

Accountability in the Khilafah

Second Edition



Abdul-Kareem Jamil

Front cover illustration of the *Dar al-'Adl* as represented by Robert Hay in his 'Illustrations of Cairo' (1840). The *Dar al-'Adl* was the Court of Unjust Acts (*Mahkamat ul-Mazalim*) within the previous Khilafah.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

INTRODUCTION TO 2nd EDITION

In this new edition I have made some cosmetic changes to the layout, fonts and Qur'anic verses. Chapter 6 – Counterbalances to the executive power of the Khaleefah, has been completely reformatted to make it easier to read.

Section 1.4 - Binding the Khaleefah to specific conditions, has been rewritten because previously it came across that it was permitted to impose an unrestricted condition on the Bay'ah to bind the Khaleefah to a particular opinion. This is not correct. In origin it is not allowed unless it will unify the ummah for their own good. This is an exception to the general rule derived from the consensus (ijma) of the sahaba.

Chapter 8 - Accountability is a right of all citizens, contains a reference to an incident between Mu'awiya and Jariya which is partly narrated in Suyuti's book History of the Caliphs. However, the final part where Mu'awiya is discussing with the Romans is not narrated in Suyuti's book. It was taken from an old Al-Waie magazine article published in the mid 1990's. Instead of removing this last section I have added a reference to the Al-Waie magazine reference in the footnotes based on trust. If I find the full historical reference in the future then I will update this in a later edition.

I have left the original introduction because the examples are still relevant post Arab spring. The conclusion however has been updated.

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INTRODUCTION

Accountability (*muhasabah*) is not the first word that springs to mind when discussing the Muslim world. Dictatorship, rigged elections, tyranny and torture pretty much sum up most Muslim countries today. The level of cruelty inflicted upon the people easily rivals if not surpasses some of the worst oppression in history. Unfortunately for those living there accountability and the rule of law seem a distant dream.

Torture is routine in Muslim countries. Uzbekistan in Central Asia has literally boiled alive members of its Islamic political opposition. In Egypt, a man was filmed being tortured and sexually assaulted by police officers. The video even made its way on to the internet. But instead of the police officers being prosecuted the victim Imad Kabir was jailed for three months for 'resisting authority.'¹

Elections are farcical. The President of Uzbekistan Islam Karimov gained 91.9% of the vote in the 2000 elections. The sole opposition candidate Abdulhasiz Jalalov admitted he only entered the race to make it seem democratic and that he voted for Karimov.²

Most Muslim countries are dictatorships and police states. Pakistan's President Pervez Musharraf recently sacked the Chief Justice for opposing some of his policies. When judges and lawyers held protests against the sacking they were attacked and beaten by police.³

It's no wonder Muslims everywhere are crying out for an alternative to this dire situation. But what is the alternative?

America has made it clear it wants a 'new Middle East'. A Middle East according to Condoleezza Rice 'that strengthens the forces of peace and the forces of democracy in this region'.⁴ The invasion of Iraq was meant to herald the start of this new era. Washington promised to make Iraq so attractive a democratic model that it would set an example to the entire Middle East.⁵ The plan spectacularly failed. 'Democratic Iraq' is a model no-one wants to follow.

The failure to present democracy as an alternative to the dictatorships in the Muslim world has accelerated the drive towards Islam and the Khilafah. The majority of Muslims also want a 'new Middle East' but one where they live by *Shari'ah* not secular law.⁶

Sensing this growing tide for Islam, America turned its attention to the Islamic Khilafah ruling system presenting it as totalitarian, fascist state that could never bring accountability and good governance to the Muslim world. George Bush said:

This caliphate would be a totalitarian Islamic empire encompassing all current and former Muslim lands, stretching from Europe to North Africa, the Middle East, and Southeast Asia.⁷

*Power tends to corrupt; absolute power corrupts absolutely*⁸

Lord Acton's words may have been made in the nineteenth century but they ring true with many people today. Europe's experience living under tyrannical Kings in the Middle Ages led renaissance thinkers to establish models of government that would severely limit the powers of the ruler and hence the power to become corrupt.

Charles de Secondat baron de Montesquieu, an eighteenth century French political thinker, established the theory of separating powers of government between the executive, legislative and judicial branches.⁹ Other methods of limiting the power of government laid down were: specifying a time limit for the ruler as opposed to the medieval life-long monarchs, general elections giving people a choice over who rules them and sharing executive power among a cabinet of ministers.

These measures have no doubt prevented tyrant rulers such as those found in the Muslim world emerging in the west. But does this mean as some writers have insinuated that democracy is the only system with effective accountability? Abdulwahab El-Affendi in his book 'Who needs an Islamic State?' states:

By positing an in-built tendency in governments towards tyranny, it was possible to devise governments which would not allow rulers enough freedom to turn into tyrants, a quite successful arrangement. Thus, although former US president Richard Nixon may have had the potential to be as tyrannical as Joseph Stalin, he was prevented from achieving this by a system which restricted his despotic tendencies.

A major flaw, therefore, in the traditional Muslim perception of the Righteous Caliphate was the erroneous belief that the rules of government must be designed to fit rulers who were almost saints – saints do not need the rules anyway.¹⁰

This accusation that a Khilafah can only work if the Khaleefah is a saint is completely unfounded as will be discussed later. Such accusations have been repeated by many western academics,

politicians and commentators who have completely misunderstood the Khilafah ruling system and failed to appreciate its mechanisms of accountability.

Accountability in the Khilafah is guaranteed firstly through the institutions of government, secondly in the obligation to establish political parties and thirdly through an individual obligation on all the citizens.

These three areas will now be discussed in turn.

1 AUTHORITY OF THE KHALEEFAH

1.1 The *Bay'ah* (pledge of allegiance)

The second principle of the Islamic ruling system is that 'Authority belongs to the Ummah.'¹ The Khaleefah is not a King or dictator who imposes his authority on the people through coercion and force. The Khaleefah's authority to rule must be given willingly by the Muslims through the Islamic ruling contract known as *Bay'ah*.² Without this *Bay'ah* the Khaleefah cannot rule.

The *Bay'ah* contract is between two parties - the Khaleefah and the Muslims. The principle conditions of the *Bay'ah* are that the Khaleefah fulfils the seven mandatory conditions of his post and to implement *Shari'ah* upon the citizens of the state.³

The seven mandatory conditions of the Khaleefah's post are listed below.⁴ Violation of any of these will result in the impeachment of the Khaleefah and his removal from office unless the violation can be rectified.⁵

1. Muslim
2. Male
3. Mature
4. Sane
5. Just (*'adl*)
6. Free
7. Competent

As an example if it was proven that the Khaleefah drinks alcohol and womanises, this would make the Khaleefah a *fasiq* and would contradict the condition of him being just (*'adl*).

The Muslims must also fulfil their side of the *Bay'ah* contract which is to obey the Khaleefah openly giving him the clasp of their hands and secretly by the fruit of their hearts.

Muslim reported that the Messenger of Allah صلى الله عليه وسلم said: "Whosoever gave a *Bay'ah* to an Imam, giving him the clasp of his hand, and the fruit of his heart shall obey him as long as he can, and if another comes to dispute with him, you must strike the neck of that man."⁶

1.2 Appointing the Khaleefah

Since the time of the first Khaleefah of the Muslims - Abu Bakr Siddiq to the last - Abdul-Mejid II, every Khaleefah achieved his authority through the *Bay'ah*. The styles and means regarding the implementation of the *Bay'ah* differed and in some cases were misapplied, but nevertheless the *Bay'ah* process always remained in place.⁷

There are many *ahadith* detailing this *Bay'ah* process.

Muslim narrated on the authority of Abi Hazim who said: "I accompanied Abu Hurayra five years and I heard him talk about the Prophet صلى الله عليه وسلم saying: 'Banu Israel used to be governed by Prophets, every time a Prophet died, another came after him, and there is not Prophet after me. There will be Khulafa'a and they will number many'. They said: 'What would you order us to do?' He صلى الله عليه وسلم said: 'Fulfil the Bay'ah to them one after the other, and give them their due right, surely Allah will account them for that which He entrusted them with.'"⁸

In modern times the most appropriate style of conducting the *Bay'ah* is through a general election, where all mature Muslims, male and female have a right to vote for the Khaleefah of their choice.⁹ The Muslim representatives of the *Majlis ul-Ummah* will shortlist the candidates for the Khaleefah limiting them to six¹⁰ and the Muslims will then vote for one of the candidates of their choice.¹¹ If a general election is not possible due to time constraints then the *Majlis ul-Ummah* will simply vote on the final candidate themselves.

1.3 Khaleefah's Term of office

In contrast to a democratic system, the term of office of the Khaleefah cannot be limited to a specific time period. As long as the Khaleefah is abiding by the *Shari'ah*, executing its laws and able to perform the duties of state, he remains in office. This is because the textual evidences concerning the *Bay'ah* came as indefinite (*Mutlaq*) and not restricted to any specific period of time.

Anas b. Malik reported that the Messenger of Allah صلى الله عليه وسلم said: "Do hear and Obey, even if you were ruled by an Abyssinian slave, whose hair is like the raisin."¹²

In another narration He صلى الله عليه وسلم said: "As long as he leads you by the Book of Allah."¹³

In addition, all the Khulafa'a Rashideen (rightly guided Khaleefah's) were given an indefinite (*Mutlaq*) *Bay'ah* which is the one mentioned in the *Ahadith*. They were not in office for a limited period. Each one of them assumed the post of Khilafah until he died, and this represents a

general consensus (*ijma*) of the Sahabah (ra), confirming that the Khilafah does not have a limited term of office but is unrestricted. Thus if a Khaleefah is given a *Bay'ah*, he remains in office until he dies, resigns or is removed due to violating the *Bay'ah* conditions by the *Mahkamat Mazalim*.¹⁴

Without this restriction on the term of office, the Khaleefah can focus on long term strategic planning for the state instead of short-term planning from one election to the next as we find in democratic systems. It also prevents corporate interests from hijacking the government agenda through campaign contributions that any Presidential candidate or party in the west must secure to achieve power. The chairman of the US Federal Election Commission has predicted that in the 2008 American presidential elections each candidate will need \$500 million in order to compete.¹⁵

Limiting the term of office for the leader is an essential element of accountability in democracy but not for the Khilafah. The Khaleefah can be investigated at any time by the institutions of state and can be removed from office at any time if he violates the *Bay'ah*.

1.4 Binding the Khaleefah to specific conditions

The *Bay'ah* is a contract and as such it's allowed to add extra conditions to this contract that the Khaleefah must abide by, as long as these extra conditions do not violate the fundamentals of the contract. So it would be haram to impose a four year time limit on the *Bay'ah* contract due to the discussion above.

Also in origin it is not allowed to add a condition to the *Bay'ah* that obliges the Khaleefah to adopt a certain opinion because this contradicts the first executive mandatory power that adoption is for the Khaleefah only (see chapter 2). However, a condition can be added to the *Bay'ah* that obliges the Khaleefah to adopt a certain opinion if the unity of the Muslims requires this. This is because of the principle in *usul ul-fiqh* (foundations of Islamic law) that a Mujtahid can leave his *ijtihad* and adopt another opinion if it is intended to unify the Muslims for their own good.¹⁶

The evidence for this is derived from 'Uthman bin Affan's *Bay'ah* where he accepted to proceed according to the way of Abu Bakr and 'Umar (ra) in ruling. This is *ijma as-sahaba* as it happened in the presence of the Sahabah (ra) without any objection from them. A detailed account of Uthman's *Bay'ah* follows to illustrate this point.

Then Abdul-Rahman sought the opinion of the prominent figures in Madina, and asked all the Muslims in Madina one by one, men and women. He left no one without asking

him about whom, he or she, would like to be the Khaleefah from amongst that group. A group of them chose Uthman and another group chose Ali. Abdul-Rahman found that opinion was split between Uthman and Ali, and that the Qurayshis sided with Uthman.

Once Abdul-Rahman completed his fact finding mission and consulted all the people, men and women, he summoned the Muslims to the mosque and went up the Minbar (podium) with his sword on and his "Amama" (head-dress) which the Messenger of Allah صلى الله عليه وسلم gave him: He stood for a long while then spoke:

"O people! I have asked you openly and secretly about your Imam, and I found that you cannot place anyone on the same level as these two men: Ali and Uthman". Then he turned to Ali and said to him. "Come to me O Ali!" Ali stood and walked to the Minbar until he came underneath it. Abdul-Rahman took his hand and said: "Would you give me your Bay'ah according to the Book of Allah and the Sunnah of His Messenger and the (actions) of Abu Bakr and Umar?"

Ali replied: "By Allah no, but on my own exertion of that and my knowledge" – (i.e. I would give you my Bay'ah according to the Book of Allah and the Sunnah of His Messenger according to my own exertion of that and my knowledge of them.) "As for the actions of Abu Bakr and Umar, I do not adhere myself to them but exert my own opinion."

Abdul-Rahman then released his hand and called: "Come to me O Uthman!" He took his hand as he stood on the spot where Ali stood earlier and said to him: "Would you give me your Bay'ah according to the Book of Allah and the Sunnah of His Messenger as well as the actions of Abu Bakr and Umar?" Uthman replied, "By Allah yes." Upon this Abdul-Rahman looked up to the roof of the mosque with his hand clutching that of Uthman and said: "O Allah! Hear and witness; O Allah, I have put what was in my neck of that (matter) in the neck of Uthman."

Then people rushed to give their Bay'ah to Uthman until they overwhelmed him. Then Ali came pushing his way through to reach Uthman and gave him his Bay'ah. Thus Bay'ah was concluded to Uthman.¹⁷

It is therefore permitted to restrict the Khaleefah to certain constitutional processes such as the empowerment of the Majlis ul-Ummah and the judiciary as counterbalances to his executive power, if unity of the ummah demanded this.

2 EXECUTIVE BRANCH OF GOVERNMENT

2.1 Executive powers of the Khaleefah

The executive branch of government is responsible for the day-to-day management of the state. Islam does not believe in collective ruling where the executive powers are shared among a cabinet of ministers. In parliamentary democracy the Prime Minister is 'first among equals', having limited powers of interference in his cabinet minister's departments. Sharing executive power among government ministers with separate portfolios (departments) leads to immense bureaucracy and lengthy delays in resolutions to problems. It also leads to political infighting and rivalry between government departments.

In the Khilafah all executive powers are held with the Khaleefah. Although he will appoint Delegated assistants (*Mu'awin ut-Tafweed*) to manage various areas of the state, these Assistants are not independent but rather under the supervision and responsibility of the Khaleefah.¹

The executive powers of the Khaleefah are listed below.²

1. It is he who adopts the divine rules (*Akham Shar'iyya*) necessary for managing the affairs of the ummah, which are deduced through viable *ijtihad* from the Book of Allah and the Sunnah of His Messenger. Thus they become a binding law that must be obeyed and not objected.
2. He is responsible for the domestic and foreign policies of the State; he is the supreme commander in chief of all the armed forces and he has full powers to declare war, concludes peace treaties, truces and all other treaties.
3. He has the powers to accept foreign ambassadors and to refuse them, as well as the powers to appoint Muslim ambassadors and to remove them.
4. It is the Khaleefah who appoints and removes the assistants and *Walīs*; they are all responsible before him and before the Majlis ul-Ummah.
5. It is he who appoints and removes the Chief Justice (*Qadhil-Qudhat*), as well as the other judges excluding the judge of *mahkamat al-Mazalim*, where he appoints him, but he is restricted regarding his dismissal as is explained in the chapter on judiciary. He also appoints the managers of the administration departments, army commanders,

chiefs of staff, and the commanders in chief; they are all answerable to him and not to the Majlis ul-Ummah.

6. It is he who adopts the divine rules, in the light of which the State's budget is drafted, and he who decides the details of the budget and the funds allocated to each department, whether concerning revenues or expenses.

2.2 The Khaleefah is not above the law

Islam firmly believes in the rule of law. No one in the Khilafah including the Khaleefah himself is above the law or has immunity from prosecution. Benefit and harm are not excuses the Khilafah can use to violate this principle as we find western democratic states doing. America's suspension of all legal and international norms for suspects held in Guantanamo Bay is a prime example of this. US President Bush defended the CIA's rendition programme and torture of terror suspects as an extraordinary measure justified by the extraordinary circumstances of the fight against terrorism.³ British Prime Minister Tony Blair after the 7/7 bombings in London said, 'Let no-one be in any doubt, the rules of the game are changing.'⁴

The Prophet صلى الله عليه وسلم firmly established this principle of rule of law in the following hadith.

Narrated 'Aisha: The people of Quraish worried about the lady from Bani Makhzum who had committed theft. They asked, "Who will intercede for her with Allah's Apostle?" Some said, "No one dare to do so except Usama bin Zaid the beloved one to Allah's Apostle." When Usama spoke about that to Allah's Apostle Allah's Apostle said: "Do you try to intercede for somebody in a case connected with Allah's Prescribed Punishments?" Then he got up and delivered a sermon saying, "What destroyed the nations preceding you, was that if a noble amongst them stole, they would forgive him, and if a poor person amongst them stole, they would inflict Allah's Legal punishment on him. By Allah, if Fatima, the daughter of Muhammad stole, I would cut off her hand."⁵

2.3 Personality of the Khaleefah

Secular democracy emanates from the belief that religion should be kept completely separate from politics. The ruler in a democratic system is therefore not restrained from tyranny by fearing God or divine accountability. With this fundamental aspect of accountability missing i.e. fear of God (*taqwa*) the ruler in a democratic system is prone to tyranny if he isn't restrained by the mechanisms of government.

The Khaleefah is not a saint but a human being who is prone to mistakes. This is why such detailed accountability mechanisms exist within the Khilafah. Although the Khaleefah is not a

saint he must be Muslim and *'adl* (just). He cannot be a *fasiq* (transgressor) if he is to hold the post of Khaleefah. Islam also defined the personality traits the Khaleefah must hold to ensure he fulfils his responsibilities of office. The most important being strength, consciousness of Allah (*taqwa*), kindness and that he should not be one who causes aversion.⁶

A. STRENGTH

The Messenger of Allah صلى الله عليه وسلم stipulated that the ruler must be strong and that the weak person is not suitable to become ruler.

Muslim also narrated from Abu Dharr who said: "I said: O Messenger of Allah, will you not appoint me as a governor/ruler? He said: He struck my shoulder with his hand then said: O Abu Dhari, you are weak and it is a trust (*amanah*). On the Day of Judgement it will be a disgrace and regret except for the one who took it by its right and fulfilled his duty in it."⁷

The meaning of strength here is strength of personality i.e. intellectual and emotional strength. It is necessary that this intellect be the ruling intellect by which he understands matters and relationships, and that his emotional disposition (*nafsiyya*) is that of a ruler who understands he is a ruler so his inclinations are of a leader.

B. CONSCIOUSNESS OF ALLAH (TAQWA)

Since the personality trait of strength has within it the potential of domination there is an obvious need for the ruler to have an attribute which protects him from the evil of domination. It is therefore necessary that he has the attribute of *taqwa* within himself and in his taking care of the Ummah.

Muslim and Ahmad from Sulayman bin Buraydah from his father: "Whenever the Messenger of Allah صلى الله عليه وسلم would appoint an Amir over an army or expedition, he would command him with *taqwa* with himself and to be good to those Muslims who are with him."⁸

The ruler, if he is conscious of Allah and fears Him, and accounts Him in his own soul secretly and openly, then this would prevent him from tyranny in the first instance.

C. KINDNESS

Taqwa alone would not prevent the Khaleefah from harshness and severity since in his taking account of Allah he would restrict himself to His commands and prohibitions. And since he is a

ruler, it is natural in his position to be severe and hard, and because of this the Legislator (*Ash-Shari'*) commanded him to be friendly and not to be hostile to the citizens.

From Aisha who said: I heard the Messenger of Allah صلى الله عليه وسلم saying in his house of mine: "O Allah, whoever is appointed over any matter of my Ummah and is severe/hostile to them, then be severe/hostile to him! And whoever is appointed over any matter of my Ummah and is friendly to them, then be friendly to him!"⁹

D. DOESN'T CAUSE AVERSION

He also commanded to be one who gives glad tidings not one who repels or turns people away.

From Abu Musa who said: When the Messenger of Allah صلى الله عليه وسلم sent one of his companions in some of his affairs, he would say to him: "Give glad tidings and do not repel people, be easy and do not be hard (to the people)"¹⁰

These traits were not restricted to the Khulufa rashida (rightly guided Khaleefah's) alone but were embodied by many later Khulufa including the 20th century Khaleefah Abdul-Hamid II. This is not a flaw of the Khilafah as El-Affendi claims¹¹ but one of its strengths. Before any of the state accountability mechanisms kick in the Khaleefah is restrained by his Islamic belief and *taqwa*. This is illustrated in the following examples of Khaleefah's that are not part of the Khulufa rashida.

Once Khaleefah Mu'awiya said in a *khutba*. "Umar appointed me over Syria and then 'Uthman did so after him. By Allah, I never swindled nor monopolised. Then Allah appointed me to command, and I did well sometimes and badly sometimes." Then a man stood up and said, "O Mu'awiya! Rather you monopolised and were bad and neither good or just!" He said to the man, "Sit down. Why are you speaking?" They went on to exchange words with each other until Mu'awiya said, "Sit down or I will make you sit down." At which the man exclaimed, "I will not sit down! I will go as far from you as possible!" He made to leave and Mu'awiya said, "Bring him back." They brought him back and Mu'awiya said, "I ask Allah's forgiveness. I saw you when you came to the Messenger of Allah صلى الله عليه وسلم and greeted him and he returned the greeting to you and you were guided to him and he accepted it from you. You became a good Muslim. We have spoken harshly to you. Tell us what you need and I will give it to you and you will be pleased."¹²

In 1901, Dr Theodore Hertzil, founder of the Zionist movement visited Istanbul and tried to meet with Khaleefah Abdul-Hamid II. Abdul-Hamid refused to meet him and told his Head of the Ministers Council:

“Advise Dr Hertzil not to take any further steps in this project. I cannot give away a handful of the soil of this land for it is not my own, it is for all the Islamic Ummah. The Islamic Ummah that fought Jihad for the sake of this land and they have watered it with their blood.”¹³

3 LEGISLATIVE BRANCH OF GOVERNMENT

The first principle of the Islamic ruling system is that 'sovereignty is to *Shari'ah*.'¹ Allah سبحانه وتعالى says in the Holy Qur'an:

إِنِ الْحُكْمُ إِلَّا لِلَّهِ

The rule is to none but Allah.²

Unlike a King or dictator the Khaleefah cannot legislate laws from his own mind that suit his personal or family interests. Although the Khaleefah holds all executive powers within the Khilafah his powers are restricted by the *Shari'ah*. Many orientalist acknowledged this separation of powers within the Khilafah. C.A. Nallino said:

But these universal monarchs of Islam, just like all other Muslim sovereigns, while they possessed to an unlimited degree executive power and some judicial power, are entirely lacking in legislative power; because legislation properly so called can only be the divine law itself, the *Shari'ah*, of which the ulama, or doctors, are alone the interpreters.³

Thomas Arnold said:

The law being thus of divine origin demanded the obedience even of the Caliph himself, and theoretically at least the administration of the state was supposed to be brought into harmony with the dictates of the sacred law. It is true that by theory the Caliph could be a *mujtahid*, that is an authority on law, but the legal decisions of a *mujtahid* are limited to interpretation of the law in its application to such particular problems as may from time to time arise, and he is thus in no sense a creator of new legislation.⁴

One of the executive powers of the Khaleefah is that he has the right to adopt legislation for the Islamic state. Those with a weak understanding of *Shari'ah* and the legal processes involved may claim the Khilafah is similar to the medieval Christian Kingdoms of Europe. The Christian Kings believed in the Divine Right of Kings, a belief that legitimate kings were appointed by God and so were answerable to God alone. King, James I in 1609 said:

The state of monarchy is the supremest thing upon earth; for kings are not only God's lieutenants upon earth, and sit upon God's throne, but even by God himself they are called Gods.⁵

The King could therefore adopt any law he wished and his decrees were seen as divine. The Khaleefah cannot do this.

The mind is not a source of *Shari'ah*. The only sources of *Shari'ah* acceptable for legislation in the Khilafah are:

1. Qur'an
2. Sunnah
3. Consensus (*ijma*) of the Sahaba
4. Qiyas (analogy)⁶

Another argument against the Khaleefah is that he could 'pick and mix' rules from any of the above sources that benefit him. However, Islam didn't just define the sources of *Shari'ah* it also defined the intricate legal process to extract the laws known as *Istinbat*.

The Khilafah is forbidden from adopting any rule that is not correctly deduced from the four divine sources listed above. Furthermore, he is also restricted to the rules he has adopted and to the method of deduction (*istanbat*) that he has chosen for deducing the rules.⁷

The Council of the Ummah (*Majlis ul-Ummah*) and the Court of Unjust Acts (*Mahkamat Mazalim*) will scrutinise all legislation adopted by the Khaleefah to ensure it conforms to the Islamic sources and methodology of the state. The Court of Unjust Acts has the power to overturn any legislation not conforming to this process.

If the Khaleefah is not a *mujtahid* (legal scholar) he can appoint scholars who are experts in various fields of *Shari'ah* such as economy, ruling, social issues and health to legislate for the state. In this case the legislative branch would be institutionally independent as well. This was the case in the Ottoman Khilafah where the Shaikh ul-Islam was the legislative branch of the state. C.H. Becker said:

The Shaikh-ul-Islam takes equal rank with the Grand Vizier and is his deputy. Though independent as interpreter of the law, he is in his position himself an official who may be dismissed. So in this way, so far as individual persons are concerned, the problem of State-control and non-interference in religion is settled.⁸

The legislative branch of the Khilafah is therefore truly independent and the laws adopted are divine and superior to any man-made secular legislation in force today.

Western democracies in principle have legislative assemblies that are institutionally independent such as the UK Parliament and US Congress. But due to the party system, elected members of congress or parliament will generally vote along party lines.

America has a very strict separation of powers between the legislative and executive branches. But if the Republican Party dominates both the Presidency and Congress, as it did during Bush's first term of office, then this separation is meaningless in reality. If the legislative and executive branches are dominated by different parties, as we see at the end of Bush's second term of office, then there is political deadlock over many issues.

Furthermore, the legal process governing democratic legislation is extremely weak compared to the detailed legal process governing Islamic legislation. It was reported recently that most lawmakers in the US Congress do not bother to read the legislation they are passing and neither do any of their officials or staff! Instead, more often than not, members of Congress rely on summaries prepared by the bill's authors or by special interest groups whose judgment they trust.

Republican Brian Baird, (D-Wash) writing in the Washington Post recently penned an Op-Ed titled '*We Need to Read the Bills*.'⁹ The op-ed at first glance reads like something emanating from Michael Moore, yet it systematically and in a serious fashion highlights a notable gap between what most people think is a painstaking and deliberative legislative process in Congress and what actually happens. Baird's op-ed was in response to a particularly embarrassing episode, in which an anonymous individual inserted a provision into a large spending bill that was passed, allowing congressional staff to examine any individual American's income tax returns.

4 JUDICIAL BRANCH OF GOVERNMENT

The Khilafah's judiciary is responsible for issuing judgments that are enforced by the state. It settles disputes between people, prevents whatever may harm the rights of the community and also settles the disputes between people and any person who is part of the government, whether the Khaleefah, his cabinet, civil servants or any other person.¹

There are two types of judicial independence: Institutional and decisional independence. Institutional independence means the judicial branch is independent from the executive and legislative branches. Decisional independence is the idea that the judge should be able to decide the outcome of a trial solely based on the law and case itself, without letting the media, politics or other things sway their decision.²

The Khilafah's judiciary enshrines both institutional and decisional independence to a level that far exceeds any of the democratic states today.

3.1 Institutional independence

The Khilafah has an independent high court called the Court of Unjust Acts (*mahkamat mazalim*). It is presided over by the most eminent and qualified judges (*qadi muzalim*) in the state and granted extensive powers by the *Shari'ah*. It has the power to remove any official of state regardless of their role or rank, including, most importantly, the Khaleefah if he persists in pursuing a path that lies outside of the terms of his *Bay'ah*.

Ordinary citizens who have a complaint against the state can register it with the Court. The Majlis ul-Ummah can also refer disputes arising between itself and the Khaleefah to the Court.

What is unique about the Court of Unjust Acts, compared to other judicial courts, is that the Government Investigations Judge (*Qadi Muzalim*) has investigatory powers and does not require a plaintiff to register a complaint before launching an investigation. This court will therefore constantly monitor the actions of all officials of the state and the legislation adopted to ensure it conforms to *Shari'ah* and no oppression (*mazlama*) is committed against the people.³

The executive counterbalance to the power of this Court is by the Khaleefah in principle having the power to appoint and remove the Chief Justice and any judges below him. The Khaleefah can either give his Chief Justice the power to appoint all the *mazalim* judges or the Khaleefah himself can appoint them.⁴

In the times of the Sultans of Egypt and Ash-Sham the Court of Unjust Acts was known as the 'House of Justice' (*Dar al-'Adl*). The Sultan Al-Malik Al-Salih Ayyub appointed deputies to act on his behalf in the house of justice, where they sat to remove the *Mazalim*, and to gather the witnesses, judges and the *Faqihs*.⁵

Nasser O. Rabbat, Professor of Islamic Architecture at MIT describes the historical workings of the *Dar al-'Adl*.

This unique institution, which may be best translated in today's context as "palace of justice," was initially conceived for the *qada al-mazalim* service that is, for the public hearings held once or twice each week and presided over by the ruler himself or his appointed deputies to review and redress grievances submitted by his subjects. The earliest known *dar al-'adl* (pl. *dur al-'adl*) was built ca. 1163 by Nur al-Din Mahmud ibn Zanki in his capital Damascus, and the last one was constructed by the Mamluk Sultan al-Nasir Muhammad ibn Qalawun (r. 1294-1341, with two interruptions) at the Citadel of the Mountain (*Qal' at al-Jabal*) in Cairo in 1315 (it was rebuilt in 1334). Three more *dur al-'adl* are known to have been constructed between these two dates: one in Aleppo in 1189 by al-Zahir Ghazi, the son of Salah al-Din, one by al-kamil Muhammad in the Citadel of Cairo ca. 1207, and one by al-Zahir Baybars in 1262 on the slope of the spur upon which the Citadel of Cairo was built. After this no more *dur al-'adl* seem to have been built until modern times, then the palace of justice was introduced.⁶



Dar al-'Adl as represented by Robert Hay in his *Illustrations of Cairo* (1840).

3.2 Decisional independence

The *Shari'ah* explicitly states that a judge must give an honest, knowledgeable and unbiased judgement on a case.

The Prophet صلى الله عليه وسلم said: "Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to Hell; and a man who gives judgment for people when he is ignorant will go to Hell."⁷

The *Shari'ah* also specifies how the judge should act within the judicial court sitting.

The Messenger of Allah صلى الله عليه وسلم said: "Whoever Allah tests by letting him become a judge, should not let one party of a dispute sit near him without bringing the other party to sit near him. And he should fear Allah by his sitting, his looking to both of them and his judging to them. He should be careful not to look down to one as if the other was higher, he should be careful not to shout to one and not the other, and he should be careful of both of them."⁸

Al-Mawardi explains some of the specific qualities needed by the *Qadi Mazalim* due to his important position within the state.

Judicial investigation of wrongs or abuses is concerned with leading those who have committed wrongs to just behaviour by instilling fear in them, and with dissuading litigants from undue obstinacy in their disputes by instilling a feeling of respect. Thus among the qualities demanded of the judicial investigator is that he be of imposing stature, that he ensures action follows his words, that he commands great respect, is manifestly correct in his keeping within moral bounds, restrained in his appetites, and possessed of great scrupulousness: he needs to have the strength of the law-enforcement officers, and the firmness of the qadis in their judicial tasks and to combine the qualities of these two types of person, so that by the majesty of his bearing he is able to execute any command with respect to both parties.⁹

To ensure the *Qadi Mazalim* is free from political influence the *Shari'ah* has restricted the executive powers of the Khaleefah regarding the Qadi's removal from office. If the *Qadi Mazalim* is currently investigating a case against the Khaleefah, Delegated Assistant (*Mua'win ut-tafweeth*) or the Chief Justice (*Qadi al-Qudah*) then the Khaleefah cannot remove the *Qadi Mazalim* from his post. The evidence for this is the *Shari'ah* principle, 'the means that leads to haram is itself haram.'¹⁰

A question may arise that if the *Qadi Mazalim* issues a judgement against the Khaleefah can the Khaleefah abuse his authority and overturn the ruling?

There is no concept in the Khilafah of a 'Pardon' for crimes committed as exists in the west. The US constitution allows the President to Pardon all crimes except impeachment.

Article II, Section 2 states that the President: *shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.*

This gives the US President huge judicial power in overturning court rulings or even preventing prosecutions from taking place. The most famous 'misuse' of this power was by Gerald Ford in 1974. After Richard Nixon resigned from office due to the Watergate scandal his Vice-President Gerald Ford assumed the Presidency. In a televised address to the nation on 8 September 1974 President Ford gave Nixon a full and unconditional pardon for his part in the Watergate scandal, hence preventing any further judicial proceedings against him. Critics claimed that this was a 'corrupt bargain' between the two men. Nixon would resign giving Ford the Presidency in return for Ford giving Nixon a full pardon.¹¹ Either way such an incident can never take place in the Khilafah.

Once a judge (*qadi*) has passed a judgement on a matter then this ruling cannot be overturned by anyone in the state including the Khaleefah.¹²

Having said this, there is an appeal process for those judgements someone believes have been made on a basis other than *Shari'ah* or when new evidence comes to light that places doubt over the original witness testimonies. For example if a witness in a murder trial later admits he lied or the real murderer confesses then this judgement will be overturned. The Court of Unjust Acts is the appeal court for such cases.¹³

The Khilafah's judiciary is responsible for issuing judgments that are enforced by the state. Therefore once the *Qadi Mazalim* has issued a judgement against the Khaleefah it MUST be enforced by the institutions of state such as the army, police or state treasury (*Bait ul-Mal*). The Khaleefah cannot overturn the ruling under any circumstances and he will be forced if necessary to submit to it.

As an example if the Khaleefah introduced a new taxation to build a grand, new mosque to celebrate his 60th birthday, as King Hassan in Morocco did when he spent \$800 million on the Hassan II mosque in Casablanca, then the Court of Unjust Acts has the power to scrap this taxation. The *Bait ul-Mal* (State Treasury) would be forbidden from imposing this taxation and the Khaleefah would have no power whatsoever in this matter.

Ibn 'Umar said that when 'Umar ibn al-Khattab was in need, he used to go to the man in charge of the bait ul-mal and seek a loan from him. Often he might be in difficulty and the man in charge of the public treasury would come to him, seeking repayment of the debt and would oblige him to pay it, and 'Umar would be evasive to him. Then often 'Umar would receive his stipend and so pay his debt.¹⁴

Many examples exist within Islamic history to illustrate the decisional and political independence of judges within the Khilafah.

The Qadi Shurayh said: When Ali was setting out to Siffin, he found that he was missing a coat of armour of his. When the war was over and he returned to Kufah, he came across the armour in the hands of a Jew. He said to the Jew, "The armour is mine; I have not sold it or given it away." The Jew said, "It is my armour and it is in my hand." He said, "Let us go to the Qadi." Ali went first, sat beside Shurayh and said, "If it was not because my opponent is a Jew, I would have sat beside him in the gathering, but I heard the Prophet صلى الله عليه وسلم saying, "Humiliate them, since Allah has humiliated them." Shurayh said, "Speak Amir al-Muminin." He said, "Yes. This armour which this Jews has is my armour; I did not sell it and I did not give it away." Shurayh said, "What do you say Jew?" He said, "It is my armour and it is in my possession." Shurayh said, "Do you have any evidence Amir al-Muminin?" He said, "Yes. Qanbar and al-Hasan will witness that the armour is mine." Shurayh said, "A son's witness it not acceptable on behalf of his father." Ali said, "A man from the Garden, and his testimony is not acceptable? I heard the Prophet صلى الله عليه وسلم saying, 'Al-Hasan and al-Hussein are the two lords of the youth of the people of the Garden.'" The Jew said, "The Amir al-Muminin brought me before his Qadi, and his Qadi gave judgement against him. I witness that this is the truth, and I witness that there is no god but Allah and I witness that Muhammad is the messenger of Allah, and that the armour is your armour."¹⁵

In the time of the Abbasid Khilafah, it is narrated that Khaleefah al-Ma'mun (813 – 833CE, 191AH), used to personally sit in the court for grievances on Sundays. On one such day a women in rags confronted him complaining that her land had been seized.

Al-Ma'mun then asked her: "Against whom do you lodge a complaint?" She replied: "The one standing by your side, al-'Abbas, the son of the Amir of the Believers." Al-Ma'mun then told his Qadi, Yahya ibn Aktam, (while others say that it was his wazir Ahmad ibn Abi Khalid), to hold a sitting with both of them and to investigate the case – which he did in the presence of al-Ma'mun. When the women raised her voice and one of the attendants reprimanded her, al-Ma'mun said: "Leave her, for surely it is the truth which is making her speak, and falsehood which is causing him to be silent," and he ordered that her land be restored to her.¹⁶

5 COUNCIL OF THE UMMAH (*MAJLIS UL-UMMAH*)

The *Majlis al-Ummah* has its evidence in the rule of *shura* (consultation) that is a right given to Muslims by the *Shari'ah*. Allah سبحانه وتعالى says in the Holy Qur'an:

وَشَاوِرْهُمْ فِي الْأَمْرِ

And do consult them in the matter¹

The *Majlis al-Ummah* is an elected council whose members can be Muslim, non-Muslim, men or women. These members represent the interests of their constituencies within the state. The *majlis* has no powers of legislation like in a democratic parliament but it does have many powers that act as a counterbalance to the executive powers of the Khaleefah.

Members of the *majlis* can voice their political opinions freely without fear of imprisonment or rebuke. Along with its mandatory powers listed below this makes the *Majlis ul-Ummah* a very powerful institution for accounting the Khaleefah and his government.

The *Majlis ul-Ummah* has the following mandatory powers:²

1. **a.** To be consulted by the Khaleefah or to advise him on the practical matters and actions which do not need scrutiny or research, such as: affairs of ruling, education, health, and the economy, industry, farming and the like; and its opinion in that is binding.

b. However in the matters which require scrutiny and research and the technical matters, the financial, the military and the foreign policy, the Khaleefah has the right to refer to the *majlis* for consultation and seeking an opinion; however the opinion of *majlis* in such matters is not binding.
2. The *Majlis* has the right to account the Khaleefah regarding all the actions that the state has actually executed, whether they were of the domestic or foreign matters, or the finance or the army and the like. The view of the *Majlis* is binding wherever the majority opinion is binding and not binding wherever the majority opinion is not.
3. The *Majlis* has the right to express dissatisfaction with the assistants, governors, and mayors; and in this matter the view of the *Majlis* is binding and the Khaleefah must discharge them at once.

4. The Khaleefah may refer to the Majlis the rules, the constitution and canons, that he intends to adopt. Muslim members of the Majlis have the right to discuss them and express their views about them, but their opinion is not binding.

5. To select the list of candidates standing for the position of Khaleefah; no candidate excluded from this list may stand and the decision of the Majlis is binding. Only Muslim members of the majlis may participate in drawing up this list.

6 COUNTERBALANCES TO THE EXECUTIVE POWER OF THE KHALEEFAH

The following table summarises the counterbalances within the Khilafah to the executive power of the Khaleefah. Each constitution article is taken from the book 'The draft constitution of the Khilafah State. The Introduction and the incumbent reasons' *Muqadimatud-Dustur Aw al-Asbabul Mujibatulah*, by Taqiudeen an-Nabahani.

Executive Power 1	
Article 35 A. It is he who adopts the divine rules (Akham Shar'iyya) necessary for managing the affairs of the ummah, which are deduced through viable ijtiḥad from the Book of Allah and the Sunnah of His Messenger. Thus they become a binding law that must be obeyed and not objected.	
Majlis ul-Ummah	Article 107 4. The Khaleefah may refer to the Majlis the rules, the constitution and canons, that he intends to adopt. Muslim members of the Majlis have the right to discuss them and express their views about them, but their opinion is not binding.
Legislative Branch (Shari'ah)	Article 12 The only evidences to be considered for the divine rules (AHkam Shara'iah) are: the Qur'an, the Sunnah, the consensus of the Companions (ijma' as-sahabah) and analogy (qiyas). Legislation cannot be taken from any source other than these evidences. Article 36 The Khaleefah is restricted in what he adopts by the AHkam Shara'iah. He is forbidden to adopt any rule that is not soundly deduced from the divine texts. He is restricted to the rules he has adopted and to the method for deduction that he has chosen. Accordingly, he is prevented from adopting a rule deduced by a method that contradicts the method he has adopted, and he must not enact any command that contradicts the rules he has adopted.
Judiciary	Article 78 The judge of the mahkamah ul-mazalim is appointed to remove all unjust acts, committed by the Khaleefah, governor(s), or any official of the State, that have been inflicted upon anyone - whether that person is a citizen or not - living in the domain of the State.

Article 79

Judges in the mahkamat ul-mazalim are appointed by the Khaleefah or the chief judge. As for their accounting , disciplining and dismissal, this is carried by the Khaleefah, the mahkamat ul-mazalim or the chief judge if authorised by the Khaleefah to do so. However, it is not allowed to dismiss him during his investigation in an unjust act against the Khaleefah, mua'win ut-tafweedh or the chief judge.

Article 80

There is no limit on the number of judges that can be appointed for the Unjust Acts. The Khaleefah can appoint as many as he may deem necessary to eradicate the unjust acts. Although it is permitted for more than one judge to sit in a court session, only one judge has the authority to pronounce a verdict. The other judges only assist and provide advice, and their advice is not binding on the judge authorised to pronounce the verdict.

Article 81

The mahkamat ul-mazalim has the authority to dismiss any ruler, governor and official of the State, including the Khaleefah.

Article 82

The mahkamat ul-mazalim has the authority to investigate any case of iniquity, whether it be connected with officials of the State, the Khaleefah's deviation from the divine rules, interpretation of the legislative texts in the constitution, canons and divine rules within the framework adopted by the Khaleefah or the imposition of a tax, etc.

Article 83

The judicature of the Unjust Acts is not restricted by a court session or the request of the defendant or the presence of the plaintiff. It has the authority to look into any case of injustice even if there is no plaintiff.

Executive Power 2	
<p>Article 35</p> <p>B. He is responsible for the domestic and foreign policies of the State; he is the supreme commander in chief of all the armed forces and he has full powers to declare war, concludes peace treaties, truces and all other treaties.</p>	
<i>Majlis ul-Ummah</i>	<p>Article 107</p> <p>2. The Majlis has the right to account the Khaleefah regarding all the actions that the state has actually executed, whether they were of the domestic or foreign matters, or the finance or the army and the like. The view of the Majlis is binding wherever the majority opinion is binding and not binding wherever the majority opinion is not.</p>
Legislative Branch (<i>Shari'ah</i>)	Same as executive power 1
Judiciary	Same as executive power 1

Executive Power 3	
<p>Article 35</p> <p>C. He has the powers to accept (foreign) ambassadors and to refuse them, as well as the powers to appoint Muslim ambassadors and to remove them.</p>	
<i>Majlis ul-Ummah</i>	Same as executive power 2
Legislative Branch (<i>Shari'ah</i>)	Same as executive power 1
Judiciary	Same as executive power 1

Executive Power 4	
<p>Article 35</p> <p>D. It is the <i>Khaleefah</i> who appoints and removes the assistants and Walis; they are all responsible before him and before the Majlis ul-Ummah.</p>	
<i>Majlis ul-Ummah</i>	<p>Article 107</p> <p>3. The Majlis has the right to express dissatisfaction with the assistants, governors, and mayors; and in this matter the view of the Majlis is binding and the Khaleefah must discharge them at once.</p>
Legislative Branch (<i>Shari'ah</i>)	Same as executive power 1
Judiciary	Same as executive power 1

Executive Power 5	
<p>Article 35</p> <p>E. It is he who appoints and removes the supreme judge (<i>Qadhil-Qudhat</i>), as well as the other judges excluding the judge of mahkamat al-Mazalim, where he appoints him, but he is restricted regarding his dismissal. He also appoints the managers of the administration departments, army commanders, chiefs of staff, and the commanders in chief; they are all answerable to him and not to the Majlis ul-Ummah.</p>	
<i>Majlis ul-Ummah</i>	No powers
Legislative Branch (<i>Shari'ah</i>)	Same as executive power 1
Judiciary	Same as executive power 1

Executive Power 6	
<p>Article 35</p> <p>F. It is he who adopts the divine rules, in the light of which the State's budget is drafted, and he who decides the details of the budget and the funds allocated to each department, whether concerning revenues or expenses.</p>	
<i>Majlis ul-Ummah</i>	<p>Article 107</p> <p>1A. To be consulted by the Khaleefah or to advise him on the practical matters and actions which do not need scrutiny or research, such as: affairs of ruling, education, health, and the economy, industry, farming and the like; and its opinion in that is binding.</p>
Legislative Branch (<i>Shari'ah</i>)	Same as executive power 1
Judiciary	Same as executive power 1

7 POLITICAL PARTIES

In addition to the institutionalised mechanisms of accountability discussed so far, Islam also ordered the establishment of political parties. Although members of the government will in many cases be members of political parties the Khilafah does not have a party system of ruling as found in western democracies.

Political parties in the Khilafah are established primarily to account the Khaleefah and his government. Their task is to safeguard the thoughts of Islam in society and to ensure the government does not deviate from the implementation and propagation of Islam.

The right of the Khilafah's citizens to establish political parties is established from the Holy Qur'an. No permission is required from the government to establish these parties as the legislative branch of the Khilafah - *Shari'ah* has given permission for this.

The following verse of the Holy Qur'an orders the establishment of political parties.

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ ۗ وَأُولَٰئِكَ هُمُ الْمُفْلِحُونَ

**Let there arise from amongst you a group which calls to al-Khair (Islam),
enjoins al-ma'ruf (good) and forbids al-munkar (evil),
and they are the successful ones.¹**

The order to establish a group is an order to establish political parties. This is deduced from the fact that the verse has determined the duty of this group which is the call to Islam, enjoining the *Ma'aruf* (good), and forbidding the *Munkar* (evil). The duty of enjoining *Ma'aruf* and forbidding *Munkar* is general and not restricted. It therefore includes the rulers and this implies holding them accountable. The holding of the rulers accountable is a political task performed by the political parties and it is the most important task of the political parties.

Thus the verse indicates the duty of establishing political parties which would call to Islam, enjoin *Ma'aruf* and forbid *Munkar*, and would hold the rulers accountable for their actions and conduct.²

The importance and power of political parties within society cannot be underestimated. Individuals have a very limited impact when accounting governments. It's very easy for the government to either ignore the individual or even imprison them preventing their message getting through. Without coordinated mass effort they can never influence public opinion enough

to be effective in their accountability. Political parties if structured correctly and unified in their message can literally move mountains when it comes to influencing public opinion and the policies of government.

The brutal suppression of opposition parties in the Muslim world shows how much the rulers fear political parties as a threat to their rule. Islam Karimov in Uzbekistan even resorted to boiling alive his political opposition in an attempt to curb their influence. According to Human Rights Watch:

Muzafar Avazov, a 35 year old father of four, was killed at the brutal Jaslik jail. Human rights groups said that the body showed signs of burns on the legs, buttocks, lower back and arms, indicating that he was boiled to death. Not content with this the 63 year old mother of Muzafar Avazov was then sentenced to 6 years imprisonment and hard labour for informing human rights groups of her son's brutal murder.³

Despite these shocking brutal tactics by the Uzbek regime the Islamic political opposition in Uzbekistan remains stronger than ever.

The strength and power of parties can also be seen in the time of the Prophet صلى الله عليه وسلم and the sahaba in Mecca.

The Islamic call was known from the first day the Messenger of Allah صلى الله عليه وسلم received the message. People in Makkah had known all along that Muhammad صلى الله عليه وسلم was calling for a new Deen, and that scores of people had embraced Islam. They also knew that Muhammad صلى الله عليه وسلم was gathering his companions and looking after them, and that the Muslims concealed themselves from the rest of the Quraysh while they grouped together and learned about their new Deen.

People in Makkah were aware of this new call and of those who believed in it, but they never knew where they met or who they were. That is why when the Messenger of Allah صلى الله عليه وسلم proclaimed his new belief, it did not come as a surprise. What surprised Makkah was the emergence of this new group of Muslims. The Muslims had gained a great deal of strength when Hamzah ibn 'Abd al-Muttalib embraced Islam, followed by 'Umar ibn al-Khattab three days later. Then came the revelation of Allah سبحانه وتعالى:

فَاصْلِحْ بِمَا تُؤْمَرُ وَأَعْرِضْ عَنِ الْمُشْرِكِينَ

**Therefore, proclaim openly (Allah's Message),
that which you are commanded,
and turn away from Al-Mushrikun⁴**

Allah's Messenger صلى الله عليه وسلم duly obeyed Allah's command and presented his group to all of Makkah. He صلى الله عليه وسلم went out with his Sahabah in two lines, one led by 'Umar and the other by Hamzah. The Sahabah walked in a manner that the Quraysh had never witnessed before. He صلى الله عليه وسلم then circumambulated the Ka'bah with them.

This is the stage when Allah's Messenger صلى الله عليه وسلم moved with his Sahabah from the secret phase to the open one, from calling and addressing and inviting those whom he felt were ready to answer his call, to addressing all people.

The disbelievers then began resisting and fighting the Da'wah, inflicting in the process all kinds of harm and injury on the Messenger of Allah صلى الله عليه وسلم and his Sahabah. This phase was one of the most severe.⁵

8 ACCOUNTABILITY IS A RIGHT OF ALL CITIZENS

Accounting the Khilafah is a right of all citizens of the state whether Muslim or non-Muslim. Although their representatives in the *Majlis ul-Ummah* will undertake this task on their behalf they still have a right and a duty in some cases to perform this task themselves.

Political apathy is a growing problem in the west. General elections are seeing fewer people voting especially young people. Growing individualism among society is leading people to ignore the problems facing their communities and wider society and be concerned only with themselves.

Islam not only obliged political parties with the task of enjoining *Ma'aruf* and forbidding *Munkar* but also individuals.

The Prophet صلى الله عليه وسلم said: "By Him in whose hand is my soul, you must enjoin the Ma'aruf and forbid the Munkar, otherwise Allah will be about to send His punishment upon you. And then if you pray to Him (to ask Him), he would not answer you."¹

Islam described the importance of accounting the tyrant ruler even if it led to death.

The Prophet صلى الله عليه وسلم said: "The master of martyrs is Hamza bin Abdul-Muttalib and a man who stood to an oppressor ruler where he ordered him and forbade him so he (the ruler) killed him."²

The duty of enjoining *Ma'aruf* and forbidding *Munkar* is carried with individuals wherever they are. Those working in the media will use their position for accounting the government as will those working in other fields.

The ordinary Muslims within the Khilafah will fear none but Allah سبحانه وتعالى. This will give them the strength to confront the Khaleefah and strongly account him when necessary. This is illustrated in the following example from the time of Khaleefah Mu'awiya (ra).

One day, Jariya Ibnu Qudama Al-Saadi entered to Mu'awiya who, at the time, was the head of the Islamic state. Three of the Roman emperor's ministers happened to be also present. Mu'awiya said to Jariya: Were you not one of Ali's allies in all of his opinions? Jariya said: Leave Ali (may Allah honour him) aside, for we have not despised him since we loved him, nor have we cheated him since we advised him.

Upon this Mu'awiya said to him: Woe to you o Jariya! You must have been lowly in your parents' eyes, for they called you Jariya (meaning slave girl or maid).

Jariya replied: You must have been lowly in your parents' eyes, for they called you Mu'awiya, the bitch on heat who barked and lured the dogs.

Mu'awiya shouted: Shut up you motherless one! Jariya replied: You shut up o Mu'awiya (he did not say Amir of the believers), for I have a mother who bore me for the swords with which we faced you one day. Then we have given you our pledge of allegiance, to hear and to obey, so long as you rule us by what Allah has revealed. So if you fulfil your promise, we fulfil our loyalty to you, and if you fail to keep up your promise, remember that we have left behind us some ferocious men and plenty of armour, they shall not let you abuse or harm them.

Mu'awiya yelled: May Allah rid us of the likes of you!

Jariya replied: You! (again he did not say Emir of the believers), say something good and be courteous, for the worst rulers are in hell fire. Jariya then left, fuming with anger without even asking Mu'awiya permission to leave.

The three ministers turned to Mu'awiya and one of them said: Our emperor would not be addressed by any of his subjects unless the subject were prostrating with his forehead at the base of his throne. If the voice of one of the closest people to him or any of his immediate family were to be raised, they could be cut to pieces, or burnt, so how could this rough desert Arab, with his ill-mannered behaviour, come and threaten you like this? As if he was your equal?

Mu'awiya smiled then said: I rule over men, who are fearless of any censurer when it comes to the truth, and all my folk are like this desert Arab, none of them prostrate save to Allah سبحانه وتعالى, none of them keep silent over an injustice and I am no superior, nor better than any of them except in piety. I have said some harsh words to the man and he rightly responded, I was the one who started, thus I am more to blame than he.

Upon hearing this, the senior Roman minister burst out crying, so Mu'awiya asked the reason why, so he said: We had thought before today that we were your equals in terms of protection and force, but after witnessing this, I fear that one day you would spread your authority over our empire.³

CONCLUSION

The Muslim world is crying out for an alternative, accountable system that looks after the interests of its people. The west is pushing democracy and the secular civil state as this alternative system, but democracy is an alien, man-made system that has no place in the Muslim world.

The Khilafah is the only system of government that successfully ruled the Muslim world for 1300 years. Since the destruction of the Khilafah the Muslim world has tried all types of governing systems.

After decades of brutal suppression some elements of accountability have now started to appear in the Muslim world post Arab Spring. Even so, we must remember as Muslims the accountability mechanisms, institutions and what issues are open to be accounted on, must be based on shariah alone. Regardless of the greater accountability offered in democratic civil states post Arab Spring, the only acceptable ruling system is the Khilafah. Benefit and harm is not a valid criteria to judge ruling systems. Only the halal and haram defines what is a *husn* (good) ruling system and what is a *qubh* (bad) ruling system. Our minds may perceive benefit in limiting the ruler's term of office to 4 years as we see in the man-made Republican System, but this benefit is rejected because it contradicts the shariah which imposes no time limit on the Khaleefah.

وَعَسَىٰ أَنْ تَكْرَهُوا شَيْئًا وَهُوَ خَيْرٌ لَّكُمْ ۖ وَعَسَىٰ أَنْ تُحِبُّوا شَيْئًا وَهُوَ شَرٌّ لَّكُمْ ۗ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ

It may be that you hate something when it is good for you and it may be that you love something when it is bad for you. Allah knows and you do not know.¹

It's time now for Muslims to return back to the Khilafah so they can bring the Muslim world out of its darkness and in to the light of Islam under the shade of the Khilafah.

الرَّ ۗ كِتَابٌ أَنْزَلْنَاهُ إِلَيْكَ لِتُخْرِجَ النَّاسَ مِنَ الظُّلُمَاتِ إِلَى النُّورِ بِإِذْنِ رَبِّهِمْ إِلَى صِرَاطٍ الْعَزِيزِ الْحَمِيدِ

***Alif Laam Ra.* We have sent down to you this Book in order that you bring mankind from darkness to the light by the permission of your Lord, to the Path of the Almighty, the Praised.²**

Abdul-Kareem Jamil
Shawwal 1433, September 2012

NOTES

Introduction

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Conclusion

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