

Reflections on the Dilemma of Legitimacy and Legality in the Contemporary Islamic Discourse

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The Contemporary Islamic political thinking is dynamic rather than static, though its dynamism is still slow and sometimes fluctuates. The comparison between what was written in 1950s and 1960s and the ideas and attitudes which that have been discussed recently clearly shows the dynamism that characterises this thinking is characterized with. This dynamism and reflects at the same time the relative maturity of some parties who produced initiated and are carrying this continued it after living for period of time under the fear of loosing identity and disappearing into the "Western political model". This has made many a number of figures in this field, until now, hesitant to settle many issues, whether symbolic or

fundamental, due to the fear of breaking the circle of "invariables". This issue is clear if we reviewed the aspects related to the dilemma of legitimacy and legality in the Islamic thinking in general, and the dynamic discourse of the Islamists in particular.

Dilemma of Definition

Legitimacy and legality have different meanings, yet they overlap in the dilemma of the attitude towards the state or the political system. Legitimacy is defined, according to the International Encyclopedia of Society, as: "The fundamentals that the ruling institution depends on in exercising authority, and is based on the right of the government to exercise the authority, and on the acceptance by those who are led of by this right.". Legality, on the other hand, refers to the extent of compliance of the activity of individuals and groups with the legal framework regulating that activity. Accordingly, there is a

common belief between political science experts of political sciences that legitimacy is a "political' concept", while legality is a "legal'" one. In the first concept, the attitude is directed to determining the nature and pillars of the authority, or the attempt to understand that authority as a political phenomenon, as undertaken by "Joan Luke" and others. In the second concept, there is a shift represented in determining the attitude towards the approach of change and methodology of opposition methodology,. however, there is an overlapping between the two concepts . Legitimacy is also linked to the issue of constitution and this may move legitimacy from its floating inaccurate meaning into a legal one, limiting the freedom of authority and avoiding absoluteness and comprehensiveness in it.

The distinction between these two levels is not new . Controversy was aroused, and lasted for a long time, between legal political scientists and Islamic sect theorists over

determining the hypothetical and fundamental attitude towards the religious and political nature of the state. This was sought through setting the conditions, according to which submission to the state would be mandatory, and then setting up general rules that justified the armed revolt against it or that which justified the acceptance of it, even if its rulers were unjust or it was greatly corrupt.

Reform Stage

The Islamic discourse of reform discourse, during the time of the Arabic literary renaissance, was preoccupied with the issue of modernizing the state or developing its institutions and performance. Reformers believed that in achieving reform and restructure the general atmosphere of the nation would be started. The notion of state had a central importance in their awareness. The situation remained the same with the different political and intellectual trends that

came later and which prevailed over the public affairs and tired tried to achieve change and reform in the Arab world.¹ Attempts to establish a strong modern state were started with the experience of Mohammad Ali Basha, who worked to take advantage from of the Western political model bearing in mind the external greed of the foreign countries. The second attempt came from within the center of the Ottoman caliphate by some young sultans who were influenced by the European power, especially in the social, military, administrative, health and construction fields. This was started by Sultan Mahmoud II, who abolished the janissary and carried out reforms in some sectors such as agriculture, heath and education. The image became brighter with 'regulating' the firman or document which that stressed on the equality between all citizens in the Ottoman caliphate and protecting their property. Moreover, an end was put to confiscating citizen's' money without a legal reason and court order, as well as trying to rationalise the taxation policy, making it fairer,

and limiting the misuse of influence or crossing the jurisdictions stipulated by the law.

The third attempt was made by Khair Eddin Al- Tonisi, who combined between the theoretical establishment of the reform project and the political practices. To achieve this goal, he held many important and responsible posts, including Minister of the Sea, President of the great Council and, especially, Great Minister. The book entitled "Aqwam Al Masalik" (The Right Methods), which summarizes the important reform ideas adopted by Khair Eddin, was based on the concept of reviewing the situation in the European countries in order to understand its development. After doing so, it could be concluded what kinds of reforms were needed to save Tunisia in particular, and the Islamic Caliphate in general from the complete breakdown and falling into the hands of the European occupation.

In spite of Khair Eddin's extensive borrowing from the West, he was very concerned about avoiding falling into the contradiction between the reforms he proposed and the Islamic law. This made his approach in calling for activating the methodology of ijtiḥād based on fiqh al-maqasid (jurisprudence of intents, goals and objectives of Islam) fundamental. In order to minimize the influence of the religiously conservative forces, he worked hard to envelop the political reform with religious legitimacy through denying any contradiction between Islam and his belief of in the necessity of building the state with the values of freedom, equality and justice for all citizens. He said,:

" If a certain conduct came from people who don't belong to us, and was a proper, conduct in line with (religious) evidence, especially if that conduct was originally ours and was taken from us, there is no way to deny it or neglect it. We should work to return to that conduct and follow it " .

Therefore, Khair Eddin believed that the Tunisian state, which was already established at that time, could gain its existence legitimacy and the loyalty of its citizens so long as it adopted ways of awakening and reform. It did not have to put itself for to a popular vote or hold transparent democratic elections in order to gain the trust of its citizens. Instead, it can would gain their trust by (1) reconsidering its choices, (2) accepting to respecting the minimum level of rights, (3) approving the founding of a number of institutions and (4) limiting the one-sided way of ruling by giving the Shura Council actual powers. Khair Eddin was aiming to establish a limited monarchical ruling system, in addition to an elected parliament that held the legislative power and supervised executive authority.

The fourth experience, which is often neglected when discussing the reform, is related to Iran from a geographic point of

view, and the intellectual developments within the Shi'ite atmosphere from a sectarian point of view. We should investigate the protest movement which that was triggered by Hassan Al- Shirazi when he issued his famous fatwa. It forbade smoking between by Shi'ites in an attempt to oppose Shah Nassir's decision of granting concessionary rights to Persian tobacco to a British company in 1890. This fatwa practically led to the withdrawal of the concession after two years of protest. That successful movement was the beginning of achieving what was later known as the Constitutional Revolution, which lasted between 1905 and 1911, a rebellion that was centered over the notion of constitution, or what is called in the Persian political literature as 'Constitutional Mashrooteh'. That witnessed a very important and dramatic turn within the Shi'ite reform and modernization , both at sectarian and political levels. The book entitled "Tanbih Al-Ummah" (The Alarm for Nation) by "Hossien Na'eeni" is considered one of the most important landmarks that resulted from that era. The change that

occurred would have consequences later on the Shi'ite contemporary political thinking.

That time witnessed an intellectual mixture between what was going inside the Sunni reform school led by Jamal Eddin Al- Afghani and the Shi'ite reform school. From a political point of view, establishing a constitutional ruling system was the objective of the period of awakening . Religious reform was used as a beginning and way of reaching the stated objective. The constitutional state does not represent overthrowing of an existing state, but a defence of the continuity of that existing state. To reach that, the existing state should adhere to restrictions and methods that prevent the risk of the absolute rule, paving the way to make nations as partners in managing the public affairs through elections and parliamentary representation. What Sheikh Mohammad Abdoh did by firmly establishing the reconciliation between the Shura and democracy was nothing but an attempt to overcome a conceptual and reform obstacle

that was introduced by the conservatives and rulers to prevent their citizens from practicing their right into the political participation.

Al Nahda (Renaissance) Figures and Characters: an Attempt to Save and Develop the State

Reform icons did not call for the establishment of an Islamic state because they did not question the religious legitimacy of the Ottoman Caliphate. In other words, their argument with the Ottoman Caliphate was not precisely a religious and ideological, but it was basically a political, social and cultural one. In the beginning, they tried to avoid any "clinical death" of the state. However, due to the crisis that including included all parts of the state, all efforts for reform were in vain. This made Jamal Eddin Al- Afghani spare no effort to support the rebellion as a means to impose the minimum level of reform similar to

the situation with the Urabi revolt. Nevertheless, the main goal of Al -Afghani was to unite Muslims and forming a wide camp to face ambitions of the occupation, which was, at that time, extending becoming bigger and spreading into all parts of the Islamic world, dividing it and restructuring its geography, economy and culture.

When the caliphate was abolished by Mustafa Kemal Atatürk, the reformists were divided into two camps. One called for rebuilding the caliphate and was represented by Rashid Ridha. A, while another camp saw the objective of the first camp as a wasted effort, and wanted to give the priority to developing a regional or local state. This state established itself historically and became the only resort for communities which that had lost the bonds of membership with the central body represented by the Ottoman caliphate. Those communities also found themselves, in addition to the local political system, alone, facing Western colonial ambitions and the

accumulation of the comprehensive political crisis, including all parts of the Muslim community .

Reformers avoided calling for delegitimisation of the inherited political system for a long time, although it was eroded by corruption, and incapable of carrying out its basic duties. Those reformists worked very hard trying to convince the ‘rulers’ of the necessity of adopting methods for gaining power as had happened in Europe. They thought that it would be possible and would, if achieved, help to establish a new political legitimacy without a violent revolutionary change or contradiction in a historical context during which the Arab Islamic state was established. Despite their concern and the achievement of some sporadic reforms, a number of factors hindered achieving the realisation of their goals. These reforms hastened the decline and collapse of the caliphate and most of its provinces. Among the factors which that hindered the reforms were

the absence of the historic awareness among the superior groups who were in authority, the flabby condition of the ruling systems and the great imbalance of power that favoured Europe.

The Dynamic Discourse Stage

When the Islamist movements were founded, thanks to the establishment of the Muslim Brotherhood organization in the Arab World and Jamaat-e-Islami in South Asia, the relationship with the state took a different turn from that of the last reform stage. Dynamic discourse tended increasingly to question the legitimacy of the national or modern state, which took the place of the caliphate state. That idea was not clear enough to the founder Sheikh Hasan Al-Banna and he dealt carefully with the crumbled monarcarchical system. He did not discredit the legitimacy of its existence, but was, at the same time, the first one to call for Islam as a religious and state

system, paving the way for the call of establishing an Islamic state. He considered that as a move towards establishing a caliphate state, which had been the strategic goal of the Liberation Party since its establishment. On the other hand, Al-Banna only highlighted the importance of the caliphate state then devoted himself to achieving gradual reform in Egypt and then in the Arab World. He said,:

"The Brothers think that restoring the caliphate is a must in order to realise Muslim unity ... and that it is a ritual Muslims must think and be concerned about, and that the existence of a caliph is a must for applying many of Islam's rules in Islam., Therefore, Brothers, put the idea of the caliphate and restoring it at top of the list of your agenda".

Thus, Al-Banna became one of the Islamists who called for an aqida (creed) state, which has a comprehensive message relative to all aspects of life.

Although he made the establishment of the Islamic state as a goal for his organisation, Al-Banna recognized the legitimacy of working within the liberal political system which was, when talking about Egypt, suffering from great corruption and misconduct. The liberal stage depended on the multilateralism of parties, holding regular elections and asking the parliamentary majority to form the government while preserving a minimum level of freedom for of the press. On the other hand, pressure was put on these practices and processes by the monarchy, as well as British intervention. Even Hasan Al-Banna, who strongly criticized the phenomena of forming political parties and did not see it as the way to save Egypt, sometimes chose sometimes to be close from to the royal palace and sympathetic to King Farouk even if that was against the interest of the Al- Wafd, which had national and public orientations. The chief basic concern of Al-Banna during that stage was protecting his movement, which grew rapidly

and found itself facing many opponents and challenges. Different manoeuvres were undertaken by him in the hope of gaining power and reaching the moment of enablement. However, the obvious involvement of the Brothers in the war in Palestine, and the involvement of the Secret Service in the assassinations of some important political figures, as well as the increasing role of the Brothers and their popularity, all made it a common interest for the English, the royal palace and other parties to stifle the Brothers with by assassinating their leader as well as detaining thousands of its members and targeting their institutions.

That painful confrontation resulted in intellectual and political effects that would be developed later on. The first effect was the denial of any political legitimacy of the monarcharchical system in Egypt. Some of the military, who belonged to the Brothers' movement, cooperated and coordinated with a group of the Free Officers who were

preparing to overthrow King Farouk and abolish the monarchy. These officers received political and logistical support from the Brothers, who considered the military coup as a legitimate action to change the situation. That was the first alliance of Islamists using the military to change a ruling system through power. The same scenario was repeated later on in Sudan, and General Dhia Al-Haq received a great support from Jamaat-e-Islami in Pakistan despite his coup against the execution of Bhutto. The failure of the two previous experiences and their breaches made several movements, which are historically considered to be as an extension of the Muslim Brothers, more careful in dealing with the military, as is the case with the Mauritanian Islamists, who refused to give their blessings to the coup that overthrew a legitimate president.

The Muslim Brothers not only supported the Free Officers but were also willing to sacrifice the political multilateralism as they supported

the revolution's leadership council's decision of abolishing parties, excluding the Brothers. Although the Brothers regretted that decision afterwards and withdrew their support, which provided an opportunity to corner them, their attitude was in to conform to the strong criticism Al- Banna aroused against the party system. That came as a result of tactical or circumstantial considerations related to corruption, which was corroding the experience of forming parties in Egypt. Moreover, the attitude of the Brothers' General Leader was linked to the type of culture he was exposed to during his religious and political upbringing; the culture that he strengthened in his supporters and the movement's members. It was not a coincidence that Al-Banna, the founder, refused to describe his movement as a political party. Instead, he described it as Al-Jama'a (the Group), which has special associations in the old and modern Islamic minds.

Al-Jama'a indicates the congregation and does not accept multilateralism or disagreement. It also indicates the tendency to integrate with community, nation and state. In Sunni culture, it indicates the state of possessing the religious truth, returning to the pure religious source and assimilating the first historical experience of Islam during the time of the Prophet (PBUH). The huge overlap between these concepts made the Brothers' leadership, until now, hesitant and doubtful towards transforming itself into a political party, although many of its members called for that move to be made. The uncertainty about the attitude of a large number of the Islamists towards the legitimacy of party multilateralism within the so-called Islamic State seemed to be the reason of the confusion in the attitude of some Islamic figures, who made a good progress in the intellectual and political moderation and renovation. One of those figures was the renowned attorney Mohammad Saliem Al- Awwa, who believed,

We don't blame the Islamic State if it allowed multilateral parties. The Islamic state may, and must, impose some conditions stating that these parties adhere to the values and rules of Islam. The state, after imposing these conditions, gives these parties the freedom to call for any social, economic and political agendas, and other agendas" . .2

This conditional multilateralism is another example for of what was described by research issued by the American Carnegie Foundation as 'grey areas' in the discourse of the Islamist movements that showed openness to democracy.³

The Alliance with the Military and the Attitude towards Multilateralism

The honeymoon between the Brothers and the Free Officers did not continue for long, especially after displacing Mohammad Najeeb, and Abdel Nasser was the only man who led the revolutionary council. The possibility of coexistence between the two parties was low because ruling a country does not tolerate two heads people struggling over power. The military men came to power, deriving their popularity from many sources such as their presence in power and the assumption that they automatically became the representatives of Egyptians by overthrowing the ousted regime. They also derived their popularity from the decisions they made by which they justified what they considered as transformation from a state of military coup into the state of revolution. From the beginning they opted for silencing all voices of opposition or those that could upset their absolute power. In all cases, the military leadership could not tolerate a growing entity such as the Brothers, which included military elements and civilian elements with military experience. For these reasons, a clash between

them was inevitable. The clash was not between two democratic powers believing in referring to the nation but a bipolar political struggle, and one of those poles had exclusive possession of power refusing to share it with anyone, while the other perceived itself as the origin and source of the religious and political legitimacy.

The Brothers did not deny their alliance with the military in order to change the ruling system, but they thought that the Officers' role would be finished as soon as the situation was stable. The Brothers also believed that the last word must be theirs because they supported the coup and provided the public platform that helped in creating a positive atmosphere for encouraging political change. After analyzing the situation, they believed that they were the representatives of the society and source of the legitimacy. On the other hand, they thought that the Officers were only individuals who accomplished a successful mission and had either to return to their barracks, handing over

the power to the Brothers, or make the Brothers their partners in the direct handling of the issues of the rule and country. Thus, the two parties resorted to using power to solve the problem, apart from the opinion of citizens. The winning party was the one who had the security forces and media at its disposal.

Questioning the Legitimacy of the Nation State

The security campaign against the Muslim Brothers was cruel and horrible. Nassir's regime wanted to eradicate them politically and ideologically without taking into account the future consequences of such an option. These consequences were represented in intellectual reactions or, more precisely, religious reactions. Sayyid Qutob not only denied the Islamic nature of the existing state in Egypt, or other countries in the Arab and Islamic World, but also described that state as

Jahiliyya (Age of Ignorance), which was the enemy of Islam`. Thus, the national state lost its legitimacy in the eyes of Islamists. The reason for that was not because that the state was not undemocratic or did not originate from a free and well-informed choice by nations through transparent and authentic elections but because it did not apply the Islamic law and did not refer to the Holy Qur'an and Sunna in handling its law, judiciary and internal and foreign policies. Due to those reasons and direct confrontation, the state as an authority and ruling system, as well as executive, legislative and judiciary institutions, became the infidel enemy, even if those in charge were undertaking their prayers and fasting during Ramadan.

Dominion or governance, in this context, had become the criterion to ensure whether or not legitimacy and legality were present together. Thus, the national state lost any justification for its loyalty, and rebelling against it, by any means necessary, became a

must, including violating its laws and resorting to violence, which was considered by the groups which that split from the Brothers as a legitimate jihad. These groups transformed its battle with the existing systems and the West also into a confrontation without boundaries. Therefore, they fully rebelled over the different legitimacies or legalities.

In this context, it was important that the Brothers' movement, which was considered to be the largest Islamist movement in the region, did not make, during the its foundation stages, democracy as a fixed strategic dimension for its ideology or political manifesto. The movement was seeking to establish an Islamic state, ambiguous in meaning and characterized by some fundamentals of the modern state without going deep into its intellectual and political structure. The absence of a purely democratic dimension in the Brother's' political culture helped renowned writers, like Sayyid Qutob, to look for alternative theoretical fundamentals establishing an

ideological and religious antonymous relationship between Islam, according to his understanding of Islam and democracy . The ideological and political experience of the Brothers influenced the different groups affiliated to them or the movements that inspired them un the region. This influence impeded the developments of these movements and hindered their maturity and interaction with the demands of the political reform. This influence also made the attitude of these movements towards basic issues, such as constitutional legitimacy, approaching pacific change approach and democracy, continue to be ambiguous despite the developments witnessed by them over the last two decades.

The Theoretical Obstacles

Any researcher, or even the argumentative, cannot deny the change in the Islamic dynamic political discourse, especially since the 1980s.

This change was attributed to the decrease in pressure on most Islamist movements and the presence of a level of freedom and political openness. This encouraged many of these movements to get through experiences that were characterized by a minimum level of party multilateralism. Some of them were even able to run for successful elections and successfully enter the parliament in a number of Arab countries such as Jordan, Egypt, Kuwait, Yemen, Lebanon, Algeria, Morocco, Palestine, Bahrain, Mauritania and Iraq.

These movements were important, and should be studied in order to understand the effects on those who were members. However, there were many theoretical obstacles that hindered and are still hindering the establishment of a democratic Islamic discourse that is clearly and ultimately decisive in the issues relating to the dilemmas of legitimacy and legality.

We can refer briefly to some of these dilemmas in this article.

The Dilemma of the Islamic State

After the decline of Ottoman Caliphate and its abolishment by Mustafa Kamal Atatürk, many Muslim communities felt that they had lost their legitimate state. Although that caliphate was symbolic and based on injustice and exclusive practicing practices of power, it was as if it representing represented a historical stage that will would never return. As for the national state, which was founded to fill the gap, some people continued to fear and doubt its legitimacy. These kinds of states, which were known in many Muslim countries after it attaining independence, were characterized by few aspects of the modern state. Moreover, they maintained their sultanate nature. However, these nation states were accused to of ‘following and adopting the aspects and life style of the West’. Thus,

Islamist movements made it their mission to restore the Islamic state as their a priority and affirmed their willingness to sacrifice all in order to achieve that goal. However, the problem of these movements was that they lacked the vision and set their objectives before defining what kind of ruling system they were endeavoring to establish.

More dangerously, the groups that were inspired by the ideology of these movements decided to enter a bloody and comprehensive confrontation with the existing ruling systems which that brutally suppressed them and attempted to overthrow them. They did not want to reform the state and make it more democratic. Instead, they worked, and still do, to provide an alternative ruling system that is Islamic and applies the Islamic law. However, in the light of the absence of a clear political alternative, the state which that these groups have been working to establish would necessarily be tyrannical in its vision and approach, as well as very traditional in its

nature and discourse because of its declared enmity towards the different fundamentals of the modern state.

Raising the banner of the Islamic state came as an alternative for any different patterns or kinds of the existing states including the democratic state, which was, from the point of view of these groups, contradictory to Islam and, therefore, could not be established in the Muslim communities. It took a long struggle before some figures in these movements started to lessen the false tension between Islam and democracy. The notion of democracy became frequently used in the political discourse of many Islamists, which represented a move in the right direction. However, the notion of the Islamic state had also been widespread, indicating that the state in question was a religious state. As in all religious states during all civilizations, the relationship between the state and democracy would always be unstable and tense.

Giving up the call for an Islamic state, which does not have a historical or fundamental justification, would help abolish the false boundaries between Muslims and the democratic state. Giving up the religious nature of the state will provide the opportunity to talk about a civil state which that derives its institutions from the nation and is managed by people who stand together and respect those who elected them to hold ruling responsibility. Islamising the state can pave the way for the head of state to claim verbally, or by his actions, that his mission is to ‘protect Islam’ and rule according to its law. This situation will gradually lead to tyranny in the name of religion, which is one of the most dangerous aspects of tyranny, according to Al- Kawakibi.

Moreover, abandoning the call for an Islamic state would help overcome the theoretical estrangement between this term and the existing state in different Muslim

communities. The option will not be to raze the state because of the idea that it does not have historical and religious legitimacy, but there will be efforts exerted to reform the existing state in order to make it more respectful and representative of the citizens' will. Efforts will also be exerted to make the state governed by law and derived from the nation so it is not controlled by the rich or corrupt people. Through this direction and vision, the reform dimension becomes mature, the possibility of the violent change of power decreases and reconciliation on the mechanism of the democratic system is reached. Therefore, there will be no contradiction between the right to practice political work and respecting the rules of the game through the democratic system.

In all cases, relying on any religious scripture must not be done to justify or pass on the project of the Islamic state, which is believed, by those who call for it, to allow them to rule in the name of God's authority.

These type of states, from which many communities suffered in the past, should not have Islamic legitimacy because it is contradictory to the text, spirit and experience of the Prophet's state, which was definitely a civil state in the full sense of the word.

Al-Hakimiyyah (Governance), is it for God or Nation? The term of al- hakimiyyah (dominion or governance) represented an intellectual, political and religious dilemma, and created great perplexity in other concepts. This was resulted, and still does, in hindering the positive interaction with the democratic system. We could not find any trace for this term in the literature of scholars of the Arab renaissance scholars such as Al- Afghani, Abdoh or Khair Al Din Al- Tunisi. Instead, the frequent use of this term was related to the raise of the contemporary Islamist movement, more specifically with the influence of Sayyid Qutob with the writings of Abu Al Ala Al - Mawdodi.

This term came as an attempt to create a political nature for the Qur'anic verse (the command is for none but Allah). The command in this verse was understood by the scholars to mean the state or the political and legislative authority, which should not be, as they claim, in the hands of humans because they believed that the state derived its characteristics from God's revelation. In fact, this interpretation was as if 'a word of justice which is used to achieve evil intention' because God is not interested in any direct authority between humans, or He does not intervene in organizing the social or political process, which is merely a human task. God talked to humans through the Qur'anic scriptures using the language of Prophet Mohammad. Those scholars interpreted this scripture according to what they thought to be right in their interests. Therefore, the whole political process from A to Z is a mere human course of action that is subject to experiment, review, error and judgment. Thus, the

authority that rules may be chosen for a nation by a free elections according to a definite political and social agenda, and therefore will be an authority that enjoys popular legitimacy. That authority may also be appointed or impose upon itself by force, and thus would be a usurpative delegitimised authority regardless of the slogans it chanted, whether religious or otherwise. This all means that legitimacy of the rule is not derived from the nature of the religious or ideological discourse adopted by that ruling system but is from the way the ruler reached power, whether through his predecessor being overthrown or through election! Deriving the legitimacy of the ruling authority by this way was not in line with what many Islamists who believe that 'legitimacy must be religious. According to this explanation, legitimacy becomes single, ultimate and comprehensive having many components and applications that are morals, and social, as well as legal and political.'⁴

This interpretation was not common between Sunni Islamic movements only. It was clearly between the wide range of Shi'ite activists and educated people. Clear evidence for that was the radical turn by one of the contemporary Shi'ite schools of political thinking. This, in turn, was initiated strongly by Imam Khomeini. The idea did not remain a dead letter in his book entitled *The Islamic Government*, but became a real experience represented in a strong country which that has a continuing regional role. The theory of the rule of jurisprudence became a source of sharp debate within Shi'ite circles. Despite the clear and well-known differences between Sunni, and specifically the Twelvers branch of Shi'ites in the Imama issue, an overlap still existed between many of the issues discussed by the followers of both sects, especially those who supported the political or movement aspects of Islam. This overlap is clear in both the issues of legitimacy and legality.

Mohammad Jawad Larijani, former head of the foreign political committee of the Iranian National Security Council, besides his university position said,:

"Western foreign culture was is not interested with in the concept of justice

because they believe in a kind of multilateralism. Therefore there is nothing called

just thought because all people are in at same level of justice.. they don't talk

about justice in the field of ruling, but about legitimacy, which means, according

to them,: justifying the authority that some of them have".

Contrary to this Western view, Larijani believes that "The basis of the regime's legitimacy in Islamic government is justice, and the basis of justice is (1) believing in God,

(2) the purpose of creation and (3) believing in the responsibility towards humanity.’. He believed that legitimacy ‘does not come from the nation or any other human being but from the right which may originate from the nation. However, the basis of that right is justice and not nation’. He summarises his opinion by saying,: ‘Democracy sees that the basis of that process is the legitimacy, which is established by the contract (i.e. social contract), while Islam states that the nation should accept the authority of the rule legitimatised by the contract.’. This is due to the fact that the nation ‘in the Islamic system represents the ground needed for the presence of an authority, although the nation is not the source of its legitimacy. If the nation chose a good leader, and then they ceased to obey that leader, and he had the power to face the nation and make it go back to supporting him, he should do so, just as Imam Amir Al Mumineen Ali bin Abi Talib did.’⁵ . Therefore, it is obvious that the dilemma of legitimacy is still strong within the contemporary Islamic thinking and is not limited to a certain group.

From our point of view, the nation should be the source of authority and its physical presence and legitimacy as it represents the body which elects the ruler as well as those who represent the ruler in parliament and the elected Shura councils. Some of the duties that the parliament or Shura councils are responsible for includes enacting laws and supervising the work of those who are in the executive authority. During all these stages and processes, God does not intervene directly or indirectly to appoint a certain group of people or establish any kind of legitimacy of that group. The game and its rules are put played by the citizens, and they control it according to their understanding of the religious texts and its general directions as well as according to their interests and the existing balance of power.

From this side, the organisation of relationships and its their institutional and

hierarchical order in relation to political affairs, and their effect on the structure of authority and its institution and levels will be as the follows:

Ruling organisation including the mediatory institutions such as

parliament, government and leadership

Political and religious culture which is derived from the understanding

of texts and consideration of interests

Interests of social classes

Groups of people who receive texts

Revelation

God

Religious practice in this context is represented in the type of the inherited or dominant culture, which originates and takes an upward trend going through a series of reactions and physiological, cultural economic and social factors. This culture then rises through the up gradually influence of the interests of the active classes that overlap through several and intertwined methods. This type of culture then adapts the public opinion

directing it towards sympathising with a certain political side without necessarily giving religious credibility to any party among those struggling for power; i.e. the side who is holding the power and the opposition. Therefore, we think that the term of 'dominion' can confuse the political system and make it ambiguous, as well as making rulers to fantasise that they rule by in the name of God. This idea necessarily leads to the erosion of the existing democratic political system or prevents it existing. It also paves the way for establishing a religious authority that suppresses in the name of God and abolishes institutions and freedom in name of Islam. This understanding will create a theoretical and practical contradiction between the slogan 'Governance is for God', with all its vagueness and holy associations, and the demand for 'dominion of the nation', for which the democrats are calling ; the demand of the parliaments which that are elected through a direct democratic elections.

Shari'ah and State

The link between the Islamic state and the slogan of 'Governance is for God' is the call for implementing Islamic law. The state, according to those who call for applying the Islamic law, in order to be 'legitimate' should be committed to some issues, such as executing the rules of Shari'ah and making it as a constitutional and legal authority to which all organisations and institutors should bind. This is due to the fact that the state represents the legal component of the aforementioned term 'dominion'. Legitimacy is linked to dominion, in the minds of many people, as long as the law that governs the state is represented in Shari'ah. Therefore, religion is considered as a concept that unites between what is religious and what is political 6. . Thus the contradiction between the dynamic discourse and the modern state begins with questioning the legitimacy of that state, a legitimacy that is based on the positive laws.

From an organisational and formal point of view, it can be said that adhering to the idea of applying Islamic law does not represent, as such, an obstacle for establishing a democratic system. The system in question is based on (1) the principle of separation of the three powers (the legislative, executive, and judicial), (2) holding and authentic and free elections, and (3) electing a president and members of parliament. However, a contradiction still exists between democracy and Shari'ah when some voices that call for applying the Shari'ah claim that elections are forbidden and Islam does not approve parliaments. Another contradiction occurs when there is discrimination between citizens through depriving some of them from the political rights due to factors related to sex or religion. Those who hold that elections are forbidden do not represent the mainstream within Muslim communities and even within Islamist trends themselves. However, those who are opposed giving political rights to women or the non-

Muslim minority still represent a powerful voice.

Between the Procedural Democracy and Actual Democracy

Nowadays, most Islamist movements and trends adopt the technical sides of the democratic system. They do not agree in participating in elections and do not have any essential objections towards most of the rules that govern those elections; the rules that are called ‘procedural democracy’ by some (7). Accepting democracy as a mechanism to settle disputes and struggles, as well as to approve technical techniques by many people does not prevent us from investigating some issues that needs explanation and examination because of the pretext that those issues are strongly related to democratic legitimacy. Democracy is an order and system. That means it is a mechanism to organise the rule and make an easy peaceful transition of power. It is, at the

same time, based on a group of basic rights and values, which gives the technical processes cultural, social and moral dimensions.

Democracy is strongly related to the concept of citizenship. This citizenship, which requires the presence of equality in rights and duties between the population who belong to one country and who are loyal to that country. This requires approving the freedom of individuals and groups, and allowing political and civil work for all, with no exceptions. The right to form parties should be included in a country's constitution and laws, with no exception for non-believers or different secular parties. Opposition is a preserved right for everyone under the democratic system. Therefore, the religious division mentioned in the Holy Qur'an in most of its verses between believers and infidels, and between Muslims and People of the Book (Christians, Jews, and other religions with revealed scriptures) has nothing to do with the political division resulted

resulting from struggle, clashes of interests and disagreements, which are the characteristics of any human activity. A mixture of the two previous types of dividing will inevitably lead to civil war or the suppression of minorities. This requires re-reading for of the Qur'anic text in a way that differentiates between the two levels of dispute:

1 - The religious level, which is represented in mental argument and intellectual

dialogue and protects the specialty of the others which who differ in terms

in religion and sect.

2 - The political level, which represented by seeking to influence the public

opinion, attracting crowds and resorting to law, institutions and ballot boxes.

Therefore, it would be difficult to divide between democracy as a mechanism to settle the political struggle over power and a group of basic values which that are included in international human rights laws. Therefore, both of them are closely connected to each other, and represent an important condition in the way of achieving any one of them.

References:

- *) Researcher and academic from Tunisia.
- 1) Refer to the important book entitled "State in the Contemporary Islamic Ideology", Abd Elah Bilqiziz, Centre of Arab Unity Studies.

- 2) Ridhwan Ziada considered this concept as a cancellation of multilateralism stressing that 'this case is similar to the comprehensive systems that pretend to accept party multilateralism but they link this multilateralism with the parties which have similar ideology, policy and religion as theirs. Therefore, multilateralism becomes like a fake testament rather than real multilateralism.' Excerpt from 'The Islamic State: a Religious Fact or Illusion?' Al-Sharqiyya online.
- 3) 'Islamic movement and democratic process in the Arab World: Discovering the gray areas", by Amr Hamzawi, Marina Otawi and Nathan J. Brown.
- 4) The concept of the religious source origin, [http: Islam online](http://Islam online).
- 5) 'The intellectual components of the political system in Islam'", an interview with Mohammad Jawad Larijani, Al Tawhid magazine.
- 6) Ibid.

7) Salam, R. A 2008, 'From core democracy to procedural democracy', "On secularism and religion and democracy: the concepts and contexts, The Arab House for Science, Nashroun, and Al Jazeera Studies Center, p201.