

Democracy, Caliphate, & Islamic Governance

An Islamic Juristic Exploration of the Compatibility of
Democracy with the Principles of Islamic Political Thought
(*Al-Siyasah Al-Shar'iyyah*)

DA'WAH INSTITUTE

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Introduction

Islam is a way of life and civilization. Its teachings are not limited to belief, worship, and moral concerns only. It has provided Muslims with guidance regarding every sphere of life such as spirituality, security, finance, healthcare, and governance, etc. So, Islam is concerned not only with the private morality and lives of people with their families, themselves, and Allah, but also with ethical government, security, safety, and the public administration of justice.

Islamic history has witnessed a number of caliphates over the last 1400 years. The most commonly known ones being the caliphate period of the first four Rightly guided Caliphs also referred to as the Rashidun Caliphate (632-661 CE), followed by the Umayyad Caliphate (661-750 CE), then the Abbasid Caliphate (750-1258 CE), the Mamluk Abbasid dynasty/caliphate (1261-1517 CE), and lastly the Ottoman Caliphate (1517- 3rd March 1922 CE).¹

¹ History.com Editors. "Ottoman Empire." Accessed March 23, 2023. <https://www.history.com/topics/middle-east/ottoman-empire>;

A number of other short-lived and sometimes disputed caliphates existed in various parts of the Muslim world. Some of these existed side-by-side others and included the Hasan ibn Ali's Caliphate (661), Abdullah ibn Zubayr's Caliphate (684-692 CE), Caliphate of Cordoba (929-1031 CE), Sokoto Caliphate (1804-1903 CE), and several others.² While each of these caliphates all carried the name “caliphate”, deeper inspection of their realities reveals that the term “caliphate” was an umbrella for various political and administrative systems of governance regarded as islamically legitimate.

The Prophet (p)³ was reported to have said: “*Banu Isra'il were ruled over by the Prophets. When one Prophet died, another succeeded him, but after me, there is no prophet and there will be **caliphs** and they will be quite large in number*”.⁴ The large number implies that the caliphs are not only the four rightly guided caliphs. Some of the caliphs and leaders were egalitarian, just and benevolent dictatorships (such as the Rashidun Caliphate), while some were corrupt and tyrannical totalitarian dictatorships, and many were monarchies where the caliphate or

https://en.wikipedia.org/wiki/Dissolution_of_the_Ottoman_Empire.

² Some of these are also referred to as dynasties (*dawlah*), caliphates (*khilafah*), or empires.

³ Stands for “peace be upon him”, a salutation to be made every time the name of Prophet Muhammad (p) is mentioned.

⁴ Muslim, Sahih Muslim, Hadith 1842.

leadership was inherited (such as the early Umayyads); though most of them evolved into oligarchies and aristocracies where leadership revolved among certain socio-economic ruling classes of selected families, royalty, nobility and ethnicity.

However, the word 'caliphate' could have both generic and specific usage. The hadith above which mentioned the large number of caliphs explains the generic usage of the word. There are other hadiths which explain the specific usage of the word i.e., for caliphate on the model of prophethood or a just rule. An example of this is the Prophet's (p) statement: *“The Prophethood will be among you as long as Allah wills, then he will eliminate it if he so wills. Then a Khilafah "Caliphate" on the model of Prophethood will prevail so long as Allah wills, then he will eliminate it if he so wills. Then there will be a biting monarchy as long as Allah wills, then he will eliminate it if he so wills. Then there will be an oppressive monarchy as long as Allah wills, then he will eliminate it if he so wills. Then a Khilafah "Caliphate" on the way of Prophethood will prevail and he kept silent”*.⁵

If the “caliphate” is an umbrella term for diverse political systems, is it possible for a particular form of “man-made” political/governance systems to also be regarded as

⁵ Ahmad, *Musnad Ahmad*, Hadith no.18406.

being among the diverse systems such as “man-made” monarchies, aristocracies, dictatorships and oligarchies, etc. to be legitimately accommodated under a “caliphate”? What criteria are there for any other man-made political or governance systems such as democracy to be recognised as legitimate or otherwise in Islamic political thought based on the guidance of the Qur'an and Sunnah?

A fundamental question therefore arises; do the Qur'an and Sunnah prescribe a particular governance structure or political system (in a similar way as it has prescribed particular forms of worship)? Is the system of the Rashidun Caliphate the only legitimate system of governance and politics acceptable to Islam, while others are deviations from that ideal system?

Alternatively, it may be asked, do the Qur'an and Sunnah have some specific prohibitions and obligations related to governance, but mainly ethical principles and clear objectives from the primary and secondary sources of Islamic law to guide the “juristic reasoning” (or *Ijtihad*) of Muslim community and its scholars in accommodating and developing a variety of alternative culturally and contextually appropriate political systems that are best able to meet the needs of justice and the objectives (or *Maqasid*) of Shari'ah?

In this case, the political systems, and policies that Islamic jurisprudence could accommodate would be

diverse and evolving, as it would accommodate various customary laws, structures, systems and policies of governance and politics that do not conflict with its principles and fundamentals that are based on the Qur'an and Sunnah. As a matter of fact, Islam accommodated and continues to accommodate many existing and new social, cultural, military, safety, healthcare, economic and financial systems and only modified or rejected what conflicted with the clear teachings and spirit of Qur'an and Sunnah. Would it also be correct to say that Islam accommodated and will continue to accommodate many diverse and new systems of governance, public administration, and politics, so long as these do not conflict with the clear teachings of the Qur'an and Sunnah? Admittedly, if any aspect of such a system does conflict with the teachings of these sources, it will be modified, changed, or rejected.

Was the Rashidun Caliphate system prescribed by the Qur'an and Sunnah as the only legitimate systems available for Muslims for all contexts till the Day of Judgement, or does it serve as one of the possible legitimate models and systems available for Muslims among many others?⁶ There

⁶ The Rashidun caliphate system is generally regarded as being in its historical context, the best ever, most just and egalitarian system of Islamic political leadership and governance. This system was however very short-lived and never successfully replicated in Islamic history for various reasons which the field of Islamic political thought (*al-Siyasa al-Shar'iyyah*) tries to study and come up with solutions for.

are two major views among Muslims regarding what the system of governance and political structure should be.

1. Islam has prescribed a specific political order and system of governance.

The first view is that Islam has prescribed a specific political order and system of governance which must be followed, except if in a situation of necessity where this is not feasible. It is a political order which stems from the first Islamic state (the Medinan state) during the lifetime of the Prophet (p) to the era of the caliphs and leaders who succeeded them. It is a political system that is unique and different from other political systems. It is not a democratic, theocratic, monarchical, oligarchical, or dictatorial system of government. It is an Islamic-nomocratic system of government. It is a government that is in accordance with the Islamic law (*Shari'ah*).⁷ It is a system of government in which absolute sovereignty is exercised by Allah through the application of Islamic law (*Shari'ah*) in all spheres of life, and as best as possible. It is a system of government in which the leaders are, as all Muslims should be, representatives of Allah on earth and not supreme authorities in their own rights. It is a system where leaders

⁷ This is an agreement in principle. What exactly will the law or policies be on particular issues would often depend on context, the schools of law and the decisions of the leader.

do not campaign to get certain positions of office, but are selected by the *Ahl al-Hall wa al-'Aqd* (“electoral college” or a group of highly respected people whom the populace at large consider their guides and representatives) or through the nomination or transfer of leadership from a leader to a successor, as done during the period of the Rashidun Caliphate. It is a system that not only aims to ensure the establishment of justice, equality, public participation and consultation (*shurah*), and general welfare of all citizens. It would also aim to ensure the establishment of worship such as prayers (*Salah*), *Zakat*, and enjoining good and forbidding bad.

2. The divine revelation does not prescribe any detailed political system.

Due to the absence of a clear mandate in the primary sources of Shari'ah – the Qur'an and Hadith - as to the precise definition, attributes, and means of achieving an Islamic state or establishing an Islamic political, administrative or governance system, other Muslim jurists hold the view that Islam has no detailed form of government that is prescribed by the divine revelation, and that it is left to the Muslim Ummah through their *Ijtihad* (juristic reasoning) to adopt or develop any system of governance and politics that best serves the objective of the Qur'an and Sunnah in every context. There is in this opinion, no single or specific

prescribed form of an Islamic political system, but there are many possibilities and optional systems for changing contexts. Of course, an Islamic state must operate Islamic law as best as it can, which distinguishes one of its objectives from other political systems. The absence of any clear texts on the structure of an ideal Islamic state or political system has given rise to various juristic opinions and *ijtihad*. This is similar to a legitimate financial or cultural system where there is not specific culture that is prescribed as the only divine option by the texts of the Qur'an and Sunnah. But there are guidelines and criteria for what is acceptable and what is not, based on the principles and maxims of Islamic jurisprudence, and the higher purposes and objectives (*Maqasid*) of Shari'ah. In other words, the Muslim community can be creative in coming up with, modifying or adopting any political system that does not conflict with the Qur'an and Sunnah.

Flowing from the concept of *Tawhid* (and unity of Allah), a Muslim government and people would as Muslims, recognise the absolute sovereignty of Allah through the application of His guidance and laws in all spheres of life, as best as they can. What exactly should Islamic law or policies be on issues, would naturally depend on the context, the schools of law and the decisions of the leadership when considering public interest (*Maslahah*). Any acceptable system of governance would also be one where the

leaders recognise themselves as servants and representatives of Allah and not ultimate authorities in their own rights. Any acceptable system would aim to ensure the establishment of justice, equality, public participation, and consultation (*shurah*), and the general welfare of all citizens. It would also protect and promote religious rights and freedoms, and the general enjoining of good and forbidding of wrong.

This discussion on the views of Muslim jurists from diverse contexts on the forms of government, and systems of politics and public administration in Islamic thought, is the subject of what in the Islamic Sciences is regarded as a branch of Islamic jurisprudence (*Fiqh*) and its sub-branch Islamic system of governance (*al-Siyasa al-Shar'iyyah*) which is the subject matter of this book. During the period immediately after the demise of the Prophet (p), that of the first four “Rightly Guided Caliphs” which lasted for about 30 years, the system of governance was generally recognised as a Caliphate or “*Khilafah* system”. This system had a diverse variety of mechanisms by which the leaders come to power as seen in the different ways in which each of the four (and subsequent) Caliphs came to power, and a diversity of governance policies implemented by the Caliphs. The experience of this period was that it was headed by people of exceptional integrity and character. There was respect for justice and the Rule of Law, and the leader did

not allow himself to be above the laws he promulgated. It was a meritocracy in the sense that the choice of leader and head of state was based on merit – competence and character – and what was most acceptable to the majority of the people at the time. It was participatory, consultative (*shurah*) and inclusive in the sense that the various groups within the community were fully involved in the determining who would be the leader and their willing endorsement through an “oath of allegiance” (*bay'ah*)⁸ was a prerequisite for the recognition of the legitimacy of the leader. It was an egalitarian system in the sense that leadership was not barred to people simply on the grounds of their tribe, place of origin, family, and socio-economic backgrounds. Earlier on, it was necessarily oligarchic, and the leaders were preferred to be from the Quraish tribe in the interest of social order and unity.⁹ During this period, new policies and governance structures were made based on individual and community consultation with other stakeholders and the application of the principles of Islamic jurisprudence (Qur'an, Sunnah, and their *Ijtihad*). This

⁸ *Bay'ah* was the giving of an “oath of allegiance” that recognised or endorsed the legitimacy of a leader. This was given to the leader by people or their representatives.

⁹ The Quraish from Mecca was the only tribe that could unite and earn the respect of the various other tribal communities in the region. Later on, this tribal condition was relaxed by scholars as the context and authority of Quraish diminished and as political power moved elsewhere.

period witnessed the best and most progressive spread of Islam, the implementation of Islamic law and justice that best realised the purposes and objectives (*Maqasid*) of the Qur'an and Sunnah in that context.

This system of governance is regarded as the best and most efficient in Islamic history. The structure and concentration of executive, legislative and judicial powers in the leader or Caliph makes it describable as that of a “benevolent dictator”. Benevolent and egalitarian because the leader respected the Rule of Law, was just and good, and was a “servant-leader” who acted in the best interest of the community and of Islam. He was a “dictator” because the leader had final temporal authority above everyone else. He could dictate an instruction to anyone, and his decision is final.

After the pious four Rightly Guided Caliphs, and still during the lives of the great Companions of the Prophet (p), a monarchical system of governance was initiated by the Caliph Mu'awiyah who was succeeded by his son Yazid. This monarchical system of governance was regarded as permissible in Islamic law by most jurists, as there was nothing in the text of the Qur'an and Sunnah to categorically condemn it as prohibited or contrary to the Shari'ah, so long as the successor to leadership was chosen based on merit regarding his competence and character.

This consideration of merit was the justification claimed by Mu'awiyah. The monarchical system of Mu'awiyah's family and relatives grew into an oligarchy with various families of the Umayyad Clan. This oligarchical system was referred to as the Umayyad Caliphate and had about 14 Caliphs in total before the Abbasid revolution that took over power in 750 C.E.¹⁰

Other rival clans, families, oligarchies and aristocracies gradually came to power through various means and resulted in the many other Caliphates of Islamic history, the most well-known being the Abbasid (which had about 39 caliphs), the Mamluk-Abbasid (with about 22 caliphs) and lastly, the Ottoman Caliphate which ended in 1922. The Ottomans had a total of about 30 caliphs in total.¹¹ These were each recognised by the scholars and jurists of their times and most jurists of later times as also being Islamic systems of governance. This was regarded as so even though they were different in structure from the original Caliphate system of the first Rightly Guided Four.

These systems were various forms of dictatorships where the final decision and power resided in the hands of

¹⁰ See Ibn Kathir, *al-Bidayah wa al-Nihayah*, 1st ed. 1997, vol.11, p.466; Hugh Kennedy, *The Abbasid Revolution in the Great Arab Conquest*, Da Capo Press, p.238-251.

¹¹ The caliphs, especially during the Abbasid Caliphate period, started accepting various other terms and titles such as "Amir al-Umara", "Imam" and "Sultan" for themselves.

the single leader, the Caliph, Amir, or Sultan. While some of these powerful caliphs were selfless, just and benevolent – i.e., “Benevolent Dictators”, many of those after the first four included some who were unjust, selfish and malevolent dictators or tyrants who were practically above all laws. Some tyrants such as the Governor of Kufah Hajjaj bin Yusuf was so vicious, that he is regarded as responsible for murdering over 120,000 people including scholars and some of the Prophet's companions such as Abdullahi bin Zubayr.¹² Importantly however, while these corrupt Caliphs and leaders might have been tyrants and their character fell far below what Islam prescribes for a leader, the system of governance and political structure they operated was still regarded as Islamically legitimate. The political, economic, or legal system of the society was not regarded as unislamic simply on account of the corruption of the individuals or families who ran the system.¹³

¹² In other words, he killed more Muslims than did the Quraishi polytheists of Mecca during the entire lifetime of the Prophet (pbuh). Ibn Umar reported that the Prophet (pbuh) said: “*In Thaqif there will be a great liar and destroyer.*” (al-Tirmidhi, Hadith 2220). Other Caliphs and leaders who also committed atrocities include Sultan Mehmet III who killed 19 of his brothers when he ascended the throne. See Zainab Hashim Jaryan and Alauddin Abdul Hussein, *The Phenomenon of Fratricide in the Ottoman Empire*, International Journal of Research in Social Sciences and Humanities, 2019, p.4.

¹³ Each system or component of society is to be judged on its own merit. It is therefore possible to have Islamic law operating in a monarchy, but not an Islamic economic system. Similarly, it is possible to have an Islamic political caliphate system operating an unjust and un-Islamic system of laws.

The “Xenophobic Reactionary Jurisprudence” in Contemporary Fatwas

Two new words that have joined popular discussions related to Islamic law and jurisprudence are “Islamic” and “Unislamic”. While helpful in certain contexts, these terms have confounded and often created confusion in the approach used by many when thinking or assessing Islam's approach to some very important issues such as matters related to governance, state, and politics. According to the distinguished contemporary jurist, Shaykh Abdullah bin Bayyah, while discussing the issue of the “*islamicity*” of the state, says, “... A large part of the problem today lies in misunderstanding what is Islamic and what is not.”¹⁴

When we say someone is doing “Islamic” Studies, or “Islamic” Sciences, we do not automatically assume that someone studying Geography, Medicine, Physics or Biology is doing “unislamic” studies. Also, when someone is taking honey and blackseed oil for some ailment, we have no difficulties describing this as “Islamic” medicine. We usually however do not automatically assume that someone taking paracetamol, antibiotics, or any other conventional medicine, is taking “unislamic” medicine.

¹⁴ Shaykh Abdullah Bin Bayyah, *The Pursuit of Peace: A Vision for a Peaceful World*, Abu Dhabi Forum for Peace, UAE, 2022, p.104

However, when we use “Islamic” and “unislamic” as means for judging what is permissible or prohibited in Islamic jurisprudence (*Fiqh*) we often tend to start prohibiting what Allah and His Prophet (p) have not prohibited. For example, when we say Abdullah, Aisha, Sarah, Asad or Umar are “Islamic” names, we often unfortunately assume that names such as Lilly, Paul, Ngozi or George are “unislamic”, even though there is nothing forbidden (*Haram*) about these names from the perspective of the Qur'an and Sunnah or Islamic Jurisprudence. These are simply customary names that are only strange to some of us, and which we are not yet used to associating with Muslims or Islam. Umar, Bilal, Abdullah, Aisha or Maryam were pre-Islamic (*Jahiliyyah*) customary Arab ('*Urfi*), Ethiopian or Jewish names that did not have meanings which conflicted with the principles and teachings of the Qur'an or Sunnah. These people became Muslims and we got used to them, and now regard their names as examples of “Islamic names”. Meanwhile, there are thousands of other non-Arab pre-Islamic names from all over the world that the Qur'an and Sunnah, and Islamic jurisprudence would regard as beautiful and completely acceptable to Islam. So, while some Muslims may regard as “unislamic” names such as Edward, Anne, Charles and Elizabeth, classical Islamic jurisprudence (based on the Qur'an and Sunnah) regards these as inoffensive or benign customary names

that do not conflict with Islamic teachings and are therefore permissible (*halal*) for Muslims, or especially for converts to Islam to retain, as did most of the early Muslims with their inoffensive customary names. What is most problematic here is when Muslims take opinions that come from a xenophobic mindset as representing the position of Islamic law on an issue.

Very often, we have allowed our personal ethnocentric biases, psychological sense of strangeness, cultural discomfort with “the Other”, and often an irrational fear of the foreign (xenophobia), to become our unwritten criteria for what is “Islamic” and acceptable (*Halal*) or “unislamic” and unacceptable (*Haram*). This approach to jurisprudence is also often “reactionary” (and not proactive) as it is usually only in response to “the Other”. It is reactionary also, because it tends to assume that the Shari'ah ruling on anything that is simply the opposite of what comes from outside the Muslim community or religious texts. This is especially so if the Other is European, Secular or Native, but not when it is Arab or coming from a Muslim majority culture such as Hausa, Malay, Pakistani, etc. Consequently, if Europeans or the West promote anything – human rights, animal rights, democracy, capitalism, science, freedom, philosophy, women's rights, constitutionalism, etc. – then it is often believed by some, that the correct position of Islamic jurisprudence is one that should react by oppos-

ing it, or promoting the exact opposite, instead of either an acceptance/adoption, “purification”, modification or adaptation of it, and only prohibiting a thing if it conflicts with the letter or spirit of the revealed text.¹⁵

Instead of the Islamic rulings being determined by an independent analysis of the Shari'ah's own primary and secondary sources of law, the Islamic ruling simply becomes what is different or the opposite of what Others or the West believe. It is as if Islamic law does not have its own independent opinion based on its own sources and evidence (*adillah*) for such issues. Its position is simply going to be dependent on and determined by whatever is the opposite of others. The usual assumption here is that any imitation of the Other, even in good and beneficial mundane (*dunya*) issues – such as agriculture, defence, customs, etc. – is prohibited (*haram*) in Islam by default. This is far from the truth, and from the more nuanced independent and proactive approach understood by the distinguished jurists (*mujtahids*) of all the major schools of law (*madhhabs*).

¹⁵ This is actually what the Prophet (p) did when faced with various local customary laws and practices on diverse mundane issues. Some pre-Islamic (Jahiliyyah) customary practices were adopted (e.g., Men's dressing, agricultural practices), modified (e.g., polygamy, jizya tax, etc.), “purified” of wrong-doing (e.g., some divorce laws, etc.), or prohibited (certain forms of marriage and divorce, alcohol consumption, etc.).

Many Muslims have assumed this “xenophobic reactionary jurisprudence” to be what “true”, “strict”, and “genuine” Islam teaches. It is easily seen where anything – names, customs, architecture, laws, systems of administration, etc. – that comes from outside Muslim majority cultures is regarded as automatically prohibited (Haram) by default, even if it does not conflict with anything from the clear text or purposes of the Qur'an and Sunnah, etc. Sometimes these inoffensive and beneficial “foreign” customary (*'urfi*) laws and practices are in fact not just endorsed and validated by Islamic jurisprudence but regarded as preferable in Shari'ah for that community. Yet, many Muslims are more guided by this xenophobic jurisprudence pursued assumed to be “Islamic”, than by classical Islamic legal theory and the principles of Islamic Jurisprudence (*Usul al-Fiqh*).

This is very dangerous, as it borders on a form of “Shirk” (polytheism) by allowing our feelings and emotions to be our criteria and sources of Shari'ah and what is judged “Islamic”, instead of the Qur'an, Sunnah and known secondary sources or evidence (*adillah*) accepted by our distinguished jurists (*Mujtahids*) and specialists of the field of Islamic Legal Theory or the Principles of Islamic Jurisprudence (*Usul al-Fiqh*). All jurists regard prohibiting what Allah has permitted, and vice-versa as a form of poly-

theism (*shirk*) or disbelief (*kufr*).¹⁶ Instead of the universally agreed Islamic legal maxim and legal presumption (*Istishab*) which is that in mundane affairs (*mu'amalat*) “everything is halal except what is haram”,¹⁷ the xenophobic maxim is the exact opposite, “everything in mundane affairs (*mu'amalat*) is prohibited (haram), except what is permissible (halal).” This effectively makes things haram by default, when they are actually permissible (halal) by

¹⁶ 'Alawi bin Abd al-Qadir al-Saqqar, *Al-Tawassut wa al-Iqtisad fi Anna al-Kufr Yakun bi al-Qawl aw al-Fi'l aw al-I'tiqad*, pp. 25, 30 & 49, al-Maktabah al-Shamilah, 3.13; Al-Mulla 'Ali al-Qary, *Mirqat al-Mafaatih Sharh Mishkat al-Masabih*, vol.12, p.420, al-Maktabah al-Shamilah, 3.13. This is also based on the Prophet's comment regarding Qur'an 9:31 where clergy from among the People of the Book would forbid what Allah had permitted, and vice-versa, and they were followed by their people. Such people were regarded by Allah as guilty of shirk (polytheism, or associating partners with Allah).

¹⁷ This well-known principle of *Usul ul-Fiqh* in Arabic is called “*Al-'asl fil ashya'i al-ibahah*” (“the legal premise of everything is permissibility”). See Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam*, IIFSO, Kuwait, 1992, p.14-18. See also: Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008; Mohammad Hashim Kamali, *Qawa'id Fiqh, The Legal Maxims of Islamic Jurisprudence*. p.2; Abu Sulayman, 'Abd al-Wahhab, “*An-Nazariyyah wal-Qawa'id fi al-Fiqh al-Islami*” in *Majallah Jamai'ah al-Malik 'Abdal-'Aziz*, No.2, May 1978, p.53; Shihab ad-Din al-Qarafi, *Kitab al-Furuq*, Matha'ah Dar Ihya al-Kutub al-'Arabiyyah, Cairo, vol.4, p.40; Jamal al Din Atiyyah, *Al-Tanzir al-Fiqhi*, p. 208; Abdurahman bin Abu Bakr al-Suyuti, *Al-ashbah wa al-Nazair*, vol.1, p.107; Badruddeen Muhammad bin Abdullahi Al-Zarkashi, *Al-Bahr Al-Muheet Fi Usul Al-Fiqh*, Dar al-Kutub al-'Ilmiyyah, Beirut, 1421 AH, vol.1, p.126; Muhammad Amir, *Taysir al-Tahrir*, Dar Nashr, vol.2, p.247; Abdullah bin Yusuf al-Juda'i, *Taysir 'Ilm Usul al Fiqh*, p.34, 69, 71 and 72; Abdullah al-Fauzan, *Khulasah al-Usul*, p.7; al-Zarqa, *Sharh al-Qawa'id al-Fiqhiyyah*, p.299; Muhammad bin Hassan al-Dadaw, *Sharh al-Waraqat*,

default in the jurisprudence of Islam. The xenophobic reactionary approach promotes a form of *shirk* (polytheism) which challenges the Lawgiver, by regarding as prohibited what the Shari'ah regards as permissible. This also has serious consequences for the ability of Islamic jurisprudence and law to guide and remain relevant to various contexts.

Before delving into any specific issue therefore, it is important that we bear in mind the following:

- Because something in popular discourse is described as “Islamic” does not automatically imply that what has not been described as “Islamic” is prohibited (Haram) and therefore not Halal, endorsed or recommended by Islamic law.
- There is the need for serious careful introspection when we come across the adjective “Islamic”, or hear things being described as the “Islamic way”, “Islamic alternative”, “Islamic approach” to anything mundane.

p.76; Abdulkareem al-Khudair, *Sharh Matn al-Waraqat*, p.410; Abdulwahab Khallaf, *Ilm Usul al-Fiqh*, Maktabah al-Da'wah, p.91; Muhammad Amin Ihsan Almujaiddi Albarkati, *Qawa'id al-Fiqh*, Dar al-Nashr, p.14; Zakariyya bin Gulam Qadir Albakistani, *Usul al-Fiqh 'Ala Manhaj Ahl al-Hadith*, Dar al-Kharraz, 1423 AH., p.116; Mashur bin Hasan Al-Salman, *Al-Tahqiqat wa al-Tanqihat al-Salafiyyah 'ala Matn al-Waraqat*, Dar Imam al-Malik, U.A.E, 1426AH, p.584-589.

- Something being described as “Islamic” should not automatically lead to the assumption that its alternatives are all prohibited (*Haram*) or even discouraged (*Makruh*).
- What has not been described as “Islamic” may on closer examination by a competent jurist, turn out to be what Islamic law regards as actually better, or just as good as the “Islamic”.

The Classical and Broad “Halal” Vs. the Modern and Narrow “Islamic”

Traditionally, jurists from the earliest period of Islam have understood that things or actions that were permissible (Halal) belonged to a variety of nuanced values and categories. Classifications of good and bad were more than just what was undesirable or forbidden. Things for Muslim jurists were not simply either prescribed or proscribed, must-do or must-not-do, compulsory or forbidden, recommended, or discouraged, Islamic or unislamic. Many, in fact, most things were neither encouraged nor discouraged by the Qur'an and Sunnah (*mubah*), and many others were discouraged but tolerated, as they were not sinful either (*makruh*).

One of the very challenging innovations in the vocabulary of many about Islam from the 20th Century is the use of the adjective “Islamic” in matters of jurisprudence and law. This adjective's false binary is “Unislamic”. And things are simplistically either “Islamic” or “Unislamic”. Describing a state (or anything else) as “Islamic”, often gives the impression that it is something originating from Islam, based on or specifically endorsed by the Qur'an and Sunnah, or belonging to Islam or Muslims, as in “Islamic law”, “Islamic dress”, “Islamic Art” or “Islamic name”, “Islamic state” or “Islamic political system”, “Islamic financial instruments”, etc. What is not “Islamic” is therefore assumed by many to then be “unislamic” and hence unacceptable, illegitimate, or prohibited (haram) and sometimes “disbelief” (or *Kufr*), or contrary to Islam. In some quarters, this term (Islamic) has simply been used as synonymous to “Muslim owned” irrespective of its early and probably non-Muslim cultural origin.

This descriptive word (“Islamic”) is not used in the Qur'an or Sunnah, nor is it used by jurists (*Mujtahids*) to describe anything. It is for them, a term that is too blunt, imprecise and ambiguous. It has sometimes been useful in certain contexts for Muslim identity purposes. It has however, also added tremendous confusion among many, to some already nuanced or complicated topics.

Islamic jurisprudence has traditionally classified all things as belonging to one of five to seven (or more) specific categories depending on the School of Law (Madhhab). Each category - *fard* or *wajib*, *mustahab*, *mubah*, *makruh tanzihi*, *makruh tahrimi*, or *haram* - has criteria and evidence required for determining what value judgement to assign to every action or thing.

Meanwhile, the category of things regarded by jurists as Halal (permissible) simply means that there is no sin (*ithm*) associated with the actions or things in that category. The *Halal* (permissible and free from sin) was broad and accommodates a range of at least four value judgements.¹⁸ In Islamic jurisprudence (*Fiqh*), the *Halal* category includes what is *Fard* or *Wajib* (compulsory), *Mustahab* (encouraged), *Mubah* or *Ja'iz* (merely permissible, neither encouraged nor discouraged) and *Makruh* (discouraged, but tolerated). The adjective "Islamic" does not adequately capture all that Islam regards as permissible and sinless (Halal). It narrows the islamically acceptable to probably just what is prescribed as obligatory (*Fard/wajib*) and recommended (*Mustahab*). These four all belong to halal category, but not adequately captured by the term

¹⁸ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, p. 279-296; Muhammad bin Salih bin al-Uthaimeen, *al-Usul min 'Ilm al-Usul*, Egypt, 2001, p.7.

“Islamic”. Meanwhile, the haram category is strictly what is sinful and hence prohibited based on clear evidence from the primary and/or secondary sources of Islamic law. This category could easily be synonymous with what is “unislamic”, but for the fact that the “unislamic” is also often used to prohibit what is *Mubah* and *Makruh* which are ordinarily both halal.

While the phrase “Islamic” may be quite popular and sounds nice, it is deceptively simplistic, much narrow and less accommodating than what the Shari'ah accommodates. It also easily makes those not familiar with Islamic Jurisprudence buy into a paradigm and approach of “reactionary jurisprudence” which implicitly treats many things that Shari'ah regards as Halal to be Haram by default. It for example usually considers things that are merely permissible (*Mubah*) in various cultures of the world (*al-'Urf wa al-'Adah*), society and nature as “not-Islamic” and hence “Unislamic” or Haram”, simply because they are not “Islamic” or “shari'ah-based”. This, as discussed earlier, can very easily lead to a dangerous form of *Shirk* – by prohibiting what Allah has not prohibited.

Just as the opposite of Halal (permissible and free from sin) is Haram (prohibited and sinful), so also, the opposite of “Islamic” is assumed to be “unislamic”. It is therefore (erroneously) assumed that “Halal” and “Islamic” are syn-

onyms, and that what is “unislamic” is also automatically Haram. This logic assumes that the opposite of “Islamic” is Haram, and the opposite of Halal is “unislamic”. So, for example, it is assumed that Umar is an Islamic name, and George is an unislamic name. Umar is halal for a Muslim to use as a name, while George is haram.

The problem with this binary way of classifying things into only two narrow categories of “Islamic” or “unislamic”, is that it disregards or negates most of what is completely “Halal” (permissible) – by all scholars – but which belongs to or originates from non-Muslim peoples and cultures. These would include their permissible foods, good customs, art, names, poetry, languages, financial instruments, architecture, dressing, wisdom, customary laws and institutions, etc. which are permissible simply because they do not conflict with clear Islamic teachings from the Qur'an and Sunnah. So, while for example, the name George may not be described as an “Islamic name” it is completely Halal for a Muslim to use it because its meaning and usage does not conflict with the Qur'an and Sunnah. Many Pre-Islamic Arab, Persian, Roman, Ethiopian names (including Umar, Salman, Bilal, etc.) were regarded as Halal by the Prophet (p), even when their sources were not Muslim or “Islamic”.

This traditional system of classification in Islamic legal theory (*Usul al-Fiqh*) is therefore far more nuanced, accurate and true to the letter and spirit of the Qur'an and Sunnah, than is the very simplistic and popular way of describing things as either "Islamic" or "unislamic". While this binary (Islamic/unislamic) may be a useful shorthand for "Halal" (permissible, no sin if committed) as opposed to "Haram" (forbidden, sinful if committed) in a few contexts, it can be very limiting, narrowing and restricting of what is permissible in Shari'ah. It is also potentially misleading and even dangerous in contexts where nuance, sophistication and specificity are needed to prevent people from speaking in God's name and issuing divine judgments with inadequate evidence. The use of the false binary of "Islamic and unislamic" runs the risk of declaring as Haram what is Halal, which itself is Haram to do, and according to all jurists, a form of *Shirk* (associating partners with the Lawgiver). Hence the seriousness of this discussion and its implications to issues related to politics, economic and legal life, etc.

Instead of asking if a thing, action, residence, place, custom, nation, system of governance or political administration, or an approach to doing something is "Islamic" or not, it would be more meaningful and loyal to traditional Islamic jurisprudence, to ask whether it is halal or haram.

If it does not conflict with the teachings and purposes of the Qur'an and Sunnah, then it is Halal. If it is Halal, then it means that there is no sin associated with it or assigned to it by Allah, and it is permissible, irrespective of its cultural or human origins. One may then choose to go further to know which sub-category of Halal, it may belong to, in order to understand better the level of desirability attached to it.

The Challenge of “Shari'ah-Compliant” Vs. “Shari'ah-Based” in Islamic Law

Two other modern phrases that have come into more popular use with some confusion and complications in certain quarters are **“Shari'ah-compliant”** and **“Shari'ah-based”**. Both are regarded as “Islamic”, but with very different and significant perspectives of viewing global wisdom and discoveries that do not conflict with Shari'ah.

“Shari'ah-compliant” is closer to the traditional approach of classical schools of Islamic jurisprudence (*Madhhabs*) and the field of Islamic legal theory and principles (*Usul al-Fiqh*). It accepts that in mundane, worldly (*dunya*) and transactional affairs (*mu'amalat*), the operational maxim and legal presumption (*istishab*) is that “everything is acceptable (*halal*) except what is clearly prohib-

ited (*haram*).¹⁹ It is synonymous with what in Islamic jurisprudence is referred to as “Halal” – permissible, lawful and not sinful. It is an inclusive approach and refers simply to anything and everything good or useful that does not conflict with, and is hence acceptable and compliant with Shari’ah standards and criteria. It accommodates various local cultural and customary practices in various fields, and from all over the world, as good and beneficial by

¹⁹ This well-known principle of *Usul ul-Fiqh* in Arabic is called “*Al-'asl fil ashya'i al-ibahah*” (“the legal premise of everything is permissibility”). See Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam*, IIFSO, Kuwait, 1992, p.14-18. See also: Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008; Mohammad Hashim Kamali, *Qawa'id Fiqh, The Legal Maxims of Islamic Jurisprudence*. p.2; Abu Sulayman, 'Abd al-Wahhab, “*An-Nazariyyah wal-Qawa'id fi al-Fiqh al-Islami*” in *Majallah Jamai'ah al-Malik 'Abdal-'Aziz*, No.2, May 1978, p.53; Shihab ad-Din al-Qarafi, *Kitab al-Furuq*, Matha'ah Dar Ihya al-Kutub al-'Arabiyyah, Cairo, vol.4, p.40; Jamal al Din Atiyyah, *Al-Tanzir al-Fiqhi*, p. 208; Abdurahman bin Abu Bakr al-Suyuti, *Al-ashbah wa al-Nazair*, vol.1, p.107; Badruddeen Muhammad bin Abdullahi Al-Zarkashi, *Al-Bahr Al-Muheet Fi Usul Al-Fiqh*, Dar al-Kutub al-'Ilmiyyah, Beirut, 1421 AH, vol.1, p.126; Muhammad Amir, *Taysir al-Tahrir*, Dar Nashr, vol.2, p.247; Abdullah bin Yusuf al-Juda'i, *Taysir 'Ilm Usul al Fiqh*, p.34, 69, 71 and 72; Abdullah al-Fauzan, *Khulasah al-Usul*, p.7; al-Zarqa, *Sharh al-Qawa'id al-Fiqhiyyah*, p.299; Muhammad bin Hassan al-Dadaw, *Sharh al-Waraqat*, p.76; Abdulkareem al-Khudair, *Sharh Matn al-Waraqat*, p.410; Abdulwahab Khallaf, *'Ilm Usul al-Fiqh*, Maktabah al-Da'wah, p.91; Muhammad Amin Ihsan Almujaiddi Albarkati, *Qawa'id al-Fiqh*, Dar al-Nashr, p.14; Zakariyya bin Gulam Qadir Albakistani, *Usul al-Fiqh 'Ala Manhaj Ahl al-Hadith*, Dar al-Kharraz, 1423 AH., p.116; Mashur bin Hasan Al-Salman, *Al-Tahqiqat wa al-Tanqihat al-Salafiyyah 'ala Matn al-Waraqat*, Dar Imam al-Malik, U.A.E, 1426AH, p.584-589.

default, once these do not conflict with Islamic teachings, even when they do not originate from Muslim communities and contexts. It views global wisdom, knowledge, discoveries, creativity, innovations, and solutions as all part of the collective heritage of humanity and the “lost property” of Muslims, and acceptable if not in conflict with the letter or spirit of Shari'ah. Shari'ah-compliant takes an inclusive approach towards jurisprudence, and sees what is good from various sources, cultures, laws, and people, so long as these do not conflict with the letter and purposes (*maqasid*) of the Qur'an and Sunnah.

This is the approach to jurisprudence that is believed by the majority of scholars to have been used and followed by the Prophet (p), his companions and the great majority of classical jurists and the schools of law (*madhhabs*). The classical sources of Islamic law accommodated *al-'Urf wa al-'adah* (local tradition and custom), *Istishab* (legal presumption of the status quo), *maslahah* (consideration of public interest), etc., as independent secondary sources of Shari'ah law that are endorsed by the Qur'an and Sunnah. Some nation-states, secular laws (e.g., traffic laws, safety, and environmental laws, etc.), financial instruments, etc. are therefore sometimes described as “Shari'ah-compliant” even though they do not owe their origin to Muslims or the explicit texts of the Qur'an and hadith.

“Shari’ah-based” however has a more modern and narrower criterion. It is more exclusive and understood to be only what originates from the Qur’an and Sunnah or “Islamic or Muslim sources”, and which generally excludes the good in the Other. It is similar in usage with the term “Islamic” (discussed earlier). The practical implications of this approach are similar to those of the xenophobic mindset or reactionary forms of Islamic jurisprudence. This approach is also difficult to justify when compared to the approaches of classical jurists of Islamic legal theory (*Usul al-Fiqh*). The “Shari’ah-based approach is one that is more commonly used by jurists for acts of devotional worship (*ibadah*) and creedal issues (*Aqidah*) that are fixed and static, and less open to change, unlike most of the mundane or worldly (*dunya*) transactions and interpersonal matters (*mu’amalat*) that easily change with context.”²⁰

²⁰ Some have tried to make a nuanced distinction while accommodating both paradigms and approaches. They say, “Shari’ah-compliant” is good and permissible (“*Halal*”), while “Shari’ah-based” is better and more wholesome (“*Halalan tayyiban*”). There seems however to be little in the evidence and sources of Shari’ah, or in the classical field of Islamic legal theory (*Usul al-Fiqh*) to support such a hierarchy. The Prophet (p) accommodated and sometimes modified many originally local customary (*‘Urfi*) practices of pre-Islamic Arabs and those of others that were beneficial in mundane matters such as clothing, marriage, divorce, commercial transactions, military strategies, “poll tax” (*Jizya*), “civil protection” (*Dhimmah*), etc. and which did not conflict with Shari’ah, and/or which actually helped realise the common good (*masalih*) and purposes (*maqasid*) of Shari’ah.

Muslims delving into topics related to Islamic political thought should be cautious of unconsciously operating with a xenophobic mindset and avoid operating a reactionary form of jurisprudence. These are both very common but do not represent Islamic teachings as taught by the Qur'an and Sunnah, or through the lives of the Rightly Guided Companions. Every aspect of political thought and governance such political systems (Democracy, Autocracy, Monarchy, Theocracy, etc.), and more specific elements and components of democracy – such as separation of power, elections, voting, terms of office, campaigning, legislating secular or “man-made” laws, multi-party systems, etc. – should each be judged on its own merits and based on the independent criteria of Islamic legal theory (*Usul al-Fiqh*) and sources of Islamic law. Whether each of these aspects of democracy is of interest to or being promoted by the West, should be of secondary concern in determining the position of Islamic jurisprudence regarding them.

In the sections that follow, these issues shall be examined in detail in light of fields in the Islamic sciences that regulate *Ijtihad* which include Islamic Legal Theory or the Principles of Islamic Jurisprudence (*Usul al-Fiqh*), Islamic legal maxims (*Qawa'id al-Fiqhiyyah*) and the Higher Intents and Purposes of Islam (*Maqasid al-Shari'ah*).

SECTION ONE

***Al-Siyasa Al-shar'iyyah* (Islamic Political Thought/Governance System)**

There are various key terms and concepts that are central to a discourse on the Islamic political thought or governance system. Below is a basic introduction to some of these concepts.

- 1. Political system:** This is the kind of political organization that a State may acknowledge, observe, or otherwise declare. It outlines the procedure for deciding on official government matters. The social, cultural, and other state and government-specific systems are typically included, as well as the government's legal and economic system. This, however, is a very simplified perspective of a much more complex system involving the questions of who should have authority and what the government's influence on its people and economy should be.

There are several predominant political systems, including democracies, monarchies, and authoritarian and totali-

tarian regimes, along with a spectrum of hybrid models. As stated by David Easton, a political system can be defined as the interactions governing the authoritative allocation of values within a society. In essence, a political system encompasses the procedures for lawmaking and the allocation of public resources in a society, as well as the dynamics among the individuals engaged in these decision-making processes.²¹

2. **Economic system:** An economic system pertains to the organization of production, resource allocation, and the distribution of goods and services within a society or specific geographical region. It encompasses a mix of institutions, agencies, entities, decision-making procedures, and consumption patterns that form the economic framework of a community. Addressing the four essential economic dilemmas—determining the types and quantities of goods to produce, the methods of production, the distribution of output, and the timing of production—is integral to any economic system.²²
3. **Legal system:** Legal system refers to the method or protocol for interpreting and implementing the law.²³ Modern national legal frameworks typically adhere to

²¹ https://en.wikipedia.org/wiki/Political_system

²² https://en.wikipedia.org/wiki/Economic_system

²³ https://www.law.cornell.edu/wex/legal_systems#:~:text=Definition,interpreting%20and%20enforcing%20the%20law.

one of four foundational systems: civil law, common law, statutory law, religious law, or a blend of these approaches.²⁴

- 4. Secular/Secularity:** Secularism, denoted as secular or secularity, signifies a state of being disconnected or impartial concerning religion. Anything lacking an explicit reference to religion, whether positive or negative, can be deemed secular.²⁵ Secularism is thus the principle of guiding human affairs based on secular and naturalistic considerations. It is commonly defined as the separation of religion from civil affairs and the State, and it can extend to minimizing religion's role in any public sphere. The term "secularism" encompasses various meanings, potentially representing anti-clericalism, atheism, naturalism, non-sectarianism, religious neutrality, or even the complete elimination of religious symbols from public institutions.²⁶

Being secular does not inherently mean being hostile toward or rejecting God or religion, although some interpret the term in this manner. According to cultural anthropologists like Jack David Eller, secularity is more accurately described not as being "anti-religious"

²⁴ https://en.wikipedia.org/wiki/List_of_national_legal_systems

²⁵ <https://en.wikipedia.org/wiki/Secularity>

²⁶ <https://en.wikipedia.org/wiki/Secularism>

but as being "religiously neutral." This perspective acknowledges that many activities within religious organizations are secular in nature, and most interpretations of secularity do not necessarily lead to a lack of religious beliefs.²⁷

5. Atheism: In its broadest sense, atheism denotes the absence of belief in the existence of deities. More narrowly, it signifies a rejection of the belief in any deities. In a stricter sense, atheism asserts that no deities exist. This standpoint stands in contrast to theism, which, in its most general form, asserts the belief in the existence of at least one deity.²⁸

6. Theism: Theism is generally understood as the belief in the existence of at least one deity. In everyday language or when compared to deism, the term typically refers to the traditional idea of God found in monotheistic religions or the gods in polytheistic faiths. It entails a belief in God or gods without rejecting revelation, a characteristic feature of deism.²⁹

²⁷ <https://en.wikipedia.org/wiki/Secularity>

²⁸ <https://en.wikipedia.org/wiki/Atheism>

²⁹ <https://en.wikipedia.org/wiki/Theism>

Distinguishing the Political System of Governance from the Legal and Economic

Ideally, an Islamic society would have a political system, and would also ensure the availability of Islamic economic, legal, and social systems, etc. And while some of these components or systems help improve the whole society, a weakness or absence of one does not negate the legitimacy of the other, under the circumstances.

This distinction between the political and the economic, legal, social, cultural, educational, security systems, etc. is important, so that we assess a political system's legitimacy based on the Qur'an, Sunnah, and other sources of law, and not on the economic or legal system, nor based on how much of another aspect of Islamic teachings are in place. A legal system may be very Islamic, but the political system may be corrupt. Similarly, the political system, as a system may be Islamically acceptable, but not the characters of those running the system. While all teachings of Islam are inter-related as one body, it is for the purpose of discussion and analysis useful to distinguish the reproductive system from the respiratory system or the digestive system. So too, the discussion of what makes a political system Islamically legitimate will focus on the political system only, and not the others, while acknowledging the

importance and complementary role these play in the proper functioning of the body politic and its governance system. Ideally therefore, Muslims would desire a system of governance and politics that accommodates all its other complementary supporting systems be it economic, social, legal, educational, cultural, etc.

Assessing The Legitimacy of Democracy in Islamic Jurisprudence

This book focuses on the political or governance system. It looks at the major features and pillars of the political system called “Democracy” and tries to see what Muslim jurists have to say regarding its legitimacy as a political system. There are many definitions and forms of democracy. We however try to consider the main ingredients and essential pillars of what most forms of “Democracy” usually imply in governance. We shall try to assess the degrees of legitimacy and compatibility (or otherwise) of democracy with Islamic teachings, in the same way that other man-made systems (such as monarchies, oligarchies, etc.) have been assessed by classical scholars from the perspective of Islamic jurisprudence.

According to some Muslims, “Democracy is a system of *kufir* (disbelief). It is forbidden to adopt, implement or

call for it”.³⁰ According to others, such as Sheikh Yusuf al-Qaradawi, “he who says democracy is disbelief neither understands Islam, nor democracy”. Each of these two statements have millions of Muslims and many scholars who regard one as being the correct position of contemporary Islamic jurisprudence, and the other as being wrong. What are the Islamic criteria for determining the truth from these two sources?

The Criteria in Islamic Jurisprudence for Assessment of Mundane and Governance Issues

“Democracy” as a system of government in its many current forms is a contemporary phenomenon.³¹ The discussion of its theories and components is by its nature a contemporary issue that is not treated directly by any text of the Qur'an or Hadith. Such issues therefore call on the need for juristic reasoning (*Ijtihad*) to assess and determine the legitimacy of each aspect of such a system with a view of determining what is acceptable and what is not.

This juristic assessment is the domain of three major fields that guide *Ijtihad*. These are: Islamic Legal Theory or

³⁰ See AbdulQadeem Zalloom of Hizb-ut-Tahrir. Source: <https://www.hizb-ut-tahrir.info/en/index.php/literature/hizb-resources/1838.html>

³¹ See different forms and classifications of democracy - <https://en.wikipedia.org/wiki/Democracy>

the Principles of Islamic Jurisprudence (*Usul al-Fiqh*), Islamic legal maxims (*Qawa'id al-Fiqhiyyah*) and the Higher Intents and Purposes of Islam (*Maqasid al-Shari'ah*).

It is important to recall that besides what the Qur'an and Sunnah may prescribe in clear texts, there are other sources of evidence in Islamic jurisprudence for establishing or strengthening shari'ah rulings and laws. These are the "secondary sources" of law such as scholarly consensus (*Ijma'*), reasoning by analogy (*Qiyas*), public interests (*Maslahah*), legal presumption of the status quo (*Istishab*), local customs and norms (*'Urf wa al 'adah*), juristic discretion (*Istihsan*), opinion of a Companion (*Ra'y al-Sahabi*), and preclusion or blocking the means (*Sadd al-dhari'ah*). Others also include praxis of the People of Medina (*Amal ahl al-Medina*) and laws of earlier revelations (*Shar'u man Qablana*).

These are the most common sources of law when such laws are not categorically prescribed by the Qur'an and Sunnah, or where these primary sources are completely silent on a specific issue. These sources help jurists come as close as possible to the letter or spirit of the primary sources.

The following points are presented here as a summary of some of the key juristic considerations from the relevant

juristic fields that guide juristic reasoning (*Ijtihad*) - the Principles of Islamic Jurisprudence (*Usul al-Fiqh*), Islamic legal maxims (*Qawa'id al-Fiqhiyyah*) and the Higher Intent and Purposes of Islam (*Maqasid al-Shari'ah*):

- As with topics such as economics and finance, defence and security, education, healthcare, agriculture, entertainment, professions and careers, science and technology, culture and management, the subject of *siyasa* or politics is regarded as belonging to the juristic category of actions that are designated to mundane affairs (*mu'amalat*). This category includes all those actions that relate to interpersonal transactions and mundane dealings with clear rational objectives. These mundane affairs are referred to as worldly matters (*umur al-dunya*), unlike those regarded as belonging to the category of issues related to *ibadaat* (devotional worship) and *aqidah* (or creed). While creativity, improvement, improvisation, assimilation, evolution, and innovation are permissible or even encouraged if beneficial in the category of issues under *mu'amalat* category, the opposite is the case in *ibadaat* (and *aqidah*).
- On issues like governance, public administration, and politics (*al-siyasa*) and others belonging to the category of mundane affairs (*mu'amalat*), the fundamental premise of Islamic law is that of permissibility. In other

words, “everything in this category is regarded as permissible” (*al-'asl fi al-ashya' al-ibahah*) unless clearly proven prohibited (*haram*).³² Halal/permissibility is regarded as the default ruling in politics (*siyasa*) and governance systems. The designation of something as *haram* or prohibited must be justified by clear evidence from either primary or secondary sources. Silence in the text on such matters implies an assumed permissibility in law.

- This legal presumption of permissibility also applies to people's mundane customary norms and traditions (*al-'Urf wa al-'Adat*). This is supported by the principle of legal presumption (*Istishab*), and good custom ('Urf) as secondary sources of law, and by the universal legal maxim which states that “custom is a basis for law” (*al-'adat muhakkamah*).³³ A similar maxim states that, “a

³² There is a consensus by jurists of all schools of Islamic jurisprudence on the application of this maxim or principle to issues related to interpersonal transactions (*mu'amalat*), worldly or mundane (*dunya*) affairs and to cultural or customary practices (*al-'urf wa al-adaat*) which include all issues related to administrative, political, governance and management policies. For further reading and references see, al-Suyuti, *al-Ashbah wa al-Nazahir*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, P60; Qadir al-Bakistani, *Min Usul al-Fiqh ala Manhaji Ahl al-Hadith*, Dar al-Kharraaz, 1st Ed, 2002, Vol. 1, P.166; Rashid Rida, *Tafsir al-Manar*, al-Hai'at al-Misriyyah al-'amal lil Kitab, 1990, Vol.7, P.118.

³³ Al-Suyuti, *Al-Ashbah wa al-Nazair*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, P.89.

well-known custom is considered similar to a stipulated condition” (*al-ma'ruf 'urfan ka al-mashrut shartan*).³⁴ In the realm of people's customary political policies and practises therefore, it is regarded as legitimate in Islamic law to adopt them or modify them if they are deemed beneficial to Muslims. This was seen in the Prophet's adoption of military strategies and tactics that were originally part of Persian military customs. What is prohibited is for Muslims to imitate or adopt the acts of worship and creeds of others, or those customary norms that clearly conflict with the Islamic sources of law.

- All policies and practices related to *siyasa* therefore are regarded by Muslim jurists of Islamic political thought (*Siyasa al-Shar'iyyah*) as permissible (*halal*) by default, unless proven otherwise with clear and acceptable evidence. The fact that something related to *siyasa* is not specifically discussed in the Qur'an or Sunnah implies that it is permissible by default unless there is evidence to the contrary. This is an important consideration to bear in mind when assessing specific issues related to politics and governance such as succession planning,

³⁴ Group of scholars of the Ottoman Empire, *Majallat al-Ahkam al-'Adliyyah*, p.21; Ibn al-Nujaim, *al-Ashbah wa al-Nazair*, 1st ed. Dar al-Kutub al-'Ilmiyyah, Beirut, 1999, p.85.

term of office, separation of powers, elections, constitutions, and codification of laws, etc.

- When two or more customary ways of doing things are regarded as permissible, Islamic law gives preference to the better or more useful of the two. What is in the greatest public interest (*maslahah*) becomes an important criterion for deciding on public matters. A legal maxim related to this states that; “the decisions of the leader regarding affairs of the people are determined based on public interest” (*Tasarruf al-Imam ala al-ra'iyyah manutun bi al-maslahah*).³⁵
- Where two alternative policies or rulings have both advantages and also disadvantages, the “lesser of the two evils” or the least harmful alternative is preferred. A maxim to this effect states that “prevention of harm takes precedence over the accruing of benefits (*Dar'u al-mafasid awla min jalb al-masalih*).³⁶
- Where something is permissible in Islamic law, but there is good reason to fear abuse of the permissibility to the detriment of the common good (*maslahah*), Islamic law provides a restriction of the permissible

³⁵ al-Suyuti, *al-Ashbah wa al-nazahir*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, p.121.

³⁶ Nasir al-Shathri, *Sharh Manzuma al-Qawa'id al-Fiqhiyyah*, p.50, al-Maktaba al-Shamila, Version 3.35.

(*taqyid al-mubah*), or a prohibition and blocking of the permissible means to undesirable ends. This is referred to as *Sadd al-Dhari'ah* (preclusion) or “blocking the means”. These laws that limit what is ordinarily permissible (by *Taqyid al-mubah* or *Sadd al-dhari'ah*) or which permit what is ordinarily prohibited to prevent a greater harm to the population (*maslahah*) are critical tools of *Ijtihad* that are used in all schools of Islamic law under various terms.³⁷

The Centrality of Maslaha in the Management of Public Affairs

The 'state' originally emerged from an intellectual necessity and the need for legitimate avenues to exercise power. It is part of the common good and is considered obligatory by the Sharia on this basis, for it is the means by which the affairs of creation are managed, and the earth looked after. The vast majority of scholars take the opinion that it is obligatory to establish a state, with only a few exceptions, such as Ibn Kisan and some of the Mu'tazila.

³⁷ Both *Maslahah* and *Sadd al-dhari'ah* are collectively described as *Istihsan* (juristic discretion) in the Hanafi school of law (*madhhab*). In the other Sunni schools of law, *Istihsan* has other more nuanced definitions and conditions for validity and application as an independent secondary source of law.

In all the space afforded to the intellect by the religion in matters pertaining to the management of public affairs, the very center of it is given over to the consideration of the common good, for it is only the intellect that can truly discern and determine what brings benefit.

The ideological and juristic crisis of the Muslim mind started in the 13th Century CE, brought on by overly rigid adherence to and reliance upon the body of work passed down to it by previous scholars. Muslim thinkers and jurists had ceased to look at things from the perspective of renewal, and the inability to create workable concepts to restore lost wisdom and skills was a mark of the times.

The jurists who specialized in Islamic governance were clearly conscious of this fact, for when they wrote their treatises on the state and its plans, they looked at them primarily from the point of view of the common good. Given that this particular matter was one of scholarly reasoning and interpretation, with the circumstances and grounds varying from case to case, the scholars did often differ with one another; but these differences were always circumstantial, and not essential.

A simple comparison of the positions of al-Mawardi and al-Juwayni proves this when we take into account that the former was a judge in the time of the Buyid Dynasty, and was a friend of Jalal al-Din al-Buwayhi (d. 1365), often

acting as a go-between between him and the Abbasid Caliph, while the latter was an advisor to the great Sunni Seljuk vizier, Nizam al-Mulk. The view of each of them was coloured by the time and situation in which they lived, and the difference between those two sets of circumstances is readily apparent to anyone who looks through the books of history.

From this, it becomes clear that governance does not fall within the sphere of religious devotion, but instead is at heart a matter of the common good, something to which great consideration is given in the Sharia. Indeed, it is the duty of every scholar to make it the basis for his positions and rulings, using a precise and disciplined methodology through which a concept and model of the State can be created that both reflects the realities and norms of the age and stays within the confines and bounds of the Sharia.

That the common good must be taken as a primary religious and intellectual consideration when approaching the topic of the nation-state can be ascertained by a cursory glance at any number of statements made by scholars on the matter; this ought to remove and overcome all differences concerning conclusions whose connection with the religion and legacy of Islam might seem problematic.

Al-Shatibi said. "The enduring principle in matters such as these is for a distinction to be drawn between acts

of worship (*ibadat*) and social transactions (*muamalat*). With respect to acts of worship, it is not enough for something to not contravene; it must be specifically indicated, for worship is the primary purpose of such acts and the meaning behind them is of no more than secondary purpose. The basic position is for acts of worship to only be done when explicit permission has been given for them, for inventing acts of worship falls outside the scope of human intellect. And the same applies to the preconditions attached to those acts. As for mundane matters, it is enough that they simply do not contravene the Sharia, for it is their meaning that is of primary concern, not their ritual form. The default position for all such things is that they are permissible unless evidence can be found to the contrary, and God knows best.”³⁸

However, some others considered the relationship between the intellect and the common good to be the cornerstone of the entire matter, including al-Izz ibn Abd Al Salam (d. 1262) and al-Tufi (d. 1316). For example, al-Izz said, “Most mundane benefits and harms are known

³⁸ Al Shatibi, *Al-Muwafaqat* (Cairo: Dar Ibn Affan, 2010), cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.29.

through the intellect, and the same is true of most religious laws.³⁹

Al-Izz also said, 'Whoever wants to know how to distinguish between benefit and harm and determine which one outweighs the other, must submit matters to the test of reason, assuming, of course, that they are not directly mentioned in the Sharia. Then let him build his rulings on that basis, for few are the rulings that fall outside the scope of the intellect, except in the case of those acts by means of which the slave worships his Lord, and for which considerations of benefit and harm are left unspecified.⁴⁰ However, elsewhere in his book, he ties the intellect to the Sharia, saying, "Whoever follows the objectives of the Sharia, in terms of promoting benefit and preventing harm will come to believe or know, as a result of those studies, that such a benefit should not be ignored and such harm should not be approached, even if there is no legal consensus, nor textual evidence nor specific analogy concerning that issue.

³⁹ Izz al-Din bin Abd al-Salam, *Qawa'id al-Ahkam Fi Islah al-Anam* (Damascus Dar al-Qalam, 2000), cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.29.

⁴⁰ Izz al-Din bin Abd al-Salam, *Qawa'id al-Ahkam Fi Islah al-Anam* (Damascus Dar al-Qalam, 2000), cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.29.

An understanding of the essence of the Sharia necessitates this.⁴¹

An example of this might be someone who spends a lot of time in the close company of a wise, astute, educated man and comes to understand what he likes and dislikes in every type of situation. Then, one day, he is confronted with an unprecedented situation about which he has never heard that man say anything, but, because he is so familiar with how the man acts and his approach to life, he is able to work out if the man would promote it on the basis of benefit or avoid it on the basis of harm. Were we to examine the objectives of the Qur'an and the Sunnah, we would find that God commands good, no matter how great or how small, and forbids evil, no matter how great or how small. So, good is an expression of promoting benefit and preventing harm, while evil is an expression of preventing benefit and promoting harm.”⁴²

This brings us to what al-Tufi said in his commentary on *Mukhtasar al-Rawdah*:

⁴¹ Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.29.

⁴² Izz al-Din bin Abd al-Salam, *Qawa'id al-Ahkam Fi Islah al-Anam* (Damascus Dar al-Qalam, 2000), cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.29.

“Know that to divide the common good (*maslaha*) into categories such as upheld (*mu'tabarah*), unsanctioned (*mulgha*), necessary (*mursala daruriyyah*), and unnecessary (*mursala ghayr daruriyyah*) is arbitrary and overly complicated, for there is a far easier and more general way of deciding whether or not something is in the common good, and that is by acknowledging that the Sharia itself takes into consideration in a general way whether something is of benefit or of harm. On this basis, one might say that if an action is wholly of benefit, it should be affirmed, and if it is wholly of harm, it should be rejected. But if it is of benefit from one perspective, but of harm from another, and both appear equal in our eyes, then we must simply make our choice and go with it, as in the case of someone who can only find enough clothing to cover one of his two private areas. Does he cover his backside because it is more indecent to leave it exposed, or cover his front side because it is facing the qibla? Or is he completely free to choose since the benefit of one matches the harm of the other and vice versa? If the two options are not equal, however, and either the realization of benefit has greater legal weight or the avoidance of harm, then we must follow the course that has greater legal weight, for that is incumbent upon us according to the Sharia. It is in light of this principle that every one of the categories for common good mentioned by the scholars of religious law is considered.

As for what is upheld (*mu'tabara*) in the Sharia, such as analogy, it is either wholly of benefit or mostly of benefit. As for what is unsanctioned (*mulgha*), such as taking steps to prohibit people from growing grapes, or ban people from cohabiting in a single home, it is because while there are both benefits and harms to doing that, the harms far outweigh the benefits. So, it is better to not take such steps, especially in light of the fact that the benefits of growing grapes or sharing housing are real and tangible, while the harms attached to them of wine being produced or fornication coming to pass are imagined and conjectural. And even were we to suppose that there was indeed a high chance that this feared harm would come to pass, so long as it is not certain and the benefit against which it is offset is certain, still it would be better to bring about that benefit with the corresponding harm than vice versa. Moreover, the harm mentioned here is specific while the corresponding benefit is general, and it is better to incur a specific – and therefore smaller – harm for the sake of gaining a general larger benefit than the other way around.

Let us explain by using our example of grapes. The benefits of grapes are many: they can be eaten in their unripe form or ripe form, they can be cooked, they can be made into juice, and they can be made into raisins and sultanas. These are five benefits and there may well be even more, while, on the flip side, there is only one thing that is

forbidden to do with them and that is making them into wine. This is why some of the people of inner meaning say, utilizing the language of the law, "Son of Adam, yours is the fruit of the vineyard: sour grapes, sweet grapes, juice, and raisins. All these four are yours but leave for Me the fifth: the 'helper' (i.e., wine): '*Know that one-fifth of your battle gains belongs to God*' (Qur'an 8:41)." It is therefore better to obtain all these permissible benefits of growing grapes than to abandon their growing to avoid a single forbidden harm.

As for benefits that fall into the sphere of complementary needs (*hajiyyat*) or conveniences (*tahsiniyyat*), such as the legal guardian personally taking part in the contracting of the marriage, or him alone being empowered to give his young daughter's hand in marriage, these are things which are purely beneficial and there is no harm attached to them whatsoever. And for that reason, those benefits must be realized.

As for necessary benefits (*daruriyyat*), such as preservation of religion, intellect, lineage, honour, and property, even if these are offset by harms – such as loss of life in the case of the apostate or murderer when they are killed, or loss of a hand (when it is cut off) in the case of the thief, or physical pain and suffering in the case of the drinker, fornicator, and slanderer when they are whipped – still the

denial of this harm is outweighed when compared to what is gained by obtaining the corresponding benefit, and so the obtaining of the benefit is stipulated and required.

The same applies to the selling of mosques that have fallen into disuse or disrepair or endowed horses that are no longer capable of serving the purpose for which they were endowed. There is benefit in doing this because by selling it and replacing it with another, the intended benefit of the endowment can endure into the future; and there is harm because it entails the waiving of the right of God from an entity that was confirmed as being dedicated to Him. Here, we give precedence to the obtaining of benefit, while others give it to the prevention of harm.

It is in this way that rulings can be reached for matters in which benefits are offset by harms or matters in which only one [benefit] is apparent. Al-Tufi was even more explicit on this point in his commentary on *Al-Arba'un al-Nawawiyyah* (Nawawi's Forty Hadith), saying, "As for everyday transactional matters (*muamalat*) and the likes, primary consideration should be given to the public good, as established earlier. This public good sometimes conforms to the other forms of legal proof, and sometimes conflicts with them. If it conforms, then there is no issue, and it should be applied immediately. If it conflicts with them, however, then an attempt must be made to reconcile

it with them. If this is not possible, then the public good should take precedence over all other considerations, based on the words of the Prophet, 'No harm should be inflicted nor reciprocated'⁴³...which is a specific instruction to keep harm at bay in the interests of the public good, and thus must be given absolute priority, especially given that looking after the welfare and common good of the people is the objective and the reason why laws are established and enacted in societies in the first place. The legal proofs of the religion are but a means to that end, and objectives must always take priority over means,”⁴⁴

It is important that the legitimacy of all these juristic tools and sources of law as presented by the scholars of their respective schools of law (*madhahib*) are well understood by students of Islamic jurisprudence (*Usul al-Fiqh*). Otherwise, it is easy to ignorantly and arrogantly accuse distinguished jurists of the past and present of *Shirk* (polytheism) or even *Kufr* (disbelief) for “permitting what Allah has prohibited”, or “prohibiting what Allah has permitted”.

As many of the features of democracy are contemporary in nature, assessing these on the scale and criteria of Islamic jurisprudence will require a basic understanding of

⁴³ *Sunan Ibn Majah*, Hadith 2341; *Sunan al-Daruqutni*, Hadith 4539.

⁴⁴ cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.33.

these tools. This will also assist in understanding and even appreciating why many classical jurists and scholars of *al-Siyasah al-Shar'iyyah* of the past accepted certain customary policies and structures of governance, and prohibited others even when no clear text of the Qur'an or Sunnah is cited in support of such rulings.

This book considers the various major objections to different aspects and features of democracy and the reasons why some regard these as unacceptable in Islamic governance or even disbelief (*Kufr*), while others regard these as not only islamically acceptable but even more desirable in the current context than most of the alternatives.

As the current system of democracy is a contemporary phenomenon not discussed by most of our classical scholars and jurists of the past, there is the need to use the same classical methodical principles and approaches of Islamic Legal Theory or the Principles of Islamic Jurisprudence (*Usul al-Fiqh*), Islamic legal maxims (*al-Qawa'id al-Fiqhiyyah*) and the Higher Intents and Purposes of Islam (*Maqasid al-Shari'ah*) when confronted by any new issue, or a new context.

An Overview of Political Systems

Islam based on the clear evidence of undisputed sources of evidence from the Qur'an and Sunnah, has not prescribed any one particular form or structure of government or governance system. It has however clearly stipulated the objectives and the characteristics of an Islamically acceptable governance system and leadership. These objectives revolve around and include the following features which are: justice, equality, consultation (*Shurah*), community participation (*bay'ah*), legislation (*Hukm*) for (as directed by, on behalf of, or in the cause of) Allah based on the Qur'an, Sunnah and *Ijtihad*, rule of law, transparency of the leader and accountability to followership, enjoining right and forbidding wrong, and the realisation of the *Maqasid* (Objectives) of Shari'ah – including the enhancement and preservation of faith/religion (*Deen*), life (*Nafs*), intellect ('*Aql*), dignity and honour ('*Ird*), family and progeny (*Ahl/Nasab*), and wealth/property (*Maal*), etc.

Below are brief explanations of some of the various political systems in contemporary society.

Monarchy

A monarchy is a government system where a person, known as the monarch, serves as the ruler or head of state

either for life or until voluntary abdication. In most instances, the succession of monarchies is based on hereditary principles. However, elective and self-proclaimed monarchies are also feasible. Monarchies are categorized into two types: absolute and constitutional. An absolute monarchy is a system in which the monarch rules independently. In contrast, a constitutional monarchy involves a monarch exercising limited authority in adherence to a constitution and not making decisions unilaterally.

Consider the hadith reported by Hudhayfah “...*then there will be a biting monarchy, lasting for as long as Allah wills, then He will eliminate it if He so wills. Then there will be an oppressive monarchy, lasting for as long as Allah wills, then He will eliminate it if He so wills...*” This hadith describes the emergence of a monarchy system of government after the caliphate. It however does not prescribe monarchy as the form of government to be implemented after the caliphate. The words in the hadith, “*mulkan aa'dan*” (biting monarchy) and “*mulkan jabariyan*” (oppressive monarchy) are understood by some to imply the description of some of the characteristics of these foretold monarchies or of monarchies in general. The hadith however is not understood as giving a prescription of the monarchy system of government, because the Prophet (p) would not prescribe or recommend a “biting” or “oppressive” system.

The permissibility of monarchy may be justified as explained by Ibn Taymiyyah by the non-condemnatory exhortation of the Prophet (p) to the Companion Mu'awiya, “*if you become a king, then do good.*”⁴⁵ Mu'awiya did eventually go on to start the Umayyad Monarchy (and caliphate) with his son, Yazid inheriting the throne after him. Commenting on this hadith, Ibn Taymiyyah said: “this requires critical thinking.”⁴⁶

In explaining the conditions for permissibility or legitimacy of a monarchy, Ibn Taymiyyah said:

“...As for the issue of monarchy, whether it is obligatory or recommended is a matter of juristic reasoning (*ijtihad*). Here there are two parties (or opinions); a party that supports the obligation of the caliphate in all circumstances and periods and on everyone, and also blames whoever opts out of it completely or due to necessity, as in the case of the People of *Bid'ah* (heretics) among the Khawarij, the *Mu'tazilah*, and some People of the Sunnah and *Zuhd* (Ascetics). The other party supports the permissibility of monarchy without being bound by the tradition (or sunnah) of the

⁴⁵ *Musannaf Ibn Abi Shaybah*, Hadith 80715.

⁴⁶ See Ibn Taymiyyah, *Majmuu' al-Fatawah*, Majma' al-Malik Fahd, 2004, vol.35, p.24.

caliphs, as in the case of tyrants, (heretical sects such as the) *Ibahiyyah* and some of the *Murjiah*.

“In examining the situation on this issue more closely, it could be said that the transformation of governance from the caliphate into a monarchy could be as a result of,

- i) the incapacity to form a caliphate, or
- ii) due to permissible juristic reasoning (*Ijtihad*) that justified it, or
- iii) the monarchy was established, even when there was the ability and capacity to form a caliphate...

“If (in the first situation) the monarchy was established as a result of the incapacity to form a caliphate, then the leader is pardoned (and justified) even when forming a caliphate is obligatory though with the condition of capability. This excuse is in the same way that other obligations (in Islam) are dropped (or excused) with the condition of incapability...

“If in the (second) situation of capability (of establishing a caliphate), but it was deduced (through juristic reasoning - *Ijtihad*) that establishing a monarchy is recommended and permissible, as it is permissible in other previous laws (*shar'u man qablana*), then if this deduction is

right, then there is no sin for having a just king (or monarchy) also...

“... but in the (third) situation where the caliphate is believed to be obligatory and within the capacity (of Muslims) to establish but is neglected; then neglecting such an obligation results into blame and punishment. The issue then is whether neglecting such an obligation would be regarded as a major or minor sin? ...”⁴⁷

It can be inferred from Ibn Taymiyyah's statement and discussion that establishing the caliphate is an obligation, but it can be replaced with monarchy on the condition of incapability of Muslims, or even permitted due to respect of the alternative opinion when it is a result of the “juristic reasoning” (*Ijtihad*) of other scholars. However, intentional neglect of the need to establish a caliphate system of governance is a sin, if one holds to the juristic opinion (*Ijtihad*) that considers it an obligation.

From the above discussion, it is clear that a monarchy system of governance can therefore be permissible in Islamic law, with the condition that this opinion is arrived at by juristic opinion (*Ijtihad*), and with the additional con-

⁴⁷ Ibn Taymiyya, *Majmuu' al-Fatawah*, Majma' al-Malik Fahd, 2004, vol.35, pp.24-28.

dition that it is capable of fulfilling the objectives (*Maqasid*) of an “Islamic state”.

Among some of the globally and historically experienced fears surrounding the establishment or strengthening of a monarchical system of governance is the difficulty in limiting or stopping the concentration and abuse of powers by a monarch or the “royal family” and friends, the removal of checks and balances to conflicts of interest by the monarch, and the easy transformation of a monarchy into an unremovable “biting” and “oppressive” tyrannical dictatorship.

In view of these concerns, some would therefore, and based on the principles of Islamic jurisprudence (and *Ijtihad*), regard a “constitutional monarchy” (which constitutionally limits and regulates the powers of a monarch) as safer for the people, and more capable or safeguarding “public interest” (*maslahah*). It is also more capable of “blocking the means” (*Sadd al-dhari'ah*) to misuse and abuse of power, while at the same time respecting the benefits of, and sensitivities for local customs and traditions (*'Urf wa al-'adah*), identities and preferences.

Totalitarianism

Totalitarianism refers to a dictatorial and centralized form of governance aimed at regulating every aspect of

individual life, both public and private, for the state's advantage. This control is typically exerted through methods like coercion, intimidation, and repression. Dictatorships and theocracies are other types of government often associated with totalitarian practices.

A dictatorship is a governmental system where supreme authority is consolidated in the hands of a single leader (typically known as a dictator), a small group, or a government organization. In such a system, political diversity and civilian participation are often suppressed or eliminated.

A theocracy is a type of government where God or a divine being is acknowledged as the ultimate ruling authority, providing spiritual guidance to human intermediaries responsible for the government's daily operations. It can also be described as a system guided by "divine inspiration," where officials, clerics, or religious leaders are considered as being directed by a higher power. Examples of theocracies in the modern world include Iran, Israel, and the Holy See (Vatican City).

Islam does not conform to totalitarianism or its various forms because it contradicts the consultative and participatory characteristics of an "Islamic state". The excesses and abuses of the leader or ruling class in totalitarianism cannot be checked. The concerns and will of the people about

the policies of their leaders is not easily considered. Also, the Islamic political objectives of equality and justice are far more difficult to achieve in such states.

Some contemporary “Islamic states” – such as Mauritania, Pakistan, the Maldives, Saudi Arabia and Iran - are sometimes referred to as theocratic states. However, most Muslim political scientists, Islamic activists and writers are against such nomenclature and characterisation as this name over-generalises and does not do justice to the degree of monarchical or community involvement in the political process in most of these communities. They also disagree with the use of “theocracy” to define an “Islamic” state because Islam (as understood by the Sunni majority) does not have a clergy or “divinely guided” men of God (*Rijal al-Deen*) who are to rule the state.

Traditionally, and from the earliest periods of Islamic history, the caliphates were not governed by the religious scholars ('*Ulama*) and jurists (*Fuqaha*). These scholars were often at odds with, and critics of the state. Many great scholars actually avoided any political office for fear of undue influence or corruption by the state. While scholars definitely gave guidance to leaders where necessary, scholars ('*Ulama*) never argued that it was their right to govern the state or dictate policies on state matters related to security, the economy, healthcare, political alliances, agriculture and food security, etc.

Aristocracy/Oligarchy

An aristocracy is a governmental system where a small, elite ruling class, known as aristocrats, holds power in society. In contrast, an oligarchy is a power structure where a small number of families or groups, connected in various ways, possess authority. These individuals might be distinguished by factors such as nobility, fame, wealth, education, or control in corporate, religious, political, or military spheres.

Governments led by aristocrats or oligarchs share similarities with monarchies and evoke similar concerns as monarchical systems. They often tend to be oppressive dictatorships, primarily prioritizing the interests of the ruling class and privileged individuals rather than the broader public interest (*Maslahah*) as required by the objectives (*Maqasid*) of Shari'ah.

Historically and globally, these forms of governance, including aristocracies, oligarchies, theocracies, and monarchies, have easily transformed into harsh and oppressive dictatorships. Some past and contemporary “juristic reasoning” (*Ijtihad*) may regard monarchies along with these other systems as permissible in and of themselves, based on legal presumption (*istishab*) of original permissibility, local customs (*'urf*), earlier laws (*Shar'u man qablana*), and the fact that these systems may not be seen as contradicting any clear texts of the Qur'an or hadith.

However, in the light of global human experience, knowledge of political risks and the existence of many more modified and alternative political systems and structures of governance available in most contemporary contexts, the consideration of juristic principles and sources of evidence (and *Ijtihad*) that are concerned with the probability of beneficial or harmful consequences of things may not result in the same conclusions and rulings. These secondary and consequentialist sources of law, include “consideration of public interests” (*maslahah*), preclusion or “blocking the means” (*sadd al-dhari'ah*) and “juristic discretion” (*istihsan*). Along with the consideration of the legal maxims and the *Maqasid* of Shari'ah, all of which are ultimately concerned with securing the “greater good” or “lesser evil” for all – it becomes more difficult for contemporary “juristic reasoning” (*Ijtihad*) to regard most of these governance systems as “harmless” or “equally as harmful”, when they have probably demonstrated higher risks of being abused. This is especially so when systems of governance are assessed in a current context of lower degrees of trust by the followership, and higher levels of corruption and immorality of most leaders after the Rightly Guided Caliphs, and particularly in contemporary times.

Along similar lines to Ibn Taimiyyah's argument, if there are currently no realistic alternatives available to

such risky systems (as monarchy, etc.), then these options would have to be tolerated due to necessity (*darurah*) for some form of government and administration, as opposed to anarchy and social disorder (*fitna*). The argument that contemporary “juristic reasoning” (*Ijtihad*) could justify any of these systems (such as monarchy, oligarchy, etc.), which do not have adequate checks and balances and other modifications, may be more difficult to justify and defend as acceptable as a norm. With certain modifications of these however, such as those done to change absolute monarchies into “constitutional monarchies”, it may be easier for “juristic reasoning” (*Ijtihad*) to support a modified version of an oligarchy or aristocracy which has the necessary checks and balances that prevent the feared concentration and abuses of power.

However, as with many other issues, if differences amongst distinguished contemporary jurists exists on an issue, then it must be acknowledged and tolerated as was done by past jurists regarding monarchies. More importantly, differences (*Khilaf*) among contemporary scholars on this issue cannot and should not be a basis for excommunication (*Takfir*). Whatever position one may hold on to regarding a particular system of governance, what is important is that steps should be taken to make it less open to abuse by those currently in power, or those who will eventually come to power.

Democracy

Democracy is a form of government that first appeared in ancient Greek political and philosophical thought in the city-state of Athens at about 508 BC – just over 2,500 years ago! The word comes from *demos* '(common) people' and *krátos* 'force/might'. There are several definitions of democracy, some of which are:

1. Government of the people, or government of the majority.⁴⁸
2. Government of the people, by the people, and for the people (Abraham Lincoln).⁴⁹
3. A system of government by the whole population, usually through elected representatives.
4. A representative government in which the government is chosen by the people, governs on their behalf, is accountable to them, and owes its legitimacy to the fact that it is representative of the people in some manner.⁵⁰
5. Democracy (from the Greek: *dēmokratiā*, from *dēmos* 'people' and *kratos* 'rule') refers to a governmental structure where the populace holds the power to elect legislators or make decisions regard-

⁴⁸ Paula Becker and Dr Jean Aime, “what is democracy?”, pg 4

⁴⁹ Cited in “what is democracy”, pg 4

⁵⁰ Kevin Harrison and Tony Boid, “Democracy”, pg 60.

ing legislation. The definition of "the people" and the distribution of authority among them have evolved over time and at varying rates in different nations. Nevertheless, an increasing number of countries have tended to encompass a larger portion of their inhabitants in the democratic process.⁵¹

6. Democracy is "a government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections".⁵²
7. Democracy is a system of "public participation in decisions affecting public life." It is a system in which governments derive their legitimacy from the consent of the governed.⁵³

Larry Diamond defined democracy as a system of government with **four key elements**:

1. a system of choosing and replacing the government through free and fair elections,
2. of active participation of people as citizens in politics and civic life,

⁵¹ Wikipedia, en.wikipedia.org/wiki/Democracy

⁵² Merriam-Webster, Merriam-Webster.com/dictionary/democracy

⁵³ Sadek Jawad Sulaiman, *Democracy and Shura*, Interview with Dale F. Eickelman, November 9, 1996.

3. of protection of human rights of all citizens,
4. of a Rule of Law in which laws and procedures apply to all citizens.⁵⁴

The difference in the definitions could be traced to the different forms of democracy. In other words, each definition explains a slightly different form of democracy.

Democracy can be classified mainly into **two major forms**: Direct Democracy and Representative Democracy.

1. **Direct Democracy or Pure Democracy**: This is a form of democracy in which the electorate (or a people) decides on policy initiatives without elected representatives as proxies. In direct democracy, the people decide on policies without any intermediary. Some of the countries that adopt this type of Democracy are Switzerland, Denmark, etc.
2. **Representative Democracy**: it is an **indirect democracy** where sovereignty is held by the people's representatives, who are elected by the people.

Below are some of the forms of a Representative Democracy:

- i. **Liberal Democracy**: This represents a blend of liberal political beliefs functioning within an indirect demo-

⁵⁴ Cited in Nwogu GAI, "Democracy: its meaning and dissenting opinions", *Journal of education and practice*, vol. 6, 2015

cratic system. It involves elections featuring various distinct political parties, a division of powers across government branches, the prevalence of the rule of law in everyday life within an open society, a market economy with private property rights, and the guarantee of equal protection for human rights, civil rights, civil liberties, and political freedoms for all individuals. This form of government is embraced by numerous countries with highly diverse populations, including those with multiple religions and a variety of cultural backgrounds.

ii. Religious Democracy: This type of government is characterized by the influence of specific religious values on laws and regulations. It is applicable to countries where religion is integrated into the governing framework. Thus, where the values of Islam affect laws and rules is Islamic Democracy as seen in states like Pakistan, Mauritania, Indonesia, Somalia, etc.; where Christianity affects laws and rules is Christian Democracy as seen in states like Vatican City; and where Judaism affects laws and rules is Jewish Democracy as seen in Israel.

iii. Ethnic Democracy: is a political system that combines a structured ethnic dominance with democratic, political, and civil rights for all. The state is owned and ruled by the core ethnic nation. Some states that adopt this

type of democracy include Malaysia, Slovakia, Northern Ireland, etc.

iv. **Consensus Democracy:** This involves incorporating consensus decision-making into the legislative process of a democracy. It features a decision-making framework that includes a wide array of opinions, ensuring a comprehensive consideration of perspectives. This stands in contrast to systems where minority opinions could be disregarded by winning majorities through voting. Some states that adopt this form of democracy include Switzerland, Belgium, Iraq, etc.

iv. **Defensive democracy** This term pertains to the body of laws, delegated legislations, and court decisions that restrict specific rights and freedoms in a democratic society to safeguard the state's existence, its democratic essence, institutional integrity, and minority rights. It signifies a significant dilemma that can arise in democratic nations, balancing adherence to democratic values such as freedom of association and the right to be elected, with the need to prevent anti-democratic groups and individuals from exploiting these principles. Some states that adopt this form of democracy include Germany, Israel, Taiwan, and South Korea. This system basically focuses on trying to prevent an extremist group, such as the Nazi Party (Hitler) in Germany, from hijacking democratic principles.

v. Constitutional Democracy: This form of democracy ensures that the authority of the majority operates within the boundaries set by a constitution, safeguarding the rights of the majority. It outlines the rules for how people are governed and ruled, as specified in the constitution. Constitutional democracy functions based on and in accordance with a state's constitution.

The most common form of democracy, liberal democracy, is characterized by the following **key features**:

- 1. Freedom of speech** allows citizens to express their opinions on public matters openly, without hindrance or fear, regardless of whether their views are critical or supportive of the government. In a democratic setup, it is crucial for officials to understand the sentiments of the people who elected them regarding the policies and decisions they make. This aspect also directly impacts the quality of representation offered by elected leaders.
- 2. Free elections** refer to the process through which citizens, following specific and constitutionally protected procedures, periodically elect their representatives and those entrusted with governance responsibilities. These elections validate various levels of representation, ranging from local councils and wards to the state presidency, ensuring democratic legitimacy.

3. **Majority rule and minority rights:** In a democratic system, choices are determined by the majority, guided by the belief that the collective judgment of the majority tends to be more accurate than that of the minority. However, this does not grant unrestricted authority to the majority. Within the democratic framework lies the essential commitment to safeguard specific fundamental rights of citizens, such as freedom of speech, press, assembly, and religious practice, ensuring they are not violated.
4. **Political parties:** In a democratic system, political parties assume a crucial role. Through these parties, individuals freely unite based on their beliefs regarding how to secure a prosperous life for themselves, their families, and future generations. Political parties foster healthy competition, compelling the ruling party to enhance transparency and accountability. It is mandatory for all parties to uphold the Constitution.
5. **Separation of powers:** The division of powers among the legislative, executive, and judiciary branches ensures constitutional checks and balances, preventing the abuse of power that can occur when too much authority is concentrated in a single leader.
6. **Constitutional authority:** Constitutional authority holds the highest power in determining the validity of

any statutory law or executive directive. It signifies the prevalence of the rule of law over individual influence in resolving public issues.

7. **Equality:** This ensures that citizens have equal rights. It also implies freedom for individuals and groups within the boundaries of the common good. This includes the right to own property, work, pursue personal ambitions, and establish civil society organizations and corporations, all accessible to every citizen.

This table shows a comparison of the features of democracy across various types of democracy – It is noteworthy that there may be diversity in what is applicable in different countries that adopt the same type of democracy due to the amount of flexibility in how democracy is practised across the globe. Democracy is thus, a flexible form of government that can exhibit different forms depending on the context and preferences of a particular people and state. Also, the minimum or unified definition that could be adopted in defining democracy is that it is a system that is the choice of a collective or pluralistic government and not that of just one person, or an individual government.

The adoption of democracy in an Islamic system of governance, state or of an Islamic Democracy has been a subject of debate among Muslims. Some see compatibility and are in support it, while others see incompatibility and

are against it. The contemporary nature of this debate amongst Muslim jurists and scholars positions it in the realm of Ijtihad or “juristic reasoning” and consequently, one of divergence (*Khilaf*) and respectful tolerance among scholars.

Those who support the idea of an Islamic democracy are convinced that the objectives of democracy can be imbibed in an Islamic state. Democracy, as they opine, can be implemented in an Islamic society in as much as it does not contradict the objectives of an Islamic state. They believe that the essential elements and objectives of an Islamic governance system are common to any genuine democratic system. They also see the democratic principle or ideal as one thing, and people's endeavours to realize its requirements as something else. The democratic principle of participatory governance (or *shura*), although recognized as a nearly universal human principle since ancient times, continues to demand better fulfilment in the experiences of all nations. However, and as has been argued by some of these scholars, the conditions discussed earlier, which were given by Ibn Taymiyyah for justifying the establishment of a monarchy system, can also be applied to democracy.

On the other end of the spectrum of this debate are those who are against the adoption of democracy by Mus-

lims. They too supported their view with various pieces of evidence and criticisms against democracy. They see democracy as being totally in contrast to the Islamic caliphate system of governance. Some of them have issues with all features of democracy while others are more specific. They regard democracy as a system that has not been recommended by the Quran or the sunnah, or the Prophet's companions. They also believe that some of the key characteristics of democracy includes features which they regard as unislamic, such as election, voting, multi-party system, campaigning, separation of powers, term of office, ruling by the majority, man-made laws, and liberty for the majority or absolute freedom of choice. They consider democracy as undermining the principle of the lawful and prohibited (*al-Halal wa al-Haram*) and of association and dissociation (*al-Wala' wa al-bara'*). Some believe democracy by definition entails atheism, liberalism, secularism, and indirect colonization. It is also regarded as a form of disbelief (*kuf'r*) to some, while others view it as a heretical innovation (*Bid'ah*). Some others even understand democracy as constituting an independent religion altogether.

Features of various types of Democracies	Liberal	Religious	Ethnic	Consensus	Defensive	Direct	Constitutional
Freedom of speech	Yes	Yes	restricted	Yes	restricted	Yes	Yes
Free Elections	Yes	Yes/no	Yes	no	Yes	no	Yes
Majority Rule/Minority rights	Yes	Yes/no	restricted	no	Yes	no	Yes
Political parties	Yes	Yes/no	Yes	no	Yes	no	Yes
Separation of powers	Yes	Yes/no	Yes/no	no	Yes	no	Yes
Constitutional authority	Yes	religion	Yes/no	yes	Yes	Yes	Yes
Equality	Yes	Yes	no	yes	Yes	Yes	Yes

This table shows a comparison of the features of democracy across various types of democracy – It is noteworthy that there may be diversity in what is applicable in different countries that adopt the same type of democracy due to the amount of flexibility in how democracy is practised across the globe.

An Overview of the Islamic Governance System

A classical jurist Ibn 'Aqil, said that "an Islamic governance system is any policy that brings people closer to goodness, and beyond evil, even if it was not enacted by the Prophet (p), or sent down as a revelation."⁵⁵

The above definition of an Islamic governance system explains that governance in Islam involves anything that brings benefit and expels evil, in as much as it does not contradict the Quran and Sunnah. In other words, it is affirming and demonstrating the benefits embedded in the Qur'an and Sunnah and warding off evils explained in both primary sources of the Shari'ah.

Goals and Objectives of an Islamic Governance System

Ibn al-Qayyim said: "Indeed, Allah has explained His laws in different ways, and His goals and objectives in enacting those laws are to uphold justice and equity among people. Whichever way justice and equity are extracted is in line with the religion and not against it".⁵⁶

⁵⁵ Ibn al-Qayyim, *al-Turuq al-Hukmiyyah*, dar al-Bayan, p.12.

⁵⁶ Ibn al-Qayyim, *al-Turuq al-Hukmiyyah*, dar al-Bayan, p.13.

The Islamic governance or political system is about accruing benefits (*jalb al-masalih*) and warding off evils (*dar' al-mafasid*). The benefits are justice, equity, fairness, impartiality, neutrality, etc., while the evils are partisanship, nepotism, injustice, prejudice, etc.

In the spirit of accruing benefits and warding off evils in the Islamic governance system, classical and contemporary scholars have written different books on *al-siyasah al-shar'iyah*⁵⁷ which, in the absence of clear textual injunctions, are the results of juristic exercises (*Ijtihad*) by these scholars to fashion, adopt, modify, and establish any appropriate system that goes in line with the objectives of Shari'ah. They also exercised juristic reasoning (*Ijtihad*) so as to give rulings on novel issues in governance, as indicated by the Caliph Umar bin Al-Aziz, when he said: "people will get new laws as long as they continue to engage in immoralities".⁵⁸ In other words, new issues and offences will be accorded with new laws. In the literature on *al-Siyasa al-Shar'iyah*, issues such as how to choose the leader, the qualities of the leader, the qualities of the group that chooses the leader, how to dismiss the leader, the various arms of government, etc., are discussed.

⁵⁷ Some of the books on *al-Siyasa al-Shar'iyah* are: *Giyath al-Umam* by al-Juwayni, *al-Turuq al-Hukmiyyah* by ibn al-Qayyim, *al-Siyasa al-Shari'yyah* by ibn Taymiyyah, *al-Ahkam al-Sultaniyyah* by Abu Ya'la, *al-Ahkam al-Sultaniyyah* by al-Mawardi, etc.

⁵⁸ Al-Qairawany, *al-Risalah*, dar al-fikr, p.132.

As a principle, traditional Islamic political or public administrative law, *al-siyasah shar'iyah* (or simply *siyasah*) entrusts the head of state with discretionary powers to introduce measures and policy decisions on matters of concern to the good management of public affairs, and that will ensure the orderly implementation of the Islamic law. This may include economic development, military affairs, international relations, emergency situations, and so forth. The urgency of situational development that demands attention may sometimes be such as to necessitate a certain departure from some of the normal rules of *fiqh* and the *ijtihad*-based elaborations of normative Islamic law.

The Characteristics of Governance Systems In Islam

The key characteristics and features of a governance system that is compatible with Islamic teachings are:

1. Legislation should belong ultimately to Allah alone. No policy should contradict the definitive and categorical teachings of Shari'ah that are based on unequivocal teachings of the Qur'an and hadith of absolute authenticity.
2. Mutual consultation (*shurah*) should be administered and ensured
3. Equality before the law. The leader must be held responsible, and the Rule of Law must prevail.

4. The leader must be just to all.
5. Rights and freedom must be preserved and protected.
6. The leader should be accountable to the ruled.⁵⁹

Means to achieve an Islamic Governance System

Aside from knowing the objectives of an Islamic governance system and its characteristics, there is also a need to know the methods and means to achieve those objectives.

The distinguished contemporary jurist Abdul Wahab Khallaf said:

“Regarding the system of government, the Noble Qur'an did not detail a system for the form of government, nor the form of regulating its authority, nor the form of choosing the members of the *shurah* (consultative council). Rather, it was sufficient to stipulate the firm foundations upon which every just government system should rely, and no nation differs from another nation in it. Allah decided on prescribing justice in His saying, Glory be to Him: “*And if you judge among the people, that you judge with justice*” (Qur'an 4:58), and on *Shurah* (consultation), in His saying: “*and they conduct their affairs by*

⁵⁹ Jami'ah al-Medina al-A'lamiyyah, *al-Siyasah al-Shari'yyah*, pp.339-430.

mutual Consultation” (Qur'an 42:38); on equality in saying, “*The believers are only brothers*” (Qur'an 49:10). As for detailed regulations to achieve these principles, Allah is silent on these so that the leaders can lay down their systems, form their government, and form their councils in a way that suits their situation and is consistent with their interests, without transgressing the boundaries of justice and *shurah*.”⁶⁰

Al-Juwayni said: “Imamate is not considered part of the tenets of faith, rather it constitutes an all-inclusive, general mandate. Most of the things that are said concerning leaders and general and specific forms of leadership are open to inquiry and investigation.”⁶¹ He also said: “Most of the matters relating to Imamate are not definitive at all and completely lacking in legal certitude”⁶²

Al-Amidi al-Shafi' said: “Know that talking about the issue of imamate is not one of the roots of religion, nor one

⁶⁰ Abdul Wahab Khallaf, *al-Siyasah al-Shar'iyah*, dar al-Qalam, 1988, p.24-25.

⁶¹ Al-Juwayni, *Ghiyath al-Umam* (Jeddah Dar Al-Minhaj, 2012), cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.24.

⁶² Al-Juwayni, *Ghiyath al-Umam* (Jeddah Dar Al-Minhaj, 2012), cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.24.

of those things that are essential that no legally accountable person should disregard it or fail to know about it”.⁶³

Al-Iji al-Hanafi said: “in our view, it is one of the subsidiary branches of the religion. The only reason we mentioned it in the context of the doctrines of faith is to show respect to those who came before us”.⁶⁴

Abu Hamid al-Ghazali said: “Know that looking into the matter of imamate is also not something important. It is not a matter of doctrine or belief, but rather a matter of jurisprudence”.⁶⁵

Al-Taftazani said: “there is no disagreement that discussions concerning Imamate would be better suited to books dealing with the branches of Jurisprudence”.⁶⁶

This makes it clear that the specifics of *how* the objectives of the Islamic governance system are to be achieved

⁶³ Al-Amidi, *Ghayat al-Maram fi Ilm al-Kalam*, p.363, cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.24.

⁶⁴ Al-Iji al-Hanafi, *Mawaqif*, p.395, cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.24.

⁶⁵ Abu Hamid al-Ghazali, *Al-Iqtisad fi al-'Itiqad*, Dar al-Minhaj, Jeddah, 2006, p.234, cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.24.

⁶⁶ Al-Taftazani, *Sharh al-Maqasid*, vol.2, p.271, cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.24.

are not explained by Allah. Rather He listed the objectives and left the details of the means in the hands of the people – His vicegerents on earth (*khulafa al-'Ard*) depending on their diverse contexts. This, in the language of Islamic Legal Theory or the Principles of Islamic Jurisprudence (*Usul al-Fiqh*), is referred to as *al-Maslahah al-Mursalah*. It is then left to the jurists and others to create appropriate means to achieve those objectives without contradicting the Quran and Sunnah.

Historically, and during the life of the Prophet (p) and his Companions, the only means for achieving an Islamic system of governance was through peaceful means. Change was gradual and steady, and not instant through a revolution, coup, or violent political take-over. Through gradual holistic social, economic, legal, and cultural reforms, values orientation, social cohesion and unity, social justice, moral courage and political evolution, the city became more and more Islamic.

Medina became an Islamic city-state of influence in the region by standing for justice, helping the oppressed, peacefully evolving as the people embraced Islam, and gradually applying greater justice in law, morals, and norms to complement or replace customary laws.⁶⁷

⁶⁷ Al-Mubarakpuri, *al-Rahiq al-Makhtum*, 1st ed. Dar-al-Hilal, Beirut, p.161; Ibn Qayyim al-Jawziyyah, *Zad al-Ma'ad fi Hady khair al-'Ibad*, Maussasah

All other places that were conquered by Muslims were annexed or colonised by Muslims only because of hostility from such places. There is on record no situation when the Prophet (p) or his companions conquered a community that was peaceful and did not break their peace treaties.⁶⁸

al-Risalah, Beirut, 1407 AH, Vol.3, p.58, Ibn Hisham, *al-Sirah al-Nabawiyyah*, Sharikah al-Tiba'ah al-Faniyyah al-Muttahidah, vol.3, p.30.

⁶⁸ See Ibn Taymiyyah, *Qa'idah Mukhtasarah fi Qital al-Kuffar*, pp.96,134; Ibn Qayyim al-Jawziyyah, *Hidayah al-Hayara*, pp.137; al-Maraghi, *Tafsir al-Maraghi*, Vol. 10, p. 92; Mahmassani, *Al-Qanun wa al-'Alaqa*, p. 177; al-Zuhayli, "*Majalat al- 'Alaqa*," p. 199; Sabiq, *Fiqh al- Sunnah*, Vol. 3, pp. 18; al-'Afifi, *Al-Mujtama' al-Islami*, p. 148; al-Ghunaimi, *Qanun al-Salam fi al-Islam*, p. 59; Ghunaym, *Al-Jihad al- Islami*, pp. 32 f.; Tabliyyah, *Al- Islam wa Huquq al-Insan*, p. 72; al-Firjani, *Usul al-'Alaqa*, pp. 77, 82 f.; al- Rikabi, *Al- Jihad fi al-Islam*, pp. 125 f.; al- Amin, "*Mawqif al- Islam*," p. 311; Weeramantry, *Islamic Jurisprudence*, p. 147; Stewart, *Unfolding Islam*, p. 92; Alsumaih, "*The Sunni Concept of Jihad*," pp. 41, 271, 276. Rudolph Peters indicates that modern Muslim writers "show that all military campaigns, raids, and expeditions of Mohammed and the first Caliphs were purely defensive." See Peters, "Jihad," p. 286; al-Qaradawi, *Fiqh al-Jihad*, Vol. 1, pp. 339–364, 380; all cited in Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011, p.39.

SECTION TWO

Constitution And Laws

A constitution is a set of principles, regulations and laws that guide the governance and administration of a group of people. It could be for a community, organization, students' society or for a nation. The scope of regulations covered by a constitution differs according to its purpose.

In a very general sense, Muslims may regard the Qur'an (and its interpretation through the Prophetic tradition) as a constitution. In this sense, the Qur'an is understood to be the primary source of all guidance and regulations for every aspect of life for Muslims as individuals and as a community. Unlike most other constitutions of countries and organisations, the Qur'an (and Sunnah) prescribes, and guides principles related to our relationship with Allah, our beliefs, moral behaviour, values, spirituality, worship, social norms, family affairs, personal and neighbourly responsibilities, dietary restrictions, social justice, law, and economic and political life, etc.

The constitution of a state is the foundation on which the whole governmental structure rests. The welfare, stability, and progress of the country, and the peace and security of its citizens, depend on it. It is a collection of principles according to which the state operates. The constitution encompasses the fundamental principles and regulations governing a nation, state, or social community. It outlines the government's powers and responsibilities while safeguarding specific rights for the people. The constitution defines the branches of government, their powers, and operations, along with citizens' rights. Typically, laws conflicting with the constitution are not permissible. Additionally, a federal constitution often allows for specific law-making capabilities at the state, local, or county levels within society.

A constitution is therefore a set of rules that guides how a country, state, or other political organization works. From this definition, a constitution, as the term is more commonly understood, is therefore much more limited in its scope and concerns than the Qur'an (or any religious scripture) which is related to the whole way of life of individuals and communities Like the Sahifah,⁶⁹ Charter or

⁶⁹ The *Sahifah* is also called *Wathiqah* or *Mithaq*. See Munir al-Ghadaban, *Fiqh al-Sirah al-Nabawiyyah*, 2nd ed. 1992, p.367; Jami'ah al-Medina al-A'lamiiyyah, *al-Siyasah al-Shari'yyah*, p.796; Munir al-Ghadaban, *al-Manhaj al-Haraki li al-Sirah al-Nabawiyyah*, 6th ed. 1990, Maktaba al-Manar, vol.2, p.209.

Constitution of Medina between the Muslims and other religious and tribal communities in Medina, a constitution is a social contract between citizens and members of a nation which articulates the terms and conditions that guide and govern their relationships, rights and responsibilities associated with what they have agreed to in that contract.

With regard to issues of governance and state in Islam, the constitution refers to a set of shari'ah-compliant principles and rules that outlines the system of government, the form of state and the public authorities in it, the people and bodies that assume these authorities and their connections to one another, and the statement of the rights and duties of individuals emanating from the general principles of Islam and its regulations in constitutional affairs.⁷⁰ The constitution may be amended, or changed when deemed necessary, but this is generally more difficult to do than passing an ordinary law. Changes in provisions in any agreement, treaty or constitution as situations and contexts change is supported by the universally accepted maxim which state that, "There is no denying that laws change as

⁷⁰ Taofeek Abdul Azeez al-Sudairy, *Al-Islam wa al-Dustur*, Wizarah al-Shuhun al-Islamiyyah wa al-Awqaf wa al-Da'wah wa al-Irshad, 1st ed. vol 1, p. 63.

contexts change” – *la yunkar taghayyur al-ahkam bi taghayyur al-ahwal*.⁷¹

Some of the teachings in the primary sources of the shari'ah (Qur'an and Sunnah) are unambiguous and definitive in their authenticity (*Qati' al-thubut*) and their meanings or implications (*Qati' al-dilalah*), and there are no difficulties or differences of opinion among scholars related to the position of Islam regarding these texts and their teachings. These are regarded as the fundamental essential teachings of Islam (*ma'lum min al-din bi al-darurah*) that no other laws from any other sources should conflict with. However, on many other general and specific policy related issues, the Qur'an and Sunnah may be either silent or inconclusive (*zanni al-dilalah*), and scholars of every generation have to resort to *ijtihad* (juristic reasoning) using the various secondary sources of law to often arrive at a diversity of meanings and rulings.⁷² These may

⁷¹ Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'n*, 1st ed. Dar Ibn al-Jawzi, Saudi Arabia, vol.1, p.48; Group of scholars of the Ottoman empire, *Majallat al-Ahkam al-'Adliyyah*, p.20. The maxim is also quoted as *la yunkar taghayyur al-ahkam bi taghayyur al-zaman*.

⁷² Some texts of the Qur'an are described by Allah as “allegorical” or “*mutashabihat*” (Qur'an 3:7) and are deliberately left open to a respectful variety of interpretations. The same applies to some hadiths. The Prophet (p) also did not give a detailed verse-by-verse interpretation (*tafsir*) of every verse of the Qur'an. Such texts that could accommodate multiple meanings as described as having speculative or presumptive meanings or implications (or as *zanni al-dilalah*).

include policies and regulations related to defence and security, agriculture and food security, use or allocation of natural resources, national boundary issues, international trade and relations, healthcare, climate and environment, traffic regulations, tax laws, etc.

Consequently, when any important agreement, charter or constitution, contract (business or marriage, etc.), pact or treaty, etc. is needed for specific purpose, the terms and conditions are better spelt out in writing separately in very simple, clear, and explicit language to avoid or reduce ambiguity and difference of interpretation. This was the case for the Sahifah or Charter of Medina between the Muslims and non-Muslims of Medina that articulated the terms of their peaceful coexistence. Another well-known treaty was that of Hudaibiyyah between the Muslims and Quraysh of Mecca.

From the perspective of Islamic jurisprudence therefore, all constitutions and their articles and clauses are regarded as permissible by default so long as they do not contradict explicit directives of the Qur'an and Sunnah. However, in case of an undesirable situation of societal need (*al-hajah al-'ammah*) or necessity (*darurah*), and in order to prevent greater harm, insecurity or civil strife (*fitnah*) to a community, there are some legitimate concessions (*rukhsah*) recommended by Islamic law that are

intended to protect the common good/interests (*maslahah*) or to block means to greater harm (*sadd al-dhari'ah*). Where provisions or articles in a treaty or constitution may be unjust but tolerable to Muslims and may ordinarily conflict with the letter of the Qur'an and Sunnah, as was the case with the Treaty of Hudaibiyyah, it is permissible in Islamic law for Muslims to accept these undesirable provisions, in the interest of the greater good (*maslahah*) and to buy time for pursuing long-term justice and explore possible alternative opportunities for reform. This in Islamic jurisprudence is regarded as “opting for the lesser of two harms” – “*irtikab akhaf al-dararayn*”.⁷³

There is therefore no justifiable basis in the Qur'an and Sunnah, or the secondary sources of Islamic law to prohibit a political system from having a constitution to guide the governance and administration of the state. A constitution may in fact facilitate national unity, make explicit certain principles, requirements and compromises that facilitate peaceful coexistence, and greater structural and social justice.

⁷³ Taj al-Din al-Subki, *al-Ashbah wa al-Nazair*, 1st ed. Dar al-Kutub al-Ilmiyyah, Beirut, 1991, vol.1, p.47; Taqiyy al-Din al-Husni, *al-Qawai'd*, 1st ed. Maktabah al-Rushd, Riyadh, 1997, vol.1, p.346.

Codification or Documentation of a Constitution

In Islamic jurisprudence, there is no ruling based on any explicit text of the Qur'an or hadith for or against the codification and documentation of a written constitution. This places such initiatives into the category of things that are “merely permissible” (*mubah*) by default – *al-ibahah al-asliyyah* (original permissibility) – neither compulsory nor prohibited – and up to those involved to decide based on their contexts, customs (*'urf*) and what they regard as being in their best public interest (*maslahah*).

In certain contexts, the Qur'an encourages the writing down of contract agreements, and to have witnesses for such contracts (Qur'an 2:282; 2:182) so as to reduce doubt, forgetfulness and errors in understanding. It also enjoins Muslims to respect and abide by their contracts, treaties, and agreements (Qur'an 5:1; 9:4; 17:34; 2:177; 61:2-3, etc.) whether these are business, civil or political. Most agreements, treaties, and charters at the time of the Prophet (p) and during the time of his Companions were written down, such as the constitution/charter or Sahifah of Medina, the Treaty of Hudaibiyyah, and the many other treaties signed between the early Muslims and others, etc.

Before the elaborate contemporary constitutions for nation states with detailed provisions on governance

related to all the arms of government and functions and procedures of a modern government, a documentation of a charter or basic constitution was witnessed during the time of Prophet Muhammad (p) when he produced the Sahifah of Medina which contained about forty-seven (47) clauses.⁷⁴ This is regarded by some scholars as the first written constitution or charter in human history between religious communities. It was definitely the first in Islamic history between the various Jewish and polytheist tribes in and around Medina, and the Muslims, and was drafted soon after the Hijrah to Medina.⁷⁵

In the history of Islam, with the exception of the documentation of the Quran during the life of the Prophet (p) and his Companions and that of Hadith literature, and other documents such as the Charter (*Sahifah*) of Median and other similar charters and treaties, there has been less consideration for documentation of more elaborate state constitutions until the documentation of the Tunisian constitution in 1861 (1276A.H), and then the Ottoman

⁷⁴ Al-Mubarakpuri, *al-Rahiq al-Makhtum*, 1st ed. Dar-al-Hilal, Beirut, p.161; Ibn Qayyim al-Jawziyyah, *Zad al-Ma'ad fi Hady khair al-'Ibad*, Maussasah al-Risalah, Beirut, 1407 AH, Vol.3, p.58; Ibn Hisham, *al-Sirah al-Nabawiyyah*, Sharikah al-'Tiba'ah al-Faniyyah al-Muttahidah, vol.3, p.30.

⁷⁵ Al-Mubarakpuri, *al-Rahiq al-Makhtum*, 1st ed. Dar-al-Hilal, Beirut, p.161; Ibn Qayyim al-Jawziyyah, *Zad al-Ma'ad fi Hady khair al-'Ibad*, Maussasah al-Risalah, Beirut, 1407 AH, Vol.3, p.58; Ibn Hisham, *al-Sirah al-Nabawiyyah*, Sharikah al-'Tiba'ah al-Faniyyah al-Muttahidah, vol.3, p.30.

Empire constitution in 1876 (1293A.H).⁷⁶ In more contemporary contexts, written or codified constitutions are becoming more popular, and more preferable for most countries.

Some countries still have unwritten or uncoded constitutions. An "uncodified constitution" comprises rules gathered from various documents rather than a single written constitution. These references can include judicial commentaries and legal experts' opinions. Although it's occasionally called an "unwritten constitution," this term isn't entirely accurate, as its components are documented in several official records.

It is worthy of note, that one of the most famous examples of a country which still does not have a written or codified constitution is the United Kingdom. The British constitution is a group of laws that have been built up throughout the people's history. Its elements include the Magna Carta, the English Bill of Rights of 1689, laws passed by Parliament, court decisions, and other sources. Other similar countries include New Zealand, Israel, and Canada.⁷⁷

⁷⁶ Taofeek Abdul Azeez al-Sudairy, *Al-Islam wa al-Dustur*, Wizarah al-Shuhun al-Islamiyyah wa al-Awqaf wa al-Da'wah wa al-Irshad, 1st ed. vol 1, p. 69.

⁷⁷ https://en.wikipedia.org/wiki/Uncodified_constitution#cite_note-Gerhard-13; Gerhard Robbers (Edt.), *Encyclopedia of World Constitutions*, 2007, Vol. 1-3; <https://kids.britannica.com/kids/article/constitution/352996>.

Saudi Arabia is also described as having an uncoded constitution. Its legal system is based on Shariah laws derived from the Quran and Sunnah. Shari'ah however also includes the Islamic scholarly consensus which is interpreted by the country's judges based on the Hanbali school of Islamic jurisprudence. This is also supplemented by regulations issued by royal decrees which put into consideration the modern issues. In 1992, the Basic System of Governance of Saudi Arabia (*al-Nidham al-Asasi li Hukm*) which is a constitution-like charter which stipulates the law of governance, authorities of the state, rights and duties, control bodies, etc., was adopted by the government.⁷⁸

In view of the silence in the text of the Qur'an and Sunnah, and the absence of a basis for prohibition from the secondary sources of Islamic law, it may be concluded that it is not prohibited for a community or nation to have either a codified or uncoded constitution.

Codification of Islamic Laws

As earlier explained regarding the documentation and codification of a constitution, there is also no rule or categorical evidence in the texts for or against the codification

⁷⁸ https://en.wikipedia.org/wiki/Basic_Law_of_Saudi_Arabia

of Islamic laws. Various forms of codification of laws were done very early on in Islamic history.

Ideally, the competent courts would choose any juristic point of view and decide what serves justice and fairness best on a case-by-case basis as would be expected of a competent judge, jurisconsult or distinguished jurist (*Mujtahid*). This however can be put into practice only when the judges (of whatever jurisdiction) have expert knowledge of the relevant Islamic sciences for interpreting, applying, or crafting laws. Without that, it would not be possible to put such a proposal into practice, as any layman who is not competent in the relevant Islamic sciences would be prone to make serious mistakes and miscarriages of justice.

In the early centuries of Islamic history, this was easier to put into practice. The Qadis (judges) were usually also scholars with profound knowledge, and they would decide cases according to their knowledge. But when many Qadis were no longer very learned, a number of Muftis were often appointed to assist them. The Qadi would take a *fatwa* (legal ruling) from them and then decide the case accordingly. Things have changed over the centuries, and it has become necessary to preserve the quality of the Islamic justice system while serving an increasingly growing,

diverse, and globalised population of Muslims who follow various schools of law (Madhhabs) or none at all.⁷⁹

Today, we also live in a relatively low trust and more corrupt society than in the past. Unless laws are properly articulated and put into an appropriate framework, there might be many circumstances that would trigger corruption as abuse of the law. Hence, it would be more appropriate to codify these laws. But obviously, this would require a group of experts in the field of Islamic jurisprudence and qualified to rephrase the Islamic juristic injunctions as actual legal maxims and laws. That was what a group of jurisprudents did during the last era of the Ottoman Caliphate, when the renowned *Majallat al-ahkam al-'Adliyyah* (in Turkish, 'Mecelle'), a compilation of legal maxims, came into being. For some time, a number of Muslim countries adopted the *Majallah* as their codified law.⁸⁰

The first attempt at codification could be traced back to the lifetime of Imam Malik. Harun Rashid the caliph then suggested that Imam Malik's book *Al-Muwatta'* should be put in the Sacred Ka'bah and all Muslims be told to follow

⁷⁹ Muhammad Taqi Usmani, *Islam and Politics*, Turath Publishing, 2018, p.106.

⁸⁰ See Peters Rudolph, *Islamic Law and Society*, Oxford University Press, 2006; Hallaq Wael B, *The Evolution of Islamic Law*, Cambridge University Press, 2001; Muhammad Taqi Usmani, *Islam and Politics*, Turath Publishing, 2018, p.106.

it in all matters of law or jurisprudence. This effort was futile because Imam Malik himself refused and told the caliph to refrain from such because some issues will be surrounded by different views, and the companions themselves held opposing views on issues.⁸¹

Another earlier attempt toward the legal codification of Islamic law was made by Ibn al-Muqaffaؒ, the ʿAbbasid scholar and political advisor. Observing the great diversity of opinions on law and dogma among Muslims, which had already led to civil strife, Ibn al-Muqaffaؒ wrote a letter to the Abbasid caliph, al-Mansur, suggesting that he select one sound position from the plurality of opinions on every issue, compiling a uniform version of the *Shari'ah*.⁸²

Codification is therefore a means of creating local legal consensus and unity. This is very important especially when it is clear that the diversity of opinions among scholars from various contexts and times can undermine law and order in a particular current context. There were, however, many early attempts by the classical scholars of the various schools of law at providing compendia of law that made popular and sound opinions of a given legal

⁸¹ Shamsuddin al-Dhahabi, *Siyar a'lam al-Nubala*, 2nd ed, Muassasah al-Risalah, 1405\1985, vol. 8, p.98.

⁸² Shamsuddin al-Dhahabi, *Siyar a'lam al-Nubala*, 2nd ed, Muassasah al-Risalah, 1405\1985, vol. 8, p.78.

school (*madhhab*) more accessible. Some of these dealt with diversity within a particular school, while others brought together the diversity from various other schools of law. Some of these books included well-known ones on diversity of Jurists or *ikhtilāf al-fuqahā'*, by jurists such as Ibn al-Mundhir, and *Tuhfat al-hukkam* of al-Garnati, to comparative legal compendia such as the *Bidāyat al-Mujtahid* of Ibn Rushd, and other books on specific legal issues such as the *Kitab al-Kharaj* (on taxes) of Abu Yusuf.

From the discussion above, it could be concluded that there is therefore no justifiable basis from the primary or secondary sources of Islamic law to prohibit a community or nation from codifying all or some of their laws, if that is what is in the best interest of the administration of justice.

Ruling With Man-Made Laws

Some ask, “Is making or issuing policies and rulings with “secular” or “man-made laws” permissible in Islam, or is it sinful, or even an act of disbelief and excommunication (*kufur*)?”

A few more questions may help demonstrate why this loaded question needs to be understood and approached from several perspectives.

- Are traffic or environmental protection laws *haram* for Muslims simply because they are secular or “man-made laws”, even if they are in line with public interests (*maslahah*) and preclusion or prevention of harm (*Sadd al-dhari'ah*) and they do not conflict with the Qur'an and Sunnah? Or are “man-made laws” *haram* only when they clearly contradict the letter and spirit of the Qur'an and Sunnah?
- Are “man-made” discretionary (*ta'zir*) punishments (such as fines and imprisonment for producing fake medicine, forged documents, impersonation, exam malpractice, etc.) that are given by a judge for offences not specifically prescribed in the Qur'an and Sunnah prohibited in Islam, even if these punishments are in line with enjoining right and forbidding or deterring wrongdoing?
- Are man-made customary laws (*'Urf* and *Adat*) which do not conflict with the Qur'an and Sunnah unacceptable in Islam after all jurists of all schools of Islamic law recognise that custom is a basis and source of law (*“al-'adah muhakkamah”*)?
- All jurists agree that a prescribed law of the Qur'an or Sunnah (*hadd*) can be suspended due to a societal need (*hajah*) and so as to avert a situation of dire necessity (*darurah*) such as famine, poverty or insecu-

riety, and as taught and practised by the Prophet (p) and his Rightly Guided Companions. This is considered among the many forms of concession or licence (*rukhsah*) in Islamic law. Is it *haram* or disbelief (*kufr*) to suspend and temporarily replace these prescribed divine laws with man-made laws that meet the interests and objectives (*Maqasid*) of Shari'ah - justice and the common good (*maslahah*)?

- The general rule in Islamic jurisprudence on issues related to mundane, secular or worldly affairs (“*umuru dunyakum*”) and social transactions (“*mu'amalat*”) is that their legal premise is that of original permissibility – “*al-'asl fi al-ashya' al-ibahah*” – that everything is permissible except what is prohibited. In other words, are all man-made innovations and creativity in beneficial civil and social laws and policies not divinely regarded as *halal* by default, except what is clearly prohibited by acceptable evidence? Is it not actually regarded as a form of *shirk* (association of partners with the Lawgiver) to regard as *haram* something that the Shari'ah regards as *halal*?
- Should Muslims reject rulings based on “juristic reasoning” (*ijtihad*) simply because this is a man-made effort by jurists to produce laws that are not explicitly prescribed by the Qur'an and Sunnah, or regarding which these primary sources are silent?

In *ijtihad*, scholars use man-made methodologies and tools such as “reasoning by analogy” (*Qiyas*), customary norms (*'Urf wa al-adat*), and the use of “reason-based” (*Istidlal*) methods such as *maslahah*, *Istihsan* and *Sadd al-dhari'ah* – that are endorsed by the Qur'an, Sunnah, and the practise of the companions of the Prophet (p) and the majority of Muslim jurists and schools of law. In other words, such secondary and man-made sources of law are actually validated by the Shari'ah of Islam and endorsed by the various schools of Islamic law. *Ijtihad* is therefore a man-made effort in juristic reasoning and regarding which the jurists often have diverse views regarding the laws and rulings they make.

The evidence (*adillah*) used by jurists to arrive at their rulings (*fatwa or hukm*) when the text of the Qur'an or Sunnah is not definitive and categorical (*qat'i*) are all regarded as presumptive and speculative (*zanni*) in their authority. These sources and evidence (*adillah*) include solitary hadith (*ahad*), *ijma'*, *qiyas*, *ra'y al-Sahabah*, *'amal ahl al-Medina*, *maslahah*, etc. Rulings arrived at using any of these secondary or presumptive (*zanni*) sources of *ijtihad* (juristic reasoning) cannot be attributed to Allah even if they are correct. Consequently, rulings (*fatwa or hukm*) based on *ijtihad* are attributed to the scholars or schools of thought (*madhabs*) that issue them and not to Allah. This can be seen in the statement of the Prophet (p)

directed to the companion Buraidah al-Aslami, where the Prophet (p) made it clear that such judgements based on ijtihad are not to be attributed to Allah but to the individual issuing such judgement. The Prophet (p) said: *"If you are asked to pronounce God's ruling upon them, then do not pronounce God's ruling upon them. But pronounce your [own] ruling (hukm-ik), for you do not know God's ruling"*.⁸³

According to Imam al-Nawawi, "the prohibition against claiming to rule in the name of God is one of caution and discouragement".⁸⁴

Imam al-Sarakhsi, the great Hanafi jurist, explains the wisdom in the Prophet's (p) statement as intending to avoid sectarian political claims: "The benefit in this is that doubt in scholarly difference (*shubhat ul-khilaf*) is avoided by pronouncing upon them 'our ruling' and judgement according to 'our opinion'. However, this is not avoided if we say we are pronouncing God's ruling, as the *mujtahid* (jurist) could be correct or incorrect. This is the benefit in using this wording."⁸⁵

⁸³ Sahih Muslim, Hadith 1731.

⁸⁴ Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.12.

⁸⁵ Al-Sarakhsi, *al-Mabsut*, Dar al-Fikr, Beirut, vol. 5, p.1800, Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.12.

Al-Sarakhsi explains that if the decisions of men are accepted to be the decisions of men and not God's rules, it prevents one from thinking that only one may be right and the other wrong and the disputes that ensue from such a discussion. If the rules are seen as man's rules, then this lends to a more pluralistic outlook and difference of opinion or judgement is seen as normal and human. Disputes over differences are therefore regarded as less relevant and the potential polarization of society that can result is negated from the start. Therefore, rather than being the rule of God, ruling should be seen as the rule of human beings.⁸⁶

So, far from being an Islamic slogan, “ruling is for God alone” is viewed by the scholars as, at best being potentially divisive and by some, such as Imam Muhammad bin al-Hasan al-Shaybani, as forbidden (haram).⁸⁷ Again, the only precedent for this slogan in all Islamic history is from the Khawarij.⁸⁸

⁸⁶ Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.12.

⁸⁷ Al-Sarakhsi, *al-Mabsut*, Dar al-Fikr, Beirut, vol. 5, p.1799, Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.13.

⁸⁸ Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.13.

When Harun al-Rashid sought from Imam Malik that the people should all adopt his al-Muwatta, the latter prevented him from this and said: "The Companions of Allah's Messenger sallallaahu 'alayhi wa sallam spread out into different regions; so each community took the knowledge that reached them."⁸⁹ Imam Sufyan At-Thawri was also reported to have said, "If you see a man doing something over which there is difference of opinion among scholars, and which you believe to be forbidden, you should not forbid him from doing it."⁹⁰

Ibn Taymiyyah was a subject of persecution by the state because they wanted to impose their religious views on him and society. He responded: "The charges made against me do not relate to criminal acts and personal rights... that would justify judicial intervention! On the contrary, the present matter is an intellectual one of universal concern, like exegesis, hadith, fiqh, and the likes. These matters include questions over which the community has agreed, as well as some over which they have disagreed. But where the community disagrees on the meaning of the verse, or a hadith, or the status of an assertion or request, the correctness of one view and the incorrectness of the other cannot

⁸⁹ Shamsuddin al-Dhahabi, *Siyar a'lam al-Nubala*, 2nd ed, Muassasah al-Risalah, 1405\1985, vol. 8, p.98.

⁹⁰ Quoted in Abdal Hakim Murad, *Understanding the Four Madhhabs*, Cambridge, Muslim Academic Trust, 1999, p.13.

be established by the ruling of a judge...Otherwise [for example] it would be possible to establish the meaning of God's statement, "they shall wait three periods (*thalathata quru'*)... and the interpretation would be a ruling, binding on all people... there would be absolutely no probative value in the statement of a judge to the effect that one of these views was correct, the other incorrect.⁹¹

Ijtihad by competent jurists is actually a communal obligation (*fardu kifayah*) on the Muslim community, and it is sinful to neglect it when it is needed for new rulings in new contexts not explicitly addressed by the sacred texts of the Qur'an or Sunnah.

The question as to whether man-made laws are permissible, can therefore be answered in at least three different ways:

- 1. It is permissible in the Shari'ah to use man-made laws if these do not conflict with the Qur'an and Sunnah, or secondary sources of law.** In a situation where there is no clear revelation in the Quran and Sunnah on a specific issue (such as traffic laws, environmental laws, defense and security laws, health

⁹¹ Ibn Taymiyah, *Majmuu' al-Fatawah*, vol.3, pp.238 – 239, Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.20.

and safety laws, etc.), “man-made laws” which are products of *Ijtihad* or juristic reasoning cannot just be used but are actually prescribed in order to solve individual and societal problems. This is because where Allah's revelation is silent or ambiguous, the Prophet (p) and his companions and their students resorted to various methodologies and tools of “juristic reasoning” (*Ijtihad*) such as “reasoning by analogy” (*qiyas*), customary practices (*'urf*), public interest (*maslahah*), etc. for arriving at new laws and judgments that are legitimate and part of the Shari'ah of Islam. The fields in the Islamic sciences that regulate *Ijtihad* include Islamic Legal Theory or the Principles of Islamic Jurisprudence (*Usul al-Fiqh*), Islamic legal maxims (*Qawa'id al-Fiqhiyyah*) and the Higher Intents and Purposes of Islam (*Maqasid al-Shari'ah*).

2. **It is also permissible to temporarily use man-made laws as part of the concessions (*rukhsah*) given to individuals or societies in situations of need or necessity where the divine law would not realise its objectives.** This is observed in the many examples cited in the books of Islamic law (*Fiqh*) when discussing legal licences and concessions (*rukhsah*). A common example is the fact that Umar bin al-Khattab suspended the prescribed punishment (*hadd*) for theft

during a period of serious food scarcity (or famine).⁹² Based on this example and other supporting texts from the Qur'an and Hadith, scholars have developed the concept of concessions and licences (*rukhsah*) when the normative law (*'azimah*) is not applied in a situation due to particular levels of need (*hajah*) or necessity (*darurah*).⁹³

Similarly, man-made treaties, such as the Treaty of Hudaibiyyah and others were legitimate and part of the Sunnah even though it contained clauses and conditions that were contrary to the normative Qur'anic requirement of fairness and justice for all. These terms were however accepted in view of the real context on the ground, the options available for strategic peace and security, and in consideration of the common good (*maslahah*), etc. Compliance and enactment of these concessions are actually part of the following of the Shari'ah and the "*Hukm*" (law) of Allah. It is therefore

⁹² Ibn al-Mulaqqan, *Al-Badr al-Munir fi Takhrij al-Ahadith Wa al-Athar al-Waqi'ah fi al-Sharh al-Kabir*, Saudi Arabia: Dar al-Hijrah, 1425, vol.8, p.679; 'Atiyyah bin Muhammad Salim, *Sharh Bulugh al-Maram, al-Maktabah al-Shamilah*, 1420, vol.141, p.12; Ahmad Hasan, *The Early Development of Islamic Jurisprudence*, Islamic Research Institute, Islamabad, 1970, p.145.

⁹³ Ibn Qudamah, *Rawdah al-Nazir wa jannat al-Munazir*, 2nd ed. Muassasah al-Rayyan, 2002, vol.1, p.188; Taj al-Din al-Subki, *Al-Ibhaj fi sharh al-Minhaj*, 1st ed. Dar al-Kutub al-'Ilmiyyah, 1984, vol.1, p.81.

not a form of disbelief (*kufr*) for Muslim jurists to create new context-appropriate laws and suspend any of the prescribed (*hudud*) laws or any other legal injunctions of the Qur'an and Sunnah, under certain circumstances of societal need (*hajah*) or individual necessity (*hajah/darurah*), if this is what is necessary to protect the essential (*daruriyyat*) objectives and *Maqasid* of Shari'ah. This is done so as to avert harm (*mafsadah*) and protect public interest (*maslahah*) as was done by the Prophet (p) and his companions, and these are all part and parcel of the Shari'ah prescribed by the sunnah of the Prophet (p) and “*Hukm* of Allah”. This is common knowledge for any student of the dynamics of Islamic legal theory (*Usul al-Fiqh*), and particularly the topic of *Azima* and *Rukhsah*, which are legal terms referring, respectively, to the application of a commandment in Islamic law in its original force, and to its replacement with a less onerous alternative in cases of need or duress. It would in fact be a travesty and abuse of the divine law and contrary to the Qur'an and Sunnah to implement Islamic laws without due regard to their contexts, impact, and consequences.⁹⁴

⁹⁴ Ibn Taymiyyah, *Majmu' al-Fatawa*, Dar al-Kutub al-Ilmiyyah, 1997, vol.35, p.266; Hallaq Wael B, *The Context of the Qur'an and the Formation of Islamic Law*, The Oxford Handbook of Islamic Law, Oxford University Press, 2018, p.12-13.

This was the main issue of contention between the Caliph Ali and the heretical Khawarij sect in their respective interpretation of “judging by the *hukm* of Allah” or “judging by what Allah has revealed” (Qur'an 5:49). The Caliph Ali regarded the consideration of greater good and public interest (*maslahah*) under the circumstance of necessity as not conflicting with the verse on “judging by what Allah has revealed”. The heretical and ignorant Khawarij extremists did not see it that way. They regarded his understanding as equivalent to disbelief (*kufr*). Unfortunately, many Muslims today who often criticise the Khawarij, still interpret the verse in the same way as did the Khawarij, without understanding what exactly was wrong with the literal interpretation given to the verse, from the perspective of Ali, the Rightly Guided Caliph.

When Ibn Abbas – the famous companion, relative of the Prophet (p), and gifted commentator on the Quran – was addressed by the Khawarij with the slogan 'no rule but God's rule', he said: Indeed, you are correct, there is no rule but God's rule, and it was God that delegated ruling (*hakkama*) to people in marital discord, as it was God who delegated ruling to people in disputes. Know that if God had willed, he would have ruled, and not left it to people... Therefore, God has

made the rule of men a protected sunnah.⁹⁵

Al-Bayhaqi reported that Ibn Abbas, may Allah be pleased with him, confronted the Khawarij, saying, “As for your statement that Ali has delegated ruling to men in the affair of Allah, I recite to you a judgment delegated to men in the matter of the price of a rabbit and other hunted animals. Allah said: O you who believe, do not kill game while you are prepared for pilgrimage... the penalty of which is judged by two men among you. (Qur'an 5:95) I implore you by Allah, is the judgment of men in hunted animals better or their judgment regarding their lives and reconciliation between them? You know that if Allah had willed, he would have judged himself and not delegated it to men. Regarding a woman and her husband, Allah Almighty said: 'If you fear dissension between them, send a judge from his family and a judge from her family. If they desire reconciliation, Allah will facilitate it between them'. (Qur'an 4:35) Hence, Allah has made the judgment of men an established precedent.” In another nar-

⁹⁵ As narrated by Imam al-Hakim in his *Mustadrak ala Sahihayn* vol. 2, p. 150 and cited by Ibn Qayyim and Ibn al-Jawzi and quoted from Sheikh Wahbah Zuhayli in his *Athar al-Harb fil-Fiqh al-Islami*, p. 763-764, Beirut – Dar el-Fikr, 3rd Edition, 1998, Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.14.

ration, Ibn Abbas said, "Allah has made the judgment of men a secured precedent."⁹⁶

Ali bin Abi Talib, the cousin of the Prophet (p) and the fourth Caliph, explained the same point in his words to the same group: "We did not delegate judgment (*tahkim*) to men, but delegated it to the Qur'an. Yet this Qur'an is only lines between two covers. It does not speak with a tongue, but it requires an interpreter, and so men speak on its behalf!"⁹⁷

We can see that those most acquainted with the religion had no such problem with speaking about the rule of people or the rule of men. In fact, they faced the opposite problem and were reluctant to use the phrase 'God's judgement' at all. It would be a strange situation if the shallow use of verses by extremists was not critiqued, especially as there are clear examples of a rejection of such views by some of the most prominent companions of the Prophet (p) from the early Islamic period. We can see that in Islamic history, the attitude

⁹⁶ Al-Bayhaqi, *al-Sunan al-Kubra*, Hadith 15389.

⁹⁷ Quoted from Sheikh Wahbah Zuhayli in his *Athar al-Harb fil-Fiqh al-Islami*, p. 763-764, Beirut – Dar el-Fikr, 3rd Edition, 1998, Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.14.

towards rationality and man's rule was different to the attitude presented by the extremists today.⁹⁸

Imam Abd al-Karim Shahrastani said, “Those who believe in religious laws do also believe in the rational laws, but the reverse is not true”.⁹⁹ The assertion made is that those who follow divine religions, Muslims included, do not (and should not) reject what is a rational or intelligent opinion out of hand.

Imam al-Izz ibn Abdul Salam elaborated in explaining how the rules of Islam are on the whole rational and seek human interests in this world. The rules of religious rituals, which are extremely few in number, are an exception to this and may defy rationalization.¹⁰⁰

⁹⁸ Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.15.

⁹⁹ Muslim Sects and Divisions –The Section on Muslim Sects in *Kitab al-Milal wa'l-Nihal* Muhammad b. 'Abd al-Karim Shahrastani (d. 1153) translated by A. K. Kazi and J.G. Flynn Kegan Paul International published in 1984, Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.15.

¹⁰⁰ Al-Izz bin Abd al-Salam, *Qawaid al-Ahkam fi Masalih al-Anam*, p. 13, Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.15.

The presence or absence of particular laws that seem contrary to the Shari'ah's normal laws cannot therefore automatically be a reason to justify declaring that law or whole legal system as disbelief (*kufir*). This assessment needs careful scholarly consideration of the context, implications, and Islamic jurisprudence. It also calls for serious caution as the implication of declaring disbelief (*takfir*) can bounce back on a person, and as the Prophet (p) warned, Allah could regard the person accusing another of *Kufir*, as being himself a *Kafir* (disbeliever).

3. **It is not permissible to follow any man-made law that conflicts with the letter or spirit of any divine law of Shari'ah.** In a situation where there is clear evidence for a particular ruling or law in the Quran and Sunnah, but conflicting or alternative man-made laws are used by Muslims who are under no circumstances of necessity or need, the majority of the scholars then consider the intent behind such a decision or choice of laws, and their opinions revolve around the following:

- Whoever knowingly rejects or opposes the truthfulness of a definitive (Qat'i) text or ruling that is from what Allah has revealed would have committed an act of disbelief (*kufir*). However, whoever accepts and believes what Allah has revealed as true, but

does not rule by it or apply it, is not a disbeliever (*kafir*). Such a Muslim may be described as a *Zalim* (transgressor) and a *Fasiq* (wrongdoer), but not a Kafir (disbeliever).¹⁰¹

- If for valid reasons (*hajah or darurah*) a Muslim is unable to apply Shari'ah rulings, his situation is that of a Muslim who is driven by necessity to do what is wrong. The Qur'an describes such people as having committed no sin. Such people are therefore neither transgressors (*zalimun*) nor wrongdoers (*fusaq*) but are Muslims facing necessity and forgiven by Allah.¹⁰²

The King of Ethiopia (Habasha) was according to the majority of scholars a Muslim before he passed away, and the Prophet (p) while in Medina prayed for him (*Salat al-Gha'ib*) upon the news of his death. This king was however (and for whatever

¹⁰¹ See al-Razi *Mafatih al-Ghayb*, vol.12 p.368, Tafsir Ibn Kathir, vol.3, p.118, Abu al-Faraj *Zad -Masir* vol.1, p.552, Tafsir al-Qurtuby vol.6, p.191, Tafsir al-Tabary vol.10, p.346.

¹⁰² Allah says: "He has only forbidden you from eating carrion, blood, and flesh of swine, and that over which any other (name) than (that of) Allah has been invoked; but whoever is driven to necessity, not desiring, nor exceeding the limit, no sin shall be upon him; surely Allah is Forgiving, Merciful" (Qur'an 2:173); "(As for) he who does not intend to commit a sin but is constrained by hunger to eat of what is forbidden, then surely Allah is Forgiving, Merciful" (Qur'an 5:3).

various reasons) not known to have once prayed any of the 5 daily prayers, nor fasted during Ramadan, nor known to have given zakat, etc. The absence of these actions, however, were not regarded by the Prophet (p) as sufficient to negate his faith or consider him a disbeliever (Kafir).¹⁰³

- Governance with man-made laws that go contrary to the Shari'ah could be a form of minor *Kufr* (disbelief), similar to other sinful acts that go contrary to the Shari'ah, such as adultery (zina), drinking, murder, lying, etc. that go against Allah's teachings. It is not the major *kufur* that annuls one's religion, nor does it take one outside the fold of Islam.
- Such compliance to man-made laws which conflict with Shari'ah is similar to imitating (*tashbih*) the ways of disbelievers in things that conflict with Islamic teachings and are forbidden. While this is wrong, it is not equivalent to disbelief (*Kufr*).

¹⁰³ It was narrated by Abu Huraira: *Allah's Messenger (pbuh) was informed about the news of the death of Al-Najashi on the day he died. He went out with us to the praying ground, and we aligned in rows, and he said four Takbirs for Al-Najashi's funeral prayer* (Sahih al-Bukhari, Book 23, Hadith 88); it was by narrated Jabir: *When Negus died, the Prophet (pbuh) said, "Today a pious man has died. So, get up and offer the funeral prayer for your brother Ashama."* (Sahih al-Bukhari, Book 63, Hadith 102).

- Such compliance is regarded as similar or equivalent to knowingly concealing the truth.¹⁰⁴

The opinions of these scholars illustrate that once a Muslim accepts as true the categorical and definitive (*Qat'i*) laws (e.g., *hudud* and *qisas*) of the Qur'an and Sunnah, he is considered a Muslim even if he does not apply them in the society. He could be regarded as *fasiq* or *zalim*, and guilty of minor *kufir*. This however do not qualify him to be a *kafir* guilty of major *kufir*.

There is however another opinion held by some that disregards the intent and context and considers this situation as a form of major *kufir*. This is what many understand to be the opinion of scholars such as Sayyid Qutb, who said: ruling with man-made laws “is non-submission to the revelation of Allah, and adopting any other law in any area of life is tantamount to denying the divinity and authority of Allah” ¹⁰⁵ . This reasoning however, if truly representative of this opinion, is similar to that used by the Khawarij against the Caliph Ali, who they accused of major *Kufr* (disbelief) due to his actions, even though he was in a situation of necessity that forced him to not apply the letter of

¹⁰⁴ See al-Razi *Mafatih al-Ghayb*, vol.12 p.368, Tafsir Ibn Kathir vol.3, p.118, Abu al-Faraj *Zad -Masir* vol.1, p.552, Tafsir al-Qurtuby vol.6, p.191, Tafsir al-Tabary vol.10, p.346.

¹⁰⁵ See Sayyid Qutb, *Fi zilal al-Quran*, vol.2, p.888.

the text, but opt for *Ijtihad* and following the spirit and purpose of the text, which resulted in his ruling in favour of arbitration in consideration of the public interest (*maslahah*) in that context.¹⁰⁶

On Imbibing Western Political Ideas

Can an Islamic governance system imbibe aspects of Western or any other political or administrative ideology or philosophy?

Islam does not go against accepting ideas and cultural practices and law (*al-'Urf wa al-'Adah*) from the East or West, or elsewhere, so long as these do not contradict the letter and purpose of Shari'ah. Things, policies, ideas, and concepts are not regarded as permissible or prohibited in Islam, based on their geographical, cultural, local, or foreign sources, past or contemporary origins, but based on the extent to which they conflict or align with the letter and spirit of the Qur'an and Sunnah.

The Prophet (p) adopted various strategies of problem-solving from other nations when these served the objectives of Islam and did not conflict with its fundamentals.

¹⁰⁶ Wahbah Zuhayli, *Athar al-Harb fil-Fiqh al-Islami*, 3rd ed. Dar al-Fikr, Beirut, 1998, p.762-763.

He accepted the military idea and tactic of digging a trench around parts of the city of Medina and the use of mangonels in warfare though it was a Persian idea, whose people were predominantly Zoroastrians (*Majus*).¹⁰⁷ Other foreign ideas and practices have also been cited by classical scholars that influenced the policies made by the Prophet (p), such as not prohibiting sexual intimacy between couples while the wife was lactating or pregnant (*ghylah*).¹⁰⁸

One of the major Islamic legal maxims (*al-qawa'id al-fiqhiyyah*) states that “*what matters in transactional issues or contracts is the objective and meaning of things and not the wordings or terminology*”.¹⁰⁹ Another legal maxim states, “*What matters is the reality and essence of things, and not the terms used*”.¹¹⁰ Consequently, it is important to understand the precise meaning and essence of specific terms used in a particular context before describing them

¹⁰⁷ Al-Mubarakpuri, *Al-Rahiq al-Makhtum (Sealed Nectar)*, Darus- Salam Publications, Riyadh, 1996, p.140.

¹⁰⁸ Sahih Muslim, Hadith 1442; Ibn al-Qayyim al-Jawziyyah, *Miftah Dar al-Sa'adah*, p. 620; also see *Zad al-Ma'ad*, vol. 4 p. 26.

¹⁰⁹ Ibn 'Ashur, *Maqasid al-Sharia'h al-Islamiyyah*, The Ministry of Awqaf and Islamic Sciences, 2004, vol.2, p.467; Wahba al-Zuhayli, *Al-Fiqh al-Islamy wa adillatuh*, 4th ed. Dar al-Fikr, Syria, vol.1, p.161; Group of scholars of the Ottoman Empire, *Majallat al-Ahkam al-'Adliyyah*, p.16.

¹¹⁰ Mahmud bin Mazah, *Al-Muhit al-Burhani*, 1st ed. Dar al-Kutub al-'Ilmiyyah, Beirut, 2004, vol.4, p.299; Muhammad Mustapha al-Zuhayli, *Al-Qawa'id al-Fiqhiyyah wa tatbiqatuha fi al-Madhahib al-Arba'ah*, 1st ed. Dar al-Fikr, Damascus, 2006, vol.1, p.403.

as prohibited or permissible. These include some commonly used vague and loaded terms such as “Secular”, “Capitalist”, “Socialist”, “Feminist”, “Modernist”, “Leftist”, “Conservative”, “Liberal”, “Human Rights”, “Traditionalist”, “Post-modern”, “Pluralist”, “Moderate”, “Extremist”, “Radical”, “Islamist”, “Protectionist”, “Democratic”, etc. Each of these terms has different definitions, some of which are compatible with Islam, and others which are not.

There are many completely acceptable new words, vocabulary and titles used to describe many things in Islamic political and economic thought that did not originate from the Qur'an or sunnah. Many terms and jargons used in the various Islamic sciences are legitimate and even necessary in Islamic jurisprudence but were not used by the Prophet (p) or his companions. These include technical terms used in fields of the Islamic Sciences (*Ulum al-Deen*) such as *Ulum al-Hadith*, *Ulum al-Qur'an*, *Usul al-Fiqh*, *Tawhid* and *Aqidah*, etc.

What matters most is the precise definition of each specific terms or concept, and the extent to which that definition is compatible or not, with the primary and secondary sources of evidence in Islamic jurisprudence.

On Separation of Powers

Is it permissible in Islamic jurisprudence for a system of governance to practise any form of separation of powers of the State, such as into Executive, Legislative, and Judiciary, etc.?

Some regard the separation of power as not Islamically acceptable since it undermines the complete power of a Caliph – who is supposed to be a “benevolent dictator” with total supreme authority over all aspects of the State. Some regard it as prohibited because it is regarded as posing a threat to the unity of the nation, and because it is believed to be alien to Islam.

Others, however, regard the political separation of powers as a principle validated by Islamic jurisprudence. The distinguished contemporary jurist, Wahbah al-Zuhayli, has observed that separation of powers is upheld in an Islamic political system, not only in functional terms, but as a matter of principle. Al-Zuhayli thus wrote on a comparative note:

“Islam validates the principle of separation of powers. This is because legislation in Islam ensues from the Qur'an and Sunnah, consensus (*ijmā'*) of the ummah, and *ijtihad*. All of these are independent of the head of state, but he is bound by them and by the conclusions drawn from them.

The principle of *ijmāʿ* in Islam manifests the will of the people ... Both the Islamic and western democracies reject despotism and consider the people as the locus of authority in political and government affairs”¹¹¹

Power is delegated to ministers, officers of state, governors, and judges, etc. In this regard, the authors of the books on *al-Siyasa al-Shari'yyah* usually distinguished between two types of ministers – Prime Ministers and Executive Ministers.¹¹²

The first is the minister with full authority (*wazir al-tafwid*), who is also vested with the exercise of political power (or *hukm*), taking initiative and making decisions in all areas of government. This is equivalent to what is now known in some contexts as Prime Minister. One who is appointed to this position must fulfil the same qualifications as the head of state. These may be summarised into three, namely, knowledge, just character, and wisdom (*ʿilm, ʿadala, wa hikma*) – although many scholars have enumerated several other additional criteria for such leaders.

¹¹¹ Wahbah al-Zuhayli, *Qadaya al-Fiqh wa al-Fikr al-Mu'asir*, Dar al-Fikr, p.466.

¹¹² See *Giyath al-Umam* by al-Juwayni, *al-Turuq al-Hukmiyyah* by ibn Qayyim, *al-Siyasa al-Shari'yyah* by ibn Taymiyyah, *al-Ahkam al-Sultaniyyah* by Abu Ya'la, *al-Ahkam al-Sultaniyyah* by al-Mawardi, etc.

The second, ministerial portfolio is known as that of 'executive minister' (*wazir al-tanfidh*), and whose responsibility extends mainly to the implementation of a specified range of duties on behalf of the head of state and does not get involved in the exercise of political power or *hukm*. The head of state may appoint any number of executive ministers, but only one prime minister.

During the Prophet's era, power was not split into three, and the Prophet (p) acted as the executive, the judge, and the legislator – all in one. But this was unique to the person of the Prophet (p) as he, and only he was the prophet and messenger of Allah. No one else has such qualifications to be a “Caliph” appointed by and representing Allah.

Caliph Abubakr made it clear that others had the power to disobey and depose him if he was found wanting.¹¹³ This clearly indicated that he was not of the opinion that he was an all-powerful leader over and above the will of his people.

With such powers in the hands of pious and Rightly Guided benevolent dictators – as in the case of the first four caliphs – society was safe, and progress was efficient

¹¹³ Ibn Taymiyyah, *Al-Istiqamah*, 1st ed. Imam Muhammad bin Saud University, Riyadh, 1403, vol.2, p.296.

and effective. However, when the same administrative structure with all the powers of the state was in the hands of anyone else, abuse of such power and despotic leadership became the norm in Islamic political history, as it was for most other nations.

Some of the abuses of power by numerous caliphs, Imams and sultans throughout Islamic history might have been much more difficult for such tyrants to get away with if the “Executive leaders” were not vested with such complete authority and total power over the Muslims. During this period, many scholars were persecuted and killed by Muslim despots who were corrupt. The truism “absolute power corrupts absolutely” has been true for most of the Muslim Ummah geographically, and for most of the time.

According to Abu Ala' Maududi, with the Islamic concept of Statecraft, the judiciary must always be independent of the pressure and interference of the executive so as to facilitate its unhindered deliverance of justice. According to Imam Abu Hanifah, the *qadi* (Judge) must be in a position to enforce his judgement even on the caliph should he be guilty of the infringement of the people's rights. He stated: “If the Caliph is found guilty of a crime that concerns human rights, Qadi' al-Qudat (the Chief Judge or Grand Qadi), who is next to him in status, should enforce his judgment on him.”¹¹⁴

¹¹⁴ Abu al-A'la Maududi, *The Islamic State*, Islamic Publications, 1985, p.81.

Abu Hanifah and many other respected jurists refused to work in governments or judicial offices (as senior judges) when it was clear to them that the Caliph was himself corrupt and their independence was not guaranteed.¹¹⁵

When the Caliph Mansur visited Abu Hanifah and insisted on his taking judicial office, the Imam calmly but frankly explained to him the reason for his refusal: "Only such a person is eligible for a position in the judiciary who is strong enough to enforce the rule of law and his judgment on yourself, your princes, and commanders of your legions. I do not find myself capable of doing that. In fact, whenever you call me, I feel at ease only when I am out of your sight."¹¹⁶

The right to freedom of expression is so sacrosanct in the Islamic system of governance that Imam Abu Hanifah considered it unlawful to punish or apprehend a person who opened his lips even against a just leader and his government.¹¹⁷ This was meant to protect freedom of speech of victims and citizens, and their right to criticise, call out,

¹¹⁵ Shamsuddin al-Dhahbi, *Siyar a'lam al-Nubala*, 2nd ed, Muassasah al-Risalah, 1405\1985, vol. 6, p.401.

¹¹⁶ Al-Muwaffaq al-Makki, *Manaqib al-Imam al-A'zam Abi Hanifah*, vol. 1, p. 215.

¹¹⁷ See Shamsuddin al-Dhahabi, *Siyar a'lam al-Nubala*, 2nd ed, Muassasah al-Risalah, 1405\1985, vol.6, p.401.

correct and tell truth to power and the leadership without any fear of intimidation or persecution.

Imam Abu Hanifah also even ruled out the justification of conviction or arrest of those who used abusive language, including threats of murder, against the head of government, so long as they were not involved in an open conspiracy, armed uprising, or disruption of law and order.¹¹⁸

Abu Hanifah based his opinion on the precedent of the fourth Rightly Guided Caliph 'Ali's observation in a similar situation. During the days of his caliphate, five people were arrested in Kufah on the charge of abusing the fourth caliph, Ali, with one of them threatening to kill him. When the accused were brought to his presence, he ordered their release. He was told that one of them was guilty of openly threatening to kill the *Amir al-Mu'minin*. Caliph 'Ali (may Allah be please with him) observed: 'Should I kill him just because he expressed his intention?' He was also informed that the culprits were publicly abusing him. His reply to this was: "If you so desire, you may abuse them too."¹¹⁹

¹¹⁸ See Abu Bakr al-Razi al-Jassas, *Ahkam al-Qur'an*, 1st ed. Dar al-Kutub al-'Ilmiyyah, Beirut, 1994, vol.1, p.85; Muhammad Taqi Usmani, *Islam and Politics*, Turath Publishing, 2018, p.174.

¹¹⁹ Al-Sharif al-Radi, *Nahj al-Balagha*, 1st ed. Ansariyan Publications, Vol. 1 Pg.441.

Imam Abu Hanifah similarly quoted in support of his stand, the statement of Imam 'Ali regarding *Khawarij*: “We will not prevent you from attending the mosques. We will not also deny to you the share from the revenue of the conquered lands so long as you do not indulge in armed activities against us.”¹²⁰

In summing up, the Separation of Powers is an important administrative instrument of checks and balances in the exercise of power. In modern states with very large administrative structures, it also prevents or at least reduces concentration of power in the hands of any individual, conflict of interest in decision-making and the use of power, reduces workload and responsibility, and facilitates specialization in administration. It might not be a substantive principle of the Shariah, but a sub-theme of *al-Siyasah al-Shar'iyah*, and open therefore to considerations of good governance and public interest (*maslahah*).

As mentioned earlier, there are no clear texts to justify the prohibition of separation of power. On the contrary, the enjoining of right and forbidding of wrong is easier when others have powers that allow for better checks and balances. Separation of Powers allows for greater “cooperation in the doing of good” (Qur'an 5:2) and the manage-

¹²⁰ Al-Sarakhsi, *Kitab al-Mabsut*, vol. 10, p. 125.

ment of power. It also limits the unbridled freedom to abuse power which is found in many other systems of governance that do not have any forms of formal separations of power. Separation of Powers therefore not only has a direct benefit in serving the common good (*maslahah*), but also is a form of preclusion and preventing some of the ways (*Sadd al-dhari'ah*) towards tyranny and the abuse of absolute power.

The Separation of Powers also serves greater justice, equality, freedom from oppression, accountability, and transparency in political leadership. If greater justice and prevention of oppression is an obligation on Muslims, then whatever facilitates this and which does not conflict with clear texts, would itself be regarded as a necessary obligation. An Islamic legal maxim states that, "Whatever is a prerequisite for an obligation, is itself regarded as an obligation".¹²¹

Democracy, the Sovereignty of the People, and Sovereignty of God

One definition of democracy is that it is a system of "government of the people, by the people and for the peo-

¹²¹ Qadi Abu Ya'la, *al-'Udda fi Usul al-Fiqh*, 1990, vol.2, p.419.

ple” and where the people have the final say regarding their affairs. Some contemporary scholars regard democracy as prohibited in Islam and a form of disbelief (*Kufr*) based on the fact that it claims that final decision-making or sovereignty is with the people instead of with Allah. These scholars emphasise that in Islam, sovereignty is with Allah alone and none other. To accept a political system or system of government that recognizes anyone else as also having sovereignty and a final say on any matter, implies in their opinion, a clear challenge to Allah's dominion and sovereignty, and is tantamount to disbelief or *Kufr*.

Some other scholars disagree with this logic and form of reasoning, and do not see a conflict between the types of sovereignty that are associated with a people or nations, and the very different type of supreme sovereignty that is with Allah alone.

A major point of difference of opinion here is associated with the various meanings and implications of the term “sovereign” or “sovereignty” in various contexts.

The Arabic term “*Rabb*” is used in the Qur'an to describe Allah as “Lord and Sustainer of all the worlds”. The husband/father, however, is also described in Arabic as the “*Rabb al-Bayt*” or “Lord of the House”, while the wife/mother is described as “*Rabbat al-Bayt*” or “Lady of the House”. The word “*Rabb*” (lord) however means differ-

ent things depending on the context in which it is used. Similarly, when the word “lord” is used for a person, husband, judge, landlord, etc. it means the person is lord in a very limited and restricted sense. When the same word is used for Allah, it has an absolute meaning of “Lord of all the Worlds”. Using “*rabb*” for a person, in no way contradicts the fact that only Allah is the “*Rabb*” or Lord, Cherisher and Sustainer of all His creation.

Similarly, the term “sovereign” or “sovereignty” means different things depending on the context. The fact that sovereignty is with a people, in no way conflicts with, reduces or takes away any of the Sovereignty of Allah. Similarly, describing a person as a sovereign leader in no way conflicts with Allah being the Sovereign Lord of the universe. It does not imply sovereignty in an absolute sense when used for people.

A supreme leader, caliph, monarch, dictator, or emperor is described as a “sovereign leader” of a nation only because he (or she) is the highest human authority and has the final say among the people he rules over. It does not mean he is sovereign over other nations, their leaders, or all of creation or God. It only applies to a particular limited jurisdiction.

A sovereign nation is one that is completely independent and is free to govern itself and makes final decisions

regarding its affairs. It does not imply that such a nation has sovereignty over its neighbours or any other nation or people, or over God.

For example, the preamble to the Constitution of the Federal Republic of Nigeria, 1999 as amended, reads:

“We the people of the Federal Republic of Nigeria, Having firmly and solemnly resolved, to live in unity and harmony as **one indivisible and indissoluble sovereign nation under God**, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding; and to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people. Do hereby make, enact and give to ourselves the following Constitution”.¹²²

This preamble makes it clear that the sovereignty of the nation is “under God”, and not equal to or above God. A people, nation or its constitution does not in any way replace the Qur'an and Sunnah, or any other religious scripture as a source of guidance in beliefs, worship, character, or most issues regarding the religious obligations

¹²² See, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>

and prohibitions. It focuses primarily on how a government should be run. Similar to a business or marriage contract, the constitution is a document that gives the negotiated terms of contract for all concerned with government, and how powers are separated in order to reduce abuses and ensure checks and balances.

The meaning of sovereignty in this context does not in any way conflict with any of the attributes of God or with His Sovereignty and the Creator and the only One to be worshipped. Describing anything – a constitution, state, person, language, etc. – as being “sovereign” is therefore always relative to others and contextual, and not the absolute sovereignty that belongs only to God.

In a monarchy, the King, Queen or Emperor is the sovereign leader of the land and final decision-maker amongst the people of that nation. In a military dictatorship, it is the dictator or president that is the sovereign leader. In a caliphate, it is the caliph that is the sovereign leader. In a democracy however, it is not the president or Prime Minister who is the sovereign leader, it is the people who elected him to serve the common good of the people. The leader in a democracy is a servant of the people – a civil servant – and represents the will of the people, who hold sovereignty over him, and can therefore correct or change their leader if they are convinced that he misuses or abuses his office.

Just as a supreme ruler or Caliph can choose to submit to Allah or to disobey Allah, so also can people choose to submit or to disobey Allah. It is still humans as Allah's vicegerents (*khulafa'*) that have been given the choice and free-will by Allah to have the final say regarding whether they will submit or not to His will. Historically some leaders and their people have used their leadership well, while others have abused their sovereignty and power. Giving a single human being the powers of a caliphate and the final choice of compliance with God's will has never guaranteed that God's commandments will be respected by such supreme leadership.¹²³

When discussing Democracy as a “government of the people” therefore, describing the people as sovereign or having the final say on their affairs, only means that instead of one dictator, king, ruler, or emperor having sovereignty and the final say regarding the affairs of the nation, it is the people who will have the final say through their elected representatives.

Describing democracy as a government that goes with the will “of the people” instead of “the will of the king or supreme leader”; “by the people” through their chosen representatives instead of “by the king and his chosen repre-

¹²³ This is especially after the period of the four Rightly Guided Caliphs.

sentatives”, and “for the people” instead of “for the benefit of the king, royal family or supreme leader” is regarded by some contemporary jurists as not in any way conflicting with the principles of Shari'ah and Islamic governance. Democracy as a system of governance is seen as the opposite of dictatorship, despotism, and tyrannical leadership.

Consequently, many contemporary jurists do not see any fundamental incompatibility between the principles of Islam and those of democracy as a system of government and administration. Some forms of democracy may be preferable to others, but in their opinion, the fundamental principle of consultative and participatory politics does not conflict with any known fundamental of Islam – *ma'lum min al-din bi al-darurah*.

There has been rampant abuse of power by sovereign leaders throughout human and Islamic history. Muslim jurists consider it permissible in issues related worldly or mundane (*dunya*) or social affairs (*mu'amalat*) – such as politics, security, economics, etc. – to find or adopt strategies and systems of administration from other cultures that do not conflict with the Qur'an and Sunnah, and which can bring benefit, limit or control the abuse of absolute power or sovereignty by supreme leaders. This consideration of beneficial strategies from other cultures that do not conflict with the Shari'ah is similar to the Prophet (p)

adopting a Persian military strategy that was beneficial to the Muslims of Medina during the Battle of the Trench (Khandaq).

The debate on this subject is one of differing “juristic reasoning” (*Ijtihad*) based on diverse contexts, evidence, and cultural preferences. The fact that this is a juristic subject of Islamic political thought (*al-siyasah al-shar'iyyah*) and one of diverse juristic opinion (*Khilaf*), implies that it is not one where any group of jurists could be regarded as guilty of disbelief or *Kufr*.

The differences are at best described as *Khilaf*, where there is respected difference of opinion amongst scholars, or at worst, one of *Ta'wil* as a result of esoteric interpretation of relevant texts. No position here justifies the *takfir* of the scholars of the followers of any of the positions of democracy. As a topic related to *mu'amalat* (social transactions) and mundane issues, the Islamic legal maxim of presumed permissibility states that, “everything is permissible except what is prohibited (by evidence)” - *al-'asl fi al-ashya' al-ibahah*. Also, people's customs have the weight of law” - *al-'adah muhakkamah*.¹²⁴

¹²⁴ Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.139.

SECTION THREE

Citizenship

Citizenship is the position or status of being a citizen or national of a particular country. It denotes a legal status and relationship between an individual and a state, entailing specific legal rights and responsibilities. It is often used interchangeably with nationality and can be obtained through various means, such as birth, marriage, naturalization, and other methods depending on specific state laws. Citizenship is acquired by fulfilling the legal requirements set forth by a national, state, or local government. Nations bestow certain privileges and rights upon their citizens, who, in turn, are expected to adhere to their country's laws and defend it against threats.

Residing in a country doesn't automatically confer citizenship upon a person. In today's society, non-citizens often require host countries' permission to visit or live there, typically granted through visas and residency permits. Such non-citizens, whether residents or visitors, must comply with the host country's laws and the terms they

agreed upon during their entry. While they usually have legal protections, their rights and privileges are typically not on par with those of citizens.

A Muslim as a Citizen of a Non-Islamic Nation-State

Can a Muslim reside in (or be a citizen of) a non-Islamic/non-Muslim Nation-State?

Scholars have had varying criteria for classifying lands, with implications for Muslim residence. These criteria are not directly from Islamic sources and have led to differences among scholars. Five major criteria have been used to determine if a territory is a "Land of Islam" (Dar al-Islam), but scholars disagree on their validity. These criteria include the application of Islamic laws, the presence of a Muslim ruler with control, security for Muslims, allowance for public acts of worship, and justice. Different scholars have classified lands differently based on these criteria due to historical and geopolitical factors. Some focused on the freedom of Islam to flourish, while others emphasized Islamic law's territorial influence. These perspectives led to various classifications of territories. For the purpose of understanding Muslim residence, these perspectives can be categorized into three groups, though

they overlap slightly.¹²⁵

1. The Traditional Binary or Two-State Paradigm:

Some Muslim scholars of the past and present have based on their juristic reasoning (*Ijtihad*) in response to their contexts, classified the entire world into only two major domains based primarily upon the criteria of whether or not Islamic law and governance system is being applied or not.¹²⁶ Those countries governed by Islamic law are termed *Dar al-Islam* (Land of Islam) while the rest of the world is regarded as *Dar al-Kufr* ("Land of Disbelief") or *Dar al-Shirk* (roughly "Land of Polytheism").¹²⁷ The rest of the world (*Dar al-Kufr/Shirk*) is also regarded as *Dar al-Harb* (Land of War or enemy states) whether or not these were lands with security or asylum for Muslims or were accommodating of Muslim freedom of worship. The presence or absence of temporary peace treaties does not

¹²⁵ See Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.8-17; Khaled Abou El Fadl, *Islamic law and Muslim minorities*, p.164; Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.137-147.

¹²⁶ There are many nuances among those who hold this paradigm that cannot be presented here. Focus will primarily be on the majority's view as it relates to Muslim residence in non-Muslim lands.

¹²⁷ *Dar al-Harb* is also referred to by some scholars as *Dar al-Bid'ah* (Land of Heresy) or *Dar al-Ma'asiya* (Land of Sin) and *Dhulm* (Injustice).

change the designation of a land. All non-Muslim countries were viewed as actively or potentially hostile to Dar al Islam and hence regarded as “enemy states” or *Dar al-Harb*.

This view was held mainly by scholars from the Maliki and Hanbali schools of law. Also, it has been noted that those are the schools of law (such as the Hanbali and especially the Maliki) that spread and interacted more with western Christendom, mainly European Christians in the western parts of the Muslim world – the Middle East and North Africa. These 2 schools in particular seem to have shared similar contexts and experiences, and often very negative ones from the inquisition in Spain, the invasions by the Crusaders, etc., in the hands of their Western Christian conquerors and colonialists. These developed similar approaches and perspectives regarding international relations and the question of Muslim residence in non-Muslim lands.¹²⁸ For most Christians at the time, the world was also divided into two, Christendom and the Pagan World, which for many included Muslims.¹²⁹

¹²⁸ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, 146.

¹²⁹ wikipedia.org/wiki/Christendom retrieved 19th June 2023.

In addition to Imam Malik bin Anas, as cited by Sahnun (d.248 AH),¹³⁰ Al-Wansharisi (d.914) citing Ibn Rushd,¹³¹ and the Maliki Shaykh al-Azhar, 'Ilish (d. 1299 AH), and others, held the view that the implementation of Islamic law was the determinant of whether a country was to be regarded as Dar al-Islam or *Dar al-Harb*.¹³²

The Hanbali jurist, Ibn Qayyim for example states that for the majority of jurists, Dar al-Islam is a territory where Muslims live, and where Islamic laws (ahkam al-Islam) are implemented. If Islamic laws are not applied, it cannot be said to be a Muslim territory, even if it is close to Dar al-Islam.¹³³ This is similar to the opinion held by Ibn Muflih al-Maqdisi.¹³⁴

Hijrah consequently means migration in the cause of Allah from the land of disbelief and sin to the land of

¹³⁰ Sahnun, *Al-Mudawwana al-Kubra*, Matba'a al-Sa'ada, Cairo, 1905, vol. 3, p. 22.

¹³¹ Al-Wansharisi, *Ansa al-Matajir*, Maktaba al-Thaqafa al-Diniya, Al-Zahir, 1996, p.30; Ibn Rushd, *al-Muqaddimat al-Mumahidat*, vol. 2, p.151 - cited in Fallah Zardumi, *Fiqh al-Siyasah al-Shar'iyyah li al-Aqalliyat al-Muslimah*, 1426AH, p. 154.

¹³² Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.226

¹³³ Ibn Qayyim al-Jawziyyah, *Ahkam Ahl al-Dhimma*, Ramli lil-Nashr, Dammam, 1997, vol.2, p.728

¹³⁴ Ibn Muflih al-Maqdisi, *Al-Adab al-Shar'iya*, Muassasat al-Risala, 1999, vol.1, p.211-212.

Islam and obedience.¹³⁵ According to Ibn Al-Arabi, Hijrah means departure from the abode of war (*dar al-Harb*) to the abode of Islam (*dar al-Islam*).¹³⁶ Ibn Qudama defines Hijrah as setting out from the land of disbelief to the land of Islam.¹³⁷

The Zahiri School of law is also of the view that Muslims must not live in a non-Muslim land even if they have the freedom to practice their religion.¹³⁸

For some of those who hold this binary paradigm, *Dar al-Harb/Kufr* included Muslim lands conquered and colonised by non-Muslims. It also included Muslim lands where Islamic law was not the dominant law of the land, since the law of the land was the main criteria for classifying lands.

In other words, the presence or absence of the dominance of Islamic law for Muslims was the most important criteria and condition for categorising a land as Dar al-Islam or Dar al Kufr/Harb and not the religious identity of

¹³⁵ Muhammad al-Thani Abd al-Mumin, Muhammad al-Haj Abu Bakar, et al. *Al-Wasatiyyah fi al I'tiqad*, Wisdom Publishers, Abuja - Nigeria, 2019, p. 55.

¹³⁶ Ibn al-Arabi, *Ahkam al-Qur'an*, vol, 2, p. 453, al-Maktabah al-Shamilah, 3.35

¹³⁷ Ibn Qudamah, *al-Mughni*, Dar al-Fikr, Beirut, 1405 AH. vol.10, p.505.

¹³⁸ Ibn Hazm, *al-Muhallah bi al-Athar*, vol.5, p.419 cited in Fallah Zardumi, *Fiqh al-Siyasah al-Shar'iyyah li al-Aqalliyat al-Muslimah*, 1426AH, p.154.

the citizens. Some who held this position, narrowed down the meaning of “application of Islamic law” to imply mainly the criminal law, and others narrowed it down even further to the application of the “prescribed punishments” (hudud) in particular.¹³⁹

Non-Muslims who accept to live with treaties under the protection (*dhimma*) of Dar al-Islam and under its sovereign ruler or caliph, are regarded as living in Dar al-Islam and do not belong to the political-legal jurisdiction of Dar al-Harb.

Based on this two-state paradigm, most Muslim and non-Muslim countries in the world today (East and West) are viewed as Dar al-Harb (enemy states). Consequently, the scholars of this persuasion regard it as prohibited for Muslims to reside in the West or anywhere other than in Muslim lands where Islamic law (of varying degrees) is recognised. Hijrah from non-Muslim lands – irrespective of the degree of security, justice, and freedom from religious persecution – is regarded as an obligation for those with the means and opportunity.

This binary perspective was probably the most politically pragmatic and realistic for the international relations in its context. It was the equal and opposite of Christen-

¹³⁹ Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.8

dom binary approach. A challenge today is that some regard this categorisation as a divine prescription of Shari'ah based on the Qur'an and Sunnah, and not as a juristic opinion in response to its historical and changing context, which may not be universal for all Muslims and times.

Some who hold this view today, do not recognise the existence of peace treaties (such as those of the United Nations (UN), African Union (AU), European Union (EU), etc.) as changing the context of this dichotomy.

While recognising the legitimacy and even desirability of peace treaties for the purpose of peace and security in international relations, these do not change the fact that non-Muslim lands are Dar al-Kufr and therefore Dar al-Harb, and hence prohibited for Muslim residence. Hijrah is therefore still seen as an obligation on such Muslim minorities.

For some of these jurists, the justifications for this binary paradigm of the world comes mainly from the historical realities on the ground and the lived experiences of many of the scholars who held this perspective.¹⁴⁰ Resid-

¹⁴⁰ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, pp.141-142.

ing in such enemy states was regarded by some as supporting the economy of an enemy state (*Dar al-Harb*) instead of that of *Dar al-Islam*.¹⁴¹ It was also seen by some as liking and preferring the culture and morals of the Other over that of Islam and Muslims.¹⁴²

Some lend support for this binary paradigm with evidence from the early period of Islam, when most nations outside the city-state of Medina were viewed as a threat and enemy. Most relationships were those of either friend or foe.¹⁴³ The unwritten policy in international relations for most of the world at the time, and for most of human history was “conquer or be conquered”; “colonize or be colonized”.¹⁴⁴ The dichotomy of territories and lands into two - those of Islam and peace (*Dar al-Islam*) as opposed

¹⁴¹ Khaled Abou El Fadl, “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.157.

¹⁴² Khaled Abou El Fadl, “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.155.

¹⁴³ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Khaled Abou El Fadl, “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.163.

¹⁴⁴ Jeffrey Lang, *Struggling to Surrender: Some Impressions of an American Convert to Islam*, Amana Publications, USA, 1994, p. 190.

to Disbelief and War (*Dar al-Kufr/Harb*) was also a reflection of the historical context and geopolitical realities of the relevant jurists.¹⁴⁵

In addition, some present texts in support of this paradigm are also cited from the period before the conquest or occupation of Mecca, when the Prophet (p) initially encouraged the early Muslims and communities who embraced Islam before the conquest of Mecca to migrate and unite in and around Medina against hostile neighbours, and especially Meccan Quraish and their allies. Support for this perspective therefore comes from hadith where the Prophet (p) made it clear that he would not be responsible for the protection of those Muslims who chose to reside outside his political-legal jurisdiction and among hostile others. Some scholars also justified the prohibition of residing in or moving to non-Muslim lands with the prophetic hadith cited earlier which says: ***“I dissociate myself from all Muslims living in the midst of polytheists....”***¹⁴⁶ This statement of the Prophet (p) was actually in response to a very specific situation where some converts to Islam who lived in the midst of a group of polytheists that were hostile to Medina, were unknowingly killed in the battle that ensued. The Prophet (p) was mak-

¹⁴⁵ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.137.

¹⁴⁶ Sunan Abu Dawud, hadith no. 2274; *Sunan al-Tirmidhi*, hadith no. 1530.

ing it clear that he was dissociating himself from the responsible for the payment of the blood money (*diyya*) in such cases of accidental killing or manslaughter, where the Muslims lived in the midst of hostile non-Muslims.¹⁴⁷ The historical context and occasion (*Sabab al-wurud*) of this hadith makes it clear that this statement had nothing to do with the prohibition of Muslims migrating to or living in the midst of non-hostile people of other faith which was done by the Prophet (p) himself, and by his companions.¹⁴⁸

Some have also tried to justify this paradigm from the texts of the Qur'an and Hadith by claiming that verses prescribing peaceful coexistence and treaties with non-hostile others (discussed in Qur'an 60:8, etc.) have been abrogated by the "Verse of the Sword" (Qur'an 9:5). Some scholars have interpreted this verse to imply that there are to be no more peace treaties with people of other faiths – especially polytheists.¹⁴⁹ Some others consider Qur'an 9:5 as giving the last word on international relations with polytheists,

¹⁴⁷ Muhammad Shams al-Haq al-Azim al-Abadiy, *'Awn al-Ma'bud: Sharh Sunan Abu Dawud'*, Dar Al-Kotob Al-Ilmiyyah, Beirut, 1415, vol. 7, p. 218, no. 2645.

¹⁴⁸ For more discussion on the hadith, see: Da'wah Institute, *Relations with Christians, Jews and Others*, Minna, Nigeria: Islamic Education Trust, 2018, pp. 202 – 204.

¹⁴⁹ Ibn Kathir, *Tafsir al-Quran al-'Azim*, Dar Tayyibah li al-Nashr wa al-Tawzi', 2nd edition, 1999, vol.4 pp112-114; Abu Abdulillah al-Qurtubi, *al-Jami' li ahkam al-Quran*, Dar al-Kutub al-Misriyyah, Cairo, 2nd edition, 1964, vol.8, p.73; cited Auda, *what is the land of Islam?*, p.18

while Qur'an 9:28 as giving the last word on international relations with People of the Book – Jews and Christians.¹⁵⁰

For these scholars therefore, it is prohibited for Muslims who have the means, and are not driven by necessity, to live outside *Dar al-Islam*. All those who embrace Islam in non-Muslim lands are obligated to migrate (*Hijrah*) from all parts of the world to *Dar al-Islam*, which is understood to be where Islamic law governs the land.¹⁵¹ And if for any legitimate reason, they are unable to migrate, they should as much as possible socially isolate themselves from their host communities so as to prevent assimilation into the religion, norms and morals of *Dar al-Kufr/Harb*.¹⁵²

Experience from various contexts has shown that this was a real fear for not only, but especially oppressed Muslim minorities in different parts of the world.¹⁵³ Tempo-

¹⁵⁰ Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011, p.64

¹⁵¹ See Shaykh Muhammad Naasiruddeen al-Albaanee, *The Obligation of Hijrah from the Lands of Shirk and Kufr*, SalafiManhaj, 2004; Shaykh Abdur Rahmaan al-Adanee, *Questions and answers concerning al-Hijrah: Emigrating to the land of Islam*, masjiduthaymeen.org, 2005

¹⁵² Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.163

¹⁵³ Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.156

rary visits by traders, emissaries, scholars and preachers were permitted if safe, but permanent residence was regarded as impermissible.¹⁵⁴

Yusuf al-Qaradawi commented on Ibn Qudama's explanation¹⁵⁵ of the need for Muslims to migrate from non-Muslim lands to Dar al-Islam. He says that this is on the assumption that the person who is encouraged to migrate does not have the role of teaching or preaching Islam to non-Muslims. As for a person who plays those roles, his stay in the land of non-Muslims will be better as that would be regarded as a form of Jihad.¹⁵⁶

It should however be noted that the designation of a place by these jurists as *Dar al-Harb* does not in any way imply that they condoned extrajudicial acts of violence against *Dar al-Harb* without clear permission from the caliph of *Dar al-Islam*, or Muslim head of state. All texts of the Qur'an and hadith that are related to legal punishments or warfare are applied only through the proper legal authorities of the state, and never through personal discre-

¹⁵⁴ Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994 pp.147-150

¹⁵⁵ Ibn Qudamah, *al-Mughni*, Dar al-Fikr, Beirut, 1405 AH. vol.10, p.505.

¹⁵⁶ Ibid. Yusuf al-Qaradawi, *Fiqh al-Jihad*, Maktabah Wahbah, Cairo, 2009, vol.2, p. 952

tion, which would be as a criminal act. Declaring a place as *Dar al-Harb* was not a permission for anyone to commence hostilities against others. It was simply a theoretical juristic categorization among other categorisations proposed by the reasoning (*Ijtihad*) of other jurists. It is only the head of state that can decide to make it law, and to act upon it.¹⁵⁷

For most of these jurists, even when war was regarded as justified against enemy combatants, it was to be managed by the state authorities of *Dar al-Islam* and not anyone else among the Muslim citizens.

2. The Traditional Tripartite or Three- State Paradigm

Some Muslim jurists of the past and present have based on their juristic reasoning (*Ijtihad*) in response to their contexts, classified the world into three major domains or lands based primarily on the criteria of the safety from religious persecution and security for Muslims which was usually indicated by the existence of peace treaties. These three states are:

¹⁵⁷ Qur'an 4:89 and 8:72, were used as evidence for the obligation of Hijra before migration. See Abu Hayyan, *Tafsir al-Bahr al-Muhit*, vol. 4, p. 219, al-Maktabah al-Shamilah, 3.35; 'Muhammad Rashid Rida, *Tafsir al-Manar*, vol. 6, p. 354, al-haiha al-Misriyyah, 1990

1. *Dar al-Islam* (Land of Islam)
2. *Dar al-Harb* (Land of War, or enemy territory), and
3. *Dar al-Sulh/ Dar al-'Ahd* (Land of Treaty, or Peace-treaty State). *Dar al-Sulh* was also referred to by some scholars as *Dar al-'Ahd* or *Dar al-Muwada'a*.¹⁵⁸

Imam al-Shafi'i is credited as introducing the term "*Dar al-Ahd*" ("Abode of Treaty") to juridical discussion, referring to nations that were not politically Islamic, but which held political alliances or were at peace with one or more Muslim states.¹⁵⁹

The Qur'an and Sunnah are clear on the need for Muslims to support peace treaties (*Sulh*) with even former enemies, and the obligation to respect such treaties.

"And if they (your enemy) incline to peace, incline you also to it, and trust in Allah". (Qur'an 8:61)

"...but if they cease, let there be no hostility except to those who practice oppression". (Qur'an 2:193)

¹⁵⁸ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.141.

¹⁵⁹ Ibn Abu Ya'la, *Tabaqat al-Hanabilah*, vol.2, p. 193. Cited in Ismail Lutfi Fattani, *Ikhtilaf al-Darain wa Atharuhu fi al-Kam al-Munkahat wa al-Mu'amalat*, p.43.

(Fight them) except those who join a people between whom and you there is a treaty, or those who come to you because their hearts restrain them from fighting you or their own people...” (Qur'an 4:90).

Here, the Qur'an is also prohibiting Muslims from fighting those non-Muslim nations or communities that are protected by other non-Muslim nations who have peace treaties with Muslims. The rest of the verse reads:

“... If Allah had willed, He would have given the unbelievers power over you, and they would have fought you. Therefore, if they withdraw from you and fight you not, and instead send you guarantees of peace, know that Allah has not given you a license (to fight them).” (Qur'an 4:90)

“If one amongst the (combatant) polytheists asks you for asylum grant it to him so that he may hear the word of Allah and then escort him to where he can be secure, ...” (Qur'an 9:6)

“...As long as they stand true to you, stand you true to them: For Allah does love the righteous”. (Qur'an 9:7)

Based on these and other clear texts of the Qur'an and Hadith, some scholars regard any classification of lands that does not clearly provide for Dar al-Sulh/'Ahd - lands

with peace treaties and alliances with Muslims – as incomplete or over-simplistic.

It has been noted by some that those schools of law such as the Hanafi and Shafi'i which spread further into the eastern parts of the Muslim world (towards Turkey, India and Indonesia) interacted more significantly with Byzantine or Orthodox Christians and various non-Christian communities such as Zoroastrians, Hindus, Buddhists and many others.¹⁶⁰ These appear to have had more diverse religious contexts and experiences than those who faced Christendom in the West, and probably resulted in more nuanced approaches to international relations and a greater accommodation of Muslim residence in non-Muslim lands.¹⁶¹

From the perspective of this paradigm, *Dar al-Islam* was the land of Islam dominated by Muslims and Islamic law. *Dar al-Sulh* was a land of non-Muslims where their laws dominated, but who had peace treaties and alliances directly or indirectly with *Dar al-Islam*.

¹⁶⁰ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, pp. 145-148

¹⁶¹ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, pp. 141 – 142.

Dar al-Sulh was a term used to refer to a land that was *Dar al-Kufr* (Land of Disbelief) or *Dar al-Shirk* (Polytheist State) in its religious identity, but which was at peace with Muslims, and therefore not an enemy state or *Dar al-Harb* (Land of War).

So, for example, during the lifetime of the Prophet (p), Medina after the migration (Hijrah) there by the Prophet (p) was *Dar al-Islam*. Abyssinia, and Mecca during the period of the Treaty of Hudaibiyya were both *Dar al-Sulh*/*'Ahd* or *Dar al-Muwada'a*. Mecca was a *Dar al-Harb* or enemy state before the Treaty of Hudaibiyya and after they broke that treaty. It later became a *Dar al-Islam* after its threat was neutralised with the conquest or occupation of Mecca.

Some of those who hold this three-state paradigm therefore agree that the world can theoretically be classified into 2 domains based on the criteria of the religion of those who dominate the land – *Dar al-Islam* (Land of Islam) and *Dar al-Kufr/Shirk* (Land of Disbelief/ Polytheism). However, they subdivide *Dar al-Kufr/Shirk* into 2 further domains – *Dar al-Sulh* and *Dar al-Harb*. *Dar al-Sulh* (Land of Treaty) are non-Muslim lands where Muslims can reside without fear of persecution on account of their faith, while *Dar al-Harb* (Land of War) are hostile or

enemy states where Muslims are not safe, and do not have the freedom to practise their faith.¹⁶²

Muslims residing in safe non-Muslim countries – similar to those Muslims residing in Mecca during the period of the Treaty of Hudaibiyyah, etc. – are expected to recognise the leadership of the territory they have chosen to reside in. Muslims living in *Dar al-Islam* are also expected to respect and recognise the autonomy, leadership, and sovereignty of the *Dar al-Sulh* country they have entered into treaties with. It is for this reason, that even though most of the Companions of the Prophet (p) were opposed to the unfair and humiliating conditions of the Treaty of Hudaibiyyah which the Prophet (p) had agreed to, all Muslims of Medina and Mecca were required to respect and honour the signed treaty, and those Muslims in Mecca were expected to recognise the leadership of Mecca as their political leaders under whose political-legal jurisdiction they resided in.

Regarding this non-interference in the domestic affairs of other nations, and the recognition of the legal autonomy and political sovereignty of states with whom Muslims have a treaty, Allah says in the Qur'an, "*Those who believed,*

¹⁶² Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, pp. 142 – 143.

emigrated, and strived with their wealth and lives in the cause of Allah, as well as those who gave them shelter and help—they are truly guardians of one another. As for those who believed but did not emigrate, you have no obligations to them until they emigrate. But if they seek your help (against persecution) in faith, it is your obligation to help them, except against people bound with you in a treaty. Allah is All-Seeing of what you do.” (Qur'an 8:72)

Regarding Muslim residence in non-Muslim lands, those who hold this paradigm are of the opinion that Muslims are permitted to live in any non-Muslim country anywhere in the world which has peace treaties with Dar al-Islam or Muslim nations, and for as long as these treaties are in place. Today, nearly every nation has direct or indirect treaties with Muslims through the United Nations (UN) or other regional treaties and international alliances.¹⁶³ The countries that have treaties with Muslim nations therefore include nearly all countries on all continents in the modern world. Some distinguished contemporary jurists regard all countries and member states of these treaties in the world today as *Dar al-Sulh* or *Dar al-'Ahd* (Lands with Treaties) and not *Dar al-Harb*.¹⁶⁴

¹⁶³ Examples include; Commonwealth, Organization of Islamic Cooperation, International peace/security treaties.

¹⁶⁴ Zuhayli, Al-Qaradawi, Abu Zahra – Cited in Moussa, Moussa Abou Ramadan, “*Muslim Jurists' Criteria for the Division of the World into Dar al-*

In the opinion of a distinguished contemporary jurist, Abdul Wahab al-Khallaf (d.1956), *Dar al-Harb* is a territory where Muslims, the propagation of their faith, or those who propagate it are attacked. He also acknowledges the existence of a territory of non-Muslim people, who do not attack Muslims and do not prevent the peaceful propagation of Islam. It is, in his opinion forbidden to fight against such a people because, according to him, there is a current principle of peaceful coexistence, and there is no justification to deviate from that status quo.¹⁶⁵

Another distinguished contemporary jurist, Yusuf al-Qaradawi (d. 2022), disagrees with the respected contemporary jurist, Wahba al-Zuhayli who claims that the juristic division of the world has no direct basis in the Qur'an

Harb and Dar al-Islam", in International Law and Religion: Historical and Contemporary Perspectives, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p. 231.

¹⁶⁵ Abdul Wahab Khalaf, *al-Siyasa al-Shar'iyyah wa Nizam al-Dawla al-Islamiya*, Al-Matba'a al-Salafiya wa Maktabatuhu, Cairo, 1931, p.72-75. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in International Law and Religion: Historical and Contemporary Perspectives, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.231

or Sunnah and is purely a product of juristic reasoning (Ijtihad)¹⁶⁶ in response to historical contexts.¹⁶⁷

Al-Qaradawi regards *Dar al-Islam* as a single territory where the majority of inhabitants recognise the oneness of Allah, and that Muhammad (p) is his prophet and messenger, even if some of them do not formally operate an Islamic governance system nor establish Islamic law, as is

¹⁶⁶ Ijtihad by its very nature depends on presumptive (*zanni*) evidence. Its basis in Shari'ah sources are either presumptive texts – i.e., texts from the Qur'an or Hadith with no definitive meanings or agreed implications (*zanni al-dilalah*) - or the many secondary sources of Shari'ah such as juristic consensus (*Ijma'*), reasoning by analogy (*Qiyas*), public interest (*Maslahah*), customary practice (*al-'Urf*), juristic discretion (*Istihsan*), legal presumption (*Istishab*), etc. depending on the school of law (Madhhab). For a more thorough analysis of the arguments used by Zuhayli to justify his conclusion, see Wahba al-Zuhayli, *Athar al-Harb fi al-Fiqh al-Islami: Dirasa Muqarina*, 3rd ed., Dar al-Fikr, Beirut, 1998, pp. 192 - 196.

¹⁶⁷ Al-Qaradawi for example cites texts such Qur'an 4:92 that mentions "hostile people" as evidence in support of the traditional division into two. Others regard this as descriptive of a historical reality, and not a prescription or recommendation. Earlier jurists did not cite this verse in support of their divisions. The interpretation of this and similar texts of the Qur'an and hadith to support a particular political division of the whole world is itself evidence of the effort of independent juristic reasoning (*Ijtihad*), which has naturally created a diversity of legitimate opinions among jurists of various historical contexts. See Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into *Dar al-Harb* and *Dar al-Islam*", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.234.

¹⁶⁸ Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Ahkamihi wa Falasafatihi fi Du'al Qur'an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009, p.890.

the case with the ex-Soviet Muslim states in Asia, such as Azerbaijan, Uzbekistan, Tajikistan, etc.¹⁶⁸ He therefore classifies Egypt and Turkey as part of *Dar al-Islam*.¹⁶⁹ As for the rest of the world, al-Qaradawi regards it as territory of treaties (*Dar al-'Ahd*)¹⁷⁰ and is ready to abandon the terms “*Dar al-Harb*” and “*Dhimmi*” when they are irrelevant to the realities to nation-states today.¹⁷¹ He stresses that Muslims are obliged to honour their commitments to treaties such as those of the UN.

In conclusion, those jurists and schools of law that hold this tripartite or 3-state perspective or paradigm, regard it permissible for Muslims to reside in safe non-Muslim lands that have alliances and treaties with Muslim nations. This implies the permissibility of Muslims today to live anywhere in the modern world where they can live in adequate peace, and practise or propagate Islam.

¹⁶⁹ Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Ahkamihi wa Falasafatihi fi Du'al Qur'an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009, pp.879-910. Cited in Moussa Abou Ramadan, “*Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam*”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.234.

¹⁷⁰ This is with the exception of the State of Israel. Though he accepts the observance of treaties signed between Israel and Muslim states. (Yusuf Al-Qaradawi, *Fiqh al-Jihad*, p.907).

¹⁷¹ Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Ahkamihi wa Falasafatihi fi Du'al Qur'an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009, p. 909.

3. Other Independent Paradigms For Domains Or States

This third category is a collection of those numerous juristic positions that have nuanced interpretations of territories that significantly differ from the categorization of the majority. The uniqueness of the opinions of these jurists makes it difficult (and unfair) to categorize them under any of the earlier two (binary and tripartite) paradigms discussed. The perspectives presented in this category come from all the major schools of law and demonstrate not just the internal diversity of views within each school (*madhhab*), but also the dynamic and intellectual independence of jurists in their approaches and reasoning (*Ijtihad*). It often also demonstrates their acute perceptivity and sensitivity to their diverse political realities, and their interest in realizing the higher intents and objectives (*Maqasid*) of Shari'ah as related to Muslim residence, migration (*Hijrah*), international relations, and the Islamic law of war and peace. While some of these jurists seem to agree with some of the earlier classifications, they would differ significantly in their definitions of similar terms.

The Shafi'i hadith scholar, Ibn Hajar al-Asqalani for example cites the view of another prominent Shafi'i jurist and political theorist, Imam al-Mawardi, who was of the opinion that if a Muslim is able to practice Islam openly in

a non-Muslim land, then that land becomes *Dar al-Islam* (the Abode of Islam) by virtue of his settling there, and living there is preferable to moving away from it as other people may be attracted to Islam merely by their interaction with him.¹⁷² According to al-Mawardi, "The public acts of worship (*sha`a'ir*) of Islam such as group prayers in mosques and call for prayers are the criteria by which the Prophet (p) differentiated between the Land of Islam and the Land of Disbelief."¹⁷³

Fakhr al-Din al-Razi, another Shafi'i jurist writes that "If the Islamic acts of worship are evident in streets and public places, this certainly entails that Islam is dominant."¹⁷⁴

A distinguished Hanbali jurist, Ibn Taymiyyah equally wrote that, "The public acts of worship (*sha`a'ir*) of Islam are the true signs that a certain land is a Land of Islam."¹⁷⁵ In a *fatwa* given by Ibn Taymiyyah regarding a unique context (at the time), he described the territory of Mardin (a city in today's Turkey) in which Muslims lived as minori-

¹⁷² Ibn Hajar al-Asqalani, *Fath al-Bari*, Dar al-Fikr, Beirut, vol.7, p.230. See also, Al-Nawawi, *Al-Majmu'*, vol.49, p.264.

¹⁷³ Al-Mawardi, *Al-Ahkam al-Sultaniyah*, vol.1, p.275. Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p. 13.

¹⁷⁴ Al-Razi, *Al-Mahsul fi 'Ilm Usul al-Fiqh*, vol.4, p.43. Cited in Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p. 13.

¹⁷⁵ Ibn Taymiyyah, *Al-Nubuwwat*, vol.1, p.197.

ties, but which was neither *Dar al-Islam* where Islamic law is applied, although its soldiers are Muslims, nor is it *Dar al-Harb*, but “something in-between” - *Dar al-Murakkabah* (or “composite territory”).¹⁷⁶

Imam Abu Hanifa states: “The purpose (*maqsud*) of calling a certain land a 'Land of Islam' or a 'Land of Disbelief' (*kufur*) is not Islam versus *kufur*. It is security versus insecurity.”¹⁷⁷

According to the Hanafi jurist, Al-Kasani, the classification of *Dar al-Islam* or *Dar al-Kufr* is not a function of Islam or *Kufr* as such. For him, *Dar al-Islam* means absolute safety for Muslims and the absolute fear for disbelievers, while *Dar al-Kufr* implies absolute safety for disbelievers and absolute fear for Muslims. What seems to have been more important for al-Kasani was safety and fear.¹⁷⁸

According to one of the last great Hanafi jurists, Ibn 'Abidin (d.1252), if Islamic law is enforced in a territory as well as the law of polytheists (*Ahl al-Shirk*), then that territory is not *Dar al-Harb*.¹⁷⁹

¹⁷⁶ Ibn Taymiyyah, *Al-Majmu' al-Fatawa*, Dar al-Wafa, 2005, vol.28, p.240-241.

¹⁷⁷ Al-Kasani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i*, Al-Maktabah Al-Shamela 3.35, vol.15, pp. 406 – 407.

¹⁷⁸ Al-Kasani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i*, Dar al-Kutub al-'Ilmiyya, Beirut, 2003, vol.9, pp.518-520.

¹⁷⁹ Ibn 'Abidin, *Radd al-Muhtar 'ala al-Durr al-Mukhtar Sharh Tanwir al-Absar*, Dar al-'Alim al-Kitab, Al-Riyad, 2003, p.288. Cited in Moussa

The Andalusian Maliki jurist, Ibn Abd al-Barr (d.463 AH) regarded the call for prayer (*adhan*) as a criterion for distinguishing between *Dar al-Islam* and *Dar al-Harb*.¹⁸⁰ This is also reported to be the opinion of the Maliki jurist, Qadi 'Iyad that was mentioned by al-Mawwaq al-Maliki.¹⁸¹

According to another Maliki, Imam al-Qarafi (d.684 AH), the Maliki jurist, Imam al-Mazari (d.536 AH) says that the call to prayer has two implications. Firstly, it is ceremonial and announces that the territory in which it is called is *Dar al-Islam*, and that the prayer is a collective obligation, which means that if a part of the community does fulfil the obligation, the others are exempt, but if the population does not fulfil this obligation, then it will be fought. The second implication of the call for prayer, is that

About Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al---Harb and Dar al---Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.224.

¹⁸⁰ Ibn Abd al-Barr, *Al-Istidhkar*, Dar al---Wa', Cairo, 1993, p.18. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al---Harb and Dar al---Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, ...p.225

¹⁸¹ Al-Mawwaq, *Al-Taj wa al-Iklil li Mukhtasar Khalil*, Dar al---Kutub al-'Ilmiyya, Beirut, 1994, p.110. cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al---Harb and Dar al---Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.225.

it tells the time.¹⁸² While discussing the benefits of the call to prayer (*adhan*), the Maliki jurist, Al-Nafrawi mentions that it tells the time for prayer and announces that this is *Dar al-Islam*.¹⁸³

According to another Maliki jurist, Al-Dasuqi (d.1230 AH), *Dar al-Islam* does not turn into *Dar al-Harb* simply by conquest, but only when there are no Muslim ceremonies anymore. For him, as long as the Muslim ceremonies and festivities are held, or at least some of them, then the territory does not become *Dar al-Harb*. The same opinion is held by Imam al-Sawi.¹⁸⁴

Some Maliki jurists such as Al-Khurashi (d. 1090 AH) defines *Dar al-Harb* as a place where the army of the enemy is camped, and there is no safety for Muslims there, even if it is within the political-legal jurisdiction of *Dar al-*

¹⁸² Al-Qarafi, *Al-Dhakhira*, Dar al---Garb al-Islami, Beirut, 1994, vol.2, p.58. cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al---Harb and Dar al---Islam", in International Law and Religion: Historical and Contemporary Perspectives, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.225

¹⁸³ Al-Nafrawi, *Al-Fawakih al-Dawani 'ala Risalah al-Qayrawan*, Dar al---Kutub al-'Ilmiyya, Beirut, 1997, vol.1, p.265. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al---Harb and Dar al---Islam", in International Law and Religion: Historical and Contemporary Perspectives, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.225.

¹⁸⁴ Al-Sawi, *Bulghat al-Salik li Aqrab al-Masalik*, Dar al-Kutub al-'Ilmiyya, Beirut, n.d., vol.2, p.187.

Islam.¹⁸⁵ This is also the position of Salih al-Azhari (d. 1335 AH).¹⁸⁶

The distinguished contemporary Syrian jurist, Wahba al-Zuhayli, holds an opinion similar to that of Imam Shafi'i which is that the world is one entity. To him, the division into *Dar al-Harb* and *Dar al-Islam* is not relevant if there is no war. He says, “(contemporary) international law is in accordance with the Islamic Shari'ah in holding that the world is one and that war is a transient phenomenon that exists due to animosity between two states, and that this situation will disappear with the disappearance of war”.¹⁸⁷

According to another distinguished contemporary Egyptian jurist, Muhammad Abu Zahra (d. 1974), the world today is organised through the United Nations. The member states which include Muslim states, are obliged

¹⁸⁵ Al-Khurashi, *Sharh al-Khurashi*, Al-Matba'a al-Kubra al-Amiriyah, Bulaq, 1899/1900, p. 62.

¹⁸⁶ Salih al-Azhari, *Al-Thamar al-Dani*, (n.p., n. pub., n.d.), p.190. Cited in Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.226,

¹⁸⁷ Wahba al-Zuhayli, *Athar al-Harb fi al-Fiqh al-Islami: Dirasa Muqarina*, 3rd edn., Dar al-Fikr, Beirut, 1998, p.196. Cited in Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.233

and committed to the UN regulations and statutes. He says the Qur'an makes it obligatory to meet one's commitments. Thus, the entire world has turned into *Dar al-'Ahd*, and there is, in reality, no longer a division into *Dar al-Harb* and *Dar al-Islam*.¹⁸⁸

Discussion On The Various Domains

El-Fadl and others suggest that the positions of the different schools and scholars should be viewed as historical responses to historical challenges. Islamic legal solutions imply ethical choices and responsibility. And while the rulings and decisions of pre-modern Muslim jurists will not necessarily resolve the various dilemmas facing modern Muslim minorities, they do however, provide examples of pragmatic and ethical choices made by earlier jurists in response to particular historical challenges.¹⁸⁹

The dichotomous or binary paradigm (of *Dar al-Islam* vs. *Dar al-Harb*) discussed earlier becomes potentially dangerous for all Muslims once it is taken literally as dogma or

¹⁸⁸ Muhammad Abu Zahra, *Al-'Ilaqat al-Duwaliya fi al-Islam*, Dar al-Fikr al-'Arabi, Nasr City, 1995, p.56-60. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, ...p.232

¹⁸⁹ El-Fadl, ...p.187

divine teachings of Islam, and beyond the theoretical discussions of jurists exercising their reasoning (*Ijtihad*) in their own diverse contexts. It is the most abused and misused of the 3 paradigms. It is the one most often used by Muslim extremists to justify the excommunication (*takfir*) of fellow Muslims and Muslim states that do not implement Islamic law to their satisfaction. They regard these Muslims as living in *Dar al-Harb*, and consequently try to justify migrating away from and fighting them in the name of Jihad.

This understanding and justification of war against others, purely because a community is not Muslim and thus designated as “Dar al-Harb”, implies fighting a community simply because they profess another religion, and not because they have fought or been hostile towards Muslims. This is an erroneous and deviant understanding of Jihad and international relations of the Prophet Muhammad (p), that is not supported by any evidence from the Qur'an and Sunnah, and from the practices of the Rightly Guided Companions of the Prophet (p). In fact, the attempt to justify fighting peaceful non-Muslim nations simply due to differences in religion (and not due to unacceptable hostility or aggression), is a clear violation of numerous explicitly clear texts of the Qur'an and Sunnah as understood and implemented in the lives of the Prophet (p) and his companions. This opinion has been effectively

refuted by numerous classical and contemporary jurists including Ibn Taymiyyah and many others.¹⁹⁰

As reiterated throughout this discussion, all the political-legal classifications of domains, lands, territories, or countries (into Dar al-Islam, Dar al-Sulh, Dar al-Kufr, etc.) and the various preferred criteria and definitions adopted by particular schools of law or scholars are based primarily on independent juristic reasoning (Ijtihad) in response to their own geo-political contexts.

The inconsistency among scholars with diverse criteria and categorization of lands is therefore only evidence of the dynamism of their juristic reasoning (*ijtihad*) and independent juristic assessment of their contexts and realities. Scholars clearly differed in their decisions regarding how to define and classify lands and international relations based on their multiple priorities, interests, and concerns. Sometimes the same scholar would have more than one opinion based on his own learning, exposure, changing context, or the specific case he was dealing with. Some-

¹⁹⁰ Ibn Taymiyyah in *Risalah al-Qitaal* (p.123-125); Qaradawi in *Fiqh al-Jihad*; Ibn Taymiyyah in *al-Siyasat al-Shar'iyyah* (p. 123); Ramadan al-Buti in *Jihad in Islam: how to understand and practice it*; Ahmed al-Dawoody in *Islamic Law of War: Justification and regulation*; Wahba al-Zuhayli in *Athar al-Harb fi Fiqh al-Islami*; Zakariyyah al-Bardisi, *al-Iqraa baina al-Shari'ah wa al-Qanun* (415); Da'wah Institute in *The Use, Misuse and Abuse of Jihad*; Khaduri, *al-Harb wa al-Silam fi al-Sharia'ah al-Islamiyyah*

times the scholars are forced to formulate new terminology and categorizations through original *Ijtihad* for dealing with his nuanced reality. They would often use the same terms as earlier scholars, but with radically different definitions and legal implications.

The geo-political context of each domain's scholarly position is not static. They are diverse, dynamic, and ever-changing, and so are the scholarly opinions and responses to these changing realities. The scholarly rulings on these are not doctrinal or dogmatic and fixed (*thawabit*) rulings (*hukm*) of Shari'ah based on any clear and explicit texts of the Qur'an and Sunnah. While some scholars have tried to link their interpretations to the texts of the Qur'an and Hadith, most of the distinguished scholars and commentators of the Qur'an and Hadith have not understood the interpretations of these texts as necessarily supporting only these juristic positions and political implication.

Consequently, distinguished jurists throughout Islamic history are critical of any particular juristic method of classification, that is itself a product of *Ijtihad*, being imposed on or regarded as the one and only correct method for all Muslims everywhere and for all time. The *Ijtihad* by some jurists in one context cannot and should never be regarded as binding on other jurists of the same or of different contexts. It is well-known among jurists also that the *Ijtihad* of

one or some jurists on an issue does not invalidate the *ijtihad* of others. Hence, one of the Islamic legal maxims accepted by all schools of law (*madhhabs*) states that “One *ijtihad* is not invalidated by another *Ijtihad*” (*Al-ijtihad la yanqudhu bi al-ijtihad*).¹⁹¹

No legal (*fiqhi*) opinion that is the product of human and juristic reasoning (*Ijtihad*) in any context should be treated as if it were Divine injunction, and it should never be imposed on others. Sufyan At-Thawri was reported to have said, "If you see a man doing something over which there is difference of opinion among scholars, and which you believe to be forbidden, you should not forbid him from doing it".¹⁹²

Some jurists therefore question the relevance of many of the categorizations that are based on the reasoning (*Ijtihad*) of any past scholars to all current and multiple evolving global realities. These scholars call for a more independent critical assessment of current realities and policies in international relations based on analysis of original texts and a consideration of what is relevant to the best

¹⁹¹ Suyuti, *Al-Ashba wa al-Naza'ir fi Qawa'id wa furu' fiqh al-Shafiyyah*, p. 101, Dar al-Kutub Ilmiyyah, Beirut, Lebanon; al-Zarkashi, *al-Manthur fi al-Qawa'id*, p. 32, al-Maktabah al-Shamilah, 3.35; Zain al-Din al-Sunuki, *Gayah al-Wusul fi Sharh lub al-Usul*, p. 167, al-Maktabah al-Shamilah, 3.35

¹⁹² Quoted in Abdal Hakim Murad, *Understanding the Four Madhhabs*, Cambridge: Muslim Academic Trust, 1999, p.13).

interests of specific Muslim communities in their own contexts.

Each community of Muslims or country should therefore have the freedom to decide what criteria best meet their needs and interests (*Maslahah*) when considering their realities and the consequences of rulings. Each Muslim community, leadership and their scholars are the ones to determine for themselves how best to describe their unique realities and relations with others.

Being oblivious to our realities and dogmatically following the opinions and classifications of past scholars, especially on socio-political issues can be retrogressive and has very often prevented Muslims from being united on key issues related to their security and political stability. Various distinguished jurists have criticised such blind imitation of the rulings of earlier jurists.¹⁹³

¹⁹³ Ibn Taimiyyah, *Majmoo' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.4, p.197; Ibn Taimiyyah, *Majmoo' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.7, pp.71-72; Al-Shawkani, *Irshad al-Fuhul li Tahqiq al-Haqq min 'ilm al-Usul*, Dar al-Kitab al-'Arabi, 1st edition, 1999, vol 1, p.216; Ibn al-Qayyim, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, Maktabah al-Kulliyat al-Azhariyyah, Cairo, 1968, vol 1, p.7, p.39 see also al-Shawkani, *al-Qawl al-Mufid fi adillah al-Ijtihad wa al-Taqlid*, Dar al-Kitab al-Misry, Cairo.

A Muslim as a Citizen of a Modern Islamic Nation-State

Traditionally and from the earliest times, Muslims resided in any land that was safe and secure, and where they were free enough to practise the fundamental of their faith. Some of these were lands that were under Muslim rule, while others were not, and others still were jointly governed by Muslims and non-Muslims. Some of these Muslim majority nations formally recognized themselves as “Islamic” states or kingdoms, while others did not. Some formally recognized the Qur'an and Sunnah as sources of law, while others accommodated Islamic law in certain domains of law, and to varying degrees.

There are various ways today through which a person can acquire citizenship or residency in a country. Some of these are new, most are not and often differ from one country to another. Most countries, including Muslim countries today only recognise citizenship by birth, marriage, naturalisation, etc. In most nations, citizens usually have equal rights and no individual who has met the criteria for citizenship is discriminated against based on race, ethnicity, gender, or religion. All citizens are usually regarded as having equal opportunities to serve the state in various capacities and to benefit from the services of the state.

It should however be noted that discriminatory laws based on race, ethnicity, religion, or gender, are reflections of the legal system of the society and not its structure of administration or governance system. Countries such as the United State of America were recognised as functioning democracies, even while slavery and racial discrimination was regarded as legally acceptable. The same goes for other laws that discriminated based on gender and women's right to vote, hold political office, etc.

A critique of the freedoms and legal rights of citizens therefore, while important for various reasons, is not a precondition for a governance system to be regarded as a democracy or not. As explained earlier in this paper, the focus of this discussion and analysis of democracy from the perspective of Islamic jurisprudence will dwell on the system of governance (*siyasa*) and not of the legal system.

Non-Muslims as Citizens of a Modern Islamic Nation-State

From the lifetime of the Prophet (p), we learn that Medina had migrants and indigenous people of various ethnicities, clans and religious affiliation, and their terms of “citizenship” or social contract (*dhimma*) were determined by the Constitution, Charter or (*Sahifah*) of Medina.

A non-Muslim or Muslim can therefore become a citizen of a modern “Islamic state” or a Shari'ah-compliant state through the processes of acquiring citizenship that is unique to each state. This implies that today, the process of becoming a citizen of an Islamic state is applicable to both Muslims and non-Muslims, and this is determined by the constitution or authorities of the state in question and their own *ijtihad* (juristic reasoning) based usually on public interest (*maslahah*) and preclusion (*sadd al-dhari'ah*), etc.

The Jews and other signatories to the Charter of Medina were regarded as citizens of Madinah the same way the Muslims were regarded, and they were all bound by a single constitution. They were referred to as belonging to the same “Ummah” (community) as each other, even when they had their own religious and legal system. The Jews of Medina also, did not pay the Jizya (military exemption tax which was in lieu of military service. This was because, as with most citizens today, they agreed to contributing to and defending the state in the same way as the Muslim citizens.¹⁹⁴ The Charter (Sahifah) of Medina has

¹⁹⁴ Muhammad Hamidullah, *Majmu'at al-Watha'iq al-Siyasiyyah*, 2nd ed., Dar al-Irshad, Beirut, 1969, p.41-47, cited in Akram Diya' al-'Umari, *Madinan Society at the Time of the Prophet (Vol.1): Its Characteristics and Organisation*, International Institute of Islamic Thought, Virginia, 1991, p.109-110. For further readings on the *Sahifah* of Medina, see also, Ahmad Ibn Yahya Ibn Jabir al-Baladhuri, *Ansab al-Ashraf*, (with commentary by

also been the basis of the contemporary Marrakesh Declaration.¹⁹⁵

The Ottoman empire was also seen to admit non-Muslims as citizens. In a public speech made in 1830, the Ottoman Sultan Mahmud (Mehmet) II, said that: “From among the subjects, where I distinguish who is Muslim, is at a mosque, and who is Christian, is in a church, and who is Jewish, is in a synagogue. There is no difference between them on other days.”¹⁹⁶

In another speech in present-day Bulgaria in 1837, Sultan Mahmud II said: “O Greeks, Armenians, and Jews! All of you, just like the Muslims, are God's servants and my subjects. You have various religions, but you are all under the protection of the laws of the state and my royal will.”¹⁹⁷

Muhammad Hamidullah), Dar al-Ma'arif, Egypt, 1959, vol.1, p.286, 308; Abu Muhammad Ali Ibn Sa'id Ibn Hazm, *Jawami' al-Sirah*, (with commentary by Dr. Ihsan Abbas and Dr. Nasir al-Din al-Asad), Dar al-Ma'arif al-Misriyyah, Egypt, n.d., p.95; Muhammad Ibn Jarir al-Tabari, *Tarih al-Rusul*, (with commentary by Muhammad Abu El-Fadl Ibrahim, Egypt, vol.2, p.479; 'Imad al-Din Abu al-Fida' Isma'il Ibn Umar Ibn Kathir, *Al-Bidayah wa al-Nihayah*, Al-Sa'adah Press, Cairo, 1932, vol.4, p.103-104.

¹⁹⁵ See, <http://www.marrakeshdeclaration.org/marrakesh-declaration.html>

¹⁹⁶ Cited in Usama Hassan, *From Dhimmitude to Democracy*, Quiliam, 2015, p.63.

¹⁹⁷ Cited in Usama Hassan, *From Dhimmitude to Democracy*, Quiliam, 2015, p.63.

Similar to the Dhimmah treaty, non-Muslim citizenship in an Islamic state can be inherited by the children of existing citizens, terminated by the individual, and given the same rights as natives or primary dwellers.

SECTION FOUR

Choosing the Leader

The jurists have long debated the matter of Imamate and the appointment of an Imam over Muslims, and many have reported there to be a consensus on the matter, including Imam al-Haramayn al Juwayni. However, the consensus on the matter of Imamate mentioned by al-Juwayni depends upon its actual occurrence and on the views of scholars who came after the first generations.¹⁹⁸

And, as far as we can see, this consensus was that there be an Imamate of some sort, namely, a government to manage and coordinate the affairs of the community. The other things connected to this matter, however, such as the Umma being united in a single state under a single ruler, or for the leader to be of the tribe of Quraysh, did not necessarily fall under this consensus. Indeed, their occurrence in history was endorsed by Muslim scholars on the basis

¹⁹⁸ Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.24.

that such requirements are basically a practical impossibility.¹⁹⁹

Imam al-Haramayn talks about this himself when he says, “The best way to look after our best interests in this world and the next is to place all areas of authority under a single authority if it is feasible and possible. If it is too difficult to accomplish such a thing or is not feasible, then it falls to men of standing in the lands and abodes of Islam to ensure the rulings of God reach His worshippers.”²⁰⁰

Another indication that this particular understanding is valid and correct can be found in the fact that Imam al-Haramayn draws a direct contrast between the consensus position on Imamate and the position of Ibn Kisan al-Asamm (d. 816), who held the opinion that people should be left disunited and to their own devices, without a system of governance to manage their affairs. According to this position of al-Asamm, it is not obligatory for there to be rule of any kind. The opposite position to this would be that it is obligatory to have rule, regardless of whether it is in the form of a unified single government or multiple

¹⁹⁹ Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.25.

²⁰⁰ Al-Juwayni, Ghiyath al-Umam (Jeddah: Dar Al-Minhaj, 2012), cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.25.

governments, and regardless of whether or not the rulers are descendants of Quraysh.²⁰¹

Likewise, the Najdat sect of the Khawarij held the opinion that it was not obligatory for a ruler to be appointed if the people were at peace. In this respect, they resemble anarchists and Marxists in their early stages.²⁰²

Methods and Conditions of Choosing a Leader

There is no specific method prescribed in the Quran or Sunnah for choosing a leader. This is regarded as a form of deliberate silence intended to show mercy and accommodate dynamism and universality of changing Muslim contexts. The Prophet (p) said: *“Allah, the Exalted, has laid down certain duties which you should not neglect, and has put certain limits which you should not transgress, and has kept silent about matters out of mercy for you and not out of forgetfulness, so do not seek to investigate them.”*²⁰³

Silence in the text is not viewed as a judgement of prohibition, but as an opportunity for juristic reasoning

²⁰¹ Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.25.

²⁰² Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.25.

²⁰³ Sunan al-Daruqutni, 5/326

(*ijtihad*), especially if there is a valid concern that any of the objectives of *Shari'ah* would be threatened by the silence on it. The early history of Islam witnessed about three different ways of choosing a leader that were all based on various forms of *ijtihad*.

These 3 ways were:

- I) Choosing a leader by a group of respected representatives of the people (*ahlu al-hall wa al-aqd*) or an “electoral college”;
- ii) Transferring of leadership from the leader to a particular successor by nomination; and,
- iii) Transferring of leadership from the leader to a particular successor from among his children or family members.

The first method brought Caliph Abubakr, Caliph Uthman, and Caliph Ali to power after having been chosen by the people through slightly nuanced mechanisms. The second method brought Caliph Umar to power, while the third method brought Yazid (son of the Companion, Mu'awiyah) and leaders after him to power.²⁰⁴

As the Qur'an and Sunnah are silent on prescribing a particular method of choosing a leader, it is left to each

²⁰⁴ Abubakr Ibn al-Araby, *al-'Awasim min al-Qawasim*, Maktabah al-Sunnah, pp 62-221.

community and its leadership to innovate, decide and evolve whichever method or system best suits their context and realities, depending on their priorities, culture and traditions (al-'Urf wa al-'adah) and best interests (*Maslahah*). From an Islamic juristic perspective, everything in such mundane affairs (*dunya/mu'amalat*) is permissible except what is clearly prohibited by valid evidence.²⁰⁵

As for the conditions for choosing a Caliph, Muslim scholars through the ages have come up with various criteria for the qualifications of a Caliph or leader of an Islamic state. Some lists are generally agreed upon, while others are debated or regarded as contextual. They all agreed that a leader or Caliph must be Muslim.

Al-Imam Mawardi stated about seven conditions for choosing a leader, which are: the leader should be fair and just, he should have a sound hearing, sight, and speech, he should be free from (impeding) disabilities, he should have a good thinking ability, he should be brave, knowledgeable, and he should come from Quraysh tribe.²⁰⁶

²⁰⁵ Al-Zarkashi, *Tashnif al-Masami'*, 1st.ed. Maktabah Qutubah, 1998, vol.3, p.436.

²⁰⁶ Al-Mawardi, *al-Ahkam al-Sultaniyyah*, dar al-Hadith, Cairo, p.19. This last tribal condition - being Qurayshi - is based on an authentic hadith to that effect. Its context, limits and implications will be discussed in greater depth later on in this material.

Al-Imam Abu Ya'la stated four conditions: the leader should be a descendant of Quraysh tribe, he should have the qualities of a judge such as maturity and sanity, he should possess political and military skills, and he should be the best in knowledge and religion.²⁰⁷

Ibn Khaldun explains that the condition of being a descendant of the Quraysh tribe goes beyond the simple literal meaning and implication of coming from a particular tribe. This is because coming from a particular tribe has no value related to the realisation of the intents (*Maqasid*) of Shari'ah. He interpreted the requirement of descending from specifically the Quraysh tribe as having the particular value of social acceptance and respect by other tribes in contexts where leadership and followership was primarily tribal.²⁰⁸

Some scholars also included being a male and being free from slavery to the list of conditions for leadership of a state.²⁰⁹

However, another condition included by the Shi'a is that the leader must be from the *Ahl al-Bayt* i.e., Family of

²⁰⁷ Abu Ya'la, *al-Ahkam al-Sultaniyyah*, dar al-Kutub al-'Ilmiyyah, Beirut-Lebanon, 2000, p.20.

²⁰⁸ Ibn Khadun, *the Muqadimmah*, translated by Franz Rosenthal, Princeton university press, 1967, p.211-212.

²⁰⁹ Al-Shinqeety, *Adwa al-Bayan*, dar Ibn Hazm, Beirut, 2019, vol.1, p.78, suratul Baqarah 30.

the Prophet (p), a guardian of the Divine will (*Shar'*) and protected from natural human mistakes and errors.²¹⁰

Ibn Taymiyyah and other Sunni scholars refuted this claim by explaining that it is indeed the Muslim Ummah that must be the guardian of the Divine will (*Shar'*) and not just an Imam.²¹¹

Is the Leader of a Modern Islamic Nation-State a 'Caliph' or a 'Wali'?

The Caliph has traditionally been the general leader of Muslims. He handles the affairs of Muslims in any part of the world and is regarded as the representative of the Prophet (p). Other terminologies such as Hakim, Amir al-Mu'minin, Imam, Sultan, Malik, etc. have been used to address the Caliph based on personal and customary preference. The Caliph cannot directly oversee the affairs of every Muslim throughout the Islamic lands. He therefore naturally appoints representatives in every community and region who direct the affairs of their regions and report back to him. These governors or representatives are

²¹⁰ Ibn Babawaih al-Qummi, *Ma'ani al-Akhbar*, Mu'assasah al-Nashr al-Islami, Qum, 1982, p.132.

²¹¹ Ibn Taymiyya, *Minhaj al-Sunnah al-Nabawiyyah*, al-Imam Muhammad bin Saud Islamic University, 1986, vol.6, p.382.

referred to in Arabic as *Wulaat* (the plural word for *Waali*).

Since the dissolution of the last Ottoman Caliphate in 1341AH., the Muslim Ummah has not witnessed any legal Caliphate overseeing the affairs of all Muslims throughout the world. The Muslim ummah eventually witnessed the division of Muslim lands into different countries and nation-states with different leaders as Presidents and Prime Ministers of each nation-state. In this situation, should the presidents of each Muslim nation be regarded as Caliphs or *Wulaat*? Can Muslims have many caliphs at a time in various Muslim nation-states and regions?

Looking at the systems of governance in existence today, geo-political realities, the state of the Muslims, and blocking the means for the formation of illegal caliphates by Muslim extremists and opportunists, many contemporary scholars believe that it will be more appropriate and beneficial for Muslims to see such leaders as *Wulaat* instead of as Caliphs. Others disagree. Some raise the concern about the possibility of having more than one Caliph at a time.

Can There Be More Than One Caliph At A Time?

The majority of classical scholars hold that as a general rule there ought to be just one Caliph worldwide, and that

there cannot be different ones in different countries, especially if these lands are administratively close to each other. Al-Mawardi wrote:

'If two different persons are appointed as Caliph in two different places, their Imamate shall not be valid, since it is not permissible that there should be two Imams at the same time, even though some have adopted the unorthodox view that this is permissible.'²¹²

However, there is an authentic hadith in which the Messenger of Allah (p) is reported to have said:

*'There shall be Caliphs, and there shall be many of them. [The Companions] asked: 'So what are your orders [for those times], O Messenger of Allah!' He replied: 'Remain loyal to the first one to whom you pledged allegiance first, and then to the next.'*²¹³

However, as al-Mawardi himself pointed out, some classical scholars hold that if the Islamic Empire extends over so vast an area that it would be highly impracticable to unite all its subjects under one leader, then one may divide

²¹² Al-Mawardi, *al-Ahkam al-sultaniyyah*, Bab al-Usul, p. 9.

²¹³ Al-Bukhari, *Sahih*, *Kitab al-Anbiya'*: Bab Ma dhukira 'an Bai Isra'il, Hadith 3455.

the empire into regions and appoint one Caliph to rule over each territory. 'Abd al-Qadir al-Baghdadi says:

'It is not permissible that there be two Imams at the same time who must be obeyed... unless there is between two areas a sea such as would prevent the people of one from helping the people of another. In that case, it is permissible for the people of each area to appoint their own leader.'²¹⁴

Al-Mawardi says:

'In disparate lands and far-flung cities, some scholars hold firmly that it is permissible (to appoint more than one Imam) since the purpose of appointing an Imam is to achieve certain benefits. If there are two Imams in two different regions, each will be in a better position to look after his region and control the area closest to him. Similarly, as it was possible for two prophets to be sent in a single era, and the commission of one did not render the other's Prophethood void, then in the case of Imamate it must hold even more true that this does not entail the invalidation of the Imamate.'²¹⁵

²¹⁴ 'Abd al-Qadir al-Baghdadi, *Usul al-din*, p. 274.

²¹⁵ Al-Mawardi, *Adab al-dunya wa al-din* (N.p.: Dar Maktabah al-Hayat, 1986), p. 136.

Imam al-Haramayn al-Juwayni expressed the same view in these terms:

'My position on this matter is that I am convinced that it is not permissible to appoint two Imams over a small area of territory, and there is a consensus in this regard. But if the area is far-flung and there is a substantial distance between the Imams, there is scope to accept such an arrangement, that situation falls outside the [normal] restrictions.'²¹⁶

Imam Qurtubi corroborates this view in his *Tafsir*, where he quotes the full passage from Juwayni verbatim.²¹⁷

Ibn Taymiyyah said:

"The sunnah (right path) is for the Muslims to have one Imam, and the rest are his deputies. If it is assumed that the *Ummah* digressed from that due to disobedience from some of them and incompetence from others, etc, and they had numerous Imams, it would be incumbent upon each Imam to establish the *hadd* punishments and fulfill the rights of his followers"²¹⁸

²¹⁶ Al-Juwayni, *al-Irshad ila qawati' al-adilla fi usul al-I'tiqad* (Beirut, 1405/1985), p. 357.

²¹⁷ Al-Qurtubi, *Tafsir* (Cairo: Dar al-Kutub al-Misriyyah, 1384/1964), vol. 1, p. 273; Surat al-Baqarah, Ayah 30.

²¹⁸ Ibn Taymiyya, *Majmu' al-Fatawah*, vol 34 pg175

A theoretical ideal has been that the Islamic state(s) should work towards the goal of there being only one Imam in charge worldwide. But practically, and in many past and present circumstances, natural barriers of physical, regional, and human geographies have made this reality unattainable and unrealistic. Realities such as distance and the natural barriers of geography are difficult to overcome and make such a global unity under one leadership impractical and administratively inefficient.

It was part of the historical practice of the Muslims to have multiple states and multiple rulers, and there is nothing to indicate or prove that any of them ever tried to use doctrinal justifications to unite all the various lands under a single banner. Yes, they did sometimes try to unify the Muslims for political, military, or denominational reasons, but never on the basis that it was an obligatory part of our belief system for there to be a caliphate and a single ruler.²¹⁹

During the time of the Abbasid caliphate, there were independent Muslim states in the Maghreb which had their own rulers, as well as other Muslim states in al-Andalus, and none of the scholars of the time spoke out against this. The only thing they forbade was for there to

²¹⁹ Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, pp.25-26.

be more than one leader in a single land. Some of the scholars of the Maghreb, such as al-Maziri (d. 1141) and ibn Arafah (d. 1401), took it further and openly declared that the multiplicity of lands made a multiplicity of governments and states permissible.²²⁰

Al-Maziri said, “The appointment of two separate leaders during the same time period is not allowed. Some of the later scholars have indicated, however, that if the lands in which the Muslims live are geographically distant from one another, or the land is so huge that news from the ruler does not reach those living on the edges and he is unable to adequately manage their affairs, then it is permissible for them to appoint their own ruler to see to their needs.”²²¹

Ibn al-Azraq al-Gharnati al-Maliki (d. 1344) said, “The requirement of there being just one unified leader and no other in the same time period ceases to be binding when it becomes a practical impossibility.”²²²

²²⁰ Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.26.

²²¹ Al-Maziri, *Al-Mu'lim bi Fawa'id Muslim*, Tunis Bayt al-Hikma, 1987, Cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.26.

²²² Ibn al-Azraq, *Bada'i al-Suluk*, Dar al-Salam, Cairo, 2011, cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.26.

Ibn Arafah said, as narrated from him by al-Ubayy, “If the distance between the leader and a far-off Muslim land is so great as to make his rulings unenforceable, the appointment of a different person to rule over that land becomes permissible.”²²³

Al Qurtubi (d. 1273) said, “If lands are geographically and culturally far apart, such as al-Andalus and Khorasan, then [the appointment of another ruler] becomes permissible.”²²⁴

Ibn Kathir (d. 1373) said, “Imam al-Haramayn narrated on the authority of his teacher, Abu Ishaq, that the appointment of two or more rulers was permissible if the lands were far apart and there was a tremendous expanse of territory between them. But Imam al-Haramayn himself was undecided on this matter. I say, this is very similar to the situation when there was an Abbasid caliph in Iraq, a Fatimid caliph in Egypt, and an Umayyad caliph in the Maghreb.”²²⁵

Al-Qinnauji said, “I see no problem with the appointment of several caliphs or sultans, and each of them must

²²³ Cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.26.

²²⁴ Al-Qurtubi, *Al Jami' Li Ahkam al-Qur'an*, Dar al-Fikr, Beirut, 2005, Cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.26.

be obeyed after receiving the oath of allegiance from the people of the provinces over which they rule.”²²⁶

Al-Shawkani (d. 1834) said, “It is well-known that after Islam spread and expanded to cover a massive area and the frontiers became separated by huge distances, each area fell under the rule of its own caliph or sultan, and that Caliph's commands and prohibitions only held sway in his own area under his authority, not in any of the others. There is no problem with the appointment of several caliphs or sultans, and each of them must be obeyed after receiving the oath of allegiance from the people of the provinces over which they rule.”²²⁷

These statements all prove that there is no way that Muslims can be coerced at sword-point to unite into a single nation under a single ruler, even if it is the ideal to which we all aspire and which best serves our religious and mundane interests-because it must be voluntary and not compulsory. Avoidance of harm takes precedence over

²²⁵ Ibn Kathir, *Tafsir al-Qur'an al-Azim*, Dar Ibn al-Jawzi, Riyadh, 2015, Cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.26.

²²⁶ Siddiq al-Qinnauji, *al-Rawda al-Nadiyya*, Dar Ibn Hazm, Beirut, 2009, Cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.27.

²²⁷ Muhammad al-Shawkani, *al-Sayl al-Jarrar*, Dar Ibn Kathir, Damascus, 2007, Cited in Abdallah bin Bayyah, *The Nation state in Muslim societies*, 3rd Framework speech of the Abu Dhabi Forum for Peace, 2016, p.26.

reaping of benefit in the Shari'ah. Given the extent that the conditions, time, place, and situation have changed, the legitimacy of nation states is no longer even in question, and this means that the same degree of obedience must be given to the leaders and laws of these states as was given to those Muslim states of the past.

With the Islamic world divided into scores of independently governed nation-states or countries; one would also have to first persuade their existing Muslim leaders and followers to accept any such proposal. Otherwise, this ideal goal could not be achieved without war between the Muslim nations – which would indeed be a greater evil. These circumstances leave one no choice but to accept the multitude of governments, for anything else would lead to chaos and harm that is greater than the uncertain benefits.²²⁸ Islamic political history also shows that there were numerous independent Muslim governments and Islamic states or caliphates, and the scholars considered their ordinances legitimate and binding on their populations and territories. In the light of this, Muslims should consider the ordinances given by various governments as valid and bind-

²²⁸ In this context various questions arise, such as the following: Should Muslims participate in international organisations such as the OIC (Organization of Islamic Conferences) which was established to represent the Muslim world in order to protect and safeguard the vital interests of Muslims in the spirit of promoting international peace, security, and harmony as well as inter-faith dialogue among various people of the world?

ing. This is also probably the most appropriate choice under the circumstances.

Elections and Voting

An election is a group decision-making process by which a population chooses an individual or multiple individuals to hold public office.²²⁹ Since the means of choosing a leader are not clearly stated in the Quran and Sunnah, Islamic history has witnessed different customary forms of choosing a leader that are permissible by default.

One of the traditionally preferred instruments for selection of leadership, was to use an electoral college, or “kingmakers” or a group of upright and respected representatives of the community to determine the next leader (or remove him), on behalf of the larger population. With the geographical and population size and cultural diversity of some nations, and the lower levels of trust for leaders and representatives due to rise in various forms of corruption, moral and religious decay, even among religious leaders, it has become more desirable for individuals to express their own opinion themselves. This is afforded by the voting system of electing leaders.

²²⁹ <https://en.wikipedia.org/wiki/Election>

The general public in some nations today, very much desire greater transparency, inclusivity, and participation in certain levels and matters of governance, such as the appointment to certain positions of leadership. There is an increasing interest in being more actively involved in certain political decision-making in some contexts. This public interest (as opposed to disinterest and apathy) of such large and diverse populations, is generally believed to be better served and more accurately represented by the diverse and evolving modern voting and election processes.

Juristic Perspectives on Elections And Voting

Elections within the general public however, have been regarded as permissible by some scholars but prohibited by others. Some of them are of the opinion that it is against the principles of the Islamic political system and governance, and that it is an alien innovation that was not adopted by the Prophet (p) and his companions. The proponents of this view believe that elections and the system of voting are contrary to Islamic teachings for the following reasons:

- 1. That elections and the voting system are alien to Islam, and there is no supporting evidence for these from the Qur'an or Sunnah.** Some who hold this posi-

tion also regard voting and elections as forms of blameworthy innovation (*Bid'ah*).

Others however view the subject of elections and voting as related to the category in jurisprudence of worldly mundane interpersonal transactions (*dunya/mu'amalat*) and not in the category of formal devotional worship (*ibadat*). Innovations that are beneficial and in the public interest in such worldly and mundane affairs (*mu'amalat*) are described by jurists as related to *maslahah* (benefits) in *Ijtihad* (juristic reasoning), and not to things described as *bid'ah* which are usually blameworthy or heretical innovations related to prescribed acts of devotional worship (*ibadat*).

Consequently, the legal presumption (*Istishab*) related to elections and voting is that these are permissible unless there is clear evidence that they are prohibited. The onus of proof is on those claiming it is prohibited, as it is forbidden for a Muslim to declare anything as prohibited (*haram*) without the prerequisite evidence from acceptable sources of Islamic law.

Being “alien” or “of foreign origin” is not a basis for discouragement nor a prohibition in Islamic jurisprudence (*Fiqh*). It is well-known that the Prophet (p) adopted a number of “alien” practices that were benefi-

cial, and which did not conflict with the Qur'an.²³⁰ The fact that there is no evidence from the Qur'an and Sunnah for a prohibition of elections and the voting system, is itself an argument for its permissibility.

If, however, it can be shown that elections/voting actually serve public interest and the greater good of a society, Islamic jurisprudence will actually support such elections/voting under the principle of "public interest" (*maslahah*). If in addition, it also reduces the possibility of tyranny and political oppression, then it will also be supported by other sources of Islamic law and evidence such as "blocking the means" (*Sadd al-dhari'ah*), and numerous maxims (*Qawa'id*) and objectives (*Maqasid*) of Shari'ah.

2. **That elections/voting contain more harm (*mafasid*) than benefit (*masalih*), in that voting and elections are established on the basis of going by the choice and opinion of the majority of people, which is regarded as discouraged in Islam.** Those who hold this view, support their position with the Qur'an, since Allah says: "*We found that most of them did not honour their commitment; we found that most of them were defiant.*" (Qur'an 7:102). This verse is interpreted to imply the unreliability of decisions made by a majority.

²³⁰ These include use of Persian military strategies such as the use of the trench in the Battle of the Trench.

Others, however, do not understand this verse or Islamic teachings in general, as considering the majority opinion as automatically weak, or always discouraged or prohibited. The verse cited simply makes the well-known observation, that most people in many contexts do not honour their commitments (to Allah or to others), and that most people are deviant in certain ways. It is not saying that most people in ALL contexts are unreliable, or that most people are ALWAYS deviant.

It is reliably established that in his compliance with the Qur'anic (3:159) requirement to “consult his people in matters (of public concern)” that the Prophet (p) sometimes went with the opinion of the majority of his followers, even when he preferred an alternative opinion. (This of course applied to only mundane issues of public concern that were not already decided by Divine revelation). The Prophet (p) is also reliably reported to have accepted the opinion of the majority of his companions, which was actually contrary to his own preferred opinion regarding the choice of fighting the advancing Meccan army at the Hill of Uhud or to engage them in the city of Medina.²³¹ When

²³¹ Safiyyu al-Rahman al-Mubarakfuri, *al-Rahiq al-Makhtum*, 1st ed. dar al-Hilal, Beirut, p.226-227.

Abdurrahman bin 'Awf consulted with the various individual community members of Medina, including women and children, in his attempt to decide who was preferred by the community as the next Caliph after Umar bin al-Khattab, he was interested in the opinion of the majority of the citizenry.²³²

The concept of *jumhur* (majority) is in fact regarded as important when considering the views of various schools of law or scholarly opinion. The Prophet (p) is reported to have said, "*Allah's hand (support) is with the jama'ah*"²³³ and also, "*My community (Ummah) will not agree on error.*"²³⁴ The Prophet (p) regarded the best of Muslim leaders as those who are loved and prayed for by the majority of followers, he said: "*The best of leaders are those whom the people love and who love them in return, who invoke God's blessings upon them and they invoke His blessings upon the people. And the worst of leaders are those whom the people hate and who hate them in return, and who invoke God's curse upon them and they invoke God's curse upon the people.*"²³⁵ There are also other pieces of evidence in the Qur'an

²³² Ibn Taymiyyah, *Minhaj al-Sunnah al-Nabawiyyah*, al-Imam Muhammad bin Sau'd Islamic University, 1986, vol.6, p.352.

²³³ Al-Tirmidhi, *Jami' al-Tirmidhi*, Hadith 2166.

²³⁴ Ibn Majah, *Sunan Ibn Majah*, Hadith 3950.

²³⁵ Abu Dawud, *Sunan Abi Dawud*, Hadith 2920.

and hadith used by Muslim jurists to support the strength of consensus (*Ijma'*) or majority opinion.²³⁶ These all suggest that an agreement or consensus of the majority of Muslims will be more reliable than that of a minority.

In the Maliki school of Islamic jurisprudence (*Madhhab*), the *Amal Ahl al-Medina* is regarded as a strong source of understanding the normative Sunnah and tradition of the Prophet (p).²³⁷ This however refers to the praxis and accepted actions of the majority of the People of Medina who were the generation of the students of the Prophet's Companions that were based in Medina at the time of Imam Malik bin Anas.

Classical Muslims jurists have never regarded an opinion to be wrong or weak simply because it is the view of the majority of people. The majority view is not regarded as problematic simply because it is the opinion of the majority. Nor is a minority opinion weak simply because it is held by a minority. The opinion of the majority is only problematic if there is a consensus

²³⁶ "And whosoever opposes the Messenger after guidance has become clear to him and follows a path other than that of the believers, We shall keep him in the path he has chosen and burn him in Hell-what an evil destination" (Quran 4:115)

²³⁷ Badr al-Din al-Zarkashi, *al-Bahr al-Muhit*, dar al-Kutubi, 1994, vol.6, p.440.

of the more knowledgeable and upright in the community who ALL hold onto one view, and this view is opposed by the majority. In contemporary elections and voting for leaders however, what is common is that both the knowledgeable scholars of integrity and the lay persons of integrity are divided regarding their candidates and positions. There is rarely a consensus among scholars (*Ijma'*) for one candidate or policy.

Consequently, there is no conclusive textual evidence from the Qur'an or Sunnah to prove that every majority opinion is wrong, or that every minority opinion is right. Islamic history, scholars and jurisprudence have seen many opinions held by the majority that are wrong or weak, and where the opinions held a minority are more correct and stronger. Conversely, there are also numerous cases where the majority opinion is correct, and the minority is wrong and even very misguided.

In conclusion, Islam does not teach that following the majority of opinion is automatically wrong, discouraged or prohibited. In fact, if the opinion of the majority will auger better for peace and stability, then it would be in the better interest of all (*Maslahah*) to respect and facilitate it. This is especially where for various reasons, there is low trust for community elders, leaders, and representatives.

3. It is also argued that the voting system does not value or distinguish the more educated and knowledgeable scholars from the more ignorant and uneducated voters, nor does it positively discriminate the vote or choice of pious people of integrity from selfish, corrupt and uncaring criminals.

While the idea that every citizen has one vote – one person, one vote – is viewed as a weakness in the election and voting system, others view it as a strength. Firstly, there is no evidence to suggest that the more educated, and those with university degrees are more morally upright than those with lesser levels of education. It is not correct to assume that the more knowledgeable and educated a person gets, the less corrupt, immoral, selfish, or criminal they become. On the contrary, some of the most corrupt and criminal individuals who have caused the greatest damage to our communities and nations, are among the more educated and wealthier classes.

Secondly, if only the educated and consequently wealthier members of a community were allowed to vote and elect the leadership, it would not be surprising that the elected leadership would only show loyalty and concern for interests and priorities of those who elected them. Such leaders would not care for the needs

and priorities of the majority who are less educated, rural, and poor. By allowing all citizen to have equal voting power, politicians are forced to visit and be concerned with the needs of the poorest, least educated, and furthest from the major urban areas. Giving the less educated an equal voting power with the more educated allows them to have a voice and some say in leadership decisions, instead of having no voice at all regarding the leadership that affects them too. One-person-one-vote therefore serves a very important public benefit (*maslahah*) and it is ultimately in the best interest of the Ummah and community. Discriminating against the poor and less educated in voting rights would actually be a form of injustice, oppression, and corruption (*mafsadah*).

Electing and voting of political representatives does not imply that ignorant people or just any group of people can decide on sensitive issues that require expertise. Elections only apply to positions in the government for “elected officials” or “political offices”. It should be noted, that giving the majority of uneducated citizens the opportunity to vote, does not mean that any citizen has a say regarding every decision made by the government. The majority usually only vote in their political representatives, they do not decide on technical issues that require the expertise of specialists in laws or the

judiciary, economic policy making, administration, defence and security, health and safety, agricultural policy, social welfare, etc. The decisions regarding the values of currency, banking or export promotion policies, and Covid-19 protocols for example, are not agreed upon by a democratic process involving the majority of citizens. The majority of citizens also do not have a say in who will be the CBN Governor, Chief Justice or any judge, Inspector of Police, or a military General. These are usually decided in consultation with teams of experts and specialists of specific fields recognised by various agencies, ministries, and institutions of authority, under the oversight of specific government officials, most of whom are not elected by the majority.

Out of the millions of government officials working in the various offices in democratic nations, only a very few, and much less than 1% are actually elected by citizens through the voting process. The United States for example, has a population of just over 332 million in 2022. The total number of elected government officials is 514,580.²³⁸ This is less than 0.2% of the population of that country. For Nigeria with the population of about

²³⁸ <https://www.census.gov/programs-surveys/annual-survey-of-governments/data/2020-governments-data.html>

220 million in 2022, the total number of elected government officials is 11,775.²³⁹

Other scholars are therefore of the opinion that election process is not a blameworthy innovation (*Bid'ah*), but a beneficial political and administrative innovation that serves the public interest (*maslahah*) and facilitates the ability for a population to express its choice, preference, and support in decision-making. From this perspective, the voting system and elections should actually be embraced, especially in the absence of a better alternative for realising the same objectives in contemporary contexts.

Some of these scholars see additional justifications and parallels between the objectives of elections/voting and several important principles and concepts of Islam. These include the concepts of *Shura* (consultation), *Bay'ah* (giving oath of allegiance), *Shahadah* (giving testimony) and *Wakalah* (Agency). *Wakalah* (Agency) is where a person is regarded as an agent or representative with specific responsibilities and terms of contract. This is common in Islamic Finance transactions.

²³⁹ <https://nass.gov.ng/document/constitution-of-the-federal-republic-of-nigeria-1999-as-amended>

The Modern Leader As 'Wakil' Not Caliph And The Implications To Voting/Election Systems

An elected political leader (President, Prime Minister, etc.) in most contemporary democratic contexts is a civil servant, and representative of the electorate, who is holding electoral office with specific limited responsibilities and terms of contract and tenure. He is also accountable to his electorate whom he represents. This is unlike the terms and qualifications discussed by classical scholars associated with the traditional office of a Caliph who was vested with much more power, and as such, was a supreme imperial leader and “benevolent dictator” of an empire or Caliphate. In view of this significant difference between the realities of each type of leadership, some scholars are of the opinion that the assumed qualifications, powers, and conditions for a person to be a Caliph should not be assumed or required of a contemporary leader who is literally a public servant and representative (*Wakil*). From this perspective, it is completely left for the public or electorate to decide on how they want to elect their representative and what terms and conditions they give such a representative. As this situation is very different from that of a Caliphate, the traditional ways of choosing a Caliph should therefore not be assumed, extended by analogy (*Qiyas*) or imposed on contemporary democratic contexts. It is therefore viewed as

completely permissible (based also on the legal presumption of permissibility – *Istishab*), to use a voting system or any other appropriate method deemed best for electing a democratic leader that is in reality a *Wakil* (Servant Leader) and not a Caliph (in the classical sense of the term).²⁴⁰

Bay'ah And Similarities to Voting

Bay'ah refers to the Oath of Allegiance that followers or their representatives give their leader as a sign of their recognition, preference for, and endorsement of a particular leader. Voting and elections are also seen to essentially perform similar objectives of expressing preference, recognition, support, and endorsement of a particular leader.

Consequently, some scholars view voting and elections as very similar to *bay'ah* (oath of allegiance), and by extension or analogy (*qiyas*) regard voting as permissible and encouraged since it also performs a public benefit (*maslahah*).²⁴¹

²⁴⁰ Fahd bin Salih al-'Ijlan, *Al-Intikhabat wa ahkamuha fi al-Fiqh al-Islami*, Dar Kunuz Ishbiliya, 1429, p.44.

²⁴¹ Fahd bin Salih al-'Ijlan, *Al-Intikhabat wa ahkamuha fi al-Fiqh al-Islami*, Dar Kunuz Ishbiliya, 1429, p.49.

***Shahadah* And Similarities to Voting**

Shahadah is the act of testifying, giving witness or testimony. Some scholars see a similarity between this permissible act and the act of voting and electing a leader. The act of voting is therefore seen as a testimony of the competence or greater competence of one leader when compared to another.

Giving testimony and witnessing that one leader is more worthy or more competent to lead than another does not automatically imply an endorsement of every trait and quality of the leader. It could also only imply that one believes that the leader voted for is better than the other – a greater good, or lesser evil. Based on the similarities between *Shahadah* and voting, the latter is viewed as permissible and supported by analogy (*qiyas*).²⁴²

***Shurah* And Similarities to Voting**

The community participation and inclusion in choosing its representatives is understood by most scholars to be an essential pillar of the Islamic governance system which is related to the concept of *Shura* – consultation and participatory decision-making. Elections and the voting sys-

²⁴² Fahd bin Salih al-'Ijlan, *Al-Intikhabat wa ahkamuha fi al-Fiqh al-Islami*, Dar Kunuz Ishbiliya, 1429, p.42.

tem are seen by some scholars as modern forms of *shurah* (mutual consultation) or participatory decision-making in matters that affect the community.

The process of appointment of a leader - *nasb al-khalifah* - must be by mutual consultation and community participation. This is based on the Qur'an and Hadith, and the statements and practises of the Rightly Guided Companions.

The Qur'an (42:38) describes a characteristic of the decision-making system of believers in the following words: “*And their matters are decided through mutual consultation.*” The Prophet (p) was himself required by Allah in the Qur'an (3:159) to “*consult them in matters (of public concern)*”.

Besides these texts, one of the strongest proofs that the way of choosing a leader (*Khilafah*) is to be decided through mutual consultation among the common Muslims is that the Messenger of Allah (p) did not himself nominate anyone to be Caliph after him but left it for the community to decide through consultation (*Shura*) as explicitly taught by the Qur'an.²⁴³

Still clearer proof of this comes from a tradition reliably related by al-Bukhari, according to which the Messenger of

²⁴³ Abdul Wahab Khallaf, *al-Siyasah al-Shar'iyah*, dar al-Qalam, 1988, p.24-25.

Allah (p) said to his wife 'Aisha (RA), “*I had made up my mind (or, I had intended) to send [a message] to Abu Bakr and his son [appointing Abu Bakr as Caliph] lest some people should start talking [about] and others wishing it [for themselves]; but then I said [to myself] that Allah would not allow [anybody else].*”²⁴⁴ The Prophet (p) therefore deliberately did not express his choice of a successor, but trusted that the community would through a consultative method be guided by Allah to the right decision.

While 'Umar was a Caliph, he delivered a speech in which he made many important statements including the following:

“.... If any person pledges allegiance to another without consulting the Muslims, neither he to whom allegiance was being pledged, nor he who pledged it are to be followed; for there is apprehension that both of them may be killed. And [Abu Bakr] was among the best of us when Allah summoned His Prophet (p).”²⁴⁵

According to another tradition (*athar*), Abu Hurayrah (RA) is reported to have related the following from 'Umar (RA), “If a person pre-empt the concerns of the Muslims

²⁴⁴ Bukhari, *Sahih*, Hadith 5666.

²⁴⁵ Bukhari, *Sahih*, Hadith 6830.

without due consultation, allegiance to him is null and void.”²⁴⁶

After the martyrdom of the third Caliph 'Uthman bin 'Affan, the people went to 'Ali and stretched out their hands to pledge allegiance to him as their new leader. Upon this, 'Ali said: “That is not for you [to decide], but for the advisory council and the warriors of Badr. So, whoever the advisory council approves, shall be (the next) Caliph. We shall assemble and consider the matter.”²⁴⁷

And when some of the people (or masses) insisted that Ali should then and there agree to be the next Caliph after Uthman, he said to them: “Very well then, let us go to the mosque; for allegiance to me must not be secret, or given without the approval of the generality of Muslims.”²⁴⁸

'Abd Allah ibn Abbas said, 'I did not want him to go to the mosque to take the pledge of allegiance, lest the people make noise (and fall into disagreement). However, 'Ali did not agree. He went to the mosque. Then when he entered the mosque the *Muhajirun* and *Ansar* also entered and

²⁴⁶ Ibn Abi Shaybah, *al-Musannaf*, ed. 'Awwamah (N.p.: Mu'assasah 'Ulum al-Qur'an, 1427/2006), vol. 12, p. 307; *Ma qala fi al-furud wa tadwin al-dawawin*.

²⁴⁷ Ibn Quaybah, *al-Imamah wa al-siyasah* (Cairo, 1388/1969), vol. 1, p. 66.

²⁴⁸ Abubakr Ibn al-Araby, *al-'Awasim min al-Qawasim*, Maktabah al-Sunnah, pp 147.

pledged allegiance to him, and then the people (masses) also pledged allegiance to him.'²⁴⁹

The Qur'an and Sunnah as understood by the Rightly Guided Companions, are therefore very categorical on the need for *Shura* or community participation and consultative decision-making in matters of politics and public affairs. The Qur'an and Sunnah however, have not prescribed any particular procedure for facilitating or conducting such participatory and consultative decision-making (*Shura*). It has been left to the Muslims of each era to decide the details for themselves.

It is in light of these that some scholars are of the view that there is no basis in the Shari'ah for regarding modern elections and the voting system as prohibited. The fact that these actually help realise the objectives of good governance, and to a great extent, those good purposes of *Bay'ah*, *Shahadah*, *Wakala* and *Shura* in contemporary context, makes some scholars view such electoral and voting systems actually as serving public interest (*maslahah*) and blocking means to harm (*sadd al-dhari'ah*), and should therefore be endorsed as supported by the Principles of Islamic jurisprudence (*Usul al-Fiqh*), Islamic legal maxims (*Qawa'id al-Fiqhiyyah*) and the purposes and objectives (*Maqasid*) of Shari'ah.

²⁴⁹ Al-Tabari, *Tarikh*, vol. 2, p. 427.

The Role Of Ahl Al-Hall Wa Al-'Aqd ('Electoral College') In Contemporary Contexts

Ahl al-Hall wa al-'Aqd ('electoral college') refers to those respected community members whom the populace at large customarily consider their guides and representatives. In the past, (as in certain community today), the *Ahl al-Hall wa al-'Aqd* also included tribal elders or clan leaders, scholars, jurists, leaders of different circles, and representatives of the people. This expression was not vague or ambiguous, and there was no difference of opinion as to its meaning in that cultural context. The society at large knew very well who belonged to this category, and so there was no need for any special formal identification. People in general recognized them and considered that anyone whose advice was not taken was not to be considered as representative of this political advisory council or electoral college.

What system could be adopted by societies and nations in this age, in view of the size and spread of the populations (including their diaspora), and diverse stakeholders?

In the opinion of many contemporary scholars, the advisory councils, electoral colleges, parliaments, senates, Houses of Representatives, and Houses of assembly, etc. do in reality constitute the various contemporary forms of *Ahl al-Hall wa al-'Aqd*. These ensure the best possible commu-

nity participation and consultative decision-making (*Shura*) at all levels of modern governance structures. Such organs of government or bodies, whether local, state, national, provincial, regional, or international, etc. would be elected directly or indirectly (through representatives) on a community majority-preference basis if it is to gain acceptance and credibility in the eyes of people as is one of the objectives of *Shura* in Islamic teachings.

In order to improve the Shari'ah compliance of government policies, it is important that elected leaders and representatives have some basic knowledge of the principles of Islamic jurisprudence, what Islam clearly prohibits, and the contexts and conditions for these. It is also important for such leaders to have a system of consulting relevant scholars, specialists, and organisations. This is sometimes also done during “public hearings” where stakeholders in the community are invited for consultation, before new bills and laws are passed by relevant authorities – senates, parliaments, Houses of Assembly, etc.²⁵⁰

The Qur'an and Sunnah have therefore given each community the leeway, flexibility, scope and choice regarding their preferred method of electing a leader. What is most important is that the method of choice is the most

²⁵⁰ See Rached Ghannouchi, *Public Freedoms in the Islamic State*, Yale University Press, 2022, p.146.

acceptable and appropriate for its context and does not conflict with Shari'ah. It should be inclusive, consultative, and participatory, practicable and convenient for choosing a leader that the community believe is best for them - one that the community likes, and who likes their people.

Multi-Party Systems in a Democracy

Some view the existence of more than one political party competing for power with others as promoting disunity, which is prohibited in the Qur'an and Sunnah. Islam encourages Muslim unity and not disunity. Muslims, it is argued must therefore maintain one political party under Allah.

Others argue that a multiparty system is one in which several political parties, organisations, or groups compete in some ways while cooperating in other ways with one another in offering superior leadership and administrative, and better public services and community welfare (*maslahah*) in changing contexts. The objective therefore is not disunity, but competing and cooperating in the doing of what is best for the community.

The difference between competing political parties is one of legitimate diversity (*khilaf*) in realizing the purposes of government in Islam and not disunity. This is similar –

according to some scholars – to the diversity within schools of law (*madhhabs*) in their juristic reasoning (*ijtihad*), or competition between Islamic financial institutions (such as banks, etc.), as they each try to offer superior and competitive services to the community. It is the same reasoning behind Muslim institutions competing in offering better education, Qur'an recitation competitions, better healthcare facilities and systems, while at the same time being part of associations and umbrella organisations that allow them to effectively cooperate with each other in ensuring agreed ethics and standards that meet their shared goals of contributing to society.

The Qur'an (2:148) explicitly encourages Muslims to “*compete in the doing of good*”, while also asking them to “*cooperate in righteousness actions and piety...*” (Qur'an 5:2). The competition in meeting “public interests” (*maslahah*) and cooperation in protecting political stability and due process is understood by these scholars to be fully in compliance with the Qur'an and Sunnah. Political parties of the opposition are also usually more organized and effective in enjoining what is right and identifying and correcting the wrongdoings of those in power when compared to other groups.

The legal presumption of permissibility in matters related to worldly politics and administration. This is

supported by the legal maxim of – “the norm regarding things is that of permissibility” (*Al-asl fi al-ashya'a al-ibahah*).²⁵¹ In addition to textual evidence interpreted in favour of political and other forms of “cooperation” and “competition in the doing of good”, the absence of any explicit textual evidence against a political multi-party system of governance is therefore also viewed as evidence for its permissibility.

A multiple-party system is not meant to create unnecessary disunity, but to organise political parties that have different paradigms, priorities, agendas, and approaches to development, which are not against Islamic teachings. They allow Muslims to have a choice in identifying the best team of citizens who should be trusted with the affairs of leadership. Forcing groups that disagree on community priorities and approaches to join one group or party only will create unnecessary infighting and resentment.

In line with the legal maxim: “Harm must be removed” (*Al-darar yuzal*),²⁵² a multiparty system is needed to reduce the chances of a team of corrupt leadership staying in office because there are no alternatives to the corrupt

²⁵¹ Ibn al-Nujaim, *Al-Ashbah wa al-Nazair*, 1st ed. Dar al-Kutub al-Ilmiyyah, Beirut, 1999, p.56.

²⁵² Al-Subki, *Al-Ashbah wa al-Nazair*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, P.41.

leader and his team/party. It also ensures that there are other competent teams of politicians and leaders on standby if one team is seen to be incompetent or corrupt. It also provides a platform that puts pressure on the existing leadership to perform their best.²⁵³

Another legal maxim states that “The means to an obligation (*wajib*) is also an obligation (*wajib*)”.²⁵⁴ If the need for the benefits (*maslahah*) of a multiparty system – political stability and smooth transition - is an essential obligation to political stability then so are the means and systems put in place to ensure these.

A state with multiple political parties can decide through a consultative process (*shura*) how it will regulate and organize its various political parties on how to govern, what to prioritize, how to choose representatives, and how to relate with other political parties. This is left to every community to decide based on the best interest of its people (*maslahah*). A legal maxim related to this states that; “the decisions of the leader regarding affairs of the people are determined based on public interest” (*Tasarruf al-Imam ala al-ra'iyah manutun bi al-maslahah*).²⁵⁵

²⁵³ Yusuf Al Qaradawi, *State in Islam*, translated by El-Falah, published by El-Falah press Cairo 1998, p.225.

²⁵⁴ Mohammad Hashim Kamali, *Maqasid al-Shari'ah, Ijtihad and Civilizational Renewal*, Occasional Papers Series 20, IIIT London and IAIS Malaysia, 2012, p.30.

²⁵⁵ Al-Suyuti, *Al-Ashbah wa al-Nazair*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, P121.

There are no explicit texts prohibiting a community or nation from having multiple political parties competing and cooperating in the interests of the people. The legal presumption on such mundane (*dunya*) affairs related to social and political transactions (*mu'amalat*) is that everything is permissible unless proven prohibited. However, evidence from experience in many countries shows that having multiparty systems can on the whole, actually be more beneficial for improving the attainment of the objectives of good governance.

Campaigning For Political Office

Campaigning refers to the process of promoting a candidate, a political party, a product, or an idea through various means of communication, such as advertising, public speaking, social media, and other forms of outreach. In a political context, campaigning often involves activities such as rallies, debates, canvassing, and fundraising to persuade voters to support a particular candidate or political party. It may also involve conducting research to understand the needs and concerns of the electorate, developing campaign strategies, and crafting persuasive messages.²⁵⁶

²⁵⁶ <https://www.merriam-webster.com/dictionary/campaigning>.

Election may involve campaigning and extolling oneself or one's party so as to convince the populace of one's competencies and integrity and win the hearts and minds of the majority. This may or may not be prohibited depending on the context and purpose, and jurists, both past and present, have held divergent positions based on their independent reasoning (*ijtihad*) and how they try to reconcile the various texts with their purposes and contexts.

The Qur'an and sunnah narrate some instances that indicate that seeking a position of authority was done by pious individuals as a sacrifice in the interest of the common good and public interest (*maslahah*). There are however also some texts that seem to prohibit seeking for leadership positions; some of which include:

A Hadith relates that the Messenger of Allah (p) told 'Abd al-Rahman ibn Samurah: *"Do not ask for leadership, for if you are given it because of having asked for it, you will be left in [sole] charge of it; but if you are given it without asking, you will be helped in it [by Allah]."*²⁵⁷

It is related by Anas that the Messenger of Allah (p) said: *"Whoever wants to be a Qadi (judge) and asks people to recommend him shall be left to his own devices; but who-*

²⁵⁷ Sahih al-Bukhari, Hadith 6622.

*ever is forced to be one, Allah shall send an angel to keep him straight.”*²⁵⁸

Abu Musa al-Ash'ari reported that two men from his tribe asked the Prophet (p) for a leadership post. To this, the Prophet (p) replied: “*We do not give this to those who ask for it or are eager for it.*”²⁵⁹

Some scholars, however, based on other texts in the Qur'an and Hadith, distinguish between two types of seeking political office:

- i) Seeking positions of leadership by the incompetent, who take the responsibilities too lightly or whose purpose is self-aggrandisement and the mere quest for power or wealth, (which all scholars consider prohibited); and,
- ii) those who seek it knowing they are competent and purely as a sacrifice and in the service of the community, for the purpose of promoting the common good (*maslahah*), or in order to prevent others who are corrupt or incompetent from causing harm and undermining social values – (which these scholars regard as permissible and necessary).

²⁵⁸ Sunan Ibn Majah, Hadith 2309.

²⁵⁹ Sahih al-Bukhari, Hadith 7149.

They have therefore concluded that in the context of seeking leadership for the common good as a service to the community, it is permissible to ask for office or a government post. Part of the evidence for this position is based on the words of Prophet Yusuf (p) mentioned by Allah in the Qur'an when he sought for office in order to serve the community: *"Put me in charge of the treasures of the land. I am a most knowledgeable steward."* (Qur'an 12:55)

Some scholars use this verse as justification for contesting elections and publicizing their own merits or those of their party. This is based on the fact that Yusuf (p) not only asked for this post but even mentioned some of his own qualities and capabilities. Allah in the Qur'an thus informs Muslims that Prophet Yusuf (p) campaigned for the position of the Minister in charge of the food security in Egypt during his time.

Allah says: *"He (Yusuf) said: Set me over the storehouses of the land. Verily, I am a competent custodian."* (Qur'an 12:55 – an alternative translation). Here the Prophet Yusuf (p) was not boasting, but extolling his virtues and competences to the king in order to win his favour and agree to Yusuf's request for the public office he sought which was critical to the general welfare of the society. Yusuf (p) was fully aware of the food security challenges ahead, and decided to seek office where he could be of the greatest service to the community.

To some scholars however, Yusuf did not campaign for the post. They believe that it was already clear to Yusuf (p) that the king was going to give him a post (Qur'an 12:54). The only question to be settled was which responsibility was to be entrusted to him, and Yusuf (p) made his preference known. These scholars therefore do not regard this verse as adequate evidence to permit campaigning during elections. Other scholars however consider the fact that Yusuf (p) still went ahead and asked for office of leadership, as evidence for the permissibility of campaigning under certain conditions.²⁶⁰

In addition to the Qur'anic verse regarding Yusuf (p) seeking office, Imam Abu Dawud records from Abu Hurayrah the following Hadith: *"One who seeks office as a judge of Muslims and acquires it, and whose justice prevails over his injustice, shall have Paradise."*²⁶¹

It was narrated that 'Uthman bin Abi Al-As said: "I said: 'O Messenger of Allah, make me the Imam (prayer leader) of my people.' He said: 'You are their Imam, so consider the weakest among them and choose a Mu'adhdhin (caller for prayer) who does not accept any payment for his Adhan.'"²⁶²

²⁶⁰ Fahd bin Salih al-'Ijlan, *Al-Intikhabat wa ahkamuha fi al-Fiqh al-Islami*, Dar Kunuz Ishbiliya, 1429, p.249.

²⁶¹ Abu Da'ud, *Sunan, Bab fi al-qadi yukhti' wa yusib*.

²⁶² Sunan Nasai 7:680

As for the hadiths cited earlier which seem to prohibit one from seeking a leadership position, it can be understood in such a way as not to unnecessarily contradict these other texts. If we understand the earlier hadiths as discouraging or prohibiting giving power to those who seek it for either personal aggrandizement or to those who may be honest in character, but weak in competence and unable to handle the heavy responsibilities and pressures that come with such leadership positions.

Sometimes, and more often than not, there are situations in which a person knows instinctively that if he does not ask for a certain post it will go to someone who will not fulfil the rights of the people, and corruption will spread as a result. In such pressing situations (*hajjah*), it is permissible or even necessary for good people to ask for a post and seek positions of power, provided that one sincerely desires betterment and reform rather than fame and prestige. Qadi Abu Ya'la al-Hanbali in his book *al-Ahkam al-Sultaniyyah* adopted this very stance, which was later corroborated by other scholars.²⁶³ Zafar Ahmad 'Usmani also gives preference to this point of view in his work *I'la' al-Sunan*.²⁶⁴ Most scholars would accept such a

²⁶³ Abu Ya'la, *al-Ahkam al-Sultaniyyah*, dar al-Kutub al-'Ilmiyyah, Beirut-Lebanon, 2000, p.71.

²⁶⁴ Zafar Ahmad 'Usmani, *I'la' al-Sunan*, Idarat al-Qur'an wa al-'Ulum al-Islamiyyah, 1415, vol.15, pp.45-50.

permissibility and necessity in a situation of communal need (*hajah ammah*) or necessity (*darurah*).²⁶⁵

Therefore, some interpretations of these hadiths can lead to the conclusion that seeking public office is prohibited in general irrespective of the purpose of such campaigning or lobbying. This interpretation however appears to conflict with other texts of the Qur'an and sunnah. These same "prohibiting" hadith however can also be interpreted in such a way as not to conflict with these other "conditionally permitting" texts if the purposes (*maqasid*), intent, and context of each of these texts are considered.

The difference among scholars in their interpretation of these texts can either be resolved as some do through "preference and elimination" (*tarjih*) of some of the texts in favour of others, or (preferably) through reconciling the meanings of each text, such that they are harmonized (*jam'*) and so do not require resorting to abrogation (*naskh*) or elimination/preference (*tarjih*) of any credible texts. An interpretation arrived at through harmonizing or reconciling (*jam'*) all relevant texts and pieces of evidence, is regarded by scholars as superior to one arrived at

²⁶⁵ See Fahd bin Salih al-'Ijlan, *Al-Intikhabat wa ahkamuha fi al-Fiqh al-Islami*, Dar Kunuz Ishbiliya, 1429; Zafar Ahmad 'Usmani, *I'la' al-Sunan*, Idarat al-Qur'an wa al-'Ulum al-Islamiyyah, 1415, vol.15.

through elimination or preference (*tarjih*), or through abrogation (*naskh*).²⁶⁶

Based on this, there are no undisputed texts that prohibit seeking political office if it is intended to be of civil service and in the interest of the common good, and given to those who are capable of handling its attendant responsibilities. It is not permissible when it is sought or given in pursuit of personal aggrandizement.

Women in Political Office and Leadership

Can a woman hold the highest political office of the Head of State, President, or Prime Minister in a contemporary democratic Islamic nation-state?

Some Muslims regard a State as not being “Islamic” if it is led by a woman. Others regard the inclusion of women in positions of leadership as an inseparable part and parcel of a democracy. They therefore regard democracy as incompatible with Islam, since it permits women into leadership positions, and especially the position of the head of state.

²⁶⁶ Al-Shawkani, *Irshad al-Fuhul*, 1st.ed. Dar al-Kitab al-'Araby, 1999, vol.2, p.264; Abu Ya'la, *al-'Udah fi Usul al-Fiqh*, 2nd.ed. 1990, vol.3, p.1046.

Gender Equality not a Prerequisite for Democratic System

The gender of any particular office holder is not one of the essential pillars that define a democracy. The gender of the head of state or any other office of leadership is related to the culture and laws of the land and not to the political structure or system of governance. In other words, permitting or not permitting, having or not having women in the office of the head of state (or any other office) does not reflect on the democratic character or governance system of the state, but the nature of its laws and culture.

Some countries were regarded as democratic even when women were legally and constitutionally not allowed the right to even vote, let alone hold any political office. Some of these nations have for various cultural and other reasons never had a female head of state, yet they are regarded as examples of modern democracies. Whichever position a Muslim or Muslim community holds regarding the permissibility of women in leadership, is a choice related to jurisprudence and law, and not the governance structure or democratic qualification of the state, especially if that is the preference and will of the majority of its scholars and citizens.²⁶⁷

²⁶⁷ It is worth noting that a number of Muslim majority countries have had Muslim women as heads of state, and these include Pakistan, Bangladesh, Tunisia, Senegal and Indonesia, etc.

Diversity of Opinions among Jurists on Women in Political Leadership

There is a diversity of opinions among classical and contemporary Muslim scholars and jurists regarding the permissibility of a woman to be a head of state or Caliph.²⁶⁸

1. Some regard it as prohibited (*Haram*) and even extend this prohibition to all levels of leadership in the community.
2. Some regard only being the Head of State as prohibited, while permitting (*mubah*) women into all other political offices of leadership. These would therefore permit women in offices such as ministers, ambassadors, judges, heads of agencies, governors, military generals, etc.
3. Others regard it as discouraged but tolerated (*Makruh*), and not absolutely prohibited or sinful (*Haram*).
4. Others regard it as only prohibited for a woman to head a traditional Caliphate where she alone is the supreme or imperial leader of all Muslims. They do not regard it as prohibited for a woman to be president or the head of a modern democratic nation-

²⁶⁸ Abul Walid Muhammad bin Ahmad bin Muhammad bin Rushd Al-Qurtabiy Al-Andalusi, *Bidayatul Mujtahid Wa Nihayaul Muqtasid*, Vol.2, p.377.

state with separation of powers, where the leader does not have the same imperial powers as that of a traditional caliph, in the classical sense.

5. Yet some classical and modern jurists regard it as completely permissible (*Mubah*) for a woman to be a Head of State (or Caliph) even in a caliphate system, and that she can therefore hold any other position of leadership. Those who hold this opinion regard the evidence presented for the prohibition as insufficient to justify such a position.

Even those scholars who regard women in any particular level of leadership as prohibited by default, consider it as temporarily permissible and legitimate in situations of general societal need (*hajah al-'aammah*) or necessity (*darurah*), as a “lesser evil”, and in order to prevent a greater harm, if that will be in the best interest (*maslahah*) of a community, and only for as long as the necessity for it exists.

The detailed analyses of each of these opinions and the evidence presented by their proponents among classical and contemporary jurists is beyond the scope of this work.²⁶⁹ Thus, only some of the most important argu-

²⁶⁹ Those interested in a more detailed analysis of the various opinions on women as heads of state and holding various other levels of leadership are

ments and pieces of evidence will be discussed here. Hence, the focus of this discussion will be on the contemporary context of most democratic Muslim nation-states. In other words, is it permissible in Islamic jurisprudence for a woman to be a head of a nation-state in the context of a modern democracy?

The democratic nation-state is a contemporary phenomenon that presents a whole new context in Islamic governance and political thought, which was not in existence in the past, and therefore not discussed by any classical scholars of *al-Siyasah al-Shar'iyah* or *al-Ahkam al-Sultaniyyah*. In view of this changed reality and difference in political contexts, some contemporary scholars are of the opinion that it is not truthful or proper to quote schol-

advised to consult other work on this including: al-Qurtubi, *al-jami' li ahkam al-Qur'an*, vol 5 p. 168; Ibn Kathir, *Tafseer al-Qur'an al-'Azim*, vol. 1, p. 492; Abdullah bin Baz in *Fatwa No. 20677*, www.IslamQ&A.com (5th August, 2012); Zahiri, *Asma' al-Sahabah al-Ruwah*; El-Fadl, Khaled Abou, *Speaking in God's Name: Islamic Law, Authority and Women*, (Oxford: Oneworld Publications, 2001); Cited in *Female Leadership in Islam*, by Maulana Muhammad Karolia from www.beautifulislam.net/women/female_leadership_islam.html (August, 2012); Jamal Badawi, *Women under the shade of Islam*, p.22; Magda Amer, *An Islamic perspective on legislation for women*, p.37; Alexis, Carrel, *Man: the Unknown*, (New York, 1449) ; Yusuf al-Qaradawi, *The Status of Women in Islam*; Sanusi Lamido Sanusi, *Women and Political Leadership in Muslim Thought*, published online at <http://khaliffgusau.blogspot.com/2017/07/women-and-political-leadership-in.html?spref=tw>; Iqbal S., *Woman in Islamic Law*, (Adam Publishers and Distributors, New Delhi, 2004), p.205.

ars of the distant past as commenting on contemporary contexts that they did not witness or address.

Some contemporary jurists are of the opinion that the evidence used by classical scholars of the past to prohibit women in leadership or as heads of state, still apply to the contemporary nation-state, whether democratic or not.

Textual Evidence For and Against Women in Leadership

Scholars who argued against women holding political offices and/or the office of the head of state, support their position with arguments and various pieces of evidence which include the following:

1. The verse of the Qur'an (4:34): “*Men are maintainers (or in charge) of women...*”. This verse is understood to imply that men generally should not be under the authority or maintenance of women.
2. The verse of the Qur'an (33:33): “*...and stay in your houses...*”. This verse is understood to imply that women should not participate or be involved in public affairs of a community.
3. The hadith in Sahih Bukhari, “*a people (or nation) whose affairs are in the hands of a woman will not succeed*”. This hadith is understood to prohibit nominating a woman into some or all positions of leadership.

4. The argument based on the principle of preclusion or “blocking the means” (*Sadd al-dhari'ah*). This argument prohibits women holding political office as a means to prevent intermingling between men and women.
5. The argument that women have natural impediments and challenges to leadership such as menstrual periods, pregnancy, etc., which can undermine their ability to shoulder the burden of political leadership.

Based mainly on these, most jurists are of the opinion that holding the position of the head of state of an Islamic state or caliphate by a woman is not permissible. While numerous arguments and texts are presented as evidence for this prohibition of women in leadership, the strongest and most common textual evidence presented for this position seems to come mainly from one verse of the Qur'an and a hadith.

1. The verse of the Qur'an states that, “*Men are maintainers (or protectors) of women*” (Qur'an 4:43).

This is understood to therefore prohibit its opposite, which means that women cannot and should not be maintainers or protectors of men. This is understood by

some scholars to imply a prohibition of women taking political positions of community leadership.

Other scholars, however, challenge this interpretation based on its own textual context, and its implications when considering the historical context or occasion of its revelation (*Sabab al-Nuzul*).

From the textual context, the remaining part of the same verse clearly stipulates that the “maintenance” referred to in the earlier part of verse refers to the responsibility for financial maintenance and protection that Islam puts on the husband/father or “men” to cater for the needs of the women of his family. Later in the same verse is the discussion on how a husband should manage a case of ill-conduct (*nushuz*) on the part of his wife. This clarifies further the fact that the earlier part of the verse refers to the domestic context between couples.

The verse in full reads:

*“Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and **because they support them from their means.** Therefore, the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard As for those from whom you fear disloyalty (*nushuz*), admonish them, and abandon*

them in their beds, then strike them, then if they obey you, do not seek to do injustice to them; indeed Allah is Supreme, Great” (Qur'an 4:34).

Other scholars therefore understand and interpret this verse as applying only to the domestic context of the family, and do not see any justification from the rest of the Qur'an or the Sunnah for extending the implication of this verse to all other contexts – education, healthcare, finance, security, scholarship, management, etc. – and definitely not the political contexts of governance and community leadership.

The historical context and occasion of the revelation (*Sabab al-Nuzul*) of this verse, as discussed by classical commentators (*Mufasssirun*) based on the relevant hadith, also demonstrates that it was revealed in the domestic context of a woman (by the name Habibah bint Zayd) who came to complain to the Prophet (p) about being mistreated by her husband (Sa'd bin al-Rabi').²⁷⁰ This case is clearly in the context of the family, and the verse highlights the financial or material responsibilities which men have towards their wives and family.²⁷¹

²⁷⁰ see *Tafsir al-Baghawi*, 1st.ed. Dar Ihya al-Turath al-Adabi, Beirut, vol.5, p.510; *Tafsir al-Qurtuby*, Dar al-Kutub al-Misriyyah, Cairo, vol.5, p.168; Zuhayli, *Al-Tafsir al-Munir*, Dar al-Fikr, Syria, vol.5, p.54.

²⁷¹ Ahmad Al-Sawiy Al-Malikiy, *Hashiyat al-Sawiy 'Ala Tafsir al-Jalalain*, Darul Fikr, Lebanon, Volume I, pg. 288.

These essential considerations of this context (*Sabab al-Nuzul*), and the textual context of the verse, are among the reasons why some scholars do not see the relevance of this verse to the subject of women in political leadership. They also do not see any justification in the relevant texts for extending and generalising its implications from the simple context of the family to the very different political contexts of public office or the headship of a state, which most people are not competent enough to hold.

2. Another major piece of evidence used to prohibit women from political office in the context of a contemporary democratic nation-state is a hadith narrated by Abu Bakrah al-Thaqafi. **This hadith states that the Prophet (p) said, “A nation that entrusts her affairs to a woman will not succeed”.**²⁷²

This authentic but solitary hadith (*hadith ahad*) is narrated by only one companion Abu Bakrah which makes it *gharib*.²⁷³ This hadith has been interpreted in various ways by both classical and contemporary scholars when considered in the light of its wordings, context, and other pieces of evidence. There is no other clear and authentic textual evidence from the Prophet (p) to help corroborate

²⁷² Sahih al-Bukhari, Hadith 6686.

²⁷³ *Gharib*, in hadith sciences, refers to a hadith narrated by only one narrator at any era.

and strengthen its precise meaning and implication. Some scholars cite the fact that Aisha (the wife of the Prophet (p)), was the leader of Muslims in the Battle of the Camel, and she was supported by some great Companions of the Prophet (p) such as Talha bn Ubaydullah and Zubayr bn Al-Awwam. These greater and more respected Companions (including Aisha) seem not to have known or understood that it was prohibited for a woman to lead men. Also, the fact that Allah in the Qur'an actually presents the case of Bilqis, the Queen of Sheba as an exemplary leader, is seen by some as textual evidence of the absence of any divine objection to a woman's leadership.²⁷⁴

The existence of these facts and other pieces of evidence that conflict with some of the apparent meanings of this hadith has left the categorization of this hadith as one of both presumptive authenticity (*zanni al-thubut*) and presumptive implication (*zanni al-dilalah*), and hence necessarily open to diverse legitimate interpretations and differences (*khilaf*) over its legal implications. Consequently, numerous interpretations have developed around this hadith by classical and contemporary scholars which are beyond the scope of this discussion.²⁷⁵

²⁷⁴ Qur'an 27:23-35.

²⁷⁵ See Ibn Kathir, *Al-Bidayat wa al-Nihayat*, vol.7, p.230; Ibn Taimiyyah, *Minhaj al-Sunnah*, p.185; Maulana Muhammad, *Female Leadership in Islam*; El-Fadl, Khaled Abou, *Speaking in God's Name: Islamic Law, Authority and Women*, (Oxford: Oneworld Publications, 2001).

The hadith has been interpreted by some scholars to refer only to the office of the caliph or Head of State; in other words, the person entrusted with the “affairs of a nation”. The circumstances surround the narration of this hadith (*Sabab al-wurud*), is narrated in Sahih Bukhari to be in response to the news of the newly appointed but incompetent Queen of Persia, the downfall of which was already imminent to the Companions, and also foretold in the Qur'an (Surah al-Rum, 30:2-4) revealed eight years earlier while in Mecca. Based on these and the historical context referred to by the hadith, some scholars understood the kind of system of leadership being referred to in this hadith to be one where “all the affairs of the nation” were in her hands – i.e., an imperial leader. This was typically a system of imperial leadership, similar to that in Persia, which was an empire under one leader, and similar to that of a supreme imperial leader or Caliph. These scholars therefore accept that a woman cannot be a supreme imperial leader or Caliph of the global Muslim Ummah.

However, given the significant difference between such an imperial system and the modern democratic nation-state with separation of powers of government, and where no leader has full authority over “all the affairs of the nation”, these scholars restrict the implication of this hadith to only the kind of authoritarian and totalitarian

leadership practiced in its historical context. They do not apply it to the contemporary democratic context where a Head of State can be censored or even impeached by a parliament, senate, or a referendum. In the democratic context, no nation has all its affairs in the hands of any one leader, man or woman. Consequently, these jurists accept the hadith in its context, but regard the extension of its implications to the modern democratic context as unwarranted by its very different historical context. The legitimacy of considering such a changed context is also based on a universally accepted legal maxim which states that, “there is no denying that rulings change with the change in context” *la yunkar taghayyur al-ahkam bi taghayyur al-ahwal*.²⁷⁶

This is similar to the implications of changing contexts to the numerous authentic hadith which clearly consider belonging to the tribe of Quraysh as being a pre-requisite for legitimate political leadership in Islam. The Prophet (p) is reported to have said, “The leaders shall be from the Quraysh”.²⁷⁷ In the historical context of early Islam, the tribe that held the respect and confidence of the majority

²⁷⁶ Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, 1st ed. Dar Ibn al-Jawzi, Saudi Arabia, vol.1, p.48; Group of scholars of the Ottoman empire, *Majallat al-Ahkam al-'Adliyyah*, p.20. The maxim is also quoted as *la yunkar taghayyur al-ahkam bi taghayyur al-zaman*.

²⁷⁷ *Al-Nasa'i*, No: 5942.

would be granted the reins of power. Since the time of the Prophet (p), though the period of the early caliphates – Rashidun, Umayyad and Abbasid – this status was occupied by the Quraysh. In other words, political authority was not because of any racial precedence or tribal superiority ('*asabiyya*'), but on some of the positive qualities associated with the Quraysh at the time, and importantly, based on what was most acceptable to the majority in that tribal context of Arabia.²⁷⁸ However, as pointed out by some classical scholars, it also follows from this that the Quraysh were entitled to rule after the Prophet (p) as long as they enjoyed the confidence of the majority and were the most competent. Once they lost this significance and confidence as they gradually did, they were not automatically entitled to rule.

Therefore, while the hadith on the Qurayshi qualifications of a leader in Islam is authentic, the change in contemporary contexts has necessitated that its implications and application also change. This is understood by some scholar to be similar to the effect of changing political

²⁷⁸ This is also clear from another hadith where the Prophet (pbuh) said, "*People in this matter follow the Quraysh. The believers of Arabia are the followers of their believers and the disbelievers of Arabia are the followers of their disbelievers*". (Muslim, No: 1818) This reason was also the reason given by Umar bin al-Khattab to persuade the Ansar of Medina to accept Abubakr who was also a Qurayshi as the first caliph after the passing away of the Prophet (pbuh).

contexts on the implications and application of the authentic hadith understood by some to prohibit women from holding supreme and imperial political leadership. This argument insists that the interpretation and implications of a hadith cannot be forced onto a new context that is significantly different from that which it originally applied to.

Consequently, when considering the current democratic political context, these scholars see “silence in the text” of the Qur'an and Hadith, as this current context is not explicitly addressed by any text. In such a situation, where there is no other clear text of the Qur'an or hadith prohibiting women from taking any office of leadership in the current context, the default legal presumption in mundane interpersonal (*mu'amalat*) affairs is that “everything is permissible except what is prohibited by clear evidence”. The absence of any prohibiting evidence is itself viewed by jurists as evidence for permissibility. These scholars and jurists therefore regard it permissible for a competent woman of character be a Head of State in a modern democratic nation-state. Consequently, and by extension, she can hold any other political office of lesser significance.²⁷⁹

²⁷⁹ Al Qaradawi, *State in Islam*, translated by El-Falah, published by El-Falah press Cairo 1998, p.246-271; See “A Response to Those Who Deny Women Political Rights”, by Sheikh Yusuf Al-Qaradawi in: http://www.onislam.net/english/ask-the-scholar/shariah-based-systems/imamate-and-political-systems/170849-a-response-to-those-who-deny-women-political-rights.html?Political_Systems(August 2012).

Along similar lines of consideration of the change of political contexts and realities surrounding the new structure of democratic governance, others argue (as discussed earlier) that the contemporary democratic context of leadership with limitations and separation of powers, terms of office and specific executive responsibilities, is drastically different from the traditional imperial caliphate system. This makes it difficult to find analogies from the past political systems that could be regarded as similar to the contemporary ones. Consequently, the closest analogy for the current system of representative leadership comes from the system of agency (*Wakala*) in *mu'amalat* (e.g., in Islamic finance). These scholars argue that in terms of its conditions and structure, the representative democratic system of leadership is much closer to the *Wakala* system than it is to the caliphate system. Consequently, the conditions of ethnicity (Quraysh) and gender need not apply to a modern democratic system as they do not apply either to *Wakala* or agency. The fears of unlimited abuse of power by an incompetent woman (or man) in leadership which are more difficult to correct in a traditional imperial caliphate system, do not easily apply to the *Wakala* structure, nor to a contemporary democratic structure of governance. This structure has various mechanisms to correct or replace leaders that are for any reason unwanted by the electorate that they represent, and who employ them as

civil agents and servants under various agreed terms and conditions. While gender may be regarded as among the criteria for political leadership in a traditional caliphate system, it is not viewed by these scholars as a necessary in the contemporary democratic system of governance.

Some of those who argue for the inclusion of women in political leadership including that of the head of state, also present other arguments and pieces of evidence that are beyond the scope of this work.²⁸⁰ Their major argument seems to be that the default legal presumption is Islamic jurisprudence of permissibility (*istishab*) in the absence of clear textual prohibition.

The general principle of Islamic law is that of equality, with no difference between men and women in obligations, responsibilities, and prohibitions, unless specifically stipulated by clear credible evidence. Whenever Allah or His Prophet (p) address Muslims as “O People”, “O you who Believe”, “My People”, “O Children of Adam”, etc., it is understood to be referring to both men and women, unless there is justifiable evidence for an exception.

²⁸⁰ See Majid Mahmud, *Al-Mar'a wa al-Huquq al-Siyaasiyyah fi al-Islam*, Ar-Rushd press Riyadh 1997, p.124-480; Yusuf Al Qaradawi, *State in Islam*, translated by El-Falah, published by El-Falah press Cairo 1998, p.246.

More specifically, the Qur'an addresses both men and women as partners who are responsible for enjoining right and forbidding wrong in public life.

Allah says: "*And the believers, men, and women, are protecting friends of one another; they enjoin the right and forbid the wrong, and they establish worship and pay the poor-due, and they obey Allah and His Messenger. As for these, Allah will have mercy on them.*" (Qur'an 9:71).

This divine verse is understood to have unrestricted general import in every sphere of life, including the political. Categorical evidence is required to justify restricting or excluding the political contributions and role of women from its general implications. For those classical and contemporary jurists who regard women as prohibited from all or certain levels political leadership, this restricting evidence exists. For those who disagree with this opinion, such evidence is unconvincing and inadequate to restrict a divinely ordained permissibility.

In all verdicts and judgements of Islamic law, exceptions, licences, and concessions (*rukhsah*) are given in undesirable situations of genuine need (*hajah*) or necessity (*darurah*).²⁸¹ These are contexts where insistence on

²⁸¹ These are regulated by the subject of Declaratory Laws (*Ahkam al-Wad'iyyah*) in Usul al-Fiqh.

abiding by the normative law (*azima*) would result in various degrees of harm or undesirable consequences to the objectives (*Maqasid*) of Shari'ah. Numerous legal maxims (*Qawa'id al-Fiqhiyyah*) based directly on the texts of the Qur'an and Hadith are used to justify and regulate these concessions.

Some of more common of these maxims include:

- “Affairs are judged by their purposes” (*Al-umuru bi-maqasidiha*).²⁸²
- “Hardship begets facility” (*Al-mashaqqah tajlib al-taysir*).²⁸³
- “Harm must be eliminated” (*Al-darar yuzal*).²⁸⁴
- “Necessity makes the unlawful lawful” (*Al-darura tubih al-mahzurah*).²⁸⁵
- “A specific harm is tolerated in order to prevent a more general one” (*Yutahammal ad-darar al-khaas li-daf' al-darar al 'aam*).²⁸⁶

²⁸² Al-Subki, *Al-Ashbah wa al-Nazair*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, p.54.

²⁸³ Al-Subki, *Al-Ashbah wa al-Nazair*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, p.49.

²⁸⁴ Al-Subki, *Al-Ashbah wa al-Nazair*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, p.41.

²⁸⁵ Al-Subki, *Al-Ashbah wa al-Nazair*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, p.45.

²⁸⁶ Group of scholars of the Ottoman Empire, *Majallat al-Ahkam al-'Adliyyah*, p.19.

- “A greater harm is eliminated by means of a lesser harm” (*Yuzal ad-darar al-ashaddu bid-darar al-akhaff*).²⁸⁷
- “When forced to choose between evil alternatives, the lesser evil must be sought” (*Nakhtaru a’la al-maslahtayni wa akhaffu al-dararayni*).²⁸⁸
- “Whatever leads to, or is a prerequisite for a prohibition (*haram*) is regarded as prohibited (*haram*) itself” (*Ma yatawaqqafu al-haramu alayhi fa huwa haram*).²⁸⁹
- “Whatever is a prerequisite or necessity for an obligation (*wajib*) is regarded as a *wajib* itself” (*Ma la yatimmu al-wajibu illabihi fahuwa wajib*).²⁹⁰
- “Necessity is measured in accordance with its true proportions” (*Ad-daruratu tuqaddaru bi-qadriha*).²⁹¹

²⁸⁷ Group of scholars of the Ottoman Empire, *Majallat al-Ahkam al-Adliyyah*, p.19.

²⁸⁸ Mohammad Hashim Kamali, *Maqasid al-Shari’ah, Ijtihad and Civilizational Renewal*, Occasional Papers Series 20, IIIT London and IAIS Malaysia, 2012, p.30.

²⁸⁹ Mohammad Hashim Kamali, *Maqasid al-Shari’ah, Ijtihad and Civilizational Renewal*, Occasional Papers Series 20, IIIT London and IAIS Malaysia, 2012, p.30.

²⁹⁰ Mohammad Hashim Kamali, *Maqasid al-Shari’ah, Ijtihad and Civilizational Renewal*, Occasional Papers Series 20, IIIT London and IAIS Malaysia, 2012, p.30.

²⁹¹ Group of scholars of the Ottoman empire, *Majallat al-Ahkam al-Adliyyah*, p.18.

Based on these, and their supporting texts, competent jurists who would normally hold onto the position that it is prohibited for women to hold a particular office of political leadership, would concede and permit it in contexts of society need (*hajah*) or necessity (*darurah*). This is in order to accrue a greater benefit, or ward off a greater harm or evil. For example, the late Pakistani scholar, jurist and reformer, Abu 'Ala Maududi was of the opinion that it was not permissible for a woman to hold the position of head of state. However, in view of the fact that the contender for the political office of presidency was a former corrupt military dictator, Maududi decided to support a woman, Fatimah Jinnah instead, in consideration of what was in the best interest (*Maslahah*) of Pakistan at the time (1962). It is generally agreed that those that should hold political office should be those who are the most qualified (*al-Aslah*) and trusted in their competences and good character.²⁹² And Allah says: “*the best employee for you is the strong and trustworthy*” (Qur'an 28:26).

Consequently, when there is a conflict between criteria for political (or other) leadership, there is greater textual evidence, certainty, and consensus on the dangers of cor-

²⁹² See Chatterji, Manas, and Jain, B. M., *Conflict and Peace in South Asia*, (Emerald Group Publishing, U.K., 2008), p.258, cited in http://www.irfi.org/articles/articles_401_450/female_leadership_in_islam.htm)

rupt and incompetent leadership than there is over the dangers a woman in political leadership. For this reason, in situations similar to that of Abu 'Ala Maududi, Muslims are expected to be guided by the maxims and principles of the Qur'an and Sunnah in realizing what is in their best interest (*Maslahah*), by choosing the lesser evil or greater good between two undesirable options.

The harm of a corrupt or incompetent male leader is greater than that of a trusted and competent female and must therefore be avoided at all costs. The harm of corrupt male leader takes priority over the benefit of maleness in leadership. In Islamic jurisprudence, avoiding harm and corruption (*dar' al-mafasid*) takes priority and precedence over accruing benefit (*jalb al-masalih*).

So, while scholars differ on normative law regarding the permissibility or otherwise of women in various levels of political leadership, when real and undesirable situations, contexts and choices present themselves, the priority is to remove and avoid what is most harmful and corrupt to society.

Non-Muslims Holding Political Positions

Is it permissible for a non-Muslim to hold any political office in a modern Islamic nation-state or a modern Muslim-majority democratic state?

It stands to reason that a head of state will be one who accepts the ideology of the state concerned. It is therefore understandable that a head of state must be a national of the country concerned and, in many cases, has to have been born in that country and is loyal to its people. It is also expected that a leader will not be one who adopts or believes in a political ideology and agenda that is different from his or her own political party or community. Consequently, it stands to reason that only a Muslim can be a caliph or head of state of an Islamic state or society. Only a genuine Christian, Jew or Hindu would be expected to oversee a state that is inspired and governed by the principles of their respective religion.

Classical and contemporary scholars have therefore also concluded that while there is no clear and explicit textual prohibition of a non-Muslim holding certain political offices, they conclude by consensus that only a Muslim who is first and foremost loyal to Islam, can and should be the caliph and head of an Islamic state or caliphate.²⁹³

Al-Qadi 'Iyad stated that jurists unanimously agreed on the illegitimacy of a non-Muslim holding the position of

²⁹³ See *Ghiyath al-Umam* by al-Juwayni, *al-Turuq al-Hukmiyyah* by ibn al-Qayyim, *al-Siyasa al-Shari'yyah* by ibn Taymiyyah, *al-Ahkam al-Sultaniyyah* by Abu ya'la, *al-Ahkam al-Sultaniyyah* by al-Mawardi, etc.

Caliph/Imam (head of state) of an Islamic state.²⁹⁴ Some jurists have declared it permissible for suitably qualified non-Muslims who live as a peaceful, law-abiding citizens in an Islamic state to hold certain political positions. Al-Mawardi stated that a non-Muslim (*Dhimmi*) is qualified for a ministerial position,²⁹⁵ and Abu Hanifah is of the opinion that a non-Muslim can be a judge for the people of his faith.²⁹⁶

The Qur'an makes it clear that non-Muslims are not all alike, "*Yet they are not all alike: there are some among the People of the Book who are upright, ...*" (Qur'an 3:113). Some can be trusted while others cannot be; "*Among the People of the Book are those who, if you were to entrust them with a heap of gold, they would return it to you. And among them is he who, if you entrust him with a [single] silver coin, he will not return it to you unless you are constantly standing over him [demanding it].*" (Qur'an 3:75).

Allah cautions Muslims against intimacy and closeness with those who would want to undermine or ruin Islam and Muslims; "*O You who believe, do not take for your inti-*

²⁹⁴ See Al-Nawawi, *Al-Minhaj Sharhu Sahihu Muslim*, 2nd ed. Dar Ihyah al-Turath al-Araby, Beirut, vol.12, p.229.

²⁹⁵ Al-mawardi, *Al-Ahkam al-Sultaniyyah*, Dar al-Hadith, Cairo, p.58. See also Al-Qarafy, *al-Dhakhirah*, Dar al-Gharb al-Islamy, vol.10, p.30; Al-Wansharishi, *Al-Wilayat*, p.130, Abu Ya'la, *Al-Ahkam al-Sultaniyyah*, p.32.

²⁹⁶ Ibn Abideen, *Radd al-Muhtar*, Maktabat Mustapaha al-Babi, vol.5, p.354.

mates such outsiders as spare no effort to ruin you and want to see you suffer: their hatred is evident from their mouths, but what their hearts conceal is far worse. We have made Our revelations clear for you; will you not use your reason?" (Qur'an 3:118). According to the exegetes of the Holy Qur'an, the gist of this verse is that non-Muslims who are inclined to enmity must not be taken into confidence by the Muslims where some matters are concerned. Other texts and traditions make it very clear that this verse forbids the Muslims to befriend people (including Muslims) who are hypocrites, or to confide in them.²⁹⁷

Additionally, the verse of the Quran which states, "*and never will Allah grant to the unbelievers a way (to triumph) over the believers*" (Qur'an 4:141) is understood by some as a caution or prohibition against appointing non-Muslims to hold sensitive political posts which may be abused to the detriment of Muslims.²⁹⁸

Consequently, Ibn Al-Arabi in his commentary on Qur'an 3:28 – "*The believers may not take the unbelievers for their allies in preference to those who believe*" – reported that Umar blamed Abu Musa Al-Ashari for appointing a non-Muslim citizen (Dhimmi) to a particularly sensitive

²⁹⁷ Al-Alusi, *Ruh al-ma'ani*, vol. 4, p. 37.

²⁹⁸ See Majid Mahmud, *Al-Mar'a wa al-Huquq al-Siyasiyyah fi al-Islam*, Ar-Rushd Press Riyadh 1997, pg 267.

political post in Yemen and ordered his removal. He also explained further that the Prophet (p) said: “*we will not seek assistance from a non-Muslim*”. He concluded however by saying that if there was any benefit in seeking the assistance of a non-Muslim, then there is no problem with that.²⁹⁹ In a similar vein, the contemporary scholar, Abu 'Ala Al-Maududi opposed electing non-Muslims in the legislative arm of the Pakistani government.³⁰⁰ Electing non-Muslims into such politically sensitive positions was viewed as a form of favouritism and allegiance towards them and laws that would be contrary to Islam.

The Prophet (p) is well-known to have enjoyed the cooperation and support of various non-Muslim individuals and communities (Polytheists, Christians, Jews, and others) in the affairs of Muslims. He negotiated and concluded numerous peace treaties with them, employed some of the trusted ones amongst them as spies and travel guides, and allowed some of them to fight alongside Muslims in various battles. He allowed some literate polytheists (among the prisoners of war) to teach Muslims how to read and write as a form of ransom.³⁰¹ He did business

²⁹⁹ Ibn Al-Araby, *Ahkam al-Qur'an*, 3rd ed. Dar al-Kutub al-'Ilmiyyah, 2003, vol.1, p.351. See also Ibn Qayyim, *Ahkam Ahl al-Dhimma*, 2nd ed. Dar 'Atahat al-'Ilm, Riyadh, vol.1, p.453-455.

³⁰⁰ Al-Maududi, *Nazariyat al-Islam wa Adyuhu*, p.118.

³⁰¹ Al-Tariqi, *Al-Istia'nah bi ghayr al-Muslimin fi al-Fiqh al-islamy*, p.381.

with them, took loans from them, and some of his companions married Jewish and Christian women.

The author of the renowned work, *Fiqh us-Sunnah*, Sayyid Sabiq, states:

“In his book, *Al-Adab ash-Shari'ah*, Ibn Muflih writes that Sheikh Taqiuddin Ibn Taymiyyah said: 'A credible Jew or Christian who has medical expertise may treat a sick Muslim. Such a person may, likewise, be entrusted with funds or other financial transactions, for Allah, the Exalted, says: *“Among the People of the Book are some who, if entrusted with a hoard of gold, will (readily) pay it back; others, who, if entrusted with a single silver coin, will not repay it unless you constantly stand over them demanding it.”* (Qur'an 3:75) We find in a sound hadith that the Prophet, peace be upon him, hired a polytheist as a guide at the time of his migration to Medina, so he entrusted him with his life and money. The people of the tribe of Khuza'ah, who were both Muslims and polytheists, acted as scouts for the Messenger of Allah (p). It is also reported that the Prophet (p), ordered Muslims to seek treatment from Al-Harith ibn Kildah, who was a disbeliever.... The same applies when one has to entrust a person with funds or deal with him in

business. If a Muslim has to confide in or turn to someone from the People of the Book for medical treatment, he may do so. It is not prohibited to befriend Jews and Christians. And when the Muslim has an opportunity to talk to them, he should address them in ways that are polite and sincere. Indeed, Allah, the Exalted, says: “*And do not argue with the people of the Book, except in ways that are best.*” (Qur'an 29:46) In a hadith on the Treaty of Hudaibiyyah, Abu Al-Khattab tells us that, 'the Prophet (p) sent a man of the Khuza'ah tribe to gather intelligence, and the Prophet (p) accepted his report despite the fact that he was a disbeliever.' This proves, according to Abu Al-Khattab, that it is quite permissible to take the advice of a non-believing physician for diagnosis and treatment, provided he is not suspected, and his fidelity is not doubtful.”³⁰²

Imam Al-Sarakhsi mentions (in his *Mabsut*) the fact that during the days of the second Caliph 'Umar bin al-Khattab, there were times when consultative meetings (*Shura*) were called for and some non-Muslim citizens and community leaders (*Ahl al-Dhimma*) were invited to attend.

³⁰² Sayyid Sabiq, *Fiqh al-Sunnah*, vol.4, hadith no. 6A in *Alim* 6.0

Imam al-Sarakhsi states, after describing an incident that took place in the consultations (*Shura*) of Caliph 'Umar: "And this proves that there is no harm in some of the People of the Book attending the meeting of the Consultation (*Shura*), for the Christian who said whatever it was that he said was present at 'Umar's meeting, and this was not considered disallowed or wrong."³⁰³ 'Umar also called in and consulted some non-Muslims to help him decide on certain matters pertaining to the non-Muslim affairs.

All this shows that while Muslims must remain vigilant and cautious regarding who they put in charge of any sensitive positions of leadership, there is no textual prohibition against appointing just and trusted people of other faiths to hold various offices of political leadership in an Islamic state. The exception, for obvious reasons, being that of the head of state or caliph.

Regarding ensuring that justice is respected as one of the most important criteria for realising the common good (*maslahah*) in issues related to governance, several distinguished jurists have elaborated on the relationship between political stability and sustainability, and justice in governance and decision-making. In addition, and more

³⁰³ Al-Sarakhsi, *Al-Mabsut*, Matba'a al-Sa'adah, Egypt, vol.24, p.7.

importantly, they underscore the significance and priority of the considering justice over and above mere religious identity and affiliation. Al-Turtushi, a distinguished Andalusian jurists and Islamic political theorist, when explaining the importance of justice which he refers to as “conventional policy” (*siyasa istilahiyah*) in one of his rulings said:

“...and for this, it is often said that an infidel leader who complies with the requirements of conventional policy (*siyasa istilahiyah*) lasts longer and is stronger than a believing leader who in his own person is just and obedient to the prophetic policy of justice. You should know that a single coin (*dirham*) taken from the subjects in a negligent and foolish manner even though justly, corrupts their hearts more than ten dirhams taken from them in accordance with a policy seen to be well regulated and of a familiar pattern, even though unjustly. Authority is therefore not established for the believers or infidels except with the establishment of justice.”³⁰⁴

Along similar lines, the jurist Ibn Taymiyyah while stressing the importance of justice even in an un-Islamic state said:

³⁰⁴ Turtushi, *Siraj al-Muluk*, p.54.

“Human welfare in matters of this world can be attained more with justice that is accompanied by (other) sins, than with injustice in matters of people's rights even if that is not accompanied by (any other) sins. That is why it has been said: 'God establishes a just state (*dawla*), be it unbelieving, but He does not establish (or support) an unjust state, be it Islamic'. It is also said: '(the affairs of) this world can last with justice plus unbelief (*kufra*), but cannot last with injustice plus Islam'. The Prophet (P) has said in the same vein: “no sin is quicker in divine chastisement than the usurpation of other's rights and severance of family ties”. The usurper is punished in this very world, even if he might be forgiven in the hereafter, for justice is the principle of everything. Thus, inasmuch as its affairs are based on justice, a state will persist even if its leaders have no share in the hereafter (due to lack of faith). But if justice is absent, it will not persist even if its leaders are rewarded in the hereafter for their faith.”³⁰⁵

³⁰⁵ Ibn Taymiyyah, *Al-Amr bi al-Ma'ruf wa al-Nahy 'an al-Munkar*, Wizarat al-Shuun al-Islamiyyah, 1418, vol.1 p.29.

These words of Ibn Taymiyyah, do not imply secularism, but stress that justice is a rational necessity in any political system.³⁰⁶

In choosing a leader for any political office therefore, these jurists make it clear that from the perspective of Islam, the criterion of justice supersedes all others - including personal faith and religious identity, as a prerequisite for gaining divine support and worldly political stability and sustainable development.

Another argument used to explain why non-Muslims can be given any position of leadership within some contemporary Muslim nation-states is similar to the argument by some regarding women in political leadership in the very different political contexts and realities surrounding the modern structures of democratic governance. Some scholars argue that the contemporary democratic context of leadership with limitations and separation of powers, agreed terms of office and specific executive responsibilities, is drastically different from the traditional imperial caliphate system which had limited checks and balances. This has made it difficult to find analogies from the past political systems that could be regarded as similar to the contemporary ones.

³⁰⁶ Ovamir Anjum, *Politics, Law, and Community, the Taymiyyan moment*, Cambridge university press, p.243.

Consequently, the closest analogy for the current system of representative leadership comes from the system of agency (*Wakala*) in mu'amalat (e.g Islamic finance). These scholars argue that in terms of its conditions and structure, the representative democratic system of leadership is much closer to the *Wakala* (agency) agreement system, than it is to the traditional imperial caliphate system. Consequently, the conditions of ethnicity (Quraysh), gender and religion need not apply to political office a modern democratic system as they do not apply either to *Wakala* or agency. The fears of unlimited abuse of power by a non-Muslim in leadership which were more difficult to correct in a traditional imperial caliphate system, do not easily apply to the *Wakala* structure and arrangement, nor to a contemporary democratic structure of governance. This *wakala*/agency and democratic structure has various mechanisms to correct or replace leaders that betray trusts, do not meet the demands of the Muslim populace, or who are for any reason unwanted by the electorate that they represent. The electorate employ their representatives and leaders as civil agents or civil servants under various terms and conditions of office.

When the conservative religious scholars and leaders of the Deobandi *ulema* argued that the Muslims and Hindus of India formed a single nation, unified together, and did not require a separate 'Islamic State' in Pakistan.

Mawlana Hussain Ahmed Madani, in his address at the 5th Conference of Jamiat Ulema at Kokanada in January 1924 said:

'Hindu-Muslim unity is a pre-requisite for freedom in India. It is the religious and political duty of the Muslims that they should work for the freedom of India and continue this struggle until the government (at the time British Colonial Government) accedes to their demand.

He also explained the following about his vision of how Muslims could see such a development of society and politics in India, asserting in a response to a question from Mohammed Siddiq Sahab that: 'The system of India will be democratic. A president will be elected for a specific period. He may be a Muslim or a non-Muslim. But he will not have kingly power'.³⁰⁷

The religious affiliation of a just non-Muslim of good character and competence is not viewed by these scholars as a necessary condition for political office in the contemporary democratic system of governance. Depending on the office under consideration, others would accept this

³⁰⁷ Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.31.

situation as only permissible based on the principle of social need (*hajjah*) or dire necessity (*darurah*), if they are regarded as the most qualified for the office.

*Non-Muslim leadership in Nation-States that are “**Darul 'Ahd/Sulh**”*

Many and probably most Muslims do not live in what has come to be described as an “Islamic State” or caliphate. Consequently, discussions by classical jurists on this topic may not be very relevant or practical to most Muslims living as small or large minorities, or as large majorities in multi-religious countries that respect freedom of religion and equal citizenship in their constitutions for Muslims and others, but which are secular or not “Islamic States”.

The question then is: can Muslims elect non-Muslims into any political leadership position in states that are not caliphates or “Islamic States”, but which respect Muslims as equal citizens, and where such leaders are not expected to implement Islamic law or governance?

Most Muslims today live in nation-states that are multi-religious and whose constitutions protect the human rights of all its citizens, both Muslims and non-Muslims, and which respect Muslim their freedom of religion and belief. These contexts and societies are similar to those found by the Prophet's companions in Abyssinia, and by

many others companions and their successors who relocated after the demise of the Prophet (p) from the major Muslim centres of Medina and Mecca to live in the various distant but peaceful and accommodating non-Muslim lands of Asia, Europe and Africa. It is also similar to the circumstance of the city of Mecca during the period of the Treaty of Hudaibiyah. These nations and communities were naturally ruled by non-Muslims.

Some scholars have categorised these peaceful non-Muslim multireligious communities as “Abodes of Treaties” (*Dar al-Ahd*, or *Dar al-Sulh*) while others refer to them as “Abodes of Justice” (*Dar al-'Adl*) or “Abodes of Islam” (*Dar al-Islam*). Others referred to these nations as “Abodes of Disbelief” (*Dar al-Kufr*) since they were not governed by Islamic principles. If they were at war with or hostile to Islam and Muslims, they were usually referred to as “Abodes of War” (*Dar al-Harb*).³⁰⁸

Regarding what qualifies a territory or nation to be referred to as “Land//Abode of Islam” or *Darul Islam*, Ibn Hajr al-Asqalani for example, cites the view of al-Mawardi, that if a Muslim is able to practice Islam openly in a non-Muslim land, then that land becomes *Dar al-Islam* (the Abode of Islam) by virtue of his settling there, and living

³⁰⁸ See Jasser Auda, *What is the land of Islam?*

there is preferable to moving away from it as other people may be attracted to Islam merely by their interaction with him.³⁰⁹ According to al-Mawardi, "The public acts of worship (*sha`a'ir*) of Islam such as group prayers in mosques and call for prayers are the criteria by which the Prophet, peace be upon him, differentiated between the Land of Islam and the Land of Disbelief."³¹⁰

Imam Abu Hanifa states: "The purpose (*maqsud*) of calling a certain land a 'Land of Islam' or a 'land of disbelief (*kufr*)' is not Islam versus *kufr*. It is security versus insecurity."³¹¹ According to Al-Razi, "If the Islamic acts of worship are evident in streets and public places, this certainly entails that Islam is dominant."³¹² Ibn Taymiyyah equally wrote that, "The public acts of worship (*sh`a'ir*) of Islam are the true signs that a certain land is a Land of Islam."³¹³

The criterion of "the achievement of justice", is so central in the Islamic concept of 'Land or Abode of Islam' to the extent that the term 'land of justice' (*Dar al-'Adl*) is very often used interchangeably with the term 'Land of Islam' (*Dar al-Islam*) in numerous sources.³¹⁴

³⁰⁹ Ibn Hajar al-Asqalani, *Fath al-Bari*, Dar al-Fikr, Beirut, vol.7, p.230.

³¹⁰ Al-Mawardi, *Al-Ahkam al-Sultaniyah*, vol.1, p.275.

³¹¹ Al-Kasani, *Bada'i` al-Sana'i`*, vol.7, p.131

³¹² Al-Razi, *Al-Mahsul*, vol.4, p.43.

³¹³ Ibn Taymiyyah, *Al-Nubuwwat*, vol.1, p.197.

³¹⁴ For example: Ibn Taymiyyah, *Kutub wa Rasa'il*, vol.28, p.146; Rashid Rida, *Al-Khilafah*, p.50 & 62; Al-Mawardi, *Al-Ahkam al-Sultaniyah*, vol.1, p.22;

Leaving aside the discussion and debate on diverse meanings and terms used by classical and contemporary scholars to describe these territories, lands or abodes, these scholars recognize that Muslims can and should live in such societies that are just and free from persecution.³¹⁵ It could even be argued that many modern nations give their Muslim citizens more rights and freedom in joining and determining leadership and policies than did Abyssinia and other places in Islamic history.

Similarly, scholars from within the tradition also cite the example of the Prophet Joseph (p) from the Qur'an to show that Muslims can also hold leadership positions under non-Muslim leaders. The story tells how Prophet Yusuf himself requested a position under a Pharaoh of a different religion to himself. The verse is: He said: "*Make me responsible for the store houses in the Earth, verily I am trustworthy and knowledgable*". [Qur'an 12: 55]

Al-Sarakhsi, *al-Usul*, vol.9, p. 182; Al-Kasani, *Bada'i' al-Sana'i'*, vol.7, p.80; Ibn Qudamah, *Al-Mughni*, vol.9, p.14; Al-Nawawi, *Rawdat al-Talibin*, vol.10, p.49; Al-Zar'i, *Al-Jawab al-Kafi*, vol.1, p.101; Ibn Abidin, *Hashiyat Raddul-Mukhtar*, vol.4, p.45; Al-Alusi, *Ruh al-Ma'ani*, vol.18, p.91; Nizam, *Al-Fatawa al-Hindiyah*, vol.2, p.179.

³¹⁵ It is clear that to these scholars that a "land of Islam" (*Dar al-Islam*) was not a state governed by Muslims or Islamic law, or what some contemporary scholars refer to as an "Islamic State", a "Shari'ah-compliant state", or a state governed by Islamic law. It was assumed however that an "Islamic state" is governed by Muslims and Islamic law was automatically a *Dar al-Islam* where Muslims had justice, were safe and free to practice and share their faith.

Regarding this verse, Imam Qurtubi comments:

Some of the people of knowledge said: In this verse there is what permits someone of nobler stature working for a flagrant sinner, or taking a position in a non-Muslim authority on condition that he is not merely satisfying the random desires and wishes of the *fajir* (flagrant transgressor), but rather he is performing what he is tasked to do according to his general discretion. Some said this was a special dispensation for Yusuf and is not permitted today. The first is what is correct if conditioned by what we have mentioned.

Qurtubi continues that Mawardi said: If the master/ruler is a tyrant people have differed on the permissibility of taking a ruling position and are of two views: one group permitted it if he can act in accordance with the truth in what he has been entrusted with because Yusuf was a ruler for Pharaoh. And consideration is for the person's actions and not for the actions of others. The second group did not permit it... explaining that the Pharaoh was just and righteous, unlike Musa's Pharaoh... What is correct is that it is permitted absolutely.

In this excerpt, Qurtubi mentions the opinion of Imam Mawardi in addition to his own view. Mawardi covered the subject of this verse in his extensive treatise on govern-

ment, *al-Ahkam al-Sultaniya wal-Wilayat al-Diniya*. As Qurtubi reminds us, that Mawardi emphatically states the absolute permissibility of participating in this type of government. Imam Qurtubi explained that the chapter documenting the story of Yusuf explains for us the fundamental aims of the Shariah and that the teachings of Islam are universal and not restricted to what is contained within the revelation. It is for him an indisputable axiom of Islam.

This is a principle (evidence) for the statement that the interests of the Shariah (*masalih al-Shariah*) are the preservation of religions (in the plural), lives, intellects, lineage and property. So, everything that achieves something from these matters is an interest (*maslaha*); and everything that damages an interest being realized is a *mafsada* (corruption) and the opposite of a *maslaha*. And there is no dispute (*khilaf*) that the aim of the Shariah is to guide people to their worldly interests.³¹⁶

Al-Zamakhshari comments on the verse as follows:

If it is said: how can it be permitted to become a ruler under the authority of a non-Muslim, following him, being under his authority, and obedient to him? I reply: it has indeed been nar-

³¹⁶ Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.34.

rated from Mujahid that he became Muslim, but Qatada states (conversely) it is evidence that it is permitted for someone to take a position of governance in a tyrannical authority. Indeed, many of the *salaf* (early generation of pious Muslims) took up positions of judiciary from many transgressors! Indeed, when a prophet or a scholar knows that there is no way to rule by the decrees of God, or to stop oppression, except by being established in authority through a non-Muslim king or a *fasiq* (a flagrant sinner) then he is to stand alongside and be prominent with him. Some have said (*qeela* – i.e., though it is weak) that the King took counsel from him and did not disagree with him in anything.³¹⁷

Ibn Taymiyyah was asked a question regarding a worse situation, where someone in authority was a tyrant and an oppressor and usurped people's wealth. Should someone who has some ability to influence the situation and make it less bad, leave office, or stay in power? His response was:

“Such a man is like a guardian of orphans, a trustee of *waqf* (religious trust), a partner in commerce or any such individual who acts on behalf

³¹⁷ Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, p.35.

of others by virtue of his guardianship or by proxy: he is like them in their payment of some of the money of their principals or clients to an unjust ruler if this is the only way to serve the interests of their clients. This man will be doing right, not wrong, and what he gives the rulers includes what is given to tax collectors in real-estate tax and sales tax, as anyone who makes a transaction for himself or on behalf of others in these countries has to pay these taxes, and if he does not collect the tax, while he cannot see to the affairs of his subjects without it, the interests of his subjects, and his subjects themselves, will be harmed.

“As for those who opine that such a situation should not be allowed to exist in order not to accept a little injustice, if they are followed by people, the injustice and corruption will certainly increase, for they are like travelers stopped by bandits: if they do not pacify the bandits with some of their money, the bandits will kill them and take all their money. If anyone says to these travelers, “It is illegal to give the bandits any of your money”, he means to keep that little money he is advising them not to pay, but if they follow his advice they will lose that little money and all their money as well. Nobody in his right mind

would give such an advice, let alone that a religion ordain it, for Allah the Almighty sent down His Messengers to establish, attain public interests and eliminate and curb evils as much as possible.

“If such a man who tries to collect as little tax as possible and spares the people much more evil by so doing, and can do nothing else, leaves his offices, he will be succeeded by someone else who will collect all the tax and spare the people nothing. Such a man will be rewarded for what he does and will not be punished (for that) in this world or in the Hereafter.

“Such a man is like an orphan's guardians and a *waqf*'s trustees who can do their duty only by payment of unjust tax imposed by the government, for if any of them abandons his job he will be replaced by someone who will aggravate the injustice. Therefore, their stay in office is permissible, and they will be committing no sin by paying such taxes. Their remaining in office may even be a duty (*wajib*) they have to discharge.”

He said in another text:

“Civilisation is rooted in justice, and the consequences of oppression are devastating. There-

fore, it is said that Allah aids the just state even if it is non-Muslim, yet withholds His help from the oppressive state even if it is Muslim.”³¹⁸

In contemporary nation-states, which include most countries of the modern world, it stands to reason that it is completely permissible for Muslims to choose the most qualified non-Muslims as leaders who would best uphold justice and protect the rights of citizens. And if justice regarding the character and competence of a leader is paramount, it would also imply that a Muslim can and should elect a just non-Muslim candidate to be a head of state in preference to a less qualified Muslim candidate, should such a case arise.

It should always be noted that when classical scholars of Islamic Political Science and Governance (*Siyasah al-Shar'iyyah*) discussed the criteria and qualifications of a caliph or Muslim head of state, they were addressing leadership in a Muslim caliphate, and not leadership in non-Muslim or multireligious *Dar al-'Ahd/Sulh*, or non-Muslim states that accommodated Muslims presence. By definition, the policies and conditions for leadership in an “Abode of Treaty” (or *Dar al-'Ahd/Sulh*) was characterized

³¹⁸ Cited in Rashad Ali, Dawud Masieh & Dilwar Hussain, *To Vote Or Not To Vote? Political Participation: Refuting The Claims Of Extremist Separatists*. Ibrahim Foundation, pp.36-37.

and determined by the nature and terms of the treaty, charter or constitution negotiated with non-Muslim communities, and not the dictates and juristic opinions of Muslim scholars. Consequently, it would be wrong to claim that the condition and requirement of being Muslim or any other condition of a leader in Islamic law also applies to most modern states that are “Abodes of Treaties” (Darul 'Ahd/Sulh) and not just “Islamic states” or caliphates.

SECTION FIVE

Removing A Leader

Criticizing And Correcting The Leader

Respect and obedience for leadership is an oft-repeated teaching from the Qur'an and Hadith, but this does not imply uncritical obedience or blind followership. Obedience does not mean that one cannot criticise or censure the leader at all. Rather, the opposite is true.

In an authentic Islamic state or society, the subjects and citizens are all free to correct and criticise their leaders, especially when any of their policies or orders are found to be clearly against the teachings of the Qur'an and the Sunnah and public interest (*maslahah*), in which case such an order may even be repealed by the Court. The reason for this is that the Shari'ah does not regard the leader a supernatural being who is above making mistakes. This is also why the leader has been ordered in the Qur'an to consult others, and the purpose of consultation is to give people and stakeholders in the community an opportunity to express their views, share ideas and make corrections with-

out fear of any negative consequences or backlash from the leadership. This is at the core of protecting the right to freedom of speech and expression of citizens and many advocacy and civil society organisations.

These corrections and criticisms should be taken by the leadership in good faith with humility, curiosity, and compassion for others, irrespective of the faith, race, gender, age, and ethnicity of the real or perceived victims. Justice should not be compromised by the egos or feelings of those in leadership.

Allah says in the Qur'an, *"O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do."* (Qur'an 5:8). Imam Qurtubi in his commentary on this verse said that, "This verse shows that the disbelief (*kufr*) of an unbeliever does not prevent him from enjoying justice."³¹⁹

"O you who have attained to faith! Stand firm for justice as witnesses for Allah even if it is against yourselves, your parents, or close relatives. Be they rich or poor, Allah is best to ensure their interests. So do not let your desires cause you

³¹⁹ *Tafsir al-Qurtubi*, Tafsir of Qur'an 5:8 in *Maktab Taalib al-Ilm*, CD-ROM, Ariss Computers Inc., Beirut, Lebanon, 2002.

to deviate (from justice). If you distort testimony or refuse to give it, then (know that) Allah is certainly All-Aware of what you do." (Qur'an 4:135)

"Cooperate in righteousness and piety, and do not cooperate in sin and aggression." (Qur'an 5:2)

"And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful." (Qur'an 3:104)

'Iyad bin Ghanm reported that the Messenger of Allah (p) said: "When one desires to counsel a person in authority, he should not do so in public. Instead, he should take him by his hand and talk to him privately. If he accepts the counsel, so be it; if not, he will have done what was due from him."³²⁰

While this hadith emphasizes the importance of showing respect to leadership and not embarrassing leaders in public, it still emphasises the obligation to correct leaders. Ideally, this should be done privately. However, this may not always be feasible for certain citizens and in certain contexts. Other texts and cases during the time of the Prophet (p) and his companions show other contexts

³²⁰ Narrated by Imam Ahmad, *Majma'a al-zawa'id*, *Kitab al-Khilafah*; *Bab al-Nasihah lil-a'immah wa kayfiyyatuha*; Hadith 9161, 9162.

where other (and sometimes less courteous) approaches were tolerated and even appreciated. The most effective approach would therefore depend significantly on the context.

The Prophet (p) also said that, “*Whoever amongst you sees an evil act or deed should change it with his hand. If he is not able, then he should change it with his tongue. But if he is not able to, then with his heart. And that is the weakest of faith.*”³²¹

The Messenger of Allah (p) enjoined on people, that if they witnessed any wrong in their leaders, they should try to rectify these rather than support them through connivance or silent compliance. In his excellent book on *Islam and Politics*, Mufti Muhammad Taqi Usmani cites numerous examples of this in the life of the Prophet (p) and his Companions, some of which are shared here.³²²

The Companion, Ka'b ibn Ujarah is reported to have said:

“The Messenger of Allah (p) came out to us when nine of us were there, and he said: 'After me, there shall be leaders. Whoever corroborates

³²¹ *Sahih Muslim*, hadith no. 78; *Ibn Majah*, hadith no.4013.

³²² Muhammad Taqi Usmani, *Islam and Politics*, Turath Publishing, 2018, pp.38-42,112-118.

them in their lies and aids them in their injustice does not belong to me, nor I to him, and he shall not drink at my Cistern (in Paradise). Whoever does not corroborate (or support) them in their lies, or aid them in their injustice belongs to me, and I to him, and he shall drink at my Cistern (in Paradise).’”³²³

It is related to Abu Sa'id al-Khudri that the Messenger of Allah (p) said:

“Allah does not send a Prophet or appoint a Caliph without them having two advisors. One advisor calls him to goodness and encourages him in it; the other advisor calls him to evil and encourages him in it. Only those whom Allah protects are truly safe.”³²⁴

It is also related from Abu Sa'id al-Khudri that the Messenger of Allah (p) said:

“One of the greatest [forms of] Jihad is a word of justice [spoken] in the presence of a tyrannical leader.”³²⁵

³²³ Al-Nasa'i, *Sunan*, *Kitab al-Bay'ah*, *Dhikr al-wa'id li-man a'ana amiran 'ala al-zulm*; Hadith 4212.

³²⁴ Al-Bukhari, *Sahih*, *Kitab al-Ahkam*, *Bab Batanat al-imam*, Hadith 7198.

³²⁵ Al-Tirmidhi, *Sunan*, *Kitab al-Fitan*, Hadith 2174. Narrated with slight differences in wording in Abu Da'ud, *Sunan*, *Kitab al-Malahim*, Hadith 4344; and Ibn Majah, *Sunan*, *Kitab al-Fitan*, Hadith 4011.

“None of you should degrade himself’. [Those present] asked: ‘And how does one degrade oneself?’ He replied: ‘When someone sees something about which he could speak for the sake of Allah but does not say it. Then after wasting that [opportunity], he meets Allah (Blessed and Exalted is He), who asks: ‘What kept you [from speaking out]?’ When he replies: ‘Fear of people’. Allah will tell him: ‘But I was more deserving to be feared.’”³²⁶

According to Abd Allah bin ‘Umar, the Prophet (p) said:

“When someone is in the leader's presence, he should either say what is good or keep quiet.”³²⁷

‘Abd Allah bin ‘Abbas narrates that the Messenger of Allah (p) said:

“When a person finds himself in a position to speak up for what is right, it is not befitting to fail

³²⁶ Related thus by Abu Dawud al-Tayalisi, with a chain that is *sahih*; by Abu Ya‘la al-Mawsili, and from him by Ibn Hibban in his *Sahih*; also, in shortened form, by Ahmad ibn Mani‘, ‘Abd ibn Hamid and Ibn Majah. See *Ithaf al-khiyarah al-maharah bi-zawa‘id al-Masanid al-‘asharah*, *Kitab al-Fitan*, *Bab al-Amr bi-al-ma‘ruf wa al-nahy ‘an al-munkar*: Hadith 7402.

³²⁷ *Majma‘ul-zawa‘id*, *Kitab al-Khalafah*, *Bab al-kalam bi-al-haqq ‘ind al-a‘immah*: Hadith 9167.

to speak up, for [failing to] can neither hasten his death nor deprive him of his provision.”³²⁸

Abdullah bin 'Umar also said that the Prophet Muhammad (p) said, "*Whoever walks with a wronged person, so as to secure his rights, Allah will secure his feet on the Day of Judgment when (other) men's feet shall stumble*".³²⁹

The Prophet's shirt was violently pulled by a Bedouin demanding the Prophet (p) to give him from state's wealth which was under his care. The Prophet (p) smiled and ordered that he should be given something.³³⁰

Allah says: "*It is by the mercy of Allah that you were gentle with them. Had you been harsh, and hard-hearted, they would have dispersed from around you. So, pardon them, and ask for forgiveness for them, and consult them in the conduct of affairs.*" (Qur'an 3:159).

In the light of these hadiths, it is apparent that the Rightly-Guided Caliphs not just permitted but actually asked people for censure and criticism, and they welcomed such feedback. Immediately after Abu Bakr was elected Caliph, he addressed the people in his first sermon and acceptance speech thus:

³²⁸ Al-Bayhaqi, *Shu'ab al-imam*, 52; Hadith 7579.

³²⁹ Al-Albani, *Sahih al-Targhib*, no. 2623, and *Sahih al-Jami'*, no. 176; al-Tabarani, *Al-Mu'jam al-Awsat*, no. 6026.

³³⁰ Sahih al-Bukhari, Hadith 5869.

“O people, I have been put in charge of you, although I am not at all the best of you. So, if I do good assist me, and if I do wrong set me straight. Truthfulness is a trust and falsehood is betrayal. The weak among you are strong in my sight until I have alleviated what ails them, if Allah wills. The strong among you is weak in my sight until I have taken what is due from him, if Allah wills. Obey me as long as I obey Allah and His Messenger; but if I disobey Allah and His Messenger, you are under no obligation to obey me....”³³¹

In this short address, Caliph Abu Bakr described in a few words what role the leader plays in an Islamic state, and what should be the attributes of such a state and its leadership. He clearly instructed the people to truthfully criticise and censure him, should the need arise. Each of the just and Rightly Guided leaders after him would follow the same principle.

The second Caliph, 'Umar bin al-Khattab once told his people:

“I am just like any of you, and today you acknowledge what is right. Let whoever may oppose me oppose me and let whoever agrees with me agree with me. But I do not want you to

³³¹ Ibn Kathir, *al-Bidayah wa al-nihayah*, vol. 9, p. 414.

follow any unaccountable behaviour (or whim) of mine.”³³²

These type of statement makes it easier for the population to feel free to critique the actions of a leader.

'Umar bin al-Khattab always welcomed constructive criticism of himself. Hasan al-Basri, a distinguished scholar and student of the Companions recounted that once someone said: 'Fear Allah, O 'Umar!' and that he kept repeating that. When another person told him to stop, and that he had wronged the Caliph, 'Umar calmly told him:

“Let him be. There would be no goodness in them if they did not say that to us, and no goodness in us if we did not accept [their admonitions].”³³³

This welcoming, appreciation and reframing of criticism shows the magnanimity expected of a Muslim leader.

Similarly, Caliph 'Umar once cautioned the people during a sermon *Khutbah* not to fix very high sums for the bridal gift (*mahr*), and if anyone gave a dowry higher than what the Messenger of Allah used to give his blessed wives, the excess amount would have to be handed over to the State Treasury (Bayt al-Mal). After he concluded his

³³² Abu Yusuf, *Kitab al-Kharaj, al-Fay' wa al-kharaj*, p. 25.

³³³ Abu Yusuf, *Kitab al-Kharaj*, p. 12.

Khutbah, an unidentified Qurayshi woman got up and said: 'Commander of the Faithful, is the message of Allah's Book more truthful and worthy to be followed, or what you say?' Caliph 'Umar said: 'Of course, the Book of Allah is more worthy to be followed. But what is the matter? Why do you ask?' That woman replied: 'Today you have forbidden people to give high amounts as bridal gifts (*mahr*), although Allah Most High says in His Book: "...And if you have given any of them a heap [of gold, silver or money], do not take anything thereof" (Qur'an 4:20). Upon hearing this, 'Umar exclaimed: 'Everyone seems to have a better understanding of religion than 'Umar!' He then ascended the minbar and repealed the instruction he had just given.³³⁴ This exemplifies the humility that a Muslim leader is expected to show when corrected by a general member of the public.

It was 'Umar again, who wanted to purchase the house of 'Abbas in order to annexe [the site of] it during the expansion works on the Mosque of the Prophet (p) in Madinah. 'Abbas, however, refused to sell. That gave rise to differences of opinion as to whether Caliph 'Umar could indeed force 'Abbas into selling his home so that the site could be annexed during the expansion of the mosque. The two distinguished gentlemen asked Ubayy bin Ka'b to

³³⁴ Al-Bayhaqi, *al-Sunan al-kubra* (Hyderabad, 1353/1934-35), vol. 7, p. 233.

help settle their dispute. Ubayy however decided on the case against the Caliph 'Umar, and in favour of 'Abbas. Later on, 'Abbas gave away this house for the noble cause of expanding the mosque and did not take its price.³³⁵

The house in question had a raised water conduit from which water used to spill onto the very path which 'Umar used to walk to the mosque. On one occasion 'Abbas had slaughtered some chickens, and their blood fell through the conduit and onto 'Umar, who was on his way to lead the Friday prayer, thus soiling his clothes. 'Umar went back to his home and changed his clothes, and he ordered that the conduit be removed. 'Abbas objected, saying that the Messenger of Allah (p) himself had put the conduit there. On hearing this, 'Umar grew anxious and said: 'For the sake of Allah, stand on my back and put the conduit back where it was.' And that is exactly what happened. 'Abbas did step on Sayyiduna 'Umar's back and put the conduit back in its place as it was before. This water conduit is preserved to this day in the western side of the Prophet's Mosque.³³⁶

Similar to the way in which Caliph Umar handled criticism, many of the Muslim leaders after him handled criti-

³³⁵ Ibn Sa'd, *Tabaqat*, vol. 6, p. 168; Ibn Sa'd, *Tabaqat*, vol. 4, p. 19.

³³⁶ Muhammad Taqi Usmani, *Islam and Politics*, Turath Publishing, 2018, p.117.

cism with open arms with the exception of a few of them who were oppressors and dealt unjustly with anyone who raised their voices against them.

The third of the Rightly Guided Caliphs, Uthman bin 'Affan was on one occasion criticized by a group of Muslims. He called for a meeting with them and asked: "what am I being criticized for?" They replied saying: 'you did not shorten your prayers (salah) at Muzdalifah during Hajj; you acquired lands for your livestock which you and your children benefit from; the Quran was written in different books, but you gathered them into a single book; and you appointed youths into political positions.... (and a host of others).' Uthman replied to the criticism with great humility when he said: 'I travelled to a land where my family resides and I completed my prayers (*Salah*) (instead of shortening them); my livestock was the largest when I became the Caliph but today, I have just these two camels for my pilgrimage; and the Quran is still one which came from Allah, I only followed the footsteps of my predecessors (in gathering the Quran) - Abubakr and Umar; and I only appointed those whom people are pleased with, and the Prophet (p) also appointed youth."³³⁷

Such incidents of magnanimity and maturity in handling criticisms and critics were not limited to the Rightly-

³³⁷ Tarikh al-Tabari, vol. 6, p. 651.

Guided Caliphs. Many later righteous leaders followed the excellent example that had been set by them. They listened to and accepted criticism and unpleasant feedback from their subjects. Islamic history is full of many exemplary cases which demonstrate this. The following is an example cited by Mufti Usmani.³³⁸

In the year 439 A.H., the Caliph Jalal al-Dawlah ordered that the appellation *Shahanshah-i-A'zam*, *Malik al-Muluk* ('Mightiest Monarch, King of Kings') be added to his name. During the Friday *Khutbah*, when his name was to be mentioned with these additions, some scholars protested. Meanwhile others maintained that as long as it was meant and understood as being in comparison with other worldly leaders, one should not declare such a title impermissible. One scholar, Abu al-Hasan al-Mawardi seriously opposed the use of this title and declared it completely impermissible. He said that only Allah can be referred to as *Shahanshah* or *Malik al-Muluk*, and that no human being must be given a title like that. Jalal al-Dawlah had good relations with Imam al-Mawardi. When he got to know about the latter's verdict (*fatwa*) on the matter, he called him and said: 'Keeping in view our relationship, I know that if you would make a concession to anyone in

³³⁸ Muhammad Taqi Usmani, *Islam and Politics*, Turath Publishing, 2018, p.117.

this matter, you would make it to me. However, you did not. The verdict (fatwa) you gave is completely based on righteousness. This is why you have risen even more in my estimation of you than before.'³³⁹

Here we see a scholar being openly critical of a leader's policy, and insisting on his position even when others could excuse it. It also shows the respect the scholar had cultivated between himself and the Caliph, which made it easier for him. Al-Mawardi's honesty and courage actually earned him even greater respect in the eyes of the Caliph.

Those in power are expected to show more restraint, maturity, magnanimity, emotional intelligence, and ego management than the rest of the citizens of a state – especially towards angry and frustrated citizens who are in many ways also victims of the imperfections of the state. Leaders cannot satisfy everyone, and thus, patience and tolerance of critical followers and citizens is part of the challenge of any real and responsible leadership.

If legitimate non-violent forms of criticism and protest are denied to the aggrieved, what other alternative and practical courses of action do we expect to see from the less patient among citizens, who are often already victims

³³⁹ Al-Subki, *Tabaqat al-Shafi'iyyat al-Kubra* (Cairo, 1964), vol. 5, p. 271; entry on 'Ali ibn Muhammad ibn Habib Abu al-Hasan al-Mawardi.

of various forms of poverty? If the people of the "upper deck" of a ship (leaders and elite) deny those of the "lower deck" access to their essential right to "water", those of the "lower deck" often start to think that making a hole below them will get them their water! This often has tragic consequences for all! This is a parable shared by the Prophet Muhammad (p) for us to ponder over as we listen with compassion to the real or perceived grievances and cries of the aggrieved.

Difference Between Criticism and Contempt of a Leader

While the public was not only allowed but also encouraged to voice their criticisms and identification of injustices, they were also cautioned to distinguish between respectful criticism and disrespectful contempt. Criticism is a qualified statement with an evaluation, it is an attack on wrong character due to the shortcomings of the criticized person. Contempt, conversely, signifies a strong emotion or stance considering someone or something as inferior, base, or worthless, akin to scorn. It can also refer to the state of being despised or dishonored, involving disgrace and open disrespect or deliberate disobedience of a court of law or legislative body. This behavior entails attacking or insulting a person's character rather than crit-

icizing their actions or intentions. While criticism is not only allowed but can be constructive, contempt is strictly prohibited.

Allah says in the Qur'an:

"When you speak, be fair." (Qur'an 6:152)

"Invite to the way of your Lord with wisdom and beautiful exhortation." (Qur'an 16:125)

"Do not argue with the People of the Book, except in a most honourable manner." (Qur'an 29:46)

Allah says: *"It is by the mercy of Allah that you were gentle with them. Had you been harsh, and hard-hearted, they would have dispersed from around you. So, pardon them, and ask for forgiveness for them, and consult them in the conduct of affairs."* (Qur'an 3:159)

Once a person saw a certain Amir ibn Amir, who was attired inappropriately. He said: 'Look at our Amir! He is dressed like a shameless person.' Abu Bakrah, a well-known Companion of the Prophet happened to be present. He said: 'Be quiet, for I heard the Messenger of Allah (p) say: *'Whoever shows contempt for Allah's leader on earth, Allah will show contempt for him.'*³⁴⁰

³⁴⁰ Al-Tirmidhi, *Sunan, Abwab al-fitan*, Hadith 2224 (classed as gharib).

Imam Ahmad recorded this tradition as follows: '*Whoever honours Allah's leader in this world, Allah shall honour him on the Day of Resurrection. Whoever belittles Allah's leader in this world, Allah will belittle him on the Day of Resurrection.*'³⁴¹

There are some differences among hadith scholars regarding the chain of transmission of this Hadith. But since a great number of Hadith scholars (*Muhaddithun*) related this Hadith through other different channels, the message contained in this Hadith which is that it is not permissible to revile a leader, seems to be firmly established. The reason is that the foremost motive in criticising someone should not be to insult, humiliate or debase him, but a sincere desire to correct and reform the leader effectively. Ideally, such criticism is made solely to please Allah, and in the interest of the leader and society. It is not meant to degrade the person, or to give people an opportunity to show off their boldness, arrogance, or verbal prowess.

Ideally, as 'Iyad ibn Ghanm reported, the Messenger of Allah (p) said:

'When one desires to counsel a person in authority, he should not do so in public. Instead, he should take him by his hand and talk to him

³⁴¹ Ahmad ibn Hanbal, *Musnad*, vol. 34, p. 79; Hadith 20,433.

privately. If he accepts the counsel, so be it; if not, he will have done what was due from him.³⁴²

While this hadith describes an ideal approach towards correcting or counselling certain types of leaders in particular contexts, it highlights the emphasis on the need for appropriate humane approach, courtesy, and good character to facilitate effectiveness. When trying to correct leaders, Muslims should not use ways and means that unnecessarily make the leadership more defensive and hostile to our demands.

One of the core purposes of Freedom of Speech and Expression is to protect the freedom of people to question, correct and be critical of any level of leadership. It is also to ensure public accountability of leaders. And just as good justice needs to also be seen to be done, so also does good leadership.

Freedom of speech and expression by citizens, media and various other organisations is not an absolute or unrestricted freedom to be irresponsible with speech, communication, and expressions. Abuse of the freedom of speech is usually censored by various public and private institutions and agencies depending on the context, law, and soci-

³⁴² Narrated by Imam Ahmad, *Majma'a al-zawa'id, Kitab al-Khilafah; Bab al-Nasihah lil-a'immah wa kayfiyyatuha*; Hadith 9161, 9162.

ety. Legal restrictions on this freedom of speech and expression are often also offences and punishable crimes such as incitement to lawlessness, defamation (libel or slander), fraud, lying under oath, obscenity or nudity, fighting words or insults, cursing, hate speech, blasphemy and threats, etc.

Such abuses are punished under various legislations depending on the purpose, time, place and manner of speech, the nature of the irresponsible speech and its consequences. As with most laws, it is usually defined according to the context, cultural norms and jurisdiction of the constitution of a particular people or nation. What is being emphasised here, is the importance of constructive criticism and responsible use of freedom of speech and expression, as opposed to contemptuous or destructive criticism and irresponsible speech and expression by anyone – leadership or followership.

Having said this, the wrong approach by aggrieved and angry citizens in expressing complaints, grievances, and criticisms, should not be an excuse for the leadership to disregard the real or perceived grievances of citizens. The leadership should always err on the side of compassion, patience, and magnanimity.

Allah says, *“O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let*

the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do.” (Qur'an 5:8).

And also, Allah says, *“The good deed and the evil deed cannot be equal. Repel (evil) with that which is better (and good)” (Qur'an 41:34).*

Reasons for Removing a Leader or Head of State

The leader or head of state can be removed or relieved of his responsibilities in a peaceful manner for any of the following reasons:

1. If the head of state himself has decided to step-down for personal reasons: that is, he has chosen to resign from his post. Obviously, by doing so he would have effectively “dismissed or removed himself” as opined by some scholars.³⁴³
2. If the leader denounces his faith, apostatises, and becomes a non-Muslim.³⁴⁴

³⁴³ Some other scholars regarded the resignation of the leader as unlawful because the whole state is his responsibility and he should not shy away from his responsibilities except for reasons of incapability or unforeseen problems. Al-Shinqeety, *Adwa al-Bayaan*, Dar al-Fikr, Beirut, 1995, vol.1, p.31-32, Qur'an 2:30.

³⁴⁴ Al-Shinqeety, *Adwa al-Bayaan*, Dar al-Fikr, Beirut, 1995, vol.1, p.31-32; al-Juwayni, *Ghiyath al-Umam*, Maktabah Imam al-Haramain, 1401, p.102.

3. If the leader suffers from some condition that prevents him from running the affairs of the state or displays unacceptable levels of incompetence and clear inability to lead.³⁴⁵
4. If he commits an act of corruption, tyranny, or abuse of power, or gross immorality, or any action that is deemed contrary to public interest. Examples are betrayal of trust, consuming liquor, sexual harassment, bribery and corruption, and acts of oppression and persecution.³⁴⁶

The Prophet (p) said that “*Whoever amongst you sees an evil act or deed should change it with his hand. If he is not able, then he should change it with his tongue. But if he is not able to, then with his heart. And that is the weakest of faith.*”³⁴⁷

If removing a leader for any of the above reasons can be achieved peacefully, it is obligatory to do so. Ibn Hajar al-'Asqalani wrote in his commentary on al-Bukhari:

“The point on which scholars are agreed concerning tyrants is that if they can be dis-

³⁴⁵ al-Juwayni, *Ghiyath al-Umam*, Maktabah Imam al-Haramain, 1401, p.104.

³⁴⁶ Al-Shinqeety, *Adwa al-Bayaan*, Dar al-Fikr, Beirut, 1995, vol.1, p.29-30, al-Juwayni, *Ghiyath al-Umam*, Maktabah Imam al-Haramain, 1401, p.102.

³⁴⁷ *Sahih Muslim*, hadith no. 78; *Ibn Majah*, hadith no.4013.

missed without causing mischief or oppression, it is obligatory to dismiss them. Otherwise, it is obligatory to remain patient.”³⁴⁸

To “remain patient” in this context means that one must not try to remove a tyrant by means of an armed uprising as this may lead to a worsening of the situation due to civil strife, mischief, and greater corruption.

Peaceful legal means through the judicial system can establish a justified case against the leader and get him impeached. Most communities have systems to deal with the death or replacement of a leader after one is found to be unworthy, incompetent, or unable to satisfactorily perform their tasks.

If policies made by the leader are not in the interest of the state, and the people dislike him on that account, could that justify his dismissal?

There is no evidence to justify imposing a leader of a people against their will. The system that appointed the leader can also be utilised for dismissing him in a peaceful manner.

³⁴⁸ Ibn Hajar, *Fath al-Bari*, vol. 13, p. 8; *Kitab al-Fitan, Bab qawluh Halak ummati...*

This is supported by a hadith narrated by Anas, according to which the Prophet (p) cursed three kinds of people, including the following:

“...A person who acts as Imam for a people against their will.”³⁴⁹

From this, it is clear that it is undesirable for a person who is disliked by the people to continue to rule over them. Any peaceful means may be adopted to get a better, more popular leader, who is free from the curse of the Prophet (p).

Another hadith that supports the undesirability of leaders who are disliked by the people is related by 'Awf ibn Malik al-Ashja'i, and informs us that the Messenger of Allah (p) said:

“The best of your leaders are those whom you love and who love you; for whom you pray and who pray for you. And the worst of your leaders are those whom you dislike and who dislike you; whom you curse and who curse you.”³⁵⁰

³⁴⁹ At-Tirmidhi, *al-Jami'* (*Sunan*), *Kitab al-Salah*; Hadith 358. According to Taqi Usmani, there are some minor flaws in the chain of this Tradition, but the path that transmits it from al-Hasan al-Basri that is in *mursal* form is authentic. In addition, Imam al-Tirmidhi recorded it as a statement by 'Umar ibn Harith ibn Mutlaq with a *sahih* chain of transmission.

³⁵⁰ Muslim, *Sahih*, *Kitab al-Imarah*; Hadith 4768.

This hadith admittedly continues as follows:

“When the Messenger of Allah (p) was asked: “Then should we not try to rid ourselves of them?” he replied: ‘No, not as long as they establish the prayer amongst you. When one sees someone whom Allah has put in charge involved in disobedience to Allah, one ought to hate the disobedience to Allah that he has committed; but one certainly may not cease to obey him.’³⁵¹

The context of tyrannical leadership (“who dislike their people”, and which is involved in “disobedience to Allah”, etc.) which is what this hadith is addressing, is critical to understanding its correct implications. What this hadith really means is that it is not permissible – under normal circumstances - to take up arms against the leader, as this was usually the only means of removing tyrants and leaders – described as those who dislike their people and who are disliked by them. Removing such a leader by violent means or rebellion, which usually made a bad situation worse for the people, is what is prohibited by this hadith. This hadith does not contradict the implications of the earlier narrations and does not prohibit removing an undesirable leader or leader by peaceful means.

³⁵¹ Muslim, *Sahih*, *Kitab al-Imarah*; Hadith 4768

The hadith does not prevent a people from removing an undesirable leader through any effective, efficient, and appropriate method that does not conflict with the Shari'ah - the democratic or electoral process, impeachment, referendum, end of term of office, or any other legal and peaceful means – that does not worsen or undermine the best interest (*maslahah*) of the people.

Hence, while working out a framework for an Islamic government, it is important that there is a clause in the constitution by which people can remove a leader under circumstances where this is necessary. Such policies in the principles of Islamic jurisprudence (*Usul al-Fiqh*), are usually supported by evidence (*adillah*) such as the general texts of the Qur'an and Sunnah on enjoining right and forbidding wrong, promoting justice and compassion, and the common good. This is in addition to other secondary sources of law such as “consideration of public interest” (*maslahah*), preclusion and blocking the means to harm (*sadd al-dhari'ah*), juristic discretion (*Istihsan*), legal presumption (*Istishab*), and local custom and convention (*'urf wa al-'adah*). This is also supported by the Islamic legal maxims (*Qawa'id al-Fiqhiyyah*) and the higher intents and objectives of law (*Maqasid al-Shari'ah*).

Tenure and Term of Office

Most countries appoint their head of state, whether President or Prime Minister, for only a certain constitutionally predetermined **period of time** – a term of office or tenure. Once this term has elapsed, unless re-elected, the head of state is automatically retired or deposed, and a new one is elected as a replacement. Some constitutions also have a maximum number of times a leader can be re-elected for.

Having a predetermined term of office for a head of state, has usually been done to allow people to have peaceful change or transition of leadership, when necessary, while still giving them the option to retain well-performing leaders. It forces those in power to deliver results within what the society regards as sufficient time to demonstrate effectiveness and gain the trust of the people for another term of office. It also gives those with serious grievances and those ready to violently topple the leadership the chance to consider a more peaceful and realistic alternative to violence since they know that they can appoint a different leader upon the expiration of the term of office of the present one. It also facilitates the option of rotation of leaders in especially multi-ethnic societies, thereby contributing to national unity. It forces incumbents who really care for the society to put in place succes-

sion plans for continuity and long-term plans. It gives the country a significant number of former statesmen with experience and wisdom to guide future leaders, especially in times of national crises.

Having a constitutionally predetermined maximum number of terms a leader can be re-elected for, has also made it more difficult for many leaders to remain in office forever, since they often become more powerful with more time in office. It is seen as one of the many power-limiting mechanism and instruments of administrative that are used as checks and balances to prevent or block the means to the usually corrupting influence of “absolute power”. This is viewed as important since human history seems to show very few leaders who became better with time. Many that started off well became more tyrannical and corrupt with time, and their families and friends became more opportunistic and abusive of their privileged positions.

Islamic history does not provide us with ideal examples of where a Caliph was elected or nominated for a certain tenure or only a fixed period of time. This is still an option and possible course of action for Muslims because Islamic jurisprudence is very flexible regarding the details of political organization and administrative conditions. The legal presumption (*Istishab*) in such matters is that “everything is permissible, unless prohibited by clear evidence”. The

absence of a prohibition is itself evidence for permissibility of fixing a term of office if this is considered as being in the best interest (*maslahah*) of the people.

It is reported however, that as a general rule, Caliph Umar removed leaders and workers after they had spent four years in office.³⁵² He understood that being in power for long could intoxicate. Consequently, he removed Khalid bin Walid as the army general after a while, even though he was probably the most competent military general at the time.³⁵³ This allowed others to also acquire military experience as generals while still having Khalid on “stand-by”.

In the same spirit, some treaties or contracts between communities or nations such as the Treaty of Hudaibiyyah had tenure or period of 10 years attached to its conditions, after which it lapses if not renegotiated. Other treaties however such as the “charter” or “constitution” (*Sahifah*) of the various communities in Medina was not timebound. The issue of having or determining a term or tenure of office for any official or contract worker therefore could be viewed as dependent on context, and what is in the best

³⁵² Ibn Hajar al-'Asqalani, *Fathu al-Bari*, Dar al-Ma'rifah, Beirut, 1379, vo.2 p.240.

³⁵³ Muhammad Hameed Al-Haydar, *Majmu'ah al-Wathaiq al-Siyasiyyah*, 6th ed. Dar al-Nafais, Beirut, 1407, vol.1, p. 458.

interest of people (*maslahah*) or what is in line with their customary practice (*'urf*).

There is therefore nothing wrong with having an agreed and predetermined tenure period for any leader to remain in power. The term should nevertheless be long enough to allow the leader sufficient time to implement his policies effectively. Once the terms of office are clear and agreed with by a leader, they must be respected, and he and others with him are all bound by that contract.

All believers are characterized as those “*who are faithful to their trusts and to their pledges*” (Qur'an 23:8). And upon acceptance of the terms and conditions of tenure, a Muslim is bound by them, as stipulated in the hadith and adopted as an Islamic legal maxim, “*al-muslimun 'inda shurutihim*”³⁵⁴ (i.e., “Muslims are bound by their terms”).³⁵⁵

As mentioned earlier, the Qur'an and the Sunnah do not contain any explicit prescriptions for appointing a leader or Caliph for only a certain period of time. There is also nothing to be found in the texts that forbids doing so either. The legal presumption is that of permissibility in matters related to worldly affairs and transactions

³⁵⁴ Bukhari, *Sahih Bukhari*, hadith no.2273

³⁵⁵ Tariq Ramadan, *To Be a European Muslim*, The Islamic Foundation, Leicester, UK, 1999, p.173

(*mu'amalat*) such as politics and administration. This is supported by the relevant texts and the legal maxim: “the norm regarding things is that of permissibility” (*Al-asl fi al-ashya'a al-ibahah*). The absence of any explicit textual evidence against having a political term of office is therefore also viewed as evidence for its permissibility.

Where having a term of office for any leader has become the customary practise and tradition of a people in their administrative arrangement, it takes on greater importance and weight in Islamic law, especially when the benefits outweigh the harm, and it does not conflict with other evidence (*adillah*). This is supported by one of the secondary sources and principles of Islamic law (*Usul al-Fiqh*) known as “custom and traditions” (*'Urf wa al-'adah*). It is also supported by at least one of the universal maxims of Islamic law (*Qawa'id al-Fiqhiyyah al-Kulliyyah*) which states that “Custom shall have the weight of law” or “Custom is the basis of judgement” (*al-'addatu muhakkamah*).³⁵⁶

³⁵⁶ Al-Suyuti, *Al-Ashbah wa al-Nazair*, Dar al-Kutubil Ilmiyyah, Beirut, Vol.1, P.89

Endorsement and Respect for National Symbols

National symbols such as the national anthem, pledge, flag, coat of arms, mace, etc. are seen as a part of culture and custom of a people (*a'dat*) by most Muslim scholars. There is no clear evidence from the Quran or Sunnah against their use or endorsement. Therefore, they are regarded as permissible to use based on legal presumption (*Istishab*), unless evidence shows any of these contradict the Shariah. The Prophet (p) used flags during periods of war³⁵⁷ and customary war songs were chanted in his presence.

Some Muslims, however, prohibit the salutation of flag, standing up to recite the national anthem, or using the mace in parliaments and events. Some also prohibit the singing or recitation of the national anthem and pledge. Reciting the anthem or pledge is regarded by these Muslims as being similar to reciting or pronouncement of the Testimony of Faith (*shahadah*) and becomes a more heinous offence when musical instruments are also used. Saluting the flag and standing to recite the anthem, etc., are according to them similar to acts of devotional worship

³⁵⁷ Ibn Hajar al-'Asqalani, *Fathu al-Bari*, Dar al-Ma'rifah, Beirut, 1379, vol.6, p.127.

in Islam. Thus, these acts are regarded as tantamount to polytheism (*Shirk*) and imply disbelief (*Kufr*).

Most scholars however regard all the national symbols as purely cultural practices ('*adat*') which do not contradict the religion. Any analogy made between these cultural practices and devotional acts of worship is regarded as a false analogy, and one which will result into prohibiting any action (and silence) that is in any way similar to devotional acts even if the intent and contexts is completely different. Regarding the introduction of musical instruments to the national anthem, it is an old topic of divergence and differing opinions (*khilaf*) among both classical and contemporary scholars.

1. The National Anthem and Pledge and a Muslim's Shahadah³⁵⁸

Some Muslims regard the National Pledge and National Anthem as a form of glorifying the nation instead of glorifying only Allah. The Nigerian national pledge and anthem, for instance, ask citizens "...to be faithful, loyal and honest", "to serve Nigeria with all my strength...", "to serve our fatherland...", etc. Such loyalty and service are

³⁵⁸ This section is an excerpt from our earlier publication: Da'wah Institute of Nigeria, *Western Education: Prohibition or Obligation?*, Minna, Nigeria: Islamic Education Trust, pp 96-98.

understood to be due only to Allah. Those who recite these pledges and anthems – such as students, civil servants, armed forces, media houses, etc. - are regarded as partaking in sinful wrongdoing or disbelief (*Kufr*). Are Muslims permitted to recite national pledges and anthems?

Any form of service to the best of one's ability (“with all my strength”) towards the family, neighbours and others which does not imply any disobedience to Allah is not just permissible (*halal*) but even encouraged (*mustahab*) in Islamic law. The provision of essential services to the community and nation are in fact regarded in Islam as a collective social obligation (*fard kifayah*) and must be performed.

The national pledge is simply a promise to be faithful, loyal, and honest in giving service to the people of one's country - through enjoining right and forbidding wrong - that is *halal*. Being faithful, loyal, and honest, along with other virtues are essential for any true believer. The Prophet (p) instructed Muslims and their leadership to always honour and stand by the pledges, promises, contracts and agreements they make: “*Al Muslimu inda shurutihim!*” (“Muslims are bound by the conditions they accept”), and all believers are characterized in the Qur'an as those “*who are faithful to their trusts and to their pledges*” (Qur'an 23:8).

The national pledge does not imply that one cannot give service to other creatures or to the rest of Africa or humanity. The pledge also ends with a prayer - “So help me God!” It therefore recognizes and honours God and makes it clear that the pledge/promise requires His blessing and support. Serving Allah and the country are not automatically mutually exclusive. Serving a part of or all humanity is a way of serving Allah, with Allah's assistance. True faith (*iman*) is in serving others – family, neighbours, the community and nation, etc.

The second stanza or part of the National Pledge (of Nigeria) is actually a supplication (*du'a*) to Allah for guidance and for “a nation where peace and justice shall reign”. As it is a supplication or request (*du'a*) to Allah and not a “ritual prayer” (*salah*), it can be said in any language, facing any direction and done at any time, without ablution (*wudu*). The fact also that there are better-structured and more comprehensive supplications within the Islamic tradition does not make the prayer or pledge bad or even discouraged.

The national anthem is a motivational song that encourages people to unite and “to serve ...with love and strength and faith” and a hope for a “nation bound in freedom, peace and unity”. The anthem is made up of good words and does not contradict the Qur'an and Sunnah.

Such noble songs or poetry especially when unaccompanied with musical instruments are decent and clearly permissible (*halal*).³⁵⁹ Where they are accompanied by musical instruments, there will be the same differences of opinions among the scholars (such as Ibn Hazm, Ibn Al-Arabi, Al-Shawkani, Al-Qaradawi, and others). The differences of opinion based on juristic reasoning (Ijtihad) among distinguished scholars should not be a basis for disunity and the breaking of brotherhood, nor the basis for excommunication (*Takfir*) of any Muslim.

2. Standing up in Respect for Other than Allah as Un-Islamic³⁶⁰

Some Muslims consider it prohibited to stand out of respect for anyone, they say that the Prophet (p) prohibited people from standing up out of respect for him. Meanwhile, many schools and communities teach their students and citizens to stand up in respect for teachers, leaders, or elders. Is standing up for a leader (or anyone else) prohibited and sinful in Islamic law?

³⁵⁹ Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu*, Dar al-Fikr, Damascus, vol.4, p.214

³⁶⁰ This section is an excerpt from our earlier publication: Da'wah Institute of Nigeria, *Western Education: Prohibition or Obligation?*, Minna, Nigeria: Islamic Education Trust, pp 99 – 106.

There are a number of hadith quoted to justify the prohibition of standing up in respect for others:

- Anas reported that when they saw the Prophet (p) *“they did not stand up because they knew of his dislike for that.”*³⁶¹
- Anas also reported that the Prophet (p) said, *“Those before you have been ruined by the fact that they have glorified their kings by standing up as their kings sit down.”*³⁶²
- Jabir is reported to have said, *“You were about to do as the Persians and Byzantines do. They stand while their kings sit down. Do not do that!”*³⁶³
- When Abdullah bin Zubayr and Ibn Safwan stood up for Mu'awiyya, he said, *“Sit down, for I heard the Prophet (p) say, ‘Let he who is pleased by people standing up before him, await his place in Hell’.”*³⁶⁴
- When Mu'adh bin Jabal in imitation of the people of Sham prostrated before the Prophet (p), the Prophet (p) then said, *“Were I to have commanded anyone to*

³⁶¹ Al-Tirmidhi 2754

³⁶² Bukhari, *Adab al-Mufrad*, 202.

³⁶³ Cited in Khaled M. Abou El-Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, University Press of America, Inc., Maryland, 2001, p.49. (Hereinafter referenced as El-Fadl, 2001)

³⁶⁴ Abu Dawud 5231, Tirmidhi 2755

prostrate to anyone, I would have commanded the wife to prostrate to her husband.”³⁶⁵ This hadith is used by some as the basis for an analogy (*qiyas*) with standing up.

The hadiths above clearly demonstrates that the Prophet (p) took issue with people standing up before him, and that Muslims should not desire others to stand up out of respect for him or her. It also makes it clear that this is also out of fear that this could lead to over-respect and veneration as it happened in the past. In a similar vein, the Prophet (p) is reported to also have said “Do not venerate me” (*“la tatruni”*).³⁶⁶

Other authentic hadiths however also clearly show that the Prophet (p) himself did stand up out of respect for others and even encouraged some of his companions to do the same, especially where there was no fear that this would lead to conceit or undue veneration.

- According to a number of companions, the Prophet (p) commanded some of the *Ansar* (helpers) to

³⁶⁵ Al-Tirmidhi 1159, Abu Dawud 2140, Musnad Ahmad 19422

³⁶⁶ Ahmad ibn Hajar al-Asqalani, *Fath al-Bari fi Sharh al-Bukhari*, Dar al-Fikr, Beirut, 1993, 12:322. Cited El-Fadl, 2001, p.49. Based on some of these, Imam Malik ruled that a woman may not remain standing before her husband. (Ibn Hajar, *Fath al-Bari*, 1993, 12:319, cited in El-Fadl, 2001, p.56)

“Stand up for your master” (“*qumu ila sayyidikum*”) who was Sa'ad bin Mu'adh.³⁶⁷

- Abu Hurayrah reports that when the Prophet (p) would stand up to leave, the companions would stand up and remain standing until he left the mosque.³⁶⁸
- The Prophet (p) stood up during a Jewish funeral procession for a dead Jew and the reason given by the Prophet (p) for his action when he was asked, was “But is it not a soul?”³⁶⁹
- The Prophet (p) stood up to receive and greet his daughter Fatima,³⁷⁰ Ikrima bin Abi Jahl or the Prophet's (p) suckling brother.³⁷¹

Based on all these seemingly contradictory but authentic hadith narrations, some scholars such as Ibn Qayyim concluded that it is prohibited to stand up as a show of respect.³⁷² Others such as Al-Nawawi, Al-Baghawi, Al-

³⁶⁷ Al-Baihaqi, *Al-Sunan al-Kubrah*, hadith no. 18648; Abu Dawud, *Sunan Abu Dawud*, Hadith no5217; al-Nasa'I, *Al-Sunan Al-Kubrah*, hadith no. 8222; Al-Bukhari, *Sahih al-Bukhari*, hadith no. 3043, 4121 & 6282; Muslim, *Sahih Muslim*, hadith no. 4695

³⁶⁸ Abu Dawud, 110

³⁶⁹ Al- Tirmidhi 3174, an-Nasa'i 1927, Abu Dawud 3174, Ahmad 14591

³⁷⁰ Sahih Muslim 6467

³⁷¹ Ibn Hajar al-Asqalani, *Fath al-Bari*, 1993, 12:321. See also al-Bukhari, *Al-Adaba al-Mufrad*, 201-2. Cited El-Fadl, 2001, p.57

³⁷² Ibn Hajar al-Asqalani, *Fath al-Bari*, 1993, 12:320. This view is also held by Al-Albani in his *Silsilah al-Ahadith al-Da'ifah*, 3:637-8. Cited in El-Fadl, 2001, p.59.

Ghazali and al-Baihaqi have concluded that it is permissible to stand up out of compassion or respect.³⁷³ Others such as Al-'aini³⁷⁴ and Ibn Hajar al-Asqalani³⁷⁵ conclude that there is no definite conclusion or resolution among scholars on the issue of standing because of their disagreements. They both (along with others) however said that it is recommended to stand up for a leader, a just leader (*imam*), an elder, or a knowledgeable person.³⁷⁶

In reconciling the various hadiths on this issue, some of these scholars, including al-Tabari and al-Nawawi, make a subtle but important distinction between a proud or egoistical desire for others to stand up for oneself (which is prohibited based on some of these hadiths) and standing up for others out of one's own humility, modesty and respect for them (which is permissible based on the other hadith).³⁷⁷ Al-Tabari argues therefore that it all depends

³⁷³ Husain bin Mas'ud al-Baghawi, *Sharh al-Sunnah*, Beirut, Dar al-Fikr, 1994, 7:213; Ibn Hajar al-Asqalani, *Fath al-Bari*, 1993, 12:320, 323. Cited in El-Fadl, 2001, p.59

³⁷⁴ Badr al-Din Mahmud bin Ahmad al-'aini, *'Umdah al-Qari bi Sharh Sahih al-Bukhari*, Beirut, Dar al-Firk, n.d., 11:251. Cited in El-Fadl, 2001, p.58

³⁷⁵ Ibn Hajar al-Asqalani, *Fath al-Bari*, 1993, 12:317.

³⁷⁶ Husayn bin Mas'ud al-Baghawi, *Sharh al-Sunnah*, Beirut, Dar al-Fikr, 1994, 7:213; Ibn Hajar al-Asqalani, *Fath al-Bari*, 1993, 12:320, 323. Cited in El-Fadl, 2001, p.59

³⁷⁷ Ibn Hajar al-Asqalani, *Fath al-Bari*, 1993, 12:318, 322. Cited in El-Fadl, 2001, p.59.

on the intention – Is it promoting arrogance and conceit, or merely showing of respect?³⁷⁸

Some other scholars try to reconcile these hadiths by concluding that there are different occasions and consequences of standing up presented in all the relevant hadith, and depending on these, standing up as a show of respect could be prohibited (*haram*), discouraged (*discouraged*), merely permissible (*mubah*) or even encouraged (*mustahab*).

According to Ibn Rushd, standing up is of four types:³⁷⁹

1. It is prohibited for one to arrogantly and self-conceitedly want others to stand up in his presence.
2. It is reprehensible to stand up to one who is not conceited or arrogant, but of whom it is feared that he or she will become conceited or arrogant when people stand up in his or her presence.
3. It is permissible to stand up as a sign of respect before someone who you do not fear will become arrogant.

³⁷⁸ Ibn Hajar al-Asqalani, *Fath al-Bari*, 1993, 12:320. Cited in El-Fadl, 2001, p.59

³⁷⁹ Ibn Hajar al-Asqalani, *Fath al-Bari*, 1993, 12:320; Cited in El-Fadl, 2001, p.59. See also Muhammad bin Salih al-Uthaimin, *Sharh Riyadh al-Salihin*, al-Maktabah al-Shamilah 13.13, vol.1, p.59

4. It is recommended that one stand up to greet someone who arrives after travelling.

Scholars such as Ibn Abd al-Salam and Ibn Hajar al-Asqalani however add that if the failure to stand up will result in insult or create a *mafsada* (corruption or harm) then it becomes forbidden not to stand up.³⁸⁰ Ibn Hajar al-Haitami says that standing up becomes recommended, if not mandatory, if it is in order to achieve social harmony and to avoid unnecessary conflicts.³⁸¹ Al-Shatibi states that the custom of standing up out of respect to greet someone is consistent with the Shari'ah, and it is lawful. He asserts that under the Caliph Umar bin Abdul Aziz, it had become an established practice. This established practice, he argues, was consistent with the precedent set by the Prophet (p) because the Prophet (p) rose to greet his cousin Ja'far.³⁸²

The Prophet (p) said, "*He is not of us who does not respect our elders, nor show compassion towards our young ones*".³⁸³ Those who regard it as permissible or even

³⁸⁰ Ibn Hajar al-Asqalani, *Fath al-Bari*, 1993, 12:323, Cited in El-Fadl, 2001, p.59.

³⁸¹ Ibn Hajar al-Haitami, *Al-Fatwabs al-Kubra al-Fiqhiyyah*, Beirut, Dar al-Kutub al-Ilmiyyah, 1983, 4:247-8. Cited in El-Fadl, 2001, p.58

³⁸² Ibrahim bin Musa al-Shatibi, *Al-Muwafaqat fi Usul al-Shari'ah*, ed. 'Abdullah Darraz, Cairo, Dar al-Fikr al-'Arab, n.d., 3:64-65. Cited in El-Fadl, 2001, p.60

³⁸³ Bukhari, *Al-Adab al-Mufrad*, 358; *Sunan al-Tirmidhi*, 1919

encouraged for a Muslim to stand up out of humility, compassion and respect for others regard it therefore as permissible and even necessary for children or students to be taught such gestures of respect, modesty and humility in school, and especially towards teachers, elders, leaders and parents. The natural challenge and responsibility is for the individual teacher, leader or parent, etc., not to allow himself or herself gradually develop a sense of arrogance, pride and an inner desire from such displays of humility or respect by others.

The fact however still remains that distinguished scholars have and will continue to differ on this issue.³⁸⁴ According to Sufyan At-Thawri,³⁸⁵ *"If you see a man doing something over which there is difference of opinion among scholars, and which you believe to be forbidden, you should not forbid him from doing it."*³⁸⁶

Such issues upon which scholars differ (*khilaf*) - and there are many others – cannot and should not be a basis for insulting anyone, nor is it a valid basis for attributing

³⁸⁴ For further reading on the issue of standing up for others, and in addition to references already cited above, see also Hasan Ayyub, *Al-Suluk al-Ijtima'i fi al-Islam*, Dar al-Buhuth al-Ilmiyyah, Cairo, 1979, p.324-332.

³⁸⁵ He was also called the *Amirul Mu'minin fil Hadith* ("Leader of the Believer in Hadith") and was among the greatest scholars of the successors (*tabi'un*) of the companions of the Prophet (pbuh).

³⁸⁶ Quoted in Abdal Hakim Murad, *Understanding the Four Madhahib*, Cambridge: Muslim Academic Trust, 1999, p.13

the sin of polytheism (*shirk*) or of excommunicating a Muslim by declaring him a disbeliever (*kufr*). It is narrated from Ibn Umar that the Prophet (p) said: “*When a man calls his brother an unbeliever (kafir), it returns (at least) to one of them.*”³⁸⁷ In other words, if you call a person a disbeliever (*kafir*) when he is not, then Allah will regard you as a *kafir*!

3. Saluting the Flag as being similar to Reverence and Worship of an Idol³⁸⁸

Some Muslims understand the act of saluting a flag or a superior officer to be similar to an act of reverence, veneration and worship, and therefore regard it as an act of polytheism (*shirk*) and disbelief (*kufr*). Some also regard the salute gesture as similar to the raising of the hands in prayer (*salah*), except that it is done with only one hand instead of two. Would saluting a flag or a superior officer be regarded as an act of *kufr* in Islamic Law?

There is no textually based prohibition of the gesture of saluting anyone or anything in the Qur'an or Sunnah of the Prophet Muhammad (p). Allah reminds us in Qur'an

³⁸⁷ Ahmad, 4687; Al-Bukhari, 6103, Muwatta' Malik, 3606; Muslim, 224

³⁸⁸ This section is an excerpt from our earlier publication: Da'wah Institute of Nigeria, *Western Education: Prohibition or Obligation?*, Minna, Nigeria: Islamic Education Trust, pp 107 – 110.

(16:116), “*And do not say about what your tongues assert of untruth, "This is lawful and this is unlawful," to invent falsehood about Allah. Indeed, those who invent falsehood about Allah will not succeed.*”

The analogy that implies the similarity of salutation (to a flag) to prostration (*sujud*) or raising of the hands (in *takbiratul ihram*) in prayer (*salah*) is logically problematic. It implies that any gesture that is in any way similar to a posture done in prayer (*salah*) - such as standing, sitting, turning the head, waving, pointing with one finger, etc.- would also be prohibited even when clearly done with no intention of devotional worship (*ibadah*). This type of logic is not a legitimate basis for establishing rulings in Shari'ah.

This logic also makes no distinction between non-devotional customary (*al-'adah* or *'urf*) gestures of respect, recognition, affection, and association to a symbol - such as raising or saluting a flag; facing and circumambulation (*tawaf*) round the *Ka'bah*; touching, pointing or kissing the Black Stone; sitting or standing in front of a teacher or *imam*; having symbols on mosques and flags such as the crescent moon and star (of the Ottoman Caliphate); etc. - and devotional worship (*ibadah*) related gestures towards an image or idol, which is clearly prohibited (*haram*). An example of symbolism in devotional worship which represents disassociation and rejection is the “stoning of the

devil” during the Hajj pilgrimage. This is in no way a basis for drawing an analogy with other different reasons for throwing stones at anyone or anything.

The validity of using analogical reasoning (*qiyas*) in Islamic law is dependent of the correctness in identifying the clear effective cause/reason (*'illah*) or wisdom (*hikmah*) behind the original action, and its significant degree of similarity with the new case. In the case of raising the hands in *salah*, the reason for doing it is devotional worship (*ibadah*) while in the case of saluting a flag, it is not so. If saluting or raising a flag was done as an act of devotion and worship, then it would be regarded as prohibited (*haram*). Most acts of *ibadah* do not have clear and specific textually identified reasons (*'illah*). Scholars of Islamic law therefore generally do not approve of *qiyas* being applied to issues related to creed (*aqidah*) and prescribed devotional acts or rituals (*ibadah*).³⁸⁹

Additionally, physical movements that look exactly like acts of worship (*ibadah*) do not automatically become acts of *ibadah* unless they are preceded by a deliberate inten-

³⁸⁹ Mohammad Hashim Kamali, *Principle of Islamic Jurisprudence*, p.191; Abdul Wahab Khallaf, *Masadir al-Tashri' al-Islamiy fi ma la Nass fih*, Kuwait, Dar al-Qalam, 1414 AH, 6th ed., p.26 and 30; Ibn Kathir, *Tafsir Ibn Kathir*, Dar Tayba, Madinah, 1420 AH, vol.7, p.465; Al-Hasan bin Ali al-Barbahari, *Sharh al-Sunnah*, Makrabah al-Sunnah, Egypt, 1416 AH, p.28, 47 & 49.

tion for the act to be an act of devotion (*ibadah*) and done for that purpose. Consequently, washing of the limbs, face, and head without the prerequisite intention for it as an act of *ibadah* does not constitute an ablution (*wudu*) for prayer (*salah*); abstinence from food and drink from dawn to sunset does not constitute fasting (*siyam*) without the prerequisite intention. The same applies to visiting specific sites at Makkah and pilgrimage (Hajj or Umrah), performing exercises or movements that are identical to those in prayer (*salah*); etc. The same also therefore applies to raising hands as in *salah* during *takbirah al-ihram*. Raising one hand to salute a person or flag does not constitute an act of *ibadah* without the intention for it to be so. So, while a posture like prostration (*sujud*) when done towards any other than Allah is prohibited by clear text irrespective of the intent, the salutation of a flag is not prohibited by any text nor is the act done with the intention of being an act of worship (*ibadah*). Intention for devotional worship is therefore required to make a posture or gesture an act of *ibadah*, or an act of *shirk* if it is directed to any other than Allah. The mere similarity of a posture or gesture with an act of *ibadah* is not sufficient to constitute an act of *shirk*.

There is therefore no basis in the Qur'an, Sunnah, practice of the Companions (*sahabah*), consensus (*ijma'*) or analogical deduction (*qiyas*) to prohibit the salutation of

a flag, or to claim that it is prohibited because it is somehow similar to raising of the hands in *salah* during *takbirah al-ihram*. This therefore implies that there is no basis for such reasoning to be a criterion for declaring polytheism (*shirk*) or disbelief (*kufir*) on a person who salutes a flag or someone, even if one still regarded it as prohibited (*haram*).

4. On Serving the Nation instead of Serving Only Allah³⁹⁰

Some Muslims believe that any form of “national service” such as the National Youth Service Corps (NYSC) done in Nigeria after a university degree (or its equivalent) is an act of disbelief (*Kufr*), because it is a form of serving the nation instead of serving Allah, who is the only One Who should be served. (It should also be noted that in Hausa language, “national service” is translated as “*bautan kasa*” which literally means “worshipping the nation”). Is it permissible for a Muslim to serve others or his nation while also serving Allah?

The argument in the above question seems to assume that serving one's nation, family, guests, etc. is somehow

³⁹⁰ This section is an excerpt from our earlier publication: Da'wah Institute of Nigeria, *Western Education: Prohibition or Obligation?*, Minna, Nigeria: Islamic Education Trust, pp 91 – 95.

contradictory to serving Allah; that one cannot serve one's parents if only Allah should be served. It neglects the fact that serving Allah actually requires us to serve His creation in accordance with His guidance in the Qur'an and Sunnah.

Allah says in the Qur'an, "*I have not created jinn and men for any other purpose than for them to serve Me.*" (Qur'an 51:56) The word translated as "serve" (*ibadah*) in the verse above is, when used for Allah, also understood to mean worship in the sense of directing devotion and religious rituals towards Allah alone. When applied to Allah, it means that we do not serve or submit to the will of any creature in a way that implies disobedience to Allah as taught by the Prophet (p). When we are described as servants of Allah, it means Allah is our ultimate Master and we do not serve any other in a way that contradicts or conflicts with our pledge (or *shahadah*) to Allah.

It does not literally mean that there are no more "servants" in peoples' homes, and no more "masters of the house" (*Rabb al-Bait*). It also does not mean a Muslim cannot "serve" others such as "serving" his/her guests, parents, family, stranger, neighbours, community, society, nation, the Ummah or humanity or even serving the needs of other creatures. It does not mean that people cannot also be civil "servants" or part of a group of youth "serving" the nation (i.e., the National Youth Service Corps – NYSC). In

fact, these and many other forms of showing compassion and being useful to others or social service are all different ways of serving Allah.

What is prohibited for a Muslim is to serve others in ways or for purposes that conflict with the teachings of Islam, and which are therefore forms of disobedience to Allah.

The various ways of “serving” Allah therefore are actually fulfilled through selflessly serving His creation by following His guidance. We are taught to serve Allah through serving others. The Prophet (p) said, “*The best among you are those who are most useful to others*”.³⁹¹ In reality, Allah is in no need of our service and worship, as He is independent of these. A careful study of all religious and mundane teachings of Islam shows that they are all aimed at benefiting humanity (*maslahah*) or removing harm and evil (*mafsadah*) in this life and the next. Therefore, selfless service to Allah's creation is also regarded as serving Allah.

The Prophet (p) said, “*Whoever does not show gratitude to people has not shown gratitude to Allah*”,³⁹² “*Show mercy*

³⁹¹ Abu Bakr Ahmad bin Husain al-Baihaqi, *Shu'ab al-Iman*, Dar al-Kutub al-Ilmiyyah, Beirut, 1410AH, vol.6, p.117, hadith no.7658; Daraqutni

³⁹² Muhammad bin Ismail al-Bukhari, *al-Adab al-Mufrad*, Dar al-Bashair al-Islamiyya, Beirut, 1989, p.85, hadith no.218; Sulaiman bin Abu Dawud,

to those on earth and He who is in heaven will show mercy to you”;³⁹³ In a long “divine” (*qudsi*) hadith, Allah, on the Day of Judgment describes Himself as having been “hungry”, “thirsty” and “sick” and was not tended to by the Believer. When the Believer asks how it could be possible for Allah the Almighty to be “hungry”, “thirsty” and “sick”, Allah responds by saying “My servant was hungry, ...thirsty and ...sick, and you did not tend to him.”³⁹⁴ Aisha was asked about what the Prophet (p) did while he was at home, and she said, “He served his family”.³⁹⁵ These hadiths clearly show that serving and tending to the legitimate needs of Allah's creation are an important way of serving Allah.

The Hausa translation of “National Service” as “*bautan kasa*” (literally, “worshipping/serving the land/country”) does not change the real and accepted meaning of the term as a form of service to the nation. Even though the word “*bauta*” also means worship in the devotional sense, no educated Hausa person uses the word to literally mean that

Sunan Abi Dawud, Dar al-Kitab al-Araby, Beirut, vol.4, p.403, hadith no.4813

³⁹³ Al-Tirmidhi, 1924; *Musnad Imam Ahmad*, 6494; Abu Bakar Ahmad bin al-Husain bin Ali bin Musa al-Baihaqi, *al-Sunan al-Kubra*, Maktabat Dar al-Baz, Makkah, 1994, vol.9, p.41, hadith no.17683

³⁹⁴ *Sahih Muslim*, 6721.

³⁹⁵ *Sahih al-Bukhari*, 676; *Musnad Ahmad*, 24226

people are worshipping the nation in the same sense as they worship or show devotion to Allah, since the term in its context also means “serving the country”.

Also, while some have criticized the immoral and unethical activities of some of the Service Corp members as also found within all professions (Islamiyyah and other teachers, lecturers, *mallams*, police, politicians, traders, mechanics, rural farmers, cattle herdsman, etc.), this still does not constitute disbelief (*kufr*), nor is it sufficient to make such service or responsibilities *haram* for everyone else.

Wrongdoing by corps members only underscores the critical importance of more efforts by concerned Muslims and all stakeholders to find legitimate and effective ways of enjoining right and forbidding wrong. The NYSC members, especially through the Muslim Corpers' Association of Nigeria (MCAN), have also done a lot of good in spreading a better understanding of Islam, building community and offering many humanitarian and other services to various distant communities.

SECTION SIX

Restoring the Caliphate

Meaning of Caliphate

Caliphate is the general leadership in religious and worldly affairs on behalf of the Prophet (p). It is also called the Great Imamate³⁹⁶ The Caliphate started immediately after the death of the Prophet (p) with the emergence of Abubakr as the first Caliph. This caliphate system was then succeeded by royal authority (or a monarchical system of governance) which lasted until the dissolution of the Ottoman Empire in 1922.

The Prophet (p) said: *"The Prophethood will be among you as long as Allah wills; then He will eliminate it if He so wills. Then a Khilafah ("Caliphate") on the model of Prophethood will prevail so long as Allah wills, then He will eliminate it if He so wills. Then there will be a biting monarchy as long as Allah wills, then He will eliminate it if he so wills. Then there will be an oppressive monarchy as long as*

³⁹⁶ The Fiqh Encyclopedia, *Al-Mausu'ah al-Fiqhiyah al-Kuwaitiyyah*, vol.6, p.196.

*Allah wills, then He will eliminate it if he so wills. Then a Khilafah ("Caliphate") on the way of Prophethood will prevail and he kept silent."*³⁹⁷

However, it is noticed that even the various empires succeeding the Rightly Guided Caliphates were also regarded and referred to as caliphates by classical scholars and jurists in their books of Islamic history and the likes.³⁹⁸

Umar bin Khattab once asked Salman: "Am I a Caliph or a king?" He replied: "If you take a dirham from the land of the Muslims and you put it in the wrong place then you are a king and not a caliph". He also asked other people and similar answers were given to him.³⁹⁹

Abu Musa Al-Ashari was reported to have said: "leadership (*imra*) is that which is carried out collectively, while kingship (*mulk*) is that which is dominated by the sword."⁴⁰⁰

Ibn Khaldun said: "the real meaning of royal authority (monarchy) is that it is a form of organization necessary to

³⁹⁷ Musnad Imam Ahmad, Hadith 18406.

³⁹⁸ See Ibn Taymiyya, *Minhaj al-Sunnah al-Nabawiyyah*, 1st ed. Imam Muhammad bin Saud University, 1986, vol.1, p.480.

³⁹⁹ Muhammad bin Sa'd, *Al-Tabaqat al-Kubrah*, 1st ed. Maktabah al-Khanaji, Cairo, 2001, vol.3, p.306.

⁴⁰⁰ Muhammad bin Sa'd, *Al-Tabaqat al-Kubrah*, 1st ed. Maktabah al-Khanaji, Cairo, 2001, vol.4, p.113.

mankind. Royal authority requires superiority and force, which express the wrathfulness and animality (of human nature). The decisions of the leader will therefore, as a rule, deviate from what is right”.⁴⁰¹

The quotes from Umar and Ibn Khaldun's explanations clearly distinguish between a caliphate and a monarchy (or royal authority) as the difference between a good and bad government.

On the other hand, the jurist, Ibn Taymiyyah endorsed naming other leaders as caliphs after the Rightly Guided Caliphs, and he supported this position with the Hadith: “*The Children of Israel used to be ruled and guided by prophets. Whenever a prophet died, another would take over his place. There will be no prophet after me; but there will be **Caliphs who will increase in numbers.***”⁴⁰² The reference by the Prophet (p) in this hadith to “caliphs” who will be in large numbers, when the agreed Rightly Guided were only four, is understood as implying that the term caliph also applies to others besides the Rightly Guided four. Ibn Taymiyyah however, later on concludes that kingship (or monarchy) is primarily unlawful, and it is an obligation to set up a model similar to that of the prophetic caliphate of the Rightly Guided caliphs.

⁴⁰¹ Ibn Khaldun, the Muqaddimah, translated by Franz Rosenthal, p.257.

⁴⁰² Muslim, Sahih Muslim, Hadith 1842.

From this, it can be concluded that the caliphate system (of the Rashidun) is obligatory, but Muslims can establish or be governed by an alternative to it when there is a necessity. It can also be said that in the opinion of Ibn Taymiyyah, a monarchy is permissible if it better eases the realization of the objectives of a state...⁴⁰³

Prophet Muhammad's (p) Prophecy On Caliphate

Hudhayfah reported a prophecy from the Prophet (p), where he said: *"The (system by) Prophethood will be among you for as long as Allah wills, then He will eliminate it if He so wills. Then a Khilafah ("Caliphate") on the model of Prophethood will prevail for so long as Allah wills, then He will eliminate it if He so wills. Then there will be a biting monarchy for as long as Allah wills, then He will eliminate it if He so wills. Then there will be an oppressive monarchy for as long as Allah wills, then He will eliminate it if He so wills. Then a Khilafah ("Caliphate") on the model of Prophethood will prevail, and he (the Prophet) then kept silent."*⁴⁰⁴

This controversial solitary Hadith (*ahad*) has been accorded with lots of discussions and explanations by

⁴⁰³ See Ibn Taymiyya, Majmuu'l Fatawah, Majma' Malik Fahd, Saudi, 2004, vol.35 pp.20-22.

⁴⁰⁴ Musnad Imam Ahmad, Hadith 18406.

scholars regarding its authenticity, meaning and implications. While some hadith scholars have argued that it is authentic, others have challenged its authenticity. Some others however regard as unauthentic only the last important phrase of the hadith - "...Then a Khilafah ("Caliphate") on the model of Prophethood will prevail..."⁴⁰⁵

Some of the alternative interpretations and perspectives on this hadith include:

1. Some who regarded the hadith as authentic, interpreted it as not just a prophecy about the future, but also a prescription from the Prophet (p) that requires Muslims to create a caliphate similar to his model. These Muslims, therefore, have tried wherever possible, to establish such caliphates, and refer to their leaders as "caliphs", and declare their caliphates to be "Islamic states".⁴⁰⁶
2. Other scholars who also regarded the hadith as authentic, faulted this first opinion and interpreted the hadith as a prophesy and description from the Prophet (p) of the future, that there will be a re-birth of the caliphate on the model of the Prophetic way. The fulfilment of

⁴⁰⁵ Aliyy bin Muhammad, *Mirqat al-Mafatih*, 1st ed. Dar al-Fikr, Beirut, 2002, vol.8, pp.376-377.

⁴⁰⁶ This seems to be the understanding of the Islamic Militant groups such as ISIS.

this prophesy is believed to have occurred during the rule and caliphate of Umar bin Abdul-Azeez, who was coincidentally the great-grandson of the second Caliph, Umar bin al-Khattab. His was a rightly guided caliphate which came after a biting and oppressive monarchy as depicted in the hadith. Umar bin Abdul-Azeez was nicknamed by some classical scholars as the “5th of the Rightly Guided Caliphs”.⁴⁰⁷

3. Others accept the authenticity of the hadith, and that the hadith is a prophecy about the future. However, they argue that the fulfilment of the prophesy and the appearance or occurrence of such a predicted caliphate would only be realised towards the end of time, during the period of the return of Prophet Isa (p) or the emergence of al-Mahdi.⁴⁰⁸
4. There are also those scholars who accept but interpreted the Hadith as simply a prophecy of glad tidings from the Prophet (p) which like many other prophecies of the Prophet (p), requires no legislative action from Muslims, other than hopefully expecting its occurrence with time, and putting their trust in Allah will.⁴⁰⁹

⁴⁰⁷ <https://al-maktaba.org/book/31615/30767>

⁴⁰⁸ Aliyy bin Muhammad, *Mirqat al-Mafatih*, 1st ed. Dar al-Fikr, Beirut, 2002, vol.8, pp.376-377.

⁴⁰⁹ Majdi al-Hilali, *'Audat al-Majd*, 1st ed. Muassasat Iqra, Cairo, 2007, p.20.

In this opinion, prophecies may caution or advise, but do not constitute legal prescriptions or obligation in Shari'ah. They are only positive or negative descriptions of the future, and an additional sign for believers of Allah's power over all affairs. Additional and more categorical evidence from the Qur'an and sunnah is required for establishing legal *Shari'ah* rulings (*ahkam al-shar'iyyah*) on such critical issues that affect the whole community or Ummah.

Implications of the Silence in the Text

In spite of the diversity of interpretations of the hadith in question, and the doubts regarding its authenticity, it is critical to note not just what the hadith actually mentions explicitly, but what it is also silent about. This is important so as to avoid assumed meanings and imputed implications being read into the text, where the text is actually silent.

While the hadith does give preference and credence to the caliphate system that is modelled according to the way of the Prophet (p), the hadith is silent about the ways in which leaders are to be elected, as the Rightly Guided Caliphs were elected into office in diverse ways according to the *ijtihad* (reasoning) of the companions and community. The hadith is also silent about the details and admin-

istrative or governance structure which continued to evolve even during the time of the Rightly Guided Caliphs. The hadith mentions two forms of monarchy “biting” and “oppressive”. It is silent about other benign and benevolent monarchies where the kings are compassionate and just, as during the times of some earlier prophets such as Dawud and Suleiman (p). It is also silent about and does not condemn other systems of governance that are not among those mentioned in the hadith – including aristocracies, theocracies, oligarchies, democracies, etc.

Silence in the text is generally regarded as supporting the default legal presumption (*Istishab*) of issues related to worldly (*dunyawi*) and mundane affairs (*mu'amalat*) which is that “everything is permissible unless clear evidence shows it to be prohibited. Silence in the text is therefore understood to imply an opportunity for “juristic reasoning” (*Ijtihad*) and consequent diversity of opinion (*Khilaf*).

Every generation and community of scholars and jurists will have to carry out the necessary “juristic reasoning” (*Ijtihad*) for their time, place, and context, in consultation (*Shurah*) with the other relevant scholars, professionals and stakeholders, so as to arrive at the most effective, innovative and pragmatic solutions that are in the best interest (*maslahah*) of the people and the higher intents

and objectives (*Maqasid*) of Shari'ah. It is regarded as prohibited (*haram*) for the *Mujtahid* or distinguished jurist(s) of any age to blindly follow any irrelevant *fatwas*, verdicts and *ijtihad* of earlier scholars or those of different contexts and realities. In view of the diverse contexts of Muslims in history, diverse geographies, and realities, it is expected that there will have to be differing opinions and rulings (*fatwas*) that must be appreciated, respected or at least tolerated. Added to this is the reality of human error, fallibility, and other limitations on the part of respected scholars, (who are still rewarded by Allah for their sincere efforts), but which only insightful or more distinguished scholars and specialists may be able to detect and correct.

It is also agreed by the consensus (*Ijma'*) of Muslim jurists and the major schools of law (*madhhabs*), that excommunication (*Takfir*) of Muslims (or anything) is never justified or established by presumptive or speculative (*Zanni*) evidence, such as those secondary sources of law that are the bases of *Ijtihad*.⁴¹⁰

Fundamental creed (*Aqidah*) of Islam, the rejection of which implies excommunication (*Takfir*), is not established by "juristic reasoning" (*Ijtihad*) or speculative or

⁴¹⁰ Munkidh bin Mahmud, *Al-Takfir wa dawabituhu*, Rabitah al-'Alam al-Islami, p.17.

presumptive (*Zanni*) evidence. It is only established by definitive and categorical (*Qat'i*) evidence from the Qur'an or from Hadith of absolute authenticity that have numerous and undisputedly multiple (*Mutawatir*) chains of narrators. Only evidence that is definitive and certain regarding the authenticity (*Qat'i al-thubut*) and regarding its meaning and implications (*Qat'i al-dilalah*) is strong enough to establish the “known fundamental teachings of Islam” – also known by scholars as “*Ma'alum min al-deen bi al-darurah*”. None of these fundamentals are products of juristic human reasoning (*Ijtihad*) and they are all accepted by consensus (*Ijma'*) of Muslim scholars and schools of the Ummah.

It is absolutely prohibited (*haram*) in Islamic law to refer to or excommunicate a person, concept, system, or thing as a form of disbelief (*kufr*) if the evidence used is based only on presumptive (*Zanni*) evidence, or if there is diversity of juristic opinion (*Khilaf*) based on their “juristic reasoning” (*Ijtihad*), or if scholars differ in their interpretation (*Tafsir/Ta'wil*) of the relevant texts of the Qur'an or hadith.

Conclusion

No system of governance that is operated by humans can ever be perfect. It never was even during the Rashidun Caliphate period which had several modifications and did not survive more than about 3 decades.⁴¹¹ Each system has its relative advantages and disadvantages, opportunities, threats, strengths, and weaknesses.

However, considering lessons from both Islamic history and the history of other nations, and the difficulty in finding leaders with the quality of character and integrity of the four Rightly Guided Caliphs, it has become more important for Muslims today to consider policies and systems of governance that at least meet some, but preferably all the following criteria, (and more):

⁴¹¹ In an authentic hadith, the Prophet (p) is reported to have said that the caliphate system would last for 30 years, then he mentioned other governance systems that would follow. The fact that the other systems were still mentioned by the Prophet (p), and were not condemned by him, was regarded by many scholars as an endorsement of their legitimacy.

- 1. Be Shari'ah Compliant:** It should be a system of governance that is realistic for its context and which does not conflict with any clear prescriptions of the Qur'an and Sunnah or the agreed principles of Islamic jurisprudence (as discussed in the juristic fields of Islamic Legal Theory or the Principles of Islamic Jurisprudence (*Usul al-Fiqh*), Islamic legal maxims (*Qawa'id al-Fiqhiyyah*) and the Higher Intents and Purposes of Islam (*Maqasid al-Shari'ah*).
- 2. Serves Justice and Public Interests:** It should be the system that best meets the needs for social justice, public interests and general good (*maslahah*) of the Muslim Ummah and other citizens. It should demonstrate transparency, accountability and integrity.
- 3. Limits Concentration of Powers:** It should best prevent or check the excesses and abuses of powers and arbitrary rule by any individual or group in positions of authority. Absolute power has been seen again and again, to have very corrupting influence on leaders.
- 4. Ensures Peaceful Transition of Leadership:** It should accommodate the peaceful transition or removal of leaders as soon as these leaders no longer serve the best interests of Islam, justice, and the community. It should allow the Muslim community the real ability to have a leader they prefer and remove one they dislike.

5. **Promotes Meritocracy and Egalitarianism:** It should pose no hinderance to the coming to power of the most competent and just persons, irrespective of their family, tribal, racial, and socio-economic background, or place of origin.
6. **Protects Freedom to Tell Truth to Power and Correct Leadership:** It should allow Muslim intellectuals and scholars, as well as victims with grievances, the greatest freedom and protection from fear or persecution when correcting, enjoining right and forbidding wrong, criticising or telling the bitter truth to those in any position of power.
7. **Proven Sustainability, Resilience and Track Record relative to Others:** It would be an advantage if such a system has proven itself and worked in human history for a significant period time, and has been relatively successful in meeting the above criteria and objectives at least.

As of today, democracy is the most widely practiced system of governance in the world, with over 65% of the world's countries practicing some form of democracy. In various Muslim societies around the world, there have been a lot of debates surrounding the compatibility of Islam and democracy, and these debates have often been

fraught with misconceptions, misinterpretations, and, sometimes, outright hostility.

Some Muslim scholars condemn and forbid democracy in its entirety, labelling democracy as a foreign import antithetical to Islamic values and discouraging or forbidding Muslims from any form of participation in a democratic governance system including voting during elections. Others only criticize some specific elements or features of democracy such as having multiple political parties, campaigning for leadership positions, having women or people of other faiths as leaders, separation of powers, having human lawmakers and constitutions, sovereignty assigned to people instead of Allah, having tenure of office, amongst others. Other contemporary jurists do not see any fundamental incompatibility between the principles of Islam and those of democracy as a system of government and administration. Some forms of democracy may be preferable to others, but in their opinion, the fundamental principle of consultative and participatory politics does not conflict with any known fundamental of Islam – *ma'lum min al-din bi al-darurah*.

Thus, throughout this book, we have delved deep into the heart of a discourse that continues to shape the identity, beliefs, and aspirations of Muslims around the world. We have explored the multifaceted challenges and dilem-

mas faced by Muslims as they grapple with the question of whether democracy is compatible with the tenets of their faith and how it can be reconciled with the principles of the Shari'ah. As this topic also relates to the concepts of citizenship and residence, both for Muslims in non-Islamic nation-states and within modern Islamic nation-states, it is important to note that Islam encourages Muslims to be responsible citizens, regardless of their geographic location. Muslims must therefore respect the laws of the land of while upholding Islamic values and principles, and non-Muslims living in Islamic nation-states should also be treated with justice and dignity. Throughout this exploration, we have sought to provide clarity, nuance, and a balanced perspective on this crucial matter, while staying true to the Principles of Islamic Jurisprudence (*Usul al-Fiqh*), Islamic legal maxims (*Qawa'id al-Fiqhiyyah*) and the Higher Intents and Purposes of Islam (*Maqasid al-Shari'ah*).

Muslim jurists consider it permissible in issues related worldly or mundane (*dunya*) or social affairs (*mu'amalat*) – such as politics, security, economics, etc. – to find or adopt strategies and systems of administration from other cultures that do not conflict with the Qur'an and Sunnah, and which can bring benefit, limit or control the abuse of absolute power or sovereignty by supreme leaders. This consideration of beneficial strategies from other cultures

that do not conflict with the Shari'ah is similar to the Prophet (p) adopting a Persian military strategy that was beneficial to the Muslims of Medina during the Battle of the Trench (Khandaq).

One of the key distinctions we have made throughout this book is between the classical and broad concept of "halal" and the modern and narrow notion of "Islamic." We have argued that democracy when viewed through the lens of the broader Islamic ethical framework, can indeed be considered "halal" or permissible. We also delved into the challenge posed by "Shari'ah-compliant" versus "Shari'ah-based" approaches to Islamic law. It became clear that an overemphasis on compliance rather than the fundamental values of justice, equity, and welfare has led to confusion and rigidity in Islamic legal thought. By emphasizing the importance of *ijtihad* (independent legal reasoning) and the dynamic nature of Islamic jurisprudence, we have challenged the overly conservative interpretations that categorically reject democracy. It thus becomes imperative to seek a balance that upholds the spirit of Islamic law while adapting to the changing needs of our societies.

The debate on this subject is thus one of differing "juristic reasoning" (*Ijtihad*) based on diverse contexts, evidence, and cultural preferences. The fact that this is a juristic subject of Islamic political thought (*al-siyasah al-*

shar'iyyah) and one of diverse juristic opinion (*Khilaf*), implies that it is not one where any group of jurists could be regarded as guilty of disbelief or *Kufr*. The differences are at best described as *Khilaf*, where there is respected difference of opinion amongst scholars, or at worst, one of *Ta'wil* as a result of esoteric interpretation of relevant texts. No position here justifies the *takfir* of the scholars or the followers of any of the positions of democracy. As a topic related to *mu'amalat* (social transactions) and mundane issues, the Islamic legal maxim of presumed permissibility states that, "everything is permissible except what is prohibited (by evidence)" - *al-'asl fi al-ashya' al-ibahah*. Also, people's customs have the weight of law" - *al-'adah muhakkamah*.

Throughout this book, we have shown that democracy at its core is not inherently at odds with Islam; rather, it can be embraced as a political system that aligns with the principles of justice, accountability, and public welfare outlined in the Shari'ah. Central to our argument has been the concept of *maslaha*, which underscores the importance of the greater public good in governance. We have shown that democracy, as a system that allows for public participation and representation and is conducive to upholding *maslaha*. However, it is crucial to recognize that democracy is not a one-size-fits-all solution, and the deficiencies in various

models of democracy adopted around the world can be improved upon to better serve the best interests of the populace.

In contemporary times, the path forward for Muslims lies in embracing the principles of Islam while adopting governance systems that best serve the interests of their societies. It is a journey that requires engagement, critical thinking, and the application of Islamic ethics to the complex challenges of the modern world. The reconciliation of Islam and democracy requires a nuanced understanding of both systems. It demands a commitment to upholding Islamic values within the democratic framework and adapting democracy to accommodate the unique cultural and social contexts of Muslim-majority nations. It necessitates a continuous dialogue between scholars, leaders, and the broader Muslim community to develop governance systems that are truly just, accountable, and responsive to the needs of the people.

As we close this book, we invite readers to reflect on the profound principles of justice, equity, and welfare that underpin Islamic teachings. We encourage Muslims to engage in the democratic process, advocating for governance that reflects the spirit of Islamic ethics and ensures the well-being of all citizens. By doing so, we can contribute to a world where the values of Islam and the principles

of democracy coexist harmoniously, fostering a society that is just, compassionate, and inclusive. It is our hope that this book serves as a catalyst for constructive dialogue and positive change, paving the way for a brighter future where Islam and democracy walk hand in hand towards a better world for all.

ABOUT THE BOOK

This book provides a comprehensive and thought-provoking exploration of governance systems, providing valuable insights into the principles, challenges, and debates surrounding democracy, particularly within the framework of Islamic governance. It examines the role of a constitution exploring the issues surrounding the formation and documentation of a constitution, including the codification of laws, from an Islamic perspective. It also addresses the issue of ruling with man-made laws, imbuing Western ideology, and the separation of powers, highlighting the complexities and nuances of combining Islamic principles with modern governance structures.

The process of selecting a leader in a modern Islamic state is a critical aspect of governance, and the book discusses various methods for choosing a leader and the conditions for leadership. It also explores the concepts of elections, multi-party systems, campaigning, and the possibility of women and non-Muslims holding political positions. Similarly, removing a leader is a delicate yet crucial aspect of governance, which is discussed in this book, while also offering insights into the accountability mechanisms within a modern Islamic state. The book also explores the concept of the caliphate, its historical significance, and its relevance in the modern world, while examining other governance systems such as monarchy, totalitarianism, and aristocracy/oligarchy. It thus explores several issues relating to governance which have been subjects of debates or misunderstanding for many decades, providing a thoughtful reflection and critical analysis while highlighting the complexities and nuances of contemporary governance in an Islamic context.

About the Author

The Da'wah Institute (DIN) is the research and public enlightenment department of the Islamic Education Trust (IET). It is an internationally recognized institute for its ground-breaking efforts in research, development of resources, and training. It has over the last 5 decades dedicated resources to providing enlightenment for the populace – Muslims and others. The DIN partners with other organizations for comprehensive capacity building and promoting peaceful co-existence.



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