Liberal Democracy and Political Islam: the Search for Common Ground.

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Abstract: We seek to establish a dialogue between Islamic and democratic normative political theories. To that aim, we show that the conception of democracy underlying a prominent Islamic political model is procedural. We distinguish proceduralism from a liberal conception of democracy. We explain how bringing together Islamic political theory and democracy alters the meaning of the latter. In other words, we show that democracy within Islam often means democracy within Islamic limits.

Keywords: Islam, democracy, liberalism, constitutionalism, secularism.

1. Introduction.

This paper seeks to establish a dialogue between democratic and Islamic political theories.[1] The interplay between them is puzzling: for example, in order to explain the relationship existing between democracy and their conception of the ideal Islamic political regime, the Pakistani scholar Abu 'Ala Maududi coined the neologism "theodemocracy"[2] whereas the French scholar Louis Massignon suggested the oxymoron "secular theocracy".[3] These expressions suggest that some aspects of democracy are evaluated positively and others are judged negatively.[4] For example, Muslim scholars and activists often endorse the principle of accountability of rulers, which is a defining feature of democracy.[5] On the contrary, they

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often reject the principle of separation between religion and the state,[6] which is often considered to be part of democracy (at least, of democracy as known in the United States today).[7]

Given this mixed assessment of democratic principles, it seems interesting to determine the conception of democracy underlying Islamic political models. In other words, we should try to find out what is democratic in "theodemocracy". To that end, among the impressive diversity and plurality of Islamic traditions of normative political thought, we essentially focus on the broad current of thought going back to Abu 'Ala Maududi and the Egyptian intellectual Sayyed Qutb.[8] This particular trend of thought is interesting because in the Muslim world, it lies at the basis of some of the most challenging oppositions to the diffusion of the values originating from the West. Based on religious values, this trend elaborated a political model alternative to liberal democracy.[9]

Broadly speaking, the conception of democracy included in this Islamic political model is procedural. With some differences, this conception is inspired by democratic theories advocated by some constitutionalists and political scientists.[10] It is thin and minimalist, up to a certain point. For example, it does not rely on any notion of popular sovereignty and it does not require any separation between religion and politics. The first aim of this paper is to elaborate this minimalist conception. We make a detailed restatement of it in order to isolate this conception from its moral (liberal) foundations, which are controversial from the particular Islamic viewpoint considered here. Indeed, the democratic process is usually derived from a principle of personal autonomy, which is not endorsed by these Islamic theories.[11] Here, we show that such principle is not necessary to justify a democratic process. To that end, we extract two properties from the value of autonomy, called the *inclusion* and *permanence* properties, which are sufficient for this justification. We show that these properties are shared by the Islamic conception of the individual as vice-regent (*khalifa*) of God. In other words, we

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show how the common ground on political procedures between liberal and Islamic theories can be seen as originating from the common ground existing between their conceptions of the individual.

Providing Islamic roots to proceduralism will complete the second and most important aim of this study: this will show the conceptual possibility of Maududi's "theodemocracy". Having a religious government required to be accountable to the people is not a self-evident possibility. Despite being widely acknowledged in the existing literature on Islam and democracy, this possibility remains to be better understood. For example, a secularist might not be convinced by the mere invocation of Islamic concepts like *bay'a* and *shura*, which are often cited as providing an Islamic foundation to democracy.[12] He might believe that both procedural and liberal democracies remain deeply tied to the value of autonomy, which contradicts the fundamental Islamic principle of obedience to God. Therefore, he might reasonably conclude that "Islamic democracy" is a contradiction in terms and that these Islamic scholars and activists cannot be genuinely committed to democratic ideals.[13] The existing literature does not seem to reply to this kind of objection in a satisfactory way.[14] This paper tries to address it by engaging procedural and liberal democratic theories.

The third aim of this paper is to show limits of this common ground. Indeed, in a second time, we also see that things are not so simple. We are not merely separating democracy on the one hand and secular and liberal values on the other hand. This is because an isolated theory, standing alone, is not the same as a theory embedded in a broader system of thought. In this paper, we see that as soon as we try to justify the minimal democratic process from wider moral theories, then we quasi-mechanically have to constrain its outcomes. We also meet the same phenomenon within each of the three families of political theories (minimal, liberal and Islamic) considered. Said otherwise, justification has a price. A slogan for this paper could be: "no justification without limitation". Thus, the third aim of this paper is to illustrate this slogan,

which expresses a pattern constitutive of the activity of justification. Therefore, we defend a holistic view on moral theories: we think that if two moral theories have two opposed basic values, then their superficial convergences are scarcely able to have the same meaning and the same implications.

Like the first two results of the paper, this third one is not entirely new. For example, Rawls argued that reasonable citizens must not merely endorse the liberal conception of political justice from within their own moral doctrine. According to him, this would make consensus on this conception "political in the wrong way". This is why, in addition to this internal justification, they must endorse it from a second, "freestanding" viewpoint, independent of their doctrine. These two justifications, nonpublic and public, form the basis of what he calls a "reasonable overlapping consensus".[15] However, Rawls's argument on the role of moral doctrines in political justification is general, and he does not discuss the particular case of Islam and democracy in great detail.[16] Therefore, the paper presents a view already known but that remains to be illustrated in this particular case. In fact, in our case, this idea has an important consequence for the search of Islamic roots to democracy: democracy within Islam often means democracy within Islamic limits.

Moreover, this consequence is not only theoretical. It also has a practical meaning. Indeed, it is often said that "democracy must come from within".[17] That is to say, first, since the stability of democracy requires the allegiance of the people to her ideals and second, since religion deeply influences many people living in Muslim countries,[18] then the project of finding religious roots to democracy has a practical value.[19] In this paper, we try to show a problematical aspect of this project, which is due to the fact that justification has a price. This cost does not only exist for religious justification, because we will also face it for the justification of proceduralism by liberalism and for the justification of majority rule by proceduralism.

Our study ends with the presentation of an Islamic regime called *shura mulzima* (the explanation of this name will appear in the discussion). This regime is the upshot of our aims: first, it includes within itself a minimal theory of democracy, namely, proceduralism. Second, the justification of proceduralism from shura mulzima provides limitations on the outcomes of the political process. Therefore, shura mulzima is not totally compliant with liberal democracy, but it is not totally opposed to it either. It lies somewhere between these two extremes stances. In order to position it and characterize it with precision, we compare it with three models drawn from Western political tradition (called *pure majoritarianism*, *proceduralism* and *liberalism*) and another model inspired of Islamic political tradition (called *shura mu'lima*).

As a last preliminary remark, we insist that the fact of this convergence on minimalist democracy does not imply that liberal democrats ought to refrain from defending principles that are not included in it. In other words, we do not say that this existing agreement corresponds to the scope of political values that liberal democrats ought to advocate. Determining how liberalism should deal with Muslim countries is a separate question.[20] Here, we only investigate a possible convergence on the process of political decision-making between traditions often perceived as irreducibly opposed. As we will see, this task is already not so easy. Nonetheless, we hope that the present paper can indirectly contribute to the debate on global public reason, which often takes Islam as a case-study.[21]

First, we present a "minimal" conception of democracy, called *proceduralism*. We contrast it with a "sub-minimal" conception, called *pure majoritarianism*. We insist on the shallow foundations of proceduralism (but these foundations are still deeper than pure majoritarianism's): they make room for the endorsement of this theory by both liberal and Islamic moral perspectives. Second, we contrast proceduralism with a thicker conception of democracy, called *liberalism*. Third, we offer an account of *shura mulzima*. We compare it with the aforementioned theories and with *shura mu'lima*. We follow a progressive method of

elaboration in order to insist on the structure of justification of each theory. To conclude, a comparative table summarizes the study.

2. Pure majoritarianism.

The first aim of this paper is to construct a minimalist theory of democracy. Therefore, the investigation should begin with majoritarianism, which is commonly held to be the simplest version of democracy. According to majoritarianism, the will of more than half of the polity determines the democratic option. Indeed, democracy is the ruling of the people, and if the people are not unanimous, then the largest number must prevail. However, this apparently too simple definition raises much suspicion. According to critics, untrammelled majority rule is absurd. Critics recall that everything has limits, even majority rule. Otherwise, logical contradictions arise. In order to show the inconsistency of unbounded majority rule, critics present the extreme case of a majority abolishing majority rule itself by electing, say, a dictator. According to critics, if majority rule was really absolutely unlimited, then the majority would be able to abolish majority rule and in this case, the majority no longer rules. This would be a contradiction. From this alleged logical fact, critics argue that the will of the majority must necessarily evolve within some constitutional limits. Critics do not even accept to discuss the *legitimacy* of the majoritarian definition of democracy. They argue against its *internal consistency*. Therefore, before thinking of any link between this simple definition of democracy and Islam, we must first examine its consistency.

On the one hand, it is true that majorities cannot have absolute power *all the time*. If the majority at time t had an absolute power, then it could deprive the majority at time $t+1$ of her own power to make decisions. In this case, the majority at time $t+1$ does not have any power at all. This would be contradictory indeed. But on the other hand, it is not contradictory at all that the majority at a given time t determines her decision rule for all times t' strictly larger than t in

an absolutely free way. *Pure majoritarianism* of time *t,* or t-*pure majoritarianism*, is defined as the political regime where *all* decisions are taken by the majority of time *t, without any limitation*. Thus, pure majoritarianism is defined relatively to a basic instant t_0 that determines which will of the majority must be taken into account. There are as many pure majoritarianisms as there are instants. Paradoxes arise from the negligence of this point: two pure majoritarianisms defined at two different instants may not agree. A majority at a given time t_0 can forbid the use of majority rule at time t_1. Nevertheless, for the sake of concision, the prefix is omitted before "*t*-pure majoritarianism" when the defining time *t* is not important. However, it must be clear that speaking of pure majoritarianism implicitly refers to a single electoral event. Thus, without any contradiction, pure majoritarianism is absolutely open-ended. The majority can exclude any of the members of the polity. It can deprive minorities of their right to vote. It can even renounce to majority rule itself, by depriving herself of her own right to vote.

It is important to understand what pure majoritarianism means. For example, consider the case when the majority elects a dictator for life. This does not contradict pure majoritarianism, because the power to make dictatorial decisions comes itself from a majoritarian decision. It is incorrect to say that majority rule has been abolished and replaced by dictatorship. On the contrary, at a given time *t,* the polity decides that a dictator must take all future decisions. In fact, all the decisions taken by the dictator at times *t'* strictly larger than *t* correspond to the decision of the polity at time *t*. Whatever he does, the dictator does not violate the will of the majority of the polity at time *t*. Through the decisions of the dictator, the majority of time *t* still rules. If again, the people comprising the old polity should rule according to the will of the majority, this now depends on the benevolence of the dictator (that is to say, it depends on their own will as expressed at time *t*). It depends whether he accepts to abolish his absolute power.

3. Proceduralism

a. The rights of future polities.

Critics of majoritarianism certainly have in mind a completely different kind of regime. They may think of a complex form of government, where majoritarianism is limited by itself. When this regime is not defined explicitly, it seems undemanding, like pure majoritarianism. For example, consider Popper's famous definition of democracy: "governments of 'which we can get rid' without bloodshed" or Przeworski's: "democracy is a system in which parties lose elections".[22] Apparently, these are innocent definitions of democracy. They are even sometimes viewed as "minimal" ones. Nevertheless, this impression is misleading. They are much thicker than they seem.[23] They are already less minimal than pure majoritarianism, because they implicitly assume that elected rulers cannot indefinitely postpone a new confrontation with voters. Elections are *repeated*. There is always a scheduled election. At a given time t_0, people vote by virtue of a general rule saying that elections must hold at regular intervals of time. The mere existence of this inference already puts limitations on the outcomes of this specific election: if participants decide to cancel all future elections, then they violate this general rule. They undermine the legitimacy of this very election. On the contrary, if they vote by virtue of a t_0-pure majoritarianism (or some sufficiently similar theory), then they do not suffer of this restriction.

Things can also be viewed in this way: consider the process made up of an infinite sequence $P_1, P_2, P_3\ldots$Each P_i corresponds to the state of the polity at the ith election. A "meta-polity" $\{P_1, P_2, P_3\ldots\}$ can be imagined in which each participant is itself a polity P_i. This peculiar meta-polity extends in time. In other words, we look at the history (past and future) of the polity and each instantiation, at the moment of an election, gives birth to a new member of this meta-polity (imagine each election is a picture of the film telling the history of the polity). Then, this limitation on majority rule means that participants of this meta-polity must not

infringe on each others' rights. At least, a given participant must not eliminate another one. All the members of this meta-polity hold a basic right to life. In other words, the ith majority rule is limited because P_{i+1} has rights *against* P_i. In this framework, pure majoritarianism is tyrannical, but not because it allows the tyranny of the majority on minorities or because voters might thus elect a tyrant. It is tyrannical because it allows the present polity to tyrannize all the others, who live in the future. For example, an i-pure majoritarianism would correspond to the (meta-)regime where the polity P_i is an absolute ruler on her descendents P_j, for all j strictly larger than i.

Thus, the preservation over time of (normal) participants' right to vote in the (normal) polity corresponds to the right to exist held by future polities against the present one. This limitation on outcomes is built-in the very nature of the political process considered: if it is dropped, then a completely different process is obtained, such as pure majoritarianism. The right to vote is our first instance of *procedural right,* which is to say, a right constitutive of the political process.[24] A regime preserving procedural rights, and only them, is called *procedural regime*. The theory defending this regime is indifferently called *proceduralism*, or *procedural theory*. However, strictly speaking, pure majoritarianism is also a procedural theory: a one-shot procedure. Nonetheless, it is preferable to keep the term "procedural regime" for the regime in which the same procedure of decision is repeated over time.

A familiar opinion is that limitation on majority rule only comes from minority rights. However, this opinion is misleaded: proceduralism totally ignores minority rights, but still limits her majority rule. For example, the preservation by the majority of the right to vote (of the majority as well as of minorities) does not really correspond to the right of a minority to become the majority in the future. It is more radical than that: in fact, procedural rights are independent of the rule of decision chosen. If nobody changes her view and if the same rule of decision is also maintained, then repeating elections is useless whatever this rule is. The

outcome will be the same. This preservation of the right to vote rather corresponds to the right of the *whole polity* to *revise* her decisions. In particular, in the case of majority rule, it also corresponds to the right of the members of the current majority to change the future majority. Indeed, observe that if nobody within the majority revises her view, then minorities persist and remain powerless anyway. If *a priori,* it is known that no voter in the previous majority will revise her view, then preserving the right to vote of minorities is ultimately useless. Thus, this is not an opposition between majority rule and minority rights, but rather between majority rule and *majority rights* (i.e. the rights of the current majority to be transformed in the future). All the discussion above can be re-written using any other rule of collective decision-making. It could well have been asked whether unanimity can abolish unanimity rule by electing a dictator. However, for pedagogical purposes, majority rule is still privileged in the exposition. This rule may be more familiar to most readers.

In order to grasp this point in its starkest form, an analogy with the problem of self-enslavement is helpful.[25] The act of renouncing to one's own freedom seems so paradoxical that many thinkers affirmed it was illegitimate. *t*-pure majoritarianism is analogous to the position allowing self-enslavement at time *t*: I can renounce to my liberty at time *t* simply because I am free to do whatever I want at time *t*. Proceduralism is analogous to the position prohibiting self-enslavement: I cannot decide to renounce to my right to make subsequent decisions because I will be allowed to make this particular decision only by virtue of my general and perpetual right to make decisions. I always have a decision to make in the future. "Me in the future" has a right against "Me in the present". This is why John Stuart Mill argues against self-enslavement: "by selling himself for a slave, he abdicates his liberty; he forgoes *any future use of it*, beyond that single act. He therefore defeats, in his own case, the very purpose which is the *justification* of allowing him to dispose of himself [again, justifications provide limitations]. (…). The *principle of freedom* cannot require that he should be free not to

be free. It is not freedom, to be allowed to alienate his freedom."[26] In order to reply to Mill, a hypothetical candidate to self-enslavement can follow the same line of argument as a pure majoritarianist: he claims a right to be free only for the moment of his self-enslavement. He does not justify his decision by invoking Mill's general rule. Therefore, he is not limited by it. Of course, our hypothetical candidate to slavery should still explain why his day of self-enslavement is a special day. He must still explain why he can claim to be free on this particular day without claiming to be free in the next days. Here, we are only pointing out that his position is possible and not necessarily inconsistent. We are arguing that Mill's principle of inalienable and perpetual freedom is not logically necessary for allowing someone to dispose of oneself. On the contrary, Mill's argument relies on a particular conception of the person. His conception might be that the defining feature of human beings is their inalienable freedom. It can be imagined someone elaborating an ad hoc conception if his projects are incompatible with Mill's general principle of freedom.

Thus, the important point is that saying "I do X because I am free" is not as innocent as it seems. It involves a whole sequence of agents who have an equal claim to freedom, and "me now" is only one among many others. In particular, it does not mean that I am absolutely free now. My aim X must still respect the freedom of "me in the future". [27] Being absolutely free all the time is self-contradictory. Only being absolutely free at a given time is not, because it only involves one agent. This is the same for polities.

b. Other procedural rights

Repetition of elections has been justified by the right of the polity to revise her decisions. Now, we investigate the further limitations on the outcome of each election induced by this justification. The right to vote is not the only one to be preserved by the process. Indeed, the polity preserves her right to revise her decision in order to benefit from the growth of

politically relevant information over time. Typically, with repeated elections, the polity can judge incumbents on the basis of their realizations. If they only vote once, they can just rely on their promises. Therefore, with time, new information will be useful for the forthcoming election. Moreover, since the election at time $t+1$ must not be under the control of the polity as it was at time t, then the information relevant for this election must be beyond the control of current rulers, who were elected at time t. The polity must put political information beyond the control of her own will as expressed at time t. Therefore, freedom of political expression, which is to say, freedom to make information available to the polity for the next election, must not be infringed by the current government. Even a unanimously elected government does not have the right to abridge freedom of political speech. Freedom of political expression is our second procedural right. It is constitutive of the political process that consists of repeated elections.

Thus, in our framework, freedom of political expression does not consist in a natural right held by individuals against their government. It rather consists in the right held by future polities against the present one. The process does not protect individuals' interests in expressing their thoughts. It does not recognize any right to self-expression, any "right to speak". Instead, it protects the "right to hear" of future polities.[28] Said otherwise, under this view, freedom of political speech is not an inalienable human right, but a vulgar tool useful for the next electoral campaign.

So far, two procedural rights are identified: the right to vote and the right to political expression. Nonetheless, it is simple now to see that many additional rights can be defended along this line. The prohibition on elected rulers to control future electoral campaigns entails a whole bundle of procedural rights. For example, preserving freedom of political association is necessary for all future elections. The list can even go further. However, problems will quickly arise: defining procedural rights and interpreting them in particular cases is not always easy.

c. An internal critique: who speaks for future polities?

These problems arise as soon as the method of preservation of procedural rights is examined. By definition, future polities are not present. Practically, only people living in the present can act. This is a truism. Therefore, people living in the present are needed to act on behalf of future polities.

One possible solution is to rely on experts. Their task is to override the decisions of the current polity contradicting the rights of future polities. They justify their decisions in the name of the preservation of the political process. This solution has been adopted by the United States, according to one possible justification of judicial review:[29] the Supreme Court has the role of reinforcing the democratic process, even at the expense of the current majoritarian will. Supreme Court judges are appointed for life in order to be preserved from the pressures of the current polity and in order to be able to focus on the rights of future polities.

However, this solution is satisfactory only when the nature and interpretation of procedural rights (i.e. the rights of future polities) are uncontroversial. The nature of procedural rights can be disputed indeed. For example, is a basic income essential for the exercise of the right to vote? For some authors,[30] the formal right to vote is not sufficient for having a real share in the decision of the polity, because it is not sufficient for making informed and meaningful decisions. This procedural right is less obvious than the right to vote and the right to political expression. Additionally, even uncontroversial procedural rights can admit controversial interpretations in some specific cases. For example, freedom of political expression can admit two opposed interpretations. On the one hand, it can justify the non-intervention of the state in political expression: each view must be left free to make her case on the air. On the other hand, it can justify state regulation of political expression as well: state regulation of airing times allows minority and disadvantaged views to make their case. In this latter case, currently elected rulers provide a content-neutral justification of their regulation of

political speech: they invoke the rights of future voters to be fairly informed and they do not merely invoke the will of those who previously elected them.

In our theoretical framework, these disagreements turn on the interpretation of the rights of future polities. Therefore, the irreducible problem comes down to the fact that multiple and incompatible claims can be made in the name of an absent being, who consists in the potentially infinite sequence of future polities. These claims are made by people who are only indirectly linked to these polities. The fact that the Supreme Court is independent of the present polity does not imply that it is dependent on future ones. In our comparative perspective, it is worthy to note that an analogous problem will be encountered during our discussion of Islamic regimes. But this time, the absent being will be different.

Naturally, it is also possible to provide external critiques to procedural theory: for example, one could ask why future polities should be entitled to overriding rights at the expense of present ones. After all, we make a daily experience of the irreversibility of our choices. We often have to suffer of the decisions of our past selves. They often seriously affect our capacity to make new choices. Echoing Jefferson, one could argue: "future selves have neither powers nor rights …"[31] Moreover, the relationship between pure majoritarianism and proceduralism is more complementary than opposed. In practice, the rights of future polities are paradoxically preserved through a past act of pure majoritarianism. For example, this is the case in constitutional referendums: at a given time, a polity feels the need to preserve her capacity to make decisions in the future and decides to limit the powers of each of the subsequent ordinary elections. This corresponds to a partial abolition of majority rule by a majoritarian vote. Therefore, even if pure majoritarianism does not seem very politically attractive at the first sight, pure majoritarians may still find convincing justifications for their actions in some cases.

However, we will not follow these directions of investigation.[32] In this section, we do

not want to *justify* procedural theory. Our sole aim is to extract and isolate this important notion of procedural rights, justified by the simple fact that elections are repeated. Indeed, providing a deeper justification would put additional constraints on it. As far as possible, we do not want to conflate procedural theory with any considerations unessential to it. Instead, in the next sections, we provide two different and incompatible justifications of procedural rights from process-independent values. They give rise to two mutually incompatible limitations on the outcomes of the political process. We contrast these limitations with those stemming from proceduralism.

While being opposed, these two moral theories still follow an analogous argumentative strategy: they view the *role* of individuals in the political process as an expression of their *status*. As a consequence, they rule out outcomes of the process threatening the status of participants. From the inside of each worldview, these statuses embody human dignity. From the outside, they rather appear as perverse tricks for limiting collective action.

First, we provide a justification of procedural rights from what is called *liberal theory*. Second, we provide a justification from the viewpoint of an Islamic political theory.

4. Liberal Theory

In liberal theory, the status of individuals is that of *sovereign* persons.[33] Individuals are autonomous, in the sense that they must freely choose what they want to make of their lives. They must be free to form, pursue and revise their ideas of what is good and valuable in life. They must be the sole masters of themselves. Moreover, individuals are also equal as self-ruling persons.

First, this status provides a justification of the electoral procedure: through the political process, the idea that each individual must be the ruler of her own life is extended to the domain of collective decision making. This is because individuals' life is dependent on the

larger social context in which they live. Having a share in the process of collective decision-making allows individuals to have control over this larger context. Since individuals are equal in their sovereign status, then their share in the process must also be equal. The electoral process maximizes the scope of self-rule for those who are subjected to collective decisions. It maximally respects the autonomy [in the sense defined above] of all who are subjected to its outcome. Moreover, elections are repeated because members of the polity must be able to revise their conception of the good life. Thus, the right to vote, to free political speech and to political association must be understood against this background: they express the capacity of individuals for self-rule.

Second, this justification also provides limitations on the outcomes of the process. Collective decisions threatening the sovereign status of individuals are excluded, even if they do not threaten the process itself. Indeed, such collective decisions do not undermine the process, but they still undermine its justification. These limitations on the process take the form of a family of rights that must be put beyond the control of present polities. These further limitations are called *liberal rights*. They comprise rights such as freedom of conscience, freedom of non-political expression, the right to privacy and the right to a fair trial (of course, this list is not exhaustive). For example, freedom of non-political expression is justified on the ground that it is necessary for freedom of choice. Freedom of non-political expression enables individuals to freely deliberate on their ways of life. It allows them to freely determine the values and practices worthy of their allegiance. Thus, liberal rights limit procedural rights. However, these two families of rights must not be seen as conflicting with each other insofar as both families are justified by the same background values. Both express the sovereign status of individuals.[34]

The framework of liberal rights allows making sense of the concept of minority rights. As seen in the discussion of procedural theory, limitations usually perceived as minority rights,

such as freedom of political speech, can actually be viewed as relying on the right of the polity taken as a whole to revise her past decisions. Now, with liberal theory, individuals obtain a status *prior* to their role in the procedure. Therefore, we can denounce the tyranny of the majority on minorities. We can speak of the rights of minorities against the majority, and even against the whole polity. We could not speak of them in procedural theory, because individuals were exhausted in their political role. For proceduralism, minority rights are nonsensical. On the contrary, in liberal theory, the polity has a duty to respect them because her right to exist as a polity is derived from the right of her members to exist as individuals, or as associations of individuals (that could be minorities). From the viewpoint of liberal theory, both pure majoritarianism and proceduralism do not offer enough checks against the tyranny of the majority. For liberalism, this property of proceduralism is a shortcoming. On the contrary, for us, who try to elaborate a minimalist theory of democracy, the absence of the notion of individual is an advantage: proceduralism will not be exposed to many Islamic objections against the liberal conception of the person.

Like procedural rights, liberal rights may be defended by courts, since they must be put beyond the control of present polities. For example, the American Supreme Court decisions in *Griswold v. Connecticut* or in *Roe v. Wade* might illustrate this action. The protection of the right to privacy of consenting adults and the protection of the right to abortion are not tied in any obvious way to the preservation of the electoral process. They cannot easily be placed in the category of procedural rights.[35] In these two cases, the Court still overruled decisions compliant with the electoral process because it considered that they contradicted the conception of the person as free justifying the process.

This separation between procedural and liberal rights leaves the possibility open for a regime to recognize the firsts while rejecting the seconds. Two aspects of liberal democracy have been theoretically disentangled, thus leaving some space for an endorsement of

democracy by Islamic political theories. We have completed our first aim. However, on a practical level, drawing a distinction between procedural and liberal theory may seem to make things more obscure. For example, the distinction between freedom of political speech and freedom of non-political speech might not be easy to draw in practice. Nevertheless, this impression may be due to the fact that procedural and liberal stipulations are conflated in the constitution of nowadays liberal democracies. This may be specific to the contemporary western perspective. From a contemporary non-western viewpoint, this conflation will appear less obvious, as seen below. Interestingly, it is not more obvious from a non-contemporary western viewpoint or at least, under a modern interpretation of an ancient viewpoint. There are concrete instances of non-contemporary western political regimes preserving procedural rights at the expense of liberal rights. To some extent, the distinction between procedural and liberal rights recovers Benjamin Constant's distinction between the "Liberty of the Ancients" and the "Liberty of the Moderns".[36] According to Constant, in Ancient Rome and Greece, individuals (more exactly, free indigenous males) benefited of the former but were deprived of the latter. As members of the polity, they enjoyed "active and continuous participation in the exercise of collective power" even at the expense of their most basic liberal rights. For example, after the battle of Arginusae, Athenian generals were the victims of an outrageous trial. Athenian citizens condemned them on the basis of popular fury. The right to vote, a liberty of the ancients, infringed on the right to a fair trial, which is a liberty of the moderns. Thus, the distinction between procedural and liberal rights admits actual manifestations.

5. The status of individuals in Islamic political theory and its consequences.

The rest of this paper examines how this disentanglement between procedural and liberal rights sheds a new light on the relationship between democracy and Islam. As in liberal theory, the starting point of this political theory is the status of individuals. In particular, the

opposition between our liberal and Islamic political theories does not correspond to an opposition between individual-based and community-based political theories. Both theories are individualistic. They only differ in their *kind* of individualism. In this section, we present an Islamic conception of the individual, following the views of contemporary Islamists (Maududi, Qutb…). Then, we compare this conception with a liberal one and, we specify a common ground between them (the inclusion and permanence properties).

In this Islamic theory, individuals are *vice-regents of God*. God has appointed a vice-regent (*khalifa*) on Earth: Man (Quran 2:30). Being God's vice-regent is the defining feature of humans. It is inalienable. It puts them above the rest of the creation. God has appointed and empowered Man to manage the Earth in conformity with His law.[37] Moreover, individuals are equal in their status of vice-regents of God. All humans have the same responsibility of applying God's law on Earth, the *shari'a*. Shari'a is essentially based on the Quran and the Sunna (which is the tradition of the Prophet).[38] Of course, there can be disagreement on the interpretation of these sources. We consider this problem later. The point to stress here is that in this political theory, the status of individuals is that of vice-regents of God and in particular, individuals are not sovereign. The sole sovereign on Earth is God. This property is called *tawhid al-hakimiya* (oneness of sovereignty).[39] God created the world and rules over his creation.

First, this status justifies the power (*sulta*) held by the community (*Umma*) to make decisions.[40] The duty to apply God's law on Earth entails the right to rule. All humans must apply God's law on Earth. All have an equal claim to participate in this project. As a consequence, none of them can claim an exclusive prerogative to do so at the expense of others. We come back later to the practical way used by the Umma to exercise this right-duty. It requires a separate discussion, given our two ideal-types of popular decision, pure majoritarianism and proceduralism.

Second, this status also implies limitations on the claims individuals can make. They must not transgress the limits inherent to their status. They have no claim to act against shari'a. This would defeat the very justification of their rights. Therefore, the Umma cannot make laws contradicting shari'a. It is worthy to observe that there is already an Islamic concept expressing this idea of limitation. Those who make rules transgressing God's limits are *tawaghit* (plural of *taghut*). Tawaghit transgress the limits implied by the justification of their claim to rule. More conventionally, Ibn al-Qayyim gives the following definition: "Taghut is what leads men to exceed limits, either worshipped, followed or obeyed. Taghut is the one who they make a judge besides Allah and His prophet, or worship other than Allah, or follow him without taking any consideration of Allah, or obey him in a matter that is a disobedience to Allah".[41] The term *taghut* is derived from the word *tughyan*, which means transgressing, overflowing. For example, when in a river, water leaves its natural bed, it is said: "tagha al-ma", which is to say, water has overflowed. It has crossed the limits of the riverbank. Consequently, it may cause a destructive flood. Tawaghit can be of every kind, but the basic idea is the same: they transgress their limits.

In particular, in our case, the polity formed by vice-regents of God is completely different of the polity formed by sovereign citizens. In the latter, as citizens, people are able to make laws without taking into account shari'a. As subjects, they must obey in a matter that may be a disobedience of God. This regime is based on the laws of tawaghit, who are the self-ruling citizens. In liberal democracy, the ruling polity as a whole is a taghut. In this respect, sovereign citizens are not fundamentally different of famous tawaghit like Pharaoh, who coerced the Egyptian people to follow his law in place of God's law.

Nowadays, the term "taghut" is often popularly used to denounce the tyrannies ruling Muslim countries. Nonetheless, when the taghut tyrannizes his people, he only does it in an indirect way: it is not because he violates the rights intrinsic to the personhood of his people. It

is rather because he violates the divine order, by coercing people to obey laws opposed to shari'a.[42] To take a simple example, the ruler may violate the divine commandment "Thou shalt not kill".[43] In this case, he is not wrong merely because he abusively kills people. Most of all, he is wrong because by doing this, he violates God's commandment. Tyrants transgress the limits implied by their own status of vice-regents of God. On the contrary, in liberal theory, tyranny, either of the majority or of a minority, corresponds to a failure to take individuals as sovereign beings. In liberalism, tyrants transgress the limits implied by their own status of self-ruling persons. The relation is purely horizontal, without the intermediary role of God.

Thus, individuals' status in this political theory entails limitations on their claims that were inexistent in liberal theory. Said more plainly, in liberal theory, the polity is not constrained to rule within shari'a. Conversely, a polity of vice-regents of God is not constrained by liberal limits. It is not constrained by the self-ruling status of individuals. People do not derive their right to rule from a general right to make choices. In liberal theory, individuals have a *higher-order* interest in securing this capacity to make choices.[44] They need to invoke it in order to make any of their particular choices. This capacity is seen as the necessary precondition of all of their choices. The right to make any particular choice is deduced from a general rule according to which individuals must be free to make choices. In this Islamic theory, this is not the case. According to it, the Umma derives her right to rule only from her right-duty to make "the right choice", which is the choice of God's law (more exactly, the right to make a choice within the boundaries of shari'a). Failing to respect "wrong choices" of individuals does not threaten the religious justification of her right to rule. On the contrary, in liberal theory, if the polity fails to respect what she considers as "the wrong choices" of individuals, she threatens the justification of her own right to rule, because the polity's right to choose is established independently of the content of her choices. The only "wrong choices" of individuals are those inconsistent with the right to choose of the other members of the polity.

The liberal argumentative strategy is particularly efficient in pluralistic societies, where people deeply disagree about what "the right choice" is. It allows reducing plurality to unity. It re-introduces uniformity at a higher level: individuals have different interests, but all have the same higher-order interest in pursuing their different interests.

In this respect, the relationship between these Islamic and liberal theories is analogous to the relationship between pure majoritarian and procedural theories. Islamic theory privileges a particular choice among others, "the right choice", in the same way as pure majoritarianism privileges a particular time of choice among others, "the right time". On the contrary, liberal and procedural theories invoke a general rule in order to justify any particular decision. For liberal theory, this rule consists in a general right to make choices, independently of their nature. For procedural theory, this rule consists in a general right to vote, independently of time. Therefore, any particular decision is automatically constrained by its justifying general rule. No decision suffices to itself. There are only particular applications of a general rule.

However, this correspondence does not imply that the Islamic model cannot endorse procedural rights in the same way as the liberal model does. A priori, there is no logical reason against this. There is nothing more than an analogy between "the right time" and "the right choice". We can easily imagine that each time, there is only one legitimate choice, but this legitimate choice may vary over time. Typically, the right choice as it appears given the politically relevant information available at time t may not coincide with the right choice as it appears later at time $t+1$. Therefore, one could argue that, if the Umma renounces to her capacity to make future decisions, then future Ummas will have to suffer of what will appear to them as wrong choices, given the growth of information that occurred meanwhile. In other words, present Ummas must not infringe on the rights of future Ummas to be ruled rightfully. In particular, it means that the Umma has to preserve her capacity to remove rulers who do not apply shari'a correctly.

In other words, endorsing the *whole* liberal conception of the person is not a *necessary* condition for endorsing procedural rights. Indeed, remember that in our liberal political regime, all individuals share the same end e_L. However, this end e_L is quite special: it is a "second-order" end. It consists in preserving one's capacity to have ends, one's autonomy. Nevertheless, the key observation is that this particularity is not what matters for the justification of procedural rights. For this justification, only two features of e_L are important. First, this end e_L satisfies what could be called an *inclusion condition*: no individual can be denied the possibility to pursue e_L. On the contrary, all individuals have an equal right to pursue e_L, which is to say, to preserve their autonomy. Second, this end e_L satisfies a *permanence condition*: e_L is constitutive of the personhood of individuals. Nobody can renounce to it. Individuals' autonomy is inalienable.

Therefore, any other end e_M that satisfies the inclusion and permanence conditions[45] will still support procedural rights. First, the inclusion condition guarantees that everyone has the right to vote and to participate in order to accomplish e_M. Therefore, the electoral body can include everyone. Second, the permanence condition guarantees that elections are repeated. Indeed, persons permanently have to pursue e_M. Therefore, they always have to accomplish e_M somewhen in the future. As we saw earlier, this is sufficient to grant the electoral body procedural rights.[46]

In particular, the Islamic conception of the person can also support procedural rights. Remember that in our Islamic political regime, all individuals share the same end e_I, which consists in applying God's law. The end e_I satisfies the inclusion condition: insofar as all individuals are vice-regents of God, then all have a right to pursue e_I, to promote God's law. Moreover, e_I satisfies the permanence condition, since vice-regency of God is a constitutive property of humanity. God created humans only to worship and obey him.[47]

The next section examines the process of collective decision-making considered in our Islamic political theory more in detail. A particular attention is paid to the way the permanence condition is reflected in the concepts of Islamic political theory. Indeed, according to our two ideal-typical theories, pure majoritarianism and proceduralism, there are two ways to take decisions: the first one, associated with pure majoritarianism, is the one-shot decision. The second one, associated with proceduralism, corresponds to a sequence of decisions. An echo of this opposition is found in Islamic political concepts: first, we present the notion of *bay'a*, which is a way for the Umma to appoint the ruler. We follow a reinterpretation of classical Islamic theory by contemporary Islamist thinkers.[48] Then, we show that this concept is insufficient for providing an adequate account of the control exercised by the Umma over her rulers. To correct it, we present another Islamic concept, *shura* (consultation) and we show how it is articulated with bay'a. Then, we distinguish two versions of shura: *shura mu'lima* (informative consultation), following some classical Islamic theorists and *shura mulzima* (binding consultation), following Maududi and Qutb. The latter endorses procedural rights because it takes the permanence condition more seriously than the former.

6. Bay'a and Shura.

a. Bay'a

Bay'a consists in Umma's pledge of allegiance to the caliph, who was the ruler of the Umma. Through bay'a, the ruler takes the authority from the Umma, who is then obliged to obey him. This system corresponds to a contract between the ruler on one side and the rest of the Umma on the other side. As a contract, it requires the consent of both parties and it engages their responsibility. It is worthy to note that the Prophet, as a political leader,[49] took the pledge from men and women alike but refused the pledge from children.[50] It means that bay'a can only be performed by mature and responsible people. These features of bay'a bring it close to an

electoral process: an election can be seen as a contract between the ruler and the ruled, engaging the responsability of citizens. Moreover, kids do not have the right to vote: they are not considered as mature and responsible persons.

However, despite these similarities, the process of bay'a differs from our familiar modern elections in at least two respects. The first one is irrelevant from the perspective of the present study. It corresponds to the fact that the bay'a is not an act made by each individual separately. On the contrary, in modern democracy, voting is an individual act. For example, remember the slogan "one man, one vote". Here, appointing the ruler is not an individual duty *(fard 'ayn)* but a collective duty *(fard kifaya)*.[51] It must be performed by the Umma as a whole. However, we are affirming that this difference is not relevant because we previously explained that our discussion of pure majoritarianism and proceduralism was in fact independent of the formal rule of decision, even if we took majority rule to fix ideas. To repeat, procedural rights are collective rights and proceduralism ignores the notion of individual. Historically, the procedure of bay'a was informal, but the important point is that in principle, nobody could be excluded of the procedure. Majority rule does not even have to be discussed within the context of Islamic theory. Determining when it can reasonably be said that "the polity/Umma has decided" is a question independent of the present paper. Here, a reasonable answer to it is simply assumed.[52]

The second difference is more important for our comparison: once designated, obedience to the ruler is due lifelong. As far as the ruler respects his side of the contract, he cannot be removed. In general, there is no procedure of renegotiation of the contract. This point is essential insofar as it brings bay'a closer to the model of pure majoritarianism. The Umma cannot revise her bay'a. Through bay'a, the Umma renounces to her power to make new decisions in the future. More exactly, the Umma brings back her power the make new bay'as only at the death of the current ruler. In principle, rulers do not have the right to appoint their

successors.[53] Since each ruler's reign is expected to be very long, it is reasonable to say that, by making bay'a, the Umma makes an irreversible choice. In particular, from the procedure of bay'a, no limitation on the power of the reigning ruler can be inferred. He is not entitled to respect any procedural right, since there is no forthcoming election.

b. Shura: informative or deliberative?

Thus, from the perspective of proceduralism, the single process of bay'a suffers from a major shortcoming. In order to overcome it, another important Islamic political idea is introduced, the concept of *shura* (consultation). It is derived from two Quranic verses:

"Those who hearken to their Lord, and establish regular Prayer; who (conduct) their affairs by mutual Consultation; who spend out of what We bestow on them for Sustenance;" (42:38)[54]

"…and consult them in affairs (of moment). Then, when thou hast Taken a decision put thy trust in Allah. For Allah loves those who put their trust (in Him)." (3:159)

Shura is all-encompassing obligation.[55] Believers must consult each other in all circumstances. In particular, shura must also precede bay'a. The second caliph Umar even said: "Anyone who calls the command for himself or any other person without consulting the Muslims, it is not allowed for you not to kill him."[56]

The link between shura and bay'a and the connection with minimal theories (pure majoritarian and procedural) appear when we look at the existing debate within Islamic theory on the scope of shura in the political domain: does shura mean that the ruler must merely take advice from the Umma, or is the consultation binding on him? Does shura mean advice or deliberation?[57] The two possible answers come from two mutually incompatible interpretations

of the verses above.

A first school assimilates shura to advice.[58] They are the proponents of *shura mu'lima* (informative consultation). The Umma must be consulted indeed, but ultimately, only the ruler decides. He is not binded by the advices he receives. This viewpoint emphasizes the verse (3:159): "and take counsel with them in the affair, so when you have decided then place your trust in Allah". This verse alludes to the Prophet's behavior, which is a model for all Muslims. God orders him to take counsel with Muslims on public affairs, but also grants him the power to take the ultimate decision.

This perspective is not very satisfying. On the one hand, there is a rule of decision, bay'a, which is not revisable. On the other hand, the chosen ruler must still consult the ruled, but with no compulsory consequences. A piece is missing in the puzzle. Having bay'a without any consultation following it would seem more consistent, even if it is less attractive from the procedural viewpoint. According to shura mu'lima, once the ruler is elected, he is still binded to consult people or experts, even if he has no duty to really hear them. There is no threshold of political deafness above which he might lose his legitimacy. Therefore, the insistence on consultation seems unclear.[59] A coherent and unified account of these two concepts would be better.

The missing link comes from the second view, which assimilates shura to deliberation. It is called *shura mulzima* (binding consultation). It puts a stronger emphasis on the verse (42:38). Thus, Maududi notes that the Quran does not say: "They are consulted in their affairs", but says instead: "They conduct their affairs by mutual consultations". [60] The latter formulation indicates that mutual consultations are the method of decision-making. Consultations and decision are not separated. In other words, shura means shura mulzima. What's more, this second view dismisses the reading of the verse (3:159) made by the proponents of shura mu'lima: even if the Prophet was the ultimate decision-maker, his practice testifies that he had

implemented the opinion of his companions even when it was against his own views. For example, at the consultation that took place before the battle of Uhud over the location of the battlefield, he gave precedent to the opinion of the majority of Muslims over his own.[61]

The deliberative interpretation of shura provides the missing link between decision rule and speech rights: shura mulzima is part of shari'a. Therefore, if the ruler does not sufficiently take into account the outcome of shura, then he violates shari'a itself. By transgressing the limits of shari'a, the ruler becomes a taghut. Obedience to him is a sin. In particular, he breaks his bay'a. Thus, the machinery elaborated at the beginning can run quite smoothly: there is always a future decision to be made by the Umma. To do it properly, the Umma requires procedural rights. These rights become part of the Islamic political system, and they are also naturally limited by their justifying values.

First, shura mulzima allows a better matching between bay'a and shura. Second, it takes seriously the reason why the ruler cannot rightfully appoint his successor, namely, that government is a contract between a ruler and the Umma, not an absolute property of the ruler.[62] Last but not least, it connects compellingly the political regime with humans' status of vice-regents of God.[63] Thus, political and metaphysical principles cohere with each other. It would seem strange that humans enjoy a status that they immediately alienate to someone else. Our trouble with shura mu'lima parallels Mill's objection against self-enslavement: if vice-regency is a defining feature of humans, they cannot renounce to it *ad vitam aeternam*. In other words, shura mu'lima, as well as self-enslavement, does not take the permanence condition seriously.

c. The controversial case of freedom of political association.

In particular, the ruler must preserve the right to political association. However, this last procedural right is far from being consensual among contemporary Islamists. The question of the legality (according to shari'a) of political parties is much disputed. A first view rejects

political parties on the ground that they divide the Umma. The Umma is united under God. The Umma is not supposed to be divided because all her members have the same end: obeying God. Therefore, allowing political parties would unnecessarily foster division *(fitna)*. Political parties pursue parochial interests at the expense of Islamic goals. Party politics express factionalism (*hizbiyya*).[64]

In many respects, this critique echoes a classical objection against the pluralistic model of democracy. In a nutshell, according to the pluralistic model, the outcome of the political process must reflect the existing preferences of citizens. The procedure only aims at aggregating them. Critics of this model warn against its potential degeneration into a tyranny of factions (either of the majority or minorities). They argue that the process must instead transform private preferences and make them in adequation with the interest of all participants.[65]

Islamic advocates of the right to political association follow a parallel line of argumentation. They agree with the objection against factionalism. Nevertheless, they still argue that political associations are necessary to pursue Islamic goals and that these associations must not fall under the control of the state.[66] Indeed, alienating the right to political association to the state threatens humans' status of vice-regents of God. This argument follows the same pattern as in the other cases: Islamic values justify and constraint freedom of political association.

7. An internal critique: who speaks for God?

Finally, we should show a limitation of these two Islamic models, shura mulzima and mu'lima, from an internal perspective. This internal critique parallels the internal critique against proceduralism. We saw that the duty of application of shari'a was the foundation of the Umma's political power. It implies that the Umma cannot make any decision against the

shari'a, since this would defeat the justification allowing her to participate politically. The shari'a is over all of the Umma's decisions. When the injunctions of the Quran and the Sunna are straightforward, there is no problem. But troubles appear when these injunctions are open to multiple and conflicting interpretations. In this case, the disagreement cannot be overcome with a vote precisely because a decision must be taken in an issue in which the Umma has no right to decide for herself. We cannot invoke the previous justification of the empowerment of the Umma, which is that men are vice-regents of God. Likewise, a studious effort of interpretation *(ijtihad)* may be led by some religious experts, but this is not sufficient for the extreme case when arguments of all parties have been exhausted and disagreement still persists, even within this body of experts. Indeed, the implementation of a procedure of voting within this body cannot be justified with the arguments used to justify the right to vote of the overall Umma.[67]

This limit on Islamic theory is analogous to the limit on procedural theory presented above. In the latter, the problem comes down to the fact that future polities are absent and need people living in present polities to preserve their rights. In the case of Islamic theory, the problem comes down to the fact that God does not specify the meaning of his injunctions in all particular cases. The "right of God" *(huquq Allah)* must be absolutely preserved, but the content of what must be preserved is ambiguous. The Supreme Court's claim to preserve procedural rights is ultimately undermined by the fact that it does not enjoy any special link to future polities. Likewise, the possible religious experts of Islamic regimes do not enjoy any special link to God that would grant them a supreme and unconditional right to override ordinary decisions. The fundamental problem comes down to the fact that no earthly institution can claim an exclusive right to interpret religious texts. Echoing Massignon's paradoxical phrase, this objection consists in pointing out the difficulty of making a "theocratic" reading of a "secular" religion (Islam), which does not have any clergy. [68]

Notwithstanding, this critical assessment is not sufficient for rejecting these theories on

an internal basis. The fact that Revelation may present controversial passages is not sufficient for dismissing it as the basis of coercive law. This same argument would amount to saying that procedural rights do not exist as soon as they are disputed. This is not because procedural rights may be controversial that some pure majoritarianism should be preferred. The fact that the application of the rights of future polities may be ambiguous does not imply that future polities do not have rights. In both cases, a being has an overriding claim but remains absent (or more exactly, the way he is present does not allow lifting conflicting interpretations of his claims).

This does not go as far as to say that religious texts never speak for themselves, or that they do not have a self-evident meaning. Our charge is far less radical. We are only saying that sometimes, they do have a self-evident meaning and sometimes, they do not. Then, we are asking what ultimately happens when they do not. We are looking for the justification of the decision that will finally be taken. Our objection is simple. We only rely on common experience and commonsense. This does not commit us to any particular hermeneutics of revelation[69] or theory of religious knowledge.[70] Therefore, our objection is inclusive. It may be more easily understood and accepted by people with different perceptions of the nature of religion. Whatever an advocate of Islamic regimes thinks of the essence of the Quran, shari'a or fiqh, she will have to face the problem of persistent disagreement among people she accepts to view as reasonable.

There is still a possible reply to this objection. However, this reply is external to the models elaborated here. This answer consists in saying that in case of doubt, the opinion of the current ruler claims a practical priority. This argument restricts the ruler's loss of legitimacy to cases when he violates obvious and uncontroversial divine injunctions. This view draws from the Word of the Prophet: "The best of your rulers are those whom you love and who love you, who invoke God's blessings upon you and you invoke His blessings upon them. And the worst of your rulers are those whom you hate and who hate you, and whom you curse and who curse

you. It was asked: Should we not overthrow them with the sword? He said: No, as long as they establish prayer among you [that is to say, as long as they do not violate elementary divine requirements]. If you then find anything detestable in them, you should hate their administration, but do not withdraw yourselves from their obedience."[71] This objection is external to our models because we follow a more demanding theory of government: only one un-Islamic decision is sufficient for undermining the legitimacy of the ruler. Obeying a single un-Islamic rule is equivalent to obeying taghut. The ruler must apply the whole shari'a in order to keep his legitimacy.[72]

8. Conclusion.

The point of this paper can be summarized with a metaphor borrowed from clothing: liberal and shura mulzima models view the protection of procedural rights as a necessary condition of a just regime. They also agree that this protection is not sufficient. Proceduralism must not remain naked. It must be dressed with background moral values. These justify and limit the process at the same time. However, liberal and shura mulzima theories disagree over the dress that proceduralism should wear. For the first, the dress consists in the value of autonomy, entailing liberal rights. For the second, it consists in the principle of obedience to God, entailing shari'a. Said more plainly, to the question: "Is shura mulzima compatible with constitutional democracy?" our answer is: it depends on the stipulations of the constitution considered. If these are procedural ones, the reply is essentially yes, whereas if these are liberal ones, the reply is essentially no. Instead of liberal constitutional limitations on the process, shura mulzima places her own constitutional limitations drawn from shari'a.

Naturally, we do not mean that the convergence of these two regimes is reduced to procedural rights. Liberal rights and shari'a can themselves overlap. Just to take an uncontroversial example, both highly value the right to a fair trial, which is not protected by

proceduralism. They may disagree over the features of a fair trial, but all will recognize it. They will not say this right is overridden by procedural rights. They will not find justified the trial of the Athenian generals of the battle of Arginusae. To take a more complicated example, the non-application of shari'a to non-Muslims can itself be inferred from shari'a. In this case, the application of shari'a consists in refraining from applying to non-Muslims the divine prescriptions applicable to Muslims. However, in this paper, our aim is not to engage in an exhausting inventory of punctual convergences on substantive issues. We rather want to focus on the structural consequences of the strategy of justification of each form of government.

Table 1 offers an overall picture of this comparative study. It neglects significant nuances discussed in the body of the text. It is difficult to reduce the complexity of an original thought to few boxes. They are sometimes filled with no explanation in the body of the text, hoping that it is sufficiently self-evident. We simply hope that they can help to make sense of oxymorons like "theodemocracy" or "secular theocracy", which motivated the paper.

		Process-independent standard?	Repeated elections?	Limitation on outcomes	Justification for and limitation on election(s)	Internal critique of limitation	Who appoints the ruler?
Western Political theory	Minimal — Pure majoritarian	No	No	None	None	None (tautological justification)	People
	Minimal — Procedural	No	Yes	Procedural rights	Repeated elections	Future polities are absent	People
	Liberal	Yes	Yes	Procedural+ Liberal rights	Status of voters (autonomy)	Disputed interpretation of rights	People
Islamic political theory	Shura mu'lima	Yes	No	Shari'a	Status of voters (vice-regency)	God is "absent"	People
	Shura mulzima	Yes	Yes	Procedural rights+ Shari'a	Status of voters (vice-regency)	God is "absent"	People

Table 1: comparison of political theories.

[1] Recent contributions to this dialogue include N. Feldman, *After Jihad: America and the Struggle for Islamic Democracy* (Farrar, Straus & Giroux, 2003), K. Abou El Fadl (edited by J. Cohen and D. Chasman) *Islam and the Challenge of Democracy* (Princeton: Princeton University Press, 2004), M. A. Muqtedar Khan, *Islamic Democratic Discourse: Theory, Debates, and Philosophical Perspectives* (Lexington Books, 2006). However, this dialogue is much older. See for example M. Abduh, "The Despotic Government" *Misr* 14 February 1879 (cited in A. S. Tamimi, Democracy in Islamic Political Thought, [Lecture given at the Belfast Mosque in October 1997]

http://www.iol.ie/~afifi/Articles/democracy.htm), see also M. Iqbal, "The Principle of Movement in the Structure of Islam" in *The Reconstruction of Religious Thought in Islam* (1930) (reprinted by Kitab Bhavan, 2000). For surveys, see A. S. Tamimi, "Islam and Democracy from Tahtawi to Ghannouchi" *Theory Culture Society*.2007; 24: 39-58, A. Hourani, *Arabic Thought in the Liberal Age 1798-1939* (Cambridge: Cambridge University Press, 1983), H. Enayat, *Modern lslamic Political Thought*, (University of Texas Press, 1982), L. Binder, *Islamic Liberalism: a Critique of Development Ideologies*. (Chicago: University of Chicago Press, 1988).

[2] A. Maududi, "Political Theory of Islam" in B. Gupta and J. Mohanty (ed.) *Philosophical Questions: East and West*, (Rowman & Littlefield, 2000), p.230.

[3] L. Massignon, *La Passion d'Al-Hallaj*, (Paris: Geuthner, 1922), p. 719.

[4] It should be recalled that Islamic political theories are not the only ones that provide mixed evaluations of democracy. For critics from other political theories, see e.g. R. Dahl, *Democracy and its Critics*, (New Haven: Yale University Press, 1989), part II.

[5] See A.L. Lowrie, *Islam, Democracy, the State and the West: A Round Table with Dr. Hasan Turabi*. (Tampa: University of Florida Press, 1993). See also « Buts et méthodes du FIS » *Congres du « Martyr Abdelkader Hachani »*, 2002, p.7 http://fisweb.fisweb.org/moutamar/rm/ButsetMethodes.pdf. (The FIS (Islamic Salvation Front) was an Algerian political party supporting the introduction of shari'a).

[6] For example, see Y. Qaradawi: "since Islam is a comprehensive system of `Ibadah (worship) and Shari`ah (legislation), the acceptance of secularism means abandonment of Shari`ah, a denial of the Divine guidance and a rejection of Allah's injunctions. (...) the call for secularism among Muslims is atheism and a rejection of Islam. Its acceptance as a basis for rule in place of Shari`ah is a downright apostasy." Y. Qaradawi, *How the Imported Solutions Disastrously Affected Our Muslim Nation.* http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-EnglishAsk_Scholar/FatwaE/FatwaE&cid=1119503545396pp 113-4

[7] Nonetheless, it should not be forgotten that religion and politics can also be closely intertwined in established democracies. For example, the Church of England is the established church in England and, policy-making in the United States is sometimes influenced by religious discourses. On the other side, as explained in section 5 of the paper, Maududi and Qutb's Islamist movements do not ask for the control of the state by religious figures.

[8] See e.g. S. Qutb, *Social Justice in Islam.* transl. John B. Hardie, revised by Hamid Algar. (Oneonta, NY: Islamic Publications International, 2000), *In the Shade of the Quran (Fi Zilal al-Quran)* 1954, *Milestones* (Kazi Publications, 1964). For an analysis of Qutb's thought, see A. S. Mousalli, *Radical Islamic Fundamentalism: The Ideological and Political Discourse of Sayyid Qutb.* (Beirut: American University of Beirut Press, 1992), R. L. Euben, *Ennemy in the Mirror: Islamic Fundamentalism and the Limits of Modern Rationalism.* (Princeton: Princeton University Press, 1999), ch. 3.

[9] Of course, this trend of Muslim thought is not the only one that could enlighten the relationship between Islam and democracy. For the views of other Muslims, see C. Kurzman (ed.) *Liberal Islam: A Source-Book*, (Oxford: Oxford University Press, 1998), L. Diamond, M. F. Plattner and D. Brumberg (ed.) *Islam and Democracy in the Middle East*.(Baltimore: John Hopkins University Press, 2003) pp.193-267, A. Filali-Ansary*, L'Islam est-il hostile á la laïcité?*, (Actes Sud, France, 2002), M. S. al-Ashmawy, *L'Islamisme contre l'Islam* (Paris: Editions la decouverte, 1989), K. Abou El Fadl, op. cit. In particular, for Shi'i viewpoints, see for example A. Soroush, *Reason, Freedom and Democracy in Islam*, (Oxford: Oxford University Press, 2000), R. Khomeini and H. Algar, *Islamic Government: Governance*

of the Jurist, (Alhoda, 2002), A. Vaezi, *Shia Political Thought*, (London: Islamic Center of England, 2004).

[10] e.g. respectively, J.H. Ely, *Democracy and Distrust: a Theory of Judicial Review* (Cambridge: Harvard University Press, 1980), R. Dahl, op. cit.

[11] e.g. R. Dahl, op. cit. p. 97. However, Ely does not provide any foundation to democracy external to the constitution. See M.C. Dorf, "Putting the Democracy in Democracy and Distrust: The Coherentist Case for Representation Reinforcement" (September 1, 2004). *Columbia Public Law Research Paper* No. 04-77. Available at SSRN: http://ssrn.com/abstract=602541

[12] See e.g. N. Feldman, op. cit., G. Kramer, "Islamist Notions of Democracy", *Middle East Report*, Vol. 23, No. 4, Issue 183 (1993), p. 2, H. Goddard, "Islam and Democracy", *Political Science Quarterly*, Vol. 73, No. 1, January/March 2002, pp. 3-9. G. Fuller, "Islamists in the Arab World: The Dance around Democracy" *Carnegie Foundation,* 2004.http://www.carnegieendowment.org/files/cp49_fuller_final.pdf

[13] For example, an objection of this kind is formulated by the Algerian intellectual Muhammad Hachemaoui: "democracy is before everything a 'government of freedom' based on the (moral and social) autonomy of the individual, a philosophical conception that is in principled contradiction with the Islamist doctrine that preaches the sovereignty of God (al hakimiyya li Allah) on her followers" (translation from French is mine). M. Hachemaoui, "Démocratie sans Démocrates ?" *El Watan*. (2006, April 8) http://www.elwatan.com/spip.php?page=article&id_article=40008

[14] This may partly be because the conception of democracy used is not detailed. See for example Abdolkarim Soroush: "We better make at the outset a preliminary distinction between Political (otherwise called Minimal, Procedural or Formal) democracy and the Liberal democracy. Whereas the former is less problematic in terms of compatibility with Islam the latter creates all sorts of problems and questions." *'Islam and Democracy' conference*, Mashhad, Iran, dec.2004 http://www.drsoroush.com/English/By_DrSoroush/E-CMB-20041126-Islam_and_Democracy-conference_in_Mashhad.htm. See also the views of Rachid Ghannouchi: "He [Rachid Ghannouchi] is also unequivocal about his conviction that an Islamic model of democracy, which would be born out of

a marriage between procedural democracy and Islamic values, is possible." in A. S. Tamimi, *Rachid Ghannouchi: a Democrat within Islamism* (Oxford University Press, 2001). Unfortunately, Soroush nowhere develops his argument and Ghannouchi does not specify the precise terms of this marriage.

[15] J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), pp. 385-394.

[16] However, when dealing with political justice at the global level, Rawls discusses the case of an imaginary non-liberal but still decent Muslim society, called "Kazanistan". Nevertheless, he does not consider in detail how religious citizens living in this society relate to the democratic component of his conception of justice. J. Rawls, *The Law of Peoples*, (Cambridge, Mass.: Harvard University Press, 1999).

[17] For this view, see for example N. A. Hashemi, "Change from Within", in K. Abou El Fadl (edited by J. Cohen and D. Chasman) *Islam and the Challenge of Democracy,* op.cit.

[18] Of course, other factors can explain the absence of democracy in some Muslim countries and empirically, the claim that the Muslim religion is an obstacle to democracy is disputed. See e.g. A. C. Stepan and G. B. Robertson, "An "Arab" More Than a "Muslim" Democracy Gap", *Journal of Democracy*, Vol. 14, No. 3, (July 2003), pp. 30-44. However, these points do not contradict the claims of this paper.

[19] This project may also have a theoretical value, if moral pluralism makes impossible to find a single justification to liberal political values. Indeed, in this case, it becomes necessary to find justifications to liberalism that are specific to each particular moral perspective. For discussion on this point, see A. Bilgrami, "Secularism and Relativism." *boundary 2, 31*(2), (2004). 173-196.

[20] On the demands of political liberalism of Muslim citizens living as minorities in liberal democracies, see A. F. March, "Liberal Citizenship and the Search for an Overlapping Consensus: The Case of Muslim Minorities", *Philosophy and Public Affairs*, Vol. 34, No. 4 (Fall 2006), "Islamic Foundations for a Social Contract in non-Muslim Liberal Democracies", *American Political Science Review*, Vol. 101, No. 2 (May 2007).

[21] For example, see J. Cohen, "Minimalism About Human Rights: the Best We Can Hope For?", *Journal of Political Philosophy* Vol. 12, No. 2, pp.190-213 (June 2004), J. Rawls, "The Law of Peoples", op. cit.

[22] K. Popper, *The Open Society and Its Enemies.* Vol.1 (London: Routledge, 2003), p.132, A. Przeworski, *Democracy and Market* (Cambridge: Cambridge University Press, 1991), p.10.

[23] For a critical examination of the alleged minimalism of "minimalist" definitions of democracy, see also G. O'Donnell, "Democracy, Law, and Comparative Politics" *Studies in Comparative International Development*, Spring 2001, Vol.36, No.1, pp. 7-36. In fact, "minimalist" theories are minimalist with respect to theories like liberalism, presented below.

[24] The notion of procedural rights is close to Robert Dahl's notion of "primary political rights", except that we do not distinguish between rights essential to the democratic process (what Dahl calls "primary political rights") and those external to the process but necessary to it. R. Dahl, *Democracy and its Critics*, (New Haven: Yale University Press, 1989), p.178.

[25] Basically, the problem of self-enslavement is equivalent to ours: on the one hand, a man can be assimilated to a polity with only one member. Conversely, since the polity is considered only as a whole and without considering its components, then it can be viewed as a single person. However, in general, there are also many differences between decisions of a polity and decisions of individuals. For example, contrary to individuals, polities need rules (and a constitution) to take decisions. Notwithstanding, these distinctions are irrelevant for our discussion. See S. Holmes, "Precommitment and the Paradox of Democracy" in *Passions and Constraint: on the Theory of Liberal Democracy* (Chicago: University of Chicago Press, 1995), pp.175-176.

[26] J.S. Mill, *On Liberty*, 1859.

[27] For further developments on these questions of personal identity, see D. Parfit, *Reasons and Persons,* (Oxford: Oxford University Press, 1984), part III. See in particular pp. 317-321 and pp. 326-329.

[28] For a defense of freedom of political speech along this line, see A. Meiklejohn, *Freedom of Speech and its Relation to Self-Government*, (New York: Harper & Brothers, 1948).

[29] J.H.Ely, op. cit.This is not a possible justification of all the decisions of the Supreme Court, as will be seen below.

[30] See for example C. Pateman, "Freedom and Democratization: Why Basic Income is to be Preferred to Basic Capital", in K. Dowdingm J. de Wispelaere and S. White (ed.) *The Ethics of Stakeholding* (Basingstoke: Palgrave Macmillan, 2004).

[31] This is an allusion to Jefferson's reply to Madison: "The dead have neither powers nor rights …"

[32] For discussion on these questions, see for example S. Holmes, op.cit.

[33] S. Freeman, "Original Meaning, Democratic Interpretation, and the Constitution" *Philosophy and Public Affairs*, Vol. 21, No. 1. (Winter, 1992), pp. 3-42 ,pp.30-31; C. Brettschneider, "The Value Theory of Democracy", *Politics,Philosophy & Economics*, Vol. 5, No. 3, 259-278 (2006), *Democratic Rights:The Substance of Self-Government*, (Princeton: Princeton University Press, 2007).

[34] In particular, this distinction between procedural rights and their liberal justification does not correspond to the distinction between process and substantive values. On the one hand, procedural rights are not merely instrumental to the preservation of liberal rights. On the contrary, they also express the substantive liberal values of political freedom. On the other hand, the liberal justification of the procedure does not only entail process-independent norms. For example, additionally to the legal right to free expression, this justification can also entail moral rules on the procedure of political deliberation itself. On these points, see J. Cohen, "Procedure and Substance in Deliberative Democracy" in J. Bohman and W. Rehg (ed.) *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, Mass.: MIT Press, 1998).

[35] The precisions "might", "obvious way" and "easily" are important. We do not consider opinions arguing that rights to intimacy or to reproductive freedom are fundamental conditions for political participation. See e.g. D. Held, "The Possibilities of Democracy", *Theory and Society*, Vol. 20, No. 6 (Dec., 1991), pp. 875-889, p. 882.

[36] B. Constant, *The Liberty of Ancients Compared with that of Moderns*, 1816.

[37] On this point, see also T. Ramadan, *Islam, the West and the Challenges of Modernity*. (Leicester: The Islamic Foundation, 2003), pp. 18-24.

[38] It is important to recall that in our context, God's law *(shari'a)* corresponds to a large set of rules or orientations, virtually covering all areas of life. It is not reduced to a penal code.

[39] "Islam (…) altogether repudiates the philosophy of popular sovereignty and rears its polity on the foundations of the sovereignty of God and the viceregency of man." A. Maududi, "Political Theory of Islam" in B. Gupta and J. Mohanty (ed.) *Philosophical Questions: East and West*, (Rowman & Littlefield, 2000), p.230. On the idea of *tawhid al-hakimiya*, see also S. Qutb, *Milestones*, ch.6 and A. Maududi, *Towards Understanding Islam*. transl. K. Ahmad. (Leicester, UK:The Islamic Foundation, 1979) (First edition: 1932), ch.1.

[40] S. Habib, "Pour une Vision Politique Islamique." *CCFIS Archives*. 2001. The paper can be found on the website of the Islamic Salvation Front : http://ccfis.fisweb.org/dispcol.asp?art=171&ccolumn=11

[41] Ibn al-Qayyim, *I'lam al-Muwaqqi'in,* Vol.1 p. 50, cited in A. Maqdisi, "Believe in Allah and Disbelieve in Taaghoot." transl. A. al-Maleki. (date unknown). A. Maqdisi is a leading figure of salafi jihadism. http://salafiyyah-jadeedah.tripod.com/Legislation/Disbelieve_in_Taaghoot.htm

[42] A. Maududi, *Tafheem ul Quran*, 1979. See his commentary of (Quran, 4:60): http://www.translatedquran.com/description.asp?sno=4&tno=397&max=1

[43] Islam endorses the commandments given to Moses, except the one on Shabbat.

[44] See for example J. Rawls, "Kantian Constructivism in Moral Theory", *The Journal of Philosophy*, Vol.77, No.9 (Sep., 1980), pp. 515-572, p.525.

[45] Observe that there also exist ends that violate the inclusion and permanence conditions.

[46] However, it does not mean that procedural rights have to be *instrumental* in the realization of the end e_M. They may not be viewed only as means towards the end e_M. The inclusion and permanence conditions may well be *part* of e_M. This is the case with the liberal end e_L. The electoral process expresses the capacity for self-rule of individuals (see also the endnote above). This is also the case with

the Islamic end e_1 , because in this case, the process represents an act of submission to the will of God. The action of applying God's law through the procedure has an intrinsic religious value.

[47] "I have only created Jinns and men, that they may serve Me." Quran (51:56), transl. Yusuf Ali.

[48] Historically, there are four ways of appointing the caliph: by bay'a, by nomination, by force and by divine text. For discussion of the three other ways, see L. Abdul-Sabour, *Islamic State: The only solution* (1997) http://www.islamic-world.net/islamic-state/Islamic-state.doc

[49] We do not enter in the discussion of the possible distinction between the bay'a received by him as a Prophet and the bay'a received by him as a political leader.

[50] Al-Bukhari reported about Abdullah ibn Hisham, who witnessed the Prophet , that his mother Zaynab, daughter of Hameed, took him to the Messenger of Allah and said: "O Messenger of Allah, take his pledge", the Prophet said: "He is young" and rubbed (wiped) his head and said du'a [prayer] for him.

[51] L. Abdul-Sabour, op.cit., pp.28-29

[52] Admittedly, this assumption is not obvious at all, especially when there are more than two options available to the polity. For discussion of these problems, see for example W. Riker, *Liberalism against Populism: a Confrontation between the Theory of Democracy and the Theory of Social Choice* (San Fransisco: WH Freeman, 1982).

[53] See for example Taqiuddin an-Nabhani (founder of the Hizb ut-Tahrir, an international organization advocating for the establishement of an Islamic state): "The appointment of the next caliph, by the existing caliph, is not included in the caliphate contract because he does not have the right to contract it, and because the caliphate is a right of the Muslims, not the existing caliph, and they contract it to whom they wish. So the appointment of the next caliph... by the existing caliph is not correct, because he gives something which he does not posses. Giving something, which is not possessed by the giver is illegal." *Islamic Personality (al-Shaksiyyah al-Islamiyyah).* (London: al-Khilafah Publications, 2005) (1st edition: 1960).Vol.2, pp.31-32. In practice, it had also been another matter but again, this is irrelevant for our discussion.

[54] Quran, transl. Yusuf Ali.

[55] S. Qutb, *In the Shade of the Quran (Fi Zilal al-Quran)* 1954. See his commentary of (Quran, 42:38).

[56] Ali lbn Muragi, *Kanz Al-'umal*, hadith No.14359, Vol.5, p.778.

[57] For a review of the debate shura mu'lima/mulzima, see for example R. El-Solh, "Islamist Attitudes towards Democracy: A Review of the Ideas of al-Ghazali, al-Turabi and 'Amara" *British Journal of Middle Eastern Studies*, Vol.20, No.1 (1993), pp.57-63.

[58] This is the viewpoint of the majority of jurists of the classical period. See K. Abou El Fadl (edited by J. Cohen and D. Chasman) *Islam and the Challenge of Democracy,* op.cit.

[59] Many classical jurists still claim that the just ruler takes consultation into account, even if he is not binded by it. See e.g. Al-Ghazali: "despotic, non-consultative, decision-making, even if from a wise and learned person is objectionable and unacceptable." Abu Hamid Al-Ghazali, *Fada'ih al-Batiniyya,* ed. 'Abd al-Rahman (Cairo: Dar al-Qawmiyya, 1964), 186, 191; cited in K. Abou El Fadl (edited by J. Cohen and D. Chasman) *Islam and the Challenge of Democracy,* op.cit. See also the viewpoint of the reformist Muhammad Rashid Rida, who affirms that the caliph has a duty of non-binding consultation, but that if the caliph is unjust, he should be deposed. M. R. Rida, *The Caliphate or the Greater Imamate (Al-Khilafa aw-al-Imama al-'Uzma)* (Cairo, 1923), p. 29, cited in C. Mansour, *L'Autorite dans la Pensee Musulmane,* (Paris: Vrin, 1975), p. 135.

[60] A. Maududi, *Tafheem ul Quran*, op. cit. See his commentary of (Quran, 42:38):

http://www.translatedquran.com/description.asp?sno=42&tno=1319#61

[61] Of course, the Prophet did not follow the conclusions of the shura when they were against shari'a. He did not even consult them on matters of religion. This also implicitly holds for the ruler: the Umma gives bay'a to the ruler not merely to execute what the Umma decides, but to do this conditionally to the compliance of Umma's wants with the shari'a. Bay'a as well as shura are divine injunctions, and their outcomes must not threaten their justifications. See for example Qutb: "whenever revelation was received, of course, in the very nature of the case there was no room for consultation". S. Qutb, *Social Justice in Islam,* op. cit. p. 122.

[62] See T. an-Nabhani, op.cit.

[63] For discussion of the political implications of the vice-regency of Man, see also M. Ammara, "The Vicegerency of Man" *Islam Today*, No.13, pp. 59-62 (1995). The paper can be found on the website of the editor: http://www.isesco.org.ma/Islam.Today/Eng/13/P4.htm

[64] See e.g. M. al-'Anjaree, "Two Da'wahs and what a great Rift between Them", transl. U. Beecher, *Salafiyyah-Kuwait.blogspot.com* , Sept, 7, 2008.

http://www.assalafi.com/Articles/da'wah_sharee'ah_wa_siyaasiyyah_assalafi.pdf

[65] See for example J. Elster, "The Market and the Forum" in J. Elster, A. Hylland (dir.), *Foundations of Social Choice Theory*, (Cambridge: Cambridge University Press, 1986).

[66] For discussion on this issue, see A. Benhadj (ex n°2 of the Algerian Islamic Salvation Front), *The Islamic Parties in the Weighting of Democracy and Shari'a (Al Ahzab al-Islamiya fi mizan ad-dimokratiya wa as-shari'a)*, (Algiers: FIS publications, 1996).

[67] The question of epistemic justifications of voting (Condorcet jury theorem…) is left open.

[68] L. Massignon, op. cit.

[69] For a critique of the Islamist political agenda based on a sophisticated hermeneutics of the Quran, see N.H. Abu Zayd, *Rethinking the Qur'an: Towards a Humanistic Hermeneutics*. (Utrecht: Humanistics University Press, 2004).

[70] For a radical critique of religious states based on a complex theory of "expansion and contraction of religious knowledge", see A. Soroush, *Reason, Freedom and Democracy in Islam*, (Oxford: Oxford University Press, 2000). For a critique of Soroush's theory of religious knowledge, see A. Vaezi, op. cit. pp.197-209.

[71] Hadith reported by Muslim – Kitab al-Imarah 4573.

[72] This more demanding view is suggested by Qutb indeed: "he [the ruler] must derive his authority from his continual enforcement of the law [i.e. the shari'a]. (…) any dereliction of the law on his part means that he no longer has the right to obedience". S. Qutb, *Social Justice in Islam*, op.cit., p. 122.