2-1-2015

The persistence of the caliphate debate in Egyptian legal thought: Historical analysis from 1925 to 2014

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A Thesis Submitted to the

Department of Law

in partial fulfillment of the requirements for the LL.M. Degree in International and Comparative Law

By

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ACKNOWLEDGMENTS

I would like to thank Dr. Amr for encouraging my research and suggesting useful sources. I would like to thank so much Diana, the director of the Legal English Training unit for all her support and advices since I started my Masters. A special thanks to my family, my father for our discussion of my thesis, my mother for her support and my husband for being very kind and supportive. Also I would like to thank my friend Mona Alroby for supporting me in writing my thesis, Sally Yosry for being very helpful all the time and finally Sue ellen for being a great, supportive and helpful friend.

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ABSTRACT

In the early centuries of Islam, the term caliph was referred to the highest leader of the Muslim community. He had two roles; firstly as a ruler practicing the roles of the Prophet and secondly as a religious leader leading the communal prayers.[1] The Caliphate has appeared for fourteen centuries and was abolished by Mustafa Kemal Atātūrk in 1924. Although Muslims have been without caliph for ninety years, heated controversy on the restoration of the Caliphate has been debated among Egyptians since 1920s until 2015. This thesis aims to answer the caliphate question," is the Caliphate obligatory in *Shari'a*?" by conducting a historical analysis of the views of six *sunni* scholars and the group of Islam State of Iraq and Syria (ISIS) on the caliphate from 1920s to 2014. Two of the six sunni scholars, 'Alī 'Abdal Rāziq and Nasr Hāmyd Abū Zayd argued that the Caliphate had no foundations neither in the *Qur'an* nor *Sunna*. The other *sunni* scholars, 'Abdal -Rāziq al-Sanhūrī, Muhammad 'Imāra, Hasan al-Banā, Ibn Taymiyya and ISIS believed in the obligation of the Caliphate in *Shari'a*.

[1] C.E BOSWORTH, KHALIFA 948 (2nd ed.1960).

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I. Introduction:

Will the Caliphate be reestablished in 2015 after ninety years following its abolishment by Mustafa Kemal Atātūrk? In June 2014, on the first day of the month of Ramadan, the leaders of the Islamic state of Iraq and Syria (ISIS) proclaimed that the Caliphate had been reestablished and declared Abū Bakr Al- Baghdādī is the caliph of Muslims.[2]The declaration of the establishment of the Caliphate by ISIS led to heated debate and concern worldwide. President Obama believes that ISIS is dangerous and a threat to the world; he has promised Americans to face this group through a well counter-terrorism plan.[3] There were other reactions. More than 120 Muslim Leaders and scholars signed an open letter issued on Wednesday September 2014, addressed to al- Baghdādī, criticizing ISIS's actions and ideology based on the *Qur'an*. They argue that the establishment of the Islamic Caliphate and practices are illegitimate in Islam.[4] In addition, Ahmed al-Tayeb, the current Imam of *al-Azhar* argued that ISIS's actions of killing innocent people, demolishing mosques and causing violence made by ISIS are against Islam.[5] The Caliphate has raised considerable debate in 2014; this is not the first time the issue has been raised. Since the 1920s, disagreement on the obligation of the Caliphate has been debated among Egyptians. No decision has yet been taken by *al-Azhar* regarding whether the Caliphate is an obligatory injunction, or *Fard Wāgeb,* in *Shari a*. After the publication of "*Al Khilāfa* wa *Solta*t *al- Umma*" in 1924, which calls for the separation between the state and the Caliphate, [6] and after the abolishment of the Caliphate in Turkey in 1924, 'Alī 'Abd al-Rāziq, published his book "*Al-Islām wa Uṣūl al-Ḥukm*" in 1925 discussing his points of view regarding the reasons why the Caliphate is not obligatory in *Shari 'a*. At that time Rāziq faced a lot of criticism because of his book. By decision of the body of the '*ulama* of *al-Azhar*, Rāziq was dismissed from the body of the '*ulama* of *al-Azhar* and was dismissed from his position as a judge in the *Shari 'a* Courts.[7]After the publication of Rāziq's book, several authors decided to respond to Rāziq by writing articles criticizing his arguments or by writing books to insure the obligation of the Caliphate in *Shari 'a*. For example, Rashīd Ridā published an article in *al-Manār* arguing that Rāziq's book was a new effort to abolish the Caliphate and mislead the Muslims. Additionally, Rashid Ridā mentioned that the '*ulama* would be responsible of the entire *umma* if they did not react to the book.[8] When the '*ulama* began to take action against Rāziq, Ridā was assured that he was the first to push them against Rāziq in the articles he published in *al-Manār and* other journals like *al-Liwā'* and *al-Akhbār.*[9] Moreover, ten pages

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[2] 'Adel Shabhūn, Kheta Amneya 'khskariya limowāghat Mashro3 Dakh'sh *or Military Security Plan to face ISIS's Caliphate Project,* AL-AHRāM, June 10, 2014, http://digital.ahram.org.eg/Policy.aspx?Serial=1636753 .

[3] TRANSCRIPT: PRESIDENT OBAMA'S SPEECH ON COMBATING ISIS AND TERRORISIM (Sep. 11, 2014), http://edition.cnn.com/2014/09/10/politics/transcript-obama-syria-isis-speech/.

[4] OPEN LETTER TO Al-BAGHDADI (Sep. 11, 2014), http://lettertobaghdadi.com/index.php.

[5] Lo'ay 'Ali, Nanshor arā' Ahl Al-Sunna fī Tanzīm Dakh'sh *or Publishing the Opinions of Sunni Scholars on ISIS*, AL- YAWM AL-SāBA', Sep. 1, 2014.

[6]. NASR HāMYD ABū ZAYD, AL-KHILāFA WA SOLTAT Al UMMA 29 (2d ed. 1995).

[7] 'ALī 'ABD AL-RāZIQ, AL-ISLāM WA USūL AL-ḤUKM DIRāSA WA WATHā'IQ 22 (2d ed. 1988).

[8] Rashīd Ridā, *AL-MANāR*, 100-104.

[9] Rashīd Ridā, *AL-MANāR* 212.

of ‘Abdel al-Rāziq Sanhūrī’s book “*Fiqh Al Khilāfa wa Tataworhā*” were criticized Rāziq’s arguments. And of course, all *al-Azhar* scholars were against Rāziq’s opinion and were certain of the necessity of the Caliphate in Shari ‘a. Lastly, the Salafist press participated in this attack against Rāziq; the Salafist members distributed free pamphlets discussing *Rāziq* ‘s judgment by *al-Azhar*.[10] Hence, the disagreements among Egyptians in the 1920s regarding this issue were well-known and public.

If we leave the 1920s and focus on the period after the 25th January revolution in 2011, we see the same debate. Although the caliph position was abolished, since no decision has yet been taken by *al-Azhar* scholars regarding whether or not the Caliphate is obligatory in *Shari ‘a*. The Muslim Brotherhood and the Salafists insist on the necessity of the Caliphate because it is one of the obligations in *Shari ‘a*. For example, Yasser Borhāmī, a Salafist preacher, said the Caliphate is obligatory in *Shari ‘a* and every Muslim has to join the entire Islamic group which is calling for the establishment of the Caliphate.[11] Also, several of the members of the Muslim Brotherhood and their general guide Mohamed Badī’ have called for the creation of the Caliphate; Badī’ expressed its urgency. He said the reestablishment of the Caliphate is important because it is one of the goals recognized by Imam Hasan al-Banā.[12] Hence the debate continues unabated. Currently there is disagreement between the liberals, secularist, leftist and the rights, who do not want to see establishment of the Caliphate, and the Islamic group, who are calling for its creation.[13]
It is important to answer the Caliphate question to put an end of the heated debate by the Arabs and scholars regarding this issue. If we take a look over the Islamic history, we see the Caliphate has caused controversy between Muslims in every era. It is hard to take the answer of the question from *al-Azhar* as it has a very contracting position. In 1925, it insured the obligation of the Caliphate in *Shari ‘a*, and dismissed Rāziq from the body of ‘*ulama*. Then in 1945, once again it rewarded Rāziq his certificate ‘*ālim* and reinstated him in the Council of ‘*ulama.* The position of *al-Azhar* is confusing in that it re-gave Rāziq his certificate. One could argue that *al-Azhar* might reject its first position and take a new view on the Caliphate, but it is yet to be claimed.

This paper argues that the Caliphate has no foundation in the Prophetic government and the Qur’an. It tackles the issue that the Caliphate was harmful for Muslims as it did not help Muslims and Islam to be stabilized. It argues that ISIS’s declaration of the Caliphate is invalid. The paper ends with a discussion proving that implementing *Shari‘a* does depend on the establishment of the Caliphate and the Islamic government is a civil government.

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[10] *Supra* note 7 at, 9.
[11] Yasser Borhāmī, AL-KHILāFAH AL-ISLāMIYYA BAYN AL-HAKīKA WA AL-KHAYāL (Augest 8, 2014), http://www.islamion.com/post.php?post=16812.
[12] Muhammed Hagag, Badi’L Al-Khilāfah Al-Rāsheda Wa Ihyā’ Dawlat Al-Islām Wa Al-Shari’a Hadaf Al-Ikhwān *or Badi’: The Rightly Guided Caliphs and Revving the Islamic State and Shair’a is the goal of the Muslim Brotherhood*, AL- YAWM AL- SāBA’, March 3, 2013.
[13] Muhammed Hagag, Badi’L Al-Khilāfah Al-Rāsheda Wa Ihyā’ Dawlat Al-Islām Wa Al-Shari’a Hadaf Al-Ikhwān *or Badi’: The Rightly Guided Caliphs and Revving the Islamic State and Shair’a is the goal of the Muslim Brotherhood*, AL- YAWM AL- SāBA’, March 3, 2013.

In this paper ‘Alī ‘Abd al-Rāziq and Nasr Hāmyd Abū Zayd were chosen as both of them are liberal, Islamist and have the same position on the Caliphate. Additionally, both scholars faced a lot of harm because of publishing books arguing their opinions relating to Islam and their books led to heated discussions amongst scholars. On the one hand, as I mentioned above the body of the ‘*ulama* of *al-Azhar*, dismissed Rāziq from the body of the ‘*ulama* and from his position as a judge in the *Shari ‘a* Courts because his ideas contained in his book “*Al-Islām wa Uṣūl al-Ḥukm*”. On the other hand, in 1992 Abū Zayd presented several academic publications like Imām Shāfi‘ī, the Founding of Medieval Ideology and the Critique of Religious Discourse to the Standing Committee of Academic Tenure and Promotion for advancement at Cairo University. Because of his academic publication, the Critique of Religious Discourse, arguing his views on the *Qur’an*, Abū Zayd was refused tenure at Cairo University and was accused of being apostate. In addition, a case was filed against him before the Personal Status Court asking for the divorce of Abū Zayd from his wife Dr. Ibthāl Yūnis on the grounds that a Muslim woman cannot marry an apostate. In 1994 the Court rejected the case because the plaintiff did not have any personal interest in the matter. However, in 1995 the Cairo Appeals Court reversed the decision and declared that the marriage of Abū Zayd and Dr. Ibthāl Yūnis was null.

‘Abdal -Rāziq al-Sanhūrī, Muhammad ‘Imāra, Hasan al-Banā, Ibn Taymiyya and ISIS were chosen as all of them believed that the Caliphate is positive as it unites Muslims and it implements *Shari’a*. ‘Abdal -Rāziq al-Sanhūrī was chosen because although he was a leftist, his ideas on the Caliphate were like the Islamists. Additionally, he published his dissertation *Le Califat, évolution vers une société des nations oriental* in 1926 after the publishing of Rāziq’s book which included ten pages that respond to Rāziq’s ideas.

Muhammad ‘Imāra was chosen to highlight a contradictory position to Rāziq’s thinking and because of his intellectual evolution. In his youth, ‘Imāra was Marxist and fought against imperialism, which incorporated secular leftist thinking. In the 1990s he turned against Marxism and became an Islamist.

Hasan al-Banā was chosen to include his ideology on the Caliphate in order to understand the Muslim Brotherhood’s ideology on the issue as the majority of them are inspired by him. Ibn Taymiyya was also chosen as a considerable amount of Salafist thinking is a reference to Ibn Taymiyya. Finally, ISIS was chosen to show that until 2015 the Caliphate debate continues unabated.

II. The Caliphate, *Shari 'a* Sources, and Injunctions

This chapter begins with a general idea about the Caliphate followed by a definition for each source of *Shari 'a*, the *Qur'an*, *Sunna*, *ijma*', or consensus and *qyās* or analogy and types of injunctions in Shari 'a *Fard 'Etiqaadī* and *Fard'Amalī*. It is necessary to provide an explanation for *Shari 'a* sources and injunctions before presenting the ideas of Rāziq, Sanhūrī and Abū Zayd as all of them discuss the *Shari 'a* sources.

A. Muslims understanding of the Caliphate:

According to Muslims, the Caliphate is the person who has the authority of the caliph becomes the Prophet's successor.[14] The caliph represents the power of God and God's shadow on Earth. [15] The caliph has the same authority of God and the Prophet.[16] According to the *Sunnis*, there are several conditions that must be present in the caliph like; he has to be a Muslim, free, healthy, brave, fair and *Qurayshī*.

B. Sources of *Shari 'a*:

The word *Shari 'a* means in Arabic "the road to the watering place".[17] *Shari'a* involves religious, ordinances and secular norms. There are four sources of *Shari 'a*: the *Qur'an*, *Sunna*, *ijmā',* or consensus*,* and *Qyās* or analogy. The primary sources of *Shari 'a* are the *Quran* and *Sunna* and the secondary sources are the *ijmā'* and *Qyās.* The *Qur'an* is the first source of *Shari 'a* and considered to be the word of God, and has 5 features: "It was revealed to the Prophet; it was put in writing; it is all mutawātir, or Hadiths; it is speech of God; and it is recited in prayer*."*[18]

The second source of *Shari 'a* is the *Sunna*, which means a way of behavior for life.[19] In the legal context, Sunna refers to the behavior, actions and the saying of the Prophet."[20] In *Shari 'a* if there is a conflict between the *Qur'an* and the *Sunna*, the Qur'an's authority is higher than the Sunna.[21]

The third source of *Shari 'a* is the *ijmā'*, which is the consensus of the scholars of a certain era on a certain opinion. Another definition of *ijmā'* is "the unanimous agreement of the Mujtāhidūn, or Islamic Jurists, of the Muslim community of any period following the demise of the Prophet Muhammad on any matter."[22] (A *mujtahid)* is a well-educated scholar in *Shari 'a*.[23] Unlike the *Qur'an* and the *Sunna* which are considered divine, the *ijmā'* is not divine.[24] *Ijmā'* cannot be inconsistent with the *Qur'an* and the *Sunna*.[25]

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[14] *Supra note* 7 at 113-114.
[15] *Id*.
[16] *Id*.
[17] R Landeawa, ISLAM AND YHE ARABS 141 (1958).
[18] MUHAMMAD HASHIM KAM'ALĪ , PRINCIPLES OF ISLAMIC JURISPRUDENCE 16 (3d ed. 2003).
[19] C. G. WEERAMANTRY, ISLAMIC JURISPRUDENCE: AN INTERNATIONAL PERSPECTIVE 34 (1988).
[20] M. CHERIF BASSIONI & GAMAL M. BADR, *The Shari'a: sources, Interpretation, and RULE- Making,* 135, 148 (2002).
[21] *Supra* note 19, at 34.
[22] *Supra* note 18, at 16.
[23] *Supra* note 19, at 41.
[24] *Supra* note 18, at, 16.
[25] *Supra* note 19, at 34.

Finally, the fourth source of *Shari 'a* is the *Qyās*.[26] Muslims scholars use *Qyās* only in case if the *Qur'an* and the *Sunna* are silent in a certain issue.[27] The *Qyās* cannot modify the law because every individual has a personal belief in the content of law.[28]

C. Types of injunctions:

1. In *Shari 'a*, there are two types of injunctions. *Fard* obligatory or *Fard E'tiqādī* which is taken from *Shari 'a* and verified by certain evidence; one example of the obligatory acts is performing the five daily prayers. And *Fard 'Amalī* which is not proven by *Shari 'a* using a certain arguments but is necessary in view of the consensus of "*Mujtahids*" (Islamic jurists) based on reason. One example of the *Fard 'Amalī,* if the *Qur'an* and *Sunna* do not state the obligation of the Caliphate, and Muslim jurists agree its necessity based on reasoning, so the act would be indefinite obligatory. There are two kinds of *Fard 'Amalī*.

The First, *Fard 'Ain,* is the duty that has to be executed by every Muslim like the five daily prayers. The second, *Fard Kifāyah* is "a general duty of believers whose performance by only some Muslims will absolve all and if not performed by even a single believer then all will be held responsible for the sin like washing the dead and funeral prayer."[29] This means that *Fard Kifāyah* is an obligation that must be executed by all Muslims. If some of them execute it, the other Muslims will not be punished.

After the general idea of the Caliphate, sources and injunctions of *Shari 'a*, a historical overview of the Caliphate starting from the death of the Prophet to the Ottoman Caliphate is presented. It includes the rise and fall of all the Caliphates starting from the rightly guided caliphs to the Ottoman Caliphate.

[26] *Supra* note 18, at 16.
[27] *Id*.
[28] *Id*.

[29] TERMINOLOGY OF SHARI'AH'S COMMANDS, http://www.islamicacademy.org/html/Books/GLIS/tsc.htm.

III. Rise and fall of the *Sunni* Caliphate:

The rise and fall of the Sunni Caliphate was marked by expanding the Islamic territory and political fragmentation which started from the third caliph 'uthmān. This chapter begins with a discussion of the rightly guided caliphs and ends with the last Caliphate, the Ottoman Caliphate. This shows how the Caliphate started with allegiance the caliphs and ended with inheriting the Caliphate.

The Caliphate has been divided into three eras: the rightly guided caliphs era extending from 632 to 661, the Umayyad Empire from 661 to750 and the Abbasid Empire from 750 to 1258. [30]

A. Rightly guided caliphs (632-661)

The rightly guided caliphs began in 632 and ended in 661 has been considered as *Khilāfa al-nubuwwa* or the ideal government as Ibn Taymiyya mentioned. The rightly guided caliphs began in 632; the first four caliphs were the companions of the Prophet.[31] Muslims believe that the Prophet died without choosing a successor.[32]After a period of doubt, the Prophet's companions and elders of Medina selected Abū Bakr to be the first caliph.[33] Abū Bakr, as a caliph, was the political and military leader of the community. [34] Before giving him the title of caliph, Prophet Muhammad picked him to lead the prayer in his absence.[35] After resolving the question of the Caliphate, Abū Bakr wanted to unite Muslim rule in Arabia. However, after the death of the Prophet, several tribes rebelled. Several tribal chiefs said that their fidelity was based on a political pact with Medina that stopped with the Prophet's death.[36] The independence of the tribes threated the unity of the new Islamic state.[37] At that time, Abū Bakr was convinced that the unity of the community was based on the strong relationship between faith and politics. Thus, he undertook a series of battles that were called the wars of apostasy or "*ridda*".

Abū Bakr's successor was 'Umar Ibn al-khatāb, who had a new title which is *amīr al-muminin*.[38] 'Umar was the one who started the great period of expansion and victory; he was one of the best military leaders of his time. He also created a new system for the choice of his successor or the next caliph.[39] Before his death, he appointed a committee in order to choose his successor. After consultation, the committee chose 'Uthmān Ibn 'Affān,[40] consequently, the first three caliphs were chosen by the *Quraysh*.[41]

'Uthmān's family was considered the strongest party against the Prophet Muhammed. Several of the Mednian Elite, who supported the Prophet, hated 'uthmān's succession to power and the increased

[30] JOHN EPOSITO, ISLAM: THE STRAIGHT PATH 37 (1988).
[31] THE RIGHTLY GUIDED CALIPHS, http://www.religionfacts.com/islam/history/caliphs.htm.
[32] *Supra* note 30, at 38.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] THE RIGHTLY GUIDED CALIPHS, http://www.religionfacts.com/islam/history/caliphs.htm.
[37] *Id*.
[38] *Id*.
[39] *Supra* note 30, at 38.
[40] *Supra* note, 31.
[41] *Supra* note, 30 at 39.

wealth of his family.[42] Although it was well-known during that time that 'Uthmān did not have the same skills of leadership as the previous caliphs, accusations that he was weak caliph and guilty of nepotism fueled intrigue. [43]In 656, 'Uthmān was assassinated by a group of rebels in Egypt and his murder was the first in a series of Muslim rebellions. [44]

'Alī was the cousin and son-in-law of the Prophet and the fourth caliph. Although 'Al*ī* did not rule for long time, the Caliphate during his time faced two civil wars *fitna* and trials. 'Alī''s authority was threatened by two opposition movements. [45]The first opposition movement was a group headed by the Prophet's widow, Aisha the daughter of Abū Bakr; the second opposition movement was challenged by the forces of Mu'áūya , the governor of Syria at that time and a relative of 'uthman.[46] 'Alī s failure to find and punish the killers of 'Uthmān became the main reason of both revolts.[47] Ali won the battle of Cammle against the coalition of Aisha, but he was killed during the war with Mu'áūya by Kharijites in 662. [48]

After 'Alī's murder, Mu'áūya succeeded as caliph, and moving his capital to Damascus. [49]With the creation of The Umayyad Caliphate, the Caliphate became an absolute monarchy.[50]

B. *Umayyad* Caliphate (661-750):

The righteous period was followed by the Umayyad Empire which was accused of depending on hereditary kingship. Unlike the first four caliphs who did not obtain power by coercion. They had been chosen by Muslims. Mu'áūya inherited the Caliphate to his son Yazīd as caliph before his death in 680.

The advent of the Umayyad authority expanded and centralized which transformed the Islamic community from being an Arab *shaykhdom* into an Islamic empire whose rulers relied on religion for legitimacy and the military for power and stability. [51]

Mu'áūya was the caliph from 661 to 680 and he lead the Umayyad era from 661 to 750.[52] During this time the capital was moved to Damascus.[53] Islamic territory extended quickly. From this new center, the Umayyads over "the entire Persian and half of the Roman (Byzantine) empire". [54]When Mu'áūya controlled the power, Islam had already spread to several countries such as Libya, Iraq and Egypt.[55] Furthermore, during the Umayyad Empire, Muslims also controlled many countries like Spain, Portugal

[42] *Supra* note 31.
[43] *Supra* note 30, at 39.
[44] *Supra* note 30, at 39
[45] *Supra* note 31.
[46] *Supra* note 30, at 39
[47] *Supra* note 30, at 39
[48] *Supra* note 30, at 39
[49] *Supra* note 31.
[50] *Supra* note 30, at 40.
[51] *Supra* note 30, at 42 (1988).
[52] *Id*.
[53] *Id*.
[54] *Id*.
[55] *Id*.

and Maghreb (North Africa).[56] Damascus became stronger imperial capital than it had been under Byzantine rule. [57]

In addition to the territory's expansion, Umayyad rulers developed a strong Arab empire.[58] Umayyad rulers amended the more advanced government, institutions, and bureaucracy of Byzantium to Arab Muslim needs; [59]furthermore, the language of government became Arabic as well as the lingua franca. [60]During the Umayyad Empire, Caliphs were the protectors of the faith and charged with extending the rule of Islam. [61]What made the Umayyad united and stabilized was the establishment of an Arab monarchy and reliance on Arab, in particular Syrian, warriors. [62]Contrary to the rightly guided caliphs who were elected, hereditary succession restricted the Caliphate to the Umayyad house. [63]This new practice became the excuse for later Muslim historians, writing under Abbasid patronage, to denounce Umayyad rule as kingship and thus un-Islamic.[64] In addition, Arab Muslims enjoyed special tax privileges that were applied on non-Arab Muslims and non-Muslims. [65]This practice became controversial among non-Arab Muslims *(maw*ālȳ*)* who considered their lesser status as a violation of Islamic equality. [66]Their alienation eventually helped to the downfall of the Umayyad Empire.[67] Despite all the accomplishments of the *Umayyad* rulers in the 18th century, (720), those anti-*Umayyad* spread. Anti-*Umayyad* included non-Arab Muslims (mawāly), Kharijites and Shī'ī , who considered the Umayyad as usurpers. [68]It also included Arab Muslims in Medina, Mecca, and Iraq, who disliked the privileged status of Syrian families and pious Muslims, Arab and non-Arab, who see that the life style of the Umayyad was unlike the Islamic way of life.[69] Opposition groups started for calling to the return to *Qur'an* and *Sunna*.[70] By 747, an opposition movement had begun considerable, with a great Shī'ī support rallied behind Abū Muslim, a freed Abbasid slave.[71] By 750, the *Umayyad* Empire had fallen, and Abū Abās, a descendant of the Prophet's uncle al-Abās, was declared to be the caliph.[72] After this event, Islam's capital was moved from Damascus to Baghdad.[73]

[56] *Id*.
[57] *Id*.
[58] *Id*.
[59] *Id*.
[60] *Id*.
[61] *Id*.
[62] *Id*.
[63] *Id*.
[64] *Supra* note 30, at 43 (1988).
[65] *Id*.
[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] *Supra* note 30, at 52.
[70] *Id*.
[71] *Id*.
[72] *Id*.
[73] *Id*.

C. *Abbasid* Caliphate: Development of Islamic Civilization (750-1258):

The Umayyad period was followed by the Abbasid Caliphate which started in 750 and ended in 1258. The Abbasid caliphs depended on hereditary kingship like the *Umayyad* Empire. After the death of Abū al-'Abās in 754, his brother Abū Jafar 'Abdallah ibn Muhammad who had a title attached to his name al-Mansūr became the caliph of Muslims. During the Abbasid rule, the Islamic state had a strong centralized government, had a prosperous economy and civilization. [74] Abū al-'Abās took the title of "the blood shedder" al-safāh.[75] The Abbasid caliphs united their power by first divesting their opponent and their *Shī'ī* supporters. [76] The Abbasids came to power under the title of Islam; they took care of their government with Islam.[77] For example, they became the great supporters of an emerging religious class, the '*Ulam*ā religious scholars, they encouraged the development of Islamic scholarship and disciplines, and they built mosques, and schools.[78] The *Abbasids* controlled a great empire from the Atlantic to central Asia.[79] However, Abbasids political unity failed quickly from 861 to 945 as religious *Khariji* and *Shī'ī* \and regional differences, and particularly competing political aspirations, led to a revolt.[80] By the thirteenth century, the *Abbasid* Empire had become very weak; it was an empire in name only.[81] Pouring out of Central Asia, the armies of Genghis Khan captured several countries like China and much of Central Asia and the Near East.[82] In 1258, the Mongol army under Hulagu Khan, the grandson of Genghis Khan, captured Baghdad after killing Muslims citizens and burning the city.[83] Only Egypt and Syria were far from the Mongol conquest of the Muslim empire. [84] In Egypt, the Mamlūks the owned ones, Turkish slave soldier, who served as a sort of Praetorian Guard, sized power from their Ayyubid Fatimid masters. The Mamlūks sultanate successfully resisted the Mongols and ruled until 1517.

D. *Abbasid* Caliphate in Cairo and *Mamlūks Sultanayye* (1250-1517):

The *Mamlūks* were constituted by soldiers and regiments. The *Mamlūks* came after killing the last *Ayyubid* sultan of Egypt in 1250. Salves were trained to be soldiers and were educated the *Qur'an*, Islamic Law, Arabic language and Muslim prayers.[85] Several of the slaves were appointed to high positions by the state, and even gained the position of sultan.[86]The situation changed in 1261 when the *Mamlūks* sultan Baybars received a letter stating that the son of the caliph al-Nasir had arrived in Damascus. Four days after the arrival of the letter, Baybars pledged the oath of allegiance to the next caliph who took the title al-Mustansr. The time of al-Mustansir was short; he was murdered in a battle

[74] *Id*.
[75] *Id*.
[76] *Id*.
[77] *Supra* note 30, at 53.
[78] *Id*.
[79] *Supra* note 30, at 58.
[80] *Id*.
[81] *Id*.
[82] *Id*.
[83] *Id*.
[84] *Id*.
[85] DONALD P. LITTLE, THE MUSLIM WORLD 166 (183).
[86] DAVID AYLON, JERUSALEM STUDIES IN ARABIC ISLAM II, 346 (1980).

against the Mongols in Iraq in 1262. After the death of al-Mustansir, Baybars would recognize another pretender.

Despite the *Mamlūks* sultans recognized the reputed Abbasids in Cairo, it is nonetheless erroneous to think that the reinstalled caliphs were of any practical significance to the daily administration of the sultanate. By Baybars's investing in the Islamic countries, the caliph became very weak, it was no more than sultan's stamp of legitimacy in securing the latter's claim as a universal sultan of Islam. The Abbasid Caliphate in Cairo ended when the Ottoman sultan Selīm I defeated the Egyptian *Mamlūks* in 1517, and transported the last Abbasid caliph in Cairo, al-*Mutawakkil* III, and his family to Istanbul, where he was rumored to have transferred the Caliphate to Selīm. From that point, the centuries old Abbasid dynasty passed into obscurity.

E. Ottoman Caliphate (1299-1924):

The Abbasid Caliphate was followed by the Ottoman Empire which was considered the largest empire and lasted the longest time in history. The Ottoman Empire expanded to the Arab Middle East and North Africa; it incorporated several Islamic cities like Cairo, Tunis, Medina, Damascus, Mecca, as well as great Islamic centers like *al-Azhar* in Egypt and Tunisia's Zaytūna Mosque University.[87] The Ottoman Empire captured several countries like Greece, Malta, Cyprus, Tripoli and the Balkans and much of Eastern Europe. During the 1600s the Ottoman Empire had evolved to include a population of 500,000 people and became international.[88]The Ottoman Empire became successful for several reasons; from the Islamic world, many artists and scholars were appointed, Muslim conquerors were great builders of civilization.[89] The Ottoman Empire survived until the twentieth century when it was dismantled by the British and the French during the post-World War I period. [90]The Empire officially ended on the 1st of November 1922, when Turkey was declared a republic and the Ottoman sultanate was abolished. The Ottoman Caliphate continued as an institution, till it was abolished on the 3rd of March 1924.

The rise and fall of the *Sunni* Caliphate ending in 1924, an action which Muslims were concerned about; it was strange for them to not have a caliph. The following chapter presents the debate of the Caliphate between the four Imams, Abū Hanifā, Mālek Ibn Ans, Shāf'ī and Ibn Hanbal followed by the debate of the Caliphate issue between two scholars, Rāziq and Sanhūrī. This is followed by a discussion for the reasons behind the disappearance of the Caliphate debate from 1950s to 1970s.

[87] *Supra* note 30, at 63.
[88] *Id*.
[89] *Id*.
[90] *Id*.

IV. Caliphate debate from 1920s to 1940s:

Before presenting the debate of the six scholars and ISIS on the Caliphate, it is important to start the debate of the Caliphate by presenting the thought of the four Imams Abū Hanifā, Mālek Ibn Ans, Shāf'ī and Ibn Hanbal to know their beliefs in the Caliphate. The four Imams Abū Hanifā, Mālek Ibn Ans, Shāf'ī and Ibn Hanbal agreed that the Caliphate is a *Fard*. They depended on *ijmā'* based on an incident. Following the Prophet's death in 632, Muslims agreed quickly to hire a caliph in order to lead the Islamic community.[91]The four Imams argued that Muslims must have a caliph to manage their religious affairs and Muslims could not have two caliphs in the same time. According to the four Imams, there are several conditions that must be present in the caliph like; he has to be a Muslim, adult, free, male, *Qurayshī,* fair, brave, healthy, and good decision maker. The four Imams agreed that the choosing of the caliph could be based on the allegiance of fair scholars or on unanimous consensus as Abū Bakr chose 'Umar to be his successor before his death.

In addition, the four Imams agreed that the judgments of the caliph and his assistant are final. Muslims could not disobey the caliph if he involved all the mentioned conditions and if they do so, the caliph could fight them. They added Muslims only could revolt against the caliph if he did a sin.[92]

Like Sanhūrī, 'Imāra, al-Banā and Ibn Taymiyya, The Four Imams argued that the Caliphate is significant to manage the religious affairs of the Muslims. In addition, like al-Banā, the four Imams argued that citizens cannot revolt against the caliph scaring from the anarchy unless he did a sin. Here the four imams did not define what does it mean by sin. Additionally, they did not mention if they agreed that the Caliphate is a *Fard* obligatory or *Fard Kifāyah.*

The Caliphate issue was subject to considerable debate during the 1920s for several reasons. One reason is because the Muslim world was worried about the Caliphate after Atātūrk's abolishing it in 1924 after its evolution. Second reason is because the '*ulama* of *al-Azhar* called for a congress in order to restore the Caliphate. The congress ended without resolving the problem. The cause given was that Muslims during that time were not united and politics was characterized by its weakness. Third reason is that at the end of the nineteenth century a secular idea appeared in Egypt calling for the separation of state and religion. What follows are Rāziq and 'Abdel Rāziq Sanhūrī's positions concerning the Caliphate. Rāziq ignored the Caliphate in *Shari 'a* while Sanhūrī depended on *ijmā'* and reasoning to insure that the Caliphate was *Fard Kifāyah*.

A. Caliphate in Rāziq's legal thought:

The Caliphate in Rāziq's thinking was the lack of stating the Caliphate in the first three sources of *Shari 'a* and reasoning. He published his book *Al-Islām wa Uṣūl al-Ḥukm* to prove the world that the Caliphate is not obligatory in *Shari 'a.*

[91] 'ABD AL-RāZIQ AL- SANHūRī, FIQH AL- KHILāFA WA TTWRHā 67 (1926).
AL-MāWARDī, AHKāM AL-SULTāNIYA page 3 (1989).
[92] 'ABD AL-RAHMāN AL-GEZīRī, AL-FIQH FI AL-MATHāHB AL-ARBA'A 366-367 (Part 5, 2nd e.d. 2003).

After the abolishment of the Caliphate in Turkey in 1924, and after the publication of"*al-Khilāfa* wa *Solta*t *Al Umma*" in 1924 by 'Abd al-Ghani Sunnī, which called for the division between the authority and the Caliphate, [93] Rāziq published his book *Al-Islām wa Uṣūl al-Ḥukm*. Rāziq believed that the Caliphate's foundation was neither in the law nor by reasoning. The following discusses Rāziq's arguments on how the issue of the Caliphate is ignored in the *Qur'an*, *sunna*, *Ijmā'* and reasoning.

Rāziq's roots helped to form his thinking. Rāziq was born in 1888 in Abū Jirj; his father and brother were liberals and fought against the British rule in Egypt and supporters of the monarchy. [94] Rāziq was educated in the traditional Islamic Curriculum and graduated from *al-Azhar* University as an '*ālim* in 1915.[95] After Rāziq's graduation from *al-Azhar* University; Later, Rāziq studied politics and economics at Oxford University; he did not spend a long time there due to the First World War.[96] Later, Rāziq became an Arabic teacher and a judge in the traditional courts of Alexandria.[97] Rāziq started working on his research, the question of the Caliphate during his post graduate years.[98] His research ended with publication of his book" *Al-Islām wa Uṣūl al-Ḥukm".* This book let to controversy among Egyptians and harmed Rāziq.

1. Caliphate in the *Qur'an Sunna* and *ijmā'*:

For Rāziq the Caliphate is not pronounced by the *Qur'an* or *Sunna* or *ijmā'*. In the following paragraph, he argued that the three sources ignored it.

a) Caliphate in the *Qur'an*

The first of Rāziq's argument concerning the Caliphate is ignored in the *Qur'an*. Rāziq provided the meaning of several verses in the *Qur'an*, which several scholars still depend on them, clarifying that these verses do not support the argument in favor of the Caliphate.[99]

"O believers obey God and obey the Prophet and those set in authority over you. If you dispute among yourselves over any matter, refer it to God and the Messenger, if you believe in God and the last day. This would be best, and best also in consequence."[100]

"When there comes to them a report, bearing news of security or of foreboding, they spread it wide. Were they to refer it to the Messenger and to those set in authority over them, its true import would be ascertained from them by those best fitted to understand it. Were it not for God's bounty upon you and his mercy, you would have followed Satan, all but a few."[101]

Rāziq argued that the experts of the *Qur'an* defined the phrase of those in authority in the first verse as reference to the Muslim prince during the Prophet's time; these included judges, military commanders and caliphs.[102] On the other hand, the phrase those in authority in the second verse referred to "the most

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[93] *Supra* note 6, at 29.
[94] 'ALī 'ABD AL-RāZIQ, ISLAM AND THE FOUNDATIONS OF POLITICAL POWER vi (1st ed. 2012).
[95] *Supra* note 94 at vi.
[96] *Id*.
[97] *Id*.
[98] *Supra* note 7, at 9.
[99] *Supra* note 94, at 37.
[100] Qur'an 4-59.
Supra note 94, at 37.
[101] Qur'an 4-83.
Qur'an 4-59.
Supra note 94, at 37.
[102] *Supra* note 94, at 37.

acute-minded among the companions of the Prophet or to those who were in authority among them".[103]Rāziq argued that the stated verses might be interpreted to mean that there are certain people among Muslims to be responsible for the conduct of their public affairs. This is a more general meaning than the theory of the Caliphate mentioned by the scholars calling for the Caliphate.[104]

b) Caliphate in *the Sunna:*

Like the first of Rāziq's argument concerning the Caliphate is ignored in the *Qur'an*, the second of Rāziq's argument concerning the Caliphate is ignored in the *Sunna* too. Rāziq analyzed the words of the Prophet in the *Hadiths* to insure that the Caliphate had no foundations in the *Sunna*. He argued if we analyze the words of the Prophet, we find nothing more than references to terminologies such as the "*imamate*," allegiance", "community",[105] found in the following hadiths:

"The Imams should be of Qurayshī' origin; it is binding upon the community of Muslims; the person who dies without having sworn allegiance to an imam is like someone who dies without having adhered to Islam; if someone has given allegiance to an imam and committed his actions and sentiments to him, he is bound to obey him as far as possible; if some disputes the imam's authority, he should be decapitated; and follow the example of those who came after me- Abū Bakr, 'Uthmān, and so on."[106]

Rāziq argued that nothing in the above hadiths required the obligation of the Caliphate, and the Islamic Community must be governed by caliph.[107] Rāziq gave an example of Jesus Christs's comment" render unto Caesar what is Caesars? Rāziq responded that the Biblical phrase does not mean that Jesus did not order for the creation of a divine foundation to Caesar's government.[108] The Bible does not recognize Caesar's government's being as obligatory in the Christian belief.[109] No one who has an understanding of linguistic usage can interpret Jesus' words in a manner that would make assumptions of this sort.[110] Hence, according to Rāziq, the above mentioning of the concepts of "Caliphate, Imāma and allegiance in the Prophet's hadiths do not mean anything beyond what Christ meant when he referred to the legal requirements pertaining to the government of Caesar.[111]

c) Caliphate in *ijmā':*

Like the *Qur'an* and *Sunna*, Rāziq believed that the Caliphate is ignored in the *ijmā'*. For Rāziq People who claim that the issue of the Caliphate is supported by *ijmā'* base their argument on an incident which is well-known in the Islamic history.

After the Prophet's death, there was debate among the Muslims during the first era of Islam to ensure that the position of the Imam did not fall vacant. In point of fact, Abū Bakr declared that someone has to be the

[103] AL- ZAMAKHSHARI, AL-KASHAF AL-TANZIL.
[104] *Supra* note 94, at 37.
[105] *Supra* note 94, at 40.
[106] These hadiths are quoted in Rashīd Ridā, AL- KHILAFA WA AL- IMāMA AL-KHOZMA ("the Caliphate and the Great Imamate" 1924)
[107] *Supra* note 94, at 40.
[108] *Id*.
[109] *Id*.
[110] *Id*.
[111] *Supra* note 94, at 41.

Prophet's successor to manage the Islamic community. Later Muslims agreed to select Abū Bakr as a caliph after the burial of the Prophet. From that time on, in every age, Muslims nominated an imam to administer and manage their affaires.[112] Rāziq contested that depending on *ijmā'* based on the above incident is unjustifiable; whether *ijmā'* involves the companions of the Prophet, or along with the companions, it also includes the second generation of Muslims or the entire body of Muslim theologians.[113] For Rāziq the Caliphate "referred to the choice of those who pledge and un-pledged their allegiance," since the "imamate is a pledge which functions through those who pledge and un-pledge their allegiance to the one whom they chose, having consulted among themselves, to be the leader of the community and the imam of the umma."[114] This means that the Caliphate is based on voluntary allegiance; this had not happened in the history except for the first three caliphs; whoever came after gained their positions by the use of sheer coercion like the fourth and the fifth caliphs.[115]

2. Caliphate in reasoning.

Like the *Qur'an*, *Sunna* and *ijmā'*, for Rāziq the Caliphate is ignored in reasoning too.

a) Islamic government* is not necessary*:

In Rāziq's eyes, a government is important for any society to stabilize and manage its affaires, but the Caliphate as an Islamic government is not required. Rāziq argued that it is agreed among experts in public law that the best functioning in any civilized society, regardless its religion, race or language is having a government to stabilize the society and manage its affairs.[116] Experts in public law did not agree on what form of government is the best system, as the forms of government might vary whether, constitutional or despotic, republican, or Bolshevik, and so on.[117] Rāziq and Abū Bakr had the same consideration in mind,[118] when Abū Bakr said" this religion (the community of believers) needs someone to take charge of its affairs."[119] Additionally, it seems that the *Qur'an* has the same view too. The following states the opinion of the *Qur'an* of the importance of existing a government:

"Is it they who hand out the mercy of your lord?

We distributed their livelihoods among them in this present life, and raised some Abū ve others in rank that might take others into their service. But the mercy of your lord is better than what they amass."[120]

"So let those who follow the Evangel judge in accordance with what God revealed in it. Who so judges not in accordance with what God revealed, these are the dissolute.

[112] *Supra* note 94 at 44.
[113] *Id*.
[114] RASHĪD RIDā, AL- KHILAFA WA AL- IMāMA AL-KHOZMA (1st ed. 1924).
[115] *Supra* note 94, at 46,47.
[116] *Supra* note 94, at 53.
[117] *Id*.
[118] *Id*.
[119] *Id*.
[120] Qur'an 43.32.
Supra note 94, at 53.

To you We revealed the Book with the Truth, confirming previous Scripture and witnessing to their veracity. So judge between them as God revealed and do not follow their whims, to turn you away from the truth revealed to you.

For every community We decreed a law and a way of life. Had God willed, He could have made you a single community-but in order to test you in what He revealed to you. So vie with one another in virtue. To God is your homecoming, all of you, and He will then acquaint you with that over which differed.

So judge between them as God revealed and do not follow their whines, and be ware lest they tempt you away certain things that God revealed to you. If they turn away in denial, know that God wishes to chastise them for some of their sins-several are the sinners among mankind! Do they truly desire the law of paganism? But who is fairer than God in judgment for a people firm of faith?

O believers, take not Jews and Christians for allies; they are allies one of another. Who so among you takes them as allies is accounted of their number. God guides not the wrongdoers."[121]

Rāziq agreed with political scientists arguing the significance of any society to have a government; however, Rāziq disagreed with political scientists, if they defined the government's significance means the Caliphate.[122]

Rāziq believed that the Caliphate has always been a disaster for Islam and Muslims; it was characterized by corruption.[123] For example Yazīd's allegiance, the son of Mu'áūya and a caliph of the *Umayyads* after his father was based on violence. during Yazīd's nomination, Mu'áūya said" when he dies, it will be him": finally, showing his sword, he cried" and for those who object, it will be this."[124] Another example of the Umayyads, when Yazīd violated the noble blood of the Prophet's line in the personage of Husayn, son of Fatima, the daughter of God's messenger.[125]

b) Islam is a message from God:

For Rāziq the Prophet was not a king having authority over Muslims. In order to prove this point, Rāziq mentioned an incident, "a man introduced himself to the Prophet with a matter in hand. Finding himself in the presence of the Prophet, he was overawed and shook with fear. The Prophet said to him, "be calm for I am neither a king not a tyrant. I am but the son of a Qurayshī' woman who used to partake of salted meat.[126]"

In addition, for Rāziq the Prophet's mission was only delivering and teaching the divine law; he cited several verses in the *Qur'an* proving this point. [127]As we see Rāziq believed the Caliphate is ignored in the first three sources of *Shari 'a* and in reasoning. After Rāziq published his book in the first of April 1925, sixty-three of the *'Ulama'* scholars sent an open letter to *al-Azhar* on June 25, 1925 explaining their

[121] Qur'an 5.47.
Supra note 94, at 54.
[122] *Supra* note 94, at 54.
[123] *Id*.
[124] UBN 'ABD RABBUH, AL 'IQD AL-FARID.
[125] *Supra* note 7, at 29.
[126] *Supra* note 94, at 92.
[127] Qur'an 5.92- 5.99- 7.184- 10.2- 13.40- 16.35- 16.82- 17.105- 19.97- 201-3- 24.54- 25-56.

unacceptable views of the book.[128] Other letters were sent to the book itself in order to defend Islam against the book's ideas. [129]Additionally, Ridā claimed that several scholars from *al-Azhar* sent several letters to newspapers and to him discussing their views against the book.

B. Senior '*ulama'*s accusations against Rāziq:

In 1925, Rāziq published a book that was controversial amongst Egypt's intellectuals, including the Council of Senior *'Ulama'* of *al-Azhar* who accused Rāziq of contradicting Islam and the texts of the Holy *Qur'an*. The Council's accusations can be organized to seven categories. The first category was that Rāziq portrayed the *Shari 'a* as an exclusive spiritual legislation with no affiliation to government or administrative matters. The second category was that Rāziq held that the *jihad* was ordered for the sake of kingship and not for the sake of spreading Islam to the world. The third category was that Rāziq believed that the system of governance was ambiguous, mysterious, inconsistent, incomplete, and perplexing. The fourth category was that Rāziq insisted that the Prophet's mission was to convey the *Shari 'a* without governance or administration. The fifth category was that Rāziq challenged the inherent consensus amongst the Prophet's companions of appointing an imam who managed the religious and worldly affairs of the *umma*. The sixth category was that Rāziq explicitly denied the fact that a *qaḍā'* or judiciary authority is required by the *Shari 'a*. Finally Rāziq asserted that the government of the first caliph and subsequent caliphs were secular, lā diniyya'.[130]

As a result of Rāziq's views, the senior of 'ulama were moved to act against him. On August 12, 1925, the Council of Senior 'ulama of *al-Azhar* issued its decision on Rāziq. The Council's decision includes dismissing Rāziq from the body of the' *ulama* and from his job as a judge in the *Shari 'a* Courts.[131]

Unlike Rāziq who ignored the Caliphate in the *Qur'an*, *Sunna*, *ijmā'* and in reasoning, for Sanhūrī the Caliphate is based on *ijmā'* and in reasoning.

C. Caliphate in Sanhūrī's legal thought:

For Sanhūrī,[132] the Caliphate is necessary as it is *Fard Kifāyah* in *Shari 'a.* He wrote his doctoral thesis at the University of Lyon entitled *Le Califat, évolution vers une société des nations oriental* which was published in 1926. Sanhūrī's views on the Caliphate were totally different from Rāziq's ideas. The aim of Sanhūrī's thesis was to reestablish the Caliphate *al-Khilāfa al-sahīha*; but he concluded that if it is impossible to reestablish *al-Khilāfa al-sahīha*, so there is no excuse for establishing *al-Khilāfa al-nāqysa*. According to Sanhūrī, there are two types of the Caliphate. The first caliphate is *al-Khilāfa al-sahīha* which must reflect the Sunna conditions, and is chosen by voluntary allegiance. The second Caliphate which is

[128] The text of this letter is published in *Al-Manār*, Vol. 26, 212-217.
[129] Ridā, *AL-MANāR*, Vol. 26, 215.
[130] ALī 'ABD AL-RāZIQ, AL-ISLāM WA USūL AL-ḤUKM 5 (1925).

[131] *Supra* note 7, at 32.
[132] Sanhūrī is an Egyptian legal scholar who drafted the current Egyptian Civil code and others for several Arabic countries.

the *al-Khilāfa al-nāqysa* whereby the caliph who does meet not have all the required conditions or was chosen by voluntary allegiance, but gaining the power by sheer coercion.

1. *Ijmā'* between religious doctrines:

Sanhūrī 's first argument concerning the Caliphate is based on the *ijmā'* between the Sunnis and the Mu'tazilites.

a) Sunnis:

The Sunnis insure the obligation of the Caliphate based on an incident. Following the Prophet's death in 632, the companions of the Prophet agreed quickly to hire one amongst them to be the caliph in order to lead the Islamic community. According to Sanhūrī, if there had been a dispute amongst *Muhājerūn*, Ansār and Muslims, that dispute regarded the person who would be caliph, not on the necessity of the position itself.[133]

b) Mu'tazilites:

Unlike the Sunnis whose argument's concerning the Caliphate on an incident, The Mu'tazilites's argument concerning the Caliphate is based on reasoning. The Mu'tazilites used reasoning to come up with what is good and bad. The Mu'tazilites argue that the Caliphate is necessary in *Shari 'a* in order to stabilize the society and manage its affaires.[134] For them, the Caliphate is important to present anarchy. Sanhūrī agreed with the Mu'tazilites's argument claiming that by depending on reasons, it could be said the government is a must in order to prevent chaos, by depending on the *ijmā'*, it could be said the Caliphate is necessary in Islam.[135] As we see Sanhūrī''s belief on the Caliphate based on the ijmā' and in reasoning, the following is Sanhūrī 's criticism of Rāziq's ideas.

2. Sanhūrī's response to Rāziq:

For Sanhūrī, the Caliphate is obligatory in *Shari 'a* based on the consensus between the religious doctrines. For Sanhūrī, the Prophetic government was not like the following governments, but it had the main conditions of the other governments like enforcing taxes.[136] Sanhūrī responded to Rāziq's ideas on two points. First, Sanhūrī contended that Rāziq did not differentiate between the obligation of the Caliphate and the hiring of the caliph as Sanhūrī demanded differentiate on between these two issues. The necessity of the Caliphate was agreed up on by Muslims after the Prophet's death.[137] Regarding the use of coercion, Sanhūrī behind that happened in all empires.[138]

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[133] *Supra* note 91, at 67.
AL-MāWARDī, AHKāM AL-SULTāNIYA 3 (1989).
[134] *Supra* note 91, at 71.
AL-MāWARDī, AHKāM SLTāNIYA 3 (1989).
[135] *Supra* note 91, at 71.
[136] *Supra* note 91, at 82.
[137] *Supra* note 91, at 67.

In addition, Sanhūrī focused on Rāziq' use of the two terms Religion and State, which means that the state has three bodies, executive, legislative and judicial body, and the religion represents the rules which are related to the person's belief and his/her relationship with God. Sanhūrī contended that these two terms were not clearly defined during the Prophet's lifetime as the political system depended on religious considerations or *Shari 'a*. The system of the state during the Prophet's lifetime did not allow the existence of an accurate complex regime, whether Republic, Democratic or Autocratic. Even though, the Prophet organized the Islamic state with the basics features of states like enforcing taxes, laws, military and administrative system as civil system.[139]For Sanhūrī a government regardless of its form is necessary for the society; but by the ijmā', the Islamic government is a *Fard- Kifāyah* for Muslims.

3. Reestablishment of the Caliphate:

It is clear that Sanhūrī insisted of the reestablishment of the Caliphate, after writing his thesis in 1925, in 1929 Sanhūrī once again wrote his ideas to reestablish the Caliphate in *al-Mohamā al-shar'īya.* He argued that the Islamic government has more advantages than any other governmental systems because *al-Khilāfa al-sahiha* has three important characteristics. First, the caliph is responsible for the religious and worldly affairs of Muslims. Second, the caliph must implement *Shari 'a* as he is not enforced to implement the rule of a certain doctrine; he can ask the *Mujtahidun* to agree on a certain issue if there is a dispute. Third, the Caliphate is significant because it unites Muslims. The Islamic government must be based on only one caliph, which is *al-Khilāfa al-sahīha* , but Muslims might hire several caliphs if there is an excuse, which is called *al-Khilāfa al-nāqysa* . Hence, what matters for Sanhūrī is the implementation of *Shari 'a* through the Caliphate.

D. Caliphate debate from 1940s to 1970s:

After *al-Azhar* withdrew Rāziq's certificate '*ālim* in 1925, twenty years later the Council of Senior '*ulama* of *al-Azhar* reinstated Rāziq the title *'ālim* in 1945, and from 1948 to 1949, he served as a Minister of *al-Awqāf* or Religious Endowments. The period between1940 to 1970 is characterized by the lack controversy of the Caliphate debate unlike the previous period which was characterized by the heated debate of the Caliphate. After the heated debate on the Caliphate from 1920s to 1940s, the level of debate began to decrease between the 1950s to 1960s for several reasons. The first reason is because the Islamic society was flooded by anti-colonial sentiment by the 1950s. For example, the British colonization used all the means to evaporate the institutions of Islamic culture and society. They started by *Shari 'a*. They limited its types of punishments. In addition, they switched Arabic with English as the administrative language and establishing Koranic and Arabic schools into their administrative framework.[140] Additionally, most of the Muslim states gained independence during the 1950s, except

AL-MāWARDī, AHKāM SULTāNIYA 3 (1989).
[138] *Supra* note 91, at 67-77.
[139] *Supra* note 91, at 82-83.
[140] BENJAMIN F. SOARES, MUSLIM-CHRISTIAN ENCOUNTERS IN AFRICA 223 (2006).

Algeria which gained its independence by 1962.[141] Consequently, during that time, the Islamist could not have the power to call for the Caliphate during the colonization as I mentioned above the colonization aimed to not apply *Shari 'a*.

The second reason is because, in the 1960s and 1970s, the Muslim community like Egypt, Sudan, Libya, Syria and Iraq[142] were flooded by nationalistic ideology and pan-Arabism whish was considered strongly secular. [143] Islam was seen as a burden to the evolution of the society. [144]Pan-Arabism and Secular nationalist tried to strictly regulate religion and then use it to provide support for their causes, because of the power of Islam and its ability to mobilize the masses.[145] For example, President Gamāl 'Abd al-Nāsser attempted to do this by making *al-Azhar* dependent on the government then had it lend support to all governmental policies.[146] Another reason was when President Nasser was a member of the military coup against King Farouk. Although the members of the Muslim Brotherhood took the side Nāsser side in that military coup, Nāsser repressed its expectations that victory might establish an Islamic government, and he moved to a secular socialist ideology.[147]As a result of this, when the Muslim Brotherhood participated in active opposition, Nasser repressed it. Thousands were arrested during this time, such as Sayd Qutb, one of the prominent figures of the Muslim brotherhood; he was their leader between the 1950s and the 1960s – who was executed.[148] Nasser's server's repression of Islamic groups several of the Islamists as they were afraid of being arrested or tortured.

As we see the debate between Rāziq and Sanhūrī in the 1920s, and its disappearance in the 1950s to 1970s a period which was characterized by colonization of the Arab states and Nasser's repression, What follows is the return to the debate from the 1980s to 2014. Followed by the controversy between Muhammed 'Imāra and Hāmyd Abū Zayd on Rāziq's book followed by their thoughts on the Caliphate. This is followed by the arguments of Hasan al-Banā as the representative of the Muslim Brotherhood, Ibn Taymiyya as one of the representatives of the Salafists and ISIS on the Caliphate issue.

[141] JOHN EPOSITO, THE OXFORD HISTORY OF ISLAM 654 (1999).
[142] *Id*.
[143] KHāLED ABŪ AL- FADL, THE GREAT THEFT 42 (2007).
[144] Id.
[145] *Id*.
[146] *Id*.
[147] *Supra* note 141.
[148] *Supra* note 141.

VI. Persistence of the Caliphate debate from 1970s to 2014:

Two reasons can be argued of the return of the Caliphate debate from 1970s to 2014. In 1970s President Sadat made a deal with the Islamists in order to legitimize his rule. The deal was based on giving Muslim brotherhood more freedom like excluding them from prisons in order to combat the Leftist, Nāsser's supporters. By 1972, President Sadat was under pressure by the Islamists movement for Islamizing Egypt. As the Muslim brotherhood became free; they started in calling people of their project, al- Banā's project, including the establishment of the Caliphate and implementing *Shari 'a penalties*. Another reason was that when Muslims were disappointed with their loose in the 1967 war; they asked themselves what has gone wrong with Islam? They found the answer which was Islam did not leave Muslims, but Muslims who abandoned Islam. Muslims must return to the right path of Islam, which was in the seventh century. The Muslim Brotherhood exploited this period of Muslims' frustration and started converting their ideas including the establishment of the Caliphate through several means lectures, mosques, lessons and media.[149] As we see the reasons why the debate returned between the 1970s and the 1980s, the following chapter starts with 'Imāra's counter argument to Rāziq's book in 1970s and 1980s then his thinking on the Caliphate. 'Imāra strongly believed and agreed on the implementation of the Caliphate. This is followed by Abū Zayd's response to 'Imāra concluding that 'Imāra has a very contradictory view of Rāziq's book and his thinking on the Caliphate which he believed that the Caliphate had no foundations in *Shari 'a*. Followed by the beliefs of the Brotherhood, Salafists and ISIS whom believe in the Caliphate and call for its restoration.

A. Caliphate in Muhammed 'Imāra's legal thought:

'Imāra articulated his thoughts in his book entitles *al-Khilāfa*; he considered the Caliphate to be necessary because it implements *Shari 'a* and unites Muslims. This chapter starts with 'Imāra's counter argument to Rāziq's book then his thought on the Caliphate.

The main argument of the defenders of Rāziq is that his book was an attack on the desires of King Fūād and the imperialist ambitions of the British. This opinion is similar to 'Imāra's opinion. 'Imāra,[150] published Rāziq's book in 1971. Later he wrote an introduction to the republication of the book in 1972,[151] discussing his support to the book, although he did not agree with it intellectually. For 'Imāra the book was neither a political nor a religious academic. First, it was a political attempt to not let King Fārūk be the caliph; additionally, the book was a factor in excluding the English colonists from Egypt 'Imāra argued.[152]. 'Imāra believed that the trial of Rāziq took place at the instigation of the king. 'Imāra argued that the King's Palace is responsible to push *al-Azhar* to act against Rāziq. 'Imāra was confused with the decision of the Council of *al-Azhar* on Rāziq he argued that after 20 years of *al-Azhar* decision on Rāziq Rāziq was

[149]CARRIE ROSEFKSY WICKHAM, MOBILIZING ISLAM: RELIGION, ACTIVISIM AND POLITICAL CHANGE IN EGYPT 140 (2002).
[150]MUHAMMAD 'IMāRA is an Islamic intellectual and a member of the Islamic Research Academy in Cairo.

[151] Supra note 6 at 11.
[152] MUHAMMAD 'IMāRA, *Ma'RAKA AL-ISLāM WA USūL AL-HUKM*, 15 (2d ed 1997).
Supra note 7, at 10.

once again restored the degree of *'ālim.* 'Imāra wondered, by Rāziq's receiving again his certificate, is that mean that *al-Azhar* believed in Rāziq's thinking and realized they did a mistake by judging him?

By the end of the 1980s and during the 1990s, 'Imāra changed his opinion on 'Rāziq's book. Unlike his argument in the 1970s stating that Rāziq's book helped to expel the English colonization in Egypt and from the Caliphate conspiracy in Egypt,[153] among his general changes in his thoughts is becoming one of the people calling for the establishment of the Caliphate.[154] 'Imāra showed his growing discontent with Rāziq's ideas in several ways. It began with published seven articles in *al-Sha'b*, between 1, November 1994 to 1, Februrary,1994. 'Imāra discussed his points of view regarding the reasons why he was against Rāziq's book. 'Imāra argued that the book helped to achieve the West's goal in abolishing the Caliphate; the book's aim is to secularize the Islamic society.

The second way 'Imāra developed a hypothesis regarding who was the actual author of *Al-Islām wa Uṣūl al-Ḥukm.* Before proving 'Imāra's hypothesis, he argued that Rāziq rejected his ideas of the book because he kept silent on discussing anything related to the book after the decision of the Council of *al-Azhar*, and he refused to republish the book until he died in 1966. For 'Imāra, this meant that Rāziq is not the only author of the book.

'Imāra rejected the hypothesis that the book was written by an Orientalist because he believed none of them supported such ideas about the Caliphate.[155] 'Imāra's hypothesis was that *Al-Islām wa Uṣūl al-Ḥukm* was written by two authors, Rāziq and Taha Husayn. 'Imāra supported his hypothesis by using on Shaykh Ahmad Hasan's report who claimed that Rāziq told him that the book was written by Taha Husayn and he surprised Rāziq by writing Rāziq's name as the author on the book. Rāziq's ethics prevented him from suing his friend Taha Husayn. 'Imāra argued that he did not agree strongly with this argument; however, he provided other evidence proving that Taha Husayn wrote some parts of the book. 'Imāra quoted that Taha Husayn who said that he read the book three times before its publication and made several modifications.[156] This is how 'Imāra supported his contentions that the book was partnership of Rāziq and Taha Husayn and could not only have been written by Taha Husayn. 'Imāra argued the first chapter of the book was written by Rāziq and could not have been written by Taha Husayn because such condemnations contradict Taha Husayn's writings about the Caliphate. In his *Al-Fitna al-Kubrā*, Taha Husayn gave a fair discussion of the Caliphate. Taha Husayn argued that the Caliphate was a contract between the Muslims and the caliph. Moreover, Taha Husayn did not accept the idea that the Caliphate was a theocratic system.[157]

Unlike the first chapter which is written by Rāziq, 'Imāra argued that the second chapter was written by Taha Husayn and not Rāziq because it discussed Islam as being religion and not a state and Islam had

[153] *Supra* note 7, at 10.
[154] *Supra* note 6, at 14.
[155] Muhammad 'Imāra, *Hal huwa min Ta'līf al-Mustashriqīn al-Madfū'īn min Qibal Briṭanyā*, AL-SHA'B, January 21, 1994.
[156] *Id*.
[157] TAHA HUSAYN, AL-FITNA AL-KUBRā 1,22,25 (1962).

nothing to do with politics, which was Taha Husayn's ideas in his writings. [158] 'Imāra added that the difference in writing the footnotes and the way of referring to Koranic chapters and verses proved that the book was written by more than one author. [159] As we see 'Imāra's counter argument to Rāziq's book, what follows is 'Imāra's thinking on the Caliphate in the 1980s.

For 'Imāra, the Caliphate is a civil system. It is the *umma* who hires, monitors, and deposes the caliph in urgent cases; the Caliphate's aim is to implement *Shari 'a*.[160] According to 'Imāra, for the first time, the Caliphate is the only type of government that involves three authorities, *Shari 'a*, *umma* and the state,[161] which is considered a better governmental system than the autocratic and secular systems as it protects Islam and safeguards the society with its implementing of *Shari 'a*.[162]

Although 'Imāra argued that all the Caliphates had fallen and risen, for more than thirteen centuries, all of them achieved several goals, which are considered the most important goals of *Shari 'a* and society, he did not state enough evidences to insure this point . 'Imāra claimed that the first goal that the Caliphate achieved was the unity of the *umma*, which is a goal stated in the *Qur'an*.[163] The second goal is that the Caliphate achieved was the unity of *dār al-Islām,* or the Islam territory, which means all regions and homelands were under the control of the Islamic government. According to 'Imāra, during the Caliphate there were no borders between the states. Every citizen was free to travel without getting a visa; however, the borders between the states, and the nationality system created by the European state are against *Shari 'a*, in which citizens are unable to travel freely.[164] The last goal achieved by the Caliphate was the implementation of *Shari 'a* for Muslims and non-Muslims.[165] *Shari 'a* was applied on Muslims; it was considered the reference of the law. *Shari 'a* allowed Non-Muslims the freedom of belief.

As we see 'Imāra's counter argument to Rāziq's book in the 1970s and 1980s and his aim is to implement the Caliphate because it applies *Shari 'a* and has several advantages that make it a unique government to 'Imāra, the following is a response of Abū Zayd to 'Imāra's ideas on Rāziq's book concerning Rāziq's book and his legal thought on the Caliphate. Unlike 'Imāra who believed in the Caliphate as it applies the goals of *Shari 'a*, Abū Zyad ignored the Caliphate in the *Qur'an* and *Sunna*.

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[158] Muhammad 'Imāra, *Mādhā li 'Alī 'Abd al-Rāziq wā Mādhā li Ţaa Husayn fī Hadhā al-Kitāb*, AL-SHA'B, January 28, 1994.
[159] Muhammad 'Imāra, *Adilla Uslubiyya wa Shawāhid 'Ilmiyya 'alā Ta'addud Mu'alif al-Kitāb*, AL-SHA'B, February 1, 1994.
[160] MUHAMMAD 'IMāRA, IHYā AL- KHILāFA AL-ISLāMIYYA 9 (1st ed. 2005).
[161] *Id*.
[162] *Supra* note 160, at 12.
[163] *Supra* note 160, at 17.
Qur'an 8-63 and 21-92.
[164] *Supra* note 160, at 18.
[165] *Supra* note 160, at 24.

B. Caliphate in Nasr Hāmyd Abū Zayd's legal thought:

Abū Zayd[166]'s thinking regarding the Caliphate was ignored in the first two sources of *Shari 'a.* Abū Zayd criticized 'Imāra for his criticism of Rāziq's ideas. The first point that Abū Zayd responded to 'Imāra was that 'Imāra's criticism that Rāziq did not reject the ideas written in the book. Rāziq kept silent on discussing any ideas regarding his book because he wanted to avoid any further battles. Rāziq did not refuse to republish his book again; he told to Mahmūd Amīr al-ālim to publish the book if he wanted but without taking his permission; he stated I do not want to be responsible for that.[167]

The second point that Abū Zayd responded to 'Imāra was that the book written by both Rāziq and Taha Husayn. Abū Zayd argued that it was understandable if Taha Husayn had said he read the book three times before its publication and made several modifications.[168]In the intellectual field, it is normal that every author provides his/her book to others in order to be revised before its publication as any suggestions or modifications could help the author.[169] Additionally, Abū Zayd rejected the idea that the book was written by Rāziq and Taha Husayn as questioned, why Taha Husayn did not take any action when Rāziq was faced a lot of troubles? Why Rāziq suffered alone without disclosing that Taha Husayn was the author too? As we see Abū Zayd's response to 'Imāra for his criticism of Rāziq's book; what follows my response to 'Imāra's criticism of Rāziq's book the 1990s in three points as I take the side of Abū Zayd followed by Abū Zayd's view on the Caliphate.

The first point I disagree with 'Imāra, is that, I believe Rāziq's book did not aim to achieve the British's goal for falling down the caliphate as 'Imāra stated. Indeed, there was an agreement between the British and the palace to nominate king Fūād as a caliph for Muslims after Atātūrk 's decision in abolishing the caliphate.[170]

The second point, which is unlike 'Imāra, is that Rāziq did not deny his ideas in the book. Like Abū Zayd claimed, in June 1966 before Rāziq's death, Mahmūd Amīn al-'Ālim met Rāziq in order to take his permission to republish his book. Rāziq was eager in insuring that he did not deny about anything of his ideas in the book.[171]Regarding the republishing of the book, Rāziq responded that he already faced a lot of problems because of the book, and he could not bear additional harms. Rāziq said to al- *'ālim*, republish the book on your responsibility and do not ask me for permission.[172]In addition, in November 1971 al-Tali'a published Rāziq's book. Al-Tali'a stated in its introduction, that Rāziq wanted in his last time, before his death to reprint again his book. In addition, when many people said that Rāziq denied his arguments, Rāziq's daughter Dr. Souad Ali 'Abdel Rāziq ignored that argument and said if my father

[166] NASR HāMYD ABū ZAYD is an Egyptian Muslim thinker.
[167] AL- AHāLī, May 1985.
[168] MUHAMMAD 'IMāRA, *Hal huwa min Ta'līf al-Mustashriqīn al-Madfū'īn min Qibal Briṭanyā*, Al-Sha'b, January 25, 1994.
[169] *Supra* note 6, at 25.
[170] Available at http://www.almustaqbal.com/v4/Article.aspx?Type=np&Articleid=43001.
[171] AL- AHāLī, May 1985.
[172] AL- AHāLī, May 1985.

denied his arguments on the book, he would have the courage to face people of his regression and to publish his new argument".[173]

In addition, in November 7, 1989, 'Imāra insured that after few years of Rāziq's death Dār al-Helāl thought of publishing Rāziq's book, and it sent 'Imāra to contact Rāziq's successors to take their permission to publish the book.[174] According to 'Imāra, he met Rāziq's oldest son, Muhammed and he asked him if Dār al-Helāl could republish the book. Muhammed told 'Imāra that before a short time of Rāziq's death, he was under the pressure of many people to publish the book, so he started writing a new introduction to the book which does not reflect any new intellectual position and it discussed the circumstances of publishing the book. According to Muhammed, his father wrote three pages then he died, and we lost those three pages. [175] Consequently, according to the stated facts, Rāziq did not deny his arguments and he agreed to publish his book with the same views.

Moreover, during the conversation of Sheikh Musalaem and Rāziq in 1942, Rāziq argued that he did not acknowledge that Taha Husayn is the author because based on his customs; the youngers cannot contradict what the older people say. This is sentence is questionable how Rāziq said this sentence and it is well known that Rāziq is older than Taha Husayn. Rāziq was born in 1887 and Taha Husayn was born in 1889. This means that Rāziq's response to Sheikh Musalaem is doubtable. Additionally, Rāziq's response to sheikh Mussalam as Taha Husayn surprised him by writing his name is questionable. How Rāziq was surprised by the book and his memorandum before the trial insured that he knew well what had been written in the book. He wrote the memorandum responding to the seven accusations. He said to the council, I wrote the memorandum and I am ready to discuss it verbally if you want. Additionally, his responses in the memorandum assured that he was aware of what had been written in the book. For example responding to the first accusation, Rāziq considered Shari 'a as purely spiritual; and it has no relation with the authority. Rāziq responded that he did not believe in that, *Shari' a* is purely spiritual. He responded I have not said this in the book or in anything else. Consequently, based on this response, it is clear that Rāziq knew well what had and had not been written in the book.

Lastly, I wonder how Rāziq was surprised by the book according to the conversation of Rāziq and Mussalem, and the introduction of the book insures that Rāziq is the author. Rāziq wrote, I have been hired in the Egyptian Shari'a court since thirty three thousand three hundred Hijri 1915, and this encourages me in researching in all kinds of the history of the legitimate judiciary and the judiciary , and because the legitimate judiciary is one of the branches of the Islamic government, anyone wants to research in this kind of judiciary has to start researching in its first branch which is the government in Islam and the basis of any authority in Islam is the caliphate and the Imam, so it was important to do

[173] AL- AHāLī, May 1985.
[174] AL-WAFD, November 7, 1989.
[175] *Id*.

research in it. I have been started researching for several years, and I am still in my early stage of the research. Here is my research I provide for the person who might be interested.

Hence, according to the stated facts, Rāziq is considered the author of the book, he did not deny any ideas related to the book and he did not use the book for falling down the caliphate. As a result, what 'Imāra said is invalid. As we see, 'Imāra's criticism of Rāziq's book in the 1990s is not logic. I take the side of Abū Zayd in supporting Rāziq's book. What follows is Abū Zayd's legal thought regarding the Caliphate as his ideas are similar to Rāziq. Like Rāziq, in Abū Zayd's eyes, the Caliphate had no foundations in the *Qur'an* and *Sunna.*

a) **Caliphate in the *Qur'an and Sunna*:**

Abū Zayd argued that the Caliphate was ignored in both the *Qur'an* and the *Sunna*; according to him, the negotiations between Muslims, *Ansār* ,[176]and *Muhajirūn*,[177]about the Caliphate following the death of the Prophet was the eligibility and not on Shari 'a sources.[178] Abū Zayd argued that after the Prophet's death, Abū Bakr, 'Umar Ibn Al-khatāb, the *Muhajirūn*, and the *Ansār* , met in order to discuss who would be the Prophet's successor after his death. On one hand, the *Ansār* contended that they had the priority on the Caliphate because they had helped and supported the *Muhajirūn*.[179] On the other hand, 'Alī discussed that he has the eligibility to be the caliph as he is the Prophet's cousin and to continue the victories by Banū H*ā*shem against their enemies. [180] Abū Zayd concluded that the above story proved that there was a separation among the people on the Caliphate issue, and that conflict proved there was nothing in the *Qur'an* or *Sunna* stating that the caliph must be *Quryash*ī or the other obligation of the Caliphate. Abū Zayd believed that verses depended on to identify the Caliph were created during the fight of *sf*īn between 'Alī and Mu'áūya. When Mu'áūya became the caliph, the Umayyad empire had to create *fatw*ā proving the legitimacy and eligibility of its empire *Qurayshī*' in order to face fatwā by the *Shias* stating the legitimacy of fighting the Umayyad empire.[181]

b) Choosing the rightly guided caliphs:

For Abū Zayd, the way of choosing the rightly guided caliphs was not based on the original allegiance meaning. Abū Zayd argued that the eventual agreement the first four caliphs was not based on unanimous consensus. Muslims agreed on Abū Bakr six months after his appointment. [182] After the death of Abū Bakr, Muslims had to have a new caliph, who was 'Umar Ibn al-khatāb, who became the second caliph after the negotiation of only two of the Prophet's companions: 'Abd al-Rahmān Ibn 'Khūf and 'Uthmān Ibn 'Afān; additionally, Abū Bakr gave the license to 'Uthamān to be the caliph in case al-khatāb

[176] Citizens of Medina who helped Muhammad on his arrival to Medina after migration from Mecca.
[177] Early Muslims who followed Muhammad on his Hijra from Mecca to Medina.
[178] *Supra* note 6, at 45.
[179] *Supra* note 6, at 45, 46.
[180] *Supra* note 6, at 46.
[181] *Supra* note 6, at 47.
[182] *Supra* note 6, at 50.

rejected it.[183] 'Uthamān Ibn 'Afān became the third caliph after the death of Omar Ibn al- khatāb and his choice was based on a *Shūra* Council composed of six of the Prophet's companions hired by the second caliph; lastly, the choosing of Ali was not based totally on unanimous consensus as the people who gave him the oath of the allegiance were the same people who had waged a war against him.[184]

Abū Zayd concluded that the selection of every caliph was not based on unanimous consensus, a vote of allegiance could be one or two, and following this decision, Muslims have to obey the caliph.

The Caliphate ideology of 'Imāra and Abū Zayd is different as 'Imāra supported the Caliphate as it is a unique institution and has many advantages. While Abū Zayd ignored the Caliphate in the first and second sources in *Shari 'a*. The next part is the Caliphate in the legal thought of the Muslim Brotherhood as I present the arguments of Hasan al- Banā as he is their representatives and the founder of the organization. Al-Banā inspired hundreds of thousands of Muslims around the world. Al- Banā concluded that the Islamic government is the best type of government, and he laid down some principles and features of that government in order to achieve justice. This is followed by the legal thought of Ibn Taymiyya as hundreds of Salafists are influenced by him; for Ibn Taymiyya, any society must have a government to organize and manage its legal affairs whether its ruler is ruling justly or unjustly. Furthermore, for him, whether the Caliphate is *Khilāfat al-nubuwwa* or *Khilāfat al-mulk* it is still legitimate. The last section discusses, the official spokesman of ISIS proclaiming the establishment of the Caliphate with over all Muslims with, Al-Baghd*ā*dī as caliph.

C. The period after the 25th Janurary revolution:

The Caliphate was debatable after the 25th January revolution for a main reason. The reason was that after the revolution, many political parties were incorporated. For example, the liberty and justice political party as it represents the Muslim Brotherhood's thought, the Nour political party as it represents the Salafists's thought, and the Dustūr political party as it represents the liberals' thoughts. The Islamic political parties, the Muslim Brotherhood and the Salafists have the same ideology which is the calling for the reestablishment of the caliphate and the implementation of *Shari 'a*, so like the period of the 1970s, the Islamists were calling for it through many ways like lecture, lesson or Media.

1. Caliphate in the Muslim Brotherhood's legal thought:

Like 'Imāra, the Caliphate in the Muslim Brotherhood's thinking is characterized mainly by the application of *Shari 'a.* The Muslim Brotherhood was founded in 1928 by Hasan al-Banā; the main goal of the incorporation of this group is the establishment of the Caliphate, the implementation of *Shari 'a* and the liberation from colonization.[185] Al-Banā's project influenced thousands of Muslims worldwide in order to reinforce the society through Islam. In 1949 he was assassinated after a series of murders committed by members of his organization.

[183] *Supra* note 6, at 50.
[184] *Supra* note 6, at 50, 51.
[185] GHāNIM IBRāHīM AL-BAYYūMī , AL-FIKR AL-SIYāSī LIL-IMāM HASAN AL-BANNā 251 (1st ed.1992).

Al-Banā was born in Mahmūdiyya, Egypt in 1906; when he was eight year old, he studied for four years subjects like history, the *Qur'an* and literature at a school there.[186] Al-Banā participated in demonstrations against the British rule when he was between fourteen and seventeen year old.[187] He moved to Cairo at *Dar al 'Ulūm* for teacher training; then he moved to *Isma'ilya* where he worked as a professor in a school.[188]

Al-Banā was influenced mostly by Rashīd Ridā, who depended on *ijtihād*[189], which is contrary to the Salafism discourse which rejected it. Al-Banā followed Rashīd Ridā's writings in AL-Manār magazine and shared Ridā's concern on the abolition of the Caliphate.[190]Like all Islamists, al-Banā considered the government as a fundamental part of Islam; it was a must that *Shari 'a* be implemented, which mean following the model of the Prophet and his companions as the rightly guided caliphs. For al-Banā, Islam is defined as the non-separation between the state and religion;[191] he depended on the Koranic verses to insure that the Islamic Caliphate was based on three necessary principles: justice,[192] between Muslims and non-Muslims, liberty [193]and *jīhad*.[194] Al- Banā wrote an article on *had*,[195] supporting with some verses in the *Qur'an* and *Hadiths* and the ideas of the four of the classical schools of Sunni jurisprudence on *jihad*. He insured that *Jihad* is against polytheists, and everyone who does not embrace Islam.[196] He added that it is a must to fight with people who do not embrace Islam even if those people do not fight against Muslims. [197] According to al-Banā, Jews and Christians are obliged to pay the jizya,[198] as it is mentioned in the *Qur'an*[199].Additionally, al-Banā argued that the *jihad* becomes *fard 'Ayn for* all Muslims if Islamic lands are occupied.[200] This meant that every Muslim whether male or female has to join or at least help the fighter. [201]

Additionally, like 'Imāra, al-Banā laid down three features on the Islamic Caliphate. The first feature was that the Caliphate is a message,[202] which means al-Bana supported the idea of the non-separation between the state and religion, unlike Rāziq's view. Like 'Imāra, the second feature was that the

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[186] *Supra* note 185, at 142.
[187] *Supra* note 185, at 145.
[188] *Supra* note 185, at 143- 144.
[189] Assad N. Busool, RASHID RIDA'S STRUGGLE TO ESTBALISH A MODERN STATE, http://i-epistemology.net/attachments/318_Rashid%20Rida%20Struggle%20to%20Establish%20a%20Modern%20Islamic%20State.pdf.
[190] Zhyntativ, HASAN AL-BANA AND HIS POLITICAL THOUGHT OF ISLAMIC BROTHERHOOD, (May. 2008) http://www.ikhwanweb.com/article.php?id=17065.
[191] HASAN AL-BANNā, KHATAWAna AL-THāNEYA, AL-TANZEER 1-1-30.
[192] Qur'an 4:58.
[193] Qur'an 63-8 and 4-59.
[194] Qur'an 8-60.
[195] HASAN AL-BANNā, FIVE TRACTS 133-156 (1978).
[196] HASAN AL-BANNā, FIVE TRACTS 142 (1978).

[197] HASAN AL-BANNā, FIVE TRACTS 147 (1978).
[198] A tax paid by the non-Muslims during the wars in case they do not want to belong to Islam or to be with the Muslim army.
[199] The *Qur'an* (9:29).
[200] Hasan Al-Bannā , *Risālat Al-Jihād* 286, http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D8%A7%D9%84%D8%AC%D9%87%D8%A7%D8%AF.
[201] Hasan Al-Bannā , *Risālat Al-Jihād*, 286, http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D8%A7%D9%84%D8%AC%D9%87%D8%A7%D8%AF.
[202] Hasan Al-Bannā, AMAL AL-DAWLA AL-ISLAMIYYA FI GHD AL-FAROWAK.

Caliphate is international, which means the Caliphate's role is to unite Muslims and to expand the boarders of the Islamic state by *Jihad*,[203] and lastly like 'Imāra, the Caliphate must function according to the *Qur'an*, [204] this meant the Caliphate's aim is implementing *Shari 'a*.

In addition to the three features mentioned above, al-Banā imposed three categories for the Islamic government. The first category was that the ruler's responsibility as he is responsible to God and People; the ruler is considered to be a servant of the people. The relationship between the ruler and the citizens is contractual; the authority cannot be inherited, which means the authority must be based on election and the *umma* is the only one who choose the caliph. [205] The second category was that that al-Banā argued that the Muslim nation must act in a unified manner. He based this argument on two points. First, the citizens must provide advice and guidance for the Islamic state.[206] This meant the *umma* had a duty toward the caliph. The citizens must monitor him and guide him in case he misused the authority. Al-Banā added the ruler could not be removed unless he disobeyed God's mandate. [207] Here, al-Banā did not mention what were the acts that allowed the *umma* to dispose the caliph. Second, contrary to the western's democracy system, al-Banā rejected the multiparty systems because it breaks the unity of the Muslim nation and creates a competition between the political parties to gain the authority.[208] The third category was that al-Banā strongly supported that the best working system is the unitary system in order to achieve both the reformation of the government and independence. [209] According to al-Banā, if the government met the above three conditions, its name or form does not matter; he argued that the contemporary political systems and parliamentary democracy is the closest to Islam.[210] Although al-Banā rejected the multiparty system which is considered as democratic.

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[203] Hasan Al-Bannā, *Risālat Al-Jihād*, 273, 283, http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D8%A7%D9%84%D8%AC%D9%87%D8%A7%D8%AF.

[204] Hasan Al-Bannā, *Bayn Al-Ams wa AL-Yawm* 147, http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D8%A8%D9%8A%D9%86_%D8%A7%D9%84%D8%A3%D9%85%D8%B3_%D9%88%D8%A7%D9%84%D9%8A%D9%88%D9%85.

[205] Hasan Al-Bannā, *Mushklatna Al-Dākhelya fi Dewal Al-Nezam Al-Islāmī* 234, http://www.ikhwanwiki.com/index.php?title=%D9%85%D8%B4%D9%83%D9%84%D8%A7%D8%AA%D9%86%D8%A7_%D9%81%D9%8A_%D8%B6%D9%88%D8%A1_%D8%A7%D9%84%D9%86%D8%B8%D8%A7%D9%85_%D8%A7%D9%84%D8%A5%D8%B3%D9%84%D8%A7%D9%85%D9%8A.

[206] Hasan Al-Bannā, *Risālat Al-Mu'tamar Al-Khāmis* 321 (Jan. 4, 2003), http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D8%A7%D9%84%D9%85%D8%A4%D8%AA%D9%85%D8%B1_%D8%A7%D9%84%D8%AE%D8%A7%D9%85%D8%B3.

[207] Hasan Al-Bannā, *Risālat Al-Ta'khlīm*, http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D8%A7%D9%84%D8%AA%D8%B9%D8%A7%D9%84%D9%8A%D9%85.

[208] Hasan Al-Bannā, *Risālat Nizām Al-Hukm* 235, http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D9%86%D8%B8%D8%A7%D9%85_%D8%A7%D9%84%D8%AD%D9%83%D9%85.
Risālat Al-Mu'tamar Al-Khāmis 197 (Jan. 4, 2003), http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D8%A7%D9%84%D9%85%D8%A4%D8%AA%D9%85%D8%B1_%D8%A7%D9%84%D8%AE%D8%A7%D9%85%D8%B3.

[209] Hasan Al-Bannā AL-NAZIī R 14-1-3.

[210] Hasan Al-Bannā, *Risālat Nizām Al-Hukm* 235, http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D9%86%D8%B8%D8%A7%D9%85_%D8%A7%D9%84%D8%AD%D9%83%D9%85.

As we see, like ‘Imāra and Sanhūrī the legal thought of al-Banā on the Caliphate was characterized by the unity of the *umma* and the application of *Shari ’a*. What follows is the Caliphate in Ibn Taymiiya’s legal thought regarding the Caliphate. For Ibn Taymiyya, the most important issues are the implementation of *Shari ’a* like ‘Imāra and al-Banā claimed and the existence of a government as he was scared from anarchy.

2. Caliphate in the Salafists legal thought:

The Caliphate in the legal thought of Ibn Taymiyya was characterized by the implementation of *Shari ’a* like ‘Imāra, Sanhūrī and al-Banā, and the obligation of existence a government scaring from anarchy. Ibn Taymiyya was born after the fall of Baghdad, in Harran. His family moved to Damascus when he was about six year old, and was educated there in the religious sciences and Sunna.[211] Ibn Taymiyya was a member of the Hānbalī school of law created by the students of Ahmed Ibn Hanbal, who depended on the first two sources of *Shari ‘a*, the *Qur’an* and *Sunna*, instead of depending on *ijtihād*. Following the death of his father, Ibn Taymiyya became a professor of Hanbalī jurisprudence in the Grand Mosque.

Ibn Taymiyya was a Salafist; he called and supported the Salafism discourse, which depends mainly on the *Qur’an* and hadiths. However, it rejects *ijma*’, *qyās* and *ijtihād* as it involves reason, which should not play any roles in religious matters.[212] Ibn Taymiyya reconnected the umma back to Salaf from 400 H to 700 when Ahl-al-Kalām severed the umma from the righteous Salaf. This is proven in his writings like when he refuted the Raafidah, the Sufiyyah, the Jahmiyyah and all other factions or individuals.[213] There - are different opinions on Ibn Taymiyya’s arguments. The leader of al-Nūr political party Tárek al-Saharī who supports Ibn Taymiyya’s arguments criticizing ‘Alī Gom’a, the previous Mufftī’s opinion on Ibn Taymiyya when he said Gom’a said that the fatwā of Ibn Taymiyya are disaster.[214]

In order to analyze Ibn Taymiyya’s opinions on the Caliphate, one must be familiar with the *al-Siyasa al-shar’iyya*. Ibn Taymiyya discussed the issue of the Caliphate in a fatwā belonging to the Prophet claiming that “The Caliphate will last thirty years, and then it will turn into monarchy.” For Ibn Taymiyya, this meant that the caliphate would exist in every era. The first thirty years are the ideal governments. Then, all the subsequent caliphates were characterized by anarchy.

Additionally Ibn Taymiyya divided the Caliphate into two types: *Khilāfat al-nubuwwa* (Caliphate based on the model of the Prophetic government) and *Khilāfat al-mulk* (Caliphate based on kingship).[215] Ibn Taymiyya placed the four caliphs under the head of *Khilāfat al-nubuwwa*; and all the subsequent caliphs

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Hasan Al-Bannā *Risālat Al-Mu'tamar Al-Khāmis* 197 (Jan. 4, 2003), http://www.ikhwanwiki.com/index.php?title=%D8%B1%D8%B3%D8%A7%D9%84%D8%A9_%D8%A7%D9%84%D9%85%D8%A4%D8%AA%D9%85%D8%B1_%D8%A7%D9%84%D8%AE%D8%A7%D9%85%D8%B3.

[211] IBN TAYMIYYA, Al-SIYASA AL-SHAR’IYYA FI ISLAH AL-RA’I WA AL-RA’IYYA 3 (1966).

[212] Ahmed Moussalli, more on section of Salafism, WAHABISM, SALAFISM AND ISLAMISM, WHO IS THE ENEMY (Jan.2009), http://conflictsforum.org/briefings/Wahhabism-Salafism-and-Islamism.pdf.

[213] Abu Lyaad, REFUTING YASIR QADHI AND THE ORIENTALISTS: IBN TAYMIYYA ON SALAFIYYAH BEING THE PROPHETIC WAY, http://www.salafis.com/articles/araufda-refuting-yasir-qadhi-and-the-orientalists-ibn-taymiyyah-on--salafiyyah-being-the-prophetic-way.cfm.

[214] ‘Alī Kemāl, *kiyādī al-Nūr La Yahkom ‘alā Ibn Taymiyya ‘la Amsalo*, AL-SHERūK, January 21, 2014.

[215] IBN TAYMIYYA, EXPOUNDS ON ISLAM 496-500(2000).

starting with Mu'áūya under the head of *Khilāfat al-mulk.*[216] Ibn Taymiyya did not consider the Caliphates after the four Rightly-Guided Caliphs as illegitimate; instead, he claimed "one may call *Khilāfa* those rulers also who came after the rightly guided caliphs even though they acted as kings and not as deputies of the Prophet," and mentioned a Prophetic *hadith*: "The people of Israel were ruled by their prophets. Whenever a prophet died another prophet took his place. But there will be no prophet after me; there will only be deputies and there will be several."[217] Ibn Taymiyya argued that "The words, and they will be several, is evidence that the Prophet insured there would be few caliphs besides the rightly guided caliphs."[218]

Although Ibn Taymiyya argued that the Umayyad and Abbasid Caliphate are not placed under the category of *Khilāfat al-nubuwwa,* he recognized their legitimate rules. For Ibn Taymiyya, the society may change *Khilāfat al-nubuwwa* to Khilāfat al-mulk in two cases.[219] The first case, if the society is not capable of implementing the *Khilāfat al-nubuwwa*, the ruler will have an excuse and will not be punished. The second case, if the society is capable of establishing *Khilāfat al-nubuwwa*' so the ruler has a duty to establish, and if he ignored it, he is punished.[220] Ibn Taymiyya'a research on the Caliphate represented the Caliphate as the perfect model for the Muslim community. For Ibn Taymiyya, if the Caliphate is an ideal form of government, the *Shari 'a* for him is the highest authority that should be the guiding principle for Islamic Government. For Ibn Taymiyya, *Shari 'a* is the legislative body of the government that controlling the society. For him, the Caliphate considered the best functioning government if it applied *Shari 'a.* The book *al-Siyasa al-shar'iyya* is based on two verses in the *Qur'an* concerning political rule:

"Surely God commands you to make over trusts to those worthy of them, and that when you Judge between people, you judge with justice. Surely God admonishes you with what is Excellent. Surely Allah is ever Hearing, Seeing*."*
"O you who believe, obey God and obey the Messenger and those in authority from among you; then if you quarrel about anything, refer It to God and the Messenger, if you believe in God and the Last Day. This is best and more Likely to (achieve) the end."[221]

In analyzing the previous versus, Ibn Taymiyya stressed that rulers should rule and administer the society's legal affairs fairly.[222] In that regard, it can be argued that according to Ibn Taymiyya, *Shari 'a*'s definition is *to* ruling justly.[223] This means that a ruler must judge according to *Shari 'a*, which means according to the *Qur'an* and the *Sunna*."[224] It can be argued that for Ibn Taymiyya the *Qur'an* and Sunna are the guiding law for Muslims. In *al-Siyasa al-shar'iyya*, there are several Hadiths of the Prophet ordering rulers to rule justly:

"The most beloved in the eyes of God is the just ruler, and the most hateful in His eyes is the unjust ruler*."*

[216] *Supra* note 215, at 496.
[217] *Id*.
[218] *Supra* note 215, at 497.
[219] *Supra* note 215, at 499.
[220] *Supra note* 215, at 499-500.
[221] IBN TAYMIYYA, Al-SIYASA AL-SHAR'IYYA FI ISLAH AL-RA'I WA AL-RA'IYYA. Transl. Omar Farrukh 12 (Beirut Khayats.1966).
[222] *Id*.
[223] P. BEARMAN, W. HEINRICHS and B. G. WEISS EDS, *THE LAW APPLIED: CONTEXTUALIZINGTHE ISLAMIC SHARI'A* 259-294 (2008).
[224] *Supra* note 221, at 14, 23.

*"*The people of Paradise are of three categories: a just ruler, a man good-natured towards every relative and every Muslim, and a man who is rich, chaste and charitable*."*

*"*So, the aim of sending messengers and revealing Books [scriptures] (to them) is to enable men to be fair in performing the duties due to God and those due to His creatures."[225]

To sum up, what is important for Ibn Taymiyya, is the rule according to *Shari 'a*. Any ruler who rules justly is considered as a ruler who rules according to *Shari 'a*. For Ibn Taymiyya, if the Caliphate could implement *Shari 'a*, it would considered the ideal government. Ibn Taymiyya provided a Hadith claiming that:

"Every one of you is a shepherd, and every one of you is responsible for his flock; the caliph who rules the people is a shepherd, and he is responsible for those whom he governs; the woman is a shepherdess in her husband's house, and she is responsible for the household; the youngster is a shepherd in regard to his father's wealth, and he is responsible for the money at his disposal; the slave is a shepherd as regards his master's possessions, and he is responsible for these possessions. Lo! Every one of you is a shepherd, and every one of you is responsible for his flock."[226]

This meant that For Ibn Taymiya, the ruler and citizens are equal. In the above passage he equalized the caliph to a woman, youngster and even a shepherd. Consequently, based on Ibn Taymiyya's view, good government is meant looking to the *Shari 'a* for guidance, not the Caliphate.

Although Ibn Taymiyya claimed the importance of a just ruler, he recognized that political authority is essential for political and social order whether the ruler is ruling justly or unjustly. Ibn Taymiyya expressed his concern for prevailing chaos, as evidenced by the following Hadith:

"Sixty years of (domination) of a despotic ruler are better than one single night (passed) without a ruler."[227]

Furthermore, Ibn Taymiyya provided a report by the fourth caliph Ali in order to justify the political rule whether the ruler was fair or unfair:

"Ali ibn Abi Talib said: "It is inevitable that there should be an authority, righteous or wicked." He [cAli] was asked: "O Commander of the Faithful, we understand what a righteous authority is; what Abū ut the wicked?" He answered: "From this also the frontiers are guarded, the highways are rendered secure, the land is defended against the enemy and the fai' (revenues from lands conquered from unbelievers) are distributed among the Muslims. "[228]

Hence, according to Ibn Taymiyya, a government is a must in the society to prevent chaos. If the ruler was fair, his government would be ideal and legitimate and anarchy would prevented. However, if he ruler was unfair, his government would not be ideal; but legitimate as without it the society would not be

[225] *Supra* note 221, at 33, 34.
[226] *Supra* note 221, at 1.
[227] *Supra* note 221, at 188.
[228] *Supra* note 221, at 73, 74.

stabilized and chaos would prevail. As we see Ibn Taymiyya's eyes on the Caliphate, what follows is a letter written by ISIS proclaiming the establishment of the Caliphate.

3. Caliphate in The Islam State of Iraq and Syria's (ISIS) legal thought:

Like Sanhūrī, 'Imāra and Ibn Taymiyya who strongly supported the Caliphate as it applies *Shari 'a*, ISIS believes in the Caliphate too. They declared that they restore the Caliphate. ISIS began in Iraq with the name "Islam state of Iraq", and then it expanded to Syria and changed its name to the Islam State of Iraq and Syria.[229] At this time, ISIS controls parts in Syria and Iraq which is a part of a single state.[230] ISIS is fighting in these two countries in order to achieve its main objective, which is expansion.

After ISIS's control of some parts in Syria and Iraq; they declared the restoration of the Caliphate. On the 29 of June 2014, Abū Muhammad al-'Adnānī, the official spokesman of ISIS, proclaimed the establishment of the Caliphate; he declared the group as a Caliphate and its leader is Abū Bakr al-Baghdādī, the Caliph Ibrahim. The announcement came on the Twitter account of the group's al-I'tisaam Media Foundation entitled", هذا وعد الله".[231] The speech can be summarized in five points. The first point was that there is no excuse to delay the implementation of the Caliphate. The second point was that Ibrāhīm Ibn 'Awwād Ibn Ibrāhīm Ibn 'Alī Ibn Muhammad al-Badrī al-Hāshimī al-Husaynī al-Qurashī is the caliph of all Muslims , and he accepted the bay'ah (pledge of allegiance) by the people of the authority in the Islamic state. The third point was that ISIS has expanded to in Iraq and Shām. The fourth point was that all Muslims have to give the oath of allegiance and support the caliph, al- Baghdādī. The last point was that any other groups or organizations become void after ISIS's announcement of the Caliphate.[232] Responding to ISIS's letter, first, the Caliphate cannot be applied in the 21th century. Every state has its own laws and customs that might be different from other states. For example, the incident of Charlie Hebdo insured that France allows without limitations the freedom of expression; the cartoonists can draw several caricatures underestimating any religion without being punished. However, customs in Egypt cannot allow such behavior. The same idea applies in the Caliphate issue. Surely not all the states could accept the project of ISIS including the establishment of the Caliphate as it differs from their laws and customs. Second, it is obvious that ISIS wanted to gain the power of the Caliphate by violence like the Umayyad and Abbasid. It proclaimed al- Baghdādī as a caliph without taking the allegiance from Muslims. The votes of the people of authority in the Islamic state were enough for them to choose the caliph, and following this decision, Muslims have to obey the caliph. In addition, ISIS killed thousands of people and captured Iraq and Sham in order to gain the power an attitude which is against Islam and the Prophet's behavior. As we see ISIS's thinking in the Caliphate, the following is a response to the Caliphate question through conducting a historical analysis of six Sunni scholars.

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[229] Abdallah Suleiman Ali, *ISIS on offense in Iraq*, Al-Monitor, JUNE 10, 2014.
[230] *Id*.
[231] Translated into English to this is the Promise of Allah.

[232] https://www.youtube.com/watch?v=waWxwanIdR2CA.

VII. Analysis:

As we see, the thoughts of al-Banā, Ibn Taymiyya and ISIS in the Caliphate who were characterized by the implementation of *Shari' a*, the following is a response to the Caliphate question through examining the thoughts of six Sunni scholars and ISIS in the Caliphate. Starting from the 1920s to 2014: In the 1920s Rāziq's and Sanhūrī ; then in the 1980s Abū Zayd and 'Imāra and lastly the Caliphate debate following the 25th January revolution, the Muslim brotherhood as I examine the writings of al-Banā , the Salafists as I examine the writings of Ibn Taymiyya and ISIS's letter. I hope that this thesis constitutes a useful starting point to support the separation idea of religion and politics; and gives an appropriate answer to the Caliphate question through examining the arguments of the all mentioned authors.

An essential characteristic of Islam is that it ignores the formal separation of religion and politics. Unlike Secular countries, such as France, the separation idea of religion and politics is strongly acceptable. However, in Islam, religious and political authorities are inseparable. This is seen in the position of the caliph. The caliph has two roles: the first role is protecting the religion; and the second role is managing worldly affairs. The caliph's freedom is limited; he is restricted to the guiding law in *Shari 'a*. The caliph cannot allow something prohibited in *Shari' a* or contradicts something ordered in *Shari' a*. For example, when the *Qur'an* orders Muslims to do the five daily prayers, hence the caliph must follow this obligatory duty and enforces Muslims to do so as an order from God. In Bernard Lewis's book "*The Political Language of Islam*," he argues that unlike Christianity, which is characterized by the separation of state and religion, Islam does not accept such idea as it contradicts its rules, "The distinction Between church and state, so deeply rooted in Christendom, did not exist in Islam….The very notion of a secular jurisdiction and authority—of a so-to-speak unsanctified Part of life that lies outside the scope of religious law and those who uphold it—is seen as an impiety, indeed as the ultimate betrayal of Islam."[233] Additionally, Ann Lambton claims that Islam and Christianity are totally different. As Islam does not recognize the separation idea of state and church, while in Christianity, this idea is highly appreciated.[234] The idea that Islam is characterized by a rigid fusion of religion and politics is supported by several Arabic authors too like Khomeinī,[235] the guide of the Iranian revolution, and Yusuf Qaradāwī. Qaradāwī claims that Christianity accepts the separation of life into two parts. The first part is for the religion; and the second part is for the state. Unlike Islam which ignores such idea.[236] Both authors, Khomeinī and Yusuf Qaradāwī argue that the Islamic government is necessary as it applies *Shari 'a*; they have an only concern that is without an Islamic government, there cannot be no implementation of *Shari 'a*. As we see how the non-separation idea in Islam is supported by many scholars, the following is the views of the opponents and proponents of Rāziq's book.

[233] BERNARD LEWIS, THE POLITICAL LANGUAGE OF ISLA, 2-3 (1988).
[234] ANN K. S. LAMBTON, STATE AND GOVERMENT IN MEDIEVAL *ISLAM* xv (1981).
[235] IMAN KHOMENI, GOVERNANCE OF THE JURIST
[236] YUSUF AL-QARDāWī, The Lawful and Prohibited in Islam, 104-105 http://www.2muslims.com/directory/Detailed/226100.shtml.

There are different views regarding the separation idea of religion and politics, which is supported in Rāziq's book. On the one hand the work of Muhammad al-Khidr Husayn,[237] Rashīd Ridā,[238]are considered two of the most popular books of Rāziq's criticism. Rashīd Ridā claimed that Rāziq's book allows Muslims to disobey God and the Prophet concerning all of the worldly regulations of the *Shari 'a*."[239] Additionally, *Shaykh* Muhammad Bakhīt and the scholars of *al-Azhar* are critiques of Rāziq's arguments too. All of them see the Caliphate is the ideal government because it applies the rule of law *Shari 'a*. On the other hand, there are several authors who defend Rāziq's work as Majid Fahmī Fakhrī who described Islam and the foundations of Political Power as" the most thoughtful and constructive attempt to re-examine the presuppositions upon which the traditional notion of the Islamic Sate rests."[240] As well as Souad T. Ali who claims that Rāziq's work is "new critical examination of Islam's history and scared texts, is "is keeping with the active revivalist spirit of the early twentieth century Muslim world."[241] Ali does not argue like Fakhrī that Rāziq's proved the requirements of progress, but she argues that his work filled the conditions of responsible scholarship. Consequently, according to Ali, the decision of dismissing Rāziq's from the Council of '*ulama"* was wrong as their decision was political not religious. [242]

Contrary to the idea that Islam is both religion and politics, this thesis argues the opposite; there is separation of religion and politics in Islam. This is seen in the examination of the thoughts of six Sunni scholars and ISIS in the Caliphate starting from the 1920s to 2014, which show that Rāziq and Abū Zayd have the same thinking regarding the Caliphate. While, Sanhūrī, 'Imāra, al-Banā, Ibn Taymiyya and ISIS have the same though in the Caliphate.

The separation view of religion and politics has been discussed extensively. In Ira Lapidus's Article "*The Separation of State and Religion in the Development of Early Islamic Society*," which focuses on Baghadad, she argues that from the middle of the tenth century, governments in the Islamic lands were characterized with secular regime.[243]There were three developments in early Islam that reflect the separation of religion and politics. The first development was that the Muslim caliphs who strongly focused on the political authority instead of religious character; the second development was the appearance of a religious class '*ulama* who were independent of the political authority of the Caliphate, who were judges, teachers, administrators and the third development was the appearance of religious advisers to Muslim, and the rise of the Hanbalī school of law.[244] Another author who supports the separation idea is Patricia Crone; she argues that although after the death of the Prophet, the political and religious authority was controlled by the caliph, by the mid-ninth century the '*ulama* declared that they

[237]MUHAMMED AL-KHEDR HUSAYN, NAKD KITAB AL-ISLāM WA USūL AL-ḤUKM (1976).
[238] Rashīd Ridā, AL-MANāR, June 21, 1925.
[239] Rashīd Ridā, AL-MANāR, June 21, 1925.
[240] MAJID FAKHRī, THE THEOCRATIC IDEA OF THE ISLAMIC STATE IN RECENT CONTROVERSIES (1954).
[241] SOUAD T. 'ALī , A RELIGION NOT A STATE page 86 (1st ed. 2009).
[242] *Id*.
[243] LAPIDUS, SEPERATION OF STATE AND RELIGION 364 (1975).
[244] *Id* at 366-377.

are the only who interpret the *Qur'an* and *sunna*,[245] rejecting any intervention from any caliph in religious matters.[246]In addition, another proponent of the separation view is 'Abdullahī Ahmed An-Na'khīm. He focuses on the reasons why secularism is a better system that the Islamic state for Muslims and claims that "It is Indispensable for protecting the freedom of each and every person to affirm, challenge, or transform his or her cultural or religious identity,"[247] Additionally, Ashmawī, an Egyptian liberal lawyer, who is against the case of the fusion religion and politics too. He provides several conflicts in the political Islamic history and concluded that all these conflicts have been articulated in a religious manner which hides their bases political character. [248] After we see the proponents and the opponents of the separation idea of religion and politics, the following is a view arguing that the *Qur'an* states the appearance of a government without stating its form. Followed by proving that the Prophetic government was a theocratic government, and a legal one, not Islamic.

A. Government in the *Qur'an* and the Prophet's era:

It is essential that everyone agrees that a government is important for any society regardless its religion, color or race. The view of Rāziq, Ibn Taymiyya and Sanhūrī that a government is a must in Islam to prevent chaos and to protect the society is persuasive. [249]Indeed, a body of law is not enough to organize and to stabilize and manage a society. In order to prevent chaos, there must be a ruler and a government. Without these the society will be unstable and chaos will prevail. I believe a government is necessary in Islam based on the *Qur'an*, but at the same time I believe the *Qur'an* does not articulate the form of government as Rāziq,[250] and Abu Zayd,[251]claim. Unlike Sanhūrī, I believe that the political authority has no foundation in the Prophetic government as Rāziq argued.[252] I believe the form of government during the period of the Prophet was a theocratic and a legal one. In the following paragraph I discuss that the *Qur'an* mentions the existence of a government but it does not articulate its form followed by my arguments on the non-existence of the political authority during the government of the Prophet.

First of all, I believe that the *Qur'an* only states the existence of a government without articulating its form. The *Qur'an* states the existence of a government, but it does not mention the form of the government that has to be applied in the society. The *Qur'an* mentions two kinds of kings good kings like Jewish kings, David and Solmon who were appreciated by the *Qur'an* because they ruled justly, according to the divine law, and bad kings like Pharaoh,[253] who was criticized in the *Qur'an* because he was a tyrant king; he did

[245] CRONE AND HINDS, GOD'S CALIPH 1-3 (1986).
[246] *Id*.
[247] ABDALLAH AHMED AN- NA'IM, ISLAM AND SECULAT STATE (2008).
[248] MUHAMAAD AL-'ASHMāWī, AL-ISLāM AL-SīYASī (1987).
[249] See page 14, 31-32, 17.
[250] See page 14-15.
[251] See page 25.
[252] See page 14-15.
[253] He was a king in Egypt.

not believe in The Prophet in Moses, who was the Prophet of Jews.[254] The *Qur'an* describes Pharaoh as" a Kings, when they enter a country, they despoil it and make the noblest of its people meanest, thus do they behave."[255] Based on these mentioned verses, it is obvious that the *Qur'an* is not against the idea of kingship, which means it accepts the society having a ruler. However, the *Qur'an* does not state the form of government of such a kingship. The *Qur'an* is only against despotic rule which does not follow divine law.[256] Hence, the *Qur'an* recognizes the existence of a ruler by stating the types of kings, but with one condition which is the rule just and according to divine law. In addition, the *Qur'an* uses several times the word *al-Hukm* to express authority.[257] Thus, by using the word *al-Hukm* the *Qur'an* accepts the establishment of an authority to rule the society. In addition to the lack of stating directly the form of government, I believe political authority has no foundation during Prophetic government. Although the Prophetic government involved the three powers, legislative, executive and judicial bodies, the government of the Prophet was not characterized by political authority.

The highest body of the Prophetic government is the legislative body which refers to the laws that apply in society; in democracy this authority is chosen by the *umma* or the citizens or their representatives like the parliament.[258] However, in Islam the only legislator is God; God connects with people through his Prophets. He delivered his divine law, which is embodied in the *Qur'an* to the people.[259]

There are many features of the Koranic legislation during the period of the Prophet. The first feature is that the *Qur'an* was established gradually over 22 years parallel to the progress of the Islamic state; therefore, the legislation was practical and the rules were limited.[260] The second feature is that the *Qur'an* lays down the conditions to organize the religious issues,[261] such as praying, equality and the freedom of belief. The third feature is that the *Qur'an* is universal.[262] Because the *Qur'an* is from God, so it is for all people regardless their color, race or religion; it is not possible for anyone to amend or change it after the period of the Prophet.[263] To sum up, the Prophet was not a ruler; the *Qur'an* is the ruler that creates the rules and the Prophet was only a Messenger from God to guide and educate the people the divine law.

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[254] Qur'an, XX:43
XXVIII:4
LXXIX: 15-26.
[255] 'Alī, The Holy Qur'an, vol. 2, pp. 985-986.
[256] HAMIDULLAH, INTRODUCTION TO ISLAM 90-91 (1969).
MUTW'ALī , MABäda', NIZāM AL-HUKM FI AL-ISLāM 498 (1st ed. 1966).
[257] Qur'an, III: 79
XII: 40
XXI: 79
V: 42-50.
[258] MUTW'ALī , AL- QANUN AL-DUSTURI WA AL-ANZIMAH AL-SIYASIYAH 160-164 (3rd ed. 1964).
[259] KHADDURI, WAR AND PEACE IN THE LAW OF ISLAM, 24 (3rd ed. 1962)
[260] KHALāF, KHULāSAT TARīKH AL-TASHRIī' AL-ISLāMī, 60-61 (8TH ed. 1968).
[261] AL- SHAFI'ī' , AL-RISALAH, p. 20 (1st ed. 1940).
SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 1 (1964).
[262] Qur'an, XXI: 107
The holy Our'an 846
Qur'an, XKXIV: 28
PICKTHALL, Glorious Koran, p. 309.
[263] Qur'an, X: 64;
ūDAH, AL-TASHRī' AL JINāī'19 (2nd ed. 1959).

As we see the supreme body of the Prophetic government, the following is the second body of the Prophetic government.

The second body is the executive power which was controlled by the Prophet's representative of God and under his direct control as he was the God's Messenger. The Prophet was the head of the executive power; he had many duties. The first duty was preaching Islam and educating the people. The main duty of the Prophet was to make people believe and to embrace in Islam and teach them Islam's principles. He used several ways to achieve this goal. The first way was the mission. The Prophet spent all his time in Mecca in calling the people to Islam; he succeeded in converting the Medinans. The Prophet with his followers, continued in calling the people to Islam; the Prophet sent some of his companions to work as missionaries in far places. The first one sent to achieve the mission was Mis'ab Ibn 'Umayr, when the Prophet sent him to al-Madina to teach Muslims the *Qur'an* and lead them in prayers.[264] The second way was education. The Prophet taught many people how to write and read. He asked the *Qurayshī'* prisoners captured in *Badr* battle to teach Muslim children how to read and write.[265] In addition, the Prophet depended on the companions who read and write to write down the *Qur'an*, letters and treaties and he charged others to work as judges and governors.[266] The third way was the Mosque. The first thing the Prophet did when he arrived in al-Madina was to establish a mosque, which is considered the main center in the religious and political spheres. The mosque had many functions like; it was a place for performing the prayers,[267]and for education Muslims in the principles of writing, reading and religion.[268] Muslims usually used the mosque to negotiate their affairs, the Prophet called them to the mosque when there was something urgent to be discussed.[269]

After discussing the means used by the Prophet to preach and to educate people Islam, it is important to clarify what is meant by *jihad* as many people believe the Prophetic government was characterized by the political authority because the Prophet practiced *jihad*. The Prophet depended on *jihad* only for preaching Islam peacefully as the *Qur'an* rejected the idea of forcing someone to believe in Islam. The *Qur'an* states" there shall be no coercion in matters of faith," [270] "The truth[has now come] from your Sustainer: Let, then, him who wills, believe in it, and let him who wills, reject it,"[271] "Whoever chooses to follow the right path follows it but for his own good; and whoever goes astray goes but astray to his own hurt."[272]These verses mean that the *Qur'an* recognizes the freedom of belief; every individual is free to choose his or her religion. Therefore, forcing individuals in Islam is unacceptable, and anyone would

[264] IBN HISHāM, AL-SīRAH AL-NABAWIYYAH 434-435 (1955).
[265] IBN SA'D MUHAMMAD, AL-TABAQāT AL-KUBRā 22 (1960).
AL-BANNā, AL-FATH AL-RABBāNī 101 (1st ed. 1353- 1377 A.H).
[266] Ibn KHAYYāT, TARIKH KHALīFAH Ibn KHAYYāT 62-64 (1967).
IBN SA'D MUHAMMAD, AL-TABAQāT AL-KUBRā 341-342 (1960).
[267] GAUDEFROY DEMOMBYNES, MUSLIM INSTITUTION 108 (3rd ed.1961).
[268] ARNOLD, THE CALIPHATE 63 (1924).
HITTI, HISTORY OF THE ARABS 120-121 (8th ed. 1963).
[269] IBN SA'D MUHAMMAD, AL-TABAQāT AL-KUBRā 247 (1960).
AL-SHARīF, AL DAWLAH AL ISLāMIYYAH 67 (1965).
[270] Qur'an, 2:256,The Islamic Case of Religious Liberty.
[271] Qur'an 18:29, The Islamic Case of Religious Liberty.
[272] Qur'an17:15, The Islamic Case of Religious Liberty.

use force not peace means to promote religion must ignore the view of the person central in the *Qur'an*. In addition, the mission of the Prophet was based on persuading people to believe in Islam using peace means; it did not depend on force and violence. For example, when the Prophet settled in al-Medina, there was a minority group who were the Jews, who did not want to believe in Islam. The Prophet agreed with them to do an agreement with the Muslims as each group in Medina knew their obligations and rights. The charter could be summarized in three points. The first point was that the Jews who entered into this chart are equal to others; they are protected from any violence of insult. The second point was that they had the freedom of worship. The third point was that the Jews enjoyed the same securities as Muslims. Hence, this agreement between the Prophet and the Jews proves that the Prophet was just with dealing with non-Islamic people. Also, it shows how the Prophet did not use force in spreading Islam in Medina; however, he used peace means with people of other faiths.[273] Indeed, the Prophet practiced *jihad* for mainly two reasons. The first reason was that the Prophet protected Islam from attack. The second reason was that the Prophet guaranteed the spread of Islam belief without coercion.[274] As we see, *jihad* was only practiced for defending Islam, not for forcing people to believe in Islam violently and the second body of the Prophetic government, what follows is the last body, which is the judicial government.

The third body was the judicial power which was controlled by the Prophet under his direct control as he was the God's messenger. Before Islam, the Arabs settled their disputes according to customary arbitration of tribal chiefs.[275] The situation started to change after the development of Islam, because the *Qur'an* ordered Muslims to present their disputes to the Prophet, and it tells the Prophet to settle their disputes. [276] Indeed, the Prophet practiced the role of an arbitrator or mediator before his call to prophet-hood and before his death. At the early beginning the Meccans referred their disputes to the Prophet as he was characterized by his intelligence, wisdom; they welcomed his judgment of his great attitude. They referred to him as al-amīn.[277] Additionally, the judgment of the Prophet was not obligatory or final; the disputing parties had the right to execute his judgment or not. A Sunna reports that the Prophet settled a dispute between a creditor and a debtor by suggesting the creditor to accept to get half the debt if the debtor pays in installment.[278] Hence, by stating suggesting, it means that the Prophet's judgments were not enforceable; he was only a mediator. The Prophet settled only the disputes which were presented to him, though he did not oblige the parties to present their disputes to him. This is clear in the Madina

[273] Justice, Peace and Prophet Muhammad, available at http://www.al-islam.org/articles/justice-peace-and-prophet-muhammad-sayyid-muhammad-rizvi
[274] Qur'an, 11: 190-193; 217; IV: 74-75;
[275] TYAN E, HISTOIRE DE L'ORGANISATION JUDICIAIRE EN PAYS D'ISLAM 62 (2nd ed. 1960).
[276] Qur'ān, XXXVIII: 17-26.
AL-TABARī, JAMī' AL-BAYāN 'AN TA'WīL ĀY AL-QUR'āN 135-136 (2nd ed. 1954).
QUR'āN, IV: 59.
'ALī, THE HOLY QUR'ĀN 198, 199.
AL-TABARī, JAMī' AL-BAYāN 'AN TA'WīL ĀY AL-QUR'āN 157,158 (2nd ed. 1954).
-QURTUBī, AL-JAMī' LI AHKāM AL-QUR'Ān 261, 266 (1st ed. 1932-1950).
[277] Lahoucine khabid, *Mediation by Prophet*, MUSLIMS AND NON-MUSLIMS APPROACH TO CONFLICT RESOLUTION, http://www.academia.edu/7264568/Mediation_Muslim_and_non-Muslim_approach_to_conflict_resolution.
[278] Lahoucine khabid, *Mediation by Prophet*, MUSLIMS AND NON-MUSLIMS APPROACH TO CONFLICT RESOLUTION, http://www.academia.edu/7264568/Mediation_Muslim_and_non-Muslim_approach_to_conflict_resolution.

Constitution established by the Prophet, a provision stated the Prophet said" conciliation between Muslims is permissible, except for a conciliation that makes lawful unlawful and unlawful lawful". Also, the Prophet said: "Intercede so you will be rewarded." Hence, by stating the word permissible, it means that Muslims had the freedom to present their disputes or not. After the rise of Islam, the responsibilities of the Prophet increased, so he had to choose some of his companions in the judicial field to help him. For example, the Prophet asked 'Amr Ibn al-'ās to judge a case under his observation. Also 'Umar Ibn al-Khatāb was a judge during the period of the Prophet,[279] as well as Alī and Mu'ādh Ibn Jabal.[280] All of the mentioned companions helped the Prophet to settle the disputes of the Arabs. Their judgments were not final as the Prophet's were; the disputing parties had the right to present their dispute to the Prophet if they did not accept their initial judgment.[281] In addition, the Prophetic government did not enforce taxes on people as the current governments enforce taxes on inheritance, sellers, apartments and income. However, the taxes system was known by the rightly guided caliphs. Even, al-Zaka', was not enforced by the Prophetic government; however, it was a gift given by Muslims to the Prophet when he leaded them in the prayers.[282] Thus, it is clear that the Prophet was not a king or a ruler as he neither enforced taxes nor executed judgments on Arabs; all he did was helping the Arabs to settle their disputes and to preach Islam.

As we see, the lack of political authority in the Prophetic government. The legislative power as the supreme authority was held by God and the executive and judicial powers which were exercised by the Prophet in the name of God.[283] The question arises as to what the form of the Prophet's government was? We cannot say the government of the Prophet was a monarchy. Firstly, although the *Qur'an* is not against the idea of kingship, the Prophet did not want to be treated as a king. He said" I am not a king or a tyrant."[284] Or to be called as a king; he preferred to be called as the Messenger of God, and he said "I am the servant of God and his Messengers."[285] Additionally, the conditions of kingship government did not meet during the era of the Prophet. [286]A king gets the power based on heredity, while the Prophet got the religious authority from God through God's revelation, which controlled the Prophet's acts.[287]

In addition to the kingship government, we also cannot say that the government of the Prophet was a republic.[288] First of all, both the *Qur'an* and *Sunna* did not mention such a system. In addition, in the

[279] AL- SARAKHSī AL-MABSūT 70 (1st ed. 1324-1331).
IBN SA'D MUHAMMAD, AL-TABAQāT AL-KUBRā 146 (1960).
AL KITTāNī AL-TARāTīBAL-IDāRIYYAH 256-257.
[280] IBN SA'D MUHAMMAD, AL-TABAQāT AL-KUBRā 337 (1960).
[281] WAKī' , AKHBāR AL-QUDāT 95-97.
[282] Qur'an, 103:9
[283] ARNOLD, THE PREACHING OF ISLAM 27 (1896)
ARBERRY, ASPECTS OF ISLAMIC CIVILIZATION 72 (1st ed. 1964).
LEWIS. B, THE CONCEPT OF AN ISLAMIC REPUBLIC 9 (1955).
[284] Qur'an, XX:43; XXVIII:4; LXXIX: 15-26.
Hashim Y. Al-Mallah, THE GOVERMENTAL SYSTEM OF THE PROPHET MUHAMMED, 219 (1972).
[285] IBN KHATIR, AL BIDāYAH WA AL-NIHāYAH 44,48 (1966-1977).
SAYYID QUTB, AL 'ADāLAH AL-IJTIMā'YAH FI AL-ISLāM 52 (1991).
[286] Hashim Y. Al-Mallah, THE GOVERMENTAL SYSTEM OF THE PROPHET MUHAMMED, 219 (1972).
[287] *Id*.
[288] *Id*.

republican system, the president or the king is elected and chosen by the citizens for a fixed term; while the Prophet was chosen from God for unfixed term. [289] Indeed, the Prophet's government was created to apply divine law which is embodied in the *Qur'an*. Divine law was obligatory on Arabs including the Prophet himself and his family," because the ruler, equally with those who are ruled, is subject to the transcendent law."[290] Moreover, revelation controlled the works of the Prophet as the *Qur'an* stated" Had he invented against Us any sayings, We would have sized him by the right hand, then We would surely have out his life-vein and not one of you could have defended him."[291] Therefore, the Prophet was limited by God's revelation. Therefore, we find many verses in the *Qur'an* criticizing the Prophet because sometimes his *Ijtihād* was wrong. [292]Therefore, we can say the Prophet's government was characterized by two forms of governments a theocratic and a legal one.

The first form is that the Prophetic government was characterized by a theocratic form "in which the supreme power has been attributed either to God, or to a god, or some other superhuman being, or to an Idea. The men who exercised rule were not regarded as its possessors, but as the servants and vicegerents of an unseen ruler, free from the weakness of human nature."[293]Theocratic government means the source of power is God and he delivers directly or indirectly a Messenger to govern the people with his name and those people must obey him.[294] Indeed the Prophet's government met the conditions of such a theocratic government. The source of power: the legislative, executive and judicial powers were held by God. God sent his Messenger Muhammad to deliver the divine law and all people must obey him because he got his authority from God.

The second form is that the Prophetic government was characterized by a legal government because it took its legitimacy from divine law and functioned according to its rules in order to be implemented on earth.[295] Thus, the Prophetic government was neither kingship nor republic, but rather a theocratic and a legal government. Thus, we can say the main and only goal of the Prophet was preaching Islam and educating people on the divine law based on the *Qur'an*, which is considered the legislative body. The Prophet was not a king or a president; he was the Messenger of God who educated people about divine law through God's revelation. Thus, divine law was established and promoted before the death of the Prophet. No one has the right to educate people in such divine law except the Prophet as he was the only person who had this authority as the Messenger of God. As we see the Prophetic government was not characterized by political authority but rather by a theocratic and a legal one. What follows is a discussion showing how the Caliphate did not unite Muslims, a view which is different from the views of Sanhūrī, 'Imāra and al-Banā.

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[289] Hashim Y. Al-Mallah, THE GOVERMENTAL SYSTEM OF THE PROPHET MUHAMMED, 230 (1972).
[290] Anderson and Coulson, The Muslim Ruler and Contractual Obligations, New York University Law Review 98 (Nov. 1958).
[291] ARBERRY, The Koran, 604-605.
[292] IBN HISHāM, AL-SīRAH AL-NABAWIYYAH 228-229 (1955).
[293] BLUNTSCHLI, THE THEORY OF THE STATE, 331 (6th ed. Oxford 1885).
[294] *Id,* at 286-301.
[295] *Supra* note 289, at 221.

B. Myth of Muslims unity during the Caliphate.

Unlike Sanhūrī, ‘Imāra and al-Banā,[296] who believed the Caliphate has an important role which is uniting Muslims, I believe the Caliphate did not unite Muslims. I believe the definition of Muslims unity means that all Muslims must be under one Caliphate and having one caliph. However, this did not happen in Islam. On the one hand, starting from the rightly guided caliphs, there were two centers of Caliphate in the same time, one for Ali in Kūffa, and the other for Mu‘áūya in Damascus. On the other hand, after the era of the rightly guided caliphs there were three centers of Caliphate at the same time, the Abbasid Caliphate in Baghdad, the Fatimid Caliphate in Egypt and the Umayyad Caliphate in Andalusia.

The first evidence proving the Caliphate did not help Muslims to be united is that there were two caliphs during the years 658 to 661. After the death of ‘uthmān, ‘Alī was chosen to be the caliph of Muslims from 660 to 655 in Kūffa. Ali’s Caliphate was well-known by rumors that Alī killed ‘Uthmān to gain power. People started to believe in these rumors after Ali did not accept investigating ‘Uthmān’s killing. In Syria, Mu‘áūya wanted take revenge on ‘Utham’s murders as Aisha did. A civil war had broken out between Aisha and her supporters and Alī won the war. Then, Alī faced Mu‘áūya’s forces, who used a conspiracy to their advantage. Mu‘áūya ordered his forces to spear a page from the *Qur’an* on the tips of their lances. When Alī’s forces saw this, they wavered as they did not want to fight the *Qur’an*. Both forces separated and the issue was settled by arbitration of ‘Amr Ibn al-‘ás and Abá Mūsā al-Ash’aī in Mu‘áūya ’s favor. Mu‘áūya declared himself as the caliph in Damascus in 658, although Alī was the official chosen caliph after ‘Uthmān. [297]Hence, during the years 658 to 661, there were two centers of the Caliphate at the same time, one for Alī in Kūfa and the other for Mu‘áūya in Damascus. Consequently, the caliphate during the last caliph ‘Alī, did not unite Muslims. What follow is another evidence proving how the Caliphate did not unite Muslims after the period of the rightly guided caliphs; there were three centers of Caliphate at the same time.

The second evidence proving the Caliphate did not let Muslims act in a unified manner is that there were three centers of Caliphate at the same time. The first Caliphate was the Fatimid Caliphate which was established first in Tunisia in 909. Then it expanded its territory because it needed a more central capital than Tunisia which is why Egypt was chosen. Then, they conquered Egypt in 969 and established the city of Cairo as a place for its empire; they controlled Egypt from 969 to 1171.[298] The second Caliphate was the Abbasid caliphate. During the Abbasid Caliphate, Al-Mansūr, one of the Abbasid caliphs, established a new capital for the empire in 762 in Baghdad which ended at 1258. [299] The third Caliphate was the Umayyad Caliphate. When the Umayyad Caliphate of Damascus was defeated by the Abbasids in 750, the last surviving member of the Umayyad ‘Abd al-Rahmān fled to Spain and established a Caliphate capital there declaring himself as a caliph from 929 to 1031. Looking the dates of the three Caliphates, we will see the appearance of three centers of the Caliphate for a time from 969 to 1031. Consequently, the

[296] See page 18, 22, 28..
[297] NATALIE GOLSTEIN, RELIGION AND THE STATE 44 (2010).
[298] Hanif Virani, *The Rise and Decline of the Fatimid Empire*.
[299] Sanderson Beck, Abbasids, Buyids and Seljuqs (2004-2010), http://www.san.beck.org/AB14-IslamCulture750-1095.html.

Caliphate during Ali from 656 to 616 and after did not unite Muslims. What follows is proof that the Caliphate was a source of violence.

C. Myth of the Caliphate's Positivity:

Unlike Sanhūrī, 'Imāra and al-Banā,[300] I believe the Caliphate did not help the Islamic community to live in a fair and just environment. Like Rāziq,[301] I believe the Caliphate was a source of corruption for Muslims. I see most of the Caliphate eras were corrupts even during the time of the rightly guided caliphs. Stories of corruption in the Caliphate are numerous in Islam. In the following paragraph, I present some corrupts stories happening some of the Caliphates era. Starting from the rightly guided caliphs' era, it is well known in Islamic history that corruption prevailed during 'Uthmān's caliphate. 'Uthmān exploited his power by hiring many members of his family in high positions.[302] He hired al-Walīd ben Akaba as a manger of al-Kūfa; and 'Abd allah Ben Sarah to be the manager of Egypt and Mu'áūya to be responsible for al-Sham as of them were 'Uthmān's relatives.[303]

Hence, the administration during the Caliphate of 'Uthmān was corrupted by exploiting his authority by hiring his family in high positions regardless of whether they were qualified or not. Like the period of the rightly guided caliphs which was characterized by exploiting the authority, the *Umayyads* and the *Abbasids* eras were characterized by inheritance the caliph position and violence. According to Muslim tradition, it is well known that the *Umayyads* are accused of switching *Khilāft al-nubuwwa to Khilāfat al-mulk*.[304] Several of these accusations came from the Abbasid. For instance, al-Jahīz, an Abbasid era poet polemicist, named the year of Mu'áūya 's succession to the Caliphate that "year of schism, coercion, oppression and violence, a year in which the imamate, or the Caliphate became a monarchy after the fashion of Chosroes, and the Caliphate a tyranny worthy of a Caesar."[305] Inheriting the position of the caliph started when Mu'áūya obtained authority. Before Mu'áūya 's death in 680, he gave the authority to his son Yazīd as the subsequent caliph. Later this practice became normalized and all the subsequent Caliphates were based on hereditary kingship.

Like the Umayyads, the Abbasids were also known for their corruption. The Abbasids gave themselves the right to inherit the Caliphate. The Abbasids court poet, al-Buhturī, called the caliph al-Mu'tazz as "the heir of the [Prophet's] Mantle, the Staff [of the Prophet] and the authority of God."[306]By doing so, they gave themselves God and the Prophet's authority as no one could contradict them. Hence, by having the Abbasid caliph the same authority of God, and the Prophet, their actions were not limited and no one could contradict them. As we see 'Uthmān, the umayyads and the abbasids's Caliphates were

[300] See page 17, 22, 28.
[301] See page 15.
[302] *Supra* note 30, at 39.
[303] MUHAMMAD HASANIN HAYK , AL-FARūK 2nd part 593 (1st ed. 1944).
[304] G. R. HAWTING, THE FIRST DYNASTY OF ISLAM: THE UMAYYAD CALIPHATE AS 661-750, 11-18 ((London: Routledge, 1986).
[305] An emperor who ruled from 531 to 579.
[306] Stefan Sperl, *Islamic Kingship and Arabic Panegyric Poetry in the Early 9th Century*, 21 (1977).

characterized by corruption, what follows is a discussion of the differences between the Caliphate and the civil government.

[307] What follows is an argument on *al-Khilāfa al-sahīha* and *Khilāfa al-nāqysa 's* practice which were characterized by harmful for Muslims.

D. *Al-Khilāfa al-nāqysa and Khilāfat al-mulk* in practice:

In my opinion, I see both al-*Khilāfa al-sahīha* and al-*Khilāfa al- nāqysa* were damaging for Muslims. Sanhūrī divided the Caliphate into two types: the first type is *al-Khilāfa al-sahīha* and the second type is al-*Khilāfa al- nāqysa.* Sanhūrī defined the meaning of the first caliphate, *al-Khilāfa al-sahīha* which must reflect the Sunna conditions, a caliph has to be a Muslim, free, healthy, brave, and fair and *Qurayshī*'. He also defined the meaning al- *Khilāfa al- nāqysa ,* as a caliph who does meet not have all the required conditions or was chosen by voluntary allegiance, and gaining the power by sheer coercion. Sanhūrī accepted al- *Khilāfa al- nāqysa* in case the impossibility to implement *al-Khilāfa al-sahiha.* Sanhūrī argued that in general Muslims must implement *al-Khilāfa al-sahīha* which first was applicable during the period of the rightly guided caliphs. According to Sanhūrī, *al-Khilāfa al-sahīha* which embodied all the Sunna conditions*,* is the original Caliphate that all Muslims must follow. However, he also argued that if there had been an excuse to not implement *al-Khilāfa al-sahīha*, Muslims could have implemented al-*Khilāfa al-nāqysa .* When Rāziq claimed that the Caliphate was a source of evil for Muslims, Sanhūrī replied that we cannot ignore the corruption which was commonplace during al-*Khilāfa al-nāqysa* starting with the Umayyads and continuing. Sanhūrī claimed that the corruption which happened was because the caliphs did not follow *al-Khilāfa al-sahiha.*[308] Sanhūrī recognized the corruption starting with the umayyads; thus, he called it and all the subsequent Caliphates al-*Khilāfa al-nāqysa.* Hence, we can say by Sanhūrī 's accepting the implementation of al-*Khilāfa al-nāqysa* , he accepted the absence of the Caliphate conditions. For example, he accepted that a caliph could be unfair, a feature which is against Islam. The *Qur'an* states" when you judge between people, you judge with justice."[309] Also, he accepted that a caliph could be fearful, an unacceptable character for a ruler; a ruler must be strong enough to make important decisions like going to war. He also accepted a caliph's disable from performing with full energy. Hence, Sanhūrī agreed to accept *al-Khilāfa al-nāqysa* although some of the conditions were against the Sunni caliphate conditions and the *Qur'an*. Additionally, Sanhūrī accepted how Mu'áūya and most of the subsequent caliphs gained power by violence although the original caliph gained power by allegiance. By Sanhūrī's acceptance of al- *Khilāfa al-nāqysa,* he also accepted corruption and the possibility of an oppressive caliph, a view which is unacceptable and does not help the Islamic community to evolve. As we see the negativity of al-*Khilāfa al-nāqysa* said by Sanhūrī, what follows is the view of Ibn Taymiyya regarding *Khilāfa al-mulk* in which I believe it was harmful for Muslims.

[307] ABū HURAYRA, AL-'AKD AL-FARīD LIBN 'ABD RABO 1-5 (1st e.d 1302).
[308] 'ABD AL-RāZIQ AL- SANHūRī, FIQH AL- KHILāFA WA TTWRHā 98 (1st ed. 1993)
[309] *Supra* note 221, at 12.

Like al-Khilāfa al-nāqysa was characterized as being damaging for Muslims, *Khilāfat al-mulk* was a harmful practice for Muslims too. This was recognized by Ibn Taymiyya.

Like Sanhūrī, Ibn Taymiyya divided the Caliphate into two types: the first type was *Khilāfat al-nubuwwa,* which is similar to *al-Khilāfa al-sahiha* and based on the government of the rightly guided caliphs*, and Khilāfat al-mulk,* which is similar to al-*Khilāfa al-nāqysa* and based *on* Mu'áūya's caliphate and the subsequent ones. Although Ibn Taymiyya did not place the Umayyads and the Abbasids under the category of *Khilāfat al-nubuwwa,* he admitted their legitimate rules because according to him if a society had an excuse to not implement Khilāfat *al-nubuwwa,* it could apply *Khilāfat al-mulk.* Therefore*,* Ibn *Taymiyya* believed that both the Umayyads *and* Abbasids had an excuse to not apply Khilāfa *al-nubuwwa,* so it was acceptable for them to apply *Khilāfa al-mulk*. What Ibn Taymiyya means by an excuse is confusing. Also, confusing is the excuse of the Umayyads *and* Abbasids to not implement Khilāfat *al-nubuwwa,* which is considered the ideal government according to Ibn Taymiyya*.* If he meant by excuse a caliph who did not have all the required Sunni conditions, his position is similar to Sanhūrī; he accepted the unjust rule and gaining authority through violence. Indeed, Ibn Taymiyya accepted despotic rulers like Sanhūrī by saying direct political authority is essential for political and social order whether the ruler is ruling justly or unjustly. So, it is clear that Ibn Taymiyya was against democracy; he was against revolutions and demonstrations whether the ruler was fair or unfair. Hence, Ibn Taymiyya accepted all autocratic rulers over fourteen centuries after the period of the rightly guided caliphs as he accepted the Umayyads and the Abbasids. In addition, it is clear that if Ibn Taymiyya had been alive during the Arab spring, he would not accept all the political turmoil against the rulers fearing from anarchy. We see Yāsser Borhāmī and Sheikh Muhammed Hasan, two of the thousands of people who follow Ibn Taymiyya's ideology claiming the same idea. During the 25th January revolution, they claimed that what Egyptians did was against *Shari 'a*; Egyptians should not revolt against the ruler.[310] To sum up, Sanhūrī and Ibn Taymiyya share the same ideology. They accept autocratic rulers, although the *Qur'an* itself ignores those rulers. With Sanhūrī and Ibn Taymiyya's acceptance of implementing both al-*Khilāfa al-nāqysa and Khilāfat al-mulk,* I believe these two systems are unacceptable for Muslims, as both of them prevent the citizen from practicing his or her right to revolt against the ruler; a right which is stated in most constitutions. As we see the harmful systems of al-*Khilāfa al-nāqysa and Khilāfat al-mulk,* what follows is a view proving that *Shari' a* can be implemented without the reestablishment of Caliphate.

[310] Al-Jazeera, http://www.aljazeera.net/news/reportsandinterviews/2014/11/21/%D8%A7%D9%84%D8%AE%D8%B1%D9%88%D8%AC-%D8%B9%D9%84%D9%89-%D8%A7%D9%84%D8%AD%D8%A7%D9%83%D9%85-%D9%81%D8%AA%D8%A7%D9%88%D9%89-%D9%85%D8%AA%D9%86%D8%A7%D9%82%D8%B6%D8%A9-%D9%84%D9%86%D9%81%D8%B3-%D8%A7%D9%84%D9%85%D8%B4%D8%A7%D9%8A%D8%AE.

E. *Shari' a*'s Implementation without the Caliphate:

This chapter starts with a discussion of the difference between the Caliphate and the civil government, followed by arguing that Shari'a can be implemented without the restoration of the Caliphate.

It is confusing what does it mean by the Caliphate as a government as many people think that the Caliphate is obligatory because it is a religious system and applies Shari'a. On the one hand, in the civil government, the president is elected and chosen by the citizens for a fixed term; the citizens may remove and disobey the president if they see that he misuses the authority even if he applies Shari'a. On the other hand, the Islamic government is not necessary the government applying shari'a or religious ordinances; however, the government becomes Islamic when the ruler has the same authority of God and the Prophet and must be obeyed as he represents both. In the Islamic government citizens cannot revolt against the ruler. Hence, the difference between the civil government and the caliphate is not the matter of implementing Shari'a, but the features embodied in the ruler.

It could be said that the Caliphate is a civil system as I stated above neither the *Qur'an* nor the Prophet do mention such government. During the righty guided caliphs, the caliph was a person following the Prophet in the time not in his roles or authorities. Later, the title had been changed to be a person having the same authorities of God and the Prophet which led to the appearance of chaos between Muslims.[311] I believe the Islamic government is acceptable and equal to the civil government if the ruler is elected and removed by the citizens. However, such system in unacceptable if the ruler has the same authorities of God and the Prophet as many scholars argued like Abu Hurayra.

Unlike Sanhūrī, 'Imāra, Ibn Taymiyya and ISIS and al-Banā,[312]'s thinking that the Caliphate is obligatory as it implements *Shari 'a*, I believe the *Shari 'a* can be applied without the need for restoration the Caliphate. Several Arab countries like Egypt, Afghanistan and Iraq have adopted constitutions requiring the law of the state to be compatible with *Shari 'a*. For example, in the current Egyptian constitution, Article 2 states that the main principles of *Shari 'a* are considered the main source of legislation. Article 2 does not articulate what is meant by the principles of *Shari 'a*. In my opinion, I see the principles of *Shari 'a* as the *Qur'an* states as being, justice,[313] equality, [314] freedom of belief,[315] freedom of worship,[316] freedom from violence,[317] and freedom from unfairness.[318] It can be agreed that if any state implements these principles, it will be stabilized, evolve the society and chaos evaporate. These principles can be applied without the need to reestablish the Caliphate. Indeed, by stating the mentioned three states the application of *Shari 'a* in their constitutions, they meant to follow the principles which I mentioned. This is happening without a caliph. Hence, in brief, there are many states which implement *Shari 'a* principles

[311] MUHAMMED 'ASHMāWī, AL- KHILāFA AL-ISLāMIYYA 11-12 (2nd ed. 1992).
[312] See page 18, 22, 30-31, 33 and 28.
[313] *Qur'an* 4:58
[314] Qur'an 49:13.
[315] Qur'an 18:29
[316] Qur'an 39:15
[317] Qur'an 2:256.
[318] Qur'an 4:58.

although the caliphate was abolished ninety years ago. Hence, the arguments that the Caliphate is obligatory as it alone applies *Shari 'a* is invalid.

VIII. Conclusion:

This thesis has presented the legal thought concerning the Caliphate of six sunni scholars and ISIS from the 1920s to 2014. It presented views of two scholars in the 1920s, Rāziq who did not believe in the obligation of the Caliphate in *Shari' a*, and Sanhūrī who believed in the Caliphate as it implements *Shari' a* and unites Muslims. The views of two scholars on the Caliphate from 1970s to 1990s were then presented. 'Imāra who had a contradictory opinion on Rāziq's book and lately supported strongly the reestablishment of the Caliphate. And Abū Zayd, who responded to 'Imāra's criticism of Rāziq's book, and disbelieved in the Caliphate. This is followed by the presentation of the thinking about the Caliphate of two scholars and ISIS after the 25th January 2011 revolution. Al-Banā as the representative of the Muslim Brotherhood who took the side of the restoration of the Caliphate, Ibn Taymiyya as the representative of the Salafists believed the most important issue is the establishment of a government to avoid chaos. Finally a letter written by ISIS in discussing their arguments for their declaration to restore the Caliphate was presented. This thesis took the side of Rāziq and Abū Zayd as it ignores the necessity of the Caliphate based on the *Qur'an* and the Prophetic government. It disagrees with Sanhūrī, 'Imāra and al-Banā as it believes the Caliphate broke Muslim unity and introduced corruption to the Islamic community. In addition, it does not agree with the ideology of Sanhūrī and Ibn Taymiyya to establish *al-Khilāfa al-sahīha* and al-*Khilāfa al-nāqysa* as both of them are harmful to Muslims. Finally, unlike Sanhūrī, al-Bana, 'Imāra and ISIS, this thesis argues that the *Shari 'a* can be implemented without the reestablishment of *Shari 'a*.