

Arab Republic of Egypt

Ministry of Awqaf

State Related Jurisprudence

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In the Name of Allah, Lord of Mercy, Giver of Mercy

“I only want to put things right as far as I can. I cannot succeed without Allah’s help: I trust in Him, and always turn to Him....”

(The Qur’an, ١١:٨٨)

In the Name of Allah, Lord of Mercy, Giver of Mercy

Introduction□

All praise is due to Allah, the Lord of the worlds; May Allah's Peace and Blessings be upon the seal of all the Prophets and Messengers, Muhammad Ibn Abd Allah, his Household, Companions and those who follow his guidance till the Day of Judgment.

The strength of a state means the strength of its citizens, its faith, and the nation as a whole. There is a statement that tells, "A poor man in a rich and strong country is better than a rich man in a poor and weak one, because the former has a state that protects him inside or outside the country, while the latter lacks such protection."

Hence, building a state and strengthening its institutions are national necessities by the *Shari'ah*. The more the citizens believe in the rights of their country, their loyalty to it, their readiness to sacrifice for its sake, the more this country will be strong. However, with the weakness of such loyalty and the will to sacrifice with one's soul and wealth, this country will weaken, fall, and be divided. Moreover, supporting the just ruler is a national and legal requirement, without which countries cannot proceed.

However, the issue of the state-building is not easy matter. It is a very complex process that requires much experience, strong determination, continuous work, and an insightful vision in various areas and fields that enhance the strength of the state and maintain its security and stability. Add to this, the ability to quickly perceive the real world, understand its challenges, find out its secrets and handle it based on scientific and logical grounds in light of the accumulated experiences.

Moreover, we affirm that nations and countries cannot be built without science, hard work and serious efforts. Nations that do not produce their basic needs will be dependent on others and shall not control their own affairs or have their own independent decision.

In addition to knowledge and work, it is necessary to be loyalty to one's homeland, giving preference to the public interest over personal one. We must understand that the interests of our homelands are part of objectives of religions. Whatever matter undermines the power or entity of the state is considered contrary to the values of religious, human and national values. Moreover, Sacrificing for the sake of one's homeland is a top sort of martyrdom for the Sake of Allah, the Almighty.

No nation can survive without values or morals. Nations and civilizations that lack these essential factors bear the causes of collapse within their structure, and their destiny will be collapse and disappearance.

We must differentiate between State-relating Jurisprudence that raises awareness about the challenges facing the state, the ways of preserving it, the necessity and legitimacy of defending it, and making sacrifices for its cause on one side; and the pragmatism of the Group that builds its foundation on its endeavors to weaken the state and overthrow its system to replace it with its own. The Group struggles to do so even if these actions led to the collapse of the state itself, wiping it off the world map, reducing it to small, ineffective entities, or even ending its existence through tearing it apart and paving the way for other states or powers to dominate it.

The attempt of terrorist groups to restate their members in twenty-five countries to rebuild their lines and demolish the countries that they can attack, requires us to work seriously and comprehensively to refute their deviated claims and misconceptions. These groups are just tools at the hands of the enemies of our Islamic and Arabic nation.

We affirm that losing our homeland means losing our own character, identity, security and protection. It means losing everything; it means humiliation, diaspora, alienation, and loss of memories of our childhood and necessarily the loss of parents, beloved people and companions.

Human history, with its different eras, tells us about tragic examples of the loss of the homeland, and the sufferings and humiliation experienced by those who lost their homelands. Abu Al-Baqaa' Al-Rindy, a poet, described the sufferings of the kings of Al-Tawaa'if after they lost their homeland:

In the past they were kings in their homeland

But today they are slaves in evil land

Reviewing history, we find that no state that has fallen except by reason of treason. This directs our attention to the danger of traitors and agents. It is thus necessary to keep the word of the state strong and superior, and to direct the sword of the state against all traitors and agents, and those who support them, provide shelter for them, or hide them, because they are a serious danger to religion and the state.

We do not invent a new religion, and this will not happen. We will not either allow anyone to manipulate the firm principles of our religion. We just search for the correct understanding of our religion through correcting the misconceptions and deviations. We want to encounter the radical thought and prevent the radicalization of new members. We need to besiege terrorism and eliminate radicals wherever they are.

This requires full attention to concern and to avoid negligence, as the Qur'an directs our attention to the idea that enemies may exploit the moments of our negligence saying, "The disbelievers would dearly like you to be heedless of your weapons and baggage, in order for them to take you in a single assault." It goes without saying that knowledge, thought and culture are key weapons to confront terrorism. This requires many efforts to correct the misconceptions raised by radical groups.

This Book presents a number of researches from the proceedings of the ۳th Conference held by the Supreme Council of Islamic Affairs held on ۱۵-۱۶/۹/۲۰۱۹ C.E. under the title "The Jurisprudence of State-Building...A Contemporary Vision", along with the Conference recommendations and Cairo Document for Citizenship.

I sincerely seek the Pleasure of Allah; He is Sufficient for us and the best Disposer of affairs.

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Mabrouk
Minister of Awqaf
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Islamic Affairs
Member of the Islamic Research
Academy,
Al-Azhar Al-Sharif**

Cairo Citizenship Document

With the participation of about three hundred scholars from different countries in the ٣٠th Conference of the Supreme Council for Islamic Affairs convened on Sunday and Monday, ١٦-١٧ Muharram ١٤٤١ AH, corresponding to ١٥-١٦ September ٢٠١٩, under the patronage of President Sisi and chaired by Prof. Muhammad Mukhtar Gomaa, Egypt's Minister of Religious Endowments (*awqaf*), entitled "State-building Jurisprudence: A Modern Jurisprudential Vision", the participators have agreed on issuing the following document: "Cairo Citizenship Document".

There is almost complete unanimity between all participators on the fact that equal citizenship is one of the key fundamentals of national security, stability and prosperity. The countries that achieve equal citizenship are the most secure, prosperous and advanced while those plagued by religious, racial or sectarian wars are beset by chaos that leaves destruction everywhere: "But God loveth not mischief" [٣: ٢٠٥].

The participators have stressed on the following points:

١. Citizenship is an act of giving, belonging and respecting all state symbols including its flag, anthem and all material and moral symbols.
٢. It is imperative to respect law, constitution and national policies and

institutions.

۳. Muslims must respect the citizenship contract between the state and its subjects whether they live in a Muslim-majority or a Muslim-minority country.
۴. Citizenship jurisprudence is not restricted to the relations between people of different faiths, although reinforcing the principles of co-existence between them is one of its fundamental principles.
۵. The concept of citizenship is broad enough to achieve all aspects of justice between all people, without any discrimination based on religion, color, gender, race or school of thought. Women should be given their complete rights, believe in all aspects of national pluralism and believing in diversity as a symbol of national richness.
۶. We should take care of the elderly and people with special needs. The value of material and moral solidarity between fellow citizens should be optimized. This is ensured by the enlightened understanding and proper application of the doctrine of collective duty (kifaya).
۷. We should promote the principle of rights and obligations between the state and its subjects on the one hand and between the fellow citizens themselves on the other. As long as a citizen is keen on enjoying his/her rights, he/she should fulfil his/her obligations towards the state and fellow citizens. The state should provide a

decent life for its subjects and secure their rights both at home and abroad.

- Λ. All religious, cultural, educational and media institutions should work hard to elucidate the concept of state and the need to sustain it and help it prosper. These institutions should work on a comprehensive and joint strategy to refute the state-related allegations circulated by the extremist formations.
- ϣ. It is recommended that a working group of the participating scholars be formed to represent and circulate this document worldwide.

All participators in the Conference have stressed their approval and adoption of all clauses included in this important historical document.

Recommendations of the ٣th Conference of the Supreme Council for Islamic Affairs

With the participation of about three hundred scholars from different countries in the ٣th Conference of the Supreme Council for Islamic Affairs convened on Sunday and Monday, ١٦-١٧ Muharram ١٤٤١ AH, corresponding to ١٥-١٦ September ٢٠١٩, under the patronage of President Sisi and chaired by Prof. Muhammad Mukhtar Gomaa, Egypt's Minister of Religious Endowments (*awqaf*), entitled "State-building Jurisprudence: A Modern Jurisprudential Vision",

Reviewing the conference research papers and after two successive days of strenuous scientific work, the participants came up with the following recommendations:

١. It is a religious, national, social and civilizational imperative to build and sustain the state. It is also a religious and national must to combat all subversive attempts to disrupt national security and stability.
٢. A modern state is based on its people, land, regime and international legitimacy. It is not permissible for any group or formation to impose its own way of life on people in the name of religion and beyond state authority. If they did so, they must be confronted by all possible means and deemed outlaws and betrayers of both the religion and the state.

٣. It is stressed that the national interests and maintaining national security are inherent in Shariah objectives (*maqasid*) and are among the six essentials of human well-being (*kulliyyat*) that must be protected.
٤. Muslims must respect the citizenship contract between the state and its subjects whether they live in a Muslim-majority or a Muslim-minority country.
٥. It is essential to refute the basis of the deviated discourse of boycotting the state and its proponents and combat their ideologies on cultural, media and electronic platforms.
٦. State-related concepts must be clearly defined and any distortions must be corrected on a regular basis.
٧. It is necessary to combat the distorted concepts adopted by the extremist groups about the state, choosing the ruler and the rights of both states and subjects and to replace them with the correct and constructive state-related concepts in Islamic thought.
٨. Islam is a faith that promotes the foundations of national constitution, law, and economic and social systems. It has its own controls and practical examples that support this principle, thus thwarting the extremists' attempts to make false comparisons between religion and law, world, or state. It is our role to use religion to develop the world not vice versa.

٩. Islam does not introduce a fixed mold or a standardized regime. Rather, it approves whatever sustains the public good in any way that achieves the people's will based on consultation (*shura*) and democracy.
١٠. The mechanism of choosing the ruler varies according to time and place. It is not a rigid or a stereotypical mechanism.
١١. Rallying behind the just ruler is a religious and national requirement for sustaining national security and Shariah objectives.
١٢. We should reinforce and maximize cultural commonalities and human values between fellow citizens and to respect the peculiarities of all faiths.
١٣. It is essential to do justice and equality between fellow citizens with respect to their political, economic and cultural practices, without discrimination based on race, color or faith.
١٤. The status of institutions-run state should be optimized while promoting institutional work that boosts prosperity and stability and fighting distorted ideologies and extremist formations in accordance with law and constitution.
١٥. It is essential to put a comprehensive strategy to counter terrorism and to expand confrontation to include sieging the extremists and hampering their attempts to establish new hotbeds or gain new lands to host their subversive practices.

١٦. We should support the events and practices that promote state-building and maximize the values of belonging, citizenship and countering terrorism and corruption.
١٧. Homeland is and for all fellow citizens. It is not a home for one group only and cannot thrive without their solidarity. Therefore, they should join hands to make it prosper, sustain its security and maintain national assets.
١٨. We need to make broad international political, military, security, cultural, media partnerships to siege terrorism and extremism.
١٩. Agents and mercenaries should be uncovered. If man does not make good to his own country, neither will he make good to himself nor to humanity. He will be a danger wherever he turns.
٢٠. We must spare no pains to counter extremist ideology, while constantly refuting the false allegations and rumors intentionally circulated by the extremist formations.
٢١. All religious, cultural, educational and media institutions should work hard to elucidate the concept of state and the need to sustain and help it prosper. These institutions should work on a comprehensive and joint strategy to refute the state-related allegations circulated by the extremist formations.

٢٢. It is important to give special attention to the portfolio of Islamic call (*da'wa*) and the dissemination of enlightened moderate thought in Africa in the light of the historical relations between Egypt and Africa, especially while the African Union is now chaired by Egypt.
٢٣. The youth should be ideologically protected against the attempts of falsifying their consciousness via social media.
٢٤. The international community should be urged to impose deterrent sanctions against the states and the organizations supporting and funding terrorism.

**Recommendations of the ٣^٠th International Conference of the Supreme
Council for Islamic Affairs**

Held in Cairo on:

September ١٥-١٦, ٢٠١٩

Entitled:

"Jurisprudence of State Building .. A Modern Vision"

Recommendations of the ٣٠th International Conference of the Supreme Council for Islamic Affairs

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**Selected Researches from the Proceedings of the
Conference**

Protection of the Public Interest of the State in Islamic legislation¹

All Praise is due to God alone! May Allah's Peace and Blessings be upon the seal of all Prophets, our master and Prophet Muhammad Ibn Abd Allah, the mercy sent by Allah, and the grace granted to us, and upon his Household, Companions and those who follow his guidance!

The word (Right) has always been a subject of great controversy between *Shari'ah* jurists and legal jurists in terms of definition and comprehending all of its aspects. The controversy may have arisen from the nature of the word, and that the term cannot be separated from its manifestation. Thus, when the term is used, one would think directly of its subject matter. The subject matter of "right" lies in its status, scope and fields. It is difficult that the scholars' sayings agree on one definite meaning that everyone accepts.

The Importance of the Balance between the Public Right and Private Right in the Country:

The word "right" is a word that is repeated much throughout the day and night by all people and all races. However, if a person asks another about its meaning he may say something not accepted by the questioner, and if he agrees to it, another one may disagree. The problem of stating a definite meaning for "right" is not confined to the man-made law. It is also found in the *Fiqh* (Islamic Jurisprudence). There is no one agreed upon definition for

¹ This research is presented by Prof. Abd Allah Mabrouk Al-Najjar, an associate professor at Al-Azhar University, and a member at Al-Azhar Research Academy.

the “right” among all *Fuqahaa’*. In a compromising attempt, it is said that “right” is: “what is ruled by Allah”.^۶ This is true. However, the identification of “that is ruled by Allah” remains disputed by all scholars in light of *Shari’ah* evidence and schools of Islamic jurisprudence. Thus, the disagreement remains standing.

In our view, the origin of that difficulty stems from two things:

First: The difference of the viewpoint regarding the two parties involved in this “right”: it is certain that the debtor’s view of the right differs from that of the creditor. If each of them was asked to give a definition of the “right”, he would formulate it in a different statement; the debtor would reduce the amount of the right and the creditor would maximize it.

Second: The difference of intellectual doctrines -on the human level- in viewing “right”. Some of these doctrines distribute elements of the right between the individual and society in a way that maximizes the right of society at the expense of the right of the individual, or amplifies the right of the individual at the expense of the right of society. However, if it is requested from a follower of the collective approach, or the so-called (socialist) to define “right”, he would formulate it in terms that reduce the rights of individuals in favor of the rights of society, and accordingly the individual would do as much efforts as possible but gains only very little. However, in the individual doctrine, the key attention

^۶ See: Al-Shatibi, *Al-Muwafaqat*, ۶/۱۱۸, Al-Matba’ah Al-Tijariyyah; Dr. Muhammad Sallam Madkour, *Tareekh Al-Tashri’ Al-Islami wa Masadiruh*, p. ۶۴۴, Al-Fajjalah, ۱۹۸۰.

when defining “right” goes to the right of individuals to possess whatever he wants, even if his wealth exceeds the society.

Selected definition for “right”

However, this difference does not prevent the agreement that “right” must be supported and advocated, and that the concept of “right” expands to include all that the Almighty Allah asked His servants to abide by. In its general terms, “right” is divided into two types on which no one disagrees, namely the Public right and the private right, and that the public right is given preference to the private right.

If the jurisprudential approaches differed on the definition of the right, the Islamic legislation has laid down the legislative foundations that guarantee supporting “right”, and the achievement of its fruits in the stability of the human society, its progress, and the building of the modern state. This comes through the establishment of correct foundation for the two types of rights: (public right and private right) and connecting them to one another in order to achieve this noble national goal, by achieving a balance between these two types of rights.

It is well known that the balance between public and private rights is one of the most important imperatives to build the contemporary state, and that the imbalance in dealing with these two types of rights is one of the causes of the weakness of the state and a factor of its collapse.

The present research reveals the seriousness of the problem of the imbalance between the public and private rights, highlights the legal

controls for preserving the public interest, and states solutions to build a modern national state that achieves an international position that it deserves. The present research plan consists of two main sections

First: Explaining the criteria for the distinction between public right and private right.

Second: Mechanisms of balance between rights to protect the public interest of the state.

I pray to the Almighty God to protect and save our Country Egypt, keep the high status it has achieved on the international level.

I also ask the Almighty Allah to accept this work from me, and to make it pure for His sake, for it is Allah Who is our Guardian and the One Who guides us!

First Sections

Criteria for Distinguishing between the Public Right and the Private Right

“Interest” is something needed and necessary for people in life, as they get its fruit and goodness sooner in their world. They need it and cannot dispense with it. It represents the reason for providing a decent life for them. However, looking at it from the side the Creator Who created people and legislated for them the rights in order to achieve these interests in life is a different matter. The Creator does not need a right or an interest, as He is Self-Sufficient. People stand in dire need for Allah to help them with the “rights” that He decided for them, but He - the Omnipotent- is Self-Sufficient and does not need them or their rights.

Confirming this meaning, the Almighty Allah says, “People, it is you who stand in need of God- God needs nothing and is worthy of all praise- if He wills, He can do away with you and bring in a new creation, that is not difficult for God.” (The Qur’an ٣٥: ١٥-١٧), and He also says, “God is the source of wealth and you are the needy ones.” (The Qur’an ٤٧: ٣٨). These Qur’anic verses and others indicate that God is the source of wealth, and by this attribute he is in no need for anything that the creatures need; they are in need of Him, but He is in no need for. Here, the meaning of God’s right and the benefits of the interest are determined.

The Fruits of Benefits

From the legal evidence, the statements of the jurists, and the meanings deduced by scholars, it is clear that: God does not need a right. However, if

this is the case, why does God ask His servants to do “His right” and respect it? Moreover, why did God add the word “right” to Himself while He does not need it? The answer to these two questions is as follows:

The benefit from God’s rights goes to His servants:

The Almighty Allah did not decide these rights for Himself or for it to be beneficial to him, because He –the Omnipotent- is self-sufficient and He does not need these rights. The Omnipotent Allah decided these rights to be beneficial for the servants, and to form the “public right” as opposed to the “private right”. If the benefit of the private right is limited and does not exceed the individual’s limits or his family, the public right will benefit all people, so that each of them finds a share of it through his own private right.

Moreover, the public right represents the fence that protects private rights, and it gives all people the opportunity to benefit from all the rights stated by the Lawgiver, within the framework of the public and private rights.

This is why the “right” added to the Almighty Allah is defined as: “The right that all people benefit from without being limited to one of them.” Here the scholars of *Usul* state that: the right of God is related to the public benefit of all people, and not limited to one of them. Allah has attributed that “right” to Him as a form of honoring and glorifying it because it benefits all humans. Otherwise, there is no meaning to add these rights to

Allah.^۲ The Almighty Allah says, “Whatever is in the heavens and in the earth belongs to God.” (The Qur’an ۲: ۲۸۴), and says, “To Allah belongs the kingdom of the heavens and the earth and everything in between. He creates whatever He wills.”(The Qur’an ۱۰: ۱۷) and He Also says, “The heavens and earth and all that is between them belongs to Him: all journeys lead to Him.” (The Qur’an ۱۰: ۱۸)

This means that every member of society -even if he does not have any of the private rights- must find a right of God to fulfill his needs, and this guarantees for him a generous life and ensures that he exercises his rights as a human being. For example, the benefits of the public facilities like rivers, streets, and squares, are not limited to a specific individual, but for every servant of God without distinction between a person and another. Thus, the right to pass through public roads is a guaranteed for every person; drinking from rivers and pure water resources is a right for all people; the same applies to benefiting from public areas and facilities such as schools, hospitals, and transportation. Through the public right every individual enjoys that which he cannot achieve through his private rights. For example, a person may not be able to buy a ship or an aircraft, but this does not mean that he cannot benefit from the public facilities.

The scope of the benefiting from God’s right is wider than the scope of the benefiting from the private right, as it provides the individual with many benefits that he is unable to get on his own capacity. This is why the benefit

^۲ Dr. Muhammad Hassan Fayed, *Usul Al-Fiqh Li Al-Hnafiyyah*, (Dar Al-Ittihad Al-Arabi), P. ۸.

of the public right is more beneficial, and its fruits are more. The interest that comes from it is not limited to the individual, but extends to the whole country and provides the society with the reasons of sufficiency, dignity, stability and progress. Thus, the society will be able to achieve God's will from the creation of man to develop the earth with values and virtues, building and civilization, until the end of time.

Legislative Purpose of Attributing "rights" to God

The legislative purpose of attributing "right" to God is to draw people's attention to this right, so that they to pay it due attention and appreciation, because it is a right that has acquired a high position by linking it to Allah, the Almighty. This indicates that it is something of great value. The Almighty Allah honors it to make His servants respect it so that they may obtain its benefit and be happy in their world and in the Hereafter.⁴

Common Rights and Private Rights

People's use of rights is influenced by selfishness. Even when someone uses the term "right", he adds it to himself, saying: my right, my money, or my land. Had that "rights" not been stated equally among people through the "balance" between rights, people would have fought each other in an attempt to expand their rights, so that they would be richer and wealthier than others.

⁴ Dr. Muhammad Hassan Fayed, *Usul Al-Fiqh Li Al-Hnafiyah*, (Dar Al-Ittihad Al-Arabi), P. ٨.

This tendency towards selfishness in the use of private rights has affected the general culture of people in the field of dealing with the public right. Therefore, they tend towards greed, negligence, or carelessness. As a result, public rights became a vast field for two deficiencies in terms of people attitude towards the public rights:

First: Encroaching on Public Property

It is well known that public property is owned by all people, not by one particular individual. If an individual is appointed to serve, develop, and protect it, he does not do so as an owner. Rather, he does so as a job for which he receives remuneration.

Moreover, such job may drive the employee, if he lacks good conscience, to transgress the limits and steal the public property. Thus, such property turns to be a private property used only by this employee. Crimes such as encroaching on the public lands of the state and stealing public money are good examples of such deviated conduct that usurp the public property which is a right of Allah, and not allowed for personal use.

Second: Negligence in Preserving Public Property

Another thing similar to greed in dealing with the public money is the negligence, because preserving the property in some people's understanding is confined only to the private property. They think that public property is unowned property and it belongs to no body. It belongs to a presumed person which is the state or its bureaus, or its public facilities. Thus, sometimes there is a sort of indifference when dealing with

the public property. For example, rivers are not safe from encroaching by building on their shores, draining of waste water into them, or fishing from them by means that poison water and destroys water resources. Also, shop owners sometimes use parts of the road to show their goods; sometimes, people misuse public transportations. The same applies to schools, universities, buildings, hospitals, streets, lakes, and fields, parks, etc.

All such practices and others affect the public interests, and therefore, it is an important topic to discuss from the *Shari'ah* standpoint in order to deter people and prevent such practices.

The Second Section

Mechanisms of Balance between Rights to Protect the Public Interest of the State

This obvious flaw in dealing with the public right in comparison to private right have been dealt in the *Shari'ah*, which stated a rational policy to care for "rights" of Allah and develop the public interests in people's lives. This approach was adopted not only because the fact that benefits of the public interests are greater than the private rights, but also because respecting this right leads to the strength of nations and their advancement. Perhaps what we see of the universal norms and the morals and behavior of people in the East and West is the greatest evidence for this. We find that the countries that have developed in the West and in the East, did so because of the respect of their citizens for the public rights, and giving it more attention than the private right. Imam Mohammed 'Abduh (may Allah be merciful to him) when he traveled to the West a century ago, and saw the citizens' respect for their countries and the public rights, he gave his famous statement, "I saw Islam, but no Muslims; I got back to the East and saw Muslims, but not Islam." Sheikh Muhammad 'Abduh did not intend by this phrase to speak on a creedal issues related to Islam or other faiths. Rather, he was talking about a life phenomenon that affirms an Islamic meaning, even if the provisions and concepts of Islam are not present in the minds of those who do what Islam instructs us to do. It is a matter of causality, where causes lead to results, and this is the rule that Allah states in the creation. Whoever attains those reasons will reach his purpose, and

he who neglects them will not be fortunate to get the results. It is said, “God upholds the unbeliever state when it deals with justice, and defeats the Muslim state when it deals with injustice.” That is why injustice is forbidden for Muslims as it has for others. Abu Musa reported that the Prophet (PBUH) said, “Verily, Allah gives respite to the oppressor. But when He seizes him, He does not let him escape.” Then he (PBUH) recited, “Such is the Seizure of your Lord when He seizes the (population of) towns while they are doing wrong. Verily, His Seizure is painful (and) severe.”^o

Imam Muslim also narrated on the authority of Abu Umamah (may God be pleased with him) that the Messenger of God (PBUH) said, “Allah decrees the (Hell) Fire and debars Jannah for the one who usurps the rights of a believer by taking a false oath.” One man asked: “O Messenger of Allah! Even if it should be for an insignificant thing?” He said, “Even if it be a stick of the Arak tree.”^ʿ

In our view, the legislative policy for dealing with the public right, in a way that rebalances the relationship between it and the private right, is represented in two directions:

The first: Giving priority to the public right when it conflicts with the private right.

^oReported by Al-Bukhari, Chapter of “Exegesis of the Qur’an”, Hadith No. ٤٦٨٤; Muslim, Chapter of “Righteousness, and Etiquettes”, Hadith No. ٢٠٨٣.

^ʿReported by Al-Bukhari, Chapter of “Tawhid”, Hadith No. ٧٤٤٠; Muslim, The Book of “Iman”, Hadith No. ١٣٧.

The second: Determining the procedures that guarantee respecting the public right, in a manner that preserves the public interest.

This is to be explained as follows:

The First Approach: Giving priority to the public right when it conflicts with the private right:

The dispute among people concerning rights is a normal matter, because interaction is an ongoing process between people, and the performance of duties is required. Therefore, it is important to set the rules that govern the fulfillment of rights between people.

It seems from reviewing the statements of jurists and their proofs regarding this issue that there are two criteria for preference. The first of which is: The thematic criterion and the second is: intrinsic criterion standard.

First: The thematic criterion

This criterion is based on the rules of jurisprudence regarding preference, namely the maxim that states “the public right is given preference to the private right” or “the most expected interest is preferred to less expected one.” This is the view of Shafi’i jurists and Ibn Hazm. If the public right equals the right of God (Glory be to Him) and the private right equals the right of the servant, then the right of God is given priority to the right of the servant.^۷ A close opinion to this one is the opinion of Hanbali and Zaidi

^۷ Ibn Hazm, *Al-Muhalla*, ۹/۲۰۲, Al-Muniriyyah publication; *Sharh Al-Jalal Al-Mahalli ‘ala Al-Minhaj*, and *Sharh Al-Sheikh Umairah*, ۲/۱۳, DarIhya Al-Kutub Al-‘Arabiyyah.

jurists who said:the two rights are equal in deserving fulfillment.[^]Thus, it is certain that the equality of the public right with the private right means the preference of the public right, as this equality means to give the same degree of care and attention to the public right as given to the private one. Thus, thisview is thematic also as it is based on the theme of the right and the interests it produces for all people.

Second: the intrinsic criterion

This view is based on personal or subjective considerations regarding the right holder. According to this view, Imam Abu Hanifa and Maliki jurists opted that the right of the servant is given priority to the right of Allah.[^]

This approach is based on considering the condition of the beneficiary from the interests resulting from this right. Those beneficiaries may be a group of individuals or one individual. Even if he is one individual, his right is given preference. Otherwise, this individual may suffer deprivation. Thisgives him priority over others who suffer no such need.

The holders of this view did not provide evidence to support their opinion, except a good justification given by Imam Abu Hanifah who said, “The right of a servant is given priority to the right of Allah due to the need of the servant and the self-sufficiency of Allah,[^] as Allah said, “People, it is

[^] *Al-Sharh Al-Kabir, Al-Mughni* by Ibn Qudamah, ٢/٤٦٦, Al-Manar Publication.

[^] Al-Zayla'i, *Tabyeen Al-Haqa'iq*, Boulaq Publication, *Hashiyat Al-Dusouqi 'alaAl-Sharh Al-Kabir*, ٤/٤٥٨, Subeih Publication.

[^] A-Zayla'I, *Ibid*.

you who stand in need of God- God needs nothing and is worthy of all praise.” (The Qur’an ٣٥: ١٥)

This general speech is ambiguous, as the servant’s attributes cannot be compared to Allah’s attributes. One’s richness no matter how great is it, cannot be compared to Allah’s wealth. Moreover, poverty is impossible for Allah. It is more proper to compare a person’s poverty to other people’s poverty in order to hold an accurate comparison. It is known that the poverty of a given person is a special harm, and if it is compared to the poverty of all people, the latter will be more needed to be addressed, because this is a public harm. According to the legal maxim “Warding off public harm takes priority over prevention of private harm.

Public right takes priority over private right

The proofs of those who believe that God’s right is superior are stronger and clearer as the legal texts are explicit in the Prophet’s hadith. ‘A woman from the tribe of Juhainah came to the Prophet (PBUH) and said, ‘My mother had vowed to perform Hajj, but she died before fulfilling her vow. Should I perform Hajj on her behalf? The Prophet (PBUH) replied, “Perform Hajj on her behalf. Had there been a debt on your mother, would you have paid it or not? So, pay Allah's debt as He has more right to be paid.”^{١١}

^{١١} Al-Bukhari, *The Book of Jazaa’ Al-Sayd*, Hadith no. ١٨٥٢; see Al-Shawkani, *Nayl Al-Awtar*, ٤/٣٢٠.

Imam Al-Shawkani commented on the Hadith saying: “This proves that God’s right takes precedence over slave’s right, and it includes every public right in the human’s capacity.”¹²

Undoubtedly, giving public right priority will in turn activate charity channels in the society and provide assistance for a broad section of the deprived people who are in dire need for the means of decent life and dignity. The legislator necessitated providing this right for them.¹³

The Second Approach: the procedures that ensure respecting public interest:

This point includes a number of procedures that ensure respecting the public right, and thus protecting the public interest, through a set of actions, including:

First: Stating the responsibility of protecting the public right

Second: developing precautionary measures to protect the public right

Third: Strengthening punitive measures to protect the public right.

Each one will be dealt in detail

First sub-section: Stating the responsibility of protecting the public right

Responsibility for protecting public right vary in its conditions and the qualities of those who are in charge of it from these in the private right.

¹² Al-Shawkani, Ibid, P. ٣٢١.

¹³ See: My PhD from the Faculty of Shari’ah and Law, Cairo “*Awlawiyyat Istifaa’ AL-Duyoun: Dirsah Tatbiqiyyah Muqarinah fi Al-Fiqh Al-Islami wa Al-Qanoun Al-Wad’i*”, ١٩٨٤, P ٣٢٧.

Responsibility for the private right is an individual responsibility taken by the right holder himself, according to his competency. This competency might have intrinsic or acquired manifestation. These manifestations might affect the mental capacity, so that the right holder cannot improve its management and lose his right at the end, or he is replaced by a deputy or a guardian to handle that right, and the right in that case will depend on the righteousness or viciousness of this guardian.

Responsibility for public right is a collective responsibility. One who is in charge of it must be competent to safeguard it, and be able to well protect it. Collective responsibility contrasts individual responsibility. It is better and stronger in terms of safeguarding and protecting the right. In addition, such responsibility is harder than the responsibility for losing the private right, because if the private right is lost, it will only affect its holder, and its responsibility is restricted to losing his money, the penalty in that case is a civil one as he may file a case against the one who usurped his right. However, the responsibility for the public right is mostly criminal one.

According to Scholars of *Usul* and jurists: individual duty contrasts collective duty, and private right contrasts public right as well. Imposing collective duty is intended just for the achievement of the duty. It is directed at the whole society as a common obligation to establish the rights of the state, safeguard public facilities and take its responsibility very seriously. As long as there is no identified person to fulfill this right, the whole society is sinful before the Almighty God in case of negligence. This sin will still seize people who do not take serious steps to appoint a

responsible for safeguarding public rights or public affair until they choose a person for the duty.^{١٤}

Choosing a person to be responsible for the public affair or the collective duty must be based on efficiency or competence that is he must be competent and trustworthy. This choice must be objective one, free of any subjective reasons. The obligation of taking the responsibility of public affair is called a collective “duty” because it necessities that one who is in charge of it enjoy efficiency and ability to protect and safeguard it. Therefore, if there is only one individual who fits it, it turns into individual duty upon him.

Collective duty is a trust to the one in charge of it. Therefore, he must be able to control it and whoever chooses the incompetent is sinful. The Prophet (PBUH) said: “He who has any charge over Muslims and appoints a man although there is better than him, betrays God, His messengers and the believers”.^{١٥}

It is known that the collective duty is an effective tool for organizing public interests, jobs and professions, that not all people are able to perform, but only some people with competence, experience and qualification are the capable one to do so. The duty of other people is to help those responsible for these duties, as this is a form of cooperation for the sake of righteousness and piety and achieving what leads to the

^{١٤} Al-Soyouti, *Al-Ashbahwa Al-Naza’r*, P. ٤١; Al-Taftazani, *Al-Talweeh ‘ala Al-Tawdeeh*, ٢/١٥٩, Matba’atSubeih; See also: Dr. Muhammad Anis Ibadah, *Usul Al-Fiqh Li Al-Hanafiyyah*, P. ٢١; Ali Hasab Allah, *Usul Al-Tashri’ Al-Islamli*, p. ٣٧٤, Dar Al-Ma’arif.

^{١٥} Al-Mundhiri, *Al-Tarhibwa Al-Tarhib*, ٣/١٤٣.

common good in this world and the Hereafter.

The second sub-section: precautionary measures to protect the public right□

In order to protect the public right, the Islamic legislation has stated many things. However, there are two things that highlight the importance of this right, and lead to its protection; these two things are:

First: the fulfillment of the purpose of Allah from creating man

Second: Providing the means of a decent life for the next generations.

It is important to explain these two things:

First: the fulfillment of the purpose of Allah from creating man□

God has created people as successive generations that they follow each other. This succession cannot go on when it is centered on the private right whose benefit cannot exceed, in best conditions, the life of its holder or his heirs. So, if it is only the private right which concerns, then the next generation will be lost and the purpose of the development of land will not be achieved. Here comes the public interest whose benefit extends to all generations. This is why the God's will was to divide rights into two types: The private right, the public right; and the latter one includes all generations, while the former may only cover one or two generations. Thus, if it is only one type which is "the private right", then the future of all nations would collapse.

God obliged every human being to work for the good of others, even if he was certain that he would not gain the fruit of this action, or even if he was

certain that the Day of Judgment would come before the fruit of his plant grow. The Prophet (PBUH) said, "If the Final Hour comes while you have a palm-cutting in your hands, let him plant it."¹⁶

Second: Providing a decent Life for Future Generations□

In this context, the Prophet (PBUH) urged to care for future generations and provide the means for wealth and a decent life for them. It is reported that the Prophet (PBUH) said to Saad Ibn Abi Waqqas", "To leave your heirs rich is better than to leave them poor and begging from people."¹⁷

This Hadith indicates that a person is not allowed to leave the next generations lacking the means of life. Rather, one has a duty to provide for them the means of life that give them a decent life. This is why it is forbidden for a person to live for himself alone, without caring for the rights of future generations. If this will not happen, goodness will disappear, and there will appear only corruption. It is for this reason that Allah obliged people to work to fulfill this noble purpose. Also, the human conscience believes that "he is not a human the one who work for himself alone and care not for others".

Shari'ah Evidence for the Rights of Future Generations□

The *Shari'ah* evidence from the Glorious Qur'an, Sunnah and the consensus of the scholars agree that the future generations have a right to the bounties

¹⁶ Reported by Imam Ahmad in his *Musnad*, 2/691, Hadith No. 12902, Mu'assasat Qurtubah, ed. Su'ayb Al-Arna'out.

¹⁷ Al-Bukhari, the Book of "Al-Jana'iz", Hadith No. 1290; See: Al-Shawkani, *Nayl Al-Awtar*, 1/43, Subeih Publications

of their country, and that the present generation has to save these bounties for the next generations. Among these proofs are, the saying of Allah, “Whatever gains God has turned over to His Messenger from the inhabitants of the villages belong to God, the Messenger, kinsfolk, orphans, the needy, the traveler in need- this is so that they do not just circulate among those of you who are rich--so accept whatever the Messenger gives you, and abstain from whatever he forbids you. Be mindful of God: God is severe in punishment.” (The Qur’an ٥٩: ٧)

Allah’s saying, “This is so that they do not just circulate among those of you who are rich “confirms this meaning. Major projects are not confined to the age of those who built them, but their benefits extend to future generations. Therefore, the Qur’anic statement indicates that the public money should not be spent on one generation. Rather, the present generation should keep it for the next generations lest they may not be lost. This is why Umar Ibn Al-Khattab said: No one from the people of Islam except he has a right in these properties. ^{١٨} The correct view of the scholars is to keep the lands owned by the state to all people as done by Umar Ibn Al-Khattab, when he kept the land of *Kharaj* (taxes on land) as endowment for all the next generations.

The Third sub-section: Strengthening punitive measures to protect the public right□

One of the most important legal measures to protect the public right is the

^{١٨} Al-Qurtubi, *Tafsir Al-Qur’an*, Dar Al-Kutub Al-Misriyyah, Cairo, ٢nd edition, ١٣٨٤ A.H. – ١٩٦٤ C.E.

prohibition of tampering with it through adopting a set of penalties that match in its nature and severity the strength of the interest. The penalty of negligence in the private right is civilian. However, the responsibility in the public right is criminal responsibility that takes a title that matches the seriousness of the interest. This term in *Shari'ah* is "*gholoul*" (embezzlement) which represents the crime of usurping a public right or a right of God Almighty, in addition to the crimes of aggression and corruption in earth. These penalties can be stated as follows:

(1) Punishment of the *Gholoul* (misappropriation) crime:

This crime means the misappropriation of a public fund. This means that this crime is encroaching on the public interest that is beneficial to the whole nation, and thus the public interest turns to be a private interest.

This crime is often associated with the exploitation of one's position or job, and therefore, its penalty is duplicated in this world and in the Hereafter.

(A) As for the Hereafter:

The Qur'an says, "It is inconceivable that a prophet would ever dishonestly take something from the battle gains. Anyone who does so will carry it with him on the Day of Resurrection" (The Qur'an ٣: ١٦١).

***Gholoul* means:** dishonest dealing with public fund and exploiting it by the employee, for example through bribery, treachery, breach of duty, and stealing.¹³ This is often combined with the exploitation of one's position, as

¹³*Mukhtar Al-Sihah*, P. ٤٣٠, Dar Al-Kutub Al-Ilmiyyah.

indicated in the Hadith narrated on the authority of Uday Ibn Umairah who said, "I heard the Messenger of God (PBUH) saying: ' Whosoever among you is appointed by us to a position and he conceals from us even a needle or less, it will amount to misappropriation and he will be called upon to restore it on the Day of Resurrection'"^۲.

And Aishah (May God be pleased with her) narrated that the Prophet (PBUH) said, "If anyone takes a span of land unjustly, on the Day of Resurrection Allah will strangle him with it from seven earths."^۳ This is an evidence of the prohibition of the misappropriation of the State's funds and lands.

(B) As for this world life"

The crimes of *Gholoul* have not a stated penalty. Penalties are necessary, they must be free from any doubt. If there is any doubt regarding the criminal, then he should not be penalized, based on the legal maxim: "averting the legal penalties if there is a doubt. The original case of any person is freedom from sins, unless there is clear evidence that he committed the crime.

Jurists said that: individuals have a right to public money given that its benefits go to all people without specification. Even if everyone's share is very little and there is no justification to use it personally, but here this is a doubt, and this doubt leads to the removal of the stated penalty for theft.

^۲ Sahih Muslim, the Book of "Al-Imarah", Hadith No. ۴۸۴۸.

^۳ Sahih Al-Bukhari, The Book of "Bad' Al-Khalq", Hadith No. ۳۱۹۸.

However, this does not mean to remove any punishment, as there is another form or penalties called *Ta'zir* (discretionary punishment) to deter criminals.

Ta'zir is a punishment based on flexibility and appropriateness between the criminal act and the criminal. The punishment is determined by the people of specialization in a manner that preserves the public interest and could deter the criminals.^{۲۲}

(۲) Punishment for *Hirabah* crime “robbery with violence” (corruption on earth)

The punishment for *Hirabah* has the ability to confront gangster formations that threaten the public interest by looting in what is known as (grand theft), or killing, terrorizing, stealing people’s properties.

This crime has been called “Major theft,^{۲۳}” because it involves taking money by force.^{۲۴}

Terms related to *Hirabah* Punishment □

The punishment for *hirabah* is severe and varied, and it is characterized by its ability to face all cases of *hirabah*. The Glorious Qur’an states this punishment saying, “Those who wage war against God and His Messenger and strive to spread corruption in the land should be punished by death, crucifixion, the amputation of an alternate hand and foot, or

^{۲۲} Imam Al-Haramayn, *Al-Ghayathi*, ed. Abd Al-Azem Al-Deeb, P. ۲۰۱۸.

^{۲۳} Ibn Qudamah, *Al-Mughni*, ۱/۳۰۶; Al-Shawkani, *Nayl Al-Awtar*, ۲/۳۶۰, Ibn Hazm, *Al-Muhallah*, ۱/۳۰۰.

^{۲۴} Ibn Qudamah, *Al-Mughni*, ۱/۳۱۹.

banishment from the land: a disgrace for them in this world, and then a terrible punishment in the Hereafter,” (The Qur’an ٥: ٣٣)

This noble verse show the types of punishments prescribed for the crime of corruption in the earth, either in this life or in the Hereafter. These types of punishment include: killing, crucifixion, cutting alternate hand and foot, or exile. The worldly punishment does not hamper the Hereafter punishment. A *Muharib* is the person who participates in any acts of corruption in land, whether by planning, implementation, participation, or assistance in any way. The one who steals money, kills, assists or participates in any way, is a *muharib*.

The essence of the crime of *hirabah* is encroaching on public order, the public good, and the state. Therefore, the most preferable view is that the word “*awu*” (or) in the verse means giving a choice. Thus, the judge has the ability to choose the most appropriate punishment for the criminals according to their crime. This is the view of Zahiri scholar and Imam Malik who add a discretionary punishment to the one stated in the verse.^{٢٥}

The meaning of repentance that removes the punishment of *Hirabah* crime□

The repentance that removes the worldly punishment does not mean that the perpetrator commits these crimes and then says: I repent to Allah. Rather, it means: to abandon the crime after thinking about and planning for it, and before he begins to implement it. However, if he committed it and the

^{٢٥}*Bidayat Al-Mujtahid*, ٢/٣٨٠; Ibn Hazm, *Al-Muhalla*, ١١/٣١٩.

harm occurred, then there will be rights for the individuals and the society according to the principles of the prescribed legislation. Even if we accepted that the repentance will be effective after the commitment of the crime, this effect will be related to the Hereafter punishment not the worldly one.

As it is clear from the punitive legislation for crimes of violation of the public right or corruption, those penalties are varied and strict, and they guarantee respect for the rights of society, prevent abuse of God's rights, and lead to the goodness for people in this world and the Hereafter.

* * *

Jurisprudential Rulings on Citizenship□

Between Basic Rules and Contemporary Situation ^{٧٦} □

All praise is due to God! May Allah's Peace and Blessings be upon the seal of the Messengers of God, our master Muhammad, and upon his Household and Companions!

the Almighty Allah has honored all humans, as He, The Omnipotent, created Adam by His Hands, blew into him from His soul, ordered the Angels to bow down to him, taught Adam all names, determined for him a heavenly cannon to follow. The heavenly cannons sent by Allah followed one after the other, until Allah sent the Glorious Qur'an as a final message to the last Prophet, Muhammad (PBUH).

If the state depends on a homeland, a ruling authority, and a relationship between the people and the ruler within the framework of a certain system, this has been completed for our Messenger in Medina, and in light of this framework and system, the foundations of the state may be understood.

In its permanent endeavor towards developing thought, ensuring the advancement of correct understanding, and preserving identity and fighting deconstruction, the Ministry of Awqaf held its Conference in ١٤٤٠ - ٢٠١٩ C.E., entitled, "**Jurisprudence of Nation-Building...A modern Jurisprudence Vision.**" It is my pleasure to participate with my research entitled, "Jurisprudential

^{٧٦} This research is prepared by Prof. Seif Rajab Qazamil, the former Dean of the Faculty of Shari'an and Law, Tanta, Al-Azhar University, and the member of the supreme council of Islamic Affairs.

Rulings on Citizenship

Between Basic Rules and Contemporary Situation” in this Conference, as I will summarize the most important rulings of citizenship.

First Section

The Right to Coexistence

The Right to Coexist in the Constitution of Medina

The blessed prophetic era is a practical translation of peaceful coexistence, and there is no contradiction between the plurality of religious groups in the society and submission to a single political system, which can be called as national unity or peaceful coexistence.

The Prophet (PBUH) migrated to (*Yathrib*), which was later called Medina, and he (PBUH) found that there are several groups. There were Muslims -immigrants and supporters-, Jews from different tribes, and polytheists who have not yet embraced Islam. So, the Prophet (PBUH) had to put the Constitution of Medina that would be the umbrella for all individuals, as it contained the way of coexistence between members of the one community despite the plurality of their religions and orientations.

The Constitution states: "This is a document from Muhammad the prophet (governing the relations) between the believers and Muslims of Quraysh and Yathrib, and those who followed them and joined them and labored with them. They shall constitute a separate *Ummah* (nation) as distinguished from all people. The Jews of *Banu 'Au wf* shall be considered as one political community (Ummah) along with the believers. For the Jews their religion, and for the Muslims theirs, be one client or patron. He,

however, who is guilty of oppression or breach of treaty, shall suffer the resultant trouble as also his family, but no one besides.”

Then the Constitution enumerated the sects of the Jews, and stated that they have the same rights and duties as that of *Banu Awf*.

It is clear from this document that the aspects of coexistence were perfect in this society and that cooperation and interdependence existed in multiple areas, represented in the rights and duties without preference for one over another, and without distinction based on religion, gender or lineage.

The document states: “The Quraysh emigrants according to their present custom shall pay the bloodwit within their number and shall redeem their prisoners with the kindness and justice common among believers.” This includes cooperation between Jews and Muslims in the payment of the death penalty.

Cooperation on righteousness and piety, not on sin and transgression:

The document included that everyone cooperates in the release of the captives, and help the debtor who cannot payback the debt. The document also states, “Every group shall secure the release of its own prisoners by paying their ransom from themselves.” However, he who does injustice and transgresses, bears its burden and the penalty for his crime alone.

The document states: “The Jews must bear their expenses and the

Muslims their expenses. Each must help the other against anyone who attacks the people of this document. They must seek mutual advice and consultation, and loyalty is a protection against treachery. A man is not liable for his ally's misdeeds. The wronged must be helped."

"The Jews of al-Aus, their freedmen and themselves have the same standing with the people of this document in purely loyalty from the people of this document. Loyalty is a protection against treachery. He who acquires ought to acquire it for himself, God accepts what is nearest to piety and goodness in this document. "

The right to defend the homeland:

Coexistence requires security and safety in order that everyone performs his duties in stability. This requires preparing what is necessary to prevent terrorism. This is why the Almighty Allah says, "Prepare whatever forces you [believers] can muster, including warhorses, to frighten off God's enemies and yours, and warn others unknown to you but known to God. Whatever you give in God's cause will be repaid to you in full, and you will not be wronged." (The Qur'an 8: 60)

Hence, the Constitutions of Medina included the necessity of joint defense if Medina faced any attack. Thus, all people of Medina were obliged to cooperate in response to the attack. This included that no sect or individual would help the enemies or would support them.

The document states, "No polytheist shall take the property of person of Quraysh under his protection nor shall he intervene against a believer."

It also states. “The Jews shall contribute to the cost of war so long as they are fighting alongside the believers.”

“Each must help the other against anyone who attacks the people of this document.”

“Yathrib shall be a sanctuary for the people of this document”

“Quraysh and their helpers shall not be given protection. And the contracting parties (i.e., Jews and Muslims) are bound to help one another against any attack on Yathrib.

It is clear from these and other provisions that coexistence required cooperation in the defending of Medina when someone attacked it, that is all people must share the duty of preparing funds, arms, and defense against those attacking it. This also included: not to support the enemy, i.e. Quraysh, as Quraysh at that time was an enemy to Muslim nation and was working to prevent Muhammad from building a strong state that they surmised he will take it as a headquarter to conquer them. Praise be to Allah, the Omnipotent, they were disappointed, and they embraced God’s faith in crowds^{١٧}

Certainly, peaceful coexistence is an important requirement fostered by *Shari’ah*. The salutation in Islam is: “Peace be upon you”, and a Muslim may add (Peace and mercy of Allah) or even add “peace, mercy and blessings of Allah.” Moreover, Islam expanded the concept of the branches

^{١٧}Ses *Al-Watha’iq Al-Siyasiyyah li Al-Ahd Al-Nabawiwa Al-Khilafah Al-Rashidah*, by Muhammad Hamidullah, ٦th edition, Dar Al-Nafa’is, Beirut, ١٤٠٧A.H.

of faith. Abu Hurayrah (May God be pleased with him) said, "Faith has over seventy branches or over sixty branches, the most excellent of which is the declaration that there is no god but Allah, and the humblest of which is the, removal of what is injurious from the path: and modesty is the branch of faith."^{۱۸}

This means that the branches of faith are numerous, and when reviewing these branches, it becomes clear that Islam calls for morality fostered by previous Divine Messages including belief in Allah, caring for orphans and widows, mercy with others, respecting the elders, honoring guests, justice, avoiding fraud, usury, committing immorality...etc., God, the Omnipotent, said, "All this is in the earlier scriptures, the scriptures of Abraham and Moses." (The Qur'an ۸۷: ۱۸ - ۱۹).

This means that the call to adopt the common matters that unite us is an important requirement for coexistence. This is very clear from the saying of Allah, "[Believers], argue only in the best way with the People of the Book, except with those of them who act unjustly. Say, 'We believe in what was revealed to us and in what was revealed to you; our God and your God are one [and the same]; we are devoted to Him.'" (The Qur'an ۲۹: ۴۶), and His saying: "So [you believers], say, 'We believe in God and in what was sent down to us and what was sent down to Abraham, Ishmael, Isaac, Jacob, and the Tribes, and what was given to Moses, Jesus, and all the prophets by their Lord. We make no distinction between any of them, and we devote ourselves to Him.'" (The Qur'an ۲: ۱۳۶).

^{۱۸}Sahih Muslim, the Book of "*Eman*", Hadith No. ۳۰.

The Second Section

The Right to Life, Belief and Property

First: The right to life

It is well known that the Heavenly Messages agree to preserve one's soul, so that man can carry out his message in life is the best way. Preservation of one's soul is equal for everyone living in the homeland, whether he is Muslim or non-Muslim, as the Almighty Allah say: "On account of [his deed], We decreed to the Children of Israel that if anyone kills a person- unless in retribution for murder or spreading corruption in the land- it is as if he kills all mankind, while if any saves a life it is as if he saves the lives of all mankind. Our messengers came to them with clear signs, but many of them continued to commit excesses in the land." (The Qur'an ٥: ٣٢).

Based on this, The Islamic jurisprudence presents the concept of sanctity of human soul based on one's Islam or land (i.e. land of residency in the homeland). This is confirmed by the Almighty Allah's saying, "It is He who first produced you from a single soul, then gave you a place to stay [in life] and a resting place [after death]. We have made our revelations clear to those who understand." (The Qur'an ٦: ٩٨), and His saying, "In the Torah We prescribed for them a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, an equal wound for a wound: if anyone forgoes this out of charity, it will serve as atonement for his bad deeds. Those who do not judge according to what

God has revealed are doing grave wrong.”(The Qur’an ٥: ٤٥). Another verse is, “Fair retribution saves life for you, people of understanding, so that you may guard yourselves against what is wrong.”(The Qur’an ٢: ١٧٩). These verses indicate the necessity of retribution of the perpetrator, whether the murderer and the murdered is a Muslim or a non-Muslim.^{٢٩} In the Sunnah of the Prophet (PBUH) we read the Hadith reported by Abd Allah Ibn Amr that the Prophet (PBUH) said, “Whoever killed a Mu'ahid (a person who is granted the pledge of protection by the Muslims) shall not smell the fragrance of Paradise though its fragrance can be smelt at a distance of forty years (of traveling).”^{٣٠} The preservation of one’s soul includes all elements of the soul. Thus, as it is not permissible to kill a person, it is also forbidden to attack him in any way, and whoever does this is punished in this world and in the Hereafter.

Second: Preservation of Honor

Islam has equated the preservation of soul to honor for all people. The Prophet (PBUH) said: “Verily your blood, your property and your honor are as sacred and inviolable.”^{٣١} The preservation of honor is not confined to Muslims, and this protects the society from disintegration and collapse, as attacking one’s honor is destructive to the society.

^{٢٩} Al-Jassas, *Ahkam Al-Qur’an*, ١/١٦٧, Dar Ihya Al-Turath Al-Arabi, Beirut, ١٤٥٠ A.H.

^{٣٠} Al-Bukhari, The Book of “*Al-Jizyah*”, Hadith No. ٣١٦٦

^{٣١} Al-Bukhari, the Book of Knowledge, Hadith N. ١٠٥.

In addition, assaulting one's honor constitutes an ethical crime that is disliked to people's common sense and good morals.^{۳۳} The Almighty Allah said, "Another of His signs is that He created spouses from among yourselves for you to live with in tranquility: He ordained love and kindness between you. There truly are signs in this for those who reflect." (The Qur'an ۳۰: ۲۱), and He also said, "And it is God who has given you spouses from amongst yourselves and through them He has given you children and grand children and provided you with good things. How can they believe in falsehood and deny God's blessings?" (The Qur'an ۱۶: ۷۲).

Third: Freedom of Faith

Islam has ensured freedom of belief for all people, as Allah, the Omnipotent, says, "There is no compulsion in religion: true guidance has become distinct from error, so whoever rejects false gods and believes in God has grasped the firmest hand-hold, one that will never break. God is all hearing and all knowing."^{۳۴}; He, the Omnipotent, says as well, "You are not there to control them."^{۳۵}; further He, the Omnipotent, says, "But [Prophet] are you going to worry yourself to death over them if they do not believe in this message?"^{۳۶}; and He, the Omnipotent, also says, "Say, 'Now the truth has come from your Lord: let those who wish to believe in it do so, and let those who wish to reject it do so.' We have prepared a Fire for

^{۳۳} Dr. Muhammad Fahmy Al-Serjani, *AhkamJara'im Al-Ird fi Al-Fiqh Al-Islami*, P. ۳۲, Dar Al-Ittihad Al-Arabi li Al-Tiba'ah, ۱۹۸۷C.E.

^{۳۴} The Qur'an, ۲:۲۰۶

^{۳۵} The Qur'an, ۸۸:۲۲

^{۳۶} The Qur'an, ۱۸:۶

the wrongdoers that will envelop them from all sides. If they call for relief, they will be relieved with water like molten metal, scalding their faces. What a terrible drink! What a painful resting place!"^{۳۶} Thus, Islam has ensured and guaranteed religious freedom for the non-Muslim citizen, so it is unlawful to force anyone to leave his religion.

Moreover, the Prophet (PBUH) has confirmed freedom of belief for the people of the Book and the Arab polytheists in the constitution of Medina, and he did not impose Islam on them. This indicates that one of the bases of citizenship is recognizing other citizens' right to choose their belief and not attacking it. This concept is confirmed in Allah's Saying, "[Believers], do not revile those they call on beside God in case they, in their hostility and ignorance, revile God. To each community We make their own actions seem alluring, but in the end they will return to their Lord and He will inform them of all they did."^{۳۷}; He, the Omnipotent, also says, "[Prophet], call [people] to the way of your Lord with wisdom and good teaching. Argue with them in the most courteous way, for your Lord knows best who has strayed from His way and who is rightly guided."^{۳۸}; and He, the Omnipotent, says as well, "[Believers], argue only in the best way with the People of the Book, except with those of them who act unjustly. Say, 'We believe in what was revealed to us and in what was revealed to you; our God and your God are one [and the same]; we are devoted to Him.'"^{۳۹} The

^{۳۶} The Qur'an, ۱۸:۲۹

^{۳۷} The Qur'an, ۶:۱۰۸

^{۳۸} The Qur'an, ۱۶:۱۲۵

^{۳۹} The Qur'an, ۲۹:۴۶

last noble verse proves that we should argue with the people of the Book in the best manner, and with gentleness, leniency, and observation of the general controls applied in the society.

Ensuring the freedom of belief includes the protection of houses of worship, as Allah, the Omnipotent, says, "Those who have been driven unjustly from their homes only for saying, 'Our Lord is God.' If God did not repel some people by means of others, many monasteries, churches, synagogues, and mosques, where God's name is much invoked, would have been destroyed. God is sure to help those who help His cause- God is strong and mighty."^{٤٠}

The *Dhimmis* have the right to practice their rituals and acts of worship in their churches and no one may transgress against them. In this connection, the pact of 'Umar to the people of Ilia' reads, "This is an assurance of peace and protection given by the servant of Allah 'Umar, Commander of the Believers to the people of Aelia . He gave them an assurance of protection for their lives, property, churches and crosses as well as the sick and healthy and all its religious community. Their churches shall not be occupied, demolished nor taken away wholly or in part. None of their crosses nor property shall be seized. They shall not be coerced in their religion nor shall any of them be injured."^{٤١}

Fourth: Protecting the Ownership:

^{٤٠} The Qur'an, ٢٢:٤٠

^{٤١} See: Tarikh At-Tabari, ٢/٦٠٩, ed. Dar Al-Hadith- Beirut, ٢nd ed., ١٣٨٧ H.

Allah, the Omnipotent, has subjected the universe for humankind in order to reform it according to Allah's divine Law, and to enjoy the bounties that He, the Omnipotent, has bestowed in it. In this regard, He, Glory be to Him, says, "It is He who has made the earth manageable for you--travel its regions; eat His provision- and to Him you will be resurrected."^{٤٢} The subservience of the universe is for all human beings; not only for the Muslims but also for the non-Muslims. The Islamic law protects the property of all the citizens of the state. It is unlawful to appropriate it or to take it unlawfully. On the other hand, everyone has the right to travel in the land in quest of Allah's bounty, to make deals and to conduct transactions with whomever he wants - Muslims and non-Muslims alike. In this regard, the Prophet (PBUH) has conducted some transactions with non-Muslims. For example, he (PBUH) died while his armor was mortgaged with a Jew, a fact which is crystal clear in the Hadith in which 'Aishah (May Allah be pleased with her) reported, "When Messenger of Allah died, his armor was mortgaged with a Jew for thirty Sa' (measures) of barley."^{٤٣} Thus, he (PBUH) clarified the permissibility of conducting transactions with Muslims and non-Muslims alike, as he (PBUH) opted for taking the mortgage from a Jew though he could have taken it from one of the wealthy Companions.

One of the aspects of protecting ownership in Islamic law is the prohibition of all forms of transgression against other people's property through theft

^{٤٢}The Qur'an, ٦٧:١٥.

^{٤٣}Al-Bukhari, Sahih, Book of Jihad, Chapter of what was said about the armour of the Prophet (PBUH) Hadith no. ٢٩١٦.

or any similar way, as Allah, Glory be to Him, says, "Cut off the hands of thieves, whether they are man or woman, as punishment for what they have done- a deterrent from God: God is almighty and wise."⁴⁴; and He, Glory be to Him, also says, "You who believe, do not wrongfully consume each other's wealth but trade by mutual consent. Do not kill each other, for God is merciful to you."⁴⁵; and moreover, He, Glory be to Him, says, "God commands you [people] to return things entrusted to you to their rightful owners, and, if you judge between people, to do so with justice: God's instructions to you are excellent, for He hears and sees everything."⁴⁶

In the same vein, it is reported that 'Ali (May Allah be pleased with him) said, the sanctity of the blood and the blood money of anyone whom we have given our protection are equal to the sanctity of our blood and blood money." Further, "not seizing the property or the land" was one of the clauses that Amr Ibn Al-'As (May Allah be pleased with him) has included in his pact to the people of Egypt.⁴⁷

The property, which is the object of transaction, must have a value recognized as such by the *Shari'ah*. However, if a Muslim transgresses against a non-Muslim's property, the former must compensate the latter. This shows how other creeds and beliefs are respected. The door of

⁴⁴The Qur'an, 5:38.

⁴⁵The Qur'an, 4:29.

⁴⁶The Qur'an, 17:35.

⁴⁷ See: Jamal Ad-Din Al-Atabaki, *An-NujumAz-Zahira fi MulukMisrwa Al-Qahira*, 1st ed., Ministry of Culture; and also see: *This is Islam: Issues and Concepts, Islamic Tolerance and Non-Muslims' Rights*, 1991 C.E., Ministry of Endowments.

ownership is open for all citizens according to the controls set by the laws of ownership and the other relevant laws.^{٤٨}

^{٤٨}Al-Kisani, Bada' As-Sanaa', ٤/١٣٥٨, Dar Al-Kutub Al-'Ilmiyya, Beirut, ١٩٨٦ C.E.

Section ۳

Equality and Respecting State Order

First: Equality is a Part and Parcel of Citizenship:

Equality is one of the Islamic milestones. Difference in race and religion does not affect the rights and obligations except for some matters of religious requirements and other similar issues. In this regard, Allah, Glory be to Him, says, "People, We created you all from a single man and a single woman, and made you into races and tribes so that you should recognize one another. In God's eyes, the most honoured of you are the ones most mindful of Him: God is all knowing, all aware."^{۴۹} In the same vein, it is narrated in the noble Sunnah that the Prophet (PBUH) said in the Farewell Pilgrimage, "O People, your Lord is One and your father is one. An Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a white has no superiority over black nor a black has any superiority over white except by piety. In God's eyes, the most honoured of you are the ones most mindful of Him."^{۵۰}

The forms of equality are various, including: equality in public positions as long as the requirements of these positions are met. In this connection, it is reported that the Prophet (PBUH) said, "Whoever appoints a man as a

^{۴۹}The Qur'an, ۴۹:۱۳.

^{۵۰} Ahmed, Musnad: ۳۸/۴۷۴.

leader of a group of people through among them someone who would be better with regard to Allah [for this position], he [i.e. the one who appointed him] has betrayed Allah, His Messenger and the believers."^{o1}

It is well-known that the Messenger (PUBH) made 'Usama Ibn Zayd the leader of the army that was assigned to confront the Romans who attacked nearby territories and were about to fight the Islamic State. Thus, it was necessary for the Muslims to take an action to ward off their evil. Some great Companions like Abu Bakr and 'Umar (May Allah be pleased with them both) joined that army. However, the Prophet (PBUH) was suffering the illness of his death and the army did not move. When Abu Bakr became the Caliph, he sought 'Usama Ibn Zayd's permission to keep 'Umar with him in Medina as he, i.e. Abu Bakr would need him for consultation and other issues. Thereupon, Zayd granted Abu Bakr the permission.

It is also well-known that many Companions counseled Abu Bakr (May Allah be pleased with him) not to dispatch the army with 'Usama to meet the Romans due the apostasy of some Arabs. However, Abu Bakr (May Allah be pleased with him) insisted on dispatching the army under the leadership of 'Usama and said, "Abu Quhafa wouldn't violate a command that the Messenger of Allah has issued." The dispatching of the army proved to be the better opinion as it casted awe in the hearts of the Arabian

^{o1} Al-Hakim, Mustadrak, Hadith no. 4, 7, 23/104.

tribes, not to mention that the Roman soldiers had to retreat to the borders of their state.^{٥٢}

The objectivity in assuming the public positions is confirmed by the fact that the Messenger (PBUH) did not accept the request of some Companions who asked him some positions. For example, he said to Abu Dharr, May Allah be pleased with him, "O Abu Dharr, you are a weak man and it is a trust and it will be a cause of disgrace and remorse on the Day of Resurrection except for the one who takes it up with a full sense of responsibility and fulfills what is entrusted to him (discharges its obligations efficiently)."^{٥٣}

Equality before the law and in courts is another form that should be discussed. In this connection, Allah, Glory be to Him, says, "You who believe, be steadfast in your devotion to God and bear witness impartially: do not let hatred of others lead you away from justice, but adhere to justice, for that is closer to awareness of God. Be mindful of God: God is well aware of all that you do."^{٥٤}; and the Prophet (PBUH) also said, "By the One in whose hand is the soul of Muhammad, if Fatimah bint Muhammad were to steal, I would cut off her hand."^{٥٥}

^{٥٢} As-Siyasa Ashariyya, p. ٧٤٣.

^{٥٣} Muslim, Sahih, Hadith no. ١٨٢٥.

^{٥٤} The Qur'an, ٥:٨.

^{٥٥٥} Al-Bukhari, Sahih, ٣/١٣١٥.

Second: Respecting the State System:

The contemporary state systems changed greatly due to the development of the political conditions, experience and other factors. Some states are kingdoms while others are republics; they adopt parliament system or any other available system.

All states have a system that allows the people to share their options in a form of Houses of Representatives, People's Councils and Nation Councils, etc. Moreover, the way the executive power fulfils its charges changes from one state to another.

It is well-known that the state consists of a land, a people and a ruling power. Thus, the ruler needs the participation of the people in fulfilling the responsibilities of the state on domestic and international level. It is legally allowed that the state adopt any system that fulfill its interests according to its constitution that sets the framework of the state and its system. This agrees with the Islamic *Shari'ah* that leaves the door open for any change as long as it does not contradict the general foundations of *Shari'ah*.

Choosing the Ruler in Islam

The Contemporary Elections as an Example^{٥١}

All praise is due to Allah, and Peace and Blessing be upon our master, Messenger of Allah, and upon his Household and Companions.

The Islamic *Shari'ah* is valid for every place and time and accommodates all the new developments of the age. That is why it has finalized the previous Messages. The scholars of Islam unanimously agreed that the text of the Qur'an and authentic Sunnah is limited, but it is applicable to the unlimited incidents. For that reason, the Muslim scholars from the early time of Islam recognized that Fatwas (religious verdicts) change according to the difference in conditions, times and exceptional cases. They have never failed to find a religious proof for their verdicts.

The change in the religious ruling applies to the way of choosing the rulers; it changes according to the time and the means. For example, the ways of choosing the ruler varied at the time of the rightly-guided Caliphs, though it was a limited period (١١-٤٠ H). That was in the presence of the Companions (May Allah be pleased with them) from the Immigrants and the Helpers. They accepted different ways of choosing the ruler. This

^{٥١}A research written by Prof. Dr. Ibrahim Al-Hudhud.

constitutes a Consensus, which is one of the accepted proofs among the jurists.

Here is a brief account handling (١) the conditions that must be met by anyone assuming the position of presidency, the government, or the general leadership; (٢) the conditions that the people who choose the ruler (Ahl al-hall wal-aqd) must meet, (٣) the verdict regarding the modern elections and whether they are considered a *Bai'a* (Pledge of allegiance) (٤), the verdict regarding running for presidency with the recommendation of some parliamentary members, (٥) can they be considered the People of Consultation in jurisprudential heritage, and (٦) should we reject democracy just because it is borrowed from non-Muslims or accept the beneficial side and modify it to suit our conditions in a way that agrees with the *Shari'ah*. I deliberately employed an easy writing style based on the principle of simplification and making the matters easy, which are two of the characteristics of our religion and *Shari'ah*.

Allah's Peace and Blessings be upon our master Muhammad, and upon his household and Companions.

At the early time of Islam, the period that does not exceed ١٣٦ H, the Ummah was united under one ruler. Afterwards, the Abbasid state arose while the Umayyad state remained in Andalusia. Later, both states were

divided into many smaller states. Each state had borders that couldn't be violated otherwise blood would be shed, wars would increase and people would be killed. Now, it is possible instead to unite the entire Islamic world under the umbrella of an entity that gathers all the people while preserving the borders, the sovereignty and independence of each state like the European Union, for example. As for the return of the caliphate in its early form, it is impossible and the call for it contradicts the sound understanding and correct thought. This call only exists in the mind of the Kharijites who violate the sanctity of blood, honor and property and cause corruption on earth.

First: The Ummah adopted various ways for choosing the ruler:

١- The free choice after consultation: the beloved Prophet (PBUH) died and returned to his Lord without appointing anyone to lead the Ummah after him. He (PBUH) also did not specify the way of choosing the ruler. He left that matter for the Ummah that selected Abu Bakr (May Allah be pleased with him) through free choice due to his virtues, rank among the Companions (May Allah be pleased with them) and the selection of the Prophet (PBUH) for him to be the imam of prayer during his illness. However, choosing Abu Bakr as the leader of the Ummah was not because of the prophet's appointment for him: "The Prophet was about to write for

the Muslims a document to assign their leadership to someone, but he left that for the Ummah after he rethought about it."^{٥٧}

Selecting the caliph was in Saqifa Bani Sa'dah and pledging allegiance was in the prophetic mosque. It is confirmed that the Helpers were about to choose one of them to be the ruler, but when Abu Bakr and 'Umar (May Allah be pleased with them both) heard about their gathering, they went to Saqifa to meet the Helpers. The Helpers initially wanted to choose a ruler from the Immigrants and another from the Helpers. However, Abu Bakr (May Allah be pleased with him) delivered a speech to persuade them not to do that. After long discussions, they agreed to choose Abu Bakr to be the successor of Allah's Messenger (PBUH), and the Muslims pledged allegiance to him. This indicates that the caliphate of Abu Bakr was not due to the appointment of Prophet (PBUH) for him. Further, he (PBUH) did not specify any way for choosing his successor. That is why his Companions disagreed about the way of choosing the ruler and then agreed to choose Abu Bakr (May Allah be pleased with him).

٢- The ruler's appointment of his successor: Abu Bakr (May Allah be pleased with him) appointed 'Umar (May Allah be pleased with him) to be the caliph after him. He does so to avoid the sedition during the apostasy movement and to protect the Islamic state. Abu Bakr's appointment of 'Umar (May Allah be pleased with him) was a mere suggestion and was

^{٥٧}Al-Bukhari, Sahih, Hadith no. ٢٢١٩.

not obligatory on the Ummah. He proposed that appointment and the believers accepted it willingly. This way of choosing the ruler is different from the previous one.

۳- Limiting the choice to the candidates that the ruler specifies: This is the way that 'Umar ibn Al-Khattab innovated. He was ambivalent about the matter of appointing his successor, saying, "If I did not appoint a successor, someone else better than me [i.e. the Prophet (PBUH)] had not appoint anyone as his successors; and if I appointed someone to succeed me, someone better than me [i.e. Abu Bakr (May Allah be pleased with him)] had done so. However, I leave this matter to be decided by the consent of these six men with whom the Messenger of Allah (PUBH) remained well pleased till his death.^{۵۸} He then said, "Abdullah Ibn 'Umar should be present among them, but he has no role in deciding the matter." The position of Ibn 'Umar is similar to that of the observer. Thereupon, pledging allegiance to 'Uthman Ibn 'Affan (May Allah be pleased with him) took place and he became the ruler after the committee, chosen by 'Umar, accepted him to be the caliph following three-day deliberations.^{۵۹}

These are three different ways of choosing the rule. Remarkably, the selection and pledging allegiance were confined to the people of Medina inhabited by the Immigrants and Helpers. The matter was decided in the

^{۵۸}Al-Bukhari, Sahih, Hadith no. ۲۷۱۷.

^{۵۹} Al-Bukhari, Sahih, Hadith no. ۲۲۰۷.

home and haven of Islam, i.e. Medina because it was a stable city, unlike the rest of the provinces. The multiplicity of the ways of choosing the rulers indicates that what can be suitable for a period of time mightn't be suitable for another. Further, the way of choosing the ruler is left for the Ummah to decide according to the time and the conditions. This is due to the fact that this matter belongs to the changeable practices in which the previous applications are not binding, but can be enlightening experience.

Second: the qualifications of the people who select the ruler.

The people who select the ruler *Ahl al-hall wal-aqd* are the members of consultation who nominate the ruler and hold him accountable. The jurists stipulated some conditions for them, including:

General conditions: Islam, puberty, sound mind, freedom, and maleness. These are the conditions according to most of the jurists.

Specific conditions: justice, with its total conditions, adequate knowledge for choosing the one who deserves the presidency, being well-educated about the culture of the age, issuing sound opinions and wisdom.

No specific number of *Ahl al-hall wal-aqd* is stipulated; only meeting the general and specific conditions is taken into consideration. Here arises a question: can the nomination of *Ahl al-hall wal-aqd* do without the public pledge of allegiance?

Nomination is not enough as the public pledge of allegiance is a must. Abu Bakr was nominated at Thaqifat Bani Sa'dah and then a public pledge of allegiance was given to him in the mosque. Moreover, Abu Bakr nominated 'Umar Ibn Al-Khattab and then he was given the public allegiance. Further, the People of Shura nominated Uthman Ibn Affan and the people pledged allegiance to him afterwards. The same also applies to Ali Ibn Abi Talib. If the nomination were enough, there would be no need for the public pledge of allegiance.

Third: Contemporary Elections... Do They Violate *Shari'ah*?

The nomination of the president in the contemporary election is done through some members of the parliament, which replaces the consultation that we mentioned above in the ways of choosing the ruler, Imam or caliph. The parliament takes the place of *Ahl al-hall wal-aqd* because it has the right to hold the president accountable and the president swears the oath before its members. Although the parliament is the representative of the people, the nomination of the parliament members is not enough. The people should pledge allegiance through ballot box which ensures full freedom of choice and is considered the public *Bai'ah*.

Some people refuse this way of choosing the ruler on the pretext that it is coming from the west. However, the truth stands clear; this way does contradict the practices of the Companions at the time of the rightly-guided Caliphs. Anyone objecting to this way on the grounds that it is coming

from the non-Muslim west, he should object to everything coming from the west such as food, clothes, medicine, applied sciences, luxurious cars, computers, programs, mobile phones and so on.

The Islamic objective in this regard is bringing about the benefit and the interest of the people; the word of wisdom is the lost object of the believer, wherever he finds it, he is more entitled to it. What I believe in is that the contemporary elections and the democratic system is legal and achieve most of the interest of the citizens. Those who refuse this system do so as a rejection of the names or the origin of this system. They go to the extreme falsely and misguidedly. The Egyptian constitution clearly states in the second article that the Islamic *Shari'ah* is the main source of legislation. This constitution is the product of the democratic system. Moreover, the specialized scholars of *Shari'ah* and law assert that the Egyptian law concords with the Islamic *Shari'ah*. Thus, this matter has the aspect of vastness.

The Discourse of Estrangement with the State of the Extremist Groups...Features and Phenomena^١

Every discourse has its features that draw its milestones and shape its image and phenomena. The extremist groups' estrangement discourse with the state is not a new type; when a smart critic reflects on its style and content, he can realize its features and phenomena, which can be discussed as follows:

Feature one: it's one sided, racist discourse:

This discourse stems from racism that refuses the idea that all human factions and groups are part of the human entity. It is impossible for this entity to be alive and well without interaction among these factions and groups under the umbrella of humanity.

This discourse disregards the content of a full chapter of the glorious Qur'an, namely Al-Kafirun, where Allah, Glory be to Him, commands His Prophet (PBUH) to clarify for the non-Muslims that every faction has its specific belief, law, values and religion. That is why this concept has been repeated in the the *sura*: "Say [Prophet], 'Disbelievers: [١] I do not worship what you worship, [٢] you do not worship what I worship, [٣] I will never

^١ The research is written by Prof. Dr. Salem Abu 'Asi.

worship what you worship, [٤] you will never worship what I worship: [٥]
you have your religion and I have mine.' [٦]"^{١١}

It must be frankly stated that the blood shedding won't stop until the armed terrorist groups stop its malicious desire to shed blood. Consequently, we should attack racism and work on ending the existence of the one-sided discourse. We should understand the inevitability of listening to each other and to frankly discuss the issues in order to lead a better life in the light of Allah's Saying: "We have assigned a law and a path to each of you."^{١٢}

In this regard, we must understand that religious pluralism within one country is a normal phenomenon. No reasonable person can say that all human beings are one pattern resembling each other. Islam has affirmed that pluralism is a human reality, as Allah, Glory be to Him, says, "Had your Lord willed, all the people on earth would have believed. So can you [Prophet] compel people to believe?"^{١٣}

It is well-known that the treaty of pluralism that the Prophet (PBUH) made with the Jews - with his arrival to Medina- confirmed pluralism and established the foundations of co-existence- This treaty still has a great

^{١١} The Qur'an, ١٠٩:١-٦

^{١٢}The Qur'an, ٥:٤٨.

^{١٣} The Qur'an, ١٠:٩٩

significance and loftiness and attracts admiration among the constitutions and the international treaties. Its content achieves more than any other international treaty with regard to pluralism, citizenship, co-existence and cultural and civilizational dialogue. This concept of pluralism comes from the rules that the mature awareness confirms, that is, the religious fraternity is not the only form of bonds among the human beings; there is the brotherhood in homeland, as Allah, the Almighty, says, "The people of Noah, too, called the messengers liars. Their brother Noah said to them, 'Will you not be mindful of God?'"^{٦٤} There are many similar verses of the Qur'an with the same meaning.

Second feature: It is a supremacist discourse

It is a kind of speech that looks at others as if they are dwarfs while the holder of this opinion is the only giant who knows everything about the intention of Allah, Glory be to Him, and His Messenger (PBUH) from the texts of revelation. The crowds who help and listen to his speeches are not but riff-raff and rabble with superficial understanding. They blindly receive what the leaders of these groups dictate them without employing their minds. They think that their figures are well-protected against aberration and deviation while Allah, Glory be to Him, says, "And do not say about what your tongues assert of untruth, "This is lawful and this is

^{٦٤} The Qur'an, ٢٦:١٠٥-١٠٦.

unlawful," to invent falsehood about Allah. Indeed, those who invent falsehood about Allah will not succeed."^{١٥}

One of their qualities is that they always pretend to be shrewd; they lay restrictions on the worshippers of Allah with what He, Glory be to Him, did not authorize. They forget or pretend to forget that the rules in Islam are based on ease not on hardship.

They were badly afflicted with hollow knowledgeable hyper inflation while attacking scholarly, and historical institutions whose thoughts lived and still live, let alone the fact that they are still producers of well-versed knowledge. You can see them attacking Al-Azhar despite being a dwarf who knows nothing about the simplest scholarly problems. Astonishingly, if anybody reads their so-called books, he will find nothing but plenty of information and useless narration about marginal matters - ignorance about them does not harm and having knowledge about them is of no avail. This leads to the following:-

١- They confined the concept of Jihad to combat only

They allege that Jihad was legitimated after (Hijra) the migration of the Prophet (PBUH) to Al-Madinah. The reason for this misunderstanding is that they confined Jihad to combat. There is no doubt that combating

^{١٥} The Qur'an, ١٦:١١٦.

against aggressors was legitimated after settlement in Al-Madinah. The majority of people ignore that both the Meccan and Medinan *suras* of the Glorious Qur'an highlighted the topic of Jihad. In *surat* An-Nahl, a Meccan one, Allah, Glory be to Him, says, "Then, indeed your Lord, to those who emigrated after they had been compelled [to renounce their religion] and thereafter fought [for the cause of Allah] and were patient - indeed, your Lord, after that, is Forgiving and Merciful."^{٦٦}

In the *surat* Al-Furqaan, a Meccan one, Allah, Glory be to Him, orders His Prophet (PBUH) saying "So do not obey the disbelievers, and strive against them with the Qur'an a great striving."^{٦٧} It is obvious that the pronoun in (with it) refers to the Glorious Qur'an and the direct order to the Prophet (PBUH) is to strive. Here let's ask, "What is the true meaning of Jihad mentioned in the Meccan verse?" The meaning can never be "fighting" as it was legislated later in Madinah. As such the meaning of the word "Jihad" in this verse is calling the disbelievers to Islam because the Prophet (PBUH) was in Mecca before the legislation of Jihad. This very meaning of Jihad is very clear in the following Hadith of the Prophet (PBUH) "The highest form of Jihad is speaking the truth in the presence of a tyrant ruler."^{٦٨}

Extremist groups insist on their misleading opinion that confined the meaning of Jihad to combat only, ignoring the other various meanings

^{٦٦} The Qur'an, ١٦:١١٠.

^{٦٧} The Qur'an, ٢٥:٥٢.

^{٦٨} Abu Dawud, Sunan, Hadith no. ٤٣٤٤.

carried by the word like Jihad (striving) against oneself. The soul needs real striving, not the meaning which they employ to serve their own purposes.

۲- Describing contemporary societies as living in a pre-Islamic period of ignorance

When we meditate the verses of the Glorious Qur'an, we realize that Allah, the Omnipotent, mentioned the word (*jahiliyyah*) pre-Islamic period of ignorance four times, as follows:-

First: It is mentioned in *surat* Aal-i-Imraan joined with or describing the word "Thann" (thinking) as Allah, Glory be to Him, says, "Thinking of Allah other than the truth - the thought of ignorance."^{۱۹}

Second: It is mentioned in *surat* Al-Maa'ida joined with or describing the word judgment as Allah, the Omnipotent, says, "Then is it the judgment of [the time of] ignorance they desire? But who is better than Allah in judgment for a people who are certain [in faith]."^{۲۰}

Third: It is mentioned in *surat* Al-Ahzaab joined with or describing the word "Tabruj" display of women's adornment as Allah, Glory be to Him, says, "And do not display yourselves as [was] the display of the former

^{۱۹} The Qur'an, ۳:۱۰۴.

^{۲۰} The Qur'an, ۵:۵۰.

times of ignorance.”^{٧١} This verse adds another description to the word (*jahiliyyah*) which is (*the first jahiliyyah*).

Fourth: It is mentioned in the *surat* Al-Fath joined with or describing the word “Hammia” (chauvinism) as Allah, Glory be to Him, says, “When those who disbelieved had put into their hearts chauvinism - the chauvinism of the time of ignorance.”^{٧٢}

Al-Bukhari (May Allah be merciful to him) mentioned the word (*jahiliyyah*) ignorance in his Sahih, saying, “Sins are related to (*jahiliyyah*) ignorance.”

Here are two important things:-

The first one: Is it correct to use the word *jahiliyyah* without restriction?

The second one: Is it correct to describe contemporary societies with this word?

When we come to answer the first question, we say it can never be the case. This is because if the word is said without any restrictions, it includes disbelief. In that case it includes doctrine, morals, worships and the whole society, as the general meaning of the word includes all the members while the absolute meaning includes all parts unless a specific restriction is

^{٧١} The Qur’an, ٣٣:٣٣.

^{٧٢} The Qur’an, ٤٨:٢٦.

mentioned. In that case, we describe the whole society with ignorance; it is ignorant with regard to its doctrine, morals, worships, transactions, judgments and behavior. This is a big mistake as ignorance with regard to doctrine means nothing but disbelief and the rest will be a mixture of disbelief and sins.

Offering answer to the second question, we can say that *Jahiliyyah* is a period of time to which the Glorious Qur'an refers to as a pre-Islamic period of ignorance. The Glorious Qur'an refers to it for one more time as "the first ignorance" referring to a period of ignorance that directly preceded Islam.

Some extremists regard it as a description, so it can be renewed. The right position is that if we want to use this description, we should use it partly, not generally. Prophet Muhammad (PBUH) said to Abu Dharr, "You are a person who still has (the remnants) of Ignorance in you."^{٧٣} He (PBUH) also said, "What are these proclamations of the Days of Ignorance? They said: Allah's Messenger, a person from the emigrants struck at the back of an Ansari, whereupon he said: It is something disgusting."^{٧٤} What is obvious from these two Hadiths among many others is that he (PBUH) refers to behavior and customs; not judging people to be disbelievers as these extremist groups do. It is totally forbidden to connect between judging the one's behavior and judging the whole society by the word "ignorance."

^{٧٣}Al-Bukhari, Sahih, Hadith no. ٤٤٠٣.

^{٧٤}Al-Bukhari, Sahih, Hadith no. ٣٣٠٥.

The first rule to judge a society as an Islamic one is to formally and orally accept Islam. The most prominent phenomenon that indicates that this society is a Muslim one and thus prohibits describing it of disbelief or ignorance or legislating fighting against it is calling for prayer (Adhaan). Besides, Islamic rituals are common in the Egyptian society in particular, and the Arab and Islamic world in general.

I can reiterate that the human failure to do what ought to be done does not apply to the whole society. Allah, Glory be to Him, says, “and no bearer of burdens will bear the burden of another.”^{٧٥} And He also says, “Every person, for what he earned, is retained.”^{٧٦} We are not allowed to declare the entire community to be disbelievers because there is a disbelieving minority; we should not describe it as generally corruptive because there is a class of it who are corruptive. Similarly, we must not call a society as ignorant because somebody does an act of ignorance. Through careful examination of history from the era of the Message up till to now, we realize that there is no society whose members did not fail to do what ought to be done towards the noble *Shari’ah*.

Reforming society cannot be done by fighting against its corrupt members or describing them as ignorant as this would lead to greater corruption than the good we seek to realize. Allah, Glory be to Him, says to His Prophet (PBUH), “Invite to the way of your Lord with wisdom and good

^{٧٥} The Qur’an, ٦:١٦٤.

^{٧٦} The Qur’an, ٥٢:٢١.

instruction, and argue with them in a way that is best. Indeed, your Lord is most knowing of who has strayed from His way, and He is most knowing of who is [rightly] guided.”^{٧٧}

Third feature: It is a discourse that is not based on a scholarly methodology

It is a discourse that is not based on a scholarly methodology founded by a group of the most famous well-versed scholars of Al-Azhar Al-Sharif, to the extent that when one of these widely famous scholars is mentioned before them, they frown and mock him despite the huge difference of knowledge level between them. Moreover, they cannot correctly understand the Arabic language. The best example for this is that they use the three verses mentioned in *surat* Al-Maa'ida about whoever do not rule according to the Glorious Qur'an to judge people as disbelievers, wrongdoers and defiantly disobedient. However, if they knew that the exegete should be aware of the internal and external connotation of the context, they would know that the verses refer to a different kind of disbelief. It is reported on the authority of Abd Allah Ibn `Abbas (Allah be pleased with them) that he said “It is not the disbelief which they mean, it is not disbelief which change religion. (It is a different kind of disbelief)”^{٧٨}. It is also reported in Sahih Muslim that Al-Bara' ibn `Azib said, about these verses “If any do fail to judge (by the light of) what Allah has revealed,

^{٧٧} The Qur'an, ١٦:١٢٥.

^{٧٨}Hakim, Mustadrak, Hadith no. ٣٢١٩.

they are (no better than) unbelievers" up to "wrongdoers." These three verses were revealed about the disbelievers who do not judge by what Allah has revealed, and not about the Muslims. The verses talk about the Jews and the people similar to them. The only two authentic explanations for the verses in question are reported on the authority of Ibn `Abbas and Al-Bara', so the scholars of the *Shari'ah* since 13 centuries up till now adopt their opinion.

If it is said that the verse is general and does not specify the people for whom it was revealed, we will definitely say, "This generality is apparently opposed by another generality, that is, the saying of Allah, "And do not say to one who gives you [a greeting of] peace "You are not a believer."⁹⁴ The way to correctly understand these verses of general meaning is to specify the meaning of one of them, otherwise the scriptural texts would be contradictory. Thus, Allah's Saying, "And whoever does not judge by what Allah has revealed..." is related to the people who disbelieve in the revelation of Allah. As a result, generalizing the meaning of the verse entails wrong understanding.

The extremist groups' discourse, which is not founded on a correct scholarly methodology, let them to give unfounded Fatwa because of their full ignorance of the ultimate objectives of the *Shari'ah*. Knowing about these objectives helps us correctly understand the scriptural texts.

⁹⁴ The Qur'an, 4:94.

The objectives of *Shari'ah* help the scholar to understand three important things:-

- ١- The rationale as a tool for controlling the ruling and linking it to the meaning.
- ٢- Achieving the interest as the ultimate goal of the rulings.
- ٣- The ultimate outcome of the actions as the main rule for understanding the revelation.

Fourth feature: It is an extremist discourse

It is amazing that they rely on military wings to protect them when they fail in the fields of scholarly dialogue. Undoubtedly, they know nothing; you have to ignorantly repeat what they say otherwise you wait to face an aggression on your honor, property or yourself by their armed terrorist group. They forgot that the Glorious Qur'an ordered Moses and Aaron (Peace be upon them both) to speak gently with Pharaoh, the tyrant who claimed to be the God. Allah, Glory be to Him, says, "And speak to him with gentle speech that perhaps he may be reminded or fear [Allah]."[^]

The outcome we want to get is that a discourse of these qualities is a one-sided, arrogant, and terroristic one whose holders claim to have

[^]The Qur'an, ٢٠:٤٤.

knowledge. This kind of discourses is a discourse of estrangement, irrelevant to a state that believes in dialogue, multiculturalism and institution-building.

Intellectual Misconceptions in the Jurisprudence of Building the State according to Extremist Groups Compared to Islamic Jurisprudence^{^1}

There are various intellectual misconceptions attached to the thought of the so-called Islamic groups. This also applies to their views of building the states. The following lines will highlight some of the most serious misconceptions.

First: The concept of caliphate in Islam

The true meaning of caliphate in Islam is the presidency. In Islam, there is a system of values regulating the political work and other fields. However, it has no definite political system. The best examples of these values are consultation, equality, justice, non-discrimination among citizens, preserving and securing the homeland, development to improve citizens' standard of living and freedom of worship, etc.

To assume that there is a connection between any definitive, legal, political system and religion is a matter of illusion, confusion, aberrance and misguidance. The same is said with regard to considering politics an essential pillar of Islam and/or the caliphate the only way of ruling in Islam. This idea is far away from the basic foundations of religion.

^{^1} This research was written by Prof. Dr. Nabil As-Samalluti.

Caliphate is a form of ruling that changes and develops according to whatever achieves the interest of the society and suits the age. The political system (e.g. Kingdom, Republic, Empire ...etc.) does not define the religious identity as it is not a part of religion.

In every society, an authority is legally and rationally required to achieve the internal and external security and preserve people's affairs. This is exactly what happened inside the Islamic state. The citizens of any society can freely determine the legitimate authority of their society. Throughout the history of Islam, the Sunni and the moderate Muslims agreed that the legitimate or legal authority is an agreement to preserve the interests of the people and it is irrelevant to one's worship or doctrine. This obviously means that the will of the majority of citizens is the source of political authority in any society. This recent constitutional scenario was applied in the first state founded by Prophet Muhammad (PBUH). After his death, the beginning of Islamic caliphate was based on what is called the pledge of allegiance. It is regarded as a form of democratic elections carried out in light of Shura and Islamic regulations, which are applied in various forms in the East and the West today.

Second: The concept of pre-Islamic period of ignorance

The morphological balance of the term *Jahilyah* in Arabic is (*Fa'ilyah*), this expression is mentioned in the Glorious Qur'an in four positions which are, the Saying of Allah "Thinking of Allah other than the truth - the thought of

ignorance.”^{٨٢}, “Then is it the judgment of [the time of] ignorance they desire?”^{٨٣}, “and do not display yourselves as [was] the display of the former times of ignorance.”^{٨٤}and “When those who disbelieved had put into their hearts chauvinism - the chauvinism of the time of ignorance.”^{٨٥}

Mentioned in the Glorious Qur’an as an expression, pre-Islamic period of ignorance has two different meanings as follows:

- ١- The ignorance about the Essence of Divinity and its characteristics; not knowing that Allah, Glory be to Him, is the Creator, the Originator, the Living, the Ever-Subsisting...etc.
- ٢- The behavior which is not guided by the Divine Guidance in all behaviors, relations and ways of thinking.

There is no relation between pre-Islamic period of ignorance in the Qur’an and Sunnah and ignorance about astronomy, physics, mathematics, the economic and political systems and the scientific progress and backwardness.

Pre-Islamic period of ignorance refers to misguided doctrine, judging according to one’s whims and the rejection of Allah’s *Shari’ah*. The

^{٨٢} The Qur’an, ٣:١٠٤.

^{٨٣}The Qur’an, ٥:٥٠.

^{٨٤} The Qur’an, ٣٣:٣٣.

^{٨٥} The Qur’an, ٤٨:٢٦.

opposite of pre-Islamic period of ignorance is recognizing that Islam is a doctrine, *Shari'ah* and a lifestyle.^{^1}

Third: Casting doubt on the legitimacy of the national state

The extremist groups do not recognize the importance of the national state, land, loyalty to the state or society. They believe in the insignificance of these matters, though the belief in the above mentioned matters is one of the major values of Islam as a doctrine and *Shari'ah*. Islam appreciates the value of land and home as it cannot be applied completely except in a homeland and a state. Prophet Muhammad (PBUH) gives due care to building the state to spread Islam and confront idolatry with wisdom and good admonition. The Prophet and his Companions defended their first home and state against the polytheists in Badr, Uhud, Khaibar and other battles. Having faith in defending and dying for one's homeland are the essence of Islamic thought. Respecting the national state entails respecting the citizenship contract between the individual and the state, defending homeland and adhering to the equal rights and duties among citizens.

Loyalty to homeland is an indispensable part of loyalty to Islam. Yet, the extremist groups do not understand the essence of Islam. Consequently, they kill, shed blood, violate honor, spoil property and terrorize safe

^{^1}Abbasi, Mafhoum Lafdh Al-Jahiliya Fi Al-Qur'an Wa Al-Hadith An-Nabawi and Al-'Asr Al-Hadith, pp 101.

people. Is this the true essence of Islam? Islam came to spread security, safety and peace in all countries alike. The actions of these deviated groups that misguide people are sheer criminality and violation of the *Shari'ah* of Allah.

It is right that Islam does not prescribe a definitive policy for regulating the society or the state. However, it lays down a group of values, maxims and principles that should be followed and applied, including justice, *shura* (mutual consultation), equality, freedom of religion and citizenship. The state in Islam is responsible for maintaining peace and achieving the interests of its citizens, a matter which clearly shows the importance of having a power to accomplish these goals. Such power protects and strengthens the state and defends it against its enemies.

Prophet Muhammad (PBUH) was the first one to establish a constitutional state based on complete citizenship among its citizens, regardless of the difference in religion, race and the educational and economic standard, etc. Scholars confirm that assaulting the Dhimmis (Non-Muslims living in an Islamic state with legal protection) in the Islamic state requires a movement of the whole state and its army to protect them.

Fourth: The Concept of Jihad

There are various kinds of Jihad that are as important as defending the society and the state. These kinds include striving against the devil and the soul and struggling to spread Islam with wisdom and good preaching. There is also a kind of Jihad (striving) to improve the citizens' affairs through developing and improving the economic, educational and health performance.

In *surat* Al-Furqan, which was revealed in Mecca, Allah, Glory be to Him, says, "So do not obey the disbelievers, and strive against them with the Qur'an a great striving."^{^v} The pronoun here refers to the Qur'an; it is an order to strive against the disbelievers with speech before fighting was prescribed later in Al-Madinah. Furthermore, in the Meccan phase, Allah, Glory be to Him, says, in the *surat* An-Nahl "Then, indeed your Lord, to those who emigrated after they had been compelled [to renounce their religion] and thereafter fought [for the cause of Allah] and were patient - indeed, your Lord, after that, is Forgiving and Merciful."^{^^} The Jihad meant in the verse is striving against soul which is the greatest kind of Jihad.

After building the first Islamic state in Al-Madinah and all the pillars of the state (i.e. inhabitants, land, authority, and constitution) were

^{^v} The Qur'an, 25:52.

^{^^} The Qur'an, 16:110.

complete, combating was prescribed as a kind of Jihad to defend the citizens of the society, Muslims and non-Muslims alike.

Thus, there are many forms and kinds of Jihad. The most important one is striving against the spiritual diseases of the soul, the devil, poverty, ignorance and disease, all forms of economic and social backwardness, all society's diseases like divorce, family disintegration, smoke and drug use, all forms of sedition, many crises and problems and whoever attacks homeland and the citizens. For this reason, Allah, Glory be to Him, orders the Muslims to build intellectual, religious, scientific, technological, economic, political and military powers. We should not fight non-Muslims; we should leave them alone, for there is no compulsion in the religion. We should use power to deter the aggressors from attacking the state or to avoid their aggression if it occurs.

Fifth: Allegation of infallibility, cancellation of mind and blind hearing and obedience:

There are so many of the so-called Islamic groups believing in the infallibility of their leaders. All their followers should swear to listen and be obedient without any discussion about their leaders' orders. Undoubtedly, this is against the essence of our Islamic religion as infallibility ceased to exist when the final Prophet, Muhammad (PBUH), died. Our pure religion orders us to use our minds and teaches us that there is no hearing or obedience but to Allah, His Glorious Book and the

authentic Sunnah of Prophet Muhammad (PBUH). Apart from the Prophet (PBUH) and Allah's Revelation, anybody can be right or wrong. He (PBUH) consulted his companions about unrevealed matters and applied their opinions to confirm the importance of *shura* approach. This happened in the battle of Badr, Uhud, Al-Ahzaab and in many other cases.

Sixth: Intolerance and rejection of diversity and peaceful co-existence

The so-called Muslims extremist groups do not accept diversity and difference in religion, customs, traditions and dealings among human beings. They want us either to follow their aberrance and extremism or to be murdered and violate the sanctity of our property and honor, etc.

No doubt that this thought clashes with the facts of Islam, for diversity is the rule of Allah, Glory be to Him, in His creation as the worshippers are different from each other in religion, race, color, abilities and economic and social levels, etc. He, Glory be to Him, says, "And if your Lord had willed, He could have made mankind one community; but they will not cease to differ. Except whom your Lord has given mercy, and for that He created them."⁸⁹; "There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong."⁹⁰; "You are not over them a controller."⁹¹; and "The truth is from your Lord, so whoever wills - let him

⁸⁹ The Qur'an, 11:118-119.

⁹⁰ The Qur'an, 2:256.

⁹¹ The Qur'an, 88:22.

believe; and whoever wills - let him disbelieve.”⁹² He, Glory be to Him, laid down some divine rules in the universe including relations, science, technology, human rights, liberties, justice, equality and *shura* (mutual consultation), etc. Whoever adheres to these rules will be rewarded in this worldly life as He, Glory be to Him, says, “To each [category] We extend - to these and to those - from the gift of your Lord. And never has the gift of your Lord been restricted.”⁹³

The Muslims accept diversity and difference among people as this is the Will of Allah, the Omnipotent. Therefore, one of the main objectives of Islam is the peaceful co-existence between Muslims and non-Muslims. This is exactly what Prophet Muhammad (PBUH) did in the first Islamic state. It included Muslims, Jews, pagans and others as citizens having the same rights and freedom.

Seventh: Using religion to achieve personal benefits and gain political power:

The majority of the followers of these extremist groups do not use religion and its principles to truly call for Islam, but to hold authority and achieve their vested interests and aims. This is a crime against religion and people. They (i.e. extremist groups) do not hesitate to expel people from their countries, demolish their houses of worship, take their women by force and

⁹²The Qur’an, 18:29.

⁹³The Qur’an, 16:20.

violate the sanctified property on grounds that its owners follow another religion or do not follow the extremist ideology of these groups. They commit their crimes under the slogan of Islamic state or any other religious one. In fact, Islam is innocent and does not accept any of these things; it gives due care to the rights and freedom of all citizens, Muslims and non-Muslims alike.

Eighth: Our Islamic religion prohibits desecration of religions:

Islamic religion prohibits desecration of religions and their symbols as well as insulting non-Muslims. Doing these actions undermines social and human peace and hurts the feelings of the followers of other religions. That is why we should truly understand some concepts mentioned in the books of Jurisprudence. The extremist groups try hard to arouse sedition and hatred between Muslims and non-Muslims, which leads to conflict, murder, civil wars, sedition, and clash of cultures and civilizations. Allah, Glory be to Him, says, “And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge.”^{٩٤}

These ideas and principles, adopted by so-called Muslim extremist groups, deviate from the essence of Islam. These groups emerged and developed with the help of the enemies of Arabs and Islam. They founded them to cause sedition inside Arab societies and divide them through civil wars

^{٩٤} The Qur'an, ٦:١٠٨.

and launching war on behalf of these hostile international bodies to destroy the Arab and Islamic societies.

Fiqh of building the first Muslim state

The objective, fair-minded researcher realizes that what we call the modern civil state - which we are proud of and upon which all the political, social and legal researchers agree - was first founded by the Prophet Muhammad (PBUH) in Al- Madinah al-Munawwarah. Some people in the West mistakenly claim that its pillars and foundations were laid down after the English, French and American revolutions.

Honestly and objectively, let's define these foundations that all people agree that they are the pillars of the modern civil state:

Prophet Muhammad (PBUH) founded the first Muslim state on a social contract that has obvious terms, conditions and principles. This first started in the pilgrimage season held in the ۱۲th year after Prophethood, exactly in June ۶۲۱ C.E. (Al-Aqaba first Pledge). Al-Bukhari recorded that Ubada bin As-Samit (May Allah be pleased with him) said, "The Prophet (PBUH) said, "Come along and give me the pledge of allegiance that you will not worship anything besides Allah, will not steal, will not commit illegal sexual intercourse will not kill your children, will not utter; slander, invented by yourself, and will not disobey me if I order you to do

something good. Whoever among you will respect and fulfill this pledge, will be rewarded by Allah. And if one of you commits any of these sins and is punished in this world then that will be his expiation for it, and if one of you commits any of these sins and Allah screens his sin, then his matter, will rest with Allah: If He will, He will punish him and if He will, He will excuse him." So I gave the pledge of allegiance to him for these conditions."^{۹۰}

After completing the Pledge and the end of the pilgrimage season, the Prophet (PBUH) sent Mus'ab ibn 'Umair (May Allah be pleased with him), the first ambassador in Islam, with those who gave the Prophet the pledge of allegiance. He went with them to Yathrib to spread Islam and teach the Muslims the matters of their religion.

In the second pilgrimage season in the ۱۳th year of Prophethood, June ۶۲۲ C.E. seventy three Muslims of Yathrib among the pilgrims of Yathrib went to Prophet Muhammad (PBUH) and they determined not to leave him. There was a meeting between seventy-three men and two women (Nusaybah bint Ka'ab and Asmaa bint Amr) from Yathribi Muslims with the Prophet (PBUH). The Prophet's uncle, Al Abbas ibn Abd al-Muttalib, was there and said, "Muhammad is one of us; we protect him from our people and he is honored and supported by his people. He refused anything but to be and catch up with you. If you would be loyal to him and

^{۹۰}Al-Bukhari, Sahih, Hadith no. ۳۸۹۲.

protect him from whoever opposes him, you should properly bear that; and if you would let him down and forsake him after coming to you, then leave him here. Ka'b ibn Malek Al-Ansari said, "We heard what you said. Now, speak, Prophet, and stipulate for yourself and your God what you want."⁹⁶ Afterwards, the Prophet (PBUH) talked and the pledge was fulfilled.

Imam Ahmed narrated that Jaber (May Allah be pleased with him) said, "Upon what conditions shall we make a pledge to you? He (PBUH) said, "pledge to me that you should listen and obey, both when you are active and lazy; that you will spend (for the cause of Islam), both in poverty and richness, that you will enjoin good and forbid evil; that you will speak for the cause of Allah, fearing not, when do something for Allah, the blame of a blamer; and that you will support me and protect me when I come to you, in the same way yourselves, your wives, and your children. And (If you fulfill these conditions,) you will have Paradise."⁹⁷

When the pledge was fulfilled, the Prophet (PBUH) asked them to elect twelve leaders to have the responsibility to carry out the terms of this pledge. He (PBUH) said to people of Yathrib, "Elect twelve representatives

⁹⁶ Ibn Hisham, Sira, 1/440-441

⁹⁷ Ahmed, Musnad, 1/404.

from you to be your leaders.” This was the first election in history, as they immediately elected nine from Al-Khazraj and three from Al-Aws.^{9^}

Building the Madinah state and laying down the foundations of disciplined democracy

The researcher in political history and the development of social and political systems realizes that the birth of the fundamental foundations of the modern democratic state - that the west and international organizations are proud of and work on spreading here and there - are but the foundations emerged in building the first state in Islam that the Prophet (PBUH) founded in Al- Madinah al-Munawwarah.

These pillars and rules were reshaped through the European history in the Magna Carta document, the English and then the French revolution that raised the slogans of freedom, fraternity and equality. These pillars appeared after that through the international organizations like the Universal Declaration of Human Rights 1948 C.E., International Covenants 1966 C.E., covenants and agreements to criminalize discrimination against women, conventions on the child, the attempt to spread democracy, freedom of opinion, Parliamentary system, and realizing equality among citizens ... etc.

^{9^} Al-Mubarkfuri, Ar-Raheeq Al-Makhtum, p. 137

The Prophet (PBUH) founded the first state in Islam in Al-Madinah on these basic foundations ١٤٤٠ years ago. These foundations are still the cause of the growth, development and integration of any country in our world today. Undoubtedly these foundations guarantee constructive interactions among the social, political, legal, religious, cultural, and educational systems.

We can summarize the most important rules upon which the first state in Islam was based on as follows: -

First:

It was a contract-based country. There were meetings between the people of Yathrib and the Prophet (PBUH) in Al-'Aqaba before building the state. Two meetings were held in two consecutive years referred to in books of history and Biography of the Prophet, as the first and second 'Aqaba Pledges, which resulted in signing a social contract to found a state. The Prophet (PBUH) put some stipulations to move to Yathrib that the delegation willingly accepted after studying. This was the first social contract to build the first Muslim state.

Second:

The state in Al- Madinah al-Munawwarah was the first one to be based on choosing the ruler freely by the citizens. They were very satisfied and free

when they chose their ruler. The Prophet (PBUH) and Abu Bakr As-Siddiq immigrated to Madinah upon the request of the representatives of its inhabitants who wanted him to be a political president there. He was neither a colonist nor an invader. The inhabitants of Madinah welcomed him happily; they competed to win his stay, and tried to direct his she-camel but he (PBUH) said to them, "Let her alone, for she is ordered to go on."⁹⁹

Third:

Building the public institution of the state was the first thing to be done in the state of the Prophet (PBUH). He built Quba Mosque, the first mosque in Islam. It was the headquarter of preaching, political, economic and military establishments. It was also the place where the Prophet (PBUH) used to plan for the wars to defend the country and repel the aggressors. The modern, civil states confirm that the modern states should be that of institutions and state of law.

Fourth:

The state in Al-Madinah al-Munawwarah was based on national reconciliation; this is what the states have recently realized. There must be a minimum of reconciliation and common culture among the inhabitants of the country to create an inclusive community which represents the basis of

⁹⁹ Ibn Mansur, Sunan no. ۲۹۷۸; At-Tabarani, Al-Mujam Al-Awsat, no. ۳۰۴۴.

a strong state. Prophet Muhammad (PBUH) was keen on achieving reconciliation and agreement between the biggest two tribes in Al-Madinah (Al-Aws and Al-Khazraj). There were wars, conflicts and blood shedding between these two tribes for more than forty years. This means that our Islamic religion sets up society and country on national reconciliation.

Fifth:

The first state in Islam was set up on a constitution which defined the shape and the authority of the state, the rights, duties and liberties of its inhabitants. These matters were written in Al-Madinah Document. The first term of this constitution was that the “Emigrants and helpers (*Muhajirun and Ansar*) and Jews and their freedmen constitute one indivisible nation enjoying equal rights.

The inhabitants of the Muslim state were not only Muslims but also Jews and disbelievers. All these categories have the same right, duties, and liberties.

The Islamic state is not limited to its inhabitants as the phrase (their followers and whoever caught up with them) means that the state could include new inhabitants on condition that they adhere to its constitution.

Sixth:

The principle of citizenship was first established in the state of Al-Madinah al-Munawwarah. It has legal, economic, social and national dimensions, including that the inhabitants of the country have the same rights, liberties and equality without discrimination on the basis of religion, race, economic or social status. The only condition is loyalty and adherence to the constitution of the country.

Seventh:

The state of Al-Madinah al-Munawwarah has achieved complete equality between men and women in the political, economic and social rights. The Glorious Qur'an admitted that women are halves of men and they (man and woman) were created from one soul as it is proved in the beginning of *surat An-Nisaa*: "O mankind! Be dutiful to your Lord, Who created you from a single person (Adam)"¹⁰⁰. Women have the same rights of men as Allah, Glory be to Him, says, "And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]."¹⁰¹ These two verses confirm that man and woman are equal.

Eighth:

¹⁰⁰ The Qur'an, 4:1.

¹⁰¹ The Qur'an, 4:228.

The state of Al-Madinah al-Munawwarah was set up on justice that was confirmed in the Glorious Qur'an and Sunnah. Justice means that everybody could get his rights without discrimination, applying equality among people and taking care of people's rights. The divine justice is applied on all people without discrimination. In this connection, let's mention one verse and one Hadith. Allah, the Omnipotent, says, "and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do."^{١١٢} As for the Hadith, it is the Prophet's (PBUH) statement when he said to his dearly loved Companion Osama Ibn Zaid when he tried to intercede for the Makhzumi lady who stole, "By the One in whose hand is my soul, if Fatimah bint Muhammad were to steal, I would cut off her hand."^{١١٣}

Ninth:

The state of Al-Madinah al-Munawwarah was the first to apply Shura principle, that is, the disciplined democracy with Islamic values, doctrine and criteria. The state of Al-Madinah ensured freedom of opinion and the right of having different views regarding the unrevealed matters. This is because Muhammad (PBUH) was a Prophet and a president and he encouraged his companions to express their opinions. He used to carry out their opinions in the most sensitive and dangerous situations. It is obvious

^{١١٢} The Qur'an, ٥:٨.

^{١١٣} Al-Bukhari, Sahih, Hadith no. ٣٤٧٥.

that the state of Al- Madinah al-Munawwarah is considered a history of freedom of speech, the right to express opinion and have different views, and the disciplined democracy guided by revelation, not by the west as it is common in the majority of books of political and social sciences.

Tenth:

The state of Al-Madinah al-Munawwarah founded a new kind of relationship between the majority and the minority. The majority of the inhabitants of Al- Madinah were Muslims, the immigrants and Helpers. At the same time, there were other Jewish tribes and polytheists minorities. The Islamic state does not impose certain religion, opinion or belief and rejects what is called today the dictatorship of the majority. The non-Muslims had the freedom of belief, and could practice their special acts of worships, personal affairs law in marriage and family building. They also had free economic and social activity among Muslims on condition that they adhere to the conditions of the constitution of the state and not to attack or conspire against the state.

When the first Islamic state was built, Islam confirmed that there is no sovereign State except for peace; there is no peace without justice; and there is no justice apart from preserving the rights, duties and liberties for whoever lives in the state without discrimination on the basis of religion, race, tribe, color or any tribal, economic or educational position. Without preserving the dignity of all members of society we cannot have a good

state or integrated society as it is proved in the Glorious Qur'an: "And We have certainly honored the children of Adam."^{١١٤} The verse refers to the children of Adam in general. The Prophet (PBUH) said in His first religious and political speech after reaching Madinah and becoming its ruler, "O people, exchange greetings of peace (i.e., say: As-Salamu 'Alaikum to one another), feed people, strengthen the ties of kinship, and be in prayer when others are asleep, you will enter Jannah in peace."^{١١٥} All this was the objective and realistic application of Allah's Mercy: "And We have not sent you, [O Muhammad], except as a mercy to the worlds."^{١١٦}

A treaty with Yathrib Jews and establishing citizenship rights:

There were Jews and polytheists in Madinah. Although they harbored hatred against the Prophet and Muslims, they did not show any resistance or rivalry at the early time of building the state. Thus, Prophet Muhammad (PBUH) signed a treaty with them that confirms on the right of citizenship for all. He (PBUH) confirms the human rights for whoever lives in the state without discrimination. He (PBUH) also gave the Jews the freedom to practice their rituals, trade, and agricultural and personal affairs. Thus, he (PBUH) rejected the exclusion or marginalization of non-Muslims.

^{١١٤} The Qur'an, ١٦:٧٠.

^{١١٥} At-Tirmidhi, Sunan, Hadith no. ٢٤٨٥.

^{١١٦} The Qur'an, ٢١:١٠٧.

Due to the treaty mentioned above, Al Madinah and its outskirts became a state based on law and citizenship foundations; the state's capital city was Al-Madinah and it was under the Prophet's leadership. Muslims were the ones to order and control everything so Al-Madinah became the real capital of Islam. The Prophet (PBUH) signed some treaties with other tribes so that he could spread security and peace according to circumstances and conditions.

Great and important constitutional principles in Al Madinah document

For the first time in the human history, this document confirmed some principles which are considered today the first foundation for political elites, human rights and the preservation of human dignity without discrimination. It is the first basis for freedom which is disciplined by moral controls that prevent aggression. It is also the first basis for building the state of citizenship and the rule of law. It is a state that is not based on individual ruling but on the work of institutions, so it prevents despotism or pursuing the personal interests. The constitutional principles and foundations of this document include;

1. The nation and state are one entity that is above tribal entities. This is regarded as a recent principle in the political development. The Constitution of Al Madinah did not cancel tribalism as it plays a vital role in achieving integration, interdependence and power. However,

the Constitution prioritized the loyalty to the state so that the loyalties do not clash but integrate.

٢. Social solidarity among each component of society and among all the components together.
٣. Cooperation among all to deter and punish those who are disloyal to the contracts, promises and items of the constitution approved by all.
٤. Equality among Muslims and respecting the security and peace of a Muslim as Muslims' blood and honors are equal, there is no difference between them and they are together against others.
٥. Protecting the Dhimmis (people with whom we have a covenant) and non-Muslims minorities as they and Muslims have the same rights and duties. This is the first application of citizenship principle in human history.
٦. Achieving national and citizens' security, protecting the society's citizens and assuring their rights and blood money.
٧. The constitution defined the Islamic *Shari'ah* as a religious authority which we refer to when there is a difference.

٨. Freedom of belief and practicing rituals for all citizens were approved whatever their religion and creeds are. History witnesses that this principle was first used in Al-Madinah document and it has never appeared in previous civilizations or ancient societies.
٩. Establishing the principle of responsibility of all groups and institutions of society in defending and protecting the state. Defending and protecting the state is the responsibility of all and they all have to participate in expenses, effort and time.
١٠. Financial and economic independence of each class in the society.
١١. Co-operation among classes of the society is a must to face any aggression against the state or some of its classes.
١٢. The positive and constructive dialogue between Muslims and People of the Book in Al Madinah as there are advice and righteousness among them for the sake of all and the state in general.
١٣. Making agreements with allies is possible for each class but on condition that it does not harm other classes or the country.
١٤. The constitution of Al Madinah affirms the realization of justice for all citizens and the necessity to support the oppressed.

١٥. Realizing peace and security right for every citizen in the new state.
١٦. Muslims citizens' duties towards each other and the others.
١٧. Rights and duties of People of the Book and non-Muslims.
١٨. General principles; Yathrib is a sanctuary for people who signed this document (A specific geographical borders of the state) and the neighbor is protected and secured (Realizing neighborhood right).^{١٠٧}

To conclude; these are some distinctive features of the Islamic civilization in the Constitution of Al Madinah that prove to us, to political scientists, sociologists, and thinkers in East and West how the Islamic system preceded all systems in realizing the values of tolerance, interdependence, freedom and the support of the oppressed. It also realized the principle of citizenship, human rights and dignity and complete equality among the citizens in society without discrimination. The aspect which was not realized before Islam and none of the recent western constitutions could reach its high level of ensuring rights, guaranteeing freedom and human dignity without discrimination. Neither previous nor subsequent nor contemporary civilizations have

^{١٠٧} Ibn Hisham, Sira, ١/٥٠٤.

known that; no one of them could reach the loftiness that the state of Islam has reached.