

Principles of Governance, Freedom, and Responsibility in Islam

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I. Introduction

Although I have been directly involved in a political process that seeks to establish an Islamic state, I am not going to describe the forms that an Islamic government might take in any particular country. Rather, I will try to describe the universal characteristics of an Islamic state. These derive from the teachings of the Qur'ān as embodied in the political practice of the Prophet Muhammad (pbuh), and constitute an eternal model that Muslims are bound to adopt as a perfect standard for all time. The diversity of historical circumstances, however, in which they try to apply that ideal introduces a necessary element of relativity and imperfection in the practice of Islam.

An Islamic state cannot be isolated from society, because Islam is a comprehensive, integrated way of life. The division between private and public, the state and society, which is familiar in Western culture, has not been known in Islam. The state is only the political expression of an Islamic society. You cannot have an Islamic state except insofar as you have an Islamic society. Any attempt at establishing a political order for the establishment of a genuine Islamic society would be the superimposition of laws over a reluctant society. This is not in the nature of religion; religion is based on sincere conviction and voluntary compliance. Therefore an Islamic state evolves from an Islamic society. In certain areas, progress toward an Islamic society may be frustrated by political suppression. Whenever religious energy is thus suppressed, it builds up and ultimately erupts either in isolated acts of struggle or resistance, which are called terrorist by those in power, or in a revolution. In circumstances where Islam is allowed free expression, social change takes place peacefully and gradually, and the Islamic movement develops programs of Islamization before it takes over the destiny of the state because Islamic thought — like all thought — only flourishes in a social environment of freedom and public consultation (*shūrā*).

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II. *Tawhīd*: the Source of All Principles of Governance

The ideological foundation of an Islamic state lies in the doctrine of *tawhīd* – the unity of Allah and of human life – as a comprehensive and exclusive program of worship. This fundamental principle of belief has many consequences for an Islamic state: first, it is not secular. All public life in Islam is religious, being permeated by the experience of the divine. Its function is to pursue the service of Allah as expressed in a concrete way in the *shari'ah*, the religious law. The Christian West has been through an important historical experience of secularization. There have also been certain elements of secularization in the political conduct of Muslims. But the difference between Christianity and Islam is that Muslims are never fully resigned to such practices because the preserved sources of religious guidance (the Qur'ān and the example of the Prophet) constantly remind them of any gap that develops between their ideal and their practice and inspire a process of revitalization that would completely integrate politics with religion. If one compares Christian secularism in France with Muslim secularism in Turkey the process would seem strikingly similar. All religious life is subject to these historical challenges to their identity. But once the Muslims experience the tension of an historical fall and become conscious of the fact that public life has moved away from the moral values and norms of religion, they rise to reform their political attitudes and institutions.

Second, an Islamic state is not a nationalistic state because ultimate allegiance is owed to Allah and thereby to the community of all believers – the *ummah*. One can never stop at any national frontier and say the nation is absolute, an ultimate end in itself. Islam does allow for limited allegiances either social, ethnic, or territorial. The state of Medina itself was, for some time, a regional state; the Muslims of Mecca were not citizens, and the duty to extend protection to them against any persecution was subject to the treaty obligations of the state. So there is an Islamic concept of a territorial state which is not coextensive with the whole *ummah*. But that state is not nationalistic. In modern times Muslims have adopted Arab, Turkish or other nationalities as a framework for development, but they were never enthusiastic about it, and always yearned for an open *ummah*. This does not mean, however, that every Muslim all over the world should necessarily have immediate access to an Islamic state; it does mean that the state would be much more open and less discriminatory in its domestic laws and foreign policies. It would develop institutionalized international links with other Muslim states and would work toward the eventual unity of the *ummah* and beyond. Ultimately there is nothing final even about the so-called Muslim world or Muslim nation, because Islam is universal and open to all humanity.

Third, an Islamic state is not an absolute or sovereign entity. It is subject to

the higher norms of the *sharī'ah* that represent the Will of Allah. Politically this rules out all forms of absolutism. Legally it paves the way for the development of constitutional law, a set of norms limiting state powers. In fact, the Islamic tradition of rules limiting the Power of sovereign is much older than the concept of constitutional law in the secular West. Because the Islamic state is not absolute, Muslims have also known, from the beginning, the rules of international law which derive from the supreme *sharī'ah* and bind the state in its relations to other states and peoples.

Fourth, an Islamic state is not primordial; the primary institution in Islam is the *ummah*. *The phrase "Islamic state" itself is a misnomer. The state is only the political dimension of the collective endeavor of Muslims.* The norms of Islam are only partly legal in the Western sense of depending on the sanctions of state power. For most of it, the implementation of the *sharī'ah* is left to the free conscience of believers or to informal means of social control.

States come and go; Islamic society can and has existed without the structures of a state for centuries. Of course, society, if able to live religion in its integral, comprehensive manner, would have its political dimension in a government that seeks to fulfill some of the purposes of religious life.

III. *Ijmā'* and *shūrā*.

The form of an Islamic government is determined by the foregoing principles of *tawhīd*, entailing the freedom, equality, and unity of believers. One can call an Islamic state a republic since the *sharī'ah* rules out usurpation and succession as grounds of political legitimacy. In early Islam the system of government was called a caliphate (*al-khilāfah*) which emphasized succession to the Prophet and thereby subordination of all power to his Sunnah or way. Whereas the Prophet was appointed by Allah, however, the caliph was freely elected by the people who thereby have precedence over him as a legal authority. Although the Prophet used to consult his companions systematically and normally would follow their consensus, he had the divine right to an overriding authority. The caliph, however, or any similar holder of political power, is subject both to the *sharī'ah* and to the will of his electors. As reflected in Islamic jurisprudence this implies that, save for the express provision of the *sharī'ah*, the consensus (*Ijmā'*) is mandatory for the resolution of all important public issues.

The caliphate began as an elected consultative institution. Later it degenerated into a hereditary, or usurpatory, authoritarian government. This pseudocaliphate was universally condemned by jurists, though many excused its acts on the grounds of necessity or tolerated them in the interest of stability. The question arises whether the proper Islamic form of government—elective and consultative—amounts to a liberal representative democracy?

In a large Islamic state, consultation would have to be indirect and undertaken by representatives of the people. This was practiced in early Islam and recognized by jurists in their reference to *ahl al-hall wa al-'Aqd* or *ahl al-shūrā* (those who resolve public affairs). In a parallel development *ijmā'*, which is the conclusion of a process of consultation, came to mean the consensus of the '*ulamā'*. This was a practical adaptation of the original popular concept of *ijmā'* as the consensus of the community which had resulted from the Muslim expansion. In effect, Muslims were then to be found all over the world, and there was no practical way of consulting everyone in the general *ummah* in those days. So the *ulama* posed as representatives of the people and maintained that their consensus was a form of indirect representation, of indirect, binding *ijmā'*. In different circumstances other formal delegates can lawfully represent the *ummah* in the process of consultation.

It follows that an Islamic order of government is essentially a form of representative democracy. But this statement requires the following qualification. First an Islamic republic is not strictly speaking a direct government of and by the people; it is a government of the *sharī'ah*. But, in a substantial sense, it is a popular government since the *shūrā* represents the convictions of the people and, therefore, their direct will. This limitation on what a representative body can do is a guarantee of the supremacy of the religious will of the community.

The consultative system of government in Islam is related to and reinforced by similar features of Muslim society since politics is an integral part of all religious life and not simply a separate secular vocation. The fair distribution of political power through *shūrā*, whether direct or indirect, is supported by an equally just distribution of economic wealth, so that an Islamic democracy may never degenerate in a formal system where, because of the concentration of wealth, the rich alone exercise their political rights and determine what is to be decided.

Also, ideally there is no clerical or *ulama* class, which prevents an elitist or theocratic government. Whether termed a religious, a theocratic, or even a secular theocracy, an Islamic state is not a government of the '*ulamā'*. Knowledge, like power, is distributed in a way that inhibits the development of a distinct, religious hierarchy.

Nor is an Islamic democracy government by the male members of the society. Women played a considerable role in public life during the life of the Prophet; and they contributed to the election of the third caliph. Only afterwards were women denied their rightful place in public life, but this was history departing from the ideal, just like the development of classes based on property, knowledge (*ilm*), or other status. In principle, all believers, rich or poor, no-

ble or humble, learned or ignorant, men or women, are equal before Allah, and they are His vicegerents on earth and the holders of His trust.

An Islamic government should be a stable system of government because the people consider it an expression of their religion and therefore contribute positively to the political process. In their mutual consultations, they work toward a consensus that unites them. The majority/minority pattern in politics is not an ideal one in Islam. That is not to say that decisions have to await a unanimous vote, because this could paralyze a government. But people can deliberate openly and argue and consult to ultimately reach a consensus and not simply assert or submit to a majority opinion.

This raises the question of the party system. Can an Islamic government have a multiparty system or a single party system? There is no legal bar to the development of different parties or to the freedom of opinion and debate. Such was the case in the constitutional practice of the caliph. A well-developed Islamic society, however, would probably not be conducive to the growth of rigid parties wherein one stands by one's party whether it is wrong or right. This is a form of factionalism that can be very oppressive of individual freedom and divisive of the community, and it is therefore antithetical to a Muslim's ultimate responsibility to Allah and to *ummah*. While there may be a multiparty system, an Islamic government should function more as a consensus-oriented rather than a minority/majority system with political parties rigidly confronting each other over decisions. Parties should approach the decision-making process with an open mind and after a consensus adopt a mutually agreeable policy.

Finally, decisions should not be arrived at lightly. Parliament does not simply deliberate and come to a conclusion. Any agreement must be an enlightened decision with conscious reference to the guiding principles of the *sharī'ah*. Because of this, the '*ulamā*' should have a role in the procedure, not as the ultimate authority determining what the law is, but as advisors in the *shūrā* to enlighten the Muslims as to the options which are open to them. What do I mean by '*ulamā*'? The word historically has come to mean those versed in the legacy of religious (revealed) knowledge (*ilm*). However, '*ilm*' does not mean that alone. It means anyone who knows anything well enough to relate it to Allah. *Because all knowledge is divine and religious, a chemist, an engineer, an economist, or a jurists are all 'ulamā*'. So the '*ulamā*' in this broad sense, whether they are social or natural scientists, public opinion leaders or philosophers, should enlighten society. There should be an intensive procedure of hearings, research, and deliberations and thus a wider consultation than that which sometimes takes place now in modern parliaments where bills can be rushed through and policies resolved on arbitrary passion and prejudice.

IV. Limited Government and Human Rights

What are the functions and frontiers of an Islamic government? The functions that fulfill the aims of Islamic life pertain primarily to society. Because Islam is comprehensive, one might conclude that an Islamic government, acting for society, is a totalitarian one. In many ways, however, an Islamic government is a very limited government. First, not every aspect of Islam is entrusted to government to enforce. It is in the nature of a unitarian religious order of society that the individual should enjoy a wide degree of autonomy. Moreover, not everything is practically capable of enforcement through government law. Classical jurists have developed the distinction between religious obligations and juridical obligation, the latter only being enforceable through formal, objective sanctions. Most aspects of Islamic life are subjective or private and outside the domain of law as applied by governments. Second, and this is a question which depends on history, where society can manage, government has no business interfering. This is similar to a liberal, minimal theory of government. In the past a Muslim government had a very limited function simply because the Muslims were spread over such a wide territory and the government could not reach them. Today, because of the revolution in communications, a government can easily take over functions which an Islamic government did not oversee so many centuries ago. But there are certain historical considerations which I would want to underline very strongly. The Islamic government historically has been, for the most part, illegitimate as far as the election of the head of a state is concerned. That explains why it was so severely limited. The jurists, realizing that the state was not a legitimate, consultative government, deliberately restricted its domain in favor of private social action. The jurists totally eliminated governmental authority as a source of law in their development of *uṣūl al-fiqh* (the source of law). A very important arm of government, the legislative power, was actually assumed by the jurists themselves. They determined what the law was and the judges, who were appointed by the government, looked to the jurists to apply the law.

Another area where government was severely limited was in its power to tax. There is nothing in Islam which inhibits or forbids the government from imposing, from time to time, taxes other than *zakāt* for the general welfare of the community. The power to tax is one of the most oppressive weapons in the hands of any government. Many constitutional conflicts in the West revolve around the slogan, "No taxation without representation." although Muslim jurists have effectively deprived government of many means of exploitation, in a modern Islamic state the representative legislature would probably assume all political functions. A modern Islamic government could, subject to the *sharī'ah*, establish and enforce further norms of law and policy derived

from the *sharī'ah*. It can establish complete legal codes. Such codes, as were known to Muslims in the past, did not emanate from the state but from the great jurists like Mālik, Abū Ḥanīfah, and Shāfi'ī. There were mainly seven such operative legal codes throughout the Muslim world. It was the absence of an official organ of government charged with the unification of the legal system that led to the closing of the door of *ijtihād* (judicial research) for fear of the proliferation of laws and ensuing threat to order and legal security. Subject to the *sharī'ah* and *ijmā* it is up to a Muslim government today to determine its system of public law and economics.

An Islamic government is bound to exercise all powers necessary for providing a minimum of the basic conditions of Muslim life. The actual scope of government depends on society. Where society on its own manages to realize social justice, for example, then the government does not need to interfere. In Muslim history, governments were mostly illegitimate and did not or were not allowed to develop a macro-economic polity. Therefore Muslims addressed questions of social justice within their private dealings. This was done especially through a wide, mutually supportive family system, through extensive charities and endowments, and through a system of private mutual insurance still operative in many parts of Muslim society today. Where this failed for any reason, the government was bound to step in and try to rectify the situation. This holds for other welfare services as well. Society can manage, for example, its own system of private education like that of Muslim Spain which was so widespread that it almost eliminated illiteracy through free education for all. Otherwise, the government is bound and entitled to promote education, health services, and what have you.

What are the frontiers of government vis-à-vis society and the individual? This question has not been posed very acutely in the past. Why? Simply because the Islamic government was not a totally alien institution superimposed upon society. To the extent that it was alien – in the sense that it was not legitimate – the jurists saw to it that it should be relatively powerless. But, on the whole, the aims and means of government correspond to that of society, being related to religion and based on the *sharī'ah*. Furthermore, the individual was largely free because the lawmaking and financial powers were so limited; so there was not any intolerable oppression. Even though the particular caliph might be a usurper, an authoritarian, and a tyrant, he was not a totalitarian, absolute dictator. Certainly, where his security was threatened, he would impinge on freedom, but otherwise people were left alone.

It was only recently when secularized governments were introduced and established in Muslim lands and the protective shield of the *sharī'ah* withdrawn and the forms of government regulation expanded, that Muslims really felt the bitter oppression of totalitarian government, and that the issue of fundamental rights and liberties was raised.

The freedom of the individual ultimately emanates from the doctrine of *tawhīd* which requires a self-liberation of man from any worldly authority in order to serve Allah exclusively. Society, including particularly those in power, is inspired by the same principle, and the collective endeavor is not one of hampering the liberty of an individual but of cooperation toward the maximum achievement of this ideal. To promote this cooperation, the freedom of one individual is related to that of the general group. The ultimate common aim of religious life unites the private and the social spheres; and the *sharī'ah* provides an arbiter between social order and individual freedom.

I do not have to go into the various rights of man *via-à-vis* the state or society in Islam. The individual has the right to his physical existence, general social well-being, reputation, peace, privacy, education, and a decent life. These are rights that the state ought to recognize and guarantee for a better fulfillment of the religious ideals of life. Freedom of religion and of expression should also be guaranteed and encouraged. Thus, while a Muslim would not oppose the *sharī'ah* because he believes in it, if he does not agree to a particular interpretation of the law, he is entitled to his view. Actually, these are not pure rights that the individual is free to exercise. He owes it to Allah and to his fellow Muslims to observe these as a social obligation as well. He should contribute to the political solidarity and well-being of the state. If government becomes so alien as to transcend the *sharī'ah*, he has the right and obligation to revolt. This is the revolutionary element in Islam. A Muslim's ultimate obedience is to Allah alone.

V. Checks and Balances

What about representative institutions in an Islamic government? This depends on the particular historical circumstances. In the period of the Prophet, all the functions of the state were exercised by him as teacher and sovereign. He wisely but informally consulted with his companions. Later this consultative process was developed almost into an indirect representative institution called *ahl al-shūrā* or *majlis-al-shūrā* (consultative council). The breakdown of the early legitimate political order did not allow the procedures and institutions of *shūrā* to crystalize. Today this could very well be formulated through a parliament, a council, or a *majlis-al-shūrā*. People may directly, through referendum, exercise their *ijmā'* consensus or otherwise delegate power to their deputies. There would however, be certain rules regulating the qualifications of candidates and election campaigns for the choice of deputies or other officers of the state. In Islam, for example, no one is entitled to conduct a campaign for themselves directly or indirectly in the anarchic and demagogic manner of Western electoral campaigns. The present-

tation of candidates would be monitored by a neutral institution that would explain to the people the options offered in policies and personalities. Factors of relative wealth or access to the communications media are also not allowed to falsify the representative character of deputies. The prevailing criteria of political merit for the purposes of candidature for any political office revolves on moral integrity as well as other relevant considerations. All this would, no doubt, influence the form and spirit of accession to positions of power.

The other central institution in an Islamic government is that which provides both leadership and effective execution of the general will: Caliph, Commander of the Believers, President of the Republic, or Prime Minister. As noted earlier, the word “caliph” was not originally chosen for any specific reason except to denote succession and compliance with the prophetic example of leadership. Most modern and contemporary constitutional theory tends to vest political leadership in one individual and not in a collegiate body – a presidency rather than a council of ministers. But neither a president nor a prime minister can be very powerful and representative of the unity of political purpose so essential to an Islamic polity. Whatever form the executive may take, a leader is always subject both to the *sharī‘ah* and to the *ijmā‘* formulated under it. He enjoys no special immunities and can therefore be prosecuted or sued for anything he does in his private or public life. This a fundamental principle of Islamic constitutional law, ensuing from the supremacy of the *sharī‘ah*. No rigid theory of separation of government functions can develop in a comprehensive, coherent system like the Islamic political order, except to provide some necessary *checks and balances* to safeguard liberty or justice. Besides those powers delegated by the *majlis-al-shūrā* or consultative council and subject to its control, the executive may derive powers both directly from the *sharī‘ah* and *ijmā‘*.

VI. Judicial Institutions and the Sharī‘ah

The judiciary, although appointed as part of the administration, plays an extremely important role as a check and balance in an Islamic state because of the special legal nature of the political order which is organized in accordance with a strict hierarchy of norms. The *sharī‘ah* is the highest revealed law followed by popular laws based on *ijmā‘* and by executive orders and regulations. Because of this, judges, as the guardians of the *sharī‘ah*, adjudicate in all matters of law. Early Muslims were very keen to provide judges with a generous income to protect them against temptation and to allow them a very large degree of autonomy with broad powers to administer justice. The legal systems of Islam, however, did not know a lawyer’s profession. The modern capitalist institution which requires the participation of solicitors and bar-

risters in the administration of justice ultimately works in favor of the rich who can afford the expenses and the delays of justice in a system administered in this way. I realize as a lawyer, myself, that adjudication in a contemporary society is a very complicated, time-consuming process. Judges cannot listen to all the complaints and determine the issues. But such a difficulty was resolved in early Islam by the office of a counsellor to the judge: an assistant who first heard the parties, ascertained the matters in issue, marshaled all the relevant evidence, and researched the law in preparation for a decision by the judge. In an Islamic state there would be a tendency to do away with or to minimize the role of the legal profession by establishing an extended system of legal counsel and assistance, especially for the poor.

As far as public law for the administration of an Islamic state or government is concerned, one can draw upon early Islamic history and tradition regarding services for forms of achieving the political ideals of Islam. But due to the transformation of public life in contemporary societies, the Muslim would also draw heavily on comparative constitutional history and practice. This has a legal basis in Islamic jurisprudence. Any form or procedures for the organization of public life that can be ultimately related to Allah and put to His service in furtherance of the aims of Islamic government can be adopted unless expressly excluded by the *sharī'ah*. Once so received, it is an integral part of Islam, whatever its source may be. Through this process of Islamization, the Muslims were always very open to expansion and change. Thus, Muslims can incorporate any experience whatsoever if not contrary to their ideals. Muslims took most of their bureaucratic forms from Roman and Persian models. Now, much can be borrowed from contemporary sources, critically appreciated in the light of the *sharī'ah* values and norms, and integrated into the Islamic framework of government.

VII. International Relations

Finally, I come to the inter-state and inter-faith relations of the Muslim state. I have remained quiet about the status of non-Muslims because I did not want to complicate issues. The historical record of Muslims' treatment of Christians and Jews is quite good, especially compared with the history of relations between different religions and religious denominations in the West. The first Islamic state established in Medina was not simply a state of Muslims; it had many Jews, and many non-Muslim Arabs. Therefore, the problem of non-Muslim minorities within a Muslim state is nothing new. Muslims do not like the term "minorities." They call them the People of the Book (*ahl al-kitāb*), the *dhimmiyyūn*, or protected people. These non-Muslims have a guaranteed right to their religious conviction, to profess and

defend their own convictions, and even to criticize Islam and engage in a dialogue with Muslims. Non-Muslims also have the right to regulate their private life, education, and family life by adopting their own family laws. If there is any rule in the *sharī'ah* which they think religiously incompatible, they can be absolved from it. There can be a very large degree of legal and political decentralization under an Islamic government. The more important thing is that, morally, Muslims are bound to relate to non-Muslim minorities positively. It is more than a matter of tolerance and legal immunity. Muslims have a moral obligation to be fair and friendly in their person-to-person conduct toward non-Muslim citizens, and will be answerable to Allah for that. They must treat them with trust, beneficence, and equity. There may be a certain feeling of alienation because the public law generally will be Islamic law. The public law of Islam, however, is one related rationally to justice and to the general good and even a non-Muslim may appreciate its wisdom and fairness. Christians in particular, who at least now do not seem to have a public law, should not mind the application of Islamic law as long as it does not interfere with their religion. It is a moral law based on values that are common and more akin to Christian values than any secular law – Caesar's law.

As to the inter-state or international relations of a Muslim state, we have noted earlier the limitations on state sovereignty imposed by the *sharī'ah* in favor of nationals of other states. The sanctity of treaty obligations and the vocation to world peace, except in situations of aggression, provide a basis for the development of extensive international relations. The international practice of Muslim states in history is well known. What is not as well-known is its contribution to the development of modern international law.

In conclusion, it is important to note that an awareness of the general nature and features of the Islamic state is necessary for an understanding of modern Islam as a resurgent force seeking to make up for a failure to realize Islam fully.