

What is the Land of Islam?

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This booklet is a re-examination of the concept of ‘land of Islam’ in the *fiqh* (understanding) of the classic schools of the Islamic jurisprudence. The objective is to understand the criteria that jurists use for rendering a certain land to be a ‘Land of Islam’. A careful study in the classic sources reveals that neither Muslims being a majority, nor the application of the corporal part of the Islamic criminal law (*hudud*), is a valid criterion. The study also reveals that the fundamental criteria used in the Islamic jurisprudence have to do with security (*al-amn*), freedom to practice the Islamic acts of worship (*sha'a'ir al-islam*), and justice (*al-adl*). Thus, although a comprehensive and realistic survey/index is required, a rough assessment of how many Muslim-minority countries in general fare on the surveyed criteria gives them a relatively high score on the ‘Land of Islam’ scale.

Fiqh for minorities?

One of the main concepts that shape Muslim minorities’ worldview is the concept of ‘Muslim countries’, or in other expressions, the ‘Islamic World’, or the ‘Land of Islam’. This concept has a strong impact on the ‘contextualisation’ of Muslims in the Muslim-minority countries.

First, because some Muslim minorities perceive that they live in a ‘non-Muslim’ or ‘disbelieving’ land, they give themselves a special status of an exceptional case, in which they think that the principles of justice and honesty do not apply to their dealings in this land. Some other Muslims, including some who are American, European, African

or Asian to the roots and to the core, always yearn to live in the ‘Land of Islam’. A few of them venture to immigrate or ‘move back’ to that land, only to face an unexpected and sometimes shocking reality. Moreover, and quite unfortunately, a few but loud groups of Muslims take the view that because they do not live in the ‘Land of Islam’, therefore they live in the ‘Land of War’. Bad politics and clash-of-civilizations advocates, also quite unfortunately, give these groups additional justifications to commit crimes –in the name of Islam– against the land they live in and their fellow citizens, and thus, add fuel to an already vicious cycle. Last but not least, a feeling that a Muslim belonging to a minority does not live in his or her ‘natural’ and ‘default’ Land of Islam goes against their other feelings of belonging and identification. This conflict has serious implications on a number of issues, from politics and education to community participation and citizenship.

This booklet is examining the concept of ‘land of Islam’ in various Islamic classic schools of law. The objective is to understand whether this concept is an absolute concept that is defined via certain geographical borders, or it is, rather, a concept that is relative to certain values and conditions. Thus, this booklet is asking two questions:

1. What are the criteria for judging a certain geographical area to be a ‘Land of Islam’, in the Classic Islamic Jurisprudence sense? In this regard, reference is made to popular classic sources, in addition to modern interpretations of them.
2. Based on these criteria, how can we assess a certain geographical/political area as being close to the ideal ‘Land of Islam’?

Sharī'ah* versus *Fiqh

Before discussing definitions of '*dar al-Islam*' (land of Islam), one must note that this whole discussion does not fall in the area of *sharī'ah* (the constant Islamic divine way). It falls rather in the area of *fiqh* (which is the human understanding of this divine way).

The word *fiqh* is used in the Qur'an and hadith in various forms to refer to the process of understanding, comprehension, and gaining knowledge of the religion in general. Eventually, and since the end of the era of the imams of the Islamic schools of law/thought around the third Islamic century, the word *fiqh* has been typically defined as, 'knowledge of practical revealed rulings extracted from detailed evidences'.¹ 'Detailed evidences' are verses from the Qur'an and narrations of prophetic hadith.

On the other hand, the term '*sharī'ah* law' has negative connotations in the English language, because it is normally used to refer to various corporal punishments used in some countries. Statistically speaking, these punishments have been applied predominantly on the weak and marginalised in these societies. This partial application raises serious questions about the political motives behind applying these punishments, regardless of the juridical/theological debates over them.

Nevertheless, the word *sharī'ah* is used in the Qur'an to mean a 'revealed way of life,' for example, the word '*shir'ah*' in *Surat al-Ma'idah*, {To each of you We prescribed a

¹ For example: Abu Zahra, Mohammad, *Usul Al-Fiqh*. Dar al-Fikr al-Arabi, Cairo, 1958, p.5.

law and a way} (5:48), and the word *sharī'ah* in *Surat al-Jathiyah*. {Then We put you, [O Mu'ammad], on an ordained way concerning the matter [of religion]; so follow it and do not follow the inclinations of those who do not know} (45:18). Yusuf Ali translated them as 'Law' and 'Way,' respectively. Picktall translated them as 'divine law' and 'road.' Irving translated them as 'code of law' and 'highroad.'

However, an orientalist view does not differentiate between shariah and fiqh. In the First Encyclopaedia of Islam, Schacht defines *shari'ah* as a 'canon law' that is sometimes 'synonymous' with *fiqh*. He wrote:

SHARĠA (A) also SHAR` (originally infinitive), the road to the watering place, the clear path to be followed the path which the believer has to tread, the religion of Islam, as a technical term, the canon law of Islam, the totality of Allah's commandments ... *Fikh* (along with the sciences of *tafsir* and *hadith* and the ancillary sciences) is the science of the *shari`a* or the *shar`i`* (c.f. FIKH) and sometimes be used as synonymous with it, and the *`usūl al-fikh* are also called *usūl al-shar`*.²

Nevertheless, for believers, it is important to differentiate *fiqh* from *sharī'ah*. First, the two terms refer to two different meanings; *fiqh* represents the 'human' part of the Islamic law, while *sharī'ah*, by definition, represents the 'heavenly' part of this law, for the believers. Thus, the term *faqīh* is used for people with 'understanding' (*fahm*),³

² J. Schacht, 'Shari'ah,' in: Houtsma, M. Th., T. W. Arnold, R. Basset, and R. Hartmann (eds.), First Encyclopaedia of Islam 1913-1936, Leiden, New York, Copenhagen, Koln: E.J. Brill, 1987, vol. 4, p.320.

³ Ibn Taymiyah, Ahmad, Kutub Wa Rasa'il Wa Fatwa. Edited by Abdur-Rahman al-Najdi. 2nd ed. Maktabat Ibn Taymiyah, Riyadh, without date, vol.13, p.113.

‘perception’ (*taṣawwur*),⁴ and ‘cognition’ (*idrāk*),⁵ and is not to be used for God.⁶ This is because, for the believers, *fiqh* is an attribute of deficiency, rather than an attribute of perfection. On the other hand, the term *Al-Shāri* (‘The Legislator’) refers to God himself,⁷ and could not be used for humans, except for the Prophet, when he ‘conveys a message from God’.⁸

This differentiation entails the following two consequences, which have a direct impact on the concepts of ‘land of Islam’ and ‘land of war’:

1. *Fiqh* could not claim to be ‘infallible’ or ‘perfect’, and a *faqih* could possibly be right or wrong on any opinion. Scholars (*Fuqaha*) correct each other via juridical debating (*munazarah*). *Sharī’ah*, for the believers, cannot be wrong, because the Qur’an and the prophetic sayings, when the Prophet conveys a message from God, are truths in their own right.
2. *Fiqh* is changeable, and in fact must change with the change of place and time (except for the ritual acts of worship). *Sharī’ah*, for the believers, does not change with the change of space and time.

Thus, blurring the line between *fiqh* and *sharī’ah* does not allow the changeable parts of the law to ‘evolve’ with the change of time and place. Moreover, it gives way to claims of

⁴ Al-Subki, Ali, *Al-’Ibhaj Fi Sharh Al-Minhaj*. Dar al-Nashr, Beirut, 1983, vol.1, p.39.

⁵ Al-Haj, Ibn Amir, *Al-Taqrir Wal-Tahbir Fi ’Ilm Usul Al-Fiqh*. Dar al-fikr, Beirut, 1996, vol.1, p.26.

⁶ For example, Shaikhi-Zadah, Abdel-Rahman, *Majma’ Al-Anhur*. Dar al-Kutub al-Ilmiyah, Beirut, 1998, vol.1, p.11.

⁷ For example, *Ibid*.

⁸ Ibn Ashur, al-Tahir, *Alaysa Al-Subh Bi-Qareeb? Al-Sharikah al-Tunusiyah le-Funun al-Rassm*, Tunis, 1988, Ch.6.

‘divinity’ and ‘sanctity’ in human juridical *ijtihād*/opinions. Historically, these claims have resulted in two serious phenomena, namely, mutual accusations of heresy and resistance of renewal in the Islamic law.⁹

The above analysis applies directly to the *fiqhi* concepts/constructs of ‘*dar al-Islam*’ and ‘*dar al-Ḥarb*’, both of which are mentioned nowhere in the Islamic scripts of Quran and hadith, to start with. In other words, the concept of a ‘*dar*’ is not ‘revealed *sharī‘ah*’, contrary to some current opinions.¹⁰ It is merely a *fiqhi* interpretation of the *sharī‘ah* that had its historical context. It could be valid, but is not ‘infallible’ and is indeed ‘changeable’.

Classic Definitions of *Dar al-Islam*

For the sake of this booklet, a survey was carried out on the concept of the ‘Land of Islam’ (*dar al-islam*) in the main classic sources of the Islamic law known today, which includes various Sunni, Shia, and Ibadi Schools of Law, and related contemporary studies. The results of the survey reveal some interesting facts and popular misconceptions. First, the two current popular criteria that define whether or not a country is ‘Islamic’ or part of the ‘Land of Islam’ are not supported by any school of the Islamic law.

1. The first criteria is having some sort of a 50% +1 majority of Muslims, regardless of whether the constitution states that it is a ‘secular country’, such as in Turkey, whether the constitution does not define any specific religion for that country, such as in Nigeria or Indonesia,

⁹ A more detailed discussion in: Auda, Jasser, *Maqasid al- Shariah as Philosophy of Islamic Law: A Systems Approach*, International Institute of Islamic Thought (IIIT), London, 2008, Ch.3.

¹⁰ For example: Ismail Fatani, *Ikhtilaf Al-Darain*, 2nd ed., Dar al-Salam, Cairo, 1998.

whether the head of state is non-Muslim, such as in Lebanon, or whether the Islamic rituals and acts of worship are not generally practiced, such as in a number of former Soviet Union States. In fact, a number of classic judicial sources from various schools clearly state that the issue of Muslims being a majority or a minority in a certain country is irrelevant to a land being a 'Land of Islam'.¹¹

2. The other popular criteria, which was recently applied to a rural region of tribal Pakistan in an attempt to get it out of the 'Land of War' zone (!), is the application of the Islamic criminal law (especially the corporal part known as *hudud*). However, we also did not find any explicit mention in any classic school of Islamic law that relates the 'Islamicity' of a land or a state specifically to the application of *hudud*.

To answer the question 'what are the classic criteria for a Land of Islam', the results of the survey carried out for the sake of this study could be summarised in the following five criteria.

1. A land where Islamic rules (*ahkam al-islam*) apply.¹²

¹¹ For example: Al-Qummi Al-Naisaburi, Nizamuddin (d. 728 h). Tafsir Ghara'ib al-Qur'an, Dar al-Kutub al-Ilmiyyah, Beirut, 1996, vol.3, p.459, and Al-Bayhaqi, Ahmad Ibn Al-Hussein (d. 458 h). Sunan al-Bayhaqi al-Kubra, Dar al-Bazz, Mecca, 1994, vol.9, p.16.

¹² For example: Ibn Al-Qayyim, Shamsuddin (d. 751 h). Ahkam Ahl al-Dhimmah, Beirut: Ramady/Ibn Hazm, 1997, vol.2, p.728, Reda, Rashid. Fatawa, Compiled by: Salahuddin Al-Munajjid and Yusuf Khouri, Beirut: Dar al-Kitab-al-Jadeed, 1390 h, Al-Qummi Al-Naisaburi, Tafsir Ghara'ib al-Qur'an, vol.3, p.459, Al-Sarakhsi, Shamsuddin (d. 483 h). Dar Al-Marifa, Beirut, without date, vol.9, p. 182, and Al-Yunini, Qutbuddin (d. 726 h). Dhail Mir'at al-Zaman, Amman: Al-Turath, without date, vol.2, p.58.

2. A land where a Muslim ruler has control (*isteela'*) over its affairs.¹³
3. A land of security (*al-amn*).¹⁴
4. A land where the practicing of public acts of worship (*sha-a'ir al-islam*) is allowed.¹⁵
5. A 'Land of Justice' (*dar al-'adl*).¹⁶

The following is a brief analysis of each of these concepts and their implications.

¹³ For example: Al-Mawardi, Ali Ibn Mohammad (d. 450 h) *Alawi al-Kabeer fi Fiqh Madhab al-Imam al-Shafie*, Dar al-Kutub, Beirut, 1999, vol.14, p.267, Reda, Fatawa, Reda, Rashid. *Al-Khilafah*, Al-Zahraa, Cairo, without date, p.50, Al-Mawardi, Ali Ibn Mohammad (d. 450 h). *Al-Ahkam al-Sultaniyah wal-Wilayat al-Diniyah*, Dar al-Kutub al-Ilmiyah, Beirut, 1985, vol..1, p.22, Al-Mawsili, Abdullah (d. 683 h). *Al-Ikhtiyan*, Dar al-Kutub Al-Ilmiyah, Beirut, 2005, vol.4, p.178, and Al-Qummi Al-Naisaburi, vol.3, p.459.

¹⁴ For example: Al-Bayhaqi, vol.9, p.16, Al-Kasani, Alauddin(d. 587 h). *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, Dar al-Kitab al-'Arabi, Beirut, 1982, vol.7, p.131, Al-Sarakhsi, vol.9, p. 182.

¹⁵ For example: Ibn Taymiyah, Ahmad (d. 728 h). *Al-Nubuwa*, Al-Matba'ah Al-Salafiyah, Cairo, 1386 h, vol.1, p.197, Al-Razi, Mohammad Ibn Omar (d. 606 h). *Al-Mahsul*, Jamiat Al-Imam, Riyad, 1400 h, vol.4, p.43, Al-Mawardi, Ali Ibn Mohammad (d. 450 h). *Al-Ahkam al-Sultaniyah wal-Wilayat al-Diniyah*, Dar al-Kutub al-Ilmiyah, Beirut, 1985, vol..1, p.275, Al-Nasa'i, Ahmad, (d. 303 h). *Al-Jum'ah*, Al-Turath, Amman, without date, p.10, Al-Kalabadhi Al-Bukhari, Abu-Bakr (d. 384 h). *Bahr al-Fawa'id*, Dar Al-Kutub Al-Ilmiyah, Beirut, 1999, vol.1, p.130, Al-Mawardi, Ali Ibn Mohammad (d. 450 h) *Al-Hawi al-Kabeer fi Fiqh Madhab al-Imam al-Shafie*, Dar al-Kutub, Beirut, 1999, vol.2, p.48, Ibn Al-Arabi, Abu BAKr (d 543 h). *Ahkam al-Quran*, Dar al-Fikr, Lebanon, vol.1, p.368, Ibn Al-Arabi, Abu BAKr (d 543 h). *Ahkam al-Quran*, Dar al-Fikr, Lebanon, vol.1, p.530, Al-Kasani, Alauddin(d. 587 h). *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, Dar al-Kitab al-'Arabi, Beirut, 1982, vol.7, p.113, Al-Razi, Mohammad Ibn Omar (d. 604 h). *Al-Tafsir Al-Kabeer*, Dar Al-Kutub Al-Ilmiyah, Beirut, vol.32, p.108, Al-Mawsili, Abdullah (d. 683 h). *Al-Ikhtiyan*, Dar al-Kutub Al-Ilmiyah, Beirut, 2005, vol.4, p.178, Al-Yunini, Qutbuddin (d. 726 h). *Dhail Mir'at al-Zaman*, Al-Turath, Amman, without date, vol.2, p.58, Ibn Taymiyah, Ahmad (d. 728 h). *Kutub wa Rasa'il wa Fatawa*, Maktabat Ibn Taymiyah, without date, vol.23, p.146, and Ibn Taymiyah, *Kutub wa Rasa'il wa Fatawa*, Maktabat Ibn Taymiyah, vol.28, p.408.

¹⁶ For example: Ibn Taymiyah, Ahmad (d. 728 h). *Kutub wa Rasa'il wa Fatawa*, Maktabat Ibn Taymiyah, without date, vol.28, p.146, Reda, Al-Khilafah, p.50, 62, Al-Mawardi, Al-Ahkam al-Sultaniyah, vol.1, p.22, Al-Sarakhsi, Shamsuddin (d. 483 h). *Al-Usul*, Dar Al-Marifa, Beirut, without date, vol.9, p. 182, Al-Kasani, Alauddin(d. 587 h). *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, Dar al-Kitab al-'Arabi, Beirut, 1982, vol.7, p.80, Ibn Qudamah, Abdullah Al-Maqdisi (d. 620 h). *Al-Mughni fi Fiqh al-Imam Ahmad*, Dar Al-Fikr, Beirut, 1405 h, vol.9, p.14, Al-Nawawi, Muhammad (d. 676 h). *Rawdat al-Talibin wa 'Umdat al-Muftim*, Al-Maktabat Al-Islami, Beirut, 1405 h, vol.10, p.49, Al-Zar'i, Mohmmad Ibn Abu Bakr (d. 751h). *Al-Jawab al-Kafi Liman Sa'al 'an al-Dawa' al-Shafi*, Dar al-Kutub Al-Ilmiyah, Beirut, 1405 h, vol.1, p.101, Ibn Abidin, Mohammad (d. 1252 h). *Hashiyat Raddul-Mukhtar*, Dar al-Fikr, Beirut, 2000, vol.4, p.45, Al-Alusi, Shihabuddin (d 1270 h). *Ruh al-Ma'ani fi Tafsir al-Quran al-'Adheem*, Dar Ihya al-Turath al-'Arabi, Beirut, without date, vol.18, p.91, Nizam, al-Sheikh. *Al-Fatawa al-Hindiyah*, Dar al-Fikr, 1991, vol.2, p.179, Reda, Rashid. *Al-Khilafah*, Al-Zahraa, Cairo, without date, p.50.

The ‘Land of Islamic Rulings’

A popular definition of the Land of Islam in classic sources is, ‘the land where the Islamic rulings are applied’.¹⁷ The question is: What are these ‘Islamic rulings’? There is a popular (mis-)conception that the application of the Islamic rulings in a society is synonymous with the codification of the Islamic law in its legal system. However, the very concept of law, in the *qanun* (legal system) sense, was not known in Muslim-majority countries until late nineteenth century.¹⁸ It is indeed a concept that has a ‘post-colonial’ context, the analysis of which is beyond the scope of this booklet. Nevertheless, it is safe to assume that the ‘application of the Sharī’ah in the legal system’, or ‘Sharī’ah-compliant laws’, were definitely not part of the ‘Land of Islam’ classic interpretation.

I had an interesting conversation with a Muslim convert from London, U.K., which is quite relevant to this research. He insisted that every law in the Europe is ‘non-Islamic’, and when I asked him to explain why, he said: Because the legislators are not Muslims. I asked: The laws that criminalise theft, killing, monopoly, bribery, abuse, and so on, aren’t these ‘Islamic laws’. He said: No, because the people proposed them are not Muslim. I replied: But that is irrelevant, isn’t it? He replied: No, because they did not have the right ‘intention’ (*niyyah*) when they proposed them. I asked: What do you think their intent was? He said: The intent behind these laws is the achievement of justice. I exclaimed: Isn’t justice an ‘Islamic’ intent for the law? He replied: No, because they applied justice because it best served the material well-being of the people, not because it is

¹⁷ For example: ref 1, 4, 5, 12, 32. Ibn Al-Qayyim, *Ahkam Ahl al-Dhimmah*, vol.2, p.728, Reda, *Fatawa*, Al-Qummi Al-Naisaburi, vol.3, p.459, Al-Sarakhsi, vol.9, p. 182, and Al-Yunini, *Dhail Mir’at al-Zaman*, vol.2, p.58.

¹⁸ Rashid Reda, ‘Mujmal Al-Ahwal Al-Siyasiyah,’ *al-‘Urwah al-Wuthqa*, Feb. 29th, 1898 CE.

ordained by God. I replied: But the well-being of the people is exactly the purpose of God's order to establish justice, isn't it? He disagreed.

The conversation outlined above show the general (mis-)perception of the 'non-Islamic' versus 'Islamic' dichotomy in the 'application of the Islamic rulings' in a society. In the classic texts, however, the 'Islamic ruling' (*aḥkam al-islam*) were explained in several other senses, which the rest of this booklet will attempt to investigate.

The 'Land of a Muslim Ruler'

To have a Muslim ruler in 'control' (*isteela*) over the affairs of a certain land is a criterion that some classic and contemporary scholars used for judging that a certain land is indeed a 'Land of Islam'.¹⁹ Al-Mawardi, for example, explicitly mentions that 'when Muslims reside in and control a certain land, it becomes a Land of Islam'.²⁰

However, this criterion is subject to a number of conditions to be valid, prime of which is the ability of Muslims to practice their religious obligations, a public feeling of security, and the application of justice. A Muslim ruler who fails to observe or work towards these obligations jeopardises the status of 'Land of Islam' of his jurisdiction. Sheikh Rashid Reda summarizes these conditions as follows:

Indeed, many countries that are governed by Muslim leaders are countries where one is forced against practicing his/her religion and cannot reveal everything he/she believes in or fulfils his/her practical Islamic obliga-

¹⁹ For example: Al-Mawardi, *Al-Hawi al-Kabeer*, vol.14, p.267, Reda, *Fatawa*, Al-Qummi Al-Naisaburi, vol.3, p.459, and Al-Bayhaqi, *Sunan al-Bayhaqi*, vol.9, p.16.

²⁰ Al-Mawardi, *Al-Hawi al-Kabeer*, vol.14, p.267.

tions, especially enjoying good, forbidden evil, and the ability to criticise rulings that go against the Divine Law. This land, according to some scholars, is a 'Land of War'.

Thus, the existence of enough security and freedom to allow Muslims to practice religion is, juridically speaking, more essential than the religion of the ruler.

The 'Land of Security'

In fact, a number of Imams stated that security is the purpose (*maqṣud*) of the Land of Islam versus Land of War classification, to start with, and not 'Islam' versus 'non-Islam' per se.

For example, Imam Abu Hanifa states:

The purpose (*maqṣud*) of calling a certain land a 'Land of Islam' or a 'land of disbelief (*kufr*)' is not Islam versus *kufr*. It is security versus insecurity.²¹

Mecca itself – according to Imam al-Bayhaqi for example – became a 'Land of Islam' after its 'conquest' only because of its newly found sense of security. He writes:

Mecca became a 'Land of Islam' and 'land of security' after its conquest because no one there was forced against his/her religion. Any other land is likewise if it acquires the same kind of security.²²

It is clear from the classic definitions too that security itself is means to the end of freedom to practice the Islamic 'public acts of worship' (Arabic: *sha'a'ir al-islam*). Sev-

²¹ Al-Kasani, Bada'i' al-Sana'i', vol.7, p.131.

²² Al-Bayhaqi, Sunan al-Bayhaqi, vol.9, p.16.

eral scholars mentioned that a Muslims who have enough security and freedom to practice *sha'a'ir al-islam* actually live in a 'Land of Islam', even if they were minority. Al-Qummi Al-Naisaburi explains:

Muslims, even a minority, are prevailing over non-Muslims, even if they were a majority, if they are not prevented from practicing the public Islamic acts of worship (*sha'a'ir al-islam*).²³

The next section elaborates on these Islamic public acts of worship, which appear to form a rather basic criterion for judging a land to be a 'Land of Islam'.

The 'Land of Freedom to practice Islam'

The majority of scholars and schools of Islamic law find this criterion to be the 'true sign that a certain land is a Land of Islam'.²⁴ Many of them refer to certain prophetic traditions during the times of war and interpret them to mean that certain acts, such as group prayers in the mosque, the call for prayer (*adhan*), pilgrimage, the celebration of *Eid*, and so on, identify the 'land of Islam'. Al-Mawardi, for example, writes:

The public acts of worship (*sha'a'ir*) of Islam such as group prayers in mosques and call for prayers are the criteria by which the Prophet, peace be upon him, differentiated between the Land of Islam and the Land of Disbelief.²⁵

²³ Al-Qummi Al-Naisaburi, *Tafsir Ghara'ib al-Qur'an*, vol.3, p.459.

²⁴ Ibn Taymiyah, *Al-Nubuwwat*, vol.1, p.197.

²⁵ Al-Mawardi, *Al-Ahkam al-Sultaniyah*, vol.1, p.275.

Perhaps it is useful here to reiterate that Al-Mawardi's 'land of Islam' and 'land of disbelief' expressions are not expressions that appeared in the text of the narrations. They are his own '*fiqh*' or understanding of them. This understanding, however, is shared by a large number of jurists. Al-Razi, for example, writes:

If the Islamic acts of worship are evident in streets and public places, this certainly entails that Islam is dominant.²⁶

Ibn Taymiyah writes:

The public acts of worship (*shā'a'ir*) of Islam are the true signs that a certain land is a Land of Islam.²⁷

These 'public acts of worship' (*shā'a'ir*) include a variety of Islamic rituals, which include one or more of the following, according to the various schools of law that were included in the survey:

1. The daily five prayers.²⁸
2. The Call (*azan*) for the prayers.²⁹
3. Friday prayers.³⁰
4. Fasting in Ramaḍan.³¹

²⁶ Al-Razi, Al-Mahsul, vol.4, p.43.

²⁷ Ibn Taymiyah, Al-Nubuwwat, vol.1, p.197.

²⁸ Al-Mawardi, Al-Ahkam al-Sultaniyah, vol.1, p.275, Ibn Al-Arabi, Ahkam al-Quran, vol.1, p.368, 530, Al-Razi, Al-Tafsir, vol.32, p.108, and Ibn Taymiyah, Kutub wa Rasa'il, vol.28, p.408.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibn Al-Arabi, Ahkam al-Quran, vol.1, p.530.

5. Giving the annual (*zakah*) charity.³²
6. Pilgrimage (*Hajj*).³³
7. Ablution (*Wudu*).³⁴
8. Festival (*eid*) prayers.³⁵
9. Recitation the Qur'an.³⁶
10. Circumcision (of boys).³⁷
11. Sacrificing animals (to feed the poor).³⁸
12. Building mosques, and especially minarets.³⁹
13. Greeting people with 'peace be upon you'.⁴⁰
14. Charitable endowments (*awaqaf*).⁴¹

Thus, if Muslims are allowed to practice the above acts of worship in a given land, this land becomes a 'Land of Freedom to practice Islam'; an expression that is synonymous with the 'Land of Islam' according to many sources. But if we objectively as-

³² Al-Razi, Al-Tafsir, vol.32, p.108.

³³ Al-Kalabadhi Al-Bukhari, Bahr al-Fawa'id, vol.1, p.130.

³⁴ Ibid.

³⁵ Al-Mawardi, Al-Hawi al-Kabeer, vol.2, p.48.

³⁶ Ibn Al-Arabi, Ahkam al-Quran, vol.1, p.368, and Ibn Taymiyah, Kutub wa Rasa'il, vol.28, p.408.

³⁷ Al-Kalabadhi Al-Bukhari, Bahr al-Fawa'id, vol.1, p.130.

³⁸ Ibid., vol.23, p.146.

³⁹ Ibid., vol.28, p.408, and Al-Yunini, Dhail Mir'at al-Zaman, vol.2, p.58.

⁴⁰ Al-Kasani, Bada'i' al-Sana'i', vol.7, p.113.

⁴¹ Al-Yunini, Dhail Mir'at al-Zaman, vol.2, p.58.

sess various countries, provinces, regions, or cities around the world based on Muslims' freedom to practice the above specific Islamic acts of worship, and create some sort of 'index' for them, we will quickly realise that many countries and regions where Muslims live as a minority, would easily score a full score, more or less. This imaginary 'index' would directly suggest changing or re-interpreting the definition of the 'land of Islam' to include these countries and cities in it.

The 'Land of Justice' (*Dar al-ʿadl*)

This criterion, the achievement of justice, is so central in the Islamic concept of 'Land of Islam' to the extent that the 'land of justice' term interchangeably with the 'Land of Islam' term in numerous sources.⁴² Justice is the basis of all of the above criteria, according to many Islamic jurists, and hence more fundamental in the Islamic principles and purposes. Thus, an 'Islamic leadership' that is not based on justice and is based on 'ethnic solidarity' (*aṣabiyyah*) does not constitute a valid condition for the 'Land of Islam'. Rashid Rēḍa, for example, explains:

The land of justice, which is the Land of Islam, is a land that has a true leader who establishes justice. This is contrary to the 'land of injustice and aggression', in which governorship is based on some 'ethnic

⁴² For example: Ibn Taymiyah, *Kutub wa Rasa'il*, vol.28, p.146, Reda, *Al-Khilafah*, p.50, 62, Al-Mawardi, *Al-Ahkam al-Sultaniyah*, vol.1, p.22, Al-Sarakhsi, *al-Usul*, vol.9, p. 182, Al-Kasani, *Bada'i' al-Sana'i'*, vol.7, p.80, Ibn Qudamah, *Al-Mughni*, vol.9, p.14, Al-Nawawi, *Rawdat al-Talibin*, vol.10, p.49, Al-Zar'i, *Al-Jawab al-Kafi*, vol.1, p.101, Ibn Abidin, *Hashiyat Raddul-Mukhtar*, vol.4, p.45, Al-Alusi, *Ruh al-Ma'ani*, vol.18, p.91, Nizam, *Al-Fatawa al-Hindiyah*, vol.2, p.179, and Reda, *Al-Khilafah*, p.50.

solidarity' (*aṣabiyyah*), practiced by some Muslims, regardless of the establishment of the Islamic rulings.⁴³

Al-Mawardi also stresses the importance of 'competence' and a 'good character' of the leader in the 'Land of Justice'. He writes:

People who are qualified to make decisions in the Land of Justice should choose a leader who possesses a good character and competency.⁴⁴

Ibn Taymiyah holds the 'achievement of justice' in a state as most fundamental and deserving of God's support, even for a 'nation of disbelievers'. He writes:

In this life, people prevail when justice prevails in their society even if they fall into various kinds of sins. However, people will not prevail when injustice and lack of rights prevail in their society. That is why the saying goes: God upholds a state established on justice, even if it were a nation of disbelievers, and would not uphold a state established on injustice, even if it were a nation of Muslims. The other saying goes: This world lives with justice and disbelief, and does not live with injustice and Islam. The Prophet, peace be upon him, had said: 'No sin has a faster Divine punishment than the sin of injustice ...'. Thus, people of injustice fail in this life, even if they were to be forgiven in the hereafter. This is because justice is the universal law of things.⁴⁵

⁴³ Reda, Ibid.

⁴⁴ Al-Mawardi, Ibid.

⁴⁵ Ibn Taymiyah, Ibid.

The “abrogating” verse of the “sword”

Finally, it is important to mention in the context of the “Land of Islam” that some Muslims consider it to be simply the opposite of the “Land of War”, and that some uninformed but loud voices, unfortunately, link the concept of the Land of War with the concept of the abrogating “Verse of the Sword”.

Abrogation (*Naskh*) literally means cancellation or annulment (*Ezalah*).⁴⁶ A typical definition of abrogation found in the Jurisprudence literature is: ‘The (heavenly) replacement of one juridical ruling with a later ruling.’ Mainstream jurists support this definition⁴⁷ and the variations of the definition they suggest demonstrate little functional difference.⁴⁸

Nonetheless, abrogation is one of the concepts in Islamic jurisprudence that resulted in some questionable decrees. One key example is verse 9:5 of the Quran, which has come to be named “The Verse of the Sword” (*Ayat-us-Sayf*). It states: “But when the forbidden months are past, then fight and slay the Pagans wherever you find them, and seize them.”

⁴⁶ Al-Razi, *Mukhtar Al-Sihah*, under “*Na Sa Kha*”, Maktabat Libnan, 1989.

⁴⁷ Al-Shafi’i, *Al-Resalah*, p.108, Dar Al-Fikr, Beirut, without date; Al-Shirazi, *Al-Luma’ fi Usul Al-Fiqh*, vol.1, p.58, Dar Al-Kutub Al-‘Ilmiyah, Beirut, 1985; Al-Mujaddadi Al-Barakati, *Qawa’ed Al-Fiqh*, vol.1, p.212, Al-Sadaf, Karachi, 1986; Ibn Hazm, *Al-Nubthah Al-Kafeyah*, vol.1, p.43, Dar Al-Kutub Al-‘Ilmiyah, Beirut, 1405 (*Hijri*); Al-Juwaini, *Al-Burhan fi Usul Al-Fiqh*, vol.2, p.842, Dar Al-Wafa’, Mansoura, 1418 (*Hijri*); Al-Shawkani, *Irshad Al-Fuhool*, vol.1, p.244, Dar Al-Fikr, Beirut, 1992; Ibn Taymiyah, *Al-Musawwadah fi Usul Al-Fiqh*, Vol.1, p.176, Al-Madani, Cairo, without date; Al-Amedi, *Al-Ihkaam fi Usul Al-Ahkam*, vol.3, p.126, Dar Al-Kitab Al-Arabi, Beirut, 1404 (*Hijri*); Ibn Hazm, *Al-Ihkaam fi Usul Al-Ahkam*, vol.7, p.379, Dar Al-Hadith, Cairo, 1404 (*Hijri*); Al-Ghazali, *Al-Mustasfa fi Usul Al-Fiqh*, vol.1, p.86, Dar Al-Kutub Al-‘Ilmiyah, Beirut, 1413 (*Hijri*).

⁴⁸ For example, one variation addresses the issue of whether the first ruling was “meant” to be replaced by the second one or was otherwise meant to last for a specific period of time regardless of the second one (*Al-Burhan*, vol.2, p.842). Another variation addresses the issue of whether abrogation is a form of “clarification” rather than “substitution” or not (*Al-Musawwadah*, vol.1, p.176), and Ibn Taymiyah supported the “clarification” phrase to dispel the idea that God has a time dimension. A third variation queries whether a Scriptural expression that implies generality or continuity could be abrogated or not (*Al-Musawwadah*, vol.1, p.176).

Although the context of the verse in Chapter 9 is a specific battle with the Pagans of Mecca, the verse was claimed to be the “abrogating” final and absolute ruling in dealing with non-Muslims outside the “Land of Islam”. And this single verse was claimed to have “abrogated” more than two hundred verses of the Quran, all preaching dialogue, freedom of belief, forgiveness, peace and even patience!⁴⁹

A broad survey on the Quran and the main collections of *Hadith* (the famous “nine books”, namely, *Bukhari*, *Muslim*, *Tirmithi*, *Nasa’i*, *Abu Dawud*, *Ibn Majah*, *Ahmad*, *Malik*, and *Darami*)⁵⁰ reveals a rather interesting fact: The term “abrogation of rulings” (*Naskh al-Ahkaam*) is mentioned nowhere in the Quran or the words of the Prophet. The actual word “abrogation,” however, is mentioned in the following senses.

The Quranic verse 2:106 states: “Not an *ayah* (verse or miracle) do We ‘abrogate’ or *nunsiha* (cause to be forgotten or delayed), but We substitute something better or similar.”⁵¹

The Arabic word *ayah* could mean a Quranic verse and could also mean a miracle, proof,

⁴⁹ Refer to the common books of Exegesis (*Tafseer*) regarding this verse (9:5); for example, *Al-Tabari*, *Al-Baidawi*, *Al-Zamakhshari*, *Ibn Kathir*, *Al-Jalaleen*, etc., and how the verse was claimed to abrogate verses like, “No compulsion in the religion,” “Forgive them,” “And if they incline to peace, then incline to it,” “You have your religion and I have my religion,” “Allah does not love those who transgress,” etc.

⁵⁰ This collection includes virtually all narrations of *Hadith* cited in the literature of the major Schools of Thought: Imam Al-Bukhari, *Bukhari’s Authentic Collection*, Dar Al-Qalam, Beirut, 1987; Imam Muslim, *Muslim’s Authentic Collection*, Dar Ihya’ Al-Turath Al-Arabi, Beirut, 1954; Imam Al-Tirmithi, *Sunan Al-Tirmithi*, Dar Al-Kutub Al-Ilmiyah, without date; Imam Al-Nasa’i, *Sunan Al-Nasa’i*, Dar Al-Basha’ir Al-Islamiyah, 1986; Imam Abu Dawud, *Sunan Abi Dawud*, Al-Maktabah Al-‘Asriyah, Beirut, without date; Imam Ibn Majah Al-Qazwini, *Sunan Ibn Majah*, Dar Ihya’ Al-Turath Al-Arabi, without date; Imam Ahmed Ibn Hanbal, *Musnad Al-Imam Ahmad*, Dar Al-Ma’arif, Cairo, 1949; Imam Malik Ibn Anas, *Al-Muwatta’*, Dar Ihya’ Al-‘Ulum, 1988; and Imam Al-Darami, *Sunan Al-Darami*, Dar Al-Kitab Al-Arabi, 1987. (Enumeration of all *Ahadith* cited from the above books and used throughout this paper is according to Sakhr Software’s enumeration in their *Encyclopedia of Hadith*, www.sakhr.com)

⁵¹ There is one other verse in the Quran that has a similar meaning; Quran 16:101: “We substitute one *ayah* for another,” and the word “*ayah*” can hold the same two meanings.

or sign. The word *nunsiha* (which means ‘cause to be forgotten’) could also be read as “*nunsi’ha*” (which means ‘cause to be delayed’).⁵² Therefore, interpreting *ayah* as “miracle” and *nunsiha* as “cause to be delayed” implies that Prophet Mohammad was not given certain miracles that were granted other prophets before him and that God determines the timing of the miracle itself – an interpretation supported by several scholars.⁵³ However, interpreting *ayah* as “verse” and *nunsiha* as “cause to be forgotten,” which is the opinion of most scholars, implies the abrogation (i.e., omission) of some Quranic verses. This interpretation suggests that certain verses were recited as part of the Quran for a specific period of time and later omitted from the written Script at the request of the Prophet. This kind of abrogation is termed “omitting the written Script” (*Naskh al-Rasm*). Although the majority of scholars support this type of abrogation, the narrations they cite are not at the degree of authenticity as Quranic verses.⁵⁴ Moreover, several of these narrations reveal that the narrator (companion) was not sure whether the statement under consideration was a verse of the Quran or a saying of the Prophet himself.⁵⁵

Whatever the case may be regarding the omission of verses from the Script (*Naskh al-Rasm*), mainstream jurisprudence and exegesis literature uses the verse cited above as a proof for a different kind of abrogation, the abrogation of rulings (*Naskh al-Hukm*) im-

⁵² Refer to the books of *Tafseer* regarding this verse (2:106) by Al-Qurtubi, Al-Nasafi and Ibn Kathir.

⁵³ Like Muhammad Al-Ghazali and Muhammad Abdu. Refer to Muhammad Al-Ghazali, *Nazaraat fi Al-Qur’an*, p. 203,204, Nahdat Masr, Cairo, 2002.

⁵⁴ Not most-popular (*Mutawatir*). For example, *Bukhari* No. 2591, 2603, and 3786.

⁵⁵ Ibid.

plied by, both, the Quran and the *Hadith*.⁵⁶ Yet, there is no Quranic evidence for the “abrogation of rulings”.

Nevertheless, the term “abrogation of rulings” is mentioned within the collections of *Hadith* under consideration in about forty contexts (excluding the repeated narrations).⁵⁷

These are the key examples upon which the whole concept of “abrogation of rulings” was established in the different Schools of Thought.

The survey confirms that “abrogation of rulings” is not mentioned in the body (*Matn*) of any *Hadith*, i.e., within the words of the Prophet himself, in all of the above instances. It was introduced clearly as an explanation given by the narrator (whether a companion or commentator) for verses and narrations that were thought to imply conflicting or contradicting rulings. Moreover, a difference of opinion about the applicability of abrogation to each specific occasion occurred in most of the instances. This is further proof that the “abrogation of rulings” was a hypothesized explanation rather than a juridical indisputable fact. The following are some examples that support this conclusion.

⁵⁶ For example, Bukhari in his collection on authentic *Hadith* (No. 4121, which is quoted by most jurists), *Nasa'i* (*Hadith* No. 3442) and *Ahmad* (*Hadith* No. 20172).

⁵⁷ In the following locations: *Bukhari* (*Hadith* No. 1813, 2128, 2542, 2553, 4121, 4145, 4147, 4224 and 4725), *Muslim* (*Hadith* No. 35, 179, 436, 518, 524, 526, 1597, 1875, 1931, 2938, 3643, 3724, 4117 and 5226), *Tirmithi* (*Hadith* No. 357, 1364, 1493 and 2883), *Nasa'i* (*Hadith* No. 3442, 3487 and 2498), *Abu Dawud* (*Hadith* No. 1109, 2068, 2144, 2434, 2485, 3187, 3296 and 3584), *Ibn Majah* (*Hadith* No. 2356), *Ahmad* (*Hadith* No. 8976 and 19006), *Malik* (*Hadith* No. 1118 and 1205), and *Darimi* (*Hadith* No. 3129, 3130 and 3131).

Abu Dawud narrates in *Hadith* No. 2485 that Ibn ‘Abbas, the companion, recited the verse, “It is prescribed, when death approaches any of you, if he leaves any goods that he makes a bequest to parents and next of kin, according to reasonable usage”⁵⁸ and then went on to say that the ruling of inheritance⁵⁹ abrogated the ruling of bequests. Ibn ‘Abbas assumed that there was a contradiction between the two rulings that could not be resolved except through the claim that one of them abrogated the other. However, numerous scholars have pointed out that the two rulings are not at odds and could be both applied simultaneously. This would happen if one makes a will for a “reasonable portion” of his/her wealth while applying the rulings of inheritance to the rest of the assets.⁶⁰

Another companion, Abu Said Al-Khudrey, thought that the verses, “When you contract a debt for a fixed term, record it in writing” and “a pledge (shall suffice) and if one of you entrusts to another let him who is trusted deliver up that which is entrusted to him” are in disagreement. Therefore, Ibn Majah narrates, that Abu Said declared that the second verse abrogated the first.⁶¹ Here again, it is obvious that the two rulings cannot logically be at odds but rather address different contexts. The second ruling renders an oral pledge sufficient when there is mutual trust between the giver and the receiver of the debt.

⁵⁸ Quran 2:180.

⁵⁹ Quran 4:11,12.

⁶⁰ Which is the opinion of the four Schools of Thought, although there is a difference of opinion regarding the legality of making a bequest to one of the inheritors in addition to his/her prescribed portion. Refer to Muhammad Nada, *Al-Naskh fi Al-Qur'an bayn Al-Mu'iydin wal-Mu'aridheen*, p.86-89, Al-Dar Al-Arabiyyah Lil-Kitab, Cairo, 1996.

⁶¹ Ibn Majah, *Hadith* No. 2356.

Another example, which illustrates the methodology that jurists followed in applying the abrogation of ruling theory, is *Muslim's Hadith* number 1875. Ibn 'Abbas narrated that the Prophet broke his fasting while traveling during Ramadan. Based on this narration, Al-Zuhari, a chief follower of the companions (*Taba'i*), concluded that a traveler in Ramadan is obliged to break his/her fast and regarded the ruling that allows him/her to fast (through another narration) as abrogated. Both rulings are actually valid but apply relative to the physical condition of the fasting person.⁶² On the other hand, Al-Zuhari explained his methodology by saying: "The latest tradition, in chronological order, narrated after the Prophet is the definite and abrogating tradition." Al-Shafe'i proposed the same methodology in his notable piece on the Islamic fundamentals of Jurisprudence and applied it to numerous examples.⁶³ This is how abrogation of rulings developed into a fundamental concept in the literature of Jurisprudence.

After the first Islamic century, jurists began claiming many new cases of "abrogation of rulings" merely to invalidate opinions or narrations that disagree with their Schools of Thought. As one contemporary scholar put it: "The fundamental ruling is that every verse that is different from the opinion of the scholars of our School is abrogated."⁶⁴ Therefore, it is not unusual in the jurisprudence literature to find a certain ruling to be "abrogating" according to one School and "abrogated" according to another.⁶⁵ This arbitrary use of "abrogation of rulings" contributed to a sense of inflexibility in the Islamic Jurispru-

⁶² *Al-Naskh fi Al-Qur'an bayn Al-Mu'ayyin wal-Mu'aridheen*, p. 94.

⁶³ *Al-Resalah*, p.92-117.

⁶⁴ *Qawa'id Al-Fiqh*, Vol.1, p.18.

⁶⁵ For examples, refer to Al-Hazimi, *Al-I'tibar fi Al-Nasikh wal-Mansukh fi Al-Hadith*, Dar Ibn Hazm, Meca, 2001.

dence. The difference of opinions among jurists is a natural phenomenon due to natural human views about interpreting the Script and the degree of literalism in the application of rulings. However, when one jurist claims that another jurist's evidence is abrogated, i.e., null and void, the tolerance to "the other's" difference in opinion decreases and healthy diversity becomes unhealthy dispute.

More importantly, the abrogated and cancelled verse or *Hadith* might very well be a valid ruling for certain people or in a specific context, as illustrated in some of the examples above. Therefore, labeling these verses and narrations as "cancelled" jeopardizes the ability of Islamic jurisprudence to deal appropriately with various circumstances, as it was meant to deal.

Therefore, endorsing the abrogation power of the "verse of the sword" as the Islamic means to deal with the "Land of War" is an incredibly simplistic opinion that does not carry scholarly merit.

Discussion

Popular juridical investigations tend to think in terms of 'opposing tendencies' that, in my view, constitute false dichotomies. Thus, ideas are always expressed in terms of contradictions, such as, abrogating versus abrogated (*nāsikh/mansūkh*), exact versus illusionary (*munḍabīṭ/mawhūm*), subjective versus objective (*shakhsi/mawdu'i*), and land of Islam versus land of war (*dar al-Islam/dar al-Ḥarb*). This way of thinking limited the ability of the Islamic law to take into consideration cases in the 'grey area' between these

extreme positions and stances. If we imagine a human vision that is confined to a false binary choice between black and white, we will wind up losing an infinite number of grey levels in a picture, let alone missing on its colours. The following chart is an illustration.



Chart. A grey-scale picture distorts the variety of detail of a coloured picture. Its two-colour ‘distortion,’ however, filters out a great deal of information.

Similarly, the ‘Land of Islam’ versus the ‘Land of War or Disbelief’, ‘good ruler’ versus ‘evil ruler’, ‘security’ versus ‘insecurity’, ‘freedom in practicing Islam’ versus ‘no freedom in practicing Islam’, and ‘justice’ versus ‘injustice’, are all false dichotomies. There is no land anywhere that has any of the above features in absolute terms. In other words, the achievement of the criteria presented in this booklet, especially the three most fundamental (security, freedom, and justice) is relative, whether in a Muslim-majority or a Muslim-minority society.

Thus, and perhaps contrary to popular (mis-)perceptions, a country that is juridically worthy of being a ‘Land of Islam’, ‘Land of Security’, or ‘Land of Justice’ is a country that achieves a relatively high score on the criteria that are detailed above. Building an ‘index’ for that score obviously requires a comprehensive and realistic survey of

various countries in order to create a measurable ranking of some sort. I suggest for this index to be built on *maqasid al-sharaih*, the objectives and principles of the Islamic jurisprudence. Then, a rough but reasonable assessment of how many Muslim-minority countries meet all of the above criteria gives them a relatively high score on the 'Land of Islam' scale.