

THE ISLAMIC CONCEPT OF SOVEREIGNTY

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In the name of Allāh, the most Merciful, the most Beneficent.



To my family.

Declaration

I hereby declare that this thesis has been written by me (undersigned) and does not represent the work of any other person.

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ABSTRACT

The purpose of this study is to analyse the modern trends among the Muslims concerning the problem of sovereignty. The question of sovereignty, which basically deals with political power, has become a matter of great concern to the Muslims since the nineteenth century especially those who are interested in the real principles of Islamic statehood as opposed to the western political concepts. There have been remarkable attempts by modern Muslim scholars to reconstruct early Islamic theories of rulership in circumstances which have been entirely different to those in which the theories were born, chiefly due to the encounter between Islam and the West. These scholars have attempted to express these theories in modern terms amongst which the word sovereignty is in common use. Owing to the great impact of the Western notions of sovereignty, we shall also consider to what extent they have influenced the emergence of the new Muslim attitudes.

It is advisable, therefore, to start the study with an examination of the origins of the Western theories in order to understand the Islamic concept of sovereignty as conceived by the modern Muslims. In Europe, sovereignty emerged as an important political concept after the religious wars of the sixteenth century and as a result of the creation of the territorial nation state. Though, it is generally an accepted working assumption up to the present time, yet it is an ambiguous term and lends itself to different interpretations. In fact, it has been given a variety of forms in a number of theories which are all surrounded with much controversy. Nonetheless, all states of the modern world, including the Muslim countries, have been founded on the basis of these Western theories.

After the Western sources the study looks into the early Islamic ideas of rulership from which the Muslims derive their inspirations. The survey of the modern Muslim views that follows covers the political thought of the Ottomans, the Arabs and the Muslims of the Indian sub-continent since the nineteenth century.

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Note on the Transliteration

This study follows the system of transliteration of the United States Library of Congress as outlined in the *Cataloguing Service Bulletin* No. 49 (November, 1958).

Foreword

The purpose of this study is to analyse the modern trends among the Muslims concerning the problem of sovereignty. The question of sovereignty, which basically deals with political power, has become a matter of great concern to the Muslims since the nineteenth century especially those who are interested in the real principles of Islamic statehood as opposed to the western political concepts. There have been remarkable attempts by modern Muslim scholars to reconstruct early Islamic theories of rulership in circumstances which have been entirely different to those in which the theories were born, chiefly due to the encounter between Islam and the West. These scholars have attempted to express these theories in modern terms amongst which the word sovereignty is in common use. Owing to the great impact of the Western notions of sovereignty, we shall also consider to what extent they have influenced the emergence of the new Muslim attitudes.

It is advisable, therefore, to start the study with an examination of the origins of the Western theories in order to understand the Islamic concept of sovereignty as conceived by the modern Muslims. In Europe, sovereignty emerged as an important political concept after the religious wars of the sixteenth century and as a result of the creation of the territorial nation state. Though, it is generally an accepted working assumption up to the present time, yet it is an ambiguous term and lends itself to different interpretations. In fact, it has been given a variety of forms in a number of theories which are all surrounded with much controversy. Nonetheless, all states of the modern world, including the Muslim countries, have been founded on the basis of these Western theories.

After the Western sources the study looks into the early Islamic ideas of rulership from which the Muslims derive their inspirations. The survey of the modern Muslim views that follows covers the political thought of the Ottomans, the Arabs and the Muslims of the Indian sub-continent since the nineteenth century.

Chapter 1

ORIGINS OF THE CONCEPT IN THE WEST

I. The Evolution of the Concept of Sovereignty

i. Influences of Formation

The concept of sovereignty is best understood if it is associated with the circumstances in which it appeared. In Europe the modern use of the notion emerged at the close of the sixteenth century. Several factors at that time were in the process of bringing about radical transformations in Western society. The long struggle between the Pope and the Emperor, the gradual concentration of power in the hands of regional monarchs, the revival of the ideas of Greece and Rome, and similar interlinked forces had helped in the formulation of the new outlooks. However, the emergence of the modern concept of sovereignty is closely linked with the birth of the national secular state and the development of positive law. In fact the modern theory of sovereignty owed much of its existence to these two changes. Without the evolution of the territorial state as a creator of law, sovereignty in its modern European formula could not have appeared.¹ A historian of sovereignty observes:

"Without the revolutionary idea that valid law might be created by an act of will, and not simply discovered by an act of understanding, the modern theory of the state could scarcely have emerged. For once it is admitted that law can be made, and made specifically by the political authority, the political order no longer stands on an equal footing with other associations. If these derive their powers from law, the political authority as law-creator must be, in some sense, above the law, and superior to other associations. Thus the theory of sovereignty as developed in the sixteenth and seventeenth centuries ... involved the logical divorce of law and custom, and the preeminence of the community's political organization. The law-making state became the source of legitimacy for all other forms of social organizations".²

Those influences which have shaped the Western concept of sovereignty will briefly be looked into in the following discussion.

¹ See F. H. Hinsley, *Sovereignty*, 2nd. ed.(Cambridge, 1986), ch. 3; A. P. D'Entreves, *The Notion of the State* (Oxford, 1967), pp. 89-95.

² S. I. Benn and R. S. Peters, *Social principles and the Democratic State* (London, 1963), p. 275.

The Positive Concept of Law

The new ideas in the field of law, initially, were not so much direct outcomes of political changes in Europe as importations from and rediscoveries of other different civilizations.¹ The renewed study of Roman law led Western legal thinking to draw a distinction between divine or natural law and positive law; between the law of God and the law of the community. The medieval legal conception was that law was part of a universal and eternal order. It was 'given' and 'found' and not 'made'. As a set of universal truths it might be given through revelation or might be discovered by reason and study of local customs. The community with all its associations and political authorities was under the law. This primacy of law was checked by the important change brought about by the idea inherited from Rome that law could be man-made. It began to be accepted that the community was free to legislate what it required in order to meet its needs and to adopt any necessary rules seen to be suitable to its changing conditions. Divine law, natural law and customary law lost their primacy and gradually began to be viewed as moral obligations and rules of ethics rather than statutory rules of law.²

As law began to be conceived as positive law, that is to say, law posited or made by man, the stress shifted to focus on the source of law. Then it was natural to make a basic assumption that the source of law was there somewhere in the community. Henceforth, it would be a question of finding that supreme will which would command and was not commanded by others, and whose command was the law.³ That would one day come to be termed sovereignty.

Birth of the nation state

The other substantial change which was paving the way for the appearance of the modern European formulae of sovereignty, was the growing preeminence of the

¹ Hinsley, *op. cit.*, p. 72.

² *Ibid.*, pp. 67-72; D'Entrevés, *op. cit.*, p. 89; Benn and Peters, *op. cit.*, pp. 255 - 7.

³ D'Entrevés, *op. cit.*, p. 93.

political association, the state, and the steady decline and subordination of other associations, particularly the church, kinship, and local groups. Regional kings were gradually concentrating more power in their hands, while the external universal authority of the Pope and the Emperor, and the internal power of the feudal lords, were both weakening and failing.¹ National Kings were gaining superiority internally and independence externally, and at that time the theory of sovereignty was invented to support their claims. It is worthy of note that both attributes of superiority and independence, which were assigned to national Kings, formed an important element in the theory. In short, the theory of sovereignty was formulated at the same time as the modern notion of statehood was emerging. Therefore, it was shaded by the same colours and it became closely linked with nationalism and secularism.

Absolutism

Moreover, the concept of sovereignty was to come to maturity in a period when absolute monarchy was budding in Europe.² One of the pressures which necessitated the demand for royal absolutism was the occasional outbreak of civil and religious wars. To face the bitter consequences of these conflicts and the confusion of divided loyalties, there was a need for a solid and continuing solution. The only solution seen was the establishment of an effective, strong, and definite centralized government with unlimited authority. Hence, the developing centralized system of regional monarchy was supported by a theory of royal absolutism which was given the name sovereignty. Absolute monopoly of both force and law was vested in the King.³ The maintenance of order was seen to be the preeminent value to be secured. Eventually, the idea of absolutism penetrated deeply into the logic of the theory of sovereignty.

¹ Hinsley, *op. cit.*, p. 100.

² Jacques Maritain, "The Concept of Sovereignty", in W. J. Stankiewicz (ed.), *In Defence of Sovereignty* (New York, 1969) p. 49.

³ D'Entreves, *op. cit.*, pp. 108 - 9; Hinsley, *op. cit.*, p. 120.

The General Culture

In the light of the historical circumstances which have been briefly sketched above, a possible explanation could be sought for the basic notions that are associated with sovereignty in its Western context. Sovereignty has become territorial rather than universal because it is conceived as an attribute of the national state. Sovereignty has emerged as secular and not as divine because it is considered to be the source of man-made legislation and the creator of positive law. Sovereignty is linked with absolutism because it originated at a moment when the need for unlimited, unique, centralized authority was stressed. Those notions, inherent in the concept of sovereignty, carried the influences of its formative period, and due to the changing political conditions, they have eventually created many difficulties and have become the object of substantial criticism.

Undoubtedly, the political conditions were not the only forces that shaped the form which the theory of sovereignty took in Europe, but there were other factors as well. Politics is nothing but one aspect of the ideologies, outlooks and way of life of any society. Hymen Cohen in *Recent Theories of Sovereignty* writes:

"Not the political alone, however, influences theory. Social facts and political institutions are an important element, a very important element, in shaping the general patterns of an ideology. But not the sole factors. They furnish the basic groundwork, perhaps. The techniques of elaborations, the nature of the justification, and the types of interpretation will depend as well, however, upon the philosophy, the outlook, the intellectual background - in short, on the general culture of the theorizer".¹

Hence, it may be concluded that the modern theory of sovereignty is in fact the outcome of Western general culture, and in the light of this reality, its universal validity seems to be very questionable.

¹ H. E. Cohen, *Recent Theories of Sovereignty* (Chicago, 1937) pp. 3 - 4.

ii. Great Theorists of Sovereignty

There are many political theorists who have made significant contribution to the study of sovereignty in the West and the literature on the subject is vast. The basic questions raised are at least three: what is the nature of political rule in any system, who is the real ruler and who ought to rule? Probably the most important thinkers since the sixteenth century who have puzzled out theories dealing with these questions have been Jean Bodin, Thomas Hobbes, Jean-Jacques Rousseau and John Austin. It is proposed to outline below a broad summary of their theses.

Bodin

The father of the modern theory of sovereignty is rightly regarded to be Jean Bodin, a French lawyer and politician, who lived in the second half of the sixteenth century. In two key chapters of his work *The Republic*, which appeared in 1567, Bodin gives a systematic discussion of sovereignty, its definition, characteristics, limits and general functions.¹ Bodin was not entirely wrong in claiming that he had discovered sovereignty.² Credit is commonly given to him for presenting the first definition of it, and furnishing logical arguments concerning its essential existence in any political community. Though those arguments contained serious confusions, his statement of sovereignty was the first clear one given.

Perhaps, the confusion in Bodin's thought was mainly because he attempted the reconciliation of two rival principles. On the one hand he was an advocate of the separation of religion from politics as the only cure for the disorder of the religious wars in France in his time. In order to maintain peace, he required the establishment of a powerful central authority which placed the interests of the French nation over the religious considerations. In fact, he belonged to a nationalist party known as the Politiques, and his book to a large extent reflected their ideas. The Politiques were

¹ See J. Bodin, *Les Six Livres de la Republique* (1576). Trans. Richard Knolles as *The Six Books of Commonweal*, edited by Kenneth D. McRae (Cambridge, Mass., 1962) Book 1, chapters 8 and 10.

² D'Entreves, *op. cit.*, p. 99.

described by one of their contemporaries as those who preferred "that the Kingdom remained at peace without God than at war with Him".¹ Thus, to strengthen the authority of the King, Bodin assigned various rights to him, amongst which the most fundamental of those was the authority to make laws. In his view, the human ruler possessed absolute power to legislate.

On the other hand, Bodin, who was bound by his medieval tradition which was religious in nature, could not follow the consequences of the absoluteness of human legislation to its logical conclusions. His apparent contradiction discloses itself when, in his ultimate analysis, he laid restrictions on the ruler. The decisions of his absolute ruler were not final. One of the most important limitations to his power was that he was subject to divine law.

Bodin's human ruler could be seen to be above the law as his single will is the sole unlimited source of it, and at the same time the subject of fundamental laws which he has not made and cannot change. He wanted to place the ruler above moral and religious matters and at the same time exclude them from his control.² "Hence he does not effect a harmonious reconciliation of his two principles, failing to see their antithetical character with sufficient clarity".³

Hobbes

The enquiry of Thomas Hobbes, the English philosopher of the seventeenth century, into the problem of sovereignty, in his thesis *Leviathan* published in 1651, is an outstanding landmark in the development of Western political thought. It was a major step forward towards the full secularization of the state and its institutions to which Europe had been gradually moving to but had hesitated to adopt. It was a death-blow to the traditional dualism of church and state that had lasted for centuries.

¹ George H. Sabine, *A History of Political Thought*, ed. Thomas L. Thorson (Hinsdale, Illinois, 1973), p. 373; F. J. C. Hearnshaw, "Bodin and the Genesis of the Doctrine of Sovereignty", in R. W. Seton-Watson (ed.), *Tudor Studies* (London, 1924), p. 119.

² W. T. Jones, *Masters of Political Thought* (Edinburgh, 1960), pp. 59 - 63; Sabine, *op. cit.*, pp. 379 - 82.

³ Jones, *op. cit.*, p. 62.

Hobbes presented a solution to the problem which had eluded Jean Bodin and all the previous theorists because of their dual approach. He took the logic of the early theories of sovereignty and worked it out to its ultimate conclusions. In his scheme, the state absorbs and represents the members of all the community. The 'multitude' becomes 'united in one person', as he says, an artificial person who is a mortal god, symbolized by him in the *Leviathan*, the powerful monster described in the Bible" as there is no power above the earth which may be compared to him".¹ Hobbes says that to "the generation of that great Leviathan, or rather to that mortal god... we owe... our peace and defence, for ... he hath the use of so much Power and Strength".² Hobbes made the state above all individuals and above all associations, even above the church. In his proposition, power is concentrated in one single centre and is the source of unlimited legislative authority. Law is solely the command of the ruler and there is no limit to the extent of his orders. He expanded the absoluteness of the human legislature to the extreme. That absoluteness is applicable to both the political and moral spheres. In the moral sense, what is meant is not only that there is no higher moral law above the state according to which it could be criticized, but that the laws of the state create the distinction of right and wrong, and of good and evil.³ The function of the state is to establish moral values and legal rules out of a moral and a legal vacuum.⁴

The influence of Hobbes is enormous. Despite the fact that he has been criticized for his one sided outlook of human nature on which he had based his political theory, and for inconsistency in his premises,⁵ his ideas in general founded the basis of the modern secular state. His outstanding position may be best described in the words of a modern political writer, who said:

¹ Cf. F. L. Cross, ed., *The Oxford Dictionary of the Christian Church* (London, 1974), sv.

² Thomas Hobbes, *Leviathan*, ed. C. B. Macpherson (Middlesex, 1986), p. 227.

³ *Ibid.*, pp. 234, 312.

⁴ Hinsley, *op. cit.*, p. 149.

⁵ Jones, *op. cit.*, pp. 126 - 134.

"His enquiry into sovereignty stands as a milestone in modern political thought. Indeed, it is only comparatively recently that this special value of Hobbes's teaching has been fully realized. When once old enmities had subsided, and the question of the 'atheism' and 'immorality' of the philosopher of Malmesbury had ceased to be an issue, Hobbes's political theory appeared in a totally different light, and could be hailed as what it certainly is, 'the first modern theory of the modern state'."¹

Rousseau

In the eighteenth century the theory of sovereignty found a new formulation and justification in the writings of Jean-Jacques Rousseau, on whose ideas, in large measure, depended the French Revolution. During the sixteenth and seventeenth centuries, the great problem had been to secure a powerful centralized national authority against external and internal forces. But after the battle for regional monarchies had been won, a new problem emerged which political theorists had to face. It was that the monarchies had become too powerful.² The result was a trend towards a rediscovery and an assertion of the rights of the subjects. It was felt that it had become of crucial importance to base the authority of the state on the consent of the governed people.

Rousseau developed these democratic notions to the utmost extreme.³ He took over the conception of Hobbes of an absolute single centre of power⁴ and combined it with the idea of the people's rights and the requirement of their agreement to establish their ruling authority.⁵ The combination of the two ideas generated his thesis which he expressed in his main political work, *the Social Contract* (1756). He put forward the hypothesis that the people possessed the absolute highest authority as a right embodied in their so called 'General will'. The governing body in the society is subjected to the general will of the people and authorized by it. In his opinion, the main function of the

¹ D'Entreves, *op. cit.*, p. 105.

² Jones, *op. cit.*, p. 253.

³ C. E. Merriam, *History of the Theory of Sovereignty since Rousseau* (New York, 1900), p. 33.

⁴ Hinsley, *op. cit.*, p. 153.

⁵ J. J. Rousseau, *The Social Contract and Discourses*. Tran. G. D. H. Cole, ed. J. Brumfitt and J. Hall (London, 1983), introduction p. XXVI.

government is to carry out the instructions, or acts of will of the people.¹ Hence, he reduced the rulership to which the early theorists had attached great power to a mere commission.² Rousseau did not state precisely and clearly what he meant by his concept of the General Will. However, what can be understood is that it is the will of the collective body composed of all the individuals of the community aiming to maintain the common interests of the whole.³

Rousseau attributes to the people all the rights. They are the unlimited source of power and law. He holds that the 'general will' of the people is infallible, it is always right and always just. Moreover, he asserts that their authority is inalienable and indivisible.⁴ He says:

"The body politic, therefore, is also a corporate being possessed of a will; and this general will, which tends to the preservation and welfare of the whole and every part, and is the source of law, constitutes for all the members of the state, in their relation to one another and to it, the rule of what is just or unjust... The most general will is the most just also, and ... the voice of the people is in fact the voice of God."⁵

In the final analysis, Hobbes and Rousseau appear to stand on the same footing. While the former allowed the state to absorb the community which originally created it, the latter allowed the community to swallow up the state.⁶ In both cases, the bearer of sovereignty possessed absolute unlimited power. Despite these differences, the ideas of both of them did influence the modern states, though with some adjustments to their premises. This took the form of a synthesis of their doctrines which was expressed in the tendency towards constitutionalism.

¹ *Ibid.*, p. XXVI.

² Hinsley, *op. cit.*, p. 153.

³ Rousseau, *op. cit.*, book I ch. VI, p. 175 - 7.

⁴ *Ibid.*, pp. 182 - 93.

⁵ *Ibid.*, p. 120 - 2.

⁶ Hinsley, *op. cit.*, p. 155 ; Merriam, *op. cit.*, p. 35.

Austin

The next stage in the history of sovereignty which needs to be considered is the contribution made by the jurists of the nineteenth century, notably by John Austin's *Province of Jurisprudence Determined* (1832). To his outstanding credit is the presentation of "a sharply defined theory of sovereignty, stating its nature and character in the most precise terms."¹ His main concern was legislation, which was viewed by him to be the most important function of the state. With a crystal clear view and simplicity, he asserts positiveness in jurisprudence. He defines law as being solely an effective command of a superior to an inferior which is binding because of the sanction that the superior is able to inflict whenever it is violated. It is essentially a precise and a definite command of a superior which obliges certain acts or forbearances, and not a general and vague notion that something must be observed. Therefore, moral rules or customs are not considered by Austin to be law proper, because they fail his test. In the first place, they are not issued by a superior, nor stated in the form of a command. And secondly, there is no effective sanction attached to them.²

Regarding sovereignty, Austin's doctrine is closely connected with his conception of law. His sovereign is the human superior who is the source of law. Most essential in the nature of that superior is that it is a 'determinate' body. By that Austin means a definite body which is capable of corporate conduct. That is to say a definite person or body of persons who are indicated with concise characteristics, such as the Parliament of England, for example. Such a body must be distinct and clear; it must possess "a local habitation and a name" and there must be no doubt about its identity. This clear definiteness is the most striking emphasis laid down by Austin's theory of sovereignty.³ As regards the other features, Austin attributed to his

¹ Merriam, *op. cit.*, p. 131.

² *Ibid.*, p. 138.

³ *Ibid.*, pp. 141-2.

sovereignty whole absoluteness. Whether it is located in a person or a body of persons, its power to legislate is unlimited. As a source of law, it cannot be limited even by its own law. Supreme power limited by law, he holds, is a flat contradiction in words.¹

II. Nature of Absolute Sovereignty

Apparently, the conclusion that could be derived from the above analysis is that the nature of sovereignty discussed by earlier scholars, namely Bodin, Hobbes, Rousseau, and Austin, is generally identical. All of them have conceived sovereignty as wholly absolute. In order to throw more light on the concept of absolute sovereignty, the discussion now turns to pursue further its nature, considering questions such as its definition, attributes and location.

i. Preliminary Definition

Sovereignty is an ambiguous term,² and it is almost impossible to define it precisely and clearly. The etymology of the word in English shows that it is derived, through old French *soverainete*, from medieval Latin *supremtas*, or *suprema potestas*, which is taken to mean "supreme power".³ In *The Oxford English Dictionary* the word sovereign indicates "one who has supremacy or rank above, or authority over, others; a ruler, governor, lord or master (of persons, etc.)." It is frequently applied to the Deity in relation to created things, but the usage permits even its application to a husband in relation to his wife,⁴ and till very recent times it was used to describe the head of a municipality in several Irish boroughs.⁵ However, the

¹ *Ibid.*, pp. 143- 4.

² Benn and Peters, *op. cit.*, p. 257.

³ Walter W. Skeat, *An Etymological Dictionary to the English Language* (Oxford, 1882), p. 576; W. J. Stankiewicz, "Sovereignty", *Encyclopaedia Britannica* (1981), 17, p. 309. The years 1290 and 1297 are suggested for the first usage of the term in English. In other European languages it emerged also from the same origin, and at first other equivalents were used to denote the same meaning of sovereignty. Cf. D' Entreves, *op. cit.*, p. 102.

⁴ *The Oxford English Dictionary*, ed. James Murray (Oxford, 1933), 10, p.489.

⁵ James Bryes, *Studies in History and Jurisprudence* (Oxford, 1901) II, p. 51 n.1.

origin of the modern usage of the word may be traced to the feudal system of the Middle Ages in Central and Western Europe. Feudalism was basically a system of land-tenure in which the various social classes organized themselves in a hierarchical order. Land was granted according to a contract, vassalage, in which the lord was obliged to give aid and protection in return for loyalty and other specific services rendered by the tenant, among which were military duties, judgement at the lord's court, and various payments upon fixed occasions. At the apex of the system was the king who granted lands to members of the high nobility, who in turn gave parts of it to various vassals from the lower class of nobles, and that was filtered down to the bottom where there were the serfs on whose labour the whole system rested. Consequently, political power in the feudal system was essentially a personal relation and a property relation and was also highly decentralized. The king was weak, as he was only able to deal with his subjects at second or third hand. The loyalty of the people was to their immediate lord.¹ In other words, each member of the nobility, like the barons, the dukes and the counts, possessed full authority in his domain. The terms used to describe the lordships of the nobles were sovereignty and suzerainty, though the distinction between the two was not explicit. Generally, a suzerain was a lord who had another over him, while sovereignty referred to overlordship and signified finality of authority.²

Therefore, in its feudal origins sovereignty was only a specific quality associated with special lordships and particularly with royal lordships. The Latin root of the word, "*superans*" or "*supremitas*", indicates the owner of a lordship who is independent of any other lordship or, as phrased by medieval thinkers, whose lordship depends only on God.³ In this sense, a medieval writer used the word sovereignty to describe the feudal lordship of a baron. The baron, it is stated, in the internal affairs of

¹ Sabine, *op. cit.*, pp. 204 - 8.

² Paul W. Ward, *Sovereignty* (London, 1928), pp. 3 - 4.

³ Leon Duguit, *Law in Modern State*. Trans. Frida and Harold Laski (London, 1921), p. 8.

his barony recognizes no suzerain, as " each baron is sovereign in his barony", but above all " the king is sovereign and has the right of general control over the kingdom".¹ Later, the term was applied exclusively to the king. In the sixteenth century Bodin took the word, which was originally attached to a single quality of the royal person, and coined it to mean royal power itself.² Undoubtedly, Bodin used it in a new sense, yet it had wide appeal since the people had already familiarized themselves with it.

Moreover, sovereignty, like most modern European political and legal terms, goes back in its origin to Roman law. To form the modern concept of sovereignty the lawyers intertwined the feudal notion of sovereignty with the Roman ideas of public power. Public lordship is called in Latin "*imperium*". In the course of the development of the Roman Empire, the Emperor came to possess the "*imperium*" which meant a right to command inherent in his character and his will was equated with law.³ This idea also found its expression in the famous sentence: "the will of the Prince has the force of law, since the people have transferred to him all their right and power".⁴ Those conceptions of Roman "*imperium*" or "*suprema potestas*", which were originally universal, were narrowed to a territorial scope, and fused with the denotations of the feudal lordship, especially in its implied relations of power and property. The power to command, the "*imperium*" , was regarded as a right similar to that of property. The fusion of those elements resulted in the modern doctrine of sovereignty,⁵ which was made in its first stages of development to belong exclusively to the secular king.⁶ To this modern sense of sovereignty we now turn our concern.

¹ La Coutume de Beauvoisis, quoted in Duguit, *op. cit.*, pp. 8 - 9.

² *Ibid.*, pp. 9 - 10.

³ *Ibid.*, pp. 3 - 4.

⁴ Merriam, *op. cit.*, p. 11.

⁵ The beginnings of the theory may also be traced to Aristotle in his *Politics*. He does not appear to have discussed the nature of sovereignty but rather to have questioned who should be sovereign. He arrives to his famous classification that sovereignty must be in the hands of one, or a few, or of many. Cf. Hinsley, *op. cit.*, pp. 27- 30.

⁶ Duguit, *op. cit.*, pp. 5- 9; Ward, *op. cit.*, p. 23- 6.

In the fields of theology, law or political science the term sovereignty is eventually employed to signify two inseparable senses: supremacy over others (omnipotence) and/or freedom from control by others (independence).¹ That is to say that the phenomenon of sovereignty comprises two aspects. One is a positive side implying the possession of infinite power which overrides all other forces and compels them to complete subjection. The other is a negative feature which denotes the denial of any superior authority and the claim for full autonomy unrestricted by any other being.² Following this analysis, sovereignty in its broadest sense could be defined as the power to do everything without accountability.³ However, as sovereignty is used as a political and a legal concept, the notion that it is "the power to do everything " must be related to a lesser sphere. This "lesser sovereignty" is a circumscribed type perceived to operate and prevail in the "state".⁴ Even at this preliminary stage in our discussion it appears to be important to emphasize this shift of application. The point may look trivial and obvious, but in fact it is often overlooked and important consequences follow. Perhaps, ignoring it is the cause of the puzzling difficulties found in the concept in Europe since its formulation. Sovereignty which is the supreme infinite absolute power is attached to a human organization, the state, which is by its nature finite and limited. From the beginning contradictory elements seem to be inherent in the Western concept of sovereignty.

With reference to the state, sovereignty is defined as "the supreme power by which any state is governed".⁵ Applying the former broad sense of the term to the state, the idea of sovereignty would be the idea of "the power to do everything in a state without accountability".⁶ This idea seems to be the core of the definitions given by

¹ George Schwarzenberger, "The Forms of Sovereignty", in Stankiewicz ed. , *In Defence of Sovereignty*, p. 162.

² *Ibid.*, pp. 165- 7.

³ Robert Lansing, *Notes on Sovereignty* (Washington, 1921), p. 3.

⁴ *Ibid.*, p. 4.

⁵ Wheaton, *Elements of International Law*, 6th. ed. (Boston, 1855), p. 29, quoted in Lansing, *Notes on Sovereignty*, p. 7.

⁶ Lansing, *op. cit.*, p. 6.

accepted authorities in the West in the past and the present time, though they have been phrased differently, each emphasizing one or another of the implications of the concept.

ii. Constituents of Sovereignty

It may suffice for the present discussion about the nature of sovereignty to quote and analyse two famous key definitions. One is given by Bodin who was the first in the modern age to attempt to define sovereignty. The other is offered by Austin and much credit is given to it for its clearness and preciseness.

Bodin's definition is as follows:

"Sovereignty is the most high, absolute and perpetual power over the citizens and subjects in a Commonwealth, ... that is to say, the greatest power to command."¹

Austin expresses the notion of sovereignty thus:

"If a determinate human superior, not in a habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent."²

Apparently, both definitions need further analysis and closer examination. This will be shown in the following discussion.

1. Before progressing further it is necessary to obtain an essential understanding of the notion of the state, in order to grasp the basic assumption that sovereignty exists in every state. A satisfactory meaning of the state may be is that it "is a particular portion of mankind viewed as an organized unit".³ Apparently, the main characteristic of the state is that it is an organized association. In general terms, by that is meant that, within it, there is some person or body of persons who is in some sense representing the whole, speaking or acting on behalf of them, and who makes decisions which are regarded as binding on the whole. That characteristic is also a feature of any other organized group like a church, a trade union, a political party or

¹ Bodin, *op. cit.*, book 1 ch. 8, p. 84.

² John Austin, *The Province of Jurisprudence Determined* (London, 1832), p. 200.

³ Lansing, *op. cit.*, p. 4.

any other similar organizations; but there are of course other qualities which distinguish the state from other organized associations. Among these distinctive qualifications the most common may be is that a state must have a fixed territory. Broadly speaking, the individuals habitually resident in a certain tract of land compose a state. However, it is not needed for the present discussion to deal with all the qualifications of a state. The important consideration, with regard to sovereignty, is that the state is an organized group of individuals.¹

Now, the basic assumption introduced as a main attribute of the state is that there exists somewhere in the state, as an organized association, a power which controls the actions of the members of the society. That central authority in the state is above all the individuals and all their associations. It has the first claim on their obedience and it is controlled by none outside it. This greatest and highest power is given the term sovereignty. In Bodin's definition sovereignty is referred to as the highest power over the citizens and subjects in a state.

2. It seems that the focal point in the idea of sovereignty is that it is "an ultimate right" of command in the society,² or, as Bodin phrased it in his definition quoted above, it is "the greatest power of command". It is the centre of decision making in the state, which is entitled to issue orders binding the members of the society to certain courses of action. Sovereignty acts as an ultimate agent of arbitration conferring the right to settle disputes among members of the community on how a community shall act.³

3. Some of the "commands" of the sovereign authority are in the form of instructions related to particular cases or settlements of certain issues, but mainly its orders are in the form of general rules and laws. Hence, one of the chief elements of sovereignty is that it is the sole source of law. Indeed, laws are defined simply as the

¹ *Ibid.*, p. 6; G.C. Field, *Political Theory* (Strang, 1963), pp. 55 -7.

² Bertrand De Jouvenel, *On Power* (Boston, 1962), p. 26.

³ Preston King, "Sovereignty" in David Miller, ed., *The Blackwell Encyclopaedia of Political Thought* (Oxford, 1987), p. 493.

general commands of sovereignty. Any rule which cannot be traced to a direct or an indirect order of the sovereign body will not be regarded as a law. Sovereignty in this sense is the supreme legislative authority in society. Bodin writes:

"I say that the first mark of a sovereign prince is the power of giving laws to all the people ... without consent of any beside himself ... This power of being the source of law is incommunicable. The sovereign may, of course, give to certain persons the right to make the laws, which will then have the same authority as if made by the sovereign himself. Under this power of giving and abrogating laws are included all the other rights and marks of sovereignty. Indeed, if one is to speak precisely, there is but this one mark of sovereignty, All the various specific rights of a sovereign prince are only aspects of , or derivatives from this primary right of giving laws."¹

Similarly, the theory of Hobbes has annexed to the sovereign "the whole power of prescribing the rules, whereby every man may know what goods he may enjoy and what actions he may do".² Likewise, the essential element in the existence of laws, in the Austinian sense, is the command of a superior which binds and obliges an inferior person or persons. It is a definite, precise order necessitating certain "acts or forbearances".³

4. Hence, a fundamental aspect of sovereignty is the habit of issuing orders and commands in legal or other forms, but it is not the only one. Actually, the phenomenon of sovereignty has two inseparable faces: commands which proceed from the centre of power, and "habitual obedience" by the "bulk" of the people. Perhaps, the latter is the most fundamental side of it.⁴ Unless there is a habit of obedience from the side of the majority of the subjects without the possibility of resistance, sovereignty does not exist. The central fact here is that sovereignty is constituted by being obeyed, and by nothing else.⁵ "Habitual" obedience is meant to be a general and regular submission to a recognized authority. Continuity and regularity are essential to form a

¹Bodin, *op. cit.*, pp. 159 -62.

²Hobbes, *Leviathan*, *op. cit.* p. 234.

³Austin, *op. cit.*, p. 18 ; Merriam, *op. cit.*, p. 138.

⁴Field, *op. cit.*, p. 62.

⁵*Ibid.*, p. 78.

habit of obedience and a sovereignty in the Austinian sense.¹ If the obedience is rare or transient, and not permanent or habitual, the relation of sovereignty and subjection is not created in that given society.²

Moreover, the reference to the fact of obedience is characterized affirmatively and negatively. Positively a superior to be sovereign must receive obedience from other people, but negatively he must not obey anyone. As Austin expresses it in his definition, the sovereign superior must not be in a habit of obedience to a like superior, and should receive habitual obedience from the bulk of the people.

5. However, the question of political obligation, that is why people obey their political authority, is not a simple question and cannot be answered in simple terms. The motives behind obedience vary considerably as between individuals and might be very mixed in the same individual. Sometimes, obedience is based on active approval. Yet, it is probably safe to say that obedience is a habit influenced by many motives.³

Undoubtedly, fear of punishment is a main motive behind the obedience of many people. Therefore, it is essential for an effective sovereignty to possess and control the necessary force which would compel people to obey. Sovereignty, besides making the law, must be competent to enforce the law. Force should always be there in the background in order to support the commands of sovereignty and bring about the people's obedience, either as a threat or to be physically applied when necessary. Sovereignty appears from this point of view to be the holder of the supreme coercive power in society. In fact the idea that sovereignty rests on force has been advanced by many writers.⁴ For example, this is clearly stated in the following two quotations:

"Without force a State can neither come into existence nor continue."⁵

¹ Merriam, *op. cit.*, p. 140.

² Austin, *op. cit.*, p. 202.

³ Field, *op. cit.*, p. 63.

⁴ But cf. Field, *op. cit.*, pp. 65-9.

⁵ Bluntschli, quoted in Lansing, *op. cit.*, p. 9.

"The essence of the state is in its monopoly of coercive power, declared and enforced as the only legitimate monopoly; in its very existence, which is an imminent threat; or in its active use in the naked form of force when the members of the society... threaten the main values and are about to disrupt the society by exercising force against each other. This then, is the state; and its supreme power and monopoly of coercion (which it can devolve in many ways on its own terms) is sovereignty."¹

6. In relation to the above analysis of the basic elements which constitute sovereignty, it is important to remember that sovereignty in the European formula is conceived primarily as a human quality. In the above quoted definition of Austin, he speaks of it as an attribute of "a human superior". It is understood to be the force constantly working within the framework of human society, regulating personal conduct and shaping social institutions. It is the power originating from human society and functioning in its sphere.

iii. Attributes

The theorists of sovereignty, in their attempt to express a basic exposition of its nature, described it in general terms, at one time or another, with a variety of characteristics.² With reference to position, sovereignty is regarded as the highest power in the pyramid of the ruling hierarchy. Quantitatively, it is the greatest power in society possessing the major 'amount' of control. In sequence it is the final power in the chain of the process of politico-legal decision making. With reference to effect, sovereignty is the most general power, in the sense that it serves the public interest of the whole community. In respect of its extent, it is identified as the total power or unlimited power without any restraint in its scope of action. Moreover, unity is maintained as an essential feature of sovereignty,. It is indivisible and cannot be shared among many bodies. Another fundamental attribute refers to autonomy. By nature, sovereignty is independent from any control, and is not subjected to any agent.

¹ Herman Finer, quoted in Benn and Peters, *Social Principles and the Democratic State*, *op. cit.*, p. 267.

² Cf. Preston King, *The Ideology of Order* (London, 1974), pp. 140- 57; *idem.*, "Sovereignty", *The Encyclopaedia of Political Thought*, pp. 492- 4.

In some contexts, sovereignty is characterized as being perpetual,¹ inalienable,² and infallible.³

Seemingly, all these attributes are distinct notions., though some of them overlap with each other. However, most of them could stem as implications of the basic idea that sovereignty is an absolute power. The term "absolute" is vague and could be understood to mean different, and not necessarily compatible, notions. Ideas such as "highest", "greatest", "final", "indivisible", and "unlimited" can all be categorized as absolute.⁴ However, further examination of these meanings is desirable.

The Highest Power

The first fundamental attribute of sovereignty is superiority. In status this means it is the uppermost power in society. In any politico-legal system many decisions are taken within it at a lower level. When moving up a point is reached where there is no competence beyond it. That power at the peak is sovereignty. The entire elements in the society are subordinate and inferior to it.⁵

The Final Power

Sovereignty is considered to be the authority of the last word. It is the final centre of adjustment and arbitration in the politico-legal association. The attribute of being the highest authority may overlap with the quality of being final. But a distinction can be made if the former is viewed as referring to position, while finality is assumed to suggest sequence. The finality of sovereignty is not a limitation to its power to amend or alter earlier laws or decisions. Finality is not identical with irreversibility. It simply means that no body, other than the sovereign, can or has the right to reverse a sovereign decision. In most cases, finality is imposed by time in the

¹ Bodin, *op. cit.*, p. 84.

² Rousseau, *op. cit.*, p. 182.

³ *Ibid.*, pp. 120, 122.

⁴ King, *The Ideology of Order*, pp. 140 -1.

⁵ King, "Sovereignty", *Encyclopaedia of Political Thought*, p. 493.

sense that once a decision is taken, it might already be implemented before being revised and reversed.¹

The Greatest Power

This means superiority in "quantity" of power. No body could be called sovereign if it does not exercise a considerable control over other bodies and persons in the society. In order to determine their actions in certain ways the "amount" of power in the hands of the sovereign must be greater than that possessed by any other person or group of persons. The difference between the ideas of being greatest and being highest could easily be seen when a body has the highest status in the society, in any possible sense, but may not necessarily be competent to impose the greatest influence.²

The Total Power

Some may tend to think of the quantitative power of sovereignty, not only as a major quantity of control contained in the idea of being greatest, but as being complete and total. This could mean that the ruling agent exercises a total range of control over every sphere of governmental affairs. The reference here is to the horizontal breadth of control. The description of such a power as being complete may mean that all final decisions on all ruling problems, arising at any level or time, are in the hands of the sovereign. However, total power could also mean a total degree or depth of control and not only total range of control. The intensity or degree of control is complete if all orders and instructions issued by a ruling agent are obeyed by all the subjects. It could be argued that all the commands of a sovereign are compulsory; nevertheless, no ruler appears to possess the power to exercise a total degree or depth of control over the whole society.³

¹ *Ibid.*, . 493; Ernest Barker, *Principles of Social and Political Theory* (Oxford, 1952), p. 60.

² King, *The Ideology of Order*, p. 151.

³ *Ibid.*, pp. 147- 51.

The Unlimited Power

The absoluteness of sovereignty is best reflected in the thesis that its power is unlimited. The theory simply argues that there could be no other power limiting the sovereign, otherwise by definition that power is itself the sovereign. In other words the doctrine asserts that the unlimited power of the sovereign is his by definition.¹ Though that argument appears to be simple and straightforward, the interpretations of being unlimited are varied, confused and open to attack. In a weaker sense, the word "unlimited" is often used to mean "exceedingly great" or "superior to any other". But this is rather a pointless tautology, as it is like saying that supreme authority must be supreme.² In extreme cases, the idea that the competence of sovereignty is illimitable, is understood to mean that "everything whatsoever lies within its competence".³ The difficulty and exaggeration involved in such a statement are avoided in other explanations. It is said that there could be various restrictions on the sovereign, such as moral obligations and the agreed values of the society in which it exercises its power. It may be argued that no decision-making procedure can exist except against a background of some agreement on values; and therefore there must be some decisions the decision procedure has no authority to make, namely those which run counter to the shared values of the members of the community.⁴ There are other considerations as well, such as that the sovereign may in fact be influenced by public opinion and other political factors. But it is generally admitted that such obligations cannot be regarded as political or legal limitations. Hence, the thesis that there is no political or legal power capable of formally limiting the sovereign appears to be unchecked.⁵ Legally the supreme power is absolutely despotic; practically, its power may depend on many considerations. It is asserted that the theory does not insist that there are no limits

¹ Merriam, *op. cit.*, p. 223.

² W. J. Rees, "The Theory of Sovereignty Restated", in Stankiewicz, ed., *In Defence of sovereignty*, p. 220.

³ J. R. Lucas, *The Principles of Politics* (Oxford, 1966), p. 33.

⁴ *Ibid.*, p. 33.

⁵ Merriam, *op. cit.*, pp. 150, 223.

whatsoever on the sovereign. Simply, the limits it denies are only legal limits.¹ Austin says: "supreme power limited by positive law, is a flat contradiction in terms",² meaning that the legislative power of the sovereign cannot be legally restrained. Upon this it follows that sovereignty is seen to be a part and an organ of the legal association. It is defined and limited by its own nature. As it is confined to and moves within the legal circle, it does not enter the areas of social action which cannot be brought under legal control. Sovereignty is not a capricious power of doing anything in any way. Only in one sense sovereignty is unlimited and illimitable, that is, it must be competent to adjust every issue arising in the legal association without exception.³

The Indivisible Power

Hobbes writes: "

"There is a doctrine, plainly, and directly against the essence of a commonwealth; and it is this : *that the sovereign power may be divided*. For what is to divide the Power of a commonwealth, but to DISSOLVE it; for powers divided mutually destroy each other."⁴

His statement is a distinguished account of the principle of indivisibility of sovereignty held by most political theorists. Sovereignty, it is believed, is one or not at all. This means, as Austin, for instance, explains: "in every society political and independent, the sovereign is one individual, or one body of individuals".⁵ However, the indivisibility doctrine may indicate two distinct notions. It may be understood to denote that sovereignty is both unique and united.⁶ Sovereignty is unique in the sense that there is one and only one supreme power, and it is united if it is in the hands of one person or one body of persons. Clearly, it would be self-contradicting to say of any two powers that they were both at one and the same time the highest and the greatest; nevertheless, if in a state there were more than non-subordinate powers,

¹ H. L. A. Hart, *The Concept of Law* (Oxford, 1961), p. 65.

² Austin, *op. cit.*, p. 268.

³ Barker, *op. cit.*, pp. 60 - 1.

⁴ Hobbes, *op. cit.*, p. 368.

⁵ *Province of Jurisprudence*, p. 285.

⁶ Joseph Raz, *The Concept of a Legal System* (Oxford, 1980), pp. 8, 35; Rees, *op. cit.*, p.

sovereignty would not be unique. On the other hand, if there is only one sovereign power but it is shared between several bodies, each separately holding part of the sovereign power, it is not united. Such an interpretation assumes that sovereignty can be divided and yet remains unique.¹ As will be shown later, fierce criticism has been levelled against the principle of indivisibility of sovereignty. It is argued that it is not necessary that only one and the same body should possess all authority on all matters all the time. One authority could be obeyed in some matters, and another in others.²

The Independent Power

Independence is another important characteristic of sovereignty. In fact it is a natural consequence of it. Austin, for example, in his definition of sovereignty asserts that the determinate human superior, called sovereign, must not be "in a habit of obedience to a like superior".³ He further stressed:

"To that determinate superior, the other members of the society are *subject*: or on that determinate superior, the other members of the society are *dependent*. The position of its other members towards that determinate superior is a state of subjection, or a state of dependence. The mutual relation which exists between that superior and them may be styled the relation of sovereign and subject or the relation of sovereignty and subjection."⁴

In other words, independence meant absolute non-subjection to any interior or external power. With regard to non-subjection to outside powers, the notion of independence of the national sovereign state has gained significant importance in the field of international relations. It has become an established rule in international law to respect the independence of any state, its freedom to adopt any policies according to its own will, and the prohibition of the intervention of any external powers in its affairs.⁵ Yet, no state or political entity seems to be absolutely independent of every other. Interactions and influences are always present. Absolute independence is assumed

¹ Raz, *op. cit.*, p. 8.

² Cf. Raz, *op. cit.*, p. 35; Field, *op. cit.*, p. 79.

³ *Province of Jurisprudence*, p. 200.

⁴ *Ibid.*, p. 200.

⁵ Hans J. Morgenthau, *Politics among Nations* (New York, 1976), p. 302.

formally, but there has always been found intermediate stages between absolute independence and absolute subjection.¹ Preston King in *the Encyclopaedia of Political Thought* observes:

"No social or political entity is entirely or absolutely independent of every other. As individuals, we may be slaves to passion, to fashion, to ideologies, and more. Some nations may regularly imitate others, and in diverse ways betray reciprocal influences. Some, certainly, have far greater power than others, and over others. Autonomy in matters political does not indicate an absence of interaction.... There will be powerful groups within any state seeking influence, preference or control. Many external groups (not least among these being other states) will betray the same purpose. The point is that for a sovereign (meaning independent) state to be subject to non-sovereign influences does not mean that, in this, it loses its sovereignty and independence, any more than it follows that an individual, persuaded in some matter or matters by another, becomes, by virtue of this, subject to that other. Nevertheless, it remains open as to how regularly one sovereign entity may sway another before it becomes inappropriate to speak of the latter as 'sovereign'.²

The Perpetual Power

One of the characteristics to which Bodin attached particular attention was the unlimited duration of sovereign power.³ To him, "sovereignty is unlimited in power, competence, and time".⁴ It seems that Bodin's basic intention was that the monarch should be granted office for life, and should be allowed to appoint his successor according to the hereditary rule. However, instead of formulating a direct argument to support that view he adopted a different approach. He used the same logic which he has applied to prove the unlimited power of the sovereign taking time as one dimension of the quality of being illimitable. As no power could put limits on the sovereign or else he would cease to be sovereign, he also argued that if it were possible that he might cease to be sovereign at any moment he would have never been a sovereign. Hence, he concluded that, for a sovereign to be sovereign he must exercise perpetual power. However, Bodin himself appears to be aware of the difficulty of his argument, since

¹ Field, *op. cit.*, pp. 80 - 4.

² King, "Sovereignty" in *The Encyclopaedia of Political Thought*, p. 494.

³ *Idem.*, *The Ideology of Order*, pp. 141 - 145.

⁴ Bodin, *The Six Books*, p. 85.

kings die and no sovereign power exists in perpetuity. He admits that "wherefore we must understand by the word perpetual, for the time of the life of him who hath the power".¹ Yet, scholars took seriously his argument that sovereignty implies an infinite duration and spent considerable effort in refuting him.

The Inalienable Right

Rousseau describes the sovereign power, which he believes to belong to the general will of the people, as being inalienable. He writes:

"I hold then that sovereignty, being nothing less than the exercise of the general will, can never be alienated, and that the Sovereign, who is no less than a collective being, cannot be represented except by himself: the power indeed may be transmitted, but not the will."²

His concept of the inalienable right may be clearer when a closer examination is made of his distinction between power and will. In his opinion, the government holds only executive function and it merely executes the acts of will of the people. Just as the human will transfers its commands to be carried out by the parts of the body, in the same way the general will of the people transmits power to the government to execute its acts. The people are always supreme, the government exists only at their pleasure and can always be revoked by their will. Rousseau denies that representative institutions have any claims to sovereignty. The bearer of sovereignty is the people only. To exercise legislation every individual has to participate directly and not through delegation.³ In his words: "every law the people has not ratified in person is null and void - is in fact not a law".⁴ Hence, he concludes that he cannot see how the people can preserve their right as sovereign unless the state be very small.⁵

¹ *Ibid.*, p. 87.

² *The Social Contract*, p. 182.

³ John C. Hall, in his introduction to *The Social Contract*, pp. xxvii - ix.

⁴ *Ibid.*, p. 240.

⁵ *Ibid.*, p. 242.

The Infallible Power

Rousseau's sovereignty is characterized by a further attribute. He describes the sovereign will as infallible. He asserts: "the general will is always upright and always tends to the public advantage".¹ "It is always constant, unalterable and pure".² Sometimes, the general will might be mistaken, because it is misled by private interests and "is subordinated to other wills",³ but in general it is not corrupted.

However, Rousseau's assumption faced frequent objections. One of his recent critics writes:

"Certainly the facts of history seem to contradict this claim only too frequently. There is no doubt that on many occasions men consent to, and actively participate in, acts which are extremely unjust... To assume that all men always act from good motives and that they do wrong only when they are misled or deceived, is more utopian idealism."⁴

III. Who is Sovereign?

Undoubtedly, the question of where sovereignty is located is fundamental, as obviously it would be pointless to investigate the nature of sovereignty without determining who can be the holder of it. Yet, it seems to be more puzzling than the other inquiries and perhaps no unambiguous answer can be given to it.⁵ Many theorists, especially the early makers of the concept of sovereignty, Bodin, Hobbes, Rousseau and Austin, seem to be in agreement generally on the nature and attributes of sovereignty but differ considerably on who ought to possess the sovereign power. An overview of the suggested answers reveals a remarkable contrast between ideas. The theories of sovereignty have varied from locating it in one person, an individual ruler at

¹ *Ibid.*, p. 184.

² *Ibid.*, p. 248.

³ *Ibid.*, p. 274- 8.

⁴ Jones, *Masters of Political Thought*, pp. 271, 274.

⁵ Very early on in human history Aristotle wrote in his *Politics* saying: "Another question is where ought the sovereign power of the state reside? With the people? With the propertied classes? With one man the best of all the good? With one man the tyrant? There are objections to all these". Cf. Stankiewicz, *In Defence of Sovereignty*, p. xiii

the top of a hierarchy, to considering the people, who are in reality the ruled, to be the only source of it. The residence of sovereignty may be a personal body, for instance a monarch, or an impersonal organization, the state. Most theories have conceived sovereignty as a human quality, but some have asserted its divine nature and assigned it to God. Instead of situating supremacy in a physical entity, some have assigned it to an abstract norm such as the law.¹ However, these patterns of thought about the seat of sovereignty may fall into three main categories, namely sovereignty of the ruler, sovereignty of the people and sovereignty of God. A short description of them will be given below.

i. The Ruler

The King

The sovereignty of the ruler was the first theory to appear. In fact, the emergence of the concept of sovereignty itself was mainly an attempt to justify the rule of a single person as the only possible solution to the crisis of the conflicting interests in the community. According to this theory, the state will be inadequate to achieve true stability, unity and peace if it is not a specific individual. The state, in other words, becomes incarnate in a single ruler. All powers are centred in his person and he becomes the focus of all social functions. What he wills is right because it is his will. By his predominating unity and decisiveness he gives unity and strength to the whole community. These are the elements of the theory formulated by Bodin.² As a sixteenth century Frenchman, he was strongly in favour of monarchy assuming that any other form of government was seriously inoperative. His theory of sovereignty was an assertion of the supremacy of the royal will, and it placed sovereignty as a personal attribute of the king. It was a great support to the French monarchy of his day. Yet,

¹ Aristotle argued that it is 'a poor sort of policy to vest sovereignty in any person or body of persons, subject as persons are to the passions that beset men's souls, and that it is better to vest it in law'. Cf. Wilson, *op. cit.*, p. 781. For the idea of the sovereignty of reason or justice see Merriam, *op. cit.*, pp. 73- 83; Barker, *op. cit.*, pp. 212- 5.

² Hinsley, *op. cit.*, pp. 100- 25; King, "Sovereignty" in *Encyclopaedia of Political Thought*, p. 494; Harold Laski, *A Grammar of Politics* (London, 1925), p. 45.

Bodin did not rule out the possibility that sovereignty may also reside in other forms of state organization such as democracy, where the holder of it will be the whole community, or aristocracy, where it is vested in the hands of a limited number of individuals.¹

Similarly, Hobbes allows theoretically that sovereignty may be placed in one man or an assembly of men, into which either every one has the right to enter, or only certain distinguished men.² But his admission is only nominal. He makes it perfectly clear that he took monarchy to be the best form of rule to produce peace and unity.³ His view is based on a number of factors. First, he argues that a collective sovereignty in democracies is actually dominated by the will of one man and must prove in the end to be like monarchy. Second, the representatives of an assembly may not be able to give good advice, either because their choice is the effect of wealth rather than of knowledge, or because their decision is commonly the outcome of long fruitless discussions filled with strong passion which may excite men but not govern them. Third, the disagreements in the assembly may reach such a dangerous height as to bring the state to the edge of civil war.⁴

The State

Significantly, Hobbes' arguments disclose another important theoretical implication. He compares the commonwealth to an artificial man, even of greater stature and strength than the natural, in his language a Leviathan, the mythical monster. He then advances the idea that the state itself as an artificial man is the holder of the supreme power. That is to say, Hobbes attempts to transform the sovereignty of the ruler by substituting for the Prince the abstract notion of the state. He assumes a mortal god as the holder of sovereign power which absorbs the personality and rights of his

¹ Merriam, *op. cit.*, p. 16; Ward, *op. cit.*, p. 23; D'Entreves, *op. cit.*, p. 102.

² Hobbes, *op. cit.*, pp. 293 - 41.

³ *Ibid.*, p. 241.

⁴ *Ibid.*, pp. 241- 5.

subjects.¹ But, even he himself might speak of the state as an artificial man, might attribute to it absolute sovereignty and might consider it as a matter of choice or circumstances whether it is formed of one physical ruler or of a few or of many. Yet the only practical interpretation of his theory is that the old ruler personality possesses sovereignty.² The king is tangible and visible, the state is a mere fiction.

However, the idea that the state itself is the holder of sovereignty has continued to find recognition among later theorists,³ especially when personal loyalty to royal families gave way to loyalty to the state as an impersonal entity. The first step in the development of the idea is an attack on the theory of the artificial nature of the state which views it as a product of the will of the community through a contract. The state is regarded as an organism created by social growth, either in the idealistic sense introduced by Hegel,⁴ or in the natural sense influenced by the development of natural sciences.⁵ Further there appeared the notion that the state is a real juristic personality, that is, it has the capacity to bear legal rights and duties.⁶ With these two conceptions about the nature of the state, some supporting one of them, others holding both, the idea of the sovereignty of the state has become widespread.

ii. The People

At first sight, the doctrine that the people are sovereign, if seen to signify the ruled in contrast to their ruler, may be judged as an inversion of the natural political order.⁷ Moreover, it may be assumed to involve a contradiction in terms in indicating that the people are superior to the people. Yet, the idea that power primarily belongs to the people, that the authority of the ruler is in fact transformed to him from the

¹ Hinsley, *op. cit.*, pp. 142- 3.

² *Ibid.*, p. 145.

³ See Merriam, *op. cit.*, pp. 85 - 129.

⁴ *Ibid.*, pp. 91- 5; cf. Hegel, *The Philosophy of Right*.. Trans. T. M. Knox (Oxford, 1952).

⁵ Cf. H. J. McCloskey, "The State as an Organism", *The Philosophical Review*, LXXXII (1963), pp. 306- 26.

⁶ Merriam, *op. cit.*, pp. 108 - 20; cf. Kenneth C. Cole, "The Theory of the State as a Sovereign Juristic Person", in Stankiewicz, *In Defence of Sovereignty*, pp. 86 - 103.

⁷ Merriam, *op. cit.*, p. 128.

community, and that he is only a delegate of the whole is an old belief. It is found in ancient Greece, among the Romans and in medieval thought, as well as in its revival by modern thinkers.¹ The striking fact is that such notions are not believed to hold only in democracy. They appear to be the underlying assumption in any form of government, whether it is in the hands of one, few or many. The historic expression 'government by the consent of the governed' has never, and will never fall out of use.² An example of its use to justify monarchy in the ancient world appears in the Roman idea that 'the will of the Prince has the force of law, since the people have transferred to him all their rights and power'.³ Another modern example is Hobbes who though he assigned absolute power to the ruler who is preferably a monarch, still held that initially the ruler is invested with sovereignty by an agreement between him and the people who submit to his authority wholly and for ever.⁴ That is to say that Hobbes admits the notion of the supremacy of the people in theory, only to destroy it in reality. On the other hand, Rousseau has probably done more than any one else to renew the notion of the supremacy of the people and to bring it back to its original sense in democracy.

Unlike Hobbes, Rousseau assumes that the people are the holders of sovereignty and they have never alienated it or transmitted it.⁵ In his theory the role of the ruler is reduced to that of a leader who is completely under the control of those whom he leads. The governor seems in appearance to exercise authority, but in truth authority remains in the hands of the governed. The governing person is delegated by the people, is instructed to fulfil a certain mission, and while carrying out his duties he remains strictly subordinated to the people who have delegated him. Real authority belongs not to the governor but to the governed.⁶ To bring forth this essential element

¹ Cf. Yves R. Simon, "Sovereignty in Democracy", in Stankiewicz, *In Defence of Sovereignty*, pp. 241-72.

² Simon, *op. cit.*, p. 268.

³ Merriam, *op. cit.*, p. 11.

⁴ Hobbes, *op. cit.*, pp. 227 - 8.

⁵ Rousseau, *op. cit.*, p. 182.

⁶ Simon, *op. cit.*, p. 243.

of the theory, one writer suggested describing the government in such a state of affairs as a coach-driver hired and paid by those whom he drives.¹ The comparison is very remarkable. As the coach-driver, doubtless, leads his clients by the virtue of their wills and not where he pleases, the government rules the people, but only as an instrument to fulfil their wishes and not as a real master.

All the People

However, the concept of popular sovereignty in its proper and strict sense applies only to pure democracy in a small community where the people govern directly by themselves. There is no distinct government and no representation. Every citizen participates directly in the meetings of the people who in their totality form the government. As a result of that Rousseau rejects assigning sovereignty to representative assemblies. He writes:

"Sovereignty, for the same reason as makes it inalienable, cannot be represented; it lies essentially in the general will, and will does not admit of representation: it is either the same, or other; there is no intermediate possibility. The deputies of the people, therefore, are not and cannot be its representatives: they are merely its stewards, and can carry through no definitive acts. Every law the people has not ratified in person is null and void - is, in fact, not a law. The people of England regards itself as free; but it is grossly mistaken; it is free only during the election of the members of parliament. As soon as they are elected, slavery overtakes it, and it is nothing. The use it makes of the short moments of liberty it enjoys shows indeed that it deserves to lose them."²

The Parliament or the Electorate

However, in England itself continuous constitutional developments have consolidated the acceptance of the notion of the sovereignty of the representative assembly, the Parliament, as an essential element in the democratic type of rule. Since the eighteenth century the doctrine of the absolute sovereignty of the Crown-in-Parliament has gained a dominant and central position in British politics.³ In this

¹ Paul-Louis Courier, *Lettres au redacteur du Censeur* (Paris, 1845), pp. 62-3, quoted in Simon, *op. cit.*, p. 244.

² *The Social Contract*, *op. cit.*, p. 240.

³ Hinsley, *op. cit.*, p. 152. For full discussion of parliamentary sovereignty and its modern developments see R. F. V. Heuston, "Sovereignty", in A. G. Guest, ed. *Oxford Essays in*

regard, it is often assumed that the Crown in Parliament is a perfect example of the seat of sovereignty in the Austinian sense.¹ However true this may be, it overlooks the personal view of Austin. To him, it is not the elected representative assembly which forms part of the sovereign body but the electorate. Speaking about England he writes:

"Speaking accurately the members of the common house are merely trustees for the body by which they are elected and appointed: and consequently the sovereignty always resides in the King's Peers and the electoral body of the commons."²

In the background of such different interpretation of the doctrine of popular sovereignty its viability seems to be destroyed. The theory as Rousseau left it and as Austin supplemented it, though have exerted great influence and inspired all democratic movements since the French Revolution, yet did not escape severe criticism. Harold Laski, for instance, one of the leading critics of the theory in the twentieth century says:

"The maze, in fact, to which Austinianism ultimately leads, implies in the modern State the theory of popular sovereignty. It is well to urge at the outset that it is impossible to give precision to this view. The people cannot govern in the sense of acting continually as a unit; for the business of the modern state is far too complex to be conducted by perpetual referenda. If popular sovereignty simply means the paramountcy of public opinion, this is an abstraction of the most vicious kind. For we need to know when public opinion is public and when it is opinion. And, if with the French Constitution of 1791, we say that the nation is the source of all powers which are to be exercised by the legislative body and the king, we are reducing popular sovereignty to a metaphor. We should then encounter on the one hand the argument of Rousseau that to part with paramount power is to betray it, and on the other the view ...that a restricted mandate is fatal to the moral character of the representative. All, in fact, that the theory of popular sovereignty seems to mean is that the interests which prevail must be the interests of the mass of men rather than of any special portion of the community; and it is further an implicit insistence that the prevalence of this general interest is the criterion of political good. But this is to raise debate, not to settle it; for the real problem is not the announcement, but the realisation, of the substance of this creed."³

Jurisprudence (Oxford, 1961), pp. 198- 222; Geoffrey Marshall, *Constitutional Theory* (Oxford, 1972).

¹ Laski, *A Grammar of Politics*, p. 52; Field, *op. cit.*, p. 59.

² *Province of Jurisprudence*, pp. 230-1.

³ Laski, *A Grammar of Politics*, pp. 54- 5.

iii. God

The concept of divine sovereignty occupies an important place in the Western political thought because it is closely related to Christianity which has been a major force in politics ever since it became the established religion of the Roman Empire in the second century. Our main concern here is about the modernized forms of the concept of the sixteenth and the eighteenth centuries which accompanied the emergence of the other theories of sovereignty. But it does not seem possible to render an explanation of the concept except in terms of Christian history. Needless to say, the essence of the Christian doctrine is the belief of a dual nature of man and of a dual control over human life based on the distinction between spirituals and temporals. In the pure spiritual sphere the doctrine that power is God's appears to have a perfectly valid and constant interpretation which has only been challenged by the Reformation. However, the application of the doctrine to the temporal, that is to say the political, sphere is perhaps vague, obscure and lends itself to different interpretations.

The Papacy

The starting point in the establishment and government of the spiritual society is the doctrine of the papacy.¹ According to the Christian faith, God became man and while he was on earth he founded the church as the body of all the faithful, as well as designating its leader, namely St. Peter. The powers of Peter were the same as Christ's powers, and by way of succession those powers pass to the following heads of the church, the popes. The pope, it is believed, does not derive his powers from his predecessor, nor from the church, but directly from God. According to this principle, he becomes a vicar of Christ and stands outside and above the church forming an entity of his own. While his person remains human and he is designated to his office by men, his power is by no means from man; it is from God alone and its conjunction with his person is effected by God. As a vicar of Christ, he is the only one authorized to

¹ Cf. Walter Ullmann, *Principles of Government and Politics in the Middle Ages* (London, 1961), pp. 32- 56.

announce and interpret the divine will. Though he is supported by a class of professional clergy who offer spiritual consolation, he is singled out for the exposition and fixation of the Christian norms. His authority of jurisdiction in religious affairs is final.

Passive Obedience

On the other hand, the Christian theories of sovereignty of God in the political sphere originate from the important passage in the New Testament of St. Paul's letter to the Romans, 'so much so that all Christian political theory may be regarded as one long uninterrupted commentary on it'.¹ The words of St. Paul sound obvious and positive:

"Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God, and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shall have praise of the same: For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. For this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing. Render therefore to all their dues: a tribute to whom a tribute is due; custom to whom custom; fear to whom fear; honour to whom honor."²

Yet however clear and definite St. Paul's words, they are given very different interpretations and are used for a great variety of purposes. In the early Christian communities, they have helped to combat tendencies to civil disobedience which would lead to increased oppression or would, it is thought, divert the community from its true spiritual mission. It became an accepted doctrine that civil obedience is a duty imposed by God. As all power is of God it is an obligation to submit to it in whatever form it manifests itself and even evil power must be passively obeyed.³ Such an interpretation

¹ D'Entreves, *op. cit.*, p. 183.

² Romans XIII,1- 7; cf. similar passages in Titus III, 1 and 1 Peter II, 13- 7.

³ Bertrand De Jouvenel, *On Power*. Trans. J. F. Huntigton (Boston, 1962), p. 29; D'Entreves, *op. cit.*, p. 184; Sabine, *op. cit.*, pp. 177- 8.

is supported further by the statements of the Old Testament about the nature of the Jewish kingship.¹ According to the Jewish tradition the kingship was founded by God as a necessary consequence of human rebelliousness, and the king, who was in fact instituted in power by the anointment of a prophet, was described as the Lord's anointed. 'In a sense the Christian conception of rulership always implied a theory of divine right, since the ruler is a minister of God'.² The influence of such ideas is so great that it has brought a considerable change in the claims of the Roman Emperors to power. They have come to recognize in God the origin of their power and to consider themselves emperors by the grace of God.³ The importance of this change lies in the fact that it has paved the way for the so-called theocratic rule in the Middle Ages.

Supremacy of the Pope

By the fifth century a new interpretation of St. Paul's formula that all power is of God has already been emerging. The new trend puts stress on the thesis that if power is from God and is conferred by his grace it is a source of duties rather than a source of rights. Instead of defining the principle to induce the subjects to obey Power, it is interpreted to induce Power to obey God. The holder of power is not autonomous to use it as he pleases. It is his duty to use it in accordance with divine law, the law of the Master of his power.⁴ Several significant alternative conclusions are now possible to be reached. On the one hand, passive obedience is no longer needed. On the contrary, resistance to evil power is not only permitted but rather is regarded sometimes a duty. If the holder of power, in St. Paul's words, is the minister of God to the people for their good, the obligation of obedience of the subjects is conditional to his fulfilment of his duties in accordance with justice.⁵ On the other hand, when these principles are viewed in conjunction with the papal doctrines, which

¹ See I. Samuel, chs. 8- 10.

² Sabine, *op. cit.*, p. 178.

³ Ullmann, *op. cit.*, p. 57.

⁴ Ullmann, *op. cit.*, pp. 64- 5; D'Entreves, *op. cit.*, pp. 185- 6; De Jouvenel, *op. cit.*, p. 29.

⁵ D' Entreves, *op. cit.*, p. 185.

are accounted above, they will illustrate the grounds for the claims of the popes throughout the Middle Ages to supervision and supremacy over secular rulers.¹ The traditional Christian doctrine places the church and the state side by side as equals each deriving its power from God.² But when it is accepted that the function of the secular ruler is basically the eradication of evil, and that his power is not arbitrary but he is constrained by Divine law, the state and the church will not stand on the same footing. Within the papal premises, the pope who is the 'rock' upon which the church is built is the only one authorized to pronounce what is Divine law, what is evil and what is not evil in the Christian world. As such he must be in a higher position. The concept of the role of the churchmen in directing the affairs of the state appears in the words of Gregory VII to a council at Rome in the year 1080:

"So act, I beg you, holy fathers and princes, that all the world may know that, if you have power to bind and loose in Heaven, you have power on earth to take away or to grant empires, kingdoms, principalities, dukedoms, marches, counties, and the possessions of all men according to their merits.... Let kings and all the princes of the world learn how great you are and what power you have and let these small men fear to disobey the command of your church."³

The theocracy of the Middle Ages is the culmination of the implementation of this kind of interpretation of the principle of divine sovereignty.⁴ From the eleventh to the fourteenth centuries the pope has become the supreme monarch of the church and the secular ruler is but one of his subjects. The prince is not independent in many ways. He has to follow the papal law and commands or face excommunication, if not deposition. And such sanctions have proved to be so formidable that they have provoked the Emperor Henry IV to kneel down in the snow of Canossa to seek the forgiveness of Gregory VII.

¹ For full discussion see Ullmann, *op. cit.*, pp. 57- 86.

² This conception is often referred to as the doctrine of the two swords, and is given authoritative exposition by Pope Gelasius I at the end of the fifth century. See Sabine, *op. cit.*, pp. 188- 90.

³ Quoted by Sabine, *op. cit.*, p. 224.

⁴ De Jouvenel, *op. cit.*, pp. 29 - 30.

However, the Reformation has marked the breakdown of the absolute government of the pope both in the spiritual and political spheres. To undermine his authority in the political side two lines of religious argument have developed offering new interpretations to the doctrine of divine sovereignty. One has stressed the independence of the secular ruler holding him responsible directly to God with no earthly intermediary. The other stresses the rights of the people, under God, to provide for its own civil government.¹ It is to be noticed that while both trends agree in the view that power is of God and both have sought to free the civil government from the yoke of the pope, nonetheless they run counter to each other. The former is in support of the royal rights and it has crystalized in the theory of the divine right of kings which subjects the people to kings as a representative of God instead of subjecting them to the law of God and the control of the church. The latter is an attempt to limit the power of the king and assert his accountability to his subjects as well as to God. Therefore, while the former is a justification of despotism, the latter is a defence of liberty and the rights of the community. Also it is noteworthy that these theories have emerged in the sixteenth century at almost the same time when Bodin's theory of sovereignty has made its appearance. The distinction between them and Bodin's theory lies in the fact that they are of a religious background where Bodin has omitted God in his thesis and has accepted a pure secular state.

The Right to Resist

As the doctrine of the divine right of kings has gained popularity because it is largely directed against the theory which places the people above the kings and justifies resistance, it may be convenient to look into the latter first. The most interesting expositions of the theory are those of the French Protestants, and among them the most famous is the *Vindiciae Contra Tyrannos* which is published in 1579.² The main

¹ Sabine, *op. cit.*, p. 230.

² An English translation has appeared in 1648 and others thereafter. It is reprinted with an introduction by H. J. Laski as *A Defence of Liberty against Tyrants* (London, 1924). The authorship of the book has been debated since the sixteenth century and it is often assumed that

outline of the theory of the *Vindiciae* may be illustrated in the following extracts from the book:

"The Holy Scripture doeth teach that God reigns by his own proper authority, and kings by derivation, God from himself, kings from God, that God hath a jurisdiction proper, kings are his delegates. It follows then, that the jurisdiction of God hath no limits, that of kings bounded; that the power of God is infinite, that of kings confined, that the kingdom of God extends itself to all places, that of kings is retained within the confines of certain countries.... And, therefore, seeing all the kings of the world are under his feet, it is no marvel, if God be called the King of kings and Lord of lords; all kings be termed His ministers established to judge rightly, and govern justly the world in the quality of lieutenants.... By the same reason the people are always called the Lord's people, and the Lord's inheritance, and the king's governor of this inheritance, and conductor or leader of his people of God.... That sentence of God Almighty must always remain irrevocably true, I will not give My glory to any other, that is, no man shall have such absolute authority, but I will always remain Sovereign."¹

Under the title "Kings are made by the people" the book continues to explain its ideas and says:

"We have shewed before that it is God that does appoint kings, who chooses them, who gives the kingdom to them: now we say that the people establish kings, puts the sceptre into their hands, and who with their suffrages, approves the election. God would have it done in this manner, to the end that the kings should acknowledge, that after God they hold their power and sovereignty from the people, and that it might rather induce them, to apply and address the utmost of their care and thoughts for the profit of the people.² Now seeing that the people choose and establish their kings, it follows that the whole body of the people is above the king; for it is a thing most evident, that he who is established by another, is accounted under him who has established him, and he who receives his authority from another, is less than he from whom he derives his power."³

In short, God in the scheme of the *Vindiciae* is the real sovereign and the king and the people are bound to obey his law. Though the king is instituted by God, God acts in this matter through the people. Therefore, the king derives his power from God as his lieutenant and from the people who have elected him as their representative.

Duplessis- Mornay, the counsellor of Henry IV, is its author. However, the book is published under the pseudonym of Junius Brutus.

¹ Laski, ed., *A Defence of Liberty against Tyrants*, pp. 67- 70.

² *Ibid.*, p. 118.

³ *Ibid.*, p. 124.

Thus, God is superior and the people are greater than the king. The king is bound to their services. If the king violates the law of God, or does not fulfil the duties trusted to him by the people, resistance against him is justifiable. Such revolt is the duty of the people. But by the people it is not meant the masses. The reference to the people throughout the theory means the natural heads of the community who are commissioned to speak in its name. In this sense, the rights claimed for the people is not a right of every individual. It is a right of those who possess authority of some kind and whose position makes them the natural heads of the community. Hence, 'the spirit of the *Vindiciae* is not democratic but aristocratic';¹ nonetheless, the book has become 'one of the landmarks of revolutionary literature'.²

The Divine Right of Kings

In reply to the claims of the rights of the people and the revolutionary trends they raise, the theory of the divine rights of the kings is stated.³ Essentially, it claims that monarchy is the best, if not the only, form of government chosen by God, and that a monarch has a right to his throne acquired by birth and derived directly from God. As the right is hereditary as well as divine, it does not depend on the consent of the subjects. The king is the representative of God on earth, his power is absolute and he is accountable to God alone. Ultimately, the law resides in the breast of the king in spite the fact that it is assumed that he is bound by the divine law and the natural law. "Kings", James wrote, "are the authors and makers of the laws, and not the laws of the kings".⁴ Under such a theory the sacred obligation of the subjects is to render

¹ Sabine, *op. cit.*, p. 357.

² *Ibid.*, p. 352.

³ A comprehensive discussion of the statements of the theory of the divine right of kings is contained in John Neville Figgis, *The Divine Right of Kings*, 2nd. ed. (Cambridge, 1914). Though the theory has originally been elaborated in France by writers such as William Barclay, it has appeared at the same time in Scotland and is stated by King James I himself. Cf. Charles H. McIlwain, ed., *The Political Works of James I* (Cambridge, Mass., 1918). A brief account is given in J. W. Allen, *A History of Political Thought in the Sixteenth Century* (London, 1928), pp. 367- 93; Sabine, *op. cit.*, pp. 364- 9; Ullmann, *op. cit.*, pp. 117- 37; and D'Entrevies, *op. cit.*, pp. 182- 90.

⁴ *The Political Works*, p. 62.

unconditional obedience to the kings, who "are not only God's lieutenants upon earth, and sit upon God's throne, but even by God himself they are called Gods".¹

If the elements of the theory of the divine right of kings is taken into account, it is not difficult to see that it is nothing but a justification of the same absolute monarchy which Bodin's theory of sovereignty has attempted to defend. As a means of stability against tendencies of rebellion it has gained a wide acceptance and has achieved the end for which it has been invented. Hence, it is not surprising to find the religious theorists hold to it whenever there is a threat of instability. In the aftermath of the French Revolution it is called upon again to restore order. The doctrine has been given new and brilliant elaborations² and it is able to survive through the eighteenth century and the first half of the nineteenth century. The basis of this movement is to assert the doctrine of divine sovereignty. God is the true sovereign of the universe and the real fountain of political power. Any theory of the religious and political sovereignty of man is regarded "the principle of all the evils which afflict society".³ It is declared that "man cannot give laws to himself" only "he can do no more than defend what is dispensed to him by a higher power".⁴ This emphasis on the divine origin of power is to impose limitations by the law of God on the human ruler and to suppress rebellion. Practically, it disapproves of democracy and favours absolute monarchy. In fact this is the ultimate end for which the divine right is effectively used.

¹ *Ibid.*, p. 307.

² The leaders of this movement among the Roman Catholics in France are De Maistre in his *Study on Sovereignty and The Pope*, and De Bonald in his *Theory of Political and Religious Power in Civil Society*. In Germany a good presentation is found in *Philosophy of Law* by the great Protestant theorist Stahl. Cf. Merriam, *op. cit.*, pp. 52- 62. The two works of Harold J. Laski, *Studies in the Problem of Sovereignty* (New Haven, 1917), pp. 211- 39; and *Authority in the Modern State* (New Haven, 1919), pp. 123- 88, give a summary of the political thought of De Maistre and Bonald respectively.

³ Bonald as quoted in Merriam, *op. cit.*, p. 54.

⁴ De Maistre quoted in Laski, *Problem of Sovereignty, op. cit.*, p. 217.

Chapter 2

Criticisms and Restatements of Western Theories

I. Objections to Absolute Sovereignty

Theories of absolute sovereignty as expounded by Bodin, Hobbes, Rousseau and Austin had never been a universally accepted truth. In spite of that they became the central dogma in the revolutionary changes that took place in Europe in recent centuries. Firstly, the belief in the sovereignty of the national King challenged the supremacy of the Pope and the Emperor and succeeded in overturning their power. Later, the monarchical regime itself collapsed under the pressure of the idea of popular sovereignty. Nevertheless, those theories were always attacked and strong criticism has been levied against them, specially during the past hundred years. Some at least attempted fundamental changes to the traditional views. Others claimed the total rejection of the concept of sovereignty and disowned it as wrong and harmful. "It would be of lasting benefit to political science if the whole concept of sovereignty were surrendered", one critic suggested, "on the grounds that it was of dubious correctness in fact, and it had dangerous moral consequences".¹ Another wrote:

"It is my contention that political philosophy must get rid of the word, as well as the concept, of sovereignty ... because this concept is intrinsically wrong and bound to mislead us if we keep using it assuming that it has been too long and too largely accepted to be permissibly rejected, and unaware of the false connotations that are inherent in it."²

This attempt to refute the theory of sovereignty is claimed to be based on factual and moral grounds. It is argued that sovereignty with its traditional attributes is impossible to be identified in reality. In the light of modern political conditions, it is maintained to be inapplicable to most important developments such as

¹ Harold Laski, *A Grammar of Politics* (London, 1925), pp. 44- 5.

² Jacques Maritain, "The Concept of Sovereignty", in W. J. Stankiewicz(ed.), *In Defence of Sovereignty* (New York, 1969), pp. 42- 3.

federalism and modern democracy. Moreover, the growth of international law has thrown some doubts on the competence of the notion of national sovereignty. Morally, sovereignty with its mark of unlimited power is seen to be an effective tool in the hands of despotic rulers. However, it would be out of place here to attempt anything like a detailed review of this criticism. Yet it appears to be necessary to outline its origins and then look into the latest views on sovereignty.

i. Irrelevance to Actual Conditions

The arguments supporting the idea that the theory of sovereignty is incompatible with modern social and political facts, have asserted that there has been an intense growth in the internal structure of societies and a close association between the ruling body and the ruled people. It is believed that complexity and diversity in the distribution of power in the political community makes it inaccurate to assume that there is an ultimate authority within it.¹ In verifying this view a number of recent political developments are mentioned as examples. It will suffice to take only the most striking.

Decentralization and Federalism

The arguments for the case that the validity of the concept of sovereignty was challenged by the developments that took place in many countries towards adopting decentralization and federalism were stated by a distinguished French critic, Leon Duguit, as follows:

"Today many countries with a unitary system of government, and particularly France, move in the direction of a large decentralization. Federalism is almost the common law in America. In Europe, Switzerland and the German Empire are already Federal states. He is referring to the Swiss Union of 1848, 1874 and the German Empire of 1871 and the system is without doubt destined to expand. In the usual theory of sovereignty regional decentralization is a system in which certain local groups, varying in character and number according to the state in question, exercise certain prerogatives by means of organs and agents regarded as representatives of the local group; but their activity is more or less strictly controlled by the superior authority. The French Commune is a very clear example of a local and decentralised group. It

¹ F. H. Hinsley, *Sovereignty*, 2nd. ed. (Cambridge, 1986), p. 218.

holds real rights of sovereign character: it has a police power, it can levy taxes, it has the privilege of eminent domain. These powers are exercised by organs and agents as representatives of the commune. Whatever may be said, this is the flagrant contradiction to the conception of a unified and indivisible national personally exercised sovereign power... To avoid the disharmony, it has been urged that these decentralized groups are not really sovereign, that though they exercise sovereign power, sovereignty itself remains undividedly attached to the indivisible national person. This is the merest quibbling.

As to federalism more even than regional decentralization it negatives the idea of state sovereignty. It is essentially constituted upon the basis that there exists on the same territory only one nation but several states invested as such with sovereign power.¹

This new phenomenon of decentralization and federalism stimulated numerous controversies and immense efforts were made to resolve its apparent incompatibility with the concept of sovereignty.² The course of discussions reveals that the problem faced was of a very perplexing nature. apparently, it was hardly possible to reconcile the different forms of division of powers in the federal state with the idea of the monistic indivisible sovereignty. Sovereignty, as was found in the traditional theory, had to be one, or it was not at all.

The first resolution in america, the pioneer example of federation, was a tendency to accept the idea of divisibility of sovereignty, which was even reflected in the constitution of 1887 though in a confused manner. The states and the national government were regarded as sharing sovereign power between them. While each retained important portions of it, neither of them became supreme, but both were limited.³ Those who held this view argued that without admitting the possibility of a divided sovereignty it was difficult to explain intelligibly the compound system of government in the United States. The assumption that sovereignty was a unit had to be corrected because "experience has shown it capable of division".⁴ On the Continent the German thinkers adopted, for some time, a similar theory of double sovereignty

¹ Leon Duguit, *Law in Modern States*. Tran. T. Frida and Harold Laski (London, 1921), pp. 20- 2.

² See C. E. Merriam, *History of the Theory of Sovereignty since Rousseau* (New York, 1900), chapters 9 and 10; Preston King, *Federalism and Federation* (London, 1982).

³ Merriam, *op. cit.*, p. 162- 3.

⁴ *Ibid.*, pp. 164 n.5.

in the explanation of the character of a federal state. The central government, as it was reasoned, and each local or state government had its own sphere of operations. Within the limits of its own sphere, each was sovereign as was the other. Therefore, there was no contradiction in the concept of a state with many sovereigns, if it was meant by that independent political entities, each supreme in its own particular sphere.¹

The notion of a divided or a relative sovereignty became widely influential, but eventually was weakened by other explanations. Under one famous form of definition, sovereignty was considered as an absolute and unlimited power, but it was possible that it could be limited by its own will, and only by itself. This possibility of "self-limitation" of sovereignty, with emphasis on the self, was regarded as an explanation through the doctrine of sovereignty of what was maintained against it.² Moreover, to facilitate the recognition of one sovereignty another development had appeared. A distinction was made between state and government. There was an ordinary organization with local and central branches which was the government. Then, above it there was the state which was supreme and ultimate in its powers. Governmental powers might be divided among different organs, but sovereignty remained absolute and indivisible and it belonged to the state itself. Thus sovereignty was recognized as an essential quality of the state.³ Further, another theory developed another argument which ran in the opposite direction. It claimed a divorce between sovereignty and statehood and introduced the idea of the non-sovereign state. It was asserted that there could be political communities which were non-sovereign because they were subjected to a higher power, but nevertheless they could be entitled to the name of state in the sense that they possessed an authority based on their own right, and not on delegation from the

¹ *Ibid.*, pp. 186- 7.

² *Ibid.*, pp. 193- 7.

³ *Ibid.*, p.180- 2.

sovereign powers, to perform political functions and to establish their own binding rules. Accordingly in federalism, though the local powers lost their sovereignty, they still retained their statehood. All parties in a federal state, that is the individual states and the central state, possessed in common the supreme indivisible power.¹

The above discussion summarizes the complicated problems that existed in reconciling federalism with the traditional theory of sovereignty. The derived conclusion, however, might be well presented in the following quotation taken from a recently published book on federalism (1982):

"For various reasons, the classical theory of sovereignty is inadequate. If we are to regard federation as a form of sovereign state, it is necessary to indicate in advance what we intend by sovereign. We may stipulate a sovereign state to be a territorially defined unit which has established and coherent procedures for conflict-resolution and decision-making within its borders, which is neither legally subject to nor substantively bound by any other entity extended to itself, and which has designated agents (eg. rulers, civil servants etc) to act on its behalf. Such a definition as this excludes any considerations of absolute, total, illimitable or indivisible power as marks of sovereignty. It does not, however, exclude notions of rule-coherence, finality of decision, or political hierarchy. With such a definition, there remains no need for the concept of a 'unitary' state. A federation is merely one of many different, indeed innumerable, types of sovereign states.²

Complexities in International Relations

Europe in the Middle Ages, under the dominance of imperial ideas and Christendom, was believed to form a single community governed by one universal authority, the Emperor or the Pope. The development of separate territorial entities was accompanied by the appearance of the notion of sovereignty which led to the belief that there should be a final and absolute authority within each separate state. The early formulators of the theory of sovereignty were primarily interested in the internal political structure of their societies and paid little attention to the question of relations between nations.³ However, the theory of sovereignty has been

¹ *Ibid.*, pp 197- 200.

² King, *Federalism and Federation*, p. 141.

³ J. L. Brierly, *The Law of Nations* (Oxford, 1963), pp. 45- 6.

expanded to apply to the international system.¹ In the international context it is used to mean the antithesis of its internal usage. The theory maintained that within the single community there should exist a superior power, but internationally the principle denied the existence of any kind of superior authority over and above a collection of states.² Essentially, sovereignty is a territorial concept explaining the relations between rulers and the ruled. The confusion around its function in international law arises mainly from the fact that it has been used to express a wholly different relation which arises between two or more "sovereigns".³

Nevertheless, when the doctrine of absolute national sovereignty was transformed from a principle of internal order into the international sphere, the result was confusing.⁴ The assumption of absolute sovereignty was found to be incompatible with the idea of international law. If each state has absolute freedom of action in international affairs, the existence of international law will be impossible. If the state with its own unlimited supreme will is the sole source of all law, how could it be subjected to international law?

To escape from this difficulty many devices have been introduced. In one approach international law was viewed as a law of coordination, not a law of subordination, a law between and not above the different states. Yet, even in this sense if states are subjects of international law certainly the law is above them.⁵ Another attempt to reconcile the notion of absolute sovereignty with the existence of international law is the theory of self-limitation. According to this concept, the state by its own sovereign will may voluntarily submit to international laws and treaties and hence limit its sovereignty. Hence, international

¹ See F. H. Hinsley, "The Concept of Sovereignty and the Relations between Nations", in W. J. Stankiewicz (ed.), *In Defence of Sovereignty* (New York, 1969) pp. 275- 88.

² *Ibid.*, p. 275.

³ R. P. Anand, "Equality of States in International Law", *Recueil Des Cours*, II, 1986, pp. 26- 7.

⁴ Mark St. Korowicz, *Introduction to International Law* (The Hague, 1959), pp. 40- 51.

⁵ Brierly, *op. cit.*, p. 46.

law, like all other law, is a creation of the individual state. It is an "external state law".¹

Eventually this construction was realized to be inadequate. International law is not a binding legal system if it depends wholly on the will of the individual state. If "self-liberation" from "self-limitation" is permitted according to the interests of each state, then there will be no real obligation.² However, the dominant tendency in modern international relations is a move towards increasing limitation on sovereignty of individual states and assertions of the supremacy of international law. Sovereignty is defined as the autonomy of the national state within the limits of international law.³ In the opinion of one authority on international law :

"The present international practice and doctrine recognize only and exclusively the relative sovereignty of states, i.e sovereignty limited by the rules of international law which the state co-created or to which it acceded. These rules are binding upon the state, it has to obey and apply them faithfully, and it may not unilaterally, by its own will change or abolish them."⁴

In this regard, there remains to be considered the remarkable views of Hans Kelsen, a renowned international jurist, who made a careful analytical study of the problem of national sovereignty in international law.⁵ Kelsen excludes the possibility of the "dualistic position" which assumes the simultaneous validity of international and national law, for the simple reason that they may conflict with each other, "the one prescribing that a certain action ought to be performed and the other that this action ought not to be performed".⁶ There is left only the "monistic theory" which holds that: either international law is superior to national law, meaning that the validity of the latter is derived from the former, or national law is conceived of as superior to

¹ Korowicz, *op. cit.*, pp. 42- 5.

² *Ibid.*, p. 45.

³ See Anad, *op. cit.*, pp. 34- 5.

⁴ Mark S. Korowicz, "Some Present Aspects of Sovereignty", *Recueil Des Cours*, I, 1961, p. 108.

⁵ See Hans Kelsen, "Sovereignty and International Law", in Stankiewicz, *In Defence of Sovereignty*, pp. 115- 31.

⁶ *Ibid.*, p. 117.

international law whose validity depends on recognition by national law. If the primacy of international law over national law is accepted, then the term sovereignty of the state loses its proper sense, since the supreme order is the international law and not the subordinated national legal order.¹ If on the other hand the primacy of the national legal order is accepted, bestowing validity on international law only when it is recognized by the state, then sovereignty of the state acquires its real meaning as presented in the traditional theory.² But such a view will lead to state solipsism because it follows from this construction that only the sovereignty of one state could be presupposed and the sovereignty of this state would exclude the sovereignty of all other states.³ Finally, Kelsen arrives at the following conclusion:

"Both systems are equally correct and equally legitimate. To decide between them on the basis and with the specific means of the science of law is impossible. The science of law can only describe both systems and ascertain that one of the two systems of reference has to be accepted in order to determine the relation between international and national law. The decision for one or the other of the systems is outside the science of law. This decision may be determined by political considerations rather than scientific. One who appreciates the idea of the sovereignty of his own state, because he identifies himself with his state in his enhanced self-consciousness, will prefer the primacy of national law to the primacy of international law. On the other hand, one who cherishes the idea of a legal world organization will prefer the primacy of international law.⁴

Sovereignty, therefore, has been subjected to various views and criticisms; yet it has also retained its importance in international law as a basic principle and as a foundation of it. However, the difficulty of the inconsistency of absolute sovereignty and the existence of international law is not the only one that has arisen in the application of the international version of sovereignty. Several other corollaries, such as independence and equality, which are also major doctrines in international relations, have been constantly reviewed to suit the changing situations. Independence is an integral part of sovereignty; indeed it is the negative

¹ *Ibid.*, p. 121.

² *Ibid.*, p. 119.

³ *Ibid.*, p. 121.

⁴ *Ibid.*, p.130.

aspect of it. Yet, in the actual conditions of the world the interdependence between nations on political, military, economic and technological matters makes it very difficult for an individual state to pursue an entirely independent policy in internal and foreign affairs.¹ Hence, the the definition of a sovereign independent state has always been a controversial issue. There had been certain circumstances in which a region was not under direct foreign rule, yet it was not ruled by an authority which could be described as fully sovereign and independent. Examples of such situations can be found in the protectorate system of the nineteenth century, the mandate system after the First World War, and the Trusteeship system after the Second World War.² This led to the rise of the notion of the semi-sovereign state, which appears to be a self-contradictory term. The problem of divided sovereignty has also been presented in the development of the conditions of the British Dominions. The question of what is sovereignty and where it lies in the British Empire and its parts, or in what later came to be known as the British Commonwealth of Nations, was very difficult to answer.³ Similarly, there is much confusion about under what conditions a nation loses its sovereignty.⁴ Such difficulties indicate the perplexities at the root of the concept of national sovereignty whenever the question of the relations of a political entity within a family of nations is raised.

Moreover, the development over the past century to establish an international authority superior to national states, especially in relation to their decision as to peace and war, has resulted in more apparent contradiction between national sovereignty and international order. Since the Napoleonic Wars, and after every serious war, there has been a growing tendency to find ways of stopping national states from self-destructive

¹ Hans J. Morgenthau, *Politics Among Nations*, 4th. ed. (New York, 1967), p. 304.

² Hinsley, *op. cit.*, p. 224.

³ For a brief discussion of the problem see H. E. Cohen, *Recent Theories of Sovereignty* (Chicago, 1937) pp. 93- 108.

⁴ See Morgenthau, *op. cit.*, p. 305.

wars. In 1918, at the end of the First World War, the League of Nations was formed. After the Second World War, in 1945, the United Nations was established. Such devices could be seen as a movement towards the centralization of the application of international law. It is always argued that the creation of powerful international bodies, such as the security council, is incompatible with the notion of national sovereignty. It is frequently emphasized that the "main stumbling block which thus far has vitiated all attempts at restraining the struggle for power on the international scene is national sovereignty itself".¹

Further, it has been argued that the principle of equality, which is a manifestation of a particular aspect of sovereignty, is often departed from in the practices of international agencies. Article 2 of the charter of the United Nations states that The organization is based on the principle of the sovereign equality of all members; yet it has been frequently pointed out that there are certain deviations from that rule. These include the authority given to the permanent members of the Security Council, the veto right and unequal representation in international bodies.²

Such confusion and inconsistency in the concept of sovereignty in its application to the international sphere have led some thinkers to demand a divorce of sovereignty from nationalism. One writer explains:

"Political and economic nationalism, as practised by national states exercising their prerogative of national sovereignty, has been the perpetual and repetitive cause of war and will continue to be so in future. Therefore, all attempts to end war have consistently failed because they have all dealt with the means of war but not with its cause. Yet in the last 150 years, the modern world, having established more and more national states, is still busy carving up the earth (and pretty soon it will be the moon) into small and large national segments. More and more people are falling prey to the intoxication of nationalism and aiming for the establishment of independent national states.

The issue is plain: we have to choose between nationalism and the acceptance of moral and ethical political principles in a cooperating world society. The fundamental change over to a lawful society of nations can only be made if we subordinate nationalism to humanity and

¹ *Ibid.*, p. 316.

² *Ibid.*, pp. 302, 309- 12.

only then we can establish a world community exercising the functions of world wide institutions. The day will come when man's real enemy, nationalism, will be defeated, and the people of East and West will march together towards a world human sovereignty".¹

Pluralism

Sovereignty has also been criticized from a different angle by a group of thinkers² who used a different analysis of the nature of the state and its law. Their argument stemmed from the fact that they did not view society as a hierarchical structure in which there was a monistic centralized body possessing the dominating command authority. In their outlook, the society was rather of a federal structure in which there were many sources of powers. There was, especially in a democratic state, a diffusion of powers into several molecular units all working at the same time and all seeking equilibrium. Such an analysis of the nature of power in the society was comprehensively termed pluralism.

To understand the pluralistic approach, it should be recalled that the monopoly of power in the hands of the modern state in Europe was a development that followed the feudal particularism which had divided Europe into "an infinite number of petty sovereignties".³ That process of centralization of power was supported by the creation of law by the state. The state had taken the place of the old plural legal system and became the unique source, arbiter and executor of law. In short, "no power, no law, no society except with the state and within the state".⁴ That was the spirit of Hobbes's "mortal God", Leviathan, which inspired and shaped the modern notion of the state as expressed in the concept of sovereignty.

To the pluralists Leviathan was a myth. They brought back and developed the view that in actual conditions there existed with and within the state many centres of power. Beside the state there were a number of associations of which the citizen was a

¹ Arther Freud, *Human Sovereignty* (New York, 1964), pp. 157, 333, 338.

² An outstanding example is Harold J. Laski, see his books: *Studies in the Problem of Sovereignty* (New Haven, 1917); *The Foundations of Sovereignty* (New York, 1921); *A Grammar of Politics* (London, 1925).

³ A. P. D'Entrevès, *The Notion of the State* (Oxford, 1967), p. 124.

⁴ *Ibid.*, p. 112.

member, such as the church, trade unions and the like. As opposed to the theorizers of sovereignty who demanded the monopolization of power in one centre as a necessary condition for the establishment of order in the society, the pluralists saw decentralization and distribution of power as the only guarantee of the safety, security and liberty of the citizen. Moreover, the pluralistic conception of law challenged the basic construction that the state was the sole law creator. The legal phenomenon was a characteristic of all rule-controlled social behaviour and was not exclusive to the sphere of the state.¹ Law was not only the command of the sovereign, as defined in the imperative conception. Not only did law exist outside the state, but within the state law was issued as an expression and indication of what had already become accepted standards by common convictions.² Law was "accepted" rather than "imposed".

Pluralism as a political doctrine was powerfully expounded in the writings of Laski, whose name was commonly associated with the attack against sovereignty. His thought may serve as an outstanding example of this attitude, to which he returned repeatedly in all his books. His ideas in his latest comprehensive treatise *A Grammar of Politics* may stand as a summary of his general outlook.³ In his discussion of the nature of sovereignty he examined it from three different perspectives: historically, legally and politically. His analysis led him to reject sovereignty as no longer valid. The historical evolution of sovereignty since the religious struggles of the sixteenth century, in his view, revealed the relativity of the concept. "It represents, not an absolute but a historical logic".⁴ The question of sovereignty was dealing with power, and there was in history, a variety of ways in which power might be organized. The sovereign state, being merely one way of them,⁵ was "conditioned always by the environment it encounters"; yet, mostly "the logic of its hypothesis is directly

¹ *Ibid.*, p. 129.

² Ernest Barker, *Principles of Social and Political Theory* (Oxford, 1952), p. 213.

³ See Laski, *a Grammar of Politics*, pp. 44- 88.

⁴ *Ibid.*, p.48.

⁵ *Ibid.*, p. 45.

antithetic to the experience it has encountered".¹ The difficulty of fitting its assumptions to the modern state was obvious, especially in a federal state and in the international side where a unified and interdependent world was needed. Sovereignty sought to be absolute and irresponsible, but power to serve its ends had to be organized to work in accordance with rules.²

In the legal aspect of sovereignty, Laski examined the Austinian form given to it, which emphasized the three fold implications that in each state there was a legal determinate authority, with unlimited powers, whose command was the law. His examinations induced him to believe that the assumption on which the Austinian view was based "make it worthless as an explanation of the modern state for political purposes".³ Firstly, to think of law as simply a command did not account for complex legal phenomena. He gave examples of states in which "the notion of command is contingent and indirect; and the idea of penalty is, again save in the most circuitous way, notably absent".⁴ Even the King in Parliament, the standard example of the Austinian sovereign, because of increasing deference to the electorate, public opinion and pressure groups had become "a machine for registering decisions arrived at elsewhere".⁵ The sovereign was forced to will things desired by inferior bodies, or it would cease to be a parliament. No sovereign anywhere had possessed unlimited powers. In this respect, it was very difficult to discover such a sovereign in a state governed by constitution.

On the political side of sovereignty, Laski viewed society "as essentially federal in its nature".⁶ Men were not only members of the state, but they were also members of many other associations. These associations sought to exercise power over

¹ *Ibid.*, p.49.

² *Ibid.*, pp. 48- 9.

³ *Ibid.*, p. 51.

⁴ *Ibid.*, p. 52.

⁵ *Ibid.*, p. 52.

⁶ *Ibid.*, p. 59.

their followers and also sought to influence the state.¹ Against this background society was best understood as a multiple of sovereign associations, each controlling an aspect of the social life of man. The state was only a public service corporation competing for loyalty from the individual like other associations. It differed from other associations in that it was territorial in nature, and its membership was compulsory.² Yet the character of the state was akin to other associations, even if different and greater in the range it covered. To assume to the state a pre-eminence and a sovereign position over other associations was not only mythical, but also dangerous in that it left "to a small number of men an authority it is difficult not to abuse".³ The function of the state was to coordinate. It was outside its competence to interfere with the function of other associations as long as they acted within their limits.⁴

Therefore, the state ought to be responsible. Its will was to be limited in a variety of ways. It ought to be answerable from time to time to the people from whom it derived its power. It ought to be powerless to change certain fundamentals. It ought to be legally accountable for its mistakes, and its officers should easily be suable in the courts.⁵ In short, the state ought to be under popular control. To insure this, Laski introduced some devices such as territorial decentralization, functional representation, consultative bodies and the right of the citizen to acquire equal education and economic power.

To sum up it appears that the pluralists attempted to prove that the monistic theory of sovereignty was seriously inadequate to explain the complex nature of society seen in the perspective of the numerous autonomous associations it comprised. As a theory of law it accounted only for a certain part of a wide area of controlled behaviour which was an outcome of custom and consent rather than a result of a

¹ *Ibid.*, p.59.

² *Ibid.*, p. 69.

³ *Ibid.*, p. 71.

⁴ *Ibid.*, p. 60.

⁵ *Ibid.*, p. 62.

command. As a political theory it overlooked large social phenomena and limited itself to the realization of order as a higher value.¹

On the other hand, after all these vigorous attacks, the pluralist could not escape the fact that there should be in the society a final coordinating authority of some form for the maintenance of equilibrium. Even in the programme of Laski, he was favouring the retention of the traditional territorial parliament as the final coordinating organ, with the addition of consultative bodies. In the end, we find that Laski did not drink the whole cup.²

ii. Despotism: The Moral Objection to Sovereignty

Another tendency to dismiss sovereignty is the attempt of some critics to question the morality of the concept on the ground that it justified despotism. One critic wrote: the two concepts of sovereignty and absolutism have been forged together on the same anvil. They must be scrapped together.³

The moralist objections are based on claiming that there were certain connotations inherent in the concept of sovereignty which tended to support despotism. Primarily, sovereignty is a right to absolute power, and a right to be obeyed without restrictions. Such notions may be used to vindicate absolutism. In fact, sovereignty found its real and full meaning in the power possessed by the Absolute Monarchies of the sixteenth and seventeenth centuries in Europe. The state took their place, characterized basically by the right to possess absolute sovereignty. The inner logic of sovereignty creates notions of centralization and monopolization of power, and provides conditions which favour totalitarianism. It puts the law and coercive forces of the state beyond the control of the people.⁴ Depending on the idea that sovereignty is

¹ C. H. Wilson, "Soverign and Sovereignty", *Chamber's Encyclopaedia* (?), p. 783.

² H. E. Cohen, *Recent Theories of Sovereignty* (Chicago, 1937) p. 127.

³ Jacques Maritain, "The Concept of Sovereignty", in W. J. Stankiewicz (ed.), *In Defence of Sovereignty* (New York, 1969), p. 64.

⁴ W. J. Rees, "The Theory of Sovereignty Restated", in Stankiewicz (ed.), *In Defence of sovereignty*, p. 240.

the power to act without accountability, the state is endeavouring persistently to escape supervision and control by society.¹

In the main, the moralists object to the attributes attached to sovereignty on the basis that they conflict with other important norms in society, such as democracy, freedom, individualism, obligation and the like. It is maintained that the value of order, on which sovereignty rests, is set superior to any other norms. The problem is especially acute if democracy is held to constitute the main principle in the state. It is not possible to reconcile pure democracy and sovereignty in its absolute sense.² Even the notion of popular sovereignty introduced by Rousseau was not a guarantee against the misuse of power, because it proved to be, both in theory and in practice, an ambiguous notion which could easily be interpreted to serve absolutism. Rousseau himself declared "whoever refuses to obey the general will shall be compelled to do so by the whole body" which "means nothing else than that he will be forced to be free".³ The burden of the cruel tyranny of the Convention was laid on France in the name of popular sovereignty, and the despotism of the two Napoleons was based on claims of popular right.⁴ Many present totalitarian dictators may find support in Rousseau's arguments.⁵ In that way Rousseau offered, modern democracies a concept of sovereignty which is destructive of democracy and which directs towards the totalitarian state; because he transferred "the superior power of absolute kings to the point of an unheard-of absolutism, in order to make a present of it to the people".⁶

In defence of sovereignty against the moralists' objections, it is said that the misuse of power would have occurred if the notion of sovereignty had never been

¹ Maritain, *op. cit.*, p. 63.

² Stankiewicz, *In Defence of Sovereignty*, p.6.

³ J. J. Rousseau, *The Social Contract and Discourses*. Tran. G. D. H. Cole, ed. J. Brumfitt and J. Hall (London, 1983), p. 177.

⁴ Leon Duguit, *Law in Modern State*. Tran. Frida and Harold Laski, (London, 1921), pp. 28- 9.

⁵ Maritain, *op. cit.*, p. 58.

⁶ Hinsley, *Sovereignty*, p. 57.

formulated as it did before the notion was formulated.¹ Those in authority manipulate sovereignty to justify their absolutist claims and serve their ends as they misapply other theories to the same purposes. The notions misemployed are, in fact, by-products of ambiguities and distortions attached to the statement of the theory of sovereignty which can easily be removed if the proper sense of it is understood. They are neither necessary to it nor logical.² The theory does not allow, let alone justify, whatever the state does or may choose to do. It only maintains that there must be an ultimate authority in every political society if it is to function effectively. The critics of sovereignty seem to have misunderstood the real significance and purpose of the concept.³

II. Recent Restatements of Sovereignty

The objections raised against the theory of absolute sovereignty have stimulated repeated attempts to reform it and make necessary amendments and additions to it. By and large, those revisions have been brought about through efforts to identify distinct types of sovereignty. Such distinctions stem from the separation made between the two notions of authority and power. To avoid confusion in thought, it is suggested that they should be distinguished explicitly, though in reality they may be closely related. According to this view they may be separately defined as follows:

"A man, or a body of men, has *authority* if it follows from his saying "let x happen", that x ought to happen. A man, or a body of men, has *power*, if it results from his saying "let x happen", that x does happen."⁴

This approach gave room to the detection of a variety of kinds of sovereignty. In the following discussion we shall look into the tendencies which brought about those distinctions and their impact on the general view of sovereignty.

¹ *Ibid.*, p.217.

² Rees, *op. cit.*, p. 240.

³ Hinsley, *Sovereignty*, p. 217.

⁴ J. R. Lucas, *The Principles of Politics* (Oxford, 1966), p. 16.

i. Types of Sovereignty

Legal and Political Sovereignty

Perhaps it may be convenient to start examining the new views of sovereignty by stating the distinction introduced by Dicey, the famous name of the late nineteenth century in constitutional law in Britain. Dicey, in his reformulation of British Parliamentary sovereignty points out two different notions, "legal sovereignty" and "political sovereignty". In his text, *Law of the Constitution*, he remarks:

"It should, however, be carefully noted that the term sovereignty, as long as it is accurately employed in the sense in which Austin sometimes uses it, is a merely legal conception, and means simply the power of law making unrestricted by any legal limit. If the term sovereignty be thus used, the sovereign power under the English constitution is clearly Parliament. But the word sovereignty is sometimes employed in a political rather than in a strictly legal sense. That body is politically sovereign or supreme in a state if the will of which is ultimately obeyed by the citizens of the state. In this sense of the word the electors of Great Britain may be said to be ... the body in which sovereign power is vested. For, as things now stand, the will of the electorate,.... is sure ultimately to prevail on all subjects to be determined by the British government.... But this is a political, not a legal fact. The electors can in the long run always enforce their will. But the courts will take no notice of the will of the electors. The judges know nothing about any will of the people except in so far as that will is expressed by an Act of Parliament The political sense of the word sovereignty is, it is true, fully as important as the legal sense or more so. But the two significations, though intimately connected together, are essentially different."¹

This line of thought was elaborated further by Lord Bryce at the beginning of this century. He proposed that it is possible to discover two kinds of sovereignty: legal and practical. Legal sovereignty (*de jure*) exists in the sphere of law and chiefly concerns the jurists. It is the sole legislative authority, the ultimate and the highest source of Law. Bryce defines legal sovereignty as "the person (or body) to whose directions the law attributes legal force". It is the power which possesses the ultimate right of making general rules, or issuing special commands which will bind others and will not be overruled by any above it.² This kind of sovereignty is created by and

¹ A. V. Dicey, *Law of the Constitution*, 8th. ed. (London, 1915), pp.70- 2.

² James Bryce, *Studies in History and Jurisprudence* (Oxford, 1901), II, pp. 51- 2.

concerned with law, and law only. It does not relate to the actual forces in the state. It deals merely with the person or body to whom law in theory attributes supremacy. It is a mere question of Right as defined by law, which may or may not coincide with the actual facts. Bryce calls sovereignty that prevails in reality practical sovereignty, and uses it to denote simply the strongest force in the state. He defines it as "the person (or body of persons) who can make his (or their) will prevail whether with the law or against the law". It is the dominant force to which obedience is actually rendered, and in case of conflict will overcome any resistance.¹

While, Bryce holds that legal sovereignty is limited and divisible, practical sovereignty seems to him to be indivisible and incapable of being limited. It is the law that defines the sphere and extent of legislative power and may assign it to one authority or may divide it between two or more authorities each capable in its field of issuing general rules or special orders. Further, the law may restrict the scope of legislation of one authority or another. It may hold the right to legislate on some subjects to the whole people, or it may reserve that certain rules cannot be altered at all even by the people. Practical sovereignty by its definition, is the strongest force in the state. It is vested in one person or body of persons and law has nothing to do with limiting its powers. Yet, in exercising its powers it is practically checked and restrained by different influences.²

Finally, Bryce remarks that, although the two kinds of sovereignty are distinct conceptions, they are significantly related to each other. There is a tendency in both sovereignties to attract each other and unite; and that is the reason which has made them often confused. The possession of legal right tends to make the legal sovereign actually powerful. Presumably, legal sovereignty has a moral claim to obedience. In its turn, practical sovereignty always seeks to be recognized legally, and if it lasts for a

¹ *Ibid.*, pp. 59- 60.

² *Ibid.*, pp. 70- 1.

certain period it usually ripens into legal sovereignty.¹ However, questions regarding the grounds and the moral reasons why power has been vested in any given sovereignty, whether legal or practical, in view of Lord Bryce, lie outside the sphere of the determination of the nature of either kinds of sovereignty. An inquiry into that may belong to history, political philosophy or ethics; but they have nothing to do with the factual existence of sovereignty in the state.²

Legal, Coercive and Influential Sovereignty

Quite recently, in 1950, W. J. Rees has made an extensive re-examination of sovereignty in a remarkable article, under the title: "The Theory of Sovereignty Restated".³ He endeavours a resolution of the difficulties inherent in the concept by proposing a number of possible proper usages of the term sovereignty. These senses are essentially based on the fact that it is possible to distinguish different species of power. He explains this as follows:

"To exercise power in a social and political sense, is to determine the actions of persons in certain intended ways. There are, however, different species of power, and these may be distinguished according to the means used to determine persons' actions. We thus have the following species. (1) Power in the sense of authority, especially legal authority, where the means used is the formulation of, or the reference to, a rule of law. (2) Coercive power, where the means used consists either in the direct use of physical force, or else in a serious threat of the use of force. (3) Power in the sense of influence, where the means used may be any means other than the employment of a rule of law or physical force.⁴

Consequently, Rees finds that the use of the word sovereignty is valid in at least three aspects. Firstly, there is the concept of legal sovereignty, which is necessary to exist in every state; moreover, the question of its location is fundamental to every lawyer. Rees defines supreme legal authority as "the determination of a person's actions in certain intended ways by means of a law". By law it is meant "an unwritten

¹ *Ibid.*, pp. 64- 5.

² *Ibid.*, pp. 57, 72.

³ Reprinted in Stankiewicz, *In Defence of Sovereignty*, pp. 209- 40.

⁴ *Ibid.*, p. 228.

convention or a written regulation enforceable by a sanction".¹ However, it is to be noted that the legal authority is used here to refer to the power of issuing binding rules whether it is the power of a legislative assembly, an executive ministry or a court.² It is noted further that the decisions of such bodies are not by themselves enforceable unless they are maintained by a coercive power. In other words, it is the use of force, or the threat of the exercise of force which gives those rules the status of law. It seems necessary that if certain rules are to be obeyed there must exist some body of persons who are sufficiently strong to be able to enforce obedience and overcome any kind of opposition.³

If the above argument is justified, it brings us to the second useful sense of sovereignty, which is termed coercive sovereignty. It is used to denote the power to determine the actions of persons in certain intended ways by means of force or the threat of force. Usually, such power resides in a determinate body of persons consisting of a professional police or a standing army. In this respect, it is generally understood that there is a functional connection between the legal and the coercive powers. Where it is necessary that a legal sovereignty should exist, there is an equal necessity that a coercive sovereignty should exist. However, sometimes the exercise of coercive authority may not be in accordance with the law, but may eventually acquire legitimacy by virtue of its monopoly of power.⁴

It now remains to explain the third sense of sovereignty which Rees refers to as the influential concept. This is defined as follows:

"To exercise political influence.... is to determine in certain intended ways the actions, jointly or severally, of the legal and coercive sovereigns, provided always that their actions are determined by some means other than by a rule of law or threat of force. To exercise sovereignty in this sense is to exercise political influence, as now defined, to a greater degree than anyone else provided that those who

¹ *Ibid.*, pp. 224- 5.

² *Ibid.*, p. 211.

³ *Ibid.*, pp. 211, 223- 6.

⁴ *Ibid.*, pp. 212, 225- 9.

exercise it normally reside within the state whose legal or coercive sovereign they are supposed to influence.¹

It is always important to determine where the political influence lies if effective ways are sought to intervene in political affairs. For this reason it appears that the concept of influential sovereignty is useful. It might be possible to attribute it to the majority of the electorate, to the ruling class, or sometimes the government might be an instrument in the hands of an oligarchy or a priesthood.²

ii. Controversies over the Uses of Sovereignty

The drift of the recent development, in which many types of sovereignty have been identified, generated considerable discussion. On the one hand, not only has the new trend gained supporters, but some analysts have gone further to examine new forms of sovereignty and make new distinctions. On the other hand, the holders of the monistic view of sovereignty sharply criticized such approaches on the ground that sovereignty is indivisible. But against the background of the vigorous attacks upon the classical theory of sovereignty, they have developed new arguments to defend their position. As these notions mark the recent phase in the history of sovereignty, it is necessary to review them.

Advocates of Classification

Among the advocates for the classification of sovereignty into different classes is Sir Ernest Baker.³ Primarily, in his view, sovereignty is a legal term and its use is logical and consistent only in the legal sphere. This stems from the fact that he holds the view that the state is a legal association which acts to control actions through uniform rules. According to this view, sovereignty which is an attribute of the state, is by its nature legal and it is confined to the sphere of law.⁴ Within the State, and looking only to the State, it is possible to see two forms of legal sovereignty, both distinct and different in kind. The first form is the ultimate sovereignty which is the constitution

¹ *Ibid.*, pp. 231- 2.

² *Ibid.*, pp. 229- 31.

³ See his book: *Principles of Social and Political Theory* (Oxford,1952), pp. 59-69, 219- 6.

⁴ *Ibid.*, p.60.

itself by which the state is brought into being and which defines its subsequent operations. The second form of legal sovereignty is the immediate sovereignty which is the body that issues, subject to the constitution, ordinary laws and rules and possesses the general control of their enforcement.¹ It is significant that Baker ascribes the legal sovereignty in its first kind to the constitution itself which is a norm, and ascribes the second type of legal sovereignty to an organ: the legislative or the law- and rule-making body. Moreover, Barker sees a third form of sovereignty which acts beyond the state. Looking outside the legal limits of the State into the broad area of society and social thought, which is the basis of law and of the existence and inspiration of the activity of the whole legal association, he comes to the conclusion that, over and above the legal association, there is the idea of justice which determines the right order of relations of the members of the national society. He refers to this justice as the extra-legal or supra-legal sovereignty. Therefore, his third form of sovereignty, is what he calls "the socially created idea of justice", which is the product of social thought and social discussion.²

However, Barker is not content to reduce the three sovereignties to one by seeking to unite them in a single personal source of will, whether it is the individual will of a person, the collective will of a body of persons, or the will of the people itself. It is his contention that:

" In the sphere of social and political theory, which is bound to embrace both Society and the State, there is no one and only sovereignty of which we can say Its will is our peace. The peace of acquiescence in such a will is denied us by our own nature."³

Another important contribution to that trend of thought is an essay of Stanley Benn entitled "The Uses of Sovereignty".⁴ He has attempted an exhaustive

¹ *Ibid.*, pp. 61, 215.

² *Ibid.*, pp. 214- 5.

³ *Ibid.*, p. 216.

⁴ *Political Studies*, III, No. 2 (June 1955), pp. 109- 22. Reprinted in Stankiewicz, *In Defence of Sovereignty*, pp. 67- 85. See also S. I. Benn and R. S. Peters, *Social principles and the Democratic State* (London, 1963), pp. 257- 363.

examination of a number of distinct usages of sovereignty determining their interpretation, application and usefulness in different fields of study. He begins with the term legal sovereignty and relates it to the judicial view of the legal system. The judge, he pointed out, sees the law as a body of given rules which guides his judgement. His judicial decisions are reached in the light of norms. Therefore he needs a normative supremacy which determines which rules belong to the law, and is itself not open to challenge. That highest basic norm which provides the validity of the whole legal system constitutes the legal sovereignty. In Benn's analysis, such a supreme norm is the constitution itself, written or unwritten, or to speak effectively it is "the traditional judicial interpretation of the constitution".¹

However, beside the static view of the judge to whom the law appears as a set of rules, there is the view of the political scientist who is interested in the dynamic process of making the law. Therefore, his main concern is with law-makers and legislative organs. To differentiate between the supremacy attributed to a norm, which is important to the judge, and the supremacy that may be attributed to the legislative organ by a political scientist, Benn suggests using "legal sovereignty" for the former, and "legislative sovereignty" for the latter. Yet, his discussion leads him to believe that the necessity that directs the judge to seek a supreme norm is not paralleled by a similar necessity that directs the political scientist to seek a supreme legislative organ. In his opinion, it is neither logically nor practically necessary to find a legislative organ in every state, though there may be some states in which it is possible to discover such organs. The reason that makes him arrive at this rather surprising conclusion is that "a constitution may allocate fields of legislative competence between coordinate organs, or place certain matters beyond the competence of any organ".²

In any case, Benn stresses, that to attribute sovereignty to a legislative organ does not mean ascribing to it any actual ability or a de facto power. It only means that

¹ *Ibid.*, pp. 69- 74.

² *Ibid.*, pp. 74- 8.

it possesses a legal capacity which makes the judge sets its rule in a supreme position in relation to the rules of other organs. Therefore, when supremacy is applied to a legislative organ that does not necessarily mean that it is the organ which is rendered more obedience than other organs. It only means that its legislative act is considered as the highest directive to a judge.¹

Sovereignty in a *de facto* sense of power, according to Benn, is a supreme coercive power. By coercive power he means the imposition of physical constraints by the exercise or threat of the use of armed force. In this sense coercion is a necessary characteristics of a state if it is to survive violent opposition. Nevertheless, Benn points to the difficulties that arise in the application of the concept of sovereignty as a supreme coercive power. Coercive power in any state is in the hands of determinate institutions and the decision to use force is undertaken by whatever men happen to occupy the appropriate offices as the state order provides. Since the coercive power in the state is normally only exercised by the organized organs of the state, it is trivial to speak of them as supreme. It is because supremacy implies conflict, and whenever conflict arises it is always caused by a coercive group which is not part or acting as part of the state order. Moreover, while the concept of coercive sovereignty may be useful in historical and sociological studies to describe power relations in a particular territory at a particular time; yet it might be misleading. To understand the role played by military powers in political events, it is more helpful to analyse the interplay of forces within them than to lump them collectively as "the supreme coercive power".²

The final type of sovereignty in Benn's discussion is sovereignty as "the strongest political influence". In his opinion such a concept has no place in a normative study because the influence of a person or a group can only be established through the observation of the behaviour of others in relation to him and not by examining his status in a normative order. Consequently, it is fruitful only in historical and social

¹ *Ibid.*, pp. 76- 7.

² *Ibid.*, pp. 79- 82.

studies. However, it should be noted that the influential sovereignty should only be attributed to the group that exerts a great dominant influence over a fairly wide range of political issues. In many cases state policies are the outcome of an interplay of influences and not only shaped by a single prevalent influence. It will be misleading to speak of an influential sovereign in such cases. It may be more apposite to use terms like pressure group or body. It is misleading also to attribute influence to the electorate or the majority, since they have no single intention. Thus, the concept of influential sovereignty may be valuable in certain circumstances, but it has the disadvantage of posing the wrong questions, or obscuring rather than illuminating.¹

In short, Benn's conclusion is that sovereignty may be useful and meaningful if employed in the juristic field, though there may not be a determinate sovereign in the legal sense in every state. But sovereignty in a political sense is misleading, especially if it is interpreted to mean a determinate body, because "political action is always the result of a conflict of wills, never an expression of a single independent will".²

In Defence of Unity: Obedience as the Basis of Sovereignty

The critics who reject the proposals to classify sovereignty into many types developed new arguments to support the unity of sovereignty. They claim that the new formulations have disregarded the real intent of the concept and the functions for which it was formed. It is admitted that there are, no doubt, different kinds of power. However, such observations and classifications of distinct classes of behaviour will be only a generalized description of the fact. What is needed is a theory that brings those different types of behaviour and gives them a meaning which is valid, not only in one society, but in different types of societies. The true function of the theory of sovereignty, it is argued, is its ability to do this. Its real significance is its capacity to integrate a large number of distinct concepts into one comprehensible working assumption. Sovereignty joins in a rational system a number of concepts such as

¹ *Ibid.*, pp. 82-4.

² Benn and Peters, *op. cit.*, p. 263.

power, authority, obligation, legitimacy and community.¹ To ignore this fact is to misunderstand the purpose which the concept is intended to achieve. As the editor of *In Defence of Sovereignty* observed:

"The classical discussions of Bodin and Hobbes derive much of their continuing interest from their capacity to bring together into a logical whole the state's normative order, its coercive power and the public's 'obligation' or readiness to accept the coercive element - and by accepting it, to give it in effect the power to be coercive."²

However, the most significant argument in support of the view that there is only one sort of sovereignty is developed through a line of thought which places great emphasis on obedience as the basis of sovereignty.³ It is generally assumed that obedience is an important element in composing sovereignty. Sovereignty which is not obeyed does not exist. The view under consideration builds up this assumption and works out its consequences. It is argued that "sovereignty in any sense is constituted by consent, the development of the habit of obedience and by nothing else".⁴ Perhaps, such proposition may seem obvious and trivial as it follows directly from the definition of the sovereign as the person or body of persons to whom habitual obedience is rendered. But it would be shown to be of great importance. In the case of political or actual sovereignty it may be thought that it rests on force. It is true that fear of force is one possible motive among others which urge people to obey. But it would be hardly true to say that obedience is secured only by force or fear of punishment. Probably, it may be safer to say that in most cases most people are influenced simply by the habit to obey. An illustration of this can be found in the armed forces or the police who concentrate the power of the application of force in their hands. Since these bodies obey the sovereign, it can hardly be supposed that they act, themselves, merely from fear of force. Yet, on the other hand, it is essential for effective sovereignty to have a body

¹ W. J. Stankiewicz, "The Validity of Sovereignty" in *Idem., In defence of Sovereignty*, pp. 294- 5.

² Stankiewicz, *In Defence of Sovereignty*, p. 13.

³ See G. C. Field, *Political Theory* (Strand, 1963), ch. 4, 5.

⁴ *Ibid.*, p. 75.

capable of applying force under its command, though it will be misleading to regard them, in some sense and to some degree, as the real sovereign; simply because in normal cases they act in obedience to orders. The only conclusion, then, is that real sovereignty is constituted of habitual obedience, which is the central fact.¹

Turning to legal sovereignty, the same question is often asked. What is it that makes it sovereign? It is not possible to answer that it is the law, as it will seem very odd to say that the law makes the sovereign, and the sovereign makes the law. Taking the case when a sovereign is overthrown by the illegal use of force, usually the people eventually develop the habit of obedience to the new authority and its commands are accepted as law. Sooner or later it will be recognized as the legal sovereignty and the source of law. This shows that the legal sovereignty is not a distinct type of sovereignty which is constituted in a different way. It is simply an abstraction from actual sovereignty. We begin to speak about legal sovereignty when obedience has become definitely established.²

We may end by saying that there is no significant distinction between different types of sovereignty. The fundamental constituent of sovereignty is obedience and from that power emerges.³ Important results can be reached upon such a view. In the light of it some resolutions to the traditional controversies about sovereignty may be attempted. The question whether sovereignty is limited or unlimited takes a simple form: will the people obey sovereignty absolutely? There may be occasions in history in which that has happened, but in the majority of societies there have been always limits. As regards the question whether sovereignty is divisible or indivisible, it can be reduced to whether the people can possibly distribute their obedience among different bodies, by obeying each body in its proper sphere. Apparently, this is possible and has happened in many cases.⁴

¹ *Ibid.*, pp. 61-9.

² *Ibid.*, pp. 72-75.

³ *Ibid.*, p. 78.

⁴ *Ibid.*, pp. 78-9

Finally it is claimed that:

"The general conclusion is that much less can be deduced from the general nature of sovereignty than has in the past been supposed. We cannot tell from the fact of obedience who is going to be obeyed, how far they will be obeyed, or who ought to be obeyed. The first two questions are matters of fact which would have to be answered by a consideration of the circumstances of each particular case. The last is a question of the policy that we are going to pursue, and the one thing that we can say with reasonable certainty is that it is important that it should be answered. That is to say, for a state, or any organized society, to function at all it is necessary for the people in it to make up their minds whom they are going to obey and to turn this decision into a habit which is broken only with difficulty and in exceptional conditions."¹

¹ *Ibid.*, p. 80.

Chapter 3

PRE-MODERN ISLAMIC THEORIES

I. The Semantic Problem

To investigate the existence of the notion of sovereignty in Islamic thought, or any similar idea, much care should be given to the semantic problem.¹ Confusion often results from the misuse and misunderstanding of words. Terms and expressions used at one time can become foreign and hardly understood at another age. The problem is complicated further when difficulties of translations exist. The words used in one civilisation can sometimes be translated into the language of another only in approximate equivalents. Each word is deeply rooted in the culture and circumstances in which it has originated and sometimes it might not convey the same meaning to the people of other cultures or who are under different conditions. Concerning the political concepts of Islam, the semantic problem forms a considerable obstacle. On the one hand, the terminology used in the Qur'ān or in early sources and thought might not be grasped in its full and original meaning. Islamic terms such as *khilāfa*, *umma*, *ahl al-ḥall wa-al-'aqd* sound sometimes strange when they are used in modern politics. They might be misinterpreted if they are equated with modern words, such as state for *khilāfa*, nation for *umma*, and people's representatives for *ahl al-ḥall wa-al-'aqd*. Such vague and loose usages could sometimes muddle the subject from the start. On the other hand, the tendency to use modern words in explaining political ideas in Islam can also be misleading. For example, the question whether democracy exists in Islam seems to be a puzzle and answers are often confusing. The initial difficulty is that Islamic ideas are unique and distinctive. The other difficulty, which is equally complex, is that the word democracy cannot be precisely defined.

¹ Abu al-A'lā al-Mawdūdī, *Nazaryāt al-Islām wa-Hayuh fī-al-Siyāsa* (Bairut, 1968), p. 241; H. Hinsley, *Sovereignty*, 2nd. ed. (Cambridge, 1986), pp. 22-4.

Such difficulties do not apply only to Islamic concepts. They have existed and affected political language most of the times. For instance, words used by Aristotle which are translated as "the state" or "the law" can mislead us to believe that they meant to him what they mean to us today.¹ As far as the idea of sovereignty is concerned, the debate on its history is partly constituted by the semantic problem. A historian on sovereignty admitted that "the history of this concept is full of pitfalls".² In his view, initially this is due to the fact that "there is a danger of misinterpreting and misunderstanding the ideas to which men have given expression in earlier times". Moreover, "there is also the possibility that they entertained ideas to which they could not or did not give expression". However, men in most ages have expressed general ideas closely associated with the notion of sovereignty in the words for "power" and "rule", "empire" and "country", "king" and "government"; but, in his opinion "they are less precise and specific, less technical and sophisticated than the idea of sovereignty."³

In the face of such difficulties it seems essential to explore the equivalent words used for sovereignty and the ideas related to it in Islamic sources. In modern Arabic, the term *al-siyāda*, a derivative of *sayyid*, is in common usage for the word sovereignty. Also in modern Islamic political thought the word *ḥākimiyya*, derived from *ḥukm*, is often in use to denote sovereignty in its modern sense. However, before the Western modern thought began to have a great impact on the Muslim political conceptions and terminology, there had been a number of expression that signify the interpretation and exercise of power in Islam. Many words of Arabic origin, such as caliphate, imamate, emirate, sultanate, are widely known and commonly used in reference to the ruling body and the supreme authority of the Muslims. It is possible that those terms and concepts that are associated with them may bear indications of the sense of sovereignty as conceived by Muslims.

¹ Hinsley, *op. cit.*, p. 23.

² *Ibid.*, p. 22.

³ *Ibid.*, p. 24.

Therefore, it is proposed to start by analysing the original Islamic terms of power, like caliphate, imamate; and giving a brief account of the political theories related to them. In that way an initial clearing of the ground may be achieved before attempting a detailed analysis of the views of modern Muslim thinkers on sovereignty.

II. Nature of the Caliphate

The doctrine of the caliphate is a central theme in Islamic sources, especially in the fields of theology, jurisprudence and history. Accordingly, there is an abundance of literature on the subject. As the fundamental concern of the present study is to search for an Islamic concept of sovereignty it will seek to emphasize only the relevant ideas as they appear in their Islamic context without interpreting them in the light of Western concepts. It may be extremely misleading to read into the Islamic sources ideas and theories along lines familiar in Western thought. In most cases it is often possible to find in such sources, isolated elements which when gathered and rebuilt can be interpreted as equivalents to occidental notions. A full treatment of such an approach, and in particular its effect in shaping attitudes in modern Muslim political thinking toward the concept of sovereignty, will be discussed later. It suffices to say here that it is essential in this preliminary stage to let the early Islamic sources speak for themselves and explain their ideas in their own terminology. It may be necessary to examine them, as the famous French orientalist, Louis Massignon pointed, from 'the inside', "transposing into ourselves the categories of thought imagined by the Muslims, in order to appreciate their original interdependence, their intimate structure, and their real historical growth".¹

i. The Nature of Power in Human Civilization

The development of the views of the early Muslim thinkers on the political phenomena culminated in the outstanding analysis of the nature of power in human

¹ Revue du Monde, *Musulman*, XXXIX (1920), p. 152; quoted in Malcom H. Kerr, *Islamic Reform* (Berkeley, 1966), p. 12.

civilization comprehensively expounded by the historian Ibn Khaldūn (1332-1406),¹ and expanded and elaborated later by Ibn al-Azraq (1427-1491).² Ibn Khaldūn has attempted an explanation of the principles governing the political organization and a description of how it worked in any human society in general and in the Islamic community in particular. In respect of the true character of political power, which Ibn Khaldūn gave the term *mulk*, he stated that association (*ijtimā'*), which provided the natural means for the growth of civilization, was a feature of human life. Since injustice and aggressiveness characterized the animal nature of man, such (*ijtimā'*) could not persist. If there was no restraining body in the society to stop people from destroying each other a state of anarchy would prevail. Therefore, it was required by human nature that there must be a constraining body (*wāzi'*) who would be the ruler (*ḥākim*) over people. This *wāzi'* or *ḥākim* was the one among them who was forceful and could actually exercise constraint over them. In other words, as Ibn Khaldūn says:

"*Mulk*, in reality, belongs only to one who dominates the subjects, subjugates the people, collects revenues, sends out military expeditions, and protects the frontiers; and there is no other human force over him. This is generally accepted as the real meaning and the true character of *mulk*".³

It may be clear from the above statement that the essence of *mulk* was the competence to control and bring about actual subjection of the people, so as to carry out the various functions of government such as finance or defence. Moreover, the other basic feature of *mulk* was that there was no one above and stronger than the one who possessed it. If any one, Ibn Khaldūn explains, failed to acquire one or another of these qualities, then his *mulk* was defective. The degree and extent of that defectiveness depended on the kind and range of the missing feature. Generally, that could take two forms. The first type of defectiveness might be the incapability to perform some of the

¹ See 'Abd al-Raḥmān Ibn Khaldūn, *al-Muqaddima*, edited by 'Alī 'Abd al-Wāḥid Wāfi, 3rd ed., 3 volumes (Cairo, 1980). English translation by Franz Rosenthal, 3 volumes (London, 1958.)

² See Abū 'Abd al-Allāh Ibn al-Azraq, *Badāi' al-Sulūk fī Ṭabāi' al-Mulk*, edited by 'Alī Sāmī al-Nashār, 2 volumes (Baghdad, 1977.)

³ Ibn Khaldūn, *op. cit.*, II, p. 574; cf. Ibn al-Azraq, *op. cit.* v I, p. 89.

functions of rule like collecting taxes or defending the subjects. The other kind of defectiveness was not being strong enough to gain supremacy (*isti'la'*) over other groups and bring them under subjection, which would result in the existence of a superior authority. This was often the case in large countries where there were independent rulers of local regions who dominated their own people but at the same time rendered obedience to the state (*dawla*) which they were all under.¹ On the other hand, there was a natural tendency in *mulk*, according to Ibn Khaldūn, to exercise absolutism (*istibdād*). Because the quality of egotism (*ta'alluh*) is innate in human nature, *mulk* at one stage of its development must claim exclusive authority and would not permit any one to have a share in it.²

In another passage in his discussion, Ibn Khaldūn proceeded to describe the relation between *mulk* and *qawānīn* (laws) and distinguished three kinds of states according to the kind of law governing them. *Mulk*, he stated, is necessarily required to be based on obligatory political norms which were accepted and submitted to by the masses. Without the existence of such political laws, *mulk* would hardly succeed in establishing its supremacy and obtaining obedience and order. *Mulk* would be ruinous if it was based on arbitrary power whose sole purpose was to employ the people to fulfil the interests of the ruler. Therefore, it became an accepted principle to found *mulk* on a binding set of rules as was the case in old Persia and other nations. Such laws could be ordained in two ways. Firstly, they could be decreed by the knowledgeable and wise leading personalities of the state who were grounded in rational reasoning. Secondly, they could be ordained by God through a lawgiver, a prophet, who would state and instruct them.

¹ Ibn Khaldūn, *op. cit.*, p. 574.; Cf. Ibn al-Azraq, *op. cit.*, p. 90. Ibn Khaldūn gives examples of both types of defectiveness. For the former he refers to the Berber ruler of the Aghlabid dynasty in al-Qayrawan and the Persian rulers at the beginning of the Abbasid dynasty. For the later he mentions the relationship of the Sinhajah with the 'Ubaydis (Fatimids), the Zanatah with the Spanish Umayyads at one time and with the 'Ubaydid (Fatimids) at another, the Persian rulers with the Abbasid, the Berber rulers with the European Christians in the Maghrib prior to Islam, and of the old Persian states with Alexander and the Greeks.]

² Ibn Khaldūn, *op. cit.*, pp. 539,554.

Accordingly, Ibn Khaldūn classified *mulk* into three kinds. He called the first kind *mulk ṭabī‘ī* (natural *mulk*), which was based on arbitrarily forcing the masses to act. Such type of rule was considered reprehensible because it would ultimately lead to tyranny and injustice. The second kind of rule was called *mulk siyāsī* (political *mulk*), which was based on *siyāsa ‘aqliyya* (rational politics), by which he meant a law established by human reason; and which induces the masses to act in furtherance of the interests of their worldly welfare. This sort of rule was also considered reprehensible because it was derived by speculation without the guidance of God. Ibn Khaldūn asserted that it was only God who was most knowledgeable of what was good for mankind. The third type of *mulk* was the one based on *siyāsa dīniyya*, that is to say, revealed political norms. Divine law, *Shari‘a*, was described by Ibn Khaldūn as a comprehensive system of human affairs which covered their worship of God and their dealings with their fellow men (*‘ibāda* and *mu‘āmala*). It also comprised the organisation of *mulk* which was necessary for human society. Therefore, *mulk* was dictated to follow the course of the revealed religion because all human affairs should be supervised by the insight of the lawgiver. Such *mulk* belonged to the prophets who instructed the divine law, and to those who took their position after them, the caliphs. Thus the caliphate, in its essence, was a succession to the lawgiver, the prophet, whose purpose was to further, like him, both the religious and the temporal interests of the masses.¹

It is important to be aware of the fact that Ibn Khaldūn's views regarding the nature of political power are not solely the outcome of his independent thought. It would be more accurate to say that they developed as a continuation of the thought of the preceding Muslim political theorists.² An example of the similar ideas of the early

¹ *Ibid.*, pp. 576- 78.

² Hamilton A. R. Gibb, "Background of Ibn Khaldūn's Political Theory", in *Studies on the Civilization of Islam* (London, 1962), p. 168.

thinkers which Ibn Khaldūn took and expanded in greater precision can be found in the following passage written by Ibn Taymiyya (d. 1328). He says:

"All mankind cannot accomplish their welfare, either in this life or in the next, except through association (*ijtimā'*) and mutual support. Their cooperation and mutual help is for attaining things of benefit to them, and keeping off things harmful to them. For this reason it is said that 'Man is a political being by nature'. But when they come to live together it is necessary that they do certain things to acquire their welfare and avoid certain things in which there lies mischief. Consequently, they will be obedient to the one who commands them to the aims of furthering their welfare, and who restrains them from evils.

In short, all mankind must render obedience to a commander and restrainer. Those who do not possess divine books or who do not follow any religion, ultimately, obey their kings in all what they think will achieve their interests of the material world, being sometimes right and sometimes wrong. Those who are followers of altered religions such as the polytheists, or those who are possessed of divine books which are altered or abrogated, are obedient to whatever they think is good to them both in religious and material interests.

However, if it is necessary to render obedience to a commander and restrainer, evidently it is better to be obedient to God and His messenger.... For this reason the Prophet instructed his followers to set up rulers in charge of their affairs (*ūlū al-amr*)... and instructed the people to obey them in matters that are in accordance with obedience to God.¹

ii. The Terms: Caliphate, Imamate and Emirate

The words *khilāfa*, *imāma* and *imāra* are commonly associated with the office of the head of the Muslim community. In discussing the nature of authority in Islam it is worth considering the origins of these terms and the historical circumstances related to their application. Although the three words may be sometimes accepted to signify the same office, yet they are not identical. Firstly, historically, each term has made its first appearance in different conditions. More significantly, each term seems to emphasize a special attribute of the office. However, all words are deeply rooted in the language and have diverse meanings.

¹ Aḥmad Ibn Taymiyya, *al-Ḥisba fī-al-Islām* (Beirut, n.d.) pp. 2, 3, 5; Cf. Gibb, *op. cit.*, p. 169.

Imāma:

In respect of our study it may be convenient to start with *imāma* because the term is most common in political theory and, for our present purposes, it seems to comprise the idea of supremacy. *Imāma* is derived from the verb *amma* which means to intend, to purpose and to aim at. One of the derivatives of this root is *amam* which means the location that is before, ahead of, in front of. Hence, comes the word *imām* which denotes anything that is taken as an example or a pattern, combining the two original ideas of attaining a purpose and being in front of. Various things are called *imām*. For example a road or a way; the string which is extended upon, or against, a building and according to which one builds; the lesson of a child that is learned each day; and a book or scripture which is taken as an example such as the Qur'ān. Among persons, for instance, it refers to a driver or conductor of camels, a guide who shows the way, a leader of an army, a chief, a learned scholar, and a leader of the prayer.¹ In the Qur'ān the word is used in many of its above literal meanings.² Significantly, the Qur'ān uses the word *imām* to refer generally to leaders of goodness, such as the prophet Abraham;³ but it is also used for leaders of evil with a special indication in the context.⁴ In the traditions of the Prophet the word occurs in several places, and in some cases it is clearly meant to refer to the head of the Muslim community, such as the reference to *jamā'at al-Muslimīn wa-imāmuhum*.

However, associated with the above usages, the word *imām* emerged as a designation of the head of the Muslim community and the word *imāma* is applied to signify his office, state or power, especially in the field of political thought. Yet it is not certain when and how that usage originated. Most likely, the term has made its first

¹ Muḥammad Ibn Manzūr, *Lisān al-'Arab* (Cairo, 1300 A.H.), XIV, pp. 289-91; Cf. Edward W.Lane, *Arabic-English Lexicon* (London, 1863), Book I, pp. 88-91.

² Muḥammad F. 'Abd al-Bāqī, *al-Mu'jam al-Mufahras li-alfāz al-Qur'ān* (Istanbul, 1984), pp. 80-1.

³ The Qur'ān 2:124.

⁴ Cf. Muḥammad al-Rayyis, *al-Nazariyāt al-Siyāsiyya fī-al-Islam* (Cairo, 1979), pp. 110-1; Thomas W. Arnold, *The Caliphate* (Oxford, 1924), pp. 33-5.

appearance with the shī'ites who started to call 'Alī, the third caliph, by the title Imām.¹ According to their doctrine he was the first one qualified to the office of *imāma* because he had been appointed by the prophet through *naṣṣ* (valid designation) either explicitly or implicitly. Significantly, the shī'ites used to call their heads whom they think had the right to rule by the name *imām*, but when these heads succeeded in seizing power they applied to them the titles caliph or *amīr*.² This can be understood as that they think of the *imām* as the *de jure* ruler, and of the caliph as the *de facto* ruler.³ In any case, the term *imāma* became widely accepted and unanimously employed, particularly by theologians and later by political theorists. One of the first textual witnesses to the usage of the term is found in a work entitled "*Conditions of Imāma*", which is claimed to be written by Abū al-Ḥasan al-Baṣrī (d. 728), a famous scholar of the first century.

With regard to our present research, it is very significant to note that the attribute of supremacy is expressly attached to *imāma*. To distinguish the office of the head of the state from other kinds of *imāma*, such as leadership of prayer, the former is commonly called *imāma 'uẓmā*.⁴ *'Uẓmā* means greatest, highest, supreme and major.⁵ The name *imāma* which refers to other positions such as the position of a learned scholar, or of a leader of prayers in a particular mosque, is described as *imāma ṣuḡhrā*. *Ṣuḡhrā*, the antonym of *'uẓmā*, means smaller, lower and minor.⁶ Even, in one opinion, it is maintained that the word *imāma* when used unrestrictedly relates only to the supreme leadership, while to refer to other positions it should be used in a genitive construction such as to say the *imām* of a particular place or in a particular sphere.⁷

¹ Ibn Khaldūn, *op. cit.*, p.638.

² *Ibid.*, p.639.

³ al-Rayyis, *op. cit.*, p. 119.

⁴ Ibn Khaldūn, *op. cit.*, p. 578.

⁵ Lane, *op. cit.*, V, p. 2087.

⁶ *Ibid.*, IV, p. 1692.

⁷ Abū Muḥammad 'Alī Ibn Ḥazm, *al-Fiṣal fī-al-Milal wa-al-Niḥal* (Beirut, n.d.), IV, p. 90.; Cf. al-Rayyis, *al-Naẓariyāt al-Siyāsiyya*, p. 112.

Furthermore, there is another important connotation of the term *imāma* which is worth noticing. It has been observed that the term is most common in theology and political thought. The reason for this may be that the actual practical political power was not viewed by these thinkers as an ideal Islamic authority. In their opinion the actual power in most cases was not identical with the true caliphate as they conceived it. They argue that the real caliphate had lost its character and only remained in name.¹ Therefore, it appeared more suitable to them to use the term *imama* in discussing the ideal character of power. In other words, *imāma* was thought to be the ideal Islamic rule which ought to prevail, though in reality that was not the case.²

Imāra

The second title associated with the head of the Muslims is *Amīr al-Mu'minīn*. The Arabic verb *amara* means to command, order, bid and enjoin. Hence, the words *amīr* and *walī al-amr* denotes the person in possession of command. *Imāra* and *wilāya* is used for his position.³

The term *amīr* was in customary usage in early Islamic period to designate the commanders of Muslim expeditions. The word *amīr* compounded with *al-mu'minīn* made its first appearance, according to the sources, when it was designated to Sa'ad Ibn Abī Waqqāṣ, the leader of the Muslim army at the battle of Qādisiyya against the Persians. Later on, it was adopted by 'Umar, the second caliph. After him it is employed exclusively as a title of the head of the Muslim community.⁴ Christian Europe during the Middle Ages usually know the Caliph by the title, though under peculiar forms such as: 'Elmiram mommini', 'Miralomin', 'Mirmumnus', and others.⁵

¹ Cf. Ibn Khaldūn, *op. cit.*, the passage on 'Transformation of the caliphate into Royal authority', pp.598- 608.

² al-Rayyis, *al-Nazariyyāt al-Siyāsiyya*, p. 121.

³ Ibn Manẓūr, *op. cit.*, V, p. 86.

⁴ Ibn Khaldūn, *op. cit.*, pp. 638-9; H. R. Gibb, "Amīr al-Mu'minīn", *E.I.*², I, p. 445.

⁵ Arnold, *op. cit.*, p. 38.

Concerning the office of *imārat al-mu'minīn*, there are two implications in its meaning which need to be emphasized. First and foremost, the term is clearly based on the idea of command. Consequently, the fundamental element which constitutes, the *imāra* is the possession of command. Normally the possession of command implies the necessity of being obeyed. In fact, rendering obedience to the *amīr* is regarded as a religious duty in the eyes of the Muslims, though it is claimed to be limited in scope and degree. The nature and extent of this obedience will be discussed later, but it must be emphasized here that the possession of command, which is the basic feature of *imāra*, involved the element of obedience. The other important inference from the office of *imārat al-mu'minīn* is the notion of generality. Ibn Ḥazm remarks that the word *al-mu'minīn* (the faithful) necessarily indicates that this *imāra* is of a general character as its authority is above all the faithful in their totality. While it is true that a leader of an army, or a ruler of a district can be called an *amīr*, but as any one of them is a head of only a part of the Muslims, it is incorrect to call him *amīr al-mu'minīn*. The title *amīr al-mu'minīn* applies only to the one who is in possession of command over all the affairs of the Muslims, or one who ought to be so even if in reality some sections of the people disobey him.¹ It is remarkable that Ibn Ḥazm mentions two levels of generality; one relating to all the people, the other to all their affairs. Another feature of generality is expressed by al-Juwaynī who described the *imām* as though all Muslims have become one person embodied in his person, because he has undertaken responsibility of managing their affairs and thus he is a representative of the whole of them.²

Khilāfa

The term *khlāifa* is the third main title applied to the supreme leadership of the Muslim community. The root of the word in Arabic has two meanings: a successor who comes after and follows on, or a vicegerent who is a substitute and in place of

¹ Ibn Ḥazm, *op. cit.*, p. 90.

² Abū al-Ma'ālī al-Juwaynī, *al-Ghiyāthī*, ed. by 'Abd al-'Azīm al-Dīb (Cairo, 1401 A.H.), p. 210.

someone.¹ The word and its derivatives is used in the Qur'ān in both meanings. Three verses in particular are most relevant to our discussion. In one verse the reference is made to David: "O, David, We have made you a *khalīfa* on earth so judge between men justly".² The word *khalīfa* in this verse is associated with political authority and is addressed to a prophet and a ruler who was made the second King of Israel. This can mean that he was a successor in the sense that he came after and in place of the previous prophets, or in the sense that he was a vicegerent of God.³ In another passage Aaron is mentioned: "... And Moses had charged his brother Aaron: act for me amongst my people".⁴ The verb used in Arabic is *ukhlufnī* which is translated "act for me", and as one of the commentators remarked it is a clear reference to vicegerency.⁵ The third verse refers to Adam, "Behold, your Lord said to the angels, I am placing a *khalīfa* on earth."⁶ This verse is surrounded with much controversy. One view holds that Adam is called *khalīfa* because he succeeded the inhabitants before him on earth. In another view Adam is thought of as a vicegerent of God who would judge in his name and execute his orders. Others argue that the reference is not to Adam, but it is to his progeny, as every generation succeeds the previous preceding one.⁷

In tracing the origins of the term *khalīfa* it may be useful to mention that the word is also found in some traditions of the Prophet. According to the sources there appears some evidence that the usage of the word *khalīfa* was current during the life of the Prophet. Historians mention that it was the habit of the Prophet to appoint a deputy to act in his place in Medina whenever he used to travel out of the city. The main

¹ Ibn Manẓūr, *op. cit.*, X, p. 340.

² The Qur'ān 38:36.

³ Muḥammad Ibn Aḥmad al-Qurṭubī, *al-Jāmi' li-Aḥkām al-Qur'ān* (Cairo, 1966), XV, p. 188; Abu Ja'far Muḥammad Ibn Jarīr al-Ṭabarī, *Jāmi' al-Bayān fī Ta'wīl al-Qur'ān* (Cairo, 1968), XXIII, p. 151.

⁴ The Qur'ān 7:142.

⁵ Qurṭubī, *op. cit.*, VII, p. 277.

⁶ The Qur'ān 2:30.

⁷ Ṭabarī, *op. cit.*, I, p.199- 201.

function of the deputy was to lead the prayers as well as to perform other activities.¹ In one incident the Prophet delegated 'Alī Ibn Abī Ṭālib to act in his place in Medina, and addressed him by saying : "Would you not like to be in my place. In the same position as Aaron was in Moses place".² Bearing all this in mind it seem justifiable to assume that it was not wholly a creation to apply the term *khalīfa* to Abū Bakr, the new head of community after the death of the Prophet. Although some historians claim that the term originated with application to Abū Bakr,³ that seems unlikely. It is true that at that time it was not customary among the Arab tribes to call their heads by the title *khalīfa*. So the evolution of the conception of *khalīfa* as a title of the head of the community would seem to have taken place in the life time of the Prophet before it was applied after his death. It could also be assumed that the Qur'ān in particular was the main source from which this title was derived.⁴

Having examined the circumstances which led to the appearance of the title *khalīfa* and its meaning as a successor or a vicegerent, a question arises: whom was he acting on behalf of? When the term was first used in reference to Abū Bakr he was called *khalīfat rasūl Allāh* (the successor of the messenger of God). This emphasizes that he was taken to be in place of the Prophet who had died. It is said that the Prophet in his final illness was about to write a decree nominating his successor, but because of some reasons he changed his mind.⁵ It is more probable that he was contented that the Muslims were in a position to choose the right person without his help. However, Abū Bakr was chosen afterwards and it could not be claimed that he was a *khalīfa* in the sense that he was an appointed deputy by the Prophet. His authority was not given to him by the Prophet, but most likely he was thought of as succeeding him in the

¹ Cf. Ismā'il Ibn Kathīr, *al-Fuṣūl fī Ikhtisār Sirat al-Rasūl* (Damascus, 1400 A.H.), pp. 113, 123- 5.

² Qurṭubī, *op. cit.*, VII, p. 277.

³ Muḥammad al-Khālīdī, *Ma'ālim al-Khilāfa fī-al-Fikr al-Islāmī* (Beirut, 1984), p. 17.

⁴ Cf. W. M. Watt, *Islamic Political Thought* (Edinburgh, 1980), p. 32.

⁵ Cf. Muḥammad Ibn Ismā'il al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Cairo, 1953), III, p. 65-6; Arnold, *op. cit.*, p. 19.

exercise of authority.¹ It is an accepted belief among the Muslims that the prophetic office ceased with Muḥammad, but his other powers and functions were held to have passed to his successors.² The majority of the Muslims jurists and theologians seem to support the opinion that the *khalīfa* is acting in the place of the Prophet,³ even though, historically, the title *khalīfat rasūl Allāh* was only applied to Abū Bakr. In fact when the second *Khalīfa* 'Umar came into power he was addressed in the first days of his reign by the title '*khalīfa* of the *khalīfa* of the Messenger of God', but this was dropped because it was too long. Nevertheless, this gave rise to the view that the *khalīfa* was simply a successor to the previous one.⁴ This seems to be an attempt to simplify matters and avoid the objections made against the other opinions.

The other common theory is that the *khalīfa* is a vicegerent of God. Those who advocate this theory tried to base it on the Qur'ānic application of the word to Adam and David.⁵ The most popular possible meaning attached to the concept of vicegerency of God is that the *khalīfa* is executing the orders of Allāh and implementing His laws.⁶ It is unlikely that anyone understood that the *khalīfa* is an appointed deputy by Allāh.⁷ However, most of the Islamic scholars reject the usage of the title *khalīfat Allāh* (God's Caliph) arguing that vicegerency is to a person who is absent or dead, and since Allāh is alive and always present it is not possible to attach a vicegerent to Him.⁸ According to the sources this title began to be used unofficially since the Umayyads,

¹ Watt, *op. cit.*, p.33.

² Arnold, *op. cit.*, p. 27.

³ Aḥmad Ibn 'Abd Allāh al-Qalqashandī, *al-Ināfa fī M'ālim al-Khilāfa* (kuwait, 1964), p. 16.

⁴ *Ibid.*, p. 17.

⁵ *Ibid.*, p.16.

⁶ Qurṭubī, *op. cit.*, p.263.

⁷ Cf. Watt, *op. cit.*, p. 32.

⁸ This is the opinion of al-Māwardī, al-Farrā', al-Juwaynī and Ibn Taymiyya. See Qalqashandī, *op. cit.*, p.15.

especially in poetry, public addresses and political propaganda. With the Abbasids the title made its appearance in some official correspondences.¹

However, it may be significant in this respect to consider the interpretation of the tradition: "The sultān is the shadow of God on earth" which is commonly associated with the concept of God's Caliph. Ibn Taymiyya, who holds it to be authentic, makes a remarkable explanation to it. He observes:

"Definitely the sultan is a servant of God, created by Him, always in need of Him, and cannot dispense with Him, But there are some qualities possessed by the sultan like ability, authority, protection, support and other attributes of mastery (*su'dud*)² and lordship (*ṣamadiyya*) on which rests the control and welfare of the people. That is the reason why he resembles the shadow of God on earth; besides he is the most effective cause to put the affairs of the people in order. If the one who is possessed with power is good, then the affairs of the people will be set in a right state. If he is corrupt there exist pandemonium and injustice in accordance with the extent of his corruption though the people will not be in a state of complete disorder in every aspect. There must exist some benefit as long as the sultan exists, because he is the shadow of God. But shadow may sometimes be completely dark and sheltering from any kind of harm, and sometimes it protects only partially. However, if there is no shadow there will be complete disorder. That is a case similar to the situation if God does not exist, because God is the one who sustains all mankind.³

To sum up, the conclusions derived from the meanings attached with the three titles: imamate, emirate and caliphate, are quite significant. While the first two indicate supremacy and generality, the third suggests in some sense subordination. As all of them are descriptions of the same office, apparently it is viewed from different angles. In one consideration it is the highest, greatest and general. According to the other opinion it is either a vicegerency of God, or a succession to prophethood. Apparently, there is an implicit conflict between the three views which needs to be resolved. We have already seen the explanation offered by Ibn Taymiyya to reconcile them.

¹ Cf. W.M.Watt, "God's Caliph: Quranic Interpretation and Umayyad Claims", in *Iran and Islam*, ed C.E. Bosworth (Edinburgh 1973), p. 571; Patricia Crone and Martin Hinds, *God's Caliph* (Cambridge, 1986), pp. 6-19.

² It is noteworthy that *Su'dud* or *siyāda* is the modern term used for sovereignty.

³ Aḥmad Ibn Taymiyya, *al-Fatāwā* (al-Ribat, n.d.), p. 46.

Nevertheless, that possible contradiction originated a rich discussion which has continued up to the present time.

iii. The Standard Definition

The nature of the Muslim authority is prescribed with great precision in the technical definitions of the *imāma*. We take as our starting point the well-known definition of al-Māwardī who describes it as: "The succession of Prophethood for the preservation of the religion and the organisation of temporal affairs".¹

It may be evident that the definition comprises three basic elements. The first element specifies the *imāma* as a post originally occupied by the Prophet and after his death he is followed by successors who are acting in place of him. Ibn Khaldūn's analysis of the nature of rule may throw additional light on this aspect of the *imāma*. According to him, the caliphate is that kind of rule which is based on the implementation of the revealed law. Therefore, such rule belongs primarily to the prophets who are the lawgivers that instruct the revealed law. Since prophethood has ceased and, as a result of that, the ordination of revealed law has also ended, the prophets are succeeded by rulers who act in their place and enforce the revealed law.² In this view, the caliphate is not considered as a successor office only to the Prophet Muḥammad, but to the office of prophethood in general. Such an idea may be inferred from a well-known tradition of the Prophet which states that the Israelites used to be governed by prophets, but since there is no prophet after Muḥammad, his people will be governed by caliphs.³

As a result of the fact that the caliphate is a successor to the lawgiver, the prophet, its main function will be to observe the continuity of the enforcement of the revealed law, or as in the expression of al-Māwardī "the preservation of religion

¹ Abū al-Ḥasan al-Māwardī, *al-Aḥkām al-Sulṭāniyya* (Cairo, 1973), p. 5.

² Ibn Khaldūn, *op. cit.*, p. 578.

³ Muḥyī al-Dīn al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (Cairo, 1931), XII, p. 231.

(*ḥirāsāt al-dīn*)," which forms the second element in his definition. Apparently, this is a fundamental feature of the caliphate which establishes the theoretical basis of the unique relationship between political power and religion in Islam. That relationship, as elaborated by al-Māwardī, can be viewed to consist of two inseparable sides. On the one hand, political power is founded on religion and it functions according to its norms. On the other hand, political power acts as a guardian which protects the religion and preserves its doctrines. In other words, as al-Māwardī states, if religion does not possess political power, ultimately it will not be observed and its norms will be altered. Similarly, if political power is stripped of religion it will become a despotic rule and a cause of disorder.¹ Hence, religion and political power, or *dīn* and *sultān*, are regarded as dependent on each other and the relationship between them is seen to be analogous to the relationship between twins. The thesis describing that relationship is expressed in a statement that is repeatedly quoted by theorists which says that "*al-Dīn uss wa-al-sultān ḥāris*", signifying that religion is the foundation of the whole structure and that political power acts as a guardian to it. The statement goes on to assert that any structure without a foundation can simply be destroyed, and that anything that is not guarded can easily be lost.² In the light of this, the caliphate appears to be as a political institution which is established on the basis of religion and according to its norms. It may also be evident that political power is an effective instrument of Islam used for the implementation and the protection of its norms.

On the other hand, the caliphate is not designed to carry out only religious duties. It has to render the services which any other political institution usually provides. Those functions are summed up in al-Māwardī's definition in the phrase "*siyāsāt al-dunya*", the organization of temporal affairs. There are several points to be noticed with regard to this function. In respect of the necessity of this task, Ibn Khaldūn points out that, as civilization (*'imrān*) is necessary for mankind, the care for

¹ Abū al-Ḥasan al-Māwardī, *Adab al-Dīn wa-al-Dunya* (Beirut, 1978), p. 115.

² Ibn al-Azraq, *op. cit.*, pp. 106 -7.

the various interests of that civilization is also necessary. Any secular political power may suffice in serving those interests, though the welfare of human civilization would be more perfect if it is served through the religious revealed laws, the *shari'a*, because God has a better knowledge of human benefits. Certainly, the Prophet was concerned with both functions, says Ibn Khaldūn, the religious affairs in his capacity to transmit and implement the religion, and the temporal affairs in his responsibility to care for the benefits of human civilization. Similarly, the caliphate in succession to him is to carry the same functions and is to care for both religious and worldly affairs.¹

Moreover, the relation between the two functions may be shown in the statement of al-Ghazālī, who asserted that: "good ordering of religion is brought about only by good ordering of temporal affairs". To prove that, he refers to the basic needs of any human being such as health, clothing, lodging, food, and security without which life will not be possible. He asserts that the religious duty to know and worship God can be performed only if those necessities are attained. If a man is busy, all his time to gain a living and to guard himself and his property, how can he have time to gain knowledge and practice worship?² In other words al-Ghazālī is saying that "the supreme purpose of man's life is to know and worship God", and consequently "the supreme purpose of all the organization of human communities is to facilitate the attainment of that end by individuals".³ The same view is expressed by al-Juwaynī who maintains that *dunya* sustains *dīn* and serves as a means to achieve its objectives.⁴

In addition to that, al-Ghazālī's discussion casts some light on the explanation of the terms religion (*dīn*) and temporal affairs (*dunya*) and the distinction between them. He uses *dīn* to mean knowledge and worship of God, and by *dunya* he refers to all things needed for the maintenance of life. In that context *dunya*, al-Ghazālī explains,

¹ Ibn Khaldūn, *op. cit.*, pp. 624- 5.

² al-Ghazālī, *op. cit.*, p. 135.

³ W. Montgomery Watt, "Authority in the Thought of al-Ghazālī", in *La notion d'autorité au Moyen Age* (Paris, 1982) p. 60.

⁴ al-Juwaynī, *op. cit.*, p. 180.

is not opposite to *dīn*, it is a requirement of it.¹ That interpretation reflects the most general tendency in the usage of the phrase "*dīn wa-dunya*" with reference to political thought and in particular regarding the definition and function of the caliphate. The word *dīn* in Arabic is a rich root which have several derivatives and meanings. Basically, it signifies the senses of: a) Obedience and submission; b) custom, habit and usage c) a law, a statute or an ordinance; d) judgement and requital.² When used in a general sense it denotes "the corpus of obligatory prescriptions given by God to which one must submit".³ Since those prescriptions in Islam are all-comprehensive, *dīn* in that sense covers all conduct of life.⁴ On the other hand, *dunya* can simply mean nearer, nearest, lower or lowest, and when combined with life (*ḥayā*), either explicitly or implicitly, it means this world or life, particularly the material side of it. It is an antonym of the life after death (*ākhirā*).⁵ According to Islam, the interests of this world may oppose the next only if they are not aimed at the service of God. But if material life is used to serve God, then *dunya* becomes necessary for the exercise of *dīn*. This is the essence of the above remark of al-Ghazālī that *dunya* is not opposite to *dīn*. In fact, *dunya* appears to be comprised in *dīn*, or as M. Laoust observes in his comments on the political doctrine of Ibn Taymiyya that: "*dīn* is intimately bound up with *dunya*".⁶

It is worth mentioning here the remark which many Western writers have made that the meaning of the words *dīn* and *dunya* when translated into Western terms may often be distorted. Most likely, the translation may be given Christian connotations. Often *dīn* is translated into 'religion'; and the concept of *dīn* is undoubtedly quite coincident with the common sense of religion. *Dunya* is translated to "temporal" or "secular affairs", which may mislead to the indication that *dunya* is opposite to *dīn*. But as is shown above the two terms are closely connected, especially in reference to

¹ al-Ghazālī, *op. cit.*, p. 135.

² Ibn Manẓūr, *op. cit.*, 17, pp. 24-30; Lane, *op. cit.*, III, p. 944.; *E.I.*², II, p. 293.

³ *E.I.*², II, p. 293.

⁴ Watt, *Islamic Political Thought*, p. 29.

⁵ Ibn Manẓūr, *op. cit.*, XVIII, p. 297; Lane, *op. cit.*, III, p. 922.; *E.I.*², II, pp. 295, 626.

⁶ *Doctrines sociales et politiques d'Ibn Taymiyya*, p. 280; Quoted in *E.I.*², II, p. 295.

politics. That is to say, there is a unique unity of politics and religion in Islam, and whenever the phrase "religious and temporal" are used in political context that unity should be regarded as implied.¹

In the light of this discussion it appears to be difficult to draw exactly the line that separates *dīn* and *dunya*. Though the terms are used in the definition of the caliphate presumably to denote separate functions, it is difficult to find a precise distinction between them. In reviewing the functions of the caliphate listed by the political theorists there seems to be no criterion to distinguish between which belongs to *dīn* and which belongs to *dunya*; except in very obvious cases such as describing the establishment of prayer as being religious.² Even when some writers like al-Juwaynī³ and Ibn Khaldūn⁴ have attempted to classify those functions under separate headings, claiming that some belong to *dīn* and others to *dunya*, there is no agreement between them. It is not only that their lists are not identical but in most cases their classification itself is questionable. According to Ibn Khaldūn the judiciary (*qaḍā'*) is associated with *dīn*, while al-Juwaynī relates it to *dunya*. Moreover, most items classified under *dunya* may clearly be described as religious, such as finance (*amwāl*) and security of life and property (*amn*). Perhaps, an explanation of this may be found in the fact which has already been emphasized that *dīn* and *dunya* are closely correlated. The revealed *shari'a* laws, as Ibn Khaldūn says, is concerned with the material life and has laid down legislations for its various aspects.⁵ Hence, *dīn* comprises *dunya*, and when *dunya* is mentioned distinct from *dīn*, it is to emphasize its importance rather than to separate it as an opposite concept of *dīn*.

¹ Erwin Rosenthal, *Political Thought in Medieval Islam* (Cambridge, 1958), pp. 8-9; Watt, *Islamic Political Thought*, p. 29.

² Cf. Māwardī, *al-Aḥkām al-Sultāniyya*, pp. 15-16; Badr al-Din Ibn Jamā'a, *Tahrīr al-Aḥkām*, ed. Fu'ād 'Abd al-Mun'im (Dawha, 1985) pp. 65-70.

³ Cf. al-Juwaynī, *op. cit.*, pp. 180-206.

⁴ Cf. Ibn Khaldūn, *op. cit.*, pp. 624-625, 663-665.

⁵ *Ibid.*, p. 669.

III. Features of Rulership

Apparently, the standard definition of al-Māwardī has shaped the basic features of the caliphate, though it has clearly stressed the aspects of its function. However, the other technical definitions have viewed the caliphate from different angles and either added a new element or attempted to lay the stress on other features. Now those additional characters of the caliphate shall be briefly considered.

i. Generality

It has already been mentioned that one of the chief qualities attributed to the caliphate is generality. Commenting on the title *amīr al-mu'minīn* Ibn Ḥazm has remarked that it indicates the possession of command over all the affairs of all the Muslims.¹ To signify the importance of that attribute, al-Taftāzānī, a great theologian and jurist of the eighth century (d.791/1388), included it in his rephrased definition. He pictures the imamate as: "a general leadership (*ri'āsa 'āmma*) governing both religious and temporal affairs in succession to the Prophet".² In an earlier definition which was coined by al-Juwaynī, a contemporary to al-Māwardī, the emphasis was put on both the generality and the totality of the imamate. He states that: "the imamate is a total authority and overall leadership (*ri'āsa tāmma wa-zi'āma 'āmma*) concerning general and special (affairs) in religious and temporal matters".³ In another place in his treatise he asserts another level of generality when he describes the Imam as though all the Muslims have become one person embodied in his person.⁴

The discussion of generality leads us to consider the concept of general *wilāya* which is often assigned to the office of the Imam. The verb *waliya* means to have charge or command over something,⁵ and its derivative *wilāya* is defined as "the

¹ Ibn Ḥazm, *op. cit.*, p. 90.

² Sa'ad al-Taftāzānī, *Maqāṣid al-Ṭālibīn* (Astana, 1305 A.H.) quoted in M. Rashid Riḍā, *al-Khilāfa* (Cairo, 1988), p. 17.

³ al-Juwaynī, *op. cit.*, p. 22.

⁴ *Ibid.*, p. 210.

⁵ Ibn Manẓūr, *op. cit.*, XX, p. 287; Lane, *op. cit.*, p. 3060.

carrying through of a decision affecting another person whether the latter wishes or not".¹ The essence of *wilāya*, as Ibn al-Athīr says, is that it indicates power and ability to carry out what is decided.² *Wilāya* is applied to anyone who has got that power. While it is regarded as an attribute of God, a number of persons holding public and private responsibilities are also designated with the power of *wilāya*. Accordingly a distinction is made between general and special *wilāya*. The general power (*wilāya ʿamma*) is assigned to the Imam. A vizier or an amīr over a province may also have general *wilāya* delegated by the Imam. Other officials possess special *wilāya*, such as military commanders, judges, financial officials, leaders of prayers and of pilgrimage (*ḥaj*). In private affairs, special *wilāya* is possessed by persons such as a guardian of an orphan child, an insane person or a relative of a woman independently of whom her marriage cannot be performed.³

ii. Supremacy

Supremacy is another basic attribute assigned to the imamate. Al-Qādi ʿAbd al-Jabbār regards it as the main quality that distinguishes the imamate from other authorities. He defines the nature of the imamate as follows:

"Etymologically, imam means the one who is put forward whether he is worthy to take the position of being ahead of others or not. As a technical term in *sharʿ* it is the title applied to the one who possesses *wilāya* over the people to act according to his will in managing their affairs in such a way that there is no force above him to overrule his decisions (*lā yakūn fawq yadih yad*). This distinguishes his authority from that of a judge or a governor of a province. Though they also manage the affairs of the people, but the Imam has authority above them".⁴

Furthermore, supremacy is considered from a different standpoint in an interesting discussion by al-Juwaynī, who phrased the word " *istiqlāl*" (independence)

¹ ʿAlī M. al-Jurjānī, *Kitāb al-Taʿrīfāt* (Beirut, 1969), p. 275; *E.I.*¹, IV, p. 1137.

² Ibn Manẓūr, XX, p. 287.

³ *E.I.*¹, IV, pp. 1137- 8.

⁴ ʿAbd al-Jabbār Ibn Aḥmad, *Sharḥ al-Ussūl al-Khamsa*, ed. ʿAbd al-Karīm ʿUthmān (Cairo, n.d.), p. 750.

as a general term which comprises all the major qualities attributed to the imamate. In its broadest sense, his concept of independence may be interpreted as an essential corollary of supremacy. Perhaps, it is an established view that the person who is to be an imam must ideally have certain qualities such as knowledge, administrative ability and piety. Al-Juwaynī argues that most of those qualities can possibly be traced back to one origin, that is to say, independence. In his view, it is a requirement that the imam must be independent if the imamate is to perform its religious or temporal functions. It is essential, he explains, that the imam, in his capacity as a leader in both *dīn* and *dunya*, should be followed. He should not be subordinate to or follow anyone. The chief purpose of the imamate is to unite the people, make them accept to follow a certain course of action, and render their obedience to one man, in spite of their different natures, wills, wishes and conditions. If that fails to be achieved, there will be no stable government. In religious affairs, the independence of the imam necessitates that he must possess the knowledge and qualifications which enable him to make his own judgement (*ijtihād*). Because if he is not a *mujtahid*, he has to observe the ideas of the '*ulamā*' and obey their instructions and prohibitions. According to al-Juwaynī, following the '*ulamā*' contradicts the position of chiefdom and the office of the imamate. Similarly, the imam has to attain high ability to administer temporal affairs in order to be independent in his decisions. However, al-Juwaynī says that it may be objected that his concept of independence is not a necessary condition of the imamate on the ground that the imam has to hold consultation (*shūrā*) and decide according to it. However, he believes that conducting *shūrā* is not inconsistent with the quality of independence of the imam because the Prophet himself used to hold consultations on many occasions and was ordered by the Qur'ān to do so. Therefore the imam is required to observe *shūrā*, no matter how highly qualified and greatly independent he may be as long as decisions based on arbitrariness (*istibdād*) are most likely to be unjust. In short, al-Juwaynī holds that independence (*istigqlāl*) is a chief

feature of the imamate from which other qualities such as knowledge and ability can be derived.¹

iii. The Authority of a definite person

According to al-Rāzī the imamate is "a general authority concerning religious and temporal affairs assigned to a definite person".² It appears that his definition is unsatisfactory and has actually been rejected on the ground that it also applies to prophethood.³ But that disapproval does not seem to be an objection to the contents of the definition, it is rather a reference to its incompleteness. It is most likely that the missing element is the fact that the imamate is in fact a succession to prophethood. Nonetheless, al-Rāzī's definition seems to introduce an important feature when it emphasises that the imamate is to be assigned to a definite person. In other words, the imamate is an authority which is possessed by a certain body in the society. It is not abstract. It is not attributed to a norm. It belongs to a real person, a living person, neither hidden nor unseen and, besides, who is fixed and known. There is even a rather extreme opinion of a scholar which imposes an obligatory duty on all the Muslims to know in person the imam by name. Al-Māwardī criticizes that view, but maintains that such a recognition of the imam is only required from those who are entitled to choose the imam and on whose pledge of allegiance the imamate is contracted. Ordinary people are only required to know that the imamate is assigned to a certain person.⁴

However, our concern here is that the imamate is the power which is brought into the hands of a certain person. Al-Rāzī continues to explain why he laid down that condition. He states that defining the imamate as the authority designated to one

¹ al-Juwaynī, *op. cit.*, pp. 84- 90.

² Quoted in Riḍā, *op. cit.*, p. 17.

³ 'Abd al-Raḥmān al-Ījī, *al-Mawāqif fi 'Ilm al-Kalām* (Cairo, n.d.), p. 395.

⁴ al-Māwardī, *al-Aḥkām al-Sultāniyya*, p. 15.

person excludes the idea that it belongs to all the *umma* (the people) because it is in their power to depose the imam in certain cases, particularly if he does not meet the requirements of righteousness.¹ Commenting on al-Rāzī's statement, al-Taftāzānī supposes that his reference to the whole *umma* most probably means *ahl al-ḥall wa-al-'aqd* (the people who bind and loose), assuming that they possess authority above the rest of the people.² However, whether the authority to depose the imam resides in *ahl al-ḥall wa-al-'aqd*, or belongs to the whole *umma*, it seems that al-Rāzī seeks to rule out the possibility that they possess the supreme authority. Therefore it is clearly stated in his definition that the imamate is that authority which resides in one definite person, that is to say, it is not the authority of the whole *umma* or the authority of *ahl al-ḥall wa-al-'aqd*. Though they hold some kind of authority, but apparently it is not the *al-imāma al-'uzmā*.

In this respect, it may also be useful to explore the concept of the unity of the imamate which the theorists regard as an essential characteristic. Generally, it is an accepted idea that there should be appointed only one person for the office of the imamate to rule all the Muslims wherever that is possible.³ This opinion is basically founded with reference to certain Qur'ānic verses and Prophetic traditions which expressly indicate the unity of all the Muslims in general and, in particular, that the caliphate has to be rendered to one at a time.⁴ Besides, there are some interesting arguments which are proposed in support of the doctrine of unity. Ibn Ḥazm, for example, argues that if it would be possible to have more than one imam at a time, then it would be possible to have numberless imams. There are no grounds, he says, to rule out the possibility of having an imam for every town, or for every village, or even every individual could be the imam of himself; and evidently that would be utter

¹ Riḍā, *op. cit.*, p. 17.

² *Ibid.*, p. 17.

³ al-Māwardī, *al-Aḥkām al-Sultāniyya*, p. 9 ; al-Farrā', *op. cit.*, p.25; al-Juwaynī, *op. cit.*, p. 172 ; Ibn Ḥazm, *op. cit.*, p. 88 ; al-Rayyis, *op. cit.*, p. 243 ; Ibn Jamā'a, *op. cit.*, p. 56 ; Ibn al-Azraq, *op. cit.*, I, p. 76.

⁴ Cf. Ibn Ḥazm, *op. cit.*, p. 88 ; al-Rayyis, *op. cit.*, p. 245.

chaos.¹ But Ibn Ḥazm gives no reason for his supposition that either there must be one imam for the whole world, or power will be divided into a number of infinitive parts. Perhaps, the most convincing argument which endeavours to make a conclusive proof of those assumptions is made by al-Juwaynī. He applies his concept of independence of the imamate which has been explained before. He argues that:

"The office of the imamate necessitates independence in actions. Therefore it is impossible to assign to two independent persons together the supreme leadership. The jurists have disagreed whether it is permissible to appoint two judges in one district, if it is assumed that each one of them is given general authority over all the area. It is more proper that it is not allowed. But it may be presumed to be possible on the ground that the imam is above the judges, the governors and the other officials, and therefore if any two officials are inharmonious and there is a conflict between them, the Muslims can turn to the authority of the imam to finally resolve the disputed matter. As for the imamate, it is the utmost end above which there is no authority that may be assumed, which can be turned to or followed".²

Hence, the indivisibility of the imamate is not permissible. In other words, it has to be allocated to one definite person if his control over the whole Muslim world is possible. Yet, al-Juwaynī explains that the unity of the imamate may sometimes be impracticable for various reasons. For example, if there is a remote country from the Muslim world, its people can appoint an independent amīr to rule them as long as it is not possible for them to be governed by the central authority of the Imam. That amīr is not regarded as an imam, and when the difficulties which prevent the extension of the power of the imam of the bulk of the Muslims are removed, the amīr will become one of his subjects. On the other hand, if the Muslim world itself is divided into different countries, and each country is ruled by an amīr, none of them will be regarded as an imam. In that case, according to al-Juwaynī, the office of the imam is considered to be

¹ Ibn Ḥazm, *op. cit.*, p. 88.

² al-Juwaynī, *op. cit.*, pp.178, 179.

vacant, "because the imam is the one with whom all the Muslims are associated".¹ In short, al-Juwaynī is saying that there must exist only one imamate or there is none.

iv. The Imamate and the Law

Now we turn to an important issue in the study of the nature of any political power, that is, the relation between it and law. As has been stated before, Ibn Khaldūn has asserted the necessity of establishing political power on the basis of binding laws which may either be man-made laws or revealed laws ordained by a prophet. According to his focus on the element of law, he defines the caliphate as that institute which "enforces the populace to act in accordance with the judgement of the *shar'* in furtherance of their interests of this world as well as the other world".² This definition is significant in several aspects, especially in reflecting the relation between the caliphate and the laws of the *sharī'a*. It describes the basic purpose of the caliphate as being the enforcement of the *sharī'a* laws. It may be self-evident that those laws are not created by the caliphate, but they have been ordained by God through the Prophet. In other words, the caliphate is not the primary source of laws, yet its fundamental function is to use the power it possesses to put into execution those laws. The fulfilment of that end is not only seen as the main duty of the imamate, but it is regarded as the cause that necessitates its very own existence.

In fact, the discussion about the reasons behind the necessity of the imamate is one of several aspects which show the indisputable facts of the supremacy of the *sharī'a* laws. This discussion is found in most political treatises,³ and it is sufficient here to give a brief account of the major arguments. The significant fact with regard to our present consideration of the point of the supremacy of the *sharī'a* is that almost all

¹ *Ibid.*, pp. 174, 175.

² Ibn Khaldūn, *op. cit.*, p. 578 ; cf. the English translation, Rosenthal, *op. cit.*, I, p. 387.

³ Cf. al-Māwardī, *al-Aḥkām*, p. 5 ; al-Farrā', *op. cit.*, p. 19 ; Ibn Khaldūn, *op. cit.*, pp. 578 - 81 ; Ibn Jamā'a, *op. cit.*, p. 48 ; al-Rāzī, *op. cit.*, pp. 133 - 5 ; Ibn Ḥazm, *op. cit.*, pp. 87 - 9 ; al-Ījī, *op. cit.*, pp. 395 - 8 ; Sayf al-Dīn al-Āmidī, *Ghayat al-Muraām fī 'Ilm al-Kalām* (Cairo, 1971), pp. 367 - 74 ; al-Rayyis, *op. cit.*, pp. 127 - 51.

the opinions agree that the necessity of establishing the imamate is derived from those laws. It is maintained that the arguments for it are based on *shar'* and not on *'aql*, that is secular human reasoning. That is to say, phrasing it in contemporary terms, that the religious law, the *shar'*, creates the imamate. Generally, there are two ways to prove that the imamate is necessary according to the religious law. The first proof is the consensus (*ijmā'*). It is argued that on the death of the Prophet, the men around him proceeded before his burial to choose an imam. It is reported that Abū Bakar addressed them saying that: "There is no doubt that the Prophet has died. Therefore, in order to preserve the religion there must be a person to take over". All the people agreed to that and no one objected. That was also the case in subsequent periods and there was no time when the people were left without an imam.¹ The second proof claims that there are many religious duties which can only be carried out collectively and cannot be performed by each individual by himself. Such collective religious duties, it is argued, can only be performed under the leadership of an imam. Therefore, it is obligatory (*wājib*) to establish an imam, because that is the only means to carry out the several obligatory collective duties.² Even those extremists, who have taken the exceptional position that it is not necessary to have an imam, are not against the supremacy of the *sharī'a*. On the contrary, they argue that it is only necessary to observe the *sharī'a* laws, and they think that it is possible for all the people to agree upon the practicing of justice and the obedience of the law, without the existence of an imam.³ However, there are some thinkers who hold that the necessity of the imamate is indicated by human intellect (*'aql*) only, but according to their doctrine the *shar'* is a manifestation of human reasoning and in the end their opinion is not a denial to the principle of the supremacy of the religious laws.⁴

¹ Ibn Khaldūn, *op. cit.*, p. 579 ; al-Ījī, *op. cit.*, p. 395 ; al-Āmidī, *op. cit.*, p. 364.

² al-Āmidī, *op. cit.*, p. 366 ; al-Ījī, *op. cit.*, p. 396.

³ Cf. Ibn Khaldūn, *op. cit.*, pp. 580 - 1.

⁴ Cf. al-Rayyis, *op. cit.*, p. 131.

The relation between the imamate and the law is shown further in the discussion about the Shi'a theory that the imamate is needed since it is the only source of the knowledge of the religious laws, and that is the reason why they believe that the imam must be infallible. The Sunnis, and others, who reject this theory, hold that the imamate is needed only for the execution of the religious laws, since those laws have already been known. They maintain that they are all included in the Qur'an and the *Sunna*, and what is needed is a power to enforce them, not a source to instruct them.¹

Furthermore, the doctrine of the supremacy of the revealed religious laws has been asserted and thoroughly explained in the face of a grave challenge that faced the Muslims after the invasion of the Mongols who destroyed the Abbasid Caliphate in Baghdad and captured a great part of the Muslim world. Those Mongols used to have a traditional code, called the *Yasaq* or *Yasa*, compiled and written by Chingiz Khan² which embodied their tribal rules and customs. When they assumed power over the Muslims, though they themselves ultimately adopted Islam, they still continued for some time to govern following their ancient law. Such a situation was totally new to the Muslims who for centuries followed the *shari'a* as the only source of legal judgement. In the face of that new challenge, the Muslim scholars took up to show more expressly the obligatory nature of the *shari'a* laws, the necessity to enforce them, and the essential requirement to reject totally any tendency to displace them. One of the leading exponents of this period was Ibn Taymiyya who expounded his view in various works, especially in his replies, *fatāwā*, to the worried queries raised about the inclinations of some judges to follow their masters, the Mongols, and substitute for the *shari'a* the code of the so-called *Yasaq*.³ However, after a long and a slow process, the

¹ 'Abd al-Jabbār, *op. cit.*, pp. 751 - 2 ; cf. al-Rayyis, *op. cit.*, pp. 159 - 70.

² Cf. Ibn Kathir, *al-Bidāya wa-al-Nihāya* (Beirut, n.d), XII, p. 144 ; Thomas Arnold, *The Caliphate*, (Oxford, 1924), p. 109.

³ Cf. Ibn Taymiyya, *al-Fatāwā* (al-Ribāt, n.d.), 35, p. 408.

Mongols princes were fully Islamized and the laws of the Yasaq were entirely disestablished.¹

It is not possible to examine all the expressions of Ibn Taymiyya on this issue. It must suffice to look into some of his discussions on the matter, especially those related to the general character of judgement (*al-qadā'*). In his investigations he explains obligatory nature of the laws of the *sharī'a*, the nullification of any laws contradicting them, and to what extent the decisions of rulers and judges can be regarded as compulsory. A summary of his ideas on those questions may be given in the following points.

(1) Quoting the Qur'ān,² he states that the decisions of governors must always be based on justice. He interprets justice as to mean the revealed laws contained in the Qur'ān and the *Sunna*, which he calls *shar' munzal*. So, justice is *shar'*, and *shar'* is justice. It is an obligation on all mankind to follow this *shar'*, basically because it is God alone who ordains the law. In support of this principle, he brings forward the important doctrine that God is given the attribute of being *al-Hākim* (the arbitrator), the decision belongs only to him (*in al-ḥukm illā li-llāh*), which means He alone is the law-giver. Ibn Taymiyya quotes various authorities to verify that beliefs among them are the Qur'ānic verses which state that command, decision and judgement belongs to God alone.³ Those laws of God are included in his Book and conveyed by His Messenger Muḥammad. Therefore, the Qur'ān and the *Sunna* teach the revealed religious law, *shar' munzal*, which is obligatory on every one to obey, and it is the duty of the Muslims to use every force they possess to protect its enforcement and compel its obedience.⁴

(2) On the other hand, Ibn Taymiyya firmly invalidates the imposition of any laws other than the *sharī'a*. He signifies any norms inflicted in place of the *sharī'a*

¹ Arnold, *op. cit.*, p. 111.

² "When you rule people, judge amongst them with justice", IV:58.

³ For example see verses 12:40 ; 42:10.

⁴ Ibn Taymiyya, *al-Fatāwā*, 35, pp. 361 - 6.

by the phrase "*shar' mubdal*", that is, replaced and changed laws. As an example of such type of law, he particularly mentions the customary rules of the Tatars, codified in the collection called the *Yasaq*. Ibn Taymiyya strenuously denies such laws and confirms that no Muslim is allowed to give or accept any judgement based on them. He holds a strong conviction that ruling by them or agreeing to an arbitration on their basis forms a great sin which in certain cases may amount to apostacy from Islam.¹ He demonstrates his ideas by providing many evidences from the Qur'an.² To give an example of his approach, we shall consider his comments on one citation which appear to be, in particular, of great significance in elaborating the concept of lordship (*rubūbiyya*), and later in shaping the idea of sovereignty of modern Muslims. He states his remarks in his explanation of the verse which describes the Jews and the Christians by saying: "they have taken their doctors of law and their monks for lords beside God".³ Quoting the Prophet and the early commentators, the verse is interpreted to mean that they obeyed their religious leaders in what they allowed and what they forbade. It does not mean that they worshiped them and prayed to them as actual gods. They are described as being lords taken beside God, because the lordship of legislating what is permissible and what is forbidden has been assigned to them, while it ought to be assigned only to God. Ibn Taymiyya has no doubt that the heads who give themselves the authority to make deliberate changes in the laws of God and those who obey them in that are both blameworthy. If those alterations are acknowledged to be authentic and the heads admit having the right to set them, though it is known that they are contradictory with the laws of God, then this is regarded as unmistakable apostacy and *shirk*. It may be a sin that does not amount to *shirk* only in the case when the belief in the original laws of God remains unshakable despite the fact that their displacement is imposed and complied with. Apparently, Ibn Taymiyya seems to be

¹ *Ibid.*, 28, pp. 200, 201 ; 35, pp. 361-6.

² For example see verses 4:60 -56 ; 5:50.

³ The Qur'an 9:31.

convinced that giving men the right to set laws other than the laws of God is a contradiction of the belief in the Lordship of God.¹

(3) Yet, beside the revealed religious laws, *shar' munzal*, Ibn Taymiyya acknowledges another set of rules, for which he coins the term *shar' mu'awwal*. By that he means the different interpretations of the Muslim scholars regarding the revealed law. No doubt, the application of the limited number of the revealed statements, *nuṣūṣ*, has led to the emergence of a wide range of different opinions, either in their explanation or in their employment to cover new situations. That area in which *ijtihād* is used and especially when there is no agreement between the *mujtahids*, is what Ibn Taymiyya calls *shar' mu'awwal*.

His concern in relation to this area of legal order is to show that its rules are not as compulsory as the revealed laws, in the sense that individuals have the choice to follow what they think is correct. No ruler has the right to use his power to compel all the people to follow one opinion and abandon other opinions. The ruler and other people stand on an equal footing and the authenticity of each opinion depends on the evidences provided. Force is to be used to impose the legal decision of a ruler or a judge only upon the particular people brought to their court in a specific case. Besides, any judicial decision is an independent judgement of the person who passed it and there is always room for human error. Therefore, neither a ruler, a judge, nor any scholar may claim that his decision on a certain matter is equated with the judgement (*ḥukm*) of God. God's *ḥukm* is his revealed law, and its application and interpretation is necessarily human action.²

This distinction between the decision of God (*ḥukm Allāh*) and the judgement of the men (*ḥukm al rijāl*) has been emphasised as early as the era of 'Alī Ibn Abī

¹ Ibn Taymiyya, *op. cit.*, 7, pp. 67 - 71 ; Cf. Ibn Kathīr, *op. cit.*, 13, p. 114 ; Ibn Kathīr is one example of the followers of Ibn Taymiyya who echoed his views on the impementation of non-Islamic laws. The impact of Ibn Taymiyya is felt up to the present age especially in opposing the imposition of Western laws in Islamic countries.

² *Ibid.*, 7, pp. 376 - 88 ; 28, pp. 384 - 6 ; 10, pp. 470- 1.

Ṭālib, the fourth Caliph, in the course of his conflict with the Kharijites. One of their original objections was expressed in the slogan: *Lā ḥukm illā li-llāh*, by which they mean "the decision is God's alone". This was a reference to their disapproval of the arbitration between 'Alī and Mu'āwiya, on the ground that it was a decision of men, *ḥukm rijāl*. They hold that the Qur'ān had already decided that a party whose conduct was felt to be outrageous, like Mu'āwiya's party, should be fought until they submit to the head of the community.¹ Therefore, to seek a resolution through the arbitration was interpreted by them as a rejection of God's decision and would be equal to apostasy, *kufr*. 'Alī strongly opposed their contention on the basis that it was a misunderstanding of the doctrine that decision belongs only to God and a misuse of it. He and other scholars, namely Ibn 'Abbās, attempted to clarify that the Qur'ān was a book containing the words written in ink and was unable to speak for itself and decide for itself. Men were needed for its application and interpretation. In support of their view, they made reference to the fact that the Qur'ān itself allowed the appointment of two men as arbitrators to settle marriage disputes.² Then, why should it not be permissible to go to arbitration to prevent bloodshed and settle a conflict between two fighting parties?³ 'Alī explained further that setting a human deciding-body, like an imarate, was necessary for mankind, and certainly he did not see any contradiction between it and the doctrine that 'the decision is God's alone' (*Lā ḥukm illā li-llāh*).⁴

v. The Caliphate in relation to obedience

Obedience forms a major constituent in the establishment of any political power. With regard to the caliphate, an attempt has been made to define it in relation to obedience by two scholars, namely al-Ījī and Ibn 'Arafa. The former defines it as: "the

¹ Cf. the Qur'ān 50:9.

² Cf. the Qur'ān 4:35.

³ Ibn Jarir, al-Ṭabarī, *Tārīkh al-Rusul wa-al-Mulūk* (Cairo, 1963), 5, pp. 64 -6,72- 3 ; Ibn Kathīr, *op. cit.*, 7, pp. 304 -7.

⁴ Cf. Kamāl al-Dīn Maytham al-Baḥrānī, *Sharḥ Nahj al-Balāgha* (Tahran, 1362), II, p.101.

succession to the Prophet in the execution of the religion whereby a duty is imposed on all the people to render obedience to it".¹ In the latter's definition it is described as: "an acquired quality which requires obedience of the order of the person to whom it is assigned on condition that his order is not deemed as evil (*munkar*)".² It may be clear that the focus in both definitions is shifted to obedience and it is reflected as a major component of the caliphate. Ibn al-Azraq, in his comments on this approach, shows his approval to it and asserts the importance of obedience in relation to the imamate. In his view, "the imamate will cease to exist if obedience to it is lacking".³

It may also be clear that, besides emphasizing the significance of obedience, these definitions explain further its character and extent. Obedience is represented as a common duty imposed on all the people. In rendering it that quality of generality, it becomes possible to distinguish the imamate from other kinds of authority, like the judiciary, which receive obedience to some degree.⁴ In addition to that, the scope of obedience is also defined. Though the whole people ought to obey the imamate, but their obedience is not unlimited. They ought to abide by *ma'rūf*, and to disobey *munkar*. *Ma'rūf* is a general term denoting anything deemed lawful according to the *Shari'a*, and *munkar* is the opposite of it. In other words, political decisions to be obeyed have to be in conformity with the *Shari'a* laws. To understand the nature of obedience in general and the restrictions limiting it, we have to trace the sources of the notion in politics and theology.

No doubt, the principle of submission to the imamate is acknowledged as a religious duty.⁵ Ibn Taymiyya, for example, says:

"Obedience of the rulers is a duty of everybody, even if he has not sworn allegiance to them or has not made firm pledges to them, as it

¹ al-Ījī, *op. cit.*, p. 395.

² Ibn al-Azraq, *op. cit.*, 1, p.91.

³ *Ibid.*, 1, p. 77.

⁴ *Ibid.*, 1, p.91 ; al-Ījī, *op. cit.*, p. 395.

⁵ al-Māwardī, *al-Aḥkām al-ṣultāniyya*, p. 17 ; al-Farrā', *op. cit.*, p. 28 ; Ibn Jamā'a, *op. cit.*, pp. 61,62.

is a duty of everybody to perform five prayers, *zakāt*, fasting, pilgrimage, and other practices of worship which are ordained by God and his Messenger. If a person takes an oath for that it is only a verification and a confirmation".¹

This firm conviction is based on the Qur'ān from which the whole concept of obedience of the rulers has originated. In two closely related verses it is said: a) God commands you to give back trusts to those worthy of them, and when you judge between people, to judge with justice b) O! You who believe, obey God and obey the Apostle and those who possess the authority to command among you (*ūlū al-amr*).² The commentators are almost in agreement that the first statement is addressed to the rulers, and the latter to the subjects. The rulers are directed to observe to be trustworthy and just in their government, and when they do so it becomes a duty on the subjects to render them obedience.³ This view is supported further by a number of traditions which assert the importance of performing the obligation of loyalty to the rulers, and at the same time restricts it to the limits of *ma'rūf*, that is, legality according to the *Sharī'a*.⁴ Therefore, basically obedience is to God, and the decisions of the rulers are to be obeyed as long as they agree and do not contradict with the orders of God.⁵

This is a general outline of the concept of obedience to the rulers as expressed in theory. However, political realities in Islamic history may in many cases portray different implications. Many despotic rulers had claimed unlimited powers and had received unlimited obedience from their subjects, regardless of whether they were just or unjust. Nonetheless, such despotism and the total subjection of the masses to it was most likely due to the misuse of force, and it can hardly be said that political theory

¹ Ibn Taymiyya, *al-Fataāwā*, 35, p. 9.

² The Qur'an, 4:58,59.

³ Cf. Ibn Jarir al-Ṭabarī, *Jāmi' al-Bayān 'an-Ta'wīl al-Qur'ān*, (Cairo, 1968), 5, pp. 144-50; al-Qurṭubī, *op. cit.*, 5, pp. 255 - 61.

⁴ Cf. 'Alā al-Dīn 'Alī al-Muttaqī, *Kanz al-'Umāl* (Beirut, 1979), V, pp.778- 98.

⁵ Ibn Taymiyya, *al-Fatāwā*, *op. cit.*, 10, pp. 266- 7.

appears to be in support of it.¹ Apparently, the concept of obedience, in the sense that it has to be rendered to a just ruler whose decisions are in harmony with the dictates of the *Shari'a*, has remained unchanged. Even at a later age when despotism had become almost the dominant system of rule in most countries, the same doctrine was declared and circulated by political thinkers, such as Ibn Taymiyya (d.1328),² Ibn Jamā'a (d.1333)³ and Ibn Khaldūn (d.1406),⁴ who had made clear statements that the instructions of an unjust ruler were to be carried into execution only when they would appear to be in themselves just and lawful.

Yet, submission by the subjects to despots is not by itself a sign of approval of their rule. Besides, the question of to what extent disapproval can lead to resistance against them and to their deposition is a totally different matter either in theory or in practice. In fact, historical realities seem to have had a great influence in shaping ideas about revolution against the rulers which had always been very controversial.⁵ Even then such ideas are not to be confused with the doctrine of obedience however closely related they may appear, as there is no doubt that political concepts are often overlapping. However, the impact of actual historical facts may be best shown in our next discussion on the basis of the caliphate and whether it is founded on consent or on force. It may also appear there that the Sunni attitude is primarily to obey the laws of the *Shari'a* whenever they are applied by any ruler. As regard their position towards the evils of governments they are inclined to follow a nonviolent course of protest rather than be involved in an unseccessful revolution.

¹ Cf. Arnold, *op. cit.*, p. 47- 9 who holds this view ; and see a criticism of his views in al-Rayyis, *op. cit.*, pp. 344 - 64.

² Cf. al-Fatāwā, 29, p. 196.

³ See his book *Tahrīr al-Aḥkām*, pp. 61- 2.

⁴ See *al-Muqaddima*, 2, p.622.

⁵ For concepts of revolution cf. al-Rayyis, *op.cit.*, pp. 349 - 364.]

III. Basis of Rulership: Consent or Force?

The question about what constitutes the caliphate and whether it rests on consent or force, is not related to why people render obedience to it. In fact it is an examination of the method of how the office of the caliphate is filled. Though, undoubtedly obedience is an important element in composing the power of the caliphate, yet the problem under consideration is not an investigation into the motive behind the phenomenon of obedience and whether it is consent or fear of force. The question, as the Muslim thinkers have laid it, is directed to the way in which authority is acquired.

i. Consent

According to the Sunni view, the caliphate is originally conceived to be based on consent, in the sense that it is regarded as an elective office. Therefore, the principle of election and the rules associated with it are discussed in almost all expositions on the subject. Generally, the reference is made to two verses in the Qur'ān which are understood to demand the setting up of a consultative government. The first verse described the members of the community as those "whose affairs are decided by mutual counsel (*shūrā*).¹ The second verse was addressed to the Prophet who was told to "consult them in the affairs".² As one of the commentators observes, this doctrine of *shūrā* found its practical expression during the lifetime of the Prophet in a number of matters especially war affairs; but it was not applied to law-making as all binding legal rules were being ordained by God through revelation. After his death, it was first employed to the determination of the caliphate as he did not designate a successor. Then, it also came to be used in the legislation of laws which were derived from the Qur'ān and the *Sunna*.³ In the meeting of the Muslim notables of Medina after

¹ The Qur'ān, 42:38.

² The Qur'ān 3:159.

³ Al-Qurṭubī, *op. cit.*, 16, p. 37.

the death of the Prophet a consensus was reached to choose Abū Bakr as the first Caliph. That consensus has set the precedent on which the principle of regarding the caliphate an elective office is based.¹ In fact, in the early days of the caliphate the *shūrā* was seen to be the only way by which authority is invested. 'Umar, the second caliph, is quoted to have said in a public talk in Medīna: "If any one swears allegiance to a man without taking counsel with the Muslims he is not to be obeyed".²

Despite the fact that great importance is placed on *shūrā*, yet there is no insistence on a precise electoral system. In general, the rule is that the election is carried by a group of notables who possess certain qualifications such as moral probity, good knowledge and sound judgement;³ besides holding influential positions in the society.⁴ The term *ahl al-ḥal wa-al-'qd* (people of loosing and binding) is commonly used to denote these electors, who have remained an unspecified electorate in spite of the definition of their qualifications. Some jurists have also attempted to specify the least number of electors authorised to grant the caliphate depending on historical precedents of the *Rāshidūn* Caliphs. They were led to conclude that even one or just a few electors are sufficient.⁵ However, that assumption appears to be a misinterpretation of the events. In the analysis of al-Juwaynī,⁶ al-Ghazālī⁷ and Ibn Taymiyya,⁸ it is stated that the choice of a few number of electors can not empower a person to the caliphate if he is met with a lot of opposition. The assignment of the caliphate will be effective only when it is given the support of a sufficient number of followers which will enable it to attain the necessary power needed to generate the

¹ Cf. al-Juwaynī, *op. cit.*, pp. 54 - 8.

² Al-Bukhārī, *al-Ṣaḥīḥ* (Cairo, 1953), IV, p. 127.

³ Cf. al-Māwardī, *al-Aḥkām*, p. 6 ; al-Farrā', *op. cit.*, p.19 ; al-Juwaynī, *op. cit.*, pp. 62 - 6.

⁴ Such capacity is not stated clearly in the sources, but it is inferred from their discussions. Cf. Malcolm Kerr, *Islamic Reform* (Berkeley, 1966), pp. 43- 4. See also al-Juwaynī, *op. cit.*, p. 72, who indicates the importance of influence.

⁵ Abū Bakr al-Bāqillānī, *al-Tamhīd* (Cairo, 1947), p. 178 ; Māwardī, *al-Aḥkām*, p.7.

⁶ Al-Juwaynī, *op. cit.*, pp. 70 -2.

⁷ See his book *al-Radd 'alā al-Bāṭiniyya* (Leiden,1916), pp. 64 - 5. Quoted in al-Rayyis, *op. cit.*, p. 223.

⁸ See his book *Minhāj al-Sunna al-Nabawiyya* (n.p., n.d.), 1, pp. 189- 90.

obedience of the rest of the community. In most cases this may mean that the consent of the majority of the electors is to be ensured. However, the key point in this contention is that the determining factor lies in the acquirement of effective power (*shawka*). The support of any number of electors which establishes sufficient *shawka* and brings about the obedience of the masses is enough. In short, the significant point to be noticed is that it is consent that actually confers authority, and that seems to be the essence of *shūrā*.

As regards the procedure of the election, it also appears that there is no demand for a precise way. The account of the elections of the early caliphs, the *Rāshidūn*, reveals variant forms.¹ However, al-Māwardī gives a brief description of a procedure which seems to be in accord with the process followed in the selection of Abū Bakr. He says:

"when the *ahl al-ḥal wa-al-'aqd* meet for election they have to examine carefully those who possess the qualifications of the imamate and give preference to the pre-eminent and highly qualified among them, whom the masses will easily obey and do not hesitate to render allegiance to him. On arriving at a decision to choose one of them, they offer him the imamate; and if he accepts they swear allegiance to him on it. By their oath (*bay'a*) the imamate becomes fully contracted to him and it becomes compulsory for all the people (the *umma*) to give *bay'a* to him and subject themselves to his rule".²

In light of this view the decision of *ahl al-ḥal wa-al-'aqd* appears to be final. There is an obligation on the populace at large to follow and it is implied that their consent is assumed to be automatic. The multitudes show their approval in a second oath known as the public *bay'a*,³ though it is not necessary that everyone should swear it. Al-Māwardī clearly states that it is not necessary, even after full installation of the imamate, that everybody should know the imam by name. The whole responsibility

¹ Cf. al-Bukhārī, *op. cit.*, IV, pp. 173-4.

² Al-Māwardī, *al-Aḥkām al-Sultāniyya*, *op. cit.*, p. 7.

³ Al-Māwardī, *Quānīn al-Wizāra*, p. 34, quoted in Fathī al-Drīnī, *Khaṣā' is al-Tashrī' al-Islāmī fī-al-Siyāsa waal-Ḥukm* (Bayrut, 1982), p. 427 ; cf. Kerr, *op. cit.*, p. 36.

is in the hands of *ahl al-ḥal wa-al-'aqd*, who are the competent authority and on their decision the imamate is contracted.¹

ii. Force

We have seen that the determining factor in consent as a means to confer authority is that it should enable the acquisition of effective power, *shawka*. However, political realities gave rise to the question what if effective rule is imposed by force? Many political writers have expressed their opinions on this issue. A summary of the Sunni position may be best shown in the following ideas of Ibn Taymiyya, who says:

"A man will not become an Imam until he wins the approval of the people who possess influence and whose obedience will enable him to carry out the purposes of his office, because the fulfilment of the functions of the imamate depends on competence and might. Therefore, whoever is pledged an oath of loyalty which provides him with competence and might will become an imam. That is the reason which made the Sunni scholars hold that anyone who obtains might and competence to accomplish the functions of rule is to be considered as one of the holders of authority (*ūlū al-amr*) whom God have ordered to be obeyed as long as they do not command evil... The fact of the matter is that the possession by a person of the office of an *amīr*, a judge, a *wālī*, or any other position in which might and competence are inherent, becomes real and exists when the necessary might and competence is obtained. If it is not obtained it does not exist... As the power to administer the people can be constituted by their willing obedience or by their being coerced, any one who becomes able to rule them, willingly or unwillingly, should be regarded as the actual holder of authority. He is to be obeyed if his commands are in accord with obedience to God. Imam Aḥmad (Ibn Ḥanbal) has said that: "whoever occupies the caliphate, either by the consensus of the people and their acceptance or by his sword against their will, and consequently becomes the *de facto* caliph and is given the title *amīr al-mu'minīn*, then it will be correct (*ḥaḍir*) to pay him the religious dues (*ṣadaqāt*), regardless of whether he is pious or not"... The question of the legitimacy of his actions is not directly related, because realities of rule and authority are effected by acquiring the necessary competence. In the course of that, authority may be acquired in the desirable correct way like that of the *Rāshidūn* Caliphs, or it may be obtained in the wrong way like the authority of the tyrants (*al-salāṭīn al-zālimīn*).

.....Concerning the Umayyad and the Abbasid caliphs, the Sunnis do not claim that they were entitled to be empowered, nor that they were to be obeyed in all their decisions. However, the Sunnis describe the *status quo* and advise the appropriate course of action. As

¹ Al-Māwardī, *al-Aḥkām*, p. 15.

a result of their recognition of the realities they called for the suitable requirements to observe the rules of God and his Messenger. They admitted that those caliphs were the persons who came into power and possessed might and competence which had enabled them to carry out the functions of rule, *wilāya*, such as the enforcement of revealed punishments (*ḥudūd*), the provision and division of welfare money (*amwāl*), the setting of district governors (*wulāt*), the waging of war (*jihād*) against enemies and the establishment of pilgrimage (*hajj*), festivals (*a'yād*) and Friday congregation (*jumu'a*). The sunnis called for disobedience of any of them or their deputies in any action which was in violation of God's law (*ma'ṣiya*). But they were to be cooperated with in their pious deeds, like making *jihad* under their leadership, praying *jumu'a* and *a'yād* and performing *hajj* with them, as well as helping them in enforcing *ḥudūd* enjoining good and forbidding evil. They were to be supported in whatever was good and correct and not to be aided in whatever was evil and wrong".¹

It may be clear from that long quotation how the Sunnis responded to the challenges that were brought about by political realities. Since the era of the early four Caliphs, *al-Rāshidūn*, there has been a gradual change in the ideal form of the caliphate, especially in its elective nature which is regarded as one of its significant features. Such transformations were a result of alterations in the Islamic society as vast territories and diverse people came under the Islamic fold and the impact of other cultures began to be felt among the Muslims. It is generally agreed that the first major change was the transformation of the proper Prophetic manner of the caliphate (*khilāfa 'alā Minhāj al-nubūwwa*) into monarchy, *mulk*, which was founded and promoted by the Umayyads who were "kings" and not caliphs but in name only.² In the analysis of Ibn Khaldūn, the alterations into monarchy, *mulk*, was a natural outcome of *'aṣabiyya* (group feeling) which began to develop at that time as the Umayyads banded together round Mu'āwiya, and had he opposed them and had not claimed all the power for himself and them, it would have meant the complete crumbling away of the Islamic edifice which everyone had fought to uphold. Ibn Khaldūn believes that the designation of the caliphate to Yazīd, the son of Mu'āwiya was made for the same reason.³ Yet, that change into *mulk* was not a total alteration in the functions and

¹ Ibn Taymiyya, *Minhāj al-Sunna*, pp. 189 - 95.

² Ibn Taymiyya, *al-Fatāwā*, 35, pp. 18 - 20; Ibn Kathīr, *al-Bidāya wa al-Nihāya*, p. 22.

³ Ibn Khaldūn, *op. cit.*, 2, p. 604.

characteristics of the *khilāfa* as the basic structures were preserved. That marked the beginning of a gradual and slow process of change in which at first the characters of *khilāfa* and *mulk* were intermixed and finally absolute monarchy remained alone. Ibn Khaldūn observes:

"It has thus been shown how the form of rule came to be *mulk*.¹ But in spite of that there remained the traits that are characteristic of the caliphate, namely preference for Islam and its ways, and adherence to the path of truth. A change became apparent only in the restraining factor (*wāzi'*) that had been Islam and now came to be '*asbiyya* and the sword. That was the situation at the time of Mu'āwiya, Marwān, his son 'Abd al-Malik, and the first Abbasid caliphs down to al-Rashīd and some of his sons. Then the features of the caliphate were totally lost and only its name remained and the rule is transformed into monarchy pure and simple. Absoluteness reached its extreme accompanied by its other outcomes such as coercion and gratification of desires and pleasures."²

Mulk, which is basically political authority founded and built on force, is originally not permissible, as Ibn Taymiyya states, and in fact it is the elective caliphate which is required, unless there is inability to establish it.³ Moreover, it is an agreed principle among Muslims, according to Ibn Ḥazm and others,⁴ that it is illegal to inherit the office of the caliphate. However, the type of succession which is very similar to the hereditary succession, is the one in which the caliphate is passed within the same family such as the Umayyad or the Abbasid dynasty. Such way of succession has been justified by the principle denoted by the term '*ahd*. According to this rule, power is designated by the reigning caliph to a successor who is in most cases a son or a relative, though in theory he may be any other person. The origin of this way of obtaining the caliphate is traced back to two historical precedents which are claimed to have been approved by consensus, namely, the designation of 'Umar by Abū Bakr and later, the appointment by 'Umar of a body of six persons for electing his successor.⁵

¹ Cf. *Ibid.*, 2, pp. 598 - 608.

² *Ibid.*, p. 608.

³ Ibn Taymiyya, *al-Fatāwā*, 35, p. 22.

⁴ Ibn Ḥazm, *al-Fiṣal*, 4, p. 167 ; cf. Ibn Khaldūn, 2, p. 614.

⁵ Al-Māwardī, *al-Aḥkām*, p.10 ; Ibn Khaldūn, *op.cit.*, 2, p.611.

Apparently, there is disagreement on the analysis of these precedents which has led to different conclusions. In the opinion of some jurists, which seems to be the only view quoted by al-Farrā' in his treatise *al-Aḥkām al-Sulṭāniyya*, the choice of a successor by the reigning caliph through 'ahd is regarded as a nomination, and power is invested to him only by consent of the electorate body.¹ On the other hand, al-Māwardī mentions the above view but goes on to support that it is equally correct to choose and invest power to a successor without any regard to the will of the electorate.² However, after close examination of the historical account of the empowerment of both 'Umar and 'Uthmān, which are taken as precedents for the principle of 'ahd, it can hardly be said that they took place without any regard to the consultation and consent of the electors.³ If this fact is established, it may reveal the weakness in the argument of al-Māwardī.⁴ Nonetheless, *mulk* has always been at pains to legalize itself by the principle of 'ahd, and has not fallen short of means to gain apparent approval of the people to render a seeming legitimate *bay'a*. Coercion has become the basis of power especially in the later stages of monarchy.⁵

Besides *mulk* there have also emerged a new situation after the middle of the third century as a result of the use of force which is expressed later by the term *imārat al-istilā'* (emirate by seizure). Since the days of the Prophet and the *Rāshidūn* Caliphs the rule over different occupied territories was invested to appointed representatives. Such a provincial governor or administrator, who was commonly called 'āmil and later had come to be known as *amīr*,⁶ was generally allowed a high degree of local autonomy under the authority of the caliph who appointed him, had full

¹ Al-Farrā', *op. cit.*, pp. 25- 6.

² Al-Māwardī, *al-Aḥkām*, p. 10. Al-Juwaynī seems to support this view. See his book *al-Ghiyāthī*, p. 139.

³ Cf. al-Bukhārī, *op. cit.*, IV, pp. 173-4.

⁴ Cf. al-Rayyis, *op. cit.*, pp. 239 - 49 ; 'Ārif Abū 'Īd, *Wazīfat al-Hākīm fī-al-Dawla al-Islāmiyya* (Kuwayt, 1985), pp. 87 - 92 ; Kerr, *op. cit.*, p. 33.

⁵ Cf. Ibn Khaldūn, *op. cit.*, 2, p. 608.

⁶ See 'Āmil in *E.I.*²; cf. W.M.Watt, *Islamic Political Thought*, (Edinburgh, 1968), p. 52.

control over him, and could depose him if he liked.¹ However, that system of administration began to break up under the Abbasids when the central power of the caliphate had weakened. Powerful territorial amīrs who possessed strong military force had claimed a greater measure of independence especially with regards to succession which they passed to members of their family. The caliphs were too weak to oppose them and their authority had lessened to the recognition of their *de facto* rule over the lands under them. The first dynasty to enjoy that right were the Aghlabids of Tunisia, followed by the Tahirids in Khurasan, and after them there had emerged many other dynasties who either had captured power by force or had originally been delegated authority by the caliph. In all cases they had continued to rule in the name of the caliph while in reality they had held all effective power in their hands.²

In the discussion of the new phenomenon by the political jurists it is given the term *imārat al-istīlā* and is defined as that situation in which an amīr captures a territory by force and the caliph finds himself compelled to grant him recognition and authorizes him sole control of policy and administration over the territory. Because the caliph has no power to change the *de facto* state it has become necessary for him to grant his approval. Moreover, this grant of recognition and authorization saves the unity of the caliphate and the rights and the interests of the public. By the caliph's permission the *amīr* enjoys a lawful status and his rule becomes legitimate, while in return he acknowledges the rights of the caliphate, show respect to it, and rule under its name.³

On that basis many independent dynasties had emerged and the Abbasid Caliphate was fragmented into various self-ruling kingdoms though the caliph was still regarded as its nominal head. But his position had continued to weaken even in the capital Baghdad itself where effective power had passed into the hands of the Turkish

¹ For the powers and functions of a provincial *amīr* see al-Māwardī, *al-Aḥkām*, pp. 30 -3.

² B. Lewis, "The Abbasids", in E.I.²; Watt, *Islamic Political Thought*, pp. 99 - 101.

³ Al-Māwardī, *al-Aḥkām*, pp.33-4; al-Farrā', *op. cit.*, pp.37-8; Ibn Jamā'a, *op. cit.*, p. 61 ; Gibb, *op. cit.*, pp. 162 163.

mercenaries employed by him. In the same manner, their authority was seized by force but was granted recognition by the Caliph who was a mere puppet in their hands. That development had culminated in the event in which a military commander of Baghdad was granted the title of *amīr al-umarā'* (grand amīr) to signify his supremacy over his colleagues.¹ By the year 334/945 the armies of the Buwayhids, a ruling dynasty of the eastern provinces, entered Baghdad and assumed power marking a new era in the decline of the Caliphate. In spite of the fact that they were Shi'ites, they had continued for about one century to be the actual rulers of the central area of the caliphate, while the caliph was decreased to a formal authority from which officially they derived authorization.² After the weakening of the Buwayhids, the Seljuqs captured Baghdad and replaced them in their position in much the same way. Afterwards, the Abbasids had never gained effective power, and after the Mongol invasion they were installed under the Mamluks as caliphs in Cairo with even less ceremonial duties.

One of the significant results of the new developments was the appearance of the office of the sultanate. The word *sulṭān* in Arabic originally means a proof, an evidence or an argument, but it is also used to denote competence and ability.³ These are also the senses attached to the word in its different occurrences in the Qur'ān.⁴ From its meaning of competence it has been applied to refer to political power in the early centuries of Islam and in that usage the caliph is called a *sulṭān*.⁵ Ibn Khaldūn mentions that a minister of Harūn al-Rashid, namely Ja'far b. Yaḥyā, had been bestowed the title of *sulṭān*⁶ to indicate that he had been a leader of all ministerial affairs like the modern office of prime minister. Later on, it had become common

¹ B.Lewis, *op. cit.*; Watt, *Islamic Political thought, op. cit.*, p. 100.

² C. Cahin, "The Buwayhids" in E.I.².

³ Ibn Manzūr, *Lisān al-'Arab*, 9, pp.192-4; Lane, *op. cit.*, p.1407; Ibn Jamā'a, *op. cit.*, pp.73-4.

⁴ As an argument see for example the verses 7:71, 12:40, 21:21, 40:23; and as an ability see 55:33, 69:29.

⁵ J.H. Kramers, "Sulṭān" in E.I.¹

⁶ Ibn Khaldūn, *op. cit.*, 2, p.669.

among the independent *amīrs* of the provinces to adopt the title *sulṭān* mainly as a sign of their autonomy. For the same reasons, the Turkish military commander of Baghdad before the Buwayhids was given the title *amīr al-umarā'* when he had been elevated to the most powerful position in the capital. However, the title of *amīr al-umarā'* soon fell into disuse after the Buwayhids had entered Baghdad. Afterwards, *sulṭān* had become the regular title of the usurpers of the authority of the caliph either in the capital or in the provinces, and its official application had continued till it was also assumed by the Ottomans.¹

These new developments were reflected in political theory as early as al-Māwardī who wrote during the time of the Buwayhids. In a brief remark about the curtailment of liberty of the caliph he points out the case in which he is being dominated by one of his subordinates who claims all effective power to himself. He states that, while the caliph is still regarded as being in office, the usurper is also considered as a legitimate ruler as long as he shows signs of loyalty to the caliphate and acts in conformity with the *Shari'a*.² This line of thought seems to be followed by succeeding political jurists who are inclined to recognize the *status quo* as no one is able to change it, and attempted to save as much as possible of the Islamic characteristics of government, especially the enforcement of the laws of the *Shari'a*.³ However, it must be pointed that the view that actual competence and ability (*shawka*) is regarded as the basis of authority, whether it has been acquired by consent or by force, stands out as a significant conclusion.

¹ Ibn Khaldun, *op. cit.*, 2, p.669; Arnold, *op. cit.*, p.202.

² Al-Māwardī, *al-Ahkām*, pp. 162-4.

³ Cf. al-Juwāgnī, *op. cit.*, pp. 451 - 546 ; W. Montgomery Watt, "Authority in the Thought of al-Ghazālī", in George Makdisi, *la notion d'autorite au Moyen Age*, (Paris, 1982), pp. 57 - 8 ; Carole Hellenbrand, "Islamic Orthodoxy or Real politic? al-Ghazālī's views on Government", *Iran*, XXVI 1988, pp.81-94.

Chapter 4

MODERN TURKISH THOUGHT

In the following chapters we shall review the emergence of the new attitudes of the Muslim thinkers towards the problem of sovereignty. Such modern trends are largely the product of the confrontation between the Muslim mind and the Western civilization which has had a great impact on the developments of the way of thinking and the way of life in the Muslim world during the late centuries. We shall also consider to what extent the Western notions of sovereignty are absorbed into the body of the modern Islamic political thought in which, for various factors, the whole question of authority is raised once more. In the entirely different circumstances the statements of the early scholars about rulership is expressed in a new language amongst which the word sovereignty is in common use or new equivalents are derived to denote its borrowed sense.

Owing to different natural and historical reasons, Turkey became the first major Islamic area of the conflict between Islam and the West. Therefore, it is normal to find the Ottoman Turks make the first attempts to address the problem of sovereignty in the modern era and cast their opinions on it. The two other areas, next to Turkey, which have become the scene of the struggle between the Islamic and Western civilizations are India and Egypt. It seems appropriate, then, to review the Turkish and Arab modern thought and the ideas in the Indian Sub-Continent.

I. The Ottoman State Tradition

The Ottoman state has emerged in the fourteenth century in the aftermath of the invasion of the Mongol, the fall of the Abbasid Caliphate and the breakdown of the Muslim World into independent kingdoms and sultanates. Osman, the founder of the dynasty, was at first only a tribal leader ruling a small principality in Anatolia. As a result of significant military achievements he was conferred the title of a *bay* by the Seljuk Sultan as a recognition of his

independent political authority.¹ Later, the Ottomans gained supremacy over vast territories which enabled them to assume not only the title of the *sultān* but also to claim the inheritance of the caliphate after they had defeated the Mamluks in Egypt and ended their state in 1517. It was claimed at that time that one of the descendants of the Abbasids who continued to hold the caliphate nominally under the protection of the Mamluks transferred his rights to the Ottoman dynasty.² However, whether the Ottomans occupied the seat of the caliphate or the sultanate the fact remains that their authority was pure monarchy. They rose to supremacy and continued to hold actual power only on the basis of effective force. In fact, the remarkable military ability of the Turks was the main reason behind their dominance of the Islamic World and consequently the Ottoman state was in its conception and essence a military institution.³ The Turks followed the shape of government which the former Islamic sultanates took, especially that of the Seljuks and the Mamluks. In addition to these influences which include the effect of Islam, the Turkish tribal tradition also had a great impact on the shape of their state.

i. The Sultan

At the top of the Ottoman hierarchy was the sultan who was commonly called padishah by the Turks. The title of *sultān*, which had come to mean a head of state who recognized no superior,⁴ and the title padishah, which denoted something like super king or king of kings,⁵ might imply the notions of independence and supremacy which were attached to the personality of the ruler who enjoyed almost absolute authority. The people, like in other Muslim states, played no role in the appointment of the sultan. There was no election and his succession to the throne was determined by heredity. One of the peculiarities of the Ottomans in this regard was that a law was issued by

¹ Muḥammad Farid, *Tārīkh al-Dawla al-'aliyya al-'Uthmāniyya* (Beirut, 1977), p.40.

² Cf. *Ibid.*, p. 76; Stanford Shaw, *History of the Ottoman Empire and Modern Turkey* (Cambridge, 1976), I, p.85.

³ Sir Harry Luke, *The Making of Modern Turkey* (London, 1936), p.20.

⁴ Bernard Lewis, *The Political Language of Islam* (Chicago, 1988), p.53.

⁵ *Ibid.*, p.57; Cf. EI¹, s.v. Padishah.

Mehmed the Conqueror permitting the murder of the brothers of the new sultan on his accession in order to safeguard the throne against their ambitions and revolt.¹ The slaughter of the brothers was carried out up to the end of the sixteenth century when it was replaced by the confinement of all the princes to special apartments in the palace.² The sultanate had passed from father to son for thirteen generations from the foundation of the sultanate to the beginning of the seventeenth century. A new law was then proclaimed passing the succession to the eldest male in the royal family.³ In spite of this fact, the sultans had maintained the traditional ceremony of allegiance, *bay'a* which marked the formal acceptance of the people of the sultanate as a legitimate authority. As a result of the actual conditions that had prevailed long before the establishment of the Turkish sultanate that acceptance was not regarded as incompatible with the *Shari'a* on the ground that the sultan possessed the *de facto* power, the *shawka*.

ii. The Officials

Another feature of the Ottoman rulership was the employment of slaves in the administration as well as in the army. This, indeed, was a common practice in Islamic history since the Abbasid Caliph. However the slaves of the Ottoman sultans⁴ occupied almost all the highest positions in the state and essentially formed the permanent central army of the sultan.⁵ Such a system was advantageous to the sultan as it had ensured the absolute loyalty of the civil and military officials to him because he was their ruler as well as their master. However, as a result of the oppressive and absolute nature of rule, each official in his relation with the people considered himself a mini-sultan.⁶

¹ For the text of the Law see Hamilton Gibb and Harold Bown, *Islamic Society and the West*, (Oxford, 1950), I, p. 36.

² *Ibid.*, p. 37.

³ *Ibid.*, p. 37.

⁴ Those slaves were called in Turkish *kapikullari* (slaves of the Porte). Originally, they were Christian children captured by governmental agents who were converted and trained through a special system of recruitment. Cf. Shaw, *History of the Ottoman Empire*, I, pp.113-5; 'Abd al-'Aziz al-Shinawi, *Al-Dawla al-'Uthmaniyya* (Cairo,1980), I, pp. 120-8.

⁵ For full account see Shaw, *History of the Ottoman Empire*, I, pp.112-32; al-Shinawi, *op. cit.*, I, pp. 356-71; Gibb and Bowen, *op. cit.*, I, pp. 39-87.

⁶ Metin Heper, *The State Tradition in Turkey* (Hull,1985),p.29.

At the apex of the officials was the chief minister, called *sadr-i azam* by the Ottomans and known as grand vizier in the West, who was delegated full authority and considerable powers. In fact, he was defined in the state Law -code, *kanunname*, as the absolute representative of the sultan. Beside the grand vizier there was a council which was the most important central body in the Ottoman administration. The council was referred to by the Persian term *Diwan-i Humayan* which means the sultanate or the imperial council. The membership of the council consisted of the viziers, including the governors of important provinces, the chiefs of the scribal and financial institutions, the military commanders and the judicial chiefs (*kazaskers*) representing the religious institution, the ulema. The work of the council was to discuss and determine the state policy as well as carrying the functions of a high court and acting as a legislative body. At first the council was chaired by the sultan himself, but later the grand vizier became its head.¹ Nevertheless, the council was not a limitation to the absolute powers of the sultan. In fact, the council was but a tool to help the sultan rule effectively his vast land and numerous subjects and was necessitated by the growing complexities of the state functions. As the members of the council were officially appointed by the sultan, and their decisions were subject to his approval, consequently, the council was just an extension of the sultan and did not enjoy any administrative, judicial or legislative powers of its own.² However, whereas earlier the sultans maintained a true hand, gradually they lost their authority and became puppets in the hands of various powers behind the throne inside and outside the palace.³

iii. The Religious Institution

In principle, the authority of the Ottoman sultan was limited only by the Shari'a. Indeed, the Ottoman state was Islamic in its character. The sultan was not only, in

¹ For a full discussion of the Ottoman central administration, the foundation and development of the grand vizierate, and the Imperial council see Gibb and Bowen, *op. cit.*, I, pp. 107-36; Shaw, *History of the Ottoman Empire*, I, pp. 24-5, 118-9; al-Shināwī, *op. cit.*, I, pp. 357-95.

² al-Shināwī, *op. cit.*, pp. 391-5.

³ *Ibid.*, I, p.471.

principle, subordinate to the Islamic revealed law, the *Shari'a*, but also derived the legitimacy of his throne from it. One of his main functions was to maintain the observance of Islamic ideals and traditions in the society. Under the circumstances of the Ottoman era, he was the most powerful defender of Islam against Christian Europe and of Sunnism against the Shah of Persia. The ulema, the religious intellectual elite, were the machinery through which the state obtained its Islamic nature.¹ They were the *muftis* who interpreted the *Shari'a*, the judges who administered it in courts, the teachers who taught it in schools and trained the ruling class in it including the sultan himself, as well as being in its service in mosques as prayer leaders and public orators. Accordingly, their role and their influence was great. Since very early, the Ottomans formed a regular organization of the ulema and made the office of Shaykh-u-'l-Islam as its head² ranking him virtually equal with the grand vizier.³ The authority of shaykh-u-'l-Islam consisted in his capacity to issue legal opinions (*fatwas*) on various public and private affairs based on the *Shari'a*. It was true that these *fatwas* especially those concerning political problems such as authorizing the deposition of a sultan or the declaration of war,⁴ made of him an important figure in the Ottoman politics. Yet, he had no real power as he had no competence to carry out his judgements. He was dependent on the other holders of the power like the sultan, the grand vizier or the military forces.⁵ Apparently, the strength of the office was mainly determined by the personality of its holder. While there were times when it was filled by strong influential characters, on many occasions it was a tool used by powerful politicians to legalize their acts.⁶

¹ For a full account of the Role of the Ulema see Gibb and Brown, *op. cit.*, pp.81 - 178 ; al-Shinawi, *op. cit.*, I, pp. 396 - 470.

² Cf. Michael M. Pixley, "The Development and Role of Shaykh-u-'l-Islam in Early Ottoman History", *Journal of The American Oriental Society*, 96 No. 1 (1976) pp. 89 - 90.

³ Gibb and Bowen, *op. cit.*, I, part II, p.86.

⁴ For examples of these *fatwas* see al-Shinawi, *op. cit.*, I, pp.411-4

⁵ Niazi Berkes, *The Development of Secularism in Turkey* (Montreal,1964), p.16.

⁶ al-Shinawi, *op. cit.*, I, p.414.

In the final analysis the whole Ottoman government structure appear to be based on the power of the sword and whoever had effective control of it would be able to manipulate it to fulfil his purposes. The sultan was the centre of the system and in his person, though sometimes nominally, the whole state was structured. Islam was the main source of the ideals of justice and order. However, eventually that traditional scheme began to breakdown in the face of a great influence, that is to say , the impact of Europe. It is time now to turn to study these new effects and the ideas of rulership which they had stimulated.

II. The Impact of the West

From the sixteenth century there had been a constant decline of the Ottoman Caliphate and a swift rise of Europe. Yet, the Ottomans continued to believe in their supremacy and were not aware of the reality. They came to recognize that fact only after successive military defeats which were mainly, because of the inadequacy of their traditional military methods in the face of the modernized well equipped European armies. A report written in the year 1717 and discussed by the government was a clear sign of its realization of the necessity of change.¹ In the year 1713 one of the earliest books which dealt exclusively with the question of reform was printed and at the same time presented to the sultan. The book, entitled *Uşûl al-Hikam fi-Nizâm al-Umam* (Rational Bases for the Politics of Nations) was written by Ibrahim Mutefericca the founder of the Turkish printing press who was very keen on the adoption of European techniques and ideas. The book is important for our present purpose as it potrayed the first opinions on Western systems of rule. In it Ibrahim briefly asserted the significance of a well-organized government, described the different forms of rule in other countries, examined the role of the army and the new European military art, besides discussing the uses of modern geographical and scientific knowledge. Following the

¹ Berkes, *op. cit.*, pp.31-32.

classification of government into the three forms, that is monarchy, aristocracy and democracy, he gave a short account of each form. In monarchy, which was the system of rule in most countries, "the people obey a just and a wise sovereign and follow his opinions and measures in all of their affairs". In aristocracy "sovereignty is in the hands of the dignitaries of the state and one among them is elected as head, but he is dependent upon the rest in counsel and decision, lest he tend to deviate from the law of justice. In the case of democracy, in which "sovereignty belongs to the people", he referred to the Netherlands and England as examples and examined in more detail parliaments and methods of representation. He concluded:

"All the wise men of the world agree that the people of Turkey excel all other peoples in their nature of accepting rule and order. If they learn the new military sciences and are able to apply them, no enemy can ever withstand this state.¹

1. Steps towards Westernization

The first practical steps towards reform took place in the era of Selim III (1789-1807) by the establishment of new military units which adopted the Western methods not only in training and armaments but also in uniform.² But once that 'dose' of westernization was injected it had widespread effects and began to destroy the whole traditional system. According to the historian Toynbee, that was an ultimate consequence for the simple reason that:

"...Any civilization, any way of life is an indivisible whole in which all parts hang together and are independent. For example the secret of the West superiority to the rest of the world in the art of war from the seventeenth century onward is not to be found just in Western weapons, drill, and military training. It is not even to be found in the civilian technology that supplied the military equipment. It cannot be understood without also taking into account the whole mind and soul of the Western society of the day; and the truth is that the Western art of war has always been one facet of the Western way of life. Hence, an alien society that tried to acquire the art without attempting to live the life was bound to fail to master the art."³

¹ Berkes, *op. cit.* pp.42-5; Bernard Lewis, *The Emergence of Modern Turkey* (Oxford, 1961), p.47.

² For the reforms made by Selim III see Berkes *op. cit.*, pp.72-81, Shaw, *History of Ottoman Empire*, I, pp. 260-7; Farid, *op. cit.*, p.179.

³ Arnold Toynbee, *The World and the West* (London, 1953), p.26.

Whether the statement of Toynbee is right or wrong is the theme of the controversy which accompanied westernization in most of the Islamic world. In the case of Turkey it seems to be true as the importation of the Western warcraft initiated a continuous progress towards the imitation of the West in all aspects, though it naturally encountered with wide disapproval and suffered repeated hindrances. The reforms of Selim III agitated a revolt against him in which he was deposed and latter killed. His successor also met the same fate.¹ During the revolt, however, an important development took place. A document, called *shar'ī ḥujja*, was written in order that the sultan should be subjected to it to ensure his observance of the *sharī'a*.² Nevertheless, the setback to the trend of reform was only temporary. In 1808, soon after the accession of the sultan Maḥmūd II, the notables and provincial governors were invited for the first time to a consultative assembly, (*majlis mashūra*), which resulted in signing a deed of forty six articles known as Send-i-Itifak (Document of Agreement). The document was a confirmation of loyalty to the sultan and support to the new military reforms. Although there was an attempt in the document to restrict the power of the sultan especially with regard to taxes, and to lay clear duties and rights on the ruler and the ruled, yet the itifak was of insignificant effect as it was soon forgotten.³

ii. The Tanzimat

The most significant result of the *itifak* was that the reform movement resumed its pace. A few decades later the trend of political change turned into a new stage during the years known as the period of the Tanzimat (Reforms). The term was used for the series of acts between approximately 1839 and 1860 which shaped the state in a new order.⁴ The most important developments were the decrees of 1839 and 1856 issued

¹ See Farid, *op. cit.*, pp.186, 190,194; Shaw, *History of the Ottoman Empire*, I, pp.273-7.

² Berkes, *op. cit.*, p.90.

³ Farid, *op. cit.*, p.219; Shaw, *History*, II, p.2; Berkes, *op. cit.* pp.90-7. Some writers describe the document as a Magna Carta of the Ottomans, but that is only an exaggeration despite the outside similarities. Cf. Shaw, *op. cit.*, II, p.3; Heper, *op. cit.*, pp.37-9.

⁴ Tanzimat is the plural of *tanzim* which mean ordering. The nearest equivalent in English may be Reforms. See Berkes, *op. cit.*, pp.144-5.

by the sultan, taking into account that the latter edict was only a confirmation of the provisions of the former whose implementation had for various factors been delayed. The aim of the edict was to reorganize state affairs and secure in particular safety of life and property and equality of rights amongst all the subjects.¹

With regard to the structure of the government the edicts expanded the principle of consultation (*mashūra*). Various central and provincial councils were established during the Tanzimat period which dealt entirely with legislation.² The local councils were to some extent representative and their members were selected from and by the notables and the governmental officials. But all the members of the central councils were appointed by the sultan and though they were assigned powers of legislation through free discussions and majority vote, yet their decisions were to be ratified by him to become formal laws.³ Therefore, those councils do not appear to be an imitation of the Western parliamentarianism though their establishment were brought by westernization-oriented intellegentsia.⁴

Undoubtedly, the Western element penetrated not only into their procedure, but also appeared in their method of codification and more important, in their general inclination towards secularism.⁵ Through them the westernizers monopolized power in their hands and used it to open wider the door for modernization. In view of the fact

¹ The texts of the edict are found in many places in Turkish, French, Arabic and English. See Farid, *op. cit.*, pp.254-60; Rodenic H Davison, *Reform in the Ottoman Empire 1856-1876* (Princeton, 1963), p.38, n.62 and p.54, n.10.

² See Stanford J.Shaw, "The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement Before 1876", *Int. J. of Middle East Stud.*, I, no.1 (Jan 1970), 51-84; *Idem.*, "The Origins of Representative Government in the Ottoman Empire: The Provincial Representative Councils, 1839- 1876", *Near Eastern Round Table*, New York 1969?.

³ Berkes, *op. cit.*, p.146.

⁴ The outstanding leaders of reform were Resid, Ali and Fuad who dominated the government during the Tanzimat period and who were very favourable to westernization. See Shaw, *History*, II, pp.58-64.

⁵ In 1840 a penal code was promulgated which was prepared by the Supreme Council. It contained secular codes side by side with others taken from the sharia. In 1868 a pure secular penal code was enacted based on the French Penal Code of 1810. A secular Commercial Code taken from the French Code of 1807 was enacted in 1850 followed by the Code of Procedure of the Commercial courts in 1861 and the Code of Maritime Commerce in 1863. Attempts were made to adopt the French Code which had been translated into Turkish but failed. For Secularism of the Tanzimat see Berkes, *Development of Secularism*, pp.155-200.

that the *Shari'a* continued to be the main source of legislation and that the origins of those councils were found in the previous traditional institutions, it may be true to describe them as being of a dual nature, one Western and the other traditional. In fact, dualism was a common feature of most of the establishment of the Tanzimat period. "In politics, in administration, in education, in intellectual life, two sets of institution, two sets of ideas, two loyalties - one to the old and the other to the new - stood side by side".¹ These circumstances led to the appearance of a multi-standard trend. Modernist thinkers who accepted Western elements of progress began to advance arguments to justify them in the light of Islamic norms.² For instance, Ubicini at the middle of the century wrote that "all essentials of modern democracy" were to be found in the Qur'ān, and that the *Shari'a* "formally sets forth the sovereignty of the nation, universal suffrage, the principal of election to all, even to the governing power, equality between all members of the body politic...", and so on.³

iii. The Young Ottomans

This brings us to the most striking modernist ideas in which for the first time in Turkey, and most probably in all the Muslim world, we find a definite and systematic expression of the Western modern concept of sovereignty studied from an Islamic point of view. Such ideas were originated by a small group of men known as the Young Ottomans who dominated the Turkish political thought in the late Tanzimat period and for few decades after. The Young Ottoman society was established in 1865 at a time of a growing disapproval of the westernized secularism of the Tanzimat with the main objective of introducing a constitution in Turkey as an important vehicle for bringing reform. The Young Ottomans, who were for most of the time based in Paris and London, were well acquainted with Western ideas of constitution, popular sovereignty

¹ Niyazi Berkes, *Turkish Nationalism and Western Civilisation* (London, 1959), p.17.

² Ahmed Davutoglu, "The Re-Emergence of Islamic Thought in Turkey - Intellectual Transformation", *Proceeding of the International Conference on Middle Eastern Studies* (Oxford, 1986), p.232.

³ J.H. Abdolonyme Ubicini, *Letters on Turkey*. Trans. Lady Easthope (London, 1856), I, pp.57, 132, quoted in Davison, *op. cit.*, p.67.

and parliamentary rule which were gaining a steady strength in Europe. Owing to their dissent from westernization after seeing the failure of the reforms of the Tanzimat, they searched for a synthesis allowing borrowing from Europe without abandoning their Islamic tradition. By and large, the thought of the Young Ottomans in being half European and half Islamic represented an early pattern of modernism whose line of development was reproduced elsewhere.¹

One of the distinguished Young Ottoman intellectual was Namik Kemal (1840-1880) whose views on popular sovereignty were the best exposition on the theme.² Therefore, it seems appropriate to examine them. The political ideas of Namik Kemal were not expounded in any single treatise but appeared occasionally in a number of articles in newspapers. There were various political principles for which he was most concerned, but the sovereignty of the people seems to be a key concept in his thought. He was vigorously opposed to absolute rule and strongly believed that a good government should be based on the consent of the members of the community. He stressed the fact that consent was the primary base of rule in Islam as the choice of an imam was the right of the community. The community exercised its right through the process of *bay'a* which constituted a contract between the ruler and the ruled. According to that contract the ruler was in fact the servant of the people and not their master. If the ruler did not fulfil his duties to serve the community, the community had the right to depose him. He stated:

"There is no quality of the Padishah, which gives him the right to govern men other than that which, under the name of *bay'a*, is granted to him and with which the ministers are vested by way of appointment. This is the connotation of the saying of the Prophet to the effect that the masters of the tribe are your servants.

If the people of a country gather and pledge allegiance to a man for the Sultanate or the Caliphate, this man becomes Sultan or Caliph.

¹ A good study of the thought of the Young Ottomans is found in Şerif Mardin, *The Genesis of Young Ottoman Thought* (Princeton, 1962).

² For the life and thought of Namik Kemal in Turkish sources see Berkes, *The Development of Secularism in Turkey*, p.209 n.7. A brief account is found in *Ibid.*, pp. 209-13; Mardin, *op. cit.*, pp. 283-336; Lewis, *op. cit.*, pp. 137-42.

The Sultan or Caliph preceding him is invalidated, for the imamate is a right of the community."¹

That reasoning led him to the assumption that "the right of sovereignty belongs to all".² Accordingly, he viewed the government as a delegation of the community, since it was impractical for all the people in their totality to perform governmental duties. In his words:

"Since it is impossible that the community perform the tasks which befall it... the appointment of an Imam and the formation of government is a necessity. This, on the other hand, is nothing other than the delegation of certain individuals by society for the performance of the above mentioned duties."³

"The 'government' or the 'state' is the name given to the way in which this delegation of the power of the community is exercised. On the other hand, the name 'community' is used for the whole of a civilized society when one sets aside this delegation."⁴

Namik Kemal considered that the main function of the government thus delegated by the society was to preserve the natural rights with which each individual was endowed. As he expressed:

"Every community can delegate command to a greater or lesser degree, according to its needs and character. However, it is a precept of reason that regardless of the time, the place, or the method used, the government should choose the road which will least limit the freedom of the individual."⁵

At this point an important question imposed itself. How could the government determine the rights of the individuals and the limit imposed on their freedom in order to maintain the right of other individuals? In his attempt to answer it, Namik Kemal arrived at a considerably different concept of popular sovereignty from the one known in the West. In his view, if the laws determining the definition and scope of the rights of the individual were left to the individuals themselves the result would be anarchy as each individual would claim absolute rights to himself. Nor could such laws be made

¹ Namik Kemal, "Wa Shāwirhum", *Hurriyete*, 20 July 1868. The translation of this and the following are taken from Mardin, *op. cit.*, pp. 283-336.

² *Ibid.*, p.1.

³ *Ibid.*, p.1.

⁴ Namik Kemal, "Bazi Mulahazat", *İbret*, no:27, 9 October 1872 in Mustafa Ozon, *Namik Kemal ve İbnet Gazetesi* (Ankara, 1938), p.132.

⁵ Kemal, "Wa Shawirhum", p.1.

by the will of the majority of the people as in such case the individual could be deprived of his freedom or the majority could be tyrannical to the minority. Moreover, Namik rejected that the source of Law could be the will of all the community, the general will as termed by Rousseau. Such a conception appeared to him to be vague and ambiguous. In criticizing it he believed that it was the myth of the general will that made Europe one time regard it a crime whose penalty was capital punishment to shout "Long Live the King", and four months later the same punishment was applied to the cry "Long Live the Emperor", and four years later any one who said "Long Live the Republic" was to be sentenced to death.¹ He wrote:

"In reality, sovereignty is not an abstract right which is attributed to the totality of the people, it is the right of sovereignty which is congenitally present in every man... The sovereignty of the people, which consists in the idea that the source of power of the government is the people, and which is called *bay'a* in the religious law, is not a power that derives from the abstract meaning attached to the conceptions such as the 'majority' or the 'people'. It is a right which derives from the congenital independence with which every individual is endowed at his creation, and follows from personal independence. 'Every one is the ruler of his own world'."²

Therefore, in order to preserve the freedom of the individual as well as fulfilling the interest of the community as a whole there should be, he maintained, a source outside popular sovereignty which would determine right and good (*husn*). In every society there was invented "an absolute normative force for the protection of the freedom".³ To the Muslims this force was the *Shari'a*.⁴ Again in an other occasion he explained:

"When societies became larger, states and governments were formed and it became necessary to enact a binding thread which would elicit common opinion in matters of general administration for the individuals who made up every civilized society. This binding thread is the *Shari'a* which is the political Law serving to protect and govern the members of society jointly and severally. Its interpretation is determined

¹ Namik Kemal, "Hukuk-u-Umumiye", *Ibret*, 8 July 1872, in Ozon, *op. cit.*, p.97.

² *Ibid.*, p.97.

³ Namik Kemal, "Wa Shawirhum", p.1.

⁴ Namik Kemal, *Hukuk*, in Ozon, *op. cit.*, p.51.

by the assent of the community but its basis is natural Law. For us that natural Law is the same divine justice as has been set by the Qur'ān."¹

In short, Namik Kemal conceived popular sovereignty and the will of the community to work within the limits of the *Shari'a*. It would not determine the right or create the law of justice, it could only maintain them. As he clearly expressed: "justice is only protected by the power of the majority". "This does not mean that justice exists in what the majority prefer, or in what it regards as useful". "An unjust act is unjust and unlawful even if it were sanctioned and carried out by the whole population; still it would be tyranny".² Obviously, Kemal attached great importance to the Islamic law and in that regard he was quite consistent with his original background. His standpoint was shown further in his vigorous attack on the movement of legal secularization that began in the Tanzimat. In furious remarks he questioned the benefits of the new secular laws and courts of the Tanzimat. "Of what use have these been", he wrote, "other than weakening the Mohammadan *Shari'a*?" "Are these courts more impartial than religious courts and are these laws more perfect than the precepts of the *Shari'a*?"³

With respect to the form of government which would embody the sovereignty of the people, Namik Kemal had the conviction that while Islam did not insist on a particular form and that monarchy was a possible system which was ideal for Turkey, yet the Islamic state was, in principle, "a kind of republic".⁴ He wrote:

"What does it mean to state that once the right of the people's sovereignty has been affirmed, it should also be admitted that the people can create a republic? Who can deny this right? That a republic would cause our (Turkey's) downfall is a different matter which nobody will deny, and this idea would not occur to anybody in our country, but the right to create (such a system) has not elapsed, because of the mere fact that it has not been used."⁵

¹ Kemal, "Develit-i Aliyyeyi Bunlundugu Hal-i Hatarnaktan Halasin Esbabi", *Hurriyete*, 24 August 1868, p.2.

² Kemal, *Makalat-i Siyasiye ve Edebiye* (Istanbul, 1911), quoted and translated in Berkes, *op. cit.*, pp.211-2.

³ Editorial, *Hurriyete*, 30 November 1868, p.3.

⁴ "Usul al-Mashura", *Hurriyete*, 14 September 1868, p.5.

⁵ Kemal, "Wa Shawirhum", p.1.

If Namik Kemal did not favour a republican regime in Turkey, he suggested, like most other liberals of his days even in Europe, a constitutional monarchy. As a modernist, he was quite content that it was necessary for Turkey to import a constitution and a parliamentary system from Europe and there was no need to develop one of its own. He argued that a constitution and a parliament were not undesirable innovation, *bid'a*. They were no more a *bid'a* than steamships.¹ "As we are commanded to receive all products of progress from any part of the world, there is no need to return to the past, or to come to a halt in the present".² Moreover, if the imported system from the West was agreed upon by the consensus (*ijmā'*) of the community (*umma*), it would not be a *bid'a*, but part of the *shari'a*.³ The only problem that troubled Kemal was from which country should the constitution, which would be suitable for Turkey, be imported. His view regarding this point was not so clear. At one time he rejected the American and British systems because they were impractical for Turkey and favoured the French.⁴ But at another time his choice seemed to fall on London for he spoke highly of its parliament and criticised the Paris Chamber under Napoleon 111.⁵ Following the French model he suggested three organs; a council of state, *Meclis-i Sura-yi Devlet*, formed of appointed members to draft the laws and supervise their administration, a popular council, *Meclis-i Sura-yi Ummet*, with elected members to vote the laws and control the budget, and a senate (*Meclis-i Ayan*) composed of notables to ratify the laws and protect the constitution and liberties.⁶

¹ Davison, *op. cit.*, p. 224.

² Kemal, *Makalat-ı Siyasiye ve Edebiye*, quoted in Berkes, *Development of Secularism in Turkey*, p. 213.

³ *Ibid.*, p.213.

⁴ *Ibid.*, p.213; Mardin, *op. cit.*, p.311.

⁵ Lewis, *The Emergence of Modern Turkey*, pp. 141-2.

⁶ Mardin, *op. cit.*, p.311; Davison, *op. cit.*, p. 224; Lewis, *Development of Secularism in Turkey*, p.213.

The elements of European influence in the thought of Namik Kemal was not only his proposed constitution.¹ His use of terms such as sovereignty (*hākimiyya*), the people (*umma*), freedom (*hūriyya*), constitution (*dustūr*) and others, marked the development of a new political terminology which was largely coined by the Turks. Such terms, which were mainly a direct translation of European concepts, became the common vehicles used by thinkers up to the present day to express Islamic political ideas with more or less modified interpretations. With respect to sovereignty, Kemal's emphasis on locating it with the people formed a major opinion among modern Muslims. But there were notable differences between his concept of popular sovereignty and that of the West. His sovereignty of the people had to work within the frame of the revealed law. Its main function was to maintain the laws of justice not to create them.

Nevertheless, Kemal's popular sovereignty found a counter idea developed by a rival named Ali Suavi who was contemporary with him and who belonged to the same group, the Young Ottomans.² Suavi argued against Kemal's attempts to establish that the concept of popular sovereignty had always been part of Islamic political theory. Suavi reasoned that the term was not only meaningless according to the political theology of Islam, but also appeared to be fallacious from the point of view of the European political philosophy.³ In his discussion he defended the opinion that sovereignty, in its true sense, belonged only to God. It is noteworthy that the statement that sovereignty is God's formed an important political belief held by leading Islamic reform movements today. We find powerful expression of it made recently by a number of intellectuals who most probably did not hear about Suavi's exposition. As a matter of fact, Suavi appears to be the first Muslim to produce a modern statement of the thesis of divine sovereignty in response to European theories. His ideas appeared

¹ For the European origins of Kemal's ideas see Mardin, *op. cit.*, pp. 332-6.

² For his life and thought see Mardin, *op. cit.*, pp.360-84.

³ *Ibid.*, p. 366.

in the year 1869 in a Turkish journal published by him in Paris in a short article entitled *al-Hākim Huw-Allāh* (Sovereign Powers is God's). He wrote:

There exists a term which has gained considerable notoriety nowadays, 'popular sovereignty', as the expression goes. This term is a translation from the French. Its original reads '*seuverainete' du peuple*'. Now let us inquire into the meaning of these French words. What does '*souverainete*' mean? This word is originally from Latin '*sprenos*' which means 'does what he desires', 'sole master of himself' (*hākim-i binnefs*), absolute authority (*amīr-i mutlak*), free in his actions (*fa'il-i mukhtār*). Well, what is it in fact, that rules by itself and has absolute power over things? Something which cannot be qualified with any attribute other than that of Divinity. Thus, in this sense, there does not exist a single human being who possesses '*souverainete*'."¹

Man, in his opinion, was vested with a relative kind of sovereignty in the sense that his freedom of action was regarded as long as he abided by the divine Law. He argued that such a fact was implied in the statements of the Western philosophies in which they acknowledged the existense of an overall organizing force which, according to him, was only a poor substitute of God.²

iv. The Constitution Movement

However, the dualism of the modernist trend of the Young Ottomans was put to the test by the promulgation of the constitution of 1876 and the election of a parliament thereafter, in the first years of the reign of Abdul Ḥamid.³ Namik Kemal, as a leading theorizer of constitutionalism, was one of the authors of the constitution but its practical implementation was accomplished by a successful statesman, Midhat Pasha. The first Ottoman constitution, following the Western charters on which it was modeled, contained a clear recognition of the location and rights of sovereignty. Unsurprisingly, sovereignty was not attributed to God nor to the people: like most of the liberals of that age, the framers of the constitution favoured a constitutional monarch

¹ *Ulum*, 1 August 1869, p.18, quoted in Mardin, *op.cit.*, p.376.

² *Ibid.*, p. 376.

³ A detailed account about the constitution of 1876 and the first Ottoman Parliament is found in Robert Devereux, *The First Ottoman Constitutional Period* (Baltimore, 1963). A short summary is found in Shaw, *History of the Ottoman Empire*, 11, pp.174-86; Davison, *op. cit.*, pp.358-408; B.Lewis, "Dustur", *E.I.*², 11, pp.640-4. An English text of the constitution is provided in Suna Kili, *Turkish Constitutional Developments* (Istanbul, 1971), pp.150-9.

and they, therefore, vested sovereignty in the person of the Sultan. The constitution declared that the Ottoman Sovereignty was included in the supreme caliphate of Islam which belonged to the eldest member of the Dynasty of Osman (article 3). Article 4 recognized the Sultan as the protector of Islam under the title of supreme caliph and added that he was the sovereign and padishah of all the Ottomans. Apparently, the constitution equated sovereignty with the Islamic caliphate and the traditional Turkish kingship. Unless that is assumed, the titles attributed to the Sultan will look an unusual mix. Moreover, the person of the Sultan was considered to be sacred and he was responsible to no one in his acts (article 5). The concept of the sacred nature of the Sultan and responsibility of his acts had important implications and consequences since it emphasized his absolute character.

Several other sections of the constitution reflected the absolute powers of the Sultan. The provision dealing with his sovereign right placed in his hands sole authority over almost all state affairs.¹ The executive powers of the ministers, including the Grand Vezier, depended entirely on the will of the Sultan since their appointment and dismissal was his sole right and their acts became executory only on his approval. The constitution did not give ministerial responsibility to the cabinet, nor made the cabinet responsible to the Parliament. The Assembly could summon a minister for explanations of his acts, but the minister was authorized either to appear in person, send a delegate or even postpone indefinitely his reply. A minister, who was accused by the chamber through a two-thirds majority vote could only be brought to trial by virtue of an imperial *irāda*. (See articles 27-40). The parliament created by the

¹ Article 7 states: Among the sovereign rights of his Majesty the Sultan are the following prerogatives: He makes and cancels the appointments of ministers; he confers the grades, functions, insignia of his orders and confers investiture on the chiefs of the privileged provinces according to the forms determined by the privileges granted to them; he has the coining of money; his name is pronounced in the mosques during public prayers; he concludes Treaties with the Powers; he declares war and makes peace; he commands both the land and sea forces; he directs military movements; he carries out the provisions of the *Shari'a* (the Sacred Law) and the other laws; he sees to the administration of public measures; he respites or commutes sentences pronounced by the Criminal Courts; he summons and prorogues the General Assembly; he dissolves, if he deems it necessary, the Chambers of deputies, provided he directs the election of new members.

constitution (articles 42-8) was not a real legislative organ and legislation was entirely in the hands of the Sultan. The Parliament was composed of two chambers, a senate (mejlis-i-ayan) whose members were appointed directly by the Sulatan, and a chamber of Deputies (mejlis-i-mebusan) who were elected by a second ballot. Law bills which the ministers reserved the exclusive right to initiate, had to be submitted first to the chamber of Deputies and then to the chamber of Notables. Laws passed by the two chambers had to be ratified by the Sultan. By such limitations the role of the parliament was reduced to a consultative body, rather than a legislative organ. However, the real power of the parliament was its control over finance and apparently neither the government nor the sultan could override that control. (Articles 97-100).

In addition to those extensive powers placed in the hands of the Sultan, he was given the right to declare a state of siege whenever he deemed necessary and to exile anyone, who, according to police information, was suspected of being dangerous to the security of the state (article 113). By virtue of this clause, the Sultan was given arbitrary authority which he could constitutionally use against any opposition.

In short, the constitution took the shape of an absolutist reform charter which asserted the rights of the ruler and payed lip-service to the rights of the subjects. This was contrary to the wishes of the constitutionalists whose main objective was to put limitations on one-man rule. But, it must be realized that the constitution was granted by the ruler himself and the constitutionalists were compelled to compromise lest the constitution should not be promulgated. Abdul Hamid was not against constitutionalism in principle, but he wanted a constitution which would suit his views of reform. As a Western historian observed: "many Turks and Muslims felt, as Abdul Hamid did, that under the veneer of Western liberalism, so much admired by Turkish liberals, there was something anti-Turkish and anti-Islamic, which had nothing to do with whether or not Turkey had a constitution".¹ Abdul Hamid wanted to rescue and

¹ Berkes, *op. cit.*, p.231.

strengthen the Ottoman state without parting with Turkish and Islamic tradition and without any limitations of the powers of the sovereign as padishah and *Khalīfa*.¹ The constitution gave him a legal base of his extensive powers which he used to oppose the ideology of the Young Ottomans. On the basis of Article 113 of the constitution, Midhat, the chief promoter of the constitution and a leading opponent of the Sulatan's concept of his own role in the government, was exiled as a danger to the security of the state.² Other Young Ottomans, like Namik Kemal faced similar fate. Later on, the Sultan dissolved the Parliament and suspended the constitution in 1878.³

Thereafter Abdul Ḥamid continued to rule autocratically for thirty years. He, in collaboration with the Sufis and the '*Ulamā*', suppressed the Modernist views, which were by and large, a synthesis of Islamic and Western ideas. But, the more the suppression intensified, the more the modernist revolted against religion as an obstacle in the way of progress, and the more they steadily took over to Western ideas. This new trend towards total westernization crystalized in the movement known as the Young Turks.⁴ Among them was the Committee of Union and progress who led the political struggle against Abdul Ḥamid. It eventually succeeded in enforcing the Sultan to reinstate the constitution of 1876 and elect a Parliament in 1908 and subsequently in overthrowing him. To enable the revolution achieve its aims, a series of amendments were made to the constitution. The amendments severely reduced the powers of the Sultan and strengthened the parliament. Sovereignty continued to be vested in the Ottoman sultan, but the parliament had the right to depose him if he did not fulfil his obligation to respect both the *Shari'a* and the constitution. The collective responsibility of the ministers, who were appointed by the grand vizier, was clearly stated and they were made accountable to the parliament rather than to the sultan. The right to proclaim

¹ *Ibid.*, pp. 229-31, Davison, *op. cit.*, p.403.; Shaw, *History of the Ottoman Empire*, 11, p. 212.

² Shaw, *History of the Ottoman Empire*, 11, p. 180.

³ *Ibid.*, p.187.

⁴ See Earnest Edmondson Ramsaar, *The Young Turks* (Princeton, 1957) and feroz Ahmad, *The Young Turks* (Oxford, 1969).

martial law was no longer in the hands of the Sultan, but it was given to the cabinet. The dissolution of the parliament was made a more difficult process and its convening each year was not subject to the will of the Sultan. Both the parliament and the cabinet held equal rights to initiate legislation and the parliament had the full right to pass laws even if the Sultan objected to them.¹

In general, the constitution favoured a constitutional monarchy with a powerful parliament. The Islamic nature of the state was preserved though in reality the programme of the Committee of Union and Progress was strongly secularist.² However, the Unionists, shortly after the reinstatement of the constitution, failed to live up to their democratic ideals. In the face of external and internal crises, especially the acute struggle between the political parties that emerged, the country ended with a Unionist dictatorship. Several amendments were again made to reduce the role of the parliament and increase the authority of the Sultan who was in effect controlled by the Unionist.³ The policy of the Unionist put them under vigorous attack from both the Islamists and the Westernizers. On the one hand they were criticized for being secularists and not following the Shari'a. On the other hand, they were blamed for not going far enough in destroying the old order and replacing it with European system.⁴

v. The Abolition of the Caliphate

The total collapse of the old regime was brought after the defeat of the Ottomans in the first world war in 1918. Most of the Ottoman territories fell under European occupation and the Allied force even entered Istanbul. During the events that followed and the war of independence that broke out, the Turkish nationalists emerged as a powerful force under the leadership of Mustafa Kemal. In 1920 he established a new government in Ankara and formed a new parliament under the name of Grand National Assembly which consisted of some members of the last Ottoman parliament and

¹ Shaw, *History*, pp.282-5.; Kili, *op. cit.*, pp.16-7.; Lewis, "Dustur", *E.I.*², II, p.643.

² For modernization under the Young Turks see Shaw, *History*, pp. 305-10.

³ Lewis, "Dustur", *E.I.*², 11, p.643.

⁴ *Idem.*, *The Emergency of Modern Turkey*, pp. 229-33.

representatives of the national resistance groups.¹ With monopoly of power in his hands, Kemal transformed Turkey into a secular nation state. The Grand National Assembly passed a constitution, Law of Fundamental Organisations, in 1921 in which the Western doctrine of popular sovereignty was fully accepted. The first article declared that: "sovereignty belongs unconditionally to the nation". The system of administration is based on the principle that the people personally and effectively direct their own destinies. The Assembly was to elect the ministers and its chairman who also was to be the chairman of the council of ministers. The Assembly was to be elected every two years.²

To reconcile the new government with the existing Ottoman caliphate, the new sultanate was separated and ended in 1922 leaving only spiritual religious authority to the Ottoman caliph. In support of this kind of caliphate, Zia Gokalp, the theorizer of Turkish nationalism, furnished a new explanation of the nature of caliphate in history. He argued that the only function of the caliphate was to serve the religious life of the Muslims. He wrote:

"The caliphacy has taken four forms in the history of Islam. As these four types are each of a different nature, we shall call them by different names. The primary function of the Rashidun caliphs was caliphacy. Since there were no state organization at that time, these Caliphs were invested with political authority or sovereignty in addition to their original function. We call this type the 'Caliph-Ruler' type. The primary function of the Ummayyad, Abbasid and Ottoman Caliphs, on the other hand, was political rulership. They were invested with caliphal authority in addition to their original political authority. We shall call this type the 'Ruler-Caliph' type. In Baghdad at the times of the Seljuks and in Egypt during the reign of the Mamluk Sultans, the caliphs were not only divested of any political authority, but also were without any religious organization, which they needed to carry out their religious functions. Because of the non-existence of a religious organization, these caliphs failed to perform their religious function in the real sense. We shall call this type 'caliphacy without organization'. Finally, the last type which is to be born now will be separate from political sovereignty and will be in a position to fulfil its functions in a

¹ Shaw, *History*, 11, p. 348.

² Kili, *op. cit.*, pp.17-8.

true sense. We may call this type the 'independent and organized caliphacy'."¹

Gokalp suggested a religious organization similar to the Christian Churches of the West in which the caliph would be more or less like the Pope. The smallest units would be the mosques of the locality linked to the larger mosques which in each town would be under a mufti. The muftis of each state would be under a great mufti, a *shaykh al-Islam*. All the *shuyūkh-al-Islam* would be associated with the caliph.² Thus, all the Islamic community, the *Umma*, comprising all nations would join the caliphate while each nation would have its own independent political authority. In other words, in order to give the caliphate a character compatible with the principle of national popular sovereignty, the powers of the caliphate should be separate from political authority and directed only to the pure spiritual sphere. However, more significant than that was the argument contained in a semi-official document published in 1923 which attempted to reject the caliphate and disassociate it with Islam. The actual authors of this document were not known, but it is believed to have been prepared by a Turkish committee of a group of religious lawyers set up by the ruling party.³ The document, under the title 'the Caliphate and the Sovereignty of the Nation,' claimed that the institution of the caliphate was originated to meet the political and administrative needs of the Muslims, but not as a religious obligation. In fact, the Qur'ān and the Prophet traditions, the paper added, contained no details about government affairs, and that was the reason for the crisis over the caliphate in early times. The paper held that the legitimate caliphate was the one which was based on free election by the people, as sovereignty belonged to all the Muslims. That 'real' caliphate had lasted for a short period, and changed to a 'fictitious' one established and sustained by force. From this analysis, the report reached the conclusion that since the

¹ Zia Gokalp, *Hilafet ve Hakimiyet* (Ankara, 1922), p.58; quoted and translated in Niyazi Berkes, *Turkish Nationalism and Western Civilization* (London, 1959) pp.229-30.

² *Ibid.*, pp.228-9.

³ Muḥammad Muḥammad Husayn, *al-Itijāhāt al-Waṭaniyya fī-al-Adab al-Ḥadīth* (Birut, 1970/1389) p.68; Hamid Enayat, *Modern Islamic Political Thought* (London, 1982), p. 55.

caliphate had become an unjust oppressive body the Muslims were free to choose the form of government which would meet their needs in the present age. Thus, the report ended, a National Assembly would be far better than a Sultanate.¹

On the third of March 1924 the caliphate was abolished and the last Ottoman Caliph was expelled from the country. The doctrine of unconditional sovereignty of the nation was affirmed in the constitution of 1924.² Turkey became the first state in the Muslim world to be declared as a national secular Republic. Following that, swift successive blows were struck at the position of Islam to disestablish it. These changes included the closure of religious schools, the abolition of *Shari'a* courts, the implementation of European civil and penal Law, the change of the alphabet and calendar, and the enforcement of the Western costumes of dress.

III. The Response of the Islamists

During the long and decisive encounter of the Turks with Western civilization, the '*ulamā*' who were supposed to be the intellectual leaders of the Muslims, played on the whole a negative and a defensive role. The Ottoman State was military in its nature and it was established at a time when Islamic culture had begun to decline and the scholars of Islam lacked in general productivity and originality. When the Ottoman state began to decay and there was a need for reform, the '*ulamā*' were not only unable to create improvements but put up a strong resistance to any change. The reformers had no choice but to turn their face to the West. In the field of political thought, the '*ulamā*' were very conservative and showed little awareness of the weakness in the traditional institutions. The caliphate in the shape it took in the late ages formed one of their firm convictions. Because of their education which for a long time dealt only with religious knowledge, they were ignorant of the new emerging European ideas. On the other hand, the reformers developed a hostile attitude to all that was ancient and

¹ Husayn, *op. cit.*, 1, pp 68-73; Enayat, *op. cit.*, pp. 55-6.

² See Kili, *op. cit.*, pp. 19-23.

traditional and were full of admiration for new Western institutions. However, both parties were of purely imitative nature. The 'ulamā' were looking to the past and the westernizers were blind followers of the West. Both were wanting in creative mentality which could promote a critical approach and an objective assessment of both the traditional and Western ideas.

i. Sovereignty of the Ruler

After the failure of the westernizers' reforms of the Tanzimat, a group of 'ulamā' began to awake to the reality of the intellectual stagnation of their conservative class and the futile products of imitation of the West. The leading figure of this trend was Ahmad Cevdet (1822-1895). Cevdet was educated in Islamic religious schools, the madrasas, but due to his discontent with his traditional knowledge he went on to study modern Western culture. His career was shaped further by his close contacts with top statesmen which enabled him to become experienced in politics and administration. He served in many important positions including ministerial offices in education and justice and among his major works were the Ottoman history and the Mecelle, which for the first time codified the *Sharī'a* laws.¹ Cevdet believed, as Berkes remarked in *the Development of Secularism in Turkey*, that:

"...All the past reform efforts had been defeated by the ignorance, superstitious, and corruption of the 'ulamā' and the men of government on one side, and by the blind imitativeness of the admirers of the West on the other. It is clear from Cevdet's account.... that he meant to say that success in renovating Turkey lay neither in stubborn resistance to change, nor in automatic imitation of the West, but in the intelligent revival of the traditional institutions by the infusion of Western scientific and technological inventions."²

Cevdet criticised the Tanzimat for resulting only in copying Western superficialities and for making no serious attempts to master the real methods which caused European progress.³ The degeneration of the Ottoman system, in his view,

¹ For sources on the life of Cevdet see Shaw, *History of the Ottoman Empire*, 11, pp. 445-66.

² Berkes, p.178.

³ Cevdet, *Ma'rūdāt*, quoted in Aḥmad al-Shawābka, *Harakat al-Jāmi'a al-Islāmiyya* (Zarqa, 1984) p.45.

was caused by the departure from Islamic traditions as well as it had not been adapted to the needs of the time.¹ His project of reform was "preparation for the future without the destruction of the past".² Therefore, he was concerned to preserve the old institutions and improve them to meet the modern requirements. So, while he introduced many new reforms in education and legal system, he opposed borrowing French codes insisting that, "as our state was based upon the *Shrī'a*, it should therefore, be the basis of our laws and bye-laws".³ Besides, he supported Abdul Hamid against the constitutionalists in their attempt to limit the sovereign rights of the sultan.⁴

A similar line of thought was adopted in a book written by a Tunisian and an Ottoman statesman, Khayr al-Dīn Pasha (1822-1890),⁵ who set out in the introduction his programme of reform of Muslim countries in general and the Ottoman state in particular.⁶ Khayr al-Dīn did not belong to the class of the '*ulamā*', but he believed that reform could only be brought about by collaboration between the '*ulamā*' and the politicians. He denounced the lack of involvement of the '*ulamā*' in politics as one of the main causes of the weakening of the Muslim states.⁷ It was important, he proposed, that the political system of Muslim states be based on justice and liberty, the sources, in his analysis, of European power. Both justice and liberty, he added, were well established Islamic principles.⁸ In order to achieve justice the state ought to be organized by effective laws which should be supremely binding on both subjects and rulers.⁹ As the Muslim community was bound by the *Sharī'a*, Laws were to be drawn

¹ Cevdet, *Tārīkh* 1, p.40, quoted in Ahmed Darutoglu, "The Re-emergence of Islamic Thought in Turkey", in *BRISMES Proceedings* (Oxford, 1986), p. 232.

² *Ibid.*, p.232.

³ Quoted by Berkes, *Development of Secularism in Turkey*, p.168..

⁴ See *Ibid.*, pp.241-6.

⁵ For his biography see *E.I.*², s.v.

⁶ The book is written in Arabic under the title: *Aqwam al-Masālik fi-Ma'rifat Aḥwāl al-Mamālik* (Istanbul, 1284 A.H.) and was translated into Turkish. The greater part of the book was a review of the political and economic conditions of the European countries of the time.

⁷ *Ibid.*, p. 5.

⁸ *Ibid.*, pp.8-9.

⁹ *Ibid.*, pp. 13-15.

from it.¹ By liberty he meant the participation of the people in political affairs and consultation with them about the welfare of the state. The sharing of people in government in Europe was fulfilled by parliaments and in Islam by the counsel of the notables in the state, *ahl al-ḥall wa-al-‘aqd*.²

Khayr al-Dīn was strongly opposed to despotism and he urged the Muslims to control the powers of their rulers. Among the most important measures to achieve that, in his view, were to observe the obligation to take counsel before acting, *shūrā* and the obligation of the enlightened people in the society to supervise public acts.³ Further, he urged that the ministers should be granted a free hand to act, quoting in this respect the Islamic precedent of unlimited ministerial authorization, *tafwīd*. As to the means and institutions required to meet the need for control over governmental policies, he recommended the Muslims to adopt whatever was suitable and appropriate to circumstances and time such as representative chambers and the press which fulfil that function in Europe.⁴ However, he emphasized that political liberty should only be given to those who had developed to a certain stage to benefit from it. Therefore, he was against the claims of the Young Ottomans to establish a nationwide representative chamber in Turkey because the country was not as yet ripe for it.⁵ To sum up, Khayr al-Dīn, using the Islamic concept of *shūrā*, was only advocating supervision over the sovereign rather than locating sovereignty with the people and making the ruler responsible to them as Namik Kemal did.⁶ In that respect, he was close to the traditional Turkish concept of sovereignty of the ruler.

¹ *Ibid.*, p.40.

² *Ibid.*, pp.74-5.

³ See a short account of his political ideas in Mardin, *op. cit.*, pp.358-95.; Khaldūn al-Ḥusary, *Three Reformers* (Beirut,1966),pp.33-53.

⁴ *Ibid.*, pp.11-3.

⁵ *Ibid.*, p.36.

⁶ Mardin, *op. cit.*, p. 391.

ii. Sovereignty of the *Shari'a*

By the end of the nineteenth century the Ottoman movement of reform reached a crossroads. Lines of thinking were no longer confused and mixed but they began to be clarified and differentiated. During the long controversies on political change and cultural matters, a new school of thought emerged between the conflicting forces of conservation and westernization. That school eventually came to be known as Islamists. In place of the stubborn passive resistance of the traditionalists, the Islamists fostered a new critical approach and a modern formulation and expression of Islamic ideas in contrast to Western concepts. The political thought of the Islamist may be illustrated best by a brief review of the opinions of two leading exponents: Sa'id Halim and Muṣṭafā Sabri.

The first, Prince Sa'id Halim Pasha (1863-1921), was the grandson of Muḥammad 'Alī of Egypt. His ideas were exposed in different essays and probably the most important one was the article entitled "The Reform of Muslim Society" which he wrote in French just before his assassination while he was in exile in Rome.¹ Confronted by the expansion of the process of secularising the Ottoman state based on the Western doctrine of popular national sovereignty, Sa'id endeavoured to find out what should be the Islamic political regime. Perhaps, he was the first to attempt to express the Muslim belief of the obligation and the supremacy of the *Shari'a* in modern terms. He coined the term "sovereignty of the *Shari'a*" in contrast with the principle of national sovereignty which the secularists used to disestablish religion from all state affairs. He wrote:

"The whole social framework of Islam rests upon the fundamental principle of the sovereignty of the *Shari'ah*. Muslim society is that which is subject to that sovereignty. Now, the *Shari'ah* is the sum-total of the natural, ethical and social truths which the Prophet in the name of the Creator revealed to us, and on which human happiness depends. The principle of the sovereignty of the *Shari'a* is the recognition of the fundamental truth that all existence, of whatever

¹ The essay was translated into English by Muḥammad Marmaduke Picthall and published in *Islamic Culture* (Hyderabad- Deccar, India), I, (Jan.1927), pp.111-35.

nature it may be, is subject to the natural laws peculiar to it, and, consequently, that the social existence of men is subject to natural social laws just as their physical existence is subject to natural physical laws. Thus Islam succeeded in establishing the principle that man is in no way bound to submit to his neighbour's law, even though it be the expression of the will of the most numerous group, because such law must need to be arbitrary to some extent, and owes obedience only to the will of his Creator manifested in the natural laws."¹

But, why was it that man was able to discover scientific laws in the natural physical sphere by using his faculties of observation and reasoning, and was incompetent in formulating the laws governing his social life so that he yet had to depend on their being revealed to him by his Creator? Sa'īd raised this question and proceeded to state that the answer was furnished by the difference between the two categories of laws. The physical sphere was a ground for objective study where man possessed mental independence and impartiality which enabled him to reach true conclusions. The social sphere was of a sentimental and psychological nature, that is to say, it was pre-eminently subjective. The study of social disciplines was always marred by human infirmities and could only furnish uncertainties and defective guides. That incapacity of man to discover social laws was manifested in the West where social studies were far behind the high degree of knowledge of other natural sciences. Man would never have known social laws if they had not been revealed to the Prophet in the form of the *Shari'a*.² Following those arguments, Sa'īd concluded:

"In short, the social doctrine of Islam consists in teaching us that natural human society - that which conforms to the natural ethical laws - is that society which is built upon the principle of the absolute sovereignty of the *Shari'a*. The cardinal point of this teaching is that authority, the basis of order and stability in society, can only proceed from an incontestable and uncontested source, the nature of this moral supremacy of God Himself, since science is impotent to furnish such a source. Islam teaches us, besides, that the happiest society is that which best knows and best applies, not only the moral and social laws, but also the physical laws - in other words, the society which can best obey the totality of the Creator's will."³

¹ *Ibid.*, pp112-3.

² *Ibid.*p.114.

³ *Ibid.*, pp.114- 5.

After stating the meaning and justification for the principle of the sovereignty of the *Shari'ah*, Sa'id made a strong criticism of the Western concept of national sovereignty. He denounced Muslim "intellectuals" who were misled by the material power of the West to think that it was a miraculous result of its political ideas such as the doctrine of national sovereignty. Therefore, that principle was adopted in some Muslim countries and the *Shari'a* ceased to be the source of inspiration of its Muslim rulers. He wrote:

"Now, that concept of omnipotent national sovereignty is as false as all other concepts of sovereignty which preceded it in the West. It rests on an imaginary right which the nation adjudges to itself on its own authority and initiative, imitating thus its former masters, the church and Royalty, which, each in turn, proclaimed, on their authority, their own almighty, irresponsible and infallible sovereignty. At the base of these sovereignties we find always the same principle: force. The result is a constant struggle for power, in which social hatred becomes poisonous and national strength is frittered away. Such sovereignties are, therefore, mere prerogatives imposed by brute force. They are not principles which of themselves command respect by the prestige of their intrinsic moral value. They request usurpations - that is to say, injustice. Moreover, that which people call the national will is really but the will of the majority of the nation. It may conceivably be that half of the nation plus one vote; that is to say, the will of a weak majority in opposition to a very strong minority, a minority almost equal to the majority. The principle of national sovereignty is therefore merely the recognition of the right of the majority to impose its will on the minority, a will which is law in all things, whose decisions are without appeal; consequently, an absolute will, prevailing only by numerical strength - supposing that it be not artificial, as it often is. Such a will is, of all, the most unlikely to be inspired by truth and wisdom. When we remember that, in past centuries, the same right belonged to a minority, aristocratic or clerical, which failed not to abuse it at its will and pleasure, we must agree that the sovereignty of the national will is merely a revenge of the majority on the minority, a revenge which, in its turn, will lead on to some new revenge as well deserved.¹

Finally, Sa'id set down the outlines of the political system which would best be suited to the Muslim social order based on the principle of the sovereignty of the *Shari'ah*. He did not intend to frame a constitution, since no one constitution would suit all Muslim peoples despite the many points they had in common. Besides, a constitution had to take into account the needs, mentality and characteristics of the

¹ *Ibid.*, pp.115-6.

people for whom it was regulated. His object was to warn the Muslims of the irreparable error of "adopting imitations of the political constitutions of the West, and, along with them, the social and political principles of that portion of humanity".¹ His political project consisted of establishing three independent, but closely united institutions: executive power, controlling power and legislative power. Primarily, authority in Muslim state would reside in one person, the chief of the state who should be chosen by the nation. His main task was to regulate and harmonize the functions of the various powers of the state and settle any differences between them. As head of the executive power, he would delegate sufficient rights to his ministers to govern and administer effectively.

Though the executive power should be free in its domain, the principle of the sovereignty of the *Shari'a* necessitated that the Muslim community should supervise that its government was maintaining the supremacy of the *Shari'a*. This could be fulfilled by an assembly elected by the nation which would control the acts of the government. But that national parliament would be a controlling, not a legislative power. Since the right to legislate was simply a matter of competence, it should belong to that class of specialists who possess deep knowledge of the *Shari'a* and high moral qualities. The legislative assembly, like the controlling Parliament, was to be elected by the nation. However, the controlling assembly had no authority over the executive to command it. It had only the right to criticise, urge and warn. In the event of differences between the two, the chief of the state should intervene and act as an arbitrator. The chief of the state himself was to be personally responsible both to the representatives of the *Shari'a* and the representatives of the nation who should provide for a mechanism and procedure of extreme simplicity to depose him "when his faults, his vices or shortcomings had rendered him insupportable".²

¹ *Ibid.*, p.133.

² *Ibid.*, pp.128-133.

The second example of the new attitude of the Islamists is Muṣṭafā Ṣabrī (d. 1944) who was the last *Shaykh al-Islam* of Turkey. He began his political activities and writings after the reinstatement of the constitution in 1908. But his most significant contribution was made while he was in exile in Egypt after Mustafa Kemal abolished the *khilāfa* and disestablished Islam in Turkey. In two books he launched a vigorous attack on the Kemalists' basic achievement: secularism, abolition of the caliphate and nationalism.¹

His views were mainly concerned with criticism of secularism manifested in the principle of separation between politics and religion. He did not involve himself with a detailed clear exposition of what form the Islamic government should take in modern times. Yet, it is significant that in his writings he asserted the principle of the supremacy of the revealed law, the *Shari'a*, to which he referred by coining the expression *ḥākimiyyat al-dīn*.² He defined the caliphate simply as the government maintaining the supremacy of the *Shari'a*.³ Therefore, religion could never be separate from politics, unless the government ceased to be Islamic. As the government was to be supreme over the society, religion was to be supreme over politics and controlling the government. The relation of religion and politics in the Ottoman state, he argued, was explained in the Turkish saying: *bāsh Pāshā bāghlī, Pāshā shērī'at bāghlī*, which meant the head was tied down to the Pasha, and the Pasha was tied down to the *Shari'a*.⁴ Moreover, Islam was not only confined to spiritual affairs like other religions so that it could be separated from politics. Islam, in fact, was a comprehensive way of life comprising religion, statehood, as well as being

¹ His two books were written in Arabic under the following titles. The first is: *Al-Nakīr 'alā Munkrī al-Ni'ma min-al- Dīn wa-al-Khilāfa wa-al-Umma* (The Rejection of Those who Denied the Gift of Religion, Caliphate and Community (Bairut,1924), which is reprinted and edited by Muṣṭafā Ḥilmī under the title *al-Asrār al-Khafiyya wrā' Ilghā' al- Khilāfa al-'Uthmāniyya* (secrets behind the abolition of the Ottoman Caliphate) (Cairo,1985). The second is *Mawqif al-'Aql wa-al-'Ilm wa-al-'Alam min Rab al-'Alamīn wa-'Ibādih al-Mursalin*.(The attitude of reasoning, science and mankind towards the Lord of the Universe and his Prophets.)(Cairo,1950).

² Ṣabrī, *al-Nakīr*, p.185..

³ *Ibid.*, p.145.

⁴ Ṣabrī, *Mawqif*, pp. 290-3..

a supra-nationality uniting different races.¹ Sovereignty of law, according to Şabrî, was an important principle to safeguard justice and equality in any society. It was necessary that no individual, no class, no party and no section of the society should be above law. Law should be supreme and above all. But that supremacy of law would not be real if law was man-made because the makers of law would necessarily be unrestrained by it since they could easily change it. Supremacy of law would only be true if law was made by God. In such a case God will be the the real sovereign, *ḥâkim*, and not any human being. Justice and equality would then be truly dominant as all men would be on the same footing with regard to the law. On those grounds, Şabrî affirmed, the right of legislation, *tashrî'*, in Islam belonged only to God. It could never be associated to anyone other than Him.²

¹ *Ibid.*, p. 295.

² Şabrî, *Mawqif*, pp. 341 - 5.

Chapter 5

MODERN EGYPTIAN THOUGHT

Owing to a number of factors, Egypt had taken over the leadership of Arabic thought by the nineteenth century. On the one hand, Cairo had occupied an important political position since the downfall of Baghdad. This, in particular strengthened the role of al-Azhar as a principal seat of learning of Arabic language and the Islamic sciences, attracting many scholars and students from Muslim countries. From the Mamluks era up to the twentieth century, the influence of the '*ulamā*' of al-Azhar in the promotion of Islamic political ideas had been great in Egypt and other Arab Lands. On the other hand, the impact of Egypt was also due to the fact that it was exposed to Western culture much earlier and more intensively than the rest of the Arab World. The penetration of European influences and their encounter with deep-rooted Islamic ideas resulted in far reaching intellectual activities. Therefore, it is important to study the ideological evolution that took place in Egypt and examine in its new structure for any Islamic Arabic concepts of sovereignty.

I. Making of Modern Egypt

By and large, westernization in Egypt went along similar lines to the development in Turkey except for the fact that the foreign pressure that stimulated modernization was much greater on Egypt than on the Ottomans. In fact, Napoleon's invasion of Egypt in 1798 marked the beginning of the process of westernization. The Khedives who took power after the French were most of the time under foreign control which culminated in British occupation of the country in 1882 and which continued to be dominant even after the declaration of independence in 1922. But the transformation of Egypt from virtually a traditional Islamic sultanate into a modern secular national state was not brought about only by foreign forces. Powerful autocrats, like Muḥammad 'Alī, Ismā'il and Nāṣir, exerted much effort to drive the

country towards European ideals. As a result of the initiatives of those autocrats, whether working independently or under foreign influences, the stage was set for the emergence of an intellectual movement which developed justifications following or accompanying the reforms of the politicians. However, there can be no question of giving here a detailed review of the making of modern Egypt. The purpose of this study is to explore briefly the importation and application of the European idea of sovereignty manifested in the notion of secular nation state and the principle of popular rule.¹ The aim of the survey is to set a background to the response of the Islamic reformers and their endeavour in search of an Islamic theory of sovereignty.

i. The Role of The Rulers

The seeds of Western political thought, particularly secularism and popular government, were planted by Napoleon in his brief occupation of Egypt. He opened the eyes of the Egyptians to the ideas of the French revolution which were secular and anti-religious in nature. However, Napoleon, in his attitude towards Islam in Egypt, preferred to follow a policy "to tame religion not to oppose it".² "We must lull fanaticism to sleep before we can uproot it", he wrote to Kleber, his assistant.³ From the beginning he set out to establish a local native body, the *Diwān*, composed of Muslim notables to help him to control the country. Consultative councils were not a novelty to Muslims, nevertheless, the establishment of the administrative *diwān* system introduced to the Egyptians, for the first time the modern methods of representative popular rule.⁴ Those early views of Europe might not have had the effect they had if the subsequent Khedives of Egypt had not turned their face to France in their attempts to modernize the country. During the reign of Muḥammad 'Alī (1805-48), the cultural links with France were intensified and there was a massive

1 See for example: Muḥammad Quṭb, *Wāqī'unā al-Mu'āṣir* (Jeddah, 1987) pp.195-363; Nadar Safran, *Egypt in Search of Political Community* (Cambridge, 1961).

2 J. C. Herold, *Bonaparte in Egypt* (London, 1962), p.182.

3 *Correspondence de Napoleon*, V, 574, quoted in *Ibid.*, p.182.

4 For an account of the *Diwān* and its functions see for example 'Abd al-Raḥmān al-Rāfi'i, *Tārikh al-Ḥaraka al-Qawmiyya fi Miṣr* (Cairo, 1948), Volumes 1 and 11.

introduction of Western technology and statecraft and a wide transmission of ideas through translations and writings.¹ Further steps towards secularism and representative government were taken by Khedive Ismā'il.² In 1866 he established an elected council of Deputies, majlis *shūrā* al-nuwwāb, which was mainly of a consultative nature to help him combat foreign intervention. However, foreign pressure forced him in 1878 to delegate the executive power to a responsible cabinet, majlis al-nuẓẓār, which was regarded the first modern ministerial council in Egypt.

In the legal sphere his secular reforms were clearer. His Armenian Minister, Nubar Pasha, founded in 1867 the mixed courts to adjudicate on disputes involving foreigners in civil and commercial matters. A modified French law was applied in these courts. This was a turning point in the judicial system of Egypt. It marked the beginning of the replacement of the *Shari'a* by secular laws which developed further in one field after another. The year 1883 witnessed the establishment of the national (ahli) courts which adopted French civil and penal code. *Shari'a* courts were confined to disputes of personal status.³ The secularisation of Egypt's judicial system resulted in the creation of generations of jurists who took the West as the sole source of legal ideas.

The developments in the constitutional sphere were more significant for the further process of secularisation and the introduction of the principle of popular sovereignty which inspired the later national movements. The first written constitution was promulgated in 1882. From that time on different constitutional frameworks were introduced, significantly those of 1913 and 1923. But the basic structure of government was maintained without important change. At the top of the system was a personal ruler who held all powers in his hands, namely a khedive during the sultanate era, a king after independence, and a president when the army took over in 1952.

¹ See Afaf Lutfi al-Sayyid, *Egypt in the reign of Muḥammad 'Alī* (Cambridge, 1984).

² For a documented account on Ismā'il's reign, see 'Abd al-Raḥmān al Rāfi'i, *'Aṣr Ismā'il* (The Age of Ismā'il), 2 vols. (Cairo, 1937).

³ P. J. Vatikiotis, *The History of Egypt* (London, 1985) pp. 119-21, 297.

Legislative organs were elected though in most cases with restricted authority.¹ Political parties had emerged at different periods especially before and after independence, which generally had secular national attitudes. One of the first political parties, was the National Party, al-ḥizb al-waṭanī, which was established in 1907 by Muṣṭafā Kāmil, the founder of the nationalist movement. Another important party was the Wafd which was founded by Sa'ad Zaghlūl, one of the most prominent popular leaders who dominated the Egyptian political life in the first quarter of the twentieth century. Both leaders, Muṣṭafā and Sa'ad, were close to Western liberalism and directed their talents to orientate the masses towards it.² In short, these developments resulted in the end in the total conversion of Egypt into a secular nation sovereign state.

ii. The Effect of the Intellectuals

In the field of secular ideology the contribution of the Egyptians was purely imitative. The Western ideas were borrowed without questioning or criticism. One of the earliest pioneers who passed on the ideals of the French Revolution to the Egyptian mind and left a lasting effect on it was Rifā'a Rāfi' al-Ṭaḥṭāwī (1801-71).³ He was an Azharite scholar who was sent as Imam to accompany the first mission of Egyptians that went to study in Paris. His great role in the transmission of Western ideas can be brought home to us by the fact that about two thousand books were translated from French under his supervision.⁴ For our present purposes, two of his works are relevant. The first book, *Takhlīṣ al-Ibrīz fi-Talkhīṣ Bāriz*,⁵ was an account of his observations on various features of French life during his five-years stay in Paris. In it, he wrote describing and admiring the political convictions and institutions of

¹ *Ibid.*, p. 297.

² *Ibid.*, pp. 227-8, 255-65.

³ For his biography see Ṣāliḥ Majdī, *Ḥilyat al-Zamān bi-Manāqib Khādim al-Waṭan* (Cairo, 1958). Accounts of his life and thought are found in Khaldūn al-Ḥuṣary, *Three Reformers* (Beirut, 1966), pp. 11-32; Albert Hourani, *Arabic Thought in the Liberal Age* (Cambridge, 1983), pp. 67-83.

⁴ 'Abd al-Raḥmān al-Rāfi'i, *'Aṣr Muḥammad 'Alī* (Cairo, 1947), p. 414.

⁵ Reprinted in Muḥammad 'Amāra ed., *al-A'māl al-Kāmila Li-Rifā'a Rāfi' al-Ṭaḥṭāwī* (Beirut, 1973)

France, its constitution and the revolution of 1830. He was the first to acquaint the Arabs with political ideas of the West including Rousseau's theory of popular sovereignty and Montesquieu's concept of separation of powers. The book gained much fame and its impact was stated by a Western historian of Egypt as follows:

"In describing the French constitution and the political institutions of France generally, Rifā'a was in a way, introducing Egyptian readers to the notion of secular authority, the concept of law deriving from other than divine sources. Similarly, he was appraising them of such ideas as political rights and liberty. He was the first Egyptian to report fairly systematically and intelligently to his compatriots on the general outlines of European political institutions, the ideas of the Enlightenment and the French Revolution which underlined them. To this extent, Rifā'a inaugurated the interest of the modern Egyptian in the liberal social and political ideas of Europe which found their widest dissemination in the country during the first two decades of the twentieth century."¹

In his other work, *Manāhij al-albāb al-Miṣriyya fi-mabāhij al-adāb al-ʿaṣriyya*,² Ṭaḥṭāwī stated his views on how Egypt should develop. With respect to his political ideas contained in the book, which concern us here, we find a striking attempt to define political authority and its characteristics and functions which underlay Western influences. To maintain order in any society, he wrote, there should exist a central general governing power, *quwa ḥākima*, composed of three divisions; namely the legislative, the judiciary and the executive. These three forces resided in one person, a monarch, and therefore they composed one single power, that is to say, "the monarchical power bound by laws". The office of the king was originally elective, but became in most countries hereditary because elections brought about civil war and disorder. Only matters of supreme and ultimate nature were to be settled by the king who had to delegate some of his powers to other bodies like courts or councils. Yet, his authority was unique and no one would have a share in it. Moreover, the king was accountable to none but God. But, since kingdoms were established to observe the

¹ Vatikiotis, *op. cit.*, pp. 114-5.

² Reprinted in Muḥammad ʿAmāra ed., *al-Aʿmāl al-Kāmila Li-Rifāʿa Rāfiʿ al-Ṭaḥṭāwī* (Beirut, 1973)

rights of the subjects and maintain among them equality, liberty and order by means of stated laws, the king had to govern in accordance with these laws. In other words, Ṭaḥṭāwī considered his monarch to have absolute power limited only by law. Laws were to be made by legislative councils subject to the approval of the king.¹ However, Ṭaḥṭāwī did not favour secular laws to replace the *Shari'a* though he praised Khadive Ismā'il for assembling a legislative council² and he had himself translated the Napoleonic Code.³ Apparently, he was advocating the formulation of laws which would meet the modern needs of the society by making use of foreign codes without contradicting or undermining the *Shari'a*. His position was clearly demonstrated in his attack on the adoption of European laws in the mixed tribunals arguing that the *Shari'a* would not fail to meet justice if it had been properly applied.⁴ However, one of his students, Qādri, who served as Minister of Justice for sometime, drafted the secular laws for the Ahli, or National, courts which came into effect in 1883.⁵

Besides the impact of the French thought on Egypt there came the effect of the British ideas which came as a direct result of the British occupation. One of the outstanding intellectuals who was more directly influenced by British liberalism was Aḥmad Luṭfī al-Sayyid (1872-1963).⁶ Though his writings consisted only of newspaper articles published during the period from 1907 to 1914 while he was the editor of *al-Jarīda*, the organ of the political party founded by him, yet he left a permanent mark on Egypt's culture so much so that he came to be known by the title 'the teacher of a generation', *ustādh al-jil*.⁷ During that formative period of modern Egypt, he was most credited for his great boldness in advocating the imitation of

¹ *Ibid.*, pp. 516-22.

² *Ibid.*, p.497.

³ Vatikiotis, *op. cit.*, p. 119.

⁴ Ṭaḥṭāwī, *Manāhij*, pp.3 69-70.

⁵ Vatikiotis, *op. cit.*, p. 119.

⁶ For his life, see Aḥmad Luṭfī al-Sayyid, *Qiṣṣat Hayātī* (Cairo,1962).

⁷ His articles were later collected and edited by Ismā'il Mazhar and published under the titles: *al-Muntakhabāt* (Cairo,1937,1945); *Ṣafahāt Maṭwiyya* (Cairo,1946); *Ta'ammulāt* (Cairo,1946).

Europe and its secular views. The following extract shows clearly his enthusiasm for the importation from European civilisation:

"In our present situation and need to borrow from the civilization of Europe in order to gain sources of power to be able to compete with others in life, we must not destroy in ourselves the quality of useful imitation by viewing it as a disgrace. On the contrary, it is necessary for us to promote it further so that we will imitate the good examples in every aspect and increase the number of those who follow them. Let us imitate, for it may be possible that the copy will be like the original. There is no reason to fear that copying others will demolish our identity, simply because complete assimilation is impossible and because all importations from Europe when they enter into Egypt will be influenced and adapted to our linguistic, religious and moral ways."¹

Paradoxically, the originality of Luṭfī al-Sayyid's, contribution lay in borrowing from the West. Among his most significant borrowed political ideas which are related to this study are the concepts of nation (*umma*), sovereignty of the nation (*sulṭat al-umma*), freedom (*huriyya*) and secularism. The belief in Egyptian nationalism was at the core of his political thinking. He understood nationalism in the same way as it was defined in the West. The Egyptians were those who lived in the land of Egypt and who were identified with many common characteristics like complexion, language, race and history.² As a fervent nationalist he believed only in an Egyptian nation, and rejected the idea of an Islamic community, or of an Ottoman nation or even of an Arab nation.³ In other words, he abandoned totally the Islamic sense of *umma* which comprises all the Muslims. Instead, he used the word *umma* as territorial entity giving it a meaning identical with the Western concept of nation. Moreover, while the ties with outside Communities were denied, he incorporated into Egyptian nationalism the ancient Pharaohs and the Copts, their descendants. Viewing Egyptian history as an uninterrupted chain of events he stressed that "we are the

¹ Aḥmad Luṭfī al-Sayyid, *Ta'ammulāt*, pp.79-80.

² al-Sayyid, *Ta'ammulāt*, p.61.

³ *Ibid.*, pp.69-71.

Pharaohs of Egypt, the Arabs of Egypt, the Mamluks and Turks of Egypt - we are the Egyptians".¹

With that sense of nation in his mind he claimed that the nation possessed natural rights, above them all sovereignty and freedom. In a number of Luṭfī's articles he mentioned the sovereignty of the nation, *sulṭat al-umma*, as an accepted rule without undertaking the task of explaining it fully. In very general terms he meant by it the right of the community to rule itself and judge what would in its best interests.² Practically, that should necessitate the formation of a constitutional government answerable to an elected assembly which would serve as necessary safeguard against despotism.³ Time and again Luṭfī attacked despotic rule and praised representative government. In particular, he strongly opposed the theory of the benevolent despot, *al-mustabidd al-'ādil*, advocated by Muḥammad 'Abduh, describing it as utopian. Intellectual stagnation was but one of the evils of despotism, while modern scientific progress had only become possible under representative rule.⁴ Rarely, did Luṭfī defend his ideas by quoting religious arguments. Yet, with respect to sovereignty of the nation, he claimed that it was decreed by the Prophet and that the *Rāshidūn* Caliphs followed in his footsteps. It was only later, that the legists (*fuqahā'*) justified despotism for the benefit of the rulers.⁵

The other important natural right of the nation, according to Luṭfī, was freedom. He admitted that he had borrowed his conception of freedom from the Liberals (*al-Hurriyyūn*) of the West, particularly those of Britain and America.⁶ According to the liberal doctrine, from which Luṭfī derived his views, the state was considered to be a necessity and its control should be confined to a very limited area.

¹ *Ibid.*, p.61.

² al-Sayyid, *Ṣafaḥāt*, p.30, *idem.*, *Ta'ammulāt*, p.102.

³ al-Sayyid, *Ta'ammulāt*, p.96.

⁴ *Ibid.*, pp.99-102.

⁵ *al-Jarīda*, 10 Dec. 1912, quoted in Charles Wendell, *The Evolution of the Egyptian National Image* (Berkeley, 1972), p. 226.

⁶ al-Sayyid, *al-Muntakhabāt*, p.95.

Luṭfī mentioned only three functions to be carried out by the government, namely, to maintain security by the police force, to administer justice and to defend the country against attack. All spheres other than those should be left to the control of individuals and independent organizations and the government should not intervene in them.¹ In other words, freedom should prevail in a wide spectrum of social action and government interference should be an exception. In particular, Luṭfī detailed certain rights with which the authority should never interfere. These included freedom of belief, education, ownership, expression, association and the like. Besides, he stressed the importance of freedom of the judiciary meaning by that its independence from legislative and executive powers.²

Perhaps, Luṭfī was aware that the ultimate result of the adoption of Western concepts of sovereignty of the nation and freedom would be to undermine the concept of divinely sanctioned Islamic authority. In fact he aimed to liberate the Egyptians from the so called traditional thought of their ancestors and open their minds to the new ideas. He wrote:

"Our progress towards realizing our natural share in freedom is impossible to achieve even if we possessed the greatest instruments of brutal force and even if our number were many times what it is until we liberate ourselves first from the curse of worshipping uncritically thoughts and ideas on authority, and until we shatter with our own hands the chains which have held our mind in bondage and the fantasies which have prevented us from benefiting from the new ideals."³

These views revealed his secular attitudes which especially characterized his political reforms. He believed that it was dangerous to make religion the basis for political action. He was convinced that politics should be based on nationalism (*waṭaniyya*) and common interest (*al-manfa'a*) and on nothing more.⁴ His arguments provided the intellectual justifications for the constant development of Egypt

¹ *Ibid.*, p.65; al-Sayyid, *Ta'ammulāt* p.87.

² al-Sayyid, *al-Muntakhabāt*, pp.71-90.

³ al-Sayyid, *Ta'ammulāt*, p.60, translated in Safran, *op. cit.*, p.95.

⁴ *al-Jarīda*, 1st. Sep. 1912, 4th May 1913, quoted in Wendell, *op. cit.*, pp. 229-30.

towards secularism and the disestablishment of Islam in almost every governmental sphere.

II. Islamic Reform

The challenges of imported Western ideas contributed with other factors towards the awakening of Islamic reform. In particular, much debate was generated on the question of political authority and its real position in Islam. In general, the writings that dealt with the problem of Islamic political power fall into two categories. First, there were those pure academic researches which provided theoretical investigations without being directly involved with political realities. Second, there were the essays written by political activists and Islamic reformers whose ideas were shaped by the changing political circumstances. For example, there was a flood of political books in the aftermath of the downfall of the Caliphate in Turkey in 1924. That event also marked the beginning of a new phase in Islamic political thought in Egypt. The Muslim thinkers before the abolition of the Caliphate still continued to pay homage to their rulers and did not yet give up hope that they might initiate reforms. Though there was an awareness of the despotic nature of their government, yet it was argued that a despot could be just. When the evils of despotism were fully appreciated and it was not possible to justify them any longer, a campaign began against autocratic rule. By the end of the Caliphate, the focus was still on fighting despotism. The writings of that period, in their attempt to reconstruct the theory of the Caliphate in the face of modern challenges, contained clear emphasis on the Islamic principles that could combat tyranny. To denote those principles, new expressions like *sulṭat al-umma* or *siyādat al-umma* began to circulate which were direct translations of the Western term sovereignty of the people. However, before long it was realized that there was a greater danger than despotism against which Islamic reform should struggle. It became clear that secularism was the new evil which had actually uprooted the whole Islamic life including its political and legal authority. The focus now shifted

to stress the ultimate authority of Islam in all spheres involving politics and law. In these circumstances, the doctrine of sovereignty of God, *ḥākimiyyat Allāh*, began to stand out. We shall now turn to look into these developments in greater detail.

i. Before the Fall of the Caliphate

Undoubtly, the two outstanding figures in the Islamic reform in the period from the last quarter of the nineteenth century to the first quarter of the twentieth century were Jamāl al-Dīn al-Afghānī (1839-97) and his disciple Muḥammad ‘Abduh (1849-1905). As for al-Afghani, despite his fame, he was a mysterious character and his actions and opinions were surrounded by controversy. Apparently, his political objectives were dominated by one major factor, that is to say, the expansion of European powers into the Islamic world. He strove all his life to unite the Muslims to defend themselves and was regarded as a leader of Pan-Islamism. Yet, his plan of how to achieve unity or how to liberate the Muslim countries was vague. At one time, he believed in bringing the Muslims under the strongest ruler of the time, the Ottoman Caliph.¹ His centre of attention being this, he spent his life in search for a Muslim ruler to cooperate with, and, therefore, he never questioned the ideal form of Islamic government. He contented himself to work with any monarch, though sometimes he made indefinite calls to curb the despotic powers of the Muslim rulers.²

Muḥammad ‘Abduh collaborated with his master for a short period in pursuit of his political objectives. Later, when he returned from exile which had been brought about for alleged links with ‘Urābī revolution, he became discontented with political struggle and confined his reforms to educational and judicial matters. Even, his writings in his early political career contains general observations about constitutional issues and did not mount to a systematic structure.³ He spoke of *shūrā* and approved

¹ See details of his project of unity which he had presented to Sultan ‘Abd al-Ḥamid in Muḥammad al-Makhdūmī, *Khtāṛāt Jamāl al-Dīn al-Afghānī* (Beirut, 1933) pp.237-9.

² See *al-‘Urwa al-Wuthqā*, 3rd.ed. (Beirut, 1933).

³ Cf. Malcolm H. Kerr, *Islamic Reform* (Cambridge, 1966), pp.146-52.

of establishing consultative councils on the Western model.¹ However, his inclinations for limiting the powers of the ruler seemed to have changed since he advocated the idea of the benevolent dictator which won wide fame. He wrote an article under the title '*innamā yanhaḍ bi-al-sharq mustabidd 'ādil*' (only a just despot will develop the East) in which he pleaded for a benevolent autocracy that could in fifteen years lead the country to a level of advancement that could not be reached in fifteen centuries. However, he also suggested that his dictator introduce gradually representative councils and freedom whenever the people reached a certain level of civilization.²

It is surprising, presumably, that 'Abduh with his Azherite background did not say anything in protest against the replacement of the *Shari'a* by French secular codes in national courts. He wrote articles objecting to the use of any language other than Arabic in these courts,³ but nothing more. It is not only true that he did not deplore secular legal changes, but many of his *fatwas* paved the way for the Muslims to live in compliance with them. See for example his *fatwa* concerning allowing working as a judge in secular courts.⁴ It is also necessary to mention that 'Abduh was regarded as a pioneer of modernism in Arabic thought. Albert Hourani described him as follows:

"He carried farther a process of identifying certain traditional concepts of Islamic thought with the dominant ideas of modern Europe. In this line of thought, *maṣlaha* gradually turns into utility, *shurā* into parliamentary democracy, *ijmā'* into public opinion; Islam itself become identical with civilization and activity, the norms of nineteenth century social thought. It was, of course, easy in this way to distort if not destroy the precise meaning of Islamic concepts, to lose that which distinguished Islam from other religions and even from non-religious humanism."⁵

In that way, 'Abduh's essential theme was to bridge the gulf between Islam and modern life and he ended in modernizing the forms of education of al-Azhar and the procedures of the *Shari'a* courts. In short, he did not address the question of the

¹ See Muḥammad Rashīd Riḍā, *Tārīkh al-Ustādh al-Imām* (Cairo, 1344 A.H.) pp.197-200.

² *Ibid.*, pp. 390-1.

³ *Ibid.*, pp. 365- 9.

⁴ Cf. *al-Manār*, IV, No.17, pp. 262-5.

⁵ Hourani, *op. cit.*, p.144.

source of political authority in Islamic society. However, there was a significant attempt to examine the nature of Islamic political power which happened in the academic field. It was a doctoral thesis prepared in Paris in 1917 by Ahmed Sakka.¹ In it, he claimed that there was a distinction in Islamic law between sovereignty and power. For sovereignty he used the Arabic word *rubūbiyya* and for power the term *wilāya*. Sovereignty or supreme unlimited power was attributed to God the Master of all people and things. One aspect of His sovereignty was the right to declare what was lawful and what was not. The Qur'ān and its complement the *Sunna* were the expression of God's sovereign will and by them men should be governed. However for the enforcement of these divine laws God had instituted 'general *wilāya*'. In other words, pure sovereignty, Sakka explained, in its full sense was made up of two elements: a will and an implementation of what was willed. It was the latter element which constituted the essence of general *wilāya*. It was wrong to understand general *wilāya* as implying absolute power and consequently make it coincide with the notion of sovereignty. If legitimately exercised, it was undoubtedly limited by its own function which was essentially to maintain social order in the way prescribed by the sovereign will of God. In this way, Islamic political power or general *wilāya* was of a complex character. It was both divine and temporal. Divine because of its origin and temporal for its social function. In conclusion he stressed that within the sphere of human relations, it was therefore not a matter of sovereignty in the absolute sense. The proper legal term was *wilāya*. It was possible to use in a loose way the word sovereignty, but it should be taken to mean *wilāya*.² By those words, Sakka attempted to summarize the uses and misuses of the word sovereignty in an Islamic context before it became a matter of debate in Egypt.

¹ Ahmed Sakka, *De La Souverainete dans Le Droit Puplic Musulman Sunnite* (Paris, 1917).

² *Ibid.*, pp. 19-21.

ii. Crisis Over the Caliphate

The attitude of the Muslims in the Arab world towards the Ottoman Caliphate before the fall was one of recognition and reverence for an office which, in their eyes, was regarded as sacred. However, there were occasions when opposition was spelled out. Such antagonistic trend was fully expounded in two books by a known Syrian, 'Abd al-Rahmān al-Kawākibī(1849-1903).¹ The first book was a strong attack on despotism as the origin of many evils and an obstacle to progress. The second book contained the ideas of an imaginary secret society, which would work to transfer the caliphate to a descendant of Quraysh based in Mecca.² But the caliphate in his scheme was to be of a pure spiritual authority similar to the government of the Church.³ Considering Western influence on his thought, it was not surprising to find his ideas close to those of a contemporary Christian Syrian.⁴

Nonetheless, the events which took place in Turkey and led to the abolition of the Caliphate caused quite a stir in Egypt. Under their impact a wave of intellectual activity was created and a number of essays appeared arguing for or against the caliphate. The drift of support for abolition culminated in the appearance in 1925 of a book entitled *al-Islām wa-Uṣūl al-Hukm* (Islam and the Origins of Government) advocating the complete divorce of Islam and politics. The author was 'Alī 'Abd al-Rāziq, an Azharite who was at that time a judge at a *Shari'a* court. Being one of the '*ulamā'*', 'Alī used Islamic sources and history to defend his views. He, unlike other secularists, did not draw his arguments from Western thought in which the idea of separation of religion and politics was deep rooted. His attempt was the first to defend secularism on religious grounds.

¹ For his life and thought, see Khaldūn al-Ḥuṣary, *Three Reformers* (Beirut, 1966), pp.55-112; Muḥammad 'Amāra (ed.), *al-A'māl al-Kāmila li-'Abd al-Rahmān al-Kāwakibī* (Cairo, 1970), introduction.

² The titles of the books, respectively, are *Ṭabāi' al-Istibdad* (Features of Despotism) and *Umm al-Qurā'*. Anonymous prints of them appeared in Cairo in 1900. New edition are found in 'Amāra, *al-A'māl al-Kāmila*.

³ al-Kāwakibī, *Umm al-Qurā'*, pp. 364-5.

⁴ Najīb 'Azūr similarly advocated an Arab Caliphate with pure spiritual authority. Cf. Enayat, *op. cit.*, p. 57.

The book was received with severe opposition and it aroused considerable agitation. One of its consequences was that it transferred the debate on the Caliphate from Turkey to Egypt. Firstly, 'Alī claimed that the caliphate as a special form of government had nothing to do with Islam and there was no religious obligation to establish it. Any form of government and any kind of authority could serve its purpose whether it was individual, autocratic, democratic or socialistic. He wrote:

"We have no need for this caliphate, neither in the affairs of our religious life, nor in those of our civil life. For the caliphate has always been, and continues to be, a misfortune to Islam and Muslims and the source of evil and corruption."¹

'Alī did not only reject the caliphate but had gone further than that. The core of his thesis was a basic assumption that Islam was purely spiritual religion which had no relation with political authority, functions of government and all other worldly affairs.

He wrote:

"The truth is that this abusive conception of a caliphate imbued with ambition, fear, splendour and force is quite alien to Islam. The caliphate has nothing to do with the divine project, and for that matter neither does the administration of justice and the other functions of government and the state. These are specific political projects with which religion has no concern. Islam has neither recognized, condemned nor forbidden them, leaving us to make up our minds on the bases of reason, the experience of nations and the rules of politics. Similarly religion has nothing to do with the administration of the Muslim armies, civic amenities, or other municipal projects. These are all matters of common sense and experimentation drawing on established ground rules and expert opinion. There is nothing in religion which forbids Muslims to compete with other nations in the social and political sciences. Nothing debars them from overthrowing the decrepit form of organization which has so humiliated them ever since they adopted it. Muslims are free to establish rules of kingship and government fully in keeping with the most recent achievements of the human spirit, and with that which the experience of nations has shown to be the most advantageous in terms of the principles of sound government."²

¹ 'Alī 'Abd al-Rāziq, *al-Islām wa-uṣūl al-Hukm* (Cairo,1925), p.38.

² 'Alī, *op. cit.*, pp.100-3. Extracts translated by Michael Pallis in Anauar Abdel- Malik, *Contemporary Arab Political Thought* (London,1983) p.43.

His attempts to furnish proofs for the disassociation of religion from politics led him to conclusions which his critics found extremely unsatisfactory.¹ Starting from the Prophet he claimed that his apostolic function was purely religious and his leadership was entirely spiritual. He possessed neither kingly rule nor government and he was not charged with the task of founding a kingdom in the political sense.² But what about the Prophet's activities such as judicial, administrative and military actions which could only be described as political? The author simply denied such activities on the ground that the traditions did not reveal to us a clear picture of the judicial system of the Prophet if there was any. In his view, his administrative acts were reported on few occasions and were meant for temporary purposes. Even jihad was not part of his mission but he was forced to wage war.³ His critics found such statements clearly contrary to the facts of history and easily refuted them by quoting the numerous recorded actions of the Prophet which could only be interpreted as political activities.⁴

When he discussed the beginning of the establishment of the caliphate by Abū Bakr, he maintained that it was but a monarchy founded to keep order by the power of the sword. Abū Bakr was thought of as the successor of the Prophet only to save the unity of the Arabs in the face of the revolt against his political authority. This led to the false conception that the caliphate was a religious institution which was emphasized by later kings to make their subjects obey them.⁵ These arguments were strongly opposed. For example, al-Rayyis believed that the proofs provided by the jurists to support the setting up of the caliphate were overlooked by 'Alī. Political theorists had clearly based the caliphate on the evidence of consensus, *ijmā'*. The inconsistency of

¹ Among his early critics was the Mufti of Egypt, Muḥammad Bakhī in his book *Haqīqat al-Islām wa-Uṣūl al-Hukm* (Cairo, 1925). One of the latest books was Muḥammad Ḍiyā' al-Dīn al-Rayyis, *al-Islām wa-al-Khilāfa fi-al-'Aṣr al-Ḥadīth* (Cairo, 1973).

² 'Alī, *op. cit.*, p. 64; C. C. Adams, *Islam and Modernism in Egypt* (London, 1933), p. 264.

³ 'Alī, *op. cit.*, pp. 56, 80.

⁴ See al-Rayyis, *al-Islām wa al-Khilāfa*, pp. 230-50; Muḥammad Fathī 'Uthmān, *Min Uṣūl al-Fikr al-Siyāsī al-Islāmī* (Beirut, 1979) pp. 52-3.

⁵ 'Alī, *op. cit.*, pp. 92-102.

‘Alī, said al-Rayyis, was amazing as he himself had written a book on the authenticity of consensus as a source of jurisprudence and stated in it that the caliphate was based on that origin. Though the consensus was sufficient as an evidence, continued al-Rayyis, the support of the obligation of the caliphate was found in the Qur’ān and the traditions.¹

As for the advocacy of the caliphate and its revival in the modern age it is sufficient for our purposes to consider an important treatise which had appeared shortly after the fall of the Ottoman Caliphate and was written in response to it. The author of the book was Muḥammad Rashīd Riḍā, a leading disciple of ‘Abduh,² and its title was *al-Khilāfa, aw al-Imāma al-‘Uẓmā* (The Caliphate, or the Supreme Imamate).³ The book furnished a vivid example of the stress laid on the role of the community in relation to its ruler which was reflected upon the vigorous attack on despotism prompted by all religious and secular schools of thought at that time. The central position attached to the community was denoted in the book by the expression *sulṭat al-umma* which meant sovereignty of the community. It is our aim here to examine Riḍā’s usage of this expression as an illustration of the connotations assigned to it by the Islamists and draw a comparison between it and the Western concept of sovereignty of the nation.⁴

Riḍā had indicated clearly that he was using the term *sulṭat al-umma*, sovereignty of the community, in the sense applied to it in modern politics.⁵ Then he set out to verify that the Islamic employment of the principle of sovereignty of the

¹ al-Rayyis, *al-Islām wa-al-Khilāfa*, pp.208-10, 214-6.

² Accounts of his life and thought are found in numerous works. See for example Shakīb Arslān, *al-Sayyid Rashīd Riḍā aw Ikhā’ Arba’in Sana* (Damascus,1937) and Kerr, *op. cit.*, pp. 153-208.

³ Cairo,1923. The book was a collection of a series of articles published in the periodical *al-Manār* volumes XXIII and XXIV. A new print was published in Cairo, 1988. The following page references are to the new print.

⁴ For attempts to emphasize the rights of the community in Islam expressed in the principle *sulṭat al-umma* see also ‘Abd al-Razāq al-Sanhoury, *le Califat* (Paris,1926) and ‘Abd al-Wahāb Khallāf, *al-Siyāsa al-Shar’iyya* (Cairo,1350 A.H., reprinted 1987), . Sanhoury claimed in his thesis that Islam had known the doctrine of sovereignty of the people before Rousseau had formulated it in his Social Contract.

⁵ Muḥammad Rashīd Riḍā, *Tafsīr al-Qur’ān* (Cairo,1328),V,p.183.

community surpassed its modern application in the West. His views are best summarised in the following extract from his introduction to his book *al-Khilāfa*:

"Islam is a spiritual guidance as well as a social and a civil system. As for the latter, Islam has founded its basis and fundamentals and entitled the Muslim community to make its own judgements and *ijtihād* concerning its detail since these change with times and places and develop with advancements in civilization and in scientific disciplines. Among these fundamentals is that the community possesses sovereignty, its affairs are decided through consultation *shūrā*, its government is like a republic and its ruler, who is in place of its Prophet, is only an executive enforcing the *Shari'a* laws and the community opinion without himself being above the law but equal to any other subject. Moreover the government is administering religious affairs and temporal interests, combining moral virtues and material benefits and pursuing the universalization of human brotherhood by uniting the different nations inwardly and outwardly. But, when the Muslims became weak they failed to attain these fundamentals and to practice these ideals. Had they established them they would have set up applications of them suitable for the requirements of any age."¹

His arguments for the sovereignty of the community were drawn heavily from Islamic sources and history. He based his conviction on three grounds, the idea of *shūrā* (consultation), the doctrine of *ijmā'* (consensus) and the concept of *ulū al-amr* (possessors of the right of command) concluding that these Islamic principles clearly indicated that sovereignty belonged to the community. As for *shūrā* he stressed its importance as a base of Islamic government. The Qur'an directed the Prophet, in place of him the ruler, to consult the community in general affairs. More significant the community itself was described as taking heed of *shūrā* in their decision making process. As such the *shūrā* became a foundation of rule and Riḍā showed how it was exercised during the era of the Prophet and the Rāshidūn by quoting numerous historical incidents. When the Ummayyads took over power they abolished *shūrā* and established their dominion over the community by force. Since then the Muslim rulers assigned to themselves autocratic power so much so that Islam was mistakenly considered to approve of despotism. The truth of the matter was that the corruption of the caliphate was essentially a result of its deviation from Islamic principles such as

¹ Riḍā, *al-Khilāfa*, p.9.

shūrā.¹ The other mark of the authority of the community, Riḍā maintained, was the binding nature of a decision reached through consensus. He quoted in this respect the assertion of the Prophet that all the members of the community would not be completely unanimous in an error of judgement. Following al-Ṭabarī, he defined the term *jamā'a* (community) as to be identical to a body politic. If the people reached an agreement to choose a ruler and be under his single government, they would thereupon form a *jamā'a* whose decision would be enforced on all. Such obligatory nature of a political resolution was a vivid aspect of the sovereignty of the community.²

As for the concept of *ūlū al-amr* (holders of the right of command) he paid more attention to it and dwelt on it in demonstrating his idea of sovereignty. The Qur'ān had evidently stated that obedience should be rendered to God, his Messenger and *ūlū al-amr*.³ In answer to the question who were *ūlū al-amr*, Riḍā, accepted al-Rāzī's view that they were *ahl al-'aqd wa-al-ḥall* (the people who bind and loose) to whom was attributed the power of election and deposition of the ruler, consultation in governmental decisions, and definition of the law. He further supported this view by quoting another occurrence of *ūlū al-amr* in the Qur'ān which reads: "when they hear any rumour about safety or fear they at once spread it; whereas if they reported it to the Messenger and to *ūlū al-amr* they would properly investigate it."⁴ To him, this was a clear indication that *ūlū al-amr* were those whose authority included the determination of strategic issues of war and peace. Besides, Riḍā once more referred to al-Rāzī who explicitly mentioned that sovereignty or right of leadership *haqq al-ri'āsa* belonged to the community (*umma*) represented by *ahl al-'aqd wa-al-ḥall*.⁵ An important mark of the authority of *ahl al-'aqd wa-al-ḥall* in Riḍā's view was their competence to derive the law. He denoted this ability to deduce or make the law by the term *ishtrā'*

¹ *Ibid.*, pp.21, 39-41, 51-5; *Idem.*, *Tafsir*, IV, pp. 198-205, V, pp. 195-8.

² Riḍā, *al-Khilāfa*, pp. 21-2.

³ The Qur'ān 4:58.

⁴ The Qur'ān 4:83.

⁵ *Ibid.*, p. 22; Riḍā, *Tafsir*, V, pp.180-6.

meaning by it legislation in its modern sense which he saw as identical to the traditional words *ijtihād* and *istinbāt* (inference). Legislation in Islam, he argued, was not only based on Qur'ānic and Prophetic text (*naṣṣ*) but also on public interest (*maṣlaḥa*); and was not only confined to religious aspects (*'ibādāt*) but also comprised civil, criminal, administrative and army rules (*mu'āmalāt*). As the Qur'ānic and Prophetic text was limited there was a wide area of permissibility for man made laws based on utility which were changeable and adaptable to the times. This legislative authority, he concluded, belonged to the community (*umma*) represented in *ahl al-'aqd wa-al-ḥall*.¹ The assumption of legislative power by the community, he maintained, was not in contradiction to the principle that God was the sole legislator to whom alone judgement belonged which formed a cardinal constituent part of the belief in the oneness of godship (*tawḥīd al-rubūbiyya*). The right of the community to legislate was legitimate because God himself had permitted it.²

There remained an important question, namely who specifically were *ahl al-'aqd wa-al-ḥall*. Riḍā, in his attempt to answer, cited first the early definition that they were composed of the *'ulamā'*, the chiefs and the notables who, by virtue of their rank, were influential, and could easily affect the rest of the community to follow them. Then he embarked on a historical review to identify them in the early period of Islam. During the time of the Prophet and the Rāshidūn they were easily distinguished for their prominence and association with the Prophet and were normally situated in Medina. The Ummayyads depended on tribal solidarity (*'ṣabiyya*) and made the consultation of *ahl al-'aqd wa-al-ḥall*, inoperative. Thus, the *shūrā* system was not given the chance to develop and institutionalize. As for the identification of *ahl al-'aqd wa-al-ḥall* in the modern age it would be possible, according to him, to adopt the present day method of election. But he insisted that election should be free so as to be

¹ Riḍā, *al-Khilāfa*, pp. 101-8

² Riḍā, *Tafsīr*, V, pp. 87-8.

Islamically accepted.¹ The elected body would have the powers of election and deposition of the executive, supervision over its action, and legislation. In many ways it would be identical to a modern legislative assembly.² Though there were similarities between the Islamic and European applications of the principle of sovereignty of the community, there were also vital distinctions. In the first place, the Muslim community was not above the *Shari'a* law and therefore it was not free to legislate anything not in accordance with it.³ Riḍā laid the blame for the Muslim's loss of unity, independence, and cultural identity on their adoption of foreign laws without any modifications. As the rules of grammar of any language would not be used to govern the structure of another language, foreign laws would not be suitable to rule any society unless they were adapted to its beliefs and needs.⁴ On the other hand, the sovereignty of the Muslim community was not based on nationalism. Riḍā argued strongly against Ibn Khaldūn's idea that the caliphate was founded on national group feeling (*'aṣbiyya*) since Islam was against racism.⁵ Pursuing the same point, he attacked the national trend in Turkey towards Turkeyism. The Turks had associated their concept of popular sovereignty (*al-ḥākimiyya al-milliyya*) with nationalism and secularism, and for this reason he was totally opposed to it. From this it may appear that Riḍā conceived sovereignty of the community to be different from its European formula adopted in Turkey.⁶

iii. The Muslims Brotherhood

The next phase in the history of the idea of sovereignty in Egypt was dominated by the contribution of the movement of the Muslim Brothers,

¹ *Ibid.*, pp. 195-201.

² *Ibid.*, p. 187.

³ *Ibid.*, p. 189.

⁴ Riḍā, *al-Khilāfa*, pp. 1-2.

⁵ *Ibid.*, p. 149.

⁶ *Ibid.*, pp. 152-4.

al- Ikhwān al-Muslimūn, founded by Ḥasan al-Banna (1906-1949) in 1928.¹ The emergence of the movement came about under the impact of a combination of circumstances. Among these, as stated by al-Banna, were the liberal trends in cultural life with orientations towards apostacy and materialism and attacks on tradition, the forceful voices of westernized feminist movement, the forces favouring secularism which culminated in the support to the abolition of the Caliphate and the corruption and disunity of political parties and their failure to confront the Western powers and bring about real independence and reform.² The battle-cry of Rashīd Riḍā to establish a moderate party to achieve Islamic reform³ was embodied by al-Banna in his tight organized movement which spread quickly into other Arab countries and beyond.

Since the Muslim brothers understood Islam as a comprehensive way of life and aimed to bring about its supervision over all individual and collective affairs, the establishment of an Islamic state was at the top of their objectives. As was hinted before, secularism was now clearly conceived as a grave threat engulfing the whole Muslim life and the struggle against it moved into the centre. The appeal for an Islamic state required a discussion of political principles including the question of sovereignty and the Muslim Brothers made a considerable contribution in this regard. To begin with, Ḥasan al-Banna, the founder of the movement, asserted a similar version of the ideas of Rashīd Riḍā about the sovereignty of the community *sulṭat al-umma*. In a number of his pamphlets he stated that Islam acknowledged the modern constitutional principle known as *sulṭat al-umma*. At one place he wrote:

"Islam has established sovereignty of the community and emphasized it. It directed every Muslim to supervise fully the actions of his government by providing it with counsel and assistance and by bringing it to account. While it has instructed the ruler to fulfil the interests of the ruled by means of instituting good and eradicating evil,

¹ Accounts of the history and ideas of the movement are found in Ishāq Mūsā al-Ḥusaynī, *The Muslim Brethren* (Beirut, 1956), Ra'ūf Shalabī, *al-Shaykh Ḥasan al-Banna wa-madrasatuh al-Ikhwān al-Muslimun* (Cairo, 1978), Richard P. Mitchell, *The Society of Muslim Brothers* (London, 1969).

² Enayat, *op. cit.*, p.84; Shalabī, *op. cit.*, pp.133-9.

³ Riḍā, *al-Khilāfa*, pp.69-77.

it has also ordered the ruler to render obedience to the ruler as long as he carries out that function. If he becomes corrupt it is their duty to put him right, ensure that he abides by the law and bring him back to follow the course of justice."¹

Speaking generally about constitutional principles in another place he stated:

"The principles of constitutional rule, which could be summarized in maintaining individual freedoms, consultation and locating sovereignty with the community, responsibility of the rulers to the people and their accountability to the public for their actions and definition of the prerogatives of state powers - these principles, if thoroughly studied, will be found to be identical with teachings of Islam and its basis and regulations of its ruling system."²

In a separate book under the title *Nizām al-Hukm* (System of Government) he clarified in more detail what he conceived to be the basis of an Islamic state. The whole framework of government, in Islam, he explained, was founded on a set of established rules. These essentially include the responsibility of the ruler to the people, unity of the community and respect for its will. As for the responsibility of the ruler, Islam had surpassed the theory of social contract by stating that the origin of the authority of the ruler was a contract between him and the community. According to this contract, the community hired the ruler to work for its interests and therefore he was responsible and accountable to them.³ In applying this principle to the constitutional system of Egypt at that time, he observed that it was full of obscurities in this regard. He demanded the formation of a responsible cabinet with clear-cut limits of powers and responsibility either attached directly to the head of state, the King, or a prime minister.⁴ Pursuing the second rule, the unity of the nation, he required the dissolution of all political parties in Egypt which he claimed produced nothing but antagonism and corruption.⁵ In application of the third rule, the superiority of the will of the community, he approved the adoption of parliamentary system in general but asked for basic reforms. As an alternative to political parties, independent candidates

¹ Hasan al-Banna, *Fī Mu'tamar Ṭalabat al-Ikhwān al-Muslimīn*, in *Majmū'at al-Rasā'il* (Beirut, 1981), pp.160-1.

² al-Banna, *Risālat al-Mu'tamar al-Khāmis*, in *Majmū'at al-Rasā'il*, p.138.

³ al-Banna, *Nizām al-Hukm*, in *Majmū'at al-Rasā'il*, pp.318.

⁴ *Ibid.*, pp. 322- 4.

⁵ *Ibid.*, pp.325-7.

should only be allowed to compete in the elections. These candidates should possess high qualities well-defined by law and have clear programmes. A strict code of conduct should be prescribed to govern election campaign and propaganda, prohibit bribing voters and lay severe punishment for counterfeiting.¹ If these and similar reforms were brought about, the election system would yield a real representation of the will of the community.

However, after Ḥasan al-Banna there was a gradual shift in the views of the Muslim Brothers. Undoubtedly, al-Banna himself in demanding an Islamic state had vigorously opposed the adoption of secular laws in place of the *Sharī'a*. He regarded them as contrary to Islam and to the Egyptian constitution which stated that Islam was the state established religion. Their infliction upon the Muslims was creating a serious conflict as they were torn between obeying them or obeying God.² But, he did not denote the obligation to derive all laws from the *Sharī'a* by any specific expression such as *ḥākimiyya* which later came to be invariably used by his followers, nor did he mention that sovereignty belonged to God.

The change in the ideas of the Muslim Brothers took place in stages. The mixed ideas expressed at one stage were exemplified in a book of one of the leading members of the movement. 'Abd al-Gādir 'Awda in his booklet *al-Islām wa-āwdā'unā al-Siyāsiyya* (Islam and the Political Conditions)³ was in agreement with Rashīd Riḍā's belief in sovereignty of the community and had cited his arguments in full.⁴ Also he supported this view by a chapter on *shūrā* in which he claimed that it was one of the fundamentals of Islam and that it was obligatory on the Muslims to depose any ruler who did not apply it.⁵ Besides he placed great emphasis on the necessity to implement the Islamic laws of the *Sharī'a* and reject any legislation in

¹ *Ibid.*, pp. 328-30.

² Banna, *Risālat al-Mu'tamar al-Khāmis*, in *Majmū'at al-Rasā'il*, pp.139-40.

³ The following page reference are to the 7th.ed. (Bairut,1986).

⁴ Cf. 'Awda, *op. cit.*, pp. 211-3.

⁵ *Ibid.*, pp.193-5.

contradiction with it. The demand for the enforcement of the *Shari'a* laws and the abolishment of man-made laws was not new. But, 'Awda took a different approach to the problem. He raised the question who possessed *hukm* (authority to judge)? Within the context of arguing for the adoption of the *Shari'a* laws his natural answer was that *hukm* (authority to judge) belonged to God and man was made his vicegerent (*khalifa*) on earth to follow and enforce His judgements. He said in his answer to the above question:

"The answer to this question is not difficult since we have known that God is the Creator of the universe and the Owner of it. He caused mankind to thrive on earth, made them his vicegerents and instructed them to follow his guidance and defer to the will of none beside him. In the light of this fact, anyone with reasonable thinking can only say that authority to judge belonged to God and that he was ruler (*hakim*) over the universe since he was its creator and owner. Mankind has to subject itself to His revealed judgements and govern in accordance to them. This is because they were made vicegerents on earth. Therefore, on the one hand their vicegerency was conditional on following God's guidance, and on the other hand being a vicegerent necessitates that one should not violate the order of the one who appoints him. In fact, God has already made what was revealed to his Prophet a compulsory legal code and prescribed that we should follow and abide by its rules. He has forbidden us to subject ourselves to man-made laws."¹

Now, apparently 'Awda was contradicting himself by stating that authority to judge belonged to God and at the same time holding that the community was the source of sovereignty. He offered two propositions in order to remove any ambiguities. First, he claimed that all mankind were vested with general vicegerency to God which could only be exercised in full when a community was formed and a government above the community was established to enforce the laws of God. This government was a delegation of the community since it was chosen, supervised and directed by the consultation (*shura*) of the members of the community. Though the Islamic government was named a caliphate which indicated vigerency, its vigerency was not direct from God. The caliph was a deputy of the community which God vested with

¹ Ibid.,pp.67-9.

direct vicegerency while God himself held real authority.¹ Second, he drew a comparison between Islam and democracy to show how the principle of sovereignty of the community operated in a Muslim context. The similarities between the two systems comprised many aspects such as election of rulers by representatives of the community, foundation of government on justice and equality, and permission of freedoms. However, the big difference between them lay in the fact that Islam had limited the authority of both the ruled and the rulers. Definitions and standards of justice, equality and freedom were prescribed by Islam and were not left to men to determine. While in democracy men possessed absolute right to make their own norms and values.²

'Awda's analysis of the relation between man and God and his stress that *ḥukm* was only God's, was later given a greater force and became the dominant current thought within the Muslim Brothers since the sixties. In this stage two important developments took place. First, the word *ḥākimiyya*, an Arabic word derived from *ḥukm* which was rich and powerful in connotations deeply rooted in the Muslim mind, began to be used and equated with the modern sense of sovereignty. Second, it was argued that sovereignty, *ḥākimiyya*, was exclusively an attribute of the Divinity and that whoever rejected this divine quality or rendered it ineffectual in reality would negate his claim to be a Muslim. This shift, which was indeed a culmination of the vigorous refutation of secularism, was mainly brought about by the avidly and massively read writings of Sayyid Qutb whose career as an Islamic ideologue began when he joined the Muslim Brothers in 1952. He wrote almost all of his important works in prison due to Nāṣir's suppression of the movement and eventually he was sentenced to death in 1966.³ The Shock of his death, viewed as martyrdom, inspired more vigour and spirit in his words and ideas.

¹ *Ibid.*, pp.97-9.

² *Ibid.*, pp.103-4.

³ The life, works and ideas of Qutb are accounted in Maḥdī Faḍl al-Allāh, *Ma'a-Sayyid Qutb fi-fikrih al-Siyāsi wa-al-Dīni* (Beirut,1987); Yūsuf al-'Aẓm, *Rā'id al-Fikr al-Islāmī al-Mu'aṣir al-*

Quṭb made an intensive explanation of his concept of *ḥākimiyya* especially in his later works. The following extract from his voluminous commentary on the Qur'ān may briefly introduce his views. He said:

"Hukm, authority to judge, belongs to no other than God. It is only his by virtue of his godship since *ḥākimiyya* (judgeship or sovereignty) is a characteristic of the Divinity. Therefore, whoever claims to possess it will in fact be denying God one of his fundamental divine rights. This is true whether the possession of this right is claimed to belong to an individual, a class, a party, an assembly, a nation or even all mankind represented in one international organization. Now, the truth of the matter is that denying God this fundamental right and claiming its possession is clear apostacy beyond any doubt. The undue assumption of this right, which will result in giving up faith in the true religion and the denial of a fundamental divine quality, does not necessarily take one form. It must not necessarily be by saying, as Pharaoh openly said, 'you have no other god that I know except myself' or 'I am your supreme Lord'. The claim to this right and its dissociation from God can merely be by dislodging divine law from sovereignty (*ḥākimiyya*) and deriving law from other source. It can merely be by declaring that the seat of sovereignty (*ḥākimiyya*), that is the source of powers, is any other than God whether it be the whole nation or all mankind."¹

Apparently, Quṭb used the word *ḥākimiyya*, as in the above quotation, to mean the source of legislation, that is to say, the supreme power that possessed the right to make laws which would determine the various systems of the society and its form of government.² But Quṭb did not confine the concept of sovereignty, *ḥākimiyya*, to the narrow legal sense. He explained it in a wider sense as the source of beliefs, concepts, morals, values, culture and knowledge beside laws and governmental rules.³ It is to be recalled that the word *ḥākimiyya* was already in use, especially in Turkish, to mean sovereignty and some reference to it in the same sense was to be found in some modern Arabic sources.⁴ But there is no evidence to show

Shahīd Sayyid Quṭb (Damascus, 1980); Ṣalāḥ al-Khāldī, *Sayyid Quṭb al-Shahīd al-Ḥayy* (Amman, 1981)

¹ Sayyid Quṭb, *Fi Zilāl al-Qur'ān*, 7th.ed. (Beirut, 1971), VII, p.725 (comments on verse 12:40)

² Cf. Sayyid Quṭb, *Muqawimāt al-Taṣawwur al-Islāmī* (Cairo, 1986), p.133.

³ Cf. Sayyid Quṭb, *Ma'ālim fi-al-Tariq* (Cairo, nd), pp.123-4.

⁴ Cf. Rashīd Riḍā, *al-Khilāfa*, p.153.

that Quṭb was borrowing the usage of the word from these origins. In fact, when he was asked, during his trial to explain the meaning of the word *ḥākimiyya* and its origin, he replied that he meant by it the source of legislation and claimed that he coined the word from his studies of Islam.¹ However it was evident, as he also admitted, that his concept of *ḥākimiyya* was influenced if not directly adopted from, the ideas of the contemporary Pakistani thinker al-Mawdūdī which we shall review later.²

Quṭb asserted that *ḥākimiyya* was a divine quality which should be associated with none but God. This was not, he affirmed, his own subjective opinion or the suggestion of any other. It was what the Qur'ānic text had literally said. There were clear statements, in the Qur'ān that God was not only sovereign over the universe and heaven but also over human affairs and their system of life.³ To support his argument he depended on many citations from the Qur'ān. We shall suffice ourselves with the following quotations as examples.

(1) "His is the creation, His the command."⁴

(2) "The authority to judge is for none but God, He ordered that you worship none but Him."⁵

(3) "Have they partners who have made lawful to them in the system of life what God has not allowed."⁶

(4) "They take their rabbis and monks as Lords beside God."⁷

¹ Sāmī Jawhar, *al-Mawṭā yatakallmūn* (Cairo, 1977), p.135 quoted in Ṣalāḥ al-Khālidī, *Fi Zilāl al-Qur'an fi-al-Mizān* (Jeddah, 1986), p.185.

² *Ibid.*, p.135.

³ Quṭb, *Muqawimāt*, p.147.

⁴ The Qur'ān 7:54; cf. Quṭb, *Fi Zilāl al-Qur'ān*, III, pp.524-6.

⁵ The Qur'ān 9:40; cf. *Ibid.*, IV, pp.725-7.

⁶ The Qur'ān 42:21; cf. *Ibid.*, VII, p.281.

⁷ The Qur'ān 9:31. This was a reference to the Jews and Christians who followed their leaders in legislating what was contrary to the laws of God. Cf. *Ibid.*, IV, pp.202-5.

(5) "Have you not considered those who though claiming that they believe in the revelations that have come to you and to others before you, yet they seek the judgement of a false god despite having been ordered to reject him."¹

(6) "Those who do not judge in accordance with God's revelations are 'unbelievers', 'transgressors' and 'wrong-doers'."²

We can now attempt to summarise briefly his arguments drawn from the above verses. As God was the creator of the universe and there was no partner beside him in its creation, He ought to be the only one entitled to possess the command in determining its affairs including the way of life of man which was but a part of the universal system. Since there was no one who partnered God in the creation, there should be no partnership with Him in legislation for mankind, that is to say, in sovereignty. In fact, no one possessed the knowledge and qualification to make laws except God. Therefore, it was not only a great mischief to associate sovereignty to a human being, but also a form of polytheism. The Qur'ān was very clear with respect to this point. Anyone who submitted to man-made laws was described as a polythesist even though he believed in God and rendered Him other religious forms of worship. The Jews and Christians took their rabbis and priests as Lords in the religious and political sense of the word "lord". By following their legislation which was not in accordance with God's laws, they were actually worshiping them though they never attributed to them godship over the universe. Likewise, if Muslims enforced man-made laws or accepted their implementation they ceased to be Muslims. Having said all this, it will not be difficult to understand the following far-reaching conclusions which probably were the main cause for him being put to death.

"Whenever the supreme sovereignty in any society is associated with God alone as depicted in the supremacy of His divine *Shari'a*, this will be the only state in which man gains real and complete freedom from servitude to human whims and slavery to other men. This will be the only form of Islamic civilization in God's judgement. Since the

¹ The Qur'ān 4:59; cf. *Ibid.*, II, pp.421-2.

² The Qur'ān 5:44,45,47; cf. *Ibid.*, pp.724-53.

civilization which God designed for a mankind is founded on respect and liberty of every individual, as a basic rule, respect and liberty is never attained when there is servitude of a man to man. There is no liberty and respect in a society in which some men become lords entitled to legislate and hold the right of supreme sovereignty and the others became slaves submissive and obedient to these lords. Legislation is not only confined to legal judgements since values, standard, morals and customs are all parts of legislations to which men are subjected with or without awareness. If the previous conditions prevail in any society it is to be considered as reactionary and backward, or, in Islamic terminology, as polytheistic and part of *jāhiliyya*.¹

Jāhiliyya is a state and a condition and not a temporal historical period. Today, it is prevailing all over the world among the people of all creeds, ideologies, systems and practices. It is based primarily on the principles of sovereignty of human beings over each other and the rejection of the absolute sovereignty of God over men. In it human inclinations in all shapes essentially made an arbitrary god and God's revealed code is denied legal application. It may take different forms and appearances, show different signs and features, have different names and qualities or establish different sects and systems. Yet, it always stems from its distinctive principle which defines its nature and reality.

Mankind is divided into various *jāhiliyya* societies.

There is the atheistic society which originally denies the existence of God. The case of these atheists may be self-evident and needs no further explanation.

There is the pagan society which recognizes the existence of God but partnered with him many false gods and lords as is the case in India, Central Africa and various other parts of the world.

Also, as a *jāhili* society there is the *ahl al-kitāb*, the Jews and the Christians. In the past these people attributed associates to God by relating a son to him and by taking their rabbis and monks as lords beside God since they accepted their claim for sovereign rights and followed their canons even though they did not make prayers to them. At present they have driven completely the sovereignty of God out of their life and established for themselves systems such as the so-called capitalism and socialism and forms of government such as democracy and dictatorship. In that way they departed from the principle laid in God's religion and adopted a *jāhiliyya* similar to that of the Greeks and the Romans by manufacturing systems and ways of life according to their opinion.

Likewise, the society that claims itself to be Muslim is in fact a *jāhiliyya* one. It adopts the above method of the *ahl al-kitāb* and follows in the footsteps of them by deserting God's religion for a man-man religion."²

There remains an important question to be sorted out before we conclude our discussion of Quṭb's ideas. What is the role of the community in a scheme over which divine sovereignty is dominant? It seemed that Quṭb was fully aware of the question.

¹ *Jāhiliyya*, derived from *jahl* (ignorance) is originally the name of the pre-Islamic period.

² Quṭb, *Fi Zilāl al Qur' ān*, III, pp.461-3 (comments on verse 7:2.).

However, he did not appear to have attempted an elaborate answer to it. There is no doubt that he recognized the function of the community in the Islamic political system and asserted its rights of consultation (*shūrā*) and legislation within the limits of the revealed law.¹ In one of his early books he insisted that the ruler in Islam received his authority from one source: "the will of the ruled".² To reconcile the role of the community with divine sovereignty he offered the following brief interpretation:

"The community in the Islamic system chooses the ruler and by that it ascribes him the legitimacy to exercise the authority of enforcing the laws of God. But it is not the source of sovereignty which lends legitimacy to the law. The source of sovereignty is God only. Many, even Muslim reseachers, seem to confuse the exercise of authority with the source of it. Mankind in its totality does not possess the right of sovereignty. It is God who is entitled to it. But men exercise the authority of application of what God legislated by virtue of his sovereignty."³

iv. Criticisms

The ideas of Quṭb aroused much controvesy especially after the appearance in the seventies of a group of extremists who in many ways resembled the thought of the early Kharijites and who claimed to be influenced by Quṭb. One of the main doctrines of the Kharijites was that the authority to judge belonged to God alone and anyone who did not act according to God's command should be excommunicated. A similar ideology nourished among some Muslim Brothers in prison under the pressures of the tortures which they suffered. Quṭb's concept of *ḥākimmiyya* became their basic dogma leading them to excommunicate all Muslims who were not members of their society.⁴ One of the earliest books which attempted to refute these new tendencies was written in prison by the leader of the Muslim Brothers at that time, Ḥasan al-Huḍaybī, under the title *Du'āh, Lā Quḍāh* (Preachers, not Judges) and published in 1969. Its

¹ For *shūrā* see his comments on verses 3:159 and 42:38 in *al-Zilāl*, II, pp.118-22, VII, pp.299-300. For legislation see for examples his remarks on verse 42:21 in *al-Zilāl*, VII, p.281.

² Sayyid Quṭb, *Ma'rakat al-Islām wa-al-Ra' simāliyya*, 4th ed.(Jeddah,1969), p. 73.

³ Quṭb, *Fi Zilāl al Qur'ān*, IV, pp. 725-6 (remarks on verse 9:40).

⁴ A good discussion of these tendencies is found in Sālim 'Alī Bahnasāwī, *al-Hukm wa qadiyyat takfir al-Muslim* (Cairo, 1977). See also Gillies Kepal, *The Prophet and Pharaoh: Muslim Extremism in Egypt*. Trans. by Jon Rothschild (London, 1985).

main theme was to show the conditions under which it could be permitted to excommunicate a Muslim and to clarify the ambiguities surrounded the concept of the *ḥākimiyya* (sovereignty) of God. He was not in favour of the use of the word *ḥākimiyya*, let alone attributing it to God, on the ground that it was not found in the Qur'ān and the traditions. Though he admitted that it could be possible for Muslims thinkers to coin a word to express a certain Qur'ānic or prophetic concept, yet he warned against the misunderstandings that could arise if the original meanings in the Qur'ān and the traditions for which the term was derived were forgotten. He wrote:

"There are some who establish their belief on a term which is not found in any text of the Book of God or the traditions of the Prophet, a word which is invented by fallible human being who are bound to fall into error and delusion. Moreover, their judgement of what has been said may be premature and distorted."¹

To dissolve the ambiguities attached to the term *ḥākimiyya* Huḍaybi made an analysis of the term endeavouring to limit its ruinous consequences which were the causes for the appearance of extremism. From his discussion it was clear that he was in agreement with Quṭb's main thesis that sovereignty belonged to God. Only, he rejected its misinterpretations.² Such a line of thought was nearly followed in most criticisms and defences of Quṭb which were written afterwards. His ideas were generally accepted though it was admitted that they contained some ambiguities which could lead to disastrous misunderstandings.³

Of greater importance than criticisms of Quṭb were the objections made against the introduction of the concept of sovereignty into Islamic thought. Such objections were first raised by a constitutional lawyer, 'Abd al-Ḥamīd Mutawālī, in his book on the system of government in Islam. He was convinced that the early Muslim scholars did not attempt to formulate any theory of sovereignty. It had only been recently that some Muslim thinkers had raised the question of sovereignty in Islam under direct

¹ Ḥasan Ismā'il al-Huḍaybī, *Du'āh, Lā Qudāh* (Kuwait, 1985), pp.83-4.

² *Ibid.*, pp.89-106.

³ See Bahnasāwī, *op. cit.*, pp.245-77; al-'Azam, *op. cit.*, pp.229-85; Kahāldī, *op. cit.*, pp.172-85.

influence from the West and claimed that it belonged to God or to the community. In his view, the introduction of such a problem into the sphere of Islam was wrong for two reasons. First, Western theories of sovereignty had appeared under certain circumstances which did not apply to Islam such as the fight between religious and temporal authorities or the struggle against monarchical absolutism. Second, Western theories of sovereignty proved to be not only artificial and invalid but also dangerous as they paved the way for despotism.¹

These opinions of Mutawālī were developed in a separate monograph concerned with the study of authority in an Islamic state compared with Western theories of sovereignty.² The author, like Mutawālī, followed in the footsteps of the French thought of the early twentieth century which rejected the theories of sovereignty on the grounds that they were outdated. Since sovereignty, as a term and a concept, was anchored to the historical circumstances in which it appeared, it was not proper to use it to express Islamic ideas. The Islamic concept of public authority, he claimed, was unique and distinctive. To show its distinction he made a detailed contrast between it and modern theories of sovereignty. He arrived at the conclusion that Islam had succeeded in resolving the problem of authority while the West had failed. Theories of sovereignty did not provide any sound interpretation of why one human will should be entitled to supremacy over other human wills. Moreover, such supremacy was demanded by these theories to be absolute and in no way bound by restrictions. As there were no effective means of limiting sovereignty, it mostly led to despotic rule by an individual or a minority over the majority. Islamic public authority was different. It derived its legitimacy from the will of God and that was the basis for why it should be obeyed. In its nature it was limited since it should operate within the

¹ 'Abd al-Ḥamīd Mutawālī, *Mabādi' Niẓām al-Ḥukm fī-al-Islām* (Cairo, 1966), pp. 551-88.

² The book is Fathī 'Abd al-Karīm, *al-Dawla wa-al-Siyyāda fī-al-Fiqh al-Islāmī* (State and Sovereignty in Islamic Law), 2nd. ed.(Cairo, 1984).

boundaries of the laws of God. There were also practical ways to check the power of the government such as public supervision over it and *shūrā*.

It should be clear that such objections against the introduction of sovereignty into Islamic thinking were dependent on the controversial assumption of its invalidity. They did not take into account the recent history of the theory and the attempts to restate it. Moreover, they used the term public authority to denote Islamic rulership while they admitted that sovereignty was defined to mean public authority. In the light of this, they appear to be playing with words when they rejected the usage of sovereignty to express Islamic ideas.

Chapter 6

IDEAS IN THE INDIAN SUB-CONTINENT

I. Modern Developments

i. Early Attitudes to Western Rule

When the British came to India in the seventeenth century and began to gain a footing, the dominant type of Muslim rule was the sultanate. The Mughul government, to all intents and purposes, was a traditional monarchy with absolute powers limited only by the supremacy of the *Shari'a* laws.¹ However, political ideas were reconstructed by the writings of Shāh Walī al-Allāh of Delhi, an eminent reformer of the late Mughul era who had a great impact on all subsequent developments of Muslim thought in the subcontinent.² In his view one of the main factors of the decline of the Muslims was the corruption of their political power as a result of the transformation of the caliphate system into kingship. He made a masterly analysis of the effects of the adoption of monarchical rule and outlined the basic principles of the system of the caliphate as the best type of Islamic government.³ The aim of his reform was essentially to initiate a movement among the Muslims of India to establish a refurbished state power. Thus he laid the intellectual foundation of the struggle for an Islamic state which became a dominant feature of the subcontinent up to the present time. Also, we shall see that this struggle was a major factor in shaping ideas about sovereignty.

As for Western ideas, India came into contact with them as early as the establishment of the dominion of the East India Company. The British were a powerful

¹ See Ishtiaq Husain Qureshi, *The Administration of the Sultanate of Delhi* (Lahore, 1942); *idem*, "India under the Mughuls", in P. M. Holt, ed., *The Cambridge History of Islam* (Cambridge, 1970), II, pp. 35-62.

² For his life see Rizvi Saiyid Athar Abbas, *Shāh Walī al- Allāh and his times* (Canberra, 1980).

³ His political thought is exposed mainly in two works in Arabic: *Izālat al-Khafā' 'an Khilāfat al-Khulafā'* (Luknow, n.d.); *Hujjat Allāh al-Bāligha* (Lahore, n.d.).

representative of Western culture and their growing influence in the country was a great challenge to the Muslims. When the Mughul ruler fell under the control of the British in 1803, Shāh 'Abd al-'Azīz, a son of Shāh Walī al-Allāh who inherited his ideals and mission, declared that India had become an un-Islamic territory, *dār ḥarb*.¹

The *fatwā* described the situation as follows:

"...In this city the *Imām al-Muslimīn* wields no authority, while the decrees of the Christian leaders are obeyed... Promulgation of the commands of *kufr* means that in the matter of administration and the control of the people, the levy of land taxes, tribute tolls, and customs, in the settlement of disputes, in the punishment of offences, the *kāfirs* act according to their discretion. There are, indeed, certain Islamic rituals - as, eg., Friday and 'Īd prayers, *adhān*, and cow slaughter - with which they do not interfere. But that is of no account."²

The implication of this *fatwā* from the point of view of sovereignty was significant. It was a legal judgement that a territory would not be regarded as Islamic if political power over it was exercised according to non-Muslim ways and laws. Therefore, it was obligatory for the Muslims to wage war, *jihād*, to overthrow it and establish Islamic rule. Consequently, a wide movement of *jihād* was organized by the followers of Shāh 'Abd al-'Azīz chiefly under the leadership of Sayyid Aḥmad Barelwi. The great development of the movement was its success in forming an Islamic state in north west India in accordance with the system of the caliphate as outlined by Shāh Walī al-Allāh and its leader assumed the title of Imam in 1826. Soon after, the movement was crushed as its leaders were killed in the battlefield;³ yet it became a vivid example that provided inspiration for all future struggle for an Islamic rule.

Meanwhile in eastern Bengal a similar activity of *jihād* was in operation during the first half of the nineteenth century which came to be known as the Farā'īdi

¹ S. A. A. Rizvi, "The Breakdown of Traditional Society", in Holt, ed., *The Cambridge History of Islam*, II, p.73.

² Quoted in Mujeeb ashraf, *Muslim attitudes towards British rule and Western Culture in India* (Delhi, 1982), p.122.

³ *Ibid.*, pp. 73-5. The history of the movement is recorded in many books in English, Urdu and Arabic. See for example Abū al-Hasan al-Nadawī, *Izā Habat Rih al-Imān* (Kuwait, 1974). The British view is best represented in W.W. Hunter, *The Indian Mussalmans* (London, 1871).

movement.¹ Successive uprisings were organized but all ended in failure.² However, the resistance to British rule culminated in the revolt of 1857 in which the Muslims took an active role with the aim of restoring Islamic government.³ Again, the uprising was quickly suppressed and India came under direct British Crown control for almost a century. By the ascendancy of the British over India Western ideas, laws, and institutions became deeply rooted. The British Parliament in London acquired real sovereignty over the country and Islamic political doctrines were driven into the realm of theory.

ii. Islamic Modernism

By the failure of the uprising of 1857 a new chapter was opened in the development of Indian Muslim thought. A new tendency appeared which sought to strike a compromise not only between the Muslim and their new foreign rulers but also between Islam and Western culture. The origins of such a tendency could be traced back to an early period since there had always been a group among the Muslims who favoured the British rule and "looked forward to the birth of a new culture, a cross-breed of the Western with the Eastern".⁴ But this trend found a forceful expression in the ideas of Sayyid Ahmad Khan (1817-1898) who was regarded as the pioneer of Islamic modernism in India. In the field of religious thought he re-interpreted Islam and the Quran "in order to bring them in line with the scientific knowledge and the mental and cultural ideals of the later half of the nineteenth century".⁵ In the political field, which is our concern here, he did not content himself with advocating passive obedience to British rule but went to the extent of demanding loyalty to it. His opinion was not advanced as a practical policy fit for the circumstances but he argued

¹ This was on account on their emphasis on the observance of *farā'id* meaning obligatory duties on Muslims.

² See Ashraf, *op.cit.*, pp. 144-54.

³ A brief survey of events and a comparative review of sources is provided by Ashraf, *op.cit.*, pp.155-84.

⁴ Ashraf, *op.cit.*,pp.187. For these tendencies see *Ibid.* pp. 187-263.

⁵ Abū al-Ḥasan al-Nadwī, *Western Civilization - Islam and Muslims*. Eng. trans. by M. A. Kidwai (Lucknow,1978), p.67.

for it on religious grounds. He claimed that Islam taught that "if through the Will of God we are subdued by a nation which gives religious freedom, rules with justice, maintains peace in the country and respects our individuality and property, as it is done by the British rule in India, we should be loyal to it".¹ He supported his claim with the example of Joseph who served the Pharaoh of Egypt very obediently and loyally, although the latter was not a Muslim ruler.²

Sayyid Khan's doctrine of loyalty was also advocated on another occasion. It was used against the ideology of Pan-Islamism which urged the Indian Muslims to support the Ottoman Caliphate and express indignation against its European enemies including Britain. He argued that the Muslims of India were legally bound to obey the will of the Indian British government and not of an external Muslim ruler. He regarded direct relations of the Ottoman agents with the Muslims to be illegal because the Indians were loyal subjects of the British government. They were not subjects of Sultan 'Abd al-Hamid who wielded no authority or spiritual suzerainty over them. His title of Caliph was effective only in his own land.³

Sayyid Khan did not develop a complete political theory, nor did he discuss fully the system of government in Islam. All his concern was to prove that "loyalty to the powers that be was ordained by God". As his interest was to save the Muslims from persecution by the British and combat any revolutionary tendencies, his concept of sovereignty appeared to be very close to that of the early Christians. He believed that power was God's and that Muslims had to submit to it whether it be evil or good. Viewed from this angle, his opinion appears to be a special interpretation of the concept of Divine sovereignty. However, Sayyid Khan's modernism was splendidly expounded by his devoted disciple Ameer Ali (1849-1928) in his famous book *The*

¹ From a letter of his cited in J. M. S. Baljon, *The Reforms and Religious Ideas of Sir Sayyid Ahmad Khan* (Leiden, 1949), p. 14.

² *Ibid.*, p. 14.

³ Aziz Ahmad, *Islamic Modernism in India and Pakistan* (London, 1967), p. 125.

Spirit of Islam.¹ In one of the chapters of the book, the author attempted to interpret the Islamic political system in terms of modern Western concepts. He wrote:

"Islam gave to the people a code which, however archaic in its simplicity, was capable of the greatest development in accordance with the progress of material civilization. It conferred on the State a flexible constitution, based on a just appreciation of human rights and human duty. It limited taxation, it made men equal in the eye of the law, it consecrated the principles of self-government. It established a control over the sovereign power by rendering the executive authority subordinate to the law - a law based upon religious sanction and moral obligation."²

According to Ameer Ali the Islamic state was a kind of republic based on a definite code which was supreme over both the ruler and ruled. The head of the state, who was elected by the suffrage of the people, assumed sovereign rights but his powers were limited and not absolute. Beside the Islamic fundamental law his authority was checked by the advisory councils which assisted him. Moreover, the judiciary was independent and even the head of state could not intervene in its judgements. The following quotation sums up his views:

"An examination of the political conditions of the Muslims under the early Caliphs brings into view a popular government administered by an elective chief with limited powers. The prerogatives of the head of the state were confined to administrative and executive matters, such as the regulation of the police, control of the army, transaction of foreign affairs, disbursement of the finance, etc. But he could never act in contravention of the recognised law. The tribunals were not dependent on the government. Their decisions were supreme; and the early Caliphs could not assume the power of pardoning those whom the regular tribunals had condemned. The law was the same for the poor as for the rich, for the man in power as for the Labourer in the field. As time advances the stringency of the system is relaxed but the form is always maintained. Even the usurpers, who, without right, by treachery and murder seized the reins of government, and who in their persons represented the pagan oligarchy which had been displaced by the teachings of Islam, observed more or less the outward semblance of law-abiding executive heads of a representative government. And the rulers of the later dynasties, of arbitrary power, were restrained by the

¹ The book was first published in London in 1890 and was edited and revised several times up to 1922. Since then there have been numerous reprints of the book and parts of it have been translated into Arabic and Turkish. The book have been met with vigorous criticism and was even described as heretical. See Maryam Jameelah, *Islam and Modernism* (Lahore, 1977), pp. 69-76.

² Ameer Ali, *The Spirit of Islam* (London, 1974), p. 277.

sentence of general body of juriconsults, which in all Muslim states serves as a constitutional check on the sovereign."¹

Another modernist view of sovereignty was expressed by Salahuddin Khuda Bukhsh, a liberal thinker from Bengal. He discussed the problem of sovereignty in one of his books in an essay under the title "The Islamic Conception of Sovereignty".² His study of the features of sovereignty was made in the light of the history of the Caliphate. Khuda Burksh possessed some acquaintance with the Western theory of sovereignty and the writings of Westerners on Islam like Van Kremer, Wellhausen and Goldziher as he had translated some of their works. His survey of the history of the Caliphate and his discussion of the Islamic theory of sovereignty contained many quotations of Western writings which apparently had exerted a great influence on his thought. Unlike Ameer Ali who emphasized the binding nature of the Divine law as a constitutional check on the sovereign, Khuda Burksh took an opposite view.³ He claimed that the Muslims sovereignty was defective as far as it possessed no power to alter the divine law. He believed that the divine law was not fixed and that it was not against Islam to make changes in it and adapt it to modern conditions. Therefore, he assumed that politics should be separated from religion and human legislation should be freed from religious interference in order to bring the laws in line with progress. The following quotation may best show his standpoint:

"But modern jurisprudence understands by sovereign authority the person or body to whose directions the law attributes force, the person in whom resides, as of right, the ultimate power either of laying down general rules, or of issuing isolated rules or commands whose authority is that of law itself. Judged from this point of view the Muslim sovereignty was undoubtedly defective, the sovereign possessing no right or power to interfere with or alter or modify the Muslim law. Nor could the Muslim jurists take such a comprehensive view of sovereignty as is taken by European jurists, accustomed as they are to limited monarchy or democracy. The Muslim sovereignty was unlimited in one way and absolutely fettered in another, inasmuch as interference with Muslim law would have been equivalent to a defiance

¹ *Ibid.*, p. 278.

² S. Khuda Burksh, *Essays Indian and Islamic* (London, 1912), pp. 25-55.

³ This is only an apparent difference between the two modernist thinkers as they agree in their final findings. Ameer Ali has also demanded alteration in the Divine law to meet the changing conditions. See his book *The Spirit of Islam*, pp. 182-7.

of the law of God. But if it was narrow and confined in this respect it was far too wide and extensive in other ways. The power of the Muslim sovereign ranged over not merely temporal affairs of the State, but also matters religious and social. He had to protect religion from heresies and innovations just as much as he had to defend the frontiers from foreign inroads and incursions. Here lay the strength as well as the weakness of the Muslim sovereignty. It was religion which prolonged the existence of the Caliphate till 1258, and it was religion again which hopelessly placed limitations and reservations on the powers which a beneficent monarchy might have exercised over the people by assisting the current of progress unimpeded by the fetters forged by religion and modifying and harmonizing the laws with advancing civilization."¹

iii. The Khilafat Movement

Beside modernism there was no significant development in Muslim political thought in India after the failure of the *Jihād* movement. However, by the first decade of the twentieth century a new turning point was reached. This development was a result of the confrontation between the Ottoman Caliphate and Western powers especially during World War 1 when Turkey joined the war against the Allies. The Muslims of India felt a religious obligation to show loyalty to Turkey due to the fact that it was the seat of the Caliphate, the only remaining symbol of Muslim power and unity. Emotions of pan-Islamism had already been aroused before the war by Western expansionism over Muslim territories and by the ideas of Jamal al-Din al-Afghani who visited India. It became an established practice to recognize the Ottoman Caliph in Friday sermons. When the war came to an end and Turkey was defeated, feelings were electrified in India since it was felt that with the British occupation of Constantinople the very existence of the caliphate was in danger. In these circumstances the Khilafat movement was founded which fought vigorously for the preservation of the caliphate and a just peace settlement. The significance of the movement was its great impact on the revival of political ideas. The abstract concepts of the caliphate began to be discussed particularly in the face of the Western propaganda which attempted to humiliate the Islamic doctrines. The question of

¹ *Ibid*, pp. 51-2. For his views concerning the need for change in the Divine law to adapt itself to progress see his "Thoughts on the Present Situation" in *Ibid*. pp.284-95.

loyalty was also raised as the Indian Muslims were forced to fight with Britain against Turkey.

One of the leaders of the Khilafat movement was Muhammad Ali Jauhar who headed a delegation to London to explain the claims of the Indian Muslims. Muhammad Ali did not expose his ideas in a systematic treatise but his speeches and writings revealed for the first time a clear concept of the sovereignty of God which became the dominant belief of Indian Muslims ever since. His ideas reflected in the interview with the British Prime Minister were widely echoed. He argued as follows:

"In this regard we wish to show the connection between the Muslims of India and the Caliphate. Islam as we understand it is not just a body of doctrines and dogmas; it is, a total way of life, it is a moral code and a social constitution. It does not distinguish between the church and the state. It considers life as an indivisible entity, and its goal is to provide divine guidance in all the affairs of humanity. The Muslims consider themselves as the servants of God whom they obey and recognize as the supreme authority. Islam does not admit any political, geographical or ethnic barriers."¹

His concept of the caliphate was expanded further in his reply to those who equated the Caliph with the Pope and suggested the establishment of a spiritual caliphate. It also contained an explicit mention of the sovereignty of God. He said in one of his talks in London:

"But the Khalifa... was not the Pope, and the moment he would consent to be "Vaticanised", he would cease to be the Khalifa. He was the Commander of the Faithful, the President of our Theocratic Commonwealth, the leader of all Muslims in peace and war though he could neither claim to be infallible like the Pope, nor could he in all circumstances exercise unquestionable authority, for Allāh was the only Sovereign, and in the case of dispute Muslims were bound to refer back to the Holy Qur'ān and to the Traditions of the Prophet whose successor the Khalifa is."²

The other outstanding figure in the Khilafat movement and its principal theoretician was Abu al-Kalam Azad (1888 - 1958).³ His major contribution to the

1 Quoted in Manzooruddin Ahmed, *Pakistan the Emerging Islamic State* (Karachi, 1966), p.75.

2 Afzal Iqbal ed., *Selected Writings and Speeches of Maulana Mohamad Ali* (Lahore, 1969), 11, p.37.

3

movement was an exposition of its ideology and a discussion of the doctrine of the Caliphate published in 1920 as *Mas'ala-i-Khilafat*.¹ His views revealed an influence of Shāh Walī al-Allāh and showed no originality except with regard to the modern question of the Ottoman Caliphate and its future. Azad defended the obligatory nature of the caliphate as a universal institution to establish divine justice on earth. The caliph, he argued, possessed real sovereignty different from the spiritual authority possessed by the Pope. Since Islam did not assign legislative authority to other than God and His Messenger, the caliph should be subjected to Divine laws and he had no right to legislate. However, in all other spheres the caliph possessed the ultimate right of command, *amr*, and the Muslims all over the world should render loyalty to him. In its early history the caliphate was an ideal example of the Islamic political system. It was a kind of a republic based on election and *shūrā*. Though the Umayyads, the Abbasids and the Ottomans represented a despotic monarchical government different from what Islam demanded, yet they were still the legitimate leadership of the Muslims. As for the Indian Muslims, it was a legal duty on them to show loyalty to the Ottoman Caliph and therefore they should not co-operate with the British who were at war against him.²

However, the Indian Muslims did not realize that the disintegration of the Ottoman Caliphate was not solely an outcome of external pressures. Forces of nationalism and secularism within Turkey itself were steadily gaining momentum and eventually the caliphate for which the Indians vigorously fought was abolished. Consequently, the Khilafat movement was doomed to failure from the start. After it was brought to an end, one of its leaders, Abu al-Kalam Azad, was even driven by the drift of the Indian nationalism and secularism. Nonetheless, the impact of the Khilafat movement on the development of the political thinking of the Indian Muslims was

¹ Arabic translation by 'Abd al-Razāq Abādī as *Kitāb al-Khilāfa al-Islāmiyya* and published in a series in al-Manar periodical, XXIII, 1922.

² *Ibid*, pp. 48-9, 104-6, 196-7, 201

great. It revived the struggle for an Islamic state which had been launched by the *Jihād* Movement and crystalized the basic Islamic political doctrines.

iv. Pakistan Movement

The establishment of the Indian National Congress in 1885 was the first step towards the political regeneration of India. The attitude of the Muslims towards it was exemplified in the position of Sayyid Khan who urged them to disassociate themselves with it on the ground that they were a weak minority and if they were united with the Hindu majority in one body the Muslims would be permanently submerged. His fears that "the larger community would totally override the interests of the smaller community" drove him also to oppose the introduction of representative and democratic system and the formation of a local self-government. He held a firm conviction that it was not possible that two nations - the Mohammedans and the Hindus - could sit on the same throne and remain equal in power".¹ These ideas dominated the Muslim political thinking for so long after Sayyid Khan. Under their impact and in the face of the increasing Hindu hostile attitudes, the Muslims formed a separate political organization, the All-India Muslim League, in 1909 with the main objective "to protect and advance the political rights and interests of Mussalmans of India".² One of the first reforms proposed by the Muslim League was to demand a separate electorate to ensure the adequate representation of the Muslims in the newly introduced elective councils.³ However, a series of national and international developments after the First World War brought the League and the Congress into alliance and they mutually organized opposition against the British and struggled together for the common goal of independence. Such cooperation lasted for a short time. Distrust and polarity between the two political parties returned and continued to dominate Indian politics from 1924 onwards. Gradually, the concern of the Muslims

¹ For documents of Sayyid Khan views see C. H. Philips, *The Evolution of India and Pakistan 1858 to 1947* (London, 1962), pp. 185-9.

² Resolution of 30 December 1906 at Dacca in *Ibid.*, p. 194.

³ *Ibid.*, p. 195.

to safeguard their community began to crystalize in a definite demand to secure a Muslim political power over the territories in which the Muslims were a majority. Eventually, the concept of a separate Muslim state emerged marking the birth of the movement which led to the establishment of Pakistan in 1947.¹

We shall now turn to examine briefly the political ideas of the period before the formation of Pakistan. One of the most outstanding thinkers of that period was Muhammad Iqbal (1876 - 1938) who made the first clear statement of the demand for a separate homeland for the Muslims in his address to the All-India Muslim League Conference in 1930.² Iqbal was strongly against the Western concept of nationalism. He described it as a sickness which tended to impoverish human culture by narrowing down thoughts and emotions. Nationalism could not "cure the ills of a despairing humanity" and as such the Modern Muslim was misled to seek to create new loyalties based on patriotism and nationalism.³ Iqbal asserted that Islam did not approve of the national notion which recognized territory as the only principle of political solidarity. He wrote:

"You know that Islam is something more than a creed, it is also a community, a nation. The membership of Islam is not determined by birth, locality or naturalisation; it consists in the identity of belief. The expression, "Indian Muhammadans", however convenient it may be, is a contradiction in terms, since Islam in its essence is above all conditions of Time and Space. Nationality with us is a pure idea; it has no geographical basis."⁴

Beside nationalism, Iqbal criticized secularism which began to change the outlook of the present generation of Muslims who were inspired by Western ideas and were anxious to adopt them in their own countries "without any critical appreciation of the facts which have determined their evolution in Europe".⁵ In Europe, Christianity

¹ See Aziz Ahmad, "India and Pakistan", in P. M. Holt, ed., *The Cambridge History of Islam* (Cambridge, 1970), II, pp. 97-119.

² Philips, *op.cit.*, pp. 239-40.

³ Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore, 1954), pp. 188-9.

⁴ Muhammad Iqbal, *Islam as an Ethical and a Political Ideal* (Lahore, 1977), p. 101.

⁵ Iqbal's address to the Muslim League in 1930 reproduced in C. M. Naim, ed., *Iqbal, Jinnah and Pakistan* (New York, 1979), p.192.

developed as a pure spiritual order having nothing to do with political and civil affairs and practically obeying the Roman authority in these spheres. When the state became Christian, the State and the Church were separate bodies and eventually conflict evolved between them. The reformation of Luther was directed against the organization of the church and in the peculiar conditions of Europe his movement led to the displacement of the universal ethics of Christianity by national systems. Europe was consequently driven to the conclusion that religion was a private affair of the individual and had nothing to do with what was called man's temporal life. As for Islam, it was different, for it was a civil society from the start. Therefore, secularism could not be adopted by Muslims as it assumed a dualism which never existed in Islam. In Islam, spirit and matter, church and state are organic to each other.¹ He went on to warn the Muslims against the dangers of separating religion from politics because it would eventually mean the complete rejection of Islam even as a religious ideal. In his address to the Muslim League in 1930, he said:

"The proposition that religion is a private individual experience is not surprising on the lips of an European. In Europe the conception of Christianity as a monastic order, renouncing the world of matter and fixing its gaze entirely on the world of spirit led by a logical process of thought, to the view embodied in this proposition. The nature of the Holy Prophet's religious experience, as disclosed in the Qur'ān, however, is wholly different. It is not mere experience in the sense of a purely biological event, happening inside the experient and necessitating no reactions on his social environment. It is individual experience creative of a social order. Its immediate outcome is the fundamentals of a polity with implicit legal concepts whose civic significance cannot be belittled merely because their origin is revelational. The religious ideal of Islam, therefore, is organically related to the social order which it has created. The rejection of the one will eventually involve the rejection of the other."²

When we proceed to examine the Islamic political system as conceived by Iqbal we find in it an implicit recognition of the concept of sovereignty of God.³ According

¹ *Ibid.*, 191-4; Iqbal, *The Reconstruction of Religious Thought in Islam*, pp. 155-6.

² Naim, *op.cit.*, pp. 193-4.

³ Manzooruddin Ahmed, *Pakistan: The Emerging Islamic State* (Karachi, 1966), p.88.

to him, the Islamic form of government was founded on the principle of *Tawhīd*, oneness of God. This basic doctrine of Islam comprised a number of working political ideals such as equality, freedom and unity. Moreover, an important result of it was that loyalty of the Muslim community was to be rendered to God, not rulers. In his own words:

"The new culture finds the foundation of world-unity in the principle of `Tawhīd'. Islam, as polity, is only a practical means of making this principle a living factor in the intellectual and emotional life of mankind. It demands loyalty to God, not to thrones. And since God is the ultimate spiritual basis of all life, loyalty to God virtually amounts to man's loyalty to his own ideal nature. ...The essence of `Tawhīd' as a working idea is equality, solidarity and freedom. The State, from the Islamic stand point, is an endeavour to transform these ideal principles into space-time forces, an inspiration to realize them in a definite human organization. It is in this sense alone that the State in Islam is a theocracy, not in the sense that it is headed by a representative of God on earth who can always screen his despotic will behind his supposed infallibility."¹

Another important consequence of *Tawhīd* in the political sphere, in Iqbal's view, was the absolute supremacy of the law of God. "The law of God", he wrote, "is absolutely supreme. Authority, except as an interpreter of the law, has no place in the social structure of Islam." However, this was the only limit on freedom which otherwise was regarded as sacred in Islam. Hence, Iqbal maintained that Islam had based its government on democracy in order to develop individual freedom. In explaining the democratic elements of Islam he referred to the elective aspect of the caliph's office and equality of all Muslim before the law.

"The best government for such a community would be democracy, the ideal of which is to let a man develop all the possibilities of his nature by allowing him as much freedom as practicable. The Caliph of Islam is not an infallible being; like other Muslims, he is subject to the same law; he is elected by the people and is deposed by them if he goes contrary to the law."²

¹ Iqbal, *The Reconstruction of Religious Thought*, pp. 146, 154.

² Iqbal, *Islam as a Political Ideal*, p.103.

Though Iqbal believed that democracy was the most important aspect of Islam as a political ideal, yet he was critical of the Western type of democracy. The will of the majority was the source of law and norms in the democracy of the West. But in Islam God was the real source of religion, philosophy and law, and bestower of power, strength, and authority.¹

II. The Idea of Sovereignty in Pakistan

i. Constitutional Developments

The demand of the Muslims of India to have a separate homeland attained fulfilment by the establishment of the state of Pakistan in 1947. The new state was governed by an interim constitution, the Government of India Act of 1935 with modifications made by the Indian Independence Act, 1947. Under the latter Act a Constituent Assembly came into existence whose first task was to frame a permanent constitution for Pakistan. However, the process of constitution-making faced many problems and became the subject of much controversy. Since independence Pakistan has been offered a great number of constitutional drafts and it had three constitutions enacted in the years 1956, 1962 and 1973 and amended now and again.

No doubt Islam was at the base of the demand for Pakistan. The founders of the country proclaimed that the objective of the new state was to enable the Muslims to fashion their lives according to Islamic teachings. Pakistan was envisaged to be an Islamic state although the nature of such a state and its conformity with modernity was not well defined in the minds of the people and their leaders. Nonetheless, Islam became one of the major factors which determined the shape of the new state and its constitution. There was a strong movement to adopt an Islamic constitution though the elements of such a constitution were given different interpretations. Sovereignty, which was a chief question in modern Western constitution making, was at the core of

¹ M. Aziz Ahmad, "Iqbal's Political Theory", in *Iqbal as a Thinker : essays by eminent scholars* (Lahore, 1944), pp. 251, 262.

the constitutional debate in Pakistan. There were different attempts to define it Islamically. It is our purpose here to examine those views on sovereignty as reflected in the constitutional developments in Pakistan and how they were embodied in its constitution.

Objectives Resolution

The first step in making the constitution of Pakistan was taken when the Constituent Assembly passed a resolution in 1949 containing basic guidelines for the future constitution which came to be known as the Objectives Resolution. Under the pressure exerted by the movement to incorporate Islam in the constitution, the Objective Resolution had a distinctive Islamic feature. The resolution clearly recognized the sovereignty of God and viewed state authority as a trust delegated by God which was to be exercised within the limits laid by Islam. Standards of democracy, freedom, equality, tolerance and social justice which were to direct the state policy should be followed and interpreted according to Islamic concepts. The function of the state, according to the resolution, was to enable the Muslims to lead an individual and collective Islamic way of life in conformity with the teachings of the Qur'an and the *Sunna* and at the same time to make provisions to safeguard the rights of the other religious minorities. The first clauses of the Objectives Resolution were as follows:

"Whereas sovereignty over the entire universe belongs to God Almighty alone and the authority, which He had delegated to the State of Pakistan through its people to be exercised within limit prescribed by Him, is a sacred trust;

This Constituent Assembly representing the people of Pakistan resolves to frame a constitution for the sovereign independent State of Pakistan;

Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Qur'an and the *Sunna*;

Wherein adequate provision shall be made for the minorities freely to profess and practice their religion and develop their culture."¹

¹ G.W. Choudhury, *Documents and Speeches on the Constitution of Pakistan* (Dacca, 1967), pp. 23-4.

Perhaps there was an apparent inconsistency in the Objectives Resolution with respect to the usage of the word sovereignty. The first clause admitted that sovereignty belonged to God, yet immediately in the second clause the term "the sovereign independent state of Pakistan" was used and, in addition to that, another clause contained the phrase "its sovereign rights over land, sea and air".¹ Seemingly, the framers of the resolution had confused the two concepts of God's sovereignty and state sovereignty. This was a clear indication that the formulation of the resolution was a result of a compromise between the different forces inside and outside the Constituent Assembly. Moreover, a close examination of the contents and meanings of the resolution would reveal a more serious confusion. In a remark about the resolution, it was observed that:

"The Objectives Resolution, acknowledged the sovereignty of God, recognized the authority of the people derived from their Creator, and vested the authority delegated by the people in the Constituent Assembly for the purpose of making a constitution for the sovereign state of Pakistan. Thus is God sovereign, the people sovereign, parliament sovereign, and the state sovereign in Pakistan. It would indeed be a narrow-minded person who was not satisfied with such a compromise."²

Indeed, the ambiguity of the resolution was self-evident if the word sovereignty was used in its original Western sense to mean a supreme absolute power. However, it would be safer to assume that the makers of the constitution attached to the word sovereignty a loose meaning. As a result of that, as we shall see in the analysis of the constitutional debate, contradictory interpretations were given to what came to be known as the "sovereignty clause" in the constitution of Pakistan.

Islamic Provisions

All the constitutions of Pakistan contained Islamic provisions.³

¹ *Ibid.*, p.24.

² Leonard Binder, *Religion and Politics in Pakistan* (Berkeley, 1963), p.149.

³ Cf. Muhammad Shafiq, "System of Government in the Constitution of Pakistan", *Islamic Culture*, LX, No.4 (1986), pp. 1-29; Manzoordin Ahmed, "Islamic Aspects of the New Constitution of 1962", *Islamic Studies*, II, No.2 (June 1963), pp. 249-86; Fazlur Rahman, "Islam and the New Constitution of Pakistan of 1973", *Journal of Asian and African Studies*, VIII (1973), pp. 190-204.

These include:

1. the clause on the sovereignty of God,
2. the head of State should be a Muslim,
3. the directive principles of state policy,
4. the repugnancy clause : no law shall be enacted which is repugnant to the Qur'ān and the *Sunna*.

Since the Objectives Resolution formed the preamble of all the constitutions of Pakistan, the clause on the sovereignty of God reserved its place there. However, the ambiguity that surrounded this clause continued as the term sovereignty was still used to refer to God's sovereignty and to the state sovereignty in the same preamble. Moreover, it was apparent that the makers of the constitution interpreted sovereignty of God to mean a higher moral and ethical values. Therefore, the sovereignty of God was never given a legal sanction. It was incorporated only in the preamble of the constitution. Though the preamble to the constitution was the guiding principle on which the several provisions of the constitution were based, yet the preamble was not considered to be part of the constitution and therefore it had no substantive authority to make it legally enforceable.¹ Therefore, it may be concluded that the provision of the Sovereignty of God was of no real significance and it produced no actual effect.

All the constitutions of Pakistan provided that one of the qualifications for the office of the Head of State, the President, was that a person should be a Muslim.² The Prime Minister, according to the constitution of 1973, should also be a Muslim.³ However, such a qualification was also of no effective importance though it had been surrounded by much controversy in the constitutional debate. Though there was a non-Muslim minority in the country, the fact of the matter was that the overwhelming

¹ Muhammad Shafiq, *Islamic Concept of a Modern State* (Gujarat, 1987), pp.77-9; See also *idem.*, "System of Government in the Constitution of Pakistan", pp.27-9.

² Constitution of the Islamic Republic of Pakistan, 1956, article 32 paragraph 2; Constitution of 1962, article 10; Constitution of 1973 article ? .

³ Chapt.3, article 91, paragraph 2.

majority were Muslims. It would be only natural then that the President or Prime Minister should be Muslims. Such a qualification could not be paralleled by the qualities laid by the jurists for a caliph. A caliph was required to be pious and knowledgeable about Islam. The makers of the constitution of Pakistan, by providing Islam as a qualification for the President, did not seem to be necessitating that he should be a practising Muslim. The provision was a product of the historical background and special circumstances of Pakistan, rather than an effect of Islamic political theory.

Other Islamic provisions were also found in the "Directive Principles of State Policy" in every constitution. The most important of these was the provision called "the enabling clause" which stated the following:

"Steps shall be taken to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the Holy Qur'ān and the *Sunna*."¹

In order that the Muslims of Pakistan could be enabled to lead an Islamic way of life, the constitution listed a number of steps. Among them were the provision of facilities to promote the understanding of Islamic concepts and standards, proper organization of *zakāt*, *wakfs* and mosques, elimination of *ribā'*, prevention of prostitution, gambling, drug-taking and consumption of alcohol.² However, these clauses were in reality inoperative since they were not enforceable by law. It was clearly stated in every constitution in more or less similar words that the principles of State policy were only guiding and no court action could be brought against the State, any organ or authority of the State or any person on the ground that an action or a law was not in accordance with the principles of policy.³

¹ Article 25, paragraph 1, the Constitution of 1956. Similar provisions were also in the other constitutions.

² Cf. The Principles of State Policy in the different constitution.

³ See A. K. Brahi, *Fundamental Law of Pakistan* (Karachi, 1958), pp.55, 740-69.

There was one single Islamic provision in Pakistan's constitutions which was sanctioned to be legally binding. It was the repugnancy clause which stated in the Article 198 of the Constitution of 1956, the following:

"(1) No law shall be enacted which is repugnant to the injunctions of Islam as laid down in Holy Qur'ān and *Sunna*, hereinafter referred to as Injunctions of Islam, and existing law shall be brought into conformity with such injunctions.

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in clause (3).

(3) Within one year of the Constitution Day, the President shall appoint a commission -

(a) to make recommendations-

(i) as to the measures for bringing existing law into conformity with the Injunctions of Islam, and

(ii) as to the stages by which such measures should be brought into effect; and

(b) to compile in a suitable form, for the guidance of the National and Provisional Assemblies, such injunctions of Islam as can be given legislative effect.

The commission shall submit its final report within five years of its appointment, and may submit any interim report earlier. The report, whether interim or final, shall be laid before the National Assembly within six months of its receipt, and the Assembly after considering the report shall enact laws in respect thereof.

(4) Nothing in this Article shall effect the personal laws of non-Muslim citizens, or their status as citizens, or any provision of the Constitution.

Explanation:- In the application of this Article to the personal law of any Muslim sect, the expression Qur'ān and *Sunna* shall mean the Qur'ān and *Sunna* as interpreted by the sect."¹

It may be clear that the aim of this clause was to bring about a legal system reform which would necessarily involve the Islamization of all laws in order to materialize the concepts of the sovereignty of God and the supremacy of the *Shari'a*. However, nothing or very little had been done in this direction ever since Pakistan came into existence. The constitutions of Pakistan were inoperative during most periods and were abrogated from time to time. Some ineffective attempts were taken towards Islamization under the military regime of Ziaul Haq during the years 1977-89.² The thrust of the reform was the Islamization of laws. A *Shari'a* Court was

¹ Chaoudhury, *op.cit.*, p. 450.

² Cf. C. Bouma, "Pakistan's Islamization: 1977-89", *Al Mushir*, 31 (1989), pp. 9-27; Riaz Hassan, "Islamization: An Analysis of Religious, Political and Social Change in Pakistan", *Middle Eastern Studies*, 21 No.3 (July 1985), pp. 263-84.

empowered to abolish any law contrary to Islam and replace it by Islamic laws. As a result of that various ordinances imposed some laws such as *ḥudūd*, *qiṣāṣ*, *zakāt* and *'ushūr*. However, the scope of this Islamic legislative process was limited to certain spheres. Besides, the implementation of Islamic reforms depended on state bureaucracy which was primarily secularly oriented.¹ The reasons for the failure of the Islamization of the constitution and laws of Pakistan were analysed by a Pakistani Islamist as follows:

"... the reins of power have been in the hands of those persons who not only did not have even an elementary understanding of Islamic law and constitution, but had all their education and training for the running of Godless secular states. Therefore, they are in a bad predicament because they are incapable of thinking except in terms of the nature and pattern of the Western secular type. They are not in a position to wriggle themselves out of the Western modes of thinking and practice. The position of the Muslim masses is not very dissimilar in certain respects. No doubt they are extremely eager to reestablish the Islamic way of life and this urge of theirs is very real and sincere. But they too are not clear about the nature and form of the state whose establishment they so sincerely urge. They also do not know as to what should they do to establish the state of their dreams. Furthermore, Western thinkers and policy-makers whose opinions have begun to command immense importance in our times, who are influencing most the decisions of the Muslim countries, and to whose opinions we too give due weight, harbour many a prejudice and suspicion about the nature and prospect of the Islamic state."²

In the light of such claims it may be convenient to turn now to examine the Islamist's programme and how they conceived the structure of an Islamic modern state.

II. The Islamists' Views

A close examination of the history of the constitutional developments in Pakistan reveals that the Islamists had played a major role in constitution-making despite the fact that Pakistan was brought into existence and continued to be governed by westernized secular politicians. The Islamists, with their background of Islamic

¹ Hassan, *op.cit.*, pp. 268-70.

² Abū al-A'la al-Mawdūdī, *The Islamic Law and Constitution*. Trans. Khurshid Ahmad, 7th ed. (Lahore, 1980), pp. v, vi.

learning, attempted to formulate the basic concepts which characterize an Islamic state and created public pressure by mobilizing the masses to support their demands for an Islamic constitution. In the final analysis, the Islamists' campaign to embody Islam in the constitution did not bear fruits, but their other task of defining Islamic governmental principles was a remarkable contribution to the ideological controversy which surrounded constitution-making. The term Islamists is used here to cover basically the 'ulamā' and the Jamā'at-i-Islāmi, an Islamic organization founded by Abū al-A'la al-Mawdūdī. It is our intention to review here their ideas regarding the concept of an Islamic state and the definition and place of sovereignty in it.

1. Mawdūdī's Thought

The Jamā'at-i-Islāmi was a leading Islamic movement in Pakistan. The party and its founder, Mawlānā Mawdūdī (1903 - 1979), wielded a lot of influence both in the intellectual sphere and on the political platform,¹ which was felt not only inside Pakistan but also extended outside it. Mawdūdī's thought, and in particular his concept of divine sovereignty which is our present concern, had greatly impressed the minds of the modern Muslims throughout the world. Shortly after the establishment of Pakistan, Mawdūdī launched a powerful campaign for an Islamic constitution. He mobilized the masses to support a public demand for the Islamization of the state which he composed in a formula of four points as follows:

"Whereas the overwhelming majority of the citizens of Pakistan firmly believes in the principles of Islam; and whereas the entire struggle and all the sacrifices in the freedom movement for Pakistan were for the sole purpose of establishing these very Islamic principles in all fields of our life:

Therefore now, after the establishment of Pakistan, we the Muslims of Pakistan demand that the Constituent Assembly should unequivocally declare:

¹ For sources on the history of the Jamā'at-i-Islāmi and the life and thought of Mawdūdī, see Asaf Hussain, *Islamic Movements in Egypt, Pakistan and Iran* (London, 1983), pp. 47-83; Khurshid Ahmad and Zafar Ansari, eds., *Islamic Perspectives* (Leicester, 1980), pp. 3-14.

(1) That the sovereignty of the State of Pakistan rests in God Almighty and that the Government of Pakistan shall be only an agent to execute the Sovereign's will:

(2) That the Islamic *Sharī'a* shall form the inviolable basic code for all legislation in Pakistan;

(3) That all existing or future legislation which may contravene, whether in letter or in spirit, the Islamic *Sharī'a* shall be null and void and be considered *ultra vires* of the Constitution; and

(4) That the powers of the Government of Pakistan shall be derived from, circumscribed by and exercised within the limits of Islamic *Sharī'a* alone."¹

Mawdūdī, therefore, had clearly proclaimed his firm belief in Divine sovereignty and the corollary of it the supremacy of the *Sharī'a* laws. In order to understand his concept of sovereignty it is essential to examine the Islamic political theory as conceived and expounded by him.² Political theory of Islam, he argued, like all other aspects of Islamic ideology, was derived from and rested on a definite set of fundamental principles. All the prophets asked mankind to acknowledge the concept of *Tawhīd* (the Unity of the Godhead) and to render unalloyed obedience to Him. To explore the full significance and the logical and practical implications of these postulates it was necessary to look to the real meaning of the terms *ilāh* and *rabb*. The word *ilāh* in Arabic stood for *ma'būd*, by which was meant the object of worship, and which in itself was a derivative of the word *'abd*, that is, slave or servant. This implied that man had to live like an *'abd* to God and offer him *'ibāda* (worship). *'Ibāda*, worship of God, was not confined to spiritual rituals and prayers, it meant "a life of continuous service and unremitting obedience like the life of a slave in relation to his Lord." Similarly, in Arabic the word *rabb* literally meant "one who nourishes, sustains, regulates and perfects."³ In the light of the meanings of *ilāh* and *rabb* it could easily be discovered who possessed the qualities to rightfully claim to be *ilāh* and *rabb* and therefore deserved to be served, obeyed and worshipped. But man, instead of

¹ al-Mawdūdī, *The Islamic Law and Constitution*, pp.26-7.

² Cf. Abu al-A'lā al-Mawdūdī, *Political Theory of Islam*, in Khurshid Ahmad ed., *The Islamic Law and Constitution*, pp. 124-52.

³ Mawdūdī elaborated fully the meanings of the terms *ilāh*, *rabb*, *'ibāda* and *dīn* in a separate book under the title: *Four Basic Quranic Terms*. English tr. serialized in the *Criterion* from XI, No. 1 (Jan., 1976) to XII, No. 2 (Feb., 1977).

recognizing God Almighty as his sole master and Lord (*ilāh* and *rabb*), had enchained himself in the slavery to other men who had made false claims to godhood. The consequences of this man's over lordship and domination over his fellow beings (*ulūhiyya* and *rubūbiyya*) was despotism, tyranny, unlawful exploitation, inequality and injustice. This was the root-cause of all miseries and mischiefs in the world. The real mission of the Prophets was to free man from this slavery of man over man and this domination of man over man. The message of all the Prophets was: "O my people, worship Allah. There is no *ilah* whatever for you except He.¹ As God was the Creator of the universe, its real Sustainer and Ruler and His will prevailed in the cosmos all around, His command should also be dominant and obeyed in man's society. He should be recognized as real Sovereign and His will should rule supreme as the law.² Hence, Mawdūdī concludes that:

"The belief in the Unity and the Sovereignty of Allāh is the foundation of the social and moral system propounded by the Prophets. It is the very starting point of the Islamic political philosophy. The basic principle of Islam is that human beings must, individually and collectively, surrender all rights on overlordship, legislation and exercising of authority over others. No one should be allowed to pass orders or make commands in his own right and no one ought to accept the obligation to carry out such commands and obey such orders. None is entitled to make laws on his own authority and none is obliged to abide by them. This right rests in Allāh alone.³ According to this theory, sovereignty belongs to Allāh. He alone is the Law-giver. No man, even he be a prophet has the right to order others in his own right to do or not to do certain things. The Prophet himself is subject to God's commands. Other people are required to obey the Prophet because he enunciates not his own but God's commands.⁴

Thus the main characteristics of an Islamic state that can be deduced from the express statements of the Holy Qur'ān are as follows;

(1) No person, class or group, not even the entire population of the state as a whole, can lay claim to sovereignty. God alone is the real sovereign, all others are merely His subjects;

(2) God is the real Law-giver and the authority of absolute legislation rests in Him. The believers cannot resort to totally independent legislation nor can they modify any law which God has laid down, even if the desire to effect such legislation or change in divine laws is unanimous; and

¹ The Qur'ān 17:59.

² Mawdūdī, *The Islamic Law and Constitution*, pp.125-36, 166.

³ Mawdūdī quoted the Qur'ān verses 12:40, 3:154, 16:116 and 5:44.

⁴ The following verses of the Qur'ān are quoted 4:64, 6:50, 6:90 and 3:97.

(3) An Islamic state must, in all respects, be founded upon the law laid down by God through His Prophet. The government which runs such a state will be entitled to obedience in its capacity as a political agency set to enforce the laws of God and only in so far as it acts in that capacity. If it disregards the law revealed by God, its command will not be binding on the believers."¹

At this point a question may be posed. What was the meaning which Mawdūdī attached to the word sovereignty and made him equate it with *ulūhiyya* and *rubūbiyya*. Mawdūdī himself explained the sense in which he used the term sovereignty as follows.

"In the terminology of Modern Political Science, this word is used in the sense of absolute overlordship or complete suzerainty. If a person or a group of persons or an institution is to be Sovereign, it would mean that the word of that person, group or institution is law. A sovereign has the undisputed right to impose orders on all subjects of the State and the subjects are under an absolute obligation to obey them, be it willingly or unwillingly. No outside agency, excepting his own will, impose any limitations or restrictions on his power to rule. No subject has any absolute right against him or in contravention of his orders. Whatever rights anybody enjoys emanate from him and whatever rights he withdraws become extinct forthwith. It is a universal legal axiom that every right in law comes into existence only because the law-giver desires it to be so. If, therefore, the law-giver withdraws it, its very existence is obliterated and it cannot be demanded thereafter. Laws come into existence by dint of the will of the sovereign and place all subjects of the state under an obligation to obey them; but no law binds the Sovereign himself. In other words, he is the absolute authority, which means that, in relation to his orders, questions of good and evil and right and wrong cannot and should not arise at all. Whatever he does, is just and nobody can question his conduct or his orders and their enforcement, His behaviour is the criterion of right and wrong and none can question it. It is thus inescapable that the sovereign should be accepted as being absolutely above all aberrations and errors, even though he may not actually be so.

Such is the nature and meaning of the concept of sovereignty as enunciated by modern 'lawyers and jurist'. Nothing short of this can be termed sovereignty. This sovereignty, however, remains a mere legal supposition so long as some active paramount body capable of enforcing it is not available. In the language of Political Science, therefore, legal sovereignty without political sovereignty has no practical existence. Political sovereignty thus naturally means ownership of the authority of enforcing legal sovereignty."²

Applying this modern Western original sense of sovereignty, with its attributes of absoluteness, unity and illimitability, it was natural that Mawdūdī arrived, like some

¹ Mawdūdī, *The Islamic Law and Constitution*, pp. 136-8.

² Mawdūdī, *First Principles of Islamic State*, in Khurshid Ahmad ed., *The Islamic Law and Constitution*, pp. 212-4.

Western thinkers, to the conclusion that such sovereignty did not and had not existed within the bounds of humanity. Neither any monarchy nor the people nor any institution possessed these attributes of sovereignty. The myth of investing anything with it whether an individual or an institution or a people was not justifiable on any grounds. It was a superhuman right reserved for God alone and was inherent in Him by reason of His being the Creator. The Qur'ān explained this point by saying: "Verily, His is the Creation and His is the Law".¹ Moreover, the association of this superhuman quality with any human agency had invariably resulted in despotism and injustice. For these reasons Islam had definitely placed *de jure* sovereignty with God whose *de facto* sovereignty was clearly working over all the creation.² But it was important to notice that this God's sovereignty as stated in the Qur'ān was not merely of the metaphysical type but it also comprised both legal and political aspects.³

Since sovereignty belonged to God alone, the Muslims, according to Mawdūdī, adopted the word *khilāfa* (vicegerency) for the political organisation. *Khilāfa*, he explained, referred to one who enjoyed 'certain rights and powers not in his own right but as a representative and viceroy of his Lord'. This concept of vicegerency should not be confused with Western doctrines of the divine right of kings or papal authority. Mawdūdī argued that the vicegerency of God was not the exclusive birthright of any person or body of persons. It was the collective right of all those who recognized the absolute sovereignty of God over themselves and adopted the divine code as their supreme law. In other words, this vicegerency belonged to the whole community of believers, the Muslims. Quoting the Qur'ān,⁴ Mawdūdī assumed that every Muslim was a caliph of God in his individual capacity. For this principle he coined the term 'popular vicegerency' and presumed that it was the basis of democracy in Islam. While

¹ The Qur'ān 7:54.

² Mawdūdī, *First Principles of the Islamic State*, pp. 214 - 6.

³ Mawdūdī, *Fundamentals of Islamic Constitution*, in Khurshid Ahmad ed., *The Islamic Law and Constitution*, pp. 255- 6.

⁴ The Qur'ān 24: 55.

Western secular democracy was formed on the foundation of popular sovereignty, Islam totally repudiated this philosophy and established its polity on the sovereignty of God and the popular vicegerency of man. These two principles demanded that claims to absolute sovereignty in an Islamic state were to be forsaken and that authority was to be vested in the whole Muslim society as a delegation by God and to be exercised within the limits set by him. The Qur'ān described the method of application of the doctrine of 'popular sovereignty' in the following statement: "They manage their affairs by mutual consultation"¹ This verse made it clear that no collective matter of the Muslims should be conducted without counsel with the people concerned. Such rule applied in the first place to the appointment of the Head of the Muslim State and to the management of governmental affairs. Islam had not prescribed a definite mode of consultation and it was left to the Muslims to decide it in terms of time and place. Problems of whether to consult the people directly or indirectly through their representatives, whether to form one consultative body or two, whether to hold general elections or have electoral colleges and the like were to be solved according to the needs of the time.²

A fundamental feature of the Islamic state, which emerged from the principles of sovereignty of God and vicegerency of man and which distinguished it from a non-Islamic state, was that it adopted divine law as set in the Qur'ān and the *Sunna* of the Prophet as the final authority. If this characteristic was lacking, the state would not be Islamic. The Qur'ān and *Sunna* consisted of definite principles and certain injunctions in different spheres of life and activity which laid down the broad framework within which man was given the freedom to make decisions, legislate and set subsidiary laws to regulate his life affairs. These limits which man was not permitted to override were termed 'Divine Limits' (*Hudūd Allāh*) in the Islamic phraseology. The Qur'ān warned those who did not govern their affairs in accordance with God's revealed law and did

¹ The Qur'ān, 42: 38.

² Mawdūdī, *Islamic Law and Constitution*, pp. 148-52, 172-3, 218-9, 258- 61.

not enforce it that they were (a) disbelievers (b) unjust and (c) transgressors.¹ Whoever did not follow the law of God was guilty of the three crimes *kufr*, *ẓulm* and *fisq* but the extent of his guilt would, of course, depend on the extent of the deviation and disobedience which in certain cases might take him outside the fold of Islam. It logically followed from these injunctions that it was beyond the purview of any legislature of an Islamic state to lay any laws in contravention of the directives of the Qur'ān and the *Sunna* and all such laws, even though passed by the legislature, would be considered null and void. In spite of these limitations, Mawdūdī assumed that, the legislature in an Islamic state, had a number of functions. The legislature, according to him, was known in the old terminology of *Fiqh* as 'the body which resolves and prescribes' (*Ahl al-ḥall wa-al-'Aqd*). Wherever there were explicit directives of God and his Prophet, the legislature alone was competent "to enact them in the shape of sections, devise relevant definitions and details and make rules and regulations for the purpose of enforcing them". If these directives were capable of more than one interpretation, the legislature had the authority to decide which of these interpretations should be preferred and enacted into law. Where the provisions of the Qur'ān and the *Sunna* were not explicit the legislature had to enact laws taking into account the general spirit of Islam and the opinions found in the books of *Fiqh*. If even basic guidance was not available the legislature was left free to make laws according to his best lights provided that they were not in contravention in any way to the letter or the spirit of the Divine law.²

In his discussions Mawdūdī drew a comparison between the Islamic and Western concepts of sovereignty. Islam, in his view, was extremely antithetical to secular Western democracy. Western democracy was founded on the doctrine of popular sovereignty which placed absolute powers of legislation and determination of values and norms of conduct in the hands of the people. Laws were driven according

¹ The Qur'ān, 5: 44, 45, 47.

² Mawdūdī, *Islamic Law and Constitution*, pp. 140-5, 174-5, 182-3, 221-3.

to the attitudes and moods of the masses. If they desired any specific piece of legislation it had to be enacted however unacceptable it might be from religious and moral standpoint; and if they disapproved of any law it had to be abrogated however just and good it might be. In contrast to that, Islam had established its state on the sovereignty of God and the *khilāfa* (vicegerency) of man. The Islamic government was bound to administer its affairs and laws within the limits set by the divine law. Viewed from this angle the Islamic state might be confused with Western theocracy of which Europe had had a bitter experience. In such kind of theocracy a class of priesthood, which clearly distinguished itself from the rest of the society, enjoyed absolute domination to enforce its own man-made laws in the name of God. In other words, it was imposing its own godhood over laypersons. This was not the case in Islam wherein rulership was not in the hands of any particular religious class but the entire Muslim society had the right to run the state and the government was established or changed by the will of the people. Since in that way Islam was a unique system which bore certain similarities and differences in relation to other systems, Mawdūdī coined the term 'theo-democracy' to describe it. More important than that, however, was that his analysis along these lines of thought lead him to use the phrase 'limited popular sovereignty under the suzerainty of God' to signify the authority of the people instead of the word *khilāfa* (vicegerency). In the light of this usage it may be assumed that Mawdūdī most probably used the two terms, *khilāfa* (vicegerency) and 'limited popular sovereignty under the suzerainty of God' to mean the same thing.¹ To verify this point further it is proposed to examine the following statements of Mawdūdī who said:

"If I were permitted to coin a new term, I would describe this system of government as a 'theo-democracy', that is to say a divine democratic government, because under this the Muslims have been given a limited popular sovereignty under the suzerainty of God. The executive under this system of government is constituted by the general will of the Muslims who have also the right to depose it. All

¹ *Ibid.*, pp. 138 - 52, 218-9,

administrative matters and all questions about which no explicit injunction is to be found in the *Shari'a* are settled by the consensus of opinion among the Muslims. Every Muslim who is capable and qualified to give a sound opinion on matters of Islamic law, is entitled to interpret the law of God when such interpretation becomes necessary. In this sense the Islamic polity is a democracy. But it is a theocracy in the sense that where an explicit command of God or His Prophet already exists, no Muslim leader or legislature, or any religious scholar can form an independent judgement, not even all the Muslims of the world put together, have any right to make the least alteration in it."¹

ii. The '*Ulamā*'

Mawdūdi was the principal representative of the Islamic revivalist movement in Pakistan. The significant characteristic of his approach was an attempt to reconstruct the Islamic thought in order to meet the intellectual challenge of the West and to fulfil the needs of the modern times. He differed in this respect from the traditional '*ulamā*' who adopted in general a conservative approach. For many reasons the '*ulamā*' were unable to understand the modern political or constitutional problems or speak the language of today. This created an ideological gap between them and the westernized politicians who held the reigns of power in their hands. In spite of all their shortcomings, the '*ulamā*' continued to form a powerful religious leadership which exerted a great influence in the development of events. In the course of time, they adjusted themselves to the new situations and were able to provide interesting views on constitutional and political matters. A brief account of these views shall follow below.

One of the outstanding '*ulamā*' of Pakistan was Mawlānā Shabīr Aḥmad 'Uthmānī who was the head of Jamā't-al-'Ulamā'-i-Islām which was the only organization of '*ulamā*' at the time when Pakistan came into existence. He had also close links with the ruling class and was appointed as a Muslim League member of the first Constituent Assembly of Pakistan. This unique position enabled him to bring about public pressure on the government and to voice the opinions of the '*ulamā*' in the official circles. 'Uthmānī was the only '*ālim*' in the first Constituent Assembly. After his death the voice of the '*ulamā*' was weak in the Assembly though they were

¹ *Ibid.*, pp. 139 - 40.

strong outside it. Later on, a number of 'ulamā' entered the Assembly especially during Bhutto's era.¹ However, in the speeches of 'Uthmānī one could hear an echo of Mawdūdī's thought. In the debates of the Constituent Assembly over the Objectives Resolution, Mawlānā 'Uthmānī spoke about Divine sovereignty and said:

"An Islamic state is not a state in its own right, with authority inherent in it. It is a state to which authority has been delegated. The real sovereignty belongs to God. Man is his vicegerent on earth and discharges his obligations along with other religious duties within the limits prescribed by God, thus exercising his authority within a more comprehensive Divine sovereignty."²

Beside the Constituent Assembly the voice of the 'ulamā' was officially expressed in the Board of Ta'limat-i-Islamīa (Islamic Teachings) which was an advisory body formed in 1949 by the Basic Principles Committee to counsel on matters related to the Islamic aspects of the constitution. The membership of the Board consisted of prominent 'ulamā' including Mawlānā 'Uthmānī who was its first chairman.³ The Board had no real power and its authority was only to advise on matters referred to it. Yet, its opinions were kept secret by the government and were not made available even to the members of the Constituent Assembly. Mufti Shafi, who succeeded 'Uthmānī in its chairmanship, published a pamphlet under the title "*The Basic Principles of the Qur'anic Constitution of the State*" which was believed to have summed up the views of the Board.⁴ In it he asserted, in the same way as Mawdūdī, the principle of divine sovereignty. Sovereignty rested with God alone. "The government of the earth," he wrote, "is entrusted to mankind only as a trust and a delegated function."⁵ In addition to Shafi's book there were some released reports of

¹ See Shafiq, *System of Government*, p. 13.

² *Constituent Assembly Debates*, V, No. 3 (March 1949), p. 45, quoted with changes in the translation in Manzooruddin, *op. cit.*, p. 90. For the views of 'Uthmānī see Shafiq, *Islamic Concept of Modern State*, pp. 67-9.

³ Among the members of the Board was Mawlānā Zafar Aḥmad Anṣārī as secretary, Mufti Muḥammad Shafi, Mawlānā Sulaymān al-Nadawī, Dr. Muḥammad Ḥamidullah and Mufti Ja'far Ḥussain, a *Shī'a* scholar. For a more detailed account of the Board and its views see Leonard Binder, *Religion and Politics in Pakistan* (Berkeley, 1963), pp. 155- 82.

⁴ See Mawlānā Mufti Muḥammad Shafi, *The Basic Principles of the Qur'anic Constitution of the State* (Karachi, 1955). For a summary of his ideas see J. Windrow Sweetman, "Viewpoints in Pakistan", *The Muslim World*, XLVII, No. 2 (April, 1957), pp. 117- 21.

⁵ Sweetman, *op. cit.*, p. 120.

the Board which need close examination. In them the Board offered a definition of an Islamic state as follows:

"Islamic state means a state ruled in accordance with the tenets of Islam or, more correctly, a state where the divine order, as contained in the Holy Qur'ān and *Sunna*, reigns supreme and the entire Government business in its various spheres is conducted with a view to executing the will of Allah as laid down in the *Shari'ā*. The next significant implication of an Islamic and, for the matter of that, of any ideological state is that all the places wherefrom the policies of the Government emanate must necessarily be in the charge of such persons who not only believe in the fundamental principles underlying that particular ideology but also conform to the minimum code promulgated under that particular ideology."¹

Such a state, maintained the Board, was required to work for the consolidation of Islam, implementation of its scheme of life, ensuring dispensation of justice and provision of necessities of life to all subjects, preservation of good morals, spread of knowledge and learning, and maintenance of peace and order inside its territory and in the world. The performance of these functions of the state was, in the first place, the responsibility of the whole people of the state who had to elect a Head of State to discharge these duties on their behalf and in consultation with their representatives. From this analysis three constituent elements of the Islamic state were brought out, namely, the people, the councillors and the head of state. Each of these had its own powers, rights and obligations. The Board elaborated these powers as follows:

"The people are responsible for electing their head and giving him full allegiance, co-operation and support and keeping an eye over his activities, the councillors for giving wise and sincere advice and such assistance in the discharge of the head's duties as may be required of them, and the head for the functioning of the entire machinery of government within the framework of the *Shari'ā* and with a view to accomplishing the aforementioned objectives.

The head of state may have a single advisory council for the performance of his multifarious functions - legislative, propagative, executive and judicial - or, if exigencies of times and climes so require, a number of councils with well-defined scopes. He is the trustee of the interests of the *Milla*, the symbol and manifestation of its power and authority and its executive organ in all walks of the state. But Islamic Government being essentially a consultative government, he is bound to take counsel from men of wisdom and righteousness and to ascertain the

¹ Report of the Board dated 10-4-50 reproduced in appendix A in Binder, *op. cit.*, p. 385.

desires and wishes of the people in matters left out by the *Shari'a* as discretionary."¹

The Board suggested having a number of councils in a big territory like Pakistan which included legislative council, executive council, propagative or cultural council and judicial council. The details of functions of each of these councils and their relation with the head of state were drawn up by the Board.² As for the legislation, with which we are more concerned here, it was stated that its activity was limited due to the fact that the Islamic state was based on the idea of the sovereignty of Allāh and its function, therefore, was mainly to execute His commands and will. In matters which were expressly laid down in the Qur'ān and the *Sunna* or determined by consensus of opinion of knowledgeable persons there was little room for legislation. However, there was still a wide range of affairs outside these two categories which called for a legislative machinery to fulfil the day-to-day needs in condition that the laws made thereby should be in the light of the broad and basic principles of Islam and its spirit and should not conflict with them.³ In view of this, the Board mentioned that there was a fundamental difference between democracy and Islam. In an Islamic state supremacy is to the commands of Allāh and the will of the people was comparatively subservient to them; while, on the contrary, the will of the people was to be unconditionally dominant in an absolute democratic state. It was essential, therefore, that the future constitution of Pakistan should not be a copy of the constitution of any contemporary Western or Eastern democratic states. The Board, in particular, attacked the tendency to imitate the British or the Indian constitution and called for different courses which would be in closer resemblance with the traditions of Pakistan. The Board also observed that the legislatures in various countries were made the most powerful bodies and were vested with administrative and judicial functions in addition to legislation such as consideration of the budget, ratification of treaties and hearing of

¹ *Ibid.*, p. 395.

² *Ibid.*, pp. 395-400.

³ *Ibid.*, p. 396.

cases against the head of state. Hence, it was suggested that pure legislation be allocated to the legislative council and the other functions such as the election and deposition of the head of state and the budget be entrusted to a larger representative body which may be called the Supreme House (Majlis al-Hall wa-al-'Aqd).¹ As for the question of whether non-Muslims were legible to become members in the legislature or the Supreme House, the Board was of the view that considerations of many factors lead it to allow them the right of membership provided that it should be ensured that the injunctions of Islam should not be affected in any manner.² It was also the opinion of the Board that it would be preferable not to bring women into the representative assemblies on the ground that Islam assigned to them a social role inside the home and they were not encouraged to bear activities outside except in conditions of urgent necessity. However, if the membership of women was deemed indispensable, the Board suggested that it should only be granted to women of fifty years of age and who observed the rules of the Islamic dress.³ In the main the Board was in favour of universal suffrage, but it laid down certain qualifications for the candidates. Muslim candidates should be observant of the tenets of Islam and non-Muslims should not object openly to the principle of the sovereignty of God which was the foundation of the constitution of Pakistan.⁴

The '*ulamā*', as it was pointed above, were very active outside the official spheres. Facing allegations that there was a severe conflict of opinions among them about the version of Islamic constitution demanded for Pakistan, a convention of scholars of all schools of thought was held in Krachi in January 1951. The conference formulated unanimously in twenty two points the "Basic Principles of the Islamic State".⁵ The first principle stated that "ultimate sovereignty over all nature and all law

¹ *Ibid.*, pp. 406-9.

² *Ibid.*, pp. 409-10.

³ *Ibid.*, pp. 410-2.

⁴ *Ibid.*, pp. 412-3.

⁵ See Mawdūdī, *The Islamic Law and Constitution*, the introduction pp.28-9 and appendix 1, pp. 331-6 for the text of the resolutins and the names of the participants.

vests in Allāh, the Lord of the universe, alone." Hence, the law of the country should be based on the Qur'ān and the *Sunna* and no law or administrative order should be issued in conflict with them.¹ The Head of the State was entrusted with the full administrative authority of the state although he could delegate part of his powers to any person or body. However, he should discharge his duties in a consultative manner with the advice of the officials of the state and the elected representatives of the people. He had no right to run the government without consultation (*shūrā*) or to suspend the constitution wholly or partly. With respect to civil rights, he should be equal to other Muslims and should not be above the law. The body empowered to elect him should also have the power to depose him by a majority of votes.²

Beside the convention of the '*ulamā*' there were some other conferences organised by academic persons in which the problem of sovereignty from the Islamic point of view was dealt with.³ Moreover, sovereignty became the subject of interesting research carried out by scholars who were generally familiar with Western concepts.⁴ In the main, the doctrine of the sovereignty of God was accepted, defended and explained in most of the studies. Nonetheless, it is significant to notice a tendency to discover more than one sovereignty in the Islamic state. Mazheruddin Siddiqi, for instance, in All Pakistan Political Science Conference of 1962 concluded his paper on "The Concept of Sovereignty in Islam" with the following remarks:

"It is, therefore, clear that there is no one sovereign in Muslim polity. Sovereignty is not concentrated either in the person of the caliph or the people, both of whom are subject to the laws of Islam which they

¹ *Ibid.*, p. 332.

² *Ibid.*, p.334.

³ Cf. Amir Hassan Siddiqi, "Concept of Sovereignty in the Islamic State', in S. Moinul Haq, ed., *The Proceedings of the Pakistan History Conference* (2nd. session, Karachi, 1952), pp. 60- 8; Yusuf Abbas Hashmi, "Sovereignty in Islam in Theory and Practice", *ibid.*, pp. 87-97; Mazheruddin Siddiqi, "The Concept of Sovereignty in Islam", in Muhammad Aziz Ahmad, ed., *The Proceedings of the Third All Pakistan Political Science Conference*, 1962, pp. 87- 96.

⁴ There is only one book which is exclusively written about the Islamic concept of sovereignty, that is, Ilyas Ahmad, *Sovereignty: Islamic and Modern* (Karachi, 1965). But, it is very unsystematic and polemical. Periodicals contain various material. See for example S. A. Q. Husaini, "The Sovereign in a Muslim State", *The Islamic Literature*, II, No. 7 (July, 1950), pp. 595-604; Haroon Khan Sherwani, *Sovereignty in the Islamic State*, *ibid.*, II, No. 8 (August, 1950), pp. 843- 51.

can not change or modify according to their will. But the people enjoy the right of choosing the ruler and removing him. They can criticise him and see that he does not follow wrong policies, but so long as he keeps to the observance and enforcement of Islamic law or does not do anything in flagrant disregard of the interests of religion or the Islamic polity, they are required to obey him. The ruler, on the other hand, enjoys wide powers of administration and the enforcement of the laws and punishments of Islam. He can legislate outside the sphere covered by the Islamic law. He has to conduct the foreign policy of the state and is charged with its defence. These are wide powers and in their exercise he enjoys unquestionable sovereignty. Yet, above both the people and the ruler stands the fabric of Islamic law whose observance is binding on both. This presupposes a completely free judiciary and history shows that the system of *qadā'* in Islamic Countries was to a very great extent independent of the ruler and free from his interference. Thus the *Shari'a* or the law of Islam is a far more real sovereign than either the people or the ruler, though, within their sphere, these two also enjoy a limited measure of sovereignty."¹

¹ Mazheruddin Siddiqi, *op. cit.*, p. 96.

CONCLUSION

I. Validity of the Western Concept of Sovereignty

The question of the validity of the Western concept of sovereignty, its existence or non-existence in ancient or modern communities, and where it can be located is basically a problem of terminology. The controversy over them appears to originate essentially from the ambiguity of meaning of the word sovereignty as there are a great variety of senses attached to it. With respect to the more general meaning of sovereignty, however, there appears to be no real difference in opinions. The necessity of the existence of a superior power within any community to maintain law and order has been expressed in ancient and modern thought. In particular, the Greek, Roman, Christian and Muslim political thinkers have made intense studies about the proper qualities of the holder of the "supreme power" and his primary functions. It is only in the circumstances that prevailed in Europe at the beginning of the early modern period that the concept of sovereignty took on a definite formula there. Two specific factors had a great impact on the shape of the modern theory of sovereignty in its formative period in France, that is, the emergence of the secular territorial nation state and the acceptance of the positive conception of law. The definition, therefore, of the French jurist Jean Bodin of the sixteenth century, which is regarded as being the first modern expression of sovereignty, embodied implicitly and explicitly the claims of national monarchy. As a product of peculiar historical conditions, sovereignty meant an absolute, indivisible, inalienable, and unlimited right of command placed in the national king's hands. The commands of the king established the law while he himself was regarded as above the law. These attributes of sovereignty, as a recent thinker observed, were analogous to the qualities of God. Theologians, in speaking of the sovereignty of God, ascribed to him absolute supremacy and plenteous power with the implication of the complete subjection of man to God. In applying the same sense to

the political context, he concluded, it appeared that "the theological concept of sovereignty has been secularised."¹

Nonetheless, these attributes were confirmed further by later theorists who were reasoning under a similar historical environment. Perhaps the most important of these were Thoms Hobbes, Jean Jacques Rousseau and John Austin. In the main they were in agreement on the attributes and nature of sovereignty. They differed only on the person or body of persons who possessed or ought to possess sovereignty. While Hobbes continued to vest it in a personal ruler, Rousseau shifted it to the ruled, that is to say, the whole people and Austin placed it in the hands of their representatives.

As long as the circumstances that led to the formulation of the theory of sovereignty, namely the establishment of the national state and its right of law-making, still survive, many still hold it to be valid. Yet, there are some voices which have claimed that the 'classical' doctrine of sovereignty is inadequate to account for a number of new developments such as federalism, international law and modern democracy. Moreover, in the light of a new understanding of the nature and character of the state and law the traditional ideas of sovereignty have been given new interpretations. It is very difficult, according to the critics of the theory, to decide accurately the location of an absolute sovereignty in a federal state since authority is shared between the central and local governments. Sovereignty with its despotic connotations appears as anti-democratic. In the international sphere where states are regarded as equals it is not practical to grant any one of them an absolute freedom and total independence. Leon Duguit, a French lawyer, dwelt on the concept of a welfare state whose main function was to provide public services to reject the absolute notion of sovereignty. Among the critics of sovereignty was the English Political Scientist Harold Laski who viewed the state as one organisation among others in the society and, therefore, denied its

¹ George Schwarzenberger, "The Forms of Sovereignty" in W. J. Stankiewicz, *In Defence of Sovereignty* (New York, 1969), p. 165.

monopoly of power under the name of sovereignty. The historical origins of the concept of sovereignty, maintained Laski, represented "not an absolute but a historical logic".¹ On the other hand, on the basis of the assumption that there exist a number of kinds of power in any society which operate at the same time, many types of sovereignty have been claimed to be discovered. These include political, legal, coercive, influential, *de jure*, *de facto*, internal, external, positive, negative, absolute and relative. In other words, it is maintained that there exists a number of bodies in which sovereignty is located, each of which is found to be fully supreme, but only within its proper sphere. But this tendency is also faced with objections not least because it shows sovereignty as a 'protean' word which has no fixed meaning.² One of the advocates of this tendency admits that:

"The dilemma with which we are faced, therefore, if we wish to retain the concept of sovereignty, is very great. If we preserve the traditional simplicity of the concept, it is too ambiguous to be of service, but if we draw the distinctions necessary to avoid these ambiguities, the analysis of the concept becomes so complicated that its use is no longer helpful."³

This dilemma concerning the nature of sovereignty has its effect on the question of who bears or ought to bear the sovereign rights and how to justify the claim to hold them. Similarly, this enquiry seems to be a puzzle. The entities in which, according to various Western theories, sovereignty does reside or should reside comprise the monarchy, the people, the state, the parliament, the electorate, the constitution, coercive institutions such as the army or the police and influential bodies like pressure groups. Perhaps, the most objectionable attribute of sovereignty when determining its location

¹ Harold Laski, *A Grammar of Politics* (London, 1925), p. 48.

² See Stanley Benn, "The Uses of Sovereignty", *Political Studies*, III, No. 2 (June, 1955) pp. 109-22. Reprinted in Stankiewicz (ed.), *In Defence of Sovereignty*, pp. 67-85.

³ W. J. Rees, "The Theory of Sovereignty Restated", in Stankiewicz (ed.), *In Defence of Sovereignty*, p. 221.

within the human boundaries is its absoluteness since all human authority is necessarily relative and conditional. Here we are faced with the basic defect in the original Western theory of sovereignty. When Bodin conceived the sovereign prince as an image of God,¹ he actually embodied this notion in his attributes of the sovereign. However, the complexities of the problem are reduced if claims to absolute, illimitable and indivisible power were excluded. If sovereignty is understood to mean the highest, greatest, final and most general human power in the society it is possible to find a germ of truth in it. Since the unique function of any political power is to maintain the legal order it is not possible to fulfil such a function if these qualities are not possessed. The criterion which determines where the highest, greatest and final power can be located is the phenomenon of obedience. It seems to be commonly believed that obedience is a fundamental constituent of sovereignty and from its existence power is established. Sovereignty which is not rendered *de jure* or *de facto* obedience does not exist. Whoever is obeyed as a highest and a final authority is a sovereign in the sphere in which he is obeyed. The fact that it is possible to attribute obedience to different entities by obeying each body in its proper sphere allow for the existence of more than one relative sovereign in the society. By a consideration of the historical conditions it can be decided who is obeyed in a particular case. As for the question who ought to be sovereign it is to be remembered that any system of rule embody an ideology and the answer to that question is to be sought within that ideology. Apparently, each ideology constructs its own theory of sovereignty.

¹ See Jacques Maritain, "The Concept of Sovereignty", in Stankiewicz (ed.), *In Defence of Sovereignty*, p. 47.

2. The Muslim Viewpoint

i. The Early Muslims

The early Muslim thinkers, especially Ibn Khaldūn, made outstanding endeavours to analyse the nature of political power in human civilization to which they applied the term *mulk*. It is stated that *mulk* was essential for human association (*ijtimā'*). Its essence was its competence, than which there should be no one stronger and higher, to effect real subjection of the people in order to enable it to carry out the various functions of rule. According to Ibn Khaldūn, it was possible to classify *mulk* into three kinds owing to the type of laws (*qawānīn*) enforced. Firstly, there was arbitrary *mulk* which had no established set of rules except the bigoted desires of the ruler. Secondly, the secular type of *mulk* which was based on laws established solely by human reason. The third kind of *mulk* was the one founded on divine laws revealed by God to a prophet. God in this system was considered the only law-giver and *mulk*, whose basic function was the enforcement of the divine laws, belonged originally to the prophets who received God's revelation. After them it was passed to successors who were called caliphs (*khulafā'*) in the Islamic phraseology.

The above analysis explains why the Muslim rulership was given the term caliphate (*khilāfa*) beside other names like imamate (*imāma*) and imarate (*imāra*). In most standard definitions, the caliphate was viewed as a succession to the Prophet in the office of the enforcement of the divine laws and the maintenance of order and material welfare. Most of the Muslim scholars did not accept the idea that the caliph is God's vicegerent, but he was described as a shadow of God. Ibn Taymiyya's statements of the reasons why the caliph was an image of God on earth stands out as a remarkable explanation. He said:

"Definitely the sultan is a servant of God, created by Him, always in need of Him, and cannot dispense with Him, But there are some qualities possessed by the sultan like ability, authority, protection, support and other attributes of mastery (*su'dud*) and lordship (*ṣamadiyya*) on which rests the control and welfare of the people. That is the reason why he resembles the shadow of God on earth; besides he is the most effective cause to put the affairs of the people in order. If the

one who is possessed with power is good, then the affairs of the people will be set in a right state. If he is corrupt there exist pandemonium and injustice in accordance with the extent of his corruption though the people will not be in a state of complete disorder in every aspect. There must exist some benefit as long as the sultan exists, because he is the shadow of God. But shadow may sometimes be completely dark and sheltering from any kind of harm, and sometimes it protects only partially. However, if there is no shadow there will be complete disorder. That is a case similar to the situation if God does not exist, because God is the one who sustains all mankind."¹

The various thinkers attached to the caliphate a number of attributes such as describing it as most superior (*'uzmā*), most general (*'amma*) and independent. It was also conceived as an authority assigned to a determinate definite person by which it was meant that it did not belong to all the people though it was in their power to elect or depose the caliph and supervise his acts. Being an elective office was also one of the characters of the caliphate according to the Sunnī view. They held that it should be based on consultation (*shūrā*) in its formation and in its administration of governmental affairs. However, the political realities compelled the Sunnīs to legitimize the rule that had gained competence (*shawka*) by force and not by consent provided that it maintained the supremacy of the *Shari'a* laws.

In the final analysis, there appears to be certain similarities between the concept of *mulk* as understood by the early Muslim thinkers and the Western notion of sovereignty and there are significant distinctions. If sovereignty is taken to mean simply a highest, greatest, final and most general political power it becomes very close to *mulk*. The Muslims associated to *mulk* supremacy, generality, and competence, but they never thought of it as absolute or illimitable. But the distinction between *mulk* and sovereignty is not only in the attributes attached to them but it is basically in their nature. Owing to the peculiar conditions which shaped the Western concepts, sovereignty has become essentially national and secular. One of the important marks of sovereignty is its legal aspect, that is to say, it creates laws beside its other function of subjecting the people to obey it. Without being the source of law-making sovereignty in

¹ Aḥmad Ibn Taymiyya, *al-Fatāwā* (al-Ribat, n.d.), p. 46.

the Western conception does not exist. Sovereignty will only be found if law is positively made and not given. *Mulk*, on the other hand, is possible to exist regardless of whether it possesses the authority to make laws or not. The basic function of *mulk* is the enforcement of law and not law-making. Laws can be made either by the wilful wishes of the ruler, the decisions of the political elite of the state, or they could be given by God. *Mulk* will only be Islamic if law in it is given by God and not made by men. This forms a basic difference which distinguishes sovereignty from *mulk*.

ii. Modern Muslims

By the year 1924 the last form of the Muslim caliphate was abolished and in its place the secular nation state system of the West was adopted. That was the culmination of a long process of secularization in Turkey which was developing in a similar way in the other parts of the Muslim world. By reason of many historical and geographical factors westernization was very forceful in Turkey, Egypt and India and they became a scene of the encounter between Islam and Western ideas. The political thought of the secular intellectuals which accompanied the development of secularism in the Muslim countries was generally a mere imitation of the West. The Western concepts of sovereignty were echoed and in most cases enacted in constitutions without any critical evaluation. Under the impact of the French revolution and other influences democratic ideas especially the concept of sovereignty of the people spread widely. The words *hākimiyyat millat* in Turkish and *sultt al-umma* or *siyyādat al-umma* in Arabic, which mean sovereignty of the people, became the motto of the secular movement in Turkey and Egypt which portrayed itself as a freedom crusade against despotism.

In the course of the decisive struggle between Islam and secularism, the traditional intellectual leaders of the Muslims, the '*ulamā*', remained stagnant and over protective towards the old order of the past. They failed to adapt their thought to the new changes and initiate solutions to the new problems. In particular, they were unable

to grasp the modern political and legal concepts or express the Islamic principles in the language of today. Consequently, the secular politicians won the battle and captured power even in Pakistan which was established as a separate state chiefly to enable the Muslims to maintain their Islamic identity. Not only was the political and legal authority of Islam disestablished in the Muslim countries but most of the Islamic way of life was uprooted. Those successive blows to the position of Islam brought about a new movement of Islamic reform. Amongst the tasks of this reform was to define the Islamic principles and express them in modern terms. Therefore, it addressed itself to the problem of sovereignty as an important political and legal concept.

With respect to the problem of sovereignty two tendencies dominated the thought of the Islamic reformists. The first laid emphasis on the Islamic ideas which combat despotism which was seen as a chief cause of the degeneration of the Islamic life. The second focused on the campaign against secularism, which completely got rid of Islam, and involved itself in stressing the ultimate supremacy of the Islamic scheme of life including the political and legal system. Both trends borrowed the Western concepts of sovereignty and attempted to interpret them from an Islamic point of view. The former attitude used the notion of popular sovereignty to denote the participation of the Muslim populace in governmental affairs. The latter denied that sovereignty can be attached to any human being and reserved it only to God or to His divine laws, the *Shari'a*.

An outstanding advocate of the stress laid on the role of the Muslim community in relation to its ruler is Muḥammad Rashīd Riḍā who explicitly admitted that he used the term sovereignty of the nation (*sulṭat al-umma*) in its modern political sense to express his ideas. Ḥasan al-Bannā, the founder of the movement of the Muslim Brothers (*al-Ikhwān al-Muslimūn*), and 'Abd al-Qādir 'Uda, a leading thinker of the movement, were in agreement with Riḍā in his usage of the concept *sulṭat al-umma* and its applications and reproduced his thesis in their writings. These thinkers argued that one of the fundamentals of Islam was that the Muslim community possessed

sovereignty. Islam attributed to the community through its representatives *ahl al-'aql wa-al-hall* (the people who bind and loose) the power of election and deposition of the ruler, consultation (*shūrā*) in governmental decisions, and definition of the law. However, it must be remarked that they never accepted the full connotations of the Western concept of sovereignty of the nation. The Muslim community was not based on nationalism and it was not free to legislate anything which was not in conformity with the *Shari'a* laws. Assigning sovereignty to the community, it was asserted, was not in contradiction with the doctrine of oneness of godship (*tawhīd al-rubūbiyya*) which implied that God was the real legislator and His laws enjoyed ultimate supremacy. It is clear, therefore, that though these thinkers have borrowed the modern Western concept of popular sovereignty to express their ideas, yet they were compelled to give it new interpretations and make vital amendments to it in order to make it suitable to convey the Islamic ideas.

On the other hand, the other group of Islamists who emphasized the supremacy of God's laws, the *Shari'a*, preferred to assign sovereignty directly to it or to God. Perhaps, the most important of those thinkers are the Turkish Prince Sa'id Ḥalīm Pāshā, Abū al-A'lā al-Mawdūdī of Pakistan and Sayyid Quṭb from Egypt. Sa'id appears to be the first to use the phrase 'sovereignty of the *Shari'a*' to express the belief of the Muslims in the obligation and the supremacy of the divine laws, the *Shari'a*, in contrast to the concept of national sovereignty which was employed by the secularists to disestablish Islam. He was convinced that "the whole social framework of Islam rests upon the fundamental principle of the *Shari'a*."¹ He also furnished new arguments to justify the truth of the *Shari'a's* sovereignty and the falsehood of the national sovereignty. Man was not competent to discover social laws to govern his life as he was able to find scientific laws in the physical and natural sphere. Therefore,

¹ Sa'id Ḥalīm Pāshā, "The Reform of Muslim Society". English tran. Muḥammad Marmaduke Pickthall, *Islamic Culture*, I, No. 1 (January, 1927), p.101.

law, which was the basis of order in the society, could only be derived from the incontestable source, God. By reason of this fact, he maintained that the principle of national sovereignty was a false imaginary right which produced only injustice.

Al-Mawdūdī, who was writing after Sa'īd, followed a similar line of thought but in place of the *Shari'a* he vested sovereignty in God himself. Sayyid Quṭb's contribution, on the other hand, was mainly an elaboration and explanation of the ideas of al-Mawdūdī. Al-Mawdūdī has expressly acknowledged, like Riḍā and al-Bannā, that he borrowed the word sovereignty (*ḥākimiyya*) from the terminology of modern Political Science. He understood it to mean 'absolute overlordship or complete suzerainty' which entitled its holder to unquestionable right to impose his orders on all the subjects of the state without himself being subjected to any limitations or restrictions on his power to rule except his own will. Laws were enacted by the means of his absolute will which was the only criterion of right and wrong and good and evil and all the subjects were under obligation to obey them. It is clear, therefore, that his concept of sovereignty was identical with the original notion developed by the early Western theorists up to the beginning of the nineteenth century. Assuming this sense of sovereignty, he argued that no human being could possess it or be justified in holding it. Like Sa'īd, he stated that the myth of investing anything with it would only produce injustice. As he equated sovereignty with the Arabic terms *ulūhiyya* and *rubūbiyya* (godship), he reserved it to God alone. Similarly, Quṭb detailed further those ideas and associated absolute sovereignty (*ḥākimiyya*) with God only as depicted in the supremacy of the divine law, the *Shari'a*.

With regard to the question of the role of the community in a system in which God is the only sovereign, al-Mawdūdī and Quṭb offered slightly different answers. Generally, Quṭb seems to have paid more attention to the question of sovereignty of God than its relationship to the community. No doubt he spoke about the function of the Muslim community in the political system and its right of consultation (*shūrā*) and legislation within the limits of the *Shari'a*. But it is not possible to find an elaborate

explanation of the place of the community in relation to God's sovereignty except his reference to the position of man as a vicegerent (*khalīfa*) of God. In only one place he hinted that there was a difference between the source of authority and the exercise of it. Since God was entitled to sovereignty, "men exercise the authority of application of what God legislated by virtue of his sovereignty."¹ On the other hand al-Mawdūdī dwelt on his concept of vicegerency for God to define the role of the Muslim community in relation to God's sovereignty. Every Muslim was a vicegerent of God and all the Muslims possessed what he called 'popular vicegerency'. This popular vicegerency entitled the Muslim community to conduct all collective affairs by mutual consultation (*shūrā*) like the appointment of the head of state, the management of all governmental matters and the function of legislation in conformity with the explicit and implicit directives of the Qur'ān and the *Sunna* and the general spirit of Islam. He uncommonly denoted this authority of the people by the phrase 'limited popular sovereignty under the suzerainty of God'. This fact, in itself, reveals that al-Mawdūdī found that his doctrine of divine sovereignty was inadequate to account for the Muslim political phenomenon unless it was aided by a doctrine of "popular vicgerency" or "limited popular sovereignty". Apparently, Quṭb faced the same difficulty when he attempted to make a distinction between the source of sovereignty and the exercise of it. However, both attempts to resolve the difficulty appear to be unsatisfactory. On the one hand, how can an entity exercise a right which it does not hold. On the other hand, al-Mawdūdī's concept of popular vicegerency which assumed that every Muslim is a caliph of God could hardly be defended in the light of the usage of the word *khalīfa* in the Qur'ān and the *Sunna*.²

¹ Sayyid Quṭb, *Fi-Zilāl al-Qur'ān*, comments on verse 9:40.

² See below pp. 81-5.

iii. A Restatement

Taking into account the difficulties that faced the modern Muslim attempts to borrow the Western concept of sovereignty to express the Islamic ideas of rulership, it may be clear that they were inadequate. The basic reason for this may be the impropriety of the term sovereignty in its Western usage to accurately convey the Islamic principles. In the West, sovereignty is understood to mean an authority to make laws and to enforce them. Those who have believed in a monistic sovereignty hold these two constituents of it to be inseparable. The modern Muslim thinkers also believed in a monistic sovereignty but it was difficult to associate its two elements of making and enforcing the law with one entity. It is difficult to vest the authority of enacting and implementing the law in the Muslim community since the real law-giver in the belief of the Muslims is God. It is equally difficult to assign to God a coercive power which compels men to obey the law. There is no doubt that the necessary coercion to impose the law is left to be exerted by a human power. Therefore, sovereignty in its Western sense is neither applicable to God nor to the Muslim community. The modern Muslims who have used the word sovereignty to express the Islamic ideas have found themselves compelled to adapt its senses to suit their purposes. They were no longer using it in its original Western sense. Hence, Mawdūdī, for instance, equated sovereignty with *ulūhiyya* and reserved it to God. Even though he adjusted its proper sense which denotes a human power working within the human society, he was additionally forced to recognize a human 'limited popular' sovereignty. Quṭb mainly used the word sovereignty (*ḥākimiyya*) to mean law-giving (*tashrī'*). Apparently, those who placed sovereignty within the Muslim community have modified its sense by excluding from it the aspect of law-making.

In the light of the above discussion, and if it is insisted to use the term sovereignty to describe Islamic rulership, it may be appropriate to consider the recent tendency in Western thought which splits sovereignty into distinctive types each fully sovereign in its proper sphere. In that case, what is termed legal sovereignty and which

deals with law-giving can be assigned to God or to his divine laws, *the Shari'a*, as they are definitely binding upon the Muslim community. Political sovereignty, which chiefly means the power to enforce the law, can be vested in the Muslim ruler who enjoys wide powers of administration in Islam. The people, who possess the right to elect the ruler and depose him and to participate in making collective decisions, can be considered to be holding the ultimate political sovereignty and the ruler the immediate one. Besides, the influential sovereignty undoubtedly can reside with the people.

Perhaps, this may sound less helpful since the word sovereignty will take many meanings. However, it is to be remembered that there is no real difference of opinions as regards the basic outlines of the Islamic political system. Muslim scholars generally are in agreement concerning the supremacy of the *Shari'a*, the rights of the ruler and the powers of the Muslim community in relation to its government. Therefore, it is only a problem of terminology which made some scholars assign sovereignty to God and others associate it with the community. In the final analysis, there is a common consent regarding the original Islamic principles. In that case, it may be more proper to use the early Islamic phraseology and reject the word sovereignty, which have proved to be rather confusing than useful, or equate its meaning with them. Firstly, there is the term *Ulūhiyya* (godship), which certainly implies the right of command over the creation and legislation for mankind, and it clearly belongs exclusively to God. No doubt, the term *ulūhiyya* comprises all the meanings which those who assigned sovereignty to God wanted to attribute to Him. The term *mulk* suffices to denote human political power. It is advantageous also as it can account, as Ibn Khaldūn attempted, for the nature of political power in different civilizations. *Mulk* can equally exist in Muslim and non-Muslim societies. But the Islamic *mulk*, which can also be termed *khilāfa*, must meet at least two conditions. It must in the first place recognize the supremacy of the *Shari'a* laws and abide by them in accordance with the doctrine of *ulūhiyya*. Its power and competence (*shawka*) must originally be derived

from the consent of the governed people, that is to say, they must be consulted in all collective decisions including the formation of the government and the definition of law. If *mulk* is established by force instead of consent of the people it is still possible to describe it as Islamic as long as it abides by the *Shari'a* laws. But it certainly suffers a serious defectiveness according to the Islamic norms of the *khilāfa* system. Only, *mulk* becomes un-Islamic if the *Shari'a* laws are not maintained even if it is in the hands of Muslims. A Muslim would cease to be a Muslim if he rejects the belief in the supremacy of the *Shari'a* laws as that would imply a rejection of the doctrine of *ulūhiyya*.

To sum up, the terms *ulūhiyya* and *mulk* are very useful in describing the nature and location of legal and political authority in Islam. Therefore, if it is required to use the word sovereignty to signify those authorities it may be more consistent to give it two senses: one equivalent to *ulūhiyya* and the other to *mulk*. *Ulūhiyya* implies an absolute sovereignty and *mulk* implies a limited relative sovereignty. In other words, there will be more than one sovereign in Islam, namely, God and the human political power, *mulk*, which comprises both the ruler and the people. This fact can be verified further if we apply the criterion of obedience which detects the existence of sovereignty in any society. It is evident that the Muslim community ought to render obedience to God, his Prophet and *ulū al-amr* as it is stated in the Qur'ān. The Qur'ān said: "O you believe, obey Allāh and obey His Messenger and those from among you who hold authority (*ulū al-amr*)."¹ Two objects of obedience stand out from this verse: God or his divine law as contained in the Qur'ān and the *Sunna* and the human authority denoted by the term *ulū al-amr* which indicates both the ruler and the persons who are qualified to decide the collective affairs of the Muslim community.

¹ The Qur'ān 4: 59.

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