

AL-TASAMUOH



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Year 7, Volume 5
Autumn 1431 / 2010

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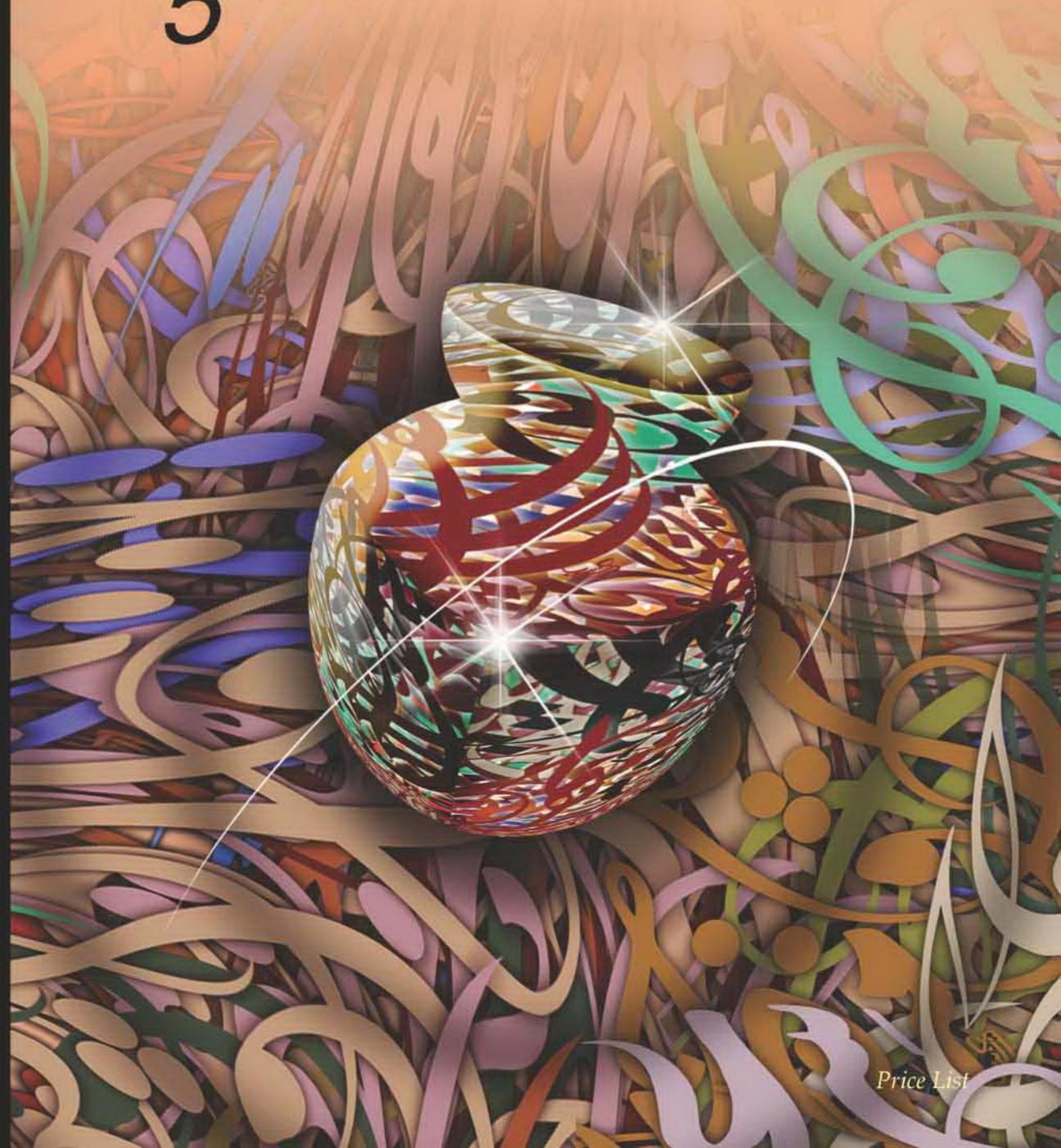


AL-TASAMUOH

Year 7, Volume 5
Autumn 1431 / 2010

ISLAMIC CULTURAL PERIODICAL

5



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Human Rights between Shari'ah and International Laws

Mohammed As-Sammak

There are two basic aspects that need to be looked at when examining the controversy between Islamic Shari'ah and international laws on human rights. Firstly, human positioning in the Islamic values and teaching, and, secondly, human understanding of the religious discourse in general, and especially that is related to human rights.

In regard to the first aspect, 'human' is seen as Allah's representative on earth which is the highest honour given by Allah to any being.

(Behold, thy Lord said to the angels: "I will create a vicegerent on earth." They said: '

"Wilt Thou place therein one who will make mischief therein and shed blood?- whilst we do celebrate Thy praises and glorify Thy holy (name)?" ?' He said: ' : "I know what ye know not.")1.

For this reason, Allah Has created all heaven and earth to serve mankind and help undertake the role He gave to them.

(Do ye not see that Allah has subjected to your (use) all things in the heavens and on earth)2.

(It is Allah Who hath created the heavens and the earth and sendeth down rain from the skies, and with it bringeth out fruits wherewith to feed you; it is He Who hath made the ships subject to you, that they may sail through the sea by His command; and the rivers ((also)) hath He made subject to you. And He hath made subject to you the sun and the moon, both diligently pursuing their courses; and the night and the day hath he ((also)) made subject to you. And He giveth you of all that ye ask

for. But if ye count the favours of Allah, never will ye be able to number them. Verily, man is given up to injustice and ingratitude.) 3

In this way, mankind can undertake the role of representation in the most appropriate and constructive manner, for representation of God means only construction not destruction: ‘(It is He Who hath produced you from the earth and settled you therein ...’)4 .

However, this mission is unachievable without proper knowledge, and that’s that is why Allah gave mankind the capacity to reflect and understand the sciences of life: ‘(And He taught Adam the nature of all things ..)5’ Allah urged mankind to understand themselves and the universe around them to realize that knowledge is limitless and that no matter how much they discover, there will always be more: ‘(Of knowledge it is only a little that is communicated to you, ((O men!) 6) , and ‘... (but over all endued with knowledge is one, the All-Knowing 7).’

Another dimension of honour given to mankind by Allah is that He created them in the best form possible: ('We have indeed created man in the best of moulds') 8 and '(... and made your shapes beautiful ...'9 . Starting from the living cells which that carry a lot of inherited features and traits, to the mind that have has the capacity to think and create, Allah has provided humans with all the means necessary to achieve their important role of representation: 'We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure ...'(We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure)10.

The most important aspect of this honour is that it is not given based on faith, but for the sole reason of humanity and the sacred role of being Allah's viceroys on earth, to the extent

that He puts human beings in the upper status unlike than lots of His creations:. ‘(Has then your Lord, (O Pagans!) preferred for you sons ..11.’ And in the incident where Allah asked angels to bow before Adam it was apparent that Allah puts had placed humans in at an upper higher status even than angels, who were created from fire while humans were made from clay.

This honouring and privilege is evident in the knowledge given to human, which is not given even to angels.

(And He taught Adam the nature of all things; then He placed them before the angels, and said: “Tell me the nature of these if ye are right.” They said: ‘ "Glory to Thee, of knowledge We have none, save what Thou Hast taught us: In truth it is Thou Who art perfect in knowledge and wisdom.” He said: ‘ "O Adam! Tell them their natures.” When he had told them, Allah said: “Did I not tell you that I know the secrets of heaven and earth, and I know what ye reveal and what ye conceal?”12).

Allah also gave humans some key skills and without them human they cannot carry out their mission of representation mission. These skills are the self- assessment and control by which humans guide themselves into good.

There are lots many of verses that addresses humans by their feature of being knowledgeable and thinking creatures:.

(Do they not reflect in their own minds? Not but for just ends and for a term appointed, did Allah create the heavens and the earth, and all between them .13..)

(Now let man but think from what he is created!14).

(Say: "Behold all that is in the heavens and on earth"; but neither Signs nor Warners profit those who believe not 15).

(Do they not travel through the land, so that their hearts (and minds) may thus learn wisdom and their ears may thus learn to hear?16)

(Do they see nothing in the government of the heavens and the earth and all that Allah hath created?17)

(Do they not look at the Camels, how they are made? And at the Sky, how it is raised high? And at the Mountains, how they are fixed firm? And at the Earth, how it is spread out?18)

... (and none will grasp the Message except men of understanding.19)

When ‘... (Allah has subjected to your (use) all things in the heavens and on earth 20 that could only mean that humans are the most important of them. When Allah gives humans the choice of doing good or bad, for which they will be judged accordingly, that could only mean that Allah has given humans privileges and placed them at the highest status, not to be blind followers but to choose to obey Allah through knowledge.

Furthermore, honour is that a human faith that is not genetically inherited or practiced by some symbolic rituals, but is solely put up to the will of each individual: (‘... Let him who will believe, and let him who will, reject (it) 21..).’ In addition, faith is never made compulsory:, (‘Truth stands out clear from Error 22) . This verse is not a call for people not to force people into Islam but to indicate that faith is never reached and shall never be reached by force or against one's will.

Humanity identity is bound around individualism, as illustrated in the first pillar of Islam: "I hereby declare that there is no God but Allah and Mohammed is His messenger", meaning that I, the a human, declare that I believe in what I believe in, which is the oneness of Allah and that Mohammed is His messenger. To emphasize emphasise this freedom of human, many verses of the Qur'an address Mohammed by his mission as a messenger from Allah.

(Therefore do thou give admonition, for thou art one to admonish. Thou art not one to manage (men's) affairs. But if any turn away and reject Allah, Allah will punish him with a mighty Punishment, For to Us will be their return; Then it will be for Us to call them to account 23.)

(Say: "Obey Allah, and obey the Messenger.: but if ye turn away, he is only responsible for the duty placed on him and ye

for that placed on you. If ye obey him, ye shall be on right guidance. The Messenger's duty is only to preach the clear (Message).²⁴.

(If it had been thy Lord's will, they would all have believed, - all who are on earth! wilt thou then compel mankind, against their will, to believe! 25)

Islam's respect for human freedom and dignity goes far beyond this by eliminating all mediators between Allah and mankind. There is no other power or authority of one's faith other than man himself in the first life and Allah's power on the Last Day.

This kind of power is the reason behind the explosion of the relationship between the church and the European communities in the medieval times. Some movements appeared later as reforming movements from which

emerged the idea of individual self- rights and the need for providing regulations to protect these rights by through laws.

Later, libations liberating revolutions, especially the French Revolution, laid down the first principles of the French human rights, then followed by the European, Western and, later, the international human rights, as in the declaration in of 1948.

One important point has to be made clear, and that is that Allah's honouring of humans and granting them and privileges to human is general for all mankind regardless of their faiths or ideologies. This privilege is not limited to one race over the another or one faith over another faiths. Allah is the ultimate God of all, be it they Muslims, Jews or Christians.

That is in essence, but there are details on which many thoughts, ideas and opinions have formed. In February 2000, an Islamic conference on human rights was held, which called on all governments, communities and organizations to revise their declarations and international laws on human rights in order to fill some gaps in view of human needs and the principles required for protecting human rights. One of these principles is to associate human rights with some authority that respects religious values and beliefs, which was recommended by Allah through His messengers. Moreover, it they also called for linking rights with obligations to achieve a balance between the role of humans and their needs to build families, support communities and construct life on earth in a manner that does not interfere with Allah's teachings.

The importance of this was realized by twenty-four very important international figures (heads of countries like including Japan, Germany, South Korea, Thailand,

Singapore, the USA, Canada, Brazil and France) headed by the former German Chancellor Helmut Schmidt, and who made a proposal to the UN to have an international declaration on "Human Obligations".

The proposal starts with: '... "exclusive focus on rights alone will lead to endless conflicts and clashes. Neglecting human responsibilities will lead to a state of chaos and lawless life".'

The proposal states: 'Sovereignty of law and circulation of human rights depend on the readiness of men and women readiness to act lawfully'. .' It adds:", 'Every human is a valuable in essence and that should be preserved with no conditions.'". It also states that ' "Conflicts should be resolved without violence and that every person has to abide by the truth in their deeds and speech.' In essence, as the proposal says, no one, be it an organization, state, military or security system,

can place themselves as judges over good and evil. All people should be subject to specific ethical standards, and for that all people are responsible for spreading good and to avoiding evil in any context.

However, this initiative did not change the essence of international laws or the size of controversy between those laws and the constant beliefs of some religions and other cultures, especially Islam.

As for the second aspect (human understanding of religious discourse), it is important to note that religious ideology is based on divine text, meaning that this text is immortal and is the foundation of faith and belief, and opposing it would mean violating its divinity.

Modern ideology is based on human experience and thus holds no aspect of

divinity. It remains subject to right and wrong;, open for change. Abandoning it is nothing not any different than to correcting an error.

A religious script comes straight from God and derives its divinity, and therefore its credibility, from its source and not necessarily form from its content. The divinity of such scripts becomes the foundation to justify the importance of the content. On the contrary, a man-made script derives its importance from its content not its source; what is important is not who said it, but what is said. A religious script presents laws as ultimate rules which that define the outline and scope of religious thinking. A human man-made script is, on the other hand, open to change and reconsideration, and there would be no constitution in modern times that does not have guidelines of for further modifications and reconsiderations.

There is no way to reform a divine script; it is forbidden to do so in the first place. However, understanding the heavenly script is always open for reconsideration. This is called *egtiḥad* (opinion workout). A heavenly script in itself is divine and ultimate, but its understanding is a human activity which is relative and open. A holy script is constant and durable, but understanding the script is constantly changing the moment it enters the human mind. Understanding becomes a human affair, like any other human thinking, subject to change and alteration, which has nothing to do with the divinity of the script itself.

When taking into account the religious Islamic ideology, it is very essential to distinguish between "Shari'ah" (law) and "Fiqh" (practice). Shari'ah is ultimate and constant, while "Fiqh" is a purely relative and changes human understanding. A person who is working in "Fiqh" can be influenced by many factors such as:

- A. His/her religious culture
- B. The living environment. (Shari'ah goals in the Empty Quarter will be different from those for Siberia for example)
- C. Interaction with the neighboring civilizations .
- D. The capacity to foresee future challenges.

For this reason, scholars come up with different opinions and form different fiqh schools. In his book "Al-Imtina' wal Moa'anasa", Abo Hayyan At- Tawhidi says, :
"As long as people's minds are different, brought up in different ways, have different good and bad habits and have different perceptions of things around them, there will always be differences in what they do and what they do not do".'

Islamic laws are not the only laws that conflict with the principles and values of

international human rights. The Group of Asian Countries with their unique culture, religions and social traditions also found themselves also in clashing with these international laws, as evidenced in the Bangkok Declaration (April 1993), which stated: "While human rights are international by nature and follow the developments of current international laws, it is important that national or local cultures, minorities and historic, religious and cultural backgrounds are taken into account".' However, the Vienna conference, held in June of the same year, stressed on the globalism of international laws and that they should be implemented with no exceptions regardless of any social, law or cultural traditions. Composed of two thousand of international human rights' NGOs, the conference denied any relativity in human rights and regarded such efforts as an attempt to violate them.

The conference even went further by refusing to consider human rights as internal private

affairs of each individual concerned country concerned, which means refusing the relativity of internationalism primarily and practically. Here is where opinions clashes between Shari'ah and some articles of international laws. This controversy started on 10th December 1948, when the UN General Assembly (which had fifty-eight members at that time) issued the Universal Declaration of Human Rights. Among the eight countries showing some reservations on the declaration (former socialist bloc countries), Saudi Arabia and Egypt had expressed reservations regarding two articles:

1. Article 16 stating that ‘ "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family." .' This is seen as being opposed to Shari'ah, which does not allow the marriage of Muslim women of non Muslims on the basis that Islam recognizes Christianity and Judaism do not recognise Islam while they

do not recognize Islam as one of the heavenly messages.

2. Article 16 stating that every human reserves the right to change their religion and beliefs, which is seen by Saudi Arabia and Egypt as opposing the Shari'ah, which that considers such acts as "riddah" or apostasy.

Today, there are 168 members of the UN General Assembly and it has never occurred that a country joining after 1948 requested a change in the declaration or expressed any reservations, not even members of the Organization of the Islamic Conference (fifty-four states).

The same thing happened with the Universal Declaration of the Rights of the Child; when the UN announced the document on the rights of the child, 171 countries, among them 43 forty-three countries from the Organization of

the Islamic Conference, hurried to ratify it while twenty-nine others, five of them from the Organization, refused to ratify. Despite the fact that three countries from the Organization participated were members of the drafting committee, twelve Islamic countries had reservations on a number of articles, namely nos. 12, 14, 16, 17, 20, 29 and 30. All these reservations, in fact, fall into the same sphere of what was seen as opposing Islamic Shari'ah, such as a child's right to choose his/her religion.

In 1993, the International Conference on Human Rights held in Vienna linked human rights with democracy and development, and stressed considering them as an indivisible unit that shall should be adhered to and respected. Article 8 of the Vienna declaration states: "The right to develop to achieve equal opportunities to basic needs (education-, health care, food, shelter, and employment) as well as in the fair and equitable sharing of revenues. It also emphasized, "Human rights are universal,

indivisible and interdependent and interrelated. The right to development is universal and an indivisible part of human rights".’

Today's law makers divide human rights into two major categories: political civil rights and social, cultural and economic rights, while Islam as a religion puts human rights into three main categories: Allah's rights (main worship activities), human rights and community rights, and they are all interrelated.

This is illustrated in Cairo Declaration of Human Rights in Islam made on 4th August 1990. This declaration was unanimously approved by all Islamic countries. Even though the human rights culture in the west (Europe-North America) has been based on the individual since the revolution against the church, it never honoured human people and reserved their rights as much as Islam did. This is not only being said to favour of Islam or to undermine the international laws. Take,

for example, each side's position towards the protection of life and dignity.

In the protection of life, international penalty laws are used to approve of capital punishment of all who commit murder deliberately and with premeditation. However, these laws today tend to abandon such a penalty and replace it with long-year terms of imprisonment.

Islamic Shari'ah, on the other hand, deals with such a matters based on two verses from the Holy Qur'an, the first of which is Mackia (revealed in Mecca):

(Nor take life — which Allah has made sacred - — except for just cause. And if anyone is slain wrongfully, we have given his heir authority (to demand qisas or to forgive)): but let him not exceed bounds in the matter of taking life ; for he is helped (by the Law 26.) ,

and the second is Madania (revealed in Al-Madinah) :

(O ye who believe! the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty. In the Law of Equality there is (saving of) Life to you, O ye men of understanding; that ye may restrain yourselves.27)

It is known that Meccia verses tend to provide generic laws, without going into details, and are addressed to individuals without calling them by a common feature, for example, "O people ...". However, Madania

verses, come are complementary for to the generic laws and put in the details addressing people by their common feature: faith.

It is clear that capital punishment as a law was not issued until Muslims settled in Madinah with an independent state system, and when laws of relating to penalties became were in the hands of the state.

Al-Qasas linguistically means doing the same as been done, upon or simply equality: a killer not necessarily with premeditation will be killed regardless of the method used or the person killed or whether the killer is charged with other penalties. For a murder to be deliberate is enough to carry out the death penalty. There is no doubt that qasas for deliberate killing without consideration to external circumstances is justice and equality; the criminal gets punished according to his/her deeds and the penalty is of the same nature of as the crime 28.

As for the second issue, protecting dignity, Islamic Shari'ah regards any forbidden contact between a man and a woman, whether one of them or both are married or not, is as an adultery adulterous act which that should be punished for. Human laws see it as "infidelity" and impose punishment accordingly. But if the contact is made willingly by both parties make contact willingly, there is no punishment for any either of them in under international laws.

Before the Universal Declaration, human relations with their own country were regarded as exclusively internal affairs and no outsiders (states or communities) were allowed to interfere. But since the declaration was made, human rights were elevated up to the level of internationalism, paving the road way for international peace based on the right of the international community to interfere in cases of human rights' violations.

Minorities' rights:

On 14th December 14th 1993, the Universal Declaration of Minorities' Rights was approved by the UN General Assembly. The issue, therefore, became an international issue one rather than being restricted within the political borders and local laws of individual countries,. thus protecting ethnic identities of unique culture, languages or faiths is was no longer an internal affair. As much as it was good for Muslim minorities in non-Muslim countries, it was also supposed to benefit non-Muslim minorities in Muslim countries and non- Arab minorities inside Arab countries.

In principle, Arab and Muslim states cannot ask to benefit from something and refuse it at the same time; they cannot demand the rights of Muslim minorities in non-Muslim countries and, at the same time, inside Arab and Muslim

countries, depriving non-Muslim or non-Arab minorities from of their rights. Restricting religious freedom of Muslim minorities in non-Muslim countries is regarded as denial of Islam as a heavenly message, while denying the Jews or Christians of their religious freedom in Muslim communities is against Islamic values in the first place. The religious freedom of non-Islamic heavenly messages was granted in Islam without the need for a universal declaration on the contrary to Muslim rights in non-Muslim states, which are protected only by the universal declaration.

The image of Arab states having negative attitudes towards this declaration is exaggerated because Arab states have, and still, suffered the exploitation of causes related to minorities by outside forces. Being reluctant about this declaration is due to the fear of such exploitation, which will increase the gaps between the Arab communities and split them into even smaller states through international

interference in national affairs, as justified by the protection of minorities' rights.

Since the second half of the 19th century when Europe started attracting the attention of Christian minorities in the Arab world, protection of minorities entered their colonial policies as a colonial strategy. Arab and Muslim states fear that the same may happen with through the justifications of protecting the rights of non-Muslim or non-Arab minorities in Muslim or Arab states. Such reservations are clearly based on cautionary procedures and not on laws imposed by Islamic Shari'ah.

However, the universal declaration is still a milestone in the process of protecting minorities' rights, or human rights, by the international community inside states. The two universal declarations formed the new foundations of relations between states and modern societies.

Women's Rights:

Comparison of women's rights between international laws and Islamic Shari'ah is a much-debated point and dominated surrounded by lots of suspicion and misunderstanding. Subjectivity of research requires the investigation of the following:

- The positioning of women in international culture
- The positioning of women in the traditions of some Muslim societies
- Women's rights in Islam
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As for to the first point, a UN report says that women constitute half the world's population and a third the of its working force, but only tenth the in international income. The report

continues to say that home chores and other family duties increase their women's working hours by two-thirds, but still they are getting 40% less income than men. It concludes that a woman's share of moveable and non-moveable properties is only 1%.

The gap is widened when it comes to literacy levels. According to 1995 statistics, men have an illiteracy level of 23.5%, while women have a level of more than 35%, i.e. 540 million women. The difference is even clearer in poverty levels. A fifth of the world's population is in at the poverty level and 70% of these are women. World refugees are estimated to be around eighteen million and, eight millions are women. There are a hundred million missing women in Asia alone due to deliberate abortion or female infanticide in India and China.

Nowadays, science can tell the gender of the a fetus and in these countries . If it is male, the

mother will continue the pregnancy, but if it is female, she will may immediately abort. Such practices have made some caused an imbalance in the Chinese society; t in specific. The number of men has started to exceed the number of women, to which the authorities have responded to by banning screening devices.

In the Indian countryside where poverty prevails and no screening devices are available, a female fetus will always often meet its death by being buried after delivery.

In modern Western societies, the scenario is different but not necessarily better. In Britain for example, divorce rates have rocketed to 50% and marriage has decreased by 17%. British statistics say that 4 four out of five marriages fail, and a fifth of British families have only one parent due to divorce or separation. However, the most shocking fact is

that a third of Britain's children are illegitimate.

This fact looks less dreadful when compared to that of Iceland where 57.3% of their children are not the result of marriage. This reality shows grave effects on women. Only in France, Britain and Germany 25 twenty-five million women live alone because of divorce or spinsterhood.

In the US, women seem to be in even worse off. US statistics say that 26% of juvenile girls (under sixteen) say they have been raped. Abuse of children scored an increase by of 40% only just between 1985 and 1991. The statistics also show that 80% of genocides usually occur within the families, and that in 48% of cases the house is always the crime scene. A woman gets beaten in America every eighteen minutes.

In Sweden, a modern European society, the number of harassment and body torture cases filed by women is about nineteen thousand a year. The US Times describes the family as a "personal hell";, often the most dangerous place for a woman is her house, and that her husband or lover is her worst enemy.

As for the second point (positioning of women in the traditions of some Muslim societies) distinction must be clear clarified between religion and tradition. Religion as a heavenly message is one thing, and tradition as a social outcome is something else. It is not logical to blame religion for the mistakes of traditions reflecting that are only reflections of what societies and what they have been throughout in history, their literacy education levels and their openness to other cultures. It is also important to note that what the West has laid out as the modern and developed values are not necessarily the ideal standards that should be followed by other societies regardless of their cultural specificities, as in

eastern cultures for example. Every nation has its unique interaction with its surroundings and, therefore, has its own values and conceptions about life and civilization.

Being politically, economically and militarily advanced does not necessarily mean that West is ahead because in of their ethical and social values. The West itself is worried that the ebb of ethics and social values will lead to the fall of the family and eventually the whole of society.

As for women's rights in Islamic Shari'ah, the privilege given to human beings includes everyone, without differentiations regarding gender or religion, for Allah Has created them all in the same way: '(O mankind! Reverence your Guardian-Lord, Who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women.²⁹ . This means that Allah Has created man and woman from

the same soul, thus indicating their equality. Apparently this is much different form from non-Islamic literature, which regarded regards woman as the devil responsible for Adam's expulsion from heaven.

Many verses in the Qur'an talks about the equality between man and woman:

For Muslim men and women, - for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in Charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise,- for them has Allah prepared forgiveness and great reward.³⁰

(Whoever works righteousness, man or woman, and has Faith, verily, to him will We give a new Life, a life that is good and pure

and We will bestow on such their reward according to the best of their actions.31.

Allah hath promised to Believers, - man and woman, - gardens under which rivers flow, to dwell therein, and beautiful mansions in gardens of everlasting bliss. But the greatest bliss is the good pleasure of Allah. that is the supreme felicity 32.

There is no distinction between man and woman in matters of reward as well as matters of punishment and penalties.

(As to the thief, male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime: and Allah is Exalted in power 33.

The woman and the man guilty of adultery or fornication, - flog each of them with a hundred stripes 34.

Allah hath promised the Hypocrites men and women, and the rejecters, of Faith, the fire of Hell: Therein shall they dwell 35...

If any do deeds of righteousness, - be they male or female - and have faith, they will enter Heaven, and not the least injustice will be done to them. 36.

Never will I suffer to be lost the work of any of you, be he male or female 37.

The same equality is granted in personal rights as for property and inheritance.

... to men is allotted what they earn, and to women what they earn 38.

From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large,- a determinate share. 39

Moving away from generalities to more detailed principles, it becomes important to consider the following issues:

1. Priority: ‘... but men have a degree (of advantage) over them 40 . ‘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. 41. Some fiqh" scholars say that this is meant for private issues inside within the family, as they require consultations between all family members, especially the father and the mother. The man is given more power in such matters due to his economic role and social experience.

2. Inheritance: Allah says,: ‘ ... (to the male, a portion equal to that of two females . 42 . It is not possible to look at this these kinds of laws out of the context of all other Shari’ah laws, which organizes the Islamic family and its relationship with the whole Muslim community in a holistic manner. Man, having been given lots of merit and privileges, the inheritance privileges is given like a compensation that allows him to carry out his family role. This is not a case of superiority, but of fairness.

3. Walaya: Mohammed Rasheed Ridha has worked hard to interpret this verse: ‘(The Believers, men and women, are protectors one of another .43 , and says in his book “Women’s Rights in Islam and their share of Mohammed’s Reform” that faithful women are given full guardianship in their social and religious lives.

This means that women can take up judicial positions, state their opinions and even hold political positions. They have equal rights to what men have. This is, in fact, a reality as many Muslim women occupy leading positions in many Muslim countries (Bangladesh, Indonesia, Pakistan and Turkey) without facing objections or embarrassment in front of any local or international Islamic authority. However, Mohammed Nasser Al-Din Al-Albani holds an opposing opinion and responded to Mohammed Rasheed's opinion based on the verse '(And stay quietly in your houses ...' 44 but still there are still lots of contemporary scholars who agree with Rasheed's opinion and see no clash between the two verses, such as like Mohammed Mhdi Shams A-Din in his book "Sensitive Issues in Women's Fiqh" and Mohammed Gazali in his book "The Prophet's Biography between Fiqh Scholars and Hadeeth Scholars".

Despite all the laws of equality and fairness laid down by Shari'ah law towards women, women are still marginalized and treated as like a pieces of household furniture, or simply a devices for reproduction. This downgrading degradation of women in many communities, among them the Islamic communities, is essentially due to imitation rather the than legislation.

It is true that many Muslim women are living hard lives, but it this is not because of Islam, but rather through ignorance. The day Islam got rids itself of the ignorance that imprisons some of its communities is the day that women will be freed from their nightmares. Attempts to link women suffering to Islam are basically attempts to link Islam to ignorance and, eventually, to eliminate Islam as a system that shapes communities.

The problem of degradation of women in some societies can be attributed to many factors, perhaps foremost of which are:

1. Not following the Islamic values as a whole, but only partially or superficially.
2. Introducing Western values of clothing, eating and attitudes into Muslim Societies.
3. The emergence of social hybrid attitudes that are neither Islamic nor Western, which lead to unstable attitudes that for which women to pay a high price.
4. Social hypocrisy, which is evident in discrepancy of men's attitudes towards women inside their homes (wife, sister, mother) and towards women outside

the home (neighbor or colleague).

The Rights of the Child

There is no doubt that politically, children are no doubt the weakest in defending their own rights in any country; they can be easily neglected or overlooked. The international community has realized this and pushed modern societies into giving more care and attention to children, especially in development programs. It also urged giving the child priority in efforts of protecting human rights.

After many years of continuous efforts, the UNICEF issued a draft for the Rights of the Child. The draft was presented to the UN General Assembly in November 1989, and was put into effect on the 2nd of September 1990 after being ratified by 160 countries, the

highest level of ratification in the shortest period of time in the history of the UN.

Some considered the document as the cornerstone of modern values and ethics on for the child. Others even considered it as the cornerstone in the modern history of humanity because such values of respect and protection of the rights of the child are the starting point for developing the hidden potentials of individuals in an environment of fairness and freedom.

The convention defines a child as ‘ “every human being below the age of eighteen years. In the second article it calls upon all states to respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion,

national, ethnic or social origin, property, disability, birth or other status”.’

Before making this Convention, of which comprises fifty-four articles, the international community issued two declarations on the children and their care. The first one was the “Geneva Declaration 1924’, which called for providing special care for the child. The second was on child’s rights and named ‘The Declaration of the Rights of the Child’, a ten-article document adopted by the UN General Assembly in 1959.

After the 1989 Declaration, another 5 five complementary international declarations were made:

1. A universal declaration for the survival, protection and development of the

child, and a plan to execute the declaration in the 1990s. This declaration was

issued by The International Summit Conference for the Child (UN, New York, 30th September 1990).

2. The Annual Reports prepared by UNICEF about (Children in the World 1991, 1992, 1993 and 1994).

3. The Convention of the “Rights of the Arab Child”, issued by the Arab League in 1989 in regard to the protection and care of the child. This convention comprises fifty-one articles in five sections.

4. The Ankara Declaration for the protection and care for of the child, issued by the Organization of Islamic States on 7th July 1993 which confirms the protection of children, their care , raising them with noble Islamic values and the protection of their

rights. It firmly confirms adherence to decisions made by Islamic Summit conferences and international laws related to children in a manner that concurs with human rights and the rights of the child in Islam.

5. The Cairo Declaration on Human Rights in Islam issued on August 5th 1990

confirming the importance to of protecting the rights of the child and the

obligations of states towards such rights (Article 7).

The question is why the international community is so keen on protecting the rights of the child. To answer this we will need to have a quick look at the developments in the western societies in general and the western family in particular, which directly affect the child and eventually all humanity. US studies show that family ties are loosening. The 1994 August issue of US News magazine published

a study conducted by the Statistics Office indicating that eighteen million American children (i.e. 27% of US children) are living with only one parent. This figure is triple that in recorded in 1970. Most of these children live with either a single or divorced parent .

Wade Horn, an American psychologist heading the National Initiative for Paternity, says that the current situation has never before occurred in human history and the high rates of childbearing among teenage and single girls who have failed to find themselves a good husband. It also reflects the inflation of problems resulting from increasing divorce rates.

These figures and statistics constitute a major concern for the many social authorities in the US. Children with only one parent are more likely to be exposed to poverty, destitution and, failure in education than those living with two parents. Children growing up with one

parent are more likely to take their parent's path and have illegitimate children without marriage or be without a permanent partner. These children are a burden on the state as most of them are dependent on the state's social welfare programs.

Media plays a major role in this situation. Studies show that an American child would have watched eight thousand crimes and a hundred thousand violent acts on television before even finishing elementary school.

This grave reality of the Western family with and its effects on children and their attitudes encouraged the international community to put forward the International Rights of the Child. These rights are not just American or Western, they are universal, in view of globalisation and the rapid development in telecommunications, which has also helped to increase the radius spread of those social

diseases through societies, among them are Muslim societies.

Where does Islamic Shari'ah law stand compared with international laws on the rights of the child?

To answer this question we again need to make a distinction between Islamic values and human attitudes, ie. what is stipulated by the Shari'ah and what is practiced. Shari'ah has drawn lines in comprehensive values to ensure the good care of children. These values start with building the core of Islamic societies, a good family based on decency and Shari'ah. The Prophet Mohammed (PBUH) says,: "If approached by whom you trust, his religion and ethics, get him married to your daughter, and if you do not, that will be a great corruption on earth." .

Islam also forbade fornication, something that is spreading through modern society like wildfire. That is to prevent illegitimate children: “And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect.’ 45

Islam provides care for children in every stage of their life, starting from pregnancy to the delivery and breast-feeding period.

(Man We did create from a quintessence (of clay).;

Then We placed him as (a drop of) sperm in a place of rest, firmly fixed.;

Then We made the sperm into a clot of congealed blood; then of that clot We made a (foetus) lump; then we made out of that lump bones and clothed the bones with flesh; then we developed out of it another creature. So blessed be Allah, the best to create! 46

It Islam ensures that every child gets their right to wealth, health care, physical and psychological education that goes along with Islamic values and teachings at different levels: with the child itself, between the child and his/her peers in society or between the child and the creator, Allah. Once the Prophet said, ‘: "Teach your children for they are to live a time different than yours".’

In the battle of Badr, a prisoner was released in exchange of for teaching ten Muslim children how to read and write. Islam also ensures that a child gets his/her right to inheritance from the moment they are created inside their mother's womb. Islam also came up with the

first call that humanity might have known for equality between men and women: ‘And their Lord hath accepted of them, and answered them: “Never will I suffer to be lost the work of any of you, be he male or female.’ 47

The Prophet also says, "For he who takes care of a girl child, heaven is granted", and also, ‘ says: "The best of your children are the girls".’ Islam also prohibited all forms of abortion and infanticide by burying them baby girls alive, as the case is India nowadays.

Islam also gave special attention for to orphaned children, and warned their guardians from taking away their original family name as a price for their care. Islam made it clear that a child must be called by his/her original family name: ‘Call them by (the names of) their fathers.’48. Islam further prohibits adoption or any form of care that severs a child’s links to his/her original parents, or confuses lineages, and along with that cancels all results of

adoption such as inheritance or admissibility of marriage as such things are based on falsehood, and whatever is based on falsehood is false as well.

There is no other law other than Shari'ah that gives such high regard to maternity and equals it to worship 'Thy Lord hath decreed that ye worship none but Him, and that ye be kind to parents.' 49. Respecting parents, specifically the mother, is a paved way to heaven as our Prophet (PBUH) says, "Heaven is just under the feet of mothers'" making the relationship between a child and his/her parents, especially the mother, sacred; something that has never been in any legislation. On the other hand Islam confirms the full responsibility of parents, especially the father, for their children: "Every one of you is a guardian, and every guardian is responsible for what they guard".

In view of all these religious-ethical laws of Islam, some reservations were shown on the Convention on the Rights of the Child, including Article 14 which says, "States Parties shall respect the right of the child to freedom of thought, conscience and religion, and Article 16, which says, "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation". Mali for example sees this to be against the deep-rooted family laws and social traditions. Indonesia, Turkey and Iran have some reservations about Article 17, which talks about ensuring a child's access to information and knowledge from any national or international source.

Almost all Muslim countries have reservations about Article 20, which deals with adoption, and says in paragraph (C),: "'Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary

placement in suitable institutions for the care of children".' Some Muslim multi-ethnic states have reservations on Article 29, paragraph (C,) which says, "'The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living; the country from which he or she may originate, and for civilizations different from his or her own".'

Turkey have also has reservations on about Article 30 which says, 'In : "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language".' Some states like Iran, Pakistan, Mauritania and Djibouti drafted their reservations in general saying that they do not agree to anything in the

Convention which that goes against the Islamic Shari'ah. These reservations left the international community with the image that Islam and its Shari'ah do not respect the rights of the child or are not concerned enough about them. For this reason, the 6th Islamic Summit, held in Dakar in September 1990, called for a conference to draft a unified Islamic stand about the rights of the child. The 21st Conference of Arab Ministers of Foreign Affairs held in Karachi in April 1993 recommended that such a conference should be held in association with the UNICEF.

On 28th June 1994, a special conference was held in Jeddah and was attended by eleven Muslim states, with fifteen experts in Islamic Shari'ah and children's affairs, who were chosen in coordination with the UNICEF. The resulting recommendations did not condemn international laws, but expressed the Islamic view on the rights of the child that form the foundation of protecting their rights. The

drafted document in this conference was very expressive.

The first preamble of this draft focused on the divinity of social values in Islam, and that these values were and are responsible for shaping the whole Islamic nation and its social patterns. The draft explained that abandoning such values along with some historic, political and economic pressures left the family structure, as well as cultural, health care and social levels, on the verge of collapse. The draft assured that embracing these heavenly guidelines by individuals and governments is the only way out of the social collapse.

Conclusion

In view of the above, it is clear that humanity is concerned about two issues:

1. Multiplicity in view of globalism.

2. Human rights in view of different beliefs and cultures.

Many conferences and symposiums have been held to discuss the two issues in the last two decades, especially after following the fall of communism.

In the Muslim and Arab world, these issues are sometimes looked at from a negative point of view, and from an accusatory point of view in other times on the basis that Islam does not accept multiplicity and does not respect human rights in general, and, in particular, rights of women and children in specific. Such opinions and views resulted in two reactions:

1. An emotional defence of Islam without putting forth any intellectual effort or

even discussing matters that cause confusion or misunderstanding.

2. Trying to link this to what is thought to be a programmed campaign against Islam following communism.

In both cases, Islam is put in on the defensive, which is a weak standpoint . Outlining the issue of rights in Islam is becoming a religious, scientific and human necessity more than ever and it is the responsibility of all Muslim scholars.

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{To Thee we Sent The Scripture in Truth }

Legality and Legitimacy between Theory and Reality

Abdulrahman Al Salmi

Some researchers consider legitimacy and legality synonyms. Actually, we can differentiate between them in view of the fact that legitimacy is a general approach but legality means customs, traditions and laws that organise people's lives in society, including the exchange and practice of authority. Some new *mufassirin* (Qur'anic exegesis specialists) explain the law through the following Qur'anic verse: 'For each We have appointed a divine law and a traced-out way',⁽¹⁾ according to the abovementioned comparison. Legality means the law, traditions and customs, and their associations; their non-application badly affects the general

organisation of society and the state. On the other hand, with regard to the holy verse, legitimacy is compared to the 'traced-out way', which includes truths and basic distinguishing features of a certain society, and if all or some of them were not applied, the system would collapse or turn into total chaos.

It is clear that this differentiation compares legitimacy with the basic legality of society and state, and its signs in the historical experience of our nation: the one nation, one house, one authority and one legislative and legal system.

It is natural in communities and states, which harbour and develop a certain system of assembly, living, dealings, governance and communication with the outside, to have it distinguished in its details, though not in its general features, with probability and obscurity due to the diverse experiences of different generations and groups. This results

in the diversity or disparity of means and methods of application or practice and usually results in conflicts that occur through these means and details and their legality. However, disagreement about principles or legitimacy is rare because if the disagreement about them spread it would threaten the whole system. On the other hand, differences of details are possible, although people usually incline to the general view and convention.

One example from the historical Islamic experience is when the Prophet (PBUH) passed away. There were discussions regarding some issues that came under legitimacy and others under legality. Among the discussions in the former category was the dispute about the unity of authority and whether there should be one emir or two. When he realised that the Qurashieen (emigrants of Quraish) would not relinquish authority to the Ansar (original residents of Al-Madinah), the Ansari Al-Hbab bin Al-Munther called for having two emirs, one from the *Ansar* and the other from the Qurashieen.

Then, Abu Bakr responded to the proposal saying that it was not possible to have two swords in one sheath. After that, the principle of the unity of authority and the ruler prevailed because it is, according to the Holy Qur'an, one of the principles of the right path. The Sahabah (Companions of the Prophet), who were from Quraish, insisted that the Imamah should be from Quraish, based on what they narrated about the Prophet (PBUH) — that Imams should be from Quraish and that priority be given to Quraish. Thus, after some members of the Ansar, Muhakimah, Qadariyah and Muatzilah accepted this as one of the principles of the system and Ibn Khaldun (808 AH) considered it a result of the power of Quraish's tribal spirit, which later declined, the issue of the Imamah of Quraish could be classified under legality not legitimacy. Indeed, the Imamah of Quraish deteriorated after the 5th century AH and many were elected from outside Quraish, even non-Arabs, as caliphs and emirs of Muamneen, without considering this change as a violation of legitimacy. The same thing happened with

those who called for the giving of authority to certain people from the family of the Prophet. They considered what they called for as one of the principles of the system and some of them established states and appointed sultans and caliphs, but the dispute continued between those people and the majority who did not believe in its necessity and legality.

There is another difference that clearly shows the differences between legitimacy and legality, or between principles and variables. How did the Emir of Muamneen come to power? The people, who represented the majority, did not believe the call for giving family members of the Prophet priority to seize authority, but believed that the emir should come to power through *shura*, although there are no confirmed references or rules for this kind of *shura*. The four caliphs were selected differently but Abu Bakr came to power through direct election. Similarly, Omar came to power after Abu Bakr and the people nominated by Omar agreed on Othman, who was one of six nominees. Ali was directly

elected in the *Masjid an-Nabawi* (Mosque of the Prophet) in Al-Madinah. Since the 1st century AH controversy has taken place about people charged with authority, or people of the *shura* ie. people who name nominees from whom a leader is selected. However, in the Umayyad and Abbasid dynasties, the system was different and the caliph who was in power nominated his son or brother, who was then elected by the people. The interesting thing is that no one considered that as a violation of legitimacy, even Al-Mawardi (450 AH), who in his book *Al-Ahkam A'Sultaniah* said that only one person could be charged with authority and that was the emir of *Muamneen* himself, who nominated his son or brother.

Actually, what can be understood from these issues is not that a dictatorship prevailed or that the jurisprudents complied with their leaders' desires, but that there is a mutual factor between legitimacy and legality. This factor is the same that called for unity of authority, and is the aspiration for unity and stability because if there was no system for

exchange of authority before the vacancy of the position of the head of state, then there was no use going to the *shura* because going to *shura* after the vacancy would mean chaos and instability. Therefore, semi-royal traditions prevailed to maintain stability and avoid *fitnah*(2) eg. insurgence or conflict with the authority. This is the reason for the great fear that the jurists and the public have of *fitnah* and the intensive call for unity and support of the imam. However, some opposing voices remained and did think the fear from chaos or *fitnah* was a just reason to give up the *shura* principle. In general, in the classic eras, *shura* ceased to be part of the system or the legitimacy, but the controversy remained and escalated in modern times considering *shura* part of the legality or an essential component for achieving it.

Recently, there has been interesting discussion over the legality of a conqueror who comes to power without being a member of a royal family but through the help of a developing military group.

Long debates took place between constitutional jurists regarding the legality of a conqueror. Some said that recognition of a conqueror is not permitted for any reason because it threatens legality and in case it gets repeated and accepted by people because then the legitimacy or the system will be threatened, which means a threat to the unity of the nation and authority. However, some said that it is possible to recognise a conqueror provided that he is capable of maintaining internal unity, defeating enemies, preserving traditions and ensuring justice. Thus, this strong trend considered legitimacy a functional matter and not a principled one. Supporters of this view give examples of successful cases, for example when Noor A'Deen Zanki took over power from the Salajika. He initiated development, united his people and fought crusaders. Another example is Salah A'Deen Al-Ayoubi who took over power from Ibn Noor A'Deen Zanki. He united eastern Arabia, conquered Al-Quds, and established a system for justice and welfare.

Thus, legitimacy both in the past and present is concerned with the basics of the nation or state, such as sovereignty of law and working for the good of people. However, legality is subject to development and change according to circumstances. Certainly, these issues, that are addressed by the Holy Qur'an and experienced by our nation throughout history, are still very important in the present and will be in the future.

Legality and Legitimacy in the Arab Islamic Experience

Ridhwan Al Sayyid (1)

1. Introduction

There are several possibilities and approaches to deal with the problems of legality and legitimacy through the different periods of Arab Islamic political, economic and social fields. The possibilities, so to speak, are 'models' or theoretical types. As for the approaches, they are the origins, events, terms or expressions indicating the system or its scope.

I opted for the model or the approach adopted by the German sociologist Max Weber and selected the Arab Islamic experience in its classical stage (ie. from the time of establishing the Islamic state until the end of the Abbasid Caliphate in Baghdad, ie.

between 10 AH and 656 AH). By the ‘experience’ I mean two things:

1. The main issues representing the major invariables of the system, prospects and example ideals (or rules) of the experience. I considered those to be the basis of the system’s legitimacy;
2. The problems, difficulties, successes and failures that occurred during the course of the experience in light of the legitimacy invariables. I have called them the ‘legality’, which is, in general, mostly related to traditions and customs in all facets of public and private life and, as a whole, to different interests and concepts.

Therefore, there are issues of establishment or legitimacy in any system including the Arab Islamic system. On the other hand, there are issues related to the interests determining the

behaviour of individuals and groups, ie. the dos and don'ts of the issues related to legality. To make my meaning clear by this differentiation or discrimination between legitimacy and legality, I indicate that the system will fall or change if it deviates from the invariables. The same system will face problems of gradual imperfection and dispersion if political bodies or wide classes of the nation deviate from the established rules and customs for extended periods of time. Finally, it is worth pointing out that, in this introduction, these concepts and sayings are relative and explanatory, and there is nothing inevitable about them. The issue is centred on assessment and what is most probable. It does not involve passing unalterable judgments that are not covered by a civilized experience with rich nations, traditions and stages that have lasted for more than six hundred years.

Max Weber mentioned, in one of his sayings about political economy, that there are three patterns of legality⁽²⁾ representing the founding, continuation, stability and

transformation of systems. Firstly, there is the **traditional pattern** where the established traditions and customs govern the main aspects and behaviour. By that, he means monarcharchial systems, which depend on the principle of inheriting authority and executing it. It also follows major inherited laws and customs in the political, economic and social practices within a country, as well as inherited major customs for external relations and neighboring countries and how to deal with them. Therefore, the legality of any person or behaviour is determined within this pattern according to the established customs adopted for attaining power and using it to deal with different classes of people, in addition to allies or enemies outside a country.

Secondly, there is the **constitutional or democratic pattern**. The legality of this pattern is determined by whether or not the ways of attaining power and political behaviour are in agreement with the

constitutional text as well as with other laws, customs and traditions in the system.

Thirdly, there is the **charismatic or personal pattern**. There is a problem in considering this as a pattern because it depends on unique personal adequacy, which may not be available to the person who seeks to assume power through the support of the public. As a matter of fact, Max Weber died before the founding of Italian Fascism or German Nazism. Therefore, he was referring to people like Napoleon, Mazzini or Garibaldi in Italy during the 19th century. He may have been indicating people who lived in historical times such as Barklese of Greece or the Israelites' prophets, whom he studied thoroughly.

It is understood that Weber considered the third pattern to be the exception that represented a change to one of the previous patterns, just as happened, for instance, with Cromwell in Britain during the 17th century.

However, the issue at that time did not develop into a 'pattern' because the British returned to the modified traditional pattern. Nevertheless, Professor Henderson, in his book *Arab Politics* (1971), used Weber's pattern as a point of departure to understand the methods Arab military rulers used in the 1950s and 1960s to legalise their systems through 'revolutionary change'. He perceived, as Anwar Abdul Malik did in his study of the officers of the July Revolution, that there was no doubting the wide popularity of the revolutionary coup during its early years in regions of Asia, Africa and Latin America. The case is similar to the revolutions or legitimacy of people like Hitler, Mussolini, Mao Tse-Tung, Kim Il-Sung, etc. Another problem in Weber's system is represented by its mere theoretical nature. It is obvious that there is no pure traditional pattern, pure constitutional pattern or pure charismatic pattern. And then, what would become of the legality of any system in the case where two or three patterns are combined, such the case of a constitutional monarchy

where the kings enjoy huge popularity among their nation or citizens.

2 - The experience, its invariables and issues(3). In viewing the Arab Islamic

experience, two problems appear:

1. The overall atmosphere within which we can determine the system we call an Arab Islamic system;
2. The invariables upon which that system was established.

We described the system as an Arab system because the people who established it were Arabs. They worked to achieve goals related to their understanding of their authorities, on one hand, and their behaviour within the experience on the other. The system is

described as Islamic because the people who founded it considered it to be such due to the fact that they established it on the fact that its contents and important issues were guided by the religion of Islam, which was spread, in the first instance, by the Prophet Mohammad (PBUH), and they succeeded him in spreading the message of Islam and initiating the project of founding the state.

In light of this, many people were of the opinion that the Islamic system should be called a prophetic caliphate system. They viewed it as prophetic because the Prophet, who had charismatic authority (inspired or received revelations as any other prophets), founded it. It is a caliphate system because the Prophet's Companions, who succeeded him, called it that and described themselves as 'Caliphs of the Prophet'. However, two problems appear:

1. The Companions, during their days when the basic concepts of the system were formed, did not consider their power to be prophetic or charismatic. They did not consider themselves to be infallible nor that they were appointed by the Prophet or the divine scripture. They were appointed as successors of the Prophet by the Muslim community or the people of Madinah because of the needs of the hour and due to the death of the Prophet, and this is, according to them, is the only meaning of ‘caliphate’;

2. Their understanding of the system they were heading resulted in concern of their being distinguished from the Caesars and Persian kings.

The contemporary ‘systems’ or patterns were the Arab emirate, the Byzantium Caesarian system and the Sassanid Khosrau system. The

Companions were aware of the relationship between the Byzantium system and Christianity, but considered the Sassanid system to be pragmatic and tyrannical. Although they were close to the ethics and understanding of the Arab Emirate, it remained a tribal Emirate.

It was noticeable that Mecca and A'Ta'if had a 'Mal'a' — a group of notable figures who presided over the tribal groups of Quraish and Thaqeef. The jurisdiction of every sheikh or notable figure did not go beyond his tribal group unless a meeting was called and a consensus reached among them over issues related to the whole village. Therefore, it can be concluded that the name 'Caliphate' was adopted to show the blessing of being successors of the Prophet Mohammed (PBUH) or to show that the nation or Muslim community had entered the stage of succession following being in the stage of prophecy(4) In the content of the system, monarcharchial Caesarism was avoided in order to maintain

the separation of religion and state. Therefore, they avoided giving themselves the legal authority the Prophet had over religion or community.

They also avoided the characteristics of the Khosrau regime because they believed that the Sassanid regime was established on social class and slavery and on tyranny towards others. (Arabs were aware of that because they and Sassanids were neighbours during the first and second Jahiliyya period.)

Since the beginning there were two names for the their system:

1. The new name 'Caliphate', which meant the new world power, and
2. The emirate of believers, a name that refers to the relationship between a ruler and his Arab and Muslim citizens, which reflects modesty and commitment. They benefited

from the Arab tradition of sheikdom and emirate.

Abu Musa Al-Ash'ari was successful in distinguishing between the two patterns, as he said:

Emirate is achieved through mutual consultation, and kingship is what is attained by power. Therefore, I believe that the pattern of authority in question, within Arab Islamic experience, was not a prophetic pattern because it didn't have prophetic characteristics, ie the revelation by Allah, being chosen by Allah and infallibility. Moreover, it is not an Arab pattern because Sheikdom and Emirate, which were applied in Arabia, didn't have a global dimension nor did they have a general political or ideological agenda. Sheikdom and Emirate were merely organisational practices. It is not a Caesarian or Khosrau regime due to the aforementioned reasons.

It is, therefore, a caliphate system, as described by the Companions and affected by the Arab Emirate founded in central Arabia (not the Emirates founded on the edges of Arabia as the case of Al-Lakhmeyien in Al-Hira and Al-Ghasasinah in Syria, as both were affected by their Caesarian and Khosrau masters). It was also affected by the general preaching directives of the new religion, and ways of being understood by its elite followers. Although this was not clear, due the neutrality of the term ‘caliphate’, it was understood from the behaviour of the first four Rightly Guided Caliphs that they believed that Arabs, due to their embracing Islam, had two commitments or obligations:

1. The obligation of establishing an entity that united all Arabia under one command, and
2. The obligation of extending their influence outside Arabia in order to defend the new entity, and spread and support Islam.

What are the invariables of the new system? What are the bases of its legitimacy? I assumed in previous studies that the new system was established on three entities: unity of nation, unity of state and unity of power. As a matter of fact, unity of nation was described in many verses in the Holy Qur'an. The political nature of this unity was stated in the Al-Madinah Pact in the 2nd year of Hijra. It stated that those who gathered in Al-Madinah constituted 'one independent nation' through two stages:

1. The stage of gathering and assembly, and that happened when those who were converting to Islam were asked to emigrate to Al-Madinah in pursuit of protection and declare their joining the new religious and political group
2. The stage of extension and expansion that happened after Mecca was conquered in the 6th year of Hijra. On that occasion the

Prophet Mohammad (PBUH) said, ‘There will be no Hijra (to Al-Madinah) after today, but Jihad and intention. Whenever you are called for war, you should answer that call.’

For that reason, when the Prophet (PBUH) passed away in the early 11th century AH, the issue of the nation being a political group was settled without the need for further emphasis. The case was the same with the unity of state at the time when the Prophet (PBUH) passed away. Islam had extended to most parts of Arabia, and a new entity or ‘house’, as described later, was founded by Islamic jurists during the period that followed the middle of Umayyad dynasty. That is what must be understood from the war Abu Bakr waged against Islamic *murtadeen* (apostates). Doubtless, some of those were either apostates from Islam, such as Sujah A’Tamemiya, Tulayha bin Khuwailid Al-Asadi in Najd, Musailama in Al-Yamamah, and Al-Aswad Al-Ansi in Yemen, or they had not embraced Islam in the first place. Some of those people

did not become apostates but they were unable to comprehend the political essence of the new nation. It is known that some of the companions did not want to fight the apostates either because they thought that the new entity would not be able to fight or they did not understand that embracing the new religion required the unity of nation or state.

There were those (and I am one of them) who believed that the unity of nation and state also required unity of power, and that was why Abu Bakr started a war against those who stopped giving *zakat* (almsgiving), ie. those who did not want to be subjected to the new religious and political authority in Madinah. It was narrated that Abu Bakr said, 'I swear to God that if they refuse to pay to me (even) *iqaal*(4) they used to pay to the Prophet, I will fight them for it.' The issue here is that the third unity (power) has been the centre of a lot of debate, even though it was small. Some of the Ansars in Saqifat, after the death of the Prophet (PBUH), seeing that Al-Muhajirun

would not allow them to preside over the new entity, voiced an opinion saying: ‘A prince from us, and a prince from you.’ This move meant that they did not see any problem in selecting two princes for the new unified religious group in Madinah. The answer of Muhajirun varied, like: ‘Two swords cannot be put inside one scabbard’, ‘People (Muslims) will not obey any prince unless he is from Quraish’, ‘We fear struggle and *fitnah* (instigation) if we dispute over this matter’, etc. All these were political and practical reasons and had nothing to do with religion or the nation's invariables. However, we all know that most of Al-Ansar elected Abu Bakr, ie. they submitted to the unity of power although they disapproved of Abu Bakr's personality, and that was apparent in the sayings of Sa'ad bin Obada and poetry of Hutayy'a.

We also know (which represents an issue where unity of state combines with unity of power) that Omar, Othman and Ali refused to divide the conquered lands among the

conquerors because they feared that roles, powers or entities would multiply in the time when people had not yet forgotten hahiliyya (5) and tribalism. Eventually, if the religious aspect is very obvious in the unity of nation and state, the political aspect is even more obvious in the third unity: the unity of power. This distinction appears to be important if we follow the developments of the experience over the centuries. All those who opposed the Umayyads and Abbasids started by attempting to assume their place, ie. replace them in power. This is just what Abbasids did when their supporters rebelled in Khorasan and came to Syria, defeated the Umayyads and overthrew their dynasty. On other hand, many rebels did not seek to overthrow the 'Overall State' but to attain independence in one part while retaining the two unities of 'nation and state'. Perhaps, the first who tried to do that was Al Harith bin Surayih Attamimi in Khorasan, then the Ibadhis accomplished that in Oman and Al-Maghreb, and the Zaidites in Dailam and Yemen.

At the end of the second half of the third century AH, two opposing caliphates were established; the Fatimid in Morocco and then in Egypt and Syria, and the Umayyad in Andalusia. It may be argued that Fatimids were attempting to replace the Abbasids but they were not able to; they held the opinion of one legitimacy or unity of power. The case is different with Umayyads in Andalusia, about whom we do not know of any single attempt to replace the Fatimids or Abbasids. The situation was similar in many small counties established after the influence of Abbasids and Fatimids became weak in their territories. However, the evidence of the relative strength of the 'unity of power', invariably in Muslim states — continuing through history to the present — is that a great number of people who attained dependence were requesting legitimacy through pleasing the Abbasids caliphs in order to make them recognise their authority in the places they controlled. It was obvious that the caliphs were not able to

remove the people from those places, but they wanted to be included within the principle of ‘unity of power’ in order to make their citizens happy instead of using the army to make them submit.

We can find justification for Islamic *fiqh* (jurisprudence) mentioned in *Al-Ahkam Al-Sultaniyah*, (the Royal Rules) written by Al-Mawirdi (450 AH), who talked about *Emarat Al-Tagalub* (Emirate of the victorious party) and how it could be included under the umbrella of a comprehensive caliphate legitimacy. This could be achieved through ‘crowning’ the victorious party later on by the caliph! Therefore, ‘unity of power’ remained relatively strong in awareness and behaviour, ie. it remained in the factors and motives of legitimacy. However, this unity is not as important as the two principles of unity of nation and unity of state. Unity of nation has not been questioned until today. As for unity of state, it was seriously questioned in only two recent incidents:

1. During the breakdown and decline of Islamic Andalusia, and

2. At the beginning of European occupation of Algeria, India and Indonesia. Many Muslim *fukaha* (jurisprudents) — especially after caliphate in Baghdad had declined — submitted to the idea of several disputes and authorities spread over Muslim states. However, a great number of them believed, in light that the unity of state was threatened with occupation or conquest, that ‘the seizure of Muslim states or part of it by non-Muslims’ would make their nations leave Islam even though Muslims were the majority. This would happen for two reasons:

1. Being separated from other Muslims, and
2. Submitting to non-Islamic rules, laws and regulations.

Therefore, for more than five centuries, many Islamic jurists asked people of occupied countries to either fight for jihad or emigrate. Accordingly, and under certain limitations, terms and circumstances I mention for discussion, the basis of legitimacy were:

1. Unity of nation, which is characterised mostly by religious meaning
2. Unity of state, which is characterised mostly by religious and political factors, and
3. Unity of power, which is characterised mostly by political factors.

It can be said that these were the invariables of legitimacy during the time of the global strength of the Islamic State.

3. **Issues of legality and its problems(6)**

The three unities mentioned above constitute issues related to legitimacy and its invariables, or are establishment issues. On the other hand, several issues and problems emerged during the time of the Arab Islamic experience and constituted issues of the legality of interests. In other words, if the three unities are considered to be necessities of the system, there are issues — such as the caliph being from the tribe of Quraish, following Shura as a means to reach power and relationships between the system and Islamic Shari'ah — which were mentioned in the debates over the legality of a certain caliph or president. Some Islamic jurists and politicians considered these issues to be a necessity, however, most of them continued to consider them as issues in need of betterment as described by Al-Shatibi, the Maliki jurist, when talking about the distinction of interests. Al-Shatibi mentioned, in his renowned book entitled *Al-Muwafaqat*, that Shari'ah was established to protect the

interests of people, some of which are a matter of necessity, need and betterment.

One issue that was discussed first in Saqifat Bani Sa'ida was the head of state or caliph being from the tribe of Quraish. Some of the arguments made by Abu Bakr, Omar and Abu Obaida like, 'People only obey this man of Quraish'. The same argument was expressed later by the Umayyads, as mentioned in Sahih Al Bukhari (Al Bukhari the Genuine), Tabari history and other sources that state that Quraish was a middle-class tribe who were the custodians of Ka'aba, to which Muslims made their pilgrimage and submitted to the leadership of the tribe. The Prophet (PBUH) did not try to change that, but instead emphasised it.

This argument as such was transformed by Ibn Khaldun (808 AH) into his famous law of *asabiyya* (tribalism). This meant that of the Arab tribes, the Quraish was the most aware

that the power should be with them. The idea of *asabiyya* was spread between other Arab tribes, especially after the Prophet was victorious, making them more honoured and entitled. However, no tribal or non-tribal group had that awareness and entitlement other than the tribe of Quraish.

At a later stage, perhaps in the time of the Umayyads, hadiths (7) proscribing that power should be given to Quraish claimed to be quoted by the Prophet and started to spread. These hadiths quoted phrases like, ‘The Imams come from Quraish’, ‘Make Quraish first and do not precede them’, ‘This issue remains in Quraish even if there were two people.’ This is not the place to discuss whether these hadiths are true or not, especially because Al-Ansar, who gathered in Saqifat Bani Sa’ida with Al-Muhajirun, did not know of them. Moreover, men from Quraish did not use them as evidence but followed Arab traditions and the idea of being close to the Prophet (PBUH), as well as the fact that they were the first people who became Muslim and immigrated to Al-

Madinah. However, this issue, which became a reality through the *Bai'ah* (the pledge of allegiance) to Abu Bakr and the three caliphs after him, was questioned and denied by some followers of Al-Ansar, as well as by groups of Al-Muhakkimh, who went to Mecca in 64/65 AH to help Ibn Al-Zubair (72 AH) defend the Holy House against the Umayyad army. Apparently, it did not seem that they disagreed with him in any issue. However, after the Umayyad siege of Mecca was ended by the death of Yazid bin Muawiya, Ibn Al Zubair hastened to ask only men of Quraish in Mecca to pledge their support for him becoming caliph, but did not ask the fighters who fought on his side for their opinion.

Those groups of Muhakkimh did not agree with Ibn Al-Zubair on many issues, among the most important of which was taking the pledge of allegiance without Shura. They left Mecca to establish, during the history of Islam, states presided over by imams who did not come from Quraish. Other Muslims, who had

different religious opinions, did not refuse but they disapproved of the killings done by those whose opinions differed. Thus, in spite of unquestioned recognition by the majority of the obedience to imams descended from Quraish, this tradition was not considered to be a power necessity but was, during the first centuries, a condition for power legality. During the 5th century AH, the Imam of the two Holy Mosques, Al-Juwaini(8) (478 AH), considered the Imam being from Quraish as a condition of betterment and not a condition of necessity. He also considered the unity of caliph, or *Amir Al-Mumineen* (commander of the believers), not the unity of power to be of possible issue in this matter. This is true especially if ‘the distance (of the state) was very huge’ to the extent that the caliph could not discharge his duties of power by himself over the state.

This means that Juwaini ibn Khaldun and Al-Makreezi (845 AH), who came after him, no longer considered the unity of the imam or his

being from Quraish to be a condition for legality. As I have previously mentioned, the unity of power remained a respected principle even after centuries of its elimination. Likewise, the imam being from Quraish remained a prevailing condition or condition of legality even after states with a non-Quraishi imam were established. Moreover, the unity of the Sultan remained a requirement by jurists even after centuries of the multiplicity of imams and *Amir Al-Mumineen*.

It should be noted here that the Al-Muhakkimah were not the only people who denied the condition of the imam being from Quraish. In fact, all who called for the caliphate to be only for the members of the Prophet's family did not do so because those members belonged to Quraish, but because they were descended from Fatima (may God be pleased with her), the Prophet's daughter. Therefore, after the 4th century AH, many trends appeared that did not consider the imam being from Quraish to be a legal requirement,

even if these trends differ in explanation. There were groups who said that the imam being from Quraish was never a condition according to religion or interest (such as Al-Muhakkimah and some Muslim theologians). There were those who were of the opinion that the only condition for legality was that the person who showed interest in assuming authority should be descended from the Household of the Prophet. On the other hand, there were those of the opinion that the imam being from Quraish was no longer a condition because it was overwhelmed by the de facto situation, or that the law of tribalism was not in its side.

The case is different with Shura principle. It appears that it did not play a legal role except:

1. During the time of the Four Rashidun Caliphs
2. Within the ideology and claims of opponents, and

3. By Al-Muhakkimah, who established states in some parts of the Islamic world.

However, the issue of Shura was ambiguous both in meaning and practice. Omar said about Abu Bakr's caliphate, who received from Muslims the pledge of allegiance in Saqifat Bani Sa'ida and then in the Prophet's Mosque: 'The argument over the caliphate was an unexpected event that God prevented from aggravating.' Historians and jurists differed in their interpretation of the remark. Some said that Omar made it because only some of the people of Al-Madinah had pledged allegiance. Some said that nobody 'with authority' elected Abu Bakr for power.

The previous second interpretation of Omar's remark is the most probable, which is that he did not consider the public to be from Shura people or candidacy, but only from people who pledged allegiance. As for Omar, he was nominated or appointed as a successor by Abu

Bakr when he was on his deathbed. Othman was chosen by six men ('Ahl Al-Hal Wa Al-Aqd' — those in power) who were appointed by Omar when he was dying. The fourth caliph, Ali, went to the Prophet's mosque in Madinah and the people all pledged their allegiance. The first people who did so were those considered by Omar to be men of Shura and people of influence.

Therefore, the foundational period of the four orthodox Muslim caliphs did not explain anything concerning the issue of Shura, its importance and consideration in the legality of the person who attains a position of power. However, that does not mean that there were no high-level Muslim figures during the first age who considered Shura as a right for all Muslims both in the candidacy and pledging of allegiance. Historians mention that among the people who supported Ibn Al-Zubair, in addition to Al-Muhakkimah, were groups of Mawali, ie. new Muslims who enjoyed influence. They did not appose that Ibn Al-

Zubair was from Quraish, but they disapproved of the fact that he did not follow Shura after Yazid bin Muawiya died. Instead, Ibn Al-Zubair collected the men of Quraish near the Ka'aba and asked for their pledge of allegiance — then went to receive the pledge of others!

During the time of the Umayyads, the rebels claimed that the Qur'an and Sunna should be applied, and they stated that the Umayyads took power without Shura. As for the people who opposed Abbasids, they stopped calling for applying Shura. Instead, they supported the just sharing of the *ghanimat* (war booty) and the just treatment of people! Likewise, jurists whose writings dated to the first half of the 3rd century AH, such as Al-Shafi'ie (204 AH), Ahmed Ibn Hanbal (241 AH), Abu Obaid Al-Qasim ibn Sallam (224 AH) and Al-Muhasibi (243 AH) talked about 'obedience of the victorious party' and the conditions for 'the victorious party', ie those who attained power without Shura or a pledge of allegiance. The conditions were:

1. Receiving the pledge later
2. Enforcing justice between people without deviating from the established traditions, and
3. Fighting enemies in defence of the Islamic state.

They all have one aim to support maintaining the unity of community, preventing *fitnah* (dissension), which might result from rebellion on the victorious party and power struggles. Therefore, the discussion in question was rapidly diverted from the basic legality, which was achieved through Shura and pledge of allegiance to, so to speak, the ‘functional legality’. That means ‘formalities’ are not important, taking into account the supreme interest of the nation, which is represented in maintaining the stability, unity, justice and integrity of the Muslim nation. This prompted the aforementioned Al-Juwaini (478 AH) to say, in his book entitled *Ghiyath Al-Umam* (*Help of Nations*): ‘It is possible to legalise the power of the victorious Saljooki and call him

Amir Al-Mumineen because he maintained stability of the Islamic region after the failure and weakness of Abbasids, and because he prevented the Roman invasion of the Islamic state after fighting and defeating them in Asia Minor in 1071.'

However, this radical adaptation to historic reality was not prevailing among Muslim jurists. Some groups kept trying to combine the historic experience of the four orthodox Muslim caliphs and the events and problems that appeared. One jurist who held this opinion was Abu Abdullah Al-Humaili (403 AH) in his book *Al-Minhaj Fi Shu'ab Al-Iman (The Method of The Branches of Faith)* and Abu Al-Hassan Al-Mawirdi (450 AH) in his book *Al-Ahkan Al-Sultaniyah (The Royal Rules)*. Those continued in the belief that legitimacy is achieved as long as the three unities are established and maintained. As for factual formalities that harmed legality, these could be solved through insistence that legality remained for the Abbasid caliph or any

Abbasids who attained power through competence even if the former caliph did not appoint him.

Any Abbasids who attained power were entitled to enjoy the support from men of the Shura or those who were selected (in this case, these men could be top army officials who were descended from Dailam or were Turkish), who would then take the public pledge of allegiance. Within this concept, which prevailed, formalities, historic conditions or traditions remained. In reality, the functional trend was the prevailing one, which was represented in:

1. Achieving a minimum level of legality that justified obedience on the part of those assuming power (individually or from the victorious party)
2. Achieving stability, and

3. Fighting against enemies (individually or with the help of the victorious princes)!

The issue of obedience became a continuing debate, which had no justification except maintaining stability and preventing *fitnah* in a time when the Turkish and others prevailed. This issue did not have any justification, even according to a great jurist like Ibn Jama'a (733 AH) in his book *Tahreer Al-Ahkam Fi Tadbeer Ahl Al-Islam*. However, Ibn Khaldun (808 AH), who visited Cairo forty years after the death of Ibn Jama'a, ridiculed the details and over precision practiced by jurists in the *Muqaddimah (Introduction)*, his history book. He considered the whole issue to be part of the nature of kingship and effects of tribalism. He held that religion or good intention had no effect on obedience. In fact, Ibn Khaldun, the great Maliki jurist, was unjust to jurists of other sects because he

considered them to lack knowledge about the nature of kingship. The problem was not their lack of knowledge about the nature of civilisation and kingship, but the different interests and priorities that each had. Their interest, before the time of Al-Mawirdi, was centered over the three unities, supporting the power capable of protecting those unities and the stability of life under Shari'ah and established traditions.

The jurists of other Islamic sects were willing to admit that a sacrifice of minimum damage should be made in order to prevent a much greater damage in:

1. The unity of nation, state and power, and
2. Stability of the relationship between religion and state.

This had been the essence of their discussions concerning religion and politics since the 4th century AH. The classic jurists did not have a private agenda for a state that applied Shari'ah. Instead, they adopted the overall Islamic practice of establishing power and its mechanisms within the Islamic state.

They were specialised in taking care of religion, judiciary authority, education and *fatwa* (religious edict or legal opinion). On the other hand, they handed over public matters, which they considered mostly to be a matter of interest rather than a religious one, to the authorities. Therefore, they were very sensitive when any imperfection occurred with the three unities because that also prejudiced religion, as well as when problems arose with issues related to legislation, the judiciary or endowment.

Since the 4th century AH, politics was the focus for every statesmen in the Islamic world, and there were issues discussed that were related to handling the public. These issues included more than the religious rules mentioned in the Holy Qur'an or in the *ijtihad* (independent judgements) of jurists. The groups who raised this were those who considered it to be an offence against religion, the people's interest and the judiciary. Therefore, they initially tried to prevent political authorities from intervening in judiciary issues. They condemned the intervention by the *hajib* (chamberlain) or chief of police, commander of the army or the minister of judiciary and legislative affairs. The intervention consisted of not handing some offenders over to the law but passing their own judgement on them, or passing judgement in *Qada Al-Madhalim* (settling injustice) councils without following usual judiciary procedures.

When they were unable to achieve a result, as they wanted all legislative and judiciary matters to remain within the jurisdiction of the proper authorities, they invented a branch in Islamic jurisprudence called ‘religious political Islamic jurisprudence’. They tried to combine the necessities of state or its pride and religion and its rules as understood and used during centuries of the Islamic experience. Ibn Taymiyya’s (728 AH) treatise on ‘religious politics’ yields to the experience and relationship between the state and jurists during the 4th to 7th centuries AH. All problems associated with this subject were not solved during the time of Ibn Taymiyya or after his death.

And so we find a historian like Al-Makrisi (845 AH) considering it to be against religion that some Mamluk princes followed ‘political laws’. He also considered what some Mamluk princes did as contradictory to Islam and a reason for losing the legitimacy of the people. Al-Makrisi claimed that the Mamluk princes,

who had Turkish origins like the Moguls, were following the ‘policy’ planned by Genghis Khan, leader of the Moguls, and the politics derived from it in the judiciary.

The foregoing was a briefing dealing with issues of legitimacy and legality within the Arab Islamic experience during the classic period of Islam. It is a summary that does not discuss all the issues and does not cover its lengthy points. However, I believe it presents an acceptable outline of these two issues and their problems. This brief article is like any other research paper; it is always modifiable in the hope of achieving thorough knowledge and sufficiency.

References:

*) Lebanese thinker and academic, from Lebanon, and editorial consultant to Al Tasamo Pickthal's Quran translation of the Holy Qur'an.

1- In the Islamic tradition, trials or temptations that test the unity of the Muslim community. Encyclopædia Britannica, Inc.uh magazine.

2- Max Weber: *Wirtschaft and Gesells-chaft*, II212-268

3- I investigated issues of legitimacy in the Arab Islamic experience in my book entitled *Nation, Community and Authority* (1985), but I did not then go for Max Weber's to the approach or model of Max Weber.

4- The Holy Quran mentioned the singular in many contexts and linked it in one occasion with Prophet David.

5- a rope using for hobbling the feet of a camel.

6- I investigated issues of legality in my book entitled "*Community, Society and State*" (1997), but I did not then cover then the issue

of Qurashiyyah. Instead, I discussed Shura and the relationship between religion and state.

7- erroneous beliefs, traditions or customs established between Arabs in the period prior to Islam.

8- In his -Juana's book entitled "*Al-Irshad (the Guidance)*" and "*Al-Shameil" (The Comprehensive)*. Both of books) talks about the science of *Al-Kalam* (dogmatic theology) not about the political *fiqh* or royally rules. He mentioned that in his book entitled *Ghyath Al-Umam (Help of Nations)*.

9) traditions attributed to The Prophet Mohammad.

*A Tunisian academic living in Brussels

**) A historian and academic from Lebanon

**) Different administrative forms of states (translator)

***) Groups of the same social background.

This can be translated as social cohesion, tribalism, clanism, nationalism (translator).

Legitimacy in Greek Society and Plato and Aristotle's Forms of Government

Muhammad Uthman Al-Khasht

Limitations in the Principle of Liberty and Misconceptions about the Humanist Trend

The current opinion about the prevalence of democracy in all aspects of ancient Greek life is highly questionable: in the first place, it was confined to Athens and, secondly, it was a limited and flawed type of democracy that was rejected by the philosophers Plato (428-347 BC) and Aristotle (384-323 BC).

Nor was the concept of legitimacy in Greek society necessarily based on the principle of voting in elections. Other criteria included wealth, in accordance with the oligarchic

principle, and power as in a democracy or a tyranny. A third criterion was the concept of inherited rank giving aristocratic legitimacy. All these forms of government were experienced by Greek cities in successive stages.

Similarly, with regard to the contention that religious doctrine was replaced by a humanist trend in Greek society, this was plainly not the case at either a political or existential level.

In spite of our rejection of these two prevailing views, we do not by any means deny that a democratic system with freedom of speech based on humanistic principles was present in Athens at the time, and we contend that, although limited in nature and scope, Athenian democracy, despite its shortcomings, was better than any other contemporary system of government. At the same time it is important not to exaggerate the merits of

Athenian democracy or overstate its political and intellectual benefits.

However, we should point out that by claiming a religious dimension in Greek society, we are not insisting on the existence of the temporal representation of religious power in the form of temples and a priesthood analogous to the established church in medieval Europe. Rather, we are referring to the religious spirit of the Olympian mysteries, the participation of priests in important decision making (as can be seen in the events of the *Iliad* and the *Odyssey*), and the consultation of fortune-tellers by leaders in times of war. Priests also sought approval of the gods for the political actions of rulers, and great events of state involving the government or the army were invariably accompanied by religious ceremonies and rites, as were trials and meetings of the legislative assembly. Nor should we forget the many sentences of imprisonment, exile and execution issued

against philosophers and politicians on the grounds of apostasy.

The examples of Anaxagoras (500-428 BC) and Aspasia well illustrate the limitations of humanistic and liberal principles and the effect of an intolerant religious climate. Anaxagoras was compelled to flee and Aspasia was accused of disrespect to the gods. This cultured woman was exposed to the vilest and the most shameful insults as a result of her critical spirit and liberal opinions, and she was not helped by Pericles' impassioned defiance.

The Athenian general and statesman Alcibiades suffered from the accusation that his companions had maltreated a statue of Hermes, the god of fertility, as a result of which their male members, ears and noses were cut off. Alcibiades and his companions were also accused of ridiculing the Illyrian rites, following which the Athenian assembly voted to confiscate all Alcibiades' possessions

and wealth, and condemned him to death. However, he managed to take refuge in Sparta.

Nor were the Sophists protected by humanitarian ideals, as can be seen by the imprisonment of Protagoras (481-411 BC), the renowned Sophist philosopher, who coined the famous dictum 'Man is the measure of all things; he decides what shall be and what shall not be.'¹

The list goes on; Aristides was starved, Themistocles and Miltiades were banished, and Anaxamoras was expelled. Even Socrates (469-399 BC) and the great philosopher Aristotle did not escape the charge of apostasy. Socrates was condemned to death by the Athenian assembly on charges of introducing strange gods. When Aristotle was condemned for religious disbelief on the basis of quotations from his works, the silence was palpable. He was forced to flee from Athens in his declining years and was sentenced to death

in absentia. He died from an illness brought on by the suffering he experienced in exile.

The accusation of apostasy was generally followed by a sentence of imprisonment, banishment or death, which clearly demonstrates the limitation of the concept of freedom of expression in classical Greek society. Members of the assembly, in accordance with the law of privation laid down by Cleisthenes, were able to sentence anyone who they considered to be a danger to the state to banishment for a period of ten years, a threat which enjoined caution on the politically ambitious. Some reports indicate that even Cleisthenes himself was sentenced to exile.

As has been already stated, our contention is that while democracy undoubtedly existed in ancient Greece, it was imperfect and limited in scope, and the same can be said for the humanist trend, which was less influential than religious presence. While it is inaccurate to

suggest that the temporal symbols of religion were non-existent in Greek society, the view that religion played no part in daily life is equally invalid. Nor does this cancel out humanism, which co-existed with religion, although in an inferior role.

In ancient Greek culture gods were represented in human form and humans were considered to have a divine essence. However, in spite of a certain amount of political freedom, Greek consciousness lacked the element of free spirit since fate and necessity were held to rule over all things, including the gods,² although there was blind faith in the eternal laws of gods. Greek games and ceremonies were a conscious expression of the happy unity between the human and divine.

In Greek religion, the spirit was superior to nature since real power lay in policy not in nature. This can be seen in the belief that Zeus, the supreme power and king of gods,

triumphed over all the powers on earth and in the heavens. The spirit becomes reconciled with nature in Greek art where the gods are depicted in a sensory form with human bodies and thoughts. Meaning becomes reconciled with form, the spiritual with the sensory, and the inner spirit becomes perfectly expressed in its external manifestation.³

So, where is the humanism in all this? And where is the democratic legitimacy in Greek cities outside Athens? Even Athens could not tolerate the opinions of Anaxagoras, Socrates and Plato.

The Athenians could not begin to imagine the modern concept of democracy — multi-faith, multi-cultural, regardless of race or gender orientation — or the true meaning of freedom of expression, especially religious expression.

The Growth of Democratic Legitimacy, its Flowering and Decline

The core meaning of democracy is a system in which the community is the source of power, or rule by the people for the people. The community elects its representatives (deputies) in fair and free elections and the government is composed of ministers overseen by deputies. The deputies have the power to pass legislation, raise revenue from taxes and determine how such revenue should be spent. They also have the power to call ministers to account for their behaviour and determine whether they should continue as ministers or not, and in general run the affairs of the state in a satisfactory manner. In short, the underlying principle of democracy is rule by the people in the interests of the people.

Democracy comes from the Greek word *demokratia* – *demos* 'the people' + *kratia* 'power'.

In order to define the nature and scope of democracy we should go back to the 7th century BC when Athens was a prominent Greek city subjected to a despotic form of aristocratic rule. The legitimacy of this regime derived from wealth and privilege, power being exercised by a class of prodigiously wealthy aristocrats who operated a usurious economic system under which families who failed to pay their debts forfeited their freedom and were sold as slaves.

In this society, in which the rich and poor were separated by a wide gulf, legislation was enacted for the benefit of the wealthy. However, the people began to call out for legislative reform. The aristocrats bowed to their demand and empowered Draakon to publish new laws in 621 BC. These laws were judged especially harsh towards the poor and he was succeeded by another aristocrat, Solon the reformer, who was highly critical of the

aristocrats and rejected their methods of government, based on extortion, trickery and greed, as well as the principle of hereditary rule.

Solon came to power in 594 BC and carried out a number of political and economic reforms, the most celebrated of which was the division of Athenian citizens into four classes based on wealth, with a corresponding division of political rights and responsibilities. He also gave citizens the right to elect their ruler. His most prominent reform was the abolition of debt slavery and the liberation of those who had been enslaved as a result of failure to pay their debts. Nevertheless, Solon's system was still biased in favour of the wealthy, who retained more influence than any other class.

Solon's system was certainly not full Athenian democracy but it was an important step along the road. However, even this limited amount of democracy was too much

for some citizens, who urged Solon to take over absolute power himself. He refused to do so and continued with his reforms until relinquishing power and ultimately leaving Athens.

The era of Solon was followed by the rule of the tyrant Peisistratus who brought prosperity to Athens for a period of twenty years. He was succeeded by Cleisthenes who, although an aristocrat, was not despotic like those who came after him. If anything, he inclined towards the people and it was during his rule that the foundations were laid for Athenian democracy, so often lauded in the West. In 508 BC he divided Athens into electoral units on the basis of geography rather than hereditary wealth. Each unit was represented by a group chosen by ballot every year in the assembly of five hundred. Only male citizens over the age of eighteen years old were entitled to meet in the public forum to propose laws and to vote on them. Then a smaller group was chosen by ballot to enact the legislation that had been

agreed upon. An unlimited number of jurors were also chosen by ballot.

This type of democracy is known as direct democracy and has the following features:

1. Exercise of the right to discuss public civil affairs — including political — in a public forum or public assembly

2. Equality of free citizens before the law

3. Power to assume responsibilities of jurors

However, Athenian democracy, with its attendant rights and obligations, did not extend to all people; excluded from the democratic process were women, slaves and minors — those under eighteen years old. There was no role for women in administration or politics since they, together with slaves, did not have

citizens' 'rights' in the modern generally accepted sense.⁴ Hence, participation in the democratic process was not the prerogative of all citizens but only of those who were male, over eighteen years old and descended from the original inhabitants of the city state.

On this basis we can say that Greek democracy was limited and deficient in that it did not treat all citizens equally. Full citizenship for all was not achieved until the modern era, after the liberal tradition had reached its apogee in the 20th century. In spite of this, the germ of the Western idea of citizenship lies in the Greek concept of the same name. Greek democracy strongly resembles its modern-day counterpart, especially regarding its affirmation of the right to equality of members of a group and its emphasis on the right of political participation.⁵ Greek citizenship, for all its shortcomings, remains the lineal and etymological progenitor of the Western term 'citizen'.⁶

According to Western sources, the birth of democracy in Athens occurred towards the end of the 6th century, in 508 BC. It was logical that this should be so since it was in Athens that certain social groups enjoyed the benefits of citizenship, which gave them the right to participate in framing and enacting legislation and in the political and legal processes of the state.

In his *History of the Peloponnesian Wars*, Thucydides mentions that Athens was governed by a democratic constitution based on majority rule, in accordance with which the law was applied. That Athens was in a special position is made clear in Pericles' funeral oration to the soldiers who died in the Peloponnesian War, where he refers to the Athenian constitution as being without parallel in any other city, a democratic system not found elsewhere in which the rulers are elected on the basis of competence rather than

hereditary privilege in a society characterised by free speech, inventiveness and openness.

We need not take this speech too literally since, after all, it is a political speech given by the city's ruler, but there is no doubt that the Athenian system of government — however bad the shortcomings pointed out by Plato and Aristotle — was qualitatively better than any other contemporary system of government.

What is also sure is that Plato and Aristotle's opinions about democracy were among the factors that led to its subsequent decline and ultimate demise. Prominent among these factors were the failure to confront attacks of aggressors, internal instability, increase in class struggles, the ascendancy of demagoguery in the popular assembly, and the levying of harsh taxes and duties. In this way Greek democracy was responsible for its own demise, although it did not breathe its last until after the Macedonian occupation. The lesson

to be drawn is that democracy without wise and mature participants is a worthless exercise.

Not only did democracy die out in this part of the world but even the term 'democracy' itself began to lose its original meaning and took on the negative connotations of 'demagoguery' attributed to it by Plato and Aristotle in the disparaging references of medieval and Islamic scholars up until the dawn of the modern era.

Although Greek democracy was defective and limited in extension, and subject to long periods of exploitation by ignorant demagogues, there is no doubt that the Athenian model — for all its limitations — was considerably better than the Roman rule in the Hellenic Age, as well as being superior to most forms of government in medieval Europe and even preferable to some political systems today.

Athenian democracy had a legitimacy found in no preceding or subsequent regimes until the dawn of the modern era. For example in the Roman era, the state had a defective view of the citizen who was defined without reference to identity and illimitability.⁷ Human alienation reached its peak in Roman politics and religion, not because of the utilitarian relationship between the gods and men but because the emperor arrogated himself power over all humans as divine authority, such that he ruled over the fate of citizens in a more despotic and arbitrary fashion than the gods.

The emperor was glorified as the supreme power and venerated as a god since he was the irrational arbiter of all men's fates. Garoudy repeatedly comes back to this point:

In the Roman empire, all power was stripped from the individual and vested in the emperor; all divinity was concentrated in a single being, much to the distress and misery of the individual human being who was deprived of his power and his essence and even of his future.⁸

This led to

... blind trust in the eternal laws of the gods, whose statues were nothing more than lifeless corpses. Religious chants were just empty words devoid of spiritual meaning. The temples of the gods were devoid of spirituality, and games and festivals could no longer symbolise that happy unity between gods and men. The ecstasy of the certainty of the self — as expressed so boldly by the Stoics — had changed into a feeling of the loss of the divine spark as a result of the spread of 'unhappy consciousness', which led to a general collapse of morality.⁹

Hegel says, 'Unhappy consciousness was the symbol of this general loss, as a result of which the personality lost its internal value and its capacity for thought.'¹⁰

This increasing sense of alienation and misery and the contradiction between the limited and the limitless would eventually usher in the medieval era when Europe suffered for long centuries from the loss of ability to think for itself. In the Middle Ages it was the clergy and the monarchs who thought, willed and chose while the people reacted passively like sheep. The dominant discourse of the time was that of master and slave. Man had no legitimacy qua man; legitimacy derived from money, power or the priesthood, depending on local conditions. Philosophy was reduced to being the handmaiden of theology!

Plato's and Aristotle's Forms of Government

Although Plato was immersed in imaginary speculation in his description of the 'Ideal Republic', he was much more realistic when he turned his attention to analysing existing forms of government. Indeed, I often feel that his descriptions match comparable regimes throughout the ages down to the modern era. However, here we have to exclude his view of democracy, which was so closely bound up with the realities of his time that he was unable to discern any redeeming features in this form of government, let alone consider how it might be reformed or improved.

If we except Plato's imaginary Ideal Republic ruled over by a philosopher, his classification of forms of government, in order of preference, was based on real models extant at the time. His preferred model, the government of the good (or aristocracy) was the nearest to

his Ideal Republic and his least favourite was autocratic rule (tyranny). Plato's classification of forms of government was as follows:

1. **Aristocracy**

This is rule by a virtuous minority or a 'government of the good', which strives directly to promote justice and good. However, this equitable system of government, nearest in form to the Ideal Republic, is prone to changes in patterns of intermarriage or education, which lead to its dissolution and eventual extinction.

2. **Timocracy**

This system comes into being as a result of the disappearance of the aristocracy. The powerful class takes over government, seeking glory and pre-eminence by military might.¹¹ This form of government is based on greed ie. a timocracy derives its legitimacy from wealth and military power (as in the city of Sparta). A

conquering city such as this treats others on the basis that they themselves are victors and its main concern is to accumulate wealth. However, because of the unequal distribution of wealth, the system breaks down and another form of government emerges from among the wealthy class.

3. Oligarchy

This is a system of government dominated by the wealthy,¹² whose sole *raison d'être* is the creation of wealth. This is similar to Al-Farabi's 'City of Commercial Exchange', which is based on the principle of accumulation of wealth by the wealthy class, who alone have the right to govern or to come to power. The poor, on the other hand, have no rights in this regard even if they perform outstanding feats.¹³ Yet, this regime also begins to decay as a result of the increasing greed of the wealthy and the predominance of the system of usury. The people become progressively poorer, finally leading to mutiny and sedition.

4. **Democracy**

When the people succeed in overthrowing the corrupt wealthy class a system of majority rule comes into being, which gives the people the right to participate in government.¹⁴ Democracy is rule 'by the people for the people' and its legitimacy derives ultimately from the opinion of the majority. In essence it is similar to Al-Farabi's 'Communal City' in which all are equal and free to do whatever they want. However, this is not democracy as we know it today but merely a type of democracy that we could label direct anarchic democracy since it is based on people's desires and is a system in which office can be purchased for money. Plato's democracy is similar to Al-Farabi's and it is clear that neither of them were familiar with any other forms of democracy, such as consensual, liberal or social democracy.

Plato erred in equating democracy with rule of the mob and it is informative in the modern political era to note that he criticised the concept of democracy because, in addition to conferring on the people the right to participate in the running of the state, it also gave citizens the right to follow their desires¹⁵ and do as they pleased with their lives. Citizens could also be elected as jurors and it was through one of these bodies that Socrates (469-399 BC) was sentenced to death for apostasy and corrupting the young.¹⁶

Plato argued that democracy was indissolubly linked to the 'rule of the mob' stirred up by invective that appealed to the emotions rather than to rational thought (as would be the case in rule by a minority or the philosopher-king in the Ideal Republic).¹⁷ Indeed, Plato considered that democracy was a corrupt form of government and he ranked it low, just above tyranny on his list, which he claimed evolved as a direct result of democracy.¹⁸

Plato's view of democracy reflects a narrow elitist view, equally restricted in its way as theocratic rule.¹⁹ He was unable to appreciate the values of liberty and equality, seeing the former as the road to anarchy. He considered that people were born to their class rather than achieving rank through their own efforts. Those who were born slaves or workers were unable to aspire to another class.²⁰

It may have been that Plato's (and Aristotle's) views on democracy were indelibly marred by their experiences of its Athenian manifestation, but the fact remains that neither of them were able to perceive any merit in the system, nor could they envisage any type of revised or reformed model.

At any rate Plato considered that democracy was inherently unstable since conditions would always break down and end in anarchy

because of the freedom given to demagogues. Inevitably democracy would end up by creating its exact opposite — tyranny or autocratic rule.²¹

5. Tyranny

The tyrant is the head of the government. At first he is just and equitable but then he becomes unjust and immoral; he abandons the rule of law and refuses to listen to reason. He is a shameless embezzler and oppressor and does not hesitate to use torture to consolidate and perpetuate his rule.²²

Plato utilises another basis for classifying government, which he refers to in 'The Laws', one of his dialogues most anchored in reality. Governments can be either constitutional or unconstitutional. A constitutional state, which gains its legitimacy from the constitution, may be governed by an individual, a minority, or a group.²³

I now turn to a comparison of Plato with Al-Farabi in response to the claim that the latter drew on the former for a large part of his political philosophy. This claim was made, on the basis of evident similarities between the two philosophers while ignoring points of difference, by such writers as Butros Ghali, Abdul Rahman Badawi, Waddi Bur and Simon Blackburn, who states that 'Al-Farabi's Model City is but a version of Plato's Republic.'²⁴ The same claim is made by Ian Richard Netton, who states that 'Al-Farabi's Model City is a copy or a clone of Plato's Republic.'²⁵

This is clearly erroneous since there are many points of difference between Al-Farabi and Plato on the one hand and Aristotle on the other. Neither of the Greek philosophers was familiar with the concept of the world state since their ideal prototype was a city state. Al-Farabi's state was conceived of as a model city on a world scale where the object of

association is the happiness of its citizens. Hence, it is unjust to suggest that Al-Farabi's city is a mere copy of Plato's Republic.²⁶

Unlike Plato and the other Greek philosophers, Al-Farabi's thinking was not restricted by models of city states like Athens and Sparta. He conceived of a federation of nations united under a single sovereign. Thus his conception was on a grander scale than the Greek philosophers who were unable to see beyond the confines of their daily lives.²⁷

For Al-Farabi social groupings were complete or incomplete in form. Of the former he distinguishes three examples: the world state, the nation state and the city state. The latter (the only one of the three known to Plato) formed part of the nation state and was the smallest and lowliest of Al-Farabi's social groupings. On the other hand, the city state was considered to be the ideal for all Greek philosophers except the Stoics.

It may be noted that Al-Farabi's model city is consistent with the Qur'anic vision of a world God for a single humanity, but Badawi, in line with orientalists who trace Islamic philosophy back to Greek roots, hypothesises that Al-Farabi was influenced by the Stoics.

The Stoics believed that the cosmos is a single unity presided over by reason and their 'world state' was nothing but the external political manifestation of their ontological theory. For the Stoics existence was a single essence, a natural unity and a single state.²⁸

However, in the opinion of the writer of this paper, Al-Farabi's model city can best be explained in terms of Islamic belief in the concept of Allah, Lord of the Worlds; the idea of a world God is consistent with that of a single humanity, which logically entails the political concept of a world state. This is the

contention of Jamil Saliba, who opines that Al-Farabi could only have derived his idea from religious belief.²⁹ In contrast, the Jewish belief of a particular God for a particular people implicitly denies the idea of internationality.

Al-Farabi classifies non-model cities (in the opinion of the people of the Model City) under four headings:

1. The city of ignorance, with the following subcategories — the city of necessity, founded on the basis of assuring essential needs; the city of commercial exchange, based on wealth creation and trade; the contemptible city, whose sole aim is the pursuit of enjoyment and gratification of the senses, and sexual and sensory pleasures; the noble city, which seeks to acquire glory in order to win fame and honour; the city of military might, which deals with people on the basis that they themselves are victors over

others; and the collective city, in which people are equal and free to do as they please (a type of democracy referred to above).

2. The dissolute city, whose inhabitants embrace the theories of the people of the Model City but act like the inhabitants of the city of ignorance.

3. The mutable city, which changes from a model to a non-model city.

4. The erroneous city, whose inhabitants have lost the road to happiness and have embraced false ideas about Allah and the world and the hereafter. They have lost the chance for happiness since they follow a leader who believes that he is divinely inspired but operates through delusion, trickery and deception.³⁰

Hence, it is clear that although there are similarities between Plato and Al-Farabi, there are also considerable differences between them in the classification and bases of different forms of government.³¹

The foregoing vindication of Al-Farabi's position is not to question or belittle Plato's authority in this area but simply to demonstrate the value and originality of the former's ideas. Although Al-Farabi profited from the ideas of the Divine Sage, his work is by no means a copy of the Ideal Republic.

Turning to Aristotle we find that he divides forms of government into two categories based on the degree to which they serve public or private interests. On this basis he distinguishes virtuous governments from corrupt governments. Each subcategory is further classified quantitatively into three types of government: individual, minority group and majority. Each of the six types identified have

their constitutions — good constitutions for honest governments and bad constitutions for corrupt governments.³²

I. Individual governments

1. **Kingship:** a form of government presided over by a king who abides by

the rule of law and serves the public interest by bringing about universal

justice.³³

2. **Tyranny:** ruled over by a tyrant who does not respect the law and does not serve the public interest, but rather his own interest in accumulating wealth and sensory gratification.³⁴

II. Minority governments

1. **Aristocracy:** ruled over by a competent and virtuous elite who abides by the law and serves the public interest by bringing about universal justice.³⁵

2. **Oligarchy:** ruled over by a corrupt minority whose sole aim is to accumulate wealth and increase their influence. They do not respect the law and have no desire to serve the public interest by bringing about universal justice.³⁶

III. Majority governments

1. **Polity:** Rule by the people in which the majority work for the benefit of all. The

government abides by the rule of law and serves the public interest by bringing about universal justice. Aristotle considered Polity³⁷ to be the best form of government since it is midway between the rule of the rich and the rule of the poor and is a blend of the virtuous elite and democracy, since competent people — rather than demagogues — exercise power.³⁸ The virtuous elite (rather than the corrupt elite) exercise partial power. This form of government is expressive of the middle class who balance the interests of the rich oligarchs with the poor, traditionally represented in a democracy.

2. **Democracy:** Rule by the poor and base majority of the people.³⁹ It is a corrupt system in which people do not abide by the law or respect reason but rather follow their desires, resulting in anarchy.⁴⁰

Thus, for Aristotle legitimacy derives from a virtuous constitution, application of the law and the creation of universal justice in a system of government in which no private or class interests are served at the expense of another class. However, Aristotle did not specify the mechanisms that guarantee that the virtuous elite form the government, nor did he explain how the conditional nature of democratic power operates in a mixed system such as he proposes.

The synthesis proposed by Aristotle derived from the status quo prevailing in Greece at that time and there is no guarantee that such a system could be reproduced in other conditions. This same synthesis is currently used by some corrupt regimes to give themselves a veneer of democracy but their rule is like the stage set of a play in which characters play their assigned roles!

The problem for Plato and Aristotle was that they were unable to think outside the confines of the reality they knew, and when Plato attempted to go beyond these boundaries with the Ideal Republic, he drowned in a sea of unattainable speculation and conjecture.

From the Defects of Athenian Democracy to the Defects of Modern Democracy

It should be emphasised that democracy is a mechanism for government and distribution of power, which is far from guaranteed or definitive. Its nature varies between one society and another and between one ideology and another. The operation of democracy takes many forms according to the structure of political systems, which vary from one country to another.

It can also be asserted, *pace* Plato and Aristotle, that real democracy remains the least worst system of government and the one most likely to deliver social justice because democracy strengthens — or should strengthen — the rule of the majority. It does so by striking a balance between the interests of the rich and the poor, and by not favouring the wealthy, the politically influential or those with hereditary rank.

Besides, contrary to the claims of Plato and Aristotle, it restricts the opportunities for tyranny and does not inevitably lead to anarchy since it permits conflicting parties to resolve their differences peacefully and fosters political and social stability. Democracy is not simply mob rule (as our two philosophers assert) because it creates a separation of political and social power, guarantees human rights, upholds individual freedom and promotes the public interest without favouring one party over another. It also fosters the concept of citizenship whereby all individuals

have a say in determining the future of their country and expressing their opinions.

Democracy is meaningless unless it is total; a democratic political system does not operate in a vacuum from other sectors in society. If the democratic spirit does not pervade all walks of life – from the highest to the lowest – then democracy cannot achieve its goals. In this case we do not have real democracy but 'partial democracy'.

If Plato and Aristotle were alive today, it is likely that they would level criticisms against modern democratic regimes just as they did against Athenian democracy.

In the modern world, many so-called democracies conceal within them anti-democratic tendencies — for example, the propaganda campaigns financed by interest groups and the biased and misleading publicity

during election periods. Powerful pressure groups infiltrate into the public domain and wield an influence out of all proportion to their numbers. In the United States it is not the voter who has the last word in elections but the state electoral colleges, which can reject popularly elected candidates if they consider them 'unsuitable'. The members of these electoral colleges are generally appointed from within the ranks of the political parties in power. In Britain, the ruling political parties act to ensure that only candidates they approve of can aspire to the post of Prime Minister. In France the presidential electoral law stipulates that candidates for the presidency must be vetted by a number of the great and the good before being permitted to submit their candidacy. Elections in Western countries are by no means totally democratic. In addition, in the majority of countries elected deputies are primarily concerned with the interests of their own constituencies and devote most of their attention to the parties that financed their electoral campaigns. In many democracies, parties put the interests of themselves and their

members ahead of the public interest. In many countries the wishes and interests of those in government are paramount and bureaucracy is dictatorial in nature. Power is exercised in hegemonic fashion so as to stifle debate, and spheres of influence and wealth creation are monopolised to the detriment of the public interest. A semblance of democracy is maintained in order to delude the public but the basic aim is to serve the interests of the political and business elite.

These anti-democratic tendencies are not so much visible in the internal workings of democratic governments as in the area of their foreign policy, as evidenced in the increasingly strained relations between the West and Arab and Islamic countries (with the conspicuous exception of Israel), and between the rich and powerful countries of the north and the poor and weak countries of the south. Further, international bodies and organisations are under the domination of the powerful countries that established them and are run

with a semblance of democracy in order to serve the interests of those countries as, for example, in the exercise of the veto. Hence it is clear that the policies pursued by democratic Western powers are far from democratic, especially their foreign policies.⁴¹

So, as I have already pointed out, Plato and Aristotle would have criticised modern democratic regimes for the same reasons that they criticised the democracies of their era. Democracy is incoherent and bound to fail since it is against the public interest and merely serves the elite. It is against the law of natural selection, which ensures the survival of the fittest.

Anyone who wishes for a system of government that ensures the common good and expresses the will of the people will turn to democracy but the only route to success in this enterprise is through fully-fledged (not partial) democracy.

Plato and Aristotle's harsh criticisms of democracy in Greek society, while well warranted, do not constitute a solution to the problem. The problems of democracy can only be solved by a more comprehensive application of democracy.⁴² So it is that the countries that have implemented democratic practices to the greatest extent are the countries with the highest level of social justice, at least as far as internal policy is concerned.

The cure to the problems of democracy is the application of more democracy by implementation of human rights and the constitution, by real universal suffrage through secret ballot, by rotation and distribution of supreme power and by non-interference in the will of the people!

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Reflections on the Dilemma of Legitimacy and Legality in the Contemporary Islamic Discourse

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The Contemporary Islamic political thinking is dynamic rather than static, though its dynamism is still slow and sometimes fluctuates. The comparison between what was written in 1950s and 1960s and the ideas and attitudes which that have been discussed recently clearly shows the dynamism that characterises this thinking is characterized with. This dynamism and reflects at the same time the relative maturity of some parties who produced initiated and are carrying this continued it after living for period of time under the fear of loosing identity and disappearing into the "Western political model". This has made many a number of figures in this field, until now, hesitant to settle many issues, whether symbolic or

fundamental, due to the fear of breaking the circle of "invariables". This issue is clear if we reviewed the aspects related to the dilemma of legitimacy and legality in the Islamic thinking in general, and the dynamic discourse of the Islamists in particular.

Dilemma of Definition

Legitimacy and legality have different meanings, yet they overlap in the dilemma of the attitude towards the state or the political system. Legitimacy is defined, according to the International Encyclopedia of Society, as: "The fundamentals that the ruling institution depends on in exercising authority, and is based on the right of the government to exercise the authority, and on the acceptance by those who are led of by this right.". Legality, on the other hand, refers to the extent of compliance of the activity of individuals and groups with the legal framework regulating that activity. Accordingly, there is a

common belief between political science experts of political sciences that legitimacy is a "political' concept", while legality is a "legal'" one. In the first concept, the attitude is directed to determining the nature and pillars of the authority, or the attempt to understand that authority as a political phenomenon, as undertaken by "Joan Luke" and others. In the second concept, there is a shift represented in determining the attitude towards the approach of change and methodology of opposition methodology,. however, there is an overlapping between the two concepts . Legitimacy is also linked to the issue of constitution and this may move legitimacy from its floating inaccurate meaning into a legal one, limiting the freedom of authority and avoiding absoluteness and comprehensiveness in it.

The distinction between these two levels is not new . Controversy was aroused, and lasted for a long time, between legal political scientists and Islamic sect theorists over

determining the hypothetical and fundamental attitude towards the religious and political nature of the state. This was sought through setting the conditions, according to which submission to the state would be mandatory, and then setting up general rules that justified the armed revolt against it or that which justified the acceptance of it, even if its rulers were unjust or it was greatly corrupt.

Reform Stage

The Islamic discourse of reform discourse, during the time of the Arabic literary renaissance, was preoccupied with the issue of modernizing the state or developing its institutions and performance. Reformers believed that in achieving reform and restructure the general atmosphere of the nation would be started. The notion of state had a central importance in their awareness. The situation remained the same with the different political and intellectual trends that

came later and which prevailed over the public affairs and tired tried to achieve change and reform in the Arab world.¹ Attempts to establish a strong modern state were started with the experience of Mohammad Ali Basha, who worked to take advantage from of the Western political model bearing in mind the external greed of the foreign countries. The second attempt came from within the center of the Ottoman caliphate by some young sultans who were influenced by the European power, especially in the social, military, administrative, health and construction fields. This was started by Sultan Mahmoud II, who abolished the janissary and carried out reforms in some sectors such as agriculture, heath and education. The image became brighter with 'regulating' the firman or document which that stressed on the equality between all citizens in the Ottoman caliphate and protecting their property. Moreover, an end was put to confiscating citizen's' money without a legal reason and court order, as well as trying to rationalise the taxation policy, making it fairer,

and limiting the misuse of influence or crossing the jurisdictions stipulated by the law.

The third attempt was made by Khair Eddin Al- Tonisi, who combined between the theoretical establishment of the reform project and the political practices. To achieve this goal, he held many important and responsible posts, including Minister of the Sea, President of the great Council and, especially, Great Minister. The book entitled "Aqwam Al Masalik" (The Right Methods), which summarizes the important reform ideas adopted by Khair Eddin, was based on the concept of reviewing the situation in the European countries in order to understand its development. After doing so, it could be concluded what kinds of reforms were needed to save Tunisia in particular, and the Islamic Caliphate in general from the complete breakdown and falling into the hands of the European occupation.

In spite of Khair Eddin's extensive borrowing from the West, he was very concerned about avoiding falling into the contradiction between the reforms he proposed and the Islamic law. This made his approach in calling for activating the methodology of ijtiḥād based on fiqh al-maqasid (jurisprudence of intents, goals and objectives of Islam) fundamental. In order to minimize the influence of the religiously conservative forces, he worked hard to envelop the political reform with religious legitimacy through denying any contradiction between Islam and his belief of in the necessity of building the state with the values of freedom, equality and justice for all citizens. He said,:

" If a certain conduct came from people who don't belong to us, and was a proper, conduct in line with (religious) evidence, especially if that conduct was originally ours and was taken from us, there is no way to deny it or neglect it. We should work to return to that conduct and follow it " .

Therefore, Khair Eddin believed that the Tunisian state, which was already established at that time, could gain its existence legitimacy and the loyalty of its citizens so long as it adopted ways of awakening and reform. It did not have to put itself for to a popular vote or hold transparent democratic elections in order to gain the trust of its citizens. Instead, it can would gain their trust by (1) reconsidering its choices, (2) accepting to respecting the minimum level of rights, (3) approving the founding of a number of institutions and (4) limiting the one-sided way of ruling by giving the Shura Council actual powers. Khair Eddin was aiming to establish a limited monarchical ruling system, in addition to an elected parliament that held the legislative power and supervised executive authority.

The fourth experience, which is often neglected when discussing the reform, is related to Iran from a geographic point of

view, and the intellectual developments within the Shi'ite atmosphere from a sectarian point of view. We should investigate the protest movement which that was triggered by Hassan Al- Shirazi when he issued his famous fatwa. It forbade smoking between by Shi'ites in an attempt to oppose Shah Nassir's decision of granting concessionary rights to Persian tobacco to a British company in 1890. This fatwa practically led to the withdrawal of the concession after two years of protest. That successful movement was the beginning of achieving what was later known as the Constitutional Revolution, which lasted between 1905 and 1911, a rebellion that was centered over the notion of constitution, or what is called in the Persian political literature as 'Constitutional Mashrooteh'. That witnessed a very important and dramatic turn within the Shi'ite reform and modernization , both at sectarian and political levels. The book entitled "Tanbih Al-Ummah" (The Alarm for Nation) by "Hossien Na'eeni" is considered one of the most important landmarks that resulted from that era. The change that

occurred would have consequences later on the Shi'ite contemporary political thinking.

That time witnessed an intellectual mixture between what was going inside the Sunni reform school led by Jamal Eddin Al- Afghani and the Shi'ite reform school. From a political point of view, establishing a constitutional ruling system was the objective of the period of awakening . Religious reform was used as a beginning and way of reaching the stated objective. The constitutional state does not represent overthrowing of an existing state, but a defence of the continuity of that existing state. To reach that, the existing state should adhere to restrictions and methods that prevent the risk of the absolute rule, paving the way to make nations as partners in managing the public affairs through elections and parliamentary representation. What Sheikh Mohammad Abdoh did by firmly establishing the reconciliation between the Shura and democracy was nothing but an attempt to overcome a conceptual and reform obstacle

that was introduced by the conservatives and rulers to prevent their citizens from practicing their right into the political participation.

Al Nahda (Renaissance) Figures and Characters: an Attempt to Save and Develop the State

Reform icons did not call for the establishment of an Islamic state because they did not question the religious legitimacy of the Ottoman Caliphate. In other words, their argument with the Ottoman Caliphate was not precisely a religious and ideological, but it was basically a political, social and cultural one. In the beginning, they tried to avoid any "clinical death" of the state. However, due to the crisis that including included all parts of the state, all efforts for reform were in vain. This made Jamal Eddin Al- Afghani spare no effort to support the rebellion as a means to impose the minimum level of reform similar to

the situation with the Urabi revolt. Nevertheless, the main goal of Al -Afghani was to unite Muslims and forming a wide camp to face ambitions of the occupation, which was, at that time, extending becoming bigger and spreading into all parts of the Islamic world, dividing it and restructuring its geography, economy and culture.

When the caliphate was abolished by Mustafa Kemal Atatürk, the reformists were divided into two camps. One called for rebuilding the caliphate and was represented by Rashid Ridha. A, while another camp saw the objective of the first camp as a wasted effort, and wanted to give the priority to developing a regional or local state. This state established itself historically and became the only resort for communities which that had lost the bonds of membership with the central body represented by the Ottoman caliphate. Those communities also found themselves, in addition to the local political system, alone, facing Western colonial ambitions and the

accumulation of the comprehensive political crisis, including all parts of the Muslim community .

Reformers avoided calling for delegitimisation of the inherited political system for a long time, although it was eroded by corruption, and incapable of carrying out its basic duties. Those reformists worked very hard trying to convince the ‘rulers’ of the necessity of adopting methods for gaining power as had happened in Europe. They thought that it would be possible and would, if achieved, help to establish a new political legitimacy without a violent revolutionary change or contradiction in a historical context during which the Arab Islamic state was established. Despite their concern and the achievement of some sporadic reforms, a number of factors hindered achieving the realisation of their goals. These reforms hastened the decline and collapse of the caliphate and most of its provinces. Among the factors which that hindered the reforms were

the absence of the historic awareness among the superior groups who were in authority, the flabby condition of the ruling systems and the great imbalance of power that favoured Europe.

The Dynamic Discourse Stage

When the Islamist movements were founded, thanks to the establishment of the Muslim Brotherhood organization in the Arab World and Jamaat-e-Islami in South Asia, the relationship with the state took a different turn from that of the last reform stage. Dynamic discourse tended increasingly to question the legitimacy of the national or modern state, which took the place of the caliphate state. That idea was not clear enough to the founder Sheikh Hasan Al-Banna and he dealt carefully with the crumbled monarcarchical system. He did not discredit the legitimacy of its existence, but was, at the same time, the first one to call for Islam as a religious and state

system, paving the way for the call of establishing an Islamic state. He considered that as a move towards establishing a caliphate state, which had been the strategic goal of the Liberation Party since its establishment. On the other hand, Al-Banna only highlighted the importance of the caliphate state then devoted himself to achieving gradual reform in Egypt and then in the Arab World. He said,:

"The Brothers think that restoring the caliphate is a must in order to realise Muslim unity ... and that it is a ritual Muslims must think and be concerned about, and that the existence of a caliph is a must for applying many of Islam's rules in Islam., Therefore, Brothers, put the idea of the caliphate and restoring it at top of the list of your agenda".

Thus, Al-Banna became one of the Islamists who called for an aqida (creed) state, which has a comprehensive message relative to all aspects of life.

Although he made the establishment of the Islamic state as a goal for his organisation, Al-Banna recognized the legitimacy of working within the liberal political system which was, when talking about Egypt, suffering from great corruption and misconduct. The liberal stage depended on the multilateralism of parties, holding regular elections and asking the parliamentary majority to form the government while preserving a minimum level of freedom for of the press. On the other hand, pressure was put on these practices and processes by the monarchy, as well as British intervention. Even Hasan Al-Banna, who strongly criticized the phenomena of forming political parties and did not see it as the way to save Egypt, sometimes chose sometimes to be close from to the royal palace and sympathetic to King Farouk even if that was against the interest of the Al- Wafd, which had national and public orientations. The chief basic concern of Al-Banna during that stage was protecting his movement, which grew rapidly

and found itself facing many opponents and challenges. Different manoeuvres were undertaken by him in the hope of gaining power and reaching the moment of enablement. However, the obvious involvement of the Brothers in the war in Palestine, and the involvement of the Secret Service in the assassinations of some important political figures, as well as the increasing role of the Brothers and their popularity, all made it a common interest for the English, the royal palace and other parties to stifle the Brothers with by assassinating their leader as well as detaining thousands of its members and targeting their institutions.

That painful confrontation resulted in intellectual and political effects that would be developed later on. The first effect was the denial of any political legitimacy of the monarcharchical system in Egypt. Some of the military, who belonged to the Brothers' movement, cooperated and coordinated with a group of the Free Officers who was were

preparing to overthrow King Farouk and abolish the monarchy. These officers received political and logistical support from the Brothers, who considered the military coup as a legitimate action to change the situation. That was the first alliance of Islamists using the military to change a ruling system through power. The same scenario was repeated later on in Sudan, and General Dhia Al-Haq received a great support from Jamaat-e-Islami in Pakistan despite his coup against and the execution of Bhutto. The failure of the two previous experiences and their breaches made several movements, which are historically considered to be as an extension of the Muslim Brothers, more careful in dealing with the military, as is the case with the Mauritanian Islamists, who refused to give their blessings to the coup that overthrew a legitimate president.

The Muslim Brothers not only supported the Free Officers but were also willing to sacrifice the political multilateralism as they supported

the revolution's leadership council's decision of abolishing parties, excluding the Brothers. Although the Brothers regretted that decision afterwards and withdrew their support, which provided an opportunity to corner them, their attitude was in to conform to the strong criticism Al- Banna aroused against the party system. That came as a result of tactical or circumstantial considerations related to corruption, which was corroding the experience of forming parties in Egypt. Moreover, the attitude of the Brothers' General Leader was linked to the type of culture he was exposed to during his religious and political upbringing; the culture that he strengthened in his supporters and the movement's members. It was not a coincidence that Al-Banna, the founder, refused to describe his movement as a political party. Instead, he described it as Al-Jama'a (the Group), which has special associations in the old and modern Islamic minds.

Al-Jama'a indicates the congregation and does not accept multilateralism or disagreement. It also indicates the tendency to integrate with community, nation and state. In Sunni culture, it indicates the state of possessing the religious truth, returning to the pure religious source and assimilating the first historical experience of Islam during the time of the Prophet (PBUH). The huge overlap between these concepts made the Brothers' leadership, until now, hesitant and doubtful towards transforming itself into a political party, although many of its members called for that move to be made. The uncertainty about the attitude of a large number of the Islamists towards the legitimacy of party multilateralism within the so-called Islamic State seemed to be the reason of the confusion in the attitude of some Islamic figures, who made a good progress in the intellectual and political moderation and renovation. One of those figures was the renowned attorney Mohammad Saliem Al- Awwa, who believed,

We don't blame the Islamic State if it allowed multilateral parties. The Islamic state may, and must, impose some conditions stating that these parties adhere to the values and rules of Islam. The state, after imposing these conditions, gives these parties the freedom to call for any social, economic and political agendas, and other agendas" . .2

This conditional multilateralism is another example for of what was described by research issued by the American Carnegie Foundation as 'grey areas' in the discourse of the Islamist movements that showed openness to democracy.³

The Alliance with the Military and the Attitude towards Multilateralism

The honeymoon between the Brothers and the Free Officers did not continue for long, especially after displacing Mohammad Najeeb, and Abdel Nasser was the only man who led the revolutionary council. The possibility of coexistence between the two parties was low because ruling a country does not tolerate two heads people struggling over power. The military men came to power, deriving their popularity from many sources such as their presence in power and the assumption that they automatically became the representatives of Egyptians by overthrowing the ousted regime. They also derived their popularity from the decisions they made by which they justified what they considered as transformation from a state of military coup into the state of revolution. From the beginning they opted for silencing all voices of opposition or those that could upset their absolute power. In all cases, the military leadership could not tolerate a growing entity such as the Brothers, which included military elements and civilian elements with military experience. For these reasons, a clash between

them was inevitable. The clash was not between two democratic powers believing in referring to the nation but a bipolar political struggle, and one of those poles had exclusive possession of power refusing to share it with anyone, while the other perceived itself as the origin and source of the religious and political legitimacy.

The Brothers did not deny their alliance with the military in order to change the ruling system, but they thought that the Officers' role would be finished as soon as the situation was stable. The Brothers also believed that the last word must be theirs because they supported the coup and provided the public platform that helped in creating a positive atmosphere for encouraging political change. After analyzing the situation, they believed that they were the representatives of the society and source of the legitimacy. On the other hand, they thought that the Officers were only individuals who accomplished a successful mission and had either to return to their barracks, handing over

the power to the Brothers, or make the Brothers their partners in the direct handling of the issues of the rule and country. Thus, the two parties resorted to using power to solve the problem, apart from the opinion of citizens. The winning party was the one who had the security forces and media at its disposal.

Questioning the Legitimacy of the Nation State

The security campaign against the Muslim Brothers was cruel and horrible. Nassir's regime wanted to eradicate them politically and ideologically without taking into account the future consequences of such an option. These consequences were represented in intellectual reactions or, more precisely, religious reactions. Sayyid Qutob not only denied the Islamic nature of the existing state in Egypt, or other countries in the Arab and Islamic World, but also described that state as

Jahiliyya (Age of Ignorance), which was the enemy of Islam`. Thus, the national state lost its legitimacy in the eyes of Islamists. The reason for that was not because that the state was not undemocratic or did not originate from a free and well-informed choice by nations through transparent and authentic elections but because it did not apply the Islamic law and did not refer to the Holy Qur'an and Sunna in handling its law, judiciary and internal and foreign policies. Due to those reasons and direct confrontation, the state as an authority and ruling system, as well as executive, legislative and judiciary institutions, became the infidel enemy, even if those in charge were undertaking their prayers and fasting during Ramadan.

Dominion or governance, in this context, had become the criterion to ensure whether or not legitimacy and legality were present together. Thus, the national state lost any justification for its loyalty, and rebelling against it, by any means necessary, became a

must, including violating its laws and resorting to violence, which was considered by the groups which that split from the Brothers as a legitimate jihad. These groups transformed its battle with the existing systems and the West also into a confrontation without boundaries. Therefore, they fully rebelled over the different legitimacies or legalities.

In this context, it was important that the Brothers' movement, which was considered to be the largest Islamist movement in the region, did not make, during the its foundation stages, democracy as a fixed strategic dimension for its ideology or political manifesto. The movement was seeking to establish an Islamic state, ambiguous in meaning and characterized by some fundamentals of the modern state without going deep into its intellectual and political structure. The absence of a purely democratic dimension in the Brother's' political culture helped renowned writers, like Sayyid Qutob, to look for alternative theoretical fundamentals establishing an

ideological and religious antonymous relationship between Islam, according to his understanding of Islam and democracy . The ideological and political experience of the Brothers influenced the different groups affiliated to them or the movements that inspired them un the region. This influence impeded the developments of these movements and hindered their maturity and interaction with the demands of the political reform. This influence also made the attitude of these movements towards basic issues, such as constitutional legitimacy, approaching pacific change approach and democracy, continue to be ambiguous despite the developments witnessed by them over the last two decades.

The Theoretical Obstacles

Any researcher, or even the argumentative, cannot deny the change in the Islamic dynamic political discourse, especially since the 1980s.

This change was attributed to the decrease in pressure on most Islamist movements and the presence of a level of freedom and political openness. This encouraged many of these movements to get through experiences that were characterized by a minimum level of party multilateralism. Some of them were even able to run for successful elections and successfully enter the parliament in a number of Arab countries such as Jordan, Egypt, Kuwait, Yemen, Lebanon, Algeria, Morocco, Palestine, Bahrain, Mauritania and Iraq.

These movements were important, and should be studied in order to understand the effects on those who were members. However, there were many theoretical obstacles that hindered and are still hindering the establishment of a democratic Islamic discourse that is clearly and ultimately decisive in the issues relating to the dilemmas of legitimacy and legality.

We can refer briefly to some of these dilemmas in this article.

The Dilemma of the Islamic State

After the decline of Ottoman Caliphate and its abolishment by Mustafa Kamal Atatürk, many Muslim communities felt that they had lost their legitimate state. Although that caliphate was symbolic and based on injustice and exclusive practicing practices of power, it was as if it representing represented a historical stage that will would never return. As for the national state, which was founded to fill the gap, some people continued to fear and doubt its legitimacy. These kinds of states, which were known in many Muslim countries after it attaining independence, were characterized by few aspects of the modern state. Moreover, they maintained their sultanate nature. However, these nation states were accused to of ‘following and adopting the aspects and life style of the West’. Thus,

Islamist movements made it their mission to restore the Islamic state as their a priority and affirmed their willingness to sacrifice all in order to achieve that goal. However, the problem of these movements was that they lacked the vision and set their objectives before defining what kind of ruling system they were endeavoring to establish.

More dangerously, the groups that were inspired by the ideology of these movements decided to enter a bloody and comprehensive confrontation with the existing ruling systems which that brutally suppressed them and attempted to overthrow them. They did not want to reform the state and make it more democratic. Instead, they worked, and still do, to provide an alternative ruling system that is Islamic and applies the Islamic law. However, in the light of the absence of a clear political alternative, the state which that these groups have been working to establish would necessarily be tyrannical in its vision and approach, as well as very traditional in its

nature and discourse because of its declared enmity towards the different fundamentals of the modern state.

Raising the banner of the Islamic state came as an alternative for any different patterns or kinds of the existing states including the democratic state, which was, from the point of view of these groups, contradictory to Islam and, therefore, could not be established in the Muslim communities. It took a long struggle before some figures in these movements started to lessen the false tension between Islam and democracy. The notion of democracy became frequently used in the political discourse of many Islamists, which represented a move in the right direction. However, the notion of the Islamic state had also been widespread, indicating that the state in question was a religious state. As in all religious states during all civilizations, the relationship between the state and democracy would always be unstable and tense.

Giving up the call for an Islamic state, which does not have a historical or fundamental justification, would help abolish the false boundaries between Muslims and the democratic state. Giving up the religious nature of the state will provide the opportunity to talk about a civil state which that derives its institutions from the nation and is managed by people who stand together and respect those who elected them to hold ruling responsibility. Islamising the state can pave the way for the head of state to claim verbally, or by his actions, that his mission is to ‘protect Islam’ and rule according to its law. This situation will gradually lead to tyranny in the name of religion, which is one of the most dangerous aspects of tyranny, according to Al- Kawakibi.

Moreover, abandoning the call for an Islamic state would help overcome the theoretical estrangement between this term and the existing state in different Muslim

communities. The option will not be to raze the state because of the idea that it does not have historical and religious legitimacy, but there will be efforts exerted to reform the existing state in order to make it more respectful and representative of the citizens' will. Efforts will also be exerted to make the state governed by law and derived from the nation so it is not controlled by the rich or corrupt people. Through this direction and vision, the reform dimension becomes mature, the possibility of the violent change of power decreases and reconciliation on the mechanism of the democratic system is reached. Therefore, there will be no contradiction between the right to practice political work and respecting the rules of the game through the democratic system.

In all cases, relying on any religious scripture must not be done to justify or pass on the project of the Islamic state, which is believed, by those who call for it, to allow them to rule in the name of God's authority.

These type of states, from which many communities suffered in the past, should not have Islamic legitimacy because it is contradictory to the text, spirit and experience of the Prophet's state, which was definitely a civil state in the full sense of the word.

Al-Hakimiyyah (Governance), is it for God or Nation? The term of al- hakimiyyah (dominion or governance) represented an intellectual, political and religious dilemma, and created great perplexity in other concepts. This was resulted, and still does, in hindering the positive interaction with the democratic system. We could not find any trace for this term in the literature of scholars of the Arab renaissance scholars such as Al- Afghani, Abdoh or Khair Al Din Al- Tunisi. Instead, the frequent use of this term was related to the raise of the contemporary Islamist movement, more specifically with the influence of Sayyid Qutob with the writings of Abu Al Ala Al - Mawdodi.

This term came as an attempt to create a political nature for the Qur'anic verse (the command is for none but Allah). The command in this verse was understood by the scholars to mean the state or the political and legislative authority, which should not be, as they claim, in the hands of humans because they believed that the state derived its characteristics from God's and revelation. In fact, this interpretation was as if 'a word of justice which is used to achieve evil intention' because God is not interested in any direct authority between humans, or He does not intervene in organizing the social or political process, which is merely a human task. God talked to humans through the Qur'anic scriptures using the language of Prophet Mohammad. Those scholars interpreted this scripture according to what they thought to be right in their interests. Therefore, the whole political process from A to Z is a mere human course of action that is subject to experiment, review, error and judgment. Thus, the

authority that rules may be chosen for a nation by a free elections according to a definite political and social agenda, and therefore will be an authority that enjoys popular legitimacy. That authority may also be appointed or impose upon itself by force, and thus would be a usurpative delegitimised authority regardless of the slogans it chanted, whether religious or otherwise. This all means that legitimacy of the rule is not derived from the nature of the religious or ideological discourse adopted by that ruling system but is from the way the ruler reached power, whether through his predecessor being overthrown or through election! Deriving the legitimacy of the ruling authority by this way was not in line with what many Islamists who believe that ‘legitimacy must be religious. According to this explanation, legitimacy becomes single, ultimate and comprehensive having many components and applications that are morals, and social, as well as legal and political.’⁴

This interpretation was not common between Sunni Islamic movements only. It was clearly between the wide range of Shi'ite activists and educated people. Clear evidence for that was the radical turn by one of the contemporary Shi'ite schools of political thinking. This, in turn, was initiated strongly by Imam Khomeini. The idea did not remain a dead letter in his book entitled *The Islamic Government*, but became a real experience represented in a strong country which that has a continuing regional role. The theory of the rule of jurisprudence became a source of sharp debate within Shi'ite circles. Despite the clear and well-known differences between Sunni, and specifically the Twelvers branch of Shi'ites in the Imama issue, an overlap still existed between many of the issues discussed by the followers of both sects, especially those who supported the political or movement aspects of Islam. This overlap is clear in both the issues of legitimacy and legality.

Mohammad Jawad Larijani, former head of the foreign political committee of the Iranian National Security Council, besides his university position said,:

"Western foreign culture was is not interested with in the concept of justice

because they believe in a kind of multilateralism. Therefore there is nothing called

just thought because all people are in at same level of justice.. they don't talk

about justice in the field of ruling, but about legitimacy, which means, according

to them,: justifying the authority that some of them have".

Contrary to this Western view, Larijani believes that "The basis of the regime's legitimacy in Islamic government is justice, and the basis of justice is (1) believing in God,

(2) the purpose of creation and (3) believing in the responsibility towards humanity.’. He believed that legitimacy ‘does not come from the nation or any other human being but from the right which may originate from the nation. However, the basis of that right is justice and not nation’. He summarises his opinion by saying,: ‘Democracy sees that the basis of that process is the legitimacy, which is established by the contract (i.e. social contract), while Islam states that the nation should accept the authority of the rule legitimatised by the contract.’. This is due to the fact that the nation ‘in the Islamic system represents the ground needed for the presence of an authority, although the nation is not the source of its legitimacy. If the nation chose a good leader, and then they ceased to obey that leader, and he had the power to face the nation and make it go back to supporting him, he should do so, just as Imam Amir Al Mumineen Ali bin Abi Talib did.’⁵ . Therefore, it is obvious that the dilemma of legitimacy is still strong within the contemporary Islamic thinking and is not limited to a certain group.

From our point of view, the nation should be the source of authority and its physical presence and legitimacy as it represents the body which elects the ruler as well as those who represent the ruler in parliament and the elected Shura councils. Some of the duties that the parliament or Shura councils are responsible for includes enacting laws and supervising the work of those who are in the executive authority. During all these stages and processes, God does not intervene directly or indirectly to appoint a certain group of people or establish any kind of legitimacy of that group. The game and its rules are put played by the citizens, and they control it according to their understanding of the religious texts and its general directions as well as according to their interests and the existing balance of power.

From this side, the organisation of relationships and its their institutional and

hierarchical order in relation to political affairs, and their effect on the structure of authority and its institution and levels will be as the follows:

Ruling organisation including the mediatory institutions such as

parliament, government and leadership

Political and religious culture which is derived from the understanding

of texts and consideration of interests

Interests of social classes

Groups of people who receive texts

Revelation

God

Religious practice in this context is represented in the type of the inherited or dominant culture, which originates and takes an upward trend going through a series of reactions and physiological, cultural economic and social factors. This culture then rises through the up gradually influence of the interests of the active classes that overlap through several and intertwined methods. This type of culture then adapts the public opinion

directing it towards sympathising with a certain political side without necessarily giving religious credibility to any party among those struggling for power; i.e. the side who is holding the power and the opposition. Therefore, we think that the term of 'dominion' can confuse the political system and make it ambiguous, as well as making rulers to fantasise that they rule by in the name of God. This idea necessarily leads to the erosion of the existing democratic political system or prevents it existing. It also paves the way for establishing a religious authority that suppresses in the name of God and abolishes institutions and freedom in name of Islam. This understanding will create a theoretical and practical contradiction between the slogan 'Governance is for God', with all its vagueness and holy associations, and the demand for 'dominion of the nation', for which the democrats are calling ; the demand of the parliaments which that are elected through a direct democratic elections.

Shari'ah and State

The link between the Islamic state and the slogan of 'Governance is for God' is the call for implementing Islamic law. The state, according to those who call for applying the Islamic law, in order to be 'legitimate' should be committed to some issues, such as executing the rules of Shari'ah and making it as a constitutional and legal authority to which all organisations and institutors should bind. This is due to the fact that the state represents the legal component of the aforementioned term 'dominion'. Legitimacy is linked to dominion, in the minds of many people, as long as the law that governs the state is represented in Shari'ah. Therefore, religion is considered as a concept that unites between what is religious and what is political 6. . Thus the contradiction between the dynamic discourse and the modern state begins with questioning the legitimacy of that state, a legitimacy that is based on the positive laws.

From an organisational and formal point of view, it can be said that adhering to the idea of applying Islamic law does not represent, as such, an obstacle for establishing a democratic system. The system in question is based on (1) the principle of separation of the three powers (the legislative, executive, and judicial), (2) holding and authentic and free elections, and (3) electing a president and members of parliament. However, a contradiction still exists between democracy and Shari'ah when some voices that call for applying the Shari'ah claim that elections are forbidden and Islam does not approve parliaments. Another contradiction occurs when there is discrimination between citizens through depriving some of them from the political rights due to factors related to sex or religion. Those who hold that elections are forbidden do not represent the mainstream within Muslim communities and even within Islamist trends themselves. However, those who are opposed giving political rights to women or the non-

Muslim minority still represent a powerful voice.

Between the Procedural Democracy and Actual Democracy

Nowadays, most Islamist movements and trends adopt the technical sides of the democratic system. They do not agree in participating in elections and do not have any essential objections towards most of the rules that govern those elections; the rules that are called ‘procedural democracy’ by some (7). Accepting democracy as a mechanism to settle disputes and struggles, as well as to approve technical techniques by many people does not prevent us from investigating some issues that needs explanation and examination because of the pretext that those issues are strongly related to democratic legitimacy. Democracy is an order and system. That means it is a mechanism to organise the rule and make an easy peaceful transition of power. It is, at the

same time, based on a group of basic rights and values, which gives the technical processes cultural, social and moral dimensions.

Democracy is strongly related to the concept of citizenship. This citizenship, which requires the presence of equality in rights and duties between the population who belong to one country and who are loyal to that country. This requires approving the freedom of individuals and groups, and allowing political and civil work for all, with no exceptions. The right to form parties should be included in a country's constitution and laws, with no exception for non-believers or different secular parties. Opposition is a preserved right for everyone under the democratic system. Therefore, the religious division mentioned in the Holy Qur'an in most of its verses between believers and infidels, and between Muslims and People of the Book (Christians, Jews, and other religions with revealed scriptures) has nothing to do with the political division resulted

resulting from struggle, clashes of interests and disagreements, which are the characteristics of any human activity. A mixture of the two previous types of dividing will inevitably lead to civil war or the suppression of minorities. This requires re-reading for of the Qur'anic text in a way that differentiates between the two levels of dispute:

1 - The religious level, which is represented in mental argument and intellectual

dialogue and protects the specialty of the others which who differ in terms

in religion and sect.

2 - The political level, which represented by seeking to influence the public

opinion, attracting crowds and resorting to law, institutions and ballot boxes.

Therefore, it would be difficult to divide between democracy as a mechanism to settle the political struggle over power and a group of basic values which that are included in international human rights laws. Therefore, both of them are closely connected to each other, and represent an important condition in the way of achieving any one of them.

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- 5) 'The intellectual components of the political system in Islam'", an interview with Mohammad Jawad Larijani, Al Tawhid magazine.
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Religion and Liberalism: Theoretical Considerations

Heba Raouf Ezzat

‘The United States is a society in which religion has a prominent presence,’ said Alexis de Tocqueville in *Democracy in America*, which was written in the first half of the 19th century, and many Arab writers in recent times have concerned themselves with the rise of Christian-Zionism, the religious right in the United States and its effect on America's foreign policy. Many studies have focused on the nature of religious discourse, ranging from the conservative to the apocalyptic, while others have addressed the nature of political decision-making in Congress and Senate, the influence of the Zionist lobby and the ascendancy of the religious right since the Reagan era.

This paper aims to consider another theoretical plane, moving the debate from the political and journalistic arenas to the academic field. American thinking is the product of many influences, of which the opinions of university academics are one of the most significant. This explains the concern of the neo-con right regarding a perceived shift towards an academic discourse more openly critical of American policy,¹ which in turn has resulted in the stifling of criticism and, in some cases, intimidation of professors by putting them on blacklists and accusing them of supporting terrorism and failing to defend the country's 'national interests'. Hence the importance of a renewed focus on the topic of religion in the social sciences and a consideration of different theoretical positions on democracy and liberalism as a means of gaining a wider understanding of current thinking on these matters in the United States of America.

Sources of Liberalism: Major Issues

Liberalism is a multi-faceted concept that cannot simply be reduced to the components of liberty, egalitarianism and citizenship. Indeed, there has been much debate on the definition of liberalism and its relationship to other concepts, such as religion. While it is true that liberalism has been identified with the individualist school of thought in that it prioritises the individual over the community on the basis of core values such as reason and liberty, it is important to point out that this paradigm has become controversial, as has the definition of who or what constitutes a liberal thinker. The origins of liberalism are many and varied; for example one of the most prominent liberal thinkers, Brian Turner, has claimed that there are three, sometimes conflicting, formulas of individualism that all subsume the concept of citizenship. 'Individualism' refers to an individual's property rights, historically identified with the concept of equality and empowerment of the individual as an owner with social and political status formerly denied

him in a society where wealth and power were exclusively owned by the aristocracy. 'Individuality' focuses on an individual's freedom and his independent will vis-à-vis society and its traditions, underlining the importance of liberty and self-fulfillment in the scheme of liberal values. 'Liberation' on the other hand derives from the republican view of positive freedom and positive citizenship.²

In point of fact, the roots of liberalism have long been a battleground between utilitarian materialistic and transcendental immaterial tendencies, according to which its origins have been discerned in widely divergent phenomena ranging from Romanticism to religion. Nancy Rosenblum considers that the Romantic movement conferred important status on the individual but she also stresses the role of the emotions, claiming that reason alone is not enough to remedy the pragmatic shortcomings of classic liberal individualism. She finds that Romanticism is a necessary pre-condition for

the study of liberal thought, which is approached by others from the perspective of Kantian ethics or Social Contract theory in all its manifestations. The nearest Social Contract philosophers to the ethical and religious perspective are John Locke and James Mill, father of John Stewart Mill (leader of English enlightenment). A third group has approached liberalism from a Benthamite utilitarianism point of view.³

In the early 1970s John Rawls published *A Theory of Justice* in which he made a serious attempt to give new impetus to liberal individualist thought by appeal to a ‘contractual spirit’ based on social and cultural values. This work, which aims to make classical social contract theory relevant to the modern era, is essential to the understanding of contemporary thinking on liberalism.

Rawls chose to cast his theory under the banner of justice in view of the earlier

prioritising of liberty by liberal theorists. Approaching the subject from the discipline of philosophy, he wished to provide liberalism with a solid philosophical grounding and developed a Social Contract theory in which individual will is balanced by social obligation. Drawing inspiration from Locke, Rousseau and Kant, he sought to restore the moral balance to liberalistic studies, long dominated by utilitarian considerations.⁴

In his analysis of the concept of justice, Rawls stresses that like the concept of ‘the law’, it is better to regard it as a group of concepts rather than a single entity. Hence his theory aims to construct a blueprint in which an individual’s options for self-fulfilment can be plotted in terms of values that guarantee both freedom and justice. These values derive their meaning from the institutions that embody them and from the factors according to which choices are made, as well as scenarios illustrative of justice, such as the

social distributional sector and its relation to politics.⁵

In spite of the centrality of the contract and reason in Rawls' thinking, he also — because of his Kantian tendency — lays emphasis on the individual's ethical responsibility towards others on the basis of overriding general virtues.⁶ Furthermore, he calls for the necessity of abiding by the law and opposing civil disobedience — even if that law is not just — in deference to the principle of commitment originally enshrined in the social contract. The principle of justice cannot be overthrown or compromised even if some of the law's measures are unjust — and this was a point of disagreement between him and Walzer, as we shall see later.⁷

After refining his ideas over a period of twenty years, Rawls brought out, in the early 1990s, *Political Liberalism*, in which he sought to make his vision of the

individual/citizen and the political grouping a more dynamic one. In his original formulation in the *Theory of Justice* the group is seen as part of a well-ordered society and the individual is merely a passive player in conflict resolution in society ie. conflict is basically objective. This, however, is at variance with the changes that have occurred in liberal societies, in particular with regard to the concept of identity and the increase in pluralism, quite apart from changes in the meaning of liberalism and its differing interpretations. Thus Rawls' second book was written to address certain shortcomings in his *Theory of Justice* and to expound his new ideas on rational pluralism, which respects diversity without sinking into subjective relativism.⁸

Clearly Rawls' theory is a complex one that cannot easily be synthesized, and his eloquent style is reminiscent of the founding fathers of liberalism with its density of ideas and depth of philosophical perspective. However, what

concerns us here is his concept of justice which overlaps with ideas of citizenship and reason, the importance of democracy and, in particular, the role of ethical concepts that go beyond a narrow utilitarian perspective and thus prepare the way for a discussion of the relationship between religion and liberalism in American political thought.

Individual ... Group ... Ethics

In 1950, David Riesman published an important book in an effort to bring back the concept of the group into American theoretical discourse, which was a pre-condition for the rehabilitation of the notion of religion. This book, *The Lonely Crowd*, did not claim a wider role for the state in providing welfare, as was the trend in liberal polemics at the time, but rather advanced the notion that human welfare could only be achieved through the social group and not simply by conferring social rights on the state. This was essentially

a critique of capitalist economic doctrines with their emphasis on the self and an affirmation that merely providing individuals with a minimum degree of welfare was not enough to drive them to participate in society socially and politically.⁹

While Riesman's work can be viewed as an attempt to analyze the American personality and his degree of political affiliation in the light of cultural and political developments, three decades later Robert Bellah and his working group attempted to complement these efforts through a sociological analysis of changing values as they affected individuals' political commitment as a basis for political participation.¹⁰

Bellah's central concern was the rationale for political commitment in an increasingly individualistic society. What were the impediments to effective citizenship and how could such commitment be maintained when

individualistic utilitarian ideas tended to dominate? Bellah found that the key to the problem lay in the growth of cosmopolitan cities, which encouraged parochial and local attitudes and hypothesised two types of motivation for the creation of active citizens: civil motivation and religious motivation. He saw no inevitable conflict between these two types of motivation and recommended harnessing the voluntary spirit still extant in American popular culture in creating effective citizens in the cities.¹¹

While Bellah sought to analyse the loosening of social bonds towards a greater individualism, Christopher Lasch's aim was to chart the breakdown of the family unit (an essential building block from a religious perspective) with the resultant social and political changes regarding individuals' loyalty towards society. Lasch was one of the American sociologists who championed the idea of the self in an era of increasing modernisation but who criticised the negative

effect of individualism on social solidarity and had reservations about notions of women's liberation with its philosophical and social implications.

At the end of the 1970s, Lasch produced two important works critical of individualism and analysing the power structure of the modern state, especially the welfare state, which he criticised for providing services with one hand and taking away the rights and powers of the political group with the other. He urged that the family unit should be at the heart of social and political analysis at a time when it was absent or had been excluded under a sociology strongly influenced by the individual in the behaviorist era.¹² We find him proposing a political sociology of the family in a capitalist society, in which the public remit of the state was prioritised with consequent diminution of the role of the family. While Talcott Parsons had charted the diminution in the role of the family unit since the 1960s in an increasingly modernised society in which many family

duties were taken over by state organisations,¹³ Lasch focused on the decline of the family as a socially productive unit whose functions, largely taken over by schools and educational institutions, had been reduced to social welfare and care for the elderly, and even those areas were becoming increasingly institutionalised. In other respects also, the role of the family was becoming circumscribed and, with experts and educationists taking over provision of counselling and privatisation of everyday activities such as provision of meals, the family was reduced to being no more than a provider of emotional support.¹⁴

Lasch also saw a connection between the loosening of social bonds and the falling off of religion in the public domain. He considered that the exclusion of religion as a social determinant led to the decline of collective tendencies and the emergence of individual goals as the motivator of social change (reminiscent of John Locke's dictum 'he who has no religion has no commitment and no

trust can be put in him’). This reflected a turning point in sociological studies in the 1960s, in parallel with other changes in academia regarding approaches to interpretative and analytical tools. Lasch was of the opinion that under the aegis of liberalism, humanitarian studies could only explain reality and were in no position to discern underlying truths — which is the proper task of science.¹⁵

Bellah can be viewed as representing those who consider religion as a necessary factor in the analysis of political groupings while Lasch is more concerned with social and economic structural changes and their effect on the group. Lasch also adopts an ethical viewpoint in the sense of civic responsibility and alludes to the global challenges presented by capitalism. However, there are other voices seeking to defend liberal democracy with its social networks and its notion of the social grouping as fertile soil for civic values. They incline to utilising the democratic discourse as

a means of sowing a pluralistic theory of democracy under the aegis of liberalism rather than being seen as inimical to it. The champion of those who wish to situate this expanded version of liberalism in the context of the new paradigm of social studies, with their attendant ideologies and approaches, is undoubtedly Michael Walzer.

In parallel with John Rawls, Walzer sought to locate justice at the heart of the new critique of individualism in a revived liberalistic discipline. He proposes a new concept of 'fields of justice' since it is not possible to draw up uni-dimensional criteria for such a complex notion. The definition of justice in the legislative field differs from that in human relations, and both differ from the interpretation of justice in the civil domain. Walzer considers that the neutrality of the state is the best guarantee of democracy but he also regards religion as an integral and inalienable component of the social group insofar as

religion is an expression of personal freedom.¹⁶

Walzer's idiosyncratic approach — his background is political science — posits a group of ideas drawing their validity from the centrality of the state rather than the centrality of the group, as advocated by the sociologists. In an early work he wrote about political obedience and strikingly referred to the right to disobey if the state's policies conflicted with principles of freedom, especially in times of war, and, drawing inspiration from the premises of Social Contract theory, he discussed the rights and obligations of citizenship and concluded that the state must preserve the lives of its citizens.¹⁷

With regard to the role of ethics, Walzer considers an overly strict ethical convention as inimical to tolerance and insists on the right to disagree. He believes that social, civil and national ethics are global values that work

against democracy, and for this reason he proposes a light rather than heavy ethical framework in accordance with his view of cultural pluralism and global civil society.¹⁸

The Return of Religion and the Rise of Sociological Studies

A wide reading of literature in the field of liberal political science reveals a conspicuous absence of religion at the heart of liberal discourse. Religion may be mentioned now and then to exemplify a point or to confirm an opinion but generally in a pejorative sense as an element that threatens democracy or a cultural variable that must be treated with caution. There is a sense of disconnection between the religious variable and political science although, of course, it remains an important consideration in sociological studies as an existing phenomenon, rather than as a functional component. However, in mainstream political science discourse and

liberalistic theory, religion remains somewhat marginalised.

Undoubtedly this is due to historical reasons since liberalism was originally seen as the longed-for solution to religious disputes insofar as it led to the creation of an equal society in which all were members of a social and political polity, irrespective of their religious affiliations. This contributed to the secularist monopoly over liberal thought, as evidenced in Brian Turner's attitude to religion in *Citizenship and Capitalism*, written in the 1980s, in which he refers to the problem of the religious dimension. Although religion has a global dimension, it tends to be exclusionist because of its absolute nature, which conflicts with the concept of equality implicit in the notion of citizenship.¹⁹ On the other hand, the roots of citizenship can also be seen to lie in Christian values, and Turner enthusiastically endorses the view of Talcott Parsons, doyen of sociolinguistic studies, that Christian values have an important role to play in modern

industrial society. He also alludes to Max Weber's analysis of the link between Protestant ethics and capitalism in society, in which Christian values underlie the separation between church and state and equality among citizens, as well as promoting a global humanitarian dimension.²⁰

In spite of this, Turner has no hesitation in advancing a human rights rather than citizenship-based theory as a basis for determining the rights and freedom of citizens,²¹ and asserts that Christianity and freedom have only been conjoined at rare moments in history.²²

A careful reading of the history of liberal thought reveals that liberalism did not originate in opposition to religion per se but rather as a corrective to the arbitrary power of the church, civil violence and instability. Both Heller and Taylor concur that atheism was not an issue for the fathers of enlightenment, for

whom theology and divine inspiration were givens and whose main concern was to promote the dignity of man, social peace and the end of war. From this point of view, we can see that the values of enlightenment were firmly grounded in religion. Heller observes that equality was not a Roman or Greek concept but a by-product of Western Christian thinking, deriving its inspiration from the equality of worshippers. The same applies to the ideas of freedom of choice, deriving from the transcendental nature of Christianity, which confers on man the faculty of reasoning and independent action. The fathers of enlightenment prioritised doctrinal freedom to counter religious strife and the political influence of the church, but a society without religion was an idea that never occurred to them.²³ This is also the contention of Charles Taylor for whom the marginalisation of religion at the end of the 19th century was the logical outcome of a long process of locating religion in the mind of man, which only reached its apogee in the 20th century. Nevertheless, Taylor contends that this era is

in need of examination and research, since the imposition of the secularist paradigm cannot be explained solely by materialist progress.²⁴

The researcher into liberal thought will find that religion has been frequently addressed in recent years but generally outside mainstream academic research in the field of political science.

Thus, religion was viewed from a sociological standpoint as a component of American culture and its spirit of solidarity, but the discourse we wish to focus on here is one that characterises religion as a reference point for the individual citizen in a liberal society and elevates this to a theory. One of the best-known proponents of this trend was Ronald Niebuhr in *Moral Man and Immoral Society*, which addresses the subject of the status of the citizen with ethical/religious affiliation in a secular capitalist founded on utilitarianism.

With an increase in secularism in society in the 1960s it seemed that religious discourse could no longer prevail, a factor that led Niebuhr to distinguish between communal and individual ethics. He claimed that social and political realities imposed difficult choices on the individual, but instead of trying to reform the system he advocated that the individual should retain his ethical integrity, remaining true to higher ideals in the face of utilitarian communal values.²⁵ Although Niebuhr describes his proposal as realistic, there is something redemptive about a system in which the individual has limited ethical obligations in a changing society. Another ethical thinker was Paul Tillich who, in *Morality and Beyond*, put forward the view that unless morality was anchored in religion and in the human psyche then it could not escape from relativism; in this he diverged from Niebuhr's realistic theory, instead prioritising the problem of ethical relativism, which should not be the basis for conflict resolution in society. For Tillich, the

more religion was excluded from human ontology, the more utilitarianism and relativism would prevail.²⁶

The 1980s witnessed a shift in the relationship between liberalism and religion, as evidenced by the groundbreaking work of Richard Neuhaus on religion and democracy in the United States, which is considered a classic in the literature on the subject. Neuhaus asserted that political liberalism was in the unprecedented position of excluding religion from public discourse. He considered that a public domain without religion was meaningless and liberalism was by no means incompatible with religion, and he strongly advocated a social system in which an individual retained his moral and religious affiliation and rejected the naïve contention that liberalism and religious affiliation were mutually inimical.

Neuhaus thought that liberalism should be reconfigured²⁷ — far from expressing reservations about religion as subverting civic equality or democratic pluralism, the return of religion to the agenda was a means whereby a large sector of society, alienated and marginalised by secular policies, would return to participatory democracy. Rehabilitating religion would not lead to a recurrence of theocracy but rather a recalibration of liberalism on the basis of individual freedom and pluralism. Thus liberalism is continually undergoing reinvention and redefinition.²⁸ To proscribe religion would be to deprive society of a vital element in the development process.²⁹ Furthermore, a return of the theocratic tyrannical version of religion was not possible since Christianity had now evolved into new democratic and humanitarian paradigms.³⁰

Neuhaus attacked the rise of the religious right and acknowledged the legitimate concerns of liberals in this regard, but he did

consider that this warranted exclusion of religious affiliation from democratic discourse. He emphasised the link between religion and daily life, and thought that the increasing involvement of politics in a citizen's routine concerns favoured the inclusion of religion as a component of citizenship.³¹ It is clear that Neuhaus' predictions about the increasing influence of religion on democratic agendas over the past two decades have been more than amply fulfilled.

The Catholic priest Neuhaus' presentation of the role of religion in a cohesive theory has been echoed in the field of academic research in several ways. Firstly, researchers in the fields of religious and sociological studies have begun to develop their ideas using the matrix of religion, liberalism and democracy. Secondly, the increasing interest of political and legal science researchers in religion as a factor in political choice. A representative of the first group is Robert Wuthnow, who studied the limits of religion and the

mechanisms of secularism from a sociological perspective. He demonstrated how the dispute over the role of religion in society was not simply between liberal secularists and their opponents but was also conducted among different religious schools of thought. Overall, Wuthnow sets out an evangelical perspective, which is not dissimilar from Neuhaus' Catholic approach.

Wuthnow considers that religion is present in society at the very least in voluntary work, which he terms public work and not simply charity. He notes a rapprochement between Jewish and Christian agendas in the public domain since the Second World War and discerns two trends: multi-confessional conservative and liberal. Religion is no longer simply a subject of theological dispute but an important component in the search for improved political systems. Religion has, thus, an important input into the political agenda and is no longer simply a means of attenuating the shrillness of political debate but a vital

element enabling those who hold religious views to participate fully and effectively in the democratic process.³²

Wuthnow attempted to chart the religious and state debate in Protestant and Catholic schools of thought and their differing views of the balance between religious and temporal power. In so doing he did not merely examine the place of religion in the public domain, but also in terms of the government and its policies. Hence he considered not only internal sociological issues but also the role played by America in armed conflicts in Latin America and the effect of United States' policy in the Middle East. His analysis is all the more relevant since it addresses the question of the relationship between church and state at a time of increasing individual and collective religious commitment. However, while he admits that religious fundamentalism presents real dangers, he asserts that this does not mean ignoring the democratic aspirations of religious people.³³

On the other hand, Greenawalt, from the perspective of law and political studies, deplors the marginalised role of religious affiliation in political choice as a result of the predominance of the Wise Choice School. He considers the effect of religion on moral choices, which the political agent must make, whether a decision maker or a citizen exercising his democratic right. He is not only concerned with the relationship between an individual and his belief but also that between the individual and the religious grouping and the attitude of the church towards political issues.³⁴

By the end of the 1980s research efforts from differing viewpoints united in discussing the term ‘Civil Religion’ and whether it referred to the role of religion in the public domain and the politicisation of religion or whether the concept was put forward as an alternative to Christianity as a kind of secular

citizenship.³⁵ Discussion of religion, its relationship to politics and the meaning of citizenship was mainly confined to departments of philosophy and religious studies or occasional debates between individuals and professors of civil and constitutional law.

The 1990s witnessed a considerable resurgence of interest in the role of religion in the public domain and the citizen's political options. Wuthnow himself published on this subject and the impact of an increasingly religious American society in the political arena. Greenawalt also contributes to the debate with reference to the legal aspects of religious affiliation and religious rights.

As part of a general move to reinstate the republican concept of the positive liberal citizen, there was renewed interest in examining the relationship between religion and state. Galston, a prominent liberal

theoretician, hypothesised that the separation of religion and state was linked to the theory of progress, which predicted that religion would become weaker as the modernisation process gathered pace. This, in turn, led to the inability of liberal thinkers to take sufficiently seriously the problems of secularism and the failure of politicians to be neutral in regard to religion, since political theory was traditionally hostile to religion, as was liberalism to the expression of religion in the public domain and since there was a legal and constitutional bias against religion.

Galston called for a reinterpretation of the doctrines of the liberal fathers, for example Locke's view of the separation of church and state should be seen in the context of an age when the power of the church was supreme and the democratic experiment was tentative. Now that democracy was well established in liberal societies it was time to re-examine the place of religious identity and affiliation in the public and political domains, and whereas in

the past a liberal would have asked ‘What is my political status in society?’ today the same question could be posed by a citizen with a strong religious affiliation.³⁶

Galston also called for a re-interpretation of Jeffersonian secularism and the constitutional separation of the power of religion and state, on which secularists rely. He stressed that religious equality meant respect and sympathy for all types of religious commitment without distinction, rather than neutrality or hostility towards any particular religious or ethical allegiance.³⁷ Religious affiliation could be re-integrated in the civil sphere without fear, especially in the legal field; in fact there was an increasing need to incorporate religion into political theories of ethics in order to confront problems arising from the loosening of social bonds against a background of calls for a return to civil-republican values in the democratic process. Indeed, assigning a central position to religion in constructing new public

ethics of a liberal society would restore the true meaning of positive liberty.³⁸

Religion and Citizenship

In the mid-1990s, new voices arose claiming that it was not enough to analyse the variables of religion and ethics from the standpoint of sociology, theology or political empiricism, nor was it enough to subsume them in a return to republican principles and the concept of positive liberty of the citizen. The liberal academics who subscribed to this view sought to place citizenship at the heart of the debate and to include religious affiliation as a basic component of citizenship, in addition to cultural and racial diversity and gender orientation. One of the pioneers of this approach was the Yale Law Professor Stephen Carter who wove religion into a complex discourse that went considerably beyond simply regarding religion as a motivational or moral variable. Far from adopting a defensive

stance, Carter went on the offensive to claim that religion had been marginalised and trivialised in American political culture to the extent that citizens with religious affiliations were prevented from contributing fully to the democratic process. He did not simply call for a renewed debate on the distinction between church and state, but asserted that historically the state had controlled religion and interfered in the rights of citizens to practice their faith. Far from being neutral in this matter, the state was in thrall to the concept of non-religious liberty, which effectively proscribed the degree of religious freedom permitted. Religion should, however, be an essential element in the concept of citizenship and a basic constituent of its meaning. Carter called for a distinction between the troubling rise of the religious right on the American political scene and the need to allow religion to play a political and legal role in the public sphere since this enmity towards religion in the name of separation of church and state had led to a double standard. Those citizens of religious faith were forced to act publicly and

sometimes privately as if religious affiliation was not a significant part of the democratic process; indeed, the political discourse seemed to suggest that religious belief was an impediment to and a distraction from the proper exercise of citizenship.³⁹

Building on Neuhaus' contention that a state without religion is 'a state without values', Carter seeks to flesh out this principle legally and constitutionally by quoting examples of legal precedents that have marginalized religion and religious affiliation in the United States. In other words, the public domain has become devoid of justice by the exclusion of religion as a legitimate collective option. He makes a clarion call not simply for tolerance of religion in liberal discourse but for religion to be respected as a cornerstone of American democracy and an integral part of the Constitution.⁴⁰

Carter develops his ideas further in his book *Dissent of the Governed* in which he views American democracy in the vision of its founding fathers as essentially based on conflict management rather than national consensus. He considers that those of religious affiliation should no longer be considered as external to or in conflict with civil polity but rather should be fully fledged participants in the democratic process. He contends that the legislative problematic in dealing with religious affiliation is essentially interpretative since there is a conflict between the law and its formulators on one hand and religious groups who apply their own systems of reference on the other.⁴¹ The religious movement has, in recent decades, elaborated a broad explicatory synthesis of religion and civics, using nuanced and eloquent language, respectful of the Constitution and the legitimacy of America's founding ideals, and this discourse can no longer be ignored in the political and theoretical debate on citizenship.

Religious discourse can further be viewed from Protestant and Catholic perspectives. Representative of the former is the writer James Skillen, who called for the return of the religious dimension in public life insofar as it is an essential component of the American experience. He claims that America faces two crises. Firstly, a constitutional crisis in which citizen's beliefs are ignored in a legislative system biased towards secular individualism and, secondly, an undermining of the democratic process as a result of the absence of the religious factor in determining positive civil values. He believes that religious discourse is an integral part of citizenship, citing Locke's ideas in this regard, and calls for new enlightenment that takes account of multi-cultural and multi-faith developments in American society, including Islam. He also advocates a multi-referential system of morality in which no party is coerced into giving up his values in the name of tolerance, especially on issues concerning bodily rights and sex education in schools.⁴²

The Catholic view is exemplified by David Walsh who considers that modernization is facing a profound crisis since it inevitably leads to a collapse of the moral imperative and the failure to create a new ethical system in the absence of religion. However, he does not think that the solution lies in a return to pre-modernism but rather in a synthesis of ontological transcendentalism.⁴³ It is as if he is seeking to recalibrate democratic liberalism on spiritual foundations since he argues that the Christian roots of liberalism combine self-fulfillment with self-realisation. He cites Locke's view that individual rights are legitimate as long as they do not lead to infringement of morality or impairment of the common good. In this sense, liberalism can serve as a moral reference in a pluralistic society searching for new post-liberal discourses.⁴⁴

Conclusion

We believe that different factors have combined to create a climate favourable to renewed consideration of religion and liberalism. Not all these factors are internal — such as, for example, the shrillness of the secularist discourse or the reaction of religious thinkers and their search for religious rights in a democracy. We contend that there are two external issues that are relevant in this regard. Firstly, the Iranian revolution, which confounded sociologists' predictions of the eclipse of religion and led to a shift in American perceptions about radical Islam all over the world — even if Iran represented the most radical example. It also aroused the interest of academics in questions of religion and politics, in a similar way to the philosophical discussion of secularism in France ignited by the wearing of the hijab. Secondly, the rise of globalisation with the realisation that religion was not invariably excluded from social and political discourse and the consequent necessity of maintaining an

international perspective in liberalist studies in spite of the impact of Fukuyama's ideas about the end of history and the triumph of liberalism. Religious sociology has undergone a seismic shift in orientation since Stark and Bainbridge's study on the spread of religion within the United States in the 1980s⁴⁵ and the subsequent admission of a leading academic, Peter Berger, of the error of his hypothesis that religion was about to disappear.⁴⁶ Globalisation and the concomitant renewed interest in the world's social and cultural systems has played a leading role in bringing about this shift. A further factor is the increasing use of the Internet in theoretical discussions and the opening up of new forms of communication, which have enabled prominent philosophers and academics with different religious and cultural backgrounds to air their views about the relation between religion and democracy, in turn leading to a plethora of comparative studies and academic research.⁴⁷

However, for the moment, we are still hiding behind ideological discourses in our role as observers rather than creators of novel ideas and concepts in academic research.

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1. See Martin Kramer's *Ivory Towers on Sand* in which he considers Middle Eastern Studies
2. professors as one of the reasons for the occurrence of the 9/11 tragedy since they did not pay
3. attention to the dangers of Islam and Islamists, calling instead for them to be assimilated into
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Social Organisation and Modern Polity, The Social Contract and Legitimacy for Hobbes and Rousseau

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The evolution from the Middle Ages to the modern era took place over a period of time by means of qualitative changes at different levels and sectors of society. These changes were not necessarily parallel nor did they occur at the same pace, nor was there a sudden and final rupture between the two systems of knowledge and thought. Rather the change was cumulative and experiential, arising from advances and retreats of varying importance and a gradual progression extending over two centuries. The Renaissance was only a part of this wider movement. In short, the modern era came into being as a result of multifarious developments occurring at differing places and

times. In this article I examine two aspects of this evolutionary change, namely social and political organisation.

It is apparent that society and the body politic suffered severe dislocation, which resulted in the establishment of new social and political frameworks. It is not overstating it to say that the period under discussion — the 17th and 18th centuries — witnessed nothing less than a social and political rebirth; on one hand, a social upheaval that ushered in a radically different society from the one that had preceded it, and on the other a new legal and political system that flew in the face of the conventions that had been in force for eight long centuries. The aim was nothing less than the installation of a new political edifice and a new concept of politics more in tune with the momentous changes that had occurred in society in the fields of economics, religion and knowledge. We are dealing with a twin social and political rebirth that shaped and created

the basis on which our contemporary notions of society and politics rest.

In this article I wish to examine the nature of this twin social and political rebirth in the light of current thinking with regard to the concepts of the social contract and legitimacy. In modern political thought it is customary to regard the philosopher Thomas Hobbes and the francophone Swiss Jean-Jacques Rousseau as most representative of Social Contract theory, although social historians tend to regard them as being at opposite ends of the spectrum in their application of the theory, considering their views are diametrically opposed on a number of points. I intend to focus on their differing positions in an effort to clarify the meaning of Social Contract and in particular the concept of legitimacy between two or more contracting parties. In so doing, I am considering two of the key philosophical and political concepts that underlie the changeover from medievalism to modernism.

1. Social Organisation and Modern Polity: a Twin Rebirth

It is self-evident that the concept of 'new' can only be understood in relation to its opposite — 'old' — a term redolent of rejection and revisionism, and indeed the French Revolution, which Hegel characterised as a 'new broom', did try to sweep away all that opposed it and considered the notion of old as antithetical to its aims. In writings on the French Revolution we find a clear opposition between the *ancien regime* (the political and social system in place on the evening of 14th July 1789) and the *nouveau regime*, which the revolutionaries were seeking to establish. Similarly it has become general practice to apply the epithet 'old' to all aspects of 17th-century thinking and knowledge. Hence, in order to elucidate modern notions of politics and society, it is

necessary to explicate their former conceptualizations.

The *ancien regime* was based on a hierarchical social system dominated by noble landowners (land being the primary economic commodity in the Middle Ages). This monarchical system was legitimized by an ideology that characterised the ruling authority as divine, and stipulated that the political power of the ruler was absolute. This ideology was underpinned and supported by the clergy of the church, which formulated the doctrine of the 'Divine Right of Kings'. In like manner, Pope Gregory VII enacted the 'Doctrines of Theocracy' specifying the areas of influence for the Pope and the church. We read in Chapter 9 of the 'Theocratic Doctrines' that 'the Pope is the only man whose feet princes may kiss' and in Chapter 12 that the Pope 'may remove patriarchs from their thrones.' We also read, in Chapter 18, that the word uttered by the Pope 'may not be uttered by another, while the Pope has the right to pronounce on

judgments made by other men' and in Chapter 19 that 'the Pope may not be held to account by anyone whomsoever.'¹ Complementing and supporting the Theocratic Doctrines was the theory of the Divine Right of Kings, described by the French historian Bossuet in his famous work *Politics Drawn from the Very Words of Holy Scripture* as being based on four pillars:

1. The monarch's power is 'a divine power, that kings are God's vicars on earth and through them the Lord rules his kingdom ... Therefore, the king's throne is not simply royal but it is the throne of God himself.'

2. Royal power is essentially patriarchal 'since kings represent God who is the real father of the human race ... The first notion of power possessed by man is

a paternal power and so it is that kings rule in the manner of fathers.'

3. The third pillar is the logical outcome of the previous two in that it specifies

the absolute nature of divine and paternal authority. A monarch's power is

unfettered and absolute and 'a king does not have to justify his commands ...

Without this absolute power a king would not be able to do good and punish

evil. A monarch's power must be such that none may escape from his grasp.'

4. The last pillar complements and completes the previous three pillars stating

that the divine, paternal and absolute power of the monarch cannot be objected

to by those under his rule. If his subjects are oppressed by the king and

consider that the burdens he lays upon them are unjust, then 'they may only

object to the harshness of princes if their complaints are made in a respectful

and peaceful manner, in well-mannered petitions.'²

The Theocratic Doctrines and the Divine Right of Kings agree in the matter of divinity and absoluteness of power. In fact it is possible to say that they are two sides of the same doctrine, in tune with the social and epistemological conditions prevailing in the West throughout the Middle Ages. The French writer Albert Seboul neatly characterises French society under the *ancien regime* as a tripartite structure comprising 'those who worship, those who fight and all those who labour to feed the former two categories.'³ However, the old social and political systems were already under threat for a number of reasons.

Firstly, the aristocracy was no longer a strong and unified class able to protect and preserve the status quo. The institution of the monarchy was becoming enfeebled as a result of the growth of forces opposed to it, as well as the appearance of new means of production and exchange not dependent on traditional power and patronage.

Secondly, the Catholic clergy were unable to maintain unanimity in the face of the rising tide of Protestantism and increasingly loud appeals for the freedom of religious belief and practice.

Thirdly, the power of the bourgeoisie had grown from small beginnings in Holland and England, and had crossed into France in the 18th century. Their wealth and prosperity made them financiers of economic activity

'effectively pushing the aristocracy into a marginal and parasitic role' (Albert Seboul).⁴

The fourth and final reason was the role of geographic exploration and scientific discoveries financed by the bourgeoisie and resulting in an explosion of new ideas and values.

All these factors were already undermining the *ancien regime* before the advent of the French Revolution, which administered the *coup de grace* and set about creating a new social and legislative system more in tune with its revolutionary ideals. In short, the political authority built on the absolute rule of kings became meaningless with the collapse of its power base and the ethical and religious theories that supported it. In addition, the patriarchal system, which was based on inheritance and the concept of society as an extended family bound together by coercion, fear and divine authority, began to be replaced

by a new social paradigm based on citizenship, the public interest and the common good.

The *ancien regime* was superseded in a multi-faceted process at political, economic, epistemological and social levels and replaced by an opposing antithetical system. Social organisation and political lawmaking were henceforth to be based on agreement and contractibility rather than fear and coercion.

2. The Social Contract and Legitimacy: Components of the New System

In general, it can be asserted that the 'new system' — as espoused by modern philosophical thought and, in particular, political thought, and of which the French Revolution was the practical expression — is based on four elements. None of these terms are new; their novelty lies in the meanings attributed to them by modern philosophers,

each from their own particular viewpoint or philosophical affiliation. These four components, which underpinned and explicated the 'new system' are reason, liberty, citizenship and man.

a. Reason

In modern philosophical thinking reason represents a way to the truth, an epistemological procedure and an ideal to be followed and emulated. This was so not only for rationalist and idealist philosophers but also for those who adopted an empirical approach in the pursuit of knowledge. Reason was not easily acquired and the exercise of reason was an arduous task not immune from difficulties and setbacks. However, the clearest exponent of reason (according to the above definition) was the French philosopher Descartes (1596-1650) who viewed it from three aspects. Firstly, he adopted doubt as a method for attaining certainty ie. by supposing

all things as doubtful until they could empirically be raised to the status of self-evident and demonstrably true. Secondly, he adopted the method of mathematical proof as a criterion in his search for the truth. There is nothing more demonstrative of the existence of reason than mathematical proof and the hypothetical deductive method. Thirdly he sought knowledge in what he called '*le grand livre du monde*' (the book of the world). In other words, knowledge is not to be found only in books and in the sayings of interpreters and commentators (as was the case in the Middle Ages when the words of the clergy acquired a semblance of infallibility) but depends rather on observation and experiment. Consequently, Descartes viewed reason as a criterion and a guide in his outlook on the world. His threefold method represented a clear break with accepted epistemological conventions and constituted a direct challenge to the foundations of orthodox learning.

In this connection, we should not omit to mention the Dutch philosopher Spinoza (1632-1677) and his efforts to distinguish between belief and religion on one hand and reason and philosophy on the other, as clearly stated in Chapter 14 of his *Treatise on Politics and Theology*. Spinoza argues for the primacy of human reason as a means of ridding mankind from the yoke of theology and the church fathers, guardians of the 'old' system of thought.

In short we can say that reason was a major component of new philosophical thinking and a potent weapon in the battle against an outworn ideology.

b. Liberty

It is small wonder that reason and liberty are in a symbiotic relationship, jointly underpinning the edifice of the new social

system that philosophers and political leaders sought to build and consolidate. In what follows, I will restrict myself to three interrelated aspects of the concept of liberty.

In the first place liberty is to be seen as the sought-after goal of freedom of religious belief in the wars between Protestants and Catholics, culminating in a significant historical gain for the right to choose one's form of worship. It should be noted that at that time the only place where religious freedom was a reality was the Low Countries. For this reason the English philosopher John Locke was able to flee there from the Civil War in his country, finding a refuge where he could write and publish his two volumes on *Tolerance*. Similarly Descartes, escaping from the clutches of the Catholic Inquisition, settled in Holland where he wrote his *Meditations*, exchanged correspondence with his friend Mersin and composed his *Laws of Reason*.

Secondly, liberty is seen as a building block of the new system of thought and the adoption of reason as a means of achieving it. For if freedom necessitated that free individuals voluntarily associate — in such a way that exercise of that freedom did not conflict with the aims of others — then its only sure guarantee was the appeal to reason as a higher authority. Consequently reason figures prominently in the writings of John Locke, Baruch Spinoza, Jean-Jacques Rousseau and Thomas Hobbes, and hence in the exponents of the Social Contract theory. Just as there is no true contract without freedom, equally there is no true contract except between rational beings.

The third guarantee of liberty, in the absence of which a new epistemological system cannot be created, is the insistence on the human aspect of political power. It is a *sine qua non* of a social contract that it be made between rational free beings who take reason as their criterion and reference.

c. Citizenship

The rational free being (believing in reason as the ultimate arbiter of thought and existence) has the right to enter into a social contract as a means of establishing a new social system and setting up a free state. In the writings of philosophers of Social Contract of the 17th and 18th centuries, this being is referred to as a 'citizen'. In a well-known discussion on the obligation to obey enacted laws, Spinoza distinguishes between a son, a slave and a citizen.

The clear difference between the slave, the son and the citizen can be formulated as follows: the slave is compelled to submit to orders which serve the interests of his master, while the son must act according to the interests of his father. However, the citizen carries out the orders of the ruler in the public

*interest and hence in his own personal interest.*⁵

According to the above, citizenship entails submitting to laws enacted by the ruler, but it should be appreciated that this involves obedience to laws in the framing of which the citizen is a contracting party. Seen from this perspective the law, in the words of Rousseau, is 'a wonderful construct by means of submission to which men become free beings.'

Submission to the law is, at first sight, blind, slavish obedience but according to the 18th-century philosophers this is a superficial view. Rousseau writes, 'How can they, in the shadow of such "slavery", be more free since no individual loses his freedom except inasmuch as he loses the source of annoyance with regard to another?' Submission to the law appears to be slavery but in practice it is exercising freedom at the highest level. For Rousseau this is the nature of citizenship and

the significance of the free contract entered into by free citizens. On this essential point all philosophers of the Social Contract concur, although there are superficial differences between them.

We now turn to the fourth basic building block of the new system and the one which confers its legitimacy: man

d. Man

Discussion of citizenship, liberty and reason inevitably leads us to the subject of man, the highest authority and the first and last resort of appeal. In political terms this justifies man's rising up against theocracy and overturning any power that he regards as a manifestation of divine rule, an embodiment of patriarchy or an absolute authority. In practice rebellion against these outmoded systems of government is an expression of the rule of the people with no

room for divinity, except insofar as the social contract into which citizens have entered into can be regarded as divine. Similarly, there is no scope for discussion of absolutism lest the social contract be transformed into slavery and submission. The citizen only derives his citizenship from the exercise of liberty and all his deeds and obligations are attributable to reason.

3. Two Conceptualisations of the Social Contract and Legitimacy

It is customary in modern political thought to locate Thomas Hobbes and Jean-Jacques Rousseau at opposite poles of Social Contract theory. Hobbes is seen as a proponent of absolute rule and an apologist for political despotism in the name of Social Contract, whereas Rousseau is generally regarded as the revolutionary philosopher. A cursory glance at Hobbes' *Léviathan* and Rousseau's *Social Contract* appears to confirm this judgment but

a more careful reading of the two texts and the fundamental aims of the two writers casts doubt on this generalisation and leads us to the conclusion that their two theories are only superficially in conflict and that, in fact, they have a common purpose.

In all Social Contract theories, it is possible to identify three components: the contrast between the State of Nature and Civil Society, the nature of the Social Contract itself, and the principle of sovereignty.

In the following section of the paper, I propose to elucidate Hobbes' and Rousseau's conceptualisations of Social Contract according to their views regarding each of these three components.

a. State of Nature / Civil Society

The State of Nature is an imaginary hypothetical construct, utilised by both writers, in which man lived before the emergence of civil society. According to this theory men originally existed in a former natural state before subsequently coming to live together in a society. The move from nature into civil society is not simply a progression from a lower to a higher state but a qualitative and irrevocable change since it is not possible to return to the former state. Thus the philosophical question posed is how much man has lost or gained by leaving the state of nature and entering into civil society, or in other words is the state of nature a curse or a blessing as far as man is concerned.

For Thomas Hobbes the state of nature is the worst possible situation in which men can find themselves since it is unbearably brutal and a state of perpetual war. In this state men live according to the law of Natural Right, which confers on each person full power to pursue his own individually considered best interests

in order to preserve his own life.⁶ There are no limits or checks on this right, except insofar as individuals differ in terms of power. This inequality in power causes misery and distress, and the competition for resources inevitably leads to enmity. Consequently, Hobbes does not find it surprising that in this state 'if a man plants or sows or establishes a settlement, then others of his tribe will unite to attack him and deprive him of his property.'⁷

Hobbes asks whether there are laws in nature that protect men from falling prey to the domination and oppression of others, and identifies a law of nature by which reasonable men can see their way out of such an intolerable situation. This law forbids men from acting to destroy the lives of others or depriving them of the means to avoid their own deaths.⁸ The law of nature is based on a simple principle that states people should treat each other as they wish to be treated themselves. The concepts subsumed under this law include 'justice', 'equality', 'moderation'

and 'compassion', and proscribed ideas would be 'partiality', 'revenge', 'arrogance' and so on. Why then would men abide by the former concepts but still aim to commit acts motivated by the latter? According to Hobbes the answer to this conundrum lies in the nature of man himself. Man is a weak creature with a tendency to commit evil. Therefore, the only means of limiting men's capacity for wreaking evil on each other is an appeal to the authority of a sovereign. 'As long as men live without a shared sovereign who enjoins mutual respect upon them, then they live in a state of war in which each man is pitted against his brother.' 9

In short, for Thomas Hobbes, the state of nature is an irrational and unacceptable evil from which men must free themselves in order to progress.

On the other hand, Rousseau's view of the state of nature leads to very different conclusions, even if he and Hobbes share a

common starting point. Rousseau agrees with Hobbes that concepts such as justice, oppression, equality, good and evil remain simply empty terms in a state of nature, but he disagrees with Hobbes in describing man as a naturally evil being for the simple reason that natural man does not distinguish between good and evil. Rousseau considers that Hobbes would find fault with all modern definitions of 'natural right' but the consequences that he infers from his own definition demonstrate its fallibility. The author of *Léviathan* should rather acknowledge that the state of nature is one in which man is less likely to harm his fellow beings since his primary concern is to preserve his own existence. Consequently this state is the most conducive to peace for the human race. Hobbes asserts the contrary but he errs in confusing man's desire to create a civil society with his efforts to preserve his own life.¹⁰

In Rousseau's opinion, Hobbes' mistake is his predisposition to view man in a state of

nature from the perspective of man in contemporary society. This prevents him from noticing, for example, that noble emotion found in the humblest of creatures viz. compassion. Compassion tempers an excess of self-love and is present in the greatest degree among the lower classes who are closer to nature. It becomes less widespread or even disappears altogether higher up the social scale. 'In times of sedition and social unrest when the prudent withdraw, it is the lowly people, the female workers, who intercede to break up disputes and counsel the nobility to keep away.'¹¹

For Rousseau man is the more morally pure the closer he gets to a state of nature and conversely the more predisposed to evil the more he is influenced by the desires and dictates of society. It is the desire for private property that weans man away from a simple natural state into one characterised by greed and vice. One day it happens that man puts walls around a piece of land and says, 'This is mine.' Other simple and plain people believe

him and in this way civil society is established with its attendant crimes, murders, scandals and vice. But there is another kind of man who rushes to pull out the pegs, fill in the ditches and shouts to the people, 'Don't listen to this swindler. You know you are all proprietors. Have you forgotten that the fruits of the land are for all and not for a single individual among you?'¹²

Thus for Rousseau, the state of nature was originally essentially a state of goodness although it later developed into an unacceptable evil, which must be avoided and abandoned.

Hobbes and Rousseau have differing views on the state of nature but they concur on the overall goal of establishing a new form of human society based upon agreement and conciliation, and founded on a social contract.

b. The Social Contract

A contract is an agreement between two parties, an agreement to respect a body of recorded and promulgated principles. Like any other agreement a social contract entails obtaining something in exchange for relinquishing something else in a voluntary manner. Political philosophers have differed in their perspectives on three aspects of social contracts, namely, the nature of this relinquishment, the manner of the relinquishment and the rights and obligations of the two contractual parties. On this point it appears that Hobbes and Rousseau share similar if not unanimous views.

Hobbes distinguishes between a 'covenant' and a 'conformity', while the latter is natural and spontaneous the former is intentional and artificial. A conformity dictates that animals live in a group with the species to which they belong and do not fight or kill one another. On

the other hand a covenant is artificial and not spontaneous among men because it is not natural that men come together without fighting or seeking to bring harm to one another.

The covenant is only agreed by a collective will and decision confirmed by people meeting together and, therefore, it cannot be ratified unless there is mutual agreement between the parties to abide by a body of laws and ordinances formulated in terms of clear and explicit clauses in a binding and public charter. The social contract is simply a body of these clauses and agreements and a charter that binds the individuals who comprise the two contractual parties. In other words, what applies to a social contract is no more or less than that which applies in all types of known contracts. There are conditions, by acceptance of which the contract becomes valid and by infringement of which the contract becomes null and void. An example of the latter would be the undertaking of agreements between

humans and animals, or between humans and God, except that it be between 'those who have been entrusted by God through supernatural power or those who govern in His name or come under His command.'¹³ Similarly, null and void would be a contract known in advance to be impossible of fulfilment, as for example a contract which stipulated that tyranny or violence could not be opposed by one of the parties even in self-defence.

In a social contract the first party, representing the group of contractees, renounces their natural rights voluntarily, collectively and completely, the multiple wills become a single will and the multiple voices a single voice. The second party is represented by the person or the group to whom the group have renounced their rights. He is thus the high representative of the voices that have pledged allegiance to him and the sole expression of them such that 'he represents unity in diversity in a unique and original way.'¹⁴ Thus the power that is embodied in

that person, according to the terms of the contract, is complete and absolute and cannot be opposed, and indeed against whom the notion of opposition is meaningless.

This view of a social contract, and in particular the resultant consideration of the party that renounces all its natural powers and rights and becomes the legal embodiment of the group he represents, is essentially Hobbes' conceptualisation of the absolute authority of the sovereign and the people's renunciation of their individual rights, and was criticised by Rousseau in his *Du Contrat Social*.

Rousseau considered that Hobbes' view was not essentially different from that of the proponents of the Law of Natural Right, represented by Grotius and Pufendorf, who hold that since mankind is desirous of quitting the misery of the state of nature, man should enter into a social contract, specifically he should abide by the terms of two contracts

which complement each other perfectly, namely a covenant on cooperation and unity on one hand and a covenant of submission on the other.

The first covenant signifies the voluntary decision of people to achieve their aim of a peaceful society and social harmony. The second covenant confirms the first and is the means whereby man, of his own free will, will spontaneously and joyfully renounce his rights in favour of a sovereign authority to which he pledges fealty. Many have asked, 'Is this not simply slavery by another name?' Proponents of the Law of Natural Right do not disagree; rather they claim that acceptance of this slavery is a privilege, which they explain as follows. In the past a warrior had full right to kill his opponent whenever he could but the defeated warrior had the right to demand the right to be kept alive in exchange for renouncing his freedom. What applied to the individual thus applies to a group of people collectively, as long as there is a convention

signed by both sides. Rousseau objected to this situation, which he considered the point of view adopted by Hobbes, saying that

*The people remain the people before they offer themselves up freely. This bestowal is in essence a civil act which necessitates a popular consultation. Before determining the way in which a people elect their sovereign we should examine the act itself which makes a people sovereign since this act is the basis of a civil society.*¹⁵

The basic principle espoused by Rousseau in the creation of a social contract is free will. The family is the basis of society but if the children remain in the family in their childhood years involuntarily, they remain part of the family on a voluntary basis when they are old enough to become independent. This is the first idea in Rousseau's *Du Contrat Social*. The reader of the book will find the concept of General Will recurring throughout its four

chapters — General Will is the product (and not simply the addition) of all the contracting individuals' wills, which rises above the group and surpasses it, and which is, in fact, the motivating force of Social Contract.

c. Sovereignty

In discussions of sovereignty in classical political philosophy, three aspects are usually considered, the answers to which bring out the varying points of view of different philosophers on this topic. What is the source of sovereignty? What is the nature of sovereignty? What are the limits of sovereignty? Following the method adopted in our earlier discussion of social contract, we will consider the theories of the Natural Right philosophers as a necessary preliminary to understanding Hobbes' and Rousseau's viewpoints on this matter.

Natural Right philosophers consider sovereignty is present in every individual in the State of Nature (as is the case with natural rights). However, since the State of Nature cannot endure (for reasons alluded to earlier), the sovereignty that each individual bears personally has to be renounced in favour of the person with whom the social contract is made. Thus Grotius asserts that sovereignty '... can be transferred, just like other things, to the person to whom it belongs in reality.' And this person is the co-signatory of the covenant of cooperation and the covenant of submission, as mentioned earlier. Pufendorf considers that

When the king is crowned sovereign power no longer rests with the group consisting of the entire populace but this does not imply that the people are simply an aggregate of unconnected individuals, rather that the people will always be a single and united body.

If we strip away the veil of respectability which disguises the harsh reality of submissiveness, as well as the illusion of choice, we are left with a theory that deprives the people of all power and justifies the legitimacy of absolute rule, which is an embodiment of the social contract in the matter of reason, freedom and citizenship insofar as man is considered as having a supreme value. What then is Hobbes' view on sovereignty? Here is an extract from his *Léviathan*:

... the multitude so united in one person is called a Commonwealth; in Latin civitas. This is the generation of the great Leviathan, or rather, to speak more reverently, of that mortal god to which we owe, under the immortal God, our peace and defence ... a single authority and in him consisteth the essence of the Commonwealth, which to define it is one person, of whose acts a great

*multitude, by mutual covenants one with another, have made themselves every one, the author, to the end he may use the strength and means of them all as he shall think expedient for their peace and common defence ... And he that carryeth this person is called sovereign and said to have sovereign power; and everyone besides, his subject.*¹⁶

In overall intention, Hobbes' standpoint on sovereignty — if we allow for some differences in formulation — is not very different from the views of the Natural Right philosophers Grotius and Pufendorf, insofar as there is one absolute authority to whom the natural rights of all the contracting individuals is transferred. Whether the term used is 'Leviathan' or 'the mortal god' or the 'possessor of sovereign power', they all point towards the same conclusion viz. sovereignty is transferred from all contractual individuals considered as the first party to the second party, who is the sole and absolute higher authority.

For Rousseau the matter is quite otherwise. As noted earlier, he sees General Will as the motivating force of Social Contract and the people as its basis insofar as they are the manifestation of General Will. Further, he regards the popular assembly as a sign of liberty and citizenship and as a sacred bond that binds individual members of society together. From this perspective, sovereignty represents the bedrock that imbues Social Contract theory with meaning. It is thus not surprising that sovereignty is a recurring theme in Rousseau's second book. Due to reasons of shortage of space, I will confine myself to two aspects of Rousseau's theory of sovereignty:

1. Sovereignty can never be transferred. As Rousseau says in this regard, 'Government can be transferred from one body to another but General Will is inalienable.' General Will is inseparable from sovereignty and both are two sides of the same coin.

2. Sovereignty is indivisible and cannot be partially renounced. Will can either be general or not. It is either the will of the people in their entirety or it is the will of a part of the people. In the first case, it is an exponent of sovereignty and has the effect of law. In the second case, it is only the expression of a particular will and thus does not have legislative power.¹⁷

That the gulf between Rousseau and Hobbes appears wide must be readily apparent to the reader and, as has been noted, it is customary in political philosophy to locate the two writers on Social Contract theory at opposite poles of the spectrum. However, it is our contention that the reality is somewhat different and that they are, in fact, both swimming on the same tide towards the same distant goal. One point of similarity lies in the concept of 'artificial'; we remember that Hobbes distinguished between conformity (ie. spontaneous such as can be found among animals but not among humans) and a

covenant (artificial and synthetic, not natural or spontaneous). The reader will have noticed that Hobbes is very precise in reference to legal terminology, carefully distinguishing between pacts and agreements, laws and conditions. Rousseau is equally consistent in differentiating between the mechanics of Social Contract — government and its organisation, laws and promulgated decrees — and General Will from which the contract derives its significance. However the common position of the two writers, in spite of their manifest apparent differences, can clearly be seen in regard to two major issues on which they set great store. The first of these is the necessity for legislation in order for men to escape from a state of nature and live together in a civil society. It is evident that for both writers the State of Nature was not simply a hypothetical construct when viewed against the background of civil war in England in the 17th century and the religious wars that plagued France in the 18th century. The second point is the need for the people to meet together and legislate for a political authority,

other than a divine or ecclesiastical authority, whose power derives from 'citizens' and not simply 'subjects' in a process that would lead to a new social and political order.

From this perspective, Hobbes and Rousseau seem to be on common ground, in spite of the apparent contradictions between them and the violence of Rousseau's critique of Hobbes' theory. It has been customary to characterise the author of *Léviathan* as a proponent of absolute power and the Swiss philosopher as the precursor of the French Revolution, but the arguments deployed in this paper suggest that they were both working towards the same goal.

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Sources and Types of Legitimacy in the Political Sociology of Max Weber

Abdul-Wahed Al-Alami (*)

Max Weber's works have increasingly been attracting interest in various fields of sociology. In the 1950s, Raymond Aaron commented on the increasing presence of Weber and his works in an article entitled 'Weber is coeval with us',¹ which covered the conference of the German Association of Sociology held on the 100th anniversary of Weber's birth. Aaron wondered, 'What evokes all these emotive debates about Weber though it has been nearly half a century since his death? Is it because of his works or personality?'

Aaron wrote about this conference, which was attended by the most famous European

and Western sociologists, historians and philosophers of the time, including Herbert Marcuse, Talcott Parsons, Herbert Lothy and the young, Jürgen Habermas. The number of Weberians equalled those of Marxians. Americans opened their arms to Weber's works as a science established by a scientist, regardless the political aspect of his personality. On the other hand, many veteran Marxians, even the enlightened ones such as Marcuse, were annoyed by the astonishing correspondence of his sociological predictions and analyses to reality. They were wrathful because these predications and analyses were conducted by a non-Marxian scientist who had never been interested in Marxian ideology, which he sometimes dealt with in a pathological manner.²

Today, it has been more than half a century since this outstanding conference and yet Max's works and theses are still at the heart of sociological and political controversy, even more than they were then. Real witnesses to

this controversial presence are the different European publications about Weber, which appear every year.

Political sociology takes up the major part of Max's works, creating ongoing debate and discussion among both students of his work and those who are inspired by his sociological, philosophical and political theses. It is true to say that the contemporary discipline of political sociology is inclusive within the topics and problems discussed by Weber. Examples of such topics are the contemporary state and its relationship with capitalism, bureaucratic administration, forms of electoral politics, patterns of authority and forms of legitimacy. It is not an exaggeration to say that most of the pioneers of sociological and philosophical projects have inescapably passed through the door of Weberian sociology, either inspirationally or critically, to establish their firm bases.³

Although Weber's sociological works were scientifically welcomed, along with his theses of capitalism and protestant ethics, his political and sociopolitical ideas were condemned. There are two different teams debating on explaining the big gap between many of the political attitudes that Weber stood for and his concepts of democracy, domination and legitimacy. Grateful to his political (practical) activities, Weber was viewed as a democratic intellectualist for a long time. However, after the publication of Wolfgang Mommsen's⁴ book in 1959, it was impossible to turn a blind eye to Weber's overt theoretical attitudes, which many people did not hesitate to interpret as an anti-democratic approach, that is against the concept of human rights. They viewed them as an admirer of the charismatic pattern, which they believed to be almost the same as the totalitarianism **that was** evident in Europe a few years after Weber's death. Such tendencies of Weber's can be clearly seen in the statement when he addressed General Ludendorff in a conversation that took place in 1919. He stated, 'In democracy, the people

choose a leader whom they trust. Then the chosen man says, “Now shut your mouth and obey me.” Neither the people nor the parties are then free to interfere in the leader's business. The people can sit in judgement.’⁵

For most students, the works of Weber the Liberalist, who was calling for strengthening and supporting the power of parliament during the empire, is much less important than Max the reader of Nietzsche, whose first aim was to be ‘the bourgeois Marx’.⁶

The following paragraphs will shed light on the analysis of the definition, sources and types of legitimacy as viewed by Max Weber. The categorisation established by Weber has played an important role in contemporary sociology works. Although this categorisation provides the right source for all discussions of legitimacy in contemporary politics since the 1950s, there is a general impression that before long this will soon turned into a judgement of

failure, especially in terms of its function of analysis. In fact, a successful analysis is a must in any theory of legitimacy as it is responsible for forming a clear standard that enables us to distinguish between legitimate and illegitimate forms of authority, and to categorise all forms of ruling systems known in this century. Most importantly, it should entitle us to homogeneously analyse the legitimacy of Liberalistic democracy.⁷

The concept of legitimate domination constitutes the central mainstay of Max's political sociology. For instance, his famous categorisation can be found in five of his works in different contexts, the most important of which is in his huge book, published after his death, entitled *Economy and Society*.⁸ In this context, the categorisation functions as an introduction and basis to organise the main chapters analysing bureaucracy, patriarchy, patrimonialism, feudalism and charismatic powers respectively.

In the first volume of a later edition of the same book, the publisher approvingly maintains this categorisation but slightly disagrees with the main sociological statements in its introduction. Again, the categorisation is presented in another book⁹ as an introduction to the definitions of common terms used in the study of the world's main religions. The same categorisation is also found in Weber's book *Politics as a Vocation*¹⁰ as an analysis method of the role charisma plays within parties and political elections. Finally, Weber mentions his categorisation in the article, 'The Three Types of Legitimate Domination'¹¹, which was published after his death. He briefly aligns the categorisation with the main features of each type.

The intensive focus on this categorisation in Weber's works reflects its importance to him

in his economic, political and religious sociology and concept of domination.¹²

Sociology of domination: is it the domination of legitimacy or the legitimacy of domination?

According to Weber, domination is a distinguished form of social action and relationships. It is a relationship of leadership and obedience by which the people are subjected to a leadership under which they shall obey orders regardless their contents.¹³ To Weber, it was a question of some people having distinguished characteristics that enable them to be in a position of superiority over the others by one form or another. He poses different questions to clarify this idea as follows:

- What are the personal characteristics that the people who order or the people who obey the orders have, which gradually make it

possible to form a social relationship in all cases?

- What are the historical, cultural, political, social and economic conditions that make it easy or difficult to form such a relationship?

- What are the results of this social relationship at all levels of social reality?

To answer these questions, Weber worked on improving a system that included three central concepts: power, domination and obedience,¹⁴ expressed as follows:

Power is the chance that an individual has, in a social relationship, by which he can impose his own will even against the

*resistance of others regardless on which this chance is based. We use the term domination to describe every ruling system that could provide the chance to achieve the obedience of a certain people. We mean by obedience the chance to find a rapid and automatic obedience from a number of certain people according to a certain sequence.*¹⁵

Weber did not focus on clarifying and analysing the concepts of power and obedience but instead mentioned the concept of power in relationship to economy, or the concept of class, parties or rule. Similarly, he did not discuss the concept of power except for its relationship to the military or religion.¹⁶ His scientific and political interest was focused on the phenomenon of domination since it forms the core of the social relationship; there is domination willingness on one hand, and obedience and compliance willingness on the other.

Weber preferred to use the term 'domination' rather than 'power' or 'authority', which he considered a vague concept. Furthermore, he believed that domination is not necessarily political, except if there is a group of people somewhere where affairs are ruled and managed by a certain group of people who are assigned to that role in particular. Thus, domination practiced by the head of a household is not political, firstly because it is practiced over a limited number of people, and secondly because it is not supported by an administrative authority that executes orders.

On the other hand, according to Weber, casual temporary domination achieved by force, or a relationship of force, is not significant to sociology. In contrast, domination in his context is the one that is characterised by stability and continuity, which makes it understandable and interpretable. In other words, the concept of domination is applicable when based on the

legitimacy of obedience derived from belonging and conviction rather than obedience based on fear. In this context, Weber is faithful to his method of comprehension, which he generally uses in his sociology. Within his realisation, Weber tries to describe those who accept domination. He focuses mostly on comprehending these self-made descriptions of the two most important social actors rather than describing real outer representations that are so-called neutral and objective. In fact, Legitimacy is the faith in the self-value or the view towards the social system¹⁷ in which the subordinates live. Thus, subordinate people add a new meaning to the domination they are subjected to. Domination should not be a result of a habit or instrumental rationalisation, but instead it should be initially desirable by subordinates, otherwise the social system is likely to collapse at any moment. This meaning is not represented in utilitarianism as the latter is likely to collapse as soon wealth is distributed, and neither is it represented in the concept of habit as it is changeable, leading to a unstable

system. Accordingly, it is, necessarily, that subordinates believe in the legitimacy of a certain system. Weber maintains,

The system that is respected for rational reasons is generally less stable than the one that is respected for habitual reasons. That is essentially because of the routine features of human behaviour. In fact, habits are the most common behaviour among humans; however, a habit-based system is less stable compared to a system that is based on the attraction of idealism and necessity, namely legitimacy.¹⁸

In the third chapter, ‘Sociology Levels’, of the book *Economy and Society*, under the title, ‘Types of Domination’, Max tries to differentiate between the types and forms of domination.

After a comprehensive analysis, Weber concludes that there are various explanations

for subordination and obedience towards claimed dominations, ranging from a 'dull habit' to more rational explanations. However, what is common among these explanations is that there is always a minimum level of willingness to obey, namely there is always a personal interest (internal or external) behind obedience.¹⁹

On the other hand, the concept of domination cannot be applied to unequal economic relationships. The ability of some people to manipulate economic conditions to influence and direct social factors cannot be compared to the relationships of authority. Weber states,

Using the term domination to describe an economical power, based on using monopolization, which strengthens the ability to impose certain exchange conditions on the partners, is almost the same as using the term domination to describe the effect of winning in

*love, sport, speech or any other kind of contest.*²⁰

Weber begins by saying that domination is a real phenomenon and not an ideal consideration. It is not a legal or ideological finding that can be drawn from a particular value or standard, in contrast, it actually exists. Namely, it exists as long there is a ruling authority that makes laws that are followed by a wide range of people.

Weber refuses any value-based or standard-based explanation for domination. He decides that any execution of an order should be explained by the definition he mentioned. However, he believes that the result, namely executing the order, is not enough to understand the various reasons behind this relationship, starting with issuing the order and ending with its execution.

To maintain his chance of executing his orders by subordinates, the dominant person usually needs 'an administrative authority'. The patterns that connect the dominant person with his subordinates vary according to social action patterns defined by Weber as follows:21

1- The traditional action imposed by inherited customs, traditions and ideologies, which gradually turn into those of a fixed nature. The actor here is neither led for a value or purpose nor influenced by an emotion; instead he reacts to fixed instructions found in his practical life.

2- The effective (emotional) action that is induced by a conscious state or mood of the person at a certain moment, such as when a mother hits her son in anger. Another example is when a soccer player loses his temper and kicks another player at the end of the game. Such actions cannot be connected to a particular purpose or value as they are

emotional reactions carried out under certain circumstances.

3- The instrumental or purposeful social action is, according to Raymond Aaron, identical to the logical action described by Barito.²² It is the action where a social actor is well aware of the purpose and the reasons leading to it, such as an engineer trying to build a tunnel or a stockholder seeking profit.

4- The value rational act connected to a value, such as a person defending his home with his life, or a captain who prefers to go down with his ship rather than surviving without it because he believes that it is shameful to do so. Such actions are rational because people are faithful to the concept of honour or honest morality without achieving a certain goal.

When the relationship between the dominant person and the administrative authority is purposefully materialistic and rational, it results in unstable domination. Accordingly, sometimes emotional and rational values are added to such a relationship. However, it is still not enough to establish a firm basis for domination even when the relationship includes interest and connections based on a purpose, value and emotion. In such case, there is a stronger factor that can be added, which is 'the belief in legitimacy'.

It is not an exaggeration to say that Weber's political sociology is not intended in the domination of legitimacy, which is an obscure concept to the later sociological and political studies, rather than how to 'legitimise' all forms of domination known across human history.

The belief of the subordinates is the first source of legitimacy:

Weber believes that experience proves that having more chances to continue domination does not depend on materialistic, emotional or value-based rational reasons. Domination mostly seeks to educate people and make them believe in its legitimacy. Consequently, and according to Weber, it is appropriate to differentiate between patterns of legitimacy according to patterns of domination.

This idea views domination as a distinguished form of social actions and relationships. Social action adopts different directions and approaches. It is important to mention that Weber's view towards legitimacy and legitimisation was introduced in a wider and more comprehensive context, namely within his research of domination patterns and

bases. His writing about legitimacy was only an explanatory tool to describe patterns of domination and legitimate domination in particular.

The main challenge in the political sociology of Weber is legitimate domination and not the concept of legitimacy itself. According to the Canadian sociologist Laurence McFalls, Weber did not use terms such as legitimate\illegitimate* except in a narrow range of circumstances, either in his theoretical writings or debates.²³ When he used these terms, he used them in contexts that are different from the ones known later on in the political discipline.

In the 'Illegitimate Domination' chapter in his book *Economy and Society*, Weber compares cities of the Middle Ages to ancient cities. He concludes that the important role

played by the cities of the Middle Ages in the transformation to the 'electional form of cities' at the level of its leadership, 'paving the way for the emergence of the contemporary concept of the city as an open company that is owned by all individuals.' Unlike what some people think about him, Weber does not legitimise or discuss a form of domination based on violence or revolution, instead he discusses a new form of domination that contrasts to the old kinds based on the conventional, aristocratic and religious authority. He describes municipal authorities in all Italian cities at the beginning of the 14th century, established by the Italian Pabolo*, as the first common politics that were consciously illegitimate and non-revolutionary (he aimed, by using the term 'illegitimate', to describe a form of domination that consciously breaks off the demand for traditional domination). The legitimacy of the new domination does not exist without the existence of another that claims to be legitimate. This means that Weber viewed legitimacy and illegitimacy as relative

standardised concepts, namely they evaluate judgements and are not credible analysed facts.²⁴ However, for some political sciences, it is usual to talk about the legitimacy of a political system as an actual feature where its absence leads necessarily to a ‘legitimacy crisis’. Thus, the patterns of legitimacy correspond to social actions,²⁵ as stated by Weber in his book *Economy and Society*. He mentions three types of legitimate domination — traditional, rational and charismatic.

Traditional domination is buttressed by continuous belief in the sacred nature of traditions and customs held in the memory of the individual, obliging him to show respect towards them. In a society where relationships are personal and interconnected because of common beliefs, we find that constancy is preferable to renewal. Accordingly, upon these traditions and customs, respecting the social arrangements becomes an instrument of maintaining and guaranteeing domination. Therefore, each ruling system, that owns such

fixed customs along with common beliefs, increasingly demands domination until it becomes a kind of natural domination whose foundations and roots are not in doubt.

Rational domination is based on the belief of the legitimacy of the law that is related to the concept of society built on contraction and equality between its members. This kind of domination is characterised by its strong institutional nature and bureaucracy. Public and impersonal rules are the first priority, and political employment is carried out according to the level of competence, not favoritism and family relationships. In such domination, each dominant person and his subordinates are equally led by rational behaviour*, namely, they follow a rational disciplinary path in order to achieve their goals.

Charismatic domination is located at a high level of effectiveness (emotion). According to Weber, the power of dominant people over

their subordinates is based on 'an emotional group' and unusual sacred subjugation by the subordinates towards the heroic, religious, oratorical and exceptional merits of a particular person. A democratic or traditional leader, if he wants to impose his self, can depend on voluntary 'self-donation', which drives his subordinates to an absolute dedication motivated by enthusiasm or necessity. Charismatic domination uses all possible tools and methods to charm subordinates through the personality of the dominant person, which affects, confusingly, two other types of domination: the traditional and the rational. For example, a religious or traditional leadership based on traditional domination can be turned into charismatic leadership concealing traditional legitimacy to the advantage of charismatic legitimacy. Also, a democratic leadership may shift into an electoral system suspending all current legal rules.

More importantly is that these three types of domination cannot establish their legitimacy by materialistic external bases only. Instead, they should have the strong belief of subordinates in their legitimacy. When theorising the problem of legitimacy, Weber was thinking of an incentive for the social shift based on a self-intentional logic. Weber maintains,²⁶

Experience proves that there is not any domination that is exclusively and voluntarily dependant on obsolete materialistic emotional or rational motives to maintain its continuity. In contrast, all types of domination seek to make their people believe in their legitimacy.²⁷

However, this does not exclude other motives, such as materialistic ones that can be the reason behind the emergence of some forms of domination. This is obviously represented when Weber relates the intensive

rise of bureaucracy in the USA with external factors ignoring the concept of legitimacy based on self-belief.²⁸ In fact, such ideas stated by Weber are behind the obscure and inhomogeneous nature of his political sociology.

On the other hand, it is difficult to clarify the real and actual motives for such belief as the real motives for obedience are multiple. However, this mutability has no sociological meaning, namely the sociological understanding does not require necessarily ‘reviving or restructuring the actual motives of a certain social action.’²⁹

Searching for legitimacy is an endless process and Weber was not interested in figuring out whether a claim of legitimacy is effective in maintaining the continuity of domination or not. Instead, he was interested in knowing ‘how’ the form of such a claim could contribute in forming and organising

relationships within this domination. This goal led Weber to establishing his categorisation of domination, including three abstract forms that a claim of domination can take.

Weber's analysis indicates that there is no self-sufficiency in the three forms of legitimacy. For instance, in traditional domination, the dominant person claims that he represents a principle derived from his seniority. Similarly, the charismatic dominant claims that he represents a principle breaking off from the past that is derived from his exceptional personality. Rational domination is dependant on a group of principles accepted by everyone, and claims that it is superior to all.

Therefore, it is unacceptable to talk about traditional, charismatic or rational domination as a reality. The royal system, based on inherited legitimacy cannot dispense with the need of 'summoning' 'the exceptional

characteristics' of the king or rationalising the administrative leadership, otherwise it will be irrational, similar to rationalised bureaucracy, which soon shifts into a rigid convention in the absence of charismatic motives. Likely, if the administrators of a revolutionary system continue to work for and under politics without rationalisation, their system will soon fall into chaos.

There is a continuous shift of forms of legitimacy from one to another, and what Weber was interested in was to understand the variable forms of legitimacy in order to describe the disturbance raised in each and the tension found between each of them. This is obvious in his analysis of the Reich system in the Geom II era, which was in its way to collapsing. According to Laurence McFalls in one of his articles, Weber, astonishingly, did not mention that this system was illegitimate though he had radically criticised it previously. This was because Weber did not value the

standard of legitimate\illegitimate in his analysis.

Consequences of the charismatic form and criticism on Weber's political sociology:

The concept of legitimacy or legitimate domination has been intensively criticised starting from the paradox of this complex notion, combining domination and legitimacy into one concept, which is far from the homogenous description of the social phenomena or, more precisely, in the form of such social phenomena. The criticism also includes the connection between the concept of legitimacy and the self-belief of the social actors, regardless of the objective and legal limitations. Also, there has been criticism about the exaggerated psychological description of the subordinates' acceptance of domination, as if this acceptance is a legitimisation for the authority and even more powerful than it.

There may be other reasons that caused this intense criticism against the legitimate domination concept. It may be the ideological use, if not exploitation, of the concept after Weber's death. Many people believe that the 14th June 1920, the date of Weber's death, was the starting point of Weber's achievements.³⁰ Various readings, especially the ones conducted in the Weimar Republic, have used many Weberian concepts, including legitimate domination, charismatic and democratic elections for professional and political purposes or to promote their theses, which avoided explaining sociologically and legally the historical event of Weber's death.³¹ An example of such readings is Hans Kelsen's, which concluded in a paradox that Weber is one of the main theorists of democracy. Carl Schmitt pushed the Weberian charismatic form to the presidential totalitarianism and Richa Tomma's writing, which overtly interpreted the Weberian statements by the electoral and

aristocratic democracy and the domination of the best within such a system.³²

There is no doubt that Weber's obscure concepts, complicated categorisation and political and intellectual hesitation towards some concepts have played an important role in such ideological and political exploitation of his sociological and political theses. Above all, it is impossible to ignore his political involvement and the overlap of his professional ambition with his theoretical tendencies that show an unclear attitude towards liberalism and democracy. Weber seems to be tending toward a parliamentary democracy headed by a strong leader who has a charismatic privilege, enabling him to reduce the parliamentary disputes. Weber was against the obsolete parliamentary system, which was at that time represented in the Third Republic. In 1918, he announced, in public, 'The parliamentary system and its factional disputes can be avoided if the executive board unifying the Reich is under the power of a leader

elected by the whole nation.’ By his statement, Weber hoped to see ‘a leader supported by the revolutionary legitimacy of public elections.’³³ His tendency was toward what he called election democracy, in which the leader, through his charisma, is superior to the authority of the parliament.

In our point of view, it is an underestimation to consider Weberian political sociology as a theory similar to the anti-democracy theories of the 19th century. His analysis of the oligarchic tendencies of the democratic systems and organisations is confused with the internal paradoxes of the contemporary principles of legitimacy. Therefore, it is important to distinguish, within his sociological domination, between what is based on analysis of contemporary forms and what is based on the reconstruction of the social conflict dynamism. There should never be an approximation or comparison between this Weberian work and the totalitarianism form.³⁴ It is simply because totalitarianism,

along with the Soviet Union, was subsequently experienced by Germany and Italy prior to the Second World War. In fact, this pattern was not even seen on the sociological horizon at that time.

However, as Mommsen says,³⁵ the constitution of the fifth Republic under the leadership of Charles de Gaulle may be considered the closest form to the aims of electoral democracy as stated by Weber. If Weber were still alive in 1933, he might actually realise the dramatic consequences of charismatic domination for which he longed.

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17. Weber defines the social system as follows, ‘a content indicating a social relationship where

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Max

worked hard on categorising the phenomena by selecting what he called the pure patterns

that he believed to be the only method that allows the respect of the endless mutability of values directing sociologists' research. The ideal or pure pattern is a representation of reality

therefore it is necessarily partial or biased. For example, the researcher can be biased towards

certain variables over another ones which he intends to exclude from his research. See,

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* Popolo. Popolo is a term used for some of the inhabitants of Italian municipalities between the

12th-14th centuries that did not belong to the noble class. It included merchants who traded in

the thriving Italian cities between the 11th-14th centuries.

* Zweckrational

25. Weber, M, op. cit., p285.

In fact, the three types of social actions do not all correspond to the three types of domination. There is a type of social action that Weber did not correspond to legitimacy.

On the other hand, there are three types of legitimacy that correspond to four types of domination. This controversial point provoked different explanations, for instance, Raymond Aaron stated that this difference was because of Weber's vague concepts. He proved his idea by the different categorisation mentioned by Weber in another context of legitimate systems corresponding to the three types of social actions. However, Philip Rhino believed that these two categorisations are not identical, namely the first one views legitimacy from the dominants person's point of view while the second one views legitimacy from the subordinates' point of view. Accordingly, rational legitimacy in Weber's view corresponds to the two types of rational action related to both a value and purpose. (See, Raymond Aaron's book mentioned above, p555 and Philip Rhino's book previously mentioned, pp158-159).

26. Bourdieu takes into consideration self-logic but at the same time he reduces the intensity of

intention through his theory, the Habitus.

27. Weber, M, op. cit., pp544-545. German version.

28. Weber explains the intensive rise of bureaucracy as being ‘mostly established with the least

cost’ and ‘as the main reason for the development of Patriarch is its technical superiority over

other types of organization.’ *Economy and Society*.

29. Weber, M, loc. cit.

30. Herrera, C M, 'Comment assumer l'héritage wébérien sous Weimar Légitimité, démocratie,

changement social', *La légitimité de l'Etat et du droit Autour de Max Weber, sous la*

direction de Michel Coutu et Guy Rocher.
L.G.D.J e les Presses de l'Université Laval,
p221.

31. Carlos Michael Herara says, 'Absorbing Weber's ideas under the Weimar Republic was a

political pet regarding the state theory', *ibid.*
p214.

32. Review a different analysis for a different form of studies of Weber's political works,
ibid.,

p236-221.

33. Mommsen, W, op. cit., p430.

34. Actually, many writers followed this step and made a strong connection between the

Weberian concept of charisma and the emergence of Adolph Hitler, such as Auto Colrouter

and Carl Lopheth. *ibid.*, pp510-511.

35. *ibid.*, pp512-513.

The Democratic Legitimacy in the Modern World: A Promising Authority... Elusive Implementations

Yasser Qansaw

Legitimacy is similar to a reservoir — a wise regime will maintain a specific level because once the legitimacy standard has deteriorated, the regime will either fail or collapse.¹ The following question could be asked from the figurative expression above: is it really legitimacy, or legitimised?

1. An Ambiguous Concept

An inevitable overlap occurs while looking for the broad definition of legitimacy or the meaningful concept as a whole and, if you

agree in principle with the statement that legitimacy is ‘the right to practice power’, then several issues are raised, each one of which could illustrate the image of legitimacy as a whole.

These are:

- a. The practising ruler (ie. the government) is associated with power delegated by legitimacy
- b. The degree of people’s acceptance of political rule
- c. The legal complication of the power of legitimacy

d. The necessity of legitimisation in specific political situations

If you subscribe to this you might face ambiguity in a more insistent question: must all regimes claiming legitimacy be democratic? And if the public acceptance is the democratic criterion for legitimacy, the facts confirm that non-democratic regimes enjoy required legitimacy for their continuation. However, the benefit of the link of legitimacy and democracy emerges from the procedural side as the performance criteria of the political system, and this could be evaluated through its functional tasks that are defined by the expectations of most people who expect a level of confidence, and consequently legitimacy may be required for certain regimes.

Discrimination results in two images of legitimacy — a positive image and a normative image.

The positive image (reality) depends on the concept of public acceptance that defines the legitimacy of a political regime. This acceptance means that with the consent of the people such an authority can carry out its tasks, namely the acceptance and obedience of the people that represent the legitimacy. This image is more common in terms of the democratic concept that reflects acceptance and obedience as a sign of the legitimacy of non-democratic regimes.

The normative image is related to the doctrine of political philosophy, which includes the moral side or a government's right to power. It is obvious that through this image governments based on immoral practices could be realised through their right to carry out responsibilities against the people's recognition.

The democratic-liberal definition of legitimacy is the practice of power that is derived from a rational (wise) acceptance by inferiors. Hence, the link of legitimacy and acceptance is unavoidable and leads to the continuation of legitimate power. However, the democratic-liberal meaning of legitimacy is not the only decisive element of legitimate fulfillment by any authority or regime. According to Max Weber, three characteristics define the link of authority and legitimacy that enable an authority to claim legitimacy or the legitimised practice of rule. In return, this allows the individuals of certain political systems or the people to accept the legitimacy. These characteristics are as following:

1. **Charismatic Authority:** This authority derives its legitimacy from the loyalty

to sainthood and heroism, and the individual will ideally be distinguished

through the moral example he has established.

2. **Traditional Authority:** This is based on the solid belief of an ancient traditional sacredness and obedience to leaders who accept their authority from common traditions.

3. **Legal Authority:** This depends on acquiring legitimacy by legal means under constitutional rules whereby a superior's powers are legally binding and considered legitimate by the people.² Consequently, the difference between legitimacy and what is considered legitimate or legal must be clarified because an action might be legal but, at the same time, illegitimate, as stipulated in 'immoral' law. Licentious practices, for instance, are legal but illegitimate, and

an act or legitimate conduct that is illegal may lead to revolution that

overthrows a dictator's regime although such an act is not laid down in law

(revolution legitimacy).

When democratic legitimacy is under debate, democracy itself appears to be disputed, however, the perception of accepted democratic qualities by philosophers and theorists could lead to freedom of opinion, freedom of press, freedom of criticism etc., all of which enable the people to put forward their views on policies and political leadership. On the other hand, the Western democratic view represents procedural direction, which is the optimum democratic trait that emerges through fair elections and free intellectual expression, as well as the freedom of parties.³ If the understanding of legitimacy requires practicing democracy, a democratic profile is preferable in establishing legitimacy through procedures implemented by a regime,

procedures that are accepted and obeyed by the people. However, obedience is not necessarily an outcome of regime legitimacy as it is insufficient in itself; the people will abide by the orders of a regime they fear and do not accept as a legitimate authority. Authority is a legitimised power⁴ and according to R. Dahl, the relationship between authority and legitimacy occurs ‘when the influence of the leader is legitimate, which is normally indicated as an authority’s special type of influence.’⁵ Lukes, on the other hand, emphasises that authority is ‘a function of consent’⁶ and as such assures its legitimacy either by legitimate influence, traditional means or as a function of consent.

Through the three linked ideals of legitimacy, democracy and authority there is an overriding ambiguity over the concept of democratic legitimacy. The reasons that lead to this ambiguity are:

1. The competitive image of democratic thought that occurs concurrently with the call for legitimacy may enrich knowledge on democracy, however, it does not set a definite frame for democracy, which could be restricted by a number of votes that do not indicate majority acceptance. American elections are an example.

2. Democratic legitimacy requires representation by the people at all political levels.

However, the authority represented by the ruling elite could lead to a complicated process.

3. When talking about the meaning of legitimate authorities, an overlap may take place because some authorities theoretically adapt democracy and, accordingly, say that they are legitimate for this reason but, in fact, they obtain their legitimacy from the great influence and power enjoyed by their leaders (as in case of Hitler in Germany). In this case, a leader might be first elected democratically but then due to the legitimacy he gains from his position, act in a non-democratic way and give himself unlimited powers.

Dahl states that even in the USA, a relatively democratic society, political regimes that reflect contradictory principles in terms of authority attain legitimacy. For example,

companies, government establishments and some religious organisations are established according to hierarchical principles, not in accordance with democratic principles, even though a great number of US nationals who recognise the legitimacy of the US administration due to its democratic structure also recognise the legitimacy of such hierarchical regimes. This indicates that every political process is feudal, royal (minority rule), inherited aristocracy, plutocracy (rule of wealthiest), representative government or direct democracy, which have acquired legitimacy to the extent that people will sacrifice themselves in defending it.⁷ Since legitimacy realistically sounds like a synonym to democracy, idiomatically the theory results in unavoidable ambiguity in terms of the concept of a democratic legitimacy that could be implemented when required:

1. Since the main source of democracy is recognition of a government practicing

democratic principles that are applied according to the will of the people, and authorised or delegated by the people, and although this authority is carried out in accordance with definite democratic principles and differs from one ruling system, it nevertheless acquires legitimacy.

2. The diverse mechanism of the acquisition of legitimacy, for instance, the failure of a former political regime in fulfilling certain achievements that were subject to the acquisition of legitimacy, ie. all performance levels linked with legitimacy are considered as a quantity of performance or achievement regardless of the quality of the acquisition.

3. The image of an authority's legitimacy is based on the rational acceptance by

inferiors, representing a particular image acceptance of which is given by

those who are unable to grant their rational consent to the government because

they lack the legal or intellectual capabilities. They represent the image of

ordinary nationals.

4. Some nationals may accept certain aspects of a regime's legitimacy or

illegitimacy under a democracy.

5. The concept of democratic legitimacy is connected with stability, for example,

new political and economic regimes.

2. Direct Democratic Legitimacy (from Athens to Geneva)

Democracy is the people's vote through which they feel free, however, in a democratic context controlling a party's propaganda could mean misguided slogans and false promises. Alcibiades, the Greek philosopher, described Athens' democracy as a recognised foolishness.⁸ Since the Greek's creation of democracy, the term *demos*, Greek for people's self rule rather than the rule of any class or influential groups⁹, the people or nationals represented those belonging to Athens' society who were political and not humanistic. Hence, foreigners or expatriates did not participate in democracy as they were not citizens. Democracy, in the context of the Greek definition, was extracted from a caste vision, as citizens or landlords were entitled to membership of Athens' society, unlike the slave class and expatriates who resided in

Athens whose consent or otherwise to the political regime did not make any difference except for their separation from the domain of democratic legitimacy based on equality.

Jan Jacques Russo took advantage of both old Athens and modern Geneva, his homeland, in order to introduce his democratic model. His return to the past was an attempt to abstract the free spirit of the current state regime as a basis for his concept of being freed from the 'general will', which represents the legitimacy image in direct democracy. General will is correlated with public rights that must be granted to the people and which are guaranteed for each human individual — for example, the difference between the democratic image from that which prevailed in the past throughout the Athens democracy — moreover, general will is the defining tool of general interest, so consequently it legitimises the authority or the ruling. On the other hand, it enforces the legitimacy of will, whereas the task of the constitutional authority is outlined

in the establishment of general policies and the possibility of neutralising the actions of the executive authority. In this context of general will, individual freedom is achieved by the best route. Once every person utilises his capabilities under the high directives of general will, and recognises his right to consultation or cooperation, everyone will be part of a society.

One shall bind himself to the general will of the assembly he belongs to but not to any particular person's will. The member of this assembly will always get his right — no more no less.¹¹

Under general parliamentary, or liberal, democracy, any unauthorised rule by the people is not only invalid but is definitely not considered. Russo also realises that the image of consultation under general will is insufficient for agreement on the nature of public interest due to social and economical

differences, which may lead to the continuation of general will being directly threatened. Russo tried to emphasise the feeling of group spirit among members of society through which they could live in harmony and which enabled them to legislate laws that could be accepted by everyone so that legitimacy meant that each individual retained his own rights that were protected by the power of general will. This is what Russo was keen to achieve ie. legitimacy through general will, hence he states that a ruler would be unable to remain as leader forever unless he transferred his strength to legitimacy and obedience to duty.¹² The continuation of democratic legitimacy, according to Russo, is linked to maintaining political equality, which is considered the basis of not only participation by nationals in government but also of granting necessary legitimacy to the government. As much as the matter here emphasises the equality value in democracy, it also causes anxiety through the possibility of democratic implementation. If the exact definition of democracy is considered, it

becomes clear that no real democracy has ever been established.¹³

Democratic legitimacy, according to Russo, could be understood to have emerged from individuals' contributions in establishing certain criteria in the public interest. However, due to the level of legitimacy given by the democratic society to individuals in their quest for more wealth and the political influence resulting from the possession of wealth, the idea of public will as a direct democratic method will not be applicable in the same sense meant by Russo who dismissed all forms of parliamentary democracy or liberal democracy. Therefore, a member of parliament would not be representing his constituents but would only be an agent who could not take final action on anything. Furthermore, English people think that they are free but they are totally mistaken; they are not free until the time they elect a Member of Parliament and after that they become slaves.¹⁴

Russo and his strong defence of direct democracy and John Lock's ideas of liberal or parliamentary democracy are two continuously disputed notions of legitimacy. The first is limited to the agreement of general will when the government is illegitimate and the second emphasises individual consent as the basis for liberal democracy through civil freedom that is enjoyed by the individual and his ability to vote in parliamentary elections, thus paving the way for the acquisition or loss of legitimacy in terms of the ruling political regime.

3- Liberal Democratic Legitimacy (Legitimacy of Rational Consent)

Crisis of rationality emerges throughout social integration, in another words if the country could not settle the conflicting interests of people under its rule, it would be

considered illegitimate due to its failure in fulfilling its basic mission and its power would be the object of query.¹⁵

A reasonable analysis for authority legitimacy is based on the rational consent of the governed as stated by John Lock, who is considered the spiritual father of what is known as Liberal Democracy. Lock based his analysis on the rational principles of political authority or the reasons for its existence. Thus, he decided that it is logical to suppose the existence of natural rights for all people since they are human and these rights cannot be taken away from them. He said God granted people equal characteristics such as thinking, understanding and freedom so they should not be subject to others' arbitrary leadership. A political authority acquires its legitimacy when it comprehends this matter and this cannot be achieved without the consent and satisfaction of the people, resulting in laws laid down by a government's legislative authority that maintain the protection of peoples' rights and

their freedom in society, which should not be the subject to any legislative authority except that based on individual consent in an organised society.¹⁶

Lock searches for the best way to achieve the following aims:

1- The individual's freedom and protection of his properties

2- The acquired legitimacy through which political regime or government endeavours to achieve personal freedom and the necessary protection of private ownership.

3- The acquired legitimacy of a political regime through the consent or

satisfaction of society's individuals.

Lock also discovers that the social contract, through which authority is established, is the outcome of unanimous agreement by the people under majority rule, however, the important question in this context is whether a majority of 51% to 49% is sufficient to guarantee democratic legitimacy? In fact it is unlikely that democracy would survive when faced with a large minority because the democratic institutions would face obstacles if the majority is obliged to impose its rule constantly over such a minority.¹⁷

Lock attempts to restrict the rule of majority through the permanent recognition of the rights of all, but then the people would be faced by two factors that are illustrated by Lock's vision on the social mind. Firstly, explicit consent and secondly, tacit consent. Tacit consent, in terms of legitimacy, is concerned with the people openly declaring

their consent to government rule. Lock believes that through the consent of rational people to government rule that protect their properties and allow them to enjoy special benefits, the governing regime could acquire legitimacy. By rational people, Lock means property owners, as they are the only people who are able to air their views and take authority, but those who are unable to do so, ie. non owners who are a social entity that cannot be ignored, cannot understand what tacit is in the context of legitimacy based on consent, so what is their attitude towards a regime's legitimacy or otherwise? Since Lock and the 18th century, Liberal Democracy has been able to maintain its legitimacy, especially in England, because it depends on a genuine liberal principle: government power legitimised by the consent of the governed, which is gained from parliamentary democracy.

A liberal nation is distinguished by three main qualities: (a) a just, constitutional

democratic government that, to some extent, serves the main interests of citizens, and is related to laws and establishments; (b) citizens distinguished by what Stewart Mel calls joint emotional feelings that are related to cultural ideals, and (c) moral nature, which requires a strong connection with the political morals of justice.¹⁸

Since the mid 1980s, liberal democracy has enjoyed overwhelming popularity, not only due to its political efficiency as a companion to capitalism in the economic sphere, leading to its success and continuation, but also as a result of the failure of alternatives such as socialism and communism in achieving stability. Liberal democracy defeats the irrational idea that recognises states or individuals according to their importance and replaces it with a rational one that bases recognition on equality. Moreover, in nations that enjoy liberal democracy the likelihood of war will decline as these nations recognise each other's legitimacy.¹⁹ By contrast, Francis

Fokoyama's view is that regimes governed by tyrants, whether right or left wing, fail to develop legitimacy as they do not possess the goodwill nor any degree of flexibility enjoyed by liberal democracies. Despite the popularity of democracy as the main source of legitimacy in the today's world, electors of democratic regimes feel unfamiliar with political establishments and liberal democratic factional policies. However, it should be acknowledged that the remarkable and surprising popular trend towards liberal democracy will reinforce its prospects and support attempts to implement it. However, it must be acknowledged that this political current is subject to disruption then deterioration and failure. In fact, liberal democracy allows individuals and societies to be free from many political constraints but does not provide healthy situations for guaranteed legitimacy since it does not add anything new to human knowledge.

4. Democratising the Democratic Legitimacy

A suitable moment to introduce a new democracy would probably be that in which liberal democracy is enjoying intellectual domination and has captured people's imaginations globally as a concept of domination, and raising the concept of resistance and change in order not to maintain the people's dreams of openness and modernisation. This could be tackled through the democracy of dialogue or creating new examples that could go beyond the country's borders in a manner that suits cultural diversity in its global framework. In addition to searching for new forms of social exchange there could exist the possibility of establishing a strong union combining independence and social solidarity in order to guarantee legitimacy capable of settling disputes emerging from the conflict between thought and interests to attain political priorities. Therefore, deliberative democracy includes

two main elements. Firstly, democracy itself and secondly, dialogue. The democratic part concerns group decision making through the participation of all activists in dialogue, which takes place in order to provide the opportunity for discussion and rational attempts at decision making.²⁰ This debate appears similar to the concept of Russo's general will, although Russo believes that the right answer to political issues raised within society can be reached, and as it is impossible to find definite criteria as to what is right according to certain democratic institutions, the democracy of dialogue enables activists and participants to agree on certain criteria, or set of criteria, to control their process in making specific political decisions to agree on what should be done in disputes.

Habermas expresses his vision about the democracy of dialogue; he believes it is a limitless set of procedures that aims to reach an outcome that may not be right but is democratic dialogue based on communication

between free equal participants. Open minds that welcome all opinions and views within totally free discourse and open-minded participation aim to result in a unanimous rationale.²¹ Maybe the most important significance of democracy of dialogue or deliberative democracy is its relationship to the concept of establishing political legitimacy and maintaining it where elections and parliamentary representation do not guarantee its continuation because of interference from lobbyists or those with influence, or what is known as political sidelining. In this case political failure can be expected because of interference in decision making, possibly eventually leading to the loss of legitimacy. Therefore, democracy of dialogue should be emphasised as a policy concerned with the public interest that requires real equality between citizens and conveys the claim for their interests in a way that reflects the popular trend.

Democracy of dialogue could be explained in four main qualities:

a. Democracy of dialogue that is an independent progressive gathering

b. The participation of dialogue that gathers members' views that match the terms laid down by society defining a framework according to criteria reached through unimpeded discussion or deliberations between equal individuals. This is considered the basis of legitimacy

c. Democracy of dialogue is an assembly of various people with different preferences, ideologies and principles related to their behaviour in daily life.

d. A democratic gathering of members who believe that dialogue or deliberation is a source of legitimacy, and the importance of using clear terms in the outcome of their deliberations. Moreover, preferences are assigned for connection between deliberations and decisions reached as evidence of not losing relevance. Furthermore, each member attempts to be acquainted with each other's acquisition of dialogue capabilities ie. the capabilities required in general talk.²³ The concept of public reasoning based on a view that since individuals are participating in ongoing discussions to try to resolve general matters of dispute, they must explain the basis of their views considering that, to some extent, those others may support these views as they all enjoy freedom

and equal opportunities.²⁴ Hence, the importance of democracy of dialogue is applicable to all fundamental conflicts, taking into account that all disputes, conflicts or divisions cannot be resolved through continuous dialogue but eventually lead to establishing revived confidence among individuals under interconnected social relationships.

5- Legitimacy: The Dilemma of Implementing Democracy

The traditional image attributing legitimacy to a tyrant's rule through traditions, or bestowing religious sanctity (the theory that God is right) and forcing people into subjection is no longer accepted within the

multicultural and interconnected world. However, is it possible to say that people under democratic legitimacy are satisfied? According to Raymond Aaron, the French philosopher, they are if their basic needs are fulfilled and their key interests are totally in line with those of other democratic peoples. Nevertheless, satisfaction here does not mean that society is happy or delighted but that there is peace between people because they are all content with their situation at that time. The state of peace, or satisfaction as it called by Aaron, is contrary to both a state of peace by force or disability. John Roles agrees with Aaron, who believes that such terms are necessary for permanent peace and could be met by people living in constitutional liberal democracies who respect joint principles concerning government legitimacy.²⁵

The concept of democratic peace indicates that war takes place only where societies are dissatisfied with their commitments or with countries violating international legitimacy.

However, there is a global ideological game that justifies the overthrow of democratically legitimate governments eg. Musaddaq in Iran, Allende in Chile and Arbenz in Guatemala, among others. In the global tendency towards democracy, the emergence of absolute directions apposing its concept become difficult, however, claiming democracy is insufficient to acquire legitimacy because legitimacy crisis remains linked with performance, achievement or democratic fulfillment. Furthermore, the legitimacy of a dictatorship, or massive regimes based on performance under pressure of failure of economic growth, appears to parallel political performance where a government's tasks have not been conducted as expected by members of society.

Legitimacy crises are basically crises of change, therefore, their roots must be hidden in the nature of change of modern society being an effective element in the stability of democratic regimes.

The hypothesis of the crisis of legitimacy may be a result of what happens during the process of transfer to a new social entity.²⁶ However, implementing democracy, which legitimises a certain political regime, remains controversial even in stable democratic regimes like the United States. It is not true that American democracy means the American voter has the ultimate decision when it comes to selecting the American President. Many other factors and considerations have to be taken into account, which, of course, restrict the role of the voter. The weight of the vote is measured by the weight of the State in which voting takes place.

The United States follows the system of ‘maximum votes’ rather than ‘the majority of votes’, ie. If Candidate A gets 43% of the votes and Candidate B 42% of the votes, Candidate A wins although he did not get the majority of votes.²⁷ This means that it is

possible for a candidate to win the election even though the majority of voters have, technically, voted for his rival. The above example shows that the crisis of legitimacy is at best a democratic situation and indicates how democratic legitimacy will be practiced while being dependent on quantity rather than quality. In other words, it depends on the percentage of votes regardless of the votes of the majority.

While a continuous trend in the Arab world is towards democracy, the clearest image in the West is towards restricting democratic practices. Timothy Mitchell states that this is done by two means: firstly, by eliminating certain sectors from involvement and participation in politics and, secondly, by eliminating certain authorities from involvement in the political process.²⁸ However, there is always a keenness to create new forms of democracy to provide legitimacy to the existing ruler. There is a contradiction when discussing the concept of legitimate

democracy, as there is a gap between theoretical references that look at emphasising and establishing the concept and the implementation that seems to be multifaceted.

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The Image of the Sultanate State in Arab History, The Controversy of Unity and Division between Legality and Legitimacy

Wajeeh Kawtharany (*)

Introduction

In using the terms of legality and legitimacy I came across two terminologies, *Légal* and *Légitime*, in the Arabised *Leland Philosophy Encyclopedia*. The entry 'Légitime Legitimité' in general is 'Said of all actions, attitudes or feelings, or of any saying expressing a person's full right as in legitimate defense or legitimate action'. In this sense the word 'legal' is more accurate.

As for the term 'legal', it means, in general, adhering to laws. It is the feature of what is controlled by law or laws (*Leland Philosophy Encyclopedia*, vol. 2, p723-724).

In the Larousse Dictionary, the term *Légitimité* (legitimate) is the status or condition of whatever is based on lawful rights, justice and equality. However, it should be noted that legitimacy in this wide definition of moral dimensions is different from the legality of law. Some issues of justice and fairness cannot be effectively resolved within the outlined work frame of law. Therefore, laws or rights can result in unjust side effects.

It is worth noting that dictionary usage of modern Western political language does not differ much from that of the history of sultanates, emirates and wilayats(**) in Islamic history. Whatever was legal at those times, had always been based on Islamic Shari'ah, especially its constitutions (the Holy

Qur'an and Hadeeth) and other tools, such as reason, analogy and consensus, used for deriving laws from these constitutions. Shari'ah references cover both existing legality and renewable legitimacy, ie. it what is legal or exists in Shari'ah, and what is 'legitimate' or justified in reference to Shari'ah or by means of force. Usually, or in most cases, the two things are gravely mixed, a dilemma that is evident in some of Mawerdi's or Ibn Khaldun's texts — creating an emirate or sultanate by means of force is a legitimate act in the mindset of its initiators. However, by means of necessity (advancing a state free of chaos and dissolution) it becomes legal, but always within the framework of laws that have been mutually debated (controversy between political laws of a sultanate, wilayat and religious laws).

This was a page of a long history. When new nation states appeared in modern Arab and Islamic history, new controversies emerged in the form of new descriptions, like unity and

division, and the legality or legitimacy of each state of these.

This piece of writing is an initial attempt to look deep into the continuous controversy associated with the state in Arab history, starting from the *asabiya*-based(***) sultanate to a national state in contemporary political literature.

The Controversy of Asabiya and Religious Authority in the Establishment of States in Arab history

A closer look at the history of how sultanate states started in Arab-Islamic history, and their dynamics, structures, systems and ideologies reveals a historic controversy between *asabiya* as a sociopolitical tool of conflict in society and Shari'ah as seen in thinking, *fiqh* and different Islamic schools, ie. *fiqh* and intellectual opinions resulting in various

schools based on Islamic teachings to justify legality in religious rules and strengthening legitimacy of sultanate policies.

Ibn Khaldun's theory on states, in fact, is a reflection of the historic experience of states in different stages of Arab-Islamic history going back and forth between the two authorities mentioned earlier: *asabiya* and Shari'ah. Ibn Khaldun stresses the importance of *asabiya*, ie. force in the rise of a state, but also says that Shari'ah is important in legalising the establishment of a state. He says, 'Arabs do not get to rule unless by cover of religion, prophecy, social status or a great religious role.'¹

This controversy, in fact, explains why Ibn Khaldun is looked at differently today in the eyes of *fiqh* scholars, on one hand, who see him as 'deceived by the looks of a state based on *asabiya*, as Rasheed Ridha puts it, which, in their view,² is different from the Caliphate

in Islam. On the other hand, today's nationalist intellectuals try to compare the concept of Ibn Khaldun's *ummah* (nation) with the concept of 'nation' in European minds in the 19th century.³

This difference is creating a historic dilemma. In my view, despite the fact that *asabiya*-based states are supported by religion or Shari'ah, as Ibn Khaldun puts it, it could not shape Islam into a certain ideology of *ummah* similar to the ideology of nation. Islam remained the highest authority of *ummah* and is used as a tool to highlight opposing opinions or ideologies and to justify its legitimacy based on Islamic laws. The *ummah's* ideology is legitimate even if it sometimes conflicts with Shari'ah or existing laws, or the *fiqh* of the Islamic school followed by the state.⁴

The State\Society Notion between Claimed Legality and Calls for Legitimacy

The relationship between ruling people and ruled people in Islamic history were of an authoritarian nature over people, and not a relationship of fusion and integration. This is evident in the forms of authorities and policies of inclusion through different tools as a result of the interaction between the *asabiya*-based states (rulers) and the people who constitute the nation and its different *asabiyas*, schools and ideologies.

This interpretation of the dilemma in the relationship between governments and the people perhaps explains the gap between the two in Islamic history, which still lingers between the legality of rulers and their people and the legitimacy of having the right of constant rule based on emerging *asabiya*. The concept of *ummah* referring to an Islamic human community has not fully integrated in the state. The Islamic Arab states, since the Omayyad and even after the Ottomans,

expanded based on *asabiya*'s superior powers. *ummah*, on the other hand, took the shape of a community characterised by plurality, diversity and even division on different levels:

- Diversity due to the extent of divisions evident in the different opinions and schools on Shari'ah.

- Diversity at the level of co-existence with other heavenly messages (the system of *milal* — religions — in the Ottoman days.
 - Diversity due to *asabiya* clashes between tribes, clans or families.

- Diversity at the level of loyalty to different cities and districts.

- Diversity at the level of nationalities and peoples.

- Diversity at the level of craft groups (types and Sufi ways).

Based on this, it is possible to say the following: the rulers are the superior *asabiya* groups surrounded by allies and loyal groups. Those do not justify their state by their social background or representation of the people, but by claiming to be guardians and followers of Shari'ah. Their state is neither an integrated nationalist state, as per contemporary understanding, nor a regional state, as seen in contemporary geopolitics and modern international relationships starting with the 1648 Treaty of Westphalia in Europe or the 1923 Treaty of Lausanne in Turkey and the eastern Arab countries.

Ibn Khaldun's concepts somehow summarise and provide indications of the state experience in Islamic history regarding its rise, formation, expansion and downfall. On the other hand, those concepts also provide theories and rich methods of understanding unity and division, and therefore accept the dynamics and reality as truthful and legitimate, and justify loyalty to them one after another.

Ibn Khaldun, when reviewing the process of a state's division, does not associate a state to a region or geographic area even if the state has been essentially based on geographical foundations or what Ibn Khaldun calls *qasia* or *taraf* (peripheries).⁵ An emerging state remains a follower of the bigger state and derives its legality from it, or, based on its stronger *asabiya* or religious calls, abandons the old state and replaces it or competes with it for legality as a legitimate right.

Therefore, states on the periphery are acknowledged by the existing large state without war, while a state based on religious ideology is seen as a threat to the large state and as a sign of disloyalty or sometimes competition. Ibn Khaldun describes this when he says,

Emerging states fall into two categories: states at the peripheries that disappear if the big state's authority recedes. They do not usually demand much from the big state; whatever they have in hand would be enough for them. The other type is called khawarij (religion based) and those have demands because they usually have power. These demands are usually backed by enough pride and asabiya to rage constant wars between the two until one gets the other.⁶

This theoretical political classification of states in Arab Islamic history could serve as a starting point for understanding the

mechanism of the sociopolitical conflict that results in unity or division; unity in the case of a general *asabiya* state, or division in the case of different states of different *asabiya*, ethnicities, tribes or religious schools that live together in different peripheries in short periods, or wage wars against each other to try to overcome the majority and eventually become the biggest state or authority in 'Islam's House'. This was the case of many states such as the Buyids and Seljuqs, Mamluks and Elkhaneen, and the Ottomans, Mamluks and Safavids, let alone the starting of the Abbasid-Umayyad conflict, the Abbasid-Fatimid conflict and other family conflicts in the Maghreb and Andalusia, and conflicts between small states at the peripheries opposing the central state like the Qarmatians and Ismailids. It is a dilemma of the continuous relationship between the party who has the legality on the part of the state and those who seek legality in the name of a broader or relative legitimacy.

It has been noticed though that many historians over emphasise the ideological part of the legality of these states, or what Ibn Khaldun calls the ‘religious interface’ of *asabiya* or the ‘religious effect’. They also stress the national aspect of the rise of these states. Some see, in the Ottoman-Safavid conflict, a religious conflict between Shi’a and Sunni, and some view the rise of the state in Iran as an ethnic or Persian *asabiya*, for example.

In my opinion, if this is true, at the risk of fueling the conflict, it should not eliminate the level of conflict and its long-term goals. The field of conflict, as seen by Khaldun, is the notion of ‘state scope’. It is, firstly, the geopolitical field of the emerging state, and secondly, the expansion of this scope on the financial activities and interests, which translates into taxes and customs duty on whatever crosses a trade route, or on the markets that formed in the Asian and Mediterranean area. This also includes any

area to which Islam spreads and becomes a potential entity for inclusion and integration, or for division and disintegration at the levels of religion, civilisation or means of transportation, and trade centres.⁷

Whenever a state emerges somewhere inside the scope of this market, its people would, due to the increasing need of collecting taxes, want to include the peripheries and expand their state, especially when it comes to strategic areas or a commodities' transportation or excise route.

Unity and Division under Legality and Legitimacy

These, in my opinion, are the missing or neglected aspects of Arab-Islamic history. Neglecting these aspects suppresses the controversy on movement of unity and division of this period of history. Such

movements were justified by legality as in the case of existing states and by legitimacy with resistance and overthrowing the state (legalising the state of overthrowing). This controversy is bound only to the ideology or declared religious discourse of each party paving the road for conflict based on religious schools or nationalities. The reality of this conflict does not allow diversity but only unity by means of overcoming and inclusion of other parties and ideologies. This reality resembles the history of the sultanate state, which regards overtaking and overthrowing as legitimate rights and the religious interface as a legal cover.

A closer look and study at the geopolitical and economic dimensions of the two co-existing experiences of the Ottoman and the Safavids would reveal hidden key aspects for understanding the controversy of unity and division in the history of sultanate states in Islamic history.⁸

This history holds two movements:

1. A unifying movement seen in the dynamics of the foundation of the Ottoman Empire in the first two centuries of its establishment, and its capacity to seamlessly include and combine legality and legitimacy for a long Islamic time
2. A dividing movement seen in the dissolution of its economic and military systems, starting from the second half of the 16th century, which coincided with many influential regional and international events such as:
 - The discovery of the Cape of Good Hope as a route to India, which marginalised the role of the Mediterranean
 - The discovery of the New World, and the following stockpiling wealth in the

coastal cities of Europe, and opening up of intercontinental trade at the cost of

old Mediterranean passages

- At the regional level of the Islamic world, a new competitive sultanate emerged

— Safavid in Iran.

The Safavid unified the small states and carried forward its own religious teachings, and competed with the existing Ottoman state. They wanted to expand on the geopolitical scope of the Ottomans (Anatolia, Iraq, the Gulf, and the eastern coast of the Mediterranean) and competed with them economically by attempting to control land and sea passages between Europe and Asia (the Silk Route).

The point of reviewing this history is to understand the Ottoman-Iranian wars in the historic context of the ‘European Renaissance’

and its natural readiness for a huge industrial revolution. The key element of the international transformation was the superiority of European communities in military weapons, warships and institutionalised systems and organisations. Just after the discovery of the Cape of Good Hope and the New American World, the Mediterranean began to lose its role as a key economic player in history, and the Islamic world turned into a war zone between its two major internal powers. It can be inferred that this internal conflict, in the bigger picture, was looking for a way out of the recession of Mediterranean trade through attempts to control the passageways and ports leading to Europe, whose ports, at that time, were full of gold and silver brought from the New American World. After the two key players had exhausted their powers, their economies were so downtrodden that they could not hope for 'resurrection' unless through foreign concessions and the expansion of foreign trade. Local crafts and commodities were so down in the face of a huge surge of European

commodities that internal affairs, if compared to the strength of trade, prices, tariffs and manpower, were unable to stand up to the unequal international competition.

All these events and interactions paved the road for an unequal relationship between the West and the Islamic east, ie. the centre that led to the industrial revolution and the peripheries that suffered internal wars, marginalisation and dependence on foreign concessions.

The sultanate state in this historic scene is no longer the state that Ibn Khaldun mentioned in stages of rise, summit and downfall. It is no longer based on the *asabiya*, by religious enforcement or by the old controversy of unity-division. It is a sultanate state with a historical heritage that does not control or influence the destiny of the state. European policies prevailed and were decisive in matters of directing, controlling, utilising, investing or

even reforming and structuring, as in the case of the Ottoman organisations and European policies towards such organisations.

This historic scene, in fact, would hold the seeds of downfall of the communities of this state based on the historic heritage itself in the 19th century and the beginning of the 20th century, but this time with new concepts and notions such as minorities, national independence, ethnicities, modern administrations. etc., and due to clear interaction with the policies of foreign powers.

It is also noticeable that the sultanates' unifying/diversifying policies (Ottoman Empire in its early stages) included local power sources. This kind of inclusion was possible in certain sociopolitical times; those of craft systems, agricultural investment, feudalism, sects and traditional social structures of families, tribes and village groups, providing legitimacy and paving the

way for legality. However, this kind of inclusion was not possible in view of the dissolution of its communities as a result of capitalism and European policies, and the increasing national, ethnic, social and political conscience.

This is what many Ottoman renaissance intellectuals, *fiqh* scholars and reformers tried to fix through different methods of reform, organisation, and *fatwa*, but the dissolution was too deeply engraved in international policies and decisions, and with diplomats and experts.

International Policies and the Legitimacy of Reality (Local Authorities establishing National States)

The Ottoman administration was characterised by centrality and strict policies, especially at the time of Sultan Abdul Hamid,

who practiced central tyranny, and at the time of Committee of Union and Progress, who practiced a military dictatorship with discriminative Turkish policies. On the other hand, other social powers were looking to establish their own local authorities through local councils or through refusal to join the central Ottoman powers, and, at the same time, searching for legal foundations for their independence. Europe was, at that time, observing the situation closely in order to utilise whatever power could serve its own political ventures. This interaction between the internal conflicts and Western policies resulted in a state of chaos in the different regions or districts, as reported by Midhat Basha, an Ottoman Wali in Iraq and Syria in the 1880s, besides the reports of consuls in the capitals of the wilayats, who observed the conditions, studied their social symptoms and foresaw their future direction.

Perhaps what the French Chancellor in the Ministry of Foreign Affairs wrote on 30th May

1920 reflects the function of the political chaos as seen by the strategic Western mindset.

The Chancellor said,

In the territories that were once part of the Ottoman Empire, the chronic historic conflict between the concept of 'state' and the concept of 'nation' has led to the emergence of a chaotic mindset, and the people had to form small groups based on ethnicities or regions. This reality is convenient for us as it makes circulating resistance in the whole empire a difficult task. On the other hand, more dissolution may put us in a similarly stressful situation.

The Chancellor concludes with the following,

I find it a chance to push studies on potential ethnic groups that may start their first autonomous regional authority.⁹

This Western understanding of what the French Chancellor called ‘historic controversy between the state and the nation’ comes from observing the crisis that the Ottoman system tried to tackle through centralising the state, ie. transforming the old *asabiya*-based sultanate into a modern state, similar to the state\ nation model. Turkish nobles and some Arabs find the term ‘Ottoman home’ expressive of this tendency, which was basically an attempt to unite the administration, institutions and laws of different communities of different languages, religions, ethnicities, sects, traditions and customs. As a result, a number of political movements emerged on the peripheries, especially in the rural mountain areas and western cities, refusing to be part of the central Ottoman authority.

However, these movements failed for many reasons. That failure itself, regardless of its reasons, made the West conclude that a kind of ‘chaotic mindset’ prevailed over the people, and that dissolution on the basis of ethnicity, religion and sect was an inevitable key solution for the ‘controversy between the concepts of state and nation’, as the French Chancellor put it.

As the French Chancellor proposed, many anthropological, historical, economic and social studies were conducted to justify the ‘appropriate’ political practices of the disintegrating region, which would eventually serve the policies of the Western powers in the eastern Arab countries.

The truth is that what the West sees as ‘permanent features’ or fixed traits of Arab-Islamic society, was no more than a state of dissolution and Western influence in Ottoman society.

Whereas the ethnic groups that took clear shape in the Ottoman system served as a justification for the West to resolve the so-called 'chaotic mindset' through the formation of independent smaller 'states', the policies of local authorities that used the system's laws in their favour in courts, municipalities, committees and different functions, allowed, on the other hand, international policies to create 'local interfaces'. Moreover, the ethnic groups and the policies of local authorities interacted to form authorities looking for 'geopolitical' legality through adoption of the state\ nation notion.

The French Chancellor said, 'There should be strong local interfaces whom we can move behind without holding responsibility.' He commented on the efficiency of the Ottoman system, which gave the local authorities a lot of space in their own affairs,

Recently, Archbishop Khorri, head of the Lebanese delegation in Paris, was asked about ways that allowed the Ottoman to keep their system alive with limited resources. He gave the same answer he had given to general Goro, that the Turkish authorities achieved the balance between the different groups of the population with little interference in their internal affairs or interests.¹⁰

However, the Ottoman understanding of the European model was a justification for sociopolitical dissolution, and the attempts to contain the situation in local interfaces. These interfaces were, in the French plans, similar to Ottoman local authorities as the latter had achieved ‘some balance’ in the diverse population. The difference between the local Ottoman authorities and the authorities proposed in Western plans to be local interfaces is the difference between two histories:

1. The long sociopolitical Ottoman history with its power sources as key pillars of the political balance of the Ottoman authority, which also secured its historic legitimacy and part of its religious legality regardless of local conflicts aimed at occupying certain positions in the structure of sultanate authorities.
2. The sociopolitical history of European influence in which some local family groups emerged in the Ottoman system as 'new figures' looking for opportunities to ensure themselves local authorities based on administrative power, land possession and capital of foreign investment.

The overlapping of the three factors of the new figures in point 2 instructed the European

policy makers to adopt these directions in view of the latter accepting the role of local interfaces of the mandate. This was a page of one history followed by pages of another history.

Conclusion

What is the meaning of reviewing history, specifically the sultanate state experience and its society in the Islamic history, in the context of examining diversity, legality and legitimacy?

It is natural to say that ‘history does not repeat itself’, even if it carries factors that may lead to thinking of similarities between phenomenon and big events, or between actions and human reactions, which restore continuous matters in the different geographical environments of civilisations, as Braudel sees for example.

Such restoration, however, is always changing and adapting to major transformations in international history. Reference to history does not function, isolated from history as a whole, as a foundation for understanding the present and foreseeing the future. Reference to history continues in the understanding of the history of individuals and groups through memories of pictures, ideals and even myths and superstitions. The advancement of knowledge of sciences and humanities today offers us methods and ways of interpretation and reasoning. Memories, be they in the form of stories, news or mental images, are fields of study, scrutiny and conclusion. This is the function of history, the way it was founded by Ibn Khaldun. Unfortunately, this ideology did not crystallise in the subsequent history of the Arabs.

This subject faces two key problems:

First is the issue of unity and division at the level of state. In the past, there was some kind of plurality and diversity in the times of the caliphate and sultanate of Islam's history. They emerged from the roles and functions of the *asabiya* of tribes, nations and cities that formed the geopolitics and humanity of 'Islam's house'. They further constitute the roles of sultanates and emirates by seizure, and wilayats 'legalised; by Islamic *fiqh*. At the same time, there was a tendency toward geopolitical and economic unity that extended the boundaries of the sultanate by means of force and inclusion. This unity was supported by 'religious cover' and without doubt carried its 'legitimacy' elements in parallel with the legitimacy held, as a reality, by sultanates and emirates.

In modern history, there was a 'division' that took place within some areas under Western influence at the end of the 19th century and the beginning of the 20th century. There was also some kind of state plurality in the form of

independent states established on the basis of national sovereignty of a state or region. But at the same time there was a movement towards Islamic or national unity as a reaction to the divisions. It followed the footsteps of the sultanate unity example in an Arab manner, just like the Omayyad dynasty in the nationalists' mindset, or in an Islamic manner, just like the Ottoman's caliphate or sultanate state in the Islamists' mindset.

These two issues overlap (in the past and present) in history as a 'reference', sometimes to justify the call for or rise of dynamics of 'unity', or to justify the reality of multiple states in the name of local history.

Reality, however, points to a different historic and future direction. The 'division' that is usually emphasised as being a 'colonial act' in historic and national literature is, without any doubt, an undeniable reality and a factor in the establishment of modern states

and entities. However, in the 20th century this 'division' gained different social, political, economic and intellectual dimensions, which were evident in the emergence of institutions and administrative structure, and at the level of production and consumption, economic interests and national loyalty within each state. These dimensions and aspects became living facts, not only at the level of the state, but also at the level of citizens, ie. they gained legality at the emerging state level, and legitimacy at the national community level.

These new transformations in the notion of division have given it new meanings that overcame its negative historic connotations of colonial division. It has become an integrated, existing and legitimate reality, but, in any case, it should not be looked at from a historic angle either for justification or acceptance. Historic justification in the name of the national history of a state, on the basis of the multiple states in the times of the sultanate state, does not give any state any long-lasting historic 'legality'.

On the other hand, historic discovery in the name of the unity at the times of the sultanate state does not take away its legality on the basis of ‘historic right’, ‘Islamic unity’ or ‘Arab unity’.

Historical developments have to be looked at in the context of the second half of the 20th century and its expected directions at the beginning of the 21st century. Such developments must be considered when examining the issue of multiple states, including:

- The emergence of national liberation movements in the third world, specifically the Arab and Islamic world. These movements adopted national or local interfaces in building their ideologies and programs for establishing power, economy and the culture of each state. After the failure of the Egypt-Syria unity attempt and other unity projects, the crisis of including Kuwait in the name of ‘historic

right', and the mistakes of the Syrian administration of Lebanon, it becomes very clear that there is a need for 'unity' alternatives other than the types experienced in Arab history.

- The end of the Cold War, which resulted in a clear consequence, the fall of the 'unity by force' model presented by the Soviet Union and the communism system in Eastern Europe.

- The emergence of an effective, peaceful and successful model of unity in Europe, starting with infrastructure such as transportation, commodities exchange, customs, the movement of people, manpower, currency and rights of travel and residence, to arrive at today's picture of the 'European national' and full unity.

All these developments require reconsideration of the notions of unity and division in our modern life, and eventually a reconsideration of concepts of legality and legitimacy in states' unity or division.

Second, the plurality of religion, parties, ethnicities and ideologies in societies:

· In the past, the sultanate system witnessed a multiplicity of religions, ethnicities and social-cultural backgrounds, and was contained in a type of code of independence between the state and the community. That was made possible through legal and legitimate systems such as sects and the Awqaf system, village or family groups or groups of tribes or clans that had their own local councils, leaders and spokespersons, the craft groups and the Sufis, who had their own leaders and structures.

· Today in the modern democratic states and communities they have witnessed the establishment of political parties, associations, societies, clubs and many influential institutions under what is called ‘civil society’ in the West. This is the opposite of the clerical system of the 19th century or military totalitarianism of the 20th century. Modern society is not a separate or opposing entity to the state, but has relative independence and interacts with the state, as well as the state interacting with it, in a political representative system of power, influence, decision making and distribution of development roles between the state and society.

Reality and political mindset in our Arab Islamic world is suffering from these two problems in general, which are both ineffective. Reference to the multiplicity of the sultanate state is no longer valid, therefore not nowadays legal to be followed and adopted. Neither has reference to the European civil

community, as is the case with some Arabs who are in a position opposing the religious community and abandoning their history and culture, indicative of a straight and sound methodology.

Reviewing history to read today's phenomenon of diversity, unity, division, the sultanate state, the nation state and the Islamic state is, in my opinion, important as an approach and critical viewpoint, not as a reference to imitation or adoption to gain legality or legitimacy. A past experience does not repeat itself in the exactly the same detailed manner. On this basis, we can conclude that the unity experience in the sultanate state cannot be copied at the present time. Its 'unity' is founded on the basis of inclusion and force and intersects today with the inclusive national Western state. This interaction is evident in the Arab national mindset with its 'force-based' projects that do not carry the seeds of development and continuity even if they claim 'legality' on the

basis of history or religion. Such a mindset of inclusion by force has caused hopeless regional wars that hold no bright future. The legality of today's nation states and their legitimacy are not based on historical facts or their ideologies, neither on romantic nationalism nor Islamic inclusiveness but rather on new factors such as development, sovereignty, sharing, democracy and mutual national security, integration of economy, science, education and military powers. Above all, it is the right of Arab citizenship, which is the basis of legality and legitimacy for today and tomorrow.

References:

- *) A Tunisian academic living in Brussels**
- *) A historian and academic from Lebanon**

***) Different administrative forms of states
(translator)

****) Groups of the same social background.
This can be translated as *social cohesion, tribalism, clanism, nationalism* (translator)

1. Khaldun, I, Al-Moqadima, p151.

2. Ridha, M R, The Great Caliphate or Imamah, p134.

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4. Orientalist L. Gardet says. 'What is sure is that many voices in Islam called against "arbitrariness" and refused all rules unless based on the Qur'an and its teachings. And when it comes to the content of government principles, the term "right" that requires defence and protection always and ultimately takes priority.' Gardet, 1 1976. La cite musulmane, vie sociale et politique, 4th ed. Paris, pp38-39.

5. Khaldun, I, op. cit, pp292-293.

6 . Ibid., p156.

7. On this market, refer to Lumbar, M 1977, Islam in its first glory, from the 8th century to the 11th century, trans. Y. Hafidh, Dar At Tali'ah, Beirut, pp111-131.

8. To expand on the subject refer to Kawtharani, W 1990, Al faqeeh wa sultan, a study of two experiences: the Ottoman and the Safavid-Qajaria in Iran, Dar At Tali'ah Beirut.

9. Documents of the French Ministry of Foreign Affairs, diplomatic report dated 30th May 1929, Vol. 29, Bab Al-Sharq, Syria, Lebanon, p27-28.

10. Ibid., p28.