

## **RELIGION AND THE STATE: THE FUNCTIONAL PURPOSES AND THE ISSUE OF LEGITIMACY**

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### **Abstract**

The present paper examines the importance of the functional criterion employed in assessing the legitimacy of the state in the context of political and Islamic communities. The main, underlying hypothesis is that the existence of the state, as envisaged by Muslims political scholars, is linked to the realization of the legitimate purposes as well as the empowerment of the *Ummah*'s sacred values and principles. This approach, which is based on the religious criterion of legitimacy presumes that the legitimacy of the state is contingent upon its commitments towards the requirements that were initially established to achieve. Regarding the methodology, this paper combines a historical approach to explore the origins of the state and its connection to religion, alongside content analysis aimed at comprehending the metaphysical foundation underlying the state's inception. The paper concludes that the state, in its Islamic perspective, is a historical product, wherein text and history intertwine, resulting from the interaction of the political community that rule it with their believed religious metaphysics. This requires the subordination of the state to the *Ummah* as a functional tool rather than an independent entity.

**Keywords:** *Religion, State, Function, Ummah, Community, Legitimacy.*

### **1. Introduction**

Discussing the relationship between religion and the state politically and socially entails a discussion on political legitimacy; the relationship assumes that the state, as the legal and political expression of the *Ummah*'s political presence, is required to embody the authoritative religious and ethical values that the *Ummah* believes in, and which it seeks to empower through its official bodies. Based on its functional role, the state's legitimacy is contingent upon its obligation

towards its constitutional and legal obligations. In studying the issue of legitimacy, this approach, which considers the religious aspect, could differ from the commonly used approach of modern political studies, which tend to limit the issue of political legitimacy within the perimeters of power rather than those of the state. This could be justified considering the nature of the modern state, wherein religion and the state are disconnected, and which also accounts for the dispensability of religion as a foundation of legitimacy. However, in Islamic and political communities, wherein such a disconnection between religion and the state cannot be envisaged, this approach remains an indispensable methodological obligation in the pursuit of construing the state and its functionality and in probing into the extent to which its legitimacy is achieved.

Although the issue of the relationship between the state and religion constitutes one of the most important focus of contemporary Islamic literature (Hamza Ates, 2003, p. 364), It can be said that this relationship is the most ambiguous concepts in the contemporary political awareness of Islamic peoples.

This ambiguity is perceptible in the intellectual turmoil reflected in the intense discussion distinguishing Islamic and Arab societies throughout their modern history. The issue of the abovementioned relationship—that of religion and the state—has imposed itself among the most contended issues, whose contention has gone beyond academic debates to become a matter of dissent in media, politics, and society. Given the intricate intellectual and political landscape, this paper aims to rationalize ongoing discussions about the relationship between the state and religion, whether within its contemporary historical context or its theoretical framework. In this intellectual rationalization, it seeks to address the following questions: What historical circumstances have contributed to the confusion surrounding the relationship between religion and the state in the awareness of contemporary Islamic societies? From an Islamic perspective, is the state merely a sociological phenomenon or a complex concept with metaphysical and historical dimensions? If we acknowledge the symbiotic relationship between the state and society, to what extent can this relationship be used as a criterion for assessing the legitimacy of the state?

## **2. Methodology**

Regarding the methodology, this paper employs the historical approach in understanding the emergence of the state in the early Islamic era, how the organic connections between religion and the state were first established, and the manifestations of their interactions on the societal scale. The paper further employs content analysis to 1)

understand the religious text responsible for the formation of metaphysical foundation of the state, and 2) construe the juristic interpretations made to look at the patterns of the state in the Islamic societies it ruled.

### **3. Literature Review**

In contrast to numerous studies that delve into the concept of power legitimacy, this research uniquely centers on the legitimacy of the state, an area explored by only a handful of scholarly works. One notable example is Hamid Rabie's introduction in the book "The Behaviour of the Owner in Managing Kingdoms." Rabie addresses crucial aspects such as the state's role, national unity, the dynamics between rulers and the ruled, the principle of justice, and the underlying value system. Another noteworthy contribution is Hamid Qweisi's study, "The Doctrinal Function of the Islamic State, a Systematic Study in Islamic Political Theory." Additionally, Saif al-Din Abdel Fattah's book, "Political Theory from an Islamic Civilized Perspective," allocates a section to the Islamic viewpoint on political legitimacy, emphasizing its distinction from Western perspectives by being grounded in religious foundations.

This article aligns with the aforementioned studies by approaching the legitimacy issue from a civilizational standpoint. It acknowledges the inseparable connection between the state and the nation. In the Islamic perspective, the state emerges from and exists for the community's benefit. It serves as an organizational tool crafted by the collective to fulfill its assigned tasks, primarily dedicated to religious purposes. From this civilizational perspective, emphasizing the absence of any state autonomy from the nation, the state's role involves embodying the overarching objectives of *Shari'ah* law across all its agencies and institutions. Thus, it becomes the guiding principle governing public affairs, shaping its domestic and foreign policies.

### **4. The ambiguous relationship between religion and the state**

It would be difficult to understand the essence of the religion-state ambiguity in the awareness of Arab and Islamic societies unless it is placed in its modern historical, political context, which has witnessed the compulsory modernization of these societies following a forced model of a modern state.<sup>1</sup> This political penetration resulted in negative ramifications on the common political concepts in society, leading to the loss of their semantic strength in shaping their historically inherited political awareness in favour of the state's tyrannical hegemony as it manifested in the political history of Europe. The major variable in this transformation could be what touches upon the metaphysical foundation from which the state derives both its

existence and function. Wael Hallaq<sup>2</sup>, in his critical review of the emergence of the modern European state, presents one of the central concepts on which this state was founded; it is the concept of sovereignty, which made the state a transcendent metaphysical entity and not just a means to a higher end.

This notion will eventually reflect on the function of the state; this transcendence, which borrows from religion the function of the transcendent God, presents the concept of the God state, which intervenes—through its absolute sovereignty—in determining the regulatory standards and the culture of the society subordinating to its sovereignty.<sup>3</sup> This perceived function of the state essentially contradicts its Islamic counterpart, as states Pakistani thinker Kalim Siddiqui: “While Islam brings the State into existence as an instrument of Divine purpose, the nation-State comes into existence for precisely the opposite reason: to dismiss God and to replace Him with the ‘national interest’ as determined by human reason”.<sup>4</sup>

Internationalizing this concept is one of the most important factors responsible for the religion-state ambiguity in the awareness of Islamic societies. This is because borrowing the concept of ‘the state,’ in its modern essence centered around absolute sovereignty, and imposing it as the prime example of governance, has thrown it in arguably the most dangerous political conundrum in its political history: the seizure of the sovereignty of *Sharī‘ah*. This transformation led to a drastic upheaval in perceiving the state, where it would turn from a mere instrumental means representing the values of the community, through its administrative and legislative institutions, to a higher entity that transcends both *Sharī‘ah* and the community alike. From amidst this coup emerged the chronic disputes that accompanied our contemporary political history around the secularization of the political sphere of Islamic societies, its separation from its religious authority and its political traditions.

With this political, intellectual shift, the religion-state relationship has become a subject of ongoing debates, which have gone beyond their contemporary ramifications as to critically revisit the experience of Islamic self-governance from a skeptical perspective that relies on modern concepts, which were not common in Islamic societies throughout their history in their attempt to justify the argument of separation. This methodological approach in dealing with the heritage experience has become familiar among Western scholars, as seen, for instance, with the American historian Ira Lapidus, whose area of specialty is Islamic history.<sup>5</sup> This tradition, however, does not reflect individual works only, but a critical movement that includes a plethora of Western historians and scholars who have formed a school

that is methodologically unified around what is referred to as the Revisionist school of Islamic studies. The movement questioned the Islamic narrative about the origins of Islam, its religious, political, and social history, with the aim of secularizing it and stripping it of its religious context. This school, which emerged in the 1970s, has lent its approach to many Arab scholars, who have devoted their works to the study of the religious and political history of Islam and Islamic societies, as seen in the early works of Radwan El-Sayed on the separation of religion from politics.<sup>6</sup>

This forced projection of contemporary problems into the historical depth inevitably leads to a perplexity in the awareness of Islamic communities regarding their own historical experiences, which places us in a systematic distortion of memory, aimed at legitimizing contemporary political transformations by grounding them in history.

Therefore, it is believed that the skeptical reading on the theoretical and historical levels presents false indications implying that the contemporary intellectual debate about the relationship between the religious and the political is not alien to the traditions of Islamic political community, and is not an emergent matter as much as it is rooted in the structure of the Islamic political thought on one hand, and an extension of a historical conflict between the religious and political institutions on the other.

The aim of this paper is to explore the functional purposes of the state in the context of the Islamic political community and not to cite the international and local debates surrounding the relationship between the state and religion. Addressing this issue in the context of the preoccupations experienced by the current Islamic societies requires the need to understand the historical context in which this issue have been produced.

This context is inseparable from the Western central vision that governs the relationship between religion and the state, an idea through which all human experiences are stereotyped, as previously noted by the French scholar Serge Latouche.<sup>7</sup> Patricia Crone, a Danish historian specialized in the study of early Islamic political history, shrewdly notes that Western scholars have hardly encountered any difficulty accepting the prophet's faith journey, a story that follows a common model in the Christian history. What confounds Westerners, however, is that the Prophet Muhammad (*Ḥaḍrat Muhammad Rasūlullah Khātām un Nabīyyīn Ṣallallahu 'alaihi wa 'alā 'Ālihi wa Aṣḥābihi wa Ṣallam*) established a system of governance in Madinah instead of turning to martyrdom in the Christian way.<sup>8</sup> This commentary summarizes the depth of the problem that Western circles

and their Arab and Muslim “appendages” have been promoting, where confusion between the Church as a priestly authority and the mosque as a religious and social space often exists.<sup>9</sup>

Fortunately, more liberated critical studies have emerged away from this Western-centric perspective, offering serious doubts about the standardization of Western political thought.<sup>10</sup> These studies tend to construe Islamic political discourse within the very same context that produced it.<sup>11</sup> This critical approach has the potential to overcome the distortion that employs the historical experience as the standard for studying the nature of the state and its relationship with religion, without considering its religious foundations. Hence, the need to understand this relationship within its textual contexts arises.

## **5. The Origin and Emergence of the State: Textual Semantics**

Amid the current political and intellectual transformations and the increasing prevalence of biased readings, it is important to address the religion-state relationship as it appears in its textual context, wherein the Quranic texts deal with governance as part of the *Ummah*’s religious creed. Therefore, any concept of governance and state within the context of Islamic political communities is inextricably linked to the theory of knowledge from which this society derives its vital systems and religious metaphysics that emanate from it.<sup>12</sup> In defining the nature of the state, this religious approach implies that the state, in its Islamic context, is not merely a historical product that arose from the evolution of a political group bound by national, linguistic, and cultural ties, as is the case with the nation state in the European political experience.<sup>13</sup> Rather, it is a complex product where text intersects with history and arises from the interaction of the political community governing it with the religious metaphysics it believes in. Hence, there is a necessity to invoke the historical dimension alongside the religious dimension in determining the origin and formation of the state.

### **5.1. The Metaphysical foundation of the Origin of the State**

How did the state come into existence in the first place? From the perspective of the historical reading pertaining to prophecy, Patricia Crone presents an answer that is familiar to the public of believers: “As the ruler of the universe, God issued laws. Adam had received a set of them; so had later prophets, most recently Muhammad, whose version was final. Living in accordance with God’s law was the essence of religion”.<sup>14</sup>

This quote reflects an objective understanding of the history of prophethood and summarizes a rich history of the major historical turning points of human societies that coincide with the Quranic

narrative pertaining to the function of prophets and their demands. Two Quranic verses that address all prophets and depict statements indicating that all prophets have conveyed one essence Substantial content—that is to inform humans throughout history that they have one ruler, who is Allah. The verse depicts an imperative statement: “*We did not send before you any messenger but We revealed to him that there is no god but I, so worship Me.*” [21: 25]. In the second verse, the address is in the form of a prohibition: “*We did raise a messenger among every people, with the message: .Worship Allah and stay away from the Rebel (the Satan)..*” [16: 36]. These two verses show a deliberate juxtaposition between worship and tyranny (disbelief), and between Allah and *Ṭaghut*. Worship, as defined by As-San‘āni, is “the ultimate level of submission and humility, and it was only used in submission to Allah”.<sup>15</sup> On the other hand, *Ṭaghūt*, as defined by Al-Aṣfahāni, refers to “anything that is obeyed and worshiped other than Allah”.<sup>16</sup> According to these two definitions, which are in reference to two conflicting concepts, the issue of governance is considered the essence of religion and that of monotheism; it orbits around proving the sovereignty of Allah.

From a methodological standpoint, the *Holy Qur’ān* logically approaches the issue of governance by explaining the complementary relationship in the dualism of ‘creation’ and ‘command:’ “*Lo! To Him alone belong the creation and the command. Glorious is Allah, the Lord of all the worlds.* [7: 54]. This interrelationship presents governance as a subject of contemplation based on the principle of logical and rational argumentation, not just religious faith. According to this relationship, the One who creates is the only One who has the right to command. The term ‘command’ is absolute, so Allah has absolute command over everything He has created, which leads us to the divine management of the entire universe: “*He manages (every) matter from the sky to the earth*” [32: 5]. According to this Quranic metaphysics, framing the issue thus transcends the management of human existence on Earth, as a minor matter, towards the entire existence.

According to this Quranic verse, the Creator of existence has the right to rule and control it. With this same logical argument related to the total existence, the *Holy Qur’ān* addresses the issue of governance as a part of the whole. Only the Owner of the sovereignty has the right to govern what He possesses, “*The Decision belongs to none but Allah.*” [6: 57]. Surat Yusuf further explains, “*Sovereignty belongs to none but Allah. He has ordained that you shall not worship anyone but Him.*” [12: 40]. This logical argument, which places humanity under the absolute sovereignty of Allah, and which does not allow partnership, concludes that governance is a matter of belief and

a prerequisite for faith would require believing in it.

This issue, labeled under ‘unity of worship’ and ‘unity of divinity,’ has been the focus of a plethora of jurists and theologians. It has recently been addressed by contemporary scholars under the term governance. However, the term has faced rejection, which surprised many of this era’s leading scholars.<sup>17</sup> Despite the term being a corresponding alternative to the political connotations pertaining to the idea of sovereignty. The concept of sovereignty as employed in contemporary Islamic political literature is a rephrased concept of governance whose political content is concisely defined by Al-Ghazali: “the deservingness of holding power belongs only to those who possess creation and command.”<sup>18</sup> This quote confirms the absolute nature of governance and its ‘unsharability,’ and it clearly affirms that governance rules over the *Ummah*, the state, and authority as entities subject to God’s revealed laws. Two ideas can be extracted from the Quranic presentation of governance: first, governance is part of the religious creed that Muslims believe in; second, the history of governance is part of the history of the prophets, and it cannot be dissociated from it. The prophets ruled by Allah’s command, wherever they appeared. What the *Holy Qur’ān* mentioned in general terms was detailed in the biographies of the prophets throughout history, as explained by exegetists. Based upon the detailed Quranic presentation, the history of humankind consists of a series of successive stages following prophets’ governance, starting with Adam and ending with Muhammad (*Ḥaḍrat Muhammad Rasūlullah Khātām un Nabīyyīn Ṣallallahu ‘alaihi wa ‘alā ‘Ālihi wa Aṣḥābihi wa Ṣallam*). As mentioned by Patricia Crone, “thanks to Muhammad’s career, Muslims came to think of prophets as the paradigmatic founders of states.<sup>19</sup> This pattern of thinking, which applies to the Muslims’ perception of their own political history, will linger in their religious and political awareness as long as the *Holy Qur’ān* remains part of their lives.

## **5.2. The historical embodiment of the principle of sovereignty**

The state is the historical embodiment of the principle of sovereignty. This principle was first mentioned in historical documents that appeared with the establishment of the Muslim state, following the migration to Madinah, when the Prophet (*Ṣal Allah-u-‘alaihi wa sallam*) wrote a binding covenant for all the groups that pledged allegiance to him. Among the terms of the covenant, and perhaps the most important, was this clause that establishes the authority of the emerging state: “Whatever you may differ in shall return to Allah and to Muhammad”.<sup>20</sup> Despite the political society that emerged in the city for the first time being a multi-religious society,



all religious components were concerned with adhering to this constitutional provision regarding the organization of the public sphere while recognizing the non-Islamic component of its religious specificity.<sup>21</sup> This Principle would be stated with the same clarity in the Prophet's will to his *Ummah*, prior to his passing. The will states, "I have left you with two things, and you shall never go astray as long as you hold on to them: the Allah's book and the tradition of His Prophet".<sup>22</sup> This hadith is addressed to the *Ummah* and is stated conditionally as immunity from error is made contingent upon adherence to the *Holy Qur'ān* and Sunnah. This condition is meaningless without a state that reproduces the teachings of the *Holy Qur'ān* and Sunnah according to the requirements of time and place.

On the legal level, the term state of Islam (*Dār al-Islām*), which was coined by Islamic jurists in reference to the meaning of the state, reflects the dialectical relationship between text and history. This compound term combines Islam, as the supreme authority of the state and its institutions, and geography as the land where Allah promised his servants to establish their religion on the condition of fulfilling their religious obligations: "*those who, when We give them power in the land, establish Salah, pay Zakah, bid what is Fair and forbid what is Unfair.*" [22:41].

As will be discussed, the definitions formulated by Islamic jurists to determine the nature of state of Islam revolve around the following Quranic verse, which promises the Muslims three matters: succession, empowerment, and the removal of fear:

*"Allah has promised those of you who believe and do good deeds that He will certainly make them (His) vicegerents in the land, as He made those before them, and will certainly establish for them their religion which He has chosen for them, and will certainly give them peace in place of fear in which they were before".* [24: 55].

This verse mentions three components essential in the establishment of a state. The jurists' definitions do not go beyond these three components: the Muslim community, which is responsible for implementing Allah's commands; the land, which is the geographic area inhabited by the community; and the absence of fear due to the community's possession of the authority that allows it to achieve Allah's rule on earth. Ibn Al-Qayyim defines state of Islam as "the land where Muslims, where Islamic laws are enforced, and unless Islamic laws are enforced on it, it is not regarded as state of Islam even if it were adjacent to it".<sup>23</sup> The definition accurately specifies the three aforementioned foundations: a nurturing land, inhabited by Muslims, and Islamically ruled.

Muslim jurists have established two criteria for state of Islam to be presented in its legal status, with some variation in juridical interpretation.<sup>24</sup> The first criterion is political and pertains to the state's ability to assert its sovereignty; the second is functional and it pertains to its ability to implement *Sharī'ah*. The first criterion is expressed in terms of 'security and fear,' which is derived from the aforementioned verse "And He will replace their fear with security." This means that the legal existence of state of Islam is achieved when Muslims live in a state of security and power; the opposite, on the other hand, is true when they live in a state of fear and weakness. This results in what is labeled as state of disbelief (*Dār al-Kufr*). It is worth noting that the terms 'state of Islam' and 'state of disbelief' are not value judgments. Rather, they are juridical terms used in the constitutional sense to indicate the type of ruling prevailing in each state based on the prevailing legal rulings. If sovereignty is based on Islamic rulings, it is state of Islam; otherwise, it is state of disbelief. Al-Kasani states:

The word *Dār* (state) is only added to Islam or *Kufr* (disbelief) when Islam or lack thereof appears in it... and Islam and disbelief appear with their rulings; if the rulings of disbelief appear in a state, it becomes state of disbelief, and so the state becomes state of Islam with the appearance of Islamic rulings in it.<sup>25</sup> It is worthy to note that the expression of the jurists with regards to state of Islam and its opposite, state of disbelief, was articulated in a legal language with religious connotations, which would, in contemporary contexts, mean a secular, civil, irreligious, or modern state, as opposed to an Islamic state.

## **6. The functional purposes of the state**

The topic being discussed is the function of the state and not authority. Distinguishing the terms is a must to shun any ambiguity around the two concepts. The concept of state refers to the existence of an organized political society, governed by government institutions that enjoy legal recognition and constitute its highest political authority. Executive authority is part of these institutions. This difference is evident in the function of each. While the function of the state is characterized as institutional and constructive in nature, the function of authority is of an executive nature. The mission of the state is to build the official institutions that manifest the will of the *Ummah* from which it derives its legitimacy. As for Authority, it is the executive tool that ensures the protection of this structure through legal coercion. Based on this integrative perspective, it can be said that the state is the carrier of the *Ummah*'s project, with authority being its protector.

### **6.1. The *Ummah* being the origin and the state as functional tool**

The first Islamic state arose after the migration to Madina within a defensive context, and embodied an advanced stage of the nascent community's life where it moved from a creed group into a political one. This transformation undoubtedly signifies that the *Ummah* had reached an advanced stage of confrontation, which required the existence of an organized political entity to protect its religious project against hostile forces. The Quranic text strongly accompanied this transformation by revealing verses that framed it, placing the newly born community in front of new political tasks uncommon before the *Hijrah*. It is worth noting that the verses addressing the community with these tasks are primarily Medinan (as opposed to Meccan), reflecting this quality development of the political formation of the community after the *Hijrah*. The verses mentioned in this context are numerous, including the following: [61:14], [22:39, 41], [8:72].

The abovementioned verses revolve around the state's emergence from and for the community. It was initially established to serve the religious purposes entrusted to the community and served as an organizational tool created by the community to execute the tasks assigned to it. This teleological perspective, which completely excludes any form of state independence from the *Ummah*, has been a riveting subject for many thinkers. Among these thinkers are Muslims—who base their arguments on Islamic beliefs—and their western counterparts, who adopt a descriptive, historical approach in the study of the emergence of the state and its relationship with the community. Ahmed Raisouni's book titled *The Ummah is the Origin*<sup>26</sup> unequivocally explains the subordination of the state to the *Ummah* based on its function, which is closely related to the implementation of the tasks that the *Ummah* has been entrusted with since its inception. This can be clearly explored from the Quranic verses that appear in the form of "you believers!" where the discourse is directed towards the community of believers. This understanding is also reinforced by some Western writings specialized in this context. Andrew March's book, *The caliphate of man*, notes that the subject of Quranic discourse is the community of believers themselves, based on the Quranic verses that vouchsafe the community with the responsibility of promoting virtue and preventing vice and fighting in the cause of Allah against aggressors. This ethical function, which turns believers into representatives (*Khulafā'*) of Allah on earth, justifies the purpose of the existence of public authority in Islamic political thought.<sup>27</sup> In her book titled *Gods Rule*, Patricia Crone notes that throughout their pre-modern history, Muslims viewed the state as an organizational framework, which supports the religiously formed society, and which

is created to implement the religious directives formulated by jurists.<sup>28</sup> This conscious perception of the jurists' position in the political body requires clarification regarding their leadership role in the legal framework of the Islamic community as the representatives of the *Ummah*, who are authorized to speak on behalf of the community.

## **6.2. The state function: institutionalizing the purposes of *Sharī'ah***

The function of the state lies in embodying the overall purposes of *Sharī'ah* at all levels of its institutions and bodies, becoming the rule governing its management of public affairs and the basis for its developmental policies and its internal and external relations. There is no safer means to empower these purposes than to stipulate them in the constitution of the state, provided that the legislation and laws applied in all sectors be consistent with the constitution. It is important to articulate the constitutional and legal texts in an explicit, binding, and comprehensive manner to avoid any form of interpretation that may lead to undermining the overall juristic purposes or stripping them of their legitimate religious truth.

The state's foremost interests and priorities should be the empowering of wholeness of religion, considering religion as the true faith, and safeguarding it from anything that may desecrate its sanctity under any pretext, such as religious tolerance, freedom of belief, or the right to apostasy. These concepts, along with their approximate equivalents, must be dealt with from the perspective of legal responsibility towards the preservation of the religion from any form of disrespect—an approach that should be the case across the board. When we speak of values related to the intellect, such as freedom of expression, academic freedom, and the right to differ in opinion, these values remain guaranteed within the limits prescribed by the laws of *Sharī'ah*, which do not violate their religious and moral principles.

As for the values related to preserving human life, dignity, and material and spiritual human rights, the state is obligated to prevent any act that threatens these values, such as the right to abortion or euthanasia. These should all be done within the limits prescribed by religious and moral principles. Regarding the governing values of family, the relationship between the sexes, the functional roles of each, the management of the family, the mutual rights and obligations of family members, and other concepts that question the Muslim Family Code today, these should all be subject to the legal and moral principles prescribed by the law in a way that preserves the Muslim family. Concerning the wealth of individuals and society, the state must build its development activities and programs based on prioritizing principles over benefits, while avoiding any form of violation of moral and legal values under any pretext of public interest,

except in the case of a compelling necessity according to *Sharī'ah* law. This principle is often violated as it is seen in many forms of excessive duplicity reflected in the activities of both society and the state, especially in sectors that are considered essential in providing state resources. This is the case in many economic investments, commercial and financial transactions, and touristic activities that are prohibited by religious law.

The state must ascertain that the presence of these vital interests or general purposes within its institutions is maintained; this would enable their preservation positively and negatively as stated by *Sharī'ah* jurists. Positive preservation of these institutions would mean enabling and providing conditions for their achievement, while negative preservation would mean protecting them against all risks that may threaten them. This principle cannot be practically achieved except through the collaboration of the legislative and judicial authorities, as they are a legal guarantee that binds the state's institutions to act in accordance with the requirements of *Sharī'ah*.

On the legislative level, the Islamic legal rulings to which the Islamic society usually resorts are inextricably linked with its religious creed. This entails two interconnected matters: first, Islamic *Sharī'ah* is the primary source of legislation that regulates the sectors of the state; second, the ruling authority is religiously bound to act in accordance with the provisions of these legislations on the one hand, and is empowered to do so on the other hand. Based on what has been mentioned, legal texts must provide the legislative framework from which state institutions and executive agencies derive their general policies that achieve *Sharī'ah* purposes in both the private and public domains. This committed use of *Sharī'ah* provisions to achieve the values and interests of society is the practical translation of a genuine political will through which the state expresses its alignment with the identity of the society it governs and embodies with the power of the constitution. Furthermore, this commitment generates a state of societal satisfaction resulting from the individuals' reassurance about the state's alignment with their vital interests.

At the judicial level, the judiciary is one of the most important institutions of the state, and the most effective in criminal regulation. Given its authority, which surpasses both society and the state, the judiciary—in addition to its legal function—bears the responsibility of preserving the religious and moral identity of society, ensuring the application of Islamic, legal rulings, and binding all social groups to adhere to the general ethics that regulate Islamic, political, and social interactions with the force of the law.

### **6.3. *Hisbah*: functional integration between the state and the *Ummah***

The aim of this integration is to ascertain the effective oversight of state institutions and to sustain their effectiveness in achieving their functional purposes. Overseeing state institutions is an integral part of the state's work; it is the responsibility of the state to establish administrative agencies that secure this function. However, as is the case in various countries around the world, overseeing is not solely the prerogative of state institutions, but is also a societal responsibility. In the experience of Islamic governance, Muslims developed a supervisory system co-shared by the community and the state, each within its own sphere of competence according to what is stipulated in the jurisprudence of *Hisbah*.

In discussing the purposes of *Sharī'ah*, Al-Shatibi considered their preservation a shared responsibility, both individually and collectively. This collaborative perspective is best manifested in the *Hisbah* system (Islamic inspection), which is a model of the functional integration between official work and voluntary civil work i.e., between *Hisbah* being an institution of official state institutions, and a social activity. And *Hisbah*, as defined by Al-Mawardi, is “promoting virtue when its negligence appears, and preventing vice when it manifests”.<sup>29</sup> in compliance with Allah's verse: “*There has to be a group of people from among you who call towards the good, and bid the Fair and forbid the Unfair.*” [3:104]. The Islamic experience confirms *Hisbah* as not merely an administrative matter, but rather an ethical function that both the authority and society share the burden of performing based on the legal discourse that made the responsibility of promoting virtue and preventing vice a legal obligation. Therefore, jurists distinguish between two types of *Hisbah*: the first is a formal system that the state bears; the second is a voluntary system that individuals bear. The difference between them, as noted by Al-Mawardi, is that the function of *Hisbah* in terms of guardianship is a bound obligation on the *Hisbah* supervisor, who is paid from the treasury, unlike voluntary *Hisbah*, which is a common obligation.<sup>30</sup> The *Hisbah* system is considered the most effective mechanism in protecting societal values and ensuring the *Sharī'ah* compliance. It derives its effectiveness from its scope of work and the nature of its function, which is primarily related to the development of public life and the inspection of the general performance of society. Therefore, what distinguishes the function of *Hisbah* is its comprehensiveness, covering all activities that a Muslim does—be it about the rights of Allah or the rights of human beings or common rights between them. It would be worthy to consult book indices dealing with *Hisbah* issues

to understand the extent of this function to every aspect of the daily life.

Al-Shaizari presents a long list of *Hisbah* tasks that cover areas of health, veterinary medicine, and pharmaceuticals, education and discipline, finance and banking, market movement, and its related types of sales, trade, scales, and weights, and various industrial crafts, professions related to nutrition and food. This is in addition to general etiquette related to travel and roads, building security, its relationship to the sanctity and health of the inhabitants, the role of worship and its associated activities, practices, and the councils of governors and princes.<sup>31</sup> In terms of work mechanisms, the overseer enjoys wide-range authority, enabling him to perform his job with high efficiency, where his disciplinary procedures are characterized by immediacy and strong punishment. This gives him the power of implementation and authority of deterrence in case of violation.

## **7. Discussion**

### **The connection between *Sharī'ah* and legitimacy**

The previous explanations about the state's function in empowering *Sharī'ah* purposes and public interests lead to the importance of the functional approach in evaluating the state's legitimacy. The previous details provide sufficient evidence that the major criterion in this legitimacy is the extent to which the state adheres to its assigned function. Therefore, addressing this issue is of constitutional nature as it pertains to the state authority and the extent of its institutions' commitment to representing the values and principles of *Sharī'ah* in managing public affairs. Based on a textual analysis of the issue in question, the hadiths mentioned in this topic seem to clearly address the possibility and expectation of the nullification of ruling according to *Sharī'ah*. This means that the state is at risk of losing its legitimacy when it rebels against its religious authority.

This has been stated in some authentic narrations, such in the hadith: "The knots of Islam shall unravel one by one, and with each knot unraveling, the people will cling to the subsequent one. The first knot to unravel is ruling, and the last, prayer".<sup>32</sup> This hadith is reported in the form of a declarative statement, indicating the coming time when *Sharī'ah* ruling will be disrupted. As explained by Abdul-Aziz Ibn Baz, this hadith refers to the absence of *Sharī'ah* ruling, and this situation, he adds, leads to apostasy if it arises out of denial.<sup>33</sup> The term used to express this state of abstinence is *istiḥlāl*, it refers to the deliberate refrainment and obstinately from acting according to *Sharī'ah*. Based on this *fatwā*, the legitimacy of the state is contingent

upon its institutions' obligations towards acting in accordance with *Sharī'ah*; if these institutions are liberated from *Sharī'ah* as their Authoritative, they lose their legitimacy.

The relationship between *Sharī'ah* and state legitimacy has been addressed by jurists in their discussions of rulings pertaining to the state of Islam, particularly in light of the historical events relating some Islamic societies being invaded by external forces e.g., the fall of Andalusia and the Mongol invasion of the Arab East. These events formed forums for the scholars at that time to engage in debates, which resulted in *fatwās* becoming constitutional precedents that continue today to resonate strongly in contemporary writings. It is the case with the *fatwās* of Ibn Taymīyyah, whose criterion adopted in stating the illegitimacy of the Tatar state was the suspension of the implementation of *Sharī'ah*.<sup>34</sup> As has been noted by some researchers, the similarity between the political situation that Ibn Taymīyyah experienced and the political reality of post-colonial Islamic societies has pushed his ideas to the fore in contemporary Islamic political literature. His historical *fatwās* produced the most appropriate judgment for framing the current political situation, especially after the abolition of the Ottoman caliphate. This positions Ibn Taymīyyah not only as a historical thinker, but also as a thinker actively involved in current debates about the future of *Sharī'ah* in post-colonial states.<sup>35</sup>

A juristic criterion for the implementation of *Sharī'ah* is constitutional; it states that when *Sharī'ah* has sovereignty, it is state of Islam, but when the sovereignty of *Sharī'ah* is lifted, it becomes state of disbelief (*Dār al-Kufr*).<sup>36</sup> Based on this juristic diagnosis, a distinction must be made between legitimacy and legality. The state only risks losing its legitimacy when it deliberately hinders the governance of *Sharī'ah*, while any actions that violate *Sharī'ah*, though they recognize its sovereignty, fall within the area of legality. State institutions' shortcomings and their erroneous policies remain a possibility due to ignorance, incapacity, neglect, or manipulation. These practices, which are usually inherent in any human practice, are undoubtedly wrong, but they can be corrected by the *Ummah* and its community institutions though their right to monitor the performance of the state.

## **8. Conclusion**

In conclusion, the previous discussions lead to assessing the relationship between religion and the state from an integrative perspective, one that combines textual implications and historical experience, especially in its founding stage. The relationship shows a high degree of complexity that goes beyond the skeptical and simplistic view that often reduces it to its historical dimension. This



integrative approach shows that the model of prophetic rule, whose political construction was completed early with the establishment of the Madinah state after the *Hijrah*, followed the integration and intertwinement between the religious and political.

Based on this conclusion, the standard model for the state as conventionally understood in the context of the Islamic political and historical discourse is essentially a religious and ethical one. Therefore, it is inconceivable for the state to detach itself from the authoritative values upon which it is founded, and which are highly regarded by the community it governs. This necessarily requires the state to be in line with society—an alignment that establishes the type of function entrusted to the state, which is determined by translating the values of the community and embodying them through its sovereign institutions.

Considering that the state legally embodies the will of the *Ummah* and is constitutionally obligated to achieve its objectives, the legitimacy of the state depends on the extent to which it vows to secure the objectives of *Sharī‘ah* and represent its values in the management of public affairs. This function, for which the state was initially established, justifies the adoption of the functional approach as a standard for assessing the legitimacy of the state—a standard in which political legitimacy coexists alongside religious legitimacy.

## Notes and References

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<sup>4</sup> Siddiqui, Kalim, *Beyond the Muslim Nation-State*, <https://www.icit-digital.org/articles/beyond-the-muslim-nation-states>

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<sup>8</sup> Crone, Patricia, *God’s rule government and Islam*, (Edinburgh University Press Ltd 2004), p.10-11.

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<sup>23</sup> Ibn Qayyim al-Jawzīyah, Muḥammad, *Aḥkām ahl al-dhimmah*, ed. Yūsuf al-Bakrī and shākīr al-‘Ārūrī, (Dār Ramādī lil-Nashr, Dammam, 1997), v. 2, p. 728.

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<sup>28</sup> Patricia Crone, *God's*. op. cit., p. 395

<sup>29</sup> al-Māwardī, ‘Alī ibn Muḥammad, *al-aḥkām al-sulṭānīyah*, ed. Aḥmad Jād, (Dār al-ḥadīth, Cairo, 2006), p. 349.

<sup>30</sup> Ibid, p. 348.

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<sup>36</sup> Badā‘i‘ al-şanā‘i‘, op. cit., v. 7, pp. 130-131.