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“In The Matter of A Murdered Person...”

The Qur'an, 2:178

by T. W. Lapin

At 4:30 p.m. on the 18th of June 1975 the head of Prince Faisal ibn Musā'id of Saudi Arabia was severed from his body by two strokes of the executioner's sword. [For a detailed description of the execution see appendix at the end of this article.] Prince Faisal died, on March 25, 1975, as a result of his assassination of his uncle, Faisal ibn 'Abd al-'Aziz, King of Saudi Arabia. In accordance with the 1300 year-old Shari'a, the law of Islam, a murderer was made to account for his crime.

Islamic law prescribes the death penalty for four crimes: murder, highway robbery involving homicide (what we would call “felony murder”), adultery by married people, and apostasy from Islam. Far from being a bloodthirsty code, the Shari'a permits capital punishment but recommends clemency, either by payment of blood-money or forgiveness. The choice of punishment rests with the victim or his survivors, retribution being considered a personal right (although the requirements of modern life have diminished the ability of private individuals to exact penalties). The individual may, at will, waive his right to punish the culprit via the right of retaliation, mercy being deemed highly meritorious in the eyes of God.

Murder is divided into four categories: 1. Intentional, or willful murder; 2. Unintentional murder; 3. Retaliatory murder; and 4. Murder of female infants. The generic term for homicide is “qatl”. Qatl is divided into varying degrees whose essentials and penalties are fairly well codified. The penalties for homicide lie among retaliation (qisas), acts of con-

Front page of The Washington Star, March 25, 1975, reporting the Assassination of King Faisal of Saudi Arabia.



Front page of The Egyptian newspaper Al-Ahram, June 10, 1975. The headline reads: “Execution of the Murder of King Faisal.” For a translation of the accompanying news story see the appendix at the end of this article.



trition (kaffāra), and blood-money (diya), or combinations of one or more of the three. Intentional and willful murder is similar to our “murder in the first degree”: the act involves deliberate intent ('amd or qasd), and implies the use of a deadly weapon. The penalty required is qisas (retaliation, i.e., the death penalty) without kaffāra (expiation), but may be settled by a payment of blood-money to the wali ad-dam, the victim's next of kin. Quasi-deliberate intent, called “shibh al-'amd” meaning “resembling a purpose,” involves a deliberate act of mur-

der without the use of a deadly weapon, punishment for which is kaffāra and diya (expiation and blood-money). The difference between 'amd and shibh al-'amd has been a moot subject for centuries, and the distinctions are still far from clear: e.g. murder by burning is 'amd, murder by flogging is shibh al-'amd, and murder by drowning or strangling may be either one. Murder by mistake (e.g. killing a man thinking he is an animal one is hunting, or shooting at a target and accidentally killing a man) is called “khata,” and is further complicated by the fact that Is-

Islamic law does not recognize the concept of negligence. The penalty for khata' is the same as for quasi-deliberate murder (supra), but allows a reduction in the amount of blood-money required.

There is an additional category called "qatl bi-sabab" which is a form of indirect homicide as opposed to "direct, bodily causation". This consists of performing an otherwise legal act at an unauthorized time or place, which act results in the death of another person. The penalty exacted in this event is the payment of blood-money; an act of contrition is not required.

The Prophet Muhammad outlawed the custom, practised among many Arabian tribes of his era, of killing unwanted female children. The Arabic language retains a verb for the custom: "wa' ada", meaning "to bury alive one's baby daughter." The penalty established by the Shaḥī'a is death, usually by lapidation. Lest we regard the pre-Islamic Arabs as an exceptionally barbarous people, it is well to remember that infanticide was practised extensively throughout the ancient world (and continues today in certain parts of the globe). Indeed, official policy of the Greek city-state of Sparta required each newborn Spartan to be examined by the government to determine if it were worthy of living. (viz. the law of Lycurgus). Infanticide was also quite common in the Roman Empire until an addition to the Cornelian laws in the fifth century A.D. specifically forbade it.

Adultery merits the death penalty only for the married adulteror or adulteress; the unmarried party is merely flogged severely.

Women are accorded preferential treatment in the application of penalties for apostasy from Islam. While the male heretic is given three days in which to recant his rejection of the Faith and, if he fails to do so, is executed, the female apostate is simply imprisoned, and beaten every three days — a female slave is to be beaten by her master — until she returns to Islam.

"Felony murder," which usually seems to have been embodied in the act of highway brigandage (qatl at-tariq), was considered especially heinous by

the early Muslim jurists. In a society such as theirs, which engaged in extensive commerce by caravan to distant lands, the necessity for safe passage of men and merchandise was essential; this caused swift and severe punishment to be favored for those who engaged in what might be termed violent restraint of trade. Mere plundering was regarded as theft and was punished by a complex system which made the severity of the penalty dependent on the amount and value of merchandise stolen.

If a homicide occurs during the commission of a robbery and no goods stolen concurrently, the penalty prescribed by law is death by the sword (generally, decapitation is preferred). However, if death occurs to the innocent party or parties with an attendant loss of property, the death penalty is to be crucifixion alive for the killer. (Regarding crucifixion as punishment: it is extremely rare in Islamic law for such a manner of death to be ordered. The only other crime which warrants crucifixion, to my knowledge, is the making of war on God or His Prophet, see The Qur'an, chapter of "The Table Served"). If one of the bandits involved in the commission of a robbery in which an innocent party is killed is a minor, he is not subject to capital punishment. Moreover, while collective guilt is applied to all members of a bandit gang if one of its members commits a "felony murder," if one or more of the gang taking part in the incident involved is a minor, collective guilt (with its attendant collective decapitation or crucifixion) is *not* imposed, and each man is held individually accountable for his actions.

This clemency towards juveniles is part of the legal philosophy of Islam which prohibits the execution of minors or mental incompetents. Furthermore, an execution may not be carried out on an intoxicated person: one must be an adult and *compos mentis* to be executed under Islamic law.

Certain forms of illicit sexual intercourse (zina) were punished by death, as was the drinking of wine (shurb al-khamr) when accompanied by adultery or unlawful fornication in general. The latter was rarely, if, indeed, ever, en-

forced. It is reported that Muhammad once had a man stoned to death after the fellow was brought before him for the fifth time for thievery: after the first conviction for theft the man had had one hand amputated; after the second conviction, the other hand went the way of the first; upon the third conviction, one leg (or foot) was removed, followed by the remaining foot on the fourth conviction. Just how the man was able to steal anything, bereft of his hands and feet (or legs!) as he was, is a matter of considerable interest.

The most common form of execution in the classical Islamic appears to have been death by the sword: it was (and is) quick, convenient, and inexpensive. Ideally, the condemned was to receive a slight, preliminary cut on the back of the neck before the coup de grace effected the Final Separation. The purpose of this initial slicing (which was inflicted upon the late Prince Faisal) was to give the criminal a taste of the suffering he had caused his victim and the victim's family: a highly commendable practice. The first cut was followed immediately by a mighty stroke which severed the head from the body. After the execution, the head is to be displayed before the spectators (and there are always spectators as executions are required to be carried out in public places at a time when a goodly number of people are present to witness the punishment, that being the key reason for the punishment itself: an object lesson for would-be wrongdoers. A preferred time for public executions is shortly after noonday prayers on Friday, the Muslim Sabbath, when many people are to be found in the public places of cities, towns, and villages). As previously mentioned, death by crucifixion and death by lapidation (i.e. stoning) are popular methods of capital punishment. This writer has learned from reliable sources that execution by hurling the condemned from the top of a minaret (the tower attached to mosques) has been used, and was employed as recently as the late 1960's to execute homosexuals in Yemen. (N.B.: it is expressly forbidden to execute anyone *inside* a mosque).

Islamic law recognizes the concept of

"lawful murder;" no criminal liability attaches itself to one who kills:

- 1.) A person who killed another without just cause.
- 2.) A rebel or bandit.
- 3.) A married person who committed adultery.

An aider or abettor to the crime of murder is merely subject to imprisonment.

There exist several quasi-criminal acts which are not considered compensable or subject to retribution:

- 1.) Death, wounds, or damage caused by quadruped animals.
- 2.) Death, wounds, or damage sustained while voluntarily working in a mine or constructing a well.
- 3.) Death or wounds caused by anyone in defense of his own life or property.
- 4.) Wounds or damage sustained while "peeping through a window or screen without permission."
- 5.) Death caused in defense of the religion of Islam, or in the act of protecting a family.
- 6.) Death or wounding of a person who is constantly guilty of speaking ill of the Prophet Muhammad or "casting blasphemous aspersions upon him."

In concluding this review of the application of the death penalty under Islamic law it should be mentioned that capital punishment under that system is employed in a highly regulated and purposeful manner. It should also be borne in mind that the death penalty as employed in Islamic legal circles is not to be equated absolutely with capital punishment as it existed in our own society. In view of the increasingly popular demand for reinstatement of the death penalty in the United States some consideration must be given to the application of that form of punishment — both as a punishment and as a deterrent to crime — in legal systems other than the one we have employed in the past.

APPENDIX

The following is Mr. Lapin's translation of the news story printed in the Cairo newspaper "Al-Ahram," a photograph of which appears on the first page of this article.

"EXECUTION OF KING FAISAL'S MURDERER"

The Shari'a court published its verdict in the morning and the execution by the sword was completed before sunset in front of the Palace of Justice in Riyadh.

Riyadh — the 18th — various news agencies —

Today, Prince Faisal bin Musa'id, the murderer of King Faisal, was executed in accordance with the sentence handed down this morning by the Supreme Shari'a Court in Riyadh. The implementation of the execution by the sword occurred in front of the Palace of Justice in Riyadh at 4:30 in the afternoon, in the presence of all of the citizens assembled in the plaza facing the Palace of Justice. The murderer was led, blindfolded and bound, and dressed in a white robe, to the place of execution. The actual execution lasted only one minute. It began with the executioner nicking the back of the murderer's neck twice with his sword before striking the head from its body with one mighty stroke.

Then the executioner lifted the head of the Prince, placed it upon a pole, and paraded it among the assembled throng for about a quarter of an hour until everyone had seen it. After that, an ambulance arrived into which were placed the head and body of the Prince.

In a telephone interview with the United Press, a Saudi journalist mentioned that it was but a moment between the first stroke of the sword on the neck of the murderer and the stroke which completed the execution.

The journalist went on to say that the citizens who were gathered to witness the execution — and there were more than 6,000 of them — cheered with

each stroke of the sword.

The execution was not attended by members of the Royal Family with the exception of Prince Suleiman, the youngest brother of the late King Faisal, and that was in his capacity as magistrate of Riyadh.

In an official statement Radio Riyadh said, "The execution of the murderous criminal took place today in accordance with the judgment published this morning by the Supreme Shari'a Court, in retribution for the murder of the deceased leader of the Arab and Islamic community, the late King Faisal. His Majesty King Khalid bin 'Abd al-Aziz had pondered the verdict in his heart and ordered that the execution take place after the afternoon prayer."

The radio also reported that, according to a statement from the Royal Palace, the murderer had confessed during his trial that he had killed the King to impose a limit on Islam, and that his crime was a part of his goals for liberating (?) religion.

The Prince was 27 years old when he committed his crime on the 26th of last March, when he infiltrated into the office of King Faisal during a meeting with the Kuwaiti oil minister, 'Abd al-Matlab al-Kazami, and Sheikh Ahmad Zaki al-Yamani, the Saudi oil minister. The Prince approached the King as if he wanted to greet him, then shot the King with a pistol he had concealed in his clothing, whereupon the King fell to the floor without a word. In an official announcement following the murder of the King, it was announced that the Prince who had murdered his uncle was not mentally stable. Later Prince Nayif bin 'Abd al-'Aziz, the Minister of State, announced that the Prince was not mentally unbalanced when he committed the crime, and that the first official statement had been erroneous in that respect: Prince Faisal, Prince Nayif reported, "was sane then and is sane now." Prince Nayif said that he had turned the whole matter over to the Supreme Shari'a Court.