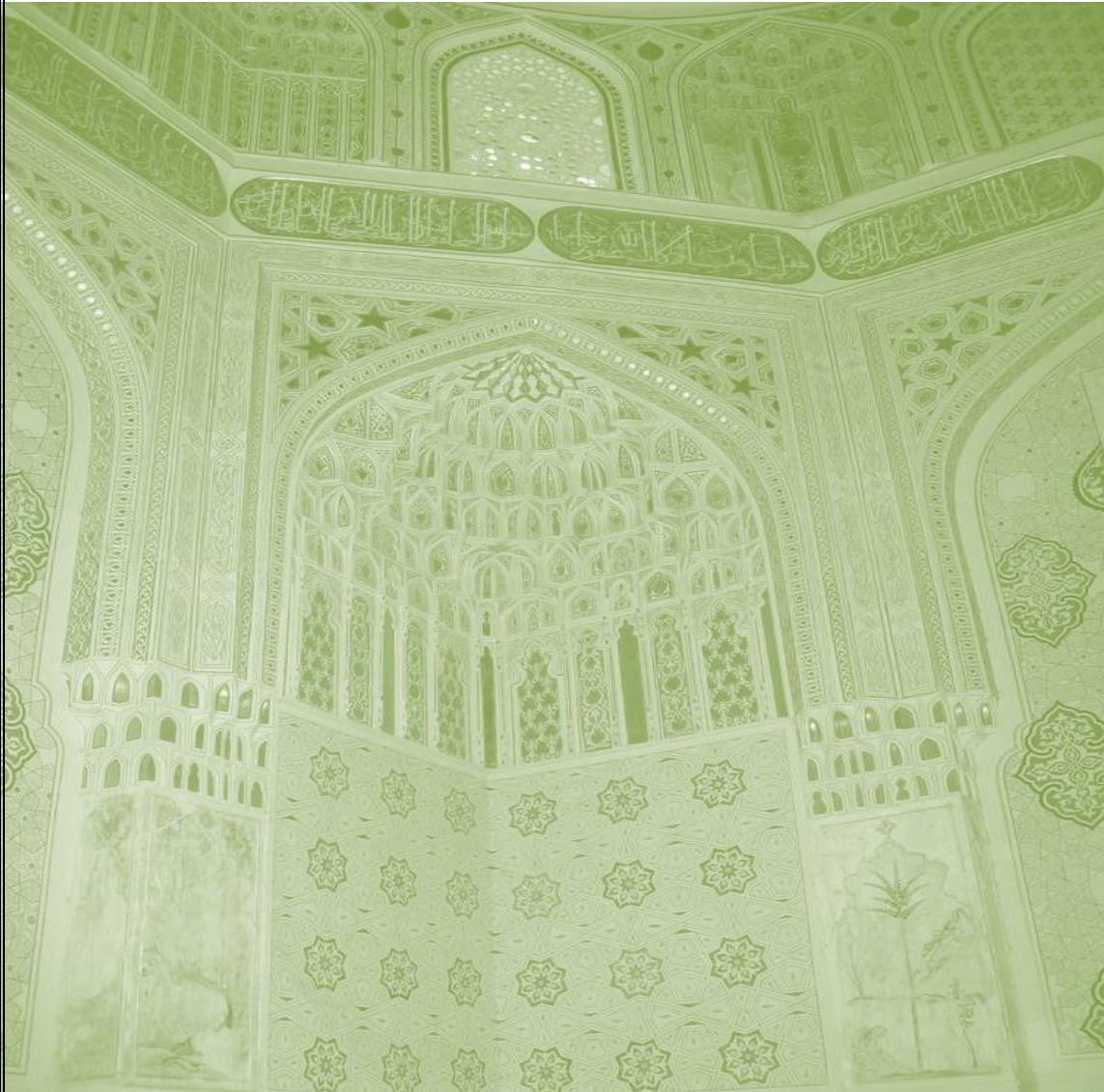


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Waikato Islamic Studies Review

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Half-Way Democracy: The Theo-Democracy of al-Mawdûdî (1903-1979)

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Introduction

For Muslims, the 19th and 20th centuries have a particular meaning. Some leading Muslim figures proclaimed this era as a period of awakening (*‘asr al-nahda*) after more than a few centuries of backwardness both in terms of religion and civilization. In these centuries, governments and political leaders of the Muslim world, more predominantly after the fall of the last Islamic caliphate in Turkey in 1924, tried to formulate and find approaches and techniques that were methodologically and practically applicable to support this new spirit.

They tried, for example, to develop and infuse any Islamic meanings, values, and moral purposes into the politics of their region. This meant that they had to expand both Islamic thought and practices. In the field of Islamic thought, to name some, there were Namik Kemal (1840-1888) in Turkey, Muhammad ‘Abduh (1849-1905) and ‘Alî ‘Abd Al-Râziq (1888-1966) in Egypt, ‘Alî Shari‘ati (1933-1977) in Iran, Fazlur Rahmân (1911-1988) in Pakistan, and so forth. To a considerable degree, they were regarded as new voices or directions of Islamic thought, surrounded by the predominant conservative voices and thoughts such as those of Egyptian Hassan Al-Banna (1906-1949), Afghanistan Jamâl Al-Dîn Al-Afghânî (1838-1897), and Egyptian Sayyid Qutb (1906-1966). In this connection, Pakistani al-Mawdûdî (1903-1979) is very often

placed -to a noticeably extent- among the conservative voices of Islamic thought.¹ One of their foremost discourses is the relation between Islam and the concept of democracy and modernity widely practiced in the Western part of the world. Both voices tried to examine and scrutinize whether Islam is compatible with democracy and modernity or not.

This paper aims at critiquing the thought of al-Mawdûdî on Islam and democracy. Due to his strong interest in state organisation, this paper will also portray his accounts of the ideal Islamic state. The paper eventually examines and analyses al-Mawdûdî's [in]consistency in his political thought and practices, as well as the validity of scholarly opinions of him.

Socio-political Biography²

Abû al-A'îlâ al-Mawdûdî³ was born in Aurangabad (presently in Andhra Pradesh, India) on 3 Rajab 1321 or 25 September 1903, into a respectable religious family that claimed descent from the Prophet Muhammad (pbuh). His ancestors were also famous for their outstanding charismatic leadership in Sufi orders.⁴ His father, Ahmad Hasan (b. 1855) who died when he was still a student in Dâr al-'Ulûm, Heiderabad, was famous for his legal expertise and pious personality.

¹See for example R. Stephen Humphreys, *Between Memory and Desire: The Middle East in a Troubled Age*, (California: University of California Press, 1999), p. 269.

²For more details regarding his life, see Khurshid Ahmad and Zafar Ishaq Ansari, "Mawlânâ Sayyid Abul A'îlâ Al-Mawdûdî; An Introduction to His Vision of Islam and Islamic Revival" in Khurshid Ahmad and Zafar Ishaq Ansari (eds.), *Islamic Perspectives; Studies in Honour of Mawlânâ Sayyid Abul A'îlâ Al-Mawdûdî*, (Leicester: Islamic Foundation, 1979), p. 359-365. In this article, Ahmad and Ansari mentions several primary sources of Mawdûdî's life, particularly in those written in Urdu.

³The name Abû Al-A'îlâ (lit. father of The Highest) once became a small discussion, for Al-A'îlâ is one of God's attributes. In his pled, Mawdûdî quoted two God's attributes *i.e.* *al-a'îlâ* and *al-a'lawna* which were attributed to Prophet Moses. Munawir Syadzali, *Islam and Governmental System; Teaching, History, and Reflection*, (Jakarta: INIS, 1991), p. 158. For technical reason, I will use the simpler way to refer to him, namely al-Mawdûdî.

⁴One of them was Khwâjah Qutb al-Dîn Mawdûd (d. 527), the famous leader of the Chishti Sufi Order. Al-Mawdûdî's ancestors move from Chisti to sub-continent in the 9th/15th century.

Al-Mawdûdî did not come from academic milieu and education, but he autodidactly learned Islam; hence he is not an *'âlim* by formation, but self-taught in Islamic knowledge. He completed his earlier education directly from his father, and then continued to *Madrassa Fawqâniya*, a school structured to integrate Western and traditional Islamic educational system. He continued his study to undergraduate studies at Dâr al-'Ulûm, but he did not complete it. Through his knowledge of English, Arabic, and Persia, as well as Urdu (his mother tongue), he attempted to self-study any subjects of his interest.

After the break of his formal education, al-Mawdûdî became a very productive writer in the journalistic world. This inclinations towards journalism led him to face and observe the socio-political realities in the Indian sub-continent. His first direct conflict with the British colonial regime took place when he was the Editor in Chief of the magazine *Bajnor*, a publication run by his older brother Abû al-Khayr al-Mawdûdî. Almost all magazines where he worked such as *Tâj* in Jabalbur, *Muslim* magazine in Dahla, and so forth, were banned by the authorities.⁵ This at least indicates that the British regime was attentive to the influence of al-Mawdûdî's writings.

In his twenties, he published his first book entitled *al-Jihâd fî al-Islâm*, a work regarding Islam in war and peace. He also established a monthly magazine *Tarjumân Al-Qur'ân* to share his ideas and thought. He often wrote on modern issues especially regarding the clash of civilization of Islam and the West. Within these writings, he became famous and started his political career. He had a number of appreciative comments from Indian famous figures at that time, such as Iqbal, Ali Jawhar, and so forth.

⁵Muhammad 'Imâra, *Abû al-A'lâ al-Mawdûdî wa al-Sahwa al-Islâmiya*, (Cairo: Dâr al-Shurûq, 1987), p.31-34.

Examining al-Mawdûdî's ideas, even though there is very little in common between his and al-Mawdûdî's religio-political ideas, Iqbal urged him to move to Pathankot district and established a research centre called Dâr al-Islâm. As the President of the Muslim League, Iqbal asked him to be involved in the codification of Islamic jurisprudence. In the early 1940s, al-Mawdûdî founded *Jamâ't-i-Islâmî*⁶ which was initially not a socio-religious movement and led it until 1972. In 1947, he went to Pakistan to participate in the development of the Islamic state to which he was initially opposed in principle. Al-Mawdûdî also had opportunity to travel abroad to give lectures on Islam and related topics. He is one of early important figures in *Râbita al- 'Âlam al-Islâmî* based in Mecca. Due to his critical writings and activities, he was often in conflict with the Pakistani government and was once imprisoned in 1948 for his provocation against politicians, and in 1952 in connection with the strife against the Qâdiyânî community. In 1953, al-Mawdûdî was sentenced to death for a subversive allegation. His punishment was then reduced to be lifetime prison, after a number of public protests from inside and outside the country.⁷

As other Pakistani and Indian subcontinent leading figures such as Khan (1817-1898), Iqbal (1875-1938), Jinna (1876-1948), Azad (1888-1958), and so forth, al-Mawdûdî is widely appreciated as a great figure in the discourse of Modern Islam. Smith calls him as “much the most systematic thinker of modern Islam,”⁸ and Adams regards him as

⁶In the British Indian phase, it was not concerned with politics. Its initial emphasis was purification of thought and social reform. After being such a pressure group, it was transformed into political party in 1954, and joined the election up to 1992 without a satisfying gains. See Abdul R. Moten, “Mawdudi and the Transformation of the Jama'at-e-Islami in Pakistan.” *The Muslim World*, Vol. 93, No. 3-4, July-October, 2003, p. 391-414. Studies on this organisation have been conducted by several scholars. See for example, Seyyed Vali Reza Nasr, *The Vanguard of the Islamic Revolution; The Jama'at-i Islami of Pakistan*, (London: I.B. Tauris, 1994). See also Frédéric Grare, *Political Islam in the Indian Subcontinent; The Jamaat-i-Islami*, (New Delhi: Manohar & Cêtre des sciences humaines, 2001).

⁷However, this experience of imprisonment does not easily lead Enayat to call him a revolutioner, since most revolutioners experienced prisoning. Examining all passages of Mawdûdî's life, Enayat comes to a conclusion that “outwardly, there is nothing in his career which would suggest a revolutionary temper.” Hamid Enayat, *Modern Islamic Political Thought; The Response of the Shî'î and Sunnî Muslims to the Twentieth Century*, (London: Macmillan, 1982), p. 101.

⁸C. Cantwell-Smith, *Islam in Modern History*, (Princeton: Princeton University Press, 1987), p. 234.

“the best known, most controversial and most highly visible of all religious leaders of the country [Pakistan].”⁹ Interestingly, Watt compares him completely the same as Hasan al-Banna (1906-1949) in Egypt, who was born later and died earlier than al-Mawdûdî. His career -according to Watt- is exactly the same as al-Banna who is not basically an *‘âlim* as well as al-Mawdûdî, but Watt contends that they were discursively close to traditional Islamic knowledge and practice. They both were involved in socio-religio-political movements by founding Islamic political organisations; *Ikhwân al-Muslimîn* in Egypt and *Jamâ‘t-i Islâmî* in India-Pakistan. Moreover, they both served prison sentences.¹⁰ Meanwhile, Ahmad and Ansari mention al-Mawdûdî as “possessed of extraordinary knowledge as well as keen and profound thought.” He “not only possessed challenging and provocative ideas, but also of a very powerful pen to express them.”¹¹

It is considerably remarkable that despite his deep involvement in political movement, he was also a prolific writer, not only qualitatively but quantitatively as well. He wrote approximately 138 articles and books, most originally in Urdu and then translated to other world languages.¹² He wrote his *magnum opus* an interpretation of the Qur’ân entitled *Tafhîm al-Qur’ân* over 30 years. Presently, his works have been translated into English, French, German, Turkish, Persian, Arabic,¹³ Indonesian, Tamil, Bengal, and several other languages.¹⁴ Mawdûdî’s thought and works have also invited a huge number of studies. By to 1970s, there were already over 60 academic studies on him. In 1978, a committee involving various international Muslim leaders and scholars

⁹C.J. Adams, “Maududi and the Islamic State” in John J. Esposito, *Voices of Resurgent Islam*, (New York/Oxford: Oxford University Press, 1983), p. 99.

¹⁰W.M. Watt, *Islamic Fundamentalism and Modernity*, (London: Routledge, 1988), p. 31.

¹¹Khurshid Ahmad and Zafar I. Ansari (eds.), *Islamic Perspectives*, p. ix.

¹²Among the popular works are *Towards Understanding Islam* (1980), *The Islamic Way of Life* (1986), *Al-Khilâfa wa al-Mulk* (1967), *Islamic Law and Constitution* (1955), *Political Theory of Islam* (1964), and so forth.

¹³See Muhammad ‘Imâra, *Abû al-A‘lâ al-Mawdûdî wa al-Sahwa al-Islâmiya*, p. 440-443.

¹⁴Muhammad ‘Imâra, *Abû al-A‘lâ al-Mawdûdî wa al-Sahwa al-Islâmiya*, p. 70.

prepared a compilation of writings devoted to him. In 2003, the journal *The Muslim World* published a volume with special issue on Mawdûdî.¹⁵ His reknown invited Faruqi, the founding director of the Virginia-based International Institute of Islamic Thought (IIIT), to comment. There are at least -according to Faruqi- two reasons behind his famousness; he remains literate and scholarly, and his thought does not go beyond the condemnation of the un-Islamic political status quo of the umma.¹⁶

His thought does not only influence Indian sub-continent, but also extends to the wider Muslim world. About 48 of his works have been translated into Arabic and many other languages. It means that he is highly considered and acceptable in the Arab world. For a long time, his *al-Khilâfa wa al-Mulk* was one of the most popular works of his read by Muslim youth in Egypt. His influence is not only limited to member of Ikhwân al-Muslimîn in Egypt, but also to Hizb al-Tahrîr al-Islâmi led by al-Nabhânî (d. 1977) in Jerussalem, al-Jamâ'a al-Islâmiya led by Fathi Yakan in Lebanon, al-Takfîr wa al-Hijra in Egypt. It is remarkable that 'Imâra, a reknown Egyptian scholar, scrutinises al-Mawdûdî's thought only by relying on Arabic translation of al-Mawdûdî's works mostly by Muhammad 'Âzim al-Haddâd, Samîr, Ahmad Idrîs, Muhammad Kâzhim Sabbâq, and so forth, and printed by Egyptian and Beirut publishers.¹⁷ Moreover, his thought influences a number of Muslim leaders in South East Asia, particularly in Indonesia and Malaysia. Some Islamic organisations in this region were established by readers influenced by his literature. At least these organizations such as MASJUMI in Indonesia and Pan-Malaysian Islamic Party (PAS) and Islamic Youth Movement of Malaysia (ABIM) in Malaysia, promoted his ideas.¹⁸

¹⁵In this special issue, there are at least nine articles scrutinising Mawdûdî's ideas. *The Muslim World*, Vol. 93, No. 3-4, July-October 2003.

¹⁶Ismail Raji al-Faruqi, "The Islamic Critique of the Status Quo of Muslim Society" in Barbara F. Stowasser (ed.), *The Islamic Impulse*, (London: Croom Helm, 1987), p. 226.

¹⁷Fathi Osman, "Mawdudi's Contribution to the Development of Modern Islamic Thinking in the Arabic-Speaking World." *The Muslim World*, Vol. 93, No. 3-4, July-October, 2003, p. 465-486.

¹⁸M. Kamal Hassan, "The Influence of Mawdudî's Thought in South East Asia; A Brief Survey." *The Muslim World*, Vol. 93, No. 3-4, July-October, 2003, p. 429-464.

However, al-Mawdûdî also received some critical and unfriendly notes from some scholars. Bannerman, for example, regards him as “essentially a hard-line and rigid conservative, unoriginal and shallow in his thinking, conventional and prone to the belief that constant repetition is an adequate substitute for logical thought and presentation.”¹⁹ With the relatively same tone, Aziz Ahmad mentions al-Mawdûdî’s writings as “revivalist writings and speeches” and his *Jamâ’at-i Islâmî* as a “well-knit, monolithic, almost totalitarian religio-political organisation”.²⁰

The Proposal of Theo-Democracy

Before formulating his theories of the ideal Islamic political system, al-Mawdûdî expressed his animosity toward some notions spreading among Muslims and Non-Muslims who always identify Islam with one of the world systems of life such as democracy and communism, or conversely, who maintain that Islam has an element of dictatorship. Al-Mawdûdî argues that all these notions only come from people who are misguided and misinformed. If they were Non-Muslims, they have never systematically studied Islam. If they were Muslim, they were demonstrating an inferiority complex that liked to present Islam as a religion which resembles any world ideologies.²¹

According to al-Mawdûdî, Islamic political system must always be based on three fundamental principles; *al-tawhîd* (the oneness of God), *al-risâla* (prophecy), and *al-khilâfa* (vicegerency).²² *Tawhîd* is always the starting point to prevent all kinds of hegemony. From *tawhîd* as well, he believes that the sovereignty (*al-Hâkimiya*) only belongs to God, not to the people as understood in a modern Western democracy.

¹⁹Patrick Bannerman, *Islam in Perspective; A Guide to Islamic Society, Politics and Law*, (London: Routledge, 1988), p. 122.

²⁰Aziz Ahmad, “Mawdûdî; Orthodox Fundamentalism,” in Aziz Ahmad, *Islamic Modernism in India and Pakistan 1857-1964*, (London: Oxford University Press, 1967), p. 208.

²¹Al-Mawdûdî, “Political Theory of Islam” in John J. Donohue and John L. Esposito (eds.), *Islam in Transition; Muslim Perspective*, (Oxford: Oxford University Press, 1982), p. 252.

²²Al-Mawdûdî, *The Islamic Way of Life*, (Leicester: The Islamic Foundation, 1986), p. 29.

Considering that the sovereignty only belonged to God, all mankind were completely the same in the sense that people, social class or group, have no such political authority over the other. Quoting some verses of the Qur'ân,²³ al-Mawdûdî comes to the conclusion that this principle did not recognise legal and political independence of human beings, individually and collectively. State building without *tawhîd* is not different from repressing and exploiting mankind which remains impermissible in Islam. A state which runs without it, will not reach the ideal goal of the state.²⁴

Law as the commandments of God to organise human beings are delivered through a medium called *risâlat* or prophethood, that was eventually entrusted to Muhammad. Muhammad is then succeeded by people called *khalîfa* who are selected and trusted to continue the application of God's law. Therefore, *risâlat* and *khilâfa* must always be applied in accordance with *tawhîd*. Al-Mawdûdî often simplifies this structure by giving an example of an estate entrusted to someone to administer on the behalf of the owner. In this case the trustee will administer and exercise his authority only in accordance with the owner's instructions.²⁵ Moreover, *khilâfa* for al-Mawdûdî means representation, while *al-khalîfa* designates representative. The whole community are entrusted to carry and represent the sovereignty of God on Earth, in the frames determined by God, and are individually responsible to God. In particular, al-Mawdûdî insisted that every individual is the *khalîfa* (representative) of God. In this sense, al-Mawdûdî considers all mankind as equal in enjoying the rights and authority as the *khalîfa* of God. An Islamic state does not tolerate any class divisions based on birth,

²³Q.S. Yûsuf [12]: 40, Al 'Imrân [3]: 154, al-An'âm [6]: 50, al-Nisâ' [4]: 64.

²⁴Al-Mawdûdî, "Political Theory of Islam," p. 252-253. In regards with *tawhîd*, for more detail, see Al-Mawdûdî, *Towards Understanding Islam*, (Leicester: The Islamic Foundation, 1980), p. 68-72. See also al-Mawdûdî, *The Islamic Movement; Dynamics of Values, Power, and Change*, (London: Islamic Foundation, 1984), trans. Khurram Murad, p. 99-100.

²⁵Al-Mawdûdî, *The Islamic Way of Life*, p. 30.

social status, profession and so forth, therefore, there will be no dictatorship or repression over others since all humans are the caliph of God.²⁶

From this point of view, al-Mawdûdî went deeper to explore the relations between Islam and Western democracy which according to him was very contradictory. The former is based on the sovereignty of God, while the latter is on sovereignty of the people. In the former, no one person can claim sovereignty, so that people cannot modify the law of God. Meanwhile, in the latter, the power of legislation remains in the hand of people.²⁷

Al-Mawdûdî, who also relatively understood theories and practices of democracy in the West, maintained that people sovereignty is always misused with any political manipulations. A democratic country will only regulate the iron law of oligarchy, in which a group of Rulers is in cooperation to determine any social, economic, and political policies, without care to the real will of the people. In this system, all methods are allowed to extend status quo and regime with reasons of ideology, stability, development, and other ideal symbols.²⁸

Al-Mawdûdî then coined a term "Kingdom of God" or "theocracy" to identify an idealised Islamic government. However, it did not mean that Islam legitimises the practice of Catholic-based theocracy in Medieval Europe. Islam never ordered the establishment of special powers for non-Islamic functionaries at that time. In his Islamic theocracy, government does not only belong to a particular religious elite or group, but to whole community. Therefore, Islam also recognised the limited sovereignty of the people, which cannot be used to contravene any norms or values determined by God as the holder of highest sovereignty. To distinguish it from medieval European nations of

²⁶Al-Mawdûdî, "Political Theory of Islam," p. 258-259. Esposito and Voll even equalise Mawdûdî's explanation regarding *al-khalifa* with the content of Universal declaration of Islam on Human Rights formulated by Islamic Council in Europe. John L. Esposito dan John O. Voll, *Islam and Democracy*, (London: Oxford University Press, 1996), p. 23-24.

²⁷Al-Mawdûdî, *The Islamic Way of Life*, p. 31.

²⁸Al-Mawdûdî, *The Islamic Way of Life*, p. 29.

theocracy, Mawdûdî coined the new term or concept of theo-democracy; this was envisioned as a limited popular sovereignty under the suzerainty of God, or in other words a divine democratic government. In its practice, anything that does not explicitly exist in the Qur'ân and Sunna, is solved by the consensus of Muslims who are capable and qualified to give legal opinion. In this sense, insisted al-Mawdûdî, the Islamic system is democratic. However, it is a theocracy where all problems must refer to both fundamental sources, and there is no space for Muslims to exercise *ijtihâd* for explicit matters prescribed in the Qur'ân and Sunna.²⁹

Moreover, the Islamic theo-democracy is co-extensive with the whole of human life. In this sense, al-Mawdûdî had been forced to confess that Islamic theo-democracy resembles the fascist and communist states very much. However, al-Mawdûdî argued that the vicegerency (*khilâfat*) rules out dictatorship, which distinguishes the Islamic system from those modern ones.³⁰

Islamic State

On the basis of some verses,³¹ al-Mawdûdî formulates that an ideal Islamic state does not only aim at preventing people from taking advantage of each other, preserving their liberty and protecting it from foreign invasion. It also aims at “evolving and developing well-balanced system of social justice,” exterminating all forms of evil, and cheering all types of virtue and excellence which has been set forth by God in the Qur'an.³² In this respect, it seems that al-Mawdûdî follows -to some extent- Hegel's philosophy of politics whereby a state is perceived as a transcendent instrument or divine idea in which people can identify themselves. For Hegel, the state enables a combination between

²⁹Al-Mawdûdî, “Political Theory of Islam” p. 253-254. Muhammad ‘Imâra, *Abu al-A‘lâ al-Madûdî wa al-Sahwa al-Islâmiya*, p. 225-232.

³⁰Aziz Ahmad, *Islamic Modernism in India and Pakistan*, p. 219.

³¹Q.S. al-Hadîd [57]: 25, al-Hajj [22]: 41, and Al ‘Imrân [3]: 110.

³²Al-Mawdûdî, “Political Theory of Islam,” p. 256.

subjective freedom (individual consciousness and interest in reaching a goal) and an objective one (real public consciousness and interest). A strong state is confirmed once the ultimate goal of the people is reached. Still in this respect, al-Mawdûdî ignores the Marxist theory that a state is an oppressive machine, tyranny, with an exploitative government --as the owner of means of production-- toward the people. Differing from Hegel, Marx considers the absence of state as *summum bonum* or the highest wisdom for the people.³³

As explained in the second part of this paper, al-Mawdûdî considers Islam as a perfect religion which arranges both the relationship between mankind and God (*habl min Allâh*) and the relation among mankind (*habl min al-nâs*). This also designates that Islam regulates technical systems of all aspects of a Muslim's life. Given that politics is a part of human activities, he conceptualises some basic principles of an ideal Islamic state.

For al-Mawdûdî, there must be three authorities who organise the implementation of a state, namely legislative, executive, and judicative. A state leader who is also executive lead, is the highest authority who will carry his responsibility to God and the people. In organising the state, he must consult the legislative council elected from a general election. The legislative council's decision is based on the majority vote with a condition that the major vote is not against the standard of divine truth or revelation. Therefore, in a special circumstance, a state leader does not have to follow the legislative council's decision supported by the major vote. A state leader may follow either a minority or majority in the legislative, or even reject both of them. However,

³³Amien Rais' introduction in al-Mawdûdî, *Khilâfah dan Kerajaan*, (Bandung: Mizan, 1993), p. 17. It seems to me that al-Mawdûdî's *al-Khilâfa wa al-Mulk*, is particularly his very critical point to monarchy system. Al-Mawdûdî insists that monarchy will always absolutely force people to legitimise a dynastic power which is always hegemonic, exploitative, or in his term *al-mulk al-'adûd*. Monarchy, he adds, will always be repressive to political, economical, and social rights of people. Al-Mawdûdî always mention Saudi Arabia as the case, which is according to him, not an ideal Islamic state.

the people must always be able to criticise to the state leader. Apart from that, the criteria for state leader are Muslim, male, adult, physically and mentally healthy, best citizen, pious, and has a high commitment to Islam. A state leader is elected under the agreement of all Muslims. A citizen cannot seek power or put himself forward for election, and his nomination must stem from others, because the Prophet never gave a position to anyone who intentionally asked or made efforts to occupy it. Therefore, Islam does not support political campaigning. People may impeach the state leader if he breaks the *sharî'a*, or there is a motion of no confidence by the people.³⁴

The member of legislative must be Muslim citizen, man, pious, capable to understand and interpret the *sharî'a*, regulate ordinances which are not contradictive to the Qur'ân and Sunna. In particular, the duties of the legislature are (1) to formulate the Qur'ân and Sunna into the appropriate form of ordinance and their technical implementation, (2) to determine an interpretation if there were disagreements, (3) to issue laws on the basis of the spirit and the guidance of the Qur'ân and Sunna, (4) issuing other regulations provided they do not contradict the Qur'ân and Sunna. Apart from that, the legislative members be divided not on the basis of members should not political parties. According to al-Mawdûdî, multi-party system can only be applied in the general election to select their best candidates for legislative members who then should be totally loyal to the state and constitution alone.³⁵ Theoretically, the only existing party is that of the state leader (as government). Meanwhile, the judicative institution should remain an independent, autonomous organ state which is not under the executive structure. Its duty is to apply the law of God and to work not to represent the state leader, but God. In this context, the state leader is absolutely the same as ordinary people.³⁶

³⁴Munawir Syadzali, *Islam and Governmental System*, p. 171.

³⁵Al-Mawdûdî, *The Islamic Law and Constitution*, in Edward Mortimer, *Faith and Power; The Politics of Islam*, (New York: Vintages Books, 1982), p. 205.

³⁶Al-Mawdûdî, *The Islamic Way of Life*, p. 35.

The citizenry are divided into two groups; Muslim and Non-Muslim or *dhimmi* (protected people). In religious matters, the *dhimmi*s or *ahl al-dhimma* are led by their religious leaders, but in other matters, they must follow the Islamic law. The *dhimmi*s may not occupy any key position in government. They may only occupy positions of secondary importance within the legislative structure and have no authority in state policy.³⁷ They have rights to vote in legislative elections, but not in the presidential one.³⁸ Generally speaking, they enjoy various legal protections and civil liberties.³⁹

Another interesting point of al-Mawdûdî's thought is his account regarding nationalism, albeit a number of scholars often misunderstand it. Much of his literature repudiates nationalism. One of his remarkable observation is that "the combination between the words 'Muslim' and 'nationalist' is absolutely peculiar. The words 'Muslim nationalist' and 'Muslim communist' are *contradictio in terminus*, as you say 'communist facist', 'socialist capitalist', or 'monotheist polytheist'. When the nationalism enters the mind and heart of a Muslim through a path, Islam will get out through another path."⁴⁰ From these texts, a number of scholars maintain that al-Mawdûdî completely discards nationalism. Grare, for example, writes that he rejects it because it is a Western-minded concept.⁴¹ Ahmad and Ansari, the authoritative biographers of al-Mawdûdî conclude the same as well.⁴² 'Imâra, however, insists that those scholars misunderstood al-Mawdûdî. 'Imâra argues that what al-Mawdûdî discards is the western secular nationalism applied in India before the Partition. Al-Mawdûdî was worrying that the

³⁷Al-Mawdûdî, "Political Theory of Islam", p. 257. Al-Mawdûdî, *The Islamic Way of Life*, p. 33-34. For more explanation regarding *ahl al-dhimma* according to Mawdûdî, see Muhammad 'Imâra, *Abu al-A'la al-Mawdûdî wa al-Sahwa al-Islâmiya*, p. 387-406.

³⁸Edward Mortimer, *Power and Faith*, p. 206.

³⁹*Al-Mawdûdî, Huquq Ahl al-Dhimma*, in Ahmad S. Moussalli, *The Islamic Quest for Democracy, Pluralism, and Human Rights*, (Florida: Univ. of Florida Press, 2001), p. 149.

⁴⁰Al-Mawdûdî, "Nationalism and Islam" in John J. Donohue and John L. Esposito (eds.), *Islam in Transition*. Al-Mawdûdî, *Al-Umma al-Islâmiya wa Qadiya al-Qawmiya*, in Muhammad 'Imâra, *Abû al-A'la Al-Mawdûdî wa al-Sahwa al-Islâmiya*, p. 267.

⁴¹Frédéric Grare, *Political Islam in the Indian Subcontinent*, p. 22-23.

⁴²Khurshid Ahmad and Zafar I. Ansari, "Mawlâna Sayyid Abul A'la al-Mawdûdî," p. 362.

nationalism will merely treat Muslims as the minority who only has minor rights. Generally speaking, 'Imâra maintains that the context of his disagreement is the Indian subcontinent before the Partition in which Hinduism majority and Muslim minority were in conflict.⁴³

Islam -according to al-Mawdûdî- is universal and does not recognize any linguistic, ethnic, and geographical borders. The ideal example is the practice of *al-khulafâ' al-râshidûn* which did not recognise nationalism. Therefore, al-Mawdûdî proposes to return to the system of first four caliphs. He eventually introduced a new term namely Pan-Islamism.⁴⁴ Al-Mawdûdî delivered most of his thought regarding Pan-Islam in his 1967 booklet *Unity of the Muslim World*. One of his main reasons is that while there were British Commonwealth of Nations, Organisation of African States, or Warsaw Pact, he felt there should be Muslim bloc or Muslim conference which could solve similar problems faced by Muslim countries.⁴⁵ As the continuation of the Pan-Islamism, moreover, al-Mawdûdî even advocated a bloc of Muslim countries and a Muslim International Court of Justice.⁴⁶

Inconsistency

In his *Al-Khilâfah wa al-Mulk*, he also presented some critical points of his best colleagues. He identifies about 19 critiques addressed to him, which were drawn by other scholars in any dailies or in various other media forms. Some of them criticise him from his paradigm of thought, others from the political practices of his thought.

⁴³For more detail, see chapter "al-Qawmiya" in Muhammad 'Imâra, *Abû al-A'la al-Mawdûdî*, p. 263-303.

⁴⁴Munawir Syadzali, *Islam and Governmental System*, p. 115.

⁴⁵Jacob M. Landau, *The Politics of Pan-Islam; Ideology and Organization*, (Oxford: Clarendon Press, 1990), p. 272.

⁴⁶Jacob M. Landau, *The Politics of Pan-Islam*, p. 227.

To some extent, al-Mawdûdî did not reject all Western concepts of (political) life.⁴⁷ He even once proposed to create such a federal state for India in 1938;⁴⁸ such a federal state was of course not originally a part of Islamic political system. One might say that he rejected the secular democracy of the West, but also acknowledged some of the practical features and concepts. When he eliminated secular democracy, he proposed theo-democracy which to some extent is not so different from democracy. Al-Mawdûdî always considered the presence of God in all political activities. Practically, a president, for example, must be elected by the people, as it is practiced in within a Western secular democracy. Moreover, within a Western democracy, the sovereignty of the people did not automatically negate the sovereignty of God. In the past, the sovereignty of people had been a tool to overthrow the absolute power of kings. Conversely, in the Muslim countries, kings and political leaders often misused the sovereignty of God in order to repress people and hide behind the sovereignty of God. Another example is his proposal regarding three significant elements of a state, *i.e.* executive, legislative, and judicative which are absolutely the significant parts of Western democracy called the concept of *trias politica* by Montesquieu.

His proposal to return to the political system of the first four caliphs invited debate. In this connection, it is interesting that he never mentioned and used the Hadis that the Islamic leadership must be in the hand of the Quraish tribe, which is very famous among Muslim theologians. I am sure that he had examined the Hadis, but within the reality of

⁴⁷He even once called for good cooperation between Islam and the West. In his introduction writing for Ahmad's *Islam and the West* (1967), he clearly maintains that "the call of our times is that with a view of achieving world peace and international amity, mutual relationship among different nations be constructed... The need for establishment of a relationship of the people of Europe and America with the Islamic fraternity, on new foundation of good will and good cheer, stands out as of paramount significant." John L. Esposito and John J. Donohue (eds.), *Makers of Contemporary Islam*, (Oxford: Oxford University Press, 2001). Some of his accounts of peace can be read in Abû al-A'îlâ al-Mawdûdî, *Islam: Way to Peace and Salvation*, (Birmingham: UKIM Da'wa Center, 2003), trans. Khurshid Ahmad, p. 18.

⁴⁸Omar Khalidi, "Mawlana Mawdudi and the Future Political Order in British India." *The Muslim World*, Vol. 93, No. 3-4, July-October, 2003, p. 421-423.

the Indian sub-continent was not practical to apply it. It means, he tried to surrender toward reality *vis a vis* the text; otherwise, he had to explain. Moreover, he does not clarify which particular system of the first four caliphs he was referring to. As generally known, the appointment systems of the first four caliphs were not of one kind; Abû Bakr was elected by the leading figures of Mecca and Medina, ‘Umar was appointed by Abu Bakr, ‘Uthmân and ‘Ali were appointed by the council four.

In some cases, al-Mawdûdî is not consistent with his articulated thought regarding the position of women in an Islamic state. As explained above, al-Mawdûdî demands that a president must be a man, for various irresponsible reasons. He also discards a political campaign in the presidential election by saying that in Islam a trust or a power will not be granted to whom offering himself as candidate. However, he supported Fatima Jinnah, the daughter of Pakistani founding father Ali Jinnah, to be the president at that time. Moreover, he did not only issue a fatwa allowing women to serve as president, he and his organization the *Jamâ‘at-i-Islâmî* even supported and endorsed the political campaign of Fatima Jinnah. Al-Mawdûdî never clarified why he undertook such a campaign that is totally contradictive to his Islamic political thought.

Conclusion

It is apparent that al-Mawdûdî is one of those Muslim scholars who say that there is no distinction between Islam and politics. He always attempts to insert God into the political sphere. He presupposes that Islam is a monolith, universal, and an unchanging system of belief and practice. It means that politics in Islam was also sacred, not profane as it is perceived by the West. Politics is then perceived as a matter of salvation,

therefore a Muslim may sacrifice life and properties for political purposes, as he offers in his proposal for Indian constitutional order.⁴⁹

In this connection, al-Mawdûdî represents the conservative voices of Islam which in the middle of twentieth century never won support in most Muslim countries. More particularly in the 1950s-1960s, the conservative voices of Islam have been excluded from the central policy making processes in Muslim countries, from Indonesia to Algeria. The only issue won by these conservative voices or Islamists (*intégristes* in French) is the application of Islamic family law. In the case of Pakistan, al-Mawdûdî and his *Jamâ'at-i-Islâmî* never won much electoral support, even though his political thought drew much attention in South East Asia and Egypt.

It seems that al-Mawdûdî may be categorised among Muslim political thinkers such as al-Banna and Sayyid Qutb who regarded Islam as a holistic and universal religion covering all aspects of life, including the governmental system. He is different from other voice of Muslim political thinkers such as 'Alî 'Abd Al-Râziq and Tâhâ Husayn (1889-1973) in Egypt, who said that Islam never organised or determined any particular system of politics, and who insisted that the Prophet never meant to establish a state; that the Medina state was purely a socio-political act and option for the Prophet. He is also different from other Muslim thinkers such as Husayn Haykal (1888-1956) who considers that Islam is not a comprehensive religion which, for example, organises a governmental system, but, Islam proposes the very fundamental values of politics such justice, *shûrâ*, and so forth.⁵⁰

⁴⁹See his three proposals for the constitutional order of India in Omar Khalidi, "Mawlana Mawdudi and the Future Political Order in British India," p. 421-423.

⁵⁰Charles D. Smith, *Islam and the Search for Social Order in Modern Egypt: A Biography of Muhammad Husayn Haykal*. (New York: SUNY Press, 1984).

I would examine that the concept of theo-democracy of al-Mawdûdî is a half-way democracy. He adopted some technicalities of Western democracy such as the trias politica, but at the same time, he always suggested the superiority of the sovereignty of God over that of the people. This also includes inconsistencies in his political ideas and practices. Marietje Schaake, a Dutch Member of European Parliament, in her IPCD talk in 2017, once suggested that half-way democracy is not enough for Africa to develop. In this regard, the half-way democracy al-Mawdûdî would never be decent for contemporary nation-state context.

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The Legality of Islamic Banking Systems in Nigeria: A Historical Approach

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Abstract: *This paper attempts to study the advent and systematic development of banking system in Nigeria with reference to the Islamic banking system. The approach applied here is historical as well as analytical; data were collected, collated and analyzed for possible logical conclusion. Issues examined include: the evolution of banking system in Nigeria, the Islamic banking system under the constitution of Federal Republic of Nigeria, Islamic banking as a constitutional right of the Nigerian Muslims, and making laws for the implementation of Islamic banking system in Nigeria.*

Introduction

The Nigeria has a special approach to the issue of legality having regards to its geographical, ethnic and religious composition. The method adopted is inclusiveness, or rather accommodating every interest group as far as the collective interests of the group could be permitted by a sovereign nation. Hence, the issues of pluralism, federal character and religion become pronounced in Nigeria. Consequently, issues relating to these three subjects, particularly religion, are always controversial. As efforts to establish Islamic banking system in Nigeria is reaching the approval stage, the extent of its constitutionality or legality is appropriate to be examined.

Following the Usman Dan Fodiyo's *Jihad* of 1804, the hitherto war-torn Hausa states constituting the present Northern Nigeria and beyond were brought under an Islamic way of life and system of government which lasted for a century, 1804-1903. However, this was brought to an end and foisted upon them was the western socio-political legal and

economic (including banking) by the incursion of the British colonialist into the territory.¹

Apparently between 1903, when the colonialists defeated the Sokoto caliphate's army, and 1960, when Nigeria became independent, virtually all the elements of Islam inherent in the system had been uprooted or transformed. Fortunately, it was only the official, legal, political and economic systems that were transformed. The unofficial ones that the Muslims learnt imbibed and applied to themselves on a daily basis remained in the conscience, and that is the most possible explanation for the increasing agitation of Nigerian Muslims for 'real' independence to apply full Islamic law in their affairs.²

At present, Muslims in Nigeria are taking up the challenge of liberating themselves from the apron strings of the western socio-economic, and political enslavement. This is evident among several efforts made to ensure recognition by virtually all the past and present Nigerian constitutions for the full application of Shariah to include Islamic banking system.

In 1991, Banking and Other Financial Institutions Decree (BOFID) was promulgated which hostile banking laws to pave ways for the enthronement of profit and loss sharing (PLS) banking. Sequel to the above establishment, provisional licenses were given to the existing conventional banks in 1992 to operate interest free banking but it almost went down the drain until 1999, when Habib Nigeria Bank Limited started her interest free banking window.

In this article, consideration shall be given to the examination of the extent to which the establishment and operations of Islamic banking system can be accommodated under the

¹ Jihad literally translated to strive in the cause of Allah; a term used to denote a religious duty imposed on Muslims to proclaim and spread Islam.

² See Yadudu, A.H., "Colonialism and transformation of Islamic law in the northern states of Nigeria" (1992) 32 Journal of Legal Pluralism, p.135.

1999 constitution of the Federal Republic of Nigeria (CFRN). To this end, evolution of banking system in Nigeria vis-à-vis the accommodation of Islamic banking by the banking laws is examined. An attempt has also been made to examine the correlation between the constitutionally enshrined fundamental human rights and Islamic banking in Nigeria. Finally, the intricacies of law making process under the Nigerian Constitution as it affects Islamic banking are looked into.

Evolution of Banking System in Nigeria

In the pre-colonial Nigeria, especially within the caliphate, there were various means by which business capitals were generated. Practice of money lending was evidenced in Sokkwato Township as far back as 1903.³ Credit facility was also given in form of goods being sold by traders who paid the principal sum with a mark-up or share of profit, only after sale. Individuals bound by common interest also pooled their resources together to form partnership at a predetermined share of profit or loss.⁴ All these aforementioned activities which were practiced under a strict ribā free policy of the caliphate,⁵ and continued long after the evolution of the conventional banks, are what an Islamic bank sets out to do today.

All the same, the traditional way of saving surplus capital was predominant before and long after the colonial incursion. The process was to stock cowry shells in a gourd shaped clay pot; dig the ground and bury the pot therein leaving a mark on the spot for easy withdrawal. This method also applies to the coin currency introduced by the colonialists though with introduction of spreading yam flour on each layer of money to avoid rusting.⁶ In other parts of the country too, activities similar to those performed by the present

³ See Abubakar, S., "Birnon Shehu- "The city of Sokoto. A social and economic history C. 1809-1903", (PhD Thesis, Ahmadu Bello University of Zaria, 1982), p.114.

⁴ See Malami, U.H., "Economic Principles and Practices of the Sokoto caliphate," (1998) Sokoto: The Institute of Islamic Science, p. 99.

⁵ See Trimmingham, J.S., Islam in West Africa, (London: Oxford University Press, 1959), p. 194.

⁶ Interview on behalf of the researcher by Folorunsho A.H. Esq., Ilorin, Kwara state – Nigeria, July 11, 2004.

conventional banks like lending, safe deposit, guaranteeing and agency function in respect of sales were carried out before the colonialists' intervention but they were not in form of today's banking business.

Banking in the conventional way was ushered into the Nigerian economic system with the establishment, in 1894, of the Bank of British West Africa (BBWA) later known as Standard Bank and now First Bank of Nigeria Plc.⁷ The Anglo-Africa Bank which later became Bank of Nigeria was established in 1899. These were later joined by the colonial bank in 1917⁸ and British and French Bank, now United Bank for Africa in 1948. The set-up clearly shows the monopoly of the banking system by foreign banks whose sole concern was to serve the expatriates and colonial interests.⁹

The spirited attempt made by the indigenous entrepreneur cum patriots to break the monopoly resulted in the proliferation of establishment of locally-owned banks.¹⁰ There was neither financing requirement nor regulations to restrict and control the establishment and operation of banks. The few indigenous banks in operation were discriminately suffocated out of business. This resulted in the enactment of the First Banking Ordinance in 1952, to regulate banking operations. Further agitations against the discrimination of foreign banks resulted in the draft of CBN Ordinance and Banking Acts in 1958.¹¹

In 1991, Central Bank of Nigeria Decree No 24 and Banks and Other Financial Institutions Decree No 25 were promulgated. The two decrees were amended by Decrees

⁷ This bank was the principal importer of currency from the British Treasury until West Africa currency Board was established in 1912, when it was yet appointed the sole agent of the Board in Nigeria. See Danjuma N., (The bankers' liability; The Heinemann Edu. books plc.)

⁸ This bank later became Barclays Bank in 1925 and is now Union Bank of Nigeria plc.

⁹ Igweke, K.I., Law of Banking and Negotiable Instruments: Onitsha, Africana-Fep Publishers Ltd. (1991), p.1.

¹⁰ Nigerian Merchant Banks in 1931, national Bank of Nigeria in 1933, Agbonmagbe Bank and Nigerian Penny Bank in 1945.

¹¹ This latter legislation have vigorously gone through amendments and repeals that crystallized in consolidated statutes, the CBN Act (cap.47) and Banking Act (cap 28) both compiled in the laws of the Federation of Nigeria, LFN 1990.

No 3 and 4 of 1997 respectively; only to remove the limited autonomy granted the CBN by the 1991 decrees. The two decrees were further amended by Decrees No 37 and 38 of 1998 and Decrees No 41 and 40 of 1999 respectively.

The thrust of the activities of the conventional banks since the colonial time to date is no other than the charges and interest payment by both the central and commercial banks on all deposits and loans. In fact, before 1991, charging interest by banks was made mandatory.

Above all, since the nation's attainment of "Independence" in 1960 the nation's economy has been at the mercy of the colonialist through interest system. This was actualized by contracting on behalf of Nigeria, an external interest-based debt of USD28 million for railway construction in 1958. The interest on this loan has been the means of siphoning the nation's abundant resources.

Islamic Banking under the 1999 Constitution of the Federal Republic of Nigeria

It is pertinent to point out from the outset that there is no place in the 1999 constitution of the Federal Republic of Nigeria, or those ones that preceded it, where provision is/was made for Islamic banking or its affiliate. This may be explained by the fact that the constitution does not pretend to be capable of making provisions for all laws that need to be. Rather, by its supreme status,¹² it portends to give validity to all laws of the land as the makers of such laws derive their law-making powers from it. By this provision, the constitution seeks to assume the status of Kelson's concept of Grundnorm. This is the basic norm, that is, the common source for the validity of all norms that belong to the same order and the reason for their validity.¹³

¹² See S.1 (1) and (3), constitution of the Federal Republic of Nigeria (CFRN), 1999.

¹³ See Morrison, W., Jurisprudence from the Greek to post-modernism, (London; Cavendish publishing limited, 1997), pp. 337-338.

Thus, all the banking laws in Nigeria, including that enabling Islamic banking have their origin or foundation traceable to the constitution through this means. Even where any of these laws was made before the constitution came into force, the validity of such law is co-opted into the constitution as if its makers, then, also derived powers from it. The laws in this category are referred to as the existing laws.¹⁴ The purport of the provisions of section 315(4)(b) of the constitution was to bring all Nigerian laws predating its coming to being into its ambit and deem them as having been properly made under it. Thus, virtually all the laws regulating banking practices presently in Nigeria fall within this category.

Islamic Banking as a Constitutional Right of the Nigerian Muslims

The inalienable Fundamental Human Right to freedom of thought, conscience and religion has always been preserved in the successive constitutions. This principle is borrowed from the widely believed precursor of Human Right, Magna Carter of 1215, and the United Nations (UN) Universal Declaration of Human Rights, 1948. The preservation also relates, most importantly, to the fact that the religious past of the country, just like any other past, never gets dead and buried.

The 1999 constitution, in no ambiguous terms, states that every person shall be entitled to Freedom of Thought, Conscience and Religion; to include freedom to change his religion or belief and freedom (either alone or in community with others and in public or private) to manifest and propagate his religion or belief in worship, teaching, practice and observances. This provision necessitates a query as to what constitutes a religious freedom. The response to this poser would vary, depending on the faith or ideology of the respondent. A Christian, for instance, may be prepared, in the notion of giving to Caesar and God what respectively belongs to them, to limit his or her right to religious

¹⁴ See S.315 (4) (b), CFRN, 1999.

freedom to matters of faith and worship only. A person from the West may also be contented with the western compartmentalization of life into religious and temporal.¹⁵ A Muslim, on the other hand, would view religion as covering all the facets of life. This is because his or her spiritual and moral worth is tested against his or her daily interaction with others at the congregational prayers, in marital union, in the pursuit of legitimate livelihood and in the holding of public responsibilities, amongst others.¹⁶ To him right to freedom of religion would entail or encompass:

- i. *Al-^caqīdah wa 'l-^cIbādah* (freedom of belief and worship)
- ii. *Sharīa^ch* (Right to live by Allah's commandments) and
- iii. *Al-Amr bi 'l-ma^crūf wa 'n-nahy ^cani 'l-munkar* (right to encourage good and forbid evil.)¹⁷

Based on the foregoing background, therefore, a Muslim would tend to avoid interest-based transactions practiced under the conventional banking and opt for Islamic banking system. This is why an average Nigerian Muslim would either abstain from conventional bank or, as a matter of necessity, operate a current account for the reason of its non-attraction of interest. This state of affairs, however, does not solve the problem as it merely amounts to what is referred to in Islamic jurisprudential principle as:

“Adopting the lesser of two alternative harms” (*Ikhtiyar akhaf aw ahwan Sharrain aw Dharrain*)

The first and the most grievous of the harms is the involvement in interest transaction and, therefore, the lesser harm is adopted in order to deal with such situation, not

¹⁵ See Oredola M.A. “The 1999 constitution and the New Initiative on the Shari’ah; Between the ideal and the possible” in *Al-Maslaha journal of Law and Religion*.

¹⁶ See Tabiu, M., “Realisation of Freedom of Religion under the Nigerian constitution: The challenges before Muslims” vol. 1:1, (1999), *Al-Mujtahid*, co.

¹⁷ *Ibid*; see also, Qur’an, al-Mai’dah (5): 45-50; and Al-Imran (3):104; while al-Nahl (16:97) differentiate between the rewards for righteous deeds based on humanitarian grounds alone and the one based on religious belief.

bothering about what deposit is used for provided it is kept safe. That is, keeping it fallow as far as he is concerned.

Thus, to do justice to the phrase “freedom (either alone or in community with others) to manifest his religious belief in worship, practice and observance” in the above referred constitutional provision, recourse has to be made to how it was interpreted in its jurisdiction of origin and its adaptation to the Nigerian peculiarity.

The recent case of *Bashirat Saliu & 2 others v. The Provost Kwara State College of Education Ilorin & 2 others*,¹⁸ however, provides a locus classicus interpretation of section 38 of 1999 constitution on right to freedom of thought, conscience and religion. In that case, the applicants who are female Muslim Students of the respondent institution filed an application for the enforcement of their Fundamental Human Right to freedom of Religion.

The fulcrum of their application is an objection they had to Article J of the dress code of the institution which prohibits dress/apparels that cover the entire face of an individual, thereby making the immediate identity of the person inside impossible.¹⁹ Relying on the applicant’s averment that their entire life is purely guided by the principles of Islamic tenets which regulate their dress code. Relying on the literal dictionary meaning of the words ‘manifest, observance and practice, as contained in Section 38 of the 1999 Nigerian constitution, the court held that the provisions of the above article J are unconstitutional, null and void and of no effect whatsoever.

The ratio of the above ruling could easily be extended to the religiosity of Islamic banking to the Nigerian Muslims. Their avoidance of interest, which is the basis of the conventional banking, is a serious matter of faith that, many Nigerian Muslims will not

¹⁸ Unreported suit No. KWS/28M/2006 of Kwara State High Court of Justice Ilorin, ruling delivered on 8 May, 2006.

¹⁹ See Kwara state college of Education Ilorin, “Dress code for the students of the Kwara State college of Education Ilorin,” dated 28 September, 2005.

compromise. Since lack of alternative banking system is capable of impairing their economic prosperity, therefore, their right to practice and observe their religious faith would require that they be given a fair opportunity as those that believe in the conventional system.

As a fundamental human right, the government is not only obliged to facilitate the actualization of the system but also to avoid its' being trampled upon except in the manner provided by the constitution.²⁰ Anything contrary will be discriminatory against Muslims by reason only of their religion. That too would amount to further infringement of their fundamental and other constitutional rights.²¹ This is more particularly so as people of other religions are privileged by the status quo especially as they are not complaining.

Making Laws for Islamic Banking in Nigeria

Nigeria operates a bicameral Federal legislature comprising of a Senate and a House of Representatives, both of which constitute the National Assembly. There are also states Houses of Assembly as states legislative organ's law-making powers is delineated in the constitution. The National Assembly has powers to make laws on matters contained in the exclusive legislative list to the exclusion of the states; Houses of Assembly,²² while it has concurrent powers with the latter to make laws on matters contained in the concurrent legislative list,²³ are singularly empowered to make laws relating to issues on the residual list. The states Houses of Assembly have powers to make laws on matters not included in the exclusive legislative list and on matters contained in the concurrent legislative list.²⁴ Matters of banks, banking, bill of exchange and promissory notes

²⁰ See S. 45(1), CFRN, 1999; and Oredola, n. 8 at 60.

²¹ See SS.15 (2) and 42(1); CFRN, 1999.

²² Those are contained in part 1 of the second schedule to 1999 constitution; see also, Attorney General of Ondo State v. A.G. Federation [2002] 6 SCJN 1.

²³ These are contained in part II to the schedule of 1999 constitution, see also S. 4(2) and (3) (a), CFRN, 1999.

²⁴ See S.4 (7) (a) and (b), CFRN, 1999.

constitute item number 6 on the exclusive legislative list. Thus, only the National Assembly can make laws on matters pertaining to Islamic banks and banking.

For the first time in the history of Nigerian banking law, provisions were made for a banking system that deviate from the conventional banking in the Banking and other Financial Institutions Decree (BOFID) No.25, 1991. In its categorization of Banks in Nigeria, BOFID provides that the president on the recommendation of the Central Bank shall, from time to time determine as he may deem appropriate, the minimum paid-up share capital of each category of banks. If profit-and-loss sharing bank is considered a category of the Nigerian banks with a minimum paid-up share capital for the time being, of N 50,000,000 (USD 5,045,408.70), the above decree, by virtue of Section 315(4) of the 1999 constitution, is therefore, presumed to be part of the constitution.

In recognition of the peculiarities of this new banking system, the law made provisions for a number of exceptions to facilitate its smooth operations. Prominent among these exceptions is the non-applicability of the need to display the interest rate in the banking premises of a PLS bank. The relevant section of the law provides:

“Every bank shall display at its offices its lending and deposit interest rates and shall render to the Bank information on such rates as may be specified, from time to time, by the Bank, provided that the provisions of this subsection shall not apply to profit and loss sharing banks.”²⁵

This provision presumes the payment or taking of interest on deposits or loans as a necessary practice of banks and, thus, mandates the display of the interest rates. Its exemption of PLS banks from the practice, therefore, sets a solid foundation for Islamic banking system. Similar provisions of the Decree empower the Central Bank Governor

²⁵ S.23 (1), BOFIA, 1991 as amended; emphasis mine and reference to "Bank" as opposed to "bank" in this law relates to the Central Bank of Nigeria and any other bank respectively, S. 61 thereof.

to further exempt Profit and Loss Sharing banks from the general provisions of the Decree as he may think fit.²⁶

Meanwhile, the banking laws in Nigeria, as they presently relate to Islamic banking are at best accommodative of its establishment, but nothing is on the ground to regulate the nitty-gritty of its peculiar operations. This would justify the need for either a separate law or guidelines to suit the philosophy of Islamic banking system, especially in terms of its types of business which are still being restricted by the existing banking laws. Such a law or guidelines would provide for supervision by Shariah Advisory council and committees both at the CBN and Islamic bank(s).

As pressing as the need for this law might seem, the composition of the National Assembly is such that it may be difficult for a state or its representatives in the legislature to push through a bill to be passed into laws especially the one with religious connotation.²⁷ Because, unless a matter is generally viewed as one of national importance, the sponsors of a bill would have to lobby and convince at least a simple majority of members who almost certainly would have contrary interest to serve.

Given the number of the northern states, 19 of them, and their Federal constituencies based on the population of their people reflecting their quota in the two Houses of the National Assembly, it would be expected that the senators from the north should be able to form a block. To push such a bill for Islamic Banking through would, therefore, require winning a few other members from other parts of the country over.²⁸

²⁶ See Section 52 BOFID, 1991, this particular section has been amended by removal of the exception and introduction of an entirely new provision on manner of sharing revenues from penalties among the CBN, NDIC and the consolidated Revenue Fund.

²⁷ Each of the 36 states of the Federation produces three senators and one is produced by the Federal capital Territory (FCT) to make 109 altogether. The House of Representatives is constituted by 360 honourable members representing federal constituencies of nearly equal population as far as possible, see SS. 48 and 49, CFRN, 1999.

²⁸ 57 senators representing 52.3 percent of their total number are from the northern states while their honourable members counterpart are 189 representing 52.5 percent of the total number, see Anyanwu, C.N.D., *The Law Makers-Federal Republic of Nigeria 2003-2007*; (New Jersey: start craft international, 2003), pp. 73-262; although this publication like any other on National Assembly documents avoided

Closely related to this is the problem of constitutional lacuna hinged on the Nigerian bicameral legislative system operating at the Federal level. By this system, a bill which may although emanate from either house must be passed separately by the other house. The two houses must reach an agreement on any amendment that may be made on a bill before it is sent to the president for assent.²⁹ The lacuna relates to the silence of the constitution on how long the other house can hold a bill requiring concurrent passage.

The House of Representatives took advantage of this lacuna to withhold both BOFIA and CBN amendment bills passed by the senate since February 2005. And that situation of withholding gives a clear insight of what Islamic banking bill is likely to go through whenever it is presented for passage. This problem would be compounded by the fact that legislators in developing nations, as typical of Nigeria, are always more conscious of their own personal and political interests. This is unlike the case with their counterparts in the developed world where legislators are committed to working for the interest of their constituencies.³⁰

More so, quite a number of the legislators as much as other policy makers are owners and shareholders in the existing conventional banks and possess some other interest earning assets. Given this spirit, it is unlikely that majority of them will be disposed to making any law that would tend to give room for rivalry with their personal interests in the name of economic emancipation of the masses. It makes no difference whether prosperity may eventually, through Islamic banking, spread wide enough to make up for the loss at the personal level.

reference to religious affiliation of members, yet the figures were arrived at training through the names of the members.

²⁹ See S. 58(2) and (3), CFRN, 1999.

³⁰ A study in the US showed that Senators attend to an average of 302 and representatives 115 cases a week from their constituencies, see Johannes, J.R. "The distribution of casework in the US Congress: An uneven burden", *Legislative studies-Quarterly*, vol.5 November, 1980, p. 519, cited by Keef, W.J. and Ogul, M.S.; *The American legislative process congress and the states*, (New Jersey: Prentice-Hall incorporation, 1993), p. 28.

Conclusion

As a fundamental right, the Nigerian Muslims are entitled to be given the opportunity to operate their economic activities in accordance with their religious belief, an opportunity which would mean provision of a level playing ground in a pluralistic society where citizens should have a choice of how they conduct their business. Much as no one is compelled to participate in the new system, justice would also demand that no one is excluded from being a beneficiary. In the words of Abraham Lincoln: “As I would not be a slave, so I would not be a master. This expresses my idea of democracy: Whatever differs from this, to the extent of the difference is no democracy.” In addition, effectuating the operations of Islamic banking system as a constitutional right in Nigeria expresses a true idea of constitutionalism. Anything to the contrary would amount to a derogation of not only the right of the Muslims but also the economic prosperity of the nation as a whole.

The Tomb of Islam

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Abstract: *The concept of Muslim immigration to, and settlement in, New Zealand has become synonymous with the inflow of Asian and more recently African migrants and refugees. However, appellations like “Asian” incorporate a plethora of very different folk groups of significantly diverse races, languages, castes and levels of education. An important minority of Asian Muslim immigrants since the 1890s originated in the Punjab region, an area of northern India traditionally noted for its agricultural production. This paper surveys the early immigration and settlement of Punjabi Muslims through an examination of a single Punjabi Muslim immigrant, Ibrahim Wali Mohamed Suliman (1885/86-1941), better known as Abraham Walley Mahomed Salaman. Most Punjabi migrants to this country in this time frame were Sikh or Hindu and hence Muslims have not received much in-depth research, although Salaman is a curious exception to this rule.*

Introduction

The intention of this essay is to outline a short history of the early Punjabi Muslim immigration and settlement in New Zealand, from the earliest recorded evidence in the 1890s to approximately the 1940s. The term Punjabi Muslim is a fairly precise geographic appellation I will use to cover all Muslims from the Punjab region of northern India regardless of caste or ancestry. The Punjab was a British colonial province during the first part of this time frame. After the 1948 Partition of India and Pakistan, the area was divided in two. The province was mostly known for its important agricultural production and was usually a destination for migrants rather than a provider of such folk. Currently the entire Islamic community in New Zealand numbers over 40,000¹ and is famously diverse in character, ethnicity, employment, education and geographic spread – making exact generalisations concerning the details of such a diffuse congregation ever more exigent. The number of Muslims from the Punjab presently runs into the thousands.

¹ *New Zealand Official Yearbook*, 2010, p.106.

I aim to focus on the minority within the minority – the Muslims of the Punjab – who form a less examined section of the entire Indian community.

It is probable that some scholars will declare it impracticable to research and write an interesting history of the Punjabi Muslims here if only because their numbers are insufficient to uncover anything particularly deep. It is true that material is scant and it is sometimes challenging to produce great insights about either the wider Muslim or Indian communities for this period. However, I believe the discernible tensions and textual ambiguities present and pose a remarkable quantity of usable data. What is recorded about the Punjabi Muslim migrants is as important as what was not. Apparent textual incongruities can be safely interpreted to contribute more to our comprehension of the history of Punjabis, Indians and Islam in New Zealand. It may also be observed that early Punjabi Muslim immigrants have sometimes been slightly overlooked in both mainstream Muslim community literature and in the broader historiography of New Zealand. For many New Zealand Muslims multiple identities are increasingly common nowadays but historically terms like “Punjabi” and “Indian” have sometimes been employed as synonyms. For example, we will observe that newspapers for this period frequently refer to Muslims as simply “Hindoos”, confusing the historical records and researchers alike. My method here has been essentially historical, grounded in empirical examination and study, and buttressed by a view of identity as a basically dynamic and ever evolving process.

This essay explores a section of Punjabi Muslim settlers and tentatively investigates how they have navigated their private and public identifications as New Zealanders. I argue in favour of a more carefully nuanced interpretation of the biographies of the people involved and a greater appreciation for the challenges they faced. This is the context in which this article strives to highlight the important contribution made by this unique folk

group in the field of New Zealand Muslim historiography and my hope is that this can add to the ongoing historical discourse on the subject.

Genesis

The first identifiable Muslim to settle permanently in New Zealand seems to be one “Mahomet Wuzerah” or “Wuzerah Moosalman” from the Indian subcontinent, his precise origin unknown and unrecorded. He was popularly addressed or identified simply as Wuzerah (and spelling variations on that single name). Wuzerah and his family (wife and sons) appear to have arrived to work for Sir John Cracroft Wilson (1808 – 1881) and came to Lyttleton in 1854 on a ship named the *Akbar*². Wuzerah died in April 1902.³ Throughout the 1890s and 1900s a small number of Muslim immigrants arrived from India – mostly from the Punjab and Gujarat regions – but also from Kashmir and other parts of the subcontinent.⁴

There were several other Muslim individuals from Arabia and central Asia. Over the 1890s and 1900s New Zealand’s laws were changed to exclude Asians effectively and to promote British immigration. It was not until the 1950s that the number of Muslim immigrants began to rise significantly. Professor McLeod demonstrated that the immediate source of information for many of the early migrants was a Muslim family in Karnana in the Nawanshahr district of the Punjab province. The Shah brothers had all been to Australia in the 1890s and had assisted many Punjabi men to travel there before 1901 when changes to Australian immigration laws led them to switch their attention to

² “Supreme Court Lyttelton”, *Lyttelton Times*, 13 March 1858, p.4.

³ “Personal”, *Auckland Star*, 1 May 1902, p.3; “Canterbury”, *Otago Witness*, 7 May 1902, p.30; “Accidents and Fatalities” in *Wanganui Herald*, 2 May 1902, p.2.; “A Venerable Indian” in *Star*, 2 May 1902, p.5.; (untitled) *Poverty Bay Herald*, 6 May 1902, p.4.; “Our Letter Home”, *New Zealand Herald*, 16 May 1902, p.1.; Abdullah Drury, “Mostly Harmless: A Short History of the First Century of Muslim Settlement in New Zealand”, *Waikato Islamic Studies Review* (March 2015), Vol 1, No 1, pp.30-32.

⁴ See “Butterdean” from Kashmir: “Resident Magistrate’s Court”, *Otago Daily Times*, 24 June 1875, p. 3.

New Zealand and Fiji. Evidently, they organised passages for prospective emigrants and collected a commission from shipping companies for their services.⁵

The Punjabi Muslims who came to New Zealand did not hail from any one particular village, town or locale, or restrict themselves to settling down in any one particular area together once here. This is markedly different from the Punjabi Sikhs who often came from the same villages and frequently worked together, congregated together for religious festivals, dairy farmed together at Whitikahu in the Waikato region and formed Indian ethnic associations together. The Punjabi Muslims do not appear to stem from one particular social class or caste, nor did they restrict themselves to any one line of work once settled. They came from all over the Punjab province and although many ended up in the North Island for economic reasons, in fact they were fairly spread out and disparate. It is interesting to observe that almost all of the Punjabi Muslim migrants were male and many married local women, again in contradistinction from the Punjabi Sikhs who were often from the landowning castes and who brought out women folk from the homeland at great expense. It is also interesting that although some Muslims were involved on the margins of Indian associations, most were not. Clearly ethnic, religious and linguistic ties were not enough to bind this small group closely together within New Zealand during this period.

It is also important to note that firstly there remain many Punjabi Muslim settlers for whom little information can be found. For example, Mohamed Ishaq, better known as George Sayed, is a very elusive character to research. Born around 1896 he evidently was an accountant, married a Pakeha lady named Ellenor in 1919 and settled in Napier. Sayed / Ishaq features in McLeod's book *Punjab to Aotearoa* with his wife and blond grandchildren. He died on 9 February 1971 and was buried in the Wharerangi Cemetery

⁵ William H. McLeod, *Punjabis in New Zealand* (Amritsar, 1986), p.70.

in Napier.⁶ His appears to be an intriguing tale of assimilation and yet startlingly little data is available. Secondly the reader must bear in mind that there were many transient Punjabi Muslims who lived and worked in New Zealand during this period, but who ultimately did not stay here. For example, Sher Mohammed arrived in New Zealand from the Punjab in 1918, according to newspapers, aged 32.⁷ He collected bottles for recycling from a shop and dwelling in Southwark Street, Christchurch, in the 1920s, and obtained a license to trade as a dealer.⁸ He was in court in 1925 charged with assaulting two Hindu gentlemen but the case was dismissed.⁹ Sher Mohammed then sailed off to Australia in 1930 never to return.¹⁰

In approaching academic literature on early Punjabi Muslim settlement in New Zealand there are three scholars of particular note. Firstly, there are the highly influential works of Dr William Sheppard of Canterbury University, who has written extensively about the wider Muslim community in several academic articles, chapters and papers. Dr Sheppard's utilisation of investigative and hermeneutical practices, and his rigorous employment of the best social science and religious studies methodologies has distinguished his writing style and thus contributed enormously to our current comprehension of the New Zealand Islamic congregation.¹¹ Also significant is the

⁶ William H. McLeod, and S. S. Bhullar, *Punjab to Aotearoa: migration and settlement of Punjabis in New Zealand 1890–1990*, New Zealand Indian Association Country Section (Inc.), Hamilton: 1990, p.62.

⁷ "New Zealand, Archives New Zealand, Passenger Lists, 1839-1973", Sher Mohamed, 1918, National Archives, Wellington, p.69.

⁸ "Threw Bottle", *NZ Truth*, 31 January 1929, p.5.

⁹ "The Courts", *Press*, 19 February 1925, p.5.

¹⁰ "New Zealand, Archives New Zealand, Passenger Lists, 1839-1973," Sher Mohammad, 1930; National Archives, Wellington, p.73.

¹¹ William Sheppard, "The Muslim Community in New Zealand", Chapter 5, *Indians in New Zealand*, ed. K.N. Tiwari (Wellington, N.Z.: Price-Milburn, 1980); William Sheppard, "Muslims in New Zealand", *The Journal of the Institute of Muslim Minority Affairs* (Riyadh), 4/1-2 (1982), pp.60–81.; William Sheppard, "The Islamic Contribution: Muslims in New Zealand", in *Religion in New Zealand Society*, Second Edition, eds Brian Colless & Peter Donovan (Palmerston North, New Zealand: Dunmore Press, 1985), pp.181–213.; William Sheppard, "Australia and New Zealand", *The Oxford Encyclopaedia of the Modern Islamic World* (New York and Oxford: Oxford University Press, 1995), Vol. 1, pp.154–5.; William Sheppard, "Muslims in New Zealand", *The Journal of the Institute of Muslim Minority Affairs* (Riyadh), 16/2 (1996), pp.211–232.; William Sheppard, "Australia and New Zealand", authored jointly with Michael Humphrey, in *Islam Outside the Arab World*, eds. David Westerlund and Ingvar Svanberg, Surrey: Curzon Press, 1999, pp.278–294.; William Sheppard, "Muslims in New Zealand", *Muslim Minorities in the West: Visible and Invisible*, eds., Yvonne Y. Haddad and Jane I. Smith, Walnut Creek, etc.: Altamira Press, 2002, chapter 13.; William Sheppard, "New Zealand's Muslims And Their

academic literature of Associate Professor Jacqueline V. Leckie, of Otago University. In addition to several helpful papers, she is the author of the definitive *Indian Settlers. The Story of a New Zealand South Asian Community*.

However, the most important influential corpus on Punjabi migration to New Zealand in general is that of the late Professor William Hewat McLeod (1932 – 2009) of Otago University. McLeod had a background in the Presbyterian church and his initial interest in Punjabi folk was sparked by time served at a Mission there where he learnt the Hindi and Punjabi languages. He was a popular and prolific writer who produced a plethora of articles and books on Sikh identity, Sikh history and Sikh theology. Of especial interest to us here is his 1986 *Punjabis in New Zealand: A history of Punjabi migration, 1890–1940* published by the Guru Nanak Dev University in Amritsar, and also the *Punjab to Aotearoa: migration and settlement of Punjabis in New Zealand 1890–1990*, which he wrote in collaboration with S.S. Bhullar. Although squarely focused on Sikh migration, both these titles offer the reader extremely useful glimpses of several Punjabi Muslim settlers who interacted with other Punjabi immigrants.

All these scholars, however, have focused away from our target here and even McLeod admits to having a solitary Muslim informant¹². Overall the tendency has been to consider the Punjabi Muslims as an after-thought or adjutant to more generalised research on the wider Punjabi and / or Indian communities, or as a component of broader Islamic focused studies.

Organisations”, *New Zealand Journal of Asian Studies* 8, 2 (December, 2006), pp.8–44.; William Sheppard, “Introduction: Muslims In New Zealand”, *New Zealand Journal of Asian Studies* 8, 2 (December, 2006), pp.1–7.

¹² William H. McLeod, *Punjabis in New Zealand*, p.136.

Suliman Hakim

Ibrahim Wali Mohamed Suliman (1885/86-1941), or Abraham Walley Mahomed Salaman in English, is probably the best known and most significant Punjabi Muslim settler of whom we have in fact a lot of information, although much of it remains controversial. Salaman was a prominent merchant and herbalist from the Punjab who was remembered by an earlier generation of Indian migrants as “Suliman Hakim” (Suliman the wise). Interest in his remarkable biography revived after the 1999 television series “Epitaph” devoted an episode to his curious biography and a chapter was written for a book accompanying the programme.¹³

Salaman was born in Amritsar around 1885 or 1886 to Futha-Din and Ayesha Karrambox. “The family were reputed to be wealthy textile merchants and manufacturers.”¹⁴ Evidently, he received little education and left home when he was 14 years old to explore the world.¹⁵ He seems to have arrived in New Zealand either around 1903 or 1913, certainly making him one of the earlier Punjabi Muslim settlers here. In a 1918 court case he claimed to have studied aniline dyes in Germany before entering New Zealand. Salaman worked as a silk merchant and draper on Ponsonby Road in Auckland in 1914 before moving to Wellington in 1915 where he manufactured aniline dyes for khaki army uniforms during World War One.

On 23 December 1915 he married Aberdeen-born spinster Marjory Cardno and their only child Ayesha was born in April 1917. The marriage was not happy, and the couple separated in September 1917. “As to his wife’s habits, witness gave his version of her

¹³ Graeme Lay, “Salaman’s Tomb”, Paul Gittens, *Epitaph II*, Random House New Zealand Ltd. 2001, pp.200-207.

¹⁴ Graeme Lay, “Salaman’s Tomb”, Paul Gittens, *Epitaph II*, Random House New Zealand Ltd. 2001, p.201.

¹⁵ Louise Buckingham, “Salaman, Abraham Walley Mahomed”, *The Dictionary of New Zealand Biography*, Volume 4, 1921-1940, Auckland, 1998, pp. 447-448.

ways, and declared that an Indian named Khan had told him that his wife had been out with him in the Basin Reserve at ten o'clock at night."¹⁶

By 1919 Abraham Salaman had returned to Auckland whilst the wife and child remained in Wellington. In August he commenced divorce proceedings and on 18 October 1921 a *decree nisi* was pronounced in his favour.¹⁷ The couple legally divorced in 1922 and he maintained custody of the daughter after an ugly and much publicized court case.¹⁸ In court Salaman asserted that he would raise the girl Christian "since it was the custom in India, in such cases, that the boys should be brought up in the Hindu faith and the girls in the Christian faith."¹⁹

On 23 February 1924 Abraham Salaman married Gladys Louisa Richards at his home in Arawa Street. They were to have two daughters in 1925 and 1928. In Auckland Salaman set up a herbalist shop on Khyber Pass Road. It seems he had absolutely no qualifications and when questioned in court replied: "I know, that's all." Salaman's purportedly herbal remedies were popular and his enterprise flourished. "His medicine bottles bore the words 'Salaman Atah' ('atah' means doctor), and outside his premises was a sign bearing the title 'Indian Herb Atah.'"²⁰ Evidently, he wore a chemist's white lab coat and a doctor's stethoscope for appearances and, unable to obtain all the Indian herbs he required, mixed various generic stock medicines.

However, two of his patients died. In December 1924 a 30-year-old woman, Agnes Wright Stewart, sued Salaman for negligence and for failure to exercise reasonable skill and care in his treatment. She claimed £2,284 in damages. She had developed exophthalmic goitre in February 1923 and friends had advised her that Salaman could

¹⁶ "Their Troubles", *NZ Truth*, 11 May 1918, p.5.

¹⁷ "Habeas Corpus", *Evening Post*, 17 December 1921, p.6.

¹⁸ "Dispute Over A Child", *New Zealand Herald*, 16 May 1922, p.6.

¹⁹ "An Eurasian Child", *Evening Post*, 27 March 1922, p.10.

²⁰ Graeme Lay, "Salaman's Tomb", Paul Gittens, *Epitaph II*, Random House New Zealand Ltd. 2001, p. 201.

cure her without surgery. His official examination consisted of placing a stethoscope to her neck where upon he pronounced that her kidneys and lungs were the problem and prescribed several of his own herbal remedies. Almost a year later it transpired that the basis of his treatment was opium. In fact, only 15 of the 26 medicines he had prescribed were in any way herbal. His patient was so weak she had to be carried into court on a stretcher to give evidence, further dramatising the case for the newspapers. The Indian herbalist was found guilty of falsely pretending to be a doctor and sentenced to a month's imprisonment at Mount Eden. Miss Agnes Stewart was awarded £600 in damages, although she died two weeks later.²¹

Two years later Salaman petitioned Parliament for compensation and appealed for an inquiry into various prosecutions instituted against him, but nothing came of it. His wife Gladys had developed tuberculosis after the birth of his third daughter Valerie Amir-Begum in April 1928, and on 12 November that year his second daughter Amtul-Hafiz died from diphtheria in Nelson, aged two years and 11 months.²² She was buried in the Wesleyan section of the Wakapuaka cemetery.²³ His wife Gladys died two years later.

In 1930 Salaman relocated to the burgeoning provincial centre of New Plymouth. His herbal treatments were evidently very popular, for his daughter remembers a waiting room regularly crowded with patients, some of who came to the town from as far away as the Wairarapa district. However, within months he was enmeshed in yet another court case when a six-year-old named Lyall Christie from Fordell, died in a diabetic coma caused by the withdrawal of insulin on Salaman's advice. On 25 November a jury found him guilty of manslaughter, with a recommendation to mercy, noting that the child's

²¹ "Indian "Herbalist" In Court", *NZ Truth*, 6 December 1924, p.5; "Is He A Quack?", *Hawera & Normanby Star*, 12 December 1924, p.5; "Death of Miss Stewart", *The Evening Post*, 16 December 1924, p.6; "Salaman Sentenced", *The Auckland Star*, 16 December 1924, p.5; "Salaman, The Swindler", *Hawera & Normanby Star*, 18 December 1924, p.7.

²² Graeme Lay, "Salaman's Tomb", Paul Gittens, *Epitaph II*, Random House New Zealand Ltd. 2001, p.202.

²³ "Funeral Notice", *Nelson Evening Mail*, 13 November 1928, p.2; "Deaths", *Auckland Star*, 17 November 1928, p. 1.

mother did not hold him to blame. Justice Michael Myers declared that he could not ignore the fact that this was not an isolated case and stated, “The prisoner is plainly a charlatan”. Salaman was sentenced to 12 months’ imprisonment with hard labour.²⁴

The good folk of Taranaki were incensed, and many voiced the opinion that the real issue was the medical “establishment” taking aim at an alternative option. Former members of the jury were threatened and appealed for police protection.²⁵ A public meeting was convened in New Plymouth and approximately 500 attended. Opinions were expressed, and letters of appreciation read aloud. A petition was organised. Residents also convened meetings at Moturoa and Eltham, and one crowded meeting at Woodville resolved to approach the acting prime minister to secure Salaman’s immediate release. In January 1931 a deputation representing folk from Taranaki, Manawatu, Hawkes Bay and Wairarapa met with the Justice Minister. Cabinet took no action and Salaman served his time in gaol.²⁶

An understandably unhappy Abraham Salaman decided to return to India after 30 years and built himself a house and clinic at Amritsar. He returned to New Plymouth briefly however and married 24-year-old Annie Esther Perreaux on 22 March 1933. Together the family set up shop in India, but it seems the children and the new wife could not adjust to their new environment. By the end of 1933 he sold his properties in India and returned again to New Plymouth where he resumed his successful business. “People who believed in his abilities continued to beat a path to his door and he became a rich man. He drove a 12-cylinder, maroon-coloured Lincoln Zephyr car around Taranaki.”²⁷

²⁴ "A Charlatan", *Auckland Star*, 25 November 1930, p.8.

²⁵ "Jury men Abused", *Auckland Star*, 4 December 1930, p.2.

²⁶ "Sentence To Stand", *Auckland Star*, 2 February 1931, p.10.

²⁷ Graeme Lay, "Salaman's Tomb", Paul Gittens, *Epitaph II*, Random House New Zealand Ltd. 2001, p. 203.

In 1940 Salaman became ill and consulted a real health professional, Dr Davies. Salaman organised his Will, gifted some land (the Salaman Reserve) to the City Council, and had a small mini-Mughal style tomb constructed specially for himself at the historic Te Henui cemetery. Built by Jones & Sandford, the £2,500 tomb occupied 10 plots and required special permission: it was a large square structure with heavy wooden doors decorated with star and moon motifs, heavy brass gates, and a brass star and crescent moon on top of a blue dome with small mini-minarets in each corner. The inside features a terrazzo floor, walls lined with a gate vitrolite. Three small steps descend into “a green-walled interior lit by green glass plinths set into walls, which were made of green marble tiles.”²⁸ Two beige clay urns with “BISMULLAH” engraved on their rims were placed inside and the inscription above the door carried Salaman's name in full and the date he died.²⁹

Salaman died aged 59 on 8 February 1941 at his home in Gill Street of cirrhosis of the liver. His body was embalmed and lay in state for a week, robed in a silver-patterned green wrap over a white satin gown, and watched night and day by his family and friends. Newspapers reported his obituary very generously, omitting any mention of his criminal convictions completely. On 15 February more than 2,000 people, including the Mayor of New Plymouth, gathered for the funeral rites conducted in English and Arabic by a Presbyterian Reverend J. D. McLennan Wilson at the cemetery to pay their last tributes. Reverend Wilson said: “It might seem strange to some of you - a Christian minister conducting the funeral of a Mohammedan but no clergyman of his faith is in New Zealand and we should like to think that were we to die in some land of Islam, similarly situated, there might be found some Sheikh of their religion who would give us a Christian burial.”³⁰ Green candles in massive brass candlesticks were lit in the chapel and the tomb,

²⁸ Graeme Lay, “Salaman’s Tomb”, Paul Gittens, *Epitaph II*, Random House New Zealand Ltd. 2001, p. 205.

²⁹ Graeme Lay, “Salaman’s Tomb”, Paul Gittens, *Epitaph II*, Random House New Zealand Ltd. 2001, p. 204.

³⁰ “Buried in Own Faith”, *Evening Post*, 17 February 1941, p.4.

where the oak coffin was left inside draped with a hand-embroidered rug with a small copy of Rodwells English language translation of the Holy Quran atop.

The value of Salaman's estate was almost £8,000 and his final Will made numerous demands of his family: he directed that his children maintain his tomb in proper order.³¹

His widow carried on the herbal business and after marrying a Chinese immigrant named Kwong Simpson in 1943 traded as Salaman-Simpson until the early 1970s. Periodically vandals and thieves have struck Salaman's tomb: the brass star and moon have disappeared, and in 1992 the heavy bronze entrance gates were stolen.

Salaman's fate in the historical memory of the self-consciously devout section of the Islamic community has been largely benign if inaccurate. In 2001 a group of travelling Tabligh Jamaat visited the tomb and curiously an account was written for the Muslim community newspaper "Al Mujaddid". Not having taken the time to read or research the copious corpus available at any library on the subject matter, the report notes prosaically:

The coffin is not buried in the ground. We assume that it could be because he might have left a will suggesting that Muslims should bury him after proper Tajheez and Takfeen and Janazah Namaz. [...] It is a beautiful thought that this person [...] was making sure that he would be buried as a Muslim.³²

In any event they recited the *Surah Fatiha* (the opening chapter of the Quran) and a prayer for the departed soul. In the final analysis the tomb of Suliman Hakim remains a special monument to a unique Indian businessman remembered in Taranaki for his healing skills, his entrepreneurial acumen and his infamy.

Conclusions

³¹ "Moslem Rites", *Auckland Star*, 19 February 1941, p.10.

³² "Mohammed Islama Salama ???", *Al Mujaddid*, October 2001, p.12.

Traditional historical metanarratives and depictions of Punjabi Muslim settlers have tended to marginalize this distinct group and placed these individuals squarely on the periphery of other, larger groups – the broader Muslim community in its totality, or within accounts of the Indians and Punjabi Sikhs in particular. The aim of this article has been to briefly overview the history of one of the most well-known early Punjabi Muslim settlers from the 1890s to the 1970s with as much detail as manageable. His biography provides the reader with an excellent example of the various challenges confronted by Asian Muslim migrants at the time and these smaller narratives illustrate and flesh out a larger metanarrative. Certain features and issues rise immediately. McLeod observed:

From the report given by my only Muslim informant it is evident that traditional rituals were largely ignored by the few Punjabi Muslims who migrated to New Zealand. They obviously retained an awareness of their Muslim identity.³³

Clearly, they were motivated to settle in New Zealand by economic factors rather than pious ones. It is revealing that Salaman built himself a small mausoleum to be buried in rather than a mosque to pray. It is also revealing that he gave his children, from mixed marriages, Muslim names but apparently no instruction in the faith at all. It is a shame that we not have more insider views: The Hakim did not leave letters or a diary, and we must rely on newspaper articles (and his Will) to hear his own words. We must acknowledge that our perspective of this particular pioneer is often shaped by exterior factors and players and official documents prepared by others.

Nevertheless, the history of Punjabi Muslims in New Zealand offers critical and crucial insights into the wider viewpoints of both Indian migration and Islam in this country. I wanted to highlight the biography of this settler rather than particular tropes or themes for this period, because I think that his actual life exposes a great deal about the Muslim

³³ William H. McLeod, *Punjabis in New Zealand*, p.136.

cultural practices and religious priorities. Certainly, it can be argued that Salaman and other Punjabi Muslim pioneers laid the groundwork for later Punjabi Muslim immigrants who settled in New Zealand in the 1970s, such as Dr Khalid Rashid Sandhu of Wellington and Mansoor Ahmed Khawaja of Christchurch.

Obviously more research is necessary here as much of the History focusing on Muslims to date has systematically concentrated on either broader Asian perspectives in New Zealand or the period after the 1970s when Muslim associations were set up and a degree of official Islam was more loudly articulated. During the formative era I have studied there were no mosques, Islamic institutions or clergy, but there is evidence of individuals communicating their own personal definition of Muslim identity negotiated in line with their own objectives, education and understanding of the religion.

In many respects the early Punjabi Muslim settlers are an excellent microcosm of the wider immigrant Muslim experience of the period who demonstrate that a fuller understanding of history necessitates not only a degree of healthy scepticism towards stereotypes and received truths, but also a profound sensitivity to the complexity of human experience. Today the Islamic minority in New Zealand is demographically very diverse and in the last analysis of these lengthy historical excursions and reviews one can only hope that the Punjabi Muslim community will continue to contribute to New Zealand.

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