

# Islamic Political Representation in Malaysia



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LUKMAN THAIB



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LUKMAN THAIB

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# FOREWORD

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 has been the contention of this writing 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 age.

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 state and the procedures for participation in the political process are left open. The Muslim community at any point in time are obliged to evolve from this framework of the constitutional institutions which meet the needs of their era.

Modern Islamic representative theory has shown that Islamic political thought is capable of meeting the needs of contemporary political life. Using the constitutional precepts of the *syariah*, we are able to construct a workable election process for the election of *wakil rakyat* (people's representatives). In addition we were also able to define the powers which the *syariah* accords this institution and to elaborate its procedures. This reality testifies to the dynamic nature of Islamic political thought and its relevance to changing times.

Muhammad Asad in his book entitled *The Principles of State and Government in Islam* defined the Islamic political system as "a system characterised by a conscious application of the socio-political tenets of Islam to the life of the nation, and by an incorporation of those tenets in the basic constitution of the country". Since the system is founded upon the Islamic vision and communal needs, it maintains some dynamism, as Sayyid Qutb stated in his book *Ma'rakah al-Islam Wa al-Ra'sumaliyah* that the Islamic system "has room for scores of

models which are compatible with the natural growth of a society and the new needs of the contemporary age as long as the total Islamic idea dominates these models in its expansive external perimeter”.

The Islamic political system is a constitutional system founded upon the conditions underlined by the *syariah*, which is a complete system of life and all-embracing social order. The *syariah* recognises the authority of the political representatives (*ahl al-Syura*) or members of parliament in arriving at communal decisions and upholds the principles of freedom, justice and equality of all Muslims regardless of their ethno-national and racial distinctions. Through the constitutional idea of popular Caliphate and the principle of mutual consultation (*Syura*), the *syariah* confers upon all adult Muslims: equal political rights, irrespective of race, colour, nationality, or socio-economic status.

The right to participate in the discussion of, or to be consulted about, all major public issues not categorically settled by the revealed text, for example, is only one of those universally guaranteed political rights. The fulfilment of religious and legal obligations as guaranteed by the *syariah*, makes political participation itself an obligation of the Muslim ummah. Chief among such obligations is ensuring that the affairs of the worldly kingdom are conducted in accordance with Divine Law; as this constitutes the primary purpose of the covenant of Islam. Since the application of the *syariah* represents both personal and collective obligation upon Muslims, for that reason it is essential for every citizen to participate directly in the 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 consultation.

Human experience, however, has shown that direct popular participation in decision-making is possible only in small communities as the problem of size makes direct popular consultation impossible. Thus, representative government becomes the only available practical option to ensure effective popular participation in the decision-making process in any large state. The modern Muslim state, of course, is no exception to this rule. In fact, the idea of government by representation in Islam is derived from this necessity.

The formation of the Malaysian Parliament can be regarded as an achievement of Malaysia's independence and the nation building process that resulted in the establishment of a modern constitutional system of government in Malaysia. The current structure of the

Malaysian Parliament is designed to reflect the needs and aspirations of the various groups of the Malaysian society. Since the earliest political entities in Peninsular Malaysia were organized by the Malays, although the modern constitution was introduced after independence, the institution of Malay rulers such as "The Conference of Rulers" is retained with some modification in accordance with the concept of Parliament and independence.

Historically, the ruling system in the Malay political world view has traditionally been a fundamental part of the Malay social set up with subjects owing complete loyalty to their Sultan. Prior to the arrival of the British in the Malaysian Peninsula, there were advisory bodies appointed by the Sultan, such as "*Pembesar Empat*" for the Malacca Sultans, the "*Jamaah Pangkuan Kerajaan*" for the Johore Sultans, and "*Orang Besar Berlapan*" for the Perak Sultanate. These advisory councils for Malay Sultanates was regarded as part of the Sultanic tradition to bestow authority to govern lower ranking officers in the Sultanates.

During the era of British interference in Malaya from 1874 up to the Second World War, the whole of the Malay Peninsula was not directly colonized. The nine Malay states were legally autonomous with each having its own civil service under the influence of British advisers but the government still functioned in the Sultan's name. The Sultans were accepted as sovereign rulers by the British, and enjoyed complete power within their respective states. Only the Straits Settlements were a direct crown colony from 1867. Hence, the claim that the Malay community in the archipelago formed their political world view as early as that century is true, if viewed according to those facts, and the words "state" as well as "kingdom" has shaped the traditional socio-political world view of the Malays in this region.

Due to this fact, although Malaysia has adopted a modern constitutional system of government which replaced the Sultanate system, the Malay political leaders had to assure the Malay Rulers of their established positions and privileges. The Malay leaders had to use all their power of persuasion to convince the Rulers that the new Malaysian Constitution would guarantee and safeguard the position of Malay Rulers. This is confirmed by the Reid Constitutional Commission which drew up the new Constitution for Malaysia. It declares: "*The position of a Ruler as constitutional monarch in his state would be much the same as that of the Yang di-Pertuan Agong in the Federation*".

The office of the Yang di-Pertuan Agong as an institution came about as a result of the efforts of the Malay political leadership to reassure the Rulers that their position as constitutional monarchs

would be secured and included into the Constitution of the Federation of Malaysia. The Yang di-Pertuan Agong serves as a symbol of unity of Malaysia's different ethnic groupings. His constitutional responsibility is to safeguard the special position of the Malays and the legitimate interest of other communities. The only modification to the institution of rulers was the change from being obliged to accept British advice to accepting the advice of the Ministers in the present and to act accordingly. In the case of the Yang di-Pertuan Agong, he has to act on the advice of the Cabinet and in the case of the Ruler of a state, he is to act on the advice of the Executive Council.

The Malaysian Constitution makes provisions for the Yang di-Pertuan Agong, all Rulers, and the Yang di-Pertua Negeri to have a good mutual working relationship. This is made possible by setting up a body called the "Conference of Rulers", officially known as "*Majlis Raja-Raja*". The *Majlis* has a permanent secretariat headed by an officer known as the "Keeper of the Rulers' Seal". Although the *Majlis Raja-Raja* has no power to make law or levy taxes or sanction on public expenditure, it is, however, very influential. It provides an intimate link between the Rulers and the Federal and State Governments at the highest level.

The Malaysian system, in reality can function in accordance with Islamic principles and law. The Conference of Rulers, the structure of legislature and Cabinet employ the *Syura* system in Islam although it is not stated explicitly that the principle of *Syura* should be followed. The Malaysian Constitution recognises the rule of law. It is up to the Muslims of this country to realize that in Islam the rule of law is to be implemented to completely.

I am very happy that my colleague, Dr. Lukman Thaib of the Department of Southeast Asian Studies of the Faculty of Arts and Social Sciences has written this important book entitled *Islamic Political Representation in Malaysia* to explain how the political decision-making process in Malaysia was carried out successfully according to the Islamic and Malaysian Constitutional provision. I have no doubt in my mind that this book will be of great interest to students studying Law and to those who are interested in the comparative study of Islamic and Western governmental systems.

Professor Dr. Muhammad Raduan Mohd Ariff  
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# INTRODUCTION

Islam is a self-contained system which embodies beliefs and concepts of great creativity, practicability and guidance for man in his relationship with his Lord and fellow-men. These beliefs serve as instruments of his mental culture, moral betterment, spiritual enlightenment, social justice and political tolerance. Islam, therefore, is a code of life that regulates the temporal as well as the spiritual activities of its followers. It is a comprehensive system, recognizing no compartmentalization of human existence. All aspect of this existence are considered to be parts of the Divine plan for creation, and are by necessity meant to be ruled according to the *syariah*.

In Islam, the law precedes the state, which exists for the sole purpose of maintaining and enforcing the law. There are, however, certain similarities. Greek political thought starts from an ethical view point and regarded the state as a moral association. Islamic political thought, has a religious basis and concieves of the state as a religious community. However, diverse the two may be, both still postulate a certain similarity which is foreign to most modern thinkers.

Since Islam is a self-contained system, living according to Islamic teachings is need to build a society and a state according to the ideals of the *syariah*. Within this frame of reference, the purpose of government in Islam is to enforce the Divine law and to realize the wordly interest of the community according to its guidance. It is in this sense that the state in Islam is often described as an instrument of religion. By virtue of this Islamic community and state is a fulfillment of God's demand on Muslim *ummah*. Understanding this organic relationship between religion and politics in Islam is extremely important.

According to the *syariah*, Islamic government must be based on popular consent and consultation. However, the ideal of an Islamic state, fully predicted upon the guidance of the *syariah* was actually realized only during the forty years of the time of Prophet Muhammad and the four Caliphs who followed him from the Islamic era, 622-661

A. D. This ideal was undermined when Muawiyah Ibn Abi Sufyan seized power by force in 661 A. D. His seizure of power undermined the idea of a government by consent and consultation as commanded by the al-Qur'an. With a few possible exceptions which are indicated in this study, Muslims have never been able to restore the ideal government by genuine consultation since the accession of Muawiyah to power.

This discrepancy between the constitutional ideals of the *syariah*, and the historical practices of most Muslim governments, since the end of the classical Caliphate,<sup>1</sup> has caused legal and moral dilemma for Muslims throughout history. How could the legitimacy of governments which in most cases neither come to power nor to rule by genuine consultation, be reconciled with the command of the *syariah* stipulating government by consent and consultation? These practices have been cited by concerned Muslims as a violation of the *syariah*. The acceleration of the process of secularization since the inception of the colonial period exacerbated this dilemma. The secularization process went even further to undermine the very existence of the *syariah* as the basis for Muslim's daily legal and moral life. The growing distance between the life commanded by the *syariah* and the actual daily life which is against Islam and the identity of its followers.

Historically, the reaction to this gradual estrangement from the teachings of Islam have ranged from reconciliation and resignation to total rejection. But the demand for the return to a life based upon the *syariah* has been consistently strong enough to be considered an important source of tension in the Muslim community. In fact, this demand has been a leading cause of instability in Muslim societies.

The re-establishment of an Islamic government is regarded as a primary step towards an improved Islamic life. However, the *syariah* does not prescribe a detailed political system applicable under all historical circumstances. Indeed, the *syariah* provides only a broad constitutional framework which consist of Divine precepts that are meant to be adapted with changing times. This orientation of the *syariah* requires that any demand to re-establish an Islamic Constitution be accompanied by scholarly efforts to relate Islamic constitutional ideals to the needs of time. On this, however, Muslim scholars, have failed miserably. Their ceaseless demands to re-establish an Islamic Constitution have suffered since historical times from the lack of a meaningful program of action in the form of serious scholarly efforts to adapt the constitutional principles of the *syariah* to changing circumstances.

Instead, the vast majority of Muslim reformers simply stated the constitutional precepts of the *syariah* and called for their reintroduction to the Muslim constitutional life. They did not show how this could be done practically. This shortcoming has reduced the practical significance of those demands and minimized their historical achievements.

The challenge posed to the proponents of the revival of the Islamic Constitutional is not only to take the Islamic constitutional precepts from the original sources of the *syariah*, but also to make them relevant to contemporary life. This study is a humble effort in that direction; its investigation being limited to the notion of political representation in Islam. The purpose of this study is threefold: (i) to define the constitutional provisions of the Qur'an and the *Sunnah* pertinent to the idea of political representation, (ii) to trace the evaluation of this idea in Islamic jurisprudence; (iii) to investigate its historical application in the classical Islamic state and to relate it to the constitutional needs of contemporary Muslims. The present parliamentary experience of Malaysia is analyzed in the latter context.

An investigation of this kind must inevitably touch upon the entire subject of governance in Islam. Other subjects to be studied and analyzed are the structures of the *syariah* and the place of ethics in Islamic politics.

Since Islamic government shares some important characteristics of theocracy, western democracy, and totalitarianism, some thinkers, Muslims and non-Muslims alike, have mistakenly associated the Islamic government with one system or the other. The association of Islamic political concepts with secular political concepts is neither accurate nor conducive to a better understanding. To avoid the misapplication of western political terms to Islamic institutions, it is necessary to distinguish between Islamic governance and these three western political systems. This distinction is important in order to put our discussion in the proper context. Let us draw the line between theocracy in the Islamic state first.

According to the Oxford dictionary, "theocracy" is defined as "a form of government in which God (or diety) is recognized as the king or immediate ruler and His laws are taken as the statute book of kingdom". Since God, at least in the conception familiar to Judaism, Christianity and Islam, is never considered to be the "immediate" ruler of any state, theocracy would actually mean the rulership of a vicegerent who claims to rule on God's behalf according to His will, which is said to be embodied in a theocrat. This is of special interest to us here. One is the fact that His word is considered to be a binding

law upon His subjects. The other is the fact that His ruling is derived from the Divine law, from the people.<sup>2</sup> Our task now is to determine whether features are shared by Islamic governance.

Careful analysis shows that Islamic governance and theocracy have much in common, but they are not identical. The most important point of contact between the two systems are the idea of vicegerency of God on earth, and the rule of the Divine law. However, the nature of vicegerency in the Islamic sense differs drastically from its western counterpart. To begin with, the idea of vicegerency of God (*Khilafah*) in Islam is not limited to one individual, or even to a few individuals. Rather, all Muslims are considered to be vicegerents (*Khulafa*). Maududi (d. 1979 A. D.) states: "according to the Qur'an, the vicegerency of God is not the executive birthright of any individual, clan or class of people; it is the collective right of all those who accept and admit God's code, conveyed through the Prophet, as the law above all laws and regulation"<sup>3</sup> Given the fact that the concept of vicegerency in Islam is popular in scope, it is regarded as the primary source of political equality in the Islamic state.

From this Islamic perspective the application of the *syariah* is required equally to all vicegerents. But, since the enforcement of the *syariah* is impossible without an organized state authority, Muslims are obliged to select government authority via consultation to fulfil this obligation on their behalf. In this case the governing authority of the Muslim chief executive is derived from two sources: his free selection by the Muslims and rule according to the *syariah*. He has no claim to office by Divine right. Furthermore, the *syariah* is binding on him, in the same degree as it is binding on his subjects. In the event that supplementary human legislation is needed, the Muslim head of state is not in any position to legislate unilaterally. The legislative function in the Islamic state is reserved for Muslim jurists. These characteristics indicate that, while the Islamic state has strong theocratic elements, namely, the idea of vicegerency and rule according to the Divine law, it cannot be defined as theocracy.

The fact that the Qur'an commands Muslims to select their government and to conduct public business by consultation seem to have led some scholars to think that Islamic government is similar with western democracy. Although the two systems have several important features in common, they are not synonymous. Historically, the term "democracy" has many meanings, and therefore, is difficult to define. However, this characteristic of democracy should not prevent us from discussing it with the purpose of arriving at a general concept, or concepts, of what it means and then compare it with the Islamic government.

The term "democracy" comes from originates from the Greek words: "demos" meaning "the people", and "Kraitein" meaning "to rule". Thus, the original meaning of democracy is, in the literal sense, "rule of the people".<sup>4</sup> Democracy still retains this connotation, of course, but both the meaning of "the people: and the methods of their rule" have undergone substantial change from their original Greek concept. The original Greek meaning for the term "people" refers only to a small portion of the total population: the free-born male inhabitants of the state. Other segments of the population, women, children, and slaves, were not considered citizens, and did not possess the right to participate in civil affairs. In short, they were not part of the people. This Greek concept differs greatly from the modern democratic concept, which normally refers to the entire group of adult citizens.<sup>5</sup>

Futhermore, the Greek democracy was meant for the *polis*, a small city-state of which the adult citizens totalled roughly 30,000 to 40,000. The limits of territory and population made the *polis* ideal for the exercise of direct democracy, in which the people participate directly in daily decision-making.<sup>6</sup>

Modern democracy, on the other hand, is a representative system. In the words of Mill (d. 1876 A. D.), modern democracy is "a government of the whole people by a mere majority of the people, exclusively represented."<sup>7</sup> Unlike the Greek *polis*, the large size of population and territory of modern democracies make government by representation imperative.

Beyond their general agreement about the characteristics which distinguish the ancient from modern democracy, scholars have yet to agree on a universally accepted definition of modern democracy. Some scholars regard democracy as a substance, while others define it as a form or method. Most scholars, however, seem to agree that democracy connotes "a system based on competitive parties in which the governing majority respects the rights of the minorities".<sup>8</sup> Our purpose here, which is to distinguish between Islamic governance and modern western democracy, would be well served by using the classification made by some scholars, which divides democracy as a popular rule into plebiscitarian and constitutional. This approach would make it possible to cut across the philosophical lines and to identify the most salient features that distinguish Islamic governance from western democracy.

Plebiscitary democracy is defined as "one which gives maximum freedom and power to the momentary majority of the people by placing no strong resistant legal obstacles in the way of emerging popular

The Islamic Political Representation in Malaysia explains that in the Islamic political system, through the constitutional idea of popular *Caliphate* and the principle of mutual consultation (*Shura*), the *Shariah* confers upon all adult Muslims equal political rights. This equality gives the Muslim community the right to participate in the decision-making process of all major political issues of modern Muslim states. The basic reason for popular participation in the decision-making process is that political rights, like almost all other rights guaranteed by the *Shari' ah*, entail numerous religious and legal obligations. The fulfilment of these obligations makes political participation in itself an obligation of the Muslim *Ummah*.

From the *Shari' ah* perspective, political participation in Islam constitutes both an exercise of rights and a fulfilment of religious obligations the ideal method for such political participation, is that of direct popular consultation. Human experience, however, has shown that direct popular participation in decision-making is possible only in small communities, as the problem of size makes direct popular participation difficult. The only available and practical option then is to ensure effective popular participation in decision-making process through the 'representative government'.

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