



POLITICAL PHILOSOPHY
IN
ISLAM

BOOK III

MUSLIM CONSTITUTIONALISM

A. H. KAMALI

IQBAL ACADEMY PAKISTAN

KARACHI

1971

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ABDUL HAMEED KAMALI

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PROLOGUE

Unlike those great leaders of the Muslim world who devoted themselves to pan-Islamism, or to organize their decadent states into a league of Muslim nations at the turn of the nineteenth century, Iqbal clearly visualized the real problem of the Congregation of Islam. It was basic reform of its public order and political constitution. He wished a revolution in Muslim Politics from kingship to democracy and observed as early as 1910: "It is clear that the fundamental principle laid down in the Quran is the principle of election, the details or rather the translation of this principle into a workable scheme of Government is left to be determined by other considerations (*Hindustan Review*, 1910-11; S.A. Vahid, *Thoughts and Reflections*, p. 74)." Till sometime after the Great War 1914-18, the Muslim world remained clung to an outworn Khilafat (the Turkish Ottoman Empire), and was unable to perceive or appreciate the possibilities of Islam which were likely to be unfolded in our time. Iqbal saw no future of this Khilafat and did not rise to save it. He was optimistic about the re-emergence of Muslim states on better lines. In fact, he was a spiritual comrade of the '*Muslim Radicals*', who were struggling for a new public order. Yet he was their acute critic also. He said; "In modern times—thanks to the influence of Western political ideas—Muslim countries have exhibited signs of political life. Egypt has made progress; Persia has received a constitution from the Shah, and the Young Turkish Party too have been struggling, scheming, and plotting to achieve their object. But it is absolutely necessary for these political reformers to make a thorough study of Islamic constitutional principles, and not to shock the naturally suspicious conservatism of their people by appearing as prophets of a new culture. They would certainly impress them more if they could show that their seemingly borrowed ideal of political freedom is really the ideal of Islam, and is, as such, the rightful demand of free Muslim conscience (*Hindustan Review*, Vols. XXII & XXIII, 1910-11; S.A. Vahid, *Thoughts & Reflections of Iqbal*, p. 75)."

When the Indian Muslims were rising into a Khilafat Movement, rather unconscious of the political principles of Islam, and were making great sacrifices for the restoration of the House of Ottoman and its decadent public institutions and empire in 1921, Iqbal recorded his convictions as follows: "That Muslim peoples have fought and conquered like other peoples, and that some of their leaders have screened their personal ambition behind the veil of religion, I do not deny; but I am absolutely sure that territorial conquest was no part of the original programme of Islam. As a matter of fact, I consider it a great loss

that the progress of Islam as a conquering faith stultified the growth of those germs of an economic and democratic organization of society which I find scattered up and down the pages of the Quran and the traditions of the Prophet. No doubt, the Muslims succeeded in building a great empire, but thereby they largely repaganized their political ideals, and lost sight of some of the most important potentialities of their faith (S.A. Vahid, 'Letter to Dr Nicholson,' *ibid*, p. 100)".

That Government by consultation or democratic organization is proved and prescribed by the Quran is not the end of political philosophy in Islam. Indeed, from it start the actual and true problems of political constitution for the Muslim countries. How does this principle of consultation work in legislation and government? How is it related to the Quran and Sunna? How does it recreate itself with the historical situations and developments? Those are the questions which are to be answered as necessary ingredients towards the political philosophy in Islam. Iqbal was fully conscious of the gigantic immensity and dimensions of those problems as no other Muslim thinker of political philosophy. He concentrated himself, in this connection, to great reflections and deep inquiries, as may be demonstrated by his various letters to the scholars and 'ulamā of Islam as follows:—

2 Sept, 1925; To Ghulam Mustafa Tabasum: "What is required is that the perfection (of the Quran) be demonstrated by proving that all the necessary rules for human supremacy (leadership) are found in it; that such and such verses are derivative sources for such and such rules; that the rules in 'Ibādāt and M'uāmalāt (especially in the latter) followed by other people are critically examined in the light of the Quran and shown that they are defective because, all along with them, humanity cannot attain supremacy (Shaykh Attaullah, *Iqbal Nama*, Vol. I, p. 50)".

18 Aug, 1924; To Sulayman Nadvi: "Recently, a reputed University (Columbia) of the U.S. has published a book on "Muslim Theory of Finance". This book states that the Consensus of Umma may repeal the nas al Quran...The author says that according to some hanafiya and Mutazila, the *Idjmā'a i Umma* has authority to do so. I want to know if there is any reference to this effect in the Muslim literature (*ibid*, p. 132)." (Sulayman Nadvi denies the contention by quoting al Amidi who in *al Ahkām* Vo. III p. 229 says; 'The general opinion against some of the Mutazila is that the Consensus cannot repeal it' (*ibid*, P, 132)".

24 Aug, 1924; "You have said that the Fuqaha consider it permissible that a Nas is particularized by Consensus. I want

to know some illustration of this particularization and generalization. Moreover, it is also necessary to know that such a particularization or generalization can be effected by Consensus of the Companions only or it is allowable to the Consensus of 'ulamā and Mudjtahidīn also. In Muslim history, if there is an illustration that the Companions particularized the ordinance or generalized the ordinance of a nas (I want to know it). I could not understand the meaning of particularization or generalization of an Ordinance (*Hukm*).

2. In addition, you have said that if there was an Ordinance from the Companions against the nas, it should mean that there was a repealing Ordinance (*Hukm i Nāsikh*) in the knowledge of the Companions against the nas, but it has not reached us.

Now, I want to know if there is an Ordinance promulgated by the Companions against the nas al Quran (Sulayman Nadvi writes in his footnote that there was no such Ordinance). That some repealing Ordinance might have been in their knowledge, seems to be only a *good guess* known as a 'legal fiction' in the contemporary legal dictionary. Allama Amidi's opinion apparently strengthens the American author's view in as much as the consensus of the Companions was allowed to decide against the nas al Quran. The 'Ulamā, after the period of the Companions could not act in that manner, for they could not have in their knowledge a repealing Ordinance (*Nāsikh Hūkm*).

3. If the Companions issued an ordinance against the nas al Quran, it was due to the fact that, according to Allama Amidi, some repealing ordinance was in their knowledge. Now, the repealing ordinance could not be other than a *hadith* of the Prophet. This proves that the *hadith* may function as a repealer of the Quran. It is unacceptable to me, and to you also it should be like that...The book published in America is *Mohammadan Theories of Finance* by Nicholas P. Aghnides (*ibid.* p. 133-34)".

19 Aug. 1926; "So far as the rules for particularization and generalization are concerned, I have come to know about them by Kāḍī Shaukāni's *Irshad al Fuḥūl*. Please let me have an answer for the rest of my question (*ibid.* p. 136)".

16 October, 1924; "When the Chief of the World (the Prophet of God) was asked some problem, he used to wait for a revelation. If there was a revelation, he used to answer the inquiry accordingly. But if there was no revelation (on it), he used to argue about it on the basis of some of the verses of the Quran, and in his answer used to cite them. Which of the books should be consulted for

reference? Another point of inquiry in this connection is as follows: The answer which was given on the basis of revelation (on it) is *hudjja* on all the *Umma* (and that revelation became part of the Quran). But, is the answer (of the Prophet) given by the Prophet, on the basis of an argument containing no element of revelation, is also a *hudjja* for the *Umma*? If its answer is in affirmative, it means that the Prophet's arguments are also included in the Revelations. In other words, there is no difference between *Wahi* (revelation) and *Hadith* (*ibid.*, p. 141-42)".

7 April, 1926: "I am not after the modification or repeal of '*Ibādat*'. In my article on *Idjtihad*, on the contrary, I have tried to put arguments for their changelessness. But there are many questions in my mind on *m'ūāmlat*. I am not satisfied. A question has arisen by the last part of your letter. Is the *imām* competent to cancel the limit (penalty) as established by the Quran and promulgate instead, a new penalty (Sulayman Nadvi in his footnote says that the word *cancellation* is not correct; the *Imām* may postpone it). *Haḍrat 'Umar* regulated...divorce. Was he empowered to do so? I want to know the *basis* of this power. In modern language. I want to know whether the Constitution in Islam allowed him authority for it? (I want to know further) whether the *Imām* (of the Muslim State) is an individual person, or it is such that a body (of persons) may also be the *Imām*; whether every Muslim country may have an *Imām*, or it is necessary that the whole of the Muslim world has an *Imām*. If it is the latter, then how is it possible in face of the present distribution (of the Muslim countries)? kindly, throw light on those issues (*ibid.*, 164-50).

24 April, 1926: "After completing my article on *idjtihād*, I will write on Ibn Qayyim's *Turq al Hikmiya*, and after it on *Maqabalat*. If I have questions regarding the *shariat i Ahādith*, it does not mean that *Ahādith* are useless. (Indeed), the (human) society, in spite of its progress and advancement, has not within its reach those priceless principles which lie in those *Ahādith*.

1. You have said (in your letter) that there are two aspects of the Prophet of God: *Prophethood*, and *Imama*. The former consisted of *ahkām al Quran* and the Prophet's conclusions from the verses of the Quran. But, *Idjtihād* is however based on human intelligence and experience. Is the *idjtihād* (of the Prophet) included in *Wahi* (the Revelation)? If it is, then how would you argue (and prove) it.?

2. The Prophet used to consult the Companions. Was the con-

sultation under the aspect of Prophethood? Or was it, under that of the Imāma? (*ibid.*, pp. 153-54)."

24 January, 1934; "Yesterday, I was reading your old letters. In one of them you had written that the head of the Muslim state has authority temporarily or permanently to repeal the shar'ī permissions, if those permissions are likely source of fasād (disorder/disturbance). He may also *repeal* the incumbents (Sulayman Nadvi said in his footnote that the word 'postpone' and not 'repeal' was written by me). Your letter is not before me now; I am writing this by memory (*ibid.* pp. 182-83)".

1 Sept, 1934; "I want to have a list of those matters about which establishing an opinion (for exercise of authority) is entrusted to the Imām (chief of the Muslim state). How is it that an Imām formulates his own opinion on such crimes, the penalties of which are already fixed by the Quran?"

May I ask you one more question? What are the principles of the extension of the Imām's authority to such Aḥkām which are fixed by nas (*Aḥkām i Mansūsa*)? If they are within the authority of the Imām, can their operation be limited by his authority? If there is a historical illustration for it, it may be pointed out. Who is the owner of land? What is the opinion (view) of Muslim Fuqaha? Perhaps, there is a *fatwā* of Kaḏī Mubārak in this matter. What is that? If an Islamic country *declare* land the property of state (just like Russia), will it accord with the Shar'īā of Islam or will it not? This problem is immensely related to politics and social order. Is establishment of opinion in this matter entrusted to the Imām? (*ibid.*, 183-85).

17 October, 1936: To Khwaja Ghulam as Sayyadain: "I am a Muslim and will die a Muslim...Islam is a socialism of its kind, but the Muslim Society has seldom tried to draw benefit out of it (*ibid.*, p. 318-19)".

The present work takes its threads from Iqbal, and is an attempt to spin the web of Muslim political thought exactly on the basis of those researches and inquiries to which he devoted most of his time at least ever since 1924. The issues may be systematized, as follows:

What is 'Sovereignty' and how is it related to *society* and *State* in the constitutional traditions of Islam?

What is the place and rule of idjmā'a (consensus) in the political process enunciated by Islam?

How one idjmā'a is related to another idjmā'a and to Quran and Sunna ?

How does political authority of Umma arise from it ?

What are the governing norms of political authority and Public Order ?

How is Political authority related to Shar'ī Sanctions and permissions ?

What is the nature of political obligation in Islam ?

THE IDEA OF SOVEREIGNTY AND MUSLIM TRADITION

Contemporary upsurge of Islam has brought, in its train, a wholesale borrowing of those notions, concepts including syntax of political discourse, that grew and flourished in the environment of *Western Civilization* which has its own peculiar outlook, germinate intuitions and native impulses. In their frenzic bid to restate the theory of public order in Islam and reshape the *Constitution of State* for the Muslim people, the Islamists of our time, it appears, by and large have no due appreciation of cultural relativism inherent in the very nature of the problem. Thus, their attempt to recast the political thought of Islam by decorating it with a diction and deductive system which is alien to Muslim Constitutionalism has scared them by a number of paradoxes, most dreadful of them being clung to the idea of Sovereignty in Islam.

Since the very hour of its birth, *Muslim Constitutionalism* has an individualizing thrust of its own. Even degeneration which swamped history of the Muslim people could not weaken its piercing force. Thus the constitutional thought of Islam flowed unabated all along with its peculiar symbols and fundamental intuitions according to which *Congregation* and *Khilafat*, *Umma* and *Imama*, *Civil society* and *State* were basic distinctions in human groups. These very distinctions which were so acute and basic for the theory of Public Order in Islam, had precisely no meaning in the growth of Western Civilization. The leading intellectuals of the West, Grotius, Hobbes, Rousseau, and Austin, who tuned its spirit, worked one after another to abolish the distinction between *State* and *Society* and by doing so, laid the foundation of *Modern State*.

The *Modern State* is a class of its kind, a peculiar conceptual model. It does not recognize the civil society as distinct from or as transcending its being. Its designers made it in itself to be all of the society. The above mentioned thinkers, who intuited its essence, spelled it out as the most articulate form of man-in-group. What they contemplated in its idea is a *peculiar inventory* of socio-political make. As principal vehicle of Western Civilization, this inventory externalises its intentions by growing absolute and unrestricted in authority. Thus, the *modern state* comprehends society and potentially has no limitation set upon it. Since its dreamers visualized in its set up the ultimate meaning of existence in society, by definition

and design it is impelled from within to articulate, legislate and execute its own content.

But in *Muslim Constitutionalism* an inventory of this make which overwhelms human beings by functioning as ultimate form of their existence-in-group is impossible. According to the Muslim design of public order, the state has no further meanings beyond an institution of the society, which in its build incorporates an authority for some functions and power necessary for the purpose. Thus, the society precedes it, surrounds it, and contains it in every sense. Unlike the *modern state*, the *state in Islam*, consequently, cannot create or recreate its own content. It is extended only to the *authoritative* executive machinery which a society must possess. This hypothesis is basic to *Muslim Constitutionalism*.

In technical terminology of Islam, the society which creates a state, or the people who join together to give themselves an *authoritative* executive set up as part of their public order are denoted as an *Umma* more or less corresponding with the term 'civil society' in use for the political discussions of our time. According to the constitutional practice in Islam, the *Umma* or Civil Society does not disappear in the *Khilafat* or State. Iqbal's observation is in that very spirit when he says; "In an over-organized society, the individual is altogether crushed out of existence (*Reconstruction*, p. 151)". Iqbal abhors it. As raised on the postulate of identity between the state and society, the system of inferences worked out in the tradition of western thought are inadmissible in the theoretical model envisaged by Islam for its public order. Before this important point is thrashed out, the origin of the concept of *Umma* in Muslim tradition may be pointed out. It has its origin in the *Covenant of Madina* for the purposes of Constitutionalism in Islam. The *Covenant* states: 'This is writing of Mohammad, the Prophet, and amongst the believers and Muslims of Quraish and Yathrib and amongst those who follow them, and (those who) are aligned with them, and those (who) fight with them. *They are one Umma in contrast with other mankind.*' Thus *Umma* is that group of mankind, which unites in forging together a public *authority* with all of its paraphernalia for implementing its intention of living as such in mutual co-operation. The public authority is one of the institutions and not whole of the *Umma* for the purposes of the constitutional theory in Islam. Thus, by disallowing the state to be something beyond the authoritatively established executive machine of the *Society or Umma*, Muslim Constitutionalism has a basis different from that which underlies the modern state, the state of the Western civilization. Its state executes its intents but does not legislate them.

The history of Muslim people, there is no doubt has not gone quite unbruised. Efforts to extend the authority of state to enable it to legislate the content of its activity were not altogether absent. But all of those efforts had to fail in the end and the Muslim thought resumed the same even course, which had been its distinctive mark. First great effort to extend the power of *Imama/Khilafa* was made by Ibn al Muqaffa, who solicited to al Mansūr to exercise his own *idjtihad*, as binding on all the Congregation, in view of the diverse opinions about the *Sunna* of the Apostle; and wrote the following memorandum: "There is no order in the courts of justice: appeal is no where made to a publicised law; decisions depend on the opinion and independent reasoning of the *Kāḍis*, resulting in contradictory decrees in one and the same town. While in a sector of Kufa, the (*Kāḍi*'s) judgment goes against the life and property of a party, in another of its sectors, according to some different *Kāḍi*, it goes in favour. Things like those are befalling on the believers. Consequently, I am of the opinion that all such cases and depositions, along with their arguments should be referred to the Commander of the Faithful, who after taking a (full) view of them, select those of them which appear to be sound. The selection then should be compiled in a manual and copies thereof be sent to different towns. It should be made obligatory on the *Kāḍis* to adhere to it in their decisions. With the appearance of new cases, the same procedure is repeatable. The *Khulafa* in succession may, however, modify the laws (of the manual) to suit the needs (of their time)"¹. The memorandum bore no fruit.

The second occasion arose much later,. It was when, attended by a greater formality, Djalal al Din Akbar was invested with the power of legislation in 1579, through an instrument of investiture, under the signature of the leading doctors of his dominions as follows: "Now, we the principal *Ulama*, who have duly considered the deep meaning, first of the verse: 'obey God and obey the Prophet and those who have authority among you'; and secondly, of the genuine traditions:- 'surely the man who is dearest to God on the day of Judgment is the *Imām-i-Adil* (just Ruler)' and 'whoso ever obeys the Amir obeys Thee'; and thirdly, of several other proofs based on reasoning or testimony, we have agreed that the rank of Sultan i Adil is higher in the eyes of God than the rank of a *Mudjtahid*. "Further, we declare that the king of Islam, Amir of the faithful, shadow of God in the world, Padshah Ghazi (whose kingdom God perpetuate) is a most just, a most wise, and a most God-fearing King, should therefore, in the future, a *religious Question* came up regarding which the opinion of the *Mudjtahids* are at variance, and His Majesty,

in his penetrating understanding and clear wisdom be inclined to adopt, for the benefit of *the nation* and as a *political expedient*, any of the conflicting opinions which exist on that point, and should issue a decree to that effect. *We do hereby agree that such a decree shall be binding on us and the whole nation.*'²

The Mahdar was signed by many prominent Ulama, but proved ineffective and the Mughal Emperor continued as before to head the *body politic* whose main function was supposed to be execution of the law, and not creation of the law.

There are indeed three basic hypotheses at the root of Muslim constitutionalism:

- 1) The Umma is repository of all power and authority;
- 2) The Imama (public authority) is brought into existence by delegation of specific authority to it from the Umma;
- and 3) the Umma is prior to the Imama, the *latter* having borrowed existence and the former innate existence.

Western political theory in contrast, is spun on radically different props for the organization of group life;

- 1) Society (umma) is not prior to the foundation of state (imama);
- 2) all power, by original jurisdiction, belongs to the state (imama);
- and 3) Society (Umma) has its being to the extent to which its power is derived from, or recognized by the State (imama).

Consequently, the state, in Western theory, legislates its own content except so far as it has enacted a delegation of power to the society in a particular sphere. This delegation of power has been conventionally expressed by proclamations of the rights of *people*. We shall now explain the whole matter and evolution of the idea of modern state.

It may be traced back to Bodin, who by expounding the idea of sovereignty as the most strategic of concepts for political philosophy contributed to the evolution of modern political thought. He defined it thus: "Sovereignty is supreme power over citizens and is untrammelled by law". At one stroke, this idea undermines the distinction, which obtains between a society and state. In principle, on its basis none of the aspects of social order remains beyond the absolute control and arbitration of the state; the community becomes an epiphenomenon. "Considering that such a definition is absolutely

essential to the idea of state, Bodin assumes an air of pardonable pride in declaring that neither philosopher nor jurist has ever before propounded one."⁴ The essence of the idea is embodied in the words *legibus soluta*, viz, Sovereignty has its chief and characteristic function in the *making of Laws*. Bodin also holds that, authority which is truly sovereign must not only be supreme, but perpetual. This notion is however of first rate importance in as much as in it the difference between state and Government or the holder of the state, i.e. the particular ruler, who in the exercise of authority, merely represents the state is clearly worked out. The next step in the development of *Western theory* is taken by Grotius who expounded the omnipotent character of state by completely disintegrating the independence of society in it. He said: "By nature, every one has a right to resist a wrong, but when civil society has been instituted for the preservation of public tranquility, this right becomes subject to the prescriptions of the sovereign."⁵ According to him, the right of resistance to the Sovereign is null and void, for the reason, that those who instituted civil society by their very act of doing so, abdicated their rights in favour of its sovereign authority.

Evolution of political thought in Western culture took great strides in the social contract theories. The *myths* necessary for the theory of modern state around the idea of sovereignty received their most colourful formulation by them. The starting myth of social contract theories is a pre-social state, identified as it were, with an imagined societyless natural state. Accordingly not only the so called social contract originated a political authority but also instituted at once the civil society. Consequently, no society is conceivable before or beyond the sovereign state which is *civil society* in itself.

Hobbes identifies the natural state with the state of war. "The notions of right and wrong, justice and injustice, have there no place. Force and fraud in war, are two cardinal virtues. Justice and injustice are none of the faculties, neither of the body, nor of the mind...They are qualities that relate to man in society, not in solitude. It is a condition of war, wherein every man to every man is an enemy"; and "life is solitary, poor, nasty, brutish and short".⁶ This state of affairs is transcended by a *compact* in which all of the people do surrender their freedom to a determinate superior. This act of surrender takes away from them their authority, but delivers them from the state of nature. The superior to whom they surrender is himself under no other authority. He is thus their absolute ruler, whose power has no limit. This process whereby civil Society comes into being, in opposition to the state of nature, carries with it un-conditional submission of the indivi-

duals to the infinite, unrestricted, rather inarticulate power of the *determinate superior*, the monarch. Thus, the civitas is state. No society is conceivable beyond it, for the logical or rational act which creates a state creates the society. Accordingly, the society is an absolute alienation of power for the omnipotent state. Thus, whatever concession; or rights are conceded to the members of the human group, they are derived from the act of the state. It may be observed by now, how evolution of the Western theory and clarification of its fiction of sovereignty is in direct contradiction with the unfolding of imageries and notions inherent in the Muslim Constitutionalism, which creates the state or political authority by commissioning to it only a particular set of executive powers. The Muslim Tradition means that the power not prescribed for the Imama remains a prerogative of the Congregation. In other words, all the undelegated or residual power belongs to the society in the tradition of Islam. On the contrary, it strictly follows from the Hobbesian political theory that there are no rights, inalienable immutable human rights which belong to the Congregation, or to the members of society. As creatures of the state, the rights are subject to the sovereign will of the political authority. Indeed, the individual has no power, right or authority, before their creation and recognition by the *sovereign* state. Consequently, the *state* circumscribe the society in Hobbesian theory determining the nature of public order in evolution of the western civilization.

Rousseau's theory was a challenge to Hobbes. It was not because the former differed from the latter on the identification of society and state; It was not also because he wished to put some limit on the sovereign state. He differed from Hobbes, because he had a different picture of the pre-social state, the natural state, from which according to him men make a transcendence by making a pact, and thus a civil society comes into being. Notwithstanding this difference, basic agreement between Hobbes and Rousseau on the premises which are involved in the nature of *sovereign state* is quite noticeable. Both of them are protagonists of absolute authority and dry up the streams of social life in the landslide of the omnipotent state. There is however, a distinction. While Hobbes reached at the notion of a *determinate superior*, a monarch bestowed with sovereignty, Rousseau pushed the idea to a level further and arrived at collectivism; the Sovereignty of general will: "Each of us puts his person and all his power in common under the supreme direction of the general will, and in our corporate capacity, we receive each member as an indivisible part of the whole...At once, in the place of the individual personality of each

contracting party, this act of association creates a *moral and collective body*, composed of as many members as the assembly (ensamble, corps) contains voters, and receiving from this act its unity, its common identity, its life and its will. This public person so formed by the union of all other persons, formerly took the name of *City* and now take that of *republic* or *body politic*; it is called by its members state when passive; *sovereign* when active, and power when compared with others like itself. Those who are associated in it take collectively the name of *people*, and severally are called *citizens* as sharing in the sovereign power, and *subjects* as being under the laws of the state.⁷ This passage clearly verbalizes the logic pervading the flow of Western Political thought, and brings forth to the open that the categories for different aspects of political life in it are intimately related to one another and each of them depends for its meaning on the hypothesis of a unitive genesis of state and society. Accordingly, *body politic*, in this thought, is supposed to be the only possible organization for human association or society. In other words, human communities, or individuals-in-group, have no existence prior to and apart from the all embracing accoutrements of the state. By resigning their rights, under social contract, the individuals who are in the group, have now to extend unqualified and unlimited obedience to the sovereignty of the *General Will*, which preserves the group as a civil society.

General Will is absolute, immutable inalienable and unconditional. "Each man alienates I admit, by the social compact, only such part of his powers, goods and liberty as it is important for the community to control"; says Rousseau. "But it must also be granted that the sovereign is sole judge of what is important," he adds.⁸ Thus, all the titles, rights and powers of the individuals are subject to the sovereign disposition of the general will, which holds together, all the individuals as members of the civil society, by its coercive power as representation of the social contract. Consequently, rights and powers of the individuals have existence in the civil society so far as they are assented to or granted by the state; they are indeed *fiats* of the sovereign will, and as such are ultimately *provable* by reference to the manual of its *commands*. This explains why a list of rights is almost a necessary part of the constitution of a western state. A constitution in the western lores, is self constituting of the sovereign will. By spelling out the rights of men, the sovereign will creates and incorporates them in the body politic. This technique of creating rights is an inevitable crystallization of the basic props of western constitutionalism and its theory of sovereignty which by making state spiritual nucleus, living will, and rational faculty of the com-

munity concentrates at least theoretically, all the power, collective power in it.

If the basic premises of Western Constitutionalism are valid then all residual powers, that is, the power not specifically delegated to the individuals-in-group are *powers* of the state. It is on this crucial point that its contrast with Muslim Constitutionalism is brought into full relief. In Muslim theory, the people, members of society are depository of all residual power. As it has been pointed out earlier, in its tradition the *body politic* is constituted of by handing over to the *Imamah* certain definite power, all the rest remaining with the congregation, the believers, the members of Society. Consequently, a method, in reverse order of the western theory is required to prove the rights of men as an element of the Muslim theory. A right in the Muslim Tradition is demonstrable if it is proved that it was not delegated to the *Imamah*. Hence, Muslim Constitutionalism is particular about enlisting the subjects of delegation of power to the state under the notion of the '*Rights of the Imam*'. It may be found in almost every tractate on political theory, the Muslims ever wrote. Consequently, in the Muslim traditions, the state or the body politic has to establish a proof, that such and such authority was transferred to their care. Only on that basis and for that particular purpose which was content of delegation, the state in Islam could exercise its power on the congregation. To put it sharply, the state, in Muslim society, exists by specific delegation of functions from the society and is therefore, posterior to the congregation, the human association, the community of men, the Umma which instals it. This theoretical approach completely repudiates the monism of state and society in evolution in the West ever since Bodin, Hobbes, and Rousseau. The notion of *freedom* which grew in the framework of western theories, was very peculiar. It may be summed up, in the words of De Lolme, thus: "To live in a state, where the laws are equal for all and sure to be executed, is to be *free*."⁹ This conception is at par with that of Rousseau who had earlier said; "since each gives himself up to *all*, he gives himself up to no one; and as there is acquired over every associate the same right, that is given up by himself, there is gained the equivalent of what is lost, with greater power to preserve that is left."¹⁰ The later Romantics like Fichte and Hegel denoted it by the march of liberty in human kind.

Kant advanced the Rousseauish ideas to certain limit of logical conclusions. According to him; "The state is a product of a contract, through which individuals put their inalienable rights under the guarantee of the people, the general will is the ultimate source of the

law—is itself law. A constitution is an act of the general will through which *a crowd becomes a people.*"¹¹ He believes that a state possesses three powers as embodiment of the general will; the legislative, the executive, and the judicial. His Critique of Practical Reason lays down norms necessary for the logic of will, and thus, by definition, those norms are operational principle for the sovereign will :

- 1) Act only on that maxim whereby thou const at the same time will that it should become universal law ;
- 2) Act as if the maxim of thy action were to become by thy will a universal law of Nature;
- 3) So Act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only.

These maxims imply that the acts of the sovereign will should be *universal, uniform, general, and impartial*. They do certainly infuse an element of *morality* in the body politic, but it doesnot mean that the postulates of the unitive theory—identity of society and state—are altered by them. The moral element in them boils down to the view that state laws should be applicable to all, and there should be no exemption to this. The substance and framework of state, thus does not undergo a change; the body politic perpetuates for Kant as the sovereign source of all laws, powers, rights of the individuals and groups-in-society, as it was for Hobbes and Rousseau.

Kant's philosophy however opened on political speculation the door of Romanticism which spiritualized the idea of *Sovereignty*, by informing it with the categorical imperative. It follows further from Kant's theory, that being manifestation of the pure legislating *will*, state has its station in the sphere of real world, though unfolded it is in the phenomenal world. This unfoldment as such is a necessary part of the spiritual destiny of man.

Now, it was Fichte's turn to scale further the possibilities of Kant's theory. He stated that "state itself is man's natural condition." It was this pronouncement which had the potentiality of filling the metaphysical gaps which lurked in the atomizing unitive theory of modern state. It also had the power to clear those accessories with which the Hobbesian—Rousseauish model was conceived. Thus, Fichte found it redundant to postulate a *pre-social state*; the state of joyful independence as with Rousseau, or that social of solitude as with Hobbes. He started at once from the concept of individual. He said that it involves itself with the concept of other individuals and with the consciousness of being conditioned by them. It means that ego

implies community, which further implies authoritative mutual limitation in relation to one another. In this innate self-determination by others lies the origin of state, according to Fichte. He said; "The state itself is man's natural condition. Innate self-restriction is dictum of pure thought, in which, the individual will and general will are synthetically united."¹² This synthesis between the wills unfolds itself in a composite compact consisting of three contracts, of course in logical, not chronological order :¹³

- a) the contract of property whereby each one pledges to limit his freedom "in the world of sense" for the sake of others ;
- b) the contract of protection whereby each one pledges to contribute to the common power, to protect the limits inherent in the first contract; and
- c) the contract of union whereby, the sovereign authority is constituted by which the two earlier pledges are enforced.

The sovereign authority is thus vested with the power to legislate the limits and preserve them by force. In his mature writings, Fichte made it out that the individual property, representing freedom of action in the world of sense, exists only through the state.¹⁴ In other words, the property depends on the creation, sanction and permission of the *state*, which exercises its sovereignty under the concept of pure will. Thus, the only objective system, which rational individuals ever confront, is state. They derive from it what they possess; objective determination; property; and the bonds of mutuality. Community is, then a shadow of the reality that posits itself in the being of *state*.

Hegel further advanced the theory and put state above civil society. According to him, civil society preserves itself by external force which compels the individuals to comply with its regulation. It is not yet ripe, for it seems to exist apart from the state, which regulates it. This distinctness of society from the state means that socialization is yet at a transitory stage, and that the individuals are not yet merged together enough for the realization of *pure will*. In the total actualization of state lies the perfect realization of rational will. When it becomes actual there remains no residual social core; all the community undergoes transfiguration into the state. Hegel said: "The state is absolutely rational as it is the actuality of the substantial will which it possesses in the particular self-consciousness of its universality. This substantial unity is *an absolute unmoved* and in itself, in which freedom comes into its supreme right. On the other hand, this final end has supreme

right against the individuals, whose supreme duty is to be a member of the state. Since the state is mind objectified, it is only as one of its members that the individual himself has objectivity, genuine individuality, and an ethical life."¹⁴

The meanings of the 'general will', in vogue since Rousseau thus attained perfect logical clarity in Hegel. The general will, incarnate in the state, is concrete universal will. It is unitive; therefore, it is indivisible, and cannot be broken into individual wills. The individuals by it transcend their particularity and enter into universality, like drops which unbound themselves in an ocean. *The general will* is essentially a negation of the individual wills. So far as it is real, it is realization of the Idea, its perfect embodiment with one consciousness, one determination, and single will. When it is actual, the individuals are completely merged in the universality, and are thus liberated from the bond of particularity. In it consequently, lies the perfect realization of *freedom*. The universal is *freedom* absolutely manifest. The *individuals* are disengaged in it as details of its universal rationality. Thus, in terms of the ontological status, the Universal Reason is a substance; its being is a substantive being, and the individuals are its predicates; or to be more exact, are accidents of its attributes. Within the limitations of earth, state is this universal individual. Human individuals, and their various bonds, groups, associations, and institutions are not more than particular determinations of the universal rationality, which it manifests. Consequently, the individual rights, and human communities, and all other circles of public life derive their being from the irrevocable volition and sovereign intention that it commands. Thus, the fictions and propositions at the start of the Western political theory attained their perfect logical culmination in Hegel's 'reflections which became a tradition. Green expounded and expanded the doctrines of Hegelianism.¹⁵ According to him, sovereignty is supreme coercive power of the state upon the individuals and their institutions but from within it is manifestation of the supreme, rational, and universal will inherent in it. Externally it is a constraint, but internally it is moral law in operation, and is consequently foundation of political obligation. As we have already noticed the concept of *universal reason* and *pure will* exhaust their meanings in three construct of formal maxims, like those of Kant, each to mean, from a different angle, that every *imperative* should be general, and equally applicable to all the individuals. Equity in submission to the judgment or equality before coercion, which guarantees this submission to it, is the sum and substance of *Rationality* and *Universality* which

flows from the sovereign *will*, manifest in the state. In the usual spirit of the Western political thought, the doctrine as such, puts every manifestation of society under the sovereignty of state, under its supreme arbitration. Though, Green moderated many of the extremities of the Hegelian point of view, yet the essential frame of his theory was moulded by the idea of modern state as it had its origin ever since Hobbes. (1) Representation of society as made of state; and (2) derivation of the admissible claims of the individuals and their communities from the supreme command of the state; those are the aspects of modern state which were emphasized further by his works. This phenomenon shows that the same standpoint is confirmed and reconfirmed, articulated and rearticulated with ever more details at every evolution of the Western political thought, which directly confronts and contradicts the fundamental outlook innate to the Muslim constitutionalism. The *omnipotent state* appears again and again as *enteleche* implicit in the Western theory and its actualization with the march of its ideas.

It makes no difference whether the true essence of sovereignty is incarnate in a monarch—or in a general will for the purposes of the present discussion around the concept of *modern state*. It is just sufficient if its generic properties, its absoluteness, generality, and supremacy in the scheme of this *state* are taken into account. The sovereign power is inalienable and indivisible. Its true manifestation is law, and law-making.¹⁶ Austin who gives most subtle description of the nature of *modern state*, puts that sovereign is the law creating source in it and thus the positive law of society springs from and is unified by its acts. The customs of society are also positive law, but they are as such only because by permitting them to continue, the sovereign has willed them to exist, for it is substance of the sovereignty, that *what it permits, it commands*. Austin does not locate the seat of sovereignty, nor is it necessary for our purpose. It may be a person, a leader, an assembly, or a general will. What he deems necessary about it is that it should be determinate and generally obeyed¹⁷. It is of the essence of the theory of modern state, to follow Austin, that just as it makes the state all inclusive, so also, it lays particular stress on the exact determinate character of *sovereignty* through which and by which the state expands, preserves, and controls its organism. The essential core of modern state is its unity of function in the diversity of its organism. It administers, adjudicates, defends, protects, and performs various other functions which it likes to perform, and contains the whole of the community. Consequently, in all of its manifestations, it preserves an organic

unity. The society then refers back everything to its authority and control, which may precisely be denoted as its *command*. The modern state requires that the *source of command* in it should be completely *visible, definite, and articulate*. What it commands is positive law, and the positive law embraces every thing which lies within it i.e. the entire community. Thus everything of the society has origin in positive law. The law either creates the things afresh or permits them to continue as from the past. In both ways, it commands them to be. This conception bestows exactness on the idea of sovereignty and on its place in the constitutionalism which springs from and is suitable to the problems and nature of the Western civilization.

The modern state, with its all inclusive being in its own right, cannot exist without a written constitution. The necessity arises out of the requirement that the state has to formulate and locate, in its scheme, the determinate sovereign authority whose commands are to have binding force for all, bestowing properties, rights, liberties, institutions, professions, roles, classes, groups, and communities on the people. In the United Kingdom, the King-in-Parliament is the sovereign; its one aspect is provided by the instrument of succession and the other by elections. The king-in-Parliament is unchallengeable, irresistible, unlimitable and absolute authority in the United Kingdom, and commands every thing which belongs to their people and territories. The United States have a written constitution which specifies the *determinate superior* of a much more complicated form than that of the simple form of the King-in-Parliament. Similar is the case with all the modern states, emerging into existence just as embodiments of the conceptions from the Western political theories and practices. The main function of the constitution in all of them is to determine the sovereign activity by particularizing it in an exact visible body, which by its perpetual commands maintain the organic unity of the state, keeps it up with the course of time, modifies and continuously formulates its content. It is bound by its own will in relation to its individuals, their social limits, rights, properties, institutions, manners, morals, etc.

The history of Muslim Constitutionalism shows that it prescribes and specifies the functionaries, the executives and magistrates needed by the society and thus raises the structure of Muslim state. What it does not do is stipulation of a determinate superior, the sovereign authority, whose words are to be law unto the people, creator of their rights, authoritative source of the prescripts regulating their activity. The reason is: Muslim constitutionalism recognizes in the Congregation an existent which is distinct from the State. It cannot not

therefore make the state depositary of every thing, especially of the supreme authority, which should prescribe the civil relations binding the individuals and their associations. The frame work of constitution as provided by the Covenant of Madina in 623 A.D., remained the mainstay of Muslim political thought. A close reading of the Covenant proves that organization under a 'determinate sovereign' is not the only mode of socio-political organization. The political association, created by the Covenant, was not mono-polar in its structure. It did not even fix a chief or head, yet it created an *Umma* distinct from all other people with a definite network of public order aiming at preserving its unity of function against external aggression and effecting uniformity in its internal matters. It was enough for its internal cohesiveness, that the Covenant created and fixed an arbitre as final authority in the cases which involved tort liabilities or in the cases which implied penal jurisdiction, from determination of a crime to the execution of its punishment. The basic idea throughout the provisions of the Covenant was admission of the substance-like existence of the integrated communities as parts of the umma. Consequently, its scheme belied the subject predicate logic. The Medinite state, or the political institution of the umma was not a subject to which the communities and clans were attached as predicates. Entities of single nucleus are amenable to this kind of logic which postulates one substance in the multiple of predicates. The Covenant, by its very nature, ruled out application of its forms on the public order of the Congregation of Mohammad. Thus, allowing real existence to the communities, which it meant to synthesize by its political network, the Covenant of Madina laid the foundation of a different kind of authoritative organization. It requires a larger vision to understand what it created. Its creation was not like an atom which collects its being around a point. It was indeed like a chain. And chains are fairly well organized, rather in many a case more powerful system of events. The Covenant of Madina had a conceptual model which was furnished with a chain-like approach to public order and its problems, producing an institution of authority in the Umma that did not negate and sum up the communities in the fold of its axial activities. The idea that it was a confederacy of tribes is also a poor construct, for the apex of confederacy and its formal organization is confined to the confederating units only, and thus, cannot reach the individuals. The political constitution envisaged by the Covenant directly touched the individuals of the integrated communities on many points. It had in it the provision: "No one of them may go out (to war) without permission of Mohammad, but one is not restrained from taking vengeance for wounds. Who ever

acts rashly, it (involves) only himself and his household except where a man has been wronged." The political complex, emerging from it implied that an individual person and his household alone were to be, henceforth responsible before the political order. The communities, the constituent tribes and clans, of which the individuals were members, were not to be object of vengeance or liable to punishment for the wrong doings of the culprits in future. Thus, the political constitution on the one hand, admitted the individual existence of the communities, and on the other directly related the individuals to its dispensation. The opposition between these two aspects was smoothed away by a far advanced and far more complicated system of political order. The simple analogy of 'organism' with a central unity of will and decision working through the objective diversity of organs and functions can not be applied to it. This analogy is however a dangerous over-simplification of the body politic. Its projection in social phenomena and implementation as an idea obviously produces the monolithic omnipotent state of the Hobbesian-Rousseauish type, which does not recognize any social experience beyond its existence. The Medinite state was not on its like. The dynamic concept informing its being was realism which faired well with the political realism and practical requirements of the public order. Thus, the political order of early Islam can best be reproduced in the logic of relations and as we have said, on the analogy of chain. It linked the groups, without negating them. As a policy, autonomy of the socio-cultural groups was fundamental law in its evolution. Consequently, the body politic it produced was not the entire community nor did it aim at replacing the already existing communities, so that all of the social circles should be crushed by the growth of its being.

The evolution of the Muslim State between 623 and 632 A.D. crystallized many a point which moulded its determinate character. The responsibilities of the Leader of the Congregation, and thereby the functions of the political machinery multiplied. Mohammad (may peace be on him), organized the defence and expeditionary forces; received and sent emissaries; levied and collected taxes (Zakāt, Kharāj, and Djizyah); disbursed the revenues according to particular heads; and contracted agreements. Thus, during his life time, the political organization developed and detailed its meanings. After his passing away, his responsibilities devolved on his Successor, hence the origin of Khilāfat. The Khilāfat was the sum-total of those public functions, which had evolved as sunnah of the Apostle between 623 and 632 A.D., from the Covenant of Madinah. Consequently, having its own being as a reality in itself, the Congregation of Islam, could not exhaust its meanings in the concept of the Khilāfat, which gave only a

political establishment to the Umma. Thus, the Congregation had its existence apart from the Khilāfat, its organization, its functionaries, and their roles. Consequently, the Khilāfat was not an organism of which the social groups of the Umma were parts and organs. It was one of the several important links between the autonomous groups and individuals, which formed the Congregation of Islam and the protected congregations attached to it. It existed by delegated authority, just as the Medinite state had come into existence.

If the Khilāfat was not an organism, then what was it? Nasir-uddīn Tūsī (d. 672/1274) gave a general answer about the nature of state. He denoted it under the concept of plan (*tadbir*). The concept is important for in it is exposed the peculiar attitude which shaped the Muslim Constitutionalism in contrast with the philosophies of the Western Social Contract theories. Nasiruddīn Tūsī said; "Just as we said, concerning Economics, that what was meant by household was not a dwelling but the combination of the inhabitants of a dwelling in a particular way (*Wajhi-khāss*). So here also, what is meant by city, is not the dwelling of the inhabitants of a city, but a particular association (*Jamiyat-i-makhsūs*). Now, the motives for men's actions differ, and their movements are directed to varying ends, eg., the intention of one will be to attain a pleasure, whereas that of another will be to acquire an honour. Thus if they be left to their own natures, no co-operation can conceivably result among them for the domineering man will make everyone his slave, while the greedy will devise for himself all things that are acquired; and when strife befalls among them, they will concern themselves (only) with mutual destruction and injury. Necessarily therefore one requires some type of *tadbir* (plan) to render each one content with the station which he deserves and bring him to his due, to restrain each man's hand from depredation and from infringement of the rights of others and to concern itself with the task for which he is responsible among the matters pertaining to co-operation. Such a *tadbir* (plan) is called *Siyāsah* (politics)." ¹⁸ Djalaluddīn al Dāwwāni (d. 908/1502) strictly follows al Tūsī and propounds thus; "Hence they (people) come to make a plan (*tadbir*) under which each agrees to remain within his rights and withdraws his hand of aggression against others, and this plan is the institution of the *Siyasat-i Uzmā* (the high political order), which involves law (*Nāmus*), an arbitre (*Hākīm*), and wealth (*Dinār*)." ¹⁹ The preceding statements though seem to approach the position of Hobbes, but do differ from it in two important respects which make them the pieces of altogether a different tradition of political thought. The first is, the plan institutes a particular association, a *Jamiyat-i-*

Makhsūs, and not all the associations that go by the collective name of society. The second is, no one is to abdicate his rights in its favour. It is only an instrument whereby every one keeps his hand withdrawn from encroaching upon the rights or titles of others.²⁰ Consequently, the plan does not institute a sum total of the negations of individual rights, like the Leviathan of Hobbes or the General will of Rousseau. It does not either function as point of unification for the society, nor is it the society itself, reproducing all of the network of social relations in its being posited as such. The Muslim political thinkers by emphasizing the plan-quality of the political nexus, saved the society from its complete disappearance in the emergence of political order. A plan is a pattern of behaviour, an action-organization, while the Western tradition distinctly perceives, in political order, an absolute internalization of the social circles and a complete rebirth of the individual in the forms of its organization. Thus, when, the state of Western differentiates in its being classes and groups, it differentiates them as specialized limbs of its living organism. In short, Western thought encounters in the phenomenon of state and its organs a thing, a structure; and the Muslim constitutionalists behold in it a function. To the Muslims, political organization is one of the several functions of the Congregation, pertaining to that area of mutual co-operation, in which action cannot be performed otherwise. The Khilāfat therefore, exists by deputation from the Congregation, and that, too for specific activities. In spite of the rise of the *siyasat i Ghalbah* (power-state), the hypotheses of Muslim thought retained their primeval orientation. The *credal statements*, representing the highest grade of scholarly formulation of the belief system in Islam, did not undergo any modification on the subject in any period. It shows the strength and tenacity of the Muslim approach to the problems of the public order in Islam. Even the last compilation of Muslim *creed* made by 'Umar al Nasafi was unchanged on it. "The Muslim must have an imām;" it says; "to look after the conduct of their legal decisions, observance of their laws, protection of their frontiers; preparedness of their armies, collection of what they hand over as Sadaqat (taxes and spending in the way of Allah), control of those who are after power, arrangement for the Djuma congregation, settlement of disputes between the individuals, hearing of evidence (arguments) in connection with legal rights, marriage of the orphans of either side having no guardian, and distribution of Ghanima (booties)."²⁰ Thus, the 'superior', who is at the centre of political organization of the Umma has according to the creed a particular mandate, which means that the entire political

organization flourishes within the bounds of the mandate, as an aspect of the society, like many other organizations or arrangements, the society evolves, as harbingers of its distinctions. In Muslim theory the society with its several groups and classes, institutions and bodies thus has its own genuine and irrevocable existence, in spite of the state with all of its branches and tall shadow.

This discussion makes it clear that the generic difference between Muslim and Western Constitutionalism must be far flung. Yes, it is. The Muslim tradition is *historico-normative* by its kind which makes it impossible for it to deviate from its basic imagery about *society and state* it has in possession since its very beginning. The Muslim thinkers knew it well that there are psychological bases of as well as rational grounds for the public order and political obligation, but for the purpose of their theoretical systems, they sought its foundations in the precedent of the Porch of Bani Sā'ada as supreme norm controlling their concept-formation. The fact of the Saqifa Bani Sā'ada bestowed on them a *historico-normative* methodology, that kept them within the discipline of the pristine outlook of Islam, which does not submerge human society in the state.

The approach of the Western people, on the contrary, is *hypothetico-deductive*. They are not nestled with a historical precedent so that it may be raised to an authentic normativeness. Consequently, they are forced to indulge in imaginative constructs. Certain logical fictions, true or false, do they contrive, and shape them into ground-hypotheses, and then deduce or construct political theories. In Hobbes, '*state of war*'; in the Utilitarians '*propensity of self-interest*'; in the Idealists, '*realization of the Idea*' are some of the instances of the type of methodology in Western political theories. All of them conform to a basic pattern, in which state is hypothetically deduced from the hypothesis as supreme form of realization of man in group and its order of existence. We are not here examining the validity of the political fictions of the Western hypothetico-deductive approach but simply directing ourselves to the gigantic generic difference, which reigns between the two types of political traditions: the *Muslim* and the *Western*.

The historical precedent, entrenched deeply in the Muslim constitutionalism as its super norm forbids the believers to have gone to irrational myths or unverifiable fictions as possible or potential frame of reference for their political theory. Thus, as rules of practical reason shaping the idea of state in Islam, drawn from the Covenant of Madina and from the affairs of the Porch of Bani Sā'ada, the following postulates are set for them for ever :

1. Congregation or society is an indubitable fact of human existence ;
2. *The congregation* works out its intents by creating institutions.
3. The institutions owe their actuality-by-delegation to the congregation.

Thus, in accordance with the above norms, society creates *political institution* for some congregational purposes and equip it with necessary power and authority to execute those purposes. *State therefore is one of the adjunct of society, which surrounds and comprehends the former, and clothes it with a derivative or delegated existence.* The term society or 'congregation' in the present context should be taken as free from all reification. Its treatment in a 'personified way' as a subject of intents and action may be attributed to the coercion of grammar, otherwise it simply means '*people in mutual interaction*', free from all the stuff belonging to an unhappy collectivism. The point is, people and their mutual dealings surround the political organization, which has to its care only some of the public *duties* in accordance with that borrowed power or authority, which was bestowed on it by the people. The people if they like, as they do certainly like, create other organizations for other purposes, beyond the pale of the state. This point brings to light one more distinct mark of the Muslim image of state and society. It is about the law of organic union which obtains between them.

Even in that kind of Western theory, in which state, as an idea in realization, is not required to exhaust the society with all of its totality as such, political power potentially forms the *nucleus* or mediating point of all the organizations. From ordinary facts of human situations, it appears that in mutual dealings, men imperceptibly or consciously forge together various institutions or organizations, which in the course of time become visible and come to stay as 'urfs. Every advancement of civilization provides a necessary impetus to the trends of ever more organizations, and as the wants grow thereby, new institutions come into being or old institutions change and expand and resurge as if they were new institutions. Society does not however break up as they grow. On the other hand, it maintains an organic unity in their multiplicity. According to the Western *fictions*, state is the connecting, diffusing, and coordinating point of all those organizations and social creations. So truly speaking, the Western model carves out in the design of a state, an organization and institution which comprehends and contains

all the other organizations. It is, in short, *association of associations*, the apex of all the organs of society. There is thus, no congregational gestalt which may lie beyond its authority and right to manipulate.

The logical meanings latent in Muslim thought are absolutely different from those of the Western philosophy of politics. In Muslim theory, Society or Congregation and not the state, is a bond of organic union; in its unity lie all the organizations and institutions. Thus the Umma is nexus or radii of all of the collective creatures; arbitrates between them, sustains them, deters them from eating each other, and develops them as details of its own distinctions.

This comparison between Western and Muslim theories proves that they are not latent with the same policy for social coherence. As we have told earlier, every state, whether it is of Eastern or of Western type, is mono-centric in character. When in it is sought the principle of union for the entire society, it gives a point-like unity to the entire human order. Men-in-interaction, through several of their organizations, must converge on this point. The will of the state, its omnipotent and omniscient sway cannot allow them a refuge beyond itself. In contrast is Muslim theory. As it seeks in society, and not in state, the linking continuum of all the associations, it cannot, by any stretch of imagination, usher into monocentricism. By its very essence, it proffers a unity of direction, not that of a centre. The image of a physical atom, with one nucleus around which so many electrons rotate with speed, is an image faithfully portraying the sense of the Western constitutionalism. For the *Muslim way*, this image has no sense. The logical structure of public order, it seeks, may best be depicted by vectoral current, a long drawn line, which runs in between all the structures of the field. A line is also a unity, but it is a unity of very superior and intricate type; it has no common centre, still it has order and preserves its function. Or conceive of an ocean; the idea of mono-centricity as applied to it proves meaningless; its unity lies in its continuity; a continuous interrelated series of functions. It aptly conveys a difficult, yet a majestic view. Such or similar image underlies the Muslim sense of public order consisting of different organizations and institutions, though independent, yet related to one another, in authority, scope, function, and execution of their intents. It is congregation with its original reality which obtains between them and interrelates them by its real and effective presence, and preserves the totality of human order by its continuous actions and processes. The unity

it bestows on the order of social events consequently, is the unity of a function, and not that of a nucleus. The social image of the West seeks unity in defacto or dejure resignation of all to a nucleus. To it thus belongs 'Atomism' as determining norm for its thought. An atom is an existent, which has one and only one centre, which has in its grip its entire being. It is a simple thing engulfed by a single permeation within its own being. The Muslim theory discards it.

No better demonstration is needed to expose the peculiar quality and design of the imagery inherent in Western political thinking than the hypothesis of sovereignty of state it has in its heart. As a synthetic proposition which relates the notion of state with sovereignty, it describes the *imagery* itself and as analytical proposition, functioning as definition, it determines all the forms of political propositions which a Western man may validly hold in pursuit of his basic thought. In the former case, it means that every thing which occurs in *human groups*, every social entity which comes into being, the state is sovereign unto it. In the latter case, it moulds the political thinking itself in the light of, or strictly on the ground of the above mentioned *outlook*. Modern Islamists, quite oblivious of the generic difference which reigns between the inventory of modern state and the basic imagery of Islam posited as it were in the form of its *Precedent*, try to shape the structure of Islamic thought on the former and attribute sovereignty to state as basic analytical proposition in the development of their political philosophy. When they do so, they are logically forced to sever themselves from the historico-normativism inherent in Muslim Constitutionalism. Then, they are compelled to forge a fiction to square their thought with their borrowed 'analytical' foundation. The 1949 objective Resolution of the Constituent Assembly of Pakistan is consummation of their efforts, and prescribes the following fiction :

1. Sovereignty over the entire universe belongs to God Almighty.
2. He has delegated the authority (inherent in His sovereignty) to the state (of Pakistan) through its *people* as a sacred trust ;
3. Thus therefore, the state (of Pakistan) is sovereign.

This fiction does not deepen the meanings of state any more. On the other hand, it strikes at the very foundation of the Islamic image for it drastically changes the basis of Muslim thinking from historico-normativism to hypothetico-deduc-

tive system. Secondly, it absolutely Conforms to the Western definition of state, which implies, against the generic intents of Muslim imagination, mono-centricism or atomization of the Umma and knowingly makes the state nucleus of all the organizations and activities of the society, and declares it sovereign unto them.

Now, we shall address ourselves to a logical analysis of this modernist's fiction which undoubtedly has marshalled in its favour, mostly on emotional ground, a host of contemporary Muslim thinkers. The idea of 'sovereignty' in the first instance, is a political notion. In other words, it has no meaning beyond the discourse of political theory, or owns no discernible truths beyond the structure of society. When it is said that the state is sovereign, it means that the state's will arbitrates between all the things lying within its territories; and this arbitration is a potential, actual unceasing, ever renewing function which it performs in relation to all the 'urfs, institutions, arrangements and organizations of the people under its charge. And this *function is political*. When, the idea of sovereignty is attributed to God, it makes *God to perform the political function in His Universe*. It also means that *the universe is a political or social phenomenon*. The entire fiction is thus an hotch potch of wild imagination. The universe at large, if it may be comprehended, is a gigantic divine affair, wherein everything is fixed in its path; everything has a measure; no *civil* dispute takes place; no jealousy, no competition; sun does not betake moon, nor does moon drifts away from its path: "Blessed is (He) who created the seven heavens. Thou seest no incongruity in the creation of the Beneficent. Then, look again: Canst thou see any disorder (crack). Then turn the eye again—thy look will return confused, while it is fatigued (al Quran: 29.34)." God therefore has no *political* function in his universe; the seven heavens have no civil disputes, that the Lord should deliver His judgment, and execute it with His Sovereign Authority. Overlordship or *sovereignty* is a human phenomenon, and is meaningful only in human situations, requiring ever presence of an authority, as final dispenser of social conflicts in human societies. By the very fact, that God is *absent* from the human world; He is absent in the sense, in which human individuals are present in it and their institutions occupy its social space; the idea of *sovereignty as a continuous political function* is utterly inapplicable to His Being. The fiction is therefore, a sophistry.

In their emotional zeal to stamp the notion of modern (western) state with Islam, the Modern Inslamists have broken the

limits of logical consistency, and confused a political notion with the categories of divine order. We will explain it by pointing out that the Muslim creed is based on a simple idea that God has bestowed on mankind His Guidance which contains certain laws; and that on His Guidance and Laws, society should be organized. This belief is so much plain that no fiction is needed to substantiate it in *politics* and constitution. The historico-normativism of Muslim thought was pure of the fictionism which polutes Muslim thinking today.

How the idea of sovereignty is tossed together with divine categories underlying the created universe by these Islamists, may be followed by the system of their arguments which consists of two steps :

- 1) deduction of God's relation with the universe: and
- 2) on its basis, deduction of God's relation with man, leading to the idea that He is sovereign unto the Universe and mankind.²¹

They substantiate their deduction on the basis of *nūsūs al-Quran* as given below :

"It is He who has *created* the heavens and the earth with truth (73:6)." "Say: God is the *creator* of all things, and He is one and over-powering (13:16)." "He is who *created* for you all that is in the earth (2:29)." "O people, be fearing of Lord, who *created* you from a single being (*nafs-al-Wahida*), and created from it, mate (of the same kind) and spread from these two many men and women (4:1)." "See you, that which you omit? Is it you that create it or are We the creator? We have ordained death among you, and We are *not* to be *outstepped* (paced out)? That we may change your state and make you grow into what you know not. And certainly you know the first growth, why do you not then mind? See what you sow. Is it you that cause it to grow or are We the cause of growth...Is it you that evolve the trees, or are We the evolver (56: 58-72)." "Say: Have you seen your associates, which you call upon besides Allah? Show me what they have created of the earth! Or have they any share in the heavens? Or, have We given them a Book so that they follow a clear argument thereof? Nay, the wrong doers hold out promises one to

another only to deceive. Surely Allah *upholds* the heavens and the earth lest they come to naught. And if they come to naught, none can uphold them after Him. Surely, He is ever Forbearing, Forgiving (35:40-41)."

In these *nūsūs* is expressed those truths which inform the nature of universe. God is its creator; He is upholder of its things; He is sustainer. Every Muslim believes in those truths.

But, Ilyas Ahmed, Abul Ala Maududi and many others of the modern Islamists deduce from them the idea of *sovereignty of God* over the universe. This deduction may be meaningful if we postulate a particular meaning of Sovereignty that it means creation, sustenance, upholding; Or that creation, sustenance, and upholding are grounds of sovereignty. Thus, according to the underlying postulate of this deduction, the idea of sovereignty becomes equated with other *generic* ideas, thereby undergoing a change in its connotation.

The second line of arguments propounded by the above Islamists is like this: "All the attributes and authority belong to Allah. No one is possessor of those attributes and authority in the universe beside Him. He is the Over-powering; He is the Knower of all. He is the Spotless; Error-less; Protector of all;...Living; Waking;...all the authority is in His hand. No one can do any harm without His will (Idhn)...No one has the power to defy his decree."²² The argument is said to have been built on the following verses:

"It is he, (who is) Irresistible to His servants; and it is He, the Wise, the Aware (6:18)." "The Knower of the unseen and the seen, the Great, the most High (13:9)." "He is Allah, besides whom there is no God; the Dominus; the Holy; the Error-less, the Security Granter; the Guardian; the Mighty; the Super-Determinate; the Possessor-of-Greatness (59: 22-23)." Blessed is He, in whose hands is the Dominion and who is Over-Whelming to all things (66:1)."

All the arguments, based on the above verses, to us, it appears, return to a single order of truths; the order which unfolds the relation of God to things-in-creation. It is He who brings the things into existence, sustains them, and causes them out of existence. In this *order* of reality, nothing defies God's decree. Since by its very nature, this order manifests Divine Domination, in it is instituted the realm of God's *Dominion*; Himself being Dominus unto it.

The distinctive mark of the Divine Dominion is that *it is* logically impossible in it to deviate from the dictates of the overwhelming Power, Holiness, Majesty and Glory of its (Divine) *Dominus*.

As we have pointed out, this Dominion is a level or order of reality; none of the creation escapes it, except by His own *will*. There are certainly some of the things, which though are part of *God's Dominion*, yet by God's own Decree, ushers into a realm, order, or level of reality, in which the rule of Dominion does not constitute the *law of being*; and God is not *Dominus* there, notwithstanding that God is the Creator, the Sustainer, and the Nourisher. No light is shed on the nature of this order of reality from the *truths* obtaining in the kind of reality which is subsumed under the Dominion of God.

All thinkers of the modern renaissance of Islam, who have invented the fiction of (political) sovereignty about God, are victim of logical error; the fallacy of confounding two different levels of reality. From the verses that unfold the *truths* about *God's Dominion*, they infer those laws of those other spheres of reality, which are differently set as they were, by the Wisdom, and Power, and Glory of the same God. The ideas of corruption and improvement, virtue and vice, compassion and indifference are inapplicable to the structure of events in the Dominion of God which contains no oughtness, for everything is only with an *isness* in it. Consequently, none of its contents is subject to value judgment. Such are the implications of *the Dominus and the Dominion*.

The authors of the objective Resolution of Pakistan by 1949 A.D. and besides them, political thinkers like Abul 'Ala Maududi, Ilyas Ahmed, etc. have projected the idea of *Dominus* beyond the sphere of the *Dominion*, into the sphere of those entities which are endowed with power to follow or violate the *Divine Ordinance*, and to whom sympathy and hatred, cooperation and competition, piety and mischief, good and evil, progress and regress are forms of mutual interaction. In other words, *God's Domination*, as a metaphysical category, does not absolutely determine the structure of events in this sphere. To be true to our experience, this sphere is human world, though it is rooted in or grown upon *God's Dominion*. This world of man is, for its being and continuity, existence and destiny, is inexhaustible within its limits and constitution. Iqbal has poetised this truth in *Javid Nama* as follows :

‘Although man sprang out of water and clay,
Alas, if he wanders for ever in water and clay,
Alas, if he soars not higher than this station,

The body says, 'go into the dust of the roadway,'
 The soul says; 'look upon the expanse of the world?'
 Man of reason, the soul is not contained in dimension,
 The free man is stranger to every fetter and chain,
 The free man nails against the dark earth,
 For it beseems not the falcon to act like a mouse.

(tr. Arberry, L. 1050 f.)

The problem of *Sovereignty* arises in this sphere of reality, in which man rises above the 'Dominion' as a level of reality. Consequently, the verses whose content and purpose is unfoldment of the order of Divine Dominion cannot provide those inferences which are true in and valid for this world. Thus, from the axiom that 'God is the dominus,' it does not follow that 'God is the sovereign'. The Islamist's argument is however, precisely constituted of this kind of inference, which reduces the concept of *Sovereignty* to that of *Domination*, pure and simple.

This reduction makes the concept of sovereignty empty of all value connotation. When the human world is completely condensed in the concept of Dominion, emasculated of all value component it becomes, and everything of it looks as if swaying in an irresistible *domination* from beyond it. This kind of vision is a conceit of Devil, and fosters those grave *heresies* about the constitution of human events, which are impermissible according to the dictates of moral and religious consciousness. The concept of *sovereignty* should be considered in the same light; its reduction to pure domination makes it a heretical notion which teaches us the doctrine of submission to naked force, and indeed, drapes the human personality in immorality. It is true that all the concepts of *domination* are true of God, but their field is the order of Divine *Dominion*, in which the moral and religious issues have no meaning; everything of it irresistibly submits to His domination. The Quran also teaches us that man and his affairs are not exempt from Divine Dominion and: God is 'dominus of the people also.' "He is overpowering over His servants; and He is the wise, the Aware (6: 18)."

The verse confirms it that man has his station within His Dominion; but it does not mean that man does not go into other realms, which He nourishes beyond His Dominion.

"Indeed, He is the Originator, and is Repeater, the Forgiver and the Lover, (Holder) of the majestic Throne, Doer of what He wills (85: 13-16)."

This verse, which declares God not only the *Overpowering*, but also the Lover and the Forgiver is stretched over to both of the positions of man, or aspects of his being: the one is subject to the Divine Domination and the other is subject to *other types* of the Divine Act. The Divine ordinance stating permissions and prohibitions are addressed to man so far as the latter is not a member of His Dominion and is not besieged by His Domination. Extension of the concepts of Domination to man without any restriction generates *heresies*. No heresy is uglier in its import for moral and religious consciousness than this one, which induces man to submit himself to *force*, to brazen *force*. The modern Islamist's *doctrine* by implication is merely a *probe* into the '*overpowering*' beings and after discovering the supreme *Overpowering* Agent from whom nothing is saved, it takes a sudden leap to the conclusion that the latter is sovereign who ought to be obeyed. They are thus upholders of the '*power-state*,' its Chief priests, who goad the people to worship power, and offer allegiance to its absolute embodiment. By identifying the idea of Islamic state with that of the worship of power, they are not by intention of course, but by their logic in deed, protagonists, of the utmost degeneration of mankind.

The concept of sovereignty, on analysis, it should be found, is thoroughly grounded in a sense of valuation to which the idea of power filled with pure domination is no match. The idea of a *Dominus* is free from all value strappings, and is therefore different from the idea of *sovereign*. The concept of power, in itself, does not imply any necessity beyond '*compulsion*' to elicit obedience from those who are subdued by its irresistible sway. Whereof the idea of '*sovereignty*' directly implies a command, which ought to be obeyed. Since the dominion is free from all considerations related to 'is' and 'ought', the Majestic, Overwhelming, Tremendous, Firm, Mighty and Powerful Force who reigns over it, is consequently a *Dominus*, whose command is above all the attributes of *oughtness*; His Throne for his Dominion is fixed beyond good and evil. The concept of *Tauhid* genuinely transcends it. Iqbal had a keen insight to remark accordingly; "the essence of *Tauhid* as working idea is equality, solidarity and freedom. The state from the Islamic stand point is an endeavour to transform these ideal principles into space-time forces, an aspiration to realize them in a definite human organization (*Recons* P. 154)." But by having built up their theory of sovereignty on the notion of 'irresistible might' the Islamists of our time have undermined the civilization of Islam, and distorted its religious consciousness as 'might is right'. The *irresistible might*, before whom everything is helpless, has to them, the right to command allegiance from the people. Their theory, as clothed in modern termi-

nology, is indeed a rebirth, of the same old theory of the 'power-state' which had permeated the spirit of the classical Islam, and its world outlook; the Asharitism; out of which, as successor of the Apostle and the Companions, was born the most depraved creature whose mettle was so debased and slavish that he could no longer preserve the traces of the lofty traditions of Islam, and bowed in utter servitude before every usurper of power.

The doctrine of basing sovereignty on irresistible might, in the final analysis, means that power is self-validating principle; viz. power legitimizes power; more the power more legitimate it becomes, and accordingly, absolute power is legitimate absolutely. Thus debased, our image of right and wrong completely shatters and let loose upon us the reign of terror in which pure force is everything, arbitre of law and justice, judge of the good and evil, umpire of wrong and right. The doctrine leads to most wretched kind of *nihilism*, ever conceived of man on earth. As we have told earlier, fallacy of this view lies in its utter failure to appreciate the distinction which lies between *domination* and *sovereignty*. It projects in the sphere of sovereignty a logic which is relevant to the sphere of dominion. Final step according to this view is taken in those premises which are drawn from the following verses :

"Surely, power belongs, wholly belongs to God; He is the Hearer, the Knower (10:65)." "And to Him submits whoever is in the heavens and the earth, willingly and unwillingly, and to Him they will be returned (3:82)." "Then, who can control aught for you from God, if He intends to harm you, or if He intends to do you good (48:11)." "To Allah belongs whatever is in the heavens and whatever is in the earth. And whether you manifest what is in your minds or hide it, Allah will call you to account according to it. So, He forgives whom he pleases and chastises whom He pleases. And Allah is possessor of sway over all things (2;284)."

As we have propounded, the value-component is a constitutive element of sovereignty. Consequently, it can not be explained away by the idea of power and domination. Being an irreducible element in the nature of sovereignty, it ushers in the right to command, and this command creates the *obligation* in others to obey it. Pure power produces '*compulsion*', things are *compelled* to follow and not obligated to obey its will. This generic difference between the '*dominus who*

overwhelms' and the 'sovereign who commands' repudiates the modern Islamists' theory for the foundation of public order in Islam.

Iqbal rightly holds that "state according to Islam is only an effort to realize the spiritual in a human organization (*Recons.* P. 155)." It means that the notion of 'sovereignty' is generically a normative notion. Thus, its relation to 'power' must also be of normative character. Since the sovereign has a right to command, he ought to have the power to enforce his command. Thus, the notion of right to command becomes a-priori ground for the power, which belongs to the constitution of sovereignty. That the sovereign ought to have necessary power and sway to execute his commands, all are under obligation to contribute to the power-structure, which lies behind the 'sovereign authority' regulating them. Everything around the idea of sovereignty is thus, subject to normative judgments; power attached to it becomes one of its attributes through the norm which informs its substance. The people are obligated not only to obey the sovereign command but also pool together the means of 'domination', which it ought to possess over them to coerce those of them who are likely to waver from compliance with it. The entire structure of sovereignty presupposes a world of 'freedom, norm, and choice', a world whose governing law is not 'overwhelmingness', but an 'existential freedom, to choose or not to choose an act. The modern Islamist's theory of sovereignty is grounded in complete oversight of this world, in the context of which the notion of sovereignty is moulded, shaped, and fixed; and from which is drawn its substance and composition for the purposes of the public order in Islam.

Besides the normative component, the idea of sovereignty is replete with an indispensable existential consideration. The sovereign authority is a ceaseless function, ever living, ever present amidst the order, which is governed by its normative causation. More precisely, we are talking of the human world. The sovereign in its public order is a present living activity, which issues final authoritative command. But the notion of 'Divine sovereignty' seems to be a resurrection of the notion of hidden Imām. God beholds man, but man beholds Him not. God is omnipresent, but man is blind to His presence. It is our human world, and if God is sovereign in it, and He is hidden from the sight of men, then how is He sovereign? To be sovereign is a perpetual business, issuance of command is a continuous activity, which we often denote by the term *legislation*. Since God is not present to perform this business, and since it is His Will to be absent from the sight of men, He is not and cannot be sovereign in the community of human individuals. It is not His Will to function as such.

On the presupposition that God is sovereign, and that His convention is to reveal His commands through His Apostles, we are forced to conclude that, for the growing legislation, which human society always need, there always should be a *present Apostle* in the mankind to bring from Him, His *commands* to add to the growth of *law*. The theory logically culminates in the *perpetuation* of the Divine Imama on earth, an unbreakable chain of Imams, unto whom God's will is communicated every year. Thus, an absolute *theocracy*, headed by a divinely appointed present, and not occult Imam is the only goal of the theory, propounded by the Islamists in our time.

The Islamists try to escape these *conclusions* by forwarding a fiction of the *delegation of authority* to the Umma or to the *state* in Islam. The question is what kind of authority has been delegated to the *Umma* or to its state. If God has delegated the sovereign authority, He has ceased to be sovereign. The fiction had to be rebuilt in order to accommodate the delegation of power as follows: Once upon a time, God was sovereign upon the people, exercising His supreme Authority through the Apostle. But as He Himself discontinued the institution of Apostleship, He gave up the sovereignty and made the people or their state inherit it. Thus sovereignty remained, but its agents changed. Now the people or the state are sovereign. This kind of reconstruction is the only possible stake for those thinkers to allow them avoid divinely instituted chain of Imama till the end of time, a succession of divinely chosen legatees, present (not hidden), admit the people to give fresh commands on the basis of fresh divine revelations to them and thus fulfil the requirement of Divine sovereignty, as ever present, unbreakable living activity in the community of Islam. The doctrine of inherited sovereignty as the only alternative to the divinely established vicars of God, evolving from the very heart of their theory of Divine Sovereignty, as a consequence of the end of Apostleship, implies a negation of the theory itself. It means that the basic postulates of their Islamic constitution are riddled with contradiction as follows :

“Sovereignty of God implies transference of sovereignty from God, which in turn means that God has not remained sovereign”.

Thus the doctrine succumbs to its own logical weakness. The truth is and we must state it without any equivocation that there is inherent incoherence between the notion of God-head and the notion of sovereignty. Both notions have different connotations, and different functions. Their usage as alternate values for one another,

consequently, causes riddles and contradictions, the instances of which, we have noticed in the doctrine of modern *Islamism* where the affirmation of Divine Sovereignty leads to its contradiction; the denial of Divine Sovereignty. Or, if it is not so, then to the chain of visible Divine Vicars as principle of organization for human societies. Because of its classical spirit and plethora of neo-Classicism, Modern Islamism is unable to overcome its contradictions. The Islamist of our time is nothing more than a heir of the Asharites, but one who is equipped with the tools of modern Western thought. The Doctrine of the Sovereignty of God in the logical structure of his Islam and political philosophy is a new manifestation of the Asharite creed which teaches that the 'law' revealed is an Act of the Divine Will, before whose sway nothing can stand. Now, saturated in this creed, the Islamists of our time are led as if by an impulse to conclude that because of its a-priori commitment to the divinely revealed law of the Book, state in Islam should presuppose the sovereignty of God, as basic prop of its constitution. If, it is true that the law is a command of the Sovereign Lord, the conclusion must follow.

But is it true that the prohibitions, permissions, and obligations prescribed by the revealed word are Acts of God, the Irresistible Power? There is no reason to hold this view. If the Asharite premises are not conceded, the injunctions and teachings of the Quran do not remain Acts of the Irresistible Will—the Omnipotent God. Muslim culture, out of its own inner resourcefulness, welled out from its being other views also which declined and disappeared as Muslim civilization marched on with shafitism as its law and Asharitism, the theoretical encrustation of Shafitism, as its spiritual out-look. The M'utazila and the Maturudi movements are glorious illustrations of the kind. In them, the teachings of the Quran were based on the Infinite Wisdom of God; on His Mercy and Bounteousness. It was not God, the holder of absolute sway over all things, whose urge to power, impelled Him, to bind His servants by His dictates, but it was God, the Wise, the Beneficent, the 'Free from wanting', the Nourisher, the one who revealed to mankind the Right Path, because for mankind it was disastrous to follow the wrong path; the path of Devil. Law in Islam, it follows, is supposed to be the embodiment of intrinsic goodness, which has objective existence for the kind of world, or plane of reality assigned to man.

This value.—Consciousness paves the ground for public order in Islam for the sake of which the Muslims are obligated to seek guidance from the Divine Revelations. Iqbal has said :

'God's revelation sees the benefit of all.
Its regard is for the welfare and benefit of all.'

(Tr, Arberrry; Javid Nama: L. 1239 f)

The Laws are revealed not because He is *Dominus*, but because He is infinite sympathy, affection, and love for mankind. 'He is the Friend Most High': this dictum is the foundation or ought to be the foundation of constitution for public order in mankind. Consequently, when the public order of the Congregation of Islam is raised on the injunctions of the Holy Book, whose author is God, it relates itself to *the wisdom of the Friend, Most High*. The sovereignty of God, it means, is not a necessary and logical foundation of the state in Islam.

The foundation of public order in Islam should be sought in plain facts. When the people enter into the fold of Islam, the very act of entrance is an expression of their consent to turn the *Divine Teachings* contained in the Holy Book into *Laws* of their life, patterns of their behaviour, and aims of their policies. Now, it is this *consent* which transforms these teachings into '*law-making*'; the Sovereign function that orientates the public order in a particular direction. When, this plain *fact* is comprehended with all of its imports, the mysteries surrounding the public order in Islam are *resolved*. As we have said earlier, Muslim Constitutionalism does not concede to state the sovereign activity. Now, what is Sovereign activity? It is an activity which expresses itself in finalization of decision on a public affair in a society. The characteristic form of this finalization is law-making an ever present function, necessary for perpetuation of the human group. In Muslim public order, this activity precisely belongs to *Idjmā'a*. Consequently, *Sovereignty of Idjmaa* is the first article of faith for the constitution of public order (and state) in Islam.

The concept of the *Sovereignty of Idjmaa*, does not mean transplantation of the doctrine of *popular sovereignty* in Islam. Indeed, it does not lead to the Sovereignty of public opinion, or '*referendum*'. *Idjmā'a*, in its peculiar constitution is different from all those concepts. It has a particular logic; it is disciplined in a particular way and by no means can it transcend its own constitutive logic and pattern of discipline, reducing itself to an inarticulate or irrational popular will; '*voice of the volks*'. The latter has also a logic of its own. Customs, manners, and trends of the people are its governing principles; but its final mark is its ultimate authority to annual, drop, modify, discontinue any of the traditions and conventions. Also it

may abdicate itself in favour of dictatorship, or vote itself out of existence, though it may resurrect on its own strength once again.

Idjmā'a on the other hand, is a creative organizing activity which cannot rule out its own rule (logic) out of existence, Though it appears as the assents of the members of Congregation, yet mere assents it is not. Its being is given in what is technically known as abrogation of the Quran, and the Sunnah of the *Prophet and Companions*. In its creative unfoldment which gives laws, institutions, organizations, and government to the muslim people, Idjmā'a exists beyond all of its creations. The government of the umma cannot impose its commands and wishes on it, nor can any other agency govern it. As it exists, it serves as the supreme, governing, arbitrating principle in the Umma.

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 18. Nasiruddin Tusi, *Ikhlaq i Nasri*, Tr. G.M. Wickens as under *The Nathirian Ethics*, (London, 1964), pp. 109-10. Compare it with Hobbes, *Loc cit*, pp. 132-33.
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 20. 'Aqaid al Nasafi, (Delhi, 1338 A.H.), p. 81 (Translation of the piece by MacDonald).
 21. Kemal A. Faruki, *Islamic Constitution*, (Karachi, 1952), pp. 39-44; Ilyas Ahmed, *Sovereignty*, *loc cit*. Abul Ala Maududi, *Khilafat O Mulukiyat*, (Lahore, 1966), pp. 15-27.
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PLACE OF IDJMA'A
IN THE
PUBLIC ORDER OF ISLAM

Idjmā'a is agreement of the community. In Muslim scheme of *truths*, it occupies two distinct places, and as such, it is substantive ground of the Muslim community as well as the regulative idea of public order in Islam.

As substantive ground, it means that the Congregation of Islam owes its existence to a collective agreement that Mohammad (peace be on him) is Apostle of God and that the Quran is Divine revelation to the Apostle for guiding the mankind. This conscious agreement constantly inspires the members of the Community to distinguish themselves from those communities who were born of chance, thrown into mutuality, or united into an umma by unconscious inarticulate ties in history of the world. Thus emancipated from historical determinism, the Congregation of Islam is obligated to view itself as having emerged from a peculiar *will to live*, which permeates every member of the community. This will in permeation is root idjmā'a, ground Consensus which functions as the existential principle or differentiating continuum of the Congregation of Islam and in it abides the collective unconscious of the Muslim people. It is their material basis from which grows the frame of reference for the social space of the Umma.

Above this plane is another series of idjmā'a which functions at the plane of social process. Here it serves as one of the regulative *Ideas* of the community controlling the judgments of practical reason in Islam.

Regulative ideas are indeed, *final proofs* of the soundness of practical reason and as such are ultimate limits of its demonstration and serve as ultimate frames of reference for the articulation of its intent. The regulative Ideas for the practical reason of the Congregation of Islam are three: the Divine Ordinance; the Apostolic tradition; and the Idjmā'a of people. There is no fourth of their kind to bestow authority and confer validity on judgments of the practical reason in the community of Islam. Thus, for the stamp of authoritativeness upon them, all the constructs of Muslim Thought, are to be proved that they are *direct* (not inferred) stipulations of God as He Himself revealed them through the Quran; or that they are the direct stipulations from the Apostle, fixed as they were, in the continuity of his (authentic) *Sunna*, or that they are approved by the Idjmā'a of the community. Without meeting, at least one of these conditions,

no judgment in the scheme of Muslim outlook has an obligatory *value*, and may be allowed a place in the authentic thought of Islam. It does not however, mean that those Ideas control all kinds of thinking activity in the Umma. The sphere of their regulative function is only *practical reason*, which produces those propositions that find their objectification say in economic, moral, religious, and political imperatives. Our contention is that the structure of imperatives, and not the judgments of theoretical reason for instance, propositions of theology, physics, etc. are governed by the regulative ideas of Divine Ordinance, Apostolic Tradition and Idjmā'a of the Community in the Congregation of Islam. Thus, the imperatives, shaping the public order as such are the only ones to be proved on the basis of the above ideas for their place as rules of conduct and authoritative regulations binding on the people. In other words, there is no prescript, no ordinance, no law, and no stipulation for the public order in Islam, which has not obtained its authority from those Ideas and has not been proved by them.

All the regulative Ideas which, by their very function, prove authoritativeness of the judgments of practical reason, *ex-hypothesi*, are *right, infallible, and well-protected from defect*. This attribute is a necessity attached to them as such and is specific property of their role as regulative Ideas. Consequently, to be above error, in their case, is not amenable to the logic of experiment and rules of verification. It proves that being immune from error in their case is an a-priori methodic principle, and pertains to the logic of practical reason so far as it governs those constructs which are binding on the people. Being a-priori ground of authority and a-priori principle of validation for rules of conduct, the regulative Ideas of *Divine Ordinance* and that of the *Apostolic Tradition* have the attribute of immunity from error for the design of practical reason in Islam. Since, Idjmā'a too, in Islam, is a regulative idea and a principle of validity for practical judgments, it belongs to the same category. *Ex-hypothesi*, it becomes *infallible* and *protected from error* in its logic. The concept of protection from error for Idjmā'a has no further domain of meanings. It has no extension beyond the context of binding laws, practical rules, and legal propositions for the Muslim people. In other words, Idjmā'a cannot be evoked for the subjects of theoretical reason.

It is peculiar quality of Islam that beyond Idjmā'a of the people nothing, no authority, no judgment, has a religious guarantee to be above error, except the words of God and Sunna of the Apostle at

the foundation of its public order. There are no people on earth except the believers who have indeed allowed so splendid a position to the Consensus of the masses as to enshrine it with the Writs of God and His Messengers in the holy sanctuary of *Isma* (errorlessness) and concede to it a supreme power which is wrapped in holiness for conferring final authority on the deliberations of the 'ulamā, statesmen, and leaders of the people.

Idjmā'a which regulates the public affairs, to define it by its functional side, is but 'mutual conference' of the people. Even the Apostle had to himself the Divine Ordinance: "And confer with them in matter. And when thou hath (thereby) resolveth, then put thy trust in God (3:158)." *Isma* (immunity from corruption) for it is established by the Divine revelation as follows: "And whoever branches off from the messenger after guidance has become demonstrated to him, and (whoever) adopts a course other than that of the believers, we turn him to that he turns and make him enter hell: and it is an evil resort (4:115)." About the 'mutual conference' which the unbelievers hold, the divine verdict is thus: "There is no good in most of their secret counsels except (in) him who enjoins charity or goodness or reconciliation between people. And, whoever does this, seeking Allah's pleasure, we shall give him a mighty reward (4:114)".

The above Nūsūs specify a number of points:

1. Not all 'mutual conference' is good.
2. Only those 'conferences' are subject to mighty reward from God, whose content is informed of goodness, charity, and reconciliation.
3. Whosoever of the believers branches off from the path (set by mutual conference) of the believers, he is assuredly adrift towards hell. Thus, the believers are forbidden to branch off from the path of the believers, "whose matters are settled by mutual conference."

It may be directly inferred from the consultation-verse (42:36), that the people whose affairs are not decided by conference among themselves, are not the believers. By building up a direct chain of arguments, the verses also establish the sanctity of mutual consultation; make the path, set by it, protected from corruption for all practical purposes; and declare branching off from it an act leading to Hell. Thus, the Divine Ordinance forbids that kind of individualism in which every member of a community hoists himself as law unto himself. If there are no *Ahadith* of the kind; 'my community will not get

together on error'; the Quranic revelations themselves, as mentioned above, are just sufficient for extending errorlessness to the *Idjmā'a* of the community as transcendental principle of socio-political organization in Islam.

The *usul*—thinkers muddled the issues of *Idjmā'a* with those of the source of law or *sharī'a* in Islam. Not fully conscious of its regulative character, they treated consensus of the community, as only a source material for their use to condify the law of Islam. Thus, they were apt to include it in the *usul* of Ahkam, the material roots of the *sharī'a* in Islam.¹

The *Usul* undoubtedly, are roots and function as material norms on which the practical reason in Islam operates to formulate a *hukm* or opinion. But as we have said somewhere else, a *hukm* is a mere opinion unless invested with authoritativeness by the *Quran*, the *Summa* or the *Idjmā'a*, that is by the validating norms as provided for them in Islam.² A *hukm* or practical judgment has always two sides, one is construction; and the other is seal of authority upon it. As a construct, it is subject to the rules of construction, which are, different, in category, from the rules of validation. A valid judgment is a product of these latter rules. Being a validating norm, *Idjmā'a* belongs to their category. Nevertheless, most of the thinkers of Islam are not free from the fallacy of confusing the categories of construction and validation, and erroneously treat *Idjmā'a* as if it were a principle of construction. The creative genius of the doctors of Islam specified in *Qiyas*, *Istihṣān*, *Istidlāl*, *Istishāb*, those constructive norms of the religious thought which are to serve as roots for the *Ahkām ash Sharī'a*, but most of them could not see that *Idjmā'a* had a different role and could not be used as part of construction. This explains the main reason why Muslim thought failed to achieve proper crystallization of the theory of *Idjmā'a* in Islam.

There is no sophistication or over-intellectualism in holding the view that vigorous thinking for proper construction of a judgment presupposes a well grounded training in and command of expert knowledge. It means that consensus of the community cannot be trusted as a source of reliable construction for practical propositions. In fact, there is no period of human history in which society turned towards its masses for guidance on those delicate and critical problems of life, which required very high statesmanship or rational discipline. Consequently, when *consensus* of the community is taken as a source, the value of the *hukm* itself becomes doubtful. Instead of correcting themselves on the issue that *consensus* cannot serve as one of the sources and

roots of Ahkân, or as a constructive element of judgments in Islam, most of the Muslim jurists persisted in their error, and made attempts to fit it in their ill-defined scheme of *usûl*, if necessary by distorting its nature. And they distorted its nature to the extent that it was degenerated to mean an 'agreement of the Ulama of Islam'. As a development, it was indeed a declaration that God, the Apostle, and the Ulama' are regulative ideas, validating principles for practical reason and seal of authority on every kind of *Hukm ash Shari'a* in the community of Islam. Its theoretical causes may be sought in the gigantic failure of the jurists to preserve those discriminations, which obtain between construction and validation, resulting in the massive change at the entire foundation of Islam. A Society, based on priesthood, it gave rise. The social organization succumbed to perversity. Now, it had no sphere of application for those verses of the Quran which sanctified *Idjmā'a of the community* as a whole. There was indeed, an absolute rephrasing of the public order of Islam into an oligarchy of the *ulama and wielders of power*. Thus, most of the *usul* works of neo-Classical period reduced the *Idjmā'a* to the *consensus of the Ahl l Hal wal 'Aqd*. *Minhādij al Usûl* defines it thus. "And it is agreement (*ittifāq*) of the 'binders and looseners' of the umma of Mohammad, (may peace be on him), on a matter.³" Ibn Taymiya, Ibn Qayyim, and other revivalists of Islam of the eighth and ninth centuries Hijra also could not save themselves from pitfalls of this view and believed that the *Wielders of power and 'Ulamā of Islam* constituted the *Ahl l Hal wa l 'Aqd* and that their 'agreement' was the *Idjmā'a*, binding on the Congregation of Islam. The following rule became established law; "When the *Mudjtahidum* of a period have inferred a *hukm* and drawn their agreement on it, the people of the period are obligated to acknowledge it. Its opposition is impermissible, for the agreement (of the *mudjtahidīn*) is a proof of the *hukm*.⁴" If this became a law for the 'ulamā, then in it was sanctified the corruption of the Umma into a public order made of a priestly overlordship around the oligarchy of its rulers. Abu l Hasan al Amidī (d. 631/1234) recorded the view of his time thus: "The majority (of the 'ulamā) hold that layman's opposition or support is of no consequence in the *Idjmā'a*." This opinion which became Quite established by al Amidī's time in the circles of 'ulamā, it should be noted, had no basis whatsoever in the *nusûs* and the origin of Islam. There is no Divine verse to support it, nor can it be validated by some tradition of the Prophet and his people. Thus, if the 'ulamā and the wielders of power welded an agreement on it as a principle of order in the Congregation of Mohammad, it was not sufficient to make it a part

of Islam and accord it a place in the code of its sharī'a. Having no religious sanctity behind it, the consensus of 'ulamā and rulers commands no obligation of obedience to it. At best, it may be allowed the position of an idjti'hād in civic and political matters.

Al Amidi was, however, particular enough to record the other opinion, held by a minority of 'ulamā, according to which, support or opposition of the laymen was an important element in the constitution of idjmā'a. This opinion sought its ground in the living transmissions (*Dalā'il i Samā'i*) of Islam leading to the idea that the *umma as a whole*, and not a part of it, was declared immune from error, and that the immunity proved for all was not proved for a part. The 'ulamā are not whole of the umma. Their mutual consensus according to this view, cannot possess a guarantee of being immune from error. In addition to it, the unanimity of the umarā and 'ulamā also is a consensus of a part of the population. It also cannot enjoy errorlessness, and therefore has no seal of validity upon it.

Al Amidi quotes six reasons, forwarded by the upholders of the 'established view.' The purpose of all those reasons is only one, to bind the laymen to the opinions or the so called agreement of the 'ulamā and umarā; viz. the *Ahl i Hal wa l 'Aqd* of the Muslim Society. When the laymen are forced to adhere to the decision of the *Ahl i Hal wa l 'Aqd*, their adherence may make those decisions an idjmā'a of the Community which has the religious guarantee to be free from error.

The very case championed by the Seventh Century (Hijra) advocates of the 'established opinion' which limits franchise to the 'ulamā and wielders of power only was however, self-contradictory. *Idjmā'a* as idjmā'a of the whole community underlied as a presupposition in their demonstration for establishing its opposite. Their technique was of the nature of a sophistry made of a number of arguments for reducing the *Idjmā'a* of community to the agreement of a few. And it was as follows :⁵

1. It is necessary for a layman that he abides by the (agreed) collective opinion of the 'ulamā, for his opposition shall have no authenticity in the matters in which *taqlid* (following) is incumbent on him.
2. The opinion (agreement) of the 'ulamā is a *Hudjja* (final proof) on the basis of *istidlal* (argumentation) that it contains, for no hukm is demonstrable without an *istidlal* for it. Since a layman is not vested with insight and argumentation, his *opinion*, just like that of a lunatic or a child, is of no consideration.

3. Having no support from *istidlal*, the observation of a layman in *dīn* is in itself an error, which obstructs him in his inferences. And a person, whose demonstration is obstructed by error, has no weight in the matter, which he opposes or supports.
4. The 'ulamā and public of the first generation, the age of the companions, had consensus that the opposition or support of a layman is of no consideration.
5. The *umma* is saved from error by its reasoning. A statement of *Ahkam* (the judgment of *sharī'a*), unsupported by reasoning and argument, is an error. Since a layman is not competent to reasoning, it cannot be conceded that he is immune from errors.
6. Soundness of opinion in the case of a layman cannot be thought of as he accepts a judgment without argument. Consequently, immunity from error, a pre-requisite of the soundness of opinion, cannot be conceived of him.

The above arguments are meant to establish the oligarchy of specialists with binding authority on the community. It is argued that a layman is quite novice in the art of reasoning; he lacks proper qualifications to establish proofs; and his judgments and conclusions are infested with errors. As human society, with the exception of a small highly educated section, consists of laymen, who are simply bundles of error, the argument sets out the principle that opposition or support of the masses is of no consequence for (establishing) *Idjmā'a* in the social system of Islam. This conclusion is in direct contradiction with the principle; "My people will not get together on error"; which enthrones the idea of errorlessness of the community as a whole.

Abul Hasan Ali Nadwi acutely felt this contradiction, which had already crept in the body of Muslim thought, by his time. His main contribution, as one of the greatest *Usul* thinkers in Islam, lies in working out a theory which resolves the contradiction. It must be conceded that most of the above mentioned arguments against a layman are plausible and the conclusion that a society, with the exception of its learned few, is a bundle of error, seems to be hardly contestable. But, Nadwi resolves the whole issue as follows:

1. "That a layman should compulsorily turn towards the judgment (opinions) of the 'ulamā, contains in it the proof that judgments of the 'ulamā, without (support from) him,

are not *authoritative* for other reasoners (Mudjtahidin) beyond them. The *authoritativeness* of their judgments for others beyond them shall be established on account of the agreement of laymen with their judgment."⁶

Al Amidi duly admits here that laymen are required to depend on the learned ones for opinion. But this admission, according to him, does not entail the possibility of an *Idjmā'a* without the laymen's agreeing with them on the opinion. It is plain that Amidi differentiates between the learned judgment of the reasoners and the *authoritativeness* to be attached to it for making it binding on others. Agreement of the layman is pre-requisite of the *authoritativeness* for it. So long as this agreement is not behind, it is only an opinion among so many opinions.

2. "If *consensus* requires reasoning, either (expert) reasoners should do it or all of the people. The first alternative as a case holds good, while the latter (obviously) does not. In spite of this, the layman has no bar to extend his agreement to the reasoners as a necessary condition for *Idjmā'a* (of the community). It is as such, although a layman is not competent to forward arguments. That the agreement of the children and lunatics cannot be a condition, does not become a ground for revoking the condition of layman's agreement, because there is a difference between them and the layman, on account of which the latter is a bearer of responsibility (Mukallaf)."⁷

The argument apparently distinguishes between the *act of approval* and the *act of demonstration*. Reasoning, argument, or demonstration is a privilege of the learned *elite* but assent, agreement, or approval is a prerogative of a layman and his likes. The ground of demonstration and reasoning is light and knowledge. The ground of agreement and approval is will and responsibility. The *sharī'a* declares layman Mukallaf (bearer of responsibility); he cannot consequently, be classified with the children or lunatics. Al Amidi says that the approval of the children and lunatics is not made a condition of *Idjmā'a*, because they are *absolved of responsibility*, and not because of their incompetence to reasoning.

3. "Although, the opinion or judgment of layman, unsupported by argument in the affairs of *dīn*, is an error, yet this fact does not prohibit others to take his support a condition for selection of an opinion from a number of opinions."⁸
4. "The fourth contention (of the opponents) has no basis whatsoever."⁹

The fourth contention of the opposite party of limited franchise is that from the first generation, viz. from the period of the Companions, the public and learned have been in consensus that the opposition and support of a layman is of no consequence. Al Āmidī summarily rejects the proposition. He says very strongly that no such consensus has been in transmission since the first generation of Islam.

5. "A layman may not be among the *Ahl l Idjtihād* (men of independent reasoning), but this does not produce any obstacle in making his unreasoned consent a condition of the *authoritativeness* of the consensus."¹⁰
6. The sixth objection of the opposite party is replied thus: "If by a layman, a lone individual is meant, then of course soundness of opinion cannot be attributed to him. But how would it be an obstacle to his being right if he participates in an opinion by giving his agreement? A layman is undoubtedly right and on sound opinion when he supports the learned. And on this basis, it becomes admissible that his agreement is made a necessary condition of the *authoritativeness* of an *Idjmā'a*."¹¹

The quint-essence of this argument is that though a layman cannot form a learned judgment, yet he may adopt and support one, and in doing so he is held to be on the right path, and is redeemed of the charge of erring. When the situation is this, and the adoption of a learned opinion, advocated by any of the specialists is *not an error*, then there remains no objection to making his consent condition a-priori for the authoritative formulation of *Idjmā'a*.

Al Āmidī's discussion thus completely repudiates the theory that 'Idjmā'a is an agreement of the *Ahl l Hal wal 'Aqd* of the community, which in other words means that the approval or disapproval of the 'Āmī (a member of the public) carries no worth. Al Āmidī concludes that an *Idjtihād* is only a reasoned out theorem; it is not authoritative at all. It grows into the *Idjmā'a* and assumes authoritativeness by joining of the masses to support it. Without their participation, it merely remains a *Qiyās* (guess).

In this context, it may be pointed out that thinkers of the second and third centuries, ash Shaf'ī, Ahmed b. Hanbal, etc., and those of the fourth and fifth centuries like Ibn Hazm adhered to the view that *Idjmā'a* is agreement of the community. They merely refuted the contention, and rightly so, that in a number of problems in which people or specialists believed that there was an *Idjmā'a*, there was altogether no *Idjmā'a*. Their negative efforts were directed

to prove, as discussed earlier, that in view of the expansion of the community to far off regions, it had become difficult to hold the *Idjmā'a*. All their discourse, pre-supposed, nevertheless, that *Idjmā'a* means *Idjmā'a* of the whole community.¹² Limited franchise as meaning of the *Idjmā'a* was only a new development in Muslim thought mostly during the sixth and seventh centuries which levelled it down to the agreement of learned jurists only. After it, very little time was required for its transformation into an 'agreement of the *binders and looseners of the community*, who were back-bone of the body politic in Muslim nations.

Al Āmidī's discussion has to its credit those elements by which the original *doctrine* of Islam is revived and the 'innovators' of limited suffrage are met on their own ground. He investigated the problem with a thoroughness and proved that there is a continuation between the learned jurists (and the wielders of power) and the general public. A layman, he said, is also a *Jurist*, but one who does not exert his *idjtihād*; he is a follower (*muqalid*) legist for he understands and remembers the *Aḥkām*. His participation in *Idjmā'a* means association of a *follower-jurist* in the affairs of *dīn* (and the *Umma*).

The main props of his theory rest on his keen discrimination between the construction and validation of a *ḥakm*. Construction is a function of the learned, but validation is a prerogative of the public. This discrimination leads to a neat and clear concept of the legislative business in Islam. It has two sides: (1) reasoning, and (2) approval. The masses embody approval or will of the community which alone puts the seal of finality upon the learned guesses. The learned *guesses*, however, are workmanship of reason and are business of the experts. When an *idjtihād* receives approval of the people, it becomes a binding law, and enters into the code of *sharī'a* of Islam, otherwise it remains the opinion of an individual expert or a school. Since an opinion, a learned opinion is not crowned with authoritativeness on its own, it does not become part of the *Sharī'a* without the *Idjmā'a* on it, and as such its violation is no sin and its observance is no virtue in the strictly religious sense of vice and virtue in Islam.

In the scheme of the *sharī'a* of Islam, on the reasoning side of a stipulation are the *sources* from which it is constructed. They are the *Qurān*, the *Sunna*, *Qiyas*, *istihsān*, *istislāh*, *istishāb*, '*urf*, etc; and on the side of its validation, are *God*, *the Apostle*, and *the Community*. A direct Quranic injunction is law binding on the believers, because, the authority of God bestows on it the seal of validity. The *sunna*

is a law, because it has authority of the Apostle behind it. All the rest requires authority of the community. No deduction on the basis of Qiyās, istiḥṣān, ‘urf, istiḥāb, etc. has, therefore, religious significance, and commands obligation of obedience to it, unless it has received finality from the authority of Idjmā‘a. It was original view of Islam.

During the fifth, sixth, and seventh centuries, Muslim Thought passed into its own counter-thesis i.e. freedom from Idjmā‘a of the Community as a condition a-priori for an ordinance in Islam and its public order, and the result was that the *mujtahidūn* theoretically became *lawmakers* in Muslim nations. Thus, Idjtihād became in itself the law outrightly prescribing the *licit* and the *illicit* for the Congregation of Islam. It was an innovation in religion and its code, and got so established in the course of time since those centuries that the nineteenth and twentieth centuries thinkers of Islam could not comprehend in it the gigantic distortion of Islam it had wrought by equating the law with *Idjtihād* of the specialists or of the ‘*Ahl l Hal wa l ‘Aqd*’.

In the original scheme of Islam, Idjtihād has no better claim than a proposal of law, while in the distorted image of Islam which limits Idjmā‘a to the *binder and looseners* of affairs, it is law by itself, binding on people. This corruption of Islam closes the door of creative thinking. Only men in power are allowed thereby to do it on behalf of the entire community and whatever they think or propose immediately, without reference to the people, becomes law of the nation. In this kind of oligarchic set up, both idjtihād and idjmā‘a are enfranchised in a small suffrage, contrary to the original view of Islam, which makes the whole community responsible for it. By giving its approval to an opinion, the community alone creates its law and adds to the Sharī‘a.

At this place, we wish to emphasize that reasoning or idjtihad cannot be disallowed to the members of the society, who alone by unanimity or majority opinion are final authority to transform an idjtihād into the law, binding on all. By holding their consensus, after sufficient exchange of ideas through direct referendum among themselves or through their wakīls (elected representatives), from time to time and on different issues, the people are competent to and real agents for modification and expansion of the sharī‘a of Islam, so far as it means a function through Qiyās, istiḥṣān, ‘urf, etc. Thus, any further consideration of the constitution of public order in Islam is subject to the crowning idea that it is not idjtihād but idjmā‘a of the Community which is law-maker in Islam. From this idea, the follow-

ing rules of guidance or necessary and obligatory prescripts emerge as constitutional framework of the public order in Islam :

- 1) There is no place for oligarchy of the learned clergy, or that of the *wielders of power* in the body politic of Islam;
- 2) There is no law-giver besides the community;
- 3) If one imposes his own idjtihād on the people without first having obtained Idjmā'a of the community by provision of adequate interaction of their opinions, his idjtihād has no force of valid authority behind it, and is an *illicit* part of the public arrangements (law) of the *Umma*.

When al Mehdi desired to proclaim the *Mu'attā* public law of the Abbasid Dominions, Malik. b. Anas, its codifier, opposed him, because it had not secured agreement of the community. The story is also suggestive of yet another convention, i.e. the *wielder of power* cannot *legislate* for the community. This was also a cause of Malik's refusal. The origin and ground of this convention lies in the doctrine that after *God*, and *the Apostle*, there is no authority beyond the *community* itself, which can give a law, constitution, or *namūs* to the people, and force them to abide by it, except by transgressing the limits of Islam.

Let us take a full politico-religious view of a Muslim State in the light of the above mentioned observations. Analysing the *Structure of Islam*, Iqbal draws his conclusion thus: 'The republican form of government is not only thoroughly consistent with the spirit of Islam, but has also become a necessity in view of the new forces that are set free in the world of Islam (*Recons*: p. 157).' Our conclusion is that the principle of republicanism works through the mechanics of idjtihād and idjmā'a in a Muslim nation as ever living, ever fresh, dynamic aspects of its constitution. Anything, a political regime, public institution, sectarian stronghold, or vested interest which curbs the process of idjtihād and idjmā'a, is undoubtedly a *hindrance* to be removed from the public order of Islam.

In a public order which represents the spirit of Islam, the *umma* exerts itself in two activities: Idjtihād and Idjmā'a. Idjtihād is performed by the leaders of the community, its intellectuals, jurists, 'ulamā, etc. but members of the community are transformer of the idjtihād into laws of the public order. The idjtihād, which has not received sanction from the idjmā'a is an opinion with no *obligation* attached to it. In the process of idjtihād, society enriches itself in thought, gives impetus to its intellectual movements; while in the

process of Idjmā'a, by exerting themselves in the acts of *approval* or *disapproval*, the masses expand the *authoritative* arrangements of their public order and cause evolution of their collective life with the requirements of time. Thus, both of these activities are natural aspects of the Congregation of Islam.

A state as such is a mode of authoritative functioning of a Community. And since the Congregation of Islam contains the state, the activities of the state-holders are controlled by Idjtihād and Idjmā'a which themselves are above their control. In other words, idjtihād, i.e. creative thinking and idjmā'a, i.e., its validation by the public are necessary forms which shape the being of a Muslim state and its institutions. Consequently, they lie beyond the *control* and *veto* from it. This principle is necessary aspect of the Constitution in Islam. Debate on issues, interaction of opinions, communication between man and man, consultation between the learned and laymen, exchange of views through mass media; in modern times through papers, radio, and public meetings, etc. all of these group interactions are beyond the authority of *state* as conceived by Islam. It cannot ban them, curb their effectiveness or postpone them to some unforeseeable future time. It is no judge upon the idjtihād and idjmā'a nor could it arbitrate between them. It has only one function in relation to the process which contains them: provision of facilities and protection of those facilities as necessary aspect of the public order in Islam. Being moments of *Idjmā'a* in formation, the individual opinions, in the system of Islamic Constitutionalism, are in ebb and flow beyond the sphere of state. The opinions attract men and cause the growth of different parties in the community. Development of the individual opinions into party opinions is a natural phase of the social and political process, towards its crystallization as an idjmā'a. Thus it is implicit in the very nature of Idjmā'a, that the people are free in it to form parties, adhere to their views, follow the leaders of their choice, and uphold the opinions, they judge as best. Moreover, it is also implicit in the institution of Idjmā'a that the people and parties are allowed to propagate their views; carry them from town to town and man to man. It is in this sense that the words of the Apostle; '*Differences in my Community are blessings*'; are true. Having its very constitution based on idjtihād and idjmā'a, the Congregation of Islam, as a religious duty, disallows the growth of a public authority which obstructs the people in differing from one another and forming parties for the purpose of idjtihād and its propagation leading towards an eventual idjmā'a of the whole people. Thus, multiple parties is a way of the Congregation by which it remains alive and healthy.

Islam can not allow in its space that a party or a clique imposes its *idjtihād* on it as a law of the people or as *shari'a* of Islam, except by first it has secured agreement of the members of the Congregation. For this purpose, the people and their parties are obligated to submit their *idjtihād* to the *idjmā'a* of the community. The Congregation, in turn, is obligated to provide and maintain a *machinery* for it, as a compulsory constitutional element of its public order. This social obligation of the Community may take three forms: either a referendum on issues with full freedom of different solutions or a referendum on men to represent the will of the people or both. These are valid methods through which the Umma modifies, evolves, and expands its *shari'a*, institutes the modes of its embodiment, and organizes its public institutions. But, as Iqbal observed; "Possibility of its (*idjmā'a*'s) transformation into a permanent legislative institution was contrary to the political interests of the kind of absolute monarchy that grew up in Islam after the four Caliphs."¹³ Now, when the medieval order and its regimes have been overthrown, and the Spirit of Islam has become free to shape the Muslim nations on the institutionalization of *Idjtihād* and *Idjmā'a*, the function of state is nothing but executing the laws, intents, ect. that this institutionalization may create for the Congregation. In tradition of the Muslim constitutional practice, the *imām* of the Muslims does not form part of the legislative process, the supreme process which determines and shapes the *life* and institutions of the Muslim people. To him, his deputies and their establishment belong only:

- a) *allegiance* to the law as it exists and not creation of it.
- b) execution of the law (as the executive function devolves on him and the administrative organization under his control).
- c) Protection of the legislative process of the umma; its *idjtihād* and *idjmā'a* activities.

Such is the theory of constitution in Islam.

The thinkers of *mulk* i.e. of *power state* in the history of Islam put silence of the people at par with *idjmā'a* of the community. Silent or covert *idjmā'a* was recognized in the Congregation of Islam as a principle, but it had its genesis in a methodic need of the jurists, and it was not stipulated to replace the covert, institutionalized, and objectively provable *idjmā'a* of the people. Nevertheless, in the history of Muslim thought, *covert idjmā'a* served as one of the ways through which the *idjmā'a* of the community as such was set aside by the wielders of power in their bid to validate such institutions of their choice which battered and bruised the Con-

gregation of Islam from end to end. Even, hereditary monarchy and feudalism were legalised by the jurists in this manner on the plea that there was no expressed opposition to them in the Umma and that they had already become 'urf. Now we will discuss the place of *Silent Consensus* in the law of Islam.

It is quite plain that Silent Consent in itself is a shapeless thing, indistinct from its own contradiction; "*the silent opposition*". If a man is silent, it reveals nothing of him; neither his consent nor his dissent. It cannot therefore, function as a proof of agreement or disagreement. Still for a number of occasions, silence has been recognized as sign of approval in human Societies. There is an old, very old human custom in many civilized groups that a girl is allowed to express her consent to her marriage proposal by 'silence'. This *silence* sometimes may be exploited. As a corrective of its possible abuse, the shari'a of Islam makes a necessary provision of an agent with authority from the girl and two witnesses thereof to communicate her approval. Thus, those three men have the responsibility of probing into the heart of the girl in order to know the meaning of her silence. If silence of the community is construed as a consenting idjmā'a, its completion, on this analogy of covert approval as allowed in Islam, entails that every member of the community will be in need of an agent to communicate his agreement on his behalf and two witnesses thereof to certify the truth of the communication. It is absurd. An idjmā'a then, is either an overt communication and institution of the approval or it is no idjmā'a. The people must verbalize their assent or dissent, then their idjmā'a is demonstrated, proved, and established, otherwise it has no existence. There is no place of *silence* as representation of idjmā'a in Islam.

The concept of *covert idjmā'a*, as we have said earlier, had its genesis in a different sphere and that too for a limited purpose. It was evolved for determining the place of a number of transmissions from the first generation of Islam. The transmissions had a scanty number of narrators, from the Companions, behind them, but their main property was that there were no other narrations in transmission contradicting them. Now, the question arose about the *status* of those narrations and the opinions recorded by them. The methodologists of the Sharī'a of Islam solved the problem by treating them as transmission of consensus of the companions on the particular opinions, contained by them. They presumed that if the opinions as recorded by those narrations had not embodied the consensus, then some other opinion in transmission on the authority of some

other companion would have contradicted them. This principle was appellated by them as '*covert idjmā'a* of the companions'¹⁴, and it served a valuable purpose. In second/third century, the main problem for the methodologists of Islam was to reconstruct the collective *sunna* of the *Apostle and the Companions*. The concept of covert *idjmā'a* was contrived by them to overcome those difficulties which they had to face in recapturing the Collective Tradition of the first generation for giving a systematic foundation to the continuity of Islam, its outlook, and its *sharī'a*. The technique had no further use. It was thus, not meant to develop into a rule of proving or articulating the *idjmā'a* of community on pertinent issues of the time.

To sum up, *Covert idjmā'a* was a *procedure* of inquiry limited to the collation of the *collective sunna* of the first generation of Islam and *Overt Idjmā'a* is a rule of behaviour, a technique for the functioning of society. Consequently, the former can have no place as a rule of discovering the consensus of people on problems of the age. Some naive jurists of the *umma* and most of the mischief makers, in its history, represented reticence of the people as *idjmā'a* of the community. It was not infrequent that the usurpers of power interpreted the grave-yard peace, imposed by them on the community, as *idjmā'a* of the people supporting their *devilish* manipulations. When some voice in opposition was raised, they branded it as dissenting voice of a negligible minority or mischief of the traitors, meant to disturb the so-called *idjmā'a* of people in their support, and thus a condemnable attempt to overthrow their Government 'established by law' in the land. Ash Shaf'ī performed a great service by his repudiating the claim (of a proof) of an *idjmā'a* by a proof that there was no opposition.¹⁵ He strictly limited the concept of *covert idjmā'a* to the recording of the *sunna* from the first generation of Islam.¹⁶ In this work, he was followed by Aḥmed b. Hanbal, Daūd al Zāherī and nearly by all other great methodologists of Islam. All of them emphasized the principle that lack of opposition is no proof of an *idjmā'a*.

The public order in Islam thus, has as one of its essential pillars, the rule that if there is an *idjmā'a* its mechanics is overt and public; it is either open consent; or it has no existence and proof. In other words, none is allowed in Islam to scandalize silence of the people, or absence of their visible opposition into a proof of their *idjmā'a* behind him or his pretensions.

Most important questions about the institution of covert *idjmā'a* in the public order of Islam, relates to its practical realization. The

Umma cannot hold idjmā'a by participation of all the people on every issue and on every trivial matter. Only in a small community, say a city state, it is possible to give a call to the citizens to assemble at a place and express their approval or disapproval on a certain proposal. In large communities it is not feasible. We have already noticed the observation made by ash Shaf'iī and Ibn Hazm about the impossibility of managing an idjmā'a or of tabūlating the consensus of the people on account of 'the enormous expansion of the Umma from East to West.' This practical hindrance of large number and great distance which they observed was exploited by the *wielders of power* in Muslim communities to set themselves free from the requirement of idjmā'a without ever challenging its place as final authority on public matters in the Congregation of Islam.

But, the Sharī'a of Islam had its own method after expounding the principles, for solving the problems of practical nature. It evolved the principle of *fiduciary delegation* and other auxiliary principles which may be organized into a system for articulation, embodiment, and proof of idjmā'a in the face of numerical and geographical expansion of the Congregation or Society, as necessary element in the constitution of the public order in Islam.

The conception of *fiduciary delegation* (*wikāla* and the appointment of fiduciary agent (*wakīl*) in different matters were articulate enough as institutions in the community since the very beginning of Islam.¹⁷ The Sharī'a articulated the idea of delegation as follows :

"Fiduciary delegation is permissible in only those problems which do not require the real agent to tackle them."

The underlying principle in the fiduciary delegation is the Sharī'i norm as mentioned above which controls it from within and exactly defines its scope and composition. It precludes from its scope all those affairs in which the real agent, and not his representative is absolute condition of the matter. Islam puts the daily prayers in the class of those matters in which fiduciary delegation is impermissible. Positively, the delegation is permissible only in those cases, according to the Fuqaha of Islam, in which the prescribed work may be performed without any loss of its *essence* by some other person unless the Sharī'a has prohibited it.¹⁸ This is a law of Islam, and this law is a pillar of its public order, rather an axiomatic basis for its political philosophy.

But even in those matters, in which delegation of power is permissible, it should have a sufficient cause behind it. The intent of the Sharī'a is that every man should perform his duty or work himself.

It modifies its intent only when there is an allowable ground for it.¹⁹ Thus, there must be some admissible obstruction for the real agent to perform the work, so that he is allowed delegation of its authority to some one else. In other words, no delegation is permissible in Islam without an admissible ground, for in the community none is free from the responsibility which he has to fulfil, if he may fulfil it. Consequently, it is presence of an obstruction which produces the Shar'ī situation for a man in which fiduciary delegation assumes for him the character of a *Shar'ī* course of action. Since, there is hindrance in universal suffrage, as ash Shaf'ī and ibn Hazm noted it, there is Shar'ī ground for the members of the community to meet this obligation of organizing idjmā'a by instituting fiduciary delegation. The Umma may articulate its idjmā'a on various problems, rather than routine issues, by instituting fiduciary delegation of its authority.

Another principle which underlies the fiduciary delegation is that it is by nature a choice, an option.²⁰ On the supposition that a situation may be handled by delegation of authority to fiduciary agents but the real agents themselves want to handle it, no one on earth has the Shar'ī authority to force them to give up their power. This principle means that only *physical or material obstruction* and not the *human power such as a political regime* may force the real agents to delegate their authority of performing an activity. Thus fiduciary agency, whatsoever it may be, depends on the *inalienable choice* of the real agents in the community of Islam. No individual or clique may become fiduciary agent of the Umma in any matter by self proclamation. The fiduciary agency is validated only when the real agents have a genuine Shar'ī cause to perform a matter by delegation of authority and they have appointed the fiduciary agents by their choice.

All political constitution is by nature an arrangement of fiduciary delegation for legislation on and administration of public affairs. The considerations, as discussed above, do converge on a rule of shari'a that though fiduciary delegation is permissible, yet it cannot be imposed on the real agents. From this shar'ī rule, it logically follows that no political constitution or system of the delegation of authority can be licit without their consent.

Fiduciary delegation, is an institution of the Congregation of Islam whereby an assembly of Wukalā (delegates) comes into existence. They discharge the function of arriving at consensus on behalf of the people on the problems entrusted to them. The basis of Muslim constitutional and its institutional set up is thus, the idea of *Wikāla*.

The assembly is grand wakīl of the society with power to hold idjmā'a on those matters which are transferred to the state by the people. Wikāla itself may assume two forms. It may be confined to represent the will, intention, or decision of the real agent in particular matters; or, it may be a delegation of power to the fiduciary agent to exercise his own discretion, articulate his own thought, form his own judgment, and decide the issues. As constitution of public order and mode of representing the idjmā'a of people, Wikāla may take any of the forms or combine both of them.

The essential point in it is its mandate.²¹ Therefore, fiduciary delegation as mode of the idjmā'a of people by an assembly of chosen or elected representatives is preceded by an elaborate statement or description of its mandate as indispensable part of the political constitution. The delegation is proved by this description, has validity within its limits, and exists for the period allowed by it. Thus, the essence of body politic lies in the mandate, its terms and conditions. In a Muslim state, it is prescribed, accepted, and consented to by the people who are real agents, actual bearers of responsibility, and in shar'iī terminology, are denoted as 'Mukallafīn'.

Since articulation of idjmā'a and arriving at a consensus is a shar'iī obligation, it is incumbent on the believers to fulfil this obligation either directly or indirectly for they are the mukallafīn for it. As we have said earlier, the shar'i'a permits indirect fulfilment of an obligation when there are genuine material handicaps attached to its direct fulfilment. That there is permissible shar'iī haradj in organizing public idjmā'a, idjmā'a by delegation of authority, as the only mode of overcoming the obstacle, becomes a shar'iī obligation for the believers on account of which the assembly of their Wūkālā comes into being with its well defined mandate, entailing some further norms as part of the shar'i'a of Islam. They are as follows :

1. *A thing which is consequent upon a condition is proved by the existence of that condition.*²²

Extension of this norm to public order means that if a community is so small that it can hold idjmā'a by direct participation of every member, it does not have the condition which permits idjmā'a by fiduciary delegation as a necessity for it.

2. *A thing which is consequent upon a condition has no existence, if the condition does not exist.*²³

As applied to the matters of public order, this norm means that disappearance of conditions, which are attached to the fiduciary

delegation, invalidates the delegation itself. For instance, if the *real agents*, viz. mukallafūn do not appoint or elect their Wukalā or fiduciary agents freely, the persons who claim that they are the Wukalā are not delegated the authority as such and what they do in the name of the people or on their behalf becomes illicit, invalid, and ultra vires in the eye of the Shari'a of Islam.

3. *A representation (Zāhir|Maḍjāz) is admissible, when the real thing is inaccessible.*²⁴

By this norm the Constitution of public order in Islam takes a particular direction. The inaccessibility of the real thing is a permissible shar'i obstacle which must be overcome by a representation of it. But all such representations however, dissolve when the real thing becomes realizable. No doubt, the shari'a does not intend to burden mankind with inaccessible things, for one of its basic purposes is to ease the human situation. Consequently, when a real programme, institution or obligation may be accomplished without much difficulty, then representative purposes, entities, substitutes, or methods do not have the condition necessary for their existence and thus do not remain provable for the shari'a.

In representations also this norm of shari'a operates. If a first degree representation is easily accessible, then a second degree representation is become inadmissible, and contains no justification for its existence or continuity. If an assembly of fiduciary delegates may be brought into existence directly by act of election, then there remains no permissible ground in Islam, that the people perform this duty indirectly and first elect some intermediary agents, who in turn are allowed to elect the supreme *Wukalā* of the people.

Since, idjmā'a is a real institution in the scheme of Islam, its substitution by a representation does not form part of the original state of affairs for the purposes of shari'a. Then, when, it is substituted because of a permissible obstruction, the substitute must be as much close to the real as possible. The pyramid of tiers, intervening between the people and the supreme fiduciary agents who exercise the true power of arriving at consensus on public matters, is *banished from Islam*. The above norm makes it self-evident that if the people can choose or elect their ultimate fiduciary agents directly, and thus can establish a first hand representation for the articulation of their idjmā'a, no haradj as a condition exists for shari'a to recognize several tiers of intermediary representation as licit. It becomes *prohibited* then, that the people first elect ground level agents, who in turn elect

higher level agents with power to form opinion and decide public affairs as part of the constitution of a Muslim state.

It may be emphasized that an order of pyramid cannot be justified on the further ground that the people have adopted it. The consent of the people is only one and not all of the conditions which form the Shar'ī 'proof' for its existence. Since, it cannot be demonstrated by a permissible *haradj*, the condition upon which it is consequent is absent; and as such it does not exist, and has no proof whatsoever. A thing which has no proof and existence in shari'a becomes an illicit arrangement in a Muslim nation, whose real institution for public order is *idjmā'a* of the people.

To collect together all the important points in the light of those three norms of shari'a, we have just enlisted and discussed, *idjmā'a* by fiduciary delegation for organizing public life and administering the affairs of the people is proved as follows :

- 1) There are genuine obstacles admissible in shari'a and provable by its methods, for the real agents of the community, i.e. the members of the Congregation to have decided to realize their *idjmā'a* by the institution of fiduciary agency;
 - 2) The people have appointed their fiduciary agents by their own choice, with a mandate prescribed by them;
 - 3) The agents have performed their functions in accordance with the terms and conditions of the mandate;
- and 4) they have exercised their authority as such during the tenure of time fixed for them by the people.

When these conditions are fulfilled, an *idjmā'a* through fiduciary delegation is proved and is established as *hudjjah* (agreement and authority) upon the community.

Next important question is the tenure of an *idjmā'a* so far as it is a final authority for prescribing the provisions binding on the Muslim public order. In this connection, the shari'a has its general rule as: '*The idjmā'a of a generation is hudjjah upon it*'.²⁵ This rule is sufficient to throw light on the temporal relation between one and another *idjmā'a*. Thus, the methodologists of Islam consider it permissible that an *idjmā'a* effectively modify an earlier *idjmā'a*. Taftāzānī states that an *idjmā'a*, however final it might be, is subject to repeal by another *idjmā'a*. Modern Islamists some time, betray an extension of this principle to the modification of the *collective sunna* in transmission since the Age of the Apostle and the Companions. They do not hesitate even if it results in a conflict with the publicized overt *idjmā'a* of the Companions on a particular matter of public interest.

The position of those Islamists is understandable. The strains of modern times and their pressure on the institutions and laws of Islam, it appears, is responsible for their activity to give a 'fresh' interpretation of Islam. This indeed, is an extension of the law of change, but is not of a very late origin, for it has been working in the body of Islam since long. Al Shaukānī argued that the "aqwal" (sayings/opinions) of the Companions do not possess finality: "Indeed, companion's saying has no finality, for God has created no authority as such for the umma, beyond the Apostle. He, who holds that the companion's saying in *Dīn* is categorical independent of the Divine Book and (of) the Apostolic sunna, claims in the *Dīn* a thing for which there is no proof, and which in itself is an innovation in the Sharī'a of Islam, such that God has issued no ordinance for compliance with it. Thus, it is a very grave contention. Let it be understood and grasped that God has sent towards the umma no messenger and no commander except Mohammad (peace be on him), nor has he given a shar'ī value to any opinion beyond his opinion, nor has he fixed finality (hudjjah) for the saying of any other person, however great his standing might be."²⁶

Sulaymān bin 'Abd al Qavī al Ṭaufī (d. 716 A.H.) had already pushed this tendency of rebuilding the collective sunna of Islam to its farthest limit, by adopting the concept of 'Expediency' as free from the nusus of the Quran and the sunna of the Apostle. He said; "God has guided us to the ways of knowing the masāleḥ (expediencies); and we can also know them as per habits. In contrast, (our efforts) to know the expediency inherent in the (different) nusūs (the Quranic verses and the Apostolic sunna) is filled with uncertainty. Then why should we seek an uncertain expediency over against a sure one?" He further said; "This principle of ours is based on a *hadith*. Moreover, we recognize expediency in *m'ūāmalat* (public affairs) only and not in 'Ibādāt (prayers). The 'Ibādāt are specifically provided by God and the Apostle. Thus, whatever is known of their quantity, modality, timing, and place is only known from the law-giver (i.e. God). But the problem of the rights of the Mūkallafīn (viz. those who are bearer of responsibility and are *subject* to law) is different. The Aḥkām about them are based on *Shar'ī politics* and *public expediency*...Expediency is the most powerful proof of how they are determined. All other reasons are only means to this real purpose of the politics of mukallifīn".²⁷ Al Ṭaufī means that there are Aḥkām based on different arguments, on the Quran, on the Sunna, on the interaction of the Companions, etc., but in the affairs of public dealings, no reasoning is stronger than that based on *expediency*. Thus, if there-

is conflict between what one considers a *Maslehā* and a *Nas*, being replete with problematic expediency the value of which is uncertain the latter will be superseded by the self-evident character of the known *Maslehā*. If the matter goes to *idjmā'a*, it may modify the *nas* of the Quran and the sunna of the Apostle and determine its own forms, institutions, and laws for public order in the context of the particular epoch of history in accordance with the expediency which dominantly prevails in it. Since those views of Al Ṭaufi imply suspension of the Quran and the Sunna in the public life, and limit them to the sphere of '*Ibād āt*' only, they cannot be considered representative outlook of the umma, nor of its minority even.

Modern Islamists have however, shown interest in snapping the authority of the Companions, and liberating the spirit of the Congregation of Islam from what it owes to their authority. Though Iqbal is in sympathy with this effort, but does not outrightly reject their authority. His position is as follows: "I think it is necessary in this connection to discriminate between a decision relating to a question of fact and the one relating to a question of law. In the former case, as for instance, when the question arose whether the two small suras known as 'Mauzatain' formed part of the Quran or not, and the Companions unanimously decided that they did, we are bound by their decision, obviously because the Companions alone were in a position to know the fact. In the latter case, the question is one of interpretation only, and I venture to think, on the authority of Karkhi, that latter generations are not bound by the decisions of the companions. Says Karkhi, 'The sunnah of the Companions is binding in matters which cannot be cleared up by *qiyas*, but it is not so in matters which can be established by *qiyas*'²⁸." Ali b. Mohammad al Nabardavi also held deviation from the *idjmā'a* of the Companions as possible.

The above views assign only communicative position to the first generation of Islam, the primary group of the believers. As an approach, this kind of thing is against the evolutionary view of Islam. Secondly, it sharply isolates the Apostle from the society of which he was a member. If the Apostle is viewed as a lonely figure, then he means very little except a 'postman' from heaven; he too, is reduced to a communicative position. Then, there remains no ground for the living sunna of Islam, which is a group phenomenon and which is in transmission from the first generation. It may be conceded that Revelation as such is not complete Islam. The function of revelation is to provide a system of ideas and symbols, which materialize themselves in a concrete community. The Apostle must be regarded as a member of the community of Islam, member of its first generation in which the Revelation received its embodiment and became a living, tangible

sunna. Thus, the Prophet was part of that group interaction which built up Islam, shaped its concrete structure, materialized its intents, gave objectivity to its ideational dimension. And it is technically known as "*interaction of the Companions*". Then, when we apply the term sunna to that community which consisted of the *Apostle and the companions*, it means the conventions, methods of mutual dealing, procedures, etc. which stem from them. Thus, a particular *sunna*, in the context of Islam, denotes a stable pattern of public behaviour and presupposes a social environment. This view makes the Sunna an objective entity in which all the sects of Islam may participate, over and above their relative leanings towards different personalities of the first generation of Islam. It is admissible that for knowing the teachings of Islam, some of them turn towards 'Abdulla bin 'Abbās, others towards 'Abdullah bin Mas'ūd, and still others towards Dj'afar Sādiq. *Sunnat al Islam* is over and above all this. It is mass behaviour of Islam, collective pattern of the first group or society of the Muslims; and is supreme light which enables the Muslims to order their public life. The sunna is possessed of mutivariant reference and entails the *Apostle and the Companions* in the same embrace. Whether it is called the *sunna of the Prophet* or *interaction of the Companions*, the same phenomenon is denoted by it. For the purposes of *Dīn*, value judgments of the community of first generation, its ways and repetitive forms, its deliberations and social inventions—all are the fundamental material of Islam all along with its cognitive core, viz. the Divine Book. All of them are posited in one and only one category of '*Continuous Transmissions*' from generation to generation of the *umma*. This unique interaction, the source material of Shari'a, continued to evolve after the passing away of the Prophet till the domination of this generation of Islam was over. In its evolution, this interaction raised the scaffolding of Islam, spelt out its inherent meanings and verbalized its direction. The *Quran* itself, apart from its specific dispensations as permanent values, represents the divine meanings in very general terms. The particular shape of those generalized meanings is main contribution of the sunna (of the Companions) in Islam. If it is set aside, very little of Islam is left. So far as the political philosophy in Islam is concerned, *interaction of the Companions* defined its main features and particularized its meanings as follows:—

- (1) There can be no public authority of the Muslims, to whom the obligation of obedience is due, except by the selection and pleasure of the community ;
- (2) No one should on his own pledge obedience to an Imām

- as invested with (public) Authority except by consultation with other believers;
- (3) The responsibility of the community is indivisible; but those who are *near* to it, perform it;
 - (4) The process of the creation of new *laws*, obligatory on the believers, as part and expansion of the divine law of Islam for public order is *Idjmā'a*;
- and (5) When the believers come to agreement on a point, those, who are in disagreement, are also obligated to stick to it.

These principles are permanent part of the political constitution of the *umma*. They do vigorously define the connotation of *political problem* in Islam and sharply distinguish it from other problems. There are matters in which the dissensions of the companions are well known. The methodic grounds or arguments behind those differences are not also unknown. There is no reason, why, by exercising the *shar'ii* methodology, the *umma* cannot solve the problems represented by those dissensions. Again, a number of Companions worked as magistrates and civil judges (*Kāḍis*). Their judgments are subject to juristic review in the same way in which a judgment may be technically reviewed. Thus, it does not require methodic adherence to the opinion of a Companion. But, this aspect does not become a ground for the believers to free themselves from the collective *sunna* of the first generation of Islam, *the Prophet and the Companions*. *Idjmā'a* of the Community is an evolution from their very interaction.

The problem of the evolution of *idjma'a*, however, requires some more thought. What should we do with the Quran? With the *Sunna* of the Prophet and the Companions? And How should we relate one *Idjma'a* to another *idjmā'a*? These are different aspects of the same problem, which may be solved in accordance with the universal logic inherent in Islam.

One of the root elements of the belief structure of Islam is its exquisite consciousness of and foundation in the idea that guidance or divine revelation since Adam to Mohammad is a historical progression. He is not a believer, who does not hold this creed as a definite part of his faith. The believers are defined in the Book thus: 'And those who believe in that which has been revealed to thee and that which was revealed before thee (2:4)'. 'And there is not a people but a warner has gone among them (35:24)'. 'And every people had a messenger (10:47)'. 'And certainly we sent messengers before thee; there some of them, we have mentioned to thee; and

there are others whom we have not mentioned to thee (40:78:).” Thus, historical sense and its intense feeling is foundational component of a Muslim’s creed.

The divine revelations as progressive series, according to Islam, follow a peculiar law of history: “Whatever we abrogate or cause to be forgotten we bring one better than it or one like (2:106)”.

The world at large, heavens and earth follow this law or not; we do not know. There may or may not be the law of progressive succession in the universe. But one thing is clear to a *Muslim Mind* that Guidance or Divine Revelation follows the law of progressive replacement. It is technically known as the *logic of abrogation*. The scripture of Noah was abrogated by the Saḥīfa of Abraham; the Saḥīfa by the Torah of Moses; the Torah by the Indjil of b. Maryam; and all the revelations sent to the messengers or assigned to different nations of the globe were finally abrogated by the Quran, sent to the Prophet.

The unique internal structure of abrogation has been unraveled by the Quran as follows: “And we have revealed to thee the Book with the truth, *verifying* that is before it of the Book, and a *guardian* over it (5:48)”.

Thus the abrogating process, of necessity, implies *verification* of the truth it *abrogates*, and in itself is the *guardian* over it. Abrogation, thus does not mean a repeal or contradiction. Of necessity, it implies a protection, a conservation of the past truth as part of its meanings. The Quran is therefore, appellated as *Mohaimin* (guardian) over all past revelation, showing that the truth value of the earlier scriptures has been preserved by it. Thus, the concept of abrogation entails preservation of the truths, it abrogates. We denote this property by ‘*accumulation*’. The logic of *Abrogation* functions by *accumulation* of the *contents*, the abrogated truth contained in its fold; and its peculiar function is increment upon it. The *abrogator* is, at least, like the one abrogated by it. But, in most cases, it is better than that and means an addition of some more excellence to it. Thus, in its texture, the abrogator represents a better and expanded embodiment of the abrogated truth. In other words, *accumulation and increment are logical aspects of the process of abrogation which operates in the divine revelations. The same law operates in the evolution of the codes of life from the divine revelations.* It aims at a better formulation, a more perfect shape in its ever progressive process. A deeper insight informs us that abrogation is indeed law and divine principle unto the creative phenomena. Seed is abrogated in sapling; the sapling in a full grown

tree. Human life also embodies the law of abrogation: infancy is abrogated in childhood; childhood in pre-adolescence; the latter in maturation. The same principle, according to Islam, operates in the institution of divine revelations. Thus, it views Abrogation as logic inherent in the nature of *truth* and *law*. But, it does not mean a mere change, for a mere change may be useless, or harmful. Abrogation is that kind of change, which conserves the past achievement but at the same time enlarges or deepens it by further gain. Sometimes, it appears as 'undoing,' overthrow, or even death stroke. But, death or undoing of a thing is not its nature. Seed is not dead, when the plant appears. It has stepped up and indeed, expanded into a plant. Thus, the plant is a *verifier* of the truth which lies in the structure of its seed; and shoots up as *guardian* over its secrets. It carries over into the future all that the seed had in it. Consequently, the plant is what the seed was; but the seed was not what now the plant is. The plant is a living increment upon the *seed*. This entire phenomenon is denoted by *abrogation* in the technical terminology of Islam. Progressive historical series are subject to its logic. Though it was part of their basic faith, the Muslims in the course of their history lost sight of it as it works in living things. One of the great contributions of Iqbal is that by his own Evolutionism he has made the Muslims to be once again conscious of the law of abrogation as part of their faith. He says :

"The soul assumes a thousand forms, all fresh,
Content with one, it would become mere flesh".

(Tr. Hadi Husain, *Tulip of Sinai, Quatrain. 152*)

He exhorts mankind to be alive to progressive replacements :

"What if one world will vanish from before
My eyes ? My mind has many world in stores".

(*ibid. 112*)

He gave a metaphysical meaning to all of this process which underlies the abrogation :

"This world of ours, a sculptor's study still,
Is undergoing change night and day.
The chisel of Destiny in due course will,
Give it a shape; for it is rough hewn."

(*ibid. 101*)

Life is replete with motion; abrogation is its inner urge, for to the living entity all past looks as if rough hewn. At one place Iqbal poetized a dialogue on the nature of life ?

"I said; "Its love of wandering is goalless".

He said; "Its very goal, it is to wander".

I said; "It comes from and return to dust".

He said; "The seed bursts forth from dust a flowers."

(Tr. Hadi Husain, *Payam i Mashriq, Life.*)

A Muslim learns by immediate inference from his creed that in some genuine sense mankind has followed the law of abrogation; and has passed through several stages representing a progress, an expansion, an evolution as such from the past stages. There is no other people on the *globe*, who by their religious belief itself, are obligated to believe in *human evolution*. According to the Muslims, *law of abrogation* not only works in the chain of the Prophets of God and their messages but also in the same revelations with which a particular Prophet is endowed. The Muslims do firmly comprehend it that the law of abrogation pervades the Holy Quran; some of its verses abrogate some others. If growth is property of life, then *as a living phenomenon*, revelation has to abide by the law of abrogation; hence existence of the abrogated (*mansūkh*) verses and abrogating (*nāsikh*) verses in the Quran. The prohibition of drink for instance, passed through several abrogations. The people asked of the Prophet about drink and gamble. To him, it was revealed: "Say, in both of these things, there is very great evil and (also) there is advantage for the people." After some time, the following revelation descended: "O the people who believe; don't go near the prayer, when you are intoxicated, until you know what you utter." Then, the final Ordinance came: "O people who believe; indeed, gambling and drinking are wicked crafts of the Devil. Do escape from them. May be, you achieve the betterment."

The first Revelation on the subject is abrogated by the second; and the third Ordinance abrogates the second. In all of this process, the *abrogator*, however, conserves *the abrogated law*, and adds to it something more which was absent from it in the previous revelation. Such is the nature of abrogation. Neither it *cancel*s nor does it wipe off the abrogated *truths*. On the other hand, as a specific characteristic of its logical structure, it *verifies* them, and by its own particular contribution becomes guardian over them and makes them abide with a better frame.

The principle of abrogation, according to Sayūṭī, mainly, rather exclusively, permeates those verses of the Quran, in which *prohibitions*, *permissions*, and *obligations* are revealed.²⁹ In other words, as a principle, abrogation lies at the root of the *Shari'a* of Islam, its code of human

behaviour which builds up the system of *licit, illicit, preferable, apprehensible, etc.* The Shari'a thus, is a living system; accumulation, and growth are its innate properties. It assimilates the abrogated laws in its advancement, causes an increment upon their content in its growth, and thus moves on. This expansion or growth is law generic to the Shari'a of Islam ever since the first revelation to the Apostle; "Read by the name of thine Nourisher;" until the last day for mankind. Thus as living logic of the truths, it cannot remain confined to the revelations only. It must pervade all of the Sunnat al Islam, and must animate the evolution of idjmā'a which sprouts from it.

Permeation of abrogation in the process of life does not mean a linear evolution. It fulfils itself in a variety of forms which cannot be exhausted by the concept of linearity. Thus, this Quranic term or idea has infinitely more vastitude in its scope than the idea of evolution, for determining the changes and forms informing the living realities. Striving is abrogated by its goal; proof abrogates claim that it proves; and of a thesis, its demonstration is abrogator. These are aspects of life representing some modification or change, but they cannot be illustrated by linear evolution. In all of them, the *abrogator (nāsikh)* contains, preserves, and protects the truth, essence, or reality which was posited by the *abrogated (mansūkh)*, and adds to it something new which was not in it. The new element as its part fortifies the past/earlier content by enhancing its actual fulfilment. To sum up, throughout all the forms of abrogation, certain fundamental norms are unfolded as its elemental aspects which *decidedly* separate it from all other kinds of processes, changes, modifications, and repeals. *Conservation and accumulation* of all the abrogated content and *growth* of a fresh core upon it are criteria of its being as such.

Having thus clarified the notion of *abrogation* and its necessary constituents, we may now, in the context of the present discussion, state that the *Sunna abrogates the Revelation*. By accumulating in its fold dispensations of the divine revelations, the sunna accomplishes expansion of the shari'a, which consists of patterning human behaviour in detail around the revealed word. The usul thinkers, it may be pointed out, discussed a great problem; "Whether a sunna or Hadith is judge upon the nusūs al Qurān". The discussion was a representation of the problem of abrogation in Islam. It may be recalled that the law of abrogation operates only in the deduction of *Ahkām* (the stipulations of the shari'a). Ash Shatibi explained the abrogating properties of the sunna as follows: "According to the ulamā, the sunna decides the meanings and implications of the Book. The Booke, on the other hand, does not decide the meanings and intents of the

*sunna*³⁰." This judgement undoubtedly takes into account the truth that so far as the formulation of Shar'ī Aḥkām is concerned, the sunna abrogates Divine revelations of the Book. Ash Shaf'ī was, however, much baffled by the abrogating property of the *sunna*. Consequently, he made a rule to the effect that a verse is abrogated by another verse and a sunna by another sunna. By this rule, he moved, rather unconsciously, into a dualism which puts the Quran and the sunna as parallel principles independent of one another. He said; "The place, where the Quran is apparently abrogated by a *sunna*, must have some verse of the Quran to support it³¹". This condition entails that Nas of the Quran is either abrogated by another Nas or not abrogated. In the same way, he said; "When it is God's will that Prophet remove a sunna, then another sunna takes its place and (thus) abrogates it.³²" Ash Shaf'ī's methodology, it is clear, recreates the sunna into a principle which, as a source of the Sharī'a, must be binding on the people in its own right without having involved a reference to the Quran. All of this has its origin obviously in a particular view of abrogation. Ash Shaf'ī viewed it as if it were a 'cancelling out, or 'wiping off'. Therefore, he insisted on the abrogation of a Nas by a Nas and abrogation of a sunna by a sunna, realizing very little that he was dualising Islam and removing that vital link which interconnects the Sunna and the Quran.

Displaying penetrating insight, Ahmad b. Hanbal surmounted the *Shafite dualism* by a clearer grasp of the nature of abrogation. He was successful in restoring that link which makes the Sunna a continuation of the Book. He said; "(God) appointed the prophet expounder of the Quran to spell out its ins and out, general and particular, the abrogated and the abrogator³³." Thus, justification of the Prophet's sunna, from the Shar'ī point of view, lies in its being an authoritative demonstration and particularization of the revealed words. So far as the sunna formulates, amplifies, and determines the textual revelation of the Book, or furnishes demonstration of its injunctions, it abrogates the Quran, in just the same way in which, an embodiment abrogates the idea behind it, or an idiom is abrogated by its usage which makes it explicit. "After the Prophet, the Companions were (the authorities) for exposition and demonstration of the Quran and Sunna. Beyond the Companions, none was (expected) to know the purposes, meanings, and spirit of the Quran and Sunna of the Prophet³⁴"; said Ahmad. Thus, *Interaction of the Companions* flourished as the process of abrogation in Islam. Ahmed b. Hanbal extended the properties of abrogation to the Sunna of the second generation of Islam; the generation of the Tab'īn (followers). He

however, confined this extension to those points only on which Sunna of the Prophet and the Companions was not recorded. It shows that the idea of abrogation is not repugnant to the place of the Quran and Sunna in Islam. Abrogation by its essence, is enhancement, embodiment, amplification, and fulfilment of the abrogated contents of Islam. Being an incessant articulation of the truth of the abrogated material, it adds to its physiognomy, strengthens it either by perfecting its procedure, or by evolving efficiency and economy in the institutions, realizing it. An instant of the kind may be provided by abrogation of the *Nas al Quran* which directs the believers to escape from the untouchable drinks. The *Nas* was abrogated by the Companions by attaching a penalty of eighty lashes to violation of it. Another instance is *Nas al Quran* for tax on wealth. It was abrogated by the *Sunna* of the Prophet, who appointed tax collectors and sent them to different regions. If we trace out the historical evolution, we do come across a Shafite innovation in this matter, which classified the wealth into cognizable assets (agricultural wealth, live stock, etc.) and non-cognizable wealth (gold, silver, currency, jewelleries, etc.) and relegated payment of the tax on the latter to the sphere of private obligation or religious duty of the believers³⁵. The question is whether it was an abrogation of the Quran and the Sunna. The *Ulamā* claimed an *idjmā'a* of the community on it. It so happened, down the course of time, within a century of its formulation that all the other schools including the Hanafites accepted it as part of the law of Islam. Afterwards, Silence of the Community was evoked by them as proof of *idjmā'a* of the *Umma* behind it. The wielders of power promulgated it as part of the Public Order of their dominions. But, this *idjtihād* did not make an improvement on the institution as founded by the Prophet for implementing the *Nas al Quran* for tax on wealth whether it was in the form of agricultural produce and live-stock or in that of gold and money. Acceptance of the Shafite *idjtihād* by the rulers saved the moneyed aristocracy consisting of *Umarā*, '*Ulamā* and Tradesmen from public intervention and gave them an escape from the duty by permitting them to discharge it as a private obligation. The Public Authority continued to assess the so-called cognizable properties, levy, and collect taxes on them. By all canons, this entire change was in contradiction with and not an abrogation of the administration established by the Prophet. It caused an evil mechanism and institutional change which instead of fortifying the institution of tax collection on wealth, weakened its effectiveness and finally was responsible for transforming the tax on gold and silver into a mere charity, which further presupposes, rather necessitates a class of paupers always existing in the Society for its fulfilment.

Abrogation as such, is not at all a problem of private tastes, nor can it be left to individual opinions. It has tangible and objective tests, which make it an observable process open to all, debatable by all and re-cognizable by all, with the *power* and *authority* to modify or repeal the existing institutions either by better or by at least such new institutions which are equal to them in economy, efficiency, and effectiveness. As the Quran defines its nature, abrogation has to serve as *verifier* of the earlier (truths and Ahkam embodied in institutions and public arrangements) and must function as a *guardian* over them. Thus, as it moves on, new forms and methods for the fulfilment and actualization of the intents of Islam are in evolution.

The process which has been discussed above as abrogation is the same which is perceptible as *idjmā'a* of the people in the community of Islam. Indeed, *Idjmā'a* and *Abrogation* are indivisible aspects of the same interaction which maintains the Muslim Society intact and leads it into the future. They may be taken on the analogy of soul and body. *Idjmā'a* of the people, by definition, embodies abrogation of the *truths* inherent in Islam; and abrogation of the truths spiritualizes *idjmā'a* of the people. Thus, no *idjmā'a* is admissible in the Congregation of Islam which is not pervaded by abrogation and does not more effectively articulate (than ever) the truths enunciated by Islam. Similarly, no abrogation is admissible as an element of public order which has not been validated by *idjmā'a* of the people on it. Thus whether one calls it an abrogation or an *idjmā'a*, it means the same element of the Public Order in Islam.

The Muslim Community cannot therefore draw its agreement on a thing which does not confirm and verifies the Nusus al Quran and Sunna and does not amplify them in a better, higher, more powerful and fool-proof system of social innovations. It may be said that the principle of abrogation is internal logic of *idjmā'a*. It is how *idjmā'a* is different in its morphology from the registration of subjective opinions or *voice of the people* which is basic law of the public order in Western Democracies.

What the *idjmā'a* creates, consequently, is at once religious and political. It has religious value because violation of the institutions and administration of affairs, it has created with laws and rules for them, is sin liable to divine punishment. An individual believer may not agree on those institutions and their regulations but it is religious obligation for him to abide by them, for it is not the individual will of a believer but the *idjmā'a* which is determinant of 'vice' and 'virtue', with their full connotation, in Islam. Thus, a believer dare

to violate what it prescribes, he is a sinner. The door is not however closed to him for an attempt to get the peoples' agreement on and support for his point of view. If he is successful, and the fresh idjmā'a changes the existing arrangement according to his ideal, then the changed arrangement becomes an excellence, a *virtue* the violation of which from that moment is a *vice* in the religious sense of Islam, for the idjmā'a has protection from error and the individual's judgment does not have such a protection. Now, when it is clear from the above discussions that fresh idjmā'a may change a past idjmā'a the question is, what religious value is attached to the actions that were done in the past? The answer is obvious; they might have become *vices* today, acts which are liable to divine punishment, but they were *virtues* during the past idjmā'a by which they were allowed. Thus, protection from error is a regulative idea which extends to every idjmā'a past or present, and determines in the context relative to it, vice and virtue as supreme regulative principles of the Congregation of Islam.

The public order, according to Islam, is under the custody of idjmā'a, the obligatory activity of the community which is divinely protected from error. It is a religious duty of every believer to contribute to its continuity, protect its authority and make it more effective in operation. Furthermore, the Umma has religious authority to fulfil it, if it is reasonable to do so, by fiduciary delegation. This delegation is foundation of the representative assembly of people for idjmā'a in Islam.

It may be added that the principle that believers are those whose affairs are set by '*consultation between them*' puts its own limitation upon the fiduciary delegation of idjmā'a. It means that it can not be delegated to a lone fiduciary agent or to such a small number of agents whose meetings hardly satisfy the requirement of '*consultation between the people.*' It is permissible that the execution of the decisions of idjmā'a is vested in one man, or in a handful of men, but it seems impermissible that the idjmā'a which determines the laws and decides the policies themselves is delegated to a lone individual or to a small committee. Thus, an *assembly* with a reasonable number of *wukalā* (fiduciary agents) of the people in it, institutes the obligation of idjmā'a, according to the philosophy of Islam.

Idjmā'a is living core of the Public Order in Islam, its directive and organizing principle. On account of it, the Muslim Society is always in evolution, in change, in movement. It evolves and composes

internal differences of the Society. A new point, a new adjustment, it always seeks.

“What does govern the world of colour and scent, but that water once flowed returns not to the stream?

Life has no desire for repetition;

Its nature is not habituated to repetition;

Beneath the sky, reversion is unlawful to life.

(Trans. Arberry, *Javid Nama*, l. 356-770)

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**MIZAN AND THE NORMS
OF
PUBLIC POLICY IN ISLAM**

The theory of *modern state* has emancipated itself from all transcendental notions. *Justice*, in it, is but adjudication in accordance with the laws, a state consents or creates; the positive-laws, its legislative will gives to itself. But made of a different fibre, Muslim Constitutionalism is wedded to the idea of (Measure) *Mizan* which by its being as such is above all the creations of state. The Muslims believe that every conduct of the individuals, every action of the groups, and every drama of human history is subject to an impersonal, supernal and ultimate *Reckoning*. This belief receives materialization in the public arrangements of the Congregation of Islam. Nothing contrary to it is therefore, conceivable in its constitutional theory. The Measure (*Mizān*) is mediating principle between man and man, man and group, group and group in all the constitutional provisions, social interactions, and state politics in the public order of Islam. It does not change with the change of place. Thus, the dualism of *here* and *hereafter*, so sharp in different human societies and cultures is completely obliterated in it. This is one way how the religious and secular do become a single continuum in the basic outlook of Islam. It means that man is not subject to a double standard and valuation, and that there is no difference between *the world* and the *other world*, *secular* and *religous*, *duniyā* and *dīn* in Muslim consciousness. The Quran reveals :

“And the weighing on that day will be just; so as for those whose good deeds are heavy, they are the successful. And as for those who ruined their selves, because they disbelieved in our messages (7:8,9). “And the heaven, He raised it high, and He set up the measure. That you may not exceed the measure. And keep up the balance with equity, nor fall short in the measure (55:7-9)”. “Certainly, we sent our messengers with clear arguments, and sent down with them the Book and the Measure, that men may conduct themselves with equity (57:25).” “Allah is He who revealed the *Book* with truth, and the *Balance* (42:17)”.

Book and *Balance* in the above nusūs al Quran do not indeed, denote two equivalent realities. Being divine guidance, the *Book* guides to the *Balance*, and thus embraces in its exposition that transcendental measure according to which human deeds are marked and evaluated. But, significant reference to the *Balance* as distinct from the *Book*, contains its *own* educative and prescriptive

meanings. It obligates the believers to remember that no human approach, abrogation of and construction from the Book, which does not come up to the requirements of the *Balance*, is sound and true. It thus becomes a transcendental principle in Islam, independent of the state, the *idjmā'a*, the individual, and even the society.

In the theory of modern state, as part of public order, it has no such transcendental elevation. The positive laws themselves are taken as measures of everything. Reckoning on their basis is the sole meaning of *justice* in its constitution.¹ Since, the laws are creations of the state and its legislative will, the balance, installed by it, also becomes its creation. Thus, every modern state brings forth its own *balance* to judge the affairs of men. Reckoning, consequently, is a thing relative to the political order in the theory of modern State. Against this relativism, the Congregation of Islam is pledged to *Justice*, as an absolute truth. The legislating will of the modern omnipotent state, not bound to and limited by any such notion, is completely free in its determinations. What it creates as law is conceived by it as a measure in its own right. Immanentism which does not recognize any residue beyond the given positive presentations, provides the genetic law of its being.

The Modern state, all along with the typical form of its *democracy*, has in its background the entire legacy of Western Civilization, which moved from Transcendentalism to Immanentism as unfoldment of its spiritual meanings at every stage of its evolution. Thus, the controversy between Locke and Descartes about the innate ideas and acquired ideas was indeed, a great collision between the departing soul of Medievalism and the rising spirit of Modernism. The Medieval spirit, stuck to the belief of transcendentalism of the substance, lost its ground. The victorious Modern spirit explained away the idea of matter as a compound idea made of the simple ideas or sense-impressions which crowd the external universe. Its next step was denial of the transcendental character of mind or soul which, too, was explained away as an association or bundle of sensations. This development pervaded the moral philosophy also and led to the theory that none of our moral notions has a meaning beyond the *bundle* of our pleasures and pains or collection of our approvals and disapprovals. The notion of Good as held by this Modernism does not go beyond our likings; there is no bliss beyond them. The idea of evil, to it, is not also something more positive than a bundle of *dislikings*. In the sphere of political philosophy, this *Modernism* equates *Justice* to the stipulations as are found in the public order. Thus Immanentism, in the history of Modern Thought, first scaled the problems of know-

ledge; then, surmounted the height of metaphysics; then, invaded the domain of morals; and finally swept across the political and legal philosophy. Its sway is now complete. Every thing transcendental is denied. Continental philosophies of the nineteenth century were also verifier of the impulses and guardian over the spirit of Modern Civilization. By discarding every transcendentalism, the Absolutism of Hegel also made a confirming contribution in the same direction. The 'objective mind', the mind that counts, accordingly, was conceived by it as a totality of *ideas*. Having no position beyond, the objective mind, in Hegelianism, has complete identification with the combinations and modes of syntheses of those ideas. What this mind approves is *morality*; what it approves not is *evil*; what it loves is *beauty*; what it hates is *ugliness*; what it affirms is *truth*; and what it prescribes is the *measure*². Then, it envisions justice as what it obligates. There is no balance beyond its reckoning in terms of the laws, it has posited. In other words, there is no norm beyond its positivity.

Western Democracy is rooted in all those developments. In its substance, it is a coalition of private *wills*, if one likes to approach it from the side of Individualism. It is *collective mind* of the people, if it is approached from the side of Absolutism. Whether its ultimate focus is on coalition of the private wills or on the *collective mind*, what it assents to as binding on people determines the *balance* according to which deeds of men and groups are reckoned by it. Hence, this democracy is deeply rooted in *unreason*, mere collection of likings and dislikings. It has no 'proof' beyond 'we wish it'. *The right* is what its sovereign will permits; the wrong is what it prohibits; and *Justice* is what its system of approbation and disapprobation posits as order of human affairs. It knows no *balance* beyond.

Recent developments of Western thought are attempts to state the theory of democracy in a logical coherent system of the positive notions, true to its conscience. The '*Pure Theory of Law*' as it is called, undoubtedly, is one of the sharpest articulations of the Western mind. It solves the problem of Balance by the idea of *ordering*, and not by that of *reckoning*. Thus Stammler holds; "Absolute validity of conceptions can in legal questions, also, be attributed only to the pure forms, in which we arrange legal experience according to a fixed and uniform plan".³ It may be recalled that the ground idea of Western Civilization is that all *reality is collection of presentations*. Consequently, it recognizes different realities by the *forms* of presentation. Its democratic consciousness thus, exhausts and fulfils its spiritual meanings in arriving at a *uniform order* of

collective behaviour, evaluating the socio-political *acts*, not in terms of their content, nor in those of their aims and effects, but positively in terms of how they are ordered. Thus, its notion of *law* and idea of justice is *procedural* in contrast with the Muslim idea which is evaluational.

In spirit and expression, Western Democracy is an extension of the *principle of uniformity* over the socio-political reality. If Justice lies in the laws of society, then, it cannot think of it as something beyond the ordering principles. Remarks Stammler; "There are certainly pure forms of juristic thought which are unconditionally necessary as ordering principles for any law whatsoever."⁴ When the purposes of a number of men are combined, an external regulation is implicitly imposed upon them. This experience which lacks the sense of balance, according to him, provides the ground idea of law. Men are subject to its external regulation in an enduring way articulating their social consciousness. It is *law*, and as such is the "*system of pure principles for ordering consciousness*."⁵ *Just* is then, anything which may be brought within their operation, producing so to say the *procedures*, or *methods* of mutual dealings. Thus, Law is that which "presents itself as an external regulation of human conduct. By this, we understand the laying down of norms which are quite independent of the person's inclination to follow them. It is immaterial whether a person obeys them because he regards them as right, submitting out of respect for the law; or whether his obedience is due to a selfish motive of some sort, fear of punishment; or hope of reward; or finally, whether he thinks about it at all; or acts from mere habit."⁶ According to Stammler, the public order is a legitimate order of imperatives, imposing external uniformity on interactions of the individuals. The individuals are woven into community by it. The essence of their unification as members of society lies in the objective procedure as such, consisting of the rules which prescribe how they must act without ever determining the reason and content of their acts. Uniformity of these pure procedures and rules is the meaning of Justice in this *Formalism*.⁷

But, every individual is a spring of wants, desires, and aims. Human community is basically a community of wants, desires, and aspirations. This Formalism, as philosophy of Justice, does not know licit and illicit wants. Only universal procedures become aims of the public order in it. Stammler says; "The content of a particular aspiration is then fundamentally right, if it fits harmoniously, so far as one can see, into that totality of aims, regulations."⁸ Stammler is a Kantian philosopher; the idea of order is basic to all sorts of Kantianism. To

Stammler, therefore all rationality lies in an ordering principle. Anything of the social phenomenon which fits in an order is *rational*, *public*, and *legitimate*; and the thing which defies it is *irrational*, *private*, and *banished*. Moreover, if there is a thing which *comes in conflict* with it is *illicit*, *prohibited*, and *evil*. British Utilitarianism and its theory of legislation also *moves* in the same grooves. Perfection of justice in it is also efficient reduction of human content to the *uniformity* of legislative process. It does not evaluate the content of a *desire*. The sole purpose, it has, is stating those *principles* according to which impending *conflict* between the desires of all individuals is removed. It seeks those principles in ordering i.e. in *how* of the *acts*, and not in *what* and *whence* and *why* of the acts. The doctrines of Utilitarianism and Kantianism, both of them fail to add any substantial meanings to their *respective* ideal states of '*the general happiness*' or '*the agreement of the wills*;' and introduce mere formalism in the social order. The idea that there should be *no conflict*, to them, receives embodiment in the dictum that all should follow the same *procedures*. Thus, by *law* is denoted that form which may be prescribed as a regulation for one and all. The public order, which thus comes into existence entails as its basis the following ideology :

1. The individuals are equivalent in terms of the *procedures* prescribed for all of the society ;
2. Every individual is a mass of desires or intentions, but is bound by the *procedures*;
3. All those desires or intentions are alike in terms of the *procedures* ;
4. If one desire or individual has the right to gratification, all other desires and individuals have the same right subject to those procedure.

Thus the public order, raised on a system of *procedures*, lacks in it a *measure* which classifies the desires and intents of the individuals, in accordance with the nature of their content, and mark them as illicit, licit, preferable, damnable, excellent, ugly, etc.⁹ The absence of a *value scale*, a *mizan* is often camouflaged by the concept of freedom as part of public order, advocated in the spirit of Western Civilization. In Western democracy, all individuals are thought to do what they like, provided what they do does not come in conflict with the permissible or prescribed procedures, universally applicable to all the members of its public order. The American Declaration of Independence dramatizes all of it thus: "We hold these truths to be self-evident; that all men are created equal; that they are endowed

by their creator with certain inalienable Rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted, deriving their just powers from the consent of the governed."¹⁰ Every whim, cunning, ambition, recklessness, gluttony has a right of admission in the public order accordingly, just like those of the benevolent motives; cooperation, sacrifice, good sense, etc. Thus the concept of *Justice* becomes redundant. Divorced from a normative judgment, every *content* is equally good for purposes of the public order. Consequently, a legal *prescript* is recognizable in it, not because of the content it possesses but because of its lack as an empty *regulation*.

Gerber, Laband and Jellinek followed the full imports of this outlook and banished *Justice* from the system of positive law as a meta-Juristic concept, having nothing to do with the Judicial process. The state was conceived by them as a juristic person with a will of its own and in its own right, dependent on nothing beyond itself. "The state's power to will, the political power is the law of the state",¹¹ Now, when the only criterion of *law* and *not-law* is state sanction or lack of it, then there remains no room for the idea of Justice in the body politic. The concept of legal equality reduces itself to the uniformity of that procedure by which the will of the state attaches itself to a social content and transforms it into a concrete law. The concept of legal equality in this public order thus entails four things :

1. All the phenomena of social life are neutral stuff before the legislative will ;
2. The legislative will objectifies itself in terms of its volitions by which it distinguishes the law from the not law;
3. All laws are equal because they are volitions of the same will;
4. A law is *law* for all the members of society.

These four axioms collected together provide the spiritual schema of Western Democracy, which by its logic must culminate in its disassociation from Justice as a meta-Juristic concept.

Gerber believes that every state is bound by its purpose.¹² He is right. But since, the purpose of a state is dependent on its will and nothing beyond, it cannot be demonstrated, according to the axioms as stated above, except on the basis of what the state wills. This is the meaning of disassociation from every transcendental consideration. The spiritual schema is essentially a doctrine of legal subjectivism which knows no objective moral value or limiting measure and operates only

on *we wish it* principle as ultimate proof of its prescripts. Laband particularizes the state activity in a background of this subjectivism by stating that "the specific activity of the *power of state* appears not in the production of the content of law but only in sanctioning the validity of law, in equipping a legal prescript with power to bind with outer authority."¹³ This explanation defines the nature of subjectivism in political order.

Jellinek makes the analysis of political order even more eloquent. He denies in clear terms that law has a basis which lies beyond it. He propounds it that the only foundation of law is law. His aim is pure analysis on the basis of which he wants to distinguish the *will of the state* from a mere *coercive power* to save the laws from brazen arbitrariness. But, it does not mean that he subjects the state to some higher principles. He achieves his purpose within the domain of subjectivism only, and analyses the will of the state till he reaches the axiom that *law* has its genesis in *law* denying everything which transcends it. He hits upon the Quint essence of the public order of Western Democracy, which seeks justification of its laws from *we wish it* principle, when he states; "The *state can rid itself of every self imposed limitation, but only within the forms of law.*"¹⁴ In one sense, it means that a law may be repealed by another law, but in a deeper sense it lays bare the ground idea of law and it is 'rule of law'. He declares that; "Sovereignty is not state omnipotent. It is *legal power* and bound by law"¹⁵ It contains in its being the *form* of law, the procedure, the method, whereby it creates or repeals a law. On the power of state, this *form*, ground form is a necessary limit. Jellinek is sound in his intuition that mere power cannot create a *state*. The latter comes into being, when the power formulates itself, and prescribes the form by following which, its will *sanctions* something into law of the land. In this conception, the state and the law-creating *mechanism* are completely defined in positive terms requiring no aid from such factors as morality, justice, etc. Thus, *procedural* law is foundation of all *law* in the modern state, i.e. in democracy of the Western Civilization. There is no idea or content, which by adopting the generic procedure of the state, "cannot be enacted into a law."¹⁶

The 'Pure Theory of Law' of the twentieth century, to which we alluded earlier, in fact is an expansion of the Analytical Jurisprudence of Gerber, Laband, and Jellinek. It receives the perfection of a logical system with Hans Kelsen, who defines legal order as consisting of 'a plurality of legal norms,' and nothing else. "Any content

whatsoever can be legal; there is no human behaviour which could not function as the content of a legal norm;¹⁷” says Kelsen. On the genesis of law, he remarks; “A norm becomes a legal norm only because it has been constituted in a particular fashion, has been canalized through a definite procedure and a definite rule. Law is valid only as positive law, that is statute law....”¹⁸ The legal norms constitute the legal order of society. Thus, the judicial process comprises adherence to those norms. No interpretation of the methodic reasoning that leads to declaration of the right in a dispute is allowed to violate them. He further clarifies the problem: “All the norms constituting this (legal) order have the same ground of validity, i.e. they can be traced back to the one and the same basic norm.”¹⁹ This foundational truth bestows unity and individuality on the legal order.

Kelsen carries the analysis a step further than carried over by Jellinek. He puts up that the norm on which the legal order is based is not in itself a *legal* norm. “The supreme basic norm cannot be created in the same sense as the norms of the legal order whose unity is founded on it. *This basic norm is not created by the organs of the legal order, but is presupposed by the legal cognition; the basic norm is therefore not a positive, but a hypothetical norm.*”²⁰ Lauterprecht discusses the imports of his theory thus: “The norm which lies at the basis of his system, although not arbitrary is purely relativistic and hypothetical. There is in it no such *absolute element* which it would necessarily contain, if it were grounded in a material ethical value, for instance in that of *justice.*”²¹ Consequently, it is absolutely indifferent as to the nature of *political power* which underlies it. The distinctive mark of the hypothetical norm is its reserve force for compulsion by which it is capable of transforming any content of social phenomenon into a binding norm for the public order.²² “The pure theory of law”; expounds Kelsen; “views the state as a system of human behaviour, an order of social compulsion. This compulsive order is not different from the legal order for the reason that within one community *only one not two* compulsive orders can be valid at the same time. “Every expression of the life of state, every act of state, is a legal act,”²³ for the simple reason that it has coercive force attached to it. Thus, in Hans Kelsen, the theory of modern state obtains complete relativism as a philosophy of public order. It has norms, no doubt; but being subordinate to the *hypothetical norm*, all of those norms become hypothetical in character. They are distinct from the not-norms, because of the elements of coercion which are fused in them by the ground norm which in its turn may be

any thing; it may be 'dictatorship of the proletariat', 'military coup d'etat,' 'voice of the people', or 'usurpation by a sultan'. The legal order itself is indifferent to its nature. Its ultimate criterion is *compulsion*, not physical, but social compulsion, that is the human power that seizes the people to make them abide by its decrees. The legal order and the judicial process are completely identical with its compulsion; hence no transcendentalism. Whatever the state does, ordains, and decrees is categorical imperative of the public order; it cannot be *wrong* and cannot be subject to any further evaluation.²⁴ These are ultimate foundations of the state, the modern state. Thus, it has its existence beyond the measures of good and evil, justice and injustice, beauty and ugliness. Consequently western democracy as a modern state is a-moral, if not down right immoral. *Voice of the people* is its ground norm which does not put its legal norms to any further considerations. By virtue of its being vested with compulsion, whatever it enacts is valid norm for the society, that the law-courts cannot challenge. In this way, 'we wish it' principle, in it, takes the place of all absolute and transcendental values. Every value that it declares, reveals only the coercive power that sustains it as a political order of the society. Its compulsive order incarnates the idea of 'collective likings and dislikings' as sovereign organizing principle and replaces all other values. This phenomenon has been pronounced in unscientific language as secularization of outlook. It does not bother about preserving or seeking an organic union of the public order, legal norms, and absolute values. By clearing its redundant paraphernalia, Jellinek and Kelsen have simply polished and completed its theoretical representation. Since, Western Democracy is attached to nothing beyond its hypothetical norm, in its sovereign activity it is not subject to any super principle or *moral* sense. Consequently, its supreme judiciary is also but a subordinate organ geared, as is were, to its order of compulsion.

The function of law court in this democracy lies in complete adherence to its created legal *norms*. A legal decision in it is just to determine whether or not a particular action of the state or member of the public *coheres* with the *decreed* legal norms. On the legal *norms* themselves, the Court of Justice, even the supreme court of a Western democracy can pass no judgments. Consequently, the ultimate judgment in the public order of the Western democracy is not an *absolute*, but relative and hypothetical judgment, postulating the *absoluteness* of *hypothetical norm* as its ultimate point of reference.

This kind of justice is something inconceivable in the Muslim order of things. The Congregation is bound to the absoluteness of *justice*

as its organizing principle, and its law courts are supposed to be in possession of the Transcendental Balance (*mizan*) on the basis of which they judge the acts of the individuals and the state and declare them licit or illicit. The Muslim public order is obligated to erect the Balance on which every legal *norm* must be brought for testing; the unjust being null and void. In other words, the supreme court of the *Muslim state* has no limits upon itself except the limit of the idea of justice; it has full power to pronounce its judgment on the validity of a *legal norm*, which has been *enacted* as part of the legal order of the Congregation of Islam. There is no authority on earth, neither the usurping Sultan nor the voice of people that may stop it or bar it from this basic, inalienable, and obligatory duty. The supreme court of the Congregation, therefore, is not an organ of the state, subordinate to its hypothetical norm; but is an independent, impartial institution for reflecting the *Balance*. The Congregation itself is directly responsible for its machinery and operation.

To understand this kind of organization as discussed above, a distinction should be made between *civil adjudication* and *supreme adjudication*. The former is a process, according to which legal disputes are solved in term of the legal norms, laws, and institutes prevalent or decreed in the society. It may be entrusted to the *imāma* or state. According to the conventions of Muslim Constitutionalism, the state-holders are thus assigned the duties to appoint the Kādis, who hear evidences and decide civil disputes of the people. In their jurisdiction they do also include maintenance of the limits of God and punishment of the violators. In other words, civil courts and magistracy are integral components of the state to preserve law and order of the society. The same sector of activity may further organize its intents by providing courts of appeal. Thus is the origin of higher courts to review the civil judgments of the lower courts as part and parcel of the institutions of state. Beyond this *civil and penal adjudication*, the Muslim order of civil life envisages, unlike the Western Democracy, another kind of adjudication, to review the cases in the light of the idea of *justice*; its judicial power to weigh the legal *prescripts* on the *mizan* is unlimited in the sense that no other authority is allowed to encroach upon it. The process of this adjudication results in a *solemn judgment* on the deeds of the people, on the actions of the state, and on the laws created by the *idjmā'a*. The court which embodies this process may be called *Constitutional Court*. Or if the believers wish to revive their own *precedents*, it may be called *Supreme*

Arbitration in the Congregation of Islam. Since, the Muslim society does not accept the view that anything vested with social compulsion automatically becomes part of the legal imperatives in its public order, it must be prepared to submit the legal *prescripts* it has framed to a judicial review of the Supreme Arbitration. Anything found in contradiction with the idea of justice, of necessity, is void of effect in it. The Supreme Arbitration, instituted as above with authority to declare any act of political power lawful or unlawful, on the basis of the supreme measure of Justice, will deter all the groups from excesses.

In order to make the authority of the Arbitration effective in true sense, every believer is obligated to support it and translate his support into practical propositions. It means that as one of the ultimate institutions of the Muslim public order, the Court of Supreme Arbitration must be invested with power to summon the leaders of army, the heads of civil administration, and the chiefs of political parties for the purpose of declaring its constitutional judgment before their solemn assembly, and entrust them with its execution. This process and institution transcends and limits the Government as a fundamental aspect of Muslim Constitutionalism which must protect the sanctity of the Supreme Award. Thus, it may be fixed that every officer of the army and civil administration in addition to his particular duties of post has a general duty to act as an executive officer of the Arbitration Court, with a commission and authority from it and from the people to carry out its orders. This kind of arrangement is a perfection of the Arbitration Machinery that the first generation of Islam established in 37 A.H. In our time it should not fail as it failed at that time. Now, it should be equipped with a fool proof arrangement that none dare to deny its authority, or tamper with its authoritative judgment. This will be a unique institution with no parallel in Western traditions.

In the theory of Western Democracy, all *courts* without exception are *organs of state*, which also takes the responsibility of executing their awards. This makes the whole judicial process dependent on the state in a double way. The courts draw their members, the judges from the government and also look towards the government for executing their decrees. Instituted as organs of the state, they cannot be otherwise. In their judicial process, especially in their constitutional declarations, extra-legal considerations are bound to enter. Consequently, what they expound as right is invariably an *echo* of the regime in which they are constituted and is thus relative, subjectively

oriented and inwardly determined by the *political power* of which they are organs.

In Muslim Constitutionalism, the principle that courts of Justice are organs of state is simply a heresy. The Congregation which is pledged to uphold the *mizan* cannot allow this blasphemy in its political ideology.

Institution of *Supreme Arbitration* as discussed above, armed with necessary provisions of power, is the only arrangement which satisfies the conscience of Islam. It may be re-emphasized that adjudication of civil disputes and magisterial process may be, rather should be a duty of the state and government. The Supreme Arbitration is basically a court of constitutional adjudication which must project the ultimate *Measure* and for that purpose it should have a unique constitution with adequate power over and above the state and its holders. In that way only, it may be an effective judge upon the acts and ordinances of the state and determine their value in relation to the norm of Justice. This court may also be a judge upon those changes which after the lawful set up of political authority of the community bring about a modification of it. And finally, it may be a judge upon the *constitution* of the state, upon its authoritative interpretation, upon its fundamental code and upon its meanings in the light of the idea of Justice which should receive embodiment in the institutions and public arrangements of the Congregation of Islam. In view of its function and duties as seat of conscience of the organized Muslim community, it stands independent of the state, and cannot be thus an organ of the government. By establishing it, the Muslim Constitutional tradition returns to its own Spirit. In the context of our time, the institution of supreme Justice may be pressed to its logical conclusion by making it free from the influences of the political process itself. The Arbitrators may be appointed through an electoral college consisting of Juris-consults and the practising lawyers of the community. Or it may so happen that the said electoral college recommend a panel of qualified jurists to the general suffrage, which in turn elect one third of them to the Supreme Arbitration. Thus, their appointment will have to do nothing with the state-holders, the political parties, and other vested interests. As we have told, the Supreme Arbitration cannot be bound to the *positive law*. Its sole concern is with the idea of Justice. It may become a living *mizan* with the community, if its sanctity and authority as supreme judge on constitution, laws, and decrees affecting the basic political institutions of the society is duly fortified by institution of a universal pledge, which every citizen, and every public functionary, every organ

of the state, and every authority has to make to execute and implement its decision. Practically, every part of the society will have to be its organ of implementation. Does it mean a dictatorship in the name of Arbitration? This is an important question.

It is self-evident that the Judgment of Supreme Arbitration, consisting of five to eleven experts, shall prevail upon every one in the society. If its authority is not further articulated, there is no doubt, it may turn into an absolute tyranny of demi-gods and the public order will become a regime of Tāghūt ultimately controlled from above by a handful of individuals. It will be a theocracy of the nature of a papacy in the body politic of Islam. There had been suggestions, in the past, for the institution of a *Board of 'Ulamā* to frame and pronounce their authoritative opinion with power of veto even on legislation created by the National Assembly consisting of the fiduciary agents of the people. This proposal was dropped by the framers of Constitution for Pakistan in 1950. Is not the institution of Supreme Arbitration as duly armed with effective power to review, interpret, and declare validity of the acts and laws for protecting and upholding the scales of Measure a relapse into the same proposal? Supremacy of the Arbitration Court in the public affairs is against the supremacy of political authority of the People. And in a public order, supremacy is vested in one and only one authority. Apparently, the implications of these considerations are beset with enigma for the theory of Muslim Constitutionalism. If the Supreme Arbitration Court is final authority of all things, then it leads to a papal order (*Nizām i Tāghūt*) in the name of maintenance of Justice. And, if the people's authority is final, then there is no control on it.

This dilemma of Muslim Constitutionalism, which at once is bound to uphold *Balance* and maintain the authority of *idjmā'a* as well, may be, however, resolved in a dialectical adjustment. Let us start from a piece of legislation and let us suppose, that it is an important enactment of the National Assembly of people and as such represents *idjmā'a* of the Community. Now, someone applies to the Supreme Arbitration for its review, and the review declares it *ultra vires*. In this situation, the legislation will at once cease to be a part of the public order. But, the problem does not end here, for as we have already presupposed, the matter is very important from public point of view. Then, appropriate steps will be that the National Assembly refers it to the public referendum. Now, the *legislation* of the Assembly and the court's *declaration* are before the people. There are two possibilities. Either the people say 'yes' to the legislation or say 'yes' to the declaration of the court. In the former case,

the court's declaration is vacated and the legislation is restored as part of the public law. In the latter case, the declaration becomes a confirmed part of the public order.

The referendum, we have provided in the Muslim constitutional set up, means that the responsibility of expounding the idea of Justice and preserving the Supreme Measure in a particular case of its public order has been taken over by the Congregation itself and that the Arbitration Court is relieved of its duty in it. As an important provision of the Muslim Constitution, this method may be prescribed, because the true and real mukallifīn (bearers of responsibility) in a Muslim order of things are the people, and not their institutions.

It means supremacy of a *reconsidered idjmā'a*. The earlier idjmā'a which created the law was abrogated by the declaration of the Court, and the latter is abrogated by a fresh idjmā'a, this time by participation of the general members of the Community, who take into consideration both the abrogated legislation and the abrogating judgment of the court for its formulation. This development may be designated as a *reconsidered idjmā'a*. And it ends the matter.

This discussion leads us to one of the fundamental rules implicit in the political philosophy of Islam which articulately defines the place of Supreme Arbitration vis-a-vis idjmā'a of the Community. It may be stated as follows: The institution of Supreme Arbitration with all of its power is a *judicial authority*, while the Congregation-in-idjmā'a is *religious authority* endowed with finality in all of its dispensations for the interpretation, expansion, and exercise of the collective consciousness in Islam.

This rule of political constitution is representation of three fundamental principles defining the religious attitude of Islam: (1) Trust on man as bearer of responsibility (mukallaf); (2) faith in his common sense for matters of practical judgment; and (3) Confidence in group interaction of opinions as rectification of error. These principles are pre-requisite of every public institution in Islam and these are also a-priori ground of the nature and function of the Supreme Arbitration and its judicial authority. Consequently, the reconsidered idjmā'a is ultimate arbiter in the public order of Islam. The dialectical tension between the legislative will and Judicial review resolves itself in the progress of idjmā'a as a collective effort to read the Measure, grasp its working and translate its reckoning in the scales of licit, illicit, apprehensible, preferable as value system of the public order in Islam.

The idea of Balance in the religious consciousness of Islam is straight and simple. It measures every man as equal to every other man. The scales of its balance produce equilibrium among men. The formal law of Islam is that all men are of the same stock. Its public order is an effort to bring about equilibrium among members of the community and maintain it in a situation of continuous change. It is how Muslim faith in God enters into the working of human affairs. "The essence of Tauhid as a working idea;" Says Iqbal; "is equality, solidarity, and freedom. The state, from the Islamic point of view, is an endeavour to transform these ideal principles into space time forces, an aspiration to realize them in a definite human organization."²⁵ The norms of *equality*, *solidarity*, and *freedom* are but descriptive symbols of the idea of justice in Islam.

The idea of justice completes its ultimate meanings in the revealed symbols that *the Merciful (God) is established on the Throne* and that His Throne encompasses whole of the universe. In one stroke this powerful imagery obliterates all kinds of mean inequalities, gives consolidation to human ego against all exploitation and open before him a world of possibilities as living core of the public policy in Islam.

This Muslim imagery is unknown to the Western Civilization which draws its ultimate meanings from the idea of Harmony or Proportion—the Greek representation of Justice.

To the Greeks, *Harmony* or *Proportion* was a timeless mechanical form of interdependence. The modern Western Civilization has, however, recomprehended it as a temporal and changing form, which allocates position and power to the members of community by the interplay of its socio-dynamic forces. The Muslim concept has no rapport with such ideas. The way of life, dear to the Muslims, cannot abandon the individuals to the merciless play of forces. Their public order means a planned, organized, and sustained effort to control and eliminate those forces which produce inequalities and alienation between man and man in the march of civilization, accumulation of technological growth, and emergence of roundaboutness in the settled life.

The religious thought of Islam welled out from its inner sources, the *Qawā'id i Kulliya* for efficient functioning of its practical reason in the environment of complex mechanisms of highly sophisticated life of civilization as verification of its absolute commitment to preserve the transcendental *Balance* in the affairs of men and their communities. In this respect, ibn Nudjajm's *al Ashbah wa l Nazāir*, and Sayutī's work on *qawā'id* under the same title are most important

compilations with all the important reflections of Muslim Jurisprudence and shar'ii thought based on the classical works of great imāms—Awzai, Abu Hanifa, Tahāwi, shaf'ii, Ahmed b. Hanbal, Bazdavi, Sarakhasi, ibn Hazm, etc. Following is a selected cross-section of the Qawā'id along with an extended effort to apply them to the problem of political philosophy in Islam.

1. *Every ordinance (hukm) is a function of the major expediency inherent in it.*²⁶

This rule for deduction of Ahkam ash shari'a prescribes the criterion of legislation for public affairs. The ordinance will be identified with the expediency which is predominantly served by it. The minor expediency, which is also served, will not be taken into consideration while making it.

Idjtihad and idjmā'a, both are required to determine the value of a social innovation, a utility complex, or a public institution on the basis of this rule. If an ordinance or an institution is a source of minor inconvenience, but is attended by a great amount of benefit, it will be declared a beneficial thing in the public order.

2. *Prohibition is at the root of harmful things and permission is at that of useful things.*²⁷

This rule prescribes that when the value of a thing is determined as harmful, it becomes prohibited. The function of idjmā'a is to prohibit it and the public authority has to implement the intention of idjmā'a. Similarly, when the idjmā'a finds a thing useful, it must legislate it as a permission. The duty of public authority is to supervise that the permission, enacted, has become an *effective part* of the public order. This aspect demonstrates that public authority or government in Islam is co-extensive with the prohibitions and permissions prescribed by the legislation for the entire public order. It exercises effective authority for taking steps to make them concrete elements of the society.

Furthermore, 'harmful' and 'useful' are not fixed properties of the social entities. Things which were useful in the past may become harmful in future, and the harmful things of yesterday may not be so today. This rule of Shari'a, which determines the ground of permission and prohibition, in the changing context of the useful and harmful for Society, lays down the lines of the evolution of state activity and idjmā'a of the people in Islam.

3. *No harm against a harm.*²⁸

This norm defines the public policy in Islam, and prohibit, in it, the use of harm (*ḍarar*) as an expediency.

When a harm is removed by another harm, it defeats its own objective and the public policy is caught in a riddle. Consequently, the legislative business in Islam has to keep an eye on its goal which in each and every situation adopts as its means a 'better state of affairs'. For instance, as application of *no harm against a harm*, reforms of the deviationists, rehabilitation of the delinquents, and reincorporation even of the rebels in the normal society, apart from the enforcement of the limits of God, are to be treated as important contents of legislation and the duties of state in Islam.

4. *Labour requires facilities.*²⁹

Human society consists of work and labour and this norm prescribes that every work and labour, the society needs or permits, entails conditions favourable to it. This rule adds one of the important pillars to the administration of affairs in the public order of Islam. It has its basis in the *Ahkam al Quran*. "God wills for you facility and wills not hardship (2:185)"; "God wills to light your burden, and indeed man is born weak (4:28)"; "God's messenger will relieve them of the heaviness under which they are suffering; will liberate them from its meshes in which they are caught (7:157)." As foundation of public order, these *nusūs* determine the meaning and goals of the legislative and executive machinery. The Muslim State is a vehicle of the *nusūs ash sharī'a*, particularly of the Divine ordinances. In theory, it is successor of the Prophet and thus embodies the Prophetic mission defined as thus: "God's Messenger will relieve them of the heaviness under which they are suffering; will liberate them from the meshes in which they are caught." Thus, Islam conceives of very wide function and consequent authority for the institutions of state. Administration of the affairs, therefore is required to take the form of those devices, departments, and social inventories which protect man from exploitation and produce the facilities necessary for his work and labour as member of the society. It is divine intention that bottlenecks are removed and people are saved from hardship. The law-makers and the state in Islam are therefore bound to put an end to those 'urfs, combines, and spins in commerce, industry, agriculture, business, family and social life, in short, in the whole of economy and culture which fall heavily on the people, make their life miserable, narrow down their opportunities, and finally throw them out of work. The Muslim system of government is under obligation to

transform itself into a huge and impregnable system of facilities around every man. Such is the view of Islam on the basis of its clear nusūs.

As a way of life, Islam is not compatible with hardship for 'God has not put hardship in the dīn'. According to this nas, no idjtihād or idjmā'a is permissible which tends to justify an order of miserable conditions for working people and which make their life retarded and burdensome.

5. *No responsibility beyond capacity.*³⁰

The ground of human burden and criterion of allocation of work for every man is envisaged in the public order of Islam in the light of the nas that 'God does not make responsible a nafs (life/man) beyond its capacity (2:286)'. In a system of social injustice, burdens are distributed most unfairly. The believers are obligated to achieve a fair distribution of burden and responsibility in the society. No one should have a burden beyond his capacity. This principle as Divine Ordinance is *law* to the believers in their agriculture, industry, in all of the economy as well as in all their social dealings. But, who is to implement it? Only State as fiduciary agent of the Congregation, its vakil and deputy for executing its purposes may be entrusted with it.

Moreover, though no man is given a responsibility beyond his capacity, yet every one has a right to 'facilities' in the public order of Islam. As living institution of the society, the Muslim State, all along with its executive power, is embodiment of these norms in its activities and is obligated to remove every obstacle from the path of the people. Ash Shatibi states that the idea of Haradj (obstacle) includes all forms, states, and conditions, which cause despondency, helplessness, even unpleasantness, dejection, fatigue and monotony. The removal of frustration and disappointment by transforming the social system into a system of facilities with work to every body in accordance with his capacity is thus basic responsibility of the believers which they must fulfil, by their idjtihad, idjmā'a, and state machine.

6. *A particular loss shall be allowed in contrast with the general loss.*³¹

According to this norm of public policy, if a situation is advantageous to only a small group of people and is disadvantageous to the rest, it shall be altered to make room for their advantage, i.e. for the advantage of the *large section of population*. Invoking this norm, Abu Hanifa modified the principle of no interference with private property; some other juris-consults permitted exercise of

government authority on the assets of immature or feeble-minded persons; and still others recommended price control in the public interest.

The state may be invested with wide powers, in the light of this principle, as authoritative trustee of public interest. The law givers must take note of particular institutions. If the institutions consist of facilities to a small group and haradj (obstacles) to a large number, then they are obligated to change the order and if necessary to abolish them altogether.

7. *Necessity (darura) permits prohibition.*³²

Traditionally, this norm, as spelled out by Sarakhasi, is confined to the cases of emergency. It is, thus, independent of any other norm. In its extent, if necessity of the abnormal situation so demands, it permits suspension of the explicit and mansūs prohibitions of the shari'a. The darurah which has been allowed this much power, as ground of suspension is not left ambiguous. The shari'a closely defines it in terms of *absolute danger to life and property*. Thus, an emergency, say, caused by flood, earthquake, aggression of the enemy, starvation, etc. are definite contents of this norm. Exercise of power on behalf of the people in cases of emergency can only be vested in the government. Thus the state in Islam and its leaders are allowed to *dispense with the normal law* to meet the emergency. But, political experience of nations shows that an emergency situation should be adequately defined and described by the Idjmā'a of the community, to guide the state when and where emergency power, including authority to permit what has been prohibited by nas, is to be exercised.

8. *Want produces need; a general need or a particular need.*³³

Social evolution is followed by multiplication in the number and qualities of human wants. The principle of shari'a in this matter is permission, unless particular prohibition is prescribed by the nusūs. Thus, the right to satisfy those wants has no restriction on the basis of those wants as such. But, it does not prohibit the imposition of some control on them in public interest. Indeed, the shari'i rule of the removal of obstacle extends to these growing wants also and the public order of Islam is obligated to accommodate them by looking into the facilities for them. It so happens that wants of an age evolve into *bare necessities* in the future age. The state has to keep pace with this development. Consequently, the Muslim state is always a *thing* in evolution. It has no fixed set of duties for ever.

9. *Anything which becomes permissible on account of some want is permissible only to the extent to which the necessity requires it.*³⁴

This norm is self-evident, but it is not confined to the emergency situations only. Its scope is wider and includes normal situations over a longer period of time. Under it, various problems of public policy are resolvable and a law for the growth of government and public order is clearly in sight. The socio-politico-economic system is subject to various forces and consequent change, which may require action so that the society resumes its even course. According to this norm, the action should not be more than required. It may involve a shift in prohibitions and permissions. The permissions of the past may turn into prohibitions and its prohibitions, unless fixed by the *nusū*s, may become permissions. The above rule provides and prescribes the limits of this change, by stating that anything which is permitted by a necessity, shall be permissible only to the extent to which the necessity requires it. Beyond that limit, the past as such will be allowed to continue. The authoritative arrangement of the society, its collective power, and its legislators have necessary *shar'ī* authority to readjust different components of the social system and redefine permissions and prohibitions in the context of time.

It may be mentioned that the Divine *Nusū*s are permanent values which as a normal course are not subject to repeal except by way of abrogation which must ensure a better system and technique to give them effect in the society.

10. *Of two prohibitions as the only alternatives, the lesser will be adopted.*³⁵

Human life is sometimes entangled in a situation which consists of two evils as the only alternative open to a man. Group life is more often involved in such situations. The above maxim resolves them by making obligatory the lesser evil. For instance, unemployment of the people and increase in taxation, both are evil. But, there is no way out to remove unemployment, except by an increase in the taxes to finance the public works. The public authority must adopt the evil of increasing taxation for removing the greater evil of unemployment. It is self-evident as a *shar'ī* obligation of the state that every man must have a work and facilities for it.

There are numberless instances of this norm which must orientate the *idjmā'a* and state activity of the congregation of Islam.

11. *Tightness entails leniency and leniency entails tightness.*³⁶

This is a temporally oriented norm and has its basis in *nas al*

Quran. In it is stipulated the rhythm of legislation and statesmanship in public affairs as a matter of policy. In our society, routine 'administrative' legislation, in the form of year to year revision of the nation building programme and annual budget, is an important aspect of the functions of elected representative of the people. This rule of sharī'a provides necessary guideline for it. The sectors which require lenient condition, after sometime require tight conditions to allow equal development to other sectors. Similarly, the sectors where tight conditions prevail, do require lenient conditions afterwards. It is necessary for preserving and promoting social mobility in all fields.

This rule also provides a shar'ī basis of 'judicial choice' for magisterial authorities, and 'administrative discrimination' for executive authorities. They may apply a tight or liberal interpretation of the provisions of law within admissible limits under its guidance. In other words, it establishes 'juristic preference' as a legitimate and desirable element for safe conduct of public affairs in Islam.

Indeed, it lies in the nature of Executive Authority that its actions do combine in their texture legal stipulation and subjective discretion for disposing of particular cases. The maxim of alternation in tightness and leniency is shar'ī rule for this combination.

12. *Control of the Imām (state authority) is dependent on the public weal (maslihāt 'amma).*³⁷

This rule is a norm which states that the acts of every authority or functionary of the state have public weal as their content. Thus, the acts which are not conducive to the general welfare do become rightly questionable. The Muslim state, to satisfy this norm, must have enough provision for revision of the acts of authorities in the structure of its establishment. The aspect which is subject to revision is *subjective discretion* of authorities in the light of this rule. Consequently, it is part of the state organization that every authority is answerable to its higher authority. Thus, from ground level to its top, the organization of state forms a hierarchy of responsible control over the authorities. With this norm is born the notion of *responsible authority and government* as an important element in the political philosophy of Islam. The appeal, reconsideration, and revision, its notion entails, are different in category from those which are within the competence of the civil courts.

In civil adjudication, the review of an administrative action is confined to judgment on how far it has followed the regulations framed

and enforced for it. The *subjective discretion* of the administrative authority remains out of its scope. It is for this particular reason that the government establishment must provide for revision of the total action including the subjective discretion in it, by entrusting it to higher authorities. This provision becomes a shar'i ground for the hierarchical set up of the public authority. Then, this *authority as a whole*, including the authorities at the top of it, must also be answerable before somebody, otherwise there is no refuge against a despotic government. This requirement is a logical culmination of *responsible authority* as organizing principle of government in Islam. The public authority, taken as a whole, must be responsible for its '*subjective discretion*' and give an account of its administrative actions in different fields of public order, which are under its charge.

It is responsible before the elected representatives of the people, who are to be *chosen* for this very purpose of hearing from the government and state holders about their actions and activities, and if necessary to revise them in public interest. Thus, the concept of *Imām as responsible before no body for his subjective discretion is hardly compatible with Islam*. The people, through their fiduciary delegates, have to exercise their power on his *discretion* as ultimate revising authority for the purposes of shari'a in Islam.

This particular aspect of the political set up should, however, be distinguished from *legislation*, which the people do through their representatives, elected in implementation of the principle of idjmā'a for creating laws of the society.

It so happens in modern states that the assembly of delegates, which has authority to make and pass the laws, is also allowed the authority to take account from the government. Now, the Muslim political thinkers should decide whether this combination of two functions in the same fiduciary agent is a sound arrangement. Big states have two houses. Will it not be suitable that the function of one house is fixed as legislative business, and that of the other as the hearing of actions from the Government? This house which takes account from the Government may consist of those, who are competent minutely to judge, understand, and revise the government administration and subjective exercise of its power. This house may also advise the legislative assembly for revising the laws in the light of its experience. It may also be constituted by election.

13. *The acts are determined by the purpose they serve.*³⁸

This rule throws light on the nature of public order in Islam

and ensures complete objectivity of its system and its parts, thus allowing its exhaustive review and criticism on the basis of visible, tangible contents open to every body. There is thus, no mysterious element in the public order of Islam. Its perfection lies in its *hard data*, in its objectification and exhaustive reference to the system of external existence. Consequently, nothing which is invisible, nothing which is 'private' to individual minds, nothing which forms the soft data enters as a value in its considerations.

There is no doubt that determination of acts by *their intents* is also an indispensable aspect of a Muslim's faith but its scope is confined to the subjective states, defining the spiritual character of a man as responsible for his deeds before his God. Thus, as an objective data, it does not form part of the social system and does not determine the objective values of shari'a on which the public order in Islam is established.

The rule that acts are determined by the purposes they serve, consequently, has an important function in public affairs. It disallows review of the actions and institutions, policies and programmes, by attacking or eulogizing the 'inner intents' of the members of Society and their public authority. Only objective aims, goals, etc. served or likely to be served by their actions are admissible as valid points of reference. This principle keeps a healthy atmosphere in the society, and build the public order on solid foundation.

14. *No prescript shall have effect, if it conflicts with the Shari'a.*³⁹

This rule defines in vigorous terms the limitations imposed on the prescripts. These limitations are formal as well as material.

A prescript is in conflict with Shari'a (1) if it comes into being against the methods prescribed by the shari'a; (2) if it entails negation of the nusūs al Quran and Sunna; and (3) if it has not followed the *Qawā'id Kulliya* enunciated by Islam.

Most of the Shari'a of Islam in public matters is a creation of idjmā'a. A prescript which does not entail modification of a past idjmā'a by another one behind it, is outrightly in conflict with the Shari'a and is ultra vires.

The *Qawā'id i Kulliya* in Islam are either most general principles as categories of rational thought, universally acknowledged by all men, provided they are known to them, or directly prescribed by the nusūs al Quran. No prescript which comes in conflict with them is a valid part of the Shari'a. And finally, every prescript which under-

mines the grip of *clear nusūs* (and not *mutashābihāt* i.e. allegorical verses) is admissible as part of the *Sharī'a*.

The proof that an administrative order or an act of authority contravenes the positive provisions of Islam is sufficient to make it non-existent.

15. *Every person is free from a restraint, unless the latter was proved for him.*⁴⁰

This rule is a symbol of the spirit of Muslim Culture. Shaukāni expounded it as charter of freedom for mankind. No man is liable to check and control in any matter unless it was proved for him. Obviously, the proof of restraint in the public order of Islam has the following steps: either restraint is directly provided (1) by the *Nusūs*; or (2) by the *idjmā'a* of the community through its universal suffrage; or (3) by the assembly of fiduciary agents for the purpose; or (4) by the *executive authority* invested with the power to impose it in a particular matter. All these are the *sharī'i* forms of the constitution of restraint, the violation of which is sin liable to punishment in the public order of Islam.

There is no dearth of such pious men in whom is absent a regard, religious regard, for the control imposed by legislation on the authority of *Idjmā'a* or that by the restraining order of an executive authority duly authorized from the *idjmā'a* of the community. This disregard is, indeed, a rebellion against the *sharī'i* socio-political stipulations of Islam. Both *idjmā'a* and the *executive authority* created by *idjmā'a* are *religious authorities* for issuing writs and orders to bring any matter under restraint unless specifically prohibited by the Divine Nas.

Having no comprehension of the full logic of *Sharī'a*, the decadent 'ulamā demand proof of every restraint from the Divine *Nusūs*, thus feeling no obligation towards the checks and restraints as stipulated and prescribed by the legislative will of the *Umma*, which is required to expand the controlling authority of government in different sectors of life. The discussion on this constitutional subject in our time has taken the form of a debate on private property verses collective ownership in the community. No party to the debate is ever able to cite a divine *nas* in favour of its contention contradicting the rival thesis. Those who have rallied round the idea of private property quote the laws of inheritance in the *Nusūs al Quran* as basis of their claim. But those *nusūs* which are about the distribution of assets among the heirs of a deceased person do not in themselves prescribe private property as divine

ordinance on earth. Nevertheless, it is, however, quite true that the laws of inheritance presuppose private property for their operation. But, what it proves is not more than that private property is a hypothetical norm for the laws of inheritance and not a categorical norm prescribed by the Divine Ordinance. It is just like the case of Divine pardoning which entails the hypothesis of sin. Does the existence of Divine pardon and its operation prescribe sin and its order? No, on the other hand, the shari'a prohibits sinning and transgression all together. This is sufficient to prove that the laws of inheritance from the Divine nusūs do not prescribe private property as an institution in Islam. At the same time, there is no nas to prohibit it as such. Thus, the authority of idjmā'a and delegation of authority to the government of the umma to exercise control in the area which have been hitherto considered as private property does not conflict with any inviolable aspect of the shari'a of Islam including the Divine Ordinances. Whatsoever the idjmā'a of the community, in view of removing hurdles and providing facilities to the people, stipulates, in itself becomes a shar'i obligation and every believer has religious duty to follow it as part of his piety.

16. *No idjtihād repeals the past idjtihād.*⁴¹

This rule does not mean that a past idjtihād is eternal part of the shari'a for all future. As Ibn Nudjaym has clarified its meanings, it simply lays down the principle that no idjtihād has retrospective effect. In other words, the past acts cannot be judged in terms of the licit, illicit, permissions, prohibitions, enacted by a fresh idjtihād and idjmā'a. It is in this sense that no idjmā'a repeals the past idjmā'a. This maxim liberates the community from the burden of the past 'urf and the old institutions, and puts them to fresh legislation in the light of the idea of justice, public interest, etc. The only restraining factors are the Divine nusūs which are permanent values in Islam so far as they provide or prohibit a particular institution.

The mansūs values cannot be repealed by any idjmā'a except if some other Divine Nas allows it the authority to do so in a particular matter.

17. *When there is conflict in rights, the poor shall have preference over the rich, the near cause over the remote cause, the distributive obligation (fard bil 'Ain) over a negotiable obligation (fard bi l Kifāya).*⁴²

Al-Qarāfi has cited a number of illustrations to explain the norm. When two rights are established, the right of the rich and the right

of the poor and the rights cannot be fulfilled at the same time, the juristic preference as well as subjective discretion of the authority shall take into account the right of the poor. This rule further identifies the causes which should be admitted as ground of actions. This problem is very crucial from human point of view. Scientific causality offers a long series of reasons as possible explanation of human behaviour. The purpose of public policy is not explanation, but determination. It determines action and decides policy in the context of man as a responsible being. This latter context is universal ground of law, morality, and public order. The shari'a of Islam by this rule provides categories for its determination in terms of the immediate and all present social environment, with its frontal needs, problems, situations, and challenges forming the system of direct causes as ground of human action and public policy. Every action is to be judged in terms of its direct cause and direct goals.

Another aspect of this rule is that the duty which should be performed by everybody has precedence over the duties which may be performed by some of the people.

All the different precepts of the norm forge together a public order in which (a) direct causes, actions, and goals are contents of human behaviour so far as he is held responsible in legal, political, and moral sense; (2) the public policy has its articulate justification in terms of the immediate reasons; (3) every body is obligated to fulfil his obligation which he cannot negotiate with others; and (4) in the matters of benefit, i.e. extension of positive facilities for the weaker classes has priority over those for the well-to-do classes.

18. *Illicit is to give what is illicit to take.*

The shari'a prescribes symmetrical relation between give and take of the licit and illicit things. Anything which is illicit to accept for oneself is illicit to give to others. This rule has a very wide range of application in social, economic, and commercial dealings. For instance, it is illicit for a Muslim to receive ribā and bribe. This entails that he cannot offer them to others.

19. *Illicit is the demand of the illicit things.*⁴³

As the rule for public order, it means that the demands of those things, which have been declared illicit by the nusūs al Quran or by the idjmā'a ruling at present are also illicit which further implies that the steps taken by any authority or member of the community for fulfilling those demands is quite illicit and unlawful in Islam.

Supposing that the public authority has put some essentials of life on rationing with a fixed quota to every body, it is illicit that its extra demand builds up in the market, and it is illicit that steps, open or hidden, be taken to meet them. There are many other areas and situations in which the *rule* is basic law for decision and action.

20. *The nusūs of the shari'a have cause and reason.*⁴⁴

The general rule of the shari'a of Islam liberates human reason from docile submission to the revelations. The nusūs of the Quran and the sunna are not made in sports for 'the world was not created in sports'.⁴⁵ Divine ordinances are laden with serious reasons. Human intellect should try to understand them and fulfil their intents. Thus, understanding them is an irrevocable elementary constituent of the evolution of shari'a and public institutions of Islam. There is always, a beneficial ground for a nas: "O men, there has come to you indeed an admonition from your Lord and a healing for what is in the breasts and a guidance and a mercy for the believers. Say, in the Grace of God and in His Mercy, in that they should rejoice; it is better than that which they gather (10:57-58)." Ibn Qayyim says; "God and the Apostle never made an ordinance which was in conflict with reason and perception. All (their) Aḥkām were based on equity and justice. Intellect must confirm it that the Aḥkām (of the shari'a) are unique and most suitable for their occasions."⁴⁶ "It is not a demand of right and just intellect;" writes Ibn Taymiya; "that every body should know the reasons. If some body feels a thing of the shari'a as pitted against reason, then (he should know that) it is in conflict with the judgment of his own person only, and not against the judgment which coheres with the Truth. Now, if we notice an incoherence of a Nas with (our) speculation, we must realize that our speculation is defective, for there is, in the shari'a, nothing against the sound reason."⁴⁷ Ibn Qayyim concludes as follows: "The person who has a right humour and comprehends the excellence of shari'a follows it clearly that its purpose is to benefit men here and hereafter and establish justice and equity among the creatures. There is no greater expediency than justice in Islam; equality is its irrevocable component."⁴⁸

According to these acute observations as above, there is no super rational or mysterious norm in the shari'a of Islam. The Nusūs al Quran are only ultimate limits of rational discourse on practical matters. If some of them are not completely appreciated today, human understanding may find their worth and appreciate the masliha (expediency) ensured by them, in future.

The policy rules or norms of public order in Islam, we have just surveyed and discussed, are not final things. Human intelligence is creative and may draw other basic rules (Qawā'id Kullīya) from the revealed Book. The value of these norms lies in their organic union. Every norm is either dead or serves only a limited interest, when it is isolated from the rest. In an organic union, the norms are source of meaning and guidance. Their ground is equality between man and man and only in terms of this unitive principle in them that they form the system of public order in Islam. Their ultimate aim is to save every man from *existential dependence* on other men. There is no doubt, that human order is an interdependent function, but it should entail mutual co-operation and not mutual exploitation.

The Shar'īi politics of Islam aims at existential freedom, true and real freedom of every man, with all of its concrete and material conditions as meanings of equality between man and man. It weeds out the possibility that a handful of men proclaim their god-head over all other men, and become their sustainers and nourishers. Any system which produces this state of affairs and reduces the public order into existential dependence for large classes of men is outrightly illicit in Islam. In other words, the norms, discussed above, will be applied on concrete problems in the light of those Nusūs al Quran which are as follows :

“O people, worship your Lord who created you (2:21).”

“We worship Thee only and seek only Thy help (1:4).”

“Do not worship any one except Allah (2:83).”

“O My servants who believe, surely My earth is vast; so worship Me only (29:5).”

“And when My servants ask thee about Me, surely I am nigh (2:186).”

All men, thus are equal before God. And when they are equal before Him, they are unequal before none. There is no man who has a greater right over other men. In this dictum lies the secret of successful functioning of the Congregation of Islam. The norms of its public order are means of implementing, in here and now of history, the truth that not only formally but materially all men are free, living individuals, and can not have other men as their sustainers, nourishers, and moulders of destiny.

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29. Ash shatibi, *loc cit*, p. 123. al Zarqa, *al MadKhal al Fiqh* (Egypt, 1959), p. 983.
30. Ash shatibi, *loc cit*, p. 159; *Tafisr al Kashshaf*, p. 292.
31. As sayuti, *Al Ashba wa l Nazai'r* (Hyderabad, 1310), p. 62; Ottomon *Mecelle (Mudjalla)*, article No. 26.
32. As Sayuti, *loc cit*, p. 58; al Ghazali, *al Mustasfa*, Vol I (Cairo, 1937), p. 141.
33. Abu Bakar Djasas, *Ahkam al Quran*, Vol. I (Egypt, n.d.), p. 30.
34. As Sayuti, *loc cit*, pp. 58-59; al Ghazali, *loc cit*, p. 139; *Mudjalla*, article Nos 22 and 23.
35. Subhi Mahmasani, *Falsafa at Tashri'i fi l Islam* (Beirut, 1946), pp. 157-58.
36. Mahmasani, *loc cit*, p. 245.
37. As Sayuti, *loc cit*, p. 88; Taqi Amini, *Fiqh Islami*, *loc cit*, pp. 385-86.
38. For discussion of shar'ii aims, al Ghazali, *loc cit*, pp. 139-41.
39. As Sayuti, *loc cit*, pp. 88-89; al Ghazali, *loc cit*, pp. 143-44.
40. An inferred rule from 'uqud wa sharait in Islam and the sources of shari'a
41. Ash Shatibi, *loc cit*, p. 285; Taqi Amini, *loc cit*, p. 421.
42. Al Qarafi, *al Dakhira* Vol. I (Cairo, 1961), pp. 122-30.
43. Taqi Amini, *loc cit*, p. 411.

44. Al 'Izz b. 'Abd al Salam, *Qawa'id al Ahkam*, Vol. II (Egypt, 1934), p. 70, f.
45. Al Quran, 3:188; 29:43; 10:105; 64:3.
46. *Al Turuq*, *loc cit*, p. 205.
47. *Madjm'u al Rasal'l wal Masai'l*, Vol. V (al Manar, n. d.) pp. 22-23.
48. *Al Turuq*, *op cit*, pp. 4-5.

**THE NATURE OF POLITICAL OBLIGATION
AND
METAPHYSICS OF PUBLIC ORDER IN ISLAM**

It was 'Alī b. Abi Tālib who rent visible in one flash the true source of political obligation in the Congregation of Islam. He said; "*Responsibility of the believers is indivisible; those who are near to it fulfil it.*"¹ But, the doctors and statesmen of the *Mulk* (Power State) in Islam left no stone unturned to prove that Saltana or political authority is a Divine Grace or Award. In their support, they used to quote the verse: "Say: O God Owner of Dominion, Thou givest the dominion to whomsoever Thou pleasest, and Thou exaltest whomsoever Thou pleasest and abasest whomsoever Thou pleasest (3:25)". Thus, in his *kitab al kharādj*, Abu Yusuf said; "O Commander of the Faithful, Allah has bestowed on you the imāma."² And Nizām al Mulk Tūsi built up a complete political philosophy on its basis: "In every age and time, God (be He exalted) chooses one member of the human race and having adorned and endowed him with kingly virtues, entrusts him with the interests of the world and well-being of His servants... Whenever—Allah be our refuge—there occurs any disobedience or disregard of divine laws on the part of His servants or any failure in devotion and attention to the commands of the Truth (be He Exalted) and He wishes to chasten them and make them taste the retribution of their deeds...verily the wrath of the Truth overtakes those people and He forsakes them for the vileness of the disobedience...until those sinners are all destroyed in tumults and bloodshed ...Then, by divine decree one human being acquires some prosperity and power, and according to his deserts the Truth bestows good fortune upon him...If his subjects tread the path of obedience and busy themselves with their tasks, he will keep them untroubled by hardships."³ The theory simply means that it is God, Most High, who enthrones or dethrones the rulers. If people are good and scrupulous about their religious duties, they taste good *sultans*. When they disobey their religion or grow wicked, they are punished by disorder and bloodshed. This philosophy which reigned the Congregation with the rise of *Mulk* in Muslim civilization was oblivious of all political obligation that should inform the members of Community.

As we have discussed somewhere else, the verses as 3:25 represent, indeed, the realm of Divine Will while the function of shari'a in Islam is determination of the values for human conduct. Political philosophy of Islam is an extension of the Shari'a to the values which should govern the public order by specifying the *Aḥkām al Islam*

from obligatory to reprehensible and prohibitory in relation to the political constitution and conduct of the 'umma. Since, the above mentioned verses throw no light on the problem, they cannot serve as a basis of Shar'ī values about the political arrangements of the Congregation of Islam. This judgment equally applies to the theory of Divine Grace as propounded by Nizām al Mulk Ṭūsī seeking justification for power state in Islam by another nas: "God has promised to those of you who believe and do good that He will surely make them succeed in the land as He made those before them succeed, and He will surely establish for them religion which He has chosen for them and that He will surely give them security in exchange after their fear. They will serve Me, not associating aught with Me (24:55)". This verse is revelation of a divine promise, but in itself does not entail a Shar'ī ḥukm specifying the permissible or reprehensible of the human conduct. It may, however, serve as a measure how far men adhere to the true belief or abide by goodness in their affairs. On the premise that God honours His promises, the Revelation guides us to deduce that if a people live in a wretched state, they are neither men of strong belief nor are like those who preserve goodness in their social dealings. Beyond this inference, no propositions of significance for the Sharī'a of Islam seem to follow from it.

As source of political power and government authority the doctrine of Divine Grace is in absolute contradiction with the doctrine of 'indivisible responsibility of the believers', so clearly expounded by 'Alī b. Abī Tālib, on the authority of muḥakam nusūs al Qurān. The doctrine of Divine Grace as basis of political authority absolves the believers from their duty to exert in the way of Allah for the soundness and proper functioning of the political machine, impoverishes their sense of obligation to raise, uphold, and defend the public order of Islam; extinguishes the fire of life in them; and teaches them withdrawal from their responsibility of organizing collective life of their society in accordance with their moral sense.

The main tradition of Muslim thought, however, does not subscribe to the idea of divine grace as foundation of public authority. 'Abd al Qāhir al Baghdādī defined the shar'ī value of imāma as an obligation incumbent on the believers. Those who succeeded him like al-māwardī, Abī 'Yālā, al Bazdavi, al Ghazālī, al Shaharastāni, etc. defined its place as a *fard bi l kifāya*, in the system of obligations in Islam.

The concept of *fard bi l kifāya* owes its origin to Idris ash Shaff'ī

who assigned systematic positions to different obligations. Though the obligations as such had been duly known before his time, yet they had not obtained their class names. Ash Shaff'iī classified them. He had the following nas in support of his idea of *fard bi l kifāya*. "It is not for the believers to go forth all together. Why, then, does not a party of every group of them go forth, that they may apply to understanding of the religion (9:122)?" This Divine ordinance means that if all the people apply themselves to a public duty and neglect other needs, it is plainly inadmissible. The reasonable method will be that *some of the individuals* from every community or settlement should come out for it. Others should attend other duties. Thus, these duties are such in their character that "those who do not perform (them) will not fall in error."⁴ But, at the same time, if no one goes out for them, all of the people are liable to punishment for their neglect. Ash Shaff'iī quoted Djihād as one of their instances. He said; "If all the men failed to perform the duty so that no able-bodied man went forth to battle, all of them, I am afraid, would fall into error."⁵ Thus, Djihād is a '*fard bi l kifāya*'.

After this clarification, we should probe into the nature of political obligation. Is it a kifāya duty? The logical structure of the shar'iī value of a '*fard bi l kifāya*,' as we know, is such that if some members of the community perform it, either all of them are deemed to have performed it or it so happens that all of them have been free from it. Funeral service is one more illustration in point. If some of the members perform it, the entire group is relieved of its burden. It may be contrasted with five time daily prayers. They are valued as *essential* duty (*Fard bi l 'Ain*). The believers have to offer them, each himself. The one who does not do so is not relieved of their burden. When the political obligation is determined as a *fard bi l kifāya*, as it was fixed by Māwardī, Bazdāvī, Ghazālī, etc. it implies that if some of the people fulfil it, the entire community is free from its responsibility. Supposing that a section of the community comes out and establishes Government, the doctrine of *fard bi l kifāya* as ground of political obligation means that the *ūmma* is relieved of its responsibility.

Before we address ourselves to probing into the validity of this doctrine of political obligation, it is desirable to further explore the nature of *fard bi l kifāya*. It seems to rest on a distinction between an *obligation* and its *fulfilment*. The obligation may be universal in its compass, but its fulfilment may require very few hands; hence its particularization in some members of the society. Burial of the

body after death is considered a universal obligation by all nations of mankind, but its actual fulfilment requires only a very small number of men in every particular case. Similarly, an entire village may need a well for fresh water. If some of their sturdy youths dig a well, the entire village is rid of its want. Such is the origin of *farḍ bi l kifāya*. Its practical side limits it to some individuals. In *djihād* also the same limitation applies. Every society feels the necessity of protection, a *universal necessity* of defence against the enemies from within and without. But this need is met by raising police and military services, consisting of a small section of the whole of society. Thus it is only a particular army which gives fight in a battle. *Fard bi l kifāya*, it means, represents those obligations which by nature imitate a particular logical model which provides that when they are performed by some of the people, all are acquitted. In them, every part is equal to the whole of society.

The work performance of which by some persons is sufficient for all is one of the most important material ground for evolution of the division of labour, a functional differentiation by which the members of society are classified into definable roles and identified with different professional groups. The concept of *farḍ bi l kifāya* is woven with this development, differentiation, and co-ordination of the life-in-group. Human societies need every branch of production and service, but by nature, every individual branch needs and absorbs only a part of the total population, yet its turn over or service is sufficient for all. Now, this social phenomenon should be considered the a-priori ground of *farḍ bi l kifāya* in the *sharī'a* of Islam. Each of the social function becomes a *farḍ bi l kifāya*. Consequently, all of the services, works, utilities, and productions which the society requires and *sharī'a* permits enter into the class of *farḍ bi l kifāya* as part of public order in Islam. Every believer is answerable for their wrong. This aspect entails that every believer is responsible for the proper maintenance of those services and productions. In concrete terms, every one is answerable for agriculture, industry, finance, communication, defence, trade, commerce, etc. The persons who are attached to them are busy with them on behalf of the whole believers, and as such are responsible before them as their *Wūkālā* and deputies for their particular works, which they do as their profession. Thus, all the believers are responsible for the *proper state of affairs* in respect of the *kifāya* obligations. If something goes wrong with those works and productions, they are obligated to take steps, otherwise they are considered guilty of sin in Islam. In this principle lies the whole orbit and secret of Muslim Public

Order. There is, however, an internal tension between the absoluteness of the *farḍ bi l kifāya* which comprehends every member of the community and relative responsibility of its execution which particularizes itself in only some of the individuals. The public order in Islam must resolve this tension, which dualizes itself in two different aspects of the social system, transforming it into a hierarchy of different levels around every obligation. For, the purpose of our present discussion it is sufficient, if the social system is approached in terms of two planes only. Now, let us take the obligation of justice. At one plane, it consists of the courts, their judges, their proceedings, etc. It is how the obligation is fulfilled at this plane. But, at the higher plane, justice is absolute responsibility; every believer is held responsible if its administration is neglected in the society. Thus, justice which as *farḍ bi l kifāya* identifies itself with the courts and judges, at the higher level identifies itself with every member of the society. The public order partakes in both of the levels and determines its set up accordingly. In the form of an executive work, *farḍ bi l kifāya* thus issues from the higher plane, the plane of its absolute, universal *oughtness*, where all the members of the society are directly responsible for it and are liable to answer for its defects, negligence, and mal-administration. The Muslim jurists do not keep in view the levels of the social system definable in terms of the distinction between an obligation and its execution. Consequently, they are often liable to neglect the obligatoriness of the *farḍ bi l Kifāya* and identify it with its execution only. Thus, they are unable to appreciate how the members of public are *shar'ī mukallaḥīn* for it. That execution of a *farḍ bi l Kifāya* requires not all but some of the *mukallaḥīn* is a blessing which allows mankind to divert its energy to other equally important *farā'id*. But, this blessing has been turned into a curse in the politico-legal thought of the Muslim people, by complete reduction of the obligations to their executions only, thus making the whole of the *umma*, except the executives in charge, indifferent to them.

When the Classical and neo-Classical thinkers of Islam like Bazdavi and Ghazālī determine that instituting *imāma* or public authority is a *farḍ bi l Kifāya*, they exhort the believers that if some of them—the privileged class and group—have established it, the *shar'ī* obligation is fulfilled and they are free from its burden. There is no doubt that the function of *imāma* devolves on one or some individuals, but this is the practical side of it by which the believers are acquitted of its burden. It does not in any way exhaust the whole meanings of the obligation. When the *imāma* or public authority is completely

identified with the holders of state, binders and looseners of its affairs and all their establishment, the members of the community, bulk of the population, the general Muslims all are banished from having a share in establishing, maintaining, and running it. The doctrine of the establishment of political authority as a *farḍ bi l Kifāya* leads to the false value that if some persons of the 'umma establish it, all are absolved from its burden and have no concern with its constitution, except obedience to the one who has proclaimed that the political authority is crystallized and augmented in his own person. Since this doctrine is against the obligatory *shar'ī* value as incorporate in the nature of *farḍ bi l Kifāya* that its fulfilment by none makes every body of the community apprehensible for it and that fulfilment always means *normal* and *satisfactory* implementation of an intent, it is a patent distortion of the *sharī'a* of Islam. The nature of this obligation is such that every body is related to and responsible for it.

We may define the *political obligation* as consisting of those duties, according to which it is incumbent on every believer to take every permissible step to see that the establishment of *imāma*, and execution of its purposes by the persons who are entrusted with it, is satisfactory, proper, and in accordance with the requirements of the public order. In that way, the political obligation is '*Fard bi l 'Ain*. It has no identity with the execution of any *fard bi l Kifāya*, nor even with the sum of them. Its sphere is higher. It is identifiable with the collection of the obligations so far as they are absolute universal and in them encompass every member of the society. Thus, in concrete terms, the political obligation contains as its contents those aspects of the *farā'id bi l Kifāya* for which every body is *muḳallaf*. In this sense, it is a *fard bi l 'ain* and obligates every members of the Community to carry out its purposes by suitable constitution and establishment of political authority.

The discussion requires comparison between *fard bi l kifāya* and *fard bi l 'ain*. Both kinds of obligation have the same root and obligatoriness at their basis. But while in *fard bi l Kifāya* the executive agents and their number are not specified, in *fard bi l 'ain* it is duly fixed in all of the people. Thus, it is integral part of its logical structure that every member is required to attend to it for he is subject to questioning about it. To define it, the innate design of *fard bi l 'ain* is raised on the principle that *the orbit of its obligatoriness and the orbit of its execution are identical and co-extensive with every member of the congregation in Islam.*

It is obvious that the political obligation in Islam is fitted in this design, and that all the Kifāya duties are its contents. To state it more clearly, political obligation is not at par with the Kifāyas but transcends and comprehends them. As universal medium through which the society gives effect to its purposes, and makes arrangement for them in the form of its departments, establishments and services, it is in fact ground of all the Kifāya duties taken together. Consequently, it is above them and is distributed over all the members of the community according to the philosophy of Islam. Every man thus, is not only an agent of some kifāya duty as part of the social system, but also an agent and executant of the political obligation. In the former case, he is a technical hand with some particular job; in the latter case, he is a citizen with universal and basic duties. This point may be further illustrated by a number of Divine Commands: "And hold fast, all of you together, by the cable of God, and break not loose from it and remember God's goodness towards you (3:18)". This *nas* is addressed to all of the responsible persons (*mukallafīn*). Since none is exempted from it, it is not a *fard bi l Kifāya*, but a *fard bi l 'ain*. Another *nas*, "Lo, Allah enjoineeth justice and kindness, and giving to kinsfolk, and forbiddeth lewdness and abomination and wickedness (16:90)." This command is also to every body. And one more: "The entire mankind is just like a family of Allah and that person is the dearest in the eye of Allah who does good to His family (XLIX:11)". This also is addressed to all exempting none. "And establish worship, and pay the Zakat and lend unto Allah a good loan (LXXI:20)". "And there must spring from you a group who invite to goodness and enjoin right conduct and forbid indecency; such are they who are successful (III:104)". The commands inherent in the *nusūs* as above are commands to every body and as such are *farā'id bi l 'ain* for which every believer will be answerable. Thus, all the believers are obligated to carry them out as their responsibility. In this (responsibility) lies the origin of political obligation in Islam. The believers are obligated to 'co-operate' in good *deeds*.⁶ This co-operation is universal content of the political obligation as prescribed by the *sharī'a* without which the believers cannot fulfil those commands and their likes. The political obligation is therefore responsibility of every believer as member of the community. He is *mukallaf* for the *co-operation* which establishes political institutions and methods. Its performance by some does not absolve others of the group from its responsibility. It is, therefore, a distributive obligation, an obligation which is equally distributed among all the members of the community. It may be compared with *salat*. Just

as *Salat* is a distributive obligation according to the shari'a, the 'augmentation of Power' of the community by 'comradeship with one another' and use of this power through the mechanism of 'consultation' is a distributive obligation. This augmented power of the people forms political power which encircles all the institutions, arrangements, and functions of the society. It devolves upon every believer as part of his irrevocable and mansûs obligation that he exerts himself for establishing, preserving, and proper functioning of the political system. His negligence of it is a negligence of the absolute commands just quoted above, as he is responsible and answerable for them.

Ali's aphorism is a warning to the believers, that for every public duty which is performed, for every public authority which is exercised, the believers, all the believers are indivisibly responsible. Thus, the obligation in this respect, the political obligation is universal in Islam and encompasses every member of the community according to its shari'a. It obligates every believer to participate in the stream of political activity from which springs up the public order with its hierarchical organization from the supreme Imâma down to the watchman of a village and a frontier guard. All these latter offices are of the category of fard bi l Kifâya, for if the required individuals are inducted into them, all the other members of the community are relieved of their burden. But the political process, on which depends this entire order of offices and jobs is fard bi l 'ain distributed among all the members of the community. Thus, the *indivisible responsibility of the community*, the political responsibility comprehends them as their totality as well as their ground and root. Certain fundamental theorems immediately follow as basic Aḥkâm from the above analysis :

1. Constitution of *political authority* is fard bi l 'ain for which all the believers are individually Makallafîn.

2. The *Consultation* or *interaction of opinions*, necessary for it, is also fard bi l 'ain. If some of the believers participate in it, and others do not, the latter are not relieved of its burden.

3. Those of the persons who create obstruction in its fulfilment, are persons who obstruct the people in a fard bi l 'ain with all of its liability.

4. Those of the persons, who neglect it, are liable to chastisement for the neglect of a fard bi l 'ain.

5. The foundation of political authority and public order in Islam is a burden of every individual who is member of the society.

6. The individual person is directly responsible for its proper constitution and efficient administration.

7. Thus, he is the first and the last authority of the constitution and provisions of the public order.

8. He must fulfil it by seeking co-operation from all the persons responsible like him.

This determination of the basic shar'ī Aḥkām for public order envisages a unique kind of metaphysics. In our age, Iqbal's philosophy is an effort to build up this metaphysics which takes man with his unique sense of responsibility very seriously. When a man is awakened to the Aḥkām ash sharī'a for public order in Islam, he is reborn with a master passion :

I shall go and efface antiquity from the Cosmic spectacle.

To this assemblage of colour and fragrance

I shall impart new dynamism.

Powerless are the ecstasies of the dwellers of the Temples ;

I shall, with my song, move venus from her pedestal.

(Ghalib).

It was however, Iqbal who translated this master passion, the maker of History and moulder of nations into coherent thought and vivid imageries of poetry. "Iqbal is great"; says Cantwell Smith; "because he said with supreme eloquence and convincing passion, what his fellows were beginning to feel, but were unable to formulate". Without beating about the bush, let us immediately recognize that mankind today wants a world order based on respect of all nations, human freedom, righteousness, equality, and brotherhood. The secret of Iqbal's profound vision lies just in discovering and comprehending those spiritual, cultural, and ontological conditions which assure a world-order in which every human soul harvests the fruits of equality, liberty, and free development.

It is very easy to pamper an ethereal notion of those values, but very difficult to transform them into the forces of history. It requires a keen sense of Time and its movement. Eastern nations shun Time and change as illusion. But if Time is an illusion, everything of its stream turns out to be a mere illusion; man and his world, prosperity and destruction, freedom and slavery, glory and poverty, trials and tribulations all alike are reduced to illusions, and with them spirituality, religion, and morals also. Nothing remains.

The key-note of Iqbal's philosophy, for the resurrection of East and birth of a new humanity is, therefore, inculcation of a powerful regard for the reality of Time. He says :

"Thou art the secret of my being; I am the secret of thine.
 In thy soul I lie hidden, out of thy soul I arise;
 I am the traveller, thou the destination;
 I am the field, thou the harvest."¹⁰

Human endeavour is epoch-making, creator of Time. The metaphors of 'traveller and destination' and 'the field and harvest' symbolize struggle, hard work, movement in their vivid imageries. Indeed, to Iqbal, Time and Life are experiences of the same reality from different points of perception. Iqbal's spiritualism, consequently, is held fast to the Realism of Time.

And Time and Spirit become one in movement. Iqbal says :

Realise my friend
 That the cup of life
 Becomes richer and riper
 Firmer and stronger
 Only in movement.
 In this and this alone,
 If thou wouldst see,
 Lies the great secret of eternal life."¹¹

A life infested with inertia and inactivity is swayed by the sweep of Time. "I am the world-destroying sword"; proclaims Time. Only, hard-working and dynamic nations ride over it; "from the efforts of great men cometh my spring". Iqbal, therefore, teaches:

Create a world of your own.
 If ye are amongst the living,¹²

.....

Ask the reality of Life
 Of the Mount-breaker;
 A stream of milk,
 An axe, and a hard granite is Life.
 Ah, in Bondage it exhausts
 Into a shallow stream;
 But in liberty it exalts,
 For a boundless ocean is Life."¹³

Only free people may undergo the true experience of Life, Time and Movement.

Iqbal admonishes :

Like a Bubble ye have arisen
From the ocean of Life;
And in this 'House of Loss'
Your real test is Life."14

How should life pass this test? Iqbal's answer is:

It should be able to burn away
This borrowed Earth and Heaven
And from their cold ashes,
Should create a world of its own.
It should reveal
The hidden Powers of Life
So that this insignificant Spark
May kindle an immortal Light."15

A world reshaped in term of these ennobling ideals is a spiritual democracy, in which every individual is a sovereign and has full opportunities to develop from an 'insignificant spark' to an 'immortal life'. Iqbal believes that this kind of world order sprouts from loyalty to one God. Addressing man, he says:

"Love and fear were mingled in thy making.
Fear of this world and of the world to come, fear of death,
Fear of all the pains of earth and heavens,
Love of riches and power, love of country,
Love of self and kindred and wife.
Man, in whom clay is mixed with water, is fond of ease,
Devoted to wickedness and enamoured of evil.
So long as thou hold'st the staff of *there is no God, but He*
Thou wilt break every spell of fear.
One to whom God is as the soul in his body,
His neck is not bowed before vanity.
Fear finds no way into his bosom,
His heart is affraid of none but Allah."16

Thus, true spiritual consciousness based upon dedication to God is the only ground of spiritual democracy for the man of God: "No man is his slave, and he is the slave of none." Iqbal makes it clear

that "In this world, command is rooted in naked power" but at the same time he demonstrates that "mastery drawn from other than God is pure unbelief", that is, pure tyranny. He brings forth his poetic command to bear upon the typical nature of 'tyranny'.

"The tyrannical ruler who is well versed in power
 builds about himself a fortress made up of edicts;
 white falcon sharp of claw and swift to seize,
 he takes for his counsellor the silly sparrow
 giving to tyranny its constitution and laws,
 a sightless man giving collyrium to the blind.
 What results from the laws and constitutions of kings ?
 Fat lords of the manor, peasants lean as spindles."¹⁷

According to Iqbal, tyranny, in which masses are harnessed to the chariot of a despot, flourishes only among those, whose belief in God is weak, and who are haunted by mushroom fears. That is why, for the rise of the true democracy, he advocates the doctrine of the sovereignty of God as the foundation of new world order. The men who are afraid of none, but God, cannot allow rise of despots, dictators and tyrants, nor do they bow before their rules, edicts and laws.

Iqbal has a sharp eye on the Western democracy, its typology and inner dynamics. He reveals that this kind of democracy, informed of no spiritual principle, has its roots in egoism and self-interest. Greed and avarice are its basic motivations incessantly leading it to self-aggrandizement. Imperialism is the logic of its activities. Says Iqbal:

The Western democracy
 Is the same old instrument
 From whose chords proceed
 No voice save that of Imperialism.
 It is the Monster of Aggression
 Masquerading in the garb of democracy."¹⁸

Capitalism is the organic principle of modern democracy, and consequently, unfolds the meanings of its spiritual basis, "The true nature of the system of imperialism lies"; remarks Iqbal; "not in the existence of an individual leader or a king. Be it a national assembly or the Court of a Parwiz, whoever casts a covetous eye on other's harvest is a King. Hast thou not observed the Democratic system of

the West? With a brilliant exterior, its interior is darker than *Changez*." Being Capitalistic in its spiritual core, Western Democracy is innately covetous in toto and may thrive only on relentless expansion of territories, merciless economic control and mass exploitation of less fortunate people. By concentrating the wealth and resources of the land in the hands of a few families with ever increasing pace, the capitalistic organization transforms the entire society of its own into a miserable mass of less privileged people. The vast gap between the multitudes of 'have not' and the small coterie of "have all" creates most abnoxious social disequilibrium. Capitalism tries to alleviate mass unrest by unloading its internal imbalance on other societies and grabbing their wealth and resources for its own people. For the purpose, it chanalizes their unrest and frustration into what may be called expansionism and carves out for them the idol of hyper-patriotism. Instead of equality of opportunities and equitable enjoyment of the provisions of life, Capitalism, thus, offers to its own people the prospects of prosperity by devouring other lands, imperial depre-dation and expansionism. Modern Nationalism which means a neurosis of glorification for one's nation at the cost of other people, consequently, grows up as its ideological counterpart. It throws an emotional shrouding upon the capitalistic system and hides its ugly face from the stark gaze of its own miserable masses, that is, from the sight of those unfortunate teaming millions who are victim of its scourge from within the boundary of their own social milieu. Western Democracy represents political solidification of the capitalistic organization of society around the nexus of Territorial Nationalism, by which the masses are glutted to serve the evil designs of expansionism.

Thus, Capitalism, Imperialism and territorial Nationalism are interdependent phenomena, *whose collective name is Western Democracy*.

Iqbal says :

Alas for the Democracy of the West,
 This doomsday trumpet's eternal death.
 The tricksters of the Occident, like fate,
 With nations play as if they are mere pawns.
 They play a game, both those who succour bring
 And those who minister their wealth; against
 Each other always ambush lay.
 Must needs be their secret be disclosed: they are

All traders and their merchandise are we.
 Their love of gold has dried their eyes, made them
 So lustreless that mother finds their sons
 But burdensome. Woe to a people that
 Would make the tree all sapless lest it yield
 A fruit; they kill the unborn in the Womb,
 Least, if it grows, its plectrum strikes by chance
 A music deep out of life's chord."¹⁹

Before the Second World War not unlike a seer Iqbal was impelled to utter a warning; "In every corner of the earth, the spirit of freedom and dignity of man are being trampled under foot in a way to which not even the darkest period of history presents a parallel. Engines of destruction created by science are wiping the great landmarks of man's cultural achievements. The governments which are not themselves engaged in this drama of fire and blood are sucking the blood of the weaker peoples economically. It is as if the day of doom had come upon the earth, in which each looks after the safety of his own skin and in which no voice of human sympathy or fellowship is audible". As an ultimate solution of this most alarming situation of mankind, Iqbal said; "Only one unity is dependable and that unity is the brotherhood of man."²⁰

Iqbal rejects Capitalism, rejects Imperialism, and rejects their spiritual fount Territorial Nationalism, for he wishes to realize brotherhood of mankind as the basis of new world order. He said; "My purpose is to look for a better social order and to present a universally acceptable ideal (of life and action) before the world, but it is impossible for me in this effort to outline this ideal, to ignore the social system and values of Islam, whose most important objective is to demolish all the artificial and pernicious distinctions of caste, creed, colour and economic status."²¹ Since Muslims are his co-religionists, Iqbal's message is primarily to them. He believes that if they were aroused to the public and moral ideals of their own religion, they would become torch-bearers and vicars of the new world-order based on equality and brotherhood of mankind. He said; "I have selected the Islamic community as my starting point not because of any national or religious prejudice, but because it is the most practicable line of approach to the problem."²²

Indeed, there are two aspects of Islam: One is private, and the other is public. The private aspect is related to the individual's secret or spiritual communion with God through prayers and fasting

and self-discipline, while the public one is related to society and man's relation with man. In this latter aspect, Islam is coincident with the whole of humanity and it organizes humanity and social institutions on the basis of equality for all, co-sharing in wealth and prosperity, mutual sympathy, and unity of mankind by transcending the barriers of race, creed, language and land. Iqbal firmly believes that those who are possessed of unshakeable trust in God are the people who can realise the supreme ideals that reconstruct the destiny of mankind on the image of brotherhood.

H says of the men of God :

“The man of faith gains form and substance all
From none except Him. Constantly he feels
The stir of life a-fresh; each moment comes
To him a glory ever new like God's.”²³

Philosophers and Poets have an impact on society. Kalidas and Shakespeare refined the aesthetic taste of the people. Guru Nanak and Tulsidas heightened the moral taste. Fichte's "Address to the German People" led to the awakening of the whole of German nation at a time when Napoleon's armies were trampling the Central Europe. But Iqbal has a unique position in the history of our Time. His contribution to the awakening of the Indo-Pak people against the British Raj and to their freedom movement was immediate and direct. In twenties, he was already a national poet. At the time, when most of the champions and leaders of the freedom movement believed in *Cultural Eclecticism*, he saw in *Cultural Pluralism* the final destiny of India. It was his firm conviction that *Cultural Eclecticism* would weaken the moral and spiritual texture of India, slow down, rather reverse the progress of its people and would create unspeakable difficulties in the path of equality of men, social justice, and benevolent public order. His *Cultural Pluralism* as a principle of social and political organization cannot be adequately comprehended by Europe which in itself is divided into small nations based on languages and ethnic prejudices. Democracies thereof, each one is a very simple entity made of homogeneous individuals who are identical with one another in terms of emotions, history, sense of value and strong local affinities. Consequently, a Western state is manifestation of cultural monism, having no similitude in India. Thus, there is no question of ever duplicating the European model in this sub-Continent.

Iqbal's strong sense of human values led him to conclude that

India could achieve dignity of man and provide equal opportunities and facilities to its individuals by consolidating its cultural pluralism. When he found it impossible in one India, he proposed two. There were many historical and political reasons for the partition of India and establishment of Pakistan in 1947, but it was mainly Iqbal's thought which provided its rational justification and articulate goals.²³ An altruistic society based on the socio-political principles of Islam was its ideal. Consequently, its future can be identified neither with Capitalism, nor with Totalitarianism. Its people are bound to chalk out their own public order by selecting or evolving social institutions on the humanitarian ideals of Islam. Though, at present it has to face a number of problems and its final shape has not emerged, yet one thing is clear. It can not duplicate in its being the Western Model of social organization. Its destiny is to become a crucial experiment for the reconstruction of public order on the bases of (1) brotherhood of mankind, (2) concrete and equal facilities to every man, (3) advancement of righteousness, and (4) prohibition of evil. Thus, it has always to take Iqbal as expounder of its meanings.

The world order processed through the creative thought of Iqbal necessitates complete spiritualization of the material elements of life and at the same time materialization of the spirituality of man. Matter and life are continuous truths. Iqbal launched vigorous attacks against the dualism of spirit and matter. And there is no doubt that the developments in recent philosophical thought do support Iqbal's thesis that the distinctions between body and soul are simply frivolous. But portals of the Modern West are raised on this very dualism and project a cleavage between private and public life, religion and politics, individual and society. In this way, there is a deep seated contradiction between the newly discovered philosophical truths and the manifestations of Western civilization. Dualization of human life into spiritual privacy and public sphere is incarante in its laws, policies, business, morals, and culture.

To Iqbal, life is an indivisible whole which admits of no segmentation. Consequently, the artificial rupture between spiritual vocation and worldly business, according to him, is at the root of all evils. As a theoretical concept, segmentation of life is false, because it is full of baseless implications. For instance, it entails the ludicrous conclusions that spiritual advancement has no effect upon public dealings and that there is no difference between the dealings of a saint and a selfish egoist. Iqbal's analysis of the supreme religious exper-

ience is relevant in this context. According to him, the experience of a low quality absorbs the individual and overpowers his ego. But the higher and true religious experience endows the individual with an ineffable power and makes him return to serve the suffering humanity and reform the world. Thus, the spiritual advancement, if it is authentic, manifests itself in reconstruction of the human order and reformation of its public life.²⁴ Its criterion is the progress of society, revolution of the political, economic and social system. This is the Iqbalian sense in which no segmentation between religion and politics, individual and society is possible. There is a permeation; the whole of life, with all of its powers and characteristics permeates all of the spheres of life. Therefore, economics, politics, morals, and religion, etc. represent the same law of permeation. It means that whenever there is improvement, it is at once an economic improvement, a political improvement, and a spiritual improvement. Its reverse is also true. Whenever there is decline, it is not only an economic or political decline but also a decline in morality and religion.

Iqbal's philosophical vision thus has a message of far reaching consequences as follows :

- (1) Bereft of a living union between the private religion of a man and the public policy of his society, the universal human order can not be realized;
- (2) programmes of self discipline and schedules of prayer prescribed for the personal life of the individual, as in Islam, are necessary preparations for his authentic role in the collective life of the society; and
- (3) his participation in social life and full play of role in it is a means of spiritual advancement for him and his group.

Thus, life advances as a unity. Iqbal's thought has, indeed, revived and interpreted the very old truths in which there are some inklings of the unfathomable religious experiences of the greatest of all souls; Abraham, Moses, Krishna, Budha, Jesus and Mohammad. These epitomes of humanity were not shattered by the awe of the supreme experience. From its loftiest heights they made a return to the suffering humanity and reconstituted the world. Theirs is the supreme model for every claim of spiritual advancement. In poetic and philosophical ways Iqbal tried to convey this truth about the spiritual vocation of man. It was his message that no self-abnegating soul can carry forward the weight of higher experience. Only strong and self-preserving souls can build and sustain the world-order on the all-pervading universal truths implicit in its highest cast.

Strength is the twin of Truth;
 If thou knowest thyself, strength is
 the Truth-revealing glass.
 Life is the seed, and power the crop;
 Power explains the mystery of truth and falsehood.²⁵

Weak souls are wrecked by the commotion of world.²⁷
 Lust eats them up, or aesthetic experience disintegrates them, or the
 profundity of some higher experience breaks up their stamina. They
 have no share in constitution or reconstitution of the world.

Iqbal therefore, teaches the doctrine of self-affirmation against the
 orthodox opinion of self-denial. "Make yourself hard like a diamond."
 In a parable, the diamond said to the coal :

Dark earth, when hardened, becomes
 in dignity as a bezel.
 Having been at strife with its environment,
 it is ripened by the struggle and grows
 hard like a stone.
 'Tis this ripeness that has endowed my
 form with light
 And filled my bosom with radiance.
 Because thy being is immature, thou
 hast become abased;
 Because thy body is soft, thou art burnt.
 Be void of fear, grief, and anxiety
 Be hard as a stone, be a diamond!
 Whosoever strives hard and grips tight ;
 The two worlds are illumined by him'.²⁶

In *Javid Nama*, metaphysical dimensions of the same problem
 are unfolded. In the sphere of Jupiter, Iblis, 'the Leader of the
 People of Separation', appeared. "His body was immersed in wreath-
 ing smoke. A sigh of anguish broke from his lips. He wallowed a
 while in his own fumes and a lament rose high" :

God of the righteous and the Unrighteous,
 Man's company has devastated me.
 Not once has he rebelled against any rule ;
 he has closed his eyes to himself, and has

not found himself.

His dust is a stranger to the joy of disobedience,
a stranger to the spark of pride.

.....

Save me from the all too obedient servant!

Set me free from such a quarry ;

Remember my obedience of yesterday.²⁷

That dearth of true individual transforms the battle of good and evil into a farce is one perspective of meaning and that Iblis suffers from terrible loneliness is another system of meaning in the above verses. The arch-devil laments that he has none to confront him; none to greet him; none to denounce him; and none to be friended with. The same fate overtakes those who build up their positions by undermining other souls. Their irresistible sway over the people kills their own spirit and consumes them in the fumes of loneliness. Iblis laments :

“What is man? A handful of straw;
one spark from me is enough for a handful of straw.
If nothing but straw existed in this world,
What profited it to endow me with so much fire ?
It were a shame to melt a piece of glass;
to melt a rock—that is a proper task !
I have become so saddened by all my triumphs
that now I come to You for recompense”.

What sort of recompense does he want ?

“I seek from You one who dares to deny me—”²⁸

Iqbal, here with astonishing philosophical vision brings home the basic law of life. Even Devil longs after a living individual, who may stand straight before him:

“I need a man who will twist my neck,
whose glance will set my body quivering.
Grant me, O God, one living man of faith ;
happy I shall know delight at last in defeat.”²⁹

Iblis is a life, and he too wants a companion or an enemy. The law of life is multiplication of life. A Changez Khan before whom all men are fire-wood and debris may have all things, but not the joy of life. A leader to whom the followers are but furniture of his huge establishment is simply a reduced figure in waste lands. A so-called saviour of the nation, who kills the initiative of his people, and pre-

pare them for slavery to his will is a pyramid, not a living individual. Even the devilish of all the spirits, Iblis kneels down before the law of life, and cherishes to have a really existing ego who may face him. He does not care even of his own defeat for this desire. Thus, he too wants to be limited by the emergence of true individuals.

Man is either a true individual or is not at all. The entire value of the world and its possibilities depends on his arrival:

“It is man who makes the possibilities credible;
 His poise is the norm of all possibilities.
 That which is lost in him, is the world;
 What gets not lost in the world, is he.
 Manifest are the sun and moon by his arrival;
 Even Gabriel has no access to the Privacy of his being.
 Man is loftier than the heavens;
 Respect of man is (thus) foundation
 of civilization.”³⁰

In Iqbal's metaphysics, the universe is a system of purposive correlations between the truly existing egos. A unique individual is he, who is master of his own essential *privacy*; the privacy in which he makes his own choice and is the seat of his own judgments. It is true essence of his being; self-possession in spirit and action. The external world is a system of visible limits, unfolding actual and possible connections between these self-possessing individuals. Consequently, the contents of the world, the structures of physical events assume significance by the presence of man who assimilates them to his purposes. If it does not add to the assimilative power of man, all scientific knowledge worths nothing. Science has helped man in wielding unprecedented power over the physical environment. Modern science and technology is, therefore, an integrated part of the spiritual structure of the human world. And, in the creation of a truly human world order it shall play a critical role.

The ultimate world order, in Iqbal's metaphysics, is a democracy of unique individuals, presided over by the most unique individual. Iqbal's vision unravels three mutually complementing principles as supreme law of this world order. Only, he is truly endowed with existence, whose being as such is confirmed by the following types of consciousness :

Three witnesses should testify thy state.
 The first as witness is thy consciousness

Of self, to see thyself by thy own light.
 The second is another's consciousness,
 That thou mayst kindle thus to see thyself.
 And thy third witness is God's consciousness,
 A light in which thou may'st see thyself."³¹

At every point-instant, the world order is a *state*, and every state is a trilogic projection, a three dimensional set of events. One of its dimension, say length, is definable as the light of one's own self; the second, say its breadth, is definable as the light of other selves; and the third, say its height, is definable as the light of 'Divine Self'.

In European Egoism, '*I and my states*' are the only measure of existence. In pan-Theism, it is *Divine Consciousness*. In Totalitarian creeds, the alter, *my opposite*, is my measure. In Iqbal's theory, *I myself, my logical opposites, and God taken together are the measure of existence*.

Life is a manifestation of God; and it means a community. *I, other selves and God* are the Totality of Existence. And it is community. When an Ego is given to itself only, it is spurious. When, it is given to others, but not to itself, it is a fiction, And when, it is given to itself and given to others, but not to God, it is debased. Constant reference to divine light, is a necessary feature of the truly abiding world order.

Ego, in Iqbal's philosophy is not a speck of consciousness; a simple feeling of self-existence. Had it been so, it would have been a very poor entity, a pitiable creature. Having nothing but only a feeling of existence, it can occupy no place in the scheme of world. Ego is far more than this feeling. It is, to Iqbal, a complex reality. Its existential texture contains three frames of reference. It cannot adequately posit itself, without at the same time, receiving other selves and the Divine Self as concrete aspects of its being posited as such. Thus, its enteleche is governed by three kinds of motives. It moves for itself; for other selves; and for the Divine Self. These motives and movements prepare the web of its life, in which they appear as an indivisible single movement. This movement of the true ego that embraces all—*me, other selves and God*—is denoted as *Ishq* (love) by Iqbal. *Ishq* or love has, thus, characteristically distinct and very delicate meanings in his philosophy. It is dynamic essence and the ego is its structural principle which adds the dimension of time to its three dimensional reality. The following couplets are therefore necessary concomitant of Iqbal's philosophy :

“*Ishq* is the envoy of God; *Ishq* the utterance of God.

Even our mortal clay, touched by
love's ecstasy, glows;

...

Love the priest of the shrine, Love the
commander of hosts,

...

Love is the warmth of life."³²

Love is not subvergence of all in all, nor is it merger of one into another. Love does not soak the ego, nor does it undermine the loved ones. Love is a root that sprouts in society. It is sustainer and nourisher of individuality; and fortifies the border of existence. Love is the principle of individuation; It protects the ego and consolidates alter-egos. Its ultimate end is infinite creative social experience.

The infinite experience is all embracing creative social experience in which *I, you, all others* and *God* partake. It is niche of the individuals; assurance of their limitless evolution, harbinger of their personalities. It is this experience and no other which draws confirmation from the light of my consciousness; the light of other's consciousness, and the light of God's consciousness. Consequently, it alone is the real stuff of reality. Wisdom and Power are poles of its axis, Justice and Mercy are the geometry of its field, creativeness and Bounteousness are its scales, and sympathy is its nucleus. All good names ever borne in human conception are manifest in its commotion. If you look into it, it is a world of command ('*Ālam i Amr*), infinitely distinct from the world of creation ('*Ālam i Khalq*'). Iqbal throws light on *Khalq* and *Amr* by referring to a verse of the Quran. 'And they ask thee of the soul. Say, the soul proceeds from my Lord's Amr (Command): but of knowledge to you is given only a little (17:85).' He says; "In order to understand the meaning of the word *Amr*, we must remember the distinction which the Quran draws between 'Amr' and 'Khalq'. Pringle Pattison deplors that the English language possesses only one word—creation—to express the relation of God and the universe of extension on the one hand and the relation of God and the human ego on the other. The Arabic language is, however, more fortunate in this respect. It has two words *Khalq* and *Amr* to express the two ways in which the creative activity of God reveals itself to us. *Khalq* is creation, *Amr* is direction. As the Quran says: 'To Him belongs creation and direction'. The verse quoted above means that the essential nature of the soul is directive as it proceeds from the directive energy of God; though we do not know how Divine Amr functions as ego unities. The personal pronoun used in the expression *Rabbi* ('My Lord') throws further light

on the nature and behaviour of the ego. It is meant to suggest that the soul must be taken as something individual and specific, with all the variations in the range, balance and effectiveness of its unity. 'Every man acteth after his own manner: but your Lord well knoweth who is best guided in his path (17:84)'. Thus my real personality is not a thing, it is an act."³³

Nature is a prism of pure presentations. Thing, in it, is a bare creation; creation of changes, creation from interior and creation by exterior. It is totality of the *World of Creation* ('Ālam i Khalq). Social realities participate in a different world i.e. the world of command ('Ālam i Amr), where nothing is creation, everything is creativeness. When looked into itself an act qua act is neither creation nor creativeness. It becomes a creation when it is an outcome of (external) forces; a series dependent on the long impetus which gives it content and shapes its being from behind. It floats like a bubble on the formidable drive of events and thus perfectly emulates the order of creation which makes it a thing of nature. But, Nature is rent asunder when the act frees itself from its *push*, becomes self-possessed and attains to its individuality. Now, the logic of creation no longer contains it. It does not remain an outcome of the forces from behind. It lives between *itself to be* and *itself not to be*, an exact emulation of the World of Command. It enters into a social situation as a creative thrust, and in turn becomes a locus of creative response from others. Thus, the social process grows into successive and simultaneous moments of creative acts as member of the 'Ālam i Amr. The moral, legal, political, economic and other necessary systems as aspects of the public order, consequently, project in their structure the logic of imperatives. They are not subject to the laws of becoming; theirs are the laws of creativeness, and consequently presuppose the components of Freedom, Responsibility and Measure in their dynamics.

At bottom, all social phenomenon is informed of an irreducible existential core which makes it an aboriginal fact of reality. It consists of a sui generic *intent* which relates one individual to others unfolding an order of existence in its own right. To our mind, this inexplicable and irreducible intent represents itself as a craving, a living disposition which impels us from within to weave ourselves and all around in a web of relationships. It pervades everything human. Even indifference is one of its examples, a sort of relation which one may like to have with some one else. If one is bent upon running away from others, that too is a social response. Association and dis-association, enmity and friendship, sub-ordination and

governance, co-operation and competition all are its particular determinations positing different aspects and moments of a group.

When the human order is viewed as a reflection of the 'Ālam i Amr, the entire society from its interior appears as an activity. Thus *sociation*, in its substance as its member is an act of *Will*. Evolution of human personality is permeated by it and man always finds himself in the environment of dynamic relationship with all the individuals beyond him.

Springing up from the 'Will to Sociate', each individual brings his own creative moment to bear upon the aggregates of individuals unfolding the world of imperatives above the world of mere creations. The social acts are, therefore, creative acts. An elementary social entity is a continuous creativeness with the individual doings as its contents. Atomic acts of the individuals are integrated into indivisible massive wholes by the constitutive law of sociation, which works from within each of them and thus, public order subject to the laws of the World of Command comes into existence.

Modifications of the contents of a social fact constitute the moments of its change and evolution. Thus, every social fact follows a historical development. It means that Time is its implicit dimension. In principle, thus, there is no *social act* which is not made of creative moments. Every moment is a creative wave. The entire fibre of society in that way is spun by creative thrusts. "Surely, from state to state, shall ye be carried forward (84:19)" It is history, and it belongs to the World of Command.

The world of creation needs no history for it is devoid of value and is indifferent to good and evil. Thus God of Mercy is God of 'Ālam i Amr, the refuge and guide of creative, individual, and singular moments. The revelation that "God will gather you all together, for God has power over all things (2:143)" denotes the logical structure and historical character of human destiny. Assembling of all is inner law of the World of Command. Thus, the stream of social events and the tidal bores of human history do not emulate the topography of Nature. They belong to a new heaven. Divine Mercy surrounds them from all sides.

"Say whose is all that is in the heavens
and the earth? Say: God's. He has imposed
Mercy (Raḥma) on himself as a Law (6:12)."

Thus Raḥma (mercy) is root idea of the world of imperatives, the order of creative truths, the structure of real time for which every body will be accountable.

Informed of the logic of 'Ālam i Amr, Muslim public order is an order of Divine Mercy. All nature is comprehensible in the concept of play or Lila. The Hindu world view comprehends it as 'Bhagvān ki Lila (game of the Creator). But, viewed through the World of Command, it is a serious thing and is with truth (bi l Haq). "Our Lord! All this, Thou hath not created in vain (bil Bāṭil) (3:188)." "He heath created the heavens and the earth with truth (bi l Haq) and has fashioned you and given (you) goodly form (64:3)."

Public order in Islam is a human planning which lifts up man from a mere thing of play in the world of creation for rehabilitating him as a truth. It's concept embraces all the individuals and God is one of them. When there are two, He is the third; and when there are three, He is the fourth. The human order is bi l Haq when it is founded on this truth. And its law is *Benevolence*.

This benevolent order of which mercy is the Law is forged together by Wasāya—pledges: (1) Tawāsu bi l Haq (pledge for truth); (2) Tawāsu bi s Sabr (pledge for patience); and (3) Tawāsu bi l Marḥama (pledge for mercy) as constitutional provisions and guarantees, made incumbent by the nusūs al Qurān. "By the Time. Surly man is in loss. Except those who believe and do good and pledge one another for truth and pledge one another for patience (*al Quran*: 103)". "To free the neck of one in bondage, or to feed in a day of hunger one who is near, or (feed) the immobilized lying in dust. Then he is of those who pledge one another to patience and pledge one another to mercy (90:8)." The system these commitments to one another produce is 'Aqba. Islam recognizes in it an uphill task-to unfetter the individuals from bondage, to take care of the orphan, and to provide food to those who are rendered motionless. Great fortitude and sacrifice is required for it. But God declares: "We have certainly created man to face difficulties. Have we not given him two eyes. And a tongue and two lips. And pointed out to him two conspicuous ways. But he attempts not the uphill road ('aqba). And what will make thee comprehend what the uphill road ('aqba) is. (It is) Cutting the nets and freeing the neck (Fak i Raqba). Or feeding the orphan nearby on a day of hunger, or (feeding) the downtrodden lying in dust (90:8-16)." Those Wasāya, when incorporated in the socio-political system, it becomes 'Aqba. It is like an uphill road. Man Must move forward on it for to live in difficulties is his situation. As prescribed by Islam, the main purpose and constitutional responsibility of the public order is removal of the raqba in which men are caught, ensuring them a space for work with due provisions of life.

Consequently, 'Aqba is technical name of the public order in Islam. The system which fails to ensure mutual care is a mere *Taghā*. The nusus al Quran define it as consisting of :

1. Competition with one another for abundance ;
2. Accumulation of wealth;
3. Depravity for those who are left out;
4. And no care for others beyond oneself.

The end of this system is destruction even of those who are most benefited by it. "Abundance diverts you. Until you come to the graves (102:1-2)". "Your striving is surely diverse. Then as for him who gives and keeps duty. And accepts what is good—We facilitate for him ease. And as for him who is niggardly and considers himself self-sufficient. And rejects what is good—We facilitate for him distress (92:4-10)". "Surely thy Lord is watchful. As for man, when his Lord tries him, then gives him honour and favours him, he says; 'My Lord honours me.' But when He tries him, then straightens to him his subsistence, he says; 'My Lord has disgraced me.' Nay, but you honour not the orphans. Nor do you urge one another to provision for the miskīn (89:14-18)".

The words 'poor,' 'down trodden', etc. really do not communicate the true meaning of miskīn. The root of this word is 'Sakana' which means a circumstance or condition in which a man cannot move, neither to left, nor to right, nor forward, nor backward. It denotes a state of complete immobilization. The man who is caught by it is miskīn. He is left out in the competition for wealth and is alienated from what he possesses. He is ensnared in the raqba created by the exploiting forces of Taghā in the society. Then he is crushed down and razed to ground. If we analyse the immobilization which has besieged the huge number of people it is always found consisting of knots, snares, ambush, etc. spreading over the social space. Men are caught in it left out, made motionless and then crushed down. It is raqba. But the public order of Islam breaks it and adopts 'aqba. By wasāya to one another, the Muslims are committed to it. It may be pointed out that a wasiya is not a *nasiha* (exhortation/sermon). Wasāya Allah, in Arabic, means the Ordinances of God. A wasiya is of the nature of a binding testament which must be fulfilled by one to whom it is addressed, or in whose name it has been made. The Muslims' *act of binding one another by testament* carries with it the greatest of all legal force and constitutional power ever conceivable in the codes of men and creates an order of compulsion. Thus, Tawāsu bi l Haq, Tawāsu bi s Sabr, and Tawāsu bi l Marḥama

lay down the basic law and constitutional provisions of its public order, transforming it into a system of mutual support and mutual care. All the values of the shari'a in public affairs are determinable for their exact meanings only in terms of these wasāya which obligatorily enlarge the duties of state in Islam.

The state has not only to look after the life and property of its populace and protect its frontiers, but also is made duty bound to provide concrete facilities of life to its citizens. It has to give a constitutional guarantee to its members that the public order is such that (1) No one is deprived of the provisions of life; (2) every able bodied person is provided with a work and an income which quarantees him to live in self-respect and dignity; and (3) the guardianless minors of the Society are provided with all the comforts of life. This system of Islam is undoubtedly an uphill road. But the Muslims are pledged to perseverance which means that every one of them is bound to follow it by their collective pledge of sacrifice and fortitude. Man is born to face difficulties.

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24. *Reconstruction*, *loc cit*, pp. 124-25, 184.
25. *Secret of the Self*, 1066-70.
26. *Secret of the Self*, *op cit*. 1214-24.
27. *Javid Nama*, Tr Arberry, 2507-12.
28. *Ibid.*, 2525-33.
29. *Ibid.*, 2535-40.
30. *Javid, Nama*, 1171-80.
31. *Javid Name*. Tr. Mahmud Ahmed, 233-38.
32. '*Bal i Djibril*, Masdjid i Qartaba, Tr. V.G. Kiernan
33. *Reconstruction*, *loc cit*, pp. 102-03.

ERRATA

<i>Page : Line</i>	<i>Correct Reading</i>
12 : 5	absolute alienation
14 : 9	constituted by handing over
14 : 29	in the framework
29 : 48	fictionism which pollutes
32 : 40	Indeed, He.....is Repeater
34 : 6	in utter servitude
34 : 14	arbiter
36 : 25	amidst the people
53 : 20	unforeseeable future
56 : 30	was followed by Ahmed
60 : 22	representation becomes inadmissible
68 : 4	He said; "The seed bursts forth from dust a flower."
70 : 8	Independent of each other
72 : 4	Thus, if a believer