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## Keynote Address

‘Religion and State are Twin Brothers’:

Classical Muslim Political Theor

Dr. Muhammad Khalid Masud

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### ‘Religion and State are Twin Brothers’: Classical Muslim Political Theory

**Dr. Muhammad Khalid Masud**

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This paper explores the reasons for reluctant democratic transition in current Muslim societies amidst tensions between the secularists, Islamists and terrorists. Secularists consider Islamic state impossible because Islam does not allow democracy. Islamists accept democracy but reject secularism as anti-religion. The terrorists do not recognize space for democracy and secularity in Islamic state.

In my view, the problem is with the comparative methodology that considers certain concepts essential and certain practices normative. Ernest Gellner (1996), for instance, characterizes Islam as “secularism resistant”. Most regard Islamic law fixed and political theories constant. Alfred Stepan (2012) disagrees as he finds in the West “multiple secularisms” and observes democratic transition in post Arab Spring Muslim societies. He observes that healthy democracies require religious leaders to grant authority to elected representative and the state authorities must facilitate religious groups’ democratic participation in civil and political domains. He calls it Twin Tolerations—that is, “the minimal boundaries of freedom of action that must somehow be crafted for political institutions vis-a-vis religious authorities, and for religious individuals and groups vis-a-vis political institutions” (2000, 37).

This paper is too short to analyse all these approaches. I find classical Muslim political thought pragmatic and open to modification. I propose to overview with the doctrines of “Twin Brothers” and Siyasa, that discusses relationship between religion and governance, on the doctrines of Bidah, Tashabbuh, and Ijma’ that questions the scope of authority of the religious in social and political matters. The paper is divided into four sections. The first overviews the doctrine of Twin Brothers, the religious and the political. The second and third analyse respectively the concepts of the Political and the Religious focusing on the doctrines of Siyasa, and secularism, Bidah and Tashabbuh that define their boundaries. The fourth section discusses with the social, focusing on the doctrine of Ijma’. It summarizes Imam al-Juwayni’s views on Ijma’ relating to the participation of masses in religion and politics.

#### **TWIN BROTHERS: The Religious and the Political**

Debates in Muslim society over the relationship between the religious and political began quite early in Islam but it became more prominent during the early Abbasid period. Ibn Muqaffa’ (d. 759), Caliph Mansur’s Secretary was alarmed by the rise of numerous schools of law and the freedom of juristic opinion that led to contradictory judgments by the qadis and Muftis in similar cases. He advised the Caliph to use his prerogative to unify the laws. Caliph Mansur approached Imam Malik (d. 795) in Medina to allow his compilation of laws to make the law of the caliphate. Malik refused because that would deprive the jurists from the freedom of interpretation. The jurists were generally reluctant to accept the position of judges during this period. Al-Juwayni (d. 1085) considered necessity of establishing the state was not derived from the Qur’an and hadith but by the consensus of the community. Obligation to obey the ruler was, however, religious. Gradually, a demarcation between the roles of the political and the religious emerged. The concepts of Imamah, leadership and Ijarah, command made the Political more authoritative as the terms mulk (kingship) and later Sultan came to be included during eleventh and twelfth centuries. Caliphs, no longer elected, were mere figureheads as symbols of the Religious, Sultans represented the Political.

The doctrine “Religion and kingship are twin brothers” (*Al-din wa'l-mulk tau'aman*) recognised both as authorities. The statement is discussed as a basic principle of politics in books on Theology, Political Theory, History, Ethics, Tafsir and Hadith from tenth century.

Qudamah b. Ja'far (d. 948), secretary to the Abbasi caliphs during the period called “Abbasid Revival” (920-932) when the caliphs reclaimed their political authority. He is apparently the first to attribute this statement to Ardashir I, the founder the Sassanid Empire with Zoroastrianism as the religion of his kingdom. Qudamah's explanation that the authorities of religion and kingship are combined in Caliph because no kingdom survives without religion and law and no religion can function without kingdom and control (1981, I:436). His reference to Ardashir is quite relevant. It coincides also with the restoration of the caliphal power, as Qudamah was asked to prepare a manual for secretaries and tax collectors.

Majority of the authors attributes this statement to Ardashir I the King of Persia (re. 224-241), very few cite it as saying of Prophet Muhammad, most often it refers to “ancients” or simply says, ‘it is said’. Al-Ghazali (d. 1111) is apparently the first to attribute this concept to the Prophet saying: “Islam and Sultan are twin brothers” reported by Ibn Abbas (N.D. 205). It appears in the hadith collections like Musnad Al-Daylami (d. 1162), ‘Ala al-Din al-Muttaqi's *Kanz al-Ummal* (1981, 6:10), and commentaries of the Qur'an after al-Ghazali. Al-Saghani, in the thirteenth century, however, considered this report fabricated.

Variation in the later version of the statement later, substituting the words al-Din with al-Islam and al-'adl, and al-mulk with al-sultan and sometimes tau'aman with akhawan and sinwan needs to be understood in the changing political contexts. Religion was extremely politicised in this period between these rival warrior groups who disrupted the order in this region. Caliphs were no longer in control of affairs; they only served as religious figureheads. Nizamul Mulk Tusi's (d. 1092), book *Siyasat Nama* famously known for the statement of “Twin Brothers” provide an insight into the art of political management in this chaotic period. Tau'aman, twin brothers in this statement is the core term that provides rationality to this otherwise common wisdom.

This reference implies that this relationship is the law of nature and biological fact. The term has some other interpretations, all politically relevant. Twins means having the same source; twins are inseparable; twins are indistinguishable; twins support each other; twins are interdependent; twins have equal position.

Nizamul Mulk Tusi took two steps. He wrote *Siyasat Namah*, advising Saljuq Sultan Alp Arsalan to acquire religious knowledge enough to distinguish between heresy and authentic religion to protect himself and his kingdom. A whole new theology was developed to counter the religious Fatimid state. Second, he established the chain of Madaris Nizamiyya, known after his name, to train religious scholars, Muftis, Qadis and state officials who would be sufficiently knowledgeable to guide the religious discourse. He also assigned al-Ghazali to write a book on the heresies of the Batinis. It is in this book that al-Ghazali cited the above-mentioned Hadith. In his other books, he does not refer to this statement as Hadith.

Before the situation could improve, Tusi was assassinated by an Isma'ili and al-Ghazali had to go into hiding. This situation politicised the religious. Debate about the Political and the Religious as twin brothers continued in Muslim societies. The next section discusses the doctrines relating the Religious; the third section overviews the doctrine about the Political.

## I.THE RELIGIOUS

The Qur'an refers to religious diversity and co-existence between followers of different religions; everyone is free to worship (109: 4-6). There is no compulsion in religion because truth and error are clearly known (2: 256). Islamic traditions define the 'religious other' in several different ways. Kalam and Fiqh defined the religious other as infidel from the perspective of faith. Islamic law defined the religious other from the political perspective and defined the status accordingly as Ahl al-Kitab, Ahl al-Dhimma, harabi, mustamin, and mu'ahid. Boundaries were also marked to distinguish Din from Dunya, changeable and unchangeable, and between Ibadat from Mu'amalat.

Fiqh as understanding of Shariah developed initially as multiple local customary legal traditions in Medina, the city of the Prophet and in other cities where the companions lived after his death. The plurality of views in the Fiqh traditions is proverbial. The problem arose when this distinction was blurred by some modern religious leaders expanding the domain of religion to include the Political, namely the State into the religious as absolute authority. Mawlana Mawdudi considered the term Din too unique and comprehensive to be translated in any language." The modern word "state" has reached somewhat closer to it, but it is not yet broad enough to include the whole semantic field to which the word Din, Religion refers" (Mawdudi, 2000, 132).

I take up only two doctrines Bidah and Tashabbuh to illustrate how these boundaries provided cultural freedom to the Social by distinguishing the religious from non-religious matters. This distinction was religiously necessary because no one had the religious authority that the Prophet had. As discussed in the last section, Imam al-Haramayn al-Juwayni clarified that religious authority existed only in the Qur'an and Sunnah. In the absence of these primary sources, it the consensus of the community was decisive.

### **Al-Bidah**

Bidah is an important doctrine defining distinction between the religious and the non-religious. Muslim jurists have written volumes on the subject. Al-Shatibi's (d. 1388) description of al-Bidah is regarded as more definitive than others as he discovered four constituent elements that render an innovation, a new idea or a practice Bidah: (1) Intent and belief that the innovation is religious, (2) Similarity in status with religious obligations, (3) Exaggerated emphasis on its religious nature, and (4) Considering its practice as a way of seeking God's pleasure. Shatibi does not consider an innovation and practice as Bidah. He gives the examples of built up houses in place of huts and use of sieves to sift or strain unwanted elements from food as innovations that are not Bidah as they are not associated with belief and religion. Shatibi distinguishes also Ibadat as the area where Bidat are usually introduced as opposed to Mu'amalat. He gives an example that would have sounded far-fetched in his period. "If there were then a person who travels to perform the obligation of hajj flying in the air or walking on the water he will not be counted as innovator or heretic. The purpose is to reach Mecca to perform the obligation and he achieved that purpose in its fullest sense (Shatibi 1997, 1: 253).

### **Tashabbuh**

The doctrine of prohibition of imitating the infidel, tashabbuh bi'l kuffar, has been exploited by extremists to blur boundaries between what is religious obligation and what is not. Firstly, the doctrine is presented as a definition of Muslim identity. Imitation of non-Muslims per se is described as apostasy. Second, it blurs the difference between religious and cultural symbols of identity, even socialising with non-Muslims is regarded as Tashabbuh.

The doctrine of Tashabbuh was derived from the following saying of the Prophet: "Whoever imitates (tashabbaha) a people he belongs to them". Varying versions of this statement are reported in Ahmad b. Hanbal's Musnad, Abu Da'ud Sulayman b. Ash'ath al-Sijistani's (d. 888-9) Sunan and Abu Isa Muhammad b. Isa al-Tirmidhi's (d. 892) Jami'.

Generalisation of this prohibition, diversity in its interpretation and widening its implications arose in changing cultural, political and religious contexts. I will illustrate this diversity with four examples from the twelfth and fourteenth centuries in the pre-modern and nineteenth and twentieth centuries in the modern period.

Al-Ghazali discusses the question of Tashabbuh as cultural issue of relations between Muslims and others and takes political perspective. He gives several explanations for prohibition of imitating the infidels: tense relationship between Muslims and Jews in Medina, distinct Muslim identity. Ibn Taymiyya takes the prohibition of imitation in strictly religious sense. He explains that imitation breeds affection for non-Muslim practices which are sinful. These two examples are from Muslim majority cultures. The situation becomes more complex in nineteenth century colonial India where Muslims are in minority living under foreign rulers who are Christian.

Shah Abd al-Aziz (d. 1823) was frequently asked about sharing food with non-Muslims, dressing like them, eating with them, greeting them, attending their festivals, accepting gifts and food distributed at these festivals, did it make them non-Muslims? He clarified that anything, custom, practice, food, dress that is considered by non-Muslims as religious is not allowed for Muslims as amounted to imitating them in strictly religious manner. However, if it is common among the kuffar but not peculiar to them, there is no harm for Muslims to adopt it. If Muslims adopt them for benefits and convenience and not with the intention of imitating their religion, it is not forbidden, for instance, wearing a warm dress that the non-Muslims do in winter is not religious practice, and is not forbidden (1987, 417).

The problem of tashabbuh was politicised in nineteenth century when Sayyid Ahmad Khan as an official of the state had a dinner with an English official. His rivals asked for Fatawa and was declared infidel because he mixed with the English and ate at the same table. Khan wrote a detailed treatise on the subject, analysing the relevant hadith and arguing on the practices and fatwas in contemporary Muslim societies. Among others, Mawlana Ashraf Ali Thanawi also wrote a rejoinder to this treatise. Both are important writings and reflect the political and religious context of this debate. The space in this short paper does not allow even a summary of this debate. Despite the scrupulous details and arguments, the tenor is quite political. We find same trend in the Fatawa literature, yet some of these rulings are useful to see how the boundaries between the religious and the cultural are also drawn to allow practices which are not religious.

Mufti Abd al-Hayy of Farangi Mahal advised to give up Muslim cultural practices if it hurts the religious feeling of non-Muslims. He clarified that killing a cow and eating the meat is not an obligation. It must be avoided if it leads to religious disorder because Hindus worship it (1964, 71). He also allowed accepting sweets distributed as religious offerings on Diwali and Holi festivals (1964, 510). Speaking and learning English languages was also forbidden as tashabbuh. The Mufti clarified that learning English was not tashabbuh. Tashabbuh refers to special customs and habits, which are peculiar with the kuffar. Food, drinks, dress may entail tashabbuh, but not languages (1964, 551).

There was also a difference of opinion about wooden sandals as they were used by Hindu Yogis. Mufti Abd al-Hayy disallowed these sandals but Mufti Rashid Ahmad Gangohi (d. 1905) clarified that wooden sandals symbolized Yogis now it is common among Muslims and Hindus, and therefore allowed (N.d. 627). Gangohi was asked about English dress and cross worn by Christians. He explained that Cross is a symbol of Christianity, and therefore counts imitation. Hat, coat and pantaloons are not religious symbols. Muslims in England also wear these dresses. But in India it is regarded imitation of the English and therefore forbidden (p. 215).

Despite the emphasis on distinction between religious and non-religious the issue of tashabbuh was increasingly politicised in the colonial period. As the next section illustrates, the Political brother enjoyed more privileged position than the religious. Consequently, as noted below religion had to be imagined as state and ideology but religion had to bear the cost for this transformation.

## 2. THE POLITICAL

Siyasah and Shariah are often essentialised today as mutually contradictory; Siyasah is open and Shariah is rigid. In Islamic tradition, the doctrine of Siyasah aims to mark boundaries between the political and the religious. Ibn Nujaym (d. 1563), defines it as follows: "Siyasah refers to the action taken by a ruler in view of a public interest in his opinion in a certain matter even though he found no textual evidence to support his action", see al-Bahr al-Ra'iq (Cairo: Dar al-Kutub al-'Arabiyya al-Kubra, n.d).

The debate about the boundaries emerged in the ninth centuries when jurists' interpretations had developed into several schools of law. Jurists who functioned as Muftis and Qadis represented the Religious in Muslim society. The Abbasids introduced New courts (e.g. Mazalim and Hisba) where the rulers used their discretion in public interest. Imam al-Shafi'i rejected the notion of "Ruler's discretion (Siyasah)", allowing it only that which accorded with the Qur'an and Sunna (Al-Umm, Cairo: dar al-Misriyya, N.d. 1: 7). Other jurists developed this notion of discretion to limit the limited number of crimes where punishments were fixed and designated them as Hudud, the rest under the category of ta'zirat were left to the discretion of the ruler. The debate on Siyasah emerged intermittently as and when the system faced a crisis.

### (a) The Doctrine of Siyasah

The first crisis came when the newly emerging position of the Sultan claimed to be the political in place of the caliph in twelfth century. As mentioned above, the Abbasid caliphate had been under constant threat by neighbour states. The caliphs were too weak to control the disorder; they had to rely on military amirs who gradually claimed executive authorities and kept the position of caliph for legal justification. They used this authority to appoint and depose the caliphs at their will.

Al-Ghazali and other jurists rationalised this situation as Istila', rule by force. He developed a theory of Siyasah that separated the political from the religious; the religious in succession of the Prophet and the political as a matter of fact. The Siyasah in the latter sense meant "Social organization and cooperation for economic resources and their management" (Ihya 'Ulum al-Din, Cairo: Maktaba Mashhad al-Husayn, 1971, 1: 10-11).

The Abbasid caliphate in Baghdad was destroyed in the thirteenth century but the authority of the caliph had already diminished. The political continued gaining more authority. The caliphate was shifted to Cairo reorganizing under powerful Sultans with caliphs as nominal heads. The territory of the Cairo caliphate was limited. It was frequently threatened by Mongols and Crusaders. The crisis of rule of law related more specifically to crimes and wars, demanding strong rules and harsh punishments. Siyasah came to mean political authority to establish discipline and order. Al-Qarafi, developed a theory of Siyasah dividing religious and legal authority between the Imam, the Qadi and the Mufti; the Mufti was responsible to God and the Qadi to the Imam. The Imam had the final authority where the jurists differed. Ibn Taymiyyah proposed to assimilate both authorities of Siyasah in his doctrine of al-Siyasah al-Shar'iyyah. He disagreed with separation of powers between religion and state because state was necessitated by religion and the state was responsible to enforce Shariah. He gave more power to the ruler under Shariah, for instance to fix punishments even for tazir crimes. In Al-Andalus, al-Shatibi developed Maslahah public interest, into the doctrine of Maqasid al-Shariah, in which religion was one of the basic needs along with four other categories of public interest.

Taqi al-Din al-Maqrizi (d. 1441) who argued that the term Siyasah was constructed on the pattern of Mongol Yasa, defined Siyasah to mean "Seeking the welfare of the people by leading them to the way of success in this and the other world". According to him Siyasah was of two types, Prophetic and Oppressive; the first was ruled by Shariah.

The Political became hierarchical and authoritative during sixteenth and seventeenth centuries with the rise of Mughal (India) Safavid (Iran) and the Ottoman empires. Siyasah in this period was defined as balance of power. The jurists as officials of the state participated in systemization of Islamic laws resulting in compilations like Multaqa al-Abhur and Fatawa Alamgiri. Emperors introduced their own law, e.g., Qanun in the Ottoman

Empire and Farman and A'in in Mughal India, in Mughal India in addition to Shari'a, sometimes even contrary to fiqh. Shah Waliullah also defined Siyasaḥ as balance of powers. Assimilating the various doctrines of Siyasaḥ by philosophers and jurists he stressed the need for the deconstruction of old systems (fakk kulli nizam) and construct a new one on the Siyasaḥ of balance and Public interest.

It is quite interesting that the doctrine of Siyasaḥ was also invoked by the colonial rulers, especially by Warren Hastings in eighteenth century India, to justify reforms in Islamic criminal laws. He assumed the title Nawwab Governor General Hastings to claim prerogatives of a Muslim ruler to reform laws on grounds of the doctrine of Siyasaḥ (Jain 1982). George Rankin noted the influence of the doctrine of Siyasaḥ in the administration of criminal laws even after Warren Hastings. It is described by Jonathan Duncan as a 'corrective or supplementary doctrine' which is well known and admitted in the practice. It was probably this doctrine that allowed the colonial state to legislate Shariat and British judges to adjudicate it, if the Ulama approved it.

Literature on Siyasaḥ grown abundantly in nineteenth and twentieth centuries. The term Siyasaḥ came to be distinguished as law in public law in contrast to Shariah that meant personal laws. Rifa'a al-Tahtawi (d. 1873) translated the French terms "loi, reglement" as Siyasaḥ in 1830, thus equating Siyasaḥ with Secular law. 'Abd al-Wahhab Khallaf, defined Siyasaḥ as "management of public affairs in an Islamic state with a view to securing public welfare and removal of harm in such a way that it did not transgress the limits imposed by Shari'a and did not violate its universal principles, even though it may not be in complete conformity with the statements of the leading jurists. Ahmad Fathi al-Bahnasi, and other jurists also mentioned this division between Ta'zir and Hudud as Siyasaḥ and Shariah. International laws and peace treaties also belonged to Siyasaḥ.

#### (b) Secularism

The modern nation-state replaced the personal concept of governance, and bestowed upon the institution of state complete sovereignty as embodiment of the nation. This development posed new questions to the doctrine of Siyasaḥ. Who has the sovereignty? The Islamists reject the idea of the sovereignty of the people. They believe that the sovereignty belongs to God. This opened a new debate about democracy and secularism.

Secularism has been subject of debate more heatedly after the abolition of caliphate in 1924. In the modern context secularism was approached from at least three different perspectives: sociological, epistemological and ideological.

In view of the religious, cultural and ethnic diversity in southeast Asia, Secularism was treated as an epistemological issue; communal identity was defined by culture and source of knowledge. Naquib al-Attas proposed Islamisation of knowledge for defining Muslim religious and political identity. Secularism to him was neutral, or pluralist toward such divisions. To Naquib al-Attas, "The term "secular" has dual connotation: time and location; now and this world. (p. 16). He considered secularism anti-religious from that perspective. distinguishing secularization and secularism, he observed that Secularization in the West, is understood as deliverance of man first from religion and then from metaphysical control over his reason and his language', and Secularism, like religion, denotes an ideology that projects a close world-view and absolute set of values in line with an ultimate historical purpose having a final significance for men. Secularism, according to them. (p. 19 citing Harvey Cox, *The Secular City*, New York, 1965).

In the Arab world, the social organisation was not religious either, but the political and the religious were not interdependent. The social and the political also could not adjust with each other under the Ottomans. Strong reaction against Ali Abd al-Raziq's somewhat secularist call was opposed by the religious and political together at the abolition of the caliphate as Al-Azhar was supporting the caliphate of the Egyptian King Fouad. Resistance to secularism continued but turned ideological with the Muslim brothers. Al-Qaradawi rejects it as Western, anti-religious and atheist ideology. He regards Muslims supporting secularism apostates.

Ghannushi argues that Secularism as not ideology or theory; there is a multitude of secularisms. Western

secularism is only 'procedural solution'. Islam has combined religion and politics since its beginning with the social contract (Mithaq) of Medina that combined people of different religions and beliefs into one political community. Islamic approach is distinction, not separation between religion and politics. In Islamic law, distinction is made between human and divine, reason and revelation, Ibadat and Mu'amalat, rights of people and rights of God, state and religion. Secularism is not expulsion of religion from politics. It is dangerous; it reduces state to be Mafia without moral restraint, social harmony need balance. "To achieve this balance, we need to go back to the issue of distinguishing between religion and politics and adjust the parameters and constant in religion and that which is variable". (2012). To Ghannushi, secularism is not atheistic philosophy but merely a set of procedural arrangement designed to safeguard the freedom of belief and thought". Defining the Islamic state, he says, "The state is Islamic insofar as it assures that its actions are in accordance with Islam's values without being subjected to the tutelage of any religious institution for there is no such thing in Islam. Rather, there is a people and a nation who make decision through their institutions".

In South Asia, Secularism was seen from three different perspectives: traditional, historical and ideological.

Qari Tayyib's book "The Natural State" illustrates the traditional view. According to him the Nature symbolizes Divine kingdom, which is the best example of a balanced system. The government on earth is Khilafat (deputy of God), which establishes a system of government on the pattern of the Divine natural state. Islamic caliphate is distinct from all other systems because in other systems humans assume the Divine authority. Islamic system of government differs from others in the following aspects.

- God alone is the legislator.
- The ruler is bound to consult and is bound to abide by the consultation.
- Majority view does not constitute a binding advice; the binding advice is the one that is the most reasonable.
- Majority view is decisive only to settle a point where opinions are divided.
- Khilafat does not work for material objectives.
- Khilafat system does not allow party system.

He elaborated further that political government without consultation is tyranny and dictatorship, and consultation without a leader is anarchy and de-centrism. In its most excellent form of a comprehensive and moderate religion, Islam combines autocracy and democracy.

Calling for obligatory obedience to ruler Islam prevents disorder so that the divine vice-regency is secure from chaos of the selfish opinions and from the interference of the masses. Constituting the institution of consultation, Islam abolished the possibility of the tyranny and absolutism of the ruler, so that that entire Umma does not suffer from the individualism, selfishness and chaos. Consequently, an Islamic government combines autocracy and democracy, neither is autocracy independent of democracy, nor is democracy independent of autocracy" (Tayyib 1963, 220).

The opinion of the people does not qualify as 'majority opinion'. Only the religious scholars can validly decide between equivocal issues because possess the legislative taste and are well versed in the philosophy of law. The opinion of the ordinary people has no value, even if they have total consensus about a certain matter (Tayyib 1963, 219).

Muhammad Iqbal studied the issue from historical angle and argued that Muslim societies did not develop the religious as institutional authority because in Islam the material and spiritual are two aspects of the same reality. He welcomed abolition of Caliphate in Turkey to bring autocracy to an end. He proposed combining Ijtihad and Ijma' in the institution of parliament. He also explained that separation of the religious and the political was a functional division in the management of the political. "The Islamic idea of the division of the religious and political functions of the State must not be confounded with the European idea of the separation of Church and State. The former is only a division of functions... the latter is based on the metaphysical dualism of spirit and matter".

Mawlana Mawdudi (d. 1979) viewed secularism as an ideology of *la diniyyat*, absence of religion. 'Islamic ideology' on the other hand is based on two principles of Sovereignty of God and enforcement of Shariah. He does not support democracy as a theory of the sovereignty of the people and rejects theocracy or the sovereign authority of the religious people. He called Islamic state Theo-democracy. According to him, "Islamic State is not *La dini jamhuriyyat* (Secular democracy); sovereignty does not belong to the people" (Mawdudi 1964, 23). He coined the term "Theo-democracy" (*Ilahi Jamhuri hukumat*) for the type of democracy in an Islamic state (Mawdudi 1964, 24). He is extremely critical of the Western idea of democracy. In elections, which are the hallmark of a democratic system, a special group of people is elected because this group can influence people by its wealth, and propaganda. This group in power makes laws for their own personal and class interests (Mawdudi 1964, 25). In Islam people are not free to make their own laws.

Niyazi Berkes, a sociologist from Turkey, views it as a problem of modernisation; it does not originate with religion or state. The societies where the social and political were not organised on religious basis in pre-modern period could easily separate the political from the religious. Unlike Christian, Muslim societies who treated the religious and the political interdependent are divided between the traditional conservative, the modernist and the religious reformist. The traditional conservative is strictly religious, but accommodative, the modernist is not religious and has no problem with secularism. It is the religious reformist who is for revival of religion and contests the modernist. The Ottoman society was not organised on religious basis; it combined religion and political both. It is the difficulty of continuing this combination that creates tension.

### 3. THE SOCIAL

In these debates, I find Imam al-Haramayn Abu'l Ma'ali al-Juwayni's (d. 1085) *Ghiyath al-umam fi iltiyath al-Zulam*, helping communities in the world wrapped in darkness, immensely relevant to these debates. Even the title indicates his concern with the environment of tyranny and oppression and his attempt to save the community from this dark era. *Ghiyath al-Umam* aims to help the masses against oppression. Increased oppression of the rulers and officials. The Ulama have lost caution and balance. Leaders and the middle classes have no piety. My attempt is to put the grinding wheels in place I have given above some idea about the darkness and oppression to which this title refers. Al-Ghazali who accommodated this oppression by legitimised *Istila* based on necessity of avoiding disorder was al-Juwayni's disciple. Al-Juwayni was also the rector of the Madrasa Nizamiyya that Tusi established. Both were also prominent in supporting the Twin Brother doctrine.

Al-Juwayni disagreed, not with their theory and with the missing link in this theory; the role and faith of the *umam*, communities, the masses, the society beside the Political and the Religious. He agreed that Imamah was complete and general authority, that it was necessary to establish a ruler, that the religious and the political are twin and interdependent. He, however disagreed with the argument that the establishment of state was a religious obligation created by a religious text. He goes into details that such claims are unfounded. He clarifies that this necessity was created by the community and legitimised by *Ijma'*, the consensus of the masses. Once a leader, an Imam, an Amir, a ruler is elected and appointed religion obliges its followers to obey him. There are religious texts to this effect.

He argues that this necessity is not a religious norm in the sense that it obliges God to provide guidance and to prescribe rules. One could say that Prophet were sent to fulfil such necessity. Al-Juwayni argues that God was not obliged to do that. Otherwise, there would have been no *fatrah*, hiatus, a period without a prophet. Also, Prophet would not be the last prophet. That means sending Prophets is not natural necessity, a norm, a Divine obligation. If so, then Imam is a lesser requirement. If it is possible to have a time without the Prophet then it is even more logical to have an Imam.

Secondly, God is not obliged to save the people. Even the Prophet is not the saviour; his duty is to deliver the divine message. He organises society, establishes a community and guides them to run their affairs. He does not force them. He leads them, if they will. God also does not change the conditions of the people unless they change themselves. Thirdly, while the Prophet was chosen by God, an Imam is chosen by the community. Consensus of the community is the source of legitimation (pp. 1:21-26).

The role of Imam as leader of the community is central. The Imamah as an institution is comprehensive; it applicable to all matters including protection of the territory, care of the subjects, establishing the call with rational and military support, saving the oppressed from the oppressor. (1:22).

Imam's legal authority related to two types of laws: (1) laws relating Imam and governors who have the authority to rule and to enforce the law. (2) Laws for the community. There are members of the community between the two who participate in formulating and completing the laws. (1:15). Since they are responsible for transmitting the authentic and reliable rules in Shariah, they must be qualified to exercise Ijtihad. They are the pillars of trust in knowledge and piety.

Most problems of law are broken into pieces because differences of opinion. The negative and the positive impact of the difference is resolved by Ijma. The framework of argument for Consensus is custom and its continuity. If it is not habitual and familiar its continuity is not proven. Consensus is required in matters relating political systems, religions, and religious communities. In all these cases, customs continue because they have been developed by people suffering from hardship and struggling for their dreams that are attached to these customs. Opinions differ. Despite individual differences, however, these opinions and desires come to join each other. People cannot be left on their own. They would not survive alone. Commons and crowds may lose their way. It is only when God likes to harm some people he leaves them alone (1:50).

Instead of summarising these discussion, it is well to refer to al-Deeb, who abstracts the following as principles of al-Juwayni's political theory in Ghayath al-umam,

- The ruler receives the authority and power from Umma, the community.
- In Islamic state the ruler is not the legislator.
- He is not absolute and sole power force, he must consult the Ulama, the learned in the community.
- The Ulama are the *ahl al-hall wa'l aqd* (legislators).
- Freedom of each person is guaranteed.
- Property of the people is protected.
- Islamic state is not a state run by police and judges.

## Conclusion

To sum up, division between the political and the religious appeared very early in the history of Islamic law. It turned into tension when the Political became more powerful and reduced the authority of religion. The religious organised itself as protector of Shariah and rule of law but in view of social cohesion and enforcement of law it accepted boundaries. This position, expressed as twin brothers had its periods of tension but it provided the needed balance of authority. This balance of disrupted when religion was interpreted as a political ideology and refused to be neutral in public law in modern period.

Presently, under the influence of the doctrine of Maqasid al-Shari'a, that defines public interest as the objective and has already been accepted as guiding principle in responses to the public issues in economy, health, environment, and human rights has emerged as balancing common value between the political and the religious. This meaning of Maslahah as public interest has fortified emerging civil society in the Muslim world to move away from conflict toward common good and cooperation.

Before I conclude I must make a confession. In the current debate on the "state of exception" political theorists are divided on the role of the Political and the Legal; most following Karl Schmidt recognised only the Political and others insisted on including the Legal. I wanted to make my paper relevant to this debate by reminding the participants that the Political and the Legal were regarded as twin brothers among the Muslims political theorists in the pre-modern period and that they were believed to be twins. Also, that the legal was called the religious in those days. While writing this paper I found that in hurry Muslim scholars had forgotten

the third brother, the Social. I found him in al-Juwayni's Ghiyathi, the pet name for Ghiyath al-umam in Islamic tradition. I added him in this paper.

I am glad and must mention that I am not alone in this adventure. I would like to mention the following two studies: *The Dialectic of the Law: Certainty, Continuity and Society in al-Juwayni*, by Sohaira Zahid Siddiqui (2014), and Ahmed Abdel Meguid, "Reversing Schmitt: The sovereign as a guardian of rational pluralism and the peculiarity of the Islamic state of exception in al-Juwayni's dialectical theology", (September 12, 2017).

According to Siddiqui, "al-Juwayni articulates a more expansive notion of the Shari'a which is responsive to religious, political and social change and continuously acts as a governing force in the lives of the people to adhere to it. As a corollary, the Shari'a more than a static body of laws is a mechanism of governance which transcends any formal apparatus of government and is able to ensure societal continuity in the absence of the latter".

Abdel Meguid finds that "al-Juwayni's position is the reverse of Schmitt's. Al-Juwayni argues that the state of exception, which defines the essence of sovereignty, is the absence of the sovereign power and that the ultimate task of the sovereign is to secure a rationally pluralistic community".

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