

CONJURING SOVEREIGNTY: HOW THE “CONSTITUTION” OF MEDINA BECAME AN ORACLE OF MODERN STATEHOOD

Ovamiir Anjum
University of Toledo, Ohio

Abstract

Although the legal institutions of postcolonial Egypt and much of the Arab world had been reconstituted along the lines of Napoleonic civil code in the 1940s, Islamic political discourse remained encumbered by claims in which the nation, the umma, was defined by faith rather than territorial boundaries, and lacked a notion of secular citizenship and sovereignty. South Asian scholar Hamidullah’s apologetic recasting of the Ṣaḥīfat al-Madīnā in the 1930s as the “world’s first written constitution” may have handed Egyptian Islamic reformists like the Islamic reformist and lawyer Salim El-Awa the solution to this problem. Wildly successful, El-Awa’s strategically ahistorical reading in Sadat’s Egypt pitted the purportedly liberal Prophetic politics against a constrictive juristic tradition. The resulting discourse made the Ṣaḥīfa available to anyone who wished to get past the structural incompatibility between Islamic politico-legal tradition and the territorially constituted nation-state. Besides disarticulating the relationship between Islamic law and politics, the Ṣaḥīfa may have performed another unintended function. As a treaty that placed no limits on a sovereign’s power, now elevated as the true Islamic constitution that had been obscured by later tradition, it became something of a modern oracle, providing the perfect instrument of legitimation to the modern Arab authoritarian states looking to deploy Islam but to bypass the tradition of Islamic jurisprudence.

INTRODUCTION¹

“We have no doubt that the rulings pertaining to the treatment of the Jews in the Constitution of Medina are the standard against which the various juristic opinions must be judged; whichever of them agree with these rulings we accept them, else we throw them aside.”—Salim El-Awa²

“Fully in power” in his society when the Ṣaḥīfa was written, the Prophet “never asked them to abandon their polytheism for monotheism, but only demanded their loyalty to the state.”—Rāshid al-Ghannūshī, 2012³

“The state of Medina extended citizenship to include non-Muslims according to the Constitution of Medina, for the Jewish tribes were considered along with the believing Immigrants and Helpers ‘a single community to the exclusion of all other people’.”—Rāshid al-Ghannūshī, 2015⁴

1 I thank Alex Thurston, Andrew March, Yousef Wahb, Rezart Beka, and David Warren for their thoughtful reading and constructive critiques of this paper. I am grateful to Yousef Wahb for putting me in touch with the formidable Egyptian legal mind whose work forms the core of this article, Dr. El-Awa. And many thanks for Ahmed El Shamsy for hunting down and making available to me the first, 1975 edition of Dr. El-Awa’s work at Regenstein library at the University of Chicago, an edition that even the author no longer possessed.

2 MUHAMMAD SALĪM AL-‘AWWĀ, FĪ’L-NIZĀM AL-SIYĀSĪ LIL-DAWLA AL-IS-LĀMIYYA 56 (2nd ed., 1427/2006); all the subsequent references are to this edition except when indicated otherwise. This text was originally published in 1975, and the English translation was published as MUHAMMAD S. EL-AWA, ON THE POLITICAL SYSTEM OF THE ISLAMIC STATE (1980). This particular comment is not found in the original 1975 edition of the text, which will be indicated as ‘AWWĀ, NIZĀM (1975).

3 RĀSHID AL-GHANNŪSHĪ, AL-DĪMUQARĀTIYYA WA-HUQŪQ AL-INSĀN FĪ’L-ISLĀM 185 (2012).

4 RĀSHID AL-GHANNŪSHĪ, AL-MUWĀṬANA: NAHWA TA’ŠĪL LI-MAFĀHĪM MU’ĀSIRA 52 (2016).

In the first third of his 2008 monograph *The Fall and Rise of the Islamic State*, American constitutional lawyer and Harvard professor Noah Feldman depicts in glowing terms what he calls the “classical Islamic constitution.” The monograph, it should be noted, was published a few years before the phrase “Islamic state” was to enter infamy as the label adopted by the terrorist outfit that grew up in Iraq under the US occupation. Feldman’s argument is well known to historians of Islam. The copious Sunni political discourse on the caliphate, its prime importance as a singularly important obligation, its historical evolution, theological grounds, conditions, powers, and limits lie at the heart of Islamic political literature. One persistent concern of this literature is to articulate limits on the authority of the ruler: he was neither infallible, nor the best or most pious by virtue of this office, and had the function of upholding the divine law. Furthermore, although this part was never formally institutionalized and seldom actualized, he had to be among the most knowledgeable and pious, and constrained in his powers over public treasury, earning a stipend ideally no more than that of an average Muslim. The caliph (or *amīr al-mu’minīn*) ruled the *umma* of the believers in the footsteps of the Prophet Muḥammad, inheriting his political but not religious authority. Notwithstanding the pervasive Western stereotype of the “oriental despot,” the powers of the caliph–sultan were very far from absolute in theory or practice.⁵ If constitutions are meant to limit the powers of the ruler and underpin rule of law, the unwritten classical Islamic constitution can boast a long and meaningful life over the course of an extremely eventful millennium in the lands of Islam, ending with the rise of modernizing reforms in mid-nineteenth-century Istanbul. None of this, however, would be familiar to a reader of modern Muslim political discourse, to whom Islamic constitutionalism has come to mean something entirely different. The classical Islamic constitution spoke to the believing community and its ruler, and treated temporal regional rulers (who would adopt titles such as *amīr*, *sulṭān* or *malik*) as merely deputies of the proper caliph. The caliph ruled

5 NOAH FELDMAN, *THE FALL AND RISE OF THE ISLAMIC STATE* 31, 34 (2008).

not a territorially defined state but a religiously defined community, the *umma*, which included its *dhimmīs* or non-Muslim ward-communities.

The modern nation-state, in contrast, stands in a subversive relation vis-à-vis religious traditions, as a growing number of scholars have argued. Far from being a neutral instrument of governance, the state is secular and secularizing. Notably, it secularizes not by separating religion from politics, but by defining and continually redefining religious doctrine itself to render it usable for the state's own purposes.

This study examines this contention through the case of a remarkable recent transformation in Islamic tradition, that of the *Ṣaḥīfat al-Madīna*, also known as *kitāb* or *wathīqa* (henceforward, the *Ṣaḥīfa*) of Medina, from a relatively obscure treaty of the Prophet Muḥammad with his followers and the Jews of Medina to the centerpiece of Islamic political imagination and the fount, as indicated in the epigraph above, of all proper Islamic public norms. It thus offers an opportunity to reflect on how and why traditions adjust themselves to the dictates of the state, how they are reopened for rereading and misreading, and in what ways interest or prejudice rather than robust scholarship might decide the course of a tradition. Finally, by shedding light on the key moments of intervention, formation, and contestation, it asks whether excavating this process might offer some hope against manipulation of tradition, and the cynical view that tradition is merely accumulated manipulation.

In the opening decades of the twenty-first century, the Arab Islamic discourse, be it pro- or anti-reform, revolutionary or counter-revolutionary, Salafī or Sūfī, seems unanimous that the document containing the declaration by the Prophet Muḥammad of the terms of the believers' mutual solidarity and their relationship with the Medinan Jews was a "constitution." Its leading champions further argue that laid the foundation for a (i) religiously pluralist, (ii) citizenship-based, and (iii) territorially defined constitutional order.

A comparison of two translations of the first two clauses is sufficient to serve as the motivation for this study. The Arabic original is as follows:

هذا كتاب من محمد النبي بين المؤمنين والمسلمين من قريش
ويثرب ومن تبعهم فلحق بهم وجاهد معهم

إنهم أمة واحدة من دون الناس⁶

The following is my rendering (Ibn Ishāq’s version is taken as the default text, Abū ‘Ubayd’s variations are indicated in angular brackets, and my explanations are inserted within parentheses; the section numbering here and throughout this article follows that of Hamidullah’s, for which, see below):

§1. This is a *kitāb* (writ, prescript) from Muḥammad <the Messenger of Allah> between the *mu’minūn* (Believers) and *muslimūn* (Muslims) of the Quraysh and Yathrib (the original name of Medina) and those who join them, <settle with them,> and make *jihād* (armed struggle) alongside them.

§2. They are one people (*umma*) to the exclusion of all other people.⁷

It is noteworthy that the followers of the Prophet are labeled as “Believers” and “Muslims,” which is consistent with the Qur’ānic use of these terms, as in Q 49:14–17; Believers refers to the fully committed devotees, whereas Muslims appears to be a catchall term inclusive of the new converts from among the bedouins around Medina who had not yet fully mastered the requirements of faith.

Contrast this with the translation given in the English rendering of the Emirates-backed Mauritanian politician and

6 The text survives only in two sources, Ibn Ishāq and Abū ‘Ubayd. The juxtaposition of the Arabic texts is given in MICHAEL LECKER, THE “CONSTITUTION OF MEDINA”: MUḤAMMAD’S FIRST LEGAL DOCUMENT 27 (2004).

7 OVAMIR ANJUM, THE “CONSTITUTION” OF MEDINA: TRANSLATION, COMMENTARY, AND MEANING TODAY (2021), <https://yaqeeninstitute.org/read/paper/the-constitution-of-medina-translation-commentary-and-meaning-today>. For reference, here is Michael Lecker’s rendering of Ibn Ishāq: “This is a compact from Muḥammad the Prophet between the *mu’minūn* and *muslimūn* of Quraysh and Yathrib and those who join them as clients, attach themselves to them and fight the holy war with them. They form one people to the exclusion of others.” Lecker, *supra* note 6, at 32.

scholar Abdallah Bin Bayya's Arabic publication *The Path to Peace*, with commentary seamlessly added in the title of each clause as well as in parentheses:⁸

Article 1 Constitutional Document

This is a constitutional document given by Muhammad (Peace be upon him), the Prophet (Messenger of God).

Article 2 Constitutional Subjects of the State

(This shall be a pact) between the Muslims of Quraysh, the people of Yathrib (the Citizens of Medina) and those who shall follow them and become attached to them (politically) and fight along with them. (All these communities shall be the constitutional subjects of the state.)

Article 3 Formation of the Constitutional Nationality

The aforementioned communities shall formulate a Constitutional Unity as distinct from (other) people.

To say that the modern rendering takes a few licenses would be an understatement. The very parties to the pact have been altered, as is the stated purpose of the pact. It is no longer “between the Believers and Muslims and those who join them and struggle (*jihād*) for religion alongside them,” but the Muslims on the one hand and the people, even “citizens,” of Medina. These two parties are thereby said to form a “Constitutional Unity.”

Needless to say, in the original text, there is no such entity as the “people of Yathrib.” The original lends itself to two readings, one in which the Believers and Muslims and those who join them in their struggle are one party, and what follows are their mutual obligations. A less obvious but grammatically

8 ABDALLAH BIN BAYYA, *THE PATH TO PEACE* 259ff (2022); the translators reproduce here the translation by MUHAMMAD TAHIR-UL-QADRI, *THE CONSTITUTION OF MEDINA: 63 CONSTITUTIONAL ARTICLES* (2012). This particular translation does not even pretend to scholarly rigor, nor engage with the original Arabic text and issues of versions and authenticity, and begins the translation as “Article 1: This is a constitutional document given by Muhammad,” thus choosing to render *kitāb* (script) as “constitutional document” from the outset.

plausible reading could be one that envisions two parties, the Believers and Muslims on the one hand, and those who join their struggle in the future on the other. Since no such difference between the original participants to the faith and newcomers to it is evidenced in the rest of the document, the first meaning appears to be preferable. In neither case is there any reference to “the people of Yathrib.”

This is not merely an instance of an incompetent translation or accidental misreading, but the result of a history of accumulating ideological developments in which the entire range of data readily available to the Muslim scholarly tradition about the early life in Medina in the Qur’ān, *ḥadīth*, and *sīra* materials are disregarded and contradicted in service of a politically charged reading. This translation merely reflects the ideological contents of contemporary Arabic scholarship. The aim of the present study is to excavate the roots of this reading of the *Ṣaḥīfa* that has come to define modern apologetic Muslim political thought. Lest we dismiss the subject of this study under the impression that religious texts are often creatively redeployed to fit all sorts of purposes, I note, nevertheless, that careful reading of and debates about the authenticity and meaning of the Prophet’s words has been and remains the bread and butter of Islamic scholarship. Not so in this case.

Through a history of the reception of the *Ṣaḥīfa* in postcolonial Arab states, this study investigates how a particular ahistorical reading initially came to be adopted by certain state-centered Islamic reformers in Anwar Sadat’s Egypt, the decade when the Islamic political sentiment was on the rise, and Islam was being used to replace Gamel Abdel Nasser’s Arab nationalism as the ideological prop for the state. In the subsequent decades, this misreading has become the basis of a wholesale reinterpretation of the Prophet’s political life and increasingly fantastical construal of Islamic political norms. In the most recent phase of this saga, this revisionist discourse has been picked up by the counterrevolutionary forces in the employ of the Gulf monarchies existentially threatened by the events of the Arab Spring and who have conscripted the *Ṣaḥīfa* discourse, ironically, as an instrument of thoroughgoing authoritarianism.

WHAT IS THE *ṢAḤĪFA* OF MEDINA?

That a compact of some sort existed between the Prophet and the Jews of Medina is agreed upon by all scholars, modern and premodern. Most historians and *ḥadīth* scholars further grant the authenticity of the specific recension of the *Ṣaḥīfa* as recorded in the works of Ibn Hishām (d. 218/833)—the editor of a longer *sīra* work by Ibn Ishāq (d. 150/767)—and Abū ‘Ubayd al-Qāsim b. Sallām (d. 224/838). This confidence is based in strong circumstantial evidence, notwithstanding the weakness in its chain of narration, lack of documentary evidence, and the usual difficulties with textual integrity.⁹ To modern scholars the *Ṣaḥīfa* has been an enigmatic document, and nearly everything about it remains debatable: its unity (does it comprise one, two, or many distinct compacts?), its date and stages of writing (whether it was composed before or after the Battle of Badr in 2/624), its mode of preservation (as it lacks an authentic chain of narration), its numerous archaic terms and phrases, which inspire confidence in its authenticity, but the precise meaning of which remains elusive (e.g., does it prohibit the Jews from exiting Medina without the Prophet’s permission, or from making war without his permission?), the identity of the groups that are named in it (why are the three main Jewish tribes of Medina, Qaynuqā‘, Naḍīr, and Qurayza not named in it?), its redundancy (why are some groups incorporated twice?), and its eventual fate.

Most scholars agree that the *Ṣaḥīfa* comprises two different treaties, one being a declaration of rights among the Believers (sections 1 through 23), and the second (sections 24 onward) as a truce (*muwāda‘a*; literally, cessation of hostilities) with the Jews of Medina. The second of these was likely reduced to writing either before the Battle of Badr, which occurred during the ninth month of 2 AH (March 624) or, more likely, in early 3 AH (June–July 624) a few months after Badr, as I have argued elsewhere.¹⁰ In addition to Muslim scholars writing in Arabic

9 For a discussion of authenticity, see ANJUM, *supra* note 7; for Patricia Crone’s comments on the relative values of the two texts, see LECKER, *supra* note 6, at 191, n.198.

10 ANJUM, *supra* note 7.

or other Islamicate languages, the *Ṣaḥīfa* has been studied by numerous modern Western scholars. The most comprehensive record and evaluation of the Western studies can be found in Michael Lecker's aforementioned monograph, which remains the most thorough academic work on the subject. Lecker's study is particularly helpful as it meticulously juxtaposes the two extant versions of the texts by Ibn Ishāq and Abū 'Ubayd, compares several earlier Western translations and studies of the text, and investigates each clause of the document against the available contemporary textual data from early Islam, and has been instrumental in my own translation and study.

Lecker, concerned with the text rather than its modern reception, takes it for granted that the label "constitution" is a misnomer,¹¹ and instead argues that the compact with the Jews was in fact a *muwāda'a*, a temporary truce, as both of its original reporters label it.¹² My study of the document arrives at the same conclusion as Lecker's, namely, that this document cannot be labeled a *constitution*, if by constitution is meant an authoritative document that constitutes a political unit and lists the rights and duties of the ruler and the ruled. My case can be briefly recapitulated here in the following six points:

- (i) The Prophet did not possess sovereignty, or anything approaching monopoly over legitimate violence, in the period when the *Ṣaḥīfa* could have been composed.
- (ii) It is labeled in the sources that report it as a *muwāda'a*, a truce, which suggests its temporal nature, although no time limit is explicitly mentioned in it. Its intertextual reading with the Qur'ān, the most authoritative contemporaneous source we possess, also strongly suggests its temporally limited nature.
- (iii) There is no definitive evidence that it encompassed all of Medina's inhabitants or the Jews, and there are reasons to think otherwise. It is possible that other compacts, written or unwritten, were made with other groups.

¹¹ LECKER, *supra* note 6, at 1.

¹² *Id.* at 27, 204–5.

- (iv) There can be no doubt that as a document, it was subordinate to the Qur'ān, liable to be replaced by its new revelations, which were proclaimed piecemeal as divine commentary that guided an active mission in which the Prophet and the Believers struggled to secure the Jews' conversion to his religion, or at least their peaceful coexistence, both of which aims were resisted by the majority of the Jews, who tried to collaborate with his Meccan foes.¹³ This struggle is confirmed in the opening lines of the *Ṣaḥīfa*.
- (v) These Qur'ānic passages also persistently warn the Believers against taking the Jews and other nonbelievers as their allies on pain of punishment in both this world and the next. Read carefully, the terms of the *Ṣaḥīfa* treat the two communities differently, with a different set of expectations, in keeping with the Qur'ānic message. The Believers and Muslims are to make *jihād* alongside the Prophet and obey him in all matters, whereas the Jews' obligations are limited to maintaining peace, contributing to shared defense, and not seeking alliance with the Meccans and other enemies of the Muslims. These different expectations do not suggest full parity. The Jews, in short, were not deemed as part of the Muslim *umma* in theory and were actively hostile to it in fact.
- (vi) Last, but not least, the *Ṣaḥīfa* cannot be likened to a constitution as it remained a relatively obscure document, and, to the best of my knowledge, is not known to have been invoked as a document in any subsequent occasions, including the conflicts between Muslim and Jews where a constitutional reference would be warranted.¹⁴

13 The Qur'ān, being our best historical source of the period, comments at length on this relationship in particular in Sūra 4, al-Nisā', and Sūra 5, al-Mā'ida. The tradition has it that Sūra 4 was revealed in the early Medinan period when the *Ṣaḥīfa* was written. This conclusion is strengthened by its themes and further corroborated by the fact that some of the clauses of the *Ṣaḥīfa* closely resemble its verses (e.g. clause 23 and Q 4:59). This background is discussed at length in ANJUM, *supra* note 7.

14 *Id.*

Before we turn to the history of its reception, it is useful to mention the most confusing and controversial clause of the *Ṣaḥīfa*, which elicited some puzzled remarks by the early and medieval commentators and has fueled modern revisionist imagination. The most popular is Ibn Ishāq's version of clause 25, which reads, "The Jews of Banū 'Awf are an *umma* alongside (*ma'a*) the Believers." In Abū 'Ubayd, the clause reads that the Jews are "an *umma* from (*min*) the Believers." This version has furnished the greatest opportunity for modern readings. But the confusion is alleviated when we appreciate the scarce and uncertain path of the preservation of the text. Some of the main recensions of the phrase are as follows: The Jews (i) "are an *umma* alongside" / (ii) "are an *umma* from" / (iii) "are secure from" / (iv) "have *dhimma* protection from" the Believers. After an elaborate comparison, Lecker argues for (iii) as being the most plausible reading.¹⁵ What further strengthens Lecker's reading is that this clause is followed by clauses 26–35, each of which adds a new group as a party to clause 25, thus: "The Jews of Banū So-and-so receive the same rights as the Jews of Banū 'Awf." This would, strictly speaking, suggest that each of these eleven or so Jewish groups is an *umma* unto itself. This, although linguistically plausible, would be an odd meaning. This suggests that the original combination is not *umma-min* or *umma-ma'a* but, as Lecker has suggested, *amana-min*, "are secure from." Furthermore, since Banū 'Awf and the other clans named were known Arab clans of Medina, "the Jews of" these clans must refer not to an independent Jewish community but to the Jews affiliated with the named Arab clans.

Be that as it may, there is no denying that the *Ṣaḥīfa* imagines the Medinan Jews as forming part of a Medinan political unit held together by a common defense treaty, under the authority of God and the Prophet. It does so in a way that foreshadows the *dhimma* contract that was mentioned in Sūrat al-Tawba (Q 9:29) believed to have been revealed around 9/630–31, a few years after the *Ṣaḥīfa* was concluded.¹⁶ It further evidences a gener-

¹⁵ LECKER, *supra* note 6 at 136–43.

¹⁶ For a more detailed treatment, see David Warren and Christine Gilmore, *One Nation under God: Yusuf al-Qaradawi's Changing Fiqh of Citizenship in the Light of the Islamic Legal Tradition*, 8 CONTEMPORARY ISLAM 217, 228–31 (2014).

ous contractual relationship based in cooperation on matters of shared interests that the Prophet was willing to countenance with those who rejected his message. In this respect, the *Ṣaḥīfa* can be best seen as an early prototype of the *dhimma* contract that eventually became part of Islamic law and remained in place in nearly all Muslim societies until the modern period. The chief differences being that, first, in contrast to the *Ṣaḥīfa*, which tolerated the polytheist (*mushrik*) Arabs, the final *dhimma* contract as finalized in Sūra al-Tawba (Q 9:1) precluded them, and second, it demilitarized the People of the Book (*ahl al-kitāb*). That is, instead of demanding participation in defense as the *Ṣaḥīfa* does, the late Medinan law imposed a poll tax (*jizya*) on them.

Let us turn now to the modern Muslim reception of the *Ṣaḥīfa*.

HAMIDULLAH: *ṢAḤĪFA* AS A CONSTITUTION IN ISLAMIC APOLOGETICS

Muḥammad Ḥamīdullāh (henceforth, Hamidullah) (1908–2002), the prodigious scholar who hailed from Hyderabad, Decan and spent his life in research and writing in Paris, was to my knowledge the first scholar in modern history to offer this peculiar interpretation of the *Ṣaḥīfa* of Medina, in his 1941 publication (based on an Arabic lecture delivered in 1937),¹⁷ claiming in the very title of his treatise that the *Ṣaḥīfa* was the first written constitution in the world.¹⁸ To support his claim, which was admittedly a minor part of his erudite if brief study, he distinguished between “ordinary laws” and a constitution, between written and unwritten constitutions, and, finally, between just any treaty and “an authoritative constitution of a State” issued by the sovereign of the country. It is all these features together that made this document exceptional.¹⁹

17 This is listed in Michael Lecker’s bibliography as *Aqdam dustūr musajjal fi’l-‘ālam: wathīqa nabawiyya muhimma*, in 1 ISLAMIC SCHOLARS CONFERENCE 98 (1937), with no information on the location, and I do not have access to it.

18 Muhammad Hamidullah, *The First Written Constitution in the World* (3rd ed., 1975).

19 *Id.* at 5–6.

Being a lover of “order and unity”, the Prophet established “a central public institution for seeking justice,” in place of the tribal vendetta system. Employing characteristically modern statist language, Hamidullah noted that through this treaty the Prophet “secured the highest judicial, legislative and executive powers for himself.”²⁰ Hamidullah insisted, however, that the Prophet’s absolute authority differed from that of worldly autocrats in that “materialism had no part to play here,”²¹ echoing the critique Muslims had often leveled against the West, namely, that it had sacrificed its spirituality at the altar of material progress, whereas the “East” (of which Islam was a part) had remained spiritual. Hamidullah’s observations presupposed that the Prophet’s motives were selfless and his conduct infallible, for he was directly constrained by the Ever-living God who watched his every move.

As a serious historian, Hamidullah did not shy away from asking historical questions, such as “how the non-believing sections of the population could agree to invest a newcomer and a stranger at that time with so much authority within a few weeks of his arrival?”²² Similarly, Hamidullah was ambivalent about the nature of the status accorded to the Jews in the *Ṣaḥīfa*. On the one hand, based on an expansive reading of clauses 16 (“Whoever of the Jews follows us shall have help and parity”) and 25 (“the Jews are a community *alongside/from among/afforded protection by*²³ the Believers”) he remarked that “The Jews have been given equal political and cultural rights with the Muslims in the clearest terms.”²⁴ Yet, based on clauses 37, 44, and 45, he concluded: “In reality it was a military alliance, which was made with the Jews . . . it has been made quite clear that

20 *Id.*

21 *Id.* at 11.

22 *Id.* at 12–13. Hamidullah further notes: The total population of Medina at this time would have been around ten thousand, to which the Jews contributed nearly a half, in which the number of Muslims including the Medinan converts “hardly exceeded a few hundred” (*Id.* at 8). Once the *Ṣaḥīfa* becomes “canonized” as the cornerstone of Islamic political thought, this kind of critical historical questioning disappears altogether from later Muslim readers of the *Ṣaḥīfa*.

23 See ANJUM, *supra* note 7 for an explanation of these three readings, and why the last one is the most likely.

24 HAMIDULLAH, *supra* note 18, at 21.

they shall have to fight against all those people against whom the Muslims will have to fight; and shall be in peace with whomsoever the Muslims may be in peace, and shall take an equal part in the defence of Madinah.”²⁵ Referring to clause 36, he writes that the Jews’ “joining the forces with the Muslims in an expedition [outside Medina] would have been with the permission of the Prophet” and:

Although Jews were given internal autonomy, they did not share in the foreign policy of the newly constituted City-State, in spite of the fact that the Jews formed the second largest single community on the arrive of the Prophet in Madinah.²⁶

Hamidullah does not seem to detect the contradiction between his two observations: how could the Jews be said to have enjoyed equal political rights when they have no part in governance, being governed by a man whose claim to being God’s Prophet they refused to acknowledge, whose preaching fundamentally challenged their religious claims, and whose “foreign” policy, designed to advance his divine mission, they could not even negotiate, let alone halt?

Although far more attentive to fact and evidence than the later deployments of the *Ṣaḥīfa* that we explore shortly, Hamidullah at times gives in to fantastic claims, such as the following: “With the collaboration of all, a political system was inaugurated in Madinah, which made that city in later times the metropolis of an extensive and powerful empire extending over three continents of Asia, Africa and Europe, without any difficulty and without any abrogation of this original Constitutional Act.”²⁷ This is a surprising claim given that many of the clauses of this *Ṣaḥīfa* were abrogated by the later Qur’ānic commands, as acknowledged by even many apologetic commentators (see below), and within two to four years of its writing the three main

²⁵ *Id.* at 21.

²⁶ *Id.* at 22, 24.

²⁷ *Id.* at 23.

tribes of the Jews had been sent into exile or executed for violating their deal with the Muslims.

Before the *Ṣaḥīfa*-centered revival of Islamic political discourse in the late 1970's, two influential trends had prevailed. One defended Islam's political relevance against 'Alī 'Abd al-Rāziq's call for secularism and was spearheaded by the leading ulama of the Muslim world for decades. The other, which may be labelled the Qutbist trend, was more revolutionary and modern and offered a radical critique of the wholesale secularization of Muslim societies. Alongside these two main strands, there were the erudite but less known contributions by Muslim academics and ulama who offered historically sensitive readings of Islamic texts, including the *Ṣaḥīfa*.

Perhaps the best example of such disciplined scholarship is a 1969 article by the celebrated Iraqi historian Ṣāliḥ Aḥmad al-'Alī, educated at Cairo and Oxford universities. He studied the *Ṣaḥīfa* as part of the Prophet's administrative organization of Medina.²⁸ The idea that the *Ṣaḥīfa* is a constitution (*dustūr*) does not seem to have reached 'Alī, who does wonder, as a historian would, about how to classify this document, and suggests that perhaps should be labeled merely a declaration (*i' lān*),²⁹ and proceeds to juxtapose its content against the relevant verses in the Qur'ān.³⁰ He further observes that, even though the *Ṣaḥīfa* does not insist on excluding the Arab polytheists, neither does it grant them the same status or rights, declaring that "A Believer shall not be killed for an unbeliever, nor shall an unbeliever be aided against a Believer" (clause 14).³¹ 'Alī concludes that the establishment of justice, a judicial order, was the primary concern of this document, as a result of which it guaranteed "freedom of work and organization."³² 'Alī's reading, as we note in the last statement, is not without the aspiration to draw modern

28 Ṣāliḥ Aḥmad al-'Alī, *Tanzīmāt al-rasūl al-idāriyya fī'l-Madīna*, 17 MAJALLA AL-MAJMA' AL-'ILMĪ AL-'IRĀQĪ 50 (1969/1388). The issue is available online at: https://archive.alsharekh.org/MagazinePages/MagazineBook/The_IRAQ_Academy/mogalad_17/mogalad_17/index.html.

29 *Id.* at 51.

30 *Id.* at 53.

31 *Id.* at 59.

32 *Id.* at 60, 66.

lessons from the *Ṣahīfa*, and accords the city imagined in this treaty some attributes of a centralized state. It is nevertheless historically sensitive, concerned to place the document within its context, and up-front about the limited function of the document.

EL-AWA: THE *ṢAHĪFA* AS AN ORACLE FOR THE NATION-STATE

Some four decades after the groundbreaking claim by Hamidullah that labelled the *Ṣahīfa* “the first written constitution in the world,” we witness this claim revived by an Egyptian lawyer, Muḥammad Salīm al-‘Awwā (anglicized as El-Awa), whose seminal text on Islamic political system *Fī al-nizām al-siyāsī lil-dawla al-islāmiyya* (“On the Political System of the Islamic State”) appeared in 1975. The study is centered around the *Ṣahīfa*, whose text is cited directly from Hamidullah’s work, although Hamidullah’s insights and questioning are never engaged with, and the *Ṣahīfa* is fatefully taken for granted as a *dustūr*, with a note that “many researchers” label it as such. This suggests that Hamidullah’s reading had caught on in El-Awa’s time and others too had used the term, although I have not been able to ascertain any such writers.³³

El-Awa’s monograph is a theoretically sophisticated study in conversation with the growing reformist scholarship on early Islam. The instant popularity of his study is evinced by the fact that five of its editions had been printed by 1981. The eighth edition appeared in 2006. The additions and corrections in each of the editions evidence the author’s active engagement in the political discourse of the time and continued development of his ideas. El-Awa’s reading quickly became the dominant one in Islamic reformist circles, pervading most subsequent writing on Islamic political thought in the decades that followed.

From an almost obscure treatise marginal to centuries of Islamic political reflection, El-Awa’s contribution turned the

33 El-Awa references Hamidullah’s collection of the Prophet’s contracts MAJMŪ‘A AL-WATHĀ’IQ AL-SIYĀSIYYA (‘Awwā, NIZĀM (1975), *supra* note 2, at 27; ‘Awwā, NIZĀM (2006), *supra* note 2, at 49). El-Awa’s Egyptian teacher in the field, Diyā’ al-Dīn al-Rayyis, a leading scholar whose wrote two important texts on Islamic political thought, never mentioned the *Ṣahīfa*.

Ṣaḥīfa into the cornerstone of an Islamic political order, a development that can be called a small intellectual revolution. The *Ṣaḥīfa-as-dustūr* became the central theme of the reformist Islamic political thought, it inevitably cross-fertilized with the two aforementioned anti-secularism strands, the traditionalist discourse affirming the inextricability of religion and politics in the legal and theological traditions, and the revolutionary Qutbist discourse that offered a sociopolitical critique.

In the eighth (2006) edition, El-Awa's preface begins with the claim that "the first Islamic state in Medina is considered the earliest form of a state in human history," insofar as it comprised the material elements of a state, people, land, and authority under the rule of law. It boasted an unprecedented concept of legitimacy (*shar'īyya*) in which the state is subject to the legislative authority of divine revelation, and notwithstanding the many subsequent developments that were less than wholesome, rule of law remained a feature of Muslim governance throughout history.³⁴ El-Awa fails to note that the crucial element of this system, namely, law's authority over the ruler, however, is hardly evident in the *Ṣaḥīfa*, for the ruler in this case was God's mouthpiece, the very source of the law. It was only after the Prophet's death that the principle of the supremacy of God and His Prophet's command over the community's ruler could be formalized, as indeed it was by the first successor of the Prophet, Abū Bakr, who declared it in his inaugural address: "Obey me so long as I obey God and if I disobey Him you have no duty to obey me."³⁵

El-Awa casually acknowledges here the significance of Abu Bakr's condition to the constitutive formation of the first and ideal Islamic state. But this addition is anything but marginal; it is a fundamental transformation that is by no means anticipated in the *Ṣaḥīfa*. To this crucial omission, we shall return presently.

The subsequent chapters of El-Awa's text trace the development of key Islamic political concepts. More specifically, the original edition consisted of four sections, The first covers

³⁴ 'Awwā, NIZĀM (2006), *supra* note 2, at 22.

³⁵ *Id.* at 24.

the rise of the Islamic state against the backdrop of pre-Islamic Arab traditions, culminating in the Prophet's flight to Medina and the creation of the "constitution." The second addresses the development of political institutions and ideas under the Rashidun caliphs until the first civil war. The third explains the purpose of governance in Islam, and the fourth Islamic values in politics and governance.

The 2006 edition is more than double the size of the original text and, apart from the additions and emendations that are found throughout the text, the fourth section is expanded from forty pages in the original to about a hundred, and a fifth additional section entitled "Contemporary Islamic State" features new material concerned with reconciling Islamic tradition with contemporary conditions. This includes discussions on accommodating non-Muslim citizens, the constitution of Islamic Iran, and the progression of political ideas through the twentieth century from the original ideas of Jamāl al-Din al-Afghānī to El-Awa's own "moderate" Islamic political party, *Ḥizb al-Waṣaṭ*.

El-Awa seems to have been aware that the concept of territorial sovereignty was the key contribution of his book. In his preface to the 2006 edition El-Awa identifies three factors that justify calling the early Medinan community a state (*dawla*): first, a territory where the Muslims felt secure and in whose general welfare they were economically and otherwise invested; second, a social consciousness toward a shared goal; and third, political authority. Although exaggerated and packaged anachronistically, these observations are not entirely baseless. But El-Awa's ambition is loftier. Already in the original 1975 edition, the anachronistic imposition of modern state concepts is fully developed:

The nation (*sha'b*) in this very first Islamic state is not limited to the believers alone, but the polytheists of Medina as well as its Jews (see clauses 20 and 25) as well, and therefore, the element of territory (Medina) accorded the right of citizenship to each and every part of the society.³⁶

36 'Awwā, *Nizām* (1975), *supra* note 2, at 32.

Unlike Hamidullah and ‘Alī’s careful historical analyses, both of which recognized the limits of the Prophet’s control over Medina and the nature of the deal made with the Jews, the late-century Arab reformist authors starting with El-Awa evince an increasingly aggressive ideological subversion of the text, starting with a hasty imputation of political sovereignty to the early Medinan community and endow the *Ṣaḥīfa* with nearly all the features desired by the modern nation-state. In fact, El-Awa’s text appears to have been an improvement over some enthusiasts who went so far as to suggest that the Prophet had acquired political authority already in Mecca.³⁷ El-Awa, notwithstanding, makes numerous compelling observations about the *Ṣaḥīfa*, not all of which are compromised by anachronism and deserve to be studied in their own right. This article limits its investigation, however, to his contentions about citizenship and territoriality.

Territoriality as a concept, El-Awa is aware, is needed to ground his claim of the notion of citizenship in early Medina. Although he notes that the *Ṣaḥīfa* begins by defining the *umma*, the believing community, yet fixes his attention on a concept that the *Ṣaḥīfa* does not name, *al-muwāṭana*, the modern Arabic word that Rifā‘a al-Ṭaḥṭāwī had employed over a century earlier to translate the French notion of citizenship.³⁸ This “right,” El-Awa insists, was based on residence within Medina, not religion, as it was extended to the pagans as well as the Jews.³⁹ To this end, he invokes a verse in *Sūrat al-Anfāl*, which speaks of the Battle of Badr and would have been revealed immediate after it, stating that the Muslims who had not yet immigrated to Medina did not share the alliance (*walāya*), because they were not resident of Medina:

And those who have believed and not yet immigrated have no claim of *walāya* on you until they immigrate; if, however, they ask for help in religion, you must aid

³⁷ E.g., this claim is made by Zāfir al-Qasimī, and questioned by El-Awa. ‘Awwā, NIZĀM (2006), *supra* note 2, at 46.

³⁸ Muṣṭafā Riyād, *al-Tarjama wa-binā’ al-dawla al-ḥadītha fī Miṣr: al-Ṭaḥṭāwī mutarjiman*, 38 ALIF JOURNAL OF COMPARATIVE POETICS 185 (April, 2018).

³⁹ ‘Awwā, NIZĀM (2006), *supra* note 2, at 55.

them, except against a people with whom you have a treaty. . . (Q 8:72; my translation).

Walāya (alliance, loyalty; each party to this alliance being a *walī*, pl. *awliyā'*) is a multivalent term in the Qur'ān. The verse is of interest to the revisionists because it connects alliance to immigration rather than to faith alone. Its meaning is complicated by the very next verse ("And the unbelievers are each other's allies, and if ye do not also do the same, there will be great tumult and mischief in the land"). A straightforward reading would be that alliance requires true faith, which in this scenario required immigration as well, but the reformists suggest, instead, that alliance, now equated to citizenship, is a function of the secular act of belonging to the land.⁴⁰ This reading contradicts the frequent Qur'ānic insistence on limiting alliance to the Believers and denying it to other religious groups (Q 5:51, 9:71, etc.).⁴¹ More pertinently, El-Awa does not attend to the rudimentary difficulties in his equation of *walāya* with the modern concept of territorial citizenship.

In El-Awa's scheme, the Believers who failed to migrate did not obtain *walāya*, which is citizenship, whereas the Jews and the pagans obtain this citizenship by virtue of their residence, referencing also Ibn Ishāq's version of the aforementioned clause 25, "the Jews are a community (*umma*) alongside the Believers."⁴² To name a silent relationship is not necessarily a

40 The notion of *walāya* in Q 8:72 that is denied to the Muslims who failed to migrate is incomprehensible without attending to the details of the migration, which are found in the Qur'ān, *ḥadīth*, and biographical sources. In fact, Q 8:72 is similar to Q 4:89 in wording, but the latter verse adds a key piece of information: those who failed to migrate to Medina were hypocrites who threatened the Medinan community, and were not merely to be left alone, but hunted down: "They wish you would disbelieve as they disbelieved so you would be alike. So do not take from among them allies until they emigrate for the cause of Allah. But if they turn away, then seize them and kill them wherever you find them and take not from among them any ally or helper" (Q 4:89). This investigation, nevertheless, is beyond our scope here. It is employed here merely to point out the conceptual difficulty in El-Awa's use of the verse to establish citizenship rights for the non-Muslim inhabitants of Medina.

41 The prohibition of taking nonbelievers as *awliyā'* appears in numerous verses, to name only the most explicit ones: Q 3:28, 3:175, 4:139, 4:144, 5:51, 5:57, and 5:81.

42 'Awwā, Nizām (2006), *supra* note 2, at 55.

case of distortion; it could simply be an attempt to draw attention to a neglected concept. But this questionable insertion becomes the axis along with the *Ṣaḥīfa* is now understood, and therefore merits some scrutiny. El-Awa and, to my knowledge, all champions of the view that the *Ṣaḥīfa* guarantees religiously pluralist citizenship have yet to reconcile their proposed understanding to the more definite and explicit opening clauses that define the belonging solely on faith and *jihād*, let alone the Qur’ānic verses that make the same points emphatically.

As in the quotation in the epigraph, the Tunisian leader Rashid al-Ghannoushi alters the meaning of the *Ṣaḥīfa* even more daringly by inserting “the Jews” alongside the Believers in the first two clauses. The incoherence of claiming faith-independent citizenship is evinced by other parts of the *Ṣaḥīfa* such as clause 14 (that no Believer shall be killed for an unbeliever),⁴³ as pointed out by Ṣāliḥ al-‘Alī above, not to mention the fact that the *umma* is defined both in the *Ṣaḥīfa* and the Qur’ān by its religious mission. The Qur’ān explicitly establishes its laws (such as those pertaining to homicide, inheritance, marriage, etc.) based on the individuals’ status as Believers. How could equal *walāya*, whether understood in its historical sense as tribal alliance or anachronistically as citizenship, have been granted to those who opposed the very purpose of this “state”?

The tension between the notion of the *umma* and the newfangled notion of *muwāṭana* (territorial citizenship) is evident within El-Awa’s text. A few paragraphs after the above claim, El-Awa mentions the clause 17 that prohibits any Believer to make peace, without the consent of other Believers, with “the enemies of the *umma*,” without explaining this conceptual switch from territory to the believing *umma*, and how this exclusive loyalty could be based on two frequently conflicting identifiers, territorial citizenship and faith.⁴⁴

Another conclusion the author derives from the *Ṣaḥīfa* is the imperative of “justice and equality” among all citizens. Although the Qur’ān declares itself to be the epitome of justice, it also frequently avers that there is no worse injustice than to

43 See clause 14 and its discussion in ANJUM, *supra* note 7.

44 ‘Awwā, NIZĀM (2006) *supra* note 2, at 58–59.

ascribe partners to God. El-Awa seamlessly imputes onto the *Ṣaḥīfa* the modern idea of “equality” (*musāwāt*), again a non-Qur’ānic concept that has come to define modern Muslim adoption of equal citizenship. In doing so, he fails to differentiate between modern secular equality before the state and the kind of legal fairness relevant in a faith-based polity where multiple faith communities coexist. El-Awa’s desire to create a political and a legal sphere where faith differences do not matter cannot be faulted, but we are concerned only with his reading of these aspirations into the *Ṣaḥīfa*. This is all the more remarkable since El-Awa continues to insist that “the Qur’ān and the Sunnah” organize the lives of the citizens, including non-Muslims, in this Islamic state. Not only does El-Awa fail to confront the obvious difficulties of this dual system of belonging, he dismisses, as shown in the epigraph, the tradition of Islamic jurisprudence that attempted to negotiate precisely these complexities.

In short, in El-Awa’s proposal the *umma* as a religious mission coexists halcyonically with territorial, faith-independent citizenship. El-Awa is cautious not to press his claim too far, and this incoherence does not quite yet turn into egregious contradiction in his text. Later scholars in this tradition have been even less careful.

HUWAYDĪ: ṢAḤĪFA AS THE ALTERNATIVE TO FĪQH

One obvious resolution of the tensions evident in El-Awa’s account appears among his Egyptian associates like the journalist Fahmī Huwaydī, whose 1985 book⁴⁵ boldly sets aside traditional jurisprudence for having effectively failed in upholding the equal rights of the non-Muslims that had been apparently self-evident in the Qur’ān and the *Ṣaḥīfa* of Medina. Labeled “the new Islamists” by an admiring American scholar, Raymond Baker, Huwaydī and his like reject classical *fiqh* as having failed the universal and self-evident ideals of human rights that

45 FAHMĪ HUWAYDĪ, *MUWĀṬĪNŪN LĀ DHIMMIYYŪN: MAWQĪ‘ GHAYR AL-MUSLIMĪN FĪ MUJTAMA‘ AL-MUSLIMĪN* (4th ed., 2005); for a detailed study of this text and its context, see Ovarir Anjum, *Dhimmi Citizens: Non-Muslims in the New Islamist Discourse*, 2 *ReOrient* 31 (2016).

Islam had brought “fourteen hundred years ago,” well before they were discovered by European Enlightenment. Even the recent reform-minded jurists like the South Asian Abū al-A‘lā al-Mawdūdī (d. 1979), who advocated a religious “theo-democracy” and reserved seats for non-Muslim members in the parliament to be voted in by their co-religionists, is found to be too medieval.⁴⁶ Religious difference cannot have any effect on one’s political standing, say the “new Islamists.”

Fahmī Huwaydī and other “new Islamists” may be best understood as conservative nationalist republicans, with Islam seen as a part of national heritage (*turāth*). With Islam abstracted into heritage and a few general goals or the *maqāṣid*, their political ideal appears to be a secular nation-state and a public sphere whose parameters are determined by conservative national discourse rather than religious dicta.

Abdelwahab Elmessiri, a notable intellectual who famously opposed total secularism but made room for a soft secularism, stated this claim most clearly by summing up popular Egyptian scholar Muḥammad al-Ghazālī’s position on the matter:

*Dhimmi*s, in wise of political and national identity, become Muslims, with the same rights and duties, even if they remain in their persons (that is, in private), on their own creed, rites, and personal status.⁴⁷

Elmessiri notes that intellectuals (*mufakkirūn*) such as Fahmī Huwaydī, Louay Safi, and El-Awa interpret the *Ṣaḥīfa* of Medina to grant non-Muslims “complete citizenship” (*al-muwāṭana al-kāmila*).⁴⁸ The *umma* is thus shifted from its theological and religious basis, as defined in the *Ṣaḥīfa* and the Qur’ān, to the usual cultural, linguistic, and historical bases of the nation. Islam, on this view, is not understood primarily as a salvific revelation, but as a civilizational project, one in which nonbelievers

46 HUWAYDĪ, *supra* note 45, at 126.

47 ‘ABD AL-WAHHĀB AL-MISSIRĪ, MAWSŪ‘A AL-YAHŪD WA’L-YAHŪDIYYA WA’L-ṢAḤYŪNIYYA vol. 2, ch. 1 (n.d.); digitized version: 11:39.

48 *Id.* at 11:40.

can be involved so long as they accept the terms and interests of the larger Muslim civilizational identity.⁴⁹

QARADAWI: *ṢAḤĪFA* AS REFORMED *FIQH*

There is no better evidence of the remarkable *Ṣaḥīfa*-induced shift than the writings of the most influential Muslim scholar of the last half century and a champion of reformed jurisprudence, Yūsuf al-Qaraḏāwī (d. 2022). Existing literature has begun to explore the shifts in the writings of the late-twentieth-century Arab Islamic reformists of various strands vaguely identified as the moderates, often failing to distinguish among them, but none has focused on the *Ṣaḥīfa* as the site of this tectonic shift, let alone identifying the precise source and nature of the tension.⁵⁰ His 1977 treatise on the rights of non-Muslims, written before the *Ṣaḥīfa* became the mainstay of Islamic political imagination, offers a confident defense of a reformist, capacious, but still traditionally grounded interpretation of the *dhimma* as the social contract relevant to the non-Muslims in an Islamic state. It also recruits historical evidence to show that the *dhimmi*s enjoyed honorable and protected life, especially when compared with the status of religious minorities in medieval Christendom.⁵¹ The most notable feature of the text is that, while teeming with references to texts from the Prophet's teachings, Qur'ānic verses, and jurisprudence, the text never mentions the *Ṣaḥīfa* of Medina.

49 This sentiment is shared by many Christian Arabs like Palestinian Christian intellectual Azmi Beshara who declares allegiance to Christianity as his personal faith but Islam as his civilization. American historian of Islamic law of Christian background Wael Hallaq advocates Islamic law as an ethical alternative to modernity and declares the modern nation state incompatible with Islam. See WAEL HALLAQ, *THE IMPOSSIBLE STATE* (2013).

50 Apart from Raymond Baker mentioned above, RACHEL SCOTT, *THE CHALLENGE OF POLITICAL ISLAM: NON-MUSLIMS AND THE EGYPTIAN STATE* 122 (2010), has explored the development of "fiqh" of equal citizenship among Muslim Brotherhood and other reformists intellectuals. David Warren and Christine Gilmore (*supra* note 16) have identified the shift in the discourse of Yūsuf al-Qaraḏāwī around 2010 while highlighting the increasingly acute tension in his thought between adhering to tradition and modern concepts.

51 YŪSUF AL-QARAḌĀWĪ, *GĦAYR AL-MUSLIMĪN FĪ AL-MUJTAMA' AL-ISLĀMĪ* (1413/1992); the author notes in his online biography that the book was originally published in 1977.

This treatise, therefore, represents a useful “before image” of Islamic political discourse.

For a perfect “after image”, consider Qaraḍāwī’s 2008 treatise on the same subject, unsurprisingly centered on the *Ṣaḥīfa* of Medina. Here Qaraḍāwī states, “It is clear that the Charter (*wathīqa*) of Medina gives *umma* a meaning that is made up of four components,” and goes on to name religious, political, geographic, and social senses of the word *umma*.⁵² Qaraḍāwī goes further than El-Awa in trying to reconcile the *Ṣaḥīfa* with the notion of *dhimma* found in the Qur’ān and jurisprudence, stating in an apologetic vein that whereas Muslims pay for this citizenship with their taxes and with their lives (insofar as they are its soldiers), non-Muslims only pay taxes.

We find this proliferation of the *Ṣaḥīfa* discourse not only among the pioneering authors like El-Awa and Qaraḍāwī, but also where Quentin Skinner of the Cambridge School of intellectual history would advise us to look: the ordinary, unexceptional discourses that reflect the ordinary understanding and practice.⁵³ One such work is Aḥmad al-Shu‘aybī’s treatise *Wathīqat al-Madīna* (2006),⁵⁴ which offers a somewhat traditional, scripturalist interpretation that refuses to see a contradiction or even a notable development between the new *Ṣaḥīfa* discourse and the traditional rules that he presents alongside each other. A writer of Yemeni origin educated in Tunis, Aḥmad al-Shu‘aybī

52 YŪSUF AL-QARADĀWĪ, AL-WAṬĀN WA’L-MUWĀṬĀNA FĪ DAW’ AL-UṢŪL AL-‘AQĀDIYYA WA’L-MAQĀSĪD AL-SHAR‘IYYA 19–21 (2010). The text gives no date and publication information, but I rely here on David Warren’s dating. It is available for download at Qaraḍawī’s website <https://www.al-qaradawi.net/node/5069> (accessed 2/17/2022). The text uses the awkward phrase *al-ma’nā al-jughrāfī lil-umma*, but by “geographic” (*jughrāfī*) he perhaps means territorial. He notes that “territory is the basis of political and national identity in modern time” (*Id.* at 20–21). Predictably, he invokes Q 8:72 to differentiate between religious and political meanings of belonging. It is not uncommon for Qaraḍāwī to seek to mediate between seemingly contradictory ideas, and whether this classification of religious, political, and geographic notions of the *umma* is coherent is beyond the scope of this essay. It is noteworthy that this new-fangled classification of the *umma* is claimed to have been introduced by Qaraḍāwī’s student and research assistant Muḥammad al-Mukhtār al-Shinqīṭī, as explained by Warren and Gilmore, *supra* note 16, at 228.

53 QUENTIN SKINNER, *THE FOUNDATIONS OF MODERN POLITICAL THOUGHT: THE RENAISSANCE* x–xii (2002).

54 AḤMAD QĀ’ID MUḤAMMAD AL-SHU‘AYBĪ, *WATHĪQAT AL-MADĪNA: AL-MADMŪN WA’L-DALĀLA* (1426/2006).

draws on a plethora of Arabic books on the subject that had appeared since El-Awa's pioneering text. Featuring a foreword by a Syrian resident of Qatar, under the shade of the school of "moderation" (*wasatiyya*) associated with the Egyptian "global mufti" Qaraḏāwī, the book is published by Qatar's ministry of religious endowments—in a series called *Kitāb al-Ummah*; the text is remarkable in the international conditions of its production. And yet, it presents a defense of territorial citizenship with little explicit attention to the global Muslim community or the regime of postcolonial nation-states bequeathed by colonialism. Aimed at advancing the civilizational imperative and the spirit of reformism and moderation, beginning with an epigraph featuring a Qur'ānic verse that emphasizes peaceful co-existence with non-Muslims (Q 60:8), the text seeks to advance the typical reformist theses, shoring up the claims made by El-Awa with scriptural references. Yet it also accentuates the limitations of its project. The state (*dawla*) is defined as "an *umma* that has unity of language, ethnicity, and religion on a territory."⁵⁵ Whereas El-Awa had recognized that in the lifetime of the Prophet there were no strictly *political* theories, given the Prophet's religious status,⁵⁶ our author erases any conceptual difference between the Prophet's mission and modern politics. El-Awa had noted the wisdom of the *Ṣaḥīfa* in tolerating the pre-existing tribal norms that were deemed inoffensive, Shu'aybī declares that "a new society far and away from tribal norms" had now been established.⁵⁷ El-Awa had tried to define citizenship through the writings of an Arab-Islamic theorist,⁵⁸ thus potentially distancing himself from the charge of hastily imposing modern Western norms onto early Islam. Our author does not shy away from pulling out the definition of citizenship from *Encyclopaedia Britannica* (the assumption being that Western references provide timeless categories), defining it as the relationship between individuals and the state,

55 *Id.* at 55.

56 'AWWĀ, NIZĀM (1975), *supra* note 2, at 36.

57 SHU'AYBĪ, *supra* note 54, at 61.

58 For instance, El-Awa frequently draws on the works of Muḥammad Ṭāhā Badawī, a prolific mid-century Egyptian political theorist sympathetic to Muslim Brotherhood whose writings sought to bridge the gap between traditional Muslim and modern state concepts.

before imputing it to the *Ṣahīfa*.⁵⁹ The conceptual slippage in the making for three decades is now complete. In a later section, the author does consider the question of the relationship of individuals to groups,⁶⁰ but without recognizing his slippage from the “group contract” implied in the *Ṣahīfa*’s contract with the Jewish groups as clients of their Arab clans to modern individual citizenship. The ground for citizenship in the *Ṣahīfa*, we are told, were two, faith and residence. The Jews are citizens of the Islamic state because of their residence, whereas Muslims who do not inhabit the land are required to migrate to claim the citizenship.⁶¹ The same Qur’ānic verse (Q 8:72) that El-Awa had invoked merely to show that the Muslims who had chosen not to migrate were not part of the *walā’* (solidarity alliance) of the Islamic state, now serves as the foundation of territorial citizenship without comment.

As if by the authority of sheer will and repetition, participants in the new *Ṣahīfa* discourse paper over crucial ruptures between early Islam and imported modern concepts. This is precisely what the *Ṣahīfa* discourse has allowed modern Islamic political thought to do: replace a thousand-year-long juristic discourse of profound depth, nuance, and detail with an oracle that readily translates into modern concepts. An oracle it is, for it stands on its own authority, its meanings being what its first discoverers assign to it, without constraints of past scholarship and debate. All other norms are relegated all to a footnote.

It should be noted that what is being argued here is not that the reformist authors discussed here are secularists in disguise or mere servants of the agenda of the modern state. In highly authoritarian and oppressive environments, such ambiguities could be seen as merely a survival mechanism. Those who resolve the ambiguity in favor of the nation-state, such as Huwaydī departing notably from Islamic tradition in contrast to those like Qaraḍāwī who ground their authority primarily in the tradition they wish to reform. Western scholarship has continued to lump them as “Islamists,” a label as unhelpful as the

59 SHU’AYBI, *supra* note 54, at 62–63.

60 *Id.* at 91–98.

61 *Id.* at 67.

now fashionable “post-Islamism”. Had they not been lumped together by the repressive states and the synoptic Western gaze, the methodological rift between the state-centered, secularizing reformists and the reformers within the Islamic tradition was as evident in the 1970s as it is now. Predictably, that rift becomes clearer when the proverbial rubber hits the road and the reformists are compelled to spell out their programs in real political situations.

GHANNŪSHĪ: *ṢAḤĪFA* FOR SECULAR LIBERALISM

By the time the Arab uprisings were underway in 2011, the state-centered reformers had long succeeded in normalizing and lionizing the *Ṣaḥīfa* as a one-stop-shop for Islamic political norms pertaining to the territorial nation-state and citizenship. It was now understood as a pioneering constitution in the world that fantastically resolved the logical tension between equal, territorially defined citizenship and religious plurality on the one hand and on the other a political existence defined by Islam’s law and religious mission—which reformist writers continued to profess. The next chapter of this saga was to be written in countries further to the west in North Africa.

Like Fahmī Huwaydī and at about the same time, the leader of the Tunisian version of Muslim Brotherhood, Ennahda (al-Nahḍa) Party, Rāshid al-Ghannūshī offered his reading of the *Ṣaḥīfa*.⁶² In his mostly derivative discourses, delivered as Friday sermons and later compiled as a book, he draws on his Egyptian colleagues and other contemporary authors, but with an even more impatient accommodation of national politics. In one sermon, for instance, he quotes a leading contemporary Muslim jurist ‘Abd al-Karīm Zīdān to the effect that *dhimma* is comparable to modern citizenship, leaving the reader with the misleading implication that for Zīdān the two were identical, against the jurist’s clear assertion to the opposite effect. More candid and

62 RĀSHID AL-GHANNŪSHĪ, *ḤUQŪQ AL-MUWĀṬĀNA* 65 (1986). The text is a compilation of Friday sermons delivered in 1984, and as such, meager in scholarly discussions and references. Among the few references is Aḥmad Kamāl Abū ‘l-Majd’s presentation at a conference entitled “Arab Nationalism and Islam” (1981).

combative, Fahmī Huwaydī had noted and summarily dismissed Zīdān’s careful reasoning in which the jurists had affirmed an essential difference between the two types of belonging based on Islamic juristic tradition.⁶³ Huwaydī had similarly dismissed the South Asian thinker and reformist Abū al-A‘lā al-Mawdūdī, who had paid greater attention to the needs of the modern state than traditional Arab jurists like Zīdān and proposed to accommodate non-Muslims within a parliamentary system as special-status minorities. Huwaydī had offered two lines of argument against those who sought to sustain any faith-based difference: first, the (in)famous clause 25 from the *Ṣaḥīfa*, “Jews are an *umma* with [*ma‘a*] the Believers,” which he had taken to imply full citizenship, and second, he had mockingly reminded them that they lived in the twentieth century.⁶⁴ Without irony, he declared that “the lands of Muslims must belong to Muslims as well as non-Muslims without one dominating the other, for [referring to Q 49:13] there is no superiority of one man over another except in piety and righteous deeds.”⁶⁵ The Qur’ānic meritocracy and difference grounded in faith and piety presented little difficulty to Huwaydī, for true piety was now rethought in terms of loyalty to society and state.

Ghannūshī seemed even less prepared to recognize the aspects of the *Ṣaḥīfa* or the classical *fiqh* that challenged his conclusions. An activist and politician rather than a scholar, he cherry-picked scriptural texts and juristic discussions that appear to support his purpose. Apart from Huwaydī, Ghannūshī’s intellectual debt, suggested both by references and substantive affinity, seem to have been to other Sadat-era statist writers like Aḥmad Kamāl Abū ‘l-Majd (another one of Baker’s “new Islamists”), who similarly inhabited a space between Arab nationalism and Islamic reformism and advocated full secularization of citizenship under an ever thinner Islamic veneer.

A quarter of a century later, in a book published in 2012, one year after the Tunisian revolution, Ghannūshī offered a slightly more developed take on the *Ṣaḥīfa*. Written during the

63 ‘ABD AL-KARĪM ZĪDĀN, *AḤKĀM AHL AL-DHIMMA WA’L-MUSTA’MINĪN FĪ DĀR AL-ISLĀM* 66 (1988).

64 HUWAYDĪ, *supra* note 45, at 126.

65 *Id.*

short-lived triumph of the Arab Spring in Tunisia, this text firmly recasts the *Ṣaḥīfa* in the spirit of the new Tunisia that the author envisioned. The *Ṣaḥīfa*, he wrote, was a constitution that formed the backbone of an Islamic political order, one in which legitimacy was earned by “a triumphant majority” to found a new society, whereby “the founder of the state, directed by his Lord, laid the foundations of an exemplary civilizational and social nucleus, guided by a world-embracing religion (*dīn munfatih ‘alā ‘l-‘ālam*) that could encompass all creeds, cultures, and races within its vision.”⁶⁶ It is only fitting for a religion that came “to honor human beings with intellect and freedom” to acknowledge the religious and ethnic diversity of human beings and seek to organize them.⁶⁷ After a swift and awkward acknowledgment that the *Ṣaḥīfa* declares the Muslims “a community to the exclusion of all people,” our author quickly makes the move that has become routine since El-Awa, namely, to invoke Q 8:72 to make the point that the state thus established was territorial, for those Muslims who did not migrate were not the recipients of the alliance. The phrase “a religiously pluralist society” peppers every few lines. “Fully in power” in his society when the *Ṣaḥīfa* was written, the Prophet “never asked them to abandon their polytheism for monotheism, but only demanded their loyalty to the state.”⁶⁸ It is this effectively secularized depiction of the state of the Prophet in Medina which left people to freely choose whatever religious they wanted that forms the foundation of a “modern civil society with political [and religious] pluralism.” At times Ghannūshī seems to suggest that the Prophet Muḥammad’s true aim would have been to establish a modern-day Scandinavian-style social democracy: “Citizenship and loyalty to the state are the [sole] foundations of rights and duties.”⁶⁹

This sits uncomfortably with the half-hearted acknowledgments of certain “religious” clauses, usually inserted without comment, such as that “every disagreement should be turned to Allah and His Messenger” and that “The Qur’ān and the Sunnah

66 GHANNŪSHĪ, AL-DIMUQARĀTIYYA, *supra* note 3, at 183.

67 *Id.* at 184.

68 *Id.* at 185.

69 *Id.*

are the authorities or references (*marjaʿiyya*) of legislation.”⁷⁰ Yet, whereas the deniers of the same Qurʾān and the Sunnah are equal citizens, “the *Ṣaḥīfa* forbids any alliance with the enemies of the state.”⁷¹ Surprisingly for someone who draws heavily on liberal ideas, Ghannūshī never considers the possibility that someone upholding “the Qurʾān and the Sunnah” may simultaneously and precisely for that reason be among “the enemies of the state”.

The contradictions of theory tend to work themselves out in practice. Andrew March’s recent study observes how Ghannūshī’s reading of the *Ṣaḥīfa* shifted further in the aftermath of the Arab Spring:

But the post-2011 writings go even further in stressing that the lesson of Medina for postrevolutionary Tunisia is that Islamic governance was founded originally in circumstances of radical pluralism, precisely where a shared will or purpose among “citizens” could not be assumed. Ghannūshī writes that the first written constitution in Islam (if not the world), the *ṣaḥīfah*, codified an essentially pluralistic political formation, and that “we [Muslims] are lucky that our first state was a pluralist state.” In a later essay, he reiterates that the founding of Medina provides Muslims with the authoritative example of founding a pluralistic political order, with citizenship (not religion) as the fundamental principle of rights and duties.⁷²

As with others, but now with unironic obviousness, the state is the source and the end of all loyalty. More precisely, the national *umma*, the sovereign people inhabiting the territory that has, as in Hobbesian myth, handed its power to the state, is the formal source of authority.⁷³ The *umma* is now a secular nation: the residents of the state are part of it, whereas those believers who

70 *Id.* at 186.

71 *Id.*

72 ANDREW MARCH, *THE CALIPHATE OF MAN* 212–13 (2019).

73 I owe this insight to Andrew March, whose careful reading of a draft of this paper generated many improvements and corrections.

do not live within its boundaries have no rights or politically meaningful ties. All this has been achieved through the fantastical powers of the *Ṣahīfa* of Medina.

Once freed of constraints of any scholarly tradition and discipline, the oracle proves defenseless against being used in diametrically arbitrary ways. It is to one such twist that we now turn.

BIN BAYYA: ṢAHĪFA FOR SECULAR AUTHORITARIANISM

So far, the *Ṣahīfa* had been twisted beyond recognition by the reformists in their quest for modern, accountable politics: for justifying a territorial state and ambivalently secular citizenship. However, both El-Awa and Ghannūshī seem to have foreseen the difficulty inherent in the *Ṣahīfa*, namely, the absence of any limits on the sovereign's power, any reference to consultation (*shūrā*), and any participation of the "citizens."⁷⁴ Already, unlike the deep and complex moral universe of the Qur'ān, the Sunnah, and classical Islamic jurisprudence, the *Ṣahīfa* as the oracle that trumps all other sources had become available for new and unpredictable uses. These possibilities, it should be reiterated, did not arise necessarily from any features of the *Ṣahīfa* itself, but from its anachronistic and selective reading.

Among the possibilities inherent in the *Ṣahīfa*, given the absence of any limits on the sovereign's powers, was justification for authoritarianism. The perfect moment for this rudimentary realization came in the aftermath of the Arab Spring, when Abdullah Bin Bayya (b. 1935), a Mauritanian politician and Mālikī jurist who was much in debt of the largesse of United Arab Emirates' ambitious ruling class, picked up where the reformists had left off and, on his Gulf patrons' behalf, turned it against them. The authority of the Prophet's fabled Medinan State is handed this time not to a liberal constitutional order but to the ambitious strongmen of Gulf monarchies without stipulating any participation or accountability in return.

⁷⁴ See, for instance, GHANNŪSHĪ, *AL-DIMUQARĀTIYYA*, *supra* note 3, at 187; he writes that the *Ṣahīfa* did not encompass all of the values and concepts of the Islamic state leaving out in particular the concept of *shūrā* (consultation).

In his publication titled *Ṣaḥīfat al-Madīna*, based on his keynote speech, published alongside the much publicized “Marrakesh Declaration,” Bin Bayya rehashes all the reformist themes pertaining to the *Ṣaḥīfa*, but with crucial additions and strategic omissions.⁷⁵ By way of addition, he makes four distinctive claims. First, since the Prophet was expelled from Mecca for saying “My Lord is Allah”—for his religious belief—his first purpose in the *Ṣaḥīfa* was to guarantee religious freedom. Second, the *Ṣaḥīfa* seeks to establish a religiously pluralist society, “granting its individuals same rights and duties” as “one nation” (*umma wāḥida*).⁷⁶ Third, the *Ṣaḥīfa* is not preceded or accompanied by any violence. Fourth, it has no concept of a majority or a minority.

Each of these statements is more or less untrue, and untrue in a far stronger sense than El-Awa’s original claims are ahistorical. Our scholars from an earlier era of Muslim scholarship—a Hamidullah or an ‘Alī—might observe that the Prophet was not expelled because he privately worshipped Allah, but because he declared “There is no god but Allah,” that the Meccan gods are false idols, and that he will not stop preaching his message at any cost. El-Awa’s book, in fact, starts by giving a sophisticated account of the Meccan struggle, explaining how the Prophet would seek material and military assistance from the Arab tribes during the annual pilgrimage, visited the neighboring town of Ṭā’if in that pursuit, and ultimately agreed to migrate to Medina when its leaders embraced Islam and promised to defend his mission with their lives.⁷⁷ None of this, of course, would be news to Bin Bayya.

In this own redeployment of the *Ṣaḥīfa*, Bin Bayya omits all the contextual information given in El-Awa’s and other reformist works, including later developments after the *Ṣaḥīfa* that would help make sense of its meaning. The Prophet preached that Meccan polytheism was based in false claims and demanded a new order based in his being the one true God’s sole spokesperson, which flies in the face of Bin Bayya’s declaration that

⁷⁵ Notes on the opening page declare that it was published for the well-known Marrakesh Conference held on 25–27 January 2016.

⁷⁶ ‘ABD ALLĀH B. BAYYA, *ṢAḤĪFA AL-MADĪNA* 26 (2016).

⁷⁷ ‘AWWĀ, *NIZĀM* (2006), *supra* note 2, at 45.

the Prophet's primary purpose was to secure or guarantee religious freedom. Rather, the Prophet had preached to the Jews and the pagan Arabs, and sought their aid quite explicitly in the *Ṣahīfa* in defending Medina while simultaneously he waged a comprehensive campaign against the Meccans, including an economic boycott and interception of caravans, in retaliation for their opposition to his call and their persecution of his followers, as explained in the Qur'ān (Q 22:39–41).

Both Hamidullah and 'Alī had denied the notion that the *Ṣahīfa* grants the Jews and the pagans the same rights and duties as it does the Believers; even the reformists, including Qaraḍāwī as noted above, recognized key differences among the parties to the *Ṣahīfa* as regards their respective rights and duties. Bin Bayya's neglect of the clauses of the *Ṣahīfa* such as that "No Believer shall be killed in retaliation for an unbeliever" and "The Believers are one *umma* to the exclusion of all others", to name only a couple, follows the pattern of more and more egregious misreadings. It is comparable to Ghannūshī's in his most recent writings (reproduced in the epigraph), in which he alters not just the meaning but the text itself, inserting Jews alongside the Believers in the very first clause, thus turning the entire document on its head.

Equally surprising is Bin Bayya's third point of non-violence, for the *Ṣahīfa* is most likely written right after the Battle of Badr, and certainly after the verses commanding armed defense were revealed (Q 22:39–41). In fact, according to one *ḥadīth* report, it was written the day after the execution of the Jewish-Arab leader Ka'b b. al-Ashraf, the man who had sought to ally with the Meccans against the Believers.⁷⁸

The fourth and final observation by Bin Bayya might be the most significant. It is a rudimentary fact that the concepts of majority and minority are absent from the *Ṣahīfa* of Medina; it was a declaration of truce between Medinan clans, not a democratic manifesto. Numbers of citizens are irrelevant to the question of political authority in the absence of modern concepts of popular sovereignty, citizenship, and democracy. But

⁷⁸ For a discussion of the incident and the *ḥadīth* reports, see ANJUM, *supra* note 7.

to Bin Bayya and his patrons, this absence takes on new significance, and presents an opportunity. It is the sovereign people who in theory grant sovereignty to the ruler. Bin Bayya denies the notions of majority and minority not because sovereignty is exercised by the Believers regardless of their numbers, but because in the states he seeks to justify and the order he seeks to theorize, people are subjects, not citizens. The ruler claims sovereignty without limits and accountability in the same way that the *Ṣahīfa* claims it for God and the Prophet.⁷⁹ All citizens are equal precisely because there are no citizens; no one has the right to protest, publicly complain, or hold the ruler accountable, let alone participate in governance.

As in the case of the reformists, the key nemesis against which Bin Bayya's political thought is presumably constructed is religious ignorance and militancy. For reformist jurists like Qaraḍāwī, who had been writing on the subject for some three decades before Bin Bayya took it up, religious extremism, terrorism, and violence had been in part a result of state oppression, colonialism, and religious misunderstanding, and in part instigated or carried out by the state security as a tactic to divide and rule. In Bin Bayya's discourse, religious militancy is treated as the primary cause.⁸⁰ Bin Bayya takes as political truth the prov-

79 He acknowledges elsewhere that sovereignty belongs to God, but explains that the people are epistemically incapable of knowing and perhaps even understanding the facts needed to make good political decisions, they have no right to interfere in governance. For this last claim see: Bin Bayya's booklet *THE EXERCISE OF ISLAMIC JURISTIC REASONING BY ASCERTAINING THE RATIO LEGIS: THE JURISPRUDENCE OF CONTEMPORARY AND FUTURE CONTEXT* (2015), contextualized at length in REZART BEKA, *THE JURISPRUDENCE OF REALITY (FIQH AL-WĀQI')* IN CONTEMPORARY ISLAMIC THOUGHT: A COMPARATIVE STUDY OF THE DISCOURSE OF YŪSUF AL-QARAḌĀWĪ (D. 2022), NĀṢIR AL-'UMAR (B. 1952), AND ABDULLAH BIN BAYYAH (B. 1935) 471–78 (2022) (Ph.D. dissertation, Georgetown University).

80 Bin Bayya's published texts effectively explain and addresses the myriad types of political violence, notwithstanding occasional competing claims about social, economic, and other causes of political violence that appear in some of his published literature. For instance, in a speech delivered in 2007 at an OIC (Organization of Islamic Cooperation) conference in Jeddah, later translated as *THE CULTURE OF TERRORISM: TENETS AND TREATMENTS* (USA: Sandala, 2014), an analysis of terrorism is presented, where one finds general statements such that terrorism is the result of "several factors" that are "compounded and not simple" (*Id.* at 5), citing a Canadian study that cites four causes (personal, religious framing, political—lack of democracy is positively associated with terrorism and poverty), but a few paragraphs later it is

erb that Muslim jurists often repeated as hyperbole: “Better sixty years of tyranny than one night of anarchy,” a reality in which any public protest is seen as a gateway to anarchy and terrorism.

Otherwise an unimaginative copy of the reformist discourse, Bin Bayya’s agenda betrays two striking absences. Both Islam as a public religion and any form of political accountability are categorically absent. In his opposition to political Islam, Bin Bayya erases both politics and Islam: all that’s left is the ruler’s will unconstrained either by any religious institution or training (in contrast to Iran’s Ayatollahs, for instance, who are presumably guided by extensive religious training and credentials, Bin Bayya stipulates none), any political institutional constraint (because “the Arabs are not mature enough for democracy”), or

proclaimed, “The terrorism currently manifest in the Islamic world stems from distorted thought, an education system in crisis, and a mistaken understanding of Islam” (*Id.* at 9). Even when injustice is mentioned as the main cause of terrorism in passing, the causes of that injustice are omitted, and in contrast to Qaraḍāwī’s even-handed treatment, the rulers are given no share of the blame (*Id.* at 7). These pre-Arab-Spring ruminations are systematically omitted in his writings produced after the onset of counter-revolution in 2013. In the analysis offered in Bin Bayya’s pamphlet *ṢAḤĪFA*, the reformist discourse is selectively copied and pasted from the writings of precisely the same scholars whose demand for justice and constraint on the powers of the ruling class is considered a source of terrorism. Bin Bayya’s discourse produced formally at the behest of the Gulf rulers diverges from that of his erstwhile senior and mentor Qaraḍāwī, whose ties to another Gulf monarchy are obvious, but who blames terrorism on despotic governments, complicit clerics, and foreign imperialism (e.g., in Qaraḍāwī’s seminal *AL-ṢAḤWA AL-ISLĀMIYYA BAYNA AL-JUHŪD WA’L-TATARRUF*, translated as *ISLAMIC AWAKENING BETWEEN REJECTION AND EXTREMISM* [2007]). For Bin Bayya, religious corruption becomes effectively the singular cause. For an alternative analysis, see DAVID WARREN, *RIVALS IN THE GULF: YUSUF AL-QARADAWI, ABDULLAH BIN BAYYAH, AND THE QATAR-UAE CONTEST OVER THE ARAB SPRING AND THE GULF CRISIS* 81–108 (2021). Warren sees Bin Bayya as moved not by helpless submission to the rulers, but an act of claim-making on behalf of the ulama, whom he believes are the solution to this problem. “If the cause of violence [is] ‘religious’ militancy, then the solution is suitably muftis who, importantly, are empowered by the state” (*Id.* at 81–82). He further argues that even though the rise of the nation-state in Muslim societies has profoundly destabilized the ulama’s role, for Bin Bayya the solution is yet more state involvement in religious life (*Id.* at 103–4). Warren argues that Bin Bayya’s justification for utter submission to the ruler, as strange as it might sound, is based on the argument that only the ruler can know how best to rule, and cannot be advised at all (*Id.* at 89). Warren discusses Bin Bayya’s “Orwellian freedom” by highlighting his argument that, while people have rights to accountable governments, those rights are seemingly deferred forever “for the sake of peace.” Warren’s attempt to give theoretical coherence to Bin Bayya’s Orwellian ideas is insightful, even though I am not persuaded that what underlies these rather extreme conclusions is theory.

by any other mechanism. Effectively, submission to the ruler's unconstrained and inscrutable will is the only guarantee, we are told, of peace and freedom.⁸¹

The unique notion of freedom (*hurriyya*) is notable here, for it is neither the negative freedom of liberal individualism, nor the positive freedom of a perfectionist regime that embodies and teaches virtue; it is the Orwellian freedom that an expatriate enjoys in a Gulf monarchy: freedom to be useful to the ruling elite and follow whatever cult or faith one wishes so long as the ruler does not perceive it as a threat. A direct implication of Bin Bayya's political "orthodoxy" is that if the ruler in his inscrutable wisdom comes to see anything as a threat, that freedom must be relinquished without right to resist or protest. It is only in this Hobbesian fashion that this reading of the *Ṣaḥīfa* can be treated as a call to peace, a peace that must replace any reciprocal demand for justice and relinquish any freedom that the ruler deems threatening. All "citizens" are equal insofar as they must equally cede their freedoms, demand for justice, and any hope to hold the rulers as well as their benefactors accountable in any fashion, except perhaps in an afterlife.

CONCLUSION

Contemporary intellectual historians have long debated as to who deserves the credit (or blame) for the direction of contemporary Islam, and all actors ranging from the state, Islamists, reformists, cultural elite including the ulama, to the popular sentiment, have been suggested. The dominant cultural discourses in the West continue to prefer cultural and doctrinal explanations: it is Islamic dogma that prefigures the blueprint of Muslim politics.⁸² Nathan Brown broke new ground by emphasizing the importance of the elite culture in shaping the state as well as the popular imagination.⁸³ Jakob Skovgaard-Petersen too emphasized the role of a specific elite group, the ulama: "In their

81 'ABD ALLĀH B. BAYYA, *supra* note 76, at 29, 30.

82 See, for example, EMANUEL SIVAN, *RADICAL ISLAM: MEDIEVAL THEOLOGY AND MODERN POLITICS* (1990).

83 Nathan J. Brown, *Law and Imperialism: Egypt in Comparative Perspective*, 29 *LAW AND SOCIETY REVIEW* 103 (1995).

endeavour to serve the state, uphold the authority of high ‘ulamā and fight godlessness and secularization, the State Muftis were contributing to a reformulation of Islam as simple, rational, just and easily applicable—a vision of Islam that has been highly influential in the 20th century.”⁸⁴ Gregory Starrett argued that the state politicized and objectified Islam through mass education policies; the British used it to socialize the population against political revolt, ‘Abd al-Nasir to justify scientific socialism, and Sadat to argue that the state (and not the Islamist opposition) possessed an authoritative claim to religious legitimacy.”⁸⁵ Robert D. Lee handed the authority back to religion as a set of independently existing discourses, but noted that religion responds to the state’s need and weakness and the state is compelled to exploit the religious discourse.⁸⁶ Aaron Rock-Singer’s recent work sees “state-sponsored and Islamist educational efforts as two sides of the same coin” and that “the driving force behind the bifurcation of religious education in Egypt’s Islamic Revival was not the incommensurability of Statist and Islamist calls for religious change, but rather their shared adoption of the Ministry of Education-sponsored Modernist vision of education as a prime motor of social change.”⁸⁷ From the postcolonial state, the cultural elite within and outside the formal institutions, the Islamic reformist movements (Islamists), to popular religion at large, all factors have been held responsible for Egypt’s (and the Muslim world’s) religious state.

The present study adds a new dimension to these explanations, the crucial role of innovative reasoning in Islamic doctrine, including strategic (mis)readings that offer useful possibilities and lend themselves to political deployment, that shapes the fundamental doctrine that the various players—as in the case of the *Ṣaḥīfa*, first the reformist and then the Statist elites—may then put to use in various, even diametrically opposed, ways. It

84 JAKOB SKOVGAARD-PETERSEN, *DEFINING ISLAM FOR THE EGYPTIAN STATE: MUFTIS AND FATWAS OF DĀR AL-IFTĀ* 29 (1997).

85 GREGORY STARRETT, *PUTTING ISLAM TO WORK* 62, 77–86 (1998).

86 ROBERT D. LEE, *RELIGION AND POLITICS IN THE MIDDLE EAST: IDENTITY, IDEOLOGY, INSTITUTIONS, AND ATTITUDES* (2010).

87 AARON ROCK-SINGER, *PRACTICING ISLAM IN EGYPT: PRINT MEDIA AND ISLAMIC REVIVAL* 77 (2019).

straddles two bodies of scholarship, textual and historical study of the *Ṣaḥīfa*, and intellectual history of contemporary Islamic reformist trends, and has implications for the theoretical approaches that have provided frames for examining secularism and its entanglement with the modern nation-state. It offers a way to probe whether, and if so how, the set of interpretative resources within a tradition exercises its agency vis-à-vis external pressures. By identifying the *Ṣaḥīfa* discourse as a key transformation in contemporary Islamic political thought, it offers a way to interrogate and concretize the theses put forth by theorists like Talal Asad, Wael Hallaq, and others who see the modern state as necessarily secularizing. Its finding not only confirms this suspicion, but also probes it through falsifiable claims open to the investigative work of intellectual history.

Far from definitive on the roots and diversity of contemporary Islamic political thought, this study invites further inquiries. If it is the case that the *Ṣaḥīfa* discourse helped normalize the idea of a territorially defined Islamic state among the moderates, we may ask how it informed the Islamic political discourse in the wake of the 2011 Arab uprisings. We continue to witness two highly divergent and ahistorical uses of the *Ṣaḥīfa* discourse. Both projects share with the original revisionist reading the desire to smuggle territoriality into Islamic political thought as the marker of sovereignty, thus making Islam fully available to the state. Another path of inquiry is to explore the larger implications of the claim that Islam's true political and constitutional teachings are best expressed in a hitherto obscure document, not in the historical Muslim scholarly understanding. It is worth asking whether the *Ṣaḥīfa* might not have accomplished in a more subtle fashion what the Sudanese Maḥmūd Muḥammad Ṭāhā had proposed in his "Second Message of Islam" and his disciple Abdullahi Ahmed An-Na'im continues to propose in calls for thoroughgoing political secularization.⁸⁸ Such a reading, it

88 Ṭāhā was declared a heretic and executed in Sudan in 1985 for effectively rejecting the Medinan Qur'ān. For his disciple Abdullahi Ahmed An-Na'im's description and defense of this thesis, see *ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'Ā* 2, 124, 284 (2008). An-Na'im, too, otherwise total secularist, surprisingly asserts that "the polity of Medina during the time of the Prophet is of course an inspiring model of the sort of values Muslims should strive for in

should be noted, has by no means been the reformists' intention, nor is this possibility explicit in the reformist writings which often read the *Ṣaḥīfa* with more or less careful attention to the developments during the later Medinan and the Rashidun caliphate periods. Coexisting uncomfortably with other discourses, this potential seems to become fully deployed only when the political need arises. A related theoretical puzzle is worth ruminating over: Does historical scholarship matter? If scholarly errors, expedient or sincere, in the reading of history or doctrine can be pointed out, can the seemingly inexorable powers of the modern state be tamed?

This study does not argue that authoritarianism in the Arab or the Muslim world is caused by Islamic doctrine or scriptural hermeneutics. The elites in postcolonial Muslim states hardly need Islamic teaching to justify their politics. But the power of ideology lies not only in inspiring policies, but equally in justifying them. At a time when the autocrats face tough competition from Islamically framed mass opposition, the religious flavoring afforded by the *Ṣaḥīfa* may have performed the crucial function of managing popular Islamic sentiment, as suggested by some empirical evidence.⁸⁹ Some scholars, such as David War-

self-governance, transparency, and accountability" (*Id.* at 280), ignoring the rudimentary fact that there was no earthly objection possible to the Prophet, and it is only with Abū Bakr, the first caliph, that the idea of the ruler as accountable to the people became conceivable and was in fact instated.

⁸⁹ For a summary of scholarship on Middle Eastern authoritarianism, see Eva Bellin, *The Robustness of Authoritarianism in the Middle East: Exceptionalism in Comparative Perspective*, 36 *COMPARATIVE POLITICS* 152–53 (2004). She notes that the general factors that strengthen coercive structures are common to other authoritarian regions are patrimonialism in state structures and low level of popular mobilization, aggravated in MENA region by two further factors, an abundance of rent and Western security (not to mention economic and ideological) concerns. Even beyond these, MENA suffers from low national solidarity, low elite commitment to democracy, low GNP, and absence of Impartial and effective state institutions. However, "The dramatic transition to democracy that swept Sub-Saharan Africa and Eastern Europe in the 1990s drew attention to the important role popular mobilization can play in bringing down authoritarian regimes" (*Id.* at 152). In the wake of the 2011 uprisings, Bellin observed that many of the earlier observations of the analysts were confirmed, "the trajectory of the Arab Spring highlights an empirical novelty for the Arab world, namely, the manifestation of huge, cross-class popular protest in the name of political change, as well as a new factor that abetted the materialization of this phenomenon—the spread of social media. See Eva Bellin, *Reconsidering the Robustness of Authoritarianism in the Middle East Lessons from the Arab Spring*, 44 *COMPARATIVE*

ren, have argued that the use of the *Ṣahīfa* has been only a spectacle for the Western elite in an effort by the ambitious states to furnish bargaining chips in thwarting any potential international pressure to reform or democratize.⁹⁰ What is also the case, however, is that the specific substance of the spectacle was directed at the domestic audience whose potential the Arab Spring had demonstrated and whose ideas have been shaped by the Islamic Awakening (*Ṣaḥwa*) discourses of the last few decades. As Eva Bellin, expert on MENA authoritarianism, wrote in 2012, “If anything, the Arab Spring has demonstrated the importance of regional effects and the power of positive example in stimulating political re-imagination.”⁹¹ In other words, the authoritarian elite have every reason to fear a repeat of these events and, given the sustained and demonstrated power of Islamic frames, invest in a counterrevolutionary religious ideology. The *Ṣahīfa* discourse, ironically, has lent itself to precisely that ideology. To stem the tide of a fierce demand for accountability by the standards of Islam, the veneer of an authentic Prophetic constitution, built up to high heaven by the reformists themselves, has provided the perfect defense. Furthermore, the valorization of the *Ṣahīfa* into the world’s first constitution speaks deeply to Muslims’ affection for the Prophet, making a critical rejoinder a potentially impious if not heretical enterprise.

The manipulation of Islamic discursive tradition has long-term consequences for the Islamic world and the world at large. Reformist scholars like El-Awa and Qaraḏāwī seem to have been invested in solving the chronic problems of the deficit of political legitimacy, enduring authoritarianism and repression,

POLITICS 142–43 (2012). She further noted that the latter will no doubt be “a game changer for the longevity of authoritarian regimes around the world from now on” (*Id.*). She also wisely curbed her enthusiasm by cautioning that “Only a minority of countries that jettisoned authoritarian regimes between 1974 and 1999 had developed into stable democracies by the turn of the century” (*Id.* at 143).

90 David Warren, personal communication, but also see his recent monograph, DAVID WARREN, *RIVALS IN THE GULF* (2021), which explains the UAE’s effort to build a “state-brand” (*Id.* at 8–9, 107, 116–17) and a way of demonstrating to foreign powers (the US) that they are an essential ally in “reforming Islam from within” (*Id.* at 109) by sponsoring figures like Bin Bayya, and should thus be protected from internal calls for democracy.

91 Bellin, *Reconsidering*, *supra* note 89, at 144.

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socioeconomic inequality, and foreign exploitation of the Muslim world. Once a voice for social justice, anticolonialism, and an Islamic modernity, the tropes of moderate political Islam, as evidenced in the *Ṣaḥīfa* discourse, have now also become a weapon in the hands of the authoritarian elites. This has been an important and ignored chapter in the long and continued battle for the soul of modern Islam.