Political Authority in Classical Islamic Thought

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Unlike Christianity, where normative thought is expressed in theological writings, in Islam normative thought is expressed in legal tradition. According to this tradition, the purpose of Islamic society is to submit to God's will, which is expressed clearly through revelation: Human beings are to create a just society. As political activity is essential for the creation and maintenance of social justice, all political activity is essentially religious activity in Islam. Thus, the discussion of political activity is highly developed and wide-ranging in Islamic legal texts. In this paper, I focus on discussions of the source of political authority in the ideal Islamic state.

Among contemporary commentators on Islam, it has become popular to claim that there is no separation of religion and politics in Islam. This claim, combined with the rejection of secularism by many contemporary Muslim activists, has led some observers to assume that Islam espouses a kind of theocracy. However, this is not the case; the term "nomocracy" is more suitable to describe Islamic political theory. A theocracy is a state governed by God/gods or those who claim to act on divine authority. A nomocracy, by contrast, is a state governed by a codified system of laws. The ideal Islamic state is one governed by individuals or bodies bound by Islamic law.[1]

In this context, classical Islamic legal theory implicitly distinguishes between those empowered to interpret the law (the legislative and judicial branches) and those empowered to make sure the law is being followed (the executive branch). Executive political power—with its coercive authority—ideally would concern itself with safeguarding Islamic law. But because it is subject to abuse, the formulators of Islam's classical theory of political authority considered it an unreliable repository of religious

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responsibility. They therefore retained the primary responsibility for influencing the life of the community in the hands of legal scholars: the legislative and judicial branch of Islamic authority.

I will demonstrate that in classical Islamic thought the ideal Islamic state is one based on laws derived from divine revelation. Even the chief executive officer, whether king or caliph, is subject, theoretically, to Islamic law. Legal scholars make up the legislative and judicial branch of the ideal Islamic state, which is logically prior in importance to the executive. I will introduce this discussion with some background on the centrality of legal theory to Islamic thought.

Introduction to Islamic Thought

In Islamic tradition there is no theology as such. Instead, there is *kalām* (disputation or discussion), which was developed in the early Islamic centuries to analyze rationally, using Greek philosophical principles, certain Qur'anic descriptions of God and to demystify the Qur'an by figuratively interpreting some of its statements about God. The preeminent formulator of *kalām*, al Ash'arī (d. 935), stated that God is beyond human comprehension and that only God's effects are knowable. He asserted that there is no natural causality (there are only occasions for God to cause things, which God does with great regularity so that it looks, for example, like putting a flame to cotton makes the cotton burn when, in reality, it is God's direct action that makes the cotton burn). He also asserted that things are not inherently good or evil and that humans cannot figure out what is good and evil except through revelation. This strain of thought is criticized severely by many contemporary Muslim reformers as having led to a decline in intellectual and spiritual vitality that in turn paved the way for the colonial domination whose effects most of the Muslim world are still struggling to overcome.

Whether or not *kalām* was the culprit in Islam's decline remains an open question, but it never played the central role in Islamic thought that theology played in Christianity. Muslim scholars never accepted the classical Greek division of sciences into practical and speculative, upon which Christian theology is based. One effect of this division is the separation of ethics (practical) from theology (speculative). Such a separation is unworkable in the Islamic paradigm, because ethical behavior ideally is viewed as a response to recognition of divinity. In Islam, ethics proceeds from thinking about God.

There are other examples of this emphasis on ethical behavior as response to God. One is Islam's insistence on "bearing witness" rather than simply "believing." In the Christian tradition, according to authoritative Church councils, one is identified as a true Christian on the basis of what one believes. The Nicene Creed, formulated at the Council of Nicea in 325 as the litmus test of Christian identity, is still recited daily in Catholic Masses around the world. By contrast, the first pillar of Islam, the *shahādah*

—the statement by which Muslims identify themselves—derives from the verb meaning "to bear witness," which has no adequate translation in English. It does not mean "to say" (give verbal assent) or "to believe" (give intellectual assent); rather, declaring the *shahādah* means (ideally) to vow to demonstrate (in one's behavior) that one recognizes that "there is no god but God, and Muhammad is the Messenger of God."

This emphasis on the inseparability of belief and action is also symbolized in the origin of the Islamic calendar in 622, the year the Prophet and his followers emigrated from Makkah to Madinah. In Makkah, the Prophet was preaching and gaining followers, but they were being persecuted by the city's leaders. In Madinah, he and his followers were welcomed and, in fact, the local tribes agreed to abide by his leadership. This event, therefore, signifies the transition of the Prophet's mission from simply preaching submission (*islām*) to God's will to actually creating a just society and institutions that ensure social justice. Had they remained in Makkah and been wiped out, the community's beliefs would have been correct but unrealized and ineffectual. Thus, many scholars believe that this event symbolizes the uniquely Islamic emphasis on action within the monotheistic tradition. Earlier prophets had taught the same truths confirmed in the Prophet's teaching: Muhammad was the "seal of the prophets" (meaning that no more prophets would be necessary) because he made it clear, once and for all, that correct belief is not enough to fulfill the covenant. True belief must be "witnessed" in social action and ethical behavior.

What is important here is that Islam's emphasis on belief-in-action is reflected in the fact that the controlling and unifying role played by theology in Christianity is played by law in Islam. But law in Islam is not simply a list of rules and regulations. As Fazlur Rahman puts it, Islamic law "is not strictly speaking law [in the Western sense], since much of it embodies moral and quasi-moral precepts not enforceable in any court." "[O]n closer examination," he continues, it is "a body of legal opinions or, as Santillana put it, 'an endless discussion of the duties of a Muslim,' rather than a neatly formulated code or codes."[2] That is why we must look to Islamic legal thought, rather than to theology, for ideas about politics as a medium for religious activity.

The Development of Islamic Jurisprudence

Unlike Judaism and Christianity, Islam developed from the outset in the context of political power. Yet Muhammad left no detailed political theory or institutions empowered to develop one. Thus, classical Islamic theory developed gradually and in dialogue with actual political developments.

The classical institution of Islamic leadership is the caliphate. From the death of the Prophet in 632 until 1924, there was, at least theoretically, a *khalīfah* (lit. political successor). Muhammad's prophetic mantle was not inherited by his successors, and he did not leave behind a specific political

system or designate a successor (according to Sunni belief). The Prophet was considered both a just arbiter and the source of divine revelation. Yet the two roles were not fused; the Qur'an even commanded the Prophet to make decisions on practical issues only in consultation (*shūrā*) with members of the community. In addition, the Prophet elicited periodic oaths of allegiance to his leadership (*bay'ah*) from the Muslims. Beyond establishing these precedents, the Prophet apparently left it to the community to devise its own form of governance.

In general, the Prophet's successors were expected to be personally pious and to behave according to the guidance left by the Prophet, but there were no formal criteria for determining the community's leadership or judging its legitimacy. The first successor, Abū Bakr, was chosen by the consensus of the Muslim elders in Madinah. He appears to have suggested his successor, 'Umar, to a council of community leaders who approved the choice. The next two successors ('Uthmān and 'Alī) were also reported to have been chosen by such a council, the choices being presumably ratified by the community's oath of allegiance.

Yet it is unclear even what titles these leaders were accorded. Abū Bakr apparently used "successor to the Messenger of God" (*khalīfat* [caliph] *rasūl Allāh*), while 'Umar seems to have preferred "leader of the faithful" (*amīr al mu'minīn*). However, as Watt points out, there is no evidence of a clearly defined significance for either designation.[3] The Qur'an (4:62) simply commands: "Obey God and the Messenger and those among you in authority." We have no record that the early Muslim community believed it was doing anything more or less than that. The caliphate only came to be institutionalized gradually and on an ad hoc basis, as Muslim sovereignty began to spread and the office of caliphate became a coveted prize. In 661 C.E., following violent competition, the Umayyads, descendants of a leading Makkan family, assumed control of the caliphate and established their headquarters in Damascus. Here, a distinction between executive and legislative–judicial religious authority became apparent: Damascus became the empire's political capital while Makkah remained its religious center. The Umayyads ruled until they were overthrown by the Abbasids in 750. But still there was no theory upon which the institution was based.

However, during this time the field of Islamic law was developing, and a great deal of theorizing was taking place in that sphere, theorizing that would become the basis of Islamic political institutions. In the early days of the Muslim community, there were no official organs of either law or the interpretation of scripture on which law was supposed to be based. During the lifetime of the Prophet and his first four immediate successors (his closest Companions who are regarded by Sunnis as having been of exemplary character and judgment and are therefore called *al rāshidūn* or the "rightly-guided" caliphs), the model of governance was basically that of a revered tribal elder whose behavior became normative. As noted, Muhammad's prophetic role was explicitly distinguished from his practical leadership role. He is even reported to have told his community that they are the best

judges in practical matters, except where the Qur'an directs otherwise. In the Constitution of Madinah, believed to have been dictated by him when he established the community at Madinah, he defined his political role as that of arbiter of disputes. After designating the rights and responsibilities of community members toward one another, he said: "Wherever there is anything about which you differ, it is to be referred to God and to Muhammad for a decision." Elsewhere, "Whenever among the people of this document there occurs any disturbance or quarrel from which disaster is to be feared, it is to be referred to God and to Muhammad, the Messenger of God."[4] Clearly, it was assumed that Muhammad's behavior was divinely guided and that his judgment was sound. The only other monotheists referred to in the constitution (besides the Muslims) were Jews and, although they were designated as part of the community of the Prophet, it was stipulated that they could retain their own religious laws and practice. Those who declared themselves Muslim, in lieu of a developed legal system, deferred to the Prophet's judgment, on a case-by-case basis. Apparently, the *rāshidūn* followed this same model.

The assumption of power and subsequent conquest of vast territories by the Umayyads, however, changed that model. Umayyad general administrative policy, particularly regarding matters of taxation, was to leave in place the extant system, which varied according to whether the area had been under Roman (Byzantine) or Persian administration, the means of acquisition (conquest or treaty), and so on.[5] Thus, huge chunks of policy and legislation were incorporated into the Islamic administrative system with virtually no input from Islamic sources. Furthermore, it became apparent to some that Umayyad leadership no longer evinced the model of wisdom and piety that Islamic leadership ideally symbolized. This recognition fostered the growth of opposition groups. Among them were religious scholars whose objections to Umayyad policies were based on their understanding of Islamic principles. It was in this context that the Islamic community began to develop the foundations for a political theory: the scholars' articulation of the components of legal reasoning, which gave rise to the four schools of Sunni Islamic law.[6]

The Umayyads introduced the office of judge (*qāḍī*), political appointees with varied administrative responsibilities, including police and treasury work, who were generally charged with settling disputes according to local custom. They had a great deal of latitude and could exercise their own discretion with regard to what was permissible given Islamic principles and administrative necessities. By the mid-eighth century, however, there was a significant number of religious scholars who were popularly regarded as having the authority to identify and interpret the sources of normative Islamic practice (Islamic law). They fell into schools of thought, which generally developed according to regional practice. In Madinah, for example, a legal school developed based on local practice and on the interpretations of scripture and hadith reports known locally. It was expressed in the work of Mālik ibn Anas (d. 796),

around which developed the Mālikī school. Another center, with different local customs and different hadith reports, grew up in Kūfah: the school of Abū Ḥanīfah (d. 767), largely developed by Abū Yūsuf (d. 798) and al Shaybānī (d. 804) and known as the Ḥanafī school. The development of these schools was essentially democratic; determination of what was normative in the Qur'an and Sunnah was based on local consensus (*ijmā'*). When there were no apparently applicable precedents in the Qur'an or Sunnah, legal scholars were to use their discretion, as had the Umayyad judges, to determine the implications of what they found in the Qur'an and Sunnah with regard to novel situations. They were to practice ijtihad, the name given to this interpretive work.

As members of the opposition, legal scholars (*fuqahā'*) were naturally favored by the dynasty succeeding the Umayyads—the Abbasids (750-1258)—and came to play an important role in their administration. But their incorporation into the imperial administration revealed the need for greater rigor in legal thought in the hopes of greater uniformity of practice throughout the empire. Thus a third school of Islamic law developed, that attributed to al Shāfi'ī (d. 820) who held that only the consensus of the entire Islamic community (not just the various regions) was considered authoritative. As this was virtually impossible to attain, given the extent of the Islamic community had achieved, it was preferable to follow precedent as much as possible. For al Shāfi'ī, then, the third source of Islamic law was established consensus regarding the meaning of the Qur'an as interpreted in light of hadith reports. Ijtihad could be practiced only as a final resort, but it too was circumscribed: The intellectual effort to determine the implications of the Qur'an and Sunnah was to be according to syllogistic reasoning, or reasoning by analogy (*qiyās*). A fourth school of Islamic law eventually developed and placed even greater emphasis on precedent as expressed in the Sunnah.[7] Al Shāfi'ī's student Aḥmad ibn Hanbal (d. 855) is credited with founding the Ḥanbalī school.

This articulation of the components of Islamic law would become the basis for a comprehensive theory of political sovereignty. As Coulson, a legal historian, put it, "The legal scholars were publicly recognized as the architects of an Islamic scheme of state and society which the Abbasids had pledged themselves to build, and under this political sponsorship the schools of law developed rapidly."[8] But the need for a comprehensive political theory apparently did not present itself until the early eleventh century, by which time the 'Abbāsid caliphs were facing strong competition from regional usurpers, particularly in Egypt and even in Baghdad, their capital. It was this challenge that finally gave rise to a theory of government, propounded by the Shāfi'ī jurist al Māwardī (d. 1058).[9]

Classical Theories of Islamic Government

According to al Māwardī, the caliphate was established in order to continue the work of the Prophet in his capacity as defender of Islam and in

worldly governance.[10] Furthermore, it is obligatory upon the community that someone be placed in the position of caliph. He says that scholarly opinion is divided as to whether that obligation is based on reason or revelation. Reason tells us that

> it is in the nature of reasonable men to submit to a leader who will prevent them from injuring one another and who will settle quarrels and disputes, for without rulers men would live in anarchy and heedlessness like benighted savages.

Revelation tells us, as noted above, that we must "obey God, the Messenger, and those in authority among you" (Qur'an 4:62). Furthermore, there is a hadith report that the Prophet said:

> Other rulers after me will rule over you, the pious according to his piety, the wicked according to his wickedness. Hear them and obey in all that accords with the truth. If they do good, it will count for you and for them. If they do evil, it will count for you and against them.

Either way—whether on the basis of common sense or revelation—there must be a caliph, says al Māwardī. In the absence of a caliph, the community must produce a group of candidates eligible for the position and a group of electors to choose from among the candidates. The latter must be of honorable character; able to practice ijtihad; have sound hearing, vision, and speech; be "sound of limb"; have sound judgment; be courageous and vigorous; and be (male) members of the Quraysh tribe (the tribe of the Prophet). The electors must have integrity, enough intelligence to recognize the candidates' qualifications, and the ability to choose wisely.

In al Māwardī's words, the duties of the caliph are as follows:

1. To maintain the religion according to established principles and the consensus of the first generation of Muslims. If an innovator appears or if some dubious person deviates from it, the [caliph] must clarify the proofs of religion to him, expound that which is correct, and apply to him the proper rules and penalties so that religion may be protected from injury and the community safeguarded from error.
2. To execute judgments given between litigants and to settle disputes between contestants so that justice may prevail and so that none commit or suffer injustice.
3. To defend the lands of Islam and to protect them from intrusion so that people may earn their livelihood and travel at will without danger to life or property.
4. To enforce the legal penalties for the protection of God's commandments from violation and for the preservation of the rights of his servants from injury or destruction.

5. To maintain the frontier fortresses with adequate supplies and effective force for their defense so that the enemy may not take them by surprise, commit profanation there, or shed blood, either of a Muslim or an ally.

6. To wage holy war [jihad] against those who, after having been invited to accept Islam, persist in rejecting it, until they either become Muslims or enter the Pact [*dhimmah*] so that God's truth may prevail over every religion.

7. To collect the booty and the alms in conformity with the prescriptions of the Holy Laws, as defined by explicit texts and by ijtihad, and this without terror or oppression.

8. To determine the salaries and other sums due from the treasury, without extravagance and without parsimony, and to make payment at the proper time, neither in advance nor in arrears.

9. To employ capable and trustworthy men and appoint sincere men for the tasks which he delegates to them and for the money which he entrust to them so that the tasks may be discharged competently and the money honestly safeguarded.

10. To concern himself directly with the supervision of affairs and the scrutiny of conditions so that he may personally govern the community, safeguard the faith, and not resort to delegation in order to free himself either for pleasure or for worship, for even the trustworthy may betray and the sincere may deceive.[11]

Beyond the final article, which stipulates generally that the caliph must pay attention to this work and not delegate it irresponsibly, each of the duties of the caliph falls into one of three categories: defense, treasury, or executive. He is to defend the community from attack (article 3), maintain frontier defenses (article 5), and wage war against those who refuse either to become Muslims or to enter into treaty with Muslims (article 6). Regarding fiduciary responsibility, he is to collect both the alms payments required of all Muslims (to be spent on the needs of the community at large) and the legitimate spoils of war (article 7), fairly determine and pay salaries from the treasury (article 8), and make sure those he appoints handle treasury moneys honestly (article 9). Finally, he is to make sure that the established principles of religion are safeguarded (article 1) and that legal judgments and penalties are enforced (articles 2 and 4). In no case is the caliph granted legislative or judicial authority.

It should be noted that these are the qualifications set out by legists in the event the community is given the chance to determine its own candidates. As al Māwardī notes, that is only the case when the previous caliph fails to designate his successor and, not surprisingly, it was virtually unheard of that someone did not at least claim to have been designated by

the previous caliph. It should also be pointed out that although al Māwardī's treatment implies that a wayward ruler may be replaced by due process, in fact none ever was. Indeed, given the fact that there were insurrectionary groups attacking the caliphate at the very time legists were working out Islamic political theory, thinkers from al Māwardī on insisted that even a ruler who fails to live up to the ideal standards must be obeyed.[12] As the saying usually attributed to Ibn Hanbal has it, sixty years under a tyrant is preferable to a single night of anarchy.

Furthermore, as the list of qualifications for the office stipulated, the caliph should be capable of ijtihad. Nevertheless, it was also recognized quickly that he rarely was. This seems to be the source of the idea that he could delegate his authority to legal scholars, as well as to the idea, expressed by the Shāfi'ī scholar al Juwaynī (d. 1985) that it is the legal scholars who possess real authority in the community. Therefore, the caliph could be a *muqallid* (follower of precedents or imitator, rather than an independent thinker), so long as he consulted religious scholars.[13] This would become the defining paradigm of Islamic political thought: Islamic law is the ultimate source of political authority.

The classical theory of Islamic government received its fullest treatment in the work of the thirteenth-century Hanbalī jurist Ibn Taymīyah (d. 1328). In his best-known work, *al Siyāsah al Shar'īyah*, he explains that he is setting out the requirements of Islamic government. He begins by clarifying that the exercise of authority is one of the greatest religious duties, because "the children of Adam cannot insure the realization of their (common) interest except by meeting together, because every one of them is in need of every other one."[14] And their "common interest" is to live in justice: "To judge according to justice, to render dues to those who have a claim on them, constitute the essential principles of just government and the very purpose of public life."[15] Elsewhere, "On justice rests the preservation of both worlds; this world and the next do not prosper without it."[16]

To Ibn Taymīyah, it is both self-evident and confirmed by revelation ("according to religion and reason") that some people are leaders and most are followers. But he distinguishes real leadership ability from another ubiquitous human tendency—the desire to control: "[L]onging for exaltation over the people is (an aspect) of oppression, since all people are of the same kind."[17] The fact that we are social animals makes it necessary for us to establish some kind of government; the fact that many are prone to try to control others makes it necessary to establish righteous government. Taking his cue from the Qur'anic verse he once described as one-third of the Qur'an (3:110), Ibn Taymīyah says: "The ruler is there to enjoin good and forbid evil—this is expected of him in his position."[18] However, it is not the leader who makes a community righteous, in Ibn Taymīyah's opinion, but rather the guidance of the community by Islamic law. Thus, the title of his *al Siyāsah al Shar'īyah* means government by Shari'ah (the term generally used to designate the entire body of Islamic law but which, more precisely, means God's unchanging will for humanity; the practical codes of

law developed by Islamic jurisprudents are called *fiqh*, which is human in origin and subject to revision. This distinction will be discussed in greater detail below.). A community guided by the Shari'ah is the *al ummat al wasaṭ*, the "just, equitable nation" described by the Qur'an.[19]

Accordingly, Ibn Taymīyah draws a clear distinction between religious and strictly coercive political authority. The example of the Prophet and the *rāshidūn* notwithstanding, leadership of the community is not the sole preserve of the caliphal authorities. He agrees with the prevailing opinion that even unjust rulers are preferable to anarchy (although rulers commanding outright contravention of God's will must not be obeyed).[20] The government's authority is called *wilāyah*, a kind of deputyship or management. Ideally, he says, it is a trust (*wakālah*), like the responsibility of a shepherd to the flock. He cites a hadith wherein the Prophet is supposed to have said: "All of you are shepherds, and every shepherd is responsible for his flock," and then concludes that the authority of the caliphal government is "a trust, for rulers are trustees of the souls of believers as in a partnership."[21] Referring to the government's work as treasurer for the community, he stresses again: "Treasurers have not the power to apportion the funds as an owner may divide his property; rather they are custodians, representatives, stewards, not owners."[22]

Overall, in fact, Ibn Taymīyah describes the caliphal government as a practical reality, not a scared or doctrinal issue. He argues against the Shi'i view that the leader of the community is not only essential to the Islamic identity of the community but is infallible.[23] He says that only the leadership of the Prophet was divinely instituted. Even the leadership of the *rāshidūn* was only relatively perfect. They had been close enough to the Prophet to be able to lead the community in a pious way. But since that time, political leadership has degenerated into mere kingship, temporal and practical, at best. Furthermore, he agrees with al Māwardī that executive leadership should be decided by consensus, or at least a preponderance of opinion of an electoral body, and that its opinion should then be offered to the public for ratification. Like any contract, it should be accepted freely by both sides and both have the right to a reasonable expectation of benefit. The community has the right to expect peace and social order, and the executive has the right to expect obedience so long as he leads in accordance with Islamic law. Again, then, the overriding authority is Islamic law, the legislative–judicial branch of government, rather then the executive.

Ibn Taymīyah makes this quite clear when he says that the identifying feature of an Islamic society is not its leader's character but rather the people's responsiveness to the Shari'ah.[24] For that reason, he devotes fully half of his book on Islamic government to the duties of the ruled and a good deal of his other writings to correcting what he believed were deviations that had crept into Islamic practice. Therefore, he says, it is not the sultans—those with executive authority—who bear the legacy of the Prophet's and the *rāshidūn*'s righteous leadership; it is the religious scholars. In his treatise on the authority of the founders of the four Sunni

schools of law, Ibn Taymīyah reminded readers of the Qur'anic injunction to obey God, the Prophet, and those in authority in the community. But he identified "those in authority among you" as the religious scholars, whom he called "heirs of the prophets, and [those to] whom God gave the status of stars for guidance in the darkness of land and sea."[25]

In this context, Ibn Taymīyah finds the distinction between Shari'ah (God's will for human beings) and *fiqh* (the laws human beings devise) to be essential. He criticizes people who confuse the two:

> People who [confuse Shari'ah and *fiqh*] do not understand clearly the distinction in the meanings of the word Shari'ah as employed in the Speech of God and His Apostle (on the one had) and by common people on the other . . . . Indeed, some of them think that Shari'ah is the name given to the judge's decisions; many of them even do not make a distinction between a learned judge, an ignorant judge, and an unjust judge. Worse still, people tend to regard any decrees of a ruler as Shari'ah, while sometimes undoubtedly the truth (*ḥaqīqah*) is actually contrary to the decree of the ruler.
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> The Prophet himself said: "You people bring disputes to me; but it may be that some of you are able to put their case better than others. But I have to decide on evidence that is before me. If I happen to expropriate the right of anyone in favor of his brother, let the latter not take it, for in that case I have given him a piece of hell-fire." Thus, the judge decided on the strength of depositions and evidence that are before him, while the party decided against may well have proofs that have not been put forward. In such cases the Shari'ah in reality is just the opposite of the external law, although the decision of the judge has to be enforced.[26]

The weight of Islamic governance having been placed on jurists, Ibn Taymīyah is careful to guard against claims of infallibility on their part.[27] Furthermore, as even a valid judgment is subject to amendment in light of new evidence, Islamic legislation must remain flexible. For that reason, Ibn Taymīyah is opposed to *taqlīd* (imitation of legal precedents). A devoted follower of Ibn Hanbal, Ibn Taymīyah does not deny authoritative judgments—determined on the basis of consensus—by the eponyms of the four schools of Sunni law.[28] But like al Shāfi'ī, Ibn Taymīyah says that, given the vast extent of the Islamic community, consensus among legal scholars is no longer feasible. Even if it were, that would not relieve qualified jurists of the responsibility to examine all evidence in every case, as well as all pertinent arguments in their own school and in others, and then determine on the basis of the Qur'an and the Sunnah the most suitable judgment. If a jurist determines that there exists a precedent resonant with the spirit of revealed truth, that precedent should be applied regardless of the school of law in which it is found. If he does not find an appropriate

precedent, he should not hesitate to judge independently—to exercise ijtihad—in accordance with the principles he has determined to be most conducive to justice.[29] The direct relationship envisioned here is one between a jurist and revelation; no human authority should serve as a filter for a qualified jurist. Only those untrained in Islamic law are allowed (indeed, obliged) to follow the teachings of human authorities.

For Ibn Taymīyah, then, careful scrutiny of the cumulative tradition of Islamic law was essential to the life of the Muslim community. But the fact that an opinion may have been suitable at a given time and place was no guarantee that it would be suitable in another time and place. This is why he rejected *taqlīd*. To convince others of the point, he called upon the witness of the very scholars being imitated: "[T]he imams themselves have demonstrably admonished the people against their imitation and commanded that if they found stronger evidence in the Qur'an or in the Sunnah, they should prefer it to their own."[30] In all cases, it must be the Qur'an that determines a judgment. In particular, he cites Mālik and al Shāfi'ī, as well as the first caliph, Abū Bakr: "Follow me where I obey God; but if I disobey Him, you owe me no obedience." The founder of his own school, Ibn Hanbal, is quoted: "Do not imitate me or Mālik or al Shāfi'ī, or al Thawrī, but investigate as we have investigated."[31]

Thus, ijtihad for Ibn Taymīyah was not only perennially possible but was also essential to the practice of Islam, and disagreement among the *fuqahā'* (legal scholars) was not a sign of weakness: It simply reflects their humanity and the need for flexibility of Islamic law. Here Ibn Taymīyah expands upon the Hanbalī notion of *istiṣlāḥ* (having regard for social well-being or public interest in rendering legal judgments). The Mālikī and Shāfi'ī schools also use this principle, while the Ḥanafis use a similar principle known as *istiḥsān* ("approval" or juristic prerogative). In either case, it is a mechanism whereby strict adherence to established precedent or strict legal reasoning can be bypassed if, under the specific circumstances at hand, the common good would not be served by such a judgment. The well-being of the community, its common interest, as Ibn Taymīyah put it above, is justice, the very purpose of Islamic law, of public life, and of the Muslim community. In the commitment to justice lies what Ibn Taymīyah identified as social solidarity (*ta'āwun*), not in uniformity of legal judgments. This is what binds the Muslim community into a unity throughout history, from its origins with the prophets to the final judgment. It is primarily a moral unity, rather than a political unity or even an absolute uniformity of practice. Like the judgments of the *fuqahā'*, jurisprudents, or legal scholars, different communities' practices can diverge to a certain extent, as long as the core of moral unity remains.[32] The ideal Muslim community he described is one whose members are mutually supportive in encouraging goodness and denouncing evil and in issuing the invitation (*da'wah*) to follow the law of God. Participation in issuing this invitation, both in work and in deed, to join the community of God's witnesses on Earth—i.e., to live Islamic

law—is the core of Islamic unity or solidarity. Provided this type of unity exists, differences in practice and judgment are not only acceptable but inevitable.

Conclusion

What Westerners think of as the three branches of government are, in classical Islamic theory, split between those who wield coercive power (the executive branch) and the legislative–judicial branch. The former has authority over defense matters and is charged with managing the treasury according to the law as well as executing the laws and the judgments of legal scholars. But by far the greatest emphasis is on the latter branch, particularly its legislative capacity, for a community's identity as Islamic lies not in the leader's behavior but in whether or not Islamic law prevails.

This orientation is reflected in the classical designation of the Islamic world as *dār al Islām* (abode of Islam) as opposed to *dār al 'ahd* (abode of covenant), *dār al ṣulḥ* (abode of truce), or *dār al ḥarb* (abode of war). Although these terms do not appear in the Qur'an, *dār al Islām* became the classical scholars' most common designation for the Muslim community.[33] It refers specifically to those territories whose leaders are Muslim. *Dār al 'ahd* and *dār al ṣulḥ* are regions whose leaders have agreed to pay the Muslim leaders a certain tax and to protect the rights of any Muslims and/or their allies who dwell there, but who otherwise maintain their autonomy, including their own legal systems. *Dār al ḥarb* is a region whose leaders have made no such agreement and where, therefore, Muslims and their allies, unprotected by law, are technically under threat.

In actual practice, most Muslims follow the law of the school prevailing in their region. Shāfi'ī law, for example, is dominant in Indonesia, while Hanbalī law prevails in Saudi Arabia. But theoretically, as Ibn Taymīyah stressed, no one is forced to follow a particular school of thought. Each jurisprudent has not only the right but the responsibility to study as broadly as possible in all legal schools before making a judgment on Islamic law, and individuals are technically free to follow the judgments of those they consider the wisest and most just. This freedom within Islamic law is, in fact, the focus of contemporary discussions of democracy in Islam. A claim could even be made for populism in Islamic political theory, since anyone can enter the ranks of the *fuqahā'* and thus participate in the dominant branch of Islamic government. Indeed, as Hallaq argues, the science of Islamic jurisprudence was developed precisely to set out the procedures whereby anyone with proper training could participate in this branch of the government:

> The primary objective of legal theory . . . was to lay down a coherent system of principles through which a qualified jurist could extract rulings for novel cases. From the third/ninth century

> onwards, this was universally recognized by jurists to be the sacred purpose of *uṣūl al fiqh* [the roots of Islamic legislation]."[34]

Populist or not, however, sacred legislation is considered a communal duty in Islam. That means that although not everyone need assume this responsibility, at least enough people have to undertake it to get the job done. And the job, as articulated by Ibn Taymīyah, is to establish a just society. Therefore, at least in classical Islamic theory, participation in the dominant legislative–judicial branch of government—the one designed to make sure the entire government is functioning according to the law of God—is religious activity. And that religious activity is the source of political authority in classical thought.

Endnotes

1. I will confine this discussion to Sunni Islamic thought. Shi'i Muslims, some 12-15 percent of the world's Muslim population, maintain a different theory.

2. Fazlur Rahman, *Islam and Modernity* (Chicago and London: University of Chicago Press, 1982), 32. Historian of Islamic law N. J. Coulson puts it this way: "The ideal code of behavior which is the Shariah has in fact a much wider scope and purpose than a simple legal system in the Western sense of the term. Jurisprudence (*fiqh*) not only regulates in meticulous detail the ritual practices of the faith and matters which could be classified as medical hygiene or social etiquette—legal treatises, indeed, invariably deal with these topics first; it is also a composite science of law and morality, whose exponents (*fuqaha'*, sing. *faqih*) are the guardians of the Islamic conscience." N. J. Coulson, *A History of Islamic Law* (Edinburgh: The University Press, 1964), 83.

3. W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: The University Press, 1968), 32 ff. Here, he discusses the meanings of the term *khalīfah* at the time Abū Bakr seems to have used it. His conclusion that the term had no more specific meaning than "one who comes after" is generally accepted by scholars, although the term is used in the Qur'an in a few places with the connotation of "deputy" or "vicegerent."

4. Articles 23 and 42 of the Constitution of Madinah, from Ibn Hishām's *al Sīrah*, translated by Watt in ibid., 132-33.

5. The general pattern was for Muslim conquerors to exact some sort of tribute to reflect their sovereignty while leaving it to local authorities to collect taxes according to their established customs. The local officials' degree of autonomy was often affected by the nature of the conquest. When the lands were acquired through military conquest, the administrative system established generally reflected more the conqueror's discretion than those acquired by a treaty of capitulation. At times, however, a system of taxation was simply imposed regardless of the means of conquest, or the amount of tribute expected may have been fixed in advance of the conquest and only the means of collection left to local officials. Iraq, for example, was conquered by military victory over the drained Sasanid forces and with the help of the Shaybān bedouins. Native Arab subordinates were left in control of taxation and followed the Sasanid tradition, which included both a land tax and a poll tax and varied according to the degree of wealth among the populace (except for the aristocracy, who were exempt from the poll tax). In order to maintain this exemption, the aristocracy generally converted to Islam. In Syria, on the other hand, where Islamic dominance was achieved largely by treaty, tax collection and tribute were left to the discretion of native administrators. In general, they followed the fiscal system of the previous Roman overlords. More complex than the Persian system, the Roman model included a personal tax only on colonists and non-Christians and a property tax that varied according to estate size. A small parcel was apparently taxed according to the measure of its cultivation, while

larger estates were taxed according to the number of people working the land. In Iran and the Transcaucasus/Central Asia, the Sasanid system of land tax and poll tax, regardless of conversion, seems to have remained intact. A tribute was simply fixed by the conquerors, and local chieftains were left to administer taxes as they saw fit. See al Baladhūrī, *Futūḥ al Buldān*, ed. DeGoege (Leiden: E. J. Brill, 1866 [translated by Phillip K. Hitti as *The Origins of the Islamic State* (New York: Columbia University Press, 1916)]), 110-12; Aḥmad B. Abī Ya'qūb al Ya'qūbī, *Tārīkh*, ed. Th. Houtsma (Leiden: E. J. Brill, 1883), 2:150-51; al Ṭabarī, *Tārīkh al Rusul wa al Mulūk*, ed. M. deGoeje et al. (Leiden: E. J. Brill, 1879-1901), 1:2111-12, 2121-24; Ibn 'Asākir, *al Tārīkh al Kabīr*, ed. 'Abd al Qādir Badrān and Aḥmad 'Ubayd (Damascus: 1329-51 A.H.), 1:130; Ibn al Athīr, *al Kāmil fi al Tārīkh*, ed. C. J. Thornberg (Leiden: E. J. Brill, 1867), 2:312-13; see also Daniel C. Dennett, Jr., *Conversion and the Poll Tax* (Cambridge, MA: Harvard University Press, 1950), 12 ff.; C. Cahen, "Djizya," *Encyclopedia of Islam*, 2d ed., 2:259; H. Lammens, *Etudes sur le regne du Calife Omaiyade Moaiwa 1er* (Beirut: Imprimerie Catholique, 1930), 226.

6. See Coulson, *History*, chapters 2-3, upon which this account is based.

7. Ibid., 70-71, and Wael B. Hallaq, "Was al-Shafii the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies* 25, no. 4 (November 1993): 587-605.

8. Coulson, *History*, 37.

9. In Marshall G. S. Hodgson's analysis, dynastic families had seized control of the central political power of the Muslim empire (the army and the treasury that supported it) before there was any theory of political legitimacy in Islam. But by the tenth century, regional principalities had emerged and, while they were generally content to pay nominal allegiance to the Baghdad caliphate, they posed a challenge to the central caliphate's real power. Hodgson says: "The caliphate itself was in question, in a world ruled by arbitrary amirs [princes], and the caliphate had proved willing to turn to Shar'i principles in its crisis. Hence the scholars set about developing the theory of a *siyāsah shar'iyyah*, Shar'i political order." See *The Venture of Islam, vol. 2: The Expansion of Islam in the Middle Periods* (Chicago and London: University of Chicago Press, 1974), 55. It should be noted that even in al Māwardī's formulation, the term imamate is used rather than caliphate. Scholars agree, however, that the terms are interchangeable in this context.

10. The following account is taken from pp. 3-6, 14-15, and 19-20 of al Māwardī's *al Aḥkām al Sulṭānīyah*, trans. by Bernard Lewis in *Islam*, vol. 1: "Politics and War" (New York: Harper Torchbooks, 1974): 171-79.

11. Nevertheless, al Māwardī notes that the caliph may delegate the following four kinds of authority: a) Those who have unlimited authority of unlimited scope. These are the viziers [ministers], for they are entrusted with all public affairs without specific attribution; b) Those who have unlimited authority of limited scope. Such are the provincial and district governors, whose authority is unlimited within the specific areas assigned to them; c)Those who have limited authority of unlimited scope. Such are the chief *qāḍī* [judge], the commander of the armies, the commandant of frontier fortresses, the intendant of the land tax, and the collector of alms, each of whom has unlimited authority in the specific functions assigned to him; and d) Those with limited authority of limited scope, such as the *qāḍī* or a town or district, the local intendant of the land tax, collector of tithes, the frontier commandant, or the army commander, every one of whom has limited authority of limited scope.

12. See Fazlur Rahman, "The Law of Rebellion in Islam," in *Islam in the Modern World: 1983 Paine Lectures in Religion*, ed. Jill Raitt (Columbia, MO: University of Missouri-Columbia Department of Religious Studies, 1983), 1-10.

13. Muḥammad al Juwaynī, *Ghiyāth al Umāmah* (Alexandria, Egypt: 1979), 274-75: "If the sultan does not reach the degree of ijtihad, then the jurists are to be followed and the sultan will provide them with help, power, and protection." Quoted by Wael Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies*, no. 16 (1984): 13.

14. Ibn Taymīyah quotes the Prophet in this regard: "If three of them were on a journey, they should choose one of them as a leader [*qā'id*]." Ibn Taymīyah, *al Siyāsah al Shar'īyah fi Iṣlāḥ al Rā'i wa al Ra'īyah*, ed. Muḥammad al Mubārak (Beirut: Dār al Kutub

al 'Arabīyah, 1966). Except where specifically noted in brackets, English quotes are taken from translation by Umar Farrukh, *On Public and Private Law in Islam* (Beirut: Khayats, 1966), 187-89.

15. Ibid., 2.

16. Ibid., 165; cf. p. 12, where Ibn Taymīyah says that those in authority "should make over trust to those worthy of them and . . . administer justice fairly."

17. Ibid., 191.

18. Ibid., 83.

19. Ibid., 55. Erwin Rosenthal points out in his *Political Thought in Medieval Islam* (Cambridge, 1958) that Henri Laoust translates *ummat wasaṭ* as "la nation de just milieu." "It may be asked," Rosenthal states, "whether this meaning was actually in Ibn Taymiyah's mind. In view of his rigid Hanbalism I am rather inclined to give preference to my second translation, 'the just, equitable nation,' and to take *wasat* in the sense of Aristotle's *mesotes*. The term occurs in the Qur'an (2:137) in this sense."

20. Ibid., 12; cf. 188-890, where Ibn Taymīyah quotes the maximum "sixty years domination by a despotic ruler are better than one single night without a ruler."

21. Cited by Victor E. Makari, *Ibn Taymiyyah's Ethics: The Social Factor* (Chico, CA: Scholars Press, 1983), 136 from Ibn Taymīyah, *al Siyāsah al Shar'īyah*, 7.

22. Ibn Taymīyah, *al Siyāsah al Shar'īyah*, 17.

23. See Laoust's discussion, *Political Thought*, 282 ff.

24. See Ibn Taymīyah, *Majmū'at al Rasā'il al Kubrā*, ed. Muḥammad 'Alī Subayh (1966), 1:312 ff.

25. Ibn Taymīyah, *Raf' al Malām 'an al A'immah al A'lām*, ed. M. H. al Faqqī (Cairo: Maṭba'at al Sunnah al Muḥammadīyah, 1958), 9.

26. Fazlur Rahman, *Islam*, 12, quoted from Ibn Taymīyah, *al Ihtijāj bi al Qadar* in his *Rasā'il* (Cairo: 1323 A.H.), 2:96-97.

27. Contrary to what Coulson said was the ahistoricity of the orthodox position, Ibn Taymīyah, in Rahman's words, "seeks to go behind all historic formulations of Islam by all Muslim groups, to the Qur'an itself and to the teaching of the Prophet." See Fazlur Rahman, "Revival and Reform in Islam," *The Cambridge History of Islam*, eds. P. M. Holt et al. (Cambridge: Cambridge University Press, 1970), 635. He criticizes limitations in Ibn Taymīyah's work, including "the fact that rationalism is condemned on principle" and that "the Sunna was taken in a literalist sense," Ibid., 636. Ibn Taymīyah's critique of rationalism, however, was in the context of Greek philosophers who rationalized without regard for revelation. His view on rationality in general, by contrast, was very positive: "[T]raditional authority can never be divorced from reason. But the fact that something is a Shari'a value cannot be validly opposed to something being rational," as Rahman quoted in *Islam*, 111 from Ibn Taymīyah's *Muwāfaqat Sharī'ah al Ma'qūl li Ṣaḥīḥ al Manqūl* (Cairo: 1321), 1:48.

28. See his *Raf' al Malām 'an al A'immah al A'lām*, 3d ed. (Beirut: al Maktab al Islāmī: 1970).

29. See his *Fatwā fi al Ijtihād* in the appendix of *Raf' al Malām 'an al A'immah al A'lām*.

30. Translated by Victor E. Makari in *Ibn Taymiyyah's Ethics*, 98 from Taymīyah's *al Fatāwā al Kubrā* (Cairo: Dār al Kutub al Ḥadīthah, 1966), 1:484.

31. See Makari, *Ibn Taymiyyah's Ethics*, 106-7.

32. See Henri Laoust's classic discussion in *Essai sur les Doctrines Sociales et Politique de Taki-d-Din b. Taimiya* (Cairo: Institute Français d'Archaeologie Orientale, 1939), 253 ff.

33. The usage is generally traced to hadith reports. See discussion by A. Abel, "Dar al-Islam" in *Encyclopedia of Islam*, new edition (Leiden: E. J. Brill, 1963), 2:127.

34. Hallaq, "Was the Gate of Ijtihad Closed?," 5.