



## CONTEMPORARY ISLAMIC POLITICAL *FIQH*

### TRENDS – ISSUES – PROBLEMS

**Hassan Abdullah Hassan** ●

In 1924, the Islamic Caliphate fell at the hands of Kemal Atatürk and a secular republic was declared in Turkey, reflecting the principles and culture Atatürk was brought up to adopt and replacing the Islamic systems of government and every other aspect of life with Western European models. From that day onwards, the Islamic world came under the domination of what became known as the secular nation state – states with ‘national identities’. The Islamic *ummah* (nation) found itself at a loss, not knowing what to do next or how to return to the Islamic system of government derived from the *Holy Qur’an*, the Sunnah and other Islamic sources of legislation, or how to establish a government, which, in contrast to the secular governments, could be described as Islamic.

Another, related question was how to promote a broad political ideology capable of confronting the secularist challenge and asserting the feasibility of political Islam. Islamic politicians and intellectuals

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● Scholar from Egypt.



endeavoured to answer this question, sometimes through collective revolutionary action, at other times by seeking to develop the ideology the *ummah* was hoping would enable it to restore the cultural and legislative identity it had lost to the secular state.

The *ummah* has been waiting to see the results of this latter approach – which may be termed ‘political *fiqh* (doctrine/jurisprudence)’ – for nearly a century.

In this paper we intend to review the six main fields of political *fiqh*, from its birth in the modern era until the present day, and to examine the most significant issues that have attracted the attention of Islamic thinkers during that period.

## 1. The Islamic Caliphate Trend

An early trend in the history of ‘political *fiqh*’ – the call for the restoration of the Islamic Caliphate – was a response to two main factors: firstly, the fall of the Islamic Caliphate at the hands of Kemal Atatürk and, secondly, the rise in support for its abolition, the rejection of the idea that the Caliphate is an Islamic obligation and the call for the secularisation of the state.

Ali Abdul Razzāq was an early supporter of secularisation in his book *Al Islam wa Usūl al Hukm (Islam and the Basis of Government)*,<sup>1</sup> 1925, which is in three parts. The first part deals with the Caliphate and its role in Islam, including Caliphate rule and the Caliphate from the social angle; the second part discusses the system of government during the time of the Prophet, the Prophet’s mission and rule, and Islam as a mission, not a system of government, and as a religion, not a state, while the third part looks at religious unity and the Arabs, the Arab state and the Islamic Caliphate. After examining these issues, the author concludes that the Caliphate is not part of the scheme of things as envisioned by religion, nor has it anything to do with the justice system, nor with any of the other functions of government and the state. All those areas are purely political

<sup>1</sup> Razzāq, Ali Abdul, *Al Islam wa Usūl al Hukm (Islam and the Basis of Government)*, Dar al Hilal, Cairo, 2000.



and religion has no role to play in them, just as it has no role to play in military matters, urban construction etc., which are the domain of human intelligence and expertise.

Another book, *Al Khilafah wa Sultatu'l Ummah (The Caliphate and the National Authority)*,<sup>1</sup> by an unknown author, which appeared in 1923 and followed the same line of thinking, was translated from Turkish into Arabic by Abdul Ghani Sunni. This book is in two parts with an introduction and an epilogue. The first part comprises *fiqh*-oriented studies related to the Caliphate, while the second part draws a distinction between the Caliphate and the governing authority. The introduction aims to show that the Caliphate is temporal and political and has almost no connection with religion.

The idea of the secularisation of the state, ie. the separation of religion from the state, was raised by Farah Anton (1874-1922) in his exposition of the positivist view when he defended the need for politics to be independent of religion and began to develop a political vision in which, supposedly supported by the laws of history, absolute priority would be given to temporal matters. This was the position of the positivist philosophy during the nineteenth century<sup>2</sup>.

Farah Anton set out the case for the separation between the religious and temporal authorities as follows<sup>3</sup>:

- That human thought should be freed from all restrictions for the future benefit of mankind.
- That there should be absolute equality between all the people of the nation, regardless of their religious sects and beliefs.

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<sup>1</sup> See a review of this book in: Hussein, Mohammed Mohammed, *Al Ittijahat al Wataniyah fi'l Adabi'l Mu'asir (National Trends in Contemporary Literature)*, Maktabat al Adab, Cairo, undated, p.64 onwards.

<sup>2</sup> Latif, Kamal Abdul, 'The Secularism of Farah Anton', *Manbar al Hiwar*, Beirut, No. 38, Spring 1999, p.115.

<sup>3</sup> Anton, Farah, *Ibn Rushd wa Falsafatuh (Ibn Rushd and His Philosophy)*, Dar al Tali'ah, Beirut, 1981, pp.144-150.



- That it was not the business of the religious authority to interfere in temporal matters, because religions were established to deal with the next world, not this one.
- That the *ummah* was weak and would continue to be so for as long as it failed to separate its civil and religious authorities.
- The impossibility of religious unity.<sup>1</sup>

*Al Khilafah wa'l Imamah al 'Udhma (The Caliphate and the Greater Imamate)*, by Rashid Ridha (1865-1935)<sup>2</sup>, which appeared in 1922, heralded the rise of the trend calling for the return of the Caliphate. In Part One of the book he speaks of 'the unity and plurality of the Caliph' and the 'unity of the Imamate and the unity of the Ummah', and discusses 'what the Caliphate means to people' and the 'influence of the Imamate in reforming the Islamic world'. He then goes on to link Muslim revival with the revival of *ijtihad* (interpretative judgement) with regard to the Sharia, and maintains that 'abandonment of *ijtihad* was believed by some to be due to the unsophisticated Bedouin lifestyle, or some similar factor, while others ascribed it to Europeanisation and abandonment of the *deen* (faith).'

In Part Two, Rashid Ridha stresses the need for the Arabs and Turks to cooperate in restoring the Caliphate and speaks of 'the Caliphate being based in the Hejaz' and 'the Caliphate being established in the Central Region'. He attaches great importance to cooperation between the Arab and Turkish peoples in establishing a true Islamic Caliphate. In Part Three, he puts Muslims into three categories: the Europeanised party, the party of ultraconservative *fuqaha* (jurists/scholars of doctrine) and the moderate Islamic reformist party. He describes the first category as one that 'does not believe in the *deen* and champions the culture of the age of politics and science.' The second category, he says, would like their government to be Islamic, but they are 'incapable of devising military, financial and political

<sup>1</sup> This view of Farah Anton's, which was later propounded by all the secularists in the Arab and Islamic nation, holds that Islam and Christianity are identical. Hence, all these ideas put forward by the secularists are based on this mistaken belief, and they have failed to make an objective study of Islam.

<sup>2</sup> Hussein, *op.cit.*, p.54 onwards.



laws derived from traditional *fiqh*. Moreover, they are not prepared to apply *ijtihad mutlaq* (unrestricted *ijtihad*) to all temporal actions, even if they are authorised to do so by government command ...'

Here the author regrets the end of the political *ijtihad* movement – and indeed of *ijtihad mutlaq*, as he describes it – which has brought the *ummah* to the state it is in at present. He therefore turns to 'those who understand', whom he calls 'the reformist party'. This group, he says, 'combine an independent understanding of the *fiqh* of the *deen* with a thorough understanding of Islamic Sharia rule and Islamic civilisation.'

The book points to a number of facts relating to *fiqh* with regard to the state in Islam. It touches on two major questions in particular: what the public think of the contradiction between religious rule and the people's right to legislation, and what some feel about the synonymy of the two terms Caliphal and Papal, which contain connotations of religious despotism.

Another book along similar lines, *Al Nakir 'ala Munkari'l Ni'mah mina'l Deen wa'l Khilafah wa'l Ummah (Rejection of Those Who Reject the Blessings of the Deen, the Caliphate and the Ummah)*, by Mustafa Sabri was published in 1924.<sup>1\*</sup> Its most significant feature was its response to two arguments that opponents of the 'Caliphate idea' were trying desperately to sell to the public at that time. One of these was about Sharia law and the other was about the religious '*ulama* (scholars). The first argument went, 'How can a government be free and independent if it is restricted by the *deen*?' The author's reply was, 'If we believe that the Islamic faith is a blessing for Muslims in this world and the next, then freedom and independence are perfectly compatible with the government being prohibited from exceeding the *hudud* (limits) of the *deen*.' Then he points out that 'freedom' means freedom for the *ummah*, freedom for governments; this prevents governments from becoming despotic. Hence free peoples put restrictions on their governments by means of laws.

The second argument was about obscurantism among the '*ulama* over

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1 \* See Hussein, *op.cit.*, p.69 onwards.



questions of *fiqh*. Here the author stresses that it is vital for the *'ulama* to become involved in politics, noting, 'As for the *'ulama* who cut themselves off from politics, it is as if they are in collusion with all politicians – both the upright ones and the oppressors.'

This was also the view of the martyred Imam Hasan al Banna (1906-1949), the founder of the Muslim Brotherhood in 1347 AH (1928 A.D.), in his 'Message to the 5th Conference (1357 AH/1938 A.D.)', which noted that the Brotherhood believed the Caliphate was the symbol of Islamic unity and reinforced the close ties between Islamic nations. It was also an Islamic institution and Muslims had an obligation to commit themselves to it; moreover, the Caliph was responsible for implementing the laws of the *deen* of Allah.

So the Muslim Brotherhood place the Caliphate and its restoration at the top of their agenda, though at the same time they believe that this needs extensive planning and preparation, and that 'a direct step to restore the Caliphate must be preceded by a number of previous steps<sup>1</sup>.'

Under the title *Nidham al Hukm* (the System of Government)<sup>2</sup> al Banna spoke of the pillars of Islamic rule, the responsibility of the ruler, the unity of the *ummah*, respect for the *ummah*'s opinion, and the attitude towards contemporary systems of government.

In his political education program Imam Hasan al Banna proposed five stages, at the end of which it would be possible to set up an Islamic Caliphate. They begin with the Muslim individual, then the Muslim family, then the Muslim people, then the Muslim government, then the Greater Islamic Caliphate, which will reunite what has been fragmented by imperialism<sup>3</sup>.

Generally speaking, this trend rejected the concept of the nation state (which was devised by imperialism on the principles of 'nationalism' and

<sup>1</sup> Al Banna, Hasan, fifth conference, Collected Letters of the Martyred Imam, Dar al Da'wah, Alexandria, 1992, p.144.

<sup>2</sup> Al Banna, *Mushkilatna fi daw'i'l Nidhami'l Islami*, *ibid.*, p.315.

<sup>3</sup> Al Banna, *Risalah ila'l Shabab* (Letter to Youth), *ibid.*, p.177.



‘patriotism’), as well as the concept of a secular state, which ‘Westernisers’ tried to import from Europe; this has given rise to conflict between the Islamist and Western ideologies, which has begun to extend from the political into the cultural and social spheres.

## 2. The Total Rejection of Secular Political Systems

This trend developed in the context of a set of social and ideological circumstances, which led it to stand firmly against all worldly systems and those who adopt them, and in favour of the faith and Sharia of Islam. Mohammed Amarah calls this trend the ‘revolutionary rejectionist trend’, which condemns present-day reality, heritage, modern society and the *ummah* as being contrary to Islam. It refuses to work through the channels and institutions set up by the *ummah* and regards all of them as tools and supporters of the *jahiliyyah* (ignorance), which it believes holds sway over these societies. This is the reasoning behind the revolutionary trend adopted by this faction of the Islamic Awakening movement<sup>1</sup>.

There are several groups within this faction, but they all agree on this assessment of Islam’s present-day reality and Islamic societies.<sup>2</sup>

When considering the ideology behind this trend, one should also take into account the social circumstances in which it developed. Its supporters cite a number of factors, in particular the fall of the Islamic Caliphate, Communist attacks on Islamic ideology, the occupation of the Islamic Holy

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1 Amarah, Mohammed, *Al Tariq ila’l Yaqdha’l Islamiyah (The Road to Islamic Awakening)*, Dar al Shurooq, Cairo, 1990, p.280.

2 See also Mohammed Amarah on this movement:

*Al Sahwa’l Islamiyah wa’l Tahaddi’l Hadari (The Islamic Awakening and the Cultural Challenge)*, Cairo, 1985.

*Al Faridah al Gha’ibah ... ‘Ard wa Hiwar wa Taqyim (The Absent Obligation ... Review, Discussion and Assessment)*, Cairo, 1982.

Writings against this movement include:

Al Hudaibi, Hasan, *Du’at La Qudat (Preachers, not Judges)*, Dar al Tawzi’ wa’l Nashri’l Islamiyah, Cairo, 1977.

Al Qaradawi, Yousuf *Dhahirat al Ghuluw fi’l Takfir (Extremism in Accusing Others of Unbelief)*, Maktabat Wahbah, Cairo, 1990.



Places by the Jews, and the eradication of the Islamic Sharia in Muslim states and its replacement by Western secularism.<sup>1</sup>

This trend can be clearly seen in the groups' confrontation with the 'positivist systems'; according to their political *fiqh*, it is vital to eradicate *al Munkar al Akbar* (the Greatest Abomination) – that is, the secular ruler or the government – so that *al Ma'ruf al Akbar* (the Greatest Virtue, ie. Divine governance) – can prevail.

It should be noted that this trend has a tendency to pick and choose from the works of some leading *'ulama* and thinkers, such as Ibn Taymiyyah's *al Fatawa al Kubra (Greatest Fatwas)*, particularly the *fatwas* on the Tatars, and al Shawkani's book *Fiqh al Jihad fi Subul al Salam (Fiqh of Jihad in the Cause of Peace)*, as well as the ideas of Hizbut Tahrir and the writings of al Mawdudi and Sayyid Qutb, particularly his book *Ma'alim fi'l Tariq (Milestones)*.

This trend's main contribution has been its studies on the state of contemporary Islam. They include *Risalat al Iman (Message of Faith)* by Salih Sariyah, *Wathiqat al Khilafah (the Caliphate Document)*, by Shukri Mustafa and *al Faridat al Gha'ibah (the Absent Obligation)* by Abdessalam Faraj.<sup>2\*</sup> The most critical and serious result of this ideological material has been the appearance of the phenomenon of 'political violence' in Muslim society, which at one time (over the last three decades of the twentieth century) supporters of this trend regarded as *jihad*. Later, in the middle of the final decade of the last century some of its leaders rejected this view and published a *fiqh* opinion entitled *Silsilat Tas-hih al Mafahim (Correction of Concepts Series)*.<sup>3</sup> The main concepts they intended to correct included

1 See Zayyat, Muntasir, *Al Jama'at al Islamiyah ... Ru'yah mina'l Dakhil (The Islamic Groups ... an Insider's View)*, *Al Hayat* newspaper in five episodes, *Al Hayat*, London, Nos. 15260, 15261, 15262, 15263 and 15264, 10th-14th January 2005.

2 See these writings in detail in:

Ahmed, Rifa'at Sayyid, *Tandhimat al Ghadab al Islami fi'l Sab'inat (Islamic Anger Organisations in the Seventies)*, Maktabat Madbuli, Cairo, 1989.

3 There are over a hundred books in this series, including:

*Mubadarat Inha' al 'Unf ... Ru'yah Shar'iyah wa Nadhrah Waqi'iyah (Initiative to Bring an End to Violence the Sharia Position and a Realistic View)*. =

*jihad*, *shar'iyat al taghyir fi'l ijthadat al fiqhiyah* (the legitimacy of change in *fiqh ijthad*), *takfir* (accusing of unbelief), *ghuluw* (extremism) and *hasbah* (accountability).

All the above factors represent an important step towards a distinctive political *fiqh* that adherents of this trend can contribute to contemporary political *ijtihad*.

### 3. Reconciling and Comparing the Islamic Political System with Western Democracy

This trend has two aims: firstly, to define the Islamic political system and, secondly, to use comparison in order to achieve that definition by attempting to reconcile and demonstrate the points of similarity and difference between it and the Western political system. This trend, which is the converse of the trend that rejects the West in general and its political system in particular, seeks to transform the idea of a 'clash between Islamic and Western ideologies' into an 'objective dialogue'.

This trend draws many of its ideas from Mohammed Abduh (1849-1905), who sought to amend Islam's political concepts and transform them from purely religious into religious-civil ideas. This can be clearly seen in his book *Al Islam bain al 'Ilm wa'l Madaniyah (Islam between Science and Civilisation)*<sup>1</sup>, 1960, where in Chapter 5, entitled *Al Sultan fi'l Islam* (the Ruler in Islam), he makes the following points:

1. The Caliph or ruler is not infallible and does not hold a monopoly on religious truth.

= *Hurmat al Ghuluw fi'l Deen wa Takfir al Muslimin (Extremism in religion and Accusing Muslims of Unbelief)*.

Taslit al Adwaa' 'ala ma Waqa'a fi'l Jihad min Akhta' (Casting Light on the Errors that have taken Place in Jihad).

*Al Nus-h wa'l Tabyin fi Tas-hih Mafahimi'l Muhtasibin (Correcting the Ideas of Those who Hold Others to Account)*.

All these books were published by Maktabat al Turath al Islami, Cairo, 2002.

1 Abduh, Mohammed, *Al Islam bain al 'Ilm wa'l Madaniyah (Islam between Science and Civilisation)*, Dar al Hilal, Kitab al Hilal 114, Cairo, 1960.



2. It should be the *ummah* that installs the ruler and removes him if it sees fit to do so.
3. Islam is not like the Church in the Middle Ages.
4. The Islamic political system can be reconciled with the Western system by separating the religious authority from the civil authority.

Imam Mohammed Abduh's book states that a Caliph is not infallible, nor does he receive Divine inspiration, nor has he the exclusive right to interpret the Book and the Sunnah. It is true that it is a condition he should be a *mujtahid* (a person who practises *ijtihad*), but this does not mean the *deen* gives him special powers to understand the Book and the provisions of the Law, nor does it give him special status; rather, he is at the same level as all other seekers of knowledge and understanding. The Caliph should be obeyed as long as he follows the way of the Book and the Sunnah, and Muslims, ie. the Muslim population, should keep a close watch on him. If he strays from the Way, they should lead him back to it and counsel him, with the advice: 'No creature of Allah's creation shall be obeyed in disobeying the Creator.' If he abandons the Book and the Sunnah in his actions, they have a duty to replace him. The *ummah* has the right to exercise authority over him and remove him when it sees his removal as being in its interests, because he is a civil ruler from every point of view. Muslims should not make the mistake of confusing the Caliph with what the Europeans call a 'theocrat', ie. a Divine ruler; according to this view, such a ruler is the sole recipient of the Law from God, he has the sole right to promulgate legislation, he has the right to demand obedience from the people, not an oath of allegiance, and a Believer has no right to disagree with him if he is a Believer, even if he should think that he is an enemy of God's religion and even if he has personally seen him act in a way that is incompatible with what he knows of God's laws, because, whatever they may be, the actions and words of the religious ruler are the religion and the Law; that is how the Church authorities were in the Middle Ages.

In fact, the Church still claims the right to exercise this power in the way described above. The separation of the religious authority from the civil authority is a modern development that leaves the Church in charge of faith



and such matters as fall within the scope of a person's relationship with his Lord; in those areas it is free to legislate and abrogate, monitor and hold accountable, excommunicate and grant favours at will. Meanwhile, the civil authority has the right to legislate on matters concerning dealings between people and the maintenance of public order. In the Western view, this separation serves the greater public interest.

Westerners attack Islam on the grounds that it ordains that the two authorities – religious and temporal – should be exercised by a single individual. They think the Muslim view is that the ruler is 'in charge' of the *deen*, that he legislates and implements its rulings and provisions, and that the Faith is a tool in his hands, which he manipulates in order to dominate his subjects' hearts and minds. They infer from this that a Muslim is a slave of his ruler, that the religious ruler is an enemy of knowledge and an upholder of ignorance, and that the Islamic religion is incapable of tolerating science and knowledge as long as one of its fundamental principles is that the establishment of this form of rule is a religious obligation.

You can see that this is all nonsense and a complete misunderstanding of a fundamental Islamic principle, since you are aware of the fact that the only religious authority in Islam is the authority of *al maw'idha'l hasanah* (beautiful exhortation), with its appeal to do good while discouraging evil deeds. This is the authority Allah has bestowed on the lowest of the Muslims, who can use it to chasten the highest of them, just as He has bestowed it upon the highest of the Muslims so that they can receive admonition from the lowest of them<sup>1</sup>.

Among contemporary views that believe there should be a closer relationship between the Islamic and democratic political systems is a work by Mohammed Abdul Jabbar entitled *Al Islam wa'l Dimoqratiyah fi Ma'rakati'l Bina'l Hadari (Islam and Democracy in the Battle to Build Civilisation)*<sup>2</sup>. In this study the author endeavours to highlight a number of

<sup>1</sup> Abduh, *ibid.*, pp.124, 126.

<sup>2</sup> Jabbar, Mohammed Abdul, 'Islam and Democracy in the Battle to Build Civilisation', in Razzāq, Abdul 'Eid and Jabbar, Mohammed Abdul, *Al Dimoqratiyah bain al 'Ilmaniyah wa'l Islam (Democracy between Secularism and Islam)*, Dar al Fikr al Mu'asir, Beirut, 1999, p.93.



points of similarity between Islam (as a political ideology) and democracy, which gives priority to freedom and institutions. These points include:

1. Endorsement of the Muslim concept of freedom as an innate human structural quality rather than a gift or favour that has been acquired.
2. The 'Qur'anic message' includes the concepts of pluralism, institutionalism and the rotation of authority.
3. The 'Qur'anic message' includes provisions for public rights and freedoms.

Under the heading 'Adapting Democratic Mechanisms to the Islamic Cultural Climate'<sup>1</sup>, he also mentions a number of points in support of his view that Islam is not incompatible with democracy. They include:

1. The concept of adapting democracy to suit the Islamic cultural climate.
2. Islam's position vis-à-vis non-Islamic 'cultural products'.
3. The need to distinguish between Sharia judgements and the mechanisms for implementing them.

He also describes the obstacles to the process of adaptation, such as the sectarian nature of democracy, as well as the Sharia, Divine government and the government of the people, and the conditions for secularism and democratic capitalism.

Jawdat Said makes the concept of democracy synonymous with *rushd* (reason/right guidance/maturity). Under the title *Al Ummah al Islamiyah bain al Rushd wa'l Ghayy* (*The Islamic Ummah between Rushd and Error*)<sup>2</sup>, he writes that political democracy represents a return to *rushd*; that is to say, the ruler does not come to power by force, nor does he depart by force. This study also covers such topics as 'Islam and the Other', '*Ijtihad* in Islam', 'Why the Fear of Democracy?', 'Islam and Democracy', 'The concept of *rushd*', 'Democratic Powerlessness', and 'Democracy and *Rushd*'.

1 Jabbar, 'Adapting Democratic Mechanisms in the Islamic Cultural Climate', *ibid.*, p.154.

2 Said, Jawdat 'The Islamic *Ummha* between *Rushd* and Error', in Said, Jawdat and Alwani, Abdul Wahid, *Al Islam wa'l Gharb wa'l Dimoqratiyah* (*Islam, the West and Democracy*), Dar al Fikr al Mu'asir, Beirut, 1996, p.97.



Under the title ‘*Nawat al Shura wa’l Dimoqratiyah; Ru’ya Mafahimiyah*’ (‘The Nucleus of *Shura* and Democracy; a Conceptual View’)<sup>1</sup>, Sayyid Umar states that *shura* and democracy are both political mechanisms that can be operated in a large number of ways. They are subject to value systems, but in themselves they are no more than human attempts to achieve harmony and agreement at every social level and within the context of the state. He then refers to the points of similarity between them in what he calls ‘political participation’. Of these, the main ones are:

- Decentralisation of power
- Delegation of authority
- Monitoring of the ruling authority
- Rotation of the ruling authority

The Centre for the Study of Islam and Democracy<sup>2</sup> held its first annual conference to discuss common topics shared by Islam and democracy and came up with a number of proposals in response to questions such as:

- Can *shura* institutions be developed in contemporary Islamic society?
- Is there a conflict between Islamic values and ideas and popular participation in political life?

The papers presented at the conference also discussed several important theoretical and practical questions such as ‘Divine Governance Versus People’s Governance’, ‘*Shura* and Democracy’, ‘Democracy in the Light of Islamic Sources’ and ‘Political Reform in Iran’.

Sufi Abu Talib<sup>3</sup> makes an objective comparison between Western democracy and Islamic *shura* and points to several points of similarity

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1 Umar, Sayyid, ‘The Nucleus of *Shura* and Democracy; a Conceptual View’, *Al Muslim al Mu’asir*, 23rd year, No. 91, April 1999, Cairo, p.133.

2 Safi, Lu’ayy, report on the first annual conference of the Centre for the Study of Islam and Democracy, Georgetown University, Washington, April 2000, *Islamiyat al Ma’rifah (The Islamisation of Knowledge)*, sixth year, No. 21, 2000, P. 181.

3 Talib, Sufi Abu, ‘Party-political Pluralism in Islamic Thought’, *al Manar al Jadid*, No. 6, Cairo, April 1999, p.6.



including equality and national sovereignty, the social contract between the state and the individual, the choice of ruler and his responsibility before the people, and the concept of *niyabah* (deputyship/representation/mandate). The main areas of difference include (1) limited pluralism in the Islamic system, and (2) the aims of democracy and *shura*; the former has a temporal goal, while the latter has a goal that is both religious and temporal.

#### 4. Invoking Islamic Political Heritage

This trend attempts to summon up Islam's political heritage with the aim of proving that it exists at the theoretical and philosophical level, or even at higher levels than that. Studies include *Al Nadhariyat al Siyasiyah al Islamiyah* (Islamic Political Theories)<sup>1</sup> by Mohammed Diya al Deen al Ris, in which the author seeks to put the main Islamic political theories into their historical context by analysing and explaining the views of the main Islamic groups, including the Sunnis, the Shia, the Khawarij and the Mu'tazilah. The book contains chapter headings such as 'The Formation of the Islamic State', 'The Origins of Islamic Theories', 'the Imamate: What is it?', 'Islam and the Necessity for Governance', 'The Political Contract and Related Issues', 'The State – Conditions and Obligations', and 'Between the *Ummah* and the Ruler'.

Nivin Abdul Khaliq focuses on another political dimension in *Al Mu'aradhah fi'l Fikr al Siyasi al Islami* (*Opposition in Islamic Political Thought*)<sup>2</sup> and reviews the concept of opposition from both the semantic and legal angles. She compares the concepts of opposition in Islam and democracy, then goes on to speak about the 'roots of Sharia and the origins of opposition' and 'opposition – between *shura* and *al amr bi'l ma'ruf wa'l nahiy 'ani'l munkar* (commanding the good and forbidding the evil)'. She then examines the main opposition schools in Islamic thought, which she lists as the Khawarij, the Shia, the Mu'tazilah and Abu Hanifah. [?????Is Abu Hanifah correct here? Not Ahmed Ibn Hanbal? Tr.]

1 Al Ris, Mohammed Diya al Deen *Al Nadhariyat al Siyasiyah al Islamiyah* (Islamic Political Theories), Dar al Ma'aref, Cairo, 1967.

2 Khaliq, Nivin Abdul, *Al Mu'aradhah fi'l Fikr al Siyasi al Islami* (Opposition in Islamic Political Thought), Maktabat al Malik Faisal, Cairo, 1985.



Hamid Abdul Majid has produced two philosophical/theoretical studies. The first, entitled *Theory of Political Power: An Analytical Study of Abu'l Hasan al Marudi's Book, Tashil al Nadhar wa Ta'jil al Dhafar fi Akhlaq al Malik wa Siyasat al Mulk (The Sovereign's Ethics and the Policy of State)*,<sup>1</sup> <sup>2\*</sup> is an attempt to explain al Marudi's vision of the origins, nature, aims, development and shortcomings of political power. The author also takes a philosophical look at Islamic political heritage, including the ideological and cultural context of politics and how to interpret political events at different levels. The analytical study examines the establishment, nature, functions, roles, shortcomings and collapse of political power.

The second study, by the same author, entitled *Al Wadhifah al 'Aqidiyah li'l Dawlati'l Islamiyah ... Dirasah Manhajiyah fi'l Nadhariyah al Siyasiyah al Islamiyah (The Creedal Function of the Islamic State ... a Methodological Study of Islamic Political Theory)*,<sup>3</sup> arrives at several significant conclusions, including:

1. That a study of the creedal function of the Islamic state can fill the gaps in contemporary political theory vis-à-vis the human aspects of the theory of the state's functions.
2. That a study of the creedal functions of the state (in an Islamic context) will contribute to an understanding of the political history of the Islamic state.

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1 Majid, Hamid Abdul, 'Theory of Political Power: An Analytical Study of Abu'l Hasan al Marudi's Book – *Tashil al Nadhar wa Ta'jil al al Dhafar fi Akhlaq al Malik wa Siyasat al Mulk (The Sovereign's Ethics and the Policy of State)*', *Al Muslim al Mu'asir*, 25th year, No. 97, September 2000.

2 \* Al Marudi's writings may be regarded as an early contribution to Islam's political heritage. See, for example:

bin Said, Said *Al Fiqh wa'l Siyasah: Dirasah fi'l Tafkiri'l Siyasi 'inda'l Marudi (Fiqh and Politics: A study of al Marudi's Political Thought)*, Dar Toubqal, Casablanca, 1989.

al Baghdadi, Ahmed Mubarak, *Al Fikr al Siyasi 'ind Abi'l Hasan al Marudi (Abul Hasan al Marudi's Political Thought)*, Mu'assasat al Shiraa' li'l Nashr wa'l Tawzi', Beirut, 1983.

Basyouni, Salah, *Al Fikr al Siyasi 'ind al Marudi (Al Marudi's Political Thought)*, Dar al Thaqafah li'l Nashr wa'l Tawzi', Cairo, 1983.

3 Majid, Hamid Abdul, *Al Wadhifah al 'Aqidiyah li'l Dawlati'l Islamiyah ... Dirasah Manhajiyah fi'l Nadhariyah al Siyasiyah al Islamiyah (The Creedal Function of the Islamic State ... a Methodological Study of Islamic Political Theory)*, Dar al Tawzi' wa'l Nashr al Islamiyah, Cairo, 1993.



3. This study also offers a model of knowledge derived from Divine Revelation, which will help lead to an understanding of the concept of the state, its origins and its development.

With regard to the institutional aspect of the Islamic political system,<sup>1</sup> a study by Nahid Arnous, focuses on the ideological foundations of the concept of institutions in Islam. In her second chapter the author speaks of the institutional dimensions of Islam, while the third chapter deals with the different types of institutions in Islamic political thought and analyses a number of political institutions, the rules governing their functions, and the conditions, duties, responsibilities and work procedures of their employees.

## 5. Investigating Rights; Human Rights – the Rights of *Ahl Al Dhimmah* (Non-Muslims in an Islamic State)

One contemporary area covered by political *fiqh* is the question of human rights in Islam, including the rights of *ahl al dhimmah* (non-Muslims in a Muslim state) and the position of the present-day Islamic state on the traditional view of them in matters such as *'ahd al aman* (pledge of security) and the *jizyah* (tax on non-Muslims in an Islamic state).

Where human rights are concerned, there have been several studies on the importance attached by the Islamic Sharia to basic principles such as freedom, equality and justice. In fact Mohammed Amarah sees these as necessities, not rights<sup>2</sup>, while al Zuhayli demonstrates that there is a strong relationship between the goals of the Sharia and those rights<sup>3</sup>. Al Bitani refers to the active promotion of human rights in the Islamic political system<sup>4</sup>, while other studies point to the universality of human rights in

1 Arnous, Nahid Mahmoud, *Al Mu'assasah fi'l Nidham al Islami: Risalat Majister (The Institution in the Islamic System: Master's degree Thesis)*, Cairo University, Faculty of Economics and Political Sciences, 1993.

2 Amarah, Mohammed, *Al Islam wa Huquq al Insan, Dururat, La Huquq (Islam and Human Rights, Necessities, not Rights)*, Alam al Ma'rifah, Kuwait, No. 89, May 1985.

3 Al Zuhayli, Mohammed and others, *Huquq al Insan Mihwar Maqasid al Shari'ah (Human Rights are Pivotal to the Aims of the Sharia)*, Kitab al Ummah, Qatar, No. 87, April 2002.

4 Al Bitani, Munir Hamid *Huquq al Insan bain al Shari'ah wa'l Qanun (Human Rights between the Sharia and the Law)*, Kitab al Ummah, Qatar, No. 88, May 2002.



Islam compared with their restricted nature in the Western context. This can be clearly seen in the Islamic Declaration of Human Rights<sup>1</sup>, and also in comparative studies between human rights in Islam and human rights in the West<sup>2</sup>.

The most serious subject tackled by this trend is the question of the rights of *ahl al dhimmah* in the Islamic community. One new element here is a radical new approach that considers it essential to do away with the expression '*ahl al dhimmah*' altogether and replace it with a new concept, that of '*muwatanah*' (citizenship); the majority view on this subject maintains that 'as our societies now include all citizens, regardless of their religions, and as the state exists on the basis of *muwatanah*, these two factors preclude any continued need for the concept of *ahl al dhimmah*, and even the use of the term itself, since the basis is equality between all citizens.'<sup>3,4</sup>

## 6. Political *Ijtihad*

Political *fiqh* has faced a 'knowledge crisis' ever since the fall of the Caliphate in 1924 and right up to the present day, which has been exacerbated by a number of changes that have taken place in the contemporary political arena.

Some aspects of this crisis are due to political *fiqh*'s inability to respond ideologically to the questions put before it – or imposed upon it. These cover a number of areas, including freedoms, democracy, pluralism and institutionalism.

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1 Al Ghazali, Mohammed *Huquq al Insan baina Ta'alim al Islam wa l'lan al Umam al Muttahidah (Human Rights between the Teachings of Islam and the UN Declaration)*, Dar al Da'wah, Alexandria, 1993. See also *Al l'lan al Islami li Huquq al Insan (The Islamic Declaration of Human Rights)*, ed. Mohammed Salim al Awa, Dar Nahdat Misr, Al Tanwir al Islami Series No. 50, Cairo, 2000.

2 Uthman, Mohammed Fathi, *Huquq al Insan bain al Shari'ah al Islamiyah wa'l Fikr al Qanuni al Gharbi (Human Rights between the Islamic Sharia and Western Legal Thinking)*, Dar al Shuruq, Cairo, 1982.

3 Al Mutawakkil, Mohammed Abdul Khaliq, 'Islam and Human Rights' in *Huquq al Insan al Arabi (Arab Human Rights)*, Centre for Arab Unity Studies, Beirut, 1999, P. 109.

4 See also Howaidi, Fahmi, *Muwatinun La Dhimmiyun (Citizens, Not Dhimmis)*, Dar al Shuruq, 2005, and al Awa, Mohammed Salim, 'The Relationship between Muslims and the People of the Book' in *Al Muslim al Mu'asir (Modern Muslim)*, 22nd year, No. 85, October 1997.



Political *fiqh* has endeavoured to answer these questions, but the answers have taken the form of individual *ijtihad* and have tended to be incomplete. A glance at some of those attempts reveals that they have generally been defensive or reactive. At times this has been necessary, but it may also indicate the lack of a convincing Islamic political *ijtihad* strategy capable of setting goals, plans, programs and priorities.

From this trend we may summarise some of the main contemporary political issues dealt with on the basis of individual *ijtihad* as:

**1. Freedoms:** A study by Rached Ghannouchi entitled *Al Hurriyat al 'Aamah fi'l Dawla'l Islamiyah (Public Freedoms in the Islamic State)*<sup>1</sup> discusses the subject of freedom and raises a number of basic questions, including: Does the concept of human rights exist in Islam? Does the concept of the state exist in Islam? What is the relationship between it and the concepts of the state in modern Western culture? What are the main political dimensions of *shura*? What guarantees of freedom are there in Islam?<sup>2</sup>

**2. Institutionalism:** One of the main issues in contemporary Islamic political thought is what is known as 'institutionalism' or 'an institution-based state'. Political *fiqh* has a fundamental role to play here, particularly in producing a vision of the institutions of the Islamic state that it hopes to establish. In this connection, Jamal Atiyah has produced a general overview of the main institutions of a modern Islamic state and has offered a detailed picture of the nature and functions of those institutions, which include:<sup>3</sup>

<sup>1</sup> Ghannouchi, Rached, *Al Hurriyat al 'Aamah fi'l Dawla'l Islamiyah (Public Freedoms in the Islamic State)*, Centre for Arab Unity Studies, Beirut, 1993.

<sup>2</sup> See also Arnous, Nahid, *op.cit.*, and Jad, Abdullah, 'The Institution in Islam' in Aref, Nasr (Tahrir), *Qadaya Ishkaliyah fi'l Fikr al Islami al Mu'asir (Problems in Islamic Contemporary Thought)*, International Institute of Islamic Thought, 1997.

<sup>3</sup> See details of these institutes' discussions on their practical applications, including Atiyah, Jamal, 'Towards an Institutional View of the Islamic State' in *Al Muslim al Mu'asir (Modern Muslim)*, 26th year, No. 104, June 2002, and by the same author, 'Justice and *al Amr bi'l Ma'ruf wa'l Nahi 'ani'l Munkar* Institutions' in *Al Muslim al Mu'asir (Modern Muslim)*, 27th year, No. 105, September 2002, and by the same author, 'Jihad and Missionary Institutions in the Islamic State', in *Al Muslim al Mu'asir (Modern Muslim)*, 27th year, No. 107, March 2003.

- An *ijtihad* institution.
- *Shura* institutions.
- Justice institutions.
- *Amr bi'l ma'ruf wa'l nahiy 'ani'l munkar* institutions.
- A *zakat* institution.
- A building development institution, and, finally,
- An Islamic Caliphate institution.

**3.** Pluralism: Political *fiqh* offers a wide-ranging definition of pluralism based on the *Holy Qur'an* and the Sunnah of the Prophet (PBUH), and it draws examples of political pluralism from Islamic history, particularly the time of the Rightly-Guided Caliphs. Contributions in this field include a study by Mohammed Amarah entitled *Al Ta'addudiyah ... al Ru'yah al Islamiyah wa'l Tahaddiyat al Gharbiyah (Pluralism ...the Islamic Vision and Western Challenges)*,<sup>1</sup> as well as Nivin Abdul Khaliq's *Al Ta'addudiyah wa'l Ikhtilaf (Pluralism and Differences of Opinion)*<sup>2</sup> and *Al Ab'ad al Siyasiyah li Mafhumi'l Ta'addudiyah (The Political Dimensions of the Concept of Pluralism)*<sup>3</sup>. The second of these studies deals with such questions as 'The Islamic Alternative and its Position on Pluralism' and 'Partisan Views on the Islamic Alternative Position on Pluralism.'

**4.** Government and the ruler in the Islamic state: The most important issue faced by political *ijtihad* is the nature of government and the ruler in Islam. Should it be a religious government or adopt the Western civil model or a church theocratic system? There is consensus that this should not be the case and that the government, or state, in Islam should be 'Islamic', ie. that it should combine the best of this world and the next and shun any form of despotism or oppression. This point is made clearly by Ahmed Shawqi al Fanjari in his book *Kayfa Nahkum bi'l Islam fi Dawlah 'Asriyah?*

<sup>1</sup> Amarah, Mohammed, *Al Ta'addudiyah ... al Ru'yah al Islamiyah wa'l Tahaddiyat al Gharbiyah (Pluralism ... the Islamic Vision and Western Challenges)*, Dar Nahdat Misr, Cairo, 1997.

<sup>2</sup> Khaliq, Nivin Abdul, 'Pluralism and Differences of Opinion' in *Al Muslim al Mu'asir (Modern Muslim)*, 19th year, Nos. 75 and 76, July 1995.

<sup>3</sup> Khaliq, Nivin Abdul, 'The Political Dimensions of the Concept of Pluralism' in *Al Muslim al Mu'asir (Modern Muslim)*, 20th year, No. 77, October 1995.



(*How Can We Rule by Islam in a Modern State?*)<sup>1</sup> This study covers a range of topics such as ‘Why should One Rule by Islam?’ ‘What do the Muslims of today understand by the expression “Rule by Islam”?’ ‘How can we achieve Islamic rule in the modern age?’ ‘Islam and Opposition’, ‘Islam and Political Parties’, ‘Minorities in an Islamic State’, ‘The Islamic constitution’, ‘Public and Political Freedoms’, ‘Safeguards of Freedom’ and ‘The Principle of *Shura* in the Twentieth Century’.

A study by Laith Zaidan entitled *Masa’alat al Hukkam fi’l Islam (The Accountability of Rulers in Islam)*<sup>2</sup> deals with several important points before concluding that ‘monitoring the ruler’ is an Islamic obligation. The introductory chapter – ‘The Authority and Renewal of Islamic Thought’ – explains the causes of ‘the Muslim crisis’, and ‘being detached from reality’. Chapter One speaks of the principle of ruler accountability in Islam and discusses the nature and aims of Islamic government, the obligation for rulers to be accountable to the *ummah*, the contract of allegiance, and the *ummah*’s right to *shura*, *al amr bi’l ma’ruf wa’l nahiy ‘ani’l munkar* and the principle of counsel. Chapter Two examines the notion of the accountability of rulers in Islam and the sovereignty of the people and deals with such topics as custodianship on behalf of the *ummah*, the community’s responsibility, freedom, equality, resisting injustice and oppression, equality before the Law, and Divine governance and the sovereignty of the people.

1 Al Fanjari, Ahmed Shawqi, *Kayfa Nahkum bi’l Islam fi Dawlah ‘Asriyah? (How Can We Rule by Islam in a Modern State?)*, Al Hay’ah al ‘Aamah li’l Kitab, Cairo, 1990.

2 Zaidan, Laith, *Masa’alat al Hukkam fi’l Islam (The Accountability of Rulers in Islam)*, *Al Watan*, online daily newspaper, [alwatanvoice.com](http://alwatanvoice.com), 30th December 2005.