

CIVILIAN AND DEMOCRATIC DIMENSIONS OF GOVERNANCE IN ISLAM

Mohammad H. Kamali

Notwithstanding the long history of scholarship on caliphate and government in Islam, uncertainties persist over the basic concepts of state and methods of governance. This is partly caused by the prevailing tendency in modern writings on Islamic constitutional law to apply the nation-state idea of eighteenth century Europe to the events of early Islam centuries earlier. This essay takes a brief account of these uncertainties and then proceeds to focus on some of the characteristic features of governance in Islam, notably its civilian and democratic dimensions.

I. An Overview of the Discipline

Constitutional law is one of the most under-developed areas of *fiqh* and stands in this respect at the opposite pole of *'ibadat*, on which the *fiqh* is exceedingly elaborate. A great deal of what has been written in the past expatiates on the early caliphate and pay little attention to subsequent developments. The literature that has come about as a result is still wanting of critical evaluation and development in conjunction with contemporary conditions. Uncertainties began to set in at an early stage. The nascent *Khilāfah* of the early decades of Islam had barely realized its potential that military conflict and the subsequent irregularities of dynastic rule exposed it to intolerable disruption. The republican features of the *Khilāfah*, especially consultation (*shūra*) and *bay'ah*, were only nominally kept and were subjugated to the vagaries of a totalitarian system, which characterised the many centuries of rule under the Umayyads, the Abbasids and others.

More recently the Islamic revolution of Iran stimulated Islamic scholarship and many researchers have since written on issues of constitutional law in Islam. Yet despite this welcome

development, as one observer noted "many issues of interest to Islamic political thought and constitutional law remain shrouded in ambiguity which tend to cause hesitation and impede research." It is perhaps the present generation of researchers who will contribute to the development of constitutional law in a way "that would suit the requirements of our age and address issues of concern to us at present."¹

A former Mufti of Egypt, Shaykh Ahmad Huraydi, observed that the political order that held sway in the Muslim lands over the greater stretch of history from the Umayyads to the end of the Ottomans did not, on the whole, comply with the principles of Islam, and those who wrote on Islamic government and administration focused their attention on dynastic practices which did not reflect normative principles, but only expounded the history of government in those times, and there is "a big difference between the two."²

Juristic works on the caliphate are on the whole concerned with the methods of designation of the caliph, his rights and duties and a certain institutional blueprint on the judiciary, vizierate, and departmental structures for the army, taxation, police duties and so forth. This literature does not address modern developments, including the nation state itself, and constitutional themes on democracy, separation of powers and so forth.

Abū al-Ḥassan al-Māwardī's (d.450/1058) renowned *Kitāb al-Aḥkām al-Sultāniyyah* pays more attention to the realities of the Abbasid state of his time rather than the foundational guidelines of the Qur'ān and Sunnah. He pays scant attention to consultation and has no section or chapter on the basic rights of people.

The Qur'ān does not provide a clear text on government although it does contain a number of provisions that either take

¹ Mohamed Selim el-Awa, *al-fiqh al-Islāmī fi Ṭarīq al-Tajdid*, 2nd edn., Beirut: al-Maktab al-Islāmī, 1419/1998, 44.

² Lecture series by Shaykh Ahmad Huraydi held at the University of Cairo—as quoted by Fu'ād A. Aḥmad, *Uṣūl Niẓām al-Flukin fi al-Islām*, 15–16.