

The *Bay'ah* as a Politico-Legal Principle: The Prophet (SAW), the *Fuqahā'* and the *Rāshidūn* Caliphs

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Abstract: The doctrine of *bay'ah* was introduced by the Prophet (SAW) and had its application in the era of the rightly guided caliphs (*khulafā' al-rāshidūn*). From the practices of the first four caliphs, the Muslim jurists (*fuqahā'*) developed their theories of *bay'ah*. Analysing the practices and perspectives of the *fuqahā'* provides an in-depth understanding of the nature of *bay'ah*, its significance in Muslim social and political thought and its evolution over the years.

Keywords: *bay'ah*, Muslim jurists, *khulafā' al-rāshidūn*, *'aqd*, *ikhtiyār*

The *bay'ah* (pledge of allegiance) is the *sine qua non* of the institution of *khilāfah* (caliphate). Leading *fuqahā'* (Muslim jurists) of the early period have described it as a vital politico-legal principle which binds the *ummah* with the occupant of the office of the *khilāfah*. It is regarded as a solemn promise of allegiance by the *ahl al-ḥall wa al-'aqd* (literally those who loosen and bind) and the general public to the caliph chosen by them. This paper elucidates the principle of *bay'ah* in the writings of the *fuqahā'* followed by a discussion with concrete examples of how *bay'ah* was practised during the time of the Prophet (SAW) and the *khulafā' al-rāshidūn* (rightly guided caliphs).

'Aqd, Bay'ah and Ikhtiyār

In their discussion of the contract, some scholars have used the word *'aqd* instead of *bay'ah*; though both words carry identical significance

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in legal terminology. For example, Abū al-Ḥasan al-Ash‘arī used the term *‘aqd* instead of *bay‘ah* in his discussion on the pillars of faith.¹ ‘Abd al-Qāhir al-Baghdādī has used both terms in his discussion on the theme. According to him, al-Ash‘arī holds the contract as valid in case the *‘aqd* is made by an eligible person of sound character from amongst the *ahl al-ijtihād* (people exercising *ijtihād*) to another person who fulfils the conditions required for the office of the *khilāfah*. Al-Baghdādī has, however, not mentioned any details of the circumstances under which al-Ash‘arī accepted the idea of *‘aqd*. He has also not mentioned the arguments put forward by al-Ash‘arī in support of his viewpoint. It is surmised that al-Ash‘arī might have regarded the representative of the *ahl al-hall wal-‘aqd* as an effective and influential leader whose decision is acceptable to the people. However, if the individual who proffered the contract was not eligible or the proposed recipient of the contract was not deserving of the office of the *khilāfah*, the contract would not be deemed valid.² Though in this treatise al-Ash‘arī has used the word *‘aqd* in the sense of *bay‘ah*, in his further discourse on the subject he has also used the term *bay‘ah*.

The term *bay‘ah* appears as an important principle in the discussions of the *fuqahā’* on *khilāfah*. Referring to the *imāmah* (imamate used interchangeably with *khilāfah*, caliphate) of Abū Bakr, al-Ash‘arī says that the proof of the legitimacy of *imāmah* of Abū Bakr is that he was given *bay‘ah* by all Muslims. Al-Baghdādī argued earlier that ‘Abbās ibn ‘Abd al-Muṭṭalib, the uncle of the Holy Prophet (SAW) and ‘Alī ibn Abī Ṭālib, the cousin of the Messenger of God (SAW) made *bay‘ah* to Abū Bakr.³ Al-Ash‘arī concurs and says ‘Abbās and ‘Alī acknowledged Abū Bakr’s *khilāfah* by making *bay‘ah* to him.⁴ Al-Baghdādī categorically states that it is only the *bay‘ah* which renders final confirmation to the contract of *khilāfah* and that it is the only accepted mode to establish the *khilāfah*. Refuting the claim of the Shī‘ahs (partisans of ‘Alī), he argues that Abū Bakr’s *imāmah* was legal because he was given *bay‘ah* by all Muslims. Thus, Al-Baghdādī uses this general consensus on *bay‘ah* as the basis to argue his case for the legitimacy of the *imāmah* of Abū Bakr.⁵

The great scholar, Abu al-Ḥasan ‘Alī al-Māwardī, elucidated the concept of *bay‘ah* at a great length, and has pointed out that the

imāmah is an 'aqd which, like other contracts, is undertaken by 'āqid.⁶ According to his theory, the *ahl al-ḥall wa al-'aqd* are the contractors whose *bay'ah* finalises the contract of *khilāfah*.⁷ Abū Ya'lā Muḥammad Ibn al-Farra' has also discussed the theory in a similar pattern. Examining the *ikhtiyār* (choice) of Abū Bakr, he says that there were difference of opinion among the *Anṣār* and the *Muhājirūn* at Saqīfah of Banī Sā'idah and a heated discussion ensued on the issue of *khilāfah* but once the *bay'ah* was made to Abū Bakr, the discussions ceased. Thus, the *khilāfah* of Abū Bakr was confirmed when all those present at the meeting made *bay'ah* to him.⁸

Al-Māwardī and Ibn al-Farra' both agree that when the *ahl al-ḥall wa al-'aqd* get together to choose someone as *khalīfah*, they must examine the personal attributes and qualifications of the candidates for the office of *khilāfah*. They must investigate thoroughly and choose the most qualified person for the exalted office. However, al-Māwardī, in another hypothetical discussion on the subject, has opined that if the *ahl al-ḥall wa al-'aqd* confer their *bay'ah* on a person who is less excellent (*mafdūl*) in attributes and qualifications, he will become *khalīfah* because of their *bay'ah*.⁹ This opinion is generally shared by *jumhūr fuqahā'* (majority of jurists) and theologians. However, al-Jāḥiẓ's view differs from this one.¹⁰ Ibn al-Farra' has dwelt extensively on the principle of *bay'ah* and on the *imāmah* of the most deserving and the most suitable person.¹¹

In the selection process, the *fuqahā'* gave preference to the one who is most experienced by age among the candidates provided they enjoy the same respect and status in the community by virtue of their distinctive character, acumen, ability, fortitude, etc. However, when the circumstances demand, a younger (*aṣghar*) candidate may be selected for the office and when the *bay'ah* is made to him, he would become a legitimate *khalīfah*.¹² While dwelling upon the significance of *bay'ah*, the *fuqahā'* do not generally accept the concept of two *imāms* at one point in time. If the *bay'ah* is made to two persons simultaneously, both the contracts will stand nullified. However, if the *bay'ah* is made at two different time periods, the earlier *bay'ah* will be considered legitimate while the latter one would stand nullified.¹³ A similar situation has been discussed by Al-Ṭabarī while mentioning the *bay'ah* made by the people of Syria to Mu'āwiyah as *khalīfah* after *taḥkīm* (arbitration) in the year 37 A.H.

Before *tahkīm*, the Syrians supported him in his demand for the *qiṣās* (punishment, retaliation) of ‘Uthmān’s assassination.¹⁴ By that time ‘Alī had already been chosen as the *khalīfah* by majority of the Muslims. Therefore, the *jumhūr fuqahā*’ and *‘ulamā*’ do not accept Mu‘āwiyah as the legitimate *khalīfah*. However, after the martyrdom of ‘Alī, when the public made the *bay‘ah* to Mu‘āwiyah in the year 41 A.H, he was acknowledged as the legitimate *khalīfah*.¹⁵

The *fuqahā*’ of the Medieval period also discussed another aspect of *bay‘ah* relating to the number of *ahl al-ḥall wa al-‘aqd* required to provide authentication to the *khilāfah*. However, the *‘ulamā*’ agree that the *bay‘ah* of *ahl al-ḥall wa al-‘aqd* is the *sine quo non* of the selection of the *khalīfah*. To al-Māwardī, the common people are obliged to make *bay‘ah* to the individual to whom the *ahl al-ḥall wa al-‘aqd* have given their oath of allegiance.¹⁶ This principle has been taken, as al-Māwardī observes, from the precedent of Abū Bakr who was confirmed as *khalīfah* by the *bay‘ah* of only those persons who were present at the *saqīfah* of Banī Sā‘idah.¹⁷ According to another opinion, a minimum of five persons from amongst *ahl al-ḥall wa al-‘aqd* is required for a *bay‘ah* to legitimise the *khilāfah*. In other words, the *bay‘ah* of five *ahl al-ḥall wa al-‘aqd* is enough to validate the *khilāfah*. This opinion of the *fuqahā*’ is based on the example of *al-shūrā* (consultation) constituted by ‘Umar which chose ‘Uthmān as *khalīfah* by conferring their *bay‘ah* on him.¹⁸

However, Imām al-Ḥaramayn al-Juwaynī, in his discussion on the subject, differed from these opinions. According to him, it is necessary to conclude the *bay‘ah* by an overwhelming majority of *ahl al-ḥall wa al-‘aqd* so that the *khalīfah* can command perceptible power and strength in order to ensure law and order in the land.¹⁹ The arguments put forward by al-Juwaynī appear to be more logical and practical. Another scholar, Al-Ramlī expresses the view that if there is only one person who commands respect of the people in a society and who fulfils the conditions attached to the *ahl al-ḥall wa al-‘aqd*, his *bay‘ah* may be regarded sufficient to establish the *khilāfah*. This opinion is shared by Abū al-Ḥasan al-Ash‘arī.²⁰ As a theoretical axiom, this opinion may suit a particular situation in which, for instance, there are only one or two *ahl al-ḥall wa al-‘aqd* who are so powerful, popular and influential that the *ummah* would not go against any of their decisions. If they make *bay‘ah* to someone,

the people will follow them without any hesitation. In such a case, their *bay'ah* will constitute a valid *khilāfah*. A disagreement in such a situation can create multiple problems for the *ummah*.

Al-Qurṭubī has narrated the views of Ibn Khuwayz Mandad (d. 400) about a person who is competent to hold the office of *khilāfah* but does not follow the norms of selection and takes over the power without consultation and without *ikhtiyār* (election) and the people also accept his rule by making *bay'ah* to him. In such a situation, his *khilāfah* is valid as the people have bestowed their oath of allegiance on him.²¹

The *fuqahā'*, in their discussions on the subject, have referred to two kinds of *bay'ah*: (i) the *bay'ah khāṣṣah*, that is made by the *ahl al-hall wa al-'aqd*, and (ii) *bay'ah 'āmmah*, that is the *bay'ah* given by the community. Both types of *bay'ah* are considered legally valid by the scholars because the two types were practised by the companions of the Prophet (SAW) during the period of the *Rāshidūn khulafā'*.²² The two kinds of *bay'ah* were in vogue for centuries during the Umayyad and 'Abbāsīd periods.²³ However, the *bay'ah khāṣṣah* or the *bay'ah* of the *ahl al-hall wa al-'aqd* carried more weight than the *bay'ah 'āmmah*. Generally, when the elite (*khāṣṣah*) submit their *bay'ah* to the *imām*, the *'āmmah* (public) usually follow them and make *bay'ah* to the same *Imām*. It may be mentioned here that *bay'ah khāṣṣah*, no doubt, has more strength but it gets enervated in the absence of the *bay'ah 'āmmah*.

Some *fuqahā'*, in their discussions, have prescribed details of the procedure of making *bay'ah* to the *khalīfah*. According to Ibn al-Farrā', the person who makes the contract of *bay'ah* tells the *khalīfah* that he would take the oath of allegiance on the condition that the *khalīfah* ensures justice and equity in the land; and that he would honour the obligations of *khilāfah*.²⁴ Ibn Jamā'ah also mentions the same procedure with the proviso that the *khalīfah* would also announce their determination to adhere strictly to the commands of Allah (SWT) and the *Sunnah* of the Prophet (SAW). According to him, the *bay'ah* should be concluded by pronouncing the following words: "We agree willingly to make *bay'ah* to you on the condition that justice would be established and the obligations of the *imāmah* be carried out; and that the Book of Allah and the *Sunnah* of the Prophet would be followed."²⁵

Bay'ah al-ʿAqabah and Bay'ah al-Riḍwān

The concept of *bay'ah* goes back to the beginning of Islamic *da'wah* itself. When Prophet Muḥammad (SAW) started his mission of calling people to Islam (*da'wah*), he received *bay'ah* from those who accepted his call. It was a devotional pledge which the followers gave to the Prophet (SAW) by swearing that they would not ascribe anyone as partner to Allah (SWT) and that Muḥammad (SAW) is His Messenger.

During the Makkan period, the Messenger (SAW) took *bay'ah* on tenets of faith and observance of moral virtues. Initially, the Messenger (SAW) accepted the oath of allegiance based on *shahādah* (testimony), and later, according to circumstances, he included other conditions. An important *bay'ah*, in the Makkan period, is known as *bay'ah al-Nisā'* (women's oath of allegiance). This *bay'ah* is based on the fundamental affirmation of *tawḥīd* and on the agreement to follow the correct moral behaviour. As revealed in the Qur'ān, Allah (SWT) was pleased with the devotion of women to Islam who pledged that they would not worship anyone but Allah SWT; that they will not steal, commit adultery, or kill their children; that they will not slander chaste men and women; and that they would not disobey the Prophet of God (SAW) in what is right.²⁶ *Bay'ah* on similar conditions was also made by men but it is known as *bay'ah* of women because it is mentioned in the Qur'ān which reads as follows:

O Prophet! When believing women come to you to give you the *bay'ah*, that they will not associate anything in worship with Allah, that they will not steal, that they will not commit illegal sexual intercourse, that they will not kill their children, that they will not utter slander, intentionally forging falsehood (i.e. by making illegal children belonging to their husbands), and that they will not disobey you in *ma'rūf* (Islamic monotheism and all that which Islam ordains), then accept their *bay'ah* and ask Allah to forgive them. Verily, Allah is Oft-Forgiving, most Merciful (*Sūrat al-Mumtaḥinah*, 60:12).²⁷

The Messenger (SAW) accepted the *bay'ah* from individuals as well as from groups. Two points in the oath of allegiance were of specific importance: the first was the acceptance of *tawḥīd* (to worship God

alone) and the second was that they would not disobey Prophet Muḥammad (SAW). The acceptance of these obligations as faith and belief completely transformed the psyche of the people and brought in equipoise in their way of life, which was necessary for the establishment of an Islamic society.

It would be instructive to describe two very important *bay'ah* which took place during the time of the Prophet (SAW) which were to have a deep impact on Islamic history. It may be mentioned that the *bay'ah* also had political significance which is intertwined with religious aspects. The Messenger (SAW), in establishing Islam, laid the foundations of a society in which tenets of the new faith provided guidance to the faithful in all spheres of life. The first step in this direction was the *bay'ah al-'Aqabah*. The political aspect of *bay'ah* emerged with the conclusion of this *bay'ah*.

The historical accounts narrate that several meetings were held between the Messenger (SAW) and the people of Madinah. Three such meetings, in particular, have been recorded by the historians.²⁸ In the first meeting, the people of Madinah were introduced to Islam and the message of God. In the second meeting, the people accepted Islam and made *bay'ah* on six conditions spelled out in *bay'ah al-Nisā'*.²⁹ On the occasion of the last meeting, the people of Madinah assured the Messenger (SAW) of complete protection to him and his Makkan followers.³⁰ It is worth noting that the people of Madinah realised that the conclusion of this *bay'ah* would require them to go to war against all 'Arab tribes and A'jam (non-Arab) in order to protect the Messenger (SAW). They asked the Prophet (SAW) about their reward if they fulfilled their covenant. The Messenger (SAW) told them that their reward would be *Jannah* (paradise).³¹ Thereupon the people of Madinah said that their bargain (*bay'ah*) was felicitous and successful, and would never be withdrawn.

The *bay'ah al-'Aqabah* is significant because of its religious and political connotations. The political aspect of the *bay'ah* was obvious as the people of Makkah were promised a homeland in Madinah. Its religious aspect was that the Messenger (SAW) made no promise of any worldly reward even though they had vowed to defend him at the cost of their lives and property. Commenting on this *bay'ah*, Montgomery Watt says: "They pledged themselves not merely to accept Muḥammad as Prophet and avoid sins, but also to fight on

behalf of God and His Messenger.”³² The following Qur’anic verse is related to this historical event which is well worth quoting:

Allah has certainly bought from the believers their lives and their possessions in return for *Jannah* (paradise); they fight in the way of Allah, they slay and they are slain; a promise which in truth He has willed upon himself in the Torah, the Gospel and the Qur’ān. And who could be more faithful to his covenant than Allah? Rejoice, then, in the bargain which you have made with Him, for this is the supreme triumph (*Surat al-Tawbah*, 9:111).³³

The second important contract in Islamic history is the *Bay’ah al-Riḍwān* which the Prophet (SAW) concluded, at al-Ḥudaybiyyah, with those who offered to fight to avenge the reported assassination of his envoy, ‘Uthmān, by the Quraysh of Makkah. However, it turned out to be a false rumour.³⁴ Those who made this *bay’ah* considered it a pledge to fight to their death.³⁵ However, Jābir b. ‘Abd Allah, in his interpretation of the wording of *bay’ah*, says that they promised to stay in the battlefield if war was declared by the Makkans, and continue fighting until the end.³⁶

There was great enthusiasm in the Muslim camp when they made the *bay’ah* and assured the Holy Prophet (SAW) of their total loyalty under all circumstances. The Qur’ān appreciates their moral strength and devotion to Islam as follows:

Allah was well pleased with the believers when they made *bay’ah* to you under the tree. He knew what was in their hearts, and He sent down tranquility to them; and He rewarded them with a speedy victory (*Surat al-Fath*, 48:18).³⁷

The Qur’ān declared it as the *bay’ah* to God. It reads:

Certainly those who made *bay’ah* to you, in fact, made *bay’ah* to Allah. The hand of Allah is above their hands; so whoever violates his *bay’ah*, violates it to the harm of his own self, and anyone who keeps his covenant with Allah, Allah will soon grant him a great victory (*Surat al-Fath*, 48:10).³⁸

Ibn Khaldūn, in his discussion on the meaning of *bay’ah*, has also made reference to *Bay’ah ‘Aqaba* and *Bay’ah al-Riḍwān*. To him, the *bay’ah* is like a contract of *bay’* (sale), in which the two parties (the seller and the buyer) conclude an agreement. In the contract of

bay'ah, the person hands over the supervision of affairs of all Muslims including his own to the Caliph. Ibn Khaldūn further points out that the *bay'ah* of the *khulafā'* is derived from the *bay'ah* practice of the Messenger (SAW). He also drew attention to another issue pertaining to *bay'ah* which relates to a *fiqhī* point. He supports Imām Mālik who gave *fatwā* (juristic opinion) that *bay'ah* and oath taken by force have no legal value.³⁹

Bay'ah* as practised by the *Khulafā'

The *bay'ah*, as a socio-political principle, was practised throughout the Rāshidūn period. The *ikhtiyār* of all the Rāshidūn was solemnised by the notables and the leading personalities of the time and then followed by *bay'ah* of general people. The *bay'ah* was a contractual agreement between the *khalīfah* and the public leaders which was subsequently confirmed by the people.⁴⁰

There were two types of *bay'ah* in vogue during the period of the *rāshidūn*. The *bay'ah* to make an *ikhtiyār* of the *khalīfah* has been elaborately discussed by the *fuqahā'* as a principle carrying much significance in the system of *khilāfah*. The other category is the *bay'ah* made only to pay homage to the *khalīfah* and to assure adherence to his authority. Both categories bear religious and political significance in view of the fact that the *bay'ah* owed its emergence to the practise of the Prophet (SAW) and that it had references in the Qur'ān.

The *Saqīfah* of Banī Sā'idah was the first occasion in which Abū Bakr was designated as *khalīfah* by the *bay'ah* of the people who were present at the meeting.⁴¹ Before making *bay'ah* to Abū Bakr there were proposals and discussions between the *muhājirūn* and the *anṣār* but when the consensus was reached and the *bay'ah* was made to him the situation normalised. The companions were unanimous in their opinion that *bay'ah* was the most vital factor in establishing the *khilāfah*. 'Umar ibn al-Khaṭṭāb, swearing by God, referred to this point and said that there was no matter more important than the *bay'ah* of Abū Bakr.⁴² The theory of the *fuqahā'* which states that the *bay'ah* finalises the *ikhtiyār*, is based on this precedent.⁴³ The *bay'ah* of Abū Bakr initially took place at the *Saqīfah* of Banu Sā'idah on the day the Prophet (SAW) died and was confirmed again on the second day in the mosque of the

Messenger (SAW).⁴⁴ The first *bay'ah* is known as the *bay'ah khāṣṣah* in which most of the *ahl al-ikhtiyār* from the *muhājirūn* and the *anṣār* participated. The second *bay'ah* is called the *bay'ah 'āmmah* in which the general public made *bay'ah* to Abū Bakr. A young companion, Abū 'Affīf who was present in the mosque and witnessed the proceedings of the *bay'ah*, gave a brief description of the event. He said that Abū Bakr, in his address to the people who had gathered there, called on them that they should make the *bay'ah* to him on the condition that they would obey Allah's commands; they should follow His Book first and then follow the *Amīr* (leader, caliph). Abū 'Affīf himself made *bay'ah* on the same condition.⁴⁵

Some *fuqahā'* insist that some stipulations of following the Qur'ān and the *Sunnah* of the Prophet (SAW) are to be mentioned at the time of giving *bay'ah* while others are of the view that it is enough to say that the obligations of the *khalīfah* would be carried out.⁴⁶ It can be seen that Abū Bakr's *bay'ah* was made conditional i.e. as long as he himself followed the Book of Allah and the *Sunnah* of the Prophet (SAW) and ruled accordingly, he would deserve the obedience of the people. Abū Bakr further explained this aspect in his speech which he delivered just after the *bay'ah 'āmmah*.⁴⁷

The obedience of the people to the Messenger (SAW) was all-pervading as he was the Messenger of God. However, the *bay'ah* to Abū Bakr was for the *khalīfah* of the Messenger and not for the representative of God. The significant aspect of the *bay'ah* was, therefore, the limitation of authority. He deserved obedience in *ma'rūf* (what is right) and not in *munkar* (what is wrong). This aspect has been elaborated by al-Māwardī and Ibn al-Farrā'. It is the right of the *khalīfah* to be obeyed and supported as long as he himself is on the right path. According to al-Māwardī, he is not worthy of *imāmah* when his qualification of '*adālah* (justice) is damaged.⁴⁸ Ibn Jamā'ah regards him responsible for the affairs of the *ummah* and accountable for breach of trust (*Khiyānah*).⁴⁹

A verse of *Sūrat al-Nisā'* 4:59 describes the matter of obedience to God, His Messenger and to those in authority in the following words:

O believers! Obey Allah and obey the Messenger and the *ulu al-amr* (people in authority) from amongst you; and if you

differ in any matter, refer it to Allah and His Messenger, if you believe in Allah and the Last Day. This is the best for you and best in the end.⁵⁰

Ibn al-Qayyim dwells upon the nature of obedience in the light of the above verse. He makes the point that the verb *aṭī'ū* (obey) has been specifically used with respect to Allah and al-Rasūl (the Messenger), denoting complete and unconditional obedience to them. This verb has not been used with respect to the *ulū al-amr* implying that the obedience owed to the *ulū al-amr* is conditional upon his obedience to the commands of God and His Messenger. Thus, according to Ibn al-Qayyim, when the people of authority issue orders in accordance with the Qur'ān and the *Sunnah*, they must be obeyed; but if they issue commands contrary to the Qur'ān and the *Sunnah*, then they have no right to claim obedience of the people. Such commands should be disobeyed, because the Holy Prophet (SAW) has said: "No obedience is due to the created which involves disobedience to the Creator" and obedience is due only in approved (*ma'rūf*), and "He who commands you in what is sinful in the eyes of God, you should neither pay heed to him nor obey him."⁵¹ So, it can be stated that the obedience which is owed to the ruler because of the *bay'ah* is not akin to the one given to the Prophet (SAW). There are several *aḥādīth* that list the conditions of obedience to an *imām*.⁵²

The principle of *bay'ah* was also applied to finalise the designation of 'Umar as *khalīfah*. The *bay'ah* was made to him in the mosque of the Prophet (SAW) in a public gathering on the day Abū Bakr passed away. According to al-Maqdisī, the *bay'ah* to 'Umar was carried out after the burial of Abū Bakr, but Ibn Sa'd relates that the *bay'ah* was made to him when Abū Bakr sent his statement to the people who gathered in the mosque. The statement in which 'Umar's nomination was proposed was read out to the general public who accepted the proposal and made *bay'ah* to 'Umar.⁵³ Al-Ṭabarī, in his description of the event, does not explicitly mention when the *bay'ah* took place; however it appears from the text that the people made *bay'ah* in the same meeting.⁵⁴ Montgomery Watt is sure of this point and writes that 'Umar's designation was preceded by an informal consultation with a few of the leading men, and was followed by the acclamation (*bay'ah*) of the people as a whole. The

event happened while Abū Bakr was still alive.⁵⁵ Since *ahl al-ḥall wa al-'aqd* had already agreed with the nomination of 'Umar and *bay'ah* was undertaken in the mosque, both the *bay'ah khāṣṣah* and the *bay'ah 'āmmah* were made in the same gathering.

The constitution of *al-Shūrā* is vested with the authority to make *ikhtiyār* of *khalīfah*. The members of the *shūrā* agreed to make *bay'ah* to 'Uthmān. The people were called to gather in the mosque where 'Abd al-Raḥmān b. 'Awf, a member of the *shūrā*, first announced his *bay'ah* to 'Uthmān on the condition that he would follow the Book of God, the *Sunnah* of the Holy Prophet (SAW) and the footsteps of Abū Bakr and 'Umar. According to historical account, 'Uthmān, then, sat down on the *minbar* (pulpit) which was swarmed by the people making *bay'ah* to him.⁵⁶ Ibn Khaldūn relates that all the people swore their oath of allegiance to 'Uthmān.⁵⁷ Talḥah was also a member of the *shūrā*, but was not present in Madinah at the time of *bay'ah*. However on returning, when he learnt that the Quraysh had made *bay'ah*, he also gave 'Uthmān his oath of allegiance. It may be stated that the *bay'ah* to 'Uthmān was the first *bay'ah* that carried certain conditions. This example later gave the *fuqahā'* the idea of prescribing conditions for making *bay'ah*. The conditions varied according to the prevailing situation and circumstance.⁵⁸ It has been mentioned earlier that Ibn al-Farrā' lays a special emphasis on conditions ensuring justice and equity in the society. Ibn Jamā'ah, in his discussion on the subject, has also suggested similar conditions for making *bay'ah*.

After the assassination of 'Uthmān, 'Alī b. Abī Ṭālib was contacted by some people who wanted to give him *bay'ah*. 'Alī, however, refused the offer saying that they were not competent to handle the matter as they were not regarded as the *ahl al-ḥall wa al-'aqd*. According to al-Maqdisī, 'Alī referred the matter to the companions who had participated in the battle of Badr. Later, all the Badrī companions assembled in the mosque of the Prophet (SAW) and made *bay'ah* to 'Alī.⁵⁹ Then the general public followed them and gave their oath of allegiance to him. However, a small group of people felt hesitant due to some misconception that they would not be treated equal to Banū Hāshim. However, 'Alī allayed their apprehensions by accepting conditional *bay'ah* from them. The condition that was put to 'Alī was that he would implement the

commands in the Book of Allah equally to everyone, whether he was a relative or a stranger, strong or weak.⁶⁰

Some historical records have mentioned that 'Alī regarded the people of Madinah as *ahl al-ḥall wa al-'aqd*. As stated above, 'Alī considered Badrī companions as elites in the society. The Qur'ān also appreciated their sincerity and devotion to Islam and the people gave them due respect by recognising their privileges and eminence. Historian al-Ṭabarī reports that when the people gathered to make *bay'ah* to 'Alī, a group of Egyptians said to the people of Madinah that they actually constituted the *shūrā* who determined the *imāmah* and whose determination was valid and appreciated by the community. The Egyptians further said that if the people of Madinah choose a deserving person as *khalīfah* and make *bay'ah* to him, they would follow them and would make *bay'ah* to the same person. The people then agreed to give their oath of allegiance to 'Alī.⁶¹

From the above discussion, it appears that not only the Badrī companions but also the people of Madinah commanded great respect in the society and the Muslims of other regions considered their opinion preferable. In fact, the city of Madinah enjoyed a central position in the Islamic world and representatives from other tribes and areas had significant presence in the city. The opinion of the people of Madinah therefore reflected the opinion of others as well. Thus they were regarded as the *ahl al-ḥall wa al-'aqd*. In the case of 'Alī, the *ahl al-ḥall wa al-'aqd* and the general public made *bay'ah* to him in the same gathering. In other words, the *bay'ah 'āmmah* was accomplished just after the *bay'ah khāṣṣah*.

After 'Alī, Ḥasan, the elder son of 'Alī, was given *bay'ah* by the supporters of 'Alī. But after six months, Ḥasan made a compromise with Mu'āwiyah and made *bay'ah* to him. Thus, Mu'āwiyah successfully concluded the *bay'ah* of the people of Kūfah, and became the *khalīfah* of the whole Muslim community in the year 41 A.H. Subsequently, the practice of *bay'ah* continued to play a vital role in determining the *khilāfah*. This is the aspect of *bay'ah* to which Laoust refers to while discussing the social and political views of Ibn Taymiyyah. He says that the validity of the rule was practically based upon *bay'ah*, and the oath of allegiance tied the relation between the ruler and the community.⁶²

Conclusion

It is agreed upon by scholars that *bay'ah* is absolutely essential to institute the *khilāfah*. *Bay'ah* was introduced during the time of the Prophet (SAW) who accepted the *bay'ah* from individuals as well as from groups. *Bay'ah* then meant renunciation of polytheism in all aspects of life. It meant the acceptance of *tawhīd* (unity of God, monotheism) and obedience to Prophet Muḥammad (SAW). Additionally, those who took *bay'ah* vowed to fight on behalf of Allah (SWT) and His Messenger (SAW) at the cost of their lives and property. This is evident in the *bay'ah al-'Aqabah* and *bay'ah al-Riḍwān*.

The *bay'ah*, as a socio-political principle, was practised throughout the Rāshidūn period. The *ikhtiyār* of all the Rāshidūn was solemnized by the notables followed by the *bay'ah* of general people. The former act is known as the *bay'ah khāṣṣah* and the latter as *bay'ah 'āmmah*. This practice started with Abū Bakr when he assumed the office of *khilāfah*. The *ikhtiyār* was made by the members of *al-Shūrā*. The *fuqahā'* consider the two types of *bay'ah* to be legally valid as they were practiced during the period of the *Rāshidūn khulafā'*.

The historians and the *muḥaddithūn* (specialists on *ḥadīth*) relate that the *bay'ah* made to the Holy Prophet (SAW) upon entering the faith include telling the truth, establishing justice, making *hijrah*, doing *jihād*, practicing moral values and the like. However, since the time of Abū Bakr, the *bay'ah* was made conditional in that the obedience to the ruler was made contingent upon the *imām* following the Book of Allah (SWT) and the *Sunnah* of the Prophet (SAW) and ruled accordingly. Should he command contrary to the Qur'an and the *Sunnah*, the *ummah* would then be obliged to disobey the *imām*. Some *fuqahā'* would require the *khalīfah* to promise to ensure justice and equity in the land and to honour the obligations of *khilāfah*.

The *fuqahā'* also emphasised the need to examine the personal attributes and qualifications of the candidates for the office of *khilāfah*. Members of *al-Shūrā* should choose the most qualified and most deserving person for the exalted office. However, under some circumstances, a less excellent (*mafdūl*) person in attributes and qualifications can be accepted as *khalīfah* if the *ahl al-hall wa*

al-'aqd confer their *bay'ah* on that person. The *fuqahā'* gave preference to the one who is most experienced by age among the candidates provided he enjoys the same respect and status in the community by virtue of his distinctive character, acumen, ability, fortitude, etc. However, when the circumstances demand the selection of a younger (*aşghar*) candidate for the office and the *bay'ah* is made to him, he would become a legitimate *khalīfah*.¹² The *fuqahā'* do not generally accept the concept of two *imāms* at one point in time. A *bay'ah* made to two persons simultaneously stands nullified. Both the contracts will be regarded null and void. If there is a time lag in the two contracts, the one who received the *bay'ah* first will be considered the legal *khalīfah*.

Notes

1. Al-Baghdādī, 'Abd al-Qāhir, *Uşūl al-Dīn* (Istanbul: Maṭba'ah al-Dawlah, 1346/1928), 280-81.
2. Ibid.
3. Ibid., 81-82.
4. Al-Ash'arī, Abā al-Ḥasan, *al-Ibānah*, ed. H. Fawqiyah Maḥmūd, Vol. 2 (Cairo: Dār al-Anşār, 1397/1977), 255-56.
5. Al-Baghdādī, *Uşūl al-Dīn*, 281-82.
6. Al-Māwardī, Abu al-Ḥasan 'Alī b. Muḥammad, *al-Aḥkām al-Sultāniyyah* (Cairo: Muştafā al-Bābī, 1966), 8.
7. Ibid., 15.
8. Ibn al-Farrā', Abū Ya'lā, Muḥammad b. al-Ḥasan, *al-Mu'tamad fī Uşūl al-Dīn*, ed. Zaydān Ḥaddād (Beirut: Dār al-Mashriq, 1974), 226.
9. Al-Māwardī, *al-Aḥkām*, 7-8; Ibn al-Farrā' *al-Aḥkām al-Sultāniyyah*, ed. M. Ḥamīd al-Fiḳī (Cairo: Muştafā al-Bābī, 1386/1966), 357.
10. Al-Māwardī, *al-Aḥkām*, 8; Ibn al-Farrā', *al-Mu'tamad*, 245-46.
11. Ibn al-Farrā', *al-Mu'tamad*, 250.
12. Al-Māwardī, *al-Aḥkām*, 7; Ibn al-Farrā', *al-Aḥkām*, 24.
13. Al-Baghdādī, *Uşūl al-Dīn*, 274; al-Māwardī, *al-Aḥkām*, 9; Ibn al-Farrā' *al-Mu'tamad*, 248-49.

14. Al-Ṭabarī, Muḥammad b. Jarīr, *Tārīkh*, ed. Abu al-Faḍl Ibrāhīm, vol. 5 (Cairo: Dār al-Ma'ārif, 1961), 321, al-Dhahabī, Muḥammad b. Aḥmad, *Tārīkh al-Islam*, ed. Husam al-Dīn al-Qudṣī, vol. 3 (Cairo: Maṭba'ah al-Quddūs, 1973), 336.
15. Al-Ṭabarī, *Tārīkh*, 5:324.
16. Al-Māwardī, *al-Aḥkām*, 7; Ibn al-Farrā', *al-Aḥkām*, 27.
17. Al-Māwardī, *al-Aḥkām*, 6-7.
18. *Ibid.*, 7.
19. Al-Juwaynī, 'Abd al-Mālik, *Ghiyāth al-Umam*, eds. Muṣṭafā al-Hilmī and Fuwād, (Alexandria: Dār al-Da'wah, 1402/1979), 55-56.
20. Al-Ramlī, Muḥammad b. Abū al-'Abbās, *Nihāyat al-Muḥtāj*, vol. 7 (Cairo: Muṣṭafā al-Bābī, 1386/1967), 120.
21. Al-Qurtubī, Muḥammad b. Aḥmad, *al-Jami' li Aḥkām al-Qur'ān*, vol. 1 (Beirut: Dār al-Kitāb al-'Arabī, 1387/1967), 269.
22. Al-Māwardī, *al-Aḥkām*, 6-7; Ibn al-Farrā', *al-Aḥkām*, 23-24; al-Ṭabarī, *Tārīkh*, 3:206-10.
23. For details about the election of Umayyad and Abbasid caliphs see al-Ṭabarī, *al-Tārīkh*, vol. 5-8.
24. Ibn al-Farrā', *al-Aḥkām*, 25; *idem*, *al-Mu'tamad*, 250.
25. Ibn Jamā'ah, *Tahrīr al-Aḥkām*, 358.
26. Bukhārī, Muḥammad b. Ismā'īl, *al-Jami' al-ṣaḥīḥ*, vol. 3, (Cairo: Dār wa Maṭābi' al-Sha'b, n.d.), part 9, 99.
27. *Ibid.*; Ibn Ḥajar, *Fath al-Bārī*, vol. 16 (Cairo: Muṣṭafā al-Bābī, 1378/1959), 329-30.
28. Al-Ṭabarī, *Tārīkh*, vol. 2, 354 (first gathering) and 355-56 (second gathering) and 362-64 (third gathering); Ibn Hishām, 'Abd al-Malik, *al-Sīrah*, ed. Muṣṭafā al-Saqā, Ibrahim and A. Ḥafīz (Cairo: Muṣṭafā al-Bābī, 1375/1955) 1:228-29 (first meeting), 431 (second meeting) and 438-43 (third meeting).
29. Al-Muslim, Muslim b. Ḥajjāj, *al-Jami' al-ṣaḥīḥ*, vol. 6 (Cairo: Maṭba'ah M. 'Alī Sabīḥ, n.d.), 29; Ibn Hajar, *Fath al-Bārī*, vol. 16, 329.
30. Ibn Hishām, *Sīrah*, vol. 1:441-42; al-Ṭabarī, *Tārīkh*, 2:362; Ya'qūbī, Aḥmad b. Ya'qūb, *Tārīkh Ya'qūbī*, vol. 2 (Beirut: Dār Ṣādir, 1379/1960), 38.
31. Al-Ṭabarī, *Tārīkh*, vol. 2:364; Ibn Hishām, *Sīrah*, vol. 1:446; Ibn Sayyid al-Nās, Muḥammad b. Muḥammad, *'Uyūn al-Athār*, vol. 1 (Beirut: Dār al-Ma'rifah, 1939), 165.

32. Watt, Montgomery, *Muhammad: Prophet and Statesman* (London: Oxford University Press, 1964), 83.
33. The word *bay'ah* is derived from *bā'a*, which means to sell; and like a sale, the *bay'ah* involves an exchange or undertaking made between two parties. See E. Tyan's article on *bay'ah* in the *Encyclopedia of Islam*; al-Kattānī, 'Abd al-Hayy, *al-Trātāb al-Idāriyyah*, vol. 1 (Beirut: Hasan Ja'na, n.d.), 221-24.
34. Ibn Hishām, *Sīrah*, vol. 2:314-16; al-Nasa'ī, Aḥmad b. Shu'ayb, *al-Sunan* (with Sharḥ al-Suyūṭī), vol. 7 (Beirut: Dār Ihyā' al-Turāth al-'Arabī, 1348/1930), 141-42, 145-46.
35. Ibn Hishām, *Sīrah*, vol. 2:315.
36. Ibid.; al-Ṭabarī, *Tarīkh*, vol.2:632-33.
37. For details see al-Qurṭubī, *al-Jāmi'*, his note on verses 18, 198 *al-Faṭḥ*.
38. See al-Qurṭubī, *al-Jāmi'* note on verse 10 of *al-Faṭḥ*.
39. Ibn Khaldūn, 'Abd al-Raḥmān, *al-Muqaddimah* (Beirut: Dār Kitāb al-Lubnani, 1956-59), 370-71; Ibn al-Athīr has also mentioned the *fatwā* of Imām Malik, see *al-Kāmil*, vol. 5 (Beirut: Dar al-Kitāb al-'Arabī, 1387/1967), 532.
40. Al-Ṭabarī, *Tarīkh*, vol.3:206.
41. Ibid.
42. Ibid., 225.
43. Al-Māwardī, *al-Aḥkām*, 10; Ibn al-Farrā', *al-Mu'tamad*, 250; *al-Aḥkām*, 24; Ibn Jamā'ah, *Taḥrīr al-Aḥkām*, 356.
44. Al-Ṭabarī, *Tārīk*, vol. 3:207; al-Mas'ūdī, Abu al-Ḥasan 'Alī, *Murūj al-Dhahab*, vol. 2 (Beirut: Dār al-Andalus, 1393/1973), 304.
45. Ibn Makūla, *al-Ikmāl*, vol. 6:225.
46. Al-Muttaqī al-Hindī, *Kanz al-'Ummāl*, vol. 5 (Hyderabad Dakkan: Dā'irah al-Ma'ārif al-Nu'māniyyah, 1374/1954), 367.
47. Ibn al-Farrā', *al-Aḥkām*, 25; *al-Mu'tamad*, 250, Ibn Jamā'ah, *Taḥrīr al-Aḥkām*, 358.
48. Al-Ṭabarī, *Tarīkh*, vol. 3:210; al-Hindī, *Kanz al-'Ummā*, vol. 5:349.
49. Al-Māwardī, *al-Aḥkām*, 17; Ibn al-Farrā', *al-Aḥkām*, 28; Ibn Jamā'ah, *Taḥrīr al-Aḥkām*, 361.
50. Al-Qurṭubī, *Tafsīr*, 5:258-262.
51. Ibn Qayyim, *I'lām al-Muwaqqi'in* ed. M. Muhyi al-Dīn, vol. 1 (Beirut: Dār al-Jīl, 1973), 48.

52. Bukhārī, *Sahīh*, vol. 3, part 9, 78-79; Muslim *Sahīh*, vol. 6:13-17.
53. Al-Maqdisī, *al-Bad wa al-Tarīkh*, vol. 5:68; al-Ma'ūdī, *Muruḥ*, vol. 2:304.
54. Ibn Sa'd, *al-Ṭabaqāt*, vol. 3 (Cairo: Dār al-Taḥrīr, 1388/1968), 142.
55. Al-Tabarī, *Tarīkh*, vol. 3:428.
56. Watt, Montgomery, *Islamic Political Thought*.
57. Al-Tabarī, *Tarīkh*, vol. 4:238.
58. Ibn Khaldūn, *Tārīkh*, vol. 2:998.
59. Ibn al-Farrā', *Al-Aḥkām*, 25; *al-Mu'tamad*, 250, Ibn Jamā'ah, *Taḥrīr al-Aḥkām*, 358.
60. Al-Maqdisī, *al-Bad wa al-Tārīkh*, vol. 5:208.
61. Al-Tabarī, *Tārīkh*, vol. 4:434-35.
62. H. Laoust, *al-Siyāsah wa al-Ijtimā'*, trans. M. 'Abd al-'Azīm (Cairo: Dār al-Anṣār, 1979), 207.