# Historical Review of Who Has Control Over Public Policy Formulation in Islamic Law

**Dr. Majdi Saeed Almarashi**

Assistant Professor of Law at Collage of Judicial Studies And Regulations – Law Department,
Umm Al-Qura University, Makkah, Saudi Arabia.

**Summary:**
The paper demonstrates how the Islamic governments in the Islamic history derived the authority for regulations and laws from the Qur'ān and the Sunna (sayings of the Prophet). These two laws are sovereign over public policy. Then, it shows the obstacles that prevented modern Muslim countries from formulating public policy based on Sharia law.
*Keywords:*
*Public Policy, Islamic law, Sharia, Islamic History.*

## 1. Introduction:

The law of Islamic history is Sharia, meaning divine law. Muslims believe that God revealed this law, which governs all aspects of life, to the Prophet Muhammad between 610 and 632. Because the Qur'ān also commands believers to obey and follow the Prophet, the Prophet's actions and words are considered a second source of Islamic law, known as Sunna law.

The question arises: Does submission to Sharia law mean that the Sharia rejects secularism as a way of organizing life and regulating relations between the state, religion, and people? Is Sharia a civil or religious state? To say that the state under Sharia law is a secular state is an inaccurate answer; and to say that it is a civil or religious state is also inaccurate, because this question carries in its content a misconception and a terminological problem. The concept of secularism was born in a completely different environment than the Islamic environment – the composition of these terms and concepts is subject to its cultural setting. Language is loyal to its speakers. Therefore, the question of whether the Sharia is secular or not is inaccurate. The correct approach to dealing with these terms is to examine the meanings of each term and then analyze each meaning separately.

## 2. Siāsa Shar'iyyah As Basis of Formulating Public policy

Many who read about the Islamic system, especially in Western societies, subject this system to their own concepts, which are formed in a different context. I think this is one of the significant reasons for misunderstanding Sharia. Sharia has its own nature and its own concepts, which should be understood as Sharia intended, and not as the reader wants. Yes, it is a hard task, but it is a basic way to judge terms correctly and scientifically. Therefore, the best way to answer the question, "Is the Islamic state a civil and secular state?" is by understanding the way Sharia works, and by presenting the essential rules, provisions, and principles forming Islamic political thought. Thereafter, the reader can compare, analyze, and judge.

One of the most important legal terms that clarifies this matter is the term "Siāsa Shar'iyyah". "Siāsa" literally means "policy", and the term is derived from a narration of the Prophet, where he said, "The children of Israel were governed by the prophets, the prophets were making policy for them, whenever a prophet died, a prophet succeed him. There is no prophet after me."

## 2.1 The prophetic way of administering the state

This term "Siāsa" has two meanings: The first is the prophetic way of administering the state. Muslims believe that the actions of the Prophet are a source of legislation. Therefore, there is no legislative vacuum regarding the Prophet's life because the Prophet addresses all issues based on the commands of God. After his death, his policy is a stated method that no one can alter, modify, or change. Rulers after the Prophet must follow these teachings, except in one case: namely, the inability to apply them, and this exception is temporary. Action must be taken to return the exceptional position to the original one whenever possible.

## 2.2 The delegated method of Administering the state:

The second meaning of the term "Siāsa" is the delegated method, which is the approach of deriving laws of Sharia from their sources. It is the dynamic principle of Islamic law that helps keep the law fresh, active, and capable of facing the challenges of new places and times. It also entails going beyond the primary sources and introducing new legislation under the general framework of Sharia law.1

There are many matters regarding the two meanings of Siāsa. First: What is the scientific methodology for understanding sacred texts? Or, in other words, what is the correct Islamic methodology to derive from the provisions of Sharia?2 Second: What is the historical example after the

---

1 Dr. Abdul Aal Atwa. Siāsa Sharyyiah. Imam Muhammad Bin Saud University. (1993) 16. Saad bin Matar. Spotlight on Siāsa Sharyyiah. (2012).

2 That methodology is addressed in the next chapter.

Prophet's life that can be relied upon and used as guidance for governments in building public policies? In fact, there is a practical example of Islamic policy which the Prophet clarified to his companions in one of his last sermons, advising them to follow it after his life. This was narrated by Al-Nu'mān Ibn Bashīr who said, "One day, the Messenger of God (Allāh) gave us a deeply moving speech that melted our heart and eyes shed tears. A man said, 'This is as a farewell sermon. So advise us,' and the Prophet said, 'I admonish you to fear Allāh, to listen and obey even if a slave is appointed as your leader. Whosoever among you will live after me, will see much discord. So hold fast to my approach and the examples of the Rightly-Guided Caliphs who will come after me. Adhere to them and hold to it fast. Beware of newly invented matters [in the religion], for verily every innovation (bid'ah) is misguidance."1

This ḥadīth (saying of the Prophet) indicates that Muslims must follow the Prophet's approach to public policy, which is the first meaning of Sharia policy "Siāsa." And we have to follow the guidance of the Rightly-Guided Caliphs after the Prophet, which is the second meaning of Sharia policy "Siāsa." Realistically, are we obliged to follow the period of the caliphs without reason and are there substantial grounds that make them more important than others? And is this period of caliphs a fixed-term period?

Muslim Scholars think that the period of the Rightly-Guided Caliphs is between 632-662 CE, based on the sayings of the Prophet and the historical reality. This period is considered an inspiring example in the Islamic political system.2

The Prophet accurately prophesied the governing forms that are going to be followed after his death, and he prophesied that the genuine caliphate form is going to be applied again in the Islamic world around the end of time. Based on Ḥudhayfah, Allāh's Messenger said:

Prophecy will remain among you as long as Allāh wishes it to remain, then Allāh Most High will remove it. Then there will be a caliphate according to the manner of prophecy as long as Allāh wishes it to remain, then Allāh Most High will remove it. Then there will be a distressful kingdom which will remain as long as Allāh wishes it to remain, then Allāh Most High will remove it. Then there will be a proud kingdom which will remain as long as Allāh wishes it to remain, then Allāh Most High will remove it. Then there will be a caliphate according to the manner followed during the prophethood (by the Prophet)." Then he stopped.3

This ḥadīth is a general identification that shows that the period of the Rightly-Guided Caliphs is after the death of the Prophet. It was proclaimed in another ḥadīth that specifies this period, which was narrated by Sa'īd bin Jumhan:

Safīnah narrated to me, he said, 'The Messenger of Allāh said, 'Caliphate will be in my Ummah4 for thirty years, then there will be monarchy after that.' Then Safīnah said to me, 'Count the Khilāfah of Abū Bakr,' then he said, 'Count the Khilāfah of `Umar and the Khilāfah of `Uthmān.' Then he said

to me, 'Count the Khilāfah of `Alī.' He said, 'So we found that they add up to thirty years.' Sa'īd said, 'I said to him, 'Banu Umayyah claim that the Khilāfah is among them.' He said, 'Banu Az-Zarqa' lie, rather they are a monarchy, among the worst of monarchies.5

These are explicit texts. Additionally, there are reasons that make this period distinct from others, as follows: First, it was an ideal period in which justice spread among people; second, it was a period that was subject to human experience; third, it was a period which could reconcile the commands of the Prophet and the needs of the people; fourth, it was a period that was able to benefit from the experiences of other nations at that time, such as the Persian empire and Roman empire, without becoming inconsistent with the texts and principles of Sharia law. The most important reason this period was distinct is that the way of choosing the ruler was neither monarchical nor dictatorship. It was similar to democracy in that the right of choosing the ruler was delegated to the people rather than a tribe, family, or group.

The appointment or choice of the ruler is left to the people to choose from whom they wish. So, when the Prophet was in the disease of death, the companions asked him to appoint a successor. Although he did not do that, he hinted at the excellence of Abū Bakr. So the Companions met after the death of the Prophet in the shed of Bani Sā'idah (Saqīfah Banī Sā'idah), and they consulted with each other to choose the ruler after the Prophet. Abū Bakr was chosen.

The method adopted by Muslims in building the Muslim state, the form of government, dealing with updates, dealing with texts, and the way of applying sacred texts, is the method of the four caliphs. The recommended governing method of the Muslim nation in Islam is called Khilāfah (caliphate) headed by a caliph. The caliph is supposed to be chosen through a method called al-bay`ah (whereby Muslims offer allegiance to the caliph), and the caliph can be any good Muslim. After Prophet Muḥammad, four successive caliphs reigned, who enjoyed widespread approval among Muslims when they were chosen. They followed the methodology of Prophet Muḥammad in governing. They were Abū Bakr Al-Ṣiddīq, `Umar bin Al-Khaṭṭāb, `Uthmān bin `Affān, and `Alī bin Abī Ṭālib. After `Alī, Al-Ḥasan reigned for only 6 months and then resigned. Mu'āwiyah (from the tribe of Banū Umayyad) reigned for several years after and chose his son Yazīd to succeed him. Thus, the Umayyad dynasty started. Thereafter, the Islamic system was no longer followed regarding the perfect way of choosing the ruler. This was the first time monarchy was applied in Islamic history and was the first deviation from Islamic policy in respect to the form of government.6 Other policies, however, were generally Sharia-compliant.

Sharia has been the dominant guide of Islamic political activism throughout Islamic history. The path the Prophet and his companions followed in their lives and how they developed political life serves as a blueprint for every

---

1 Transmitted by Abū Dāwūd and At- Tirmidhī. Translated by: https://sunnah.com/riyadussaliheen/1/157
2 Majmū Fatwas of Ibn Taymiyyah: (35/19)
3 Translated by: quran-in-english.discoveringislam.org
4 The Ummah is the whole community of Muslims bound together by ties of religion.

5 Jāmi` at-Tirmidhī 2226 Translated by: https://sunnah.com/Tirmidhī/33/69
6 The historical reasons for this transformation are many – clarifying them is not one of the research objectives. I just mention the historical context of the relevant events.

Islamic government. More than a prophet, the Prophet was the founder of the first Islamic state. In the era of the Prophet and his four caliphs, all Muslim communities belonged to a single political regime – whose unity was based on the interconnection of religion and the state, where faith and politics were inseparable. Historically, every Muslim state was relying on the Islamic ideology for its foundation, including the great Islamic empires: Umayyad (661–750), Abbasid (750–1258), Ottoman (1281– 1924), and others. The Islamic ideology was the basis for creating legal, political, educational, economic, and social policies.[1]

For more than a thousand years, Muslims have not found a problem with the rule of Sharia, and societies have been governed by Islamic politics. Yes, there were deviations increasing day after day, but Muslims could deal with political deviations because they did not intersect or clash radically with Islamic thought. Even though the political regimes have deviations, they did not face a fundamental crisis with respect to the application of Islamic provisions and the Islamic policies.

A large proportion of the deviations did not concern the legitimacy of regimes, but was within the limits of deviations of officials in their personal lives. Muslim society was mostly removed from negative political influence. Religious minorities lived peacefully in these empires – they did not wrestle with Islamic policies, but merged with the society and became a part of it. The minorities had their own legal system, their own courts, their own laws, and were not forced to convert to Islam or leave their religion.

## 3 Formulating the Islamic Policy in the modern Era?

In modern times, there has been a huge crisis that has caused a deep misunderstanding of Islamic thought and the Islamic policy system. Muslim societies have been terribly divided because of it. The crisis erupted with the invasion of Western colonialism into the Muslim world. Colonialism replaced Muslim self-rule, which had been Islamic-compliant and existed since the beginning of Islamic history.

After the centuries-long struggle with European colonial rule, the colonial powers imposed authoritarian regimes that caused instability in the modern Muslim states. This situation led many people to wonder whether the Islamic public policy was capable of dealing with the updates, or if the concepts directly opposed civil society and rule of law.

In the Middle East, during World War II, the French created modern-day Lebanon from portions of Syria. The British drew the borders for Iraq and Kuwait and created a new political entity known as Jordan. Additionally, the British constituted a new occupied state called Israel in order to carry out their own strategic interests in the region – ousting non-Jewish citizens and occupying land once belonging to Christians and Muslims, surrendering the Palestinian land to a foreign power. Those arbitrary actions fed ethnic and regional chronic

conflicts. In South Asia, the Indian subcontinent was divided by the colonial British into India and Pakistan; the British also divided the Muslim-majority state of Kashmir and allocated portions of it to both countries. This action has led to millions dead, both Hindus and Muslims, in the civil war. These actions led to the creation of Bangladesh. Most of the conflicts that developed from these divisions persist to the present day. The political model was imposed by colonial powers, as they removed the Islamic system after independence from colonial states, creating weak regimes of corrupted governments that lack public support. When Muslim societies seek to get rid of these despicable patterns, they face forms of torture, abuse, or even murder. Western institutions, especially human rights institutions, give them some protection but not enough to change the political situation for the better – just enough to blackmail these authoritarian regimes. Muslims feel bitter today because many of their countries are dominated by great western powers, primarily the United States. People do not make their own decisions and enjoy freedoms, and they tried every option they had to get rid of the United States' dominance and to gain independence in their sovereign decisions, but they did not succeed.

Nowadays, countries invaded by the U.S., such as Iraq, Afghanistan, and Somalia, are considered the most failed countries. Nevertheless, the U.S. claimed that they came to eliminate terrorism and establish new democratic systems; however, the reality was that a group of dictators were allowed to rule these countries and feed sectarianism under the observation of the U.S. to plunder its natural wealth.

Russia intervened in Syria to protect the dictator Bashar al-Assad, and the United States welcomed the entry of Russia on the pretext of combating terrorism. Putin has tried more than 200 new weapons on the heads of children and women.[2] Everything was destroyed except two things: the despot Bashar al-Assad (who continues with Russia's support) and the terrorist organizations. Where are those millions who have risen up against injustice, seeking freedom and dignity? The "War on Terror" is used an excuse for intervention, but each time the superpowers intervene, hatred and violence increase, creating an endless spiral downwards.

Thousands of innovators, writers, honest politicians, and thinkers can no longer build their homes in these ruined states. There is no place for development, as they are often combated. They prefer to migrate from their countries to more stable countries that respect their creativity and production. This results in countries devoid of intellectuals and reformers. The weakness of political thought becomes commonplace, except for some individuals. People in the Islamic world must accept poverty, ignorance, and corruption under dictatorships or have to revolt and accept a war against them by world powers.

With these bitter conflicts of freedom and dignity, so many people today prefer stable monarchies to unstable democracies. Nowadays, royal regimes enjoy political stability, decision-making, and national security. While democratic systems in the Muslim world do not have political sovereignty, great powers interfere in their decisions through the conflicting

---

[1] The Role of Colonization on the Political System of the Muslim World:
https://www.islamreligion.com/articles/359/role-of-colonization-on-political-system-of-muslim-world/

[2] https://nation.com.pk/23-Feb-2018/russia-tested-over-200-new-weapons-in-syria

parties. These systems have failed miserably in Syria, Egypt, Iraq, Yemen, Tunisia, Algeria Afghanistan, Lebanon, and others. The truth is that if you want democracy to fail, you put it in a failed environment.1

"When people ask themselves why the Muslim world is distraught with violence and unrest, the answer can surely be found in the colonial interference, both past and present, in the region. Therefore, any future success depends upon returning to a society governed by the principles of the people who live in it, one in which all its affairs are governed by Islam."2

The above is a crucial point with regard to understanding the Islamic political system in modern times. We have shown the influence of colonial domination on the political reality in the Islamic world. But there is another impact that may be more severe: Many researchers believe that although the military invasion has ended in general, intellectual invasion or conceptual warfare has continued to have its effects to this day. Colonialism was not only a military invasion but also a targeting of minds. The goal of this section is not to evaluate this experiment but to indicate the level of intellectual disorder suffered by the Islamic world because of colonialism in the political sphere.

Colonialism planted new political concepts in an environment that did not accept these concepts for many reasons. The most important reason is that many of the foreign concepts collide substantially with Islamic political thought. Because the nature of the weak is to blindly imitate the strong, many intellectuals and politicians advocated adopting the colonial political thought as is, which caused a severe clash. The result is as if a doctor transplanted a strange organ in a patient's body and the transplant recipient's immune system attacked the transplanted organ. The immune system recognized that the organ is "foreign" and attacks it.

Yes, there are scientists and thinkers who have revised these concepts and compared them with the concepts of Sharia – there are great intellectual efforts in this context. But the problem is that those thinkers and scientists do not receive adequate support from local governments and often collide with political authorities. The political powers think that these scientists threaten their political existence. A set of political terms cannot be separated from the intellectual and historical context such as sovereignty, constitution, nationality, modern state, pluralism, political parties, citizenship, freedoms, rights, and so on. These terms, as an example, have specific meanings in the democratic system, and need an appropriate environment to be able to coexist with these concepts. So, when someone attempts to employ these concepts in a different system, the democracy will not work at all, and may cause more trouble. That is what happens in the Islamic world nowadays.

To explain how these concepts influenced public policy in the modern state, we can see that some concepts were generated as a result of particular social problems. For example, in Islamic history, there was no conflict between science and religion. The educational institutions that used to teach religious sciences were at the same time teaching natural sciences, astronomy, physics, medicine, and others. There was no need to demand the renunciation of religion on the grounds that it rejects science. Islamic history does not include stories of killing or torturing natural scientists. This is one of the major reasons for the emergence of the secular state, which did not exist in the Islamic world! Therefore, the attitude towards the role of religion in political life in the Islamic world is completely different from that in the Western world. As for the financial relationship between the state and the people, that was governed by an Islamic economic system. Individual property was respected and feudalism was not widespread in Islamic history. Endowments and donations were widespread. In accordance with Islamic law, the Islamic state was obliged to take care of poor people. Sharia law prevents imposing tax if it is unnecessary. Social life was established on family solidarity. When feudalism in Europe was rampant and the nobility would attack private properties, capitalism came as solution to deal with Europeans particular issues. In general, Sharia policy is radically different from capitalism. Acceptance of capitalism means the abolition of many provisions of Islamic law.

In regard to the concepts of freedom and rights, the Muslim community had its own limits to freedoms that fit its societies, customs, and beliefs. The Western concept of freedom that fits their society is not applicable in Islamic society. Islamic law boosts the role of the family, making it the center of society. When the concepts of individuality came as a result of capitalism, individuality destroyed the family relationship.

As for the political system, it is the essence of the discussion here. The Muslim community lived under Islamic systems for more than ten centuries. Yes, it carries with it a lot of problems; but, in general, it is undoubtedly better than the current reality of regimes in the Islamic world. Because they are built on a set of conflicting concepts, these regimes suffer an identity crisis and a loyalty crisis between the west and east. These political concepts of the modern state and of a completely different environment have penetrated the Muslim world. These concepts could be active, effective, and meaningful in their home. "Popular sovereignty" is a concept which radically contradicts the concept of the "sovereignty of God."3 Some of the concepts differ with Sharia law, in part as concepts of freedoms and rights. Some of the concepts are consistent with Sharia law, such as election processes (as a process not as an ideology).

These concepts were presented to the Islamic world and caused terrible confusion. Even if we assume that the

---

1 For more details see: Jōji Watanuki, Michel Crozier, and Samuel P. Huntington, The Crisis of Democracy, report on the governability of democracies to the Trilateral Commission. New York University Press. 1975.
2 The Role of Colonization on the Political System of the Muslim World:

https://www.islamreligion.com/articles/359/role-of-colonization-on-political-system-of-muslim-world/

3The meaning of divine sovereignty in Islamic thought is completely different in terms of its background from religious thought in the West.

Muslim community can absorb them intellectually, these concepts and Islamic thought cannot be combined in one place. This means that those who want to impose them on the Muslim world either do not know how Muslims think and present them in good faith, or want to confuse these regimes politically by planting concepts in a body that cannot accept them.

What many Islamic thinkers call for is to Islamize the foreign political concepts as much as they can, and to begin the gradual application of Sharia-compliant principles as soon as they can. They believe that getting rid of all these foreign concepts is politically costly and impossible; that these political foreign concepts have formed the majority of contemporary Muslim countries; that a huge number of concepts are not rejected by the Sharia; and that any attempt to get rid of these concepts altogether will yield uncalculated consequences. They believe the first way to do this is to articulate I**slamic political concepts clearly and compare** them to Western political thought. This may alleviate external pressures, especially from human rights organizations and media institutions. The other requirement for the success of this task is to remove the political injustices suffered by Muslim societies today, which spur the natural reaction of extremist ideas and groups.

## 4. Conclusion:

After presenting this historical and contemporary background of public policy in Islamic countries, this study provides a modest effort amidst a huge pile of intellectual and political conflicts. The hope is that this effort is fruitful and enlightening to many honest people who are keen to understand the facts. There are many such people in this world, and they stand in contrast to those who take initial positions without searching, scrutinizing, and reading, or those who look at other nations with contempt and disdain.

## References

[1] The Role of Colonization on the Political System of the Muslim World:
https://www.islamreligion.com/articles/359/role-of-colonization-on-political-system-of-muslim-world/

[2] https://nation.com.pk/23-Feb-2018/russia-tested-over-200-new-weapons-in-syria

[3] For more details see: Jōji Watanuki, Michel Crozier, and Samuel P. Huntington, The Crisis of Democracy, report on the governability of democracies to the Trilateral Commission. New York University Press. 1975.

[4] The Role of Colonization on the Political System of the Muslim World:
https://www.islamreligion.com/articles/359/role-of-colonization-on-political-system-of-muslim-world/

[5] The meaning of divine sovereignty in Islamic thought is completely different in terms of its background from religious thought in the West.

**Majdi Almarashi** received the Bachelor's degree in Sharia (Islamic law) at Al-Imam Muhammad Ibn Saud Islamic University in Riyadh, Saudi Arabia in 2010, then he received the master's Degree in Legal Policy with a (Law) major from the Higher Institute for Judge Qualification at Al-Imam Muhammad Ibn Saud Islamic University in Riyadh in 2013. The master's thesis was (The Provision of The Consulting Contract For The Issuance Of Securities"). Majdi got his second Master's Degree (L.L.M) in Legal Studies with a (Law) major From Case Western Reserve University in The US in 2017. Also, He has a Diploma in Criminal Law from CWRU. In 2020 he received the S.J.D from CWRU. Now, he is an assistant professor at Umm Al-Qura University. He is the general Supervisor of the Correctional Alternatives Center, and vice dean of Collage of Judicial Studies And Regulations