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# Ulu Al Amr & Authority: The Central Pillars of Sunni Political Thought

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*Ulu Al Amr* & Authority: The Central Pillars of *Sunni* Political Thought

by

Hisseine Faradj

A dissertation submitted to the Graduate Faculty in Political Science in partial fulfillment  
of the requirements for the degree of Doctor in Philosophy, The City University of New  
York

2014

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This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the dissertation requirements for the degree of Doctor of Philosophy.

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## Abstract

### ULU AL AMR & AUTHORITY: THE CENTRAL PILLARS OF SUNNI POLITICAL THOUGHT

by

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Advisor: Susan Buck-Morss

This dissertation evaluates the political history of Islam through the prism of the *Sunni* conception of authority. It finds an historical red thread that explains the legal and political evolution of different types of Islamic government that have, instead of a European-type sovereign, the *Ulu Al Amr* (those in authority). In addition, it argues that it is the authority of *Ulu Al Amr* that legitimizes temporal power via legal rulings such as *Wilayah al ahed* (allegiance to a dynastic monarchy) and *Wlayah al qaher* (obedience to coercive power and rule). Those rulings are essential to legitimating historical change. Historical legal opinions among Muslim scholars hold that the members of the *Ulu Al Amr* are the *Ulama*—those with knowledge, the learned, religious scholars with temporal power. This dissertation claims that contrary to the legal standards that changed historically in *Fiqh al siyash al sharia* (the branch Islamic jurisprudence that addresses political issues), it is the *Ulama* who were the *Ulu Al Amr*. It is *Ulu Al Amr* they and only they who decide on the exception through *Ijma* (consensus or agreement of the community, a source of Islamic law). This view of *Ulu Al Amr* is most consistent with the *Sunni* conception of authority that legitimates the force of temporal power. Finally, this dissertation argues that the historical evolution of the concept of authority and the legal role of *Ulu Al Amr*

are an outcome of political struggles and demands between the *Ulu Al Amr* (qua temporal power) and Muslim subjects rather than a set of legal codes frozen in time and space.

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## Glossary

<i>Ahl ar-ra'y</i>	is an Arabic term that means 'people of opinion'.
<i>Ahl Al Hall Wal-Aqd</i>	another term of <i>Ulu Al Amr</i> those in authority
<i>Alim</i>	see <i>Ulama</i>
<i>Amir al-mu'minin</i>	commander of the faithful (the <i>Khalifa</i> title)
<i>Ammeh</i>	commoners, public
<i>Al-malik</i>	the king or sovereign
<i>Bay'a</i>	(from <i>Ba'a</i> , to sell) contract in a form of an oath of allegiance to a leader
<i>Bayt al-mal</i>	Treasury that is collected from <i>Zakat</i> and war booty
<i>Bid'a</i>	innovation connoting impiety
<i>Faqih</i>	see <i>Fuqaha</i>
<i>Fatwa</i>	authorized legal opinion
<i>Fiqh</i>	Islamic jurisprudence
<i>Fiqh al siyash al shariah</i>	the branch Islamic jurisprudence that deals with political issues. Also referred to as <i>Al siyash al sharia</i>
<i>Fitnah</i>	secession, upheaval, and chaos
<i>Fuqaha</i>	(sing. <i>Faqih</i> legal scholar)
<i>Hadith</i>	reports or narrative of what the Prophet said or did
<i>Hila</i>	guile
<i>Ijma</i>	consensus or agreement of the community, a source of Islamic law
<i>Ijtihad</i>	independent human reasoning in <i>Sharia</i> law
<i>Ilm</i>	knowledge or learning, especially Religious Knowledge
<i>Imam</i>	(see also <i>Khalifa</i> ) leader of the Muslim community (also leader of congregational prayer, (modern) head of state

<i>Jabariyah</i>	Muslims who deny free agency of the individual. They take their denomination from Jabr, which signifies “necessity or compulsion;” because they hold a person to be necessarily and inevitably constrained to act as s/he does by force of God’s will which is eternal and immutable
<i>Jahiliyyah</i>	Pre-Islamic condition
<i>Jemaah</i>	the collectivity of the Muslim community
<i>Jihad</i>	holy war or personal striving in knowledge, charity, or public service
<i>Khalifa or Khalifat</i>	(see also <i>imam</i> ) (of Muhammad) serving as the head of state or leader of the Muslim community
<i>Khurooj</i>	rebellion
<i>Malik ul mulk</i>	king of kings or the absolute sovereign
<i>Maslaha</i>	the principle that the intent of the law is the good of the community which should be taken into account more than the enforcement of the law
<i>Mawaly</i>	Muslims who are non-Arabs
<i>Mufti</i>	expert authorized to issue <i>Fatwa</i> or a legal opinion
<i>Mujtahid</i>	person carrying out independent interpretation of Islamic law
<i>Qadariyah</i>	Muslims who are adherents of the doctrine of free will. The word <i>Qadar</i> is derived from <i>Qadr</i> (power or rights).
<i>Qiyas</i>	reasoning by analogy, a source of Islamic law
<i>Ra'y</i>	personal opinion in adapting <i>Sharia</i> law
<i>Sharia</i>	Islamic law, religious law, Right, Rectitude, Code (the whole body of rules guiding the life of a Muslim in law, ethics and etiquette); the sources of the <i>Sharia</i> law found in the <i>Qur'an</i> , <i>Hadith</i> , and <i>Sunna</i> , as well as <i>Fiqh</i> .
<i>Shura</i>	consultation among the members of the community
<i>Sunna</i>	custom, religious tradition of the Prophet Muhammad
<i>Tafsir</i>	is the literal meaning of the <i>Qur'an</i> or <i>Hadith</i>
<i>Taghut</i>	transgressor
<i>Takfiri</i>	leaving society that is considered infidel by isolating oneself from public life

<i>Taqlid</i>	strictly following legal precedents of the past without any innovations or additions
<i>Taweel</i>	allegorical interpretation or departure from the manifest [ <i>Zahir</i> ] meaning of a text in favor of another meaning where there is evidence to justify the departure
<i>Ulama</i>	(sing. <i>Alim</i> ) those with knowledge, the learned, religious scholars and experts
<i>Ulu Al Amr</i>	those in authority
<i>Umma</i>	the people or community (of Islam); (modern) nation
<i>Umara</i>	people in command
<i>Wakeel</i>	deputy or agent
<i>Waley</i>	guardian
<i>Wilayah al ahed</i>	allegiance to a dynastic monarchy
<i>Wlayah al qaher</i>	obedience of the members of the community to whomever has captured power by force
<i>Zahir</i>	manifest meaning of a text or matter
<i>Zakat</i>	"that which purifies" or alms-giving is the practice of charitable giving by Muslims based on accumulated wealth, and is obligatory for all who are able to do so. It is considered to be a personal responsibility for Muslims to ease economic hardship for others and eliminate

## INTRODUCTION

### ***Ulu Al Amr & Authority: the central Pillars of Sunni Political Thought***

Why and when should one obey authority? This is a universal question that transcends time and space. It is at the core of the discipline of political science and inevitably includes questions regarding the self, subjectivity, freedom, equality, and autonomy. Moral codes or laws require that authority limit arbitrary action. For freedom to have meaning, it must recognize its opposite: obedience. And for obedience to exist some form of authority must implement rules or laws.

Like obedience, authority is a universal concept limited by neither time nor space. For example, the contemporary opposites of the term obedience are liberty, autonomy, and freedom, which are limited to certain geographies and moments in history. Contemporary political discourse centers on these terms due to historical circumstances that have taken place in Western Europe since the middle ages. Obedience to authority and the good laws that subjects live under necessarily mean that they perceive themselves as free subjects. Conversely, bad authority and laws provide a framework for subjectivities to be constituted and developed through political struggles to correct bad laws. While obedience to authority and a set of laws or moral codes allows for a collectivity to exist, sociologically speaking, obedience regulates expectations and makes life possible.

Yet, while authority and obedience transcend time and space, obedience has particular characteristics that unfold in local geographies and specific moments in history. Identities, cultures, and nations develop around these local characteristics and produce the mosaic of

subjectivities and identities that are a testament to the creativity and malleability of the human subject. Hence, every collectivity shares in common a minimum notion of “the good” of the community. It is also disagreements on “the good” that become the bases of dissent in any given community. While obedience to good laws and struggles against bad ones is a universal condition, struggle and obedience unfold according to local contexts and qualities.

In the case of Western Europe, the womb that bore modernity, obedience to authority, historically evolved in a religious context that produced the legal arrangement of sovereignty. I argue that sovereignty is the core quality of European civilization and that it became globally hegemonic in confronting other forms of authority. Western Europe gave the world capitalism and industrialization through its local internal struggles with medieval forms of authority and obedience. More precisely, I mean the local struggles against the authority of and obedience to the Catholic Church and its role in politics that framed resistance projects. According to Herbert Marcuse:

The Protestantism of Luther and Calvin which gave the Christian doctrine of freedom its decisive form for bourgeois society, is bound up with the emergence of a new, “young” society which had first to conquer its right to exist in a bitter struggle against existing authorities. Faced with the universal bonds of traditionalist feudalism it absolutely required the liberation of the individual within the earthly order as well (the individual free subject of the economic sphere late essentially became the model of its concept of the individual) – it required the liberation of the territorial sovereign from the authority of an internationally centralized Church and a central imperial power. It further required the liberation of the “conscience” from numerous religious and ethical norms in order to clear the way for the rise of the bourgeoisie. In all these directions an *antiauthoritarian attitude* was necessary... (10)

Thus, the evolution of local legal arrangements in Western Europe into the legal solution of sovereignty followed from local struggles against authority and obedience to the Catholic Church. After all, “sovereignty is a form of authority” and a replacement of one form of authority with another (Jackson 2007, 14). Historically, sovereignty as a legal concept evolved

from being the local core of European politics to the universal and global principle in international law. Sovereignty, “is a post-medieval and indeed, anti-medieval arrangement of governing authority” (Jackson 2007, 6). While sovereignty is anti-medieval in character, it is ultimately a reaction to religion and the consequence of the role of the Church in Western Europe.

Local struggles historically unfolded in a context dominated by the Catholic Church. They shaped the evolution of emancipatory political projects in a particular trajectory that was local in character and universal in its goals. Consequently, the political and religious character of sovereignty became the frame in which the evolution of expressions of rights, freedoms, equality, and the self unfolded, was locally grasped, and finally matured into its contemporary, secular, universal expression. A prime example is the Universal Declaration of Human Rights (1948). Similarly, ideas of obedience were shaped and reshaped as a consequence of these unfolding struggles. Elshtain illustrates this argument by claiming:

As sovereign state is to sovereign God, so sovereign selves are to sovereign states. Given that sovereignty in the political sense “names” self-determination for a territorial, collective entity, it is altogether unsurprising that this logic of sovereignty came unbound and migrated, becoming attached more and more to notions of the self. (159)

She traces the evolutionary character of the sovereign God who transferred the same authority to sovereign kings in Western Europe who set the path and the framework in which local actors could claim sovereignty for themselves against local kings. As a result, the West has given us two revolutions—the American and the French—that constitute the core of modernist expressions of sovereignty, a sovereignty of the people, the self, the mind, and reason. Emancipatory projects took on a local character of European sovereignty. Thus, “to be sovereign means to exercise absolute power over one's self and one's fate. But another way of putting this is that the sovereign—whether it is a god, a king, a state, or a mere self—cannot be held

answerable to anyone. When push comes to shove, sovereignty always trumps law and morals” (Adam Kirsch, 2008). The point here is not to reduce the entirety of Western civilization to an essentialized character; on the contrary, the aim here is locate the local context through which meanings and significations of concepts such as freedom, equality, and autonomy unfold. It is through struggle that such concepts become meaningful to local subjects in a particular historical moment. Even after taming sovereign kings who claimed a divine right to rule, the sovereign domain was limited to other spheres such as the economy, which is sovereign as well. A good example is Adam Smith’s account of the rights-based state when arguing:

concerns are equally clear and pronounced: in accordance with “the system of natural freedom” the sovereign has no more than three significant responsibilities, namely, the defence of society against external enemies, the protection of each individual against any harm inflicted upon him by another, and the undertaking of such public works as would not be carried out if entrusted to private profit. (Bobbio, 2005 17-18)

So central is the concept of sovereignty to the Western legal and political context that even when it was logically incoherent and contradictory, the concept prevailed. More precisely, while sovereignty in a theological context is a logical, coherent idea—for example, the Sovereignty of God—once the concept is transferred to politics it becomes inconsistent. Jacques Maritain demonstrated the problems that logically arise when such transference is made:

But in the political sphere, and with respect to the men or agencies in charge of guiding peoples toward their earthly destinies, there is no valid use of the concept of Sovereignty. Because, in the last analysis, no earthly power is the image of God and deputy for God. God is the very source of the authority with which the people invest those men or agencies, but they are not the vicars of God. They are the vicars of the people; then they cannot be divided from the people by any superior essential property. (50)

Accordingly, the problem persists when the sovereign is the king, state, or the people, in the case of democracy. Susan Buck-Morss illustrates the circular logic of sovereignty when it is applied to democracies arguing that “if democracies could be self-constituting and self-reproducing, if they could realize the perfect closure of the Oroborus (snake consuming its tail), there would be



no decay and no history—but also no hope, no escape from the magic circle of power that is capable of mystifying any political regime, no matter how democratically conceived” (Buck-Morss 2007, 1). Nevertheless, the legal concept of sovereignty prevails and has been historically globalized via the European imperial colonization of the globe and the creation of international law.

This dissertation aims at explaining the universal political concepts of authority and obedience as they have operated historically in the *Sunni* legal system with attention accorded to the local character of *Sunni* Islam. As was the case in the Western European context, Islam was founded and evolved around particular arrangements of authority and obedience that were simultaneously universal and particular according to local historical settings and circumstances. I argue that legal, academic, cultural, and economic problems arise when European historical struggles against authority are universalized and conflated with other civilizations. I question the idea that the sovereignty that is absent from other collectivities outside Western Europe becomes the standard against which modernity, human rights, freedom, equality, and autonomy of other cultures should be measured. As a result, there is the tendency to make evaluative judgments, such as:

- (1) the “Third World” [is] a singular essentialized entity not in terms of its own existing qualities, but in term of “First World” qualities which it lacks...
- (2) contemporary conditions in the Third World ... [are] abstracted conditions of European historical experience; the Third World is seen as embodying aspects of Europe’s past (feudalism, etc.)...
- (3) only one essential path to modernity exists in the world, and Europe has experienced this path in advance of the non-Western world (Mirsepassi 2000, 8).

It is the aim of this dissertation to avoid these generalities by locating the local quality and political language of the evolution of authority and obedience in *Sunni* Islam’s legal and political

history. My hope is to shed light on the political language of *Sunni* Islam according to its local qualities. But the task is not easy; it requires the reader to temporarily suspend her ideas of what is familiar in Western politics and put herself in the context of *Sunni* Islam's historical political circumstances. To quote Susan Buck-Morss, "this is not to say that translation among political languages is easily accomplished. Real differences exist. But promise lies in the apparent incommensurability, because the attempt forces each language to extend itself creatively, becoming more than it was, producing an open space in which a new politics might take root" (Buck-Morss 2003, 6). The aim here is not just to produce another discourse; instead, the aim is to emphasize and appreciate the universal project of opposition to the abuse of power and the possibility of democratic discussion in the global public sphere. The need for such democratic dialogue is not only global. It is most urgent now as the "Arab Spring" is turning from an emancipatory project against long ruling regime of dictatorships to an ideological battle between either *Shia/Sunni* or secularist/Islamist camps. These battles are fought as zero-sum game.

This dissertation argues that the disagreements that led to the split between the two sides lack a political language that can facilitate a dialogue. The ideological gap that is created between secularists/liberals and Islamists is due, on one hand, to the ideological commitment by the secularists to universal concepts such popular sovereignty, human rights, and the autonomy of the individual, which have European sovereignty at their core, and on the other, to political Islam's commitment to *Sunni* Islamic authority.

The absence of sovereignty in the Islamic legal system, as chapter one demonstrates, shifts that attention from temporal power to the authority of *Ulu Al Amr* (those in authority). The authority of *Ulu Al Amr* becomes the red thread that runs through accounts of the historical

evolution of the Islamic legal and political system. It runs from a city state, empire, fragmented competing monarchies to the nation state. According to Ernest Gellner:

The central doctrines of Islam contain an emphatic and severe monotheism, the view that the Message received by the Prophet is so to speak terminal, and that it contains both faith and morals – or, in other words, it is both doctrine and law, and that genuine further augmentation is to be countenanced. The points of doctrine and points of law are not separated, and Muslim learned scholars are best described as theologians/jurists. There is no canon law, but simply divine law as such, applicable to the community of believers, rather than to the organization and members of some specialized agency. (6 -7)

Thus, contrary to Western European experience, in Islam the absence of a church that speaks on behalf of the faith and *Sharia* was the feature that the Muslim subject used to limit the abuse of temporal power and authority. Unlike in Western Europe, resistance to abusive authority and temporal power was possible through clinging to and emphasizing the law and interpreting it in an emancipatory context that limits temporal power's force and action. Consequently, emancipation of the collective and the self from the abuse of power has traditionally been affirmed through the law, which is historically prior to the state or any political organization. This local quality has grave consequences in understanding the differences in the role of religion in Western Europe and Islam. Moreover, this local quality casts a different shade on universal concepts of autonomy and freedom in relation to religion. More precisely, obedience to authority in *Sunni* Islam unfolded in local conditions where:

A socially and politically transcendent standard of rectitude was ever accessible, beyond the reach of manipulation by political authority, and available for condemning the *de facto* authority if it sinned against it. It only needed for that standard to possess an earthly ally, endowed with armed might, for the sinning authority – if it was held to be sinful – to be in trouble. The political history of Islam does display the periodic emergence of such a daunting alliance of transcendent rectitude and earthly might. (Gellner 1992, 7-8)

In this case, temporal power was starved from self-constituting legitimacy making it historically dependent on the *Ulu Al Amr* to rule and extract obedience from the Muslim subject.

Central to understanding authority and obedience in *Sunni* Islam is the evolution of the *Ulu Al Amr*'s authority in relationship to temporal power. This local quality has significant implications in how *Sunni* Islam constitutes human rights, freedom, equality, and ultimately the constitution of the self. Consequently, a question of why one should obey authority is directly related to *Sunni*'s historical arrangement of obedience to authority. For example, human nature in Islam is tied to the *Qur'anic* account of "the Fall" which frames subjectivities and notions of the self in a general frame and trajectory. The following verses in the *Qur'an* provide the context of the narrative:

But Satan caused them to slip out of it and removed them from that [condition] in which they had been. And We said, "Go down, [all of you], as enemies to one another, and you will have upon the earth a place of settlement and provision for a time." 2:36

Then Adam received from his Lord [some] words, and He accepted his repentance. Indeed, it is He who is the Accepting of repentance, the Merciful. 2:37

We said, "Go down from it, all of you. And when guidance comes to you from Me, whoever follows My guidance - there will be no fear concerning them, nor will they grieve. 2:38

This account of "the Fall" is not corrupting and political organization is not perceived as an institution that is designed to control the "evil" nature of persons. As a result, the subject is neither prone to be good nor bad but a subject that is free to choose or deny the right path. In this context, political institutions are established to make it easy for the subject to choose the right path and avoid error. Consequently, the nature of obedience to authority is framed around the "good" of both the individual and the collective, and who defines the good according to the text is where struggles against authority in the history of Islam are located. Thus, speaking on behalf of the text in the form of legal opinion/judgment is a claim of authority. As a result, the authoritative texts of the *Qur'an* and *Sunna* are central to struggles for freedom, equality, and autonomy are located. As such, obedience to political institutions is guided by *Sharia* but not

absolute. In fact, obedience in the *Qur'an* to someone other than God or the Prophet is mentioned but twice to “those in authority” (*Ulu Al Amr* in Arabic) in verses 4:59 and 4:83:

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing. 4:58

O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result. 4:59

Have you not seen those who claim to have believed in what was revealed to you, [O Muhammad], and what was revealed before you? They wish to refer legislation to Taghut, while they were commanded to reject it; and Satan wishes to lead them far astray. 4:60 And when it is said to them, "Come to what Allah has revealed and to the Messenger," you see the hypocrites turning away from you in aversion. 4:61

And when there comes to them information about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to those of authority among them, then the ones who [can] draw correct conclusions from it would have known about it. And if not for the favor of Allah upon you and His mercy, you would have followed Satan, except for a few. 4:83

There is no mention in the *Qur'an* or *Sunna* to unconditional obedience to a king or a monarch or any form of authority. This dissertation argues that historical and legal circumstances allowed *Ulu Al Amr* to assume the central role determining when and how a ruler can legally govern the *Umma*. Chapter two illustrates that the membership of *Ulu Al Amr* has changed historically according to changes in political circumstances. For example, at the founding period of Islam, due to their proximity to the Prophet, the Four Guided Caliphs were legal authorities and holders of temporal power. By the end of the Second Civil War (60-73 AH/680-692 CE) temporal power was a dynastic system of monarchical government. But most important, this dissertation argues, as chapter two demonstrates, that contrary to the legal standards that changed historically in *Fiqh al siyash al shariah* (the branch Islamic jurisprudence that deals with political issues), it is the *Ulama* (learned, religious scholars and experts) who were the *Ulu Al Amr*. It was *Ulu Al Amr* and only they who decided on the exception through *Ijma* (consensus or agreement of the community, a source of Islamic law.) Consequently, temporal power's rule over the *Umma* was

legitimized only through the legal authority of *Ulu Al Amr*, not through conquest or war. Gellner points out the consequence of this authority type:

It subordinates the executive to the (divine) legislature and, in actual practice, turns the theologians/lawyers into the monitors of political rectitude – whether or not they always have the power to enforce their verdicts. The principle that “the community will not agree on error” may endow communal consensus, rather than the political center, with a kind of legislative authority. Within this communal consensus, the voice of the learned is liable to possess special weight. After all, the community must heed an already existing law and it is natural to respect the opinion of those better informed. (7)

Only then can the historical development of legal concepts in *Fiqh al siyash al shariah*, such as *Wilayah al ahed* (allegiance to a dynastic monarchy) and *Wlayah al qaher* (obedience to coercive power and rule) be appreciated and understood politically. Force alone cannot achieve legal legitimacy in Islam. Accordingly, power as a legitimate temporal quality exists only when it is bestowed via the authority of *Ulu Al Amr*. This local distinction between force and power is central in understanding *Sunni* political and legal writings. Both concepts were legally developed by *Ulu Al Amr* in a specific historical moment. Neither concept can be found in the *Qur'an*, *Sunna*, or *Hadith*. No temporal power in the history of Islam was able to display a European character of sovereign power because the qualities of the concept are alien to the legal codes of *Sunni Fiqh al siyash al shariah*. The influence of *Ulu Al Amr* on political issues is immense since legally “all major *Sunni* legal *Ulama* agree that the state is not a doctrinal pillar or a foundational part of the religion and as such it is the realm of opinion and disagreements” (Imarah 1988, 208).<sup>1</sup> This quality is present in *Sunni Fiqh* since members of *Ulu Al Amr* are considered to be scholars or learned individuals, and their “authority seems to be derived from the fact that the person wielding authority possesses superior knowledge, insight, or experience. The authority rests upon these givens, which are accompanied by the person’s ability to give extended reasons

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<sup>1</sup> كل تيارات الفكر الاسلامي السنية و اعلام علمائها مجمعون على أن ( الدولة ) ليست ( ركنا ) و لا ( أصلا ) من أركان الدين و أصوله .

for what he decides to say or do” (Friedrich 1972, 51). While in *Shia Fiqh* “*Ulu Al Amr* are those in charge of the affairs of the Muslim community and they are the leaders of the *Umma*, according to verse 4:59 obeying their command is a duty of all Muslims since the verse puts obedience to them in equal status to obedience of the Prophet that is derived from the obedience of God” (Al Fahrey 1986, 11).<sup>2</sup> The difference in the quality of learned individuals and the status of prophecy underlines the difference in the conception of authority in *Shia*, which requires an entire study devoted to the subject matter.

This dissertation is primarily a legal study in *Sunni Fiqh al siyash al shariah* focusing on authority and obedience in Islam. This study records historical events in the legal evolution of *Fiqh al siyash al shariah* and analyzes how that evolution took its particular trajectory. But this is not a historical study on the evolution of *Fiqh al siyash al shariah*. In fact, there are many significant changes and developments that took place in *Fiqh al siyash al shariah* that are unrelated to the dissertation topic. Surely, there are events that scholars deem important, but again this is not primarily a historical study. Nevertheless, historical events must be elucidated in a context that best demonstrates my argument. Finally, I rely on many contemporary Muslim legal thinkers to discuss and survey *Fiqh al siyash al shariah* and show what is commonly accepted as orthodoxy. My intention is to use a body of work that has gained consensus in the mainstream of *Sunni Fiqh al siyash al shariah*.

In chapter one I discuss debates among legal scholars concerning the concept of sovereignty and the nation-state in relation to the *Sharia*. The chapter illustrates the debate in *Fiqh al siyash al sharia* (*Sharia*-oriented public policy authorizes government leaders to conduct

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<sup>2</sup> أما القضية الثانية فمرتبة على سيادة الشرع و هي عدم جواز تغيير الأحكام الشرعية لا من قبل الأمة و لا من قبل الدولة <sup>2</sup>

government affairs in harmony with the spirit and purpose of *Sharia*, even at the expense of a temporary departure from its specific rules) concerning the location of sovereignty of the state as the highest authority in relation to the *Sharia*. The debate features three different legal opinions. The first opinion argues that the sovereignty of the nation-state is compatible with the *Sharia*. The second contends that sovereignty is incompatible with *Sharia* and as such is a heretical claim that there is an authority above the *Sharia*. The third and final opinion claims that the sovereignty and the *Sharia* are compatible, but that *Sharia* must provide the guideline to what is included in the constitution. The debate is ongoing without consensus among legal scholars.

Chapter two investigates that evolution of both *Ulu Al Amr* and temporal power in the history of *Sunni* Islam as a consequence of social and political change. Historically, there is no clear *Ijma* or consensus in *Sunni Fiqh al siyash al shariah* regarding who the *Ulu Al Amr* are. This chapter argues that it is the *Ulama* and not temporal power or the elite are *Ulu Al Amr*. Furthermore, the formation of the *Ulu Al Amr* as the *Ulama* evolved historically as a consequence of the First and Second Civil wars (35-40/656-661 and 60-73/680-692, respectively). In the absence of a fixed text or orthodoxy in *Fiqh al siyash al shariah*, this chapter challenges the academic utility of the concept of fundamentalism in political Islam. In fact, the very existence of *Fiqh al siyash al shariah* renders fundamentalism an oxymoron. Chapter three investigates the character of authority and obedience in *Sunni* Islam. The chapter argues that the character of the authority of *Ulu Al-Amr* is a consequence of social and political circumstances that produced a type of authority similar to that of experts in a particular field of knowledge. Consequently, obedience to authority in *Sunni* Islam is conditional and not absolute. This character of authority is emphasized further in the realm of *Al siyash al shariah* (*Sharia*-oriented public policy authorizes government leaders to conduct government affairs in harmony with the spirit and purpose of the



*Sharia*, even at the expense of a temporary departure from its specific rules) because it is a branch and not a root of *Sharia*. *Fiqh al siyash al shariah* is a realm of opinion, and disagreements on such topics do not undermine *Sharia*. Chapter four argues that historically the *Ulu Al Amr* provided to temporal power in *Fiqh al siyash al shariah* the special legal status of a state of permanent war as a part of the process of legitimating dynastic rule. Historically, this condition provided the legal legitimacy for a shift in the role and function of temporal power from one that is subservient to *Sharia* and the *Umma* to a condition where the *Al siyash al shariah* and the *Umma* are subservient to temporal power. This shift is most prevalent in the evolution of *Fiqh al siyash al shariah*, and it is indicative of the authority of *Ulu Al Amr* in this domain.

Chapter five argues that modernity ushered in a global change in both in physical and metaphysical realms to all non- European cultures. In the case of *Sunni* Islam, modernity's consequence is twofold: first, the logic of the sovereignty of the nation-state challenged *Sunni* authority by permanently centralizing the role of the *Ulu Al Amr* as part of the state bureaucracy; hence, the historical appearance of the legal post of the Grand *Mufti*. The logic of state sovereignty undermined *Sunni* authority and the legitimacy of the *Ulu Al Amr*, who lacked neutrality, to speak on behalf of Islam. Consequently, the nineteenth century witnessed the formation of a new and modern *Ulu Al Amr*. This new class, the modern *Ulu Al Amr*, challenged and opposed the traditional establishment of *Ulu Al Amr*, rejecting obedience to temporal power via *Wilayah al ahed* and *Wlayah al qaher*. The aim of this new class, autonomous and reflexive agents free from tradition, is to reinterpret *Fiqh al siyash al shariah* according to contemporary political and social conditions. Thus, modernity set *Sunni* authority free by democratizing the office of *Ulu Al Amr* and providing it with the logical justification for challenging tradition and authority.

## CHAPTER I

### Sovereignty in Islam

On December 17<sup>th</sup> 2010, a local event in Sidi Bouzid, an impoverished town 190 miles (300 km) south of the capital Tunis, sparked what became a season of revolutions that swept the Arab region, toppling decades of dictators and regimes. Among those regimes were Bin Ali of Tunisia, Mubarak of Egypt, Gadhafi of Libya, and Abdullah Saleh of Yemen, with presumably more to follow. The incident began with a young man, Mohammed Bouazizi, the breadwinner for his family of eight, who traveled to provincial headquarters in Sidi Bouzid, to complain to local municipality officials. They refused to see him. At 11:30 a.m., less than an hour after a confrontation with a policewoman, and without telling his family, Bouazizi returned to the elegant two-story white building with arched azure shutters, poured fuel over his body, and struck a match (Abouseid, 2011). Today the name of Bouazizi is a symbol of the changes that have coursed through the Arab world and surprised the rest of the globe.

The revolutions of what became known as "the Arab Spring" started with spontaneous uprisings that caught lay observers and academics unawares. The uprising challenged decades of repression and dictatorship. The masses that took to the streets and public squares were from every walk of life and hardly committed to any particular ideology or organized political party. Instead, they mobilized and came together to reject economic, social, and political conditions that they blamed on the ruling class.

Yet once the revolutionary process toppled the dictatorships, Islamic political parties gained decisive victories at the ballot box in both Egypt and Tunisia. The enthusiasm of

the mainstream, local, Arab, and Western media was dampened by the electoral victory of the political parties that are motivated by an Islamic outlook on politics. Many have argued that the “Arab Spring” has taken a turn for the worse and become an “Arab Winter.” The fear among observers is that both Tunis and Egypt will follow the path of the Iranian revolution of 1979. This concern has sparked old and new debates, and issues of political Islam, democracy, and modernity have assumed greater urgency as observers have tried to determine the direction of Prime Minister Hamadi Jebali’s Renaissance Movement Party (RMP) in Tunisia and the President *Mohamed Morsi-led* Freedom and Justice Party (FJP) of Egypt.

With both Tunisia and Egypt in the process of drafting new constitutions, the question looming in the mind of academics and political observers is what role religion has in both documents. The main concern is whether Islamic political parties can guarantee citizenship rights and liberties for women and religious minorities while simultaneously implementing economic policy geared toward more equitable social justice. After all, religion was not the driving force behind the revolutions that swept the region. In fact, both the RMP in Tunisia and the FJP in Egypt, like every other political group, were astonished. And as the elections showed, liberal and socialist forces were unorganized. This was the case more so in Egypt than Tunisia.

Religion was at the foundation of the RMP and the FJP electoral successes, and it is the reason why they stand in contrast to the secular political parties. Furthermore, both political parties are still considered prominent enemies of the old regime in the mind of the public. Bein and Stork use the term “political Islam” to describe these movements which this dissertation applies when speaking about RMP and the FJP. Accordingly, they argue:

We term the movements in this volume “political Islam” because we regard their core concerns as temporal and political. They use the Qur’an, and hadiths (reports about the words and deeds of Muhammad and his Companions), and other canonical texts to justify their stances and actions. And they do so in all sincerity. (3)

But what is the role of political Islam in the current revolutionary phase in Tunisia and Egypt when both countries are demanding economic and social change based on respect for civil rights and liberties? One way to answer this question is by examining the political writings of the forefathers of political Islam who championed the role of religion in the state as the correct approach to politics. One cannot properly and fully evaluate the significance of the writings of Al Maududi, Qutb, or Khomeni without understanding the challenge that the nation-state, with European sovereignty at its core, posed to *Sharia*-governed political entities in the context of colonial and postcolonial states. The theme of the relationship between state sovereignty and Islam can be traced back to the eighteenth century writings of Jamal Al Din Al Afghani and continues up to contemporary Muslim scholars and thinkers such as Rashed Al Ghannushi and Yusuf Al Qaradawi. Both Al Ghannushi and Al Qaradawi are considered the modern *Ulu Al Amr* (see chapter five) behind the RMP and FJP. In this sense, they are following their predecessors’ contributions regarding the role of popular sovereignty and the sovereignty of God. They ask, for example, how the modern conception of sovereignty can coexist with the following *Qur’anic* injunction:

Say, "O Allah, Owner of Sovereignty, You give sovereignty to whom You will and You take sovereignty away from whom You will. You honor whom You will and You humble whom You will. In Your hand is [all] good. Indeed, You are over all things competent. (*Qur’an*, 3:26)

It must be noted though that the contemporary lexical term “sovereignty” (*Syaada*) differs from what is used in the verse; instead, the *Qur’an* uses the word “domain” (*Mulk*). But the choice of the word sovereignty is correct because the context of the verse indicates that *Mulk* is the highest authority in relation to other legal entities.

To illustrate the conflict between *Qur'anic* and modern Western concepts of sovereignty, consider the following statements. The first statement regarding sovereignty, made by two Islamic legal scholars, is that “*Sharia* actually nullifies the ability of the people or the state to change the law” (Mufti and Wakeel 1991, 9).<sup>3</sup> The second statement by a Western academic scholar describes sovereignty as “a foundational idea of politics and law that can only be properly understood as, at one and the same time, both an idea of *supreme* authority in the state, and an idea of political and legal *independence* of geographically separate states” (Jackson 2007, x). The stark and irreconcilable differences are clear in relation to the legal logic of the modern nation state and international law.

The modern concept of sovereignty is defined as “the power or authority which comprises the attributes of an ultimate arbitral agent –whether a person or a body of persons entitled to make decisions and settle disputes within a political hierarchy with some degree of finality. A sovereign is a person or group of persons (including a representative assembly) possessed of sovereignty” (Miller, Coleman, Connolly, and Ryan 1987, 492). Accordingly, law and legitimacy emanate from the agent who is both a temporal and transcendental actor, the highest in power, the final power, general in effect, and finally independent. It is this conception of sovereignty with its temporal/transcendental attributes that Sayyid Qutb describes as “*Jahiliyyah*” (pre Islamic or pagan). He argues that “this *Jahiliyyah* is based on rebellion against God’s sovereignty on earth. It transfers to man one of the greatest attributes of God, namely sovereignty and makes some men lords over others” (Qutb 2001, 11). While this view of

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و أولو الأمر هم الذين يتولون أمور المسلمين في هذه الشؤون و يقومون بزعامتهم بأمر من الله سبحانه، و بموجب هذه الآية يتوجب على جميع المسلمين الانقياد لأولي الأمر بعد أن قرنت طاعتهم بطاعة رسول الله التي تنفرد من طاعة الله

sovereignty is in accordance with *Fiqh al siyash al shariah* (Islamic jurisprudence), there are, as we shall see later in the chapter, contending legal views on the concept.

This conflict between Western and *Qur'anic* conceptions of sovereignty was at the heart of anxieties over the RMP and FJP drafting of constitutions in Tunisia and Egypt. While both parties claim that they want to be a part of building a modern state that respects civil rights and liberties, which the revolutions demanded and struggled to achieve, their initial success owed to their religious character and made it difficult for them to compromise on core issues such as the role of *Sharia* in relation to public life.

Many were skeptical that the RMP and FJP could succeed because of political Islam's stand on *Sharia* in public life. Critics questioned whether its values would oppose equal citizenship rights and civil liberties. More clearly, the model of the modern state that secular academics and political parties see under threat was a product of historical circumstances that "required the liberation of the territorial sovereign from the authority of an internationally centralized church and a central imperial power" (Marcuse 2008, 10). The modern state's relationship with religion has its roots in European history, and as such it "is a post-medieval and indeed, anti-medieval arrangement of governing authority" (Jackson 2007, 6). Nevertheless, sovereignty remains at its root a reaction against the medieval theological arrangements of authority and not a rupture with it. Instead, sovereignty maintained the theological qualities of medieval authority by transferring them into secularized supernatural myths of the nation, nationalism, and popular sovereignty. Thus, modern sovereignty is inherently antagonistic to any competing authority, especially the authority of religion and the institution of the centralized church. Historically, this particular arrangement of authority in its relationship to religion has played an essential role in the rise of the modern concept of sovereignty. This conception of

sovereignty over time spread “in marked contrast to ideas of authority in other parts of the world before Western imperial states intervened and established themselves as a global, and no longer merely a European or Western system” (Jackson 2007, ix). No state today operates outside this system of state sovereignty. In fact, “sovereignty is the prevailing idea of political and legal authority of the modern era” (Jackson 2007, 7).

Yet, many contemporary legal scholars argue that state sovereignty is weakening and challenged by globalization, non-state actors, and political organizations. Consequently, “the contemporary salience of religious movements around the globe, and the torrent of commentary on them by scholars and journalists, have made it plain that religion is by no means disappearing in the modern world” (Asad 2003,1). In addition, many states today do not adhere to the above strict idea of sovereignty as the highest authority. For example, both Iran and Great Britain are sovereign states that operate with a pre-modern logic of authority. My point is to demonstrate that the strict definition of sovereignty provided by Jackson is constantly violated in the material world. Therefore, why should we accept that sovereignty could exist only in its modern form in relation to the past? “It is true that sovereignty is explicitly formulated in the modern period...but it does not follow that the reality of state sovereignty did not exist in earlier periods even though the concept itself had yet to be formulated” (Hoffman 1998, 35). The point here is not to question the modern concept and its relationship to the past and other forms of authority; instead, it is to demonstrate that other formulations of authority exist side-by-side with modern sovereignty. As such, modern sovereignty is a point on the continuum of forms of authority that have existed in European history and not a product of an abrupt appearance in history. This is an important point of disagreement among academics in the debate over the concept of sovereignty.

The results of this debate are important and much related to the subject matter of this dissertation since contemporary international law and human rights are directly related to the concept of sovereignty.

Yet, applying the strict definition of sovereignty provided above by Jackson to Islamic legal and political history is theoretically confusing and misleading at best. This methodological error overlooks the local characteristics of *Sunni* authority that are specific to the Islam in general and *Sunni* Islam in particular. More important, reducing Islamic legal and political history to a concept that has its historical roots in the history of Europe may lead to conclusions that are more relevant to European history than Islamic legal and political tradition. For example, a central of Islamic legal and political writings is derived from the fact that in Islam “Law is prior to the state” (Ahmed 1965, 481). Consequently, “it is clear that in Islam the state has never been an end in itself: it has always been universal in character-not for one nation, but for all men of all nations of humanity” (Ahmed 483). As such, the aim of this dissertation is to investigate how the adherents of such a view act in a political environment organized around modern concepts such as state or popular sovereignty. A proper investigation into the concept of sovereignty and its relationship to any one European tradition should focus primarily on the local configuration of authority in the legal documents and historical configurations of authority and power. The aim is to escape the Eurocentric approach to the subject matter that “defines contemporary conditions in the ‘Third World’ in terms of abstracted condition of European experience” (Mirsepassi 2000, 8). Adhering strictly to Eurocentric concepts deprives academic research of the opportunity to understand how other cultures constitute themselves in a world system dominated by international law, European sovereignty, globalization, capitalism, and



industrialized powers. How other systems of meaning and thought address sovereignty uncover the internal dynamic of these systems, as they address and interact within the international system of state sovereignty. This is less reductive than the academic approach that “defines the ‘Third world’ as a singular essentialized entity not in terms of its own existing qualities, but in terms of ‘First World’ qualities which it lacks” (Mirsepassi 2000, 8).

Consequently, in avoiding these theoretical problems, one may overcome the problems of essentializing all non-European cultures into either/or categories compatible with modernity, democracy, and human rights. More specifically, the aim is to avoid overlooking the varieties within Islamic legal and political thought and essentializing Islam into a singular entity. As Susan Buck-Morss has noted, the political impact of Islamism, “far from monolithic, has been reactionary, conservative, democratic, revolutionary, conspiratorial—depending on the specific and changing national and international contexts in which modern Islamism has developed over a period of several generations” (Buck-Morss 2003, 3). This dissertation contends that the key to understanding the above variation in orientation toward politics is to investigate and comprehend how authority is constituted and how sovereignty is understood by Islamic legal and political thinkers.

This dissertation aims to investigate how European sovereignty operates and coexists with *Sunni* conceptions of authority. It draws on the idea that “sovereignty is a form of authority” (Jackson 2007, 14). While there are universal characteristics of authority that both European sovereignty and *Sunni* authority share, the operation and configuration of how and why authority is recognized and obeyed is particular to the historical political and social conditions (both material and ideational) in any system of thought. Nevertheless, “the goal is not to ‘understand’ some ‘other’ discourse, emanating from a ‘civilization’ that is intrinsically different

from ‘our own’” (Buck-Morss 2003, 4). Rather the goal is to evaluate and understand political Islam’s ideas of popular sovereignty, democracy, and human rights in light of the Islamic conception of sovereignty.

The academic research that theorizes sovereignty and state formation in Islamic political and social history through a Western prism may provide plausible narratives, but such an investigation overlooks the local qualities and configurations of authority that are innate in the character of another system of thought. Sovereignty in its Hobbesian relationship to violence, human nature, or a monopoly of violence faces limits when applied to Islamic political and social history. Its methodological limitations and problems arise when researching the rise of contemporary political Islam and Islamic political thought in general. Adding to its methodological problems the challenges of tracing social and political concepts across time and space while overlooking the local qualities of the subject matter renders the task daunting and unproductive. This dissertation argues that while authority and control are universal political concepts and present in all human collectivities, they must be grasped through their local context of meaning and significations. A good example of the universal character of authority and control is the following quote by Herbert Marcuse:

Thus in the authority relationship, freedom and unfreedom, autonomy and heteronomy are yoked in the same concept and united in the single person of he who is subject. The recognition of authority as a basic force of social praxis attacks the very roots of human freedom: it means (in a different sense in each case) the surrender of autonomy (of thought, will, action), the tying of the subject’s reason and will to pre-established contents, in such a way that these contents do not form the ‘material’ to be changed by the will of the individual but are taken over as they stand as the obligatory norms for his will. (7)

This self-policing character is universal condition and present in the subject and every collectivity allowing the formation of the self and group identities that constitute the tribe, city,

state, and nation. Similarly, the formation of the self and group identities occurs in Islamic social and political history, as well. But to see how this formation of the self and group identities operates and how obedience is achieved in the *Sunni* Islamic context one must look at the local character of authority relationships. More precisely, the aim here is to understand how subjects are situated in relation to one another, i.e., how authority exerts obedience over the subject and maintains a collectivity with its system of meaning.

It is central to Islamic political thought that “law is prior to the state” (Ahmed 1965, 481). Islamic political thinking considers the purpose of the state to enforce the law, not the monopoly of the legitimate use of violence. It is a fact that neither the *Qur'an* nor the *Sunna* (an action or a statement by the Prophet narrated by legal sources) ordains Muslims to create a state or prescribe a particular system of government. The state is an expedient to implement *Sharia*. Consequently, the state is located under *Sharia* and not above it, and temporal authority or the *Khalifa* follows the same logic. The monopoly of violence is not prior to the state but a consequence of this fact. The following verses from the *Qur'an* illustrate the point:

Say, "Indeed, I am on clear evidence from my Lord, and you have denied it. I do not have that for which you are impatient. The decision is only for Allah. He relates the truth, and He is the best of deciders." 6:57

Follow, [O mankind], what has been revealed to you from your Lord and do not follow other than Him any allies. Little do you remember. 7:3

And He is Allah; there is no deity except Him. To Him is [due all] praise in the first [life] and the Hereafter. And His is the [final] decision, and to Him you will be returned. 18:70

These verses are foundational in Islamic legal and political writings. In fact, I argue that *Fiqh al siyash al shariah*, with the aid of actual historical circumstances surrounding the evolution of *Sharia*, is the proper area of investigation to understand the configuration of authority in Islam.

The historian G.H. Bousquet, in answering the riddle behind the early success of the Islamic

conquest, pointed to the importance of *Fiqh* in understanding Islamic history. He argues against historical explanations that consider the early conquest of Islam as purely material in nature and downplay faith's role. He contends that "a century after the conquest a new civilization was crystallizing around *fiqh*" (Donner 2008, xx). "Moreover, the fact that the conquerors did not stress conversion of subjects does not mean that conquerors were not motivated by religious idea (xx)." This explains why Islamic empires up to the 19<sup>th</sup> century such as Ottoman Empire allowed more than one set of legal codes to exist within the empire. Of course, exceptions exist in the history of Islam, but, nonetheless, Islamic authority, unlike European sovereignty, allowed plural legal codes and did not unify under one code of laws.

A lexical warning, I use the term *Ulu Al Amr* when speaking only about the *Ulama* (plural *Alim* legal scholars) or Grand *Mufti* (expert authorized to issue *Fatwa*, a legal opinion). Explaining the use and the argument that *Ulu Al Amr* are the *Ulama* or Grand *Mufti* will become abundantly clear in chapter two. But for the moment it is sufficient to state that according to *Fiqh al siyash al shariah* the term *Ulu Al Amr* includes the *Ulama* but the *Ulama* do not exclusively occupy this category. Historically, *Ulu Al Amr* at one moment in history includes the Companions of the Prophet and in some other moment in history legal opinions include in it the *Khalifa* or temporal power. The justification of this argument is the central topic of chapter two, which argues that the *Ulama* and the Companions of the Prophet are *Ulu Al Amr* and not temporal power. If, according to Carl Schmitt, the "sovereign is he who decides on the exception" (5), then sovereignty does not exist in Islamic legal and political writings. Legally, *Ulu Al Amr* is the body that is qualified to decide the exception via *Ijma* (consensus among *Ulama* as a source of Islamic law) yet they do not control the means of force. While the *Khalifa*

had the monopoly of force he does not decide the exception. This local character is central in understanding the *Sunni* legal and political system of meaning. Moreover, no one, including the *Ulu Al Amr*, can legally suspend *Sharia* entirely. Those are the two central characteristics of *Sunni Fiqh al siyash al Shariah* that must be understood to theorize accurately how obedience and control is historically achieved in *Sunni* Islam and why European sovereignty is a debatable concept in *Fiqh al siyash al shariah*. This will become clearer in the following chapters but for the moment this dissertation uses the *Ulu Al Amr* as the *Ulama*.

Historically, legal debates among *Ulama* (legal scholars) about the concept of sovereignty in relation to *Sharia* appeared abruptly in the eighteenth century. Debates on the concept of sovereignty in relation to *Sharia* appeared approximately during the colonial period, which started with Napoleon's invasion of Egypt 1798-1801 CE. Accordingly, "the dominance of the idea of sovereignty on the thinking of political and constitutional scholars in the Muslim states led to the appearance of several legal views in locating the source of sovereignty in the contemporary Islamic thinking" (Mufti & Wakeel 1991, 21).<sup>4</sup> Interest in the concept of sovereignty was shaped by the advent of the nation state during the colonial period but internationally the concept was operative in international law. Thus, interest and debates about sovereignty continued in the postcolonial era as well. According to Mufti and Wakeel, "since early twentieth century colonial powers propagated the concept of sovereignty as tool to establish their hegemony and laws for the purpose of secularizing Muslims and marginalizing Islam and *Sharia*. This process led the colonized states to establish the principle of popular

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<sup>4</sup> لقد أدت سيطرة فكرة السيادة على التفكير السياسي لعلماء السياسة و رجال القانون الدستوري في بلاد المسلمين إلى ظهور عدة اتجاهات في تحديد مصدر السيادة في الفكر السياسي الإسلامي المعاصر . و مع التأكيد بأن البحث أساسا في صاحب السيادة

sovereignty and abandoned the *Sharia* to prove that their system of government is similar to Western states” (Mufti & Wakeel 1991, 7).<sup>5</sup> Consequently, “Muslim legal scholars concentrated their efforts at theorizing about the concept of sovereignty in general and more precisely, the attribute of sovereignty as the highest authority and the consequences it holds in relation to the authority of the *Sharia*, the will of the *Umma* (community, or Muslims as a unit), and the state” (Mufti & Wakeel 1991, 21).<sup>6</sup>

The *Fuqaha* agreed unanimously that modern sovereignty contradicts *Sharia*, which is superior in location to it. According to As-Sawy “the will of God alone is above any other competing will and as such *Ijma* (consensus of *Fuqaha* in a given age) was achieved on the subject matter. *Ijma* follows the *Quran* and *Sunna* as a source of law that regulates the *Umma*. Throughout the history of Islam there was no opposition to this principle from a minor or a major sect in Islam” (As-Sawy 2011, 31).<sup>7</sup> If the previous statement sounds unequivocal, consider the following quote by Abu Hamid Al Ghazali (1058–1111 CE), the prominent *Faqih* in the twelfth Century, who argues “that in the process of answering who should govern, it becomes clear that

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منذ أوائل القرن الحالي سعى الإستعمار الغربي إلى نشر مفاهيمه عن السيادة في بلاد المسلمين بهدف بسط الهيمنة و القوانين الغربية فيها و تأصيل النزعة اللادينية لإقصاء الإسلام عن واقع الحياة و التشريع ، مما جعل أغلب الدول المستعمرة و التابعة تسارع إلى قرار مبدأ السيادة الشعبية لإظهار و تأكيد توافق أنظمتها مع الأنظمة الغربية ، بالإضافة إلى تعطيل الأحكام الشرعية

لقد أدت سيطرة فكرة السيادة على التفكير السياسي لعلماء السياسة و رجال القانون الدستوري في بلاد المسلمين إلى ظهور عدة إتجاهات في تحديد مصدر السيادة في الفكر السياسي الإسلامي المعاصر . و مع التأكيد بأن البحث أساسا في صاحب السيادة

إن الإرادة التي تعلو على جميع الإرادات و السلطة التي تهيم على جميع السلطات فيما تنظمه أو تقضي فيه سلطة أخرى تساويها أو تساميتها ، إنما هي إرادة الله وحده لا شريك له . و لقد إنعقد إجماع الأمة كلها في مختلف الأعصار و الأمصار ، إجماعاً لم يشذ عنه كبير و لا صغير ، و لا ذكر و لا أنثى و لا حر و لا عبد و لا طائع و لا عاص .. إنه لا دين إلا ما أوجبه الله و لا شرع إلا ما شرعه ، و لا حلال إلا ما أحله و لا حرام إلا ما حرمه ، و أن من جادل في هذه ( البنهية ) فأحل ما حرمه الله أو حرم ما أحله أو رد شيئاً من حكمه ، أو أعطى غيره حق التحليل و التحريم و الإيجاب و النذب .. فهو مارق من الدين كافر بإجماع المسلمين

there is not rule but God's rule and neither the Prophet rule over Muslims nor a master over a slave is above that" (As-Sawy 2011, 31).<sup>8</sup>

Theologically, during the early period in the history of Islam, legal scholars or *Ulu Al Amr* had achieved consensus or *Ijma* that sovereignty belongs exclusively to God. Consequently, historically the issue has never been a matter of debate. But disagreements among legal scholars or *Ulu Al Amr* were evident beyond this understanding and especially in practical realm of implementation. Differences between the schools in legal opinions will be spelled out in the following two comprehensive legal studies compiled on the topic of the modern sovereignty in *Fiqh*.

The first survey by the Muslim legal scholars Mufti and Wakeel is divided roughly into three groups on the issue of modern sovereignty in *Fiqh*:

First, the *Umma* and sovereignty legal opinion, which considers the *Umma* as a whole, is source of sovereignty, or actually the sovereign. Legally, they justify their claim that the *Umma* alone is the source of authority and government in Islam.

One of the scholars who advances this opinion is the prominent 20<sup>th</sup> Century Muslim *Faqih*, Mohamed Al Ghazali Al Saqqa, [who was closely affiliated with the Muslim Brotherhood of Egypt.] In his famous book published in 1949, *Islam and Political Despotism*, he advanced his *Ijtihad* (to exercise personal judgment based on the *Qur'an* and *Sunna*) that "the *Umma* alone is the source of authority and to disregard this fact amounts to a rebellion against both divine injunctions and historical experience. (22)"<sup>9</sup>

A similar legal opinion was advanced earlier in the nineteenth century by *Muhammad Bekhit Al Mut'aei*, the grand *Mufti* (*Sunni* Islamic scholar who is an interpreter or expounder of *Sharia*) of Egypt (1915-1920), in his book *The Truth of Islam and the Rules of Governing*, in which he

و في البحث عن الحاكم يتبين أنه لا حكم إلا لله ، و حكم للرسول و لا للسيد على العبد و لا لمخلوق على مخلوق ، بل كل ذلك حكم الله تعالى و وضعه ، لا حكم غيره

أولاً-الأمة و السيادة يرى أصحاب الإتجاه الاول : أن الأمة صاحبة السيادة على أساس أن ( السلطة العامة ليس لها سوى مصدر واحد و صاحب واحد هو الأمة . و لقد أكد إتجاه سيادة الأمة و إعتبارها مصدرا للسلطات عدد من الكتاب . حيث يعبر الشيخ محمد الغزالي عن هذا المفهوم للسيادة بقوله : و من ثم فالأمة وحدها هي مصدر السلطة و النزول على إرادتها فريضة ، و الخروج على رأيها تمرد ،،، و نصوص الدين و تجارب الحياة تتضافر كلها على تأكيد ذلك

argued “that Muslims are among the first people to advance the legal principle that the authority is in the hand of the *Umma*” (Mufti & Wakeel 1991, 22).<sup>10</sup>

This opinion that sovereignty resides with the *Umma* is based on a number of legal principles, but most important is that according to *Sharia*, Muslims have the right to choose their ruler through *Bay’a* (a contract in a form of an oath of allegiance to a leader). The second principle is *Ijma*. This principle was constructed by Muslim scholars based on a number of *Hadiths* (plural for *Hadith*). Most important is the following *Hadith*: “My nation will not unite on error, so if you see them differing, follow the great majority.”<sup>11</sup> This most-referred-to *Hadith* serves as the legal foundation of *Ijma* for the primacy of the *Umma*.

Second is “the dual sovereignty legal opinion group who considers the *Umma* and the *Sharia* both as constitutive of sovereignty in the Islamic state” (Mufti & Wakeel 1991, 25).<sup>12</sup> “This view of *Fiqh* differentiates between two sets of injunctions in the *Qur’an* and *Sunna*; they are definitive injunctions and injunctions that are open to interpretations” (Mufti & Wakeel 1991, 25).<sup>13</sup> Accordingly, it is only when the injunctions are unclear and open to interpretations that the *Umma* acts as sovereign through the process of *Ijma*. This view is advanced by the contemporary scholar Hazim Abdel Mutaal Al Saeedi in his book *The Islamic Theory of the State Compared with The State in Modern Jurisprudence*. He argues that “sovereignty in the Islamic state resides in the people...since the *Umma* is the source of authority and the ruler must obey its will.

<sup>10</sup> أن المسلمين هم أول أمة قالت بأن الأمة هي مصدر السلطات كلها قبل أن يقول ذلك غيرها من الأمم

<sup>11</sup> إن أمتي لا تجتمع على ضلالة فإذا رأيتم اختلافًا فعليكم بالسواد الأعظم

<sup>12</sup> أما أصحاب الإتجاه الثاني : فيرون أن السيادة مزدوجة، فالأمة و الشريعة يمثلان مصدر السيادة في الدولة الإسلامية

<sup>13</sup> و يفرق هؤلاء بين مجال النص القطعي ، و مجال النص الظني أو عدم ورود نص ، فإذا وجد نص قطعي واضح أصبحت السيادة لله و انتفى دور الأغلبية أو الإجماع . أما إذا كان النص ظني الدلالة فإن دور الجماعة يبرز ليهيمن على الأمر و تصبح السيادة الشعبية مكملة لدور الشريعة فيما لا نص فيه أو فيما فيه نص ظني أو غامض



Nevertheless, it is *Sharia* that sets the limits on the sovereignty of the state or the people.

Consequently, the *Umma* is free to legislate laws and organize the state accordingly but within the limits of *Sharia*” (Mufti & Wakeel 1991, 26).<sup>14</sup> Therefore, sovereignty is limited only by a clear injunction in the *Qur'an* or *Sunna*. Thus, it is a self-imposed limitation by the state and the people.

Third is the legal opinion that considers *Sharia* as the sole sovereign. Accordingly, the “*Ijma* of the *Umma* was achieved as a principle abiding on Muslims, that is, adherence to the *Qur'an* and *Sunna* and that the arbiter are the Book and the *Sunna* in any disagreement. As such it nullifies the sovereignty of the *Umma* whether limited or absolute” (Mufti & Wakeel 1991, 28).<sup>15</sup> Furthermore, “*Sharia* had emphasized the principle that sovereignty belongs to the law and not to the *Umma*. Instead, *Sharia* gives rights to the *Umma* only in the area of selecting the *Imam* (the leader, and in its highest form, refers to the head of the Islamic state) and scrutinizing his performance. Therefore, the state does not derive the authority to legislate from the *Umma* because it does not have it, and who does not own something cannot pass it to another entity” (Mufti & Wakeel 1991, 28-29).<sup>16</sup> According to Fathi Al Derini, a leading contemporary scholar in *Fiqh al siyasi* (Islamic jurisprudence that deals with politics), “the *Fiqh al siyasi* historically was unconcerned with the concept of sovereignty as it was a major subject among Western

<sup>14</sup> السيادة في الدولة الإسلامية تكمن في الشعب فالأمة الإسلامية هي مصدر السلطات ، و ليس للحكام في الدولة الإسلامية من الأمر إلا ما تريده الأمة و ترضاه . أما عن حدود سيادة الدولة ، أو سيادة مجموع الأفراد المكونين للدولة الإسلامية ، فهي الحدود التي فرضتها الشريعة الإسلامية و للأمة الإسلامية أن تضع نظمها و قوانينها في حدود هذه السيادة

يؤكد البحث مبدأ سيادة الشرع مستندا على أصل مقطوع به مجمع عليه في الشريعة و هو وجوب إتباع ما جاء به الوحي من كتاب و سنة و أن الكتاب و السنة حاكمان في كل أمر مختلف فيه . و بذلك يتقرر بطلان القول ( بسيادة الأمة ) المطلقة أو المقيدة أو القول بنظرية السيادة الشعبية

لقد أكدت تعاليم الإسلام أن السيادة للشرع و ليست للشعب الذي يمتلك فقط السلطان المتمثل في توليه الإمام ، و مراقبته ، و محاسبته و عزله ، فالدولة لا تستمد سلطة التشريع من الأمة ، لأنها لا تملكها أصلا ، و من لا يملك شيئا، ليس بوسعها أن يملكه غيره بداهة ، و لذلك فالفقه السياسي الإسلامي لم يتناول مشكلة السيادة أو الشرعية السياسية كما تناولها فقهاء السياسة الغربيون ، لان السيادة في النظرية السياسية الإسلامية للشرع . و قد أقرت الممارسة السياسية هذا المبدأ لفترة طويلة و لم يبدأ النظر في أصل السيادة و منشأها إلا بعد أن تزعزت معالم الخلافة الإسلامية

scholars since *Sharia* is the sovereign in Islamic jurisprudence. Furthermore, historically the principle established precedent through the practice of politics by Islamic states and no one questioned the source of sovereignty or its roots until the fall of the last Islamic *Khilafa*” (Mufti & Wakeel 1991, 28-29).<sup>17</sup> The author refers to the process of modernization that the Ottoman Empire embarked upon in its final decades before its collapse in World War I.

Thus, under this legal view of sovereignty, *Sharia* trumps popular sovereignty and state sovereignty as well. According to Mufti and Wakeel, “the principle of abiding by the authority of *Sharia* ties the governor and the governed to the sovereignty of God; consequently, legislation is directly derived from the *Sharia*. Conversely, legislation by the state cannot violate *Sharia* on the basis that the *Hakimiyyah* (sovereignty) is for God” (Mufti & Wakeel 1991, 29).<sup>18</sup> It is this same concept that both Al Maududi and Qutb use in their political writings, and it is to this school of *Fiqh* that they belong. This legal opinion is indeed platonic and in the face of social and political change the most rigid among the other opinions. For example, Qutb argues “the revelation represented the unequivocal affirmation that the source of the Qur’anic message was the Allah; He is the sovereign of all sovereignty” (Khatib 2006, 32). Moreover, he states that “our primary purpose is to know what way of life is demanded of us by the *Qur’an*, the total view of the universe which the *Qur’an* wants us to have, what is the nature of our knowledge taught to us by the *Qur’an*, the kind of morals and manners which are enjoined by it, and the kind of legal and constitutional system it asks us to establish in the world. Thus the *Sharia* which

<sup>17</sup> لقد أكدت تعاليم الإسلام أن السيادة للشرع و ليست للشعب الذي يمتلك فقط السلطان المتمثل في توليه الإمام ، و مراقبته ، و محاسبته و عزله ، فالدولة لا تستمد سلطة التشريع من الأمة ، لأنها لا تملكها أصلاً ، و من لا يملك شيئاً ، ليس بوسعها أن يملكه غيره بداهة ، و لذلك فالفقه السياسي الإسلامي لم يتناول مشكلة السيادة أو الشرعية السياسية كما تناولها فقهاء السياسة الغربيون ، لان السيادة في النظرية السياسية الإسلامية للشرع . و قد أقرت الممارسة السياسية هذا المبدأ لفترة طويلة و لم يبدأ النظر في أصل السيادة و منشئها إلا بعد أن تزعت معالم الخلافة الإسلامية

و يهدف مبدأ سيادة الشرع إلى إقرار إلزام الحاكم و المحكوم بشرع الله سبحانه و تعالى ، و إلى إنبثاق التشريعات من الشريعة الإسلامية ، و عدم إحداث تشريعات أو ممارسات تخالف الشرع . و ذلك أساس قاعدة الحاكمية لله و القانون المطبق في الدولة

God has given man to organize his life is also a universal law, as it is related to the general law of the universe and is harmonious with it” (Qutb 2005, 21&89). Qutb is unequivocally clear that the primary source for understanding politics and organizing the state is the *Qur'an*, the very expression of sovereignty, and as such it stands above human laws. The *Fuqaha* who adhere to this school of *Fiqh* usually argue that the *Hakimiyyah* of *Sharia* is clearly stated in the *Qur'an*.

They refer to the following verses:

Indeed, We sent down the Torah, in which was guidance and light. The prophets who submitted [to Allah] judged by it for the Jews, as did the rabbis and scholars by that with which they were entrusted of the Scripture of Allah, and they were witnesses thereto. So do not fear the people but fear Me, and do not exchange My verses for a small price. And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers. 5:44

And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers. 5:45

And We sent, following in their footsteps, Jesus, the son of Mary, confirming that which came before him in the Torah; and We gave him the Gospel, in which was guidance and light and confirming that which preceded it of the Torah as guidance and instruction for the righteous. 5:46

And let the People of the Gospel judge by what Allah has revealed therein. And whoever does not judge by what Allah has revealed - then it is those who are the defiantly disobedient. 5:47

And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method. Had Allah willed, He would have made you one nation [united in religion], but [He intended] to test you in what He has given you; so race to [all that is] good. To Allah is your return all together, and He will [then] inform you concerning that over which you used to differ. 5:48

And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you. And if they turn away - then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient. 5:49

Ample verses in the *Qur'an* illustrate the point, but I use these verses to provide the sequential detail of the injunction. This is even clearer in the verse “[O Muhammad] do not follow their

inclinations away from what has come to you of the truth” 5:48. The verse is usually presented as evidence against the previous two schools of *Fiqh*, arguing that God directly asked the prophet to implement the law as it was revealed.

Nevertheless, *Sharia* and the *Qur'an* and the *Sunna* have little, if anything, to say about the state or politics. This legal opinion views the state as a mere executive mechanism that executes *Sharia*, which remains constant regardless of changing social and political circumstances. The political body that executes the law, on the other hand, changes according to social and political circumstance. Thus, the executive will change to accommodate *Sharia*.

The second survey is by the contemporary jurist and *Faqih*, Salah As-Sawy. He divides the scope of the debate into four genres instead of the three categories of Mufti and Wakeel. Most important, he argues that “none of the four legal opinions argued that God is not sovereign as it is the case according to the Western concept of sovereignty” (As-Sawy 2011, 52).<sup>19</sup> The differences between the two surveys are insignificant, but it is worth demonstrating for the sake of an exhaustive assessment of the concept of sovereignty in *Sharia*.

The first genre contends that “God is the sovereign, while government is a human matter with God’s authorization” (As-Sawy 2011, 51).<sup>20</sup> According to this legal view, “the *Umma* does not have the right to legislate new laws but it is free in the manner of the execution of *Sharia*” (As-Sawy 2011, 52).<sup>21</sup> The *Umma* has the authority to choose its leader and to set the standard of

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أن واحدا منها لم يقرر أن السيادة المطلقة بمعناها السابق أي المصطلح عليه في الفكر الغربي لأحد من دون الله<sup>19</sup>

الإتجاه الأول : يرى أن السيادة لله "ابتلاء" أما موضع الحكم فهو بيد البشر ، بتفويض من الله<sup>20</sup>

فالإتجاه الأول : لا يتحدث عن دور الأمة في التشريع المطلق ، أو في إنشاء شرع جديد ، فذلك الذي قرر تفرد الشرع به ، وأنه لله ابتداء ، إنما يتحدث عن دورها في التنظيم في دائرة المباح أو العفو<sup>21</sup>

accountability freely according to its needs. More precisely, the *Umma* is free to regulate and choose the manner and method of executing the *Sharia*. In a sense, the *Umma* is in charge of executive laws, organization of the state, and standards of implementation for the laws, but the *Umma* cannot legislate new *Sharia*.

Second, similar to Mufti and Wakeel's first category, the "second current considers the *Umma* to be the sovereign" (As-Sawy 2011, 51).<sup>22</sup> Yet, according to As-Sawy, "the adherents of this view of *Fiqh* do not conceptualize and produce sovereignty in the modern Western sense; instead, they arrived at the idea of *Umma* sovereignty by obeying *Sharia*'s injunctions" (As-Sawy 2011, 52).<sup>23</sup> In other words, the *Fuqaha* arrived at this position through the principle of *Ijtihad* and *Ijma* and not from a principle or ideal outside of *Sharia*.

Third, and similar to Mufti and Wakeel's second category, sovereignty is dual in character. According to the adherents of this school "God is sovereign in areas with clear injunctions in the *Qur'an* and *Sunna*, and areas with injunctions that are open to interpretation or without any injunctions are left for the *Umma* to regulate given that the new legislation does not contradict *Sharia*" (As-Sawy 2011, 53).<sup>24</sup> Consequently, the *Umma* has the authority to legislate when faced with new circumstances that have no clear injunctions in the *Qur'an*, *Sunna*, or *Ijma*. Its sole restriction is that new laws not contradict an injunction in *Sharia*.

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الاتجاه الثاني : و يذهب إلى أن السيادة للأمة<sup>22</sup>

الذي نسب إليه الكاتب القول بأن السيادة للأمة يشترك عليه الكاتب نفسه بقوله : و مما يجب في هذا الصدد أن أصحاب هذا الإتجاه : أما الإتجاه الثاني<sup>23</sup> لا يقصدون من هذا الرأي أن مبدأ السيادة في سياقه الإسلامي يحمل نفس مدلوله في السياق الأوروبي ، بل أنهم ذهبوا إلى هذا الرأي و في ذهنهم ضوابطه الشرعية

الإتجاه الثالث : لا يتحدث عن سيادة الأمة في دائرة الشرع المحكم ، فهو الذي قرر أن السيادة خالصة لله ، ولكنه يتحدث عن دور الأمة في دائرة<sup>24</sup> المباح أو العفو ، و في حالة النص الذي يحتمل تأويله أوجها متعددة ، و سيأتي بيان أن هذه السيادة ليست مطلقة ، و لكنها ملتزمة في الأولى بقواعد الشريعة الكلية و مقاصدها العامة ، و ملتزمة في الثانية بضوابط الترجيح المعتمدة شرعا ، فلا سيادة و لا إطلاق

The last category according to As-Sawy is that the sovereign is the *Umma*. This is similar to Mufti and Wakeel's first category "that as sovereign the *Umma* is the primary legislator since the *Umma* is the entity that chooses to be Muslim and decides to obey *Sharia* and legislate according to its principles" (As-Sawy 2011, 53).<sup>25</sup> This view is primarily based on the legal principle that there is no compulsion in religion. Hence, if the *Umma* decides not to adhere to the *Sharia* or religion of Islam, implementing the law becomes meaningless. I argue that in this category belongs Rashed Al Ghannushi who argues that "God did not make faith a matter of force and compulsion; instead, it is a matter of understanding and choice. Compulsion by definition contradicts judgment day since it nullifies human responsibilities for their actions and most importantly stands in contradiction of *Qura'nic* verse [There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong. So whoever disbelieves in *Taghut* (transgressor) and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is Hearing and Knowing. {2:256}]" (Al Ghannushi 1993, 36).<sup>26</sup> Accordingly, the *Umma* respects sovereignty as a category of choice and responsibility. The strict implementation of *Sharia* and the law is not going to create better Muslims since this understanding contradicts the above verse and nullifies the very purpose of Judgment Day.

<sup>25</sup> أما الإتجاه الرابع : فهو أبعد هذه الإتجاهات عند الإطلاق لانه لا يتحدث إلا عن إطلاق الإرادة في إختيار الإسلام ابتداء ، و أنها في هذه الدائرة هي صاحبة السيادة و صاحبة القرار فإذا هي إختارت الإسلام فقد رضيت بالتقيد بكافة الأحكام الشرعية ، و ألزمت نفسها بإتباع أحكامه

<sup>26</sup> لأحد يكره أهله الخروج عنه . و من أجل ضمان عدم الإكراه أوجب الإسلام على المسلمين التمكن من القوة للقيام في وجه من يحاول فتنهم عن دينهم و أمر المسلمين أن يعتمدوا في دعوة خصومهم أسلوب الحكمة و الموعظة الحسنة لتبیین الرشد من الغي . فإن الله تعالى ما بني أمر الإيمان على الإجبار و القسر ، و إنما بناه على التمكن و الإختيار . لأن في القهر و الإكراه على الدين بطلان معنى و الامتحان . و نظير هذا قوله تعالى : (( فمن شاء الله فليؤمن و من شاء فليكفر )) كما ذهب إلى ذلك الرازي . و إذا كان الاعتقاد محله القلب فالإكراه فيه ممتنع أصلاً

In general, what is the significance of these contending views on the concept of sovereignty?

The concept of sovereignty and its two attributes, the source and location of authority, are the primary cause that divides legal schools. The significance of the configuration of authority cannot be overemphasized; however, what can be further emphasized is that the concept of authority in *Fiqh* is not static and cannot simply be essentialized into one legal view that is opposed to modern concepts of sovereignty. The concepts of state and popular sovereignty may after all be compatible with at least one school of *Fiqh*. More precisely, it is possible to arrive at the Western conception of sovereignty from *Fiqh al siyash al shariah*, but that is neither the aim nor the argument of this dissertation.

Second, according to contending views of sovereignty while there is *Ijma* on the principle that God is the sovereign, there is no *Ijma* in *Fiqh* about how the previous principle is related to modern sovereignty. The majority of Western academic literature overlooks this central character in *Sunni Fiqh al siyash al shariah*. Consequently, it erroneously applies the label of fundamentalism to all forms of political Islam.

Third, I argue that views of sovereignty differ according to whom the *Fuqaha* considers a legally qualified member of *Ijma*. The more inclusive legal opinion on who should be a member of *Ijma* will most likely be in accord with As-Sawy's last category stipulating the *Umma* is the sovereign. Conversely, the more exclusive legal opinion on who should be a member of *Ijma* will more likely belong to the group that contends God is the sovereign and *Sharia* is the sovereign. This is a significant categorization since *Ijma* is not mentioned in the primary sources of the *Qur'an* and *Sunna*. Instead, it is a legal category that was created through *Ijtihad*. It is a fact that there is no *Ijma* in *Fiqh* on who should be included in *Ijma*.

Finally and most important, this dissertation argues that the concept of modern sovereignty is more accurately represented in the category of those who are in a position to constitute *Ijma*. In Islamic legal theory, those who are in charge of deciding who is included and excluded in *Ijma* are the highest authority and must be the focus of investigating authority configurations in Islam. While there is no Church in Islam, the authority that this group possesses emanates from the condition “that the legal idea cannot translate itself independently [which] is evident from the fact that it says nothing about who should apply it” (Schmitt 1985, 31). This is an accurate description of the category of *Ulu Al Amr* (Trustee or Custodians) that are mentioned in the *Qur'an*:

O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result. 4:59

In fact, there is no legal consensus (*Ijma*) on who they are and how they are constituted, but “they are entitled to the affairs of the community and have this authority and the leadership of the *Umma* in accordance to the *Sharia*” (Al-Massari 2002, 14).<sup>27</sup> The following section will briefly address the legal category of *Ulu Al Amr*, which is discussed in detail in the following chapter.

In conclusion, what is the significance to the contending views of sovereignty, and what can we say about the concept of sovereignty according to *Fiqh*?

First, it is evident that the concept of sovereignty as the highest authority is the primary cause that divides the legal schools into at least three different opinions. More precisely, it is the question, and the heart of the debate between the *Fuqaha*, whether *Sharia* or sovereignty is prior.

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<sup>27</sup> أولو الأمر : أي أصحاب التصرف في شأن الأمة ، الذين يملكون زمام الأمور شرعا ، و بيدهم قيادة الأمة



Moreover, that the *Fuqaha* hold different legal views regarding the relationship between *Sharia* and sovereignty belies the Eurocentric academic view that tends to essentialize non-European concepts into one category opposite itself. In fact, as previously mentioned, there are at least three contending opinions. The concept of state sovereignty and popular sovereignty may after all be compatible with at least one opinion of *Fiqh*, which contends the *Umma* is the sovereign. Consequently, it is possible to arrive at a Eurocentric conception of sovereignty from different legal views and principles of *Fiqh*, but that is neither the aim nor the argument of this dissertation.

Second, since there is no *Ijma* among the *Fuqaha* or legal scholars on the concept, all contending views are legally valid, and Muslims are legally able to follow any of these opinions. This implies there is no consensus among scholars on the compatibility of sovereignty with *Sharia*. Therefore, the debate is ongoing.

Third, this dissertation argues that the statutory interpretations above differ according to who is legally qualified to establish *Ijma*. Accordingly, the more inclusive legal opinion regarding which parties can deliberate in the process of *Ijma* will likely belong to those who maintain that sovereignty belongs to the *Umma*. Conversely, the more exclusive or elitist legal opinion concerning who can deliberate in the process of *Ijma* will likely belong to the group that contends God is the sovereign and *Sharia* has sovereignty over the *Umma*. This is a significant categorization since *Ijma* as a principle is not mentioned in the primary sources of the *Qur'an* and *Sunna*. Instead, it is a legal category that was created through *Ijtihad* and became legal via *Ijma*. There is no *Ijma* in *Fiqh* determining who should be included to constitute *Ijma*.

Finally and most important, this dissertation argues that sovereignty is not key to understanding authority in Islamic legal and political writings. Instead, the focus of this

investigation is on those historically in charge of deliberating on new legal circumstances, including whether or not state and popular sovereignty are compatible with *Sharia*. Moreover, the subject of my investigation is focused on the following questions and those who are historically in a position to designate *Ijma*: Who is this group that has the power of *Ijma*? How do they qualify to be a part of *Ijma*? Who decides when *Ijma* is reached? In what ways has *Ijma* changed? Most important, what is the historical relationship between *Ijma*, power, and authority? Why does any particular group wield influence over *Ijma*? Each of these questions can be answered only if we move beyond an exclusive concern with sovereignty.

This dissertation contends that answering these questions is theoretically more rewarding than investigating whether the concept of sovereignty is compatible with *Sharia*. Answering these questions may avoid the inherent methodological problems that come from accepting Eurocentric definitions—while overlooking local concepts—and then applying these concepts to other systems of thought.

Primarily, this dissertation posits that the group that is in a position of constituting *Ijma* is the closest in structure and character to the sovereign. It follows that those who are in charge of deciding who is to be included and excluded from constituting *Ijma* are the highest and final authority; it is this group on which we focus our investigation into the function of authority in Islamic legal and political writings. In fact, this highest and final authority is derivative of the principle of *Ijma* in *Fiqh*. It is created by the same group for the sake of addressing changes (in other words, the exception) in the established law. Consider the following example from Mohammad Hashim Kamali:

*Siyasah* (politics) in its widest sense has five purposes: the protection of the faith, life, intellect, lineage, and property. The *Ulama* are (religious scholars; theologians) unanimous on the point that the protection of these values constitutes the ultimate objective of *Sharia* itself, despite the fact that a specific reference to this group of values can be found neither in the *Qur'an* nor in the

*Sunna*. General consensus (*Ijma*) on the protection of these values is not based on any particular provision of the Qur'an or the *Sunna*, but on the overall contents of these source-texts and on the numerous commands and prohibitions that are designed to protect these values. The same can be said of the Qur'anic verses that enjoin the community in the pursuit of good and prevention of evil. The good and evil are nowhere listed exhaustively in the *Qur'an* or the *Sunna* but can be known through a general investigation of these sources. (146)

So who is this group, and how did they come to occupy the highest point in the hierarchy of authority? According to Carl Schmitt, "this individual or group is the outcome of the fact that the legal idea cannot translate itself independently" (Schmitt 2005, 31). Therefore, this category of the sovereign is the outcome of the application of the law. Furthermore, the *Qur'an* actually acknowledges a group that should apply the legal idea. In the famous verse 4:58 in the *Qur'an*, which this undertaking maintains is the threshold of the political theory of the *Qur'an*, this faction is mentioned by name, *Ulu Al Amr* (trustees, guardians). In fact, this is the only instance in the *Qur'an* that Muslims are directed to obey an entity other than God or the Prophet. It is important to note that the verse is primarily concerned with temporal authority and to understand the scope of that authority the verse must be read sequentially for a fuller appreciation of the consequences of the order of obedience in verse 4:58

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing. 4:58

O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result. 4:59

Have you not seen those who claim to have believed in what was revealed to you, [O Muhammad], and what was revealed before you? They wish to refer legislation to Taghut (a person who overstep boundaries of the law), while they were commanded to reject it; and Satan wishes to lead them far astray. 4:60

Verse 4:58 reads: "that obedience [is] to be given as three levels: (a) Allah; (b) His Prophet; and (c) those charged with authority otherwise known as *Ulu Al Amr* or *Sultan* in Islamic terms" (Omotosho 2000, 1). Thus, obedience to *Ulu Al Amr* is conditional and tied to the other two higher sources of authority, who are God and the Prophet. It is also important to note that the

*Qur'an* does not mention obedience to a king, *Amir*, *Sultan* or any other temporal power. This dissertation argues that a proper investigation of authority in Islamic legal and political writing must focus on this group, the *Ulu Al Amr* as the highest and final authority in relation to temporal power and government. It is the *Ulu Al Amr* who have the power to give legitimacy to temporal power and government, whether it is the *Amir*, *Khalifa*, or *Sultan*. Actually, there is one more verse in the *Qur'an* that testifies to the authority of *Ulu Al Amr* in the matter of the law after the authority of God and the Prophet:

And when there comes to them information about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to those of authority among them, then the ones who [can] draw correct conclusions from it would have known about it. And if not for the favor of Allah upon you and His mercy, you would have followed Satan, except for a few. (4:83)

This task that is assigned only to the *Ulu Al Amr* is beyond the domain of temporal power, whether a *Khalifa* or *Amir*. The exception to this rule is the period of the Four Guided Caliphs who were simultaneously included in both *Ulu Al Amr* and the Caliphs. But even then, they could not achieve *Ijma* since the term *Ulu Al Amr* is plural not singular. Again, the significance this exception will be clear in the following chapter.

Yet, there is no *Ijma* directing who is to be included in *Ulu Al Amr* since the *Qur'an* and *Sunna* are mute on the matter. According to Al-Massari, “there are at least six different opinions in *Fiqh* on who should be included in *Ulu Al Amr*” (Al-Massari 2002, 15-14).<sup>28</sup> This means that historically there is no *Ijma* clarifying who should be among *Ulu Al Amr*, and the constitution of

أما المراد ((بأولي الأمر)) في الشرع الواردة في الآية السابقة فقد اختلف أهل العلم من المفسرين وغيرهم في ذلك الأقوال، أشهرها ستة: الأول: <sup>28</sup> أنهم الأمراء، قاله جمع من السلف منهم أبو هريرة و ابن عباس. و ترجمة الإمام الطبري، قال النووي، و هو قول جمهور السلف و الخلف. الثاني: أنهم العلماء، و به قال جمع من السلف منهم جابر بن عبد الله، رضوان الله و سلامه عليه، و الحسن البصري و النخعي و غيرهم. الثالث: أنهم أصحاب محمد صلى الله عليه و سلم قاله مجاهد. الرابع: أنهم أبوبكر و عمر، رضي الله عنهما، قاله عكرمة. الخامس: قال ابن كثير: و الظاهر و الله أعلم أنها عامة في كل الأمراء و العلماء. و قد اختار هذا الرأي جمهرة من أهل العلم، منهم أبو بكر العربي، و ابن القيم الجوزية، و الشوكاني و الشيخ عبد الرحمن بن سعدي. السادس: و يرى بعض أهل العلم أن المراد بهم ما هو أعم من العلماء و الأمراء من زعماء و وجهاء و كل من كان متبوعا و هم المعروفون بأهل الحل و العقد

the group changed historically from one period to another. Yet, *Ulu Al Amr* historically is the group who are entitled to make decisions on *Sharia* and have the authority over it. The following chapter will deal in detail with the concept of *Ulu Al Amr*.

## CHAPTER II

### Who are *Ulu Al-Amr*?

On March 21, 2013 “[a] large explosion killed at least 42 people inside a central Damascus mosque...including the top Sunni cleric in Syria, one of the major remaining *Sunni* supporters of President Bashar al-Assad’s embattled government in the civil war” (Mourtada and Gladstone, 2013). Mohammad Said Ramada al-Bouti, a contemporary example of a modern member (a state bureaucrat) of an establishment *Ulu Al Amr*, served as an essential source for theological legitimacy of Syria’s secular Ba’ath party government. His support for the Assad regime legitimated its rule and policies against the armed opposition that is currently battling for power. Al-Bouti’s role in Syria illustrates the historical importance of the legitimacy that the *Ulu Al Amr* has as an integral part of government rule over Muslims. For example, Turkey and Syria make the paradoxical claim that they are secular states yet entrust theological affairs to a governmental department that is a part of the state bureaucracy. Another example is the Ba’ath party in both Iraq and Syria always projected itself as Pan-Arab, modern, and secular. Yet both Saddam Hussein and Bashar Al-Assad during their crises appealed to religious figures, members of the state’s theological and bureaucratic establishment, for legitimacy. All contemporary Arab states and certainly some Western states such as Great Britain are riddled with this character, which violates Jackson’s account of sovereignty. But the question here is why in the Arab and Muslim world are theological affairs not left to private organizations but instead regulated by the state? The answer is that the state’s appeal for legitimacy requires an authoritative source in the eyes of Muslim subjects.

This chapter focuses on the authority *Ulu Al Amr* and its legal aspect. The argument is that it is a prominent historical feature of the political construction of *Sunni* Islam. Furthermore, the authority of this group of individuals has played a central role in *Suuni* Islamic politics throughout the contemporary period. With the advent of modernity and with it the nation-state the *Ulu Al Amr* group has been reduced to one individual, the Grand *Mufti*. Chapter four, the history of the formation of *Ulu Al Amr*, and chapter five describe the role of the Grand *Mufti*, who replaced the traditional *Sunni* class of *Ulu Al Amr*.

The loss of Al-Bouti, according to experts, was a serious setback depriving the Syrian Ba'ath government of legitimacy in the midst of a violent armed struggle. Yet, what concerns us here is why a secular Ba'athist government needs, in the eyes of the Syrian people, the support of Al-Bouti to legitimize its rule and fight against the uprising. More generally, why do secular governments throughout the Middle East establish ministries of theological affairs while claiming to be secular? The answer lies in the legal role of *Ulu Al Amr* and the type of authority it has practiced throughout the political history of Islam. This chapter will focus on the historical foundation and the evolution of *Ulu Al Amr*, the scope of *Ulu Al Amr* authority, and its legal ability to defend the actions of temporal power.

In this chapter and the subsequent one, I will rely on the scholarship of Mohammed Al-Massari in the area of *Sharia* in general and *Fiqh al siyash al shariah* in particular. Al-Massari is a Saudi political dissident and activist who is currently exiled in London. He is the founder of

Hizb ut-Tahrir and currently the Chairman of the Party of Islamic Renewal. The party's mission is to bring about political and social reform in the Kingdom of Saudi Arabia. Al- Massari is a *Salafi* but interestingly a critical opponent of the *Wahhabi* theological state establishment. His publications debates the Saudi *Ulama*'s legal claim over the legitimacy of the royal family and its practices. Al-Massari's political activism and critique of the Royal family has led to charges by the establishment *Wahhabi Ulama* that he is a "libertine." This dissertation considers Al-Massari's work, which is on the foundational legal sources of *Sunni Fiqh al siyash al shariah*, as a reliable representation of *Sunni* orthodoxy.

Linguistically, *Ulu Al Amr* is a compound of *Ulu* (those of or those who) and *Al Amr* (authority). "It is said that the word *Ulu* is a plural word that has no singular term but most likely this word is plural for the word '*Walee*' meaning one who or one of. Both *Ulu* and *Walee* must appear in a compound words, for example (those with authority) or (those in charge of) or (those with intellect)" (Al-Massari 2002, 13).<sup>29</sup> The plural linguistic character of the word *Ulu* in the legal term *Ulu Al Amr* signifies the basis for the argument that the principle of *Shura* (Consultation) necessitates that the category must be plural and cannot be reduced to one person. Consultation necessarily takes place among two or more individuals. "The second part of the term, *Al Amr* and the word in the Arabic language could mean either to order an action or to forbid an act" (Al-Massari 2002, 13).<sup>30</sup>

<sup>29</sup> المعنى اللغوي : - أولو : جمع، وقيل: لا مفرد له. و الأرجح أن يكون جمعا ل ((ولي))، بمعنى ((ذو)) أي أصحاب و لا يأتي إلا مضافا، في مثل ((أولوا الألبان))، يعني ذوي أو أهل أو أصحاب العقول

<sup>30</sup> لأمر: يطلق و يراد به : ١ ما هو ضد النهي : و يجمع على أوامر . يقال : أمره فآتمر : أي قبل أمره



The term *Ulu Al Amr* is mentioned in the *Qur'an* in chapter 4 verses 59 and 83, and the term appears in the *Hadith* of the Prophet as well. In the *Qur'an* the verses are as follows:

O you who have believed, obey Allah and obey the Messenger and *Ulu Al Amr* (those of authority) among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result. 4:59

And when there comes to them information about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to *Ulu Al Amr* (those of authority) among them, then the ones who [can] draw correct conclusions from it would have known about it. And if not for the favor of Allah upon you and His mercy, you would have followed Satan, except for a few. 4:83

While in the *Hadith* *Ulu Al Amr* is mentioned as follow: “three habits that the heart of a Muslim should never be angry of, sincere labor, advice to those in the *Ulu Al Amr*, and to remain among the community...” (Al-Massari 2002, 13).<sup>31</sup> Note that Muslim obedience to temporal authority is mentioned only in the verse 4:59 and even then, obedience is conditioned by the *Sharia*. Yet Al-Massari explains that while “the term *Ulu Al Amr* is clearly present in the *Qur'an* and the *Sunna*, the exact legal meaning of the term is not quite clear and therefore remains unresolved among scholars of *Sharia*” (Al-Massari 2002, 14).<sup>32</sup> Consequently, it is not clear from the *Qur'an* and *Hadith* which group of individuals Muslims should obey, and it is open to historical interpretation depending upon whom the *Umma* see the *Ulu Al Amr* fit to be among and represent. Historically, the configuration of *Ulu Al Amr* concerning who is qualified to be among them changed according to social and political change. Thus, the legal evolution of the category of *Ulu Al Amr* challenges scholarship that applies the concept of fundamentalism to political Islam. If by fundamentalism we mean adherence to textual and theological orthodoxy,

<sup>31</sup> وفي الحديث الصحيح ثلاث خصال لا يغفل عليهن قلب مسلم أبدا : اخلاص العمل لله، و مناصحة ولاة الأمر، و لزوم الجماعة

. اما المراد بأولي الامر في الشرع الواردة في الآية السابقة فقد اختلفت أهل العلم من المفسرين و غيرهم في ذلك على أقوال، أشهرها <sup>32</sup>

then we will demonstrate that as an historical fixed category the achievement of *Ijma* (consensus) is an impossibility. Legally *Ulu Al Amr* in *Sunni Fiqh* and according to *Sharia* are “those in charge or concerned with legal matters of the *Umma*, thus they are the highest authority establishing the legality and legitimacy of matters that concern the community” (Al-Massari 2002, 14).<sup>33</sup> While it is legally accepted in *Sunni Fiqh al siyash al shariah* that *Ulu Al Amr* means temporal power, those who are in charge of affairs of the *Umma*, I argue that this legal view was accurate only during the founding period when temporal power and the legal knowledge of the *Ulama* united in the persons of the Four Guided Caliphs. After the Second Civil War (60-73AH /680-692 AD) the two characteristics were permanently severed. Dynastic rule meant that only during the early history of Islam, the period of the Four Guided Caliphs, could an individual be simultaneously both a *Khalifa* and *Alim* [singular of *Ulama*]. Accordingly, once temporal power became dynastic the function of the post changed and became a mere executive branch of government, in charge only of executing and implementing *Sharia*. Since that historical moment the executive has been legally excluded from deciding on the exception. Moreover, from this point temporal power depended on the authority of the *Ulama* on their legitimacy to rule and be obeyed by the *Umma*. It is precisely this change that Ernest Gellner noted regarding the nature of government in Islam, but he failed to notice the evolutionary change that took place in the nature of government. He makes this point when he is discussing the *Sharia* by arguing that:

The fact that, in this way, legislation is pre-empted by the deity has profound implications for Muslim life. It does not merely mean that a fundamentalist may have difficulties in accepting modern law and legislative practices; it also means that a certain kind of separation of powers was built into Muslim society from the very start, or very nearly from the start. This version of the separation of power did not need to wait for some Enlightenment doctrine concerning the

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<sup>33</sup> المعنى الشرعي : أولو الامر: أي اصحاب التصرف في شأن الأمة الذين يملكون زمام الأمور شرعا، و بيدهم قيادة الأمة

desirability of a pluralist social order and of the internal balance of independent institutions. It subordinates the executive to the (divine) legislature and, in actual practice, turns the theologians/lawyers into the monitors of political rectitude – whether or not they always have the power to enforce their verdicts. The principle that ‘the community will not agree on error’ may endow communal consensus, rather than the political doctrine, with a kind of legislative authority. Within this communal consensus, the voice of the learned is liable to possess special weight. After all, the community must heed an already existing law and it is natural to respect the opinion of those better informed. (7)

Clearly, Gellner captures the dynamics of the evolution of *Sharia* but his argument at its core demonstrate sovereignty problematic logic, as chapter five demonstrates. He views the theologians/lawyers or the *Ulama* as referees of a divine law that is frozen in time and space. He fails to note the role of *Ulama* in harmonizing modernity and sovereignty with *Sharia* (see chapter one). This is precisely why he uses the term fundamentalism and argues that the “fundamentalist may have difficulties in accepting modern law and legislative practices.” Moreover, while Gellner accounts for *Ijma* (consensus) as a source of legitimacy that provides the *Ulama* with legitimate authority, his view does not capture the scope of harmonization between the modern and the *Sharia*, contrary to what chapter one demonstrates in regard to the concept of sovereignty. He sees modern law as encapsulated sovereign law that has to be accepted and implemented a wholesale.

Nevertheless, the purpose of referencing Gellner here is to demonstrate that the function and nature of temporal power changed historically by becoming a mere executive power and not a source of legitimacy. Thus, the *Ulu Al Amr* referred to in verse 4:59 cannot include dynastic temporal power, which is required to be obeyed by the *Umma*. It is precisely by the end of the Second Civil War that this change consolidated the legal role of the *Ulama* as the *Ulu Al Amr* (mentioned in verse 4:59). Obedience is limited to *Sharia* and not arbitrary laws. Consequently, this dissertation argues that *Ulama* are the logical legal members of the *Ulu Al Amr* because they and only they legally decide the exception.

Further evidence supports the argument that the *Ulama* decide who is legally to be excluded from the category of *Ulama*. The following section of the chapter demonstrates historically the legal power of the *Ulama* to define who is to be included and excluded from the category of *Ulu Al Amr*, who can be legally labeled as *Ulu Al Amr* and excluded from temporal power.

Legally, Al-Massari provides a historical legal survey in *Sunni Fiqh* that includes six different legal opinions that guide legal scholars when explaining who or what constitutes *Ulu Al Amr*:

The First, according to the *Salaf* (early scholars). *Ulu Al Amr* consisted of the *Umara* (people in command). Scholars upholding this opinion include: Abu Hurairah (603-681 CE), Abd Allah Ibn Abbas (619-687 CE), and Al Nawawi (1234-1278 CE).

Second, according to some of the *Salaf* (a *Sunni* legal school) the scholars such as Jabir *ibn Abdullah* (d. 697), Al Hasan Al Basri (642–728 CE) and others, they are the *ulama* (religious scholars).

Third group, according to a group of *Mujtahids* (religious scholars), *Ulu Al Amr* were the Companions of the Prophet.

Fourth, according to Ikrimah ibn Abi Jahl (d. 636 CE) a Companion of the Prophet, the *Ulu Al Amr* were only Abu Bakr (573-634 CE) and Umar ibn Al Khattab (579-644 CE) the first and the second *Khulafa* (plural for *Khalifa*).

Fifth, according to Ibn Kathir (1301-1373 CE) *Ulu Al Amr* are both those in command of temporal power and the *Ulama*. Many scholars, among them Abu Bakr ibn al-Arabi (1076-1148 CE), Ibn Qayyim al-Jawziyyah (1292–1350 CE), and Muhammad ash-Shawkani (1759-1834 CE), followed this legal opinion.

Sixth, other legal scholars argue that the term includes the *Ulama*, those in command, the elite, and *Ahl Al Hall Wal-Aqd* or those in command among the leaders and the elite of the community and who have followers. (14-15)<sup>34</sup>

Al-Massari's list of legal opinions has several political and legal implications. First and the most important implication, is the clear lack of historical legal consensus on who are to be included

<sup>34</sup> الاول: انهم الأمراء، قاله جمع من السلف منهم ابو هريرة و ابن عباس و رجمة الامام الطبري، قال النووي، و هو قول جمهور السلف و الخلف. الثاني: انهم العلماء، و به قال جمع من السلف منهم جابر بن عبدالله، رضوان الله و سلامه عليه، و الحسن البصري و النخعي و غيرهم. الثالث: أنهم أصحاب محمد-صلى الله عليه و سلم- قاله مجاهد. الرابع: انهم أبو بكر و عمر، رضي الله عنهما، قاله عكرمة. الخامس: قال ابن كثير و الظاهر و الله اعلم انها عامة في كل الأمراء و العلماء و قد اختار هذا الرأي جمهرة من أهل العلم، منهم أبو بكر بن العربي و ابن القيم الجوزية و الشوكاني و الشيخ عبد الرحمن بن سعدي. السادس: و يرى بعض أهل العلم أن المراد بهم ما هو أعم من العلماء و الأمراء و الزعماء و وجهاء و كل من كان متبوعاً. و هم المعروفون بأهل الحل العقد

among the *Ulu Al Amr* in *Sunni* Islam. Accordingly, the *Sunni* Muslim subject is not clearly commanded by God to obey a particular form of government. Instead, the Muslim subject is commanded to obey the law or *Sharia*. Thus, the question of who should rule, who legitimately rules the *Umma* is an historical and political question in *Sunni* Islam open to interpretation. Fred Donner argues that:

In the generation after Muhammad's death in 632 C.E. (that is, from about 31/650 until 73/692), the community of Believers was torn apart internally by a bitter dispute over the question of leadership. This dispute manifested itself particularly in two periods of open strife among the Arabian leadership of the Believers' movement, which we can call the First and Second Civil wars (35-40/656-661) and (60-73/680-692, respectively). (145)

The political question of temporal power and its legitimacy was to be resolved not according to legal injunctions but according to historical circumstances and what Muslims viewed as a legitimate form of government. This explains the historical rise of the *Ulu Al Amr* whose central role was to serve as the *Ulama* and provide human resolution to questions of law that transcended temporal power and but were capable of furnishing temporal powers with legitimacy. This is precisely how the body of *Sharia* and *Fiqh siyasah shariah* (the branch Islamic jurisprudence that deals with political issues) evolved and grew over time addressing temporal and spatial change.

It is imperative for academic scholarship to take into account these local characteristics of temporal power and the legal and historical frames that shaped their evolution. Only then can the centrality of the role of *Ulu Al Amr* become clear and provide a coherent reading of the political and social history of *Sunni* Islam. The role of *Ulu Al Amr* becomes marginal and insignificant, if academic scholarship views it through the prism of the European conceptions of temporal power or sovereignty.

Except for the first legal opinion, Al-Massari's list included the *Ulama*. The *Ulama* were not an issue in the first case because Abu Hurairah and Ibn Abbas were Companions of the Prophet and accordingly temporal power and *Alim* came together in the Four Guided Caliphs. In a technical sense the *Ulama* were present in the first opinion as well. As the Companions period drew to a close questions of piety and knowledge of faith became less important, which allowed for a dynastic Caliphate rule based purely on blood lineage. Donner explains this historical process:

With the Second Civil War in particular, we are palpably moving into a new phase in the history of the community of Believers. The era of the companions of the prophet is rapidly drawing to a close, and the *dramatis personae* are now members of a younger generation who had no memory of the prophet or of the struggles that shaped his life. One senses an attenuation of the intensely charismatic quality of the early movement, with its clear-sighted concern for piety and observing God's will; the commitment to piety is still there, but it has become more routinized and less personal and is tempered among many Believers with more practical and this worldly concerns. (190)

Hence, we have the legal opinion of Al Nawawi who held that *Ulu Al Amr* was the *Umara* (people in command). Writing during the Abbasid Dynasty (750-1258 CE) and during the violent sacking of Baghdad by the Mongol Hulagu Khan (1218 – 1265 CE) Al Nawawi stressed the importance of *Umara* [singular *Amir*] and the military. Accordingly, his legal opinion is an outlier and a response to the sacking of a Muslim empire for the first time.

Third, the legal opinions in the third and fourth categories hold that the *Ulu Al Amr* mentioned in the *Qur'an* and the *Sunna* are associated with the Companions of the Prophet. According to *Sharia*, Muslims owe obedience only to temporal power. This legal view follows if one holds that obedience is only to *Sharia* and the role of temporal power is more or less to execute the law. Moreover, it appears that the third legal opinion questions whether a figure can

arise that can command authority similar to the Prophet's Companions. Yet, the legal opinion may not exclude the role of *Ulama's Ijtihad* over new legal issues facing the *Umma*.

The fourth legal opinion was held by Ikrimah ibn Abi Jahl who died early in the Battle of Yarmouk in 636 CE before the outbreak of the two Civil Wars. Accordingly, Ikrimah's legal opinion was based on events where the transition of temporal power was executed smoothly and before violent disagreements took place among Muslims regarding who should rule over the *Umma*. At the time, the need of *Ulama* or *Ulu Al Amr* was not central to the Muslim community since the Companions of the Prophet were many and could address new circumstance authoritatively due to their proximity to the Prophet.

Fourth, that the *Ulama* as *Ulu Al Amr* are included in the second, third, fifth, and sixth legal opinions supports my argument that the *Ulama* evolved to become the *Ulu Al Amr* mentioned in the *Qur'an*. Moreover, the scope of time that these legal opinions are expressed in is over a long span of time, making them more or less accurate reflections of the majority of legal opinions.

Fifth, in the sixth legal opinion there appears for the first time a new legal category, *Al Hall Wal-Aqd* in *Fiqh siyasah al shariah*. *Al Hall Wal-Aqd* includes *Ulama*, *Umara*, and the elite. This new legal category is investigated in detail later in the chapter, but what is relevant and significant at the moment is that *Ahl Al Hall Wal-Aqd* appeared in the third century in the Islamic calendar and reflects the evolution of *Fiqh siyasah al shariah*, which has consistently included the *Ulama* as *Ulu Al Amr* even when the legal term changes.

Consequently, temporal power in Islam is limited historically by certain legal constraints. Regardless of emergencies, *Sharia* cannot be entirely suspended. Debates regarding the

emergency powers of the executive and the ability to suspend the law have yet to limit this ability in the most advanced democracies. The restriction of temporal power under *Sharia* historically necessitated the formation and crystallization of *Ulu Al Amr* as the authority that bestows legitimacy on temporal power. Hence, the acts that contradict the law are experienced as merely violence. They never set precedent but are tolerated and resisted as violence unless the *Ulama* who are the *Ulu Al Amr* legitimate them. There are ample examples in the history of Islam when pure violence and bloodshed by temporal powers occurred. When Muslims were unable to fight the illegitimate actions of temporal power, they tolerated them as violence. Historically, the consequences of force and violence never produced legitimate laws even when Caliphs were in complete control of their Muslim subjects. A good example is provided by Donner to make this case:

we see in the civil wars—and particularly in the second—the emergence of those fissures that have, ever since, divided the once united community of Believers. Ali's claims to be *amiral-muminin* during the First Civil War become gradually transformed into the beginnings of a true sectarian movement, Shi'ism, that held the family of 'Ali in special reverence; it received its defining event in the massacre of 'Ali's son Husayn at Karbala' in the Second Civil War, an event that came to be commemorated by later Shi'ite groups. It would be a century and more before Shi'ism would fully refine many of its central concepts, such as the notion of the *imamate* or ideal, God-guided leader of the community, but the later movement has its roots in the First and Second Civil wars. These events thus became the starting point for the construction of two different narratives of legitimation in the Islamic community one Shi'ite, focusing on the family of Ali, and the other (eventually called Sunni) focusing on the sequence of actual power-holders, including the Umayyads. We have also seen how a third group, the ultra-pious Kharijites, emerged during the First Civil War; although constituting only a small minority of Muslims today, they were quite significant in the first several centuries of Islam. (190-191)

In this case, the violence that temporal power perpetrated against the offspring of the Prophet and Companions was an example of total control over Muslims. Such violence was unable to gain legitimacy. In fact, the Umayyad dynasty was the first to rely on *Ulu Al Amr* to grant legitimacy to their dynastic rule, as chapter four demonstrates. In *Sunni* historical books this period of immense violence is usually referred to as *Fitnah* (upheaval and chaos) to venerate the Umayyad



dynasty especially the Companion Muawiyah Ibn Abi Sufyan (602 – 680 CE) the founder of the dynasty. Donner explains how the *Fitnah* label was used as a justification for the violence:

The traditional Muslim sources provide us with lengthy reports about the events of the mutiny and those that followed, which we call the First Civil War; our sources refer to these events as the first *fitna*, using a pejorative Qur'anic word meaning "temptation, seduction" (by the lure of worldly advantage). The goal of all these reports is either to demonstrate Uthman's guilt or to exculpate him (or, similarly, to provide moral judgments on other participants in the events). (154)

Note that the First Civil War started with the assassination of Uthman Ibn Affan (557- 656 CE).

He was a Companion of the Prophet and the Third Guided Caliph, a clan member of Muawiyah, who in the name of avenging Uthman used the assassination as an excuse to overthrow the Fourth Guided Caliph Ali Ibn Abi Talib (600- 661 CE), a Companion and the cousin of the Prophet.

The limitation of temporal power in Islam is demonstrated in the two different historical narratives that the *Sunni* and *Shia* have regarding these events. They serve as historical sources and foundations for the identity of both sects of Islam. Moreover, the lack of supernatural or theological justifications, at least in *Sunni* theological texts, for the massacre of the family of the Prophet and the establishment of the dynastic rule of *Banu* [house of] Umayya is a clear sign of the earthly character of the dynastic Caliphate that have ruled over the Muslim *Umma* ever since. Instead, the justification of the dynastic rule is explained in *Sunni Fiqh al siyash al shariah* as the best outcome possible for the *Umma* among the worst possibilities, mainly civil strife and bloodshed. Even for *Banu Abbas*, who toppled the Umayyad dynasty in 750 CE and established the Abbasid dynastic rule, their justification was based of the corruption of the Umayyads. Never did they claim they were bestowed with a supernatural duty even though they were directly descended from the Prophet via his youngest uncle Abbas ibn Abd al-Muttalib (566–653 CE).

The key difference between temporal power in *Sunni* Islam and European sovereignty is precisely the key idea that Buck-Morss claims is fundamental to Christianity and absent from the *Sunni Khalifs* or members of *Ulu Al Amr*: the quality of the supernatural. Buck-Morss argues:

The fundamental idea of Christianity is the Incarnation, the coming into visibility of the invisible and sovereign God. The veneration of icons became the practical manifestation of this idea, as the point of visibility of the relationships between divinity and humanity, Father and Son, Virgin Mother and Child, Redeemer and believer. The icon, wherein the Word (*logos*, that is, the ideal concept; in our case the political collective) takes on flesh, provides direct, experiential access to these enigmatic relationships. (4-5)

In fact, the spirit/flesh distinction plays no role in the development of *Sunni Fiqh al siyash al shariah*. In Islam the flesh remained temporal and those who occupy the flesh are bound by the *Qur'an* and the *Sunna* as the expressions of God. But neither the *Qur'an* nor the *Sunna* speak directly to the Muslim subject. They are historically expressions of the learned experts, the *Ulama* who this dissertation argues are *Ulu Al Amr*. Moreover, the absence of and prohibition against icons forced temporal power in Islam to remain under *Sharia*, depriving them of a legitimate authority who spoke and acted on behalf of the divine. While the Christian *nomos* as Buck-Morss argues “is virtual only: Paul’s *nomos* rules the realm of the spirit, leaving the material world unchanged. Obedience to the Roman imperial order is still binding; at the same time the term *oikonomia*, deployed in the spiritual realm, reasserts its law-preserving function by commanding the obedience of the ‘new man’ (Paul’s repeated term) to live according to Christianity’s predestined plan” (6). Applying *oikonomia* as a quality of temporal power produces this theoretical error. Academic scholarship overlooks the historical dilemma of temporal power in Islam, namely how legitimacy and obedience can be extracted from the Muslim subject or the *Umma* without the appeal to supernatural justification. The answer has been to look for a legal source with the authority to bestow legitimacy on the acts of temporal

power; hence *Ulu Al Amr*. It is important to note that the formation of the *Ulu Al Amr* was gradual and became central as the Companions of the Prophet died.

The consequences of the local quality of *Sunni* temporal authority are immense, and they require a political theorist to redefine political concepts such as freedom, tyranny, equality, and autonomy when investigating Islamic legal and political thought. More precisely, discussions of human rights and subjectivities must account for this quality of authority in Islam and the limits on the state that are embedded in *Sharia* and the role of *Ulu Al Amr's* authority as a legitimating function. Academic scholarship on political Islam usually claims that it is a return to pure forms of government from the founding period of Islam and the subsequent strict adherence to theological texts. This academic literature overlooks the rejection of movements associated with political Islam to orthodoxy. The logical context of this claim challenges the establishment of *Ulu Al Amr's* authority, its part as the new *Ulu Al Amr* in the modern state bureaucracy. In other words, political Islam cannot be reduced to a purportedly fundamentalist movement because, in fact, it does not adhere to orthodoxy. On the contrary, it challenges orthodoxy by appealing to new interpretations of the law that may contradict *Fiqh al siyasah shariah*. In doing so, political Islam claims to have the correct interpretation of the law. Consequently, it claims that it is the legitimate *Ulu Al Amr* with the proper authority to overthrow temporal power. This claim, which will be thoroughly investigated in chapter five, finds its expression in the sovereignty of the modern state.

It is important to restate that none of the legal opinions provided by Al-Massari established *Ijma* in *Fiqh siyasah al shariah*. A plurality of legal opinions has existed, and which opinion gains prominence in which historical period depends upon which particular school of *Fiqh* gains dominance via the support of temporal power. Thus, it is important to examine the

role of the temporal powers, which have historically assumed the enforcement role in the *Ulama*'s legal rulings. It is clear that the *Khalifa*, or temporal power, has a stake in advancing the legal opinions that serves its interest and confers legitimacy on its actions. The development of *Fiqh siyasah al shariah* has historically depended on the interaction of both institutions. It has emphasized obedience to temporal power by producing legal opinions at particular moments that decisively outlawed resistance to dynastic corruption as chapter four demonstrates. This emphasis on obedience to temporal power was particularly the case during historical periods when obedience to the *Khalifa* was treated as an article of faith, and any form of resistance or change was labeled an apostasy. Yet in the *Qur'an* and *Sunna* there is no reference to apostasy as such because the sacred texts and traditions of Islam have no reference to what type of government should be established or clear references to who exercises temporal power and how it is to be established. Historically, Muslims placed their trust in the *Ulu Al Amr* as custodian of the law who looked out for the good of the community by placing checks on temporal power. If *Ulu Al Amr* violated the trust of the *Umma*, other legal scholars would challenge and correct them. A good example is the Abbasid Caliphate's use of legal opinions to overthrow the Umayyad dynasty. Al Hasan Al Basri (642–728 CE) (see chapter four) and other legal scholars who challenged the corruption of temporal power and the establishment *Ulu Al Amr* provided early legal justification for the overthrow of the Umayyad dynasty. Therefore, *Ulu Al Amr* never constituted a body that was considered to be a unified church and never had a monopoly on the meaning of the primary sources. In fact, *Shia* Islam views the rule of these dynastic empires as illegitimate and a corruption of the faith. The following section will briefly discuss the *Shia* account of *Ulu Al Amr*, how they view the legal status of *Ulu Al Amr*, and the nature of obedience to authority.

*Shia* Islam holds that after the death of the Prophet the issue of who governed the *Umma* was the greatest of all concerns. According to *Imam* Abu Ja'far ibn Ali al Baqir (676-733 CE) the most important matter of faith in Islam was obedience to the *Imam* of the Muslim community (Al Fahery 1986, 7).<sup>35</sup> Unlike *Sunni* Islam, the nature of *Siyasah al shariah* in *Shia* Islam is divine, and temporal power resides in both the *Imam*, who is to be obeyed, and the temporal ruler. *Sunni* Islam considers the post of temporal power or *Khilafa* as a historical consequence derived from the principle of *Maslaha*. *Shia* Islam has a divine Imam. Al Fahrey explains the *Shia Fiqh* views on *Ulu Al Amr* as follow:

*Ulu Al Amr* are those in charge of the affairs of the Muslim community and they are the leaders of the *Umma*. According to verse 4:59 obeying their command is incumbent upon all Muslims since the verse requires obedience to them, which is equal in status to obedience to the Prophet, which in turn is derived from obedience to God. But this verse did not clarify a number of points and left this task for *Hadiths* to provide the details of its meaning. The first is the importance of knowing who *Ulu Al Amr* is in any historical period so that Muslims will obey and be ruled by rulers in accordance to the *Qur'anic* verse. This command is clear from the *Hadith* of Ali Hamza who said: "Abu Ja'far said that those who worship *Allah* and those who do not know *Allah* are those who worship in vain. I said, so what is the knowledge of *Allah*? He said: to believe in *Allah* and the Prophet, and to take Ali and to take the Imams after him as your guidance and to be on their side for the sake of *Allah*. And to stand against their enemy for the sake of *Allah*; only then will the knowledge of God be achieved. (6-11)<sup>36</sup>

The question of *Ulu Al Amr* in *Shia* Islam has several consequences that separate it from the *Sunni* sect of Islam: First, it was the cause of the split among Muslims in the founding period that

الأحاديث الأخر منها ما في الكافي عن أبي حمزة قال: قال لي أبو جعفر عليه السلام: إنما يعبد الله من يعرف الله، وأما من لا يعرف الله فإنما يعبد الله هكذا ضلالاً. قلت: جعلت فداك فما معرفة الله؟ قال تصديق الله عز وجل وتصديق رسوله ص وموالاته علي و الانتمام به وبأمة الهدى والبراءة الى الله عز وجل

المراد من الامر في أولي الامر: تستمد ولاية الامر شرعيتها من الآية الكريمة: (أطيعوا الله وأطيعوا الرسول وأولي الامر منكم) أولي الامر ليس الامر في مقابل النهي، كما أن الامر بمعنى الشيء أيضاً لم يكن مراداً قطعاً، بل الأمر هنا بمعنى الشأن الراجح إلى أمور الدين. الدنيا، وأولو الأمر هم الذين يتولون أمور المسلمين في هذه الشؤون ويقومون بزعامتهم بأمر من الله سبحانه، وبموجب هذه الآية يتوجب على جميع المسلمين الانقياد لأولي الامر بعد أن قرنت طاعتهم بطاعة رسول الله التي تنفرد من طاعة الله ضرورة معرفة ولي الامر: النقطة الأولى في هذا الميدان هي ضرورة معرفة ولي الامر في كل زمان ليلتزم المؤمنون طاعته وينقادوا لحكمه تنفيذاً لمضمون الآية الكريمة التي انطلق منها البحث، وهذه الضرورة مقررة في الحديث الشريف المتواتر ((من مات ولم يعرف إمام زمانه مات ميتة جاهلية)) وفي الأحاديث الأخر منها في الكافي عن أبي حمزة قال: قال لي أبو جعفر عليه السلام: إنما يعبد الله من يعرف الله، وأما من لا يعرف الله فإنما يعبد الله هكذا ضلالاً. قلت: جعلت فداك فما معرفة الله؟ قال تصديق الله عز وجل وتصديق رسوله ص وموالاته علي و الانتمام به وبأمة الهدى والبراءة الى الله عز وجل

historians call the First Civil War. The split was over the question of who was to govern the *Umma* and what would the nature of the state and government be. Consequently, there is no distinction between *Ulu Al Amr*'s authority and temporal power in the *Fiqh* of *Shia* Islam. Second, in *Shia* Islam the Imam and his offspring are the *Ulu Al Amr* of a given historical period, and therefore membership is based on the lineage of the Prophet's House and not on knowledge. Third, the issue of *Imamates* in *Shia Fiqh* is a sacred matter and obedience a religious duty. For the *Shia* obedience to the *Imam* and government is a matter faith and not derived from independent judgment based on the principle of *Maslaha*. As a result, the question of who is to govern and be obeyed was a contentious issue since the founding of the Islamic state. The contemporary divide in the Muslim community, or *Umma*, between *Sunna* and *Shia* is evidence of how deep the split was in the community over issues of authority, obedience, and temporal power in the early period of Islam. It is clear that during its founding prominent members of the community were obliged to serve the community according to their proximity to the Prophet.

The following section addresses the *Sunni* legal term *Ahl Al Hall Wal-Aqd*, which is mentioned in Al-Massari's sixth legal opinion. The legal term *Ahl Al Hall Wal-Aqd* appeared around the third century in history of Islam and was a substitute for the term *Ulu Al Amr*. The aim here to investigate the contractual language of this legal term in order to demonstrate the role *Ulu Al Amr* had in marginalizing the *Umma* or Muslims in choosing their rulers and participating in the political matters of the state. The evolution of *Ahl Al Hall Wal-Aqd* is indicative of the legal role that *Ulu Al Amr* had in addressing social and economic changes.

The legal term of *Ahl Al Hall Wal-Aqd* has characteristics similar to *Ulu Al Amr*, but according to Al Tareeqy "the term *Ahl Al Hall Wal-Aqd* historically appeared and developed late

in the history of Islam” (17).<sup>37</sup> He further states that “similar to many legal concepts in jurisprudence, the historical origin of the term is vague, and once it appeared it became a popular term used frequently by the *Ulama*” (Al Tareeqy 1998, 17).<sup>38</sup> Legally, jurists regard the term *Ahl Al Hall Wal-Aqd* as the product of *Ijtihad* since it does not appear in the *Qur'an* or the *Sunna*.

The appearance of *Ahl Al Hall Wal-Aqd* demonstrates the scope of the *Ulu Al Amr*'s authority, which gives legal legitimacy to newly invented terms, categories, and concepts that later become the legitimate orthodoxy and an essential part of *Fiqh*. This type of authority is something that temporal power could not achieve without *Ulu Al Amr* or *Ahl Al Hall Wal-Aqd*. Power and violence have no authority and alone cannot give legitimacy to government, which Alyas Ahmed demonstrates by arguing that “in Islam, we already know that law is prior to the state, and that there is a perfect sovereignty of Law which cannot be changed by human hand” (481). This primary feature of Islamic juridical and political writings stands in contrast to the modern conception of the state under international law as it is represented in European sovereignty with its monopoly of violence in a given territory. Alyas Ahmed has in mind the clear junctions in the *Qur'an* and *Sunna* and not *Siyasah al shariah*, which is the area that is open to *Ijtihad* and *Ijma* since the primary sources are mute regarding how they are to be regulated. Consequently, the scope of *Siyasah al shariah* is limited only when it runs against clear injunctions in the *Qur'an* and *Sunna*, and even then those injunctions may be violated in some circumstances under the principle of *Maslaha*.

<sup>37</sup> و هو اصطلاح ظهر متقدماً، وإن كان لم يرد في الشرع بهذا اللفظ، كالألفاظ: الإسلام، والإيمان، والصلاة والعلماء وأولي الأمر ونحو ذلك

<sup>38</sup> ولكنه اصطلاح نشأ من قبل العلماء، شأنه شأن كثير من المصطلحات مثل: أصول الفقه، والأصوليين والنحو والنحاة، والاحتساب وأهل الحسبة وأهل الاجتهاد وأهل الإجماع... وهكذا وقد استعمله طائفتان من أهل العلم: الأصوليين وأهل الفقه السياسي، وعنهم أخذ كثير من أهل الاختصاصات في العلوم الأخرى. ولقد يصعب على الباحث مهما بذل من جهد أن يصل إلى نقطة البدء في استعمال هذا المصطلح من حيث التاريخ

According to Al Tareeqy, “legal disagreements among scholars about the issue of membership of *Ahl Al Hall Wal-Aqd* and who exactly is to be included and excluded in it have a long history. But all legal opinions incorporated what commonly came under the purview of the *Ulama*, the Companions of the Prophet, and the two Guided Caliphs who succeeded the Prophet in ruling the *Umma*” (Al Tareeqy 1998, 22).<sup>39</sup> This lack of consensus is legally similar to the one discussed earlier about *Ulu Al Amr*. Moreover, like *Ulu Al Amr*, the linguistic root of *Ahl Al Hall Wal-Aqd* is similarly vague. These differences over who precisely is to be included and excluded among *Ahl Al Hall Wal-Aqd* are due to the absence of *Ijma* on the subject matter. As a result, those who are in authority maintain their status based on *Ijtihad* and based on injunctions in the *Qur'an* or the *Sunna*. Thus, the historical evolution of *Ulu Al Amr* to *Ahl Al Hall Wal-Aqd* indicates a response to social and political changes that indicate the success of temporal power to control the class of *Ulu Al Amr* or *Ahl Al Hall Wal-Aqd*.

Linguistically, the first word of the term, *Ahl*, refers to those who have the authority to decide a matter. The rest of the term combines two words *Al Hall* (to cancel) and *Al Aqd* (to contract). Both words in the term intended to refer to a contract by regarding general matters including *Syasa* (politics), logistics, the *Sharia* and the justice system...” (Al Tareeqy 1998, 26).<sup>40</sup> Linguistically the themes of commerce and contract are at the center of the meaning of the category. *Ahl Al Hall Wal-Aqd* divides the community into two sections. The first are those who are competent to enter into commerce and contracts. The second is the public which delegates

<sup>39</sup> وقد اختلف في المراد بهم على أقوال من أشهرها : ١- أنهم الأمراء، و روجه الإمام الطبري. و قال النووي: هو قول الجمهور السلف و الخلف. ٢- أنهم العلماء و به قال بعض السلف منهم: جابر بن عبد الله و الحسن البصري و النخعي و غيرهم. ٣- أنهم أصحاب محمد (ص) ٤- أنهم أبو بكر و عمر

و الحاصل : أن هذا اللفظ قد جمع بين أمرين ، العقد و الحل . و المراد : عقد نظام جماعة المسلمين في شؤونهم العامة، السياسية و الإدارية و <sup>40</sup> التشريعية و القضائية و نحوها ثم حل هذا



the power to enter in commerce and contract to *Ahl Al Hall Wal-Aqd*. Clearly, commerce here stands metaphorically for the industriousness that leads to the good life on earth and the reward of paradise in the afterlife.

Conceptually, according to Al Tareeqy, there are at least five legal opinions covering the concept of *Ahl Al Hall Wal-Aqd*:

First, they are the scholars who perform *Ijtihad*. The second, they are the *Ulama* and the leadership of the community and the elite. Third, they are those of honorable backgrounds and the elite. Fourth, they are the best of the community, who are trustworthy, and those entrusted with Muslim affairs. Fifth, they are *Ulu Al Amr* who are mentioned in verse 4:59 even though scholars historically disagreed on the meaning of the term in the verse.” (27-29)<sup>41</sup>

Al Tareeqy's list does not explain why the term *Ulu Al Amr* was replaced by *Ahl Al Hall Wal-Aqd*. Replacing terms did not solve the lack of *Ijma* and the legal vagueness of the concept. Yet, these five new legal opinions achieved two important goals: First, there must always be a body that commands and requires obedience, unlike the *Ulu Al Amr* in Al-Massari's fourth category, which allowed for the possibility of the *Umma* as the source of authority. The second, there is no reference to the *Umma* at all as a source of authority, which eliminates any possibility for the public to be included among *Ahl Al Hall Wal-Aqd*. Effectively, this legal demarcation creates a permanent division between two classes of people; the first is a class that is legally permitted to enter into contracts with temporal power and the general public who are out of this legal relationship. Effectively, establishing a class structure where one class decides “the good” of the *Umma* and the other is to obey the outcome.

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و باستقراء كلام أهل العلم و آرائهم نجد أن ثمة عدة إتجاهات في المراد بهم : الاتجاه الأول : أنهم العلماء من أهل الاجتهاد . الاتجاه الثاني : أنهم العلماء و الرؤساء و وجوه الناس الاتجاه الثالث : أنهم الأشراف و الأعيان . الاتجاه الرابع : أنهم أفاضل المسلمين المؤتمنون على أمر المسلمين . الاتجاه الخامس : أنهم اولو الامر المذكورون في قوله سبحانه ( يا أيها الذين آمنوا أطيعوا الله و أطيعوا الرسول و أولي الامر منكم ) و اذا كان العلماء قد اختلفوا في تفسير المراد بأولي الامر في الآية الكريمة، فإن هذا الرأي يفيد أن كلا من الطائفتين ( أعني أولي الأمر، و أهل الحل و العقد ) يمكن أن يفسر أحدهما بالأخرى

The language of the *Qur'an*, Islam's ultimate legal source, is the idiom of commerce and contracts. I am arguing the *Qur'an*'s language incorporates three common themes based on commerce and the freedom of contract: the first is that the *Qur'an* speaks directly to Muslims and not to a particular person or a group that mediates between God and the *Umma*; instead, its language directly addresses Muslims, both individually and collectively, to choose the right religion and to act accordingly without reference to *Ulu Al Amr* or *Ahl Al Hall Wal-Aqd*. This direct appeal to Muslims effectively removes the authority of any group from obstructing the duty of Muslims to bring about the good and forbid evil. The second is that because Meccan society was a mercantile culture the language of the *Qur'an* is largely expressed metaphorically in the language of commerce. It is a contract between the Prophet and God that provides rewards in the Hereafter in exchange for following religion rightly. According to the *Qur'an*, this contract requires Muslims to act according to the faith, and on Judgment Day deeds are judged and put on a scale to assess a fulfillment of obligations. Thus, to establish a legal category such as *Ahl Al Hall Wal-Aqd* is to establish a class that is able to enter into or forgive *Aqd* (contract), but most important the class acts as a delegate on behalf of the community thus denying members of the *Umma* the freedom to deliberate and engage directly in the process of establishing political agreements or *Bay'a*. This legal view directly changed the nature of obedience and authority in Islam by establishing two classes: one of free and mature Muslims who can engage in *Bay'a* and another, a majority, who are excluded from the process. The legal discourse produced to defend the new categorization is not to be found anywhere in the *Qur'an*. On the contrary, there is ample evidence in the *Qur'an* that all Muslims, including slaves, should give *Bay'a*—enter into contract with God and the Prophet by a handshake—and in entering the faith defend it. The following are examples from *Qur'an* that speak to the claim:

Indeed, Allah has purchased from the believers their lives and their properties [in exchange] for that they will have Paradise. They fight in the cause of Allah , so they kill and are killed. [It is] a true promise [binding] upon Him in the Torah and the Gospel and the Qur'an. And who is truer to his covenant than Allah? So rejoice in your transaction which you have contracted. And it is that which is the great attainment. 9:111

How wretched is that for which they sold themselves - that they would disbelieve in what Allah has revealed through [their] outrage that Allah would send down His favor upon whom He wills from among His servants. So they returned having [earned] wrath upon wrath. And for the disbelievers is a humiliating punishment. 2:90

[They are] those who have been evicted from their homes without right - only because they say, "Our Lord is Allah." And were it not that Allah checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned. And Allah will surely support those who support Him. Indeed, Allah is Powerful and Exalted in Might. 22:4

[O Muhammad], tell My servants who have believed to establish prayer and spend from what We have provided them, secretly and publicly, before a Day comes in which there will be no exchange, nor any friendships. 14:31

The third and most important commercial theme in the *Qur'an* is the reference to the literal scale upon which human deeds will be weighed and the fate of humanity, including Muslims, will be determined on the Day of Judgment. Unlike Christians, Muslims cannot be saved by the recognition of the divinity of God alone; action guided by belief is what determines faith. When a person cannot act, heartfelt intentions count. The duty to engage in direct action falls on the community and cannot be delegated to a class of people who will deliberate and act on behalf of the *Umma*. Thus, individual action throughout a person's life is transformed into weighed units of good and evil to be measured against one another. Consequently, the individual determines his fate. The following verses in the *Qur'an* support this point:

And O my people, give full measure and weight in justice and do not deprive the people of their due and do not commit abuse on the earth, spreading corruption. 11:85

We have already sent Our messengers with clear evidence and sent down with them the Scripture and the balance that the people may maintain [their affairs] in justice. And We sent down iron, wherein is great military might and benefits for the people, and so that Allah may make evident

those who support Him and His messengers unseen. Indeed, Allah is Powerful and Exalted in Might. 57:25

And O my people, give full measure and weight in justice and do not deprive the people of their due and do not commit abuse on the earth, spreading corruption. 11:85

The Most Merciful, Taught the Qur'an, Created man, [And] taught him eloquence. The sun and the moon [move] by precise calculation, And the stars and trees prostrate. And the heaven He raised and imposed the balance. That you not transgress within the balance. And establish weight in justice and do not make deficient the balance. 55: 1-9

Therefore, the scope of authority of *Ulu Al Amr* or *Ahl Al Hall Wal-Aqd* is limited by clear injunctions in the *Qur'an* and the *Sunna*, and as such Muslims are held accountable on the Day of Judgment for obedience contrary to the *Sharia*. Yet, as mentioned before in the realm of *Siyasah al shariah*, the scope of authority is much more extensive. Thus, in an effort to increase their scope of authority, and in accordance with the *Qur'an* and *Sunna*, *Ahl Al Hall Wal-Aqd* historically use *Fiqh* to emphasize obedience to authority over the duty of the Muslim subject to “ordain the good and forbid evil.”<sup>42</sup> For example, the *Bay'a* became limited to the *Ulama*, the leadership of the community, and those who enjoy an elite status among the community. Consequently, resistance to the ruler or temporal power was outlawed even if the ruler is corrupt. Unless a clear apostasy is admitted by the ruler or temporal power, Muslims are to obey and not to resist. This argument is justified by a *Hadith* that a corrupt ruler is punishment from God, and Muslims are to scrutinize and correct their heart and action instead of resistance to corrupt rule. A good contemporary example is al-Bouti's use of this exact argument to justify his support of Bashar Al Assad's regime and simultaneously outlaw efforts to topple him from power (Mourtada and Gladstone, 2013).

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<sup>42</sup> "الأمر بالمعروف والنهي عن المنكر"

Again, *Ahl Al Hall Wal-Aqd*'s use of Islamic legal and political writings puts in question academic literature's reliance on "fundamentalism" in addressing the social and political phenomena of political Islam. The term *Ahl Al Hall Wal-Aqd* never appeared in the primary sources, yet the scope of their authority was established by *Fiqh*. Al Tareeqy argues that "the term *Ahl Al Hall Wal-Aqd* was not mentioned in the *Qur'an* and the *Sunna* but was developed by the *Ulama* as many other legal terms that are foundational such as those entitled to engage in *Ijtihad*, *Ijma*, and other legal terms used in the *Sharia*" (32).<sup>43</sup> As a result, there is strong evidence for arguing that historically temporal power had an overwhelming interest in controlling the legal process in a matter that was most advantageous to temporal power. In most aspects of life the *Ulu Al Amr* or *Ahl Al Hall Wal-Aqd* are legally limited by *Sharia* when a legal matter is clear, for example in the areas of the penal code, inheritance, family law, property and commerce. But in the area of *Siyasah al shariah*, the matter is quite different since "All Muslim *Sunni* thinking currents including its prominent figures agree the "state" is not a pillar or foundation of the faith ...." (Imarah 1988, 208).<sup>44</sup> Therefore, the omission of reference to government and state in the primary sources increases *Ahl Al Hall Wal-Aqd*'s scope of authority and in the area of *Siyasah al shariah* "since the principle of the sovereignty of the *Sharia* is aimed to govern the ruler and the ruled alike in accordance to both God's Law. Accordingly, administrative laws are limited by the *Sharia* and nothing is legislated that would contradict God's Law, which is precisely the meaning of the sovereignty of God" (Mufti and Wakeel 1991,

و اذا عرفنا ان هذا المصطلح لم يرد بهذا اللفظ في القرآن و لا في السنة، و إنما هو من وضع العلماء، شأنه شأن الكثير من المصطلحات التي تواضع<sup>43</sup> عليها أهل الاختصاصات العلمية، مثل أهل الاجتهاد، و أهل الإجماع و أهل الحسبة و الأصوليين و النحويين و الأدباء الى غير ذلك من المصطلحات

كل تيارات الفكر الاسلامي السنية و أعلام علمائها مجمعون على أن ( الدولة ) ليست ( ركناً ) و لا ( أصلاً ) من أركان الدين و أصوله ... فهذه<sup>44</sup> الأركان و الأصول قد حددها

29).<sup>45</sup> This quote is a testament of the authority *Ulu Al Amr* as the experts who function as a monitoring body or a check on the acts of temporal power. Therefore, this dissertation argues that this check of *Ulu Al Amr* on temporal power is the most important character and theme in Islamic legal and political writings and to understand the political and social consequences of this feature is to understand the logic around which the entire edifice is organized.

Dynastic rule in Islam was secured through a restricting of *Bay'a* to a small group of individuals and marginalizing the public. Thus it is in the interest of temporal power to control the process and ensure an outcome that increases its power and control over *Ulu Al Amr*. For temporal power to control the process of inclusion/exclusion in the matters of *Al siyasah* and the *Imamah* is to ensure legitimacy to arbitrary power. The institutionalization of *Ulu Al Amr* and the faith by temporal powers is precisely the point over which modernist reformers—Jamal ad-Din al-Afghani (1838/1839 – 1897) and Mohammed Abduh (1849 -1905) and more recent figures like Hasan al-Banna (1906 – 1949) and Sayyed Qutb (1906 – 1966)—object. They all agree that the demise of the Islamic Caliphate and the spread of ignorance among Muslims are due to the *Umma*'s lack of control over temporal power, which governs arbitrarily with the blessing of the institutionalized religious establishment, the state *Ulama*. The political figures mentioned above demanded all Muslims be included in *Bay'a* and hoped they would be the source of authority they thought had existed during the early founding period. These figures wanted to restore the role of the *Umma*, have it included among *Ahl Al Hall Wal-Aqd*, and have it participate and deliberate in *Siyasah al shar'iyyah* according to the principle of *Maslaha* (the good of the community). Furthermore, they all agree that in the period of Ottoman rule the closed

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<sup>45</sup> و يهدف مبدأ سيادة الشرع إلى إقرار التزام الحاكم والمحكوم بشرع الله سبحانه وتعالى و إلى انبثاق التشريعات من الشريعة الإسلامية ، و عدم إحداث تشريعات أو ممارسات تخالف الشرع. و ذلك أساس قاعدة الحاكمية لله . فالقانون المطبق في الدولة

membership of *Ulu Al Amr* via a Grand *Mufti* under temporal power would dampen reform attempts. These political figures were the new *Ulu Al Amr*, as chapter four demonstrates, who would challenge the establishment *Ulu Al Amr* over their authority to hold temporal power and their accountability to the *Umma* and *Sharia*.

In sum, historically, the legal category of *Ahl Al Hall Wal-Aqd* appears to include those who have social and political influence and status in society, but it has effectively left out the public or *Umma*. Those with wealth, political influence, and most important, military might, are in charge of determining the good of the community and alone able to participate in the process of *Shura*. The average member of the *Umma* is secondary to these groups, and whatever the outcome of the *Shura* of the *Ahl Al Hall Wal-Aqd* the *Umma* expects to obey its mandates.

The outcome of this legal change effectively introduced a new type of authority and obedience into the legal system of *Sharia*. Nevertheless, the legal practice of *Ijma* is conducted only by the *Ulama* who are members of *Ahl Al Hall Wal-Aqd*, and due to the legal knowledge they possess they are able to participate in this process alone. And it was the *Ulama* that actually established this new legal category, even though it is vague and historically did not achieve *Ijma*. Thus, it can be maintained that the *Ulama* are the class that constitutes the essential element for any legal legitimacy. They are the only legal class that remained unchanged in both categories of *Ulu Al Amr* and *Ahl Al Hall Wal-Aqd*. In fact, they are the only members in both legal categories that possess the legal authority to legitimize their own practices and legal status. They have the authority to include or exclude other social and political sectors in the *Umma*. Most important, is the ability of the members of *Ulu Al Amr* and *Ahl Al Hall Wal-Aqd*, through the principle of *Ijma* the *Ulama*, to label actions that they consider illegal as *Bid'ah* (innovation) and therefore label

them as evil and stoppable. Yet, due to a lack of legal consensus or *Ijma*, neither *Ulu Al Amr* nor *Ahl Al Hall Wal-Aqd* could establish themselves as clear legal categories.

The following section investigates the relationship between temporal power and *Ulu Al Amr*. Historically, temporal power in the Islamic political system took different legal labels: among them *Khalifa*, *Imam*, *Amir*, and *Sultan*. To understand the significance of these labels and how temporal power is able to govern legitimately, we look to *Ulu Al Amr* legal opinions and historical interaction between them and temporal power. For example, the legal significance of “the *Khalifa* or *Imam* was historically a persistent source of major conflicts due to substantive disagreements among Muslim scholars both in the past and the present” (Nowar 1996, 7).<sup>46</sup> The source of disagreement can be divided into the following categories: “the method of selecting of the *Khalifa* or *Imam* and the duties and obligations of the post. The source of discord among *Ulu Al Amr* is over the precise characteristics of the *Khalifa* or *Imam*” (Nowar 1996, 7).<sup>47</sup> “Al-Shahristani (1086–1153 CE) argued that the greatest source of disagreement that divided Muslims was over the method of the selection of the *Khalifa* or *Imam*.” (Nowar 1996, 7).<sup>48</sup> This disagreement is because neither the *Qur'an* nor the *Sunna* addresses such legal matters practically. They leave the question of the *Khalifa*'s character open to *Al siyasah al shar'iyyah*, which evolves according to social and political change. Consequently, temporal power in Islam

<sup>46</sup> موضوع الخلافة أو الإمامة موضوع قديم متشعب ، كثر الكلام و الجدل فيه بين العلماء القدامى و الحديثين و باعتباره المشكلة الرئيسية الكبرى التي دار عليها البحث السياسي في الاسلام خلال العصور المختلفة و باعتباره الموضوع الرئيسي للنظام السياسي في الاسلام و في الدولة الإسلامية و قد شهدت العصور الإسلامية مدى اختلاف الفقهاء حول هذا الموضوع

<sup>47</sup> ان خلافتهم هذا يمثل أعظم خلاف فكري في الاسلام

<sup>48</sup> و في ذلك يقول العلامة الشهرستاني و أعظم خلاف بين الأمة خلاف الإمامة ، اذا ما سل سيف في الاسلام على قاعدة دينية مثل ما سل الإمامة في كل زمان و مكان



is a legal category without a clear historical definition settled by practice and legal precedents. The precedents that developed in the history of *Fiqh Al siyasah al shariah* in accordance to special social and political circumstances are then treated as foundational legal opinions for future generations to follow. These legal opinions, which legitimize new practices, do not contradict a clear injunction in the *Qur'an* or *Sunna*, which confirms that “historically the Prophet did not clarify the matters and methods of the *Khilafa* or *Imamah* and died without nominating any person to occupy his legal position” (Nowar 1996, 7).<sup>49</sup> This understanding is consistent with the *Sunni Fiqh*, which affirms that “the Prophet did not discuss the standards or qualifications for such a post or a method for Muslims to choose this post” (Nowar 1996, 7-8).<sup>50</sup> The matter was left for the *Umma* to regulate, a task which *Ulu Al Amr* assigned to themselves.

Because matters of obedience and governance were not determined by the *Quran* and the *Sunna*, historical circumstances gave rise to *Ulu Al Amr* who instituted the expert authority over legal texts and a particular type of obedience from the *Umma*. Historically, *Ulu Al Amr* is the legal body that legitimized and set the qualifications and limits for the post of temporal power to rule the *Umma*. Consequently, temporal power derived its authority from *Ulu Al Amr* and as a consequence lacked legitimacy of its own. What legitimacy accrued to it came from the consent of *Ulu Al Amr* or at other times was extracted through force and violence. Thus, the lack of definition or qualification in the original sources of temporal power is evidence that temporal power or the *Khalifa* was not intended to be a source of law. This is the opposite in character of

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تاريخيا ان الرسول صلى الله عليه وسلم لم يبيّن امر الخلافة او الإمامة بوضوح فقد توفي عليه الصلاة والسلام دون ان يعين احد لتولي إمامة او خلافة المسلمين ، كما انه لم يترك نصا مكتوبا و لم يبيّن الطريقة التي يتم فيها الاستخلاف

و لم يحدد الشروط التي يجب ان تتوفر في الحاكم و غيرها من الأمور بالعين او الوصف و إنما أوضح القواعد العامة و بين المثل الأخلاقية و ترك الامر شورى بين المسلمين

the type of sovereign power that had historically developed in Europe where “for long time, one of the characteristic privileges of sovereign power was the right to decide life and death. In a formal sense, it derived no doubt from ancient *patria potestas* that granted the father of the Roman family the right to ‘dispose’ of the life of his children and his slaves; just as he had given them life, so he could take it away” (Foucault 1978, 135). Conversely, temporal power’s function is to best execute the laws in accordance with *Sharia* and through the process of the *Shura* of *Ulu Al Amr* and *Ahl Al Hall Wal-Aqd*. Moreover, who is qualified for temporal power and how he is selected increased the scope of authority of *Ulu Al Amr* through the legal practice of *Ijma*. Temporal power in Islamic legal and political writings was never the source of the law, the legal source of life and death.

Scholars have argued that the *Ulu Al Amr*’s disagreement over the post of the *Khalifa* is important for two reasons: Al Mawardi (972-1058 CE), among others legal scholars, contended that the legitimacy of the post is based on a rational foundation. Ibn Taymiyyah (1263-1328 CE) and a second group of scholars argued that temporal power is based on the law and not rational faculties (11). These different legal opinion demonstrate the scope of the authority of *Ulu Al Amr*, who are able to debate on foundational legal issues that are absent in the *Qur’an* and *Sunna* and give legitimacy to the temporal power rule over the *Umma* and demands its obedience.

The first opinion justifies temporal power via rational faculty and argues that “if it was not for the ruler, the people would live in chaos and negligence” (11). It is a deductive line of reasoning by the *Ulama* to arrive at a legally binding ruling that will be referenced by future legal scholars as a part of *Fiqh*. This process is possible because *Ijma* on the subject matter has never been achieved. This lack of consensus provides judges with the space and freedom to base

their opinions on the circumstances that they are facing. Thus, according to the first opinion, government is necessary for the purpose of executing *Sharia*. Consequently, the form and nature of government is secondary to its function. The Caliphate in this sense is a tool to execute the law that has no theological character. As such, the Caliphate is based on a rational justification absent of religious duty.

While the second opinion is legally justified based on “the obligation where temporal power is trusted with guarding and implementing *Sharia*; consequently, the *Khilafa* is a duty that the *Sharia* requires Muslims to create” (Nowar 1996, 10).<sup>51</sup> Thus, it is *Sharia*, law that requires the establishment of a Caliphate free from lineages, clans, or statuses. In fact, the establishment of the Caliphate is a religious duty. According to Al-Turtushi (1059 – 1127 CE), “God required the community to create the post of *Khalifa* or *Sultan* on earth so that the strong will not oppress the weak and to correct injustice among Muslims” (Nowar 1996, 10).<sup>52</sup> Accordingly, temporal power was created out of necessity, the necessity to implement *Sharia*. Consequently, the legal bases that *Ulu Al Amr* use to justify temporal power is *Sharia*, which protects the weak from the strong. The rationalist jurists Ibn Khaldun (1332-1406 CE) argued that the *Khilafa* “according to rational views is the best method of achieving worldly benefits and shielding subjects from harm according to the *Sharia*” (Nowar 1996, 12).<sup>53</sup> The two legal opinions divided the *Ulama*, and neither achieved *Ijma* regarding the *Khalifa*’s requirements and obligations.

<sup>51</sup> ان اول اختصاص للخليفة او الامام هو حفظ الشرع و علي هذا الأساس كان تعيين او وجود الامام او الخليفة واجباً حتمياً علي الجماعة الاسلامية

<sup>52</sup> لهذا القول يقول الطرطوشي: ان الله تعالى أمتن علي الخلق بإقامة الخليفة او السلطان علي الارض، ولولا ان الله تعالى أقام السلطان في الارض يرفع القوي عن الضعيف و ينصف المظلوم من الظلم لأهلك ألقى الضعيف و تواتب الخلق بعضهم علي بعض فلا ينتظم لهم حال لا يستقر لهم قرار فتفسد الارض و من عليها

<sup>53</sup> و الخلافة علي حد قول ابن خلدون هي: حمل الكافة علي مقتضي النظر العقلي في جلب المصالح و دفع المضارة او حمل الكافة علي مقتضي النظر الشرعي في مصالحهم الاخيرة و الدنيوية الراجعة اليها

It is important at this point in the chapter to focus on the legal principle of *Ijma*. It is important to note that *Ijma* is the foundation of the authority of *Ulu Al Amr* and puts it at the apex of the state, which in turn furnishes temporal power with the legitimacy to govern. While establishment of temporal power and the state are not mentioned in the *Qur'an* and the *Sunna*; “the majority of Muslims regard the establishment of *Imamah* or *Khilafa* a religious duty” (Nowar 1996, 13).<sup>54</sup> In fact, it is the sudden death of the Prophet that necessitated the necessitated the invention of the post of *Khalifa*. This is a good example to demonstrate the historical role of *Ulu Al Amr*'s authority in making the establishment of *Imamah* of *Khilafa* a religious duty. *Ulu Al Amr* possesses legal legitimacy through *Ijma* to introduce innovative practices of temporal power in social, political, and religious matters. Once consensus is achieved regarding a new social, political, or religious issue, the legal opinion will become part of *Fiqh* and the legal justification for future similar circumstances. The *Ijma* is one of Islam's dominant sources of law, and its authority is only eclipsed by the *Qur'an* and *Sunna*. Accordingly, “*Ijma* during the time of the Companions of the Prophet was based on two legal foundations: first, that the *Ijma* is the third legal source after the *Qur'an* and the *Sunna*. Second, understanding *Sharia* necessitates knowledge of the *Ijma* of the *Fuqaha* that is established in the historical evolution of *Fiqh*” (Al Gassass 1983, 18).<sup>55</sup>

و فيما يتعلق بالخلافة كفرض او ركن فان مذهب أغلبية الأمة الإسلامية هو ان إقامة الإمامة او الخلافة الشرعية الصحيحة فرض أساسي من فروض الدين بل هو الفرض الأعظم الذي يتوقف عليه تنفيذ سائر الفروض لانه كما يقول احد الأئمة من أتم مصالح المسلمين و اعظم مقاصد الدين

و بعد هذا نستطيع القول ان الإجماع في عصر الصحابة و التابعين لم يكن له غير قاعدتين أصوليتين فقط: اولاً: ان الإجماع هو الدليل الثالث بعد القرآن و السنة. و ثانياً: انه لابد لانعقاد الإجماع من معرفة أقوال ذوي الرأي من الفقهاء

During the early period of Islam the legal concept and practice of *Ijma* had not been settled upon because the method and concept of *Ijma* were not found in the *Qur'an* or in *Sunna*. *Ijma* became the third source for law and has developed historically with the evolution of *Fiqh*. Al Gassass further provides a *Hadith* by the Prophet that legally supports the claim of the *Hadith* of Muaz “when the Prophet asked him: what would be your judgment, if you are asked to judge on a matter? Muaz answered, I will judge in accordance to the *Qur'an*, the *Sunna* and if the matter is not to be found there, then through my *Ijtihad* on the situation at hand in accordance to my opinion. The Prophet pat him on the chest and said, thank God who guided you the messenger of the Messenger to what pleases God” (Al Gassass 1983, 10).<sup>56</sup> This is evidence that the role and the authority of *Ulu Al Amr* developed in an evolutionary matter. More precisely, *Ulu Al Amr* were able to carve their legal role without clear reference to legal injunctions in the primary sources. *Ulu Al Amr* created *Ijma* and gave it legal importance after the *Qur'an* and the *Sunna*. Accordingly:

After the Prophet's death and during the early period of Islam, if a new situation occurred that required a legal justification, the Companions of the Prophet would primarily look in the *Qur'an* for an answer. If that is not possible, they will look in the *Hadith* and if they could not find an answer there (and here were the differences in opinion would appear) the *Khalifa* summoned the prominent members of the Companions and takes their *Shura* or advice. If the sum of the opinions achieve consensus, then *Ijma* is achieved and the matter becomes the legal ruling for future similar circumstances, but if they were unable to achieve consensus then the *Khalifa* makes the decision on their behalf. (Al Gassass 1983, 10)<sup>57</sup>

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و هذا ما ورد في حديث معاذ - رضي الله عنه - حين سأله رسول الله صلى الله عليه وسلم: كيف تقضي ان عرض لك قضاء، قال: اقضي بكتاب الله،<sup>56</sup> قال: فاعن لم يكن في كتاب الله، قال: فبسنة رسول الله صلى الله عليه وسلم، قال: فاعن لم يكن في سنة رسول الله صلى الله عليه وسلم، قال: اجتهد رأيي و لا الو. قال: فضرب صدري، فقال الحمد لله الذي وفق رسول الله صلى الله عليه وسلم لما يرضي

اما بعد وفاته صلى الله عليه وسلم - فكانت اذا وقعت الحادثة ينظرون في كتاب الله، فاعن لم يجدوا حكمها التمسوا ذلك في احداث الرسول، فان لم يجدوا ( و هنا يظهر الخلاف بطريقة الاستدلال مع العصر السابق ) جمع الخليفة كبار الصحابة و حفاظهم فيشاورهم في الامر، فإذا اتفقوا علي امر كان الرأي الجماعي هو المرجع، و الا حسم الخليفة الخلاف<sup>57</sup>

Accordingly, *Ijma* has a central role as a legal role in the evolution of the *Sharia*. This is precisely why “Muslim scholars had a great interest in *Ijma* by studying its origins and created subfields within the legal principle and studied and commented on the disagreement between the schools of *Fiqh* in its legal implications ... until *Ijma* became a legal branch of science in its own right” (Al Gassass 1983, 18).<sup>58</sup> The legal principle of *Ijma* is a testament to the scope of the authority of *Ulu Al Amr*, which historically solely developed *Sharia* under new political circumstances. Moreover, the careful treatment that *Ijma* historically received is due to its direct relationship to the foundations of the religion, thus, some *Ulama* charged *Bid’a* (innovation) for those who deny the authority of *Ijma* since it has the same weight as the *Qur’an* and the *Sunna*. Again, this is a clear example of the scope of authority that *Ulu Al Amr* has as the source of legitimacy which temporal power must rely on to govern and extract obedience from the *Umma*. It is *Ulu Al Amr* who decide the conditions of obedience and the legitimacy of the temporal power. Yet, *their* authority is not unlimited, and there are historical examples where they lost their authority over the community.

In conclusion, this chapter set out to demonstrate the historical legal changes in temporal power and *Ulu Al Amr* were a response to temporal and material conditions. The absence of theological injunctions in the *Qur’an* and the *Sunna* regarding a particular form of government or a type of temporal power over the *Umma* allowed for variations in forms of governments

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<sup>58</sup> و بعد هذا نستطيع القول ان اظهر علماء المسلمين اهتماما بالغا بالإجماع، فدرسوا أصوله و فرعوا مسأله المجمله، و مثلوا لكل مسأله، و احتجوا لها بما تيسر لهم من ادلة، و قارنها ذلك بمذاهب الفرق الاسلاميه، فعرضوا لخلافاتهم، و ما ينبغي عليها.... ثم وضعوا خلاصات هي زبدة جهدهم، فوصل إلينا الإجماع علما كاملا متكامل الإجماع في عصر الصحابة و التابعين لم يكن له غير قاعدتين أصوليتين فقط: اولا: ان الإجماع هو الدليل الثالث بعد القرآن و السنة. و ثانيا: انه لابد لانعقاد الإجماع من معرفة أقوال ذوي الرأي من الفقهاء

throughout the history of Islam. More important, *Ulu Al Amr* (as the only body mentioned in the *Qur'an* to command obedience from Muslims) established their authority over *Al siyash al shariah* which played a central role in the development of the body of *Fiqh al siyash al shariah*. This dissertation argues that the legal category of *Ulu Al Amr* is central in properly understanding and appreciating the local characteristic of *Sunni* Islamic political thought. Therefore, using the Western conception of sovereignty with its historical circumstance on *Sunni* Islamic legal and political history is faulty and misleading. Understanding the legal role of *Ulu Al Amr* provides coherence to the development of *Fiqh al siyash al shariah* and the central importance of the subject in the legitimacy of temporal power.

The significance of the role of *Ulu Al Amr* and the type of authority they have over *Fiqh al siyash al shariah* is twofold. First, temporal power in *Sunni* Islam possesses qualities different from European kings and monarchs and forms of legitimacy that bind and secure the obedience of the Christian subject to the temporal sword. Historically, temporal power in *Sunni* Islam remained subject to the authority of *Ulu Al Amr* from which it acquired legitimacy and the ability to secure obedience of the Muslim subject. In fact, the reliance on *Ulu Al Amr* for legitimacy is a permanent feature of the history of Muslim governments. The issue of legitimacy remains a problem for modern state governance. Even the founder of modern secular Turkey, Mustafa Kemal Atatürk created a department of theological affairs, whose existence ran contrary to the constitutional principles enshrined in the Turkish Constitution. This topic is discussed in chapter five, but for now my aim is to demonstrate that *Sunni* Islam has historically had a form of power that is different in structure than Western types of power. Power never generates legitimacy but

exists as force unless it is legitimate and proper according to *Sharia*. It is up to *Ulu Al Amr* to decide the exception when necessary. Temporal power in *Sunni* Islam lacks the Byzantium or the Roman quality that surrounds the monarch with a supernatural aura. This supernatural quality historically provided European monarchs a quality that is absent in *Sunni* Islam or Islam in general. Of course that does not mean that these qualities are historically are essential and unchanging. Such claims are reductionist and inaccurate. After all, natural law and the writings of St. Thomas Aquinas and other Christian thinkers including Luther and Calvin are testament to the limitations of obedience in Christian legal and political thought. Instead, what is intended here is to demonstrate that at the core of Western legal and political writings resides a generative frame of legitimacy that allows for the unfolding of politics and power in a coherent frame that may produce endless verities addressing time/space change. For example, Susan Buck-Morss explains a core theological quality that surrounds the sovereign. While the office historically changes from King to president to Volk or proletariat there are coherent qualities that are present with us today. She argues that:

More than the sum of merely empirical individuals of which Hobbes's Leviathan is composed, sovereignty is a transcendent category. The sovereign is an icon in the theological sense. He (or she) embodies an enigma—precisely the power of the collective to constitute itself. The sovereign figure as personification of the collective demonstrates the power of the visible image to close the circle between constituting and constituted power, explaining why even when the illegalities of an individual sovereign are exposed, the faith of the believer is still not shaken. As long as the circle appears closed, sovereign power remains intact; likewise, and conversely, as long as sovereign power remains intact, the circle appears closed. The closing of the circle demands a miracle, and the icon of the sovereign figure provides it. As a metaphysical figure, the sovereign connects the world of lived politics with the Platonic world of eternal forms. The legitimacy of political power continues even in secular modernity to maintain this ideal connection. In US political experience, “the American people” is the Platonic form that operates, an imaginary collective to which George W. Bush habitually appeals. In Hitler's Germany, it was the ethnic *Volk*. In the Soviet Union, the “proletariat” was no less a metaphysical concept: the Bolshevik Party ruled in the name of the proletariat as an ideal, not an empirical reality. (2-3)



The metaphysical aura that surrounds the European sovereign furnished the post with local European characteristics enabling it to play an essential role in the historical evolution of the state. While in *Sunni* Islam both the *Khalifa* and *Ulu Al Amr* are merely temporal individuals who are entrusted with a certain task to perform and likely to face resistance, if they overstep this task (see chapter five). Thus, to read the history of *Sunni* Islam as a history of state formation similar to European history, and to judge it according to the European qualities it lacks, is to overlook local context and qualities.

Furthermore, contrary to the idea that the sovereign represents the personification of the collective in the West, in Islam and particularly in *Sunni* Islam *Sharia* personifies the collective's adherence to monotheism. Miracles and the supernatural are not qualities that signify legitimate rule and obedience. Instead it is the law and *Ulu Al Amr*'s authority that furnish temporal power with legitimacy. Historically, it is possible to find examples in Islam of saints and figures who claimed supernatural powers, but the omnipresence of the law namely *Sharia* has stripped temporal power the ability to be the source of the law. In fact, no one, including *Ulu Al Amr*, can decide exceptions during crises by suspending *Sharia* as a contemporary sovereign might wish. Central to the *Sunni* legal system is this limitation, which academic scholars must take into account when making theoretical judgments about political Islam or Islam in general. Historically European sovereigns, as Jean B. Elshtain explains, possessed supernatural qualities that were central to the evolution of European legal system. She elaborates on Kantorowicz's and explains:

This personalization of earthly rule is documented masterfully in Ernest Kantorowicz's classic, *The King's Two Bodies*, as he unpacks the king's "twinned nature," embodied in mortal "natural" man and the office which perdures in perpetuity with another "body" holding that office when a previous fleshy monarch dies: the King is dead. Long live the King! The king comes to supplant the pope as the mediator between the earthly and the divine. Thus, in the embodied account, "the king appears the perfect *christomimetes* ... with regard to power, since his power is the same as

that of Christ... the One who is God and Anointed by nature, acts through his royal vicar who is 'God and Christ by Grace.' The will of the ruler brings the body to life. The head must "literally be an individual mind or will. Most clearly of all, supreme power we cannot be except...in one," else it would be supreme. (63)

These qualities in *Sunni* Islam were not bestowed on the members of the Prophet's family or his Companion. While many figures in Islam claimed Prophet-hood and supernatural qualities and tried to rule the Muslim *Umma* accordingly, few were able to achieve the minor and limited success of the Ahmadiyya movement that Mirza Ghulam Ahmad (1835–1908) founded during India's colonial period. But even in this case the legal characteristics of the European sovereign were alien to what Mirza claimed. More precisely, the supernatural quality is not an end in itself but an end for the purpose of the establishment of legal legitimacy that commands obedience and authority. Thus:

The state of superhuman 'absolute perfection' of this royal *persona ficta* is, so to speak, the result of a fiction within a fiction: it is inseparable from a peculiar aspect of corporational concepts, the corporation sole. Blackstone gives credit entirely to the Romans for having invented the idea of corporation-"but our laws have considerably refined and improved upon the invention, according to the usual genius of the English nation: particularly with regard to sole corporations, consisting of one person only, of which the Roman lawyers had no notion." That kind of man-made irreality-indeed, that strange construction of a human mind which finally becomes slave to its own fictions-we are normally more ready to find in the religious sphere than in the allegedly sober and realistic realms of law, politics, and constitution; and therefore Maitland's often caustic criticisms are understandable and appear fully justified. (Kantorowicz 1957, 5)

While, persons with supernatural qualities and miracles can be found in the *Qur'an*, Muslims view the *Qur'an* as the direct expression of God and it renders supernatural powers secondary in importance. In a sense, Islamic temporal power or the *Amir al-Mu'minin* (Commander of the Faithful or Leader of the Faithful), *Khalifa*, or *Sultan* remained weaker and more vulnerable in comparison to the divine qualities that European sovereign historically possessed. Consequently, to speak of a king that is sovereign in Islam is to confuse European history with the history of Islam. This confusion is quite important, and will become clearer in chapter, five when the

quality of the sovereign is transferred from the sovereign king to the sovereign state or the people.

In short, this condition, which is specific to *Sunni* Islam, necessitates the rise of *Ulu Al Amr* in a moment of history after the passage of the Companions of the Prophet. It plays a central role in the development of Islamic legal and political writings and practice. *Ulu Al Amr*, as will be demonstrated in chapter four, played a central role in legitimizing a dynastic monarchy that had no foundation in the *Qur'an* or the *Sunna*; an issue that was directly behind the two civil wars in the early history of Islam. The ripples of the violence they caused resulted from the questioning of the legitimacy of temporal power to rule over Muslims. It is today personified in the division of Muslims into *Sunni* and *Shia* Islam. As a response to these painful historical events *Ulu Al Amr* literally invented the two legal principles that guarantee dynastic rule in the history of Islam. This historical fact is important because it confirms the central arguments of the chapter, first, that *Ulu Al Amr* are legally the *Ulama*. Second, this chapter challenges the academic scholarship that applies the concept of fundamentalism to contemporary forms of political Islam that claim an adherence to theological orthodoxy. It asks how such a claim can be justified in the absence of a negative view of human nature or legal injunctions for a specific form of government or political institution. This important metaphysical/theological difference regarding human nature and government is discussed in detail in chapter three.

Secondly, it is important to note that *Ulu Al Amr* never achieved a sacred status. *Ulu Al Amr* are learned individuals whose authority is limited to the authority of experts in theological juridical matters. More precisely, even though *Ulu Al Amr* are legally “to decide the exception” they are revered for their expert knowledge without sacred or supernatural qualities attached to

their persons. Thus, the authority that *Ulu Al Amr* possesses is limited to expert authority and not a religious injunction. Only, when a legal matter achieves *Ijma* in a particular moment in history does that legal matter become binding on Muslims. The Second Civil War and the Umayyad's downfall is an example of the limitations of temporal power manipulation by the *Ulu Al Amr*. The authority of *Ulu Al Amr* is the topic of the following chapter, which will demonstrate the limits of the authority of *Ulu Al Amr*.

## CHAPTER III

### Authority and Obedience in *Sunni* Islam

In chapter one we established that European colonialism and the advent of the modern nation-state made the concept of sovereignty exogenous to *Sharia* because “sovereignty is a type of authority relationship” and competes in hierarchy and finality with other forms of authority (Lake 2003, 304). The debates were foremost about the primacy of sovereignty in relation to *Sharia*, and they appeared abruptly during the colonial period with the arrival of the modern European state. Modern *Fuqaha* and legal jurists in the nineteenth and twentieth centuries addressed sovereignty, but its lack of a connection to the early *Fiqh* in *Sunni* or *Shia* jurisprudence lends little merit to a historical investigation into Islamic legal and political writings. My aim is to avoid superimposing concepts that had historically developed in a specific spatial and temporal trajectory and later became hegemonically global in a context where the concepts do not merit similar attention.

This dissertation argues that the focus should instead be on the concept of authority that is endogenous to *Fiqh al siyash al shariah*. A clarification is necessary before embarking on the investigation at hand. This chapter does not advance the thesis that *Sunni* authority is entirely or exclusively local in character; on the contrary, *Sunni* authority shares universal qualities with other systems of meaning. For example, obedience and rule enforcement are universal in any collectivity. Yet, the question of why and how an agent is obeyed is embedded in a local context of political and social struggles. Accordingly, we must investigate the concept of authority in general, i.e., its universal character and then narrow the scope to what is relevant to the *Qur'an*, *Sunna*, and *Fiqh*. The aim here is not to investigate a concept only in relation to Western

sovereignty but also to understand the characteristics of Islamic authority that hold are both universal and local.

According to Lake, “authority can be generally defined in a social environment as X demands Y to adhere to X’s rules, and Y freely follows these rules” (Lake 2003, 304). This definition has similarities to “Dahl’s definition of power where A commands B to do something she would not do otherwise” (Lukes 1974, 11). Their similarity is the source of academic difficulty in clearly defining the two separate concepts. This dissertation will be no different, but the aim here is that once the act of obedience by the Muslim subject in relation to *Ulu Al Amr* is explained, the concept of authority in Islamic and legal writings will be mapped and constructed. *Ulu Al Amr*’s character and constitution, which have been subject to historical struggles for temporal power, have made defining its authority difficult.

Yet there are still certain universal theoretical characteristics of authority that are present in every collectivity and social and political settings. Lake argues that there are three hallmarks of authority that are related to this issue. First, “authority is based on free consent of the actor or a degree of consent. Second, authority involves an absence of force. And finally, authority is never unlimited or unrestrained” (Lake 2003, 304-05). These parameters distinguish the concepts of power and authority by avoiding their collapse into each other. The first characteristic of authority as free consent to authority accurately describes Muslims who voluntarily adhere to Islam and obey *Sharia* as an affirmation of faith. Accordingly, *Sharia* represents the moral standard of right and wrong with which the subject makes senses of her social and political environment. Furthermore, the question of force is settled in the *Qur’an*:

There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong. So whoever disbelieves in Taghut (transgressor) and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is Hearing and Knowing.  
2:256

Apostasy in Islam is not relevant here since apostasy by definition negates volunteerism and do not recognize authority. The third characteristic actually describes the limitation that *Ulu Al-Amr* had to address historically since Islam and “Muslims can understand transparently what they need to understand, how they need to act, to be saved” (Gould 2008, 12). Furthermore, “the absence of definitive interpretations breeds a certain tolerance, for example, among the four orthodox schools of law in Sunni Islam, because the differences do not matter” (Gould 2008, 12). Definitive interpretations in Islam do not exist because there is no authoritative body or a church that exercises a monopoly (Gellner 1981, 1). Consequently, total obedience in temporal and spiritual realms (realms that in Islam are actually one) does not exist in *Sunni* Islam. Instead, the relationship between authority and obedience has been historically shaped by struggles over interpretations of injunctions in the *Qur'an* and *Sunna*. “Authority seems to be derived from the fact that the person wielding authority possesses superior knowledge, insight, or experience. The authority rests upon these givens, which are accompanied by the person’s ability to give extended reasons for what he decides to say or do” (Friedrich 1972, 51). This quality is applicable to the authority that *Ulu Al Amr* legally possesses in developing *Fiqh*. Accordingly, *Fiqh*, as a legal discourse regulating the relationship between *Ulu Al Amr* and the Muslim subject, constitutes a form of authoritative communication. Therefore, disagreements over authoritative communication take place not only among experts but also, though rarely, among the public.

Historically, disagreements among *Ulu Al Amr* over the meaning of a particular political verse in the *Qur'an* have had social and political significance. A prime example are the disagreements over the scope of obedience of *Ulu Al Amr* in verse 4:59 of the *Qur'an*:

O you who have believed, obey Allah and obey the Messenger and those in authority among you (*Ulu Al-Amr*). And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.

The scope and weight of the authority becomes doubly significant when legal or expert reasons provided by *Ulu Al Amr* address a matter about which the *Qur'an* and *Sunna* are mute or vague. In fact, neither the *Qur'an* nor *Sunna* posits a clear theological injunction regarding the duty of Muslims to create government to protect the faith. Historically, the forms of governments that existed in Islam are the consequence of expediency and struggles among warring factions. Consequently, the role of the expert scholar in history as a member of *Ulu Al Amr* defines the scope of authority and obedience it requires of the Muslim subject to these new forms of governments in accordance with *Sharia*. Khadduri illustrates the scope of the authority *Ulu Al Amr* has over the executive power and the *Umma* as it relates to governance and justice:

In the Traditions (*Sunna & Hadith*), the Prophet sought to explain the meaning of the abstract maxims of justice enunciated in the *Qur'an* by specific examples, expressed in legal and ethical terms, to distinguish between just and unjust acts as well as to set underlying rules indicating what scale of justice ought to be. Since the Prophet dealt essentially with particular questions, the theologians and other scholars found in the Traditions precedents on the strength of which they formulated their theories of justice. However, neither in the *Qur'an* nor in the Tradition are these specific measures to indicate what are the constituent elements of justice or how justice can be realized on Earth. Thus the task of working out what the standard of justice ought to be fell upon the scholars who ought to draw its elements from the diverse authoritative sources and the rulings and acts embodied in the works of commentators. (10-11)

This is precisely the location of temporal power's historical struggles to control the membership of *Ulu Al Amr*. This struggle is doubly important because, first, neither the *Qur'an* nor *Sunna* designates who are precisely designated as "those in authority" or *Ulu A Amr*. Second,



membership in *Ulu A Amr* changed historically in *Fiqh al siyash al shariah* as chapter two demonstrates. Consequently, this lack of consensus made it possible for temporal power to control the *Ulu Al Amr*'s independence and restrict its membership.

Let us now focus on the linguistic meaning of "authority" in Arabic. We are immediately faced with a linguistic challenge since the term has no direct equivalent in Arabic. For example, according to the Al Mawrid dictionary, *Sulta* is the literal Arabic translation for the term authority. *Sulta* shares the same root with the word *Sultan*, which in Arabic is equivalent in English to a prince or princely power. Most important, the word *Sultan* appears twelve times in the *Qur'an*, which is the most important authentic linguistic source in Arabic.<sup>59</sup> The word *Sulta*,

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<sup>59</sup> 7:71 [Hud] said, "Already have defilement and anger fallen upon you from your Lord. Do you dispute with me concerning [mere] names you have named them, you and your fathers, for which Allah has not sent down any authority? Then wait; indeed, I am with you among those who wait."

10:68 They have said, "Allah has taken a son." Exalted is He; He is the [one] Free of need. To Him belongs whatever is in the heavens and whatever is in the earth. You have no authority for this [claim]. Do you say about Allah that which you do not know?

12:40 You worship not besides Him except [mere] names you have named them, you and your fathers, for which Allah has sent down no authority. Legislation is not but for Allah. He has commanded that you worship not except Him. That is the correct religion, but most of the people do not know.

14:22 And Satan will say when the matter has been concluded, "Indeed, Allah had promised you the promise of truth. And I promised you, but I betrayed you. But I had no authority over you except that I invited you, and you responded to me. So do not blame me; but blame yourselves. I cannot be called to your aid, nor can you be called to my aid. Indeed, I deny your association of me [with Allah] before. Indeed, for the wrongdoers is a painful punishment."

15:42 Indeed, My servants - no authority will you have over them, except those who follow you of the deviators.

16:99 Indeed, there is for him no authority over those who have believed and rely upon their Lord.

17:65 Indeed, over My [believing] servants there is for you no authority. And sufficient is your Lord as Disposer of affairs.

34:21 And he had over them no authority except [it was decreed] that We might make evident who believes in the Hereafter from who is thereof in doubt. And your Lord, over all things, is Guardian.

37:30 And we had over you no authority, but you were a transgressing people.

37: 156 Or do you have a clear authority?

40:35 Those who dispute concerning the signs of Allah without an authority having come to them - great is hatred [of them] in the sight of Allah and in the sight of those who have believed. Thus does Allah seal over every heart [belonging to] an arrogant tyrant.

in contrast, does not appear in the *Qur'an*, which makes the term most likely a modern one. *Sulta* probably appeared during the arrival of the modern state system in the Arab world. It appears in descriptions of the sovereign and authority in the modern nation-state. Furthermore, when examining the term *Sultan*, depending on the context of the verse the word could mean, rule, command, influence, control, or power. Therefore, to avoid the possible confusions that may arise from investigating the concept of authority linguistically in Islamic legal and political writings, the focus of this investigation is on the outcome of authority as a result of the faithful subject's voluntary obedience. In addition, obedience is required for all variations of the term *Sultan*. As an outcome of authority, obedience should be viewed in the light of Friedrich's three characteristics of authority to avoid collapsing authority and power. The aim here is to investigate the nature of obedience that is voluntary and simultaneously constitutes the subject who is acting according to authority on behalf of the faith.

“The Arabic term for obedience, ‘*Al taah*,’ is mentioned many times in the *Qur'an* and *Sunna*” (Al-Massari 2002, 11).<sup>60</sup> It is a legal term, but it is mentioned only once in the context of obeying someone other than God or the Prophet. According to verse 4:59—“O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and

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40:56 Indeed, those who dispute concerning the signs of Allah without [any] authority having come to them - there is not within their breasts except pride, [the extent of] which they cannot reach. So seek refuge in Allah. Indeed, it is He who is the Hearing, the Seeing.

53:23 They are not but [mere] names you have named them - you and your forefathers - for which Allah has sent down no authority. They follow not except assumption and what [their] souls desire, and there has already come to them from their Lord guidance.

<sup>60</sup> المعنى الشرعي : ورد لفظ الطاعة في القرآن الكريم و في السنة النبوية

the Last Day. That is the best [way] and best in result”—Accordingly Muslims are ordered to obey those in authority. Al-Massari argues that “linguistically the word *al taah* in the Arabic tongue means the opposite of the word coercion ‘*Al kurh*’” (11).<sup>61</sup> Moreover, “conceptually the word *Al taah* in *Sharia* means the act of adherence to whatever is ordained or forbidden by *Ulu Al Amr*, rulers, or those who govern according to the *Sharia* without resistance or objection regardless if orders are advantageous or not to the subject who obeys” (Al-Massari 2002, 12).<sup>62</sup> The English term “obedience” shares with the Arabic term *Al taah* “a sense of constraint on action. Accordingly, authority’s central quality is the power to influence and command thought, opinion, or behavior.

What is the significance of obedience in Islam? How does *Sharia* regulate it, and what limits to obedience does the Muslim subject impose on authorities? According to Ibn Taymiyyah (1263-1328 CE), “because God made it a duty of Muslims to ordain the good and forbid evil, this condition is impossible without power and government, and the same can be said about *Jihad*, justice, and *Haj*... cannot be performed without the power of government (Al-Massari 2002, 33).<sup>63</sup> For Ibn Taymiyyah the limit of obedience is directly tied to proper implementation of *Sharia*. A proper authority requires a standpoint that binds both strong and weak members of a collectivity. Therefore, the Muslim subject’s quest for salvation, the duty to ordain the good and forbid evil, is doubly significant; first, it is the authority of *Ulu Al Amr* that define the scope and

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و في لسان العرب : الطوع : نقيض الكره ... و قال ابن سيدة : و طاع يطاع و أطاع : لان و انقاد ، و أطاعه إطاعة ، و إنطاع له ، كذلك

المعنى الإصطلاحي المراد في البحث : و المراد بالطاعة هنا : الاستجابة و الانقياد لما يأمر به و ينهى عنه ولي الأمر ، أو الأمر ذي الولاية الشرعية ، و ذلك بامتنال الأمر و النهي دون منازعة و معارضة ، سواء أمر بما يوافق الطبع ، أو لم يوافق بشروط أن لا يأمر بمعصية

و لأن الله تعالى أوجب الامر بالمعروف و النهي عن المنكر ، و لا يتم ذلك بقوة و إمارة ، و كذلك سائر ما أوجبه من الجهاد و العدل و إقامة الحج و الجمع و الأعياد و نصر المظلوم و إقامة الحدود لا تتم إلا بالقوة و الإمارة

proper actions toward ordaining the “good” and forbidding “evil” especially, in the realm of governance. Second, *Ulu Al Amr*, which acts as an executive responsible for the implementation of *Sharia*, provides us with the purpose and function of government in Islam. Islam emphasizes that salvation is primarily achieved through a subject’s good works. The responsibility of temporal power is to provide the environment where such action can flourish. This characteristic and function of the state is directly tied to the specificity of the concept of authority, which limits the scope of obedience to both *Ulu Al Amr* and temporal power. This dissertation argues that a clear understanding of the character of authority and obedience is essential in understanding Islamic legal and political writings. Mahmud Al-Alusi (1802 – 1854 CE) in his commentary on the *Qur’an* verse 4:59 states that the meaning of obedience to *Ulu Al-Amr* is limited to obedience to God. “Obedience is linked to God and the Prophet and not independent of the injunctions of the *Qur’an* and *Sunna*” (Al-Massari 2002, 35).<sup>64</sup> Obedience is limited to what is exoterically clear in *Sharia*, to what guarantees salvation in the next world. This fact is illustrated in the *Qur’an*, 99:1-8:

When the earth is shaken with its [final] earthquake (1) And the earth discharges its burdens (2) And man says, "What is [wrong] with it?" (3) That Day, it will report its news (4) Because your Lord has commanded it. (5) That Day, the people will depart separated [into categories] to be shown [the result of] their deeds. (6) So whoever does an atom's weight of good will see it, (7) And whoever does an atom's weight of evil will see it. (8)

Accordingly, Muslims and non-Muslims will stand in judgment responsible for their actions in the temporal world, and only through repentance will their bad deeds be forgiven. These bad deeds must be followed by good deeds unless physically it is impossible to act accordingly; only then will intentionality substitute for action.

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<sup>64</sup> إذن فطاعة أولي الأمر تابعة لطاعة الله ورسوله ، و ليست مستقلة ، أما الطاعة في المعصية فقد إتفق أهل العلم على أن الطاعة في المعصية لا تجوز  
كما ذكر النووي في صحيح مسلم

In sum, according to *Sharia*, action in the temporal world is the path through which Muslims achieve salvation. This fact limits obedience simultaneously to arbitrary authority and temporal power and produces a specific character and arrangement of both authority and obedience. The Prophet's *Hadith* "there is no obedience to a creature of God in disobedience of the Creator" (Kamali 2002, 24) illustrates the character of authority and obedience. Another *Hadith* amplifies the sentiment: "when you see my community afraid of telling a tyrant, 'O tyrant', then it is not worth belonging to it anymore" (Kamali 2002, 24). Clearly these *Hadiths* set a limit on the scope of authority and obedience to the expert authority that *Ulu Al Amr* historically had. Yet as we moved away from the founding period of the Four Guided Caliphs emphasis on obedience to authority became prominent. This development was simultaneously accompanied by a legal emphasis on the concept of the *Ammeh* (commoners) as subjects whose duty was the unconditional obedience to *Ulu Al Amr* and temporal power.

Nevertheless, there are groups of *Hadiths* that illustrate absolute and unquestionable obedience to temporal power and *Ulu Al Amr*, but, according to these same *Hadiths*, *Sharia* limits obedience. Unlimited obedience is demanded, though, in areas where the *Qur'an* and *Sunna* remain silent, and those areas are immense especially in *Fiqh al siyash al shariah*. It is in questions about the state or government that the scope of authority of *Ulu Al Amr* is greatest because neither the *Qur'an* nor *Sunna* address those topics. It has been over this matter that historically *Ulu Al Amr* divided into at least two groups regarding the limits of temporal power and government. This division will become more apparent as evidence unfolds that the opposing the opposite views backed by *Hadiths* are less significant in *Sharia* in general while in *Al siyasah al shariah* their significance cannot be overemphasized.

Again, the *Hadiths* concerned with obedience to authority stand in at least two oppositional categories, which have historically divided the *Ulu Al-Amr*. Omotosho argues:

Muslim scholars are divided on the issue. While some of them see the power of “those charged with authority” (*Ulu Al-Amr*) as a limited one and therefore object to absolute obedience, others hold the view that with available *Qur’anic* evidence and *Hadith* of the Prophet in support of their rights, they deserve full and unquestionable obedience. Their difference seems to have emanated from their understanding of the available references – *Qur’an* and *Hadith* alike. Both Q4:59 and at least six out of the available *Hadith* ask the faithful to obey his leader without any condition attached. So, some of the jurists rely on this and therefore insist that obedience to the instruction of the *Ulu Al-Amr* is absolute. (3)

Historically, this division over obedience to authority runs up to the present and sometimes appears within the same schools of *Fiqh*. For example, among the *Salafi/Wahabi* schools in Saudi Arabia, the division is clearly present between the *Jamiah Salafism* and the *Salafi-Jihadi* school. The *Salafi-Jihadi* holds that Muslims have a duty to correct the actions of temporal power that contradict *Sharia*, by force if necessary. Conversely, the *Ulu Al-Amr* of the *Jamiah Salafism* demand absolute and unconditional obedience to temporal power, whether it contradicts *Sharia* or not. The division between those who sought to intervene as Muslims in temporal power versus those granted absolute and unconditional obedience came to the fore during the First Persian Gulf War (1990-1991). The disagreement was over the role of the United States as an ally fighting on behalf of the Gulf monarchies against Iraq. While the matter was a blatant violation of *Sharia*, nevertheless, the Grand *Mufti* of the Saudi kingdom emphasized the legality of the matter and demanded the total obedience of the people to the monarchs in accordance with *Sharia*. The *Salafi-Jihadi* school, in contrast, considered the *Fatwa* (considered opinion given by a qualified scholar, i.e., a *Mufti*) a sign of the corrupt nature of temporal rulers and the establishment *Ulu Al Amr*, which was a part of the state bureaucracy and a rubberstamp to temporal power.

Second the concept of politics or *Al siyasah al shariah* in relation to *Ulu Al Amr* and *Sharia* overall has a distinctive relationship to authority and obedience. According to Ilyas Ahmed:

In Islam, we already know that Law is prior to state, and that there is a perfect sovereignty of Law which cannot be changed by human hands ... Thus it is clear that in Islam the state has never been an end in itself: it has always been universal in character-not for one nation, but for all men of all nations and humanity. (481)

Thus, Islamic public and administrative laws temporal laws are the product of human agency in accordance with the *Maslaha* or “good” of the community. *Al siyasah al shariah* plays a different role and has a different character and domain than in the European tradition. *Sharia* which is prior to the state is different from Canon law in that its scope covers both public and private realms. Therefore, when investigating politics in Islamic legal and political writings the European conception of the political with its plurality of definitions must be abandoned in favor of *Al siyasah al shariah*, which has a stricter scope and meaning in Islamic political and legal writings. As Ahmed points out, *Al siyasah al shariah* is directly related to those duties and obligations that the executive is limited to in implementing *Sharia*. *Al siyasah al shariah* is an entire branch of *Fiqh* under *Sharia* and cannot overcome its hegemony. Kamali illustrates this point:

This [*Al siyasah al shar'iyah*] is a broad doctrine of Islamic public law that authorizes rulers and judges, that is, the *Ulu Al -Amr*, to determine the manner in which the *Sharia* should be administered. A ruler may accordingly take discretionary measures, enact rules and initiate policies as he deems appropriate in the interests of good government, provided that no substantive principle of the *Sharia* is thereby violated. (142)

This means that *Al siyasah al shariah* can be labeled as public or administrative laws as long as it remains tied to the principles of *Sharia*. Thus, politics has never been an independent domain of *Sharia* or permanently regulated by an ethical reference point of the *Sharia*. For example, if we

can imagine Machiavelli writing in *Al siyasah al shariah* then his advice to “the prince” must be according to the ends of *Sharia* and not primarily to achieve princely power and consequently stability and peace. In fact, the *Realpolitik* school of thought contradicts the existence of moral law. There are periods in history where a ruthless *Khalifa* is better than a weak and pious *Khalifa*. Nevertheless, once the ruthless *Khalifa* is in power, he must obey *Sharia* and implement it according to *Ulu Al Amr*’s legal interpretation of the law. Ibn Qayyim Al Jawziya (1292-1350 CE) a *Sunni Hanbali* jurist defined *Al siyasah al shariah* as “whatever action that orients the people closer to the good and steers them away from corruption, even if the issue at hand is not *Sunna* and *Qur’an*” (Imarah 1988, 55-56).<sup>65</sup> Historically, this definition has achieved consensus among *Sunni Fuqaha* but not the *Shia* who consider obedience to the *Imamah* (leader of the Muslim community) an article of faith.

There is more freedom and space for *Al siyasah al shariah* in *Sunni* Islam than in *Shia* Islam. Unlike in *Sunni* Islam, the state and the leadership of the community according to *Shia* Islam are not a sub branch of *Sharia* but a primary source of faith. Conversely, in *Sunni* Islam because the state and leadership of the community are sub branches of *Al siyasah al shariah* there is greater acceptance of disagreement. In brief, *Sunni* Islam is an outward and public oriented religion; yet neither the *Qur’an* nor *Sunna* entail or promote a specific form of government. Overall, the *Sharia* restricts and set limitations to all forms of government that developed historically in *Sunni* Islam.

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و من هؤلاء الأئمة الامام ابن قيم الجوزية ( ٦٩١-٧٥١هـ - ١٢٩٢-١٣٥٠ ) الذي يحدد لنا معنى الشريعة ، و دور الجهد البشري في صنع السياسة ، <sup>65</sup> التي هي جزء من الشريعة إذا كانت محققة لمصالح الناس و مقرررة للعدل بينهم ، يقول : ( إن الشريعة : مبناها و أساسها على الحكم - ) بكسر الحاء و فتح الكاف ، أي الحكمة و العلة و السبب ) - و مصالح العباد ... و السياسة : ما كان من الأفعال بحيث يكون الناس معه أقرب إلى الصلاح و أبعد عن الفساد ، و ان لم يشرعه الرسول و لا نزل به وحي



Furthermore, Abu Hamid Al Ghazali (1058-1111 CE) argued that “the theory of the *Imamah* is not a foundational part of the faith; instead, it is secondary, a branch, and, therefore, it is in the domain of *Fiqh* a subject to deliberation” (Imarah 1988, 52-53).<sup>66</sup> The state and leadership of the community and forms of government are not in the domain of faith so long as they do not contradict the principles of *Sharia*. It is precisely over issues of state and leadership where disagreements may arise because primary sources are mute. The authority of *Ulu Al Amr*, and the unchecked authority of the expert, trumps temporal power and is a source of legitimacy. Historically, temporal power has struggled to control and to shift the type of authority that emphasizes correct action in accordance with *Sharia* to a type of authority that emphasizes obedience to temporal power.

For Muslims, the state and governance are executive tools to achieve what is in accord with the ends of the law. Most important, the state and leadership posts were established in early Islam as tools to implement *Sharia* and protect the faith from external attacks by neighboring states. Thus, “Islam as a religion, belief, and *Sharia* including the foundational five pillars of the faith, plus the *Qur'an* and *Sunna* all are Divine injunctions and no believer can claim the contrary. But Islam as a religion never ordained a particular system of government due to the logic that Islam is applicable regardless of time and space. Therefore, the constant evolving human mind is entrusted to construct systems of governments according to benefit of the collective and in accordance to the general principles of the faith” (Imarah 1988, 53-54).<sup>67</sup>

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يكرر الغزالي هذا المعنى فيقول : إن نظرية الإمامة ليست من المهمات ، وليست من فن المعقولات فيها ، بل من الفقهيات <sup>66</sup>

إن الإسلام ، كدين - عقيدة و شريعة - و بأركانه الخمسة التي بني عليها و بكتابه المعجز ، و بسنته التشريعية التي بلغ بها الرسول عليه الصلاة و <sup>67</sup> السلام تفصيلات ما أجمله الوحي .. إن ذلك كله ( وضع إلهي ) ، و ليس لمؤمن أن يدعي أن شيئاً من ذلك هو من ( وضع الإنسان ) .. لكن الاسلام كدين ، لم يحدد للمسلمين نظاماً محدداً للحكم ، لأن منطق صلاحية الدين الإسلامي لكل زمان و مكان يقتضي ترك النظم المتجددة قطعاً بحكم التطور للعقل الإنساني الرشيد ، يصوغها وفق مصلحة المجموع ، و في إطار الوصايا العامة و القواعد الكلية التي قررها هذا الدين

Historically, the evolution of *Fiqh al siyash al shariah* led to a gradual increase in obedience to temporal power and the state and underlay the original purpose that the state and temporal power were assigned to serve. This evolution will become clearer in chapters four and five. This evolutionary shift entailed a change in expert authority from one that emphasized right action in accordance with *Al siyasah al shariah* to one that emphasized obedience in the name of *Maslaha* of the *Umma*, particularly obedience to temporal power, over actions of ordaining the “good” and forbidding “evil.” A good example is the marginalization of the Muslim subject’s role in the *Bay’a* by gradually making it exclusive among few people to legitimize temporal power rule.

It is precisely in the area of governance that *Fiqh al siyasah al shariah* can accommodate the different views regarding who can legally govern the *Umma* without violating the principles of *Sharia*. It is in this realm that the authority of *Ulu Al Amr* is at its peak. Consequently, they historically possessed the authority to demarcate the parameters of debates and struggles on which type of government and political organization best served the implementation of *Sharia* and the good of the *Umma* (the people or community of Islam). Imarah argues that the “omission of details regarding governance, politics, and the state from the *Qur’an* is intentional” (54).<sup>68</sup> As a result, *Al siyasah al shariah* is a flexible field shaped by human reason in accordance to the *Maslaha* of the *Umma*. The authority of *Ulu Al Amr* in this realm decides the exception which cast a particular and central character to Sunni form of authority.

The character of *Ulu Al Amr* authority in the realm of *Al siyasah al shariah* differs from its authority in the realm of *Sharia*. *Ulu Al Amr*’s flexibility and freedom in the former are much

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<sup>68</sup> و نحن نعتقد أن صمت القرآن الكريم عن تفصيل نظم الحكم و السياسة للمسلمين هو موقف إلهي مقصود

wider and allow for personal views and interests to be expressed. Consequently, *Ulu Al Amr* were able to widen the scope of *Al siyasah al shariah*, and *Al siyasah al shariah* evolved into a branch of *Fiqh*. Kamali provides an account of the wide scope of *Al siyasah al shariah* arguing that:

*Siyasah* in its widest sense has five purposes: the protection of faith, life, intellect, lineage, and property. The “*uluma*” are unanimous on the point that the protection of these values constitutes the ultimate objective of *Sharia* itself, despite the fact that a specific reference to this group of values can be found neither in the *Qur’an* nor in *Sunna*. General consensus (*ijma*) on the protection of these values is not based on any particular provision of the *Qur’an* or *Sunna*, but on the overall contents of these source-texts and on the numerous commands and prohibitions that are designed to protect these values. The same can be said of the *Qur’anic* verses that enjoin on the community the pursuit of good and prevention of evil. Good and evil are nowhere listed exhaustively in the *Qur’an* or *Sunna*, but can be known through a general investigation of these sources. (146)

This passage demonstrates the elasticity of the scope of authority of *Ulu Al Amr* over *Al siyasah al shariah*, which covers and defines *Sharia* itself.

It is important at this point to state that the above evidence and arguments present a challenge to the academic literature that applies the term fundamentalism equally to Islam and other religions. It overlooks local historical, legal and geographical configurations. This academic genre must answer the question of how religions across time and space share the same internal operational configurations and dynamic. The aim here is to emphasize the argument of the dissertation that while religion across time and space has universal characteristics; its particular configurations in any given time and space produce different systems of meaning and signification. Karl Lowith demonstrates in the following quotation the particular internal configurations of Western systems of meaning that remain Jewish and Christian in character; he states:

We of today concerned with the unity of universal history and with its progress toward an ultimate goal or at least toward a “better world,” are still in the line of prophetic and messianic

monotheism; we are still Jews and Christians, however little we may think of ourselves in those terms. But within this predominant tradition we are also the heirs of classic wisdom. We are in the line of classical polytheism when we are concerned with the plurality of various cultures as such, exploring with boundless curiosity the whole natural and historical world for the sake of disinterested knowledge which is quite untouched by any interest in redemption. (19)

This argument is doubly important; first is the idea that contemporary political concepts ultimately have their roots in religion, which shapes the internal character and configuration of contemporary secular concepts. As such, the academic's use of the universal concept of fundamentalism becomes problematic because it refers to notions of obedience to authority that is local to Western systems of meaning. Second, that Islam today exists in a world hegemonically dominated by Western standards of morality and human rights results in political questions about the compatibility of Islam with modernity and democracy. Western critiques overlook the historical roots of Islam in their contemporary context or assume that they do not exist.

Lowith's argument is directly tied to contemporary debates on revolutions in Tunisia, Yemen, Libya, and Egypt, the so-called "Arab Spring." For example, the ideological division between the Islamist and secular political parties over the draft of constitutions in both Tunisia and Egypt has its roots in the *Sunni* authority versus European sovereignty ideological division. As a matter of fact, the collapse of political dialogue in both countries has led to massive demonstrations and violence on the streets and in public squares by Islamists, secular forces, and counter-revolutionary forces of the old regimes. In Egypt, the conflicts eventually led to the 3<sup>rd</sup> of July coup.

The gridlock between the two sides is directly tied to the Islamic legal conception of authority and its manifestation, obedience in relation to secular modernity. The conflict has its roots in the Islamic concept of authority and the historical Western conception of sovereignty.

The two concepts give us various subjectivities on how modernity, freedom, autonomy, and citizenship are constituted and dispensed. This gap between Western sovereignty and *Sunni* authority at the conceptual level is presently overlooked due to the absence of political language on both sides that can facilitate and allow for a democratic dialogue. The “Arab Spring” abrupt arrival exposed the absence and lack of political language on both sides that enable a successful transition to democratic governance. Similarly, the ideological division over the role of Islam in public life is clear in public and social media, which believe that they hold irreconcilable worldviews. This impasse is a hallmark of colonialism, which hegemonically introduced and nurtured intellectuals who adopted modern subjectivities without democratic debates with those representing local political and social structures. Similarly, Islamic political and legal writings made little effort to address the modern European idea of sovereignty, which is at the core of the institution of the modern nation-state, civil rights, and liberties. Secular forces suspect that political Islam in its haste to reject Western subjectivities and modernity has also rejected basic principles of freedom and equality. Behind the tension between political Islam and secular forces are two causes. The first is the absence of political language on both sides that can allow for a common platform to be achieved. Instead, all political parties are focusing on the political action level of elections and organizing on the ground or looking of alliances that could advance their electoral gains. The second is tied to historical resistance to colonialism and the arrival of modernity and the modern state. This is the central topic of chapter five.

The abrupt arrival of the revolutions took everyone by surprise and made plain that theoretical dialogues between both sides were nonexistent. The lack of dialogue was due to the historical role and success of the old regimes in pitting the two groups against one another so that any possible coalition to challenge the status quo would be impossible. The old regimes’ strategy

was carried out at every political and societal level including in education, the media, the economy, and legal system.

This brings us to the second cause which is tied to colonialism, modernity, and local resistance. The violent military imposition of the modern state and with it the values of European modernity have created an intellectual split in the postcolonial intelligentsia. On the one hand, local intellectuals adopted Western subjectivities such as nationalism, and on the other hand, Muslim intellectuals produced an Islamic discourse that rejected European Western subjectivities as a toxic influence on the Muslim world. The main character of this split is the exclusionary discourse between those who adopted Western subjectivities and those who hold the *Sharia* as the main shield protecting the *Umma* from the intellectual hegemony of the West. A good example of the new sovereignty and the nation-state project is the role Mustafa Kemal Atatürk of Turkey and Mohammad Reza Pahlavi of Iran had in reconstituting local subjectivities into Western colonial subjectivities and identities similar subjectivities and identities. They swept away local legal codes and subjectivities by force to clear the way for Western sovereignty and subjectivities. Historically, political Islam resisted the process of physically and intellectually Westernizing Muslim values. During the period of resistance to colonial European powers, secularists who were part of the resistance viewed the Caliphate and Islamists as symbols of weakness tied to decline and colonization by European powers.

Similarly, today, secularists view contemporary Islamic political parties as hijackers of the revolution who want to prevent the values of modernity, the Enlightenment, and human rights from taking root in Tunisia and Egypt. This dynamic will be developed in the final chapter, which deals with the modern state and this dialectic between both sides. But for the time

being, it is important to emphasize that the gridlock that followed the Arab Spring is due to a lack of theoretical debates about Western sovereignty and Islamic conceptions of authority and obedience.

Let us now turn the focus of the chapter on the concept of obedience as a manifestation of authority. It is also important to reiterate the idea stated earlier, mainly that authority is different from power, which requires coercion or the threat of force to secure obedience. While obedience in *Sunni Fiqh al siyash al shariah* is obedience to expert opinion, authority emanates from the same source that guides individuals' moral standards. This moral standard acts like a glue that holds collectivities together and makes their existence as voluntary associations possible. Obedience takes the character of acting in accordance with what is moral and rightful.

What is more important is that concepts of authority and obedience have a religious character and belong to the subject of political theology. The internal character of both concepts has its roots in religious experience. This dissertation argues that the political concepts of authority, obedience, freedom, autonomy, and human rights are characteristically Christian in their configurations, operation, and character. Carl Schmitt argues this point:

all significant concepts of the modern theory of state are secularized theological concepts not only because of their historical development—in which they were transformed from theology to the theory of state, whereby, for example, the omnipotent God became the omnipotent lawgiver—but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of the concepts. (36)

Similarly, this dissertation argues that both authority and obedience in *Sunni* systems of meaning have Islamic characteristics that are still operative today but, as chapter five demonstrates, under the sovereignty of the modern nation-state. This condition is due to the colonization of the Muslim empires and the imposition of the modern states structure by force and legally via

international law. This dissertation maintains that the best place to map the genealogical difference of these concepts, at least in the case of the three monotheist religions, is “the Fall” of Adam.

The account of the Fall that is shared among the three monotheist religions is also the point where the religions develop different roots, take various directions, and give us heterogeneous political theologies and different subjectivities. While there are many themes in the sacred texts that lead to fruitful insights, this dissertation asserts that each account of the Fall of Adam is significant due to its direct relation and influence on the concepts of the proper forms of authority and obedience. After all, the three monotheist religions hold that Adam was cast out of Heaven after the Fall, hence populating the Earth. The different accounts of the Fall shaped political concepts and are still with us today in the Western tradition whose secular discourse has its roots in theology.

It is important to state here that my aim is not to reduce Western thought into essential characters and qualities. Instead, I intend to demonstrate that heterogeneous cultures and subcultures within the West are a testament to the endless varieties and creative differences that spring from the same genealogical roots. What I propose here is to refer to the *a priori* assumptions that operate in these systems of meaning. Most relevant to this investigation is the theological account of the Fall that is at the core of authority, obedience, freedom, autonomy, progress, and human rights in general. According to Karl Lowith:

one must ultimately refer back to this idea of man if the “sociological” investigations of Weber and Marx are to be understood in their fundamental and radical significance. “To be radical is to grasp things by the root. But for man the root is man himself.” The radically thisworldly view of man expressed here is a presupposition for both Marx and Weber.



“Man, who has found in a fantastic reality of heaven, where he sought a supernatural being, only his own reflection, will no longer be tempted to find only semblance of himself—a non-human-being—where he seeks and must seek his true reality” (Marx). (42-43)

Thus, while the genealogical roots of “what a person is” share the same reference points for Marx and Weber, the two theoretical views are quite different, and their theorists produced different explanations and analyses of capitalism. Similarly, the same dynamic applies to Islamic legal and political writings. Consequently, the argument here is that theological accounts of the Fall in the *Qur'an* have a direct influence on how authority and obedience are constituted and framed and produce various subjectivities in Islam. It is precisely the influence of the conception of a person in the Islamic narrative in general and in *Sunni* Islam in particular that renders European sovereignty alien to Islam’s system of meaning and signification.

Let us now examine theological accounts of the Fall in the *Qur'an*. First, the *Qur'an* provides us with a narrative of a dialogue between God and the Angels regarding knowledge of “Adam’s Fall” before the event took place. The *Qur'an* narrates the Fall as follow:

And [mention, O Muhammad], when your Lord said to the angels, "Indeed, I will make upon the earth a successive authority." They said, "Will You place upon it one who causes corruption therein and sheds blood, while we declare Your praise and sanctify You?" Allah said, "Indeed, I know that which you do not know. 2:30

The significance of such an account is that even though it was known by God according to the verse before Adam was created that the Fall was imminent, Adam was still created. The purpose of this act is for Adam and his descendants to become the “successive authority” on earth to carry and implement God’s law. A “successive authority” means to be God’s *Khalif* on earth.

The following four verses reveal other reasons behind that act of creation:

And He taught Adam the names - all of them. Then He showed them to the angels and said, "Inform Me of the names of these, if you are truthful." 2:31

They said, "Exalted are You; we have no knowledge except what You have taught us. Indeed, it is You who is the Knowing, the Wise." 2:32

He said, "O Adam, inform them of their names." And when he had informed them of their names, He said, "Did I not tell you that I know the unseen [aspects] of the heavens and the earth? And I know what you reveal and what you have concealed." 2:33

And [mention] when We said to the angels, "Prostrate before Adam"; so they prostrated, except for Iblees (devil). He refused and was arrogant and became of the disbelievers. 2:34

Thus, unlike the Christian accounts, knowledge is not the product of the Fall but the reason that, despite murder and bloodshed, Adam was created. It is not helpful to apply our understanding of knowledge on these verses. Knowledge here has a particular context regarding the ability to discern right from wrong, and to seek knowledge as an attribute is more important than the capability to kill and shed blood. Consequently, this particular account of knowledge describes the constitution of human nature in Islam. This idea has double significance when it comes to the relationship between knowledge and action after the Fall. The verses that follow give us an important account regarding the nature of Adam and Eve's being:

And We said, "O Adam, dwell, you and your wife, in Paradise and eat therefrom in [ease and] abundance from wherever you will. But do not approach this tree, lest you be among the wrongdoers." 2:35

But Satan caused them to slip out of it and removed them from that [condition] in which they had been. And We said, "Go down, [all of you], as enemies to one another, and you will have upon the earth a place of settlement and provision for a time." 2:36

The materiality of existence is already in the original state in which Adam and Eve were created. Their material body is not a product of the Fall. The duality of existence between the spiritual and the physical is absent from this account of Adam. This narrative contrasts with the Christian account of the original state of creation, which is spiritual. In Islam the meaning of heaven is not limited to an eternal and ethereal Godly bliss, but it also includes the enjoyment of eternal rewards and an abundance of physical pleasures. This includes sex, food, and eternal youth and

beauty. This dissertation argues that the dualistic approach is absent in the Islamic orientation toward being and politics due to the absence of “original sin.” Therefore, “unlike Christianity, where original sin precludes salvation without God’s grace, here each person’s nature enables her to act in ways that merits God’s grace” (Gould 2008, 4).

Most important, in Islam, the Fall never damaged human nature. The following verses illustrate this account:

Then Adam received from his Lord [some] words, and He accepted his repentance. Indeed, it is He who is the Accepting of repentance, the Merciful. 2:37

We said, "Go down from it, all of you. And when guidance comes to you from Me, whoever follows My guidance - there will be no fear concerning them, nor will they grieve. 2:38

These verses assume a certain type of human nature that gives rise to subjectivities that are different in character and configurations than in Western political and social writings. More precisely, what we are investigating here is how Christian and Islamic political theologies frame the original state of the subject.

In Islam the symbolic and the biological were not remained severed forever due to their immaterial sovereignty. Accordingly, symbolic (God) never took the form of flesh in Islam or interfered in the biological realm of existence. The physical body of a king or a priest remains worldly and profane in *Sunni* Islam and does not share any divine qualities. Consequently, institutions as well remain profane and lack divine or supernatural qualities that require obedience. On the contrary, institutions of Caliphate and *Ulu Al Amr* remain profane, limited to authority over expert knowledge. The sovereign remains in heaven, never descending in the flesh to earth, rendering all institutions profane, and preventing the figure of a sovereign from appearing in *Sunni* Islam. The following verse in the *Qur'an* demonstrates the idea:

Say, "O Allah, Owner of Sovereignty, You give sovereignty to whom You will and You take sovereignty away from whom You will. You honor whom You will and You humble whom You will. In Your hand is [all] good. Indeed, You are over all things competent.3:26

God (the symbolic) never stepped into the biological realm; thus, the flesh or blood remained profane in significance limiting claims to the divine right to rule. Thus, temporal power never possessed a divine quality in *Sunni* Islam. Furthermore, the *Qur'an* implores: "Say, 'He is Allah, [who is] One, Allah, the Eternal Refuge, He neither begets nor is born, Nor is there to Him any equivalent'" (112:1-4). This account of sovereignty has prevented a similar sovereign in Western legal and political sense from emerging in Islamic political and legal writings. The idea that God is the only sovereign means sovereignty has always remained in the symbolic realm and never taken on a physical reality. Accordingly, obedience to temporal authority must be limited to the expert model. "Hence, the real question which is being asked by who wishes to question authority is not 'Why should I obey?' but 'Why should I agree?' It is the capacity for reasoning or, more precisely put the capacity for reasoned elaboration of communication matters" (Friedrich 1972, 53). This is precisely why chapter one rejected the focus on sovereignty in Islam for a focus on *Ulu Al Amr*. The scope of authority and obedience to *Ulu Al Amr* has historically remained at the level of the expert over esoteric knowledge.

The argument here is not to set up a political theology in Islam in binary opposition to Christianity's. Instead, the argument here is to underline the problems that arise from using political concepts without investigating their internal configurations and historical dynamics in different systems of meaning. For example, Marcuse gives us an account of Protestant Christian conceptions of authority and freedom on Earth, which later become the foundation of bourgeois concepts of freedom. He argues:

Man is embedded in a system of earthly order which by no means corresponds to the fundamental teachings of Christianity. This contradiction provides a function for “double morality” as combined with the sharp distinction between the “Christian” and the worldly human existence, between “Christian” morality, and “external morality, which is the motive force in offices and works.” The former refers only to the “inner” man: his “inner” freedom and equality, his “inner” poverty, love and happiness (as its clearest in Luther’s interpretation of the Sermon on the Mount, 1530). The “external” order, on the other hand, is measured completely by the rules to which praxis and works are subjected when taken in isolation from the person. It is very characteristic that here- in accordance with the idea of praxis as the discipline and service performed by an utterly sinful existence the earthly order appears essentially as a system of “authorities” and “offices,” as an order of universal subordination, and that these authorities and offices in turn essentially appear under the sign of the sword.” (15-16)

This type of obedience to temporal authority has a specific worldview regarding earthly existence that has its roots in the Christian account of the Fall. But I think that the split between heaven/earth in the above account is to some extent contradicted by the political theology of the Christian God’s son as God in the flesh, on earth. “This thought reappears in a secularized form in Kant: man’s freedom as a rational being can only be ‘saved’ if as a sensual being he is entirely abandoned to natural necessity” (Marcuse 2008, 8). Consequently, the logic of the contemporary political concepts of human rights of freedom and autonomy follows a similar line. The logic of the dual existence of the self versus temporal world is absent in Islam with the exception of some of the schools of Sufism. The temporal world is the place to achieve salvation, which takes place without the guidance of a church or clergy. Earthly existence underlies the logic of salvation, authority, and obedience in Islam. Consider the following verses, which make the point that authority is not absolute and the subject is held accountable to praxis or deeds in accordance with *Sharia*:

And [yet], among the people are those who take other than Allah as equals [to Him]. They love them as they [should] love Allah . But those who believe are stronger in love for Allah . And if only they who have wronged would consider [that] when they see the punishment, [they will be certain] that all power belongs to Allah and that Allah is severe in punishment. 2:65

[And they should consider that] when those who have been followed disassociate themselves from those who followed [them], and they [all] see the punishment, and cut off from them are the ties [of relationship], 2:66

Those who followed will say, "If only we had another turn [at worldly life] so we could disassociate ourselves from them as they have disassociated themselves from us." Thus will Allah show them their deeds as regrets upon them. And they are never to emerge from the Fire. 2:67

Accordingly and contrary to the Christian account of the Fall, in *Sunni* Islam people are assumed to have a sound nature and knowledge and able to make sound judgments regarding obedience to authority. Thus, obedience on Earth is not absolute since praxis is ultimately what achieves salvation. Therefore, praxis in accordance with *Sharia* guarantees salvation. Sayyid Qutb argues that this is actually the foundation of monotheism, which is to follow one law that is above people and does not enslave one group to the other. He writes:

Indeed, He knows that there is no other way. The way is not to free earth from Roman and Persian tyranny in order to replace it with Arab tyranny. All tyranny is wicked! The earth belongs to God and should be purified for God, and it cannot be purified for him unless the banner "No deity except God," is unfurled across the earth. Man is servant to God alone and he can remain so only if he unfurls the banner, "No deity except God—"La ilaha illa Allah"—as an Arab with the knowledge of his language understood it: no sovereignty except God's, no law except from God, and no authority of one man over another as the authority in all respects belong to God, The "grouping" of men which Islam proclaims is based on this faith alone, the faith in which all peoples of any race or color—Arabs, Romans or Persians—are equal under the banner of God. (26)

This quote presents us with an account of authority and obedience that produces different accounts of subjectivities and new views about freedom of the subject and the limits of obedience to authority. Accordingly, only by submitting themselves to God, can Muslim subjects actually be free, meaning that subjugation is as an act of free will, a conversion that one has chosen to impose on oneself. The collective that adheres to *Sharia* cannot subjugate others nor can individuals subjugate others. This verse from the *Qur'an* illustrates the idea:

And Satan will say when the matter has been concluded, "Indeed, Allah had promised you the promise of truth. And I promised you, but I betrayed you. But I had no authority over you except that I invited you, and you responded to me. So do not blame me; but blame yourselves. I cannot be called to your aid, nor can you be called to my aid. Indeed, I deny your association of me [with Allah ] before. Indeed, for the wrongdoers is a painful punishment." 14:22

Thus, obeying laws that contradict the *Sharia* is a voluntary act by which the subject is held accountable and judged. Every act is judged according to adherence to the law. According to the *Qur'an*:

So whoever does an atom's weight of good will see it. And whoever does an atom's weight of evil will see it. 99:7-8

This type of judgment emphasizes praxis and simultaneously limits the scope of earthly power, authority, and obedience. Obedience that is tied to praxis guarantees the achievement of salvation and sets limitations on temporal power political control. Therefore, the word “freedom” never received attention similar to that paid it in Western political thought, meaning that for a Muslim to follow God’s law is to be free from arbitrary earthly laws. Freedom or liberty has never been a central theme in Islamic *Fiqh* because obedience to God’s Law addresses the same concerns that the concept of freedom does in Western political writings. Montgomery-Watt echoes the argument:

freedom has never has any place in Islamic thought. There is a word for freedom, namely *hurriyyah*, but this refers to the condition of the freemen (*hurr*) as contrasted with the slave (*‘abd*). ..despite such points, however, it seems likely that there is a combination of ideas somewhere in Islamic thought, which performs much the same function as the concept of freedom does in the West. (Kamali 2002, 8)

Yet, his argument overlooks possibilities that may arise if the concepts of *Hurr* and *Abd* are scrutinized linguistically in relation to one another before and after the advent of Islam.

At this point I would like to warn the reader that this chapter and the subsequent one rely heavily on the writing of Hakim Al-Mutairi who is contemporary Kuwaiti *Salafi* Islamic

thinker and political activist and a member of Umma Party (Hizb al-Umma al-Islami). Through his party he is aiming to reform the Kuwaiti monarchy, hoping to bring about constitutional changes that limit monarchical power in government and politics. The justification of choosing Al-Mutairi's work is the relevance of his research to the topic of this dissertation. As a *Salafi* he belongs to the most orthodox schools of *Sunni* jurisprudence. Accordingly, he is expected to be the least critical of Islamic traditional legal sources and the *Sharia*. Yet, his work is primarily on freedom from tyranny and autonomy of the Muslim subject. Accordingly, his research is ideal for the purpose of demonstrating how local qualities of freedom and equality framed and argued in *Sunni* Islam context.

Al-Mutairi argues that “*Hurr* (freedom) in classical Arabic and the language of the Qur'an has a wider meaning than the Western and contemporary use of the term. In the Arabic tongue, *Hurr* (free) is the opposite of *Abd* (slave) and *Tahreer* (to free) a child is by raising him obedient to God” (b).<sup>69</sup> Accordingly, freedom is not an act to possess an object or achieve a desire. Moreover, freedom is not to act or think without a constraint. Instead, freedom is a characteristic that a person may or may not possess. Instead, Al-Mutairi argues that “the free person (*Hurr*) is the highest in honor and the best among his/her people and the most honest and generous regardless of wealth” (b).<sup>70</sup> This means a person who holds this character is a person who is free to keep a promise and act according to these treats without fear of consequences. Such a person has no master but her/himself. Accordingly, being free is an innate quality that

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غير ان للحرية في لغة العرب و لغة القرآن معنى أشمل و أرحب يختلف اختلافا جذريا عن معناها في الثقافة الغربية الأوروبية التي تشيع اليوم ، ففي  
لسان العرب الحر نقبض العبد ، و تحرير الولد : أن يفرد له لطاعة الله

الحر من الناس خيارهم و أفاضلهم ، و حرية العرب أشرفهم ، و الحر من كل شي أعتقه أي أكرمه و أجوده و أحسنه <sup>70</sup>



flows in the opposite direction of the material environment; from an inward to outward direction. Therefore, the *Hurr* label holds more than the quality of being physically free, for a person can be free but act in a slavish manner. Thus, being free requires action in accordance with the collective standard of being *Hurr*. This description of the freedom is before the advent of Islam and after Islam the qualities of freedom are emphasized further by God and revelation. Al-Mutairi claims that to be free is “to be free from the enslavement of other. Thus, whoever obeys other next to God; he is an idol worshiper of that person whether that person is a king or clergyman” (b-g).<sup>71</sup> Conversely, the word *Abd* (slave) has the opposite connotation since by definition a person who is a slave is unable to act according to his/her own innate character. So a person can be a slave to material conditions if it prevents her innate moral character from being expressed. Hence, a free person is one who shapes the environment and not shaped by it. However, historically *Ulu Al-Amr* in *Sunni Fiqh al siyash al shariah* emphasized less this character of freedom and demanded obedience from the Muslim subject in accordance to *Maslaha*. This idea is illustrated in chapters two, four, and five.

This is the logic behind the argument that Islam has equalized relationships between the master and the slave. *Sharia* holds both master and slave are equal in value and legally both must obey *Sharia*. Of course, this argument has to answer many questions and concerns regarding the institution of slavery in general, but that is not the aim of this investigation. Here we are concerned with authority and obedience, which are never absolute in a master-slave relationship. Thus, one who acts in accordance with *Sharia* is the *Hurr*, and one who follows the law of

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<sup>71</sup> تحرر الانسان من عبودية غير الله ، فمن بذل طاعته و خضع لغير الله فهو عبد لمن صرف له طاعته ، سواء صرفها للأوثان البشرية ، كالمملوك و رجال الدين

another person is a slave to that person. As a matter of fact a Muslim cannot be a Muslim unless she accepts Islam as a free act. Consider the following verse one more time:

There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong. So whoever disbelieves in Taghut and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is Hearing and Knowing. 2:253

Faith secures freedom from arbitrary laws by temporal power. And the free act of becoming a Muslim, a necessary condition, ensures action in accordance with the standard of the religion and gives legal legitimacy to acts of resistance. The freedom from being ruled by the laws of other persons was the ethos of pre-Islamic Arabia and remained so in a different context after the advent of Islam. It is these types of relationships between authority and obedience that temporal power has historically struggled to change. In manipulating *Ulu Al-Amr*, it has sought to emphasize obedience to temporal power over action.

In sum, we have established in this chapter the local and particular legal characteristics of authority and obedience in *Sunni* Islam. *Sunni* Islam has a universal character that is present in all collectivities whether theologically sacred or profane and secular. Its most important universal character is obedience to a set of rules that *Sharia* represents as “good” and avoidance of others that are “bad or evil.” Universally, rules and some basic agreement on the “good” are necessary for a collectivity to come into existence. It is hard to conceive of a collectivity that does not follow some general rules or laws that allow for the constitution of meaningful relations and interactions among its members. Consequently, members of a collectivity must obey at least a minimal set of rules that govern the collective. Logically, an agency must hold authority to enforce a collectivity’s rules. Therefore, some type of obedience to authority is a universal quality that is present in every collectivity.

This dissertation argues that these universal characteristics of authority and obedience exist in every collectivity across time and space, but to understand how authority and obedience operate one must account for the local legal, social, and political frames of a collective setting. In the context of Western European history, authority and obedience evolved into the legal principle of sovereignty, which is currently a basic principle of international law. Only by understanding the religious roots of contemporary Western secular states can the sovereignty of the nation state and the people be grasped.

Similarly, authority and obedience in *Sunni* Islam have a local and particular quality that allows for the universal characteristics to operate coherently. This chapter has established that *Fiqh al siyash al shariah* in *Sunni* Islam has evolved from the authority of *Ulu Al Amr* as a body of legal experts. Legally, *Ulu Al Amr* in *Sunni* Islam are profane in character and lack divine or supernatural qualities in understanding and speaking on behalf of the text. They are learned expert judges who gain their authority from other judges by recognition of their grasp of the subject matter. Consequently, obedience in *Sunni* Islam is limited to *Sharia* that instructs how to ordain the “good” and to forbid “evil.” Moreover, because the Muslim subject achieves salvation through praxis and not grace obedience to authority is limited to the understanding the legal injunctions in the *Qur'an* and *Sunna*. Authority in *Sunni* Islam lacks supernatural qualities. As a result, challengers who understand sacred texts differently subject the *Ulu Al Amr* to constant scrutiny and limitation.

The highest degree of obedience to the authority of *Ulu Al Amr* in *Sunni* is in the realm of *Fiqh al siyash al shariah*. This legal branch of *Sharia* evolved to accommodate political change through the historical sediment of legal opinions according to *Maslaha*. The central role of *Ulu Al Amr*, a profane authority, regulates Muslim obedience to temporal power, be it a city state,

dynastic empire, principality, or finally the modern sovereign nation-state. It is the combination of expertise in *Sharia* and the evolution of *Fiqh al siyash al shariah* that provides the basis for legal opinions that other experts can use to achieve *Ijma* regarding new legal matters.

Historically, temporal power was able to extract obedience from Muslim subjects or the *Umma* via the legal legitimacy *Ulu Al Amr* had over the text and over political and legal issues, such as the form of government, which had no reference in the *Qur'an* or *Sunna*. Empires and other forms of government were toppled on the legal claim that they had no legitimacy. They lacked legitimacy because the *Ulu Al Amr* at the time were corrupt and had lost their authority due to unlimited legal accommodations to temporal powers that were viewed as corrupt.

## CHAPTER IV

### *Ulu Al Amr, Temporal Power and Wilayah al Ahed*

Nearly two decades after accession to power, the emir of Qatar Sheikh Hamad bin Khalifa Al Thani was set to hand control of a transformed country to his son and heir apparent Sheikh Tamim (Aljazeera 24 June 2013). Tamim was to receive *Wilayah al ahed* from his father in the year 2003 (Aljazeera 24 June 2013). The historic event signified the legal continuation of concept that appeared in the history of Islam in the year 56 AH (676 CE) and still provide the legal foundation today for all Arab monarchies. As Al-Mawardi (972-1058 CE) relates, “Imamate comes exists in two manners: the first by election of those in social power and influence and the second by the delegation of the previous Imam” (Al-Mawardi 2005, 12). *Wilayah al ahed* is the Arabic term for “delegation of power” in *Fiqh al siyash al shariah*.

This chapter focuses on the legal principle of *Wilayah al ahed* to demonstrate the particularities and unique character in the Islamic legal conception of temporal power. More important, it further clarifies the historical role of *Ulu Al Amr*’s authority in providing governmental legitimacy in Islam. Neither the *Qur’an* nor *Sunna* provides any reference to the type of government or means through which temporal power is delegated from one person to another. Fulfilling this task falls to the authority of *Ulu Al Amr*.

I would like to start with preliminary remarks regarding the use of the historical method. Since this chapter relies extensively on historical events that have legal consequences for the development of *Fiqh*, I will clarify how this historical record is treated as evidence. First, the record’s authenticity is of secondary importance. I am unconcerned with questions of historical

authenticity but intend to investigate the historical layers of legal discourse of *Fiqh* that are accepted by Muslim intellectuals and jurists who abide by *Fiqh* and constitute Islam's "tradition." This means that whatever the *Ulu Al Amr* has considered legally binding through *Ijma* is treated by this dissertation as valid evidence. Hence, the focus here is on how *Fiqh* evolved as a foundational tradition for the development of legal rulings. This includes the historical evolution of the legal principle of *Wilayah al ahed*, which later morphed into *Wlayah al qaher*.

An example that elucidates the method above is the statement of the Grand Imam of Al-Azhar of Egypt Ahmed El-Tayeb. On the 30<sup>th</sup> of June 2013 he provided legal legitimacy to the military coup that ousted President Morsi of Egypt claiming it was the lesser of two evils. This lesser evil is founded in the principle of *Fiqh* whereby ousting a legitimate president can be justified to prevent the greater evil of civil war and bloodshed. In other words, *Wlayah al qaher* legally binds the *Umma* to obey whoever usurped the state by force since obedience of the community ideally would prevent further bloodshed. As such, whether the foundational principle in early Islam is authentic or not is unimportant. What is important is that such a principle remains legally valid in *Fiqh* in 2013. Regardless of the criticism that the Grand Imam received for arriving at his *Fatwa*, my aim is to demonstrate the traditional basis for contemporary law.

Before discussing the legal principle of *Wilayah al ahed*—the delegation of power—it is beneficial for the sake of clarity to investigate *Al siyash al shariah*, a subfield of *Fiqh* and the locus of the historical development and evolution of *Wilayah al ahed*. *Wilayah al ahed* is shaped by the general principles of *Sharia*. Meaning, *Al siyash al shariah* is a subfield that is governed

by *Sharia*'s overall objectives, limited by it. Once this clarification is achieved, it is easier to follow the historical evolution of the principle of *Wilayah al ahed* in *Fiqh*. According to John Esposito:

In its broad scope, Shariah-oriented public policy (*siyasah shariyyah*) authorizes government leaders to conduct government affairs in harmony with the spirit and purpose of the Shariah, even at the expense of a temporary departure from its specific rules. The two most important objectives of this policy are the realization of social benefit and the prevention of evil. Shariah-oriented policy is an instrument of good government, and it applies both within and outside the parameters of the established Shariah, although some ulama have held that there is no policy outside the Shariah itself. (143)

Accordingly, *Al siyash al shariah* is an instrument for the realization of *Sharia* and a subfield of *Fiqh* that historically elevated *Ulu Al Amr* authority as the ultimate source of legitimacy of temporal power. Furthermore, Esposito's account of *Al siyash al shariah* is comprehensive but lacks the agency that is in charge of implementing the standard of the "government affairs in harmony with the spirit and purpose of the Shariah" (143). Hence, this dissertation argues that historically *Ulu Al Amr*'s authority provided the legitimacy to temporal power according to the *Sharia* and sometimes beyond it. Even though, historically there was a lack of consensus regarding the legal capacity of *Ulu Al Amr* to depart from *Sharia*. This lack of consensus was clear in chapter one regarding the three legal opinions on state sovereignty. Historically, important jurists have held strong views regarding the legal ability of *Ulama* to depart from the *Sharia*. The scholar Ibn Qayyim al-Jawziyyah (1292–1350 CE / 691–751 AH), the student and closest disciple and successor of Ibn Taymiyyah (1263–1328 CE/ 662 AH-729 AH), argued:

*Siyasah shariyyah* includes all measures [including *Wilayah al ahed*] which bring the people closer to beneficence and furthest away from corruption, even if it has not been approved by the Prophet (peace be upon him) nor regulated by divine revelation. Anyone who says that there is no *siyasah shariyyah* where the Shariah itself is silent is wrong. . . .(Esposito, 2001)

This statement illustrates how *Wilayah al ahed* became an established legal practice even though it is neither found in the *Qur'an* nor *Sunna*. The principle of *Wilayah al ahed* was first advanced as a legal solution under the principle of *Maslaha* for the realization of social stability

and the prevention of further civil wars by discouraging competing groups from seeking the post of *Khilafa*. Yet, historically the legal outcome of *Wilayah al ahed* placed *Maslaha* or “the good” of the community above the legal restrictions of obedience to temporal power. More precisely, unlimited obedience to the temporal power suddenly became a pillar of faith. A pious Muslim is the one who remains in *Jama’ah* (the theological or physical main body of Muslims) and avoid starting *Fitnah* (connotations of secession, upheaval, and chaos) demanding and fighting for full legal rights such as a public *Bay’a* and the practice of *Shura* by the *Khalifa*. To secure unlimited obedience to temporal power, *Ulu Al Amr* as legal experts creatively provide the legal evidence in the primary texts that supports their opinion and undermines the contrary evidence. The following *Hadith* is frequently cited as support of unlimited obedience to temporal power “...he who separates himself from the community (*Jama’ah*) by even so much as a hand span and dies (in this state), he will die the death of *Jahiliyyah*.” (Bukhari and Muslim). While the *Qur’an* and *Sunna* hold ample injunctions that demands Jihad for what is right.

We have established already in earlier chapters that *Al siyasah al shariah* and the issues of the *Imamah* are secondary matters in *Sharia* and just a branch of *Fiqh* and not foundational rendering legal differences in opinion regarding the good or harm to the community as a normal outcome of legal debates outside the realm faith. Moreover, *Sunni* legal *Ulama* agree that the subject of the state and the nature of governance are not related to theological junctions. The scope of authority of *Ulu Al Amr* as legal experts is operative in the legal opinion that renders branches of the *Sharia* more important than the roots. To borrow a Marxist analogy, by demanding a total obedience to temporal power, *Ulu Al Amr* have put the *Qur’an* and the *Sunna* on their head. *Wilayah al ahed* have effectively reversed the priority of the primary texts according to what *Ulu Al Amr* consider the *Maslaha* of the *Umma* in a particular historical



moment. “According to Al-Ghazzali (450-505 AH/1058-1111 CE), they are able to do this due to their [the *ulama's*] principal political function, which has been the interpretation of *shariah* in terms of the problems facing the community, and by their approval of the sultan's choice of *imam* in the *bay'a* . . . and their *fatwa*, they expressed the functional authority of the *shariah* (Dabashi .92/Lambton 1989, 115).” Only the *Ulu Al Amr* are historically able to shift the role and function of temporal power according to social and political change facing the *Umma*. This shift in legal opinion is indicative that “the caliph of the Sunnis [had] no authority to dispense spiritual instruction” (Dabashi 90 /Goldziher 1989, 182-83). Temporal power remained dependent on its entitlement from the *Ulu Al Amr* to rule over the *Umma*. Nevertheless, the *Ulu Al Amr* never claimed sovereignty over the interpretation of the legal source of *sharia*. *Ulu Al Amr* authority is the equivalent of an opinion by a legal expert, the province of the legal principle of *Ijma* (consensus). A consensus of opinion is legally binding if the majority agrees on a particular controversy or legal matter. While disagreements between the *Ulu Al Amr* have always been present and disputes among scholars over legal matters have existed and sometimes been debated, the principle of *Ijma* historically trumped those holding minority opinions.

Thus, legally the *Khalifa* cannot be the source of law and directly command obedience from the *Umma*. Instead, temporal power remained limited to *Sharia* in their governance of the *Umma*. This is the central character in understanding how government functions in *Sunni* Islamic political and legal writings. This local *Sunni* character directly redefines the scope of authority, obedience, emancipation, autonomy, equality, and freedom in the particular local context of *Sunni* Islam. Hence, the *khalifa* “as ruler [...] is nothing but the successor of the one who preceded him . . . and not entitled by the qualities inherent in his personality” (Dabashi 90 /Goldziher 1989, 182-83). Accordingly, God is the only Sovereign and all subjects are equal in

distance and value to his reign thus depriving temporal power of any supernatural qualities.

Obedience to temporal power is based only on the *Khalifa*'s adherence and implementation of the law. Clearly, the Hobbesian concept of sovereignty has no roots in Islamic political and legal thinking, which stands in contrast to Western political thought with its secularized but Christian roots.

In Islam the sovereign God remained invisible. Consequently, Islamic political and legal writing historically and legally lacks the Incarnation Christian quality in the evolution of its legal concepts and institutions. In Islam, God the sovereign, who is invisible, forbids iconic representations or impersonation of his divine qualities. This rejection of an incarnation of godly presence effectively denied the *Ulu Al Amr* the power to attribute divine qualities to their actions. With temporal power fleeting and without sovereignty the *Khalifa* occupied the legal domain of *Sharia* without a specific mandate from the *Qur'an* or *Sunna*. As a result, *Ulu Al Amr* legally adopted *Fiqh al siyash al shariah* to accommodate changing historical circumstances and with it the role of transitory power that governs a city state, empire, or fragmented competing principalities. This was possible by developing *Wilayah al ahed*, a legal principle that cannot be found in the *Qur'an*, *Sunna*, or the early founding period of the Four Guided Caliphs. Perhaps “we are here in a universe of guile which should remind us of what the Islamic tradition knew and developed under the name of *hila*... (Mondzain 2005, 6). How this religious trick or guile is central theme of this chapter.

Before we examine the historical record, I would like to the focus first on the linguistic meaning of the term *Wilayah al ahed* so that a clear correspondence in the English language is

developed and explained. First, the term *Wilayah al ahed* is composed of two words, *Wilayah* and *Ahed*. According to Thouaqan:

The first section of the term, *Wilayah*, is derived from the root verb *Wally* and when it is said a person is *Wally* something, means that person responsible for that matter and in its service. Ibn Jarir al-Tabari (224 – 310 AH; 838–923 AD) explains the meaning of the word *Al-wlliah* from the following verse in the *Qur'an*: Unquestionably, [for] the allies of Allah there will be no fear concerning them, nor will they grieve (10:62) as those who allied with Allah, the most sincere of the believers due to their affinity with God through obedience. And the *Wally* (ally) is called *Wallyyan* (ally) due to his *Mowallat* (allegiance) and obedience to God's command. Also the term *Al-willaiah* linguistically means those who are closer in position... And the word *Willayah* means kingship and command that pertains to ability to deliberate and govern in accordance principality. (45)<sup>72</sup>

Linguistically the term *Wilayah* in Arabic confers a sense of guardianship and responsibility over something that requires the ability to deliberate and execute in accordance with the good of that thing.

The second part/section of the term, *Al ahed* (promise), is derived from the root verb *Ahed* meaning *Wassiah* (commandment/will) and when it is said a person delegated *Ahed* it means *Awssah* or made it conditional; thus *Al ahed* is *Al wassyyah* (Thouaqan 2005, 46).<sup>73</sup> The term appears in the *Qur'an* as *Aheed* (enjoin) and *Aheedna* (plural for made a promise). The following two verses illustrate the idea:

Did I not enjoin upon you, O children of Adam, that you not worship Satan - [for] indeed, he is to you a clear enemy. 36:60 And We had already taken a promise from Adam before, but he forgot; and We found not in him determination . 20:115

<sup>72</sup> اشتقت كلمة ولاية من الفعل الثلاثي ولي، فيقال ولي الشيء بمعنى ملك أمره و قام به و الولي هو الحافظ و الناصر ... ويفسر ابن جرير الطبري الأولياء في قوله تعالى: "إلا أن أولياء الله لا خوف عليهم ولا هم يحزنون" بأنهم أنصار الله، و هم خلص المؤمنين، و ذلك لقهم من الله سبحانه بطاعته و اجتناب معصيته، و سمي الولي ولياً من موالاته الطاعات اي متابعتها لها. وتحمل كلمة الولاية معنى الامارة م السلطان و التي تشعر بالتدبر و القدرة والفعل، و تحتاج اليها ليتمكن صاحبها من القيام بواجب هذه الإمارة

<sup>73</sup> اشتقت كلمة العهد من الفعل الثلاثي عهد بمعنى أوصي، فيقال عهد اليه بمعنى أوصاه و شرط عليه، فالعهد هو الوصية

And the term *Ahed* (covenant) also means to attend to a matter and attain peace and harmony as for example in the *Qur'an* verse 7:102: “And We did not find for most of them any covenant” (Thouaqan 2005, 46).<sup>74</sup>

Thouaqan explains that by combining the two terms *Wilayah* and *ahed* “means ruler-ship and governance while the second term means covenant, the combination of those two terms *Wilayah al ahed* means the covenant and the heir of the throne ... thus the term *Wilayah al ahed* was used to refer to the person who follows the ruler and inherits the throne and governs after the state due to fulfilling the covenant that was given to him from those who could legally give *Bay'a* to the *Khalifa*” (47).<sup>75</sup> Hence, the closest thing that corresponds to the term *Wilayah al ahed* in Western legal and political thought is “binding covenant.”

To illustrate the political and the legal context before the appearance of *Wilayah al ahed* in Islamic legal discourse I focus is on the period from the death of the Prophet in “11 AH (632 CE) until 73 AH (692 CE)” (Al-Mutairi 2003, 6).<sup>76</sup> First, Al-Mutairi argues that Islamic legal and political discourse can be divided into three distinct historical periods in which legal discourse is tied to the political system and governance of each particular period. Political discourse is “the total sum of the legal rulings and principles that guide the Islamic state rules and regulations”

<sup>74</sup> كما جاء في قوله تعالى: ما وجدنا لأكثرهم من عهد

<sup>75</sup> و بما ان الولاية تحمل في معانيها الإمارة و السلطان، و العهد يحمل معني ال وصيه فقد ظهر مصطلح ولي العهد ليعني الوصي او الوارث للملك و ذلك لانه ولي الميثاق الذي يؤخذ علي من بايع الخليفة

<sup>76</sup> المرحلة الاولى مرحلة الخطاب السياسي الشرعي المنزلي ١هـ - ٧٣ هـ

(Al-Mutairi 2003, 8).<sup>77</sup> With each historical change in the mode of governing, the legal discourse changed accordingly.

Before the advent of Islam, the Arabs of central Arabia never had a unified government. They were united for the first time under the leadership of the Prophet and produced a new entity, *Umma*. “The establishment of *umma* as the Islamic community was the most significant expression of Islamic solidarity against traditional tribal structures” (Dabashi 1989, 76). “Without a succession plan the death of the Prophet (11 AH- 632 CE) presented a challenge to the unity of the *umma* and a vacuum in leadership” (Donner 2010, 146). (*Shia* scholars dispute that the Prophet did not select a successor.) According to Donner:

On the death of Muhammad in 11/632, the Believers in Medina agreed to recognize Abu Bakr as their political leader. This act not only secured the succession but also institutionalized the notion that the Believers should remain a single, united community. We also noted that Abu Bakr was succeeded by 'Umar ibn al- Khattab (ruled 13-23/634-644) and then by 'Uthman ibn 'Affan (ruled 23-35/644-656) and how under these leaders the first great wave of expansion of the Believers' movement took place. (146)

But how did the *Umma* choose its leader and what conditions were required in a leader? The political matter was left to the *Umma*, and as a result, *Fiqh al siyash al shariah* as a branch of the *Sharia* developed and evolved. As long as both political leadership and the state help in implementing *Sharia* and remain under its junctions, then they are necessarily legal. The matter is left entirely to the *Umma*.

It is important to point out that during the founding period the class of *Ulu Al Amr* had not yet formed. Most of the Companions of the Prophet possessed a direct knowledge in religious matters from the Prophet. Therefore, the First Four Guided Caliphs represented

<sup>77</sup> يمكن تقسيم المراحل التاريخية للخطاب السياسي الإسلامي - و هو منظومة الأحكام و القواعد التي يقوم عليها نظام الحكم في الدولة الإسلامية - إلى ثلاثة مراحل رئيسية ، لكل مرحلة ملامحها و معالمها التي تميزها عن المراحل الأخرى

temporal power and *Ulama* as well. The class of *Ulu Al Amr* crystalized only in the second period and with the appearance of *Wilayah al ahed*.

What are the conditions that must be available in the person who governs the community affairs? It seems that the issue of piety is the supreme condition in the *Khalifa*. Certainly, dynastic rule based on blood and family rule were out of the question during the founding period. Even when the tribe of *Quraysh* claimed that they were the first Muslims and as such they should rule, their assertion was not primarily based on the superiority of their tribe over other tribes; instead it was based on their proximity to the Prophet during the thirteen years in Mecca when He was propagating His message. The First Caliph Abu Baker gave the following speech once he received the *Bay'a* from the community:

"I have been given authority over you but I am not the best of you. If I do well, help me, and if I do ill, then put me right. . . . Obey me as long as I obey God and His apostle, and if I disobey them you owe me no obedience." (Ibn Hisham 1955, 687) (Dabashi 1989, 83)

Hamid Dabashi disagrees. He argues instead that tribalism after the death of the Prophet dominated the political process and that the first violation of equality appeared between Arab and non-Arab Muslims. He contends:

The selection of Abu Bakr was not bound to any particular stipulation of Muhammad's authority, the *Qur'an*, or the *Hadith* but was a designation framed primarily within tribal rivalries as well as affiliations. The intricate relationships among the Aws, Khazraj, and Quraysh fundamentally shaped the outcome of the tribal council in *Saqifah Bani Sacidah*, as discussed in previous chapters. (83)

Dabashi fails to clarify that what took place in the *Saqifah Bani Sacidah* was a nomination process and not actual *Bay'a*. The actual *Bay'a* was given in the mosque in front of the *Umma* or to Abu Baker by the *Umma* or more precisely, by those who inhabited the Medina during that time. Only after the *Umma* gave Abu baker *Bay'a* was he able to give the above speech. Muslims who were present in the mosque may have very well refused his leadership if they wanted to,

especially because the Medina was a city of *Aws* and *Khazraj*, not *Quraysh*, and they could have overwhelmed the *Qurayshi* vote. Furthermore, the first Caliph Abu Bakr (573 - 634 CE) was the closest lifetime companion of the Prophet before and after Islam. Thus, the issue of piety was the main reason behind the selection. As well, once the *Bay'a* was given to Abu Bakr, there were no signs of discontent with his leadership. Donner further argues “the First Civil War had involved economic and other practical issues but was fundamentally a debate over the nature of future leadership in the community of Believers, particularly its relationship to issues of piety and morality” (Donner 2010, 167). Yet, Dabashi’s claim has some justification since nothing in the *Qur’an* or *Sunna* gives *Quraysh*, despite their claims to be the first Muslims, this right.

This chapter sets out to prove that the post of temporal power originally created after the death of the Prophet was to serve the *Umma*, the good of the community, and faith; the focus later shifted 180 degrees. Despite the conflict that ensued in the wake of the Prophet’s death, particularly during the time of the Third ('Uthman ibn 'Affan 577 – 656 CE) and Fourth Caliph (Ali ibn Abi Talib 601 – 661 CE), *Sunni* Muslims hold this founding period, next to the period in which the Prophet was the leader of the *Umma*, as embodying the highest of the ideals of Islam. It is this early period (1- 73 AH) that ideally should be used for *Qiyas* (reasoning by analogy, a source of Islamic law) in *Fiqh al siyash al Shariah* for future generations of *Ulama*. Instead, historically, the *Ulu Al Amr*, in developing *Fiqh al siyash al shariah*, relied on the period of *Taweel* (73- 1350 AH) (allegorical interpretation or departure from the manifest [*Zahir*] meaning of a text in favor of another meaning where there is evidence to justify the departure) as the primary source upon which legal rulings were made and not the period of the founding.

According to *Al-Mutairi*, “the period of revealed political legal discourse (*Mounazel*) with its distinctive interchange of ideas spans the dates from 1 AH- 622 CE to 73 AH- 694 CE” (8).<sup>78</sup> He argues that there are legal principles that underlie the entire period and were used as references to solve recurrent political crises the *Umma* faced. His contention is primarily relevant to *Fiqh al siyash al shariah*. At the time, *Fiqh al siyash al shariah*, as a branch of *Sharia*, was in its infancy and did not exist as an independent field in *Fiqh*. It was closest to the original sources in the *Qur'an* and *Sunna*. He argues that these legal principles that were established in the period achieved *Ijma* among the *Umma* during that particular period, so no one disputed these legal principles among the Islamic groups that were then developing. *Al-Mutairi* lists nine principles of the *Mounazel* period as follows:

1. The necessity of the state for the establishment of the faith religion
2. The necessity of a governing authority
3. Government authority is based on the legal principle of *Bay'a*. Consequently, no *Imam* can legitimately rule without a *Bay'a*
4. The *Bay'a* is conditioned on the consent of the *Umma*.
5. And consent of the *Umma* is conditioned upon *Shura* (consultation among the members of the community) among Muslims
6. *Shura* is conditioned on freedom to deliberate and consult
7. Absolute *Hakemyah* (sovereignty) and obedience belongs exclusively to Allah and the Prophet
8. The realization of justice and equality among Muslims
9. The realization and protection of individual and collective rights and duties. (8-32)<sup>79</sup>

The nine principles were woven into the tapestry of *Sharia* and existed before the advent of *Fiqh al siyash al shariah*. They were general in character and represented the main aim of the

المرحلة الاولى : مرحلة الخطاب السياسي الشرعي المنزل : و هي المرحلة التي تمثل تعاليم الاسلام كما نزل علي النبي صلى الله عليه و سلم ، هذه المرحلة التي تبدأ تاريخيا بقيام الدولة الاسلامية في المدينة المنورة، بعد هجرة النبي صلى الله عليه و سلم إليها ، الى آخر عهد خليفة صحابي و هو عبد الله بن الزبير سنة ٧٣

١- ضرورة الدولة للدين و أنه لا دين بلا دولة ٢- ضرورة إقامة السلطة و أنه لا دولة بلا إمام ٣- ضرورة عقد البيعة، فلا إمامة بلا عقد ٤- و أنه لا عقد ببيعة الا برضا الأمة و اختيارها ٥- و لا رضا بلا شورى بين المسلمين في أمر الإمامة و شئون الأمة ٦- و أنه لا شورى بلا حرية ٧- و أن الحاكمية و الطاعة المطلقة لله و رسوله ٨- تحقيق مبادئ العدالة و المساواة ٩- حماية الحقوق و الحريات الإنسانية الفردية و الجماعية و صيانتها



political struggle and strife among Muslims in the early period. The breakdown of the *Umma* into small groups and the eventual outbreak of the First Civil War were the results of disagreements about how these general principles were to be applied. Donner argues that the piety of the *Khalifa* was a central issue leading up to the First and Second Civil Wars.

It is also important to highlight the role of the public in choosing the *Khalifa* via *Bay'a* as the main source of the legitimacy of governance. Legitimacy flows from the *Umma*, which limits the role of the *Khalifa* through the principles of *Bay'a* and *Shura*. During the founding period, both principles legitimated temporal power's ability to secure obedience. This process prevented a reversion to pre-Islamic monarchical rule, which had guaranteed temporal power based on the blood of the tribe. Arab tribes were united under the message of Islam because it explicitly denied the superiority of any group based on lineage. Conversely, Islam emphasized piety as the metric that differentiates Muslims. Dabashi illustrates this point further by explaining that:

The ten most distinguished companions of the Prophet, to whom he had promised paradise (*al-asharah al-Mubashsharah*), were Abu Bakr, Umar, Uthman, Ali, Abd ar-Rahman ibn Awf, Abu Ubaydah, Talhah, Zubayr, Sa d of Zuhrah, and Sa id, the son of Zayd the Hanif (Lings 1983, 329). To these one might add Salman the Persian and Ammar, of whom a prophetic hadith says "for three doth Paradise long, for Ali, Ammar, and Salman" (*ibid.*), and Bilal the Abyssinian, the slave whom Muhammad bought and released and who then became famous for his beautiful voice to which the Prophet loved to listen when reciting *adhdu* (the Muslim call to prayer). Salman and Bilal were particularly important, being non-Arabs, for symbolically signifying the supratribal solidarity of the Islamic community. (78)

These individuals shared positions of high status due to their proximity to the Prophet. Among these ten individuals were the Four Guided Caliphs, whose piety proved Donner's point that devotion was essential to command obedience from the *Umma*.

The Four Guided Caliphs were revered due to their piety, not tribal affiliation. In addition, there were Companions, some of whom belonged to the highest tribal power, who were not included among Four Guided Caliphs; a prime example is Mu'awiya, the fifth *Khalifa* who

was the founder of the Umayyad dynasty and ruled from (661-680 CE). These companions were recognized as pious because of their close proximity to and struggle with the Prophet to establish Islam during its founding phase. It is precisely “this proximity [that] later became the source of authority for these companions” (Dabashi 1989, 78).

Finally, those companions, during the founding, established the political practices of *Bay'a* and *Shura* to include the public in the social and political matters of the *Umma*. Without going into further details regarding the justice that was achieved during their rule, the period of the Four Guided Caliphs is historically held in high regard (at least among *Sunni* Muslims) because the *Umma* was included in political matters. Furthermore, as *Al-Mutairi explains*, “The third principle of the *Mounazel* political discourse in the founding period of Islam was closer to the spirit of the faith where the relationship between the *Umma* and the *Imam* is based on a contract. In this contract the *Umma* is the principle actor and the *Imam* is a *Wakeel* (a representative) running the state. Thus governance and authority are not divinely ordained or hereditary; instead, the relationship is based on a contract (*Bay'a*)” (16).<sup>80</sup> This fact illustrates that the office is primarily for the service of the *Umma* and not a prize to be captured and exclusively reserved for a dynasty. This legal condition would change when *Wilayah al ahed* appeared.

How and why did the legal principle of *Wilayah al ahed* appear? The obvious obstacle to the adoption of *Wilayah al ahed* was that it contradicted the legal principles of *Bay'a* and *Shura* that had been established in the founding period as a condition for the legitimate transfer of

<sup>80</sup> وهذا هو الأصل الثالث من أصول الخطاب السياسي الشرعي المنزل في المرحلة الاولى التي تمثل تعاليم الدين الحق، فالعلاقة بين الأمة و الامام تقوم على أساس عقد بين طرفين، تكون الأمة فيه هي الأصل، و الإمام هو الوكيل عنها في إدارة شئونها، فالحكم و السلطة ليسا بالتفويض الإلهي و ليسا بالحق الموروث، بل بعقد البيعة بين الأمة و الامام و بهذا سيق الاسلام الغرب في تحدي الأساس الفلسفي الذي يتم بموجبه

temporal office. These principles guaranteed that the Caliphate serve the *Umma* as it was originally intended. In this sense Muslims were equal since the office was not a monopoly of one family or tribe. Conversely, the Caliphate functioned primarily as an executive (in modern terms) to facilitate the services needed to run a state.

*Wilayah al ahed*, in contrast, legitimated the seizure of the Umayyad Caliphate. *Wilayah al ahed* violated the reason and justification for why the office was created. Logically, this change creates an environment of contention and competition over who is entitled to rule. More important, *Wilayah al ahed*, where one clan or tribe has an exclusive right to rule the community without a legal justification in the *Qur'an* or *Sunna*, violates legal equality among Muslims. The question is: How can a Muslim or the *Umma* obey a person who claims that his clan or tribe has a right to office by blood but lacks consent from the *Qur'an* or *Sunna*? This question has yet to be answered directly. Not a single verse in the *Qur'an* or *Sunna* or *Hadith* speaks of the rule of a tribe, dynasty, or a clan over the *Umma*. This problem is still a source of legal challenges over monarchical legitimacy. The invention of *Wilayah al ahed* was the legalistic solution to the problem. Yet, as it has been practiced it has created legal issues and contradictions that historically have been resolved by violence.

“Mu’awiya ibn Abi Sufyan (647 –683 CE) was the first *Khalifa* to ask for *Bay’a* for his son, Yazid ibn Mu’awiya ibn Abi Sufyan/ Yazid I (680-683 CE), and who ruled using *Wilayah al ahed*. The First Civil War was fought between Mu’awiya, who did not recognize Ali ibn Abi Talib (601-661 CE) (the nephew of the Prophet) who ruled (656 to 661 CE)” (Al-Mutairi 2003,

16).<sup>81</sup> The First Civil War was a renewal of old tribal animosities between *Banu Umayyah/Abd Shams* and *Banu Hashim*. More important, it produced the *Sunni-Shi'a* split among Muslims.

Thouaqaan argues that “the Umayyad tried to accomplish several goals by inventing the system of *Wilayah al ahed*, thus Mu’awiya wanted in the year 60 AH-697 CE to secure the *Bay’a* for his son Yazid I before his death to prevent division and discord and secure the interest of the community” (51).<sup>82</sup> I disagree with the author due to the fact that more bloodshed and civil war followed the legal adoption of the system of *Wilayah al ahed*. A power grab is a more accurate description to what occurred during Mu’awiya’s reign. The sons of the Companions challenged this principle because it imitated the non-Islamic Byzantium and Persian monarchies. Indeed, Mu’awiya ruled the Shaam province, which bordered on the Byzantium Empire. *Wilayah al ahed* first appeared among the *Ulama* of the Al-Shaam who accepted the idea of this legal practice according to *sharia*. When Mu’awiya openly asked for the *Bay’a* for his son the issue was met with great resistance. The struggle for *Wilayah al ahed* started in 53 AH 672 CE. Its resolution was ultimately achieved on the battlefield.

What followed after the death of Mu’awiya was a violent campaign over *Wilayah al ahed* that is still painful to discuss openly among Muslims today. The gruesome violence institutionalized the historical memory of *Fitnah* (upheaval and chaos), which produced the legal opinions that discouraged the *Umma* from fighting injustice and illegal force. Hence, historically *Ulu Al Amr* regarded *Wilayah al ahed* as a source of stability that prevented violence and

<sup>81</sup> و لما أراد معاوية أن يبايع الناس ابنه ، و يعهد بالأمر إليه من بعده، اعترض عليه كبار الصحابة و فقهاءهم تلك الفترة، و هم عبد الله بن عمر، و عبد الله بن الزبير، و عبدالله بن عباس، و عبد الرحمن بن أبي بكر، و الحسين بن علي

<sup>82</sup> سعي الأمويون لتحقيق عدة أهداف من خلال ابتداعهم نظام ولاية العهد، فكان معاوية ابن ابي سفيان (ت60-697م) يرى في اخذه البيعة لابنه يزيد ما يمنع من اضطراب امر المساهمين و افتقارهم، و يعمل علي الحفاظ علي وحدتهم و مصلحتهم بعد وفاته

bloodshed among Muslims. *Wilayah al ahed* was produced as a legal solution that allowed dynastic rule in exchange for stability and the prevention of bloodshed. A similar contemporary example of this legal rationale is the Grand Imam of Al-Azhar Ahmed El-Tayeb's justification of the 3<sup>rd</sup> of July coup that legitimized the ouster of President Morsi of Egypt as the lesser of two evils (Malsin, 2014).

During the Second Civil War the *Ulu Al Amr* rewarded the Umayyad's brutality and legitimated it with *Wilayah al ahed*. This principle in *Fiqh al siyash al shariah* is still practiced today in most Arab monarchies providing the legal legitimacy for hereditary rule. One could also argue that the principle of *Wilayah al ahed* saved Muslims from brutal civil wars and needless bloodshed; after all, *Sharia* is still developing by finding practical solutions to new problems that are neither addressed in the *Qur'an* nor *Sunna*. In other words, piety was replaced by stability and order, the avoidance of *Fitnah*. Such an argument is valid, but in the same breath one cannot maintain that Muslims are equal under *Sharia*. Historically, *Wilayah al ahed* created at least two classes of Muslims: one group with the right to rule and the rest with the obligation to obey, all based on lineage. This practice institutionalized and created further social and political classes and inequalities. Most important, *Wilayah al ahed* was the first legal step on the path to justifying the subservience of the *Umma* to temporal power.

In this section I would like to discuss the social and political changes that occurred with the adoption of the *Wilayah al ahed*. The conflict of who should rule the *Umma* was behind the First Civil War (35-40 AH /656-661 CE) and Second Civil War (60-73AH /680-692 CE). These

were wars that divided Muslims into groups and sects based on who should rule. The purpose of examining the historical record is to demonstrate that *Wilayah al ahed* was met with much resistance socially and politically and that much of this resistance was crushed on the battlefield. Thus, the argument here is that starting with Mu'awiya and ending with Abd al-Malik ibn Marwan (646 –705 CE), the fifth Umayyad *Khalifa*, who was the victor of the Second Civil War (60-73AH /680-692 CE) *Wilayah al ahed* became a foundational legal principle in *Fiqh al siyash al shariah* through force and violence. Moreover, the aim here is to illustrate that the *Ulu Al Amr* were not a unified and institutionalized class and that the upper hand was with the *Ulama* of Bilad al-Sham [Fertile Crescent, the center of power of the Umayyad dynasty] the Umayyad's province. Those *Ulama* were institutionalized after the Second Civil War with the adoption of *Wilayah al ahed*, which later became orthodoxy in *Fiqh al siyash al shariah*. Nevertheless, it is important to point out that violence forced a permanent change in *Fiqh al siyash al shariah* but not in *Sharia* itself. And this fact emphasizes the argument in Islamic legal and political thought that there was never a sovereign in a European sense. Temporal power was able to govern primarily by implementing *Sharia* as the *Ulu Al Amr* saw fit. In fact, the Abbasid's major claim for toppling the Umayyad dynasty was for non-adherence to *Sharia* and its principle of justice. As a result, Muslims have historically been ruled by temporal power and not sovereignty, and this legal character is central to Islamic political thought.

The violence of the First and Second Civil Wars demonstrates the consequences of neglecting a community's political life, including how it is organized and who is qualified to rule. Theologically, questions of governance were left to the *Umma* to decide under the guidance of *Sharia*, with its conception of justice and rights. Initially, after the death of the Prophet,

resolution of conflicts over who should rule was relatively peaceful; later, during the period that *Wilayah al ahed* appeared it faced resistance from the *Kharijites* sect and the *Ulama*.

One of the earliest groups that appeared as a consequence of the First Civil War was the Kharijites sect, which never recognized Mu'awiya as *Khalifa*. In fact, they were against Ali's (the Fourth Guided Caliph) agreement to peacefully dispute the Caliphate with Mu'awiya. Because they never recognized the legitimacy of the Umayyad's rule, they considered legal matters decided under the Umayyad heretical. For the Kharijites, the most important matter in the *Khalifa* was piety. They treated *Wilayah al ahed* as a legal heresy both in its source, which was the illegitimate Umayyad, and as a principle that ran against the Islamic belief in equality among believers. They did not believe in a class of *Ulama* since all Muslims must educate themselves as righteous members of the community (Thouaqan 2005, 86-88).

*Al-Mutazilah*, another group, disputed the legality of clan rule and refused to recognize the Umayyad's claim as the rightful rulers of the *Umma*. They regarded *Wilayah al ahed* as heretical. As rationalists, they rejected the philosophical claim behind *Jabariyah* (the belief that human action is foreordained by divine decree or purpose). Consequently, they held the Umayyad responsible for their indiscretion and condemned the principle of *Wilayah al ahed* as a corrupt innovation (Thouaqan 2005, 93-94).

Finally, there is *Shia* Islam, which appeared as a consequence of the battles of Karbala (61 AH- 680 CE) and Al-Harrah (63 AH- 683 CE), battles, ordered by Mu'awiya, and later his son Yazid I, that took place in the First and Second Civil Wars, respectively. The *Shia* reject the Umayyad as legitimate rulers up to this day. Moreover, they considered the Umayyad as sinners,

if not apostates, who had to maintain their power by the sword. They claim that the *Imamate* belongs to the House of the Prophet and his offspring and do not recognize *Wilayah al ahed* as a legal or legitimate principle. In fact, *Shia* opposition to contemporary monarchies and kingdoms in the Middle East stems from their rejection of the legitimacy of these rulers as a pillar of the *Shia* doctrine (Thouaqan 2005, 81-86).

It is necessary to examine the reaction of the *Ulama* to *Wilayah al ahed* among the *Sunni Ulama*. The reaction of the *Ulama* was contradictory and can be divided in three geographical regions, *Ulama* of Bilad al-Sham, Mecca/Medina, and Al-Iraq [Baghdad, Basra, and Kufa]. There are those who were in favor of and those who opposed *Wilayah al ahed*. According to Thouaqan, “the *Ulama* of the Muslim *Umma* were legally divided on the legality of *Wilayah al ahed*. The *Ulama* of Bilad al-Sham supported this new system and gave the *Bay’a* accordingly. On the other hand, the *Ulama* of Mecca, Medina, and Al-Iraq held mixed reactions. Some had supported *Wilayah al ahed* for the purpose of stability and the unity of Muslims. Others flatly rejected the system of *Wilayah al ahed*. Each side had justifications for their stand on the legal matter. Therefore, *Wilayah al ahed* never legally achieved consensus (*Ijma*) among the *Ulama*” (122).<sup>83</sup> Thus, the legal principle was not unanimously accepted at its initial stage and was rejected by a group of *Ulama* who refused to recognize either Umayyad’s rule or *Wilayah al ahed*. Most important, these *Ulama* who objected to *Wilayah al ahed* were on the side of those

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وكان لعلماء الأمة الإسلامية مواقف متناقضة من نظام ولاية العهد، ففي حين أيد قسم منهم هذا النظام و بايع لخلفائهم و أولياء عهدهم و خاصة علماء الشام، نجد ان هناك تبايناً في مواقف علماء مكة و المدينة و العراق من هذا النظام حيث مال قسم الي المهادنة و بالتالي تأييد نظام ولاة العهد، و ذلك حفاظاً عل وحدة الجماعة، و لجأ القسم الاخر الي رفض هذا النظام عدم التعامل معه و رفض بيعة أولياء العهد، و كان لكل طرف مبرراته في القبول او الرفض و بالتالي لم يكن عندهم إجماع علي هذا النظام



who lost the Second Civil War. To the *Ulama* who supported the legitimacy of *Wilayah al ahed* the Umayyad's victory was a sign from God that they were on the right path. While the *Ulama* on the losing side viewed *Wilayah al ahed* as an illegal innovation to be tolerated only as a *Maslaha* that ended the bloodbath of *Fitnah*. Nevertheless, once victory was secured both sides of the *Ulama* viewed the end of civil war as a *Maslaha* that ended the *Fitnah*.

The *Ulama* of Bilad al-Sham were the first to advise and encourage Mu'awiya to pass the *Caliphate* to his son Yazid I. They helped propagate the legality of *Wilayah al ahed* in Bilad Al-Sham and beyond. Its geographical proximity to and status as a former Byzantine territory made the idea of hereditary kingship familiar to Bilad Al-Sham's *Ulama*. Furthermore, the Umayyad dynasty had its own close-knit *Ulama*, which were treated with generosity both financially and in status. The Umayyad dynasty had secured the loyalty of the *Ulama* by repeatedly seeking their advice and opinion. It was the *Ulama* of Al-Sham that encouraged the idea of clan rule on the grounds that doing so would avoid a *Fitnah* of repeated civil wars and the splitting of *Jemaah* (the collectivity of the Muslim community). The logic was that having Yazid I rule after his father was a way to forestall conflict and competition for the post of *Khilafa*. But this meant that Mu'awiya had to ask for *Bay'a* for his son while he was alive and not on his deathbed; this was an innovation that contradicted the practice of his predecessors. Yet he was resisted by prominent members of the *Umma* at the time. In response, Mu'awiya resorted to violence for the first time to secure a *Bay'a* for his son, which he failed to do. This practice of Mu'awiya was later legalized by *Ulu Al Amr* and the practice of coerced *Bay'a* became a permanent feature of *Fiqh al siyash al shariah*. Historically, this practice had grave consequences legally, socially, and politically.

Moreover, it was the *Ulama* of Bilad Al-Sham who were geographically adjacent to the Byzantine Empire and among the first *Ulama* to institutionalize the legal justification of the unconditional obedience to the *Khalifa* as equivalent to obedience to God. If the *Umma* does not approve who governs it, through *Wilayah al ahed*, they are still legally required to obey the new ruler. Even if the new *Khalifa* turns out to be a tyrant, the *Umma* must be patient and obey. These injunctions comport with Donner's argument that the qualities of who should rule the community had shifted, and that by the Second Civil War the issue of piety became secondary to institutionalized expansionism (190).

Furthermore, "the Umayyads relied on the theological view of *Jabariyah* [*Ulama* who deny free agency of the individual] to emphasize their right to rule the *Umma* in the face of opposing forces. Moreover, they used this theological view as a justification to give *Bay'a* to their offspring. And if Mu'awiya was the first to introduce *Wilayah al ahed*, he is also credited for using the theological view of *Jabariyah* as a tool to fight his enemies who opposed his rule" (Thouaqan 2005, 52-53).<sup>84</sup>

The idea was "Mu'awiya must rule because God enabled him to rule" because everything was determined by the will of God and that the actions of the individual had no intrinsic will of its own independent from that of God's. In other words, freewill contradicts the all-knowing powerful God. The tyranny and evil of the Umayyad rulers are to be tolerated because they are ordained by God, and people cannot change the will of God. Unjust governance is a punishment ordained by God and the best the *Umma* can do is to be patient and pray. Now, it is important to

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و مثلما استند الأمويون علي مذهب الجبر لتأكيد حقهم في الخلافة و الاحتجاج علي المعارضين لهم، فانهم اعتمدوا عليه أيضاً لتسوية حقهم اعتمدوا<sup>84</sup> عليه أيضاً لتسوية حقهم في عقد البيعة لأولياء عهدهم و الاحتجاج به. و اذا كان معاوية بن ابي سفيان هو اول من جاء بنظام ولاية العهد، فانه أيضاً اول من استند علي الفكر الجبري لمواجهة خصومه الذين عارضوا استخلافه يزيد حيث يقول: "ان امر يزيد قضاء من القضاء و ليس للعباد الخيرة من "أمرهم" كما أعاد قضية الاختيار الي الله و في هذا يقول: "إنما هو الملك يؤتيه الله من يشاء

note that it is not Mu'awiya literally who developed these views even though he is a Companion of the Prophet. This is the work of legal experts of the *Ulama* of Bilad Al-Sham.

Second, the legal views of the *Ulama* of Al-Hejaz regarding *Wilayah al ahed* were mixed. Two reasons for agreeing to give *Bay'a* based on the principle of *Wilayah al ahed* stand out. First, there was the priority given to avoiding *Fitnah* and bloodshed. The second was the call for the *Umma* to remain in *Jemaah*, the unity of Muslims as one body. For example, Thouaqaan argues that "Sa'id Ibn Al-Musayyib (642-715 CE) is an example of the *Ulama* who resisted every type of pressure from the Umayyads rulers to accept their reign and *Wilayah al ahed*" (Thouaqaan 2005, 101).<sup>85</sup> While Abdullah ibn Umar (614 – 693 CE) "after the death of Mu'awiya gave *Bay'a* to Yazid I fearing *Fitnah* and division among Muslims" (Thouaqaan 2005, 101).<sup>86</sup>

Donner's historical accounts confirms the division between *Ulama* of Al-Hejaz were over *Wilayah al ahed* and dynastic rule on the legal ground of *Maslaha*. Donner confirms that by the Second Civil War the matter of piety was secondary and no longer a primary condition as it was during the First Civil War (189). For example, "Abd Allah Ibn Abbas (3 AH - 68 AH/619–620 AD) refused to give *bay'a* to Abd Allah Al-Zubayr (73 AH 624 – 692AD) who was contesting Marwan Ibn Al-Hakam (623-683 AD) the fourth Umayyad Khalifa, because Al-Zubayr did not know his friend from his enemy; while Yazid, who for his commonsense, was more fit for the post" (Donner 2010, 99). Furthermore, he campaigned for the *Bay'a* of *Wilayah al ahed* in Al-Hejaz to prevent Al-Zubayr from becoming the *Khalifa*. Yet, it is Yazid who was the first to

<sup>85</sup> كان لسعيد بن المسيب موقفه الخاص من نظام ولاية العهد الذي جاء به الأمويون، ففي حين عاب ابن السيب علي معاوية بن ابي سفيان أحداثه نظام ولاية العهد، و تحويل الخلافة الي ملك

الا انه بعد وفاة معاوية بايع يزيد بل خلفه<sup>86</sup>

destroy the *Kaaba* (the Sacred House) in his campaign to capture and kill Al-Zubayr and enforce *Wilayah al ahed* and his right to rule the *Umma*.

Finally, in the Al-Iraq region the reaction of the *Ulama* represented the greatest resistance to the Umayyad's reign. The most influential of the *Ulama* of Al-Iraq is Sa'id bin Jubayr (665-714 CE) who was a *Mawaly* (non-Arab). His position in regard to the Umayyad's reign and *Wilayah al ahed* is a good example of how the *Ulama* outside Bilad al-Sham were forced to accept the reality of power and choose the best outcome from the worst choices. *Ijma*, and hence legitimacy of the principle of *Wilayah al ahed*, was achieved by force and not on clear theological principles. "Sa'id Ibn Jubayr was openly critical of the evils of the tyrannical rule of Abd al-Malik and his clan. He resisted their rule by galvanizing an insurrection against them" (Thouaqaan 2005, 108)<sup>87</sup> He personally joined the fight with Abd al-Rahman ibn al-Ash'ath (died 704 CE), an *Umayyad* general who abandoned the dynasty and became the celebrated leader of the revolt (699–701CE) against the governor of Iraq, Al-Hajjaj (661 -714CE). His views of the Umayyad's reign and *Wilayah al ahed* are summed up in the speech he gave in the decisive battle of Dayr al-Jamajim (701):

Fight them for their tyrannical rule and their offenses against religion. Fight them for their despotism over the people and of their emptying religion of its content and the humiliation of Muslims.(Thouaqaan 2005, 108)<sup>88</sup>

The battle of Dayr al-Jamajim was lost, and Ibin Jubayr was captured. "He recanted his legal views under pressure and accepted the Umayyad reign and ratified *Wilayah al ahed*. The rest of

<sup>87</sup> و كان البصري قد نفر الناس عن الالتحاق بالثأيرين علي الأمويين، و حذرهم من المشاركة في الفتنة، و أمرهم باتباع الجماعة و كان من ابرز علماء العراق في الدعوة الي ذلك

<sup>88</sup> و قد صرح ابن جبير بعيوب عبد الملك و ذكر شرور و شرور قومه، و مساويء حكمهم، و حرض علي قتالهم و قال في دير الجماجم "قاتلهم علي جورهم في الحكم و خروجهم من الدين، و تجبرهم علي عباد الله، و امانتهم الصلاة، و استقلالهم المسلمين"

his life he spent preaching the importance of avoiding of *Fitnah* and remaining in *Jemaah*” (Thouaqan 2005, 108).<sup>89</sup>

Contrary to Ibin Jubayr in the Al-Iraq region, Al-Hasan Al-Basri (642–728 CE) a prominent *Alim*, supported the Umayyad’s rule. Ultimately, Al-Basri accepted the legality of the practice of *Wilayah al ahed* not for religious reasons but based on *Maslaha*, the best outcome of the worst of choices. He theological views were obedience and patience, even if a ruler was unjust. He chose to pray and increase one’s own piety instead of revolting. Apparently, he saw that revolt had feeble chances to change political conditions.

In sum, the *Ulama* during the period that *Wilayah al ahed* appeared were not unanimous in their view over the legality of hereditary monarchy. The *Ulama* of Bilad Al-Sham encouraged the practice of *Wilayah al ahed* and argued for its legality based on the stability for the *Umma*. Some were not comfortable with the change of *Khilafa* to a kingship, but in the end they agreed on the legality of the matter. While both the *Ulama* of Al-Hejaz and Al-Iraq had mixed reactions, ultimately those who disagreed were coerced into accepting the legitimacy of *Wilayah al ahed*. As a result, *Bay’a* and *Shura* practices during the early founding period were replaced by the new and coerced type of *Bay’a* of *Wilayah al ahed* to avoid bloodshed and *Fitnah* and remain in *Jemaah*. The nature of *Fiqh al siyash al shariah* allowed for such practices to be adopted, but the matter was left for the *Umma* to decide as long as they implemented *sharia*, which most *Khalifas* did. Consequently, the nature of tyranny in Islam has had a different character than in other

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<sup>89</sup> فقد اعتقل ابن جبير بعد هزيمة ابن الأشعث و أرسل الي الحجاج، و ذكر له انه اجبر علي الخروج، و انه يتمسك بالجماعة، و انه يتمسك بالجماعة، و ينكر الفتنة

systems of thought because while violence and arbitrary practices were part of the fight over who should rule, once a ruler was in place *Sharia* was respected and implemented.

Finally, one could argue that those who shed the most Muslim blood and were most willing to fight, by, for example, destroying holy sites or killing members of the Prophet's family, were rewarded with *Wilayah al ahed*. Yet, it did not end the bloodshed over who should rule.

After Abd al-Malik secured victory in the Second Civil War and consolidated his power he implemented *Wilayah al ahed* with the legal support of the *Ulama* of Bilad Al-Sham. The popular view is that God chose Abd al-Malik and bestowed victory on him, which consequently legitimized *Wilayah al ahed*. It was only during this period that *Wilayah al ahed* became the orthodoxy in *Fiqh al siyash al shariah*.

“Although Mu'awiya had emerged in 40/661 as the victor of the First Civil War, the basic questions over leadership that had been at issue during the war had never really been settled; they had rather been made temporarily moot by the fact that the logical claimants for leadership at that time had been reduced to one” (Donner 2010, 177). Mu'awiya introduced *Wilayah al ahed* at the end of his reign to at least the Muslims *Bilad al-Sham* who gave him *Bay'a* and recognized him as the *Khalifa* after his victory over Ali (the Fourth Guided *Khalifs*) in the First Civil War. He asked those who had given him *Bay'a* to extend it to his son. He wanted to secure the elite's agreement to *Wilayah al ahed* by making it publically clear that it had *Ijma*, that the *Umma* supported it unanimously. Yet there was no such *Ijma*. In fact there was opposition to *Wilayah al ahed*, primarily concentrated in Medina. “It was in the year 65 AH -686 CE when Mu'awiya asked to give *Wilayah al ahed* to his son Yazid, most senior Companions of the Prophet and *Fuqaha* objected to his request; among them Abd Allah ibn Umar, Abd Allah ibn al-Zubayr, Abd

Allah ibn al-Abbas, Abd al-Rahman ibn Abi Bakr, and Husayn ibn Ali” (*Al-Mutairi 2003, 116*).<sup>90</sup> Interestingly, Abd al-Rahman was the son of the First Guided Caliph, Abd Allah was the son of the Second Guided Caliph, and Husayn was the son of the Fourth Guided Caliph. One could argue that the rejection was twofold; it could be ambition or because their fathers never nominated any of them to become *Khalifa*, and as such Mu'awiya was claiming the spoils of the First Civil War for his son.

Nevertheless, *Wilayah al ahed* was rejected, and what Mu'awiya actually did was sow the seeds of the Second Civil War. He never secured for his son *Bay'a* that was based on the legal principle of *Wilayah al ahed*. Abd al-Rahman ibn Abi Bakr turned out to be the staunchest rejectionist among the Companions; he openly questioned Mu'awiya's speech, accusing him of rejecting the *Sunna* of the Prophet and instead following the *Sunna* of *Heracl* (the term used by Arabs at the time to designate the Byzantine Emperors) and *Kissra* (a designation of the Persian kings). Finally, they all fled Medina quietly fearing death from Mu'awiya who wanted to extract their *Bay'a* for his son with the sword of necessity.

Yazid, as mentioned before, fought two of the most traumatizing battles in the history of Islam: the Battle of Karbala (61 AH- 680 CE), where Husayn ibn Ali (the grandson of the Prophet) was killed with every single member of his family, and the Battle of Al-Harrah (63 AH- 683 CE), where Yazid ordered a three day pillage of Medina that enslaved members of the Prophet's family. And finally, there was the siege of Mecca in 683 CE when the holy site of *Ka'ba* was burned to the ground. Yazid's sudden death prevented an Umayyad's victory and saved the life of Abd Allah ibn al-Zubayr. Al-Zubayr's death came at the hands of Abd al-

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<sup>90</sup> و لما أراد معاوية أن يبايع الناس ابنه يزيد سنة ٦٥، و يعهد بالأمر إليه من بعده، اعترض عليه كبار الصحابة و فقهاءهم تلك الفترة، و هم عبد الله بن عمر، و عبد الله بن الزبير، و عبدالله بن عباس، و عبد الرحمن بن أبي بكر، و الحسين بن علي

Malik's forces *on the* battlefield in 692 CE when the *Ka'ba* was destroyed a second time. It was only then that the *Ulama* of Bilad Al-Sham could carry out *Wilayah al ahed*.

What are the consequences of the acceptance of *Wilayah al ahed* as a legitimate legal principle in *Fiqh al siyash al shariah*? More important, is force a legitimate means to rule the *Umma*? The victory of Abd al-Malik and the conclusion of the Second Civil War institutionalized and legitimized a role for violence. This major event became a foundational moment in *Fiqh al siyash al Shariah* where force and violence are legitimate to dynastic rule or *Wilayah al ahed*. In this case, the *Ulu Al Amr*, which at the time were outside the scope of *Sharia* itself, made the killing and bloodshed of Muslims in pursuit of temporal power a special category under the principle of *Maslaha*.

*Ulu Al Amr*'s success at instituting *Wilayah al ahed* can be explained by two contending but not necessarily contradictory variables; the first was sheer exhaustion from the level of violence and savagery that spared neither religious symbols nor the family of the Prophet.

Donner explains:

The civil wars were striking for the savagery with which they were carried out. There are many episodes in which our sources describe captives being executed in cold blood, in which sons are executed before their fathers, or men killed by, or at the order of, their relatives (Amr ibn al-Zubayr by his brother Abd Allah; Amr ibn Sa'id by Abd al-Malik), in which the vanquished were massacred in large numbers (Nahrawan, Khazir, Mukhtar's followers in Kufa, Battle of the Harra). This may have something to do with the crude temper of the age and with the brutal manners of many participants, who were rough and unrefined bedouins or peasants. But it surely also owed much to the ideological character of many of the conflicts within the civil wars. This led people to demonize their opponents as the very embodiment of evil and also made them keenly aware that a defeated enemy who had not fully repented was, for ideological reasons, always a threat to rebel again, so it was safer to eliminate him. Moreover, the intensely ideological character of the early Believers' movement made the elimination of such "allies of the devil" morally acceptable, even praiseworthy, in peoples' minds. (189)

Accordingly, *Wilayah al ahed* created much needed stability and peace and was a testament to the genius of the flexibility of the *Fiqh al siyash al shariah* as an expression of *Ulu Al Amr*. It is



important to reiterate that historically most of the rulers actually respected *Sharia* and implemented it according to what *Ulu Al Amr* proposed but constantly violated and reshaped *Al siyash al shariah*.

A second plausible variable is that *Wilayah al ahed* is the result of victor's justice. Once Abd al-Malik was able to eliminate all of his competitors, the guile of the *Maslaha*-oriented *Ulama* of Bilad al-Sham provided the dynastic rule of the Umayyads a rule that required the *Umma*'s obedience.

Regardless of which variable had a greater effect on the introduction of *Wilayah al ahed*, its presence in *Fiqh al siyash al shariah* had enormous legal and political consequences. The death of Abd Allah Al-Zubayr (73 AH) was the sign that *Wilayah al ahed* is a reality and dynastic rule had been established. Since then the right to *Bay'a* of the Muslim subject was taken away. Al-Mutairi argues that "from 73 AH to 1350 AH, the year the Ottoman Caliphate ended, a shift took place in the Islamic legal discourse from one that was revealed to *Taweel*" (44).<sup>91</sup>

*Taweel* is a self-enclosed period where legal references of the founding period are not included in producing legal opinions. *Fiqh al siyash al shariah* is based on precedents that were established in 73AH. Unlike *Tafsir* which is the literal meaning of a verse in the *Qur'an* or a *Hadith*, *Taweel* focuses primarily on the actual intent behind the verse or a *Hadith* and not the literal meaning. Thus, *Taweel* is a form of *Ijtihad* (independent human reasoning in *Sharia* law). Al-Mutairi argues that there are legal themes that are specific to this period and serve as a guideline to logical legal arguments. For example, "Al-Mawardi (972-1058 CE) is a good example of the Abbasid's *Fiqh* that uses legal sources during the period of the Companions not

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<sup>91</sup> باستشهاد الزبير عام 73 انتهى الخطاب المنزل و استقر الخطاب المؤول من حكم مروان بن الملك الي سقوط الخلافة العثمانية

to change the status quo but to provide legitimacy to the political practices of his time” (Al-Mutairi 2003, 45).<sup>92</sup> Historically, “it is this type of Mawardian *Fiqh* that provided the legal grounds for political tyranny and allowed it to spread by imitating the *Sunna* of *Heracl* [Caesar] (the term that Arabs used when referring to a Byzantine Emperors) and *Kissra* (a designation of the Persian kings) as the Prophet predicted in the *Hadith* (45).<sup>93</sup>

Al-Mutairi argues that there are four main themes in the *Taweel* discourse:

1. The usurpation confiscation of the right of the *Umma* to choose its leader and the transformation of rule by *Shura* to hereditary rule (37)<sup>94</sup>
2. The confiscation of the right of the *Umma* to participate in political decision making via *Shura* and *Ra'y* (personal opinion in adapting *Sharia* law) (47)<sup>95</sup>
3. The Umayyad reign marked the end of public oversight of *Bayt al-mal* (House of money or wealth” the treasury that is responsible for the administration of the wealth generated by war booty, taxes, and *Zakat* [that which purifies" or alms-giving] for the purpose of social welfare) (49)<sup>96</sup>
4. The decline of the *Umma* 's role in the face of corruption and injustice (51)<sup>97</sup>

These four themes, absent in the founding period, set new precedents in *Fiqh al siyash al shariah*. Despite a consensus among *Sunni* legal scholars that the founding period represented a period of ideal government, the *Ulu Al Amr* responded to the immediate aftermath of the period with *Wilayah al ahed*, a practice that permanently trumped all other principles from the founding period. The *Taweel* period of *Fiqh al siyash al shariah* served up violence and bloodshed. This

لقد كان الماواردي - و هو يعبر عن فقه العصر العباسي - يوظف النصوص من حيث لا يشعر في خدمة الواقع بخلاف الصحابة الذين صاغوا الواقع -<sup>92</sup> أو أرادو صياغته - بحسب ما جاءت به النصوص اي صار الواقع هو الذي يملئ مفاهيمه التي يجب تأويل نصوص الشريعة من أجلها، و من أجل إضفاء الشرعية عليها، لا العكس

و يمثل هذا الفقه الماواردي شاع الإستبداد السياسي، و إستقرت سنن هرقل و قيصر كما أخبر بذلك النبي صلى الله عليه و سلم<sup>93</sup>

الخطاب السياسي المؤول ١ - مصادرة حق الأمة في اختيار الإمام و تحول الحكم من شورى إلى وراثة<sup>94</sup>

الثاني: مصادرة حق الأمة في المشاركة في الرأي و الشورى<sup>95</sup>

الثالث: غياب دور الأمة في الرقابة على بيت المال<sup>96</sup>

الرابع: تراجع دور الأمة في مواجهة الظلم و الإنحراف<sup>97</sup>

shift of discourse guaranteed *Wilayah al ahed* in perpetuity and denied a return to the legal discourse of the founding period.

Sociologically, this movement also represented the gradual institutionalization of *Ulu Al Amr* into a class that was influenced and controlled by temporal power. A suggestive piece of evidence was the *Khalifa*'s provision of *Ulama* salaries. The *Khalifa* now arbitrarily controlled the wealth of *Bayt al-mal* without oversight. Dabashi sketches out the formation of the class of *Ulu Al Amr*:

Another major office which gradually developed in the Islamic state apparatus, again due to the exclusively political and administrative limitation of the caliphal authority, was that of the *ulama* (religious scholars). A firm and extensive knowledge of the religious sciences—the *Qur'an* and *Hadith* in particular—provided the *ulama* with a crucial area of expertise and thus authority. As the custodians of institutionalized Islam, this class of religious scholars and their religious authority had to be recognized. (92)

The scope of *Ulu Al Amr*'s authority is clearly demonstrated in the historical change of the discourse of *Sunni* Islam. A good example of their authority is in the change in discourse that *Ulu Al Amr* adopted to delegitimize rebellion against temporal power. Al-Mutairi argues that these *Ulama* “who hold the *Taweel* discourse viewed *Khurooj* (rebellion) and political protest movements from a reductionist and negative one-sided view. Historically, they viewed these movements as a cause *Fitnah* that cause bloodshed and destruction of property and overlooked the role of these movements in resistance to tyranny and injustice that may result in making the *Umma* prone to be conquered by the enemies of Islam” (61).<sup>98</sup> They are able to change the political discourse by applying their legal expertise to social and political conditions and inflate the legal injunctions that promote their view and deflate others according to what they perceive

<sup>98</sup> لقد نظر أصحاب هذا الخطاب المؤول إلى حركات الخروج و الإحتجاج السياسي نظرة سلبية من زاوية واحدة، هي ما يحدث بسببها من فتنة قد يذهب بها بعض النفوس و الأموال، دون نظر إلى ضرورة قيام مثل هذه المقومات التي تحول بين السلطة و بين الظلم و الاستبداد و الإنحراف، الذي قد يؤدي إلى سقوط الأمة كلها تحت سيطرة عدوها الخارجي

as *Maslaha* of the *Umma*. For example, “Al-Mutairi argues that some of the reasons behind the spread of the *Taweel* discourse are the emphasis on the *Hadiths* that discuss secession, upheaval, and chaos to prove their fatalistic views about the future as worse than the present. Thus, later generations of *Ulama* adopted theological views to maintain the statuesque and discourage political change out of fear of the future” (Al-Mutairi 2003, 64).<sup>99</sup> Lambton argues that “their [the *Ulama*'s] principal political function was the interpretation of *sharia* in terms of the problems facing the community, and by their approval of the sultan's choice of *imam* in the *bay'a* . . . and their *fatwas*, they expressed the functional authority of *sharia*” (Lambton 92) (1981, 115). The authority to interpret *Sharia* according to the changing political and social circumstances guaranteed the dependence of temporal power on the authority of *Ulu Al Amr*, especially in the matters of obedience and the use of force.

Perhaps the most important consequence of the adoption of *Wilayah al ahed* was the change in the relationship between temporal power and the *Umma*. “A legal dispute arose in the second period of *Taweel* regarding the legality of the person who was acting as a *Khalifa*. Was he acting as a *Wakeel* (deputy or agent) or a *Waley* (guardianship)” (Al-Mutairi 2003, 177).<sup>100</sup> Accordingly, in the first period the *Khalifa* was acting as a *Wakeel* since the *Bay'a* was given by the free consent of the *Umma*. Al-Mutairi “explains the legal consequence of capturing of the *Khilafa* by force changes the nature of the post from one where the *Khalifa* is acting as a deputy on behalf of the *Umma* to a guardian acting as a parent on behalf of minors (Al-Mutairi 2003,

<sup>99</sup> و من الأسباب التي أدت الى شيوع هذا الخطاب السياسي المؤول أيضاً : شيوع أحاديث الفتن، التي تؤكد أنه لا يأتي زمان إلا إذا بعده شر منه، دون فهم لمعناها الصحيح، فصار أكثر المتأخرين يعملون على ترسيخ الأمر الواقع، و الدفاع عنه، خوفاً من المستقبل الذي هو أسوأ من الحاضر كما تؤكد ذلك النصوص

كما طرأ خلاف في المرحلة الثانية في هذه القضية. و هو: هل تصرف الإمام على الأمة بطريق الوكالة أم الولاية<sup>100</sup>

177).<sup>101</sup> This legal opinion ushered the new method of *wlayah al qaher* or capturing the post of *Khliafa* by the sword. Moreover, “the *Khalifa* cannot be removed from the post by the *Umma* since the guardianship of the *Khalifa* changed the legal status of the Muslim subject to the status of a minor or child” (Al-Mutairi 2003, 177-178).<sup>102</sup> Accordingly, this legal change altered the nature of authority/obedience in *Sunni Fiqh al siyash al shariah* from a contractual legal relationship that is conditional and can be dissolved, to a paternal relationship that is natural and an unalterable. *Al-Mutairi* argue that change in the nature of discourse led to a change in the legal quality of “the *Imam* quality changed with the change of discourse from a *Wakeel* (deputy or agent) that the *Umma* can legally remove form office; to a *Waley* (a guardian) that cannot be removed according to the *Taweel* political discourse” (178).<sup>103</sup> Precisely, *Wilayah al ahed* is the legal tool that furnished the change with the legitimacy of dynastic rule and ended legal equality among Muslims, turning their relationship from contractual to paternal one.

Thus, the legal shift in the nature of the *Khalifa* coincided with a major legal shift in *Fiqh al siyash al shariah* from an emphasis on the priority of *Bay'a* and *Shura* to giving priority and legal backing to avoiding *Fitnah* and remaining in *Jemaah*. Consequently, the two civil wars served as the basis for a public retreat to security, order, and peace. Historically, *Fiqh al siyash al shariah* has more or less supported a state of war locked in a permanent state of emergency.

و هكذا أدى القول بأن الإمامة تتعقد بالإستيلاء و القهر إلى القول بأن تصرف الامام عن الأمة بصفة الولاية كولاية الأب على ابنه القاصر، ا بصفة الوكالة عنهم؛ لانه تولاهما بالقوة بلا اختيار منهم كالولي، و ليست الوكالة كذلك؛ إذ الوكيل لا يكون إلا باختيار الموكل

فلم قيل بهذا الرأي-أي أنه يتصرف بصفة الولاية-ترتب على هذا عدم إمكانية عزله؛ إذ ليس للأبناء الصغار و لا للمراء عزل وليهم؛ إذ ليست ولاية الأب على أبنائه باختيارهم، فلا يمكن له عزلهم، و كذلك إذا ثبت ذلك في الإمامة ليس له عزل نفسه أيضا

و هكذا تحول الإمام من وكيل يمكن عزله - كما كان عليه الحال في مرحلة الخطاب السياسي الأول - إلى وال لا يمكن عزله في الخطاب الثاني<sup>103</sup> المؤول؟! و هذا الرأي أدى بدوره إلى القول بأن الإمامة عقد دائم لا يمكن توقيته، بل الإمام يظل إماما حتى الموت

Capturing the post of *Khilafa* and maintaining it created a temporal appetite for bloodshed and cruelty.

Finally, some concluding remarks follow regarding the legal consequence of *Wilayah al ahed* on *Fiqh al siyash al shariah*. This chapter argues that historically *Ulu Al Amr* provided the legal legitimacy for the shift in the role of temporal power: from a servant of the community or executive of *Sharia* to a condition where *Sharia* is subservient to temporal power. This was possible by introducing the legal principle of *Wilayah al ahed* in *Fiqh al siyash al shariah*. Most important, the legitimacy given to the use of force and violence to capture the post of *Khilafa* changed the nature of the relationship between the ruler and the ruled. *Wilayah al ahed* could be praised for finally putting an end to Muslim bloodshed, especially during the Second Civil War, but violence was rewarded by locating it in an area outside any legal accountability. Nothing in *Fiqh al siyash al shariah* refers to the possibility of subjecting the ruler to a crime committed *ex post facto* after capturing the post of *Khilafa*. In fact, *Fiqh al siyash al shariah* is mute on this subject, contrary to the *Qur'an* and *Sunna* which clearly prohibit the unjustified shedding of blood and equates it to the killing of all the people on Earth. Without a doubt such a practice creates two classes: those who are weak and judged for their actions and those who use force and escape with massacring the Prophet's family. The *Maslaha* principle could be the genius of *Fiqh al siyash al shariah* in particular and *Sharia* in general, but it can also lead to grave injustices and inequalities. For example, one could argue that from the Second Civil War to the present *Fiqh al siyash al shariah* has actually been under legal emergency status. For example, the *Ulu Al Amr*, who are fully institutionalized in the modern Arab nation-state, called upon Muslims not to revolt against their presidents in Egypt, Libya, and Syria during the 2011 Arab Spring. Their

statements make it clear that the vocabulary of avoiding *Fitnah* and remaining in *Jemaah* has been carried over from the historical experience of the Second Civil War. This period became the permanent reference of *Fiqh al siyash al shariah*, but a question remains: When will it be possible to restore a state of normality? Paradoxically, when contemporary Muslim scholars ask about the greatness of justice in Islam, they immediately refer to the period of the Four Guided *Khalifs* and the ideal conditions that Muslims then enjoyed. But why does the *Ulu Al Amr* still accept *Wilayah al ahed* under the principle of *Maslaha* as a permanent principle in *Fiqh al siyash al shariah*? Modern reformers from outside the institutionalized establishment of *Ulu Al Amr*, starting with Sayyid Jamal ad-Din al-Afghani (1838/1839 – March 9, 1897), challenged deeply held legal views.

## CHAPTER V

### *Ulu Al-Amr, Modernity, Sovereignty, and the Modern State*

“Since December 2010, the Middle East has been undergoing upheavals that have challenged despots who have held onto the reins of power for decades. These uprisings underscored the sovereignty of the people, a significant majority of whom supported the implementation of Shari’a in some form” (Ahsanuddin 2013, 12). Due to factionalism and partisanship among political forces, it is clear that in this post-revolutionary period “Arab Spring” states are struggling. These difficult and tumultuous conditions have been exacerbated by the ideological commitments of Islamist and secular political parties. Domestic and international counter revolutionary forces, which are trying to stifle the success of the 2011 revolutions, further complicate the situation.

Divisions between these political parties generally relate directly to ideological splits between the Islamists and secular political groups over constitutional principles of civil rights and liberties and the role of the state in the public and private spheres of its citizens. The differences mainly concern core political and economic issues, which have resulted in irreconcilable political divisions. These ideological gaps have been and still are exploited by the domestic (the former regimes of Tunisia, Egypt, and Yemen) and international (Saudi Arabia, United Arab Emirates, Kuwait, Jordan, and Bahrain) counter revolutionary forces. International forces have exploited the ensuing turmoil to contain and reverse the spread of the revolutionary change into their own states.

In the wake of the Arab Spring, Islamist political parties met with initial success. Egyptian parliamentary elections in January 2012 resulted in Islamist parties winning 71.5



percent of the seats, and five months later, the Muslim Brotherhood's Mohamed Morsi was elected president. In Tunisia, leaders like Rachid Ghannouchi sought to emulate the conservative Justice and Development Party (AKP) of Turkey (Ahsanuddin 2013, 12-13). In the case of Egypt the MB rule came to an abrupt halt when the military jumped at the first opportunity to regain its historical role of ruling Egypt. Moreover, since the July 3<sup>rd</sup> 2013 Egyptian military coup many voices in Western and Arab academic circles and media have argued that "today, what we are facing in a post-Arab Spring and post-Turkish model Middle East is a new type of failure for political Islam's future" (Taspinar, 2014). Some academics reached similar conclusions after the Algerian military coup of December 1991 toppled the Islamic Salvation Front. In his 1992 book, *The Failure of Political Islam*, French social scientist Olivier Roy argued that political Islam as a project of governance, politics and public administration had precious little to offer. Such academic and media voices have wasted no time declaring that political Islam, freedom, equality, citizenship, and other ideals of modernity are impossible to reconcile. They point out that the military coup in Egypt was backed by millions of Egyptians discontented with the Muslim Brotherhood (MB) under President Morsi and opted for the return of the old regime, similar to Mubarak's, of military rule behind a civilian mask. Accordingly, the military coup received the support and backing of oppositional political figures across the political spectrum, including: the secularists of the National Salvation Front lead by Mohamed ElBaradei; Pope Theodoros II of the Coptic Church; Ahmad Muhammad Ahmad El-Tayyeb, the President of Al-Azhar University; and the Salafist Al-Nour party (backed by Saudi Arabia), which praised the military coup as a correction in the path of the revolutionary change. In Tunis, the Al-Nahda Party (NP) is facing similar opposition but the military, thus far, has decided not to interfere. Those forces unhappy with the rule of the MB have united with

elements of the “deep state” or the old regime to halt the success of the democratically elected Islamist governments from succeeding in ruling. Consequently, the military coup in Egypt, at least for the time being, brought the Arab Spring to a complete stop. Leading the attack on the Islamist parties of the Arab Spring states are Gulf States whose religiously conservative monarchies continue to justify their autocratic rule with the legitimacy of *Wilayah al ahed*. At the forefront of the coalition is the Islamic Saudi Kingdom, the most conservative force in *Sunni* Islam and the center of *Salafi* Islam in the world. Since the advent of the Arab Spring the Gulf monarchies (with the exception of Qatar) are actively assembling political influence and petrodollars in the West to insure the failure of political Islam. For example, “[t]he United Arab Emirates has thrown its support behind neighboring Saudi Arabia's decision to label the Muslim Brotherhood a terrorist organization, increasing Gulf Arab pressure on the Islamist group”(Associated Press, 2014). In fact, the Gulf monarchies were instrumental in exploiting the ideological divide between the Islamist and liberal political forces that appeared once Ben Ali, Mubarak, and Saleh of Yemen were toppled.

While the news out of Egypt is grim, in other parts of the region it is less so, “on January 26<sup>th</sup>, 2014, the Tunisian Constitutional Assembly approved a new constitution. Contrary to the Egyptian experience, Tunisians, in partly preserving the goals of the Jasmine Revolution, managed to overcome their country’s security and political challenges” (Farhoui, 2014). After a difficult protracted struggle among organized political forces “the Tunisian constitution, a carefully worded compromise between Islamic identity and modern day concepts of human rights and good governance, has been described as one of the most liberal constitutions in the Arab World” (Tunis Times, 2014). Rival political factions signed the document signaling a

compromise on its basic civil rights and liberties. Thus far, Tunis seems to be the most positive case as the Arab Spring states struggle for democracy, but that may change at any moment.

Conflicts in this transitional period indicate that toppling decades-long dictators is easier than managing the challenges and obstacles in achieving the goals of the revolution. Histories of revolutions are full of difficult transitions. Without a central mediating force promoting a unified idea of the good, revolutions bring to the surface contentious ideological commitments.

Ideological divisions turn yesterday's revolutionary partners into today's mortal enemies. I argue in this chapter that the current ideological divide between organized political groups in "Arab Spring" states has its roots in the nineteenth century displacement of the foundational *Sunni* conception of authority by the colonial European concept of sovereignty. Modernity and its corollary European colonialism have changed the social and political reality of Muslim physical and metaphysical realms. Through military force, European colonialism displaced the core logic of historical political, economic, and social institutions that were organized around the *Sunni* conception of authority. The core the concept of sovereignty displaced the *Sunni* conception of authority mainly via physical and metaphysical force.

European colonization's main consequence was the rearrangement of global colonial territories according to the logic of the modern nation-state. It physically redrew the Islamic geographical map under international law and according to the logic of Western conceptions of sovereignty. Consequently, the construction of modern nation-state was not historically organic to Muslims; on the contrary, physical and metaphysical violence imposed the nation-state on Muslims and forced a new reality that led to the rise of configurations of identities based on racial and linguistic origins emphasizing new loyalties to the national territorial state. The process of constructing the nation-state in the postcolonial period fell to local elites.

To illustrate the argument I have chosen the contemporary Islamic legal scholar Wael B. Hallaq as my interlocutor in this chapter. Professor Hallaq's brilliant scholarship on the *Sharia* and Islam makes him an ideal candidate for this task. There are similarities between our approaches regarding the significance of sovereignty and modernity but more importantly, we differ in the scope of sovereignty in relation to the *Sharia* or more precisely *Sunni* authority.

Similar to my approach, Hallaq appreciates the profound impact of the European colonialism on Muslims and the impact of the European legal system on the *Sharia* which is central to Muslim subjectivities and system of meaning. He illustrates in the following quotation the impact of European colonial experience and the change that was imposed on local populations in the post-independence nation-state structure:

Elsewhere, I have suggested that the postcolonial nationalist elites maintained the structures of power they had inherited from the colonial experience and that, as a rule and after gaining so-called independence for their countries, they often aggressively pursued the very same colonial policies they had fiercely fought against during the colonial period. They inherited from Europe a readymade nation-state (with its constitutive power structures) for which the existing social formations have not been adequately prepared. The paradigmatic concept of the citizen, without which no state can last, has been slow in coming, and the political lacunae have not been properly filled. (16)

Largely, the militaries of newly independent states constructed the nation-state based on the same colonial military model of governing. The process by which newly independent Arab states constructed the modern nation-state represented a top-down European colonial style of governing, which lacked organic local characteristics. This is truer of the Arab postcolonial republics than the conservative monarchies in the Middle East. In short, modernity through European colonialism displaced archaic Muslim identities based on religious membership in favor of new subjectivities based on the modern logic of European sovereignty. Accordingly, the nature of the legal system:

Until the early nineteenth century, and for twelve centuries before then, the moral law of Islam, the *Sharia*, had successfully negotiated customary law and local customary practices and had emerged as the supreme moral and legal force regulating both society and government. This 'law' was paradigmatic, having been accepted as a central system of high and general norms by societies and dynastic powers that ruled over them. (Hallaq 2013, 8)

Between the nineteenth and twentieth centuries the role of *Sharia* ended in public life as European colonialism, or local elites themselves, successfully introduced the modern codes of law. More important, in nineteenth and twentieth century Islamic political thought a link was made between European domination and the decline of the role of the *Sharia* in public life. New European laws were introduced as rational laws necessary for the construction of a modern national homeland. The new codes were constructed according to the logic of the nation-state where national rather than religious loyalties were the moral end of law. Dealing with this legal rupture was a major theme that subsequent Muslim thinkers had to address. Wael Hallaq explains the significance of this change:

The political, legal, and cultural struggles of today's Muslims stem from a certain measure of dissonance between their moral and cultural aspirations, on the one hand, and the moral realities of a modern world, on the other---realities with which they must live but that were not of their own making. In one sense, the entirety of this book seeks to substantiate this claim. The West (by which I mean here mainly Euro-American) lives somewhat more comfortably in a present that locates itself within a historical process that has been of its own creation. It lives in an age dictated by the terms of the Enlightenment, the industrial and technological revolutions, modern science, nationalism, capitalism, and the American-French constitutional tradition, all of which, and much more, have been organically and internally grown products. The rest of the world has followed or, if not, has felt the pressure to do so. There is in effect no other history but that of Euro-American, not even pre-Enlightenment European history. (17-18)

The self-confidence of the European empires sought and succeeded in shaping the world through its moral and technical superiority. The Napoleonic invasion of Egypt (1798-1801) exemplifies European self-confidence in relation to the declining Muslim Empires. Edward Said in his study of Orientalism argues that Napoleon's invasion of Egypt symbolized European hegemonic power over the Muslim subject. He contends that this invasion "although it was almost immediately preceded by at least two major Orientalist projects, Napoleon's invasion in 1798 and his foray

into Syria have had by far the greater consequence for the modern history of Orientalism” (Said 1977, 76). Said is referring to the metaphysical consequences of this colonial expedition on the European subject, who is able not only to conquer a territory but to use the local population as the subject of the European sciences. This type of domination has no parallel in the history of Islam. Consequently, any form of local resistance had to cope with this nascent domination or hegemony in a physical/metaphysical totality that constructs the world according to the logic of sovereignty. As such, invasions and decline are not new phenomena in the history of Islam; their impact has always been physical at the material level but unable to change the metaphysical core of Islam and its values. Both the Mongols and the Crusades conquered Islamic Empires and occupied large geographical territories, but they were unable to impact the metaphysical core of the legal system, e.g. *Sunni* authority of *Ulu Al Amr* and the *Sharia*. For example, Mongols converted into Islam during their rule over Muslims and the Crusades ended their venture without impacting the central role of *Sharia* in public life. But starting with Napoleon’s invasion of Egypt, “it soon became apparent that Western challenges were more fundamental and that even the attaining of modern military capabilities required wide-ranging social, economic and even political reorganizations. Between the mid-nineteenth century and the end of the First World War, almost all parts of the Muslim world were touched by this process, which amounted to a remoulding of Islamic societies in a modern European cast” (Nafi 2008, 36). This remolding was by force and required the restructuring of physical and metaphysical aspects of Muslim reality. The change crushed historical economic, social, and political ties in favor of new ones. Social and political classes declined and new classes accumulated massive political and economic power. Moreover, prominent Islamic cities such as Damascus experienced dramatic decline due to the rise of new coastal cities that were at the center of urban and economic

systems in the region. Physical changes were accompanied by metaphysical changes. The introduction of European legal codes, which governed the state and the economy, produced the novel legal logics. Wael B. Hallaq explains this unprecedented change:

However, beginning in the nineteenth century, and at the hands of colonialist Europe, the socioeconomic and political system regulated by the Sharīa was structurally dismantled, which is to say that the Sharīa itself was eviscerated, reduced to providing no more than the raw materials for the legislation of personal status by the modern state. Even in this relatively limited sphere, the Sharīa lost its autonomy and social agency in favor of the modern state; Sharīa was henceforth needed only to the limited extent that deriving certain provisions from it—provisions that were reworked and *re-created* according to modern expediency—legitimized the state's legislative ventures. (8)

The dismantling process was through the centralizing policy of the colonial powers' military might, which enabled them to impose their legal and political will on the colonies. Consequently, the nineteenth century colonial experience was a unique and unprecedented event in the history of Islam changing its physical and metaphysical characteristics, which were held intact by the *Sharia*. The scope of decline at the metaphysical level presented Muslims with the challenge of a reality lacking any reference point in the *Sharia* or history of Islam to guide them out of the colonial crisis. Because the nineteenth century decline was hegemonic, Muslim states were unable to thwart the European physical and the metaphysical system of meaning. Consequently, there was no *Sunni* system of meaning that could any longer impose its will in the physical world. Instead it receded to a ceremonial role. This moment in history we call modernity represents modern Islam's decline.

This study will utilize Eduard P. Archetti's conception of modernity by arguing that:

Modernity refers to a historical period which began in Western Europe with a series of cultural, social and economic changes during the seventeenth century, and it is usually characterized by three features: first, culturally, a reliance on reason and experience conditioned the growth of science and scientific consciousness, secularization and instrumental rationality; Second, as a mode of life it was based on the growth of industrial society, social mobility, market economy, literacy, bureaucratization and consolidation of the nation-state; and third, it fostered a conception of the person as free, autonomous, self-controlled and reflexive. Opposed to traditional forms of

thought and life, modernity can be conceptualized as a mode of social and individual experience that is shared by many men and women all over the world due to the expansion and prestige of scientific enquiry, technological innovation, political models of democracy and nation-state boundaries, and subjective drive for self-development. Modernity is inherently globalizing. Giddens (1991) has argued that the globalizing tendencies of modern institutions are accompanied by continuous changes in the perception of the self and redefinition of identities. (546)

This dissertation recognizes modernity as an extension of the Christian medieval Europe and not a rupture with the past. More precisely, secular conceptions of the subject as “free, autonomous, self-controlled and reflexive” are genealogically medieval and Christian. They eventually were secularized through struggles and unrest in the social, economic, and political history of Europe, but the internal configuration remained intact. Most important, this dissertation claims that sovereignty is the core concept and continuous thread that connects medieval Christian Europe with secular modernity which later is universalized over the globe via European colonialism. Moreover, “sovereignty is a historical innovation of certain European political and religious actors who were seeking to escape from their subjection to the papal and imperial authorities of medieval Europe and to establish their independence of all other authorities, including each other. It is a post-medieval and, indeed, anti-medieval arrangement of governing authority. It is one of the defining markers of the modern world” (Jackson 2007, 6). Thus, this dissertation holds that while modernity has produced universal principles that should be embraced and celebrated globally, the context of these principles is local in character. Mainly, modernity is structured around the unfolding logic of sovereignty in the social, economic, and political domains. More precisely, modernity unleashed the physical/metaphysical logical forces that framed the historical struggles of the European subject against power and exploitation. The logic of sovereignty provided the modern subject with the claims of national sovereignty, sovereignty over the self and body, which framed the logic of autonomy, freedom, equality and dignity.



Thus, the local character of European sovereignty is saturated throughout with the emancipatory universal struggles for human rights and human dignity.

This logic of sovereignty presents fundamental obstacles to other peoples and cultures that share emancipatory struggles against power but frame the struggle according to local historical ideas such as *Sunni* Islam authority. A problem arises when human rights and dignity claim universality regardless of the local character of sovereignty that is the outcome of historical, political, and social circumstances that have arisen from medieval Europe. Consequently, insisting on universalizing the local character of autonomy, freedom, and equality in a European context undermines the very universality of the concepts.

The sovereignty of science, the state, the economy, and the self are particular European expressions of the emancipatory principles of resisting power and exploitation of the weak. By insuring freedom and equality to all based on the dignity of the subject. It is the aim of this chapter to demonstrate that emancipatory universal concepts may be realized if the local characteristics of European sovereignty and *Sunni* authority are understood and included. But first we must analyze the physical and metaphysical of both concepts.

Insisting on the local qualities of sovereignty as universal and ignoring the local historical quality of authority in *Sunni* Islam is further proof that human rights are a tool in the hand of aggressive Western powers to advance the interest of their own imperial states. It is a fact that the advent of modernity with its universal claims coincided in the case of Islam with European colonialism and decline of the Muslim Empires. Thus, with European sovereignty at its core the universality of the modern subject as “free, autonomous, self-controlled and reflexive” becomes a discourse of human rights and wrongs according to the logic of the sovereignty of the self, the

nation, and the state while other forms of authority were excluded and absent from these universal notions. Thus, the role of colonial Western empires was central in forcing a European model of sovereignty upon other cultures and collectivities by force. The best example is international law that governs an international community based on the logic of European sovereignty. Wael Hallaq describes European domination at the physical and metaphysical realms by arguing:

Africa and Asia, in most cases, continue to struggle in order to catch up, in the process not only foregoing the privilege of drawing on their own tradition and historical experiences that shaped who they were and, partly, who they have become but also letting themselves be drawn into devastating wars, poverty, disease and the destruction of their natural environment. Modernity, whose hegemonic discourse is determined by the institutions and intellectuals of the powerful modern West, has not offered a fair shake to two-thirds of the world's population, who have lost their history and with it, their organic ways of existence. (18)

This dissertation disagrees with Hallaq that there is a history to be lost and with it an organic way of existence. Instead, I claim that the history of Islam is a history with struggles and resistance based on local forms of authority and obedience. It is the legal logic of *Sunni* authority that produced the history of Islam without an authentic history to be recalled or a moment to which to return. What is important in Hallaq's insights is the claim that the modern West depends on its ability to shape the world according to the European concept of sovereignty and creating a world that is hostile to other forms of authority. It legally requires adherence to European international law and the concept of the territorial nation-state for membership in the international system. Modern state sovereignty entails maintaining a centralized bureaucracy, a defined territory, and a fixed population. Moreover, the modern nation-state runs on taxation and exploitation of natural resources on its territory.

In sum, understanding the emancipatory discourse that spread globally through European colonialism requires an analysis of the local character of European sovereign and how the

discourse produces hegemonic power whose consequence is the physical and metaphysical domination of the local subject. In insisting on framing universal emancipatory discourses on European sovereignty, modernity necessitates a particular kind of subject, an autonomous individual with a European sense of self-authorship as its reference point. Consequently, unless the subject abandons local traits and adopts the European conception of the self, that subject is incompatible with modernity. Hallaq, argues that “as an anthropocentric entity, the state possesses a metaphysic that resides within its own sovereign will. The metaphysic generates its own meanings, which is to say that its particular views of the world are of its own creation and bound by its own standards however changeable these standards may be” (Hallaq 2013, 183). *Sharia* in the context of the environment that produced the nation-state became an alien creature that governed by alien environment. Consequently, the environment of the nation-state constitutes a unified different subject according to its laws, regardless of culture. As a result, the European subject is the only natural and compatible creature with modernity. Thus, modernity with its emancipatory universal projects is framed according to a local European environment and as such it is impossible to universalize. Hallaq illustrates the consequences of this change as follow:

Modern Muslims are therefore faced with the challenge of reconciling two facts: first, the ontological fact of the state and its undeniably powerful presence, and, second, the deontological fact of the necessity to bring about a form of *Sharia* governance. This challenge is further complicated by the recognition that the state in Muslim countries has not done much to rehabilitate any acceptable form of genuine *Sharia* governance. The constitutional battles of the Islamists in Egypt and Pakistan, the failures of the Iranian Revolution as an Islamic political and legal project, and other similar disappointment amply testify to this proposition. Yet the state remains the favored template of the Islamists and the ulama (so called Muslim clergymen). (9)

Overall, Hallaq’s description of the predicament of political Islam in the twentieth century is accurate; it even applies to the Islamist struggle during the Arab Spring. Yet, his account of what constitutes “genuine *Sharia* governance” begs the question: When and where did *Sharia*

governance genuinely existed. In fact, the body of the *Sharia* since the death of the Prophet grew according to accommodations to the changing social and political circumstances that faced the *Umma*. In fact, the split of Islam into two main rival groups; *Sunni* and *Shia* is a testament of “genuine *Sharia* governance” that Hallaq claims never existed. Furthermore, the legal principles of *Wilayah al ahed* and *Wlayah al qaher* in *Sunni Fiqh al siyash al shariah* as are response to the fact that the *Sharia* is moot on the subject of temporal power and obedience.

This dissertation views *Fiqh al siyash al shariah* as series of legal harmonizations between the changing physical world and the metaphysical ideal of Islamic monotheism. The violence in the history of Islam and especially in the early founding period as chapter four demonstrated was a history of compromise producing the legal principle of *Wilayah al ahed* under the legal principle of *Maslaha*. This historical period is what Donner dubbed the “First and Second Civil Wars” due to the violent nature and struggle against temporal power and governance of the *Umma* in early Islam.

Moreover, Hallaq exaggerates the concept of Islamic governance where implementation of *Sharia* was primarily grounded in an attempt to realize the “ought.” Modern states, in contrast, debased considerations of morality to secondary or tertiary status and simultaneously sanctified the doctrine of progress. Chapter four of this dissertation demonstrated that the “ought” was not necessarily followed in *Fiqh al siyash al shariah*, instead, the authority of *Ulu Al Amr* to decide on the expedient as a compromise under the *Maslaha* was the norm and not the exception. While this dissertation agrees with some aspects of Hallaq’s conception of Western sovereignty, the central reservation is related to his methodological commitments. Accordingly, he explains sovereignty as follows:

Inasmuch as it is inescapable for the modern state to be a historical contingency and thus of a context-specific provenance, it is also—if we speak of it as we must—a constructed entity; that is,

it must consist of something or things, whether these are real or fictional, material or conceptual, mythical or symbolic. The concept of sovereignty is one such form-property that remains, despite the changes the state has undergone over the last two centuries or so, one of its hallmarks. While all premodern rule was sustained by certain political and ideological structures, the modern state is unique in its impersonal character, an abstract concept that lies at the heart of its legitimacy. The abstractness of sovereignty therefore requires the evaluation of the state not only as an empirical set of differentiated institutions but also as an ideological structure that both pervades and orders the state's social matrix. (Hallaq 2013, 27-28)

That sovereignty is an enduring core concept of modernity means that it orders the physical and metaphysical according to its logic. Thus, non-European people must confront modernity as a political and social fact that holds a different logic from that of their local culture. For *Sunni* Islam, this condition requires changes and reorganization in the role of *Sunni* authority in public and private realms, which logically produces new legal and political order around new legitimacies in relation to the modern nation-state according to the logical necessities of sovereignty.

This dissertation disagrees with Hallaq's understanding of Islam and modernity on the ground that he uses the logic of sovereignty in his method to explain the condition of Muslims in modernity. Accordingly, he uses a European methodological model constructed around a sovereign core and then applies the logic of his method to Islam ignoring how *Sunni* Islam constructs subjectivities according to the logic of *Sunni* authority. He borrows from Carl Schmitt the methodological notions that are constructed around European sovereignty and applies them directly to describe Islam and Muslims. Ahsanuddin clarifies the point:

In framing his argument, Prof. Hallaq utilizes Carl Schmitt's notion of "central" and "peripheral" domains, or the primariness/secondariness of certain communal pursuits, to assess the weltanschauungs that define the modern state and premodern Islamic governance. According to Schmitt, the central domain defines a worldview because the objectives of the central domain constitute the primary objectives for the worldview. The peripheral domain, on the other hand, includes objectives of lesser importance: "the problems of other domains are solved in terms of the central domain – they are considered secondary problems, whose solution follows as a matter of course only if the problems of the central domain are solved." Yet Hallaq distinguishes his

approach from Schmitt by emphasizing “the centrality of the values adopted in the central domain as ideal values that remain the distinctive desiderata and the locus of purposive action and thought,” even though the values and ideals may not be realized. (Ahsanuddin. 14)

Thus, Hallaq constructs a method of analysis around the logic of European sovereign core where the “Truth” of the system guides the entire system of meaning as a paradigm. In contrast, this dissertation argues that authority of experts in *Sunni* Islam constructs different subjectivities and notions of the self than those constructed around European sovereignty. This is the logical justification of the role of *Ulu Al Amr* in the *Sunni Fiqh*. Their role was primarily as harmonizers similar to Islamic philosophy that harmonized Greek philosophy around God. Consequently, there is no body or a church in *Sunni* Islam that can claim “Truth” knowledge in Islam.

Once Hallaq constructs his method on the Schmittian notion of “central” and “peripheral” domains of power and knowledge he differentiates his method by claiming that:

While Schmitt is right in insisting on the central domain as a driving force, our account of paradigm emphasizes the centrality of the values adopted in the central domain as ideal values that remain the distinctive desiderata and the locus of purposive action and thought, even when their application and realization are not always achieved and even when the competing forces within the domains constituting the paradigm undermine such application and realization. For paradigms represent fields of “force relations,” encompassing opposing and competing discourses and strategies. This is what led Foucault to declare that these discourses of power, in their oppositional trajectories, are inseparable, for discourses “are tactical elements or blocks operating in a field of force relations; there can exist different and even contradictory discourses within the same strategy; they can, on the contrary, circulate without changing their form from one strategy to another, opposing strategy.” If power is to deserve the name it bears, if it were to produce effects over its subjects, then its processes and strategies—in their confluence and opposition—must yield such effects that both directly and obliquely flow from these processes and strategies. (Hallaq 2013, 17)

This is precisely the reason behind his claim that an Islamic state will always stand in contradiction to modernity since European sovereignty of the “modern states debased considerations of morality to secondary or tertiary status and simultaneously sanctified the doctrine of progress considerations of morality to secondary or tertiary status and simultaneously

sanctified the doctrine of progress. This preference of “is” over “ought,” of progress over morality, is perhaps most visibly demonstrated in the destruction of the environment and the various inequalities and ills that plague society” (Hallaq 2013, 13). Consequently, the European subject sits comfortably in a world of political projects based on the “is” while the Muslim subject struggles hopelessly to achieve the “ought” rendering him incompatible with modernity. The aim here is to deny agency to both Western and non-Western subjects. Hallaq’s account renders emancipatory project and struggles against power such as the global left and feminism as meaningless achievements. Moreover, he nullifies the free, autonomous, and reflexive subject whether European or non-European.

Conversely, this dissertation demonstrated in the previous chapter the struggles between temporal power and *Ulu Al Amr* to legitimize the dynastic rule of the Umayyad and the Abbasids. The absence of agency in his method I argue is due to his reliance exclusively on Schmitt’s method in explaining the core character of *Sharia*. In contrast, this dissertation uses the “exception” thesis of Schmitt but only in relation to the local core character of *Ulu Al Amr* and authority in *Sunni* Islam. Thus, the legal structure of authority in *Sunni* Islam operating via *Ulu Al Amr* demonstrates that *Sharia* is not a closed system applying metaphysical legal standards. Instead, historically the task of *Ulu Al Amr* is to harmonize the *Sharia* with the social and political changes the Muslims encountered in their history. And modernity and sovereignty is another phase in history. More precisely, *Sharia* is an adaptive form of authority relationships that changed in accordance to *Maslaha* and it was not an ideal system imposed on the material world.

Thus, while throughout the dissertation the emphasis is on the difference between a system of meaning that is based on European sovereignty and a *Sunni* system of meaning based

on authority, human agency remains my central claim. The centrality of authority in the absence of sovereignty in Islam's system of meaning was not the result of "paradigmatic Islamic governance" alone, as Hallaq claims, but the result of textual and historical circumstances that thrust *Ulu Al Amr* in the role of authority in *Sunni* Islam with its particular type of obedience. The following section will analyze the concept of European sovereignty in relation to *Sunni* authority while avoiding the absence of agency in Hallaq's account.

First, modernity produced fundamental changes in the physical and metaphysical realms on a global scale by holding time and space in a specific relationship that created new realities constructed around a specific logic of sovereignty. Carl Schmitt explains this claim as follow:

All pre-global orders were essentially terrestrial, even if they encompassed sea powers and *thalassocracies*. The originally terrestrial world was altered in the Age of Discovery, when the earth first was encompassed and measured by the global consciousness of European peoples. This resulted in the first *nomos* of the earth. It was based on a particular relation between the spatial order of firm land and the spatial order of free sea, and for 400 years it supported a Eurocentric international law: the *jus publicum Europaeum*. In the 16th century, it was England that dared to take the step from a terrestrial to a maritime existence. A further step was taken with the industrial revolution, in the course of which the earth was newly conceived and newly measured. It was essential that the industrial revolution occurred in the country that first had taken the step to a maritime existence. This is the point at which we can approach the mystery of the new *nomos* of the earth. (49)

Schmitt argues that the new terrestrial and maritime *nomos* changes the relationship between physical and metaphysical affect that is universal in character. Clearly, the new *nomos* depends on the military might of Great Britain whose global colonization redefined international law according to the logic of the new *nomos* of the earth, which has sovereignty at its core. More precisely, at apex of this *nomos* is the mysterious sovereign power "who decides on the exception" (Schmitt 2005, 5). This sovereign is above the law with emergency powers to decide when to suspend the law. Accordingly, "Sovereignty is a property which is absolute and indivisible, which cannot be participated in and admits of no degrees, and which belongs to the



Sovereign independently of the political whole, as a right of his own” (Maritain 1951, 38). Thus, the quality of the sovereign as an entity above and separate from the collective is central to the ability of the sovereign to disrupt the political process and suspend the laws even in democratic political systems. “Accordingly, law and legitimacy emanate for the agent who is at the same time a temporal and transcendental actor, the highest in power, the final power, general in effect, and finally independent” (Jackson 2007, 92-94). The supernatural extraordinary powers of the sovereign are theological, and Christian qualities exist in contemporary modernity in secular qualities.

How and why does the sovereign possess such qualities? Moreover, who is the sovereign? The answer is in the historical, social, and political conditions of Europe in its path from medieval Christianity to contemporary modernity. Thus, the medieval European holds the seeds of modern contemporary secular concepts of modernity. “The idea of sovereignty was expediently arranged in the sixteenth and seventeenth centuries by European rulers in the course of their rivalries and struggles, religious and secular. Political and legal thinkers captured the idea, its *modus operandi* and its underlying principles, in commentaries on the subject. Those commentaries are interdisciplinary: the idea is at the heart of political and legal theory, diplomatic as well as religious history, constitutional law and international law” (Jackson 2007, 1). As such, understanding contemporary political and legal concepts requires understanding the theological aspects that must be investigated and taken into account. In this context, the political writing of Carl Schmitt successfully captures the theological character of the contemporary secular concept of sovereignty. For example, he argues that:

Whether God alone is sovereign, that is, the one who acts as his acknowledged representative on earth, of the emperor, or prince, or the people, meaning those who identify themselves directly with the people, the question is always aimed at the subject of sovereignty, at the application of the concept to a concrete situation. Ever since the sixteenth century, jurists who discuss the

question of sovereignty have derived their ideas from a catalogue of determining, decisive features of sovereignty that can in essence be traced to the points made by Bodin. To possess those powers meant to be sovereign. (10)

Accordingly, the religious question regarding sovereignty remained the same throughout the evolution of the European legal system from emperor to prince and finally to the people. The religious qualities of God's representative on earth share Divine characteristics that then transferred to the emperor, or prince, or the people in the modern era, "but it is not fixed and unchanging. On the contrary, it has evolved and taken on different personas over time: it has been reformulated periodically to fit the demands and exigencies of specific historical periods or episodes" (Jackson 2007, 1). Yet, the enduring, supernaturally religious quality of sovereignty as a link between the physical and metaphysical realms transferred from God's incarnation to emperor, prince, the people, and later the self, all of which are constituted as the same supernatural character of a Sovereign God contextualized in personalized, earthly emancipatory struggles against power and oppression. Jean Bethke Elshtain explains this personalization process in the following quote:

This personalization of earthly rule is documented masterfully in Ernest Kantorowicz's classic, *The King's Two Bodies*, as he unpacks the king's "twinned nature," embodied in mortal "natural" man and the office which perdures in perpetuity with another "body" holding that office when a previous fleshy monarch dies: the King is dead. Long live the King! The king comes to supplant the pope as the mediator between the earthly and the divine. Thus, in the embodied account, "the king appears the perfect *christomimetes* ... with regard to power, since his power is the same as that of Christ... the One who is God and Anointed by nature, acts through his royal vicar who is 'God and Christ by Grace.' The will of the ruler brings the body to life. The head must "literally by an individual mind or will. Most clearly of all, supreme power we cannot be except...in one," else it would be supreme. (62)

By sharing the qualities of a sovereign God, the earthly sovereign is able to rule over of his subject with laws that emanate from his body. Thus, the European masses in their struggle must possess the same supernatural quality to be successful in revolting against the sovereign's laws and liberate themselves from his tyranny. Nevertheless, it is this supernatural quality of

sovereignty and the sovereign that holds sway in modernity. It is the ability to put the sovereign and the sovereign nation state above all as an article of faith. It is the link that holds the physical and metaphysical world together in a way meaningful to the subject who is now a citizen of the nation state. Susan Buck-Morss explains this essential quality as:

The sovereign figure as personification of the collective demonstrates the power of the visible image to close the circle between constituting and constituted power, explaining why even when the illegalities of an individual sovereign are exposed, the faith of the believer is still not shaken. As long as the circle appears closed, sovereign power remains intact; likewise, and conversely, as long as sovereign power remains intact, the circle appears closed. The closing of the circle demands a miracle, and the icon of the sovereign figure provides it. (2)

It is this enigmatic quality of the sovereign that persists in modernity. Accordingly, as “a metaphysical figure, the sovereign connects the world of lived politics with the Platonic world of eternal forms. The legitimacy of political power continues even in secular modernity to maintain this ideal connection” (Buck-Morss 2007, 3). It is this religious quality of sovereignty that is globalized with the advent of modernity, and it is the new environment that all non-European people around the world must configure accordingly to their local legal, political, economic, and social world. Thus, “the truth of the matter is that politics and religion are never severed from each other so long as the figure of the sovereign holds sway. ‘All significant concepts of the modern theory of the state are secularized theological concepts,’ writes Schmitt, and none more so than sovereignty” (Buck Morss 2007, 3). The consequences of this conception of sovereignty are amplified further once it is transferred to other parts of the system of meaning.

This is precisely the argument of Jean Bethke Elshtain who claims in “Sovereignty: God, State, and Self” that the birth of the new logic of sovereignty was historically a consequence of a change in the conceptualization of Western Christendom’s God from a God of love and miracles

to a willful God. Accordingly, this transformation of the Christian conception of a willful God was transferred to the state and finally to the self. Explaining her claim, she argues:

A streamline version of my thesis would go like this: As sovereign state is to sovereign God, so sovereign selves are to sovereign states. Given that sovereignty in the political sense “names” self-determination for a territorial, collective entity, it is altogether unsurprising that this logic of sovereignty came unbound and migrated, becoming attached more and more to notions of the self. (159)

Ipso facto, modern subjectivities and the self are embedded in the European characteristics of sovereignty. They are present in the universal concepts of justice, freedom, equality, and autonomy. These universal concepts are expressed in a European historical framework that, rightly so, attaches to them local qualities, which are necessary to make them meaningful.

Herbert Marcuse provides a historical evolution of the rise of the modern sovereign, but in his example he argues that the Christian conception of freedom and its attitude toward authority necessitated the rise of the sovereign. Marcuse differs from Elshtain in regard to the causal direction of the evolution of the sovereign. In his case the Protestant conception of freedom and attitude toward the external world necessitate the rise of the sovereign and the territorial state. Nevertheless, Marcuse’s argument confirms the centrality of Christianity in the rise of the sovereign. It is with Immanuel Kant that the theological basis of modernity is secularized. The following quote illustrates the point:

The Protestantism of Luther and Calvin which gave the Christian doctrine of freedom its decisive form for bourgeois society, is bound up with the emergence of a new, “young” society which had first to conquer its right to exist in a bitter struggle against existing authorities. Faced with the universal bonds of traditionalist feudalism it absolutely required the liberation of the individual within the earthly order as well (the individual free subject of the economic sphere later essentially became the model of its concept of the individual) – it required the liberation of the territorial sovereign from the authority of an internationally centralized Church and a central imperial power. It further required the liberation of the “conscience” from numerous religious and ethical norms in order to clear the way for the rise of the bourgeoisie. In all these directions an antiauthoritarian attitude was necessary...’ (Marcuse 2008, 9-10)

Thus, the rise of the sovereign required a theological notion of the self that would assert certain claims to autonomy and freedom against the church and the sovereign king. That autonomous self would, in turn, produce secularized conceptions of freedom in modernity.

In sum, “to be sovereign means to exercise absolute power over one's self and one's fate. But another way of putting this is that the sovereign — whether it is a god, a king, a state, or a mere self — cannot be held answerable to anyone. When push comes to shove, sovereignty always trumps law and morals” (Adam Kirsch, 2008). This is precisely the local European characters of the universal concepts freedom, equality, and autonomy that should not be universalized on global struggles against power. More accurately, the European framing of these concepts is not the only process of development of modern subjectivity nor is it the universalization of these concepts. Thus, according to the European historical record, struggles against a sovereign with supernatural qualities are embodied in Western hostility to all forms of external religious and secular authority. This hostility is necessary to emancipate the self from the web of supernatural qualities and is precisely the local European context that requires the subject to act hostilely and skeptically to external authorities and constraints, which emanate from the sovereign. But that certainly does not mean the struggle is to be applied similarly without taking into account the local qualities and context of the struggles for justice, freedom, equality, and autonomy. The consequences of these supernatural qualities of the sovereign and sovereignty are enormous in terms of the formation of subjectivities and struggles against power. More important, these qualities are directly related to the project of the modern subject in relation to the external world, laws, and authorities.

But what are the consequences of the absence of supernatural qualities in the *Sunni* Islam system of meanings? How are the formation of the subject and subjectivities constituted? What

obstacles frame the emancipatory project of the subject if the internal and external or the physical and metaphysical realms are framed absent of a sovereignty with supernatural qualities? If the Christian subject “as ‘internally’ free being man is born into a social order which, while it may have been posited or permitted by God, by no means represents the realm in which the existence or non-existence of man is decided upon. Whatever the nature of this order may be, the inner freedom of man (his pure belief and his pure will, provided they remain pure) cannot be broken in it. ‘The power of the temporal authority, whether it does right or wrong, cannot harm the soul’” (Marcuse 2008, 9).

Conversely, subjectivity in *Sunni* Islam is constituted and framed according to the subject’s understanding of the relationship between the physical and metaphysical realms or the internal and external world as they stand in relation to one another. This dissertation claims that the absence of duality in *Sunni* subjectivity nullifies the role of a temporal sovereign in the *Sunni* system. Hence, freedom and emancipatory struggles are not framed dualistically, as they are Protestantism, in a relationship of sovereignties, which set the trajectory of the unfolding of modernity. Marcuse argues that Christian subjectivity constitutes the world as dual oppositional realms internal/external. The consequence of his theological account ultimately leads back to the Fall. According to Marcuse:

The Christian doctrine of freedom pushes the liberation of man back until it pre-dates his actual history, which then, as the history of his unfreedom, becomes an “eternal” consequence of this liberation. In fact, strictly speaking there is no liberation of man in history according to this doctrine or, to put it more precisely, Christian doctrine has good reasons for viewing such a liberation as primarily something negative and evil, namely the partial liberation from God, the achievement of freedom to sin (as symbolized by the Fall)...As “internally” free being man is born into a social order which, while it may have been posited or permitted by God, by no means represents the realm in which the existence or non-existence of man is decided upon. Whatever the nature of this order may be, the inner freedom of man (his pure belief and his pure will,

provided they remain pure) cannot be broken in it. “The power of the temporal authority, whether it does right or wrong, cannot harm the soul.” (8-9)

It is precisely these local qualities that frame the universal emancipatory project and subjectivities in a particular order that must be taken into account to construct a global struggle against power and the oppression of the weak. Overlooking such local qualities usually leads to the confirmation of Ali Mirsepassi’s claim that modernity and modernization are mere discourses of power to dominate the other. By insisting on universalizing the local qualities of European sovereignty in discussions and debates about universal projects of struggles and emancipation leads to discourses of power that:

- (1) [define] the “Third World” as a singular essentialized entity not in terms of its own existing qualities, but in term if “First World” qualities which it lacks...
- (2) [define] contemporary conditions in the Third World in terms of abstracted conditions of European historical experience; the Third World is seen as embodying aspects of Europe’s past (feudalism, etc.)...
- (3) [make] the assumptions that only one essential path to modernity exists in the world, and Europe has experienced this path in advance of non-Western world. (Mirsepassi 2000, 8)

Accordingly, the insistence on looking at the world exclusively from a European subjectivity as the only “True” self, is to nullify global emancipatory projects and struggles against the oppression of power. Oppression is universal but unfolds in a local context based on geographical frames of reference. Thus, this dissertation claims that there is much to gain from theorizing the commonalities in *Sunni* Islam and European subjectivity for a dialogue about social justice, tolerance, freedom, equality, and dignity.

Similarly, the conception of the self in *Sunni* Islam frames the subject according to local, historical, social, and political conditions. Absent a sovereign in the European sense, *Sunni* Islam situates the formation of the self against the backdrop of its own local, historical circumstances. In this case, the duality of the internal and external world in relation to liberty has no significance

in *Sunni* subjectivity. The physical and metaphysical divide as a problem in the mind of the subject is absent. The question of the return to Adam's innocence before the Fall as the original the ideal condition for emancipatory struggles against power is not present in Islamic subjectivity in general. To explain this point further the Islamic political theorist Eltigani A. Hamid gives us an account of the Fall according to the *Qur'an* and its political consequences. He chooses *Surat al-Araf* (chapter seven) and divides the chapter it into sections for the purpose of understanding the origins of political thought in the Makkan (the chapters and verses that were revealed during the first ten years of the *Qur'an* in Mecca). This verse in the *Qur'an*:

Presents a conceptual framework of the reality of the human condition. It deals with the relations between humans and God, human beings and themselves, and human beings and the universe. Two main concepts can readily be defined: 1. All human beings are created from a single soul, and have a sound innate nature (*fitrah salimah*). God has established them on earth, and made it a source of sustenance for them. 2. All human beings are under God's command. He sends messengers to humankind chosen from among themselves, to convey His commands to them; and the people must renounce all other forms of allegiance, follow the guidance of their messenger, and devote themselves fully to their Creator and sole Sovereign...All human beings are created from a single soul, and have a sound innate nature. God has established them on earth, and made it a source of sustenance for them. (Hamid 2004, 32-33)

The material/spiritual or the physical/metaphysical realms are not separate, and with a different narrative of the Fall, they do not stand in binary opposition. Subjectivity is based on a continuum between the two realms in relation to the liberty, resistance, and dignity of the subject. Therefore, the *Sunni* subject does not frame liberty and resistance to power based on the Protestant divide of internal/external; instead, obedience to external authority is the frame of resistance against arbitrary temporal power. That obedience prevents temporal power from legislating moral laws or locating itself above the moral. More precisely, the subject's constitution of the self unfolds against the background of the local quality in which there is an absence of a supernatural or enigmatic earthly power.



In this context the interpretation of *Sharia* via the external authority *Ulu Al Amr* is the subject's field of struggle against oppression and a constraint on power. The historical struggle in *Sunni* Islam is over the usurpation of *Sharia* by temporal power's bending of the meaning of the *Qur'an* and *Sunna* attempts to legitimize oppression and injustice. Thus, the central difference here is that temporal power in *Sunni* Islam never achieved the supernatural status of the European sovereign. The historical dilemma of temporal power in Islam is how to usurp *Sharia* and the authority of *Ulu Al Amr*. The lack of religious icons or a miracle of incarnation in *Sunni* Islam's system of meaning deprived temporal power of the ability to acquire sacred or supernatural qualities. Thus, the entire edifice of *Fiqh al siyash al shariah* revolves around the question of the legitimacy of temporal power and why and when Muslim subjects must obey or disobey. Moreover, the very same condition devolves on *Ulu Al Amr* as experts who decide on the legal conditions of obedience, which is what in *Sharia* lends it legitimacy. On the other hand, in Islam temporal power achieves legitimacy through realist accounts and compromise based on the legal principle of the *Maslaha* of the *Umma*, i.e., the good of the community. This task is in the hands of members of the community, the *Ulu Al Amr*, whose legitimacy is based on legal expertise not supernatural qualities. Therefore, in *Sunni* Islam the subject's autonomy, freedom, and equality are attached to the interpretation and meaning of the law. Historically, the success of emancipatory movements against temporal power and oppression depends on the ability to hold temporal power to the movements' interpretation of *Sharia*. Hence, it is absolutely central for any Muslim emancipatory project that the authority of *Ulu Al Amr* remains free from the usurpation of temporal power. This is precisely the unfolding of struggle in the history of the *Sunni Fiqh al siyash al shariah*.

This dissertation argues that the root difference between *Sunni* authority and Western sovereignty finds its articulation in the Christian and Islamic accounts of the Fall. It follows that accounts of the Fall are relevant to conceptions of sovereignty. Embedded in the European subject are attitudes about how power in the external world is framed, and that framing is related to the presence of a supernatural sovereign with supernatural qualities. This discussion will be revisited again later in the chapter but for now the focus is on the consequences of the displacement of *Sunni* authority by the European concept of sovereignty.

For Islam, modernity and colonialism share the same historical roots of violence. They have made the European sovereign nation-state an unavoidable historical fact. Thus, “as far as the Middle East was concerned, it was generally the dominant colonial power that first created the essential features of a modern state, by giving it a centralized administration, a legal system, a flag and internationally recognized boundaries” (Owen 1998, 6). As a result, new identities of national language and geographical territories were constructed according to European notions of the self. Furthermore, “the new states were also given new bureaucracies and a new emphasis on homogeneity and equality. There was now to be one center of authority, issuing standard rules and regulations which were supposed to be applied equally to all those who lived within its boundaries as citizens” (Owen 1998, 10). At the same time, it was the presence of the military and its use of force that made these new states possible and created a legacy of states structured by oppressive modern armies.

Violence displaced *Sunni* authority and put in place new European constructs, that is to say the modern sovereign state, without organic, local negotiations. The ripple effect of this modernization can still be observed in the ideological divide that haunts the Arab Spring states.

The response to the historical moment of European colonialism and domination divided local responses over how best to reform and challenge this new reality making it a critical junction for the reform movements in the region. Historically, local responses can be divided around the ideological spilt that divided Islamist and national projects. These ideological divides were fundamental and produced different subjectivities based on a European sovereignty of universal principles and values or *Sunni* authority.

The intensity of the ideological divide varied geographically from one region to another and varied according to whether political system were kingdoms, monarchies, or republics. In Egypt, Tunisia, Syria, and Yemen divisions were overlapping, while in Saudi Arabia and the Gulf monarchies the division was less pronounced. Furthermore, the intensity of this division varied within the same republic or monarchy with the in split urban centers clearer than in rural areas.

In this section I will focus on the Ottoman Empire with its principal *Sunni* political structure the *Sunni* Caliphate. The declining Ottoman Empire was a member of an international system in which major European powers were expanding globally. These major powers redefined the international system according to their domestic legal codes and customs. Once they expanded globally, they defined international law according to the core logic of their own laws. These external forces and constraints shaped the Ottoman Empire to structure itself according to European conceptions of sovereignty. This globalized process has created a modern epoch of European hegemony, which codified European conceptions of sovereignty in international law through agreements such as the 1933 Montevideo Convention on the Rights

and Duties of States. Accordingly, a sovereign state has a fixed population, a defined territory, and a functioning government.

Consequently, in response to European powers the *Khalifs* of the Ottoman Empire embarked on the modernization of domestic institutions with the goal of emulating centralized European bureaucracies. The resulting institutionalization of *Ulu Al Amr* in the person of the Grand *Mufti* in the state bureaucracy was a logical outcome of the modern-state. The Ottoman Empire was willing to endanger historical institutions that eventually lead to the unraveling of the logic of *Sunni* authority. Nafi and Taji-Farouki describe this process as follow:

With the rise of the bureaucratized Islamic empires in the fifteenth and sixteenth centuries, two major developments came to affect the position of the ulama. First was the incorporation of a large segment of the ulama class into structures of the Ottoman, Safavid, and Mogul states. Second was increasing identification of the Sufi *tariqas* with the ulama institutions. While leading to a marked reduction in intellectual diversity within the ulama class as a whole, and limiting the degree of freedom they enjoyed relative to that ulama of preceding centuries, these developments did not diminish the influence of the ulama. On the contrary: the pervasive diffusion of Sufi *tariqas* in Muslim society and the instrument of the state that had thus become available of “official” ulama in fact consolidated and added further dimensions to the ulama’s status and influence in society. By the late nineteenth and beginning of the twentieth century, sweeping transformation produced by the modernisation programs and the experience of European imperialism were leaving their impact on the position of the ulama, opening the doors for the eventual emergence of new spokesmen for Islam. (Nafi/Taji-Farouki. 6)

Interestingly, the authors claim that the authority of the *Ulama* was further strengthened and consolidated once they became an institutionalized body of the Empire. Yet, by turning *Ulu Al Amr* into a tool of temporal power the consequence of this political maneuver historically undermined the paradigmatic legal concept of *Sunni* authority that underlay the entire legal, social, and political system. Similarly, Esposito and Voll argue that “in some major areas, like the Ottoman Empire, the *ulama* had become an institutionalized part of the ruling system. This gave real power to the scholar but opened the way for the organizations of scholars to become closely tied to political institutions that were subject to decline” (14). And that “by the era of peak of power of the Ottoman Empire in the sixteenth century, the ‘official’ *ulama* were a

significant part of the state structure and the institutions of the status quo” (Esposito/ Voll 2001, 9). Historically the Ottoman Empire established close ties between temporal power and the institutional *Ulu Al Amr*. Actually, the Ottoman Empire provided the tool that was essential to later political entities erected on its ruins. The institutionalization of *Ulu Al Amr*, which later established the post of the Grand *Mufti*, effectively created a church and an official state religion. The Grand *Mufti* was elevated to the role of sole speaker on behalf of the faith instead of the class of *Ulu Al Amr* who may disagree with one another. The new post could be easily turned into a rubberstamp of temporal power. The entire process and change, in the guise of a legal principle, usurped the legitimacy of *Ulu Al Amr* authority through the violence of temporal power. This was a central moment in the history of *Sunni* Islam where for the first time temporal power was at the apex of the political structure, and force was effectively exercised over *Sharia* and justified by *Sharia*. Yet, it must be noted that Ottoman Caliphate were able to introduce drastic changes to the Empire as long as they appeared to adhere during the process to “the most fundamental duty of a Muslim ruler, and that which both expressed and strengthened his alliances with the Muslim population, was to maintain the *shari’a*” (Hounrani 1991, 223). This could not have been achieved unless temporal power was free from historical ties to the authority of *Ulu Al Amr*. Consequently, only a change in the legal logic of the entire system would allow such a massive scale of change and enable the empire to introduce foundational changes in all aspects of life. A similar process was taking place in independent Egypt and other parts of the region. Consequently, these new modern changes undermined the remaining authority of *Ulu Al Amr* or the Grand *Mufti* effectively marginalizing them/him from the social, political, economic, and legal structure of the Empire. For example:

Modern education brought with it new disciplines, depriving the ulama of their centuries-old monopoly of the educational process. At the same time, it produced new types of professionals

and intellectuals, for whom the traditional Islamic knowledge of the *ulama* was becoming increasingly irrelevant. Similarly, modern court systems based on foreign legal procedures and laws, and the appropriation of the legislation process itself by the centralized state, undermined the law. The waqf sector, a major source of the economic power of the *ulama* and of their economic independence, was largely taken over by the modern state in the nineteenth century, and finally abolished in many Muslim countries during the course of the twentieth century. (Nafi/Taji-Farouki 2004, 6)

Similarly, Mohammed Ali Pasha (1769-1849) single handedly embarked on the task of modernizing Egypt (once a part of the Ottoman Empire) into a nation with a central power and a modern bureaucracy. Consequently, a massive project was established displacing traditional institutions on an unparalleled scale. It dismantled the social, economic, and political sectors of society that depended on *Sharia* for its legitimacy. Esposito and Voll illustrate this process of decline in the legal role of the *Ulama*:

The majority of the *ulama* in the most Muslim societies emerged in the nineteenth and twentieth century as a declining conservative force. The educational institutions under their control lost resources, students, and influence and in many places were simply taken over by the states, which were increasingly dominated by secularist modernizers. Perhaps the major symbolic culmination of this trend was the nationalization in 1961 of the great historic Islamic university of al-Azhar in Cairo. The justification was the need to “train a new generation committed to and capable of contributing to modernization and development. As a result, the university lost much of its independence both academically and politically. (Esposito/Voll 2001, 15)

Moreover, in Tunis the dismantling process took the shape of uprooting Islamic centers such as “the Zaytouna, a famed center of Islamic learning in North Africa and the Muslim world, was closed. The *ulama* were debilitated, rather than, as occurred in many Muslim countries, coopted by the government” (Esposito/Voll 2001, 92). The symbolism signifies a divorce from the past. Al-Zaytouna had produced over its history important Muslim scholars such as Ibn Khaldun. The signal here was that these learning centers and institutions were no longer needed due to their “backwardness”. More important, specialists in Islamic law were no longer needed after the adaptation of French law to regulate personal and public life.

Once European imperialism conquered the Muslim empires and ruled over them, it was logical that the legitimacy of the entire system including Islam and its institutions was put in doubt and questioned by Muslim reformers. Consequently and for the first time ever, questions about the role of Islam in public life and the place of Islam as a state religion became central to those who wanted to reform the state. They became legitimate discussion topics and occupied center stage among contemporary reformers. More important, the hegemony of *Sharia* in public and private spheres was questioned and gradually replaced by the introduction of European laws. These practices marked a turning point in the history of Islam. It is important to note that such challenges to social and political reality were true to all non-European people who had their reality redefined and shaped in accordance of international law and at its core the European conception sovereignty, the nation-state. It was this new identity that the ruling elite of the Middle East adopted and that was imposed on the public as modernizing project for the state to achieve. Hallaq explains this process by arguing that “elsewhere, I have suggested that the postcolonial nationalist elites maintained the structures of power they had inherited from the colonial experience and that, as a rule and after gaining so-called independence for their countries, they often aggressively pursued the very same colonial policies they had fiercely fought against during the colonial period. They inherited from Europe a readymade nation-state (with its constitutive power structures) for which the existing social formations had not been adequately prepared” (16).

The questions regarding the role of Islam and *Sharia* in public life and the state were never resolved intellectually or theologically. Furthermore, the institutionalization of *Ulu Al Amr* was an inevitable outcome of the legal exceptions of *Wilayah al ahed* leading to *Wlayah al qaher*

in *Fiqh al siyash al shariah*. The outcome of such judicial opinion produced permanent legal exceptions for temporal powers to use force under the legal category of *Maslaha*, as I illustrated in chapter four. This legal concession to temporal power set in motion an evolutionary legal trajectory that increased the power of the Caliphate and brought about a decline in the independence and authority of *Ulu Al Amr*. Thus, once temporal power was able to expand its domain of power under *Sharia* there was no turning back to a smaller role in the social and political spheres. Thus, following the steps of the Umayyad and the Abbasid empires, the Ottomans Caliphate were set on the path of increasing its power via more exceptions and concessions, thereby undermining the independence of *Ulu Al Amr*'s authority. This historical change in the legal and political structures resulted in a paradigmatic change in the relationship between power and authority in the *Sunni* legal structure. Temporal power in the nineteenth century was finally above *Sharia* shaping according to needs and necessities of the modern nation-state. Accordingly, the institutionalized *Ulu Al Amr*/Grand *Mufti* became a tool of state power to legitimize the state monopoly of the use of force regardless of *Sharia*. Thus the replacement of *Sunni* legal concepts of authority with European sovereignty was never negotiated or open to a debate. Instead, force was the dominant instrument to impose the new change both by the occupying imperial powers and the local elites that ruled the region in the postcolonial era.

Yet, all monarchies and republics that resulted from dissolution of the Ottoman Empire followed the footsteps of the Ottoman Empire by institutionalizing the *Ulu Al Amr*/Grand *Mufti* as a component of the modern state apparatus and turning it into a mouthpiece to state-power. This phenomenon presents us with an interesting question: Why self-professed secular states such as, Turkey or Tunisia, establish state institutions such a ministry of theology and a Grand



*Mufti*? This dissertation argues that the answer is in the process of how European sovereignty displaced *Sunni* authority. More precisely the institutionalization *Ulu Al Amr* as part of the apparatus of the sovereign nation-state undermined the legitimacy of their legal authority in the eyes of the *Sunni* Muslims throughout the region. Thus, imposing the legal concept of European sovereignty led to the democratization of the post of *Ulu Al Amr* which eventually led to the rise of political Islam in the twentieth century as a reform movement challenging legitimacy of rulers and the state. This dissertation labels this reforming class of *Ulu Al Amr* the “modern *Ulu Al Amr*” and argues that modernity and sovereignty forced Islamic empires to reorganize their domestic structures to institutionalize *Ulu Al Amr* and effectively establish a church as part of the state bureaucracy, which dismantled the authority of the entire system. Consequently, the delegitimization of *Ulu Al Amr*’s authority undermined state institutions in economic, social and political matters. Thus, the ruling power unintentionally provided the new *Ulu Al Amr* an opportunity to be a new class in charge of reconciling Islam with the universal concepts of modernity such as sovereignty, democracy, equality, and freedom.

In chapter three we discussed the concept of authority and the nature of obedience in *Sunni* Islam that made authority and not power the paradigmatic legal concept that entire system is constructed around. This problematic of power is directly related to the question on how and who legitimately rules Muslims. As the Prophet did not designate a ruler or a designate a system of governance for the community, this task was historically developed in *Sunni Fiqh al siyash al shariah* according to the legal of *Maslaha* or expedience according to what is good for community. The *Qur’an* as a primary source of the *Sharia* made no demands on Muslims to

obey a king, emperor, *Sultan*, or *Khalifa*. Instead, the only command in the *Qur'an* is obedience to *Ulu Al Amr* and only according to the teachings of God and the Prophet.

O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result. (4:59)

The violence that followed the death of the Prophet, what Donner has dubbed the First Civil War (35-40 AH /656-661 CE) and Second Civil War (60-73AH /680-692 CE), is a testament to the inability of temporal powers to enforce a sense of legality without the sanctions of the authority of *Ulu Al Amr*. The ripple effect of the violence committed in the early history of Islam is still present with us today dividing Muslims into *Sunni* and *Shia* Islam. Thus, *Wilayah al ahed* and *Wlayah al qaher* are not commands or injunction in the *Qur'an* and the *Sunna*. Instead, these legal principles were developed via legal authority of *Ulu Al Amr* under the legal principle of *Maslaha* or expedience. Taqi ad-Din Ahmad ibn Taymiyyah (1263 – 1328 CE) noted that the more Muslims departed in history away for the founding period of Islam the more they need to rely on *Fiqh al awalyyat* (i.e. legislating in accordance of the expedient rather than what is legal according to *Sharia*). *Fiqh al awalyyat* is based on sacrificing a legal principle expediently to implement a more important principle according to *Maslaha* e.g. the good of *Umma* the community. Accordingly, *Sunni Fiqh al siyash al shariah* and ultimately the body of *Sharia* is a product of the centuries *Ulu Al Amr's* rulings in accordance to *Maslaha* or expediency in specific historical moments and not a set of divine injunctions. Moreover, he comments on how *Ulu Al Amr* authority avoided direct clash with temporal power especially after the Second Civil War by emphasizing the three principles that the evolution of *Sunni Fiqh al siyash al shariah* is based on. The first principle is the spread of Islam; the second is the legality of the temporal power; and finally the unity of the *Umma*. He further argues that all three principals were present during

Prophetic rule and the Guided Caliphate. During later periods it was impossible to implement all three principals at once thus the legality of *Khalifa* was sacrificed on the condition that the other two principles are implemented. Hence, *Wilayah al ahed* and *Wlayah al qaher* were invented legal principles in accordance with *Maslaha*.

By the nineteenth century the decline of Muslim empires undermined the historical and legal justification of the *Khalifa* post rendering it meaningless and outdated. As I argued in chapter four, the legal exception granted to temporal power, is no longer applicable to the modern conditions of Muslim empires. It was precisely the logical explanation behind the institutionalization of *Ulu Al Amr*/Grand *Mufti* during the Ottoman period that eliminated legal opinions that may have questioned the legitimacy of the *Khalifa*. The temporal powers of the Ottoman, Safavid, and Mogul Empires followed the same legal process of institutionalizing *Ulu Al Amr* and effectively blocked any possible dissenting juridical opinions that may undermined the legitimacy of their power. Thus by institutionalizing *Ulu Al Amr* as a part of the state bureaucracy the outcome was the establishment of a state-church speaking on behalf of the sovereign who was no longer constrained by *Sharia*. Moreover, the sovereign is the new author of *Sharia*. As a result of this change in the pragmatic nature of *Sunni* authority any possible reform to the establishment was prevented since it would eventually lead to questioning the legitimacy of temporal rule. This apparent stagnation and lack of genuine reform in the established church of *Ulu Al Amr* and the empire set the stage for new energy and a reformer-led evolution in Islamic legal and political thought. Thus, while modernity was responsible for the paradigmatic shift in the nature of authority in *Sunni* Islam by simultaneously providing the physical and metaphysical force of institutionalizing *Ulu Al Amr* according to the logic of

sovereignty, it also allowed for the challenges to role of the modern *Ulu Al Amr*. Hence, this dissertation claims that the modern *Ulu Al Amr* are those reformers who appeared in the nineteenth and twentieth centuries setting the stage for the rise of political Islam. Their primary authority stems from their ability to challenge orthodoxy by appealing to new interpretation of tradition and calling for *Ijtihad*. They have been successful in capturing the public imaginary by clothing reformist thought in the language of Islam. The establishment *Ulu Al Amr* were and still are prevented from addressing the new challenges due to the replacement of *Sunni* authority with state sovereignty. As a result it is difficult to hide that they are state bureaucrats who are appointed for the purpose of sanctioning state action as Islamic in accordance with *Sharia*.

The task of facing the new challenge has been further complicated by the intrusive nature of the modern state, which dominates every aspect of the life of its citizens. This domination was further amplified by the types of states that were established on the ruins of the Ottoman Empire and postcolonial rule. They were authoritarian, intrusive, and undemocratic and further undermined the legitimacy of the institutionalized *Ulu Al Amr's* authority. Moreover, the intrusive nature of the modern-state contradicts the minimal role of the state under *Sharia*, which regulates the state and keeps temporal power at check by governing Muslim social and economic lives. Thus, modernity, and the new class of *Ulu Al Amr* or nineteenth century reformers who were the products of modernity, and the legal concept of sovereignty, was directly responsible for the rise of the modern *Ulu Al Amr* and ultimately what came to be called Islamism or political Islam.

This dissertation claims that advent of Jamal ad-Din al-Afghani (1838/1839 –1897) and his disciple Muhammad Abduh (1849– 1905) signaled the arrival in the nineteenth century of the challenge of the modern *Ulu Al Amr*. Their key task was to be critical of the status quo, to

criticize simultaneously the establishment *Ulu Al Amr*, propose reforming the entire system, and call into question the legitimacy of the *Khalifa*. But certainly we are speaking here of a matter of degree from one person to another. But overall, they were critical of the established institution of *Ulu Al Amr/Grand Mufti*. They challenged their/his legal juridical justification of temporal power on the basis of fundamental physical and metaphysical questions. Nafi illustrates this new class's critical challenge to the establishment:

At the heart of the reformists' call for *ijtihad* is their belief in the notion of *ta 'lil* [definition], of intelligibility of God's injunction...the reformist call for *ijtihad* became a modern-Islamic celebration of the objectivity of the law in Islam... Yet, reformist thought was not a mere reflection of theological and juristic preoccupation; it was not an idealist intellectual exercise, but rather an undertaking embedded in a specific socio-political context. Never since the Umayyad and early Abbasid periods was Islamic thought so interconnected with, and so expressive of, the socio-political questions of the time as reformist thought was, almost every single major idea of the reformists had socio-political implications. The reformist rejection of predestination ('*aqidat al-qadar*, as Abduh put it) was not only an attack on the Ash'ari-Sufi ethos but essentially a denunciation of political despotism and its perceived inevitability. (43)

Appealing to tradition to justify contemporary decline is no longer acceptable to the new class of individuals. They dismiss the appeal to authority and appealed to the *Qur'an* and *Sunna* as a source of authority by passing *Fiqh al siyash al shariah* and producing new legal arguments that they feel are adequate to addressing the crisis and decline.

Thus, the question that requires further elaboration is: Who are the members of *Ulu Al Amr* and what do they have in common? This dissertation claims that the modern *Ulu Al Amr* have four common characteristics. First, they are critical reformers and by definition they challenge the authority of the establishment and the state over the social, economic, and political conditions, and the direction of reform led by the state. Second, they are able to capture the imaginary mind of the public and have followers that share their views and hold them in high regard. Third, they use *Qur'an* and the *Sunna* to challenge the establishment and capture the

public mind. Finally, they don't necessarily hold formal training in *Sharia* and *Fiqh*. This is precisely the democratizing consequence of modernity where religious/political matters are open for discussion and critique in the Muslim public sphere. Accordingly, the modern *Ulu Al Amr* ranges from *Al-Afghani*, Al-Banna, Al-Ghannush, to Malcolm X. Or, it could be someone like Abu Bakr Al-Baghdadi "the leader of the self-proclaimed Islamic state that stretches across eastern Syria and much of northern and western Iraq..." (Rubin, 2014). The leader of the Islamic State in Iraq and Syria (ISIS) is an example of a return to the *Ulu Al Amr* during the founding period of the Four Guided Caliphs by uniting temporal power once more with piety by appearing in public for the first time leading the July 5<sup>th</sup> Friday sermon in the northern Iraqi city of Mosul. Al-Baghdadi tactically demonstrated his intentions during Friday sermon broadcast by all major global satellite Arabic news channels. He used the same words used by the First Caliph Abu Baker (573- 634 CE) in his well-known speech to the *Umma* by asking "for the congregation's support and struck an almost humble and pious tone... 'I was placed as your caretaker, and I am not better than you,' he said" (Rubin, 2014). This demonstrates the importance of the founding period of *Sunni* Islam which is directly tied to the authority relationship between the authority and the Muslim Subject.

Modernity and at its core European sovereignty, produced the modern *Ulu Al Amr* who are the "new spokesmen for Islam, lawyers, teachers, journalists or modern professionals, lacked the formal training of the ulama class along with its established criteria of learning and piety. Above all, they lacked the world-view of this class. What contributed yet further to the rupturing of traditional Islamic authority was the powerful case made by the Muslim reformers for reasserting the primacy of the foundational texts, the Qur'an and Sunna" (Taji-Farouki/ Nafi 2008, 10). They assert their newly founded authority against the establishment *Ulu Al Amr's*

claim on authority by appealing to a higher source of authority than the traditional foundations of *Fiqh al siyash al shariah*. We are back to the central verse 4:59 in the *Qur'an*, which concerns the conditions and the limitations of obedience to those in authority, for example, *Ulu Al Amr* in *Sunni* Islam. The modern *Ulu Al Amr* claim that once earlier members of *Ulu Al Amr* disagreed about the body of *Sharia* they produced new laws according to *Maslaha*, which then called for a return to the primary sources of the *Qur'an* and the *Sunna*. That return to primary sources is justified according to the *Qur'an*:

O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result. 4:59

Furthermore, since “those in authority among you” are regular learned individuals and are neither saints nor supernatural beings, their opinion once challenged is conditioned by the situations and cases to which they are applied. In this sense, a disagreement arises from the applicability of *Fiqh al siyash al shariah* to the social and political crises of the nineteenth and twentieth centuries. This legal maneuver and usurpation of authority is explained further by Taji-Farouki and Nafi:

As the salafi idea of returning directly to the founding texts gradually displaced the assumptions of the ulamatic traditions of learning as the necessary credentials for speaking on behalf of Islam, the Islamic cultural arena became wide open to an assortment of voices, reflecting new notions of authority. Alternative modes of authority were derived from the dominant and pervasive influence of modern education and professions, from political activism, and from the power and influence of modern information technology and modes of communication. In many cases, the intensifying conflict between the ruling classes and political Islamic forces even the modern nation-state to appropriate for itself the authority to speak on behalf of Islam. (10)

Accordingly, they used *Ijtihad* to bypass the tradition of *Fiqh al siyash al shariah* to undermine the authority of the establishment *Ulu Al Amr*. The tool of *Ijtihad* allowed them to present new solutions that are independent from the colonial and temporal power. To further illustrate the

commonality among the members of modern *Ulu Al Amr*, Shireen Hunter argues that the “reformist Islam,” or what this dissertation labels as modern *Ulu Al Amr*, share the following common characteristics:

1. Islamic reformists argue that what they are trying to reform is not Islam per-se, but human understanding of Islam.
2. All reformists are dissatisfied with traditionalist class of *ulmma* who are insisting on the *taqlid* and refuse *ijtihad* to maintain the statues-quo.
3. All thinkers all advocate *ijtihad*.
4. They emphasize the difference between *Shari'a* and *fiqh*. They further argue that this distinction is ignored by traditional class of *ulmma*.(12)

In sum, all four conditions demonstrate the tacit claim on authority to speak on behalf of the public and Islam and the genuine voice of Islam. It is important that this claim is recognized by the masses and captures the public imaginary in form of mass movement. Otherwise, the reformer is just a public intellectual who expresses dissenting views against the establishment. Thus, the public sphere becomes the essential tool for reforming and organizing the public around political demands and claims over economic, social and political demands on power. Of course, some individuals resort to violence against states and society at large. These individuals take it upon themselves and with a following to dismantle the entire system both domestically and internationally. This variety of approaches is also a consequence of *Sunni* conceptions of authority and the absence of a church in Islam. For example, Osama Bin Laden, Ayman al-Zawahiri, or Al-Baghdadi who consider themselves authoritative voice speaking on behalf of Islam and Muslims; if they are able to capture the public imaginary then the outcome leads to murderous attacks on innocent civilians. But the principle of authority in *Sunni* Islam allow for different and contending interpretations that consider such acts un-Islamic. The problem is to judge such a phenomenon using the logic of sovereignty and consider Islam in general sanctions the killing of innocent civilians. After all, it is modernity with the logic of state sovereignty at its



core that created the contradictions that necessitate the institutionalization of *Ulu Al Amr* and the intellectual forces that challenge authority and demand renewal and reform. Most important, this condition is global and not solely Islamic. The condition that specifically affected Islam was that the legal concept of European sovereignty, which caused a paradigmatic change that displaced the *Sunni* conception of authority. Muslims live today under the conditions of modernity, which are global and in sovereign territorial nation-states, whether they agree to them or not, but it is precisely this condition that has brought about the *Sunni* authority and its opposite, the modern *Ulu Al Amr*, a necessary condition to address modernity.

In Conclusion, the consequence of European sovereignty at the physical and metaphysical realms modernity challenged and changed the legal conditions around the logic of *Sunni* authority. The most important change is the rearrangement of international law according to the legal logic of sovereignty with the nation-state as its fundamental basic unit. Consequently, the logic of sovereignty produced new notions of the self that frame the world in relation to the territorial nation-state and the sovereignty of the body. Gradually, these subjectivities were globalized and universalized emancipatory struggles according to the logic of sovereignty. Similarly, *Sunni* Islam produced subjectivities that frame emancipatory struggles against arbitrary power in the context of the authority *Ulu Al Amr*. Thus, this dissertation argues that while resistance to arbitrary power via emancipatory struggles of the subject is universal, these struggles must be understood in the context of the local logics and frames of reference. Therefore, overlooking these local characters renders the universality of human rights a top/down Western hegemonic discourse of power that impose Western values as the only

genuine subjectivity and conception of the self. Instead, the aim should be to focus on the commonalities in the struggles against the oppression of arbitrary power which is universal. The most important obstacle in the “Arab Spring” between the Islamists and secular political forces is the absence of a vision of common platform that holds the secular modern subject and the Muslim subject in their resistance to arbitrary power and oppression. This understanding is important to a global dialogue that is based on mutual understanding and appreciation and the possibility of a common global project overlooking the “clash of civilization” thesis.

Finally, this chapter argues that the consequence of modernity was twofold. First, due to the logic of sovereignty the nation-state centralized the *Ulu Al Amr* by institutionalizing the class as a part of state bureaucracy. Consequently, the logic of state sovereignty undermined *Sunni* authority undermining *Ulu Al Amr*'s legitimacy. Second, as state sovereignty undermined the legitimacy of the institutionalized *Ulu Al Amr* leading to the rise of the modern *Ulu Al Amr* who opposed to traditional establishment rejecting *Wilayah al ahed* and *Wlayah al qaher* with the aim of reinterpreting *Fiqh al siyash al shariah* free from tradition as autonomous and reflexive agents. Thus, modern *Ulu Al Amr* are as much a product of modernity as feminism, civil rights, civil liberties, or the global left resisting oppressive power and global capitalism. Thus, modernity provided modern or reformist *Ulu Al Amr* the physical and metaphysical conditions that undermine the traditional pro-establishment *Ulu Al Amr* is a central feature of *Sunni* Islam in the epoch of modernity. This explains the rise of political Islam as challenge to autocratic rule in the Muslim world.

This precisely explains the panic of traditional monarchies such as Saudi Arabia, which are the guard of the establishment *Ulu Al Amr*, and have the most to lose if their authority is undermined. Thus, it is understandable that the Gulf monarchies are clear in their intention to

defeat any reform by modern *Ulu Al Amr*. As long as *Sunni* Muslims are willing to look elsewhere for authoritative voices that speak on behalf of Islam modern *Ulu Al Amr* are going to thrive.

Finally, Hallaq's account of the impossibility of the Islamic state would be accurate if had a "true" Islamic state did exist since the Prophet's death, but historically that is not the case. Thus, this dissertation argues that *Fiqh al siyash al shariah* is a testament to the authority of *Ulu Al Amr* as the agency that harmonizes the ideals of Islam with the ever-changing concrete world. It is precisely the role of agency that is absent from Hallaq's "paradigmatic Islamic governance" that accounts for the title of his work the "impossible state."

## CONCLUSION

### “Arab Spring”

The following are concluding remarks related to contemporary events in the Arab world in the light of the findings of this dissertation. When research commenced on this dissertation, the self-immolation of the street vender Mohamed Bouazizi in Sidi Bouzid, Tunisia and the Arab Spring had already been underway. While the change took everyone by surprise it was a welcomed moment for many who argued that democracy has finally arrived to a region lagging in democratic rule, social justice, and basic respect for human rights. Yet, soon the optimism and the aura around the populist uprising of 2011 eroded, and many questioned whether the Arab Spring had turned into an “Arab Winter” (Totten, 2012). One thing for sure is that the domino-effect of change that seemed to be spreading in the region overwhelming everything in its path had been effectively halted and reversed. Vulnerable states such as Morocco, Jordan, Algeria, and Sudan that experienced popular demonstrations and were on the path of revolutionary change are much more stable at the moment than they had seemed in 2011. These regimes seem to have survived the revolutionary wave, but not without eliciting panicky decisions such as:

the announcement in mid-May [2011] by the newly appointed Gulf Co-operation Council (GCC) secretary-general, Abdul Latif al-Zayani, that Jordan and Morocco had been invited to discuss the possibility of membership of the bloc seems to have been on the initiative of the Saudi king, Abdullah bin Abdel-Aziz al-Saud. Given Jordan and Morocco's status as Arab Sunni hereditary regimes, it appears that the king is concerned that, should these states succumb to the regional popular clamour for change, the Arab wave could would be more likely to sweep the Gulf than at present (The Economist 2011).”

While the idea did not materialize into an enlargement in the GCC, it was indicative of the mood at the time.

Currently, the Saudi king is openly on the offensive with the United Arab Emirates monarchs declaring the Muslim Brotherhood a terrorist organization (El Gamal 2014). At the moment counter revolutionary forces are solidifying their gains where “a proposed donor conference to support Egypt's economy is expected to dominate Saudi King Abdullah bin Abdulaziz's talks with Egyptian President Abdel-Fattah Al-Sisi in Cairo ... The talks will also focus on regional developments, including the situation in Iraq, the Palestinian cause and the Syrian and Libyan files ...” (El Gamal, 2014). In fact, “Saudi Arabia had been among the first Arab countries to welcome the army ouster of President Mohamed Morsi last year following opposition protests, and [Saudi Arabia] offered billions of dollars to prop up Egypt's foundering economy (El Gamal, 2014).” A monarchy that claims to be Islamic has been instrumental in the overthrow of the first democratically-elected Islamist government. The obvious justification for the actions of the Saudis is that they acted out of fear that the winds of change would arrive in the Kingdom and loosen their dynastic grip on power. But the question becomes how and why? Why can't the Saudis follow the footsteps of neighboring Qatar and embrace the Muslim Brotherhood? The findings of this dissertation are helpful in answering some of the questions that may have been overlooked by the conventional realpolitik approach to the region.

This dissertation claims that the Arab Spring as it stands today has been effectively transformed by Saudi Arabia and the Islamic Republic of Iran, turning back the clock on the Arab Spring and turning it into a *Sunni/Shia* war reminiscent of the Second Civil War (60-73/ AH 680-692 CE) and reviving the question of the legitimacy of who should rule over the *umma*. Certainly the United States government is acting accordingly dealing with the region. For example, “the United States, Iran and Saudi Arabia have agreed to allow Iraq's Prime Minister

Nouri Al-Maliki to stay in office for a third term, *Al-Araby Al-Yawm* newspaper reported ” (Middle East Monitor, 2014).

The fear of both states of the sweeping changes that engulfed the region since 2011 turned the basic demands of social justice, good government, and human rights into a sectarian war. Strategically, rallying *Sunni/Shia* support domestically and regionally was an effective strategic path that both states took to ensure their own legitimacy domestically and regionally. In Bahrain, the *Sunni* monarchy marginalized its local population by depicting their grievances as a *Shia* sectarian war. Indeed, it is the exact strategy that the Saudi monarchy follows domestically and acts upon regionally in its claim as the sole representative of *Sunni* Islam.

Similarly, the Islamic Republic of Iran projects itself as the sole representative of *Shia* Islam. In fact, fighters from Iran and Hezbollah of Lebanon are already in Syria helping Al Assad in his battle against domestic and foreign fighters (Fulton, Holliday, and Wyer 2013). Consequently, the Shia support that Assad’s Bathist secular government is receiving is reigniting the clash of the Second Civil War. Now the war is portrayed as Shia from Iran, Iraq, and Lebanon helping their *Alawite* brethren in Syria. As a result, this aid is reinforcing Iran’s revolutionary goal to replace the Saudi *Sunni* monarchy as legitimate Islamic state for all Muslims. The current war in Syria and Iraq is presented as a correction to the historical injustice that the Umayyads committed against the legitimate rulers of the *Umma*. Many observers of the region consider this discourse as mere rhetoric; but this is hardly the case. In fact, the basis of this discourse is legal, and legitimacy and authority are central to the political systems in Saudi Arabia and the Islamic Republic of Iran. In fact, this dissertation hopes to demonstrate that such claims are present with us in a world governed by territorial European sovereignty. The *Sunni* and *Shia* authority of *Ulu Al Amr* and not sovereignty is central to the legitimacy of both states

today. In fact, the proxy war unfolding in the region between the Saudis and Iran is at its base a protection of the *Wilayah al ahed* and *Wilayah al faqih*. The absence of a constitution in Saudi Arabia and the role of Ali Hosseini Khamene, the current Supreme Leader of the Islamic Republic, lend importance to the role of the authority and legitimacy that *Wilayah al ahed* and *Wilayah al faqih* play in both states. The danger of the Arab Spring for both states follows from the precarious nature of the two doctrines and the threat they face to their legitimacy.

In fact, the Saudi monarchy claims the *Qur'an* and *Sunna* are the Kingdom's constitution. Only in 1992 did the Kingdom decide to list basic principles, "The Basic Law of Governance."

The following are related provisions:

Chapter I, Article 1:

The *Kingdom* of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. Its constitution is Almighty God's Book, the *Holy Qur'an*, and the *Sunna* (Traditions) of the Prophet (PBUH). Arabic is the language of the Kingdom. The City of Riyadh is the capital.

Chapter II, Article 5:

- Monarchy is the system of rule in the Kingdom of Saudi Arabia
- Rulers of the country shall be from amongst the sons of the founder King Abdulaziz bin Abdulrahman Al-Faisal Al-Saud, and their descendants.
- The most upright among them shall receive allegiance according to Almighty God's Book and His Messenger's Sunna (Traditions).
- The Crown Prince shall devote himself exclusively to his duties as Crown Prince and shall perform any other duties delegated to him by the King.
- Upon the death of the King, the Crown Prince shall assume the Royal powers until a pledge of allegiance (bay'a) is given.

Article 6:

In support of the Book of God and the Sunna of His Messenger (PBUH), citizens shall give the pledge of allegiance (bay'a) to the King, professing loyalty in times of hardship and ease.

Article 7:

Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference for this Law and the other laws of the State.

Article 8:

Governance in the Kingdom of Saudi Arabia is based on justice, shura (consultation) and equality according to Islamic Sharia. (The Basic Law of Governance - *Saudi Arabia*)

The "sovereign Arab Islamic State" mentioned in Article One is not the basis of the legitimacy of the Royal family to rule over the Kingdom. Clearly, the term serves the purposes of international

law. Interestingly, there is no mention of political parties, elections, or a participatory role for citizens in governance. This is precisely the challenge that the Arab Spring presented the Saudi monarchy; *Bay'a* based on *Wilayah al ahed* is no longer viable. Most important, having Islamist political parties run elections and form governments based on the will of the people is surely an idea that must be fought and eliminated.

So what is the cost of turning the Arab Spring into a regional clash between *Wilayah al faqih* and *Wilayah al faqih*? First, sovereignty and national identities have suffered a return to the *Shia/Sunni* form of loyalties. These new loyalties and identifications are evident in Syria, Lebanon, Iraq, Bahrain, and Yemen. Even in Tunisia, Libya, and Egypt where there is no sizable *Shia* population, the Gulf States (including Qatar) led by Saudi Arabia fueled the split between the Islamist and secularist political forces on the ground. The petro dollar was essential in bankrolling the secular/Islamist divide exploiting the absence of political language that can bridge the sovereignty/authority misunderstanding and prejudices. The Saudi Kingdom and Gulf monarchies realize that the spread of the “Arab Spring” to the east means the end of the authority of the establishment *Ulu Al Amr* and with it *Bay'a* of *Wilayah al ahed*, which will effectively end the legitimacy of family rule in the region.

Second, they labeled terrorist those “Islamist politicians [who] swept elections across the region in the aftermath of the Arab Spring, [who] stepp[ed] close to power in Tunisia, Egypt, Libya and Morocco and undermin[ed] the thesis of Qaeda-style militants that violence offered the only hope for change” (Kirkpatrick 2014). The consequence of the war waged between Saudis and Iran as a sectarian war is the rise of the rigid Islamic State in Iraq and Syria (ISIS), which is unlike the moderate new *Ulu Al Amr* that hope to harmonize modern European sovereignty with *Sunni* authority. These *Ulu Al Amr* of Ayman Al Zawahiri and ISIS intends to



replace European sovereignty all together and views the harmonizing efforts of the new *Ulu Al Amr* and politicians such as Rashid al-Ghannushi as hypocritical. “Today, those politicians are in frantic retreat from Riyadh to Rabat, stymied by their political opponents, stalked by generals and plotted against by oil-rich monarchs. Instead, it is the jihadists who are on the march, roving unchecked across broad sections of North Africa and the Middle East. Now they have seized control of territory straddling the borders of Iraq and Syria where they hope to establish an Islamic caliphate (Kirkpatrick, 2014).” More important, the Saudi/Iran war as a means to stifle the “Arab Spring” conflates the two types of *Ulu Al Amr* into one terrorist camp and consequently reproducing the myth of the “Clash of Civilizations.”

Finally, there are alarming signs in the region that the consequence of the *Sunni/Shia* war is that the petro dollar that is financing and fueling the rise of fascist state in Egypt and other states in the region. It is shocking to witness the speed of the transformation of Egypt from the “Arab Spring” of the revolution in 2011 to the extreme nationalistic or fascist political discourse clothed in the “Egyptian War on Terror.” The same discourse is currently used in Syria, Libya, and Tunis. The Islamist intellectual al Huwaidi describes the situation in Egypt as follow:

From whichever angle you look at it, the situation in Egypt is unbelievable. It is unfathomable that three years after the Egyptian revolution, for which 1,000 martyrs paid with their lives, torture has become prevalent in our society. The re-emergence of torture not only constitutes a serious violation of human rights and dignity, but also marks the return of the Mubarak regime and the security state... What is no less dangerous than torture, which is a crime against humanity in every sense of the word, are the online voices that no longer question or deny the state's claims. Anyone who reads such comments made in response to accounts of torture, imprisonment or death sentences, will be shocked by the degree of brainwashing and lack of social consciousness; some people even claim that it is the victims of torture who violate the law and that death, torture and tyranny are deserved punishments that fit the alleged crimes ... This type of thinking brings to mind the Nazi ideology of 1940s Germany, in which no one blamed or questioned the regime for its belief in the superiority of the Aryan race and its attempt at the ethnic cleansing of the state. The problem lies in the fact that such blatantly racist ideology had many supporters in German society. We find ourselves facing a similar situation in that the revolution that was launched against tyranny in 2011 somehow paved the way for a quasi-Nazi movement in 2014 Egypt (Huwaidi, 2014).

Certainly, the recent mass hysteria of the Egyptian judiciary reflected in the mass sentencing of hundreds of Egyptians to death confirms Huwaidi's premonition that Egypt is on the verge of sliding into a fascist state. Yet Western liberal democracies welcomed Sisi's election as president of Egypt. If their reaction is to be taken seriously, it is a sign that we have not learned the lesson of the horrors of fascism in the twentieth century and a sign that in a moment of crisis the rise of fascism is always on the horizon. Only a sovereign state may become a fascist state. It is this unintended totalizing quality that is at the horizon of economic and political crisis that allow that sovereign state to vent excesses on a particular group. It is the aim of this dissertation to provide the political language between the European sovereignty with other form of authority to avoid the totalizing character of sovereignty that historically resulted in countless atrocities and crimes against humanity.

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