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FROM THE **ARAB WORLD**

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# ABOUT THE MENA REPORT

*The MENA Report*, published monthly by The Cordoba Foundation, provides unique insights and analysis of events and developments in the Middle East and North Africa. Seeking to provide impartial, accurate and authoritative content and analysis, we do this through The Cordoba Foundation's unique access to rare and highly important primary sources in the Middle East and beyond.



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# WELCOME



Welcome to the sixth edition of *The MENA Report*.

In this edition we have continued our investigation of the authenticity of religious, political and social sets of ideas, as well as traits which have been cast in stone and idealised. Lacking the ability or the will to distinguish between the sacred and the profane, the permissible and the absolute, inhibits the natural ability and will to investigate, reform and remedy.

The sacred always manifests itself as a reality of a totally different order from natural realities. However, the boundaries of the two realms should be distinct and clearly defined. Naturally, the sacred domain should be limited, otherwise life which is dynamic and fluent in nature will cease to develop and prosper.

Featuring in this edition of *The MENA Report* is an extensive interview with a distinguished religious scholar which sheds light on the struggle and process for reinvestigating the intellectual heritage (*turath*) which in itself is a continuous process.

As always, *The MENA Report* presents a vast array of ideas, propositions, and assumptions, especially through interviews in order to create the space and a platform for informed debate and discussion.

As this issue was on its way to the printers we received news of the military coup in Egypt. Unfortunately we are unable to cover this story in this edition of the report as it requires time to properly investigate the past and unfolding events. However, we will cover the subject of Egypt in depth in forthcoming issues.

We hope you will enjoy reading and digesting the discussion points and ideas raised in this edition of the report.

## **Dr Fareed Sabri**

HEAD OF THE MIDDLE EAST AND NORTH AFRICA PROGRAMME  
THE CORDOBA FOUNDATION

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# THE STRUGGLE OF THE PROponents OF MODERATE ISLAMIC POLITICAL THOUGHT, BETWEEN THE ULTRA-TRADITIONALIST AND NEO-ORIENTALIST PARADIGMS

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The struggle of the proponents of modern Political Islam to assert their religious legitimacy and its conformability with international humanistic and democratic standards has been fraught with an abundance of protagonists, both at home and abroad. For the past eighty years the ideologies of modern Political Islam have been locked in a bitter fight with autocratic secular regimes in the Middle East and North Africa in particular. Their declared reformation agenda seeks to establish just political systems with Islamic reference in order to pluck the Muslim nations from centuries of economic, political, scientific and technological backwardness.

In the past two centuries colonialism was a major catalyst for the revival of Islamic Political thought. In a similar context, nearly a century and a half earlier (16<sup>th</sup> century), the Salafi School of the thought was first revived in Baghdad, and then moved to Najd in present-day Saudi Arabia as a direct consequence of the militaristic rise and expansion of the Shi'i religious vigor at the hands of the Safavid dynasty in Iran.<sup>1</sup> Modern Islamic political thought was mainly formulated in

Middle Eastern cities known for their established history of civil and administrative traditions such as in Cairo, Istanbul and Damascus. In general, puritanical Salafism constituted the religious base of the movement, though its political paradigm and administrative components are borrowed from Western political traditions. This political component is what distinguishes it from the traditionally apolitical Salafi movements in the Middle East before the advent of the Jihadist Salafis (*al-Salaffiya al-Jihadiya*) in the 1970s.

The dawn of the Enlightenment in the West brought about the tradition of scientific rationalism. Nature was monitored, studied and controlled in terms of mathematics and laws of physics. Nature was simply the result of a mechanical process devoid of an ultimate purpose and omnipresent external designer. The amoral mechanical process knew no limit to scientific progress in industrial, economic and military advancement. Scientists and political philosophers in the West freed their people from the myths and heresy that veiled the Western mind and inhibited human creative faculties.

The religious reformers in the Muslim civic centers and the forefathers of contemporary Political Islam acknowledged the legitimate claims of the Western rational philosophers against the irrationality and myths of religious dogma. However, they claimed that religion, and Islam in particular, does not conflict with the rational approach to science and social development and interaction as long as these domains are restricted and guided by the basic moral tenets of religion. Materialism void of moral and ethical components is dangerous and would eventually, as has already happened, lead to racism, colonialism, and unregulated consumerism, with devastating social and environmental consequences.

Religious reformers such as Jamal al-Din al-Afghani and Muhammad Abdu, and eventually the ideologues of modern Political Islam evolved their political ideology from simple political theory based on the traditional consultation (*Shura*) to a more advanced political theory akin to Western-style democracies. A cursory glance at the Syrian Muslim Brotherhood manifesto promulgated in 2004 and the Egyptian Muslim Brotherhood manifesto which followed

a few years after prove the point made earlier. Both these manifestos adopted the democratic route as their ultimate and only route to a just and fair political system. The separation of executive powers, the respect of human rights, freedom of speech and association and the independence of the judiciary, are all democratic principles that feature heavily in their manifestos.

The struggle of the proponents of Political Islam in the Middle East and North Africa has always been over the limited political space in an attempt to establish a quasi Western-style democracy. This struggle has induced a secularising effect within the movement to an extent where the Islamist political success of the Turkish Justice and Development Party merited an absolute fascination by the Muslim Brotherhood and other Islamic trends.

One would be wrong to assume that the secularising effect touched only those Islamists who have been politically-active such as the Brotherhood. The allure of politics in its secular and democratic forms touched the traditional and

apolitical Salafis in Egypt. On the back of the success of the Arab Spring which saw the ousters of Hosni Mubarak, the Salafis, inaugurate their first political party, Hizb al-Nour (“the light”) to participate in the elections. The advent of the Arab Spring mainstreamed and popularised the strand of Muslim Brotherhood political ideology. Even extremists and Salafists, as we have already seen, realised the benefits of the democratic route.

It remains an enigma why the West, and the United States in particular failed to register this political evolution; moreover they failed to engage in a meaningful dialogue to reach some sort of mutual understanding. There is no doubt that the West was taken by surprise when Islamists ascended to power in Tunisia, Egypt and Morocco. Western Economic interests and geopolitical considerations in the Middle East and North Africa led to prominence and political providence of extremist fringe groups like al-Qaeda and the Takfiris in Egypt, Algeria and Iraq.

Skewed Western politics in regards to the Middle East

in particular, revived and pumped life into an extinct organisation such as Hizb al-Tahrir. This fringe political persuasion had virtually no political following in Iraq, Egypt, Syria or any of the Arab countries in the 1980s and 1990s. They only had a limited following in the birth place of the movement in Jordan with no political significance whatsoever. Yet the ex-leader of this fringe party managed to recruit hundreds of young, angry, impressionable Muslims in Europe during the 1990s as a direct consequence of the American involvement in the first Gulf War.

Oddly enough, the Western failure to engage moderate Islamist political parties and their unintelligible sweeping generalisation is quite similar to the Salafist Jihadist, al-Qaeda and the Tahriri’s ideological position in regards to the proponents of moderate Political Islam. The enmity was translated into an open warfare against the moderates for proposing to fuse Political Islam with aspects of Western democratic culture. The systematic assassination campaign carried out by the extremists in Algeria in the 1990s and in Iraq after 2003 against the moderates inhibited the Islamic



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The failure to engage and fathom the differences between the political cultures of the majority of Islamists and the tiny boisterous extremists has always played into the hands of the latter.

political parties and severely dented their popular base and following. In Iraq for example, the Iraqi Islamic Party was paralysed by the continuous campaign of assassinations by al-Qaeda against its political operatives. Street rallies, political canvassing, or even charitable and simple day-to-day activities carried an enormous risk to the lives of the ordinary party member.

On the other hand, established Western democracies led by the United States completed the pressure circle on the proponents of moderate Political Islam. Western governments condemned all democratic attempts and experiments as lacking legitimacy and that the only route to democracy should be a copycat of Western cultural values loaded with its contemporary evolved moralities. Their political strategy accepted no political paradigm other than liberal style democracy as the only acceptable form of government. Cultural specificities, different religious cultures and historicised social structures are considered as anomalies that should be brushed aside in the pursuit of identical Western-style democracy in the Arab and Muslim world.

The failure to engage and fathom the differences between the political cultures of the majority of Islamists and the tiny boisterous extremists has always played into the hands of the latter. The skewed Western strategy towards the evolution of democracy in the Arab and Muslim world has been problematic and disingenuous. It created tensions and total disregard to real and genuine dynamism towards real change.

In the 1990s, Martin Indyk, American ambassador to Israel and Assistant Secretary of State for Near East Affairs during the Clinton Administration, detailed part of Clinton's strategy in the Middle East as follows:

“A democracy-oriented foreign policy; a foreign policy that would promote the interests of American business abroad; a foreign policy that would work with our friends and allies in the Middle East -- Israel, Egypt and Saudi Arabia -- to protect American interests in the Middle East and to counter the threats to those interests from radical regimes, be they secular or religious; a foreign policy that would seek to stem



the flow of weapons of mass destruction to this volatile region; a foreign policy that would have as a priority the promotion of real and comprehensive peace in the Middle East.

In other words, the "vision thing" was very clear to this president before he came into office. He understands that the Middle East is finely balanced between two alternative futures: one in which extremists, cloaked in religious or nationalist garb, would hold sway across the region, wielding weapons of mass destruction loaded onto ballistic missiles; and the other future in which Israel, its Arab neighbors and the Palestinians would achieve an historic reconciliation that would pave the way for peaceful coexistence, regional economic development, arms control agreements and growing democratisation throughout the Middle East."

Clearly the American administration then, as now, sees democracy through the lens of American economic and military interests. Israel is another strategic component of their foreign policy.

Looking back at this "ingenious" political strategy where the Middle East is divided between two distinct sides, the extremists on the one side and Israel with its autocratic Arab allies on the other would explain why the West and the American strategists failed to predict the Arab Spring and the rise of Political Islam in the region. The unacceptable and unethical support for repressive regimes, the unlimited support for Israeli aggressive and militaristic incursions and the invasion of Iraq are all direct consequences of continued reliance on a neo-orientalist paradigm in America's foreign policy. The false cultural assumptions of the Western World facilitating the cultural misrepresentation of the "The Orient", in general, and of the Middle East in particular, goes back for centuries.

Neo-orientalist political strategists have wreaked havoc in the international political scene over the past 13 years. Their simplistic and binary attitude to 'the other' understood only two positions; the axis of good and the axis of evil. There are no other shades or interpretations. Plurality is considered as either with or against, just like the most ardent theocratic

regimes such as Iran, when Ayatollah Khomeini castigated the United States as the Great Satan.

The blame for the profound consequences should not only rest on the shoulders of ill-informed and politically or sometimes religiously driven politicians, but rather on a rush to a reductionism view of Muslims and Arabs, in particular by well-known and respected Western political theoreticians.

After the fall of the Berlin Wall and the collapse of the Communist threat, academics like Francis Fukuyama, Samuel Huntington, R.D. Kaplan and Joseph Nye painted a negative monolithic picture of Islam and the apparent threat it posed to Western civilisation and way of life. The concoction of minority ideologically-driven politicians such as Martin Indyk, Paul Wolfowitz the architect of Iraq invasion, Douglas Feith, Elliott Abrams, David Addington and Richard Perle, and essentialist academics did the most damage to Western foreign policy for the past 25 years.

Aspects of the neo-conservative political philosophy

dominated the successive American administrations. Western European governments parroted American foreign policy for economic and geopolitical reasons. In an essay written in 1979 by Jeane Kirkpatrick, the neo-conservative theoretician and American Ambassador to the United Nations, she criticised the Carter administration for trying to promote democracy in traditionally autocratic countries. She argued that allying with authoritarian governments might be prudent. In her essay entitled "Dictatorships and Double Standards", she divided autocratic regimes into two different political entities, the Traditional Autocrats and the Revolutionary Communist Regimes. In her opinion the US should not encourage rapid liberalisation policies for fear of throwing the new regimes in the laps of communism and leftist ideologies.<sup>2</sup>

Ironically, the same political strategy was adopted by the Clinton administration in the 1990s though supplanting the Revolutionary Communist threat with the Islamic threat. A number of American policy-makers admitted that their policy is not to force or try to impose democratic reforms

on their allies in the Middle East for fear of the ascendance of political Islam. The Human Rights of the people were compromised for economic interests and the stability and safety of Israel. The drive for democracy was underestimated to the extent that the American administration and her Western allies dithered for the first few months and continued to support the Mubarak regime in Egypt. Quite astonishingly the same indifference is repeated in Syria. For geopolitical reasons (i.e. Israel's safety and stability), the West is turning a blind eye towards the mass killings and atrocities committed by the regime. The majority of the Syrian people and opposition are denied the much needed arms and logistical supplies for fear that a tiny minority of extremists might win the political battle afterwards.

This political and humanitarian indifference lacks justice, morality and above all is ill-informed in regards to the social, political and cultural makeup of Syrian society. Unless there is a meaningful policy change towards the politics of the Middle East, coupled with direct engagement with the legitimate and real representatives of the people, the tiny

minority of extremists will win credibility and bolster their following among angry and impressionable youth.

At the heart of the policy change we envisage, is the realisation that democracy comes in different shapes and forms. Certain aspects of Western traditions, moralities and liberal values do not conform to every single society around the globe. Forcing Western liberal values and the associated intrinsic moralities as an integral part of democracy contradicts the very essence of democracy.

In "Post Modernism and Religion", Ernest Gellner identified three intellectual positions in our contemporary world. These are Fundamentalism, Relativism and Enlightened Rationalism. In his view, the Muslim World still languishes in the position of fundamental belief in religious values and the absolute truth of the divine. According to Gellner, the central Message of Islam contains an emphatic and severe monotheism. He also identified three major principles which invoke religious and political legitimacy. There are the divine message and its legal elaboration, the consensus of the

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Contentious issues in alien cultures such as sexual liberty and the consumption of alcohol are given priority over the democratic will of the majority.

community and finally, sacred leadership epitomized by members of the house of the prophet.

Part of this assumption is true since there is a schism between theory and practice in the contemporary Muslim World. The theoretical principles of pluralism in Islam and the separation between the sets of beliefs, rights and responsibilities are well established and documented. There is a dire need for deep research into the reasons for the break away from the respected tradition of pluralism which is enshrined in the religious text. Historically, respect for other cultures allowed and sheltered a variety of religions and sects to flourish for centuries under the wing of the state.

However, we also believe that some sections of Western societies, including politicians and academics, have moved from the position of relativism to secular fundamentalism. Proselytising other cultures became a priority over important issues such as justice, human rights and freedom of expression.

Contentious issues in alien cultures such as sexual liberty and the consumption of alcohol are given priority over the democratic will of the majority. The minority of militant secular activists in the Arab and Muslim world picked-up the message with vigour. They know that they cannot achieve political mobility via democratic means since their cultural values are alien to the majority of the people in the MENA region. The only means left at their disposal is to create change through mass rallies, vandalism and disrupting state institutions to convince the population that stability is unachievable under the stewardship of Political Islam. They are also candidly trying to convince the army to topple the democratically elected government.

Western politicians know very well that certain aspects of law and morality, and public policy were separated in a gradual process that took centuries to evolve. Forcing specific moral agendas on democratically-elected governments in the Middle East and North Africa will only create social schism and instability. The latest spat of violence and unrest in Taksim Square in Istanbul (Turkey) is

a striking example of Western disregard for the will of the majority of the Turkish people in the name of Western liberal values.

Lately, a number of articles in reputable Western newspapers cautioned the West against lending support to the democratically-elected Turkish president. Their main argument is to stop the Turkish president from implementing his policies. What is at stake here is policies laden with the moral values of the majority of Turks for the benefit of a tiny minority of secular, liberal, and fringe extremist groups. The cheap and superfluous advice for Western governments goes further to denounce the mastermind of Turkey's economical renaissance, a politician that has won three consecutive elections. The advice goes even further, calling to monitor the conduct of the democratically-elected government in an effort to discredit and undermine it. Total disregard for the will, culture, and moral values of the majority of people in the MENA region is usually followed by stereotyping and a disproportional blame game.

## Terrorism and the Blame Game

Terrorism against civilians is not a trade mark of a small group of guerrilla fighters or politically and religiously-motivated individuals. In the past 10 years countless atrocities have been committed by uniformed Western soldiers against unarmed innocent civilians. From Abu Ghraib, the massacre of Haditha in Iraq, to Staff Sgt. Robert Bales who killed 16 women and children in Afghanistan. In the majority of these incidents the perpetrators got off either scot-free or at best were given minimum sentences that did not correlate with the magnitude of their crimes. Nonetheless, people and governments in the Muslim World or the Middle East (excluding the insignificant minority of al-Qaeda and associated operatives) did not portion the blame on the whole of Western society or accuse Christianity as the impulse behind such heinous crimes.

It is only when these crimes are committed by someone claiming to be a Muslim or an Arab who has no official or popular representation that the whole religious tradition

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Neither the Western approach to denying context, nor our approach to investigating context is a justification for terrorism.

and community gets blamed for the crime. Furthermore, the acts of violence and the terrorist acts are always discussed as if they happened in a vacuum of context without due attention to the wide picture and the events that led to these terrorist acts.

We believe that neither the Western approach to denying context, nor our approach to investigating context is a justification for terrorism. A clear example is the Russian involvement in Chechnya. For the past 20 years the Russian Army has obliterated whole cities in this tiny republic. The Chechens felt betrayed and forgotten by the international community. The West and the United States in particular, traded its silence for the atrocities committed by the Russian government with reciprocal acquiescence in Iraq and the Gulf region. Consequently, the process of radicalising sections of the population becomes a natural process when they find that destroying their entire country and killing and raping thousands of people goes unnoticed by the international community.

The world is witnessing a diversity of values which is very difficult to unify or generalise. Nonetheless, there is a possibility for reaching a common agreement on definitions of certain international terms like terrorism, state-sponsored terrorism, pre-emptive attacks, national security, and sovereignty, if the international community is serious about creating an environment of justice, peace and cooperation. For example, the term “international terrorism” is not currently functionally defined in a way that will be globally acceptable. Despite a number of conventions, resolutions and academic interpretations, the United Nations has been unable to define this ancient phenomenon in a way that will win an international agreement.

Some governmental definitions of terrorism are overtly political, general and ambiguous. The term is also varyingly defined within one country by the different government departments. In the United States, the US Code of Federal Regulations, the Department of Defense and the US National Counterterrorism Center all have different variations of the definition, to take into account the distinction between



Naturally, different communities, countries, and cultures will differ in their perceptions and interpretations of violent acts.

international and domestic terrorist acts. A close look at Title 22, Chapter 38 of the United States Code contains a definition of terrorism which is so general that it could be interpreted any way the politicians wish. The definition reads:

“The term ‘terrorism’ means premeditated, politically motivated violence perpetrated against noncombatant targets by sub national groups or clandestine agents”.

While the Department of Defense definition reads:

“The unlawful use of violence or threat of violence to instill fear and coerce governments or societies. Terrorism is often motivated by religious, political, or other ideological beliefs and committed in the pursuit of goals that are usually political.”

Both these definitions are general and open to wide ranging interpretations to help the politicians’ exploit the vacuity and malleability as usually is the case. This seemingly disingenuous attempt to leave the term open to political

interpretations does not help build international consensus or build a policy to fight all sorts of violent and terrorist acts. Naturally, different communities, countries, and cultures will differ in their perceptions and interpretations of violent acts.

However, the most important issue is not just the definition since the most complicated and over-specified academic definitions could also be misinterpreted and misused. Different cultures, values, laws, and religions dictate that such important international terminology should not be left for individual governments to interpret and discern acts and events without studying and taking into account the context, historicity of the event, proportionality, self defense and level of violence. The most clear and striking examples are Chechnya, Syria and Iraq. Despite indisputable state-sponsored mass exterminations, destruction of private property, rape and ethnic cleansing; only those who retaliated in self defense were castigated as terrorists.

There is no doubt that extremist groups, such as al-Qaeda in



Iraq, carried out terror campaigns which are unacceptable by any law, standard or religion. However, it is in the regime's interest to castigate all groups and communities which practice self-defense as al-Qaeda terrorists. A close scrutiny of events will indicate that government tactics and responses are no less violent or criminal. Simple arithmetic will also reveal the criminal efficiency of state tactics in causing terrible damage to the civilian population. Both protagonists used terrorising strategies, though with different tools available at their disposal. Strikingly, the international community relied on the Iraqi regime's interpretation of events and incidents without proper and independent scrutiny and investigation.

Close inquiry of the aforementioned examples by an independent international body would indicate that terrorism is not just an act of sub-national groups or clandestine agents, but rather some governments can also be sponsors and instigators of acts of terror. Only then can the ordinary, innocent civilians can be assured

that the international community is not colour-blind to terrorism. Consequently, clandestine terrorist fringe groups will lose support and their recruitment pool will diminish significantly.

Psychology plays an important part in recruiting the young and impressionable. The main argument the proponents of violence utilise to recruit people is the absence of international justice and the ineffectiveness of its institutions. Western perception of the national state elevated it in the developing countries and in particular in the Middle East to sacramental status. Citizens, and sometimes whole communities, become dispensable if their predicaments put them at odds with the violent apparatus of their governments. In many instances, the very democratic institutions are emptied of its essence and turned against the people. In countries where democratic culture is lacking tradition and institutions, the judiciary, army and police are used by the executive to subdue the will of the people with impunity. These regimes learned to

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Since antiquity, prominent Muslim scholars acknowledged context (*al-waqi'a or siyaaq*) as one of the determinants for the evolution of jurisprudence and law.

dance to the Western tune of fighting terrorism and Islamic Fundamentalism. Their crimes usually pass unnoticed. It is only the reaction to injustices and atrocities committed that are usually scrutinised and meticulously documented.

There is no doubt that part of the blame should also be portioned towards the mayhem of religious edicts (*fatawa*) in the Muslim World and in Diaspora in particular. Since antiquity, prominent Muslim scholars acknowledged context (*al-waqi'a or siyaaq*) as one of the determinants for the evolution of jurisprudence and law. Hence it is extremely important to develop an “authentic” Islamic jurisprudence that caters for the interests of the millions of Muslims in the Diaspora.

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1. The Safavid dynasty ruled Iran at the beginning of the 16th century. Using force to convert the majority Sunni Iran to Shi'ism, they then conquered the majority of present day Iraq. Their form of religiosity was centered on Sufism and the reverence of the saints and members of the House of the Prophet. As a direct consequence, Salafism was revived by a number of religious scholars in Iraq and mainly in the capital city, Baghdad. Salafis reject certain aspects of popular religiosity such as sanctifying saints, using amulets to seek protection, and seeking the intercession of the saints with God. They preach revival through the return to the original teachings of the Prophet and his followers, i.e. al-Salaf al-Salih (The Righteous Forefathers).

2. *Asharq al-Awsat* (2011). Al-Nour Party: Egypt's Salafis Go Mainstream, June 20. <http://www.asharq-e.com/news.asp?section=3&id=25602> (accessed July 13, 2011).

3. <http://www.washingtoninstitute.org/policy-analysis/view/the-clinton-administrations-approach-to-the-middle-east>

4. [http://culturaloffering.com/files/93688-86434/Dictatorships\\_\\_Double\\_Standards.pdf](http://culturaloffering.com/files/93688-86434/Dictatorships__Double_Standards.pdf)

5. Refer to the articles of the Constitution of al-Madina promulgated by the Prophet in 622 AD.

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## INTERVIEW WITH SHAYKH ABDULLAH AL-JUDAI'

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In this issue of *The MENA Report* we are delighted to have been able to conduct a number of interviews with authoritative Muslim scholars based in the West to explore Islamic legal opinions on a number of issues discussed in the above article. We also solicited the opinion of well-known and respected Islamist politicians to correlate and highlight the differences between the theories of the theologians and the practice and context of the politicians. Our first interview in a series of many is with Shaykh Abdullah ibn Yusuf ibn Ya'qub al-Judai' in Leeds, United Kingdom.

Al-Judai' is a leading light and one of the most prominent Islamic scholars of our time. His extensive knowledge of the traditional Islamic Sciences coupled with a vast knowledge of the modern social and economic spheres gives him an edge on others in his field. His authentic, reformist, and critical approach towards extrapolating new judicial opinions to fit the overall interest of the community in establishing justice, harmony, and understanding, has won him many accreditations and respect. In Al-Jazeera's "Al-

Shari'a wal-Hayat" (Islamic Law and Life) the preeminent world scholar and theologian Shaykh Yusuf al-Qaradawi venerated al-Judai' as one of the most knowledgeable scientists in the science of *maqasid al-Shari'a* (the spirit or meaning behind the religious text). Al-Judai' is a founding member of the European Council for Fatwa and Research where he served as its General Secretary from 1998-2000.

***The MENA Report:*** Do you believe there is a need to develop a political jurisprudence (*fiqh*) specific to Muslim minorities which is concerned with respect for the law whilst considering possible conflicts with revealed law, particularly in the civil sphere?

***Shaykh Abdullah al-Judai':*** Is there a need for jurisprudence (*fiqh*) appropriate for each time and place? Of course, and jurisprudence is by its very nature subject to renewal. That is an essential feature of jurisprudence, which means: understanding in order to implement revealed texts. Hence we can observe juristic adaptation throughout Islamic

history due to mutual interaction with the environment. In other words, jurisprudence is formulated to be applicable to the jurist's own environment while remaining in accordance with the Shari'a.

Bearing in mind your anticipated questions, I think that the following is a suitable introduction or point of reference for the topic. Islamic law (*shari'a*) consist of both definitive (*qat'i*) and speculative (*zanni*) matters. It is a grave error to conflate the two, even at the hands of a jurist or student of law. Anyone who understands Islamic jurisprudence is aware that the majority is speculative [i.e. open to divergent opinions], whereas the definitive matters are like the signposts which preserve [the boundaries].

We often speak of rules (*dawabit*) as though the default in Islamic law is for matters to be fixed and bound. In reality, the default is the absence of restriction. Therefore, it is a mistake to ask: what are the rules and limitations in this matter? - looking at the Islamic ruling as though its natural

state is to be restricted. What we should be asking is: does this go against the [established] rules, or not?

Establishing rules entails restricting what was unrestricted, or making particular what was universal. For example, when God commanded the Israelites to slaughter a cow, the command was unrestricted such that any cow would have sufficed. The detailed rules and restrictions only came later [upon their questioning]. The nature of detailed rules is such that they should not be placed at the forefront: that position belongs to the definitive matters of the law.

So, the question is: what are the definitive tenets of Islamic law? We mean those things upon which no two Muslims will differ. This is a straightforward, non-philosophical definition. As such, they include the five prayers, pilgrimage, fasting, enjoining right and forbidding evil; these are [examples of] the principles. This helps us to make sense of any emerging or adapting issue.

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An easy-going person will produce flexible ideas, while a hard-line person will produce rigid ideas. Environment, too, has its role in shaping people's lives and thoughts.

As for the speculative aspect in which there is room for multiple opinions, this comprises the majority of the religion. Why? Because God intended this religion to be flexible enough to apply to every time and place -- adaptable to every colour of life. Even a single colour has any number of shades varying from dark to light. Flexibility is a feature of the religion that makes it appropriate to different types of people with their unique nature, remaining always within the scope of their ability.

Even the doctrine of monotheism – the greatest of Islam's teachings – is intended to free man from responsibility to anyone except the Absolute, i.e. Almighty God. This is an important introduction: we must take proper account of the tenets while giving ourselves freedom to move in the field of speculative matters. It is God Who has granted us this freedom.

There is no problem if we should differ, because that is part of human nature; only the revelation is protected from that:

“If (the Qur'ān) had been from other than God, they would have found in it much contradiction”<sup>1</sup> Human differences result in varying points of view. An easy-going person will produce flexible ideas, while a hard-line person will produce rigid ideas. Environment, too, has its role in shaping people's lives and thoughts, and therefore affects his understanding, behaviour, and *fiqh*.

The memorisation of the Qur'an for example, which many people are able to do, is not the same thing as having knowledge and the ability to have the capacity for legal reasoning. A brother of ours would critique things done in a superficial way, and he said about one person who memorised the Qur'an: all he has done is make another copy of the holy Qur'an. Memorisation is not the main goal; a person may commit numerous texts to memory and attain certificates in that, but does that make him qualified in jurisprudence?

I said to a group of people working in *Da'wa* [Islamic



Life is developing continuously and cannot be halted by any means; that is a consequence of man's nature as "ever toiling"

propagation] and *Fiqh* [Islamic jurisprudence]: "Our perennial problem is that we confine ourselves to our prior ways of thinking. In politics, we have the concept of the Islamic state, and in jurisprudence we have the various schools. Then we become stuck in these respective historical frameworks. We have conceived these ideas which we do not find [explicitly] in the Qur'an or Prophetic teachings."

This is the problem facing every accomplished or trainee jurist working in the field of knowledge or among the movements based upon Islamic ideology. These movements have become restricted on the path they have drawn themselves, which is not the same path which God described as "the straight path". On the contrary, that straight path is broad enough for many people. It is not proper to walk upon it in such a way, referring every new issue to history. When you go to some scholars and ask about a text or its contemporary implications, you find that they do not deny any of the new ideas and reinterpretation of the text, but they are unable to change or adopt these ideas because

they are still living in a different juristic age.

I have sometimes said to some of the jurists: "You know that the previous jurists would live in their own times and places, so why don't you adopt their methodology? Instead, you have adopted their detailed categorisations. The scholars of old appreciated that the Shari'a as being comprehensive, which is why they devised chapters for so many varied issues: so why not adopt that philosophy instead of sticking only to their chapters?"

That is the first point I wanted to make. Secondly, I want to draw attention to the importance of a complete revision, in the light of what I have said, of the jurisprudence of politics as well as life and interactions in general. Life is developing continuously and cannot be halted by any means; that is a consequence of man's nature as "ever toiling"<sup>22</sup> – he is always in need and thus seeks solutions, which in turn require thought.

In our times, we are not skilled at riding horses, just as in previous ages they could not drive cars. It is therefore crucial that our thinking takes account of these developments in order to engage effectively with them. The tragedy is that we have realised this necessity with regards to our daily lives such as dress, food and drink, whereas in the religious sphere we have fallen short in grasping the methodology of engagement and development. This is despite the fact that religion is one of the five essential matters [which must be preserved]; namely religion, intellect, honour, wealth and life. We have realised the necessity of development in medicine, companies, investment, clothing, transport etc., but not in religion. This has, in turn, resulted in obstacles in front of the other essential matters, and prevented development in other fields. The lack of progress in developing *fiqh* and political theories to suit the context of time and place impeded the development of our nation (*umma*) in all faculties of life.

Returning to our topic in more detail, yes: we do need to develop a jurisprudence suited to our place and time. Britain

has its own features, as does France, so not everything that is appropriate for one will necessarily suit the other. Sometimes, in our discussions with the scholars of France, they tell us concerning a certain issue – e.g. in family law or politics – that it is different in France, not like Britain. If we lack the ability to take account of different natures, customs and environments, that is a shortcoming within us, not in our religion. It is not proper for someone to simply claim that our religion is suitable for every time and place without recognising how this is so, being simply detached from reality.

In short, jurisprudence is necessarily changeable and responsive to its environment and era. Likewise, the West isn't the same as it once was, and it continues to evolve as does the entire world. Development is a natural feature that brings about new customs and behaviours as well as new understandings. One's understanding (*fiqh*) is a consequence of the reality in which one lives.

For example, people used to come to the West as refugees and say that it was only a matter of necessity, so they have no right to remain in non-Islamic lands. However, once the political situation in their home countries settled, they didn't return as their principle would dictate. Instead, they remained in the West and raised families, to the extent that if they were to return home, they would feel like strangers. So what happened to the principles?

Should we call this “contrary to the tenets”, or is it within the free scope of the speculative? In reality, it is a reflection of weakness in *fiqh* because such people did not appreciate the changes affecting the world. I believe that we need to look at the world today in a way completely distinct from the history of the Islamic state. Rather, we should look at it in the light of texts of the Qur'an and Sunna [Prophetic Traditions], as we possess the abilities and tools, such as language, Hadith, Qur'an and exegesis, to do so. The juristic tools have continued to be studied with care until today, so limiting ourselves to [the historical approach] is unjustified.

Freeing ourselves of this constricted approach which we have constructed will enable us to produce a flexible jurisprudence which equips us to take account of developments. I have never liked to refer to this as “Fiqh of Minorities”, even when we would use this term in the European Council for Fatwa and Research. Possibly it is appropriate in the context of other legal and political terminologies in the West, but in reality this label will constrict the Muslims as the Jews have done for themselves. While the Jewish Diaspora may have adopted such terms in line with their religious concepts and thought, it is not in accordance with the nature of our religion or thought at all.

Thus I recall a scholarly discussion on *halāl* meat, in which one of the participants spoke after me with a strong insistence upon the matter of Islamic character and identity in the West. He cited *halāl* meat as an exemplar of this Islamic identity. I replied: “Does it make sense to limit the identity of a Muslim to *halāl* meat, while we are free to eat from the food of others?” He pointed out that the Jews



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Strength is not in being able to overthrow others, but in controlling one's anger. A character trait is not always inherent, but can be learned.

preceded us in this respect such that their meat became emblematic of their identity. I replied, “How strange to follow the way of those before us even though our Shari’a granted us flexibility in religion.” I added that if he were to object that the people don’t slaughter their animals properly, he would perhaps have a point; but making *halāl* meat a matter of identity is a serious problem in terms of principles.

Why should I pull back from my society when I am part of it? When the Prophet Muhammad (peace be upon him) arrived at Madīna, he made its first constitution on the basis of one nation (*umma*) with different religious communities. This is something remarkable: Islam recognises this diversity and states that there is “no compulsion in religion”<sup>3</sup> and “you have your religion and I have my religion”.<sup>4</sup> When it comes to social structures and taxes, everyone contributes because these are matters for the state.

Even the *jizya* tax, was it levied in Madīna? The scholars have a consensus that it was not demanded from the

Jews of Madīna. Why? Because they were people of that land alongside whom the Prophet and his followers lived. Indeed, Ibn ‘Abbās states in a report in *Sahīh al-Bukhārī* that when the Prophet first arrived at Madīna, he preferred to do the same as the People of the Book in all things unless forbidden. This is a remarkable political and social approach aimed at achieving general welfare.

There will always be natural differences between people, even if they share a single religion. As I mentioned previously, these natural differences impact upon a person's understanding. Thus ‘Abdullāh b. ‘Umar was known for his strictness while Ibn ‘Abbās preferred facilitation. Because these differences are natural, we cannot condemn people for being strict except when that contravenes the Shari’a.

We should also point out: strength is not in being able to overthrow others, but in controlling one's anger. A character trait is not always inherent, but can be learned. For example, Ibn al-Qayyim used to say concerning his teacher, Ibn



Even though we are numerically a minority in this land, we believe that we are bearers of a light; this light is not limited to our worship but illuminates life completely.

Taymiya: “Our *shaykh* had a certain severity which he would tame with forbearance” – so there was a spiritual effort involved. Some people are naturally tough and severe: Ibn Hazm said of himself, “My eye is dry and never sheds a tear.” Likewise, people’s understanding varies such that some are guided aright and others go astray.

We should remember that the Prophets of old continued to dwell among their peoples despite their false beliefs and practices, and only departed when those people drove them out. Prophet Lūt (peace be upon him), for example, stayed until the last moment, when revelation came from heaven telling him to leave. Our Prophet Muhammad paused at the boundaries of Makka during his emigration, saying: “By God, you are the dearest part of God’s earth to me; were it not that your people drove me out, I would never have left.”

Therefore I say that even though we are numerically a minority in this land, we believe that we are bearers of a light; this light is not limited to our worship but illuminates

life completely, i.e. everything that brings about goodness.

I was taken aback when I read studies on Islam’s focus upon [the effects of] one’s environment, and compared this with the meagre attention given to the issue by the scholars and workers for Islam, even though it is an essential factor in shaping life. We have long been affected by a morbid culture due to the pressures we are under, rather than imbibing a culture of life. Death is a reality for all of us, but why is it that others are building life while we are not? The problem is within us.

When you study the Shari’a you will find that it rejects killing a sparrow for no reason, or to cut trees or pollute the environment. Don’t we need academic institutes to highlight these aspects of Islam? Our religion emphasises mercy in all facets of life, with a holistic outlook. The Qur’an says: “My prayer, my sacrifice, my living and my dying are for God, Lord of the Worlds”<sup>10</sup> – it did not stop at prayer and sacrifice, but mentioned life, meaning that I must spend my whole life

working constructively until I die.

Therefore it is not allowed to confine ourselves to a narrow outlook, as Islam is prayer and behaviour upon the way and character of the Truthful Prophet (peace be upon him). These true and positive concepts of life can never be conveyed to the people as long as they are confined by restrictive and introverted *fiqh*. We must live as a part of our broad societies and develop a jurisprudence which is suited to the time and place.

This applies also to jurisprudence in the political sphere, as the Qur'ān and Sunna contain knowledge which fulfils general interests and the goal of preserving life, wealth and so on. Yet there are some laws in the countries in which we live, which seem to conflict with our tenets. We need to discuss these matters to decide whether they genuinely contradict the definitive matters of our religion, or whether the conflict is actually in the speculative sphere. Then, if they are indeed at odds with the definitive, we discuss how to

deal with the issue. For example, the marriage of one man to another man conflicts with not only our tenets, but those of other faiths. Lately we have seen large protests in France against this practice, representing societal opposition. I also know Protestants in Britain who strongly oppose it.

This type of cooperation comes under the verse: "O People of the Book, come to a common word between us and you: that we worship none other than God..."<sup>6</sup> It did not say, "That we *say* there is no god but God" [the Islamic declaration of faith], because the purpose in this context is to implement God's command such that the interests of mankind are achieved. These positive concepts are present not only in our faith, but in Judaism, Christianity and other religions; indeed, some early scholars classified the *Majūs* (old Persian religion) as People of the Book, saying they had a scripture containing some correct teachings.

A long time ago I would say to people: we have studied law and its principles (*usūl al-fiqh*), so why not use these

principles to develop a jurisprudence suited to our time and place? History is lengthy and the opinions of the past are countless, but they may not suit our context. So let us adopt their methodology which we have studied, to develop a new *fiqh*. In aspects of worship for which we depend on the established schools, but in everyday life in which it is inappropriate to restrict ourselves and live in another era. Why is it, for example, that we have forgotten that chapter in our jurisprudence books concerned with “Freeing Slaves”? Simply because time has moved on and there are no longer slaves in our day and age.

Regarding the political dimension of your question; one seeks the greater benefit on behalf of the community, and politics includes relations with governments and politicians. As Muslims, we do not deny our religious affiliation and loyalty, just as others do not deny their religious or ethnic affiliations. For example, Kurds in Britain cannot be expected to dissociate themselves from Kurds in Turkey. This is a natural matter, so the question is how to deal with it.

The political dimension of *fiqh* is very important. Even the discourse with which I address the worshippers in my local mosque must take political considerations into account, and likewise for mosques we establish, we should take into consideration the politics of other people’s opinions.

As for respecting laws; nowadays we live in a contract which is sometimes called the civil or social contract, which is an unstated agreement – understood in spirit but not written down in detail to be signed – that says we live in a society bound by laws, and thus it is not permissible for me to breach those laws. When I say “not permissible”, that is an Islamic legal term understood in its context, based upon definitive matters in the religion. There is not a single scholar who would disagree that contracts and treaties must be respected, even if they may differ over the validity of a particular contract. God says: “Fulfil the covenant of God when you have entered into it”<sup>7</sup> – this in *Sūrat al-Nahl*, revealed in Makka when the Muslims were weak. Then the command came in numerous places in the *Madīnan*

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The Muslims – or the believers – are bound by their conditions, except such as makes the unlawful lawful, or the lawful unlawful.

revelation when the Muslims had gained strength and security, such as the late revelation of Sūrat al-Mā'ida: "O you who believe, fulfil [your] contracts".<sup>8</sup>

Therefore, I am bound by the details of the civil contract when I enter into it. This is evidenced by the fact that one is taken to account for breaking its terms, which would not be the case for someone not bound by the law. If you entered into a contract with me for a number of years, then you came after a year intending to nullify it, I would say to you that you cannot because you have agreed to its conditions. There is a Prophetic statement which everyone knows, but people dispute over its application: "The Muslims – or the believers – are bound by their conditions, except such as makes the unlawful lawful, or the lawful unlawful."

I consider the core issue to be fulfilling contracts. We live in a world which has changed politically over the past centuries. I have written a book [in Arabic] entitled, *Geographical Categorisation in Islamic Jurisprudence and its Impact Upon*

*Reality*, in which I clarified that political changes in states and societies have rendered terms like "abode of war" versus "abode of Islam" obsolete. In the contemporary world [many] states are technically non-religious but their laws are derived from a religious tradition. I read the Charter of the United Nations and said to myself that it is Islamic in spirit and hardly differs from the values of the Shari'a, if at all. There are perhaps some minor points which require discussion.

The Islamic state in Madina was like a *fait accompli*, by which I mean that the society had reached a stage where it was ready for that political rule, i.e. the state. The Prophet Muhammad would go out every year to address the tribes and delegations: "Is there any among you who will take me to his people so I may convey the message of my Lord?" What was he seeking? It was freedom. He was telling them that he had something they lacked, so they should allow him to preach; they would not be harmed by listening to him, nor would it harm him if they turned away. Therefore, freedom is an essential concern in Islam.



We might cause others to become extreme in their thoughts because of our own jurisprudence which may not suit the time and place.

The UN Charter and the various Western constitutions were established upon the principle of freedom, which is part of our religion. These developments in Western states make it an obligation for us to develop a new juristic approach. I do not live in the “abode of disbelief (*kufri*)”. I live in my own home, which is the abode of Islam. Perhaps my neighbour’s home is an abode of Christianity or otherwise – but Britain is not a Christian state, even if most of its inhabitants are Christian.

We might cause others to become extreme in their thoughts because of our own jurisprudence which may not suit the time and place. The Muslims are quite preoccupied with the East; certainly that outweighs their efforts in inviting to God in the West. I don’t mean by this invitation (*da’wa*) bringing people into Islam [only], but I mean presenting the virtue, mercy, truth and noble values of our religion.

**TMENAR:** Muslim minorities in the West, who number in the tens of millions, are granted citizenship on the basis of

secular systems. These may entail sufficing with the ritual aspect of Islam and abandoning any ambitions concerning its political aspect. Could this be accepted on the basis of ‘acting according to capacity’?

**SAJ:** We need to revise jurisprudence in general, not only in the political dimension. For example, the concepts of governance (*hukm*) and authority (*hākimiyya*): historically we have conceived a framework which is wrong in numerous respects. The Shari’a has granted extraordinary leeway in the matter of governance because it is based upon consideration of interests.

Some people criticise us for rejecting ideas from people of other faiths and ideologies who only want justice as we do – ideas related to human rights, freedoms, fairness and equality, such as God revealed in Makka under the rule of the idolatrous Quraish: “Indeed, God orders justice, good conduct and giving to relatives, and forbids immorality, bad conduct and oppression”<sup>9</sup> – lofty values. So some people say

to us, why do you reject others when they agree with you on these principles?

So where is the problem? Even in the matter of Caliphate (*khilāfa*), I ask: does the Qur'an specify the form of governance? The most we can refer to is that the Prophet established the Caliphate from among the Quraish. Then 'Umar, the great ruler and competent jurist, said: "If Sālim, the freed-slave of Hudhaifa, were alive, I would have appointed him" – even though he was not of Quraish, and was not originally a free man. Look at this understanding among the Companions, and compare it with our constrictive mentality.

On the issue of secularism, again we fail to understand properly. Some cast secularists out of the religion while not realising how the Western states were established, and how they revolted against religion. The West separated religion from the state because religion in their context was unjustly controlling every facet of the people's lives. It was only when they became free of the yoke of the Church that they

progressed to the stage of civilisation-building, as well as human rights, freedoms and scientific progress. Thus, they gained control and the upper hand over other nations and continued to develop in science and technology, health etc. Then, when we Muslims come to speak of secularism, we speak mistakenly as though our religion is the same as the Christianity which ruled in the West. Rather, we should say that that form of Christianity was not the true form.

When it comes to governance, our barometer is the Qur'anic verse: "And when you rule between people, that you do so with justice".<sup>10</sup> Therefore, wherever justice is found, that is the rule of God – even theoretically at the hands of an atheist or communist, when you consider him as an instrument as opposed to an individual. What is so special about a tyrannical Muslim – called 'Abdullāh, Ahmad or whatever for example – but he deprives our people of their rights and freedoms?

Even the sincere workers in the Islamic movements are

trapped in this old way of thinking about governance, which in turn limits our actions and leaves us trailing behind other states which continue to achieve social justice for their peoples.

When we say that justice is equivalent to the ruling of God, let us look at a judge when he rules on a particular matter, either justly or unjustly. When his ruling is just, what is the measure we use to judge it as just or otherwise? Say there is a non-Muslim judge who issues a just ruling: what law or procedure has he followed? It could be his religious background or even his reason, as God does guide the intellect to truth in many things – that is why God says: “They have hearts wherewith they do not understand”,<sup>11</sup> i.e. they are blamed for failing to do so.

The Prophet Muhammad came and acknowledged much of the good that came before him. As such, our role in this civilisation is not to invent anew, but to build on what has developed since the time of Prophet Adam and develop it further, correcting as necessary. The Prophet said, “I was

only sent to perfect lofty character”, or “righteous character” – meaning that the people before Islam did have good manners and the Prophet came to perfect them. The second narration (“*Sālih al-akhlāq*”) is more explicit in confirming that they were righteous in some respects, whereas the other wording (“*makārim*”) could refer merely to hospitality, chivalry and dignity. The Arabs had good deeds which Islam acknowledged; hence the Prophet spoke highly of the treaty known as *Hilf al-Fudūl*, saying: “If I were invited to its like, I would certainly respond”, even though it was concluded by polytheists.

Therefore, you are not in a position to create life and design people’s behaviour. All you can do is say, “This needs to be changed”. Nor can you give a child all its thoughts nor understandings in one go, but instead you have to educate him or her gradually.

**TMENAR:** Islam was gradual in revealing and implementing certain rulings; does this grant a mandate for a Muslim politician to do similar, especially at a time like this in which



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The Islamic movements now in power need to admit that they are unable to implement the political jurisprudence they once learned

there are internal and external obstacles which make gradualism necessary?

**SAJ:** Whoever would attempt to implement an entire methodology at once, will only wrong himself and others; as I said before with the example of raising children. Those who talk of implementing the Shari'a all at once can only be speaking theoretically. The Prophet Muhammad showed us an approach in addressing the other.

Your question is probably in the context of the recent revolutions which led to Islamic movements rising to power. This has [raised questions of] the traditional notion of Islamisation, whereas I believe the broader and more correct approach to Islamisation is to consider what agrees with Islam and the Shari'a. This is better both conceptually and practically: we must strive [to define] what agrees with the Shari'a.

**TMENAR:** The problem today is that those who have risen to power from the Islamic movements have been brought up

– and brought others up – on a political jurisprudence that demands implementing everything at once. Therefore, they immediately faced obstacles and descended into confusion when people began to ask: where is the project you were calling for over the past decades? Why do we not see any implementation of your theories?

**SAJ:** I have read works of political jurisprudence by contemporary scholars, and I believe that their thought and political *fiqh* belongs to another time and place. I am speaking in general here. You find them setting off from *Al-Ahkām al-Sultāniyya* by Al-Māwardī (political theory of the Islamic Middle Ages) and drawing themselves a path to which they then confine themselves.

The Islamic movements now in power need to admit that they are unable to implement the political jurisprudence they once learned, and this admission will be a great virtue on their part, as it will allow them to proceed to broad pastures of renewal in the light of the higher objectives (*maqāsid*) of the Shari'a.



We often find people submit their will and freedom to people rather than God, so the Islamic message came to grant people the highest form of liberty.

“Those who reject faith say: Why is the Qur’ān not revealed to him all at once?”<sup>12</sup> – The Qur’ān could have come as one unit, so why did it come as individual verses and passages? The Qur’ān itself replies: “That We may strengthen your heart thereby”<sup>13</sup> – the first benefit of this method was to strengthen and comfort the heart of the Prophet.

God then says: “And no question do they bring to you, but We reveal to you the truth and the best explanation”<sup>14</sup> – i.e. whenever they would come with a question or attack, the reply would come directly. When a verse comes in response to a specific incident, it is definitive in its application to that incident; unlike a general wording which you apply to a particular case, as that is not definitive. When He says “the best explanation”, it means the verses would come down to provide details concerning every occurrence.

Gradualism (*tadarruj*) also has the benefit of building personal character. It is part of human nature to do things gradually. The Prophet said: “Perform whatever deeds you can manage, for God does not tire until you tire”, i.e. you

become tired [through over-exertion] but God will never tire [of rewarding deeds].

There is also the story of Mu’adh b. Jabal when he was sent [to Yemen] by the Prophet (peace be upon him), and this story is found in the two *Sahih* collections and is incredibly powerful and beautiful in its gradualism, even in the clear-cut and definitive matters, so this approach applied to the speculative matters *a fortiori*. The Prophet said to him: “You are going to some People of the Book, so the first thing...” – his saying *first* implies gradualism, i.e. there will be a second, third etc. – “the first thing to call them to is the testimony that there is none worthy of worship but God, and that I am the Messenger of God...”

That would suffice them until the matter [of faith] became firm in their souls. God said: “O People of the Book, come to a common word between us and you: that we worship none but God”<sup>15</sup> – so responsibility is solely to God, and there is no submission and lowliness except before Him. But we often find people submit their will and freedom to people

rather than God, so the Islamic message came to grant people the highest form of liberty. When you compare this to Western legislation, you find that freedoms have been defined in a way that restricts the freedom of people. While the Shari'a tells the human being that no fellow human has [full] authority over him, and his relationship is [directly] with God.

Coming back to the hadith of Mu'adh: the Prophet (peace be upon him) said to him: "Then if they obey..." – look at this gradual approach – "then inform them that God has prescribed five prayers upon them." Why this gradualism? Because the prayers would be difficult for them if presented at the beginning, without first building faith and monotheism. "Then if they obey [God], inform them that God has prescribed alms upon them", i.e. once a year. This is the methodology of gradualism, and such texts are of tremendous importance in understanding political gradualism. None can dispute the authenticity of this report.

He said: "Take alms from the rich among them, and distribute

it to the poor among them" – look at this sensitive choice of words, lest it be said that the money is being taken from them and given to another people; the Prophet was showing concern for the society. He added: "Leave alone the most beloved of their wealth", as insisting on taking that from the people could push them to reject not only that ruling, but the entire law with which the Prophet had come.

Look how the Prophet respected the human being and his concern for his wealth. Even though the Muslims held power in Yemen, he still respected the new society and the feelings of its people. This exemplifies the Prophetic way of dealing with others gradually while he was in a position of power: so what of us in our weakness? It is even more proper for us to show patience and implement our policies gradually.

He said, "Leave alone the most beloved of their wealth" lest they revolt against the rule of Islam and even renege on faith after having entered it and offered prayers. Thus the alms were to be taken from the median of their possessions. He then said to Mu'adh: "Beware the supplication of the

oppressed, as there is no barrier between it and God”, and one narration adds: “even if he be an unbeliever”.

A jurist must observe gradualism while dealing both with specific questions and broad principles, and so must a political leadership take reality into consideration just as we use gradualism in raising our children. ‘Ā’isha (may God be pleased with her) said that if the first thing to be revealed of the Qur’ān were “Do not fornicate” or “Do not steal”, the people would have said: We will not leave off stealing or fornication! Rather, the first revelations were about the coming judgement, then legislation came later in Madīna with the Sūras of al-Baqara and al-Mā’ida upon a community that was ready to obey. Whenever a verse would come to them after faith was firm in their hearts, they would say “We hear and obey.”

Just imagine, a person such as Mā’iz who was so obedient to the law that he confessed [to fornication] so that the prescribed punishment would be enacted upon him. The Prophet offered him the chance to conceal his sin and go

without being punished, but he insisted: “Purify me” – what lofty heights of obedience! As for the Prophet’s attempt to cover the sin [i.e. by suggesting it was less than the level deserving punishment], that demonstrates that enacting punishments is not the point in Islamic legislation.

Here we come to another aspect of our narrow-mindedness, and that is how we understand the word “Sharī’a”. As I have said, the Sharī’a, or the rule of God obtains wherever people rule with justice. Then you have people who say that the Sharī’a means cutting the hand of the thief and lashing the fornicator, thus limiting the Sharī’a to a few punishments which number no more than a handful, especially if putting aside those which are differed upon, whether they are fixed or subject to legal discretion.

Some people asked me about these prescribed (*hadd*) punishments, are they open to independent scholarly opinion (*ijtihād*)? I said that we have definitive matters in the Sharī’a alongside things that accept multiple opinions, even if those be weak. Therefore we must excuse those who differ

because the text allows for that difference.

A student told me that one of the scholars allowed for a woman who has recently embraced Islam to remain with her husband of another religion. He asked me: "Is this not disbelief because the scholar has rejected a proof-text [i.e. verse of the Qur'an]?" I give this as an example of the speculative matters in which the apparent ruling is well-known, but another opinion – even if weak – is possible, such that we must excuse the one who advances it. I asked the student, "What is the proof of the scholar's disbelief, rather than simply saying that his ruling is incorrect because it opposes the apparent meaning of the verse?" He said that it opposes the verse itself, so I asked him to quote the verse, which he did.

"And do not marry polytheistic women until they believe... And do not marry polytheistic men [to your women] until they believe."<sup>16</sup> I asked, "What is the nature of the speech?" He replied, "It forbids (*nahy*)."<sup>17</sup> I asked, "And what does that entail?" He replied, "Prohibition (*tahrīm*)."<sup>18</sup> I asked, "But is there

any difference on that point?" He replied, "Yes, sometimes it is not outright prohibition [i.e. it may be discouraged only]."<sup>19</sup> I said: "That is point number one."

Then I asked, "Is there any difference concerning the meaning of polytheist (*mushrik*) here?" He replied, "Yes, as to whether it is any polytheist or specifically one who wages war [on the Muslims]."<sup>20</sup> I said: "That is point number two! And this word, isn't it universal such that it might be specified [by other texts]?" He replied in the affirmative, so I said: "That is point number three. Just one point would have sufficed to provide an excuse for a person with an opposing opinion. I agree with you that a Muslim woman may not marry a non-Muslim, but you must excuse a person who takes another view under political pressure or due to a social reality that imposes it. So, rather than describing the situation as fornication, we can say it is an 'invalid marriage contract' using juristic terms. That way, we can avoid creating a social problem, and say instead that the ruling may be acceptable for certain stage or time until a solution for this social problem is found."



People do not yet appreciate the solutions provided by the Shari'a, so why should we impose it on people before they are convinced, thereby creating problems?

By the way, the Companions got married before this verse was revealed, and there were cases of Muslim women being married to polytheists. Indeed, Zainab, the daughter of the Prophet was with Abū al-'Ās b. al-Rabi' while he was not Muslim. The point is that there is room for interpretation, as is the case with the majority of political questions.

Just think of the controversy raised against a Muslim scholar when he expressed the view – one that is present in the old books of jurisprudence – that the ruling of stoning [adulterers] was abrogated (*mansukh*). He also spoke of a moratorium on implementing the prescribed punishments at the present time, and so on. I personally do not adopt those opinions, but I do ask: when we look at the higher objectives of the Shari'a, isn't the main objective here to put an end to those crimes? Certainly, nobody could dispute that. So, if we find that a people have a system which minimises crime; why not accept that as a stage in the process, until such a time as we convince people that the divinely revealed system is more suitable and effective in

combating crime?

I am saying that people do not yet appreciate the solutions provided by the Shari'a, so why should we impose it on people before they are convinced, thereby creating problems? Sometimes you may present a paradox to people to make them think, like when the Prophet was commanded to say: "Bring a book from God which is a better guide than these two [Torah and Qur'an], that I may follow it, if you are truthful".<sup>17</sup> Look at this sincere truth-seeking attitude: "Do you have something better than what I am presenting? If so, bring it and I am ready to follow it."

You might also ask those people to come up with their own solutions, if you find them closed-minded, in order to make them think. This is not to be obstinate or test them, but in any case this method requires wise discourse. The very idea of Shari'a is widely misunderstood, so the problem is vast indeed.

These problems we are facing, especially in politics and jurisprudence, don't they necessitate the formation of specialised research institutes working day and night? I realise that this type of work presents difficulties for some of the scholars, as they will likely face criticism as soon as they start presenting their findings. One of the major scholars recently issued a book about *Hajj* rites, in which he facilitated many matters, especially concerning over-crowding and certain other difficulties people face. However, the whole world stood up against him! He then said to me: "You are comfortable in the West, so use your time to research and convey your thoughts; as for us in the East, we have a serious problem."

Also, a big political figure in a Gulf state told me that they are trapped between two calamities: between the traditional scholars and the people who call themselves liberals. Change is difficult, and requires effort and to get people moving. There are many people in the East and West who are intellectually mature, and whom we should support and

activate. A political expert is aware of practical interests, while a jurist grasps the interests stemming from scriptural texts. We must have collaboration between these two sides in order to produce a jurisprudence that serves our reality. Therefore, I believe it is not sufficient to analyse and understand our reality; we need to create a programme which proceeds from the established facts of the Shari'a and refers to the speculative aspects appropriate to that reality.

**TMENAR:** Thank you for presenting these ideas, which we need to convey to Western politicians and thinkers as well, so everyone is not tarred with the same brush. This type of thinking needs to be given space to develop, rather than being stifled or unfairly associated with extremist ideas.

**SAJ:** That is true, but the mistake we make is to assume that the other is against us, while in reality many Western secularists have no problem with us or the fact that the law helps us and grants us freedoms. The big problems faced by Muslims living in the West stems from their own perspective

of the West and of their own selves.

**TMENAR:** What do you make of the political *fiqh* of Islamic groups found in the West such as Al-Muhajiroun, and their attempts to Islamise Western societies?

**SAJ:** These people wish to impose Islam in a particular form, whereas the only thing which you can impose upon people is justice. If you are looking for justice according to scriptural or rational standards, make a study of Western constitutions and laws and you will find a large proportion is indeed just. If we hypothesise that fifty percent is just and in agreement with the definitive and speculative parts of the Shari'a, then let us work on a plan to correct the remainder.

**TMENAR:** As you know, political jurisprudence requires decades of experience in power before suitable constitutions and systems with an Islamic reference are established. In the absence of such experience, is it reasonable for a Muslim politician in the East to work according to [existing] constitutions, laws and international treaties, particularly

in the fields of human rights, women's rights and equality between religions?

**SAJ:** If we look at political questions as being almost entirely subject to opinion (*ijtihad*) – because scriptural texts that exist concerning politics are either general and open to various interpretations and applications, or simply express a higher objective of the Shari'a which ought to be observed. Therefore my research, analysis and the formulation of juristic opinion always has to be guided by the fear of God.

There is an essential difference between the Sunni and Shi'i perspectives on governance. The Shi'a consider it to be based upon scriptural texts, starting from the specification of 'Ali (may God be pleased with him) and then his descendants as rulers after the Prophet. They also consider them infallible, as a ruler must necessarily be so.

As for the Sunnis, or indeed the Companions themselves, their view is different. True, some people in the history of Ahl al-Sunna fabricated *hadiths* saying that the ruler is the



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In any political decision, i.e. on any particular aspect of life, one must observe the higher objectives (*maqāsid*) and not contradict anything definitive in the religion.

shadow of God upon the earth, in order to grant him sanctity as though everything he says must be accepted absolutely, and even if he lashed you and took your wealth you would have no right to defend yourself! However, in the Qur'an and Sunna we find the concept that “their affair is mutual consultation”.

Therefore, in any political decision, i.e. on any particular aspect of life, one must observe the higher objectives (*maqāsid*) and not contradict anything definitive in the religion. This is the precise way of defining the issue.

**TMENAR:** There are international agreements like the Universal Declaration of Human Rights, of which the vast majority of points are not in conflict with Islamic law. Is it permissible for a Muslim ruler to adopt this document on behalf of his country despite the problems with a few of its articles?

**SAJ:** Let's say that ninety percent of the Declaration is in agreement with the higher objectives of the Shari'a, and

the rest is in conflict. Then there is both a theoretical aspect and an applied aspect to the Declaration. I have no difficulty in ignoring the theoretical aspect for now, until I can come up with a wording that agrees with the principles of the Shari'a. Why make a fuss about something that isn't being implemented? As for the parts that can be applied in reality, which is in conflict with the Shari'a, I ask: is the conflict with the definitive or speculative rulings? Then I consider how much flexibility there is within the Shari'a to go along with the text without rejecting it altogether.

I mention in this context the example of some of the Successors (*tābi'in*). One of the scholars was asked a question by the Caliph, Walid b. 'Abd al-Malik. He replied, “Has such an incident occurred, O commander of the faithful?” When he replied in the negative, the scholar said: “So if it does occur, God will provide for you.” In other words, we should not waste time worrying about practical problems that might possibly occur, but there is nothing wrong with discussing the problems with the theoretical aspect.



## Understanding balances (*fiqh al-muwāzanāt*) is a vast field of enquiry.

Now that the Islamists have risen to power, why don't they establish academic forums to research these supposed conflicts and clarify their rulings? [Recently] someone called me because he found a job in the Libyan Central Bank, in the interest department: is he allowed to take it? I said yes, you may; after all, didn't you say after the revolution that you made the bank Islamic?

I consider this kind of infraction to be similar to those under 'Azīz of Egypt, in that Prophet Yūsuf did not take them as a reason not to perform the role of a chancellor and do his best to advance the cause of truth. If he committed an apparent infraction regarding his brother, then that was the lesser of two harms: "He could not have taken his brother within the law of the king..." So there is scope even in the matter of weighing up interests.

Understanding balances (*fiqh al-muwāzanāt*) is a vast field of enquiry. We might accept some treaties because we are a weak nation at present, lacking the ability to face the difficulties [associated with rejecting them]. This type of *fiqh*

is based upon essential teachings in the Qur'ān and Sunna. Hence the Prophet did not assent to 'Umar b. al-Khattāb's suggestion to strike the neck [of 'Abdullāh b. Ubayy, leader of the hypocrites in the Madina who committed treason and collaborated with the enemies of the nascent state], but said: "No, lest the people say that Muhammad kills his companions!"

Similarly, the Prophet knew that the *Hajr Ismā'il* was [originally] part of the Ka'ba, but he did not [rebuild it as he considered doing]. Who would actually stand in the way of the Messenger of God? It is simply that he gave consideration to the custom of revering the Ka'ba, so he held back from demolishing it and rebuilding it on its correct foundations.

The Prophet forbade people from wailing over the dead and described this as an action of the times of Ignorance; indeed, he described it as unbelief (*kufr*) in the practical sense of being an action of the unbelievers [therefore not negating a person's Islam in reality]. This is because it is an

act of desperation and a lack of contentment with the divine decree. Yet he permitted a woman to do this because she had given a promise to people who had done the same for her on a previous occasion. Look at this level of dispensation! Our problem is that jurists have forgotten the objectives of the Shari'a and busy themselves with the superficial.

**TMENAR:** If the individuals and Islamic movements which have recently come to power don't study this type of fiqh, they may suffer and indeed be toppled within a few years, due to the widespread belief that these movements have come to restrict people's lives and freedoms.

**SAJ:** Definitely, that will happen if the Islamic movements fail to address this matter. We need to be reflective and admit that we have been believing in theories, but once we interact with reality we must reconsider many of those beliefs. We believe in the Qur'an and Sunna and we do not contradict anything definitive from them.

Here comes the role of the scholars, to articulate

jurisprudence suited to our times. The scholar should not fear being described and labelled with hurtful words, for that is to be expected in his mission to revitalise this religion. What is the point in religious universities and academic councils? Many of these councils would appease the rulers to the extent that they were described as "scholars of authority". Then why not be courageous in advocating a new understanding in accordance with scripture, so they may be slandered again, this time for the sake of God?

**TMENAR:** There are a minority of scholars with such an understanding, but it seems you are suggesting that all should accept that there are a limited number of fixed tenets, alongside numerous Islamic opinions held by scholars both classical and contemporary?

**SAJ:** Right, and I believe that the Muslim politician will be more open-minded and more keenly aware of the need for a new jurisprudence by virtue of his entering the political scene and needing to understand its reality. Thus his opinions may be more useful than those of some scholars.

**TMENAR:** From Islam's legal point of view, where do you think the two Muslim converts went astray in killing the British soldier in Woolwich a few weeks ago? Some would argue that they didn't target a civilian and that Drummer Lee Rigby is a combatant that had served in Afghanistan.

**SAJ:** The default state of any person's life is that it is sacred, particularly when it is subject to a covenant, or that of a Muslim. Regarding the concept of covenant, I already clarified that a person in these countries is in a natural state of covenant, i.e. the social or civil contract which requires him – in the eyes of Islam – to abide by the laws of the land.

Suppose someone has a personal right – we are not talking about the right of the global nation (*umma*) – is he entitled to enforce his right by his own hand, without going through the authorities? Of course not, as he would be in breach of that covenant which requires him to go through the proper legal channels to solve any dispute. Even if he is ultimately wronged, he cannot just take his right.

If it is taken for granted – rationally and religiously – that even a judge cannot rule in favour of himself, so what about someone who doesn't have the expertise of a judge? The Prophet Muhammad said that if people were left to their own devices, some would make baseless claims against others and considered their wealth and blood to be lawful!

Going deeper into the matter, this soldier did not represent a religion, even if he practised one. He could be said to represent the state in a political sense and carry its banner, as people's allegiance to the state nowadays is political, not religious. As such, Muslims in a majority-Christian country have only a political affiliation to the country, otherwise we would consider them Christian. States under international law nowadays separate religion from national allegiance, hence the freedom to practice various religions in these countries.

If we look back in history, we find that the Prophet Muhammad did not name his state as "Islamic". He called it

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Killing a soldier in this way [ref. to Woolwich] will bring about harmful consequences for our community... [and] this action does not conform to any Islamic legal concept and cannot be justified by Islam.

“al-Madīna” (the city), which carries meanings of civility and civilisation. It is authentically reported that he named the Muslims and Jews – and all who lived in peace with them – as “one nation (*umma*)”. This is pivotal, because we have been living in an introverted condition which we called the “Islamic state” which did not exist at the time of the Prophet even though the system was established upon God’s law.

So, this soldier was a worker like any other in the state, and there is nothing to say that he was responsible for any errors committed in Afghanistan, for example, at the hands of another soldier. I know personally some devout and well-mannered Muslims in the British army who went to Iraq and carried out positive actions to benefit the people. The intervention of some states into others may be classified nowadays as political error, not religious error. As such, it is not justified for someone to take another’s life in the name of religious war.

Moreover, errors should not be called atrocities except if these are established through the law. For example, Abu

Ghraib was an open atrocity, and it may be possible through international activism [for the victims] to receive their right or at least for the matter to be proven conclusively. If we were active on the international scene, we could claim our rights or at least point out the wrongdoing

Then look at the in-fighting in Afghanistan: who says that everyone is in the right? At the time of the *mujāhidīn*, I heard Abdul Rab Rasul Sayyaf saying: “One bullet for the Soviet enemy, four for ourselves.” They destroyed the whole country in the name of *jihād*, because there were foolish and gullible people among them.

I don’t simply say that killing a soldier in this way will bring about harmful consequences for our community, as saying so is simplistic and emotional. Rather, I say that this action does not conform to any Islamic legal concept and cannot be justified by Islam in any way whatsoever. That soldier was a simple worker like anyone working in any institution.

Here I come to another issue: we have heard some scholars



telling Muslim minorities to boycott certain products in the West, e.g. Coca-Cola. This is strange, because a boycott only functions on the level of countries. You cannot, as an individual, boycott [your own country] because that would entail not even drinking the water. If you should wish to boycott for a particular reason, you will not be able to do so as long as you are part of that society, even if we suppose that that society was in error politically. A boycott is between countries, so the Gulf could boycott a particular country to exert political pressure, and that might have an effect. As such, it is the politicians who determine whether or not a boycott is effective.

Today, how we look at the world and understand the nature of societies is crucial. This includes knowing about the powers of armies and the nature of laws. We should not look at the world from a narrow juristic viewpoint.

**TMENAR:** Some of the definitions of “terrorism” advanced by Western nations are left open in order to assist their politicians to apply it to events [of their choosing]. As

such, much of what afflicts civilians in Arab and Muslim countries is kept by those governments outside the scope of terrorism, by definition. In this context, and in the absence of international law which is fair to all victims, or relevant independent bodies, does the Shari’a mandate Islamic organisations to engage in self-defence? And how would the legitimacy – or otherwise – of such organisations be defined?

**SAJ:** Self-defence is natural and universally recognised. International treaties and conventions which forbid aggression against any country must be respected and enacted.

Let us overlook the obvious examples such as Russia with its extensive history of oppression against weak nations. But the problem exists in our midst too, which we should not deny. Look at Pakistan; why has the Pakistani Taliban been established, who train youngsters to commit suicide operations, for whom and why? We have a huge problem in orientation.

These people don't have official procedures, but they have ideas concocted by the likes of Al-Zawāhiri, extracted from the depths of books. These ideas don't apply to their reality, but they are specific rulings (*fatwā*) concerning events which took place in different eras, places and contexts. Even if we examine some of these opinions taken from Shaykh Ibn Taymiyah, for example, we will find that they do not apply to our reality.

I will give you an example which I encountered personally: that of Juhaimān [al-'Utaibi] when he entered the Sacred Mosque [of Makka in 1979 in attempt to occupy with arms]. This was a simple man who was pressurised by the state after doing some small actions such as defacing pictures. When the state caught him and clamped-down hard on him – as happened to Bin Lāden also – created in him a feeling that he was living in a corrupt and oppressive reality, which gradually grew to a staunch condemnation of the state. Then he searched in the books for *hadiths* about the tribulations [of the end of time] and applied them to those rulers and events, e.g. this *hadith* is about Al-Sharīf Husain, and this one

concerns such-and-such king, and so on.

In the end, he decided that this was the era of the Mahdī. He and others had visions in their dreams and became increasingly convinced, just like how it happened with a certain group among the Shī'a. It is all based on dreams and misconceptions. So they searched for the Mahdī and found him in the form of an individual – whom I also know – known as Muhammad b. 'Abdullāh al-Qahtāni. However, the *hadith* reports explicitly say that the Mahdī will be from the Quraish tribe, not Qahtān. So they did a search and claimed that his mother was from Quraish so he should be ascribed to her like the children of Fātima al-Zahrā'. On further investigation, they claimed that he was indeed from Quraish, from the descendants of the Prophet, but his ancestors had settled in Qahtān!

So, all of a sudden, they penetrated the Sacred Mosque and killed many people. And none of this was based on any authentic scripture; only imagination justified by texts taken out of context to suit their purposes. I am not criticising the

intentions, but the atrocity which was worse than a mere error. People sometimes say, “But his intentions are good”, to which I reply: “What do I care about his intentions? His Lord will account him for those, but what matters to me is the correctness and legitimacy of his actions.”

Some major scholars come to us with justifications for suicide operations and issue *fatwā* permitting them. I say to them, bring me a single example of a jurist in history who permitted such operations – and I insist that they cannot find any example, as they alone have permitted them.

The Prophet would say in the context of war: “Do not be treacherous”, then you come in a state of peace, among civilians, with treachery! If it is said that a certain civilian is a combatant in reality, then I say: even if that is so, is he in a military environment such that you are justified in detonating yourself and harming the civilians around him? If you wish, fight him in the battlefield.

Some may point out that the enemy attacks civilians

indiscriminately. My response: is it allowed in our religion to respond to an atrocity with another atrocity? Certainly not. The Qur’ān says: “And if they break their oaths after their treaty and defame your religion, then fight the leaders of disbelief” – there is a difference between “fight” (*qātil*) and “kill” (*uqtul*), i.e. they have come to kill you, so fight them off.

There is another important text which they have overlooked in their *fatwā*, which is why I say that these people do not read the Qur’ān, or they read it without understanding. God says: “If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms” – i.e. they have revealed their treachery, so tell them that they have no treaty. But who can make that decision in an era in which treaties and covenants are between nations? Individual treaties are no more, so an individual cannot act as he pleases with respect to a treaty concluded by his country.

**TMENAR:** What is your view, as a jurist, concerning international treaties concluded by former regimes and



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## Whoever goes to the gates of the rulers will be tempted

inherited by Islamic regimes?

**SAJ:** It is obligatory to honour them. They may not be cancelled regardless of one's pleasure or whether the other party is deserving of them. Based on the verse just mentioned (Qur'an, 8:58), it would be necessary to ask the other party to cancel the treaty.

In the Treaty of Hudaibiya, many of the Companions were dissatisfied, yet their leader considered its benefit to be preponderant, even if this was the personal opinion of the Prophet. Then there was the Prophet's treaty with the people of Khaybar, in which he told them: "We will allow you to stay here as long as we wish," after which 'Umar came and said "We allowed you to stay as long as we wished," and exiled them. Certain treaties have an exit clause, and there are certain juristic opinions that they are temporary – this is an issue which requires specialised research.

However, the treaties in question are binding and no individual can free himself from them by his own will, nor

can a state dissolve them except through international agreement.

**TMENAR:** Would you agree that the Islamic state has been unstable throughout its history? There was always a rift between the scholars and the rulers. The scholars were idealistic in their vision of the state forcing the rulers to search for the illusive legitimacy.

**SAJ:** I agree to an extent, in that it has not remained upon the perfect description intended by the scholars and jurists, with the exception of the era of the Rightly-Guided Caliphs (632-661). In every period after that, there was a dichotomy between politics and jurisprudence. Some jurisprudence was at the service of politics, but by and large it was individual. There is a saying attributed to the Prophet: "Whoever goes to the gates of the rulers will be tempted" – why? The rulers would entice and cajole [scholars] because they were full of desires and sought after many of the people's rights. The scholars who frequented the rulers were blamed because ultimately they would be used by them.



## The background of the Islamic nation goes back many centuries, so it cannot be easily changed.

The scholars were not engaged in theorising about politics, but they were concerned with defining the foundations of justice for the people. Most of this was highly theoretical in nature, and had little practical application. As for the judges, most of them were jurists who were able to implement the *fiqh*. The appointment of such judges was a feature of the Islamic state, but their role remained limited in that they had no say regarding war, politics and general freedoms. There was usually conflict between the rulers and the scholars. Whenever a scholar would become close to the rulers, he would generally be manipulated and the people would lose respect for him.

**TMENAR:** How is it that the ruler in our tradition and history always seems to be unpopular yet he controls all the affairs of the *Umma*, whereas in the West they have a situation where the ruler is accepted and respected?

**SAJ:** Don't forget that there is an essential difference between our countries and the West. In the West, the government is not a single individual, but a system,

whereas in our countries the decisions are made by one person. However, the Rightly-Guided Caliphs used to make consultations even in simple ritual matters. 'Umar was frequent in this practice, whether the issue was big or small; he had a consultative council but used to make the final decision. Consequently, scholars have differed as to whether consultation (*shūrā*) is binding or merely informative.

The background of the Islamic nation goes back many centuries, so it cannot be easily changed. Therefore we must learn to deal with it and improve it as much as possible. Muslims are accustomed to venerating the religion, whereas in the West there is a history of venerating the rulers. In the Muslim attitude there is a great potential to resolve their affairs through the reverence of ethical values and moralities enshrined in the teachings of the religion. While in the West, they separated religion from politics and adopted secularism.

I say: why doesn't the *Umma* separate history – by which I mean its effects – from life? In other words, let the jurists

make their reference to the Shari'a only – not bound by the experiences of bygone ages which differ from ours – and they ought, of course, to be taken as the leaders in this respect. If we were to achieve this, the *Umma* would be able to change its condition a great deal.

It is a mistake to reject every understanding of justice and human interests which is reached by means of the intellect. There is a historical approach adopted by many hardliners [who cast others outside the fold of Islam] in certain Islamic movements, based upon the exegesis of Ibn Kathir upon the verse: "And whoever does not judge by what God has revealed, then those are the disbelievers", in which he applied it to the case of a certain non-Muslim ruler who put together legislation comprised of elements from Judaism, Christianity and Islam. Ibn Kathir commented to the effect that if someone ruled by this legislation, he would fall under the condemnation of that verse, even if the ruling was in agreement with the Qur'an and Sunna! This is an unacceptable opinion, as a ruling which agrees with the ruling of God cannot be described as being "by other than

what God revealed".

**TMENAR:** There are those who have sought refuge in the West for personal gains and interest yet at the same time they reject laws and conditions that could serve the public interest such as freedom of speech and democracy.

**SAJ:** Unfortunately, we have intellectual schizophrenia as we accept from others what achieves our private worldly interests, yet at the same time reject what achieves our general worldly interests!

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| 1. Qur'an, 4:82  | 7. Qur'an, 16:91  | 13. Qur'an, 25:32 |
| 2. Qur'an, 84:6  | 8. Qur'an, 5:1    | 14. Qur'an, 25:33 |
| 3. Qur'an, 2:256 | 9. Qur'an, 16:90  | 15. Qur'an, 3:64  |
| 4. Qur'an, 109:6 | 10. Qur'an, 4:58  | 16. Qur'an, 2:221 |
| 5. Qur'an, 6:162 | 11. Qur'an, 7:179 | 17. Qur'an, 28:49 |
| 6. Qur'an, 3:64  | 12. Qur'an, 25:32 |                   |



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