

THE
PROPOSED POLITICAL, LEGAL, AND SOCIAL
REFORMS

IN
THE OTTOMAN EMPIRE AND OTHER
MOHAMMADAN STATES.

BY
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H. H. THE NIZAM'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 Koran, Sura III. verse 100.

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INTRODUCTION.

THE following pages were written on the perusal of an article entitled "ARE REFORMS POSSIBLE UNDER MUSSULMAN RULE?"

Introductory.

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 Mohamadan Power in the world, *i.e.*, the Queen of England, as Empress of India, rules over more Mohammadans than any sovereign, not excepting His Imperial Majesty the Sultan of Turkey. *

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

"The Indian Muhammadans, 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 Islamic 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 Mohammadan 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 Mohammadan 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 more-over 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 orthodox belief, or rather misbelief, Changes not 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 ‘*fahd*,’ 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, Mokallids. 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 Moham-madan 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 (*fatwa*) 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 Malíkites. “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 Málík, 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 Málík prevailed chiefly throughout Spain and Northern Africa.

IMÁM SHÁFAEE.—He was an eclectic. He built up his system on the materials of Sháfités. Aboo Haneefa and Málík. 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 Záhirites. 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
These systems not finite in their nature. 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 *Záhirite* 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.

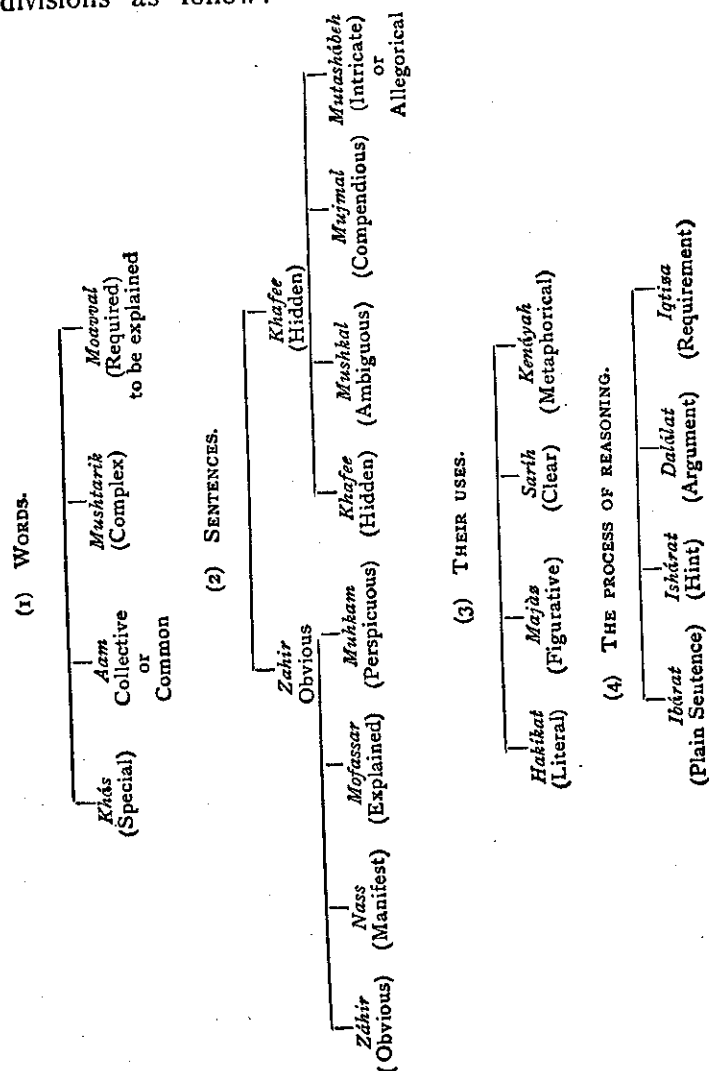
The more important civil and political institutions of the Mohammadan Common Law based on the Korán are bare inferences and deductions from a single word or an isolated

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 Mahomedan 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 Mahomedan 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 of the Korán, apart from the doctrinal, Exegesis of the Korán. moral, prophetic and historical interpretations, 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

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, 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

- * (1) Mohammad bin Ismail Bokháree, died 256 A. H.
 (2) Moslim bin Al Hajjaj Neshápúree, 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 *Akhbár-e-ahád* (single reports) to be binding on the conscience.

The European writers like Muir, Osborn, Hughes

The traditions
not generally bind-
ing on the con-
science.

and Sell, while describing the Moham-
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 *Isnád* 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

✓
Mohammad
never enjoined to
collect traditions.

political as well as the canon laws are
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 immu-
table or finite. how

The unanimous consent of all the learned men of
the whole Mohammadan world at a
certain time on a certain religious

III. The *Ijmá*.
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
Ijmá not autho- in 638 A. H.); Aboo Soleiman Dáood
ritative. az-Záhiri, a learned doctor of Isfahán, and the
founder of the Záhirite (Exteriorist) school of jurispru-
dence; Aboo Hatim Mohammad bin Habbán Al
Tamimi Al-Basti, generally known as Ibn Habbán
(died 354 A. H.); Aboo Mohammad Ali Ibn Hazm,
also a Spanish theologian of great repute (died 400

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 Sháfáee, 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. concurrence 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 *Iláhiyât* or *Aquidâ*. 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 juriconsult 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 Moham-

madan 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 *Quánún*, 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

How to begin that a religious revolution is required
the proposed re- before the work of political reform
forms. To what can begin in a Mohammadan state. I
can we make appeal? 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.

destroying 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 Mohammad'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. Mohammad 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

* *Mishkát-el-Masábeeh*, I. 46, 51."

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*.

" . . . 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 Harisbin-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 Jáfár and Abdu-ur-Ráhman bin Mahdi, from Shoba, from Abi Aun, from Harisbin-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 Mohammed ushered in,"* concerning which the Rev. Mr. Sell says:—

Syed Ameer Ali
and the Rev. Mr.
Sell.

"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 Mohamman 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, "*Ajlahado 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

The tradition 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,

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.