

The Essential Contestedness of Territorial Sovereignty in Islam

Honors Research Thesis

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Abstract

This paper focuses on the question of whether Islam and the institutions of territorial sovereignty and the nation-state system are compatible with one another. The answer to this question is more complicated than a simple yes-or-no, with the concept of territorial sovereignty being widely contested among different Islamic factions. At the root of Islam's debate over the institution of territorial sovereignty are a number of epistemological and methodological disagreements, which preclude the creation of an unambiguous Islamic position on the issue. In light of the complexity of the question at hand, this paper will utilize Gallie's framework of essential contestedness to analyze the so-called "Islamicness" of territorial sovereignty and thematize the deep epistemological and interpretative dimensions of the debate.

1. Introduction

Islam, as a religion and ideology for organizing human life, is increasingly recognized as having a great deal of significance for contemporary international relations. During the past fifty years especially, worldwide Islamic revivalist movements have placed a premium on academic research that deals with Islam's intersection with politics. One of the biggest questions that comes out of this literature is whether there is something about Islam which makes it inherently incompatible with territorial sovereignty and the nation-state. Does the Islamic ideal of supranational unity (the *umma*) preclude Islamists from recognizing the legitimacy of territorial borders within the Islamic world? While some scholars have been quick to answer this question one way or another, much of their work fails to engage the deep methodological and epistemological disagreements within Islamic jurisprudence, especially over Islam's compatibility with relatively modern institutions like territorial sovereignty and the nation-state.

The value I intend to add with my thesis is the thematization of this epistemological dimension of the debate over territorial sovereignty in Islam. In order to provide a framework for my epistemological analysis, I will contend that territorial sovereignty is an essentially contested concept in Islam. W.B. Gallie introduced the idea of essentially

contested concepts in an essay published in 1956.¹ In this piece and later publications, Gallie identifies definitions and a number of explicit criteria for identifying and understanding these concepts. I will cover the applicability of Gallie's essentially contested framework to Islam's view of territorial sovereignty later in the paper.

It may strike some as odd that I apply epistemology to a religious debate; so-called Islamic "knowledge" is, like most religious knowledge, non-falsifiable and thus not really knowledge in the traditional sense. I have two main arguments for using this term. First, Islamists use the term epistemology when talking about philosophical debates within Islam. Specifically, Islamists consider the textualist-contextualist debate within Islam to be one of a debate between objectivist and subjectivist epistemology.² In Islam, from an objectivist epistemological point of view, both the *Qur'an* and *Sunnah* can be considered independent objective knowledge and prior to human cognition. Many Islamists, however, accept that many issues are not explicitly mentioned in the *Qur'an* and *Sunnah*. In these cases, there also exists a subjectivist Islamic view of epistemology, whereby Muslim scholars and jurists must use deductive analogy, innovation, and their individual subjective understandings of Islamic jurisprudence to provide rulings, which may or may not be considered knowledge by the individual believer. In reality, the debate over Islamic jurisprudence is mostly an interpretative issue—I refer to the main debate as an epistemological one because it is understood by its participants to be (or in some cases not to be) knowledge.

¹ W.B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society*, 56, 1956, 167-198.

² See Naail Mohammed Kamil, "Ontology and Epistemology in Management Research: An Islamic Perspective," *Post Modern Openings*, Vol.7, September 2011, 71.

Second, the use of the term epistemology implies important and foundational issues, which I believe are at stake in this debate. Labeling interpretation or knowledge as proper or “true” is a significant exercise of power. The same power can, by implication, be used in distinguishing the heretic and the infidel from the saint and the martyr. Epistemology is, to a certain extent, about the foundation of any stance, political or not. The source of the disagreements between different Islamists over the issue of territorial sovereignty is at this ground level. I also think that framing the debate as one of epistemology gives readers a better way to relate to and understand the mindsets of active participants in the debate.

I should note here that my analysis will focus almost solely on the epistemology of the debate in Sunni Islamic Jurisprudence over the institution of territorial sovereignty. By narrowing my scope of analysis, I hope to provide deeper insights into the present topic of discussion. I choose the Sunni branch of Islam for two main reasons. First, adherents of Sunni Islam far outnumber those of Shiite Islam worldwide.³ The conclusions and analysis of my thesis should be applicable to a larger portion of the world’s Muslims. Second, unlike their Sunni counterparts, the Shi’a Muslims have developed a relatively clear hierarchy of authorities, with the *ayatullahs* (literally meaning signs of God) at the top. While hierarchical relationship of those at the top of Shi’a Islam’s religious ladder has historically been a matter of debate, there is significantly more agreement over the methodology of Shi’a Islamic jurisprudence than that of Sunni jurisprudence. Thus, interpretation is more centralized, especially in the decades after the Islamic Revolution in

³ The latest official figures indicate that 87-90% of the world’s Muslims are Sunni; see “Mapping the Global Muslim Population,” *Pew Research Center*, Religion & Public Life Project, October 7, 2009.

Iran.⁴ This centralization has also been aided by the relative independence of Shi'a jurists and scholars from outside funding. Unlike Sunni Islamic scholars, Shi'a scholars and jurists collect their own tax and do not have to rely on central governments for revenue towards religious schools.⁵

In the paper, I will first overview the concepts of territorial sovereignty and Islam. In this section, I will also introduce basic territorial concepts in Islamic jurisprudence, which are grounded in classical theory. In the third section, I suggest that there are at least two key Islamist views on territorial sovereignty, each with its own idea of what counts as Islamic knowledge. The fourth section of the paper deals with the problematic nature of Islamic truth claims. There are problems in qualifying what the necessary and sufficient conditions are for something to be Islamic, what the proper sources are for this qualification, and how to go about qualifying what Islam can and cannot be. These epistemological questions can be asked in the application of any aspect of Islamic doctrine, not just Islam's political dispositions, so I will then apply my answers to Islamic political and territorial concepts in particular, including reviewing some of the existing literature on the topic. In the fifth section, I will overview Gallie's framework of essentially contestedness and then apply it to the issue of territorial sovereignty in Islam. I will argue that our present case meets all of the necessary criteria to be considered essentially contested and analyzed within this framework.

⁴ In a relatively recent innovation, there is a common opinion among Shia Muslims that the Grand Ayatullah of Iran is both the supreme political leader and "guardian of affairs" of all Shia Muslims. See "Constitution of the Islamic Republic of Iran." New Delhi, Iranian Embassy, March 1980, Principles 107-112.

⁵ James Piscatori, *Islam in a World of Nation-States*. Cambridge: Cambridge University Press, 1986, 90.

2. Conceptual Overviews

Because they are such broad concepts, which are central to my thesis, I think it would be useful to define and overview exactly what I mean when I refer to territorial sovereignty and Islam.

Territorial Sovereignty: The term territorial sovereignty (used as a term of art and therefore not disaggregated) has not maintained its meaning over different historical periods and across different geographical locales. When I use the term, I am referring to territorial sovereignty as a set of practices, constituting what some refer to today as the Westphalian model.⁶ The Westphalian international legal model, which holds that the Peace of Westphalia in 1648, ending the Thirty Years' War in Europe, constituted a shift in international relations, whereby distinct polities became sovereign. The change, however, was not immediate. Over time, the attributes of what we would today call territorial sovereignty came to be recognized with the rise of the territorial state, specifically the rise of absolute monarchies during the Renaissance and Reformation in Europe. There were three key aspects to this sovereignty. First there was the internal aspect, whereby no noble or lord could claim equality with the king. Second, and most importantly for this paper, there was the external aspect, whereby kings no longer had to take orders from the Roman Catholic Church or the Holy Roman Empire. Third, and perhaps most importantly, was mutual recognition of the sovereignty of each and every King by the others.

⁶ Seeing territorial sovereignty as a set of practices has a long-standing tradition in IR scholarship; see Richard Ashley, "Untying the Sovereign State," *Millenium*, No. 17, 1988, 227; Richard Ashley and R.B.J. Walker, "Reading Dissidence/Writing the Discipline: Crisis and the Question of Sovereignty in International Studies," *International Studies Quarterly*, 34, 1990, 263-86; and Janice Thomson, "State Practices, International Norms, and the Decline of Mercenarism," *International Studies Quarterly*, 34, 1990, 23-47.

The idea of territorial sovereignty has served an important historical function by legally safeguarding international borders of recognized political and territorial entities we call nation-states. Territory has indeed become a precondition for statehood, as it concerns the relation between sovereignty, land, and people. Territorial sovereignty is also important in Western political thought: our entire conception of the international system of sovereign nation-states is premised on the idea. While globalization, along with the great improvement in telecommunications, has weakened territorial sovereignty as an institution, the modern territorial state remains an important source of identity. Territorial sovereignty is indeed now one of the essential elements of states.⁷ States do not take orders from authorities outside their boundaries or have their authority shared or limited by any other authorities. According to Waltz, “to say that a state is sovereign means that it decides for itself how it will cope with its internal and external problems, including whether or not to seek assistance from others and in doing so to limit its freedom by making commitments to them.”⁸

The territorial aspect of sovereignty has a particularly strong tradition in Western political thought. The Westphalian tradition, “presumes continuous defined regions separated by explicit boundaries which are legally imposed, acknowledged, and adjudicated.”⁹ Even when this system was not the case, such as un-colonized portions of the early United States, there was a long-standing practice of using the frontier as a sort of

⁷ Ilyas Ahmad, *Sovereignty: Islamic and Modern*. Karachi: The Allies Book Corporation, 1965, 2.

⁸ Kenneth Neal Waltz, *Theory of International Politics*. Reading: Addison-Wesley, 1979, 96.

⁹ Manoucher Parvin and Mauries Sommer, “Dar Al-Islam: The Evolution of Muslim Territoriality and its Implications for Conflict Resolution in the Middle East,” *International Journal of Middle East Studies*, 1980, 2.

less determinate territorial division with its own rules and regulations.¹⁰ Throughout the history of modern Western thought, there was clearly a desire for stasis and clarity regarding land and its division.

In a paper focused so much on Islam's disposition towards territorial sovereignty, I would be remiss not to deal with a line of criticism coming from Islamic scholars about the West's conception of the rise of sovereignty, and their attribution of the rise of territorial sovereignty to Islam. Dr. Ilyas Ahmed summarizes the criticism of what some call the West's "gradual evolution" theory of sovereignty.¹¹ Under this theory, the West conceived of supreme power first being born in Greece and Rome. Later, during the period of medieval feudalism, the concepts of overlordship and final authority were created. The final realization of territorial sovereignty, according to Ahmad's characterization of the theory, came from kings of states exercising independent authority internally and externally, with the West regarding Bodin and Hobbes as the first writers of sovereignty in modern political philosophy.

The key problem that some Islamic scholars have with the theory is that it has no connecting link with the historical periods that it claims to have descended from. This "labored theory" pretends that the drama of life is only played out in Europe, forging the links between different stages to prove that this evolution of sovereignty exists.¹² These scholars also consider the West's belief that Bodin and Hobbes were responsible for the original theoretical exposition on sovereignty to be problematic. From their perspective, both of these philosophers only emphasized the unity of sovereign power when there was a

¹⁰ Parvin and Sommer, "Dar Al-Islam: The Evolution of Muslim Territoriality and its Implications for Conflict Resolution in the Middle East," 2.

¹¹ Ahmad, *Sovereignty: Islamic and Modern*, 7-8.

¹² Ahmad, *Sovereignty: Islamic and Modern*, 8.

need for strong monarchies. Bodin observed the Huguenots being massacred twice, and civil wars becoming the norm in France. Under those anarchic conditions, he felt a need for unity and order in his country. Hobbes, on the other hand, saw the horrors of the English Civil War, leading him to also want order and authority in his country. In contrast to these situational theoretical expositions, Ahmad claims that territorial sovereignty was emphasized from the beginning in Islam.

Instead, this line of criticism postulates that Islam, its civilization, and its contribution to modern sovereignty have been ignored. They criticize Western theorists for simply pretending that Islam and its civilization existed only in a vacuum with no relation to Europe or human civilization. The Islamic scholars in question cite numerous Quranic verses to support the theory that Islam made a number of key contributions to the doctrine of territorial sovereignty. Ahmad indeed considers the Qur'an an "encyclopedia of sovereignty" and claims that the sovereign in Hobbes' Leviathan is no other than "mortal Allah."¹³ For instance, the Qur'an says: "Oh Allah! Owner of sovereignty! Thou givest the kingdom to whomsoever thou pleasest, and Thou withdrawest the kingdom from whomsoever Thou pleasest..."¹⁴

The problem with this line of argument is that by sovereigns on earth still deriving their sovereignty from God, they do not meet Westphalian (Ahmad's own criteria for being sovereign) qualifications for sovereignty; namely, sovereignty requires originality and cannot be derived.¹⁵ Moreover, the God described in the Qur'an seems to be at least relatively similar, if not exactly the same, as the God described in the new and Old

¹³ Ahmad, *Sovereignty: Islamic and Modern*, 42.

¹⁴ Qur'an 3:26

¹⁵ Ahmad, *Sovereignty: Islamic and Modern*, 3.

Testament. The so-called “encyclopedia of sovereignty” appears to simply build on a long line of theological discourse on God’s sovereignty. While Ahmad is correct in pointing out the historical contingencies that led to the predominance of territorial sovereignty as an idea and institution, as well as positing that Islam and its civilization are oftentimes viewed as existing only in a vacuum, it appears unlikely that the Qur’an spawned the concept of territorial sovereignty, at least in the way that it is understood as the basis of international law today.

Islam: In order to discuss any topic in Islam, it is useful to establish a basic historical background and some key definitions. By using the word Islam, I am referring to a religion and way of life that appeared early in the seventh century A.D.. When Muhammad, a member of the prominent Arabian tribe of Quraysh, became forty years old, he began to receive revelations that were eventually recorded in what is today’s Qur’an. In classical theory, along with the Qur’an, there are four other main sources of Islamic jurisprudence, also referred to as *fiqh*. These sources are *sunnah*, or the collection of reported sayings and actions of Muhammad, *qiyas*, or logical deduction from general principles to specific cases, *ijma’*, or the consensus of Muslims, and, while some might argue that this aspect of *fiqh* is no longer legitimate, *ijtihad*, or new interpretations of Islam according to new developments.

Talking about a religion as theoretically governing the political sphere is an oddity in the field of Political Science, which makes Islam a fairly unique religion. Normally we think of religious rules as being separate from politics, with the exception of politics sometimes influencing religious rules, but very seldom the other way around. Christianity

has maintained a long-standing tradition of this doctrine, whereby Christians “render unto Caesar what is Caesar’s” and maintain a separation of Church and state. Unlike Christianity, however, Islam has no real “church” (I refer here to a hierarchy of religious authority) to be separate from the state. In Islam, God has sovereignty over everything and pervades every aspect of human activity. What I do not mean to say here is that the only acceptable form of a political order in Islam is an Islamic state. However, it is likely, and perhaps inevitable, that many of the politicians of a state with a significant population of Muslims will be Islamists, making Islam an important factor to consider in politics.

When it comes to territoriality, classical Islamic legal doctrine maintains two main types of territorial, and very clearly political, designations. The first type is known as *Dar al-Islam*, or “the whole territory in which the law of Islam prevails.”¹⁶ While the term *Dar al-Islam* is not used in the Qur’an, it is commonly found in classical Islamic legal doctrine. From a philosophical perspective, Islam is universal, meaning that the emphasis is on individual allegiance to the faith, recognizing “no boundaries for (Islam’s) kingdom.”¹⁷ Because there is a territorial designation for lands under Islam, there must be territories beyond Islam’s control, which brings us to the second main territorial type, *Dar al-harb*. While this term generally refers to territory not under Islamic law, some Islamic scholars have further limited categorizing any territory as *Dar al-harb* to anywhere where Islam is prohibited;¹⁸ consequently, almost all of the world’s states (with the exception of North

¹⁶ “Dar al-Islam,” *Encyclopedia of Islam*. London: Luzac and Co., 1960, 127.

¹⁷ Majid Khadduri, *War and Peace in the Law of Islam*. Baltimore: Johns Hopkins Press, 1955, 46.

¹⁸ Cyril Glasse, *The New Encyclopedia of Islam: Revised Edition of the Concise Encyclopedia of Islam*. Walnut Creek: AltaMira Press, 2002, 111.

Korea, perhaps) could, within certain Islamic groups, be considered *Dar al-Islam*, as they allow the institution of Islam to exist.

Even before the relatively recent re-conception of *Dar al-harb*, Islamic jurisprudence has long-maintained traditions of further territorial designations. The Shafi'i school of Islam, one of the four main orthodox schools of Sunni jurisprudence, recognizes a third category to describe territory, known as *Dar al-ahd*, or the land of conciliation or treaty.¹⁹ It is important to note here how important treaties are in Islam. In the Qur'an, it is clear that treaties take precedence over other religious obligations.²⁰ Under the protection of a treaty, and thus by classical Islamic law, *Dar al-ahd* cannot be attacked and its political order and territorial borders are consequently deemed to be legitimate.

While this division of space or land displays a real universalist pretention, it is also implicitly a recognition of territorial sovereignty between the Islamic World and, for lack of a better term, the non-Islamic World, albeit not in the way we understand the sovereignty of nation-states. These concepts put limits on what would otherwise be universal Islamic sovereignty and use territory as the medium for demarcating the limit between these two realms. The limits became especially clear in Islamic thought during the fourteenth century, when Islamic empires had reached their greatest extent. Ibn Khaldun, the great Islamic political philosopher who lived during the fourteenth century, recognized the need for a territorial limit on *Dar al-Islam* in his work.²¹ Some scholars continue to

¹⁹ Muhammad ibn Idris al-Shafi'i, *Kitab al-umm*. Cairo: al-Matba' al-Kubra al-Amiriyya, 1904, vol. 4, 103-4.

²⁰ This obligation comes even before the obligation to come to the aid of fellow Muslims; see Qur'an 8:72

²¹ Khaldun saw that the practical necessity of defending territory required limiting territorial acquisitions to what a political entity could defend; see Ibn Khaldun, *The Muqaddimah*, trans. France Rosenthal. New York: Pantheon Books, 1958, 328.

argue, however, that these distinctions are simply legal constructs that just happen to have territorial dimensions.²²

Although the demarcation of respected borders between Islamic and non-Islamic territory has historical and legal tradition, the most important aspect of my thesis, and perhaps the least-focused on avenue for academic research, is the legitimacy of territorial divisions within the Islamic world. Holding the religious predominance of Islam constant allows for deeper insights by separating the debate over the institution of territorial sovereignty from *Dar al-Islam* and *Dar al-Harb* labels. Indeed, when we talk about Islamic International law, or *siyar*, we are not talking about a means of regulating relations between states. Instead, *siyar* refers to the rules of one (meaning The one) Islamic community with respect to its conduct toward outsiders.

3. The Main Debate: Territorial Sovereignty as a(n) (non-)Islamic Institution

One of the reasons I believe discussing territorial sovereignty in Islam is important is that it is often misunderstood in the West. Western scholars have had a great influence over how we think about Islam and International Relations. Specifically, Western discourse on Islam has altered our perception of Islamic discourse on territorial sovereignty.

In the work of Bernard Lewis, for instance, we find a strong stance that Islam has no equivalent to territorial sovereignty, with a focus on medieval Islam's territorial divisions of the world into *Dar al-Islam* and *Dar al-harb*.²³ Lewis also mentions the

²² See Parvin and Sommer, "Dar Al-Islam: The Evolution of Muslim Territoriality and its Implications for Conflict Resolution in the Middle East," 4-5.

²³ See Bernard Lewis, *The Middle East and the West*. New York: Harper Row, 1964, 115.

supposed duty of all Muslims to use violent jihad as the avenue by which Dar al-Islam should be expanded. Some scholars even claim to speak for the consensus of Muslims on the subject, such as Adda Boezeman, who claims that “they” could never be won over by “imported secular public law” or the “occidental idea of the (territorial) state.”²⁴ However, the Western worries about Islam’s incompatibility with territorial sovereignty are probably most clearly espoused in the work of Samuel Huntington. He asserts that, “The idea of sovereign nation-states is incompatible with the belief in sovereignty of Allah and the primacy of the *umma*.”²⁵ While two of Huntington’s key claims about Islam have been disproven, namely that there are a disproportionate number of “fault-line conflicts” between Muslims and non-Muslims within states and “bloody borders” between Muslims and non-Muslim states, relatively little work has been done regarding Huntington’s claims about Islam’s disposition towards territorial sovereignty.²⁶

Western discourse certainly has a basis in Islamic thought in a well-established tradition of rejecting even the idea of territorial sovereignty. Syed Ameer Ali, a well-known Muslim scholar from British India, claimed that sovereignty and territorial pluralism in Islam could only be traced back to greed among members of the Umayyad clan, who ruled the Islamic world between 661 and 750 A.D..²⁷ Abul-Ala Mawdudi, an Islamic scholar who is generally identified as the “progenitor of modern Islam”²⁸, strongly

²⁴ Adda Boezeman, “Decline of the West? Spengler Reconsidered,” *The Virginia Quarterly Review*, 59 (Spring 1983), 193.

²⁵ Samuel Huntington, *The Clash of Civilizations and the Remaking of the World Order*. New York: Touchstone, 1996, 175.

²⁶ For the study disputing Huntington’s bloody border claim, see Jonathan Fox, *Religion, Civilization and Civil War Since 1945: The Empirical Study*. Lanham: Lexington Books, 2005.

²⁷ Ameer Ali, *The Spirit of Islam*. London: Christophers, 5th ed., 1949, 290.

²⁸ Peter Mandaville, *Global Political Islam*. London: Routledge, 2007, 62.

espoused Islam's universal nature with its sphere of activity knowing no territorial bounds.²⁹

However, neither the Qur'an nor other key scriptural sources offer real details about the proper way for Muslims to conduct politics, except to say that it must, "occur in accordance with the moral system of Islam."³⁰ Islamic principles are oftentimes contradictory, at times imploring unending resistance to unjust rule and arbitrary impositions, at times cautioning against living in conflict with other people in the world. These messages allow Islam to be used to justify both absolutism and pluralist existence under changing cultural and political conditions. The vagueness with which Islam treats political institutions has led to two main camps within Islam. The first, which I will refer to as *Jihadi* Islamism, argues that, from the traditions of the prophet, one can derive a very specific way to view political institutions Islamically. The second, which I will refer to as *Ijtihadi* Islamism, contends that any political institutions are acceptable as long as they don't contradict with Islamic morality. Specifically, these groups maintain divergent views on Islamic notions of territorial sovereignty.³¹

Note here that I am not characterizing Islamism as a strict binary. Not all Islamists fall into either of the two camps, nor are all *Jihadi* and *Ijtihadi* Islamists identical. There is indeed a great deal of diversity within and between both groups, especially among the *Ijtihadi* Islamists, but also among *Jihadis*.³² Moreover, these groups are not fixed

²⁹ Abul-Ala Mawdudi, *Political Theory of Islam*. Lahore: Islamic Publications, 1960, 26.

³⁰ Mandaville, *Global Political Islam*, 12.

³¹ Other authors sometimes refer to these two groups as conformists and non-conformists, with the *Jihadi* Islamists also sometimes being referred to as fundamentalists or textualists; see Piscatori, *Islam in a World of Nation-States*, 40-41.

³² For a discussion of the diversity of *Jihadi* Islamists, see Fawaz Gerges, *The Far Enemy: Why Jihad Went Global*. New York: Cambridge University Press, 2005, Chapters 4-5.

philosophical categories. Each type of Islamist may have different views on a whole range of contentious issues; in this paper, I am simply concerned with their views on territorial sovereignty and what sources of knowledge they rely on to formulate their opinion.

In the next sections I will briefly overview the views of *Jihadi and Ijtihadi* Islamists when it comes to territorial sovereignty. Most important for the purpose of my thesis is not necessarily the positions of these groups, but rather the way they go about coming to these conclusions. I will later contend that the true dispute between these two groups is epistemological.

Jihadi Islam and Territorial Sovereignty

The key characteristic of *Jihadi* Islamists is a literal and strict adherence to the fundamentals of Islam in the Qur'an and *Sunna*. What this view means for their perspective on territorial sovereignty is that it is highly monolithic, seeing little to no separation between religion and politics. They believe that there is only one way for God's government to exist on earth and that this way was prescribed in the Qur'an and followed by the Prophet Muhammad in his life.

To *Jihadi* Islamists, the only kind of sovereignty in existence is that of God.³³ The sovereignty of Allah always comes before any earthly power. As sovereignty is used to describe the power over which there is no higher power, clearly Allah is the highest authority, with no power equal to him and no one to share power with him. This belief is derived from their understanding of the central Islamic principle of *Tawhid*, which refers to

³³ See Amin Saikal, "Westphalian and Islamic Concepts of Sovereignty," in Trudy Jacobsen, C.J.G. Sampford, Ramesh Thakur, *Re-envisioning Sovereignty: the end of Westphalia?* Aldershot: Ashgate, 2008, 73-81.

the unity of God, whereby there is one God who created all and owns everything. Thus, *Jihadis* do not recognize the legitimacy of territorial or political divisions, seeing the only legitimate authority on Earth as being divinely based.

The role of man on earth is to maintain exclusive Islamic sovereignty within the *ummah* (world-wide community of believers), expanding to wherever Muslims may live.³⁴ Due to the wide geographic distribution of Muslims today, this ideology can be used, as some have claimed, to advocate never-ending global Jihad to strengthen the *Jihadi* version of Islam.³⁵ The *Jihadi* view of the world is a borderless domain of worshippers, with no legitimacy for any sort of political institution, other than the concept of the Islamic *Khilafat* (the divinely legitimated rulership of successors to the prophet). The key implication for this view is that Jihadi Islam is opposed to territorial sovereignty and nation-states, seeing no boundaries to the defense and expansion of the Islamic faith, especially within the Islamic world.

The leading theologian for most contemporary *Jihadi* Islamists is the Egyptian Sayyid Qutb, who preached the high importance of *Jihad*. He saw the goal of *Jihad* as achieving a total Islamic order, without any attachment to territory. While the prevailing attitude towards *Jihad* among Islamic intellectuals was a defense of Muslim lands against

³⁴ However, the focus of this expansion is the lands already predominantly inhabited by Muslims; see Stuart Elden, *Terror and Territory*. Minneapolis: University of Minnesota Press, 2009, 48-49.

³⁵ See Daniel Benjamin and Steven Simon, *The Next Attack: The Globalization of Jihad*. London: Hodder and Stoughton, 2005.

direct outside threats, Qutb denied any sort of territorial conception of Islam.³⁶ For Qutb, the “soil of the country” has “no significance” in Islam.³⁷

Jihadi Islamists criticize attempts to defend territorial sovereignty and its production of the nation-state, with the principle of the national interest being its ultimate criterion and justification. Nation-states are unable to serve the universal community of Muslims; their very constitutions dictate that they must sacrifice everything and anything to pursue their own self-interests. Thus, territorial sovereignty is a barrier to an effective universal Islamic community that seeks to create justice between various member states.

The Jihadi view of the current world order can certainly be classified as revisionist. They regard themselves as committed to the task of bringing about a new world order. A key distinguishing factor between the Jihadi Islamists and the Ijtihadi Islamist is the Jihadi conviction that a Muslim must sacrifice to bring a new Islamic world order about, laying down one’s life. The ideal world order of Islam, which Jihadi Islamists see as their obligation to bring about, would abolish what we understand as territorial borders between states. They believe Islam seeks to build a world order in which God’s, “human creatures are free to seek his bounty,” unrestricted in the movements and “free to settle wherever they choose.”³⁸ Beyond scripture, I have found two main arguments put forth by *jihadi* Islamists for the abolishment of territorial sovereignty and its production of nation-states. First, they see the design of the nation-state as inimical to implementing God’s law. *Jihadi* Islamists contend that secularism is the inevitable worldview of the nation-state, with

³⁶ Qutb called territorial Islam “a creation of the modern age”; see Sayyid Qutb, *War, Peace, and Islamic Jihad*. New York: Palgrave Macmillan, 2000, 225-226.

³⁷ Qutb, *War, Peace, and Islamic Jihad*, 241.

³⁸ AbdulHamid AbuSulayman, *The Islamic Theory of International Relations*, International Institute of Islamic Thought, Brentwood: International Graphics Printing Service, 1987, xxvii.

“Satan (concealing) himself behind glimmering slogans of statehood, nationalism, and national self-determination, and thus, proceeds to govern through a de facto self-appointed elite who, consciously or unconsciously, establish and govern by misdirected public policies.”³⁹ In short, the nation-state inevitably produces values that interfere with the institution of Islamic law and the supremacy of an Islamic identity above all others. Second, they view the imposition of the nation-state system by Western powers as a malicious attempt to divide and rule the Islamic world. The *jihadi* Islamists argue that the nation-state is not an indigenous political system of mankind, let alone the Islamic world. Instead, they contend that the nation-state system is “politically manufactured” and “serves the needs of superstates as well as factional elites who aim to control the balance of power.”⁴⁰

A key caveat to my depiction of *jihadi* Islam is that not all *jihadi* Islamists see violence as a legitimate means by which to bring about an Islamic world order. While “non-violent” *jihadi* Islamists share a common goal with those that support political violence, they support a strategy of, “education and community organizing to build an Islamic society from the bottom up...”⁴¹ From the non-violent *jihadi* point of view, the appeal of this fundamentalist Islamist ideology will inevitably increase its supporters and power, allowing the movement to one day take over the state. In some ways, we can better understand the difference between non-violent and violent *jihadi* Islam by comparing it to

³⁹ Hassan Hasan Sheikh Salime El-Yacoubi and Jane Biddle Merritt El-Yacoubi, *The Debacle of the Contemporary Divergent Self-Styled Muslim Ummah*, Boulder: Published and Distributed by Authors, 1999, 57.

⁴⁰ El-Yacoubi and El-Yacoubi, *The Debacle of the Contemporary Divergent Self-Styled Muslim Ummah*, 56.

⁴¹ Ira Lapidus, “Islamic Revival and Modernity: The Contemporary Movements and the Historical Paradigms,” *Journal of the Economic and Social History of the Orient*, Vol. 40, No. 4, 1997, 447.

the struggle between Social democracy and revolutionary Socialism. Much like Social democrats criticizing the view that socialism can only come about through a violent proletariat revolution, non-violent Jihadi Islamists criticize the idea that violent direct seizure of the state is the only way to achieve an Islamic society.

Ijtihadi Islam and Territorial Sovereignty

The namesake of *Ijtihadi* Islam is obviously the Islamic concept of *ijtihad*, which makes it easier to defend multiple interpretations of Islam. *Ijtihad* is literally the “independent or original interpretation of problems not precisely covered by the Qur’an, *Hadith*, and *ijma*.”⁴² It involved the independent exercise of critical thinking and independent judgment that were key to solving questions and problems that Muslims faced. In classical times, *ijtihad* could only be exercised by the proper authority (the Islamic *‘ulama* in this case), and through the “proper” method (analogical deduction or *-qiyas* in this case).⁴³ By the beginning of the tenth century, however, there was a general agreement among Sunni jurists that any further *ijtihad* would be harmful, so the “door” to *ijtihad* became “firmly shut”.⁴⁴ It is important to remember that there was a historical context for this “door” to be closed. The initiator of this doctrine, the jurist al-Shafi’I, who lived during the late eighth and early ninth centuries, wanted to resolve a key dispute between the Hanafi and Maliki schools of Islamic thought: whether the independent

⁴² “*Ijtihad*,” *Encyclopedia Britannica Online*, accessed November 1, 2013. Note: italics did not appear in the original text.

⁴³ Piscatori, *Islam in a World of Nation-States*, 6.

⁴⁴ See Joseph Schacht, *An Introduction to Islamic Law*. Oxford, Oxford University Press, 1964, 70.

judgment of learned scholars is a valid source of Islamic law.⁴⁵ His solution was that *ijtihad* could only be exercised by referencing established orthodox opinions (meaning only the four orthodox Islamic schools of law), a principle that came to be known as *taqlid*.⁴⁶ The use of *Ijtihad* has significant implications for today's Islamists, and their disposition towards the idea of territorial sovereignty, which I will touch on later in this section.

The main criticism that Jihadi Islamists have of the practice of *ijtihad* is that they believe it “amounts to little more than forcing from the divine texts that particular interpretation which agreed with preconceived standards subjectively determined.”⁴⁷ The argument over whether *ijtihad* counts as Islamic knowledge highlights the lack of a systematic approach to Islamic jurisprudence.

Ijtihadi Islamists believe that because Islam has no theory of the state or blueprint of Islamic governance, Muslims must creatively interpret and apply Islam based on logical reasoning.⁴⁸ While the *Ijtihadis* agree with the *Jihadis* on the powerful legacy left by the Prophet Muhammad, they believe that the Prophet intended for later generations to apply Islam to changing political and cultural circumstances. Coincidentally, many *Ijtihadi* Islamists also view the Prophet's experience ruling from Medina to be too exceptional to use as a model for a state in the present world of global political and economic

⁴⁵ Piscatori, *Islam in a World of Nation-States*, 6.

⁴⁶ The exceptions to this rule were the Shiites, who still recognized their jurists as having the authority to conduct *ijtihad* outside of the boundaries of *taqlid*; see “Ijtihad,” *Encyclopedia Britannica Online*.

⁴⁷ N. J. Coulson, *A History of Islamic Law*, Edinburgh: Edinburgh University Press, 1964, 80-81.

⁴⁸ Saikal, “Westphalian and Islamic Concepts of Sovereignty,” 79.

interdependence.⁴⁹ Thus, the *Ijtihadis* view territorial sovereignty as a result of historical conditions and something Islam recognizes as a reality. In terms of relative influence, it is important to note that *Ijtihadi* Islamists greatly outnumber their *Jihadi* Islamist counterparts.⁵⁰

Even under the Jihadist epistemology (only the Qur'an and Sunnah counting as knowledge), there seems to be support for territorial sovereignty, which *Ijtihadis* are quick to point out. First, the Qur'an supports the idea of divisions within Islam, perhaps even territorial, in the world. In one verse, the Qur'an indicates that God divided men into nations and tribes so they may know one-another.⁵¹ Second, the Qur'an implicitly recognizes a plurality of authorities among mankind, even implying that God has no desire for humanity to be part of one sovereign entity.⁵² The conformism of *Ijtihadi* Islamists to prevailing political norms also has a deep doctrinal underpinning. Even the very word Islam is often used in Quranic injunctions to mean not only submitting to almighty God, but also to, "the Prophet and those in authority among you."⁵³ In these injunctions, the Qur'an prescribes a certain passive resignation towards prevailing ideologies that do not necessarily conflict with Islamic law.

Ijtihadi Islamists also use custom based on the prophet's deeds (called *Sunna*) to justify pragmatism and widely varying positions on ideas. One example occurred in 628 A.D. when the Meccans, who were non-Muslim and at odds with Muhammad at the time, prevented Muhammad and his followers from making the *Hajj* (the annual pilgrimage to

⁴⁹ Abdullahi Ahmed An-Na'im, "Islam State and Politics: Separate but Interactive," brookings.edu, January 29, 2011, 11.

⁵⁰ Saikal, "Westphalian and Islamic Concepts of Sovereignty," 79.

⁵¹ See Qur'an 49:13.

⁵² See Qur'an 4:59 and 42:8.

⁵³ Qur'an 4:59

the *Ka'bah* in Mecca).⁵⁴ Instead of fighting to go through with this divinely ordained pilgrimage, Muhammad compromised with the Meccans by agreeing to wait a year before attempting to enter the city. During the year delay, Muhammad built his forces for a battle with the Meccan defenders.⁵⁵ This and other historical examples show that there is simply a huge amount of flexibility in the practice of the Prophet, which has supported the idea in Islamic jurisprudence that “whatever is ‘necessary’ (*daruri*) and in ‘the public interest’ (*maslaha*) must be deemed to be Islamic...”⁵⁶

Along with scriptural support, however, is the *Ijtihadi* desire to stay with modern times. *Ijtihadis* are often known as “Islamic liberals”, rejecting any sort of interpretation of Islam that presents it as inadaptable to changing political realities. The *Ijtihadi* position on the issue of territorial sovereignty is entirely contingent on the prevailing ideas and practices of the world, which currently support territorial sovereignty as an institution.

The flexibility of *Ijtihadi*, and by implication so-called “mainstream”, Islam is based on the idea that everything, including the Qur’an and Sunna, is always open to new interpretation.⁵⁷ Because humans are fallible and interpretation can only be done by the effort of fallible human beings, human understanding of even divine sources cannot be considered divine.

4. The Epistemological Problems of Islamic Thought

In order to discuss any Islamic concept, however, it is important to understand what Islam is and why it is so difficult to talk about anything as truly “Islamic.” In truth, Islam is

⁵⁴ Piscatori, *Islam in a World of Nation-States*, 3.

⁵⁵ *Ibid*, 3.

⁵⁶ Piscatori, *Islam in a World of Nation-States*, 4.

⁵⁷ An-Na’im, “Islam State and Politics: Separate but Interactive,” 13.

an imprecise term.⁵⁸ One of the only things that all Muslims can agree on is the *shahada*, or general profession of faith (literally translated: “there is no God but Allah and Muhammad is his messenger”). Beyond that simple profession of faith, there is a wide disagreement over the principles and ideas of Islam. Some people might say that a scholar must look to the Qur’an, perhaps the only common denominator among the world’s Muslims, to find out what Islam is and isn’t. Unfortunately, a scholar will find numerous problems while studying scriptural interpretation of the Qur’an. For starters, the Qur’an itself encourages differing interpretations of its verses.⁵⁹ In one verse, the Qur’an admits that many of its verses are obscure or ambiguous and only God knows their true meaning.⁶⁰

There is a huge debate over what counts as knowledge in Islam because of the ambiguity in Islamic legal decision-making. Unlike the other two main monotheistic religions, there is no explicit spiritual authority in Islam, no sort of priestly caste endowed with esoteric wisdom. In the Qur’an, the individual Muslim becomes God’s vicegerent on Earth, endowed by God with intelligence and his or her own sense of right and wrong.⁶¹ Going along with this idea is the concept of *ibaha*, which means that an individual has freedom of action outside of specific divine commands.⁶² There is no ecclesiastical authority to settle disputes between scholars of Islamic law, leading to many schools of thought with no arbiter. These various schools of thought also lead Islamic jurists to

⁵⁸ For a detailed discussion on how problematic this term is, see Piscatori, *Islam in a World of Nation-States*, particularly Chapter 1.

⁵⁹ Piscatori, *Islam in a World of Nation-States*, 3.

⁶⁰ Qur’an 3:7.

⁶¹ Qur’an 2:30

⁶² Piscatori, *Islam in a World of Nation-States*, 4.

maintain the concept of *ikhtilaf*, which permits diversity of doctrine in Islamic law.⁶³ Ever since the death of the prophet, this doctrine has been used to legitimate different schools of law and divergent views in Islam. This doctrine creates huge problems when talking about an “Islamic position” on a topic, since Islam can vary with the individual believer.⁶⁴ Thus, the first step of any scholar studying Islam is to determine what a general agreement or consensus is on the subject being studied (in Islam called *ijma*’). The method in Islam for creating agreement or consensus, however, is far from clear. Islamic jurists have long debated about what is an agreement in Islam, from who has to be agreeing to how much agreeing is necessary to create a consensus.

The struggle over the use of the terms sovereignty and territoriality in Islam is most clearly epistemological. One of the key epistemological issues in the debate is the so-called “closing of the door of *Ijtihad*”. In this situation, either you believe that the door for *ijtihad* is still open, in which case you accept new developments in Islamic jurisprudence, including key developments over the last couple centuries, or you contend that the door for *ijtihad* is indeed closed, in which case you do not consider much of Islamic jurisprudence over the centuries to be knowledge.

A complicating factor of Islamic epistemology is the lack of a concrete and modern methodology to resolve debates, especially over Muslim political thought. One of the reasons behind the low priority of developing a methodology for resolving these debates is the lack of significant Muslim power and influence when it comes to international affairs.⁶⁵

⁶³ Specifically, this doctrine follows a saying of the Prophet Muhammad: “Difference of opinion among my community is a sign of the bounty of God,” see Coulson, *A History of Islamic Law*, 86.

⁶⁴ Piscatori, *Islam in a World of Nation-States*, 15-17.

⁶⁵ AbuSulayman, *The Islamic Theory of International Relations*, 48.

Muslim jurists have simply failed to systematically reform and reexamine their methods and approaches. In order to create new directions for Muslims political thought, Muslim jurists must first deal with the problems of approach and methodology.

In recent decades, relatively few western scholars have touched on the importance of epistemology when it comes to talking about Islam in any scholarly sense. There has been some effort to recognize diversity within Islamic jurisprudence and the long-standing debates that divide Islamic jurists. One of these efforts is the identification of different “readings” of Islam, departing and arriving at various interpretations of the revelations attributed to Muhammad.⁶⁶

Perhaps the best effort to display the complexities of Islamic knowledge that I have seen, specifically when it relates to Islam’s debate over territorial sovereignty, is James Piscatori’s *Islam in a World of Nation-States*. Piscatori delves into Islamic jurisprudence on the issue and ends up concluding that, by and large, Islam is compatible with the institution of territorial sovereignty. The way Piscatori arrives at this conclusion is through what he considers an Islamic *ijma’ al-fi’l* (consensus of action) and *ijma’ al-qawl* (consensus of speech) on the issue. Piscatori argues that the nonconformist view towards the territorial sovereignty in the Islamic world is mostly a manifestation of Muslims, “(f)eeeling that Islam’s decline is due chiefly to the adoption of Western ideas and culture...”⁶⁷

Even after reading his book, however, the ease with which Piscatori is able to render a final judgment on Islam’s position towards territorial sovereignty is unsatisfying.

⁶⁶ Tariq Ramadan, *Western Muslims and the Future of Islam*, Oxford: Oxford University Press, 2004, 24. In his book, Ramadan identifies 6 of these “readings”, each containing further subcategories.

⁶⁷ Piscatori, *Islam in a World of Nation-States*, 145.

Piscatori's work lacks an explanation of the framework he uses to weigh various parts of Islamic jurisprudence. He clearly has an argument about the historical actions of Muslims and Islamic states constituting a kind of *ijma' al-fi'*, but is this *ijma'* recognized as knowledge by a majority of Islamic jurists? Moreover, how would we decide if this *ijma'* constitutes a consensus of speech and how long would this consensus be binding for? Beyond the issue of even deciding whether this qualifies as an *ijma'*, however, is the question of how to weigh the *ijma'* against the other forms of Islamic jurisprudence. It is widely recognized that while Islamic jurisprudence contains all of the, "materials for a legal system...it is not a legal system itself."⁶⁸ Piscatori appears to jump the gun in looking for a definitive conclusion without the adequate framework in place to make such a conclusion.

A notable example of touching on the epistemological and interpretative dialectic in Islamic thought is Dr. Kathleen Cavanaugh's "Speaking Law to War", where she deals with what she calls the, "...struggle between...textualist readings and that of contextualists".⁶⁹ In her article, Cavanaugh argues that while textualist Islamic jurists have a fixed, literal, and immutable reading of Islam, the contextualists attempt to read and apply religious texts within specific historical contexts. For her analysis, Cavanaugh focuses on the Islamic concept of *jihad*, contending that various sources of Islamic jurisprudence have, "(opened) up a rather contested space on the meaning, scope and application of *jihad*."⁷⁰

⁶⁸ AbuSulayman, *The Islamic Theory of International Relations*, 82.

⁶⁹ Kathleen Cavanaugh, "Speaking Law to War," *Journal of Conflict & Security Law*, Vol. 17, No. 1, 2012.

⁷⁰ Cavanaugh, "Speaking Law to War", 4.

Beyond overviewing the basic interpretative debate and recognizing the doctrinal support on different sides in the debate, however, Cavanaugh fails to engage the active contestation between Islamic jurists over the issue. Her description of the debate is of two ships metaphorically passing in the night. Not that this description is incorrect in all instances—in a number of specific cases where *jihadi* ideology is employed to legitimize active and violent political struggles (like Palestine, Chechnya, and fighting U.S. interventions in Iraq and Afghanistan), there is justifiably little to no engagement with the other side of the debate over the concept. By and large, however, Islamic jurists have been forced to aggressively and defensively adapt their positions in relation to other conceptual competitors. During the Islamic revival of the last several decades especially, *jihadi* Islamists have framed their arguments to counter what they see as Muslim acceptance of alien innovations.⁷¹

Qutb, the leading theologian for *jihadi* Islamists stated: “There is no ruler save God, no legislator, no organizer of human life and human relationships to the world, to living thinking or human beings save God.”⁷² Qutb’s starting point was bypassing what he saw as an illegitimate religious establishment. He claimed that religious knowledge, as transmitted by religious authorities and as most Muslims understood it, had been, “tainted by centuries of un-Islamic innovation.”⁷³ This “innovation” included many of the sources that *Ijtihadi* Islamists (and indeed most Muslims) consider to be religious knowledge, including *Ijtihad*, *Qiyas*, and *Ijma*, highlighting the epistemic debate between these two

⁷¹ Piscatori, *Islam in a World of Nation-States*, 101.

⁷² Saikal, “Westphalian and Islamic Concepts of Sovereignty,” 77.

⁷³ Mandaville, *Global Political Islam*, 79.

groups. Qutb believed that there was only one “true Islam”, creating a binary between those who chose to embrace this version of Islam and everyone else.

The belief in a binary between “true” Muslims and, for lack of a better term, “false” Muslims has important implications for the way Jihadi Islamists deal with those Muslims who claim authority within the territorial divisions of the Islamic world. They consider these “self-proclaimed political systems”, which may claim to be Islamic, to be “apostates”, institutionalizing something other than Islam.⁷⁴

5. The Essentially Contested Framework and Application

According to Gallie, the idea of essentially contested concepts “relate to a number of organized or semi-organized human activities...(where) we find groups of people disagreeing about the proper use of concepts, e.g. of art, of democracy, of the Christian tradition. When we examine the different uses of these terms and the characteristic arguments in which they figure we soon see that there is no one use of any of them which can be set up as its generally accepted and therefore correct or standard use.”⁷⁵ Each of these groups will defend their own usage of a term, while others will certainly contend that an alternate usage is the correct and only interpretation.

Gallie created a useful analytic framework, which serves to highlight key problems in understanding and analyzing contested concepts. I use the framework not because my topic fits the criteria (not all criteria are salient all of the time, even when met), but because of its utility for explaining the complexity of the issue at hand.

⁷⁴ El-Yacoubi and El-Yacoubi, *The Debacle of the Contemporary Divergent Self-Styled Muslims Ummah*.

⁷⁵ W.B. Gallie, *Philosophy and the Historical Understanding*, New York: Schocken Books, 1968, 157.

Each side in the debate, the Jihadi and Ijtihadi Islamists, can point to various “facts” that appear to support their claims of the truth about the compatibility of Islam and the institution of territorial sovereignty. The sides can also claim that they maintain the proper method of using their set of “facts” to arrive at each of their conclusions. From what we can see, however, there is no agreed upon or general method for deciding between the claims to truth made by the two sides. Gallie describes each party in this kind of debate as, “(continuing) to maintain that the special functions which the term...fulfills on *its* behalf and *its* interpretation, is the correct or proper or primary, or the only important, function which the term in question can be said to fulfill. Moreover, each party continues to defend its case with what it claims to be convincing arguments, evidence, and other forms of justification.”⁷⁶

Importantly, employing the framework of essentially contested concepts is not a justification of any of the claims of either side of this debate. Rather, the use of the framework can be said to justify, all other things being equal, the “combined employment of the essentially contested concept” by all sides.⁷⁷

Meeting Gallie’s Goal

Gallie’s explicit goal for using the framework of essentially contested concepts is, “to provide a rigorous, systematic framework for analyzing contested concepts.”⁷⁸ Simply put, Gallie’s framework is an attempt to give order and a certain structure to a particular kind of

⁷⁶ Gallie, *Philosophy and the Historical Understanding*, 157. Emphasis in original text.

⁷⁷ Gallie, *Philosophy and the Historical Understanding*, 167.

⁷⁸ See David Collier, Fernando Daniel Hidalgo and Andra Olivia Maciuceanu, “Essentially contested concepts: Debates and applications,” *Journal of Political Ideologies*, 11 (October 2006), 236.

adversarial discourse. A debate where each side claims to have the true connection to knowledge, such as the one over territorial sovereignty in Islam, logically requires a rigid framework to sort out. After going through the applicability of Gallie's criteria to Islam's debate over territorial sovereignty, I think it will be clear that it fits the description of the kind of adversarial discourse that Gallie is referring to.

It has become at least acceptable to talk about sovereignty as an essentially contested concept in academia.⁷⁹ In her piece "Sovereignty: Contemporary Transformations", Cohen makes a strong argument for why sovereignty, referring here explicitly the territorial type, is contested. Her argument centers on the transnational character of the risks that states now face, including environmental issues and terrorism, which she argues shows the ineptitude of nation-states in controlling their own territories and borders. Developments like the U.N. Charter system, international Human rights law, and the European Union all constitute challenges to the Westphalian model of territorial sovereignty.

Obviously in Cohen's case, territorial sovereignty is considered contested because reality contradicts the frequently invoked concept of sovereignty that we have in IR. The contested nature of sovereignty in Islam, however, is on an epistemological and ideological level.⁸⁰ Indeed, talking about philosophical debates in religious groups as essentially contested concepts was one of Gallie's explicit intentions.⁸¹ In a religious debate, especially one over what counts as religious knowledge, it is quite easy for the conflicting sides to be unable to budge an inch, even when presented with the interpretations and

⁷⁹ See Jean Louise Cohen, "Sovereignty: Contemporary Transformations," *Raison Publique*, No. 5, October 2006, 31-53.

⁸⁰ To be fair, part of the debate here is over political realities, as the actions of the world's Muslims constitutes what Ijtihadi Islamists call *ijma' al-fi'l*.

⁸¹ Gallie, *Philosophy and the Historical Understanding*, 157.

doctrinal support of the other side. According to Gallie, “(w)hen this kind of situation persists in practical life we are no doubt often justified in regarding it as a head-on conflict of interests or tastes or attitudes, which no amount of discussion can possibly dispel; and we therefore feel justified in dismissing the arguments of the contesting parties as at best unconscious rationalizations and at worst sophistical special pleadings.”⁸² It is not too much of a stretch, therefore, to talk about the concept of sovereignty in religion as an essentially contested concept.

The concern among Gallie’s critics about the goal is that the overusing his framework will lead to conceptual relativism, and consequently stagnate discussions on any particular concept.⁸³ If my goal was to establish some sort of unambiguous explanation of Islam’s view on territorial sovereignty, the concern about relativism might be valid. This concern, however, appears to be unreasonable in the present study; my explicit goal is to thematize Islam’s epistemological debate over territorial sovereignty, attempting to create a realistic account of this debate in all of its complexity. In fact, part of the reason why I am researching this topic is that so many others have tried to create unambiguous meanings for Islam’s relationship with many Western institutions.

Analyzing Islam’s Compatibility with Territorial Sovereignty through Gallie’s Criteria

In his work, Gallie offers a number of different criteria for identifying and understanding concepts that are essentially contested. They are: “(I) their appraisive character, (II) internal complexity, (III) diverse describability, (IV) openness, (V)

⁸² Gallie, *Philosophy and the Historical Understanding*, 157-8.

⁸³ See Barry Clarke, “Eccentrically contested concepts,” *British Journal of Political Science*, 9, 1979, 122-126.

reciprocal recognition of their contested character among contending parties, (VI) an original exemplar that anchors conceptual meaning, and (VII) progressive competition...”⁸⁴ I will argue that an Islamic view of territorial sovereignty meets each of these seven criteria, to a certain extent.

Importantly, however, some scholars have argued that it is not necessary for specific contested concepts to meet all of Gallie’s criteria.⁸⁵ Indeed, Gallie himself indicated that only Criteria I and V were the formal defining conditions for essential contestedness.⁸⁶ Some concepts that are widely recognized as contested arguably do not meet a number of the criteria.

I. Appraisiveness: The first criterion for an essentially contested concept is whether it denotes a valued achievement. According to Gallie, appraisiveness is one of the defining criteria for essential contestedness. An Islamic view of territorial sovereignty clearly appears to be appraisive: it denotes a certain spiritual label to the institution. The epistemological debate within Islam also appears to have an appraisive component; jurists and scholars must decide whether certain kinds of jurisprudence can legitimately be Islamic knowledge or not. Much like Gallie’s examination of a “Christian life”⁸⁷, there is not much debate over whether the present study fits this criterion.

⁸⁴ Collier et al, “Essentially contested concepts: Debates and applications,” 212.

⁸⁵ Collier et al, “Essentially contested concepts: Debates and applications,” 215.

⁸⁶ Gallie, “Essentially contested concepts,” 180.

⁸⁷ Gallie, *Philosophy and the Historical Understanding*, 169.

II. Internal complexity and III. Diverse describability: These two criteria are often grouped together by Gallie and subsequent scholars who study his work.⁸⁸ Intuitively, this grouping makes sense: if a concept is internally complex, then it is possible, indeed likely, that different people and groups will explain or describe its meaning in a number of different ways. The lack of any real systematic methodology to Sunni Islamic jurisprudence to decide the compatibility of territorial sovereignty and Islamic law allows for the present concept to meet both of these criteria. Specifically, the internal complexity of Sunni Islamic jurisprudence, with the many debates over what aspects of this jurisprudence can count as knowledge, allows for different users to characterize the so-called “Islamicness” of any concept in different ways.

IV. Openness: Openness refers to the ability of an essentially contested concept to be subject to revision periodically in light of new circumstances. What some call “essential incompleteness”⁸⁹ is a critical aspect in the production of essential contestability, one that our present concept appears to meet. Because Islamic jurisprudence does not have a well-developed or well-defined framework for settling Islam’s debate over territorial sovereignty, the interpretation of particular jurists during particular historical periods is neither fixed nor immutable.

Much like Gallie’s example of a “Christian life”, the Islamic view of territorial sovereignty also has an openness that is clear from history.⁹⁰ In the beginning of the

⁸⁸ See Gallie, *Philosophy and the Historical Understanding*, 169 and Collier et al, “Essentially contested concepts: Debates and applications,” 216.

⁸⁹ Collier et al, “Essentially contested concepts: Debates and applications,” 218.

⁹⁰ Gallie gives the example of Christianity’s changing position towards the institution of slavery over the centuries; see *Philosophy and the Historical Understanding*, 169.

Islamic Caliphate, it would have been unthinkable for Islam to tolerate territorial and political divisions among Muslims. Obviously, as the one Islamic caliphate became many and a number of them had to co-exist, Islamic theory had to engage political reality. Even if this engagement is simply condemnation, it reveals an innate sensitivity to the legitimacy of existing jurisprudence and an acknowledgement of a certain kind of incompleteness to what Islamic jurists have already said on the issue.

The most questionable part of the ability of our case to meet the present criterion is the *jihadi* or strict textualist side in Islam's debate. With such a conservative interpretation of what knowledge in Islam can be, *jihadi* Islam seems to fossilize Islamic jurisprudence. It is important to remember, however, that *jihadi* Islamists only constitute one of the conceptual competitors in this debate and do not reflect on the openness of the concept as a whole. As will be clear in the next section, *jihadi* Islamists have had to effectively adapt their view to aggressively and defensively preserve their preferred conceptualization of what should be considered Islamic.

V. Reciprocal recognition: This criterion simply involves a recognition by each conceptual competitor that, "one's own use of it has to be maintained against...other uses."⁹¹ Once again, like Gallie's example of Christianity, it appears fairly clear that Islam's many adherents have conceived of its notion of territorial sovereignty both aggressively and defensively.

It is not always the case, however (nor inherently necessary), that Islam's notion of sovereignty is used both aggressively and defensively. In other words, Islamic jurists do

⁹¹ Collier et al, "Essentially contested concepts: Debates and applications," 219.

not have to frame their understanding of the Islamicness of territorial sovereignty vis-à-vis the understanding of a conceptual competitor. This is especially true in cases where one side simply dismisses the other without any sort of engagement, which (unfortunately) occurs too often in Islam's debate over territorial sovereignty. Because a similar situation occurs in many other concepts that are widely recognized as essentially contested, the pertinence of this particular criterion has been questioned.⁹² Simply put, a concept's status as essentially contested should not be questioned just because it does not meet this criterion.

VI. Exemplars: There are two understandings of this particular criterion. The first understanding is narrow: a contested concept must be anchored in some sort of original exemplar, which has an authority that is acknowledged by all conceptual competitors. The main argument that Gallie intended for this understanding to be correct is that he used a singular article (an) in referencing it, which should refer to a single reference.⁹³ If this is indeed Gallie's intention, the closest our present concept can come are the Quran and the community set up by the Prophet Muhammad during his lifetime. The Quranic interpretation and examples set by the Prophet, in addition to those set by his immediate successors, guide most of Islamic thought and interpretation of religious texts. Even through the process of *ijtihad*, the goal is to do as the Prophet would do in a particular situation, thus couching modern interpretation in a historical and original precedent.

⁹² See Collier et al, "Essentially contested concepts: Debates and applications," 219.

⁹³ Collier et al, "Essentially contested concepts: Debates and applications," 219.

Gallie's analysis of "a Christian life" leads me to believe that this common core is a sufficient exemplar.⁹⁴

The second understanding is much broader than the first: because Gallie indicates that two of the key criteria for essentially contested concepts are that it must be internally complex and variously describable, it appears likely that an exemplar will be weighted differently by different appraisers. Thus, subsequent scholars have argued that an exemplar could include, "a number of historically independent but sufficiently similar traditions..."⁹⁵ It is unclear if the present concept can satisfy this understanding. The traditions of *jihadi* and *ijtihadi* jurists diverged a long time ago and each would likely contest the other's expressed exemplar. If our example can indeed satisfy Gallie's narrowest understanding of an exemplar, however, it seems plausible that our example of Muhammad's community and the Quran are sufficient exemplars.

This criterion has been extensively criticized, with Freeden going as far as to say, "the postulation of such an exemplar is in effect inimical to the very notion of essential contestability, as it presumes an agreed or correct position from which deviations have occurred."⁹⁶ While the Islamicness of territorial sovereignty may not ideally fit this criterion, it appears likely that other concepts widely recognized as contested fit no better.

VII. Progressive competition: Much like the last criterion, progressive competition has two understandings. The narrower version entails, "achieving a more complete agreement

⁹⁴ Gallie more or less takes for granted that core Judeo-Christian texts constitute an exemplar (what he calls a "commonly acknowledged source"); see Gallie, *Philosophy and the Historical Understanding*, 169.

⁹⁵ Collier et al, "Essentially contested concepts: Debates and applications," 219.

⁹⁶ Michael Freeden, *Ideologies and Political Theory: A Conceptual Approach*, Oxford: Clarendon Press, 1996, 60.

about the original exemplar.”⁹⁷ Needless to say, given the problems with the idea of an original exemplar described above, there are issues with the ability of any contested concept to meet this criterion. Indeed, Gallie’s own explanation for why “a Christian life” meets this criterion appears fairly ambiguous and unconvincing.⁹⁸ Perhaps one could argue that Islam’s debate over territorial sovereignty has improved each competitor’s understanding of what Islamic jurisprudence ought to be. With such unsatisfying explanations for the narrow understanding of this criterion, I can only give an equally unsatisfying answer for why it applies to the present concept.

Some scholars find the broader framing to be more applicable. Instead of focusing on the original exemplar, the focus is on, “the rationality of a given individual’s continued use...of the concept in question.”⁹⁹ The argument here is that the continuation of conceptual disputes improves the quality of argumentation by each conceptual competitor.

The applicability of this criterion is probably the weakest of all for the Islamic view of territorial sovereignty. It is not apparent that jurists have improved the quality of their arguments over the centuries; in fact, they appear to be stuck on the same epistemological issues that their predecessors were.¹⁰⁰ It is possible, however, that this criterion is in conflict with the others and is unlikely to be met. Specifically, the argument made by some scholars is that a belief in progressive competition is in conflict with the first criterion, that

⁹⁷ Collier et al, “Essentially contested concepts: Debates and applications,” 220.

⁹⁸ Gallie only says, “that it conforms to my condition VII...might be agreed (although no doubt with many qualifications) not only by liberal Christians but by other liberal spirits of other...religious persuasions”; see Gallie, *Philosophy and the Historical Understanding*, 169.

⁹⁹ Collier et al, “Essentially contested concepts: Debates and applications,” 221.

¹⁰⁰ Piscatori, *Islam in a World of Nation-States*, 9.

of appraisiveness.¹⁰¹ Because of the inherent normative aspect to essentially contested concepts, which is more likely than not to lead to intractable positions, continued debate is incredibly unlikely to result in improved understanding or standardization.¹⁰²

Decontestation?

Essentially contested concepts are, by their very nature, difficult to resolve. The “solution” to contestedness has been referred to as “decontestation”.¹⁰³ The idea of decontestation is closely tied to Gallie’s criteria of openness: if a concept is open enough to be subject to periodic revision, in light of new situations, then it is capable of achieving some sort of stable meaning in a well-defined framework. Gallie, however, is quite pessimistic about the possibility of any religious issue shedding its essentially contested character.¹⁰⁴

One of the questions that really separates the two sides in this debate is how theory and interpretation should react to prevailing political realities, which effects each side’s understanding of what should count as religious knowledge. For the *Ijtihadi* Islamists, the proper way to react to the institution of territorial sovereignty is a process of accommodation. Over time, the *Ijtihadi* Islamists have attempted to change Islam’s meaning to fit with the reality of a world system dominated by sovereign nation-states. For the *Jihadi* Islamists, there is no room for accommodation. Their goal is to alter the prevailing political structures and institutions to fit their literal and monolithic

¹⁰¹ John Gray, “On liberty, liberalism, and essential contestability,” *British Journal of Political Science*, 8, 1978, 392.

¹⁰² *Ibid.*

¹⁰³ Freedon, *Ideologies and Political Theory: A Conceptual Approach*, 75-6.

¹⁰⁴ Gallie, *Philosophy and the Historical Understanding*, 170.

interpretation of Islam. This is the point where Qutb's *Jihadi* philosophy departs from conventional Islamic political thought, namely that Muslims should not overthrow prevailing political authorities.¹⁰⁵ Qutb encouraged "true" Muslims to actively resist political authorities and take action to bring about what he saw as the "proper" Islamic order.¹⁰⁶ The application of *Jihadi* political thought has led to a number of armed extremist groups, the most noteworthy among them being al-Qaeda. These groups pursue the *Jihadi* missions of establishing Islamic rule and expanding this rule with no regard for the current system of territorial divisions in the world.

Coming to a consensus between these two seemingly diametrically opposed views on Islam's application towards territorial sovereignty might be impossible. The process of selecting jurists to agree on this issue alone is a practical difficulty unlikely to be surmounted. If one is to say that a consensus must come from the entirety of the Muslim community, even more practical and conceptual difficulties arise: how do we determine whether this has happened? How long would this consensus be binding for? Why should we see the consensus of one generation as a legitimate one for future generations? Either of these routes will inevitably lead to differences of opinion and a possibility of being wrong.

Even with some sort of defined methodology or framework, however, the role of the jurists in Islamic jurisprudence presents an additional obstacle to using these frameworks. Throughout history, and indeed up until this day, most official Islamic jurists are actually civil servants, relying on central governments either directly (i.e. through regular salaries or pensions) or indirectly (i.e. even most of the religious schools that hire these Islamic scholars are in one way or another financially dependent on the state for

¹⁰⁵ Mandaville, *Global Political Islam*, 80.

¹⁰⁶ Mandaville, *Global Political Islam*, 80-81.

funding). Thus, their rulings are likely to reflect the opinions of their financiers (central governments), who are often in conflict with one another.

For the issues explained above, there is unlikely to be any form of decontestation in the foreseeable future. Even without decontestation, however, there is a significant value added in the use of the framework of essential contestedness. First, according to some scholars, when conceptual competitors understand the source and implications of essential contestedness, there is a deeper level of reflection in contestation.¹⁰⁷ For example, conceptual competitors will be reluctant to attempt to settle an intractable argument, which will greatly improve efficiency in the debates. In the present case, this means Islamic jurisprudence moving in a progressive direction by avoiding topics that cannot be agreed on and hopefully creating a framework for those that can. The idea that comes to mind here is Rawls' "overlapping consensus", which could include Islamic jurists and scholars agreeing on basic methodological issues for different reasons.¹⁰⁸ Perhaps Islamic jurists can first deal with the "space-time problem", which seems to hinder many debates, including the one between *ijtihadi* and *jihadi* Islamists over territorial sovereignty. Most basically, the space-time problem deals with the ability of Islamic institutions to "reflect the need and rationale of a specific society"¹⁰⁹; the degree of the failure of these institutions to meet the needs of contemporary Muslims is directly related to the degree of the space-time problem. Without a framework to deal with this basic problem in Islamic political thought, Islamic jurisprudence appears destined to lack productive discussions on the methodology to take definitive positions on various political concepts.

¹⁰⁷ See Jeremy Waldron, "Is the rule of law an essentially contested concept (in Florida)?", *Law and Philosophy*, 21, 2002, 140.

¹⁰⁸ John Rawls, *Political Liberalism*, New York: Columbia University Press, 1993.

¹⁰⁹ AbuSulayman, *The Islamic Theory of International Relations*, 58.

Second, the framework's realistic account of conceptual complexities will serve as a warning to those who might incorrectly make general claims about a concept, as if representing it in totality. Minimizing emphatic claims about the "real" meaning of a concept should move the discussion in a more progressive direction. Connected to this issue is benefit of a greater degree of humility in analysis. Too often, we make unwarranted claims that fail to capture the gamut of reality. My hope is that further literature on Islam's view of sovereignty approaches the topic with a great deal of sensitivity to the diversity within Islamic political thought.

6. Conclusion

The truth is that it is very difficult to definitively say just about anything in Islam, disproving the myth of some sort of Islamic monolith or singular faith. Most of the concepts in Islam are really debates, with the many Islamic scholars falling on one side or the other. Far from a singular and undifferentiated religion, Islam is an incredibly diverse religion with a great deal of pluralism. It remains close to impossible to come up with a single opinion or view of Islam. The religion encompasses 1.25 billion people who encompass hundreds of individual ethnic, linguistic, and national groups. At the same time, there is a core part of Islam that connects all Muslims, and this is what I have hoped to focus on in my analysis.

It is also important to remember that the relationship between religion, politics, and territory is quite dynamic and historically contingent. Territorial sovereignty is by no means the natural order of things, but rather should be considered a historically contingent institution. Without certain political and social developments, territorial sovereignty would likely not have even taken root in Europe. Territorial sovereignty has also, however,

become the reality for the vast majority of the Muslim world and the dominant form of identification and allegiance. Today most citizens, regardless of what country they live in, identify themselves first by referencing their respective countries before other forms of identity, such as family, tribe, ethnicity, or religion. All Islamic societies also participate in global economic, political, and security systems. The governments of Islamic countries also have historically acted and continue to act as individual states, in their own interest, and not as a part of an Islamic *umma*.

A secondary value of this paper was to question the narrative that Islam is some sort of monolith. In the aftermath of 9/11 there was a rapid increase in the amount of media and scholarly attention given to Islam, especially Islamic political thought. It was too easy for Western pundits and analysts to paint a singular picture of Islam, which somehow legitimated and encouraged all forms of violent acts in its name. These poorly argued assessments seemed to suggest that all accommodation, reform, and growth of religious morals had to take place on the side of Muslims. Equally guilty were many of the most vocal critics of these misrepresentations of Islam, who attempted to put together a narrative of an Islam that was somehow wholly in line with Western norms and institutions. Subsequent scholarship has greatly improved in its recognition of Islam as a complex and diverse religion, but there is still more work to be done. The depth of disagreement over Islamic concepts among Islamic jurists, and among Muslims in general, is often understated and unengaged. A key benefit of Gallie's framework is its ability to convey and engage the complexity of conceptual debates. My hope is that applying this framework has given readers a realistic account of Islamic jurisprudence when it comes to the issue of territorial sovereignty.

Inquiries about Islam and Islamic thought are increasingly important to academic literature. Over the centuries, Islam has demonstrated that it is both a dynamic and elastic religion, maintaining its position as the fastest growing faith, even today. Islam also remains incredibly important as a factor in international relations. There continues to be a risk of transnational terrorist networks pursuing global militant agendas under the banner of Islam. There are also persistent Islamist political parties, with many transcending state borders. Dealing with the epistemology of Islam's compatibility with territorial sovereignty should not be seen as disconnected from the empirical concerns of Islamic politics; rather, focusing on the normative content of so-called "Islamic" territorial sovereignty displays a recognition that research in Islam politics generally has a normative component to it. The normative aspect to this research is understood as playing a key role in deciding what themes are important, which, in turn, decides the topics for further study, the framing for the study of these topics, and the evidence that is applicable in studying them.

Glossary

The following are definitions for most of the Arabic terms I refer to in my thesis¹¹⁰:

Ahd: pledge or treaty

Allah: God

Aman: pledge of safe conduct

Dar al-Ahd (also called **Dar al-Sulh**): non-Muslim territories having treaty agreements with a Muslim state

Dar al-Harb: non-Muslim territories hostile to Muslims

Dar al-Sulh: see **Dar al-Ahd**

Dar al-Islam: territories in which Muslims are free and secure and/or territories over which Muslims rule

Fatwa: legal and/or religious judgment

Fiqh: the rules and injunctions deduced from **Shariah** (**Quran** and **Sunnah**); the sum of Muslim legal decisions and opinions; Muslims jurisprudence; the principle vehicle of reflection for classical and traditional Muslim intellectuals

Hadith: saying; a tradition of the prophet

Ijma': consensus

Ijtihad: use of human reasoning in elaboration and interpretation of **Shariah**; original juristic opinions

Jihad: struggle; a Muslim's striving to fulfill his Islamic responsibility; both in outward actions and in inward correction of his own mistakes; working or fighting in the cause of **Allah**

Khilafah: the caliphate; custodianship on earth

Qiyas: analogical deduction

Quran: the Holy Book of Islam; the word of **Allah**

Shariah: the will of God for human conduct revealed through the Prophet Muhammad; the **Quran** and **Sunnah**; juristic source for Muslim law of nations

Siyar: account of Muslim external achievements; juristic source for Muslim law of nations

Sulh: peace treaty or truce

Al-Sunnah: approved ways, the reported sayings of the Prophet and all actions performed or consented to by the Prophet

'**Ulama**: Muslims scholars, theologians, and learned men

Ummah: community, people, or nation

'**Usul**: source and method of classical Muslim jurisprudence

¹¹⁰ These definitions come from Dr. AbuSulayman's *The Islamic Theory of International Relations*, 153-155.

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