CITIZENSHIP IN ARAB ISLAMIC HISTORY

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CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES
CIHRS

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INTRODUCTION

"Al Muwatanah" is a term that has been recently introduced into the Arabic language. Arabic translators selected it to express the Greek "politeia," the French "citoyennete," and the English "citizenship."

Clearly, the selection of the term did not emanate from the historical significance of the concept as much as from considerations of facility and contemporary proximity. This has created more than one problematic:

The first problematic lies in the linguistic origin of the term. Citizenship "muwatanah" and citizen "muwatin" stem in Arabic from the term "watan": "home where you live. It is the individual's place of residence," according to Ibn Manzour • in *Lissan Al 'Arab* (The Arab Tongue). To reside in a territory means to consider it one's home, one's nation, and hence be its native. Another derivative is the word settlement "istitan," as well as the concept of nationalism (here the literal meaning is patriotism 'wataniyah'), which has been introduced into the Arabic language with all other "isms" in the heyday of the translation of Western modern legacy.

• *Ibn Manzour (630-711 hijri/1232-1311AD): Arab philologist and author of the celebrated Arabic dictionary LISAN AL-ARAB. (Translator's note).*

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A simple comparison of meanings reveals the relationship between the term and its origin in Greek or Latin. The difference between "polis" and "politeia" dates back to the rise of the concept in ancient Greek society/state. While citizenship represents a specific legal and political status (such as "body politic" or "formation," which mean the entire structure of the state), the word "polis" concerns the human and geographic structure of a state. In both cases, the term is not restricted to the geographic status or the spatial dimension. Consequently, our first request is to leave aside the philological significance of the term in Arabic language.

The second problematic is the facile introduction of this word into the common daily rhetoric (as in letters, speeches, and articles). Yet, despite its repetitive use in each and every proclamation or announcement, it has been rarely used in the collective consciousness or subconscious in its deep sense. Mostly, its meaning has been confined in the mind of the user to the members of a particular nation, the followers of a leader, the subjects of a Sultan or to the mob. This restricted conception overshadowed the importance of the concept of citizenship in constructing a new human consciousness that would help in going beyond our organic society to civil society and absolute rights to human rights.

The problem is not in the use of the term as much as in the role of this decisive concept in the transition between two eras. The first is the pre-World War I period, upon the nominal proclamation of the demise of the Ottoman Caliphate. The second starts with the end of WWII, the independence of a number of Arab states, and the United Nations' proclamation of

the Universal Declaration of Human Rights. The interval between the two dates represents a crossroads between two eras: the age of a Caliphate that has been going through a slow process of demise. The Caliphate has been coerced over long years to renounce the last features of the medieval period (linking citizenship to religious identity, corporal punishments, connivance of the vestiges of slavery, pressures exerted on religious and ethnic minorities, etc.). The second era is that of nascent states, which have called themselves either monarchies or republics (despite their manifest juridical imitation of the historical model of the Caliphate, and their evident religious character such as Saudi Arabia and the Islamic Republic of Iran). They still lack the fundamental constitutional conditions that would guarantee natural growth into a society that protects the individual against fanaticism (asabiyah) * of various groups (tribe, clan, sect...) and shields society against the excesses and transgressions of power. In short, the Ottoman concept of citizenship has been buried without filling the gap with either the Western concept, or with local attempts to formulate a modern concept inspired by the international human rights laws, or by those landmarks in Arab-Islamic history that aimed at safeguarding the fundamental rights of (male and female) citizens.

The first surprise upon reading Arab-Islamic history a quarter of a century ago was the absence of a unified model for accession to the Caliphate in early Islam. While I was drafting

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* *Asabiyah literally means the spirit of the clan. It implies boundless and unconditional loyalty to fellow clansmen and corresponds to patriotism of a passionate, chauvinistic type. (Translator's note).*

my book *The Arab Islamic Society from Muhammad to Ali* in 1971, I posed the question of citizenship in Islam and discussed the topic with several friends. I was advised to undertake a thorough study of the issue, especially that many Orientalists have settled the issue by announcing the absence of this concept from Arab Islamic history. In fact, this has been deferred more than once because I was immersed in studying the factors behind the abortion of renaissance in the past and in modern times. Having finished *The Dialectics of Enlightenment* and *The Challenges of Enlightenment*, I returned to that topic very slowly and cautiously. I surveyed history since Hammurabi,* the Old Testament, Ardeshire and Oriental mythologies for anything that would allow me to thoroughly pursue the topic. After that short visit to Babylon, Athens, and Carthage, I settled on a summarized non-Islamic historical introduction that allows a preliminary comparison. Then, the Islamic era would be reviewed, followed by a quick review of the status of the concept today.

This attempt cannot fill the huge gap in this topic. It is a mere contribution to the debate around the topic, especially that the concept of citizenship is still linked to the state and to international culture. There is not a single definition of citizenship; there is no single model in legislation within states today that we can consider our frame of reference. We can safely argue that the concept of citizenship spelled out in the Constitution of the French Revolution, in comparison with the spirit of the era, was much superior to the concept adopted by

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King of Babylon (around 1750 BC): well known for his formulation of a body of laws known by his name. (Translator's note).

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the French political class at the end of the twentieth century. Furthermore, the concept of citizenship adopted by many contemporary states is not devoid of racism or sectarianism. The human race has not yet settled the question of abolishing the borderline between human and citizen rights. Not every human being is a citizen, and there is no nominal equality of rights between humans.

FROM MARY TO ROME

Unlike what might come to mind, the concept of citizenship emerged historically in the course of the negative evolution of rights. The rise of the concept of "right", which most probably accompanied the emergence of the patriarchal society, endowed males rather than females with rights. The same applies to the concepts of ownership, inheritance, polygyny, the privileges of the elder son, the priority of the cousin, kinship rights, etc. These rights bestowed advantages on some individuals to the detriment of others. Hence, the concept of right was originally negative and remained as such for thousands of years.

In Oriental civilizations, the negative concept of rights was related to ancient gods. In an old Samaritan text, acts and decisions are in the hands of "Anki" *:

> I am the master, I am the absolute ordainer. I come first in everything. Thanks to my decisions, horse stables are built and farm fences are erected. When I approach heaven, the rain of prosperity falls. When I approach the earth, high floods flow. When I come near green prairies, heaps of abundance pile up with one word from me.

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* *The god of wisdom in the city of Arido (currently Abou Shahrin in Iraq). He was blessed by Enlil, god of air in the Sumerian myth. Anky was composed of two names "An" : god of the sky and "Ki" : goddess of earth.*

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Given the omnipotence of gods, rights belonged with them and acquired a sacred character. This is clearly reflected in dozens of texts. Let us take here an example of a text that dates back to the eighteenth century BC, where Yahdun Lim [**] describes the god Shamash:

> King of heaven and the under world, utters orders and decisions to the gods and humans. His function is to oversee justice bestowed on him to protect rights. He is the custodian of all people, the eminent god who judges all living creatures. (From Mary's texts)

The "transfer" of rights to gods did not so much expropriate Man's role as it endowed the ruler with jurisdictions. This is summarized in the epilogue of Hammurabi's laws:

> May justice prevail in the land
> By the word of Mardukh, my god
> (...) Hammurabi , the lord
> Who resembles the true father of the people,
>   Who has devoted himself to the word of his god Mardukh

[**] *Recorded in a text on Shamash, god of justice in Samaritan mythology.*

> To achieve the victory of Mardukh on high and on
> low,
> And thus brings delight to Mardukh's heart,
> And guarantees everlasting prosperity for his
> people.

We cannot claim a homogenous evolution of the concept of rights or its association with gods and rulers. While this pattern was predominant, it was not the only mode. Furthermore, the rise of cities and city-states in the Eastern Mediterranean was not confined to the authoritarian pattern of legislation. The Phoenician experience is quite indicative in this context: rights that were until then associated with organic relations were enriched with the germs of civil rights. The latter effected a significant transition from tribal ties to urban and professional social relations, reinforced by the concept and right of election, which divested the monarchy of its divine character and blueblood.

The Phoenician civilization has knew the concept of citizenship, and categorized the population in such a way as to distribute civil and political rights along a different line than class structure. Dioderos classified human beings into four categories: Phoenicians of Carthage, Phoenicians of Libya, Libyan subjects, and nomads. In his book *The Politics*, Aristotle writes about the Carthage council and citizenship therein:

> In all proposals presented to the council, the
> people's duty is not just to listen to decisions
> made by magistrates. The final word lies
> with the populace. Every willing citizen is

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allowed to express his opinion about the motions presented before the Council.

Historiographers agree that the conflict between citizens and power holders was quite sharp. The ruling class was hence driven to evade laws and bypass the council itself. To avoid the power of the wealthy and authoritative classes, citizens supported Hannibal's reforms in Carthage (247 - 183 BC), which preceded Tiarius Grakis' reforms in the year 200 BC. Those reforms prohibited the election of the Council of the 104 *** for more than one term, before the Roman Empire assaulted this Oriental form of citizenship.

Citizenship has not been a natural right to all people from the onset. Consequently, it did not exceed the negative formula of rights, that which bestows prerogatives on some

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*** *At the beginning of the fourth century BC., Carthage experienced several forms of election. The first was the Council of the Elders, composed of 28 members. This body represented the head of the state. Then, it was replaced by the Council of the 104. The jurisdictions of the council included: ratification of agreements and treaties, declaration of war, management of cities and provinces. Despite the fact that a section of this council was renewed every year through popular election, the power and authority of the rich classes, coupled with the absence of restraints against life time elections have circumscribed the democratic character of the council. We can also argue that class amorphism maintained the council's popular character, as a result of the overlap between handicraft and trade activities. Hannibal's reforms resisted the almost closed nature of the council which grew with time, especially with the slow membership renewal.*

human beings to the disadvantage of others. This was an "explosive" formula that faced the authorities with the predicament of having to consider a large section of society as part of the decision-making process. Furthermore, the concept of 'right' itself gained a new status that was both nebulous and shifting. Furthermore, the problematic of citizenship in ancient Greek city-states created a general socio-cultural dynamism, of which democracy was the most refined expression and classical Greek thought the most conspicuous example of richness.

A return to Greek history does not mean that we are mourning this model as much as exploring the origins and the rise of various models of citizenship. As a concept, citizenship has been associated with time and place. It was the product of historical evolution, an expression of social and state interests rather than a product of some texts, sacred or not. In ancient Greece, the boundaries between state and society and between the public and private domains were undefined. Citizenship and the body politic or civil society overlapped. In other words, prerogatives in rights and civil advantages were associated with the designation of the legislative, executive and judicial apparatuses that act on behalf of society. This is based on the consideration that the citizen is the person eligible for participating in such affairs. According to Aristotle, " The citizen in the absolute sense of the term cannot be better defined than by participation in legal functions and public functions in general."

To trace the Greek origin of the concept of citizenship it is necessary to refer to the meaning of the term "polis." Very broadly speaking, "polis" is a state of spatial fusion, an identity

linked with the political entity and citizens' estates, a small and closed spot. Its ideology precluded expansion, except if continuity, unity and cohesion were ensured. The territorial area of the polis ranged from 2650 km^2 (the cases of Athens, Salamin and Aerobes) to 8400 km^2 (the cases of Sparta, Laconi and Messini), in addition to a few cases of 1000 km^2. It should be noted here that the area of the major poleis did not exceed 100 km^2.

Unlike the literal translation of the word "polis"(city) its political and economic structure included both the city and the countryside, albeit centered round the city. Despite its limited area, the polis was divided into administrative districts with almost no boundaries between city and countryside. Farmers resided in both the city and the countryside. Inhabitants of the polis included both free and unfree individuals. The free were classified into citizens and non-citizens, while the unfreemen included dependants and slaves.

According to historians, the distribution of the population (despite all the significant differences in figures) was the following: the ratio of citizens and their families to total population equaled or exceeded 50% in general, whether in Athens or the rest of the poleis. If we take Athens as an example, in the year 400 BC., the total population ranged between 115 and 175 thousan; 20 to 25 thousand of them were citizens. Citizens and their families amounted to 60 to 100 thousand. The "metis" (expatriates or persons of mixed origin. We prefer to use the word "metis" to distinguish it from the contemporary definition of expatriates) ranged between 6 and 8 thousand: the metis and their families reached 15 to 25 thousand

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individuals. Slaves numbered 40 to 60 thousand, according to Victor Ehrenberg's estimates.

Greek philosophers had different theoretical estimates· of the optimum number of citizens. Plato suggested that it should be 50.40, while Aristotle's figures ranged between ten and hundred thousand.

Citizenship in the polis was the main expression of the political formation and civil relations. It was acquired by birth to citizens of the same polis. Whether both parents had to be citizens or that only one sufficed differed according to the different laws of the poleis at the time. The possession of real estate, and participation in public education, common duties, i.e., communal life, rather than legitimate birth, were the bases of full citizenship in Sparta. The ownership of estates has remained for quite a long time a necessary condition of citizenship. Moreover, citizenship was also related to age and sex; however the average age for the acquisition of citizenship was 18-21 years.

Women's citizenship was quite special and latent. In other words, women in general did not have the right of juridical participation. Real estate was in most cases inherited by women but not the outcome of economic activity. Women's citizenship was basically inherited from parents enjoying this privilege. Apart from this, the Greek saying goes, "Virtuous women remain in their houses because the street is the place for licentious women."

The right of citizenship could be obtained in return for great services rendered to the city or under special political circumstances. Historians agree that denaturalization preceded the right to accept new citizens. Denaturalization was either complete (depriving the individual of civil, political and religious rights, and entailing the confiscation of money and property) or otherwise kept the latter intact.

Hence, the polis could be best defined as the state of citizens, i.e., there was an organic relationship between the forms of authority and the right of citizenship. In this sense, people's sovereignty was in fact the citizen's sovereignty. The classical definition of democracy as the rule of the people, by the people, for the people is in reality just the rule of citizens. They specify the structure "sa constitut" of the state (not to be compared with the contemporary meaning of the word). In this way, we can understand the overlap between the citizens --the body defending the polis-- and the army.

The citizens' council "ecclesia" was the direct expression of their contribution to political and civil life. For long decades, the council avoided falling under the hegemony of a permanent president or an immutable apparatus, thanks to renewed elections (sometimes taking place during every session). At times, the renewal of membership was done by drawing lots to avoid any political maneuvers. Discussion was widely free. Voting was by show of hands, and decisions were passed by simple majority.

Judges did not have the same role as their contemporary counterparts. They represented the administrative-civil unit

surrounding the fundamental (religious, military, judicial) functions of the sovereign. The magistrate was an ordinary citizen who, in addition to his role in the Council and in courts, undertook a special mission he was entrusted with. The duties and responsibilities of judges as well as the nature of their role became more elaborate and more developed with the rise of democracy. The number of judges multiplied, and their jurisdiction and terms of office were more specified. The concept of judges' accountability, on the same level as other civil servants, was made an absolute necessity. Furthermore, popular courts emerged with democracy to mitigate the influence of the judicial administration, which was associated in one way or another with political authority.

The development of the polis surpassed interpersonal relations, and the relations of production. It provided a new pattern or model which, thanks to popular pressure and to the assistance of dynamic legislators and intellectuals, gave birth to new cadres who introduced democratization of rights and institutions. Put differently, the concept of relativity and the idea of amendment through participation and debate were introduced into the body of concepts that had been deeply rooted as unalterable facts of life. While blood ties and sexual differentiation have effected certain distinctions in human relations, the civil community was compelled to constantly discuss the subject-matter of this differentiation, the nature of its institutions and their weak points. The polis was a whole that obliterated the difference between society and state. However, it

was a differentiated whole which allowed growth, plurality, and innovation on the basis of equal citizenship and more specifically equality before the law -- though not in resources nor authority. Plato discussed this issue in his advocacy of the ideal citizenship based on equal resources and goods.

ISLAM AND CITIZENSHIP

One cannot discuss the concepts of citizenship in Islam without highlighting the dichotomy: Islam/ paganism. This dichotomy shapes the distribution of rights in Islam, the relationship between the individual and the community, the private and public domains. For the sake of accuracy, we will first deal with Qur'anic verses, then we will discuss the social conditions in the first fifty years after the rise of Islam. This is to show the role of human beings in the establishment of different models of citizenship, which stemmed from their perception of reality, more than from their inspiration by the scripture. That was specifically significant at a moment when all caliphs had vowed to be dedicated followers rather than innovators.

QUR'ANIC PROVISIONS

More than 530 verses have dealt with disbelievers. Description is more recurrent than judgement, and evaluation precedes chastisement. A close examination of those verses reveals the literary dimension, which spurred Sayed Qutb to write about "The Artistic Representation in Qur'an." This dimension also shaped his interpretation of these verses in his encyclopedic book *In the Shadows of the Qur'an*.

The Qur'an offers loathsome and demeaning descriptions of the disbeliever: "lecherous," "may Allah's curse

be on him," "in his heart lies the zealotry of 'Jahiliyya,'"* "the worst of creatures to Allah," "a real enemy," "devious," etc.[1] The Qur'an declared faith superior and disbelief inferior: "Be not weary and faint-hearted when you should be uppermost if you are true believers"(XLVII: 4); "Ye are the best of Peoples, evolved for mankind" (III: 110).

. While all those verses deal with normative issues rather than rights and entitlements, the definition of the word 'disbelief' is multi-dimensional. Not only does it concern non-Abrahamian beliefs, but also Christianity, Judaism, the human world and that of the Jinns. The Qur'an states:

> " They do blaspheme who say: God is Christ the son of Mary.And": They do blaspheme who say: God is one of three in a Trinity."
> And: The "blasphemers were but the evil ones." [3]

This specific designation, which considers those outside the Islamic community of the faithful as unbelievers, is to be found in the sacred texts of almost religions. The problem lies in the repercussions of this 'takfir' (the declaration of apostasy) in real terms. Here, the question becomes more complex because with disbelief in the Qur'an is not a human issue but a matter of God's volition first and foremost:

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* *The term 'jahiliyah' literally means "time of ignorance". It refers to the period that immediately preceded the emergence of Islam. (Translator's note).*

If God wills, all those on earth will become believers. Do you then force people to be believers?

And an individual decision in the second place:

Let him who will believe, and let him who will reject [it]. (XVIII: 29)

And finally, it is not the right of anyone to impose Islam on others:

Let there be no compulsion in religion: Truth stands out clear from error. (II: 256)

The Qur'an provides an example of individualism and free will: The wife of Noah and the wife of Lot who both 'betrayed' and the believing wife of the Pharaoh, reiterating more than once: " Those who reject faith will suffer from that rejection." (XXX: 44); "If, then, any do reject (God), their rejection [works] against themselves," (XXXV: 39). Here is a clear individualization of faith, which is followed by the individualization of responsibility.

The Qur'an also sanctions the forbearance of difference by relegating the punishment of the disbeliever to Allah:

As those who reject faith, I will punish them with terrible agony in this world and in the Hereafter...." (III: 56)

We can argue that, at least in times of peace, and in Meccan

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conditions for sure, Surat "Al Kafirun" (The Disbelievers: CIX) remains unabrogated by any other explicit Qur'anic verse:

Say: O Ye that reject faith!
I worship not that which ye worship
Nor will ye worship that which I worship.
And I will not worship that which ye have been wont to worship,
Nor will ye worship that which I worship.
To you be your religion, and to me mine.

It is necessary to clarify here that a nominal declaration of Islam, the confession of faith or witness, without performing any rituals endows the individual with the right to belong to the Muslim creed. There is no difference in jurisprudence, as emphasized by Al Ghazali, between a hypocrite and a true believer. What Islam demands is quite clear, and does not presuppose true belief. Surat Al Hujurat (XLIX: 14) expresses this:

The Desert Arabs say, 'We believe.' Say, 'ye have no faith' but ye [only] say, 'We have submitted our wills to God,' for not yet has faith entered your hearts.

The real origin of the problems of coexistence, pluralism and citizenship lies in the fact that the Islamic state has been established by the sword, and that it flourished thanks to the war economy which represented one of the fundamental pillars of citizenship. Furthermore, the major groups in Islam challenged the Caliphate also by the sword, either because the Caliphate did not allow them freedom of opinion and

expression, or simply because those groups considered violence the best means to change the system of rule. Ever since the battle of Badr, the concept of the holy war "Jihad" has been entrenched in the Islamic ideology, giving rise to an integrated system of exclusion, differentiation and distinction on the basis of belief. The foundation of this system was the concepts of Darul-Harb (the abode of war) and Darul-Salaam (the abode of peace).

The Qur'an only distinguishes between times of peace and times of war in the fundamentals of faith. Hence, some trends of thought in Arab Islamic history refused the arbitration of the sword. This is the starting point of the thought of Mahmoud Muhammad Taha, founder of the Republican Brothers, who espoused the Islam of Mecca and the Islam of civil peace as bedrock for reform. He also refuted the argument of "the exceptionality of the state of war" that Islam experienced in its struggle for survival.

The state of war entails fighting the enemies of Islam who wage war against Muslims. "But if they fight you, slay them. Such is the reward of those who suppress faith" (II: 191); "Therefore, when ye meet the unbelievers (in fight) smite at their necks ... until the war lays down its burdens" (XLVII: 4); "Ye who believe! Fight the unbelievers who gird you about" (IX: 123); "Strive hard against the unbelievers and the hypocrites and be firm against them" (LXVI: 9).

A close look at these verses reveals that the Qur'an does not advocate fighting those who do not war against Muslims, and it emphasizes that war be to those who initiate

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war, and peace be to those who seek it. Hence: "But if the enemy incline toward peace, do thou [also] incline toward peace." [VIII: 61]; "If they withdraw from you but fight you not, and [instead] send you [guarantees of] peace, then God hath opened no way for you [to war against them]." [IV: 90].

In times of peace, the Qur'an mentions only one specific duty for the believers, that of 'wilaya' (custodianship or rule). The believer should not prefer an infidel to a believer as the "custodian" in either a public or a private affair. (Bearing in mind the difficulty we have already noted of determining who the believer is. The specification of the custodian is an even more intricate problem).

Islam, as spelled out in the Qur'an, tolerates other religions and even atheism. Responsibility in Islam is individual and not collective. Disbelievers are not prohibited from practicing their own ways of living, and should not be forced to practice the Islamic rituals. Political and personal loyalty and custodianship are linked to faith and not to Islam, i.e., they embrace Christian and Jewish believers as well. The Qur'an states: "Of the People of the Book are a portion that stand [for the right]: they' rehearse the signs of God all night long"(III:113). Islam categorically prohibits that a believer kill another: "Never should a believer kill a believer but by mistake" (IV:92).

People living under the rule of Islam are differentiated according to faith and Islam first, then according to slavery and freedom, and by sex. In the infliction of retributive punishment 'qisas,' we can discern this differential discrimination: "The law

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of equality is prescribed to you in case of murder: the free for the free, the slave for the slave, the woman for the woman."(II: 178). There is no equality between men and women in inheritance, testimony, marriage, the "greater command" (heading the state) and the "minor command" (heading the family).

HISTORICAL CONSIDERATIONS

As the Church was less benevolent than Jesus Christ, Islamic history and jurisprudence were less merciful to people than the Qur'an. Let us start from Mecca.

Islam in Mecca was imbued with its individualism. Mecca had been an individualistic society due to its socio-political stability, which encouraged trade, capital accumulation and usury. Therefore, Meccans had converted to Islam on individual bases; the most collective was the conversion of a whole nuclear family. The features of the Islamic concept of responsibility took shape in that early period, and hence the Qur'an states: "No one will be made to bear the sins of another," and "there is no coercion in religion." Inter-religious boundaries were delineated while accepting pluralism and rejecting compulsion in matters of faith. Islam's spiritual and universal characters were emphasized.

With the emigration to Yathreb (Medina), a full-fledged modification of early Islamic tendencies took shape. The

Document,^ or what came to be called the Constitution of Medina, was the unprecedented and last systematic doctrine organizing the relationship between the Muslim community and other groups. Despite the fact that Yathreb was a transitional period, this document is quite important because it indicates the spirit that prevailed in pacts and agreements at that time.

The fundamental points that can be drawn from this agreement/document related to the topic of our research are:

- Nominal equality in rights and duties between Muslim and Jewish communities.
- Endorsing the concept of support in times of war.
- During times of peace, relations were to be based on goodwill, faithfulness and advice.
- The penal system was to be organized according to pre-Islamic Arab norms: the chief of every tribe, irrespective of his religion, was made responsible for the blood money in cases of murder or disputes.

Hence, there was no distinction between Muslim and Jewish communities. There was an attempt to coexist with other kin communities. The emigrant community (muhajirun) as a whole was considered as kin in tribal terms. However, the question of individual responsibility was ambiguous. Inter-tribal

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^ *See the Appendix.*

rituals and pacts were rehabilitated, but in that case tribes have been divided according to belief, i.e., Jews have their own religion, and Muslims have theirs.

Equality between the signatories to the document was based on juxtaposition rather than merger or integration. Each group was free to decide on the status of its members, since it was responsible for their wrongdoings. Hence, one can speak of more than one definition of the individual, according to that person's kinship (tribal) and religious positions.

The Document did not exclude specific individuals from public life; it excluded individualization in itself. To identify the role of women for instance, we have to trace the rites and traditions that prevailed among the different Arab tribes, both Jewish and Muslim, rather than try to find a general rule specifying women's identity. Therefore, the Document established the concept of juxtaposed kinship and belief communities, which left its mark on the Islamic army and gave rise to the expression "Ahl Al Dhimma."[*]

This model of juxtaposition shapes, until today, the pattern of coexistence between various religious groups in the Islamic World. This is not an Islamic "trademark"; it was actually known in Christianity, Judaism, and Hinduism. We can also trace some of its elements in the United States, albeit

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[*] *Non-Muslim subjects protected by the Muslim state. They had to explicitly submit to Muslim control of general affairs, and in return were free to perform their individual worship rituals. (Translator's note)*

without being rooted in the relationship between the individual and the state. Undoubtedly, the general features of citizenship in every Islamic state emanated from Muslim and other groups, which has always associated the state and the belief system.

Finally it should be noted that this Document preceded any institutional form of government. To avoid error, the date of its drafting is somewhere between August 622 and June 624 (between the first year and the end of the second year of Hijra).

SANCTIONING WAR

A shift from that situation of equality between and autonomy of the juxtaposed groups to a more explicit legal designation of a Muslim and consequently of a citizen came about when Islam sanctioned war. Regardless of the controversy over raids, expeditions, wars and victims, there is a point of consensus between the friends and the enemies of Islam: war was not the Prophet's or his companions' decision but stemmed from the principle of self-defense. War was approved to save the new religion not to establish a state, and to champion the freedom of worship not to eliminate the right to difference. This is a fundamental point, because it is the core of any Islamic argument over the Holy War, the Imamate, or the government. The concepts of withdrawal and reform in Medieval Islam revolved around this point, which expressed the point of view of the enlightened Muslim line. Ibn Hisham, the historian of the Prophet Muhammad's life history, supports this view:

Before Al 'Aqaba Oath, Prophet Muhammad had not received permission of war and blood

shed. He was ordered to pray, exercise patience, and forgive the ignorant wrongdoers. Quraysh persecuted his followers of the Muhajirin to forsake their religion and banished them. They had to renege, be tortured, or flee either to Abyssinia, or Medina. When Quraysh trespassed God Almighty's boundaries, called His Prophet a liar, tortured and ostracized all those who worshipped God, believed His Prophet, and adhered to His religion, God Almighty allowed His Prophet to wage war and prevail over those who did them injustice. The first verses of the Qur'an which gave the Prophet permission to combat transgressors were conveyed to me by Ourwa ibn Al Zubair and other authorities: "sanction is given unto those who fight because they have been wronged; and Allah is indeed able to give them victory. Those who have been driven from their homes unjustly only because they said: Our Lord is Allah. For had it not been for Allah's repelling some men by means of others, cloisters and oratories and mosques, wherein the name of Allah is oft mentioned, would assuredly have been pulled down. Verily Allah helpeth one who helpeth Him." [Surat: The Pilgrimage, verses 39 & 40.] In those verses, God sanctioned war because the believers were done injustice to, while they did no more than worship God. They prayed, gave alms, advocated righteousness and proscribed

misdeeds. May God bestow his blessings on Prophet Muhammad and his followers. [4]

It was necessary to quote this reference because it set the boundaries between two concepts of citizenship in Islam. The first is the image of the patient, tolerant believer, who is ready to coexist with others, and who is, in principal, forbidden to fight. Warfare was sanctioned only in the case of severe injustice that could only be redressed through the use of force. Here, Muslims worship, give alms, call for good deeds and proscribe wrongdoing. Their worldly status is associated with their personal choices. In short, this is the model of Islam as a religion and a moral system, not a state and pursuit of worldly interests. The second came about as a consequence of the wars to spread the call of Islam and attain power. In other words, there was a shift from Surat Al Insan (Human) to Surat Al Anfal (Spoils of War), from preaching to warring; war has its pitfalls and the state its own rationale.

The mobilizational discourse that accompanies any state of war has been re-used and exploited in political struggle since the Apostasy wars, until the assassination of Uthman and Ali. Its prime victims have always been the Muslims. Despite the violent charge of this discourse, it was probably a source of tension and anxiety for many Muslims. It has been rejected at times, discussed and refuted at others. The early Madani (revealed in Medina) verses of the Qur'an illustrate this.[5] The text of the Hudaybiya Treaty (6 AH/ May 628 AD) between Quraysh and the Muslims reveals the Prophet's preference of an unbalanced pact in return for ten years of peace rather than war. Even the spoils collected in wars (which had sown the seeds of

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material privileges among Muslims) did not dissuade the Prophet:

> In Thy name, O Allah. This is the treaty of peace concluded by Muhammad ibn Abdallah with Suhail ibn 'Amr, in agreement to cease war for ten years, during which people will live in peace and shun hostilities. Whoever comes to Muhammad from Quraysh without the permission of his custodian will be sent back, and whoever comes to Quraysh from Muhammad's followers will not be. Our hearts confine what we feel, and there shall be no theft or treason. Whoever desires to make alliance with Muhammad is free to do so, and whoever wishes to make alliance with Quraysh is free to do so.[6]

In September 623 AD, the expedition of Abdullah ibn Jahsh returned victorious. Ibn Jahsh suggested to his companions and hence to the Prophet that warriors take four-fifths of the booty and the remaining fifth be given "To Allah and His Messenger." The Prophet endorsed this suggestion and so did the Qur'an. This principle sanctioned war as a military-economic operation, and not only for the sake of spreading and defending Islam. The war economy was the means that set the first temporal privileges of belonging to Islam. It was followed by a poll tax or "jizyah" imposed on non-Muslims (People of the Book), and another tax paid by those who vowed to have peace with Muslims. There were no permanent rules for the distribution of the spoils of war. Moreover, there was no unified policy to deal with the prisoners of war. As Ibn Hisham, Al

Tabari and Al Ya'qubi noted, a large portion of the booty was distributed to Muhajirin rather than Ansar (supporters of the Prophet—the original inhabitants of Medina), and to those of the Prophet's tribe (Quraysh) even when they did not take part in combat. Put differently, the question of the booty has been handled in the lifetime of Prophet Muhammad according to several political, social, military and personal considerations.

The first victims of the war economy were women. They cured the wounded in wars but were not warriors. They were part of the spoils and were taken as hostages and concubines. Hence, the first repercussions of the war economy were the consolidation of the rights of men at the expense of women, the rights of Muslims to the detriment of non-Muslims, and the increase of the numbers of slaves. Naturally, this was true so long as defeat was a remote possibility.

Hence, the "military institution" was born before the "judicial institution" in the early Arab Islamic state. Prophet Muhammad was the executive head of this state. He combined the fundamental religious and worldly authorities in his person. However, this was an exceptional situation, and was associated only with the Prophet in his capacity as the divine messenger of God.

In his lifetime, Islam was tailored to the Prophet. There are more verses in the Qur'an dealing with the Prophet's private life than with legislation. The Prophet answered the emerging problems more than laid down clear judicial, political and civil rules for the regulation of society. This created a huge gap after his death. The controversy that erupted over the major problem, namely the state of war, was a case in point. Let alone other

problems of day to day life. This gap revealed itself in the fact that no two Rightly Guided Caliphs assumed power through the same procedures. In fact, the Prophet himself had disagreed with Abu Bakr and Umar over the distribution of the booty. This led Ali Abdel Razeq to reject the concept of an "Islamic state," while Muhammad Said El Ashmawi was led to speak of "people's legislation for the people in the name of The Shari'a."[7].

Except for the general rule specified in surat Al Anfal over the spoils of war, the Prophet's method of distribution of war booty was related, as we have already mentioned, to several factors, such as winning over some tribes. Apparently, the Prophet sanctioned the principle of exploitation of the "fai'a" land* by their original owners, in return for sharing the yields. Many cases of opposition were raised against the Prophet's decisions concerning the distribution of booty that are familiar to readers of the Prophet's biography.

Abu Bakr's Caliphate lasted from June 632 to August 634 AD. During this period, the ridda (apostasy) wars** were waged, and the Caliph decided to distribute the booty equally

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* *Immovable booty , or land revenues, which was not divided up but was kept intact (Translator's note)*

** *All Arabia outside al-Hijaz, which was alleged to have accepted Islam and acknowledged the temporal authority of the Prophet, upon his death broke off from the newly organized state and followed a number of local prophets. Many tribes in those regions were reluctant to pay the zakat or alms to Medina. Abu Bakr insisted on unconditional surrender from the secessionists or apostates. (Translator's note)*

among the Muslims, regardless of one's early conversion to Islam or blood relations with the Prophet or bravery in championing the Muslim cause. This created a feeling of equality that encouraged many Arabs to join the Islamic army. After the "case by case" policy of the Prophet, Abu Bakr divided the booty equally among the warriors and assigned the one fifth formerly given to the Prophet to the state treasury. Abu Bakr discussed and shared the judicial affairs with Umar ibn Al Khattab. The Caliph also introduced the new position of the 'Umma Trustee' (Treasurer). However, no institution was formed that allowed Muslims to discuss the Caliph's decisions. Consultation and debates were spontaneous, and were most often confined to the hard core of early Muslims.

Abu Bakr named Umar ibn Al Khattab as his successor. Among Umar's early decisions were the introduction of a system of pensions, and the establishment of an Army Register (Diwan) which was the first institution to organize the influx of resources. Umar attempted to control the ascendancy of Arab military leaders, according to the following bases:

1- Priority in converting to Islam and distinguishability in defending the Muslim cause.
2- Boosting the rank of Arabs in the Muslim Empire by legislating the prohibition of enslaving any Arab, and their appointment to top ranks in conquered lands, without restricting this to Meccans or Medinans. Hence, the elements of early conversion to Islam, distinguishment in serving its cause and Arab identity were the pillars of Umar's new concept of citizenship.

The introduction of the pension registers of the population concretized these two considerations. Those who had embraced Islam before the conquest of Mecca were favored to post-conquest converts. At the same time, divisions based on blood ties were recognized. According to Al Mawardi and others, three genealogists were appointed to establish a hierarchy of pensions in two categories, one general and another particular. In general, the Arabs were divided into tribes and subdivisions of tribes. The criteria of the particular categorization were: early Islam, distinguished service to Islam, age and affinity to the Prophet. Thus was set a differentiation between the old "citizen" and the new "citizen," both ranking higher than non-Muslims. The latter had to pay taxes to the Islamic state, while like women, they were deprived of all the political rights of Arabs.

Muslim armies, camps, new cities and the army diwan were organized along tribal lines. This was reflected on the relationship with non-Arab Muslims who accepted to become protected subjects (*mawali*). This was another form of inter-Muslim differentiation. The population within the Muslim society before Umar's death was classified into:
Muslims from Muhajirin, Muslims from Ansar, Meccan Muslims, Arab Muslims in general, non-Arab Muslims (*mawali*), Muslim male and female slaves, People of the Book (Christians and Jews), and those belonging to other creeds.

In spite of the pledge between the Prophet and some Jews of Hijaz, Umar decided to purge all non-Muslims from the Arabian Peninsula, while the densely populated areas were influenced by the pre-Islamic system.[8] The new cities were

organized along the same line as army organizational structure. For instance, warriors, their wives, slaves and relatives inhabited Kufa to establish "an outpost garrison town for warriors, their families and relatives to settle down." The center of Kufa included the treasury, the emirate court, the mosque, and the market place. It was surrounded by seven housing districts separated by streets. Population was divided along tribal lines, the degree of kinship and alliances.

An influential tribesman was selected to be in charge of military, administrative and financial authority in the district, in addition to issues of war and peace. According to Al Zubaidi, the heads of the seven districts were "held directly responsible for the behavior of their tribes before the governor. They prevent sedition and anti-state actions. They are the mediators between the tribe and the Emir."[9]

Another system of superintendence, which in most cases transcended tribal genealogies, was also established. The "Arraf" was a supervisor of a number of persons, ranging between 10 and 60. *Arrafs* were responsible for security in their respective districts, and controlled the process of pension distribution, and the birth and death registers. (According to Al Tabari, there were a hundred such *A3rafs* in Kufa.)

The judiciary was not a fully autonomous institution. The political and judiciary administration often overlapped, except in the cases of personalities known for their wisdom and fairness whom people resorted to for adjudication. Despite the expansion of the Caliphate, some legal problems were resolved

only by the Caliph in parson. Ibn Khaldun * wrote:

> The judiciary is one of the Caliph's
> jurisdictions.... Caliphs undertook this role
> themselves, and did not delegate it to others.
> The first to entrust others with this role was
> Umar [Ibn Al Khattab]. He appointed Abul
> Darda' [as judge] in Medina, Shariha in
> Basra, and Abu Mussa Al Ash'ari in Kufa. To
> the latter he addressed the famous message
> which has inspired judges. [10]

Regardless of what we think of the authenticity of Umar ibn Al
Khattab's message, its text has been a judicial frame of
reference in the Arab Islamic history. Therefore, we quote it
here in full:

> Judgeship is an exact duty and an observed
> tradition. When people address you,
> understand them thoroughly, for it is no use
> defending an invalid right. Equate between
> people in your assembly and in your justice so
> that nobles would have no hope in injustice by

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* *Well known Arab historian and philosopher. He wrote a comprehensive
history of North Africa made up of three parts: a Muqaddimah (Introduction)
forming the first volume, the main body treating Arabs and neighboring
peoples and the last part which deals with the history of the Berbers. The fame
of Ibn Khaldun rests on his 'Muqaddimah,' where he presented for the first
time a theory of historical development and laws of national progress and
decay, which takes into consideration geography as well as climate, moral
and spiritual forces at work. (Translator's note)*

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you, nor would the weak lose hope in your justice. Evidence shall be on the claimant, and oath on the disclaimer. Reconciliation is possible between Muslims, except one that sanctions the forbidden or forbids the permissible. If you had passed a judgment yesterday, reviewed it today, and came back to your senses about it, you should not be thwarted from returning to the right path. Rightness is venerable, and the verification of justice is better than persistence in falsehood. Understand and interpret what presses your mind and is neither in the Book nor in the Sunna. Know the examples and analogies, and measure matters by their equals. Give whoever claims a right or evidence a period of time. If he came up with evidence, you should give him what he is entitled to, or otherwise you bring him to justice; this would eradicate any doubt. Muslims are trustworthy witnesses for or against each other, except for those who had been flagellated in penalty, or had given false testimony or those whose descent is uncertain or whose loyalty suspected. Beware anxiety, boredom, and impatience with adversaries. The establishment of justice in its right place maximizes God's rewards and leaves a praiseworthy memory. Peace be to you.

Umar ibn Al Khattab's classification of the population

was the most articulate forms of identification of citizenship, albeit quite different from his predecessors'. Uthman adhered to the same line, but he diverged in that he gave Quraysh the lion's share in the redistribution of political and military posts. Insurgents against him failed to establish political manifestations of citizenship that go beyond the selection and vowing allegiance to the caliph, and the focus on pensions from the treasury. Ali ibn Abi Taleb failed to distinguish himself from his predecessors.

The civil war that erupted in the abode of Islam was the first factor to challenge the "legitimacy" of Umar's principles, not by modifying them but by putting forward other forms of citizenship. These were brought forward by the Kharijite and Shi'ite discourse in the second half of the first century AH and the beginning of the second century AH. Arab tribes realized that top positions were more and more centralized in Quraysh and the Umayyad Ma'it lines more specifically, and that the booty was not distributed mainly on warriors but was considered a property of the umma. Land was left to the natives to cultivate under the supervision of the C. As for the *mawali* (non-Arab Muslims), they were not registered in the army diwan despite their contribution in expeditions until the era of Umar ibn Abdel Aziz.

The end of the civil war between Mu'awiya and Ali ibn Abi Taleb not only transferred the Islamic center of power from Medina into the conquered territories, but there was an absolute and conclusive shift from the model of the warring city/state to that of the expansionist empire. This reminds us of the Roman society and its problems of citizenship, albeit in only the very

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general features that would not allow for any conclusions.

When people were converting to Islam in increasing numbers, one of the cunning Arabs claimed that the new comers should not be integrated with the Arab Muslim community because they were avoiding the religious poll tax. The Caliph replied by saying that Allah sent his Messenger, Prophet Muhammad, to guide people not to collect taxes. In fact, the Muslim state discriminated between Muslims and non-Muslims on the one hand, and between Muslims themselves in the oldest diwan, that of the army. The repercussions of this discrepancy reflected on the political system of the Caliphate, which was severely restricted after Umar's death and excluded many Arab tribes from positions in the conquered territories, from key military positions, and severely limited their pensions. This was the major cause for revolt against Uthman.

As for *Mawalis (non-Arab Muslims)*, it was even worse. Despite their being Muslims, their payment of the tax and their contribution in military expeditions and public affairs, positions such as emirate, leadership, and adjudication were completely closed to them during the first century Hijri. Even though some of them were appointed as judges, they rarely assumed important military and administrative posts.[11] *Mawalis* represented the bulk of diwan scribes until they were finally Arabized; they registered the taxes on land revenues (Kharaj) even after Arabization. This explains the shift of a large section of *mawalis* to handicrafts and the sciences. By raising the issue of absolute equality of citizenship between all Muslims, the Kharijites succeeded in winning over the Berbers in the West and Khurassanis in the East.

People of the Book (Christians and Jews) were excluded from positions of high command such as: jurisprudence, judicial posts, jihad or holy struggle, 'hisba' (overseeing morals),* internal security, administration, ministerial posts and the rule of conquered territories. The status of women was the same as that of the People of the Book, except in penalties. Until the assassination of Ali, and with the exception of the purge from the Arabian Peninsula, there was no discrimination between Muslims and non-Muslims. No humiliating marks of distinction were imposed on them- neither in attire nor in codes of conduct. The issue of jizyah continued to organize their taxation status apropos the state. Opinions that run counter to this are, we believe, too weakly supported to deserve any discussion.

As for the judiciary, it changed with time. It was definitely different than what we know today. The role of the judge during Umar's Caliphate did not go beyond reviewing petitions, because the sentences in crimes and the infliction of penalties were in the hands of the caliph primarily, then in his viceroys', until the position of the chief of police was established. This post flourished during the Abbasid era; it was considered a religious position, and it encompassed the right to enforce penalty before the proof of guilt, to order religious punishments and retributive sentences, and to take discretionary disciplinary measures.

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* *Hisba is a derivative of the noun 'muhtasib' meaning overseer of markets and morals. His duty was to see that proper weights and measures were used in trade, and that approved morals were maintained and that the acts forbidden by law were not committed. (Translator's note)*

FROM COMMUNITY TO EMPIRE

With the transfer of the capital of the Caliphate to Damascus, the Arab Islamic state experienced a radical and unprecedented change. The Islamic community, formerly in control over Yathreb and its suburbs, was now subduing the heart of the Old World. Its hegemony was built over the vestiges of various states, economies and forms of citizenship. The nascent empire could not possibly substitute the historical structures because Muslims did not have an alternative conception of state structure. Furthermore, they lacked the necessary cadres and personnel to cope with the horizontal expansion of the state. In addition, internecine wars had drained "the companions and followers."

Therefore, the socio-economic systems were different in Egypt, Syria, Iraq and Iran, which created a certain particularity of each nation within those regions. Individual and collective rights varied from one country to another. This has undoubtedly affected the nature and fate of the Arab Empire.

Ibn Abdel Hakam (182 - 257AH/798-871 AD) describes the relationship between the Arab governor and the inhabitants of Egypt by saying:

> When Amr ibn Al Ass consolidated his rule, he ordered the Copts to pay the same taxes they had paid to the Romans. The Romans had collected taxes by assessment: if a village was prosperous and densely populated, it was taxed

more; if it was thinly populated and devastated, taxes were lowered. The superintendents and the chiefs of the communities would gather to decide on prosperity or devastation. If they agreed to an increase, they would meet with heads of villages and divide the toll according to village capacity and size of plantations. Then each village would collect its 'kharaj,' and would keep some feddans aside for their churches, public baths and houses for Muslim guests and the Sultan's visits. Having done so, they collected from craftsmen and wage earners each according to his capability. If there was an Arab community* among them, dues were allotted according to their capacity. Then they assessed the remaining kharaj and divided it up according to the number of plots. If one of them was incapable or fell short of cultivating his land, the land would be distributed on those who can take care of it. Whoever sought further plots of land was given what the weak failed to cultivate. If they disagreed, they would divide the land equally. The feddan equals twenty-four karats. The tax on one feddan was a half ardeb of wheat and six bushels of barley. Livestock fodder was exempted from taxes. [12]

We notice that the prevailing systems were kept intact,

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* *From among the People of the Book expelled from the Arabian Peninsula. Historians range them between 20 to 70 thousand.*

the original tax collectors remained in their position, while an Arab Muslim was appointed to oversee them. In Egypt soldiers were prohibited from working in agriculture. The Byzantine commercial and military community, which numbered nearly 30 thousand men and their families, were deported. The Roman tax system governed the relationship between the Copts and the Muslim army rather than any ready-made Islamic system for jizyah!

In the Levant, the mechanisms of conquest and the movement of the army played a key role in the exodus of a large section of Greeks from the region. They left behind their houses, lands and empty plots. Arab migration to the Levant was enormous; the lowest estimates were: twenty thousand Yemenis, excluding Arab converts to Islam from the Levant. The Arab conquerors soon replaced those who fled the region and inherited all their privileges: lands, houses and shops. They reformulated many features of the old system that prevailed in the region. The former system of financial administration (which mostly adopted a fixed taxation) remained under the jurisdiction of the governors to dispose of land as the "exclusive property of the treasury."

The Arabs settled down among the original inhabitants and not in special cities, unlike Egypt and Iraq. A great part of them participated in such economic activities, inter-city and real estate trade. Economic relations between conquerors and Arab Christians were reinforced in Southern Syria and Mount Lebanon, particularly with the Christian sects which seceded from the Church. There is no evidence that Arabs applied a ruthless economic policy, or socio-political persecution on

members of different Christian sects before the rule of Umar ibn Abdel Aziz. This treatment led to the large-scale conversion of Levantine Christians. The Caliph Mu'awiya appointed a number of the members of the Christian Sergon family to important positions. Mansour ibn Sergon was appointed minister "vizir," and his doctor named Ibn Athal was governor of Emesa. Moreover, a number of Mu'awiya's consultants were Maronites.

In Iraq Kisrah Anou Shuruan * (531-579) amended the tax system in order to silence the people, and to sanction robbery by the few elite. He divided land into equal plots called "Garib" (around 2400 m^2). Taxes on those plots differed according to the type of crops cultivated: one dirham for cereals, ten dirhams for grapevines, in addition to the head tax (paid by males between 20 and 50 years old) which varied according to the degree of wealth or poverty. Great people "Fuzughan," the privileged classes (the ruling family, heads of administrations, the king's personnel, officers, religious scholars, and the educated aristocracy). When the Arab Islamic army arrived to the conquered land, the population was divided into three categories: non-Muslim Arabs who paid a fixed annual poll tax; the second category was "al Dahaqin" land, which included large plots of land and villages supervised by

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* *From the Sassanid dynasty: he ruled Persia and its adjacent territories after his father Qubadh. His era witnessed a large expansion of the Empire, which called for parallel economic changes.*
* *An old Persian term meaning the great ones (buzughan in Persian today). It refers to the privileged social classes, which were exempted from the poll tax under the Sassanids.*

state-peasants called "dahaqin." The third was the fire houses, water swamps, Kisrah's property and that of his corps (i.e. land belonging to the ruling family, the endowments of religious scholars, wasteland, etc.). All this was transferred to the Muslim state, while peasants continued to work in it.

Al Tabari expressed this state of affairs by saying, "The majority of the masses were dhimmis. They continued to pay Kisrah's kharaj. This kharaj was on men's property: crops and money." The tax system remained the same, with some modification in superficial rather than core issues. The Islamic state became the owner of the valley , according to Umar ibn Al Khattab's decision. Land tax was allotted according to the size of plots of land. Non-Muslim men had to pay a tax (jizyah, lifted in case of conversion to Islam). In the conquered land of capitulation (sulh), tax collectors from the Sassanid era remained in their position and collected taxes for the Islamic state. The tax register administration (diwans) remained unarabized until the seventh decade of hijra. The wilayat remained the fundamental units of administrative division, under the management of an Arab governor. This is not bizarre, because even the Arab currency did not appear until the seventh decade of hijra. The acknowledged currency before that was the dirham and the dinar, the currencies of the Sassanid and Byzantine empires.[13]

The death of Ali ibn Abi Taleb marked the end of the times of equitable distribution of the booty and pensions on all Muslims. Later on, the seeds of discrimination between Muslims within the treasury grew wild. Mu'awiya ibn Abi Sufiyan reinforced such cleavages in his struggle to establish a

loyal clan among the ranks of the Muslims. We can attribute to Mu'awiya any features, but we cannot claim that he governed by either the Sunna or the Qur'an. He was appointed governor of the Levant since 20 AH (641 AD) during the Caliphate of Umar ibn Al Khattab. He annexed the provinces known as natural Syria, Jordan, Palestine, and Emesa successively to his wilayat. The earliest measures enacted by Mu'awiya governor aimed to stop the migration of Arab Muslims to the Levant, the majority of migrants being from Yemeni tribes. Through this process of checking Arab Muslim migration on the one hand, he achieved a population control that facilitated the settlement of migrants and warriors. On the other hand, it was possible to organize and institutionalize the privileges and spoils of war in a centralized way, which bolstered the presence of a group of privileged citizens who paid allegiance and were loyal to the Sultan.

The second major procedure of Mu'awiya's was to constrict the share of the capital (Medina) in booty and taxes as much as possible, which allowed him to accumulate local capital to confront internal problems. The third procedure was effected throughout his long rule. He established a network of relations with Arab Yemeni tribes in order to guarantee a wider framework for support than the Qurashi-Umayyad kinship relation. Those tribes were won over through warrior pensions on the one hand, and by promotion of their trade activities. He reinforced all of this by dispensing the state-owned land to his favorites and by opportune marriages.

What were the repercussions of this policy on the concept of citizenship? The discrepancy between Muslims,

which began under the Rightly Guided Caliphs, was further bolstered. There was a strong revival of what characterized the period of Uthman, namely, nepotism as a principle of rule and expanding control through a network of close power-tribal ties. Furthermore, material and political privileges were distributed from above, in order to engage profiteers and interest-seekers to the Caliphate in a patron-client relationship.

The Umayyad Empire highlighted the classification of the population into: an Arab-Islamic citizenry who supported the ruler; an Arab Christian environment (either neutralized or made close to the ruling circles); and an Arab-Muslim citizenry that stood in opposition and was thus totally eliminated from the circles of government and was deprived of any privileges (except joining the Muslim armies to share in the spoils or the losses). This transformed the concept of differentiation on the basis of religious loyalty to the primacy of loyalty to the ruler. This principle remained in force until the downfall of the Ottoman Empire in 1925.

In practice this principle breached the fundamental basis of citizenship of the early Arab-Islamic community. The role of religion in determining citizenship subsided in favor of economic, political, social and cultural factors, which shaped the individual's status. This was evident in the discrimination between Arab Muslims and Muslim 'mawali.'

Despite its pre- and non-Islamic character, a system of "wala'a" (patron/client) relations was established between Arab warrior tribes and the communities which joined the new religion. This system was paralleled by the growth of a

superiority ideology that monopolized power and supremacy and looked down upon the *'mawali,'* who "sweep our roads, repair our sandals, and knit our clothes," as one of the Arab warriors put it[14]. Handicrafts, manual professions, including agriculture were looked on with contempt, while warfare was an object of pride. Productive activities were an indication of subordination. *Mawalis* were equalized with slaves and dependants. Shuraik said, "The peoples of the peripheral territories are slaves." It was also said that "none but an Arab is eligible for judgeship," and that "prayer is interrupted by three: a donkey, a dog or a mawla. "Historians indicate that more than once marriages between non-Arab Muslims and Arab women were prevented in the first century AH.

At the economic level, the *mawalis'* Islam did not endow them with the rights and prerogatives enjoyed by other Muslims. Note how the Arabs of Kufa criticized one of the governors for for granting *mawalis* a simple right: "Our *mawalis* and all these countries are endowments that God had bestowed on us. We set them free in the hope of getting reward [from Allah] as well as gratitude from them. However, you were not satisfied until you made them partners in our endowments."[15]

The absolutely politico-economic character of the Umayyad dynasty which controlled its relationship with "Muslim citizens" was most evident in the Caliphate of Abdul Malik ibn Marwan (65-86 AH/685-705 AD). After a thorough survey of several regions, Abdul Malik re-organized the tax system. If we take as an example the rule of the viceroy Al

Hajaj (75-95 AH),[*] we will find that the jizyah was re-imposed on new converts to Islam, and the land tax was re-introduced on lands that had been transformed into 'tithe' lands upon their passage to Arabs. In this way, the interests of the concerned Arab Muslims clashed with the new non-Arab Muslims, who were treated as non-Muslims. This culminated in protest movements, the most important of which was the ibn Al Ashaa'th uprising.[▲]

We can trace this refraction from Islamic principles in classics. Al Tabari mentions that a Khorassanian wrote to Umar ibn Abdul Aziz saying, "O! Commander of the Faithful! Twenty thousand of the *mawalis* fight without pensions. Twenty thousand other dhimmis converted to Islam and are still paying the land tax (kharaj.) "Al-Douri indicates that when Nasr ibn Sayar (738-758 AD) attempted to re-organize taxes in Khurassan, he found that thirty thousand Muslims were paying the jizyah and eighty thousand non-Muslims males were exempted from this tax".[16]

These examples emphasize our argument that the concept of citizenship in the Arab Islamic empire was mainly a function of the logic of power rather than that of religion.

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[*] *Al-Hajaj ibn Youssef : Most celebrated of the Umayyad governors. A shrewd statesman, his loyalty and fidelity to the Umayyads knew no bounds. He was known for his repressive measures. (Translator's note)*

[▲] *Abdel Rahman ibn Muhammad ibn-al Ash'ath, a descendant of the royal line of Kinda and governor of Sijistan. He later led a frightful revolt against the authority of al Hajaj. (Translator's note)*

Caliph Umar ibn Abdel Aziz (ruled from 99 to 101 AD) attempted to bestow an Islamic character on his decisions. He exempted Muslims from jizyah,* prohibited additional taxes such as those imposed on the presents of the Persian New Year's Day, festivals, taxes on marriages, the "house rents" and petition dues. He gave non-Arab Muslim warriors the same privileges as those enjoyed by their Arab counterparts.

In the same drive, Umar ibn Abdel Aziz decided to oust Christians from state positions, and was very strict with them, even though he highly respected the contractual relationship between them and the Muslim state. He tended to explain this relationship differently in such a way as to restrain dhimmis, especially concerning the amount and method of collection of the jizyah, and the freedom of worship. Churches were either adjoined to mosques or converted into mosques. Christians were prohibited from joining the civil service and from wearing turbans. They were compelled to trim their forelocks and wear special outer garments, to put leather belts around their waists, and to ride their horses unsaddled. They were forbidden from building churches or raising their voices in prayer.[17] Then, he reviewed his policy, accepted the idea of Christians' participation in the army, and restituted many non-Muslim civil servants to their posts. Hussein Al 'Awdat argues that "the issue was not religious law, but rather a socio-political and most likely an individual attitude."

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* The Qur'an proclaimed no jizyah on Muslims; however, as historians mention, tens of thousands of Muslims paid the jizyah on orders of governors. Hence, Abdel Aziz's decisions exemplified a return to the spirit of the Qur'an and Islam.

The majority of historians claim that Arabs' denial of equal rights to the *mawalis* was the cornerstone for the large-scale rebellion, which led to the collapse of the Umayyad state. It is then of some use to trace the discourse and reactions accompanying the rise and triumph of the Abbassid movement.

Notwithstanding its literary style, Dr. Ali Al Wardi's book *The Preachers of the Sultan* (Wu'aaz Al Salatin) deserves to be quoted at length on the rebellion against the privileged Arab citizenship:

> The Abbassid movement was a movement of *mawalis* to exact revenge on Arabs and demolish their state. Several historical indications point out that the Abbassid state was founded on antagonism toward Arabs. During the reign of this dynasty, a severely violent anti-Arab reaction prevailed. 'Shu'ubiya'* became tremendously widespread. In the Abbasid era, Arabs returned to the desert to herd cattle again. Ibrahim Al Imam, leader of the Abbassid movement, sent a message to his viceroy, Abi Muslim, saying: If you can kill every

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* *A movement that developed among subjected nations, particularly the Persians. This movement aimed mainly at combating superiority of the Muslims of Arabic descent. The movement took its name "Shu'ubiyah" from "shu'ub," peoples, i.e., belonging to the peoples, the non-Arabs. (Translator's note)*

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Arabic-speaker in Khurassan, do! Any five-foot tall child accused [of anything] should be killed.

Later on, Caliph Al Mansour who succeeded his brother Ibrahim Al Imam, implemented a harsh anti-Arab policy. He was well known for his hatred of Arabs and his reluctance to employ them. Al Tabari mentioned that Al Mansour had an Arab servant but did not know he was of Arab origin. When he found out, he dismissed him and said, "You are the best of pages, but no Arab enters my palace and serves my household. Get out, may God bestow health upon you! Go wherever you please." *

Al Siyuti** said, "Al Mansour was the first to appoint *mawalis* to positions of authority. He gave them precedence over Arabs. This continued with his successors until Arabs were totally alienated from top positions and leadership." Likewise, Al Massoudi* wrote about Al Mansour: "He was the first Caliph to appoint his *mawalis* and valets for his missions. He gave them priority over Arabs. Caliphs took this tradition after him. This is why the Arab Empire collapsed and vanished." [18]

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* *Al Tabari (839-923 AD). A great Arab historian. He laid down the principles of his new school of law. He was well known for his commentary on the Qur'an (Djami' Al Bayan fi Tafsir al Qur'an) and the history of the world (Tarikh al-Rusul wal-Muluk). He was accused of heresy, certainly on unjust bases. (Translator's note)*
** *A great Islamic theologian. Author of hundreds of treatises and books. (Translator's note)*
* *An Arab historian and geographer. One of the most versatile authors of the fourth century A.H. (Translator's note)*

From the time of Abul Abbas, the Caliphs kept repeating to the masses, "We rule you according to what God decreed, and treat you according to God's book. We act with the masses and the elite according to the Prophet's tradition" (see Al Tabari and Al Ya'qubi).

The Umayyad taxation system, local administration, organization of the army and diwans continued in the Abbassid era. The class of privileged warriors from Arabic descent was severely struck in favor of new classes that emerged during political struggle. These were endowed with the necessary religious authority to compensate for the constitutional dimension absent in all totalitarian regimes.

FROM THE JURIST'S FATWA*
TO THE POLITICIAN'S PROJECT

As we have seen in the two preceding chapters, the question of citizenship in Arab Islamic history without the recognition of the disagreement, and even sharp contradiction at times, between the religious doctrine and reality. Some caliphs went very far in discriminating between individuals on the basis of descent and national identity. Others gave priority to relations of production, while some gave more preeminence to religious affiliation, etc.

Since Mu'awiya's time, it became clear that the politically powerful was not necessarily the most knowledgeable or devout Muslim. And that it was the politician that employed religion and judgeship rather than being in their service!

This historical fact has been well grasped by more than one *Mutakalim* (proponent of "rational theology") and jursiprudent, and they took it into consideration in their attitudes toward the Imamate. Jaafar ibn Mubashir, Jaafar ibn Harb and Kathir Al Nawa of the Mu'tazilites (seceders) * argued that, "the

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* *Religious opinion or advice. (Translator's note).*
* *Al-Mu'tazilah or Mu'tazilites were so called because of their major doctrine that he who commits a deadly sin (Kabira) secedes from the ranks of the believers, but does not become an unbeliever; he occupies a medial position between the two. Among the major theses of this religio-philosophical school are the doctrine of free will, and that the word of God, the Qur'an, was a creature (makhlouq)of His rather than a part of Him. (Translator's note).*

Imam should not necessarily be the most knowledgeable of the umma, nor should he be the eldest or most rational. The need is fulfilled by the accession of an Imam, though inferior, even if a better and best (candidates) were available." A group of Sunnis tended to favor this doctrine to such an extent that they maintained that the Imam should not necessarily be a diligent scholar or knowledgeable in the field of religious jurisprudence.[19] Solaiman ibn Jarir, a Shi'ite Zaydi* associated between the Imamate and the Muslims' right to free choice. He said, "The Imamate is shura (a matter of consultation) between the people." He emphasized that the choice of the nation is a discretionary right, and the masses could go astray in the bay'a (declaration or oath of allegiance). This was not a sin but rather a mistake in judgement. [20] The Kharijites in general considered the Imamate a right to any Muslim, whether an Arab or a non-Arab, black or white, so long as he obtained the people's oath of allegiance. Imamate was linked with justice, and the prohibition of oppression. The Shabibiyah (one of the Kharijite sub-divisions) sanctioned the Imamate of women, provided they be able to fulfill the needs of the community and to fight their enemies.[21] The Najdat (another Kharijite group) claimed that people do not need any Imam at all and that they should seek equality and justice among themselves.[22]

There are two points of views on the accession to the Imamate. The first is expressed by Hisham ibn Amr Al Futi, a Mu'tazilite, who claimed that the oath of allegiance could not

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Zaydis are the partisans of Zayd, grandson of al-Husayn ibn Ali, whom they regard as the founder of their sect. Of all the Shi'ites, this is the nearest sect to the Sunnis and in some respects the most tolerant. (Translator's note).

be legitimate under circumstances of sedition and turmoil. He sanctioned the *bay'a* in times of peace and harmony. The second opinion was expressed by most orthodox Sunnis, who were more concerned with the unity of the umma under the leadership of an Imam than with the circumstances of his *bay'a*.

This point is directly linked to the question of citizenship. Different theological and ideological schools varied in their attitude toward the "masses," the "subjects." Some of those schools sanctioned the right of every Muslim to become Imam and hence fought any and all forms of discrimination between Muslims, Arabs and non-Arabs, in rights and duties. This was the opinion held by the majority of Kharijites. It is reported that many of them betrothed their Arab women relatives to non-Arab 'mawali,' in spite of being reproached by Arab tribes. Zayd, the grandson of Al Hussayn (65-121 AH), was well known for his endorsement of justice and equality between Arabs and *mawali*, and his rejection of the doctrine of "marriage among equals," which meant the prohibition of marriage of an Arab woman to a non-Arab. This doctrine, according to Zayd, belonged to pre-Islamic "Arab arrogance," and had no foundation in Islam. He agreed with the Kharijites on the principle of raising arms against an unjust Imam.[23]

Kharijite women were known for their excellence in argumentation, poetry and their participation in warfare. Dozens of stories were told about their strong personalities, superior culture and sharp tongues. 'Uwanah ibn Al Hakam, one of the Kufa scholars (died in 247 AH) once attempted to ridicule a Kharijite woman by saying, "O! Enemy of God! Why do you rebel against the Commander of the Faithful. Haven't you heard

Allah's words:
Killing and combat are decreed upon us,
And women should drag along their trains.
She replied, "O! Enemy of Allah! Your ignorance of the Book of Allah and your forfeiture of Allah's right forced me to rebel."[24]

Even though the opposition's views did not encompass the various aspects of citizenship, and though the oppositionists could not in many instances practice their beliefs in an institutional manner, their opinions provide an image of the political and civil conditions of the epoch. The questions of Islam and faith were the major theses of different Islamic ideological schools. On the other hand, the philosophic trend focused on the human being, irrespective of his/her religious, intellectual or political affiliation. A representative of this school, Abu Bakr Al Razi * advocated a society of "perfect intellectual cooperation and support." Likewise, Al Farabi (Averroes) presented his utopia in human non-religious terms. His description of the chief of the city-state does not include any condition relating to Islamic or other jurisprudence. [25]

Apart from the question of the Imamate, which preoccupies political books, the question of citizenship can be studied through writings on kharaj (land tax), in addition to some different opinions to be found in books on "sects and

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Abu Bakr Al Razi (Rhazes) (250/864 -313/935) was the most celebrated physician in the Arab-Persian history. Chemist and philosopher known for his criticism of religious dogmas, he believed in a progressive scientific and philosophical knowledge.

creeds." It would be useful to turn to the times of Abu Youssuf and Haroun Al Rashid to examine a sample of the method followed in the writings on kharaj, and to analyze how they have dealt with the issue of discrimination between people in dar al Islam (the abode of Islam), its source and logic.

We have already indicated that the most widespread and significant form of de facto and de jure discrimination was the differentiation in the individuals' economic relationship with the state. Jurists unanimously classified individuals into Muslims and non-Muslims. Based on this classification, the state allocated its resources and specified its financial and fiscal relations with its subjects. According to the different books on kharaj, in times of peace the state collected from the non-Muslim subjects the same taxes as from "peaceful idolaters." This included:

1- The three forms of kharaj: on conquered lands that became religious endowment kept for the whole Muslim community; on lands whose original owners fled and hence were transferred to Muslims; and on those lands that were conquered by capitulation.

2- Jizyah or religious poll tax, paid by the "People of the Book" (Christians and Jews) and those who resemble them such as Zoroastrians. It was collected once a year from adult, free, and sane males. The blind, chronically ill, the disabled and the dispossessed were exempted.

3- Taxes on non-Muslim merchants and traders. They were divided into two types: the first, 1/20 of the value of goods

belonging to Christians, Jews and other dhimmis; the second was imposed on all commodities imported from outside the Islamic community. It amounted to 1/10 of the value of the goods.

According to "dhimmi contracts" with the people of Najran and Taghleb, the state in return granted dhimmis protection of: their wealth, themselves, their territories, homes, and kin. It guaranteed their freedom of belief and worship, and their free choice of their own community leaders. According to Umar ibn Al Khattab's own account, those indigent from the "People of the Book" received a share of voluntary alms or charity. [26]

While it was the Muslim's duty to pay zakat (alms tax) and charity, the land of converts to Islam was considered tithe ('ushr), i.e., exempted from land tax. One fifth of the spoils of war in the general sense was kept to the state treasury (this included booty, minerals, and buried wealth).

According to jurists, non-Muslims had no right to the Imamate / Caliphate, nor were they entitled to participate in the selection of the caliph (no voting or nomination rights in contemporary wording). Dhimmis could not occupy the positions of plenipotentiary, judge, governor, or any other top-level posts.

Christians and Jews did not receive equal social rights as Muslims; dhimmi males could not marry Muslim women. Furthermore, kharaj books recount a number of humiliating obligations that non-Muslims had to perform. We quote here

what Abu Youssuf * for instance mentioned about non-Muslims:

> We should however stamp their necks upon the collection of the head tax, then the seals should be broken of they want to break them. None of them should be left to imitate Muslims in costumes, mounts, or appearance. They should tie tough ropes to their waists. Their hoods should be quilted. They should put wooden pommels on their saddlebows. Their shoelaces should be folded. They should not walk in the same roads as Muslims. Their women should be forbidden from mounting saddled horses. They should be prohibited from building new churches or synagogues in the city except those in existence at the time of their capitulation and turning into dhimmis.

Then, he added,

> Abdel Rahman ibn Thabet ibn Thawban told me that his father told him that 'Umar ibn Abdel Aziz wrote to one of his governors: "Do not leave out a cross without breaking or destroying it. No Jew or Christian should saddle his horse, nor should their women. They

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should ride only donkey. No Christian should wear a cape, a silk costume, or a wrap. I was told that many Christians wore turbans, tied wraps to their waists, were leading lavish lives and have stopped trimming (their forelocks). By my religion! If this is true, it is due to your weakness, incompetence and hypocrisy. They do so to know whom you are. See to all prohibited practices and be firm with whoever committed them. Peace be upon you!

Despite Abou Youssef's attribution of the first section to Umar ibn Al Khattab's procedures and the second to 'Umar ibn Abdel Aziz, these practices clearly contradict with the prophetic tradition. The Prophet prohibited doing injustice, harm and humiliation to covenantees. In any and all cases, this example is a case in point of the accumulative style of jurists based on inserting a number of authoritarian practices of rulers into the body of religious tenets. Religious advice (fatwa) was mingled with the desire, exhibited by many jurists, to shroud the calamities suffered by Muslims in a religious pall. Deviators from religion were used as scapegoats. These were the heterodox groups, non-Muslims and "zindiqs"* (heretics) in the general sense of the word. These jurisprudential delinquencies have been used by many a caliph and governor to satisfy fanatics. A good example is the despicable and

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:* *The term 'zindiq' was applied to any Muslim whose religious ideas partook of the dogmatic conceptions and mainstream interpretations. Later on, the term came to mean any person with liberal views, a freethinker. Literally, it means atheist. (Translator's note)*

humiliating practices against the Christians, Jews and non-Sunni Muslims under the Abbasid Caliph Al Mutawakil, which were mentioned by Al Tabari in his "Chronicles." Today, these practices are still held in high esteem by many hard-line fundamentalists.

In 234 AH, Al Mutawakil (ruled: 232-247 AH/ 846-861 AD) sent for religious scholars and jurists to bestow rewards, presents, and posts upon them, in order to draw them closer to him. In 237 AH, he deposed Aboul Walid from the jurisdiction of complaints in Samarra, and put him in jail where he met his inevitable destiny in 240 AH. / 854 AD. The following victim in the row was the Mu'tazilite judge Ahmed ibn Abi Daoud, who met the same fate twenty days later. On the other hand, Imam Ahmed ibn Hanbal * was rehabilitated. Fierce public mobilization against any heterodox sect, Zindiqs and non-Muslims was launched in public assemblies and mosques. Al Mutawakil ordered metal bands to be put around the necks of Christians and Jews, prevented them from showing crosses on Palm Sunday, and prohibited non-Muslim public worship in the streets. Furthermore, he had their graves leveled to the ground, and ordered them to affix wooden images of devils to their houses. He forbade them from lighting bonfires in the streets,

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* *Imam Ahmed ibn Hanbal, founder of the Sunni Hanbali school of jurisprudence. He was the representative of the uncompromising adherence to the letter of the Hadith. He refuted the rationalistic explanation of the Qur'an and Prophetic tradition. Hence, he stood against Mu'tazilite innovations. He was subjected to the inquisition 'mihna' and put in chains under the Caliph al-Ma'moun and was finally imprisoned. However, he stubbornly refused to recant and did not modify his original doctrine. (Translator's note)*

specified special signs to be put on their garments, and decreed that they should trim their forelocks. Al-Mutawakil trampled over the guarantees accorded to non-Muslims by virtue of the dhimma covenant, and violated the sanctity of their possessions, churches, synagogues and wealth. He interfered in the selection of names given to non-Muslim children and terribly ill-treated them. He refused to accept their conversion to Islam, forbade them from receiving education, and prevented the celebration of non-Islamic religious feasts.[28] In the year 245 AH, the well-known physician Bakhtayshou' ibn Gibra'il was whipped 150 times, shackled and detained in solitary confinement.

Al Mutawakil is not an exceptional case, nor does he deserve any particular attention. Except that his experience illustrates the dangers of the overlap of the religious and the political authorities. Religious scholars connived at his practices, since he bestowed honors on the fundamentalists and hard-liners, exhibited great zeal in effecting a formal Islamization of society, and persecuted all those who were not orthodox Sunnis. And that is despite Al Mutawakil's well known profligacy in his palace and his anomalous sexual affair with two clowns (Shaara and Baara), and his preposterous extravagance. For instance, he spent 86 million dirhams on the occasion of his sons circumcision; he even ordered the construction of a holy shrine (ka'ba) in Samarra (!).

Despite all this, Ibn Hanbal and other scholars turned a blind eye to the extravagances of the Caliph. Not one of the fundamentalist scholars denounced his flagrant discrimination against non-Muslims. This was a most indicative example of how the caliph was able to buy off the religious scholars at the expense of society and people's dignity.

An important sphere of discrimination between individuals was the administration of justice. Judicial verdicts were based on one's religious affiliation and socio-economic status. Whether a person was a Muslim or a non-Muslim, a freeman or a slave had to be taken into consideration. Imam Al Shafei * was asked about the case of five men who have had sexual intercourse with a certain woman, and why the first was sentenced to death, the second was stoned, the third whipped 100 lashes, the fourth 50 lashes and the last remained unpunished. The Imam explained that that was because the first was a dhimmi (Christian or Jew), the second a married Muslim, the third a bachelor Muslim, the fourth a slave and the fifth insane. [29]

In general, jurists focused on the idea of Muslim superiority over others. This superiority was given as justification of rulers' practices against non-Muslims. In time, the definition of a Muslim became more and more restricted according to the definitions of different factions. Then finally came the "Qaderi Doctrine" to demarcate the "straight path."[30]

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*Founder of the Shafi'ite school of law, Muhammad ibn Idris al Shafi' was born in Gaza in 767AH. The main scenes of his activity were Baghdad and Cairo. He elaborated the principle of 'ijma'a (consensus of opinion), which enabled Muslims to adapt their institutions and beliefs to varied and novel situations in a changing world. He died in 820 AH at Cairo, where his tomb is still the object of pilgrimage. (Translator's note)

The second generation of jurists, such as Ibn Taymiya[♦] and the Twelver [*] Ibn Babawaih, issued strict *fatwas* concerning those who deviated from their line of thought. The concept of citizenship was really shaken by the experience of the Carmathian state in the Eastern Arab Peninsula. However, we do not have sufficient information on this state because the writings of its inhabitants were completely destroyed.

The passage to the modern times has carried with it new dimensions to the concept of citizenship, particularly with the rise of Western capitalism. Two major ideas should be retained from Arab and/or Islamic history. Firstly, the discriminatory practices of the different caliphs were based on the public policies of the concerned caliph rather than the

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[♦] *Taqi al-Din Ahmed ibn Taymiya (1263-1328AH) was born in Harran and came to prominence in Damascus. He accepted no reference except the Qur'an, tradition and the practice of the community. He raised his voice high against superstitions, saint-worship and shrine visits. He was a follower of ibn Hanbal. (Translator's note)*

[*] *A Shi'ite sect that maintained that their Imam (leader and guide) had inherited from Prophet Muhammad not only his temporal sovereignty but the prerogative of being able to interpret the Law. In that capacity, the Imam was considered infallible, and he bestowed religious certainty on his followers through his instruction. Ali , their first Imam, was succeeded by his son al-Hassan and then his son, al-Hussayn, whose line is the most celebrated. The last nine imams of the twelve to whom the "Twelvers" (Ithna 'Ashriyah), the main body of the Shi'ites, swore allegiance were descendants of al-Hussayn. (Translator's note)*

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practices of the first four decades AH. Secondly, religious scholars defined the citizen within 'dar al Islam' according to the most rigid practices of caliphs against non-Muslims or heterodox factions. This gave rise to frenzied attitudes toward women, non-Muslim minorities and non-orthodox sects. Hence, by the later years of the Ottoman Caliphate, the unjust and prejudiced viewpoint of religious scholars against non-"orthodox Muslim males" was out of tune, particularly with the winds of democracy, secularism and human rights blowing hard.

While Egypt under Muhammad Ali intelligently sought Western Enlightenment, Istanbul, the capital of the last nominal Caliphate, was actually shaken by its struggle with the great powers that conquered and subdued the "High Gate" (The Ottoman seat of power) by both peace and war. The latent desire of every caliph during the nineteenth century was to follow in the footsteps of the Western invader, in the hope that this would cure the sick man of Europe.

Hence, with the Royal Decree of Khawlajana of 3 November 1839, a large-scale reform movement was launched. In 1840, the "Namissi Law" dealt for the first time with the principle of equality between all citizens before the law. Ever since, attempts have been made to separate the civil and the religious spheres. Nevertheless, the "Sultani Decree of 1856" was a decisive rupture with the Salafi concept of citizenship. It stipulated that all subjects within the empire should receive equal treatment concerning taxes, the administration of justice, and education. They would be able to occupy posts on equal basis, and join the same schools. Equality in rights entailed

equality in duties as well: the law of military draft was applied to all the subjects. Exemption from military service was through the payment of compensation. In order to provide equal opportunity for all sects to be represented, administrative structures of all the provinces were re-organized.[31] In the sphere of internal organization of religious sects, this law warranted the previous immunities of the non-Muslim sects, provided them with the right to manage their own property, and protected their freedom of worship. On the other hand, the millet system * was reinforced institutionally. This has been explained by the Liberals as a measure to bolster the power of religious scholars to the disadvantage of the enlightened intelligentsia from those religious communities.

Those changes are important because they took place while the Caliphate system was still an operative and sovereign entity. It would be useful here to remind that --with the exception of a few religious scholars-- neither the masses nor the elites objected to the decree of equality between individuals.

After the collapse of the Ottoman Empire, Hassan Al Banna in Egypt and Abu Al A'la Al-Mawdoudi in the Indian Peninsula were the first fundamentalists to react against this idea of equality. Because of his elusive and mobilizational discourse, Hassan al Banna did not seriously discuss the question of citizenship. On the other hand, Al-Mawdoudi took part in the struggle to create the state of Pakistan along the

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* *The millet system is one whereby each religious community enjoyed a considerable measure of home rule. This was a classic way by which the Islamic state tried to solve its minority problem. (Translator's note)*

contours of the religious schism left behind by the British. He dealt quite early with the issue of the political system in Islam and the constitutional state. We say "constitutional" because Al-Mawdoudi, despite his fundamentalist and Salafi perception, relied in all his writings on British law and Western discourse. He was obsessed by the idea of comparative texts establishing analogies between Anglo-Saxon concepts and his own perception of Islam. He called the Islamic state a theocratic democracy, or the democratic divine government, due to the existence of a "restricted popular rule."[(32)]

Al-Mawdoudi argued that the divine constitution is everlasting, irrevocable and irreplaceable. He requested Pakistan's Constituent Assembly to declare that:

1- Rulership in Pakistan is the prerogative of Allah alone, and the Pakistani government should only implement the orders of the Great Sovereign.

2- The fundamental law of the land should be the divine Shari'a that was conveyed to us by the master of all prophets.

3- Any applicable law should be nullified if it contravenes with the Islamic Shari'a, and should not be implemented in future.

4- The Pakistani government is not free to act except within the bounds drawn up by the Shari'a for its functions. [(33)]

In his perception of the three powers of the state (the executive, the legislative and the judiciary), Al-Mawdoudi relied on Qur'an and Hadith, and seldomly referred to the practices of caliphs. His ideology is based primarily on divine texts. However, his model of elections cannot be traced down in Oriental history but was rather inspired by the Western experience. Al-Mawdoudi also separated between the executive

and judiciary powers, although he believed that a judge's opinion should be absolute, and that the legal profession should be abolished. [34]

"Citizenship and its Foundations" was the first study on the topic by a key figure of the political Islamic movement. In this study, Al-Mawdoudi delineated the foundations of citizenship in his fundamentalist ideology: belief and residence. A Muslim who resides in the abode of Islam (Dar al Islam) by birth or moves to it is considered one of the "people of Islam" (a citizen) and is entitled to the same rights as others.

> According to Al-Mawdoudi,
> Islam has laid on the shoulders of those Muslim inhabitants the responsibility of the entire system. They submit and acquiesce to the legitimacy of this system, for it enforces the Law of Islam in full. They are committed to observe all religious, moral, civil and political commands, and should fulfill all duties and obligations. They are asked to sacrifice in the defense of the Islamic state. Then [Islam] entitles them (Muslims) exclusively to elect their rulers and participate in the Parliament - the Consultative Council - that runs state affairs. They exclusively should be appointed to key positions so that the intellectual policy of this state would conform with its fundamental principles. The greatest proof of this rule is that we do not find in the times of the Prophet or the Rightly Guided

Caliphs a single example indicating that a dhimmi was elected as member of the consultative council, or was appointed governor of one of the state's provinces, or a judge, or a wizir (minister), an overseer, or a commander of the army, or was allowed to express his opinion in the selection of the caliph. [35]

When Al-Mawdoudi ended his sermon, one of the Muslims asked him if the state that existed after the Rightly Guided Caliphs was Islamic or not. He replied: " In fact, it was neither Islamic nor non-Islamic in the true senses of the terms." Another asked whether the verse "they (conduct) their affairs by mutual consultation (shura)," refers restrictively to men rather than women. Al-Mawdoudi answered that the "Qur'an has locked women out of the shura council." [36]

In his book "The Veil" Al-Mawdoudi maintained that women were inferior to men. He explicated his attitude toward non-Muslims in a treatise on "The Rights of Dhimmis in the Islamic State," that was published in Urdu in 1948. In this treatise, he classified individuals within the Islamic state into those who believe in its principles and values and those who do not. Consequently, leadership is given to Muslim believers. This differentiation, Al Mawdoudi maintained, should be made explicit. Then, he classified non-Muslim subjects into three categories:
1) Those who became part of the state through a pact or a treaty.
2) Those who were subjugated by force.
3) Those who joined the Muslim state neither through pact nor war.

The three categories shared the general features of dhimmis, with a slight difference between them. In dealing with their rights and duties, Al-Mawdoudi recollected the major rules of dhimma covenants mentioned in the "Book of Kharaj," and annexed the personal status code of each religion. He also added that dhimmis were to be deprived of the right to vote and nominate themselves in elections, except in local councils, which are not responsible for issues concerning the fundamentals of the system. [37]

On more than one occasion, Al-Mawdoudi compared the superiority of his model to a national model which he depicted in a way as to suit his criticisms. What he did not say was that any secular (worldly) model of citizenship, irrespective of its defects, is subject to considerations of time, space, relativity, and criticism. Hence it could be changed to the better. Abu Al A'la on the other hand rejected that his model of citizenship could have been touched by change in fifteen centuries. The problem is that our friend forgot that the prohibition of slavery suspended several verses of the Qur'an and dozens of Hadiths. How could any one ignore the progress achieved in the concepts of the sovereignty of law and of citizenship, and not feel the need for discussing a new concept of citizenship in the Islamic countries?

Ibn al-Nadim said that he presented a problematic issue to Imam al-Shafei, and the Imam answered it. The inquirer said, "You have contradicted Ali ibn Abi Taleb." The Imam who knew his religion said: " Prove to me this reference to Ali ibn Abi Taleb and I will drag my face in the dust and admit I was mistaken and withdraw what I said in favor of Ali."[38]

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Can we prove today the stories concerning injustices done to dhimmis? Can the proponents of Al-Mawdoudi specify the number of Muslims who "submissively" paid the jizyah under several "Muslim" caliphs!

Some enlightened Muslim thinkers today raise the question of absolute equality of rights between Muslims and non-Muslims, irrespective of race, color, nationality, or belief. These thinkers do not use their principles as a commodity, or cloak their political programmes in a religious shroud. They are probably the most faithful to the cause of justice that underlied all the great human movements.

Citizenship and Nationalism

We move now from the Arab Islamic history to a contemporary frame of reference that played a decisive role in effecting changes to the concept of citizenship over the last three centuries, namely, the West. Even though it is difficult to forge a consensus on the general definition of citizenship in Latin, we can trace the most specific definition, i.e. the legal meaning of the term. This will be our concrete reference, although the theoretical debate over citizenship in the sphere of humanities and schools of criticism in Europe and the United States has reached advanced levels.

The word "Nation" represents the fundamental "root" of an entire historical era which came to be called the age of the nation and nation-state. Among the derivatives of the word, "nationality" is by far the most specific, accurate and concretized within the framework of a politically centralized unit. It refers in principle to the juridical status which distinguishes the "national" from the foreign. This expression was translated into Arabic differently than its original meaning: Al Jinssiyah.

Nationality, irrespective of the ideological values or determinants of the term, is a term of "exclusion" that demarcates the boundaries of participation (or denial thereof) in certain social interactions. The ambiguity of the of the word lies in the fact that, in every day life, it indicates two different drives. It expresses on the one hand what could be called the institutional germ of nationalism, and on the other the potential for advancing the democratic values of reconciliation and integration at the expense of exclusiveness and homogeneity.

The acquisition of nationality, or joining a certain nation, constitutes in itself a violation of the nationalist sentiment of the chauvinists. This sentiment is based on a logic of difference (whether religious, linguistic, racial, sexual or color). It resembles mixed marriage for an endogamous clan or tribe.

In American literature, the word "citizenship" is used in the place of the term "nationalité" that is used in French? writings. Francophonic literature usually distinguishes between citizenship and nationality. Though we can say along with Oppenheim and Lauterpacht: "Nationality is the quality of belonging to a certain state, and hence is the same as citizenship."

Whether citizenship is based on the right of blood (jus sanguinis) or territorial right (jus soli), it is a purely national issue that comes wholly under the general definition of sovereignty. The only non-national text on nationality, the Hague Convention of 12 April 1930, stresses this point:
- "Every state is entitled to define, according to its own legislations, its nationals.
- It is only these legislations that determine whether an individual is a national or not."

A reading of the nationality codes shows the variety of ways in which the different states deal with the issue: de facto nationality ("Narodowski" in Polish terminology); de jure nationality ("Obywatelstwo"); naturalization; nationality obtained through marriage, kinship or adoption; nationality based on family reunification (juris communicato); and honorary nationality (honoris causa), etc.

It goes without saying that the nationality codes are almost always influenced by socio-cultural specificity. However, they are also molded in a dynamism of interests, to borrow Max Weber's expression. The Saudi Kingdom founded by King Abdel Aziz used to appoint Arab ministers from outside the Peninsula. The Kingdom of Abdel Aziz's successors, enriched by oil wealth, is a perfect model of seclusion and parochialism. Israel rules out both the blood and the territorial rights of a great number of Palestinians, who are the real owners of the land. At the same time, Israel sanctions the principle of the Jews' return to the Promised Land, as religion becomes the fundamental, albeit not the sole, frame of reference of the concept of nationality.

Nationality is the central issue of discussion when we face those nationalist propositions based on "purity" and ethnic or national purification. This is because nationality constitutes both the legal formulation and cultural expression of nationalism in everyday life. Therefore, it plays a role in forging an organic relation between identity, self-understanding and "national interest." As Rogers Brubaker writes: "This is not the exacerbated, aggressive, passionate nationalism, not the 'starkest political shame of the twentieth century', but the routine, ordinary, taken-for-granted nationalism that of "the common idiom of contemporary political feeling," the "natural political sentiment for modern states." The exclusion of non-citizens from voting (as the nation-state may, in fact must, discriminate between members and non-members) is a "normal," "legitimate" and "rational" expression of nationalism.

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While The Hague Convention admits of nationalism, the anachronistic, inhumane and the sometimes racist regulations of nationality laws of several countries should disappear in favor of a real affinity between "human rights" and "citizens rights." However, is this possible within a society where the link between national sovereignty and nationality is this strong?

The Nation-State

"The nation-state," Edgar Morin writes, " is both the creation and creator of modern Europe.... Islanding ushered in the state (the British nation). The Catholic Reconquest of Muslim Andalusia favored the development of the Hispanic nation-state. The monarchical perseverance and historical opportunity propelled the formation of the French nation-state which became clearly visible with the French Revolution." According to Morin, "The established nation-state is an entity linked simultaneously with the territorial, the political, the social, the cultural, the historical, the mythical and the religious. Its multi-dimensional reality is composed of the ensemble of diverse elements assembled together in one unit."

Whether emancipatory (the experiences of France and the United States) or discriminatory (Germany), the multi-dimensional reality of the nation-state represented a product of "social self-generation." It is a sine-qua-non of any state's historical dimension and authenticity. The absence of this dimension in the former colonies explains the fragility of those nation-states. These latter were the outcome of a pastiche

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imposed by the colonialists who drew the borders of the post-colonial state in the Third World. In most cases, we can only speak of "forms of government" rather than "nation-states."

The different scenarios of state formation that were put forward in the Near East after the disintegration of the Ottoman Empire bear witness to this historical paradox. It suffices to remind of the several projects for a "Greater Syria," Pan-Arabism, an Arab-Islamic Caliphate, confessional states, a Kurdish autonomous state or entity, etc. Local terminology reveals the absence of linguistic and idiomatic consensus on the word "national": three concepts are used for the same word: *watani*, meaning patriotic or relating to the homeland; *kawmi*, relating to the *kawm* or the people, nation, clan; and finally *ahli*, derived from *ahl* which means relatives, people, and residents of a place.

At the end of the twentieth century, we can observe three phenomena that bring the term "nation-state" and its historical significance to question. Firstly, the crisis of the post-colonial states in the South; secondly, the disintegration of the Soviet Union and Yugoslavia; and thirdly, the advancement towards a supranational entity in the countries of the European Union. Despite the great differences between the three phenomena, they wake the demons of a reactionist, exclusivist neo-nationalism that is based on pseudo identities.

NEO-NATIONALISM

Some date the birth of French nationalism back to the 20th of September 1792 when the famous outcry "Long Live

the Nation" resonated in Valemy. This slogan. which Goethe considered to be "the time and place of a new epoch in world history," ushered in a century of republican. secular and expansionist nationalism. Another wave came from the Third World with the beginning of the twentieth century to give new dimensions to the word. Inspired by the first wave of nationalism, yet imbued with social, cultural and local political factors, it simultaneously encompassed the Turkish nationalism of Ataturk (epitomizing a rupture with the Ottoman Islamic Caliphate). and the Pan-Arab nationalism of Nasser (which embraced the Arab-Islamic legacy).

Nationalism -- a word that looks us in the face every time the word "enemy" takes on dimensions beyond logical interaction- has ceased to be an innocent concept since the Second World War. Fascism demonstrated to all the poets of nationalist romanticism that national mobilization is always emotional and most often uncontrollable.

Nationalism. in its Fascist version, feeds on fear and the myth of a threatened nation and finds in the times of demoralization the hormone of its astounding growth.

Are we conscious of the extraordinary power of such words as: superior, distinguished, assaulted identity, national sovereignty, historical right. the leader, et cetera, which pass almost unnoticed in day-to-day discourse, or in what we can call the "taken for granted nationalism?

The bigoted nationalist excesses that humanity has experienced prove the absence of an efficient vaccine to

immunize an enlightened nation against lapsing into the labyrinth of barbarism. "The ambiguous predisposition of the masses to surrender to any despotism, the susceptibility to self-destruction with the racist paranoia, all this perplexing absurdity only reveals the weakness of human intellect at present." (Adorno and Horkheimer).

We can record the following remarks on the history of nationalism:
1- Regardless of the historical significance of nationalism, its adoption, according to Liah Greenfeld, was not inevitable.
2-The demise of a national movement or nationalist ideology does not mean the demise of nationalism, which can re-emerge in other forms.
3- Today, nationalism can not possibly be an ideology of popular mobilization without being founded on certain features of identification: the supremacy of "us" over "others", and the defense of some universal value even in models of religious nationalism (Begin, Zia'-ul Haq, and Al Bashir).

It is infeasible to judge all the nationalist movements in the same way, or extend the concrete analysis of any of them to the others. For Nehru, De Gaulle, and Nasser were all nationalists; also the civil peace in South Africa and the Oslo Accords were the makings of nationalists. The idea of an Arab-Israeli confederation, proposed by the Zionist Shimon Perez is a blow to the first Zionist project (one people, one land, one state). On the other hand, the current ordeal of Kurdish nationalism shows the disconnection of the justice of a certain cause and the strength of the forces representing it.

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While nationalist calls have drawn on the local religious cultural reservoir, political religious movements too have played the card of nationalism. Example include: the Persian dimension of the Ja'fari Shi'ism in Iran, Wahabi particularism in Saudi, the nationalist discourse of Hamas in Palestine, the local features of the Islamic Salvation Front (FIS) in Algeria, and others. It is even more complicated in countries that were established on the basis of a heterogeneous identity, where the differentiation between religion and nation becomes problematic, such as the cases of Pakistan and Israel.

Today, we witness a new era of exclusivist nationalism in Europe that functionally resembles Islamic fundamentalism. This mass phenomenon, which expresses itself in local rhetoric and relies on concepts such as the nation, religion, race, and community, is gaining new grounds and advocates, and thus constitutes a serious obstacle to human progress.

It is difficult to determine the due course of action apropos the neo-nationalist calls for their diversity complicates matters even more. However, there remains an "edge of tolerance" (to play on an expression that is so dear to the ultra-nationalists and which they usually employ against foreigners) for nationalist discourse to be a subject for criticism. There could be no tolerance of an exclusivist ideology that preaches the supremacy of a race, a religion or a nation; an ideology that rejects the fundamental tenets of human rights under the pretext of an ideal and superior specificity.

The distinction between the citizen and the non-citizen, the national and the alien, is the contemporary form of

discrimination in rights between individuals within the borders of any state. It thus sets an example for the proponents of a fundamentalist interpretation of history. It supports those retrogressive views expressed by the fundamentalists who ruminate over the past in a complete break with the present and the future.

A Final Word

The question that remained with us throughout this journey was: can the concept of citizenship be possibly used to organize human interrelations in society? The absence of a homogeneous and acceptable general reference takes us back to local concepts, with all their specificities. They however share one highest common factor, namely, that the term does not include all those who live under a certain state entity.

Neither the restricted monarchy of England, nor revolutionary France, nor American democracy has provided equal rights to all those who lived in the shadow of its state. It is true that the vanguards of Western enlightenment four centuries ago vehemently criticized the Papal decision considering the native Americans as "soul-less creatures," and thus Christians were fully entitled to kill them. On the other hand, the Law of 22 December 1789 in France associated political rights with taxes paid by citizens, and Blacks did not have the right to vote in the United States of America until the sixties of the twentieth century! Hence, we are led to consider citizenship as the last "civilized" expression of depriving particular individuals in society of the rights given to citizens. In this sense, citizenship is a formula for marginalization and exclusion, irrespective of the nature of the rights granted or withheld.

Citizenship on the other hand, represents a transition from the person/subject, the subservient, acquiescent individual, to the participating individual who participates in the making of social life in all its manifestations. The modern concept of citizenship introduced fundamental political conceptions that

represented a rupture with the Middle Ages the world round: A transition from the "divine" right to the citizen's right; from a political system based on the survival of the strongest to a system based on free choice and the common belonging to civil society; in addition to the crystallization of the concept of rational management of social affairs through a democratically elected sector of society.

Is it a need for equality between members of the religious, national or geographic community, or a tacit desire to define the features of those equals? Does citizenship today offer individuals protection against the transgressions of the authorities, or does it in fact "protect" citizens from those who do not hold the title (the foreigners, the expatriates, etc.).

Citizenship codes were the primary manifestation of any nationalist or religious excess. Fascist Italy prohibited marriage between "Italian" citizens and the "colonial subjects" in order to preserve the purity of their race. During the war with Iran, the Iraqi authorities requested Iraqi women to file for divorce from their Iranian husbands or those from Iranian origin to "put an end to inter-marriage between Arabs and Persians." To top all, a founder of the Committee for the Defense of the Legitimate Rights in Saudi Arabia declared the Shiite Twelvers as apostates. While the author was drafting this research, the French Interior Minister proclaimed laws on foreigners' rights that remind of and rehabilitate the Caliph Al-Mutawakel.

The historical experience of citizenship shows that this term has not to date provided all with common and equal rights. As such, it is a backward step compared with the propositions

of the international human rights law that reject considering the citizen a special case.

Citizenship will pass into the human rights era only when each and every individual becomes ... a citizen.

NOTES AND REFERENCES

1- See verses from the Surahs: Al Nour : 55; Al Baqara : 161; Al Fath
: 26; Al Anfal : 55; Al Nissa': 101

2- The Surahs: Muhammad: 35; Aal Imran: 110.

3- See Surahs: Al Ma'ida: 17, 72-73 and Al Baqara : 102.

4- Ibn Hisham, Chronology of the Prophet's Lifetime, Vol. II, p.179.
Al Geel Publications, Beirut, 1975.

5- See Haytham Manna', The Arab-Islamic Society from Muhammad
to Ali, p. 32, Al
Razi Publications, Paris.

6- See also Ibn Hisham, op.cit., Vol. III, p.203. Suhail ibn Amr
rejected the wording "In the Name of God, the Merciful, the
Compassionate and also refused to call Prophet Muhammad anything
except the son of his father. It is mentioned that Umar Ibn Al Khattab
was not convinced of the treaty and said: "Why should we feel inferior
in our own religion?".

7- Muhammad Saiid El Ashmawi, Political Islam, p.55. Algiers, 1990.

8- On this see our study The Arab-Islamic Society, op. cit., pp.56-65.
The question of differences between the political systems of Egypt,
the Levant and Iraq before Islamic expeditions was among the reasons
of the diversification of the taxation systems. This important question
led Umar Ibn Al Khattab at about 20 AH, as we mentioned earlier, to
establish the first diwan in Islam. Muskouih mentioned (in the
Experiences of Nations "Tajarib Al Umam" , Vol.I, p.259, Tehran,
1987) that when many spoils of war were received, Umar Bin Al
Khattab mounted the pulpit and said:

> People! A great wealth has been received! If you wish we
> can distribute it by weight, and if you wish we can
> (accurately) count the numbers." A man replied, "O!
> Commander of the Faithful! The foreigners regulate this in
> diwans (registers)." Umar said: "Then make registers."

9- On the Kufa, see Muhammad Hussein Al Zubaidi, Social and Economic Life in Kufa During the First Century, Cairo: 1970.

10- Ibn Khaldun, The Introduction (Al Muqadima), pp. 220-21. Dar Al Kitab Al 'Arabi, Beirut.

11- Abdel Aziz Al Dawri, Introduction to the Arab Economic History, pp. 41-43. Dar Al Taliaa, Beirut, second ed., 1978. In his book, Money (Al Amwal), Abou Obaid alludes to the comprehensiveness of the first register, the Army diwan: it included those who fought in the battle of Badr, their confederates and clients, as well as the allies and clients of Al Ansar. (p.287, Cairo, 1976). Later, the mawali (clients) were excluded from the army diwan.

12- On the conquest of Egypt, see Haytham Manna The Arab-Islamic society, op.cit, p. 61.

13- Ibid, p.59.

14- See Abdel Aziz Al Dawri, The First Abbassid Era : A Study of Political, Administrative and Financial History. Dar Al Taliaa, Second Edition, 1988, p.10 -,

15- Al Tabari, Chronicles of Al Tabari, Egypt, Vol.7, p.116.

16- Al Dawri, op.cit., p.16.

17- Hussein Al Awdat, Christian Arabs : A Historical Survey. Al Ahali, Damascus, 1992, p.101.

18- Dr. Ali Al Wardi, The Sultans' Preachers, Second Edition, Dar Kufan, London, 1995. pp. 213-214.

19- AL Shahrestani, Al Millal Wa Al Nihal, (Sects and Creeds), Dar Al Ma'rifa, Beirut, Second Ed., Vol.1, 1975, p.160. For Ibn Hazm Al Dhahiri, priority is given to the candidate who nominates himself before the others. He wrote:

> If the Imam dies without naming a successor, and an eligible person springs to the post and receives the *bay'a* (oath of allegiance) of one or more, then in this case if another man challenges him even a twinkling later, right will be on the side of the first, whether the contender is better, equal or worse. (Judgment on Sects,

Tendencies and Creeds, Vol. 5, p.10, Muhammad
Subeih Publications, Cairo).

20- Ibid.

21- Al Bughdadi, The Difference between Sects, New Horizons,
Beirut, p.89.

22- Al Shahrestani, op. cit., Vol.1, p.124.

23- Hadi Al Alawi, Non-Disturbed Personalities in Islam. Dar Al
Kunuz Al Adabiyah, Beirut, 1995, p.91.

24- Ibn Al Nadim, p.134.

25- See Abou Bakr Al Razi : "Spiritual Medicine," in Philosophic
Treatises. New Horizons, Beirut, Vol.3, 1979. Abul Nasr Al Farabi,
Opinions of the People of Utopia, Dar Al Mashreq, Beirut, Fifth Ed.,
1985.

26- Abu Youssef, The Book of Land Tax (Kharaj), Salafiya
Publishing House, Egypt, 1352 AH, p.126. Among the authors of
books entitled "The Book of Kharaj" we can mention for instance:
Hafsaouih, Ibn Abdel Kahm, Ibn Al Mashita, Ibn Bashar, Ibn Khiyar,
Ibn Sarih, Daoud ibn Ali and Yehia ibn Adam.

27- Ibid, pp.127-128.

28- See The Arab Christians, op.cit., p.103, and the author's Ph.D.
Thesis on Islam and Illness, the chapter on "The conflict between
Religious and Judgmental knowledge," 1983, The Higher Institute of
Social Sciences, Paris (in French), and the ninth volume of The
Chronicles of Al Tabari, (on the years 234-245, and the years of Al
Mutawakil's rule).

29- See Haytham Manna, The Mania of Blasphemy, Corporal
Punishments. (in French). Shortly forthcoming.

30- The "Qaderi Doctrine" represents the first official document to
delineate and impose an Islamic creed. It is the ideal expression of the
adamancy and extremism of the Hanbalis. In 408AH/1017 AD, due to
pressure exerted by Hanbali jurists, the Caliph Al Qader Billah
ordered the opponents of the Hanbali creed to repent. Describing this
instance, Ibn Al Jawzi wrote:

Al Qader Billah, the Commander of the Faithful,
ordered the Hanafi Mu'tazilite jurists to repent.
They declared their repentance, disavowed their
creed and dissension and repudiated their anti-
Islamic treatises. The Caliph compelled them to
put this in writing, and made it known to them that
if they oppose him they would be penalized in
such a way as to make an example of them.

He added:
Abul Qassem Mahmoud (Al Ghouznawi), the
Minister, abided by the orders of the Commander
of the Faithful, and followed his way in the
missions entrusted to him in Khurasan and other
places. He killed the Mu'tazilites, the Rejectionists
(the Shi'ites), the Isma'ilis, the Carmathians, the
Juhamites, and the Mushabahas. He crucified,
incarcerated, banished them, and ordered they be
cursed in prayer sermons, in addition to
expatriating the sects of heterodoxy and driving
them out of their homes. This has become a
tradition in Islam. (The Methodical Book, Vol.7,
p.287).

Hanbalis were not satisfied with those measures, and asked for an
official document to rebut the "heretics" and define the pure belief.
The Caliph consented to their demand and issued (in 409 AH/1018
AD) a doctrine that resembles the Nuremberg racist decrees of our
time. We will relieve the reader from such a fanatic text, although it
marks the end of a civilization and continues to serve as an inspiration
for many twentieth century fundamentalists. It can be found in: Ibn Al
Jawzi, The Methodical Book on the History of Monarchs and Nations,
Vol. II, pp. 109-111, and in an excellent article by Dr. Naguib Al
Qusaybi, "The Qaderi Doctrine," Al Shahriya (The Monthly), No. 3,

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31- See for instance: Robert Montran, History of the Ottoman State, Translated by Bashir Al Sebai. Dar Al Fikr, Egypt, 1992, Vol.II, pp.121-137.

32- Abu El A'la Al Mawdoudi, The Theory of Islam and Its Guidance in Politics, Law and Constitution, Dar Al Fikr, 1967, p.35.

33- Ibid. pp.200-201.

34- After a vociferous attack on the legal profession, Al Mawdoudi concluded: "We should strive to abolish the legal profession and progressively purify the courts from its atrocities." (Ibid. p.219).

35- Ibid, "Citizenship and its Foundations," pp.301-302.

36- Ibid, pp.311-312.

37- Ibid. pp. 335-360.

38- Ibn Al Nadim, Al Fihrest, (The Index), op.cit., p.295.

THE DOCUMENT
AL-SAHEFA

In the name of God, the Merciful, the Compassionate,
This is a document by Muhammad the Prophet, between the
believers and the Muslims of Quraysh and Yathreb [Medina]
and those who followed them, joined with them, and struggled
with them. They are one community [umma] distinct from all
others.
The emigrants of Quraysh, according to their custom, shall pay
jointly the blood-money between them, and shall ransom their
captives with uprightness and justice between the believers.
Banu Awf, according to their custom, shall pay jointly the
previous blood-wits, and every group [sub-clan] shall ransom
its captives with uprightness and justice between the believers.
Banu Sa'idah, according to their custom, shall pay jointly the
previous blood-wits, and every group [sub-clan] shall ransom
its captives with uprightness and justice between the believers.
Banu al-Harith, according to their custom, shall pay jointly the
previous blood-wits, and every group [sub-clan] shall ransom
its captives with uprightness and justice between the believers.
Banu Jushm, according to their custom, shall pay jointly the
previous blood-wits, and every group [sub-clan] shall ransom
its captives with uprightness and justice between the believers.
Banu Al-Najjar, according to their custom, shall pay jointly the
previous blood-wits, and every group [sub-clan] shall ransom
its captives with uprightness and justice between the believers.
Banu Amr ibn Awf, according to their custom, shall pay jointly
the previous blood-wits, and every group [sub-clan] shall
ransom its captives with uprightness and justice between the
believers.

Banu Al-Nabit, according to their custom, shall pay jointly the previous blood-wits, and every group [sub-clan] shall ransom its captives with uprightness and justice between the believers.

Banu Al-Aws, according to their custom, shall pay jointly the previous blood-wits, and every group [sub-clan] shall ransom its captives with uprightness and justice between the believers.

The believers shall not forsake a debtor among them, but shall give him, amicably, for ransom or blood-wit.

No believer shall take in alliance the client [mawla] of another believer without his [the latter's] consent.

God-fearing believers will be against whomever of them transgresses or seeks an act of injustice, treachery, hostility or corruption among the believers; their hands shall all be against him, even if he is the son of one of them.

No believer shall kill a believer for the sake of an unbeliever, or aid an unbeliever against a believer.

The protection of God is one; if the least of them extends protection, it will be binding on them [the believers].

The believers are supporters of one another against all others.

The Jews who follow us shall have support and help, except those who do wrong or aid the enemies of the Muslims.

The peace of the believers is one; no believer shall make peace apart from another where there is fighting for God's sake, except in so far as equality and justice between them [is maintained].

In every expedition, the parties take turns with one another.

The believers shall avenge one another's blood, if shed for God's sake. The God-fearing believers are under the best and most correct guidance.

No idolater [of Medina] shall take Qurashi property or person under his protection, nor shall he stand between him and a

believer.

Whoever kills a believer, the evidence being clear, shall also be killed, unless the next of kin of the slain man is otherwise satisfied. The believers shall be against him altogether; nothing is permissible to them except to oppose him.

No believer who accepts this document and who believes in God and the Last Day is permitted to aid a wrong-doer or give him shelter. Or the curse of God and His wrath on the Day of Judgment will be upon him, and from him nothing will be accepted in expiation or compensation.

Wherever there is anything about which you differ, it is to be referred to God, the Great and Almighty, and to Muhammad, God's blessing and peace be upon him.

The Jews shall bear expenses along with the believers as long as they continue at war.

The Jews of Bani 'Awf are one community with the believers. To the Jews their religion and to the Muslims their religion. This is so for them and their clients, except for the one who does wrong or acts treacherously; he will be bringing ruination only on himself and on his household.

For the Jews of Bani Al-Najjar the like of what is for the Jews of Bani 'Awf.

For the Jews of Bani Sa'idah the like of what is for the Jews of Bani 'Awf.

For the Jews of Bani Jushm the like of what is for the Jews of Bani 'Awf.

For the Jews of Bani Al-Aws the like of what is for the Jews of Bani 'Awf.

For the Jews of Bani Tha'labah the like of what is for the Jews of Bani 'Awf, except for the one who does wrong or acts treacherously; he will be bringing ruination only on himself and

on his household.

For Jafnah, a subdivision of Tha'labah, the same.

For Bani Shutabah the like of what is for the Jews of Bani 'Awf; honorable dealing without treachery [is demanded].

The clients of Tha'labah are like them.

The close associates of Jews are like them.

None of them may go out [to war] without the permission of Muhammad, God's blessing and peace be upon him, but they shall not be prevented from taking vengeance for a wound.

Whoever slays a man slays himself and his household, unless he has been wronged. God is the guarantor of the good deeds contained herein.

The Jews shall bear their expenses and the Muslims shall bear theirs, and they shall render mutual aid against whoever wars against the people of this document. There shall be mutual advice and consultation, and honorable dealing without treachery.

A man is not guilty of treachery through the act of his confederate, and help shall be due to the one wronged.

The Jews shall bear expenses with the Muslims as long as they continue at war.

The Valley of Yathreb shall be a sanctuary for the people of this document.

A protected person is like oneself, so long as he does no harm and does not act treacherously.

A woman is not to be given protection without the permission of her people.

Whenever among the people of this document there occurs an incidence or dispute from which trouble is feared, it is to be referred to God, the Great and Almighty, and to Muhammad, the Messenger of God, God's blessings and peace be upon him.

God is the guarantor of the pious and good deeds contained herein.

No protection is to be given to Quraysh and those who help them.

Between them [the people of this document] is support against whoever attacks Yathreb.

If they are called upon to conclude and accept peace, they are to do so, and if they call for the same, this shall be observed by the believers, except in war for religion. To each is his share from the side to which he belongs.

The Jews of Al-Aws, their clients and themselves, are in the same position as the people of this document, with pure honorable dealing from the people of this document.

Indeed honorable dealing without treachery [is demanded].

Whoever acquires guilt acquires it only against himself.

God is the guarantor of the honest and good deeds herein.

This document will not protect a wrong-doer or a traitor.

He who goes out is safe, and he who stays is safe in Medina, except him who has done wrong or has acted treacherously.

God is the protector of whoever acts honorably and fears Him, and Muhammad is the Messenger of God, God's blessing and peace be upon him."

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4- " Reproductive Health Matters" selections from (Reproductive Health Matters) magazine.

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c. With Group for Democratic Development and the Egyptian Organization for Human Rights:
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- Studied social sciences and received a Ph.D. in Anthropology from the Higher Institute of Social Sciences, Paris, 1983.
- Co-founder of the French "Sou'al" (Question) intellectual magazine in 1980.
- Co-founder and international relations supervisor of the outside branch of the Committees for the Defense of Democratic Freedoms and Human Rights in Syria.
- Vice President of the International Federation for Human Rights.
- Member of the Board of Trustees of the Cairo Institute for Human Rights Studies.

** WORKS IN ARABIC
- The Revolt of the Peasant Commune, Damascus, 1975.
- Women in Islam, Beirut, 1980.
- The Arab-Islamic Society from Muhammad to 'Ali, Paris, 1986.
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- The Victim and the Executioner, Cairo, 1990.
- Human Rights in the Arab-Islamic Culture, Cairo,1996.

Contributed to several collective works on women in the Arab world and human rights, and wrote nearly 100 articles and lectures in Arabic, French and English.