Democracy In Islam

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Whether Islam can give rise to human rights and democracy is a deep concern for Western politicians and policy makers. Those who raise it fear that the hard-won human rights enjoyed by many citizens of Western democracies will be lost if Muslims are integrated into their societies. It is also easy for the concern about Islam's capacity and inclination for human rights and democratic values to be characterised as a 'clash of civilisations'. Thus, the issue of Islam and democracy is part of a global or larger contestation affecting nation states and political and religious stripes.

Based on Islam's authoritative sources, this book speaks about this global ferment by demonstrating that the political agendas promoting democracy and human values can be grounded in the Qur'an and the life of the Prophet. By exposing on Islamic politics of human rights and democracy grounded in the Qur'an, it demonstrates Islam's compatibility with liberal democracy and its values in the realm of government and law, with special focus on what is already established concerning the political and sociological propensities upon which the democratic attitude towards the self – and the attitude towards the other – are based and regarding the assets upon which the democratic system in any society depends. Particular topics covered include:

- principles of Islam's political theory and the notion of democracy therein;
- the notion of jihad and its qualification;
- Islam and human rights;
- the value and contribution of Islamic legal ideas to European legal philosophy and law.

This concise and comprehensive study offers a balanced understanding of the debated issue of democracy and Islam in post-September 11 interreligious, intercultural and international relations. It will be suitable for scholars, political commentators, students and policy makers alike.

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Routledge Studies in Political Islam

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Acknowledgements

> On completing your books, I congratulating you,
> I hope that you'll have time for me and time for you!
> You're telling me what you want,
> And I'm telling you what I need

But what I say; it doesn't matter to you,
It doesn't matter; doesn't matter too.
Oh daddy; I think there is time for me,
And there is time for you.

Introduction

The question of whether Islam is compatible with democracy has been a puzzle for some and a source of frustration for others, and this book sets out to resolve it.

Religion has re-entered politics in many ways in most parts of the world. Historical markers for this resurgence include the overthrow of the Shah of Iran and the attempts to develop local responsible government in Algeria. Although politically active Islam has received the lion's share of media and policy attention, it is not alone in experiencing renewed political engagement. Catholicism was critical in the overthrow of the communist regime in Poland; Buddhism is politically engaged in Sri Lanka; conflict between religious groups in India shapes political agendas there; and Pentecostal Protestants have entered the political realm, starting in the United States in the early 1980s.

Resurgent Christianity has not only largely been found among Pentecostal Protestant groups in Africa and Latin America, but is also evident wherever Christian denominations are found. These evangelical and charismatic Protestant groups promote a highly individualist and congregational ethos. God is portrayed as dealing primarily with persons individually and each assembly of believers is a complete church not needing to be linked hierarchically or organisationally with others. Unlike earlier forms of Christianity, which were more organisationally interconnected and hierarchically ordered, these new groups operate more independently and without systems of accountability. Social order is a necessary convenience, or evil, to be used to secure the ends of the local assembly's views of good. These groups tend to support neo-liberal political agendas that emphasise individual responsibility, legitimate wealth accumulation and seek to dismantle the welfare state. This is in stark contrast with the political agendas of mainstream Protestant and Catholic Christianity in the twentieth century, which were aimed more at establishing social justice and peace. The theological bases of the mainstream Christian groups focused on the corporate responsibility of Christians to be good citizens and to support programmes that promoted human rights and the increased welfare of all through the building of social and cultural capital.

The unexpected resurgence of religion and the re-entry of religion into politics, which began in the last quarter of the twentieth century and has been accelerating since, have made it urgently necessary to describe the political philosophy and system of governance that arises from the Qur'an and an examination of the life

of the Prophet Mohammad. The Qur'anic and theological bases of political engagement and the aims of such engagement in Islam are less clear even if crudely and widely presented through the mouths of demagogues. The current contestation in Islam over theologies of political action and the sort of society envisioned is heated and in great need of scholarly discussion.

A systematic exposition of an Islamic politics grounded in the Qur'an is made all the more necessary by the current debate in the West about Islam and human rights and the ability of Western democracies to incorporate significant Muslim minority communities. The question asked, following observations of the behaviour of states that proclaim themselves to be Muslim states, is 'Is Islam compatible with democracy?' A related question is also asked, 'Is Islam compatible with human rights?' I know that when I ask these questions to many of my colleagues both within and beyond academia I get a reaction that makes it clear that they consider Islamic human rights or Islamic democracy to be oxymoronic. Whether Islam can give rise to human rights and democracy is a deep concern for Western politicians and policy makers. This concern lies behind questions currently raised about Islam and 'Australian values' or 'European values' or 'American values'. Those who raise it fear that the hard-won human rights enjoyed by many citizens of Western democracies will be lost if Muslims are integrated into their societies.

It is easy for the concern about the capacity of Islam to give rise to human rights and democratic values to be characterised as a 'clash of civilisations', but this is not correct. The concern for the religious basis for and the religious opposition to these values and human rights is and has been as much a concern about Western Christianity as it is a concern about Islam. An abiding theme in Western political history has been the problematic association between the church and state. At times the church has used the state to repress opposition and at other times the church has used its power to challenge the state, or has been critical of state repression of human rights. Many Western states have established various forms of secular government to address this issue. These forms of secularity are currently being challenged and changed as religion comes back into the public sphere seeking to shape society according to the ideals upheld by the faith. This effort brings as much conflict between religious groups as it does between them and secular groups claiming a form of independent neutrality which is actually another form of committed ideological position.

The desire to find within Islam the source and motivation for democratic governance and human rights is very strong among Muslims. It is reflected in the writings of those who strive to relate their Islamic faith and their life in both conditions of being in majority Muslim democratic states like Turkey or Indonesia and in minority Muslim communities in Western or Oriental states. Those who oppose the human rights discourse in Islam do so from their own political agendas that seek to relate their Islamic faith to their life situation in different ways. The political agendas of each of these groups involve interpreting the meaning of the Qur'an and the life of the Prophet in the situations they encounter again in some cases as Muslim majorities and in others as Muslim minorities. Whereas some engaging in this

contest wish to present themselves as representing the one true form of Islam with continuous links to the earliest days, both groups actually are engaged in *itjihad*, the (re)interpretation of the faith to the situation of the day.

While this struggle is apparent to outsiders looking at the ferment within Islam, it is also important to realise that this struggle is not a conflict between civilisations; nor is it a peculiarly Muslim contestation. The same struggle between political agendas seeking to establish human rights through a more gracious approach and those who take a hard line in seeking to impose repressive regimes is raging among Christians. Again those among Christians who oppose the extension of human rights, such as recognising the leadership of women or the rights of sexual minorities, do so out of their contemporary interpretation of the implications of their faith even as those who seek to promote human rights do so out of their engagement with scripture and experience of God's grace. The contest, the conflict, is much more within each of these civilisations than between them.

Thus, the issue of Islam and democracy is part of a larger contestation affecting the globe. The contests occur within and between nation states, within and between religious groups, and within and between stripes of politics. This book speaks of this global ferment by demonstrating that political agendas promoting democracy and human values can be grounded in the Qur'an and the life of the Prophet. By reaching back to the time of the Prophet and the period of his rightly guided successors, and using the theological insights of such intellectual giants as Sayyid Qutb (d.1966), the basis for a contemporary Islamic seeking of human values and consultative governance is found. The book does not only consider democracy as expressed through the lexicon or linguistic and dictionary terms; it also considers democracy (i) as an attitude towards the self, (ii) as an attitude towards the other and (iii) as a combination of the sociopolitical conditions necessary for the formation and development of the welfare of individuals and society. This approach of course gives a contemporary voice to ancient scriptures. In many ways, and as demonstrated, Qutb is to Islam as Calvin is to Christianity, as Locke is to the individualists, as Montesquieu is to the spirit of the laws and separation between authorities in democracy, as Rousseau is to the social contract and as the Liberation Theologians are to twentieth-century Catholicism.

Those who think it hard to find human values in Calvin are referred to André Biéler's classic essay 'The Social Humanism of John Calvin', in which he finds that Calvin, well before Marx, had formulated the phrase 'from each according to their ability, to each according to their need'. The approach of this book, this *itjihad*, will not be without its critics, but at minimum the exposition of democracy in Islam presented here demonstrates that a clear voice can be found in the Qur'an to support, or indeed demand, that the political way forward for Muslims today is one that promotes human values and democracy.

Governance and law in Islam: a Western view

I came to work with Dr Sayed Khatab on this book because I kept encountering a frustrating form of Orientalism when my colleagues and I would attempt to

understand the social organisation of Islam under Western categories. That Islamic forms of organisation did not fit was clear; that they should not be made to fit was less clear. Some reacted that Islam was behind and needed to go through its own reformation transformations, to be modernised or secularised. However, each of these insistent demands assumes that the path the West has taken to the present must be repeated by all who follow. Of course, such views also presume that the others are in some sense behind and that there is one road. These assumptions rest comfortably in powerful and dominant imperial states like the United States, and can still be heard in certain Euro-centric analyses, but less so in other parts of the world.

As we discussed Islamic governance, I tried to force the discussion into Western frames but was gently brought back to sitting in a different place and seeing things differently. For example, there were times when I thought Sayed's argument was leading to the conclusion that Islam called for a theocracy. Certainly Western ears hear *this* in the claims of some, such as when the Ayatollahs in Iran sound the call to theocratic forms of statecraft, and yet when the Qur'an is carefully examined, the term theocracy does not apply, at least not in the terms understood in the Christian West. Such encounters are frequent in this text. Those wishing to explore these issues in a Western frame are referred to Milbank's work, which insists on an ontological basis for ethics and the analysis of social order but does not promote theocracy, realising that what has passed for theocracy in each of the religions of the book amounts to rule by self-appointed clergy who place themselves beyond accountability to the people they rule.

Secular is another Western category that sits uncomfortably with this presentation of the theory/theology of Islamic governance. It is possible to argue that the forms of Islamic governance outlined here represent a pre-differentiated form of statecraft which has been left behind in the West for an extreme form of differentiation between the state and religious organisations. Yes, the West has made this transition, but is that form of differentiation necessary, or just peculiar to the West? The problem is that both the forms of the state and the forms of religious organisation are different.

My curiosity about forms of Islamic governance arose when I studied the roles of mosques in Muslim settlements in Australia. It was further sharpened in my attempts to explain the governance of mosques and of Islam to colleagues who were familiar with the various forms of church order found in Christianity. I had written on these forms and thought I had a framework of analysis that could be applied more widely. While it can, it began to fail to provide a framework for comparative analysis of Muslim and Christian forms of organisation. This was frustrating in interreligous discussions as each participant presumed to know what the other was saying when they really did not hear it because of the profound differences.

Interorganisational, like intercultural, discussions are often hampered as those familiar with only one framework use their own framework as normative. Baptists find Roman Catholic Church order perplexing; Anglicans, Baptists and Presbyterians have very different views of the roles of the deacon; Greek Orthodox forms of worship astound Pentecostals and *vice versa*. These are confusions within Christianity. These confusions and misreadings increase as the historical, cultural and geographic differences among groups increase. Moreover, religious groups

borrow from each other. Protestant congregationalism is in many ways very similar to mosque and synagogue organisation, which, given the time of the emergence of this form of ecclasiatical organisation and the flow of intellectual life at that time, suggests that they owe their origins to Muslim and Jewish scholars who fled north rather than south from the purges of Isabel and Ferdinand in sixteenth- and seventeenth-century Spain. Moreover, religious and secular forms of organisation often mirror each other, with influences moving both ways. It is argued for example that the US form of government reflects Presbyterian Church order, while the divine right monarchs of France and England took their cue from the rule of bishops.

All of this points to the need for and importance of a careful reading of the forms of statecraft that can be seen in the Qur'an and drawn from the life of the Prophet. Such a reading is of course done in the context of the present and will serve both as a guide to the future and as a standard for assessing past attempts to form governments among Muslims.

Chapter 1: *The Political Theory* examines the relation of Islam to politics and whether Islam is only a religion, or a religion and state in one. As this is established, the chapter proceeds to investigate governance in Islam; the form of government; the concept of state, with its goal and ideology; the concept of sovereignty; the state's organs and functions, with special attention to Islam's compatibility with liberal democracy.

Chapter 2: *The Notion of Democratic Participation* in Islam develops the theory into practice. This chapter brings the early theory to the present of post-modernism. It will first investigate the notion of democracy in early Islam, namely under the leadership of the Prophet and his immediate successors, to explore their traditions of political principles; second, it examines the manner in which those traditions of political principles were later reformulated by Muslim intellectuals, whether fundamentalists or liberals, in the nineteenth and twentieth centuries. The chapter is divided into four sections: the first briefly outlines the notion of democracy in some Islamic political principles, and the Constitution of Medina and its state model, which led to the theory of government in Islam. This section provides the theme and framework for the subsequent sections' examination of contemporary Islamic political thought on democracy with special attention, in second section, to a selected number of leading Muslim thinkers, some of whom (such as al-Afghani, 'Abduh and al-Kawakibi) were steeped in the colonial moment. The third section's focus is the Muslim Brotherhood's founder Hasan al-Banna's contribution to Islam's compatibility with democracy. The fourth section investigates Islam's compatibility with democracy in the thought of Sayyid Qutb, with special focus on his influential concepts of sovereignty, the source of authority and legislation. Special attention is also given to his ideological position before and after his involvement with the Muslim Brotherhood, and during his affiliation with the Free Officers in Egypt.

Chapter 3: *Democratic Values in Some Basic Islamic Legal Ideas* examines democracy as a concept not limited to election but also values and qualifications. It investigates the values of democracy in the realm of law as laid down in the Qur'an and s*unnah*. It addresses many pressing issues which strike the radical

sense in general as surprisingly modern and relevant to our modern democracy. A special focus will be given to freedom, power chairing and caring, human rights, free market and commercial integrity, privacy and human dignity, globalism and brotherhood, labour and industrial relations and the status and rights of women.

Chapter 4: *Contribution to European Law and Philosophy* complements the other chapters in building the necessary bridges of understanding between Islamic and Western civilisations. It investigates the relation between the sources of Islamic democracy and the Western democracy. Despite the fact that the values and qualifications of democracy are there in Islamic and Western civilisations, democracy is widely considered as a product of Western civilisation and the role that human reason had played therein. These, together with the propensities of the fearful claim of clashes between Islamic and Western civilisations, are difficult to hide. Thus, the question of the relation between Islamic and Western civilisations, and which produced democracy, is legitimate. The chapter investigates the scope and extent of the contribution of Islamic philosophy and law to European law and philosophy with special focus on the relationship between religion and human reason. Investigation emphasises harmonious relationship between Islamic and Western civilisations. The findings are striking to the mentality that expects a clash and the like of this paradigm, which is but a product of human efforts to satisfy the desire and interest of a specific human type.

Chapter 5: *Islamic International Law* examines the relationship between Islamic and Western democracies. The relationship between democracies is simply that between states and is usually termed 'international relations'. International relations cannot be without some regulations that are termed 'International Law' accepted by two states or more or accepted by all states worldwide. This chapter, therefore, examines the democratic values in Islamic International Law for the relation of Islam to the West and the rest with special focus on the attitude and qualification of the Law of War and Peace as well as the pressing notion and qualification of Jihad. It also investigates the role of Islamic International Law in the United Nations' International Law, which has been claimed, by many, as a product of only Western democracy.

Chapter 6: *Historical Reality in the Light of the Declared Principles* investigates the present condition, which shocked the values and qualifications of democracy. If there are democracy and democratic values in Islam, and if there is an irrefutable and unbreakable link between Islamic and Western civilisations, the question that remains is where has this inflammatory condition come from? This is what this chapter investigates. It examines some aspects in the historical reality of Islam from early times to our modern time. It demonstrates what went wrong in the place and space with special attention to the relation between the scope and extent of democratic values and modern extremism.

Chapter 7: *Religion and the Origins of Violence and Terrorism Today* develops the investigation of the motives behind violence and terrorism with special attention to the scope and extent of democracy and the role of the media. It seeks to investigate the consequences of violence and terrorism and how to deal with them.

1 The political theory

Studying the political theory in Islam requires us first to consider whether Islam is only a religion, or a religion and state in one. What follows investigates the Islamic concept of sovereignty, the state, its organs and the nature of its function with special attention to the identity of the state and the form of government.

Islam and polity

The relationship between religion and polity in Muslim societies has been a focus of debate among scholars of Islam. Some view Islam as simply a religion without the right to govern or to order the daily affairs of human life.[1] Others, however, view Islam as not only a religion, but also a system and social order encompassing all spheres of human life, including the state and the law.[2] They base their argument on the Qur'an and point out the political connotations of many of the Qur'anic terms such as *mulk* (domination), *ummah* (nation) and other terms with political connotations. For example, the Arabic word *sultan*, which is repeatedly mentioned in the Qur'an, is an abstract noun meaning authority and rule, and was used from the early times of Islam to denote government.[3] Similarly, the term *hukm* (to govern and to judge) and its derivations such as 'governor(s), ruler(s) and judge(s)' appear in the Qur'an, explicitly more than 250 times and each has its political connotation. For example, the Qur'an (4:105) says to Muhammad, 'We have revealed to you the Book with the truth, so that you may judge (*tahkum*) among people by that which Allah has shown you.' Similarly, the Qur'an (38:26) commands: 'We said: David, We have made you a vicegerent on earth, *fa-uhkum* [judge/rule] thou between people in truth (and justice).' The word '*hukm*' here is a verb in a command form that commands the leader to 'Judge'[4] and to 'Rule'[5] with justice.

David and Muhammad were both leaders and judges by virtue of their divine appointment. Hence they possessed complete judicial power.[6] However, this command for them does not mean that they judge and rule on the basis of their own wishes; their rule must be based on the *text*, that is, for Islam, a text of the Qur'an. If there is no Qur'anic *text* explicitly or implicitly relevant to the matter, the prophets give their own legal opinion on the basis of the general spirit of the revelation God has shown them.[7] These Qur'anic texts are sufficient here to

indicate the legal and governmental connotations of the Qur'anic term *hukm*. This also illustrates the role of religion in society and the relationship between both of them.

The relation between religion and society is not confined to what is commonly termed 'rituals', and there is no dichotomy between rituals and social contract; between social contract and governance; between governance and the law; between law and human affairs in general. The nature of religion, according to Bouma (1992), is well equipped with rules and programmes to develop society and to guide human life for goodness and prosperity. Religions have come to live in society, neither to be detained in one corner of it, nor to be isolated or expelled from daily life. Religions, Bouma explains, have come with ethical visions of the good, including rules, views and programmes to develop and harmonise the pulses, political or other. The pulses of religions may be seen as different from the pulses of society. That there are differences between the patterns proposed by a religion and the existing patterns in society does not mean that religions are old and to be changed to modern religions.[8]

A society, first and last, is the patterned relationships of human beings and their groups, and their pulses are the pulses of the society. Religion came with its ethical insights and eternal vision to correct and harmonise the pulses of society. In this process, human beings remained human beings and have not changed to another creature. If it is despicable to say, for instance, that humanity is an old creature and should be replaced by a modern progressive creature, it would be even more despicable to say similar things concerning religion. Misunderstanding the objective of religion is one thing and discarding religion is certainly another thing.

Islamic Law, as Schacht emphasises, does not separate religion from daily life; it does not separate religion from politics; or politics from morals; or morals from the state. In Islamic Law, the activity of individuals and their relation to the state had metaphysical and religious bases.[9] Islam is a system for practical human life in all its aspects.[10] Islam professes an ideal and convincing concept that expounds the relationship between the Creator and the creations, the universe, all of life and humankind. It expounds the nature of the universe and determines the position of humanity in this universe as well as the ultimate objectives for humanity. It includes the doctrines and practical organisations that emanate from and depend upon this ideal, and make of it a reality reflecting upon the everyday life of human beings.[11]

Given that the Islamic conception of life is that of coordination and harmonisation between the body and the soul, it is only reasonable to expect that a very close relationship should have been established between religion and politics, between the mosque and the citadel. According to Bouma, 'religious activity involves the whole person and the social group'.[12] On the one hand, Islam deals with the fullness of humanity, as it exists in reality, not treating humanity as an intellectual concept. In contrast with Idealism, Positivism and similar notions, Islam does not deal with propositions of no practical reality. On the other hand, Islam does not view human beings as spirit alone or as matter alone. Humans are not pure mind but integrated physical, mental and spiritual beings whose faculties are part of a unified, functional and responsible whole.[13]

Islamic social order is based on 'the universal principle of human brotherhood and it endeavours to secure happiness, prosperity and goodness for both the individual and society. There is absolutely no place for class-war of any kind between individuals and society in this system.'[14] In its social system, Islam is communal, prefers a social life, demands worship in a collectivity – a congregation in which every person turns towards one ultimate authority, one direction and one centre, fasting for one month at the same time in all parts of the globe, and performing the pilgrimage to Mecca at the same time as one of the principal duties of all Muslims. It also places emphasis on strictly personal responsibility and does not forget the development of the individual, and yet it organises all individuals into a single whole: the Muslim community. The same Law regulates the affairs of the universe, life and humankind whatever the class or wherever the country. Moreover, the ruler, as we shall see, enters the office only by free election and then takes an oath for which he is responsible before the people. It is in this context that we must interpret the frequently stated view in Western languages that Islam is not only a religion, but also both a religion and a state in one. Hegel concludes that

> [t]he substance of Islamic morals may be perfect; what should be internal subjective sentiment is made a matter of external arrangement. There is no want for a will to command moral actions, but a will to perform them because they are commanded from within. Since the internal and external, Law and Moral Sense, are not yet distinguished – still form an undivided unity – so also do Religion and the State.[15]

In this connection, Montesquieu emphasised, in his *The Spirit of the Laws*, that society is not a society without law, and where there is law there must also be a government. Montesquieu based his view on Biblical and Qur'anic observations and the laws created by 'God . . . the Creator and Preserver . . . He made them because they are related to His wisdom and His power . . . As we see the world . . . still continues to exist, its motions must have invariable laws; and, if one could imagine another world than this, it would have consistent rules or it would be destroyed.'[16]

Turning to the East, it is also appropriate to observe some of the stated opinions in Arabic thought as a point of cross-reference upon the relationship between Islam and politics. For example, scholar and judge 'Ali Abd al-Raziq (1888–1966) states 'I do not believe that the Islamic Law is merely spiritual'.[17] 'Islam is a legislative religion. The application of Islamic Law is obligatory on Muslims. This is the command of Allah to them all . . . The Muslims must establish a government to carry on this burden. Allah does not impose upon Muslims a specific type or form of government, but they are free to choose what is better for the welfare of their society at any time.'[18] Similarly, Sayyid Qutb (d.1966) and Abu al-A'la Mawdudi (d.1973) both pointed out that Islam, by its very nature, is a 'political religion'.[19]

Earlier exegetes such as Ibn Kathir (d.774/1383), in his commentaries upon Qur'anic verse 4:59, points out 'the sovereign is Allah, He alone is the legislator'.[20]

Al-Jassas (d.370/987) refers to the Qur'anic verse 4:65 and states that 'the role of *shari'ah* is strongly bound with the Islamic creed and there is no Islam without the rule of *shari'ah*.'[21] Later we will explore what it means to live under the rule of *shari'ah* today. The contemporary scholar of al-Azhar, Muhammad al-Ghazali (1917–1996), emphasised that 'Allah is the only Legislator and that the nation (*ummah*) must establish a government of consultation (*shurah*)'.[22]

Abd al-Aziz al-Maraghi, a justice and professor of Islamic legislation and Shaykh al-Azhar (1935–1947), and Rizq al-Zalabani, also a professor of law and politics, were both at al-Azhar University in 1947. Both al-Maraghi and al-Zalabani termed the highest governmental and legal authority as 'sovereignty', with al-Zalabani, for instance, stating that 'the sovereignty belongs to none but Allah. He is the Creator and He alone is the legislator. All affairs are in His hands... Every person of the *ummah* must stand within the boundary of His law.'[23] Both al-Maraghi and al-Zalabani base their argument on a number of verses to which many other Muslim scholars repeatedly refer. Among these Qur'anic verses are the following: 'those who do not judge in accordance with Allah's revelation, those indeed are the transgressors' (5:45). 'Those who do not judge in accordance with Allah's revelation, those indeed are the evil-doers' (5:47). 'Do they desire to be ruled by the law of pagan ignorance (*jahiliyyah*)?' (5:50).

According to al-Qurtubi (d.671/1285), 'there is no difference among the Muslim scholars (*Imams*) on that Allah is the Legislator and that there must be a State'.[24] Similarly, al-Mawardi (d.450/1067) asserts that 'leadership is prescribed to succeed the prophethood as a means of protecting the religion and managing the affairs of this world. There is a consensus of opinion that the person who discharges the responsibilities of this position (leadership) must take on the contract of leadership of the *ummah*.'[25] Similarly, al-Nawawi Shaykh al-Azhar (1896–1900) says, 'Yes, Islam is a state and possesses a clear political theory. Muslims must know that the sovereignty belongs to none but Allah. His *shari'ah* is the constitution of the Islamic polity since the time of the Prophet. This is the opinion of the consensus of the Muslim *ummah*. Even those who referred to the role of human intellect in this particular matter confined their theory to the cases and affairs upon which the revelation does not offer specific regulation or necessary guidance.'[26]

Pointing out the importance of an Islamic state, Ibn Hajar al-Haythami (d.974/1585) says, 'You must know that the companions of the Prophet agreed that the Islamic state of the Prophet must continue and they elected their leader before the burial of the Prophet.'[27] Similarly, al-Juwayni (d.478/1094) maintains that 'Muslims must have a leader to lead their state and that is the consensus of the opinion of the *ummah* and *Imams*.'[28] In the words of Ibn Khaldun (d.808/1421) 'Islamic state is obligatory and that obligation is known by the consensus of the opinion of the companions of the Prophet'.[29]

The contemporary scholar Muhammad 'Imarah (b.1931) emphasises that 'Islam is a state and Allah is its highest legal and governmental authority and its constitution is the Qur'an and the *sunnah*.'[30] Muhammad al-Khidr Husayn,

Shaykh al-Azhar (1952–1954),[31] added that 'separating religion from state is an act of desecration to the truth of the religion. This attempt is a kind of act that the Muslim cannot do and remain a Muslim.'[32] Similarly, Mustafa Sabri (1869–1954) the Chief of the Jurist Consult of the Ottoman State was appointed four times Shaykh al-Islam in the Ottoman State; the last appointment was terminated with the changes in the Ottoman state. In 1922, he left Turkey for Egypt and died there in 1954. Mustafa Sabri observed that separating Islam from politics is more than a conspiracy against Islam. He says: 'separating Islam from state, in Muslim countries, is heresy brought about by those moderns who imitate the foreigners and that is but an act of rebellion against Islam. This kind of attempt is a revolution from the government against the creed of the people, because the right way is the revolution from the people against the government to impose the law of Islam. Nevertheless, if this occurred against Islam, first from the government, and second from the people, there is nothing but no Islam.'[33]

Khalid Muhammad Khalid (1919–1996), al-Azhar scholar of philosophy, culture, Islam, and education, who is widely considered part of the left wing of Islam, stated that 'Islam has a legal and governmental duty, which is to order human life and organize their affairs through its Islamic state which must be established and must remain as long as there is Islam in this world. The constitution of this state is the Qur'an and the *sunnah* of the Prophet and the consensus of the *ummah*.'[34] Similarly, Shaykh Muhammad al-Bahayy, professor at the University of Montreal in the 1950s and then Minister of Islamic Endowments in Egypt in 1960, who reformed al-Azhar in 1961, stated that 'Islam, as a creed, does not restrict to the conscience! Or to the effort of conveying the message but also an organized force that was protecting the establishment of the creed in the time of revelation and after, this means that, Islam is religion and state.'[35]

Muhammad 'Abduh, Shaykh al-Azhar (d.1905), stated that 'Islam is a religion of sovereignty, of authority, and of unity between this world and the hereafter. Islam is a spiritual, social, economic, political, civilian and military system. Its military force is to protect the application of *shari'ah*, the general guidance, the freedom of the *ummah*, and not to force others to embrace Islam'.[36] The president of the academy of jurisprudence in Mecca, Shaykh Bakr Abu Zayd, maintains that 'Islam in its very nature is an organized state; therefore you cannot separate Islam from politics'.[37] Similarly, Gad El-Haq 'Ali Gad El-Haq, Shaykh al-Azhar (1982–1996), stated that 'separating Islam from the notion of society is undoubtedly wrong doctrine and wrong thought . . . Islam is a social system that encompasses the affairs of human life'.[38] According to the *Gamal Abd al-Nasser Encyclopaedia of Islamic Jurisprudence* (1961), 'There is no sovereign but God; there is no rule but the rule of God, and there is no law but the law of God. This is the consensus of Muslims.'[39]

These opinions represent a wide spectrum of Islamic both left and right, thought, whether medieval or modern, liberal or conservative, modernist or revivalist, all indicate that Islam is a political and legislative religion, that is, that Islam is both a religion and a state in one.

Sovereignty

From the perspective of international law, the sovereignty of a state is the core of its identity.[40] The concept of sovereignty in Islam is one that has vexed scholars. Since the Ottoman Empire came into contact with Europe, the Ottoman institution came to be compared with the Holy Roman Empire. Terminologies associated with the Holy Roman Empire have come to play a major role as a standard measure that scholars have used to examine the Islamic institutions. This use of terms arising in one context to examine another has caused the confusion that has arisen about similarities and differences between the two institutions. It has been said that 'the Caliph was Pope and emperor in one. The analogy is misleading'.[41] Moreover, the style of the Ottoman institution cannot be considered as the only style or form of state to which Muslims must conform. Dealing with this phenomenon, Leopold Weiss suggests that '[i]t is extremely misleading to apply non-Islamic terms to Islamic concepts and institutions. The ideology of Islam has a social orientation peculiar to itself, different in many respects from that of the modern West, and can be successfully interpreted only within its own context and in its own terminology. Any departure from this principle invariably tends to obscure the attitude of Islamic Law towards many of the burning issues of our time'.[42]

Islamic Law declares that sovereignty belongs to God; He is the Creator, and He is the Legislator. The attributes of this sovereignty can be best ascertained from the Qur'an where reference to God is expressed in terms that are suggestive of one or other aspects of His sovereignty; as in this declaration: 'He governs all affairs from the heavens to the earth' (35:5); 'Blessed is He in whose hand is the sovereignty, and He over all things has power' (67:1–2); or as in this command: 'Say: "Lord, sovereign of all sovereignty. You bestow sovereignty on whom You will, and take it away from whom You please; You exalt whomever You will and abase whomever You please. In your hand lies all that is good; You have power over all things"'(3:26).[43] Like several others, these texts have, in fact, a direct bearing upon the political aspects; they have signified sovereignty as ultimate legal and governmental authority over the universe, life and humanity.

The nature and the meaning of sovereignty in Islam preclude the two sovereignties known in the Middle Ages (i.e. the Roman Emperor and the Pope) and the later modern absolute and non-responsible single sovereign presented by Bodin (1530–1596), Hugo Grotius (1583–1645), the creator of the law of nations in Western disciplines,[44] Hobbes (1588–1679), or Austin (1613–1669), whose concept of sovereignty was the result of special circumstances which swept Europe in the sixteenth century. Later the French Revolution overturned traditional authority and, following Enlightenment thought, anointed reason as the ultimate sovereign. Explaining these circumstances, George Soros says:

> Reason proved unequal to the task, and the fervour of 1789 deteriorated into the terror of 1793. But the basic tenets of the Enlightenment were not repudiated; on the contrary, Napoleon's armies carried the ideas of modernity to

the rest of Europe. Modernity's achievements are beyond compare . . . In spite of these impressive achievements, reason could not quite live up to the expectations attached to it, especially in the social and political arenas. The gap between intentions and outcomes could not be closed; indeed, the more radical the intentions, the more disappointing the outcomes. This applies, in my opinion, both to communism and to market fundamentalism, both of which claim to be grounded in science. I want to highlight one particular case of unintended consequences because it is particularly relevant to the current situation. When the original political ideas of the Enlightenment were translated into practice, they served to reinforce the idea of the nation-state. In trying to establish the rule of reason, people rose up against their rulers, and the power they captured was the power of the sovereign. That is how the nation-state, in which sovereignty belongs to the people, was borne. Whatever its merits, it is a far cry from its universalist inspiration.[45]

Because of the revitalisation of religion and the Protestant reformation of the sixteenth century, followed by the consequent break-up of the Roman Empire and the rise of national monarchies in seventeenth-century Europe, Western political thinking underwent a process of secularisation. The circumstances of 'cleavage between the absolutist rulers' compelled political thinkers to find a new theoretical basis for the new political phenomena.[46]

Jean Bodin, in the seventeenth century, was the first to define the modern Western concept of sovereignty, as a 'supreme power that is perpetual, undelegated or delegated without limit or condition, inalienable and not subject to prescription. It is unrestrained by law because the sovereign is the source of the law'.[47] His theory rationally defends absolutism, even though he recognised the limitations imposed by the divine laws and laws of nature on the supreme power of the sovereign.[48]

Tomas Hobbes maintained that 'sovereignty must be unified and absolute. Men must choose; they were ruled or they were free; they could not be both; liberty went with anarchy and security with civil obedience'.[49] This definition led to the image of the great Leviathan, the holder of the ultimate power, whom he called 'Mortal God'. His power is irreversible, absolute, indivisible and unlimited.[50] Hobbes is another exponent of absolutism.

In reaction to the theory of absolutism, the monarchomachs used the Greek–Stoic concept of 'contract' to defend popular sovereignty.[51] Locke used it to defend the English Constitutional movement. Rousseau, however, unified the absolute sovereignty of Hobbes and the 'popular consent' of Locke into the philosophical concept of sovereignty, that is the general will. It is in this sense that Rousseau's *Social Contract* may be read as an answer to Hobbes and Locke.[52]

John Austin, however, was the one who established the legal theory of sovereignty which has been long accepted. According to Austin (1790–1859), 'If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate

superior is sovereign in that society, and the society (including the superior) is a society political and independent'.[53]

In this context, one may conclude that sovereignty has varying definitions, but all signify human governmental and legal authority. The nature of this sovereignty signifies the nature of the sovereign will and the nature of the law issued by this sovereign will. The nature of this legal authority implies that the sovereign will is not constant and the law issued by this sovereign authority is not stable. This concept of sovereignty, logically, implies a multiplicity of authorities; a multiplicity of wills; and different rules and judgements.[54] The nature and the meaning of this sovereignty is not the sovereignty that was envisaged by Islam.

In Islamic Law, sovereignty is the characteristic of the divine whose rule is immediate, and whose commands, as in the Qur'an, embody the law and constitution of the nation and the state, as expressed in the Qur'an: 'To whom belong the earth and all that it contains?' (23:84). 'Who is it in whose Hands is the sovereignty of all things…Who protects all but is not protected of any (say) if you know?' (23:88). 'Who is the Lord of the seven heavens, and the Lord of the Mighty Throne?' (23:68). The Qur'an also declares that the Prophet of Islam is not above the law of God. The Prophet is commanded accordingly: 'Say: I am but a man like yourselves. It is revealed to me that your God is One God' (18:110). 'We sent not a messenger, but to be obeyed, in accordance with the will of God' (18:57).

Constitution

In the view of these injunctions, the foundation of the concept of sovereignty in Islam is slightly different from that in other systems. This also leads to some questions which define the nature and functions of the state as well as whether government in Islam is constitutional. In this regard, Albert Venn Dicey pointed out the way the term 'Constitution' is used in England. He stated that

> Constitutional Law, as the term used in England, appears to include all rules which directly or indirectly affect the distribution or exercise of the sovereign power in the state. Hence, it includes (among other things) all rules which define the members of the sovereign power, all rules which regulate the relation of such members to each other, or which determine the mode in which the sovereign power, or the members thereof, exercise their authority.[55]

Similarly, Charles Frederick Strong defines the intent of a constitution in these words:

> The objects of a constitution, in short, are to limit the arbitrary action of the government, to guarantee the rights to the governed, and to define the operation of the sovereign power.[56]

In the view of these definitions, Muslims have no written constitution to govern agreed upon by 1.3 billion people of different ethnicities, languages

and cultural backgrounds. They however have in the Qur'an the unwritten Constitution that is agreed upon by all Muslims and governs their daily life affairs to some extent without any law-enforcement body. In any particular Muslim state Muslims could have their Constitution written, if they wished, on the basis of the Qur'an. Until they do so, the Qur'an is a Constitution establishing the concept of sovereignty and its relevant issues as well as the rules that regulate the relationships between all members in the state, and between Muslim and non-Muslim states. Some scholars argue that governmental activity is restricted within the limits of the *shari'ah* (law).[57] In either case, government in Islam acts only within the framework of these limitations. This principle is a Qur'anic order expressed in clear words and in positive terms of law such as 'do this and do not do that'.[58] In this respect, the Prophet himself was not empowered to exceed or overstep these limitations. For example, the Qur'an commands that '[t]hese are the limits ordained by God, so do not transgress them. Those that transgress the limits ordained by God, those indeed are the unjust' (2:229). In the light of these and similar authoritative texts, government in Islam is limited to the ordinances of the law laid down in the Qur'an and *sunnah*, the primary sources of *shari'ah*.

One could argue that the Qur'an and *sunnah* are the sources of jurisprudence (*fiqh*) and expressions of the *shari'ah*. This matter will be detailed in a later section, but here it is sufficient to remember that Islamic jurisprudence is only a personal opinion concerning interpretations of the *shari'ah*. Muslims have agreed on the *shari'ah* but not on the rulings of jurisprudence (*fiqh*). The legal implication of this is that government in Islam is bound by a Constitution that is divinely inspired and that the Muslim community agrees that this is the case. Therefore, government in Islam is not a kind of absolute government, nor it is an autocracy or an authoritarian form of government; it is a government limited to a Constitution. Scholars of politics maintain that 'limitation of governmental power, in regulating the affairs of the people, is a great principle of constitutional rule. The methods and the means which explain these limitations are called constitutional polity'.[59] In this sense, the *shari'ah* is the Constitution, but the explanations and the methods that facilitate the application of the Constitution are the Constitutional polity.

The distinction between Constitution and Constitutional polity reveals the distinction between the source of authority and its administration. This differentiation is critical to Islamic political theory since it explains the concept of sovereignty and elucidates the nature and identity of the government. It signifies that the sovereignty belongs to God alone. However, God does not descend Himself to govern but sent down His law to govern. Here, the authority is the law, and the rule is but the rule of law. In Islam administration and government exist to facilitate the application of law. The duty of government is to facilitate the application of law. On this basis, a number of scholars, including Sayyid Qutb, are of the view that the government derives its authority, not from the party or the people (the majority), but from the administrative activities which facilitate the application of the law.[60] Qutb's view on this point will be detailed in due course, but suffice it here to note that Qutb deeply believes in the power of the people, and that his point here is not to reduce the power of the people, but to

enhance it by limiting the party's governmental power to the law. In his view, the power of the people in the realm of election and other processes remains untouched, but as soon as the election is over, the elected government derives its authority from its own activity in facilitating the application of law neither from its own party which constitutes the majority, nor from the will of the people governed.

This limitation of government to the law makes the notion of theocracy inapplicable. In the Islamic state, the person or persons at the helm of affairs are not regarded as a specific class divinely elevated or set aside from the common people. They do not rule in the place of God, but merely interpret and apply the law given to them by God, laws which are available and known to all Muslims. They are special neither in themselves nor in the laws they interpret and apply. Nor are they clergy in the sense of Western theocracies, which are clergy-controlled absolutist governments. In short, the characteristics of theocracy, and the like of this word group, do not apply to the government in Islam.[61]

The above discussion clarifies these characteristics: (i) the system of government in Islam is evidently compatible with democracy, and both systems contain substantial elements of similarity. The difference between the two systems, usually interpreted on a religious basis, also supports those elements which are similar to democracy; (ii) government in Islam is Constitutional; (iii) Islamic government is not theocratic or autocratic; (iv) changes in the form of government will not change the Islamic identity of the state, as long as the government facilitates the ordinances of the law.[62]

Form of government

Governance in Islam is one of the spheres of the Islamic system. The Islamic theory of government is based on the same bases upon which all spheres of the Islamic system are based. First is the unity of humanity in race, nature and origin. Second, Islam has universal applicability; as declared in the Qur'an, God is the Sovereign over the universe, life and humanity. These ideas are applied not only to the political sphere, but also to economic, social, intellectual and moral spheres of the Islamic system. After that, the government in Islam is based on justice on the part of the rulers, obedience on the part of the ruled, and consultation between the rulers and ruled. From these broad basic lines branch all the principles that provide the foundation, the forms and nature of government in Islam.[63]

Based on these broad outlines, government in Islam can take any form or shape. Islam does not impose a specific type or a specific form of government. The political ordinances of the *shari'ah* do not prescribe a specific form to which an Islamic state must conform. Thus, there is not only one form of the Islamic state, but many, and it is for the Muslims of every period to discover the form most suitable to their needs, based on the *shari'ah* and in agreement with its laws relating to communal life. Thus, the form of government has no impact on the Islamic identity of the state. Government in Islam can take many forms to implement justice and equality based on the *shari'ah*, which is the foundation of

legislation in the state. In this sense, Judge 'Ali Abd al-Raziq (1888–1966) responds to his critics in these words:

> Islam is a legislative religion, and its law impacts on most spheres of life... The application of Islamic law for the welfare of the people depends on the government of any form and of any type; limited or unlimited, autocratic or republican, tyrannical or constitutional, consultative or democratic, socialist or Bolshevik. Islam does not impose upon Muslims a specific type or form, but allows us to choose the best form that appeared to have the best foundation of government.[64]

Islam does not deal with abstract human beings, but with human beings walking and living on this planet. The lawgiver knows that human affairs are not fixed or rigid and rigidity is not in the nature of human life. This requires a political scheme capable of realisation at all times and under all conditions of human life. The type and form of government need to be flexible and left to human reason to shape; according to the condition and public circumstances; within the framework of the general principles of the *shari'ah*. This does not necessarily mean that the political law emerging from the *shari'ah* is unclear. The political law is 'very vivid and concrete inasmuch as it gives us the clear outline of a political scheme... But precisely because it was meant to be realised at all times and under all conditions, that scheme has been offered in outline only and not in detail. Man's political, social and economic needs are time-bound and, therefore, extremely variable.'[65]

Organs and functions of the state

What is the state, and what are its specific functions, have been the central questions of political theory. There is a wide range of scholarly contributions on the forms, structures and functions of the state.[66] In Islam, the state is not an end in itself but only a means to facilitate the interpretation and application of the ordinances of the law, that is, to administer justice, freedom and equality among all people. In the Islamic state, God is the ultimate source of governmental and legal authority. Central to this belief is the claim that God does not descend to govern but sent down His law (*shari'ah*) to govern. In other words, the *shari'ah* is the foundation of legislation. Thus government in Islam is specifically designed to implement the law that is to govern with justice in consonance with the decrees of the law. There is no place in the Islamic system for arbitrary rule by a single individual or group because there is always room for consultation (*shurah*). Based on the consensus of Muslims 'the sovereignty of God will be implemented by implementing His law. This is what Muslims have agreed upon... God's wisdom did not empower anybody, or even the prophet Muhammad, to legislate for the people as he wishes or govern them on the basis of his own authority.'[67]

As political theory in Islam is completely based on the confession of faith or the testimony that 'God is one', therefore, the one who confesses that divinity belongs to none but God and thereby confesses that sovereignty in human life

belongs to God alone. God exercises sovereignty in human life, on the one hand by directly controlling human affairs by His will and, on the other hand, by establishing the fundamental order of human life, human rights, duties, relationships and mutual obligations by His law and His programme. This affirmation means that there is nobody who can be associated with God, neither in His will nor in His law and programme.[68] These essential principles are rightly based on numerous Qur'anic verses of which the ones discussed earlier are sufficient illustration.

In this context, the modern constitutional theory, held by a great majority of Muslim political thinkers, distributes the duties and functions of a Muslim state between three categories or organs: (i) the legislature, (ii) the executive and (iii) the judiciary.[69] This form of the distribution of powers is not obligatory for Muslims of all times, places and generations. Numerous scholars extend those three organs to four by adding another one, which is to spread the message.[70] Some others integrate the duties of the legislature and the executive.[71] The nature of the relationship between the duties of these organs varies and depends on the specific form of government. It is also difficult to discover any basis for the distribution of authority in the early stage of Muslim community.

In the early period of Muslim community, the prophetic leadership of Muhammad provided the authority, according to the peculiar circumstances of the time. For his successors, Muhammad is dead but the sovereignty of God continues to exist as a reality. In the sphere of their competence, they became the successors of the Prophet of God. But for them there was no possibility of receiving divine revelations; hence, their power in the matter of legislation was restricted; specifically, they have no authority to abrogate the *shari'ah*. The *shari'ah*, however, gives them the right to interpret it and enunciate from it temporal laws to facilitate the application of *shari'ah* in their daily life.[72]

In the modern terminology of Constitutional theory, the first Caliph was the chief executive. He was entrusted with the administration of the affairs of the community, political, economic, security and others. The circumstances of the time of the first four successors necessitated the establishment of two institutions: (i) the police force to maintain internal law and order, and (ii) a professional army to maintain security from external threat. The first four Caliphs also exercised judicial power but in doing so consulted learned individuals. With the passage of time, the Caliphs delegated their judicial functions to eminent judges, who were respected by the Caliphs, and who usually acted independently.[73] In short, the main objective of the executive, legislature and judiciary was to facilitate the application of the Islamic Law so as to administer complete justice and equality among all people, ensuring freedom of all types and forms including freedom of religion for all people, and ensuring security from internal and external threat.[74]

Consultation and legislature

The political system in Islam can be understood as a consultative rule, that is, rule by *shurah* (consultation). Consultation is a basic principle in all spheres of Islamic political and social systems. It is also essential for the proper function of the

organs of the state, its overall activity and Islamic identity. The Qur'an commands Muslims to take their decisions after consultation in both public and other matters. This makes consultation mandatory, by virtue of it being the subject of a direct Qur'anic command as specific as those requiring obligatory prayers and tax (*zakat*).

Muhammad even with his exceptional quality of being divinely guided always consulted his companions and representatives of the tribes of his adherents before taking decisions. His successors were no less faithful defenders of the consultative institution. In this respect, the *shari'ah* does not confine consultation to the religious sphere, nor does it provide a specific form or detailed procedures for consultation. The *shari'ah* left the door open for Muslims to choose the method most suitable to their circumstances, in time and place.[75]

The deliberate silence of the *shari'ah* about the form of consultation is suggestive of the need for continuous temporal legislation. This legislation would relate to administration and other affairs not touched upon by the *shari'ah*, as well as the affairs for which the *shari'ah* has provided only broad basic principles with no detailed laws.[76] In either case, it is up to the people to enunciate legal opinions for what they need of detailed legislation, through independent reasoning (*ijtihad*), and this also must be in agreement with the spirit of the *shari'ah*. It is quite clear that legislation cannot be in contravention of the spirit of the *shari'ah*.[77]

As to the legislative power of the state, the early period of Islam preserved a variety of examples. Muhammad himself was consulting his Arab and non-Arab companions before deciding on matters not touched by the *shari'ah* or outlined by it broadly. Among the thousands of examples that abound is the view of both Abu Baker and 'Umar about the prisoners of the war of Badr (AH 2/624 CE). Submitting the matter to the Muslims and taking their advice, Muhammad demonstrates that he wants the people to share freely in the decision.[78] This also was followed by his successors in varying style and forms. These examples, however, are not compulsory, and none of them require that the Muslim community must conform.[79] This means that temporal legislation can be vested in the hands of an individual or a limited number of persons such as a legislative body or a council. In this respect, people could use the idea of a general public vote (one-person, one-vote), or the vote of one house (i.e. senate) or two houses (congress and senate), or any other form of consultation that suits the circumstances of the nation at a particular time and place. Whatever their circumstances, the people should decide which form of vote to use. Should it be vocal or written? Is it to be used in all affairs of politics, defence and others, or only in some affairs? Muslims should also choose the authority that observes and is responsible to oversee these procedures. Is it the responsibility of the Cabinet and the elected Chief Executive of the state? Is it the responsibility of the Judiciary Authority, or the People's Assembly? The specifics of these approaches to consultation were not prescribed in the authoritative texts of Islam. The procedures and the spheres of consultation were reserved to the circumstances of each nation, its time and place, and to the human experiences and human achievements. It would thus appear that the form of government, the form of consultation, the kind of legislature,

and the procedures to be used all could have some alteration and adjustment from time to time without any compromise to their Islamic nature.[80]

In the view of this context, many scholars view the Islamic system of government as similar to a democratic system.[81] In the view of other scholars these similarities are purely accidental, and the basic principles are different.[82] However, in either case, whether accidental or not, there is substantial similarity between Islamic political theory and democracy. The two conflicting opinions also indicate that the similarity between Islam and democracy does not mean the two systems are identical. With this in mind, the former opinion sees the Islamic system as democratic with some difference,[83] while the latter adheres to the view that the Islamic system is but Islamic (no more).[84] In the latter view, the consultative system is not identical with a parliamentary system of democracy or any other democratic system. This is because the *shurah* (consultation), as an idea, is itself an act of worship in Islam and based on the principle that sovereignty belongs to God. Secular democracy, however, is based on the principle that the absolute sovereignty is vested in the people. In this secular form, a group of people – the legislature – legislate for another group – the people – and overall the state enjoys the absolute authority. This means that a secular democratic system has the power to enforce the desires of a particular group. In this view, 'the concept of democracy is different from that held by the originators of the term'.[85]

However, one should note that the idea that 'sovereignty belongs to God' does mean that God is the governor of the state in Islam. This is because of the fact that 'sovereignty' is not 'God', but it is vested in the law by God. An Islamic state is limited both by and to the law. It follows that the sovereignty of an Islamic state is practically the sovereignty of the law, and that the law limits the governmental power and regulates its functions. Limiting governmental power to the law does not imply autocracy, but implies democracy in its widest sense because the law requires consultation. In this way, the idea that 'sovereignty belongs to God' does not make the political theory in Islam differ from that in democracy but increases the elements of similarity and compatibility between the two systems.

Similarly, the claim that 'God is the only legislator' does not make the Islamic system against democracy where the 'people legislate' for themselves. This is because of the fact that the *shari'ah* did not give detail on everything in this life, but kept silent on some issues, including the method of consultation and other matters at the heart of the structures and functions of state, and between state and its subjects, between the subjects themselves, and between state and other states in the world community. The silence of the *shari'ah* about these affairs is suggestive of the need for continuous temporal legislation. Muslims are allowed to legislate for affairs not touched upon by the *shari'ah*, as well as the affairs for which the *shari'ah* has provided only broad basic principles with no detailed laws.[86] This means, first of all that all, human legislation is temporal and interpretive and not absolute. Second, in Islam, people legislate to people, as people legislate to people in a democracy. In either case, human beings will use their talent and expertise to legislate in ways suited to their situation. Here, the difference is only that the people in Islam will legislate on the basis of the spirit of the

shari'ah, while the people in democracy will legislate on the basis of the spirit of *humanity* (if it is not on religion at all). The spirit of the *shari'ah* is not against the spirit or the nature of *humanity*, but in harmony with it. The *shari'ah* with its spirit has come to deal with human reasoning and communicate with human intellect and the spirit of *humanity*. In short, legislation on the basis of the spirit of the *shari'ah* or on the basis of the spirit of *humanity* does not mean that Islam and democracy are adversaries, and it does not set one system against the other, but adds more to the force and intent of the elements of similarity between the two systems. However, the absolute transcendence of the sovereignty of God and of the laws in the Qur'an and the *shari'ah* more radically relativise human legislation than the mere vesting in the individual person.

The chief executive

As an Islamic state is not an end in itself but only a means that facilitates the ordinances of the law and manages the affairs of the people, it is obvious that the person who has the qualification and skills to discharge these responsibilities may be entrusted with the office of head of state. Thinking of the criteria of eligibility for such office, 'Umar, the second Caliph, pointed out that 'the person who is strong without violence; the one who is gentle without being weak; the one who is economical without being miserly; and the one who is generous without being wasteful is the only person worthy of these affairs'.[87] Apart from stipulating that the prospective head of state must be wise and the most righteous of people, Islamic Law does not specify any further conditions for eligibility to this office.

The condition of eligibility also implies the notion of election and democracy. The method and procedures were left for the people to devise and choose the best for them. In this respect, the early period of Islam preserved a few examples which outline the principles of this matter. These principles have come from the fact that when Muhammad felt unwell to lead the prayer, he appointed Abu Bakr to this task in his last few days. It happened that Muhammad died in these cir-cumstances. The prominent members of the community called for a meeting to choose one to lead the community. This committee discussed a few options and finally elected Abu Bakr and nominated him to the people. Because Abu Bakr's qualification and skills were recognised by Muhammad, the people accepted the committee's nomination of Abu Bakr and swore allegiance to him. Muslims, however, could have rejected Abu Bakr without being blamed, but they accepted him because he was the most qualified person for the office.[88]

Similarly, Abu Bakr nominated one person ('Umar) to succeed him in the office, but his doing so did not compel the assent of the people, and they would have been within their rights to reject 'Umar, but the people swore allegiance to him. Likewise, 'Umar nominated a council of six persons who were to choose one of their numbers and present him to the people. Those six were the most prominent members of the community. Among them was 'Ali the cousin and paternal nephew of Muhammad. The people, however, were not obliged to choose one of those six, but elected 'Uthman and swore allegiance to him. These examples

elucidate the principles that the unfettered choice of the people is the only thing that makes government in Islam valid. This was clearly understood by the people when they postponed the choice of 'Ali, the person most closely related to Muhammad by blood. The postponement of 'Ali had its virtue in that it confirmed the theory of government. It is by the free choice of the people, not by force or inheritance of any type or form as it has later come to be and continued until our time in many Muslim countries.[89]

In view of this context, the chief executive then can be elected by representatives and then presented to the people. The representatives, according to Rashid Rida (d.1934), are a number of highly qualified jurisconsults who also should have impeccable reputations in the community.[90] Whether the chief executive should be elected by representatives (limited number of persons, or one or two houses – upper and lower house) of the community, or by the whole community, the decision is up to the people. In either instance or method, the people should have the final say. The point that needs to be made here is also that the people are not bound by the will of the former chief executive, or his predecessor, nor is the position inherited.[91]

The chief executive is not sovereign and sovereignty does not belong to him at all. Muhammad himself was not sovereign; sovereignty did not belong to him, and he never claimed sovereignty for his own person, at any point of time. The chief executive is not a divine or divinely chosen person, nor has he any religious authority that he receives directly from heaven. He is but one from amongst the people, elected by the people, and required by the law to take counsel from the consultation counsel in all important matters of the state.[92]

The duty of the chief executive is to facilitate the application of the principles of Islam, to find rational and systematic solutions to unprecedented problems, to administer justice and equality between all people, and to protect the affairs of the state from internal and external threat. For this, he had to appoint ministers, commanders, governors, to preserve law and order to protect the people and to defend the frontiers against potential external attack.[93] His authority, as Rashid Rida asserts, derives from his undertaking to implement the principles of Islam. He can rule only as long as he applies the principles of Islam and recognizes that the sovereignty belongs only to God.[94]

Loyalty or obedience to the government, in Islam, is conditional on the obedience of government to Islamic Law. The chief executive should be obeyed only to the extent that his decisions conform to the principles of Islam and have a bearing on public interests. As this principle is critical to the identity of the state, any government that is not based on this principle cannot be called Islamic, even if the government is run by an official religious body. The obedience of the people is to be given only if, and as long as, the chief executive recognises that sovereignty belongs to God alone and then implements the principles of Islam without any qualification other than freedom, justice and equality between all the people.[95]

The source of governmental authority is neither the people nor the party nor the result of election, but the activity of implementing the Islamic Law. This is not

against democracy, and does not reduce the power of the people but enhances it. The government is elected to enforce the rule of law. The governmental authority, then, is subject to its activity of carrying its mandate and facilitating the application of law. The result of election is not considered to empower the chief executive to adopt laws that lack the legitimacy of the principles of Islam or are in conflict with it. If the government departs from the law, the authority of this government, as Rashid Rida asserts, is not legitimate and it should be removed from office. The community, through Constitutional means that are agreed upon, has the full right to challenge the decisions of the chief executive whenever these decisions are seen to contravene the principles of Islam.[96]

In this context, the chief executive enters the public office by free election and on the proviso that he will implement the law and consult with the people in doing so. This allows the people to have their say and participate in decisions concerned with their political life. The result of election gives the elected chief executive a mandate to govern his people according to the law. Accepting the mandate implies that the elected chief executive has entered with the people into a 'contract' that is to govern in accordance with the law. The consensus of Muslim jurists agreed that 'the leadership is a contract based on willing choice; there being no compulsion or force in the matter'.[97] This contract is signed by (i) the elected chief executive, (ii) the people and (iii) the law (i.e. the arbitrator and just witness). Here, the law protects the rights of the ruler and the ruled as follows:

a   It gives people the right to elect their chief executive, who wills to implement the law.
b   It gives the elected chief executive the right to enforce the law on his people.
c   It instructs him to take counsel from the consultation council.
d   It gives people the right to impeach the chief executive from office if he departs from the law.

Thus, the law can be seen as fundamental and set above the state and citizens by God. The chief executive has no right to claim that he is divinely chosen or has divine authority for remaining in office if he departs from the law. Logically, the law would not legitimise the authority of any one who departs from the law. In short, the chief executive is not above criticism. In the eyes of the law, his status is the same as that of any ordinary citizen and has no rights other than those which belong to any individual of the community.[98]

The authority of the state

As hinted above, a Muslim community does not have an institution or authoritative body whose rules are binding upon all Muslims. Muslims however agree that the authority is the law laid down in the Qur'an and explained in the *sunnah* of the prophet of Islam. This also is a Qur'an command: 'O you who believe, obey God and obey His Apostle and those from among yourselves who hold authority.

Then if there is any dispute between you concerning any matter, refer it to Allah and His Apostle if you truly believe in Allah and the Last Day. This is the better course (in itself) and most just (as regards the result).'[99]

Yet Muslim interpretations are varied and range from conservative to liberal, modernist and post-modernist views. The commonly stated view is that Islamic Law is based on complete submission to the will of God. This submission is a fundamental tenet of the Islamic religion, and since Islamic Law is based on Islamic religion, it proceeds on the same fundamental assumption. The will of God embraces all aspects of life and the law hence covers all of them. It is a way or path leading or guiding the Muslim, and the revealed law governing all these matters is known as *shari'ah* (the Arabic word for track or road) or a complete code of faith and practice. The *shari'ah* then is not, strictly speaking, a legal system, for the force and intent of its words and rules reach much deeper into thought, life and conduct than a purely legal system with its dry words can aspire to do. The meaning of *shari'ah* is not limited to the principles of government and its laws, but includes everything that is prescribed by God to order human life. It encompasses the fundamentals of belief, government, behaviour, knowledge, legislative decisions and the principles of ethics by providing the values and standards that rule society and by which people, things and events are evaluated. Then it takes the form of knowledge in all its aspects and of all the fundamental principles of intellectual and artistic activity.[100]

The limits placed on Islamic government by the *shari'ah* essentially militate against potential dictatorship, despotism, autocracy and similar abuses of power. How this works is a comprehensive question encompassing the concept of Islamic religion and state. Briefly, in the Islamic state, justice comes from the law itself. For correct application of this law, Islam relies on its clear codes, the conscience of the judge and society's observation of its injunctions. Every individual in the Muslim society is obliged to prevent injustice, to admonish the ruler whenever he exceeds his limits and to advise the judge whenever he errs. In Islam the individual sins if he does not testify or if he allows wrong or, at least, does not draw attention to it when he becomes aware of it. The *shari'ah* provides protection through a number of channels such as that of the guarantees of security, the guarantees for material requirements, social equilibrium and the belief in the law. It takes into account that society can function effectively when all its members feel safe and secure. Guarantees of security are an important part of Islamic Law. For example, the *shari'ah* guarantees preservation of life for every human being irrespective of race, colour or religion.[101] It provides guarantee of honour and property. The guarantee of honour is implied in the penalties for adultery, fornication and accusation. As for lawfully acquired possession, a guarantee is implied in the penalty for wanton theft. It guarantees the inviolability of the home. Nobody has the right to enter another's home without permission. It provides guarantee of privacy. Spying is prohibited. It provides guarantee against slander and perjury. Individuals must be safeguarded against false indictments, verdicts and evidence. To this end the *shari'ah* provides almost foolproof rules and procedures. By applying the *shari'ah* all the personal and social guarantees of

human rights to life, honour, property and justice are secured for the individual by his society.[102]

As for the requirements of living, the *shari'ah* appreciates the importance of material requirements but does not unduly emphasise their role in human total welfare, for in Islam humans are physical as well as spiritual beings. Recognition of spiritual needs that must be satisfied differentiates Islam from materialistic doctrines. The *shari'ah* is quite aware that laws and guarantees are not effective if the individual cannot supply his needs. The *shari'ah* guarantees everyone a decent standard of living to ensure social equilibrium in the community. In Islam, the first of the means that enables humans and provides them with a livelihood is work. Overall, Islamic Law provides social securities. Social equilibrium is easily discerned in the Islamic political system, in its legislation, in its judicial structure and in its system of social security.[103]

The ruler therefore has no rights that do not belong to an individual Muslim except for obedience to his command, advice and assistance in enforcing the *shari'ah*. The Prophet was not only a ruler, but also the one who brought the *shari'ah* and set the legal limits for the ruler within the sphere of the rights that Islam gives him, and his successors followed his prescriptions. He allowed people to take retribution against him when they had the right to it, unless they chose to forgive him. Thus the ruler has no legal or financial rights beyond those of the ordinary Muslims, nor does his family. In the Islamic system, family structure and individual rights for all citizens are also governed by the *shari'ah*. The *shari'ah* functions as a protective shield in defence of the rights and liberties of citizens against arbitrary power.[104]

Some observers analyse Islamic jurisprudence (*fiqh*) in a way that confuses it with the *shari'ah*. This important factor contributes so much to the difference between the Western view and the standard Muslim view on the matter. For example, in some writings we read expressions such as 'the development of the *shari'ah*'.[105] It is a subtitle used by Montgomery Watt, for example, to discuss the schools of Islamic jurisprudence. Despite the fact that he translated the word '*shari'ah*' into the word '*revelation = divine law: faith and practice*' and suggested 'the *shari'ah* was not the work of the ruling or governing institution', he still uses the expression 'development of the *shari'ah*'.[106] Speaking of the consensus of the Islamic schools of jurisprudence, Watt insists on using words and phrases suggestive of 'development of *shari'ah*', as in 'the function of consensus in the *development* and *maintenance* of the *shari'ah* is remarkable'.[107] For this, it is not difficult to find some contradictory suggestions in his above exposition of the matter. He however is accurate in suggesting that 'the modern western view of the *development of shari'ah* differs considerably from the standard Muslim view'.[108]

One explanation of Watt's proposition is the fact that his method of enquiry does not distinguish between divine law and human opinions about this law. Rationally, the human view about the divine law is certainly not more than a human view that carries within itself the nature and qualities of its limited source. Muslim jurists are not considered an infallible, divine or venerated class of people; but people grounded in the science of religion in addition to their expertise

in other fields. Muslim jurists can differ in their understanding of the texts and on the derivation of the relevant legal opinions. This also occurs in the jurisprudence of human-made law.[109]

Leopold Weiss also gave another explanation focused on terminology in these words: 'It is extremely misleading to apply non-Islamic terms to Islamic concepts and institutions. The ideology of Islam has a social orientation peculiar to itself, different in many respects from that of the modern West, and can be successfully interpreted only within its own context and in its own terminology. Any departure from this principle invariably tends to obscure the attitude of Islamic Law [*fiqh* jurisprudence, not *shari'ah*] toward many of the burning issues of our time.'[110] He also pointed out that the Islamic Law of 'conventional Muslim jurisprudence (*fiqh*) rests on injunctions expressed in clear-cut terms of command and prohibition in the Qur'an and *sunnah*'.[111] Weiss also considers that the '*shari'ah* is far more concise and very much smaller in volume than the legal structure evolved through the *fiqh* [jurisprudence] of various schools of thought. Being a divine law, the *shari'ah* cannot possibly have been made dependent on scholarly deduction or interferences of a subjective nature.'[112]

The nature of the *shari'ah* differs from what is known as Islamic jurisprudence (*fiqh*). The *shari'ah* and jurisprudence are not equal in their source and argument. The *shari'ah* comprises no more than those clear commands and prohibitions conveyed in the Qur'an and explained in the *sunnah* of the Prophet. This, however, is not the case for jurisprudence. Muslim jurists practising jurisprudence were considered great scholars who, after deep and conscientious study of the Qur'an and the *sunnah*, enunciated important legal principles concerning many problems. Their work facilitated the application of *shari'ah* principles to specific problems faced during their time. Their findings were influenced by their personal approach to the legal sources of the *shari'ah* as well as by the social environment of their time. With time, precedents of interpretation have acquired in the public mind a kind of divine authority like that of the *shari'ah* and have come, erroneously, to be regarded as part of the divine *shari'ah* itself. However, jurisprudence cannot be a divine part of the *shari'ah*, which is laid down by the Qur'an and the *sunnah*. Any sources of the *shari'ah* other than the two sources, namely the Qur'an and the *sunnah*, is jurisprudence (*fiqh*).[113]

The major branches of jurisprudence are the ritual duties ('*ibadat*) and transactions (*mu'amalat*: contracts or civil affairs).[114] These two branches are interrelated and communicated on the account of the complex nature of Islamic teachings. In addition, the rites or ritual duties cannot be affected by any special requirements of time, place or a particular generation or people. For this very reason, the rites are more constant than the contracts or civil affairs which deal with issues that are subject to change in accordance with human requirements and social conditions. Prayer, for instance, cannot change to suit any generation in time or place.

Civil affairs can be reshaped to suit the time, the problem, the people, but all of that must be within the frame of the *shari'ah* to fulfil the divine obligations, that is to make sure that freedom, justice and equality between all parties are

definitely implemented. What is irrefutable is that important figures such as Abu Bakr, 'Umar, 'Ali, Ibn 'Abbas, Ibn Umar and other companions of the Prophet were princes of the *shari'ah*. Because of the Prophet's influence, they became grounded in the knowledge and practical enunciation of legal opinions based on the *shari'ah*. They were able to derive from the *shari'ah* laws and rules. Their rules are not, strictly speaking, the divine *shari'ah*, as such. They, however, facilitated the application of *shari'ah* to specific issues and dealt with questions arising from the change of social conditions of their time. Social conditions are unrepeatable in history, although they may be similar. Their rules of that time can be developed at any time to suit any generation of any time or place. Therefore, merely replicating a judgment or legal ruling of the past is not part of the order of the *shari'ah*, and not of the way of the Prophet.[115]

Jurisprudence is a great and important Islamic source of past rulings and decisions that are useful to guide the present generation to enunciate accurate legal rulings, based on similar cases, from the *shari'ah*. However, jurisprudence is no more than a human opinion concerning the *shari'ah*, not the *shari'ah* itself. The *shari'ah* cannot be made dependent on scholarly deductions or inferences of a subjective nature. It lays down the definite ordinances of the Qur'an and the *sunnah*. It is the explicit directives of the Qur'an and the *sunnah* and these alone, collectively, that constitute the primary and the constant *shari'ah*.[116]

By way of conclusion, thus we have come to see that governance in Islam, like all other aspects of life, requires first the submission of the people and those who govern them to the ultimate sovereignty of the law whose necessary framework for life has been outlined in the Qur'an and the *sunnah*. This however does not mean that governance in Islam takes the form of theocracy because those who rule are not divinely set apart and they remain subject to the scrutiny of the people, who may remove them if they enact legislation or behave in ways that are contrary to the *shari'ah*. The role of consultation is central to Islamic governance and is critical both in the appointment of leaders and in the conduct of the affairs of state. In all of this there are features of Islamic governance which resemble Western forms of democracy and other features which give the system its Islamic identity.

2 The notion of democratic participation

Having outlined in the previous chapter some of the fundamental elements in Islamic constitutional theory and its similarity to democracy, the objective in this chapter is to investigate the Islamic notion of democratic participation in the medieval and modern periods. This investigation, first, focuses on the wellspring of Islam under the leadership of the Prophet and his successors to explore their traditional principles, and, second, examines the manner in which those traditions of political principles were later reformulated by modern reformists and then by liberal intellectuals in the nineteenth and twentieth centuries. This chapter outlines the intellectual history of reformist Islam and the historical roots of contemporary attempts to promote democratic and human values from within Islam itself. The congruency of Islam and these critical human values is made clear through a rigorous examination of the history of ideas.

In its four sections, namely, 'Political principles', 'The modernists and democracy', 'The Muslim Brotherhood', and 'The liberals', this chapter opens a window onto the notion of democratic participation in Islam. This theme currently occupies the heart and the mind of the Muslim world's public debate over constitution, law, civil rights, and national and cultural identity; just as freedom, justice, equality and human rights occupy the heart and the mind of Islam. It demonstrates the emphasis that Islam places on equality, freedom, justice and pluralism, first, as manifested in the text of the Qur'an and in the practices of the Prophet and his companions, and second, in the historical experiences of Muslim society, and in the philosophical and intellectual discourse of the contemporary Islamic reformist movements.

The section on political principles briefly outlines the notion of democracy in some Islamic political principles and the Medina state model, which continued to be considered a source of guidance in the governmental sphere. This section provides the framework and the theme for the subsequent sections to examine contemporary Islamic political thought on democracy with special attention to a selected number of legendary Muslim thinkers, some of whom (such as Afghani, 'Abduh and Kawakibi) were steeped in the colonial movement. This will be followed by examination of the Muslim Brotherhood's founder Hasan al-Banna. Investigating the thought on Islam's compatibility with democracy in the post-al-Banna stage, the focus will be on Sayyid Qutb and post-Qutbiyyan groups.

This work shows the current and the flow of ideas pertaining to democracy starting from the wellspring of Islam through its history to the modern trends.

In so doing it brings Islamic fundamentalists together with Islamic moderates to the ballot box to cast their vote in a democratic process designed to provide common leadership.

Political principles

Speaking of democracy and the notion of democratic participation in Islam does not mean that the word 'democracy' is a Qur'anic term explained in the Qur'an or in the *sunnah*. It means, however, that the 'positive' features and values of democracy are compatible with the Islamic teachings that are based on the Qur'an and the *sunnah*. It means, in other words, that the attitude towards the self and the other and the combination of the political and sociological propensities upon which the modern attitude of democracy is established and the assets upon which the democratic system in any modern society depends are compatible with Islam. This approach does not confine democracy to the paradigm of those dry and limited meanings that are routinely expressed through the lexicon or linguistic and dictionary terms. Democracy here is, however, a wider concept with qualifications and values: (i) towards the self, (ii) towards the other, and (iii) a combination of the socio-political conditions that are necessary for world peace, international relations and the formation and development of the welfare of individuals and society.

Original sources

Anyone who is familiar with modern constitutions knows precisely the concept of sovereignty and the rights of individuals as developed by such notables as Thomas Aquinas (1114–1187), Roger Bacon (1214–1294), Hugo Grotuis (1583–1645), John Locke (1632–1704) and Thomas Jefferson (1743–1826).[1] Based on the observation of the pioneers John Locke pointed out that the individual has the right to pursue life, liberty and property. Locke, 'the prince of individualists',[2] also pointed out that if individuals were not happy with the laws under which they were living, they should be free to remove themselves to another place where laws could not compel them into compliance.[3] In addition, Locke believed that if a government usurped the rights of the people, the people had the right to change the government. This manner of thinking became the foundation for what was to become the American Declaration of Independence. Its principal drafter, Thomas Jefferson (1743–1826), modified Locke's principles of individual rights, and Americans have come to accept that life, liberty and the pursuit of happiness are inalienable rights. Like Locke, Jefferson is of the view that if a government interfered with these rights, the people had the right to change that government and to institute a new one which would secure their safety and happiness.[4]

Likewise, anyone who is familiar with Islam knows precisely that the notions of freedom and human rights, the rule of law and social justice as well as social solidarity, were declared by the Qur'an and practised by the Prophet. The rule of law and social justice are both found in the very source and wellspring of Islam. On its universal values, Islam, as Antony Black asserts, established 'A new kind of political society . . . Non-Arabs are welcome; indeed they are as morally

obliged to join as Arabs are...the only basis for human superiority is piety and knowledge...there was a religious duty to provide for the needy (especially orphans) by charity (*zakat*: alms). This was the ideology which overthrew empires'.[5] These principles were among the foundations upon which the first Islamic state was established in the seventh-century world:

> Islam established a state on its own ideology and made it a welfare state open to all humanity regardless of religion, ethnicity, language or other privilege. All humans have the right to live in the Islamic state, and with Muslims they enjoy equality, justice and liberties that crystallize the reality of human brotherhood.[6]

Focusing on some principles of the first Islamic state, the earlier sources remarked that the ruler of this particular state was Muhammad, who was not only the leader but also the Prophet who received the revelations and whose inspiration was the Qur'an. In this sense, his model is considered by al-Mawardi (d.450/1058) as exceptional because no ruler after Muhammad will be a messenger and a prophet receiving divine revelations.[7] However, this model and the practice of the Prophet, al-Mawardi continues, established the principles and the teachings for Muslims to develop their own models based on their own circumstances in any age and generation. This is because, after the advent of Islam, Muslims cannot live unorganised. To al-Mawardi (d.1058) as to John Locke (1704) 'government is a necessity for human beings' and is a 'means of protecting and managing the affairs of this world'.[8] Like al-Mawardi, Locke says in *Axiom*: 'God...hath given the world to men *in common*, [and] hath also given them reason to make use of it'.[9] As to reason, human intellect, rationalism and free choice are the principal features of democracy as well as of Islamic social order, since the Qur'an demands of its readers to learn and to hear, to listen and to see, and to think and meditate before they decide. It communicates with the readers and guides them to these steps in a directive style such as this: 'don't you know' (Qur'an 2:106,107); 'don't you see' (Qur'an 30:9); 'don't you think...or understand' (Qur'an 2:44); 'how do you know' (Qur'an 10:14). Examples of these are innumerable, so reference to any *surah* is simple. Persons were not ordered to follow or believe before these steps that lead to a better understanding are complete.

As to pluralism, suffice it to refer to the Qur'an, which defines Islam as not only peace for and between all, but also 'believes in the revelation given to Abraham, Isma'il, Isaac, Jacob, and the Tribes, and that given to Moses, and Jesus...making no difference between them' (Qur'an 2:136). This primary Islamic disposition, which is a fundamental part in Islamic faith, also provides the foundation for plurality that because it was implemented in the first Islamic state it cannot be denied in any Islamic state since then.

Islamic teaching has been based on appeal to the mind and the conscience. Islam is not an arbitrary religion, nor in its pure form has it ever ordered individuals or groups to adopt it or forced others to adopt Islam or to follow its law.[10] Islam is the 'religion of reason',[11] and granted 'human intellect the complete

freedom to accept or reject the decree of religion – to reject it, or to accept it completely or incompletely; and does not force anyone to practice the rules of *shari'ah*'.[12] Islam provides guides to freedom, justice and equality, and choices based on intelligence and reason. It expresses justice as a comprehensive concept, not limited to political or economic concerns and not confined to a particular sphere of human rights or human affairs. This is clearly prescribed in the law as a fundamental tenet above the state and its citizens. The law is necessary to maintain the peace and security of any society. The core ideas of Islamic law are freedom, justice, equality and social solidarity in their widest sense.[13]

While Islam grants every individual their human rights in the widest sense, it does not leave the use of these rights to human impulses, but guides it in the best way to secure a decent life for the welfare of both the individual and society.[14] This guidance is, in John Locke's view, 'the source of the individual's rights to order his actions and dispose of his possessions ... All men may be restrained from invading other's rights, and from doing hurt to one another'.[15]

Recognising plurality, the Qur'an neither confines faith and salvation to Muslims, nor denies faith and salvation to other religions: 'Not all of them are alike. There are among the People of the Book some upright men, who all night long recite the revelations of God and prostrate themselves in adoration; who believe in God and the Last Day; who enjoin justice and forbid wrong and vie with each other in good works. These are the righteous: whatever good they do, shall not be denied them. God knows the righteous' (Qur'an 3:113–114). 'And there are among the People of the Book those who truly believe in God; and in the revelation to you; and in the revelation to them. They humble themselves before God; and do not sell His revelations for a miserable gain. These shall be rewarded by their Lord. Swift is God's reckoning' (Qur'an 3:199).

The theme of just order is repeatedly and frequently mentioned in clear terms. Indeed, the Qur'an does not restrict or limit the attribution of faith and salvation to Muslims, but extends it to the Jews and Christians (the people of the Book). The Qur'an also makes this case clear by commanding that no religious community has any right to claim a monopoly on righteousness and salvation.[16] In addition, the Qur'an tells in no uncertain terms that all individuals who believe in God and the Last Day, and do good, are assured of salvation: 'Those who believe (in the Qur'an), those who follow the Jewish (scriptures), and the Sabians and the Christians – any who believe in God and the Last Day, and do righteous deeds – on them shall be no fear, nor shall they grieve' (Qur'an 5:69).

On the other hand, the Qur'an does not consider all those who accepted the Qur'an and its message as true believers. Some have accepted Islam as a general way of life but failed to understand its worldview and mission.[17] Some others accepted Islam only in appearance, but their suspicion and doubts towards it continued.[18]

These injunctions are a few of the many which clearly indicate that believers and disbelievers can belong to all religions. It follows that believers and disbelievers cannot be distinguished on the basis of any religious identity alone. As this runs across the board of religions, the Qur'an urges Muslims to seek a political

order based on peaceful cooperation and mutual respect; it warns them against any sort of religious violence or placing religious solidarity (*'asabiyyah*) over the covenanted rights or the principles of justice.[19] In this regard, the Qur'an 8:72 is one of the many examples which command Muslims not to interfere or take any violent action against a state with which Muslims have a treaty of mutual alliance; even if the given state (Muslim or not) oppresses its Muslim citizens.[20]

The Qur'an therefore commands Muslims to find a common ground with other religious communities. This common ground is expressed as a mutual respect of the freedom and autonomy of different religious and cultural backgrounds with no force or compulsion.[21]

The Constitution of Medina

The Constitution of Medina is the first Constitution of democracy in the history of constitutional rule. Its principles were also based on the Qur'an and *sunnah*. Equipped with these principles the Prophet managed to establish the first Islamic state, which included people of multi-religious and several cultural backgrounds in an *ummah wahidah* (one nation) based on universal principles that constituted the Charter or as it is commonly known the 'Constitution of Medina'.[22] In the preamble the initiator of the Constitution was the Prophet himself and he established every community in its religion, property, and determined their rights as well as their duties and their position in the society, as one *ummah*. This Constitution begins as follows:

> In the name of God the Compassionate, the Merciful. This is a covenant from Muhammad the Prophet [governing the relations] between the believers and Muslims of Quraysh and Yathrib [Medina], and those who follow them and joined them and laboured with them. They constitute one *ummah*.[23]

The Constitution expressed that freedom, justice and equality were based on humanity itself (i.e. article 15 and 17). It makes it clear, Montgomery Watt asserts, that the Jews and Christians are with Muslims in 'constituting a political unit of a new type, an *ummah* or "community" '.[24] The Jews were also not mentioned as various tribes but simply as Jews, indeed very respectfully, as with Christians, who are 'People of the Book', an ethnic minority here being made equal to a majority in a brotherhood, forming one community *ummah wahidah* (one nation). Thus, the Constitution laid down the foundation of the first Islamic state of multi-tribal and multi-religious society. The objective of the various rules enunciated in the Constitution was to maintain peace and cooperation, to protect the life and property of all citizens, to eliminate aggression and injustice regardless of tribal or religious affiliations, and to ensure freedom of religion and movement. Indeed, the Constitution of Medina placed the rules of justice over and above religious solidarity, and affirmed the right of the victims of aggression and injustice to restitution regardless of their tribal and religious affiliations. It formed the foundation of the first model Islamic state, defined the political rights

and duties of all citizens (Muslims and non-Muslims alike), and drew up the political structure of the nascent society.[25]

The Constitution stipulated that the social and political activities in the new system must be subjected to a set of universal values, collective intelligence and standards that treat all people equally. It repeatedly emphasised the fundamental nature of justice and righteousness, and frequently condemned in different expressions injustice and despotism: 'God grants His protection to whosoever acts in piety, charity and goodness. He shall be against the rebellious, and against those who seek to spread injustice, sin, enmity, or corruption among the believers.'[26]

The Constitution introduced a number of political rights and facilities to be provided by the state to all its members, Muslims and non-Muslims alike, in return for the duties. For example, the Constitution promulgated: (i) standing laws defining the rights and duties of all members, (ii) arrangements for impartial decisions on matters of right and (iii) unfailing protection of the members of the community in the enjoyment of their rights. These are the very characteristics of the political society defined by John Locke: 'a society which fails to provide these facilities is not really a political society at all, but a continuation of the state of nature'.[27] Indeed, the forty-eight articles of the Constitution of Medina provided these and other facilities and political rights, including (i) the freedom of belief, that is, every community has the right to live according to its belief; (ii) the freedom of movement from and to Medina: 'whoever will go out is safe and whoever will stay in Medina is safe'; (iii) the assurance that if there is an external threat to non-Muslims, the Muslims would help them and vice versa; (iv) the assurance that both Muslims and non-Muslims are believers and would stand together to defend Medina against any attack; (v) the agreement that no one should go to war before consulting with the Prophet (article 36); (vi) the assurance that when consultation occurs the representatives of all parties should be present; (vii) the assurance that in cases of negotiation with foreign states, representatives of all parties should be present, and that negotiations should not be concluded unilaterally; (viii) the understanding that when a person acquires guilt they acquire it only against themselves; (ix) that a person is not liable for their ally's misdeeds; (x) that charity and goodness are clearly distinguishable from crime and injury; and (xi) that God is the guarantor of the truth and goodwill of this covenant.[28]

The openness of Islam to other religions in the conduct of international relations can be clearly seen in the excellent relationship that was developed between the emerging Muslim community and the Christian Kingdom of Abyssinia. Abyssinia maintained its Christian identity long after Islam was established in the Middle East region. A few Muslim families could be found in eleventh-century Abyssinia.[29] From the beginning, the Abyssinians showed their goodwill to the early Muslims who, escaping persecution in Arabia, had sought refuge in Abyssinia, where Christianity was well established. It is possible, therefore, that Muhammad wisely advised them to go to the Christian Abyssinia; as reported by Ibn Hisham (d.180/833), Muhammad said to them that 'if you go to Abyssinia you will find a King with whom no one is oppressed; it is the land of honesty and

sincerity'.[30] The Muslim emigrants were welcomed by the Abyssinians and were further protected from the persecutors who sent delegates to extradite the Muslims back home. These brief examples represent the pulses of the common ground between religions and stand witness to the reality of the good relations between them as well as between Muslims and non-Muslims in both Islamic and Christian states.[31]

Thus, in this early model of an Islamic state Muhammad brought about a social transformation based upon the cultural foundation of the message of the Qur'an. The immediate purposes were to condition the pattern of thinking and actions of the citizens in order to fashion them into a new social and political unity, to maintain peace and cooperation, to protect the life and property of all citizens, to eliminate aggression and injustice regardless of tribal or religious affiliations, and to ensure freedom of religion and movement.[32] All citizens of this state were to follow, as one *ummah*, the charismatic personality of Muhammad. He was the Prophet and the Ruler but not the Sovereign. Sovereignty would not rest with Muhammad or any particular group, but with the Law founded on the basis of justice and goodness, maintaining the dignity of all groups in the community.[33]

Formative political principles

Among the principles of Islam is the rule that wealth should not be retained in the hands of a particular group of people, circulating only among them, the rest having no access to it: 'So that it be not a thing taken in turns among the rich of you' (Qur'an 59:7). This principle is usually considered by scholars with reference only to the economic sphere, based on the ordinances which are detailed in the same verse.[34] However, the ordinances in this verse have a political connotation which denotes that the same principle applies also in the political sphere. The verse suggests rules about power sharing in principles dealing with wealth and governance. Wealth and governance are firmly interrelated and influentially communicated. The power of wealth is not less than the power pertaining to governance. Wealth is usually used, in the medieval and in our modern time, as a driving force and means to government. In the medieval world, as asserted by Delisle Burns, the actual power in any European locality was entirely in the hands of large landowners.[35] The history of landlords and their role in the political arena of government, law and parliaments are often featured in the literature. Suffice it to note that in the eighteenth and nineteenth centuries, according to Green, 'England was ruled by a small class of property-owners ... Property was the key to government and the basis of representation in parliament.'[36] Even now, in the most advanced democracies of our modern world, wealth is still used as a means in electoral evaluation, election and other key processes of government. As wealth is the key to governance, retaining wealth in the hands of a particular group of people, circulating only among them while the rest have no access to it, will influence the nature of governance. This is abhorred in Islam, as detailed in verse 59:7.

Consequently, the Islamic theory of government and the state sets out that the power to rule has not been given to any one individual or class but to the people: 'everyone of you is a ruler and everyone is answerable to his subjects', said the Prophet.[37] This tradition declares that every adult citizen is entitled to express his personal opinion on matters of government. It is completely left to the community to devise the best method which enables them to implement freedom, justice, equality and human rights in the widest sense of these notions. The Qur'an speaks of rulership in terms that 'Allah has promised to those among you who believe and work righteous deeds that He will surely make them his vicegerent in the earth even as He had made people before them His vicegerent' (Qur'an 24:55). This means that the community of believers collectively are rulers and accountable for their rulership to the community. This is an anticipation of political doctrines such as Rousseau's, of sovereignty lying in the people, but with this difference – that in Islam there is no concept of absolute sovereignty among humans or human groups but only of viceregency under God, who alone is sovereign.[38]

Democratic participation is further specified through the Qur'anic indications of how the affairs of the state are to be conducted: 'they manage their affairs by mutual consultation' (Qur'an 42:38). The context where this verse occurs crystallises the matter of consultation and makes it clearly evident that this verse is not a mere statement of fact but an injunction and command. Here, what also should be noted is that the Prophet himself as a head of the Islamic state, and with his exceptional quality of being divinely guided, adopted consultation extensively in reaching decisions. For instance, he took counsel on the matters relevant to the battle of Badr and encamped some distance away from it. He also listened to the opinion which advised on digging the well-known Trench. He took counsel on the prisoners' matters during which he listened to an opinion against the opinion of 'Umar (who became the second Caliph). This clearly confirms consultation as one of the principles of government in Islam. It is noteworthy that his consultative council was not confined to a specific race or gender. According to the Arab historian al-Tabari (d.310/923), the Prophet consulted women as well as men, both Arabs and non-Arabs alike. His consultations at Badr and at the Trench or at al-Hudaybiyyah illustrate the point.[39]

The notion of democratic participation in the seventh century was further confirmed by the tradition related by the historian al-Khatib al-Baghdadi (d.127/744), quoting from the Caliph Ali: 'O Messenger of Allah! What should we do if, after your demise, we are confronted with a problem about which we find anything neither in the Qur'an nor have anything from you?' He replied: 'Get together amongst my followers and place the matter before them for consultation. Do not make decisions on the opinions of any single person.'[40] This in modern terminology is called direct democracy. Thus, choosing the ruler from among the people by the people is one of the Islamic principles. The early caliphs used to take counsel on matters of government and others where more knowledge than theirs was required.

As for the manner or the method of consultation, no particular system or model has been specified, so its application is left to existing circumstances and needs.

This consultation did not follow any established or formally defined system but left it to the Muslims to devise the best method or system of their age.[41] Also the practical circumstances determine who should be consulted in each period. Consultation could be through a system of two branches such as a senate and a house of representatives. With this in mind, there is nothing in Islam refraining the head of the state from entrusting his responsibility to somebody who is able to carry this responsibility. According to al-Mawardi (d.450/1058),

> The ministry is of two types: ministry of delegation and ministry of imple-mentation. The ministry of delegation is where the *Imam* [head of state] appoints a minister to whom he delegates authority for the organization of affairs in accordance with his judgment such that he effects them properly by his own efforts. The permissibility of this ministry cannot be denied: Allah, may He be exalted says, speaking of His Prophet *Musa* [Moses], on whom be peace and blessings: 'And appoint for me a *wazir* (minister) from my people, *Harun* (Aaron [Heron]), my brother, and consolidate my strength by him and make him partner in my affair' [Qur'an 20:29–32]. If this is permissible with respect to prophethood then it is all the more permissible regarding *Imamate* [state]; moreover the *Imam* cannot deal directly with all the organization of the *ummah* which has been entrusted to him except by appointing representatives. Representation by a minister, cooperating with the *Imam* in the organization of affairs, is also a more efficient way of executing such affairs than it alone: this minister will protect him from (the weakness of) his self and the *Imam* will thus be less likely to make mistakes and will be prevented from committing errors.[42]

In this representative form, the council of ministers or the cabinet is responsible, not the head of the state. This is similar to the system of Great Britain, where the head of the state is not responsible before the people but the cabinet is.

Consequently, there is ample space for various kinds of systems and methods which are not defined by Islam, as it is content to lay down the general principles of consultation. However, the Islamic state, in every period, by its very nature, devises a method and determines who should be consulted from among those with experience and skills of good judgement. As those authoritative texts confirm that the notion of democratic participation is not against Islam, they also do not confine democratic participation to a social class or colour and the like of those privileges which illustrate the medieval world.[43] In either case, the above texts are some of the many textual authorities which clearly confirm the Islamic notion of democratic participation in the seventh century when the word and notion of democracy did not even exist, as explored in the following discussion.

Democracy before and after Islam

It is well established that democracy existed before the birth of Islam, but the democratic attitude towards individuals and groups had never reached the kind of attitude emphasised by Islam as outlined earlier. For many scholars democracy

began in ancient Egypt in the period 2280–2132 BCE. They based their view on two documents known as 'the Document of the Wise Ebour' in Leiden Museum and 'the Papyrus of Nefrorwho' in Leningrad Museum.[44] For others, democracy was a form of political regime that had played a major role in the history of the city-state of ancient Greece in the fourth century BCE when there was a revolution against the authority of 'clergymen and religion'.[45] Also, Plato had come back to consider what was missed by Homer and arrived at the shore of ancient Egypt's idea, which appeared 2,200 years before him.[46] In either case, the fact is that the classic form of Greek democracy lasted only for about 200 years in a city-state of a few thousand privileged citizens, and was destroyed by invasion and war. Its long-term durability in the face of population growth was never tested.[47]

The disappearance of democracy continued from the time of ancient Athens until the late eighteenth century, when the early form of modern democracy appeared as a product of what is called 'mental revolution', which reached its zenith towards the end of the eighteenth century. In seventeenth-century Europe, according to Dunn (1979), 'there was no one at all, as far as we know, who identified their own political values by calling themselves democrats'.[48] The term 'democracy' did not reappear in any Western European language until the late eighteenth century and, when it does appear, it appears in political antithesis to the word 'aristocracy'.[49]

Some see the reappearance of the early modern democracy in the Virginian Declaration of Rights and the American Declaration of Independence in 1776 and in the French Declaration of the Rights of Man in 1789.[50] As for the latter, one French historian has called the Declaration the death certificate of the old regime.[51] Some others see that neither the French nor the American Declaration was a programme of democracy. Thomson emphasises that the 'French Declaration' was not a manifesto of democracy. Even the Americans had not yet instituted universal suffrage and the French contented themselves with stating that 'all citizens have the right to take part, in person or by their representatives', in forming the law and in voting taxes. That they intended neither universal nor direct democracy became clear before the end of 1789, when the Assembly drew up a Constitution. This made a distinction between 'active' and 'passive' citizens and withheld the vote from the latter, who were defined as 'those who did not pay taxes equal in value to three days' wages'.[52]

Democracy did not reappear before 1789 and, when it did reappear, it excluded a number of people from having a voice in decisions that would affect all people. In the eighteenth century, according to Green, 'England was ruled by a small class of property-owners...Property was the key to government and the basis of representation in parliament'.[53] By the end of the eighteenth century, 'the dominant view was that the State is the enemy of individual freedom'.[54]

In the nineteenth century, equality, freedom and fraternity were the watchwords of this early form of modern democracy. The democrats insisted that liberty of speech and writing were fundamental rights.[55] In this regard, John Stuart Mill's essay *On Liberty* (1858) is a classic protest against the tendency of governments to restrict this freedom. Yet 'neither Mill, nor any other leading thinker, taught that

speech and writing should be completely free in a democracy. Also, some restrictions on purely political opinions were justified'.[56] The democrats of the time did not advocate 'economic equality', for that would have run counter to their respect for 'private property'. At this time, according to Thomson, the historical connection between the belief in freedom of thought and the freedom of action put the concept of democracy, as an idea and form of government, in question. The relationship between government and citizens became one of the many pressing questions of the time.[57] This theme occupied the nineteenth century, as the prevailing view was that 'the less the State interfered in economic life the better for everyone . . . Thus democracy in politics came to be closely associated with individualism in economics'.[58]

In the twentieth century, there was a growing tendency to insist that democracy involves economic as well as political and civil rights. In a number of European countries the issue of equality, meaning that everyone should be given equal opportunities to make the most of their lives, led to the demand for civil equality, and for laws that would be the same for nobles and commoners, rich and poor. In this sense a citizen has the right to work, the right to basic wages, the right to security and care in sickness and old age.[59] Islamic and socialist movements have been particularly active in proclaiming these rights.[60] The claim for civil equality led to a gradually increasing demand for political equality, for the principle 'one-man, one-vote'. However, 'property qualification' for voting disappeared only gradually. It was not until 1918, when, for the first time, all British men were to be permitted to vote. Not until 1928 could all women vote in Britain.[61]

Subsequently, the word 'democracy', according to Marshall, has become virtually 'meaningless' in its everyday use. It has come to be used as a 'label to legitimize every kind of political power arrangement'.[62] This also is varied, as there have been several versions of democracy. The liberal democracy is one in which an elected group rules the entire group by means of election in which 'one-person, one-vote' ensures equity of political right exercised by secret ballot. The United Kingdom and the United States exemplify this form, but these two countries, according to Margolis, 'provide examples of liberalism without democracy'.[63] The second model of democracy is what is called the 'demo administration'. Here, leadership is exercised by a group of people, but decisions are made through consultation with local officials and senior public servants.[64] The third model, 'industrial democracy', indicates the participation of workers in the administration, planning and supervision of the state. There is 'demo centralism', which is a principal basis of communism and used in the election of all members of the communist ruling party from the community. The former Soviet Union exemplifies the type.[65] Mao Tse-tung of China developed his own version of modern democracy, in particular, to explain the situation in China. He believed that his model was the best model for all democracies in the world.[66]

Whether or not these and other models are truly and behaviourally democratic, Graeme Duncan emphasised that 'democratic practice throws a dark light on democratic theory. In present circumstances it might seem more fitting to come in black, ready to celebrate democracy's last rites.'[67] Each of those versions considers its model to be the best of all. Many people claim democracy as the 'ideal

and the world's new universal religion'.[68] This may be, as asserted by Duncan, due to 'the propaganda machine that is going on for quite some time propagandizing the dogmas of liberty, equality, self-determination and human rights that are violated so often'.[69]

The claim that democracy is an 'ideal' has also been challenged on certain grounds. Some of these challenges have appeared in the philosophical and moral critiques of democracy provided by both ancient and modern philosophers. Some other challenges are derived from the institutional and the procedural critique of modern critics of democracy. Plato and Aristotle, for example, argued that 'democracy, far from being an ideal political constitution, was not even a form of constitution *sui generis*, but was a distortion or corruption of something else'.[70]

If democracy is neither an ideal nor a form of Constitution, what is it then? This is another dilemma to which the modern writers turn their attention. For example, John Dunn characterises democracy as follows: 'the majority's ambivalence to a comprehensive social justice, the political instability, often tending to war and tyranny. The lack of moral virtues, promoted by a politics of ambition, popular rhetoric, majoritarianism and general licentiousness; the entrenchment of a few in long possession of office; the injustices occasioned by a superficial and the absence of genuine social or moral aims.'[71]

Supposing these problems have been considered not simply problems '*in*' democracy, but problems '*of*' the democratic process and practice, the point made by Rousseau is that 'In the strict sense of the term, there has never been a true democracy, and there never will be. It is contrary to the natural order that the greater number should govern and the smaller number be governed.'[72]

The arguments provided by Marxists and other modern critiques of democracy are no different from classical ones, but only in a new style with new vocabulary. The basis of Plato's condemnation of democracy is renewed, for instance, by Marx's view of capitalism and bourgeois life.[73] Plato's criticism of democracy is also 'felt in Marx's views of democratic licentiousness conjured up in his vision of crude Communism'.[74]

This brief outline indicates, among much else, that the concept of democracy has changed and developed in the shade of a variety of social, economic and political developments. Consequently, there are several versions and models of democracy in our modern world. While these modern versions are the most developed versions in our time, they also, as Fukuyama asserts, are not free from defects or contradictions.[75] It is, therefore, difficult to consider that the modern versions of democracy, with their defects, are the 'End of History' or lead to it. It is equally difficult to consider our present generation as the last generation or as it has been said the 'Last Man'.[76] This view, however, supports democracy's rejectionists, on the one hand, and stands, on the other hand, against the very nature of democracy, that is, at least, its 'flexibility'. It implies that democracy is rigid, and that those modern versions of democracy, with their variations, defects and contradictions, outlined by the same view, are the end of the world and the might of the human mind. I should, rather, think the various modern versions of democracy not only to admire the collective intelligence of humanity

and the role of human intellect in the development and renewal, but also to confirm the inclination and capability of the human mind to eliminate the defects and develop higher versions of democracy. History is not rigid and rigidity is not its nature. History is not history without humanity: the maker of history and the major player in its events. Humanity is not an isolated atom in this universe but essential in it. Neither humanity nor human talent is rigid, just as rigidity is not in the nature of the universe, life and humanity. Development and renewal are the natural course of human activity, just as they are concerned with their life on this planet. We should not take these modern versions or models of democracy as rigid and mutually exclusive classifications of civilisations, culture and thought. In short, who can assure us that the wheel of time will stop tomorrow? Who can assure us that human mind and the progress of time will not reveal new versions or models of democracy more advanced than those of our time? If we surely know yesterday, who knows what tomorrow brings? The thesis of the 'End of History and the Last Man' has been challenged by the pre-Islam Arabian poet Zuhayr Ibn Abi Sulma (d.609)[77] in these words:

> What you do not know, the days will bring to light
> And provide you with news that you have not been supplied.
> I know what today unfolds, what before it was yesterday
> But blind I stand before the knowledge of what tomorrow brings.[78]

In summary, the injunctions above indicate that Islam and democracy are not incompatible. Even if by democracy is meant a system of freedom, justice, equality and human rights, Islam has the inclination and capacity to work them better. The notion of democratic participation emphasised by Islam and practised by earlier governments is still valid and still challenging the political thinkers of Islam.[79]

Currently, Muslims need, more than ever, to face the reality and to develop democratic models most suitable to their circumstances which do not violate the legitimate right of self-determination of individuals and groups both within and outside the Muslim countries. This does not mean, if they wish, either to imitate or make a hard copy of any existing democratic model, or to ignore any of their versions, or this great human achievement in the field of democratic participation worldwide, old and modern.[80] Ignoring human achievement is not Islamic. It is, however, a violation of the first Qur'anic command to 'read' as well as other commands that require persons 'to know' (Qur'an 2:106,107; 10:14), 'to see' (Qur'an 30:9), 'to think' and 'to understand' (Qur'an 2:44). This was further illustrated by the Prophet's *hadith* which orders Muslims to go to acquire knowledge even if that knowledge is from China. The Prophet was well aware that China, at that point of time, was not a Muslim country and that its knowledge was not Islamic. On this basis, the distinction between books as Islamic and non-Islamic, in the ideological sense, should be reconsidered. Early Muslim scholars translated and learned from Greek, Persian and Roman civilisations. Muslims should step out of their paradigm and learn from other civilisations how to deal with their modern problems.

In any case, anyone who investigates Islam will be in no doubt that the notion of democratic participation is clear and prominent in both Islam's rituals and social prescriptions, and is the dominant notion that pervades Islam's whole existence. If in some ages we see an effort to overemphasise the devotional side of Islam and separate it from the social side, or understate the notion of democratic participation, that is the problem of the age and its mentality, not the problem of Islam.

The modernists and democracy

This section investigates the concept of democratic participation in the thought of the pioneers of reform. Al-Tahtawi, al-Afgani, 'Abduh and Rashid Rida are among the powerful modernist Islamic thinkers on modern democracy, who argued for rational reform and adoption from Western ideas and institutions whatever is in agreement with Islamic law and develops Muslim society. Their discourse is occupied generally by the theme that there is not any inherent conflict between Islam and modernity.

The notion of democratic participation occupied the mind of Muslim political thinkers in both the medieval and modern epochs. The first Islamic state and the practice of the earlier governments which succeeded the Prophet left a few methods that have been described as democratic models;[81] also the word 'democracy', which disappeared in 300 BCE Athens,[82] was not explicitly mentioned but its 'positive' features and values were extensively practised through the prism of consultation or the *shurah* institution.[83]

In the modern age, democracy reappeared in the West in the eighteenth century and has preoccupied the political thinkers of Islam since then.[84] Thinking about why Muslim countries were backward, the Islamic reformist movement favoured Western achievements. Muslim thinkers found their history to have had occasional fanatical rulers who tried to impose their radical views. It was necessary for the reformist movement to deal with the fixed models of classical thinking and Islamic thought handed down to them from the earlier centuries. The constitutionalists – the pioneers of reform and democratic thinking, most notably al-Tahtawi, al-Afghani and 'Abduh – emphasised that regeneration of Islam and the acceptance of the positive features of Western norms and ideas were not at all incompatible. These thinkers approached Islamic traditions rationally in a way that does not constitute a general break with the Islamic cultural past; rather their approach facilitated Islam's development and renewal.[85]

The pioneers of reform provided their Muslim community with an unmistakable egalitarian and liberal discourse, emphasising openness and tolerance. They advocated a rational and critical reading of the works of classical Muslims. While reformist scholars were, and continue even today, to be outnumbered by their traditionalist counterparts, they have exerted a profound and far-reaching influence on modern Islamic thought and contemporary Muslim society. Their influence can be seen in the increasingly open views adopted by leading figures within the traditionalist schools. Several influential and widely respected jurists

within traditionalist circles of our time are on record as supporting democracy, parliamentary government and other ideas that could not have been addressed, just a century earlier, without branding them as heretics. They were able to reach some sort of a compromise between tradition and renovation. Recent leading scholars such as Muhammad Abu Zahrah, Mahmud Shaltut, Muhammad al-Ghazali, Yusuf al-Qaradawi, Sayyid Tantawi, Salim al-'Awwa and Fahmi Huyadi, have advanced a more open and tolerant vision of modern Islam, and have emphasised the values of democracy, freedom, pluralism and equal protection of the law. This intellectual revolution would certainly have not been possible without the pioneers of constitutionalism, whose generation begins with al-Tahtawi.[86]

Al-Tahtawi (1801–1873)

The Egyptian Rifa'ah Badawi Rafi' al-Tahtawi graduated at al-Azhar University and was sent, by Muhammad 'Ali the Egyptian ruler, to Paris, where he learned and closely observed the enlightenments of the French Revolution for five years (1826–1831).[87] On his return, Tahtawi brought some leading ideas taken from European liberal thought that left their mark on him and through him on the Islamic political thought of the age. The most dominant of these ideas were nationalism, freedom, law and rationality as a source independent from religion for true human knowledge. He diagnosed the illness of the Muslim community as being due to lack of freedom, justice and equality. Speaking of society, he says:

> The society is a university where all students, Muslims and non-Muslims, get together under its roof; all are equal and brothers with no distinction between them on any basis of religions or colours.[88]

Tahtawi's political discourse implements the notion that the nature of society and the function of government were different from what they had been in the past. He emphasised that the *'ulama* should have a modern education and all citizens should have a political education. Girls must be educated as much as boys, and on the same footing.

In 1834, three years after his return to Cairo from Paris, Tahtawi published his first book, *Takhlis al-Ibriz fi Talkhis Bariz* (Liberation of the Pure Gold in the Summary of Paris); the title indicates the contents of the book and reflects the pulses of the author. Tahtawi selected those four Arabic words, in this poetical title, to suggest that the 'pure gold' (*al-Ibriz*) of Islam is in captivity and that the 'liberation' (*Takhlis*) of this pure gold is in his book or the 'summary' (*Talkhis*) of 'Paris' (*Bariz*). This theme provides the framework of his book. It summarised his observations of the manners and customs of modern France, and praised the values of democracy as he saw it in France and as he witnessed its defence and reassertion through the 1830 Revolution of the republicans against King Charles X (1757–1836). Tahtawi tried to show that the democratic attitude towards the individual and groups is compatible with the law of Islam. He compared political

pluralism with forms of ideological and jurisprudential pluralism that existed in
the Islamic experience.[89]

In translating the French Constitution, Tahtawi focused on those particular
items which declare and deal with freedom, justice and equality. Speaking of free-
dom, Tahtawi outlined five specific interrelated types of freedom:

> All French are equal before the *shariʿah* . . . The French's glorification of
> Freedom as a comprehensive expression indicates the higher level of jus-
> tice . . . There is natural freedom, freedom of behaviour, religious freedom,
> civil freedom, and political freedom . . . Freedom of this type is a great means
> of development and prosperity.[90]

Religious freedom is the freedom of belief, of opinion, provided it does not con-
tradict the fundamentals of Islam. The same would apply to the freedom of political
practice and opinion by leading administrators who endeavour to interpret and apply
rules and provisions in accordance with the laws of their own countries. Kings and
ministers are licensed in the realm of politics to pursue various routes that in the end
serve one purpose: good administration and justice.[91]

Tahtawi's advocacy for democracy continued in various capacities in his publi-
cations and wherever he worked in schools or higher institutions. He postulated that
a regeneration of Islam and an acceptance of the 'positive' features of Western civil-
isation were not incompatible. He campaigned for interaction with the European
civilisation with the objective of borrowing from it that which does not conflict with
the established values and principles of the *shariʿah*. These ideas would not have
been strange to one brought up in the tradition of Islamic political thought. In his
response to those who opposed the idea of learning or borrowing knowledge from
Europe, Tahtawi says:

> Such people are deluded; for civilizations are turns and phases. These
> sciences were once Islamic when we were at the apex of our civilization.
> Europe took them from us and developed them further. It is now our duty to
> learn from them just as they learned from our ancestors.[92]

From his experience in France, Tahtawi emphasised that the power of the ruler is
not absolute. The ruler should be tempered by respect of the law and those who
preserve it. The government should be in the hands of 'the people'.[93]

Khayr al-Din (1810–1899)

The Tunisian Khayr al-Din Pasha is another important luminary of reform in the
nineteenth century. He also was given a modern as well as religious education;
learned French in addition to Arabic; and was sent to France for about four years
that served as formative years for him as they were for Tahtawi. Both men advo-
cated democracy and left their marks on the Islamic political thought and the
mentality of the age. In 1867, Khayr al-Din published his book *Aqwam al-Masalik*

fi Taqwim al-Mamalik (*The Straightest Path to Reforming Governments*). In the introduction, Khayr al-Din outlined his observations and thought about the situation of the Muslim community in comparison with the development in the West at the time. He outlined the causes of strength and weakness with special focus on civilisation, and more importantly the role of the state in Western society in comparison with the weakness and backwardness of Muslims.[94] He suggested that reform and development of Muslim society is unachievable without studying Western civilisation and culture and borrowing ideas and institutions from them; doing so is not contrary to the *shari'ah*, but in harmony with its spirit and fundamentals of freedom, justice and human rights. He outlined his thesis as follows:

> Thinking about the developed and the undeveloped nations; I find that reform and development of the Muslims cannot be achieved without learning and studying the developed nations to identify wherein lies the strength of Europe and adopt it...we should borrow from these developed nations what is in harmony with the *shari'ah* and not in conflict with it...The nature of Islamic *shari'ah* makes it capable to unite this world and the other; that is to fulfil the needs of both worlds...Organizing the affairs of this world is fundamentally important for the straightness of religion.[95]

Khayr al-Din was tackling the question of political reform in the Muslim world. While appealing to politicians and scholars of his time to seek all possible means to improve the status of the community and develop its civility, he warned against rejecting the experiences of other nations on the basis of the misconception that all the ideas and experiences or attitudes of non-Muslims should be rejected or disregarded. He emphasised that the development of the Muslims cannot be achieved without reforming the social order and borrowing from the European systems. The democratic attitude in Europe was the direct outgrowth of reformation and the Renaissance. He called upon Muslims to reform their systems on the basis of the Western democracy in which the ministers are responsible before the elected parliament. He based his argument on the idea that the parliament in Western democracy is similar to the consultative or *shurah* council in Islam. He supports his argument with a number of authoritative texts of *shurah* and the election of its members.[96] Focusing on those authoritative texts, Khayr al-Din made his intention clear that he is

> Debating those statesmen and men of religion to adopt, as much as they can, whatever is of benefit to the welfare of the Muslim community and the development of its culture and civilization, such as the expansion of the bounds of science and learning and the preparation of the paths which lead to wealth and prosperity...and the basis of all this is good government. Warning those heedless of Muslims against their persistence in closing their eyes to what is praiseworthy and in conformity with our own religious law in the practice of adherents of other religions, simply because they have the idea engraved on their minds that all the acts and institutions of those who are not Muslims should be avoided.[97]

As for Tahtawi, Khayr al-Din has no intention to break with the Islamic past or to change Islam, for instance, but to understand it better in the modern context and explore new means and methods to implement it. His exposition and arguments both were heavily based on the authoritative texts and the explanations of ancient and contemporary scholars. To implement his reform plan, Khayr al-Din was able to reform the teaching at the Zaytunah Centre; to improve and expand the press; to create a general public library; and to establish a modern school where Western languages including French and Italian in addition to Arabic were among the curriculum, which includes, among other subjects, modern sciences as well as Arabic and Islamic literatures. Khayr al-Din believed that the adoption of democracy would put Muslims on a faster track towards development and prosperity.[98]

Al-Afghani (1838–1897)

Jamal al-Din al-Afghani, the celebrated Afghan, pointed out that the weakness and decline of Muslims were due to the corrupt government, the absence of justice and consultation (*shurah*). Al-Afghani has been regarded as the foremost formulator of Pan-Islamism in modern times. He was calling for an Islamic league. For the cause of reform, al-Afghani travelled to Europe and the Muslim world from India to Constantinople.[99] His influential character and ideas helped him in winning, towards his cause, the people of any country he visited. In Egypt, he lived for seven years and won over such powerful thinkers as Muhammad 'Abduh (later Rector of al-Azhar), Sa'd Zaghlul (leader of the Egyptian nation), and the leading Syrian scholar and journalist Rashid Rida and many others who played a substantial role in Islamic reform in modern history.[100]

Among the many objectives of al-Afghani was that of the relation between religion and polity. He felt that the processes of reform and democracy should come from the people themselves. The people must be educated to know their rights (political or others), and to know how to use their rights for reform and democracy. Within this framework, the aim of his teaching was to create the condition that allows people to have their say in decisions governing the affairs of their life. People should be allowed to assume their political and social role by participating in governing through *shurah* and elections. He was addressing these and other issues of interest in forms of theology, jurisprudence, mysticism and philosophy.[101]

In every country he visited, al-Afghani emphasised the urgent need for a local or a national unity to resist colonialism, the need for a broader unity of the Muslim peoples and the need for a constitution to limit the power of the rulers. To implement these ideas, al-Afghani encouraged his students to write, to publish scholarly journals and newspapers, and to form public opinion. He was able to arouse the feeling of national consciousness. In Egypt, al-Afghani was not on good terms with Khedive Isma'il who ruled in the period 1863–1879;[102] he was however on friendly terms with Isma'il's son Tawfiq. When he came to power (1879–1892), Tawfiq invited his friend al-Afghani to the palace, where a dialogue occurred between them that was later published by al-Afghani in *al-'Urwah al-Wothqa* (The Firm Bond).

The Khedive said: 'I do like to see the happiness and prosperity of the Egyptians; and I do like to see my country and my people in the highest levels of development and success, but the majority of the people are lazy and illiterate . . . Also, your teaching will lead the people and the country to further deterioration and destruction.' Al-Afghani responded: 'Your majesty; if I am allowed to freely say a word, I would sincerely say that the Egyptians are people like any people in this world have the lazy and illiterate, but this does not exclude the possibility to find the rational and the learned as well. The Egyptian people evaluate you through the same prism through which you evaluate them. If you accepted my advice to reform and allow people to have their say and to involve in the government of their country, you should issue your kind decree allowing for parliamentary election and legislative council, all of that will also help to stabilize your throne and strengthen your authority.'[103]

It was for this or other reasons that Khedive Tawfiq had al-Afghani deported. Al-Afghani left for India. He thought that Tawfiq was under pressure from the British Consul-General and feared al-Afghani's influence over the people, in particular the educated class in Egypt.[104]

Al-Afghani spent the next few years in India, and in 1884 he was in Paris, where he joined Muhammad 'Abduh, and together they established the society of *al-'Urwah al-Wothqa* (The Firm Bond). This Arabic periodical is well known for its political, social and intellectual line of Islamic reform. Because of its language and focused thought, the journal became one of the most influential of Arabic periodicals ever; it was circulated widely in Muslim countries and left indelible impressions on the thought of the later generation.[105]

Under the title 'The Despotic Government', published in Egypt on 14 February 1879, al-Afghani outlined that the decline of the Muslim world is the direct result of the dictatorship systems. It is because of those tyrannies that thinkers could not enlighten the Muslim public about the essence and virtues of the 'republican government', he says; 'it is a source of happiness and pride'. He goes further to assert that 'those governed by a republican form of government, alone deserve to be called human; for a true human being is only subdued by a true law that is based on the foundations of justice and that is designed to govern Man's motions, actions, transactions and his relations with others in a manner that elevates him to the highest level of true happiness'.[106] Al-Afghani's usage of the word 'republican' does not mean he advocates a fixed form; it is only a matter of translation of his Arabic word *jumhuri* (i.e. publican and republican) by which he means the government should not be absolute; there should be a restricted form of government. It is a government of the *shurah* in which the ruler consults the ruled, for the welfare of the individual and the community as well as for the state. The government is responsible for the people and should consult them, relieve them of the burdens laid upon their shoulders, and lift them from the state of decay to the highest level of perfection. Speaking of his early mentor and later colleague, Muhammad 'Abduh stated that

Al-Afghani was a thinker, philosopher, and writer with deep awareness and connections with the world's ideological and intellectual movements. He appeared always with a modern mentality accepting many of the modern ideas of his age. It was also not difficult for him to verify all of that with his tongue and his pen; that Islam is not and never was a body without spirit; he sees Islam, if those mythical and alien papers brushed away, will remain a living power compatible with the ideas of Western civilization, and able to fulfil the needs of the people of any age. Focusing on the political and social spheres of Islam, al-Afghani was well informing that the essence of Islam is liberty, while democracy is its component; it gives the people the rights to involve in the administration of the state and instructs them to watch over the government.[107]

Al-Afghani was of the view that the government in Islam is limited, neither tyrannical nor hereditary, neither based on estate nor wealth nor privilege: 'It derives only from the ordinances of *shari'ah*, the activity to implement the law, and the community's satisfaction.'[108]

'*Abduh (1849–1905)*

Muhammad 'Abduh, the legendary Egyptian, is widely considered one of the most important historical figures. In the pantheon of Egyptian enlightenment figures, 'Abduh was not only a versatile intellectual who occupied a range of positions: professor, grand Imam and mufti, and editor, but also a pioneer who managed to introduce new approach in each of these fields. He made invaluable contributions not only to religious teaching but also to nationalist politics and the Egyptian intellect. His protégés include Rashid Rida ('Abduh's official biographer); Qasim Amin (the backbone of the wonen's movement); Mustafa Abd al-Raziq (Rector of al-Azhar, 1945–1947); Taha Husayn (the prince of Arabic literature is a major figure operating both in and out of the religious establishment).

Graduating at al-Azhar in 1877, 'Abduh worked for the government in various capacities. He served as a judge on the National Court of Appeals; he taught at al-Azhar school of languages and *Dar al-'Ulum* – a new faculty established in Cairo to provide a modern education – a cross between al-Azhar and a modern Western university. While an undergraduate, 'Abduh came under the influence of al-Afghani, who was visiting Cairo. 'Abduh was the most devoted of the students who gathered around al-Afghani in Cairo. Al-Afghani's ideas on liberty and human rights were not welcomed by the colonialist-backed governments in the Muslim countries. This also influenced his students. When al-Afghani was deported from Egypt in 1879, his disciple 'Abduh was dismissed and sent home to the Nile Delta, only to be recalled to Cairo, a year later, to become the editor of the official gazette, *al-Waqi' al-Misriyyah* (Egyptian Affairs), in which he published a number of articles also calling for various political, religious and social reforms.[109]

After a short stay in Syria, 'Abduh joined al-Afghani in Paris, where together they established the famously influential Arabic periodical *al-'Urwah al-Wothqa* (The Firm Bond). The first issue was on 13 March 1884; and only eighteen issues were published. The editor-in-chief was 'Abduh.[110] In 1885, 'Abduh left al-Afghani in Paris and returned to Beirut where he taught at an Islamic college, but in 1888 he was in Cairo and soon was appointed a judge. In 1895, 'Abduh became a member of the newly formed administrative council of al-Azhar University, and in 1899 he was appointed Grand Mufti of Egypt and a member of the Legislative Council. Indeed, his various legal posts also inspired him to formulate a legal approach to reforming the administration of the *shari'ah* courts. His *Taqrir fi Islah al-Mahakim al-Shar'iyyah (A Report on the Reform of Shari'ah Courts)*, which was published in 1900 (five years before his death in 1905), and recently edited by the current Grand Mufti 'Ali Gum'ah and republished in Cairo, demonstrated 'Abduh's reconciliation of faith and reason.[111]

'Abduh mastered the French language and read widely in the European thought of the age. His library contained the writings of the leading Western thinkers, including Rousseau's *Emile*, Spencer's *Education*, the novels of Tolstoy as well as his didactic writings, Strauss's *Life of Jesus* and the works of Renan. He was in contact with European thinkers, wrote a letter to Tolstoy and went to Brighton to see Spencer; he visited the House of Commons and was on good terms with Lord Cromer as well as with Wilfrid Blunt, the most eloquent of 'Abduh's critics. 'Abduh's intellectual legacy, which opposes despotism and champion's freedom, law and rationality, was imprinted on Muslim community and politics, on all spheres of Islamic thought and on the pages of the hearts and the minds of many thinkers of Islam in the liberal age.[112]

'Abduh made it clear that neither the achievement of the West nor the failure of the East was due to religions. He believed that Islam's relationship with the modern age was the most crucial issue that Islamic communities needed to deal with. In an attempt to reconcile Islamic ideas with Western ones, he focused closely on *shurah* (consultation) as an Islamic principle that limits the power of government.[113] Among other ideas that 'Abduh employed were two principles known in Islamic jurisprudence as *sadd al-zara'i* (blocking the means)[114] and *al-masalih al-mursalah* (public interest).[115] The scope of these two principles is wide and includes what fulfils the interests of society of any age and generation within the framework of Islam.

The term *masalih mursalah* refers to the benefit or public interest of a type about whose validity no specific or a direct authoritative text (*nass*) speaks of. It refers to the circumstances when an act, a decree, law or a commandment is decided purely on the rational basis of public interest without being based on or restricted by a passage from the Qur'an or the *sunnah*.[116] The very idea and the methods by which the successors of the Prophet were elected to the office is one of the many examples of *masalih*.[117]

As to *sadd al-zara'i* (blocking the means), it is to eradicate the means, causes, devices and excuses. The crux of this principle is that the means to something forbidden is itself forbidden, and the means of something obligatory is itself

obligatory.[118] For example, if compelling someone to believe in your religion is forbidden, then all means, excuses and devices that lead to compulsion are themselves forbidden. If despotism is not Islamic, then all means, excuses and devices that lead to despotism are themselves not Islamic. If freedom, justice, equality and human rights are Islamic, then all means and devices that lead to liberty, justice, equality, fraternity, and human rights are themselves Islamically valid.

Thus, while the basic principle with *masalih mursalah* is to look at the interest of the people, the basic principle with *sadd al-zara'i* is to look at the outcomes of actions and their overall results. In either case, the aim and objective of these two principles are looking into the interest of the people and the welfare of the society. What should be noted here is that while both *masalih* and *zara'i* give the ruler or governor the authority to deal with whatever matter of public interest, the given authority is also not absolute or without restrictions and limitations. Among the restrictions are that the ruler must be 'just' and not a dictator, and that the consultation (*shurah*) must be implemented in decisions concerning any matter of public interest (*masalih*). Thus, the ruler's decision on any matter of public interest is restricted, whether the relevant specific authoritative texts exist or not. While the decision is not based on any specific passage from the Qur'an or the *sunnah*, its validity and utility comes from the rationale of public interest as well as the collective intelligence of consultation (*shurah*). The early *Imams* developed these principles and used them in varying capacities in jurisprudence. Indeed, it has been calculated that the attitudes of *masalih mursalah* (public interest) and *sad al-zara'i* (blocking the means) account for half the legislation in all Islamic spheres, political and others.[119]

In this context, 'Abduh considered public interest (*masalih mursalah*) in Islamic thought to be correspond to utility (*manfa'a*) in Western thought.[120] The 'just' ruler may devise or introduce ideas that he sees as being in the interest of the community. Here, 'Abduh's usage of both principles (*al-masalih*) and (*al-zara'i*) reflects the restriction and limitation, that is, that the ruler's power is not absolute but strictly limited. 'Abduh emphasised that the 'just' ruler should not introduce new norms, ideas or laws that rise above the capability of the subjects or above that permitted by the attitudes of the society. 'Abduh says:

> The ruling power is dependent on that of its subjects and takes no steps unless on the latter's part there is some directing to do so. We do not deny that the ruling power must be dependent on to take the actual steps and compel or persuade the subjects to accept them; but only insofar as the subjects are able to tolerate it. The diversity of forms of governments and changes in their laws are dependent on the dictates of the national spirit, which means, in reality, the condition of the subjects.[121]

'Abduh means that while the code of *masalih mursalah* gives the ruler the right to introduce new norms and deal with issues on the rational basis of public interest, the code does not exclude the voice of the people or the public opinion (*al-ra'y al-'am*) in the ruler's decision. In this context, 'Abduh emphasises that the ruler should not introduce new norms or ideas before informing the people and

educating them. The changes in social outlook must precede sweeping reforms, as 'Abduh says:

> The form of civil order in a society is only the image of the substance of the characteristics its members have acquired through the habits and customs that have grown in them, whether praiseworthy or reprehensible. The different laws they have had in their periods of rise and decline cannot be detached from these characteristics, no matter how much those laws may have changed in form or subject matter. This has been recognized by those wise persons who have striven first of all to change people's characteristics and manners, whenever they wanted to establish a well-defined order in the society. They therefore gave priority to good education.[122]

'Abduh continues by suggesting that once the people are educated and the nation is well informed, it is then the collective intelligence in the form of public opinion (*al-ra'y al-'am*) that determines the proper system or norms of behaviour. This enlightened public opinion, 'Abduh asserts, is the 'focal point on which all types of diverse ideas converge...[this is] the most expeditious and natural course'.[123]

Consequently, 'Abduh focused on representative government as a 'natural' outcome and the best form once the population is enlightened. In this regard, he asserts, 'From what we have said, it is clear that the best and most beneficial of laws is that emanating from public opinion.'[124] The specific content of the laws should vary with the circumstances. What is important is to establish a unity of concern and viewpoint within the society.

> It is enough for individuals to set themselves to aspire to the truth and to seek to arrange their interests in a way compatible with those of the country and the circumstances of the people. And let it not be imagined that the just law based on liberty is that which is modelled entirely on the civil principles and political foundations of other countries...Many a law is suited to the interests of one people but not to those of others.[125]

This means that representative government might take varying forms and models.[126] While 'Abduh reflects on the various versions of democracy, he also emphasises that the essence of human *nature* and the *nature* of human society imply that men are well informed to apply their collective intelligence to the circumstances in which they find themselves, and this also can be discovered simply by examining the record of other nations. At this juncture, 'Abduh based his view on rational grounds, as he usually did, but within the framework of Islam and its spirit. He seeks to establish that laws should be based on the interests of the people and their collective reason. To him, collective intelligence corrects the errors of individual reasoning. He pointed out that the individual cannot rise above personal desires and self-interest, ambitions and personal inclinations with which he is surrounded. This facet of human *nature* is true for the ruler as well as for the subjects.[127]

Focusing on the society – its interests, collective will, collective reason and collective intelligence, all these interrelated and communicated ideas – enabled 'Abduh to view *shurah* (consultation) as a genuine restriction on the ruler's power. The government then is not absolute or autocratic, and it is not theocratic or any form of these word groups. 'Abduh insisted that 'the authority of the governor (*hakim*) or that of the judge (*qadi*) or that of the *mufti*, was civil…Islam is a religion of sovereignty, of authority, and of unity between this world and the hereafter. Islam is a spiritual, social, political, civilian, and military system. Its military force is to protect the liberty of man, human equality, justice, and human rights, and not to force others to embrace Islam.'[128] Here 'Abduh distinguishes between dictatorship and limited authority. For 'Abduh as for a large number of Muslim thinkers the Islamic institution *shurah* is established by the Qur'an and the *sunnah* as a principle of representative or constitutional government.[129] He was a proponent of the parliamentary system and defended pluralism, refuting claims that it would undermine the unity of the Muslim community. He argued that European nations were not divided by it. 'The reason', he concludes, 'is that their objective is the same. What varies is the method they pursue toward accomplishing it'.[130] He opened the gate very wide for *ijtihad* to address the emerging priorities and problems with the mind of the modern age; he turned the wheel back to democracy known to Islam; he liberated Islamic thought from the imitation of the customary paradigms of interpretation; he strongly believed in the close friendship between religion and sciences with no clash between them; he himself represented a good example of the harmonious relationships between the Islamic and Western civilisations.[131]

Al-Kawakibi (1854–1903)

Abd al-Rahman ibn Ahmad al-Kawakibi, the prominent Syrian reformist, worked as an editor of various newspapers and periodicals, held certain official posts in the government and later worked as a lawyer. He was well versed in the Arabic, Turkish and Persian languages, and used these in his writings in the newspapers and literary journals, including *al-Manar*. Because of his sharp and focused style of criticism against dictators of the time, his independent literary journal *al-Shahba*' (the Grey)[132] was closed after only fifteen issues.[133] He established another one called *al-I'tidal* (Moderateness) and issued it in both Arabic and Turkish languages like the previous one. The journal was also calling for social and political reform and advocating freedom, justice and equality, but again the authorities closed it down. Finally, he left Syria for Egypt where he was welcomed by the intelligentsia and began to write in *al-Mu'ayyad*.[134] His style of criticism was moderate but still criticising dictatorship. In addition to his large number of articles that were scattered in the periodicals, al-Kawakibi left us only two major works: *Taba'i' al-Istibdad wa Masari' al-Isti'bad* (The Nature of Despotism and Arenas of Enslavement) and *Umm al-Qura* (The Mother of Villages).[135]

In these two books, al-Kawakibi's ideas are generally of the type of 'Abduh's. In his book on despotism, al-Kawakibi made it clear that his book was not against

a particular government or a dictator, but that he simply wanted his readers to be aware of the reasons behind the decline of the Muslim community. He tried to define despotism and to explain its various forms with special attention to political despotism. He discussed the relationship between religion and despotism and focused on what he called the 'inseparable bond' between politics and religion. His discourse reflects 'Abduh's ideas as well as those of Voltaire, Rousseau and Montesquieu and in particular, the Italian Alfieri's work on 'despotism'. In the preface of his book, al-Kawakibi himself made it clear that he has borrowed a certain amount from Alfieri's view on the subject. In the *al-Manar*, Rashid Rida pointed out that al-Kawakibi's view of Muslim society has been taken from Western authors.[136] Although, al-Kawakibi's criticism of Muslim rulers was sharp and focused, his criticism of the last Ottoman Caliph Sultan Abd al-Hamid II (1842–1918) was even harsher.

> At the Sultan Abd Al-Hamid's Royal Court, the Caliph thinks that he is ruling (*yahkum*) and despotising (*yastabid*) in the name of Allah and in His name that he kills and sinks, burns and oppresses; and around him those with beards and turbans, among them Abu al-Huda al-Sayyadi, all pretend, to the Caliph as well as to themselves and the people, that this rotten form of rule is the legitimate (*shar'*) of Allah, and that this rule is religion; and that in the name of Allah as well as in the name of Religion the Caliph must oppress the people, and their heads must bow down, and that the humans must be slaves and live like herds of animals; they have neither freedom, nor opinion, and have no will; that is only because the freedom, the opinion, and the will, all are exclusively the right of the Caliph who is sitting upon the throne of Allah; they also have no dignity or honour only because the dignity and the honour are all exclusively the rights of Abu al-Huda al-Sayyadi.[137]

Explaining the reasons why the Muslim community declined and became easy prey for the nineteenth-century colonial powers, al-Kawakibi, like his contemporary 'Abduh, attributed the decline of Muslims to the ignorant rulers and politicians. As to the rulers, he emphasised that 'the tyrannical attitudes of the rulers made it difficult for the ordinary people to distinguish, in their worship, between God and the ruler. If the people have not focused on the ruler, they at least do not know to whom they should direct their questions; to the ruler or to God.'[138]

As to despotism, al-Kawakibi dealt with it as a fundamental factor of the decline of Muslim community. He emphasised that despotic government is not the product of Islam. Islam teaches Muslims the principles of freedom, human dignity and governance by contract, the rule of law, and overall it gives the people the right to use the legitimate way to remove from office any despotic government.[139] He pointed out several forms of despotism and outlined their characteristics. The worst of all, in his view, is despotism of ignorance (*jahl*) over knowledge (*'ilm*), and that of the soul over the mind. The more he focuses on despotism and seeks how to fix it, the more he shifts his plan for reform to focus on the highest public office. Therefore al-Kawakibi's plan for reform begins from

the top office.[140] In this context, al-Kawakibi's plan for reform was similar to al-Afghani's but different from 'Abduh's plan, which prefers to begin from the wider society to educate the people first and make them aware of their rights and the legitimate way for political change.

Al-Kawakibi attributed the success of Western nations to the adoption of the rule of law, to 'the rationally extracted and practised rules that have become social duties in these advanced nations which are not affected by what appears to be divisions or groups, because such a division is only over the methods of applying the rules and not over the rules itself'.[141] Al-Kawakibi concludes that 'God has made the people to be responsible for the actions of those whom they choose to the office. When a community fails in its duty, God causes it to be subdued by another community that will govern it, just as happens in a court of law when a minor or an incompetent is put under the care of a guardian. When, on the other hand, a community matures and appreciates the value of liberty, it will restore its might; and this is but fair.'[142]

Al-Kawakibi chooses for his second book the title *Umm al-Qura* (The Mother of Villages) for two reasons: (i) the book is completely based on a conference held in Mecca and (ii) the mother of villages is the Qur'anic name of Mecca (Qur'an 6:92; 42:7). For this book, al-Kawakibi travelled up and down in the Arab and Muslim countries and invited their leading scholars for a conference organised in *Umm al-Qura* (Mecca) during pilgrimage (*hajj*). All those scholars who were invited attended the conference, except one scholar whom al-Kawakibi referred to as the author or the writer from Beirut (*al-Adib al-Bayruti*). The delegates continued their meetings daily and completed the conference in their thirteenth meeting. It was from here that al-Kawakibi drew the twelve chapters of his book *Umm al-Qura* to be a direct record or minutes of this conference, but the conclusion was by al-Kawakibi himself.[143] This book then reflects the thought of al-Kawakibi and the leading scholars of the Muslim world at the time.

In a sense, the style of the book is novelistic. Instead of referring directly to the names of the scholars who attended the conference in Mecca, al-Kawakibi constructs a series of dialogues involving fictional characters whom al-Kawakibi describes as thinkers, each belonging to a known district in the Muslim world. As this method was perhaps to avoid the authorities' restrictions and censorships, the literary style added so much value to the book and made it interesting and widely read. For instance, among the characters that al-Kawakibi employed in his book was one called 'al-Baligh al-Qudsi' (the wise from al-Quds: Jerusalem). Reflecting on the historical reality of what went wrong, the fictional character 'al-Baligh al-Qudsi' considers the cause of tepidity to be the change in the nature of Islamic politics. It was parliamentary and socialist, that is, perfectly democratic. But due to the internal feuds, after the first four caliphs, it was transformed into a monarchy and absolute heredity. Al-Rumi, another character, considers that the calamity has been the loss of liberty. In conclusion, al-Kawakibi stresses that progress is linked to accountability, while regress is linked to despotism.[144]

The book *Umm al-Qura* outlined the religious, political, moral, Ottoman politics and administration and some other diversities as general causes of the

decline of Muslim community. Each of these causes was divided into some specific factors. Among the general and specific religious causes are 'the literal interpretation of the text', the reliance on the blind imitation (*taqlid*), the abandonment of *ijtihad*, and negligence of the authoritative texts and the forms of earlier leaders.[145] As to the general and specific political causes of decline, al-Kawakibi pointed to many factors, among which are political despotism, the absence of freedom of speech and work, the lack of justice and equality of rights, the short-sightedness of the policies of Muslim rulers, the lack of accountability and responsibility, and the focus of politics on taxation and military issues.[146]

Rashid Rida (1865–1935)

The Syrian scholar Muhammad Rashid Rida was attracted to 'Abduh's ideas in 1894 when the latter was in Syria. In 1897, Rida moved to live in Cairo where he established himself as 'Abduh's closest disciple. 'Abduh's disciples were numerous but none other than Rida could claim this honour. Rida established his scholarly journal *al-Manar* (light-stand or signpost), and *al-Manar* Publishing Press, and devoted his career to collecting and interpreting 'Abduh's ideas and elaborating on his teachings. This journal was the beacon of reform on the basis of 'Abduh's ideas.[147] From 1898, when the first issue appeared, until the death of Rida in 1935, about thirty-five volumes were published. By 1935, the Muslim Brotherhood organisation, which was established by Hasan al-Banna in 1928, was seven years old. After the death of Rida, the Brotherhood continued to publish his journal *al-Manar* for a few years and then replaced it with 'the Muslim Brotherhood' journal.[148]

It is surprising then to note that the starting point for Rida as for 'Abduh and Afghani is the question of the decline and illness of Muslims: what went wrong? Seeking an explanation for weakness and decline, Rida says:

> Muslims say that the cause of their sovereignty was religion, and that turning away from it led them to decay . . . Some of them think that religion has an irrational or a magical secret that enables them to attain victory and gives them success by the way of miracles. On the other hand, researchers of human behaviour, in their own time of the past, say that the weakness of the nations comes from their occupations by foreigners . . . and the success of other states all takes place according to natural laws which do not change in any way. God guided man's attention to two paths. Whoever followed the path to progress and sovereignty, taking into consideration God's law, arrived at his destination, whether he was a believer or disbeliever, while whoever followed the path to dependence on mental service of others, and allowed himself to be subject to their laws, arrived at that destination, whether he was a believer or disbeliever. Religion has no effect on the power or weakness of nations. . . . Indeed, civilized nations believe that religion is an obstacle in the path of progress . . . These people think that the greatest obstacle in the path of Muslim progress is the Islamic religion itself, and that if they abandon it they can follow the footsteps of Europe and progress as she did.[149]

In these words, Rida argues that neither the failure of the East nor the success of the West is because of religion. Religion is divinely inspired but it has no irrational or magical power for development and progress without human efforts. Thus, development and progress are not dependent on religion, but rather on human effort guided by religion – a view given earlier by his mentor 'Abduh.[150] The failure of Muslims resonates with their assumption that their adherence to religion will magically turn their backwardness into forwardness and their failure into success. This does not mean that Rida denies religion. He does not deny the adherence to religion as a factor for success, but in which way? Rida, as one who is well aware of *Naqshabandi* and the like of *Sufi* and dervish orders,[151] reflects on the laziness of the type. In other words, those who think that development and success will come to them miraculously if they stay in the Mosque are simply wrong, and that success will not come to them even if all Muslims come to live in the Mosques for the rest of their life. Rida simply means that Islam is not to live in the Mosque, but to pray and go to work; people must work to eat and develop their society. Religion does not operate in an extraordinary or magical manner or without regard to human effort. On the other hand, Rida emphasises the wrong of those who say that Islam is an obstacle in the path of Muslim progress. To Rida as to his mentors,

> Islam is the religion of natural disposition (*fitrah*); it guides towards happiness in this world and the next; and makes it clear to the people that God's *fitrah* has all the wise norms (*namus*) toward His creatures. God's norms do not change, that He leads them to behaviour based on these norms, and that He has prescribed laws for them which, when followed, will keep them on the straight way of happiness.[152]

This means that Islam is a divinely ordained programme for human life. Its realisation in the life of people depends on the exertions of the people themselves, within the limits of their human capacities and the material realities of human existence in a given environment. Working for this aim starts at the point where people put their human capacities to work within. None of God's creatures has the right to ask Him why He has chosen to create humans with the natural dispositions they have; or why He has chosen to make the divinely ordained programme for human life be realised through human existence, rather than enforcing it magically or miraculously through obscure or hidden means. When humans' ways of life disregard these natural dispositions, they will come into conflict not only with the awesome forces of the surrounding universe, but also with their own natural dispositions. They will be miserable, bewildered and anxious, living like present-day humanity in acute torment, despite all the triumph of modern science. Explaining the reasons behind the weakness of Muslims, Rida continues:

> The Muslims have lost the truth of their religion, and this has been encouraged by bad political rulers, for the true Islam involves two things, acceptance of the unity of God and consultation in matters of State, and despotic rulers have tried to make Muslims forget the second by encouraging them to abandon the first.[153]

Having identified despotism and the inner decay as factors of Muslim backwardness, Rida's suggestion of the need for inner revival, public education and awareness of the legitimate way to overcome despotism and to establish a transparent representative government have all come to be landmarks in his works. In these, Rida was elaborating and developing the works of his mentor. As a matter of fact, Rida's reformist theories of jurisprudence and Constitutionalism are based on the reformist ideology of his mentor 'Abduh. In his emphases, Rida encourages Muslims to study European systems and learn what could be borrowed to develop the political theory within the framework of Islam. This theme is the framework of his book *Al-Khilafah aw al-Imamah al-'Uzma* (*The Caliphate and the Higher Rulership*), published in 1923 by the al-Manar Press in Cairo.[154]

The title of this book indicates the contents just as its date of publication indicates the context. In 1922 (one year before the book was published), the Turkish National Assembly reduced the authority of the Caliphate to be only spiritual or ceremonial; in 1923, Mustafa Kemal was elected President of Modern Turkey; and in 1924 the Caliphate was officially abolished.[155] It is in this context that Rida's book (*The Caliphate*) intends to demonstrate the flexibility of Islam and its ability to fashion a modern political system able to deal with modern problems with a greater efficacy than that of the Caliphate. Emphasising Islam's legislative capability and 'social-civic policy', he says:

> As for the social-civic policy, Islam has laid its foundations and set forth its rules, and has sanctioned the exertion of opinion and the pursuit of *ijtihad* in matters related to it because it changes with time and place and develops as architecture and all other aspects of knowledge develop. Its foundations include that authority belongs to the *ummah*, that decision-making is through *shurah*, that the government is a form of a republic, that the ruler is not favoured in a court of law to the layman – for he is only employed to implement *shari'ah* and public opinion, and that the purpose of this policy is to preserve religion and serve the interests of the public.[156]

Focusing on 'Abduh's observation of the Qur'an 3:104, Rida found what he termed *'ilm al-siyasah* (political science), by which Rida assures his readers that his mentor ('Abduh, d.1905) did not mean the kind of political science that the medieval Ibn Tymiyyah (d.1328) had written about, 'but rather the study of modern states (*duwal al-'asr*)...Rashid Rida, building on a hint of 'Abduh's, he contrives to find in Q 3:104 a basis for government by a representative assembly such as is found in republics and limited monarchies.'[157]

In his discussion, Rida provided the bases and detailed structures of what he considered as a modern political organisation. He was not concerned with the earlier Caliphates' models or interested in their systems. Indeed, he challenged the legitimacy of the Umayyads, the Abbasids, the Mongols and the Ottoman Caliphate models all together. He focused on the models of the immediate four successors of the Prophet, and built on them from the foundations and the practices in the *sunnah*, and applied this formula to the pressing issues of his time in 1923.[158]

Rida pointed out that the leadership of Islamic government combines the interests of religion as well as the worldly affairs of the community. The leadership is not a group of individuals but only one amongst the people and elected to the office by the people. Election to the office or this senior state position, in Rida's view, is a matter related to the qualifications of the candidate, his capacity and skills.[159] Whoever the community chooses to the state office will be assured of the people's submission and serve to organise their affairs, secure from rebellion or disobedience. Here, Rida emphasises that the result of election is a contract between the elected person and his people that he will serve them according to the law, while they obey and submit to the order. If the elected person usurped the rights of the people, the people had the right to impeach and replace him.[160] These principles have been outlined earlier by such powerful thinkers of democracy as John Locke (d.1704), Thomas Jefferson (d.1826), John Austin (d.1859) and Stuart Mill (d.1873), and before them all the prince of international law, Hugo Grotius (d.1643).[161]

Rida attempted to define the legitimate way of change and causes for which deposition or impeachment of the ruler can take place. Rida's starting point is that the office or government is necessary in Islam, but this necessity was never absolute just as it was not left to the impulses of the ruler or government without guidance or roles governing the affairs of this office. If it appeared that the elected person's capacity, skills and the scope of his jurisdiction were not up to the functions or the criteria and the requirements of the office, then a legitimate solution was to be sought. In this case, the government is legitimate and the rules of change and or impeachment will usually be only for the defined and verified causes. Here, the causes of impeachment are of the kind of weakness and mal-function of the office. On the other hand, if the office or its functions are usurped by force, no obedience at all is due, and it is the duty of the people to overthrow the ruler at the first opportunity. In this case, the government is illegitimate and the causes for impeachment are of the kind of usurpations, including military coups and misuse of power.[162]

Like his predecessor, Rashid Rida confirmed the notions of democratic participations in Islam, and pointed out in some detail that Islam and democracy are not incompatible. To those pioneers of Constitutionalism and democratic thinking 'democratic civility' is but a reproduction of Islamic institutions and conceptions, including *shurah* (consultation), *ijma'* (consensus), *ijtihad* (independent reasoning), *masalih mursalah* (public interest), *sadd al-zara'i* (blocking the means) and *al-amr bi al-ma'ruf wa al-nayy 'an al-munkar* (commanding rights and forbidding wrong) which is a comprehensive concept encompassing the activity of the state and its citizens and guaranteeing for the rulers and the ruled their 'Human Rights'.[163] In this sense, (i) the Qur'an laid down the principle of *shurah* (consultation) to guide the community's decision-making process; (ii) the *ijma'* (consensus) complements the *shurah* and adds another dimension by asserting that the principles of pluralism are compatible with divine guidance; (iii) the duty of commanding rights and forbidding wrong is one among the important duties and sanctions for the practical implementation of 'Human Rights'; it is antithetical to all types and forms of corruptions and injustices, tyrants and despotism, violence and terrorism, autocracies,

plutocracies, theocracies and the like; it is also a duty of political participations; that is if political participation is denied or ineffective, then revolution against the tyrannical rules becomes a duty;[164] (iv) the different opinions which could come out of *ijtihad* (independent reasoning) will not affect the eternal essence of the doctrine. These Constitutional and democratic views are based on the Qur'an (3:104) and the *sunnah*, and stand as a point of reference confirming that all 'good' things and 'positive' features found in the West, including democracy, are Islamic.

The Muslim Brotherhood

Hasan al-Banna

The Muslim Brotherhood is widely considered as the prototype movement of Islamic radicalism in the twentieth-century world. This section focuses on the Muslim Brotherhood organisation (*al-Ikhwan al-Muslimun*) at a historical stage that occupies a unique position in contemporary Islamic political thought, especially in the current history of revivalism. It will also focus on democratic participation in the thought of Hasan al-Banna – the influential historical figure and the sole founder of this first and largest international Muslim organisation in the twentieth century.

Hasan al-Banna (1906–1949) received a modern education and graduated from Cairo's Dar al-'Ulum, a modern university of secular orientation, a cross between al-Azhar and a modern Western university. Al-Banna planted the intellectual seeds of a sociopolitical and mass-oriented movement that has played a significant role in the politics and society of Muslim countries. His charisma stems from his being the sole founder of the largest Islamic movement, and he defined the parameters of the Brotherhood's mission, purposes and methods. He was able to talk 'to common folk in an idiom they understood, one that came from their traditions and was related to their needs'.[165]

Al-Banna was one of Rashid Rida's regular disciples: he regularly attended Rida's circle, read his journal, and carried it on after Rida's death in 1934.[166] He was also trained by his father, Ahmad Abd al-Rahman Al-Banna, a scholar and author of several books, including an encyclopaedia of *hadith* and jurisprudence.[167]

In 1928, al-Banna established the Muslim Brotherhood in Egypt's Canal Zone town of al-Isma 'iliyyah, which was at the time under a heavy British presence. The birth of this movement, which was the optimum of the leaders of reform such as Afghani and 'Abduh, was part of a general reaction to the political, economic, social, intellectual and moral setback that engulfed Egypt and the Muslim world. The Islamic Caliphate, the last symbol of Muslim unity, was abolished in Turkey on 3 March 1924. Also the general Islamic Summit, which continued its meeting in Cairo for a few years, failed to restore the Caliphate. The Brotherhood movement, under al-Banna's leadership, filled up the political vacuum: to lead the despairing and oppressed masses to draw on their past for a better future of liberty and social justice. Al-Banna built the philosophical discourse of the Brotherhood

on this theme. This movement thought that the Muslim world had lost its identity to European colonialism. The Brotherhood agreed that Muslims needed to draw on what they considered a pure Islam of Muhammad and his immediate successors to ensure their future.[168]

The newly born organisation grew rapidly and within a short period of time the organisation spread in the Arab Middle East, North Africa and Muslim countries in other regions. Its rapid growth stems from a number of factors clearly illustrated in al-Banna's works. He drew upon the different forces that exerted influence on him. His reading of al-Afghani and 'Abduh, his close contact with Rashid Rida's teachings, his contact with *Sufism*, and the influence of his father, all undoubtedly moulded al-Banna's entire personality. In addition to his awareness of the political and social situation in Egypt and the massive suppression of civil liberties and judiciary launched by Isma'il Sidqi's government in 1930, al-Banna was clear about the steps to be taken to achieve his goal. The growth of this movement was further accelerated by the 1936 Anglo-Egyptian Treaty and the Revolt in Palestine against the British Mandate and Zionist colonisation. It was against this background that the movement quickly transformed itself into a political entity. By 1939, his articles reached the masses and explained the movement's aim and objective, clarified its ideas and underlined its method.[169]

In his first article 'Bayn al-Ams wa al-Yawm' (Between Yesterday and Today), al-Banna diagnosed the situation in the Muslim world with special focus on the many complexities of the sociopolitical, economic and moral problems of the Muslim society in Egypt and elsewhere, and emphasised the aim and objective of the movement as optimism of such authorities as al-Afghani and 'Abduh. His diagnosis goes as in the following:

> The expansion of European power was the direct result of the discoveries, expeditions, and travels to the distant lands, as far as the remote Islamic countries like India, as well as some of the neighbouring Islamic provinces. Europe began to work earnestly at dismembering the powerful and far-flung Islamic state proposing numerous plans toward this end, referring to them at times as 'the Eastern question' and at others as 'dividing up the inheritance of the Sick Man'. Every state began to seize any opportunity as it arose, adopting the flimsiest of excuses to attack the peaceful yet careless Islamic state, and to reduce its periphery or demolish parts of its integral fabric. This onslaught continued over a long period of time, during which the Ottoman Empire was stripped of much of its Islamic territory which then fell under European domination, e.g., Morocco and North Africa. Many non-Islamic areas, previously under Ottoman rule, became independent during this time, e.g., Greece and the Balkan states. The final round of this struggle was the First World War, from 1914 to 1918, which ended with the defeat of Turkey and her allies, providing a perfect opportunity for the strongest nations of Europe, (England and France), and their neighbour (Italy). They laid their hands on the huge legacy left behind by the Islamic nations, imposing their rule over them under the various titles of occupation, colonialism, trusteeship, or

mandate, and dividing them up in the following manners: (1) North Africa (Morocco, Algeria, and Tunis) became French colonies lying in a zone between the international influence in Tangier and the Spanish colony in the rural areas; (2) Tripoli and Barca became Italian colonies in which Italy did not wish a single trace of Islam to remain. She forced Italian citizenship upon the people giving it the name of 'South Italy' and filling it with thousands of hungry families and wild beasts in human form (Italian outcasts); (3) Egypt and the Sudan fell under English authority, neither one possessing a shred of independent authority; (4) Palestine became an English colony, which England took the liberty of selling to the Jews so that they might establish therein a national Zionist homeland; (5) Syria became a French colony; (6) Iraq became an English colony; (7) the Hijaz (the Western Province of Arabia) possessed a weak and unstable government dependent on charity and false treaties and worthless covenants; (8) Yemen possessed an outmoded government and a poverty stricken populace exposed to attack anywhere and at any time; (9) The remaining nations of the Arabian Peninsula consisted of small emirates whose rulers lived under the wing of the British consuls and who fought one another for the crumbs falling from their tables, their breasts burning with mutual resentment and hatred. This was the case despite the reassuring promises and binding treaties drawn up by the Allies with the mightiest monarch of the Peninsula, King Hussein, stating that they would help him achieve Arab independence and support the authority of the Arab Caliphate; (10) Iran and Afghanistan possessed shaky governments beset by power hungry people on every side, they would be under the wing of one nation at one time and under the wing of another at some other times; (11) India was an English colony; (12) Turkistan and the adjoining regions were Russian colonies, subjected to the bitter harshness of the Bolshevik authorities. Apart from these, there were also the Islamic minorities scattered across many countries, knowing no state to whose protection they might have recourse, nor any well-armed government to defend their nationality, as, e.g., the Muslims in Ethiopia, China, the Balkans, and the lands of Central, South, East and West Africa. Under such conditions, Europe won in the political struggle, and finally accomplished her goal in dismembering the Islamic empire, annihilating the Islamic state and erasing it politically, from the list of exalted, living nations.[170]

Al-Banna pointed out that as each of these nations struggled to regain its freedom and the right to exist as an independent entity, concepts of 'localized nationalism arose', and many states working towards this revival purposely ignored the idea of unity.[171] From here, the European systems ceased to be a model. On the contrary, they were blamed for the ills of the Muslim community. Al-Banna says:

Europe opened the horizons of science, inventions, discoveries, and machine production was also doubled. This life went side by side with the established powerful modern state which expanded its authority over many countries.

As the material world became available in European hands, it was natural to detach religion from the aspects of social life . . . They were able to alter the basic principles of government, justice, and education, and infuse in the most powerful Islamic countries, their own peculiar political, judicial, and cultural systems. They imported . . . their amusement arcades, their stories, their newspapers, their novels, their whims, their silly games, and their vices, and allowed for crimes intolerable in their own countries . . . They built schools and cultural institutes to teach the people . . . They taught them how to demean themselves, to vilify their religion and their homeland, to detach themselves from their beliefs, and to regard anything Western as sacred, in the belief that only that which is European can be emulated. These schools were restricted to the upper class, the ruling body, the powerful and the future leaders. Those who were unsuccessful in such places were sent abroad to complete their studies. This drastic, well-organized social campaign was tremendously successful since it appealed to the mind. It will continue to exert its strong intellectual influence over a long period of time. Thus, it was far more dangerous than any political or military campaign. Some Islamic countries went overboard in their admiration for the European civilization and their dissatisfaction with the Islamic one, to the point that Turkey declared itself a non-Islamic state, imitating the Europeans in everything that they did. Aman Allah Khan, King of Afghanistan, tried this, but the attempt cost him his throne. In Egypt the manifestations of this mimicry increased and became so serious that one of her intellectual leaders could openly say that the only path to progress was to adopt this civilization: good or evil, bitter or sweet, praiseworthy or reprehensible. From Egypt it spread with strength and speed into the neighbouring countries, to the extent that it reached Morocco and encircled the holy sanctuaries within the midst of Hijaz.[172]

Al-Banna's thought on these affairs should be judged against the background of the Muslim world and Egypt's cultural life in the 1920s and 1930s and while he was on the way to reaching adulthood and intellectual maturity. He apparently is not of the view of following the West in everything 'good or evil, bitter or sweet'. Here al-Banna was responding to Egypt's influential literary critic and author Taha Husayn (1889–1979). The Sorbonne professor wrote two books that caused a great deal of discussion in Egypt and in the Parliament. His *al-Shi'r al-Jahili* (The pre-Islamic Poetry) was published in 1926, but after discussion on all levels, the book was withdrawn. In 1932 the government dismissed Husayn from his position as Dean of the Faculty of Arts at Cairo. Another government restored his post in 1936. Two years later, Husayn published *Mustaqbal al-Thaqafah fi Mir* (The Future of Culture in Egypt) in 1938. This book, according to Albert Hourani, 'derived to some extent from Ibn Khaldun, but more fundamentally from the French masters of his thought, Comte, Renan, Durkheim and Anatole France'.[173] Husayn divided the world into East and West and defined Egypt as Western rather than part of the East. He suggested that the Egyptian mind was closer to the

European mind than it was to 'China, Japan, or India...We should follow Europeans for good and ill in what they like and dislike'.[174]

It was against the context of this background which diagnosed the sophisticated problem in the Muslim world that al-Banna explained the mission of his movement as 'reawakening and deliverance'. He declared the 'general' goals of his organisation were: '(i) Freeing the Islamic homeland from all foreign authority, for this is a natural right belonging to every human being which only the unjust oppressor will deny. (ii) The establishment of an Islamic state within this homeland, which acts according to the precepts of Islam, applies its social regulations, and advocates its sound principles.'[175]

Al-Banna's words and language in his statements indicate that he was aware of Western thought, the development of secular trends, the influence on the position of religion in society, the rise of the totalitarian movements in the interwar period and its influence on the relations between European countries and the rise of the Third World Nationalism as a response to colonial penetration. Hence, al-Banna's main concern was 'reawakening and deliverance', that is, to mobilise the public against colonialism and its adverse effects on society.

In his reference to the West, al-Banna carefully distinguished between three categories (i) Western colonialism, (ii) Western civilisation and (iii) Christianity. Generally, al-Banna rejected colonialism but not everything in the West. For example, in his article in 1929, 'al-Banna admonishes his readers to follow the Western examples as far as religious primary education is concerned...in the West it is nowadays generally recognized that religious education is of the utmost importance for the well-being of a child and for the welfare of society. This Western insight should be an example for the Muslims.'[176]

Focusing on Christianity, al-Banna pointed out that there is a substantial Christian community in almost every Muslim country in the East. He emphasised that Christianity is originally not Western but Eastern, born in the Arabian land. Western Christianity was certainly not possible without the East and Easterners' efforts. What al-Banna had in mind is probably the efforts of the high priests and the Library of Alexandria in Egypt. He also emphasised that Christianity was in Arabia before Islam. The Prophet met Christians, ate with them, accepted their gifts and advised his followers to migrate to a Christian kingdom. The Prophet instructed his followers to take care of the Christian communities, including the community in Egypt. He pointed out that there is a 'substantial Christian community in Egypt, indigenous to Egyptian soil and not part of the Western conquest'.[177] To al-Banna, Western Christianity is a victim of complicated circumstances in the West. He emphasised that 'Western Christianity was used by the West's secular colonialists to colonize the rest of the world'.[178] In the words of Wendell 'Europe retained its Christianity only as a historical heirloom, as one factor among others for conquest, colonization, and the suppression of political aspirations'.[179]

In terms of the distinction that al-Banna makes between Western civilisation and colonialism, he in fact was obsessed with all forms and shapes of something called colonialism and imperialism of all colours or flags. As to Western

civilisation, al-Banna, in his bright Western suit and tie and Turkish fez (*tarbush*), was well prepared to accept Western materials which were in harmony with Islam and could develop Muslim society. Here, al-Banna was not of a mind to accept European ideas indiscriminately. Rather, his view should be judged against the background of colonialism and its adverse effects on society in the Muslim East. In the words of the eminent intellectual Ahmad Amin (1886–1954):

> Muslims reject Western ideas only because the West tried to force the Muslim world to accept them. Western force, exploitation, the crusades and the weakness of Muslims, all caused Muslims to panic and fear accepting Western ideas. They also rejected Western slogans. However, Muslims accepted Greek and Persian civilisations.[180]

It was against the theme and the implication of this statement that al-Banna opted to accept Western material which could develop Muslim society but have no influence on its cultural identity.

Al-Banna also addressed the policy sphere. He pointed out that 'government is a bond of the bonds of Islam; it is one of the creeds and fundamentals, not the branches. Islam is a government and enforcement; legislative and educative; law and judgment.'[181]

The head of the Islamic state, al-Banna continued, should be elected from amongst the Muslim community and accepted to be responsible before the people. He pointed out that the Islamic system of government puts the responsibility on the ruler. He is the 'president', whoever is elected by the people, and has the right to manage the affairs of the state, but he is also responsible before the nation and 'to be supported if he did right, or to be corrected if he did wrong'.[182] Noticeably, al-Banna used the word 'state' not Caliphate, and the word 'president' not Caliph as a title of the head of the state. He is aware that the word 'president' is Islamically valid. Early Muslims used the word 'president' and sometimes applied it to the Prophet. One example of that is mentioned by Ibn Kathir (d.774/1373): 'after the battle of Hunayn, the army marched to al-Ta'if at where Ka'b Ibn Malik reportedly said in Poetry:

> We came to you in a large army circled your citadels, in rows.
> Our president the Prophet is firm with a pure heart, forbearing and abstaining.[183]

Ka'b Ibn Malik, who was appointed by the Prophet to this position, cannot say what he said without the Prophet's permission and encouragement. Considering the word 'president' and the word 'Caliph', one might ask which one is both a tradition and *sunnah*? For Muslims, the *sunnah* is the behaviour of the Prophet; his sayings and deeds; accepting or rejecting things. With this in mind, the word 'president' is both *sunnah* and tradition, while the word 'Caliph' is only tradition. The word 'president' was used by the Prophet's companion; the Prophet accepted the word and did not reject it. However, the word 'Caliph', in its political sense,

was used only by the successors of the Prophet. If Muslims want to follow *sunnah*, they might use the word 'president'. Whether the ruler is called a 'Caliph' or 'president', he is to be elected by the people to be responsible before the people. They have the right to correct him if he does wrong. The institution 'commanding right and forbidding wrong' works as foundation of the Islamic state.[184]

Al-Banna proposed the state might take two forms of governmental systems: (i) representational forms like that of Great Britain, or (ii) a form like that of the United States. Here, the head of the state may or may not be responsible before the people. Al-Banna pointed out that there is nothing in Islam that prevents the elected president of the state from delegating his responsibility to somebody who is able to carry this responsibility. This form is called by al-Mawardi, (d.450/1058) 'ministry of delegation and traditionally', and that is well known in many governments in Islamic epochs. Islam clearly permits this as it is in the interest of the people. Like Abduh, al-Banna refers to the interest of the people (*maslaha*) as a basis for this form of government. Al-Banna based his view on al-Mawardi, who divided the system of government into forms called ministry of delegation (*tafwid*) and ministry of execution (*tanfidh*). With reference to al-Mawardi, al-Banna pointed out that the ministry of delegation is where the head of the state appoints a minister (i.e. premier) to whom he delegates authority to organise affairs in accordance with his judgement. To support his view, al-Banna referred to the Qur'an, in particular the account where the word 'minister' and the appointment of Heron (Aaron) as a minister to his brother Moses is explicitly mentioned: 'And appoint for me a *wazir* (minister) from my people, Harun, my brother, and consolidate my strength by him and make him a partner in my affair' (Qur'an 20:29–32). Al-Banna maintained that because this ministerial form is based on the Qur'an its legitimacy cannot be denied. The head of the state cannot deal directly with all the organisations except by appointing representatives. The minister will help the head of the state to carry his responsibility efficiently. The minister will protect the head of the state from taking advantage of his weakness, and he will thus be less likely to make errors. To conclude this form, al-Banna says:

> In this representative system, the head of the state is not responsible, but the ministry is. It was on this basis the constitution of Egypt and that of Great Britain were based. Both constitutions declared the responsibility of the ministry, but freed the head of the state from any responsibility.[185]

In addition, al-Banna asserts that the Islamic system of government might take another form like that of the United States. Here the head of the state is responsible, and the ministry is under his responsibility. This form is weaker than the previous one, as al-Banna says:

> In the representational system, there is no barrier that prevents the head of the state to hold the responsibility and be responsible before the people, and the ministry is also with him in that responsibility, as in the United States. In this form, the head of the state is responsible, with the ministry, before the

people, as in the United States. It is remarkable that this form of government was also detailed in the Islamic Jurisprudence and called it 'ministry of execution.' Al-Mawardi says: 'As for the ministry of execution, its rule is weaker and its conditions are fewer as its authority is restricted to the judgment and direction of the head of the state: the minister [i.e. premier] is a mediator between him [president] and his subjects, carrying out his commands, executing his instructions, enacting what he decides.' This with no doubt is one of the blessings of Islamic Jurisprudence and its capacity to do what is needed at any time or place.[186]

Having outlined the responsibility of the head of the state and the optional forms that it might take, al-Banna focuses on the Constitution. He distinguishes between Constitution and Law. He outlined that the Constitution is the general ruling system which enables the structures, the functions and purposes of the state to be organised; defining the powers and the limits of all authorities; defining the duties of the rulers and the limits of their power and their responsibility towards their citizens; and judging the rulers on the basis of their work. Al-Banna concludes that the principles of an Islamic Constitutional government are the following:

> The principles of Constitutional Rule could be concluded in the (i) protection of personal freedom of all types; (ii) consultation; (iii) obtaining the authority from the people; (iv) the rulers be responsible before the people; (v) the rulers be judged on the basis of their actions; (vi) the limits of each and every authority be clearly defined. All these principles, for any researcher, are completely conforming to the teachings of Islam, and its systems, and its foundations of government. Therefore, the Muslim Brethren believe that the system of Constitutional Rule is the nearest of all present ruling systems to Islam.[187]

In this statement, consultation could be through one or two branches or houses (i.e. Upper and Lower House or the Senate and the House of Representatives), as outlined earlier. In either case, the decision is up to the community of any place and time. This is the situation of current Muslim countries. There is not a written Constitution for all Muslims, but some Muslim countries, after their independence, had their own written Constitution (i.e. Egypt, Syria, Jordan). Some others like Saudi Arabia and surrounding states are governed without a written Constitution.

The other point that needs to be clear is that al-Banna's preference for Constitutional government does not mean he rejects pluralism. This is based on the following grounds. The first is that Islam, as al-Banna asserts, does not impose a specific form of government but left it to be stated rationally.[188] This means that the ruling system may take different forms, and vary from time to time, and from one country to another. The second is the belief that Islam is the religion of *tawhid*, that is, that their God is only one. Other than that pluralism is not forbidden or prohibited. The Qur'an orders Muslims to believe that God had

created seven heaven(s) and seven earth(s) and whatever in between them; nation(s), Book(s), Scripture(s), Messengers(s), People(s),...etc. The Qur'an is full of such accounts on pluralism. In addition, 'If God had so willed, He would have made you a single People' (Qur'an 5:48). The third is a historical one: that al-Banna fell under the influence of the modernists such as the three intellectual giants – Jamal al-Din al-Afghani, Muhammad 'Abduh and Rashid Rida. Al-Banna's flexibility to accept multiparty rule and political parties, to criticise their behaviour and the vagueness of electoral law, and to stand as a candidate for election twice, all were justified by direct reference to the authoritative texts, namely, the Qur'an and the *sunnah*. He emphasises that the Constitution of Medina was certainly not possible if there was no basis for it in the Qur'an.[189] Focusing on Islam's position on the representational system, al-Banna says:

> Constitutional philosophers say that the representational system is based on the responsibility of the ruler; the authority of the community and the respect of its will; and there is nothing in this system that would prevent the community from preserving its unity and the unity of its word; nor are factionalism and disputes among the origins of this system even if some say Partisanship is one of the pillars of the parliamentary representational system. But, in establishing this system [parliamentary representation], partisanship is tradition, not origin. Therefore, establishing this system without partisanship will not violate the fundamental origins of this system. On this basis, the foundations of the parliamentary system have nothing to conflict with the foundations of government laid down by Islam. In this view, this [parliamentary system] is not far from the system of Islam and not strange to it. On this basis, we also would say, with confidence, that the fundamental principles upon which the Egyptian constitution was established are not in conflict with the foundations of Islam; and not far from the Islamic system; and not strange to it.[190]

Here, al-Banna emphasises the essence of Islam's flexibility and compatibility with democracy. This opens a window onto the essence of the current issue of the radical Islamic groups and their understanding of both Islam and democracy. This directly confronts the radical Islamic individuals and groups who, in the East or in the West, view democracy as secular and strange to Islam. Some of them try to draw strength from al-Banna to influence domestic and international relations. However, al-Banna's view left for the radicals no option other than to accept their failure in linking their views, on the compatibility of Islam with democracy, to al-Banna. They certainly failed to justify that the Muslim Brotherhood's founder Hasan al-Banna was not aware of such secular labels when he was teaching these views. In this connection, and for the purposes of this study, briefing on some specifics of this issue is appropriate. To begin with, I should make a couple of remarks.

First, al-Banna demonstrated the degree of Islam's flexibility and tolerance and confirmed Islam's compatibility with democracy, at least. He also further assured

his readers that the foundations of the Western parliamentary system were 'not far from the Islamic system or strange to it'.[191]

The second stems from what al-Banna had in mind when he considered systems that have frequently been labelled by a secular label as Islamic. Most modern democracies do also refer to their political systems and constitutions as secular, and their states as secular democratic states. This urgently needs rethinking for some adjustments. This widespread conviction, in fact, nourishes the radical argument and provides the radical Islamic individuals and groups, as well as their sheikhs and dervishes, with ammunition ready to use against tolerance, coexistence and compatibility between Islam and democracy.

In addition, al-Banna provided a resolution to help those democracies, which are content to identify themselves as secular, to rethink democracy. He pointed out that the compatibility of Islam with modern secular democracy stems from the tolerance of the religion and its essence. Here, al-Banna's resolution implies what Gary Bouma suggests, that 'Secularity does not mean the absence of Religion',[192] just as there is no inherent enmity between religion and secularity. The notion of hostility has been artificially made by humans, only to secure their personal desires and self-interests. As a matter of fact, Western democracy was not accidentally discovered but developed over centuries. In this development, the contributions of Judaism, Christianity and Islam are significant. Some examples of that were previously mentioned with reference to al-Mawardi, al-Shaybani, Ibn Khaldun, Hugo Grotius, John Locke, Thomas Jefferson, Montesquieu, John Austin and Stuart Mill. Many verses from the Old and the New Testaments, as well as from the Qur'an, occupy much of these writings.[193] This will be further detailed in later chapters, but here let us bear in mind that democracy was not developed away from religions. Labelling democracy with a secular label is a matter of political gain that is difficult to justify. If the aim and objective of secularity is to secure the universal human aspirations of development and renewal, liberty and social justice, freedom and equality, human rights and democracy, then Islam has the inclination and capacity to tolerate secularity. In other words, if these aspects of the universal human aspirations are really the aim and objective of secularity, then religion could work secularly.

The notion of hostility between religion and secularity is the outcome not of the reality purported by either concept but of the manner in which we choose to express such so-called 'reality'. For instance, religion and secularity are expressed, from time to time, through the linguistic meaning given by lexicons that have been associated with specific historical circumstances in modern human history. However, the twenty-first century has come to call for a universal government and a universal democracy. It is difficult to comprehend how this could be achieved if the hostility that we have implanted in the matrix of secularity and religion remains sound. How could the universality of human aspirations be secured against such hostility? In the sense of language, at least, hostility is the antithesis of tolerance and harmony. The world today is in need, more than ever before, of the secularity which means tolerance and harmony, not that which means hostility to religion. This is to liberate secularity and to set it free from the paradigm of those limited words of dry and old meaning attached to it during the

period of captivity to antiecclesiastical secularists. That is to deconstruct the concept of secularity and reconstruct it in isolation from its historical connotations using terms not limited to the linguistic derivative and free from any ideological implication. For the sake of justice, the same processes could also be applied to religion.

To do just this, secularity should be considered from three aspects: (i) towards the self, (ii) towards the other and (iii) the combination of the sociopolitical and economic conditions necessary for the formation and development of such attitudes in individuals. In these aspects are the subjective and objective requirements of eradicating hostility and securing tolerance and harmony between religion and secularity. If secularity, like religion, has the capacity to tolerate the psychological and social prerequisites of these attitudes in terms of development and renewal, of universal human rights and human prosperity, the enmity between secularity and religion could be eradicated. In this context, Islam carries its responsibility with tolerance and flexibility, as in the following accounts.

In the mid-1940s, al-Banna pointed out that the constitution of Egypt, the country with which he moved, 'was not in conflict with Islam or strange to it'. This statement alone opens up some space for us to see how the essences of Islam's tolerance and flexibility accommodated such a Constitution that consisted of secular notions, laws and codes of advanced Western democracies in the developed world.

The Constitution that al-Banna was talking about, as a model that is 'not far from Islamic system or strange to it',[194] was the Constitution of 1923 Egypt. As Hasanayn Haykal put it, this Constitution was 'based on secular masseurs'.[195] It was promulgated in April 1923 by a thirty-member committee that included representatives of political parties and national leaders. This constitution adopted a Parliamentary Representative System based on separation of and cooperation among authorities. The relationship between the executive and the legislature was based on the principle of control and balance of powers. It made the Cabinet accountable to the parliament, which had the right to move no confidence votes, while giving the King the right to dissolve parliament. However, it gave the parliament the right to convene in case it was not called to sit according to the scheduled date. There was a Senate (three-fifths of its members were elected, but the King appointed the rest) and a House of Representatives (all its members were to be elected, for a five-year term). The principle of equal competences for the two branches was also adopted.[196]

Among those who drafted this Constitution was the Justice Minister Abd al-'Aziz Fahmi, an eminent scholar of international law. In his Memoir *Hadhihi Hayati* (This Is My Life), Fahmi pointed out that the Egyptian Constitution of 1923 is derived, to some degree, from European constitutions of the time. He says:

> When I was with the Wafd (Egyptian delegations)[197] in Paris, the Wafd charged me to draft a plan for Egypt's constitution. We were calling for independence and a constitution. There, I was able to consult a number of the

constitutions of the developed nations. I found the constitution of Belgium was the best of all modern constitutions that were written for any constitutional royal governments, for its specifics and method. I also find in Turkey's constitution of 1908 a particularity that is not there in the constitution of Belgium. This particularity is in the texts of the articles pertaining specifically to liberties; they were quite wider than that in the constitution of Belgium. For that, I have followed the specifics and method of Belgium's constitution and took some of it, and some others from the constitution of Romania, and drafted a constitution for Egypt.[198]

Fahmi pointed out that his draft of the Constitution served as a basis for the discussions of the committee of the Constitution and its subcommittees, and after deliberation on all levels the Constitution was promulgated on 19 April 1923.[199] This is the Constitution that the Muslim Brotherhood's founder Hasan al-Banna had accepted and referred to in these words: 'not in conflict with the foundations of Islam; and not far from the Islamic system; and not strange to it'.[200] The time and context, the expertise and sources of this Constitution are critical. Most Muslim countries, if not all, were under foreign occupation. Egypt was under British control. This Constitution was the first after the declaration of independence on 28 February 1923. This independence was never completed until 1954. With this in mind, al-Banna's consideration of the 1923 Constitution leaves no room for the later Islamic groups to claim incompatibility between Islam and democracy. Al-Banna left no room for any individual or group to draw strength from him on this matter and influence the domestic and international relations. For this, al-Banna himself pointed out, in no obscure terms, the Islamic authenticity of the 1923 Constitution, as follows:

> Those who drafted this Egyptian constitution, despite having based it on the most advanced principles and highest constitutional opinions, took great care to make sure that is nothing could be in conflict, in any way, with Islamic foundations. The texts were made either to confirm the Islamic foundations directly such as this text which says 'Islam is the religion of the State', or interpretable to confirm the Islamic foundations, such as the text which says 'The freedom of belief is guaranteed.'[201]

It was under this Constitution that the Muslim Brotherhood was established, in 1928, and developed its structural and ideological functions. It was under the umbrella of this Constitution that al-Banna himself worked and responded in articles and other works.[202] Changes had occurred to this Constitution to a degree of abrogation by Sidqi's government of 1930, but 'Ali Maher's government of 1936 attempted to restore it. It is beyond this study to pursue this latter in detail. In terms of al-Banna's ideological position, both his statements and that of 'Abd al-Aziz Fahmi could be seen as solid points of reference on Islam's compatibility with democracy, and the Constitution of 1923 in Egypt could be seen as a model of that compatibility.

If the Islamicity of the 1923 Constitution of Egypt was recognised by the Muslim Brotherhood's founder, one might consider Egypt an Islamic state at the time. If this is so, the logical question would be about why and where the Muslim Brotherhood's opposition at this period of time came about. Al-Banna says:

> Despite the parliamentary system and Egyptian constitution, in their fundamental principles, do not have any conflict with what Islam laid down in the system of government, we would announce that there is misapplication and failure in the protection of the constitution's fundamental principles which are also Islamic. This resulted in what we complain about of corruption, and of what we have from all this unstable parliamentary life.[203]

This was the area of his movement and activity all his life. It was the area of practice and application. He pointed out that the system of government in Islam is based on three principles 'the responsibility of the ruler, the unity of the *ummah*, and the respect of its Will'.[204] It was on these principles that his criticism was based. Concerning the Constitution itself, al-Banna's criticism is focused on the vague articles which dealt with the ministry's responsibility and relations with the head of the state and the people. On this matter he quoted directly from two Senators. In their memoirs, they say:

> The Ministry is the backbone of all the representational system; it is the connecting ring between Legislature and Execution; it is the regenerator of life and activity in any system that is meant to manage the affairs of the people neatly and to respect the authority of the people. If we consult our Constitution on these sensitive matters, we will find no more than three lines of vague and contradicted words. Article 29 says: 'The Executive power is occupied by the King within the limits of this constitution'; but in article 48 'The King takes His authority by His ministers'; in article 49 'The King appoints His ministers and dismisses them'; and in article 57 'the council of His ministers is the authority over the affairs of the State'; and in article 61 'the ministers, collectively, are responsible before the Senate, and every minister is responsible for his ministry'; article 63 'the King's decrees, whether vocal or written, do not release the ministers from their responsibility any way'. This is all the texts on this matter and they are not enough to deal with any of those problems outlined above.[205]

Turning attention to political parties, al-Banna focused on their political performance, the processes of election and electoral laws, and the subsequent effects on the social and economic spheres in the country in which he moved. He pointed out that the Constitution and Law, including that which regulates the political parties and elections, were the subject of sociopolitical alterations between 1924 and 1944. Despite these changes, the decisions of the Senate in all its sessions during this period 'represented 10.75% of the registered voters'.[206]

According to Muhammad Anwar al-Sadat, later president of Egypt (1971–1981), most of Egypt's wealth, resources and estate were owned by only a few individuals who represented 0.05 per cent of Egypt's eighteen millions.[207] This does not only reflect the social and economic situations, but also mirrors the Law and its application. For this reason, al-Banna distinguishes between Constitution and Law. The Constitution, he maintains, is the general ruling system which organises the structures, the functions and purposes of the state. Constitutional rule is meant to put everyone, the rulers and the ruled, under the Law.[208]

The Law is meant to organise the relationship between individuals, and protect all their rights, including natural, intellectual and material rights, as well as to judge every individual on the basis of his or her action.[209] The Muslim Brotherhood accepted the Constitution but they and other revolutionaries were critical of the performance of the political parties and the electoral law. Al-Banna was of the view that 'error or defect is not shame in itself, but doing nothing to correct it is the shame of shame'.[210]

Speaking of elections and electoral law, al-Banna says: '(i) we are calling for specific and precise criteria for candidacy; (ii) specific program and detailed budget; (iii) precise perimeter to limit the campaign to only the programs and plans, not on personal and household matters; (iv) making a law that strongly banishes corruption and offences relevant to election processes . . . overall the doors for reform and readjustment are numerous, and these are some of them'.[211] His view on reform reflects his belief in democratic participation based on a 'higher law of universal principles of right and justice that is superior to detailed everyday law'.[212]

Al-Banna's focus is the *shari'ah*. To him Islam did not come empty of laws. It explained many of the 'foundations of legislation and legal rules whether materialistic or criminal, commercial or international; the Qur'an and *hadith* are full of that; the books of jurisprudence are packed with that; and this was declared by the Lehigh International Convention before the experts of law who represented all countries of the world.'[213] This declaration is used by al-Banna to support his argument. The response he receives constitute a degree of excuses that Egypt's protector (i.e. Britain) would not support the application of the *shari'ah*. Al-Banna, however, is of the view that every nation has the right to choose the system and law for governing the nation's affairs, particularly if this system and the law confirm the general democratic principles. In al-Banna's response, the compatibility between Islam and democracy was explicitly stated as follows:

> More than once, the great states announced that they will not interfere in any country's internal affairs, including governmental forms, particularly, if these forms are in conformity with the general principles of Democracy. In this, the Islamic idea gained complete respect at the Lehigh International Convention in 1938. The Convention declared that the *shari'ah* is independent, it has the capacity for development and progress, and it is in conformity with the most modern foundations of legislation. The *shari'ah* also gained this complete respect once again in the Washington Convention of May 1945. For that

Egypt's representative, the Attorney General Hafiz Basha obtained a decision declaring Egypt's right to have a representative at the International Court of Justice, under the title Islamic *shari'ah*.'[214]

Al-Banna's ideological position was to reform the society through legitimate means, not by force or overthrow of the government. Al-Banna's aims and objectives did not include ruling or governing Egypt. He emphasised the importance of the mission rather than the organisation when he told his followers that they are 'not a benevolent organization, nor a political party, or a local association with strictly limited aims, but a new spirit making its way into the heart of this nation and reviving it through the Qur'an'.[215] In his comprehensive study, Richard Mitchell pointed out that al-Banna's organisation 'never became a political party, or advocated the overthrow of the state by violent means . . . It maintained that the transformation of society was to come primarily from the transformation of the individuals within society'.[216] The aim of al-Banna, as asserted by the eminent intellectual Jalal Kishk, 'was not to rule Egypt, and when the Brothers insisted upon that, he told them to prepare a radio program for six month, before discussing this matter. When they failed, they have come to know that administering the State is a difficult matter . . . His aim was to create an Islamic current that could be recognized as a reality by the political forces in Egypt. Then the solution will be the result of this new reality.'[217]

Al-Banna's aim and objective were directly opposite to the aim and objective of the two combined powers: the power of the Palace and the power of Britain in Egypt. This continued until the big clash between the three forces took place in 1948. The clash between the three forces, as asserted by Hasanayn Haykal, led Prime Minster Mahmud Fahmi al-Nuqrashi to liquidate the Brotherhood organisation and detain its leaders in 1948. The anger and frustration resulted in the assassination of al-Nuqrashi in 1948. The next prime minister 'Ibrahim 'Abd al-Hadi with green light from the Palace arranged to assassinate Hasan al-Banna in 1949'.[218] Under the leadership of al-Hudaybi, the dispute between the Brotherhood and the Palace escalated and reached its zenith with the Revolution of 23 July 1952. It was the Revolution of the Brotherhood led by the Brothers in the army, who later became known as the Free Officers.[219] Al-Banna's assassination and the coup opened a window onto another round to be dominated by the thought of Sayyid Qutb and the post-Qutbiyyan radical groups. What went wrong, and what was the subsequent influence on the Islamic political thought concerning Western ideas and democracy? These burning issues are the task of the next section.

The liberals

Sayyid Qutb

This section investigates the compatibility between Islam and democracy in the thought of Sayyid Qutb, who frequently used the word 'liberal' as a label for his stand against despotism and dictatorship of his time.[220] Much of Qutb's political thought is

influenced, to some extent, by the political, social and economic conditions of Egypt's royal and military regimes. In terms of defining certain issues for the Muslim intelligentsia, Qutb's thought constituted premises attractive to many radical Muslim groups in the Middle East and elsewhere. His theoretical formulations of the political, social and religious issues rest at the core of the current Islamist thinking and organisation. Subsequently, the potential of Islamic radicalism to draw strength from Qutb's writings and influence domestic and international relations is critical. This theme provides the framework for this section to investigate Qutb's view on the compatibility between Islam and democracy, and to demonstrate how his ideas were perceived by the radical groups with special attention to the transformation which occurred in the wake of Qutb's execution in 1966.

Sayyid Qutb is one of the few thinkers who, after his ordeal and death, still influenced several generations of Islamically committed intellectuals. His charisma stems from a number of factors: that he was a partisan involved in Egyptian politics, developed a systematic and comprehensive system of thought that presented a dynamic Islamic view on a number of substantive issues and problems besetting modern Muslim society, and was personally involved in the debate and planning for social reform.

Qutb occupies a central position in the scholarly output on what is usually labelled as Islamic fundamentalism; so many works have been written about Qutb in various languages, including Arabic and European languages. In the view of many scholars 'Qutb is the most significant thinker of Islamic resurgence in the modern Arab world.'[221] To Noah Feldman 'Qutb was a distinguished literary critic and theorist of education before a midlife turn to Islamism. A talented writer, he embarked on a second career as the most important theorist of radical political Islam.'[222] As outlined by Esposito and Voll, Qutb's influence, although starting in Egypt, went beyond Egypt and the Arab world to the Muslim world.[223]

For Emmanuel Sivan 'Qutb's thought of the 1950s and 1960s left a clear mark on Turkey, a country that is not Arabic speaking but which has a Sunni majority. In Pakistan his important works have been translated into Urdu, and in Malaysia, a series of classical writings of the Sunni revival (including Qutb's) has been published.'[224] Qutb in the view of Cantwell Smith 'transformed the Islamic conception from an irrelevant, purely transcendental static ideal, to an operative force actively at work on modern problems.'[225]

Qutb and al-Banna were born in the same year (1906), received a similar course of modern elementary and middle education, enrolled in the same tertiary course and graduated from the same university, but they did not know each other. After graduation, both men worked for the government, in the same sector, precisely in education, and faced similar conditions with which they moved. Al-Banna opted for the Muslim Brotherhood, while Qutb opted for journalism and literary criticism and, later, turned to the Brotherhood and developed a sophisticated system of thought on Islam and society.

Al-Banna's death devastated the Brotherhood organisation; his successor judge al-Hudaybi lacked al-Banna's charisma and leadership skills. al-Hudaybi's

intellectual vision was of one who came from outside the organisation. Members of the Brotherhood were from various professions and skills. The organisation had a considerable number in the army (later Free Officers) and were preparing for change in Egypt. Here, Qutb played a significant role. Therefore, speaking of Qutb's thought on democracy is not as simple as it might be. In addition to his sophisticated system of thought and his fine style of Arabic prose, Qutb was involved in Egyptian politics; moved from one political party to another but finally divorced them all; engaged with the army officers of the 1952 July Revolution and then rejected them; joined the Brotherhood and was jailed for fifteen years: all this coloured his intellectual output and contributed, to some extent, to his confrontational theories. A brief outline might illustrate some features of his thought on political Islam, in general, and the compatibility between Islam and democracy, in particular.

Born in 1906, in a small town in Upper Egypt, Sayyid Qutb memorised the Qur'an and received a Western-style elementary education at a modern school in his town. To further his education, Qutb moved to Cairo, where he was introduced to the literary critic and nationalist 'Abbas Mahmud al-'Aqqad, who gave him access to the press. The young Qutb began to write on poetry and its role in society, literary criticism as well as social and political matters. This continued until he graduated in 1934 from *Dar al-'Ulum*, a teacher-training university that focused on Arabic and Islamic literature but with modern orientation. One year before his graduation, Qutb published a significant work of criticism, *The Task of the Poet and the Poetry of the Present Generation*. After his graduation, Qutb worked for the Ministry of Education in varying capacities. By the end of the Second World War, he was already established as a literary critic, editor, and author whose works critically assessed the existing situation in Egypt and its foreign-backed regime. For a few years, Qutb took issue with five schools of thought in Egypt. In 1938, Qutb lambasted 'the prince of Arabic literature' Taha Husayn for his book *The Future of Culture in Egypt* in which Husayn suggested Egypt belonged to the West. Qutb's response was published in periodicals as well as in a book of the same title *Critic of the Book of the Future of Culture in Egypt* (1939). By 1947, Qutb produced a few works on the Qur'an, from literary perspectives, but with new approaches that generated intense discussion. Towards the end of 1948, Qutb's *Social Justice in Islam* was completed and it was published in 1949. During this period, Qutb was writing in the newspapers and periodicals.

He was also the editor of the widely read journal *The Arab World*, but left it to his colleague, the Moroccan 'Alal al-Fasi, and established another journal, the *New Thought*, in January 1948. This journal was closed down in May 1948 by the government. For his sharp criticism of the regime, an order was issued to arrest him, but the order was suddenly changed to send him overseas. He was sent to the United States to study Western methods of education (1948–1950). He toured around to explore, as he later said, the United States from within, but stayed in Colorado for a longer period.[226]

After his return, Qutb engaged with the young army officers. A number of them, including the later presidents Nasser and Sadat, were members in the Brotherhood preparing for change in Egypt. Qutb was their advisor; they were interested in his writing and had read for him *Social Justice in Islam* (1949); *Islam and Capitalism* (1951); *Islam and the Universal Peace* (1951). They visited him frequently and attended his lectures. Qutb said: 'After I returned to Cairo [from the United States], some Brothers of various professions visited me and congratulated me for my book *Social Justice in Islam*.'[227] Among them were those Brothers in the army (later Free Officers), and they continued to visit him regularly. Their photographs which show Gamal 'Abd al-Nasser and other army officers with Qutb at Qutb's house confirm Qutb's saying that 'he was closer to those Brothers of the army than to those outside it'.[228] Immediately after the Revolution in 1952, Qutb was appointed as advisor in the Revolutionary Command Council (RCC).[229] During this period, Qutb reformed Egypt's educational system and utilised the experience he had gained in the United States. Here, Qutb was not against the notion of borrowing from the American system or from the West such ideas that could develop and renew the educational system without conflicting with Egypt's cultural identity. In August 1952 (one month after the Revolution), the RCC decided to celebrate their successful and bloodless revolution, and to present themselves to the people. The occasion was considered as an attempt to consolidate the Free Officers in power; to introduce themselves to Egyptians and guests from East and West. On this occasion, which was attended by Nasser, Sadat, Brothers, ambassadors and revolutionaries from Egypt and overseas, Qutb was warmly congratulated as *the* thinker of the Revolution. His role was considered as that played by Comte de Mirabeau (1749–1791), the outstanding orator of the French Revolution.[230] In his speech, President Muhammad Naguib addressed Qutb with such words as these: 'Our great teacher, the pioneer of our blessed Revolution, the first thinker of Islam in our epoch, Mr Sayyid Qutb.'[231] This theme was dominant in the sermon of this occasion. Qutb found it is reasonable to say a few words to guide the revolutionary warmth. He said:

> Truly, the revolution has begun, but we should not express our gratitude to it, in that way, because it has not done anything yet. The departure of the King is not the aim of the revolution, but it is to turn the country to Islam.... As you all know, during the kingdom period, I personally was prepared to be detained at any time, even now; in this new age, detention or no detention is also not impossible.[232]

In his speech, Nasser came with his loud voice and the revolutionary mode of his age to outline the aim and objective of the revolution, but also did not forget to refer to Qutb in a few revolutionary words: 'and I would assure you brother that they cannot reach you except over my dead body. You know the commitment of the men of the revolution that we would sacrifice our life for your safety'.[233]

When differences appeared between the RCC and the Brotherhood, Qutb stepped in as a mediator, but he failed to narrow the rift between the two forces. Later, in his testimony on 19 December 1965, Qutb pointed out his relation with the RCC as follows:

> Regarding the dispute between the leaders of the Revolution and the Brotherhood, I realized the gap between them was going wider. I know that because I was working more than 12 hours a day with them…and I was very close to them…. they nominated me for a number of senior state positions…They were discussing with me – openly – the current affairs seeking my advice on some issues such as that of the labour and the communist movements in Kafr al-Dawwar. They were also discussing with me the issues concerned with the process of transition, the constitution, and the required period…etc. The important thing now is that I did try at that time – whatever possible – to prevent the combat that I was seeing in its forerunners, but I failed and the other direction finally succeeded.[234]

Qutb was not interested in any senior state position, but wanted to satisfy the growing appetite for more religion in Egypt. However, Qutb agreed on Constitutional rule, and that Islam is not against democratic Constitutional rule.[235] This standpoint continued with him in his later writings. This also was Nasser's view: '[t]he People (*al-sha'b*) want to turn to religion and I am with them'.[236]

Qutb's idea of the Liberation Rally was to incorporate youths, students, labourers and the Brotherhood under one umbrella for one goal. The Liberation Rally occurred on 23 January 1953 'under the leadership of Nasser and his deputy Sayyid Qutb'.[237] In his testimony on 19 December 1965, Qutb further explained these three reasons and highlighted his plan and strategy for the Liberation Rally: the masses of the Liberation Rally would be able to give the Revolution strength and support, particularly because the leaders of the Revolution had come from the back not only to the front but also to rule a nation that did not know its leaders; the masses of this Rally would be introduced to an Islamic programme, educating and training them to live according to Islamic law. Because the Liberation Rally would be an Islamic organisation, there would be no need for another Islamic organisation in Egypt. In this way, the Brotherhood would join the Liberation Rally, and their disputes with the RCC would be dissolved. The Liberation Rally comprised in part of the Brotherhood, then, will be the one Islamic force that the Revolution could depend on to prepare Egyptian society for Islamisation on a wider scale. Qutb noted also that Nasser and his supporters in the RCC agreed on this plan.[238]

It was in this context of layers of political disputes between Nasser and the Brotherhood that Qutb's plan for Constitutional rule within six months, returning the army to its camps, calling for elections, land reform, labour movement and the liberation rally, changed. For Qutb, the change was the point of departure, as he states in the following testimony on 19 December 1965:

> I engaged in the work with the leaders of the July Revolution until February 1953 when my opinion and theirs began to diverge on the planned program

of the Liberation Rally and some other issues of the current affairs of that time. Now, there is no need for these particular affairs to be detailed . . . The point now is that at that time, my feeling about the Muslim Brotherhood was growing stronger.[239]

It was at this point that Qutb resigned as advisor in the RCC. Nasser opted for the Soviet camp, and Qutb opted for the Muslim Brothers' camp. Qutb made his decision, as he said, to join the Brotherhood while 'he was very much aware of the gap between the two forces and knows where they are going'.[240] He worked for the Brotherhood from March 1953 until he was jailed in November 1954. Within this period, Qutb was appointed to senior positions in the Guidance Council: head of the department of propagation and guidance; editor of the Brotherhood's newspaper; and chief spokesman of the Brotherhood organisation. Under the newly declared law of censorship, Qutb was arrested and imprisoned in 1954 along with other leaders. He spent the rest of his life behind bars until the government executed him in 1966.[241]

In jail, Qutb was allowed to write. His publisher successfully obtained court permission for Qutb to meet his contractual obligation concerning his commentary on the Qur'an. The government appointed an official committee from al-Azhar to review his writings. Qutb continued to write prolifically in his style of criticism that clearly applied to the Nasser regime. He produced a large number of books and essays that met his contractual obligation and kept his views alive. These include a repeatedly reprinted multi-volume opus on the Qur'an, in which Qutb's worldview is laid out alongside the Qur'anic verses that support it. His *Ma'alim fi al-Tariq* (Milestones) the last book written in jail and published in January 1964 by Wahabah in Cairo, was very popular. The al-Azhar committee did not reject any of Qutb's works except this last, *Milestones*. Shaykh al-Subki, the head of the *fatwa* Council, stated that

> The book calls for Islam, but the style of the book is provocative and influential. The author claims that the world is *jahiliyyah* and no Islamic *ummah* (nation) exists at the present. The author calls for Islam and extends his propagation to include the world. . . . What is *hakimiyyah* (sovereignty) for Allah alone? Allah does not walk on two legs among the people to make them not submit themselves to the rulers.[242]

Al-Azhar accepted and then rejected *Milestones*, in step with the regime. Nasser himself read *Milestones* and permitted its distribution, and so did al-Azhar.[243] However, 'the book appeared too popular and was printed six times in a month, each print was double the previous one but also the demand remained extremely high. The government banned the book, and so did al-Azhar.'[244]

In his *Milestones*, Qutb went further than al-Banna in his rejection of governments that failed to follow Islamic principles. He also made it clear that he thought his analysis applied to Nasser's Egypt. In *Milestones*, Qutb argued that the world could be divided into types of societies. A society that embodied Islamic values in the realms of law, politics and economics counted as truly Islamic. A society that fell

short in any of these areas belonged to the realm of *jahiliyyah* (i.e. ignorant barbarity), a word used in the Qur'an, four times, to describe the condition of Arabian society before the advent of Islam.[245] The synonym '*jahalah*' is also mentioned in the Arabic translations of the Old Testament. In Ecclesiastes, the word '*jahalah*' is used explicitly in 5:2; 7:26; 10:1,5,14, but *jahlan* is used in 2:9.[246] Both terms *jahalah* and *jahlan* are infinitives of the substantive *jahl* (ignorance), but *jahalah* is also synonymous with *jahiliyyah*. The book *Milestones* forms the core of the radical fundamentalist canon even today.

Focusing on what went wrong, Judge Muhammad Saeed al-'Ashmawi (one of Qutb's critics) said: 'This is but a reaction to, and a result of, the activity of the revolution of 1952, which attacked liberalism and the freedom of thought. Liberal intellectual movement was destroyed, and the thought was formulated only in a government model.'[247] The former diplomat, lawyer and eminent novelist Yahya Haqqi also made this point: 'I will never forgive Nasser for beginning the post-revolution period with the hanging of workers in Kafr el-Dawar. Neither can I forgive him for the hanging of Sayyid Qutb [the first critic to write about Haqqi's *The Lamp of Umm Hashim*]. And the regime's imprisonment of the left in concentration camps...this was all unforgivable.'[248]

Qutb was read widely in European thought in various disciplines, and these were referred to in his writings. In his works he included references to Plato, Aristotle, Rousseau, Berkeley, Spencer, Tolstoy, Dostoevsky, Hume, Hegel, Kant, Renan, Thomas Hardy, Marx and Russell. He also wrote about leading Asian thinkers, including the Indian Tagore and Iqbal. In the Arab world, Qutb analysed the writings of what he calls 'the older generation'.[249] Qutb left twenty-six books, three volumes of poetry, and more than fifteen-hundred articles and essays scattered in the widespread and coloured periodicals in Egypt and Arab countries. Some of his works were among the curricula in Egyptian schools and universities until 1965, one year before his death, when the 'government collected all Qutb's works from schools and other institutions'.[250]

Following the execution of Qutb in 1966 demonstrations swarmed across the Muslim world. Then the Islamists regrouped and reviewed their infrastructure and ideas. From their past experience with the regime, the Islamists had learned their security and strength did not lie in one large pyramid structure like that of the Brotherhood. They lost confidence in the previous policy and leadership of the Brotherhood.[251] Subsequently, the Islamists founded militant Islamic groups, small in size and based on their own strategy and means. They believed that the Brotherhood's educational programme proved futile; it had led to the death of Qutb and other leaders; and it had failed to establish an Islamic state. Therefore, the right course was to overthrow the regime and proceed to the task of applying the *shari'ah*. It was here that violence and terrorism began to take shape on the local level, mainly in Egypt. Whenever the government moved against Islamists, some who escaped arrest found their way to other countries in the Middle East as well as in Europe and the United States. In addition to these countries, Afghanistan during the counter-Soviet rule, and then Afghanistan during Taliban became safe havens for many of them. Some Western, Arab and Muslim governments helped

them to go to Afghanistan. It is from these, it appears, that al-Qa'ida and its terrorist ideology emerged. Ayman al-Zawahiri, who currently is deputy leader of al-Qa'ida, was a member of these groups in Egypt and contributed to their blue-print; promoted their *jihad*; and substantiated their claim that the Muslim Brotherhood have strayed away from the path of guidance.

As far as democracy is concerned, Ayman al-Zawahiri, and his jihadi conspirators of the post-Qutbiyyan groups, whether before or after the establishment of al-Qa'ida, seems to have his own theory. His opposition, even hostility, to democracy stems from his understanding of democracy as an idolatrous idea designed, specially, against Islam. For him, democracy is to assign partners with God. In his book *al-Hasad al-Murr: al-Ikhwan al-Muslimun fi Sittina 'Aman* (The Bitter Harvest: The Muslim Brotherhood in Sixty Years), al-Zawahiri substantiated his claim that the Muslim Brotherhood and even al-Banna's policy and Qutb's educational programme had deviated the movement from the straight path and guidance. He believes that democracy is a form of '*shirk bi Allah*' or associating partners with God. To him, Islam renders sovereignty to God whereas democracy renders sovereignty to the people. The legislator in democracy is the human beings while the legislator in Islam is the Almighty God. Hence, democracy is a blasphemous idea that usurps the right to legislation from the Almighty God and gives it to the people.[252]

Al-Zawahiri's understanding of democracy is as a new 'religion' based on deify-ing humans, by virtue of awarding them the right to legislate without being bound by another authority. He argues that since democracy is the recognition of the sover-eignty of the people, it would have to mean the denial of God's 'sovereignty'. He uses this view to attack the present Brotherhood and their advocacy for constitutional democratic rule. To him, the members of the parliament are 'idols', and those who elect them commit, by doing so, the arch-sin of *shirk*. Thus, participating in elections or other democratic processes at any stage is not Islamically valid but forbidden (*haram*) and those who perpetrate in it are apostates and infidels.[253]

Similar to that is another post-Qutbiyyan jihadi trend which believes in the change from top-down that is to overthrow the government and establish the Islamic state in any country, begun by the Arabs and Muslim countries. The Islamic state of this organisation is defined as caliphate. This organisation calls itself in Arabic *Hizb ut-Tahrir al-Islami* (also, more accurately *Hizb al-Tahrir al-Islami* (the Islamic Liberation Party)). It was established in Jerusalem, in early 1952, by the Palestinian scholar Taqiyy al-Din al-Nabahani (1909–1989) who himself was a member of the Brotherhood.[254] During the past five decades, the Liberation Party expanded and currently has its own journal (*Khilafah*: caliphate), and other blueprints; its own website (*khilafah*) and links; and it has branches and headquarters in many Middle Eastern, Asian and European coun-tries, including Britain and Australia. This organisation also gained momentum in Central Asia, especially, in the five Muslim states of the former Soviet Union. This organisation has been suspended in some countries as Germany and Denmark, but not in others like the United States and Australia. Whatever their reason might be, the Liberation Party's blueprints proclaim their aim is to establish one huge state (caliphate *khilafah*) in which the ruler is accepted

'on condition that he conveys Islam as a message to the world through *da'wah* and *jihad* .... It also aims to bring back the Islamic guidance for mankind and to lead the *ummah* into a struggle with *Kufr*, its systems and its thoughts so that Islam encapsulates the world ... The field of work for it [is] in one country, or a few countries, until it is consolidated there and the Islamic State is established.'[255]

In Egypt, the Islamic Liberation Party was the first Islamic organisation to openly challenge the state. In April 1974, this organisation led by the Palestinian Dr Salih Siriyya (1933–1974) obtained some weapons and made a failed attempt to take control of the Military Technical Academy and other important sites in Cairo. It was the first time a Muslim organisation had openly announced its aim to overthrow government by force, an aim repeatedly rejected by the Brotherhood founder Hasan al-Banna.[256] This way of challenge by this Party is frequently reported by the media in Central Asia. The Liberation Party's expansion and its challenge is detailed by Pete Lentini as a 'threat to the states'.[257]

The Liberation Party argues that democracy is but a system of *kufr* (disbelief); democracy has nothing, whatsoever, to do with Islam. However, in 1951, the founder al-Nabahani himself stood for election but lost; in 1954 only one of the Party's five candidates won and entered into an arrangement with the Brotherhood; in 1956 also only one candidate won.[258] This could be considered as hypocrisy. This Party believes that democracy contradicts Islam's code in all issues, major or minor. As outlined by Akbarzadeh 'A dissident affiliated with the *Hizb ut-Tahrir* told a Radio Free Europe analyst: "people are tired of democracy. [All around you] you see unemployment, immorality. Our people are Muslims and they yearn for Allah and to live by his laws." '[259]

Similarly, the Jama'a Islamiyya (JIs) whether in the Middle East (i.e. Egypt) or in Asia (i.e. Indonesia and Malaysia) understand democracy as *shirk* and blasphemy. This ideological position also applies to all militant groups worldwide. All of them agreed that the systems of the present Arab and Muslim states are not different from Western democracies of *kufr*; all militants want to establish a caliphate (one huge Islamic state to unite the Muslim world or the *ummah*) on their own terms of rule by the *shari'ah*; all militants agree on *jihad* and to overthrow governments by force. In short, the militant groups have the same goal but different approaches to it. There are various differences between militant groups, but this should not obscure their tactical and ideological affinity. Some might prefer to act immediately, if they are well established. Others might opt for a tactical discretion vis-à-vis their opponent while they are still weak. Silence (sleeping cells) is a key strategy for preparation and development of their inner strength. All militant groups' infrastructural models are mainly based on the metamorphoses strategy of fission, division, cleavage, mitosis and meiosis and to appear with unfamiliar titles and personal names.

In addition, all militants do not trust Western democracies. They argue that when our Muslims (i.e. Islamists) in Algeria were winning the presidential election, Western democracies interfered and brought the election to a halt, and helped the corrupt regime to stay in power. It was at this point that Algerian Muslim oppositions

turned militant. This also applies to Egypt, Jordan, Syria and other Arab and Muslim regimes. Most of the Middle Eastern regimes are not democratic and have not come to power through democratic processes but through military *coups*; and oppressed their oppositions with the support of Western democracies. This is not different from their support to the military *coups* and dictatorships in present Pakistan and other Asian states. Speaking of radical groups in Central Asia, Pete Lentini pointed out what could be generally considered as part of the problem, as follows: 'Additionally, the presence of democratic countries' troops in Central Asia has not really improved these countries' human rights records. In some cases, these countries have used the "War against Terrorism" as an excuse to accelerate repression. Again, this tends to feed into dissident, militant and terrorist groups' hands.'[260]

Consequently, all militants do not trust Western ideas, including democracy. They attempt to find whatever in their religion and culture to support their position against democracies which supports despotism and dictatorship. Militants' arguments against democracy, as appeared in their blueprints, is mainly based on Qutb's key ideas, especially the concept of sovereignty (*hakimiyyah*), but they do not understand his thought. Those militants who deny Islam's compatibility with democracy and stand against power sharing and caring, usually lack knowledge of their religion and make it, like their faith, rigid and limited in time and space; not universal. If they believe Islam is universal, as they frequently claim, they, then, are seriously in need for some adjustments to avoid their contradictions. They usually lack knowledge in the humanities and are indoctrinated with some shallow Islamic literature. They tend to define things literally with extreme simplicity. For instance, they understand the Islamic state to be only a huge 'caliphate'; and the ruler must be called 'caliph'; also the ruler must assume power through only 'allegiance'.[261] None of these, as previously outlined, is obligatory to which Muslims must conform. Even the caliphate did not approve itself, but it was divided and subdivided, and there were a number of rulers, every one of them called himself caliph. Therefore, Qutb never defined Islamic rule to be caliphate. He only speaks of Islamic society. He left the form of state to Muslims to decide what is best for them.[262] Militants also understand Qutb's ideas of sovereignty (*hakimiyyah*) to mean 'God's rule'. This also is a loose translation, but they actually mean 'government by God'.[263] These key ideas are the basis of their main argument. In their analysis, militants try to shape their opinion along Qutb's comprehensive lines. Not only are all the issues of politics too complex to be simplified in this manner, but also the concept of 'government by God' or even 'God's rule' is totally misunderstood. These expressions and their specifics have been previously detailed in Chapter 1, and further details will be presented in due course. To return to the focus is on Qutb, none of these tally with Qutb's concept of sovereignty (*hakimiyyah*) and state. Their analyses lack due attention to language, philosophy of law and sociopolitical context.[264]

Militants' understandings of Islamic government to mean 'government by God' or 'God's rule', in Qutb's view, is but 'theocracy'. Qutb rejects it totally with its forms, flags and colours. Based on several Qur'anic verses (i.e. 2:229; 4:59), Qutb pointed out that 'government in Islam is limited to regulations laid down in the Qur'an and *sunnah*, the primary sources of *shari'ah*'.[265] Consequently, the limitation

of government to *shari'ah* law does not imply theocracy or autocracy and the like of this word groups but implies democracy in its widest sense. In the view of many scholars of comparative political systems, 'limitation of governmental power in regulating the affairs of the people to the law is the central principle of constitutional rule.'[266] To communicate the Constitutional rule, Qutb placed the limitation of governmental power in one word that is the '*hakimiyyah*' (Sovereignty).

The concept of *hakimiyyah* lies at the heart of the militants' argument against Islam's compatibility with democracy, and they try to draw strength from Qutb. As stated earlier, al-Zawahiri and his conspirators of al-Qa'ida and other terrorist or militant groups argue that democracy recognises the sovereignty of the people, but in Islam the sovereignty is for God. They claim that democracy's recognition of the sovereignty of the people would have to mean the denial of God's 'sovereignty'. Therefore, democracy and democratic process are 'forbidden', and those who participate in it are 'apostates' and 'infidels'.[267] None of this tally with Qutb's comprehensive line or his sophisticated system of thought.

Qutb derived the word '*hakimiyyah*' from the Qur'anic word '*hukm*' (to govern and to rule). There is not an English word that I know that could translate the word '*al-hakimiyyah*' accurately without losing the force and intent of the term. What we could do is to describe and characterise. The *hakimiyyah*, as asserted by Qutb, is 'the highest governmental and legal authority'.[268] With this definition, the '*hakimiyyah*' could be translated by the word '*Sovereignty*'. Qutb uses this term in this way '*hakimiyyatu* Allah'. Thus, the meaning, then, will be '*hakimiyyatu* Allah' is 'the highest governmental and legal authority'.[269] It is here that the militants understood *hakimiyyah* to mean 'God'. However, Qutb neither said that nor did he leave this case for speculation, but outlined the concept as follows:

> The *hakimiyyah* means that the *shari'ah* of Allah is the foundation of legislation. Allah does not descend Himself to govern, but sent down His *shari'ah* to govern'.[270]

Focusing on this text, there are two key urgent remarks: (i) the *hakimiyyah* in Qutb's view is not Allah, but it is the *shari'ah*; (ii) Qutb's reference to *shari'ah* does not prohibit people to legislate for themselves on the basis of the spirit of *shari'ah*. This is obviously indicating the militants' profound misconception of not only Qutb's ideas, but also their religion and the Qur'an. They read, but also take the immediate meaning literally out of the context. Considering these remarks, al-Qurtubi (d.671/1272) emphasised that the *shari'ah* is not Allah but it has come to being by Allah's command. In his writings, Qutb uses the term '*hakimiyyah*' (sovereignty) very often, but never said *hakimiyyah* is God.[271] In using the expression '*hakimiyyatu Allah*' (shari'ah of Allah), Qutb is simply using similar Qur'anic expressions such as '*ardu Allah* (earth of Allah); *sama'u Allah* (heaven of Allah); *naqatu Allah* (she-camel of Allah); *shahru Allah* (month of Allah); *rasulu Allah* (messenger of Allah); *mala'ikatu Allah* (angels of Allah); and *ruhu Allah* (spirit of Allah)'. Following these expressions, Qutb said '*hakimiyyatu Allah*' (the shari'ah law of Allah). All of these Qur'anic expressions have 'come to being by Allah's command'.[272] Thus, the

militants should consider that neither the 'she-camel' nor the '*hakimiyyah*' is God. It follows that the *hakimiyyah* (sovereignty) of an Islamic state is, practically, the sovereignty of Law, and that Law limits the governmental power and regulates its functions. Limiting governmental power to the rule of law does not imply autocracy, but implies democracy in its widest sense. In this way, Qutb's concept of *hakimiyyah* (sovereignty) is not against democracy, as such, but compatible with it.

Legislation is another key remark linked to *hakimiyyah* (sovereignty) and frequently used by militant groups to substantiate their claim that the legislation in democracy is made by human beings, but the legislator in Islam is God. To support their argument, militants try to draw strength from Qutb and selectively use some of his words. With that in mind, their argument concerning legislation is also not with Qutb's line of thought. Their argument comes from Qutb's frequently used expression 'Allah is the "Creator" and Legislator'. Qutb, however, uses such expressions within the context and with precision that never deprives the people of their right to legislate (through independent reasoning or *ijtihad*), the laws that they need in their daily life at any place, space and generation. As remarked earlier, Qutb refers to the *shari'ah* as the foundation or basis for legislation. This means that people could legislate for themselves on the basis of the *shari'ah*. The question then is, does the *shari'ah* and its spirit stand against humanity and its spirit?

Any one who has knowledge of Qutb's system of thought, knows that he cannot deprive people from the right to legislate for what they need, on the basis of the *shari'ah*. This is because of at least two grounds: first, Qutb presents Islam as 'a comprehensive system that is able to respond to the development of Islamic society of any time, and generation'.[273] The second is the fact that the *shari'ah*, as Qutb says, did not give detail on everything in this life, but kept silent on some issues, including the method of consultation and other affairs laid at the heart of the structures and functions of state, the relations between the state and its citizens, between the citizens themselves, and between the citizens and the state and outside world. On the basis of those two grounds, at least, the right of the people to legislate for themselves through independent reasoning, in Qutb's view, is as wider as the needs of the Islamic society of any Muslim country, place, time and generation could go.[274]

Furthermore, the deliberate silence of the *shari'ah* about those affairs is suggestive of the need for continuous temporal legislation. Qutb pointed out that Muslims are allowed to legislate for affairs not touched upon by the *shari'ah*, as well as the affairs to which the *shari'ah* has provided only broad basic principles with no detailed laws.[275] In either case, it is up to the people of any Muslim country to 'enunciate legal opinions' for what they need of detailed 'legislation' through independent reasoning (*ijtihad*); and this also must be in agreement with the 'spirit of *shari'ah*'. It is quite clear that legislation in an Islamic state cannot be in 'contravention' of the spirit of the *shari'ah*. The process of legislation, Qutb maintains, needs an Islamic state to work and develop the society.[276]

In his view, prostheses and patching this or that sector or to introduce law based on the spirit of the *shari'ah* here and an imported law there, will not help to

develop the society as it should be.[277] Here, Qutb does not reject the experience of other nations:

> The *shari'ah* has the inclination and capacity to respond to the modern life with its growth and renewal. We should utilize our own experience as well as the experience of all nations in whatever is in harmony with the general idea of Islam and its principles about life.[278]

Thus the experience of other nations (i.e. Western democracies) in making laws and codes is not *shirk*, that is, that temporal legislation is not *shirk*, as militants frequently assert. In his book *Toward Islamic Society*, Qutb portrayed the Islamic society that he seeks to establish, and pointed out that Muslims could legislate for themselves whenever they had a need for whatever they wanted:

> This Islamic society is a new society; it is a newborn society; it is a dynamic society that is continually on the move on its own way toward human liberty; all liberality and development…Questions about the criteria of rulership; about consultation and its methods…to the end of this list are on the agenda of the researchers of Islam…they try to address these important questions…but they do their research in a vacuum…they have no example of a true Islamic society existing before their eyes…Legislation cannot successfully result in good laws, before a physically established true Islamic society to know, at least, what we need and what we need not. Islamic jurisprudence cannot emerge or grow in a vacuum, and it cannot live in a vacuum as well. The required laws cannot exist in the mind and papers, but comes from the living reality of life that is precisely the life of the true Islamic society. Thus, Islamic society must be firstly established, with its physical and natural structures to be the actual environment which creates its appropriate Islamic jurisprudence that is able to deal with the new society and its affairs in the reality of daily life. Here, this new society might need banks; insurance companies…etc. and might need not. We cannot assume what laws that this society will exactly need; we do not know the volume or the shapes of laws that this society needs; so, we cannot legislate to it in advance.[279]

This means that, Islamic system allows a group of people (experts) to legislate for the entire people, as democracy allows a group of people to legislate for the entire people. In either case, human beings will use their talent and expertise to legislate and make laws through independent reasoning (*ijtihad*). Here, if the militants have in mind that the people in Islam will legislate on the basis of the spirit of *shari'ah*, while the people in democracy will legislate on the basis of the spirit of *humanity* (if not based on religion at all), then those militants must come to terms with the fact that Islam is the religion of reason, said 'Abduh and Qutb.[280] The spirit of *shari'ah* is not against the spirit of *humanity*, but in harmony with it, said Qutb.[281] The *shari'ah* with its spirit, Qutb maintains, has come to deal with 'human reasoning' and 'communicate' with human intellect and the 'spirit of

humanity'. It was on this basis that Qutb enunciated the 'foundations' upon which his entire political and economic theories were based. These foundations are: (i) absolute liberation of the inward soul; (ii) complete human equality; (iii) and firm social solidarity'.[282] For this the *shariʿah* has come to communicate, not to dictate. According to Qutb, 'Islam is the religion that respects human's cognitive and emotional faculties, and is content to address them without compulsion and without miracles that break the laws of nature.'[283] In short, legislation on the basis of the spirit of *shariʿah*, or on the basis of the spirit of *humanity* cannot be conceived to mean enmity between Islam and democracy, but to add more to the force and intent of the elements of similarity between the two systems. Here, militants turn a blind eye on these facts, and adhere to their short-sighted view which cannot see human legislation at all, but surprisingly legislate for themselves to use motor-vehicle, computer and communication technologies which have not been used by their ancestors.

As to the legislative power in an Islamic state, Qutb pointed out that the early period of Islam preserved variable methods. Muhammad himself was 'consulting' his Arab and non-Arab companions 'before deciding' on matters not touched by the *shariʿah* or outlined broadly without specific details. Some 'tens of hundreds of examples' abound in the view of both Abu Baker and 'Umar about the prisoners of the war of Badr (AH 2/624 CE). Submitting the matter to the Muslims and considering their advice, Muhammad wanted the people to 'share freely' in the decision.[284] This also was followed by his successors, in varying style and forms. These examples, Qutb maintains, are not 'obligatory' and none of them is mandatory to which the Muslim community must conform.[285] This means that temporal legislation can be vested in the hands of an 'individual' or a 'limited number' of persons that is the 'legislative body' or council. In this respect, Qutb emphasises that people could use the idea of a 'general public vote' (one-person, one-vote), or the vote of 'one House or two Houses' (i.e. Parliament and Senate), or any other idea that 'suits the circumstances' of the nation at that time and place. In either instance, the people, in Qutb's view, should decide which form of vote – is it vocally or in writing; is it in all affairs of politics, economic, defence and others, or only in some affairs? Muslims should also choose the 'authority' that observes and be responsible for these procedures. Is it the responsibility of the Cabinet and the elected president of the state? Is it the responsibility of the 'Judiciary Authority', or the 'People's Assembly?' All these channels were not prescribed in the authoritative texts of Islam. The procedures and the spheres of consultation were 'reserved to the circumstances of each nation', its time and place, and to the 'human experiences and human achievements'. It would thus appear that the form of government, the form of consultation, legislature and procedures, all could have some alterations and adjustments from time to time with no compromise to its Islamic nature.[286] In this way, Qutb pointed out the similarity between Islam and democracy, but also outlined some difference and suggested that Islam is a complete system: 'It may happen in the development of human systems that they coincide with Islam sometimes and diverge from it sometimes, but Islam is a complete and independent system.'[287] For other scholars

Islamic system is similar to the democratic system.[288] In either case, Islam is compatible with democracy.

Consequently, Qutb's thought on *hakimiyyah* as the 'highest governmental and legal authority', brought the authority of government under the realm of *hakimiyyah*. As the *hakimiyyah* (sovereignty) is practically the Law, so the sovereignty is the sovereignty of Law. Qutb argues that the duty of any government, in general, is to facilitate the application of law. On this basis, Qutb shifted the authority or legitimacy of the elected government from the electorate majority and placed it with the realm of the executive power. He is of the view that the elected government derives its legitimacy from its activity of facilitating the application of law, not from the majority of the electorate, or the result of elections.[289] With this in mind, the government (i.e. the ruling party) cannot pass laws through its own majority in the electorate or through the majority in the Parliament or in the Senate, but through the entire people or their representatives. Laws and policies will not be of the elected party's specific interest or ideology, but of the interest of the entire people, that is, all parties. Here, Qutb did not deny the rights of the people or the electorate, but enhanced the power of the entire people, on the one hand, and limited the power of the elected party, on the other hand. In other words, the concept of *hakimiyyah* (sovereignty) brought the elected government to be responsible before the entire people, not before the party or the majority of a particular interest or ideology.[290] Thus, as soon as the government is elected by the people, the government derives its legitimacy, not from the electorate or the result of election, but from the governmental activity of facilitating the application of the law.[291] Impeaching the government is not depending on the minority or on a particular party of opposition, but it is the duty of the entire people. The law gave the people full rights to watch the government; to evaluate governmental activity; to support or to impeach the government through legitimate means.[292] In either case, Qutb's view of *hakimiyyah* confirms the compatibility of Islam with democracy; and that the *hakimiyyah* (sovereignty) is the main principle of a Constitutional rule that is able to limit the governmental power. In this way, Islamic system is compatible with democracy. Thinking of Western democracies, Albert Venn Dicey pointed out the constitution used in England as follows:

> Constitutional Law, as the term used in England, appears to include all rules which directly or indirectly affect the distribution or exercise of the sovereign power in the state. Hence it includes (among other things) all rules which define the members of the sovereign power, all rules which regulate the relation of such members to each other, or which determine the mode in which the sovereign power, or the members thereof, exercise their authority.[293]

Similarly, Charles Frederick Strong defines the intent of a constitution in these words:

> The objects of a constitution, in short, are to limit the arbitrary action of the government, to guarantee the rights to the governed, and to define the operation of the sovereign power.[294]

This is simply what Qutb meant by *hakimiyyah* (sovereignty). He wants to limit governmental activity to the law framework. This principle, as Qutb asserts, is a Qur'anic order lucidly expressed in terms of law such as 'do this and do not do that'. The Prophet himself was not empowered to exceed or over-step these limits.[295] This also is declared by the Qur'an: 'These are the limits ordained by Allah, so do not transgress them. Those that transgress the limits ordained by Allah, those indeed are the unjust' (2:229).

In the sense of Constitutional rule and the limitation of governmental power in Egypt immediately after the July Revolution of 1952, Qutb sent an open letter to President Muhammad Naguib urging him to eradicate corruption and prepare for a new constitution within six months. With his sense of humour, Qutb also ironically described the process of cleaning-up as a 'just dictatorship'. Qutb noted:

> The Constitution of 1923 had brought about the corruption of not only the King and his collaterals, but also the political parties and politicians. This Constitution will not be able to protect us from the return of corruption if you have not established a complete and comprehensive program to prevent those corrupted figures from further parliamentary activity.... Should not the people, who have suffered the oppressive dictatorship for decades, be able to tolerate six months of a just dictatorship? We are assuming that any action of cleaning-up is but a dictatorship anyway.[296]

President Muhammad Naguib was delighted with this ironic missive, laughing and showing it to his inner circle, and thereafter describing himself as a 'just dictator'[297] and described Qutb as 'the master of the Revolution'.[298] The letter not only indicates Qutb's sense of humour and constructive criticism; it also illustrates his ideological position that constitutional rule is Islamically legitimate and lies at the core of the *shari'ah* that is in one word the *hakimiyyah*, which is essential to the organs of the state and its overall identity.[299]

After accepting the role of *hakimiyyah* (*shari'ah* law) in human life, Qutb maintains that government will be based on justice on the part of the ruler, obedience on the part of the ruled, and consultation between the ruler and those who are ruled. This, for Qutb, is one of the basic principles of government in Islam. Among other basic principles were those of the unity of humanity in race, nature and origins as well as those of the universal applicability of Islam. Linking all principles to the concept of *tawhid*, Qutb considers those principles as a broad basic code from which all principles branch and provide the foundation of government and its form and nature. In the sense of this context, neither democracy nor Western democracies recognise Islamic law or *hakimiyyah*. To Western democracies, democracy is not only the First but also the 'End of History'.[300] Even though it is not difficult for anyone to find numerous Eastern and Western intellectuals who consider Islam as a capitalist or others who call Islam a 'democratic system',[301] there is also a perception of Islam as a socialist system,[302] while for others Islam is a communist system, or Communism is the latest version of Islam.[303] A number of thinkers have perceived Islam as an imperialist system.[304]

According to Muhammad 'Abduh (1849–1905), 'there are some thinkers still whispering that Islam has elements of dictatorship in it, and that Muslims should review the order of obedience to the leader'.[305] In either case, both sides agree that Islam is compatible with not only democracy but also other political systems. Contributing to the debate, Qutb is of the view that those Islamic principles indicate the unique position of Islam, and make it difficult for any one to consider the Islamic system as a 'second' or to 'label' it by any label or brand it by any brand other than 'Islam'.[306] Thus, similarity between Islam and capitalism, socialism, communism, and democracy is not, for Qutb, a legitimate means to change the nature and identity of the Islamic system. According to Qutb, there is 'similarity' between Islam and those systems, but each system has its own 'specifics and precisions' which illustrate its 'nature and identity'.[307]

In terms of borrowing from Western ideas, the point for Qutb is culture and identity. His appreciation of his culture is clearly visible in his style, language and even his vocabularies. As a literary critic by profession, his thought, in a sense, seems to stem from his understanding of literature. To him, literature or the arts is not out of the framework of the philosophical theories in any sphere of human life, political, religious or other:

> Literature (arts) is the emotional commentary on life and it issues from the wellspring to which all the philosophies, religious belief, experiences and influences in a given environment have contributed. Literature perhaps has the strongest influence in creating the inward emotional idea of life and in giving the human soul a particular character...Literature – like the other arts – is an inspired expression of living values which stir the conscience of the artist. These values may differ from one soul to another, from one environment to another, and from one age to another, but in every case they issue from a specific conception of life and of the ties between man and the universe and between some men and others...It is foolish to try to separate literature or arts generally from the values they try to express directly or whose effect on human feeling they try to express. Even if we succeeded – and that is impossible – in separating them from these values, all we would have left would be empty expressions, meaningless lines, bare sounds or lifeless lumps.... Islam came to develop and evaluate life, not to accept the existing situation at any time or in any place, and not merely to record its impulses and restraints, its inclinations and limitations, whether at a particular time or over a long period. The task of Islam is always to stimulate life toward self-renewal, growth and development and to stimulate human capacities toward creation, freedom and upward development...The literature or arts that issues from the Islamic conception is a literature or an art that provides guidance by virtue of the fact that Islam is a movement for the continual renewal and advancement of life and is not content with the existing reality in any moment or generation and does not excuse it or beatify it simply because it is the reality. Its principle task is to change this reality and improve it and continually to inspire the movement to create ever new forms of life.[308]

It is from here that Qutb thinks of his and other cultures and how he evaluates what could and could not be borrowed. In his view, intellectuals might adhere to their cultural heritage and 'modernize in ways that were true to the essence of their culture: the question for me is my honour, my language, and my culture'.[309] Thus, Qutb left the gate open to borrow from other cultures to develop and modernise. But, he is of the view that he should consult his culture first, and 'if I find that I must borrow from European ideas, I would do so if this idea would develop the culture without manipulation or assumption'.[310] This theme of reviewing the cultural heritage is an important basic principle in Qutb's thought, in general, and his thought on political theory, in particular. This theme is stated as follows:

> In the world of economics, an individual who already has funds does not resort to borrowing before reviewing his funds to see whether or not they are sufficient. And, likewise, a state does not resort to importing before reviewing its financial resources and calculating its raw materials. Should not spiritual capital, intellectual resources and the heritage of heart and soul be treated the same as goods and money in human life? Of course they should! But in this so-called 'Islamic world' do not review their own spiritual or intellectual heritage before they think about importing principles and plans and borrowing systems and laws from across the deserts and beyond the seas![311]

Thus, borrowing from the West is not prohibited in Islam. Qutb is not against borrowing from Western ideas, and he is not against Western democracies. The matter for him is but to review the cultural assets before borrowing and indulging into debt. In the case of Muslim countries, as Qutb asserts, the decision of borrowing is usually made by a few individuals, if not a single individual of those despotic rulers. Paying back the kind of debt, Qutb maintains, does not affect that particular individual here or there, but affects the culture and identity of the entire nation for generations to come. Reviewing the assets of cultural heritage is important for one like Qutb who did not hide his appreciation of his language and culture. He also did not hide his appreciation of European and American culture. Recounting on his visit to North America, Qutb praised the United States' achievement as follows:

> America – the New World which captures the imagination of all humankind, occupies more mental space than America's vast plot occupies on the earth! This New World has captured the hearts of peoples from every corner on the planet; all races and colours with varying interests, aims and dreams. America – this vast area from the Atlantic to the Pacific; the inexhaustible materials and resources; the powers and men; these huge industries which are not known to any other civilization. America – the countless variety of productions; the innumerable educational institutions and laboratories; the brilliant planning and management which stimulate wonder and admiration. America – the luxurious dream of the promised paradise; the fascinating putty of nature. America – the embodied dream in place and space.[312]

Qutb added that

> America has forgotten one thing: one thing has no value here – the spirit
> (*ruh*). Here, a Ph.D student submitting a thesis on the best method of wash-
> ing the dishes. This is more important than a thesis on the Bible, if not more
> important than the Bible itself…America is good as a workshop for the
> world.[313]

Pointing out that America has a fascinating civilisation, Qutb also encouraged
Muslims to borrow from American civilisation. He even compared America with
his own country and stressed his conviction as fellows:

> The United States had utilized and continued to utilize its capital assets
> (intellectual heritage). Egypt, however, is ignoring its capital (intellectual
> heritage) as if Egypt had nothing or had gone bankrupt. The reality of pre-
> sent life in Egypt cannot be accepted by anyone. The capacity of Egypt is
> enormous, if only Egypt believed in its heritage. Egypt has arrived at the
> crossroads of history.[314]

Qutb here reflects on the political, social, economic, intellectual and ethical systems
of the United States that are the result of their 'brilliant planning and management';
of their hard work in developing and renewing their own intellectual heritage, over
centuries. It is not surprising to find Qutb emphasising that the United States is a
society well developed because it deeply believes in its 'cultural heritage' and did not
import 'systems' from overseas, but 'developed' its own systems from the assets of
its own 'heritage'. Qutb's point is simply that the United States' belief in its own
cultural heritage is a significant factor in its development and to become 'the
luxurious dream of the promised paradise; the fascinating putty of nature; and the
embodied dream in the place and space'.[315] This however does not apply to a country
in the Muslim World. Among the many examples mentioned by Qutb is Egypt:

> Egyptians ignored their own heritage, casting aside their spiritual and intel-
> lectual capital, and imitating America, Russia, Britain, France, China and
> others. Egypt imported principles, systems, theories, laws and solutions from
> these countries. Furthermore, because they stopped believing in their cultural
> heritage, Egyptians thought that this imported mix would solve their prob-
> lems. After all of this laziness with regard to their heritage, Egyptians still
> claim to be Muslims; that is their religion is Islam and their system is
> Islamic![316]

Qutb defined those Egyptians as the ruling regime and those who were planning,
commanding, dominating and monopolising Egypt's affairs. He labelled this human
type in this way: 'We do not condemn our country but that handful ignorant, muti-
nous and selfish [individuals] who hold the affairs in their hands and do nothing for
it [Egypt].'[317]

Concluding remarks

Islam is obviously compatible with democracy and its specifics of liberties, freedom, justice, human rights as well as sharing and caring values. Modern opposition to democracy, in the Muslim world, is not of religious basis but politically motivated. Religion is used by some only to enforce their rejection which, in a sense, stems mainly from the fact that the Western democracies, which provided inspiration and were greatly admired by reformists in the East, had colonised much of the Muslim world, and divided its territories among themselves as booties. The attempts of Western colonisers to Westernise the Muslims, by force, were viewed as a serious threat to the Islamic identity, and, thus, liberating Muslim lands from colonialism became a priority. Hence, the call for reform was replaced by one for revivalism.

As Muslim societies responded to the challenge of colonialism and rose to restore their freedom and struggle for their independence, Westernised elites took over the leadership of national movements that originally had Islamic inclinations. Despotic single-party, military regimes or absolute monarchies replaced the colonial authorities in most of the Muslim countries. Throughout the post-independence era, Islam, its culture and its heritage came under severe suppression in the name of many labels of modernisation. Al-Azhar University of Egypt lost its intellectual independence; it was brought under despotic military rulers to speak in the language and words of the rulers; the Tunisian al-Zaytunah Institute was closed down; the endowment institutions were nationalised; the *shari'ah* courts were dissolved; the oppositional organisations or political parties were also outlawed. The Muslim Brotherhood, who had already established branches or strong links in many Arab and Muslim countries, were hit hard by despotic regimes in Syria, Jordan and Egypt.

Following the execution of several of their leaders and the imprisonment of hundreds of their followers in 1954, 1956, 1965 and 1966 they were driven underground. The challenge had once again changed shape. It was no more the challenge and struggle for independence and freedom, but rather the struggle to resist and defend the religion against what was perceived as a pernicious onslaught against Islam and the cultural identity not only by foreign colonial powers, but also by post-independence regimes.

From then until the early 1970s, members of the Islamic movement were influenced mainly by the works of Sayyid Qutb. Faced with a crisis of government augmented by the despotic and corrupt conduct of Muslim rulers, Qutb sought to limit governmental power through a constitutional rule based on what he called *hakimiyyah* (sovereignty), that is, practically Islamic law. The law, in Islamic state, is the highest legal and governmental authority. The state and its government derive its sovereignty from the activity of facilitating the application of law.

He did not hide the fact that he thought his analysis of *hakimiyyah* not only illustrated Islam's compatibility with democracy, but also demonstrated how the Islamic system's inclination and capacity could work the democratic values better than democracy itself. Qutb provides Islamic system of government as an alternative

system of democracy. Qutb argued for reform of classical Islamic law and thought, and called for a parliamentary government of any form based on Islamic principles of *shurah* (consultation). But, the state, to him, cannot be called by any title other than 'Islamic'. He argued that some of the Western democratic values are based on materialistic conceptions of the universe, life and humanity. Such conceptions, which exclude God and religion from the society and human life, are unacceptable to Islam. With this, he also does not reject everything in Western civilisation or the 'positive' features of democracy. In this sense, he distinguishes between the 'term' and the 'concept' of democracy. He is of the view that there is similarity between Islam and democracy to some degree, but this similarity does not mean Islam should change its name and identity. To him, Islam is Islam and democracy is democracy. With this, Muslims can also borrow from the West ideas that are in harmony with Islam and not in conflict with it.

3 Democratic values in some basic Islamic legal ideas

The definition of the concept of democracy is widely connected to some qualifications of the political traditions in Europe and the United States. Democracy is usually defined through the prism of only Western experience, in which the 'West' and 'experience' are key terms.[1] At the Conference on Security and Cooperation in Europe, which convened in Moscow in September of 1991, the Secretary of State James Baker's address to the disintegrating Soviet was on 'democracy'. Esposito and Voll pointed out that Baker spoke of 'democracy's season and presented to all Soviet citizens and their leaders five fundamental principles that he urged them to follow, including multiparty, free elections and Jeffersonian understanding of the rights of minorities'.[2] The qualification of modern democracy is not merely election or voting but freedom, justice, equality, coexistence and human rights as well. None of these qualifications can work or even exist in any society without some regulations, that is to say laws and norms regulating the existence and the work of these qualifications. Society is not a society without law; law is not law unless it is practised; to practise the law needs authority that is government.

In the context of this theme the previous chapters investigated the political theory, examined Islam's compatibility with modern democracy, and demonstrated the Islamic system's inclination and capacity to work the democratic values better.

At this point, and because freedom, justice, equality and human rights are among the qualifications and values of democracy, it will be useful to outline those values, which are the qualifications of modern democracy, in only some basic Islamic legal ideas in relation to law and public affairs that have been oppressed, abused and excused by those authoritarian regimes in the Muslim world. These basic Islamic ideas have been in the Islamic legal system since Islam came into existence, and many of them will strike the radical sense in general as surprisingly modern and relevant to our modern time. The focus is only on the *shari'ah* as laid down in the Qur'an and *sunnah*.

Human relations: respect and compassion

Successive generations of legal philosophers in all systems have been groping after the 'higher law' or the 'ideal law' or the 'natural law', which stands above

all legal systems and to which all legal systems should conform.[3] All students of jurisprudence will know how important it is that a set of principles should exist which no ruler is at liberty to ignore. From the time of Plato and Aristotle down to the most modern philosophers, this has been one of the central intellectual issues in jurisprudence.[4]

Islam's solution to this problem is to offer the principles of this higher law in the word of the Qur'an. No ruler, however exalted, is at liberty to depart from any part of this law. Rulers may resort to processes of interpretation to seek to justify some particular action, but should rulers violate the law, they would have advised based on the law which will be cited against them and would have no answer.[5]

Positivistic philosophers of law, such as Bodin, Hobbes or John Austin in English jurisprudence, have taught that no law stands above the will of the sovereign.[6] Legal positivism in its worst form underlay the rule of the Third Reich in Germany where a philosophy of undiluted positivism gave the edicts of Hitler a claim to unquestioned authority and obedience.[7] No ruler, under Islamic Law, could ever claim that degree of absoluteness. He is always subject to the higher law and always accountable to it.[8]

Focusing on some basic legal ideas of Islamic Law, one should note that Islamic rules and laws are generally of two categories: the first consists of commandments for religious and spiritual purposes. These include the rules of faith and worship. The second category comprises the rules and laws administering and organising the community as well as the relations between individuals and their communities. These include the rules of human behaviour, penal laws, laws of civil status, constitutional laws, international laws, and the like. Islam also firmly connects those two categories together in a way in which the connotations (political, economic, social, intellectual and moral) of the individual ideas appear within one framework, with all ideas appearing perfectly balanced, and harmonious internally (among the parts) and externally (among the nature of the ideas and the nature of the universe, life and humankind). In this way, the numerous and diversified rules of Islam show its aim of helping people to attain happiness in this world and the world to come. Hence, all human activities have their relevance to worship. Thus, work is worship. Any worship or civil, penal, Constitutional, or international act has its repercussions on this worldly life, which might be the fulfilment of a task, the establishment of a right or nullifying it, the imposition of a penalty, or incurring a responsibility. Yet, such an act that has its effects in mundane life also has another consequence (i.e. the reward) in the celestial life.[9]

Consequently, the *shari'ah* pointed out certain rules to govern the Muslim's personal and social behaviour. In this respect, Islam recognises the nature of human beings 'it was We who created man, and We know the promptings of his soul: for We are closer to him than his jugular vein' (Qur'an 50:16). The Lawmaker knows that the individual is created with a natural love of good things. Wealth lies at the heart of human love: 'Surely he is passionate in his love of good things' (Qur'an 100:8), and that it is one of the 'allurements of the life of this world' (Qur'an 18:46). 'Say: "If you possessed the treasuries of my Lord's mercy, yet would you withhold for fear of expending" for man is (ever) niggardly'

(Qur'an 17:100). 'By no means shall you attain righteousness unless you give (freely) of that which you love: and whatever you give, God knows it well' (Qur'an 3:92).

Human beings likewise have a natural love for their posterity and a desire to pass on to them the results of their labour. The wealth that the people actually save for their children is but this work stored up in the form of wealth. By means of it persons give preference to their posterity over their own personal pleasure in their life. There is no harm in going along with these natural tendencies, so that the individual will expand his fullest energy in productive work and activity, because thus he serves his own desires and needs. He does not feel that his work is being exploited, nor does he expand his effort unwillingly and without hope. Beyond this, it is the society that profits from his effort and labour. Islam sets the basic principles which give the society this profit and assure that no harm will come from granting individual freedom and establishing the right of private ownership.

Islam establishes the right to individual ownership of property by legal means of acquisition. Establishing this right achieves the just balance between effort and reward. Islam then preserves this right and defends it against any kind of theft, robbery, looting or fraud, or illegal confiscation unless for a public need with adequate and genuine compensation. It also sets deterrent punishments to assure all this, beyond what it provides in the way of moral training to restrain people from coveting what is not theirs. Islam does not stop here but derives the consequences such as the right to free disposal of this property by sale, rental, pawning, gift or bequest, as well as other rights of legitimate use. There is no ambiguity in the establishment of this clear and unequivocal right. It is a basic principle which can be violated only in the case of necessity and only to the extent of that necessity 'To the men a share from what they have earned, and to the women a share from what they have earned' (Qur'an 4:32). 'Give the orphans their property, and do not exchange the corrupt for the good' (Qur'an 4:2).

Under the principles of the Islamic financial theory, what has later come to be called 'caliphate' or 'state' is bound to provide a living wage or relief to every citizen without discrimination of race, religion, caste or creed, and there is to be no exploiting or exploited class or slums and millionaires. The prohibition of bank interest or usury, the division of wealth and property due to the laws of inheritance and the operation of the system of taxation – the chief beneficiaries of which are the poor and the indigent – led to the establishment of a more rational system than contemporary capitalism or communism.[10]

Wealth management in Islam is based on humanitarian ethics. The notion of the sharing of wealth, which is one of the basic ideas in the administration of wealth, runs through all Islamic teaching. In the Qur'an, as in the Bible, the road to salvation is not through the accumulation of wealth. Laws, which facilitate for wealth to be accumulated in the hands of a few is not recommended in Islamic theory. There are many of the traditions of the Prophet that uphold the distribution of additional wealth of the richer classes among the needy. This practice was actively implemented by the first generation and the development of the jurisprudence literature went towards the same effect.[11] Accumulation of wealth in the

hands of a few is a sign of social dislocation, ill administration and corruption. To balance the discrimination of wealth and property, it has been strictly prohibited to accumulate wealth in a few hands: 'Woe to those who amass riches and sedulously hoard them, thinking that their wealth will render them immortal . . . They shall be flung to the destroying flame . . . It will close upon them from every side, in towering columns' (Qur'an 104:2–9). Woe to those 'who turn away from the orphan and do not urge others to feed the poor . . . who make a show of piety and give no alms to the destitute' (Qur'an 107:2–7). The directions go to the effect that wealth should be put into circulation, and strong punishments are provided for hoarders, monopolists, smugglers and the like.[12]

Along with these principles comes the practical measure aimed at sharing of wealth to make a balance in the society and eliminate social class and social tensions that might result from hoarding. The law of *zakat* (tax), for instance, required every person to give up 2.5 per cent of his or her wealth to benefit the poor. This obligatory measure was exacted in every Islamic country. Among the ideas of *zakat* is that if the wealth accumulated in the hands of a few persons without sharing of that wealth, then envy and resentment arise.[13]

The exact meaning of the word *zakat* is growth. It is also purification. It purifies the conscience and moral sense by performing an obligation, and it purifies the heart and the soul from natural greed and love of self. Like prayer, *zakat* is obligatory on every Muslim as part of his or her worship. It may be expected that Muslims, who made conscience of their religious duties, will not fail to pay the *zakat* if they act rationally to increase their short- and long-term deposit and savings for this world and the world to come. Paying *zakat* (tax) may attract God's blessings on the wealth in this world and gain His pleasure in the world to come. The Qur'an indicated that the payment of *zakat* will not decrease the person's wealth, but will attract God's blessings on the wealth and increase it ultimately: 'Of their wealth take alms, that so thou mightest purify and sanctify them' (Qur'an 9:103). This means that the *zakat* is not a favour to the poor, but a right of the community over the individual, to assure certain groups within it the minimum sufficient to live on and sometimes a bit more than the minimum.[14]

Islam regards all wealth as a trust from God and it must therefore be shared with fellow beings. The rich are not the real owners of their wealth; they are only trustees (Qur'an 57:7). They must spend their wealth in accordance with the terms of trust, one of the most important of which is fulfilling the needs of the poor. Any attempt on the part of the rich to show it as favour, thus injuring the feelings of the poor, reflects their insincerity and destroys the reward in this world and the other (Qur'an 2:261–274). The poor should also not treat the receipt of *zakat* as a personal disgrace because their receiving is only their right through the law. Hoarding was discouraged and the circulation of wealth and resources encouraged for the greater good of the community. It is for this important reason that Islam promulgates *zakat* and organises a system by which it operates. Otherwise, what else can be understood from the Islamic principles is that wealth cannot circulate only among a certain few persons 'So that it does not circulate only between the wealthy among you . . . And those saved from the covetousness of their own souls,

they are the ones that achieve prosperity' (Qur'an 59:7–9). The Prophet says, 'None of you is a believer until he loves for others what he loves for himself.'[15]

The *zakat* (tax) is due upon the value of all goods, chattels, profits and trade and mercantile business. The *zakat* is not due unless the property amounts to a certain value and has been in the possession of a person for a whole year. Those who are eligible recipients of *zakat* are specified in the Qur'an.[16]

In addition to *zakat*, after the fasting month of Ramadan, every person is required to give away alms that could be goods or the value of the same type. The rightful recipients of alms are also the poor and the indigent, destitute, debtors who cannot pay their debts and travellers, and strangers. What should be noted is that the sharing of wealth which in other religions is a moral obligation becomes in Islam a definite law.[17] Then, the state enjoys the right to enforce the law, 'The ruler should fulfil the needs of the poor for food, clothing for summer as well as winter, and housing that not only protects them from rain, heat and sun but also provides them privacy.'[18]

In the context of modern finance, the forms of wealth to which *zakat* applies are also of the pressing issues. Shares and securities, insurance policies, provident funds and machinery, being forms of wealth not actually known at the time of the foundation of Islam have provoked much academic discussion.[19]

Allied to the notion of sharing was the notion whether one should care only for oneself or for other relatives as well. Humans could not be islands unto themselves, oblivious of the sufferings and the needs of those around them. Family, kindred and neighbours must be helped, not as a distant or supercilious act of charity, but as a free and voluntary act of participation in the welfare of those around one. This high sense of social responsibility permeates the spirit of Islamic Law unlike the more distant attitude towards one's neighbours which is permissible under some other legal systems.

The concern of good neighbourly relations with other faith groups and those around one has been spelt out in some detail. In his *Ihya 'Ulum al Din*, al-Ghazali quoted a tradition transmitted by Abduallah ibn 'Amr ibn al-'As that the Prophet once said to his companions: 'Do you know what the right due to a neighbour is? You should extend to him your assistance if he seeks your help and your support whenever he needs it. Lend him whatever he may ask to borrow from you. If he should be in need, hasten to provide for his need. Visit him if he falls sick. If he should die, participate in his funeral. Extend your congratulatory greetings to him on happy occasions and your condolences on the occasion of misfortune. Do not raise your building so as to prevent the wind blowing in his house unless he grants permission to you to do so. And do not hurt him or his feeling in any matter. If you bring fruits home, send him some; otherwise let him not see it and let not your children become envious by seeing it in their hands. Let not the odours of your cooking reach his nostrils unless you let him share it.' The Prophet also is reportedly said: 'Let him who believes in God and the last day either speak good or keep silent . . . be generous to his neighbour . . . be generous to his guest.'[20] This notion was no doubt part of the larger concept of the human brotherhood.

Property: trusteeship and charitable trust

Islam recognises the right to private property. This right is also subjected to an important limitation. To 'knowingly devour the property of others wrongfully' has been condemned.[21] Those others could be the underaged children of the owner. Devouring wealth and property will certainly affect the family and the community. Therefore, Islam considers, alongside with the right of private ownership, that the individual is virtually the community's agent in relation to his property and that his tenure of it is more like an employment than ownership, and that ownership in general is the right of the community and that the community has this as a delegation from God, who is the only true owner of everything; the earth, life, the universe and the owner of the wealth. Private property arises from the particular effort expanded by the individual to acquire title to part of the general property over which God has delegated stewardship to the human race.[22]

As all property belongs to God, its holders are only trustees. They must not use it selfishly without regard to the social purposes which it should serve. Thus, while legal ownership was permitted and protected by law, it was subject to an overall social orientation. Human beings were not created to destroy the planet but to develop it.[23] The very nature of ownership of property does not, in fact, have any value without the right of unfettered control and benefit. The condition for the continuance of this function is competence to exercise the right of control and benefit. The right of control depends on sound judgement, sensible usage and adequate management of wealth and property. If one becomes incompetent to make benefit from his property, his right to retain his control will be in question: 'But do not give to fools their property that God has assigned to you to manage; provide for them and clothe them out of it' (Qur'an 4:5). A landowner who neglected to cultivate his land for an inordinate period of time might lose his right to retain his property and his neighbours might acquire the right to purchase and cultivate it; or the state may cultivate it at his expense.[24]

Such concerns become important particularly in the modern age, with its emphasis, specially, on economics and environmental concerns. The planet was inherited not by any one generation, but by humankind and all its posterity from generation to generation. 'Do you not see that God has subjected to your use all things in the heavens and on earth and has made His flow to you in exceeding measure, both seen and unseen?' (Qur'an 31:20). Each generation is only the trustee. No one generation has the right to pollute the planet or to consume all its natural resources in a manner that leaves for posterity only a polluted planet or one seriously denuded of its resources.[25] 'Do not make mischief in the Earth after it has been fixed and set in order' (Qur'an 7:56).

In terms of charitable trust, Islamic Law provides no special formalities in the creation of trusts (*waqf*). No writing is required, but the legal theory insists that the words used must be specific and precise. For example, it is not legally valid to say: I gave this, or I have dedicated that. However, if it is said: I have dedicated this as a charity, it will be valid. In this sense, the law schools pointed out some thirty expressions by which a charity may be created. In these expressions, there is no

insistence on a specific word to create trusts, but only to make sure that the donor's intention is present when they take their decision. It is in this theme, trusts can be created; the owner of property may create a trust in their lifetime by deed or by will. Once they do this, the alienation of the trust becomes irrevocable. The purpose of the trust expressed by all schools of law is wider and encompassing the benefit of any object of piety and charity. Two schools of law differ in their views on the subsequent ownership of the property. While the Hanafi school hold the view that trust belongs to Allah, the Maliki school hold that the founders of the trust and their heirs remain owners but also without any rights to deal with it.[26] In fact, the ownership of property is the ownership of the right to deal with it. In other words, the ownership of things does not have any value without the right of dealing with it. In this sense, the difference between the Hanafi and Maliki schools of law, on the subsequent ownership of trust, is but to secure a kind of continual good management. Charities, mosques, hospitals, schools and the poor may all be the beneficiaries. The institution became so important in Islamic countries that a special ministry for trusts (*wqaf*) or pious foundation was established in most Islamic countries to deal with the administration of the kind of properties.[27]

The unique characteristic of an Islamic trust (*waqf*) is that ownership is regarded as being vested in God. The *waqf* (trust) is a kind of *sadaqah* (charity) and both of them are a kind of disposition which has religious merit or religious reward. However, the substance of *sadaqah* (charity) is transferred and thus also the profits. The substance of *waqf* is detained, so that the ownership remains with God, and is not transferred to a particular individual, but the profits go, in part, to development and maintenance and, in other part, to persons who are the beneficiaries or the objects of the *waqf*. Thus a Mosque established as a trust 'belongs' to Allah and cannot be sold to be used as a supermarket.

Whenever an Islamic trust is created, trustees are chosen to administer it. They in turn choose further trustees to take their place as they grow old and retire or die. Thus, the trustees fulfil a trust which is placed in their hands. They are like caretakers. The role of the trustee in *shari'ah* is therefore very similar to that of a trustee under English law, but although some say that under English law nothing is regarded as belonging to God.[28] Ownership is linked to the charity itself and must always be vested either in the trustees for the time being, or in holding trustees, or in a legally recognised entity which is regarded as having a legal identity of its own. The concept of the objects and the purposes of the trusts in Islamic Law are wider than in the Western law. For many scholars the notion of Islamic trust is the legal and inspirational parent of the English concept of trust. This issue has been presented with substantial details by numerous scholars. For example, Henry Cattan, a member of the Jerusalem Bar, concluded that the English concept of trust was actually derived from the institution of pious foundation (*waqf*) in Islamic Law.[29] In addition, Pollock and Maitland emphasised the fact that the Islamic concept of trust antedated by several centuries the doctrine of uses and trusts in English law. Pollock and Maitland observed that the doctrine of uses and trusts were first introduced in England in the thirteenth century by Franciscan friars: 'It is an old doctrine that the inventors of "the use" were "the clergy" or

"the monks". We should be nearer the truth if we said that, to all seeming, the first persons who, in England, employed "the use" on a large scale were, not the clergy, nor the monks, but the friars of St Francis.'[30]

The main features of trusts (*waqf*) were separation of ownership and enjoyment, the vesting in the beneficiaries of the right of enjoyment and the right of the owner to vest the enjoyment in a succession of beneficiaries – all of which were later to be found in the English use of trust. In this context, there were several points of contact between the Western world and Islam during the relevant period. St Francis, the founder of the order which first introduced the use of trust, was in Egypt in 1219 where he lived for a short period of time, during the reign of King al-Kamil Nasir al-Din Muhammad ibn al-Adil (rule 1218–1238 AD). Indeed, St Francis had set out for Egypt and for Islamic Spain, thus evincing a particular interest in the Islamic world. Moreover, the English use of trust is sometimes attributed to the Roman *fidei commissum*. However, in his study the 'Effect of the Crusades on Western Europe', Passant (1926), pointed out that both the English use of trust and the Roman *fidei commissum* are vastly different from each other, while there was a direct link between the burst of intellectual activity in Europe in the thirteenth century and the new ideas of those who had returned from the Crusades having seen another civilization.[31] Whatever view one holds on this matter, there are remarkable similarities. The developed Islamic concept has long antedated the first English groupings towards such a concept must be admitted. It is the concept which the celebrated English legal historian Maitland, Frederic William (1850–1906) described: 'If we were asked what is the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence, I cannot think that we should have any better answer to give than this, namely the development from century to century of the trust idea.'[32] It should also be noted, as Pollock and Maitland observed, that the notion of permanent trusteeship so well known in Islam was, in the thirteenth century 'as yet unknown to the English law'.[33] To quote Maitland again, on the originality of the concept: 'The idea of a trust is so familiar to us all that we never wonder at it. And yet surely we ought to wonder.'[34] While noting these similarities it would be well, however, to pay attention to the fact of the dialogue between Islamic and Western civilisations. Muslims in Western countries established a number of Islamic charitable trusts with structures, functions and administration fulfilling the requirements of both Islamic and Western laws, while they also enjoy their charitable trusts and status. This also is a point of reference on cultural dialogue, tolerance and coexistence between Islamic and Western civilisations. If there is no common ground, similarity and cultural dialogue, the life of Muslims and their charitable trusts in the West would be difficult.

Ethical scope: universal and communal

Prior to the advent of Islam, despotism and dictatorship, tyrant monarchs and merchant princes held sway in Arabia without any restraining influence of any overriding legal or moral principles. Ardour, disdain, haughtiness and capricious

display of power were among the features of this lawless society. It was not uncommon to wield the sword in reaction to any trivial incident.[35] This in turn could lead to protracted warfare in Arabia, where blood-revenge was common.[36] Zuhayr Ibn Abi Sulma (d.609 AD) portrays the pre-Islamite Arabian society in the following poetry:

> He who flatters not on many events,
> will be bitten by sharp teeth, and stepped on by hoofs.
> He who shields his honour by courtesy, will preserve it;
> and he who guards not himself from censure will be censured.
> He who defends not his dam by his weapon, will see it demolished;
> and he who oppresses not others himself be oppressed.[37]

In place of this regime Islam installed the principles of fraternity, equality and liberty under the law. A sense of solidarity between individuals and groups; between rulers and ruled and among all ranks of the community replaced the divisiveness and the conflicts of interest that had prevailed earlier. The stranglehold of the privileged was broken. The ascendancy of the higher Divine Law was established. 'No one of you is really a believing person, until he loves for his brother what he loves for his own self.'[38] Thus, rulers are brothers to their subjects, members of a common group bound by a common set of laws. Going even beyond modern concepts of the rule of law, no one, however highly placed, could claim exemption from a single line of sacred law. The law interweaves all together in one vast brotherhood.

In terms of universalism, the Farewell Sermon of the Prophet encapsulates his lifetime teaching and sums up some of the *shari'ah's* basic legal ideas of universal brotherhood and human rights. After he completed his farewell pilgrimage, and when the sun passed the zenith, the Prophet ordered his camel to be saddled, and rode on it until he reached the valley of 'Urana. It was there that he, while sitting on his camel, delivered his sermon in a loud voice to his people. Rabi'ah ibn Umayyah ibn Khalaf repeated the sermon after him, sentence by sentence. The Prophet declared that the distinctions of birth, colour and race were trampled underfoot. The fair-skinned is not superior to the dark-skinned, nor that the dark-skinned superior to the fair-skinned. The Arab is not superior to the non-Arab, nor is the non-Arab superior to the Arab. They are all brothers and all descendants of Adam. Non-Muslims in the Islamic state had full recognition of their rights. The notion of humankind as one brotherhood, then, could be the only backdrop to the application of the law.

> Ye people! Listen unto my words, for I know not whether another year will be vouchsafed to me after this year to find myself amongst you in this place . . . Your lives and property are sacred and inviolable among one another even as this day and this month are sacred to all, until ye appear before the Lord and (remember) ye shall appear before your Lord Who shall demand from you an account of your actions . . . Ye People! Ye have rights over your

wives and your wives have rights over you. Treat your wives with kindness and love; verily we have taken them on the security of Allah . . . Whoever of you is keeping a trust of someone else shall return that trust to its rightful owner . . . Usury is forbidden . . . All interest obligations shall henceforth be waived . . . The debtor will return the principal; and the beginning will be made with the loans of my uncle Abbas, son of Abd al-Muttalib. . . . The aristocracy of yore is trampled under my feet . . . The Arab has no superiority over the non-Arab and the non-Arab has no superiority over the Arab. All are children of Adam and Adam was made of earth. I am leaving unto you two noble things: so long as ye cling unto them, ye will not go astray; one of them is the Book of Allah and the other is the Sunnah of His Apostle.[39]

The concept of universalism extended much further in Islam than one might think. The *shari'ah* recognised that even non-humans must be treated with care and kindness. 'There is not an animal (that lives) on earth nor a bird which flies on its wings, but (forms part of) communities like you – unto Lord shall they return' (Qur'an 6:38). Thus, all living things on earth constitute one big family which had the same origin, and which is interrelated with all inanimate things. Human being, the highest species on earth, is made of the same basic substance that comprises the most primitive life forms. Overall, 'There is not a moving creature on the earth whose sustenance is not provided by God. He knows its resting place and its temporary repose' (Qur'an 11:6). 'And the cattle He created for you. In them, you have warm clothing and other benefits. And of them you eat. And in them there is a beauty for you as you lead them home in the evening and when you lead them to pasture in the morning. They carry your burdens to a land that you could not otherwise reach except with painful toil . . . And (He has created) horses, mules, and donkeys, for you to ride and as an adornment; and He creates what you do not know' (Qur'an 16:5–8).

There are also numerous passages in the traditions showing the Prophet's concern for the welfare of animal life: 'Fear God with regard to animals. Ride them when they are fit to be ridden and get off when they are tired. Verily there are rewards for our doing good to dumb animals, and giving them water to drink', said the Prophet. 'Whoever is kind to the creatures of God, he is kind to himself.'[40]

Muslims have often been advised by the Qur'an and the *sunnah* to learn from some animal species (Qur'an 29:20,41). Likewise, in the account of Adam's sons (Abel and Cain), the Qur'an says: 'Then God sent down a raven, which dug the ground to show him how to bury the corpse of his brother' (Qur'an 5:31). Caliph Ali gives this traditional advice: 'Be like a bee; anything he eats is clean, anything he drops is sweet and any branch he sits upon does not break.'[41]

Human life: privacy and human dignity

Islam places an infinite value upon human life. Expressing this principle, the Qur'an says: 'If anyone slew a person – unless it is for murder or for spreading mischief in the land – it would be as if he slew all mankind, and if anyone saved

a life it would be as if he saved the life of all mankind' (Qur'an 5:35). Life is not only of infinite value, but is also sacred: 'Nor take life which Allah has made sacred – except for a just cause' (Qur'an 17:33).

There are innumerable texts which declare the pre-eminent position of human beings: 'We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours above great part of Our Creation' (Qur'an 17:70). Likewise the Qur'an (15:28–29) expresses the pre-eminence of human being's relative position even over the angels, 'Behold! Thy Lord said to the angels "I am about to create man from clay, from mud moulded into shape. When I have fashioned him in due proportion and breathed into him of my spirit, fall you down in obeisance to him".' Here, breathing from the spirit of God into 'man' is an expression that honours human beings; emphasises the quality of human's faculty and raises it to be as God-like knowledge and will. If this faculty is rightly used it would maintain human being's superior position above all of God's creations.[42] All being brothers and all being alike the children of Adam, there could be no affront to the human dignity of any single person without there being an affront to the dignity of all – including the dignity of the perpetrator of the indignity.

The difference between people's desires and interests is not a reason for dispute among them, but rather it should be a reason for mutual acquaintance and cooperation. Humans, being God's creation on whom he had showered his choicest blessings, could not be subject to a violation of that dignity by human being. Dignity was intrinsic to his personality and no regime, however powerful, could take it away from him. This inherent human dignity is, of course, the underlying basis of modern doctrines of human rights. Such dignity could be offended by ridicule, defamation and sarcasm. Mutual ridicule, arrogance and selfishness are not fun.

> O you who believe! Let not some men among you make fun of others. It may be that the latter are better than the former. Nor let some women make fun of others. It may be that the latter are better than the former. Nor defame nor be sarcastic to each other nor call each other by offensive nicknames.
>
> (Qur'an 49:11)

The *shari'ah* makes it clear that some types of suspicion are crimes and some others may lead to crimes. Most forms of suspicion are also baseless. Preserving human dignity, the law demands people to avoid all types of suspicion for it does cruel injustice to innocent individuals and groups. Likewise, spying and enquiring into the affairs of people are evil act. Backbiting is but a sinful act. The law ordered people to avoid all these types of behaviours which poison human relations:

> O you who believe! Avoid most suspicion, for in some cases suspicion is a crime. Do not spy on one another, nor backbite one another. Would any of you like to eat the flesh of his dead brother? Surely you would loathe it. Have fear of Allah. He is forgiving and Merciful.
>
> (Qur'an 49:12)

As the Prophet put it in his own words: 'I warn you of suspicion: for suspicion is the most lie of speech. Do not enquire into the affairs of others; do not spy on one another; do not outbid one another; do not envy each other; do not hate one another; do not shun one another; be as fellow-brothers and servants of Allah.'[43] 'Don't enter into a transaction when the others have entered into that transaction.'[44]

Islam also recognised the need for respecting human dignity in the alms of charity. 'Make not your alms void by reproaches or injury.' 'Forgiveness and kind speech are better than favours with annoyance.'

Work: labour and industrial relations

Islam likes people to work and encourages them to work. Islam makes work the essential means of earning, possession and acquiring wealth. It raises work or labour to the sacred standard of worship. When work or labour is not appreciated, the means of productivity and whatever is relevant to development, banks, politics, economics and civilisation will vanish. As Ibn Khaldun (d.808/1406) put it, 'If labour is not appreciated or work is done for free, the hope for profit will vanish, and there will be no development or production to meet the needs of the growing population, and finally will destroy human civilization.'[45] Prophet Muhammad says 'A man has not earned better income than that which is from his own labour.'[46] So also: 'Verily! The best earning is the earning of man by his own hand.' Prophets David, Moses and Muhammad used to earn their livelihood through the labour of their own hands.[47] 'And we have not sent before you any messenger but they most surely ate food and walked through the markets' (Qur'an 25:20).

Earning one's way protects one from annoying others by begging. Islam's policy of forbidding begging is complementary to its policy of dignifying and encouraging labour. In this respect, there are a number of traditions among which is this: 'one of you will beg until he meets God without a single slice of flesh in his face'.[48] This does not forbid the needy to ask for financial support (to be returned, or to do a project for the community, a charity or the like of this kind), but it merely forbids Muslims from making a career out of begging or making it a means of earning. The idea of *tawakul* (i.e. dependence *of* God) is prohibited in Islam. It is wrong to say dependence *on* God is prohibited in Islam. Then, there is not an English word that could accurately translate the word *tawakul* without losing its force and intent. What we could do is to provide descriptions and characteristics. Example of *tawkul* could be that person intentionally stops working or stays out of work only on the basis that God will feed him. Another may give up work only to be able to stay in the mosque and worship God. This and the like of this theme is not acceptable in Islam, at all. Islam stresses the necessity of labour with the confidence in God. This can be further illustrated by this tradition: 'The Prophet was asked by his companion "O Messenger of God, may I let my camel loose and depend on God". The Prophet replied "Nay: Tie it upon first and then depend on God." '[49] The duty then is to do your homework first and then depend on God. This duty also applies to the political, economic, social, intellectual, moral and industrial and all spheres of human life. The existence and general

character of the duty is well known to Muslim rulers and ruled, but whether Muslims did their homework to build on the duty is one of the pressing questions facing them today. Have they examined their civilisation or cultural heritage which is their capital asset for development and renewal in the political, economic, social, intellectual and industrial spheres? Have they utilised or did try to utilise their capital assets as the Americans, the Indians and the Chinese did? Muslims, however, still sit at the table of the world community begging in all spheres as if they have gone bankrupt, while they repeatedly remind themselves with the tradition of the Prophet 'Tie it upon first and then depend on God'. Whenever Muslim countries try to introduce themselves to the world as democrats, their endemic corruption and violation of basic human rights failed them, par excellence. Begging is forbidden in Islam. Islam hates begging as much as it hates injustice, corruptions and social dislocations. Begging is against the dignity which gives labour, nation and society the quality and faculty of being.

Islam also has honoured labour and labourers by declaring rewards for the development of human life on this planet. If there is no work, then there will be no cultivation or production, no *zakat* nor charity; instead, there will be all kinds of poverties and deprivations, diseases and distractions of the mind and the soul and the life on this planet. In this connection, one authority says, 'The Prophet was sitting, one day, with a stick in his hand making marks on the ground, then he raised his head and said: "there is no soul among yourselves but its place is known (to God), either in paradise or in hell", the companions asked, "why do we work, then; may we not just depend on God (and cease to work)?" the Prophet replied: "Nay! you must work as every one is adapted to what he is created for". Then, he recited, "For him that gives in charity and guards himself (by obeying Allah) and believes in goodness, we shall smooth the bath of salvation; but for him that disbelieves in goodness, we shall smooth the bath of affliction"' (Qur'an 92:5–10). Thus, the tradition, 'Tie it upon first and then depend on God' is an institution for a democracy of higher quality which, in fact, has not been searched. Democracy is not only one person one vote, as election is only a means for justice, human rights and human dignity which rest at the heart of democracy. One might find this tradition, 'Tie it upon first and then depend on God' mentioned here or there but only in a religious sense. The political and, in particular, democratic connotations have not been studied.

The dignity of labour is promoted further by the encouragement of honesty, truthfulness, perfection and excellence in craftsmanship and hence to pride in one's work. 'God loves to see that when someone does some work, he makes it as perfect as he can.'[50] The discouragement of idleness is another facet of the same concept. 'Verily! Allah loves His servant who knows and earns with some crafts and dislikes the servant who knows no craft and is idle.' 'Ah me! Would that my people know' (Qur'an 36:26). 'Say: "Are those equal, those who know and those who do not know?"' (Qur'an 39:9).

Overall, the employer has no superior position over the employee either in society or before the law. They are equals with equal rights. There is a contract that reflects the will of the employer and the will of the employee under the law which

reigns sovereign above all. The notion of fairness in contract runs through the entire Islamic Law of contract. Contract law is thus free of technicalities which mar many a European system particularly the common law system of contract with its technicalities and small print of consideration.

Islamic Law makes the contract on two basic principles. The contract is complete by reference to the requirements of offer (*ijab*) and acceptance (*qabul*). These are the two basic principles without which the contract cannot be complete and cannot become legally valid.[51] Consideration is not essential, unlike in the common law. Fairness to both parties and reciprocity are of the utmost importance, so that, for example, a contract which involves risk or uncertainty even to a party willing to accept it can be invalidated. A buyer may return an article for defect even after he has seen the property. The law of contract forbids the stronger party to make an unfair contract out of the weakness of the other. The rule, as we shall see, has however been circumvented to some extent by juristic interpretation. Subjects covered by the law of contract include, employment, gifts, sales, agency, guarantee, deposit and loan.[52]

The honouring of one's engagements is stressed in many passages of the Qur'an with great emphasis on the importance of contract in any sort of dealings, in general: 'O ye believe! Fulfil all your obligations' (Qur'an 5:1). The word 'obligations' is the translation of the Qur'anic word *'uqud* the plural of *'aqd* (contract). This Qur'anic word *'uqud* (obligations), according to al-Qurtubi (d.671/1272) encompasses all kinds of contracts in all spheres of human life, political or others.[53] The Qur'an also says: 'O you believe! When ye deal with each other in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties' (Qur'an 2:282).

It followed from the preceding principles that workers were not underdogs but the holders of equal rights and equal dignity with their employers. The employer is asked to pay the wages of his worker before the sweat is dry. Servants must be fed and clothed in the same way the employer feeds and clothes himself. 'See that ye feed them with such food as ye eat yourselves, and clothe them with the stuff that ye wear.' 'It is essential to feed the slave, clothe him properly and not burden him with work which is beyond his power.'[54]

The sharing of profits by capital and labour is encouraged. Work is looked upon more as a partnership between employer and employee than as a relationship of superiority and subordination. The Muslim is required to 'worship God and be kind to kindred and servants'. The principles of labour's right to a fair wage and of the employer's obligation to implement the contract justly are deeply ingrained in Islamic doctrine.[55]

Economics: free market and commercial integrity

It has been said that humans are social beings. This is illustrated by the fact that humans have been created in a state of dependence on one another. There is not an individual who does have all the things he needs. However, one person may

have something which he can spare while, at the same time, he may need something which others have and which they can spare. It was natural that people have been directed towards exchanging goods and utilities and buying and selling. Religions have come to guide people to the right track of good relationship for the welfare of individuals, groups, society and humanity. Among the guidance were the commercial activities that rest at the core of public welfare, public interest and public pride. This is stressed in many passages of the Qur'an: 'And come not nigh to the orphan's property, except to improve it, until he attain the age of full strength; give measure and weight with full justice; We never charge a soul with more than it can bear, whenever you speak, speak justly even if it affects your own relatives' (Qur'an 6:125). Concerning the Midianites (Old Testament, Num. xxxi: 7–11; Judges vii: 1–25)[56], the Qur'an says, 'To the Madyan people, We sent their brother Shu'ayb. He said "O my people! Serve Allah, for you have no god but Him. A clear sign has come to you from your Lord. Give just weight and measure and do not defraud others of their possessions" ' (Qur'an 7:85). Similar basic legal ideas are frequently mentioned in the Qur'an.

Regulating transactions never meant to hold or control the price mechanism, but merely to ensure commercial integrity to make social and economic life function smoothly and encourage people to be productive. Therefore, the *shari'ah's* basic legal ideas prohibit any unlawful transactions whether those were concerned with weights and measures, possessions and qualities, goods and services, or even words and small prints. In this context, for example, Islam prohibits sale involving any kind of uncertainty, in general (i.e. unspecified quantity, quality, time, colour, etc.). Commercial integrity is also prompted by prohibiting all forms of manipulating the price. In Islam, market is to be free and permitted to respond to the market's natural law of supply and demand. In a traditional account during the time of the Prophet, when the prices became high, the people asked him to fix the prices for them, but he replied, 'Allah is the One who fixes prices, Who withholds, Who gives lavishly, and Who provides.'[57]

As to hoarding, Islam prohibits any activity that interferes in the free market and commercial integrity. The Prophet says, 'anyone withholds grain for forty days out of the desire for a high price, Allah will renounce him'. '[I]f anyone withhold goods until the price rises, he is a sinner.' '[H]e who hoards goods is evil; if prices fall he is grieved and if they rise he is happy.'[58] Another interesting tradition which interferes with commercial integrity and the free market and was prohibited by the Prophet was that a townsman's selling on behalf of a man from the desert. This account was explained by scholars as follows: 'a stranger would bring some goods to be sold in town at the current market price. A townsman would approach him saying, "Leave them with me for a while. I will sell them for you when the price is better". Had the non-resident himself sold his goods, he would have done so for a lower price, thereby benefiting the people, while he himself would have made a reasonable profit.'[59] Despite that this account could be considered within its context of place and space, the theme of its basic legal idea is obvious.

Commercial integrity and free market is also reflected in the permissibility of brokerage, as it is a sort of mediation and connection between the proposed

contractors, which in many cases facilitates the processes of marketing and transactions. In modern times, brokerage has become more necessary than at any time in the past because of the complexities of trade and commerce, which involve all types of exports and imports, and wholesales, retails and purchases. Brokerage plays a vital role in keeping things moving. Islamic Law considers brokers should charge commission for their services. For this service, a contract between all parties involved is also necessary. The commission may be a fixed amount or proportional, or whatever is agreed upon by all parties involved. In either case, the contract's details, like any other contract, must be specific and be understood by all parties, and 'All parties must abide by their terms', said the Prophet.[60]

Commercial integrity is also prompted by the texts which prohibit usury: 'O you who believe! Fear Allah, and give up what remains of your demand for usury, if you are indeed believers. And if you do not, then be warned of war against you from Allah and His messenger. And if you repent then you shall have your principal (without interest). Wrong not and you shall not be wronged' (Qur'an 2:278–279).

The basis of prohibition of usury is without doubt a sympathetic feeling towards those in distress. Loans should be given to those who need them, but interest must not be made out of their misery.

If the debtor finds it difficult to pay, he should be granted more time and if it is possible it is better still that it be remitted altogether as charity. The main reason why Islam abolishes interest is that it is oppression involving exploitation.[61] Among other reasons is that interest transfers wealth from the poor to the rich, thus increasing inequalities in the distribution of wealth; that it creates an idle class of people; that it produces an essential duality of interest between capitalist and entrepreneur. Thus, prohibition against usury is to protect the poor from the rich individuals. Portraying the practice of usury in the pre-Islamic Arab society, Ibn Qayyim (d.751/1353) says:

> Usury was to give extra time to repay a debt with extra charges against this extension until one hundred becomes a thousand. In most of the cases, only a needy individual would repeat the extension as he would have no choice but to defer the payment of the debt. The creditor agreed to defer his demand for repayment of the debt on the basis of more profit on the principal. Then, the debtor was forced to pay the increased amount to ward off the pressing demands of the creditor and the risk of imprisonment. Thus, as time passed and the loss of the debtor went on increasing, his debt multiplied and continues in multiplication mood until his possessions and belongings were lost to the creditor.[62]

Thus, the lenders would be rich, and the borrowers destitute or poor. It is within this framework and its theme of exploitation and injustice that usury is prohibited.[63] In pre-Islamic Arab society the institution of usury had the proclivity of leading the debtor into more debt. The more poor quality his situation, the more he plunged into debt, with more impossibility of repaying the debt without the consequence of being a slave or bonded labourer. In pre-Islamic Arab society, there was no protection for debtors and this in fact, as Sir William Jones says, is 'what

may be constantly expected from men of open hearts and boiling passions, with no law to control or little religion to restrain them'.[64] There was no legislation to prevent a creditor from forcing the debtor into bonded labour. Today, creditors and debtors calculate everything and the risk before entering into a loan agreement: the income and its stability, the way of payment, what if he could not pay on time and what would happen if debtor died. It was against the deficiency of these and other regulations and the impact of this deficiency on society that the Prophet reminded Muslims of the undesirability of borrowing unless absolutely necessary.[65]

Today, however, borrowing is not really associated with poverty. This is particularly true of large-scale borrowing for the production of goods and services. Borrowing also takes place for the purchase of consumer products. In either case, the borrowers of today, generally speaking, unlike the borrowers of the prior Islamic society of Arabia, depend on predictable future incomes to repay their debts on the basis of employment, or pre-calculated income from business and other sources. The law, also, protects all parties including those small-scale borrowers, in case they cannot repay their debt on time. Today, the debtor will not be forced into slavery or bonded labour. In worst cases, the debtor would be deprived of his personal assets even where these do not cover his debt. Transferring the debt from parents to their descendants does not occur today. Moreover, the debtor, after declaring himself bankrupt, has further opportunity to build a new life free from debt obligation; that also exists in Islamic Law. The difference between debtors in pre-Islamic Arabia and those in modern times is obviously vast enough and cannot be ignored.[66] This does not mean that usury in Islamic legality is valid. However, the Qur'anic and the *sunnah*'s prohibition against usury is concerned primarily with the plight of the poor and disadvantaged. There is no indication that usury was practised between a rich creditor and a rich debtor. As emphasised by Razi, the creditors usually would be rich, but the debtors are usually poor and disadvantaged.[67] Thus, the need must be real and not more than what one basically needs to survive, not merely an extension of the scope of one's needs to become one's wants. There is a difference between the needs (i.e. food, clothing, medicine) and wants. Here, Islamic Law is strict, that is, if nine dollars are sufficient, borrowing ten is illegal. These important principles necessitate a special Islamic approach to commercial law and banking.[68]

The issue of usury is considered by some broadminded scholars to apply only to usurious transactions so that it does not include any kind of interest, where neither the lender nor the debtor is oppressed. Their idea is that once the transaction differs from the common form of usury, it is more likely to obtain the legislation of the law.

Carefully examined and technically studied in the light of surrounding circumstances of economic interests of the community, the banking system should not come within the prohibitory law of usury. It is well known that usury is universally condemned when it is oppressive for the debtor as shown by the universal legal history. The *shari'ah* law, which is a mercy from God and which is humanitarian in nature meant for human welfare and happy social life, cannot stand as an obstacle in the general national interest. On close scrutiny of the principles of

usury, scholars were able to interpret the laws of Islam with great certainty that made the institution of banking within the framework of Islamic Law. A century ago, the Egyptian Grand Mufti Muhammad 'Abduh (d.1905) was the first to promulgate the Post Office Saving Bank which ensured 2.5 per cent on individual savings. It was from here that the concept of modern Islamic banking first emerged and led to the establishment of the first Islamic bank in the Arab Republic of Egypt in 1963.[69] Four years later, in 1967, there were nine such banks in Egypt. In l97l, the Nasser Social Bank was declared an interest-free commercial bank. Since then there has been a rapid growth of Islamic banks in the Islamic world. The Islamic Development Bank (IDB) was established in l974 by the Organization of Islamic Countries as an inter-governmental bank aimed at providing funds for projects in member countries. In l975, the Dubai Islamic Bank was established. In 1977, the Faysal Islamic Bank was established in Egypt and Sudan. In l979, the Bahrain Islamic Bank was established. Currently, the whole banking system has been Islamised in both Iran and Pakistan. In addition, there are some thirty Islamic banks and a number of Islamic companies (i.e. investment, solidarity, insurance) in operation in Europe, Australia and the United States.[70]

The International Association of Islamic Banks formed in August 1977, prepared a Model Islamic Banking Act. Along with the act was produced a Model Islamic Bank Operating Proposal. The documents, prepared in consultation with leading Islamic and comparative law scholars, contain provisions dealing with issues uniquely related to Islamic banking (Articles 1–10), and provisions dealing with problems common to all banks (Articles 11–20).[71]

Islamic Bank theorists outlined that the investment activities of the Islamic Bank would be based on the two legal principles of profit and loss sharing. This means that the Islamic Bank would provide its financial resources to the borrowers on a risk sharing basis, unlike the interest based on financing in which the borrower assumes all risks while the lender merely receives his interest. The lender becomes a participant in the venture and the bank's shoulders are broad enough to bear a loss if the venture turns out to be a failure. If it is a success, the bank shares its proceeds in a proportion that has been agreed upon. Thus entrepreneurs are protected against risk and the bank gets a return through the sharing of the profits where the business is successful. Operating on this principle, Islamic banks have shown a return commensurate with those of ordinary commercial banks. This is because the theoretical principles of profit-and-loss sharing have received special attention on all levels whether academics, banks or states. This resulted in a significant development that reformed the profit-and-loss sharing practices to become almost risk-free financing mechanisms.[72]

The concepts underlying Islamic banking have recently attracted attention from the International Monetary Fund and have been the subject of discussion in the quarterly staff papers of the IMF issued in June 1986.[73]

Transactions constitute a vast branch in Islamic Law that cannot be featured in this limited space, but the point is that the basic legal ideas which ensure commercial integrity and free market in its complete meaning and wisdom rest at the core of Islamic Law.[74]

Gender: the status and rights of women

The status of women and their rights in Islamic Law can probably be understood through the reflections of their rights and status prior to Islam. The reason is obvious as one of the basic principles of sociopolitical research, which demand the understanding of various stages of change in the history. Predicting the direction of change, which confronts us, would demand familiarity with the starting point.

In many societies, the history of laws and codes is a sufficiently legal witness on the status of women and their relationship with men. Women have usually had fewer rights and lower social status than men. Such status of women's suffrage, in some societies, is clearly reflected in the laws and codes which cannot deny their ill-treatment of women, as inferior, and as less important than men.

In ancient societies the status of women and their relationship with men, as emphasised by Aristotle in the fourth century BCE and later by Manu in the fourth century CE, 'was very unequal', left to chance to 'consider the role of the female like that of the field'.[75] Herodotus, the father of history, pointed out, among other customs, that a child who was born and grew up in a tribe, upon attaining maturity has his ancestry traced to the individual who most resembles him. This custom of 'all things in common apply to women and children' is discussed by Adeimantus, Glaucon and Socrates in *The Republic of Plato*.[76] The inferior status of women compared with that of men, as Qasim Amin (1865–1908) emphasised, was also practised among 'Germanic tribes', and 'pre-Islamic Arabs' and has been reported by 'commentators' and 'contemporary travellers to different parts in the world', including 'Asia', 'Africa' and 'Europe'. Qasim Amin, whose writings led the women's movement in nineteenth-century Egypt, pointed out that 'ownerships of wives became prevalent among Greeks, Romans, Germans, Indians, Chinese, and Arabs.'[77] The *Encyclopaedia Britannica* emphasises that polygamy or 'polygyny' and 'polyandry' were a 'common practice' that was called 'marriage' in some societies. In some other societies, 'it is common for a woman to have more than one husband usually brothers. [These societies] believe that a polyandrous union is desirable because it prevents the fragmentation of property and fosters solidarity among brothers.' [78]

In India, women were regarded as a movable object but also with no value. The *Encyclopaedia Britannica* pointed out that 'girls are not highly regarded; having a female child is preferred only to remaining childless'.[79] With this detestable status, subjection was a cardinal principle. Day and night women must be 'held by their guardians in a state of dependence', says Manu. The rule of inheritance was 'agnatic', that is, descent traced through the agency of males to the exclusion of females.[80]

In Athens, women were held to be naturally less intelligent and less creative souls that existed in this world for no purpose other than to be subjected to a number of males that could be their father, brother or some of her male kin. Her consent in marriage was not considered as necessary and she was forced to submit to the wishes of her guardians and receive from them her lord, even if he was a stranger to her.[81] The purpose of marriage and the function of women, as Aristotle emphasises, was to provide heirs. Under Athenian law a female 'heir' was forced to marry

the next of kin of her father's side, even if she was already married, to produce a male heir for her father's property (*oikos*).[82] As David Hume (1786) put it:

> The extreme delicacy of the Greeks permitted no communication between persons of different sexes, except where they lived under the same roof; and even the apartments of a step-mother and her daughters were almost as much shut up against visits from the husband's sons, as against those from any stranger or more distant relation; hence, in that nation, it was lawful for a man to marry, not only his niece, but his half-sister by the father; a liberty unknown to the Romans, and other nations, where a more open intercourse was authorized between the sexes.[83]

Whatever the customs of the Romans may have been in the early times, a plurality of wives was accepted as an institution in the later days of the republic and the commencement of the empire. It is evident that polygamy was not prohibited or abhorred nor was it considered an illegal practice.[84]

Summing up the legal status of women in the Roman civilisation, the *Encyclopaedia Britannica* emphasises that the Roman law considers women, in principle, 'a human chattel that could be owned and dealt with like any other piece of property'. As such, woman was not only at the 'mercy' of her lord but also 'rightless'.[85] The Roman law, whether that was in the *Codex Constitutionum* of 529 AD, or in the digest (*digesta*) or pandects (*pandectae*) published in 530–533 AD, and its later version (*Corpus Juris Civilis*) published in 534–565 AD, sanctions marriage as to be: 'One with *manus* and one without . . . [*m*]*anus* was the autocratic power of the husband over the wife . . . Marriage without *manus* was by far the more common in all properly attested periods.'[86] In either type, whether woman is with or without *manus*, she is continually the inferior soul subjected to the rules of the *patria potestas*. The *patria potestas* subjects woman, at all stages of her life, to a number of males that could be her father, brother or some of her male relatives.[87] As William Sinnigen put it, 'Roman women, of course, were always disfranchised' and were treated as 'minor' or persons 'incapable of doing' or performing anything according to their own individual 'decision' or their own taste: a distant person continually under the 'tutelage' and male guardianship.[88] Rudolph Sohm (1907) emphasised that women under the Roman law were completely dependent. Marriage transfers woman and her possession to the power of her lord. Rudolph maintains that a wife was the purchased property of her husband and acquired only for his benefit.[89]

In the English common law 'all real property which a wife held, at the time of a marriage, became a possession of her husband. He was entitled to the rent from the land and to any profit which might be made from operating the estate during the joint life of the spouses. As time passed, the English courts devised means to forbid a husband's transferring real property without the consent of his wife, but he still retained the right to manage it and to receive the money which it produced. As to a wife's personal property, the husband's power was complete. He had the right to spend it as he saw fit.'[90]

The French Civil Code uses many of the categories of the Roman law. Under the ancient French regime the status of women was not better off than that under the Roman law. The French law regards women as consciousless souls with no feelings and no rights or future. Similar to the Romans, the French law treated women as a movable property subjected to the control of males. In the terms of the *Encyclopaedia Britannica* (1998):

> Family had been centred upon the husband, whose strong authority and power were inherited from the Roman paterfamilias. Although the Revolution proclaimed women to be equal in rights with men, it did little to implement this view in law. The drafters of the code saw no reason to modify the traditional situation, and Napoleon himself favoured subordination of the wife to the husband. The code expressly stated that she owed him obedience. With very few exceptions, she had no legal capacity to act. Without the written consent of her husband, the wife could not sell, give, mortgage, buy, or even receive property through donation or succession.[91]

In his essay *The Subjection of Women* (1869), John Stuart Mill wrote: 'we are continually told that civilization has improved the status of woman and restored her just rights. Meanwhile the wife is the actual bondservant of her husband; no less so, as far as the legal obligation goes, than slaves commonly so called.'[92]

This state of laws improved in the late nineteenth century when the cultural and intellectual activities have finally come to recognise the importance of women and their nature and place in the universe.

The *Encyclopaedia Britannica* pointed out that from 1804 to 1880 there were no important changes made to improve the status of women in the Civil Code, 'except the repeal of divorce in 1816, when a Catholic monarchy was restored. Improvement began by 'a series of acts starting with the Married Women's Property Act in 1870, amended in 1882 and 1887, married women achieved the right to own property and to enter contracts on a par with spinsters, widows, and divorcees.'[93] As late as the nineteenth century, an authority in ancient law, Sir Henry Maine wrote: 'No society which preserves any tincture of Christian institutions is likely to restore to married women the personal liberty conferred on them by the Middle Roman Law.'[94]

There were changes in the social atmosphere when 'universal suffrage' gave the labouring class some influence on legislation, 'faith in liberalism was shaken, and the idea grew that the state should intervene to protect the weak. Statutes increased in number. This movement was accentuated by World Wars I and II.'[95] It was in the atmosphere of these social changes that the status of women in the Western laws improved in various ways, and that marriage was regarded, in some societies, as the basic institution of a civilised society. As stated in the *Encyclopaedia Britannica* (1998):

> Statutes in the 20th century, however, severely diminished the authority of the husband over his wife and endowed her with full legal capacity. In 1970

the old language stating that 'the husband is the head of the family' was abandoned in favour of a new principle of joint family decision-making power, which did not, however, extend to the management of community property. In recent years matrimonial property regimes have been revised in numerous countries, the tendency being toward a partnership in property acquired after the marriage, with each party retaining control over the property he or she had before the marriage.[96]

In summary, the *Encyclopaedia Britannica* (1998) makes the point that the long-standing differences between the sexes in job opportunities and in earnings showed little signs of disappearing even in the progressive nations. In these and other areas, women still have fewer rights and lower status than that of men. In today's Western law of marital property, for instance, the rights of women are also still not equal to that of men: 'Equalization of the power to deal with marital property has not been achieved in all Western jurisdiction.'[97] The issue of women or, as Stanley Abramowitz (1990) put it, 'cultural feminism' is 'commonly' characterised by the 'dominion of male'. Abramowitz argues that 'male domination is rooted in biological difference between men and women. The subjugation of women takes place tranhistorically by force. Men have captured social power in order to maintain privileges. In effect, the human concomitant of the domination of nature is the domination of women. Women are dominated ideologically as well as physically to the extent that they become convinced that male power is rooted in nature and is therefore just.'[98]

Focusing on the pre-Islamic Arabian society, the Qur'an tells that the status of women was not better than the above-mentioned societies. Similar to women in some neighbouring countries, the Arabian women, in some tribes, enjoyed no rights and were treated no better than commodity. They were not only enslaved but also inherited as estate. After inheriting her from her father, a man would marry her. Similar to their neighbouring world, the pre-Islamic Arabian widows were inherited by the elder sons. Their customs give the elder son the complete rights to possess the widow(s) of his father; this type of possession goes from the elder son to his younger brother and then relatives in the family order.[99] Polygamy was also practised. Plurality of wives was not restricted but even encouraged to build coalitions through marriage. This cheap political gain was also at the expense of women. The never-finished business of wars between some Arab tribes led them to carry their hatred to women so far to the extent that some clans in Kindah and Quraysh tribes preferred to bury their daughters alive, over being captured and enslaved by their enemies.

Against the background of these fearful and ignorant customs of injustice in the preceding eras, the teachings of the Qur'an regarding the rights of women stood out dramatically. In the early years of the seventh century, the Qur'an declared the human nature of women, her place and duties, her rights and responsibilities, her relationships with the surrounding universe as well as with the heaven and the earth, and her status in this world and in the world to come. In the Qur'an, women are completely independent entities and fully responsible human

beings. The Qur'an addresses women directly and does not approach her through a third person nor through agents, or through the agency of Muslim males. Among the remarkable features of the Qur'an is that women are explicitly addressed in a style that her noble status and rights declared by the very structure of the text; as well as by the overt statement which declares the absolute moral and spiritual equality of women and men. This verse may illustrate the point:

> For Muslim men and women, for believing men and women; for devout men and women; for true men and women; for men and women who are patient and consent; for men and women who humble themselves; for men and women who give charity; for men and women who fast; for men and women who guard their chastity; and for men and women who engage much in God's praise – for them all has God prepared forgiveness and a great reward.
>
> (Qur'an 33:35)

The verse makes a clear statement about the absolute identity of the human moral condition, the common and identical spiritual and moral obligations placed on all individuals, women and men. The meaning and implications are far-reaching: ethical qualities, charity, chastity, truthfulness, patience, piety, social and political dimensions. This noble place and status of women is explicitly mentioned in the Qur'an. In addition, there is a complete *surah*, which consists of 176 verses of varying length (i.e. some of them are the longest in the Qur'an), which is entitled 'Women', while there is no *surah* entitled 'Men'.[100] There is another *surah* entitled 'Divorce' dealing with women's affairs. In addition, the word 'women' as plural is repeated in the Qur'an three times as many as the repetition of the word 'men'.[101]

As to the noble status of women and her equality to men, the Qur'an also says: 'O mankind! We created you from male and female, and made you into nations and tribes, that you may know each other. Verily! the most honoured of you in the sight of Allah is those who are righteous of you' (49:13). 'O mankind, have fear of your Lord, who created you from a single soul and from it created its mate (of the same kind) and from them twain has spread a multitude of men and women'(Qur'an 4:1). 'We shall reward the steadfast according to their noblest deeds. Be they men or women, those that have faith and do righteousness We will surely grant a happy life; We shall reward them according to their noblest actions' (Qur'an 16:97).

The Qur'an says that God created men and women so that they can provide company to one another, love one another, procreate children and live in peace and tranquillity to the order of their Creator. This theme of the relationship between men and women is declared as a sign of God: 'And among His signs is this, that He created for you mates from among yourselves, that you may dwell (live) in tranquillity with them, and He has put love and mercy between your hearts. Surely, there are signs in this for those who reflect' (Qur'an 30:21). 'And Allah has given you mates from among yourselves, and through them He has given you children and grandchildren, and has made provision of good things for you: will they then believe in falsehood and deny His favours?' (Qur'an 16:72).

Apart from the Qur'an, there are many traditions which further explain the status of women and their equality to men. For example, the Prophet was repeatedly saying: 'Women are but full-counterparts of men.'[102]

Furthermore, a woman would legally assume full capacity and liability once she has attained her maturity.[103] In the religious ordinances, such as prayers, fasting, zakat, charities and pilgrimage, woman is no different than man. In some cases, indeed, women have certain advantages over men to the extent that the Prophet repeatedly said: 'The paradise is under the feet of mothers'. In another tradition that 'A man asked the Prophet "who should I take as best friend?" the Prophet said "your mother", the man said "what else?" the Prophet said "your mother", the man said "what else?" the Prophet said "your mother", the man said "what else" the Prophet said "your father".'[104] Repeating the love of mother three times worked as an important principle in the Islamic Law. According to the consensus, the mother here could be Muslim and non-Muslim. In this case, al-Qurtubi referred to a number of Qur'anic texts (i.e. 60:8) and traditions (i.e. tradition in al-Bukhari about Asma' and her mother). In another tradition, 'A man came to the Prophet asking his permission to join the army for jihad. The Prophet asked him if his parents are still alive. The man said "yes". The Prophet said "go and observe your jihad in them".'[105] In Islamic Law, a person cannot go to jihad without permission from the parents, even if the parents were not Muslims. In this case al-Qurtubi says:

> They differed whether person can go to [j]ihad without permission from his non-Muslim parents: In al-Thawri, al-Shafi'i, and al-Mundhir [schools of law], person cannot go to jihad without the consent of the parents, grandparents, the mother, the father, and the grandfathers, and that the grandmothers are mothers that the person cannot go for jihad without their consent, even if they are not Muslims. And Tawuus [school of law] was also in the view that caring of sisters was more preferred than [j]ihad in the way of Allah.

While caring for parents, Muslim or non-Muslims, is better than jihad, also the status of woman (at any stage; wife, mother, grandmother and sister) is equal to that of man, at least, although women do not have advantages over men sometimes.

Among other examples where women have certain advantages over men are these: women are exempted from the daily prayers and from fasting during her menstrual periods, and forty days after childbirth. The length of exemption cannot go less, but instead it can extend to longer periods according to the condition. Women are also exempted from all types of fasting, including the month of Ramadan, during her pregnancy and during the period of nursing her baby if there is any influence on her own health or the health of her baby female or male. Any missed fasting, other than the month of Ramadan, she does not have to make up for what she missed, at all (if she wishes too). If the missed fasting is obligatory (i.e. the month of Ramadan), she can make up for the missed days whenever she can. She does not have to make up for the prayers missed for any of the above

reasons. Although women can and did go into the mosque during the days of the Prophet and thereafter, attending the Friday prayers is optional for them while it is mandatory for men. This is but an example of the tender touch of the Islamic teachings. This reflects how the Qur'an considers the physical and spiritual strength of women, and to what extent the Qur'an takes into account the physiological and psychological changes associated with her natural female functions.

Equalisation between the status of women and men is also prompted by the texts which addressed them both as parents in their advanced age. Parents, women and men will not stay physically strong forever. They, however, will return to the stage of physical weakness with the passage of time. Their life from childhood to the old age is stages that begin with powerlessness and end with powerlessness. At some stages of their life, women and men may feel their strength and may express that in their activity. They may express themselves, at least, in their talk and walk with pride (i.e. insolence or undue elation at their powers or capacities). This, however, will not continue but will also grow older, with them, and will be bent like their feeble body: 'Do not walk proudly in the earth. You cannot cleave the earth, nor reach the mountains in height' (Qur'an 17:37). 'Such as He created you in the beginning [powerless], so shall you return' (Qur'an 7:29). 'He whom We bring to old age, we reverse his strength' (Qur'an 36:68). With this in mind, the Qur'an expresses the equalisation between the status of women and that of men in these words:

> Your Lord has enjoined you to worship none but Him, and to show kindness to your parents. If either or both of them attain old age with you, show them no sign of impatience, nor rebuke them; but speak to them kind words. And out of kindness, lower to them the wing of humility and tenderness, and say: 'Lord, be merciful to them. They nursed me when I was an infant'.
>
> (Qur'an 17:23–24)

This verse, as al-Qurtubi says, constitutes 'sixteen rules' each of which he had dealt with in substantial detail. Among these rules that the Qur'an addresses in these words and language of metaphoric expression are: (i) equality between women and men; (ii) social solidarity between the older and the younger generations; (iii) and both equality and social solidarity linked to the act of worship. When the parents, woman and man, were in the stage of their prime and the child, boy or girl, was powerless, the parental strong wing of affection was lowered out of tenderness to their offspring. But then, the parents grew old and their offspring reached their prime. Now, it is the offspring's turn towards their parents, but also not without that simple act of human gratitude of kindness and love. Here, following the worship, the Qur'an uses the word 'and' (*wa*) to ascend the quality of love of the parents (women and man) to the highest horizon of spirituality by reminding the younger with the love of the Creator. It is to this extent that the Qur'an is concerned with the status of women and the equality with that of men at any stage of their life.

After a woman's death, Islamic Law does not forget her equal status with that of man. For example, in the preparation of a Muslim's body for burial, there is no

difference between women or men. Indeed at certain steps of the preparation, woman has certain advantages over man. For example, washing the deceased's body is obligatory for Muslims; it is a collective duty (*fard kifayah*), that is, that if some members take the responsibility of doing it the need is fulfilled, but if no one fulfils it then all Muslims who know about it in a given locality will be accountable. It is out of respect that a man's body should be washed by men and a woman's by women. For wrapping the deceased's body, the cloth used must be clean (preferably white) and should cover the whole body. No silk cloth for men but could be used for women. There are three pieces of cloth for men, but five for women. As to prayers and everything else there is no difference.[106]

In her tomb, her status is also illustrated in a number of the traditions of the Prophet as follows: 'While I was sitting with the Prophet, a man from the Ansar came and said "O Messenger of Allah is there anything left to my parents that I should do after their death", the Prophet replied "Yes; praying for them; asking Allah in their favour; fulfilling their covenants after them; honouring and welcoming their friends; honouring and welcoming their relatives who link you to them; this is what is left for them upon you." '[107] In another tradition, according to al-Qurtubi, the Prophet reportedly said that 'The dutifulness to the deceased parents is to be in contact with their relatives and friends'. This is what 'the Prophet himself was doing for his wives. He used to give charity and gifts in honour of Khadijah. And she is his wife, what about his parents?'[108] Whether she was his wife or his mother, the matter of fact is that she is a woman; a mother, a wife, and a sister, and that her status and rights were guaranteed in the text, in the law, and in the practice.

Similar to her noble status in the religious sphere, the status and rights of women and her equality with that of men in the social, economic, political and intellectual spheres were highly secured, in all stages of her life, and that is also guaranteed in the text, in the law and in the practice.

In terms of social aspect, as a child and an adolescent, the social acceptance of female infanticide among some Arabian tribes is critical. Criticising the attitudes of such parents who reject their female children, the Qur'an says: 'When news is brought to one of them, of (the birth of) a female (child), his face darkens and he is filled with inward grief! With shame does he hide himself from his people because of the bad news he has had! Shall he retain her on (sufferance) and contempt, or bury her in the dust? Ah! What an evil (choice) they decide on?' (Qur'an 16:58–59). The Qur'an forbade this custom, and considered it a crime like any other murder. In this regard, there are a number of Qur'anic texts among which are these: 'And when the female (infant) buried alive – is questioned, for what crime she was killed' (Qur'an 81:8–9). Islam not only prohibits female infanticide, but it forbids all types of infanticide, irrespective of whether the infant is a male or female: 'Say: "come, I will tell you what your Lord made binding on you: that you shall serve no other gods besides Him; that you shall show kindness to your parents; that you shall not kill your children for fear of want; We provide sustenance for them as well as for you. Verily the killing of them is a great sin" '

(Qur'an 6:151). Far from saving the girl's life so that she may later suffer injustice and inequality, Islam requires kind and just treatment for her. This is clearly prompted by a number of the traditions of the Prophet: 'Whosoever has a daughter and he does not bury her alive, does not insult her, and does not favour his son over her, God will enter him into paradise.'[109] 'Whosoever supports two daughters till they mature, he and I will come in the day of judgment as this' (he pointed with his two fingers – the pointer and the middle fingers held together). Similarly, the right of females to seek knowledge is not different from that of males. The Prophet said: 'Seeking knowledge is mandatory for every Muslim'. Muslim as used here including both males and females.

As a wife, the Qur'an indicates that marriage is sharing between the two halves of the society, and that its objectives, besides perpetuating human life, are emotional well-being and spiritual harmony.[110] Its bases are love and mercy. The Prophet orders Muslims to get married as soon as they are able to do so. The family is the nucleus of the Islamic society, and marriage is the only way to bring about such an institution. Extra-marital relations are categorically condemned and prohibited. Among the most impressive texts in the Qur'an about marriage is the following. 'And among His signs is this: That He created mates for you from yourselves that you may find rest, peace of mind in them, and He ordained between you love and mercy. Lo, herein indeed are signs for people who reflect' (Qur'an 30:21). According to Islamic Law, women cannot be forced to marry anyone without their consent. Here is an authority. Ibn Abbas (d.68/687) reported that 'a girl came to the Messenger of God and she reported that her father had forced her to marry without her consent. The Messenger of God gave her the choice (between accepting the marriage, or invalidating it)'.[111] Also, the girl added, 'Actually I accept this marriage but I wanted to let women know that parents have no right (to force a husband on them).'[112]

In addition to all other provisions for her protection at the time of marriage, it was specifically decreed that woman has the full right to her dowry (*mahr*, *sadaq*, also referred to in the Qur'an as *nihlah*: gift, *faridah*: lawful portion) a marriage gift, which is presented to her by her husband and is included in the nuptial contract, and that such ownership does not transfer to her father or husband.[113]

As to the common English law, the *Encyclopaedia Britannica* speaks of dowry as 'property that a wife or a wife's family give to her husband upon marriage'. In the case of divorce, 'the husband had to restore the dowry to the wife or her family'. This dowry type 'has a long history in Europe, India, Africa, and other parts of the world'.[114]

In Islamic Law, however, the dowry is not given by the wife or her family to the husband, as in the law of some other societies. Female should not bribe a proposed husband and pay him a dowry to marry her. Here, the Qur'an says: 'Give the women (in marriage) their dowry as a free gift; but if they choose to remit any part of it to you, you may regard it as lawful yours' (Qur'an 4:2). This text is sufficient to make it clear that the dowry, in the Islamic Law, is to be given

by the bridegroom to his bride in accordance with their mutual agreement. The Qur'an does not stop here, but also declared that the dowry could be of any value, small or large, as in the Qur'anic word 'whole treasure' (Qur'an 4:20).

Thus, the concept of 'dowry' (*mahr*) in Islam is neither an actual or symbolic price for the woman, as was the case in the law in certain cultures, but rather it is a gift symbolising love and affection.[115] The payment of the dowry on the part of the husband is an admission of the independence of the wife, for she becomes the owner of property immediately on her marriage, though before it she may not have owned anything. In the case of divorce, the husband has no right to demand the dowry or anything from it, said the Qur'an 'Do not take from her (the divorced one) the dowry you have given her even if it be a talent of gold; that would be improper and grossly unjust. And how can you take it back when you have lain with each other and they have taken from you a solemn covenant?'(Qur'an 4:20). As this text outlined the reason, it also indicates that the settling of a dowry on the woman is obligatory, in Islamic Law.

In the case of a Muslim marrying a Christian or a Jewish woman: the Qur'anic injunction is 'And the chaste from among the believing women and the chaste from among those who have given the Book before you, when you have given them their dowries, taken them in marriage' (Qur'an 5:5).

As to polygamy, the Islamic rules of marriage or those of women's rights indicate how grave is the mistake of those who suppose that Muhammad legalised polygamy. As Amir Ali (1922) put it 'The old idea of his having introduced it, is by this time exploded; but the opinion that he adopted and legalised the custom is still maintained by the common masses, as well as by many of the learned . . . No belief can be more false.'[116] About the time of Muhammad, women occupied a very low position in the scale of humanity and in social scale; polygamy and the corruptness of morals in Arabia and surrounding countries, in the Persian and Roman Empires, were deplorable.[117] Muhammad did not bring polygamy but corrected the practice. The social reform instituted by Muhammad found its practical effect on a vast and remarkable improvement in the status and the rights of women. Muhammad came and enforced, as one of the essential principles of his teaching creeds, the 'respect for women', 'her status' and 'her rights'. The rights of women and her noble status were expressed in explicit terms of law. Muhammad's followers, women and men: 'In their love and reverence for his celebrated daughter, proclaimed her "the Lady of Paradise", as the representative of her sex. "Our Lady of Light" is the embodiment of all that is divine in womanhood – of all that is pure and true and holy in her sex – the noblest ideal of human conception. And she has been followed by a long succession of women, who have consecrated their sex by their virtues. Who has not heard of the saintly Rabi'a and a thousand others her equal?'[118]

The teaching of Muhammad and the law that he promulgated, restored and strictly secured to women her humanity; and her rights and noble status, in society, were placed on a footing of perfect equality with men. He made it clear that marriage is essentially restricted to one, that is, that man is entitled to marry only one woman, but more than that is confined to specific conditions under which

marriage is not more than four. It is worth mentioning the Qur'anic injunctions which are seen by some to legitimise polygamy. The Qur'an says:

> Give orphans the property which belongs to them. Do not exchange their values for worthless things or devour their possessions adding them to yours; for this would surly be a great sin. If you fear that you cannot treat orphans with fairness, then you may marry such women as seem good to you: two, three, or four of them. But if you fear that you cannot do justice, marry one only.
>
> (Qur'an 4:2–3)

> You are never able to do justice between wives, even if it is your ardent desire: but do not set yourself altogether against any of them.
>
> (Qur'an 4:129)

The words and language have clearly limited the number of contemporaneous marriages to four; and at the same time, have placed the limitation in a frame of specific conditions that reduced the number down to 'one wife only'. This verse, in the words of Abu al-Husyan al-Basri (d.1634) is expressed with 'a big *IF* to confine this marriage to this mentioned condition. Don't you see that if one said to another, take from this bag what you like; two, three, or four dirhams; does not mean to take all dirhams in the bag'.[119] Thus, the verse's conditional key words: (i) the orphans; (ii) the justice between them if marriage occurred; (iii) the article that 'you are never able to do justice between wives'; and (iv) the regulation that 'do not set yourself altogether against any of them' are sufficient to confirm that marriage is essentially with only 'one', but more than 'one' is subjected to conditions and strictly limited to specific settings and rules.

Considering these key conditions require us to recall the immediate occasion of the promulgation of the verse. The verse was revealed immediately after the battle of Uhud, when the Muslim community was left with many orphans and widows and some captives of war. Dealing with these conditions must be governed by principles of greatest humanity and equality. This occasion in the newly born Islamic society is already past, but who can be sure that this condition or similar to it will not occur, if there is no similar condition existing in our modern world. The condition is past, but the principles remained applicable for such social problems of sex ratio and other affairs of male–female relationships. Marry the orphans if you are quite sure that it is in that way you will protect their interest and their property with perfect equality between them and between your own dependents if you have any. The Qur'anic word 'equitably', explained by the jurists, does not mean merely equality in lodging, clothing and necessaries, but also equity in love, affection and esteem.[120] If man is able to do justice in lodging, clothing and necessaries, can he do justice and equity in love, affection and esteem? The Qur'anic response is this 'But if you fear that you cannot do justice, marry one only' (Qur'an 4:2–3). 'You are never able to do justice between wives, even if it is your ardent desire: but do not set yourself altogether against any of them' (Qur'an 4:129). In this regard, Jesus teaches humanity that all human

begins are servants and that 'No servant can serve two masters: for either he will
hate the one and love the other; or else he will be devoted to the one and despise
the other. You cannot serve God and mammon' (Matthew 6:24).

With this in mind, Muslim jurists did not restrict the principle to the orphans.
They pointed out that marriage in Islam is essentially with only one wife, orphan
or not. More than one is permissible only in certain conditions. This condition
could exist on individual or communal levels. With the existence of this condi-
tion, the person who proposed to marry another wife must apply the following
principles:

1 He must be financially capable to look after the needs of his wives
   (Qur'an 65:6).
2 He must give dowry to every one of his wives (Qur'an 4:2).
3 He must know that the dowry is her right and her property not his
   (Qur'an 4:20).
4 He cannot marry her without her free choice and acceptance (traditions and
   jurists).[121]
5 He must inform his other wives if he plans to take another wife (traditions
   and jurists).[122]
6 He must declare the name of his wife or wives living with him (traditions and
   jurists).[123]
7 His marriage should not be concealed, but it must be made public (traditions
   and jurists).[124]
8 He must do equal justice to his wives and deal with them equitably (Qur'an
   4:2–3).
9 He should live with every one of his wives with kindness (Qur'an 4:19;
   14:24–25).
10 She has the right to live with her children in a home, separate; not with any
   of the wives or their children if any (traditions and jurists).[125]
11 He must protect the property of every one of his wives (traditions and jurists).[126]
12 He has no right to take or deal with the property of any of his wives, unless
   she allows him to do so in specific and precise terms (traditions and jurists).[127]
13 He should not force any one of his wives to pay anything at all for her living
   or for her children, even if she is more wealthy than him (Qur'an 65:7).
14 She has the complete right to deal with her property (traditions and jurists).[128]
15 She has the complete right to all kinds of freedoms: of choice, of religion, of
   education, of work, of opinion about the affairs of her house, opinion about
   national and international affairs (traditions and jurists).[129]
16 Every one of his wives has the complete right to accept or reject his marriage
   at any point of time (traditions and jurists).[130]
17 If divorced, she has the complete right to stay in the home in which she was
   living before divorce, if it is owned by the husband, otherwise he should pay
   the rent for her (Qur'an 65:1).
18 If divorced, she has the right to charge the husband with the cost of living for
   herself and her children, including child care (traditions and jurists).[131]

These are some of the basic rights of the wife whether she is the first or the fourth. These rights are based on the opinions and rulings of the jurists, as in Egypt's Personal Status Law (i.e. Act number 25 of 1920; Act number 56 of 1923; Act number 25 of 1929; Act number 100 of 1985 and its amendments on 27 January 2000) and practically applied in Egypt's Personal Status Court.[132]

The rules for married life in Islam are clear and in harmony with human rationality and upright human nature. These clues with regard to the rights of wife, whether one or four, make it difficult for any rational to suppose that Islamic Law is endorsing polygamy rather than legitimate monogamy; or that polygamy in Islamic Law is of that type known in the history of laws in some other societies. The difference is as much obvious as the noble status of women and her importance in this universe is.

Furthermore, the clues of marrying two, three or four orphans are reinforced also by the Qur'anic passage, 'In no way you can treat your wives in an equitable manner even if it is your ardent desire: do not set yourself altogether against any of them' (Qur'an 4:129). It is noteworthy that Tunisia adopted the rule of monogamy on the basis of these clues. Under Tunisian Law polygamy is prohibited, and constitutes a criminal offence, rendering a man who marries before his previous marriage is dissolved liable to one year imprisonment and a fine of 240,000 francs, even if this marriage is not lawful.[133] Muhammad Abdu (d.1950) head of Egypt's Personal Status Court, the reformer and Grand Mufti of Egypt often said that no husband can be a just husband to more than one wife under modern living conditions.[134] 'Abduh pointed out that the Qur'anic passage 4:23,129 endorses monogamy and prohibits polygamy on every husband, who fears to commit injustice and inequality between wives.[135] 'Abduh's view explained by his student Rashid Rida (d.1935) is as follows:

> The verse declares three definite key conditions: First, Islam did not legalise polygamy or endorsed it, but mentioned it in a way that indicated that any one who practice it is not immune from committing injustice which is also prohibited. The logic of this and its advantage is that man must think carefully about the intention of his aim and objective before taking his decision. Second, Islam did not prohibit polygamy completely for the many defects in human relations, and for the reasons which influence marriages as well as the ratio between sexes in some societies sometimes. Third, for this or that reasons polygamy was left with a degree of permissibility but that is strictly confined to a limited number of marriages with specific conditions and specific aim and objective in society ... But because of the nowadays' ignorance of some Muslims about the Islamic concept of marriage and its rules and the logic of its morals; and because of the corruption of Muslim education which reflects their governments, polygamy became used as a means for uncountable evils in some societies where marriage's essential principles which are explicit in the Qur'an were turned to their antithetical meanings. For that, our Imam [Abduh] in al-Azhar undertook a serious and strong campaign criticised this evil ... He suggested that is impossible for the nation to continue

with the evil of such corrupt polygamy. It must be stopped on the basis of both traditions that 'there is no harm or reciprocal harm in Islam', and that of 'warding off the evils' which is confirmed by the consensus. I have published his opinion in volume number 28 of al-Manar and mentioned his fatwa that the government has the right to stop polygamy.[136]

Over and above all the clues of restriction, there is no force in marriage; women's decision is completely a personal one. This latter clue itself, for a true person, might bring the corrupt polygamy to standstill. This theme needs also to be viewed against the other accomplishments of Islam regarding the rights of women, in society where they had no rights. One of the essential teachings of the Prophet was respect for women. Temporary or conditional marriages, such as were common at the time, were prohibited. The husband's power of divorce was restrained. Women were given the power to obtain a separation on reasonable grounds. Divorce by the husband, was condemned by the Prophet as 'the most detestable before God of all permitted things'.[137] The Qur'an constantly admonishes against separation and recommends the healing of quarrels by reconciliation. Further it teaches: 'And you are permitted to marry virtuous women who are believers and virtuous women of those who have been given scriptures before you, when you have provided them their marriage portions, living chastely with them without fornication, and not taking secret concubines' (Qur'an 5:5).

Yet, the man's role in relation to his family is but sharing and caring, love and affection, not husband's dictatorship over his wife. Islam emphasises the importance of taking counsel and mutual agreement in family decisions. The Qur'an gives this example: 'If they (husband and wife) desire to wean the child by mutual consent and (after) consultation, there is no blame on them' (Qur'an 2:233). Over and above her basic rights as a wife comes the right which is emphasised by the Qur'an and is strongly recommended by the Prophet, kind treatment and companionship. The Qur'an states: 'But consort with them in kindness, for if you hate them it may happen that you hate a thing wherein God has placed much good' (Qur'an 4:19). Also, the Prophet said: 'The best of you is the best to his family and I am the best among you to my family. The most perfect believers are the best in conduct and best of you are those who are best to their wives.'[138]

To provide for the stability of the family, however, and to protect it from hasty decisions under temporary emotional stress, certain steps and waiting periods should be observed by men and women seeking divorce. Considering the relatively more emotional nature of women, a good reason for asking for divorce should be brought before the judge. Like the man, however, the woman can divorce her husband without resorting to the court. More specifically, some aspects of Islamic Law concerning marriage and divorce are interesting and are worthy of separate treatment. When the continuation of the marriage relationship is impossible for any reason, men are still taught to seek a gracious end for it. The Qur'an states about such cases: 'When you divorce women and they reach their prescribed term, then retain them in kindness and retain them not for injury so that you transgress the limits' (Qur'an 2:231, also see 2:229; 33:49).

In the economic sphere, Islam decreed a right of which women were deprived both before Islam and after it, the right of independent ownership. Islamic Law acknowledged that a woman at any stage of her life, whether she is underage or matures, single or married, has the complete right to her wealth, estate and other properties. This right has never altered or modified. She has the complete rights to deal with her property; to contract and transactions; to buy and sell; mortgage or lease any or all her properties. It is also noteworthy that such right applies to her properties before marriage as well as to whatever she acquires thereafter. Only if she is under age, the law appoints a guardian to protect her property, and to be responsible before the law, until she attains her legal maturity.[139]

As to her right to seek employment it should be stated first that Islam regards her role in society as a mother and a wife as the most sacred and essential one. Neither maids nor baby-sitters can possibly replace the mother's love and tenderness or fulfil her place as educator of an upright, complex-free and carefully reared child. In our modern world, such a noble and vital role, which largely shapes the future of nations, cannot be regarded as 'idleness'. Nevertheless, there is no religious ordinance in Islam that prohibits woman from seeking employment.[140]

Islam restored to woman the right of inheritance, after she herself was treated as property or an object of inheritance in some cultures. The Qur'anic injunction: 'Men shall have a share in what their parents and relatives leave; and women shall have a share in what their parents and relatives leave; whether it be little or much, it is legally theirs'(Qur'an 4:7). This applies to all types of property, movable or immovable. It may be little as a piece of cloth. Her share is completely hers and no one, father, brother or husband, can make any claim on it. Her share is not necessarily one-half of the share of man. Her share is equal to that of man, at times; and more or less than that of man at other times. This variation depends only on the case.[141] Under Islamic Law, woman is far more secure financially and is far less burdened with any claims on her possessions. Whatever she owns is hers and there is no obligation on her to spend on her home or children out of her wealth. The law of inheritance within the framework of the Islamic Law reveals not only justice but also an abundance of compassion for woman.[142]

In the political sphere, a right given to women by God is the right to vote. On any public matter, a woman has the right to voice her opinion and to participate in politics. One example narrated in the Qur'an, is that Muhammad is told that when the believing women come to him and swear their allegiance to Islam he must accept their oath (Qur'an 60:12). This Qur'anic injunction established the right of women to select their leader and publicly declare their selection. Women's freedom of religion, of speech, of election as well as her right to participate in public affairs and the nomination to offices, whether political or others, are guaranteed. The Qur'an (58:14; 60:10–12) and the tradition as well as Islamic history provide examples of women who participated in serious discussions and even argued with Muhammad himself. For example, under the leadership of Muhammad, women's voice concerning the Treaty of al-Hudaybiyyah, and their voice concerning Muhammad's decision of appointing Abu Bakr as an Imam, are well known as an important milestone in the history of Islam. As to Abu Bakr's case, for instance,

women's argument was with Muhammad himself; while among those women who voiced against Abu Bakr was Abu Bakr's daughter.[143] This example within the context of the place and space is sufficient to characterise the democracy which the world is yearning to achieve.

Following Muhammad, under the two-year period of Abu Bakr's leadership, women's voice in matters such as that of the military or the generalship of Usama, or their voice in the appointment of 'Umar to the high office is documented.[144] Similarly, under the leadership of 'Umar, the following account may illustrate the point. During his reign he sought to reduce marriage's dowries which were perhaps high. To consult his people, 'Umar went to the mosque, stood at the pulpit and said among other things:

> 'In marriages, the dowries should be not more than 40 ounces, even if the girl is the daughter of the wealthiest in the city; the excess will then be subjected to confiscation in favour of the public treasury'. One amongst the women in the mosque voiced 'this is not yours'. He asked 'why'. She said: 'Because Allah says': 'If you gave her a talent of gold, do not take anything from it. That would be improper and grossly unjust'.
>
> (Qur'an 4:20)

He said 'the woman is right and 'Umar is wrong.'[145] After 'Umar, the election of 'Uthman to the office was also not possible without the voice of women; their votes were collected by Abd al-Rahman ibn 'Awf.[146]

The Qur'an liberated women and gave them the right to choose the ideology of their interest, to choose the society and to select the leadership. There is no woman who is said to have truly accepted Islamic ideology, or the leadership of Muhammad by force or without her independent will. Nor does a woman become a Muslim merely because of her relationship to father, husband or any other male. All Muslims, women, just like men, would come to the Prophet to announce their Islam personally and independently (Qur'an 60:12).

Male and female relatives may assume different stands over the ideological option. For instance, a woman like Umm Habiba, the daughter of Abu Sufiyan, who led the coalition against Muhammad until the Muslims conquered Mecca, embraced Islam, though her father was still an anti-Islamic pagan. Similarly a woman, like Fatimah the daughter of al-Khattab, selected Islamic ideology, although her brother 'Umar (later caliph) was still against Islam. Speaking of his own manner in which he selected the fold of Islam, 'Umar said, 'three days after Hamza had embraced Islam, I went out of the house, to meet by chance a man of the Makhzumi tribe whom I asked: "Do you prefer Muhammad's faith over that of your own forefathers?" The Makhzumi said: "One who is more closely related to you than myself has also done so". I asked him, who it was. Your sister and your brother-in-law, replied the Makhzumi. I hurried back and found the door of my sister's house bolted from within; and I heard some humming inside. Later, when the door was opened, I entered the house and asked: "What is it that I am hearing?" My sister replied: "You heard nothing". We were exchanging words when I struck her on the head, whereupon she stated defiantly: "We do that whether you like it

or not". I was filled with remorse when I saw her bleeding, and said to her: "Show me the scripture". She rejected unless until I performed purification with water'. 'Umar narrated the whole incident.[147]

From the early days of Islam, women had been taking a prominent role in the preservation and cultivation of the tradition of the Prophet, a function that continued down the centuries. At every period in Muslim history, there lived numerous eminent women biographers. Biographical notes on very large numbers of them are to be found in the literature.[148]

During the lifetime of the Prophet, many women were among the calligraphers and transmitters of the traditions. After the Prophet's death, many women, particularly his wives, were looked upon as vital custodians of knowledge, and were approached for instruction by the others to whom they readily dispensed the rich store which they had gathered in the Prophet's company. The names of Hafsa, Umm Habiba, Maymuna, Umm Salama and A'isha, are familiar to every student of the tradition of the Prophet. In the period of the Successors, women held important positions as traditionists. Hafsa, the daughter of Ibn Sirin, Umm al-Darda the Younger (d.81/700), and 'Amra bin 'Abd al-Rahman, are only a few of the key women traditionists of this period.[149]

After them, 'Abidah al-Madaniyyah, 'Abda bin Bishr, Umm 'Umar al-Thaqafiyyah, Zaynab the granddaughter of Ali ibn Abd Allah ibn Abbas, Nafisah daughter of al-Hasan ibn Ziyad, Khadijah Umm Muhammad, 'Abda daughter of Abd al-Rahman, are only a few. These devout women came from the most diverse backgrounds; some started their life as slaves, indicating that neither class nor gender were obstacles to rising through the ranks of Islamic scholarship. This partnership of women with men in the cultivation of the Prophetic tradition continued. In the fourth century, we find Fatimah, daughter of Abd al-Rahman (d.312/924), and granddaughter of Abu Dawud, who compiled a few volumes of the traditions that were well known as *Sunan* (traditions). These are only a few examples of the many women whose classes were always attended by reverential audiences. These examples illustrate that the fair sex excelled in delivering public lectures on the tradition of the Prophet.[150]

The Islamic tradition of female scholarship continued in the eleventh and twelfth centuries. Fatimah, daughter of al-Hasan ibn Ali ibn al-Daqqaq al-Qushayri, was celebrated not only for her piety and her mastery of calligraphy, but also for her knowledge of the tradition (*hadith*) and the quality of the chain of the transmitters (*isnads*). Even more distinguished was Karima al-Marwaziyyah (d.463/1070); she was considered the best authority on the accurate traditions which were collected by al-Bukhari (d.256/870) in a multi-volume opus known as *Sahih* of al-Bukhari (i.e. Leiden edition 1862–1908).[151] Abu Dharr of Herat, one of the leading scholars of the period, attached such great importance to her authority that he advised his students to study *hadith* under her scholarship. She thus figures as a central point in the transmission of this seminal text of Islam. As a matter of fact, writes Godziher, 'her name occurs with extraordinary frequency of the *ijazas* for narrating the text of this book'.[152] Among her students were the celebrated al-Khatib al-Baghdadi (d.463/1071) and al-Humaydi (d.488/1095).[153]

The Qur'an provides in unmistakable terms the evidence that women are completely equated with men in terms of their rights and responsibilities (Qur'an 74:38; 3:195; 16:97; 4:124). The Qur'an did not blame woman for Adam's first mistake. Both were jointly wrong in their disobedience to God, both repented and both were forgiven (Qur'an 2:36; 7:20–24). In one verse in fact (Qur'an 20:121), Adam specifically, was blamed.

The Qur'an made it difficult for any Muslim rulers or ruled to deny the noble status of women and her rights, political or other. Indeed, women's rights were given to her by God, not by man, ruler or ruled. Denying such rights is a sign of social, political and moral dislocation and a deviation from the teaching of Islam.

This chapter has outlined the way in which what are often considered Western democratic values and essential human rights can be found in Islam and supported, yes if required, by the Qur'an and the *sunnah*. The shari'ah, far from being anti-thetical to democratic values and human rights is shown to provide a profound basis for them, one that is seen to be grounded in the very will of God and not a human invention. This religious grounding provides a deep ontological foundation for equality, respect, compassion and productivity in human relations in Muslim societies. This foundation is lacking in secular societies which try to ground these values in the merely human.

4   Contribution to European law and philosophy

The preceding chapters have shown democracy in the conscience and soul of Islam and that Islam is an ideal system of life providing a social system of liberty, equality and fraternity for all humankind, and not as a system in which a few share wealth and freedom among themselves to control the rest better. These chapters have also shown Islam to be a system of government by which Islamic ideals could be rightfully approached to create the political climate for which some rights, at least, of public discussion concerning public policy could take place and the ordinary people could have control over their rulers and agents. They made clear that Islam is not merely a religion but a complete code for human life combining the spiritual and worldly affairs and seeking to regulate, not only the individual's relationship with God, but also all affairs and relationships of humankind. What also became visible, as a matter constant to Islam and its philosophy, is the exact relationship between Islamic Law and human reason.

Despite the fact that the values and qualifications of democracy exist in both Islamic and Western civilisations, democratic values however are widely considered as a product of Western civilisation and the role that human reason has played therein. This view is associated with the claim of an inevitable and fearful clash between Islamic and Western civilisations. In this context, exploring and answering the question of the relation between Islamic and Western civilisations which produced democracy is critical.

This chapter, therefore, complements the others in building the necessary bridges of understanding between the Islamic and Western civilisations which are the sources of Islamic and Western democracy. It investigates the scope and extent of the contribution of Islamic philosophy and law to European law and philosophy with special focus on the relationship between religion, human reason and democratic values. The findings of a harmonious relationship between Islamic and Western civilisations will contrast with the mentality of a clash of civilisations and similar themes which are products of human efforts to promote and defend a specific type of human society.

Islamic philosophy and Law

As a system for human life Islamic Law deals with human beings as humans and according to their nature, not the nature of angels. Human beings have their laws

harmonious with their nature; and the angels have their laws harmonious with their nature. Human life is also not separate from the surrounding universe. Their life is dependent on a harmonious relationship between universal bodies – stars and galaxies; suns and moons; light and darkness; heat and cold. Human life is not separate from the life of other creatures. Human beings are not living in this vast universe separate from either the material or non-material world, but their place and role are an indispensable part of this interacting system that operates according to the universal laws which govern and maintain the relationships between all forces in the universe.

With these laws we see the universe, life and humankind still continue to exist; the nature of the part still in harmony with the whole; this world still in harmony with the laws; we see the development in the world did not change the nature of its parts. Gradual alterations and development in human life did not change human nature into a nature of another being. As Montesquieu (d.1755) says in *The Spirit of the Laws*, 'There is, then, a primitive reason; and laws are both the relations that exist between it and the different beings, and the relations of these various beings to each other.'[1] It is for this 'primitive reason' that it 'is better for humans', as Sayyid Qutb (d.1966) says,

> to cooperate among themselves, for their welfare, in accordance with the law that harmonises their life with the life of their surrounding universe. The lawgiver; God does not leave humans nor any living being without direct guidance and continual care of their motion; His law is constant and in direct contact with the whole universe governing and maintaining its motion and the motion of every individual being in it. Stability of the law does not mean that the law is rigid in it is application. Stability of the law means that the law has been fixed to be flexible to provide for the motion of human development within a firm framework and about a stable axis.[2]

Like Qutb, Montesquieu pointed out the relation between God's laws and the universe as follows:

> God . . . as Creator and Preserver; the laws according to which He created are those according to which He preserves; He acts according to these rules because He knows them; He knows them because He made them; He made them because they are related to His wisdom and His power. As we see that world . . . still continues to exist, its motions must have invariable laws; and, if one could imagine another world than this, it would have consistent rules or it would be destroyed. Thus creation, which appears to be an arbitrary act, presupposes rules . . . these rules . . . govern the world, since the world would not continue to exist without them.[3] Man, as a physical being, is governed by invariable laws like other bodies. As an intelligent being, he constantly violates the laws God has established and changes those he himself establishes; he must guide himself, and yet he is a limited being; he is subject to *ignorance* and error, as are all finite intelligences; he loses even the imperfect

knowledge he has. As a feeling creature, he falls subject to a thousand passions. Such a being could at any moment forget his Creator; God has called him back to him by the laws of religion. Such a being could at any moment forget himself; philosophers have reminded him of himself by the laws of morality. Made for living in society, he could forget his fellows; legislators have returned him to his duties by political and civil laws.[4]

This statement is in conformity with Islamic thought and philosophy. What is important is what he also had in mind. The concept of '*ignorance*' that Montesquieu speaks about is mentioned in the Qur'an and in the Hebrew Scriptures and it was detailed, since then, by thinkers in the medieval and modern ages. For instance, Roger Bacon (1214–1294) detailed this concept and called it '*ignorantiae*', while Sayyid Qutb (1906–1966) called it by the Qur'anic word '*jahiliyyah*'.[5] In either case, revelations have come to deliver humanity from the state of ignorance (*jahiliyyah*) to the state of rightful laws. Thinkers made great efforts and have labelled these laws, as in the above of Montesquieu's words, 'civil laws', 'moral laws' and 'laws of religion'. Thinkers however forgot to take into account that these labels are but human expressions and human attempts to understand the revealed laws. According to Islam, the revealed laws are 'civil laws', 'moral laws' and overall they are 'laws of religion'. These labels are a human effort of classification, and these labels will not change the nature or the spirit of the laws. Labelling the revealed law by any such label as 'religion', 'civil' or 'moral', never meant that the nature of the revealed laws is reactionary or their spirit is out of date. The lawgiver recommended these laws to civilise human life. These laws were well designed and were produced according to the wisdom of the legislator whose legal skills and expertise in laws and Constitutions are well recognised as more comprehensive than that of Aristotle and Averroes or Plato who was called 'Plato the divine'.[6] The legislator recommended those laws; explained them; and assured that the laws fit perfectly well with human nature and human development; and emphasised among his guarantees his record. For him, the laws he recommended are civil; civil laws are moral; moral laws are wise; the wise laws are the civil creed he recommended for his subjects. Thus, labelling laws as 'laws of religion' or 'civil laws' is but a matter of classification for better understanding. Disagreement with some of them does not necessarily mean that some are in conflict with human mind or human nature. Human mind once thought that the earth is the centre of the universe, but later understood many of these laws better.

Montesquieu's quotation is a reminder that those philosophers and legislators are also human beings limited to their nature and origins; and that the nature of laws reflects the nature of their legislator. If humans, Montesquieu said, are subjected to *ignorance* and error, they then may violate not only the revealed laws, but also the 'laws made for themselves'; the 'moral laws' made by the philosophers; and the 'civil laws' made by legislators. In Montesquieu's classification, then, neither the 'civil laws' made by the legislators, nor the 'moral laws' made by the philosophers, or the laws established by God, will 'return man to his

duties' or his spirit. This is because the laws, whether that of God or of the philosophers and legislators are not actually laws unless they are implemented in society. Implementing the laws requires a government or a political organisation with a law enforcement body. With this theme Montesquieu seems to suggest, in his statement, above, that there were no laws that returned 'man to his duties' except the '*political* and civil laws'.[7]

One however might argue that the revealed laws can do the same, namely, to return man to his duties. To avoid the equality of this probability, Montesquieu used the word '*political*' next to 'civil law' in his classification of laws in the statement, above. Thus, without *political* establishment, namely, government and law enforcement agents, the *civil laws* will be like both the moral and the revealed laws; all will fail to return man to his duties. Montesquieu says: 'A society could not continue to exist without a government.'[8] What follows is that the revealed laws also have the capacity and inclination to return 'man to his duties' if there is a government able to facilitate the application of the laws in society. Thus, the existence of society needs laws, but because laws could be violated, therefore, government is necessary for the society's continual existence. This suggestion of Montesquieu confirms that the words and language of the principles that he outlined, in the statement above, as principles of his book *The Spirit of the Laws*, were influenced by and in conformity with the spirit of Islamic Laws and philosophy. The framework of this theme and its implications has occupied the mind of modern European thought; it also occupied the mind of Islamic thought of all ages and was the driving force of Islamic philosophy and its investigation in all fields of knowledge.

Islamic philosophy is the product of a complex intellectual process in which Muslims from various territories took an active part. Islamic philosophy is unique in the kinds of topics and issues with which it deals, the kinds of problems it attempts to solve and the methods it uses to solve them. It concerned itself with such matters as the problem of unity and multiplicity, the relationship between God and the world, both of which had been subjects of heated controversies and discussions among the theologians for a long time.[9]

Among other aims of Islamic philosophy was to reconcile revelation with reason; knowledge with faith; and religion with philosophy; to show that reason and revelation do not contradict each other; and that religion would be accepted by those who reject it when the issue is illuminated by the light of philosophical wisdom. It aimed to prove also that when religion embraces philosophy it takes on philosophical qualities just as philosophy too assumes the colour of religion. Islamic philosophy is a creature of the environment in which it grew and flourished, and as is quite obvious, it is a religious and spiritual philosophy.[10]

Islamic philosophy is also religiously oriented; it has not ignored any major philosophical issues. For example, it has extensively discussed the problem of being, and defended its position on issues like time, nature, space, matter and life. Its treatment of epistemology is both unique and comprehensive. It drew a distinction between the self (*nafs*) and reason, inborn and acquired qualities, accuracy and error, surmise and certain knowledge. It has investigated the question of what

is virtue and happiness and divided virtues into a number of categories and reached the conclusion that the highest virtue is uninterrupted contemplation and serene realisation of the Truth.[11]

Muslim thinkers divided philosophy into the two generally accepted categories of 'speculative' and 'practical' and their discussions extended over varied topics such as natural philosophy, geometry, mathematics, metaphysics, ethics and politics. Evidently, the Islamic thinkers believed philosophy to have a much greater scope than it is generally given today, and in this regard their work was even greater than that of the Greek philosophers including the famous Aristotle who is called 'the prince of philosophers'.[12] Thus, Islamic philosophy is intermingled with medicine, biology, chemistry, botany, astronomy and music. Generally speaking, all the fields of science were considered to be nothing other than branches of philosophy.

Considering all that has been said, it would not be an overstatement to claim that Islamic philosophy encompasses all the various aspects of Islamic culture and society. It should, of course, be kept in mind that during the ages when Islamic philosophy was developing and maturing, learning and investigation were carried out in an encyclopaedic manner. Furthermore, it should be kept in mind that theological discourse (*al-kalam*), mysticism (*tasawwuf*), the history of Islamic Law and the principles of jurisprudence, all are also considered as an integral part of Islamic philosophical thought.[13]

It is not rare to discover philosophical ideas, concepts and views in what are ostensibly Islamic scientific texts dealing with such topics as medicine, geometry, chemistry and astronomy. Furthermore, some Muslim scientists showed more courage and freedom in expressing philosophical views than that shown by those specialising in the field of philosophy. Also, amongst Islamic mystical and theological discussions, views and positions are encountered which in their profundity and precision equal any found amongst the Aristotelians. These Muslim thinkers challenged Aristotle's philosophy and struggled against it for many years. This struggle led to the emergence of a distinctive Islamic philosophy and thought. Later on a certain methodology and forms of rational analysis were introduced into discussions about the foundations of Islamic Law and the principles of jurisprudence which have a distinctly perceptible philosophical tinge. It is even possible to uncover in their involved procedures, rules and methods similar to those in use today.[14]

Consequently, Islamic philosophy is to the East what Latin philosophy is to the West; the combination of these two completes the history of speculative thought of the medieval ages. In order that the true place of Islamic philosophy and its contribution to human thought can clearly be understood, it is essential that we investigate the relationship of Islamic philosophy with medieval and modern philosophies.

Human reason and the revealed law

In Islam, the Qur'an and the traditions (*sunnah*) of the Prophet Muhammad are the ultimate source and proof of Islamic Law. During the revelation period

(610–632), the Prophet was the ultimate source of understanding of the rules laid down in the Qur'an. After the Prophet, the different aspects of the law were outlined by both the Qur'an and the traditions of the Prophet; the Qur'an explaining itself; the *sunnah* explaining itself; and both sources explaining each other. Such processes cannot exclude the role of human reason or human intellect. Applying the divine rules was not without human understanding of the text.[15] It is well known that the *shari'ah* did not give detail on everything in this life, but kept silent with regard to some affairs and touched on some other affairs without details. This deliberate silence of the *shari'ah* is equally suggestive of a deliberate invitation to the involvement of human reason in understanding the *shari'ah* and to legislate for themselves in areas where the *shari'ah* kept silent or did not provide details. This means that there is a continual need for temporal legislation. This led the jurists to develop what is called the secondary sources of legislation. These are first, the consensus (*ijma'*) of Muslim jurists in any particular age on a juridical rule; second, the analogical deduction (*qiyas*) which allows the jurist to reason from the Qur'an and the tradition as well as from the consensus to resolve issues not covered or detailed by them; and third, the independent reasoning (*ijtihad*) which is a legitimate exercise of the jurists in the absence of specific guidance from the Qur'an and the tradition of the Prophet.[16]

In this respect there was a remarkable similarity between the process of continuing interpretation and application among Muslims and the theological efforts of the early Christian Church. They had the revealed law in both the Old and New Testaments. There was discussion about the acceptable extent of human reason in their interpretation and application. God's knowledge, reason and will were supreme and human knowledge or reason could not match the divine. The conflict entailed the relationship between theology and law and, in particular, the spheres of concern where human intellect could not interfere against that of God.

In the thirteenth century, the Franciscans were in a theological dispute with the Dominicans. There was a keen rivalry between the two orders, as 'the Franciscans were not inclined to accept the authority of St Thomas'.[17] The three most important of Franciscan philosophers were Roger Bacon, Duns Scotus and William of Occam. Roger Bacon (1214–1294) who has been greatly praised in modern times was, for some, not greatly admired in his own days. Bertrand Russell pointed out that Bacon 'was not so much a philosopher in the narrow sense' but 'a man of universal learning' with great interest in 'mathematics and science' which was mixed up with the art of chemistry or 'Alchemy'.[18] This art developed by Muslims from the eighth century reached its zenith in the seventeenth century through dialogue with their Western colleagues. Bacon mastered the Arabic language and was well informed with Muslim literature and referred to a number of their most standard works in his primary sources. Bacon referred to al-Kindi (801–873), al-Farabi (870–950), Ibn al-Haytham (Alhazen 965–1039), Ibn Sina (Avicenna 980–103), Ibn Rushd (Averroes 1122–1198) and other Muslim philosophers who wrote on philosophy, mathematics and geography.[19] On these subjects, 'Bacon wrote well and quoted from Muslims' such as Abu Ma'shar al-Falaki (805–885) who is known to Western literature and to Russell as 'Albumazar the Astronomer'. Russell

emphasised that Bacon transferred his translations and his writings on geography and mathematics westward to 'Columbus' who 'was influenced by it'. Russell maintained that Bacon's writings were also based on Muslim or 'Arabic sources'.[20]

Bacon faced some difficulties with the authorities of his time, because of the particularity of his theory of 'ignorance'.[21] Bacon stated that '[b]ut unless the general and specific causes of human ignorance and error be eliminated, persuasion is in vain. Speaking first, therefore, of the wickedness and poisonous infection of general causes I say that there are three things that are obstacles to the necessary vision of truth'.[22] According to him the three obstacles are these: first, is the weakness or the frail (*fragilis*) of the evidence based on authority. The evidence was not based on a solid ground; it can be easily penetrated and destroyed; it is morally weak and easily leads astray. Second, were the customary behaviours and influences. Third was the opinion of the masses particularly those who are neither learned nor well informed.[23] In addition, a fourth obstacle was also mentioned in Bacon's *Opus maius*: namely, the concealing of one's own ignorance by a display of apparent wisdom.[24]

Bacon's theory of 'ignorance', as Russell asserts, was particularly 'written for the Pope', therefore Bacon was 'careful to say it does not include the Church'.[25] At Paris, Bacon was lecturing on the natural philosophy, the *Metaphysics* of Aristotle and the writings on this by Muslims such as al-Kindi, Avicenna and Averroes. However, 'in a Parisian provincial council of 1210 [these writings] were forbidden to be lectured on at Paris either publicly or privately, a deed which Bacon ascribes to "dens ignorance".[26] This theory was basically developed from Muslim and Christian sources. The word 'ignorance' and its derivations are mentioned in the Qur'an as well as in the Old Testament.[27] In his discussion, Bacon quoted heavily from Muslims including the writings of Ibn Sina (Avicenna) and Ibn Rushd (Averroes) as well as from Socrates, Aristotle, Boethus, Seneca, Cicero, Adelard of Bath, Tully, Josephus, St Jerome, St Chrysostom, St James and the Biblical 'Jeremiah the Prophet shows custom to be the cause of great errors and dangerous when he says: "Can an Ethiopian change [the colour] of his skin or a leopard his spots? So a man cannot do well when he has learned poorly." And Solomon [says] "A youth with inveterate habits, having grown old, will not depart from them." '[28] When Bacon came to speak of the philosophy of Ibn Sina (Avicenna) he did so with an appreciation greater than that with Aristotle's philosophy and suggested that Avicenna was 'the leader and prince of philosophy'.[29] Similarly, Bacon appreciated Muslim writings when he came to speak of the rainbow. As Russell put it:

> When Bacon comes to treat of the rainbow, he quotes Avicenna with great admiration. Every now and then he says something that has a flavour of orthodoxy, such as that the only perfect wisdom is in the Scriptures, as explained by canon law a philosophy. But he sounds more sincere when he says that there is no objection to getting knowledge from the heathen; in addition to Avicenna and Averroes, he quotes Alfarabi [al-Farabi] very often, and Albumazar [Abu Ma'shar al-Falaki] and others from time to time.[30]

Duns Scotus (1270–1308) who taught at Oxford *c*.1300, 'made copious use of the Islamic philosophers'.[31] He, however, argued that it would be impolite and unfaithful for humans to seek to understand the reasons for a rule laid down by God or to attempt to interpret it in the light of their own reason. He distinguished between human reason and human will. Using the two categories, or as David Hume calls them religious orders,[32] Scotus valued individuality. To him, reason is common to all human beings, while will distinguished the one individual from the other. Thus, man's will rather than his intellect, for Scotus, marked off the very species of man: 'Man differs from other animals precisely because his will is not moved by mere natural necessity.'[33] This means that the law of God addresses itself to human will, rather than to human reason. In other words, humans should obey the law of God without thinking or questioning or reasoning. Thus the will of a person has only to choose between 'obedience for its own sake (which is the perfect good)' and 'obedience because this is naturally conducive to happiness in general'.[34] Scotus stopped short as to explain how the will of a human can decide to choose between 'obedience' and 'obedience' (if this is a choice), without this faculty which is called reason. In the view of this philosophy, the will is exulted above reason. This applies to human beings as well as to God. God's will is superior to His reason: 'God's law proceeds from the divine will itself, not from the divine reason.'[35] Thus, the effort of any person of any place or space to understand the reasons for the rules laid down by God or to attempt to interpret them in the light of their own reason is impudent. To Scotus, human beings should accept God's rules without further enquiry. At its best, this type of philosophy which is less in its rigidity and inner conflicts than that for the others of the time provided the reasons and the will for its own distinction.[36]

The containment of free speculation, within the theme and the framework permitted by the Church doctrine, weighed heavily in favour of accepting the dogma, the ritual as well as the ecclesiastical rules with no question. Scotus' two religious orders, according to David Hume (1894), 'acquired a great dominion over the minds' and powerfully supported the existing political and ecclesiastical structures, as they 'were better qualified to gain the populace than the old orders'.[37] Had this sort of thinking of Scotus' philosophy as a rigid framework continued unchallenged, the old order in Europe would perhaps have stood firmly unshaken for some centuries to come. However, an intellectual movement was astir in the world of Islam which was to have far-reaching contribution not only to the intellectual life of Europe but, through its stimulation to the European political order that had held sway for over ten centuries.

The link between civilisations

Any dedicated and discerned eye can still see for itself what a wealth of intellectual contribution from Islam went to the making of European law and philosophy. For those who desire to make peace between nations and between civilisations, the interest is here, in the Eastern and Western universities. In these educational institutions were laid down the intellectual foundations of the developed Europe.

These institutions which are to a large extent still working in Europe are 'typically medieval and typically European, borrowed freely from outside, from institutions of the ancient and Islamic world'.[38] The intellectual life which developed in medieval Europe, as suggested by Friedrich Heer (1962), was a direct 'positive response' to the 'Islamic influences'. Speaking about the educational institution in medieval Europe J. Ribena Y Tarrago pointed out that in addition to the tolerance of Islam, the development of European law and philosophy owes much to Muslim philosophers. In this regard, Tarrago has maintained that the medieval European universities owed much to the educational system of Muslims. He emphasises Islamic Spain as a great means of stimulation and influence during the centuries when Islam had become master of the region between Persia and Spain. In the eighth century, Islamic ritual and doctrine had reached their full development, and Islam had become a society in which reason and revelation worked hand to hand, and jurisprudence meant knowledge of the practical precepts of religion. According to Heer:

> It was possible in an Islamic state for Jews and Christians to rise high, sometimes right to the top, in the service of the government or the financial administration: as 'People of the Book', they and their religious congregations enjoyed definite rights secured to them. During this period the Castilian language took over a number of Arabic words which had to do with government, technology and cultural matters. The cultural Hispano-Arab princes of the Taifas had their latter-day successors in Frederick II, the Hohenstaufen Emperor, and the Spanish and the Portuguese 'philosophers' kings of the twelfth and thirteenth centuries. The atmosphere of these courts was such that . . . of the three religions, Islam, Judaism and Christianity. The envoy of the Emperor Otto I [Holy Roman Emperor 962–973] was amazed at finding Christian prelates and Jewish rabbis and Physicians holding positions of importance at one of these courts.[39]

Muslim philosophers restored the work of Aristotle and made use of it. Aristotle in fact was not admired in the European world, at the time, and the Church had rejected Aristotle's philosophy of reason and individualism. Unlike Plato, Aristotle's emphasis on the importance of individualism and reason was intellectually attractive to Muslim philosophers. Seeking to explicate the relationship between revelation and reason, Muslim philosophers made Aristotle's work more commendable work of all. What is important here is that Muslim commentaries were officially supported by Muslim authority and performed under the watchful eyes of orthodox scholars with profound interest in the freethinking methods. Those Muslim philosophers were people of immense erudition and versatility. They also were able to develop their own system of thought in various spheres of knowledge of the time.

Literature, jurisprudence, philosophy and science were developed. In this regard, al-Kindi; al-Farabi, Ibn Sina (Avicenna), Abu Ma'shar al-Falaki (Albumazar), Ibn al-Haytham, al-Ghazali, Ibn Bajja (Avenpace) and Ibn Rushd

(Averroes), and the like of these celebrated philosophers had built the unbreakable link between nations and between civilisations. A number of these philosophers were and are referred to in Western literature with names that are not familiar even to many of the Muslims themselves. These philosophers were not the first generations of Muslims and they have never written their names in the Latin form. In translation Latinising proper names is against the rule, and that rule was also known at that time; when Muslims translated Aristotle, they wrote Aristotle. If those scholars came back to visit our world and were called by these names they will certainly not respond to us, because they do not know themselves with these Latin names. In fact, Ibn Rushd wrote his name, at least on his books, as Ahmad Ibn Rushd, not Averroes. Al-Falaki wrote his name as Abu Ma'shar al-Falaki, not Albumazar. If any of these philosophers came on a visit to our world and repeatedly hear names like 'Averroes', 'Albumazar' and 'Avenpace' they would not respond, simply because they do not know these names. Their visit is truly impossible, but these philosophers are living in this world through their writings and their contribution to the development of human civilisation.[40]

Muslim scholars who contributed to Western literature are many, among them are Abu Ali al-Husayn Ibn Abdullah Ibn Sina (Avicenna 980–1037) and Abu al-Walid Muhammad Ibn Ahmad Ibn Muhammad Ibn Rushd (Averroes 1126–1198). They made themselves masters of the culture of their time. They paved the way for the release of reason from its strict confinement by pointing out that God does not create anything in vain. Everything that exists in this world, says Ibn Sina, exists through God's will of command or appointment, both good and evil, but it is only the good that meets with his glad approval. Existence is not an accident, but everything is planned and exists according to God's plan.[41] 'It was not in sport that We created the heavens and the earth and all that lies between them' (Qur'an 21:17). While fully accepting the word of God in the Qur'an, those philosophers taught also that, in the Qur'an, there always was room for human reason in understanding the word of God. The Qur'an declares that everything in this world has purpose, and that reason was created to be used:[42]

> In the creation of the heavens and the earth; in the alternation of night and day; in the sailing of the ships through the ocean for what is beneficial to humanity; in the water which God send down from the skies and with which He revives the dead earth; in the beasts of all kinds that He scatters through the earth; in the movements of the winds, and in the clouds that are driven between earth and sky: surely in these there are signs for people who understand.
>
> (Qur'an 2:164)

That humans must use their reason to try to understand the word of God was well known as the doctrine of double truth[43] which connotes that there is truth that comes from the revelation and there is also truth that comes from human reason. Human reason is not the sole source of truth. The release of reason does not mean that human reason is able to replace the revelation. Indeed, it is true that human reason is limited in place and space and will not always be able to

understand God's reason, but there are some divine rules (if not all) which human reason could attempt to understand and work out how to apply them. This theme was developed by Muslim philosophers including al-Kindi, al-Farabi, Ibn Sina and Ibn Rushd.

Abu Yusuf Ya'qub Ibn Ishaq al-Kindi (801–873) is unanimously hailed as the first Arab Muslim philosopher from the South Arabian kingdom of Kindah. His writings on philosophy, astronomy, mathematics, politics and medicine contributed widely to European culture and thought. It was this kingdom which also gave the Arabic literature one of its greatest figures, the prince of Kindah Imru' al-Qays Ibn Hujr (d.540), who was a first class pre-Islamic poet who met the Emperor Justinian in person and whose contribution to modern European literature is well admired. His poetry with that of forty others of the first class were translated into European languages and are 'preserved in many of the European libraries including Bodleian Library at Oxford'.[44] Sir William Jones found it reasonable to 'direct the attention of the learned in Europe to the rich treasures', and he himself published his English translation of Arab poetry in 1782 followed by six volumes in 1799 and another thirteen volumes in 1807.[45] Al-Kindi was selected by the Abbasid Caliph al-Ma'mun (rule 813–833) for the work of translation of Aristotle and other Greek writings into Arabic. His fame as a prolific philosopher is confirmed by the quality of 270 books under his name. Many European scholars including 'Munk' and 'Garden' are content to place al-Kindi with the first class philosophers, namely 'among the twelve geniuses of the first order who had appeared in the world up to the sixteenth century'.[46] A striking agreement among both al-Kindi's detractors and his admirers appears, however, concerning his role in seeking to confirm the role of reason and its relation to revelation in this life. His works on Aristotle's *Novum Organon* were utilised by Roger Bacon and his contemporaries included Albertus Magnus, Thomas Aquinas, as in the following discussion.

Ibn Sina (980–1037) was another one of the pioneers and most influential philosophers and scientists of his time. An encyclopaedic philosopher of universal learning, Ibn Sina's corpus of works is more than two hundred encompassing the various branches of knowledge of his time. He surpassed all his predecessors, even the great Aristotle and al-Farabi, in the fluency and the thoroughness of his style. One of the most popular authorities on the Western Medieval philosophy, Augustine A. Maurer provided these remarks, 'For all that, his [Ibn Sina's] philosophy is a highly personal achievement, ranking among the greatest in the history of philosophy.'[47] Similarly, in his evaluation of Muslim philosophers, Copleston emphasised that 'The greatest Muslim philosopher of the eastern group is without a doubt Avicenna or Ibn Sina, the real creator of a scholastic system in the Islamic world.'[48] In forwarding his famous book of criticism, *Tahafut al-Falasifah* (*The Incoherence of the Philosophers*), al-Ghazali stated that '[t]he most faithful – as Aristotle's translators – and the most original – as his commentators – among the philosophising Muslims are al-Farabi, Abu Nasr, and Ibn Sina'.[49] Ibn Sina's *Qanon fi al-Tibb* (*Canon of Medicine*); *Kitab Shifa'* (*The Book of Healing*), and *Kitab al-Najat* (*The Book of Salvation*) are among the great

encyclopaedias of his philosophy which influenced the medieval European universities for centuries. Speaking of Ibn Sina Parviz Morewedge said:

> His penetrating intellect constructed the most authoritative example of the medieval philosophical system. So far-reaching was the effect of his thought, that should one attempt to find a fault with his genius, it would only be perhaps that he made it too difficult for later philosophers to surpass him. Brilliantly developing, organizing, and expounding the Islamic sciences and philosophy, Ibn Sina crystallized them in standard forms … In fact, rational philosophy after Ibn Sina is mostly commentary on him rather than independent investigation. His influence on medieval Europe was no less significant. Eighty-seven translations of his *Canon of Medicine* were made in Europe (including partial translations and some in Hebrew). They constituted the basis of medieval syllabi and instruction in the West until the seventeenth century. His philosophy had an even more lasting influence, not only through his *Shifa'* [*Healing*], which served as a textbook on philosophy in medieval times, but particularly through St Thomas Aquinas who was deeply affected by Ibn Sina's works, as amply demonstrated in his *de Ente et Essentia*. To Ibn Sina Thomism owes its fundamental distinction between essence and existence.[50]

Ibn Rushd (Averroes) was named Abu al-Walid Muhammad Ibn Ahmad Ibn Muhammad Ibn Rushd (1126–1198). The celebrated philosopher developed his thought in Cordova in Spain. His works are voluminous and varied as that of any greater philosophers of the East. His works included treatises on various fields of knowledge: jurisprudence, medicine, philosophy, astronomy, physics and grammar are just a few to mention as example. He wrote two long treatises on jurisprudence one of which *Bidayat al Mujtahid* (*Introductory of the Diligent*), is still extant. It is true that he wrote commentaries on all the works of Aristotle, Plato's *Republic* and the *Isagoge* of Porphyry.[51] His writing on Aristotle's works resulted in commentaries of varying length (large, intermediate and short), which included the *Physics*, the *Metaphysics*, *De Anima*, *De Caelo* and *Analytica posteriora*. There is no doubt that Ibn Rushd is one of the 'greatest' medieval philosophers to 'exploit' philosophy to 'the full, prior to St Thomas Aquinas' (1225–1274) who was greatly influenced by him.[52] By the end of the twelfth century, the most important of his works were translated into Latin, some by Gerard of Cremona (1114–1187), Robert Grosseteste (d.1253) and thus entered the mainstream of European thought and culture, and the impact of his works was long to be felt.

The more orthodox Muslim philosopher, jurist and theologian, Abu Hamid al-Ghazali (1058–1128) was inclined to distinguish between human reason and what philosophy calls pure reason, to outline the limited capacities of human reason and to confirm that human reason cannot be the sole source of truth and that the dependence on human reason alone will lead the investigation to failure. Al-Ghazali upheld the approach of mathematics and sciences as essentially

correct. However, he adopted the tools of Aristotelian logic and the Neoplatonic procedures to outline the flaws of the Neoplatonic philosophy. In contrast to al-Farabi and other Muslim philosophers, al-Ghazali portrayed the inability of reason to comprehend *the absolute* and *the infinite*. Reason could not transcend the finite. Also, several Muslim philosophers had held that the universe was finite in space but infinite in time. He argued that an infinite time was related to an infinite space. With his clarity of thought and force of argument, he was able to create a balance between religion and reason, and identified their respective spheres as being the infinite and the finite, respectively.[53]

Al-Ghazali's books include *Tuhafut al-Falasifah* (*The Incoherence of the Philosophers*), *Ihya al-'Ulum al-Din* (*The Revival of the Sciences of the Religion*), *The Beginning of Guidance*, *Deliverance from Error*, a summary of astronomy, and his autobiography. His writings passed the intellectual tendencies of his time. Thus, one might find the Dialectic of the Theologians, Sufism, Pythagorean Popular Philosophy and Neoplatonic Aristotelianism.[54] Some of his works were translated into European languages and entered the medieval European culture and thought. His work *al-Munqidh* (*The Saviour*), for instance, has been compared with St Augustine's *Confessions*.[55] His theological doctrines penetrated Europe, influenced European scholasticism and several of his arguments seem to have been adopted by Archbishop Raymund I (1126–1151), Roger Bacon (1214–1294)[56] and by St Thomas Aquinas (1225–1274) in his discussion of authority and reason.[57]

In any age, including ours, when the need for better understanding, tolerance and reconciliation at the political and social level was the yearning, it was in art at least that a semblance of the breezes of harmony was achieved. Art, which employs human reason to demonstrate the natural relationship between reason and ritual, is equally inclined to reflect the harmony between nations and between civilisations. The contribution of Muslim intelligentsia to medieval European culture and thought extends also to art and architecture. Art is the inspiration of humanity in time and place.

Medieval art faithfully reflects the intellectual and social diversities of the place and space. It is true that medieval art constitutes various elements of mathematics and theology, astronomy and philosophy, logic and sciences as well as those various elements of conflict and harmony which gave such a vital stimulus to the civilisation which produced it. Some fresh features derived from Muslim civilisation entered Europe through the designers of French churches in the twelfth century. The essential features of the different ranks of human society, and the essence of the arts and sciences, all are captured and preserved in art. Thus art did bridge the gap between the East and the West; between Islam and the two halves of the Roman Empire. Art is still carrying this sacred duty towards the world today. As Heer put it:

> Muslim architectural styles and techniques of building appear in southern France, Italy, Sicily, while a twelfth-century book of the Gospels made in Brunswick, far away in the north, is remarkable for its faithful reproduction of Suras from the Koran [Qur'an] in the Kufite script.[58]

This example will remain an irrefutable evidence of cultural diffusion from Islam to Europe and of tolerance that the relationship between civilisations is not one of clash or domination, but rather it is mutual relationships, coexistence, interdependence and brotherhood.

It is then legitimate to speak of tolerance and reconciliation through the art of writing. In this connection, Muslim poetry and novels played a remarkable role in cultural communication. As noted by the *Encyclopaedia Britannica*, tales such as *Aladdin*, or *Kalilah wa Dimnah* (Kalilah and Dimnah) influenced many European folk-tales among which was the Story of Patty and her Milk-Pail: La Perrette in Lafontaine the basis of the proverb, 'Do not count your chickens before they are hatched', and many of the popular beast-tales such as Reynard the Fox. Similar to that is *Alf Lilah wa Lilah* (A Thousand and One Nights) which influenced Montesquieu;[59] *Ali Baba*, *Sinbad*, and the *Quatrains* (*Ruba'iyyat*) of Umar al-Khayyam, or the well-known Andalusian poetry '*al-Muwashshahat*' (a form of poetry much of which is meant for religious songs of praise and supplications and to which the rhythm and meters of European poetry including stanzas is greatly in debt)[60] are just a few examples of the Muslim's intellectual output which greatly contributed to medieval and modern European culture and thought. Much learning has been devoted to the investigation of the distribution of these tales throughout European folk-literature. Arabic poetry, for example, had a profound impact on Spain. Spanish readers have long been enchanted by their enduring appeal through the versions of Emilio Garcia Gomez. Rafael Alberti says that it 'was a revelation for me and had a great influence on my work, but above all influenced the work of Federico Garcia Lorca'.[61]

Similarly, Shakespeare himself confirmed the influence of Arab poetry and philosophy on his well-known pieces such as *Moors* and *Othello*, from the play of the same name and the Prince of Morocco in the *Merchant of Venice*. Since the legacy is vast and cannot be fully recounted in this limited space, suffice it to mention others influenced by Arabic poetry and philosophy, namely, the Renaissance English Poet Christopher Marlowe in his *Tamburlaine the Great* (1587); Edward White's *A Brief Rehearsal of the Bloody Battle of Barbary* (1594), George Peel's play *The Battle of Alcazar* and Victor Hugo's *Les Orientales*; these also have a profound influence on Shakespeare's *Titus Andronicus* of 1594. The eminent English historian Frances Yates (1899–1981) in her study of Shakespeare's play *Love's Labour's Lost*, which she had published in 1936 and republished in 1997 under the title *Love's Labour's Lost: Critical Essays*, pointed out 'the connection between the book [*Optics*] by "Hasan ibn Hasan or Alhazen [Ibn al-Haytham]" and the theme of Shakespeare's play. In the Introduction of his translation "The Optics of Ibn al-Haytham", Sabra pointed out that Ernst Gombrich had made a special study of certain aspects of the *Optics*, he had written in Art an Illusion that "Alhazen taught the medieval West the distinction between sense, knowledge, and inference, all of which come into play in perception", and his constant questioning, and expert answers to questions, were a source of stimulation and a valuable guide.'[62]

While *A Thousand and One Nights* did not alone create the romantic era of poetry in the West, as emphasised by Draper (1811–1882), it greatly widened the

scope of its European literature and thus, enriched the imagery and language, promoting Europe's yearning for the exotic and stimulating amongst its intellectuals.[63] In his Introduction to his translation of Montesquieu's *Persian Letters*, C.J. Betts pointed out that

> In the early eighteenth century the east was beginning to be opened up to Europeans; travellers' reports, the occasional real oriental, as in L 91 [of Montesquieu's *Persian Letters*], and translations of such works as the *Thousand and One Nights*, increased knowledge and curiosity. Montesquieu helped to build up the fascination of the East...as in L61 or L 42.[64]

Arabic poetry is the crowning literary achievement of the Muslims and arguably one of their most enduring legacies to the Western world. This world of Arabic poetry has long been overlooked for the most part and has been given only a cursory enquiry at best; however, it offers important insights into the rich Arabic legacy and heritage, and can provide a fuller understanding of its culture and its many contributions. The contribution to European thought of this type of humanities is not less than that of Philosophy, or Geometry, Mathematics, Medicine or Alchemy. Contribution of these writings to European culture and thought is not confined to the medieval period but continued to our time. These types of writings have been reproduced in many forms including novels, stories, series for television and movies to be screened on the small and large screens worldwide. The humanist ideals of this art which invaded European literature have significantly contributed to European culture and thought, and generated innumerable giant businesses and corporations.[65]

The spirit of science and modernity

The birth of scientific investigation and method in European philosophy has been shown by a number of authors to be attributed to Muslim literature. Muslim contribution did not stop with its first impact upon pioneers like Gerbert Daurillac (Pope Silvister II reigned 999–1003) or Adelard of Bath (1075–1160), but an even more important phase occurred with Duns Scotus (1270–1308), Roger Bacon (1214–1294), Thomas Aquinas (1225–1274), Robert Grosseteste (d.1253), Hermann of Carinthia (1100–1160), Gerard of Cremona (1114–1187) and others.

Experimentation was not in accordance with traditional European methods of enquiry which had tended to centre on the interpretation and unquestioning acceptance of the sacred or authoritative writings such as the scriptures and the writings of the Greek philosophers.[66] This was not the case with Muslim tradition and that was a principle contribution in leading those pioneers towards this new method which revolutionised the critical theory of knowledge as well as the relationship between revelation and science. The pioneers of this theme have come to be numerous and were to blaze a trial for scientific knowledge in general. Before turning to intellectual engagement with Europe, it is necessary to briefly outline the intellectual status of Muslims. In this regard, John William Draper (d.1882)

Professor of History at the University of New York was content to give the following clues:

> The Saracens [Muslims] embraced every topic that can amuse or edify the mind. In later times, it was their boast that they had produced more poets than all other nations combined. In science their great merit consists in this, that they cultivated it – they perceived that it can never be advanced by mere speculation; its only sure progress is by the practical interrogation of Nature. The essential characteristics of their method are experiment and observation. Geometry and the mathematical sciences they looked upon as instruments of reasoning. In their numerous writings on mechanics, hydrostatics, optics, it is interesting to remark that the solution of a problem is always obtained by performing an experiment, or by an instrumental observation. It was this that made them the originators of chemistry, that led them to the invention of all kinds of apparatus for distillation, sublimation, fusion, filtration, etc.; that in astronomy caused them to appeal to divided instruments, as quadrants and astrolabes; in chemistry, to employ the balance, the theory of which they were perfectly familiar with; to construct tables of specific gravities and astronomical tables, as those of Baghdad, Spain, Samarqand; that produced their great improvements in geometry, trigonometry, the invention of algebra, and arithmetic.[67]
>
> Algebra, or universal arithmetic – the method of calculating indeterminate quantities, or investigating the relations that subsist among quantities of all kinds, whether arithmetical or geometrical was developed – Mohammed Ben Musa furnished the solution of quadratic equations, Omar Ben Ibrahim that of cubic equations. The Saracens also gave to trigonometry its modern form, substituting sines [trigonometric function] – they elevated it into a separate science. Musa, above mentioned, was the author of a 'Treatise on Spherical Trigonometry'. Al-Baghdadi left one on land-surveying, so excellent. In astronomy, they not only made catalogues, but maps of the stars visible in their skies, giving to those of the larger magnitudes the Arabic names they still bear on our celestial globes. They ascertained, as we have seen, the size of the earth by the measurement of a degree on her surface, determined the obliquity of the ecliptic, published corrected tables of the sun and moon, fixed the length of the year, and verified the precession of the equinoxes – The Arabian astronomers also devoted themselves to the construction and perfection of astronomical instruments, to the measurement of time by clocks of various kinds, by clepsydras and sun-dials. They were the first to introduce, for this purpose, the use of the pendulum. In the experimental sciences, they originated chemistry; they discovered some of its most important reagents – sulphuric acid, nitric acid, alcohol. They applied that science in the practice of medicine, being the first to publish pharmacopœias or dispensatories, and to include in them mineral preparations. In mechanics, they had determined the laws of falling bodies, had ideas, by no means indistinct, of the nature of gravity; they were familiar with the theory of the mechanical powers. In hydrostatics they constructed the first tables of the specific

gravities of bodies, and wrote treatises on the flotation and sinking of bodies in water. In optics, they corrected the Greek misconception, that a ray proceeds from the eye, and touches the object seen, introducing the hypothesis that the ray passes from the object to the eye. They understood the phenomena of the reflection and refraction of light. Alhazen [Ibn al-Hatham] made the great discovery of the curvilinear path of a ray of light through the atmosphere, and proved that we see the sun and moon before they have risen, and after they have set. The effects of this scientific activity are plainly perceived in the great improvements that took place in many of the industrial arts. Agriculture shows it in better methods of irrigation, the skilful employment of manures, the raising of improved breeds of cattle, the enactment of wise codes of rural laws, the introduction of the culture of rice, and that of sugar and coffee. The manufactures show it in the great extension of the industries of silk, cotton, wool; in the fabrication of Cordova [still called in Europe *muslin*] and morocco leather, and paper; in mining, casting, and various metallurgic operations; in the making of Toledo blades. Passionate lovers of poetry and music, they dedicated much of their leisure time to those elegant pursuits. They taught Europe the game of chess; they gave it its taste for works of fiction – romances and novels. In the graver domains of literature they took delight: they had many admirable compositions on such subjects as the instability of human greatness; the consequences of irreligion; the reverses of fortune; the origin, duration, and end of the world. Sometimes, not without surprise, we meet with ideas which we flatter ourselves have originated in our own times.

[…]

Thus our modern doctrines of evolution and development were taught in their schools. In fact, they carried them much farther than we are disposed to do, extending them even to inorganic or mineral things. The fundamental principle of alchemy was the natural process of development of metalline bodies. 'When common people,' says Al-Khazini [al-Khazin, Abu Ja'far Muhammad Ibn al-Hasan (900–971)] – 'hear from natural philosophers that gold is a body which has attained to perfection of maturity, to the goal of completeness, they firmly believe that it is something which has gradually come to that perfection by passing through the forms of all other metallic bodies, so that its gold nature was originally lead, afterward it became tin, then brass, then silver, and finally reached the development of gold; not knowing that the natural philosophers mean, in saying this, only something like what they mean when they speak of man, and attribute to him a completeness and equilibrium in nature and constitution – not that man was once a bull, and was changed into an ass, and afterward into a horse, and after that into an ape, and finally became a man.'[68]

Adelard (1075–1160) is a great Arabist and an 'English scholastic Philosopher and early interpreter of Arabic scientific knowledge'.[69] He studied and taught at

the theological and exegetical school, which had been founded by Anselm of Laon in *c*.1100. Adelard travelled to Salerno in south-east of Naples, and then to Sicily which at the time was under Norman control but still strongly influenced by Muslim traditions. It was conquered by Muslims in 965 and remained in their control for about 100 years until the Normans gained the island in 1060. The next visit was to Cilicia in southern Anatolia, which today is in Turkey. Cilicia is situated on the north-east coast of the Mediterranean Sea and Adelard took the natural coastal route round the east end of the Mediterranean to Syria and then later to Jerusalem. He then visited Spain where he had studied Arabic with Muslims as did the earlier scholars, or the later such as Gerard of Cremona a few years later. In 1130, Adelard returned to Bath in England and became a teacher of the future king Henry.[70] However, there is an alternative view that he learned Arabic in Sicily. This also is possible that, if this were the case, then he came in contact with, at least, a number of Arabists and Arabic texts in Sicily for several scholars who had lived in Spain and learned Arabic were at this time in Sicily.[71] In either case, he visited Spain, mastered the Arabic language, and studied Arabic arithmetic, and translated a number of Arabic books before he returned to Bath and became a teacher of the future king Henry of England. It is legitimate then to think of the influence of the teacher on the intellectual development and interest of his student. One might expect that Adelard transferred some of his Arabo-Islamic expertise to the later sovereign of England. Adelard made Latin translations of Euclid's *Elements* from Arabic sources which were for centuries the chief geometry textbooks in the West. Three Arabic translations were made: the first, by al-Hajjaj Ibn Yusuf during Harun al-Rashid (ruled 813–833); the second, by Hunayn Ibn Ishaq (ruled in Baghdad 808–873), whose translation was revised by Thabit Ibn Qurrah Ibn Marawan (d.836–901), and Nasir al-Din al-Tusi (1201–1274). It was from these translations that Adelard translated and presented Euclid's *Elements* to the West.[72]

Adelard also translated al-Khwarizmi's tables which became the first astronomical tables in the world. Al-Khwarizmi's treatises on mathematics, geometry, music and astronomy were also translated, perhaps by Adelard. His '*Quaestiones Naturales* consists of 76 scientific discussions based on Arabic science'.[73] The name of Muhammad Ibn Musa al-Khawarizmi (780–850) is concealed under the title of his work 'Algebra'. In *c*.825 he wrote a multivolume opus *Kitab al-Mukhtasar fi Hisab al-Jabr wa al-Muqabalah* (Compendious Book of Calculation by Completion and Balancing). It became, in Latin, simply 'Algebra', meaning in Arabic 'restoration', that is the transposing of negative terms of an equation. Some of this work was also translated and entered European literature through Adelard and Robert Grosseteste, and through the Italian Fibonacci Leonardo da Pisa (1170–1240). The latter also learned Arabic in Spain and distinguished himself in the mathematical competitions proposed at the court of Emperor Frederick II of Hohenstaufen, King of the Two Sicilies, who had his royal seat in Palermo.[74]

Similarly, Gerard of Cremona (1114–1187) was one of those pioneers and prolific Arabists and translators of the time. In Spain, he worked with John of Seville and with the English Daniel of Morley who also learned Arabic and translated

a few works in various fields of knowledge. Gerard translated more than seventy influential works in the sciences that introduced 'the advanced' Muslim world to an 'intellectually impoverished Europe during the Middle Ages'. His translations were 'word for word' and provided the 'classical foundations' for the work of such thinkers as 'Roger Bacon, Albertus Magnus, Thomas Aquinas and Copernicus'.[75] In this regard, Daniel of Morley Philosophy provided useful accounts about Gerard's intellectual activity in Spain and mentioned Gerard's interest in the *Great Introduction to the Science of Astrology* which was written by Abu Ma'shar al-Falaki (Albumazar).[76]

Besides math, medicine, astronomy, astrology, Gerard translated al-Kindi's *De somno et visione* which contributed greatly to the science of psychology. These works were used as textbooks in the newly established universities in Europe. Muslim philosophers have influenced countless generations of scholars in various fields of knowledge. The contribution of al-Razi's *Comprehensive Book of Medicine*[77] or that of the enormous Canon of Ibn Sina (Avicenna) is far reaching. These encyclopaedic books were translated by those great Europeans and were the most widely read medical treatise ever penned. Its editions continue to be issued even in our age.[78]

Consequently, the rise of European universities has been outlined in parallel with the Muslim contribution to Europe. Universities such as that in Salerno, Bologna and Paris began to incorporate this 'new' knowledge into their curriculum. Not everything which was translated from Arabic into Latin was immediately understood in Europe. It took centuries until the modern European scientists, astronomers, physicians and mathematicians began to truly make new discoveries. However, Muslim contribution was felt in many fields, most immediately upon translations and scholastic work in Renaissance. Albertus Magnus (1206–1280), the 'scholastic of the scholastics'[79] who attempted to systematise Aristotelian philosophy was greatly indebted to the writings of Ibn Sina (Avicenna).[80] Albert's pupil, Thomas Aquinas (1227–1274) attempted to bring Aristotle under the rubric of Church ecclesiology, through his theo-philosophical interpretation of Muslim philosophy such as that of al-Kindi and Ibn Sina. The Franciscan Roger Bacon (1214–1294), relied heavily on Muslim thought and made important contributions in the fields of natural sciences, law and mathematics.

Both the scholastics and the scholars of the Renaissance period owed a great debt to Muslim thought. Ibn al-Haytham is well known in the West as philosopher, physicist and mathematician, and is usually referred to as 'Alhazen'. Roger Bacon refers to him frequently.[81]

Ibn al-Haytham's optical treatise *Kitab al-Manazir* was written in Cairo before 1039, and translated by Gerard of Cremona and later by a few other European philosophers. This multivolume opus is 'widely recognised as the most complete and most advanced work on its subject. This work became the major source of the extensive and subsequently influential writings on light and vision by Roger Bacon, Witelo and John Pecham.'[82] The text attracted the attention of Renaissance philosophers and artists including 'Lorenzo Ghiberti'. In 1572 Friedrich Risner translated the book and appeared in Basel. This translation, 'thanks to the edition,

the *Perspectiva*', now called *Alhazeni Optica*, became more easily and more directly accessible to mathematics in the late sixteenth and seventeenth centuries, such as Willebrord Snellius, Johannes Kepler, Rene Descartes, Issac Barrow, Rene Francois de Sluse and Christiaan Huygens. All of these made substantial use of the various parts of the book, particularly its sophisticated mathematical treatment of optical problems. The book's contribution was not only to medieval sciences and mathematics but also to modern aspects of these fields, as emphasised and fruitfully examined by Vasco Ronchi, David C. Lindberg and Graziella Federici Vescovini (1965), to mention only a few.[83]

Ibn al-Haytham's contribution goes far beyond his optical *oeuvre*, *Kitab al-Manazir*. He was able to articulate a relationship between the physical, observable world and the world of intuition, psychology and mental processes. His theories of knowledge and perception which link the present-day domains of science and religion – resulted in a philosophy of existence based on the direct observation of the 'real' as it presents itself to the seeing subject. Much of his thought in this field is still present in the discourse of the twentieth-century philosophy of phenomenology.[84] Copernicus (1473–1543) knew well that Muslim astronomical works were translated from Arabic and published in Venice in 1515.[85] Muslim contribution in these fields was 'phenomenal by any standard'. Yet, their contribution in agricultural sciences was no less than the science of medicine, philosophy or laws. In the words of Bertrand Russell: 'To this day Spanish agriculture profits by Arab irrigation works.'[86]

Abu Abdullah Muhammad Ibn Jabir Ibn Sinan al-Raqqi al-Harrani al-Battani (868–929) whom Draper calls 'Albategnius', is also known in Western literature as Battani. He was first educated by his father who was also a celebrated scientist. He then moved to Raqqa, situated on the bank of the Euphrates, where he received advanced education and later on flourished as a leading astronomer and mathematician of his time. In mathematics, he introduced the use of signs. In astronomy, his treatise on 'The Science of the Stars' drew up improved tables of the Sun and Moon, measured the eccentricity of Earth's orbit and the inclination of Earth's equator to its orbital plan, and derived an accurate length for the year. Five centuries later after his death, Europe had come back to his treaties and implemented his observation. They have used his findings in the Gregorian reform of the Julian calendar, which was established under the auspices of Pope Gregory XIII in 1582 to replace the Julian calendar and corrected the accumulated error of the Julian calendar. The Gregorian calendar is now used as the civil calendar in most countries. Al-Battani's *Movements of the Stars* which was first published in Europe in 1537 enabled the Polish astronomer Hevelius, Johannes or Johan (1611–1687) to discover the variation in the Moon's motion.[87]

Jabir Ibn Hayyan (d.815) was one of the masters and was credited with over 300 treatises on Alchemy. It is difficult to measure the significance of introducing such knowledge to an intellectually impoverished Europe which was just beginning to develop the guilds which would soon blossom into universities. Muslim contribution to science, philosophy and law played an important factor in stimulating the

thinking of the great philosophers in various spheres of knowledge. Francis Bacon, for example, made rich use of Muslim contribution in science and scientific method and made some interesting experiments. Hobbes and Locke were both men of law and science who brought some scientific methods, including some of Francis Bacon's interesting experiments into their philosophical enquiry. In his *Leviathan*, Hobbes (1588–1679) attempted to 'exalt order after an age of disorder'.[88] The very *Leviathan* of Hobbes, upon which his fame is mainly based, is linked, in one way or the other, to mathematics and its applications as well as to mechanical contraption working on strings and pulleys. In this book Hobbes proclaims that '[l]ife is nothing but a motion of the limbs, and therefore automata have an artificial life'.[89] Hugo Grotius (1583–1645) himself paid no attention to the *a priori* method of reasoning from the prior customary and accepted maxims, in favour of the *ex posteriori* method of examining the evidence first and drawing from it the conclusions which he advanced. It was from here that Grotius developed his view of international law upon which his fame is based. It was here that Europe had just started to come to terms with the concept of 'property' in relation to community, individual and state. He based his view on examination and thinking of the experience of humankind – rather than to formulate his view on theoretical basis and imaginations separate from the actual reality.[90] Edward Gibbon (1737–1794) the English scholar and 'the supreme historian of the Enlightenment' emphasised Muslim contribution to European literature and thought in these words:

> If we compare, at the era of the crusades, the Latins of Europe with... Arabians, their respective degrees of knowledge, industries, and art, our rude ancestors must be content with the third rank in the scale of nations... With such a disposition the Latins... opened their eyes to the prospect of the world, and introduced them to a long and frequent intercourse with the more cultivated regions of the East. The first and most obvious progress was in trade and manufacturers, in the arts... the superior refinements of Cairo... windmills... silk and sugar... from... Egypt. But the intellectual wants of the Latins were more slowly felt and supplied... and in the age of the crusades, they viewed with careless indifference the literature of... Arabians. Some rudiments of mathematical and medicinal knowledge might be imparted in practice and figures... but the commerce of the Orientals had not diffused the study and language of their languages in the schools of Europe. If a similar principle of religion repulsed the idiom of the Koran [Qur'an], it should have excited their patience and curiosity to understand the original text of the Gospel; and the same grammar would have unfolded the sense of Plato and the beauties of Homer. Yet, in a reign of sixty years, the Latins of Constantinople disdained the speech and learning of their subjects; and the manuscripts were the only treasures... Aristotle was indeed the oracle of the Western universities, but it was a barbarous Aristotle; and, instead ascending to the fountain head, his Latin votaries humbly accepted a corrupt and remote version from the Jews and Moors [*Mōrus*] of Andalusia.[91]

Such words and language sufficiently portray the typical opinion of the legendary English master of the history of medieval Europe. Gibbon himself was benefited from Arabian literature and was content to say: 'The Arabian Poets were the historians and moralists of the age; and if they sympathised with the prejudices, they inspired and crowned the virtues of their countrymen: the indissoluble union of generosity and valour was the darling theme of their song.'[92]

The philosophy of liberty

What we have already said may give an idea of the wide scope of Islamic philosophy and its contribution to European philosophy and thought. It would also be a mistake to limit observation, as some of the nineteenth-century European scholars did, to the study of a few fragments of Latin translations. In fact, if the depth and the scope of Muslim philosophers' thinking are ever to be clearly and fully understood, it must be done through an examination of the original sources themselves. The Egyptian thinker Muhammad Farid Wajdi claims that enough is known to convince us that the material gathered by the Muslim thinkers of the medieval age was greater than that gathered by the European scholars of that era, that the Muslim thinkers explored wider horizons, enjoyed more complete freedom and made greater inventions and discoveries than their European counterparts.[93]

Some intellectuals, however, tried to diminish these indissoluable links between Islam and the West. They attempted to discount Muslim contributions to European philosophy and to discount the originality of Muslim thought, or even deny the existence of Islamic philosophy at other times.[94] While denying the links between Islam and the West on the one hand, they feigned ignorance on the other to maintain that the teachings of Islam opposed all free discussion and investigation and therefore Islam has never risen to the aid of Western philosophy and science.[95]

It is also not possible to discuss adequately the relationship between Islam and the West, or the contribution of Islamic philosophy to modern European philosophy in this limited space and to delineate the chain of ideas that relate these two together. This is especially true since repeated attempts have been made during the middle of the twentieth century to highlight the relationships between Islam and the West, and to discover the contribution of Islamic philosophy to European philosophy and the thought of liberty. Indeed, the link is unbreakable, and the contribution is so strong and rightfully speaks of the existence of a kind of kinship between them. As Draper put it:

> After the example of the medical college of Cairo . . . the first medical college established in Europe was that founded by the Saracens [Muslims] at Salerno in Italy. The first astronomical observatory was that erected by them at Seville, in Spain. It would far transcend the limits of this book to give an adequate statement of the results of this imposing scientific movement. The ancient sciences were greatly extended . . . new ones were brought into existence.[96]

Furthermore, based on the preceding discussion, and without going into further details, one can say that the history of modern philosophy originates with the consideration of two important issues: first, the significance of the experimental aspect, which deals with matters related to external reality; second speculation, which is concerned with the rational sciences. In other words, the experience of Roger Bacon on the one hand and that of Descartes on the other, have been the subjects of discussion and controversy in the modern age. Roger Bacon 'the prince of thought' in the medieval age did not limit himself to carrying out chemical experiments but also widened the scope of his experiments to include the world of nature. Bacon himself was greatly influenced by Islamic philosophy and the works of Islamic scientists. The origins of experimentation during the Renaissance were both products of Islamic thought and Muslim thinkers, because, as Watt says, Muslims were the ones who introduced the use of observatories and laboratories to discover scientific truths.[97]

The exchange and adoption of ideas does not always imply blind obedience. Several individuals may examine a particular topic and the result of their investigations may appear in a number of forms. A philosopher may utilise some of the ideas of another philosopher but this does not prevent him from giving birth to new ideas or to wholly new philosophical systems. Spinoza, for example, even though clearly followed Descartes, was the originator of an independent philosophical system of his own, and Ibn Sina, even though a loyal disciple of Aristotle, put forth views never professed by his master. In the context of this theme, Draper was content to quote from Ali Ibn Abi Talib (the fourth caliph, d.632), this wisdom:

> 'In the course of my long life,' said the Khalif Ali, 'I have often observed that men are more like the times they live in than they are like their fathers.' This profoundly philosophical remark of the son-in-law of Mohammed is strictly true; for, though the personal, the bodily lineaments of a man may indicate his parentage, the constitution of his mind, and therefore the direction of his thoughts, is determined by the environment in which he lives.[98]

Each of the Islamic philosophers lived in a particular environment distinct from the environment of the other, and it would be a mistake if we ignore the influence that these particular circumstances have had on their philosophical ideas and views. Thus the Muslim world could have a philosophy appropriate to its social conditions and religious principles. The above outline is sufficient to give an idea of the nature of this philosophy, its main ideas and principles.

To those who deny the link between Islam and the West, or deny Islamic contribution to European philosophy and thought, their own philosophy on this matter seems uneven with a short breath that cannot face the reality. Bertrand Russell who attempted to discount Muslim contribution,[99] also wrote that Muslim contribution gave a fresh beginning to European thought and philosophy. In Russell's philosophy:

> Averroes [Ibn Rushd] is more important in Christian than in Mohammedan philosophy . . . He was translated into Latin early in the thirteenth century by

Michael Scott...His influence in Europe was very great, not only on the scholastics, but also on a large body of unprofessional free-thinkers, who denied immortality and were called Averroists. Among professional philosophers, his admirers were at first especially among the Franciscans and at the University of Paris.[100]

Russell's words and language would rightfully emphasise that the discount of Muslim contribution is one thing, and to run away from the reality is another and extremely difficult thing. Islamic civilisation at its zenith not only did not block the path of science, but also it both confirmed and encouraged it. And far from opposing philosophy, it welcomed and embraced it with open arms. It welcomed the opinions and views of every shade and colour. Islam invites humans to observe themselves, the universe, the heavens and the earth and whatever lies in between them and to contemplate and meditate upon their mysteries. Islam encourages discussion and enquiry and does not restrict the freedom of thought. Encouraged by these basics Muslim philosophers were also scientists who composed their philosophies in all branches of knowledge concerned with the heavens and the earth. Without Muslim philosophy the European philosophy, including English philosophy, law and science would not have developed. As Watt put it:

When one becomes aware of the full extent of Arab experimenting, Arab thinking and Arab writing, one sees that without the Arabs European science and philosophy would not have developed when they did. The Arabs were no mere transmitters of Greek thought, but genuine bearers, who both kept alive the disciplines they had been taught and extended their range. When about 1100 Europeans became seriously interested in the science and philosophy of their Saracen enemies, these disciplines were at their zenith; and the Europeans had to learn all they could from the Arabs before they themselves could further advance.[101]

English philosophy is also in debt to the French encyclopaedists who presented at various times the universal knowledge of humankind, in various spheres, in a manner accessible to all. In this regard, anyone who is familiar with political science and European history, knows the political, theological and philosophical impact of the French encyclopaedia (*Encyclopédie*) edited by Denis Diderot in the eighteenth century or as it has been dated in 1772. As quoted by Maurice Cranston in his 'Introduction' to Rousseau's *Social Contract*: 'Diderot' himself and the other 'philosophers' who contributed with him were all 'disciples of the English philosopher Francis Bacon...They believed that the development and organization of empirical knowledge could immeasurably improve the life of man on earth. Science world save us...it could only be done by research undertaken by scholars in cooperation. The *Encyclopédie* itself was an example of such collaboration, with expertise in different fields each helping to provide a synopsis of all available knowledge.'[102] It indicates that Europe was still thinking of the scientific method.

Muslims, however, have produced such type of work earlier around 980 when the 'Brethren of Sincerity' (*Ikhwan al-Safa*) published an encyclopaedia from Basra (present-day Iraq) in fifty-two large volumes, covering all fields of knowledge of their time, including philosophy, religion, mathematics, astronomy, physics, chemistry, language, law and poetry.[103] It constitutes ten volumes on psychological and rational sciences, eleven volumes on theological, law and linguistic sciences, the rest is meant to cover physics, natural sciences and the corpus of the alchemist Jabir Ibn Hayyan. Those medieval philosophers of the tenth century are famous and well known among students and scholars of Islamic intellectual development as Abelard, Anselm, Descartes, Wittgenstein, Kant and Hegel are to historians of Western thought.[104]

As to al-Farabi's *Encyclopaedia of Science*, scholars content to consider it as an example show the tendency of the Muslim mind in that prolific age. This work gives a general review of all sciences. It is divided into five parts dealing with the different branches of science, language, logic, mathematics, natural sciences, and political and social economy. Another celebrated work of al-Farabi, largely utilised by Roger Bacon and Albertus Magnus, was his commentary on Aristotle's *Organon*. Al-Farabi's *Tendency of the Philosophies of Plato and Aristotle*, his treatise on ethics, entitled the *Way of Virtues* (*Sirat al-Fadila*) and another on politics, called as *Politics of the City* (*Siyasat al-Madina*) [105] which forms part of a larger and more comprehensive work bearing the name the *Genesis of Beings* (*Mabadi-ul-Moujudat*), show the versatile character of his intellect. Besides philosophy and medicine, al-Farabi cultivated Music, which he elevated into a science. He wrote several treatises both on the theory and the art of music, as well as the manufacture of musical instruments.[106] Draper says:

> The Saracen Empire was dotted all over with colleges – The superintendence of these schools was committed with noble liberality sometimes to Nestorians, sometimes to Jews. It mattered not in what country a man was born, nor what were his religious opinions; his attainment in learning was the only thing to be considered.[107]
>
> The Fatimite Library at Cairo contained one hundred thousand volumes, elegantly transcribed and bound. Among these, there were six thousand five hundred manuscripts on astronomy and medicine alone. The rules of this library permitted the lending out of books to students resident at Cairo – The great library of the Spanish khalifs eventually numbered six hundred thousand volumes; its catalogue alone occupied forty-four. Besides this, there were seventy public libraries in Andalusia. The collections in the possession of individuals were sometimes very extensive. A private doctor refused the invitation of a Sultan of Bokhara because the carriage of his books would have required four hundred camels. There was in every great library a department for the copying or manufacture of translations – It was the custom of the authorities of colleges to require their professors to prepare treatises on prescribed topics. Books of romances and tales, such as "The Thousand and One Arabian Nights' Entertainments", bear testimony to the creative fancy of

the Saracens. Besides these, there were works on all kinds of subjects – history, jurisprudence, politics, philosophy, biographies not only of illustrious men, but also of celebrated horses and camels. These were issued without any censorship – Books of reference abounded, geographical, statistical, medical, historical, dictionaries, and even abridgments or condensations of them, as the "Encyclopedic Dictionary of all the Sciences, by Mohammed Abu Abdallah". Much pride was taken in the purity and whiteness of the paper, in the skillful intermixture of variously-colored inks, and in the illumination of titles by gilding and other adornments.[108]

The University of Paris was one of the leading centres of intellectual ferment in Europe. It was considered as the battlefield of most intellectual conflicts of the age. It was at the University of Paris that the masters of art maintained a permanent intellectual unrest and the driving force of intellectual revolutions.[109] The quality and historical importance of the philosophers, theologians is reflected in their intellectual debate and in their literature. Thomas Aquinas, the intellectual giant of the Church was exposed to the new learning. Avid for knowledge, Aquinas plunged himself in reading the newly discovered texts of Muslims including Ibn Sina and Ibn Rushd without much appreciation of their tremendous implications of what he read in his early career, but then he steeped himself in the growing number of Muslim texts which had become available in Latin. Aquinas' two great *Summae*, his university teachings and in the context of philosophical enquiry, were able to preserve a tradition no longer observed: 'Thomas Aquinas and his teacher Albertus Magnus both stood their ground.'[110]

Ibn Rushd or Averroes' rational doctrine (Averroism) produced an elaborate theology harmonising the truth of reason with the truth of revelation. His monumental *Summa Theologica* analysed almost every rule of law and theology from the standpoint of the harmony between reason and revelation. He holds the view that Islam is the religion of reason. In other words, Ibn Rushd was able to prove almost every rule of law through both faith and reason. His method found its substantial impact on Albertus Magnus and Aquinas. Ibn Rushd (Averroes) pointed out that 'the existence of God can be proved by reason,' Russell says, 'a view also held by Thomas Aquinas'.[111] Thus when Thomas Aquinas was working on his two *Summae* he had the works of Ibn Rushd constantly by his side as principal source. Aquinas was initially not favoured by some and was needed to face the conservatives who were suspicious of his rational Averroistic approach.

The reason for such suspicion in the medieval age, one might assume, was pertaining to philosophical and intellectual development; in the modern, however, one also might assume that the reason for suspicion had grew thin. Philosophy, theology, jurisprudence, logic and other sciences have been developed. The age of reason in Europe was the result of European cultivation of Islamic philosophy which released reason from its confinement and 'that reasoning is the ultimate purposes of existence'.[112] Thus, the attempt of some of the twentieth-century thinkers to break the link between Islam and the West is out of reason and out of

date. It is surprising that some of the modern intellectuals still insist to stay within the paradigm box of suspicion in isolation from reason. In the words of Montgomery Watt:

> The influence of Averroes on European thought cannot be properly understood if it is closely linked with the 'Latin Averroism' of Siger of Brabant (*c*.1235–*c*.1282) and others. Among other things Siger thought that the conclusions of reason in its philosophical use may be contrary to the truth of revelation; but both are to be accepted. This is the theory of 'double truth', though Siger himself would not have used that term. Averroes [Ibn Rushd] had certainly held something like this, but he had softened the opposition by supposing that Qur'anic texts could be interpreted in such a way that any contradiction was removed; and Arabic has richer possibilities of interpretation than Latin. The Latin Averroists made no such attempt to reconcile reason and revelation, and their contemporaries felt – probably rightly – that their position, when logically followed out, would eventually lead to the destruction of religion. This use of the name of Latin Averroists should not mislead us into thinking that it was chiefly through them that Arabic thought, and in particular that of Averroes, influenced Europe. This is far from being so. Arabic thought provided European thought with materials, and brought within its purview a whole new world of metaphysics. All standards of European thought had to take cognizance of the translations from Arabic, nor merely the Averroists and their opponents, the party of St Thomas Aquinas, but also conservative Platonists like Bonaventura and scientifically-minded Platonists like Robert Grosseteste and Roger Bacon. The whole range of subsequent European philosophy was deeply indebted to the Arabic writers; and Thomas Aquinas owed just as much to the Aristotelianism of Averroes as did Siger of Brabant.[113]

Muslim thought and the age of reason

Consequently, the direct connection between Muslim thought and the age of reason can be rightfully traced. The age of reason was certainly not isolated from the influence of Muslim philosophers and their contribution to European thought and philosophy. It is difficult to consider that the age of reason in Europe could have come from vacuum. Muslim philosophers were also people of science and were much concerned with the relationship between the Creator and the creation; the universe, life and humanity. As Montgomery Watt put it:

> The first original European writing in metaphysics as in many aspects of science came from translators. In particular Dominic Gundisalvi wrote works, partly based on Arabic sources entitled 'On the immortality of the soul' and 'On the division of philosophy'. In dealing with the concept of God as the unmoved Mover he brought theology into relation with physics, as had

been done, for example in Avicenna's Kitab ash-Sifa' (known in Latin as *Sufficientia*) and in the summary of Avicennian views (*Maqasid al-Falasifa*) produced by Algazel [al-Ghazali] this thinking of theology with physics and metaphysics led eventually to a new type of theological writing in Latin which reached its height in the philosophy of Aquinas.[114]

Thomas Aquinas, Robert Grosseteste and Roger Bacon present a perfect picture of philosophers whose works are influenced mainly by Islamic philosophy, its subjects, aim and the language in which this philosophy was written. They learned much from al-Farabi's logical and political treatise and borrowed much of Ibn Sina's ontological scheme. Aquinas' *Summa Theologica* and Bacon's *Opus maius* bear the influence and the impact of Islamic philosophy upon them. With this influence of Islamic philosophical thought on much of Aquinas's and Bacon's writings, the picture that emerges is that of European philosophers who shared with Muslim philosophers a sacred universe and a common language. Thus, they were able to use the findings of such religious adversaries as al-Farabi and Ibn Sina (Avicenna) and others. In his book on Aquinas, Copleston observes that 'Aquinas's way of appreciating the distinction between essence and existence was influenced by Alfarabi [al-Farabi] and Avicenna [Ibn Sina]'.[115]

There is no doubt that Islamic thought was very much in the mind of Thomas Aquinas when he wrote his famous *Summa Contra Gentiles* and its developed form the *Summa Theologica*, for a number of reasons including the reason that he had an Islamic audience in view. The *Summa Contra Gentiles* was written, as Copleston says, 'at the request of St Raymond of Panafort to help those engaged in the conversion of the Moors in Spain'.[116] The *Summa* 'was composed as a handbook for the conversion of', what Antony Flew calls 'the Islamic Moors who were then in control of most of the Peninsula which is now Spain and Portugal'.[117] The Muslim world was at that time intellectually formidable and, in fact, provided Aquinas with some of his intellectual inspiration. In his work on Aquinas, Copleston pointed out that '[t]he "Gentiles" whom Aquinas had in mind were not so much the ordinary devout Mohammedans as those whose outlook was imbued with a naturalistic philosophy'.[118] Similarly, Bertrand Russell observed that 'St Thomas Aquinas's most important work, the *Summa Contra Gentiles* was written … to establish the truth of the Christian religion by arguments addressed to a reader supposed to be not already a Christian; one gathers that the imaginary reader is usually thought of as a man versed in the philosophy of the Arabs'.[119]

Aquinas was dealing with those who relied on the philosophy of reason and had to use philosophy of reason: 'My purpose is to declare the truth which the Catholic Faith professes. But here I must have recourse the natural reason, since the gentiles do not accept the authority of Scripture.'[120] It was for Muslim philosophers of reason that Aquinas devoted the four books into which the *Summa Contra Gentiles* is divided. He used the philosophy of reason which was developed by Muslim philosophers and made no appeal to revelation. He has proved 'some parts of the Faith but not others', says Russell.[121] Whatever was or was not proved, Aquinas brilliantly used Islamic philosophy of reason which did

not exist in the domain of Christian theology and the relevant spheres of human life at the time. As Copleston put it:

> The assertion of a distinction between essence and existence was not new. Islamic Philosophers like Alfarabi (d.950), Avicenna (d.1037), and Algazel [al-Ghazali] (d.1111) had already made this distinction.[122]

Aquinas also used his Arabic expertise to comment on issues on the grounds of Arabic language. He says: 'Arabic can give expression without the normal use of the copula to the fact that a person or a thing is in this or that state or possesses this or that quality.'[123] In this way, Islamic Philosophy played a significant role in stimulating that emphasis on reason which was to lead to the Renaissance and the resulting transformation of European legal system. It helped to release European reason from its long confinement. Aquinas's concern of reason to prove the revelation apparently occupied his time that he had no chance to provide, in his philosophy, the means to keep the connection between Revelation, Nature and Reason or their marriage intact. These three key elements formulated a kind of intellectual debate, during Europe's transformation, and each of these elements was to be claimed as a supreme source of knowledge; but soon Reason divorced all, included Revelation, and singularly went on its own. It is legitimate to speculate how long the entire Renaissance in European thought, on which many of the Western concepts of human rights are based might have been delayed, or what direction or course might have been taken without the contribution of Islamic thought and the guidance of Islamic philosophy.

Furthermore, the influence of Muslim philosophy 'was very great, not only on the scholastics, but also on a large body of' what Russell called 'free-thinkers'.[124] There is strong evidence that both John Locke's and Rousseau's thinking, especially their theories of sovereignty could well have been influenced by Islamic thinking on the relationship between subjects and the state.

At Oxford, Locke showed a keen interest in Edward Pococke (1604–1691), the English Orientalist, the biblical scholar and the first professor of Arabic Studies at Oxford. Pococke wrote a series of essays on Arabic history, *Specimen historiae Arabum* (1636), some of these essays were even printed in the Arabic language. These essays focused on the history and customs of the Arabs, based on Arabic sources. In 1663, he also published an important work of scholarship entitled *Historia compendiosa dynastiarum*. Pococke utilised innumerable manuscript sources which are still of value to the scholar.[125] Locke was long intimate with Pococke at Oxford's Christ Church and wrote of him to Humphrey Smith on 23 July 1703:

> The Christian world is a witness of his great learning, that the works he published would not suffer to be concealed, nor could his devotion and piety be hid, and be unobserved in a college, where his constant and regular assisting at the cathedral service, never interrupted by sharpness of weather, and scarce restrained by downright want of health, showed the temper and disposition of his mind; but his other virtues and excellent qualities had so strong

and close a covering of modesty and unaffected humility that they were apt
to be overlooked by the unobservant. Though the readiest to communicate to
any one that consulted him, he had often the silence of a learner where he had
the knowledge of a master. . . . Though a man of the greatest temperance in
himself, and the farthest from ostentation and vanity in his way of living, yet
he was of a liberal mind, and given to hospitality. . . . His name, which was in
great esteem beyond sea, and that deservedly, drew on him visits from all
foreigners of learning who came to Oxford. . . . He was always unaffectedly
cheerful. . . . His life appeared to me one constant calm.[126]

Locke's interest in Pococke then would necessarily include some accounts of
Arabic literature, culture, history and civilisation. In that event it is not logic to
discount that the theories of government current in the Arab world and embodied
in its basic legal and political literature would have received some mention, at the
hands of Pococke, at least – some mention of the hundreds of oriental manuscripts
that Pococke collected during his stay in Syria. This is very rational, especially, if
we know that Pococke was living in Syria where he mastered the Arabic language
before being invited to Chair Arabic Studies at Oxford. It is well known also that
Locke had shown deep dissatisfaction with the subject matter of conventional
studies. He was not interested in 'verbal exercises' of scholastic philosophers,
thought little of his professors, and was also labelled as not a hard-working
student.[127] By way of contrast, Locke's keen interest in Pococke's lectures on
Arabic culture may indicate that these lectures stimulated Locke's thinking and
that he derived some intellectual stimulation from them.

Moreover, Locke was interested in matters of government and its problems
of power and individual liberty. His enquiring mind could not have failed to
consult the concept of sovereignty in Muslim literature. During Locke's time the
Muslim world was not an abstract but a living reality with which Europe was in
close contact. Thus, to discount the influence of Islamic thought on European
thought of liberty is difficult. We have met Locke, the prince of liberty, in the
preceding chapters, where I have outlined his view on such concepts as sover-
eignty, the trusteeship of power, the rights of the ruler and the ruled, and the
removability of the ruler from office if he failed to keep his trust; these views
were not new to Islamic thought as also outlined earlier. In addition, a glance on
his *Two Treatises of Civil Government* might help: 'God gave us all things richly.
Is the voice of reason confirmed by inspiration? But how far has He given it us –
to enjoy'?[128]

Thinking of the origins of human knowledge, Locke emphasised human knowl-
edge as the relation between ideas and that all ideas are ultimately derived from
experience. The consequence of this approach is that the knowledge of which we
are capable is limited in its scope and certainty. Thus, he arrived at the Muslim con-
clusion that human intellect is limited in time and place. Locke's favoured model
for achieving human knowledge was not the abstract mathematical reasoning so
admired by the rationalists but the more concrete observations of natural science.

In the most general application, rationalism offers a naturalistic alternative which appeals to religious accounts of human nature and conduct. Prominent rationalists of the modern period including Descartes, Spinoza and Leibniz were influenced by Bacon, Aquinas and others.[129]

Hobbes and Locke were both men of law and science who employed some scientific methods, including some of Francis Bacon's interesting experiments in their philosophical enquiry. Hobbes became convinced that the methods employed by the mathematicians and scientists, in geometry in particular, held the greatest promise for advances in human knowledge. The political philosophy of both Hobbes and Locke relies heavily upon the conception of natural law that had been transferred to them from the Muslim philosophers by Aquinas, Grotius and the like of these great thinkers.[130]

Locke was also a friend of Isaac Newton, and had shown interest and worked with Robert Boyle. Boyle, who was Locke's scientific mentor, was in contact with Spinoza and wrote to him; he himself was inspired by Muslim scientists and Ibn Hayyan's Alchemy. Locke was reading Boyle, Dante and Descartes. In *An Essay Concerning Human Understanding* Locke adopted Dante and Descartes' 'way of ideas'; though it had been transformed so as to become an organic part of Locke's philosophy. Both Dante and Descartes were inspired by Islamic thought, especially Ibn Sina (Avicenna), Ibn Rushd (Averroes) and al-Ghazali's thought. As to Ibn Sina, for instance, 'Dante placed him between Hippocrates and Galen; and Scaliger maintained that he was Galen's equal in Medicine, and much his superior in Philosophy'.[131] Locke knew all of these men and their works. It is not logical to imagine that Locke was not stimulated by Islamic thought and that his philosophy owes, at least, some inspiration from Islamic philosophy and Law.

Similarly, as with Locke, so was Rousseau; he was influenced by Islamic thought and that was clearly seen after he had attained his intellectual maturity. His thought on sovereignty declares his influence by Islamic thought.[132] With some variation, in his *Social Contract* Rousseau says: 'My argument, then, is that sovereignty, being nothing other than the exercise of the general will, can never be alienated; and that the sovereignty, which is simply a collective being, cannot be represented by anyone but itself – power may be delegated, but the will cannot be.'[133] Speaking of the 'Civil Religion' in his *Social contract*, Rousseau wrote: 'Mahomet had very sound opinions, taking care to give unity to his political system, and for as long as the form of his government endured under the caliphs who succeeded him, the government was undivided and, to that extent, good.'[134] The flow of knowledge is also rational. Rousseau's ideas are mostly a reflection of Islamic influence on him. For example, the Islamic idea that the community, through the consensus, determines the law in cases of doubts is corresponding to Rousseau's idea of the general will distinguishing between the just and the unjust. As with Islam, Rousseau was clearly against the separation of the political institution of a nation from its moral code. In the context of this theme, Rousseau referred to the Prophet of Islam 'the child of Ishmael' and Islamic Law which established a nation on the basis of a harmonious relationship between the moral

code and the political institution of the nation – the nation 'has ruled half of the world for ten centuries'. In Rousseau's words:

> But it is not for every man to make the God speak, or to gain credence if he pretends to be an interpreter of the divine word. The lawgiver's great soul is the true miracle which must vindicate his mission. Any man can carve tablets of stone, or bribe an oracle, claim a secret intercourse with some divinity, train a bird to whisper in his ear, or discover some other vulgar means of imposing himself on the people. A man who can do such things may conceivably bring together a company of fools, but he will never establish an empire, and his bizarre creation will perish with him. Worthless tricks may set up transitory bonds, but only wisdom makes lasting ones. The Law of the Hebrews, which still lives, and that of the child of Ishmael which has ruled half the world for ten centuries, still proclaim[s] today the greatness of the men who first enunciated them; and even though proud philosophy and the blind spirit of faction may regard them as nothing but lucky impostors, the true statesman sees, and admires in their institutions, the hand of that great and powerful genius which lies behind all lasting things.[135]

Although the authorities made every effort to suppress Rousseau's writings, his ideas, along with those of Locke, were of great influence during the French Revolution (1789–1799) and formed the basis for the ethical theory of Kant (1724–1804) and provided Hegel (1770–1831) with the starting point for his theory of the state on which Hegel concludes:

> The substance of Islamic morals may be perfect; what should be internal subjective sentiment is made a matter of external arrangement. There is no want for a well to command moral actions, but a well to perform them because commanded from within. Since the internal and external, Law and Moral Sense, are not yet distinguished – still form an undivided unity – so also do Religion and the State.[136]

Similarly, the impact of Islamic thought could be clearly recognised in the writings of Baron de Montesquieu (d.1755) the political theorist of his time. His *Persian Letters* of 1721 were usually considered as forerunners of his political treatise the *Spirit of Laws* (1748) which had a profound impact on despotism. In his letters about Persia, Montesquieu tried to provide a sociological analysis, but in imaginative terms.[137] His method reflects his influence by *Kalilah wa Dimnah* (Kalilah and Dimnah), and *Alf Lilah wa Lilah* (A Thousand and One Nights). To voice his view, Montesquieu devised two Persian persons 'Rica' and 'Uzbek' who purport to visit Paris to explore European customs, the nature of sociopolitical institutions and the relationship between them in the period between 1710 and 1720.[138] A social approach had previously been established by Muslim philosophers, especially, Ibn Khaldun (732–808/1332–1406) who is also well known in Western literature by his magnum opus *al-Muqaddimah* (i.e. *Introduction*

to History). It is an attempt to investigate whether historical sources are credible, asks what the source relates, and whether it is the sort of given accounts that happen in human affairs. This enquiry led Ibn Khaldun to write a lengthier treatise on the processes of social and political changes. Thus, Ibn Khaldun's work antedated Montesquieu's views on matters such as the influence of environment on social institutions.[139] Montesquieu's observation of Islamic thought goes to the extent that his Letters 10 and 18 also made references to the Qur'an, and stated his views through his devised Muslim person.[140]

The impact of Islamic thought on Montesquieu is also seen in his treaties *The Spirit of the Laws* which was completed in 1748 and influenced all shades of political and legal thought and the subsequent separation of powers in Europe. With his historical approach and comparative method, Montesquieu begins his book with the separation between the law and its spirit. Unlike his predecessors, Montesquieu did not use such words or phrases as 'natural law' or 'state of nature' and the like of these concepts which were frequently used in the writings of his predecessors: 'I call *virtue* in a republic is love of the homeland, that is, love of equality. It is not a moral virtue or a Christian virtue; it is *political* virtue, and this is the spring that makes republican government move, as *honour* is the spring that makes monarchy move. Therefore, I have called love of the homeland and equality, *political virtue*. I have had new ideas; new words have had to be found or new meanings given to old ones.'[141]

In this way, Montesquieu provided the conceptual means which influenced the subsequent schools of jurisprudence that were of great importance to European thought. His view of the relationship between *law*, the *spirit* of law and the concept of *homeland* is one of the means which gave the theoretical basis of nationalist sentiment in Europe. Here, the flow of ideas denotes that the current French political thought had its origins in Montesquieu. French Constitutionalists idealised Anglo-American institutions and made their point of departure a critique of the French Revolution and the egalitarian revolutionary tradition. By the mid-nineteenth century, French historical Constitutionalism was also receiving major influence from the German historical school of law, whose key figure was Frederic Charles de Savigny. Here, the influence of Montesquieu on Savigny whose writings gave rise to the German nationalist sentiment must be noted. It is well known that Savigny's historical school of jurisprudence and his manifesto of 1814 had a profound influence on Hegel and his counterparts and successors in Europe. Savigny's manifesto rejected the tendency towards French-inspired legal codification in Germany and posited what Montesquieu emphasised 'the spirit of the nation' as the only source for all law.[142]

In the context of this theme, the chain of the flow of ideas will remain broken unless the ring of Islamic thought is attached. Once again, and as with his *Persian Letters* of 1721, Montesquieu, evidently, could not resist the influence of Islamic thought and the spirit of Islamic Laws on him when he was writing *The Spirit of the Laws* which took 'twenty years' and was completed in 1748. He said that he was 'filled with wonder' whenever he turned to the 'antiquity' of such 'great men' who 'have written before' him as 'Plato', 'Socrates' or those in 'France, England

and Germany' or 'infinite diversity of laws and mores' and sought 'to capture its spirit'. It was through the infinite diversity of laws and mores that he had 'examined men' on the basis of the 'nature of things', beings, signs, verses and universes.[143] To do so, he had laid down his 'principles' and had 'particular cases conform to them as if by themselves, the histories of all nations being but their consequences, and each particular law connecting with another law or dependent on a more general one'.[144] The spirit of his words; the spirit of his frequent travel to Eastern Europe; his stay in Austria to study the Constitutions and law of other countries; his attempt to visit Turkey (but his time did not allow him); his position among judges in the court and his position in the parliament; his regular attendance in the 'Club de I'Entresol where experts used to meet and present a paper concerning the governmental and international events; and the spirit of his notes on Islamic Law, figures, conceptions and thought in both his *Persian Letters* and *The Spirit of the Laws* are just a few examples that reflect the conviction and the spirit of our prince.[145]

The influence of Islamic Law and thought on Montesquieu was imprinted on the pages of his mind as well as on the pages of his *Persian Letters* and *The Spirit of the Laws*. In writing the *Persian Letters*, Montesquieu tried to cover the influence of Muslim thought on him by his devised persons, and the exotic picture that he tried to portray of Muslims in Persia. However, his attempts were strongly challenged by Rousseau who, for instance, observed that '[i]f, for example, there is any moral purpose in the *Temple de Gnide* it is thoroughly obfuscated and spoiled by the voluptuous details and lascivious images. What has the author done to cover it with a gloss of modesty? He has pretended that this work was the translation of a Greek manuscript and has fashioned the story about the discovery of this manuscript in the manner most likely to persuade his readers of the truth of his tale . . . But who has thought to accuse the author of a crime for this lie or to call him a deceiver for it?'[146]

Montesquieu's principles upon which he based *The Spirit of the Laws* confirm the influence of Islamic Law on his mind. As with Islamic thought, Montesquieu begins his treatise *The Spirit of Laws* with these principles:

> Laws, taken in the broadest meaning, are the necessary relations deriving from the nature of things; and in this sense, all beings have their laws: the divinity has its laws, the material world has its laws, the intelligences superior to man have their laws, the beasts have their laws, man has his laws. Those who have said that a blind fate has produced all the effects that we see in the world have said a great absurdity; for what greater absurdity is there than a blind fate that could have produced intelligent beings? There is, then, a primitive reason; and laws are both the relations that exist between it and the different beings, and the relations of these various beings to each other. God is related to the universe, as creator and preserver; the laws according to which he created are those according to which he preserves; he acts according to these rules because he knows them; he knows them because he made them; he made them because they are related to his wisdom and his power. As we see

that world, formed by the motion of matter and devoid of intelligence, still continues to exist, its motions must have invariable laws; and, if one could imagine another world than this, it would have consistent rules or it would be destroyed. Thus creation, which appears to be an arbitrary act, presupposes rules...these rules...govern the world, since the world would not continue to exist without them. These rules are constantly established relation. Between one moving body and another moving body, it is in accord with relations of mass and velocity that all motions are received, increased diminished, or lost; every diversity is *uniformity*, every change is constancy.[147]

The words and language are but a reflection of Islamic view on the legal status of matters and the relationship between the Creator and the creation; the universe, life and humankind. Islamic thought that is pertaining to those principles of Montesquieu have been detailed in the foregoing discussion in the present and in the previous chapters. Montesquieu made many specific references to the Qur'an and Islamic Law some of which are applicable to international law. For instance, he refers to Humphrey Prideuux's book *Life of Mahomet* on a piece of law by which 'all hostilities would cease between the Arab tribes' during specific four months every year.[148] It is the legal idea which found its way to medieval Europe and, as Clouston says, was called '*The Treuga Dei*' (Truce of God).[149] Montesquieu, then, takes the same idea to chapter 17, book 24 where he used the Qur'an (2:178): 'any one who harms the wicked man after receiving satisfaction from him will suffer grievous torments on judgment day' to make his point that religion often produces or 'give many means for reconciliation' for the hatreds that occur in a state.[150] His frequent reference to the Qur'an, Islamic thought and Law, Montesquieu's *The Spirit of the Laws*, which is this most influential work of jurisprudence, confirms that he had spilled out his best knowledge and experience of Islamic Laws and mores.[151]

Concluding remarks

Considering the earlier discussion, one might conclude that the communication between Islamic and Western civilisations is one of the most pressing issues of our time. It is not overstated to claim that this important issue still needs to be researched. It should also be noted that if Muslim contribution to European civilisation was hidden in the past, the new technologies made it difficult for such negligence to continue. Preliminary investigations show that what was expressed in the form of guess and speculation, in the past, was found to be irrefutable and a proven fact today. Researchers, including media and television, became gradually more familiar with Islamic topics than before, and their understanding of the original and unique characteristics of Islamic thought gradually increased. As they came to know more about Islamic philosophy and the spirit of Islamic Laws as well as the intellectual engagement with European history and development; their judgement of Muslim contribution became fairer and more even-handed.

Indeed, if without having first properly investigated and studied the issue, we were to say that there have been no connections between Islam and the West in regard to the world of thought, democracy, philosophic and rational speculation, it has been proven that the link between Islam and the West is unbreakable. The exchange dating back to the ancient times did exist and it was renewed during the Middle Ages. Ideas and opinions cannot be imprisoned in limited geographical boundaries, and their movement cannot be restricted to geographical or political paradigms. Communication between Islamic and Western civilisations continued throughout history. What is there then to stop such a peaceful and productive connection from existing today; what is there then to change the natural course of such a harmonious relationship between these civilisations? Considering the ideas' neutral nature, then, human weakness, or the '*ignorance*' that has been detailed by such great Western and Eastern thinkers as Roger Bacon (d.1294), Montesquieu (d.1755), and Sayyid Qutb (1966) may illustrate the point.

When the history of ideas is carefully considered, the relationship between the Muslim world and that of Christian Europe was not one of a clash of civilisations, but of ongoing communication and intellectual sharing. While the Crusades stand out in the imaginations of many, the intellectual relations of these cultures was at least as profound and lasting in their effects.

5 Islamic International Law

The relationship between Islamic and Western democracies is one of the pressing issues of the day. The encounter of democratic values in Western law with the democratic values in Islamic Law has reached a critical moment as the contours of a new world order emerge. To make a way into what could be seen as barriers between Islamic and the Western democracies, the previous chapters have continually emphasised the importance to world peace of a better understanding and appreciation of Muslim contribution to the values and qualifications of democracy with regard to human thought, philosophy and law.

Focusing on the context of this theme, one might consider the growing complexity of interstate system in general, the large number of Muslims in the world, the new ideas of globalisation, the Westward emigration of many people, the growing economic and intellectual engagement of the West with the Muslim world, the establishment of the International Court of Justice, the new events which shocked the world from the 4 November 1979 hostage crisis in Iran to the terrorist attacks of 11 September 2001 and 7 July 2005, the ensuing war on terror, the attendant serious violation of democratic values and qualifications, all these individually and collectively form a conclusive argument for the need of a wider familiarity with Islam's democratic values with special attention to Islamic International Law and its commitment and inclination towards world peace and harmonious interreligious, intercultural and international relations.

This chapter, therefore, examines the implication of the democratic values in Islamic International Law for the relation between Islam and the West and the rest with special focus on the Islamic attitude towards and qualification of the Law of War and Peace as well as clarifying the meaning and appropriate use of the Islamic concept of jihad. It also investigates the role of Islamic International Law in the development of the United Nations' International Law which has been claimed, by many, as a product of only Western democracy.

The nature of Islamic International Law

International law is a set or a common body of laws, norms and principles which can be applied to the affairs of the world community of varying cultures. All great cultural, philosophical and religious systems have made their contributions to all

the others. The search for a legal system to enhance the sovereignty of nations and human rights is a universal search that brings the talent of humanity to the challenge and translates the nature of human desires and aspirations for a better normative system. The existence of conceptions of state sovereignty, human rights, equality and non-discrimination within legal cultures is dependent on our reading of the narratives of these conceptions. In this process of reading, the more powerful states have the capacity to command attention, through their influence on global intellectual life and communications. Because Western power has the capacity to command attention this should not obscure the constructive nature of Western texts which assert Western superiority. Apart from framing non-Western legal systems within the Orientalist gaze, the narratives of the West limited themselves to narrow provincialism masquerading as universalism. As Islamic Law clamours for attention, considerations of theory and politics justify a review of the contending narratives. Globalism as emerged in theory and practice on the world stage offers a chance to challenge the narrative constructions of the colonial past.

Consequently, the 'Greek civilisation' which was known 'originally' to have roots in both 'Egyptian, and Semitic civilisations', as Bernal asserts, has been redesigned as 'Aryan' during the course of the 'nineteenth century'; its Egyptian and Semitic 'roots' were either actively 'purged' or hidden from view. Whereas 'Greek' writers themselves openly 'acknowledged' their culture's 'hybrid' past, some European philologists acquired the ideological habit of passing over these embarrassing facts without comment, in the interests of Attic purity.[1]

The ancient nations seem to have had some lack in the field of international law. The reason for that is also not difficult to understand, as Hugo Grotius (d.1645) put it, the ancient states were at war with each other most of the time.[2] However, there is evidence that the ancient states observed some form of law, whether customary or other, to regulate their relations with other states. In this connection, Hugo was 'Fully convinced...that there is a common law among nations, which is valid, alike for war and in war'.[3] The Egyptian to whom Grotius referred in his dedication to King Louis XIII as 'the most eminent of Kings',[4] and Babylonian records, according to Khadduri, 'contain agreements signed with their neighbours dealing with such problems as the use of water, the settlement of frontiers disputes, and the change of prisoners'.[5] The Old Testament, according to Schrey, shows how the Israelites regulated their relations with their neighbours in war and peace.[6] The Greeks have a set of rules to organise their relation with Rome. In terms of the contemporaries to Islam, such nations as Persia, India, China and Christendom, all have similar form of rules that organised transnational relations with other nations.[7] The medieval climate of Europe was not ready yet for the development of international law. Following the collapse of the Roman Empire, the Dark Ages, as Nussbaum emphasises, 'knew little of law at all'.[8]

The reconstruction of law and, for that matter, of civilisation was mainly the work of the Church. This took centuries but the Church developed a legal system that has come to be called the *Corpus Juris Canonici*. In this context writers speak of the *Treuga Dei* (Truce of God) in medieval Europe.[9] However, it is difficult to call this international law, in a strict sense. In Europe the *Treuga Dei* began in the

tenth century (989) and survived to the thirteenth century; but the idea originally, as Clouston says, 'was observed by the Arab tribes', prior to Islam, and was then 'adopted by the warring European tribes in the middle ages'.[10]

Other than those forms of customary rules, it is difficult to find what could allow us to suggest that the international relationships of the ancient states were governed by what could be strictly called international law. In the ancient states, as outlined by Ibn Khaldun (1332–1406), the manner of international relations was 'cruel', and the 'maxim' of nations was 'barbarous' in many ways.[11] Even though 'the eruption of northern tribes of Scythia and Germany overturned all that was gained by the Roman law, annihilated every restraint, destroyed all sense of national obligation and threw civil society for a time into violence and confusion',[12] some studies have cited the laws of Visigoths, Saxons, Sicilians and Bavarians, as restraining, by the severest penalties, the plunder of shipwrecked goods, and the abuse of shipwrecked seamen, and as extending to rights of hospitality to strangers. Though the municipal law has received some great improvement, international law however remained in the rudest state. Most of the prisoners of war were put to death along with all other kinds of prisoners. Frequent instances such as violation of embassies, murder of hostages, imprisonment of delegations and guests, killing of heralds are only examples that indicate that the law of nations was uncultivated.[13] It was not until the seventeenth century when Hugo Grotius (1583–1645) wrote a book on *The Freedom of the Seas* in 1608 which extended to include the law of war and peace *De Jure Belli ac Pacis* in 1625 that one could find a reference to the law of nations, as a discipline in European literature.[14] However, 'until the nineteenth century', Nussbaum says, 'the law of nations remained more a matter of doctrine than of state practice'.[15] The first international rules that emerged were the result of the Geneva Convention of 1864, which established the International Red Cross, and made some rules for the human treatment of the wounded and the safeguarding of the non-combat personnel who cared for them. The agreement was then written for nations to allow in the conference of 1899. It was not until 1907 that some rules of war and peace, and others on neutrality were collected and some of them were allowed by a few nations but rejected by others. These rules have also failed to protect humanity from the atrocity of the first and second world wars.[16]

Centuries before the writings of Hugo Grotius (d.1645) and Samuel Puffendorf (d.1694), or the earliest convention of Geneva in 1864, the law of nations addressed by the pre-Islamic Mecca Convention 'The Alliance of the Virtuous' (590), or by the Islamic writings of al-Shaybani (d.804), had been the subject of commentaries by scholars long before the topic became the subject of Western juristic writings. For example, the Mecca Convention *Hilf al-Fudul* (The Alliance of the Virtuous), which was convened in 590 (twenty years prior to Islam), established the coalition of the virtuous, made a set of rules on war and peace, and the pact was written down and was accepted by the established coalition. Among the immediate reasons for this convention and for forming this alliance were the wars between various kingdoms in the region and the consequences of injustice suffered by a merchant from the kingdom of Yemen. It was necessary for those concerned

to promulgate a set of rules on war and peace with some others on neutrality, freedom and safeguarding trade, treatment of delegates, visitors and merchants. An oath was also taken by the members of this assembly to the effect that whenever they found someone, whether they be a citizen or a stranger visiting or trading in any of their kingdoms, they would stand by them against any type of injustice. This convention established a kind of league against oppression, repression and injustice and it was attended by Muhammad in 590 when he was 20 years of age (he began to receive the revelation in 610 when he was 40). Later, after his migration to Medina in 622, when the Prophet was asked about that Convention he stated his support for this pact: 'Even now if I am called upon in the name of this pledge, I shall not refuse'.[17] Similarly, the Pact of Medina (623) and the Pact of Hudaybiyyah (628) are other examples on the early stages of the Islamic Law of nations which was still developing under the leadership of the Prophet.

The model behaviour of the Prophet sheds comprehensive light on all aspects of the international law. This is why every book of Islamic jurisprudence contains a complete chapter on international law. The term used by Muslim jurists for international law is '*Siyar*' the plural of *sirah* that means the way a person behaves towards the self and towards others or in one word 'conducts'. As the international law regulates the interaction between the conducts of Muslims and non-Muslim others, it is so termed as '*siyar*'. Muhammad Ibn al-Hasan al-Shaybani (750–804), the famous student of Imam Abu Hanifiah (698–767), the founder of the Hanafi School of Jurisprudence, was the first scholar who wrote a comprehensive book exclusively on the law of nations.[18] The title of the book as written by him is *Kitab al-Siyar al-Saghir* (*Introduction to the Law of Nations*). The book has been preserved and was the subject topic of the commentaries by such scholars as Abu al-Tayyib al-Sarakhsi (d.899), who earned the honourable title 'the prince of imams' and was the teacher and then top advisor of the Abbasid Caliph al-Mu'tadid (d.902). The book was recently translated to English with a comprehensive introduction by Majid Khadduri and was published in 1966 by Johns Hopkins Press under the title *The Islamic Law of Nations: Shaybani's Siyar*. But this was not the only book on the subject. Later on, al-Shaybani found it reasonable to write an advanced book on the international law. He took the subject a step further and wrote a major book on the international law and named it *Kitab al-Siyar al-Kabir* (*A Treatise on the International Law*). On this major book there are many commentaries among which the commentary by al-Sarakhsi is in four large volumes. These commentary volumes also became available to scholars when they were published in Hyderabad and republished in Pakistan by Nasrullah Mansur in 1405 (1984).[19]

In his introduction to the translation of al-Shaybani's first book on the law of nations, Khadduri pointed out the renewed attempt of scholars to designate al-Shaybani as the 'Hugo Grotius of Islam'. Joseph Hammer von Purgstall reviewed these works and called al-Shaybani the 'Hugo Grotius of the Muslims'.[20] None the less, Hans Kruse writes that however honorific 'the bestowal of such a title of honour on a Muslim jurist . . . by so great a scholar as Purgstall may have been, it did not find an echo among European scholars'.[21] For this 'Hans Kruse made another attempt to "secure for al-Shaybani that place in the history of

international law which he rightfully deserves according to his importance", and he founded the Shaybani Society of International Law in 1955. But scholars did not appear disposed to regard Shaybani as the Hugo Grotius of Islam nor did Kruse follow up his pioneering effort to coordinate the work of the Shaybani Society after he had founded it'.[22] Al-Shaybani's works were described by Weeramantry as 'the world's earliest treatise on international law as a separate topic'.[23]

Al-Shaybani's treatise confirms that the Islamic Law of nations was a discipline that really existed in Islamic jurisprudential writings and practices, and not simply in the Qur'an or the tradition of the Prophet. As these writings antedate the writings of the Spanish Francisco de Victoria (also written Franciscus de Victoria or Vitoria, d.1546), the Dutch Hugo Grotius (d.1645) and Samuel Puffendorf (d.1694) and any other major European exposition of the subject, the rational question that remains is about the means of the connection or the link between these two bodies of higher learning. Did the Spanish theologians such as Victoria or the Dutch jurist Grotius who were commonly considered as the inventors of the first body doctrine of the law of nations, have any knowledge of or inspiration from their predecessors' Islamic works on the topic? The previous chapter in this book demonstrated the contributions of Islamic philosophy and law to the philosophy and law of the Renaissance and Enlightenment in Europe. Appreciative references to the Qur'an and to Islamic Law are frequent in the writings of Montesquieu.[24]

In terms of the development of European international law and the contribution of Islamic jurisprudence to Grotius' thought on the law of nations, suffice it to mention that among the authors cited by Grotius (d.1645) were the Arab–Spain philosopher Averroes (Ibn Rushd, d.1198), the Italian theologian Thomas Aquinas (d.1274), the Sicilian canonist Abbas Panormtanus (d.1445), the Spanish jurist Franciscus de Victoria (d.1548), and the Spanish Jurist Ayala (d.1584).[25] The position of Averroes (Ibn Rushd) in European philosophy and law was outlined in Chapter 4. In reference to the development of international law, Averroes' works on Islamic Law as well as his commentaries on Aristotle's works were frequently used by Grotius in his book on the law of nations.[26]

Furthermore, Victoria (d.1546) was a notable Spanish professor of theology at the University of Salamanca where he incorporated the theology of the Arabist Raymund I (1126–1151) and Thomas Aquinas (1225–1274) in his lectures, thus helping to initiate the use of their thought as a principal theological bases for the Catholic Church in the modern times.[27] These two great scholars, in addition to the Spaniard Ayala (d.1584) to whom Grotius also referred in the *Prolegomena*, were well aware of the theological and jurisprudential writings of Muslims, specially, al-Kindi, Ibn Sina (Avicenna), al-Ghazali and Ibn Rushd.[28] Victoria, for instance, consulted reason with revelation as explained by Raymund I and Aquinas who specialised in natural law. Their conceptions of sovereignty and perfection in the natural sphere with its own natural law known by reason were applied by Victoria to the relationships between Spaniards and with people in other nations, for example, the relationship between Christians and non-Christian others. He observed that the law of nature constitutes, among other values, the values that generated the mutual relationships between all human beings. For him, a 'just war' should not be fought for extension of the empire but only for causes

provided in natural law, because only these laws equally bind all human beings. He maintains that the 'just war' should not be used as a means to convert others. The relationships between Christians and non-Christian others should not be motivated by conversion to Christianity. For Victoria, converting others to Christianity should not be by the force of arms: 'Difference of religion is not a cause of just war'.[29]

This exposition of Victoria was considered by some writers as a remarkable step towards the later formulation of the law of nations by the Dutch Hugo Grotius. Victoria, Thomas Aquinas and Ayala's contributions then antedated Grotius' *De Jure Belli ac Pacis* of 1625 by more than a century, not to mention many other Spanish notables of that epoch who were too close in time and space to the recent Islamic civilisation in Spain and were cited by Grotius. This left no option other than to accept that Victoria, like Thomas Aquinas and Ayala, was well aware of the relevant portion of Islamic learning. In addition, 'Victoria's Political Writings', edited by Anthony Pagden and Jeremy Lawrance (1991), reflect the inspiration of Islamic international law.[30] These notables must have inspired Grotius, as he also admitted by citing their writings.

Furthermore, Grotius's book *De Jure Belli AC Pacis* of 1625 already made a number of remarks that indicate the inspiration and influence of Islam on Christendom. Grotius was contented to remark that the practice of the Greeks and his contemporary European states were not really the source of his knowledge. In the *Prolegomena* (preface) he has written what he observed in his time that

> [T]hroughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight cause, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.[31]

Grotius was also not entirely unaware of Islamic International Law; in Book III, Chapter 10, his awareness of Islamic Law was admitted in words like these:

> Thus God says He is not pleased with the fasting of those who held prisoners that had been wrongfully captured; and the king of Nineveh, in proclaiming a public mourning, ordered that men should cleanse their hands of plunder, being led by nature to recognize the fact that, without such restitution, repentance would be false and in vain. We see that this is the opinion not merely of Jews and Christians, but also of Mohammedans.[32]

In Chapter 10 (Article 3) he also mentioned *postliminium* – the principle right recognised by international law that essentially mitigates the tragedy of war, wherein persons and things taken by the enemy are restored to their former state, when coming again under the power of the nation to which they belonged – which was known to Muslim law.[33]

These writings left no choice but to accept the contribution of Islamic thought to the International Law. As a matter of fact, Weeramantry, the Monash University Professor of Public International Law, and who is currently at the Bench of the International Court of Justice in Hague, argues persuasively that it was the influence of Islamic International Law that served as the triggering factor in the development of the Western counterpart. Weeramantry provided decisive evidence of the influence of Islamic thought on Grotius. Western scholars in the fifteenth and sixteenth centuries were well aware of Islamic literature and sciences through scholars and writings from Spain, France and Italy. Grotius' book *De Jure Belli AC Pacis* was written in France where libraries were filled with materials on Islamic civilisations. Grotius provides a host of circumstantial evidence indicating that he was influenced by Islamic scholarship even though he always stops short from acknowledging it.[34] In Book I, he speaks of the laws of 'the whole posterity of Abraham' and 'the descendents of Ishmael', and footnoted his observation about what he calls Homeritae (also more accurate Himyarites, the Arab Kingdom in south Arabia or now Yemen).[35] In Book II, on the right to sell, he says 'Of the Nabataean Arabs Strabo says: Some goods it is permissible to import, but not others'.[36]

In addition, the world of Grotius 'was very small' and, as observed by Scott, it consisted of the early seventeenth-century 'Europe which was confronted by the Ottoman Empire, the home of Islam'.[37] Closer to his time, the siege of Vienna in 1529, which was followed by the treaty of 1535 between Suleiman (Sulayman) the Magnificent and the King of France, might have drawn Grotius' attention. It is difficult to consider that Grotius' thinking on the laws which regulate the relationships between the nations of that epoch was not informed by the culture of those nations or the attitudes of their laws which were the subjects of his pioneers such as Thomas Aquinas and Victoria.

Through the influence in global intellectual life and communications, the present law of nations is considered Western, or more precisely, European. However, the European law of nations took several centuries to develop until it received its current status. Its development began as a European law and was first based on the necessity of regulating the relations between the newly emerged sovereign states which were also deeply concerned about the need for and possibility of the 'temporal unity of the Christendom'. It was from this idea that 'the later European jurists took the view that their law of nations was limited to the Christendom only'.[38] This law, which was essentially limited, continued for more than three centuries to govern the relationships between European nations, before it was developed into law of a wider circle, nations no longer European or Christian alone. Thus, prior to this latter development, the stand of the law of nations was but an echo of the time of regionalism.[39] Modifications of this stand have come later, and the contribution of Islamic thought in the modification is mostly applicable. The waves of knowledge continued to flow with the sun light from the East to the West and from Spain to Paris and Rome. It is not an overstatement to claim that the later status of the law of nations has received impetus from a series of developments that were inspired by the Islamic ideals and practices to take the current shape.[40]

In terms of the present form of the law of nations, a number of writers, according to Khadduri, have claimed that this law is applicable for all humankind. Some have observed that this public law, in its present form, has outgrown traditional limitations; its scope is limited and cannot meet the needs of the rapidly growing world community. Some have emphasised that this law is not applicable to all humankind because of the fact that the law does not include human individuals but only states. Others have seriously 'deplored its inadequacy to serve as an expression of the life of a true society of nations'.[41] The following might illustrate the point of such deficiencies.

More recently, these deficiencies were studied by the United Nations itself and were outlined by its commissions in their 'Reports' from 2000 to 2005. The study began in 2000 under the title 'Risks ensuing from fragmentation of international law', but in 2002, the title of the topic was changed to 'Fragmentation of international law: difficulties arising from the diversification and expansion of international law'.[42] In 2003, the study group suggested the need for further studies among which were the following topics:

a   'The function and scope of the *lex specialis* rule and the question of self-contained regimes';
b   'The interpretation of treaties in the light of any relevant rules of international law applicable in the relations between the parties' (art. 31 (3) (c) of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community;
c   'The application of successive treaties relating to the same subject matter' (art. 30 of the Vienna Convention on the law of treaties);
d   'The modification of multilateral treaties between certain of the parties only' (art. 41 of the Vienna Convention on the law of treaties);
e   'Hierarchy in international law: *jus cogens*, obligations *erga omnes*, article 103 of the Charter of the United Nations, as conflict rules.'[43]

The result of this study is comprehensively detailed in a lengthy report which cannot be dealt with in detail given the limited space of this chapter. Suffice it to refer to the comments made by this study on the 'Function and scope of the *lex specialis* rule and the question of self-contained regimes' with special focus on the expression 'regionalism'. It appeared that while the expression 'regionalism' did not figure in treatises of international law; it was often raised in discussions concerning the universality of international law, especially in the context of its historical development and the influences behind its substantive parts. The word 'regionalism' is usually understood in at least three distinct ways, namely:

a   as a set of distinct approaches and methods for examining international law;
b   as a technique for international law-making;
c   as the pursuit of geographical exceptions to universal rules of international law.[44]

Focusing on 'regionalism' as a set of approaches and methods for examining international law was the most general and broadest sense. 'It was used to denote particular orientations of legal thought or historical and cultural traditions. Such is the case with the "Anglo-American" tradition or the "continental" tradition of international law, or "Soviet" doctrines or "Third World Approaches" to international law'.[45] The study also traced 'the sociological, cultural and political influence that particular regions have had on international law'.[46]

This regional influence does not exclude the inspiration or contribution of the Islamic world. It also indicates that the more powerful states have the capacity to command attention through their influence in global intellectual life and communications. Thus, the present international law is loosely termed and still some way from the criteria of universality and applicability to all humankind. It does not deal with human individuals but states. According to the United Nations' *Report of the International Law Commission* (2005), the questions of 'universalism' and 'regionalism', in the context of human rights law, have raised some significant 'philosophical questions of cultural relativism'.

The relationships between 'universalism' and 'regionalism', in the context of the collective 'security system' under Chapter VIII of the Charter of the United Nations, have also 'raised the question of the priority of competence between regional agencies and arrangements and the Security Council in taking enforcement action'.[47]

In the case of 'trade', the United Nations' *Report of the International Law Commission* pointed out that 'regionalism' generally fell under the problem of *lex specialis* in many spheres of international relations. Thus, in the sphere of trade 'regionalism' has shown great 'influence' on 'the general law' in such great measure that it needed special highlighting. In this regard, the practices of the 'European Union' and other 'States' in the American continent were especially emphasised. The expressed opinion was also that 'a study on the role and nature of European law would be worthwhile'.[48] Therefore, the *Report of the International Law Commission* (2005) has emphasised 'regionalism' as a privileged forum for international law-making as follows:

> The international law-making perceive regions as privileged forums for international law-making because of the relative homogeneity of the interests and actors concerned. It is sometimes suggested, for example, that international law should be developed in a regional context, since its implication would thus be more efficient and equitable and the relevant rules would be understood and applied in a coherent manner. Regionalism in this sense is often propounded by sociological approaches to international law. No doubt it is sometimes advisable to limit the application of novel rules to a particular region. Much of international law has developed in this way, as the gradual extension of originally regional rules to areas outside the region.[49]

Thus, the nature of the international law finds it difficult to free itself from the paradigm of regionalism. It has received a great development and expanded this

law beyond its immediate nature of European background. The scope of this law has also been developed, but its universality and applicability to humankind is still like a mirage in the desert that always remains just ahead. This law is admittedly imperfect; it is just a reflection that mirrors the nature of its source and the world society endeavours to perfect it by a continuing process of legislation.

The nature of Islamic International Law derives from the nature of its source, namely, the Qur'an and the *sunnah*, the primary legal source of the *shari'ah*. It was from these sources that the jurists have developed the Islamic International Law as a vital part of the general Islamic legal system. It was developed from the same set of higher norms and standards and depends upon the same sources upon which municipal law depends. It is but an extension of the sacred law; the *shari'ah*; designed to govern the relations of human beings, individuals and groups, political or others, inside or outside the territory of Islam, on the basis of justice that is not limited to economics or governance and not confined to a particular sphere of human rights or human affairs.[50] Islamic International Law is not a separate system, but a vital branch in the Islamic *corpus juris*, binding upon all who believed in Islam as well as upon those who sought to protect their interests in accordance with Islamic justice. Islamic International Law described by Khadduri's analogical words are as follows: 'Just as the *jus gentium*, an extension of the *jus civile*, was designed by the Romans to regulate their relations with non-Romans, so was the *siyar*, an extension of the *shari'ah*, designed to govern the relationships of Muslims with non-Muslims at a time when Islam came into contact with them'.[51]

Consequently, the nature of Islamic International Law stems from the nature of the general Islamic conception of the universe, life and humanity, and from the nature of peace as perceived in Islam, namely, peace through law; peace of conscience; peace at home; peace in society; and world peace.[52] To Islamic International Law world peace is rooted in local or regional peace. This mirrors the capacity and inclination of Islamic International Law to address the sensitive questions confronting the international law-makers on the nature and the scope of the relations between 'universalism' and 'regionalism' whether in the context of human rights law or other contexts, as previously outlined by the *Report of the International Law Commission* (2005). The peace of conscience whether that was the conscience of society (civil or political), or the conscience of human individuals (rulers and ruled), may illustrate the point. Peace of conscience is able to address most serious problems of our uneven world that submitted the third of this population to hunger and starvation, and another to disease, oppression, repression and humiliation. Peace of conscience is but a ring in the chain of peace from individual to society and the world. This stems from the physical and spiritual nature of Islamic International Law which considers the harmonious unity of all religions in the religion of God, and the unity of humanity in their nature, origins and inclinations. It considers human life as one integrated unity in the place and space; a unity in the desires and yearnings; a unity in the *fitrah* (the unchangeable constitution that God made innate to the universe, life and humanity); and a unity in regard to matter and spirit. As a mixture of matter and spirit, life is physically

and spiritually capable of development if rightly observed and carried through the law. It is from these general wellsprings that Islamic International Law was stemmed and developed as a discipline and as a vital part of Islamic legal system.

The approach to international law as taken in the doctrine and practice of the general Islamic legal system devotes great importance to tradition and history. Legal history is vital in the tradition of Muslim jurisprudence since the law is the revealed will of God by which the Islamic state is shaped and is the controlling mechanism. Searching for the religious basis of Islamic International Law leads to the Qur'an (16:90–92) and this command:

> Allah commands justices and the doing of good – Fulfil the covenant of Allah when you have entered into it, and break not your oaths after you sworn them, and after you have made Allah surely over you. Lo! Allah knoweth what you do. And be not like unto her who unravelleth the thread, after she hath made it strong, to thin filaments, making your oaths a deceit between you because of a nation being more numerous than another nation.

The verse speaks the language of law, namely, do this and do not do that (i.e. fulfil the covenant – and do not break your oaths). It also singled out one of the most pressing and sensitive issues of international law of our time, the ability of the more powerful states to flout their contractual and other obligations towards the weaker. International law has recently tilted towards concern for unequal treatment of people, as some agreements have turned into valueless pieces of paper when they came up against the interests of the more powerful states. Vetoes are allowed by the elite states and their rights under the Sun are not the rights of the weaker states. Islamic International Law, on the other hand, deeply respects vows, treaties and agreements and warns against the serious consequences of their violation. Here is another Qur'anic statement that deals with the sanctity of treaties in terms that the righteous is not to turn towards the East or the West but rather to fulfil the contract that one made: 'It is not righteousness that ye turn your faces towards East or West, but it is righteousness – to fulfil the contracts which you have made' (Qur'an 2:177).

The basis of Islamic International Law in the *sunnah* or the tradition of the Prophet can be found in his Treaties of al-Aqaba in 620 and 621 or his Treaty of al-Hudaybiyyah in 628, for example. Literature knows about the affairs of the Prophet and his treaties more than what allegedly has been said about the affairs of the recent Nuclear Non-proliferation Treaty of 1968. The literature knows, at least, that the commitment and obligations of the al-Aqaba and al-Hudaybiyyah Treaties were fulfilled.[53] The Prophet was the ruler of the Islamic state and had received ambassadors and delegations from the Roman, the Persian, the Egyptian, the Abyssinian and other states; and had also sent his delegations abroad.

Islamic International Law became formulated after the death of the Prophet as the jurists set up certain regulations to guide the interpretation of the Qur'an and extract laws. Among these regulations are: (i) the Qur'an should interpret the Qur'an, that is, verses interpret each other; (ii) the *sunnah* should interpret each

other in the light of the Qur'an; (iii) the Qur'an and the *sunnah* should not contradict each other; (iv) in any case of contradiction between these two sources, only the Qur'an is considered. Applying these regulations, jurists used some tools among which are: the consensus of juristic opinion (*ijma*'), legal reasoning (*ijtihad*), and reasoning by analogy (*qiyas*). Jurists arrived at each of these tools also from the Qur'an and the *sunnah*.[54] In order to achieve that, and because every word should be explained with its real meaning and with reference to the context, jurists employed their linguistic knowledge and grammar. The more they focused on the Qur'an and the *sunnah*, the more the jurists find the rules and legal ideas required by the continual expanding Islamic state. All these sources provide for the mainstream of Islamic International Law and Islamic legal system in general.[55]

Constituents of Islamic International Law

Islamic International Law covers many topics of the law ranging from the law of war and peace to human rights and humanitarian laws which are sensitive subject matter of modern treatise. The main branches of Islamic International Law are first, Private International Law (*al-qanun al-dawli al-khass*), which deals with topics regulating the relations of Muslims with foreigners living in the Islamic state. It also involves some segments of human rights law and humanitarian law. Juristic discussion and applications of private international law were going in step with the development of the Islamic state, as many peoples have come under its sway. Humans are humans and that the problems of conflicting laws could occur as much between Muslims and foreigners, or between foreigners of one religion, as it could arise between Muslims themselves. The second branch of Islamic International Law is termed 'General International Law' (*al-qanun al-dawli al-'am*) and deals with the relationships between Islamic and foreign states. The many complexities of these branches were the subject of discussion between jurists with an open eye to the circumstances of peace and war.

The *jihad:* notion and qualification

The actual Qur'anic words for 'war' are *al-harb* and *al-qital*. Qur'anic words usually have their own connotations, but some writers unknowingly have used these words interchangeably with the word *jihad*. As a result, a great deal of misunderstanding regarding the attitude of Islamic Law to international relations has been induced through confusion regarding the Islamic concept of *jihad*. So before observing the law of war, a brief outline of what is *jihad* and what is war for which the law was made is critical.

The Qur'an occasionally makes reference to 'war' (*harb*), frequently to 'fighting' (*qital* and other derivations from the root *q-t-l*), but more frequent reference is made to 'struggle' or 'striving' (*jihad* and other derivations of the root *j-h-d*). In some passages, these words could be used in a symbolic sense rather than literal.

Etymologically, the word *jihad* relates to the exertion of effort. As there is exertion, then there must be some sort of strong resistance. In other words, the

exertion of effort indicates the existence of strong opposition or resistance. In this sense, a person may use *jihad* to describe his efforts to get his personal habit of gambling under control. A pre-Islamic poet, for example, may use the word *jihad* to describe his efforts to get his passion under his control after the departure of his beloved with her tribe, leaving him alone without any hope of reunion. His passion would be the source of resistance to his effort to control himself and try to live a normal life.[56]

The Islamic conception of *jihad* does not differ in implying the exertion of effort and the presence of resistance. This exertion of efforts does not necessarily mean armed conflict or hostilities, for persons may do their *jihad* with words. Here, the exertion of efforts or *jihad*, as emphasised by Sayyid Qutb, is also limited to be only 'against oppression and injustice whether inflicted upon Muslims or non-Muslims, allies or non-allies'.[57] Thus, *jihad* is not a war to force others to believe in Islam. Freedom of belief is declared by the Qur'an in several verses the centre of which one is 'There is no compulsion in religion' (Qur'an 2:256). In this connection, the Qur'an stressed the firm relationship between the Islamic concepts of both *jihad* and freedom of belief. Based on the Qur'an, Sayyid Qutb says:

> Islam permits no Muslim, ruler or ruled, to fight against non-Muslims in order to force them to adopt Islam. Islam went for war only against oppressors in order to secure the rights to the freedom of belief.[58]

Furthermore, some verses which dealt with the concept of *jihad* in the early stage of Islam were abrogated by verses in the later stages of the revelation. For example, those rules in verse 4:87–94, which dealt with non-believers and hypocrites, were abrogated by the later rules of *sura* 9:4–14,29. Similarly, verse 9:73 which commands the Prophet of Islam 'O Prophet! Strive hard against the non-believers and the hypocrites, and be harsh against them', was reshaped by the commands of the verses 9:5,12,29,36,123 which dealt with the concept of *jihad* in the later stage of the revelation. War is permitted only against oppressors regardless of their religion, race or their colour. The Qur'an says: 'And fight against them [oppressors] until there is no more oppression and the entire *Din* [religion] will be for Allah. If they stopped, fight none except the oppressors' (Qur'an 8:39). Muslim exegetes do not limit the command of the latter verse to specific period or place or people, but 'general and continuous until the day of Judgement'.[59] Also, the meaning of the phrase 'the entire *Din* will be for Allah' in this verse is but 'freedom of belief'; the word *Din* (religion) in the verse does not mean specific religion or specifically 'Islamic religion'. The permission to fight the oppressors, does not free Muslim combatants from the order to be tolerant and generous. They must do justice and protect the freedom of belief of all citizens and secure their life against oppression: 'Fight for the sake of Allah those who fight against you, but do not be aggressive. Allah does not love the aggressors' (Qur'an 2:190).

It is not correct to consider *jihad* to exclusively mean 'war', even if that war could be war of words, given that the theory of war in Islamic International Law

considers 'peace is the rule, while war is exception'.[60] War then is a necessity that should not be resorted to. In short, it is not overstated to note that (i) translating the word *jihad* into 'holy war' which usually carries those quotation marks is not as accurate a translation as it should be; (ii) Islam did not leave Muslims to go to war and fight according to their impulses, but pointed out to them the circumstances under which, with whom fighting is legitimate, and pointed out the law governing the circumstances of war and peace; (iii) the intent of the command of all verses dealing with the issue of *jihad* and war should be observed within the context of time and place, and the safeguarding of human rights and the rights to the freedom of belief, at any stage.[61] In this connection Arthur Nussbaum writes:

> The hostility of Islam towards infidels was termed by remarkable exceptions. The Koran [Qur'an], despite the paramountcy of Muhammad's teachings, embodied the Old and the New Testaments in the Islamic creed, and Christians and Jews received preferential treatment. As 'peoples of the book' (*dhimmi*) – namely, of the Bible – they were permitted to stay in Moslem countries and to live there according to their own religions and under their own laws ... Perhaps the most impressive application of the doctrine occurred after the fall of the Constantinople, when the conqueror Muhammad II convoked representatives of the Greek Orthodox Church, of the Armenian Church, and of the Jews to tell them that they might stay in Constantinople under their own laws and the leadership of their religious superiors. Because the Orthodox Patriarch had died before the conquest, the Sultan caused the Greeks in Constantinople to elect a new Patriarch whom he treated with high honour.[62]

Furthermore, Ibn Khaldun (1332–1406), the pioneer Arab sociologist, observed that humanity has experienced wars and disasters of its own making since the beginning of human society, many of them rooted in a vengeful human imperative. He pointed out the status of the relationships between medieval states. Medieval states were not in the mode of confining themselves to a specific area or a piece of land. The rule of 'might is right' was the predominant mode of the medieval interstate settlements. Derived from their feuds, the policies of medieval states were designedly seeking continual expansion at the expense of other states whenever they found it possible.[63] The 'private wars' in Europe, the assault of the barbarians on the Western Roman Empire, or the wars between the Persian Empire and the Eastern Roman Empire might illustrate the point. It was also out of the theme of this policy that Rome became the great Roman Empire, conquered Europe and almost all the Eastern lands.[64]

The Roman Empire was then divided by the Emperor Theodosius (d.395). As early as 330, Constantinople had become the capital of the Eastern Roman Empire (Byzantium) which remained in control over the most fruitful lands of the Arabian Peninsula and its trade routes, except the barren area and its small towns such as Mecca and Medina. Other than this fruitless area, Byzantium controlled vast areas from Yemen, Syria, Palestine, Asia Minor, Egypt and other North

African lands, to Constantinople and its surroundings, and further to Greece, southern Balkans, Cyprus, and the northern shores of the Black Sea, Sicily, and large parts of Italy, including for about two centuries, Rome.[65]

In the context of such a policy of expansionism the security of the newly established Islamic state was critical. It is within the theme of this context that the attitude of *jihad* should be interpreted. There is a great deal of writing on the notion of *jihad*, but much of this writing has interpreted *jihad* in the world of the early Islam through the prism of today's world. Much of what has been written either applies the attitude of *jihad* in the medieval world in the same way to the modern time, or applies the attitude of the modern international law in the same way to the medieval world and its mentality. In either case such uncontextualised interpretation will certainly lead to misunderstandings that are incapable of dealing with the issues at hand.[66] The rule of 'might is right' is no longer acceptable, but has not entirely disappeared. Much of what has been written about *jihad*, particularly after 11 September 2001, shows a strong tendency to suggest that the attitudes prevalent in the early days of Islam are the same attitudes that prevail even today.[67]

In the medieval period the term *dar al-Islam* (territory of Islam) or the *pax Islamica* were used to describe Islamic countries as well as non-Islamic territories held under Islamic sovereignty. The rest of the world fell within *dar al-harb* (territory of war). Using *jihad* within the theme and framework of these terms is simply wrong and evidently misleading. First, these terms (*dar al-Islam* and *dar al-harb*) are not Qur'anic terms, but were introduced by a number of jurists as labels of classification and a means for organising their jurisprudential thought concerning the territories under the rule of Islam and the territories out of Islamic rule. Therefore, we find al-Shaybani, the author of *Kitab al-Siyar al-Saghir*: *Introduction to the Law of Nations*, and *Kitab al-Siyar al-Kabir*: *A Treatise on the International Law*, did not use these terms constantly. He simply uses terms like '*ahl al-hrab*' (people of the territory of war), and '*dar al-harb*' (territory of war) interchangeably, and sometimes uses '*ahl al-Islam*' (people of Islam) or just one word '*al-dar*' (territory) in place of (territory of Islam).[68]

Second, despite the fact that the two terms '*dar al-Islam*' and '*dar al-harb*' are not Qur'anic, the use of these terms by a number of jurists could be seen as a policy to divide the world into zones, namely, Islam and non-Islam or peace and potential war zones. However, one should note that this practice was not only unique to Muslims, but also was the policy of the most powerful states or the empires which were surrounding the newly established Islamic state at the time.[69] For Muslims, the two zone policy was not a religious policy, as such, and was not a means of aggression, oppression or conversion by force. It was rather the required policy for providing a basis for security which was the most pressing issue of the states of that time, and all times. It is not difficult to find a great deal of medieval accounts on what has come to be considered, by modern states, as a policy called 'pre-emptive strike', which was also a policy designed and practically enforced by the medieval Persian, Roman, Byzantine and Islamic governments. As to Muslims in this connection, al-Waqidi (d.207/822), in his *al-Maghazi*

(expeditions) which was edited by Marsden Jones (1966), pointed out in detail that when Muslims learnt the immediate danger of the Byzantine's preparation to invade Tabuk, the Muslim deliberation led by the Prophet himself resulted in pre-emptive strike to counter an overwhelming danger of an attack by such a strong Byzantine army. While Heracles left his army to march in demand of Tabuk and himself resided in Homs in Syria, the Prophet himself led the Muslim army to Tabuk in the very hot summer and encouraged Muslims to fight (*jihad*) to protect the state. Al-Waqidi also outlined the Qur'an revealed in connection to this particular event.[70] Thus, *jihad* could be interpreted as defensive not offensive, and that the statements in the Qur'an on *jihad* should be interpreted within the context of that time, not through the prism of today. In terms of the attitudes of the policies of the empires, contemporaries to Islam of that time, the Persian–Byzantine policies were but attacks and counter attacks. Moreover, the Byzantine empire conquered most of Italy including Rome itself. These actions of the Byzantine empire reflect policies of International Law that do not differ greatly from the mode and attitudes of the principle of the 'might is right'.[71]

It was out of the attitudes of this predominant theme that the Muslims have interpreted the territory of war (*dar al-harb*) and *dar al-Islam* (territory of Islam) as a policy of necessity. This two-zone policy was also adopted by Muslims from their surrounding empires. The *Pax Romana* and the *Pax Persiana* were also policies that divided the world into two zones of peace and war and supported the enforced application of the legal system of the conqueror and its protection over the areas under its control.[72] It was out of this tradition that the latter *Pax Britannica* has come to assert itself on the world stage as a policy of the great empire. This empire can be seen in the same way as the medieval *Pax Islamica* which prevailed over the area which is called *dar al-Islam* (territory of Islam). The Muslims added to the two zones a third one termed *dar al-sulh* (territory of peaceful arrangement) which is also called *dar al-'ahd* (territory of covenant). This means that the territory of Islam (*dar al-Islam*) recognises the territory which is not under Muslim sovereignty. Because the latter did not recognise the former, potential hostility existed. Neither the Persian, nor the Roman, nor the Byzantine law did the same as refusing to recognise the sovereignty of the new Islamic state or its right to exist. The Islamic state considered the territories of those superpowers as territories of potential war (*dar al-harb*), however, it did not exclude the possibility of peaceful arrangement or covenant with them. Their territories, then, were not exclusively considered as territory of war but also peaceful arrangement and covenant was possible. Thus, other than the territory of Islam (*dar al-Islam*), there are: (i) territory of peaceful arrangement (*dar al-sulh*), (ii) territory of covenant (*dar al-'ahd*), and (iii) territory of war (*dar al-Harb*). Those who seek peaceful arrangement or covenant with their surrounding powerful states cannot be considered as invaders, and their *jihad* cannot be observed as aggression or offensive, but defensive. It is in this context that the attitude of *jihad* as well as those expressions *dar al-Islam* and *dar al-harb* should be observed.

The concept of *jihad* cannot be understood out of its historical context, and can easily be misinterpreted if approached in terms of latter day accidental conceptions.

The necessity to interpret carefully scriptural passages dealing with war is not limited to the Qur'an. For example, the Hebrew Scriptures, accepted by Christians as The Old Testament, contain in the book of Deuteronomy 20:10–20 the following instructions:

> When thou comest nigh unto a city to fight against it, then proclaim peace unto it. And it shall be, if it make thee answer of peace, and open unto thee, then it shall be, that all the people that is found therein shall be tributaries unto thee, and they shall serve thee. And if it will make no peace with thee, but will make war against thee, then thou shalt besiege it: And when the Lord thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword: But the women, and the little ones, and the cattle, and all that is in the city, even all the spoil thereof, shalt thou take unto thyself; and thou shalt eat the spoil of thine enemies, which the Lord thy God hath given thee. Thus shalt thou do unto all the cities which are very far off from thee, which are not of the cities of these nations? But of the cities of these people, which the Lord thy God doth give thee for an inheritance though shalt save alive nothing that breatheth: But thou shalt utterly destroy them; namely, the Hittites, and the Amorites, the Canaanites, and the Perizzites, the Hivites, and the Jebusites; as the Lord thy God hath commanded thee: That they teach you not to do after all their abominations which they have done unto their gods; so should ye sin against the Lord thy God.

However, any war in Islam is subjected to many qualifications, the centre of which was the freedom of belief and the rights of non-Muslims in general as will be shown in the following discussion.

The attitude of Islamic Law towards war

In consonance with other conventions and agreements on laws of war, Islamic Law provides proper safeguards against unnecessary damage to life and property. Modern humanitarian law is seeking to provide increasing protections for civilians, non-combatants and prisoners of war. In European international law there is a strong interest to outlaw all weapons of mass destruction and those that cause harm indiscriminately to civilians and combatants. This notion has been accentuated since the Second World War and was put in practice to some extent in the past few decades.[73] In this regard, Islamic International Law is a pre-existing reality and its theory and practice already include the experienced peaceful coexistence with non-Muslims. There is a great deal of literature on the practice of Muslims and their strong support for the sanctity of treaties with non-Muslims. Muslim countries are seeking to free the world from weapons of mass destruction and to free humanity from ill-informed policies. Regarding the treatment of enemies in war, Islamic International Law having a set of principles that break new ground for their fairness towards one's enemies is an old one in many cultures.

In connection with the attitudes of Islamic International Law towards war Arthur Nussbaum writes:

> Moslem ideas on warfare are in some respects superior to Christian conceptions of the same period. A proclamation of Caliph Abu Bakr (d.634), Muhammad's first successor, is significant. He warns his victorious soldiers to spare women, children, and old men; he exhorts them not to destroy palms and orchards, or burn homes, or to take from the provisions of the enemy more than needed; and he demands that prisoners of war be treated with pity. Ransoming and the exchanging of prisoners were far more widely practiced in the East than in the West, and in a number of cases prisoners received their freedom on a large scale by acts of generosity. Booty had to be delivered to the authorities for distribution, the treasury keeping one-fifth of it – a rule adopted, surprisingly enough, by the *Siete Partidas* of Alfonso X of Castile.[74]

The attitudes of Islamic International Law towards war and peace can be summarised as follows:

1   Islam recognises a diversity of nations within the world community. In this connection, the Qur'an provides a number of references to the division of the world into a multiplicity of nations: 'And if thy Lord had willed, He verily would have made mankind a single nation, yet they cease not differing' (Qur'an 11:118). Elsewhere, 'Had it been Allah's will, He could have made them all one nation' (Qur'an 42:8). The natural result of multiplicity of nations is a wide variety of complex interests, views and political groups of psychological, political, economic and social differences. The actual relationships between these nations are the natural result of the need for coexistence between all nations. In this context the law of nations works to regulate the relations between nations during peace as well as during war period to promote justice and peace. The law of nations makes peace the rule and ultimate objective, while war is the exception.

2   Islamic Law of war orders Muslims to respect the rights of foreigners whether combatants or civilians during the course of hostilities.[75]

3   During the periods of peace or truce, which were both recognised in law, recognition was accorded to the authorities of the foreign state.[76]

4   If a Muslim entered such territory or if he was domiciled therein, he should respect the authority of the rulers of that territory and obey its laws. If there was a conflict between those laws and his own, his obligation was to the latter.[77]

5   Under Islamic International Law Muslim individuals have the right to grant any foreigner protection by a one-sided act known as the covenant of safe conduct (*'ahd-ul-aman*) by which the foreigner's life, possessions and businesses became safe and secure (*musta'man*). The act is binding upon the whole community; any violence against the *musta'man* is illegal.[78]

6   If a foreigner enters a Muslim territory or chooses to live therein they should respect the authority of the rulers of that territory and obey the laws which

do not conflict with their religious belief (i.e. obey the civil law). The foreigner's political and religious freedom is completely secured by the law. Thus, the foreigner does not pay *zakat* which is a religious duty, but does pay taxes and can choose to switch to *zakat* without changing his religious belief.[79]

7   A prisoner of war is to be accorded a generous treatment and could be set free (articles 108–109 in Khadduri's translation).[80] In this connection, the Qur'an commanded that after you subdued and captured them 'thereafter is the time for either set them free as a favour or let them ransom themselves until the war terminated' (Qur'an 47:4). A prisoner *qua* a prisoner cannot be killed. The Prophet carried out this injunction during his lifetime. In the battle of Badr, which was the first war in Islam, seventy were taken prisoners; some of them were set free as an act of favour, but the high ranks and leaders were ransomed while the war with Quraysh was still in progress. In the battle of Hunayn and al-Ta'if where a large number, about 6,000, were taken captives, all were set free. The form of ransom adopted was, in some cases, that every learned prisoner should teach ten illiterate young Muslims how to read and write; some specials paid ransom ranging from one to four thousand dirham; some others were just set free for nothing in return. Regarding ransom, al-Waqidi reported, with a sequence of references that goes back to the Prophet's wife 'Ayishah, that 'When the Meccans began to ransom their people, Zaynab, the daughter of the Prophet, also sent to ransom her husband al-'As Ibn al-Rabi'; she [Zaynab] sent her souvenir necklace which was a gift of her marriage given to her by Khadijah, the Prophet's first wife. When the Prophet saw the necklace recognized it and prayed for Khadijah, and said: "If you see [that is possible] to set her husband free to her, and to return her property, do it. They said "yes" and they freed her husband and returned the necklace to her'.[81]

8   Prisoners of war must also be fed and fed well according to the Qur'anic injunctions: 'Feed for the love of Allah, the indigent, the orphan and *the captive*, saying, "We feed you for the sake of Allah; no reward do we seek from you nor thanks"' (Qur'an 76:9). Acting according to the Qur'an, the Prophet laid down the rules by saying 'Take care of the prisoners and treat them humanely.'[82] Elsewhere, the Prophet also said: 'They are your brothers. Allah put them in your hands; so whosoever has his brother in his hands, let him give him to eat whereof he himself eats and let him give to wear what he himself wears, and do not impose on them a work they are not able to do, and if you give him such a work, then help them in execution of it'.[83] Among the prisoners, Abu al-'As Ibn al-Rabi' and al-Walid Ibn al-Walid Ibn al-Mughirah testified that 'If we were having lunch or dinner they usually favoured me by giving me bread while they are short of it – even whenever one of them finds a piece [of bread] he quickly hands it to me; they walk and carry us [on their horses and camels].'[84]

9   A prisoner could be tried and punished for his crimes, not merely for belligerency. This was carried out by the Prophet himself. He tried al-Nadr

Ibn al-Harith, after the battle of Badr, and was killed, not because he was a combatant or war prisoner but because of the crimes that he committed against the Prophet himself. He also pleaded guilty.[85]

10   For example, Amr Ibn Abdullah al-Jumahi (Abu 'Azzah) was a horseman and committed a few crimes against a number of Muslims, individually, including the Prophet himself as a human being. He also was an influential poet who used his poetry to mobilise the masses against the Prophet. Poetry was an influential and effective means of mobilisation like the mass media of our time. It has happened that al-Jumahi also fought against the Prophet at Badr but he was captured. He was treated as a prisoner of war and was set free on the basis of his pledge that he will stop to persecute Muslims and will not return to fight against the Prophet anymore. However, he did not stop his persecution and continued to employ his poetry to mobilise the masses to fight against the Prophet and accompanied them to the battle of Uhud where he was recaptured as a prisoner of war. In his trial, he said: 'O Muhammad let me free, I was forced to come'; Muhammad's reply was 'Where is your covenant, you cannot go to Mecca to do what you did once again'. This one was actually 'killed'.[86]

11   The capturing state is fully responsible for maintenance of the prisoners and must respect their dignity.[87]

12   Relatives are entitled to visit prisoners of war. Here is an example carried out by the Prophet's wife. Ummu Salama, while attending the 'mourning at the house of Afra', learnt that her Meccan cousins had become prisoners of war. She saw them entering the Medina, but did not speak to them before asking the Prophet. On her way back, she met the Prophet at the house of 'Ayishah and asked him, 'O Messenger of Allah, my cousins are seeking to come to my house, so, I do treat them as guests, kempt their hairs and bring them to neatness and tidiness shape; I did not like to do that without your order (*asta'miruka*)'. The Prophet said, 'I do not dislike anything of that! So, do of this whatever you like'.[88]

13   Prisoners of war are entitled to legal representatives. This was carried out by the leading Muslims during the Prophet's life. For example, Abu Bakr, 'Umar and al-Miqdad, stood as legal representatives. In this connection, al-Waqidi (d.207/822) reported the following account which explains the position of the prisoners, their legal representatives, and how the Prophet was taking his decisions on such matters. In the aftermath of the battle of Badr, according to al-Waqidi, the Meccans invited Abu Bakr and 'Umar, one after the other, and demanded from them to stand in defence of their prisoners of war. Both men, Abu Bakr and 'Umar went back to talk to the Prophet on the matter. He was the supreme justice, before him stood Abu Bakr in defence of the prisoners, while 'Umar stood as persecutor. The positions of Abu Bakr and that of 'Umar are not different, in a sense. Both men deeply believe that the Prophet is right and those prisoners who came to fight against him are wrong. Both men are very supportive of the Prophet and saw the case of the prisoners of this first war was critical to the State and its well-being. It was that all prisoners were combatants and were relatives on all sides, including the

Prophet himself. At the hearings, before the Prophet, while the public around was listening, Abu Bakr stood defending the prisoners saying: 'O Messenger of Allah, among your people [Meccan prisoners] are the parents and descendents; the uncles and brothers; the fathers and cousins; the far of them is nearest to you; set them free may Allah be pleased with you; or let them ransom themselves to save them from the hellfire and their payment will support the Muslims; may Allah bring their hearts to you'. The Judge, the Prophet kept silent. Abu Bakr took a side and 'Umar stood up in his place, before the Prophet, and said: 'O Messenger of Allah, they [prisoners] are the enemies of Allah; they gave their lie to your truth; they came and fought against you; they expelled and deprived you from your home; they are the heads of Quraysh and leaders of wrong; killing them will fail Quraysh [from coming back to fight against you], and will enhance the position of the Muslims.' The Prophet also kept silent. The hearing repeated a few times in a few days without change in the positions of either the defence or persecutor. The Prophet did not answer on any side. Finally, the Prophet went inside his apartment for an hour. When he came back, he asked the crowd about what they have heard from Abu Bakr and 'Umar. Their view was divided between supporters of Abu Bakr's view and supporters of 'Umar's view. 'The Prophet made his decision to accept ransom and explained the positions of Abu Bakr and that of 'Umar through analogical examples from the earlier scriptures as mentioned in the Qur'an'.[89]

14   Prisoners of war have the right to draw up their last wills. During the Prophet's time, the wills of prisoners were transmitted to the enemy through appropriate channel.[90]

15   In theory, the state of war does not always need to take the form of actual hostilities. It rather could take a form of mere non-recognition or even less, for regimes within the *dar al-harb* (territory of war) could conclude treaties with Islamic countries and enter into various forms of negotiation. The position was perhaps analogous to the *de facto* recognition accorded in modern international law to a regime which is not fully recognised *de jure* but is sufficiently established for its existence to be regarded as a fact.[91]

16   The concept of *jihad*, which is seen by some as not only 'war' but also as a means of force and expansionism or a means by which the *Pax Islamica* could spread to territories of the *dar al-harb*, does not necessarily mean actual hostilities or violent attack. It could be a cold war; a war of words or psychological warfare. The *jihad* could therefore take the form of persuasion.[92]

17   There is strong juridical support for the argument that the Prophet's practice and policy on matters of war reflected a basic attitude of defence and not offence. A war of aggression, according to some classical writings, is not supported by the precedents of the Prophet.[93] The Prophet and his followers were furiously persecuted for many years by the Quraysh and its allies while there was no order to fight back. His followers were asking for his permission to fight but he rejected their request because it was no higher order yet. It was not until the higher order permitted them to fight and defend

themselves; subsequently the battle of Badr in 624 was the first. Thus *jihad* of aggression is not supported by the Qur'an or the Prophet. Indeed 'it is well known that he [the Prophet] never fought foreign wars except on two occasions – once when he was compelled to do so consequent on the assassination of his envoy to the court of Busra and the second when he invaded Tabuk, which was a defensive measure undertaken to counter an overwhelming and immediate danger of an attack by the Byzantine Emperor'.[94]

18 Islamic International Law recognises non-Islamic territories and encourages the relationships with them.[95] This recognition might illustrate the point made earlier that the division of the world into *dar al-Islam* and *dar al-harb* was a matter of intellectual classification and that the *jihad* against *dar al-harb* did not necessarily mean armed conflict or aggression and expansionism.[96] Taking this theme a step further within the context of the geopolitical realities of the new world, the classical concepts of such labels as *pax Romana, pax Persiana*, *pax Islamica*, *dar al-Islam*, *dar al-harb*, *jihad* and crusade, which were conveying some sort of perpetual state of war, have come to be anachronistic. In the context of the geopolitical realities of the new world, the Christian ideal of one nation under Christ, and the Islamic ideal of one Islamic nation have come to be impracticable. Fragmentation of the Christian and the Muslim worlds into nation-states and the need for coexistence produced a new theory of international relations, namely, a relationship of enduring peace, not a relationship of armed conflicts or hostilities. The relationships between Muslim nation-states have come to be governed by general principles of international law no different from those between a Muslim and non-Muslim state. Treaties had to be established, regimes had to be recognised *de jure* as well as *de facto*. This leads us to 'the law of treaties, which forms an impressive part of Islamic doctrine'.[97]

19 The law of treaties is not new, brought about by those new circumstances, but has been a reality already existing in Islamic *corpus juris* and in practice. The existence of the law of treaties is another qualification denoting that the classical concept of *jihad* is not and cannot be offensive but defensive. *Jihad* was a temporary legal device designed to achieve peace with the *dar al-harb* (territory of war) and *jihad* did not necessarily involve hostility or violence, but could be a war of words. Therefore, we find Muslims were more 'accustomed to a state of dormant *jihad* rather than to a state of open hostility. In the meantime, contacts between Muslims and non-Muslims, personal and official were conducted by peaceful means, although a state of war continued to exist between Islam and other countries.'[98] In connection with the law of treaties the Qur'an obliges the believers to keep their covenants even towards polytheists until the end of the term. All parties should be genuine, observe the covenant with sincerity, and should not fail each other or help anyone against the other; *a fortiori*, the same rule applies to the relations with Christians and Jews. And the Prophet's first successor, Abu Bakr (d.634) exhorted the soldiers as follows: 'Let there be no perfidy, no falsehood in your treaties with the enemy; be faithful in all things, proving your selves upright and noble and maintaining your word and promises

truly'.[99] There is no dispensation from treaty obligations, on any ground; religious or others, recommended by Islamic Law. The Qur'anic command is to 'fulfil the covenant' and 'do not break your oaths after you have sworn them' (Qur'an 16:91).

20 In Islamic Law, the rule is to fulfil the treaties' obligations, withdrawal from the treaties is the exception.[100] There was an opinion that a treaty might be cancelled ahead of its term if this was necessarily required in the interest of the Islamic state. But this is not without regulation, as a formal denunciation is required. In regard to fulfilling the obligations of treaties, Nussbaum writes 'On the whole, however, the record of Islam is definitely good on this score. The crusaders, although the aggressors, proceeded on the principle that no faith need be kept with infidels. Says the noted English historian Lane Poole, with an eye to the crusaders, "The virtues of civilization were all on the side of the Saracens." '[101]

21 Based on the Qur'an, Islamic international law promotes the coexistence of Islam and other countries through some principles meant to enhance permanent peace, the ultimate objective of Islam, rather than the perpetuation of war.[102] In this connection, the Qur'an obliges all nations, in general (*kaffah*), to 'enter into peace' (Qur'an 2:208); 'If the enemy is inclined to peace, make peace with them, and put your trust in God. Surely He is the Hearing, the Knowing. Should they seek to deceive you, God is all-sufficient for you' (Qur'an 8:61); 'If they keep away from you, and cease their hostility, and offer you peace, enter into peace with them' (Qur'an 4:90).

22 Islamic international law obliges Muslims to behave themselves anywhere they go, away from home, in their country or abroad. If they travel abroad for trade or other purposes such as to work in any country, they should show keen insight and good judgement. They should respect the ruler and the system of the country where they choose to work or to dwell. They should live according to the law of that country and not to describe that law or that country with such unnecessary words (i.e. law or country of non-believers): 'When a greeting is offered you, meet it with a greeting still more courteous, or at least of equal courtesy' (Qur'an 4:86). In this connection, the Qur'an also commands 'O ye who believe, show keen insight and sound judgment when you go out in the way of Allah (*darabtum fi sabil Allah*) and do not say to those who offered you peace "You are not believers" '(Qur'an 4:94). There is an opinion that interprets the phrase *darabtum fi sabil Allah* to mean 'war',[103] therefore, some English translators of the meaning of the Qur'an translate the phrase '*darabtum fi sabil Allah*' to read 'when you go out to fight for the cause of Allah'.[104] Their reason is the position of the verse after a few verses which speak about war.[105] However, one might disagree on the basis of the language and the position of the verse in the Qur'an along the following lines. (a) In terms of language, the words '*sabil Allah*' which translated into the 'cause of Allah' do not convey the notion of 'war'. The Arabic word '*sabil*' is '*tariq*', '*shi'ah*', which means right way, programme, rule or law. None of these connotes the notion of 'war'. Thus, the phrase

'*sabil Allah*' means the way of Allah; the rule, the programme, the law, the *shari'ah* of Allah. In this connection, translation of the word '*sabil*' into 'cause' is not accurate translation as it should be, specifically, if the language provides more accurate words like '*tariq*' (way), and *shir'ah* (*tariq*: right way), which is also used in the Qur'an. In commanding the Prophet, the Qur'an says: 'We put thee on the right way, so follow it' (Qur'an 45:18). (b) Interpreting the '*sabil*' to mean 'cause', the 'cause of Allah' generally covers this world and the other, but to make the cause of Allah to be only 'fight' is significantly wrong. In this verse, the word 'fight' is not mentioned at all, and there is not a hint that leads to it or to the word 'fight'. The Qur'an uses words such as'*harb*' (war), '*qital*' (fight)[106], but nothing of these words are used in this verse (Qur'an 4:94). If God wants people to 'go out to fight in His cause' as the translator suggests, God could use the word '*harb*' (war), or '*qital*' (fight), but He did not use any of these specific words at all. In this verse, the phrase '*darabtum fi sabil Allah*' is general and has nothing to do with words of either 'war' or 'fight'. (c) The position of the verse after the story of war does not necessarily mean that the verse belongs to the preceding section on the circumstances of war, rather than to the subsequent ones. Reasons for relating it to the following sections include: the word 'war' is not mentioned at all; the account about war ended to begin another account of travel, and emigration.[107] (d) In the verse under discussion the first word '*darabtum*' in the phrase '*darabtum fi sabil Allah*', according to al-Qurtubi (d.1272), generally connotes all endeavours (travel, trade, tilling, cultivation, learning) which humans usually do in their life whether in their country or abroad.[108] Because endeavours could involve unlawful activities, therefore the Qur'an added to the word '*darabtum*' the phrase '*sabil Allah*' (the way of Allah) to say that the endeavours should be fulfilled faithfully. People should be faithful in all things they do; in all endeavours. Therefore, '*sabil Allah*' (the way of Allah) cannot be translated by 'war' or by any word other than the word groups of 'peace, faithful, lawful'. The way of Allah is not 'war', but peace, cooperation, caring, and coexistence. Allah does not create the world and then let a group of this or that of His creations to disrupt the cooperation and coexistence between His creations. Therefore, there is law, judgement, punishment and reward in this world and in the other.

23   Among the prohibited acts in open warfare were: (i) cruel ways of killing; (ii) killing of non-combatant; (iii) killing of prisoners of war; (iv) mutilation of human beings and beasts; (v) destruction of crops, fruits, harvests and cutting trees; (vi) adultery and fornication with captive women; (vii) killing of delegates, envoys even in retaliation; (viii) massacre in the vanquished territories; (ix) the use of poisonous weapons; (x) force others to believe in Islam, etc. These are only a few to mention, as examples, the provisions for humane treatment of combatants, prisoners and civilians which existed in Islamic International Law before they have come to be listed in the Geneva Conventions; also Islamic Law books contain more principles which are 'not yet incorporated in modern conventions. These principles have been collected from numerous works of authority, and from the Qur'an itself'.[109]

The value of Islamic Law to international relations

The relationship between Islam and the West, especially within the context of globlisation is critical. In the West, Islam is often associated with violence and hostile attitudes. However, the Islamic attitude is towards coexistence in peace and harmony with the West, and the rest is an essential part of the Islamic message. In support of this view, this book provides some detailed arguments in the sphere of government, democracy, law and international relations. In this connection, numerous researchers, who also studied Islamic original sources, have arrived at similar conclusions. For example, in the East, experts in international law such as al-Ghunaimi, the UN legal advisor and professor of International Law at the University of Cairo, refuted many of those negative positions taken up in some other works.[110] In the West, Weeramantry, the judge at the International Court and professor of Public International Law at Monash University, refuted the notions and implications of those negative attitudes and addressed the misunderstandings to enhance the relationship between Islam and the rest of the world. These experts observed the values of Islamic Law and from their positions in the legal system of the world community urged lawyers to be equipped with this invaluable information to enhance their legal profession and capacity to serve world peace. Drawing on their comprehensive observations the following points can be made:

a   In the political circumstance of the medieval world the emergence of Islamic International Law as a discipline in its own right confirms Islamic recognition of multiplicity of nations which is also explicitly mentioned in the Qur'an (i.e. 11,118; 42:8). The framework of this recognition strongly argues against such claims which imply intolerance and rejection of coexistence with other nations. It also implies the commitment of Islam; its attitudes, intention and capability, to coexist and live with all states in peace and harmony. If Islamic attitude observes the external world as an enemy, just because of the religious background, or racial and cultural difference, Muhammad would not order his followers to migrate to and live in the Abyssinian state of different religion, colour, culture and belief. This also confirms that the recognition of other states was in the early Islamic polity and practice, not merely in the Qur'an. It also works as an irrefutable evidence on the tolerance of Abyssinian Christianity and their understanding of the duty of friendliness.

b   The notion of equality among persons and between nations is a concept that runs through the Qur'anic message, and all Islamic teachings. The Qur'an says: 'O mankind Lo! We have created you male and female, and have made you nations and tribes that ye may know one another. Lo!, the noblest of you in the sight Allah is best in conduct' (Qur'an 49:13). The Prophet says: 'The Arab has no superiority over the non-Arab. All are children of Adam and Adam was made of earth'.[111]

c   Islam considers peace, equality, collaboration, right, justice and fairness as the basic norms of international relations. The theme and framework of these

norms confirm that the most basic principle of international relations is not 'might is right'. Knowing one another, as the Qur'an says (49:13), is a notion far from dominion of one nation over another. Islamic International Law is in conformity with the objectives set out in the charter of the United Nations.

d   The injunction which commands 'there is no compulsion in religion' (Qur'an 2:256), or that which recommends 'wisdom, fair exhortation, and reason' as the only method for the advancement of Islam (Qur'an 16:125), or that which commands Muslims to believe in all messengers and their messages, and not to discriminate between messengers themselves or between any of them and Muhammad (Qur'an 2:285; 3:179,199), confirms men's and women's free will, confirms the equality between sexes and confirms that these notions are cardinal tenets in both Islam and Christianity.

e   As to Islamic attitude to war, the above argued against the misperceptions of many notions associated with the concept of *jihad*. War is permissible only in defence. It is not permissible for personal glory, power or territorial expansion. The right of defence is certainly not only specific to Islam, 'but also', as Weeramantry put it, 'for Judaism and Christianity. Even more significant is the fact that in this enumeration of places of worship, mosques come last. Aggressive war, whatever individual Islamic rulers might have done, was thus contrary to the teachings of Islam. "Aggression", a term not defined in the UN Charter, is a comparatively new term in international law. The UN's Resolution on the Definition of Aggression, passed on 14 December 1974, was a very belated attempt at defining a concept which had long eluded definition. The UN adopted a definition of aggression as being the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state or in any other manner inconsistent with the Charter of the United Nations (Article 1). Article 5 pronounced that no consideration of whatever nature justified aggression and condemned aggression as a crime against international peace. Islamic theory went beyond this, including in the concept the notion of ideological aggression. Numerous verses in the Qur'an condemn aggression in all its forms. Ideological aggression as a result of state activity made it the duty of the Islamic state to defend its ideology, if need be by the use of force. Modern international law is now beginning to recognise that aggression can take place even without the direct use of force. There can be an onslaught upon a nation's security through indirect means – economic wars and propaganda wars, for example – which may entitle a nation to react in self-defence. This is a new doctrine in international law and can be both very useful and very dangerous. It needs to be developed in light of all the experience available. The Islamic writings can make a valuable contribution'.[112]

f   The world, as Weeramantry says, is in need of better understanding. He is of the view that the non-Muslim countries will require to negotiate with the Muslim world matters ranging from war and peace to trade and mercantile contracts. In support of his view, Weeramantry points out a few incidences, among which is the hostage crises in Iran (4 November 1974). He reminds us

that the United States continued to refer to the diplomatic immunity and right to protection as in the Western law books. But, Islamic Law is also rich in principles relating to the protection and treatment of embassies and personnel. These principles, Weeramantry says, were neither cited, as far as the author is aware, nor was there a sign suggesting that they were aware of the existence of this body of learning. Had such authority been cited by the United States, Weeramantry says, 'it would have had a three-fold effect: its persuasive value would have been immensely greater; it would have shown an appreciation and understanding of Islamic culture; and it would have indicated a greater readiness on the Iranian side to negotiate from a base of common understanding. It is not often sufficiently appreciated, especially in the Western world, that many of the current rules of international law are regarded by a large segment of the world's population as being principles from the rule-book of the elite club of world powers which held sway in the nineteenth century .... Indeed, at the time of the hostage crisis, the author drew the material on this point and although this suggestion was referred to the Task Force in Washington handling the crisis, the author is not aware of any steps taken in this direction. He was never informed of any consequent action following from this proposal and can only presume that it lapsed through lack of understanding or lack of expertise in the US office handling the matter. The same considerations apply at many other levels. The non-Islamic world neglects them at its own cost'.[113]

g   Islam is, by its traditions, ideologically committed to peaceful coexistence in the world community. 'Indeed its traditions', Weeramantry maintains, 'enable it to make an especially rich contribution towards these concepts. The fact that so many Islamic nations have of their own free will subscribed to the objectives of the United Nations is also testimony to this desire for coexistence on a footing of equality rather than any desire for the imposition of its ideology upon others'.[114]

This chapter has demonstrated that there is in the Qur'an Isalmic belief and history the existence of a solid basis for the development and implementation of a body of international law which promotes justice and peace as well as obliging combatants to observe human values in the conduct of nations including war, the taking of prisoners and the pursuit of conflict. Much of Islamic international law precedes by centuries the development of international law in the West. The high ideals to which all humans are called by Islamic Law not only seem to exceed those current in Western International Law, but certainly judge as substandard the actual practices of all nations Islamic and other in the conduct of war both in history and in the present time.

6 Historical reality in the light of the declared principles

This chapter investigates the present political condition which has shocked the proponents of democratic values in both the Muslim and the Western worlds. The previous chapters have shown that the values and qualifications of democracy in Islam are often antecedent to and compatible with Western democracy. They have also shown the irrefutable and unbreakable link between Islamic and Western civilisations. The question that remains is where has the inflammatory condition come from? Given the clear Qur'anic basis for human and democratic values as well as a justice and peace-oriented international law, why have these not characterised the history of Islam? This question provides the theme and framework of this chapter. It examines some aspects in the historical reality of Islam from early to our modern time. It demonstrates what went wrong in the place and space with special attention to the relation between the scope of democracy and violence.

The state is an organised political community where citizenship is realised and where state authority is seen as a legitimate capacity to rule over people. Although the state is defined either by reference to its goal, ideology, structure and/or by bureaucratic organisation, others defined the state by its relationship towards the society.[1] The tension between state institution and society is central to the understanding of state functioning or failure. In the case of the Islamic state, one might ask, what went wrong?

The previous injunctions revealed that Islamic Law is prescribed by God to His servants. In this law, God also does not *compel* humans to behave in the way prescribed, but there is complete freedom of choice. Freedom – of belief, of speech, of press – is an important qualification of democracy. Having this complete freedom, humans should come to terms with the fact that there is no complete freedom without responsibility; that is, every free person is responsible for their decisions. The sense of these notions could be immediately perceived by studying the nature of Islamic legislation and moral exhortation which is difficult to define in precise terms, as indeed must be the case with every deep universal feeling and every abstract and idealistic universal philosophy. It is clearly discernable in objectives and goals, in actual events and occurrences, in behaviour and rites, but it is difficult to express it in precise terms, nor in the limited mould of the word. The spirit of Islam has had a profound effect on the historical reality of Islam. The notions of Islamic creed and conceptions have turned into personalities and

historical events. It became human models that actually lived, events that actually happened, behaviour and activity witnessed by the eye, heard by the ear and leaving their mark on practical life and on the various stages of history. Among these personalities are those who ruled with justice and strong feeling of humanity, brotherhood and harmony between people of different ethnicity, colour, language and religion.[2]

When the community elected Abu Bakr to lead them, the office consisted in his view of no more than to mange the affairs of the people with justice and equality among all. It did not occur to him that his election to the office would give him any new rights that he did not already have. Immediately after the oath, Abu Bakr addressed the people and outlined the principles of his policy. He said:

> Now, o people, I am your ruler, though I am not the best one of you. If I do what is accurate assist me, and if I do what is not accurate correct me. Truthful is trustworthy and lying is dishonesty. The weak among you is strong for me until I satisfy his rights, and the strong among you is weak for me until I enforce justice upon him. If corruption spreads among people, God spreads calamity among them. Obey me as long as I obey God and His Messenger; if I disobey them, you need not obey me.[3]

Abu Bakr was living in a small and humble house in a suburb near Medina; when he became caliph he changed neither his house nor his mode of living. He used to walk on foot from the house to the office. Sometimes he would ride a horse he had, but not supplied out of the public treasury. Later, when the burden of his work increased he moved into Medina. He also used to live on his income from trading, but 'the office needs full time attention'. One day, the Muslim restrained him to go and attend to his business; saying 'this office does not go well with tread'. So he asked them, 'then how shall I live?' After deliberation on the question, the Muslims assigned him an allowance from the public treasury sufficient to sustain him and his family in return for his giving up his treading and confine himself entirely to the office duties. In spite of this, when death approached, he ordered that all money he had received from the public treasury be counted up and repaid out of his property and land, so that there would be no chance that he had misused the public money or wealth. He considered himself responsible for the needs of every individual subject, motivated in this by the continual alertness that Islam imposes on the conscience of the ruler and the ruled.[4]

This gives a brief idea of the first chief executive's conception of governance in Islam. The second successor, 'Umar believed that his new position did not entitle him to new privileges of any kind except the increase in his work and responsibility. Immediately after taking the Oath, 'Umar addressed the people and outlined his policy and conception of government. He said:

> Oh people, I am no more than one of you; and had it not been that I was unwilling to reject your choice for me to administer affairs, I would never have taken the responsibility of governing you . . . I owe it to you, oh people,

to have the following characteristics, so hold me to them. I must not take any tax from your land or from what God has given you except what He allows. I must give their rights to all with whom I deal. Fear God in whatever you do.[5]

'Umar profoundly felt the duty to keep himself on the same level as his subjects, and when the people suffered famine in the year of Drought he swore that he would taste no butter or meat until the situation improved. He continued thus until his skin turned black and he grimaced when he ate oil. Then a skin of butter and a skin of milk appeared in the market and his servant bought them for forty *dirhams* and went to him, but when 'Umar learned the price he said, 'that is too much, give them as charity, for I hate to eat what is bought excessively. How can I be truly concerned for the affairs of my subjects if I do not suffer what they suffer?'[6]

Once 'Umar bargained with a man for a horse and then rode it out and it collapsed, so he wanted to return it to its owner but the owner refused, so they took the case to the Court. Listening to the arguments on both sides, Shurayh the Judge said, 'oh commander of the faithful, take what you have purchased or return it as you received it'. 'Umar said, 'Could there be any other judgment?' He then made him the chief judge as a reward for judging correctly and fairly. 'Umar was of the opinion that he should deprive himself of what his subjects were deprived of so that he would feel their suffering, as he said. And also because deep within himself he did not think that his position as a ruler gave him any rights or privileges that other people did not have and that if he did not act justly in this matter he would not deserve the loyalty and obedience of his subjects.

The first four leaders or successors, considered by Muslims 'righteous rulers', came to the office by what can be described as electoral processes. In this early stage, when Muslims elected as their leader the first successor, they also thought a few titles for his position, and their choice was *Khalifat Rasul Allah* (successor of the messenger of God).[7] This leader, namely Abu Bakr, was also an *imam*, leading the prayer even before he was elected to the office. This indicates how the Muslims, in this early stage, understood the two titles and the duties of the chief executive. As head of the Islamic state, the *caliph* was also the *imam*, a title that has religious connotations of leadership and, therefore, he leads Muslims in their prayer.

When the second successor was elected to the office, the Muslims called him *khalifat khalifat Rasul Allah* (successor of the successor of the messenger of God). This second leader, namely 'Umar, found the repetition of the *khalifat khalifat* will be more difficult in the future. Advising them on the matter he said: 'you are the believers and I am your amir'; so he was the first to be called *amir al-mu'minin* 'commander of the believers' a title that denotes both political and military leaderships.[8] It was from the title caliph or *kh-a-lifah* (successor) that the word *kh-i-lafah* (caliphate) has come to denote the Islamic state or the Islamic institution of the time, and has remained in use until the collapse of the caliphate in Turkey in 1924. Likewise, from the word *amir* comes the word *amirate* which is usually written *emirate* and is still in use to denote a 'state', as in the present Arab sheikhdoms in the Gulf region. Consequently, the Islamic state does not have to be called caliphate (*khilafah*) or its chief executive to be called caliph

(*khalifah*). Neither the *caliphate* form or system of government, nor the title *caliph* is obligatory on Muslims, as claimed by those Islamic radicals and terrorists.

The spirit of the elected caliphate lasted for just about thirty years, from the accession of Abu Bakr in 632 to the murder of 'Ali and recognition of Mu'awiyah in 662. This spirit sets the high standard required by Islam as the objective to which Muslims should seek to reach, not merely by carrying out obligations and duties but also by voluntarily going beyond them. This standard level is difficult to reach, and still more difficult to maintain. The inclinations of human life and the pressure of human need keep many people from rising to this standard level. If people do reach this level, in a burst of desires and aspiration, they cannot stay for long at it. This level has its own difficult requirements on the soul and wealth, on the feeling and behaviour. Perhaps the most difficult of these requirements is the constant alertness that Islam enjoins on the individual's conscience and the keen sensitivity that it arouses in his feeling in relation to his own rights, to the rights of the society in which he lives, to the rights of humanity of which he is a part, and to the rights of his Creator who observes him in all things small or great and knows what he hides of secret feelings and thoughts.

Since the establishment of Umayyad by Mu'awiyah in 662 the spirit of the Islamic conception of government unquestionably retreated in the soul of some Muslims. The chief executives were not elected; the caliphate turned into a kingdom based purely on force.[9] The restrictions on the public treasury were removed; the treasury became legitimate spoils for the kings and princes and their entourages and flatterers. The ruling class and their entourages gained privileges, benefits and official promotions.[10]

The chief executive has come to behave as neither an elected person nor as one who has the same rights as his subjects, but distinguished from all. He took a threshold curve above the Prophets, the Messengers, and all human types and became *the* deputy of God appointed by Him, not by the people. The caliph, erroneously, came to be called *khalifat Allah* (deputy of God). The full impact is lost in translation, as the accurate one reads (the successor of God). The implication of this powerful label, which is difficult to express in words, is not Islamically valid and the jurists have rejected it in general and in detail.[11] Apart from the later reign of 'Umar Ibn Abd al-Aziz (715–720), many of the rulers have come to power only by force, not by election or freedom of choice. Coming to power by force, the rulers stayed in power also by force. As a matter of fact, none of the caliphs left the office as a result of election or the like of any cause other than natural or unnatural death. Certainly, many of them were assassinated or killed in wars between themselves, for the office's sake.[12]

During the Umayyad and Abbasid dynasties the caliphate became a tyrannical monarchy ruled through oppression, repression and humiliation. The concept of government was diverted to become a theory of sacred divine right, unknown to Islam. The spirit of Islam retreated, in the souls of some Muslims, to the pre-Islamic spirit of tribalism (*asabiyyah*).[13] Muslims and their caliphate were factionalised and were fighting each other only for political reason, that is, who should rule the caliphate. In 662 Mu'awiyah seized power over the caliphate and established

the Umayyad dynastic monarchy.[14] After the truce with his rival, Mu'awiyah victoriously entered Kufah, in Iraq, to address the people. He said:

> Oh people of Kufah! Do you think that I have fought you over prayer, tax and hajj? I know that you pray and perform hajj and pay tax. I have fought you in order to take power over you and dominate you, and God has granted me this against your will. All property or lives lost in this rebellion will remain unavenged, and whatever promises I have made are under these two feet of mine.[15]

Thinking of the previously mentioned speeches of the first and second successors, the words and language of the Umayyad leader are significantly critical. Later, Mu'awiyah appointed his special forces with a precise order, that is, to force the people to accept his Son for the office,[16] a practice that also continues to the present time; even if the 'son' is not qualified, they alter the Constitution and introduce new laws to perfectly fit him in, and make him highly qualified for the office. If there were any opposition, it will, then, be dealt with by Special Forces, labelled in all Arab countries of today as 'dawn visitors'. The theme and framework of this aim and objective of this type of rulers and their special forces continue to the present day. When it comes to the ruling ambition, the behaviour of those ambitious individuals does not distinguish between old and new, or secular and religious. Many of those who call themselves modern and democratic rulers prepare the arena for their sons (not daughter) in the name of their own concept of modernity, human rights and democracy. They are the rulers, the prosecutors, the law-makers, the judges, the opposition, the best democrats, and the best implementers of Martial Law, with not much difference, only labels and words of different generations and context.

For example, in the presence of Mu'awiyah and his Son, one of their knights introduced them to their people in these words: 'this is the leader of the faithful – after him will be this [pointed at his Son] – and we have these [pointed at the swords] for those who reject him'.[17] Everything was then obtained by the sword and protected by its blade. In his testament to his son, Mu'awiyah said: 'Oh my son, I have organized everything for you; I have made the Arabs to submit to you; and what I have left you of wealth no body could do'.[18] The caliphate remained in the Umayyad clan until the last caliph was also killed in the war with his rival al-'Abbas who then established the Abbasid caliphate, in 750.

The atrocity of al-'Abbas the founder of the Abbasid caliphate is well known in the literature. It is sufficient here to note that, according to Ibn Khaldun (d.1406), al-'Abbas is conventionally called 'butcher' or murderer and the like of these word groups.[19] In his first speech to the people, al-'Abbas said: 'oh people; be aware that I am the butcher (*al-saffah*)'.[20] The Abbasid caliphs venerated themselves above everything and made themselves the shadow of God on the earth. After al-'Abbas, his brother al-Mansur inherited the kingdom and addressed his people in these words:

> Oh people, I am the authority (*sultan*) of God on His earth, governing you with the support and assistance of God, and I am the custodian of His wealth,

administering it according to His good pleasure and His will and giving it by His permission. He has made me its lock; if He wills to open me, he opens me to give it to you and divide it among you as sustenance, and if he wills to close it up he closes me.[21]

These rules have come from the caliphate system and its faithful caliphs. This illustrates how the concept of government finally moved away from the principles of Islam and its teachings. With this twisted mentality, the rulers were governing the affairs of the people; managing the economy and the wealth of a vast caliphate. It is well known that the management of economy is dependent on and influenced by the behaviour and conduct of the government. It was, therefore, not very unnatural to hear of mismanagement of public treasury, or to hear of corrupt kings and princes and their large amounts of estate and cash.[22] It is not very unnatural to hear of palaces and luxurious entertainment of varying types and forms, even 'she does not love him for his personality but only for his gold'.[23] It is very natural to hear of gifts to flatterers and luxurious entertainers. One of the Umayyad kings gave 51 kilograms of gold to just one entertainer. Another from the Abbasids gave 17 kilograms of gold and a luxuriously furnished house for just one song.[24]

The caliphate treasury was open to the kings as if it had been their personal property. There were vast land assignments and broad expensive estates, on the one hand, and there were the workers who lived on them, slaves and clines, on the other. These are only brief examples from the waves of luxury and corruption of varying types that rolled on to the present, only resting here and then. This clearly indicates how much those kings who were called caliphs and faithful commanders usurped the public funds, how far the government was away from the Islamic principles of justice and management of wealth, how much wealth and luxury had accumulated on the one hand and misery and suffering on the other, and how seriously Islamic society had been disturbed as a result of the government's distance from the principles of Islam.[25]

Likewise, the Mongol and the Ottoman rulers were no better than their predecessors of the Umayyads and Abbasids. If the deviation of the Umayyads and Abbasids from the principles of Islam was partial – only in the spheres of government and economy – the deviation of the Mongol and the Ottoman Empires was wider. In their luxurious palaces, the Abbasids were busy with their colourful love of wealth and filth, even though they had no time to depend on themselves, to defend their caliphate, but relied on Turks, Circassians, Dailamites and others. The corruption of many Abbasid rulers and their supporters brought to end their dynasty at the hands of the destructive Mongol invasion, which flooded over the Islamic world.

The capture of Baghdad by the Mongols in 1258 killed the Abbasid caliph and abolished his caliphate. The help from the Abbasids in Egypt also failed. Both the titles 'caliph' and 'caliphate' were then shifted to Egypt where one of the Abbasid families was installed as a caliph in Cairo. This Abbasid branch continued until the Ottomans captured Cairo in 1517 and took the caliph al-Mutawakkil to Istanbul

but returned him to die in Cairo in 1543. Later the Ottomans claimed that al-Mutawakkil had transferred the caliphate to them, a theme that reflects the hereditary mentality of Muslim rulers. They think that governance is inherited. The Ottomans thought that Muslim public will accept the Ottoman rule only because al-Mutawakkil the caliph transferred the caliphate to them. How naïve a mentality is it! Even if this were true, the caliph also what is not his to one who did not deserve it. In the view of many historians, the Ottomans invented this transfer to justify their claim of a sacred right to rule.[26] In either case, the caliphate and its subjects were treated as property or estate of the ruling power. It also reflects that the titles 'caliph' and 'caliphate' have come to acquire in the public mind a kind of divine authority. With this understanding the Ottomans ruled until their caliphate was finally abolished in 1924. In this connection, Montesquieu says:

> In all despotic governments, none is more oppressive to itself than the one whose prince declares himself owner of all the land and heir to all his subjects. This always results in abandoning the cultivation of the land and, if the prince is a merchant, in ruining every kind of industry. In these states, nothing is repaired, nothing is improved.[27]

Nevertheless, some Muslims yet, erroneously, view the caliphate as a divine institution and essential part of Islamic life. This also is one of the present issues of Muslim activists who want to establish a social order. To them, social order means to establish the caliphate (*khilafah*). They also show their appreciation to imitate the outer conduct of life, such as dress, coiffure, long beard and etiquette.[28]

As is so often the case reality falls far short of the ideals set and obligations laid out by both the scriptures and original leaders of a religious group. Greed, pride and the desire for power corrupt quickly. These facts do not remove the reality that democracy and human values are deeply grounded in the Qur'an and the life of the Prophet. The call to a higher standard remains, and the ideals are not those of the caliphate for Muslims any more than those of divine right monarchy for Christians. The West must remember that it too has moved from autocratic theocracies to the kinds of universal ideals of human rights and democracy it shares with Islam.

7 Religion and the origins of violence and terrorism today

The previous chapters have demonstrated that democracy and human values are deeply embedded in and supported by Islam. Islam upholds self-development in responsible relationship with others, the society and most importantly with God. Islam supports the building of a democratic society open to all ethnicities and creeds, a society characterised by equality of dignity afforded to all. This fact about Islam has been discussed from different facets. The remaining question that this chapter investigates is the issue of the origin of violence and terrorism which plague today's world. Following our explication of the ways Islam leads to democracy and the flourishing of human values, we examined the history of Muslim societies to ascertain why these characteristics are absent in so many cases. In this examination of Muslim history, we argued that this situation does not stem from Islam but has arisen in the absence of Islam's human values and democracy. It has been in the absence of democracy that oppression, repression and humiliation have taken place in many Muslim countries. In the absence of democracy the accumulated oppression has led to violence on the local and then global stage. Given this, to consider violence and terrorism as a product of a *clash of civilisations* is wrong.

This chapter asks about the contemporary situation confronting Muslims in many parts of the world by investigating the religious motives behind violence and terrorism and paying special attention to the scope and extent of democracy. It investigates the free market of ideas with special focus on the consequences of violence and terrorism and how to deal with them. The challenges we have selected for analysis include the resurgence of religion in public life, the misguided use of the state to support religion and finding a way to be religious in secular post-industrial societies.

The resurgence of religion in public life

There has been for the past century a general assumption that the role of religion would decrease in society as modernity and secularity came to reign supreme. We can now see that the last quarter of the twentieth century, however, was witness to the opposite trend. There has been a global revival of religion in all main civilisational centres and not only in the Muslim world.[1] This revival is likely to continue

as a response to the dogmatic secularism and modernism that prevailed in the 1950s. Looking at the transformation of societies in the 1980s and 1990s, one can trace the revival of Christianity not only in America or Australia but in other parts of the world as well. In addition, there has been a revival of Hinduism, and a Hindu party came to power in India; a revival of Confucian values in China; and similarly, there was a revival of Islamic heritage in Muslim societies. This revival or resurgence of religion then has been a global phenomenon, not tied to a particular set of local circumstances.

In European, American and Australian societies this resurgence of religion including processes that have brought religion back to the core agenda of political life is in part a response to the de-traditionalisation and secularisation of society from the time of the Enlightenment. Communal values were set aside in the pursuit of individual desire, capitalist greed, national aggrandisement and totalitarian ideologies such as communism, socialism and Nazism. The impact of these processes on the Muslim world has been in part to increase attention to the differences between religious groups and to increase the risk of tension among them. In the past 15 years of the post-Cold War era, Muslims have, to some extent, lost confidence in their national leadership as well as with the objectives and the functioning mechanisms of the international systems. Muslims saw what happened in Bosnia, Palestine, Kashmir and the Philippines. The international community watched as more than 280,000 people were murdered in Bosnia, up to 150,000 killed in Kashmir, thousands in Chechnya and Kosovo. Hundreds of thousands have been displaced, bombed, uprooted and dispossessed in Palestine.

However, not all of these violations of Muslim human rights have come from non-Muslims. As a matter of fact, Muslims themselves have often been harsher to each other because of leadership that has failed in compassion and vision. The Palestinians are factionalised and under their varying signs and flags each faction is committed to use automatic rifles against the other on matters that seem trivial to those outside the conflicts, while their leaders are living in luxurious circumstances. In Algeria, over 50,000 have been killed during the 1990s in the most brutal manner possible during the Algerian–Moroccan war in the desert. Similarly, the violence in Sudan-south and Sudan-north (Darfur) has killed and displaced millions of innocent and unfortunate people. The Kurds have been dispossessed and savagely persecuted by several Muslim states. Muslims in Aleppo were bombed from Damascus. The bloody 10-year long Iraq–Iran war claimed the lives of a million people. From Cairo to Jakarta, and from Beirut to Tashkent, Muslim cities have erupted into sectarian and ethnic violence from time to time because of their leadership's failure in mission and vision. Their failure captured the imagination of individuals and groups including that of Arab movies. The Egyptian film *Al-Irhab wa al-Kabab* (Terrorism and Kebab) is one of a number of 1990s Egyptian films which illustrate that failure and corruption have been milestones on the road to violence and terrorism. *Al-Irhab wa al-Kabab* (1993) is a political satire about how in less than a second an educated 'engineer' transforms into a terrorist after becoming tired of bureaucracy. His demands are simple, yet complicated such as ordering *kebabs*, for the hostages who are lower

class citizens, and asking the minister of interior to resign from the government. The engineer did these things with the help of a shoe shiner from the Egyptian countryside, a desperate husband and a prostitute. It is a delightful film that rejects the corrupt nature of politicians who are only concerned about remaining in their positions, while the ordinary citizen worries about paying the rent, getting breakfast and going to work in a crowded bus.

Today, the Muslim masses feel a geo-political exclusion from the international system. Thinking of their future, many of these masses trust neither the leaders – national or international – nor the international system for goodness, justice or prosperity. The global system is to some extent characterised by startling advances, on the one hand, and conditions of extreme socio-economic retrogression and distress, on the other. This situation represents a severely uneven and yet deeply intertwined socio-economic development on a global scale which has created unprecedented convulsions that are exploding right across the world.

The fall of the communist bloc created a world with one superpower without a sparring partner. To some extent, a religion, Islam, has come to fill the vacancy. Islam in relationship to this superpower has become the focal point of political activity in the world. It is not surprising then to hear about 'Islam and the West' and even 'clash of civilisations'. Nevertheless, the world's conditions, as hinted above suggest that the challenge is not between Islam and the West, as such, but rather between those who have and those who have not. It is between a bloc of peoples who trust their *present* for their future and those peoples who have no choice but to trust their *past* for a better future. The challenge is not between civilisations, but rather between a bloc of peoples within each civilisation who see their future through their *present* and those peoples who have no choice but to see their future through the prism of their *past*. While the former place their trust for their better future in their present, the latter found it hard to see goodness in their present, and their future is also not promising anything but more misery, unemployment, humiliation, repression and identity crises. They do not place their trust in the present because they do not have empowerment to use this present to build a future.

The fact that the major conflicts of the world form along faultlines within each civilisation rather than between them is evident in both global and local conflicts and the disintegration of formerly strong religious organisations. Christian groups, such as the Anglican Communion both internationally and locally, are fragmenting over issues of sexuality, the ordination of women and other issues. Similarly, conflicts between Shi'ah and Sunni Muslim groups in the Middle East on the one hand and struggles within Tibetan Buddhism over whether the Dalai Lama should seek secular as well as religious leadership, all point to the internal crises that are occurring within the religions and civilisations of the world.

The attacks of 11 September 2001, along with the Gulf War and the tragic events that have followed it have given new life to the identification of Islam with violence. Islam and its adherents have become noticeable in Europe and elsewhere. The presence of Islam in Australia and America, for instance, has come to be visible in the past two decades but terrorist attacks and the Gulf war have made

the presence of these communities significant in the public mind. Islam and its adherents have come to occupy the headline news, along with the ongoing troubles in their countries of origin. Questions have been asked about the nature of Islam, its coexistence with democracy and human rights, and even whether Islam has any good in it. Does Islam actually condone such kinds of violence and terrorism? The responses of Muslims to these events has retained the complexity of the questions. Even though Osama bin Laden took credit for the attacks of 11 September 2001, many Muslims still think it was a non-Muslim conspiracy. Other Muslims have clearly denounced the events of 11 September, sharply criticising the perpetrators for hijacking their religion, and many have joined the US-led coalition to combat terrorism. Muslims and their Islam have been viewed, to some extent, through the prism of the historical episodes of the Middle Ages.[2]

Much of the exploration of the motives behind violence and terrorism in both Arabic and European languages demonstrates a lack of knowledge about Islam. The binary opposites used in many discussions, such as we/them; first/rest; our culture/their culture; believer/infidel; our civilisation/their civilisation move the interaction from cooperation and mutuality to opposition and conflict. They shift the activity from fact-finding about situations and their causes to stereotypic judgements about those with whom we work, usages that often constitute cultural and 'religious vilification'.[3] Such approaches, which often reflect attitudes of superiority/inferiority and pro/anti-Western are but unhealthy puzzling and ignorant speculations that might influence the investigation and misinform public policy. In this connection with special focus on the Asia Pacific landscape, Gary Bouma, the UNESCO Chair in Interreligious and International Relations – Asia Pacific suggested:

> Unfortunately, for the development of informed public policy about religious diversity, practice, and existence, policy makers are less informed about religion than ever before . . . We now have a generation of secular policy makers whose personal experience of the religious is completely lacking and often has been lacking for more than one generation.[4]

Likewise, John Esposito's observation of the view of 'government officials and authorities' about Islam 'on the American landscape and in our educational curriculum' referred to 'Islam: the misunderstood religion':

> Much of our knowledge has been gained through headline events, from the Iranian revolution to September 11. When the Iranian Revolution occurred in 1978, despite the fact that Islam was the second largest of the world's religions, encompassing more than fifty countries, during the hostage crisis the *Today Show* co-anchor found it necessary to interrupt his reading the news to give Americans a brief background on Islam. It was very brief: Islam is the second largest world religion; it has a scripture called the Qur'an and a prophet named Muhammad. This most basic information was deemed necessary for viewers in one of the world's most advanced and educated

nation![5] 'One Senate leader confessed, "I know a lot about many things but nothing about Islam and the Muslim world – and neither do most of my colleagues!" While many are sincere in their desire to know more, others epitomized the saying: "My mind's made up, don't confuse me with the facts!" '[6]

The result of this ignorance has been an appalling failure to treat systematically the main issues at hand – the causes and consequences of the world's conflicts, both conceptually and theoretically. To some commentators, Islam and its adherents are inferiors, anti-Western and anti-modern.[7] But this is not the view of others.[8] Moreover, the same comments are made about resurgent Christianity that takes more fundamentalist shapes.[9] Nevertheless, what is modernity?, is it technology?, is it technology of the *old* or the *new* Europe?, is it race and space?, is it human rights?, is it freedom, justice and equality?, why then is religion viewed through the prism of degradation, reactionary as a second-class citizen whose role in society is outdated?, what prevents us from considering that modernity does not mean the absence of religion?[10] Being religious and taking one's faith seriously does not mean to live in the prehistory epochs and divorce this great achievement of humanity.[11]

Many interpretations of Islam arguably neglect the reality that Islam is no longer the Oriental stranger, it is no longer out there but here with us, or as Kepel put it, 'Allah in the West'.[12] During the past two centuries, Muslims began to find new homes in the West. Currently, 'The Muslim world is no longer "out there"; Muslims are our neighbours, colleagues, and fellow citizens, and their religion, like Judaism and Christianity, rejects terrorism. Never before have peace seeking phrases like "building bridges of understanding" been more critical in a war that ultimately cannot be won simply by military power'.[13]

We should not take those labels of binary opposites at face value, or as rigid and mutually exclusive classifications of cultures, civilisations and thought. The violence that has come to characterise the Middle East has emerged from a complex combination of historic, colonial and postcolonial factors including the failure of national and international leadership to seek peace and cooperation, the failure of international mechanisms to intervene strategically for peace, from patterns of occupation, repression, oppression and humiliation that have been ongoing for decades in the Muslim countries. These conditions have also worked as a significant factor increasing the number of Muslim immigrants to Western countries. Migration does not emerge from a vacuum; but is originally connected to and conditioned by a set of social, political and psychological circumstances that both increase the desirability of moving and reduce the appeal of staying.[14]

Motives behind violence and terrorism are not best observed through the narrow slit of binary opposites or through 'religious vilification' themes which undermine social relations. This confrontational approach negatively influences the social and mutual understanding among religious communities in any society. According to Bouma, cultural and 'religious vilification is not about simply talking about one's faith, but about describing other religious groups in dehumanizing, belittling and negative ways that distort the realities of these groups and lead to

hostility towards them'.[15] Religion is not likely to go away. Religion is not a book to be stored on the shelf or removed from the scene. Religion and spiritualities are integral to man, woman, people and society.

Misguided attempts to apply religious ethics

A second source of pressures to move away from the Islamic ideals of democracy and human rights involves the use of the state to enforce religious participation or particular rules derived from religious belief is a great temptation to those who take seriously the need to put their faith into practice. This pattern can be observed in all religious groups. Once it becomes possible to use the power of the state either through electoral numbers – the tyranny of the majority – or through the offices of officials, or through leaders who share a group's faith, it is rare for a group to continue to support diversity. While the Qur'an forbids the use of coercion in religion, some Muslim states have made conversion from Islam illegal, have enforced upon both those who believe and those who believe something else certain regulations that they thought to have originated in the Qur'an and Shari'ah law. Some Christians have done similar things. Catholics have made contraception illegal, Protestants have made Sunday trading and sport illegal, others have used city ordinances to make difficult if not impossible the building of mosques, and in other cases have made illegal membership in or the practice of some religions. Secular societies do not fare any better as there are ample examples of their repression of religion, fostering negative attitudes towards religion in school curricula and preventing public displays of religious identity. Against all of this the Qur'an forbids coercion in matters of religion. This is a very healthy viewpoint of a healthy religion. A religion that needs the state to shore up participation through legislation must be weak or very out of touch with the people. Similarly, if it is necessary to force compliance with its religious regulations, a religious group must ask whether they run counter to some very basic element of human nature. The imposition of the religious regulations of one group, such as dietary, dress or relationship codes on another is simply unjust.

The use of the state in this way is not only a sign of weakness and unjust, it provokes unnecessary conflict. This is not to say that managing religious diversity is easy. It is not. The religious regulations of some groups conflict directly with the regulations of others, or with deeply held cultural preferences of others. For example, at a recent conference on Religion in Industrial Society held in Singapore, the issue of how are Muslim and Chinese neighbours in dense high-rise apartment life to cope with the right of the one to keep dogs as pets, and the strongly held view of the other that dogs are unclean? Some groups prefer to practise arranged marriage, while others see this as inhibiting the rights of the marriage partners, particularly the brides. Some groups might wish to ban the sale of alcohol, while others view it as a natural part of life. The provision of food for multi-faith gatherings poses huge problems – Halal and Kosher are not the same while the Sikhs and others refuse to eat meat that has been prayed over, and the least common denominator, vegetarian, often finishes up not pleasing anyone.

These are but a few of the issues that are not best settled by reference to the state. At the time of writing, Sri Lanka is considering introducing anti-conversion laws to stem the tide of conversions from Islam to other religions. At the same time several court cases are pending in Malaysia on the same issue. Religion is on the increase and the competition among religious communities worldwide is on the increase as well, and that is also not likely to go away. As the world becomes 'more secular, culturally plural religiously diverse', there will be an increase in competition between religious communities.[16] It is highly questionable for the state to give an advantage to one or another religious group in what has increasingly become a global free market in religious belief and practice.

The nature of secularity – an open market

The need to come to terms with recent changes in global social life have also been sources of conflict and a temptation to flee from the Islamic ideals of democracy and human rights. Increasingly Muslims live in secular post-industrial societies and in the context of the global movement of people, capital and cultures. Post-industrial societies are often ethnically, culturally and religiously diverse. This is a new experience for some, but not for all Muslims. It is certainly the experience for Muslims who have migrated. In secular societies the state does not privilege one or another religion, or for that matter, irreligion. For some religious people this context appears evil, threatening and hostile. This leads some to condemn such societies, while others find the freedom to choose to believe, to choose how to practice, to choose how to apply faith to life in a richly challenging context in which to live in submission to God.

To grasp the motives behind violence and terrorism is not to treat religion/modernity or religion/secularity as binary opposites, in a confrontational sense, but rather in a competitive theme called by Bouma an 'open market'.[17] Secularity does not mean the absence of religion, but, as Bouma suggests, 'the passing of a particular religious monopoly. This monopoly is replaced by much more open market for religious good and services'.[18] This free market requires freedom to produce and present the religious product. Here we face the crisis of leadership and the crises of international mechanisms.

In Muslim countries, the problem of leadership has been a chronic crisis affecting their nations and their relationship with other countries. In some Muslim societies there is a leader that embodies both political and moral authority. The immediate scene portrays a range of a colourful list of leadership: kings, emirs, sultans, mullahs, military dictators and democrats without democracy. Freedom to think and produce can be a problem under such leadership. A free market of goods and services for the body, the mind and the soul, has no existence in many Muslim countries. In many Muslim countries intellectual output of all goods and services for daily life in the political, economic, social and religious spheres have been under control by the state for quite a long time. Placing limitation on the freedom of speech is a central factor behind violence and terrorism within some Arab and Muslim countries.

Competition between religions is one of today's pressing issues. Even though, the competition among them is on the increase in an uneven market which does not provide an equal opportunity for discussion while placing limitation on the freedom of speech leads to conflict. Competition is healthy as it produces a greater understanding of the various positions both among those within and those outside of the group. Competitors respect each other as legitimate operators in the marketplace. Conflict is unhealthy as in conflict each seeks the destruction or removal of the other. Such conflict in the view of some is '*clash of civilizations*'.[19] Some others expressed deep scepticism about such *clash* and the suggestion of unavoidable opposition between Islam and the West. September 11, which is widely used to support the proposed clash for instance, had come from non-state terrorists, motivated by political situation in a religious dress.[20]

Communication between civilisations was in the past, and with globalisation increasing the movement of people, capital and culture is even on the increase today. Migration of *ideas* between civilisations, including Arab/Islamic civilisation has been clearly documented, and discussed in this volume. In this context conflict, or the clash is not because of civilisation, as such, but because the competition between *ideas* lacks the freedom and equality or free market. Increasing competition among *ideas* vs limitation on the free speech is the main source behind violence and terrorism in the Muslim countries. These countries have failed to understand that none of the *ideas* such as democratisation, modernisation, globalisation, Westernisation and secularisation meant the absence of religion.

There are religious groups who hold to their religion as a way of life. Likewise, there are secularist groups holding to various forms of secularity as ways of life. This also applies to other *ideas* such as capitalism, socialism, communism, democracy and even globalisation. Each of these *ideas* has its own groups; on the local and global levels; whose religion is their *idea* and hold it as their way of life. Each of these *ideas* can act as a religion for some who believed in its rules and are governed by its regulations. Religion is an *idea* among those *ideas*, and the competition among *them* is on the increase in step with the technological development. This indicates that competition will not go away. Suppression of one *idea* at the hands of another may lead to conflict. The conflict is not because of the *ideas* but because of the absence of an open market that allows free competition between the good and services of all *ideas*. The absence of freedom, the crisis of leadership and the failure of international mechanisms, all are among the main problems in the Muslim countries where freedom of speech has been detained underground for a long time.

In many Muslim countries the authoritarian regimes attempted to force, in one way or the other, the consumers to purchase the product of one *idea*. However, in the eyes of many, the most desirable of all things or *ideas* is the forbidden one. For example, confiscating a book will increase the desire for reading it. In this way, the waves of conflicts began between the authoritarian regimes and their opponents in the Muslim countries. The conflict then developed, in step with the behaviours of both sides, to violence and terrorism. These circumstances were ongoing *locally*, for decades, under the nose of the democracies, and the dogma

of liberties and human rights. Ignoring these problems by the world actors, on the one hand, and supporting those oppressive regimes, on the other hand, facilitated the accumulated pressure of pain to erupt violently with enough fuel to cross the shores of all religions; all codes and laws of all *ideas* even the Mediterranean, the Atlantic and Pacific ones. Gareth Evans, who is currently President and Chief Executive of the International Crisis Group (ICC) in Brussels, illustrated this point in these words:

> The West in general, and the US in particular, can no longer afford to treat with the same erratic neglect the problems of the Arab and Muslim world, ignoring those problems except when oil supplies appear threatened. The 9/11 weren't themselves poor or without influence, but they were supported by millions of people who are; those who resent perceived US support for their own corrupt and insensitive regimes (and indifferent hitherto to the democratic vacuum which has existed from Morocco to Pakistan); who resent perceived US indifference to their own concerns for political and social justice (including for Palestinians); who want more economic opportunity and a bigger slice of the pie; and who resent those who seem so effortlessly to have so much of it already and to be so unwilling to share it.[21]

Violence and terrorism are not because of religion or culture or civilisation, but rather oppression, repression and humiliation in the Arab and Muslim countries. The problem is to consider that there is a problem of perception, generalisation and the way of addressing the problem. In the aftermath of September 11, many have come to challenge their talents in a threatening non-scholarly imaginative and violent style to foster the perception of religion and its prophet; its scripture and message; its teachings and adherents as 'terrorism'.[22] Such publications have no scholarly value but only to alienate a particular group, promote hatred and enmity among religious groups and to tear at the social fabric of the local and global society. Alienating a given community from its surrounding communities, because of few individuals, may lead to resentment or violence and hostility in both local and global society. It is a type of hostility that is motivated by factors, such as cultural and religious vilifications, unemployment, humiliations and economic circumstances.

In our Western society, some of these factors may affect other immigrant communities as well; however, the influence of these factors on Muslim communities is acute. Such factors may provoke some youths and drive them towards radicalism and 'home grown terrorism'. The terrorist attacks in London (7 July 2005), the riot in France (in October–November 2005), and the violence in Sydney beachside suburbs (December 2005), might illustrate the point.

In remarks to the National Assembly, France's parliament and former Foreign Minister 'de Villepin', as reported by the CNN, 'acknowledged the social unrest was the result of France's failure to provide hope to thousands of young people, most of them French citizens, the children of Muslim immigrants from northern Africa'. The CNN reported that the 'Union of French Islamic Organizations (UOIF) condemned the disorder and destruction the riots had caused'.[23]

In connection with the unbelievable violence in Sydney beachside suburbs, which shocked the entire Australian community, *The Age* Newspaper reported that '[i]t is a geographically isolated enclave of Anglo-Saxons who have never seen multiculturalism having much to offer. But researchers say there were other, broader triggers, to which Melbourne and other capital cities are just as vulnerable: the populist politics of divisiveness, an increase in racial tensions and agitation by neo-Nazi or white supremacist groups. "I couldn't imagine it happening in Melbourne, but I couldn't have imagined it happening in Sydney, either," says Luke Howie, a Monash University researcher into attitudes to terrorism. "But we are sowing the seeds of intolerance and hatred, so it's the sort of thing that could happen in any city in Australia"'.[24]

The advance signs of such themes were addressed, earlier, on the Australian TV programme (60 minutes, 10 November 2002); in London (BBC Radio, 30 May 2004, 6 am); and again on Australian TV (ABC – 7.30 Report 2 June 2004). The following statement of a youth typifies the youth feelings towards what he perceived as provocation:

> Since 11 of September, the media coverage of news and current affairs has been to a large extent one-sided, prejudiced and provocative against Islam and Muslims…Reviling Islam and Muslims in the current climate is sheer stupidity and provocation.
>
> (*The Truth Unspun*, issue 1, vol. 9 August 2002)

As this reflects the learning pains of individuals and groups, it also indicates the role of the media in society. As Bouma put it:

> There exist in Australia campaigns of misinformation about religious groups that come close to being hate campaigns. These tear deeply at our social fabric and undermine our capacity to work together in harmony to achieve commonly held values.[25]

In June 2003, the Human Rights and Equal Opportunity Commission (HREOC) engaged the Centre for Cultural Research (CCR) at the University of Western Sydney to investigate Australian Arabs' and Muslims' experiences of post-September 11 racism. This 'Independent Research' has shown a sharp increase in incidents of racial attacks or vilification after September 11, and an elevated level of such events for several months afterwards.[26] The report recounted the events as follows:

> The events recounted ranged from seemingly minor incidences of social incivility, to verbal abuses, through threats of violence including stalking and threatened sexual assault, to actual physical assault from veil-tearing to a stabbing; as well as property damage from graffiti and vandalising motor vehicles, to bricks through windows and arson…Several respondents detailed ongoing experiences, even campaigns, of sustained vilification

and harassment. Most events involved one or two perpetrators, but some respondents talked about treatment at the hands of larger groups, or even institutional racism.[27]

As to the sites of racism, abuses or violence, the HREOC pointed out the sites in this order: 'the street'; 'the media'; 'shops and shopping malls'; deriving or in public transport'; 'schools and colleges'; 'work'; 'leisure places'; 'in government sites'. The perpetrators were identified as 'Australian; Aussies'; 'Anglo, Anglo-Saxon'; 'Anglo-Australian'.[28] The report shows that 'the media was the next most frequently cited "place" of racism and abuses of Arab and Muslim Australians nominated in the survey'.[29] Even though, 'the police didn't really treat the situation as if it was serious. When she reported the beating and stabbing incident by phone, she was told to contact a particular police station, which referred her to a second, which referred her to a third…Despite her being able to identify the perpetrators from school photographs with the assistance of the Principal, no charges were ever laid'.[30] Does the media have some influence on public opinion and duties; is there a consistent harmony between values and mechanisms in democracy; what is terrorism; and what sorts of violent responses to terrorism can be morally legitimate?

Before al-Qaʻida, terrorism was out there and left its diacritical marks on the pages of history. In our modern world, the word 'terrorism' entered the political discourse with reference to the Reign of Terror imposed by the Jacobin regime and that is to describe state terrorism. A considerably large number of historical studies have discussed state terrorism in some details. Historical studies have shown terrorism in varying colours: 'The Reign of Terror; The Red Terror; The White Terror'.[31] While those colours were made earlier by state terrorism – 11 September 2001, however, is a recent stamp made by non-state terrorism. In either case, terrorism is wrong and unjustifiable; whether the perpetrator is a state or others.

Considering the situation in our contemporary world, state terrorism has come to be much more difficult to discern. When social sciences and philosophy discuss terrorism, they tend to focus on non-state and more often than not, anti-state terrorism. The media's usage of terrorism tend also to focus only on non-state actors. Even though if army or security services are doing the same thing, when done by insurgents they are invariably described and condemned as terrorist. Overall, the state's action is commonly justified as actions done on behalf of the state. Thus states can and commonly do use tactic to justify their actions. However, death is but death; murder of non-combatants is but murder; destruction is but destruction; fear is but fear; and terror is but terror.

As far as the media is concerned, there is a widely shared assumption that what the state does has a certain kind of legitimacy, while those opposing the state tend to be perceived as forces of killing, destruction and unjustifiable pursuits. In a case when the state faces insurgency, the media with its influence on the public opinion tend to stand on the side of the state. This tendency affected the usage of the word 'terrorism'. Subsequently, if when insurgencies are sponsored by a state,

many institutions of this state and its allies do not call them terrorists, but rather guerrillas and freedom fighters. This tendency could be portrayed by the following words of Woddis:

> Throwing a bomb is bad,
> Dropping a bomb is good;
> Terror, no need to add,
> Depends on who's wearing the hood.[32]

This illustrates the tendency of binary opposites such as us/them, here/there, superior/inferior, as outlined earlier.

The many complexities of the current international situation of occupations, globalisation, extreme wealth, luxury and starvation, armament, terrorism and wars between nations testify the urgent need for reconciliation, dialogue and cooperation among cultures and between civilisations. Rather than to Huntington or Fukuyama, we should perhaps look to Hobbes for a metaphor in the twenty-first-century world. The present world needs, more than ever, a cultural and civilisational dialogue of a kind that prevents a further growth of misunderstanding and mistrust. Life is dearer but very short, and if we compare human community to the vast universe in which humankind is living, human community appeared as a drifting lonely speck whose span of life is a mere infinitesimal fraction in eternity.

Conclusion

The Qur'anic base for democracy and human values has been clearly established. Drawing as well from the life of the Prophet and from the *sunnah* it can be seen that Islam provides a rich resource for the development of societies that promote the good of all, that are diverse, that recognise the need for consultation, and that respect the human dignity of all persons and groups. There have been societies in Islam's history that stand as examples, including Andalusia and Sicily. In the modern time, Egyptian civil and criminal laws on the basis of the *shari'ah* were completed and implemented since 1949. There are contrary examples as well, societies both in the past and the present that have misapplied the laws or moved away from the Islamic ideal towards repressing patriarchal non-democratic regimes. The challenge facing Muslims today both in diaspora and in nations where they have been or have recently become majorities is whether to follow the negative examples so often associated with Islam, or to reach back into their traditions and read carefully their scriptures to find a way forward that leads to peace, internal security, the development of sustainable values and a richly nourishing religious and spiritual life.

Notes

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113 Qutb, *Zilal*, vol. 2, pp. 840–841, 849; vol. 3, p. 1216; vol. 4, pp. 2006–2010; Qutb, *Nahwa Mujtam' Islami*, pp. 50–51.
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2   The notion of democratic participation

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7   al-Mawardi, *al-Ahkam al-Sultaniyyah*, pp. 5–6.

8   Kendall, *John Locke and the Doctrine*, p. 91; al-Mawardi, *al-Ahkam al-Sultaniyyah*, p. 5.

9   See Kendall, *John Locke and the Doctrine*, p. 69; al-Mawardi, *al-Ahkam al-Sultaniyyah*, pp. 5–6.

10   Qutb, *Zilal*, vol. 1, pp. 290–292; for more texts and details concerning particularity of compulsion see Khatab, 'Citizenship rights of non-Muslims in the Islamic state', pp. 163–187.

11   'Abduh, Muhammad (1956), *Risalat al-Tawhid* (*The Message of Unity*), Cairo: Matba'at Ali Subayh, pp. 8, 70–74.

12   Khatab, Sayed (2006), *The Power of Sovereignty*: *The Political and Ideological Philosophy of Sayyid Qutb*, London and New York: Routledge, pp. 87–90, 92–97.

13   Qutb, *'Adalah*, pp. 15–17.

14   For example see Qur'an 88:21–22; 6:109; 2:112, 256; 16:125–126 and 50:45.

15   Kendall, *John Locke and the Doctrine*, p. 68.

16   See al-Qurtubi (1985), *Al-Jami' li Ahkam al-Qur'an*, vol. 2, pp. 74–76, esp. verse (2:113); and vol. 4, pp. 115–119, esp. verse (3:75).

17   For this type of people including the Arabs; the Qur'an tells them all that the faith has not entered their hearts, see al-Tabrasi, Abi Ali al-Fadl ibn al-Hasan (d.549/1154) (1986), *Majma' al-Bayan fi Tafsir al-Qur'an* (*The Illustrative Collection of the Interpretation of the Qur'an*), Beirut: Dar al-Ma'rifah, 10 vols, vol. 9–10, pp. 201–208, esp. Qur'an, 49:11–14.

18   See al-Qurtubi, *Al-Jami' li Ahkam al-Qur'an*, vol. 1, pp. 192–224, esp. Qur'an (2:8–20); and vol. 5, pp. 426–424, esp. Qur'an (4:142–146); and vol. 6, pp. 13–17, esp. Qur'an (2:162).

19   Ibn Khaldun, Abd al-Rahman Ibn Muhammad (d.808/1406), *Tarikh Ibn Khaldun* (*The History of Ibn Khaldun*), vol. 1, pp. 202–203.

20   See al-Qurtubi, *Al-Jami' li Ahkam al-Qur'an*, vol. 8, pp. 55–56, esp. verse (8:72).

21   See Qur'an (2:256); (10:98); for further details see Khatab, 'Citizenship rights of non-Muslims in the Islamic state', pp. 163–187.

22   The Constitution was completed on 24 September, p. 622.

23   For the complete Arabic version, see Ibn Hisham, Abd al-Malik (d.180/833) (1995), *al-Sirah al-Nabawiyyah* (*The Prophetic History*), Beirut: Dar Ihya' al-Turath, 1st edn, 4 vols, vol. 2, pp. 115–116; English translations, see Guillaume, A. (1955), *The Life of Muhammad*: *A Translation of Ishaq's Sirat Rasul Allah*, introduction and notes by Guillaume, A., Oxford and Delhi: Oxford University Press, vol. 1, pp. 231–232; Haykal, *The Life of Muhammad*, pp. 182–183; Lings, Martin (1989), *Muhammad*: *His Life Based on the Earliest Sources*, London: George Allen and Unwin Publishers,

pp. 125–127; Watt, W. Montgomery (1961), *Muhammad*, *Prophet and Statesman*, London: Oxford University Press, pp. 94–96.

24 Watt, *Muhammad*, *Prophet and Statesman*, p. 94.
25 Guillaume, *The Life of Muhammad*, vol. 1, pp. 231–232.
26 Haykal, Muhammad Husayn, *The Life of Muhammad*, pp. 182–183.
27 Kendall, *John Locke and the Doctrine*, p. 91.
28 Haykal, *The Life of Muhammad*, pp. 181–182; also see Guillaume, *The Life of Muhammad*, vol. 1, pp. 231–233.
29 Arnold, Thomas Walker (1913), *The Preaching of Islam*, London: Constable and Company, p. 113.
30 Ibn Hisham, *al-Sirah*, vol. 1, p. 358.
31 Ibn Hisham, *al-Sirah*, vol. 1, pp. 370–375.
32 Watt, *Muhammad*, *Prophet and Statesman*, pp. 94–95.
33 Haykal, *The Life of Muhammad*, pp. 180–182.
34 Qutb, *'Adalah*, pp. 92–93.
35 Burns, C. Delisle (1948), *The First Europe*: *A Study of the Establishment of Medieval Christendom*, *A.D.* 400–800, New York: W.W. Norton and Company, p. 471.
36 Green, V.H.H. (1956), *The Hanoverians 1714–1815*, London: Edward Arnold Ltd, p. 30.
37 Qutb, *'Adalah*, pp. 85–86.
38 For more details see, Khatab (2006), *The Power of Sovereignty*, pp. 31–36; Rousseau, *The Social Contract*, p. 27.
39 For details see, Al-Tabari, ibn Jarir (d.310/922) (1997), *Tarikh al-Tabari*, Beirut: Dar al-Kutb, 6 vols, vol. 2, pp. 90–94.
40 See Mawdudi, Abu al-A'la (2000), *The Islamic Law and Constitution*, trans. and ed. Khurshid Ahmad, Lahore: Islamic Publications, p. 279.
41 Weiss, *The Principles of State*, p. 23.
42 al-Mawardi, *al-Ahkam al-Sultaniyyah*, p. 22.
43 Al-Hakim, Tawfiq (n.d.), *Tawfiq al-Hakim al-Mufakkir*, Cairo: al-Kitab al-Jadid, p. 95.
44 Zurayqah, Najdat (1998), *al-Dimuqratiyyah*: *Qissah Lam Taktamil Fusulaha* (*Democracy*: *A Story Never Completed*), Damascus: Dar Blal, 1st edn, pp. 204–220.
45 In this classic form of democracy, a number of people were allowed to have a voice in decisions that would affect all people. This right was exercised at a mass meeting. The decision was direct in a way that would be called present day 'direct democracy'. But, three points that should be remembered: (i) that this form of classic age democracy excluded women and a large class of slaves; (ii) that the mass (*demos*) acted as a collective or social body, rather than as separate or isolated individuals and (iii) that this form of collective decision-making could work only as long as the citizen body who are allowed to exercise this right remained relatively small and homogeneous. In this form of democracy, the number of people never exceeded 20,000 persons. In his *Human Scale* (1980), Kirkpatrick Sale suggested that true democracy is difficult in groups larger than 10,000, and impossible in populations above 50,000: most West Europeans and Americans live in towns and cities larger than this. (See al-Hakim), *Tawfiq al-Hakim al-Mufakkir*, p. 95; Raymond Boudon and Francois Bourricaud (1989), *A Critical Dictionary of Sociology*, trans. Peter. Hamilton: University of Chicago Press, p. 105; Marshall, Gordon (1998), *Oxford Dictionary of Sociology*, London: Oxford University Press, 2nd edn, p. 147.
46 Qutb, Sayyid (1993), *Mashahid al-Qiyamah fi al-Qur'an* (*Scenes of the Resurrection in the Qur'an*), Cairo: al-Shuruq, 11th edn, p. 31.
47 Marshall, *Oxford Dictionary of Sociology*, 2nd edn, p. 147.
48 Dunn, John (1979), *Western Political Theory in the Face of the Future*, Cambridge: Cambridge University Press, p. 6; Russell, Bertrand (1961), *History of Western Philosophy*, London: Routledge, pp. 652, 665, 669, 700, 737.

49 Dunn, *Western Political Theory*, p. 6; Russell, *History*, pp. 652, 665, 669, 700, 737. Some see the reappearance of the early modern democracy in the Virginian Declaration of Rights and the American Declaration of Independence in 1776, and in the French Declaration of the Rights of Man in 1789 (see Herald and Sun (1954), *The New International Illustrated Encyclopaedia*, Melbourne: Colorgravure Publication, vol. 2, pp. 371–372). As for the latter, one French historian has called the Declaration the death certificate of the old regime (see Thomson, David (1957), *Europe Since Napoleon*, Cambridge: Longmans, 2nd edn, p. 10). Some others see that neither the French nor the American Declarations were manifestos of democracy. Thomson (1957) emphasises that the 'French Declaration was not a manifesto of democracy. Even the Americans had not yet instituted universal suffrage and the French contented themselves with stating that 'all citizens have the right to take part, in person or by their representatives', in forming the law and in voting taxes. That they intended neither universal nor direct democracy became clear before the end of 1789, when the Assembly drew up a constitution. This made a distinction between 'active' and 'passive' citizens and withheld the vote from the latter who were defined as those who did not pay taxes equal in value to three days' wages' (see Thomson, *Europe Since Napoleon*, p. 112). Democracy did not reappear before 1789 and when it did reappear, it excluded a number of people from having a voice in decisions that would affect all people. In the eighteenth century, according to Green, 'England was ruled by a small class of property-owners … Property was the key to government and the basis of representation in parliament' (see Green, *The Hanoverians 1714–1815*, p. 30). By the end of the eighteenth century, 'the dominant view was that the State is the enemy of individual freedom' (see Herald and Sun, *The New International Illustrated Encyclopaedia*, vol. 2, p. 372).

50 Herald and Sun, *The New International Illustrated Encyclopaedia*, vol. 2, pp. 371–372.

51 Thomson, *Europe Since Napoleon*, p. 10.

52 Thomson, *Europe Since Napoleon*, p. 112.

53 Green, *The Hanoverians 1714–1815*, p. 30.

54 Herald and Sun, *The New International Illustrated Encyclopaedia*, vol. 2, p. 372.

55 Thomson, *Europe Since Napoleon*, p. 341.

56 Herald and Sun, *The New International Illustrated Encyclopaedia*, vol. 2, p. 372.

57 Thomson, *Europe Since Napoleon*, pp. 341–342.

58 Herald and Sun, *The New International Illustrated Encyclopaedia*, vol. 2, p. 372.

59 Thomson, *Europe Since Napoleon*, pp. 366, 367–368; al-Maydani, Abd al-Rahman Hasan (1985), *Kawashif Ziyuf fi al-Madhahib al-Fikriyyah al-Muʿasirah*, Damascus: Dar al-Qalam, p. 709.

60 Qutb, *Nahwa Mujtamʿ Islami*, pp. 86–87; Qutb, *al-Salam*, pp. 130–142.

61 Groth, Alexander (1990), 'Democracy in England', in *World Book Encyclopaedia*, Chicago and London: World Book Inc., vol. 5, p. 129.

62 Marshall, *Oxford Dictionary of Sociology*, p. 147.

63 Margolis, Michael, (1979), *Viable Democracy*, London: Macmillan Press, p. 27.

64 Salih, Hafiz (1992), *al-Dimocratiyyah wa al-Hurriyyah*, Lahore: Dar al-Fath, pp. 9–10.

65 Salih, *al-Dimocratiyyah wa al-Hurriyyah*, p. 10.

66 See Herald and Sun, *The New International Illustrated Encyclopaedia*, vol. 2, pp. 373–374.

67 Graeme, Duncan (1983), *Democratic Theory and Practice*, Cambridge University Press, p. 3.

68 Graeme, *Democratic Theory and Practice*, p. 15.

69 Graeme, *Democratic Theory and Practice*, p. 15.

70 Graeme, *Democratic Theory and Practice*, p. 16, see p. 17. Plato's critique is given in its most elaborate form in Bk VIII of *The Republic*, ed. F.M. Cornford (1949), Oxford, esp. pp. 282–286 and 290–292. Aristotle's critique on democracy is provided in *The*

Politics, trans. E. Barker, Oxford: Oxford University Press (1948), esp. in Bk III, Ch. VII–XI, and Bk IV, Ch. IV, see pp. 207, 240, 241, 265, 275, 288, 302; see Graeme, *Democratic Theory and Practice*, pp. 16–17; Russell, *History*, pp. 196–205.

71 Dunn, *Western Political Theory in the Face of the Future*, p. 4, also see pp. 2–26.

72 Rousseau, *Social Contract*, p. 112.

73 Kamenka, Eugne (ed.) (1983), *The Portable Karl Marx*, New York: Penguin, p. 254; Russell, *History*, p. 735.

74 Kamenka (ed.) (1983), *The Portable Karl Marx*, p. 146, see pp. 53–62 for R. Lender's interview with Marx, on 3 July 1871; also see Aronowitz, Stanley (1990), *The Crisis in Historical Materialism*, Minneapolis: University of Minneapolis Press, pp. 259–266, Russell, *History*, p. 200.

75 See Fukuyama, *The End of History*, pp. 201–207.

76 Fukuyama, *The End of History*, pp. 136–137, 232–235.

77 Zuhayir, who was the king of his tribe and one of the 'first class poets' and whose poem approved to be written in gold and affixed on the gate of the Ka'aba, died in 609 when Muhammad began to meditate at 39 years just before the revelations began in 610–611 (see Qumayhah, Mufid (1994), *Sharh al-Mu'allaqat al-'Ashr*, Beirute: Matabat al-Hilal, pp. 137–141).

78 Al-A'lam, al-Shintimari, Yusuf bin Sulayman bin 'Isa al-Andalusi (d.476/1083) (1982), *Ash'ar al-Shu'ara' al-Sittah al-Jahiliyyun* (*Poetry of the Six Jahili Poets*), Beirut: Dar al-Fikr, pp. 282, 283, 287, 409.

79 Ahmad (September 1962), 'The classical Muslim state', pp. 83–104, esp. 95 and ff. 55; Cook, Michael (2002), *Commanding Right and Forbidding Wrong in Islamic Thought*, Cambridge: Cambridge University Press, pp. xi–xii, 32–35.

80 Abd al-Raziq (2 September 1925), 'Al-Islam wa Usul al-Hukm', pp. 35, 36, 84, 103.

81 Ahmad (September 1962), 'The classical Muslim state', pp. 83–104, esp. 95.

82 Dunn, *Western Political Theory*, p. 6; Russell, *History*, pp. 652, 665, 669, 700, 737.

83 al-Mawardi, *al-Ahkam al-Sultaniyyah*, pp. 5–20, for further details about the forms and practices of *shurah* see Chapter 1 in the present text.

84 Green, *The Hanoverians 1714–1815*, p. 30.

85 Abu Rabi', Ibrahim (1996), *Intellectual Origins of Islamic Resurgence in the Modern Arab World*, State University of New York Press, pp. 5–6.

86 Haykal, Muhammad Hasanayn (1983), *Kharif al-Ghadab* (*The Autumn of Anger*), 2nd edn, pp. 276–278.

87 Graduated at al-Azhar University in Cairo, al-Tahtawi was influenced by his teacher Shaykh Hasan al-'Attar the Rector of al-Azhar and great scholar of the age. Al-'Attar was in contact with European civilisation, visited *Bonaparte's Institute de'Egypte* where he saw some of the new sciences of Europe. Tahtawi may have learned some of this knowledge from him. Supported by his teacher, Tahtawi was appointed as an *Imam* to the first Egyptian regiment that was dispatched by Muhammad Ali to France. Although sent there as an *Imam* and not as a student, Tahtawi threw himself into study with enthusiasm. He acquired a precise knowledge of the French language and read books on ancient history, Greek philosophy and mythology, geography, mathematics, logic, the life of Napoleon, French poetry, including Racine and, most importantly, the French thought of the eighteenth century – Voltaire, Rousseau's *Social Contract* and other works. See Hourani, Albert (1983), *Arabic Thought in the Liberal Age 1798–1939*, Cambridge University Press, p. 69; Husayn, *Al-Islam wa al-Hadarah al-Gharbiyyah*, pp. 18–19.

88 Husayn, *Al-Islam wa al-Hadarah al-Gharbiyyah*, p. 20.

89 Tamimi, Azzam, 'Democratic synergies and oppositions in the Muslim world: Arab democracy and Islamic democracy', paper presented at the PSA Conference, Leicester University, Wednesday, 16 April 2003, p. 3; Hourani, *Arabic Thought*, pp. 69, 70–72.

90 Husayn, *Al-Islam wa al-Hadarah al-Gharbiyyah*, p. 23.

91 Abd al-Salam, Faruq (1987), *Al-Ahzab Al-Siyasiyyah fi al-Islam*, Cairo: Qalyub Publishing House, p. 32.

92   Husayn, *Al-Islam wa al-Hadarah al-Gharbiyyah*, p. 29.

93   Hourani, *Arabic Thought*, p. 73.

94   Tamimi, 'Democratic synergies and oppositions', p. 3.

95   Khayr al-Din al-Tunisi (1979), *Aqwam al-Masalik fi Taqwim al-Mamalik*, Tunis, 1284–1285/1867–1868, Arabic, pp. 3–5.

96   Khayr al-Din, *Aqwam al-Masalik fi Taqwim al-Mamalik*, pp. 9, 12, 14, 16.

97   Khayr al-Din, *Aqwam al-Masalik fi Taqwim al-Mamalik*, p. 5.

98   Hourani, *Arabic Thought*, pp. 84–85.

99   Haykal, Muhammad Hasanayn, *Kharif al-Ghadab* (*The Autumn of Anger*), pp. 276–278.

100 Among those others are Abdullah al-Nadim, Qasim Amin, Waliyy al-Din Yakan and Mustafa al-Manfaluti; for further details see Rida, Muhammad Rashid (1931), *Tarikh al-Ustadh al-Imam al-Shaykh Muhammad 'Abduh*, Cairo: al-Manar, 1st edn, vol. 2, pp. 339.

101 Amin, Ahmad (1948), *Zu'ama' al-Islah* (*The Leaders of Reform*), Cairo: Lajnat al-Ta'lif wa al-Tarjamah.

102 Khedive Ismail is the grandson of Muhammad Ali. The word 'Khedive' is Persian and it is used as a title that is conferred on a person raising him to the level of 'king' and 'sultan' but less than 'caliph' and higher than 'prime minister'. After four years of his rule, and since 8 July 1867, the Ottoman adopted this word to be the official title of the rulers of Egypt.

103 Jamal al-Din al-Afghani and al-Shaykh Muhammad 'Abduh (23 July 1957), *Al-'Urwa al-Wuthqa wa al-Thawrah al-Tahririyyah al-Kubra*, Cairo: Dar al-Arab, 1st edn, pp. d–h. This book contains some issues from the *al-'Urwah al-Wothqa* and some other writings and speeches of al-Afghani and 'Abduh that were found in the library of Dar al-Arab publishers in Egypt. The publisher collected these materials in this book and it was forwarded by Gamal Abd al-Nasser, the leader of 23 July 1952 Revolution in Egypt. The publisher claims that the material in this book contains 50 per cent of the knowledge about Afghani and 'Abduh and that without this book we lack 50 per cent of this knowledge. The book was published in 1957 in Egypt in Arabic.

104 al-Afghani and 'Abduh (23 July 1957), *Al-'Urwa al-Wuthqa*, pp. 23–24.

105 Rida, *Tarikh al-Ustadh al-Imam*, vol. 2, p. 281.

106 Hasan, Abd al-Basit (1982), *Jamal al-Din al-Afghani wa-atharuhu fi al-'alam al-Islami al-Hadith*, Cairo: Maktabat Wahbah, pp. 267–268.

107 al-Afghani and 'Abduh (23 July 1957), *Al-'Urwa al-Wuthqa*, p. 25.

108 al-Afghani and 'Abduh (23 July 1957), *Al-'Urwa al-Wuthqa*, pp. 9–12.

109 Abd al-Raziq, Mustafa (1957), 'al-Shaykh Muhammad 'Abduh', in al-Afghani and 'Abduh's *Al-'Urwa al-Wuthqa wa al-Thawrah al-Tahririyyah al-Kubra*, pp. 17–18.

110 al-Afghani and 'Abduh (23 July 1957), *Al-'Urwa al-Wuthqa*, pp. 5–6.

111 For 'Abduh's intellectual life see works by Goldziher, Max Horton, Gibb, C.C. Adams. Many of 'Abduh's works are still in Arabic, but great portions of it were translated into Western languages. The most comprehensive record on 'Abduh, in Arabic, is his disciple Rashid Rida's three-volumes of *Tarikh al-Ustadh al-Imam* (1931). Volume I is a biography of 1100 large size pages, Volume II is an anthology of articles by 'Abduh and Volume III reproduces the texts of eulogies and appreciations of 'Abduh by the press and friends and officials.

112 Hourani, *Arabic Thought*, p. 135.

113 See 'Abduh, Muhammad (1931), 'Al-Shura wa al-Istibdad' (Consultation and despotism), in Rida, Muhammad Rashid, *Tarikh al-Ustadh al-Imam al-Shaykh Muhammd 'Abduh*, Cairo: Al-Manar, 1st edn, vol. 2, pp. 203–210.

114 *Sadd al-zara'i'* (i) the word *al-zara'i* is plural, its singular *zari'ah*: means excuse, cause or device; (ii) *sadd*: block (i.e. *sadd al-zara'i'*: blocking the means whether excuses, causes or devices). See Ibn Manzur Jamal al-Din (1232–1311), (1990), *Lisan al-Arab*, Beirut: Dar Sadr, 15 vols, vol. 8, p. 96.

115 *Masalih mursalh*: (i) *masalih* is plural, its singular *maslahah*: interest, welfare, benefit (i.e. public interest; what is in the interest or for the benefit of people); (ii) *mursalah* (no specific authoritative text) see Ibn Manzur, *Lisan al-Arab*, vol. 2, p. 517.

116 Zidan, Abd al-Karim (1986), *al-Madkhal li Dirasat al-Shari'ah al-Islamiyyah* (*The Entrance for the Study of Islamic Shari'ah*), Beirut: al-Risalah, 9th edn, pp. 202–203.

117 In addition to the idea and method of election, the successors of the Prophet collected the Qur'an into a book (*mushaf*) and that had not been done during the Prophet's time. The welfare of the community required them to collect the Qur'an from scraps of paper, palm-leaves, flat bones, stones and other materials where the original text was written, with reference to those who memorised it. The successors feared that the Qur'an would be forgotten if those who memorised it are dead, or those raw materials are disintegrated. 'Umar (the second Caliph) used to take part of the wealth of governors whom he accused of adding governments' funds to their private funds. He saw this would be good for the governors and prevent them from exploiting their positions to acquire money and secure illicit gains. It is said of 'Umar that he threw milk that had been mixed with water to punish the one who tried to cheat, and this is in public interest as well, so that they would not cheat.

118 Zidan, *al-Madkhal li Dirasat al-Shari'ah*, pp. 203–204.

119 See Qur'an, see sura 2: 104; sura 6: 108; as for the *sunnah*, there are many of them and Ibn al-Qayyim in his *I'lam al-Muwaqqi'in* has quoted some ninety cases from the statements and practices of the Prophet. For further details see Qutb, *'Adalah*, pp. 119–125.

120 Tamimi, 'Democratic synergies and oppositions', p. 4; also see al-Afghani and 'Abduh (23 July 1957), *Al-Urwa al-Wuthqa*, p. 12.

121 'Abduh, Muhammad (1931), 'Ikhtilaf al-Qawanin bi Ikhtilaf Ahwal al-Umam', in Rida (1931), *Tarikh al-Ustadh al-Imam*, vol. 2, pp. 171–172 (from *al-Waqa'i' al-Misriyyah*, 19 June 1881).

122 'Abduh (1931), 'Ikhtilaf al-Qawanin bi Ikhtilaf Ahwal al-Umam', vol. 2, p. 172 (from *al-Waqa'i' al-Misriyyah*, 19 June, 1881).

123 Rida, *Tarikh al-Ustadh al-Imam*, vol. 2, p. 215.

124 Rida, *Tarikh al-Ustadh al-Imam*, vol. 2, pp. 215–216, esp. 216.

125 Rida, *Tarikh al-Ustadh al-Imam*, vol. 2, pp. 216–217.

126 al-Afghani and 'Abduh, *Al-'Urwa al-Wuthqa*, pp. 10.

127 'Abduh, 'al-Shurah', vol. 2, pp. 210–213.

128 'Abduh, *Tafsir al-Manar*, vol. 1, p. 11.

129 'Abduh, 'al-Shurah', vol. 2, pp. 203–210.

130 al-Afghani and 'Abduh, *Al-'Urwa al-Wuthqa*, pp. 74–79, 135–140.

131 Abd al-Raziq, 'al-Shaykh Muhammad 'Abduh', pp. 17–23, esp. 21.

132 The Prophet used *she-camels* among which was one called (*al-shahba*': the Grey in colour). What al-Kawakibi meant is that the message of his journal is the message which has been carried long ago by the grey *she-camel* which carried the message in the personality of the Prophet.

133 *al-Shahba*' was a monthly literary journal established in 1878.

134 *al-Mu'ayyad* was one of the major Islamic newspapers in Egypt at the end of the nineteenth century. It was edited by Shaykh 'Ali Yusuf. al-Mu'ayyad means it has 'been supported'.

135 For further details see Bani al-Marjah, Muwaffaq (1984), *Sahwat al-Rajul al-Marid*: *Al-Sultan Abd al-Hamid al-Thani wa al-Khilafah al-Islamiyyah* (*Awakening of the Sick Man*: *Sultan Abd al-Hamid II and the Muslim Caliphate*), Kuwait: Saqr al-Khalij, pp. 135–137.

136 For further details see Hourani, *Arabic Thought*, p. 271; Bani al-Marjah, *Sahwat al-Rajul al-Marid*, pp. 203.

137 See Sa'id al-'Iryan in Bani al-Marjah, *Sahwat al-Rajul al-Marid*, pp. 204.

138 Al-Kawakibi, Abd al-Rahman (1988), *Taba'i' al-Istibdad*, Algiers: Mofam Publication, p. 135.
139 Husayn, *Al-Islam wa al-Hadarah al-Gharbiyyah*, pp. 207–209.
140 Al-Kawakibi, *al-Shahba'*, no. 10, p. 1.
141 Al-Kawakibi, *Taba'i' al-Istibdad*, p. 169.
142 Al-Kawakibi, *Taba'i' al-Istibdad*, p. 187.
143 Bani al-Marjah, *Sahwat al-Rajul al-Marid*, pp. 134–136.
144 Tamimi, 'Democratic synergies and oppositions', p. 6.
145 Al-Kawakibi, Abd al-Rahman (1931), *Umm al-Qura*, Cairo: al-Matba'ah al-Misriyyah, p. 318.
146 Al-Kawakibi, *Umm al-Qura*, pp. 318–319.
147 Hourani, *Arabic Thought*, pp. 223–225.
148 Bani al-Marjah, *Sahwat al-Rajul al-Marid*, pp. 207–208.
149 Rida, Muhammad Rashid (1934), *Al-Manar*, Cairo: Manar Press, vol. 1, pp. 586–587.
150 Hourani, *Arabic Thought*, p. 136.
151 Hourani, *Arabic Thought*, p. 225.
152 Rida, *Al-Manar*, vol. 1, pp. 586–587.
153 Hourani, *Arabic Thought*, p. 228.
154 The Arabic word '*Imamate*' translates 'Rulership' in general. I translated the word '*al-'Uzma*' in the title by 'Higher' because the author used this word only to distinguish the small *imamate* of the prayer in the Mosque from the higher *Imamate* which is government. Translating the word '*al-'Uzma*' by '*supreme*' is not appropriate, as it fits neither the word, nor the author's intention or his line of thinking. As to the word '*al-'Uzma*', '*the* supreme' is more accurate than only (*supreme*). For Rida, *The Supreme* is God, not the *Imamate*. The *Imamate* whether it translates as 'government' or 'rulership' (at the Mosque or at the State Office) is neither divine, nor theocratic and it is not autocratic or the like of this word groups.
155 Bani al-Marjah, *Sahwat al-Rajul al-Marid*, pp. 289–292.
156 See Tamimi, 'Democratic synergies and oppositions', pp. 6–7.
157 Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, pp. 510–511.
158 Rida, Muhammad Rashid (1922), *al-Khilafah wa al-Imamah al-'Uzma*, Cairo: al-Manar Press, pp. 5–8.
159 Rida, *al-Khilafah wa al-Imamah*, pp. 60, 62, 65.
160 Rida, *al-Khilafah wa al-Imamah*, pp. 14–18; 52–56.
161 Kendall, *John Locke and the Doctrine*, pp. 96–97; MacDonald, *Western Political Theory*, vol. 2, p. 321–338, vol. 3, pp. 430–434 and ff.; Grotius, Hugo, *De Jure Belli AC Pacis Libri Tres*, vol. 1, pp. 140–144.
162 Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, p. 511.
163 Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, pp. 215–217, 470–474, 512, 524.
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220   Following the revolution in Egypt, Qutb was appointed as adviser to the Revolutionary council. His stand was to rule through a multiparty rule based on a constitution which had to be ready within six months and to call for election and the army to go back to its camps or as Qutb says 'natural habitat'. But soon things changed, and the Army Officers led by Nasser insisted on the military rule that Qutb usually described as tyrant (*taghut*) and dictatorship. In his stand against Nasser's military regime, in the 1960s, Qutb portrayed him as the statue '*Hubal*' (an idol worshiped as deity in Arabia prior to Islam), and his government as those masses who follow him as 'sheep in a flock; they worship him and raise him as their deity like what their ancestors did prior to Islam; they worshiped their idol as deity and raised their idol above everything, including the messengers of God and His angels'. By contrast, those who 'uncovered the reality of the idol' the 'taghut' (oppressor) are the 'Liberals; they are the Muslims who do not bow or worship the idol,' but deeply believe that the taghuts (dictators and oppressors) will surely go soon. See Sayyid Qutb, 'Hubal', *al-Kifah al-Islami*, no. 29, pp. 11–14 [poem].
221   Abu Rabi', *Intellectual Origins of Islamic Resurgence*, p. 93.
222   Feldman, Noah (2003), *After Jihad*: *America and the Struggle for Islamic Democracy*, New York: Farrar Straus and Giroux, p. 43.
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225   Smith, Cantwell (1977), *Islam in Modern History*, Princeton: Princeton University Press, p. 157.
226   For Qutb's article in the USA and his photograph with Dr William R. Ross, president of Colorado State College of education examining Qutb's newly published book *Social Justice in Islam*, see Khatab, *The Power of Sovereignty*, pp. v–vii.
227   Khatab, Sayed (Fall 2001), 'Al-Hudayb's influence on the development of Islamist movements in Egypt', *The Muslim World*, no. 91:3 and 4, pp. 451–480, esp. p. 461.
228   There are few photographs that show Nasser and other Free Officers' meetings with Qutb; some photos show them together, others show Qutb speaking to his audiences, Nasser and his team. All photos were at Qutb's house, inside the house and in the backyard, see Hammudah 'Adel (1990), *Sayyid Qutb mina al-Qaryah ila al-Mishnaqah*: *Tahqiq Wathaiq*, Cairo: Sina' li al-Nashr, 3rd edn, pp. 105–107.
229   Fayyad, Suleiman, 'Sayyid Qutb bayna al-Naqd al-Adabi wa Jahiliyyat al-Qarn al-'Ishrin' (Sayyid Qutb between the literary criticism and jahiliyyah of the twentieth century', *Al-Liwa'* (Jordanian journal), 10 September 1986, n. 696, pp. 8–9.
230   For Mirabeau, see MacDonald, *Western Political Theory*, esp. vol. 2, pp. 365–366.
231   Al-Khalidi, Salah (1994), *Sayyid Qutb min al-Milad ila al-Istishhad*, Damascus: Dar al-Qalam, 2nd edn, p. 303; Hammudah 'Adel, *Sayyid Qutb*, p. 110.
232   Al-Khalidi, *Sayyid Qutb*, p. 304.
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234   Qutb, Sayyid (n.d.), *Limadha A'damuni* (Why They Have Executed Me), Saudi Arabia: al-Saudiyyah li al-Abhath wa al-Taswiq, pp. 13–14; Hammudah, *Sayyid Qutb*, p. 120.

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4 Contribution to European law and philosophy

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5 Qutb, *Zilal*, vol. 1, pp. 129, 297; the word 'ignorance' (*jahiliyyah*) is mentioned in the Qur'an (3:154; 5:50; 33:33; 48:26) – in these places the Qur'an used the Arabic word '*jahiliyyah*'. In the Old Testament, namely, in the Ecclesiastics 5:2; 7:26; 10:1,5,14; 2:19 both Arabic terms '*jahlan*' and '*jahalah*' were mentioned explicitly and both of them are infinitives of the word '*jahl*' (ignorance) but the word '*jahalah*' is a synonym of the word '*jahiliyyah*' (ignorance) and expresses intensely its force and intents. See *al-Kitab al-Muqaddas* (*The Holy Book*), Dar al-Kitab al-Muqaddas fi al-Sharq al-Awsat (The House of the Holy Book in the Middle East), Arabic version, n.d., pp. 972–985. The word 'ignorance' or 'ignorant' also appeared in some of the English editions, but 'fool' or 'foolish' appeared in others. In the Arabic versions the root of *J.H.L* (*Jahl*) and its derivations are mentioned explicitly. As to Roger Bacon's concept of ignorance, see Bacon, Rodger (1988), *Compendium of the Study of Theology*, trans. and ed. Thomas S. Maloney, Leiden and New York: E.J. Brill, p. 39. To compare Bacon's theory of 'ignorance' with that of Sayyid Qutb's theory of *jahiliyyah* (ignorance), see Khatab, Sayed (2006), *The Political Thought of Sayyid Qutb*: *The Theory of Jahiliyyah*, London and New York: Routledge, Ch. 2, esp. pp. 14–43.
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6 Historical reality in the light of the declared principles

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28 See Khilafah Magasinet (July/August 2001), 'Indonesiens Problem i dens accept af USA's Hegemoni Over Sig', *Al-Khilafah Publikationer*, pp. 1–19, http://www.khilafah.dk/magasin/7-4/7-4.html. Similarly, the Islamic Liberation Party of Uzbekistan has a magazine titled *Khilafah* to reflect its contents.

7 Religion and the origins of violence and terrorism today

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