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The State and Human Rights in Islamic Thought

بسم الله الرحمن الرحيم

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Preface

There is kindled interest in the notion of the State in Islamic thought in terms of its juristic load, intellectual implication and constitutional status, as well as its pivotal position within the framework of modern laws. A broad and multilayered debate is taking place on this issue, the human rights and public freedoms that underpin it and the fiqh and legal issues and procedures surrounding it, along with the ensuing political aspects that preoccupy Sharia scholars, jurists and other role-players in the political and public service fields that impact on society and human rights.

Despite all that was written on this subject in modern times, and the volumes drafted about it in older times under what is known as Sharia laws and policies of Islamic governance, research on the concept of the State in the Islamic perspective continues to be open and the scope of debate around this matter is increasingly broadening in terms of theorization, explanation, analysis and clarification. The field remains wide open before intellectual Ijtihad as witnessed by the development achieved and in light of the internationally recognized and adopted constitutional systems of today. The aim is to develop a balanced equation that combines Sharia-based governance rules, Shura, the guarantee of justice and respect of human dignity, the guiding principles of Islam in ruler-citizen relations, with the system of constitutional laws that define the legal structure of the modern State, separates powers and delineates public freedoms and citizens' rights in

accordance with the established legal model. Speaking about the State and human rights in Islam and about the State's Islamic frame of reference is an ever-present concern that matches the constantly evolving requirements of public life and the needs of individuals and communities.

Having been invited to participate in the 16th General Conference of the Royal Aal al-Bayt Institute for Islamic Thought in the Hashemite Kingdom of Jordan, held from 19 to 21 August 2013 around the theme "Project of a Durable and Sustainable Modern Islamic State", I saw fit to contribute to this conference with a paper I titled "Reflections on Origins of the State and Human Rights Concepts in Islamic Thought". Today, I am publishing this paper along with its English and French translations to generalize its benefit and broaden the scope of interest taken by researchers, academicians and university students in this important issue that has come to impose itself against a backdrop of the development experienced in modern Islamic societies.

Muslim scholars were the first to establish the roots of the concept of governance in Islam or the fundaments of governance within an Islamic framework. Ibn Qayyim al-Jawziyya wrote: "The cornerstone and backbone of Sharia is the act of governing and serving the interests of the people in this life and the Hereafter. It is synonymous of justice, compassion, wellbeing and wisdom, and any action that shifts away from justice towards injustice, from compassion towards its antithesis, from the positive to the destructive and from wisdom to absurdity cannot be associated with Sharia in any way, even if it is forced upon it by some sort of interpretation." These wise and insightful words are of utmost relevance and importance and should not be ignored or neglected

*because they explicitly address an issue that is of great concern to modern Islamic thought. Sheikh Mahmoud Shaltut, former Grand Imam of al-Azhar al-Sharif, sums up the concept of the State in Islam in four elements that are religious brotherhood, social solidarity (Takaful), Shura and justice, concurring in this with Ibn al-Qayyim who summarized the matter in these few succinct words: "**Any approach taken to enforce justice and equity is part of religion and cannot be considered as a contradiction, nor can it ever be said that a justice-motivated policy is against the edict of the Sharia. It is not only in full agreement with it, it is an inherent part of it.**"*

*In 2001, I published a study on "**Human Rights in Islamic Teachings**" with its English and French translations. Then in 2005 I published another study on "**Democracy from an Islamic Perspective**", followed in 2007 by a third study on "**Ijtihad and Renewal in Islam**". The present study supplements in certain aspects the studies and papers I wrote and presented at previously held conferences and cultural and intellectual symposia. In their entirety, these studies and papers are a contribution to the renewal of Islamic thought on contemporary human and political rights issues. I pray that they will be of some benefit to knowledge seekers, and dedicate them in full abnegation to please Allah.*

The reader will find in this study a systematic definition of the concepts of the State and human rights in Islam that is far removed from the stagnant conformism that is in truth a clear negation of the rules, teachings and immutable values contained in the divine law, and resists the urge to join dominant currents that in their lustrous pull may dazzle eyes but are in fact no more than mirages in sandy deserts.

At the close of my study, I conclude that to ensure the progress of life in Muslim societies, protect their civilizational identity and facilitate their openness onto other civilizations and cultures to achieve the desired interaction, exchanges and growth, it is essential to seek and develop concepts and work mechanisms that will make it possible to set in motion legal and constitutional systems and ensure their compatibility with the requirements of modern Islamic societies and their growing needs.

May Allah grant us success and guide our steps on the right path.

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Introduction

When some political movements with an Islamic frame of reference took hold of the reins of power, much was said about the concept of the State in Islam and how compatible it was with the principles of human rights as they were internationally recognized, and whether the State in Islam was a full theocracy or made provision for a civil component that enabled people to choose their rulers, hold them accountable, monitor adherence to laws and regulations, protect the rights of non-Muslims under a citizenship status that governs all strata of society, and what the Islamic State's stance was vis-à-vis international conventions and agreements and the respect of increasingly interrelated and interdependent relations and interests with other countries.

Therefore, I have endeavored to make the study I am presenting today, before this esteemed Conference on "**Project for a Viable, Self-sustaining Modern Islamic State**", reactive to these issues and concepts. I chose the title "**Reflections on the Origins of the State and Human Rights Concepts in Islamic Thought**" which I think is suitable and addresses the issue at hand from various angles that I strived to make clear in reflecting the two concepts of State and human rights in Islam.

The State in Islam:

In this part we address the concept of the State in terms of its components and functions in Islamic thought and of the practical examples sourced from the history of Islam.

The modern legal concept of the State is a combination of three elements which are:

1- The people.

2- The rule, embodied in the authority of the State with its various institutions.

3- The laws which apply to all citizens with no discrimination whatsoever.

These three elements came perfectly together in the first State ever established by Islam, and were further consolidated with unprecedented noble values. Among these lofty values was faith in the Almighty, a faith that brings all members of society together in spiritual kinship and conditions their behavior in such a way that Allah's injunctions are not violated, leading to transgressions that undermine both the individual and society and disrupt the community's harmony and integrity. Other values include the preservation of the human being in his mind, soul, religion, property and honor, within the framework of the Sharia principles and objectives, the establishment of the State institution on Shura bases that guarantee the participation of all those mandated to command -representatives of the Ummah- in the management of State affairs and the guarantee of justice

against tyranny, domination and inequity.

Sheikh Mohamed Shaltut says: "*There are four key foundations for the State in Islam: **religious brotherhood** because it is the most sincere expression of unity, **social solidarity** because it is a key criterion of this fellowship, **Shura** because it is the foundation of good governance and the gateway to discerning what is right and take cognizance of mature opinions and because it was commanded by the Quran which made it one of the fundaments of the Islamic State. And finally justice which is the first precept decreed by Islam to preserve the edifice of human society.*"[1]

The duty of the State in Islam, as determined by the Ummah's scholars in former and current times is to safeguard religion and manage worldly matters in ways that preserve the interests and rights of the people. Ibn al-Qayyim says: "*The cornerstone and backbone of Sharia is the act of governing and serving the interests of the people in worldly life and the Hereafter. It is synonymous of justice, compassion, wellbeing and wisdom, and any action that shifts away from justice towards injustice, from compassion towards its antithesis, from the positive to the destructive and from wisdom to absurdity cannot be associated with Sharia in any way, even if it is forced upon it by some sort of interpretation.*"[2] He went on to say: "*Allah (SWT) sent His messengers and His Book for people to be governed through the*

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(1) Sheikh Mahmoud Shaltut, ***Islam as Faith and Law***, page 386, 20th edition, Dar al-Shorouq, Cairo, 2012.

(2) Ibn Qayyim al-Jawziyya, ***I'lam al-Muaqqi'in 'an Rab al-Alamin*** (Informing the Drafters of the Legal Documents about the Lord of All Beings), Vol. 3, page 1, 1st edition, Dar al-Fikr, Beirut, 1955.

justice and equity that were applied in the creation of the earth and heavens. If the manifestations of justice are apparent and its signs are clear in any way, then that constitutes proof that Allah's decree and religion are adhered to."[3]

Ibn al-Qayyim also says: "*Any path that leads to establishing justice and equity is of the essence itself of religion and cannot be seen as a contradiction. It can never be said that justice-based governance is against the edict of the law. On the contrary, it is in harmony with it and even part and parcel of it.*"[4]

And since Islamic governance, as scholars label it when they describe it, is **delegation from the Divine Lawmaker to guard religion and manage worldly life**, because Allah (SWT) **preconditioned the interests of this world and the Hereafter to obeisance to Him and the avoidance of sin**, the State in the Islamic perspective carries a religious mandate that confers on it the status of '**Islamic**'.[5] Islam is a religion and a State, authority combined with faith, a law standing side by side with rituals. The Prophet (PBUH) was the founder of Islamic governance besides being the prophet sent to Muslims. He established the Arab Ummah's religious unity, fostered the political unity of the Arab

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(3) Ibn Qayyim al-Jawziyya: *al-Turuq al Hukmiyyah fi al-Siyasah al-Shar'iya* (Ways of Governance on Islamic Law regarding Rule), page 14, Dar al-Kutub al-'Ilmiyya, Beirut, 1953.

(4) Ibn Qayyim al-Jawziyya: *al-Turuq al Hukmiyyah fi al-Siyasah al-Shar'iya* (Ways of Governance on Islamic Law regarding Rule), page 16, Dar al-Kutub al-'Ilmiyya, Beirut, 1953.

(5) Mohamed Salim al-'Awwah: *On the Political System of the Islamic State*, page 138, 7th edition, Dar al-Shurouq, Cairo, 1989.

Peninsula, and laid down the rules of social and political life. As such, Islam is a religion of the earth as well as of the heavens.[(6)]

The constitutional rules and lofty political values enshrined in the Holy Book and the Sunnah must be adhered to under the Islamic State. They condition the formulation of the Islamic concept of State, its function, the characteristics of the governance model and the prerogatives of the various branches that make up this State.[(7)]

And whilst the State in the Islamic perspective seems greatly focused on safeguarding religion, this does not make it an ecclesiastic State, contrary to the old Western concept of the Christian theocracy. The State in Islam is religious in spirit but civil in application. It preserves the interests of its citizens on the basis of justice which represents the quintessence of all governing acts (Allah (SWT) says: [*And when ye judge between man and man, that ye judge with justice.*])[(8)], the guarantee of rights and the protection of human dignity. Ibn Aqeel says: "*Politics is any action that brings people closer to rectitude and further away from corruption, even if it was not dictated by the Prophet or the subject of divine revelation.*"[(9)] This provides a clear indication that the concept of the State in Islam is not confined within

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(6) Abdulrazzaq al-Sanhoury, quoted by Dr Mohamed Amara (Dr Abdulrazzaq al-Sanhoury: *The Islamicity of the State, Citizenship and Law*, Dar al-Rachad, Cairo, 1999.

(7) Farid Abdelkhaleq: *On Islamic Political Fiqh: Constitutional Principles*.

(8) *An-Nisaa*, verse 58.

(9) Quoted by Ibn Qaayim al-Jawziyya from Ibn Aqeel's chapter on *al-Funoun* in *al-Turuq al Hukmiyyah fi al-Siyasah al-Shar'iya*, page 44, in *I'lam al-Muaqqi'in 'an Rab al-Alamin*, (1/373), and in *Badai' al-Funoun* (3/673).

narrow molds but is instead left open to all that is new and useful and that fulfills the objectives of the Sharia.

Islam did not stipulate a particular cast-in-stone model for the State that cannot be renewed or developed. Instead, it laid down foundations and drew broad lines and a general framework, leaving it up to the Muslims to adopt what they deem appropriate and most suitable for their reality and for the developments unfolding in their lives. The State thus evolved in Islamic history and its function, choices and systems expanded while the foundations remained unchanged and constant in spirit and purpose.

The Medinah Charter (*Sahifat al-Madinah*) was a pioneering piece of legislation in the history of mankind as it contained citizenship principles that protected the rights of all under the State, favoring the spiritual bond over the tribal kinship that prevailed in pre-Islamic societies and conferring on Muslims the attribute of the Ummah (distinct from all other peoples). It provided for the rights of non-Muslims, such as the Jewish and Arab tribes that had not converted to Islam, and defined their rights and obligations. Citizens under the Islamic State are equal in rights and obligations and before the rule of law, a principle that prevents any disparities in the degree of citizenship and sense of belonging to the State. Such achievement was unprecedented for mankind under former civilizations, and was only fulfilled in more recent times.

In establishing the State, Islam did not take into account criteria such as nationality, ethnicity, or residence in a given country as was the common practice in human settlements. Islam saw in

this a limitation and a constraint that denied its universality and generality as a divine religion bearing goodness for all mankind. It transcended all these primal and personal considerations and elevated the human community to a superior status where it did not owe its unity and cooperation to other than these lofty principles and ideals. It sought to unify all around the thought and faith they all embraced in willingness and out of conviction, making this faith the unifying thread and the spiritual fabric binding them all together.[10]

The jurist Dr Abdulrazzak al-Sanhoury considered that the Prophet (PBUH) created for his government the best system that could possibly exist back then because it was tailored to the conditions of society. His government cannot be faulted for not making provision for the systems in existence today because these would not have suited the Islamic society of old times. **Yet, the Prophet's government created a true State that matched in its laws and systems the Roman one in its early days. The Prophet established the political structures of the Islamic State, instituted a levy system and a legislative one, as well as administrative and military systems** ...etc. All these systems carried in their folds the seeds of growth and development through times and did indeed evolve without deviating from the premise of being rooted in Islam.[11]

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(10) Sheikh Mahmoud Shaltut, ibid., page 377.

(11) Dr Abdulrazzak al-Sanhoury: *The Fiqh of Caliphate and its Development into a League of Eastern Nations*, page 105, translated by Nadia Abdulrazzak al-Sanhoury and reviewed and prefaced by Dr Mohamed Tawfiq al-Shawi, Cairo edition, 1989.

Dr al-Sanhoury wrote these deeply insightful words in the PhD thesis he prepared in French and presented in 1926 at the Lyon University in France, then published as part of the publications of the Comparative Law Institute of the University of Lyon. The theoretical section was later translated into Arabic and published in Cairo in 1989. This text and many others in this remarkable research project remained unknown to the Arab reader for more than sixty-three years. Dr al-Sanhoury had presented his university dissertation in the same year that Sheikh Ali Abdulrazik published his book *Islam and Government Principles* in which he denied that Islam was both a religion and a State.

Human Rights in Islam:

The source of rights, freedoms and obligations in Islam is legislation both as text and implication. Political rights or political freedoms in Islamic Sharia are not a gift bestowed by anyone, nor a privilege granted by the ruler or the State. They are instead legal rules enshrined in the Sharia and decreed by the Divine Lawmaker. They are part and parcel of religion and therefore cannot be violated or belittled as this would be tantamount to transgression and therefore warrant divine punishment.[12]

There is no other religion as concerned with the human being as Islam is. This religion decided that man was honored by Allah [*We have honored the sons of Adam*][13], that he was made Allah's vice-regent on earth, and that everything on earth and in

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(12) Dr Saadi Abu Jeib: *A Study in the Political Islam Regime*, page 742, al-Risala Institution, Beirut, 1985.

(13) *Al-Israa*, verse 70.

the heavens was harnessed to serve him. He was showered with apparent and hidden bounty and blessings, created in the best of representations, blessed with the faculty of speech, thinking and willpower, and to him were sent divine books and messengers, all manifestations of Allah's honoring of Man. Islam took a keen interest in human rights which were largely considered as duties and obligations since a man can give up a right but a duty or an obligation cannot be relinquished.[14]

Islam was the first to recognize the rights of man and to advocate their preservation and protection, ensuring that those in power confer on them utmost care and attention. Islam, as Allah's religion and the final divine message sent to mankind, created a perfect system for human life, built on solid bases and with profoundly entrenched roots and eternal principles. In fact, it considered the neglect of any human right as dereliction of duty towards Allah, a violation of His commands and a deviation from the innate nature that He created mankind in.

For such considerations, the right of the individual and society in Islamic teachings became a right towards the Almighty and was labeled as such in view of its global benefit, great reward and profound impact on all human life.[15]

Rights in Islamic Sharia are considered as the foundation of all legislation. Man's rights from the Islamic perspective are

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(14) Sheikh Mahmoud Shaltut, ibid, page 190.

(15) Dr Fathi al-Dirini: *Fundamental approaches to Ijtihad in Islamic Legislation*, vol. 2, pp. 14-20. Al-Sharika al-Muttahida lil Tawzi', Damascus, 1985, quoted in the *Encyclopedia of Fiqh Terms for Muslims*, Dr Rafiq al-'Adhm, vol. 1, Maktabat Lubnan, Beirut, 1st edition, 1998.

therefore rights towards Allah of which the observance and fulfillment in the best possible way entail absolute devotion to Allah, obedience to Him and dedication to performing the duties set out in the noble Sharia. Thus, the Islamic concept of human rights rises to the lofty status of worship since these rights are considered in Islamic Sharia as religious duties and legally binding tasks. Such elevated degree of obligation translates into tremendous responsibility for man before Allah (SWT), before himself, his society and humanity at large.

Seen in this light, human rights in Islam are one of the constants over which the Islamic society is edified. They are not only political or constitutional rights, an intellectual luxury representing a phase in the evolution of the human mind, or natural rights as represented in positive law. Instead, these rights stand in lieu of religious duties assigned to the individual and society, each in their scope of action and within the limits of the responsibility entrusted to them. The Muslim individual is imbued with these rights and adapts to them, making them an integral part of his intellectual and psychological setup and endeavoring to safeguard them, for through this protection he accomplishes a legal duty assigned to him. He has no right to neglect them as it would be tantamount to dereliction of duty.[16]

And since human rights primarily represent, begin and end with the respect of man's dignity as a human being, the fundament over which Islamic teachings are built is the full and absolute respect of human dignity. In the Islamic vision, this dignity

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(16) Dr Abdulaziz Othman Altwaijri, *Human Rights in Islamic Teachings*, page 16, ISESCO Publications, Rabat, 2001.

is characterized by inclusiveness and generality, conferring on this concept depth and scope and expansion in time and space. As it is determined by the Islamic Sharia, the concept of human dignity ascends to the loftiest planes of absolute justice and perfect equity and equality. Allah (SWT) says: [*We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of our creation.*][17] The context of the noble verse intimates that this honoring entails preference and a favored status, to judge from the cohesion and transition from the verse's beginning to its end: [*We have honored the sons of Adam*], and [*conferred on them special favors, above a great part of our creation.*] With such honor and favored status, dignity becomes deeply-seated in the human race. There can be no greater honor than Allah's honoring of man,[18] and from this divine honor bestowed on men springs the guarantee of their rights in the law that Allah decreed for humanity.

Islam asserted the equality of all human beings through the divine verse: [*O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other). Verily the most honored of you in the sight of Allah is (he who is) the most righteous of you.*][19] This equality is a negation of any discrimination based on race, color, gender, language or

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(17) *Al-Israa*, verse 70.

(18) Dr Abdulaziz Othman Altwaijri, ibid., page 10.

(19) *Al Hujurat*, verse 13.

religion. Islam also called for the unity of the human family. The Prophet (PBUH) said: "*You were all born to Adam and Adam was fashioned from clay,' and also: 'Surely, there is no advantage for an Arab over a non-Arab, nor a non-Arab over an Arab, nor a white over a black, except by piousness.*"[20]

And while the Declaration of Human Rights adopted by the UN General Assembly on 18 Safar 1369/10 December 1948 addressed all aspects related to human rights, the Islamic vision of these rights stands out by this religion's chronological precedence over this declaration by almost 14 centuries, when Islam raised these rights to the status of necessities and the level of duties and obligations.[21]

The progress witnessed by Western civilization in the mid twentieth century in human rights had been experienced and even translated into a reality by the Islamic civilization of old times, not only as man's rights, but as divine obligations and legal duties that the human being can neither give up nor neglect under any circumstances.

As for the relations entertained by the Islamic State with other countries and its position vis-à-vis international treaties and conventions, all of these were governed by the principle of not declaring what is lawful as unlawful or what is unlawful as lawful, and by what serves the greater good of Muslims and preempts any harm that may befall them. The principle governing

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(20) Narrated by al-Bukhari and Muslim, from the Farewell Sermon.

(21) Dr Mohamed Amara: Islam and Social Security: Human Rights… Social Safety Valves or Breach Points?, page 83, Dar al-Shorouq, 1st edition, 1998.

dealings with non-Muslims is peace and the respect of contracts and commitments. Allah (SWT) says: [*O ye who believe! Fulfill (all) obligations,*][22] and: [...*and fulfill (every) engagement, for (every) engagement will be enquired into (on the Day of Reckoning)*.][23] And since the world has become a universal village of which the parts are interconnected and the interests have merged, the Islamic State can only jump into the foray of this universal village, defend the interests and rights of Muslims and bring about their wellbeing and that of humanity at large, starting with the status of the Islamic Ummah as a witness to the rest of Mankind, and ensuring that men are governed in justice, cooperate in good deeds and stand up to tyranny and injustice.

Islamic Thought before Constitutional and Legal Challenges:

These authentic constitutional rules and immutable principles of the State and human rights in Islam will remain mere theories in sore need of application in the Muslims' life. Back then when these rules and principles were truly applied and abided by, Muslims witnessed the apogee of the Islamic civilization.

This application of rules, principles and lofty values is a two-pronged approach. One aspect is intellectual, juristic and proce-dural, while the second one is political, legal and practical. We have an interest in the first part because it relates to our field of expertise as thinkers pondering the causes of our Ummah,

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(22) *Al-Maida*, verse 1.

(23) *Al-Israa*, verse 34.

endeavoring to enlighten the public opinion, advocating values of tolerance and moderation, and informing people about the facts of Islam that would benefit them in their material and spiritual lives. This said, the second prong is also worthy of some attention as we discuss the aspects related to the development of political and constitutional Islamic thought and the renewal of Islamic jurisprudence.

The most important observation made in this regard is that Islamic thought has not settled on one single permanent rule in the application of the constitutional rules of the State in Islam, and adhering to the basic principles of human rights. This is attributed to the divergence existing in the ideas, visions and perceptions proposed by the Muslim intellectual elites and the overlapping of the initiatives, proposals and theses introduced by these elite.

Manifestations of the Intellectual Crisis:

Many researchers tend to believe that one of the manifestations of the intellectual crisis endured by modern Islamic thought is the growing multitude and expanding scope of divergences within this body of thought. In fact, it fluctuates between moderation and extremism, openness and introversion, tolerance and radicalism, and realism and idealism. Its schools are as myriad as religious doctrines and its jurisprudence varies from one field to another, particularly when it comes to building a theory of the State, creating a governance system and guaranteeing the enjoyment of human rights. This often results in Islamic-Islamic intellectual conflicts that pit the advocates of these schools of thought and champions of these theories against each other, and ultimately

result in intellectual wars and juristic battles that drain energy, destroy the unity of ranks and undermine the higher interests of the Islamic Ummah.

Yet, and despite this, the true nature of Islamic thought triumphs in the end as rightfulness shall always prevail since this rightfulness has components such as moderation in all matters, whether legal, constitutional, political, economic or social. Additionally, the Islamic Sharia refrained from instituting a permanent ruling model or a specific system to be strictly adhered to by the Islamic State. Instead, it introduced general rules, global principles and constants, and some deeply-seated components, without providing the finer details of form, framework and mechanisms of implementation.

Of the challenges facing Islamic thought in these times is its failure to find practical, realistic and credible mechanisms to implement the theory of the State in Islam. Indeed, fiqh rules and constitutional laws remain without soul in the absence of mechanisms to translate them into a reality. It is in the practical implementation of these rules and principles that lies all the benefit for people, provided it occurs in peaceful and sound ways and with a high degree of wisdom, insight and consideration for circumstances and developments, for time and space variables, and with attention to the order instituted by the fiqh of priorities.

Striking a balance between the soundness of principles, validity of fundaments, nobility of goals and proper implementation requires the development of working tools, implementation mechanisms and a method of tackling developments and responding to the demands dictated by change and that fulfill people's needs and

meet their expectations. This entails developing Islamic political thought and renewing Islamic constitutional jurisprudence. It should be clear from the start that Islamic fiqh remains the prerogative of fiqh scholars who have developed it in the true tradition of fiqh where juristic thinking methods and processes are sound and clear. One of the salient features of Islamic fiqh is its flexibility and progressiveness, contrary to Sharia which is characterized by divine inspiration that can never be altered, the immutable and never-changing truth.[24]

If it proceeds on the right path with no compromises on religious constants, developing Islamic thought will ultimately lead to the renewal of Islamic fiqh, open up to modern times, keep pace with changes and meet the vital needs of the Muslim society in all fields, particularly in constitutional law and political thought, to enrich the theory of Islamic State edification and guarantee the enjoyment of human rights.

A Wise Opinion of the Constitutional Jurist Dr al-Sanhoury:

In his study on the degree of adaptability of Islamic Sharia sources, particularly in constitutional matters, the jurist and constitutional law lecturer Abdelhamid Metwalli wrote: "*With regard to the principle of Shura in constitutional matters, we can mention the two renowned verses [… **who (conduct) their affairs by mutual Consultation,**] and [… **and consult them in affairs (of moment).**] But which matters can, or must be the*

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(24) Abdulrazzak al-Sanhoury, ibid, page 239.

subject of mutual consultation? What criteria should those who engage in Shura meet? And what procedures should be followed in this approach? None of this is clearly spelled out in the Quran, and this absence of specificity and detail perfectly matches the nature of a Sharia that is eternal and global in order to adapt to innumerable environments and different eras."[25]

Over the past five decades, dozens of outstanding books were published on the Islamic political system, constitutional Islamic jurisprudence, human rights in Islam, Shura in Islam, the Islamic criminal law, and the genius of Islam in the principles of governing, which books were catalogued by erudite scholars and thinkers of great knowledge out of dedication to revealing the true facts of Islam in these fields. For a long time, these books of immense academic worth had a negligible impact on political life and the constitutional practice in Arab and Islamic countries. We believe this to have many causes, including the chasm existing between the researchers and thinkers dedicated to studying matters of governance in Islam on the one hand, and the class holding the reins of the power -whether rulers, public servants, or the people's elected representatives in parliamentary bodies-, on the other hand. The result was that these praiseworthy Ijtihad efforts undertaken in Islamic political thought and constitutional fiqh remained untapped by these decision-makers.

(25) Dr Abdelhamid Metwalli: ***Islamic Sharia as a Primary Source of the Constitution***, page 101, Manshaat al-Ma'arif, Alexandria, 3rd edition, 1990.

And since the fundaments of establishing a State are:

1. The political regime;

2. The Shura system;

3. The legislative and judiciary system;

4. The economic system;

5. The security regime; and

6. The educational and cultural system;

And since the goal is to guarantee the progress of Islamic societies, protect their civilizational identities and facilitate their openness onto other contemporary civilizations and cultures to achieve interactivity, exchanges and growth, it is essential to strive to develop concepts and mechanisms that would guarantee the activation of these systems and their responsiveness to the demands of modern Islamic societies and their growing needs.

Seen from this angle, the rapprochement between thinkers and scholars and decision and policy makers is a matter of crucial importance. It is essential that those holding the reins of power heed the scholars and thinkers poring over matters of relevance to the Islamic Ummah, in order to bridge the gap between theory and practice and bring about a modern Islamic Ummah that is sustainable, serves the interests of its citizens and protects the State institution and the workings behind its existence.