Concept of Political Authority in the Islamic Political Thought.

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ABSTRACT: *The challenge posed to the revival of Islamic political thought is not only to take Islamic constitutional precepts from the original sources of the Islamic law(shari'ah), but also to make them relevant to contemporary life. This paper is a humble effort in that direction, its investigation being limited to the emergence of Islamic political science(siyasah al-shar'iyyah) as a discipline in Islamic studies, and how we defines Islamic political thought, phases of its development, elaboration of individual, political and common rights. Theimplication of this conceptfor political authority, the location of authority, the delegation of authority are then explored. The paper concludes with an explanation on the mechanism for delegation of authority in Islamic political thought.*

*Keywords***:** *Islamic political science, Islamic political thought, Islamic law (shari'ah), political authority and mechanism for delegation of authority.*

I.   INTRODUCTION.

The ability of any political system to survive depends first and foremost on two primary factors: its provision for the basic spiritual and biological needs of man and its allowance for change. It is the contention of this article that Islam meets these two conditions. Aside from spiritual and moral aspects of the creed which are permanently established, Islam provides broad principles and frameworks in the area of worldly interactions which makes it possible for the Muslim community to evolve and meet the needs of every period.

Chief among such flexible aspects of Islam is its constitution. Although the constitutional rights and obligations of the rulers and the ruled are firmly established, the organization of the government and the procedures for leadership election in the political process are left open. The Muslim community at any point in time are obliged to evolved from this constitutional framework of the institutions which meet the needs of their era.

The Holy Qur'an which is regarded as the first source of rules in Islam only provide some fundamental principles pertaining to the political affairs of Muslims. The Islamic law(*shari'ah*) indeed refrains from providing detailed regulations for all changing requirements of our social existence. The need for continues temporal legislation is therefore, self-evident. In a Muslim State, the legislation would relate to many problems of administration not touched upon by the *shari'ah*.It is up to the community to evolve the relevant detailed legislation through an exercise of independent reasoning (*Ijtihad*) in consonance with the spirit of the *shari'ah* in the best interests of the nation. In matters affecting the communal side of our life no legislative reasoning or decision can be left to the discretion of individuals, but they must be based on a definite consensus(*ijma'*) of the whole community.

The Emergence of Islamic Political Science (s*iyasah al-shar'iyyah*).

The birth and development of apolitical institution is basically the product of human thoughts and action. The creation of the " *Medinah Society* " which was regarded by the majority of Muslim scholars as the first " Muslim community" was the product of the Prophet Muhammad's concept of the community (*ummah*) in the classical period on the basis of the social and political interaction between him and his followers in the city of Medinah.

The establishment of "*Medinah society*" by the Prophet was based on a formal and legal foundation, and at the same time, the formation of this "Medinah society" also has been regarded as one of the achievements of the Prophet's leadership in transforming of the divided society of Arabia into a cohesive and progressive social order which is guided by a set of laws called *shari'ah*.(Thaib 2006). Based on this rationality, Muslim scholars have provided the legitimate foundation on which the state in Islam is constructed, maintained and operated.

From Western perspective, besides the word "Polis", the Greek also have used other words to means politics such as the words of "Politicos" or "Politica" which carry the meaning as " state organization " or " the art of government."(Moten 1996).Aristotle in his effort to popularize the usage of the word " politics" to mean "

the art of government" has named his work "*politica*". Besides, Platoalso has adopted the same way as Aristotle by naming his work " *Politeia.(Thaib 2006)*".Both of these books were regarded as the main sources of reference for Western political scientist which paved the way for the emergence of 'political science" as a separate discipline of sciences according to Western point of view.

From the perspective of Islam, the word politics has been synonymous with the word "*siyasah*" which originated from the Arabic words "*sasa*", " *yasusu* " and "*siyasatan*" which carry the meaning " to take care", and if the word is used for human affairs, it means " to administer their affairs"(Bustani 1956).

Aristotle and Plato viewed politics primarily in terms of the moral purposes that the decision-makers ought to pursue. The "*Polis*", for both, existed to seek its common good, civic virtue and moral perfection. Aristotle saw "the highest good" as " the end sought by political science"(Moten 1996).Although focussing on the moral purposes that the leaders ought to pursue, Aristotle did not ignore the importance of political structure(Barker 1958).Many political scientists in recent times, hold the same position and identify political activity with moral beliefs.

The word "*siyasah*" which means " the art of government " or " governmental affairs" was first used in a saying of the Prophet (hadith) narrated by Imam al-Bukhari and Imam Muslim that is : " *KanatbanuIsra'ilatasusuhum al-Anbiya*"(ZainalAbidin 1977),which means: " the government of the Jewish people (Israilites) was managed by the Prophet."

Al-Qistilani and Imam al-Nawawi interpreted the phrase "*tasusuhum al-anbiya*" as : " the Prophets manage the governmental affairs of the Bani Israel in the way other leaders of other nations managed the affairs of their own citizen."(Thaib 1998).Based on this *hadith* of the Prophet, majority of classical Muslim scholars have defined the word "*siyasah*" as " the art of government" which all government policy makers in a particular notion should have. From here it can be seen that the word "*siyasah*", from the beginning, was only used to mean " the art of government" as is the word "*politics*" in Western concept.

Among the earliest works of the Muslim scholars who used theword of "*siyasah*" which meant "politic" is Abu Hassan al-Ahwazi's book with title "*tahzib al-siyasah*"(Political Education) which he wrote in the year 446 H. Thisis the earliest book on Islamic political science(*siyasah al-shar'iyyah*).After that several other works emerged such as "*risalah al-bir fi al-siyasah*" and "*siyasah al-'ammah*"(General Politics). Both of them were written by al-Kindi in the year 866 H. After the death of al-Kindi, his student produced his owm work entitled "*kitabsiyasah al-kabir*" (The Great Book of Politics) and " *siyasah al-saghir*"(The Small Book of Politics). All these four books were regarded as references in Islamic political science(*siyasah al-shar'iyyah*)(Thaib 1998).

It has to be understood that the meaning of the word "*siyasah*" as explained above is appropriate with the Prophet's initiative at that time in bringing together His followers and other groups with various cultures and testes in Medinah into a form of community which is structured, orderly and independent under His leadership. This is clearly a political practice to realize his goal in creating Medinah State which regarded as the first state based on the Islamic principles.

Islamic Political Science as a part of Islamic Jurisprudent (*al-ahkam al-shar'iyyah*) .

It is necessary to acknowledge that according to Islam the root and origin of all social and political institutions, including the state and government, are derived from religion(Thaib 1998).Leonard Binder said : " the point is that Islamic theology cannot accept the idea of tension between religion and politics. Islam at once is religion and a nation."(Binder 1964).For that reason also Imam al-Ghazali states: " know ye that the *shari'ah* is the foundation, and the government is the sentinel. If the government has no foundation, it is bound to fall into ruins, and if the *shari'ah* has no sentinel, it will be lost and destroyed."(Banna 1961). The seriousness of the issue, evidenced by an outpouring of studies, calls for an examination of the dynamics of the relationship between Islam and politics in order to determine what has changed and what has remained unchanged. This entails, first, an understanding of the meaning and the nature of politics from the Western and Islamic perspectives to facilitate a comparison.

The strong link between religion and politics in Islam can be seen more clearly if we look at the history of Muslim community in Medinah itself. The Muslim community of Medinah, when they recorded in their society, always selected the event which carried political values. An example of this is the determination of the Islamic new year (Islamic calendar) which is not based on the Prophet's birthday, or on the year that He received the revelation (*wahyu*), instead the Islamic calendar is based on the migration "*hijrah*" of the Prophet from Makkah to Medinah.(Thaib 2006).This migration was very important to Muslim community of Medinah as, through this event the Muslims obtained the freedom to spread the teaching of Islam as well as enabling them to unite in their efforts to create a '*Muslim community*' (an *ummah*) which can be regarded as the basis for the building of a sovereign state-the State of Medinah which regarded as the first "Islamic State" in the world.

In the early Islam,Islamic Political Science (*Siyasah al-Shar'iyyah*) was not thoughof as a separate discipline in Islamic intellectual discourses, and the Muslim jurists (*al-fuqaha'*) at that time werethe only thinkers who were

able to devise laws to regulate the life of the community in the state. According to them, the existence of proper laws in any state is a prerequisite for political stability and the existence of political stability is a prerequisite to the emergence or existence of "political theory" and governmental system of government ,that is Islamic Political Science (*al-siyasah al-shar'iyyah*).

Most of the Muslim scholars of that time such as Imam al-Shafi'i,Abu Yusuf and Abu Hanifahdiscussed Islamic political science in their work under certain chapters only of Islamic jurisprudent(*fiqh*). For example, Imam *al-Shafi'i* discussed the rights of citizens who became prisoners of war in his work of *al-Umm* in the chapter of "*bab fi ahli al-dar al-harb*", and the discourse on the rights of citizens who are not from Muslim territory (Muslim State) but whose countries have agreements with Muslim territory (Muslim State) under the title of "*babahl al-dar al-'ahd*",while the discussion on the rights of non-Muslim citizens in a Muslim territory(Muslim State) were put under the title "*babdiyatuahl al-dhimmah*". Infact, he also discussed international relations in the chapter of " *al-siyarwa al-maghazi*".(Khallaf 1956).Abu Yusuf also adopted the same methodology by putting his discussion on the "Concept of Sovereignty" in the chapter "*bab al-hakimiyyah*" in his work of "*al-kharaj*". He alsoemphasized the problem of political representation under the title of " *al-shura*". Similar discussions by other Muslim scholars were grouped in a chapter titled " *al-imamah*". (Abdi 2000).

II.   THE ISLAMIC POLITICAL SCIENCE AS SEPARATE DISCIPLINE.

In the classical period of Islam Muslim jurists(*al-fuqaha'*) in particular and Muslim scholars in general were never challenged by any outside their circle, as with the growth in Islamic thinking, they were regarded as the only group of leaders who could be consulted on any problems that arose. This resulted in Islamic political science (s*iyasah al-sha'iyyah*) discipline remaining in its classic form in terms of structure and methodology, placing it as a general sub-discipline of Islamic jurisprudence *"al-ahkam al-shar'iyyah."*only.

However, during the period of 11th and 14 centuries of the classical period of Islam there have already emerged several Muslim scholars who worked towards making an Islamic political science(*siyasah al-syar'iyyah*) as a systematic system of government and administration,such as Imam al-Mawardi with his work *" al-ahkam al-sultaniyyah*" and Imam IbnTaimiyyah with his book " *al-siyasah al-syar'iyyah fi islah al-ra'iwa al-ra'iyyah.*" These two scholars were the first to discuss Islamic political science in a comprehensive and systematic way as a separate discipline in Islam. Then IbnQayyim al-Zaujiyyah also contributed towards the effort with his work " *al-turuq al-hukmiyyah fi al-siyasah al-shar'iyyah*"(Thaib 1998).

Through the used of the new term of "*al-siyasah al-shar'iyyah*", Islamic political science became more comprehensive and was recognised as a separate discipline in the hierarchy of Islamic sciences. Although in the original connotation "*al-siyasah al-shar'iyyah*" meant a narrowly "*shari'ah political system*" or " a system of government based on *shari'ah law*", contemporary Muslim scholars such as Abdul Wahhab al- Khallaf defined " *siyasah al-shar'iyyah*" as " a flexibility in judgment given to a person in authority to take action based on the needs of the community(*Ummah*), as long as it is not against any *Shari'ah*principles(Khallaf 1956).

What is Islamic Political Thought?

What we mean by political thought in general is " *a set of thinking which consists of ideas, thoughts, doctrines and concepts pertaining to the existence of political institution that is the state.*"(Thaib 2006).In other words, political thought, be it Islamic or Western can be defined as " exercise in thinking and conceptualization which is aimed at political institution and political power."(Ibid).

The differences between Islamic and Western political thoughts is that Islamic political thought is a product of revelational guidance and reason exercised by Muslim thinkers in the classical period. Although both Islamic and Western political thought rest on intellectual pedestals, they are not identical. The Western political thought is a thinking which is based upon the Greek conception of political philosophy.(Maududi 1969).

Another difference between Islamic and Western political thought is that the Western thought of politics stands for the separation or elimination of religious thought from the understanding of world affairs and the confinement of religion to an abstract worship, (KaKaKhel 1988), while the Islamic political thought on the other hand does not allow the separation of religious values from the political scenario. Besides, the Western political thought's main concern normally is the material aspect of political affairs, while God has no role in the system.

III.   PHASES OF DEVELOPMENT.

In the past, Islamic political thought can be divided into two phases, the first phase is the phase with a *shari'atictrend* and the second phase is the phase which had a *philosohical trend*. Among the Islamic thinkers who were regarded as the pioneers in the *shari'atic trend* were Imam al-Mawardi, Imam al-Ghazali, IbnTaimiyyah and IbnJama'ah. While the leaders in the philosophic trend were al-Farabi, IbnSina and

IbnRushd, all these philosophers worked towards merging Islamic political science with philosophy(Diya al-Din 1969).

Modern Islamic political thought only began after the Caliphate system was abolished, after the advance of the Western powers into the Muslim worlds during 17th-19th century. As a reaction to this situation, Muslim scholars strove to reject the influence of the Western powers and strove to think of a system of Islamic political system which would be appropriate for the needs of that time in their effort to restructure the political system in the Muslim countries. These efforts were started by several leaders in the modernization of Islamic thinking such as Jamal al-Din al-Afghani, Muhammad Rashid Ridha and Muhammad Abduh. All of them can be regarded as leaders in the effort to come up with a political and governmental system based on Islamic principles which could be applied in a nation state system with the objective of replacing the governmental system introduced by Western powers at that time.

IV. THE CONCEPT OF POLITICAL AUTHORITY.

In the Islamic political system, through the constitutional idea of popular Caliphate and the principle of consultation (*shura*), the Islamic law (*shari'ah*) confers upon all adult Muslims, with the possible exception of some convicted criminals, equal political rights, irrespective of race, colour or socio-economic status.

The basis of establishment of the state in Islam is to enable individuals to lead a true Islamic life and this purpose can be achieved only when the individuals enjoy all their rights fully at the persuasion of the state. The state in Islam sees that there is no advantage in encroaching upon the rights of individuals; instead the state faithfully implements all directives and instructions of Islam. Accordingly, the modern Muslim state should always see to it that all the stipulated rights are provided, without any restraint.

Broadly speaking, the rights of the individual in Islam may be divided into two categories: 1. Political rights; and 2. Common rights(Thaib 1994). However, our concern here is only the political rights. The basis of political rights of every individual in a state according to Islam is based on the law which is derived from two principles accepted by the Islamic *shari'ah*. The *first* principle is that Islam does not approve of an state based on the domination and power of one person or one political partyonly (authoritarian system of government). The idea is that a state must be based on the consent and co-operation of the people as the Holy Quran commands consultation (*shura*) which is clearly accepted by the *shari'ah*. The *second* principle is the responsibility of the community (*ummah*) to enforce Islamic laws and to follow the *shari'ah* in all sphere of life. This responsibility has been printed out in the Holy Qur'an, as God commanded: ''*washawirhum fi al-amri*'',(Al-Qur;an,42:38) which means: '' Consult them (the community) in matters related to their affairs.''

The Quran clearly laid down the principle that the Muslim community is responsible for enforcing the Islamic laws (*shari'ah*) in its collective affairs including certain commandments which guide matters relating to all Muslims. The Quranic injunctions also envisage that owing to these heavy responsibilities imposed upon the community, the political authority or power also must be vested in the community itself to get them to carry out the responsibility properly. But it is also a fact that the community cannot exercise its sovereignty directly as it is not practically possible. This led to the emergence of the theory of delegations to use political authority or power of the community as a whole. Accordingly, the community chooses such representative who practically exercise political powers on behalf of the community(*ummah*) and enforce Islamic laws applicable to its situation.

Muslim scholars(Jurists) in classical Islam are almost in full agreement on the political equality of the Muslim community on the basis of these precise provisions of the Islamic law. Commenting on this a modern sub-continent scholar, Abu 'Ala al-Maududi writes : '' society, in which everyone is a vicegerent of God and with equal participation in this Caliphate, cannot tolerate any class divisions based on distinction in such society. All men enjoy equal status and positions. The only criterion of superiority in this social order is personal ability and character.''(Maududi 1969).

It is clear that the mentioned Islamic notion of equality to all citizens in a Muslim state provided them an equal right to participate in the decision-making process, and this notion of equal political right in Islamic constitutional tradition found its first practical expression in the constitutional life of the early Medinahstate(KaKaKhel 1988). It is evident that from the constitutional view point, the Islamic law seems to have anticipated, by many centuries the modern notions of government in Western democracies. The Islamic law grants the citizens the right to oversee the conduct of government, which is derived from the fact that the community (*ummah*) is the source of political authority.(Diya al-Din 1969).

V. THE CLASSICAL CONCEPT.

The Islamic history has shown that the questions of political authority in the Muslim world were never realistically solved. Rulers never succeeded in gaining full and total recognition of the jurists and if they did , it was out of necessity and expediency. The reason for this was due to the reluctance of the Muslim scholars to

adopt the changes in body politics of the early Muslim community and their ability to work out a synthesis between the eternal principles of Islam and the social changes.

By authority this paper refers to, the supreme seat of legitimization. It is sovereign and independent. It is also the ultimate code of punishment and reward, the source of legislation and annulment.(Khadduri 1955).However, the confusion that has arisen is due to the fact that Islam has not evolved a term of its own to specifically designate authority. Various expressions such as "*uli al-amri*" as found in the Quran in chapter 4 verse 59 " O ye who believe! Obey God and obey the Apostle, and those charged with the authority among you(*uli al-amri*) "; He also term "*al-Hukm*" in chapter 12 verse 40. The command (*al-hukm*) is for none but God.He hath commanded that ye worship none but Him. Again in chapter 28 verse 88, " *al-hukm* " which states : " *To Him belongs the command, and to Him will ye(all) be brought back.*" While the word "*al-mulk*" found in chapter 4 verse 54 which states: " *God conferred on the successors of Abraham a great kingdom"(al-mulk)*;has been used to designate authority, the same words has also been used to designate power.

The verses confirmed that it has been definitely laid down in Islam that de jure sovereignty also belong to God whose de facto sovereignty is inherent and manifest in the working of the entire universe and enjoys exclusively the sovereign prerogative. These Quranic verses provide us with the classical concept of authority in Islamic political thought according to which ultimate authority belong to God alone (Thaib 1994). However, God's authority cannot operate in the human society as He himself cannot become an ' *immediate ruler*' in the political connotation.(Thaib 1994). For that reason, in addition to the Quran's emphasis on the sovereignty of God, the Qur'an also repeatedly refers to man as His vicegerent(*khalifah*) on earth(chapter 2, verse30, chapter 7, verse 74, chapter 7 verse 129).

VI. THE LOCATION OF AUTHORITY.

The stated Quranic verses explain to us that the concept of authority which belongs to God according to its classical concept has been replaced by the concept of vicegerency (*khalifah*) of God. In line with this rationality a famous Quranic commentator al-Alusisaid : " The rule of the Holy Prophet(PBUH) is in fact, the rule of God. After the Prophet, the Muslim community(*his ummah*) succeeds to power to rule."(Alusi 1965). However, the Muslim community places itself under self-limitation by declaring individually as well as collectively the moral sovereignty of God. Hence, according to Islamic theory, the authority (sovereign power) is delegated by God to the community as a trust. The community can, therefore, legitimately exercise this delegated authority only in accord with His will (Islamic law or *shari'ah*).

It is very clear that political authority on earth is a gift to the community as God's vicegerent (*khalifah*), but it is a sacred trust to be exercised by rulers of the community for implementing the will of God (Islamic law or *shari'ah*) for betterment of the Muslim community at large. Hence, it is legitimate only when exercised within the bounds and in accordance with the principles of justice and equity as set forth in the Quran. Based on this fact, the Sunni Muslims developed their concept of political authority, that it must not be left vacant after the death of the Prophet. Its vacancy means that someone must be appointed to the supreme power with the principal task of regulating the affairs of the community in general.

Since political authority signifies the power to determine policy and enforce it through the law and other institutions, it can only be justly and expediently based on the consent of the whole of the population purported to be so governed. The right to participate in the discussion of, or to be consulted about, all major public issues not categorically settled by the revealed text (the *nusus*), is only one of those universally guaranteed political rights. Then, the basic reason for popular participation in the decision-making process of their government is due to their political right. Like almost all other rights guaranteed by the Islamic law, political rights entail numerous religious and legal obligations.

The fulfilment of these obligations makes political participation itself an obligation of members of the Muslim community. Since the application of the Islamic law represent both a personal and a collective obligation upon Muslims, for that reason it is essential for every citizen to participate directly in decision-making process. From this perspective, political participation in Islam constitutes both an exercise of rights and a fulfilment of religious obligations. The ideal method for such political participation, it may seem, is that of direct popular participation.

Human experience, however, has shown that direct popular participation in decision-making is possible only in small communities as the problem of size make direct popular participation is impossible. The obstacle of a large territory and sizeable population make some sort of representative government the only available practical option to ensure effective popular participation in the decision-making process in any large state(Thaib. 2005).The modern Muslim states, of course, is no exception to this rule. In fact, the idea of government by representation in Islam is derived from this necessity.

The term representation (*wakalah*) according to the Islamic law means: " *The appointment of a deputy for the purpose of acting on one's behalf concerning matters in which representation is legally valid.*"(al-Munifi.1973).This definition covers all types of representation including political representation. Since political

authority in Islam forms the central topic of this paper, the study will be limited to the examination of the delegation of political authority in Islam and the determination of what mechanism was actually used in the classical Medinah state.

VII.   THE DELEGATION OF AUTHORITY.

The point here is to determine how,according to the Islamic law, a limited number of individuals may acquire the status of legal representatives of the society. Given the fact that the Muslims enjoy equal political rights by virtue of the idea of vicegerent (*khalifah*), and the Islamic law requires, under normal circumstances, that the exercise of such rights on their behalf be based upon their free authorization, the point here is to examine the legal rules that make such authorization imperative for the validity of political representation in a Muslim state.

There are two legal reasons for requiring such authorization. One is the fact that the function of political representation constituted an exercise of public authority(*wilayah*) over the society (*Muslimumma*h),and the decisions made by the members of the assembly are binding upon society (their constituents).From the Islamic legal viewpoint, the exercise of authority over others must be based either upon a precise rule of law or upon the consent of the party or parties concerned (al-Munifi. 1973). Due to the absence of any rule of law that categorically presents the issue of political representation, that is: determining by name who shall represent the society (*Muslim ummah*), the Islamic law (*shari'ah*) requires that representatives be designated freely by the Muslim community themselves according to the Quranic Constitutional clause : " *waamruhumshurabainahum*" (al-Qur'an, 42:38), which means: " they who conduct their affairs by mutual consultation."

The other legal reason that makes the Muslims' authorization of their representatives necessary is the *citizens' constitutional right* of consultation on public issues(al-Zarqa. 1962).According to the Islamic law, the legal exercise of the rights of others on their behalf, including the right of consultation, requires contractual authorization to represent (*'aqdwakalah*) by virtue of which the rights and obligations of both parties to the contract are defined.

The exercise of the rights of others on their behalf is recognized by the Islamic law as legal only in three cases. One is legal representation of a minor (*niyabahshar'iyyah*), such as his father,represents his interest. The second case is judicial representation (*niyabahqada'iyyah*) in which a representative is appointed by a court of law. The appointment of a legal representative to oversee an orphan's interest is an example. The third case is contractual authorization(*niyabah 'aqdiyyah*), as in the case of appointment of a deputy for the purpose of acting on one's behalf (*'aqdwakalah*). Whoever exercises the rights of others outside the scope of this legal framework is considered as usurper (*ghasib)* by the Islamic law *(shari'ah)*(al-Zarqa. 1962**).**

Given the fact that political representation in Islam is considered *'aqdwakalah*, it is important to examine, from the Islamic legal perspective, the nature and legal components of this contract. It should be pointed out that there are three conditions that determine the legal validity of any *'aqdwakalah* to be valid with only one party(al-Duri. 1974). In the case of political representation, the Muslim society and its deputy would be representatives, from the two contracting parties. However, in order to consider the interaction of parties (*'aqidan)* as legally valid, they must posses the legal competence (*ahliyyah*) to conclude such contract. That is to say, both parties to *'aqdwakalah* must be sane, adult individuals. An adult person from the Islamic law point of view, is one who is over fifteen years of age (al-Zarqa. 1962**).**

The second condition for the legal validity of *'aqdwakalah* is an offer by one of the two parties that is accepted by the other(*ijabwa al-qabul*). Both parties must be acting freely, as freedom of interaction in this case constitutes the source of all legal obligations that may result from the *'aqd*. From this legal standpoint, no political representation may be valid without free authorization.

The third condition is the legal transfer of authority (*mahal al- 'aqd*)from the Muslim society(*ummah*) to their representatives(al-Bayati, 1979).The transfer of the authority to represent is the result of the two previous conditions. *Ma'al al 'aqd*, however, seems to be confused with *maudu al-'aqd* (the subject of the contractor) in the minds of some scholars. While *mahal al-'aqd* refers to the legal transfer of authority from its original possessor to the agent or representatives, *maudu' al-'aqd* connotes the overall purpose of the contract(al-Zarqa. 1962). For instance, *maudu' al-'aqd* in the case of political representation in Islam would be the representation of the Muslim society for the purpose of enforcing the Islamic law and realizing the interests of the society.

According to the Islamic law there is no specific formula for the legal conclusion of contracts (with the possible exception of the contract of marriage). Rather, *'adqwakalah* becomes valid by virtue of any verbal statement that indicates permission and any verbal statement or action that indicates acceptance(Qadamah.1973). Freedom of interaction is basically the essential element in Islamic law, not the formula in which it is cast. Consequently, the *wakalah* may be legally concluded by *'aqdtawkil al-dimni*(implicit authorization) or by *'aqdtawkil al-sarih*(explicit authorization).

VIII.   MECHANISM FOR THE DELEGATION OF AUTHORITY.

Although the Islamic law requires personal authorization for representation, it does not insist that such authorization be given in advance every time. When it is thought to be in the best interests of the person represented, in exceptional cases, the Islamic law allows an individual to represent another even without the knowledge of the person represented. Accordingly, one may speak for another, make offers, or even enter into agreements in principle on his or her behalf without prior authorization. However, no legal commitment may result from such undertaking unless it is approved by the person concerned, "the represented "(al-Zarqa. 1962).A father may enter into an agreement with someone to marry his daughter without her prior knowledge. The father in this case is undoubtedly acting on behalf of his daughter, but his action is not legally binding on her unless she subsequently approves of the agreement. Her approval validates the agreement the father had made on her behalf as of its originate date and as if he had been acting upon her prior authorization. This legal arrangement is the basis of all forms of contracts of *wakalah* by *'aqdtawkil al-dimni* in Islamic law(al-Zarqa. 1962**).**

Delegation of Authority by Implicit Authorization(*'aqdtawkil al-dimni*).

How could representation by *'aqdtawkil al-dimni*be related to political representation? The relationship is not difficult to see, especially under exceptional circumstances. For instance, because the expansion of the state prevented Muslims during the reign of the Prophet Muhammad and his Caliphs from direct popular participation in the decision-making process, the chiefs of Arab tribes and influential Companions of the Prophet participated in this process on behalf of the entire society (*ummah*).

Since they were not directly authorized by the citizen, as should be so under normal circumstances, their representation was valid by *'aqdtawkil al-dimni*. The subsequent acceptance of the decisions and commitments of this representative body by Muslims invested the Legislative Assembly (Parliament) and its decisions with the necessary legal legitimacy(al-Bayati 1979).By the same token, the rejection of such decisions by the Muslim community would have rendered them null and void. In fact, the participation of the non-elected body of Upper House(Senators) which is called in the classical Islam as '*ahl al-halwa al-'aqd* ' in decision-makingprocess on behalf of the Muslim community (*ummah*) has been legitimized by *'aqdtawkil al-dimni* from the end of the early Caliphs up to the present day(al-Zarqa. 1962).

As authorization by *'aqdtawkil al-dimn*i is, by its very nature, meant for exceptional conditions. From this perspective its relevance to Muslims' constitutional life under the present circumstances should be re-examined. While it's legal validity with respect to ordinary personal cases is not contested, *'aqdtawkil al-dimni* should not be considered as the source of authorization for political representation except in the most extreme cases, such as the state's appointment of representatives for segments of its population which are under enemy occupation.

'Aqdtawkil al-dimni should be invalid in contemporary political life for at least three compelling reasons:

The first reason is due to the advancement in the fields of communication and transportation. This has reduced geographic barriers, making it possible for citizens almost anywhere in the modern-day Muslim world to participate personally in the selection of representatives. The reduction of geographic barriers, therefore, eliminates the necessity that originally led to the legalization of representation by implicit authorization(al-Bayati 1979).

The second reason for the invalidation of implicit authorization*('aqdtawkil al-dimni*) as a basis for political representation under contemporary circumstances is that such practice demands piety and high ethical standards. That quality of men,who, because of their high Islamic ideals put the interest of the Muslims before their own personal interests, does not seem to exist on a large scale in modern day. Piety and high moral attainment, as history shows, are imperative for the proper conduct of un-elected officials(Friedrich.1969).

The erosion pietyquality and the decline of ethics, combined with the absence of organized effective popular control over non-popularly selected representatives would tend to make the Islamic Legislative Assembly or Parliament(*majlis al-shura*) a forum for selfish politicians and exploitation. According to Abdul KarimZaidan: " The legalization of representation by implicit authorization*('aqdtawkil al-dimni*) would open the dangerous door for the Muslim community since it could lead to chaos and evil acts. That is because any unqualified man could claim the right to represent the Muslim community under the pretext of their implicit agreement(Zaidan. 1978**).**

The third reason for invalidating implicit authorization as a source of authority to represent is the possibility that some Muslim heads of state may exploit this legal device for the purpose of appointing to the Islamic legislative assembly(*majlis al-shura*) individuals who do not represent the true interests of the Muslims or reflect their genuine aspirations. As history indicates, this possibility could be a prelude to tyranny. The chief executive, in this case, may find it possible to infringe upon the constitutional rights of the Muslims, aided by the power of a rubber-stamp representative body(Jindan. 1979).

None of these possible consequences is in the best interest of the Muslims, and as the interest of the Muslim community (*ummah*) is the primary objective of the Islamic law, political representation by implicit authorization must be invalidated. Besides the disappearance of the conditions that originally allowed for such

representation, its invalidation might be based on the legal role of closing the door for pretexts that may be used to violate the legal or ethical teaching of the Islamic law (*sadd a-ldharaj*). This rule is designed by Muslim jurists to make illegal any act, which might be legal under normal conditions, if its commission would do harm to the overall interest of the community. Change of legal rules according to change of circumstances is a rule of thumb in Islamic legal authority(al-Mubarak. 1974)**.**

IX. DELEGATION OF AUTHORITY BY EXPLICIT AUTHORIZATION (*'AQDTAWKIL AL-SARIH*).

The term explicit authorization *('aqdtawkil al-sarih)* refers to the legal contractual formula by which two parties to a given contract conclude their agreement personally(al-Duri 1974). This explicit contractual formula is the ideal one by which directly, and their respective representatives, could conclude the contract of representation. Why is it ideal? For one thing, it gives the individual citizen the opportunity to make personal choices with respect to those who may represent him or her without intermediaries. Direct personal participation in this sense is most consonant with the freedom of contract guaranteed by the Islamic law(*shari'ah*)(al-Zarqa. 1962)**.**

For another reason explicit authorization is the most reliable method of securing the widest popular participation possible in order to invest the representatives of the Muslim community and their decisions with the legitimacy required by the Quranic Ordinance: " they who conduct their affairs by mutual consultation."(al-Qur'an.42:38).

The fact that all adult citizens are entitled to be consulted according to this QuranicOrdinance, legally requires that any genuine Islamic representative assembly or parliament(*majlis al-shura*) is truly representative of the community. Explicit authorization ('*aqdtawkil al-sarih*) supplies the people with the opportunity, through direct selection of their representatives, to give the legislative assembly or parliament (*majlis al-shura*) its required representative character.

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