

TO VOTE OR NOT TO VOTE

POLITICAL PARTICIPATION: REFUTING
THE CLAIMS OF EXTREMIST SEPARATISTS

Rashad Ali, Dawud Masieh & Dilwar Hussain





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Foreword

This pamphlet aims to distinguish authentic Islamic teachings from those proposed by extremists today. It tackles the separatist ideology, and the civilisational conflict mindset of organisations and modern ideological movements like that of ISIS, and al-Qaeda and less well known, non-violent but ideologically extreme groups like Hizb ut-Tahrir. All of whom reject democracy, political participation, and even condemn voting for governing parties in elections. It shows that mainstream Islamic scholarship was less about the forms of governance, ideological conflict, and more about shared values, commonality, the greater interests and bringing people together. It tackles this through showing both how the teachings of the Qur'ān and the prophetic traditions were understood throughout a thousand years of Muslim scholarship, and how it has been understood in contemporary times through the lens of those diverse traditions, as opposed to puritanical ideological extremists today.

Dr Azeem Ibrahim
Chair
Ibrahim Foundation

Introduction

There is a small but growing number of Muslims who hold the view that political participation outside an 'Islamic system' is forbidden (haram). Such conclusions depend on a variety of antecedent conclusions: that sovereignty belongs to God; that Shariah rules must be imposed upon people by the state; that taking part in the governments of non-Muslim majority governments is also haram; and the like.

This pamphlet aims to set out in detail why these antecedent conclusions, and therefore the whole extremist-separatist project, are wrong. Such positions are inimical to the real interests of Muslims living in the modern global order; but they are also a clear departure from centuries of well-established religious thought. And in case anyone should suggest that during all those centuries of profound scholarship, the great thinkers whom Muslim tradition has preserved for us were far astray, the Islamist separatist position is just as patently a departure from the practice and world-view of the Prophet of Islam himself, God's prayers and peace be upon him.

Without wanting to give such 'political parties' too much prominence, groups such as Hizb ut-Tahrir have played a part in popularising these erroneous ideas. Of course, it is debatable whether they have actually come any closer to their own objective of establishing a Caliphate (in their understanding, an autocratic, expansionist state, seeking to impose a single interpretation of Shariah on the people). But the guiding ideology is dangerous unless soundly rebutted.

For the purposes of this pamphlet, Tahrir is taken as the archetype of these ideas since, compared with other groups such as ISIL, they have been more detailed in their exposition of them and have a much more detailed narrative within which their ideas are situated. While *their* presentation of extremist ideas is the one most frequently referred to, the arguments apply *a fortiori* to most other Islamist separatist movements also.

Our pamphlet aims to show that Tahrir's ideas are *far* from being definitive. Tahrir openly state, and would have Muslims believe, that their conclusions on a whole range of issues are definitive and represent the only tenable view in Islamic legal orthodoxy. Moreover, they would seek to impress upon non-Muslims that their ideas are the pure realisation of Islam and that they are somehow representative of what the Prophet himself (pbuh) would advocate.

We hope that opinions from the classical jurists presented here will serve to challenge and rebut their claims as well as reinvigorate debate by presenting new or unfamiliar evidences related to political ideas. Also that, with time, both Muslims and non-Muslims alike are able to see that far from having religious ideals, the current Islamist rejectionist organisations have at their heart only ideological and political concerns.

We identify a number of erroneous positions advanced by Tahrir and similar movements, and set out exemplars from the classical tradition that show the inadequacy of their interpretation of the Quran and the Sunna. In essence, our argument can be summarised as follows:

- Modern rejectionist movements project modern political categories backwards into sources that make no mention of them.
- Traditional Muslim understanding of Sharia (Divine Law) has always been pluralistic, due to the human incapacity to definitively discern God's will.
- Early Muslims and the tradition show that governance is for securing society's needs and interests, not for imposing interpretations of Sharia.
- Early Muslims and the tradition show that full engagement in civic life with non-Muslims is recommended, and sometimes obligatory.
- 'Dar al-Islam'/'Dar al-Harb' are not intrinsic to scripture. It is enough for a Muslim that they are able to profess their faith in a given state, to call that country their home.

Are 'Islamic' political parties ordained in the Quran?

In the later 20th century, some Muslim groupings have advocated that there is a need to establish 'Islamic' political parties and that to establish such parties is an Islamic legal obligation in the same way as praying and charity are legal obligations (*wajib*). Since it is seen as an obligation, those not participating in the activities of such political parties are seen as blameworthy and negligent of the Shariah rules.

Aside from the religious jurisprudential problems with this argument, there is also an intellectual problem. That is, the whole notion of political parties is relatively modern and this itself rules out the possibility that establishing such parties is a religious obligation: how can something that wasn't in existence at the time of the Prophet (pbuh) be the *definite* subject of a Quranic verse? Still more far-fetched is the claim that establishing 'Islamic' political parties is an obligation of similar standing to the ritual worship such as prayer. If one considers that political parties emerge from the modern nation state and also considers the vehement opposition of groups such as Tahrir to the idea of a nation state in the first place, one begins to see the inherent contradiction in their thought processes.

From a jurisprudential and religious perspective, this view is held only by a few groups such as Hizb ut-Tahrir and controversial recent figures such as Mawdudi.¹

¹ Abu al-'A'la al-Mawdudi mentioned the following in his book 'Islamic concepts regarding religion and state' under the chapter on: The obligation of enjoining the *maruf* and forbidding the *munkar*; "What is apparent from the partative in the ayah; 'And let there arise out of you a group inviting to all that is *khair* (Islam).' It does not mean that the Muslims are ordered to have a group that will undertake the obligation of *dawah* to Islam, enjoining the *maruf* and forbidding the *munkar*, whilst it is not an obligation on the rest of the Muslims to undertake this task in origin. Rather its meaning is the obligation that the Ummah should not be at any time without -at least- one group that will guard the light coming from the lamp of truth and goodness, and struggle against the darkness of evil and dangers of falsehood. When no such group exists amongst the Muslims, then it is impossible for the Ummah to be saved from the curse and severe punishment of Allah (swt), let alone be the best Ummah brought forth for mankind." This is the only reference provided with an actual quotation by HT for the formation of political parties or "groups" being necessary religiously. This is quoted by the senior HT member and ideologue Ahmed Mahmoud in his book *Dawa ilal-Islam* - 'The Call to Islam'. An extract of the translation can be found at http://islamicsystem.blogspot.com/2006_08_01_archive.html

Before these types of political groupings came into existence there was no comparable demand to establish them, and there is not a single classical jurist who held it an obligation to establish an Islamic political grouping or party.²

It is no surprise that no such political party existed in the early period of Islam or at *any* time in Islamic history. There is not one example of a party established on the basis of the Quranic verse cited as a justification for political parties:

Let there arise from among you a group of people inviting to all that is good, enjoining *al-maruf* (good) and forbidding *al-munkar* (wrongdoing). And it is they who are the successful. [3: 104]

There were different interpretations of this verse among the classical jurists and Quran commentators. There were some who said that it was an individual duty on each and every Muslim to 'promote good in society' and work against wrong. Most, however, said that if only a portion of the population did this, then that is sufficient and not all individuals are obliged to. Thus the burden of duty is on the community as a whole rather than the individual. Imam al-Jassas,³ Imam Qurtubi,⁴ and Imam al-Tabari⁵ are all of this latter view.

Imam al-Jassas, the famous Hanafi scholar, comments on the verse as follows:

God has obliged the enjoining of good and forbidding of evil, that it is a communal obligation (*fard kifayah*) and not a duty on every individual. If some

² This should not be confused with the political differences that led to the creation of different political groupings and sects e.g. the early schism between groups later known as Shia and Sunni, which do not base themselves upon reading this verse nor describe themselves as a political party. Though in origin the term 'Shia Ali', did refer to those supporting Ali ibn Abu Talib, the son-in-law of the Prophet's candidacy for Caliphate.

³ Imam Abu Bakr Ahmed bin Ali al-Razi al-Jassas al-Hanafi died in 980 CE, and is one of the foremost legal commentators of the Qur'an and belongs to the Hanafi madhab.

⁴ Imam Abu 'Abdullah Al-Qurtubi or Abu 'Abdullah Muhammad ibn Ahmad ibn Abu Bakr al-Ansari al-Qurtubi d(1214 - 1273).

⁵ Abu Ja'far Muhammad ibn Jarir al-Tabari (838-923) is the first to compile a commentary of the Qur'an and is considered one of the most thorough in relating the opinions of the early Muslim jurists. As such his commentary has weight among Muslim scholars and masses alike.

people perform this then the sin falls from the rest.... others have taken the view that it is a duty upon every individual, individually.⁶

Imam Abu Jafar al-Tabari, one of the earliest commentators on the Quran, says:

[As to God's words] 'Let there arise from among you, O believers, an ummah' [this means] *at least a group of the ummah*... [As to] 'calling to the religion of Muhammad and struggling with all effort... and they will be successful' [this means] they will have paradise.⁷

There is no third opinion mentioned in the classical sources in relation to this verse. No obligation to form an Islamic political party, or even the idea of an Islamic political party, has ever been mentioned. This is in spite of Tahrir's erroneous claim that this was precisely Imam al-Tabari's position – namely that there was a duty to establish political parties. It is clear from the quote above that this is not the case. Saying that there should be at least some people that are undertaking to 'enjoin good and forbid wrong' cannot be likened to forming a modern political party so easily.

To conclude this section, it is safe to say that the Islamist political parties such as Hizb ut-Tahrir are alone in their view that the verse relates to establishing political parties.

Having established this, we may note that the only real precedent in Islamic history for a political group is the Khawarij,⁸ an extremist faction that existed in

⁶ 'Chapter on the duty to enjoin the good and forbid the evil' *Ahkam al-Qur'an*, vol. 2, p. 29, Dar al-Turath al-Arabi Beirut.

⁷ *Tafsir al-Tabari min Jami al-Bayan an-Tawil il-Qur'an*, vol. 2, p. 300, 1994, Mu'assas al-Risala.

⁸ Sheikh Abdal-Hakim Murad (T. J. Winter) says about them: "The other great dissident movement in early Islam was that of the Kharijites, literally, the seceders, so-called because they seceded from the army of the Caliph Ali when he agreed to settle his dispute with Muawiyah through arbitration. Calling out the Quranic slogan, "Judgement is only God's", they fought bitterly against Ali and his army which included many of the leading Companions, until, in the year 38, Imam Ali defeated them at the Battle of Nahrawan, where some ten thousand of them perished."

He gives the following references in the footnote to the above point:

early Muslim history and which has many parallels with groups such as ISIL and Tahrir.⁹ Like their latter-day relatives, the Khawarij adopted the slogan ‘no judgement except God’s judgement’ and declared all the rulers of their day as being outside the pale of Islam (*kuffar*). They also believed they had the duty to remove these rulers by force or through militant activities if necessary. This last aspect is likewise one of the defining characteristics of terrorist groups like ISIL and neo-Kharijite groups like Tahrir. Betraying their modernist origins once again is the point that Tahrir make about ‘governments’ being ‘*kufir*’. Not even the Khawarij made this point because, contrary to what the Islamists say of that time, there was no such thing as a ‘government system’ for them to deride.

Jamal al-Din al-Asnawi describes the nature of the Khawarij perfectly:

Al-Khawarij: Those who permit the slaying of Muslims, and the taking of their wealth and families, based merely upon *their* interpretation and *their* apparent evidence (*shubha*). To us, they are transgressors (*fussaq*); though not to themselves.

“The Kharijites represent a tendency which has reappeared in some circles in recent years. Divided into many factions, their principles were never fully codified. They were textualist, puritanical and anti-intellectual, rejected the condition of Quraishite birth for their Imam, and declared everyone outside their grouping to be kafir. For some interesting accounts, see M. Kafafi, ‘*The Rise of Kharijism*’, Bulletin of the Faculty of Arts of the University of Egypt, XIV (1952), 29-48; Ibn Hazm, *al-Fisal fi’l-milal wa’l-nihal* (Cairo, 1320), IV, 188-92; Brahim Zerouki, *L’Imamat de Tahart: premier etat musulman du Maghreb* (Paris, 1987).” *Understanding the Four Madhabs* at: <http://www.masud.co.uk/ISLAM/ahm/newmadhh.htm#11>

⁹ Imam Ahmad, Ibn Mājah, and al-Hākim recorded a hadīth from Ibn Abī Awfā, and Ahmad and al-Hākim also recorded it from Abū Umāmah that the prophet said: “The Khawārij are the dogs of Hell”.

Is sovereignty given to Shariah or the rule of man?

The first Muslim scholar to formally write about an experience of European democracy was probably Rifa'ah Tahtawi (d. 1873), who in 1834, on his return from France, wrote of the virtues of French democracy. Tahtawi, an Imam, felt that Muslim societies could borrow experiences from the West if they did not directly contradict Islam. Another early figure was Khairuddin al-Tunisi (d. 1899) who stressed that political reform was necessary to rejuvenate the Arab world. Muhammad Abduh, the famous Egyptian scholar, argued that Islam is not a theocracy and that there is a clear distinction between the 'religious' and 'worldly'. But some have argued that democracy constitutes a form of polytheism (*shirk bi-Llah*) by interfering with God's authority to rule, as in their view the ultimate source of sovereignty (*hakimiyyah*), rests with God. As with the idea of political parties, the idea of 'sovereignty' ascribed to the Shariah is a new idea, and is not found in the works of the classical scholars.

Tahrir, and other more militant groups, use the slogan of 'Sovereignty belongs to God' as their ideological foundation. Tahrir believe that only they are able to understand Islam correctly in matters of governance and therefore only they can establish *Dar al-Islam* (the world, or ambit, of Islam) because the world as-it-is is seen as *Dar al-Kufr* or *Dar al-Harb* – a world of disbelief or war. However, what they really mean by ruling by God's law is ruling by *their interpretation* of God's law. Such ideas of the *hakimiyya* of God were developed by writers such as Sayyid Qutb (d. 1966), creating a view that democracy cannot be reconciled with Islam.

This idea, that men rule by claiming God's rule, was warned against by the Prophet (pbuh) when he said:

If you... are asked to pronounce God's ruling upon them, then do not pronounce God's ruling upon them. But pronounce your [own] ruling (*hukm-ik*), for you do not know God's ruling.¹⁰

¹⁰ *Al-Minhaj Shar'h Sahih Muslim bin al-Hajjaj*, vol. 6, parts 11/12, p. 267. Dar al-Marifa, Beirut – Lebanon.

In this hadith he forbade referring to everyday laws as ruling by God's law. The *fatawa* (judgements) given by the scholars of Islam in response to this statement state that pronouncing human judgments as ruling by God's law is either forbidden (*haram*) or detestable (*makruh*), and that any *fatwa* given by men is *not* God's rule.

Imam al-Nawawi¹¹ comments that this 'prohibition (of claiming to rule in God's name) is one of precaution and it is discouraged [to do so].' Imam al-Sarakhsi,¹² the great Hanafi jurist, explains the wisdom in the Prophet's (pbuh) statement as intending to avoid sectarian political claims:

The benefit in this is that doubt in scholarly difference (*shubhat ul-khilaf*) is avoided by pronouncing upon them 'our ruling' and judgement according to 'our opinion'. However, this is not avoided if we say we are pronouncing God's ruling, as the *mujtahid* (jurist) could be correct, or incorrect. This is the benefit in using this wording.¹³

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

So: far from being an Islamic slogan, 'ruling is for God alone' is viewed by the scholars as, at best being potentially divisive and by some, such as Imam

¹¹ Imam al-Nawawi (1255–1300) is one of the most famous scholars of the Shafi'i madhab. Legal ruling transmitted by him are often taken as the position of the *madhab* (school of thought) on the issue. He is author of the famous and most-often used commentary on Muslim's hadith collection: *Al-Minhaj shar'h Sahih Muslim bin al-Hajjaj*.

¹² Muhammad ibn Ahmad ibn Abi Sahl Abu Bakr al-Sarakhsi (from Sarakhs in Khorasan) was an Islamic scholar of the Hanafi school, who lived and worked in Transoxiana. His family background is unknown; he died around the year 1106 CE.

¹³ *Kitab ul-Mabsut*, vol. 5, p.1800, Dar al-Fikr, Beirut.

Muhammad bin al-Hasan al-Shaybani,¹⁴ as forbidden (haram).¹⁵ Again, the only precedent for this slogan in all Islamic history is from the Khawarij.

Scholars today have discouraged the formation of Islamist political parties precisely because of the sectarian conflict that they create. Sheikh Abdullah Bin Bayyah has stated it is instead preferable to form co-operative associations with mainstream political parties which share common values.¹⁶

¹⁴ Imam Muhammad Bin Hasan al-Shaybani died 850 was the foremost student of Imam Abu Hanifa, whom the Hanafi madhab is named after.

¹⁵ *Kitab ul-Mabsut*, vol. 5 p.1799, Dar al-Fikr, Beirut.

¹⁶ *Sana'at ul-Fatawa wa Fiqh ul-Aqaalliyat*, Dar ul-Minhaj, 2007.

Are judgements only for God?

Tahrir and similar groups, like the Khawarij before them, take their slogan 'no rule but God's rule' from the saying of Prophet Yusuf (pbuh) which is narrated in the Quran:

You worship besides Him only names which you have named (forged), you and your fathers – for which Allah has sent down no authority. The judgement/rule (*hukm*) is for none but Allah. He has commanded that you worship none but Him: that is the straight religion, but most men know not. [12: 40]

When Ibn Abbas – the famous companion, relative of the Prophet (pbuh), and gifted commentator on the Quran – was addressed by the Khawarij with the slogan 'no rule but God's rule', he said:

Indeed, you are correct, there is no rule but God's rule, and it was God that delegated ruling (*hakkama*) to people in marital discord, as it was God who delegated ruling to people in disputes. Know that if God had willed he would have ruled, and not left it to people... Therefore God has made the rule of men a protected sunnah.¹⁷

Imam Ali, the first man to accept Islam, the cousin of the Prophet (pbuh), and the fourth Caliph, explained the same point in eloquent words to the same group:

We did not delegate judgement (*tahkim*) to men, but delegated it to the Quran. Yet this Quran is only lines between two covers. It does not speak with a tongue but it requires an interpreter and so men speak on its behalf!¹⁸

We can see that those most acquainted with the religion had no such problem of speaking about the rule of people or the rule of men. In fact they faced the opposite problem and were reluctant to use the phrase 'God's judgement' at all. It would be a

¹⁷ As narrated by Imam al-Hakim in his *Mustadrak ala Sahihayn* vol. 2, p. 150 and cited by Ibn Qayyim and Ibn al-Jawzi and quoted from Sheikh Wahbah Zuhayli in his *Athar al-Harb fil-Fiqh al-Islami*, p. 763-764, Beirut – Dar el-Fikr, 3rd Edition, 1998.

¹⁸ Cited by Sheikh Wahbah Zuhayli as above on p. 763.

strange situation if the shallow use of verses by extremists was not critiqued, especially as there are clear examples of a rejection of such views by some of the most prominent companions of the Prophet (pbuh) from the early Islamic period.

We can see that in Islamic history the attitude towards rationality and man's rule was different to the attitude presented by the extremists today. Imam Abd al-Karim Shahrastani¹⁹ said 'Those who believe in religious laws do also believe in the rational laws, but the reverse is not true.'²⁰ The assertion made is that those who follow divine religions, Muslims included, do not (and should not) reject what is rational or intelligent opinion out of hand. Imam al-Izz ibn Abdul Salam²¹ elaborated in explaining how the rules of Islam are on the whole rational and seek human interests in this world. The rules of religious rituals, which are extremely few in number, are an exception to this and may defy rationalisation.²²

Modern day scholars have echoed this and explained that the rational rules implemented in governance are to be followed and are not in conflict with the religion. For example, Sheikh Bin Bayyah²³ in his *fatwa* about using the courts in western countries²⁴ to resolve disputes, seek divorce and seek rights in general, explains the rational necessity of following these rules:

¹⁹ Tāj al-Dīn Abū al-Fath Muhammad ibn `Abd al-Karīm al-Shahrastānī (1086–1153) was an influential Persian historian of religions and heresiographer. His book, *Kitab al-Milal wal-Nihal* (lit. 'The Book of Sects and Creeds') was one of the pioneers in developing a scientific approach to the study of religion. Besides these, he was also a Shafī'i and Ashari scholar, philosopher and theologian.

²⁰ Muslim Sects and Divisions – The Section on Muslim Sects in *Kitab al-Milal wa'l-Nihal* Muhammad b. `Abd al-Karim Shahrastani (d. 1153) translated by A. K. Kazi and J.G. Flynn Kegan Paul International published in 1984.

²¹ Imam al-Izz ibn Abdul Salam (1181–1262) was a legal philosopher and imam in the Shafī'i madhab. He is often called the 'Sultan of the Scholars'. He authored many works in jurisprudence, quran commentary, and fiqh but is probably best known for his masterwork on legal principles in Islam, *Qawa'id al-Ahkam fi Masalih al-Anam*.

²² *al-Qawaid ul-Ahkam fi Masalih ul-Anam*, p. 13.

²³ Shaykh Abdallah bin Mahfudh ibn Bayyah (b. 1935) is a Mauritanian-born Maliki Islamic scholar and professor. He was born in Mauritania. Currently he teaches at King Abdul Aziz University in Saudi Arabia.

²⁴ For an extended discussion of this subject please see:
http://www.dissentmagazine.org/democratiya/article_pdfs/d16Ali.pdf

This is because when such a Muslim undertakes such a contract of marriage, he does so in a way that is in harmony with the laws (of that country) other than the Islamic rules... this necessitates that he accepts the consequences, a part of which are: this contract cannot be repudiated except by a judge... This is seen, from the perspective of the scholarly majority (*jumhur*), as being permitted in the Shariah. Namely delegating this to the Judge – be it by implication and not explicitly.

This is because of the *fiqh* principle which states ‘a well known custom is considered similar to a stipulated condition’ (*maruf ‘urfan kal mashrut shartan*).

Also, because executing laws, other than Islamic rules, is permitted [to] bring about interests (*masalih*) and deter harms (*mafasid*)... as is stated by more than one erudite scholar, including al-Izz ibn Abdul-Salam (of the Shafii school of law), Ibn Taymiyyah (of the Hanbali school), and Shatibi (of the Maliki school).²⁵

The principle cited by Sheikh Bin Bayyah, namely ‘a well known custom is considered similar to a stipulated condition,’ is widely accepted among scholars. Ironically, it is also accepted by Tahrir. They have given a similar legal verdict²⁶ allowing the usage of secular courts to seek their rights – though in principle they reject them as ‘*kufr*’ along with democracy, human rights, and political participation. Tahrir have even used this point of view by attempting to claim their own political rights through the European Court in Strasbourg.²⁷

Irrespective of theoretical disposition, it seems that nobody can argue with the rational necessity of accepting man’s law – not even the extremists. Moreover, we find that the classical Islamic view gives credence to this approach.

²⁵ The Ruling of seeking a Divorce from a non-Muslim Judge, pp. 358-9 of *Sana’aat ul-Fatawa wa Fiqh ul-Aqaliyyaat*, Dar ul-Minhaj, Saudi Arabia.

²⁶ <http://islamicsystem.blogspot.com/2006/07m/seeking-our-rights-under-non-islamic.html> – which refers to the source as Abdul Qadeem Zalloo, the former leader of Hizb ut-Tahrir. This was distributed in a booklet as a question and answer from Hizb ut-Tahrir in the UK.

²⁷ <http://www.hizb.org.uk/hizb/press-centre/press-release/hizb-ut-tahrir-challenges-german-ban-at-european-court.html>

and

<http://www.hizb.org.uk/hizb/press-centre/press-release/press-statement-from-hizb-ut-tahrir-britain.html>

Governance isn't about imposing interpretations of the Shariah; it's about taking care of society's needs and interests

Authorities can't impose binding religious rulings on people

Authorities have power in temporal matters, not in *fiqh* or religious interpretations. Their role is not to define and impose interpretations of Shariah rules on people. Imam al-Qarafi explains that the authority of those in power is in temporal issues that need to be regulated to maintain social integrity. Their authority is not over religious interpretation and observance or on matters of *fatawa* (religious rulings and edicts). Most of these issues are subject to differing interpretations, so no authority can issue rulings which are *binding* on people. So they should only engage in making binding decisions in temporal matters for the sake of public interest and maintaining political order. These decisions are based upon what is in the public's interest (*maslaha*). Imam al-Qarafi²⁸ said:

Everything that is said by an official is no more than an opinion. If such a statement agrees with the view of the one who hears them, he may follow them; if not, he may ignore them and follow his own madhab (school of thought).²⁹

And:

Among their (the state or government's) discretionary actions are their *fatawa* concerning the rulings on such things as religious observances and the like, eg, the licit or illicit status of some sexual arrangements; ritual purity of bodies of water; the ritual purity of bodies of objects; the obligation to wage *jihād*, *etcetera*. None of these pronouncements regarding these matters constitute binding

²⁸ Shihāb al-Dīn al-Qarāfī or in full Shihāb al-Dīn Abū al-'Abbās Aḥmad ibn Idrīs (al-Sanhajī al-Bihīnī al-Misrī) al-Qarāfī (1228 – 1285), was a Maliki jurist of Berber (Sanhaja) origin who lived in Ayyubid and Mamluk, Egypt. He was born in the Bahnasa district of Upper Egypt reportedly sometime around 1228. He was a Maliki Mujtahid Imam.

²⁹ *Anwar ul-Buruq fi Anwa al-Furuq*, 4:48.

decisions. On the contrary, anyone who does not believe these statements to be correct may issue a *fatwa* in opposition to that of this judge or Imam/leader. Likewise if they command us to perform an act which they believe to be good, or they forbid us to perform one which they believe to be evil, it remains the right of anyone who disagrees with them not to follow them... other than (where it is feared that) opposing the Imam will constitute an act of sedition...³⁰

And:

If the Imam says, "Do not hold Friday prayer without my permission," this would not constitute a binding decree, even if the question of whether the Imam's permission is required to hold the Friday prayer is a disputed one (*mukhtalaf fi*). Rather, it remains the right of the people to hold the prayer without the Imam's permission, unless doing so constitutes an open display of defiance; an assault upon the lineaments of proper authority... Under these circumstances, it becomes impermissible to establish the prayer without the Imam's permission – ***but it is for this reason [the open display of defiance] and not because this is a disputed question in which an authority has issued a binding decree (hukm).***³¹

He also elaborates that:

...matters disputed in religious observances and the like [are precluded], because conflicts concerning the latter do not involve the interests of the world (*masalih al-dunya*); rather they arise in pursuit of the Hereafter. So the decisions of government officials (*hukm al-hakim*) have no place at all in resolving such matters.³²

³⁰ *Ihkam fi al-Tamyiz al-Fatawa an al-Ahkam wa Tassarrufat al-Qadi wal-Imam*, Maktabat Matbuat Islamiya published in 1967, Aleppo 182-82.

³¹ *Anwar ul-Buruq fi Anwa al-Furuq*, 4:49.

³² *Ihkam fi al-Tamyiz*, 23-24.

Ibn Taymia³³ goes further than al-Qarafi and says that not only are such rulings not binding but that it is *forbidden* to issue them. When he was asked about a situation where a ruler forbids a certain transaction on religious grounds and not on the basis of public interest, Ibn Taymia was adamant that such an action is absolutely not the right of government. He replied to the questioner:

He cannot prevent the people from this, nor from the likes of this, because it is from within the permissible *ijtihad* (ie, it is in an area over which independent legal reasoning may be exercised). Neither does he have any text from the Book, the Sunnah or the consensus [of scholars] to prevent this, especially when most of the scholars are of the view that the likes of this are actually permissible; and this is what has been acted upon by the Muslims in their lands in general. This is just like a judge, who is not allowed to negate the judgement of others in the likes of such issues, nor is it for the scholar or the mufti to compel the people to follow him in the likes of such an issue. This is why when al-Rashid sought from Malik that the people should all adopt his al-Muwatta' in the likes of these issues, the latter prevented him from this and said:

“The Companions of Allah’s Messenger sallallaahu `alayhi wa sallam spread out into different regions; so each community took the knowledge that reached them.”

...This is why scholars who wrote books about ordering the good and forbidding the evil – among the followers of al-Shafii and others – have stated: Indeed there is to be no forbidding with the hand in the likes of such issues of *ijtihad*, nor is it for anyone to compel the people to follow him in his view. However, he may speak about it with knowledge-based proofs. Whoever then sees the correctness of one of the two views, after it being clarified to him, may then follow it. But

³³ Taqi al-Din Ahmad ibn Taymia (1263–1328), was a Sunni scholar born in Harran, located in what is now Turkey, close to the Syrian border. He lived during the troubled times of the Mongol invasions. As a member of the school founded by Ibn Hanbal, he sought the return of Islam to its sources, the Qur'an and the Sunnah.

whoever follows the other opinion, then there is to be no forbidding him. And the likes of these issues are many...³⁴

Ibn Taymia was himself the subject of persecution by the state because they wanted to impose their religious views on him and society. He responded:

The charges made against me do not relate to criminal acts and personal rights... that would justify judicial intervention! On the contrary, the present matter is an intellectual one of universal concern, like exegesis, hadith, fiqh, and the like. These matters include questions over which the community has agreed, as well as some over which they have disagreed. *But where the community disagrees on the meaning of the verse, or a hadith, or the status of an assertion or request, the correctness of one view and the incorrectness of the other cannot be established by the ruling of a judge...*

Otherwise [for example] it would be possible to establish the meaning of God's statement, "they shall wait three periods (*thalathata quru'*)... and the interpretation would be a ruling, binding on all people... *there would be absolutely no probative value in the statement of a judge to the effect that one of these views was correct, the other incorrect.*³⁵

He explained his views on this issue a number of times and they can be found in his collection of religio-legal edicts (*fatawa*). He maintained that rulers could not specify the meanings of religious texts and impose those interpretations of Shariah so they are binding upon people.

The founder of Hizb ut-Tahrir, Taqiuddin al-Nabhani,³⁶ maintains that it is permissible for rulers to impose their interpretations of Shariah on people. However, his opinion is not, as one may expect, that it is obligatory (*fard*) to do so. He states:

³⁴ *Majmou al-Fatawa*, 30: 79-80

³⁵ *Majmou al-Fatawa*, 3:238-9

³⁶ Taqiuddin al-Nabhani (1909–1977) was a teacher, judge and lecturer in Islamic sciences. He established the group Hizb ut-Tahrir in 1953. He was the grandson of the famous hadith scholar Yusuf al-Nabhani.

...the basic rule/first principle regarding adoption [of an interpretation] is permissibility and it is not obligatory because the Companions, may Allah be pleased with them, agreed that it is up to the Imam (leader) to adopt and it is not binding upon him to do so... adoption from the perspective of the Caliph is permitted and not obligatory upon him...³⁷

Nabhani's 'intellectual' (as opposed to religious) view on imposing religious rules on the population is that it is bad, and that the state should aspire to adopt as few rules as possible. Nabhani explains that the enforcement of religious rules and beliefs can often create societal problems. He states that this occurred in the past, citing sectarian conflicts when sects, such as the Mutazila, came to power and tried to enforce their doctrine or version of Islamic faith on the society as a whole and had an inquisition (*mihna*) among leading scholars.

So we find a situation where Tahrir maintain that a land can only be Islamic if the Shariah rules are imposed³⁸ but at the same time they also believe that it is not mandatory to adopt any of those same rules. Presumably, they are able to reconcile these two apparently contradictory aims. In any case, we can certainly conclude that it isn't mandatory (*fard*) to implement religious rules on people, whether in the tradition of Islamic jurisprudence or in the (apparently contradictory) thought of Nabhani.

Historically scholars discouraged and forbade rulers from adopting and imposing religious rulings

Not only is it not obligatory, but we can see examples in the past when the scholars have tried to stop the imposition of Shariah rules, like in the case about Imam Malik mentioned by Ibn Taymia above. This case is also mentioned in the three narrations below. Each emphasises a particular aspect of the situation.

³⁷ *Muqadima al-Dustur* (Introduction to the Constitution or the Reasons That Make it Obligatory) Hizb ut-Tahrir, 1963.

³⁸ See the discussion in the later chapter 'Is the land dar al-kufr even if we can manifest and practice Islam?'

It was related that Abu Jafar al-Mansur said to Malik: "I want to unify the knowledge. I shall write to the leaders of the armies and to the rulers so that they make it *law*, and whoever contravenes it shall be put to death." Malik replied "O' Amir ul-mumineen (Commander of the Believers)! There is another way! Truly the Prophet (pbuh) was present in this community, he used to send out troops or set forth in person, and he did not conquer many lands but that Allah took back his soul. Then Abu Bakr (radiAllahu'anh) arose, and he also did not conquer many lands. Then Umar ibn al-Khattab (ra) arose after the two of them and many lands were conquered at his hands. As a consequence he faced the great necessity of sending out the Sahabah (ra) of the Prophet (pbuh) as teachers and people did not cease to take from them, notable *ulema* from notable *ulema*, until our time. If you now go and compel [force] them from what they know to what they do not know, they *shall deem it kufr!* Rather, confirm the people of each land with regard to whatever knowledge is there and take this knowledge to yourself!"³⁹

In another narration al-Mansur said to Malik:

"I have resolved to give the order, that your writings be copied and spread to every Muslim region on the face of the Earth, so that they may be put into practice exclusively and prevent other rulings being practiced. They will leave aside innovations and keep only this knowledge, for I consider that the source of knowledge is the narrated tradition of Madinah and the knowledge of its Ulema." Malik replied; "O' Amir ul-Mumineen! Do not do so! For people have already heard different positions, heard hadiths and related narrations. Every group have taken whatever came to them and put it into practice, conforming to it though others differed. To take them away from what they have been professing *will cause a disaster!* Therefore, leave people with whatever school they follow and whatever the people of each country choose for themselves". Al-Mansur said; "I swear by my life! I would have commanded it if you would have let me!"⁴⁰

³⁹ Narrated from Utba ibn Hamid al-Qari al-Dimashqi by Ibn Abi Hatim al-Razi in his introduction to *Jarh wa al-Tadil*, p. 29.

⁴⁰ Narrated from al-Waqidi by Ibn Sad in the supplemental volume of his *Tabaqaat* p. 440. Also from Zubayr bin Bakr by Ibn Abd al-Bar in his *Intiqa*, p. 81.

Another narration states that ‘one of the *khulafa* (Caliphs)’ said to the noble Imam of the Holy Sanctuary:

“Work with me! For I have resolved to make the Muwatta law, in the same way Uthman (ra) made the Qur’an law for them.” Malik replied, “***There is no way for you to do this!*** For the companions of the Prophet (pbuh) scattered east and west after his time and narrated from him; consequently the people of every region possess knowledge.”⁴¹

Halal and haram is not the same as legal and illegal

The outcome of the Islamist’s desire to implement the Shariah on people, is the equation of the halal and haram (religiously permitted and prohibited actions) with what is legal and illegal in temporal terms. In practice this means that the state would seek to punish people who had committed a ‘sin’ by doing something actually considered to be religiously prohibited (haram). Of course, this really means that the action is haram and blameworthy in the *state’s* view. As it did in the past, this would inevitably lead to tyranny over those who differed with the state in their religious views, for the reasons explained earlier by al-Sarakhsi and others.

Ibn Taymia explained that if the rulers permitted something, this did not equate with the action being halal. That is, the idea of an action’s legal permissibility (that is, in terms of temporal sanction) is different from the idea of the same action being halal. Similarly, the idea of an action’s legal prohibition (temporally) is different from the idea of the same action being haram. He makes it very clear that defining legal permissibility and prohibition must take into account the benefit and harm (*maslaha* and *mafsada*) that results from any such permission or prohibition. In this lengthy quotation from Ibn Taymia, it is clear that the religious prohibition of a matter by no means equates with it being forbidden by the state. Likewise it should also be clear that something lawful under the state (ie, there is no state censure or sanction) is not necessarily halal in religious terms.

We find that Umar ibn al-Khattab employed someone in public office who had an element of depravity, due to the preponderance of the *maslaha* (interest) of his

⁴¹ Narrated by Abu Nuaym in his *Hilya ul-Awliyah* ed. 6/331.

labour. However, he managed, by his strength and justice, to make the man cease his corruption.

[Another] case in hand would be for someone to embrace the faith of Islam on condition that he prays only two prayers, as is related regarding a man in the time of the Prophet (pbuh).

So too would it be for someone who, having embraced Islam, drinks wine or undertakes other forbidden actions, which if prohibited to him may make him apostatise from Islam.

So there is a differentiating factor [to consider] for a ruler or scholar, between prohibiting [or not prohibiting] a thing to some people, when doing so entails a greater *mafsada* than the act of making it halal.

This will also vary from one situation to another: it may entail making the prohibition public so that it may be known and persuades people to abandon it; or become fearful of performing it; or in the hope people will abstain; or expressing indignation (*inkar*) towards the act; all of these (and other responses) will vary from situation to situation.

This is why we find the various different approaches taken by the Prophet (pbuh), whether it was him enjoining the *maruf* or forbidding the *munkar* (evil), waging *jihad*, exonerating the act, imposing a penalty, or being exacting or merciful.⁴²

It is clear from this and from what has been cited previously that Ibn Taymia's view is that permission and prohibition in the temporal sphere cannot be justified *solely* on the basis of the ruler's understanding of the religious aspect (halal *vs.* haram) of the issue in question. Any permission or prohibition in the temporal sphere can only be legitimised through considering the public benefit and harm of the legal decision.

What may we conclude from all this? At the very least we can say that the issue is far from definitive (*qati*), against what Tahrir and others would have people believe.

⁴² *Majmou al-Fatawa*, 35: 31-32.

Both religious *and* practical consideration should be given to the public interest in creating legal permissions and prohibitions, rather than simply equating the two.

Imam al-Qarafi gave the demerits of equating halal/haram with legal/illegal from a slightly different perspective. He said that punishing people for what may be wrong has no use because in many cases the 'blameworthy action' had no worldly consequences and that the determining factor in punishment should be the worldly consequences of the action and not the religious dimension.⁴³ He also says that the disputation of religious matters is unconnected to temporal life and is related solely to the hereafter:

Conflicts concerning scriptural sources... and the like, arise strictly out of the pursuit of the affairs of the hereafter, *not out of pursuit of any benefit that is to accrue to any of the disputing parties here and now*. No; disputes concerning these matters are in the areas of religious observances. For the goal of each disputant is to establish, according to the Shariah, what is binding upon every legally responsible person (mukallaf) until the Day of Judgement, not simply to establish what is (binding) upon him only (here and now).⁴⁴

Looking after the interests of people and society

...the interests of the Shariah (*masalih al-Shariah*) are the preservation of religions (in the plural), lives, intellects, lineage and property.

Imam Qurtubi

To elaborate this further we can go the writings of Imam al-Izz bin Abdul Salam, the famous Shafii legal philosopher. He explains that adopting the people's interests necessitates securing these interests and preventing what is contrary to them, even though that may involve stopping people from doing things that are religiously permitted, such as engaging in armed insurrection using a mistaken religious justification. Another example is the authorities preventing or permitting people drinking alcohol irrespective of the people holding a valid opinion either

⁴³ *al-Furuq* part 4, supranote 224 at 181.

⁴⁴ *Ihkam fi al-Tamyiz*, p. 75.

way.⁴⁵ The ruler may forbid people from drinking alcohol or he may permit it, with the point always being to look after the interests of the community in the best possible way irrespective of *religious* grounds for or against his view.

He may even permit some lesser harms to prevent greater harms or abandon some lesser interests in order to realize greater interests as the Messenger (pbuh) did and as was manifested in the revelation throughout the time of prophethood.⁴⁶

In the same text Imam al-Izz bin Abdul Salam goes on to explain that you may forbid things which are halal yet not forbid things which are haram, as it is not in the interests of the people to do so. Therefore, taking part in the political process is not enforcing, or based upon enforcing, the Shariah but rather it is looking after society's interests. On this basis, government is free to base its prohibitions upon interests rather than the position of *madhahib* (schools of thought) or religious rulings and is free to forbid things which are halal or not make things illegal (even those which are haram) based upon interests. This is in agreement with what has been cited from Ibn Taymia previously.

Furthermore, he says laws are passed based upon public interest and common values *not specific* to the Islamic faith because the public interests (*masalih*) are known rationally and customarily and are also known to people without revelation. The Imam explains this in his work stating:

The *masalih* (interests) and *mafasid* (harms) of this world and their means are known by necessity, experience, custom and careful conjecture (*zann*). If any of that is ambiguous, its meaning should be sought from its proper proofs. Anyone seeking to know how to distinguish between the *masalih* and the *mafasid* and which outweighs the other, must submit it to the test of reason on the assumption that the Shariah has not mentioned it. Let him build his judgements on it; he will discover that almost none of them violates the rules of the Shariah except the prescriptions and proscriptions that God has imposed on His Servants as merely devotional matters without revealing to them the relevant aspects of the *maslaha* or *mafsada*.⁴⁷

⁴⁵ For a discussion about the different views see *Ahkam ul-Quran* of Imam al-Jassas, vol. 1, p. 322.

⁴⁶ *al-Qawaid ul-Ahkam fi Masalih ul-Anam*, p. 120.

⁴⁷ *al-Qawaid ul-Ahkam fi Masalih ul-Anam*, p. 13.

Hence it is upon the basis of common values and interests that political participation can take place, across different religions and cultures.

The social contract – scholars’ views on agreements of governance and imposing interpretations of Shariah

Conditions must be fair and equitable to all... The Jews of the Banu Auf are one *ummah* (community) with the believers (Muslims)...

The document of Medina (Meethaq ul-Madinah)

The document of Medina (Meethaq ul-Madinah) was a social contract in Medina during the time it was governed by the Prophet (pbuh). The Meethaq contains many examples which undermine the assertions made by Tahrir and other Islamists about the nature and conditions of ruling. The Islamists are keen to deny⁴⁸ the permissibility of a ruling which does not impose interpretations of Shariah. Moreover, they state that this is a definitive matter. This is in spite of the Meethaq and the commentary of scholars, such as Ibn Taymia, being contrary to their opinion.

The position arrived at in classical fiqh is that it is possible to make political agreements where the authority doesn't enforce even the *most basic* aspects of the Islamic rules and laws (such as prayer) upon people. This results in the acceptance of individuals practising Islam while only manifesting some of its religious observances. This is clear in the Prophet's (pbuh) example of making agreements for the Meethaq.

⁴⁸ A denial by Tahrir, and its current leader Ata Abu Rishta, can be found on websites of a member of Tahrir at the following URL: <http://islamicsystem.blogspot.com/2006/03/qa-gradual-implementation-of-islam.html>

It is in the form of an answer to a question from a member. The answer attempts to quote verses of general meaning and avoid the very specific evidences. But it then goes on to specify that the particular narrations are specific to the Prophet. Ironically Tahrir recognizes the principle which would utilize the narrations specifically and not the general texts, based upon the hermeneutic principle, "Hamal al-khass ala'a al-am"/"We apply the specific over the general" – see *Shakhsiya Islamiya* vols. 2 and 3 where this is applied and discussed extensively by an-Nabhani the founder of Hizb ut-Tahrir.

The following is a translation from Imam Shawkani's⁴⁹ *Nayl ul-Awtar* and commentary upon *Muntaqa al-Akhbar*, of Majid ul-Din Ibn Taymia the senior⁵⁰ (also of the Hanbali school), explaining the above two points and citing Imam al-Khattabi's⁵¹ agreements and disagreements with his view:⁵²

It is reported on the authority of Asim al-Laythi that a man amongst them said that he went to the Prophet (pbuh) (may Allah bless and grant him peace) and agreed that he would embrace Islam on the condition that he would pray two prayers, and he (pbuh) accepted this from him. (Narrated by Ahmed)

It was mentioned in another narration that he would not pray but a single prayer, and that the Prophet (pbuh) accepted that from him.

Wahb is reported to have said: I asked Jabir regarding what transpired at Thaqeef when they gave the *bayah* (pledge) and he said: they placed the condition (*shart*) on the Prophet (pbuh) that there would be no *sadaqa* (mandatory alms) upon them, and no *jihad*. I heard the Messenger (pbuh) himself say: They will give the *sadaqa* and they will fight *jihad*! (Narrated by Abu Dawud, Hadith number 3210)

Anas reported: Verily the Messenger (pbuh) said to a man, "Embrace Islam" and he responded, "I find myself somewhat averse/forcing myself (*ajidunee kaarihaan*)". He (pbuh) said, "Embrace Islam, even so (*in kunta kaarihaan*)" (Narrated by Ahmed, Hadith number 3211).

⁴⁹ Imam Muhammad al-Shawkani (1759–1834) was a prolific author and scholar who is regarded as a great Hadith master and scholar in *usul*, and *fiqh*.

⁵⁰ Abu al-Barkat Majid ad-deen ibn Taymiyyah al-Hanbali (d. 1255) was a reputable teacher of the hanbali school of Fiqh and the grandfather of the more well known, but controversial Taqi al-Din cited earlier sharing the same view that is being advocated here.

⁵¹ Imam Abu Sulaiman al-Busti al-Khattabi al-Shafii who died 388 hijri (988 CE) was considered a major Imam of the Shafii school and respected across different schools.

⁵² 'The Validity of Islam with a Fasid (irregular) Condition', vol. 4, p. 210, Dar al-Kutub al-'ilmiyah Beirut; *Nayl ul-Awtar min Ahadith Sayid al-Akhbar Sharh Muntaqa al-Akhbar* by Imam Muhammad bin Ali al-Shawkani on the collection of hadith collated by Majid al-Din Ibn Taymia (the grandfather and judge, Hadith number: 3209).

In these hadiths – thanks to the Prophet’s clear accession to the conditions (pbuh) – there is evidence of the *permissibility* of taking the *bayah* (pledge of allegiance) and the acceptance of Islam from a non-Muslim even if he stipulates *invalid* (*batil*) conditions, or an element of aversion. Abu Dawud was silent (i.e. he viewed it as authentic because he stated that anything he remained silent about in his Sunan is at least acceptable [Hasan]) and al-Mundhiri said, regarding the hadith that we have mentioned, that Wahb is Wahb ibn Munbih and its *isnad* (chain of narration) is authentic (Arabic. *la bas bih* – lit. no problem with it).

Abu Dawud has also narrated the hadith of al-Hasan al-Basri from Uthman bin Abi’ al-Aas that, “When (the tribe of) Thaqeef presented themselves to the Messenger, Allah bless him and grant him peace, he met them in the Mosque, so as to soften their hearts. They placed conditions on him that they should not be summoned, nor should their wealth be subject to the tenth, and that they would not lower their heads by bowing. So the Messenger, peace be upon him and his family, said: “It is granted, that you will not be summoned, and your tenth will not be taken, but there is no good in a religion without bowing (*rukū*)”. Al-Mundhiri said: It was said (“*qeela*” – used in this way because such a view is not accepted by al-Mundhiri) that al-Hasan al-Basri did not ‘hear’ from Uthman bin Abi’ al-Aas; what is meant by not being summoned is being requested to come for *jihad* and going out for it (an expedition).

And his saying ‘tenth’, is referring to the ‘tenth’ of the property that is taken as *sadaqa* (mandatory alms).

And his saying ‘not bowing’... the basic meaning of ‘bowing’ is a man standing in the position of *rukū*, and what was intended by that was that they would not pray (make the mandatory ‘*salat*’).

Al-Khattabi said: ‘it is possible to opine (there is *shubha*) that he was magnanimous to them regarding *jihad* and *sadaqa* because these two obligations (*wajibatayn*) were not immediately obligatory, as alms are due only after the passing of a year, and *jihad* is only obligatory if you are surrounded (by an enemy force); as for the *salat*, this is set-determined (*ratibah*) and therefore it is not permitted to place a condition to abandon it.’

In contradiction to this view is the hadith of Nasr bin Asim mentioned in this Chapter. For it expressly mentions that the Prophet (pbuh), may Allah bless him and grant him peace, accepted from a man that he would pray only two prayers or one prayer, depending on the different narrations. The problem remains though in the saying (of the Messenger) in the hadith: “there is no good in a

religion without bowing". The apparent meaning (*zahir*) indicates there is no goodness in someone embracing Islam on the condition that he doesn't pray. [However] it is possible to say: the Prophet's (Allah bless him and grant him peace) negation of goodness does not indicate the impermissibility (*adam ul-jawaz*) of someone accepting Islam on condition that they don't pray. The fact he, Allah bless him and grant him peace, did not accept this condition from Thaqeef, does not necessarily mean an absolute prohibition.

For this reason scholars have seen that it is acceptable within Islam to form social contracts, build society upon this premise, and unify people; as it states in the document (which was negotiated by the Prophet himself (pbuh)!) Muslim and non-Muslim tribes formed one people with shared interests and conducted their affairs through mutual consultation.

A recent example of this was when the conservative religious scholars and leaders of the Deobandi *ulema* argued that the Muslims and Hindus of India formed a single nation, unified together, and did not require a separate 'Islamic State' in Pakistan. Mawlana Hussain Ahmed Madani, in his address at the 5th Conference of Jamiat Ulema at Kokanada in January 1924 said:

Hindu-Muslim unity is a pre-requisite for freedom in India. It is the religious and political duty of the Muslims that they should work for the freedom of India and continue this struggle until the government (at the time British Colonial Government) accedes to their demand.⁵³

He also explained the following about his vision of how Muslims could see such a development of society and politics in India, asserting in a response to a question from Mohammed Siddiq Sahab that:

The system of India will be democratic. A president will be elected for a specific period. He may be a Muslim or a non-Muslim. But he will not have kingly power.⁵⁴

⁵³ Dr Abu Salman Shahjahanpur (1987) Shaikh al-Islam-Mawlana Hussain Ahmed Madani-ek *Siyasi Mutallah*, p. 103, Majlis Yadgal-Shaikh-ul-Islam, Pakistan

⁵⁴ Farhat Tabassum, '*Deoband Ulema's Movement for the Freedom of India*', p. 143, Manak publications.

The Mawlana's view was that as long as the rights of the Muslims were secure – political, economic, social, or religious – the Muslims could reside in harmony with the Hindus as a single nation sharing a single patriotic tie, of nationhood. He authored the famous piece *Islam aur Qaumiyat Mutahaddidah* (translated as 'Composite Nationalism and Islam'). In this text he explained that the Muslims in a manner similar to the Prophet Muhammad (pbuh) could form a single nation and community as people in harmony, Muslims and non-Muslims alike.

This was the precedent set in Medina where the Muslims, polytheists, and Jews were mentioned as a single *ummah* (community/people). They were all signatories to the document of Medina, giving them all autonomy to solve their own problems, live by their own rules and laws, resolve disputes together, live together, and have a common peace.

The document of Medina (the Meethaq again) states:

Conditions must be fair and equitable to all... The Jews of the Banu Auf are one Ummah (community) with the believers (Muslims)... the Jews must bear their (military) expenses and the Muslims theirs. Each must help the other against anyone who attacks the people of this document. They must seek mutual advice and consultation... The wronged must be helped... The contracting partners are bound to help one another against any attack on Yathrib (Madinah). If they are called to make peace and maintain it they must do so... the Jews of al-Aus, their freedmen and themselves have the same standing with the people of this document in pure loyalty from the people of this document.⁵⁵

⁵⁵ A. Guillaume *The Life of Muhammad* – A translation of *Sirat Rasul Allah*, pp. 231–233, Oxford University Press.

Taking part in governance within non-Muslim majority countries

It is well known that Tahrir and others say that taking part in governance within non-Muslim majority countries is haram.

This is in complete contrast to scholars from the four canonical schools of legal thought. Zamakhshari (Hanafi), Ibn Taymia (Hanbali), Qurtubi (Maliki), and Mawardi (Shafii) have all discussed this and stated its permissibility.

What should we make of the fact that all four Sunni schools apparently 'missed' the '*definitive (qati) fact*' that it is 'haram' to participate in the political systems in non-Muslim majority countries? This is the implication of Tahrir's claim that it is haram. They even go so far as to say that it is *kufr*. Well, if it is a matter of *kufr* and *iman*, then surely Tahrir have different conclusions about *aqeedah* (basic theology) from those of the four Sunni schools?

The Islamists give a commentary on a verse from Surah Yusuf in the Quran to make their point that participating in government is haram, and conclude that 'judgement is for God alone'. As has been demonstrated, the same was misconstrued by the Khawawrij, but also by the likes of Qutb, Tahrir and other Islamists.

Once again, we see that the Islamists are at variance with some impressive forebears. Scholars from within the tradition cited the example of the Prophet Joseph (pbuh) from the very same chapter to disprove the claim, long before the Islamists themselves made it.

The story tells how the Prophet Joseph (pbuh) himself requested a position under a Pharaoh of a different religion to himself. The verse is:

He said: Make me responsible for the store houses in the Earth, verily I am trustworthy and knowledgeable. [12: 55]

What did the previous scholars say about this verse? Imam Qurtubi comments:

Some of the people of knowledge said: In this verse there is what permits someone of nobler stature working for a flagrant sinner, or taking a position in a non-Muslim authority on condition that he is not merely satisfying the random desires and wishes of the *fajir* (flagrant transgressor), but rather he is performing what he is tasked to do according to his general discretion. Some said this was a special dispensation for Joseph, and is not permitted today. The first is what is correct if conditioned by what we have mentioned. God knows best.

(Qurtubi continues:) Mawardi said: If the master/ruler is a tyrant people have differed on the permissibility of taking a ruling position and are of two views: one group permitted it if he can act in accordance with the truth in what he has been entrusted with because Joseph was a ruler for Pharaoh. And consideration is for the person's actions and not for the actions of others. The second group did not permit it... explaining that the Pharaoh was just and righteous unlike Moses's Pharaoh... What is correct is that it is permitted absolutely (Mawardi)⁵⁶

In this excerpt, Qurtubi mentions the opinion of Imam Mawardi in addition to his own view. Mawardi covered the subject of this verse in his extensive treatise on government, *al-Ahkam al-Sultaniya wal-Wilayat al-Diniya*. As Qurtubi reminds us, Mawardi emphatically states the absolute permissibility of participating in this type of government.⁵⁷ The irony of this is that Tahrir liberally quote Mawardi as supporting *their* view.

Imam Qurtubi explained that the chapter documenting the story of Joseph explains for us the fundamental aims of the Shariah and that the teachings of Islam are universal and not restricted to what is contained within the revelation. It is for him an indisputable axiom of Islam:

This is a principle (evidence) for the statement that the interests of the Shariah (*masalih al-Shariah*) are the preservation of religions (in the plural), lives, intellects, lineage and property. So everything that achieves something from these matters is an interest (*maslaha*); and everything that damages an interest being realized is a *mafsada* (corruption) and the opposite of a *maslaha*. And there is no dispute (*khilaf*) that the aim of the Shariah is to guide people to their worldly interests.⁵⁸

Zamakhshari comments on the verse as follows:

⁵⁶ *Al-Jami al-Ahkam ul-Qur'an*, part 9, vol. 5, p. 151, Imam Abu Abdullah Muhammad bin Ahmad al-Ansari al-Qurtubi Dar el-Fikr, Beirut Lebanon.

⁵⁷ For Mawardi's own explanation of the issue see *al-Ahkam al-Sultaniya wal-Wilayat al-Diniya*, p. 145, Dar ul-Kitab al-Arabi Beirut, 1990, by Imam Abu'l Hasan bin Muhammad bin Habib al-Basri al-Baghdadi al-Mawardi.

⁵⁸ *Al-Jami al-Ahkam ul-Qur'an*, part 9, vol. 5, p. 143, Imam Abu Abdullah Muhammad bin Ahmad al-Ansari al-Qurtubi Dar el-Fikr, Beirut Lebanon.

If it is said: how can it be permitted to become a ruler under the authority of a non-Muslim, following him, being under his authority, and obedient to him? I reply: it has indeed been narrated from Mujahid that he became Muslim, but Qatada states (conversely) it is an evidence that it is permitted for someone to take a position of governance in a tyrannical authority. Indeed many of the *salaf* (early generation of pious Muslims) took up positions of judiciary from many transgressors! Indeed when a prophet or a scholar knows that there is no way to rule by the decrees of God, or to stop oppression, except by being established in authority through a non-Muslim king or a *fasiq* (a flagrant sinner) then he is to stand alongside and be prominent with him. Some have said (*qeela* – ie, though it is weak) that the King took counsel from him and did not disagree with him in anything.⁵⁹

Ibn Taymia was asked a question regarding a worse situation, where someone in authority was a tyrant and an oppressor and usurped people's wealth. Should someone who has some ability to influence the situation and make it less bad, leave office, or stay in power? His response was:

Such a man is like a guardian of orphans, a trustee of *waqf* (religious trust), a partner in commerce or any such individual who acts on behalf of others by virtue of his guardianship or by proxy: he is like them in their payment of some of the money of their principals of clients to an unjust ruler if this is the only way to serve the interests of their clients. This man will be doing right, not wrong, and what he gives the rulers includes what is given to tax collectors in real-estate tax and sales tax, as anyone who makes a transaction for himself or on behalf of others in these countries has to pay these taxes, and if he does not collect the tax, while he cannot see to the affairs of his subjects without it, the interests of his subjects, and his subjects themselves, will be harmed.

As for those who opine that such a situation should not be allowed to exist in order not to accept a little injustice, if they are followed by people, the injustice and corruption will certainly increase, for they are like travelers stopped by bandits: if they do not pacify the bandits with some of their money, the bandits

⁵⁹ *al-Kash-shaf*, of Imam Muhammad bin Umar al-Zamakhshari, p. 482.

will kill them and take all their money. If anyone says to these travelers, “It is illegal to give the bandits any of your money”, he means to keep that little money he is advising them not to pay, but if they follow his advice they will lose that little money and all their money as well. Nobody in his right mind would give such an advice, let alone that a religion ordain it, for Allah the Almighty sent down His Messengers to establish, attain public interests and eliminate and curb evils as much as possible.

If such a man who tries to collect as little tax as possible, and spares the people much more evil by so doing, and can do nothing else, leaves his offices, he will be succeeded by someone else who will collect all the tax and spare the people nothing. Such a man will be rewarded for what he does, and will not be punished (for that) in this world or in the Hereafter.

Such a man is like an orphan’s guardians and a *waqf’s* trustees who can do their duty only by payment of unjust tax imposed by the government, for if any of them abandons his job he will be replaced by someone who will aggravate the injustice. Therefore, their stay in office is permissible, and they will be committing no sin by paying such taxes. *Their remaining in office may even be a duty (wajib) they have to discharge.*⁶⁰

He said in another text:

Civilisation is rooted in justice, and the consequences of oppression are devastating. Therefore, it is said that Allah aids the just state even if it is non-Muslim, yet withholds His help from the oppressive state even if it is Muslim.⁶¹

⁶⁰ ‘The Permissibility Of Assuming Public Office In’ An Unjust State, If The Occupant Would Alleviate Some Of The Injustice Or Curb Evil And Corruption’ from the *Majmou al-Fatawa*.

⁶¹ *Letters From Prison*, p. 7, Taqi al-Din Ibn Taymia.

Is the land Dar al-Kufr even if we can manifest and practise Islam?

...they declare people non-believers due to sin and disobedience, and follow this with permitting/making halal (*istihlal*) the blood and the property of the believers, and describe the Dar al-Islam as Dar al-Kufr, and only the land they rule as Dar al-Iman.⁶²

Ibn Taymia

In the past the Sunni scholars viewed any land where their faith could be practised as Dar al-Islam. Among the criteria for Dar al-Islam defined by Tahrir and others is the imposition of the Shariah rules - condition, which as we have seen, is not even an obligation for them, because in their view adopting the rules by the government and enforcing them is merely *mubah* (permitted).

In the time after the migration of the Prophet (pbuh) to Medina, a man by the name of Fudayk was being chastised for not going to live with the Prophet (pbuh) and the Muslims in Medina. Instead, he preferred to remain with his tribe, who were mainly non-Muslims. The Prophet (pbuh) said to him:

Oh Fudayk! Pray, avoid evil and live in the land of your people wherever you wish.⁶³

The hadith demonstrates that the Prophet (pbuh) had no dislike for someone to live among their people (*qawm*), even if they aren't Muslims. This is one of the

⁶² *Majmou al-Fatawa*, vol. 19, p. 73 cited by Sheikh Wahbah Zuhayli on p. 411 of *Qidaya al-Fiqh wal-Fikr al-Muasir*, Dar el-Fikr – Damascus, 2006.

⁶³ Narrated by Ibn Hibban and Bayhaqi in their collections of hadith, by Imam Bayhaqi in *Sunan al-Kubra*, vol. 9, p. 17; and the Sahih of Ibn Hibban, vol. 11, p. 202.

reasons that Imam Mawardi and others come to the conclusions at which they arrive. Ibn Hajar al-Asqalani⁶⁴ quoted al-Mawardi⁶⁵:

If a Muslim is able to declare his Islam in any land from the lands which (are dominated by and therefore considered) lands of Kufr... then that land becomes a homeland for Islam (Dar al-Islam) and living therein is better than leaving it, as he is a means of others coming to Islam.⁶⁶

The statement from Mawardi above shows clearly that the criteria imposed by Tahir are wrong, or open to difference at the very least. Moreover, it renders absurd Tahir's citing of Mawardi in justifying their views.

Rather if a Muslim is able to practise his religion in a land without persecution then such a land is naturally a place within which Muslims should reside. They should take an interest in its affairs, see it as their country and home, and engage within the political, social, and security concerns of the country.

Sheikh Abdullah Bin Bayyah states:

The verdict of the majority of the jurists, and they are the Hanafiyyah, Hanbaliyya, and the Shafiiyyah, is that wherever a Muslim is permitted to profess his faith and is protected, it is permitted for him/her to live there.⁶⁷

Traditionally, scholars even obliged defending the country militarily; even when the Muslims were mere subjects of an empire and not citizens of a state as we are today. The Hanafi *mujtahid* Imam Abu Bakr Muhammad al-Sarakhsi⁶⁸ states:

⁶⁴ Al-Haafidh Shihabuddin Abu'l-Fadl Ahmad ibn Ali ibn Muhammad (b. 1372 – d. 1448), better known as Ibn Hajar due to the fame of his forefathers, al-Asqalani due to his origin. He was a medieval Shafiite Sunni scholar of Islam and represents the entire realm of the Sunni world in the field of Hadith.

⁶⁵ Abu al-Hasan Ali Ibn Muhammad Ibn Habib al-Mawardi, known in Latin as Alboacen (b. 972-d.1058 CE), was a Muslim jurist of the Shafii school. He also made contributions to Quranic interpretations, philology, ethics, and literature. He served as judge in several Iraqi districts, including Baghdad, and as an ambassador of the Abbasid caliph to several Muslim states. Al-Mawardi's works on Islamic governance are recognized as classics in the field.

⁶⁶ Ibn Hajar, *Fat'h ul-Bari*, vol. 7, p. 230.

⁶⁷ *Sana'at ul-Fatawa wa Fiqh ul-Aqalliyat*, Dar ul-Minhaj, 2007, p. 281.

If Muslims fear their security in a land which has granted them safety, even in Dar al-Harb [a hostile territory], then there is no problem with them fighting to repel such a harm from themselves and it is not considered to be supporting polytheism. The basis for this is found in the tradition of Jafar, may Allah be pleased with him, who fought alongside the Abyssinian Emperor against his enemies because the Muslims lived in safety with the Negus, and Jafar feared for his safety and the safety of the Muslims, and we know from this that when there is such a fear there is no problem with this.⁶⁹

Al-Sarakhsi's statement, '...there is no problem with them fighting to repel such a harm from themselves and it is not considered to be supporting polytheism', has particularly resonance today: 'supporting polytheism' (or *shirk*) would be precisely the description of such actions by groups such as Tahrir and al-Muhajiroun.⁷⁰

Scholars such as Imam al-Awza'i and Imam Sufyan al-Thawri also permitted Muslims to join the armed forces of non-Muslims and fight their common enemies. Imam Malik's view was that it is forbidden to spill blood without just cause. Therefore, if the Muslims are to support any fighting, there must be a just cause underlying that fighting if the Muslims are to join it.⁷¹

Imam Ibn Hajar al-Haythami went even further and explained that when people have the freedom to practise their faith and live freely as Muslims, Muslims both inside the country and outside the country (such as Muslim majority countries) are obliged (*wajib*) to defend the country and protect it when that country comes under attack.⁷²

⁶⁸ Muhammad ibn Ahmad ibn Abi Sahl Abu Bakr al-Sarakhsi (from Sarakhs in Khorasan) was an Islamic scholar of the Hanafi school, who lived and worked in Transoxiana. His family background is unknown; he died around the year 1106 CE.

⁶⁹ *Kitab ul-Mabsut*, vol. 5; Juz 10 chapter on marriage with the Ahl al-Harb (hostile territory) and entering such lands with an assurance of safety [amaan], Dar al-Fikr, Beirut, p. 1871.

⁷⁰ Shaykh Abdal Hakim Murad (T. J. Winter) also makes the same statement that Jurists accepted Muslims "...serving in the army of Christian King". The same edict has been given by Shaykh Bin Bayya and Mufti al-Judai. <http://www.masud.co.uk/ISLAM/ahm/TradorExtrad.htm>

⁷¹ *Taj wal-Ikleel li-Mukhtasar Khaleel* by Imam Muhammad bin Yusuf al-Abdari al-Mawwaaq, vol. 3, p. 389 – published alongside '*Mawahib al-Khaleel li-Mukhtasar Khaleel*' by Muhammad Maghribi al-Hattaab in 6 volumes published by Sa'aada 1328 hijri.

⁷² Shihab al-Din Ibn Hajar al-Haythami in his *Fat'h al-Jawwad*, vol. 2, p. 346.

Today, the political circumstances are different and Muslim theologians consider that Muslims everywhere are able to safely and securely practise the Islamic *ahkam* (rules) and that the *sha'air* (symbols) of Islam are manifest across the world. As such the scholars describe the world as Dar al-Islam (abode of Islam).

Sheikh Wahbah Zuhayli⁷³ states:

As for safety, it is attained in most of the places of the world today for any citizen... This opinion is shared by most of the jurists of the Malikiyyah and Shafiiyyah schools of thought. They believe that when the symbols of Islam are established in a land, then that land should be considered Dar al-Islam.⁷⁴

He goes on to say:

The basis of relationships between states today is not premised on war but rather on peace.⁷⁵

And explains that:

The relationship between Muslims and others was one of conflict... In most cases there was no treaty made between them... and this was not based on the Shar'iah... The reality is one thing and Shari'ah something else.

The Sheikh goes on to state that:

This separation of the world into the two Dars (i.e., one of war and one of peace) is not mentioned in the Quran or the Sunnah. And *jihad* is not the normal relationship, rather the norm is one of calling to Islam in a peaceful manner. We

⁷³ Professor Sheikh Wahbah Mustafa al-Zuhayli (b. 1932 in Dair Atiah, Syria), is a prominent Sunni professor and Islamic scholar specializing in Islamic law and legal philosophy. He is also currently a preacher at Badr Mosque in Dair Atiah. He is the author of scores of books on Islamic and secular law, many of which have been translated to English. He is chairman of Islamic jurisprudence at the College of Sharia at Damascus University. He is also a signatory to the Amman Message and A Common Word documents.

⁷⁴ *Athar al-Harb fil-Fiqh al-Islami*, Damascus: Dar el-Fikr, 1998, p. 173.

⁷⁵ *Ibid*, p.176.

can simply refer to the verses of peace for this: *jihad* is solely to defend the freedom to express one's faith and to defend oneself.⁷⁶

Hence the Sheikh ends by stating that:

The separation of the world into two Dars was based upon the reality, not upon the Shariah.⁷⁷

⁷⁶ Ibid, p. 193.

⁷⁷ Ibid, p. 194.

Citizenship and civic participation

The term citizenship is at the same time a formal status – the belonging of an individual to a state on the basis of a set of rights and duties – and also a state of mind. Citizenship is not only about attaining rights, but more about participation in the political and civil process. To talk of citizenship is to discuss rights, duties, participation and identity, because citizenship was always seen as a pragmatic function rather than as a political end in itself; not something to be attained but to be done, and practised. It is about being involved rather than isolated.

Muslim leaders and scholars have argued that the challenges that Muslims may face while living in a non-Muslim society like Britain are not an argument for social exclusion; indeed if anything they are greater reasons to be involved and engaged. They point to the fact that the Prophet (pbuh) lived for thirteen years in Mecca in a society that on the whole rejected his teachings, his views on morality, his behaviour and his conduct. Yet this did not deter him from trying to influence all the prominent avenues of power in his society. Examples of this are too many to count, but to cite a few: he would meet whenever possible with the influential members of the Quraish, and he would go to the Ka'bah (the centre of political as well as religious life at the time) to speak to people around him.

Perhaps one of the most vivid examples of social engagement is in the pact known as *Hilf al-Fudul* ('the virtuous pact'). When the Prophet was about twenty years old a trader from Yemen came to Makkah and was wronged by one of the Quraish, Al-'As ibn Wa'il, who bought goods from him and refused to give the agreed price. In those days people would be protected only through their family/clan or an appointed protector and, knowing that the trader had no protection, Ibn Wa'il felt that he would get away with this. The trader went to the Ka'bah and pleaded for help.

In response to this a group of people met in the house of 'Abdullah ibn Jud'an. Those present formed a pact to protect the innocent and downtrodden. Some of the biographers of the Prophet (pbuh) narrate that those present went to the Ka'bah

and, after washing their hands in a bowl, raised their right hands and made a pledge. Muhammad, along with Abu Bakr, was party to this pledge. Later on in life, he is reported to have said: "I attended in 'Abdullah ibn Jud'an's home the formation of a covenant which I would not exchange for any material gain. If now after Islam I am called upon to honour it, I would certainly do so."⁷⁸

This incident shows clearly how Muhammad was keen to take a stand against the injustices in his society that needed attention. Beyond this, it also shows that he was willing to take a moral stand alongside others, despite their different faith or values, for a common cause. Further, we may note that the cause in this case did not affect one of his 'own', but another human being whom he did not even know.

Some have argued that this all happened before Prophethood was declared and does not form a part of the exemplary life or teachings of the Prophet (pbuh); however, his clear praise of the pact later in life, and his restatement of his commitment to it, shows that this is an erroneous view.

We can also find other examples of how Muhammad benefited from the help of other people, or was prepared to work with them, regardless of their religious or moral backgrounds. When the small band of his followers in Makkah faced severe treatment at the hands of the Quraish, it was to the Christian Negus of Abyssinia that the Prophet sent those who were able to leave, as we have already seen. When the Prophet was secretly leaving Makkah for Madinah at the time of the migration (*hijrah*), it was a non-Muslim guide that he employed and confided in to show them the way. During the time of famine in Makkah, when the Muslims were boycotted and placed under strict sanctions, it was people like Al-Mut'im bin 'Adiy, who was not a Muslim, who would secretly smuggle food to the Muslims and who were instrumental in bringing the boycott to an end. It was also the same Mut'im who granted the Prophet protection after the demise of Abu Talib.

Participation, and our sense of justice, must go beyond the parochial ends envisioned by the Islamists' call to Islamic political hegemony ('Islamic', that is, as

⁷⁸ Salahi, Adil, *Muhammad Man and Prophet: A Complete Study of the Life of the Prophet of Islam*, Leicester, The Islamic Foundation, 2002, pp. 40-41.

they would see it – by now their idiosyncratic and un-normative approach should be clear). The Qur'an exhorts believers to stand up for justice, even if it be against their own kin. Furthermore it asks people to find common ground and work together for good causes. The example of the Prophet Yusuf, that we have also seen before, shows how he took up a place in a non-Muslim government because in that was scope for him to promote good and prevent harm, not just for himself but for the whole of that society.

Islam envisages that harmonious relations be the norm between people, as the etymology of the word powerfully suggests. The Qur'an shows that humanity *as such* deserves great respect and has been honoured: "We have honoured the children of Adam" (Qur'an, 17: 70). It also shows that differences of faith, ethnicity, nationality, and so on, are all part of the divine intent and that these differences are not to cause conflict between peoples:

"O mankind! We created you from a single (pair) of male and female, and made you into nations and tribes, that you may know each other, (not that you may despise each other)..." (Qur'an, 49: 13).

Difference in the sight of God is natural and part of His plan: "If your Lord had so willed, He could have made mankind one people..." (Qur'an, 11:118).

Voting for parties in a general election

Voting for the modern political parties which best share our values and best look after our society's interests is necessary and required from us. Sheikh Wahbah Zuhayli and Sheikh Bin Bayyah both argue that we should seek the greater interests of society and seek to lessen the harm to society's interests.

Sheikh Wahbah Zuhayli states:

There is nothing in the Shariah to forbid, whether for reasons of necessity, need, or an existent interest, when the intent is noble, for Muslims and non-Muslims to participate together in elections in mixed parties against other mixed parties... This is based upon the hadith "Actions are by intentions and everyone shall get what they intended"⁷⁹ and what has been extracted from the principle al-umur bil-Maqasidal-umur bil-maqasid (matters are determined by their objectives).⁸⁰

This... should be done according to when the *maslaha* (benefit) outweighs the *mafsada* (harm), and the good better than the evil, as is established in the principles of *usul* (legal axioms), *fath al-dharai* (opening the means to benefits) and *sadd al-darai* (blocking the means to harm).⁸¹

Sheikh Taha Jabir Alwani in the US concurs in a *fatwa* as follows:

"...it is the duty of (American) Muslims to participate constructively in the political process, if only to protect their rights, and give support to views and causes they favor. Their participation may also improve the quality of information

⁷⁹ 'As narrated by Imam Bukhari from Umar' [This is a footnote in 'Participation of Muslims in elections' under the heading 'Participation of Muslims and non-Muslims against other mixed groups (of Muslims and non-Muslims)', p. 520, *Qidaya al-Fiqh wal-Fikr al-Muasir* Damascus, Darel-Fikr Publications, 2006].

⁸⁰ 'Can be found in *al-Majalla ul-ahkam al-adliya* (and other scholars such as Imam Suyuti in his *Ashba wal-Nazair fil-Fiqh*.) [This is a footnote in 'Participation of Muslims in elections' under the heading 'Participation of Muslims and non-Muslims against other mixed groups (of Muslims and non-Muslims)', p. 520 *Qidaya al-Fiqh wal-Fikr al-Muasir* Damascus, Darel-Fikr Publications, 2006].

⁸¹ 'Participation of Muslims in elections' under the heading 'Participation of Muslims and non-Muslims against other mixed groups (of Muslims and non-Muslims)', p. 520, *Qidaya al-Fiqh wal-Fikr al-Muasir* Damascus, Darel-Fikr Publication, 2006.

disseminated about Islam. We call this participation a 'duty' because we do not consider it merely a 'right' that can be abandoned or a 'permission' which can be ignored."

So it is Islamic to engage in non-sectarian politics, embrace the interests of society as a whole, and cooperate with Muslims and non-Muslims as one society to look after our interests.

An incident reported in the Sunnah is that of Muslims' migration to Abyssinia, as recorded in the Musnad of Imam Ahmad on the authority of Umm Salamah, Mother of the Believers (may Allah be pleased with her), who was among those who migrated to Abyssinia.

It is reported that Umm Salamah, narrating the incident of their migration, said: "We stayed in his (al-Najashi's) land, where we were treated with great generosity and hospitality. During my stay there, some people rebelled against him (al-Najashi) and tried to take hold of the reins of power. By Allah, we haven't felt sadness as we felt at that time, for fear that such rebellious (ones) might succeed in their scheme, and then a man who does not know the truth of our religion (nor does he observe our right as refugees) as al-Najashi did may be the sovereign. An-Najashi set out to meet the enemy, who was on the opposite bank of the Nile. Then the Prophet's (pbuh) companions said that one of them could cross the river to investigate the enemy intensively. On that, Az-Zubayr ibn Al-'Awwam, who was one of the youngest among us, said, 'I will.' Then they gave him a float and he swam to the opposite bank and investigated the enemy's preparations for the battle. During this, we observed dua (supplication) heavily for al-Najashi to be victorious over his enemy and he succeeded and stability was achieved again in Abyssinia.

This narration demonstrates that the Muslims, all Companions of the Prophet (pbuh), even prayed for the king to remain in power, and supported his efforts. This demonstrates the very deep concern they had for that king, even though he was not Muslim.

Sheikh bin Bayyah states that the Muslims in the West live with religious and cultural pluralism. He explains further that most are citizens who have permanent rights and "religious freedom", and they must fulfil their obligations in terms of adhering to such a social contract. This includes following such conditions as "obedience to the law of the land" because God has stated "O you who have attained faith! Fulfil your agreements/contracts".

This also applies to people who reside in a country under a "covenant" or people entering a country under some type of agreement (which a visa or similar would

constitute). He states that God has “obliged us with obedience to the law”, and reminds Muslims that they also have to maintain high “moral and ethical standards” wherever they find themselves, whether that is in a country with “Muslim majority or otherwise”.

Sheikh Bin Bayyah also explains that the basis of political participation for Muslims in Europe is from the command of God to “Co-operate with each other in goodness and piety, but not upon sin and transgression” implying there are duties, recommendations and permitted acts that are necessary parts of citizenship and that this should be done by

abiding by Islamic etiquette and mores, such as truthfulness, justice, faithfulness, fulfilling one’s trusts, and respecting diversity and different opinions, and discussing matters lightly with those who differ with you and avoiding obstinate behaviour.

This includes taking part in elections and supporting political parties even financially whether the candidate is Muslim or non-Muslim, as long as they are the most suitable and capable of achieving the common good. Notably, the Sheikh says this applies to both Muslim men and women.⁸²

God says:

God does not forbid you, regarding those who do not fight you on account of (your) faith, nor drive you out of your homes, from dealing kindly and justly with them: for Allah loves those who are just. [60: 8–9]

Hisham Hellyer quotes Taha Jabir al-Alwani⁸³ commenting on this Quranic verse:

Ibn ul-Jawziyy said these verses are license for Muslims to build relationships with those who have not declared war on them, for kindness and charity to them even in case they are in relationships with them (i.e. Muslims). Al-Qurtubi

⁸² *Sana’aat ul-Fatawa wa Fiqh ul-Aqaalliyat*, Dar ul-Minhaj, 2007.

⁸³ Taha Jabir Al-Alwani, Ph.D. (born in 1935), is President of Cordoba University and holds the Imam Al-Shafi’i Chair in Islamic Legal Theory at the same university. He studied at Al-Azhar university in Egypt and was a lecturer at Imam Muhammad ibn Sa’ud University in Riyadh, Saudi Arabia for 10 years. Al-Alwani concentrates on the fields of Islamic legal theory, jurisprudence (*fiqh*), and *usul al-fiqh*.

commented: 'This verse is permitted by Allah (Glory to Him, Most High) for Muslims: to be charitable to those who are neither hostile to, nor fight Muslims: His (Most Gracious, Most Merciful) words "From dealing kindly and justly with them" signify that He (Glory to Him, Most High) does not forbid you (Muslims) from dealing kindly and justly with those who do not fight you.' Ibnu Jarir laid stress on that the verse applies to all non-Muslims of all religions, beliefs and sects. He said 'Of all views on this point, the most correct is the view of whoever suggests that the meaning (of the verse) is: Allah (Glory to Him, Most High) does not forbid you (Muslims) "from dealing kindly, keep contact with, and being just to them". Allah (Most Gracious, Most Merciful) generalised by saying, "Those who fight you not for (your) faith, nor drive you out of your homes" to include whomsoever this description applies; He (Glory to Him, Most High) does not specify some of them or exclude others.'⁸⁴

⁸⁴ *Fiqh of Minorities*, prolegomena – cited p. 92 of *Muslims of Europe*, H. A. Hellyer.

Conclusion

Imam Sa'd al-Din al-Taftazani's classical work of Islamic creed is considered the definitive statement on orthodox theology among Sunni Asharites and Maturidites. In it, he comments upon the incidents surrounding the appointment and selection of the Caliph by Umar ibn al-Khattab, the second 'righteous successor' to the Prophet Muhammad (pbuh). In relation to Umar's selection of six people to appoint the Caliph, Taftazani says:

...in consultation all of them took the place of one Imam.⁸⁵

This collective leadership, a selected group of individuals from the community, set the precedent for collective and consultative rule, according to 'orthodox' scholarship. Islamic orthodoxy did not, and does not, necessitate despotic, autocratic, or theocratic ruling of people in God's name.

This is why even conservative scholars of today, like Sheikh Wahbah Zuhayli, say that:

It is important to know that Islam did not lay down a specific form or shape for governance.⁸⁶

In pre-modern times, Muslim scholars considered it both acceptable and necessary to engage with, and take political positions in, empires which would have been dominated by people of other religions who were opposed to Islam. As we have seen from Zamakhshari, this was done in order to safeguard justice and the interests of society. This is far from the political situation in which we live today, where political systems are religiously neutral and are not defined by belonging to a specific faith or denomination.

It has never been the case that Muslims require religious edicts to make it necessary to participate in wider society. Neither should it be the case now; the pragmatic and principled reasons for political participation are self-evident,

⁸⁵ A Commentary on the Creed of Islam *Sa'd al-Din al-Taftazani on the Creed of Najm al-Din al-Nasafi* translated by Earl Edgar Elder, Columbia Press, New York 1950.

⁸⁶ *Qidaya a-Fiqh wal-Fikr al-Muasir*, p. 533.

especially with the development of some anti-Muslim forces in western societies today. This being the case, the spurious arguments of heterodox, deviant, extremists should not be considered as typical of Islamic thought. Nor should they be seen as reasonable religious arguments by Muslims seeking to live out their religion faithfully.

It is clear that the ideological considerations that inform the thinking and 'jurisprudence' of extremist groups did not exist in the thinking of classical Islamic jurists. The 'ideological' basis of ruling that leads to the self-contradictory verdicts issued by such groups is wholly different from the framework within which Islamic authorities delivered their religious edicts in the past. Rather than ideological aims, the classical *Islamic* authorities' main considerations were protecting the freedom to practise the religion; protecting people's interests and their wealth; and protecting the interests of society as a whole. This was the case whether it concerned joining the military, taking political office, supporting political leaders, or voting for them.

Scholars today apply the same criteria to the issues facing us now, whether it is financially or practically supporting political parties, candidates for elections or, governments. Whether the individuals are Muslims or not is not the deciding factor.

The example of the Muslims who migrated to the Christian Kingdom of Abyssinia at the request of the Prophet (pbuh) is exemplary in this regard.

The Prophet (pbuh) said about the Kingdom:

If you were to go to Abyssinia (it would be better for you), for the King will not tolerate injustice and it is a friendly country.⁸⁷

They were told he was a 'just' king and he consulted them when making decrees to protect them,⁸⁸ they prayed for him to stay in power and even fought to defend this non-Muslim ruler.⁸⁹ Scholars like Imam Malik forbade forever, any form of *jihad*

⁸⁷ The Life of Muhammad a translation of *Ibn Ishaq's Sirat Rasul Allah*, A. Guillaume, Oxford University Press.

⁸⁸ *The Life of the Prophet Muhammad al-Sira al-Nabawiyya*, Ibn Kathir, vol. 2, Translated by Professor Trevor Le Gassick from the opening pages to p. 19.

⁸⁹ *Kitab ul-Mabsut*, vol. 5; Juz 10 chapter on marriage with the Ahl al-Harb (hostile territory) and entering such lands with an assurance of safety [*amaan*], Dar al-Fikr, Beirut, p. 1871.

against such a country based upon prophetic hadith and the consensus of the scholars from the early generation – the Salaf.⁹⁰

Separatism, isolation, and disenfranchising Muslims in the name of sectarian religious politics only benefits the extremists at both ends of the political world; extremists such as al-Qaeda and ISIL, and also those on the extreme right, with their bigoted anti-Muslim message of hatred.

T J Winter, one of the leading Muslim scholars in the West, quotes a leading eastern scholar:

In a lecture given in California by Shaykh ‘Abdullah bin Bayyah, one of the most distinguished Maliki scholars of Mauritania, Bin Bayyah told his American Muslim audience that ‘the relationship between Muslims living in this land is a relationship of peace and contractual agreement – of a treaty. This is a relationship of dialogue and a relationship of giving and taking [...] It is absolutely essential that you respect the laws of the land that you are living in.’ The Shaykh proceeded to explain that the classical fiqh (rules of religious conduct) required conviviality and respect for non-Muslim neighbours, and allowed adaptations even of the fundamental religious rules, such as the timing of prayers,⁹¹ to facilitate the integration of Islam in society and the work place.

T J Winter goes on to corroborate the point with lucid examples from European history. We would be well-served by using such examples as a guide for ourselves today:

Traditional Sunnism’s legal and theological capacity to allow conviviality and adaptation has, of course, been demonstrated in many historical contexts. From an almost unlimited list, examples might include the ancient Muslim communities in Poland and Lithuania, which became so solidly embedded in their Catholic

⁹⁰ The saying of the prophet being: “Leave the Ethiopians in peace as long as they leave you alone”. Imam Malik when questioned about the narration said “People continue to avoid an attack on them”. See vol. 1, p. 456, *The Distinguished Jurist’s Primer – Bidayat al-Mujtahid wa Nihayat al-Muqtasid – Ibn Rushd*, Translated by Professor Imran Ahsan Khan Nyazee.

⁹¹ Sheikh Wahbah Zuhayli issues the same verdict quoting from Hanbali sources, Sheikh Mansur al-Buhuti, *Kash-shaaf al-qinaa*, vol. 2, pp. 3 to 7 and Imam Ibn Qudama in *al-Mughni*, vol. 2, pp. 273-282, Dar al-Manar, in his *Qidaya fil-Fiqh wal-Fikr al-Muasir*, p. 34.

surroundings that they produced two of Poland's national heroes: Jalal al-Din, who supported the Grand Duke against the Teutonic knights at Tannenberg in 1421, and Marshall Joseph Piludski (d 1920), after whom one of the greatest city squares of Warsaw still takes its name.⁹²

Muslims in the West are an essential part of the spiritual, intellectual, and political make-up of the society. Their heritage can provide ample guidance to steer them forwards, and also allow them to develop a discourse that is both true to the essential nature of Islam, and the values shared in western society by all the great faiths – indeed by all people of good-will.

⁹² T. J. Winter, 'British Muslim Identity – Past, problems, prospects', The M.A.T. Papers.

Comments on Political Participation

This book demonstrates how Muslims can engage with non-Muslims and people of all faiths, and those of no faith, on the common grounds of humanity and with the shared aims of betterment for all peoples in our society; the main aims of Islam being to promote mutual benefit and prevent harm. This work effectively refutes the views of extremists and their supporters who are anti-Democratic, anti-Western, and against freedom and liberty. This is the same freedom and liberty without which Muslims would not be able to practice their faith.

Sheikh Ahmed Tijani Ben Omar

Political Participation – refuting the claims of extremist separatists is on a topic of vital importance to the wellbeing of British society, given the tensions between Muslims and between Muslims and the rest of British society. On the basis of extensive research this short and interesting book establishes points that are crucial for Muslims living in culturally complex democratic societies.

It explains the traditional view within Islamic thought:

- that Muslims should participate in political and social activities to promote the overall best interests of the society in which they live;
- that this participation can take place on the basis of values and interests that are common to different religions and cultures and are not specific to Islam;
- that Muslims should respect the autonomy of different cultural groups and see these groups as having equal standing;
- that Islam values a society in which conditions are fair and equitable for all.

To non-Muslim members of the United Kingdom this book gives re-assurance and hope for the prospects of greater community cohesion.

Richard Rowson

Honorary Research Fellow, Kingston University

Visiting Fellow, Glamorgan University

Consultant in Professional Ethics and Community Cohesion