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Al-Shura – the consultative system of administrating public affairs in Shari'ah

Introduction

The Islamic political system is based on an accurate theory of organization founded on the Shari'ah-based approach to the universe and human being. This theory involves a complete systematization of governance: organization of state authority and administration (competences and relationship), economy and finance, foreign policy and the relation with other political entities. Over time, the Islamic political thought developed a new logic and reasoning because of several variants among which the interaction with the different systems surrounding the Arabian Peninsula remains the most influential. Immediately after the death of the Prophet, there began a struggle for power and leadership, the four companions and successors of the Prophet all being assassinated in a conspiracy a few years after their coming to power. The consequences of these developments caused the governance model established during the Prophet's life and maintained with consistent perseverance by his companions to be forsaken and abandoned (35 AH-656AC).

Priests and politicians, aware of this transformation, initiated one of the most complex and hardest campaigns to convince the Muslim nation to agree on the legitimacy of the new order in managing the public affairs. A new era began for Muslims, a serial of oppression and segregation replaced Shari'ah dimension of justice and freedom. The

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concept of the nation and its identity melted and dissolved in a more Roman than Islamic governance model. The Islamic empire, after its expansion in Europe and Asia, entered a phase of agony and laceration during the collapse of the Ottomans. Islamic territories were shaped into small political entities dominated by the new Western powers. The impact of these radical and drastic changes are still felt and reflected by a fragmented Muslim system, where the families in power are governing in disagreement with the issues contained in Shari'ah provisions. Amalgams and improvisations have become the instruments mainly used in managing public affairs and the Muslim are strongly confined to poverty, autocracy and dictatorships.

Islamic political theory

The Islamic political theory is structured on the essential postulate coming from the divine revelation to the humans who are charged to observe and apply the rules and precepts included in the universal vision of this revelation. One among the most important provisions in this divine statement makes man the representative of God (*khalipha* or successor) on the earth to worship the unique creator (God) and to manage human life.

The constituent principles and values of the Islamic political theory

The main principles which hold the compact construction of this theory are:
– The institution of *Khilāfa*: idiomatically means succession, and the first reference to this meaning comes from Quran revealing that God has chosen human to represent the divine order on earth; *khilāfa* – the word also meaning the legitimate governance model in Shari'ah system. This concept whereby "khilāfa" is intended as the governance system began with the death of the Prophet Muhammad and the appointment of his companion *Abu Bakr* to be the first *khalipha* (governor) of the Muslims nation.
"Khilāfa" means the leadership of Muslims to establish the provisions of the Islamic legislation managing public affairs. We read in *suratu al-Baqarah*, Quran 2-30, the following: "And [mention, O Muhammad], when your Lord said to the angels: 'Indeed, I will make upon the earth a successive authority.' They said, 'Will You place upon it one who causes corruption therein and sheds blood, while we declare Your praise

and sanctify You?' Allah said, 'Indeed, I know that which you do not know'."

وَإِذْ قَالَ رَبُّكَ لِلْمَلَـٰٓئِكَةِ إِنِّى جَاعِلٌۭ فِى ٱلْأَرْضِ خَلِيفَةًۭ ۖ قَالُوٓا۟ أَتَجْعَلُ فِيهَا مَن يُفْسِدُ فِيهَا وَيَسْفِكُ ٱلدِّمَآءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ ۖ قَالَ إِنِّىٓ أَعْلَمُ مَا لَا تَعْلَمُونَ ﴿٣٠﴾

And we read in *suratu al-Hadīd*, Quran 57-7, the following: "Believe in Allah and His Messenger and spend out of that in which He has made you successors. For those who have believed among you and spent, there will be a great reward".

ءَامِنُوا۟ بِٱللَّهِ وَرَسُولِهِۦ وَأَنفِقُوا۟ مِمَّا جَعَلَكُم مُّسْتَخْلَفِينَ فِيهِ ۖ فَٱلَّذِينَ ءَامَنُوا۟ مِنكُمْ وَأَنفَقُوا۟ لَهُمْ أَجْرٌۭ كَبِيرٌۭ ﴿٧﴾

– The "Oneness and worship of God": several verses from the Quran reflect the oneness of God as a unique divinity, and the most expressive among these verses are the verse 255 of Suratu al-Baqarah, Quran 2-255, "Allah – there is no deity except Him, the Ever-Living, the Sustainer of [all] existence. Neither drowsiness overtakes Him nor sleep". And first verses from *suratu āl'Imrān*, Quran 3: 1-2, we read "Alif, Lam, Meem God, there is no god but He, the Living, the Eternal". Then, in the verse 111 from suratu Taha, Quran 20-111, we read: "And [all] faces will be humbled before the Ever-Living, the Sustainer of existence. And he will have failed who carries injustice".

Mankind, according to Quran verses, is charged of several tasks in daily life, first of these tasks is to worship the unique creator *al-Khāliq*, because it is the reason for our existence, we read in *suratu Adh-Dāriyāt*, Quran 51-56: "And I did not create the jinn and mankind except to worship Me."

وَمَا خَلَقْتُ ٱلْجِنَّ وَٱلْإِنسَ إِلَّا لِيَعْبُدُونِ ﴿٥٦﴾

The worship intended in the Quran is different from the worship acts usually classified by the priests such as prayer, fasting, *Hajj* and performing *Zakāt*. The worship intended here means the total obedience to God in all our behavior and acts, so when we are working or dealing

with others we are worshiping God while respecting and observing the directives and rules of Shari'ah about the legitimacy of our acts and behavior.

– To know each other and maintain the relationships, we built with other persons without contempt or discrimination. The diversities that may characterize each individual must be interpreted as a factor providing more possibilities to live in harmony. We read in *suratu Al-Hujurāt*, Quran 49-13: "O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and acquainted."

يَٰٓأَيُّهَا ٱلنَّاسُ إِنَّا خَلَقْنَٰكُم مِّن ذَكَرٍ وَأُنثَىٰ وَجَعَلْنَٰكُمْ شُعُوبًا وَقَبَآئِلَ لِتَعَارَفُوٓا۟ۚ إِنَّ أَكْرَمَكُمْ عِندَ ٱللَّهِ أَتْقَىٰكُمْۚ إِنَّ ٱللَّهَ عَلِيمٌ خَبِيرٌ ﴿١٣﴾
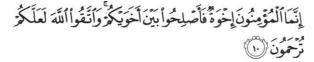
– Honoring human: mankind is created on the best and most complete aspect in comparison with other creatures in the world. The most apparent aspect of this honor is that God gives humans the intellect *al-'aql* and makes them responsible and charged with several tasks and missions.

God honored humans settling in *suratu al'Isrā'*, Quran 17-70, the following: "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference."

﴿ وَلَقَدْ كَرَّمْنَا بَنِىٓ ءَادَمَ وَحَمَلْنَٰهُمْ فِى ٱلْبَرِّ وَٱلْبَحْرِ وَرَزَقْنَٰهُم مِّنَ ٱلطَّيِّبَٰتِ وَفَضَّلْنَٰهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا ﴿٧٠﴾

– Justice: God imposes justice as a binding value for humans to establish a peaceful life on earth and a good reward in the hereafter. Justice is the decisive element characterizing divine legal systems and distinguishing it from all other legal systematization introduced by humans. God said in *suratu āl'Imrān*, Quran 3-182: "That is for what your hands have put forth and because Allah is not ever unjust to [His] servants."

ذَٰلِكَ بِمَا قَدَّمَتْ أَيْدِيكُمْ وَأَنَّ ٱللَّهَ لَيْسَ بِظَلَّٰمٍ لِّلْعَبِيدِ ﴿١٨٢﴾

And in the famous narration of *Abu Dar*, when he reported that the Prophet, as he tells about his Lord Almighty, he said: "O My servants, I have forbidden oppression for Myself and have made it forbidden amongst you do not oppress one another."[1]

– Brotherhood: is one among the most important human values laid down by Islam to preserve the entity of the universal society. We read in *suratu al-Hujurāt*, Quran 49-10: "But the believers are brothers, so make settlement between your brothers. And fear Allah that you may receive mercy."

إِنَّمَا ٱلْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ وَٱتَّقُوا ٱللَّهَ لَعَلَّكُمْ تُرْحَمُونَ ﴿١٠﴾

– All forms of governance must be settled according to the Shari'ah provisions, consequently each regime that violates this imperative precept is considered illegal and void.

The prophet received, in a revelation, the order to establish *Shura* as a unique model of governance and was asked to apply it. We read in suratu al-Mai'dah, Quran 5-48: "And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method. Had Allah willed, He would have made you one nation [united in religion], but [He intended] to test you in what He has given you; so race to [all that is] good. To Allah is your return all together, and He will [then] inform you concerning that over which you used to differ."

وَأَنزَلْنَآ إِلَيْكَ ٱلْكِتَٰبَ بِٱلْحَقِّ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ ٱلْكِتَٰبِ وَمُهَيْمِنًا عَلَيْهِ فَٱحْكُم بَيْنَهُم بِمَآ أَنزَلَ ٱللَّهُ وَلَا تَتَّبِعْ أَهْوَآءَهُمْ عَمَّا جَآءَكَ مِنَ ٱلْحَقِّ لِكُلٍّ جَعَلْنَا مِنكُمْ شِرْعَةً وَمِنْهَاجًا وَلَوْ شَآءَ ٱللَّهُ لَجَعَلَكُمْ أُمَّةً وَٰحِدَةً وَلَٰكِن لِّيَبْلُوَكُمْ فِى مَآ ءَاتَىٰكُمْ فَٱسْتَبِقُوا ٱلْخَيْرَٰتِ إِلَى ٱللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُم بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ ﴿٤٨﴾

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[1] Ab. Al-Behbequi "Al.-Sunanu al. kubra" the book of Al-ghasb. Hadith Number 11181, p. 1-15. Ed. Dar Al-Baz-Makkah, A.S 1994.

And in verse 49 from the same *surah* (Quran 5-49) we read: "And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you. And if they turn away – then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient."

وَأَنِ ٱحۡكُم بَيۡنَهُم بِمَآ أَنزَلَ ٱللَّهُ وَلَا تَتَّبِعۡ أَهۡوَآءَهُمۡ وَٱحۡذَرۡهُمۡ أَن يَفۡتِنُوكَ عَنۢ بَعۡضِ مَآ أَنزَلَ ٱللَّهُ إِلَيۡكَۖ فَإِن تَوَلَّوۡاْ فَٱعۡلَمۡ أَنَّمَا يُرِيدُ ٱللَّهُ أَن يُصِيبَهُم بِبَعۡضِ ذُنُوبِهِمۡۗ وَإِنَّ كَثِيرٗا مِّنَ ٱلنَّاسِ لَفَٰسِقُونَ ﴿٤٩﴾

As it is clearly settled in Quran, the rules of governance are determined only by the creator as a unique power that can produce binding legislation. The role of rulers is to implement the rules provided by Shari'ah and make them effective in managing public affairs. Any initiative intended to organize the governance in a different legal postulation from Shari'ah is considered null and void. This delimitation and settlement mean that the legislative process must be away from the influence of the pressure groups, lobbies and temporary circumstances affecting public policies. The factors in the above-cited should not have an impact on the legislation but on its application and interpretation only.[2] Such a decision is perceived as a prophylactic measure to safeguard the characteristics and the role of the law rules as fair, abstract, general and seeking to regulate the life of the human being for the eternal reward (salvation).

Binding constants in Shari'ah governance theory

The governance theory in Islam provides a specific system and postulate of establishment (power) and management. The constant pillars in this theory are: the sovereignty of the law (*alsiyyadatu li aś-śhar'*); the power of the nation (*sultanu al-'Uma*); the oneness of human society; the access to power by the pledge of allegiance (*al-khilāfa bi shura*), which means that the consultative system (*al-shura*) is the unique process to appoint governors. This theory

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[2] A. Yassine "Islamiser la modernité" al ofok impressions, pp. 311-316. Casa blanca-MA 1998.

gathers all these pillars under a special meaning of responsibility of the governors.

– Sovereignty of the law (*al-siyyadatu li aś-śhar'*): the sovereignty of the law (*Śharu'*) in the Islamic governance is intended as a sacred expression of fairness and democracy. This sacredness comes, firstly – from its divine origin (revelation), secondly – from the goals it seeks to achieve. Humans have to act implementing the provisions of Shari'ah considering individual cases and general circumstances, however these exceptions never generate a new rule that repels the Shari'ah original principle. In practice, priests and jurists appeal to the *Ijtihād*[3] as a legal reasoning to interpret and understand the reach of Shari'ah provisions, consequently the temptation to introduce new rules in contrast with the established order remain a considerable risk. The Islamic law has to be reasonably interpreted and applied according to the goals of Shari'ah *maqaseed al-Śhari'ah* establishing a harmonious and fair community. We read in *suratu al-Jāthiya*, Quran 45-18, as follows: "Then We put you, [O Muhammad], on an ordained way concerning the matter [of religion]; so follow it and do not follow the inclinations of those who do not know."

ثُمَّ جَعَلْنَٰكَ عَلَىٰ شَرِيعَةٍ مِّنَ ٱلْأَمْرِ فَٱتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَآءَ ٱلَّذِينَ لَا يَعْلَمُونَ ﴿١٨﴾

Then we read in *suratu al-Nisā'*, Quran 4-105: "Indeed, We have revealed to you, [O Muhammad], the Book in truth so you may judge between the people by that which Allah has shown you. And do not be for the deceitful an advocate."

إِنَّآ أَنزَلْنَآ إِلَيْكَ ٱلْكِتَٰبَ بِٱلْحَقِّ لِتَحْكُمَ بَيْنَ ٱلنَّاسِ بِمَآ أَرَىٰكَ ٱللَّهُ وَلَا تَكُن لِّلْخَآئِنِينَ خَصِيمًا ﴿١٠٥﴾

– The power of the nation (*sultanu al-"uma*), means that the nation choose the *Khalipha* (successor, governor) who coordinates all the state powers (executive, legislative and judicial), and ensure the implementation of the law.

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[3] The word derives from the three-letter Arabic verbal root of (د -ه- ج) [J-*H*-*D*] (jahada, 'struggle'), specifically *ijtihād* means to "struggle with oneself" through a deep thought. *Ijtihād* is defined as a "process of legal reasoning and which the jurist undertakes observing the Quran and the Sunna as a second source of Shari'ah".

The khalipha is chosen by allegiance (*al-Bay'ah*)[4] and can be dismissed by the nation if he does not fulfill the requested conditions for a governor, especially when he violates the Quran principles relative to the governance and the representation of the nation. Khalipha can never dispose of an absolute power or transfer his power by inheritance; he has to exercise his power through *shura*, that is a consultative binding framework in decision making.[5] This particularity makes the Islamic governance unique in its construction and practices.

– The oneness of human society: the principle which means that the whole humanity comes from a unique origin and composes one society, without discrimination between the nations and peoples.[6] Humans are descended from Adam and Eve, and no one holds some characteristics ensuring a higher rank than that of other persons. The only criterion distinguishing people is the righteous behavior and the amplified sense of responsibility toward God and the community. We read in *suratu an-Nisā'*, Quran 4-1, "O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer."

يَٰٓأَيُّهَا ٱلنَّاسُ ٱتَّقُواْ رَبَّكُمُ ٱلَّذِى خَلَقَكُم مِّن نَّفْسٍ وَٰحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَٱتَّقُواْ ٱللَّهَ ٱلَّذِى تَسَاءَلُونَ بِهِۦ وَٱلْأَرْحَامَ إِنَّ ٱللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ﴿١﴾

We read in *suratu Saba'*, Quran 34-28, "And We have not sent you except comprehensively to mankind as a bringer of good tidings and a warner. But most of the people do not know."

وَمَآ أَرْسَلْنَٰكَ إِلَّا كَآفَّةً لِّلنَّاسِ بَشِيرًا وَنَذِيرًا وَلَٰكِنَّ أَكْثَرَ ٱلنَّاسِ لَا يَعْلَمُونَ ﴿٢٨﴾

[4] Al.-bay'ah: oath of allegiance to a leader "Sworn in", *Bay'ah* can be an oral or written pact given on behalf of the subjects by leading members of the tribe (nation) with the understanding that as long as the leader abides by certain requirements towards his people, they are to maintain their allegiance to him. *Bay'ah* is still practiced in countries, such as Saudi Arabia, Morocco. *Bay'ah* is a unique way to choose the representative person or group that have to govern.

[5] A.'izat al.-khayat "Political system in Islam, political theory and governance regime", pp. 60-80. Ed. I Dar as-salam. Cairo-Egypt 1999.

[6] *Ibidem*.

– The responsibility of governors (rulers): the responsibility perceived in this system is provided on two levels: first, governors are responsible to the nation, this sphere of responsibility comprises a parallel control on the power activities and issues when these activities are in execution, as well as a prophylactic control establishing the compliance of these activities to the rules provided in Shari'ah system. To operate these two categories of control, "Shura institution" plays a crucial role indicating the guideline to follow in managing public affairs. For the above-mentioned reasons any public policy violating and deflecting the principles deepseated in the Islamic governance theory is excluded; and so is any that could relieve the governor of his responsibilities. The second set of responsibility regards the hereafter, it is intended as the responsibility toward God, consisting in the observance of the worship *al'ibadah* provisions and the dispositions regulating the behavior in the community *almu'amalāt*. We read in *suratu al-Mai'dah*, Quran 5-49: "And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you. And if they turn away – then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient."

وَأَنِ ٱحْكُم بَيْنَهُم بِمَآ أَنزَلَ ٱللَّهُ وَلَا تَتَّبِعْ أَهْوَآءَهُمْ وَٱحْذَرْهُمْ أَن يَفْتِنُوكَ عَنۢ بَعْضِ مَآ أَنزَلَ ٱللَّهُ إِلَيْكَ ۖ فَإِن تَوَلَّوْا۟ فَٱعْلَمْ أَنَّمَا يُرِيدُ ٱللَّهُ أَن يُصِيبَهُم بِبَعْضِ ذُنُوبِهِمْ ۗ وَإِنَّ كَثِيرًا مِّنَ ٱلنَّاسِ لَفَٰسِقُونَ ﴿٤٩﴾

– The binding consultative system (*hukm al-shura*) in decision making and as a unique way of governance: *shura*,[7] as known in the Islamic governance theory, was experienced in the époque of the Prophet and during the time of his four companions (*al-khulafa' al-rashidun*).[8] However, when the two wars took place in 36 and 37 AH (the battle of Al-jamal [36AH] and the war of Saffayn [37AH]), this regime was repealed by disuse and never applied.[9]

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[7] Because of "shura's" importance, God reserved it a specific surah in the Quran under the title of "shura", its number is 42 and is composed on 53 verses.

[8] A period of 41 years.

[9] A. Abel-Khaleq "Shura In the Islamic regime" http://ar.islamway.net (24.03.2007).

Legitimacy and the concept of *Shura*

Shura is the unique governance system postulated by Shari'ah. It is
founded on verses from Quran and on narration from the *sunna*[10]
(*al-hadith*). *Shura,* as a practice, means consultation with experts and
specialists to reach the righteous solution, with dialogue and con-
sultation prevailing as the main instruments to manage the power.
Shura can be perceived as well as involvement of a group of experts and
wise persons (*al-Hukama'*), according to the principles of Shari'ah, in
decision making.[11] Others define *Shura* as an instrument for re-
construction and reform, mentioned in the Quran and suggested in the
practices of Prophet Muhammad and his Companions.[12] Considering
these notions, governance in the Islamic approach is a political process
implementing Shari'ah regulations and observing the necessary flexi-
bility administrating public affairs, excluding autocratic and unilateral
decisions.[13]

"Shura" in the verses of the Quran

The word of *shura* has been mentioned in the Quran three times. First
in *suratu al-Baqarah*, Quran 2-233, "Mothers may breastfeed their
children two complete years for whoever wishes to complete the nursing
[period]. Upon the father is the mothers' provision and their clothing
according to what is acceptable. No person is charged with more than his
capacity. No mother should be harmed through her child, and no father
through his child. And upon the [father's] heir is [a duty] like that [of the
father]. And if they both desire weaning through mutual consent from
both of them and consultation, there is no blame upon either of them. And
if you wish to have your children nursed by a substitute, there is no blame
upon you as long as you give payment according to what is acceptable.
And fear Allah and know that Allah is Seeing of what you do."

Consultation here is established to save the interest of the family in
general and that of the children in particular. It is decided between the
parents to avoid hasty decision and the negative impact of separation
and divorce on parties and on the society.

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[10] *Ibidem*.

[11] M.M. Azraq www.islamshoora.com (24.06.2015).

[12] A. Raysuni "Al-Shura the quranic principle of consultation", p. 5. The International Insti-
tute of Islamic Thought. Herndon, USA 2011.

[13] R. Adnan Muhamad "Consultation concept in Islamic thinking", Ed. Samarra University,
p. 37 Journal of Surra Man Raa 2014 Volume:10, Ir – 2014.

وَٱلۡوَٰلِدَٰتُ يُرۡضِعۡنَ أَوۡلَٰدَهُنَّ حَوۡلَيۡنِ كَامِلَيۡنِۖ لِمَنۡ أَرَادَ أَن يُتِمَّ ٱلرَّضَاعَةَۚ وَعَلَى ٱلۡمَوۡلُودِ لَهُۥ رِزۡقُهُنَّ وَكِسۡوَتُهُنَّ بِٱلۡمَعۡرُوفِۚ لَا تُكَلَّفُ نَفۡسٌ إِلَّا وُسۡعَهَاۚ لَا تُضَآرَّ وَٰلِدَةٌۢ بِوَلَدِهَا وَلَا مَوۡلُودٌ لَّهُۥ بِوَلَدِهِۦۚ وَعَلَى ٱلۡوَارِثِ مِثۡلُ ذَٰلِكَۗ فَإِنۡ أَرَادَا فِصَالًا عَن تَرَاضٍ مِّنۡهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيۡهِمَاۗ وَإِنۡ أَرَدتُّمۡ أَن تَسۡتَرۡضِعُوٓاْ أَوۡلَٰدَكُمۡ فَلَا جُنَاحَ عَلَيۡكُمۡ إِذَا سَلَّمۡتُم مَّآ ءَاتَيۡتُم بِٱلۡمَعۡرُوفِۗ وَٱتَّقُواْ ٱللَّهَ وَٱعۡلَمُوٓاْ أَنَّ ٱللَّهَ بِمَا تَعۡمَلُونَ بَصِيرٌ ﴿٢٣٣﴾

The second mention of *shura* is in *suratu al-'Imrān*, Quran 3-159: "So by mercy from Allah, [O Muhammad], you were lenient with them. And if you had been rude [in speech] and harsh in heart, they would have disbanded from about you. So forgive them and ask forgiveness for them and consult them on the matter. And when you have decided, then rely upon Allah. Indeed, Allah loves those who rely [upon Him]".

فَبِمَا رَحۡمَةٍ مِّنَ ٱللَّهِ لِنتَ لَهُمۡۖ وَلَوۡ كُنتَ فَظًّا غَلِيظَ ٱلۡقَلۡبِ لَٱنفَضُّواْ مِنۡ حَوۡلِكَۖ فَٱعۡفُ عَنۡهُمۡ وَٱسۡتَغۡفِرۡ لَهُمۡ وَشَاوِرۡهُمۡ فِي ٱلۡأَمۡرِۖ فَإِذَا عَزَمۡتَ فَتَوَكَّلۡ عَلَى ٱللَّهِۚ إِنَّ ٱللَّهَ يُحِبُّ ٱلۡمُتَوَكِّلِينَ ﴿١٥٩﴾

The shura, in this verse, means that owing to the great mercy received from God, the Prophet has been lenient with his followers without excess or negligence, that if he were distasteful and had a stony heart, followers would leave him and disperse. Since the Prophet was lenient and jovial, God ordered him to forgive the people who behaved wrongly and to ask for divine forgiveness for them, as well as to consult them in decision making. Ending this verse, God ordered the Prophet and rulers succeeding to him, once the consultation process has been completed, to take the initiative executing the decision without hesitation relying on God.

The third mention of shura is found in *suratu al-Shura*, Quran 42-38, "And those who have responded to their lord and established prayer and whose affair is [determined by] consultation among themselves, and from what We have provided them, they spend."

وَٱلَّذِينَ ٱسۡتَجَابُواْ لِرَبِّهِمۡ وَأَقَامُواْ ٱلصَّلَوٰةَ وَأَمۡرُهُمۡ شُورَىٰ بَيۡنَهُمۡ وَمِمَّا رَزَقۡنَٰهُمۡ يُنفِقُونَ ﴿٣٨﴾

Deduction deriving from these verses indicates imperatively the consultation as the immutable rule of governance in the Islamic system. The spirit of this regime requires separation from the authority of the state; however, when making decisions, it demands unity and coordination under the supervision of "Khalipha" who remains himself under control of the consultative organ. Beyond this legal rooting of this institution in the Islamic governance, *shura* was practiced even before Islam, the Quran in *suratu al-Naml*, Quran 27-32, informs us that the Queen of Sheba (in Arabic *Quenn Belqui*), before taking her decision to answer the challenge launched by King Prophet Solomon, had consulted it with her advisors because she could not take decisions unilaterally. We read, "She said, 'O eminent ones, advise me in my affair. I would not decide a matter until you witness [for] me'."

قَالَتۡ يَٰٓأَيُّهَا ٱلۡمَلَؤُاْ أَفۡتُونِي فِيٓ أَمۡرِي مَا كُنتُ قَاطِعَةً أَمۡرًا حَتَّىٰ تَشۡهَدُونِ ﴿٣٢﴾

The institution of "Shura" and the modernized legislative organization

Analyzing the governance regimes in Islamic countries allows finding evidence that confirms the lack of the *Shura* as provided in the Quran and Sunnah. Different models similar to the *shura* are applied with the dominance of the persons in power; in the majority of cases families monopolize the power and pass it to their successors. In the Maghreb, acculturation and modernism generate a model close to the French *Assemblée Nationale*, in the Middle East and Asia the model is similar to the British consultative regime. The legislative organization known and practiced in Islamic countries emerged from the expansion of colonialism and from the positivist thought planted in these countries. In the majority of these models, the governor shares this function with the parliament in which political parties represent the interests of lobbies and pressure groups instead of the interests of the nation.

As regards Shari'ah, the function of the *shura* is to provide issues and solution to the nation's problems and difficulties (*istinbāt al-ahkām*),[14] and ensure the righteous application of Shari'ah principles.[15]

Representation of the nation

Many scholars and researchers based on weak evidence, have tried to attribute to the *Shura* institution the task of representing the nation.[16] They use the similarity reflected on the representation *al-wikālah* or the delegation *al-Inābah* contracts, known in civil law to affirm that "shura" can be seen as a representative regime. They consider the fact that in positivist thought and political system the parliament represents the nation. More probable, in Shari'ah governance, the nation is represented by the "khalipha" and his administrators (the executives), as the representative of God, or when necessity obliges, the nation can be represented by the Judicial power. The mission of "shura" organ is to produce reasonable issues for the questions arising in Muslims' lives and control their conformity to Shari'ah; however, this mission can never exceed to legislate new rules deflecting the rules already settled by the Quran and Sunnah. The resolution legitimately agreed within the framework of *shura*, binds all powers of the state as well as the rest of the nation. The mission of "shura" can be extended to subsequent controlling and monitoring of the *khalipha* and other people wielding power in the state, when executing public policies, and can integrate also prophylactic control in planning issues and making decisions. The institution of "Shura", seen objectively, is more an organ of consultation and control than a representative institution.

Who can be eligible for "shura" organ?

Priests and jurists do not differ on setting the conditions necessary to elect the candidate for "shura" organ, these conditions generally are: competence (instruction and experience), capacity and efficiency (wise people). The candidate must be elected in a public suffrage and known in

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[14] M.H.al-Bayati "Islamic political regime compared to state of law", pp. 168-170, Ed. IV – Dar alNafa'is, Amman, Jordan 2013.

[15] *Ibidem.*

[16] M.H.al-Bayati "Islamic political regime compared to state of law" pp. 169-170, Ed. IV – Dar alNafa'is, Amman, Jordan 2013.

his surroundings by his justice and by his earlier activities in favor of the public interest.

Majority and permanency in *shura* board

In the Quran, there is no text that drives directly the prevalence of the principle of majority when the *shura* organ makes a decision. In practice and in their unanimous opinion, scholars and priests agree on the priority and preference of the principle of majority within the board of shura.[17] And this is the most reasonable option to avoid disunity and conflicts. Notable and influential people in the community, despite their social status and influence, are not concerned if they are not competent or experts.[18]

The question of permanency of the members on the board of *shura* is a relative and subjective situation because of the changes and development that could reach the counselors' statute. Some new candidates can develop more potential, actual and new knowledge in management so they will be more appropriate to perform this function. Practice has demonstrated that the permanent members can build lobbies and groups of interests menacing the independence of the *shura* organ and the general interest of the nation. From the point of view of the prophylactic issue, it is desirable to break down with this permanency if not necessarily requested for. What must be permanent in the shura governance is the rules of the game (abstract legal framework), not the persons. The criteria and the driving factors in appointing counselors must be the adequacy to Shari'ah principles, the goals of public policy, the continuous formation and actual knowledge.

Conclusion

The Islamic governance theory has established and introduced the principle of "Shura" in an objective approach to meet the needs of the nation in accordance with the general rules of justice against oppression and excluding autocracy and authoritarianism. The Quran does not define a specific form of "Shura", but imposes it as a base for the

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[17] M.H.al-Bayati "Islamic political regime compared to state of law" p-p 188-190, Ed. IV – Dar alNafa'is, Amman, Jordan 2013. See also A. Raysuni "Al-Shura the quranic principle of consultation", pp. 7-11. The International Institute of Islamic Thought. Herndon, USA 2011.

[18] A. Raysuni "Al-Shura the quranic principle of consultation", pp. 7-11. The International Institute of Islamic Thought. Herndon, USA 2011.

legitimacy of governance.[19] The *shura* rules represent an abstract and objective legal framework associated with an effective management of experts in consideration of the reward to come. Knowledge, competences, experience and public interests are the driving factors of this system. The *shura* system, in practice, has to be flexible in decision making; however, this flexibility cannot be extended to the axiological rules that came down with the revelation. Consultation is functional to a greater extent for new cases and situations connected with managing public affairs and never go beyond the principles of faith, such as lawfulness (*Tahlīl*) or unlawfulness (*tahrīm*). Observing the situation in the Islamic world, it is certain that with the lack of *Shura* managing public affairs knocks down the hope of an integrated and unified nation.

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[19] A. yassine "Islamiser la modernité" al ofok impressions, pp. 317-318. Casa blanca-MA 1998.

AL-SHURA – THE CONSULTATIVE SYSTEM ADMINISTRATING PUBLIC AFFAIRS IN SHARI'AH

Summary: The governance theory has experienced an important evolution throughout history of political models known until present day. Specialists and scholars agree unanimously on the representative system being the preferred instrument of modern democracy to organize the state authority and competences. Politicians and rulers are elected according to a subjective approach, with the obligation to establish and realize public issues. This is a process in which the will of voters is used to prove the legitimacy of the power; however, it is deprived of an impact on direct politicians' decisions.

In another dimension, the Islamic governance theory offers a different postulate which is constructed on a clear division between the public and private interests. "Shura", that is a consultative system of governance, is determined by divine provisions as a unique governance model, in which the impact of individuals has a direct impact on appointing rulers and on decision making, as well. This system provides a preventative control and monitoring which allow consultants' or advisors' interference in the decision making process and also during the executive phase to avoid disturbance or violation of the goals established in public issues, according to provisions and rules of Shari'ah.