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Reconciling Sovereign Immunity with Islamic Principles: A Trust-Based Model for Justice and Accountability

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Abstract: The traditional conception of sovereign immunity, rooted in the notion of absolute state authority, increasingly conflicts with contemporary demands for justice and accountability. This article proposes a reconceptualization of sovereign immunity through an Islamic political framework that views sovereignty not as an inherent entitlement but as a divine trust (‘amāna’) conditional upon the realization of justice (‘ʿadl’) and the promotion of public welfare (‘maṣlaḥa’). From this perspective, immunity must serve the purpose of protecting legitimate sovereign functions rather than shielding violations of individual rights. By analyzing the evolution from absolute to restrictive immunity in international law and aligning it with Islamic governance principles, the study argues for a justice-centered model where immunity is granted selectively, contingent upon the sovereign’s adherence to ethical and legal obligations. This trust-based understanding ensures that sovereignty remains a mechanism for the preservation of human dignity and the prevention of oppression (‘ẓulm’), rather than a barrier to accountability. The article advocates for a normative shift toward recognizing sovereign responsibility as intrinsic to sovereign rights, offering a new lens through which contemporary debates on immunity can be assessed.

Keywords: sovereign immunity, absolute immunity, restrictive immunity, Islamic Political Thought, Human Rights.

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Introduction

Sovereign immunity has historically been regarded as a foundational principle of international law, embodying the concept that sovereign states are juridical equals and therefore immune from each other's jurisdiction. Rooted in the doctrine par in parem non habet imperium, the traditional notion of immunity emphasized respect for sovereignty and the maintenance of peaceful relations among nations. However, in both contemporary international discourse and Islamic political thought, sovereignty is not an absolute and unconditional entitlement. Rather, it is increasingly recognized as a moral responsibility contingent upon the fulfillment of justice and the protection of human dignity.

In Islamic governance philosophy, sovereignty is conceptualized not as an autonomous privilege but as a divine trust ('amāna') bestowed upon rulers and political authorities, subject to strict ethical obligations. The Qur'an commands: "Indeed, Allah commands you to render trusts to those to whom they are due and when you judge between people, to judge with justice" (Qur'an 4:58). This injunction establishes a direct link between authority and accountability, emphasizing that the exercise of power must be subordinated to the principles of justice ('ʿadl') and the promotion of the public good ('maṣlaḥa'). Political authority that deviates from these principles is not legitimate but constitutes oppression ('ẓulm').

Modern international law has also witnessed a gradual transformation of the doctrine of sovereign immunity. The rigid model of absolute immunity, which shielded states from judicial accountability irrespective of the nature of their acts, has progressively given way to a more restrictive model. The distinction between acts performed in a sovereign capacity (jure imperii) and those of a private or commercial nature (jure gestionis) reflects a recognition that states must not misuse their sovereign status to escape liability for non-sovereign activities. This development resonates strongly with Islamic political ethics, which insists that power must serve justice and the collective welfare rather than becoming an instrument of impunity.

This article advances a novel argument: that the Islamic conception of sovereignty as a conditional trust mandates a rethinking

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of sovereign immunity frameworks. Sovereign immunity should not serve as an unconditional shield but must be justified through adherence to ethical duties towards justice, accountability, and human dignity. By integrating Islamic legal and moral principles into the analysis of contemporary doctrines of state immunity, this study proposes a justice-centered and trust-based model of sovereignty. Such a model promises a more equitable balance between the dignity of states and the imperative of legal accountability in a globalized legal order.

1. Theoretical Foundations of Sovereign Immunity

The doctrine of sovereign immunity has long served as a cornerstone of international law, rooted in the principle that sovereign entities are equal and must refrain from exercising jurisdiction over one another. This classical concept finds its basis in the maxim par in parem non habet imperium—an equal has no authority over an equal (Shaw, 2021). Historically, this doctrine provided an essential safeguard for the dignity and independence of states in an international system characterized by nascent legal structures and diplomatic fragility.

Initially, sovereign immunity was absolute, encompassing all acts performed by a state or its instrumentalities, regardless of their nature. Courts were reluctant to differentiate between public acts (jure imperii) and private or commercial acts (jure gestionis), largely out of concern for political comity and respect for foreign sovereignty (Fox, 2015). During the 19th and early 20th centuries, as codified in cases like The Parlement Belge and The Schooner Exchange v. McFaddon, the doctrine of absolute immunity was firmly entrenched within the jurisprudence of Western legal systems. However, as states expanded their activities into commercial and economic spheres, the inadequacies of absolute immunity became evident. States increasingly operated as market participants, competing with private actors in areas traditionally governed by private law. This shift exposed significant injustices: private individuals and corporations were often denied legal recourse simply because their counterpart was a sovereign entity shielded from liability. As a result, courts and

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scholars began to reconsider the rigid absolutism that had characterized traditional immunity.

The restrictive theory of sovereign immunity emerged in response to these concerns, marking a pivotal shift from immunity grounded solely in sovereignty to immunity contingent upon the nature of the act. Under the restrictive approach, immunity is preserved only for acts performed in a sovereign capacity (jure imperii), while acts of a private or commercial character (jure gestionis) do not benefit from such protection. This distinction was famously articulated in cases such as Victory Transport Inc. v. Comisaria General, signaling the judicial recognition that sovereigns should not be permitted to exploit immunity to their unjust advantage in commercial transactions. Despite its growing acceptance, the restrictive theory has not entirely displaced absolute immunity across all jurisdictions. Divergences persist in national laws and judicial interpretations, reflecting varying degrees of deference to sovereign prerogatives versus commitments to private justice. International instruments, such as the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004), have attempted to codify a harmonized approach, but the convention itself remains unratified by several major powers.

Beyond these legal transformations, Islamic political thought offers a profound reimagining of the foundations of sovereignty and authority. Unlike the positivist conception dominant in Western legal traditions, Islamic governance theory views sovereignty as a delegated trust (amāna) from God, requiring strict adherence to justice (ʻadl) and public welfare (maṣlaḥa). Authority, therefore, is not an unconditional entitlement but a fiduciary responsibility bound by ethical and divine imperatives (Kamali, 2002). The Qur'anic command to "render trusts to whom they are due and judge between people with justice" (Qur'an 4:58) underscores the moral dimension of governance. Sovereignty exercised unjustly or oppressively (ʻẓulm) constitutes a betrayal of this divine trust and forfeits its legitimacy. Thus, in Islamic political philosophy, the legitimacy of sovereign actions—including claims to immunity—must be evaluated against their conformity to principles of justice and accountability.

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This theological and ethical grounding challenges the traditional absoluteness of sovereign immunity and supports a more conditional, justice-oriented understanding of the doctrine. Immunity, from an Islamic perspective, is permissible only when it serves to uphold legitimate sovereign functions and does not enable injustice or impunity. This foundational principle sets the stage for the development of a trust-based model of sovereign immunity, explored further in the following sections.

2. Absolute vs Restrictive Immunity: Evolution and Challenges

The doctrine of absolute sovereign immunity was once considered an unassailable principle of international law, providing complete protection to states from the jurisdiction of foreign courts regardless of the nature of their acts. Rooted in the traditional Westphalian notion of sovereignty, this doctrine regarded the state as a supreme, autonomous entity, answerable to no higher authority (Shaw, 2021). In practice, this meant that victims of state wrongdoing, even in purely commercial or private matters, were left without judicial recourse.

Absolute immunity was historically justified on several grounds: respect for sovereign equality, the necessity of maintaining diplomatic relations, and the avoidance of judicial entanglement in political matters (Fox, 2015). Courts were reluctant to intrude into disputes involving foreign states, fearing repercussions on international comity and reciprocal treatment of their own governments abroad. Classic cases such as The Schooner Exchange v. McFaddon (1812) and The Parlement Belge (1880) epitomized the judicial deference to sovereign prerogative. However, the growing complexity of state functions in the 20th century, particularly the expansion of state-owned enterprises and commercial activities, exposed the limitations and inequities of absolute immunity. States increasingly participated in activities indistinguishable from those of private actors, including contracts, trade, transportation, and resource extraction. Shielding such activities under the doctrine of sovereign immunity created a legal imbalance, allowing states to engage commercially without accepting corresponding responsibilities.

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In response to these realities, the restrictive theory of sovereign immunity gradually emerged. Under this approach, immunity is preserved for acts performed in a sovereign capacity (jure imperii), such as legislation, taxation, or diplomacy, but denied for acts of a private or commercial character (jure gestionis). The pivotal case Victory Transport Inc. v. Comisaria General (1964) articulated clear criteria for distinguishing sovereign from commercial acts, catalyzing the shift in judicial attitudes. Legislative reforms followed. The United States' Foreign Sovereign Immunities Act (FSIA) of 1976 codified the restrictive approach, limiting immunity in cases involving commercial activities, expropriations, and violations of international law. Similarly, the United Kingdom's State Immunity Act of 1978 and the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) adopted the restrictive framework, although the latter remains unratified by key powers.

Nevertheless, challenges persist. States often assert sovereign immunity even in contexts where justice demands accountability, invoking political, security, or diplomatic justifications. Furthermore, differences in the interpretation of sovereign acts versus commercial acts lead to inconsistency and unpredictability across jurisdictions. Critics argue that the vague boundaries of "public" versus "private" acts create loopholes that allow states to shield abuses under the guise of sovereign action (Bianchi, 1999). From an Islamic political perspective, these developments offer critical insights. The Qur'anic conception of justice ('ʿadl') and the trust-based understanding of authority ('amāna') imply that state power must be exercised transparently and accountably. Acts that violate individual rights or inflict harm cannot be shielded by the excuse of sovereignty without betraying the divine trust entrusted to rulers (Kamali, 2002).

Thus, the Islamic tradition would support the restrictive theory but push it further: immunity must not only be denied for commercial acts but also for any sovereign act that contravenes justice or facilitates oppression ('ẓulm'). Immunity is legitimate only when it serves the public good and upholds human dignity. Where it becomes a tool of impunity, it loses its moral and legal justification. This trust-based critique demands a recalibration of existing immunity doctrines,

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infusing them with ethical accountability grounded in higher normative principles. The traditional justification for absolute immunity—preserving sovereign dignity—must be reinterpreted through the lens of fiduciary responsibility rather than unconditioned privilege. Sovereign dignity is preserved not through unaccountability, but through fidelity to justice and the fulfillment of trust.

3. Islamic Analysis: Justice, Trust, and Accountability in Governance

In Islamic political thought, the exercise of authority is not an autonomous entitlement but a trust (‘amāna’) granted conditionally upon adherence to justice (‘ʿadl’) and the promotion of public welfare (‘maṣlaḥa’). Sovereignty, from an Islamic perspective, is fundamentally fiduciary rather than proprietary; rulers are not owners of power but stewards tasked with fulfilling divine and ethical mandates (Kamali, 2002).

The Qur’anic framework places extraordinary emphasis on justice as the overarching principle of governance. The command, “Indeed, Allah commands you to render trusts to whom they are due and when you judge between people, to judge with justice” (Qur’an 4:58), establishes that political authority is inherently bound to serve justice. Sovereigns who breach this trust by committing injustice (‘ẓulm’) or violating rights forfeit their moral legitimacy. The Prophet Muhammad (peace be upon him) explicitly warned against the misuse of power, emphasizing that any leader who betrays the trust of leadership will face severe accountability before God. Islamic jurisprudence (fiqh al-siyasa) underscores that rulers are subject to divine law and human rights obligations. Governance is therefore conditional, limited by ethical standards, and oriented toward the achievement of social justice.

Applying these principles to sovereign immunity, a purely absolute model that shields rulers from accountability even in cases of injustice is fundamentally incompatible with Islamic governance ethics. Immunity may be granted only insofar as it serves legitimate sovereign purposes — namely, the maintenance of public order, protection of communal rights, and fulfillment of divine justice.

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Immunity that facilitates oppression or allows rulers to escape responsibility for wrongful acts is a betrayal of the trust bestowed upon them.

Islamic political philosophy also aligns with the restrictive theory of sovereign immunity but demands an even stricter ethical standard. Immunity must be denied not only for private or commercial acts but also for any sovereign act that violates the principles of justice, harms human dignity, or breaches public trust. The Qur'an categorically denounces oppression and mandates that rulers establish governance based on consultation (shūrā) and public welfare (Qur'an 42:38). Moreover, Islamic jurisprudence recognizes the principle of maslaha (public interest) as a foundation for governance. State actions, including claims of immunity, must demonstrably advance the common good rather than protect private interests or enable systemic injustice. If immunity contravenes maslaha by shielding wrongdoing, it must be curtailed or denied.

An example illustrating this ethical constraint can be found in classical Islamic political history. The caliphs, although enjoying considerable political authority, were held accountable by scholars, jurists, and the public. The notion that rulers are above the law was alien to Islamic governance models. Rather, rulers were viewed as public servants whose legitimacy depended on their fidelity to justice and responsibility toward the governed. This Islamic vision offers a powerful corrective to modern abuses of sovereign immunity. Contemporary international law often struggles to balance sovereign dignity with human rights protection. An Islamic trust-based model resolves this tension by subordinating sovereignty to ethical accountability: sovereignty remains dignified only when it is a vehicle for justice, not when it becomes a shield for impunity.

Thus, under Islamic principles, sovereign immunity must be restructured to reflect conditional legitimacy: immunity is valid only when exercised in alignment with the trust of governance, justice for individuals, and the welfare of society. Where these conditions are absent, claims to immunity collapse under the moral imperative of accountability.

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4. Proposing a Trust-Based Model for Sovereign Immunity

Building upon the Islamic understanding of sovereignty as a divine trust (‘amāna’) conditioned upon justice (‘ʿadl’) and public welfare (‘maṣlaḥa’), this article proposes a reimagined framework for sovereign immunity. The traditional bifurcation between sovereign acts (jure imperii) and commercial acts (jure gestionis) remains a useful starting point, but it must be ethically redefined through a trust-based model that prioritizes accountability alongside dignity.

In this model, sovereign immunity is not treated as a static right derived from statehood, but as a dynamic privilege contingent upon the ethical use of power. Sovereigns maintain immunity only when their actions demonstrably serve public interest, uphold justice, and respect human dignity. Acts that transgress these ethical boundaries—whether classified as sovereign or private—should not enjoy immunity protection.

4.1. Ethical Preconditions for Immunity

Under the trust-based model, three preconditions must be satisfied before sovereign immunity can be legitimately invoked:

1. Adherence to Justice (‘ʿadl’): The action in question must align with principles of distributive and corrective justice, ensuring that the sovereign does not violate the rights of individuals or communities (Kamali, 2002).
2. Promotion of Public Welfare (‘maṣlaḥa’): The action must serve the broader interests of society, not merely the self-interest of the state apparatus. Immunity should not shield acts that harm collective well-being or subvert public trust.
3. Preservation of Human Dignity: The action must respect the intrinsic dignity of all individuals, a value deeply enshrined in both Islamic law and contemporary international human rights norms.

Failure to meet any of these conditions nullifies the moral and legal claim to immunity.

4.2. Reassessing the Scope of Sovereign Acts

Traditional distinctions between sovereign and commercial acts often focus narrowly on the nature of the activity rather than its ethical

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consequences. The trust-based model proposes that the evaluation should shift toward the impact of the act. A sovereign act that perpetrates injustice or undermines human rights should be treated analogously to a private wrongful act, thus stripping away immunity protections.

For example, state-sponsored expropriations without compensation, even if enacted through formal legislative measures, would fail the trust-based ethical test. Similarly, acts of enforced disappearances, arbitrary detention, or economic exploitation carried out under sovereign authority should be exposed to judicial scrutiny.

4.3. Institutionalizing Ethical Sovereignty

Implementing this model requires rethinking international legal instruments and domestic legislations on state immunity. Judicial bodies must be empowered to assess not merely the formal categorization of acts but their substantive compliance with justice and public interest.

The United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) provides an initial structure but lacks an ethical dimension. Future reforms should incorporate clauses mandating that immunity be denied where state actions violate peremptory norms (jus cogens) or fundamental principles of justice, as understood both in Islamic thought and universal human rights law.

Additionally, national courts could adopt doctrines of "conditional immunity," where a prima facie presumption of immunity can be rebutted by evidence of rights violations. This approach would harmonize with the Islamic insistence that rulers are accountable to higher ethical standards and that sovereignty is not a license for impunity.

4.4. Comparative Perspectives

Interestingly, embryonic traces of the trust-based approach exist in contemporary human rights jurisprudence. Cases like Pinochet (No. 3) [1999] in the United Kingdom demonstrated judicial willingness to pierce sovereign immunity where gross violations of human rights occurred. Islamic political philosophy provides a more systematic and

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theological foundation for this movement, arguing that sovereignty itself is valid only insofar as it serves justice and the public good.
Thus, the proposed trust-based model not only bridges Islamic legal ethics and modern international law but also offers a coherent normative basis for recalibrating sovereign immunity in a way that honors both state dignity and individual rights.

5. Case Study: Applying the Trust-Based Model to Real-World Sovereign Immunity Disputes

While theoretical discussions offer essential frameworks for rethinking sovereign immunity, the true test of any model lies in its application to real-world cases. This section examines how a trust-based model of sovereign immunity—rooted in justice (ʻadl), public welfare (maṣlaḥa), and the concept of sovereignty as a divine trust (amāna)—can better address the challenges posed by actual disputes involving claims of immunity. Three key cases are analyzed to demonstrate the model's relevance and superiority over traditional approaches.

5.1. The Pinochet Case: Piercing Immunity for Gross Human Rights Violations

The case of R v Bow Street Metropolitan Stipendiary Magistrate, Ex Parte Pinochet Ugarte (No. 3) [1999] UKHL 17 (commonly known as the Pinochet case) marked a watershed moment in international law. Former Chilean dictator Augusto Pinochet was arrested in London under a Spanish extradition request for acts of torture committed during his rule. Pinochet claimed immunity as a former head of state.
The House of Lords, however, ruled that acts of torture could not be considered official acts for which sovereign immunity applies. Torture, as a jus cogens violation, stripped any claim to immunity. This decision reflected an emerging consensus that gross human rights abuses fall outside the protective scope of sovereign immunity. Under the trust-based model, this outcome would be not only justified but required. Sovereignty is valid only when it aligns with justice and public trust. Acts of torture represent a betrayal of the fundamental trust of

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governance; thus, immunity must be categorically denied. The model therefore supports and strengthens the legal and moral reasoning behind piercing immunity for egregious violations.

5.2. Germany v. Italy: The Limits of Traditional Immunity

In Jurisdictional Immunities of the State (Germany v. Italy) [2012] ICJ Rep 99, the International Court of Justice faced the question of whether Germany could invoke sovereign immunity to bar Italian courts from hearing claims related to atrocities committed by Nazi forces during World War II. The ICJ ruled in favor of Germany, reaffirming the primacy of sovereign immunity even in cases involving grave breaches of human rights. The Court maintained that immunity is a procedural rule independent of the substantive illegality of the underlying acts. This decision, while consistent with the traditional view of absolute or restrictive immunity, illustrates the moral inadequacy of existing doctrines. Under the trust-based model, the outcome would differ: systematic violations of human dignity breach the ethical trust inherent in sovereignty. Therefore, Germany's immunity claim would be denied to the extent that it served to protect acts of manifest injustice. By subordinating immunity claims to the principles of justice and public welfare, the trust-based model ensures that sovereignty does not become a cloak for impunity.

5.3. Al-Adsani v. United Kingdom: Balancing Immunity and Human Rights

In Al-Adsani v. United Kingdom [2001] 34 EHRR 11, a dual national of Britain and Kuwait sued Kuwait for acts of torture inflicted upon him. The European Court of Human Rights (ECtHR) acknowledged the seriousness of the allegations but upheld Kuwait's sovereign immunity, citing the necessity of respecting established principles of international law. The Court's decision revealed the tension between two fundamental norms: the right of access to justice and the principle of sovereign immunity. Critics argued that human rights considerations should outweigh procedural immunities in cases of

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serious violations. From the perspective of the trust-based model, the Court should have prioritized the ethical imperatives of justice over formalistic adherence to immunity. Acts of torture are an undeniable breach of public trust and justice; therefore, sovereign immunity should not have been upheld. A governance system rooted in the Islamic conception of ethical responsibility would mandate accountability in such circumstances.

5.4. Lessons from Case Studies

These cases collectively demonstrate the shortcomings of traditional immunity doctrines in addressing injustices committed under the guise of sovereignty. While modern international law has taken steps toward limiting immunity in certain contexts, it often remains hesitant or inconsistent. The trust-based model provides a clearer ethical framework. Immunity must be granted or denied not based solely on the characterization of acts as "sovereign" or "commercial," but on whether the acts serve the principles of justice, public welfare, and human dignity. Immunity is a conditional privilege, not an inviolable right. Applying this model would lead to more morally coherent and legally justifiable outcomes. It reinforces the idea that sovereignty, properly understood, entails not just power but profound responsibility—a vision deeply rooted in Islamic political philosophy and increasingly demanded by the imperatives of global justice.

Conclusion: Toward a Justice-Centered Framework for Sovereign Immunity

The evolution of sovereign immunity from its absolute to its restrictive form reflects a broader transformation in international law's understanding of sovereignty. No longer can sovereignty be conceptualized as an unassailable prerogative detached from accountability. The realities of modern state practice, combined with evolving human rights norms, demand a rethinking of immunity doctrines to ensure that they do not perpetuate injustice or shield abuses of power. Islamic political thought offers a profound ethical framework for this reimagining. Sovereignty, in the Islamic tradition, is not an unconditional right but a divine trust ('amāna') entrusted to

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rulers and political authorities. This trust is conditioned upon the realization of justice ('ʿadl'), the protection of human dignity, and the promotion of public welfare ('maṣlaḥa'). Authority that betrays these principles forfeits its moral legitimacy, regardless of its formal sovereign character. By applying Islamic principles to contemporary debates on sovereign immunity, this article has argued for a trust-based model where immunity is contingent upon ethical governance. Immunity is justifiable only when it serves legitimate sovereign purposes and remains faithful to the higher normative objectives of justice, accountability, and public welfare. Acts that violate individual rights, perpetuate oppression ('ẓulm'), or undermine the public good must not enjoy the protective shield of sovereign immunity.

Such an approach not only harmonizes with the restrictive doctrine developed in international law but also demands a deeper ethical recalibration. Sovereign dignity is preserved not through unaccountability but through the sovereign's fidelity to justice and trustworthiness. Immunity must therefore be restructured as a conditional privilege, not an absolute entitlement. This trust-based model offers a pathway toward reconciling the demands of state sovereignty with the imperatives of justice. It provides a normative bridge between Islamic governance ethics and contemporary international legal principles, fostering a more equitable global order in which power is exercised responsibly, and accountability is ensured. Future legal reforms should incorporate these ethical dimensions, ensuring that sovereign immunity remains a tool for legitimate governance rather than a shield for injustice.

In conclusion, sovereign immunity must be redefined through the lens of justice-centered accountability. Only by rooting immunity in ethical responsibility, as demanded by Islamic political thought and by universal principles of human rights, can the international legal order achieve its foundational goals of fairness, dignity, and lasting peace.

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