Addressing the Islamic Notion of Sovereign state

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Abstract

Most academic studies of Islam and Islamic theology have not examined the concept of sovereignty in Islam. Given the fact that studies on sovereignty are undergoing a mini-renaissance where scholars are returning to the basic concepts of sovereignty of the late 1980s and early 1990s, many Islamic/Muslim scholars are trying to examine and reform the concept of sovereignty in Islam. This research paper discusses the fundamental nature of sovereignty in Islam. This research paper focuses on centering it within an international framework with particular reference to the recent unrests risings in the Middle East, while also reviewing the different and classical perspectives on sovereignty amongst Muslims scholars. Moreover, this paper discusses the new works on the problematic nature of state’s sovereignty in Islam. The popular uprisings that came to be called “The Arab Spring” have brought the question of sovereignty of the people and legitimacy of the ruler to the surface. This paper argues that the concept of God’s or divine sovereignty and the Umma have become sensitive issues that the public would like to put it aside, considering the nature of the current national states of the Muslim majority countries. It concludes that Islam has two different levels of sovereignty: judicial and executive sovereignty.

Introduction

For years International Relations theorists have been studying, researching and arguing about sovereignty. However, one aspect remains unexplored: why was sovereignty developed and is it possible to transfer from one form to another without any challenges? In other words: how could such development take place without disputing the principle of sovereignty? Is the meaning of sovereignty so unclear that it can be defined in various ways?

These questions call for a profound, thoughtful definition of sovereignty and of the progress of its meaning over time. Yet, these questions are mainly founded on the Western definition/meaning of sovereignty. The concept of sovereignty is considered here to relate to the way a political body or group is organized. Sovereignty outlines “an arrangement of authority”1. It is the essential expression of the way a political entity chooses to form itself politically, or of the way an authoritative arrangement is forced upon people and society. Sovereignty is the comparable to an outline where diverse questions can be countered: how is political power best implemented, by whom, and according to what values? Of course, sovereignty cannot continue to be absolute: as a background, it has to be complete. That is why sovereignty is continuously devoted to a model of governmental power; it is subjected to a continuous redefinition. For Thomson, “In a given historical era (however drawn), there is a standard or norm of sovereignty”2.

1Jackson, R.H. (2007), Sovereignty: The Evolution of an Idea (Key Concepts), (Cambridge: Polity)
In a work published in 2003, Bain classifies "an emerging notion of international legitimacy expressed in terms of human rights, democracy, and free market economy". These three fundamentals characterize the center of what the international society perceives as the decent life ("the good life within that society contains solely and exclusively in admiration for human rights, democratic authority, and free market economy"\textsuperscript{3}). This investigation is shared by Hobson who defines a modern 'good life' – or standard of civilization – one that comprises "the values of democracy, capitalism and individual human rights"\textsuperscript{4}, as well as by Bowden regarding the current version of civilization\textsuperscript{5}. These three components suggest a good approximation of what is today considered as decent authority.

Firstly, good authority suggests the presence of a democratic liberal regime. Surely, the advocates of good authority share a certainty in democracy as the more acceptable method of political organization. As written by Santiso: "Good governance requires an effective decision-making, an operative legislature, a sovereign judiciary and the effective separation and stability of authorities, all essential elements of a democratic regime"\textsuperscript{6}. As significance, there is a considerable overlap between democracy and good authority, since democracy is the only means to confirm good governance\textsuperscript{7}. Moreover, democracy is seen as a method to competitioncounter unreliableregimes, which is one of the fundamental goals of good authority\textsuperscript{8}. Therefore, democracy is at current perceived as an essential good\textsuperscript{9}, which clarifies its occurrence in the notion of good authority\textsuperscript{10}. Human rights standards are thus part of a notion of what is appropriate for a state to do and what is not\textsuperscript{11}. On the contrary, abuses of human rights are measured as examples of 'bad governance' or a seriously bad ruled government\textsuperscript{12}.

The relationship between sovereignty and Islam is one of the most unexplored issues. Sovereignty nowadays is a prominent field of study in International Relations; however, in Islam and among Islamic scholars, there has not been a deep theological and political debate on this issue. The question this article poses is: in the light of the Arab uprisings, and amid Islamic radicalism, what does sovereignty mean in Islam and how practical a concept is? For liberal interdependence theorists, sovereignty means the state's ability to have control within and across its borders. For realists, state's sovereignty is the state's ability to take authoritative decision; even goes for war. (Thomson, 1995). This article presupposes an assessment of the old, current and future prospects of the Islamic theory of sovereignty. It also reviews recent researches on the Islamic understanding of the concept of sovereignty. There has not been an Islamic theory of sovereignty that can be comparable to the one developed in the Western World. This article tries to construct a bases for such theory through bridging the new thoughts, doctrines and writings on political Islam and new interpretations of the Qur'an and Hadith in the aftermath of the Arab uprisings. The aim here is to examine the different views on sovereignty and its indicators in Islam, which may produce a concept of sovereignty particular to Islam.

\textsuperscript{4}Hobson, C. (2008), "Democracy as Civilization", Global Society, 22(1), 84.
\textsuperscript{5}Bowden, B. (2009), The Emergence of a Global Civilization: The Evolution of an Imperial Idea, (Chicago and London: The University of Chicago Press), especially 167 and following.
\textsuperscript{7}Ibid., 279.
\textsuperscript{8}INTERNATIONAL MONETARY FUND (1997), Good Governance. The IMF's Role. (Washington, D.C: IMF), 1-2, 3 and 4.
\textsuperscript{11}National Security Strategy of 2002, mentioned by Ibid., 279.
\textsuperscript{12}http://www.un.org/ecosocdev/geninfo/afrec/sgreport/conflict.htm (last Access 6/05/2011)
\textsuperscript{13}My, 6.
The paper has three major points: firstly, there has not been an Islamic theory of sovereignty comparable to the one elaborated in Western political philosophy. Secondly, there is a difference between “Al-Hakimya”, which literally means governance, and sovereignty “taut curi” and Islamic scholars have mixed up the concept of “Al-Hakimya” with the concept of governance. Thirdly, sovereignty in Islam basically means a state’s ability to protect its citizens from a social, financial and political malaise, through justice and equality. Any attempt to define the Islamic philosophy with reference to certain historical periods is in danger of over simplification and generalization. Islamic political philosophy has been developed since the early beginning of Islam. Islam, as a religion, did not restrict the individuals and societies from developing their own philosophy and political philosophy of the Muslim community. The Qur’an, the holy book in Islam, is a book of signs and not a book of science. It is a book that provides Muslims with only guidelines and not very detailed verses on life. As AL-Mawudhi argues, it is a book of broad general principles rather than of legal minutes (Abu-Rabi’, 2003). Islamic scholars have debated various areas of political life, including jurisprudence, regulations and policies of Islamic Sharia. In fact, among Muslim scholars there were many disagreements and different arguments on many issues, the so-called “Ikhtilaf”. These disagreements were mainly concerned with the doctrinal aspect of methodology and with how far it can go in the context of Islamic jurisprudence (Bassiouni, 2013). Albeit that, they have not discussed the issues of sovereignty in its modern concept, as we know today. Because of the different schools of thoughts among early Muslim scholars, they tend to stick to literalism, interpreting Qur’an and Sunna in reliance to the on earlier interpretations and applications of the Prophet Muhammad and the four wise Caliphs. This created a problem for the researchers and students of Islam and its disciplines where most of the references are taken from literalists’ literature. Not only do the views of scholars of pre-twentieth centuries randomly appear in studies of Islamic laws, but also most of the current literature is based on Post-Ibn Taymiyya era. Ibn Taymiyya is a Sunni Islamic philosopher who contributed to the interpretations of the Qur’an, Sunna and theology during the high Middle Ages. His legacy has been controversial among many Muslim scholars as Whabism and Salafis base their religious understandings on his literature.

Moreover, the stultification of progressive intellectuals Muslims brought a challenge to the development of modern political and philosophical theories, which is comparable to that of Western. Therefore, modernity has not been and will never be a challenge to Islam as a religion, rather it is a challenge to the Muslim societies (Bassiouni, 2013). This increased the political and cultural schism between Western and Muslim civilizations, widening the gap of the many political and philosophical differences between them. The unquestionable acceptance of Allah, and Qur’an as the word of Allah in its literalist interpretations restricted the development of Islamic political theories, including theory of sovereignty. Despite that, there is a rise of many Muslim scholars who argue that the prophet has set the bases for civil and democratic state (Ibrahim, 2012). They rely on how the prophet initiated and managed to set the first Islamic constitution in Medina, the two pledges, and his meeting with Nijran’s Christians (Salahi, 2011).

Over time, Islamic philosophical views have changed and developed. It is worth mentioning that the Qur’an and Sunna have not changed at all; it has been scholars, leaders and elites have over time. This means that the Qur’an and Sunna, the primary sources in Islamic law, can be re-interpreted and presented in a way that meets the dynamics of the times, and the political, economic, technological and political advancements. The Ummah, the Muslim nation, is not the same as during the prophet’s and neither wise caliphs’ times, nor the same of the later United Islamic state. Muslims nowadays live in different countries, different cultures (as the Muslims do not represent one social culture), different languages and different Islamic doctrines (Mainly Sunni and Shia). The Islamic theory of Sovereignty is necessary to present the views of Islam and not the views of Muslim scholars and fundamentalists, who inherited the literalist views on state, Islamic law and jurisprudence. It is necessary to open a scientific and an indepth scholarly debate on the very primary issues on the way to separate religion from the state. It has been argued that the late medieval Islamic model of rule briefly introduced above, the “siyasashari’yya” model, whereby scholars apply their understanding of God’s law in the civil realm fully independently from the secular rulers and the secular rulers in turn enjoy a certain space to exercise temporarily bound powers of command, is most closely represented in the modern world by the kingdom of Saudi Arabia13.

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As is well known, power in Saudi Arabia is divided between a class of religious scholars and the Al Saud family. The class of scholars in this case are bound by a particularly rigorous understanding of Islamic creed and legal doctrine, based on a strict form of reliance on revelation (the Qur'an and the Prophetic sunna), resuscitated in the eighteenth century by religious reformer Muhammad IbnAbd al-Wahhab. This school (Wahhabism to outsiders, Salafism internally) is characterized by its obsessive preoccupation with expurgating any conceivable departure from the strictest monotheism in Muslim belief and practice, such as venerating the graves of revered ancestors (including that of the Prophet Muhammad himself) or looking to any sources of moral and epistemic authority outside of revelation. Like many Christian Protestant-reformist movements, it insists on forming creedal and legal doctrines based to the greatest possible extent on revelatory texts, followed by the recorded original understanding of revelation by the first generation of Muslims (the salaf) and then a narrower genealogy of righteous forbearers, most notably Ahmad IbnHanbal (780-855 CE/164-241 AH) and IbnTaymiyya\textsuperscript{14}.

**The Western notion of sovereign state**

Western societies have tried through multiple efforts to fix the problems associated with absolute state sovereignty through history of sociopolitical changes within its communities, both at the upper and lower consideration\textsuperscript{15}. And these attempts were relatively than changing or removing states, it worked on merging the important features of sovereignty into a multinational foundation in which the member states’ freedom of action is restrained.\textsuperscript{16} For example the European Union formed the European Court of Justice, the European Parliament and by appointing a High Representative of the Union for Foreign Affairs. Individual European states are no longer totally autonomous.\textsuperscript{17}

Therefore, when it comes to dealings within the state, and its obligation to its citizens, the maxim “the King can do no wrong” comes to mind. For example in England, the King could not be legally charged in his own court of law.\textsuperscript{18} “No court order would falsehood against the Crown.”\textsuperscript{19} With the birth of the sovereign state came the concept of sovereignty. Sovereignty and obligation were measured commonly as private ideas.\textsuperscript{20} Therefore, the protection of the government was the general rule until the middle of nineteenth century. Afterwards, public administrations could suffer civil liability and they could be held accountable for the wrongdoings of their servants.\textsuperscript{21} The liability of public organizations is the territory of executive rule. Though the idea of rule of law does exist, it has to be reserved to the sovereign and those who work in the state’s administration are agents of the state.

The principle gatheringcall of the Sunni Islamist movement during the middle of the twentieth century was the declaration of God’s exclusive sovereignty (hakimiyya) over the world, including human political action. What we might call “high utopian Islamism” rejects any form of comparison or similarity with modern Western ideals of governance. The common Abrahamic belief in God’s cosmic, creative sovereignty—what we might call divine sovereignty as fact—leads to an uncompromising insistence on God’s exclusive legislative and normative sovereignty. The statements of SayyidQutb on the rigorous demands of a commitment to divine sovereignty remain among the most influential:

> If we look at the sources and foundations of modern modes of living, it becomes clear that the whole world is steeped in ja'liya [pagan ignorance]. . . based on rebellion against the sovereignty of God on earth. It attempts to transfer to man one of the greatest attributes of God, namely sovereignty, by making some men lords over others . . . in the more subtle form of claiming that the right to create valueo legislate rules of collective behavior, and to choose a way of life rests with men, without regard to what God has prescribed (Qutb 1964, 8)\textsuperscript{22}.

\textsuperscript{15} Upper consideration: these attempts were on the government/state level; lower consideration: these attempts were on the people, nongovernmental organization; civil society in general
\textsuperscript{17} Ibid
\textsuperscript{18} Duncan Fair-grieve State Liability in Tort (New York: Oxford University Press,2003)
\textsuperscript{19} Ibid
As is widely appreciated, Qutb’s view was a sentimental one, harkening back not to the recent past before the collapse of Muslim independence but all the way back to the first generations of Islam. And yet even this belies the fact that the connotation and institutionalization of God’s sovereignty on earth was no less a problem for the earliest Muslims than it was for later ones.

Sovereignty in Islamic thought

The quest for sovereignty has not attracted Muslim scholars until recently, during the last century. It comes to the scene in the light of the development of the Western political thoughts, the collapse of the Ottoman Empire and the colonization of the Muslim world. Despite that, many Islamic scholars still argue that there is no need to debate the question of sovereignty (Mitwalli, 1990). Their claims are founded on two reasons; the first is that the concept of sovereignty appeared in a specific historical and social European context in order to end the absolute authority of the church. Secondly, Islam doesn’t have any historical records on absolute power owned by any ruler (Al-Karim, 1977). They argue that Islam has restricted the power of the ruler and the political authority by the Islamic Sharia. Their main argument is that giving the sovereignty to any man is beyond thinking and far from any Islamic thoughts (Tawfiq Al-Shawi, 1992).

Nevertheless, many other Muslim scholars debated the question of sovereignty. The debate went into three directions, where each group supported its own ideas and arguments with the Qur’an, Hadith (prophetic traditions) and also Ijtihad (diligence). There are three main groups that discussed the question of sovereignty in Islam. However, the three groups share the same idea that there is a limit to man (generic for woman/man) when it comes to deciding on life matter, specially the bold lines of Sharia’s.

The first group argues that sovereignty in Islamic state is for God/ Islamic Sharia. According to its representatives, there should be a difference between authority and sovereignty, where sovereignty is only for God and the authority to rule is delegated to the Umma, the nation, to exercise its authority within the limit of sovereignty. According to this group, in Islam and Islamic state, there is no way that a man shares the sovereignty of God on earth. Society has no sovereignty when it is only restricted to God (Saed, 1999). Other scholars went further and argued that even if Islamic states emerged as their people wish, the sovereignty of the state must be taken from God and the people must adhere to the conditions of obeying and being loyal to this sovereignty (Asad, 1983). Most of the Islamic theorists of this group support their argument on the basis of the Qur’an verse that states:

"O you who have believed, obey Allah and obey the Messenger and those in authority among you." (The Holy Qur’an, 4:59).

This verse lays the foundations for the Islamic social, political and religious system.

The second group argues that sovereignty and sources of authority are from the nation, the Umma. While its representatives take consultation as the basic element in the complexities of Islamic state, they assert that the Sharia is the framework of Islamic laws and the ruler is the commander of this law. This implies a theocratic state similar to the one experienced by Europe during the Middle Ages, in which the church ruled politically in the name of God. This argument poses the real question: is Islamic authority an authority that rules in the name of God in its right and wrong decisions made by the Muslim rulers and politicians in jurisprudence and diligence?

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23AbulA’laMaududi was a Muslim revivalist and scholar in India and Pakistan. He was the founder of Jamaat-e-Islam, the Islamic revivalist party.

24SayyidQutub was an Islamic theorist and leading member of the Egyptian Muslim Brotherhood. He was executed by the Egyptian regime.
As Al-Duri argues, the nation is the highest authority in the state. The ruler and the consultation committees must consider the national decision in all matters. The committees represent the people/citizens in the process of nation designing and making laws according to Sharia. They manage public affairs of the citizens. Moreover, the citizens are observers for the work of the ruler and who the committee members consult, who are able to correct them. Citizens correct and file complaint against their representatives whenever they do wrong (Kahtan Al-Duri, 1974). When the Prophet passed away, his companions (Sahaba) and the Muslims in Mecca and Medina elected the first Wise Caliph, Abu Baker. It was not the prophet nor God delegated Abu Baker to rule. This implies that the nation (that’s to say the citizens) is the source of all authority, including the juridical ones authority, as long as it is founded on the framework of the Sharia. Based on these arguments, sovereignty is for the nation and the nation is the only sovereign element in the state. It pledged (in the past) a ruler and elects a president or a leader, delegating the management of the public life to him.\(^{25}\)

The third group tries to bridge the thoughts of the first and the second group. Many of the Islamic scholars belong to this group, mainly Moahmed Hamad Al-Samad and Mohammed DiaEldin Al-Rayes. They reflect the opinion that there is sovereignty of God and sovereignty of the nation. They argue that the judicial Sharia’a represents sovereignty of God while sovereignty of the nation is represented in the assemblies or consultations.

### The Islamic Models for Sovereign State

The issue of sovereignty has received significant attention from traditional Muslim historians. When we look back at Islamic historical literature on the issue of ruling, we will find numerous attributions by different Muslim scholars, include the likes of Imams al-Ghazali, IbnTaymiyya, al-Baghdadi, Abu Yusuf, al-Baqillani, al-Mawardi, al-Juwayni, al-Razi, IbnKhaldun and al-Khuri.\(^{26}\)

In actual fact, the earliest discord that ascended in the Muslim community was based on who should be the leader of the Muslim public, the Ummah and what were to be his credentials. On the one extreme were the Khatris who split from the Caliph Ali (RA) because of their disapproval of his proposal at the battle of Siffin (37/657) and the differences of opinion arising between him and Amir Muawiya (RA) due to the killing of the previous Caliph, Sayiduna Uthman (RA) should be submitted to adjudication. They believed that arbitration was a sin against God. The judgment of men could not be a substitute for God’s prescription. They advocated that it was the total responsibility of all Muslims to charge the good and to impede evil, even at the cost of their very lives. If a Muslim committed an immoral act, even if he was the Imam, he became a defector and hence was to be killed. The Imam was only legal authority as long as he was following the Divine Law entirely. If he did not do so, he was to be removed by power.\(^{20}\)

**IbnKhaldun and the concept of Mulk, Asabiyah, and state:**

The problems that IbnTaymiyya theory creates can be answered using the format and reasoning that IbnKhaldun delivered to describe Islamic history. IbnKhaldun’s political philosophy is predominantly based on Sunni groundwork, but like IbnTaymiyya, also on the concept of Tajdid al Bay’ah (renewal of the caliph’s bay’ah from the period of the Truly Directed Caliphs).

\(^{25}\) This opinion is supported by many scholars, including Mohammed KameLala(Political Systems), Saeed M. Khalili(appointment of the ruler in Islam and in modern state), Mohammed Imara(Islamic states between secularism and theocracy), Abdelgan Basiouni(Political Systems), Mahmoud Helmi(Islamic political system compared to the modern systems), Abdelkarim Zeidan(Individual and the state in Islam), Mohammed Yusef(Sharia’s ruling system) and Mohammed Dawalibi(The state and authority in Islam).

\(^{26}\) Ann K. S. Lambton , State and Government In Medieval Islam (United states , New York, Oxford University Press 1981.


\(^{28}\) Janet Mclean “Review: Personality and Public Law Doctrine” (1999), 49:1, U.T.L.J.,123 at 144; Patrick Thadeus Jackson “Forum Introduction: Is The State a Person? Why Should We Care?”(2004), (30:2),255 at 256. Mclean states that public and administrative law doctrine does not explicitly acknowledge the state’s purpose since legislative purpose has become a proxy for state purpose. The Maqasid al-Shariah, the purposes of Islamic Law define the purposes of the Islamic rule.

\(^{29}\) Ibid
It offers a stable method in comparison to the all or nothing position supported by Western theorists when it comes to the role of religion in rule. In this regard the efforts of Muhammad Mahmoud Rabi’ should be acknowledge, whose work focuses solely on IbnKhaldun’s political theory for the first time in the English language.

As a matter of fact, IbnKhaldun recognized three forms of political structures:

1. The Caliphate (الخليفة)
2. Mulksiyasi (الملك السياسي)
3. AndMulktabi’i (الملك التبعي) 30

The caliphate is a structure of administration where rule is based on the Shariah, the customs of which are recognized as definitive sovereign authority. According to IbnKhaldun, this was the ultimate structure and it was the standard against which he compared mulksiyasi and mulktabi’i. These laws would have the greatest value if they steered society and people on concerns connected to their life in this world as well as the subsequent. Only the Shariah could perform this two-fold function.

“If the political standards are meant by God through a lawmaker who creates them as (religious) laws, the consequence will be a political (establishment) on a religious foundation, which will be valuable for life in both this and the other world.” 31

IbnKhaldun argued the Shariah as an aspect of worldly adjustment. For instance, the Arab Bedouin were primeval and resistant. When Bedouin/nomads accepted Islam, its principles helped them in departing their regressive traditions and succumbing to the delightfully guided law so that they could enjoy a more civilized society and have an influential government. Accepting these principles produced in them a spiritual limitation that functioned from inside their specific natures and ended their faintness. Under this law, the public are focused on the customs of the Shariah yet not the uncontrolled authority of an unfair and brutal sovereign. Even though secular rule was the joint portion of the two types of milk, IbnKhaldun examined them in different ways as far as their achievability and validity were troubled. Mulktabi’i, that is, unlimited sovereignty, knows no authority other than that which the oppressive dictator has dominated. 32 The milk(sovereignty) is based completely on the absolute determination of an individual who feels pain some the similar faintness as any other human beings. This method of authority serves the welfares of the sovereign alone and is detrimental to the benefits of the society. 33

On the other hand Mulksiyasi is a system of kingship in which secular political rules are absolute. Unlike mulktabi’i, this system of authority has both advantages and drawbacks. 34 The advantages are that the public are submissive to rational rules and not to the absolute rule of a human being. Furthermore, spread over laws founded on secular reason provides steadiness to the rule, somewhat missing in mulktabi’i. The disadvantage of this kind of rule is the purpose it attempts for looking after only the worldly wants of the society. For IbnKhaldun this is wrong because it does not cover the religious aspects of human life that safe contentment in both this world and the following. 35

IbnKhaldun reached the notion of milk earlier due to the rise of the nation-state and its “associated phenomenon” of sovereignty. Milk, as a notion of ultimate or sovereign authority was not related to race or religion. This absolute authority, in its purpose as a mean to apprehend an end, has to be controlled by some sort of standard. The standard that IbnKhaldun puts forward is accommodating the rule of the Shariah or if the system of government is mulksiyasi, the sovereignty of organized rational laws. 36 On the other hand Mulktabi’i, cannot flourish in its determination of supporting its repressive law for long. This is a predictable outcome of this form of kingship.

IbnKhaldun’s methodology was original because he not only knew the Shariah as the divine base of the Caliph’s power, but also that authority created on secular powers could be an absolute power.

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30 Mohammad Mahmoud Rabi, The Political Theory of IbnKhaldun (Brill, Leiden, Netherlands, 1967)
31 Ibid
32 Ibid
33 Ibid
34 Ibid
36 Mohammad Mahmoud Rabi, The Political Theory of IbnKhaldun (Brill, Leiden, Netherlands, 1967)
This method places Ibn Khaldin “mid-way between the European ecclesiastical thinkers of the divine right with their hypothesis of a command of God as the groundwork of the King’s power and far along thinkers, starting with Bodin and Hobbes, who created sovereignty on historical grounds.”\textsuperscript{37} Although he favored the Caliphate, as a system of ruling in which Sharia was absolute, he also documented other methods of government. He even chosen mülksiyası rule built in reasonably organized laws, over mülk, that is, uncontrolled monarchy. In this way, Ibn Khaldin’s method is novel even compared to the Muslim jurists that preceded him. The jurists prior to him had focused mostly on the Caliphate as a form of authority. Ibn Khaldin not only restructured the progresses of the Caliphate, but also shares the notion of mülk.\textsuperscript{38}

**Is sovereignty for the Sharia or Umma?**

As fundamentalists rise, the debate intensifies, and it became a particularly sensitive topic amid the Arab uprisings. The victory of the Muslim Brotherhood and the fast crack down in their experiment brought the question of the political Islam to the surface more than ever before. The Arab Spring gave rise to many voices as resurgence of Islamic thoughts on state and society. Among them, the most pressing question is the ruler in Islam, the State and the Umma.

As the prominent scholar Adnan Ibrahim argues, that ruling quest in Islam (Qur’an and Sunna) has been confusing to many other scholars. He asserts that Ruling (Hukum) basically has a different meaning compared to the interpretation developed by Al-Mawdudi and Qutub. Instead, Al-Hakimiyya in Qur’an means judiciary and not executive authority (Ibrahim, 2012). Ibn Durayd has shown that, the Hakim is the one who exercises the judicial authority (Ibn Durayd, 1978). This argument refutes a very long-running history of scholarly work on the state in Islam that has been going on for more than 800 years. According to this line of reasoning, the confusion lies in the idea that God is the ruler and Emir (which is illogical and impossible).

However, authority in Islam, as many argue is connected directly to the ruler. The ruler cannot rule beyond, change or cancel Sharia. Not only leaders, but also Muslims and the nation cannot change or cancel any of the Sharia principles (Abdel-Karim, 1984). The nation does not have absolute authority over judicial principles rather it is restricted by Sharia. The nation has the right, sovereignty and authority to select its ruler, onewho can represent the citizen. The ruler cannot be legitimate without the consensus and consultation of the nation (Al-Khalidi, 1985). Authority is for the nation; it is given to the leaders with restrictions and conditions.

**The Umma and the State**

The question of who is the nation (Umma) arises once again. Who is the Umma? When Prophet Muhammad wrote the constitution of Medina, the first paragraph mentioned the Umma as the believers, the Muslims and those who live in Medina, too. The first and second articles are as follows: “(1) This is a document from Muhammad the Prophet (governing the relations) between the believers and Muslims of Quraysh and Yathrib, and those who followed them and joined them and labored with them. (2) They are one community (Umma) to the exclusion of all men.” (Watt, 1974)

Based on the first Islamic constitution, the Umma is not only constituted by Muslims but also by others who live in the Islamic states. This exactly constitutes that these states are for its citizens, who live within its borders. There is a consensus among all Muslim scholars that the sovereignty in Islam belongs to the Umma yet this sovereignty cannot go beyond the limit of Sharia. In Islam, the ruler is a member of the society and delegated by the citizens (Umma), assisting them to manage their public affairs. Moreover, the Umma’s acceptance of the public ruler is a must. The sources of the highest authority in the state come from political consultation or free elections. The authoritative figure is the one who is delegated to rule according to Sharia and legislative diligence, and in the event that there is no direct explanation in the holy book or Sunna, by taking into consideration the public interest (Al-Delini, 1982). Based on the third group arguments, the border of the nation’s sovereignty or the sovereignty of the citizens in the state, is constituted of the restrictions and limitations imposed by the Qur’an. No one, including the Umma, the leadership, head of the state or consultation body, can change what God delegated as the rights and responsibilities for individuals and societies. The nations must design their constitutions and laws in the framework of that sovereignty (Helmi, 1998).

\textsuperscript{37} Ibid
\textsuperscript{38} Ibid
Divine law restricts Umma’s sovereignty, and if the citizens (collectively or individually) decided to advert from this limit, the Umma will have no sovereignty. It can therefore be argued that there is a higher sovereignty than Umma's sovereignty. It is the sovereignty of God, which is represented by the judiciary principles in the Qur'an.

**Judicial Theory of Sovereignty**

The Islamic theory of sovereignty has two main levels that bestow a higher sovereignty on both the nation and Sharia. Interpreting them on political terms, two kinds of sovereignty emerge: judicial and executive sovereignty. The Theory of Judicial sovereignty in Islam is seen as the highest sovereignty whose rules and laws cannot be altered or changed neither by the Umma nor the ruler. It includes what the Qur'an addressed on politics, economics, and on societal and individual matters. Sharia as a word has caused confusion amongst Muslims and Western scholars who do not understand its scope. However, Sharia is a wider concept: its bases and goals are justice and equality in a democratic society. A democratic society means selecting or choosing the ruler, participation and consultation in public affairs, protection of political and civil rights, and a just and fair judicial system. Of course, there are many similarities with the Western concept of democracy; yet, there are still much dissimilarity.

Interestingly, the penal code of Sharia is the only part that can be altered, changed or even suspended. Omar Bin Al-Khattab, the second caliph, suspended it during the time of famine. This means that the Umma or the ruler, who is democratically selected by the free will of the Umma, decides that there is a need to suspend a penal code. The other components of the Islamic law were never altered or changed during the era of the prophet or the four wise caliphs. This indicates that the ruler or the consultation committees who are delegated by the nation can change the penal code according to the context and geographical location. For example, the penal code of cutting off the hands of thieves can be changed to fines or imprisonment and so on. Moreover, Sharia has different interpretation within different Islamic sects. Sunna and Shia have different views on many issues in Sharia including the institution of marriage, the penal code, and Islamic practices. The main purpose of Sharia is to have a society driven by justice, equality, where citizens enjoy full rights (Abdel-Menaam, 2012). As Mohamed Abdel-aziz argues, applying Sharia means judicial justice, social justice, and freedom for individuals, justice in distribution of wealth and job creation. All these kinds of justice are linked together and cannot be applied separately (Aziz, 1997).

**Executive Theory of Sovereignty**

Executive sovereignty in Islam is more comprehensive than judicial sovereignty. The ruler, even though he is restricted by the upper sovereignty (Judicial sovereignty), has absolute sovereignty to manage the public affairs of the state and to make decisions accordingly. Executive sovereignty means that the Umma, citizens or the people, have the highest sovereignty considering they choose who will govern, represent and rule them. They elect a capable group of representatives and a ruler who can manage their affairs, and who decides and designs laws in the framework of the judicial sovereignty, taking into consideration the economic, historical and social situation.

As Raja Bahlul argues there is no divine sovereignty, rather only a popular one for two main reasons. The first is that people are free to accept or reject the divine message. He affirms that Islam has not experienced any kind of state that is managed and maintained by divine powers such as angels. Islamic state exists because of the will of the people who accept that message of Islam. Secondly, people can choose to live under certain powers or divine law and how to live. According to the collective decision-making or individual preferences. Sharia is subject to variant interpretations by different religious agencies and groups (Bahlul, 2000).

**Conclusion**

This paper suggests that “Sovereignty belongs to Allah” and “In Islamic state only God rules”, are only valid and to be viewed as statements under the laws and Jurisprudence in a certain time and under specific conditions that have not supported by the Quran or Sunna. It is an argument that is based on specific historical times that are not valid anymore. These statements do not concern political decisions or the current model of the nation state if they are to be valid and moral in accordance to what the Prophet Muhammad did during the two pledges and the first constitution written in Medina. The claim that there is no room for people’s sovereignty in Islam is false and unfounded. Misunderstandings and misinterpretations amongst Muslim scholars, and the misquotations by Western scholars and writers, give room for a misunderstanding of Islam.
The Islamic theory of sovereignty envisions two kinds of sovereignty and both of them go hand in hand, not separately. In reality, judicial sovereignty in Islam does not mean the absence of executive sovereignty that is represented by the will of the Ummah all the groups, ethnicities, religions and gender (citizens). Thus, the key democratic element to note is that the people are the one who select their representatives and own the popular will to choose their ruler and the judicial framework that fits within the state, according to the economic, societal and political situation. This concept of sovereignty creates various immutable divine rules, but gives the people space to design and exercise their power over their polity, policy and political life. We suggest that there is a need for a theoretical debate amongst Muslim scholars, and not one with a morale perspective, but one that questions public policy and decision-making in the state. The absence of such a debate may lead to more radicalism and exploitation due to the lack of a clear definition on related issues.

References


The Holy Quran (n.d.).