

Legality and Legitimacy in the Arab Islamic Experience

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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-Mumuneen*.

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 oppose 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).

