THE NOTION OF CONSTITUTIONAL GOVERNMENT IN ISLAM

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Abstract

This study argues against Western political theorists’ contention that the notion of constitutional government was introduced by Western thinkers in the Enlightenment era. We contend that the Charter of Madīnah which is dated back to 622 A.H, along with several other features of constitutional government, is a seamless proof that the notion of constitutional government is originated and initiated by Muslims. The fact is that the Charter was formed about 600 years before Magna Carta was signed by King John in 1215 C.E. which is considered in Western writings as the first of such attempt in the world. Nevertheless, this study is an attempt to prove that the view of majority of Orientalists, along with liberal Muslims such as ‘Ashmīwī, al-Na‘īm and many others, who contend that Islam does not provide constitutional theory is erroneous. An in-depth study of the principles of representative government, shīrī, justice, equality, liberty, and accountability demonstrates that these principles, which are the political implications of supremacy of the Sharī‘ah, are the key features of constitutional government in Islam. Moreover, some of the above principles, i.e., shīrī, freedom of expression and accountability, are also considered as mechanisms which function as a bulwark against political absolutism and arbitrary rule.

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Introduction

The notion of constitutional government is generally thought to be the exclusive and original invention of the seventeenth century Western thinkers.\(^1\) Despite the prevailing view that the Western civilization was the first to introduce the concept of human rights and the principles of democracy, for some scholars such claim is disputable. Muslim political theorists, along with a number of Western scholars, contend that the West did not initiate the idea of human rights, the concepts of constitutional government and representative government which are the fundamental elements of modern democracy.

In this connection, Tharwat BadawÊ along with many other prominent Muslim scholars, remarks:

The Islamic state in MadÊnah was the first constitutional government on earth. In which the ruler is bound by law, he must exercise his authority in accordance with the higher law (the constitution) which limits his authority. The caliph was bound by the law of the Qur’ân and the Sunnah. His powers were limited by the freedom and the rights that Islam has provided for the people. Islam prescribed mechanisms which can prevent arbitrary rule and abuse from both the ruled and the ruler. Hence Islam recognized the concept of the sacred individual rights and regarded them as a bulwark (lawÊjiz manÊ’ah) against arbitrary power of the ruler ten centuries before its emergence in the writings of philosophers of social contract in the sixteenth century.\(^2\)

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\(^1\) In Philip B. Kurland and Ralph Lerner (ed.), *The Founders’ Constitution*, the writer says: “It has been said that the Age of Enlightenment might more properly be called the Age of Constitutions.” See the web edition www.press.pubs.uchicago.edu/founders/documents; Brianz Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), 25.

\(^2\) Tharwat BadawÊ, *al-NuÐum al-SiyÉsiyyah* (Cairo: DÉr al-NahÌah al-‘Arabiyyah, 1986) 153-154; FaîÊ al-DuraynÊ, *KhalÊ‘il al-TashrÊ’ fi al-SiyÊsah wa al-×ukm*. 2nd ed. (BeirÊ‘: Mu’assasat al-RisÊlah, 1987), 185; Réshid al-GhanÊnhÊ, *al-×urriyyÊt al-×Ómmah fÊ al-Dawlah al-IslÊmiyyah* (Beirut: Markaz DirÈsÈt al-WalÊdah al-‘Arabiyyah, 1993), 222; a similar view is expressed by Êasan al-TurÊbÊ, a renown Sudanese scholar, in 1983 he states: “Islamic state is not an absolute or sovereign entity. It is subject to the higher norm of the SharÊ’ah that represent the will of God. Politically this rules out all forms of absolutism. Legally it paves the way for the
This contention of contemporary Muslim scholars is based on historical fact and not mere rhetoric or apologetic pretension. The fact is that the Charter of Madīnah (Qalīfāt al-Madīnah), which is written by the Prophet in the 1st Hijrah or 622 of Common Era, contains political and social norms and principles that guarantee the rights of the people. It is based on this fact, many contemporary Muslim scholars, initiated by Muhammad Hamidullah, maintain that the Charter of Madīnah is the first written constitution in the world. Nevertheless, this contention is also corroborated by a number of Western scholars, such as Count Leon Ostrorog (1867-1932) and Robert Briffault (1876-1948). While delivering a lecture at University of London Ostrorog asserts:

Those Eastern thinkers of the ninth century laid down, on the basis of their theology, the principles of the rights of man, in those very terms, comprehending the rights of individual liberty, and of inviolability of person and property; described the supreme power in Islam, or caliphate, as based on a contract, implying conditions of capacity and performance, and subject to cancellation if the conditions under the contract were not fulfilled...[those Eastern thinkers of old have also] expounded a doctrine of toleration of non-Muslim creeds so liberal that our West had to wait a thousand years before seeing equivalent principles adopted.

A. The Origins of Constitutional Government

Constitutional government is defined by the existence of a constitution that effectively controls the exercise of political power. Constitution itself is a legal instrument or merely a set of fixed norms or principles generally accepted as the fundamental law of the polity. The essence of constitutionalism is the idea that government should be legally limited in its powers, and that its authority depends on its observing these limitations. Our object in this discussion is to decide whether or not this notion of constitutional government exists in early Islam and expounded in classical Islamic literature.

The notion of constitutional government expounded by Western thinkers highlights five features that are: (a) procedural stability, (b) accountability, (c) representation, (d) division of

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power, (e) openness and disclosure. At the outset it is important to state that we should not look at the same features in Islamic political system. Some might be available and some may not, but so long as the essence and basic elements of constitutionalism exist, the rest are complimentary. Because political science is not a static subject, besides, the above features are not agreed by the Western thinkers themselves.

John Locke (1634-1704), based his constitutional theory on his conception of social contract. The state of nature impelled men to associate and form a civil society. A social contract, by which each individual gave up his right and authorized the society to establish a common judge over him and his fellow, is necessary to better secure their natural rights. Locke contends, it is literally absurd to imagine men contracting to submit to an absolute, arbitrary power. Therefore the majority, acting in the name of the entire people, “alone can appoint the form of the Commonwealth, which is by constituting legislative, and appointing in whose hands that shall be”. According to Locke, all powers of the government stem from that original act of limited delegation from the people. Therefore, the society, the law of God and Nature bound the legislative power of every Commonwealth.

British constitution characterized by positing liberty as its end. The spirit of this constitution is that people shall be governed only by laws to which they have consented through freely chosen and popularly accountable representatives. Initially Britain, in which the legislative has absolute power, is considered as a model of constitutional government. It is a model, as Montesquieu (1689-1755) contends, because its constitution is characterized by limited and mutually checking powers. Thus, he expounded the notion of separation of powers.

In line with secularism and liberalism, which shapes Western liberal democracy, this exposition of constitutional government indicates that these political thinkers emphasize the rights of men and neglect the duties of men, which for Muslims is also no less importance. Obviously, a balance between the rights and the duties is what is best for the people. We need both to be emphasized in order to establish not only a good government but also a responsible society. Under this secular scheme of thought, morality has little or no significance in political system. Rather than only securing what-man-can-do, people need to be asked whether or not they fulfill their duty, and what they are doing is right or wrong, good or bad. Obviously the idea of the rule of law is sound, however, Montesquieu’s conception of rule of law invokes questions such as which and whose law? Is it the law of nature, or positive law? Is it Lockean or Austinian.

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10 John Locke, Two Treatises of Government, Book II, Chapters XI-XIV.
11 This is denied by the author of Four Letters on Interesting Subjects, by anonymous writer, to him it does not have anything that might properly be called a constitution. See “Constitutional Government” in the Constitution’s Founders, 3.
12 Baron de Montesquieu, Spirit of Laws, edited by J. V. Pritchard, (London: Bell and Sons, 1914), 1:161
13 Baron de Montesquieu, Spirit of Laws, 161.
14 Brianz Z. Tamanaha, On the Rule of Law, 53.
conception of law? This is because western conception of law is problematic due to unresolved philosophical foundation of law.15

As far as modern Western political thought is concerned, Magna Carta is considered by Western political theorists as the first constitution on earth and marked the beginning of constitutional government. Obviously, compared to Magna Carta which is dated back to 1215C.E, the Charter of Madīnah is dated much early i.e., 1H./622C.E. Moreover, King John who signed the charter agreed to the content of it under coercion of the barons of England, thus it was signed under threat and received almost immediate repudiation by King John himself,16 whereas the Charter of Madīnah was the result of understanding of all the citizens of Madīnah, including the minority Jewish tribes. Hence was found on the basis of the concurrence of both the ruled and the ruler.17

Realizing the contribution of Islam in the advancement of contemporary political and social sciences, Robert Briffault maintains:

The ideals of freedom for all human beings, of human brotherhood, of the equality of all men before the law, of democratic Government by consultation and universal suffrage, the ideals that inspired the French Revolution and the Declaration of Rights, that guided the framing of the American Constitution and inflamed the struggle for independence in the Latin American countries were not inventions of the West. They find their ultimate inspiration and source in the Holy Qur’an. They are the quintessence of what the intellectuals of Mediaeval Europe acquired form Islam over a period of centuries through the various channels of Muslim Spain, Sicilly, the Crusades; and of the ideals propagated by the various societies that developed in Europe in the wake of the Crusades in imitation of the brotherhood association of Islam.18

Considering the fact that Islam is the first to introduce the concept of the representative and consultative government, in terminologies such as shērī (mutual consultation), bay’ah (contract) and wakūlah (representation), it is not surprising to note that many western political thinkers such as Locke, Rousseau, Montesquieu, are very much influenced by Muslim scholars of the fourteenth and sixteenth century. The Europe debt to the Muslim world acknowledged and realized only by few Western scholars. Instead of acknowledging the contributions of Muslim scholars, as Montgomery Watt rightly put it, most of the Western writers exaggerate the dependence of modern Western civilization to its Greek and Roman heritage.19 Weeramantry contends that Locke had learned about Arab’s achievement while he was in Oxford through his professor of Arabic Studies i.e., Edward Pococke.20 Therefore if we see carefully his ideas of social contract, sovereignty of the people and the supremacy of the legislature over the executive correspond to the notion of bay’ah, wakūlah and shērī respectively. Likewise his idea of natural rights, i.e., life, property and liberty, was argued to have been taken with some modification from

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17 For the people of Madīnah the Charter marks the end of the unending conflict and civil war.
al-Ghazzâlî’s exposition of al-ÌarÊrìyyÊt al-khamsah (the five essential interests) which are: religion, life, intellect, property and progeny.\textsuperscript{21} It is also evident that Rousseau should have acquainted with Islamic literature before he could praise Islamic government in Muslim history. In his \textit{Social Contract}, Rousseau states: “Mahomet [or Muhammad] had very sound opinions, taking care to give unity to his political system, and for as long as the form of his government endured under the caliphs who succeeded him, the government was undivided and to that extent, good.”\textsuperscript{22}

Therefore, based on the above facts, we may conclude that the notion of constitutional government, in which the central issue is the rule of law which in turn corresponds with the notion of supremacy of SharÊ'ah (siyÊdat al-SharÊ’ah) was in actuality introduced by Islam. The focal point of Islamic constitutionalism is the subordination of both the state and the people to the general guidelines and the primordial values enshrined in the written Islamic constitution.\textsuperscript{23} It necessitates the principle of limitation of the power of the state under the rule of law. These limitations are essential because, as lord Acton put it, absolute power corrupts absolutely.\textsuperscript{24} Constitutionalism in Islam rests upon the principle that the state “is bound to administer and uphold the SharÊ’ah. There is no place in Islam for arbitrary rule by a single individual or a group”.\textsuperscript{25} The SharÊ’ah requires the government to respect and protect the rights of the individuals. No governmental agency has the power to interfere with the basic rights of the people. In Islamic state, the government is bound to administer the public affairs in accordance with the SharÊ’ah. It is bound to utilize all the powers it has in the realization of public interest (mâllâlah).\textsuperscript{26}

While the Islamists believe, based on the concept of \textit{shumÊliyyat al-IslÉm} (the comprehensiveness of Islam), that the SharÊ’ah provides rules and principles concerning politics, including constitutional law. In contrast, the secularists and liberals maintain that the SharÊ’ah does not spell out any theory of state, in fact it does not limit the power of the government.\textsuperscript{27} Rather than trying to vindicate any of these views, this study will explore the provisions of the SharÊ’ah with regard to constitutional government.

Contemporary Muslim scholars, such as al-‘AwwÊ, BadawÊ and al-GhanmÊshÊ, concur that Islam had spelt out the nature of the relationship between the ruler and the constitution (qÉnÈn), it makes the compliance with the constitution as the basis of the legitimacy of the

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\item \textsuperscript{21} Al-Ghazzâlî, \textit{al-MustaÎfÉ min ‘Ilm al-UÎÉl} (Beirut: Dar IlyÊ’ al-TurÊth al-‘ArabÊ, n.d.), 1:217; al-‘Izz b. Abd al-SalïÊm, \textit{QawÉ'id al-AÌkÉm fi MaÎÉlih al-AnÉm} (Beirut: Mu’assasat al-RayyÊn, 1990), 1:10. There is divergent opinions among the scholars about progeny, some of them, i.e., al-QÉrÉfÊ, added dignity (‘irÌ), Ibn ‘ÓshÊr regards the protection of ‘irf as belong to the hÊjiyyÊt (complementary interests) and not ÌarÊrìyyÊt (essential interests).
\item \textsuperscript{22} Muhammad al-ÙÉhir Ibn ‘ÓshÊr, \textit{MaqÉÎid al-SharÊ'ah al-IslÉmiyyah} (Cairo: Dar al-Salam, 2006), 77-79.
\item \textsuperscript{23} FatÏÊ al-DuraynÊ, \textit{KhaÎÉ'iÎ al-TashrÊ' fi al-SiyÉsah wa al-×ukm}, 185.
\item \textsuperscript{24} A statement resembles that of Ibn KhaldÈn who said: “the nature of political authority is that it is the essential association of humankind wherein coercion is needed…therefore most of those in authority are oppressive [and going far] from the truth” Ibn KhaldÈn, \textit{al-Muqaddimah}, 188.
\item \textsuperscript{26} Muhammad Hashim Kamali, “The Limits of Power in an Islamic State”, 324.
\item \textsuperscript{27} Nadirsyah Hosen, “In Search of Islamic Constitutionalism” in \textit{American Journal of Islamic Social Sciences} 21:2 (2004), 1-24; Abdullahi Ahmed al-Na’îm, \textit{Toward an Islamic Reformation:Civil Liberties, Human Rights and International Law}, 179.
\end{itemize}
The policies and the decrees of the ruler are restricted to be in consistent with the Sharī'ah. Hence, Islam allows disobedience to an unjust ruler. There is plenty of evidences which shows that the imam is obliged comply with the provisions of the Sharī'ah. Sharī'ah enunciates some obligations and limitations that the ruler should observe while governing the people. Clearly, the objective is to ensure that the ruler performs his duty accurately and the people’s interests protected. Needless to say that justice, equality, and freedom are principles upheld in Islam. This corresponds to classical Muslim scholars’ contention that the Sharī'ah, which consists of directives of God in the Qur’an and the Sunnah, is based on justice, mercy, good and wisdom.

At the outset we may say that political absolutism is condemned in Islam. The Qur’an and the Sunnah repeatedly condemned and cursed unjust rulers, such as Pharaoh (Fir’aun) who enslave his own people and claim absolute authority over them. In this connection, the Prophet said: “when you see my community afraid of calling a tyrant “tyrant” then take leave of it.” In his inaugural speech Abu Bakr states: “O people! I have been selected as your Trustee although I am no better than anyone of you. If I am right, obey me. If I am misguided, set me right”. Although the above injunctions indicate that the Muslim ruler must be just and good. The pressing question is that does Islam provide mechanisms to prevent authoritarianism and despotism? This chapter will be dedicated to answer this definite question, as it underscores the Islamic notion of constitutional government. Before we go further, it is important to note that while the Western theorists highlight the rights and liberty, the Sharī'ah emphasizes the duty and justice. Hence, some of the principles in the Sharī'ah might not be seen as people-oriented polity as they are in the West, because of anthropocentric nature of Western philosophy, and yet they are pivotal in creating a just and good government.

According to Malik Bennabi, Islamic political thought is distinct compared to secular democracy in that it stresses duty rather than rights. For him duty must necessarily exceed right, all politics founded solely on right is nothing but pure demagogy. It teaches them the tone of asking about their right without performing the efforts that give birth to these rights. This explains why in Islamic literature Muslim political theorists typically discussed about the duties of the Imam more than the rights of the people. If these obligations are fulfilled then consequently the interest of the people should have been protected.

These duty-oriented political principles correspond to the nature of Islam, which places human beings as the servants of God. Since the purpose of the creation of man is to serve and to please God, therefore, fulfilling the will of God is more important than fulfilling the will of oneself. This nature of Islamic teachings could be seen as theocentric rather than anthropocentric which characterized Western philosophy, however, there is a balance between the spiritual

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28 See, Muhammad SalÉm al-`AwwÊ, Fi al-NiDÊm al-SiyÊsÊ li al-Dawlah al-IslÉmiyyah (Cairo: DÉr al-ShurÊq, 1989), 23; Muhammad ÙÉhÉ BadawÊ, al-QÉnËn wa al-Dawlah, 15; RÉshid al-GhannËshÊ, al-×urriyyÉt al-`Ómmah, 105.
30 The Qur’an 7:44; 11; 18.
31 The Qur’an 26:11; 20:24; 28:4; 43:51. In these verses Pharaoh was depicted as despot, arrogant, cruel, tyrant, and authoritarian.
32 Musnad ImÉm AÍmad, no. 6495.
demand, or Īablun min AllĒh (men-God relation), and material demand, or Īablum min al-nĒs (men-men relation). With the former will necessarily have good impacts on the latter. The distinct approach on human rights and civil liberties between Islam and the West is caused by the formative factor of both worldviews. In modern Western tradition, as Muddathir rightly pointed out:

Human rights have evolved in the context of prolonged and oftentimes bitter political struggles between states and citizens and thus are usually seen as primarily legal and political in nature; in the Islamic tradition, in which not only political and juridical but also moral and spiritual concerns play important and pivotal roles, human rights are usually seen as having spiritual significance and religious meaning in addition to their legal and political nature.36

As a result of this distinctive approach, the Islamic law has deeper influence on the life of the believers. Compared to Western conception of human rights, Weeramantry observes, “the Islamic stress on relationship with the divine, and on the concept of duty, could well lead to a more dedicated and purposive commitment to human rights than might be possible in a system which depends on concessions grudgingly granted under compulsive pressure.”37

In the following discussion, we will explicate six political principles enunciated in the Qur’ān and the Sunnah. These principles, not with the intention to limit them to six, are the major political implications of the concept of supremacy of the Sharī‘ah which are also inevitably has a pivotal role in ensuring the notion of constitutional government being implemented in political reality. These principles are duties which bind both the ruled and the ruler. Some of them considered as mechanisms to prevent political absolutism and function as a bulwark against arbitrary power of the state.

1. Representative Government

The concept of representative government has a pivotal role in both Islamic political thought and Western political thought. Historically speaking, the idea of representation (wakālah) was expounded by classical Muslim scholar long before Western thinkers, like Locke and Rousseau developed it in their writings. Classical and contemporary Muslim scholars contend that government in Islam is based on a contract or a pledge of allegiance between the ruler and the ruled.38 Their expositions were based on the Prophetic tradition, the Prophet is reported to have said: “Let the Muslims choose among themselves a person”.39 He is also reported to have said during the bay‘ah al-‘aqabah: “select among yourselves twelve leaders”.40 “He who has pledged allegiance (bāya‘a) to an imam, giving him his hand and the fruit of his heart, shall obey

35 This will be evident for instance if we look at the purpose of prayer as stated in the Qur’ān: “…Prayer restraints from shameful and unjust deeds…” (al-‘Ankabut, 29: 45) that is if a Muslim establishes prayer wholeheartedly it will become his bulwark against misconduct and thus benefit the society. If it is not, then his prayer must be reckoned.
36 Muddathir Abd al-Rahim, Human Rights, 11.
37 C. G. Weeramantry, Islamic Jurisprudence, 117
38 Ibn Khaldun, al-Muqaddimah, 205.
39 Al-ÂwardÊ, al-ÂkÊm al-SulÎnîyyah, 13.
40 Ibn Hisham, al-SÊrah al-Nabawiyyah, 2:301. The two verses of shÊrÊ also used by the jurists to legitimize election.
him if he can [i.e., as long as he is not ordered to commit a sin] also “if there are three persons in a journey they must appoint a leader from among themselves”. The Prophet (pbuh) himself set a precedent in the bay‘ah of ‘aqabah and bay‘ah al-ri‘wah. These practices were prolonged by his Companions in the succession of the Rightly Guided Caliphs, in concomitant with the Qur‘anic injunction “Their communal concern [amruhum] is [transacted in] consultation among themselves.” The Rightly Guided Caliphs regarded themselves as one among the people except they are burdened with more responsibilities. They were paid homage to by the people as caliphs and become the deputy of the Prophet. This pledge of allegiance (bay‘ah) represents the contract between the ruler and the ruled, hence under this contract, the ruler become the representative (wakîl) of the people.

Considering the importance of the people’s consent, Islamic state is definitely far from being a theocratic state. For the simple reason that no human being in Islam, after the prophet, can claim to be the representative of God. Since the demise of the prophet Muhammad and revelation has lapsed, any direct connection and communication with God is impossible. As a respond to the Orientalists misunderstanding in his day, Muhammad Rashid Ri‘î stresses that the caliphate has nothing to do with religious authority, “he is a civil ruler in its real sense”. Even if the ruler happen to be an ‘ulamî, in Islam the ‘ulamî or the so-called religious authority is not infallible and have no ecclesiastical authority like the clergy in Christianity. In this regard Sanhuri, echoing Muhammad Rashid Ri‘î, maintains that the prophetic rule is the only rule that can be described as theocratic. Unlike the Prophet, the caliph in Islam does not have legislative authority, the rule of the Rightly Guided Caliphs is therefore administrative and civil in nature.

For this reason, classical Muslim scholars contend that the imam is a wakîl (representative), nî‘ib (deputy) and amîn (trustee) of the ummah. This is because the only way to install the caliph, in the word of al-Baghdadi and al-Juwayni, is al-Ikhityâr (election) and not as maintained by the Shi‘ite through revealed text. Only some scholars, such as al-Râzî, who argue that the Imam is the representative of God or the prophet. What they mean, as evident in al-Râzî’s his full statement, was actually that Imam is representing God or the

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41 Sahih Muslim, Kitab al-Imarah, no. 1844.
42 In bay‘ah al-‘aqabah, which took place before the migration (hijrah), the people of Yathrib pledge to protect and be with the Prophet through thick and thin, whereas in bay‘ah al-ri‘wah the Companions pledge to fight with the Prophet until the last blood. These contracts or pledges of allegiance between the Prophet and his Companions not only signify the Companions’ oath to obey the Prophet but also signiﬁy their consent with the leadership of the Prophet. See Ofî al-Рa‘Î al-Mubârakfûrû, al-Ra‘îq al-Makhtûm. 4th ed. (Jeddah and Beirut: Dér al-Qiblah and Mu’assasat ‘Ulûm al-Qur‘ân,1987), 383
43 Sûrah al-Shûrûr, 48:38.
44 The Qur’an also alluded to this representation in the following verse: “O you Faithful! Obey God and obey the Apostle and those in authority from among you.” (Sûrah al-Nisîr, 4: 59). It implies that the rulers are elected by the people and must have the consent of the people. The translation of the Qur‘anic verses in this study refers to Muhammad Asad, The Message of the Qur’an (Gibraltar: Dar al-Andalus, 1980).
46 Al-Râzî, Tafsîr al-Kabîr, 2:165.
prophet in the execution of Islamic law and not representing God in political authority.\textsuperscript{50} This view does not contradict the idea of representative government if we construe it to mean that an Imam is also the vicegerent of God (\textit{khalīfatulīh}) as all the believers are supposed to be the vicegerent of Allah.\textsuperscript{51} Undisputedly, these ‘\textit{ulama}’ never meant it in a theocratic sense that is to speak and rule on behalf of God.\textsuperscript{52}

If the ruler is the representative (\textit{wakīl}) of the ruled, then, logically speaking, the consent of the ruled is a must.\textsuperscript{53} The term \textit{bay‘ah}, which appeared since the time of the prophet, signifies that the ruler have to get the people’s consent before he assume his office, as a \textit{nā‘ib} (deputy) of the people he should get the mandate from the people before he can act on people’s behalf. As an \textit{amīn} (trustee)\textsuperscript{54} he should perform his duty in accordance with the mandate given by the people.\textsuperscript{55} If his actions and policies contradict the will of the people, he has no right to remain in office. From this argument, it is clear that political legitimacy in Islam has two constituents viz., the compliance with the Sharīah and the consent of the people.\textsuperscript{56} With regard to the latter, the caliph ‘Umar said: “There is no caliphate except through consultation” (\textit{lī khilāfata illī an mashārīh}).\textsuperscript{57}

Classical Muslim scholar maintained that \textit{bay‘ah} is ‘\textit{aqd wakīlah} (the contract of representation) between the Imam as a \textit{wakīl} (representative) and the ummah as \textit{mawṣūlīh} (the represented).\textsuperscript{58} Al-Baqillāni and Ibn Taymiyyah assert that the Imām is the representative of the people due to this contract.\textsuperscript{59} Al-‘Izz b. ‘Abd al-Salām states that the \textit{bayt al-mīlīl} (the treasury) should pay compensation for the lost generated by the acts of the Imām, because he acts in representation of the people.\textsuperscript{60} Al-Mēwardē also states that the officials appointed by the Imām should not be deposed by the demise of the Imām, because he represents not himself but the Muslims in the appointment.\textsuperscript{61} These statements indicate the concurrence of the classical ‘\textit{ulamā’} that the Imām is the representative of the people.

\textit{Bay‘ah} (pledge of allegiance) is a contract similar with any contract in Islam, which bears its sanctity by involving God.\textsuperscript{62} Like any contract the consent of the two parties is essential.

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\item \textsuperscript{50} Ibid.
\item \textsuperscript{51} Based on the Qur’an \textit{Surah al-Baqarah}, 2: 30.
\item \textsuperscript{52} See Munīr al-Bayātī, \textit{al-Niṣām al-Siyāsī al-Islāmī}, 235-6.
\item \textsuperscript{53} Al-Sanhārī, \textit{Fiqh al-Khilāfah}, 113.
\item \textsuperscript{54} It has been narrated on the authority of Abu Dhar who said: I said to the Holy Prophet (may peace be upon him): Messenger of Allah, will you not appoint me to a public office? He stroked my shoulder with his hand and said: “Abu Dhar, thou art weak and authority is a trust (\textit{amīn}) and on the Day of judgment it is a cause of humiliation and repentance except for one who fulfils its obligations and (properly) discharges the duties attendant thereon”. Sahih Muslim, \textit{Kitāb al-Imārah}, no. 4696, 12:414.
\item \textsuperscript{55} Muhammad al-Mubarak, \textit{Niṣām al-Islām: al-ṣukm wa al-Dawlah} (Cairo: Dar al-Fikr, n.d.), 105.
\item \textsuperscript{56} Tharwat Badawī, \textit{al-Nuṣūm al-Siyāsiyyah}, 155.
\item \textsuperscript{60} Al-Mēwardī, \textit{al-Ākūm al-Sulānī}, 31. Although he is also of the opinion that the Imam is the representative of the Prophet (\textit{nīyābatu-an al-nabī}) this should not be construed as contradiction because while the Imam, especially Abu Bakr, is the \textit{khalīfatul Rasūlīh} (the representative of the Prophet), the same title cannot be applied anymore. Therefore ‘Umar changed the title into \textit{amīr al-ma‘ṣīrīn} (the leader of the believers).
\item \textsuperscript{61} This is consistent with the Qur’anic verse which proclaims: “Behold, all who pledge their allegiance to thee pledge their allegiance to God: the hand of God is over their hands” (\textit{Surah al-Fath}, 48: 10).
\end{itemize}
However, it distinct from ordinary representation contract in the fact that the conditions and rights of the contract are not decided by any of them, it is the Sharī'ah that defines the conditions and the rights of both parties. Most importantly, however, fulfilling the demand of the bay'ah regarded as 'ibādah (worship) and breaching of it considered as ma‘āliyyah (sinful act). Therefore, bay’ah is more than election. It is a sacred contract similar to that of marriage in Islam. The Imam pledges to implement to law of God and serve the people. This is especially true when we look at the inaugural speech of the Rightly Guided Caliphs. This nature of Islamic political system had been expounded by classical Muslim scholars, it is through their works, apparently, Western political theorists adopted the idea of representative government.

The concept of wakfah and bay’ah in Islamic political thought are seamless proof that the people is the source of power (ma‘ādar al-sulūl) in an Islamic state. For this reason some Muslim scholars maintain that the concept of sovereignty of the people, which also constitutes the basis of modern democracy, is compatible with Islam. However, this does not necessarily seen as antithesis of the concept of sovereignty of God (al-Ḥakimiyyah li Allāh) which is endorsed by majority of Muslim scholars. Ghannushi has been able to see beyond the apparent contradiction between these two opinions, and maintain that while the concept of al-Ḥakimiyyah li Allāh is undisputable, the concept of siyāsah al-ummah does not intend to challenge the supremacy of Sharī'ah but to give the people their power as prescribed by the Sharī'ah itself.

Therefore, the concept of representative government in Islam entails the subordination of the state to the supreme authority of the people. Meanwhile the people themselves are subjected to the provisions of the Sharī'ah. Hence, in Islamic political thought the chain of authority from the top to the bottom is as follow: the Sharī'ah--the people--the state, not the other way around.

Having given the people the supreme authority over the state, Islam also prescribed a mechanism to guarantee such power is protected. The ahl al-shērē ah (the parliament), who are freely elected by the people, will represent the people in monitoring the policies and the conduct of the ruler. They have the duty to listen and taking seriously the people’s demand and aspirations. In addition, they have the right to disagree with the Imam and demand justification and explanation.

The problem is that how to ensure that the ruler perform his duties? This problem would be prevented provided that the people have fulfilled their duty in selecting the right individuals to become their representatives (ahl al-shērē). Therefore, it is crucial not to emphasize only the people’s right to choose their leader but this right must be balanced with the duty of choosing the right leader. Hence the concept of accountability of the ruler will only make sense if the ruler has been selected properly coupled with stringent criteria provided by the Sharī'ah. If the concept of

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64 This refers to Locke’s discussion of representation and the power of the people over the ruler, and as we have mentioned earlier Locke was familiar with the writings and achievement of Muslims scholars.
65 Al-Sanhūrī, Fiqh al-Khilāfah, 119; Ismail Badawi, Da‘ī al-‘Imām al-Dustūrī, 73.
choosing the right person (ikhtiyār al-aīlaḥ) for the job is not observed,⁶⁹ that is only on the basis ‘so long he is the people’s choice’ as emerged in today democracy, the elected person will most probably unable to fulfill the demand of the office. It is also important to ensure that the election was conducted fairly, without any threat and pressure, there is undoubtedly a need to elevate people’s political awareness so that they will cast their vote base on wisdom and responsibility, not on the basis of popularity and other trivial consideration.

2. The Obligation to Conduct Shērē

The Islamic state is consultative state. As Muḥammad ‘Abduh rightly put it “it is well known that an Islamic state is based on the principle of shērē”.⁷⁰ In a similar vein, Sayyid Qutb also contends that shērē is “the foundation of the Islamic state and it cannot have any other foundation to replace it”.⁷¹ This is true for the fact that the ruler in Islam is the representative of the people. The ruler as we have mentioned above is the trustee of the community. Therefore, the government is bound to follow the community’s will and the general consensus of the knowledgeable who know, based on their profound knowledge, the best interest of the people. In this regard, shērē is designed to ensure that public interests (mālālah) are protected against absolutism and arbitrary rule.

Shērē (mutual consultation) is enunciated in the Qur’an and the Sunnah. The first verse in sūrah al-Shērē God praises the community of believers for one of their nature is that: “Their communal concern [amruhum] is [transacted in] consultation among themselves.”⁷² It is remarkable to note that although the Prophet was the recipient of divine guidance, nevertheless, he was directed to consult his Companions in all matters of public import:

“[I]t was by God’s grace, that thou [O Muhammad] didst deal gently with thy followers: for if thou hadst been harsh and hard of heart, they would indeed have broken away from thee. Pardon them, then, and pray that they be forgiven. And consult with them (shēwrhum) in all matters of public concern.” (Ali ‘Imran, 3:158).

With regard to the scope of shērē, the ulama prescribe two conditions in conducting shērē. First, it must not be on matters the text had explicitly dealt with. Thus, on matters which the sacred text is silent it is left to the members of shērē to decide so long it concerns the public. Second, the decision made by majlis al-shērē must not contradict the text of the Qur’an and the Sunnah.⁷³ These conditions correspond to the spirit of the supremacy of the Sharī‘ah.

With regard to the implementation of shērē, there are two related fundamental questions which are crucial to deal with that are: Is shērē in Islam obligatory? Does the decision reached through shērē binding upon the ruler? The majority of Muslim scholars concur that shērē is compulsory upon the ruler and it is not something optional or recommendable. Only few scholars view that shērē is not obligatory.⁷⁴ In the following discussion we will examine the viewpoint of

⁶⁹ For further explanation on the duty of the constituents to select the right person see Ibn Taymiyyah, al-Siyāsah al-Shar‘īyyah, 12.
⁷⁰ Tafsīr al-Manār, 4:45.
⁷² Sūrah al-Shērē, 48:38.
⁷⁴ Ismā‘īl Badawī, Ma‘īlim al-Shērē fī al-‘Ilm (Cairo: Dar al-Nahdah al-‘Arabiyyah, 1994), 32.
both who advocate the obligation of *shÊrÉ*, which we called the exponent view and those who reject the obligation of *shÊrÉ*, which we name the opponent view.

**a. The Opponent View**

The minority view who held that *shÊrÉ* is not obligatory base their argument on slightly different interpretation of the above Qur’anic verses. They interpret the verse “*washÉwirhum fi al-’amr*” that *mushÉwarah* takes place before the ruler has tenacity and firmness, when a ruler thinks that he is right then *shÊrÉ* is not necessary as evident in the case of ×udaybiyyah. In this occasion the Prophet did not listen to the objection of the majority of the Companions who renounce the treaty between the Muslim and the Quraysh. Al-QurÏubÊ (d.671H.) mentions the argument of those in favor of non-compulsory that since the Prophet was aided by revelation, the prophet need not to consult his Companions, the direction to conduct *shÊrÉ* was thus only for strategic purposes and to win their heart. He however advocates the opinion espoused by Ibn ‘Alíyyah. We may conclude from their explanation, that they did not argue against the obligation of *shÊrÉ* rather they discussed about whether or not the Prophet in need of consultation of his Companions since he was guided by revelation. This minority view contends that Abu Bakr’s decision regarding the war on apostates overruled the majority view. It also presupposed that the election of Abu Bakr was conducted not through *shÊrÉ* but by the suggestion of ‘Umar.

Abu Ya’qub al-MulayjÊ contends that *shÊrÉ* cannot be obligatory because Islamic political system need not check and balances or mechanism to function as bulwark against despotism, since God is the real Ruler, therefore, the ruler will be accountable only to God. He

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76 ×udaybiyyah is a place about 16 kilometers from Makkah on the way to Jeddah. At this place a treaty was made in 6 H. between the Prophet and the Quraysh who stopped him and his Companions from performing ‘Umrah. Ibn Hisham, *al-SÉrah al-Nabawiyyah* (Beirut: Dar al-Fikr, 1998), 3:220.

77 This view of QatÉdah, al-RabÊ', Ibn IsÍÉq, and al-ShÉfi'Ê, is said to be based on Bukhari’s statement: that is *shÊrÉ* takes place before determination and firmness. It seems that *mushÉwarah* is required when the ruler has no decision. See al-‘Asqalani, *FatÍ al-BÉrÊ* (Beirut: Dar al-Fikr, 1993), 15:283-285; al-ManÉr, 4:25. Actually, Bukhari’s statement has nothing to do with the obligation of *shÊrÉ*, it is true that when the decision has been made the Imam should not hesitate in the implementation.


80 This is also the reason why al-Shafï’Ê said it was not obligatory: “*fakadhÉlikã yaqÉz tark al-mushÉwarah walÉkin al-awtÈlÉ ititbÈ ‘uhÈ*” means: “therefore he can abstain from conducting *shÊrÉ* but he better practice it”, in the explanation al-Shafï’Ê said that this is because “the Prophet was not in need of their opinion, he only wanted to teach the rulers after him”, this last words of al-Shafï’Ê, in this regard, imply that he did not mean to undermined the importance of *shÊrÉ*, but the direction in the verse do not actually mean the obligation to the prophet since he was guided by revelation, and therefore cannot be wrong. Unlike his caliphs (and Muslim rulers after him), they need *shÊrÉ* and therefore it should be an obligation to them. We may conclude that there is no indication that al-Shafï’Ê sustains authoritarian government. See MuÎammad b. IdrÊs al-Shafi'Ê, *al-Umm*, 6:206.

also states that even in modern democratic government the legislative’s decision is not binding to the executive. It seems that he missed the point, Muslim scholars did not promote shûrâ in order to resemble democracy. The point is that shûrâ is a Qur’anic concept and a religious directive. Furthermore, fear of God is not sufficient mechanism as far as the political institution is concerned, inasmuch as it is not observable and measurable. The fact is that in modern complex situation, our leaders are far to be paralleled with the Rightly Guided Caliphs. Even the Caliphs themselves asked people their opinion and to correct them if they went astray. It is evident that their arguments are lacked of strong evidence to support their view.

Another scholar who refuses to agree with the majority of the scholars is Maimûd al-Khâlidî. In his recent writing contends that shûrâ is actually recommendable not obligatory. His judgment is simply unacceptable because he himself explained in details the significance and the importance of conducting shûrâ, and yet after he explained both opponent and exponent viewpoints he sides with the opponent simply because he think shûrâ can only be conducted on mubah or permissible matters. Therefore, for him only the provisions of the sacred text have the binding authority. This literal and rigid interpretation of Islam is as deleterious as ignorance of Islam. It is true that shûrâ is permitted only in the absence of clear text. Even in the absence of the text, scholars should know whether something is permissible or prohibited, either through qiyès, ijmî (consensus), al-maîlî al-mursalah etc. moreover human reason has the ability to know right from wrong, good and evil, if something is decided as wrong, or evil and it is in agreement with the maqâlîd al-Sharî’ah, it has the force similar to the Sharî’ah itself. Therefore, although it is not mentioned literally in the text, something can be lawful or prohibited. And the decision arrived through shûrâ has binding authority similar to the Sharî’ah but cannot overrule it.

b. The Exponent View

This view is held by the majority of Muslim scholars, classical and contemporary. Among them are: Ibn Taymiyyah, Ibn ‘Atiyiyah, al-Qurîubî, al-Fakhr al-RÉzî, al-RÉfî’î, al-Nawawî, al-Sharbînî, some of the Malikite school, and most of the contemporary scholars like: Muîammad ‘Abduh, Muîammad Rashêd Riî,84 ‘Abd al-Wahhêb Khallêf,85 ‘Abd al-QÉdir ‘Awdah,86 Sayyid Qutb,87 Maimûd Shaltêt,88 Muîammad Saîdê al-‘Awwê,89 Tawfîq al-Shêwê,90 Yêsûf al-Qaralîwê,91 Muîammad ‘Abd al-QÉdir Abê Féris,92 RÊshid al-GhannÊshê,93 and the list goes on. The Qur’anic verse of sûrah Óli ‘Imrê, 3: 59 understood by the majority of classical ‘ulamî as when the shûrâ is conducted and you determined to take the decision of shûrâ then

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83 Maimûd al-Khâlidî, NiDÉm al-ShÊrÉ fî al-ÎslÉm (unsupported by Yaqub al-Mulayji), 4199.
84 Muîammad Rashêd Riî, Ta’fÊr al-ManÊr, 4:199.
86 ‘Abd al-QÉdir ‘Awdah, al-ÎslÉm wa Awîl’una al-SiyÊsiyyah, 162.
87 Sayyid Qutb, FÊ UlÊl al-Qur’Én, 2:119.
88 Maimûd Shaltêt, al-ÎslÉm ‘Aqêdah wa SharÊ’ah, 441-2.
89 Al-‘Awwê, FÊ al-NîdÊm al-ÎslÉm ÎE al-Dawlah al-Islamiyyah (Cairo: Dar al-Shuruq, 1989), 198.
90 Tawfêq al-Shêwê, Fîqîh al-Shêrê fî al-IstishÊrâh,17.
91 Yêsûf al-Qaralîwê, Min Fîqî al-Dawlah fî al-ÎslÉm (Cairo: Dar al-Shuruq, 1997), 81,136.
92 Muîammad ‘Abd al-QÉdir Abu Faris, al-NîdÊm al-SiyÊxiÊsê fî al-ÎslÉm, 93-94.
93 Al-GhannÊshê, al-‘uruqÉt al-‘Ommah, 108.
you have to resume and have faith in God 

tawakkal

in executing it. In his commentary of this
verse, al-Qurtubi and al-Fakhr al-Razi, cited the view of Ibn ‘Alīyyah who said: “shīrē is one of
in executing it. In his commentary of this
verse, al-Qurtubi and al-Fakhr al-Razi, cited the view of Ibn ‘Alīyyah who said: “shīrē is one of
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In his exegesis, al-ÙabarÊ (d.310H.) mentioned that “if you (Muhammad) has arrived at
your decision with Our assistance then go ahead with what We command, whether or not it be in
agreement with the opinion of your Companions...”95 hence it is clear that what al-ÙabarÊ meant
is the Prophet may disregard shūrē if he find support from revelation. This is in concomitant
with one of the conditions of shūrē which is the consultation must be in matters no clear text
therein. Al-DuraynÊ, in discussing al-Tabari’s statement contends that while it is acceptable
with regard to the Prophet due to the fact that he is guided by revelation, the same reason is not
acceptable to his successors and the Muslim rulers after him inasmuch as they are not prophets.96

The truth in the case of Hudaybiyyah is that the prophet was guided by God.97 Therefore,
even though some Companions expressed their objection, the Prophet did not listen to them. This
is because Shīrē cannot be applied when revelation is clear on the matter. Likewise, AbÊ Bakr
refuses to listen to the majority view of the Companion who confront his decision to fight the
murtaddÊn (apostates) and those who refuse to pay zakÉt because he was following a text. Abu
Bakr’s decision to rule out the majority view is correct because it is based on sacred text in
support of his view.98 Therefore, his determination is justified. Hence Abu Bakr overruled the
opinion of the Companions for the reason that he followed the clear text, not to make his own
opinion absolute. Likewise, as Abu Yusuf (113-182A.H.) reported, ‘Umar took three days to
convince the Companions who disagree with him, before they finally agree with him to maintain
the land of Iraq (sawÈd al-‘IrÈq) with its owner considering the interest of the people.99

In refuting the minority’s argument al-‘Awwa contends that the Qur’an and the Sunnah
do not specify how shÉrÉ should be conducted. Therefore the nomination of Abu Bakr by ‘Umar
is considered one of the ways that shÉrÉ could be done.100 As a matter of fact, the method used
by the Rightly Guided Caliphs in administration of public affairs is unequivocal, as Ibn al-
Qayyim states, first they look at the Book if they don’t find the solution they resort to Sunnah, if
it doesn’t say anything then they ask the people; Does anyone know how the Prophet dealt with
this kind of problem? If no one answers they call the leaders of the ummah, and when they
concur on a decision they will apply it.101 ‘Abd al-Wahhab Khallaf denounced the opinion of the
some classical ‘ulamÉ’ who said shÉrÉ is not obligatory or who said that it is obligatory but in
the end the Imam is not oblige to conform with the decision of the shÉrÉ. This, he said,

94 Al-QurÌubÊ, al-JÊmi' li AhkÉm al-Qur'Én, 3:159; al-Fakhr al-RÈzÊ, al-TafsÊr al-KabÊr, 3:120.
95 Al-ÙabarÊ, 4:249-50.
96 FatÍÊ al-DuraynÊ, KhaÎÉ'is al-TashrÊ' al-IslÉmÊ fi al-SiyÉsah wa al-×ukm, 2nd
97 Al-‘AwwÉ, FÊ al-NiÐÉm al-IslÉmÊ, 190; AbË FÉris, al-NizÉm al-SiyÉsÊ fÊ al-IslÉm, 107. For clear
understanding of what actually happened see Ibn Hisham, al-SÊrah al-Nabawiyyah, 3:220.
98 Al-DuraynÊ, KhaÎÉ'is al-TashrÊ' al-IslÉmÊ, 464; al-‘AwwÉ, FÊ al-NiÐÉm al-IslÉmÊ, 197. Abu Bakr maintains
that the ÍadÊth provides a condition (illÉ biÍaqqihÉ) for the security of their life and they broke it. The ÍadÊth is
reported by Bukhari and Muslim. This is also in consistent with the Qur’anic verse in
surah al-Tawbah, 9: 5.
99 Abu Yusuf, KitÉb al-KharÉj (Cairo: Matba’ah al-Salafiyyah, 1962), 26-28; Muhammad Yusuf Musa,
NiÐÉm al-×ukm fÊ al-IslÉm, 149; al-DuraynÊ, KhaÎÉ'is al-TashrÊ' al-IslÉmÊ, 458.
100 Muhammad SalÊm al-‘AwwÉ, FÊ al-NiÐÉm al-IslÉmÊ, 80.
101 Ibn al-Qayyim, I'lÉm al-Muwaqqi'Ên, 1:62.
inevitably destroys the institution of shÊrÉ in the past and indirectly validated the conduct of many authoritarian caliphs of the past.102

The majority of Muslim scholar, classical and contemporary, is of the opinion that shÊrÉ is an obligation. And sacking of a ruler who precludes shÊrÉ is obligatory.103 They did not distinguish between the obligation to conduct shÊrÉ and the obligation to follow the decision made through shÊrÉ. Evidence in support of this view is abundant. Needless to say that the two verses regarding the shÊrÉ is clear about the legitimacy and the obligation of shÊrÉ. The first verse clearly allude to the obligation of shÊrÉ, it is the instruction of God to the Prophet whereas the second one indicate that shÊrÉ is a distinctive attribute of the believers.104 There are plenty of aÍÉdÊth which confirm the obligation of shÊrÉ. Abu Hurayrah testifies that “I have not seen anyone more diligent in consulting his companions than the Apostle of God himself”105 The Prophet also said: “ask for help in all your affairs through consultation”, “the absolutist will not succeed with his own opinion, a person who consults others will never fail”, “a community which conduct shÊrÉ will always find the best solution to their problem”.106 The Prophet also reported to have said: “whoever appoint himself or someone else as a ruler without conducting shÊrÉ you (the community) are obliged to kill him”.107 Another ladÊth, the prophet said: “if the two of you (Abu Bakr and ‘Umar) agree upon a counsel, I shall not oppose you”.108 In short, these aÍÉdÊth envisage that shÊrÉ is the best way in administering public affairs. Upon this profound consideration of shÊrÉ in Islam, and its pivotal role in establishing good society and good government, Muslims, particularly the early generation, considered shÊrÉ as binding upon the rulers. In fact ‘Umar was reported to have said: “There is no caliphate except through consultation” (lÊ khilÊfata illÉ ‘an mashÊrāh).109

If the Prophet, who is guided by revelation and infallible, was instructed to conduct shÊrÉ and to listen to the opinions of his Companions, he even at many times gave preference to the decision of the Companions over his own views,110 thus logically speaking, the obligation of shÊrÉ is obvious considering the fact that in the modern situation the rulers are, intellectually, religiously and morally unparalleled to the Prophet. Contemporary leaders need people’s support and assistance more than the Prophet do, because unlike today Muslim leaders the Prophet had supreme religious authority. It is evident that the Prophet set these examples in order to be followed by Muslim rulers after him.111 This is understood by ‘Umar who epitomized the practice of shÊrÉ.112 Moreover, the Prophet and the Rightly Guided Caliphs are individuals of no doubt in their competency and integrity, they can be raised as the Muslim rulers in their own time no one will object and without the need of election and campaign as it is nowadays, if these

102 ‘Abd al-Wahhab Khallaf, al-SiyÉsah al-Shar’iyyah, 29.
103 Al-Qurubah, 4:249; al-DuraynÊ, KhaÎÉ‘is al-TashrÊ’ al-IslÉmÊ, 462.
104 Muhammad Yusuf Musa, NiÐÉm al-×ukm fÊ al-IslÉm (Cairo: DÊr al-Fikr al-‘ArabÊ, n.d.), 142.
105 Musnad Ahmad, 4:277; Sunan al-TirmidhÊ, no. 1714.
106 See al-RÊzÊ, al-NaÐariyyÉt al-SiyÉsiyyah al-IslÉmiyyah, 290.
108 Musnad Ahmad, 4:227; al-‘Asqalani, Fail al-BÊrÊ, 17:103.
109 ‘AIÊ al-MuttaqÊ al-HindÊ, Kanz al-‘UmmÊl (Beirut: DÊr IhyÉ al-TurÊth al-‘ArabÊ, 1990), 2:146.
110 As in the case of the battle of Uhud, Khandaq and many others see, ‘AdnÊn ‘AIÊ RiÊÉ al-NalwÊ, al-ShÊrÊ wa MumÉrasatuÊ al-ÔmÉniyyah (Riyadh: Dar al-Nahwi, 1988), 86-97; al-KhÉlidÊ, NiÐÉm al-ShÊrÊ fÊ al-IslÉm, 25-27.
111 See al-RÊzÊ, TaÊsÊr al-KabÊr, 9:66; al-‘UbarÊ, 7:345.
112 In the case of sawÊEd al-‘Iraq (the land of ‘Iraq) he had to argue with the Companions three days before finally they agreed with him. See Muhammad Yusuf Musa, NiÐÉm al-×ukm fÊ al-IslÉm, 145.
individuals of the unquestioned competency and integrity conduct shērÉ in every public matters, the Muslims of later generation unequivocally in ardent need of conducting shērÉ in their public affairs.

Ibn Taymiyyah (661-728A.H.) asserts the importance of conducting shērÉ, he contends that the rulers need to conduct shērÉ more than the Prophet. Ibn Taymiyyah stresses enjoining good and forbidding evil which is closely connected to shērÉ. Muhammad Rashid Rida and Muhammad ‘Abduh contend that the verse on al-amr bi al-ma’rÉf wa al-nahy ‘an al-munkar (commanding good and forbidding evil) is unequivocal evidence in support of the obligation of shērÉ. The principle of enjoining good and forbidding evil is the effective mechanism to impose shērÉ on the government, for the principle indeed sanctions the people to criticize, give advice and tell the truth. Moreover, they argue that no good is better than justice and no evil is worst than injustice.

Upon his commentary of the above Qur’anic verses on shērÉ, it is interesting to note that QuÏb states: “the principle of shērÉ has deeper meaning in the life of Muslims, not just as a political system for the state, it defines the nature of the Muslim community in general”. The similar contention posed by al-GhannÉshÊ:

In Islam shērÉ is not peripheral injunction which have only few evident in the Qur’an and the Sunnah, rather it is fundamental principle of Islam, the concomitant of the vicegerency of the people (istikhliÉf) who pledge to worship God alone. Therefore shērÉ is the fundamental element which guarantees the power of the ummah, so that they can perform the duty of establishing the Islamic government on the basis of cooperation, team work, and responsibility.

The Binding Authority of ShērÉ

With regard to the second question, that is whether or not the decision of shērÉ is binding upon the ruler, especially when the opinion of the majority of ahl al-shērÉ contradicts the personal opinion of the ruler. In answering this question, Muslim scholars are divided into two groups. The first group replies in the affirmative and the second group maintains that the ruler may exercise his “veto”. Some who affirm the obligation of shērÉ, like Mawdudi, Zaydan, Mutawalli, al-Khalidi and the Bayati, maintain that the Imam is not obliged to follow the

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113 Ibn Taymiyyah, al-SiyÉsah al-Shar’iyyah fi IÎlÉÍ al-RÉ'Ê wa al-Ra'iyyah (Beirut: DÉr al-Kutub al-‘ilmiyah, n.d.), 135. It is important to note that Ibn Taymiyyah is not of the opinion that the Imam may veto the decision of shura, because he was considering emergency situation where the Imam should be able to give fast decision then he may not wait the decision of shura. See Ibn Taymiyyah, al-SiyÉsah al-Shar’iyyah, 136.
114 Muhammad Rashid Rida, Ta‘ÉsÉr al-ManÉr, 4:45.
115 Ibid.
117 Al-GhannÉshÊ, al-×urriyyÉt al-‘Ómmah, 109.
118 Abul A'la Mawdudi, The Islamic Law and Constitution, 245. However he rectified his view later on as we will see.
119 Zaydan, UÎËl al-Da’wah (Beirut: Mu’assasat al-Risalah, 1996), 220-221.
120 ‘Abd al-×amÊd MutawallÊ, MabÉdi' NiÐÉm al-×ukm fÊ al-IslÉm (Cairo: Dar al-Ma’Érif, 1966), 667.
121 As we mentioned earlier, Khalidi’s argument is that because shērÉ can only be conducted on mubÉÍah or permissible matters. Therefore, for him only the provisions of the sacred text have the binding authority. MahmÊd al-KhÉlidÊ, NiÐÉm al-ShÉrÉ fÊ al-IslÉm (‘Amman: Maktabah al-Risalah al-Hadithah, 1986), 40.
decision of shÊrÊ especially when he think he is right. 122 Al-Bayati contends that this is actually involved two situations, the first when the ruler meet the criteria of being the mujtahid in this situation he is free to decide whether or not to follow the decision of shÊrÊ. The second situation is when the Imam is not a mujtahid (a competent legist) then he must follow the decision of shÊrÊ. They derive to this conclusion on the assumption that Abu Bakr, in the case of the war on apostasy, had made a decision which contravene the majority view. However, if we look carefully at the story, Abu Bakr was actually obtained the approval of the majlis al- shÊrÊ. At the end of the debate, Umar finally agree with the first caliph and declared that “God had endowed the first caliph with better insight and judgment and that whatever he had decided was really the right course”.123 Muhammad Abu Faris, commenting on this story states that the matter of discussion was in fact not fall into the ijtihÁE category, the matter for him has been implied in the text (hadÊth) therefore Abu Bakr thought he has the right to rule out the view of the majority.124 Mawdudi who was in principle hold that the Imam has the power of veto, reconsider his opinion by considering the fact that the spirit and mentality of contemporary leaders and the legislature are not comparable to the Rightly Guided Caliphs, therefore he maintains that it is necessary that the executive follow the decision of the legislative assembly.125

It will be no use of conducting shÊrÊ if the end result is not binding upon the head of the state. It is against the wisdom of shÊrÊ itself, and it is authoritarianism per se. The reason why shÊrÊ is enunciated in the Qur’an, is to promote justice and prevent arbitrary rule. By maintaining that the decision of shura is not binding these scholars, without thorough consideration, open the door for authoritarianism and despotism. Their justification is based on a shaky foundation, and have been proven wrong by many prominent scholars. Therefore, it is not surprising to note that the bulk majority of contemporary Muslim scholars subscribe to the view that the decision of shÊrÊ binds the Imam. Article 31 of the Islamic constitution model provided by the Islamic Council of Europe in 1983 states:

The Imam shall assent to legislation passed by the majlis al-shÊrÊ and then forward it to the concerned authorities for implementation. He shall not have the right to veto legislation passed by the majlis…126

With regard to the forms of consultation, there are three forms of consultations which have taken place during the first generation of Muslims. The first one is the consultation of the notables, the so-called ahl al-hall wa al-'aqd (the people who loose and bind). They, according to Ibn Taymiyyah and followed by ‘Abduh and Rida, are leaders (al-umarÊ’), scholars (al-

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122 See Munir al-Bayati, al-NiDÈm al-SiyÈsÈ al-IslÈmÈ, 194-5.
123 The last statement of ‘Umar signifies that while at the outset Abu Bakr was the minority, at the end of the debate the majority sided with him. Al-‘AwwÊ, Fi al-NiDÈm al-SiyÈsÈ li al-Dawlah al-IslÈmÈyyah, 197.
125 Firstly Mawdudi said: “The head of the state, although obliged to consult his advisers (i.e., the legislature), yet is under no obligation to sanction, follow or adopt their unanimous or even majority verdict or opinion. In other words, he can always exercise his “veto””. (p.245) Later on he said: “But so long as it is not possible in our country to create a consultative body of that caliber and to foster that spirit and that mentality, there is no other alternative but to restrict and to subordinate the executive to the majority decisions of the legislature”. Abul A’la Mawdudi, The Islamic Law and Constitution, 245-247. See also Ibidem, Nahwa al-Dustur al-Islami, 67; Ibidem, Nazariyyat al-Islam al-Siyasiyyah, 54.
\( \text{\textquoteleft ulam\textquoteright} \text{E} \), who vested with the trust of the community. They are men of wisdom and of good character. The reason is that these people are the ones who have the real authority over the community. Therefore, Ibn Khaldun (732-808A.H./1332-1406C.E.) insists that \textit{ahl al- sh\text{\textperiodcentered}r\text{\textperiodcentered}E} and \textit{ahl al-hall wa al-	extquoteleft aqd} should be among those who have \textit{\textquoteleft a\text{\textperiodcentered}abiyyah}. He contends that unlike in jurisprudence which does not need people’s support, in political matters the need of \textit{\textquoteleft a\text{\textperiodcentered}abiyyah} is evident. The Prophet did consult these selected figures in several occasions.

The second form of \textit{sh\text{\textperiodcentered}r\text{\textperiodcentered}E} is consultation of the whole community. This is also practiced by the Prophet in unpopular incidents. One time the Prophet asked the whole Muslim community with regard to the \textit{ghan\textvisitcard\text{\textperiodcentered}mah} (spoils) of Hawazin. The prophet said: “I don’t know, there could be among you who discontent, ask your leaders to tell us about it”. He wanted to make sure that everybody is happy with his decision. The similar thing happened before the incident of \textit{\textquoteleft ud\text{\textperiodcentered}ay\text{\textperiodcentered}biyyah}, the Prophet asked the community’s opinion and they all agree to fight the Quraysh of Makkah.

The third form is the appointment of limited persons of \textit{ahl al- sh\text{\textperiodcentered}r\text{\textperiodcentered}E}. This was taken place during the caliphate of ‘Umar b. al-Khattab. He appointed ‘Ali, ‘Uthman, ‘Abd al-Rahman, al-Zubayr, Talhah and Sa’d b. Abi Waqqas (r.a.) to select among them a new caliph after the demise of ‘Umar. This appointment was then accepted by the Muslim community, because they indeed represent the whole community. Undoubtedly ‘Umar’s unprecedented form of \textit{sh\text{\textperiodcentered}r\text{\textperiodcentered}E} was based on the interest of the people that is to prevent chaos and disunity, hence, it was considered at that time the best mechanism for political succession. As for today, this mechanism might seem to be outdated.

Undoubtedly election is an appropriate mechanism to select the ruler. Therefore the concept of free election is endorsed by the majority of contemporary Muslim scholars. There are prophetic traditions which explicitly enunciate the legitimacy of election. The Prophet says: “Let the Muslims choose among themselves a person”. He is also reported to have said during the \textit{bay\text{\textperiodcentered}ah al-	extquoteleft aq\text{\textperiodcentered}abah} : “select among yourselves twelve leaders”. In this connection we may conclude that, as Muhammad Asad rightly put it, a government that comes to power by ‘non elective means becomes automatically illegal”.

Despite its importance in generating people’s participation and as a proof for the supremacy of the law (Shar\text{\textperiodcentered}E’ah), unlike democracy, majority of Muslim political theorists

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129 At this Hawazin war, the \textit{Muj\text{\textperiodcentered}hid\text{\textperiodcentered}n} had captured 6000 captives who apparently repented. The Prophet wanted to let them go but give the \textit{Muj\text{\textperiodcentered}hid\text{\textperiodcentered}in} (the fighters, soldiers) the option whether to claim their rights or to let go. After the Prophet consulted the public, it was apparent that the Muslim community was all agree with the prophet’s decision. See \textit{Tabaq\text{\textperiodcentered}Et Ibn Sa’d}, 2:155; \textit{Sahih al-Bukhari}, 5:154; Muhammad Yusuf Musa, 147.


131 Al-M\text{\textperiodcentered}ward\text{\textperiodcentered}E, \textit{al-Alk\text{\textperiodcentered}Em al-Sull\text{\textperiodcentered}Eniyyah}, 10; Al-Nal\text{\textperiodcentered}w\text{\textperiodcentered}E, \textit{al-Sh\text{\textperiodcentered}r\text{\textperiodcentered}E wa Mum\text{\textperiodcentered}rasati\text{\textperiodcentered}h\text{\textperiodcentered}E al-\text{\textperiodcentered}Om\text{\textperiodcentered}Eniyyah}, 502; al-Kh\text{\textperiodcentered}lid\text{\textperiodcentered}E, \textit{Ni\text{\textperiodcentered}D\text{\textperiodcentered}Em al-Sh\text{\textperiodcentered}r\text{\textperiodcentered}E f\text{\textperiodcentered}E al-\text{\textperiodcentered}Ist\text{\textperiodcentered}Em}, 151.

132 Al-Ghann\text{\textperiodcentered}Esh\text{\textperiodcentered}E, \textit{al-\text{\textperiodcentered}sur\text{\textperiodcentered}iy\text{\textperiodcentered}Et al-\text{\textperiodcentered}Omm\text{\textperiodcentered}ah}, 125; Al-\text{\textperiodcentered}Aww\text{\textperiodcentered}E, \textit{Fi al-Ni\text{\textperiodcentered}D\text{\textperiodcentered}Em al-Ist\text{\textperiodcentered}Em\text{\textperiodcentered}E}, 81; Sanhuri, \textit{Fiqh al-Khil\text{\textperiodcentered}E\text{\textperiodcentered}fah}, 111; Asad, \textit{Principles of State and Government in Islam}, 36; Mawdudi, \textit{Islamic Law and Constitution}, 253-257; Iqbal, \textit{Reconstruction of Religious Thought in Islam}, 157; al-Bay\text{\textperiodcentered}Et\text{\textperiodcentered}E, \textit{al-Ni\text{\textperiodcentered}D\text{\textperiodcentered}Em al-Siy\text{\textperiodcentered}Es\text{\textperiodcentered}E al-Ist\text{\textperiodcentered}Em\text{\textperiodcentered}E}, 178. Sanhuri said general election is the best way to appoint them.

133 Al-M\text{\textperiodcentered}ward\text{\textperiodcentered}E, \textit{al-Alk\text{\textperiodcentered}Em al-Sull\text{\textperiodcentered}Eniyyah}, 13.

134 Ibn Hisham, \textit{al-Sirah al-Nabawiyyah}, 2:301. The two verses of \textit{sh\text{\textperiodcentered}r\text{\textperiodcentered}E} also used by the jurists to legitimize election.

concur that the appointment of the Imam should not be left to the people only, appointment must be determined by a number of ‘the notables’ also. They are called as people of loosing and binding (ahl al-hall wa al-‘aqd). Then they will determine on behalf of the people who is the right person to be the Imam.¹³⁶ Some would argue that there is nothing Islam which will prevent people from choosing directly their imam, but then if people chose for themselves without involving the ahl al-hall wa al-‘aqd, there will be no significant role for these selected people.¹³⁷ The present writer argues that this is what distinguishes, inter alia, Islamic political system from Western democracy. In Islamic system knowledge is power, similar to the importance of quality over the quantity, in democracy what matter is the number of voters and not the quality of them, democracy seems to equate professors with gardeners. In Islamic system, the scholars and leaders (the people of loosing and binding) of the Muslim community will intervene the constituents’ decision in selecting their ruler, based on the qualifications determined by the Shariah. Unlike democracy, wealth and popularity of a person plays no substantial role in the election.

Sanhuri concedes that the appropriate means to select these people is through free election. He criticizes some classical Muslim scholars, like al-Mawardi, who contend that the number of people who vote for the caliph can be five or even less.¹³⁸ He rejects this view simply because they don’t seem to understand the underlying principle behind the concept of shura i.e., the necessity of people’s consent.¹³⁹ However his proposition to conduct the election in three phases is impractical. These three phases are: firstly, to elect the ahl al-hall wa al-‘aqd, secondly, they in turn will chose the imam among themselves and lastly, is bay’ah by the member of the city as representative of the whole population. Since election involves a lot of procedures and money, it will be more appropriate if the general election conducted once that is the first election. With regard to the third election, it is not considered as election in contemporary modern political system rather it is called taking oath of allegiance.

Ahl al-shura or ahl al-hall wa al-‘aqd are not the elite individuals or a social class, as commonly understood in today socio-political system. They are the people’s choice, in the sense that they are appointed by the people not because their popularity and their power, but because they gain the people’s trust to represent them as decision makers. Muslim scholars agreed that they are the cream of the people and their best, intellectually, religiously and morally.¹⁴⁰ Therefore in order to ensure that the right person is elected, the basic principle should be upheld in conducting free election is that it should promote the appointment of the right person for the job. Unlike Western democracy which sanctions money politics, massive campaign and lobby system, which depend on who get more money rather than who is more capable, in Islamic political system these practices is against the principles of adil al-‘amanah ilah that the appointment of the right person), justice and amr al-ma’ruf wa al-nahy ‘an al-munkar (enjoining good and forbidding evil).

¹³⁶ See al-Juwayni, Ghiyath al-Umam, 34-45.
¹³⁷ It is also evident that the practice of shura in early Islam usually involved the ahl al-hall wa al-‘aqd. Their opinion represent the community’s will. It is also argued that when the whole community give their vote, the result is not necessarily the community’s will, because their motives and criteria are eclectic.
¹³⁸ See al-Mawardi, and Ibn azam. See al-Mawardi, al-Ahkam al-Sulamiyyah, 5, They arrived to this conclusion after considering the fact that Abu Bakr was elected by the proposal of ‘Umar. In reality shura (election) was happened the next day, jtim‘i thaqafah, not the day that ‘Umar proposed.
¹³⁹ Al-Sanhuri, Fiqh al-Khilafah, 112. This fresh understanding of historical fact is very much welcomed in the midst of distortion against Islamic political thought.
In short, the institution of *shÈrÉ* guarantees that the supreme power remains with the SharÈ‘ah and the ummah, and it does so if and only if *shÈrÉ* is compulsory and binds the ruler. It inevitably functions as a bulwark against despotism, authoritarianism and ruler’s manipulation. Understanding *shÈrÉ* in this manner, i.e., not in rhetorical sense espoused by the conservatives, will certainly lead us to the conclusion that *shÈrÉ* is an effective mechanism to limit the power of the government, provided that this institution is upheld in practical reality. Furthermore, *shÈrÉ* also signifies the division of power. It is evident that the legislature has a supreme power over the executive. The executive has no right to veto the decision of *shÈrÉ*. The executive is accountable to the legislature (*majlis al-shÈrÉ*) as we will demonstrate when we discuss accountability.

There are two important reflections that may be drawn from the practice of *shÈrÉ* by the Prophet and the Companions. The first one is that the spirit of the meetings prior to Badr war, Bani QurayDah and the *thaqÊfah* is that as far as politics is concerned, these public matters should be left to the people to decide. The practice of *shÈrÉ* in early Islam signifies that public matters, including the appointment of the head of the state, require the consent of the people. They are not revealed matters, especially the minutiae of political life, such as how the Imam should be appointed, what are the qualifications of being an Imam, how long he should remain in office etc. Therefore, the Sunni, the majority of Muslims, believe that imamate (political leadership) is not a religious appointment. On the contrary, the Shi’ite believe that the appointment of the Imam is revealed by God. Such view, as discussed by many classical and contemporary Muslim scholars, is baseless. The truth is, in public and political matters, the interest of the people comes first. Certainly the interest of the people will not contradict the rules of SharÈ‘ah. Because, as we have mentioned several times, the prime objective of the SharÈ‘ah is to protect human interests. It is evident that the Prophet did not appoint someone to succeed him. But he taught the Companions to settle public affairs through consultation. This new arrangement signifies that the Islamic political system is revolutionary in that it is contrary to the prevalent system at that time such as monarchy, hereditary succession, absolutism and aristocracy while introducing new form of government which places the people as the supreme authority and *shÈrÉ* as its focal mechanism.

The second observation can be made here is that the application of *shÈrÉ* during the time of the Prophet and his Companion shows that in Islamic system knowledge is power and not vice versa. This means everything must be decided on the basis of knowledge. This fact alone explains the place of knowledge in Islam. The main reason of conducting *shÈrÉ* is that those who are in authority do not necessarily know the truth and the public interests. It is through *shÈrÉ* and the discussion among the knowledgeable the good and the truth of the matter will

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141 The Shi’ite base their opinion on a *IadÊth*: “To whom I am his ‘mawlÈ’, ‘Ali too is his ‘mawlÈ’, (man kuntu mawlÈhu fa ‘Aliyyu mawlÈhu). MawlÈ literally means leader or master. This *IadÊth* is reported by Ibn MÈjah and al-TirmidhÈ. Al-TirmidhÈ states that this *IadÊth* is weak. Provided that this *IadÊth* is valid, it does not entail succession as Shi’ite understood it. The term mawlÈ was used several times in other occasions referring to other Companions as well. Had it meant what they believe, the Companions would certainly follow it. Rather, as the context of the *IadÊth* clearly shows (regarding the dispute raised over the decision of ‘Ali) it means: “To whom I am his leader then, Ali also should be his leader” entailing that if you regard me as your leader and your accept my decision then you should accept the decision of ‘Ali, because he is also your leader (appointed by the Prophet to represent him). Many other *IadÊth* are fabricated, they use their own chain of *IadÊth* (as in UÎÉl al-KÉfÊ by al-KulaynÈ) they reject the al-Kutub al-Sittah (al-BukhÈrÈ, Muslim, Abu DÈwud, Ibn MÈjah, al-TirmidhÈ and al-NasÈ’i). for the further discussion on the refutation of Shi’ah doctrines see Ibn Taymiyyah, *MinhÈj al-Sunnah*, 1:365; Ibn Khaldun, *al-Muqaddimah*, 196-199; Ahmad Abdullah Salamah, *Shia and Sunni Perspective on Islam* (Jeddah: Abul-Qasim Publishing House, 1991), 21-36.
prevail. In addition, the appointment of the members of shÊrÊ (ahl al-shÊrÊ) is based on their knowledge and credibility.

One of the main purposes of the institution of shÊrÊ is to prevent authoritarian regime, the ruler is barred from making arbitrary decision and compelling his ideas to be accepted as law. His opinion together with other opinion should be examined by the majlis al- shÊrÊ before it could be implemented. If the ruler can ignore the decision of shÊrÊ and force his ideas without the authorization of the majlis, then the role of shÊrÊ is limited to counsel. Giving advise is open to all the community, thus if its role is to give advise there is no need to develop a special institution. Since the notables are appointed and shÊrÊ is institutionalized logically the outcome of shÊrÊ must bind the ruler. Otherwise, shÊrÊ is not more than a rhetoric or demagogy. It is through consultation that right and wrong, good and bad will be revealed. There will be pros and contras, with each try to defend his views, whoever has strong argument and solid evidence will inevitably prevail. Obviously the wiser the men the more his view will be accepted. Hence wisdom in the final analysis, is the objective of conducting shÊrÊ. This will undoubtedly prevent political absolutism, certainly it will also prevent the so called ‘the tyranny of the majority’. Since the majority will never have the power to overrule the view of the minority mainly because it is minority view. This shows that the government in Islam is, strictly speaking, a knowledge-based government.

The significance of shÊrÊ manifests when we consider the fact that it is the right way to discern the right view and to arrive at the right path. It is said that the intellect of the scholars are like lights, the more lights we have the more we can see and the truth will prevail. Most importantly it signifies how Islam respects human reason. Undeniably there are benefits of conducting shÊrÊ. Among other things is that it ensures the participation of the people, which will in turn promote unreserved obedience. They will wholeheartedly support government’s visions and projects because they know that the government is listening to their needs, and doing it’s best to meet the interests of the community. The application of shÊrÊ will also ensure that the ruler gains the trust of the people which is very important for quality leadership and to promote social harmony and unity.

3. Commitment to Justice

The government is bound to administer the public affairs with the principle of justice (al-‘adÊlah). Evidently justice is not only a central principle in Islamic political thought but also a central principle in Islam, as a religion and a complete way of life. The Qur’an enunciates that justice is the ultimate goal of sending the prophets of God with the Book.142 Every Muslim is urged to be fair and just to whomever they deal with, even if it against himself and even to the enemy:

O you who have attained to faith! Be ever steadfast in upholding equity [justice], bearing witness to the truth for the sake of God, even though it be against your own selves or your parents and kinsfolk. Whether the person concerned be rich or poor, God's claim takes precedence over [the claims of] either of them. Do not, then, follow your own desires, lest you swerve from justice: for if you distort [the truth], behold, God is indeed aware of all that you do! (al-Nisa’, 4:135).

142 The Qur’an, 57:25.
O you who have attained to faith! Be ever steadfast in your devotion to God, bearing witness to the truth in all equity; and never let hatred of anyone lead you into the sin of deviating from justice. Be just: this is closest to being God-conscious (taqwa). (al-Ma‘idah, 5:8).

To rulers, this principle is even more pivotal. The so-called ‘the verse of the rulers’ (ayat al-umara’) specifically instructed Muslim ruler to uphold justice: “Verily, Allah commands that you should render back the trust to those, to whom they are due; and that when you judge between two men, you judge with justice” (al-Nisa’, 4:58). There are a number of Qur’anic verses which condemn unjust rulers:

“blame attaches but to those who oppress [other] people and behave outrageously on earth, offending against all right: for them there is grievous suffering in store … and so thou wilt see such evildoers on Judgment Day, and wilt hear how] they exclaim as soon as they behold the suffering [that awaits them], “Is there any way of return?” (al-ShërÉ, 42:42, 44).

In explaining the verse of the rulers (Éyat al-umarÉ‘), Ibn Taymiyyah contends that the objective of sending the prophets and the giving the Book was to uphold justice in matters of the rights of God and the rights of His creatures, thus, he contends: “whoever transgress from the Book he should be redressed by force” (man ‘adila ‘an al-kitÉb qurwima bi al-ÍadÊd). Ibn Taymiyyah also argues that the jurists concurred the fact that the unjust ruler should be punished with ta’zÈr (deterrent punishment imposed by judge). Ibn Taymiyyah, al-Siyasah al-Shar‘iyyah, 26; Ibn al-Qayyim, al-Ùuruq al-Hukmiyyah, 14.

The Prophet highlighted the importance of rendering to everyone his due, he made clear to one of his Companions, ‘Abdullah b. ‘Amr ibn Al-‘As, who took to extremes in worshipping Allah, to the extent that he gave up eating, sleeping and even his conjugal right. The Prophet (peace and blessings be upon him) warned him against that saying: “...Your eyes have a right on you, and your body and your family (i.e. wife) have a right on you. Render to everyone his due right.” (a’lÈ likulli dhÊ Íaqqin ÍaqqahÈ).

According to Ibn ‘Ashur the reason that justice is valued most in the Qur’an is because of the orderly administration of human affairs essentially depends on justice. Consequently, as Ibn Khaldun rightly observes that if injustice prevails in public affairs, and corruption spreads in the government certainly the destruction of civilization is not far away. Therefore, he concludes that “injustice causes the destruction of civilization (al-‘umrÉn). Realizing the strong emphasis of justice in the Qur’an, QuÈb maintains that the whole Islamic political system lies on the foundation of justice.

Nevertheless, justice also manifests in the creation of the universe by God. The Qur’an stated that God has created everything “in due measure and in proportion” (al-Qamar, 54:49). Therefore one of the names of God is Just (al-‘adl). He put everything in its proper place. Human beings, with their destructive nature, are responsible for the disturbance and destruction

144 Ibn Taymiyyah, al-Siyasah al-Shar‘iyyah, 42.
145 Tirmidhi, Zuhd, 64, no. 2413; see also Sahih al-Bukhari, KitÉb al-Øawm, no. 1975.
148 Ibid.
149 Sayyid QuÈb, al-‘AdÈlah al-IjtimÈ‘iyah, 76.
of the world. Therefore, justice become the supreme purpose of Islamic political thought so that rulers uphold the principle of justice in order to maintain peace and harmony in this world.

As far as the semantic of the Arabic language is concerned, ‘adl denotes straightness and uprightness, balance and proportion, equality, equity and fairness. It is the opposite of deviation and corruption, imbalance and disproportion, inequality and discrimination, inequity and oppression.\(^{150}\) Ibn ‘OshÊr defined it as to render to every person his due (i’tÈ‘ al-i’taq li’tÈ‘lì‘hì‘i).\(^{151}\) Therefore, justice means a harmonious condition or state of affairs whereby everything is in its right and proper place.

According to Khurram Murad, no conception of Islam should be possible without justice. Justice in Islam lends meaning and color to all human endeavors, both on an individual level and as a societal ideal. It serves as the ultimate criterion for the internal ordering of the soul and the external regulation of relationships.\(^{152}\) Therefore, justice in Islam is not confined to social and political activities it permeates all human activities. Justice has metaphysical, theological, ethical, judicial, social and political dimensions. We will only discuss the judicial and political meaning of justice.

The SharÈ‘ah is the ultimate criterion of justice not the other way around.\(^{153}\) Because SharÈ‘ah is based on wisdom, justice, and mercy.\(^{154}\) Everything laid down in the SharÈ‘ah is absolutely just. “And perfect are the words of your Lord in truthfulness, and in justice; His words cannot be changed; He is the All-hearing, All-knowing” (al-AnÈ‘am, 6:116). Having been clear about the nature of the SharÈ‘ah, competent Muslim scholars concur that there should be no conflict between the rules of the SharÈ‘ah and that which come from human discretion.

The function of a judge is to settle disputes and establish justice according with the SharÈ‘ah. Thus, he has the right to accept a suit against the state without any prior permission and can try the head of the state in an open court. This, for some writer, “is an index of its independent status”.\(^{155}\) Hence its promote the establishment of justice. A department of the judiciary, known as dÈwÈn al-maÐÈlim, was established in Islamic history to process and adjudicate complaints against the state officials. The existence of this department in Islamic history is a proof for the independence of the judiciary. The fact is that the community is in authority to depose the imam in the event of deviation and distrust, this place the judiciary in a most sensitive task to disqualify the head of the state from his position. This task will be impossible unless the judiciary is independent of executive control and enjoys total security of office.\(^{156}\)

The implications of upholding justice in sociopolitical life of the community are numerous. It entails among other things that everyone is given the equal opportunity without any preference. Sayyid Qutb (1906-1966 C.E.) have discussed in detail this matter in his book, al-‘AdÈlah al-IjtimÈ‘iyyah fi al-IslÈ‘m (Social Justice in Islam), he maintains that the concept of justice in Islam is not narrow like the one upheld by Communism. In communism, in order to prevent economic disparity it stipulates equality in wages. This type of equality “arrests the development of outstanding ability, and makes it equal to lesser ability...consequently, the

\(^{150}\) Ibn Manzur, LisÈn al-‘Arab, 11:430-34.
\(^{151}\) Ibn ‘OshÊr, Tafsir al-Tahrir wa al-Tanwir, vol.7 part 14, p.245.
\(^{153}\) Ibid., 6.
\(^{154}\) Ibn al-Qayyim, al-‘Uuruq al-‘Ukmiyyah, 15-16; Ibn al-Qayyim, I’Èm al-Muwaggi’Èn, 3:11.
community as well as entire humanity is deprived of the fruits of these talents”. Qutb concludes that “justice in Islam means equality in opportunity and freedom of talents which work within the limits that do not come into conflict with the high ideals of life”. Qutb criticizes both capitalism and communism when he says: “Islam affirms that, just as encroachments upon society by the cupidity and ambitions of the individual are a kind of social oppression which is inconsistent with justice, similarly encroachments upon the nature and ability of the individual by society are also a kind of injustice”.

Moreover, justice also entails that the criminally accused person has the right of due process and equal protection of law. Because everyone, Muslim and non-Muslim, is equal before law. Highlighting this concept justice and fairness, the Prophet announce to the Muslim community: “By God, even if Fatimah, daughter of Muhammad, committed theft, Muhammad would certainly cut her hand”. This principle of equity is also underlined in the Charter of Madinah. Regarding the criminal, the Charter states: “[he should be punished] even if he is the son of one of them”.

In the adjudication, a Muslim should not win the case because of his faith in Islam, and a non-Muslim should not lose because of his unbelief, as manifests during the reign of ‘Ali wherein the judge (Shurayh) did not side with ‘Ali although he was a Caliph. This is because in Islam human dignity, nobility, and honor have been conferred to all humankind. According to Sharīa, all human beings, including convicted criminals, Muslim and non-Muslims, are therefore entitled to dignified treatment; “for punishment is to be for retribution and reform not indignity and humiliation”.

Justice also indicates that Islamic law applies to all citizens without prejudice, nepotism and discrimination. No one may escape from the punishment he/she deserved. Nepotism and bribery are seriously condemned in Islam. At one time a woman from Makhzumiyah clan pleaded guilty of stealing, some people ask Usamah b. Zayd to intercede so that the Prophet may reduce the punishment. The Prophet admonished him and said:

“Do you intercede regarding one of the punishments prescribed by Allah? He then stood up and addressed (people) saying: O people, those who have gone before you were destroyed, because if any one of high rank committed theft amongst them, they spared him; and if anyone of low rank committed theft, they inflicted the prescribed punishment upon him. By Allah, if Fatimah, daughter of Muhammad, were to steal, I would have her hand cut off”.

158 Ibid., 28.
159 Ibid., 27.
160 Sahih al-Bukhari, Kitab al-Hudud, no. 6788.
162 During the reign of caliph ‘Ali, a Jew was accused of stealing Ali’s shield. ‘Ali saw it in the possession of a Jew. He instituted a claim in the court of Qadi Shurayh who asked that Ali produce his witnesses to prove his claim. Ali presented his son and then his emancipated slave. According to Qadi Shurayh the testimony of a son in favor of his father or an emancipated slave was not admissible, hence he ordered ‘Ali to present another witness. When ‘Ali was unable to do so, Qadi Shurayh dismissed his claim to the shield. On seeing this high degree of justice where the leader of the Muslim world could lose a case in the face of a court, the Jew embraced Islam.
164 Sahih al-Bukhari, Kitab al-Hudud, no 6788; Sahih Muslim, Kitab al-Hudud, no. 4386, 4387.
Hence, all kind of discriminations is prohibited in Islam. No preference is given to the rich and the strong in favor of the poor and the weak. Ensuring that the rich does not win because of his status and the right of the poor does not violated because of his economic situation. In other words, the judge must base his decision only on the consideration of who is right and who is wrong, precluding any other considerations which may hinder the administration of justice. Caliph ‘Umar appointed several judges\(^{165}\) during his reign, he wrote to Abë MËsÉ al-‘Ash‘arÊ, whom he appointed as judge in KÊfah, a letter which highlighted the basic principles of justice, this letter as Ibn KhaldÊn stated is the famous letter on judicature. Caliph ‘Umar \textit{inter alia} said:

\ldots consider all the people equal before you in your court and in your attention, so that the noble will not expect you to be partial [to him or her] and the humble will not despair of [receiving] justice from you….\(^{166}\)

A just government is a government which implements the Shar-zAah and upholds the truth. It does not equate all people and put them in the same basket. This is why \textit{shÊrÉ} was institutionalized in Islam that is to recognize the scholars and experts and value their knowledge. Otherwise there will be divergence between theory in books and practice in the real life, between science and community, between religion which promotes justice and politics (without religion) which promotes injustice, based on the philosophy that the end justifies the means. To be just is to place the right thing in its proper place. Consequently, the ruler and the ruled must ensure the appointment of the right person in the right position. Thus a person with knowledge should not be appraised as the same weight as a person without knowledge. Opinion which comes from an expert in his field certainly weighed more than opinion of an ordinary person. Since wisdom and knowledge is the locus of supremacy of the community. There is no place for relativism in this matter since knowledge of the truth is ascertainable.

Therefore, it is evident that Islamic politics strongly renounces all forms of injustice and takes all measures to ensure that justice prevails in every field of human life. Naturally, the Islamists face staunch opposition from those quarters where the vested interests intend to continue their exploitation and oppression in order to maintain the \textit{status quo}. Contemporary Muslim thinkers maintain that justice is not significant in modern Western political thought.\(^{167}\) Being the only political system which stresses the principle of justice, therefore, we can conclude that the insistence on justice is the unique feature of Islamic political thought.

4. The Principle of Liberty

Undesputedly the concept of liberty exists in Islam long before it is expounded in the West. In fact the mission of Islam is to liberate people from oppression and any chains that hinder the development and the wellbeing of humankind. This liberative and transformative mission of Islam is pronounced in the Qur’an and the Sunnah. The Qur’an portrayed Pharaoh (\textit{Fir’aun}) as an oppressive ruler who enslave his own people and the prophet Moses was sent by God to liberate his people, BanÊ IsrÉ‘Êl, from the despotic regime. Moses’s mission was not only to free them from the enslavement but also to give them a new life:

\(^{165}\) They are Abë MËsÉ al-As’harÊ, Shurayf and others.
\(^{166}\) Ibn KhaldÊn, \textit{al-Muqaddimah}, 225.
Behold, Pharaoh exalted himself in the land and divided its people into castes. One group of them he deemed utterly low; he would slaughter their sons and spare (only) their women: for, behold, he was one of those who spread corruption [on earth]. But it was Our will to bestow Our favour upon those [very people] who were deemed [so] utterly low in the land, and to make them forerunners in faith, and to make them heirs [to Pharaoh’s glory], and to establish them securely on earth, and to let Pharaoh and Haman and their hosts experience through those [children of Israel] the very thing against which they sought to protect themselves. 

(al-Qasas, 28:4-6)

The Qur'an for several times envisages that the objective of sending the prophets and revealing God’s Books was to establish justice on earth: “Indeed, [even aforetime] did We send forth Our apostles with all evidence of [this] truth; and through them We bestowed revelation from on high, and [thus gave you] a balance [wherewith to weigh right and wrong], so that men might behave with equity”. This means that if justice was already in place, there is no reason for sending the prophets and His Books. Since oppression, injustices and evil always haunt human beings the significance of divine guidance is therefore apparent. Commenting on the above verse which also stresses the importance of iron (İadEd), Ibn Taymiyyah maintains that iron in this verse signifies political power so that the truth can be protected and religion can be established on earth. As we can see the Qur’an deems politics as part and parcel of Islamic mission.

Highlighting these verses for some people might seem as stressing the political mission of Islam, and construe this effort as an attempt to politicizing Islam. And yet looking from the bigger picture this is humanitarian or civilizational mission. Islam should not be viewed from atomistic approach: spiritual, material, economics, political etc. looking at Islam from holistic point of view or civilizational approach will prevent us from compartmentalization of Islam, instead we will be able to see that they are all interrelated and support each other. The state, as Iqbal states, “is an endeavor to transform those ideal principles into space-time forces, an inspiration to realize them in a definite human organization”.

In Islam everyone is born free and noble. The Qur’an enunciated that human beings were created by God as dignified creature (karÊm). God proclaims: “Now, indeed, We have conferred dignity on the children of Adam, and borne them over land and sea, and provided for them sustenance out of the good things of life, and favoured them far above most of Our creation”, (Surah al-Isra, 17:70).

It is in light of this dignified nature of man, Islam prevents anything that could bring him down to a lower degree. Enslavement, discrimination, injustice are considered as the greatest

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168 SÊrah al-xadEd, 57:25.
169 “...and We bestowed [upon you] from on high [the ability to make use of] iron, in which there is awesome power as well as [a source of] benefits for man and [all this was given to you] so that God might mark out those who would stand up for him and His Apostle even though He [Himself] is beyond the reach of human perception. Verily, God is powerful, almighty!” SÊrah al-xadEd, 57:25.
170 Ibn Taymiyyah states: “those who renounce the Book must be forced by iron” (faman ‘adila ‘an al-kitÊb qunwima bi al-IadEd”, “therefore, the establishment of this religion is through the Book and the sword”. Ibn Taymiyyah, al-SiyÊsah al-Shar’îyyah, 32.
171 Muhammad Iqbal, Reconstruction of Religious Thought in Islam, 154.
munkar (evil) which should be eliminated by the Muslim community. Everyone is therefore must
do his part and no one is entitled to prevent him from exercising his rights and obligations, even
the ruler and the king.

Rather than a right, liberty in Islam is considered as one of the essentials (I{a}r{E}riyy{E}t) of
human life.\textsuperscript{172} According to Muhammad ‘Imarah, Islam’s insistence to regard it as I{a}r{E}riyy{E}t
signifies its importance in Islam.\textsuperscript{173} As a right, a person may yield and give in his right without
any consequence, whereas as an essential of life condescension is prohibited and even
punishable. Furthermore, since it is granted by God, no one has the right to impede anyone from
having it; everyone is entitled to it and therefore must fight for it. Everyone is free to do anything
as long as the law (Shar{E}{a}h) permits. This is an inviolable essential or right, and it is protected
by the Shar{E}{a}h. Muhammad Asad asserts: “As long as he sincerely and consciously submits to
the laws decreed by God, he is free to shape his personal life to whatever form his nature directs
him...he is free to make his choice from among all the limitless lawful possibilities open to
him”\textsuperscript{174} this concept of liberty in Islam is on the basis of the conception that man’s original
nature is essentially good. Contrary to the Christian idea that man is born sinful, or the teaching
of Hinduism, that he is originally low and impure.\textsuperscript{175}

\textbf{Freedom of Expression}

As we can see from the above examination of the concept of liberty in western philosophy, as
can be grasped from Article 4 of the Declaration of the rights of Man and the Citizen in 1789
France, that liberty is the right to be able to do anything which does not hurt others. This concept
of freedom is vague and thus inherently problematic. It is the result of confusion and it invites
many problems. In this connection, Chandra Muzaffar rightly asserts: “the notion of individual
freedom as the ‘be all and end all’ of existence has produced unhealthy consequences in the west
as can be seen in the assertion of individual sexual freedom which has led adverse affects on the
family structure”.\textsuperscript{176}

In practice freedom, in Western tradition, means to do whatever one likes and feels
without any internal and external control. Taslimah Nasrin who was charged of blasphemy in
Bangladesh for his antagonist writings against Islam, Muslims and Shar{E}{a}h, was supported by
the Amnesty International and American President, Bill Clinton, the President states: “The USA
is concerned about the safety of Taslimah and her right to freedom of expression”.\textsuperscript{177}

Like any human right, the concept of freedom of expression found its origins in Islam.
The thing is classical Muslim scholars did not call it freedom of expression, rather they discussed
in under the theme of \textit{al-amr bi al-ma’r{E}f wa al-nahy ‘an al-munkar} (enjoining good and
forbidding evil). Freedom of expression also related to the concept of fighting injustice
(muq{E}wamat al-Dulm) enunciated in the Qur’an and the Sunnah.\textsuperscript{178}

\begin{itemize}
  \item \textsuperscript{172} Muhammad ‘Im{E}rah, \textendash{xuq}{E}q al-Ins{E}n f{E} al-Ist{E}m: \textendash{I}{a}r{E}riyy{E}t la \textendash{xuq}{E}q (Cairo: Dar al-Salam, 2005), 5-13.
  \item \textsuperscript{173} Ibid.
  \item \textsuperscript{174} Muhammad Asad, \textit{Islam at the Crossroads}, Malaysian Edition (Kuala Lumpur: Islamic Book Trust, 1982), 12.
  \item \textsuperscript{175} Ibid.
  \item \textsuperscript{176} As cited by ABM Mahbubul Islam, \textit{Freedom of Religion in Shar{E}{a}h: A Comparative Analysis} (Kuala Lumpur: A.S. Noordeen, 2002), 59.
  \item \textsuperscript{177} The New Straits Times, 1994 (Malaysia), 2 August. 24, cited by ABM Mahbubul Islam, \textit{Freedom of Religion in Shar{E}{a}h}, 98.
  \item \textsuperscript{178} Ahmad Jalal Hamad, \textit{xurriyyat al-Ra’y}, 217, 237.
\end{itemize}
The first generation of Muslim society under the leadership of the prophet respects not only the freedom of expression but the dignity of human being. Umar was very resolved and firm in maintaining equality and freedom of individuals in Islamic society. He rebuked his governor and said: “how could you oppress [or enslave] (ista’badtum) people when they were born free”. Here, it is clear that ‘Umar considers oppression as a form of enslavement, which signifies strongest condemnation.

The duty of enjoining good and forbidding evil is evident when we look at the following Qur’anic verses: “and that there might grow out of you a community [of people] who invite unto all that is good, and enjoin the doing of what is right and forbid the doing of what is wrong: and it is they, they who shall attain to a happy state!” (Óli ‘ImrÉn, 3:107). Based on this verse the exegesists of the Qur’an agree that enjoining good and forbiddin evil is fard kifayah (collective obligation) to Muslims. Al-Qurtubi states this verse alludes to the obligation of enjoining good and forbidding evil and the implementation of hudEd.

There are plenty of evidences in the Sunnah as well in support of the freedom of expression. In a hadÉth, the Prophet said: “when you see my community afraid of calling a tyrant “tyrant” then take leave of it”. The Prophet said: “by Him in Whose hand I repose! You must enjoin right and forbid wrong, or else God will certainly send down chastisement upon you; then you will call to Him, but He will not respond to you”.

The Prophet is reported to have said: “He who amongst you sees something abominable should modify it with the help of his hand; and if he has not strength enough to do it, then he should do it with his tongue, and if he has not strength enough to do it, (even) then he should (abhor it) from his heart, and that is the least of faith”. Based on this firm and clear message on the Qur’an and the Sunnah, Muslim scholars assert the obligation of enjoining good and forbidding evil. Ibn Hazm, Al-NawawÊ, al-ShawkÉnÊ and al-GhazzÉlÊ contend that the obligation of al-amr bi al-ma’rËf wa al-nahy ‘an al-munkar is based in the Qur’an, the Sunnah and the Ijma’ of the ummah. As for the obligation of fighting injustice (muqÉwamat al-Ðulm), the following verses provide its basis:

“and who, whenever tyranny afflicts them, defend themselves” (al-ShËrÉ, 42: 39)

Permission [to fight] is given to those against whom war is being wrongfully waged and, verily, God has indeed the power to succour them. Those who have been driven from their homelands against all right for no other reason than their saying. “Our Sustainer is God!” For, if God had not enabled people to defend themselves against one another, [all] monasteries and churches and synagogues

180 Al-Alusi, Ruh al-Ma’ÉnÊ, 4:21; Ibn al-‘Arabi, Ahkam al-Qur’an, 2:122; al-Fakhri al-Razi, Tafsir al-Kabir, 3:19; al-QurÊubÊ, al-JÉmi’ li AlkÉm al-Qur’Én, 1:128; al-Zamakhshari, al-Kashshaf, 1:224. However some of them argue that it is farÌ ‘ayn (individual obligation) see al-JaÎÎÉÎ, AÍkÉm al-Qur’Én, 2:35.
182 Musnad ImÉm Almad, no. 6495.
183 Musnad Almad, 22212; TirmidhÊ: 2095.
184 hadÉth reported by Muslim, Kitab al-ÔmÉn, no: 79
185 Ibn Hazm, al-FaÎl fi al-Milal wa al-AhwÊ wa al-Nilal, 4:171; Al-Nawawi, SharÎ ØaÎÊÍ Muslim, 1:51; al-ShawkÊnÊ, Fârl al-QadÈr, 1:337; al-Ghazzali, IlyÊ’ UlÊm al-DÊn, 2:455.
and mosques - in [all of] which God's name is abundantly extolled - would surely have been destroyed [ere now]. And God will most certainly succour him who succours His cause: for, verily, God is Most Powerful, Almighty (al-Hajj, 22: 39-40).186

Rather than regarding it as a right Islam speaks of freedom of expression as an obligation to enjoin good and redress evil. The Lockean concept of right is negative in a sense that everyone, including the state, shall refrain from interfering with others. Beyond this, everyone is not obliged to do anything positive for anyone else.187 Since it is negative it does not related to the concept of good and bad, and therefore, does not concern with people’s interests. In Islam, the concept is not that everyone is free to say anything he wants, rather the good should be promoted and evil should be redressed and stopped by everyone, and this necessitates freedom of expression. The objective is that the community may live in peace and harmony which are the common interests of the community.

Because it is the necessary mechanism to promote good and redress evil, freedom of expression should be consistent with the interests of the people. If the practice of freedom of expression infringes with the people’s interests, such as their religion, reason etc., it must be regarded as illegal. In other words, unlike Western theory, the limits of freedom of expression is clear in Islam, that it must be based on true fact, that the person who convene the idea believes that he is true etc.188 As a rule, the liberty of the individual is absolutely guaranteed so long it does not violate the right or the interest of the community.189

Freedom of expression in Islam has limitations. There are moral restraints and legal restraints. As for moral violation of freedom of expression this includes: telling lies, backbiting, derision of others.190 The Qur’an warns Muslims to respect others and not to be involved in backbiting, defamation and derision:

No Men shall deride [other] men: it may well be that those [whom they deride] are better than themselves; and no women [shall deride other] women: it may well be that those [whom they deride] are better than themselves. And neither shall you defame one another, nor insult one another by [opprobrious] epithets: evil is all imputation of iniquity after [one has attained to] faith….O men! Behold, We have created you all out of male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him (al-HujurÉt, 49:11,13).

Avoid most guesswork [about one another] for, behold, some of [such] guesswork is [in itself] a sin; and do not spy upon one another, and neither allow yourselves to speak ill of one another behind your backs. Would any of you like to eat the flesh of his dead brother? Nay, you would loathe it! (al-HujurÉt, 49:12).

186 We have quoted several times the ÍadÊth in this regard: “when you see my community afraid of calling a tyrant “tyrant” then take leave of it” Musnad ImÉm AÍmad, no. 6495.
188 See for more details on the limits of freedom of expression Ahmad Jalal Hamad, Hurriyyat al-Ra’y, 307-433.
189 Ahmad Jalal Hamad, xurriyyat al-Ra’y, 433.
Realizing the importance of brotherhood and social unity the Prophet (pbuh) condemned backbiting and defamation, he said: “Do you know what ghÊbah is? To this they replied, ‘God and His Messenger know best.’ Then the Prophet said, ‘It is to mention your brother in a way that he would dislike.’ A Companion then asked: ‘What if that which I say concerning my brother is true?’ The Prophet replied saying, ‘If what you say is true then you have defamed him [by ghÊbah], and if he is innocent of what you say, then you have slandered him.”191 However, according to the jurists, ghÊbah is permitted in the following instances: (a). the impugning of witnesses (jarh al-shuhÊEd), (b). to analyze the character of individuals in the transmission of ÙadÊth, (c). to denounce the oppression or fitnah (slander), (d). to give sincere council and criticism, etc.192

Muslims are also urged not to expose the weaknesses and the disgrace or ignominy (’awrah, ’ayb) of others, the Prophet said: “Do not harm Muslims, and do not revile them, nor pursue their imperfections. For verily, whosoever pursues the imperfection of his brother shall have his own imperfections pursued by God.”193

The Sharjàh underlines pernicious innovation (bid’ah), capricious opinion (hawÉ) and ignorance (jahl) as the moral constrains of freedom of expression. It is “possible for the government, and those who are in charge of community affairs (i.e. the ulu al-amr), to convert these moral teachings of Islam into legal ordinances if they deem this to be in the interest of the community”194.

Whereas legal constrains of the freedom of expression are slanderous accusation (qadhf), public utterance of hurtful speech, libel (iftirÊ’), insult (sabb or shatm), cursing (la’n), and blasphemy.195 The Qur’an for instance specifies a particular punishment (fadd) for slanderous accusation (qadhf):196

And those who slander chaste women, then fail to bring forth four witness [to prove the charge they have laid] give them eighty lashes of the whip and nevermore accept their testimony; they, are the transgressors. Except for such as subsequently repent and correct [themselves]; for verily, God is Forgiving, Merciful.

According to Ahmad Jalal Hamad,197 in man-made law qadhf is permitted if it is accompanied by good intention and with strong believe in the accusation. In Islam this is strongly prohibited for reason of securing human dignity as manifests in several Qur’anic verses.198

Freedom of Religion

Freedom of religion in Islam understood by Muslims throughout Islamic history as that no person may under any circumstances be compelled to profess a religion hat he or she may not

191 Sahih Muslim, no.1806.
192 Muhammad Hashim Kamali, Freedom of Expression in Islam, 120-121.
193 Sunan al-Tirmidhi, Kitab al-Birr wa al-Silah, no. 1955.
194 Muhammad Hashim Kamali, Freedom of Expression in Islam, 117.
196 Surah al-NËr, 4-5.
197 Ahmad Jalal Hamad, ×urriyyat al-Ra’y, 404.
198 See surah al-Nisa’: 30; al-A’raf: 33; al-Baqarah: 190. And also the hadith, “The Muslim is one from whose tongue and hand all Muslims are immune” see al-’AsqalÈnÊ, Sharh SahÊh al-Bukhari, no. 10, 1:77.
freely wish to embrace. Thus, non-Muslims living in Islamic state were guaranteed the right to life, to own property, to profess their respective faiths, and to bring up their children accordingly. Islamic conception of freedom of religion is enshrined in the Qur'an, it states: There shall be no coercion in matters of faith. Distinct has now become the right way from [the way of] error: hence, he who rejects the powers of evil and believes in God has indeed taken hold of a support most unfailing, which shall never give way: for God is all-hearing, all-knowing (Surah al-Baqarah, 2:256).

And had thy Sustainer so willed, He could surely have made all mankind one single community: but [He willed it otherwise, and so] they continue to hold divergent views (Surah 11:118-120).

The concept of freedom of religion was the feature of the Madinan state. The charter of Madinah (ṣalīfat al-madīnāh), also known as the constitution of Madinah, is a characteristically pluralistic structure. The fact is that the Prophetic state respects non-Muslim community. It is well have been said that “Jews living under Islam fared better on the whole than those living under Christendom”. Locke, the ideologue of liberalism, once urged his compatriots to emulate the way Muslims tolerated Christians and Jews.

Freedom of religion in the Western tradition is the right to profess any religion or no religion at all. By contrast, the concept of freedom of religion in Islamic tradition is firmly rooted in religious faith. Unlike Western theory, the concept of freedom of religion does not only consist of ‘free-exercise clause’, but also the positive involvement of the state. The state is not refrained from interfering with the religion of the community, because indeed the state needs religion, to put it in the right path, and religion needs the state power to prevail. The state in Islam is bound to promote the establishment of religion. Because Islam insists that politics conforms to the provisions of religion and not the other way around.

Article 18 of the Universal Declaration of Human Rights states: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others in public or in private, to manifest his religion or belief in teaching, practice, worship and observance.”

Apostasy is prohibited in Islam to protect the religion and the Muslim community. Muslim scholars concur that renouncing Islam after embracing it willingly is a crime against God which deserves death penalty. This should be understood in line with the concept of liberty in Islam. Liberty is not an end-in-itself, it is a mechanism to promote the good and human development. Liberty, therefore, should be suspended when it resulted in badness and men-own misery. Islam proves that there is no truth outside Islam. A Muslim must realized the beauty of Islam and that he/she is blessed to be bestowed the greatest bounty that God had given to human being. When a Muslim embraces other religion it is tantamount to destroy oneself and ungrateful (kufr) for the most important bounty of God, that is Islam.

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199 Muddathir Abd al-Rahim, Human Rights..., 8.
201 Muddathir Abd al-Rahim, Human Rights, 5.
202 The Universal Declaration of Human Rights
5. The Principle of Equality

The Qur’an enunciates equality between humankind, because the concept of the unity of humankind is the basis of Islamic system. It directs Muslims to treat one another as equals. There are many verses in the Qur’an which speak about equality, respect, tolerance, love and caring society. This is because human beings are dignified creature of God having the same genesis as children of Adam and eve. In order to safeguard human dignity it condemns the tendency of men to deride, defame and assume that they are inherently superior to others:

No Men shall deride [other] men: it may well be that those [whom they deride] are better than themselves; and no women [shall deride other] women: it may well be that those [whom they deride] are better than themselves. And neither shall you defame one another, nor insult one another by [opprobrious] epithets: evil is all imputation of iniquity after [one has attained to] faith….O men! Behold, We have created you all out of male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him (al-Hujurat, 49:11,13).

Respect and integrity should be upheld in view of the fact that men are brothers. They are all equals inasmuch as they are all the children of Adam. Unjustified harm, defamation and derision are forbidden:

Avoid most guesswork [about one another] for, behold, some of [such] guesswork is [in itself] a sin; and do not spy upon one another, and neither allow yourselves to speak ill of one another behind your backs. Would any of you like to eat the flesh of his dead brother? Nay, you would loathe it! (al-Hujurat, 49:12).

Equality in Islam is an offshoot of justice inasmuch as justice (‘adl) comprises fairness and equality. This is because the term ‘adl in Islam is much wider than its equivalent term (justice) in Western writings. ‘Adl, which denotes putting the right thing in its proper place, has not only political and legal implication but also social, moral and spiritual dimensions. Hence to treat everyone in equal footing is part of doing justice. Therefore, it is argued that the Qur’anic evidence for justice is the same evidence for equality.

Although in Islam the concept of equality cannot be separated from the concept of justice, as far as politics in concerned, in justice the discussion focuses more on its political and legal implications, whereas in equality we usually stress more to social development and issues related to race and gender equality, such as the right of the minority.

The Islamic law, based on the Qur’an dan the Sunnah, discriminates none; everyone whether he is the ruler or the ruled, the master or the slave, the rich or the poor, the white or the black, the strong or the weak, are equal in Islam and therefore should be treated as equals. The Prophet stresses the importance of equality in implementation of Islamic law, he states: “communities before you strayed because when the high committed theft they were set free, but

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204 Sayyid Qutb, al-’Adalah al-Ijtima‘iyyah, 78.
205 “Now, indeed, We have conferred dignity on the children of Adam, and borne them over land and sea, and provided for them sustenance out of the good things of life, and favoured them far above most of Our creation”, Surah al-Isra’, 17: 70.
206 Al-BaytÉÈ, al-NiDÉÈm al-SiyÉÈsÈ al-IstÈÈmÈÈ, 149, 158.
when the low committed theft the law was enforced on them. By God, even if Fatimah, daughter of Muhammad, committed theft, Muhammad would certainly cut her hand.\textsuperscript{207} In a letter to his judge Abë MËsÉ al-Ash‘arÊ, ‘Umar instructed him to: “treat everyone before you alike in respect so that the weak does not despair of justice from you and that the high does not crave for an undue advantage”.\textsuperscript{208} This underscores that everyone is equal before the law and must be equal before the judge.\textsuperscript{209} There are plenty of examples set in early Islam which shows that this equality was upheld. Likewise the concept of equal opportunity, equal in governmental obligations also enshrined in the Qur’an, the Sunnah and the practice of Rightly Guided Caliphs. However, al-BayÉtÊ contends that there are certain jobs which require being Muslim as its condition and therefore prevent the dhimmÊ from obtaining it.\textsuperscript{210}

Based on this equality, Islam obliged Muslim to pay zakat and non-Muslim to pay jizyah. This concept and practice of equality underscore the beauty of Islam. According to Qutb, this is a high level of equity, to which no international law has so far achieved, nor any domestic law either.\textsuperscript{211} Many people have attracted to embrace Islam because it gives them the sense of fairness that other ideologies and religions could not offer them. The most important thing is that this concept not only pronounced in theory, but has been exemplified in early Islam.\textsuperscript{212}

To his conceited clan the Prophet said:

\begin{quote}
O people of Quraysh! Allah has rooted out your haughtiness of the days of ignorance and the pride of ancestry. O men, all of you are descended from Adam and Adam was made of clay. There is no pride whatever in ancestry; there is no merit in an Arab as against a non-Arab nor in a non-Arab against an Arab. Verily the meritorious among you in the eyes of God is he who is the most pious.\textsuperscript{213}
\end{quote}

Abu Dhar was admonished by the Prophet for his unfair action towards his slave, the prophet said to him: “you are a person with the attitude of ignorance (jÉhiliyyah)”. The Prophet then told all the Companions to treat their slaves as their brethren.\textsuperscript{214} The concept of equality manifests in the reign of the Rightly Guided caliph, Abu Bakr in his inaugural speech announced:

The weakest among you is powerful in my eyes until I get his due, God Willing. The most powerful among you is the weakest in my eyes until I make him pay due rights to others, God Willing. Allah sends down disgrace on those people who desist from fighting in the path of Allah. Allah surely sends down calamities on such people who indulge in evils. I ask you to obey me as long as I obey Allah

\textsuperscript{207} Sahih al-Bukhari, Kitab al-HudËd, no. 6788.
\textsuperscript{208} Al-Mawardi, Ibn KhaldÊn, al-Muqaddimah, 225.
\textsuperscript{209} Al-MÊwardÊ, Al-AlkÊm al-SuliÊniyyah, 68; Ibn Khaldun, al-Muqaddimah, 225. see page …for the letter of ‘Umar.
\textsuperscript{210} These are caliphate and army leadership for they are considered as religious obligations. See al-BayÉtÊ, al-NiÐÉm al-SiyÉsÊ al-IslÉmÊ, 154.
\textsuperscript{211} Sayyid QûtÊb, al-‘AdÉlah al-IjtimÉ‘iyyah fÊ al-IslÉm, 80; the English translation also available Sayyid QûtÊb, Social Justice in Islam, translated by John Hardi (Washington D.C: American Council of Learned Societies, 1953), 93-94.
\textsuperscript{212} Sayyid QûtÊb, al-‘AdÉlah al-IjtimÉ‘iyyah, 81.
\textsuperscript{213} Musnad Ahmad, no. 22391.
\textsuperscript{214} Al-Nawawi, Sharh Sahih Muslim, kitab al-Ayman, no. 38, (Beirut: Dar al-Qalam, n.d.), 11:142; al-‘Asqalani, Sharh Sahih Muslim, no. 30, 1: 118; Musnad Ahmad, no. 20461.
and His Messenger. If I disobey Allah and His Messenger you are free to disobey me.215

It is for the purpose of promoting equality, slavery was slowly abolished and eradicated in Islam. It reduces the way to slavery and opened the door wide to freedom. Majority Muslim scholars agreed that slavery is prohibited in Islam.216 Although there is no explicit evidence from the Qur’an and the Sunnah in support of their view, there is no doubt that the eradication of slavery was the objective of Law-Giver.217

6. The Accountability of The Imam

Accountability denotes the constructive check on the administration. It is the power of the ruled to control and monitor government activities. Accountability constrains the extent to which elected representatives and other office-holders can willfully deviate from their theoretical responsibilities, thus reducing corruption. Although a modern form of accountability is absent in early Islam, due to the simplicity of the society and state of Madīnah, nevertheless, accountability is an evident characteristic of the early Islamic state. As we have discussed above, the Qur’an and the Sunnah enunciate the Muslim community to uphold the principle of enjoining good and forbidding evil. Muslims are also encouraged to give a sincere advice (al-naĪÊÍah) to their ruler, the Prophet describes al-naĪÊÉlah as the very essence of Islam in sociopolitical practice; “The dÊn [of Islam] is naīĒlah”, the Companions said: “To whom [does the right/duty of naīĒlah belong], O Apostle of God?” To this, the Prophet replied, “To God, to His Book, to His Apostle, and to the leaders and community of the believers”.218 Moreover Muslims are duty bound to fight injustice (muqÊÉwat al-Ðulm).219 These principles indicate the duty of the people to control and monitor the activities of the government.

In addition, there are several aĪÉdÊth which relates closely to the concept of accountability. The Prophet (p.b.u.h) said:

“Everyone of you is a guardian and is responsible for his charge; the ruler is a guardian and is responsible for his subjects; the man is a guardian in his family and responsible for his charges; a woman is a guardian of her husband's house and responsible for her charges; and the servant is a guardian of his master's property and is responsible for his charge. “I definitely heard the above from the Prophet and think that the Prophet also said, “A man is a guardian of his father's property and responsible for his charges; so everyone of you is a guardian and responsible for his charges.”220

216 Wahbah al-Zuhayli, al-Fiqh al-IslÉmÊ wa Adillatuhu, 3:2019; See “Questions on Slavery”.
http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-
AAbout_Islam/AskAboutIslamE/AskAboutIslamE&cid=1123996016504 (retrieved June, 2005)
217 Some scholars did not agree with the majority mainly because the Qur’an and the Sunnah are silent about it. They maintain that slavery may be practiced today by Muslims, this will be construed that Islam promotes slavery and oppression, although the reality is the opposite. It is apparent that their literalism is a disservice to Islam.
218 Al-'Asqalani, Fath al-Bari Sharh Sahih al-Bukhari, Kitab al-Iman, no 57., 1:186; al-Nawawi, Sharh Sahih Muslim, Kitab al-Iman, no. 95, 1:396.
219 We have drawn the evidences in the Qur’an and the Sunnah relating the concept of muqÊÉwat al-Ðulm when we discuss freedom of expression. See sÊarah al-ShÊrÊÈ, 42: 39 and SÊarah al- ×ajj, 22: 39–40.
220 Sahih Bukhari, no. 730.
In another Ḥadīth the Prophet (p.b.u.h.) said: “It is obligatory upon a Muslim that he should listen (to the ruler appointed over him) and obey him whether he likes it or not, except that he is ordered to do a sinful thing. If he is ordered to do a sinful act, a Muslim should neither listen to him nor should he obey his orders.” The above al-Ḥadīth underscores the prohibition of obedience in injustice and wrongdoings. They also indicate that the ruler is accountable to the people and the people have the right to monitor and control the ruler.

Classical Muslim scholar realized that power should be checked and sovereignty should not be vested with any individual other than God. Ibn Khaldūn maintains that those who are in power usually tend to oppress others and transgress from the truth. This is because, he observes, to be in power and maintain it the ruler need coercion and this will lead him into oppression. Ibn Khaldūn’s critical observation on political authority is based on the framework given by the Qur’an and the Sunnah. It is based on this nature of political authority and its tendency to oppression, the prophet urged Muslim to check the ruler’s conduct: “One of the greatest jihād (struggle in the cause of Allah) is a word of just [and truth] in front of the oppressive ruler.”

The principle of Ḥisbah was institutionalized in Islamic history in order to check the conduct of the state officials. The Prophet did conduct Ḥisbah to his appointed official in his lifetime. In a Ḥadīth narrated by al-Bukhārī and Muslim the Prophet reckoned (ḥĒsaba) a person called Ibn Lutaybah. The Prophet condemned this person because he took the people’s gifts while he was in office. The Prophet stood up and gave his lecture to the community so that the people took the lesson from it. Moreover the Prophet regards gift given to the public officials as misappropriation: “Gift given to [government] employees partake of misappropriation (khiyānah). Commenting on this Ḥadīth Ibn Taymiyyah states that the ruler must return to the owner any gift which a public official has taken.

Ḥisbah which is literally mean accountability, reckoning, became the institution of ombudsman which is independent and powerful. It corresponds to modern accountability institution such as Anti-Corruption Agency (Badan Pencegah Rasuah) in Malaysia, or Hongkong Independent Commission Against Corruption. There is difference between muḥāsbat al-Īkim (accountability of the ruler) and al-Ḥisbah: the former is strictly political mechanism by which the ruler is accountable to the ruled, the latter is more general inasmuch as it is a moral as well as a socio-economic institution through which public life is regulated in such a way that a high degree of public morality is attained and the society is protected from bad workmanship, fraud, extortion and exploitation.

Muslim scholars also relate the concept of accountability with the enjoining good and forbidding evil (al-amr bi al-ma‘rūf wa al-nahy ‘an al-munkar) which is enshrined in the Qur’an.

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221 Sahih Muslim, no. 4533.
223 Ibn Khaldūn, al-Muqaddimah, 188. This is quite similar with the statement of Lord Acton: “absolute power corrupts absolutely”.
224 Tirmidhī, no. 2265.
225 Sahih al-Bukhari, no. 7197 also no. 7174; Sahih Muslim, Kitāb al-Uṣūl, no. 4717.
227 This definition is given by Imran Ahsan Khan Nyazee, Theories of Islamic Law, 318.
228 See the commentary of Ibn Taymiyyah, Public Duties in Islam (al-Ḥisbah fi al-Islām) by Muhtar Holland. From the discussion of Ibn Taymiyyah, the scope of Ḥisbah is much wider than the modern institution of anti-corruption. Ibn Taymiyyah, Public Duties in Islam, translated by Muhtar Holland (Leicester: Islamic Foundation, 1982).
and the Sunnah. The Prophet highlighted the importance of *al-amr bi al-ma'ruf wa al-nahy 'an al-munkar* so that the society may live in peace and harmony: “by Him in Whose hand I reposit! You must enjoin right and forbid wrong, or else God will certainly send down chastisement upon you; then you will call to Him, but He will not respond to you”. The Prophet stresses that every one should redress evil in any way possible: “If any of you sees something evil, he should set it right with his hand; if he is unable to do so, then with his tongue, and if he is unable to do even that, then [let him denounce it] in his heart. But this is the weakest form of faith”. It is based on the concept of enjoining good and forbidding evil (*al-amr bi al-ma'ruf wa al-nahy 'an al-munkar*), that Ibn Taymiyyah wrote his book entitled *al-×isbah fÊ al-IslÉm*, translated by Muhtar Holland as Public Duties in Islam.

Other than *hisbah*, classical jurists discussed about the *wilÉyat al-maÐÉlim* (a special court on oppression). Al-MÉwardÊ and Abu Ya'lÉ state that the office of *maÐÉlim* must have undivided authority to bring anyone to justice. Ibn Khaldun, states: “it is position that requires enormous power and judicial fairness, it also needs higher authority and charisma, so that it can frighten the unjust and deter the transgressor (*al-mu'tadÊ*). With regard to the practice of accountability in early Islam, Caliph ‘Umar once said: “By God, I do not send my officials in order to slap you on your faces or to devour your property. Whoever transgresses the limit of his duty, report him to me and I shall effect just retaliation. ‘Amr b. ‘As rose and asked, ‘O Commander of the Faithful! If a man is in charge of the affairs of Muslims and he disciplines someone in his custody, will you then retaliate?’ ‘Umar replied, ‘Indeed I will. How can I am not retaliate while you saw the Messenger of God would retaliate upon himself”.

Classical and contemporary Muslim scholars assert the necessity of accountability of the Imam in an Islamic state. Moreover, classical Muslim Scholars, such as al-MÉwardÊ, al-Juwayni, Ibn Hazm, al-Shafi’Ê, al-BaghdÉdÊ, al-GhazzÉlÊ, al-NawawÊ, al-Fakhr al-RÉzÊ, specified several reasons for the deposition of the Imam:

1. His own resignation.
2. Apostasy.
3. Being irrational or insane.

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229 See page …for further elaboration on the concept of enjoining good and forbidding evil. See also Muhammad Ahmad Mufti, *ArkÉn wa ÖamÉnÉt al-×ukm al-IslÉmÊ* (RiyÉÌ: Muassasat al-RayyÉn, 1996),185-190.
230 Musnad Almad, 22212; TirmidhÊ: 2095.
231 Sahih Muslim, 34.
232 Muhtar Holland translated it into public duty not to denote *hisbah* itself, but to give the book its appropriate title which is not necessarily literal translation. More accurately *hisbah* rather than translated as public duty (*al-waÐÉ'if al-'Émmah*), it should be translated as accountability.
238 Because being a Muslim is the first qualification that the Imam should have, based on the Qur’anic verse: “and never will God allow those who deny the truth to harm the believers” *SÉrah al-NisÉÊ*, 4: 141.
d. Being a captive in the hand of the enemy.  

e. Physical disability, such as being impaired, looses his sight etc.  

f. Gross misconduct (al-fisq al-Déhir) and injustice (al-Dulm).  

ImÉm al-GhazzÉlÊ states: “the unjust sultan should not continue being a ruler, either he is deposed or resigned...he for sure is not a sultan”.  

Commenting on the verse 2:124, al-Fakhr al-Razi states: “the unjust rulers cannot be trusted with religious obligations, cannot be the role model in it, they should not be the Imam, from this Qur’anic verse it implied the invalidity of unjust rulers.”  

The question is how on earth do the Orientalists and the liberal Muslims assume that Islam does not provide clear mechanism and procedures for the deposition of the ruler and his accountability while in office?  

It is irrational to assume that the seventh century political system should have as sophisticated mechanisms as the modern twentieth century constitutional government.  

However, In 1983, many contemporary eminent Muslims scholars has gathered in London and endorsed a model of an Islamic Constitution, in article 33 of the constitution, pertaining accountability it states:  

(a) The imam shall be impeached if he intentionally violates the provisions of the constitution, or for wanton violation of the SharÄ‘ah, by a resolution to that effect by a two-thirds majority of the members of the majlis al-shÉrÉ,…  

(b) Rules and procedures to govern the impeachment and removal of the imam shall be determined by law.  

Contemporary Muslim scholars also discussed the violations which invoke the impeachment of the Imam such as contravening the SharÄ‘ah, violating the law, gross misconduct or forfeiting any of the qualifications which initially made him eligible for the office.  

It is important to note that the accountability in Islam is not restricted to outward control but most importantly Islam stresses the importance of inward control. This is crucial for the fact that no matter how sophisticated the mechanism men can develop, unless the ruler himself has good qualities i.e., sincerity, God-fearing etc., this mechanism will not prevent him from abusing the power. This tendency of abusing the power and the trust manifests in politics as well as in economy, involving the white color as well as the blue color, the big boss or the petite workers. That is why Islam highlights the inculcation of taqwÉ (God-conscious, God-fearing) which constitutes the inner dimension and has stronger influence than the outward control. The Prophet  

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240 Al-MÉwardÊ, al-AÍkÉm al-SulÏÉniyyah, 20; AbË Ya’lÉ, al-AÍkÉm al-SulÏÉniyyah, 7.  
241 Al-MÉwardÊ, al-AÍkÉm al-SulÏÉniyyah, 18; AbË Ya’lÉ, al-AÍkÉm al-SulÏÉniyyah, 12.  
242 Al-Ghazzali, Ihya ’Ulum al-Din, 2:111.  
243 Ibid.  
244 Al-Fakhr al-RÉzÊ, al-TafsÊr al-KabÊr, 4:47.  
245 Abdullahi Ahmad al-Na’im states: “it should be emphasized that SharÄ‘ah did not provide for the implementation of this concept of representative government. SharÄ‘ah never provide clear mechanisms and procedures for the selection of the caliph by the community at large, for his accountability while in office, or for his removal in an orderly manner. That is not to say that these mechanisms and procedures cannot be developed today. Rather, it is simply to note that they are not already in existence”. Obviously he depends so much on the Orientalists writings. See Abdullahi Ahmed al-Na’im, Toward an Islamic Reformation, 83.  
246 See A Model of an Islamic Constitutionalism, in Abdul Rashid Moten, Political Science: Islamic Perspective, 122.  
reiterated in several places about the merit of just ruler and the denunciation of unjust ruler, such as: “If God appointed anyone ruler over a people and he died while he was still treacherous to his people, God would forbid his entry into Paradise”.

In short, the Qur’an and the Sunnah has provided many foundations for accountability in Islam. Principles of enjoining good and forbidding evil, *nailulah* (sincere advise), *muqawamat al-Dulm* (fighting injustice), and most importantly the principle of *lisbah* (accountability) signify the necessity of accountability of the Imam. Accountability is not only rhetorically pronounced in the Sharâ'ah but it was also exemplified by the Prophet, as in the case of Ibn Lutaybah, and was practiced as social norms in the reign of Rightly Guided Caliphs. It functions as the inevitable outcome of upholding the principle of *sharî‘ah*, hence, as soon as the institution of *sharî‘ah* was abolished during the Umayyad caliphate, consequently accountability also disappeared. Therefore, the Orientalists and liberal Muslims’ claim that the Sharâ‘ah does not provide any mechanism to check and control the government is a sheer myth and baseless.

**Conclusion**

To recapitulate, the concept of supremacy of the Sharâ‘ah, which is enshrined in the Qur’an and the Sunnah, entails the rule of law and constitutionalism. The idea constitutional government, as a necessary consequence of the supremacy of the Sharâ‘ah, is originally expounded in Islamic political thought. This is not an attempt to find the parallel of what already existed in Western political thought, rather to investigate the reality of Islamic political thought as propounded by Muslim scholars since more than a thousand years ago. The result as we have seen is that, as far as theory is concerned, the Islamic political thought expounded by classical Muslim scholars, is not as epitomized in the writings of the Orientalists and the liberal Muslims. As far as the quietist tendency is concerned, there are in fact some classical Muslim scholars who compromise the imamate by seizure (*imdrî‘at al-istî‘â‘*), but this does not justify the Orientalists’ claim that they vindicate unconditional obedience to the Imam.

Rather, the truth is that the matter under discussion falls into the category of necessities (*‘arî‘iyat*) and necessity may render what is unlawful to be lawful, it knows no law.

The principles of *sharî‘ah*, justice, equality, liberty, representative government and the accountability of the Imam are stipulated in the Qur’an and the Sunnah. Some of these principles may not be practiced fully by the Umayyads, Abbasids and other dynasties in Islamic history, but this does not change the fact that supremacy of the Sharâ‘ah is the main characteristics of Islamic politics. Although the political principles stated above are stipulated in the Qur’an and the Sunnah, their significance is not only because they are enunciated in the Qur’an and Sunnah. In addition to its Qur’anic and Sunnatic origins they also correspond to the essential interests (*‘arî‘iyat al-khamsah*) of the objectives of the Sharâ‘ah (*Maqâlid al-Sharâ‘ah*) which are: religion, life, intellect, property and progeny. *Maqâlid al-Sharâ‘ah* is considered by the jurists

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248 *Sahih Muslim*, no. 4500.


as the foundation and a complementary source of legislation. They argue that there is no single ruling of the Sharī'ah that has no interest (ma'ilah) in its legislation. In Islamic political science this foundation is also crucial in the formulation of political principles and rules. It is on this basis that Ibn al-Qayyim (d. 751 A.H.) considers anything that promote and protect justice as necessarily in concomitant with the Sharī'ah. In addition, the concept of al-siyāsah al-shar'iyyah expounded by classical Muslim scholars refers to the area in which rulers and 'ulamā' should make al-ma'ilah al-mursalah, or maslahat al-'Āmmah (public interests) as their objective in their policies and decisions.

Specifically, the concept of representative government corresponds to the protection of religion and life. It protects religion because religion can only be established if the ruler has no absolute power. As Ibn Taymiyyah has mentioned, a complete implementation of religious obligations requires a state power. Religion without the support of political authority will have little impact on the community, because the realm of religion, in Islam, is not confined to spiritual aspect of human life rather it should governed all aspects of human life so that the good will prevail over the evil. Religion itself condemned oppression and absolutism because it is considered as a crime against humanity. In Islam there is no place for political sovereignty, since sovereignty connotes unlimited and unrestrained power which should only belong to God; the ruler should not be the sovereign, for it will sanction despotism, the people should not be the sovereign as well because the will of the majority may undermine religion which is designed to protect the interests (ma'ilah) of the people. The ruler is therefore no more than the representative of the people who have supreme authority over him (al-ummah malsar al-suluq). This is inline with the concept of vicegerency (khalīfah) which is vested in all the believers.

The institutionalization of Shīrāz will certainly protects religion, because as far as politics is concerned, the Sharī'ah is dynamic and lenient, Sharī'ah sanctions the knowlegeables to decide on matters of public affairs in accordance with the objectives of the Sharī'ah. It is through shīrāz that these objectives of the Sharī'ah are observed. It is through shīrāz also that the intellect, i.e., the outcome of sound reason, is preserved and respected. Hence by institutionalizing shīrāz, religion and intellect are secured.

Punishment, as in 'Idah law, in Islam is considered by many as very harsh, such as the cutting off the hand of the thief. This is because the protection of property is the key element in maintaining peace and harmony, thus it should be of paramount importance. No security for property if injustice prevails. Therefore upholding justice, such as the principle that everybody is equal before law, is evident in early Islam following the provisions of the Sharī'ah. Justice itself by some scholar is regarded as the objective of the Sharī'ah. Ibn al-Qayyim consider justice as the foundation of the Sharī'ah.

Life has no meaning without liberty, and equality. By life we mean the promotion and protection of a dignified and decent life. Therefore, the Sharī'ah condemns oppression which is the antithesis of liberty and justice. The Qur'an and the Sunnah consider all humans as equal.

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The great mission of many prophets, such as Moses and Muhammad as we have noted before, was to free human being from enslavement and oppression.

Undoubtedly, accountability is necessary for the protection of justice and property. Without accountability public property especially would be under the threat of corruption and justice would not be secured. As Ibn Khaldun states: “the nature of political authority is that it is the essential association of humankind wherein coercion is needed…therefore most of those in authority are oppressive [and going far] from the truth.”

In order to ensure that such a despotic threat is restrained, accountability is therefore necessary to protect justice, men's property and human life.

The purpose of relating Islamic political principles with essential interests (ḥarāmiyyah) or the interests (māliḥah) of the people which are regarded as the main objective of the Shari'a is to show the wisdom behind its legislation and how necessary are these political principles to be adopted by Muslims. It is similar to the wisdom behind the need to comply the la'il (lawful) and ḥarām (unlawful) prescribed by the Law-Giver. Muslims believe that every ruling of the Shari'a is designed to protect the interests (māliḥah) of human beings. This is not good enough if they neglect the political dimension of the Shari'a. Confining the Shari'a to law, that is related to dos and dons, is obviously against the nature of the Shari'a itself, which is comprehensive and complete.

Whereas representative government, justice, equality and liberty constitute as principles which are essentials in establishing good government and define the Islamic government, the concept of shēr, and accountability are more appropriately considered as mechanisms (ḥamān) to check and limit the authority of the government thus prevent the ruler from arbitrary rule and authoritarianism. The existence of these mechanisms in early Islamic political system should give a clear signal to the Orientalists and liberal Muslims who claim that Islam did not provide any mechanism which prevent the abuse of power and arbitrary rule. More than just providing these principles and political mechanisms, it is evident from the above discussion that it was Muslims who introduce the notion of constitutional government and not the West. In fact the West has adopted it from the Muslims experience and literature.

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253 Ibn Khaldūn, *al-Muqaddimah*, 188.