

Civilian and Democratic Dimensions of Governance in Islam*

Mohammad Hashim Kamali

Classical Islamic political thought contains ideas and principles comparable to modern day tenets of democracy and pluralism. Islamic thought is derived mainly from the guidelines of the Qur'an and Sunnah on consultation, equality, justice, human dignity and so forth, which bear substantive harmony with the principles of democracy and human rights. Modern writers have further developed the democratic substance of these guidelines and have to some extent adjusted the medievalist overtones of the earlier interpretations. We submit that Islamic political order remains open to development and reform without negating its own religious and ideological heritage. The Islamic polity also historically embraced within its fold many religious and ethnic communities and lived the reality, as it were, of a civilian approach to society and politics. It is this theme that our discussion in the following pages seeks to develop. I propose, however, to start the discussion with an introductory section on Islam and secularism as this is the principal tool and engagement of the western conceptions of democracy and constitutionalism. We need to ascertain the extent of its relevance to Islamic governance.

I. Islam and Secularism

The question we pose and address here is over the relevance of the secularist debate to Islam. Secularism (Arabic: *'alaminiyyah*, or *dunyawiyyah*) means that which is worldly and temporal, and it is usually taken to imply the liberation of politics from religion. It came to the Muslim world together with its related concepts such as modernity and westernization in the context of colonialism. For the Muslim world, secularism has largely meant the marginalisation of Islam and its exclusion from reconstructing society during both the colonial and post-colonial periods.

Historians and political theorists in the English-language literature on secularism agree on one fundamental observation, namely that secularism is a product of Christian society that emerged as a protest movement to the historical domination of the church over the state and the eventual reversal of that order after the Reformation. Whether secularism's eventual objective is to deny God and eliminate religion altogether or just to restrict religion to the private sphere while recognizing the existence of a 'god' that has no say in people's worldly affairs, "the concept cannot be comprehended outside the context of Europe's evolution and its Christian reform movements."¹ Islamic norms and history have traversed a different course and Islamic movements, during the last one century or so, have on the whole, rejected what they saw as a colonial design aimed at stripping them of their cultural

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¹ Azzam Tamimi, "The Origins of Arab Secularism," in ed., Azzam Tamimi and John Esposito, *Islam and Secularism in the Middle east*, London: Hurst & Company, 2001, 14.

identity. It is widely held that the attempted secularization of the 20th-century Muslim world has produced dictatorship, state-enforced religion, the violation of human and civil rights, and the weakening or outright destruction of civil society. John Keane summarised the Muslim perception as follows: "In a word, secularity has won a reputation for humiliating Muslims – humiliating them through the exercise of Western double standards in Kuwait, Algeria and Palestine, through the corrupt despotism of comprador governments and through the permanent threat of being crushed by the economic ... and military might of the American-led West."²

One of the major postulates of secularism under conditions prevailing in industrial-scientific societies maintains that the hold of religion over society and people is bound to diminish over time. The hold of Islam over Muslims has apparently not diminished but has rather increased during the last one hundred years. And then again, secularism proclaims the independence of 'secular' truth from the notion of metaphysical truth. Scientific rationality is the arbiter of values and what it does is essentially to reduce intelligence to the level of neutral chemistry and human behaviour as a manifestation merely of physical processes. In the realm of economics, man is merely a producer and consumer of goods and is moved solely by his individual self-interest. The Islamic viewpoint accepts scientific truth but also recognizes morality and transcendent faith, which are understood by Muslims, not as limitations on rationality and science, but as vista for their enrichment and perfection.³

Muslim scholars are, however, not unanimous on the idea of separation between religion and politics. The Lebanese Farah Antoun (d.1922) and the Egyptian Lutfi al-Sayyid (d.1923) both advocated the separation of religion and state in Islam so that men of religion do not exploit religion for political purposes adding to this also the point that separation would ensure national unity in their respective multi-religious societies.⁴ A juridical argument was articulated by the renowned Shaykh 'Ali 'Abd al-Raziq (d.1966), the Azharite scholar and a one time Minister of Awqaf of Egypt, who held that Islam was a religion first and foremost and state was not a part of the religious calling of Islam. He supported his thesis by the fact that the Prophet Muhammad (d.632) was a religious, not a political, leader, and he died without appointing a successor or even addressing the subject of state in any manner that would imply its inclusion in his Prophetic mission. This was also the case with the Qur'an which spelled out some principles of relevance to government but nowhere did it directly address the idea of state, its form and organization or methods of succession to the rule. That the caliphate was not a religious obligation and the one that was formed after the Prophet was determined by the community itself.⁵

² John Keane, "The Limits of Secularism," in eds., Tamimi and Esposito, *Islam and Secularism*, 36.

³ See for details Roger Garudy, "The Balance Sheet of Western Philosophy in this Century," in International Institute of Islamic Thought, *Towards Islamisation of Disciplines*, Herndon, Va, 1993, 399f.

⁴ For a concise summary of the views of Antoun and al-Sayyid see Ridwan al-Sayyid, "al-'Alamaniyya fi'l-'Alam al-Islami," in Mu'assasa Alil- bay li'l-Fikr al-Islami, *Mustqbal al-Islam fi'l-Qarn al-Hijri al-Khamis 'Ashar*, Amman, 1425/2004, 563f.

⁵ 'Ali 'Abd al-Raziq, *al-Islam wa Usul al-Hukm*, ed. Muhammad 'Ammara, Beirut: al-Mu'assasa al-'Arabiyya li'd-Dirasat wa'l-Nashr, 1975.

The mainstream opinion on secularism has been voiced by numerous commentators, including Muhammad ‘Abduh (d.1905) who maintained that historically the idea originated in a certain course of events in Christian Europe; it had no precedent in Islam and stood in conflict with many of its doctrines. Islam does not have a church as such nor does theocracy find a place in its proposed political order. That government in Islam is essentially civilian, elective and consultative and the religion also did not stand in the way of progress, science and civilization.⁶ An earlier opinion was advanced by Shaykh Rifa‘ah al-Tahtawi (d.1873), the then Rector of al-Azhar, who considered secularism a product of the French notion of *laicite* and advocated principles that were alien to Islam. Muhammad al-Bahiy (d.1982) recorded a similar view that secularism went a long way to negating spirituality and religion and cannot therefore be easily embraced in an Islamic context. The contemporary political thinker, Muhammad ‘Abid al-Jabiri, considers secularism a rationalist ideology which tends to advance, however, an erroneous understanding of the universe, man and society, and it is as such irreconcilable with Islam.⁷ We also subscribe to the view that secularism as a movement and ideology is incompatible with Islam but we maintain that the conflict between them is partial in that the principles of governance in Islam that we are about to present remain receptive to some aspects of secularism. What remains for us to discuss then is to identify what we see as the civilian, positivist, and democratic features of governance that can accommodate the demands of a substantive separation of religion and state in an Islamic polity.

II. An Overview of the Discipline

Constitutional law is one of the most under-developed areas of *fiqh*, and stands in this respect at the opposite pole of *‘ibadat*, on which the *fiqh* is exceedingly elaborate. A great deal of what has been written in the past expatiates on the early caliphate and pays but little attention to subsequent developments. The literature that has come about as a result is still wanting of critical evaluation and development in conjunction with contemporary conditions. Uncertainties began to set in at an early stage. The nascent *khilafah* of the early decades of Islam had barely realised its potential that military conflict and the subsequent irregularities of dynastic rule exposed it to intolerable disruptions. The republican features of the *khilafah*, especially consultation (*shura*) and *bay‘ah*, were only nominally kept but were subjugated to the vagaries of a totalitarian system, which characterised the many centuries of rule under the Umayyads, the Abbasids, the Ottomans and others.

More recently the Islamic revolution of Iran stimulated Islamic scholarship and many researchers have since written on issues of constitutional law in Islam. Yet despite this welcome development, as one observer noted “many issues of interest to

⁶ Muhammad ‘Abduh, *al-Islam wa’l-Nasraniyya ma’ al-‘Ilm wa’l-Madaniyya*, Cairo: Matba‘a al-Manar, 2002.

⁷ Muhammad ‘Abid al-Jabiri, *al-Din wa’l-Dawla wa Tatbiq al-Shari‘a*, Rabat: Markaz Dirasat al-Wahda, 1996, 108-114. A summary of al-Jabiri’s views can be found in Ridwan al-Sayyid, “al-‘Alamaniyya fi’l-‘Alam al-Islami,” 572f.

Islamic political thought and constitutional law remain shrouded in ambiguity which tends to cause hesitation and impede research.” It is perhaps the present generation of researchers who will contribute to the development of constitutional law in a way “that would suit the requirements of our age and address issues of concern to us at present.”⁸

A former Mufti of Egypt, Shaykh Ahmad Huraydi, observed that the political order that held sway in the Muslim lands over the greater stretch of history from the Umayyads to the end of the Ottomans did not, on the whole, comply with the principles of Islam, and those who wrote on Islamic government and administration focused their attention on dynastic practices which did not reflect normative principles but only expounded the history of government in those times, and there is “a big difference between the two.”⁹

Juristic works on the caliphate are on the whole concerned with the methods of designation of the caliph, his rights and duties and a certain institutional blueprint on the judiciary, vizierate, and departmental structures for the army, taxation, police duties and so forth. This literature on the whole does not address modern developments, including the nation state itself, and constitutional themes on democracy, separation of powers and so forth.

Abu al-Hassan al-Mawardi’s (d.450/1058) renowned *Kitab al-Ahkam al-Sultaniyyah* pays more attention to the realities of the Abbasid state of his time rather than the foundational guidelines of the Qur’ān and Sunnah. He pays scant attention to consultation and has no section or chapter on the basic rights of people.

The Qur’ān does not provide a clear text on government although it does contain a number of provisions that either take its existence for granted or help to develop some understanding of its attributes. The basic question as to the formation of a state and whether it is a Qur’anic requirement as such has, on the whole, received a presumptive and inferential response: Since the Qur’an requires obedience to “those in charge of the affairs, the *ulu’l-amr*”, and makes references to *khalifah* and *khala’if*, contains injunctions on war and peace, justice, enjoining good and forbidding evil, commercial transactions, as well as a number of specific rules on punishments and inheritance etc., it is concluded that these cannot be duly implemented without the existence of a government.¹⁰ According to an Islamic legal maxim, the means to a *wajib* also partakes in *wajib*, hence the conclusion that formation of a government is an Islamic obligation. The *ulu’al-amr* may refer to a government, which is more likely, or it could alternatively be said to be alluding to

⁸ Mohamed Selim el-Awa, *al-Fiqh al-Islami fi Tariq al-Tajdid*, 2nd edn., Beirut: al-Maktab al-Islami, 1419/1998, p. 44.

⁹ Lecture series by Shaykh Ahmad Huraydi held at the University of Cairo – as quoted by Fu’ad A. Ahmad, *Usul Nizam al-Hukm fi’l-Islam*, pp. 15-16.

¹⁰ Cf. Qamaruddin Khan, *The Political Thoughts of Ibn Taymiyyah*, Islamabad: Islamic Research Institute, reprint 1985, pp. 23-24; Monir Hamid al-Bayati, *al-Nizam al-Siyasi al-Islami Muqarinan bi’l-Dawlah al-Qanuniyyah*, Baghdad: Dar al-Bashir, n.d, p. 49.

influential community leaders, tribal leaders, religious leaders etc., who may be obeyed and entrusted with making decisions over community affairs.

The juristic position in support of the formation of a system of rule is also said to have been upheld by general consensus, or *ijma'*, of the companions of the Prophet. The Prophet, peace be on him, himself had not issued clear instructions on the matter of succession to the rule, nor on the subject of government, according to the majority of the Sunnis at least. Only the Shi'is have held that the Prophet did nominate Ali Ibn Abu Talib to be the leader after him.

The Constitution of Madinah (*dustur al-Madinah*) laid down the foundations of a new community under the Prophet's leadership in Madina. Much attention was paid in this document to establishing a basis of cooperation and cohesion between the Emigrants, the Helpers and the Jews. Issues of leadership and subjugation of the powerful tribal structure to the authority of the new government, principles of equality and justice, freedom of religion, right of ownership, freedom of movement and travel and combating crime were among the major preoccupations of this document. Thus it would appear that the constitution of Madinah had civilian characteristics.

Al-Mawardi's writings on caliphate have been influential. He wrote at a time when the emirs and military rulers had taken over much of the effective power of the caliph of Baghdad. In an attempt to vindicate the caliph, al-Mawardi laid emphasis on his position as the patron of religion and the Shari'ah. The course of events in Ibn Taymiyyah's time (d. 728/1348), notably the fall of Baghdad to the Mongols, marked the practical extinction of the caliphate. Since Ibn Taymiyyah found no indication of a caliphate in the Qur'an or the Sunnah, he departed from the premises of the classical theory of *khilafa*. Instead he called attention to the basic principles of Shari'ah and a Shari'ah-oriented polity (*siyasa shar'iyyah*), in preference to *khilafah*, which he thought was short-lived and lasted only 30 years. What was important, he emphasised, was commitment to a set of principles that the Shari'a had enunciated. It was this renewed emphasis that characterised Ibn Taymiyyah's idea of the Shari'a state, which proved influential. Yet in his perception of *siyasa shar'iyyah*, Ibn Taymiyyah also marked a move in the direction of a judicious polity that went beyond the Shari'ah and envisaged a government that made decisions on the basis of Shari'ah as well as practical exigencies. Moreover, Ibn Taymiyyah's distinction between *khilafah kamilah* and *khilafah naqisah* (perfect and deficient caliphate) was based on necessity and pragmatism. *Khilafah naqisah* was deficient simply because it failed to comply with the valid norms of Islam, including *shura*, *baya* and justice. Lack of commitment to these principles turned the normative *khilafah* to its deficient variant.

'Abd al-Rahman Ibn Khaldun's (d. 1406) writing on monarchy (*mulk*) and its supporting idea of group solidarity (*asabiyyah*) in the ruling circles differed from the juristic approach of the ulama as it was predicated in the recognition and legitimacy, in principle, of hereditary rule that prevailed over the greater part of Islamic history.

Ibn Khaldun observed if the Muslim community found it difficult to restore the early *khilafah*, then it should be legitimate for them to establish a secular monarchy (*mulk*) founded on 'asabiyya of the politically dominant group that is guided and restrained by rational laws and the people's welfare. Thus he distinguished between two types of monarchy namely valid monarchy (*mulk haqiqi*) and deficient monarchy (*mulk naqis*). The former is based on considerations of public interest and rational laws and it provides an acceptable alternative to *khilafah*. *Mulk naqis* is, on the other hand, based on brute force rather than 'asabiyyah and it is destined to decline. Ibn Khaldun thus effectively separated politics from religion and suggested an alternative basis of legitimacy to the *khilafah* which had been abandoned for centuries.¹¹

It will be noted that the juristic details and conditions of *khilafah* which occur in the works of al-Mawardi and others do not necessarily embody a religious obligation. Some of these conditions, such as the requirement that the caliph must be from a Quraysh descent, or he be a *mujtahid*, as well as the proviso that insists on the territorial unity of the caliphate are, in any case, either obsolete or have been amended and changed.

Contemporary writings on the subject are generally cognisant of the absence of a model and prototype for an Islamic system of rule and tend to lay emphasis on conformity to a set of principles. A government may consequently take a variety of forms and yet qualify as Islamic if it complied with those principles.

Salient among these principles are *shura* (consultation) justice, equality, freedom, cooperation (*al-ta'awun*) and people's welfare (*maslahah*) to which the Islamic government is committed to uphold. Any system of government which implements these, repels turmoil (*fitnah*) and establishes peace and order qualifies as Islamic. It may be similar to the historical caliphate or may be different and combine new features in response to actual developments.

III. Criteria and Characteristics

As we elaborated in the previous sections of this work, Islamic governance may be characterised as civilian (*madaniyyah*), which is, however, neither theocratic nor totally secular but has characteristics of its own. It is a limited and a constitutional form of government whose powers are constrained by reference to the injunctions and guidelines of the Qur'an and the authentic *Sunnah*. It is also rooted in the notions of trust (*amanah*) and vicegerency (*khilafah*) and its principal assignments are to administer justice and secure the welfare (*maslahah*) of the people. The state represents the community to which it is accountable. The Islamic system of rule may also be described as a qualified democracy which is elected by the people and must conduct its affairs through consultation. Some of these attributes are elaborated as

¹¹ Muhammad Mahmud Rabi', *The Political Theory of Ibn Khaldun*, Leiden: E.J. Brill, 1967, p. 145f.

follows.

III.1. Government as a Trust (*Amanat al-Hukm*)

Further to what has already been said on the subject of the trust of government in the previous chapter, it may be noted that the basic idea of *amanah* (trust) is signified by the notion of accountability before God and the community. It was on this basis that the Righteous Caliphs understood their positions as being analogous to guardians and executors over the property of orphans. They saw it as their duty to personally supervise the community affairs, protect their *maslahah* and their rights.

Ibn Taymiyyah's renowned book, *Al-Siyasah al-Shariyyah* (Shari'a-oriented policy) which is a commentary on the *ayat al-umara'* highlighted two themes in its elaboration of *al-amanat*: selection and appointment of officials, which must strictly be based on merit and qualification, and fair distribution of wealth in the community. But the fact that the reference to justice occurs immediately after "*al-amanat*" in the text indicates that impartial justice is the most important aspect of all *amanat*.¹²

With reference to fair distribution of wealth in the community Ibn Taymiyyah has quoted the second Caliph, 'Umar al-Khattab, to have said concerning the assets of *bayt al-mal* (public treasury): "No one has a greater claim to these assets in preference to anyone else, and everyone's entitlement would be judged by his record (of service), his financial condition, his burdens and his personal needs."¹³

III.2. Limited or Constitutional Government

Further to what has already been said in our previous discussions, it may be added that a strong judiciary is the mainstay of government under the rule of law. An independent judiciary is thus an embodiment of limitation on the power of government. Judicial decisions must be based on lawful evidence, free of compulsion and espionage, and the grounds of those decisions must also be clearly stated. Trial procedures of Shari'ah courts and the substance of the Shari'ah law of evidence are, as such, positivist and civilian in character and do not show significant variation with their parallel procedures in the civil courts.

In response to limitations on the power of the Shari'ah courts themselves, especially with reference to *ta'zir* penalties, we note the deterrent (*ta'zir*) punishments are open to court discretionary powers in respect of determining the quantitative aspect of the punishment only for conduct which is prescribed by the Shari'ah. The judges have no powers to create an offence, without valid evidence in the sources, on discretionary grounds. There is, moreover, no recognition in the Shari'ah of any privileged individual or group and no one, including the head of state, enjoys any special immunity or status before the courts of justice.

¹² Taqi al-Din Ahmad Ibn Taymiyyah, *al-Siyasah al-Shariyyah fi Islah al-Ra'i wa'l-Ra'iyyah*, 2nd edn. Cairo: Dar al-Kitab al-Arabi, 1951, p. 18.

¹³ Id., p. 43.

The state's accountability to the community is in the present day Muslim countries articulated in their written constitutions which have become a common and generally accepted feature of government. These constitutions are essentially instruments of limitation which articulate the state's commitment to uphold and protect the basic rights of people, and are, as such, consistent with Islamic principles.

III.3. Theocratic or Civilian!

We have introduced this subject in a previous chapter of this book and what we add here explores certain other dimensions of concern to the subject. We may begin the discussion with a general note to say that conceptual uncertainties persisted in Islamic political thought by virtue of the fact that caliphate and imamate were subsumed, in the writing of early scholars, under the rubric of theology and *kalam*, rather than *fiqh*, to which it properly belonged. This was partially influenced by the religious character of the then on-going debate on leadership issues, especially the Shi'i doctrine of imamate, which is a part of the Shi'i theology, but also by the notion that establishing a system of rule was necessary in order to administer important aspects of Islam, such as the collection and distribution of *zakat*, organisation of *jihad* and so forth.

Whereas the Shi'i scholars subsumed *khilafa* and *imama* under theology (*kalam*) and treated it as an article of the faith, Imam Shafii (d.205/820) identified *khilafah* as a *fiqh* subject. This shift from theology to *fiqh* in some ways signified the temporal character of state and government, but scholarly writings vacillated between divergent positions. Muhammad 'Abduh (d.1905) wrote that Islam did not recognise a religious authority of the kind which is known in Christianity. In response to the question over the basis of legitimacy (*mashru'iyah*) of governance in Islam and the question as to who holds the right to rule, 'Abduh advanced the following perspective: Whereas the Shi'ite theory of Imamate tends to locate the right to rule in the principle of Divine selection, the Sunnis acknowledge that the prerogative of *hukm* belongs to God the Most High, but that governance is a part of public *maslahah*, hence the right to rule, and the right to form a government, had been vested in the people. The basis of legitimacy in Islamic governance is manifested, As 'Abduh wrote, in the people's election and *bay'ah* (oath of allegiance). To quote 'Abduh: "Undoubtedly God the Most High has given us the best guidance and principles that provide the foundations of governance, but to build that edifice and organise a government has been entrusted to us, and it is for us to form an elective and consultative government that manages the temporal affairs of the society and takes steps to realise the people's benefits." The community thus elects its own leaders who manage the public affairs through consultation and who remain accountable to the people. The government also loses its legitimacy should the people decide, through a no-confidence vote, to terminate its tenure and replace it.¹⁴ It thus appears that the bases of legitimacy in an

¹⁴ Muhammad 'Abduh, *al-Islam wa'l-Nasraniyah ma'al-'Ilm wa'l-Madaniyyah*, 8th ed. Cairo: Matba'a al-Nahda, 1373/1956, pp.57-58; idem., *Risalat al-Tawhid*, 6th ed. Cairo: Dar al-Manar, 1973, p.5ff; Muhammad 'Abduh & Muhammad Rashid Rida, *Tafsir al-Manar*, Beirut: Dar al-Ma'rifa, 1328 H , V/191f.

Islamic system of rule, according to 'Abduh, are almost entirely civilian.

Mahmud Shaltut similarly wrote that Islam encouraged the people to access the sources directly. No one is vested with the exclusive authority to interpret the Qur'an nor to issue binding opinions in the name of religion. Everyone who is qualified may give an opinion and *fatwa*, which however binds no one, and may be taken or abandoned on the basis only of its credibility and merit.¹⁵

Whereas the majority of Sunni ulama maintained that establishing a system of government was a requirement of Shari'a, the Mutazila maintained that it was a requirement of reason and not a religious nor a Shari'a requirement as such. Yet the Mutazila did not develop their views on the subject to an extent as to provide an alternative theory of government. The Kharijites were on the other hand only interested in the application of the Shari'a and attached little importance even to the existence of a government: If the community could establish justice under the Shari'a without the help of a superior authority, there may be no need for an Imam.

Even if the much-debated question as to whether government is an integral part of Islam is answered in the affirmative, it is obvious that the state is a part neither of the dogma of Islam nor of its devotional acts, the *'ibadat*. For a person can be a Muslim without believing in a state or living under any system of government. One can also perform almost all the *'ibadat*, on an individual basis at least, without a reference to a state or a political leader as such. Then it remains to be said that having a government is a part of the *fiqh* and more likely the *fiqh al-mu'amalat* aspect of Islam, and not an essential part of the religion. Although the genre of *fiqh* literature developed under the general headings of *ahkam sultaniyya* and *siyasa shar'iyya* stand as a category apart, they are, nevertheless, closer to *mu'amalat* rather than *'ibadat*. This would imply that matters of state and government are subject to considerations of rationality and *ijtihad* that realise the people's welfare at any given time.

In a theocracy the leaders claim to represent God and exercise powers such as the pardoning of sins. The state in Islam is simply not vested with such authority. The state in Islam is not a theocracy, it is a civilian state (*dawlah madaniyyah*). It is civilian because it comes into being by election, homage and consultation and the head of state is accountable to the people. Citizens are also entitled to give him counsel and advice that may alert him to his error.¹⁶

Government in Islam is also not a prerogative of the ulama, nor is it a government by men only to the exclusion of women. Women played a considerable role in public life during the time of the Prophet and they took part in the election of the third Caliph 'Uthman. Government in Islam is also not confined to any particular form or model, but it is committed to the enforcement of Shari'ah. That does not,

¹⁵ Mahmud Shaltut, *al-Islam 'Aqidah wa Shari'ah*, Kuwait: Dar al-Qalam, c.1965, p. 476.

¹⁶ Cf. Yusuf al-Qaradawi, *Min Fiqh al-Dawlah fi'l-Islam*, Cairo: Dar al-Shuruq, 1417/1997, pp. 57-58.

however, make the Islamic government a theocracy as the Shari'ah itself does not approve of theocratic government.

The Shari'ah is not solely concerned with religious and worship matters. This is admittedly one aspect of it, but the Shari'ah also addresses government matters, issues of justice, rights and liberties from a wider perspective. On these matters the *juris corpus* of Shari'ah aspires to objectivity. The rules of justice in Shari'ah, for example, do not distinguish between Muslims and non-Muslims; they are basically objective and humanitarian. *Taqwa* (piety) is a desirable quality in a Muslim, but a man of piety has no claim to distinction before the court of Shari'ah to a man of questionable piety. They must be treated equally before the court.

Theocratic government demands unquestioning obedience of its citizens and that naturally discourages individual freedom. Islam has, on the other hand, recognised the individual's right to freedom to the extent as to enable him to disobey an unlawful command, just as it also restrains the government from issuing such a command and imposing on people's freedom.

It would appear from the foregoing analysis that the Islamic government is neither a theocracy, nor is it totally secular, as it does not seek to isolate religion. On the contrary, it has a duty to protect religion and enable the people to observe it. The lawful and unlawful (*halal, haram*) that are expounded in Shari'ah must also be observed by the state. The state maintains the religious values, yet it is not a theocratic state.

The civilian character of the Islamic state has, however, been exposed to doubt in recent years as a result partly of the Islamic revolution of Iran 1979, which brought an ulama-led government into power, and Iran looked, to all intents and purposes, a theocratic state.

It should be noted, however, that Iran itself has wanted to cast off that image and has gradually moved in the direction of a civilian polity. Ayatollah Khomeini's theory of the guardianship of the jurist (*vilayat-e faqih*) and his own religious personality evidently lent support to the theocratic image of the Islamic Republic, especially in the early years of the revolution. But Iran under President Khatami has become a keen supporter of civil society and is now a leading influence in the advocacy of civilian rule and commitment to the elective principle and the people's rights.

The leading offices of state in Iran, including those of the President, the Supreme Leader, and the Majlis are all elective. Ministers and government officials did not cease to be taken to task by the Majlis and the Islamic republic has itself made no claim to be a theocratic state. On one occasion in 1984 the Majlis, for example, removed no less than seven ministers by a vote of no-confidence in accordance with the constitution.

The Shi'i doctrines on leadership and imamate are also different from those of its Sunni counterparts. The Sunnis, who are in the majority, maintain that caliphate and government are elective and do not partake in the dogma and belief structure of Islam. The Shi'is on the other hand consider imamate as a part of the Shi'i theology and the Imam, being the chosen of God, receives his title through hereditary succession from within the household of the Prophet. The Shi'i imam is decidedly a theocratic figure and also believed to be infallible. The Shi'i imam is the successor of the Prophet and has in theory direct authorisation from God to manage the temporal and spiritual affairs of the Muslim community. But then the last living Imam of the Shi'ah Imamiyyah went into occultation over 1000 years ago, during which time the mantle of the occult Imam was carried by his deputy (*na'ib-e imam*) who leads the Shi'i community but who is not infallible. In the absence of Prophet and Imam the affairs of state are determined in accordance with the will and consent of the community through consultation. This is to all intents and purposes the same position as the Sunni doctrine of *khilafah* has taken. This position is reflected in the views of a leading Shi'ite leader of Lebanon, and President of the Shi'ite Supreme Council, Muhammad Mahdi Shamsuddin, especially in his concept of *vilayat al-umma*. Thus he explained that following the Prophet's demise, the *umma* became the locus of political authority, according to the Ash'arites and the Sunnis, but only the Imam had title to authority and leadership, according to the Shi'ite doctrine. 'Ali b. Abu Talib was the first Imam to inherit that authority and the succeeding Imams carried the title after him. The twelfth Imam has remained absent for a long time and only God knows when he will return, in which case the *umma* assumes his authority during the time of his absence. The community exercises, in turn, its authority through elective and consultative methods.¹⁷

III.4. Whether A Qualified Democracy

Democracy is basically predicated in a set of principles most important among which are a recognition of the inherent worth of every human being, a representative and participatory government, acceptance of the rule of law, equality of all citizens before the law, and a high level of tolerance of unconventional views and beliefs. Islam contains a set of basic principles which make it highly responsive towards many of the moral and legal prerequisites of democracy. If democracy means a system of governance that is the opposite of dictatorship, Islam is compatible with democracy because there is no place in it for arbitrary rule by one man or a group of men.

The political system in early Islam was neither democratic nor did it rest on absolutism as understood by the Greeks and Romans; it was an Arab system of government to which Islam added its own requirements. Whereas *shura* was an entrenched Arab practice, and essentially democratic, it did not have a binding character. In the history of Islamic government too, *shura* did not constitute a check

¹⁷ Mahdi Shamsuddin's views are conveyed in his two works *Nizam al-Hukm wa'l-Idarah fi'l-Islam* (Beirut: 1997) and *al-Ijtima' al-Siyasi al-Islami* – cited by both Selim el-'Awwa and Tawfiq al-Shawi as in the following notes.

on the powers of the caliph. The Qur'an on the other hand spoke in high praise of *shura*, to the extent of coming close to making it mandatory. The Madinan state practiced *shura* and it also showed commitment to justice, equality and people's rights, just as it also turned its back, due mainly to the Qur'an, on ethno-centricity of the Arabian culture. These are some of the features of governance in Islam that exhibit harmony with the principles of democracy. The medieval caliphate admittedly set a negative record on many of the democratic features of governance such as *shura*, *bay'ah*, and the egalitarian teachings of Islam. The government was not answerable to the people, nor did it resort to consultation as such, and it turned *bay'ah*, to all intents and purposes, into little more than window dressing. Yet hardly anyone has spoken in support of those methods, and the 'ulama community have generally regarded them as flagrant departures from valid norm.

Islamic government is not exactly a direct government of the people by the people: it is rather a government of the Shari'ah. But in a substantial sense, it is a popular government since the Shari'ah approves the convictions of the people and, therefore, their direct will. It may be stressed also that the Qur'an threw its support behind *shura*, and then the Prophet himself adopted it as a regular feature of his leadership, a pattern that was followed by the Pious Caliphs after him. This would make *shura* a part of the normative precedent. Contemporary conditions also lend support to the normativity of *shura* which has received the blessing of the pioneers of Islam.

A conflict may exist between the idea of commitment to a divine law and the democratic notion of sovereign law making power. Yet the Islamic government may be described as a qualified democracy. This is because the community is the locus of authority that can hold the government to account and may ultimately depose it.

The basic harmony between Islam and democracy is manifested in Islam's resolute denunciation of oppressive and arrogant rulers, the Pharaoh and the Kora, who sought to enslave and humiliate their people. The Prophet, peace be on him, expressed this vividly in a hadith: "when you see my community afraid of calling a tyrant "tyrant" then take leave of it." The ruler in Islam is an agent and employee who is accountable to the people. This was amply shown in the speeches and sermons of the first and second caliphs, Abu Bakr and Umar. Bear also in mind that democracy was the fruit of a long-standing struggle in which the people successfully subjugated despotism to the will of the masses. Qaradawi has touched on this point to say that democracy is humanity's shared achievement and "we are entitled ... to take from others ideas and methods that would benefit us, provided they do not clash with a clear and unequivocal text." Election according to Qaradawi is a form of testimony (*shahadah*) by which the electorate testifies to the suitability of the candidate. It is an act of merit for people to participate in the elections and facilitate the designation of upright people to leadership.¹⁸

¹⁸ Yusuf al-Qaradawi, *Min Fiqh al-Dawlah fi'l-Islam: Makanatuha, Ma'alimuha, Tabi'atuha, Mawqifuha min al-Dimiqratiyyah wa'l-Ta'adduyya wa'l-Mar'a wa Ghayr al-Muslimin*, Cairo: Dar al-Shuruq, 1417/1997, p. 138f.

Political parties are an important feature of modern democracy. As opposed to those who argued that Islam rejects political parties, one may say that the Shari'ah principles of *hisbah* (promotion of good and prevention of evil), and *nasihah* (sincere advice) as well as the people's right to criticise their leaders can all be given a meaningful role within a multi-party system. To curb despotism and oppressive rule is not within the capacity of individuals acting in isolation. But when the people join together in large numbers, they can influence government policy, in which case there should be no need for acts of rebellion and uprising against oppressive rule as often happened in the past. Political parties may thus be said to be acceptable in an Islamic government.¹⁹

The Shari'ah in its broad outline is more democratic than totalitarian. It was due probably to its strong advocacy of the people's rights that totalitarian regimes of the past had difficulty in the implementation of Shari'ah. The 'ulama community have also acted, more often than not, as protectors of the people's rights and resisted oppressive governments on their behalf.

The Shari'ah gave the people a code which consecrated the principle of self-government, made men equal in the eyes of the law, and made the government subordinate to the law. At a time of history when everywhere the masses were in hopeless subjugation, Islam elaborated a political system fundamentally republican in character, stressing the duties of the leaders toward the people, and championed freedom and equality of the people.

Muhammad Iqbal (d. 1938) spoke affirmatively of the democratic impulse of Islam but said that the Muslims never effectively developed the elective principle. This was due partly to the Persians and the Mongols, the two great races which embraced Islam and formed governments; they were not only strangers to the elective principle, but actively opposed to it. The Persians worshipped their monarchs as manifestations of divine power, and the Mongols were given to tribalist methods. Iqbal also wrote: "The republican form of government is not only thoroughly consistent with the spirit of Islam, but has also become a necessity in view of the new forces that are set free in the world of Islam." The position of the ruler in the eyes of the Shari'a is the same as that of an ordinary Muslim. In Islam, the basis of legislation, after the clear injunctions of the Shari'ah, is the agreement of the Muslim community.²⁰

Muhammad Asad described the Islamic government as democratic and added that democracy as conceived by the West was infinitely nearer to the Islamic conception thereof than to its Greek parallel. For Islam maintains that all human beings are equal and must be given the same opportunities for development and self-expression. Islam essentially envisaged an elective form of government. A government that comes to power by "non-elective means becomes automatically

¹⁹ For further details on *hisba* and *nasihah* and the right of association see Mohammad Hashim Kamali, *Freedom of Expression in Islam*, Cambridge, U.K: the Islamic Texts Society, 1997, pp.28-40, and 87-106 respectively.

²⁰ Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, Lahore: Ashraf Press, reprint 1982, p. 157.

illegal.”²¹

IV. Conclusion

The evidence examined in this chapter suggests obviously that there are some differences between Islamic thinkers about the nature and characteristics of an Islamic polity. A consensus has yet to emerge on the essential requirements of an Islamic system of government which meets the requirements of a democratic order that is ruled by the will and consensus of the people, who observe the authority of divine law, in accordance with the Qur’anic requirements of consultations between the ruler and ruled. It is not an exaggeration to conclude that an Islamic system of government is substantially concurrent with the essentials of a democratic order, notwithstanding the differences which may exist in the detailed approaches of the two traditions towards those objectives. The Islamic system of rule and a western model of a democratic order do evidently differ in some respects. Yet there is enough in common between them to justify the characterisation of the Islamic system of governance as a qualified democracy.

There is general agreement among Muslim jurists on the necessity of leadership and a system of rule that manages the community affairs in accordance with the basic principles of Islam, but evidence is inconclusive as to what form and structure it should have. This leads one to the conclusion that the Islamic system of rule consists basically of commitment to a set of principles rather than subscribing to any particular institutional format. An Islamic government is thus any system of rule that upholds the injunctions of Islam on equality and justice, on consultation, the basic rights and liberties of the people, strives for the people's welfare, and upholds the morality and dogma of Islam. Non-Muslims are entitled under an Islamic government to follow and practice their own religion free of interference. They are also allowed to practice their own laws and traditions pertaining to personal status matters. Any government that is committed to these principles may consequently be regarded Islamic regardless of the organisational form and model to which it may subscribe.

²¹ Muhammad Asad, *The Principles of State and Government in Islam*, Berkeley: University of California Press, 1961, p. 36.