girls whom their right hands possess, for they are not to be blamed. But whoso craves beyond this, they are transgressors.—*Sura lxx. 29—31; Sura xxxiii. 5—7.*

The third verse of the fourth Chapter does not countenance concubinage:—

“And if ye are apprehensive that ye shall not deal fairly with orphans, then, of *other* women who seem good in your eyes, marry *but* two or three or four; and if ye *still* fear that ye shall not act equitably then one only; or the slaves whom ye have acquired: this will make justice on your part easier. And give women their dowry as a free

gift; but if of their own free will they kindly give up aught thereof to you, then enjoy it as convenient, *and* profitable."

There is another precept in the Korán in which the public are generally enjoined to marry their female slaves.

32. And marry the single amongst you, and the righteous among your slaves and handmaidens. If they be poor, God will enrich them of His Grace, for God both comprehends and knows.

33. And let those who cannot find a match, until God enriches them by His Grace, keep chaste.—*Sura xxiv.*

154. The twenty-eighth verse of the fourth Sura, although it speaks of the female slaves, does not allow concubinage. The verses 26-28 enumerate several women of different relations whom the believers were forbidden to marry, and married women are included in the category. There was an old Arab custom which provided the remarriage of a married woman captured in war, or made slave in a foreign country. The former marriage contracts of such women were considered to have been virtually dissolved. This was a recognized social institution of the Arabs and other semi-barbarous tribes, but Mohammad afterwards cut it short when he extirpated slavery.

28. Do not marry already married women, except those whom your right hands have acquired (you can marry them) *Sura iv.*

This does not allow concubinage, it simply settles the question whom we could marry and whom not.

155. The reader will observe from what has been stated above, that Mohammad never sanctioned concubinage, but on the contrary he prohibited it to Arab society. To his followers, and the general public was granted permission to marry female slaves. No other state of intercourse between the two sexes was held legal and valid, except that of permanent marriage—*marrying and living chaste, not fornicating.* The two classes of

women as they were discriminated by the Arabs at the time of their Prophet were the *free* and *bond* women, but marriage was to be their worldly *status*. Concubinage and adultery were terribly denounced and interdicted. Yet there are many European authors of the present day who, being misguided by fanatic Moslems and their Common Law, believe that Mohammad sanctioned concubinage with divine permission !!!

156. It is said regarding concubinage that—

“Female slavery, being a condition necessary to the legality of this coveted indulgence, will never be put down, with a willing or hearty co-operation by any Mussulman community.” *

This is quite true, but at the same time it is also right to say that the Mohammadan jurists who legalize slavery do not allow concubinary practice with the slave girls now imported from Georgia, Africa, and Central Asia. The only source of legal slavery consists of the prisoners of a legal war waged against the hostile non-Moslems fighting against the faith, and undertaken at the command of the rightful Imám. At the end of the war a fifth part of the spoil, consisting of the captives and other property, is set apart for the public purpose, and the rest of it, together with the would-be slaves, is distributed amongst the soldiery. In almost all the slaves imported in Moslem countries from various ports, both the law-points noticed above are wanting, that is neither the imported slaves are legally acquired in a war conducted by the rightful Imám against a hostile infidel country whose people fight against the faith, nor the spoil is legally distributed after taking out or setting apart the fifth portion of the booty for public purposes in the treasury (*Bait-*

* *Life of Mahomet*; by Sir W Muir, page 347. New Edition.

ul-mál). On the contrary, the slaves imported are Moslem children kidnapped by the Gellabs or slave-lifters from various Mohammadan ports, and can in no way be considered legal slaves, or a lawfully acquired property. This has also been the concurrent opinion of the earlier authorities among the Moslems prohibiting concubinage with the slaves imported from Roum (Turkey), India, and Turkestan.* But they have invented some devices to avoid the illegality of their practice of concubinage, which though crafty and cunning, are absurd and untenable.

Mufti Abú Saúd Effendi, the Sheikh-ul-Islam, who flourished (952—982 A. H.), during the latter and earlier part of the reigns of Sultan Soleiman and Selim II., respectively, was asked his *fetva* or legal opinion regarding concubinary practices with slaves purchased from the soldiers, because the slaves were not a legally distributed booty. He replied that the legal distribution of booty is not to be found in our days, but in 948 A. H. there was a general *Tanfeel*, and consequently after setting apart a fifth portion of the booty there remains no doubt.†

157. The word *Tanfeel* means a gratuity bestowed upon particular soldiers over and above their shares in the booty. But a general *Tanfeel* of the reigning Imám or Sultan lasts only for one year, or until the expedition returns, if the Sultan dies not, or is not deposed, in which cases the *Tanfeel* expires at that moment.‡ Now the alleged *Tanfeel* of 948 A. H., passed by Soleiman

* *Vide Tuhfatul Muhtáj fi Sharah Minháj*: by Imám Noavee. Part IV., page 154.

† *Vide Durr-ul-Mukhtár*, Book of "Institution," Chapter "Distribution of Booty."

‡ *Vide Radd-ul-Muhtár or Sháme'e*: Part III., page 242.

the Magnificent, and the *Khoms* or the setting aside of the fifth part of the booty for public purposes in the *Bait-ul-mál*, or the public treasury, will be of no avail in these days. Because, in the first place, the slaves now imported are generally children of Moslem parents kidnapped by the Gellabs, which can in no way be subject to slavery; and, in the second place, the booty is not lawfully distributed after a legal war against a hostile country by the Imám, or the sovereign head, while no *Khoms* or the fifth part has been reserved out of it in the *Bait-ul-mál* for the public use. Besides, it is not necessary to set apart the fifth portion of the booty in the case of a *Tanfeel*, and the Mufti added this condition as a precautionary measure or a device to legalize anyhow the popular concubinage which, in fact, is not lawful now-a-days even in the Common Law.

158. The author of *Radd-ul-Muhtár alad Durr-ul-Mukhtár*, often quoted before, says with respect to the Grand Mufti Abu Sáud's *fetva* referred to above, that it is not necessary in a general *Tanfeel* to set aside the fifth part of the spoil, and in our days there is neither *Kismat* (legal distribution) nor *Khoms* (the fifth part) taken out of it. Then the question naturally arises before us how the doubt can be removed by making it necessary to reserve the *Khoms* as described by the Mufti. On the contrary, the doubt remains as it is, because we do not know whether or not the Sultan of our time has permitted a general *Tanfeel*. And it cannot be said with certainty that as there is no *Kismat* now-a-days, there necessarily ought to be a general *Tanfeel*. Moreover, the armies of our time take whatever their hands lay hold of by way of pillage even from the cities of Islam, and if the Moslem

proprietor appear afterwards, his property is not restored to him except in the shape of its price. In like manner the authorities of our time, and the present commanders of forces never make a *Tanfeel* nor *Takseem*, from which it is apparent that whatever booty is captured comes in the category of *Gholool*, i.e., the secret appropriation of a portion of the spoil.

159. A second device often employed for legalizing the practice of concubinage consists of the purchase of slaves from the Imám or the sovereign head, who is empowered to sell the plunder before it is carried out of the hostile country. In this case the setting apart of the fifth portion will be incumbent on the seller, out of the price of the article sold, and the practice of concubinage will be deemed lawful on the part of the purchaser without the reservation of the fifth portion. But this sale is to take place in the hostile country by the Imám before the transportation of the plunder to the Mohammadan jurisdiction, and even before its legal distribution. Now such a condition is not to be found, and is certainly impossible in the instances of the slaves now imported and disposed of to the public. Neither the Gellabs nor their customers, who buy slaves from them, are able to act upon it.

160. A third subterfuge adduced to make concubinage lawful under the Common Law is by nominally purchasing the captured slave from the *Vakil* of the *Bait-ul-mál*, or the officer in charge of the public treasury. But at present no *Bait-ul-mál* in any of the Mohammadan states exists, and if there be any the capture of slaves and their nominal purchase from him would be illegal, because such a property is proscribed under the name of *Gholool*, and cannot be purchased

legally or by any artifice from the public treasury. The property partakes of the nature of military plunder, and such as it is, it ought to have been brought before the legal head or sovereign of the Moslems, who would have distributed legally and justly to his soldiery after the setting aside the *Khoms* for public purposes. And whosoever of the Moslems appropriates to himself any thing of the booty commits a serious crime, and is liable to corporal chastisement.

Imám Záhidi, who died in 658 A. H., has laid down his *fatwa* in *Hávee* regarding the point at issue:—

“That as there is neither a *Tanfeel* (the permission from the sovereign to his soldiers to take or to appropriate to themselves whatever prize they seize during the war), nor *Kismat* (legal distribution of the spoil), nor *Shira* (purchase of the booty from the commander of the army), it is not lawful in any way to practise concubinage with slaves.

161. A fourth shift generally employed to secure the legality of concubinage is that the purchaser must marry the slave in a lawful wedlock. In this case the question is no more of concubinage. But even the marriage with a purchased slave under the circumstances is not lawful, because, she being a portion of the prize, is the public or common property, equally claimed by all the partners of it. Hence the marriage is not lawful.*

162. A fifth subterfuge in the defence of concubinage is this, that as the slaves thus captured are the property of *Bait-ul-Mál*, and as there is no such regular establishment in the modern times, while the sovereign head of the Moslem—whether an Imám or Sultan—does not observe the legal and equal distribution of property so acquired and of the other revenues of the state, the

* Vide *Radd-ul-Muhtár*, “Book of Marriage,” Vol. II., p. 288; “Book of Jihad,” Vol III., page 242.

appropriation of such captives by their captors is legally just for the shares of the latter are withheld by the Sultan from the Public Treasury.* Such a theory, in itself unjustifiable and unsound, is a regular system of brigandage, piracy and a misappropriation of the public revenues, and Sheikh Izzuddin Ibn Abdus Salám, who died in 660 A. H., has denounced it. He says, "it is not lawful to take hold of the public property of the Moslems."†

The book *Qinya* or *Qinyatul Minya ala Mazhab Abi Haneefá*; by Imám Abirrya Nujmuddin Mukhtár ibn Mahmud Azzahidi (died 658 A. H.) is notoriously untrustworthy, though the author himself was a great authority.‡

163. The several modes of enslaving copied from a *fatwa* in the *Principles and Precedents of Moohummudan Law*, by Mr. Macnaughten, of the Bengal Civil Service (*Preliminary remarks*, pp. xxx.—xxxiv. footnote,) are not, except the first one, reliable, and do not hold good in the Common Law. As the slaves captured by Moslems will be considered, in the first place, a spoil, in which case they must be treated as such, according to the Common Law, *i.e.*, the Imám or Amir or the sovereign head or the commander after keeping

* "It has been quoted in the *Qinya* from Imám Vabri that whoever is entitled to be paid from the *Bait-ul-Mál*, has got hold of anything belonging to it and he can take it *conscientiously*."—*Radd-ul-Muhtár*, Vol. III., page 242, Kitabul Jihad, Ch. "Plunder." Originally the word translated *conscientiously* is *diyanatan*, which is the antonym of *Qaza-an*, which means, *judicially*.

† † *Vide Tuhfatul Muhtaj fi sharah Minhaj*; by Noavee, Pt III., page 82.

‡ *Vide* Hajee Khalífa in his *Kashfuzzoonoon*, *in loco*. Tahavee in his notes on *Durr-ul-Mukhtár* says "that *Qinya* is not amongst the trustworthy works of religion."

aloof the fifth portion for public purposes, must distribute the remaining among his soldiers, or otherwise the booty will be considered an unlawful property. Secondly, the capture of slaves might have been effected by theft or kidnapping, and the sale of such a property or of slaves thus apprehended is unlawful. Imám Novavee writes :—

“ If it be certain that the captor was a Moslem who has captured the slaves, by way of theft or snatching (kidnapping), the purchase of them is unlawful.” *

164. In this part I have fully explained and shown according to the plain wordings of the Korán and the authentic traditions that the so-called social mischiefs of Islam, *i.e.*, polygamy, facility of divorce, slavery, and its concomitant evils of concubinage are not permitted to be practised in the Korán. On the contrary Islam, by which I mean that pure Islam taught by the Arabian Prophet, Mohammad in the Korán has very much checked, countermanded, and discouraged these serious drawbacks to society. It has ameliorated the condition of women in general, and has laid foundations of social and moral institutions which have proved not blessings to the Arabs only but to the world in general. That the Mohammadans in general have much fallen from the precepts of their Prophet is not to be doubted, but at the same time it ought not to be forgotten also that they are susceptible of a reformation in their social and political codes adapting them to agree with those changes that are day an night going on around them.

* Vide *Tuhfatul Muhtáj fi Sharah Minháj*. Part IV., page 1

