

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Khutbah 10/3/17 – Local Custom

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

O mankind, have taqwa of your Lord who created you from a single self and created its mate from it and then disseminated many men and women from the two of them. Have taqwa of Allah in whose name you make demands on one another and also in respect of your families. Allah watches over you continually.

{ يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ حَقَّ تَقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنْتُمْ مُسْلِمُونَ }

You who believe! have taqwa of Allah with the taqwa due to Him and do not die except as Muslims.

{ يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا عَظِيمًا }

You who believe! have taqwa of Allah and speak words which hit the mark. He will put your actions right for you and forgive you your wrong deeds. All who obey Allah and His Messenger have won a mighty victory.

تاريخ اليوم الثامن عشر من شهر جمادى الآخرة، في السنة ألف وأربع مائة وثمانية وثلاثين

Today is the 18th of Jumada al-Akhir 1438

خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

Make allowances for people, command what is right, and turn away from the ignorant. (Sūrat al-A'raf 7:199)

خذ العفو ^ فيه قولان أحدهما أن المعنى خذ من الناس في أخلاقهم وأقوالهم ومعاشرتهم ما تيسر لا ما يشق عليهم لئلا ينفروا فالعفو على هذا بمعنى السهل والصفح عنهم وهو ضد الجهل والتكليف

“Make allowances for people”: about this there are two statement, first, that it means: with respect to people’s character, their words, and their company, take from them what is easy not what is difficult in case they will disperse and flee. *Afw* in this sense is ease and turning away from them, and is the opposite of ignorance or imposing responsibilities.

وامر بالعرف أي بالمعروف وهو فعل الخير وقيل العفو الجاري بين الناس من العوائد واحتج المالكية بذلك على الحكم بالعوائد

“Command what is right” means what is well known of good and generous behaviour, which is the doing of good. It has been said that it means the ease of local custom that is current among people, and the Mālikīs argued by means of that for judging by local custom.

However, the Messenger of Allah ﷺ said, as is narrated by Ibn ‘Umar ؓ:

وَمَنْ لَشَبِهَ يَقُومُ فَهُوَ مِنْهُمْ.

“Whoever models himself on a people is one of them.”

We hear in this a warning against imitating and copying immoral people or copying the behaviour of people of other religions, but there is also good news in this because someone who models him or herself on the *ṣāliḥūn*, knowledgeable people and *awliyā'* will be counted among them.

تكلمنا في العلاقة بين الشريعة والروحانية في الخطبة ال ماضية، فاليوم نتكلم في أمر العرف أو عادة وعوائد المجتمع وعلاقتها بالسنة والشريعة، فالمعلوم أنّ عوائد المجتمع من أصول الفقه في المذاهب. فإذا أتى المسلمون لبلد جديد لا يدعون أهله لثقافة أو عوائد معينة كثقافة العرب وعوائدهم مثلا، ولكن يميزون بين أمور ثقافتهم ويتركون ما لا يحل منها ويأخذون بما يحل. فنرجع لأمر العرف والعادة من يعد. فلننظر في أمر النكاح.

We spoke previously about the relationship between the *sharī'ah* and spirituality, and today we would like to address the matter of local custom, which is regarded as one of the *uṣūl al-fiqh* in the madhhabs. This is a known issue in Islam. The *sharī'ah* is a filter for culture and is not itself a culture. When the Muslims come to a land and the people of the land have customs, the Muslims do not impose other customs on them. Rather, we weed out customs that are unacceptable and confirm those that are acceptable.

For example, in these lands, although it is customary for people to take boyfriends and girlfriends, the *sharī'ah* and the Sunnah reject these matters. However, there is a genuine problem here that is not just one of morality or immorality: how do a couple know that they are right for each other? To marry, have children and gradually discover that you are not suited to each other and then divorce later in life can be a traumatic emotional experience for husband, wife and children. Naturally, a couple who are attracted to each other hesitate. Our local custom of boyfriends and girlfriends won't work since it is contrary to the *sharī'ah* and the Sunnah, and it has all the defects we know too well, of children conceived out of wedlock, the woman's loss of her honour and the respect she should be shown, her being burdened with children without means of support except from the state, which becomes the de facto husband of many single mothers. Within the fiqh of the marriage there is something that can help, something that is availed of and has become a customary matter in some Muslim societies and which has a firm basis in the Book of Allah. Allah says:

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدَرَهُ وَعَلَى الْمَقْتَرِ قَدَرَهُ
مَتَلَعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ

وَإِنْ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوا الَّذِي بِيَدِهِ عَقْدَةُ
النِّكَاحِ وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَى وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

There is nothing wrong in your divorcing women before you have touched them or allotted a dowry to them. But give them a gift – he who is wealthy according to his means and he who is less well off according to his means – a gift to be given with correctness and courtesy: a duty for all good-doers.

If you divorce them before you have touched them but have already allotted them a dowry, they should have half the amount which you allotted, unless they forgo it or the one in charge of the marriage

contract forgoes it. To forgo it is closer to taqwa. Do not forget to show generosity to one another. Allah sees what you do. (Sūrat al-Baqarah 2:236-7)

And Allah says:

إِنَّمَا الْإِنْسَانُ لِرَبِّهِ كَفُورٌ
 إِتَّيَبُوا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمِنْهَا
 وَسَرَّحُوهُنَّ سَرَاحًا جَمِيلًا

You who believe! when you marry believing women and then divorce them before you have touched them, there is no 'idda for you to calculate for them, so give them a gift and let them go with kindness.
 (Sūrat al-Aḥzāb 33:49)

The fiqh of marriage distinguishes between the marriage contract and consummation, which in Arabic is called *دُخُولٌ* and it is also said that the man *بَنَىٰ بِهَا*. In some societies, it is common for the young Muslim couple to make the marriage contract but not move in together. As they are now man and wife, they are allowed to keep each other's company and there are no restrictions on them. In some cases, the period between the signing of the contract and actually moving in together and consummating the marriage can last for a year or more. If, in that time, they find that they are not suited to each other, then they are easily able to divorce, there are less financial consequences for the husband, there is no 'iddah period for the woman to observe, and there are no children to suffer the consequences of the broken marriage.

أَقُولُ قَوْلِي هَذَا وَأَسْتَغْفِرُ اللَّهَ لِي وَلَكُمْ وَلِسَائِرِ الْمُسْلِمِينَ فَاسْتَغْفِرُوهُ إِنَّهُ هُوَ الْغَفُورُ الرَّحِيمُ

The wedding itself is another matter in which a great deal of local custom has become included. The Messenger of Allah ﷺ forbade us to imitate the People of the Book or the idolators, but this is generally understood to mean in their religious practices, whereas marriage is one of the *mu'āmalāt* and is not an *'ibādah*. Or is it?

From the point of view of the Christians, in the twelfth century, the Church took over marriage. They displaced the father from his role as guardian of the bride, but most importantly marriage had been a contract, a part of what was called Common Law in the British Isles, and that was very much like the nikah contract, but they turned it into a *sacrament*. In other words, the wedding became a specifically religious act. At that point, it became extremely disliked for Muslims to incorporate elements from it into our weddings, for example the exchange of rings, which is an essential part of the religious wedding of Christians, the dressing of the bride in white, etc.

يَبْنِيٰٓ ءَادَمَ قَدْ أَنزَلْنَا عَلَيْكُمْ لِبَاسًا يُورِي سَوْءَٰتِكُمْ وَرِيشًا ۗ وَلِبَاسَ التَّقْوَىٰ ذَٰلِكَ خَيْرٌ ۗ ذَٰلِكَ مِمَّنْ ءَايَتِ اللَّهِ لَعَلَّهُمْ يَذَّكَّرُونَ

Children of Adam, We have sent down clothing to you to conceal your private parts, and fine apparel, but the garment of taqwa – that is best! That is one of Allah's Signs, so that hopefully they will pay heed. (Sūrat al-A'rāf 7:26)

Clothing is another matter of significance here. Clothing is simply one of the *mu'āmalāt* and by it one intends to conceal one's nakedness. But here something has been introduced into the argument for the Muslim woman's headscarf that is not appropriate. It has been called a

‘religious symbol’, and on that basis a high European court considers it legitimate for employers to prohibit their employees from wearing headscarfs. The problem here is that almost all of us accept this argument that the headscarf is a religious symbol, and yet you can hardly find the word symbol itself in the Book or the Sunnah or the hadith literature. Symbolism is not a part of our way of thinking. Specifically, you cannot find in any of our source materials the view that the scarf is a religious symbol. It is not. It is a piece of clothing to cover our nakedness. Arguably the nun’s habit, their clothing including scarf, is exactly that: it is symbolic. Thus this defeat in the European court comes at our own hands because we have accepted a religious argument for the scarf that is simply wrong and that comes from outside of us.

The second disaster in this is that we men have accepted to put women forward as the standard-bearers of the struggle for Islam, whereas we are the ones who are supposed to step forward, and we ought not to expose them to any danger or possibility of insult. Something is deeply wrong that we have allowed this to happen.

We ask Allah to help us to recover the authentic *dīn* and a true understanding of the *mu‘āmalāt* in a way that makes sense in this time and in these lands.