THIRTEEN

Democracy and the Modern Islamic State

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The Islamic state is, in theory, Allah's state, or the Kingdom of God on earth, and the Muslims constitute Allah's party (b'hizbullah). The mode of life which a Muslim is commanded to follow can only be followed if he is a member of a politically or economically free community. Consequently, the Muslim community must strive to establish a state wherever it is possible to establish a viable state. A state which is managed and administered in accordance with Islamic law is technically called dar al-salam (country of peace). If a dar al-salam or an Islamic state is politically or economically subjugated by a non-Muslim power, it will be transformed into dar al-harb (country of war), and the Muslims shall be left with only two alternatives: either to conduct a jihad in order to regain their independent status or to migrate (hijra) to some Muslim country.

Consequently, a Muslim is to render obedience firstly to God, then to the Holy Prophet, and lastly, to those members of the Muslim community who command authority over him provided that they are acting only in execution of the commands of God and the Holy Prophet. (Thus, it is evident that rendering obedience to those who command authority over the Muslim community is conditional.) This obligation ceases if the above condition is not fulfilled. In case they insist on obedience to that which does not come from God and the Holy Prophet, then any member of the Muslim community or the community as a whole is legally entitled to rebel against them and to replace them.

The Islamic state is based on a two-fold concept of happiness. It must provide for the realization of happiness for the Muslim community (ummah) in this world as well as a preparation in the world hereafter. These objectives of an Islamic state necessitate that the Muslim community be founded on the principles of equality, solidarity, and freedom.

Muslim jurists have emphasized three important components of an Islamic state: the Muslim community, Islamic law (shariah), and the leadership of the Muslim community, the caliph (khilafah). Since absolute authority or ultimate sovereignty vests in God, the Islamic state upholds the supremacy of His Prime Will as expressed in Islamic law. Further, since the Muslim community is to be governed in accordance with the Islamic law, it must have a directing head to implement or execute the law. According to the Islamic faith, law has already been laid down by God in the Quran. The head of the Islamic state, therefore, is only an executive authority and has no inherent power to legislate. Wherever the law is clearly laid down in the Quran, he must implement or execute it. He is authorized to make subordinate legislation guided by these laws and principles. He can appoint a Council of Advisers (majlis-i-shura) which must be consulted in making subordinate legislation for other administrative matters, but he is not bound by their advice.

The head of the entire Muslim community is called caliph (khilafah, the successor of the Holy Prophet) or imam (leader). The judiciary has the power to interpret the Islamic law and to adjudicate in accordance with the same. According to the Sunni view, the appointment of the caliph as head of state is to be confirmed by the Muslim community through its consent, which is formally obtained by means of bay'a (a symbolic oath of allegiance). The bay'a is a contract in which two parties are involved. The Muslim community is to render obedience to the caliph in consideration of the caliph's promise to govern the Muslim community in accordance with Islamic law. If there arises any dispute between the parties, then according to the Quranic injunction, the matter may be referred to the judiciary for adjudication in accordance with the Quran and the Sunna. The judgment of the court shall be binding on both the parties (S. 4:49). If the dispute cannot be resolved through peaceful means, the Muslim community or any member thereof is entitled to rebel against the erring caliph and to replace him with another leader or imam.

In an Islamic state the people are not vested with ultimate sovereignty, nor does absolute authority rest with the head of the state or with parliament. Ultimate sovereignty and absolute authority only vest in God, and the only principle operative in an Islamic state is the supremacy of Islamic law. Using modern terminology, therefore, the Islamic Constitution has only two important organs: the executive and the judiciary. The third organ, i.e., the legislature, is not an important feature since all legislation has already been made by God in the Quran which is only to be implemented or executed by the caliph who in consultation with his Council of Advisers or otherwise may make subordinate legislation by way of ordinances.

There are two verses in the Quran with respect to consultation: “They conduct their affairs by mutual consultations” (S. 42:38) and “Consult them in affairs and when thou hast taken a decision, put thy trust in Allah” (S. 3:159). In the first verse, consultation is recommended and does not create an obligation. However, it is descriptive of the nature of the Muslim community which is expected to conduct all its affairs by mutual consultation. The second verse,
which is addressed to the Holy Prophet and contains a command and the principle that "those who command authority" ought in all matters of importance to consult the Muslims, is undisputed.

Ibn Khaldun has pointed out the following important distinction between an Islamic state and a secular state: The Islamic state is governed in accordance with the laws of God as revealed in the Quran whereas a secular state is governed by laws made through human reason. There are other important differences between an Islamic state and a modern secular state. A modern secular state must have three features: it must be fully sovereign; it must be national; and it must have well-defined territories. When these three features exist, a state can legitimately claim to be a sovereign state. However, an Islamic state, although sovereign from this accepted standpoint, is not fully sovereign because according to the faith of Islam, ultimate sovereignty vests only in God. Strictly speaking, it is also not a national state because the Muslim community (ummah) is a community of faith and consists of peoples who may belong to different tribes, races, or nationalities, and may speak different languages and be of different colors, but who share a common spiritual aspiration, i.e., their faith is Islam. Consequently, an Islamic state is a multinational state. An Islamic state is not a territorial state in the strict sense of the term, because it aims and aspires to become a universal state. Nevertheless, it is not a utopia or an imaginary state. It has to be initially founded as a territorial state, although the territories are expected to expand.

The Quran has ordained that only the most suitable person is to be appointed head of state (§ 4:58), though this is even logically the duty of those making the appointment; but no specific method for the appointment of a caliph, i.e., universal head of the Muslim community, is laid down in the Quran. This was quite natural because the Quran is concerned mainly with matters relating to right and wrong or good and evil, and is not concerned with matters relating to planning (badhir). That the best person ought to be appointed is a matter relating to right and wrong, but the question as to whether a particular process employed for determination of the best person will be successful or not is a matter relating to efficiency and wisdom in the light of prevailing conditions. Similarly, no procedure has been prescribed for the deposition of the head of state or caliph. According to the Sunni view, the Holy Prophet did not nominate or appoint any successor after him, nor did he lay down any rule or method for constituting or deposing his successor. These structures were to be evolved in the light of the good sense of the community as they were not meant to be permanent, but were subject to the law of necessity in accordance with the requirements of the Muslim community from time to time. Consequently, the real object of Islam is to establish a community of faith governed by Islamic law (the shariah), and for its enforcement, the Muslim community is at liberty to determine any mode of constitutional structure which suits its requirements.

During the normative period of the First Four Rightly Guided Caliphs (632 A.D. to 661 A.D.), different methods were adopted for the appointment of the caliph, and in all four cases the appointment was confirmed by the Muslim community's oath of allegiance (bay'a) which was formally obtained. Generally speaking, the methods adopted during this period had a common feature, i.e., the selection of the best man followed by the bay'a of the Muslim community. The majority principle, although not specifically disapproved, was not followed.

In the historical process of transformation from 661 to 1258 the interaction of numerous forces and events led to changes in the caliphate in substance as well as form. Nevertheless, the role of Muslim jurist had throughout been to bridge the gulf between the ideal and the real, theory and practice, by attempting to provide an Islamic rationale for every change in order to maintain the continuity of the Islamic character of the community. Therefore, if the period of the Rightly Guided Caliphs had provided an ideal Islamic polity, the development of later constitutional thought represented a rational justification of the formal and substantial departures from the ideal under the pressure of circumstances. During this period, according to the Sunni jurists, replacement of a caliph by another through force or coercion was considered as a legitimate method of change of government. It may be pointed out at this stage that according to some Sunni jurists—Shah Wali Ullah, for example—methods for constituting a caliph or imam are restricted only to those adopted by the Rightly Guided Caliphs or through coercion. According to al-Mawardi, the rule of a usurping leader (amir) is legitimate if he governs the state in accordance with Islamic law. This is similar to al-Ghazzali's doctrine of necessity; that the tyranny of a usurping amir is preferable to chaos. Since the source of strength of a usurping amir is his own power, some jurists are of the view that he does not require the consent of the Muslim community. However, others think that he too requires the approval of the Muslim community in addition to governing the state in accordance with Islamic law.

So long as the Muslim world remained one and united, theoretically it was managed and administered by a Universal Caliphate, even though it had been transformed into a hereditary or dynastic monarchy. There has been an instance in the history of Islam of the establishment of more than one caliphate at the same time in Baghdad, Cairo, and Cordova. But even during that period, two of the additional caliphates in Cairo and Cordova eventually disappeared, and only the one in Baghdad survived. After the sack of Baghdad by the Mongols when the Abbasid Caliph was put to death in 1258, there was for a period of three years (1258–61) no caliph in the world of Islam. However, in the later period of Islamic history when numerous rulers managed to acquire power or
controlled specific territories in the world of Islam and the Universal Caliphate only existed in name, these rulers did not adopt the title of caliph or imam but remained content to call themselves amirs, sultans, or pashas.

The modern revival of Islam commenced from the eighteenth century onwards when gradually numerous independent or semi-independent Muslim national states emerged. In some of them, hereditary or dynastic monarchy was the order of the day, and in the others legislative assemblies were constituted. Thus, when Islam entered modern history, the question arose: since the Universal Caliphate had become a thing of the past, could different Muslim national communities manage their affairs by themselves? In other words, could the powers and obligations of a caliph or imam be shared by a body of persons as the elected representatives of the Muslim community in a particular Muslim national state? After the break up of the Ottoman Empire and the abolition of the caliphate in Istanbul (Constantinople) in 1924, Turkey was the first country in the world of Islam to advance the legal reasoning that the power of the caliph or imam could be vested in a body of persons in the form of an elected assembly or legislature. This had been the viewpoint of the Khawaraj in the earlier history of Islam, who had held that it was not obligatory for the Muslim community to appoint a caliph, but the Muslims could manage their affairs themselves by mutual consultation as recommended by the Quran. Views were also expressed and adopted to the effect that in modern Muslim national states elected assemblies could constitute the advisory council (majlis-ushura) of the Muslim community and make subordinate legislation on the basis of ijtihad, i.e., reinterpret Islamic law in accordance with the changing needs and requirements of the Muslim community in light of the principles laid down in the Quran and Sunna. In any case, no voice was raised against the transformation which had taken place in Turkey, and in due course even in the Muslim countries where legislative assemblies were formed, their establishment has not been considered repugnant to the injunctions of Islam.

However, it may be, a Muslim national state does not become an Islamic state unless and until it adopts its characteristic features which still remain unalterable. The democratic method which has been adopted by some of the Muslim countries due to the influence of Western ideas is not a perfect method. An Islamic state is expected to be run by the best members of the community. The democratic method, although adopted by Western countries in order to achieve the same objective, ordinarily does not ensure the election of the best, because a really suitable or competent candidate may be defeated by an unsuitable or incompetent candidate only for the reason that the latter has obtained more votes, regardless of how they might have been achieved. Similarly, a vote is no substitute for bayya, because bayya is a bilateral contract whereas a vote does not have the implications of a contract. Furthermore, according to the Sunna of the Holy Prophet, a person who offers himself as a candidate for any office abuses his position of trust and must be ignored. If this rule is usually adopted for the selection, for instance, of a “judge,” then why should it not be adopted for the election of a so-called “legislator.” Again, there is no obligation to follow the majority principle as the right of such a majority is not recognized in Islam. Supporters of this viewpoint also argue that since Muslims constitute Allah’s party, an Islamic state must have a one-party government and that a multi-party system is repugnant to the Quran and Sunna. It is also pointed out that some Sunni schools of law do not acknowledge community agreement (ijma) as a source for the evolution of Islamic law. According to them, shura is merely a body of advisers or experts which must be appointed by the caliph or imam (through selection or nomination and not election). They serve in an advisory or consultative capacity and are not an independent legislative body.

There are a number of arguments advanced in favor of the democratic method. If the powers and obligations of a caliph or imam are to be shared by the Muslim community in a particular Muslim national state, it is necessary to create a body of persons to constitute an ijma or shura which should conduct the affairs of the Muslim community through mutual consultation. Such a body cannot be constituted except through the elected representatives of the Muslim community. Although the majority principle was not followed during the historical experiment of the Righly Guided Caliphs, its adaptation had neither been specifically forbidden nor disapproved by the Quran and Sunna. Admittedly, the Quran and Sunna insist on the sovereignty of Allah and the enforcement of His laws, but the evolution of the method for the realization of these objectives is left to the good sense of the Muslim community in accordance with its requirements from time to time. As the real object of Islam is to establish a community of faith governed by the shari’ah, the Muslim community is free to evolve any suitable method for the enforcement of Islamic law. The principle that a person who offers himself as a candidate for any office abuses his position of trust and therefore must be ignored cannot be made applicable universally. If all suitable or competent persons are to refrain from offering themselves as candidates, then the Muslim community, not being aware of their presence, may be compelled to select mediocre for appointment to positions of trust. Furthermore, strictly speaking, a vote may not be a bilateral contract like bayya, but it certainly is an indication of selection of a candidate among others, on the basis of his suitability or competency in the eyes of the electors, in order to represent them only for a fixed period of time. If he does not prove himself to be suitable or competent, he can be rejected at the next election. The establishment of a legislature is also necessary because subordinate legislation which is not repugnant to the Quran and Sunna is a very wide field due to the changing needs and requirements of the modern Muslim community. The successful
working of the democratic method really depends on the conscientious electorate which is aware of its rights and obligations under Islamic law. It is likely to fail where the electorate is gullible. Therefore, it is necessary to educate and train the Muslim community in order to make it conscious of its rights and obligations under Islamic law, for only through education and training would it be in a position to elect the best members of the community. In addition, although the Muslim community is Allah’s party, the formation of groups amongst Muslims for promoting good and suppressing evil is permitted, indeed recommended by the Quran. Only such political parties which adhere to Islamic ideology can be permitted to function in a Muslim national state. Furthermore, measures must be adopted to determine clearly as to who obtains an overwhelming (not merely bare) majority of votes in his favor.

Today, many argue that the democratic method must be adopted because there is no other appropriate substitute for the time being which could yield better results as required by the Islamic standards. The conflict in viewpoints regarding Western and Islamic forms of democracy creates a problem which is faced by some Muslim national states at present, and it is probably the cause of occasional instances of political breakdown today.

However, as it has been pointed out, the fundamental principles on which an Islamic state is founded continue to remain the same. A Muslim national state can only claim to be an Islamic state if its constitution strictly adheres to two basic principles of ultimate sovereignty vested in God and the supremacy of Islamic law. But it must be clearly understood that an Islamic state is not a theocracy. Islam does not recognize the distinction between the “spiritual” and the “secular,” and it is incumbent on every Muslim constantly to endeavor to realize religious values while performing his temporal obligations. In this sense the Islamic state assimilates the qualities of an ideal secular state. In the positive sense, a secular state ought to guarantee religious freedom to every citizen and endeavor to promote the material advancement and welfare of all its citizens without distinction of religion or race. This is also one of the numerous duties of an Islamic state, which must protect the places of worship of citizens adhering to faiths other than Islam due to the Quranic injunction: “If Allah had not raised a group [i.e., Muslims] to ward off the others from aggression, churches, synagogues, oratories and mosques, where Allah is worshipped most, would have been destroyed” (S. 2:40). Similarly, it must guarantee man’s inalienable rights, e.g., equality of status and of opportunity; equality before law; freedom of thought, expression, belief, faith, worship, association, assembly, movement, trade, business, or profession; and the right to hold and dispose of property, subject to Islamic law and morality. It must ensure the complete independence of the judiciary and uphold the supremacy of rule by Islamic law. Each of these principles can be directly traced from the Quran and Sunna.

Nevertheless, the legislature in an Islamic state has a restricted power of legislation for, technically speaking, its authority is delegated and can be exercised only within the limits prescribed by the Quran and Sunna. Consequently, it must enjoin that which is considered by the Quran as "mu'taf" (universally acknowledged moral values). There are three spheres of legislative activity in a Muslim national state: 1) To enforce laws which have specifically been laid down in the Quran and Sunnah; 2) To bring all the existing laws in conformity with the Quran and Sunnah; and 3) To make laws as subordinate legislation which are not repugnant to the Quran and Sunnah.

The establishment of such a legislature by means of election requires, firstly, an electorate which is aware of its rights and obligations under Islamic law; second, the recognition of only such political parties which adhere to the Islamic ideology and are in a position to put up candidates who are familiar with the legislative limits prescribed by the Quran and Sunnah; and third, the adoption of measures which should clearly determine who has the overwhelming support of the voters. Due to historical circumstances, a modern Muslim legislative assembly, at least for the present, must consist mostly of members who possess no knowledge of the subtleties of Islamic law. Therefore, they are likely to make grave errors in their interpretation of Islamic law. Ideally speaking, if an elected legislative assembly is to be formed in an Islamic state, it should consist of experts in different fields and lawyers who are qualified in Islamic law as well as modern jurisprudence. This objective can be realized through the accomplishment of a reform in the present system of legal education in Muslim countries, by extending its sphere so as to combine the study of Islamic law with an intelligent study of modern jurisprudence. However, this is a long-term objective. For the interim period two constitutional devices have been adopted by some Muslim national states in order to reduce the possibilities of erroneous interpretations of Islamic law in a modern Muslim legislative assembly. These are making provision with the national assembly for a separate committee of ulama which has the power to supervise the legislative activity of the assembly and constituting a body of ulama outside the assembly as an advisory council which has the authority to advise the national assembly as to whether proposed legislation is or is not repugnant to the injunctions of Islam.

The Islamic state may be considered as an ideal, but it is an ideal which the Muslim community must aspire to realize. It is through the realization of this ideal that the attitude of Islam to authority can be really demonstrated to the world. There are three objectives which the world community is trying to achieve: peace of mind for the individual because without it no happiness is possible; peace amongst the nations and disappearance of the threat of destruction by war; and finally, respect for the rules of international behavior. All three objectives remain unattained, and it is evident that with the present materialist
dimension of national objectives no further improvement in the world condition is logically possible. Politics divorced from religion and morality can only lead to the situation that exists at present. Human conduct cannot be expected to conform to standards of rectitude in the absence of belief in the ultimate accountability of man. Islam, with its organic relationship of religion to politics and society, provides the framework for a political development which can realize the objectives of the world community.