The Route of the Lesser of the Two Evils: A No Entry

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1. Background and Preliminaries

In order to understand the context for why there are discussions on some specific areas of Islamic jurisprudence (usul al-fiqh) and its relevance, it is important to understand wider matters that impinge on and shape Muslim attitudes and engagements with the prevailing reality they inhabit both as entrenched generational citizens and as a diaspora within the United Kingdom.

There has been a growing need since Muslims have taken the UK as their permanent home to develop a means of appropriating general Islamic precepts and legal principles that affords them an Islamic basis on which to interact and politically enrol in the society. In other words, Muslims had to engage with and tackle citizenship within legal and political structures that emphasises democracy, secularism, individual rights and pluralism with fiqh precepts and Islamic state discourse. 1 Two evident tensions (amongst others) underpinned this endeavour: (i) avoiding a retreat into isolationism which is both unproductive and ineffective and (ii) engaging in and contributing to a society that has no place for Islam in its public life.2 Although there was always a presence of Muslims in pre-modern Britain contrary to the post-war chronicle narrative previously held by Historians,3 the need to formulate a justification for the political integration along juristic arguments is a relatively recent response.4

With a succession of international crises within the Muslim world as a result of penetrative Western foreign policies (Palestine, Gulf War, Chechnya, Afghanistan and Iraq), the events of 9/11 and 7/7 and a geo-political agenda to thwart the ascending political will of indigenous populations of the Muslim lands for an Islamic state, the British government under the Labour leadership, had opened sustained attempts to negotiate a form of Islam articulated to express defined assimilation models in order to dissolve Islam of political dimensions as always understood within classical Islamic political theory. This aim was also to

2 Ibid, p.67.
3 H. A. Hellyer, Muslims of Europe: The ‘Other’ Europeans, pp.143-176.
4 Ibid, pp.87-94.
stigmatise a Muslim rhetoric of political dissent. This gave rise to establishing and funding numerous Muslim councils and organisations as well as projects such as Contest 1 and PVE (‘Preventing Violent Extremism’ = ‘Contest – I’) – all evident failures. In order to give representation and crede{}nce to these assimilation models and to intellectually discredit classical fiqh categories and legal precepts such as dar al-Islam, khilafah, exportational jihad and ahl al-dhimma (non-Muslim citizenship) laws, there had been a strong support and patronage of Muslim intellectuals, academics and Imams to realise this who feared that dissent from political participation would result in harm and stagnation for the Muslim community and hence be adverse politically and socially.\(^5\) One increasing area of integration sought for the Muslim community was civic integration, i.e. the direct enrolment into the prevailing political structures such as voting for local MPs and justifying the legislative process of parliament. As a result of accepting this patronage and agenda, numerous interpretative suggestions were proposed to justify the agenda from an Islamic evidential basis. Voting in the political system is merely one component of a plethora of proposed justification.

Thus, within this given climate of (i) generating fear against Islam and Muslims, (ii) the push to comprehensively integrate, (iii) the need to formulate Islamic responses to challenging British contexts and (iv) the shift in Muslim legal thinking from pre-modern fiqh models to more minimal and austere notions of an “ethical Shari‘ah” based on the ideas of overarching “values”, Maqasid (‘Objectives of the Law’),\(^6\) Maslaha (‘Benefits’)\(^7\) and the “spirit of the law”, Muslims scholars have articulated a reinvigorated discourse on Islamic practical ethics. The aim being to dispense with the “mechanistic” and “purely legal approaches” of pre-modern jurists and to embrace Islamic law as a body of general “ethical injunctions” with “new methods to derive the law” so that it can constitute a “common ground between Muslims and wider British society.”\(^8\) This would serve as a better framework, it is proposed, for furnishing answers to complex problems.

It is within this intellectual shift and political climate that discussions about citizenship, identity and political participation have taken place. In addition, due to the disengagement from Pre-modern (classical) formulations of usul al-fiqh or selective appropriation of fiqh principles, an inconsistent, vague and incongruent product of legal output has arisen. The use of the principle “Lesser of two Evils” (ahwan al-sharrayn) in order to justify voting for secular political parties is just one of many symptoms of this underlying intellectual incongruity. Below will be a short exploration of this juristic principle and its misapplication within contemporary British-Muslim civic integration contexts. First, a definition of the principle will be given followed by its various legal incarnations. Second, examples of the principle’s employment within classical fiqh legal cases will be outlined followed by its misapplication by modern exponents. Thirdly, and lastly,
extra-legal arguments will be assessed for justifying the invocation of the principle concluding in the end that these arguments are unjustifiable.

2. Definition and Juristic Principles (al-qawa‘id)

It may be worth delineating first some of the basic principles related to the discussion of ‘The Lesser of the Two Evils’ and their operational parameters as used by our noble fiqhaha’ in expounding legal cases. These principles have been discussed in the genre of legal literature entitled al-Ashbah wa’l-Naza’ir (‘Resemblances and Similitude’). And in the Majallat al-Ahkam – the Ottoman Codified Law – these principles are also listed in articles (mawadd) numbering 25-29 reproduced from these legal works. Before proceeding with outlines, a summary definition and explanation of the principle of the lesser of two evils would be helpful. Shaykh Mahmud Hasan writes in this regard:

“This principle just mentioned have different texts for it according to the scholars who use it. However, they all agree on its meaning which is the permissibility of performing one unlawful action over another, i.e. the lesser of the two. However, the principle is not absolute and unrestricted with this meaning; it is restricted to the situation where the mukallaf has no latitude other than to commit either one of two unlawful actions and it is not possible for him to abandon both because that would be a case where one would be excused or permitted to commit anyone of the unlawful actions but if he were to do that, then both unlawful situations would occur or the worse one would occur or worse evil than both will occur. These are the conditions (shurut) and rules (dawabit) for acting on this principle. There are other rules as well for this principle depending on the legal case and circumstance.”

These principles are found in the genre of legal literature (Qawa‘id al-Fiqhiyya) and are also listed in the Majallat al-Ahkam, articles 25-29, with their commentary by Shaykh `Ali Haydar entitled al-Durar al-Hukkam Sharh Majallat al-Ahkam and al-Zarqa, Sharh al-Qawa‘id al-Fiqhiyya, vol. 1:195-201.


11 “Mukallaf”: A term in Islamic jurisprudence that refers to a person who is legally responsible before the law being able to acquire and dispose of individual rights. al-Qal`aji, Mu`jam Lughat al-Fiqaha`, s.v.

The principles under discussion then include:

25. “Harm is not lifted or removed by harm.”
26. “A particular harm is borne to ward off a more general harm.”
27. “A severe or greater harm is warded off by a lesser harm.”
28. “Whenever two evils clash, the greater of the two will be warded off by committing the lesser one.”
29. “The lesser of the two known evils is chosen...”

These principles are based on legal evidences (adilla) and although this article is not intended to evaluate the evidential discussions presented by the fuqaha’ for their validity, a perusal of them however is entirely worthwhile. The focus here will be the general scope and applicability of these principles as they appear in the classical legal works and in the next section their misapplication (based on misunderstandings) by contemporary scholars, Muslim leaders and students of knowledge to relieve current challenges facing the Muslim community as minorities seeking involvement on a civic level. The above principles have been extensively discussed by the fuqaha’ and each has corresponding legal cases (masa’il) that were identified, elaborated upon and debated — especially regarding their reality and extensions to similar legal cases.

The Principles:

Principle 1: “Harm is not lifted or removed by harm”: The norm is not to commit harmful actions or to cause harm; the Shari’ah considers this as unlawful.13 One may not even commit or realise a more severe harm if it can be avoided. The commentator of the Majalla writes: “...and neither can a more harmful thing be committed if it means a harm can possibly be warded off without harming others.

If it is not possible however, then one may proceed [s: for the reason that it cannot be avoided]..."\(^{14}\)

ولا يأكث منه بالأولى إذا يشترط بأن يزال الضرر بلا أضرار بالغير إن أمكن وإلا فأخف منه

The rule then is that if there is genuinely no need or reality coercing one to commit a harmful action, then it must be avoided at all costs.

**Principle 2:** \textit{“A particular harm is borne to ward off a more general harm”:} there are many such cases discussed in the books of \textit{fiqh} such as “preventing a shameless mufti from issuing legal verdicts, or a totally ignorant doctor from practicing or a deceitful \textit{muflis} from conducting business in order to prevent a more general harm...”\(^{15}\)

المفتي الماجن والطبيب الجاهل والمكاري المفسد ضعا للضرر العام

The reason behind this permission to act on a specific harm (preventing a person from carrying out some right) is in order to prevent a greater more extensive harm to others. Thus, the shameless mufti will issue verdicts contrary to what is correct and proper thereby misleading many people and the ignorant practitioner of medicine will cause harm and danger to many unaware patients and the deceitful person will conduct unlawful dealings and deceive others if given money. It is therefore to prevent such wide-reaching consequences that the principle is applied.\(^{16}\)

**Principle 3:** \textit{“A severe or greater harm is warded off by a lesser harm”:} “This means that harm may be warded off by a lesser harm but not by harm similar to or worse than it as we explained under earlier articles.”\(^{17}\)

يعني أن الضرر تجوز إزالته بضرر يكون أخف منه ولا يجوز أن يُلْمَه أو بأشد منه حسب ما وضحنا بالمواد السابقة

\(^{14}\) Haydar, Durar al-Hukkam, vol.1, p.35.


بما أن الضرر الخاص لا يكون مثل الضرر العام بل دونه فيدفع الضرر العام به فمنع الطبيب الجاهل والمفتي الماجن والمكاري المفسد من مزاولة صنعهم ضرر لهم إلا أنه خاص بهم ولكن لا تُركُوا وشأنهم بحصل من مزاولةهم صنعهم ضرر عام كإهلاك كثير من الناس بعض الغبطة الطبيب وتصويل العباب مع تشويش كثير في الدين بمجون المفتي وغير الناس من المكاري...

\(^{17}\) Haydar, Durar al-Hukkam, vol.1, pp.36-37.
Again, the reason being is not that there is an option involved, but that there is no other course of action to take except either to commit a severe harm or a less severe harm.

Principle 4: “Whenever two evils clash, the greater of the two will be warded off by committing the lesser one:” Imam Ibn Nujaym states:

When two evils clash, the worse of the two is warded off by doing the lesser. al-Zayla`i states in his discussion on the section regarding the conditions of the Prayer: the norm regarding these species of legal cases is that whoever is afflicted with two equal calamities (baliyatayn), then he may commit either one. If the calamities are different in degrees, he chooses the lesser of the two (ahwanuhuma) because to directly commit a haram is not permitted except out of necessity and there is no necessity considered in the case of doing something greater...

Imam al-Zayla`i then gives an example from the rulings of Prayer:

“An example is that of a man who has a wound where if he were to prostrate in the Prayer the blood will flow from the wound but if he did not, then it would not flow. In this case, he must sit and pray indicating his act of bowing and prostrating because to leave the act of prostration is less evil (ahwan) than praying in a state of impurity. Is it not the case that leaving the prostration is permitted in certain conditions where one can choose not to do it like in the case of offering optional prayers while on a riding animal whereas being in a state of impurity and praying is not permitted at all...”

Another example Ibn Nujaym quotes is: “Likewise is the case of an elderly person who is unable to recite the Qur’an in the prayer while standing but is able to do so in a sitting posture. If this is so, he prays in a sitting posture because it is

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19 Ibn al-Nujaym, al-Ashbah wa’l-Naza`ir, p.113 [vol.1, p.286].
permitted to either sit or not to sit in optional prayers whereas it is not permitted to abandon the recitation in the Prayer in any circumstances…

وكذا شيخ لا يقدر على القراءة قائما ويقدر عليها قاعدا، يصلي قاعدا لأنه يجوز حالة الاختيار في النفل ولا يجوز ترك القراءة بحال

Other examples the scholars give where this rule applies include the situations:

[1] either remaining on a burning boat and be burned or to jump overboard and be drowned in the sea and

[2] Terminating the life of a baby if it means saving the mother in a highly complicated birth. Either course of action is permitted by the jurists.

*Principle 5*: “The lesser of the two known evils is chosen”: finally, this principle falls under the previous principle (4) where two evils clash and the lesser of the two is acted on. It is merely another variation of that maxim.

In summary, the realities of these principles are defined and the parameters in which they operate within the domains of law are limited. The scale with which to adjudicate degrees of harm or evil must be within the ambit of the law and not mere speculation such that definitive texts are not contradicted and other principles are considered. Thus, from the above discussion, we can infer the following points:

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22 Hasan, “Qa’idat Ahwan al-Sharrayn”.
23 Hasan, “Qa’idat Ahwan al-Sharrayn”.
24 Haydar, *Durar Al-Hukkam*, vol.1, p.40:

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*هذه المادة مأخوذة من قاعدة ( أن من ابتلي ببليتين يأخذ بأتهما شاء فإن اختلفا يختار أهونهما لأن مباشرة الحرام لا تجوز إلا للضرورة ولا ضرورة في ارتكاب الزيادة ) حيث أن هذه المادة عين المادة فلا حاجة لشرحها*
1. Lesser of two evils or harms are restricted in scope by coercion (ikrah) or compulsion (idirar) or where there is no latitude (wus`) available to do otherwise and so cannot stand as a default operating premise.25 This is explained clearly by Imam Ibn Rajab al-Hanbali:

“When a person is compelled (al-mudtarr) with two unlawful options and neither are permitted unless it is a necessity, it is obligatory to prefer the lesser of the two evils or the least harmful one...”26

إذا اجتمع للمنصْطَر مَحَرَّمان كَلَّ مَنْهَا لَا يَبْنَاهُ بِذَوْنَ الضرورة وَحِبْ نَقْبَيْمِ أَعْفَهُمَا مَفْسَدَةً وَأَقْلِهُمَا ضَرَرًا ؛ لَأَنَّ الزِّيَادَةَ لا ضَرُورَةً إِلَيْهَا فَلَا يَبْنَاهُ

2. The lesser of the two evils or harms (akhaffu al-dararayn) apply to genuine cases of the inability to choose beyond two non-ideal or harmful and or evil options as deemed by the Shariah and so stands inapplicable in non-coercive circumstances or when a genuine third option exists that does not lead to abandoning an obligation or committing an unlawful action.

3. It is not permitted to commit unlawful actions unless it is out of dire necessity.27

4. Outweighing the levels and degrees of harmfulness and evil were discussed by fuqaha’ from within the boundaries of the text and not mere speculation, guess and wild assumptions on the part of the one committing the action.

5. The benefit (manfa`/maslaha) to be realised and outweighed is what the Legislator determines and not the mind of a person as this is tantamount to following one’s mere predilection and desires. Thus, it is not human interest and benefit that is paramount but the interests and benefits the Law seeks to realise regardless of whether it apparently does or does not favour perceived benefits.28

Shaykh al-Islam Ibn Taymiyya comments on the underlying aim of the Shariah:

“The Shariah has come to actualise the maximal benefits (masalih) for human beings and to eliminate as much harm (mafasid) as possible. It has also come to prefer the best option from two good options if both cannot be

25 Hasan, “Qa`idat Ahwan al-Sharrayn”.
26 Ibn Rajab al-Hanbali, al-Qawa`id al-Fiqhiyya, maxim 112.
27 See M. Y. Izz al-Din, Islamic Law: From Historical Foundations to Contemporary Practice, pp.82-94 for a discussion on the legal concept of “darura”.
28 Hasan, “Qa`idat Ahwan al-Sharrayn”.
achieved together and to prevent the least evil from two evil options when neither can be eliminated...\textsuperscript{29}

It is the general goal or aim of the Shari`ah (ghaya) to realise the maximum benefits and to eliminate the harm but it is not the \textit{ratio legis} of the law, i.e. its legislative grounds, nor is it the \textit{ratio legis} for every single legal injunction itself (\textit{hukm bi-`aynīhi}). This is the point that is often misunderstood by many.\textsuperscript{30} Shaykh al-Islam Ibn Taymiyya further writes:

"The message of Islam is necessary for correcting the individual in this life he lives in just as there is no good for him in the Hereafter unless he follows the message of Islam. Therefore, good in this world and in his life is only possible by following the Message of Islam for in reality, the human beings are compelled to follow the Law being held between two aims: one is that which seeks to realise his best interests and the other to protect him from what harms him. The Law is the Light that clarifies what benefits him and what harms him; it is Light from Allah on His earth and the Justice to be implemented amongst His servants and the fortress that will protect anyone who enters it. Merely differentiating between what harms and what benefits based on sensation is not what is meant by the Law. This is what animals are able to do. A donkey or a camel differentiates between wheat and earth. What is meant is the differentiation in actions that harm and benefit the person who does it like the benefit of \textit{Iman}, \textit{tawhid}, justice, piety (\textit{birr}), truthfulness and excellence (\textit{ihsan}), trust, compassion, sincerity in one’s action for Allah alone, having \textit{tawakkul} on Him, submitting to all His rulings and to implement all His commands, having utter conviction in Him and His Messenger for everything he brought and to be fully obedient to everything that he commanded [...] anything that opposes this is harmful and detrimental for him in both this world and the Hereafter. If there was no Message of Islam, the mind could not have been shown the difference between what benefits and harms in this world. Thus, the greatest blessing and gift from Allah to His servants is sending them Messengers and revealing Scriptures in order to clarify the Straight Path without which we would be like animals, nay even worse."\textsuperscript{31}

\textsuperscript{29} See \textit{al-Majmu` al-Fatawa}, vol.2, p.48.

\textsuperscript{30} See Shaykh Taqi al-Din al-Nabhani, \textit{al-Shakhsiyya al-Islamiyya}, vol.3, pp.367-372 for a thorough discussion of this notion and the \textit{maqasid al-Shar`i`a} within the jurisprudential context.

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بضره، والشرع نور الله في أرضه، وعدله بين عباده، وحسنئه الذي من دخله كان آمناً، وليس المراد بالشرع: المميز بين الضر للايجاب بالحس، فإن ذلك يحصل للحوانيات المعجم، فإن الحمار والحمل ب meilleurs بين الشعر والتراب، بل المميز بين الأفعال التي تصر فاعلها في معاه ومعاده، كفع الإيمان والتوهيد، والعدل والبر والتصدق والإحسان، والأمانة والثقة، وإخلاص العمل الله، والتوكيل عليه، والتسليم لحكمه، والانقياد لأمره، والتصديق وتصديق رسله في كل ما أخبره به، وطبعهم في كل ما أمروا به، مما هو نفع وصلاح للعديد في دنياه وآخرته، وفي ضد ذلك شقانه ومضرة في دنياه وآخرته. ولولا الرسالة لم يهتد العقل إلى تفاصيل النافع والضر في المعاص والمعاد، فمن أعظم نعم الله على عباده وأشرف منهن عليه، أن أرسل إليهم رسله، وأنزل عليهم كتبه، وبين لهم الصراط المستقيم. ولولا ذلك لم كانوا ممنذونًا لألعاب وليكام، بل أمر حالًا منها...

Imam al-Shatibi writes:

“The benefits that are to be realised amongst the people cannot truly be known except by the Creator Himself who designated it. Human beings cannot know it except in a few instances because the benefits in most cases are not apparent or evident. Sometimes the personal benefits are seen quickly and other times it is not and yet at other times it is either immediate or delayed or not complete. Sometimes an harm exceeds a benefit on balance and so a good may not be replaced by a bad...”

“Ibn as-Salih writes:

إن المصالح التي تقوم بها أحوال العبد، لا يعرفها حق معرفتها إلا خالقها ووضعها، وليس للعبد بها علم إلا من بعض الوجه، والذي يخفى عليه منها أكثر من الذي يبدو له. فقد يكون ساعياً في مصلحة نفسه من وجه لا يوصله إليها، أو يوصله إليها عاجلاً لا آجلاً، أو يوصله إليها ناقصة لا كاملة، أو يكون فيها مفسدة تربي في الموازنة على المصلحة. فلا يقوم خيرها بشرها. وكم من مدبر أمرًا لا يهم له على كماله أصلاً، ولا يبني منه ثمرة أصلًا، وهو معلوم مشاهد بين العقول. فلهذا بعث الله البيبين مبشرين ومنذرين.

Thus, it is erroneous and contrary to Islamic juristic practice to assume that one outweighs between two evils/harms based on the following (unless the text specifies so):

1. Quantity.
2. Perceived fears.
3. Speculation.
5. Economic benefits.
6. Personal preference.
7. Political expediency.

32 al-Shatibi, al-Muwafaqat, 1:349.
3. Misapplication of the Principle ‘Lesser of Two Evils’

With knowledge of the rules that govern the application of the principle, a clearer understanding of its misapplication emerges. Often this principle of lesser of the two evils has been invoked by contemporary scholars for justifying voting for mainstream political parties as part of a wider civic integration programme. It is necessary to explore two brief arguments presented for justifying this action and then evaluate whether they are compliant with the rules of fiqh and legal precepts from our Sacred Law.

Argument 1:

[P1] The principle of the lesser of two evils is established from non-coercive scenarios.

[C1] Therefore, the principle can be applied to voting which is a non-coercive scenario.

The evidence used to prove P1 as valid is the treaty of Hudaybiyya where it is argued that the Prophet stipulated terms and conditions with the Meccan enemies that the Companions objected to because it contained “apparent harm and evil (mafsadah) ... however, it became evidently clear in the end that the treaty was, in essence, a benefit and a means to success through the ‘manifest victory’”. What this treaty allows one to infer according to proponents of this view is:

“The Prophet (saw) was not coerced into accepting the treaty. The matter was not one of life and death for the Prophet (saw). He could have easily chosen to abstain away from agreeing with the terms of the treaty and simply walk away, but instead, he (saw) accepted a treaty that contained a stipulation that inevitably lead to harming some Muslims, although it was simply in order to prevent a greater harm.”

Problems:

- It is not altogether clear that the sulh al-hudaybiyya (‘Hudaybiyya Treaty’) can be used as an evidence to establish the principle of lesser of the two evils. No classical historian to this author’s knowledge has made this

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33 For an inventory of views, see for example “Islam and Voting” [Online], Muslimdirectory.co.uk at <http://www.muslimdirectory.co.uk/viewarticle.php?id=261> accessed 27 April 2012.
35 Ibid.
inference. Moreover, the fuqaha’ have not used this as an evidence for establishing the principle.

- The suggestion that the Prophet (saw) was presented with an ‘evil’ is theologically problematic as it has ramifications on his (saw) impeccability (`isma). It is inconceivable that he perpetrate a sin or an act of evil.

- It is also not altogether clear whether the Prophet had an option to “simply walk away” and spur the terms and conditions of the Hudaybiyya treaty because the biographical sources allude to it being a command of Allah, i.e. a part of revelation.

**Argument 2:**

[P2] If Muslims do not vote, then a worse party/candidate will be empowered which will be even more detrimental to Muslim interests.

[C2] Therefore, the principle of the lesser of two evils can be applied to voting for the least detrimental political party/candidate for Muslims.

This argument in most cases is more of an appeal to fear rather than analysis of the electoral process and its reality. The same responses given for argument 1 above applies here as well. Again, the point to consider is how does one outweigh the greater/lesser harm in this scenario? Is it less harmful or evil to vote for a Tory Mayor of London candidate who has vilified Islam for a good part of a decade and has supported the detrimental foreign policy of Britain resulting in destruction and loss for Muslims or does one vote for a yellow Liberal Democrat candidate who is not shy of promoting policies for a LGBT agenda? Or, does one vote for the BNP who have clearly outlined their stance with Islam as essentially a “truce” or socialists (atheists) who share in an anti-war effort?36

Shaykh Ahmad Mahmud summarises succinctly the issue of voting using the principle under discussion:

“Moreover, if anyone says, ‘vote for so and so secular non-Muslim individual or help so and so based on the argument that the first will help us Muslims whereas the second will not’ or something like that, then regardless of whether or not a person is a shaykh or scholar, his opinion will be invalid according to the Shariah and cannot be relied on or anything like it with respect to this principle. All that can be said is: two unlawful matters are before us; so it would not be permitted to elect a secular person, or to delegate him on behalf of the Muslims when it comes to

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36 See for example “BBC Question Time…Nick Griffin on Question Time” [online], youtube.com available at <http://www.youtube.com/watch?v=_XgG5W7VVR0 (part 3)>

37 See “Muslims and Socialists: With Friends Like These…” [online], economist.com available at <http://www.economist.com/node/8675234>
[representing their] views because he is not bound by Islam and will commit unlawful actions. So, it would not be permitted for the one delegating representation (muwakkil) to him whether in terms of legislation or affirming unlawful policies or seeking and accepting unlawful matters because all this is forbidding the right and commanding the wrong and hence neither can be delegated as a representative [...] what to do in this situation is to leave both unlawful actions because there is latitude to do so and call others to do the same. If they do that then they have done good and if they do not, then they have done bad [...] therefore using this principle to issue a fatwa to perform an unlawful action for other than this situation would be issuing a ruling opposing what Allah has revealed and no truthful scholar can do such a thing. From these texts, it becomes clear that both unlawful actions must be abandoned and the people must be commanded to leave the unlawful act. Thus, the principle of ‘lesser of the two evils’ cannot be applied.

Other viable, and importantly, permissible options are clearly available to Muslims instead of voting such as:

1. Standing as an independent candidate.
2. Abstention from voting (it is not illegal).
3. Disengagement from mainstream political activism (it is not illegal).
4. Direct engagement to effect real change on the ground in communities (it is not illegal).
5. Social media activism.

These may not be ideal for some, but they are not, strictly speaking, impermissible according to Islamic Law.

Implications:

From the above discussion on employing the principle of the lesser of two evils, there are evident and identifiable intellectual weaknesses such as:

Weak jurisprudence: relying on deducing a ruling for real-life issues and difficult challenges based merely on a legal principle considering it as a legal text or source (nass) without deep scrutiny of the appropriate Islamic evidences (adilla shar’iyya) reveals bad fiqh. Importing an isolated legal principle cannot override normative principles of law nor compromise definitive theological concepts. Moreover, every legal principle and maxim has its controlling factors and scope in order to ascertain how it is to be applied and the boundaries of that application. Proponents of the Lesser of the Two Evils principle unfortunately fail in this regard.38

Bad logic: If the argument of applying the lesser of the two evils were to be assumed valid according to the logic of its proponents, then it is at best practically futile or at worse self-defeating. If the argument is that one must vote for a local councillor or candidate for Parliament that is Islamically inclined or is sensitive to Islamic issues in order to secure the broader interests of the Muslim community here nationally and (perhaps) internationally (because through this a greater evil will be warded off such as entry of the racist right wing candidates like the BNP and UKIP members), then how would this act of voting actually achieve the desired objective of warding off a greater evil? How would greater evil be eliminated? It is difficult to see how voting for candidates belonging to mainstream political parties will (or have) removed a greater evil. The last decade has seen the following consequences as a result of the Muslim vote and support of mainstream political parties:

1. Intense war, conflict, occupation and support of occupation of Muslim lands.

2. The continual support through numerous international pretexts of oppressive rulers in Muslim majority territories.

38 “The Politics of Voting” at http://votinghalalorharam.blogspot.co.uk/2010/05/to-vote-or-not-to-vote.html#_Toc262512774
3. Anti-terror legislation that has targeted Muslims.

4. A continual demonising of Islam, Islamic values and laws under the guise of freedom of speech.

5. A sustained project of assimilating Muslims into the host liberal value-system through conceptually secularising Islam.

6. Attacks on the notion of Political Islam, i.e. the Caliphate system.

What appears to be the case is that the application of choosing the lesser of the two evils has in reality caused its proponents to choose the greater of the two evils. It has not served the practical end they seek with it which is to repel a greater evil and realise some form of interest and benefit for the Muslim community. Therefore, it has proven futile. Imam al-Suyuti states in 

\textit{al-Jami` al-Saghir} from the Leader of the Believers `Ali Ibn Abi Talib – Allah ennoble his face – “Whoever issues a ruling without knowledge, curses of the Angels in both the heavens and the earth will be upon him.”

\textit{مَن أَفْتَى بِبَعْضِ عِلْمِهِ، لَعَّنَتُهُ مَلَائِكَتَ السَّمَاءِ وَ الْأَرْضِ.}

\textit{(updated).}

\textsuperscript{39} Recorded as \textit{hasan} (good) according to Imam al-Suyuti in \textit{al-Jami` al-Saghir} (#8491) and Ibn Hajar al-`Asqalani in his \textit{takhrij} (sourcing) of \textit{Mishkat al-Masabih} of al-Tabrizi, vol.1, p.161.