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FROM THE STATE OF THE KHALIFAH TO THE NATION STATE: THE
TRANSFORMATION OF ISLAMIC LEGAL POLITICS

Abstract

This work examines the transformation from the one Muslim State with one Khalipah (Caliph) to the nation state under Islamic law. It examines the status quo of multiplicity of Muslim States from the perspective of classical Muslim scholars to find out that the transformation from one Caliph to dozens of Head of States in separate Muslim States is not averse to the opinions of top experts of Islamic law even in early Islam. How is the Imam (head of state) appointed under Islamic legal discourse and whether the existence of different Muslim States with their own Imams violate the cardinal principle of ‘One Caliph rule’ of the Shari’ah. According to Imam Juwaini, it is possible to appoint two or more Imams for one Muslim State either to avoid fitna or if it is difficult for one Imam to serve Muslims of far off places or islands. There are four different methods of appointing an Imam according to Shah Waliullah Dehlavi. Dehlavi has based these methods the way the four successors of the Prophet Muhammad (Peace be Upon Him) had been chosen. Efforts for the one Caliph rule must be abandoned as it is not practicable today to have one Caliph for the whole Muslim world. Islamists thinkers have differed whether shura and democracy
are compatible. Finally, Islamists thinkers and others have yet to come up with the blue print of a model shura system.

Key Words:

Caliph, shari‘ah, democracy, Juwaini, Ghazali, Dehlavi, Shura, Nation State.

Introduction

Many Islamist movements in the 20th century have been calling for the establishment of a global Caliphate under the rule of one Caliph. These Pan-Islamist movements are found in many parts of the world. They, however, differ on how to achieve this goal. The advocates of establishing one Caliphate or a super state believe that as a consequence of achieving this noble goal relations between the non-Muslims and Muslim states cannot be peaceful; that Muslims are under an obligation to overwhelm the non-Muslims to establish the ideal super state and impose Shari‘ah on non-Muslims; and that the cause of war in Islam is the elimination of infidelity or the subjugation of all non-Muslims.¹ Other advocates of this idea are of the opinion that we have to work for a revolution based on the Prophet’s Muhammad (PBUH)’s time in Makka and once

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¹ For details of the views and analysis of all the jihadists, see this author’s, “Public International Law and Islamic International Law: Identical Expressions of World Order”, Islamabad Law Review, 1: 3 & 4 (Autumn/Winter, 2003), 369–430.
we get the strength we have to declare a war on all non-Muslims who are against the establishment of ‘one Caliph’s rule’.  

As a matter of fact the mainstream religious scholarship prefers an ideal of peaceful relations with non-Muslims and unity among Muslims to disunity. They are cognizant of the practical and political reality that has existed throughout the Islamic political history, that we have always had different states and empires. The realist school of thought always recognized differences and difficulties in establishing the ‘one Caliph’s rule’ in the world. The idealist school has ideal goals that are not practicable in a world which comprises of more sovereign Muslim states than one. This paper examines the arguments of the ‘idealist school’ in support of ‘one Caliph’s rule’. It discusses whether there is a remote possibility of achieving this goal. It asks whether the plurality of Muslim states, each having its own head or Imam, is based on Shar’iah (Islamic law). It asks what is the meaning of shura and finds out the Islamists’ conception of politics. Finally, it asks whether shura and democracy are compatible. The paper focuses on the opinions of selected jurists and scholars of Sunni schools of thought as the Shia’id do not agree to the notion of a Caliph. Instead they agree on the concept of Imamat or a leader for the Muslims.

One Caliph’s Rule and Islam

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2 Tanzeem-i-Islami in Pakistan seems to be aiming for this model. See, their website at http://www.tanzeem.org/ (last visited 13-03-2018).
Historically the notion of two caliphs in one Muslim state was discussed and rejected upon the death of the Prophet Muhammad (PBUH) when his companions got together at Saqif in Madina to choose his successor. Since the Prophet (PBUH) had not mentioned specifically who should succeed him or how exactly his successor be chosen his companions agreed after prolonged discussions that Abu Bakr (May Allah be pleased with him) be the first Caliph. The differences of opinions and the subsequent battles between ‘Ali b. Abi Talib and Amir Mu’awiya are well known in Islamic political history. However, it was the downfall of the Ummayad that resulted in establishing the ‘Abbasid dynasty’s rule in Baghdad. Although, the Khawarij (dissenters) as well as the Shi’aid were very also there in Baghdad but they could do little to topple the ‘Abbasids. It is pertinent to note that the Muslim governor of Muslim Spain3 declared independence after the downfall of the Ummayyad rule.4 The Muslim rule in Spain co-existed alongside the ‘Abbasid rule in the rest of the Muslim world for many centuries.

On the other hand, the Salateen rulers of Delhi and other early rulers of India considered themselves as the vassals of the Caliphs in Baghdad. However, Nasiruddin Muhammad Humayun (d. 963/1556) declared himself as an independent King of India when he was restored to power after defeating his rival

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4 Muslim rule in Spain was a succession of different rules and not a single period. The Dependent period lasted from 711-756; the Independent period (756-929); the Caliphate period (929-1031); the Almoravid period (1031-1130); and the decline (1130-1492). See, “Muslim Spain”, available at [http://www.bbc.co.uk/religion/religions/islam/history/spain_1.shtml](http://www.bbc.co.uk/religion/religions/islam/history/spain_1.shtml) (last accessed 13-03-2018).
in 1555 C.E.⁵ Thus, in practice the then India was ruled by an independent ruler who did not pledge allegiance to the Muslim Caliph.⁶ As a matter of fact many small independent Muslim states existed alongside the Caliphate throughout history. When the British withdrew from the subcontinent around 500 independent states and territories existed in what are now India, Pakistan and Bangladesh. The State of Amb, Dir, Swat, Chitral, Qalat, Haiderabad Daccan, Junagarh and Kashmir were some of the examples of independent states within the then British India.

The Prophet (PBUH) is reported to have said, “Whoever comes to you, and you are united under one man, and seeks to cause political dissension and separate your community (jama’ah), fight him.”⁷ According to Imam Nawawi (d. 631/1233) of the Shafi’i school of thought, this hadith refers to those who rebel against the leader.⁸ According to the Shafi’i jurist Abu’l-Hasan ‘Ali b. Muhammad b. Habib Al-Mawardi (d. 450/1058), “If two Imamate are established in two countries none of the two is valid as it is not permitted for there to be two imams at one time, even though one group, who are an exception, do permit it.”⁹ Mawardi argues that the fuqaha differed on which one of the two will be the Imam. He mentions that according to one group of fuqaha, the one whose

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⁷ Muslim b. Hajjaj al-Nisahpuri, Sahih Muslim, hadith no. 1852.
Imamate was established in the country in which his predecessor died as people there are more entitled to confirming the Imamate. Another group of jurists are of the opinion that each of the two should reject the imamate for himself and offer it to the other to prevent discord and strife: “in this way the people responsible for arranging the contract of Imamate may elect one of them or someone other than these two. Others say that lots should be drawn...”.

Mawardi’s opinion regarding this matter is that “the Imamate belongs to the one who first received the oath of allegiance and the contractual agreement.” Mawardi argues that “this resembles the case in which two guardians marrying off a woman for if two of them marry her off the marriage is only actually contracted by the first of the two.” He argues that if both of them received allegiance at the same time, “then both contracts of Imamate are annulled and the contract is renewed with one of them or with someone other than these two.”

The great Shafi‘i Imam and jurist ‘Abdul Malik b. ‘Abdullah al-Juwaini known as Imam al-Haramayn (d. 478/1085) has discussed the issue of appointing leader for the Muslims. He opines that Muslims must appoint one leader and that the appointment of one leader is the ideal situation as he would keep Muslims united. He argues that in case of a dispute regarding the

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10 Ibid., pp. 16-17.
11 Ibid., p. 17.
12 Ibid.
13 Ibid.
leadership if the aspirants fight, it will lead to destruction which will be the worst situation, “so, it is permissible to appoint two leaders (Imamayn) [for the Muslims within one state] to put an end to evilness (fasad).”15 He opines that when “two leaders (Imamayn) are appointed so that the orders of each one of them will be implemented in the country, it will lead to infighting and dispute.”16 He argues that “if there is no agreement on the appointment of anyone of them... so as a matter of principle, one of them is not the [rightful] Imam because Imam is the one on whom all the Muslims agree.”17 Juwaini goes on to state his personal opinion in the matter when he asserts that “I am not against the appointment of two Imams if it is unavoidable and the enforcement of their decisions according to Shari‘ah. And this however, be considered as an interregnum without an overall Imam [for the Muslims].”18 Moreover, “if the two [Imams] agree to appoint an Imam over them, it is a right for [them].”19 Thus, for Juwaini it is better to have two leaders in order to avoid ‘fitna’ (evilness).

He argues that in case one part of the state is separated from the rest or one Imam cannot govern the whole state because of its enormous size or because a non-Muslim state is situated between the main Muslim state and the rest of the state “and it became difficult to appoint a single Imam to keep the country and the subjects united, then it is permissible to appoint one leader (Imam) for one

15 Ibid., p. 127.
16 Ibid., p. 128.
17 Ibid., p. 130.
18 Ibid., p. 130.
19 Ibid., p. 130.
part of the [Muslim] state according to the needs and appoint another leader (
*Imam*) for the other part of [the] state.”²⁰

Juwaini substantiates the possibility of more than one Imam to govern a
large Muslim state by saying that if it became difficult for a single Imam to govern
the state because the state is extended and Islamic order is established in faraway
places or distant islands or if there is a non-Muslim state between the main
Muslim state and a part of it. In all such cases the Muslim population of such a
faraway region may choose their own leader (Imam). ²¹ Juwaini mentions that
this is also the view of his teachers Abul Hasan and Abu Ishaq al-Isfirayni and
others. ²² The crux of what Juwaini’s assertions is given below:

First, it is preferable to appoint a single leader for Muslims, but in case of
disagreement to appoint one Caliph for the entire Muslim community it is
allowed to have two leaders (Imams) for the Muslims. Secondly, that the main
Caliph should not object to the appointment of leaders by local Muslims in case
he (the Caliph) is unable to govern them for their geographical location and
strategic situation. Thirdly, it is allowed if the two leaders agree on the authority
of an Imam over them. Fourthly, it is permitted to divide a big Muslim state for
administrative purposes so that the leaders would be able to easily manage and
rule the different regions. Finally, Muslims should always have a leader or leaders
whatever the circumstances.

²⁰ Ibid., p. 130.
²¹ Ibid., p. 128.
²² Ibid., p. 128.
There is a saying of the Prophet (PBUH) in which he is reported to have said: “Whoever left obedience to the Imam and separated from the community and then died, then his is a death of pagan in ignorance.”²³ But what is the meaning of the phrase ‘left obedience to the Imam ...’? Muhammad b. Isma’el al-San’ani (d. 1186/1772), while commenting on this hadith mentions that “The obedience means obedience to the Caliph on whose [nomination] the Muslims have agreed and the implication here is that the Caliph referred to [in the hadith] is that of a particular region because the people have never agreed on a single Caliph in all the lands of Islam since the time of the ‘Abbasid State. Rather the people of every region were independent with someone incharge of their affairs.”²⁴

According to Imam Shawkani (d. 1250/1834), “And after the spreading of Islam and expansion of its territories and its regions were far away [from each other], so as is well known that in all such regions allegiance was given to an Imam or Sultan (head of state). And similar is the situation in other [Muslim] regions. And the orders of one Imam cannot be implemented in another region or regions that are outside his jurisdiction. Therefore, there is no problem in the plurality of Imams and Sultans [for different states] and it is [a communal] obligation for all the people in whose land his orders and prohibitions become

²³ Muslim b. al-Hajjaj al-Nishapuri, Sahih Muslim, hadith no. 4555.
effective to obey him after giving pledge of allegiance (bay’ah) to him. It is the same for the people of all the other [Muslim] territories.”

Shawkani further says that “If someone rebelled against a Sultan in a territory where allegiance is given to him and he has established his authority, such a person should be given death penalty if he does not repent. The people of another state shall not obey such a person nor should they accept his authority.” Imam Shawkani and San’ani have been very clear in their assertions regarding the plurality of Imams ruling different Muslim states. They have been talking of the real practice rather than the ideal situation.

**How is the Caliph/Imam chosen?**

According to Mawardi, Imamate can be chosen in two ways: he may be elected by the ‘ahl al-halwal ‘aqd’ (the state’s representatives of consultation and those in power), or the previous Imam may delegate powers. On how many people from ‘ahl al-halwal ‘aqd’ are needed to elect the Caliph, Mawardi mentions that Muslim jurists have difference of opinions. One group of ‘Ulama argue that the decision of the majority of ‘ahl al-halwal ‘aqd’ in each state is enough to confer Imamate on some one. Mawardi rejects this opinion and opines that the oath of allegiance to Abu Bakr was against this procedure as he received the pledge of

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26 Ibid.
28 Ibid., p. 13.
loyalty only from those persons who were present on that occasion. According to Mawardi, “another group say that the minimum number of persons that should gather for the formation of the Imamate is five or that it should be formed by one of them with the agreement of four others.”  

Mawardi mentions that the evidence provided by this group of ‘Ulama is that Abu Bakr was given the pledge of loyalty by five people, i.e. ‘Umar b. al-Khattab, Abu ‘Ubaidah b. al-Jarrah, Usayd b. Hudayr, Bashir b. Sa’d and Salim the freed slave of Abu Hudhayfah and that the rest of the faithful followed these five regarding this issue. Mawardi gives the second argument put forward by these ‘Ulama under which ‘Umar had established a committee of six individuals. The idea being that one of the six would be chosen as the Caliph and the rest would accept him as such. Mawardi attributes this view to the jurists and theologians from Basra. Mawardi states that according to the ‘Ulama of Kufa, “the Imamate comes into being by way of three persons, one of them taking charge by way of the acceptance of the other two such that there is one who decides the matter together with two witnesses, in the same way as the contract of marriage is made valid by the man in charge (the wali) and two witnesses.” Finally, Mawardi mentions the opinion of another group of jurists who asserts that the Imam is selected by way of one individual. The example given is what ‘Abbas spoke to ‘Ali b. Abi Talib, “Reach out your hand so that I may make allegiance to you and that the people say that the uncle of the Messenger of Allah, may peace and blessings of Allah be upon him, has given

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29 Ibid.
30 Ibid.
31 Ibid.
32 Ibid.
allegiance to his paternal nephew and so that there will not be two persons disputing your succession.” Thus, Mawardi has focused on the number of persons from the ‘ahl al-halwal ‘aqd’ and has mentioned the opinions of all fuqaha regarding this matter.

Mawardi argues that when the ‘ahl al-halwal ‘aqd’ “have gathered together to make the choice they should examine the state of those suitable for the Imamate from amongst them in accordance with the conditions stipulated for this matter and they should then present the most excellent among them for oath of allegiance, that is the one who best fulfils the conditions from among these persons and the one whom the people would most readily accept obedience to and to whom they would not hesitate in making the oath of allegiance.”

According to the prolific author and great Indian scholar Qutbuddin Ahmad known as Shah Waliullah Dehlavi (d. 1176/1762), a Caliph can be chosen in one of the four ways: First, “ahl al-halwal ‘aqd, those who are easily available, should pledge their allegiance (i.e. the bay’ah). It is not necessary that all ahl al-halwal ‘aqd from the entire Muslim state should be present to pledge their allegiance because it is impossible.” In addition, Dehlavi asserts that the ‘bay’ah’ of one or two persons is also not enough for this purpose because ‘Umar

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33 Ibid.
34 Ibid., pp. 13-14.
35 Shah Waliullah Dehlavi, IzalatulKhafa’ ‘AunKhilafatulKhulafa, trans. Muhammad ‘Abdul Shakur (Karachi: Qadimi Kutubkhana, n.d.), 1:23. The original book is in Persian and is printed along with its Urdu translation in four volumes. The book attempts to prove that the first three successors of the Prophet Muhammad (peace be upon him), that is, Abu Bakr, ‘Umar and Uthman b. ‘Affan were rightly chosen caliphs of the Prophet. The work attempts to prove their Caliphate from the text as well as from logic. This is the most comprehensive work on this topic. In addition, the author dispels the impression that the first three Caliphs were not the rightful choices for the post of the Caliph and that ‘Ali b. Abi Talib deserved to be chosen instead of Abu Bakr, ‘Umar and ‘Uthman. See, Dehlavi, Izalatul Khafa’, vol. 1, p. 10.
b. Khattab had stated in his last sermon that Muslims should abstain from ‘bay’ah’ of a person whose ‘bay’ah’ was done by someone without the opinion of Muslims. Dehlavi further states that Abu Bakr, the first Caliph was chosen when ‘ahl al-halwal ‘aqd’ among the companions of the Prophet pledged their allegiance to him. The second method mentioned by Dehlavi is that the Caliph may designate a person, who fulfils all the conditions of a Caliph, and ask Muslims about his designation and that he be obeyed. It would be mandatory for the people to pledge their allegiance to him. Dehlavi asserts that ‘Umar b. Khattab was appointed as a Caliph in this way. The third method of choosing the Caliph, states Dehlavi, is that the existing Caliph may set up a council of people who fulfill all the conditions of becoming a Caliph and mention that one of them is appointed as the Caliph with the consultation of this group. If a group is chosen for this purpose their selection shall be accepted by the rest of the Muslims. Dehlavi states that this method was used in the appointment of ‘Uthman b. ‘Affan. ‘Umar had selected a group of six people to appoint the Caliph after him. The group appointed ‘Abdur Rahman b. ‘Awaf to select the Caliph from among them. He appointed ‘Uthman b. ‘Affan as the Caliph. Finally, the fourth method mentioned by Dehlavi is that when the Caliph dies and someone takes over as the Caliph without the oath of loyalty by the ‘ahl al-halwal ‘aqd’ or without being appointed by the previous Caliph and get support from the people because of love and affection from them or subdue them by force, such a person

36 Ibid., vol. 1, p. 23.
37 Ibid., p. 24.
38 Ibid.
will become the Caliph. Dehlavi opines that “[A]nd people must abide by his decrees if these be according to Islamic law.”

According to Dehlavi, the fourth method has two types: that “the one who takes over fulfils the qualities to be a Caliph and without committing any unlawful act prevents his opponents from any resistance through peaceful means and proper planning. This type is allowed as a necessity.” The Caliphate of Mu‘awiya b. Abi Sufyan (May Allah be pleased with them) after the death of ‘Ali (May Allah be pleased with him) and the truce with Imam Hasan (May Allah be pleased with him) was of this nature. “The second type is that the one who takes over does not fulfill the qualities and conditions of a Caliph and subdues his opponents through fighting and through the commission of unlawful act. This type is forbidden and the person doing it commits sin.” Nevertheless, “his orders that are according to Islam must be accepted”, argues Dehlavi. However, his revenue officials can collect zakat from people and the decisions of his appointed judges will be binding. In addition, Muslims can join him to wage a jihad against infidels. Dehlavi argues that since such type of Caliph was legal under the doctrine of necessity, therefore, he should not be removed because his removal may lead to the killing of innocent Muslims and greater evilness (fitna)

39Ibid., vol. 1, pp. 24-25.
40Ibid.
41Ibid., p. 25.
42Ibid.
43Ibid. According to Imam Haskafi of the Hanafi school of thought, “The Imamate of a usurper is lawful.” Ibn ‘Abidin comments on this and explains the Arabic word ‘mutagalib and says that “it is the one who seizes power by force and by subduing and without the pledge of loyalty from ahl al-hilwa al-‘iqd and when he fulfills the conditions for the Imamate.” See, Muhammad Amin Ibn ‘Abidin, Radd al-Muhtar ‘ala Al-Durr al-Mukhtar (Beirut: Dar al-Fikr, 1992), 1:549.
44Ibid.
and fasad. Moreover, it is not certain whether his removal will be good or whether his successor will be even worse.\textsuperscript{45} Dehlavi states that ‘Abdul Malik b. Marwan and the first of the ‘Abbasid Caliphs got Imamate in this way.\textsuperscript{46} Dehlavi mentions in another place in his book that such a Caliph shall be disobeyed only when he issues orders that are against Islamic law. Such a Caliph may be fought or people may rebel against him if he does something that amounts to infidelity openly.\textsuperscript{47}

As a matter of fact, Dehlavi has analysed the method of the appointment of each Caliph after the death of the Prophet Muhammad (PBUH) and considers each particular method as a precedent. He has difficulty with the fourth method but still opines that such an Imam be obeyed and the orders of his officials such as revenue officials and judges be accepted otherwise there will be chaos. However, the problem today is that there is no Imamate and no Caliph anywhere in the Muslim world. Instead, there are nation states where heads of states are elected either according to some sort of democratic process in some Muslim states and succession process in others. Moreover, there are no ‘ahl al-halwal ‘aqd’ or persons of power and influence but rather members of Parliaments in some Muslim states where democracy is upheld. In other words, it is Parliament that appoints the head of state in some Muslim countries whereas in other Muslim states he may be elected by the people through direct vote. However, here we cannot discuss constitutional monarchies as that is beyond the scope of this

\textsuperscript{45} Ibid.
\textsuperscript{46} Ibid. vol. 1, p. 26.
\textsuperscript{47} Ibid. vol. 1, p. 531.
paper. A typical Parliament may come closer to the Islamic notion of ‘*shura*’ or consultation\(^48\) but the problem is that there is no methodology or process available in Islamic law on how the members of the ‘*shura*’ should be elected; is the process of electing members of Parliament in a multi-party system considered Islamic? In other words, is democracy considered as Islamic and a synonym to *shura* in Islamic law?

**Is Caliphate a Central Aspect of Faith?**

According to Abu Hamid Mohammad Al-Ghazali (d. 505/1111), making Caliphate a central aspect of faith and treating those who do not agree with this notion as infidels or rejecting any kind of political leadership is an extreme opinion according. He argues that

> “Know, however that error regarding the status of the Caliphate, whether or not establishing this office is a (communal) obligation, who qualifies for it, and related matters, cannot serve as grounds for condemning people as unbelievers. Indeed Ibn al-Kaysan\(^49\) denied that there was any religious obligation to have a Caliphate at all; but this does not mean he must be branded an Unbeliever. Nor do we pay any attention to those who exaggerate the matter of Imamate and equate recognition of the Imam

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\(^{48}\) In Pakistan the Parliament is also known as ‘*Majlis-i-Shura*’ in the Constitution.  
\(^{49}\) Abu Bakr ‘Abdur Rahman Ibn Kaysan al-Asamm (d. 200-1/816-818), a famous Mu'tazilite theologian, exegete, and jurist. See, al-Murtada, *Tabaqat al-Mu'tazila*, 56-7. See also, Al-Baghdadi, *Usul al-din*, 271 where he confirms that al-Asamm’s rejection of the obligation to establish a Caliphate. “Al-Asamm claimed that were the people to desist from wrongdoing each other, they would be freed of any need for a Caliph (Imam).”
with faith in God and his messenger. Nor do we pay any attention to those people who oppose these people and brand them Unbelievers simply on the basis of their doctrine on the Imamate. Both of these positions are extreme. For neither of the doctrines in question entails any claim that the Prophet perpetrated lies.”

The crux of the matter is that there could be more than one Muslim state as it is not possible to manage one big Muslim state although one state is an ideal situation but it is not practical. Consequently, each Muslim state must have its own Imam (head). Secondly, for the Sunnis it is not even obligatory to have the office of the Caliph. Thirdly, recognition of the Imamate cannot be equated with faith in God. Finally, historically and for all practical purposes there have been more than one Muslim states since the fall of Ummayyad empire.

The Concept of Shura and Modern Democracy: Are they Compatible?

The Qur’an stresses on shūra—or consultation among Muslims. The Qur’an says, “And take counsel from them in matters of importance”, and “Who conduct their affairs by consultation”. The concept of shūra encompasses the participation of all Muslims in their affairs. However, modern Muslim scholars are not unanimous on whether shura and modern democracy are compatible or not. According to the Egyptian sheikh Muhammad al-Ghazali, al-shura is not a

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51 Qur’an, 3:159.
52 Qur’an, 42: 38.
ready-made description in the texts of Islam but rather a principle left to ijtihad. He argues that there is no model experience, specifying the system of shura. The absence of legislation is ‘intended’ in order to observe clarifications and differences in circumstance and historical period. According to the Islamist ‘Abd al-Salam Yasin, “in order to meet the needs of our recent times, space, life conditions, and complex problems, we cannot merely follow that simple form [of shura] any more. We have to take the essence though and pursue the perfection of faith as much as possible. And we should be diligent in convening this shura.” Belkeziz explains the state of a-Shari’ah and al-Shurah and argues that

“it ought not be believed that al-shura connotes establishment of a civil rule agreed upon by people (that is, the group or the ummah) on agreed upon (or positive) bases and laws with their consent, and in isolation from an authoritative referent of their shari’ah. That is what conflicts with the existing logic of the Islamic state that rests upon the authoritative referent of the shari’ah in its social and political system. The truth of the matter in the Islamic state is that the state of al-shari’ah and al-shura is not a civil right, but rather it is the right of Allah.”

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Qaradawi clarifies that if a rule is against the Shari'ah, it is not binding on individual Muslims “rather it is his or her obligation to refuse; because if he or she is confronted with the right of rule and the right of Allah, then the right of Allah takes precedence without doubt.”

Qaradawi has dealt with the question of the status of shura. He argues that adopting the principle of al-shura within the Muslim group or from the group of ahl al-halwa al-‘aqd among them could be in three ways:

a. In the sphere of ‘that for which there is no text (nass);

b. In the sphere of ‘what allows for multiple facets (wujuh ‘iddah). This has two meanings: ‘that from which the imam may choose’ and ‘what exhibits multiplicity of opinions and endeavors in ijtihad’.

c. In the sphere of ‘consigned (public) good (al-masalih al-mursalah).”

He argues that “what is obligatory is that this be completed after consulting the people of opinion and specialization (ahl al-ra’iyya al-ikhtisas).” He asserts that the opinion of ahl al-halwa al-‘aqd “is mandatory for the Imam.”

Some contemporary Islamist thinkers have constructed a connection of proximity between shura and democracy. In their view shura is the origin of democracy. Ghanushi considers democracy as “the best system for the

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58 Ibid., p. 111.
59 Ibid., p. 114.
extension of the development of human thought.”\footnote{Ghannouchi, *al-Huriyat al-‘Ammah*, p. 87.} For him there is no way to think about the supposition that *shura* is outside the reality of existing democracy. The crux of Ghannouchi’s thesis is that democracy and Islam are compatible. ‘Allal al-Fasi also views *shura* and democracy as compatible. Qaradawi opines that “as for political democracy, its origins in our faith lie in *al-bay’ah* and *al-shura*.\footnote{Yusuf al-Qaradawi, *al-Sahwah al-Islamiyah*, (Cairo: Dar al-sa≥wah, 1988), p. 108.} He argues that non-Muslims have the right to be citizens of the Muslim state and that they can serve as representatives in a conditional form, that is, “so long as the parliament in its overwhelming majority is of Muslims.”\footnote{Yusuf Al-Qaradawi, *min Fiqh al-Dawlah fi al-Islam* (Cairo; Beirut: Dar al-Shuruq, 1997).pp. 194–15.} But what is the Islamic correlate to the modern concept of citizenship in the Islamic lexicon? For ‘Allal al-Fasi the modern concept of citizenship is in the concept of culpability (*al-taklif*). He argues that Islam considers every individual to be culpable (*mukallaf*) and thereby he has obligations towards God, society, himself and the humanity at large. In his view thus, “culpability (*al-taklif*) in Islamic customary law (*al-‘urf*) occupies the place of citizenship in the modern democratic customary law.”\footnote{Al-Fasi, *Maqasid al-shari‘ah*, p. 221.}

What about opposition in the Islamic *shura* system? According to the Egyptian scholar Muhammad al-Ghazali, the Imam as a human being is supported by some and criticized by others. He opines “that this theory approaches very closely the teachings of the Rashidun Caliphs. ‘Ali bin Abi Talib did not attempt to quash those who opposed him or to gather them together to
strike them, rather he said to them: ‘Keep your opinions as you will, on the condition that you do not ferment chaos or shed blood.’ That is, the great man desired a constructive opposition not a destructive one, and he did not perceive opposition to his person as a wrong (munkar).”

There are three shared and similar sources of the system of al-shura and the system of democracy in the Islamist consciousness: 1). Representation (al-tamthil); 2). ‘Culpability’ (al-taklif); and 3). The right of opposition.

For Abul ‘Ala Mawdudi (d. 1979) the political system of Islam has been based on three principles, that is, Tawhid (oneness of God), Risalat (Prophethood), and Khilafat (Caliphate). He considered the political system of Islam as a ‘perfect form of democracy’, as perfect as a democracy could ever be and proclaimed that Khalifah as popular vicegerency is the point where democracy in Islam or the “real foundation of democracy in Islam.” Mawdudi argues that Islam constitutes its own form of democracy, for which he coined the term “theo-democracy” (i.e., divine democratic government), laying emphasis on the concept of Khilafah, but he concentrated on the relationship between divine and popular sovereignty. He has differentiated between shura and democracy as follows:

“Of course, what distinguishes Islamic democracy from Western democracy is that while the latter is based on the concept of Popular Sovereignty the former rests on the principle of Popular Khilafah. In Western democracy, the people are sovereign, in Islam Sovereignty vests in God and the people are His Caliphs or representatives. In the latter [Western] the people make their own laws (Shari’ah) in the former [Islamic] they have to follow and obey the laws (Shari’ah) given by God through His Prophet. In the [Western] one the government undertakes to fulfill the will of people; in the other [i.e., Islamic] the government and the people who form it have one and all to fulfill the purpose of God. In brief, Western democracy is a kind of absolute authority which exercises its powers in a free and uncontrolled manner whereas the Islamic democracy is subservient to the Divine Law and exercises its authority in conformity with the injunctions of God and within the limits prescribed by Him.”\[^{68}\]

Other Muslim thinkers believe that shura is religious and democracy is secular and both cannot co-exist. According to ‘Abd al-Salam Yasin, the differences between shura and democracy are impossible to deny.\[^{69}\] He argues that democracy is based on social contract whereas shura is based on the Qur’an. The tremendous difference between the two is tantamount to the difference between Muslim society and civil society.\[^{70}\] For Fathi Yakan al-shura “does not solicit the consideration of the opinion of an individual or a group of people in the exegesis of Islamically legal rule or its comprehension or ijtihad in any matter


among its affairs in light of the Islamic legislation.” 71 Thus, any attempt to reconcile between shura and democracy is attempting the impossible or an attempt to square the circle.

The main issue that can be raised to sum up this section is that if the envisioned ‘Islamic democracy’ based on the concept of shura is established as an alternative to Western democracy how will it be structured and how will it be practiced. Scholars have focused on compatibility between shura and democracy on theoretical grounds but have not paid enough attention to the practical side of this compatibility. Thus, for the operational aspects, one finds neither any guidance nor any direction. In other words, there are missing links in turning ‘political theory’ into ‘political reality’. The details of the Islamic model of democracy are still awaited. Once the details are available other Muslim thinkers will definitely attack them. In the meanwhile, even pious Muslims have to adopt Western style of democracy or be contended with the existing monarchies. In other words, it is the nation-state system that has to be followed by Muslims and non-Muslims alike. Interestingly the vast majority of Islamists all over the world participate and work under the Western style democracies and talk of Islamization of existing laws rather than dismantling or replacing the Western-model democracies.

It is very interesting to mention that the majority of Muslims are not concerned with the type of political rule and administration and who is governing them. Just as politics in modern nation-states have no principles rather it is

interest that matters. The same is true of Islamists as they have succumbed to the realities of the nation-state they so often condemn as secular and un-Islamic. Ennahda of Tunisia is a recent example of this. Sayida Ounissi, a Ennahda member of the Tunisian Parliament argues that “The maturity of parties like Ennahda is also apparent through the sorts of subjects they raise in public debate. It’s no longer a matter of the relationship between Islam and state anymore, or traditionally “Islamic” issues, but rather a commitment to finding solutions to corruption, economic development, social issues, and human rights.”

As a matter of fact Ennahda’s attitude changed after the 2011 election in Tunisia when it decided not to govern alone and shared power with two ideologically different parties: the secular nationalist Congress for the Republic and the socialist Ettakatol. Rached Ghannouchi was a vocal supporter of inclusiveness regardless of the political weight of the various parties. He viewed it as the best way to secure the transition. He highly valued political inclusiveness for political debates. This illustrates the transformation of Ennahda from an Islamist to a “Muslim-democrat” party.

**Conclusions**

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73 Ibid.
According to Imam Juwaini, it is possible to appoint two or more Imams either to avoid fitna or if it is difficult for one Imam to serve Muslims of far off places or islands. There are four different methods of appointing an Imam according to Shah Waliullah Dehlavi. As a matter of fact efforts to establish one Caliph for the whole Muslim world must be abandoned as one even cannot think of the possibility that one Caliph could control Muslim States from Central Asia to Sudan and Indonesia to the Gambia. In addition, Muslim States are all nation states and have acceded to hundreds of international treaties under the international legal order. It is this international legal order that is accepted and adhered to by the Organization of Islamic Cooperation (OIC) as well.

Islamist thinkers have differed whether shura and democracy are compatible. Those who consider the two as compatible have yet to come up with details of how to implement and operate an ‘Islamic democracy’. In the meanwhile, Muslim thinkers and lay Muslims have to follow and use Western style democracies or live in monarchies. The behavior and working of Ennahda of Tunisia which was an Islamist party shows that it is completely transformed into a “Muslim-democrat” party.