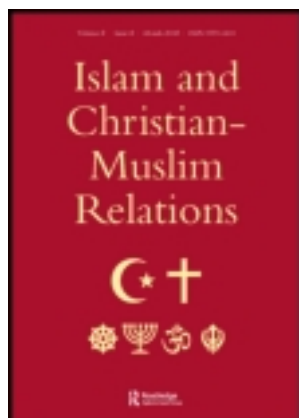


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### The majority principle in Islamic legal and political thought

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# The Majority Principle in Islamic Legal and Political Thought<sup>1</sup>

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**ABSTRACT** *This article studies the concepts of ijmāʿ, al-sawād al-aʿzam, jumhūr, al-tarjīh bi-al-kathra and legal maxims al-qawāʿid al-fiqhiyya at some length and relates them to the majority principle. These concepts represent a rich field of legal rules, principles and opinions, and the study has found that most—if not all—of them could strengthen the case for the legitimization of the majority principle in Islamic political thought and decision-making processes. The article also considers Islamic political thought in relation to popular sovereignty, equality, popular consultation and the adoption of majority decisions by all the participants in political processes. While it is by no means conclusive, the article clearly favors the adoption of the majority principle—alongside other principles validated in Islam—in shūratic processes in an Islamic state.*

This article will deal with the Islamic heritage in connection with this issue. Its aims are to identify Islamic legal concepts that could possibly have a bearing on the topic of the study, examine them critically and ascertain if any of them could be related to the majority principle and majority decision-making. In other words, this study is concerned with finding evidence that could, by further research, lead to the legitimization of the majority principle as one of the permissible mechanisms—surely not the only one—of decision-making in Islamic political thought and practice. In addition to this, I am going to dedicate a few sections of the article to contemporary Islamic political thought, and discuss in some detail such questions as the relation between Islam and democracy, the place of the majority principle in contemporary writings on this issue and the role of the majority in the *shūrā* processes.

## Legal Concepts

There are several legal concepts in Islamic jurisprudence and its principles that can be brought into discussion concerning the majority principle. Most, if not all, of the principles and concepts covered in this article have already been discussed elsewhere, both as separate units and in relation to the majority principle.

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However, I have tried to substantiate these principles and concepts with evidence from Islamic legal and political thought. The course I intend to pursue is the following: first, I define and discuss a particular concept with regard to its place in Islamic legal/political theory, then consider the views on the subject—very often opposing ones—of some of the more important scholars, and finally analyze those views critically in light of the available evidence with the goal of making a small contribution to the resolution of the disputes involved. However, in those instances where I am unable to offer an acceptable solution or suggestion, due to lack of evidence or personal limitations, I will try to indicate possible ways out of dispute or, at least, point toward major questions for further study.

### Ijmā' (Consensus)

Juristically speaking, *ijmā'* is considered a source of law in Islamic legal theory. Its place is immediately after the textual sources, namely the Qur'ān and Sunna. Different Muslim scholars have defined it in various ways. However, two definitions are particularly important and they are discussed in almost all specialized works. The first is offered by al-Ghazālī who defined *ijmā'* as 'an agreement of the *umma* of Muhammad (SAW) in particular on any given religious matter'.<sup>2</sup> The second, which is commonly accepted, states that *ijmā'* is 'an agreement of the scholars of the Muslim *umma* of a particular age on a certain issue'.<sup>3</sup> The difference is that al-Ghazālī's definition requires the unanimous agreement of the whole *umma*, whereas the second definition demands unanimity only on the part of Muslim scholars. However, al-Ghazālī clarified that what he meant was that, in matters that should be known by all Muslims, such as the obligatory nature of the five daily prayers, fasting during Ramaḍān and so on, there exists a consensus of both the common people and qualified scholars. On the other hand, in matters that require expertise, such as knowledge of different types of transactions, rules of performing the prayers and so on, the commoners acknowledge that scholars possess highly specialized knowledge in connection with those matters, and they therefore accept the scholars' consensus as their own.<sup>4</sup>

Both definitions imply that a necessary condition for *ijmā'* is the unanimous agreement of *all* scholars at a particular time, at least in theory. However, on a practical level, given the limitations imposed by the inefficiency of the means of communication and transportation during the early periods of Muslim history and inherent differences in ways humans approach intellectual challenges, it was practically impossible to establish actual agreement of all qualified scholars on a considerable number of issues. While this point was discussed in a specialized literature and the viability of *ijmā'* was established theoretically in those writings, the existence of the wide range of differences among scholars on almost all questions of Islamic jurisprudence testifies to the fact that *ijmā'* was, and is bound to remain, highly theoretical and almost impossible to achieve. In fact, according to some critics, *ijmā'* was established only in those cases and on those issues that have some textual evidence from the Qur'ān and Sunna. But *ijmā'* is not needed in cases where there are clear qur'ānic and Prophetic references!<sup>5</sup> One of the problems that contributed to the impracticability of *ijmā'*

is that the majority of Muslim jurists did not consider that *ijmāʿ* could be formed in cases where there was disagreement, even if that disagreement were the result of only one or two dissenting voices.<sup>6</sup> The minority opinion, held by al-Ṭabarī, Abū Bakr al-Rāzī, Abū Ḥusayn al-Khayyāṭ and Aḥmad ibn Ḥanbal, according to one report,<sup>7</sup> allowed for the establishment of *ijmāʿ* in cases where there existed a slim minority of such opposed voices. They base this view on several facts. First is that the appointment of Abū Bakr (RA) was considered an *ijmāʿ*, even though there were a few dissenting voices that opposed his inauguration such as Saʿd ibn ʿUbayda, ʿAlī (RA) and a few other Companions. These scholars have also employed the concept taken from the sciences of Ḥadīth which says that numerical advantage is to be taken to prefer one report over another.<sup>8</sup>

There are two more opinions on this issue. One says that if the number of scholars who happen to hold a minority opinion do not reach the level of *tawātur* (*ḥadd al-tawātur*),<sup>9</sup> then it can be considered that *ijmāʿ* has occurred in that particular instance. On the other hand, if the number of scholars that hold a minority opinion reaches or exceeds that required for the occurrence of *tawātur*, then the majority opinion cannot be considered an *ijmāʿ*.<sup>10</sup> The second of these opinions is held by Ibn Ḥājjib al-Mālikī who considered that an agreement of the majority of scholars could not be accepted as an *ijmāʿ*. However, the opinion of such a majority is an authoritative evidence (*ḥujja*) because it is more proper/appropriate (*awlā*) to follow the majority opinion.<sup>11</sup> In short, given these rigid conditions imposed by the majority of Muslim legal scholars with respect to the formation of *ijmāʿ*, it was only natural that this legal institution became highly theoretical and of almost insignificant value in the later periods of Muslim history.<sup>12</sup>

However, the situation was not always thus. So far our discussion has been limited to legal methodology and theory. But the concept of *ijmāʿ* can be studied from another perspective: the social one. The early phases in the development of Muslim society witnessed a number of dynamic processes that provided the necessary impetus to the development of Muslim sciences in general.<sup>13</sup> *Ijmāʿ*, in particular, was a driving force which provided a vital degree of stability in spite of prolonged periods of internecine conflicts and potentially disruptive unresolved theological and legal issues. This was possible because *ijmāʿ* was an informal activity, involving the community in general and the learned scholars and political leaders in particular. The spirit of free deliberation and respect for the opinion of specialized scholars was widely held. This is not to deny the existence of trends that attempted to curb this practice of free deliberation, but the prevalent atmosphere was such that scholars could express their opinion on any matter, and that opinion was very often not in line with the official policy of the day, for which action in turn they enjoyed almost undivided credibility among the public who adopted and internalized those teachings. *Ijmāʿ* was, therefore, an outcome of the *shūrā* process at large, a process which involved a large number of members of the Muslim *umma*. It was not arrived at by some governmental fiat or scholarly debate, but was achieved gradually, after a period of time, when numerous alternatives to the issue under discussion had been presented, and when one of those alternatives emerged as the most in accordance with the prevalent sentiment among the Muslims and most beneficial for their

personal interests and the interest of their religion. *Ijmā'* was the result of social processes aimed at discovering an objective truth in connection with the issue raised by the community. It was an interactive process, whereby the community at large would either adopt or reject solutions offered or suggested to them by qualified scholars and political leaders from among themselves.<sup>14</sup> It was of course enormously difficult in practice to achieve a total consensus amounting to unanimity. However, as long as the great majority of Muslims in general adopted a certain stance, it was considered that *ijmā'* was achieved.

Acknowledging difficulties that were posed by definitions of *ijmā'* as given by the majority of classical scholars, some Muslim scholars have tried to revise and possibly revitalize this valuable concept. They saw that *ijmā'*, which is a topic of discussion in the books on *uṣūl al-fiqh*, is too rigid in some points and almost totally impracticable, for if it meant the agreement of *all* scholars at a particular time on a certain issue, then its practical value is severely limited. If this definition is to be accepted, the employment of *ijmā'* in developing solutions to the problems that the Muslim community is facing today will not bear much fruit. What these scholars perceived, in fact, was a sharp contradistinction between the early usage of this concept, which served as a powerful way of resolving issues in dispute, and the way it was defined in later works on the principles of Islamic jurisprudence (*uṣūl al-fiqh*).

Shāh Walī Allāh al-Dahlawī (d.1176/1762) was among the first to notice these problems. He severely criticized the classical definition of *ijmā'*, particularly the condition which stipulates agreement of all scholars.<sup>15</sup> For him, *ijmā'* is the end-result of *shūrā* processes that involve learned men and the caliph, which is then widely accepted and implemented in the Muslim community.<sup>16</sup> In short, what is reached after mutual consultation between the caliph and the men of opinion and endorsed by the overwhelming number of the members of the community at large is called *ijmā'*. With this, he added a political dimension to *ijmā'*, thus expanding on it after it had been confined to a legal concept.

A well-known Egyptian writer, ʿAbbās Maḥmūd al-ʿAqqād, was very much in favor of democracy and tried to emphasize the democratic character of Islam. With regard to *ijmā'*, he also tried to give it a political character in addition to its being a legal concept. He maintained that it could be achieved not necessarily by a complete consensus, but by 'the thing which comes nearest to it (that is, the majority)'.<sup>17</sup> Safran criticized al-ʿAqqād's position because the latter tried to show that *ijmā'* was a political concept as well. For Safran, *ijmā'* was 'the traditional *ex-post-facto* sanction of change already established, resting on the divine assurance that the community would never agree on what is wrong'.<sup>18</sup> Here, he relied on the legal definition of *ijmā'*. However, it is precisely because of dissatisfaction with the classical legal definition that al-ʿAqqād, like al-Dahlawī before him, proposed some amendments to it.

Another proposition for the revitalization of *ijmā'* came from Muḥammad Iqbāl. He was perplexed by the fact that this concept never assumed the form of a permanent institution, but remained confined to academic discussions.<sup>19</sup> The operationalization of *ijmā'*, according to Iqbal, can only be achieved by transferring the power of *ijtihād* from individuals to a Muslim legislative assembly.<sup>20</sup> He thus called for a collective *ijtihād*, one that benefits from various inputs and

points of view, and secures a more satisfying outcome for those involved in the process. The possibilities of erroneous interpretations, which are bound to be made since many representatives are not well-versed in Islamic law, are to be minimized through a reform of the educational system which would include, among other things, 'an intelligent study of modern jurisprudence'.<sup>21</sup> *Ijtihād*, then, is not the sole prerogative of religious scholars, but should also include scholars of various disciplines, which is just what *ijtihād* used to mean in the early periods of Muslim history.<sup>22</sup> What is obtained through this collective *ijtihād* of specialists is called *ijmāʿ*.

Another criticism of the classical conception of *ijmāʿ* came from the pen of ʿAbd al-Ḥamīd Abū Sulayman. I have already pointed out the fact that *ijmāʿ*, in his opinion, was mostly reached on those issues that had already been settled by the Qurʾān and Sunna.<sup>23</sup> He echoes Iqbāl's view when he says that traditional ʿulamāʾ alone cannot fulfill the need for modern law-making. Law- and policy-making in the modern world are very complex processes that require the participation of wide segments of society, with specialists in different branches of knowledge at the forefront. The classical view of *ijmāʿ* cannot satisfy a modern social system and should be thoroughly revised.<sup>24</sup> Its role should be related to the legislative functions of modern states in concrete political systems 'where it may produce a workable relationship between the ideal and the real, with maximum possible support and participation on the part of the Muslim peoples'.<sup>25</sup>

In short, modern Muslim scholars perceive a need for the revitalization and reconceptualization of this important legal concept. Most of the classical legal definitions of *ijmāʿ* cannot satisfy the needs of modern Muslim societies. *Ijmāʿ* should be defined in a way that makes it a dynamic force, one that enables it 'to be no longer retrospective, as in the past, but to deal decisively with problems as and when they occur'.<sup>26</sup>

Where would the place of the majority be if *ijmāʿ* were to be reformulated? It could be achieved through majority decision-making if all the members of the community accept in advance that decisions by the majority are to be binding upon all of them. Thus, when a majority decision is reached, all the members of the Muslim community should strive towards seeing that decision implemented in practice. So even those who voted against the proposal which obtained the support of the majority should accept the majority decision, and try to implement the new policy *in a consensual fashion*. If understood in this way, *ijmāʿ* can be achieved through the implementation of the majority opinion.<sup>27</sup> I have previously mentioned that some classical scholars were of the opinion that the majority decision is an authoritative evidence (*ḥujja*), even though it falls short of consensus. Fathī ʿUthmān claims that this is one of the fundamentals (*uṣūl*) that are widely held by the jurists.<sup>28</sup> In fact, al-Shāwī opines that the intended meaning of *ijmāʿ* always equals *shūrā*, and that *ijmāʿ* is, as a matter of fact, what is arrived at through the process of *shūrā*.<sup>29</sup> This is reminiscent of al-Dahlawī, whose views on this issue have been discussed above. However, a new proposition of al-Shāwī is that *ijmāʿ* can be achieved through total consensus (*ijmāʿ kāmīl*) or through the consensus of the majority (*ijmāʿ al-jumhūr*).<sup>30</sup>

This should in no way inhibit the defeated minority from trying to persuade the others to accept its view, if it still holds it, while accepting the majority decision and giving it its full support at the same time. In other words, there should exist a consensus on the basic rules of the political game and, more importantly, on the values of such a political system. Within such an arrangement, the existence of nonstructural opposition<sup>31</sup> should be tolerated and it should be allowed to work for its own political program, given that it accepts the basic consensus. In this way, the relation between majority decision and *ijmāʿ* could be put into practice. This is, of course, a very brief proposal, but one that could be expanded and operationalized through further research.

### Al-sawād al-aʿẓam

This concept originated in the Prophetic saying in which the Prophet Muhammad (SAW) said: ‘My *umma* will not agree on an error, and when you see a disagreement you have to follow the majority (*fa-idha raʿaytum ikhtilāfan ʿalaykum bi-al-sawād al-aʿẓam*).’<sup>32</sup> Al-Sindī, commenting on this tradition, had this to say:

*Al-sawād al-aʿẓam* means the majority group (*al-jamāʿa al-kathīra*) because their agreement is closest to the consensus (*ijmāʿ*)...Al-Suyūṭī said [they were] a majority of those who are united in following the right course. This tradition indicates that it is mandatory to follow opinion of the majority (*yanbaghī al-ʿamal bi-qawl al-jumhūr*).<sup>33</sup>

The Ḥadīth indicates that it is preferable to reach decisions in matters of common concern on a consensual basis. However, if this is not possible, then Muslims should, according to this tradition, follow the view(s) of the majority among them. Al-Sindī has mentioned the rationale for such a stance: the majority decision is closest to the ideally desired consensus, and in those instances in which consensus is not possible, the closest approximation to it is considered to be the more correct opinion to follow. This is probably the clearest injunction that can be found either in the Qurʾān or in the Sunna in connection with majority decision. Traditionally, this Ḥadīth has been used by the followers of *ahl al-sunna wa-al-jamāʿa* to prove the correctness of their stance in opposition to that of the *shīʿa*, *khawārij* and other Muslim groups. Unfortunately, it was seldom related to the decision-making process, particularly after the period of *al-khulafāʾ al-rāshidūn*.

However, this concept became very popular in writings on contemporary Islamic political thought. Witnessing the unprecedented scientific and technological advancement of the West, and attributing that success to a certain extent, rightly in my opinion, to its political institutions, Muslims have tried to understand the reasons behind such progress. Among other things, some Muslims attribute the rise of the West to the democratic institutions of Western governments, including the participation of the people in the decision-making processes, regular elections in which the will of the electorate is tested, the accountability of elected officials and other praiseworthy democratic practices. Realizing that many of these principles have been mentioned or devised in

Islamic sources, and trying to re-establish them in the light of Islamic teachings, some Muslim scholars are now trying to develop an authentically Islamic approach to these principles and validate them by referring to and reinterpreting the said sources. As one of these principles, the argument or the concept of *al-sawād al-a'zam* is very often invoked to validate the majority principle in the processes of Islamic government.

A well-known contemporary Muslim scholar, Yūsuf al-Qaraḍāwī, uses the Ḥadīth in which *al-sawād al-a'zam* has been mentioned as evidence that in matters liable to be subject to a multitude of different opinions and on which a consensus cannot be achieved due to their not being supported by explicit evidence from the Qur'ān and/or Sunna, the majority principle can be used as a means of giving preference to one opinion over another. He says this tradition in fact commands Muslims to follow the majority opinion in matters of disagreement.<sup>34</sup> He also adds that *al-sawād al-a'zam* mentioned in the Ḥadīth means 'the majority of the people (*jumhūr al-nās*), the prevailing group among them (*‘āmmatuhum*), and the greater number of them (*al-‘adad al-akbar minhum*)'.<sup>35</sup> Muḥammad Asad also quotes this Ḥadīth approvingly and deems it to constitute evidence that should be referred to for a correct grasp of the majority principle, which, for him, should be allowed in matters of *ijtihād*. Decisions reached through it should be binding upon all members of a Muslim society.<sup>36</sup> I have already quoted al-Shāwī who mentioned *al-sawād al-a'zam*, or the majority, as a possible meaning or outcome of *shūrā*, whereby he equals it with *ijmā'*.<sup>37</sup> So, it is clear from the discussion in this section that some contemporary Muslim scholars look upon the concept of *al-sawād al-a'zam* as valid evidence on which the majority principle in the decision-making processes in an Islamic polity is to be adopted.

### Jumhūr

Another legal concept quite often mentioned in connection with the majority principle is *jumhūr*. It literally means, among other things, 'gathering', 'crowd', 'great number' or 'the majority'. The concept is used very often in legal literature. It ordinarily connotes the majority of scholars, usually in connection with an issue that is a subject of disagreement among Muslims. When such disagreement occurs, specialized literature usually gives a variety of opinions. The terms used to denote the opinion held by the majority of scholars are: 'the opinion of the majority [of scholars]' (*madhhab al-jumhūr* or *ra'y al-jumhūr*), 'the majority of scholars' (*jumhūr al-‘ulamā'*), etc. The term is also sometimes used to denote the masses, i.e. the public in a general sense, or the great majority of them.

Those Muslims scholars who see the concept of *jumhūr* as a possible means of validation of the majority principle point to the fact that Muslim legal scholars give preference to the opinion of the majority (*i'tidād bi-ra'y al-jumhūr*) in matters of disagreement, provided that there is no other more acceptable evidence contrary to it.<sup>38</sup> According to Faṭḥī 'Uthmān, Ibn Taymiyya (d. 728AH) suggested that when Abū Bakr (RA) nominated 'Umar (RA) for the office of *khalīfa* and the proposal was subsequently endorsed, the legitimacy of *bay'a* (the



oath of allegiance, or the mechanism for the appointment of the head of the state) was established only after a majority of Companions (*jumhūr al-ṣaḥāba*) had agreed to it.<sup>39</sup> Therefore, according to this reading of historical precedents, the appointment of the head of an Islamic state should be endorsed by a majority of the electorate. Al-Shāwī adds to the debate on this concept by saying, as I have already quoted, that in the absence of a total consensus (*ijmāʿ kāmīl*) reference should be made to ‘the consensus of the majority’ (*ijmāʿ al-jumhūr*), for the latter is the closest approximation to consensus in the proper sense.<sup>40</sup> This is so for ‘the majority opinion or *al-jumhūr* is indicative of the opinion of *al-jamāʿa* (society) in *al-shūrā*’.<sup>41</sup>

### Al-tarjīḥ bi-al-kathra

*Tarjīḥ* is a legal concept that comes into play when there exist two or more apparently contradictory items of legal evidence that cannot be reconciled in any other way as provided by legal theory.<sup>42</sup> So if this is the case, one opinion or evidence will be given preference or precedence over the other, based on the conditions stipulated by legal scholars. This process is called *tarjīḥ*. It is, therefore, ‘an advancement of one of the two contradictory positions by the *mujtahid*, on account of the expressed advantage [present] in it, that makes the action in accordance to it prior/preferable (*awlā*) to the other’.<sup>43</sup>

One of the applications of this concept occurs in cases where there are two Prophetic traditions whose meaning cannot be reconciled by any of the means used by legal scholars. In such cases, there are several ways in which *tarjīḥ* can be applied. One is that the tradition transmitted by the greater number of transmitters should be given preference over the other which came through fewer transmitters of Ḥadīth (*al-tarjīḥ bi-kathrat al-ruwwāt*).<sup>44</sup> This is a known principle in the sciences of Ḥadīth whereby, for instance, *mutawātir* is given preference over *aḥad* if they happen to be in conflict. However, scholars are divided on this issue, i.e. whether numerical superiority should be regarded a valid basis for *tarjīḥ*. A vast majority of Muslim scholars are in favor of this type of *tarjīḥ*, and the evidence they put forward for their opinion seems to be much stronger than that of their opponents on the same issue.<sup>45</sup> Al-Dahlawī maintained that in such cases preference should be given to a tradition transmitted by a greater number of narrators, or to that which is actually accepted in practice by a greater number of scholars.<sup>46</sup> The great scholar of Ḥadīth, al-Bukhārī (d. 256AH), commenting on an issue on which there existed contradictory reports, chose one of those reports because it came ‘through a greater number of transmitters’.<sup>47</sup> Al-Arnaʿuṭ says that this is a common practice of the great scholars of Ḥadīth (*huwa al-jārī ʿalā ṭarīqat al-muḥaqqiqīn min ahl al-ḥadīth*).<sup>48</sup> Let me clarify this argument with a quotation from another famous scholar, Ibn Daqīq al-ʿĪd, who said:

If there are different (contradictory) reports [on a certain issue]...and if one of them is to be given preference over the other(s), such as in the case of one being transmitted by a greater number of transmitters...then it is an imperative to act in accordance with such a preferred [report]

(*fayataʿayyan al-ʿamal bi-al-rājih*), because the [existence of the] weaker [evidence] is not a deterrent to act in accordance with the stronger [evidence].<sup>49</sup>

One of the few Muslim scholars who related this scholarly principle to political thought was Abū Ḥāmid al-Ghazālī. While discussing the merits of claims and counter-claims made by the ʿAbbāsīd caliphs and their Bāṭinite opponents with regard to the legitimacy of the caliphate and political power, al-Ghazālī uses a discourse similar to that of John Locke,<sup>50</sup> and asserts that since it is not conceivable that those concerned with such an issue would unanimously agree on a certain position, it is imperative that they should all accept and abide by the majority opinion (*fa-innahum law ikhtalafū... wajaba al-tarjih bi-al-kathra*).<sup>51</sup>

#### *Legal Maxims* (al-qawāʿid al-fiqhiyya)

Legal maxims are not usually cited as supporting evidence for the legitimation of the majority principle. However, I find it useful to mention that some of these maxims can perhaps be used in discussion on this topic. It should probably be said, for the sake of clarification, that legal maxims, *per se*, are not a source of law, but can be useful juristic tools in finding solutions on issues which are not made explicit in the sources. Among the maxims that could give some additional weight to the majority principle are the following: ‘that which is preponderant [in greater quantity] should be ordained (*bi-al-aghlab min al-umūr yuqḍā*)’;<sup>52</sup> ‘a more probable assumption amounts to the execution (*al-zann al-ghālib yanzil manzilat al-tahqīq*)’;<sup>53</sup> ‘that which is preponderant [in greater number or quantity] is to be taken into consideration, and that which is rare is not to be enjoined (*al-ʿibra bi-al-ghālib wa-al-nādir la ḥukm lah*)’;<sup>54</sup> ‘that which is preponderant amounts to an established/certain [opinion] (*al-ghālib musāwī li-al-muḥaqqaq*)’;<sup>55</sup> ‘the greater part gets the jurisdiction of the whole (*li-al-akthar ḥukm al-kull*)’.<sup>56</sup>

#### **Political Thought**

After looking into some legal concepts that could have a bearing on the theme of this thesis, I will now turn to contemporary Islamic political thought. This section starts by dealing with the issue of Islam and democracy. It is, indeed, one of the major questions currently discussed in the field, and there are numerous works on this topic, some of which will be referred to below. Among the issues covered in this section are the problem of sovereignty in Islamic political thought, the place of the majority principle in the ongoing discussion on Islam and democracy and some ways by which the majority principle could possibly be operationalized in *shūrā* processes. Comparison with Western political theory will also be briefly attempted, and the following sections will also bring into consideration some of the issues already discussed in the first chapter.

*Islam and Democracy: Some Disputed Issues*

The majority principle is closely related to, among other things, the question of sovereignty, or the ultimate legislative power in society to which undivided obedience is to be paid. I will spend some time here trying to explain this issue in its Islamic context. It has been interpreted in many ways, and those Muslims who oppose democracy usually invoke this in order to argue that Islam is incompatible with democracy. After presenting a discussion of the issue of sovereignty, this section will then move on to discuss some general principles of Islam and democracy, and how they can be made practicable in an Islamic state. This part serves as background for the subsequent discussion on the majority principle and its possible place in *shūrā*.

There exists a considerable degree of agreement on the issue of sovereignty in Western political theory, which assumes that ultimate sovereignty belongs to the people. Since it is inconceivable that they should all and personally participate in law-making, representation has been accepted as a workable method whereby elected representatives would be responsible and accountable for their exercise of power through periodic, free and fair elections. Thus, there are two types of sovereignty: (1) ultimate sovereignty, which belongs to the people as a whole; and (2) immediate sovereignty, which is located in the representative bodies, such as parliaments. However, it should be noted that the concept of sovereignty in the West has been secularized, particularly with the onset of modernity, and religion has been almost completely divorced from political matters.

The word for sovereignty in modern Arabic is *ḥākimiyya*, but it is a fairly recent invention which is unknown in classical literature. The term was introduced into the languages of contemporary Muslim peoples as a consequence of increased interaction with the Western world, as a translation, in particular, of the French word *souveraineté*.<sup>57</sup> Pre-modern Muslims have used some words which bear a certain resemblance to the modern Western notions of sovereignty, for instance the word *mulk*, which, in traditional usage, meant the enforcement of God-given laws which belonged originally to the prophets, and after them to the caliphs. This concept and the Western notion of sovereignty are similar inasmuch as 'sovereignty' in Western political thought involves both the making of law and its enforcement, while *mulk* denotes the latter,<sup>58</sup> law-making being regarded as the prerogative of the One God. Muslims are united on this stance and anyone who does not accept it cannot rightly claim to be a Muslim. But does this mean that Muslims should limit themselves only to the matters revealed in the Holy Qur'ān and the Sunna of the Prophet (SAW)? Certainly not, for there are many other day-to-day issues that need to be addressed by the Muslim community at large, what al-Ghannūshī calls *faraghāt*,<sup>59</sup> where it is required that Muslims exercise their intellectual powers in order to arrive at appropriate solutions to the problems and questions posed. Not only that, but even in matters that are explicitly covered by revelation one has to exercise his/her judgment and rational faculties so that the injunctions contained in revelation are correctly understood. For example, it is known that 'Umar (RA) suspended the execution of the postulated punishment for theft during the Year of Hunger because the

necessary conditions for the implementation of that rule did not then maintain. On the basis of this event, Muslim scholars have outlined a whole set of conditions that have to be met before punishments should take place. Therefore, even in matters that are made explicit in the Qur'ān, for example, one has to resort to sound thinking so that a correct implementation of the Qur'ānic teachings can be put into practice. So, in order to ascertain the role of the *umma* in an Islamic state, and put that role in proper relation to the sovereignty of God, it is very important to understand what sovereignty in an Islamic state would really mean.

For this reason, some modern Muslim thinkers have started to talk about the sovereignty of the Muslim community (*sulṭat al-umma*). Khir attributes this argument to Rashīd Riḍā and Ḥasan al-Bannā (d. 1949), the founder of the Muslim Brotherhood in Egypt,<sup>60</sup> who was very much in favor of constitutional government, with the constitution based on the principles of Islam. In addition, such an Islamic government would be based on the representative system which operated through free and fair elections.<sup>61</sup> While this apparently makes him very much a champion of democracy in an Islamic setting, his unequivocal stance that political parties should not be allowed in an Islamic polity renders his legacy in connection with democracy ambiguous, though it has to be admitted that his view on political parties was to a great extent influenced by the conditions prevalent in his time. Both these activist intellectuals looked upon the sovereignty of the community (*sulṭat al-umma*) as a way of ensuring that Muslim interests would be taken care of.

Another, quite different, conception of sovereignty was developed by Mawdūdī and Sayyid Quṭb. Mawdūdī, who uses the term *ḥākimiyya* for sovereignty, asserted that it is God who is the only sovereign. Only He can legislate or enact laws that are necessary for human society. Mawdūdī's understanding of sovereignty was that it indicated an absolute overlordship, which gives to its holder an absolute right to impose his orders upon the subjects of the state, without any limitations whatsoever to his powers. In this way, Mawdūdī's conception of sovereignty was very much in line with the early Western understanding of this concept.<sup>62</sup> He started from the premise that belief in *tawḥīd* is the foundation of the social and moral life, as explained by the prophets of God.<sup>63</sup> From this it follows that God is the sole law-giver and that nobody else can claim to have this power. The Prophet (SAW) was required to convey, explain and implement His commands, and Muslims are required to obey the Prophet (SAW).<sup>64</sup> That is why an Islamic state must be founded upon God's Law, as explained by His Prophet (SAW).<sup>65</sup> But Mawdūdī did not reject the idea of democracy. He was, in fact, aware of the positive character of many procedures inherent in the democratic process, and did not see any reason why those procedures could not be followed in an Islamic state. For this purpose, he even coined a term 'theodemocracy', because the Muslims had been given a limited sovereignty under the suzerainty of God, and they were required to interpret and implement God's Will.<sup>66</sup>

Perhaps the most radical understanding of this concept was put forward by Sayyid Quṭb. Closely following Mawdūdī in the assertion that God is the only Law-Giver, Quṭb said that *ḥākimiyya* was, in fact, a characteristic of Divinity

(*ulūhiyya*).<sup>67</sup> So, whoever claims the possession of this power is in consequence challenging Allāh's supremacy, and in turn committing the grave sin of unbelief (*kufr bawah*), whether the claim is made by a single person, an organization, a party, a community or the people as a whole.<sup>68</sup> Not only that, but also whoever pays obedience to any other than Allāh, or derives laws from a source other than His Revelation, is committing the same sin.<sup>69</sup> Moreover, he did not limit this concept to the narrow scope of law-giving, but extended it to all matters of belief, culture, social norms and standards, values, etc. Men can exercise their intellectual powers to derive these categories, but only within the scope of the characteristic of the Islamic concept.<sup>70</sup> This was, according to Quṭb, what the Qur'ān really intended in the verses related to this issue.<sup>71</sup> The role of the community in political affairs is limited to the application of what God legislated.<sup>72</sup>

These are some of the recent attempts at understanding the concept of sovereignty in an Islamic context. The contemporary debate on the issue is moving towards the assertion that there is no real conflict between God's sovereignty and the sovereignty of the *umma*. It is here that some Muslim scholars show original thinking, which results in a concept different from that familiar in the West, and give to Islamic political thought a unique dimension regarding the issue. Thus Ḥasan al-Turābī, a leading Sudanese activist and thinker, differentiates between God's *ḥākimiyya* and mankind's *istikhlāf* (viceregency). Since the Qur'ān, for al-Turābī, speaks to the individual consciousness, individuality should be maintained against any power of the state, so that proper political and social structures can be established on the basis of mutual contracts.<sup>73</sup> The ruler and the people should pursue policies of common interest, but they are bound by the Shari'ah and should not transgress its limits. *Shūrā* should be vested in a parliament with legislative powers but, again, it is not expected to go beyond the limits established by the principles of Islam. In this way, there is no conflict between God's sovereignty and people's sovereignty. Each has its defined scope and does not interfere with the other.<sup>74</sup> This is so for 'recognition of *sharia* does not necessarily eliminate the role of human opinion'.<sup>75</sup> As I have already pointed out, there are numerous issues not dealt with in the Qur'ān and Sunna. It is out of God's mercy upon the Muslim *umma* that He has left many areas for the Muslims to employ the principles of *ijtihād*, trying thus to find a correct stance on any given issue. The very process of trying to discover or devise solutions that comply with God's will, and the intellectual effort that is put into it, are considered to be among the highest forms of worship, for if a man or a group of men (and women) involved in it are using revelation as guidance, with the sole purpose of attaining God's pleasure, while also observing the rules of proper conduct in the spirit of *shūrā*, then this legislative exercise is a source of great blessing for the *umma* as a whole. Those who see conflict between God's sovereignty and the legislative role of the *umma* fail to take into consideration that, for the greater part, the legislative efforts in a modern state are related to economic, agricultural, industrial, financial, educational and other affairs, and that many of the policies connected with them are not strictly related to religious teachings or, to put it more precisely, they are only guided by some overriding Islamic principles.<sup>76</sup> Compliance with these

principles can be ensured, for example, through the formation of 'an Islamic body/council' (*hay'a shar'iyya*), whose duty would be to supervise the legislative arrangements and guarantee their Islamic character.<sup>77</sup> The presence of a constitution that would embody such Islamic principles would ensure that no legislation would contravene clear Islamic teachings and the principles that are derived from them. This is a familiar constitutional arrangement in Western political theory and practice and has also been in use in most Muslim countries during the twentieth century. It provides that there are certain things that legislative bodies cannot do, even if their decisions are supported by a large majority of the people or their representatives.<sup>78</sup>

Kurdī, for example, believes that, in a Muslim society, only the laws are sovereign, i.e. those laws that have been clearly mentioned in the revelation, since God is the ultimate sovereign, and those that are enacted and executed by the political leaders with the endorsement of the Muslim community at large. There is, in fact, no conflict between the sovereignty of God and the sovereignty of the Muslim *umma*.<sup>79</sup> The legislative functions of an Islamic state could be carried out through a body of representatives who enjoy the full support of the *umma* and would see to it that all the enacted laws are in accordance with, or do not contravene, Islamic teachings.<sup>80</sup> Al-Qaraḍāwī shares these opinions when he says that as long as the constitution of an Islamic state provides that legislative processes will not be abused to enact laws that are opposed to the Sharī'a, there is no harm in adopting the democratic principles of elections, accountability, deliberation, etc., particularly if these are used to fight abominable practices and manifest disbelief (*kuf'r bawah*).<sup>81</sup> Khir tries to find a compromise between the two types of sovereignty. He uses the concept of *ulūhiyya*, which was used as long ago as in the fourteenth century by Ibn Taymiyya and was popularized by Mawdūdī in the twentieth century, to denote the legislative powers of the sovereign, who is in this case God. *Mulk*, on the other hand, represents political power, the executive power in an Islamic state: the power to enforce the laws that are given by God and contained in the Sharī'a.<sup>82</sup> Even in modern Western thought, there is a differentiation between these two types of sovereignty, which was introduced in order to justify the separation of powers. Khir goes on to say that ultimate political sovereignty is located in the *umma*, while immediate political sovereignty is vested in the ruler.<sup>83</sup> A different approach was, however, adopted by al-'Alwānī who argues that authority, the word he uses to denote sovereignty, belongs to the Qur'ān.<sup>84</sup> The Holy Book of Islam is different from the earlier scriptures in several respects: its text is guaranteed by God to remain unchanged, it confirms the earlier scriptures, it is a guidance to humanity as a whole, etc.<sup>85</sup> And whereas God was directly involved in the affairs of previous nations, after the revelation of the Qur'ān, authority was placed in the Word of God, i.e. the Qur'ān.<sup>86</sup> The role of the individuals in relation to this authority is that they should use their intellectual abilities to understand the message of the Qur'ān in accordance with the conditions in which they live. While the individual was only a recipient expected to adhere to what is given to him/her if its authority is accepted as Divine, in the case of Qur'ānic authority he/she is required to understand the Qur'ān and apply its teachings in accordance with that understanding.<sup>87</sup>

What can be said by way of conclusion in the light of the above discussion is that there is still no agreement among Muslim scholars and intellectuals on the issue of sovereignty or authority. Nevertheless, a common characteristic among contemporary scholars is the tendency to give a greater role to the *umma* in the legislative processes. While it is acknowledged that sovereignty ultimately belongs to God, His Book and His Sharī'a, it is also understood that the commandments enshrined in the Qur'ān and the Prophetic practice are interpreted through the use of human reason. Not only is the *umma* required to legislate on matters that are not clearly expressed or not mentioned at all in the Sharī'a, but also it is through the use of the intellectual capabilities of the *umma* that even the explicit commandments are understood and implemented. The main concern on the part of Muslim scholars is with ensuring that this process of understanding Islamic sources is guided by the teachings and principles enunciated in the Qur'ān and Sunna. May I conclude this section on sovereignty by quoting a renowned contemporary Muslim scholar, Fathi Osman, who aptly summarized the issue as follows:

The Quran states that God created the human being as a 'vicegerent'...Accordingly, the people are viewed as guardians of God's justice and guidance which is represented in the divine sources. Sovereignty of God can only be secured through humans, and no ruler or jurist can claim infallibility...The people, and their representatives, practice what they are entitled to do as guardians of God's justice on earth...If believers cannot guard the 'sovereignty of God' and their faith and values through a government based on 'sovereignty of the people', it should not be imposed upon them by force which would only be a pretext for arbitrariness and despotism!<sup>88</sup>

Another important ingredient for the majority principle alongside sovereignty is that of equality, which is also upheld by Islam. In fact, contrary to Greek thought, Islam acknowledges the natural equality of men. It is probably a well-known fact that the Qur'ān emphasizes over and over again that all mankind are created from a single pair, male and female, and that the existence of different ethnic groups, tribes, languages and indeed religions points to the uniqueness and oneness of God.<sup>89</sup> All men are entitled to equality in terms of protection and property and before the law.<sup>90</sup> It is interesting that the Qur'ān always emphasizes man/individual, and that there is no Qur'ānic equivalent to citizen. The word *muwāṭin*, which means citizen in modern Arabic, is a neologism.<sup>91</sup> The goal of Islam is to make a good man, not only a good citizen, for the first notion is far more comprehensive than the second.<sup>92</sup>

Whereas Islam does not attach any condition of race, ethnicity, language, color or lineage to enjoyment of the said equality, it emphasizes that the only way for one man to be superior over another is through piety, or God-consciousness (*taqwā*).<sup>93</sup> Moreover, in classical Islamic legal theory there is a clear distinction between Muslims and non-Muslims with respect to their political and other rights in an Islamic state. So it may be argued that what Islam gives in terms of equality on the one hand, it withdraws on the other. However, it should be pointed out that no creed, ideology or line of thinking provides for absolute

equality. Any modern democratic system, for instance, requires its citizens to pay allegiance to some set of ideals, norms, values or symbols which distinguish that system from others. If an individual chooses to disregard these norms, he/she would be liable to loss of citizenship. Yet, we do not then call these systems undemocratic for that reason. Furthermore, the limitations Islam puts on equality can be removed by a conversion from other religions to Islam. With such a conversion, the person concerned is immediately entitled to the full set of rights enjoyed by his/her co-religionists.<sup>94</sup> It should also be pointed out that there is a growing trend among modern Muslim scholars to accord non-Muslims equal rights in an Islamic state.<sup>95</sup>

### *The Majority Principle and Its Place in Shūrā*

I have discussed two important issues with regard to the majority principle, namely sovereignty and equality. The other two issues, the need for popular consultation and the reception of majority decisions by all participants in the democratic process, are briefly reviewed in this section. In short, I deal with the majority principle and its possible place in *shūrā*.

*Shūrā* is, in fact, the only strictly political concept mentioned in the Qur'ān. While it has not been dealt with in detail by the revelation, Prophetic practice, as well as the practice of the Companions afterwards, has established some guiding principles with regard to this issue, and provided a direction in which this concept may possibly develop.

It is a duty of the entire Muslim community to participate in affairs of common concern to all its members. Fazlur Rahman rightly asserts that the Qur'ānic verse '[the believers are] those whose affairs are decided by mutual consultation' (*wa-amruhum shūrā baynahum*)<sup>96</sup> 'means their affairs—that is, the affair does not belong to an individual, a group or an elite, but it is "their common affair" and belongs to the community as a whole'.<sup>97</sup> One can easily point to the way in which the Prophet (SAW) consulted his Companions on all issues of common concern, except those that were settled by revelation, and to the examples that are abundant in the books of history: he consulted his Companions prior to the battles of *Badr*, *Uhud* and *Khandaq*. After the Treaty of *Hudaybiya* had been concluded he consulted his wife Umm Salāma (RA) concerning sacrificial animals. His Companions, following his example and the precepts of the Qur'ān, deliberated with each other on a number of issues of public import, including the appointment of a successor to the Prophet (SAW), the legitimacy of fighting against rebellious Arabian tribes during the *khilāfa* of Abū Bakr (RA), the appointment of a successor to 'Umar ibn al-Khaṭṭāb (RA) and so on. Therefore, it can be clearly seen, Islam, in its pristine form, not only enjoined deliberation, consultation and free discussion of pertinent issues, but related them to belief (*īmān*) and put them second in importance to the prescribed prayers (*ṣalāt*). In other words, one's belief cannot be complete without observing this particular principle of *shūrā*. This opinion is also supported by Fathi Osman who stated that '*shūrā*, or the participation in decision making by all parties concerned, [was] a consequence of faith in God and an obligation second in importance only to performing prayers to Him'.<sup>98</sup>



After dealing with the importance and nature of *shūrā* in Islam, we should ask: is there a place for majority decision-making in *shūrā*? The answer is definitely positive—for many reasons. Firstly, there are many directives and indications in Islamic legal and political thought that lend legitimacy to the use of the majority principle. Those that have been mentioned in this paper, *ijmāʿ*, *al-tarjīh bi-al-kathra*, *al-sawād al-aʿzam* and others, clearly show that it is basically acceptable to employ this principle. It should also be mentioned that *shūrā* is, in fact, a method of collective decision-making. It allows all the participants in that process to express their opinions and state the supportive evidence for those opinions. One can make a comparison here with the concepts of deliberative<sup>99</sup> and epistemic<sup>100</sup> democracy. The objective of *shūrā*—and here lies its similarity to the epistemic democracy model—is to try to find an objectively correct opinion on a given issue, guided by Islamic principles. The similarity between *shūrā* and deliberative democracy lies in the fact that the participants in both processes have to state their opinion on a given issue, not on the basis of their preference, but on the basis of supporting evidence. In Islamic terms, this means that the opinion in question has to be supported by evidence from the Qurʾān, Sunna or other valid sources. In fact, the process of collective *ijtihād* can only benefit from having diverse opinions and their supporting evidence and arguments involved in the *shūrā* process.

Drawing an analogy with the epistemic concept of democracy, one can further say that *shūrā* is a process of trying to arrive at a correct answer on the subject at issue by those qualified to participate in *shūrā*. There are several ways to facilitate this process and increase the probability of deriving a correct answer from the pool of available opinions or possibilities. In order to achieve this, one has to apply and use tools of *ijtihād*, both those accepted by our predecessors and those deemed appropriate by the contemporary generation of scholars. And one of these tools, as we have been trying to show in this article, is the majority principle. It can be used independently of the other tools of *ijtihād* or in corroboration of them, as long as a proper code of conduct is observed by the participants in this process and the outcome reflects belief that the correct opinion is being attained and the majority decision is accepted by all those participants.<sup>101</sup> The accepted opinion then amounts to *ijmāʿ*, another concept that has been dealt with in this paper. Participants in this process should also be open to accept new evidence and alter their initial stance in accordance with newly obtained information. As an outcome of this *shuratic* process, *shūrā* may achieve ‘the wide agreement in the *umma* so that it becomes the opinion of the majority of [Muslim] people’.<sup>102</sup> Therefore, *shūrā*, as we have tried to demonstrate in the preceding pages, may be said to have been fully observed only if there is participation by all the *mukallaḫūn* in society and if all abide by the outcome of their joint consultation.

## Notes

1. An earlier version of this paper was presented at the Second Annual Conference of the Center for the Study of Islam and Democracy, held at Georgetown University, Washington, DC, 7 April 2001. The author would like to express his gratitude to Muddathir Abdel-Rahim for his useful and insightful remarks. Remaining errors and inaccuracies are mine.

2. Abū Hāmid Muḥammad ibn Muḥammad al-Ghazālī (1418/1997) *Al-Mustasfā min 'ilm al-uṣūl* (Beirut: Dār Ihyā' al-Turāth al-'Arabī and Mu'assasat al-Tārīkh al-'Arabī), pt 1, p. 171.
3. This definition, with slight variations in wording, is to be found in Fakhr al-Dīn al-Rāzī (1412/1992) *Al-Maḥṣūl fī 'ilm uṣūl al-fiqh*, edited by Ṭāhā Jābir Fayyāḍ al-'Alwānī, 2nd edn, 6 vols (Beirut: Mu'assasat al-Risāla), vol. 4, p. 20; Abū al-Walīd Sulaymān ibn Khalaf al-Bājī (1409/1989) *Iḥkām al-fuṣūl fī aḥkām al-uṣūl*, edited by 'Abd Allāh Muḥammad al-Jubūrī (Beirut: Mu'assasat al-Risāla), p. 393; Wahba al-Zuḥaylī (1406/1986) *Uṣūl al-fiqh al-islāmī*, 2 vols (Beirut: Dār al-Fikr), vol. 1, p. 490; *Mawsū'at al-fiqh al-islāmī* (1988) 19 vols (Cairo: Al-Majlis al-A'lā li-al-Shu'ūn al-Islāmiyya), vol. 3, pp. 52–54, 82; A. Rahim (1994) *The Principles of Islamic Jurisprudence: According to Hanafī, Maliki, Shafi'i and Hanbali Schools*, 2nd rev. edn (New Delhi: Kitab Bhavan [originally published in 1911]), p. 110; A. Hasan (1994) *The Early Development of Islamic Jurisprudence*, 4th reprint (Islamabad: Islamic Research Institute), p. 155; M. H. Kamali (1991), *Principles of Islamic Jurisprudence*, rev. edn (Cambridge: Islamic Texts Society), p. 169; R. A. Abd Rahim (1994) The concept of *ijmā'* in Islamic Law: a comparative study, *Hamdard Islamicus*, 17(2), p. 92. Al-Āmidī shared this opinion as well. See B. G. Weiss (1992) *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf a-Dīn al-Āmidī* (Salt Lake City, UT: University of Utah Press), p. 185.
4. Al-Ghazālī, *Al-Mustasfā*, pt 1, p. 179.
5. 'AbdulḤamid A. Abūsulaymān (1414/1993) *Crisis in the Muslim Mind*, translated by Y. T. DeLorenzo (Herndon, VA: International Institute of Islamic Thought), p. 40.
6. Al-Rāzī, *Al-Maḥṣūl*, vol. 4, pp. 181–185; al-Ghazālī, *Al-Mustasfā*, pt 1, pp. 182–184; al-Bājī, *Iḥkām*, p. 393.
7. Al-Bājī, *Iḥkām*, p. 393, n. 2; al-Rāzī, *Al-Maḥṣūl*, vol. 4, pp. 181–182; al-Zuḥaylī, *Uṣūl al-fiqh*, vol. 1, p. 518.
8. Al-Zuḥaylī, *Uṣūl al-fiqh*, vol. 1, p. 521.
9. The limit of *tawātur* has not been specifically defined. There exists a wide disagreement regarding the number constituting *tawātur*. Some scholars accepted four as a sufficient number for its occurrence, others proposed different solutions, ranging from ten to seventy, and some others did not specify it at all. Of course, such an ambiguity poses more questions than it actually solves. See relevant discussions in Nūr al-Dīn al-'Uṭr (1418/1997) *Manhaj al-naqḍ fī 'ulūm al-ḥadīth*, 3rd edn (Beirut: Dār al-Fikr al-Mu'āssir), pp. 404–405; al-Ghazālī, *Al-Mustasfā*, pt 1, pp. 132–138.
10. Al-Ghazālī, *Al-Mustasfā*, pt 1, pp. 182–183; al-Zuḥaylī, *Uṣūl al-fiqh*, vol. 1, p. 518.
11. Al-Zuḥaylī, *Uṣūl al-fiqh*, vol. 1, p. 518; *Mawsū'a*, vol. 3, p. 97.
12. For a detailed discussion on various definition of *ijmā'* see A. Hasan (1984) *The Doctrine of Ijmā' in Islam: a Study of the Juridical Principle of Consensus*, repr. (Islamabad: Islamic Research Institute), pp. 72–82.
13. Some relevant instances from the time of *al-khulafā' al-rāshidūn* are discussed in M. Y. Faruqi (1992) The development of *ijmā'*: the practices of the *khulafā' al-rāshidūn* and the views of the classical *fuqahā'*, *American Journal of Islamic Social Sciences*, 9(2), pp. 173–187.
14. For a more detailed discussion on this issue see Hasan, *Doctrine of Ijmā'*, especially pp. 26–32. A related discussion, set against the debate Islam vs democracy, is to be found in A. R. Moten (2000) Democracy as development: Muslim experience and expectations, in: Z. Kausar (Ed.) *Political Development: an Islamic Perspective* (Petaling Jaya: The Other Press), pp. 105–123, esp. pp. 114–119.
15. Hasan, *Doctrine of Ijmā'*, p. 228.
16. *ibid.*, pp. 228, 231. Also see Kamali, *Principles of Islamic Jurisprudence*, p. 190.
17. H. Enayat (1988) *Modern Islamic Political Thought*, 3rd printing (Austin, TX: University of Texas Press), p. 133; another attempt to put *ijmā'* as an equivalent to the majority decision in a representative assembly is in Al-Haj Mahomed Ullah Ibn S. Jung (n.d.) *The Administration of Justice in Islam: an Introduction to the Muslim Concept of State* (Lahore: Law Publishing Company), pp. viii–ix. He offers no specific reason why this is so, and I feel that his discussion is too apologetic.
18. N. Safran (1961) *Egypt in Search of Political Community* (Cambridge, MA: Harvard University Press), pp. 220–221.
19. M. M. Iqbal (1989) *Reconstruction of Religious Thought in Islam*, 2nd edn (Lahore: Iqbal Academy Pakistan and Institute of Islamic Culture), p. 137.
20. *ibid.*, p. 138.

21. *ibid.*, p. 140.
22. Hasan, *Doctrine of Ijmāʿ*, p. 244; Kamali, *Principles of Islamic Jurisprudence*, pp. 191–192.
23. See above n. 5.
24. ʿAbdulḥamīd A. AbūSulaymān (1415/1994) *Toward an Islamic Theory of International Relations: New Directions for Methodology and Thought*, 2nd edn repr. (Herndon, VA: International Institute of Islamic Thought), pp. 85–87.
25. *ibid.*, p. 96.
26. K. A. Faruki (1979) *Ijmaʿ and ijtihad for modern conditions*, *Islamic Order*, 1(2), p. 80.
27. Al-Shāwī, after quoting the Ḥadīth on *al-sawād al-aʿzam*, says that ‘it is possible to use [this Ḥadīth] as the evidence...that the intended meaning (*al-maqṣūd*) by *ijmāʿ* is the agreement of the majority or *al-sawād al-aʿzam*...i.e. the majority’. Tawfīq al-Shāwī (1412/1992) *Fiqh al-shūrā wa-al-istishāra* (Al-Manṣūra: Dar al-Wafāʾ), p. 76, n. 3.
28. F. Osman (2000) Political participation and the institution of shura, in: Kausar, *Political Development*, p. 94.
29. Al-Shāwī, *Fiqh al-shūrā*, p. 78.
30. *ibid.*
31. Nonstructural opposition agrees with the government with regard to the nature of the political system and socio-economic structures, while aiming at changing the government’s personnel and/or specific policies. This type of opposition has existed throughout Islamic history, to a greater or lesser extent. For an excellent study on the opposition see A. Alibāi (1999) The right of political opposition in Islamic history and legal theory: an exploration of an ambivalent heritage, *Al-Shajarah*, 4(2), pp. 231–295.
32. Ḥadīth transmitted in Muḥammad ibn Yazīd Abū ʿAbdullāh Ibn Mājah (n.d.) *Sunan al-muṣṭafā*, 2 vols (Egypt: Al-Maḥbaʿa al-Ṭāziyya), *Kitāb al-fitan*, *Bāb al-sawād al-aʿzam*, vol. 2, p. 463–464. However, one of its transmitters is weak (*ḍaʿīf*), so this tradition is not strong evidence in itself. Nevertheless, it has been transmitted through different chains of transmitters and with variations in wording so that it can be elevated to the degree of *ḥasan* (good). See a detailed discussion on this and related traditions in Salmān ibn Fahd al-ʿAwdā (1412/1992) *Ṣifāt al-ghurabāʾ: al-firqa al-nājiyya, al-ṭaʿifa al-manṣūra, ṣifāt ukhar*, 3rd edn (Saudi Arabia: Dār Ibn Jawzī li-al-Nashr wa-al-Ṭibāʿa), pp. 20–51. Cf. al-Dhahabī’s discussion on al-Ḥakīm’s transmission of the Ḥadīth in Abū ʿAbdullāh Muḥammad ibn ʿAbdullāh al-Ḥakīm (1398/1978) *Al-Mustadrak ʿalā al-ṣaḥīḥayn fī al-ḥadīth*, 4 vols (Beirut: Dār al-Fikr), vol. 1, pp. 114–116. Al-Qaraḍāwī also has an interesting argument regarding this Ḥadīth, where he implicitly pronounces it valid evidence. See Yusuf al-Qaraḍāwī (1415/1994) *Fatāwā muʿāṣira*, 3rd edn, 2 vols (Al-Manṣūra: Dār al-Wafāʾ li-al-Ṭibāʿa wa-al-Nashr wa-al-Tawzīʿ), vol. 2, pp. 648–649.
33. Sindī’s commentary on *Sunan Ibn Māja* is to be found in the footnotes of the edition referred to in n. 32.
34. Yūsuf al-Qaraḍāwī (1417/1997) *Min fiqh al-dawla fī al-islām: makānatuhā, maʿālimuhā, ṭabīʿatuhā* (Cairo: Dār al-Shurūq), p. 143.
35. *ibid.*
36. M. Asad (1982) *The Principles of State and Government in Islam* (Gibraltar: Dar al-Andalus), p. 50.
37. Al-Shāwī, *Fiqh al-shūrā*, p. 78.
38. Al-Qaraḍāwī, *Min fiqh al-dawla*, p. 143.
39. F. Osman (1406/1986) Baiʿat al-imam: the contract for the appointment of the head of an Islamic state, in M. Ahmad. (Ed.) *State Politics and Islam* (Indianapolis, IN: American Trust Publications), p. 68.
40. Al-Shāwī, *Fiqh al-shūrā*, p. 78.
41. *ibid.*, p. 79.
42. A Ḥadīth science which is concerned with reconciling contradictory traditions is called *ikhtilāf al-ḥadīth* or *ʿilm mukhtalaḥ/mushkil al-ḥadīth*. For an early work on this subject see Muḥammad Idrīs al-Shāfiʿī (d. 204 AH), *Ikhtilāf al-ḥadīth*, edited by ʿĀmir Aḥmad Ḥaydar (Beirut: Muʿassasat al-Kutub al-Thaqāfiyya, 1405/1985).
43. Muḥammad Ibrāhīm Muḥammad al-Ḥafnāwī (1408/1987) *Al-Taʿarūḍ wa-al-tarjīḥ ʿind al-uṣūliyyīn wa-atharuhumā fī al-fiqh al-islāmī*, 2nd edn (Cairo: Dār al-Wafāʾ), p. 282.
44. *ibid.*, p. 307; see also Badrān Abū al-ʿAynayn Badrān (1974) *Adillat al-tashrīʿ al-mutaʿarifa wa-wujūh al-tarjīḥ baynahumā* (Alexandria: Muʿassasat Shabāb al-Jāmiʿa), p. 119.
45. Al-Ḥafnāwī, *Al-Taʿarūḍ*, pp. 308–311; Badrān, *Adillat al-tashrīʿ*, pp. 119–121.
46. Shāh Walī Allāh ibn ʿAbd al-Raḥīm al-Dahlawī (1410/1990) *Hujjat Allāh al-bāligha*, edited by Muḥammad Sharīf Sukkar, 2 vols (Beirut: Dār Iḥyāʾ al-ʿUlūm), pp. 401–403.

47. Abū Ja'far Aḥmad ibn Muḥammad ibn Salāma al-Taḥāwī (1415/1994) *Sharḥ mushkil al-āthār*, edited by Shu'ayb al-Arnā'ūt, 16 vols (Beirut: Mu'assasat al-Risāla), vol. 11, p. 246, n. 2.
48. *ibid.*
49. *ibid.*, p. 247, n. 2.
50. See J. Locke (1960) The second treatise of government, in: *Two Treatises of Government*, introduction by P. Laslett (Cambridge: Cambridge University Press).
51. Abū Ḥāmid al-Ghazālī (1993) *Faḍā'ih al-bāṭiniyya* (Amman: Dār al-Bashīr), p. 109; quoted in M. Abdel-Rahim, Al-Ghazālī's political thought: its nature and contemporary relevance, paper presented at the International Conference on Imam al-Ghazali's Legacy: Its Contemporary Relevance, organized by the International Institute of Islamic Thought and Civilization (ISTAC), Kuala Lumpur, Malaysia, 24–27 October 2001.
52. 'Alī Aḥmad al-Nadwī (1414/1994) *Al-Qawā'id al-fiqhiyya: mafhūmuhā, nash'atuhā, taṭawwuruhā, dirāsāt mu'allifātihā, adillatuhā, muhimmatuhā, taṭbiqātuhā*, introduction by Muṣṭafā al-Zarqā, 3rd edn (Damascus: Dār al-Qalam), p. 126.
53. *ibid.*, p. 345.
54. *ibid.*, p. 164.
55. *ibid.*, pp. 202, 204.
56. *ibid.*, pp. 32, 349, 353.
57. B. M. Khir (1995) Concept of sovereignty in contemporary Islamic movements, *Encounters*, 1(1), p. 6.
58. *ibid.*, p. 10.
59. See A. Tamimi (1998) Democracy: the religious and the political in contemporary Islamic debate, *Encounters*, 4(1), pp. 35–64.
60. Khir, Concept of sovereignty, pp. 15–20.
61. *ibid.*; see also Faṭḥī 'Uthmān (1410/1990) Al-dīmuqrāṭiyya fī adabiyyāt Ḥasan al-Bannā, *Al-Insān*, 1(1), pp. 78–84.
62. Khir, Concept of sovereignty, p. 21.
63. A. A. Mawdudi (1980) *The Islamic Law and Constitution*, translated by K. Ahmad, 7th edn (Lahore: Islamic Publications), p. 212.
64. *ibid.*, p. 214.
65. *ibid.*, pp. 136–138.
66. For a broader discussion on this issue see J. L. Esposito & J. O. Voll (1996) *Islam and Democracy* (New York: Oxford University Press), pp. 23–24.
67. Sayyid Quṭb (1412/1992) *Fī ḥalāl al-Qur'ān*, 17th edn, 6 vols (Cairo: Dār al-Shurūq), vol. 4, p. 1990.
68. *ibid.*
69. *ibid.*
70. S. Qutb (1991) *The Islamic Concept and Its Characteristics [Khaṣā'ish al-taṣawwur al-islāmī wa-muqawwimātuh]*, translated by M. M. Siddiqui (Indianapolis, IN: American Trust Publications), p. 44.
71. Khir, Concept of sovereignty, pp. 23–24. For an overview of the verses that have often been related to the issue of sovereignty see S. Nadvi (1948) The sovereignty of Allah, *Islamic Culture*, 22 (July), pp. 237–249.
72. Quṭb, *Fī ḥalāl al-Qur'ān*, vol. 4, p. 1990.
73. A. S. Moussalli (1994) Hasan al-Turabi's Islamist discourse on democracy and *shura*, *Middle Eastern Studies* 30(1) (January), p. 61.
74. *ibid.*, pp. 60–61.
75. F. Osman (1994), *Sharia in Contemporary Society: the Dynamics of Change in the Islamic Law* (Los Angeles: Multimedia Vera International), p. 75.
76. Faṭḥī 'Uthmān (1992) *Fī al-tajriba al-siyāsiyya li-al-ḥaraka al-islamiyya al-mu'āṣira* (n.p.), p. 18.
77. *ibid.*, p. 17.
78. Osman, *Sharia in Contemporary Society*, pp. 76–77; see also a discussion on constitutionalism in the context of Pakistan in M. Ahmed (1965) Sovereignty of God in the Constitution of Pakistan: a study in the conflict of traditionalism and modernism, *Islamic Studies*, 4(2), pp. 185–212. The author asserts that '[t]he enunciation of the doctrine of Divine sovereignty and other Islamic provisions [has] not affected the fundamentally democratic character of the [Pakistani] Constitution' (p. 211).
79. A. A. Kurdi (1984) *The Islamic State: a Study Based on the Islamic Holy Constitution* (London: Mansell Publishing Limited), pp. 35–39.
80. *ibid.*, pp. 77–83.

81. Al-Qaraḏāwī, *Min fiqh al-dawla*, pp. 140–141.
82. Khir, Concept of sovereignty, p. 34.
83. *ibid.*
84. T. J. al-ʿAlwānī (1996) Authority: divine or qurʿanic?, *American Journal of Islamic Social Sciences*, 13(4), pp. 536–550.
85. *ibid.*, p. 541.
86. *ibid.*
87. *ibid.*, p. 549.
88. M. F. Osman (2000) ‘Sovereignty of God’ or ‘Sovereignty of the People’?, *Muslim Democrat* [a newsletter published by the Center for the Study of Islam & Democracy (CSID), Washington, DC], 2(1) (February), pp. 4–5, quote is from p. 5; see also R. Bahlul (2000) People vs. God: the logic of ‘divine sovereignty’ in Islamic democratic discourse, *Islam and Christian-Muslim Relations*, 11(3) (October), pp. 287–297, where the author discusses in some detail some of the issues raised in this paper.
89. See, among other verses, Q. 30: 20–27; 49:13.
90. Kurdi, *Islamic State*, pp. 44–46.
91. Enayat, *Modern Islamic Political Thought*, p. 127.
92. See S. M. N. al-Attas (1995) *Prolegomena to the Metaphysics of Islām: an Exposition of the Fundamental Elements of the Worldview of Islām* (Kuala Lumpur: International Institute of Islamic Thought and Civilization (ISTAC)), pp. 73–74. Also *idem* (1978) *Islam and Secularism* (Kuala Lumpur: ABIM; repr. Kuala Lumpur: ISTAC, 1993), pp. 84–85 (page reference is to the reprint edition).
93. Q. 49:13.
94. Enayat, *Modern Islamic Political Thought*, p. 128.
95. M. H. Kamali (1999) *Freedom, Equality, and Justice in Islam* (Petaling Jaya: Ilmiah Publishers), pp. 111–139. For a concise study on the position of non-Muslims in traditional and contemporary Muslim societies see M. ʿAbd al-Rahim (1997) *Islam and Non-Muslim Minorities* (Penang: Just World Trust (JUST)).
96. Q. 42:38.
97. F. Rahman (1986) The principle of shura and the role of the ummah in Islam, in: M. Ahmad (Ed.) *State Politics and Islam* (Indianapolis, IN: American Trust Publications), p. 95.
98. M. F. Osman (1999) Shura in Islamic life, *Muslim Democrat*, 1(2) (September), p. 6.
99. The crux of deliberative democracy is that the participants in decision-making should explain the reasons for their choices, thus providing others with arguments that may cause them to re-evaluate and possibly change their initial stance. The justification of one’s own view presents a possibility of being confronted with a stronger argument. For more on this concept see A. Gutmann & D. Thompson (2000) Why deliberative democracy is different, *Social Philosophy & Policy*, 17(1) (Winter), pp. 161–180; also S. Benhabib (Ed.) (1996) *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton, NJ: Princeton University Press).
100. Epistemic democracy assumes that ‘[t]here is a correct answer in regard to the issue at stake whether or not a vote is taken. The voting procedure is a device to help citizens discover what the correct thing to do is. However, if there exists an independently specifiable general will, ... we can discover the general will,...by voting only, in some other way, or both by voting and in some other way as well’ (J. Coleman & J. Ferejohn (1986) Democracy and social choice, *Ethics*, 97 (October), p. 17). See also J. Cohen (1986) An epistemic conception of democracy, *Ethics*, 97 (October), pp. 26–38.
101. Osman, Shura in Islamic life, pp. 6–7.
102. Al-Ṭayyib Zayn al-ʿĀbidīn (1993), Naḥw al-shūrā fāʿila, *Al-Insān*, 2(10), p. 74.