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ISLAM AND VOTING: THE CASE OF BRITISH MUSLIMS

SHAYKH MICHAEL MUMISA

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مؤسسة افريقية

The Cordoba Foundation

Level 7, Westgate House
Westgate Road, Ealing
London W5 1YY
United Kingdom

Telephone +44 (0) 20 8991 3370

Telephone +44 (0) 20 8991 3372

Facsimile +44 (0) 20 8991 3373

info@thecordobafoundation.com

www.thecordobafoundation.com

Cultures in Dialogue.

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**ISLAM AND VOTING:
THE CASE OF BRITISH MUSLIMS¹**

Shaykh Michael Mumisa

INTRODUCTION

In the months leading to the 2005 British general election the question of Muslim participation in the elections became an issue of intense debate between those calling for Muslims' full participation in the voting process and those who considered voting in a Western democracy an act of apostasy. In a few reported cases the arguments resulted in physical altercations in the mosques between the opposing camps. Some mosque "elders" and Imams had their beards and turbans pulled by small groups of angry young men who argued that voting in what they believed to be a "*kufr* system" was a "violation of the Shari'a."

¹This paper is a summary of a lecture which the author delivered on 15 April 2010 in London at the invitation of The Cordoba Foundation. The original title of the lecture was "Islam and Voting: The Case of British Muslims, Exploring the Theological Basis for Political Engagement as Fulfillment of Civic Responsibility."

² For example, Spalek, El Awa, McDonald & Lambert. *Summary & Full Report: Police-Muslim Engagement and Partnerships for the Purposes of Counter-Terrorism: An Examination*, University of Birmingham, 2008 & 2009; and a recent meticulous study by Yasir Suleiman at Cambridge, 'Contextualising Islam in Britain: Exploratory Perspectives', University of Cambridge, 2009.

³ See the recent findings of the *House of Commons and Local Government Committee's Preventing Violent Extremism: Sixth Report of Sessions 2009-10*, published on 30 March, 2010.

Since 2005, thankfully there appears to have been some positive changes. For example, the doctrine once popularised by some "Think Tanks" and their Muslim supporters that Muslims in Britain can be divided into two simple categories: "Sufis" deemed as the good guys and "Islamists" or "Wahhabis" as the baddies or trouble-makers is now being gradually discredited by serious and rigorous academic scholarship and policy papers published in the past few years.² Organisations like Forward Thinking in London which facilitate government officials on regular visits to meet and discuss face-to-face with communities once shunned as "Islamists", "extremists", or "fundamentalists" have succeeded to a great extent in convincing senior politicians, the media, and policy makers that the theological, cultural, and ethnic diversity within the Muslim communities have to be seriously considered if positive and practical solutions to the problems leading to violent extremism are to be found.³

The major debate in the mosques across the country during the 2010 general election is not so much whether voting in such an election was *halal* (permissible) but whether any of the political parties and candidates contesting the elections represent the aspirations of Muslims. On the whole Islamic scholars from all schools of thought and ideological positions (Salafis, Shi'a, Deobandis, Berelvis, to mention only a few) have been actively encouraging their communities to take part in elections.

The voices which consider voting in elections as an act of apostasy have moved their platform away from the streets outside the mosques to the internet and to Facebook in particular. Here Islamic scholars are being attacked as "scholar for a dollar" who have sold out to the "*kufr* system". Whilst no convincing coherent theological or legal arguments are being advanced to prove the case for apostasy as would normally be required under the strict application of Islamic legal and theological principles, the

Internet appears to give such groups the licence and freedom to engage in *takfir* (declaring a Muslim an apostate) and *tahreem* (declaring something unlawful).

THE PRINCIPLE OF PERMISSIBILITY

The Islamic legal maxim *“al asl fi al-ashya’ al-ibaha”* [the doctrine that “all matters of human and social activity are considered a priori permissible (*mubah*)”] under Islamic law unless clear and incontrovertible textual evidence from the primary sources of Islamic law⁴ exists to prove otherwise has historically been the basis of all acts of *ijtihad* (legal reasoning) within both the *Sunni* and *Shi’a* schools of law. The implications of this theory though for contemporary Muslims, particularly those now living in non-Muslim societies, have not been properly explored. According to this principle, we need not look for proof from the sources of Islam to argue the case for Muslim participation in British general elections, rather what is needed is incontrovertible proof that voting in such elections is *haram* since as a general principle all matters of human and social activity (*mu’amalat* and *mu’asharat*) are originally permissible as aforementioned. Among the Qur’anic texts and the Traditions of the Prophet which form the basis of this principle are: “He hath explained to you in detail what is forbidden to you.” (al-An’am-6: 119)

All matters of human and social activity are ... permissible under Islamic law unless [evidence provided to prove otherwise].

The Prophet is reported to have said:

“Whatever God has declared lawful (halal) in His Book is lawful, and whatever He has declared unlawful is unlawful, and whatever He has remained silent about is forgiven (excused). You should therefore accept the bounties of God Who does not forget anything.” The Prophet went on the recite the verse, “Your Lord never forgets anything!”⁵

Jurists also agree that only textual incontrovertible evidence can reverse the principle of permissibility. If this fails, we return to the original state (i.e. that of permissibility). The aforementioned evidence should therefore not allow room for possible alternative interpretations because of another legal principle: *“idha waqa’a al-ihthimal saqata al-istidlal”* (“When *ihthimal* (a possibility) occurs in a text, then such a text will lose its power of *istidlal* (to act as supporting evidence).”).

So when it comes to the question of Islam and voting, incontrovertible textual evidence should be produced to prove that it is not permissible for Muslims in Britain to vote. We do not need proof to argue that it is permissible for them to vote since that is the *asl* (original state of affairs). The burden of proof is thus upon those who argue that voting is not permissible.

THE METHODOLOGY OF CLASSICAL JURISTS

Classical jurists and other scholars were very much aware that texts accommodated multiple meanings and possibilities. It is not enough to say “God says so” or “the Prophet says so.” A number of factors have to be taken into consideration such as: the context of the revelation of the text, the language of the text, the special circumstances of the addressee of the text, other texts on the same topic, the local customs (*‘adah* and *‘urf*) of the addressee and how they may differ from the contemporary reader, and so on. The famous Damascene jurist Muhammad Amin Ibn Abidin (1784–1836) wrote in his *Risalat al-‘Urf* (Messages of Tradition) that:

“The juristic cases are either established [or proved] on the basis of a direct text (*sarih al-nass*) ... or on the basis of *ijtihad* and *ra’y* (juristic reasoning). In most of the cases the *mujtahid* (jurisconsult) develops his legal arguments and judgments on the basis of the *‘urf* (‘social’ customs) of his time such that if he

⁴ Qur’an and authentic hadith

⁵ This tradition was recorded and authenticated by al-Haythami in *Majma’ al-Zawa’id*, by al-Tabarani in his *al-Kabir*, and by al-Hakim with the support of al-Dhahabi. Recently, the late scholar Nasir Din al-Albani included it in *Silsila Ahadith Sahiha* (Series of Authentic Traditions).

was living in a different time he would make a different legal ruling. It is precisely for this reason that they [classical scholars] said, while discussing the conditions and qualifications required in *ijtihād*, that he [the *mujtahid*] must be well-versed in the local customs and habits (*adat*) of the people. Thus, many laws change according to changing times (*bi ikhtilaf zaman*) such that if a law was allowed to remain the same as it was in the first case this would cause great difficulty and harm to the people (*al-mashaqqah wa darar*), and this would be a violation of the universal principles of Shari'a which are based on the need to make things light and easy (*takhfif wa taysir*).⁶

Thus it is clear from the history of the development of the schools of Islam that for the early jurists, the texts of law were considered open, dynamic and subject to re-interpretation. By employing other hermeneutical tools in the study of the texts, they could show that the Qur'an and are not closed texts, and that interpretation is contingent upon the historical context, the cultural situation and level of development, and the philosophical presuppositions of the period in which that interpretation is taking place. Hence it is difficult to prove that there can be such a thing as the "final and absolute" interpretation of the sources of law. What we may consider to be the correct meaning of God's word may be contingent upon numerous factors. What was a correct interpretation of the sources of law in the classical period may be incorrect and dated in the contemporary period and what we may regard correct today may be incorrect in the future.

THE ROLE OF IMAM AL-SHATIBI

In, *Al-Muwafaqat*, the Muslim jurist of Medieval Spain, Abu Is-haq al-Shatibi (d.1388) argued that in some cases the letter of the law was not important since laws could be changed or even abandoned when dealing with individual cases. In order to support his argument he cited a number of traditions from the Prophet where this had actually happened. Take for example:

The Prophet was once asked regarding the most meritorious deed and his answer was, "belief in God" ... "followed by striving in the path of God" ... "and finally pilgrimage (*Hajj*)". He was then asked the same question by a different person and his answer was "first is praying in the right time" ... "followed by obedience to one's parents" ... "and finally striving in the path of God."⁷

In these traditions the Prophet appears to be giving different answers to different individuals on the same question. By citing these traditions al-Shatibi seems to suggest that laws do not have inherent and intrinsic value since in these traditions and the others he cites to advance his point, we see that the concept of "meritorious" (*afdal*) is not fixed and universal.⁸ It is a concept that changes with regard to time, place, and circumstances.⁹ For al-Shatibi, the same can also be said of the Qur'an such as in Surah al-Ma'idah -5:33: "The punishment of those who wage war against God and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter."

In this verse, al-Shatibi argues, the crime is one and yet the forms of punishment are different. He explains that legal theorists have always agreed that these punishments cannot all be administered at the same time to the same individual. The judge will have to choose which punishment to administer based on circumstances.¹⁰ This also indicates that laws change when circumstances and conditions change and they do not remain fixed and rigid.¹¹

⁶ Ibn Abidin, *Risalat al-'urf* in *Manjumat Ibn Abidin*, vol.2, p.126.

⁷ Abu Is-haq al-Shatibi, *Al-Muwafaqat*, vol.5, p.26.

⁸ Ibid, p. 31.

⁹ Ibid, p. 31.

¹⁰ Ibid, pp. 37-38

¹¹ Ibid, p.29.

Muslim legal theorists and pragmatists have always agreed that the Qur'an is not prescriptive. This means that it does not provide detailed instructions on how laws should be applied or executed in society. Instead, it tends to be general providing only general principles and guidelines. The Muslim

jurists such as Abu Hanifa, al-Shafi'i, Ja'afar al-Sadiq, Ahmad Ibn Hanbal, Malik, to name just a few, developed a means of deducing the law through a complex hermeneutical theory, whereby they were able to interpret the *Qur'an* and the *Sunna* in as extensive a manner as was possible, thereby making the limited legal verses of the *Qur'an* useful in providing answers to new questions.

Al-Muwafaqat which documents the legal philosophies and hermeneutical principles is a celebrated work in Islamic legal theory and philosophy which is considered al-Shatibi's magnum opus. The influence that he and his work had in the Islamic West is compared to that of the Hanbali scholar Ibn Taymiyya (d.1328 CE) in the East. In fact their ideas and approach to Islamic theology and legal theory are strikingly similar. It is not very clear how much he was influenced by Ibn Taymiyya since he never mentioned his name in any of his writings. However, in his *al-T'isam* while discussing *al-tahlil* (legitimatization) he writes, "a Hanbali scholar once said ..." and goes on to quote verbatim from Ahmad Ibn Taymiyya's book *Iqamat al-dalil 'ala ibtal al-dalil* which has now been published together with his other *fatawa* in *al-Fatawa al-Kubra*. Perhaps the reason why he did not mention his name was the negative attitude the Muslim communities of Andalusia had towards Ibn Taymiyya's writings. Al-Shatibi already had problems of his own having been accused of rejecting the Sufi practice of mass supplication (*al-du'a al-jama'i*), and for "insulting" the *awliya'* after criticising some Sufi saints.

The major similarity between the two scholars is in their interpretation of the doctrine of *maqasid al-shari'a* (purpose of law) and *masalih al-mursala* (public interests) though these two doctrines were later attributed to al-Shatibi as the main originator and proponent.

Few scholars in Islamic legal history rival Imam al-Shatibi in formulating the theories of *maqasid* and *masalih*. However, other scholars before him had also written extensively on the topic such as Al-Juwayni (d.1085)¹²; al-Ghazali (d.1111 CE)¹³; Fakhr al-Din al-Razi (1209 CE)¹⁴ and al-Amidi (1233 CE).¹⁵ These books discussed the doctrines of *masalih* and *maqasid* alongside other topics of legal theory.¹⁶

DEDUCING THE LAW

According to al-Shatibi, the verses revealed in Makka (or before the Prophet's migration to Madina) deal with the universal and fundamental principles (*kulliyat*) of law which underlie the application of law within society. These are found in every religion because of the *Qur'anic* verse,

"The same religion has He established for you that which he enjoined on Noah, the which we have sent by revelation to you, and that which we enjoined on Abraham, Moses, and Jesus" (at-Tur 52:13).

These general and universal principles (the *maqasid* of law) such as the need to establish justice; accrue benefit for the individual and society; repel harm from the individual and society, among others cannot be abrogated or revised since such principles are not bound by time and space.

Specific legal rulings and injunctions (*al-juz'iyyat*) were revealed in Madina (or after the Prophet's migration from Makka) as an interpretation of the universal and general principles and are subject to abrogation as a result of social change.

The details of such law (*juz'iyyat*) such as penal laws of Islam, the laws of inheritance for men and women, and other laws governing the individual and society as explained in the *Qur'an* or other religious texts

"(the maqasid of law) such as the need to establish justice... among others cannot be abrogated or revised since such principles are not bound by time and space"

¹² Who dealt with the topic in his *al-Burhan fi usul al-fiqh*

¹³ in *al-Mustasfa* and in *Shifa' al-ghail*

¹⁴ in *al-Mahsul* a book which al-Shatibi studied

¹⁵ in *al-Ikham*

¹⁶ Among the first scholars to dedicate special books to *maqasid* and *masalih* theories were al-Izz Ibn 'Abdu-s-Salam (d.1261 CE) who wrote *al-Fawa'id fi ihtisar al-maqasid* which he later extended to *al-Qawa'id al-Kubra*. Some of his biographers also mentioned another book he is supposed to have written on the topic titled *al-Masalih wa al-mafasid* but this seems to have been lost. The Hanbali scholar, al-Najm al-Tufi, also wrote a book titled *al-Masalih al-Mursala*. Other scholars included the sufi writer al-Hakim al-Tirmidhi, the theologian Abu Mansur al-Maturidi who wrote *Ma'akhidh al-shari'a*, and Ahmad Ibn Taymiyya.

differ from one religion to another, just as they differ according to time and space. Since such *juz'yyat* are based on time and geographical space, they should accept abrogation, revision, and change according to the needs of each society. In other words, the interests of society can override such *juz'yyat* but they cannot override the *kulliyat*. Simply put, the *kulliyat* are the goals of the Shari'a while the *juz'yyat* are the means to such goals. The purpose of Shari'a then is not to cut people's hands or stone them to death but to establish the conditions for a just society whereby people would not be forced to steal for example. If suspending the *juz'yyat* will ensure the realisation of the *kulliyat*, then such a suspension (*naskh*) will be legitimate in Shari'a.

The development of legalism as an aspect of the expansion of the Islamic empire resulted in a pre-occupation with the *juz'yyat* at the expense of the *kulliyat*. Under correct interpretations of law in Islam, changes and the modifications in *juz'yyat* are acceptable in order to meet social change as long as such modifications do not undermine the *kulliyat*. With the concept of *maqasid al-shari'a* (intent and motive of Islamic Law), it becomes possible to apply the Qur'an to changing times and changing conditions in society, so that the data revealed remain dynamic, creative and always applicable thereby continuously invigorating society.

Early and later Muslims jurists always treated the *kulliyat* as the spirit and the intention of the Law-giver (*qasd al-Shari'*) which could override the specific legal rulings (*juz'yyat*) and other interpretations of law that were seen to be at odds with the spirit of the law. It is safe to say that according to this theory, the purpose of law in Islam is not necessarily to follow the letter of the law but to fulfill a higher goal and great purpose (*maqasid*): that of establishing a just society. Thus whatever moral and just method adopted to reach this goal is considered "Islamically correct"¹⁷.

RELEVANCE TO THE CURRENT DEBATE

Any political and legal system that fulfils the *kulliyat* is acceptable and considered as fulfilling the requirements of the *Shari'a*. The question thus becomes, does the British and political systems fulfill the *kulliyat* as required under Islam? It is my opinion that the British legal and political systems as they stand at the moment meet the goals of the *Shari'a*. I am aware that there are still points of conflict with regard to certain 'moral' issues. Islamic law requires that we overlook such differences and focus on *masalih* (public interests) and universal principles (*maqasid*) such as justice, respect and protection of a person's beliefs, protection of life, protection of sanity and intellect, preservation of lineage, and protection of a person's property or wealth, and so on.

An example of how the interpretation of Islam in a society will be influenced by *masalih* (public interest) and *maqasid* (the purpose of law) is given by the famous classical theologian and theorist Ibn Taymiyya who is widely considered as the father of conservative Islam. His student Ibn Qayyim narrates that Ibn Taymiyya once said: "I was passing with some of my friends in the days of the Tartars, and saw a group of them [Tartars] who were drinking alcohol. One of my friends wanted to reprimand them, but I prevented him from doing so and said, Allah has prohibited strong drinks as they divert people from Allah and offering daily prayers, but strong drinks have diverted these people from committing murder, capturing children and plundering, so leave them alone."¹⁸

¹⁷ For example, if it is also possible to achieve this goal without having to cut off people's hands for stealing, then suspending such penalties will be considered "Islamically correct".

¹⁸ see Ibn Qayyim's *Umm al-muwaqqin*

Thus, drinking alcohol, although *haram* (prohibited) under the *Shari'a*, in this case was overlooked both as *masalih* (public interest) and the need of the time in order to save the people from murder and plunder and creating chaos in the society. Under Islamic law, the universal and fundamental principles are the spirit and the intention of the Law-giver (*qasd al-Shari'*) and will always override the specific legal rulings and other interpretations of law that are seen to be at odds with the spirit of the law. It is safe to say that according to this theory, the purpose of law in Islam is not necessarily to follow the letter of the

law or to establish a theocracy and Islamic state, but to fulfil a higher goal and greater purpose (*maqasid*) of establishing a moral and just society. Whatever method can be used to reach this goal is considered “Islamically correct”. If it is also possible to achieve this goal without having to apply Islamic laws, then suspending such laws is also considered “Islamically correct”. If voting in the elections ensures that Muslims are able to live in peace and freedom, then it becomes a general obligation (*jard kifaya*) to vote for that party that best serves their interests (*masalih*).

“If voting in the elections ensures that Muslims are able to live in peace and freedom, then it becomes a general obligation”

TACKLING THE ARGUMENTS

The question now arises, ‘How does one use the rationale described above to counter the arguments against voting?’

The three main arguments which have been advanced by those against voting in Britain are (1) none of the political parties contesting the elections represent the aspirations of the Muslims, (2) Muslims cannot support any party which espouses only some policies that are Islamically applicable, and (3) instead of voting, Muslims should fight towards the establishment of an Islamic state or caliphate.

The first argument is certainly not unique. It has been made by many individuals and Muslim organisations that believe that the government has not delivered on its promises. There is no doubt that there are Muslims who are disillusioned with the current state of affairs, and hold the current government responsible for what they perceive to be a deterioration in school standards, health care, safety and security, job opportunities, moral values, the war on Iraq, among other things. The reluctance or hesitancy of some Muslims to vote, or indeed their desire to vote for an “opposition” party, can be understood from this point of view.

The second argument is highly debatable. While the British system does allow practices which are at variance with Islamic norms and values, this does not negate the permissibility of participation in the system, provided that the following conditions are met:

1. *the state is committed to the establishment of peace and justice.*
2. *the system guarantees freedom of religion.*
3. *the system allows for participation of all citizens in decision-making.*

The British system meets these demands. Therefore, participating in the political system is both legitimate and desirable. While Muslims are entitled to oppose any measure which they consider to be immoral, the definition of morality should not be confined to issues such as abortion on demand, gay rights, gambling, among others, but should be broadened to include issues of housing, water, health care, economic and social justice, education and employment. These are recognised by Islam as fundamental and universal rights (*kulliyat*) and *maqasid* (purpose of law is Islam) to be enjoyed by every citizen. Muslims should have absolutely no hesitation in supporting initiatives to fulfil these fundamental rights; in fact, they should be actively involved with government, as well as in Non-Governmental Organisations promoting these and other related rights.

Muslim opponents of participation will have to learn to accept that it is not in the nature of a secular state to define issues of social morality, nor to enforce any particular standard of moral and ethical behaviour on its citizens. The responsibility is upon individuals and communities to ensure that they safeguard their religious values and that they do not become victims of what they consider to be social vices. They should focus their energies on constructive means of maintaining and promoting these values at the

"Muslims will have no advantage in isolating themselves from the mainstream of political life"

level of civil society rather than on attempting to compel the state to adopt them.

CONCLUSION

Muslims will have no advantage in isolating themselves from the mainstream of political life and becoming a marginalised community. They must commit themselves to a system of cultural and religious pluralism within which they are free to assert their religious freedom. While maintaining their specific religious identity in the Western democratic order, they must remain conscious of their British identity.

The debate engendered by extremist groups and their clerics, I venture to suggest, can in fact be seen in a positive light. It should provide a platform for Muslim theologians and Islamic legal theorists to debate important questions in relation to the role of Muslims in the broader British society, their approach to secular democracy, and their national/cultural identity. Through this process, it may indirectly help Muslims to focus on their future role and involvement in national life.

Shaykh Michael Mumisa, a respected Muslim academic and theologian, was awarded his 'Alimiyya (Al-Azhar University graduate degree equivalent) in Islamic Classics and Classical Arabic Literature with distinction from Dar al-'Ulum after six years of training. He is currently pursuing PhD research in Literature and Contemporary Literary and Critical Theory as a Special Livingstone Scholar at Trinity Hall, University of Cambridge. He has taught at the University of Birmingham, University of Cambridge's Institute of Continuing Education, and Markfield Institute of Higher Education. He is author of a number of studies including *Islamic Law: Theory & Interpretation* (2002), and *Towards a Contemporary Qur'anic Hermeneutic: Theology, Language, and Literature* (forthcoming). Shaykh Mumisa is Faith Advisor at Forward Thinking and regularly features in discussions and debates on BBC Radio.



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مؤسسة قرطبة

The Cordoba Foundation

Level 7, Westgate House
Westgate Road, Ealing
London W5 1YY
United Kingdom

Telephone +44 (0) 20 8991 3370

Telephone +44 (0) 20 8991 3372

Facsimile +44 (0) 20 8991 3373

info@thecordobafoundation.com

www.thecordobafoundation.com

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