CLASSICAL ISLAMIC POLITICAL THOUGHT AND ITS CONTEMPORARY RELEVANCE

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Abstract: This paper focuses on a critical review of three themes: the historical caliphate, rule of law, and democracy. The shift from the first theme to the other two is indicative, to some extent, of a certain disruption and departure exhibited by the dynastic caliphate from the normative guidelines of scripture and the precedent of the orthodox Caliphate of the 30 years (632-661CE) following the Prophet's demise. The rest of the paper identifies significant lines of convergence between the Islamic system of rule and government under the rule of law and the basic postulates of a democracy. No direct analogies are proposed, only a comparative presentation and review of the juristic and historical evolution of Islamic political jurisprudence.

Keywords: Caliphate, Constitutionalism, Rule of law, Consultation, Democracy, Modern developments.

Introductory Remarks

The long history of Islamic scholarship on the caliphate, Shari'ah-oriented policy (*siyasah shar'iyah*), and system of government (*nizam al-hukm*) has yielded a rich legacy that is, however, beset with uncertainties vis-a-vis modern developments on government and constitutional law. Uncertainties have persisted over the basic concept and definition of an Islamic polity and the existence or otherwise of a valid precedent and model of an Islamic state.

Islamic political thought does not subscribe to a particular form or model of government, instead leaving this for the community to decide— notwithstanding common perceptions that regard the historical caliphate as a model. Government in Islam consists essentially of broad adherence to a set of principles, such as consultation, justice, equality, human dignity, representation, accountability, trusteeship (*amanah*), and observance of the Shari'ah. Yet this semblance of simplicity becomes complex when it comes to the specifics of the concerned principles and institutions. Uncertainties persist over issues of legitimacy, methods of succession, and correct understanding of their religious and civilian dimensions. There is general agreement that the community, or *ummah*, is the locus of all political authority and that the head of state acts

as its representative (*wakil*). Yet writers on the caliphate have differed over the modalities of implementing this vision. The prevailing tendency in modern writings, to relate the nation state of eighteenth-century Europe to ideas and events from earlier Islamic history, has added to these uncertainties.

Ibn Qayyim al-Jawziyyah (d. 751/1350) spoke of rigidity and stagnation in the writings of political jurists, underlying their sterile and acquiescent blueprint, which prompted the caliphs to rule by decree, resulting in marginalisation of the Shari'ah. Al-Qaradawi quotes Ibn Qayyim on the back cover of his renowned book, *Min Fiqh al-Dawlah fi'l-Islam* (Jurisprudence of State in Islam),¹ adding that even in the twentieth century Muslim writers continue to talk about the caliphate, centuries after its demise, oblivious to the fact that political realities have radically changed. Al-Qaradawi has no section or chapter on the historical caliphate, instead devoting his work entirely to an exposition of the basic characteristics of an Islamic system of rule, including whether it should be theocratic or civilian, accept political parties, allow the participation of women and non-Muslims, be democratic, have representative assemblies and so forth.

Ahmad Huraydi, a former Mufti of Egypt, observed that the political order that held sway in Muslim lands from the Umayyads until the end of the Ottoman Empire did not, on the whole, comply with the principles of Islam. Even those authors who wrote on Islamic government during that period focused their attention on dynastic practices which did not reflect normative Islamic principles but only expounded the history of government in those times, with there being "a big difference between the two."²

The Constitution of Madinah (*dustur al-Madinah*), which the Prophet, pbuh, drew up after his migration to Madinah in 622CE, laid the foundations of a new community under his leadership. Much attention was paid in this document to establishing a basis of cooperation and cohesion between the Emigrants, the Helpers and Jews as the primary inhabitants of Madinah. Issues of leadership and subjugation of powerful tribes to the authority of the nascent government, principles of equality and justice, freedom of religion, right of ownership, freedom of movement and combating crime were among the main preoccupations of this document. Thus, it was provided that "The Jews of Banu 'Awf will be treated as one community with the Believers...The same applies to Jews of Bani al-Najjar."³ Also that "the Jews have their own religion and the Muslims theirs. This will also apply to their freedmen."⁴ This document is arguably the earliest constitution in history and provides basic authority for the notion of common citizenship in its commitment to equality and citizen participation in community affairs. Its commitment to equality also recalls the Prophet's Farewell Sermon (*hajjat al-wida'*), especially where it reads: "O

People, your Creator is one; you are all from the same ancestor; all of you are from Adam, and Adam was created from clay.”⁵ Almost all of the Qur’an had been received by then, and the Prophet’s last sermon resonated with many of the Qur’anic messages on equality and human dignity.

Early Theories of Caliphate

In their articulations of the methods of caliphal investiture, both Abu al-Hassan al-Mawardi’s (d. 450/1058) influential *Kitab al-Ahkam al-Sultaniyyah*, and Abu Ya’la al-Farra’s (d. 458/1066) book of the same title, open their relevant sections by saying in almost identical words (and I quote al-Mawardi) that: “Imamate is concluded in two ways, one of which is by the selection of *ahl al-‘aqd wa’l hall* (sic - henceforth *Ahl*), and the other by the covenant of the outgoing Imam.”⁶ Both have also discussed military force (*imarat al-istila’*) as another way of accession to power, but both describe it as an emergency situation only. Whereas both use *imamate* or *caliphate* in their discussion of the first two methods, they employ *amir* and *imarah* when they refer to military takeover.⁷

Leadership (*imamah*) is a contract which is concluded through *bay’ah* that occurs in two stages: special *bay’ah*, also known as the *bay’ah* of contract (*bay’at al-in’iqad*, also *bay’ah khassah*), which occurs between the *Ahl* and the prospective caliph, and the general *bay’ah* (*bay’ah ‘ammah*) between the designated imam and the community at large. The Mawardian theory maintains that the contract of *imamate* is concluded on the first of these two occasions and is enough, as of that time, to give rise to rights and obligations, such as the duty of obedience and assistance (*ta’ah wa nasrah*) to the new caliph. Many writers maintain that this two-tiered system of *bay’ah* was practiced by both Abu Bakr and ‘Umar al-Khattab.⁸ Thus, it is reported that immediately after the Prophet’s burial on a Wednesday, the Immigrants and Helpers held a meeting at Saqifah Bani Sa’idah, where ‘Umar al-Khattab nominated Abu Bakr and the first *bay’ah* took place. The following day, Abu Bakr convened a larger meeting in the mosque where ‘Umar al-Khattab spoke on Abu Bakr’s suitability for leadership, and then asked the people to pledge *bay’ah* to him. The general *bay’ah* took place then and Abu Bakr became caliph.⁹

*Ahl al-hall wa’l-‘aqd*¹⁰ refers to a council of elders who select and nominate the caliph. The *Ahl* pledge *bay’ah* to their proposed candidate, which he accepts, and the contract of *imamate* is thus concluded. The *Ahl* must possess at least three qualifications: 1) uprightness of character (*‘adalah*), including trustworthiness, piety and stability of character; 2) knowledge that enables one

to know and ascertain credible candidates for imamate; and 3) wisdom and judgment (*al-ra'y wa'l-hikmah*) that enable one to make appropriate decisions and have insight into the best interests of the people.¹¹

Al-Mawardi proposed the following procedure for *bay'ah*, which also appears in toto in al-Farrar':

When the *ahl 'aqd wa'l-hall* assemble to ascertain the conditions of suitable candidates for imam and find through their reasoning and *ijtihad* that one of them is best qualified and fulfills the conditions of imamate, and that the people are most likely to obey him and pledge their allegiance promptly to him, they may offer the matter to him. If he accepts the offer, they pledge *bay'ah* to him. The entire community is then bound by offering him their *bay'ah* and committed thereby to obey him.¹²

Al-Farra' spells out the wording in which the *Ahl* offer their *bay'ah* to the would-be imam as follows: "we pledge our consent and *bay'ah* to you [on account of your commitment] to establish justice and fairness, and fulfill all the duties of imam- [when this is said] there remains no need for a hand-shake."¹³

Imam al-Haramayn al-Juwaini's (d. 487/1085) discussion of the quorum of *Ahl* refers to the views of Abu Bakr al-Baqillani (d. 403/1012), to the effect that consensus of *Ahl* is not a requirement:

Given the position that consensus is not a requirement for conclusion of the contract of imamate, it follows that a particular number can also not be stipulated. Contracts in Shariah are [normally] concluded by two parties...then it follows that one person is sufficient for the purpose of completion of the imamate contract.¹⁴

In sum, the imamate contract may be concluded between even one *Ahl* and the prospective imam. General *bay'ah*, which is a prerogative of the Muslim community, is thereby reduced to insignificance by a doubtful analogy to private contracts. This dubious contract is then made binding on the Muslim community as of the moment it is concluded!

In his articulation of the theory of imamate, al-Juwaini also excluded women and slaves "who are not permitted to choose the imam or to pledge *bay'ah* to him...furthermore, this is also not a matter for slaves to participate [in] even if they be knowledgeable, nor for ordinary men, who are not counted among scholars or men of great insight...All of these are to be excluded from the ranks of *ahl*."¹⁵ Al-Juwaini is also critical of al-Mawardi when the latter

held the *dhimmis* eligible to become *wazir al-tanfidh* (executive minister - as opposed to *wazir al-tafwid*, prime minister). This, according to al-Juwaini, “is a trip without justification...for a *dhimmi*’s testimony is not accepted over [a] Muslims...how can he be made a minister?”¹⁶

Juristic works on the historical caliphate are mainly concerned with the methods of designation and succession of a caliph, his rights and duties, and institutional blueprints for the judiciary, vizierate, army, taxation, police, and so forth. They can therefore be said to constitute books on public administration more than political theory. Certain elements of political theory are found in al-Mawardi, however, consisting of an assimilation of all previous practices on methods of designation, nomination, and (hereditary) succession, even seizure by force. History and political pragmatism take prominence. Some aspects of this exposition depart from the republican tenor of the orthodox caliphate, and have therefore come under scrutiny over issues of concern for legitimacy.¹⁷

Al-Farra’ and al-Juwaini have frequently referred to the precedent of the orthodox caliphs (*khulafa’ ar-rashidun*), which is generally considered authoritative, even though it only lasted for a relatively short period of thirty years.¹⁸ Yet the overriding concern of political jurists, to reconcile that precedent with dynastic politics, influenced their writings to such an extent that their conformity to the early precedent became questionable. Subsequent writers, such as Ibn Taymiyyah and Ibn Khaldun, consequently introduced new approaches not necessarily linked with the Mawardian premises.

Al-Mawardi wrote at a time when the emirs and military rulers of outlying provinces had taken over much of the effective power of the caliph in Baghdad. In an attempt to vindicate the caliph, al-Mawardi emphasised his position as the patron of religion and Shari’ah. Al-Farra’ and al-Juwaini were exposed to essentially the same influences and held similar views.¹⁹ They paid scant attention to consultation (on which see below), for example, and did not devote a section or chapter to equality and basic rights.

Commitment to Rule of Law

Constitutionalism, democracy and rule of law are often seen as parallel concepts. They are not, however, identical and can even stand in a state of tension. Constitutionalism demands commitment to the rule of law, whereas democracy is focused on majority rule. It may be relatively easy to impose elections on a given country, but it is more difficult to establish legality, commitment to basic rights, and a constitutional order of checks and balances within the organs of power. If democracy can be defined as “popular political self-government,” a simple

definition of constitutionalism could be “the containment of popular decision-making by a basic law.”²⁰ At the heart of constitutionalism lies the deliberate choice of a representative government to constitute its political life in terms of commitment to a binding agreement by the ruler and ruled, structured so as to be difficult to change.²¹

Government in Islam is bound by observation of the Shari’ah. This can also be stated more generally to include the rule of statutory law, or *qanun*. Since the Qur’an (al-Nisa’ 4:59) ordains obedience to those in charge of the community’s affairs (the *uli’l-amr*), the command of such individuals or of any lawfully enacted *qanun* is subsumed by the Islamic principle of government under the rule of Shari’ah—provided, however, that no Shari’ah injunctions are violated.

Even though the Shari’ah includes matters of belief and worship (*‘aqidah* and *‘ibadah*), it does not advocate a theocracy. This is because theocracy demands unquestioning obedience – unlike the Shari’ah, which recognises the individual’s right to disobey an unlawful command, just as it also restrains the government from issuing one. This is the clear purport of the hadith: “There is no obedience in transgression; obedience is in lawful conduct only.”²² Thus, as stated by Yusuf al-Qaradawi, “It should be clearly understood that an Islamic state is not a theocracy.” It is therefore not the government of the *‘ulama’*. Neither does the head of state in Islam hold spiritual powers to pardon sin or rule as God’s representative. Rather, he is elected by the people and holds office on their behest, and may ultimately be deposed by the people. The head of state also has no immunity; he is accountable for his conduct like all others and may be tried before the court of justice.²³ To quote Muhammad Iqbal: “Islam was, from the very beginning, a civil society with laws civil in their nature, though believed to be revelation in origin.”²⁴

Indeed, Islam clearly subscribes to a civilian concept of government that conducts its affairs through consultation (*shura*), public interest (*maslahah*) and interpretive judgment (*ijtihad*). While referring to these concepts, in addition to general consensus (*ijma’*) and difference of opinion (*ikhtilaf*), Esposito and Voll concluded that these principles embody many of the precepts of modern democratic practice and theory. Since these principles are rooted in Islamic jurisprudence, nothing in Islam forbids democracy.²⁵ Within that context it should be noted that Islam does not advocate a government by men only, to the exclusion of women. Women played a considerable role in public life during the Prophet’s lifetime and after, even taking part in the election of the third caliph, ‘Uthman (r. 644–656CE).²⁶

Islam does not advocate a totalitarian system either, as many aspects of civilian life remain outside the domain of law and government. Muslim jurists have thus distinguished the religious (*dini*) from the juridical (*qada’i*) obligations and maintained that only the latter is enforceable before the courts. Most of the

religious aspects of an individual's life are non-justiciable. Religious duties such as prayer, fasting, the *hajj*, and almost all of that which is recommendable, reprehensible and permissible (*mandub*, *makruh*, *mubah*) are not justiciable and the state only plays an administrative role with regard to them. The private rights of individuals are immune under Shari'ah against encroachment by others, including the state. No government agency – not even the Shari'ah courts – has the power to grant discretionary changes in the private rights and properties of individuals without their consent.²⁷

The Shari'ah safeguards life, honour and liberty of the citizenry by laying down rules designed to ensure due process in the administration of justice. Included therein is the presumption of original innocence (*bara'ah al-dhimmah al-asliyyah*),²⁸ that people are presumed innocent unless proven guilty through lawful evidence. The principle of legality in Shari'ah also requires that no one may be incriminated or punished without a legal text that defines the crime and its punishment. No one may be punished unless proved guilty through a fair trial.²⁹ Anyone, be it the individual or the state, who accuses a person of an offence must prove it beyond reasonable doubt.³⁰ The burden of proof is on the plaintiff, as in the hadith: "The burden of proof is on him who makes the claim, whereas the oath is on him who denies it."³¹ The plaintiff may, in other words, ask the court to put the defendant on oath if he denies the claim and no other evidence exists. If the plaintiff is required to prove his claim, it follows that until such proof is forthcoming, the defendant is presumed innocent. According to Ibn Qayyim al-Jawziyyah, if the claimant supports his claim by evidence, the court will adjudicate in his favour, otherwise the last word is that of the defendant, and the court shall credit what he says provided he takes a solemn oath to affirm that he is telling the truth.³² It is thus concluded that no one may be granted anything on the basis of a claim, suspicion, or accusation alone, and that in all cases the claim must be substantiated by evidence.

The Qur'an also lays emphasis on the principle of equality before the law by proscribing excess in retaliation and the imposition of heavy penalties:

And if you decide to punish then it must be in proportion to the offence [or the pain] to which you were subjected [in the first place]. (al-Nahl, 16:126)

Whoever is aggressive towards you, your response must be proportionate to the aggression that was inflicted on you. (al-Baqarah, 2:194)

The Qur'an thus makes clear, as Shaltut observed, that punishment must be proportionate to the crime and must not be left to personal sentiment and desire for revenge, but implemented under the rule of law.³³

There is also evidence in the Qur'an (cf. al-Anfal, 8: 32) to the effect that no one is taken to task without prior warning, meaning that punishment is not to be applied retroactively. According to Abu Zahrah, the Qur'an forbids applying punishment for offences (excepting murder, money debt and usurpation) that were committed prior to the advent of Islam.³⁴

The Qur'an further lays down the principle that no one may be accused or punished for an offence committed by another person: everyone is accountable for his own deeds and "no soul shall bear the burden of another" (al-An'am, 6:164).³⁵

Several maxims complement the principle of legality in the Shari'ah. To quote a few: "the conduct of reasonable men (or the dictate of reason) alone is of no consequence without the support of a legal text." In other words, no conduct can be declared forbidden on the grounds of reason or acts of reasonable men alone; a legal text is necessary to establish an offence. No one, therefore, should be deemed a violator because of committing or omitting an act which is not forbidden by the law.³⁶ This is also upheld in another maxim: "permissibility is the original norm" (*al-asl fi'l-ashya' al-ibadah*).³⁷ The majority of jurists have thus held that all things are permissible unless the law has declared them otherwise. Another maxim provides that "no one bears any obligation unless he is capable of understanding the law which imposes it; nor may anyone be required to act in a certain manner unless he is capable of knowing the nature of the act he is required to do or avoid doing."³⁸ The law which creates an obligation must, therefore, be addressed only to a competent person who is capable of understanding it, and that it is physically possible for him to comply with it. Consequently, there is no crime until the text which creates it has been publicly announced and brought to the knowledge of the people.³⁹

Broadly, the Shari'ah employs three different approaches for implementing the principle of legality in criminal law. In the case of serious crimes, it specifies both the offence and the punishment, as in the prescribed offences (*hudud*), retaliation (*qisas*) and blood-money (*diyah*). For offences which pose a lesser threat to public safety, Shari'ah defines the offence but provides only general guidelines about the punishment. These are the *ta'zir* offences, where the Shari'ah specifies the conduct but empowers the judge to select the type and amount of punishment to be metered out from a range of approved penalties. *Ta'zir* offences consist primarily of conduct which the Shari'ah has defined as transgressive (*ma'siyah*). It is not for the judge to create the offence; he can only specify punishment for a certain conduct that has been proscribed in a legal text (*nass*).

While discussing the common misconception that the judge has a free hand in dealing with *ta'zir* offences, 'Awdah observes that it is a mistake to suggest that

the judge is at liberty to determine both the crime and its punishment. ‘Awdah refers to a number of *ta‘zir* offences and the textual authority on which they are based. The list includes consumption of forbidden substances, breach of trust, cheating in weights and measures, perjury, usury, obscenity and insult, bribery, unlawful entry into private dwellings, and espionage. There is textual authority that all of these constitute transgressions. The judge’s discretionary powers in *ta‘zir* offences are therefore characterised as *sultah al-ikhtiyar* (power to select), as opposed to *sultah al-tahakkum* (power to rule at will). In Islamic constitutional theory, neither the judge, nor any other organ of government, enjoys unlimited powers of this latter type.⁴⁰

With regard to *ta‘zir* offences which violate the public interest (*al-mashah al-‘ammah*), Shari’ah does not specify the offence but provides only general guidelines on the type of conduct deemed to be harmful to society. The reason for this is that offences of this type are, on the whole, unpredictable and cannot be specified in advance. An act may, for example, be normally permissible and yet the circumstances in which it is committed, or some of its attributes, are such that it violates public interest in a specific case. While in principle the Shari’ah only penalises acts that amount to transgression, it makes an exception by authorising the judge to penalise conduct that, though not forbidden by textual authority, causes harm (*darar*) to society.⁴¹ Examples of this kind of *ta‘zir* include restricting the liberty of the insane for the sake of public safety or preventive detention without proof to facilitate investigation and prevent a possible escape.⁴²

In all of this, the punishment must be proportionate to the offence and should remain within the limits of moderation. Based on the authority of the Sunnah, Muslim jurists have further added the proviso that *ta‘zir*, in general, must operate at a level below the severity of the prescribed penalties (*hudud*).⁴³ Moreover, no one is above the law; everyone is accountable for their conduct. Hence, there is no recognition in Shari’ah of any privileged individual or group; no one, including the head of state, enjoys special immunity or status before the courts.⁴⁴ The people’s lives are regulated such that, as Schacht puts it, “the solutions provided by Islamic law go decisively and consistently in favour of the rights of the individual, of the sanctity of contracts, of private property, and they put severe limits to the action of the state in these matters.”⁴⁵

In response to whether constitution-making is acceptable in Islam, Muhammad Rashid Rida (d. 1935) stated in a *fatwa* that, since a constitution is designed to delineate the limits of state power and clarify the state’s commitment to people’s rights, it is acceptable in Islam. If enacting a formal constitution operates as a check on despotism, there is no question about its compatibility with the

Shari'ah. In the event that the constitution contains elements repugnant to Islam, only the repugnant elements may be set aside, but not the whole of it. Rida elaborated that, in the writings of Muslim jurists one finds instances where they made errors in *ijtihad*; one ought to reject the errors but not the whole of their endeavours. Mahmud Hilmi Mustafa concurred with this *fatwa*, commenting that there is nothing in the Shari'ah against enacting a written constitution.⁴⁶ A model Islamic constitution was also drafted by al-Azhar University and later re-examined and endorsed by Mustafa Kamal Wasfi. Many other model constitutions have since been drafted.⁴⁷

Legal determinacy is an aspect of the principle of legality, which requires that the legal rules are clearly identifiable. Since there is much diversity and disagreement (*ikhtilaf*) amongst the schools and scholars of Islamic law over interpretation, most Muslim countries have from very early times used statutory instruments for purposes of legal determinacy. Ibn al-Muqaffa' (d. 756), Abu Yusuf (d. 798), al-Jahiz (d. 868) and Ibn Taymiyyah (d. 1348) have all reflected on this.

Ibn al-Muqaffa', for example, secretary to the Abbasid caliph al-Mansur (d. 775), complained to the caliph that cities of the empire had exceedingly different, even contradictory, legal rules and advised him to consolidate and unify the laws of the various schools then prevalent. He suggested the caliph choose one correct position in each case and create a unified code that would make the law consistent across all Abbasid territories. The caliph, however, consulted with the leading jurists, who declined the proposal on the basis that it would impinge on the interpretive freedom of *ijtihad*, adding that the Prophet's Companions allowed differences of opinion and interpretation among themselves, a principle which should remain unchanged.⁴⁸

Abu Yusuf, the disciple of Abu Hanifah and chief judge under Harun al-Rashid, similarly spoke in a letter to the caliph about weaknesses in the rule of law, especially with regard to the prescribed *hudud* punishments. He asked the caliph: "if you would order that the *hudud* should be [regularly] implemented, it would help reducing the prison population, frighten the transgressors and prevent crime."⁴⁹

Writing on political legitimacy, Abu 'Amr al-Jahiz did not approve of absolute power for the caliph, stating that the basis of political authority should be the rule of law. He considered it a right of the Muslim community to oppose transgression of the law, even by the caliph. He argued that they must denounce and depose a caliph who violates the law.⁵⁰

Ibn Taymiyyah (d. 728/1348) also advocated the rule of Shari'ah as a matter of priority and a criterion of legitimacy. What was important, he stressed, was commitment to the rule of Shari'ah. The people should obey a ruler only as

long as he abides by the Shari'ah. He rejected hereditary succession, which had become prevalent, side by side with attempts to recognise the takeover of power by military means.⁵¹

Said Nursi (d. 1960) observed that "It is possible to deduce the truths of constitutionalism explicitly, implicitly, permissibly from the four schools of Islamic law."⁵² Nursi equated constitutionalism with Shari'ah, explaining that: "despotism is tyranny and oppression; constitutionalism is justice and shariah." Nursi wrote at a time when many Muslim scholars thought constitutionalism and Shari'ah were not compatible. In Hassan al-Turabi's (d. 1437/2016) assessment, an Islamic government is not exactly a 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 shariah approves the convictions of the people and, therefore, their direct will."⁵³

Shi'i scholars have taken a strongly affirmative view of constitutional government. Iran's constitutional revolution (1905-1906) was brought about by an alliance of '*ulama*', merchants and intellectuals, and became a landmark event for constitutionalism in the Muslim world. It started with protests against the policies of the governor of Tehran, but led to demands for legal and constitutional reforms that ended in the consent of the monarch in August 1906 to the creation of a national consultative assembly.⁵⁴ A key actor in this was Ayatollah Muhammad Kazim Khurasani (d. 1911) of Najaf and his prominent disciple, Muhammad Hussein Na'ini (d. 1936). Khurasani issued *fatwas* during the period of the constitutional revolution stating that "It is a [Shi'ite] religious requirement that during the Era of Absence [*ghaybah*] the government of the Muslims rests with the majority of the people."⁵⁵ In response to his many opponents, who rejected the principle of equality in the constitution as anti-Islamic, Na'ini argued that this principle was not only consistent with Islamic values, but was "among the most noble derived laws of the Islamic polity... and the basis and foundation of justice."⁵⁶ In his tract, *Tanbih al-Ummah wa Tanzih al-Millah* (1908), Na'ini further argued that in the absence of the Shi'a Imam, all rulers are fallible, and their fallibility can only be compensated for by constitutional restrictions on their powers and supervision by a representative assembly. He refuted further the anti-constitutionalists' argument that giving people freedom would lead to the abandonment of Shari'ah, pointing out that freedom is a fundamental pre-requisite of Shari'ah, while blind obedience to tyrants is tantamount to idolatry and therefore sinful in Islam.⁵⁷

A Qualified Democracy?

Asif Bayat rightly cautioned against generalisations and dichotomies, such as Islam versus democracy, which pits the two against each other, as if both were devoid of any internal complexity.⁵⁸ As Cook and Stathis note, however, democracy and Islam are both capable of multiple interpretations and applications. The history of Islam in particular reveals a rich mosaic, not a single operational paradigm.⁵⁹

Democracy is predicated on a set of principles, most important among which are the recognition of the inherent worth of every human being, representative and participatory government, the rule of law, equality of all citizens before that law, and a high level of tolerance towards unconventional views and beliefs. Islam contains principles which “make it highly responsive towards many of the moral and legal prerequisites of democracy.”⁶⁰ If democracy means a system of government 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.”⁶¹ A whole generation of Muslim scholars have tried to redefine concepts such as *bay’ah*, *shura* and *ijma’* in ways that may differ somewhat from their traditional usage, but which are “no more removed from their original meanings than modern European models of democracy are from the ancient Greek *demes*.”⁶²

Among the differences commentators have noted when comparing democracy to an Islamic system of rule is the attribution of sovereignty to God in Islam but to the people in a democratic state. In a democracy, the people may bring into being any legal order or system they wish for themselves, whereas an Islamic government is bound to implement the Shari’ah. Furthermore, democratic aims are generally material, whereas Islam speaks of both material and spiritual values. While democracy does not regulate personal morality, this too is of concern to an Islamic order.⁶³

Muhammad Iqbal (d. 1938) underlined the democratic impulse of Islam but said that the Muslims did not effectively develop the elective principle. This was due partly to the Persians and the Mongols, two great races who embraced Islam and formed Islamic 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, whereas the Mongols were given to tribalist methods.⁶⁴ Iqbal added that the position of the ruler in the eyes of the Shari’ah is the same as that of an ordinary Muslim. The basis of legislation, after the clear injunctions of the Shari’ah, is the agreement of the Muslim community.⁶⁵

Al-Qaradawi has moderated his earlier views of the 1960s and 70s on democracy, when he spoke of *al-hall al-Islami* (the Islamic solution). In his

1997 book, he has spoken forcefully against detractors of democracy, “for Islam advocates the people’s government...and there is essential harmony between Islam and democracy.” Islam, he noted, has resolutely denounced oppressive and arrogant rulers, the Pharaoh and the Kora, who sought to enslave and humiliate their people. The Prophet 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 “agent and employee of the community” who is accountable to it. This was amply shown in the statements of both the first and second caliphs, Abu Bakr and ‘Umar respectively. Al-Qaradawi adds that democracy is the fruit of a long-standing struggle in which the people successfully subjugated despotism. It is humanity’s shared achievement and “we are entitled...to take from others ideas and methods that benefit us and do not, in the meantime, clash with a clear and unequivocal text [i.e the Qur’an].”⁶⁶ Election, according to al-Qaradawi, is a form of testimony (*shahadah*) in which the electorate testifies to the suitability of a candidate. The electorate is under an obligation to give testimony and “discharge his electoral duty” to ensure only the strong and trustworthy are elected.⁶⁷

In Rached al-Ghanoushi’s opinion, “elimination of despotism (*al-istibdad*) is a higher purpose...as is also the principle of separation of powers between the various organs of state that moves the state further away from despotism... We prefer that separation of powers is taken as a principle of good government regardless of the form the state may take, be it parliamentary, presidential or any other.”⁶⁸

In an important document, entitled *Wathiqat al-Azhar Hawla Mustaqbal Misr* (al-Azhar’s Document about the Future of Egypt – dated 20 June, 2011), which was drafted and approved by al-Azhar’s top leaders, including its Rector Ahmed al-Tayyib, in addition to a mixed group of Egyptian intellectuals, philosophers, lawyers, and artists, al-Azhar articulated its position on Islam and state in Egypt. The main objective of this document was “to determine the principles regulating the relationship between Islam and the State.” The document called for the establishment of a “modern state” (*dawlah ‘asriyyah*), a “democratic transformation” (*al-tahawwul al-dimuqrati*), and the protection of Islamic principles from extremism (*ghuluw*), misinterpretation (*su’ al-tafsir*), and extremist currents (*at-tayyarat al-munharifah*) that rely on sectarian and immoderate religious rhetoric. The document also expressed its unequivocal support for “a constitutional democratic state, which practices separation of powers, and grants the people’s representatives the right to legislate in accordance with the true precepts of Islam, a religion that never in its history experienced a theocratic state.”⁶⁹

The balance of our discussion on democracy examines the following: consultation (*shura*); democracy in the Arab world, Indonesia and Malaysia; and the challenges of nurturing a culture of democracy.

Consultation (shura)

Shura features prominently in the Qur'an and is generally seen as the nearest equivalent within Islam to democratic governance. In one of its two verses on the subject, the Qur'an describes the Muslim community as those who "obey God, perform prayer, and who conduct their affairs by mutual consultation" (al-Shura, 42:38). The second verse on *shura* addresses the Prophet:

So (O Muhammad), pardon them (the Muslims) and ask forgiveness for them and consult them in the conduct of affairs. And when you are resolved, put your trust in God. (Aali-'Imran, 3: 159)

Interpreting this verse, the Qur'anic commentator al-Qutubi (d. 671/1273) wrote that consultation is a fundamental injunction (*min 'aza'im al-ahkam*) in Islam. When a ruler does not consult with men of knowledge and jurists, he must be discharged of his position. Al-Qurtubi's comment reinforces that of his predecessor, Abu Bakr al-Jassas, who stressed that "We (Muslims) are instructed to consult over our affairs."⁷⁰ Certainly, the Prophet resorted to consultation frequently. The Prophet's biographer, Ibn Hisham (d. 218/833), wrote that the Prophet consulted his people in an open meeting, saying "give me your opinion O people."⁷¹ Ibn Kathir similarly reported that in important matters a crier (*mu'adhdhin*) was instructed to repeatedly call the people to come to a meeting, and they would rush to the mosque for consultation.⁷² It is further reported that when 'Ali b. Abu Talib asked the Prophet about what should be done when Muslims face a problem that is not determined by the Qur'an or Sunnah, the Prophet said that such a problem should be solved through consultation with men of knowledge, not by an individual opinion.⁷³

The first caliph, Abu Bakr (d. 634), first engaged in consultation at the beginning of his reign, when he was to decide whether or not to fight the Apostates. The last occasion was shortly before his death, when he consulted with the people to select 'Umar as his successor.⁷⁴ 'Umar (d. 644) himself consulted with the people on many issues, including on the organisation of social security in the new community; on the appointment of governors and officials; on the establishment the *Hijri* calendar; on the building of a water facility between Makkah and Madinah to provide travelers with water; on limiting the absence of soldiers from their families to a maximum of four months; and on regulating punishments for offences by civil servants and officials. Shortly before his death, 'Umar also appointed a seven-member consultative committee to elect one from among themselves as caliph – known as the first electoral college in Islamic history.⁷⁵

Muhammad Husayn Haykal (d. 1956), formerly Egypt's Minister of Education and author of a biography of the Prophet, noted, however, that in early Islam *shura* did not constitute a check on the powers of the caliph. Even though the caliph had to consult the community, he was not answerable to it. Another renowned Egyptian, Taha Husayn (d. 1973), observed that the political system in early Islam was neither democratic nor absolutist as understood by the Greeks and Romans; it was a purely Arab system of government to which Islam added its own requirements.⁷⁶ A consensus has yet to emerge among Muslim scholars as to whether *shura* is obligatory or merely recommended. In our view, it is for the Muslim community and their representatives in the constitutional assembly to answer this question. But even if *shura* is recognised as a foundational element of an Islamic government, it still needs to be contextualised with other democratic principles in a modern constitution.

Leading Shi'ite scholars have held that, in the absence of the Prophet and Imam, affairs of state are determined by the will and consent of the community, as achieved through consultation. This was articulated by the late President of the Shi'ite Supreme Council of Lebanon, Muhammad Mahdi Shams al-Din (d. 2001), in his concept of *wilayat al-ummah*. He explained that following the Prophet's demise, the Ash'arites and Sunnis held the *ummah* to have become the locus of political authority, whereas according to Shi'ite doctrine only the Imam had a right to leadership. 'Ali b. Abi Talib was the first Imam to inherit that authority, and the succeeding Imams carried the title after him. But since the Twelfth Imam, Muhammad b. al-Hasan al-Mahdi (b. 869), remains absent, Shams al-Din argued that the *ummah* assumes his authority, exercising it through elective and consultative methods.⁷⁷

Ayatollah Khomeini's (d. 1989) idea of 'Guardianship of the Jurist' (*wilayat-e faqih*), on the other hand, entrusted that authority to a leading jurist, who would assume leadership and act as deputy (*na'ib*) of the Imam. Khomeini's notion effectively adjusted the Shi'ite doctrine postponing the establishment of an Islamic state until the return of the last Imam. *Wilayat-e faqih* thus enabled the jurist to establish an Islamic government during the Imam's absence, while Shams al-Din's concept of *wilayat al-ummah* transferred that authority to the wider community, thus agreeing with the Sunni position and thereby constructing a common doctrinal position on Islamic government among all Muslims.⁷⁸

Democracy in the Arab World, Indonesia and Malaysia: An Overview

Arab (and Muslim) exposure to democracy began in 1824, under Muhammad 'Ali of Egypt, when a group of Muslim students were sent to study in Europe.

Among these students was Rifa'ah al-Tahtawi, whose Paris diary recorded his admiration for democratic rule and the compliance of both rulers and their opponents to the rule of law, and 'Abd al-Rahman al-Kawakibi (d. 1902), whose book *Taba'i' al-Istibdad wa Masari' al-Isti'bad* (the nature of despotism and the harms of enslavement) was a most eloquent statement in support of democracy. A similarly affirmative view of democracy in Europe was later recorded by Muhammad 'Abduh (d. 1905). Since then, however, Arab efforts to introduce democracy at home have met with little success. Almost two centuries after al-Tahtawi, the Arab authors of the 2002 "Arab Human Development Report: Creating Opportunities for Future Generations," identified lack of democracy and human rights as core problems underlying the backwardness of the region.

Saad Eddin Ibrahim, a professor of sociology at the American University in Cairo, noted that tribalism, sectarianism, landlordism, and familyism among Arab societies provides a weak social base for a democratic order. Such centrifugal tendencies also work against Arab unity. What is needed is to strengthen modern aspects of civil society in the Arab world, which will pave the way for a democratic system of government.⁷⁹

Why is India democratic while most Arab states are not? Colonialism evidently does not provide a satisfactory answer. Could the rise of political Islam, acting as the new opposition to Arab autocrats, close this gap? This too has not happened.⁸⁰ Early post-colonial experiments with democratic rule in Egypt, Syria and Iraq led to disenchantment. The failure of democratic rule under a multi-party system smoothed the way for the many coup d'états that resulted in established military rule, the rampant corruption associated with multi-party rule leading to its replacement with the one-party systems of Nasserism and Baathism. Although the defeat of these secular populist regimes during the Six Day War of 1967 initially opened a kind of 'enlightenment', instigated by disillusioned Arab intellectuals, this was short-lived and succeeded by the rise of the so-called *al-hall al-Islami* movement advocated by al-Qaradawi and other Muslim Brotherhood spokesmen. The Arab Spring marked yet another inconclusive Arab attempt at democratisation. Beginning in Tunisia and later spreading to many other Arab countries, Tunisia alone is seen as a success story in its democratisation efforts. Although most commentators argue the Arab Spring has turned into a Cold Winter, Rached Ghanoushi, the intellectual leader of Ennahda, Tunisia's Islamic party, does not share this view, maintaining that "it is only a matter of time before the Arab countries recover their projects and itineraries on democracy."⁸¹

It is also important to note that the authoritarian backlash witnessed in the Middle East, the so-called Arab Winter following the Arab Spring, is part of a global phenomenon of authoritarian resurgence. It sits side-by-side, for

example, with the rise of Vladimir Putin and Russian aggression in Crimea and eastern Ukraine, and the fact that China has become more assertive domestically and in the South China Sea. This authoritarian resurgence has, however, had a greater effect in the Middle East than other regions; according to a Freedom House report, 12 of 18 countries in the region are more repressive today than they were before the Arab Spring.⁸²

Observers have noted a widening discursive interest in democracy in Indonesia. Whereas in many Muslim countries the call for the imposition of Shari'ah has become the focus of attention in recent decades, often at the expense of calls for democracy, in Indonesia calls for democratisation and Shari'ah are being heard in the public space simultaneously. That said, Indonesia also presents a coterie of different voices. Syafii Maarif confirms wide support for a functioning democratic system in Indonesia, but notes there are also those who oppose it, even a handful who denounce the nation state and democracy altogether, calling them a failure. They prefer restoring the historical caliphate based on the experience of the Rightly Guided Caliphs, ideas that could result, as Maarif adds, in an authoritarian dynastic structure that would do little to better the lives of many Muslims who have long been manipulated by anti-democratic and power-hungry leaders.⁸³

It will be noted that democracy, or *mushawarah*, is one of the five headings of Indonesia's Pancasila (five guiding principles of the nation), as per the Preamble of the 1945 constitution, a document with "strong emotional and enduring significance for most Indonesians as it is the symbol of the struggle for independence from colonialism."⁸⁴ These principles are, to wit: 1) Belief in One Supreme God, 2) Just and Civilised Humanity, 3) The Unity of Indonesia, 4) Democracy Guided by Inner Wisdom achieved through deliberation and representation; and 5) Social Justice for the entire people of Indonesia.

Indonesia's 1945 constitution has been amended four times to mark a transition to democracy. This transition to democracy started in May 1998, when Suharto, who had used the constitution to stay in power for over 30 years, was forced to resign. It was decided to amend it without replacing it; in consequence, it was amended four times in rapid succession, in 1999, 2000, 2001, and 2002. The first amendment changed nine articles of the constitution with the aim of reducing the powers of the presidency and strengthening the powers of the House of Representatives. The second amendment changed and extended eight articles aimed at strengthening local government, guaranteeing human rights, defining the functions of the armed forces and police, and restating the national symbol and anthem. The third amendment changed and extended nineteen articles on a host of themes: sovereignty of the people, rule of law, presidential form of government, formation of regional representative councils,

general elections, taxes, state finance, state auditory bodies, independence of the judiciary and the central bank. Finally, the fourth amendment dealt with national education and culture, the national economic system, amendment mechanisms, and transitional provisions.⁸⁵

Broadly, Malaysia's Malay Muslim discourse does not accord democracy a premium stake, with it rarely being taken up in religious and intellectual circles. Nevertheless, one often finds voices for social justice, gender equality, pluralism and reform amongst some progressive groups. The latent interest in *wasatiyyah* (moderation) also embraces the notions of social justice. But there is a certain absence of public discourse on democracy itself. Generally, the discourse on democracy occurs within the formal context of political parties and power maneuvering in the electoral system. By contrast, a critical discussion of the role of Islam and democracy in the public sphere is not prominent. This may be unsurprising as Islamic discourse in Malaysia is circumscribed by state control of religion and the sentiment of political and religious conservatism. By contrast to Pancasila, for instance, democracy does not feature in the Rukun Negara (principles of nationhood) of Malaysia, which are, to wit: 1) Belief in God, 2) Loyalty to King and Country, 3) the Supremacy of the Constitution, 4) Sovereignty of the Law, and 5) Courtesy and Morality.⁸⁶

That said, Malaysia's political system has a number of features which set it apart from the Third World's authoritarian regimes. Malaysia is, for example, open to the participation of minorities in national affairs according to democratic procedures. Ever since its independence in 1957, fourteen general elections have been regularly held, on the whole without any problems. Throughout this period, civilian authority has been the rule; apart from an almost two-year period of "suspended democracy" following racial riots after the 1969 elections, parliamentary democracy has functioned continuously. The 14th general election was the most remarkable in that a coalition of minority parties under Pakatan Harapan (alliance of hope) won the election, managing to unseat the ruling party UMNO and its Barisan National coalition, which had held power for 61 years. This transition occurred completely peacefully, such that Malaysia won the admiration of both the international community and its neighbours. This has substantiated Girling's earlier assessment that democratic elections do have substance in Malaysia because "alternative choices to the ruling party alliance still exist."⁸⁷ In Alatas's assessment, "The real test of our democratic state today lies in its attitude and tolerance towards criticism, opposition, dissent...our government does not seem to see itself as servants of the people but rather as our masters."⁸⁸

Challenges of Nurturing a Culture of Democracy

Democracy and culture need to be contextualised. One must acknowledge the existence of culturally different understandings of democratic rule, not only between civilisations – e.g. between Islam and the West – but also at an intra-civilisational level – e.g. within the West itself, or within Islamic civilisation. The issues of democracy in Indonesia and Malaysia are different, for instance, to those in the Arab world.⁸⁹ In a widely publicised conference entitled ‘The crisis of democracy in the Arab world,’ held in Cypress in 1983, it was suggested that for the Middle East to evolve in a positive direction, there needs to be: 1) a revision of the Western understanding of democratisation in order to enable the concept to take root in the Middle East, and 2) a change in the prevailing patterns of Middle Eastern political culture towards acceptance of cross-cultural democratic values.⁹⁰ That said, the search for a common, post-bipolar world order requires the acceptance of the basic rules and common values of democracy. The honouring of cultural peculiarities must have its limits so as to prevent a cultural relativism that denies the universal outlook shared by all humanity.

The challenge of democracy lies in nurturing its organic growth among the people, of developing a democratic ethos in education, mass media, and the practice of citizenship. Theoretical statements are not enough to make democracy a reality in people’s lives. It is persistent practical education, culture, art, and sustained commitment to the actualisation of democratic principles that will produce results. If people only hear about democracy during election campaigns, that suffices to signal a low level of democratic literacy. It may be relatively easy to establish a democratic process in the political system, but that is no guarantee that a democratic ethos will be sustained and expanded. Democracy cannot be effectively entrenched in a society if it remains only the business of the few, of power-hungry political democrats. Rather, there must be sustained engagement with the grassroots at the local level of state, country and municipality.⁹¹

Zakaria (2004) and Fish (2002) have, in their respective surveys, examined the role of different factors in the relation between Islam and democracy. They have looked at economic performance, colonial heritage, authoritarianism, socio-cultural divisions, OPEC membership, and Islamic religious tradition. They both confirm a correlation between a lack of democracy and the relatively low status of women, concluding that female empowerment may be expected to contribute to democratisation.⁹² They also identified the following variables as capable of actively promoting democratisation: 1) a strong state with institutions and public servants acting on public interest; 2) economic progress that sustains democratisation; 3) inclusion of all minorities; and 4) elites that actively participate in the process of democratisation.⁹³

Negative variables that must be addressed to make democratisation viable include: 1) hegemony of power politics, where political parties and elites dominate the political discourse, including the very meaning and scope of democracy. This is likely to impede engagement in democratic ideas outside the political circle; 2) absence of active intellectual discourse and lack of engagement in critical ideas of importance to democracy; 3) the passivity of civil society and institutions where apolitical positions and conservative sentiments set-in and persist; 4) educational rigidity, where critical literacy and democratic citizenship are seen as political intrusions; 5) persistence of religious exclusivism, where claims of religious authenticity put religion and democracy on different planes, as if the one has nothing to do with the other; 6) widening inequality that dominates society, where market rules and elitism are deemed as natural ways for society to progress, and the wealthy few are able to maximise profits at the expense the masses; and 7) moral leadership that is “blind to morality and responsibility.”⁹⁴

Religious education in many Muslim countries has remained aloof to values it must take up and promote. It must, for example, affirm the significance of human dignity, social justice, equality and the rule of law, which are all constituent parts of democracy. A progressive, value-oriented religious discourse is important for democracy. Even if religious education is not the only factor to ensure democracy, a non-rejectionist stance therein will at least pave the way for the acceptance of democracy. A democratically engaged Muslim public could act as a counter force to undemocratic authoritarian leadership. When interpretation of religion is more democratically nuanced and supported by the larger Muslim public, it augurs well for democracy to become entrenched.⁹⁵

Abdurrahman Wahid, former president of Indonesia, thought it of little significance for Muslim intellectuals to speak at length on the compatibility of Islam and democracy. Nevertheless, he felt it necessary that Muslims develop a strong affinity for democracy, something that would require the transformation of the religious tradition: “Religion can contribute to democracy when it has a liberation character.” Overall, Wahid emphasised democratisation as a cultural and not just political process. One can build democratic institutions, but that is no guarantee of democracy unless there is also cultural input.⁹⁶

One other challenge Muslims need to address is the threat of political Islamists, who use religious symbolism to secure their own political interests. “The religion that ought to buttress civilisational idealism and universal human values has been hijacked by profane goals that are parochial, shallow and misleading.”⁹⁷

Conclusion and Recommendations

Islamic political thought has remained under-developed due to a variety of factors, notably a drastic swing from a caliphate to a monarchy, resulting in the prevalence of dictatorship and hereditary rule. There are still forces that cling to these historical aberrations in disregard of normative guidelines and popular demand. The apparent failure of the Arab Spring is a telling illustration. In the past, dynastic practices even persuaded the jurists to articulate a questionable theory of the caliphate that stood at odds with the republican spirit of the early *khilafah*. Aggressive colonialism also took its toll, impeding intellectual originality and leadership among the Muslims. Islamic scholarship remained largely apologetic during much of the twentieth century, although signs of renewal and reform, including the demand for such, have since strengthened. We reinforce the need for decisive change, not just in theoretical proclamations, but in practice. We therefore recommend the following:

- In the past, Islamic principles such as consultation, general consensus, pledge of allegiance, accountability, and reasonable disagreement were not institutionalised. As a result, they have remained little more than pious declarations, easily ignored by unyielding dictators. It is now time for these to be developed into practical guidelines for the conduct of rulers and the ruled alike. The modalities of acting upon them may be defined and calibrated in tandem with other socio-economic and political variables.
- Shari'ah law has formerly been accepted as a guide for legal practice in courts, but not for rulers. The latter often used policy measures/*siyasa*h and rule by decree in the name of *maslahah*, but often without testable mechanisms to verify such. This must also change under constitutional legality, which defies open-ended discretion. *Siyasa*h should now operate in a narrowly defined sphere, regulated by law.
- A constitution serves as an instrument of limitation on coercive power, as well as a commitment by state functionaries and institutions to observe the law. Such documents are therefore compatible with Islam and should be adopted.
- Belief and action (*'aqidah wa 'amal*) go hand-in-hand in the Qur'anic order of values, but it is the latter that acquires greater significance in the business of government and courts of justice – as can be seen in the *fiqh* maxim: “The affair/conduct of the imam (read government) is judged on the basis of *maslahah*.”

- The head of state and all government officials, pious or otherwise, are accountable for their conduct before the courts of justice, without immunity or privilege. This must also be translated into constitutional guidelines and action.
- The recognition in Shari'ah of custom (*'urf*) and consensus (*ijma'*) as a basis of law and judgment, in addition to the right of the people to advise rulers through *nasihah*, refuse an unlawful command, and ultimately depose a deviant ruler, give substance to a people-centric democratic system of government in Islam. It is now time to develop these principles into practical political and constitutional reforms.
- Theoretical proclamations are no longer adequate. A paradigm shift is needed, to instill the image of stewardship and accountability in the conduct of rulers and government institutions in present-day Muslim countries.
- Islam does not subscribe to a particular form of government, rather accepting any law-abiding model of government that upholds the essence of Islamic morality and beliefs, while proscribing hereditary rule, theocracy and dictatorship. The Shari'ah draws certain lines of distinction between dogma, morality and law, between a religious obligation and a juridical obligation, in such a way as to substantiate a civilian system of government. These, too, should be translated into actionable constitutional guarantees.
- Our religious leaders, educators and *'ulama'* have remained aloof to the merit and value of just governance, law-abiding citizens, and the rule of law. They should now nurture these values in the people via their speech, conduct, and writings.

Notes

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1. Yusuf al-Qaradawi, *Min Fiqh al-Dawlah fi 'l-Islam* (Cairo: Dar al-Shoruq, 1997), 200pp.
2. Lecture series by Shakyh Ahmad Huraydi held at the University of Cairo as quoted by Fu'ad Abd al-Mun'im Ahmad, *Usul Nizam al-Hukm fi al-Islam* (Alexandria: Mu'assasah Shabab al-Jami'ah, 1411/1991), 15-6.
3. Constitution of Madinah (art. 25-26). An English translation of the *Dustur al-Madina* appears in W. Montgomery Watt, *Islamic Political Thought: The Basic Concepts* (Edinburgh: Edinburgh University Press, 1968), 130-4.
4. Constitution of Madinah (art. 25).
5. Quoted in Ibn 'Abd Rabbih, *Kitab al-'Iqd al-Farid*, ed. Ahmad Amin, Ahmad al-Zayn and Ibrahim al-Abyari, vol. 2 (Cairo: Lajnat al-Ta'lif, 1965), 357.
6. Abu al-Hasan al-Mawardi, *Kitab al-Ahkam al-Sultaniyyah wa'l-Wilayat al-Diniyyah* (Cairo: Matba'at al-Sa'adah, 1327/1959), 7 and Abu Ya'la al-Farra', *al-Ahkam al-Sultaniyyah*, ed. Muhammad Hamid al-Faqi, 2nd ed. (Cairo: Mustafa al-Babi al-Halabi, 1966), 23. The only difference in the two wordings is that al-Farra' uses the standard phrase *ahl al-hall wa'l-'aqd*, in contrast to *ahl al-'aqd wa'l-hall*. The latter seems to be more accurate.
7. Cf., al-Mawardi, *al-Ahkam*, 7 and al-Farra', *al-Ahkam*, 37 respectively for their discussion of *imarat al-istila*'.
8. Writers who distinguish the two *bay'ahs* include 'Abd al-Malik Ibn Hisham (d. 218/833), Ibn Qutaybah (d. 276/889), Abu al-'Abbas Muhib al-Din al-Tabari (d.694/1295), and Ahmad al-Qalqashandi (d.821/1418/). See Mahmud 'Abd al-Majid al-Khalidi, *Qawa'id Nizam al-Hukm fi 'l-Islam* (Kuwait: Dar al-Buhuth al-'Ilmiyyah, 1980/1400), 262.
9. 'Abd al-Malik Ibn Hisham, *al-Sirah al-Nabawiyyah*, as quoted in al-Khalidi, *Qawa'id*, 262f.
10. The phrase *ahl al-hall wa'l-'aqd* does not occur in the Qur'an or hadith. The nearest Qur'anic term to it is *uli al-amr* (those in charge of community affairs – Q. al-Nisa', 4:59). But since the caliphate as a political institution is not mentioned in the Qur'an, Muslim political jurists might have hesitated to use a Qur'anic term for something which does not occur therein. *Ahl al-hall wa'l-'aqd* is thus employed in the language of political jurisprudence, occurring alongside a number of other equivalent expressions, such as *ahl al-ikhtiyar*, *ahl al-ijthad*, *ahl al-shura*, *ahl al-shawkah*, and *ahl al-'asabiyyah*. In the Mawardian theory, all these refer to persons whose granting of *bay'ah* to a would-be leader concludes the imamate contract.
11. Al-Mawardi, *al-Ahkam*, 6; al-Farra', *al-Ahkam*, 24; al-Rayis, *al-Nazariyyat al-Siyasiyyah*, 223-4. Ibn Khaldun has termed the second of these *kafa'ah* (efficiency).
12. Al-Mawardi, *al-Ahkam*, 7-8; al-Farra', *al-Ahkam*, 24.
13. Al-Farra', *al-Ahkam*, 25.
14. Imam al-Haramayn 'Abd al-Malik al-Juwaini, *Kitab al-Irshad ila Qawati' al-Adillah fi Usul al-'I'tiqad*, annotated by al-Shaykh Zakariyya 'Umayrat (Beirut: Dar al-Kutub al-'Ilmiyyah, 1416/1995), 169.
15. Al-Juwaini, *al-Ghiyathi: Ghayath al-umam fi iltiyas al-zulam*, ed. Khalil al-Mansur (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997), 34-5; see also *al-Irshad*, 170.
16. Al-Juwaini, *al-Ghiyathi*, 72.

17. Cf., Muhammad Khalid Masud, *Shari'a Today: Essays on Contemporary Issues and Debates in Muslim Societies* (Islamabad: National Book Foundation, 2013), 148-9.
18. The verdicts/*fatawa* of the Companions are also authoritative in matters of concern to Islamic jurisprudence (*usul al-fiqh*) under the rubric, in particular, of *fatwa al-sahabi*. For details on *fatwa al-sahabi*, see Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd revised ed. (Cambridge: Islamic Texts Society, 2003), 313-23.
19. Al-Mawardi and al-Juwaini were followers of the Shafi'i school, whereas al-Farra' was a Hanbali. Al-Mawardi and al-Farra' were both career judges, whereas al-Juwaini, the teacher of Abu Hamid al-Ghazali, was a respected scholar. His teaching circles were said to have been attended by some three hundred *fiqh* scholars.
20. Cf., Mohammad Hashim Kamali, 'Constitutionalism and Democracy: An Islamic Perspective,' *Islam and Civilisational Renewal* 2, no. 1 (2010): 19. See also Frank I. Michelman, *Brennan and Democracy* (Princeton: Princeton University Press, 1999), 5-6.
21. Lawrence H. Tribe, *American Constitutional Law*, 3rd ed. (New York: Foundation Press, 2000), 20.
22. Muslim, *Sahih*: K. al-Amanah, B. Wujub ta'at al-umara' fi ghayr ma'siyyah wa tahrimuha fi'l ma'siyyah, Hadith no. 39. This Hadith is reported unanimously (*muttafaqun 'alayh*). See also Abd al-Hamid Mutawalli, *Mabadi nizam al-hukm fi 'l-Islam* (Alexandria: Munsha'at al-Maarif, 1974), 92f.
23. Cf., Kamali, 'Constitutionalism and Democracy,' 25; see also Basdemir, 'Islam and Politics Today,' 135.
24. Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, ed. and annotated Saeed Sheikh (Lahore: Institute of Islamic Culture, 1976), 123.
25. John L. Esposito and John Voll, *Islam and Democracy* (New York: Oxford University Press, 1996), 25f.
26. Hasan Turabi, 'The Islamic State,' in *Voices of Resurgent Islam*, ed. John Esposito (New York: Oxford University Press, 1983), 243.
27. Cf. Kamali, 'Characteristics,' 32.
28. Art. (8), *The Mejelle*, trans. C.R. Tyser (Lahore: Law Publishing Co., n.d.).
29. Abu Yusuf Ya'qub ibn Ibrahim, *Kitab al-Kharaj*, 2nd ed. (Cairo: al-Matba'ah al-Salafiyyah, 1352), 152; Fathi 'Uthman, *Al-Fard fi 'l-Mujtama' al-Islami* (Cairo: Shirkah Matabi' al-I'lanat al-Sharqiyyah, 1382/1962), 37.
30. Subhi Mahmasani, *Arkan Huquq al-Insan fi 'l-Islam* (Beirut: Dar al-Fikr, 1979), 106.
31. Bayhaqi, *Sunnan*: K. al-Da'wa wa'l bayyanat, B. al-bayyanah'ala al-mud'ai wa'l yamin 'ala mud'a 'alayh.
32. Ibn Qayyim, *Al-Turuq al-Hukmiyyah*, 28.
33. Mahmud Shaltut, *Al-Islam: 'Aqidah wa Shari'ah* (Kuwait: Dar al-Qalam, 1966), 327.
34. Muhammad Abu Zahrah, *Al-Jarimah wa'l-'Uqubah fi 'l-Fiqh al-Islami*, (Cairo: Dar al-Fikr, n.d.), 185. See also Muslim, *Sahih*: K. al-Iman, B. al-Islam yahdim ma qablah wa kaza al-hijrat wa'l-Hajj, hadith no. 192.
35. See Mahmud Shaltut, *Al-Islam*, 327. See also 'Abd Al-Wahhab al-Sha'rani,

- Kitab al-Mizan*, vol. 2 (Cairo: Matba'at al-Husayniyyah, 1329 AH), 125.
36. 'Abd al-Qadir 'Awdah, *al-Tashri' al-Jina'i al-Islam*, vol. 1 (Beirut: Dar al-Fikr, 1403/1938), 115. The Arabic version of the maxim reads: *la-hukm li-af'al al-'uqala' gabl wurud al-nass*.
 37. Abu Hamid Muhammad al-Ghazali, *Al-Mustasfa min 'Ilm al-Usul*, vol. 1 (Cairo: Al-Maktabat al-Tijariyyah), 63; Sayyid al-Din al-Amidi, *Al-Ihkam fi Usul al-Ahkam*, 2nd ed., vol. 1 (Beirut: Al-Maktab al-Islami, 1402/1982), 130.
 38. 'Abd al-Wahhab Khallaf, *Ilm Usul al-Fiqh*, 12th ed. (Kuwait: Dar al-Qalam), 173.
 39. Cf. 'Awdah, *Tashri'*, 117.
 40. Ibid., 138-49.
 41. Abu Zahrah, *Al-Jarimah*, 209.
 42. Al-Mawardi explains that some jurists, like 'Abd Allah al-Zubayri al-Shafi'i, have stated a maximum limit of one month detention for the purposes of investigation. Others have suggested different time limits, but the best view is that the *Imam* may specify the limit as he deems fit, see *al-Ahkam al-Sultaniyyah*, 192; 'Awdah, *al-Tashri'*, 150.
 43. Abu Zahrah, *Al-Jarimah*, 208; 'Awdah, *al-Tashri'*, 308.
 44. Ibid., 33; 'Awwa, *al-Fiqh*, 6:170-1.
 45. Joseph Schacht, 'Islamic Law in Contemporary States,' *The American Journal of Comparative Law* 8 (1959): 19.
 46. Muhammad Rashid Rida, *Fatawa Imam Muhammad Rashid Rida*, comp. Salah al-Din Munjid and Yusuf Khuri (Beirut: Dar al-Kitab al-Jadid, 1390AH/1970), 805-8; Mahmud Hilmi Mustafa, *Nizam al-Hukm al-Islami*, 6th ed. (Cairo: n.p., 1401AH/1981), 122.
 47. See Ibrahim al-Marzuqi, 'Political Rights and Democracy in Islamic Law,' in *Democracy, Rule of Law and Islam*, ed. Eugene Cotran and Adel Omar Sherif (The Hague: Kluwer Law International, 1999), 465.
 48. Cf., Ahmed Fikry Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (New York: Syracuse University Press, 2015), 35-6.
 49. Abu Yusuf Ya'qub b. Ibrahim, *Kitab al-Kharaj*, 5th ed. (Cairo: al-Matba'ah al-Salafiyyah, 1396/1976), 163.
 50. For a summary of al-Jahiz's views, see Muhammad Khalid Masud, *Shari'a Today: Essays on Contemporary Issues and Debates in Muslim Societies* (Islamabad: National Book Foundation, 2013), 147-8.
 51. Taqi al-Din Ibn Taymiyyah, *al-Siyasah al-Shar'iyyah fi Islah al-Ra'i wa'l-Ra'iyyah*, ed. 'Ali Sami al-Nashshar and Ahmad Zaki 'Atiyyah, 2nd ed. (Cairo: Dar al-Kitab al-'Arabi, 1951), 170. For more details on Ibn Taymiyyah's views, see Mohammad Hashim Kamali, 'Political Jurisprudence in Islam: Historical and Contemporary Perspectives,' *The Muslim World* 106, no. 2 (2016): 398-9.
 52. Cf., Sukran Vahide, *The Author of Risla-Nur; Bedi'uzzaman Said Nursi* (Istanbul: Suzler Publications, 1992), 73. See also Yunus Cengel, 'Nursi's Approach to Modern Values, and Justice in Governing.' Available at: <http://www.bediuzzamansaidnursi.org/eicerik/nusir> (Accessed on: 4 October 2018).
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60. Enayat, *Political Thought*, 126.
61. *Ibid.*, 128.
62. *Ibid.*, 135.
63. Al-Qurshi, *Nizam al-Hukm*, 104f.
64. Quoted by Mazheruddin Siddiqi, *Modern Reformist Thought in the Muslim World* (Islamabad: Islamic Research Institute, 1982), 127.
65. Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Ashraf Press, 1982), 157; see also Siddiqi, *Modern Reformist Thought*, 127.
66. Al-Qaradawi, *Min Fiqh al-Dawlah*, 130-47.
67. *Ibid.*, 138. See also Mahmud Ahmad Ghazi, *State and Legislation in Islam* (Islamabad: Shariah Academy, 2006), 53.
68. Rachid al-Ghanoushi, *al-Hurriyat al-'Aama fi'l-Dawla al-Islamiyya* (Beirut: Marekaz Dirasat al-Wahda al-'Arabiyyah, 1993), 248.
69. Al-Azhar Document 2011, as quoted in Ibrahim, *Pragmatism in Islamic Law*, 225.
70. Abu 'Abd Allah Muhammad ibn Ahmad al-Qurtubi, *Tafsir al-Qurtubi*, vol. 4, 249; Abu Bakr Ahmad b. 'Ali al-Razi al-Jassas, *Ahkam al-Qur'an*, vol. 3, 386. Both have been quoted in al-Marzouqi 'Political Rights,' 458.
71. See Ibn Taymiyyah, *al-Siyasah*, 213; 'Abd al-Malik Ibn Hisham, *al-Sirah al-Nabawiyyah*, vol. 2 (Beirut: Dar al-Fikr lil-Tiba'ah wa-al-Nashr wa-al-Tawzi, 1992), 272.
72. Abu al-Fida' Isma'il Ibn Kathir, *Tafsir al-Qur'an al-'Azim* (also known as *Tafsir Ibn Kathir*), vol. 3 (Cairo: Mustafa Muhammad, 1937), 64. Ibn Kathir adds in this connection the Qur'anic verse al-Nur 24:62: "When they (the Muslims) meet (the Prophet) on a matter requiring collective action, they do not depart until they have asked for his (the Prophet's) leave."
73. Al-Jawziyyah, *I'lam al-Muwaqqi'in*, vol. 1, 65.
74. Ahmad b. Yahya al-Baladhuri, *Kitab Futuh al-Buldan*, as quoted in al-Marzouqi, 'Political Rights,' 460.
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 80. Bassam Tibi, 'Islam, Freedom and Democracy in the Arab World,' in *Democratisation in the European Neighbourhood*, ed. Michael Emerson, Senem Aydin and Senem Aydin Duzgit (Brussels: The Centre for European Policy Studies, 2005), 94-5.
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 84. Ramlan Subakti, 'Constitutional Transition: Indonesian Experience,' in the Proceedings of the Istanbul Network 5th International Conference, *Democratic Transformation in the Muslim World* (27-28 November 2017), 1.
 85. For details, see *ibid.*, 1-5.
 86. Cf., Abdul Hadi Awang, *Islam dan Demokrasi* (Batu Caves: PTS Publications and Distributors, 2007) and A. Kadir Jasin, *Membangun Bangsa Dengan Mata Pena* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2009), as discussed by Ibrahim, 'The Nurturing of Democratic Ethos,' 111-2.
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 88. Syed Farid Alatas, 'Democratic Transition in the Muslim World: Prerequisites and Obstacles,' in the Proceedings of the Istanbul Network 5th International Conference, *Democratic Transformation in the Muslim World* (27-28 November 2017), 27.
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 92. Zakaria, 'Islam, Democracy, and Constitutional Liberalism,' *Political Science Quarterly* 119, no. 1 (2004): 6; M. S. Fish, 'Islam and Authoritarianism,' *World Politics* 55, no. 1 (2002): 4-37.
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94. Cf., Ibrahim, 'Nurturing of Democratic Ethos,' 112f.

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