

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 nation 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 of 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)

²THOMSON, J.E. (1995), State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research. *International Studies Quarterly*, 39(2), 228.

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"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"⁴, as well as by Bowden regarding the current version of civilization⁵. 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"⁶. As significant, there is a considerable overlap between democracy and good authority, since democracy is the only means to confirm good governance⁷. Moreover, democracy is seen as a method to competition counter unreliable regimes, which is one of the fundamental goals of good authority⁸. Therefore, democracy is at current perceived as an essential good⁹, which clarifies its occurrence in the notion of good authority¹⁰. Human rights standards are thus part of a notion of what is appropriate for a state to do and what is not¹¹. On the contrary, abuses of human rights are measured as examples of 'bad governance' or a seriously bad ruled government¹².

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.

³Bain, W. (2003), *Between Anarchy and Society: Trusteeship and the Obligations of Power*, (Oxford: Oxford University Press), 155 and 159.

⁴Hobson, C. (2008), "Democracy as Civilization". *Global Society*, 22(1), 84.

⁵Bowden, B. (2009), *The Empire of Civilization: The Evolution of an Imperial Idea*, (Chicago and London: The University of Chicago Press), especially 167 and following.

⁶C. (2001), Good Governance and Aid Effectiveness: The World Bank and Conditionality. *The Georgetown Public Policy Review*, 7(1), 16.

⁷WEISS, T.G. (2000), Governance, Good Governance and Global Governance: Conceptual and Actual Challenges. *Third World Quarterly*, 21(5), 801.

⁸INTERNATIONAL MONETARY FUND (1997), Good Governance. The IMF's Role. (Washington, DC: IMF), 1-2, 3 and 4.

⁹National Security Strategy of 2002, mentioned by NANDA, V.P. (2006), The "Good Governance" Concept Revisited. *Annals of the American Academy of Political and Social Science*, 603, 279.

¹⁰National Security Strategy of 2002, mentioned by Ibid., 279.

¹¹<http://www.un.org/ecosocdev/geninfo/afrec/sgreport/conflict.htm> (last Access 6/05/2011)

¹²Ibid., 6.

¹³Weiss, T.G. (2000), Governance, Good Governance and Global Governance: Conceptual and Actual Challenges. *Third World Quarterly*, 21(5), 801.

¹⁴Hobson, C. (2008), "Democracy as Civilization". *Global Society*, 22(1), 76.

¹⁵Democracy and democratisation is mentioned as part of good governance by Kofi Annan (see <http://www.un.org/ecosocdev/geninfo/afrec/sgreport/conflict.htm> (last Access 6/05/2011))

¹⁶Reus-Smit, C. (2001), Human Rights and the Social Construction of Sovereignty. *Review of International Studies*, 27(4), 520.

¹⁷Bøås, quoted in WEISS, T.G. (2000), Governance, Good Governance and Global Governance: Conceptual and Actual Challenges. *Third World Quarterly*, 21(5), 801.

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 “*tout court*” 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-Mawdudi argues, it is a book of broad general principles rather than of legal minutiae (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 “*Ikhtilafat*”. 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-twelfth 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 Quran, Sunna and theology during the high Middle Ages. His legacy has been controversial among many Muslim scholars as Wahabism 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 *Umma*, 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'a*). 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 in-depth 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 “*siyasah shar'iyya*” 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.

¹³Vogel, Frank E. 2000. *Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden: Brill

As is well known, power in Saudi Arabia is divided between a class of religious scholars and the A1 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 Ibn Abd 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 salafj and then a narrower genealogy of righteous forbearers, most notably Ahmad ibn Hanbal (780-855 CE/164-241 AH) and Ibn Taymiyya¹⁴.

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 consideration¹⁵. 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.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.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.¹⁸ "No court order would falsehood against the Crown."¹⁹ With the birth of the sovereign state came the concept of sovereignty. Sovereignty and obligation were measured commonly as private ideas.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.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 gathering call 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 Sayyid Qutb 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 *jahiliyya* [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 values to 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)²²."

¹⁴ Ibn Taymiyya, Taqi al-Din. 1967. *al-Hisbaf'i'l-Islam, aw wazifat al-hukuma al-Islamiyya* [Public Morality in Islam, or The Task of Islamic Government] (Beirut: Dar al-Kutub al-'Arabiyya, 1967).

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

¹⁶ Dan Philpott, "Sovereignty", *The Stanford Encyclopedia of Philosophy* (Summer 2010 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2010/entries/sovereignty/>

¹⁷ *Ibid*

¹⁸ Duncan Fair-grieve *State Liability in Tort* (New York: Oxford University Press, 2003)

¹⁹ *Ibid*

²⁰ Celia R. Taylor "A Modest Proposal: Statehood and Sovereignty in a Global Age" (1997) 18:3, U. Pa. J. Int'l Econ., 745 at 760

²¹ Patrick Thadeus Jackson "Forum Introduction: Is the State a Person? Why Should We Care?" (2004) 30:2, Rev. Int'l Stud., 255

²² Qutb, Sayyid. 1964. *Ma'alimfi'l-Tariq* [Milestones]. Cairo: Dar al-Shuruq. Schmitt, Carl. 2006. *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by George Schwab. Chicago: University of Chicago Press.

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-Karīm, 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.

Many scholars link this to the concept of "*Al-Hakimiya*", as elaborated by Al-Mawdudi²³ and Sayyid Qutb²⁴. According to these academics, this implies that authority, sovereignty and command rest solely with Allah forever. Not only this, but they argue that if *Al-Hakimiya* disappeared or was suspended, then the society would return to the pre-Islam age, *Jahiliyya* (Khatab, 2002). *Al-Hakimiya* contradicts the above arguments from within as it implies that the ruler commands in the name of God. 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?

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. They emphasize that the *Umma* is the only sovereign entity of itself and the ultimate source of authority (Al-Rayyes, 1976).

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

²⁴Sayyid Qutub 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 one's 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 him²⁵.

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 Moahhmed Hamad Al-Samad and Mohammed Dia Eldin Al-Rayyes. 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*, *Ibn Taymiyya*, *al-Baghdadi*, *Abu Yusuf*, *al-Baqillani*, *al-Mawardi*, *al-Juwayni*, *al-Razi*, *Ibn Khaldun* and *al-Khunji*.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.²⁷ On the one extreme were the *Kharijis*, 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, Sayyiduna Uthman (RA) should be submitted to adjudication.²⁸ 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 immortal 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.²⁹

Ibn Khaldun and the concept of Mulk, Asabiyah, and state:

The problems that *Ibn Taymiyya's* theory creates can be answered using the format and reasoning that *Ibn Khaldun* delivered to describe Islamic history. *Ibn Khaldun's* political philosophy is predominantly based on Sunni groundwork, but like *Ibn Taymiyyah*, 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 Kamel Laila (Political Systems), Saeed M. Khalil (appointment of the ruler in Islam and in modern state), Mohammed Imara (Islamic states between secularism and theocracy), Abdelgani Bassiouni (Political Systems), Mahmoud Helmi (Islamic political system compared to the modern systems), Abdelkarim Zeidan (Individual and the state in Islam), Mohammed Yousef Mosa (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).

²⁷ Frederic William Maitland, *The Collected Papers of Frederic William Maitland*, ed. H.A.L. Fisher (Cambridge University Press, 1911). 3 Vols. Vol. 3. Chapter: MORAL PERSONALITY AND LEGAL PERSONALITY 1 Accessed from <http://oll.libertyfund.org/title/873/70329>

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 *IbnKhalidun's* political theory for the first time in the English language.

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

- 1- The Caliphate, (الخلافة)
- 2- Mulksiyasi (الملك السياسي)
- 3- AndMulktabi'i.³⁰ (الملك التبعية)

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 *IbnKhalidun*, 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

IbnKhalidun 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 *mulk*, *IbnKhalidun* 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 *mulk* (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 *IbnKhalidun*, 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

IbnKhalidun reached the notion of *mulk* earlier due to the rise of the nation-state and its "associated phenomenon" of sovereignty. *Mulk*, 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 *IbnKhalidun* 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.

IbnKhalidun'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.

³⁰ Mohammad Mahmoud Rabi, *The Political Theory of IbnKhalidun* (Brill, Leiden , Netherlands, 1967)

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Mohammad Mahmoud Rabi, *The Political Theory of IbnKhalidun* (Brill, Leiden , Netherlands, 1967)

This method places *IbnKhalidun* "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."³⁷ Although he favored the Caliphate, as a system of ruling in which *Shariah* was absolute, he also documented other methods of government. He even chosen *mulksiyasi*, rule built in reasonably organized laws, over *mulktabi'i*, that is, uncontrolled monarchy. In this way, *IbnKhalidun'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. *IbnKhalidun* not only restructured the progresses of the Caliphate, but also shares the notion of *mulk*.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 important question is the ruler in Islam, the State and the *Sharia*.

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 Durayed 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, one who 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 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).

³⁷ Ibid

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-Khatib, 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'a* 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 Mohammed 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 by 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 theological 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.

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