

ROOTING FIQH IN MODERN IJTIHAD: ADAPTING FIQH TO COMMUNITY NEEDS

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Abstract:

In the face of the changing position of Sharia in the modern state, the contemporary jurist found himself facing the task of covering huge developments with jurisprudential rulings. He devised a jurisprudential mechanism called "rooting," which allowed him to practice *ijtihad* and cross between the previously restricted sects. To prove the validity of Sharia for modern times and its compatibility with the time requirements, through which he hopes to restore Sharia to its ancient position. This research explains this new jurisprudential mechanism and the jurisprudential practice. It was carried out through examples of political and economic fields; the areas most affected by the new transformations are clear and influential in daily life. These examples reveal the nature of this jurisprudential practice that led to the logic governing the breaking of the Islamic jurisprudence and its adaptation to the age requirements. Although it represents a current between other jurisprudential currents, this practice reveals the predicament of the jurist in the modern world and the complex dilemma he faces. If he met the age requirements and legislated them by breaking the rules and logic of jurisprudence, he strengthened the weakness of the Sharia in influencing public life. If he stood in the face of these requirements, he maintained the isolation of Sharia. In both cases, the jurist consolidates the position of Sharia imposed by the modern state outside the influence of public life.

Keywords: Contemporary Rooting, Shariah, Fiqh

1. Introduction

With the radical change in the lifestyle at the end of the nineteenth century in the Islamic world, the jurists faced an urgent need to cover the changes taking place in the legal rulings. This was accompanied by: the collapse of the Ottoman Islamic Caliphate, the emergence of a wide civilizational gap between the Islamic world and the modern Western world, and the change in the position of Sharia. In public life, the validity of Islamic jurisprudence for the modern world is at stake. (Ahmed 2017, 215; Zarqa 1998, 1:247, 259, 299). In response to this challenge, a jurisprudential activity emerged, accompanied by the emergence of specialized institutions, starting with the Academy of Scientific Research in Al-Azhar in 1961 (the first complex established for this purpose), through the Islamic Fiqh Academy in Makkah Al-Mukarramah in 1978. The establishment of educational institutions specialized in Islamic jurisprudence and its origins, such as the Faculty of Sharia at Damascus University in 1954. (Al-Zarqa 1998, 1:250) after being confined to traditional institutions led by Al-Azhar Al-Sharif in Egypt.

Regardless of the extent of the jurist's success in forming jurisprudential rulings consistent with the modern world and the system of traditional jurisprudence, he has worked on adapting jurisprudence to the requirements of the age more than he has worked to adapt the era to the requirements of jurisprudence, the adaptive process - the entire

process - and the opinions he reached and the discussions he made during This process could be one of the evidence of the enormous theoretical capacity and secularism embedded in Islamic jurisprudence that may allow the jurists to pass into the modern world.

Contemporary Muslim jurists faced this great challenge through several mechanisms, the most prominent of which are: "the jurisprudential rooting" of emerging issues, which is what this research is concerned with, as it analyzes how they use this methodological mechanism and the extent to which it is fulfilled by achieving the continued ability of jurisprudence to provide the believers with provisions and keep them under the umbrella of religion. And prove its validity for modern times as in ancient times. It is not the researcher's task here to check the validity of the jurisprudential rulings produced by this mechanism, nor the history of the process of rooting in modern jurisprudence.

It examines the practice of jurisprudential Rooting as a systematic mechanism and understanding of how to operate it, regardless of the jurisprudential dispute in inference and the approval or disagreement of some jurists with this view. The study focuses on a specific pattern of jurisprudential practice. This design represents a prominent and widespread trend, but it remains a trend among other movements. The research results here are related to this specification and do not go beyond it.

This goal requires relying on a framework of analysis consisting of two levels: The first level examines the goals of the modern jurist in his Rooting of rulings and the extent of their achievement in comparison with the results he reached. They are common goals - in general - and do not belong to one jurist without another. They are represented in two main goals: They are accommodating Developments within the Shari'a system by finding an appropriate Shari'a ruling two and proving the flexibility and validity of Shari'a for modern times. The second level examines the results in terms of the extent to which they contradict Islamic legislative logic and the area to which they are compatible with the values and systems of the modern world (Ābī al-Azharī et al., 2007).

The time frame of this study is the end of the nineteenth century to the present time. Although jurisprudential Rooting is a new term, as will be explained, many modern jurisprudential practices can be traced back to it. Hence, the term emerged as an everyday need to express the mechanism. The current methodology was used to generate judgments at a later time. This study is not concerned with following up on the historical development of the authentic practice in each of the examples examined and its chronology Rather, it is concerned with analyzing the practice itself. We will be more concerned with exploring the jurisprudential practice itself than with the history of its practice in each example, and yet we will not neglect the issue of the chronology of the development of the actual practice as a whole (ad-Duraini, 2019, p. 87).

We conduct a textbook analysis, which entails reading several textbooks to be used as references or references. Texts in this context refer to books used to learn in the world of education. The type of library that will be used for the literature study process, whether it will use media from books, media from the internet, journals, or a combination of these.

Then look for the correct type. Using a qualitative approach, we analyze the findings of our research so that they appear in an article that can be understood as an arrangement of scientific ideas that can be used as additional information in the field of implementing Islamic Shari'a and the obstacles.

2. Rooting as a legal mechanism

The emergence of the term "juristic rooting" dates back to the second half of the last century; We do not see this term used in jurisprudence research at an earlier period as a methodological mechanism for research, and it is possible that the Levantine and Egyptian schools played the primary role in crystallizing this mechanism and formulating it in a precise manner that allows its use in jurisprudence with the accuracy and caution it requires in deduction and inference; The jurists of these two schools were early involved in the jurisprudential-legal debate, and this engagement appears in the legal origin of this term as it will come (Aibak, 2006, p. 78) .

"Fiqh Rooting" is a methodological concept that is intended to search for an appropriate jurisprudential origin or root to rule on an emerging issue that is not mentioned in the chapters of jurisprudence and has no natural heritage in it to build a legal ruling on it. The construction of the legislation must be done by looking at the branches on the one hand and based on "extracting the intangible generalities [of the Shari'ah] that are fixed" on the other hand, and then subdividing or building from the branches and the intangible together (Al-Darini 2008, 1:99-100).

This methodology prevents the occurrence of a contradiction between the partial and the total (Al-Darini 2008, 1:101). It maintains the consistency of the logic of Sharia or what the jurist Al-Darini calls "legislative unity," that is, the common legislative logic and the unity of the assets of the general Islamic legal system (Al-Darini 1992, 74) can- In other words - to say: The jurisprudential Rooting is the position of a ruling that falls within the framework and logic of Islamic Sharia (Ahmad, 1999, p. 89).

This term is nothing but a new expression for the term "juristic conditioning," which is derived from the time "legal characterization, qualification or classification," which was translated by early Egyptian legal scholars and later approved by the Arabic Language Academy in Cairo (Shabeer 2014: 23; Language Council 1999: 310, 740), which is sometimes translated as "legal specification," from which the term "juristic characterization" is also derived, and it is rarely used in jurisprudence research in general.

Whatever the origin, perhaps some jurists wanted to link the process of conditioning to the principles of jurisprudence so that the term itself denotes the necessary methodological equipment. Some jurists and researchers specializing in jurisprudence may use the word "initiative rooting" (Al-Dinyi 2008, 1:99) in some cases, or "legal rooting" (Al-Musa 2010, 1319), and sometimes "realization of the subject," which is - basically - A fundamentalist term that appears in the Mabahith al-Illa wa'l-Ta'lal (Al-Darini 2008, 1: 119-121). Based on that, we will use the "fiqh rooting" and "fiqh conditioning" in one sense.

The term "rooting" is confused with four jurisprudential terms: it may be confused with the concept of "branching." Subordination generates a ruling from an origin, and it is a

work that falls under the section of analogy or in the section of doctrinal *ijtihad* if it is intended to "graduate the branches on the origins," which is the title of a famous jurisprudential book by Shihab al-Din al-Zanjani al-Shafi'i. (d. 656 AH). It may be confused with the concept of "al-Takhrej," and graduation generates a judgment on an issue; Based on the branches of the sect, regardless of the tool used (Shabeer 2014, 21), meaning that it is a purely sectarian work. In the cases of branching and graduating, the origin is known, and the process is nothing more than appending the branch to its known jurisprudential source and then building the ruling on it (Ahmad, 1999, p. 78).

The concept of Rooting may also be confused with the pictures of "cautions" and "developments." Rooting arose from the urgent need for "continuous diligence" to derive partial rulings for all emergency events; In order to prevent the "disruption of commissioning" (Al-Darini 2008, 1:88), the application field for this jurisprudential mechanism is what is known in classical jurisprudence as "Nawazil," a jurisprudential chapter specialized in emerging issues, especially among the Moroccan Maliki jurists.¹ (Al-Jizani 2006, 1: 21), which corresponds to what is known as the Hanafi hypothetical jurisprudence, i.e.,

The jurisprudence based on the assumption that events did not occur and the construction of provisions for them, while the jurisprudence of calamities is for issues that happened and there was no prior jurisprudence, regardless of whether they have an origin to build upon or no; Some of them may have a natural heritage that can be measured against, or they may not have a basis, so they resort to the rules of the jurisprudence and fundamentalism and the general rules of Sharia, but it is a doctrinal jurisprudence, and the concept of calamities corresponds to what is known in modern jurisprudence as "developments," except that the jurisprudence of developments transcends the doctrines and is not a doctrinal jurisprudence. (Al-Qarafi, 1988, p. 87)

This term is suspected of the expression "rooting," which is commonly used by the jurists of the sects and by some scholars of origins, but this expression was used – mainly – to indicate the approved principles of the doctrine, which is called by the Hanafi school as "the apparent meaning of the narration," in the sense of investigating what is approved in the philosophy (Al-Zuhaili). 1998, 967:10), and from it, the saying of Al-Abyari (d. 616 AH): "Speaking in detail with denial of rooting is a departure from achievement" (Al-Abyari 2013, 4: 72), and Imam Muhammad ibn al-Hasan al-Shaibani (d. 189 AH) has a book named "Kitab al-Usul" is a book on the issues of the principles of the Hanafi school of thought, i.e., the apparent meaning of the narration on the doctrine, not the principles of jurisprudence. Similarly, the expression "rooting and detailing" is frequently used by some jurists.

With this use, Rooting is the basis for graduation on the Imam's doctrine. And it is used by the fundamentalists in the sense of analogy based on the original. The intended origin here is the reasoned judgment with a considered reason according to the methods of reasoning known to the fundamentalists (Al Taymiyyah D. T., 366). It is used in the jurisprudence of inheritances (inheritance) in the sense of collecting the least number from which the imposition of the issue or its assumptions comes out without a fracture (a mathematical fracture) (Sibt al-Mardini 2014, 1:359). Two observations must be made here; the first is that the concept of rooting - as it is circulated in the jurisprudential

heritage - is a purely doctrinal work, and the second is that there is no expression in the classical sources of the term "juristic rooting"; This is an updated expression that means something else that does not care about adherence to the doctrinal principles of jurisprudence (Haroen, 1996, p. 78).

In summary, traditional jurisprudence has always been operating from within the doctrinal system, origins, and branches, while rooting is jurisprudence, not doctrinal, even if it is based on the jurisprudence of schools; In search of an appropriate root for the facts and developments, it deals with. The mechanism of jurisprudential Rooting can be analyzed into the following elements(Sali et al., 2020):

- .1 A new fact not mentioned in classical Islamic jurisprudence.
- .2 Approach the incident with an appropriate jurisprudential origin in the provisions of the facts contained in jurisprudence.
- .3 Building a doctrinal characterization that allows it to be placed under an origin and protest against it.
- .4 Judgment is based on considering it a branch of this origin.

For this purpose, all the fundamentalist tools and the means of the jurisprudential pilgrims are used. This mainly includes interpretation and the objectives of Sharia, as all of these methodological tools are like tools for this mechanism. The second point remains the main decisive point for two things: the jurist's ability to understand the incident, his orientation, and intellectual convictions play a fundamental role here, and the second: that all other points are technical and follow this essential and foundational work. To understand how the jurists have responded to modern challenges, we will have to examine this very point when reviewing the application of this discretionary mechanism. Because it is the core of the rooting process.(Meirison & Nazar, 2021)

Modern jurisprudence provides countless examples of the application of this mechanism. The whole life system has changed, the Islamic world is no longer the same, and the contemporary jurist must struggle to cover all developments with jurisprudential rulings that combine the spirit of Sharia, its principles, and logical system with positive interaction with the era and involvement in it. Without that, it will perpetuate the isolation of Sharia and its marginalization from public life, that is, the consecration of the position imposed on it by the modern state.

Because the field of jurisprudence is wide and very diverse, it is difficult to enumerate its issues; the research will focus on the two fields of politics and economics, which are among the areas that have been subjected to the most radical new changes without this meaning that we do not see that others have not undergone profound changes, but the difference in these two areas was more straight forward; On the one hand, the demise of the caliphate system and the emergence of the nation-state led to the old political jurisprudence being meaningless in light of a political system that differs in value and concept from the procedure established for it in all the jurisprudential codes since its inception.

On the other hand, a global economic system has emerged based on the concept of "the bank," which is entirely different from the system that prevailed before that, or at least from what is known in traditional Islamic jurisprudence, and this represented "a great

challenge to Islamic jurisprudence and jurists" (Al-Zarqa 1998, 1: 255, which required tremendous jurisprudence and the establishment of mechanisms and methodological tools to build or restore complete jurisprudential chapters that would enable jurisprudence to deal with the new political system and operate the banking system without resorting to usurious interest (Al-Zarqa 1998, 1:285)

Since presenting a comprehensive critique of these two areas in Islamic jurisprudence is hard work that requires effort and time that such limited research cannot accommodate, we have contented ourselves with studying various but essential examples from different points of view. Through which it is possible to reach a useful conclusion on the subject of roots, however, it is necessary to emphasize that relying on a few examples cannot give us the ability to reach decisive results. Still, it provides us with the ability to judge in the light of these examples only. Other studies can be more comprehensive To verify or prove the validity of these results.

3. Rooting in politics: the jurisprudence of the state

We will address here two issues that have occupied large areas of the political jurisprudence debate in the books of new jurists since the end of the nineteenth century. As awareness of the concept of the modern national state began to form, the Ottoman Sultanate and the Islamic Caliphate struggled for survival. The importance of these two examples lies in two things: the first is that they are still alive and the subject of juristic debate to this day, and rooting in them is continuous and evolving and has not yet been resolved, and the second: is that they represent two good models for revealing the mechanism of rooting work, primarily since they represent prominent issues in the world today. The first example relates to the political system, and the second relates to citizenship. (Firdaus, 2021)

4. The old political system: Shura and Sharia implementation

The basis of the challenges that changed the position of Sharia is the new political system based on the concept of the modern state, and, logically, the first discussions of the new jurisprudence are related to it. I mean the debate about the transition from the Islamic caliphate system to a modern political system and the multiple issues involved, foremost among them. Unity of the Ummah" or the agreement of Muslim countries. Numerous theses have been presented in this field, including the concept of "Islamic University" proposed by Abd al-Rahman al-Kawakibi (d. 1902 AD) in his first book "Umm al-Qura" (1889 AD) to combine the caliphate system with the modern state.

Still, The transformation of the modern state into reality and the dissolution of the Caliphate contract were more substantial than all the suggestions because things went this way, the discussion later focused on adapting the political system of the modern state to classical Islamic jurisprudence and what became known as the royal rulings since the fifth century AH, and at the heart of this discussion comes The subject of modern democracy and election in exchange for the Islamic allegiance and consultation (. et al., 2021).

The term Shura refers to the Noble Qur'an, which was called a complete civil surah, which is Surah 42 according to the arrangement of the accredited Qur'an, and the classical juristic debate in it is due to two verses) :And those who responded to their Lord, and establish the prayer and the command of them,

رَحْمَةً مِنَ اللَّهِ لَئِنْ لَمْ يَنْتَهِمْ لَخَلَفْنَا الْقُلُوبَ لِنُفِضُوا مِنْ حَوْلِكَ فَأَعُفْ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ (آل عمران: 159)

The origin of the linguistic significance of the word "Al-Shura" refers to two meanings:

Showing something and presenting it," and the second: "Taking something" (Ibn Faris 2002, 2: 177; Ibn Manzur d.T., 26: 2356) and its Jannah. The Qur'anic significance has preserved all the semantic components of the lexical linguistic origin. Still, it allocates them in the collective opinion. To have its meaning comprehensive for deliberation and discussion (presentation) and to arrive at an idea (taking a thing and taking it for a pound) is the summary of that offer (Al-Isfahani 1997, 469; Al-Mustafafi 2009, 6: 180).

The researchers in Islamic political jurisprudence hardly differ in the origin of this meaning of Shura, and although the majority of scholars agree that the phrase "and their matter is consultation among themselves" is news in the sense of creation, that is, it is an order by consultation, they were divided in the interpretation of this legitimate matter from two sides: the first Regarding the nature of the matter with Shura, the majority of commentators and jurists (from the four schools of thought) said that it is obligatory, while a number of the scholars of the Salaf from Al-Sadr I and Al-Shafi'i (and some Shafi'is) and Ibn Hazm said that it is recommended and recommended. (Ibn Ashour 1984, 4: 149–150).

The second aspect is in the extent to which it is mandatory as a result of Shura, whether Shura was practiced as a matter of recommendation or as a matter of obligation, as the most general of the commentators and jurists went to the view that it is not binding, while some jurists in the early eras of Islam argued that it is binding. (Zain 1983, 33-34), and on this last school of thought was based modern jurisprudence on rooting democracy through Shura (Al-Shawi 1994, 32; Al-Turabi 1985, 12).

Thus, except for the first eras of the era of the Rightly-Guided Caliphate, in the subsequent protracted centuries, which left a broad jurisprudential heritage in the sultan's rulings and legal politics, we hardly find a place for the concept of Shura and its term in it, two. It did not go beyond in jurisprudence to be "a spontaneous procedure: that one consults with He agrees with those with him [from the people of management] and then manages his affairs as he wants unless he is comfortable with it the other opinion. Its political meaning was not always the one who initiates [it], but rather it is more used in social transactions and personal affairs" (Al-Turabi 1985, 12).

Then there was something like a rediscovery of this concept, a discovery caused by a specific historical context, which is the beginning of the Muslim thinkers' awareness of the modern state, which we will find clear in the writings of Abd al-Rahman al-Kawakibi when he approaches the modern state (liberal at the time) in corresponding Islamic terms, and the approach of Shura to democracy. It is one of many idiomatic and conceptual approaches to al-Kawakibi. (عاشور, 2005, p. 76)

Al-Kawakibi resorts to the stories of the Qur'an to extract the origins of the Shura (which does not seem clear in the two reference verses); As a political system, he deduces from the story of Bilqis, the Queen of Sheba, who consulted her people in the request of King Solomon and (she said, "O you chiefs, advise me in my matter that I was not definitively appointed), that it is necessary to inform: 32 The nobles of the parish, and that they do not cut off a matter without their opinion, and it indicates the necessity of preserving power and strength in the hands of the subjects, and that the kings are allocated only by execution, and that they are honored by order of the matter to their reverence, and the wrath of tyrannical kings is ugliness" (Al-Kawakibi 2006, 51).

In the story of the Prophet Moses with the Pharaoh of Egypt - in an inference that is not without wit; Pharaoh in the Qur'an is the supreme model of political corruption - al-Kawakibi drives the verses (he said to the people around him, "This is a knowing sorcerer" who wants to expel you from the fertile land? (Al-Shu'ara': 35), and it is indicated by the following: "That is, the nobles said to each other: What do you think? They said: A letter to Pharaoh, and it is their decision: (Go to him and his brother, and he will send in the cities gathering together * they will come to you with every knowledgeable sorcerer), then he described their discussions with the Almighty's saying: (So they disputed their affair."), i.e., their opinion (between them and they captured al-Najwa), i.e., their public deliberations led to conflict, so they conducted secret reviews by what is happening - so far - in the public shura councils" (Al-Kawakibi 2006, 52)

It seems clear that al-Kawakibi is making every effort to match Shura with the democratic system within the framework of the caliphate system, not the modern state. It had not yet been achieved in the Islamic East. He went to a conciliatory marriage of concepts belonging to the modern state with the images of the caliphate system, so he came up with terms such as "constitutional shura," as if he wanted to fully say "constitutional democracy" (Al-Kawakibi 2006, 88)!

Then there was a tendency among contemporary jurists to transform Shura into a political system and project it onto Islamic history (Al-Zuhaili 1989, 383). Some modern jurists do not hide the motives of the process of rooting the concept of Shura; As Rashid Rida describes - in an infrequent and surprising expression - how and why democracy and consultation were matched, saying: "Do not say, O Muslim: "This ruling [of consultation] is one of the foundations of our religion, for we have benefited from it from the clear book, and the biography of the Rightly-Guided Caliphs. Not associating with Europeans, and standing up for the condition of Westerners." If it were not for the consideration of the condition of these people, you and your likes would not have thought that this is from Islam, and the first people to call for the establishment of this pillar would have been religious scholars in Astana, Egypt, and Marrakesh.

They are the ones who are still most of them. He supports the authoritarian government of individuals and is one of its biggest supporters. Since most students of the restrictive Shura, rule were the ones who knew Europe and the Europeans, and the pagans preceded them in that! Although its people are among the most reciting of Surat Al-Shura and other Surahs, the order of consultation is legislated and delegates the rule of politics to a group of those in authority and opinion? I do not deny that our religion benefits us in that.

With all this, I say: We are. Had it not been for our mixing with the Europeans, we would not have been alerted of where we are as a nation or nation. This great matter, although it is clearly and clearly in the wise Qur'an. We did not know the value of this benefit until after we sensed the greatness that confronts it, which is the pursuit of our independence and aggression against it" (Rida 1907, 283).

The legal debate went beyond mere representation and general or similar identification between Shura and democracy; This is what contemporary jurists and researchers have reached in many of the issues in which debate and doctrinal disagreement take place. By following up on this discussion, it can be noted that the issue of Shura and democracy is centered around two main points from which most other problems are branched: the first is the legislative authority as the reference for legislation, and the second is election and voting.

Since the legislative power in the democratic system in the parliament. The representatives of the people decide the legislation, and a radical contradiction appears in the position of Sharia in the modern state with the foundations upon which the entire Islamic jurisprudence is based, which is that the reference of legislation goes back to the established religious texts (the Qur'an and Sunnah) first and foremost whether we go beyond the subject of consensus and the extent to which it is based on these two basic sources. (al-Zuhayli & Al-Kattani, 2010, p. 87)

Some of the new jurists went to rooting the parliament's reference through two traditional jurisprudential issues: the first is the principle of consensus, and the second is the doctrinal dispute over the field covered by the Shura; Collective ijtihad can be adapted as unanimity, where collective ijtihad has replaced individual ijtihad under reality, and for this adaptation to be correct, it requires at least two amendments: (Al-Zuhaili 1989, 386), and the second: matching the Shura unanimously or approaching it with it (Al-Zuhaili 1989, 386), but while the consensus is based on the principle of complete agreement among the people of opinion, the Shura is based on the opinion of the majority, here a new matching takes place between the majority opinion and the concept of "The group", which appears in several prophetic texts, represents another reference in different terms, 3 (Al-Zuhaili 1989, 400).

This conversion between the two concepts allowed inferences from the historical practices of the caliphs in previous eras. Rooting here in its entirety is based contrary to the opinion of the majority of jurists regarding the obligation of Shura. (Thohir, 2004, p. 87)

As for returning to the jurisprudential dispute about what is included in Shura, the dispute among the jurists is about the extent to which Shura includes religious and worldly matters or limits it to worldly issues, and to go based on this controversy, the inclusiveness of Shura for spiritual matters as well. What is meant here, of course, is jurisprudence and within the framework of the logic of jurisprudence, not It is outside it (Al-Zuhaili 1989, 402), and the condition of not clashing with Sharia will remain, in any case, a stable state (Al-Zuhaili 1989, 403). Naturally, the contemporary jurist does not accept the marginalization of Islamic legislation and the weakening of his position while striving to restore Islamic law's function to public life.

As for the periodic elections and the ballot boxes, which represent the main democratic mechanism, which contradicts the principle of the Imamate and the eternal pledge of allegiance to the Imam, there are no decisive texts in the legislative texts established in the Qur'an and Sunnah that prevent the acceptance of its rules, since Shura is an overall concept that is not detailed in the Qur'an or other major sources of legislation, the Shari'a contented itself with prescribing Shura as a general principle and left it to the guardians in the community to lay down most of the rules necessary for its implementation" (Awda 1968, 1:37).

However, there are few basic rules concerning the application of the principle of Shura, Sharia has made clear its provisions, "Neither modification nor substitution is acceptable; Because they are rules that have been brought by special texts," including "that the minority whose opinion was not taken into account should be the first to rush to implement the opinion of the majority, and that it faithfully implement it as it is the opinion that must be followed, and that it defends it as the majority defends it, and the minority does not have the right to discuss an opinion that passed without discussion." or question the opinion put into practice" (Ouda 1968, 1:38).

Such jurisprudential adaptations of Shura were met with a difference between democracy and Shura. However, they did not appear in a chronological sequence. Hence, the discussion began with an Islamic "shura system" that contrasts with the Western "democratic system" (Shaltout 2001, 441) with emphasis - in some cases - on the existence of an intersection between them (Al-Shawi 1994, 10, 151; Yassin 1996, 302); This made it easier for some jurists and thinkers to deduce "Islamic democracy" (Ben Nabi 2000, 148; Al-Shawi, 1994), which is a democracy specific to Muslims that can be explained by consultation.

This new proposal that appeared in the sixties indicates a worsening of the identity crisis. The "ochlocracy" system in the early nineties,⁴ while some Qutb-Mudawiyah Islamic groups focused on the differences since the sixties, especially on the issue of governance, which appeared to the jihadist movements to be a religious "divine rule" as opposed to a positional "popular governance" for the modern state, which The theoreticians of these movements were later allowed to view "democracy as a religion that contradicts the tenets of Islam, and not merely as a political system" (Al-Nabhani 2003, 1:261; Al-Maqdisi DD, 12).

5. Dhimma and citizenship in the modern state: the tribute

The jurisprudential discussion of the concept of citizenship in the modern national state overlaps with many jurisprudence rulings that were established on the principle of comparison between Muslims and others. It is natural, in a political system in which religion is the reference, to expect a fundamental conflict with a political system that is supposed to be neutral towards all religions; The interview between the two systems raises an important question about the political "status" of the people subject to each.

Based on this, the issue of the status of religious minorities or non-Muslims constitutes a major topic in the modern jurisprudential discussion about the contemporary state and the compatibility with the transformation of this concept after the collapse of the Caliphate in the first quarter of the last century, as the logic of the modern state requires

legal and political equality between all residents within its borders regardless of about their religion, which is a discussion subdivided from the debate on the significant issue; The relationship of faith with the state, which arose early between the political class and the Ottoman organizations (1839-1859 AD) and the constitution of 1876 AD, which granted minorities a new status within the framework of citizenship, and inaugurated the dialogue between Sheikh Muhammad Abdo and Farah Anton (d. 1922 AD) against the background of publishing a review of the book *The Orientalist Ernest Renan* (d. 1892 AD) "Ibn Rushd and Rashidiya" in 1903, and the discussion renewed when the Sultanate and then the Caliphate between 1922-1924 appeared, and the book "Islam and the Origins of Governance" appeared by Sheikh Ali Abdel Razek (d. 1966 AD), which constituted a milestone in the history of This debate and controversy.

The fall of the Ottoman Islamic Caliphate constituted a general shock for Muslims. Especially since the fall was followed by a colonial era, which left a situation in which Muslims matched between liberation from imperial colonialism and the restoration of Islam's position in public life (Burga 2018, 15), and Islam's restoration of its position in public life. The return of the Caliphate and the concept of the "Islamic State" appeared for the first time in the famous letters of Hassan Al-Banna (Al-Hajj 2017, 212) as a struggle concept that deals with the existing reality to reach an imagined future identical to the past.

The tribute issue is one of the main topics dealt with in the case of citizenship and its approach in the Islamic political system, which is the amount of money paid by non-Muslims from the People of the Book to the Muslim treasury (the state treasury). Ibn Qayyim al-Jawziyya intensifies the definition of the jizya as "a levy struck on the heads of the [original] infidels, to humiliate and humiliate" (Ibn al-Qayyim 1997, 1:119), an exemplary traditional definition that clarifies the discriminatory basis between the population.

Despite the difference in the interpretation of the concept of the jizya, whether it is part of the penalty (punishment) as the Malikis say, or is it one of the parts (ransom) for the infallibility of blood as the Hanafis, Shafi'is and Hanbalis hold, (Ibn Al-Qayyim 1997, 1:105), there is no difference between the jurists The ancients believed that the jizyah is a legal right of the Muslims' treasury, and its origin is established in the text of the Qur'an

; المصدر التشريعي الأول في الفقه الإسلامي، في الآية (قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ) (التوبة: 29).

The contradiction of the concept of tribute with the principle of equality in citizenship prompted some jurists to work on reconsidering the concept of tribute and adapting it doctrinally so that it can be adapted to the requirements of citizenship, especially after the emergence of international human rights covenants (Quaider and Khalila 2014, 176), which were rooted and adapted as follows:

Some went to adapt it as a "tax" that the non-Muslims pay to the state. It corresponds to the zakat that the Muslim pays to the House of Zakat (prev. 1983, 67), meaning that it is the contribution of non-Muslims to the state in return for benefiting from its services (Al-

Bouti 1993, 132). However, this adaptation does not change the fact that discrimination on religious grounds in naming the tax, its amount, method of payment and banks (methods of disbursement) still exists. It is known that tax banks are the state's property, while zakat is money entrusted to the state. (الجوزية, 1995, p. 89)

This prompted some researchers specializing in jurisprudence to adapt it as a punishment (which corresponds to the old jurisprudential trend that sees it as derived from the penalty). Still, the dispute is in defining the scope of the ruling and achieving its core based on the same Qur'anic verse that linked the tribute to fighting and minors (humiliation), which are two concepts. The rule on both sides of the poem leads them to say: The jizya is a penalty imposed on the fighters, which means that it is limited to people in a specific situation (Al-Hajj 2006, 278; Al-Bouti 1993, 135) from affiliation with a debt to the penalty for the act, that is, its inclusion in the provisions of felonies. This interpretation leads - in the end - to understand the tribute as a historical situation related to the founding era of Islam, an era that is not associated with the condition of the modern state today. (علي, 1997, & الرحمن, p. 89)

6. Conclusion

There are many examples in modern Islamic jurisprudence that can be examined and reveal how the contemporary jurisprudential rooting mechanism operates, but we chose these examples; Because they are key examples that are frequently touched upon, and they represent an honest representation of the reality of moving to a new location in the modern world. We have worked to shorten them as much as possible to be a function of the purpose of the research and the subject of consideration in it

.The previous examples lead us to two basic conclusions: the first is that the jurist often has a prior conviction, which plays a role in his orientation towards the issue for which he seeks to find a ruling. Finding a way out that legitimizes the new and adapts jurisprudence to the age requirements is shown by twisting the rules of jurisprudence and combining the contradictions that we referred to in the folds of the examples we studied.

The second is that the pressure of modernity pushes jurisprudence to adapt to it and to search - in the depth of jurisprudence and its rules - for documents that give this process sufficient legitimacy .The most important and most dangerous result of this type of modern jurisprudential practice is the Jurisprudential loss system in its consistency, the destruction of its ability to continue as a system with a unified logic and format weakening of its ability to transcend time. That will lead to the strengthening of the decline in its position in public life, which is the position that the jurist is supposed to be—struggling to change it!

Nevertheless, it must be acknowledged that the plight of the contemporary jurist that emerges through these and other examples lies in his falling into a seemingly closed circle. Trends and requirements of the times strengthened the site itself! The reason does not lie in the legal logic; Insofar as it lies in the conflict of values, the modern world's values are incompatible with Islamic values as they are manifested in the entire classical

jurisprudence system and its various jurisprudence. Value as the whole system is next to impossible.

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