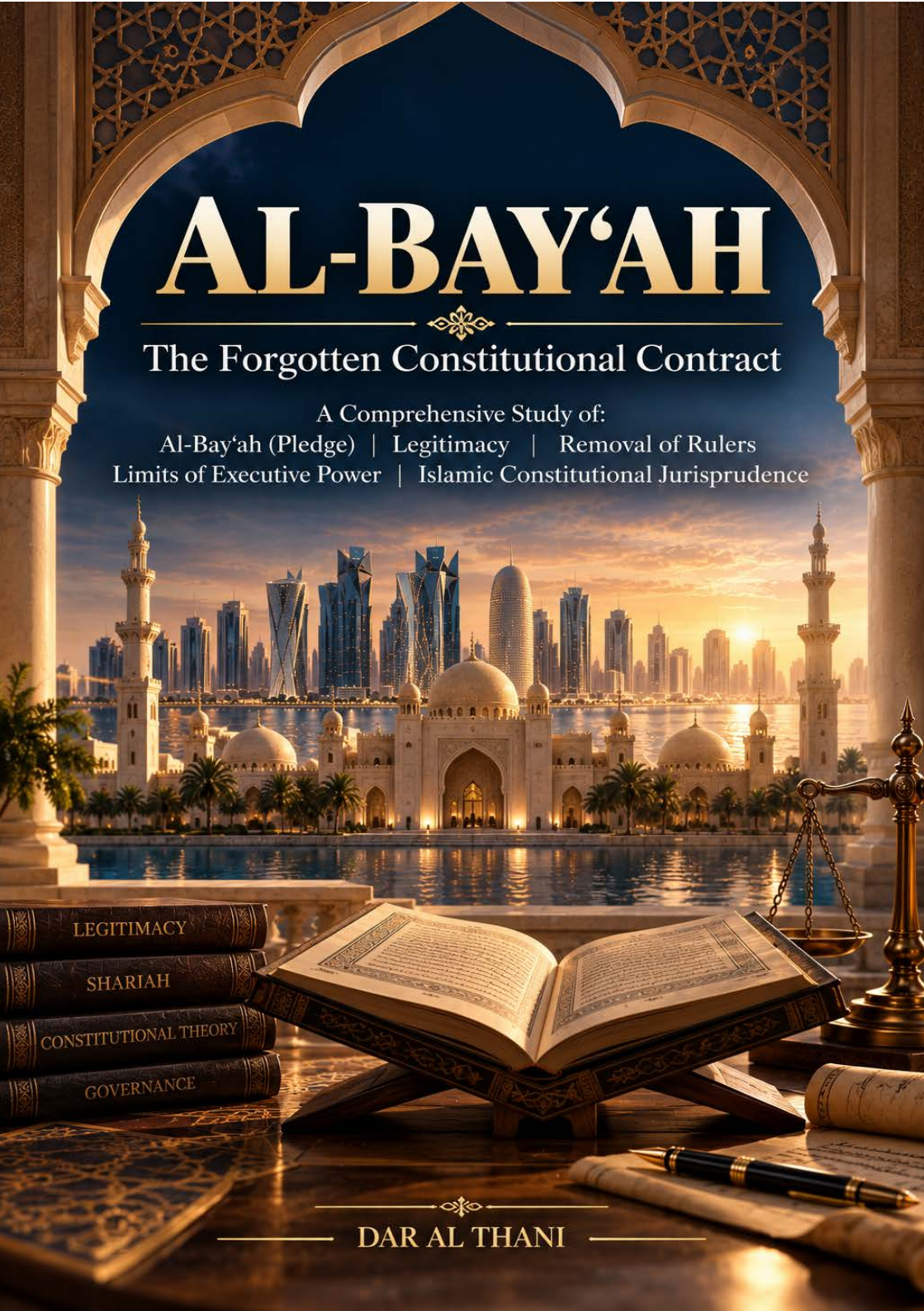
AL-BAY'AH

The Forgotten Constitutional Contract

A Comprehensive Study of:
Al-Bay'ah (Pledge) | Legitimacy | Removal of Rulers
Limits of Executive Power | Islamic Constitutional Jurisprudence



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Abstract

This study examines the Bay'ah (Pledge of Allegiance) as a constitutional contract that constitutes the legitimate legal and constitutional foundation of political authority in Islamic political jurisprudence. It seeks to reinterpret the concept through a contemporary constitutional perspective by analyzing its legal nature, its foundations in Islamic law, its constitutional implications, the limits it imposes on political authority, and its potential contribution to the development of a constitutional theory compatible with the requirements of the modern state. The study proceeds from the premise that the Bay'ah is neither merely a historical practice nor simply an expression of political loyalty; rather, it is a comprehensive constitutional institution founded upon a contractual relationship between the nation (*Ummah*) and the ruler, defining the source of political legitimacy, regulating the exercise of public authority, and establishing safeguards against the abuse of power.

The first chapter examines the concept and legal nature of the Bay'ah by exploring its linguistic and juristic meanings, distinguishing it from obedience, and demonstrating its contractual character, including its essential elements and conditions of validity. It then analyzes the legal foundations of the Bay'ah in the Qur'an, the Sunnah, and the consensus (*Ijmāʿ*) of the Companions, before tracing its historical development from the era of the Rightly Guided Caliphs to subsequent periods and assessing the constitutional implications of that evolution.

The second chapter explores the constitutional consequences arising from the Bay'ah by examining the

powers it confers, the constitutional and Sharīʿah-based limitations governing the exercise of those powers, and the rights vested in the *Ummah* in relation to political authority. These include the right to offer sincere counsel, exercise oversight, hold rulers accountable, and determine the limits of obedience, thereby ensuring a balance between the requirements of political stability and the principles of legitimacy and the rule of law.

The third chapter analyzes the grounds for the termination of political authority and the legal rules governing the removal of the ruler. It examines the circumstances in which the Bay'ah comes to an end, including death, resignation, permanent incapacity, loss of the qualifications required for office, and the expiration of a fixed term where applicable. The chapter then considers the place of the Bay'ah within the modern constitutional state, evaluates the compatibility of its underlying principles with contemporary constitutional concepts, and explores the possibility of its institutional development within the framework of modern state institutions.

The study concludes that the Bay'ah possesses the legal and constitutional characteristics necessary to serve as the foundation of a contemporary constitutional theory, provided that it is reconstructed in light of its higher objectives (*Maqāṣid al-Sharīʿah*) and general principles, while drawing upon modern constitutional experience in the organization of public powers, strengthening institutional oversight, reinforcing the rule of law, and safeguarding rights and fundamental freedoms. Such an approach would reconcile the authenticity of the Islamic constitutional tradition with the demands of the contemporary constitutional state.

Introduction

Contemporary constitutional thought has witnessed remarkable progress in the study of political systems and the mechanisms by which public authority is organized. Much of this scholarly attention has focused on modern constitutional models that emerged within the Western tradition, to the extent that they have become the principal reference point for a large body of comparative constitutional scholarship. By contrast, several foundational concepts of Islamic political jurisprudence have not received comparable constitutional analysis, despite embodying legal principles and institutional foundations that warrant careful examination.

Among the most significant of these concepts is the Bay'ah (Pledge of Allegiance). In much of the existing literature, the Bay'ah has been approached primarily from historical or juristic perspectives, while its constitutional dimension has remained comparatively underexplored. Yet, within the Islamic constitutional experience, the Bay'ah constituted one of the principal mechanisms through which political authority was established. It created a legal relationship between the ruler and the *Ummah*, giving rise to reciprocal rights and obligations, defining the constitutional framework for the exercise of public authority, and regulating both the continuity and termination of political office. These considerations underscore the need to re-examine the Bay'ah through a modern constitutional and legal lens, recognizing it as a constitutional institution of governance rather than merely a historical event or a traditional concept.

This study does not seek to replicate historical political models or transpose them directly onto the framework of the modern state. Rather, it proceeds from a clear distinction between the enduring constitutional principles upon which the Bay'ah is founded and the procedural mechanisms that were shaped by the historical circumstances and juristic reasoning of their respective eras. Constitutional theories should not be evaluated according to the historical period in which they originated, but according to their capacity to articulate enduring constitutional principles that can evolve in response to changing societal conditions while preserving their underlying intellectual and normative foundations.

Against this background, the present study seeks to contribute to the reconstruction of a constitutional understanding of the Bay'ah by highlighting the constitutional principles embedded within it and exploring their potential to enrich contemporary constitutional thought. It further aims to encourage scholarly engagement with constitutional approaches that reconcile the authenticity of the Islamic legal tradition with the institutional requirements of the modern constitutional state, thereby broadening the scope of comparative constitutional scholarship through legal theories founded upon coherent and enduring constitutional principles.

Chapter One: Bay'ah in Islamic Constitutional Theory

1. The Concept of Bay'ah and Its Legal Nature

The concept of Bay'ah (Pledge of Allegiance) constitutes the starting point of Islamic constitutional theory, as it forms the basis upon which public authority is established, the ruler acquires constitutional legitimacy, and the legal relationship between the ruler and the *Ummah* is defined. In Islamic jurisprudence, the Bay'ah has never been regarded merely as a ceremonial procedure preceding the assumption of office or as a simple expression of political loyalty. Rather, it has been understood as the legal foundation through which public authority is constituted, giving rise to reciprocal rights and obligations between its parties.

Linguistically, the term *Bay'ah* derives from the Arabic word *bayʿ* (sale or commercial transaction), because the Arabs traditionally concluded sales by shaking hands. Consequently, the term came to denote any agreement founded upon mutual consent and commitment. This meaning was subsequently extended to the political sphere to signify the covenant concluded between the *Ummah* and the ruler, whereby the latter undertakes to govern in accordance with the principles of Islamic law and to safeguard the public interest. Classical Muslim jurists therefore defined the Bay'ah as a contract of *Imāmah* (political leadership), under which the ruler assumes the obligations of public office, while the *Ummah* undertakes to obey him within the limits prescribed by the Sharīʿah.

This definition reveals a fundamental distinction between the Bay'ah and obedience. The Bay'ah is the legal act that establishes the constitutional relationship between the ruler and the *Ummah*, whereas obedience is one of the legal consequences arising from that relationship. Obedience does not exist independently but derives from a valid Bay'ah concluded in accordance with the established constitutional and legal requirements. Moreover, obedience is not absolute; it remains conditional upon the ruler's adherence to the terms of the Bay'ah and the principles of the Sharīʿah. Islamic constitutional thought has therefore never regarded obedience as an end in itself, but rather as the consequence of a legitimate authority exercising its powers within the framework of the law.

Accordingly, the Bay'ah possesses a distinctly contractual character. In its legal essence, it shares the fundamental characteristics of contracts generally, in that it is founded upon the mutual consent of the parties and gives rise to binding legal consequences. It differs from ordinary contracts, however, by virtue of its subject matter, namely the conferral of public authority and the administration of the affairs of the *Ummah*. Upon its conclusion, new legal relationships arise: the ruler becomes obligated to protect the religion, establish justice, safeguard rights and freedoms, and promote the public interest, while the *Ummah* assumes the duty of obedience in matters that are lawful, sincere counsel, and cooperation in achieving the objectives of good governance. At the same time, it retains the constitutional right to supervise and hold the ruler accountable should he fail to fulfill the obligations he accepted upon entering into the Bay'ah.

As a legal contract, the validity of the Bay'ah depends upon the fulfillment of its essential elements and conditions. The first element consists of the contracting parties: the *Ummah*, or those who legitimately represent it, and the prospective ruler who satisfies the qualifications required for public office. The second element is the subject matter of the contract, namely the conferral of political authority upon a person who is legally and constitutionally qualified to exercise it. The third element is the expression of mutual consent, which may be manifested through any legally recognized form. The Bay'ah is not valid unless its conditions are fulfilled, foremost among them the legal capacity of both parties, the voluntary nature of the agreement, the fulfillment by the ruler of the qualifications required for office, and the lawfulness of the contract's subject matter. A Bay'ah extracted through coercion or conferred upon an unqualified individual therefore raises significant constitutional and juristic questions concerning both its validity and its legal consequences.

It follows that the Bay'ah is not merely a mechanism for conferring legitimacy upon an already existing political authority; rather, it is the constitutive legal act through which public authority itself comes into existence and from which it derives both its legitimacy and its constitutional limits. Consequently, understanding the Bay'ah as a constitutional contract provides the essential framework for analyzing political legitimacy, defining the limits of executive authority, examining the grounds for the termination of political office, and addressing other fundamental questions of Islamic constitutional theory.

2. The Sharīʿah Foundations of the Bay'ah

The Bay'ah did not emerge as a political arrangement shaped solely by historical circumstances or human expediency. Rather, it is firmly rooted in the primary sources of Islamic law—the Qur'an and the Sunnah—and was consistently implemented during the era of the Rightly Guided Caliphs, while enjoying the consensus (*Ijmāʿ*) of the Prophet's Companions. These foundations established the Bay'ah as a central institution within the Islamic constitutional order. Consequently, Islamic jurisprudence has consistently linked the legitimacy of political authority to the existence of a valid Bay'ah rather than to the mere acquisition or exercise of power, since public authority derives its legitimacy only through the constitutional principles prescribed by the Sharīʿah.

The Qur'an refers to the Bay'ah in several passages, affirming both its legitimacy and its constitutional significance in regulating the relationship between leadership and the community. Among the most prominent is the verse:

"Indeed, those who pledge allegiance to you are actually pledging allegiance to Allah; the Hand of Allah is over their hands." (Qur'an 48:10)

This verse elevates the Bay'ah pledged to the Prophet Muhammad peace and blessings be upon him to a position of profound legal and moral significance, equating fidelity to that pledge with fidelity to one's covenant with God. It demonstrates that the Bay'ah is far more than a ceremonial act; it constitutes a binding legal and ethical commitment. The Qur'an likewise refers to the pledge of allegiance given by believing women:

"O Prophet, when the believing women come to you pledging allegiance to you..." (Qur'an 60:12)

This passage further illustrates that the Bay'ah was a recognized and structured legal institution governed by specific conditions and procedures appropriate to the nature of the obligations it created.

The Sunnah provides further clarification regarding the formation of the Bay'ah, its legal effects, and the rules governing its application. The Prophet peace and blessings be upon him received pledges of allegiance from his Companions on numerous occasions, each reflecting different constitutional and political purposes. The First and Second Pledges of al-ʿAqabah laid the constitutional foundations for the establishment of the Islamic state in Madinah, while the Pledge of al-Riḍwān was concluded under exceptional circumstances to reaffirm steadfastness and readiness to defend the Muslim community. Other pledges related to embracing Islam, migration (*Hijrah*), jihad, and obedience in matters consistent with the Sharīʿah. The diversity of these pledges demonstrates that the Bay'ah did not exist in a single fixed form; rather, it functioned as a flexible legal institution capable of regulating different constitutional obligations according to the needs of each stage, while preserving its underlying legal and religious foundation.

The constitutional significance of the Bay'ah did not end with the lifetime of the Prophet peace and blessings be upon him. Following his death, it remained the recognized legal mechanism through which the Rightly Guided Caliphs assumed political authority. Abū Bakr al-Ṣiddīq was invested with the Caliphate through the

Bay'ah, while ʿUmar ibn al-Khaṭṭāb received the Bay'ah after being nominated by Abū Bakr and accepted by the Muslim community. Similarly, ʿUthmān ibn ʿAffān was chosen following the process of consultation conducted by *Ahl al-Ḥall wa al-ʿAqd* (those qualified to deliberate and decide public affairs), and ʿAlī ibn Abī Ṭālib assumed office through the Bay'ah after the assassination of ʿUthmān. Although the political circumstances surrounding each succession differed, all shared a common constitutional principle: the exercise of supreme political authority became legitimate only through the Bay'ah.

No Companion of the Prophet is known to have denied the legitimacy of the Bay'ah or advocated the establishment of political authority independently of it. Rather, they unanimously accepted the Bay'ah as the lawful mechanism for appointing the leader of the Muslim community after the Prophet's death. Their disagreements concerned only the procedures for selecting the ruler or identifying those authorized to conduct the Bay'ah, not the legitimacy of the institution itself. These procedural differences never called into question the constitutional principle that political authority derives its legitimacy through the Bay'ah. Accordingly, Islamic jurisprudence has consistently recognized the Bay'ah as the legitimate legal foundation for the establishment of public authority, grounded in the Qur'an, the Sunnah, and the consensus (*Ijmāʿ*) of the Companions.

This constitutional foundation demonstrates that the authority of the Bay'ah does not derive solely from historical political practice. Rather, it rests upon the combined authority of divine revelation, consistent

constitutional practice, and the unanimous acceptance of the earliest Muslim community during the era of the Rightly Guided Caliphs. This explains its enduring place within Islamic political and constitutional jurisprudence as the foundational institution through which public authority is established before attention turns to the manner of its exercise and the constitutional limitations governing it.

3. The Historical Development of the Bay'ah

During the era of the Rightly Guided Caliphs, the Bay'ah was not confined to a single procedural model or rigid constitutional formula. While its normative and legal foundations remained constant, the methods through which it was implemented evolved according to the political circumstances of each period. This historical development demonstrates that Islamic constitutional thought did not regard the validity of the Bay'ah as dependent upon a particular procedure. Rather, its primary concern was the fulfillment of the objective for which the institution was established: the lawful conferral of public authority upon a person possessing the requisite qualifications through a process capable of securing public acceptance and preserving the stability of the political community.

The Bay'ah of Abū Bakr al-Ṣiddīq took place immediately following the death of the Prophet Muhammad peace and blessings be upon him under unprecedented political circumstances. The Muslim community suddenly faced a constitutional vacuum that required the prompt selection of a leader. The deliberations held at

Saqīfat Banī Sāʿidah culminated in the pledge of allegiance to Abū Bakr, which was subsequently affirmed through a public Bay'ah in the mosque. The constitutional significance of this event lies in its establishment of the principle that political authority does not pass automatically upon the death of a ruler but requires a Bay'ah to confer legitimacy. It also demonstrated that the initiative taken by leading members of the community to nominate a ruler did not eliminate the need for broader public acceptance through a general pledge of allegiance.

The Bay'ah of ʿUmar ibn al-Khaṭṭāb followed a different constitutional process. Before his death, Abū Bakr nominated ʿUmar after consulting the leading Companions, and the Muslim community subsequently pledged allegiance to him after Abū Bakr's passing. The nomination by the outgoing Caliph did not, in itself, create political authority; rather, it remained a preliminary constitutional step whose legal effect was completed only through the acceptance of the *Ummah* and the formal Bay'ah. This precedent illustrates that the power to nominate a successor could not substitute for the Bay'ah itself, which continued to constitute the indispensable legal basis of legitimate political authority.

The Bay'ah of ʿUthmān ibn ʿAffān introduced a third constitutional model. Before his death, ʿUmar entrusted a council of six senior Companions with the responsibility of selecting the next Caliph from among themselves. Following consultation and deliberation, the council chose ʿUthmān, who then received the Bay'ah of the Muslim community. This episode reflects a significant procedural development, as the function of *Shūrā* (consultation) evolved from a broad communal

process into a structured constitutional body entrusted with administering the selection of the ruler. It demonstrates the flexibility of Islamic constitutional practice in adapting procedural mechanisms while preserving the foundational principle that political authority ultimately derives its legitimacy from the Bay'ah.

The Bay'ah of ʿAlī ibn Abī Ṭālib took place under exceptionally difficult political conditions following the assassination of ʿUthmān. Despite the widespread unrest, ʿAlī did not assume the Caliphate solely by virtue of his personal qualifications or distinguished status. Rather, he accepted office only after receiving the Bay'ah from the majority of Muslims in Madinah. This episode illustrates that although political instability may affect the practical exercise of authority, it does not eliminate the constitutional necessity of the Bay'ah as the legal foundation upon which legitimate political authority rests.

A comparative examination of these four precedents demonstrates that the Rightly Guided Caliphs did not adhere to a single method for selecting the ruler. The Bay'ah was concluded through collective initiative in one instance, prior nomination in another, a structured consultative process in a third, and under extraordinary political circumstances in a fourth. Despite these procedural variations, one constitutional principle remained constant throughout: the Bay'ah constituted the final legal act through which political authority acquired legitimacy, irrespective of the differing procedures that preceded it.

Following the end of the era of the Rightly Guided Caliphs, the constitutional function of the Bay'ah gradually underwent significant transformation. It increasingly ceased to serve as the constitutive source of political authority and, in many instances, became an instrument for confirming decisions that had already been made within the ruling dynasty. With the establishment of the Umayyad Caliphate, the institution of hereditary succession became progressively entrenched, as heirs apparent were commonly designated during the lifetime of the reigning Caliph and the Bay'ah was subsequently sought to confirm that designation. This pattern continued, with varying degrees of participation by *Ahl al-Ḥall wa al-ʿAqd* and other political actors, throughout much of later Islamic political history.

This transformation did not signify the disappearance of the Bay'ah from the Islamic constitutional tradition. Rather, it reflected a fundamental change in its constitutional function. Whereas the Bay'ah had originally served as the legal act by which political authority was established, it gradually evolved into a mechanism for affirming the transfer of power within a ruling family or legitimizing a succession that had already been determined. As a consequence, an increasing gap emerged between the original juristic conception of the Bay'ah as a constitutional contract founded upon free choice and public consent and the subsequent political practice, which was often dominated by hereditary considerations. That distinction continues to influence constitutional discussions concerning the Bay'ah in a number of contemporary political systems.

Chapter Two: Constitutional Effects of the Bay'ah and the Limits of Executive Authority

1. Powers Arising from the Bay'ah

The conclusion of a valid Bay'ah (Pledge of Allegiance) gives rise to its most significant constitutional consequence: the establishment of the ruler's general public authority (*al-Wilāyah al-ʿĀmmah*). Prior to the Bay'ah, regardless of an individual's status, qualifications, or personal merit, he possesses no lawful authority over the *Ummah*. Once the Bay'ah has been validly concluded, however, he acquires the constitutional and legal status that authorizes him to exercise the functions of government. The Bay'ah therefore does not merely establish a relationship of political loyalty; rather, it places the ruler within a new constitutional position, making him responsible for the administration of public affairs within the limits prescribed by the Sharīʿah and in accordance with the requirements of the public interest.

This general authority encompasses the full range of governmental responsibilities associated with the administration of the state. It is not confined to a particular sphere of governance but extends to every function necessary for achieving the objectives of legitimate government. At the same time, this authority is neither inherent nor autonomous. It is a delegated and

limited constitutional authority that derives its legitimacy from the Bay'ah itself and remains subject to the legal and constitutional framework established by that contract. Consequently, the ruler is not authorized to act beyond the limits prescribed by the Sharīʿah or to pursue objectives inconsistent with the purposes for which the Bay'ah was originally concluded.

Foremost among the powers arising from the general authority conferred by the Bay'ah is the implementation of the Sharīʿah. Within the Islamic constitutional tradition, the ruler is not entrusted with creating or amending the fundamental rules of Islamic law. Rather, his constitutional function is to implement those rules, exercise *Ijtihād* in applying them to new circumstances, and enact regulatory measures in areas where no definitive legal text exists, provided that such measures promote the public interest and remain consistent with the fundamental principles of the Sharīʿah. This function constitutes the essence of executive authority in the Islamic constitutional system, for it establishes the ruler as the executor and guardian of the Sharīʿah rather than its source.

The protection of rights is inseparable from this constitutional responsibility. The establishment of justice and the preservation of religion, life, intellect, property, and human dignity constitute among the higher objectives (*Maqāṣid*) for which political authority exists. Accordingly, rights within Islamic political jurisprudence are not privileges granted at the discretion of the ruler but legal entitlements established by the Sharīʿah itself. The state is therefore under a constitutional obligation to protect these rights and ensure their effective enjoyment. Any exercise of public

authority that infringes upon or unjustifiably restricts these rights constitutes a departure from the constitutional obligations arising from the Bay'ah.

The general authority established through the Bay'ah also extends to the administration of the affairs of the state in all its dimensions, including public security, the judiciary, public administration, public finance, foreign relations, and the organization of public institutions. Administration, in this context, signifies the sound management of public affairs in a manner that promotes stability, preserves public order, and safeguards the interests of society. The administration of the state is therefore not an end in itself but an instrument for realizing the constitutional objectives upon which the institution of public authority is founded.

Within this framework, Sharʿiyyah-oriented public policy **(***al-Siyāsah al-Sharʿiyyah***)** represents the sphere in which the ruler exercises constitutional discretion. Since the Sharīʿah does not prescribe detailed solutions for every emerging circumstance, it leaves a broad field for the ruler to determine the most appropriate measures for achieving the public interest, provided that such measures do not contradict a definitive legal text or undermine a recognized objective of the Sharīʿah. Accordingly, the Bay'ah confers upon the ruler discretionary authority within the sphere of what is legally permissible and conducive to the public good, while denying him the power to establish an independent legislative authority or to free himself from the constitutional constraints governing his office.

Taken together, these constitutional powers demonstrate that the Bay'ah does not confer absolute or unrestricted

authority upon the ruler. Rather, it establishes a comprehensive yet constitutionally limited public authority characterized by both extensive governmental responsibilities and corresponding legal accountability. Every power derived from the Bay'ah is accompanied by constitutional and Sharīʿah-based limitations governing its exercise. This balance distinguishes Islamic constitutional theory from conceptions of government that regard political authority as an end in itself or permit its exercise without meaningful legal restraint.

2. Constitutional Limitations on Executive Authority

Within Islamic political jurisprudence, the institution of the Bay'ah (Pledge of Allegiance) is founded upon a constitutional balance between the conferral of authority and the legal restraints governing its exercise. The Bay'ah does not merely establish the ruler's general authority; it also defines the constitutional framework within which that authority must operate. Political authority is therefore inseparable from the legal and constitutional limitations that regulate it. Its legitimacy derives not only from the valid conclusion of the Bay'ah but also from the ruler's continuing adherence to the principles and obligations upon which that constitutional contract is founded.

Foremost among these constitutional limitations is the ruler's subjection to the Sharīʿah. No public authority within the Islamic constitutional order possesses the power to disregard definitive legal texts or violate the fundamental objectives (*Maqāṣid*) of Islamic law. The

Bay'ah does not establish the ruler as an independent lawmaker; rather, it authorizes him to exercise governmental powers within the framework of the Sharīʿah and to engage in *Ijtihād* only in matters left open to juristic reasoning, provided that such reasoning serves the public interest without contradicting established legal principles. In this sense, the Sharīʿah functions as the supreme constitutional norm from which political authority derives its legitimacy and to which every exercise of governmental power remains subject.

Closely connected to this constitutional structure is the principle of Shūrā (consultation), which serves as one of the primary safeguards against the concentration and arbitrary exercise of power. Shūrā is not merely an ethical ideal; it performs a substantive constitutional function by ensuring the participation of individuals possessing knowledge, experience, and sound judgment in the decision-making process. Through consultation, governmental authority becomes subject to deliberation and critical review before decisions of public importance are adopted. Although classical jurists differed regarding the extent to which consultation is legally binding in particular circumstances, they unanimously recognized both its legitimacy and its essential role in the sound administration of government. Accordingly, Shūrā constitutes a significant constitutional restraint upon executive authority, even where the precise scope of that restraint varies according to the nature of the matter under consideration.

The pursuit of justice represents the paramount constitutional objective for which public authority is established. The legitimacy of political authority is therefore measured not only by the validity of its

constitutional establishment but also by its commitment to administering justice among the people. The ruler may not exercise governmental powers to advance personal, familial, or factional interests. Instead, he is constitutionally obligated to apply the law impartially, protect individual rights, remove injustice, and ensure both judicial fairness and administrative integrity. Any departure from these objectives undermines the very constitutional purpose for which the Bay'ah was instituted.

Closely related to justice is the constitutional principle of equality, which prohibits discrimination on the basis of lineage, social status, wealth, or political influence and requires that all individuals be subject to the same legal standards. The constitutional practice of the Rightly Guided Caliphs illustrates the practical application of this principle, as both rulers and ordinary citizens remained equally subject to judicial authority. Holding political office did not confer legal privilege or exempt the ruler from constitutional or moral accountability.

Islamic constitutional theory further imposes a limitation through the prohibition of the abuse of power. Every governmental power is conferred for a specific constitutional purpose, and when it is exercised to achieve objectives other than those for which it was granted—or beyond the limits prescribed by the Sharīʿah—it loses its constitutional legitimacy to the extent of that excess. In substance, this principle closely resembles the well-established doctrine of abuse of power recognized in contemporary constitutional and administrative law, which holds that public authority may be exercised only for the lawful purposes for which it was conferred. This parallel demonstrates that Islamic constitutional jurisprudence articulated the essential

substance of this doctrine long before its formulation in modern legal terminology.

The constitutional framework established by the Bay'ah is completed by the principle of governmental accountability. The Bay'ah does not grant the ruler immunity from criticism or legal scrutiny; rather, it imposes responsibility on two interconnected levels. The ruler is accountable before God for faithfully discharging the trust of public office and accountable before the *Ummah* for the proper administration of its affairs. This constitutional responsibility has historically been reflected in the recognized rights of sincere counsel (*Naṣīḥah*), public correction, acknowledgment and rectification of error, and the accountability of governors and public officials. Together, these principles have functioned as practical constitutional safeguards against the transformation of political authority into a permanent privilege or an unchecked exercise of personal will.

Taken together, these constitutional principles demonstrate that the Bay'ah does not establish a political order characterized by unrestricted executive power. Rather, it creates a constitutional system in which authority is limited by the Sharīʿah, guided by the principle of consultation, directed toward the realization of justice, governed by equality before the law, and subject to continuous accountability. The constitutional significance of the Bay'ah therefore lies not merely in its capacity to confer political authority, but in its ability to define the legal framework within which that authority must be exercised and to prevent it from exceeding the constitutional limits upon which its legitimacy depends.

3. The Rights of the *Ummah* in Relation to Political Authority

The Bay'ah (Pledge of Allegiance) establishes a reciprocal constitutional relationship between the ruler and the *Ummah*. Its legal consequences are not confined to imposing obligations upon the governed; it also recognizes a set of constitutional rights and safeguards designed to ensure that political authority remains within the limits of its legitimacy. Accordingly, the role of the *Ummah* does not end with the selection of the ruler and the conclusion of the Bay'ah. Rather, it extends to monitoring the exercise of public authority, correcting deviations from constitutional principles, and preserving the legal and moral foundations upon which the Bay'ah was established.

Foremost among these rights is the right to offer sincere counsel (*Naṣīḥah*), derived from the statement of the Prophet Muhammad peace and blessings be upon him: *"Religion is sincere counsel."* In the constitutional context, *Naṣīḥah* extends far beyond mere moral exhortation or personal advice. It encompasses the right to express informed opinions, identify governmental errors, call for the correction of public decisions, and draw attention to shortcomings in the exercise of authority whenever this serves the public interest and promotes sound governance. Classical Muslim jurists therefore regarded *Naṣīḥah* both as a right belonging to the *Ummah* and as a corresponding civic duty, since it

functions as one of the principal safeguards against the misuse of political authority.

Closely connected to this right is the principle of commanding what is right and forbidding what is wrong (*al-Amr bi al-Maʿrūf wa al-Nahy ʿan al-Munkar*), which serves as a societal mechanism for overseeing the conduct of political authority and other public institutions. This principle is not confined to private moral conduct but extends into the public sphere, encompassing the evaluation of the actions of rulers and public officials and the right to object to governmental decisions that conflict with the Sharīʿah or undermine the public interest. At the same time, its exercise remains subject to legal and ethical constraints intended to prevent disorder and preserve the stability of the political community.

Within this constitutional framework, the *Ummah* possesses the right to object to governmental policies and decisions whenever they are founded upon erroneous legal judgment, depart from the objectives of the Sharīʿah, or adversely affect the public interest. Such opposition should not be understood in the partisan sense commonly associated with contemporary constitutional systems. Rather, it refers to the constitutional right to express dissenting views, engage in public discussion of governmental decisions, and advocate their correction through lawful means, without resorting to actions that threaten public order or infringe upon the rights of others.

The constitutional rights of the *Ummah* further include the authority to supervise the exercise of governmental power and hold public officials accountable. The Bay'ah

does not terminate the constitutional role of the community once it has been concluded; instead, it establishes the *Ummah* as an active participant in preserving the legitimacy and continuity of lawful government. This principle was clearly reflected in the constitutional practice of the Rightly Guided Caliphs, who accepted public criticism, responded to questions raised by members of the community, and, when persuaded by stronger reasoning, reconsidered and amended their decisions. Such historical practice demonstrates that public oversight was not regarded as an exceptional occurrence but as an integral element of the constitutional relationship established by the Bay'ah.

The Bay'ah also defines the scope and limits of obedience. Obedience is obligatory only in matters that are *maʿrūf*—that is, matters consistent with the Sharīʿah, conducive to the public interest, and falling within the ruler's lawful constitutional authority. This principle is firmly grounded in the Islamic legal tradition, which affirms that obedience is required only in what is right and that *"there is no obedience to any created being in disobedience to the Creator."* Consequently, the duty of obedience depends upon the legality and legitimacy of the governmental command itself rather than merely upon the authority from which it originates.

Accordingly, the obligation to obey ceases whenever a governmental command entails disobedience to God, directly contravenes the Sharīʿah, or represents an exercise of authority beyond the lawful constitutional powers of the ruler. The Bay'ah does not establish the ruler as an independent source of binding legal obligation; rather, it makes the duty of obedience contingent upon the legality and legitimacy of the authority exercised. At the same time, the absence of a

duty to obey in such circumstances does not authorize disorder, violence, or attacks upon the constitutional order. Instead, it requires the pursuit of lawful means capable of remedying the violation while preserving the interests of the community and safeguarding public stability.

Taken together, these constitutional rights demonstrate that the Bay'ah does not establish a political relationship based upon unconditional submission to authority. Rather, it creates a balanced constitutional order in which governmental power is matched by effective oversight, the duty of obedience is complemented by the right of accountability, and political legitimacy is preserved through the continuing participation of the *Ummah* in protecting the constitutional principles upon which legitimate authority rests.

Chapter Three: Termination of Political Authority and Its Contemporary Constitutional Prospects

1. Termination of the Bay'ah

The Bay'ah (Pledge of Allegiance) establishes a constitutional and legal relationship between the *Ummah* and the ruler, giving rise to the ruler's general public authority together with the reciprocal rights and obligations of both parties. Like any legal contract, the Bay'ah has not only the conditions necessary for its valid formation but also legally recognized grounds that bring it to an end and extinguish its legal effects. The termination of the Bay'ah signifies the cessation of the constitutional legitimacy upon which political authority rests, thereby requiring the commencement of the constitutional procedures prescribed for the selection of a new ruler.

The death of the ruler constitutes the natural and most fundamental ground for the termination of the Bay'ah. Since public authority is inseparably connected to the person of the ruler, it necessarily expires upon the termination of his legal personality. The Bay'ah neither passes automatically to the ruler's heirs nor continues to

produce legal effects after his death. Instead, the constitutional authority to select a successor reverts to the body entrusted with that responsibility under the legal principles governing the Bay'ah. This constitutional principle was consistently reflected during the early Islamic period, when the death of each Caliph required the immediate initiation of procedures for selecting a successor rather than the automatic transfer of political authority to any predetermined individual.

The Bay'ah may likewise terminate through the voluntary resignation of the ruler, where he freely chooses to relinquish public office, provided that such resignation serves the public interest and does not endanger the stability of the state or expose it to constitutional disorder. Resignation reflects the constitutional understanding that political authority is fundamentally a public trust and responsibility rather than a personal privilege. Accordingly, where the ruler becomes unable to discharge the responsibilities of office or concludes that his continued tenure would adversely affect the public welfare, he may relinquish authority, provided that the transfer of power occurs through constitutional procedures ensuring institutional continuity and preventing a political vacuum.

Permanent incapacity also constitutes a legitimate ground for terminating the Bay'ah where it reaches a level that prevents the ruler from performing the essential functions of public office. The relevant incapacity is not temporary illness or short-term physical weakness, but a condition that deprives the ruler of the effective ability to administer the affairs of the state and make the decisions necessary to protect its interests. The determination of such incapacity should be entrusted to the competent constitutional authorities in accordance

with objective legal standards, thereby preventing this ground from being exploited for political or personal purposes.

The Bay'ah may further come to an end when the ruler loses one of the essential qualifications required for political leadership, provided that the qualification concerned is recognized as fundamental to the validity and continuation of public authority. Although classical Muslim jurists differed regarding certain qualifications and the legal consequences arising from their loss, they generally agreed that the continuation of legitimate authority presupposes the continued existence of the essential conditions upon which the Bay'ah was originally concluded. Accordingly, where the ruler loses a qualification whose absence fundamentally impairs his ability to fulfill the objectives of political leadership, the continuation of his authority becomes subject to constitutional evaluation in accordance with the principles of Islamic jurisprudence.

The Bay'ah may also terminate upon the expiration of the ruler's term of office where the pledge has been concluded for a specified period or where the applicable constitutional system provides that public authority is limited to a fixed term requiring periodic renewal. By contrast, where the Bay'ah is not limited by time—as was generally the case during the era of the Rightly Guided Caliphs—it continues for as long as the legal basis supporting it remains in existence and terminates only upon the occurrence of one of the recognized grounds ending political authority. This demonstrates that Islamic political jurisprudence does not, in principle, prohibit the constitutional regulation of the duration of political office whenever such regulation serves the public interest. Since the primary sources of Islamic law

prescribe no mandatory duration for the exercise of political authority, the determination of procedural arrangements has been left to constitutional reasoning capable of achieving the higher objectives of the Sharīʿah.

These grounds share the common characteristic that they terminate the Bay'ah without, in themselves, implying legal or moral culpability on the part of the ruler. Death, resignation, permanent incapacity, and the expiration of a constitutionally prescribed term simply bring to an end the constitutional relationship established by the Bay'ah. Removal from office, by contrast, constitutes a distinct legal ground founded upon the ruler's failure to fulfill the obligations arising from his constitutional office and therefore requires separate constitutional consideration.

2. The Bay'ah and the Modern Constitutional State

The modern constitutional state has undergone significant development in the organization and regulation of political authority. Contemporary constitutional thought is no longer concerned solely with identifying the source of governmental legitimacy; it also focuses on the manner in which public authority is exercised, the constitutional safeguards that regulate its use, and the institutional mechanisms designed to protect fundamental rights and maintain a balanced distribution of powers among the organs of the state. This evolution has encouraged a re-examination of many constitutional and political theories, not for the purpose

of replacing or discarding them, but rather to assess their capacity to respond to the constitutional realities and institutional demands of the modern state.

Within this context, the Bay'ah (Pledge of Allegiance) emerges as one of the constitutional concepts deserving renewed scholarly attention in light of contemporary constitutional principles. In much of the existing literature, the Bay'ah has been examined primarily within its historical setting, a perspective that has often obscured the broader constitutional principles embedded within it. A contemporary constitutional analysis makes it possible to distinguish between the enduring principles upon which the Bay'ah is founded and the procedural mechanisms that reflected the political and social conditions of their historical context. Such an approach does not require the replication of historical political arrangements; rather, it seeks to identify the constitutional values capable of adaptation to the institutional structures of the modern state.

This perspective becomes particularly significant when it is recognized that many of the principles underlying the modern constitutional state—such as the subjection of governmental authority to the rule of law, the principle that public office entails responsibility and accountability, the existence of constitutional oversight over the exercise of public power, and the protection of fundamental rights and freedoms—are not foreign to the constitutional philosophy of the Bay'ah. On the contrary, these principles are consistent with its normative foundations and can be incorporated within its constitutional framework, provided that they are translated into modern constitutional institutions and legal mechanisms capable of meeting the requirements

of contemporary governance while preserving the essential values upon which the Bay'ah is based.

Recommendations

In light of the findings of this study, the following recommendations are proposed:

1. **Reconstruct the constitutional theory of the Bay'ah** on contemporary scholarly foundations by focusing on its higher objectives and general constitutional principles, rather than limiting its analysis to historical applications or confining it to its original historical context.
2. **Promote comparative constitutional research** examining the relationship between the Bay'ah and modern constitutional systems, with particular emphasis on shared constitutional principles, thereby enriching Islamic constitutional thought and advancing its analytical framework.
3. **Distinguish between immutable Sharīʿah principles and evolving institutional mechanisms**, enabling the development of modern state institutions and constitutional procedures while preserving the foundational principles upon which the Bay'ah is based.
4. **Draw upon contemporary constitutional experience** in areas such as the organization and separation of powers, constitutional review, judicial independence, and the protection of fundamental rights and freedoms, recognizing these as

institutional mechanisms that may be harmonized with the Islamic constitutional tradition.

5. **Expand scholarly research on the constitutional applications of the Bay'ah** through specialized studies addressing its relationship with constitutional adjudication, political parties, electoral systems, local government, independent constitutional institutions, and other components of the modern state.
6. **Emphasize the legal nature of the Bay'ah** as a constitutional contract that establishes public authority while defining the reciprocal rights and obligations of both the ruler and the *Ummah*.
7. **Affirm that the legitimacy of political authority does not arise solely from the conclusion of the Bay'ah**, but depends upon continued adherence to its constitutional requirements, particularly the principles of justice, the rule of law, the protection of fundamental rights, and the subjection of all state institutions to constitutional constraints.
8. **Encourage universities and research institutions** to incorporate Islamic constitutional thought into comparative constitutional studies, thereby promoting rigorous legal and analytical examination of the Bay'ah and other institutions of Islamic political theory.
9. **Develop contemporary constitutional models** inspired by the foundational principles of the Bay'ah while accommodating the institutional requirements of the modern constitutional state, with the objective of achieving an appropriate balance between the Islamic constitutional tradition and the principles of sound constitutional governance.
10. **Open new avenues for constitutional scholarship** on the Bay'ah by encouraging research

into its historical evolution, constitutional foundations, and potential application within contemporary political systems, thereby contributing to the development of a more coherent and comprehensive theory of Islamic constitutionalism.

Conclusion

The enduring value of constitutional theories lies not merely in their capacity to explain the past, but in their ability to contribute to the constitutional development of the future. Political ideas that lose the capacity to evolve gradually become objects of historical study, whereas those that preserve their foundational principles while remaining capable of renewal continue to offer meaningful responses to the changing constitutional needs of the state and society.

Viewed from this perspective, the Bay'ah (Pledge of Allegiance) represents a constitutional concept deserving renewed examination through the lens of contemporary constitutional scholarship. Such an inquiry should move beyond approaches that confine the Bay'ah exclusively to its historical context or seek to replace it with alternative constitutional models without first examining its legal structure and normative foundations. Reassessing the Bay'ah is therefore not an exercise in reviving historical institutions, but an effort to rediscover constitutional principles capable of enriching and advancing Islamic constitutional thought.

The principal challenge does not lie in demonstrating the compatibility of the Islamic constitutional tradition with

the requirements of the modern state. Rather, it lies in developing a constitutional jurisprudence capable of translating broad constitutional principles into effective legal institutions that respond to contemporary governance while preserving the intellectual and normative foundations upon which the Islamic constitutional order is based. The success of any constitutional theory should ultimately be measured not by the historical period from which it originated, but by its capacity to establish legitimate government, protect fundamental rights, uphold the rule of law, and promote the stability and continuity of the state.

In this sense, the Bay'ah should be understood as an evolving field of constitutional inquiry rather than a closed doctrine whose theoretical dimensions have been exhaustively defined. Every stage in the development of constitutional governance creates new opportunities to reconsider its institutional applications and procedural mechanisms in light of both the higher objectives of the Sharīʿah and the accumulated experience of modern constitutional systems, without compromising either source of constitutional legitimacy.

Accordingly, the future relevance of the Bay'ah depends not upon reproducing its historical forms, but upon the ability to reconstruct it as a dynamic constitutional theory capable of continuous development. Its permanence lies in the enduring constitutional principles upon which it is founded, while its vitality depends upon the adaptability of its institutional application. Understood in this way, the Bay'ah becomes more than a subject of historical or juristic inquiry; it emerges as a constitutional framework capable of enriching contemporary constitutional discourse and contributing to the continued development of Islamic constitutional

thought in harmony with the institutional realities of the modern constitutional state.

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AL-BAY'AH

The Forgotten Constitutional Contract

This study examines the Bay'ah (Pledge of Allegiance) as a constitutional contract that constitutes the legitimate legal and constitutional foundation of political authority in Islamic political jurisprudence. It seeks to reinterpret the concept through a contemporary constitutional perspective by analysing its legal nature, its foundations in Islamic law, its constitutional implications, the limits it imposes on political authority, and its potential contribution to the development of a constitutional theory compatible with the requirements of the modern state.

The book demonstrates that the Bay'ah is neither merely a historical practice nor simply an expression of political loyalty; rather, it is a comprehensive constitutional institution founded upon a contractual relationship between the nation (Ummah) and the ruler, defining the source of political legitimacy, regulating the exercise of public authority, and establishing safeguards against the abuse of power.

Drawing on the Qur'an, the Sunnah, classical Islamic jurisprudence, and historical precedent, the study analyses the constitutional consequences of the Bay'ah, the powers it confers, the limits on executive authority, the rights of the Ummah, and the legal grounds for termination of political authority. It also explores the relevance of the Bay'ah within the modern constitutional state and proposes practical recommendations for the development of a governance model grounded in legitimacy, accountability, the rule of law, and the protection of rights.

KEY THEMES EXPLORED

THE CONCEPT AND LEGAL NATURE
Linguistic and juristic meanings, and its contractual character.

LEGAL FOUNDATIONS
The Qur'an, Sunnah and historical development.

CONSTITUTIONAL IMPLICATIONS
Powers, limitations and the rights of the Ummah.

TERMINATION OF POLITICAL AUTHORITY
The rules for removal of the ruler and its contemporary relevance.

TOWARDS A MODERN CONSTITUTIONAL THEORY
Institutional development, accountability, and the protection of rights.

DAR AL THANI