

The Possibility of Liberalism in the Orthodox Sunni Islamic Polity

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In 1991, after the culmination of the international ideological battle of the Cold War, Francis Fukuyama an American academic claimed in a controversial article *The End of History and the Last Man* that the problems of political theory had subsided with a clear victory of liberal democracy over all philosophical alternatives, and that the march towards liberty and the liberal democratic vision of human rights was unstoppable. In many ways Fukuyama's assertions did appear self-evident – liberal democracies, despite their own problems, are open societies wherein inhabitants enjoy civil, political, and economic liberties and hence greater prosperity and general happiness¹. It would appear that liberal democracy was the End of History by empirical observation for at the very least, to quote Winston Churchill, “No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time².”

Fukuyama himself argues in a revised and more recent edition of his work, that Islamic governance does consist of an alternative to liberal democracy which is growing in the Islamic world – however, he argues, its influence is extremely limited not reaching in its influence to the boundaries of the West, and that in time liberalism will overcome Islam as the dominant political theory of the Islamic world. Fukuyama writes that “while a billion people are culturally Islamic – nearly one-fifth of the world's population – they cannot challenge liberal democracy in its own territory on the level of ideas”³. However, while much of the world has embraced the ideals of liberty and liberal democracy over the past two decades, and despite Fukuyama's liberal

¹ Fukuyama, Francis. *The End of History and the Last Man*. (New York City: Free Press, 2006), xxi.

² Hawkesworth, M.. *Encyclopedia of Government and Politics*. (New York: Routledge, 2003), 210.

³ Fukuyama, *The End of History*, 46.

triumphalism, the problems of political theory persist in the Islamic world which ultimately still accepts government authority as from God, and political legitimacy in the necessity of rule by the Divine law⁴. The Muslim world is the least democratic region of the entire globe according to the 2008 *Economist Democracy Index*, which recognizes no Muslim country in the world as a functioning liberal democracy and in fact claims that the majority of the world's authoritarian regimes are located in the Middle East and Northern Africa⁵, and Freedom House only recognizes two completely free Muslim countries: Mali and Senegal in Africa⁶. It was in this context that political scientist Samuel Huntington declared only a decade ago in, *The Clash of Civilizations*, that Islam had "bloody borders," and an underlying value system which far from being compatible with Western political liberalism would inevitably manifest itself in a clash of civilizations⁷.

In recent years, especially subsequent to the September 11th terrorist attacks and the War on Terror against an enemy, al-Qaeda, which American public officials have claimed seeks the reestablishment of an "Islamic caliphate," the institution of *sharia* or Islamic law, and the ushering in of an Islamic state, there has been much discourse on the alleged incompatibility of orthodox Islam with liberal democracy. An orthodox Islamic polity has been defined by many in the West as the antithesis of liberty. Former Pennsylvania Senator Rick Santorum reaffirmed the common premise that Islam and liberal democracy are incompatible in a speech at a the University of Nebraska February 17th 2009, claiming that under Islamic law "democracy could

⁴ Feldman, Noah. *The Fall and Rise of the Islamic State*. (Princeton: Princeton University Press, 2008), 9-12.

⁵ "The Economist Intelligence Unit's Index of Democracy." The Economist. www.economist.com/media/pdf/Democracy_Index_2007_v3.pdf (accessed March 14, 2009), 7.

⁶ "Map of Freedom 2008." Freedom House. www.freetheworld.com/2008/EconomicFreedomoftheWorld2008.pdf (accessed March 14, 2009).

⁷ Huntington, Samuel P. *The Clash of Civilizations and the Remaking of World Order*. (New York, NY: Simon & Schuster, 1998), 258.

not exist because Mohammed already made the perfect law⁸,” and Dutch Member of Parliament Greet Wilders has claimed that “if you look at the ideology of Islam it is a totalitarian ideology which controls all aspects of life,” and “at the end of the day we will lose our freedom because Islam wants nothing more than to submit other people.⁹” The assertion that an orthodox Islamic polity is antithetical to liberalism is not confined to legislators but even include the former president and vice president of the United States. For instance former President George W. Bush spoke of al-Qaeda's intention to establish a global Islamic caliphate many times, such as his September 5th 2006 address to the Military Officers Association in the White House:

They hope to establish a violent political utopia across the Middle East, which they call a Caliphate, where all would be ruled according to their hateful ideology. Osama bin Laden has called the 9/11 attacks, in his words ‘a great step toward the unity of the Muslims and establishing the Righteous ... [Caliphate].’ This Caliphate would be a totalitarian Islamic empire encompassing all current and former Muslim lands... These radicals have declared their uncompromising hostility to freedom¹⁰.

Bush constantly painted the War on Terror as a struggle between democratic liberalism on one side, and its enemies “Islamic radicals” or “Islamic fascists” bent on reestablishing an Islamic caliphate on another. In another example, Bush claimed in his farewell address on January 15th 2009 that “The battles waged by our troops are part of a broader struggle between two dramatically different systems. Under one, a small band of fanatics demands total obedience to an oppressive ideology, condemns women to subservience, and marks unbelievers for murder.

⁸ Gatz, Nicole. "Santorum speech excites crowd." Daily Nebraskan.

<http://www.dailynebraskan.com/news/1.1483422-1.1483422> (accessed March 14, 2009).

⁹ Quoted from "O'Reilly - Geert Wilders (2/23/09)." YouTube. www.youtube.com/watch?v=88bBiWV8AY (accessed March 14, 2009).

¹⁰ Alexander, Yonah, and Michael Kraft. *Evolution of U.S. Counterterrorism Policy*. (Wesport, CT: Praeger Security International, 2008), 307.

The other system is based on the conviction that freedom is the universal gift of Almighty God, and that liberty and justice light the path to peace. This is the belief that gave birth to our nation¹¹¹².”

The critique of Islam, or even a Caliphate, as being anti-liberal extends also into academics besides Fukuyama and Huntington wherein many scholars have written that Islam is inherently against democratic governance, and liberal ideas. For instance, political scientist Benjamin Barber offers his take on Islam and liberalism in his popular book *Jihad and McWorld*:

An empirical survey of existing governments in Islamic nations certainly affirms a certain lack of affinity between Islam and democracy. In nearly all Muslim nations, democracy has never been tried or has been pushed aside after unsuccessful experiments... although fundamentalism has often stood against tyranny, it has never created democracy. The historical record is poor enough to have some observers like John Waterbury to credit an “exceptionalist” thesis: that Islam creates an exceptional set of circumstances that disqualify Islamic countries from becoming democratic and fates them to an eternal struggle against the Enlightenment and its liberal and democratic children. Hilal Khashan

¹¹ "BBC NEWS | Americas | Full text: Bush's final speech." BBC NEWS | News Front Page. <http://news.bbc.co.uk/2/hi/americas/7832490.stm> (accessed March 14, 2009).

¹² Furthermore, Vice President Dick Cheney told *Meet the Press*' Tim Russert on September 10th 2006 that “The basic proposition for our adversaries -- and we ought to take a minute and focus on it -- they want to re-create the old caliphate that stretched from Spain all the way around to Southeast Asia. They want to topple the regimes that are there today,” and former CIA director Michael Hayden said on January 18th 2007 “I strongly believe [U.S. failure in Iraq] would lead to al Qaeda with what it is they said is their goal there, which is the foundations of the caliphate, and in operational terms for us, a safe haven from which then to plan and conduct attacks against the West. See "MTP Transcript for Sept. 10 - Meet the Press, online at MSNBC- msnbc.com." Breaking News, Weather, Business, Health, Entertainment, Sports, Politics, Travel, Science, Technology, Local, US & World News- msnbc.com. <http://www.msnbc.msn.com/id/14720480/> (accessed March 14, 2009). "Setting the Record Straight: Iraq Is The Central Front Of Al Qaeda's Global Campaign." Welcome to the White House. <http://georgewbush-whitehouse.archives.gov/news/releases/2007/05/20070503-6.html> (accessed March 14, 2009).

says simply “All of the... democratic prerequisites are lacking in the Arab world. Arab democracy along Western terms is wishful thinking¹³.”

Is the classical Muslim polity – the revival of the Islamic state or caliphate – intrinsically opposed to the basic assumptions of the political theory of classical liberalism which gave birth to the United States and United Kingdom of Great Britain in the sixteenth century? This inquiry will be the central focus of this paper. I will argue that an Islamic state – one which could be viewed as legitimate by the jurists of classical Islam – is indeed compatible with most if not all of the assumptions of classical liberalism and that a synthesis between the two is indeed possible. In making my case I will rely upon two basic arguments for classical liberalism – the argument for liberalism based in natural law and rights employed by John Locke primarily in his *Second Treatise on Government* and revived this century in Robert Nozick’s *Man, The State and Utopia* as well as the utilitarian justification of the classical liberal state inherent in John Stuart Mill’s *On Liberty*¹⁴. I believe both the natural rights and utilitarian arguments for the classical liberal state could be made through an Islamic framework. Furthermore I argue they have been made by Islamic political theorists and jurists historically in the Islamic world. Because political theory and governance are essentially branches of ethical and moral philosophy, it is important to examine these two moral justifications for what makes the classical liberal state legitimate. The eleventh century Muslim philosopher Averroes wrote in his most renowned philosophical treatise *Fasl al-Maqal* or the decisive word between philosophy and religion that two truths can never be in contradiction – and reason, sense-data, and veracious narration (including most

¹³ Barber, Benjamin. *Jihad vs. McWorld: How Globalism and Tribalism Are Reshaping the World*. (Chicago: Ballantine Books, 1996), 206-207.

¹⁴ These of course are not the only two arguments for liberalism – however the natural rights argument began with Locke, and the utilitarian refutation of Locke by Jeremy Bentham is one of the most famous alternate argument for liberalism. For a summary of the history of the debate between the natural law and utilitarian schools see Devine, Carol, Carol Rae Hansen, and Ralph Wilde. *Human Rights: The Essential Reference*. (Phoenix: Oryx Press, 1999), 3-57.

supremely revelation which is in turn confirmed by reason) were all means of knowing truth – hence any presupposed contradiction between two moral truths logically entails that one source of knowledge has misinterpreted or misunderstood the truth¹⁵. This will be my framework for analyzing the orthodox Islamic law and the precepts of classical liberal democracy – if liberal democracy can be confirmed via the aforementioned two arguments as a truly rationally moral and legitimate system then it must be compatible with the orthodox Islamic polity. The structure and organization of my argument will be as follows: I will first describe the nature of Islamic governance, and then argue that the nature of classical liberalism is not inherently contradictory to Sunni Islam; then I will argue that the political system of the Caliphate, supported by the majority of historical jurists of Sunni Islam also is not inherently anti-liberal.

Before continuing it is imperative in actually defining what classical liberalism, or liberal democracy, specifically consists of. While, most know the definition of democracy consists of popular sovereignty or choosing political leaders, *liberal* democracy goes further than this.

Daniel

Attempts at a compromise between Islam and liberal democracy have occurred in the past in both the Islamic world and Western academia. Most notable is the Islamic renaissance which occurred in late nineteenth century Egypt and included Muhammad Abduh¹⁶, Muhammad Rashid Rida¹⁷, Ali Abd al-Raziq¹⁸, and others. Moreover, since the Islamic revival which was

¹⁵ See Averroes. *Decisive Treatise and Epistle Dedicatory (Islamic Translation Series)*. (Lindon, Utah: Brigham Young University, 2002).

¹⁶ See Adams, Charles Clarence. *Islam and Modernism in Egypt: A Study of the Modern Reform Movement Inaugurated by MuHammad Abduh.* (New York: Russell&Russell Pub, 1968).

¹⁷ See Kurzman, Charles. *Modernist Islam, 1840-1940: A Sourcebook*. (New York: Oxford University Press, USA, 2002), 77-86 for a discussion of Muhammad Rashid Rida.

¹⁸ The famous author of *Islam wa Usul al-Hukm* in 1925 which argued that the Caliphate was unnecessary and that the secular state was compatible with Islam. See his translated “Message not Government, Religion not State.” In Kurzman, Charles. *Liberal Islam: A Sourcebook*. (New York: Oxford University Press, USA, 1998), 29-37. Also see his translated “The Problem of the Caliphate.” In Moaddel, Moaddel, and Kamran Talattof. *Modernist and*

swept the Middle East since the 1980s Islamic movements throughout the Arab and Muslim world has primarily identified themselves with accepting some sort of conception of democracy including such radical groups as Rachid Ghannouchi¹⁹ of the Algerian Salafi movement, Hezbollah, Hamas, and the Supreme Council for Islamic Revolution in Iraq²⁰. The Mufti of Egypt – the highest representative and chief jurist of Islam in the country – has even claimed that Islam can coexist with liberalism suggesting in a June 4, 2007 speech in London that

Muslims are free to choose whichever system of government they deem most appropriate for them. The principles of freedom and human dignity for which liberal democracy stands are themselves part of the foundation for the Islamic worldview; it is the achievement of this freedom and dignity within a religious context that Islamic law strives for²¹.

The scope of this paper is not to recount these arguments nor survey this literature. The vast majority Western discussions of Islam and liberalism have centered mostly on the idea of democracy, or occasionally market capitalism. Unfortunately, there is not much literature available on the relationship of Islam to modern liberal democratic conceptions of natural civil and human rights which ultimately – according to liberal theory – liberty, market capitalism, and democracy stem from. It will be the scope of this paper to stress this third aspect of liberalism especially and its compatibility with a Sunni Islamic state. In this part, I argue that neither the Qur'an nor the Sunnah forbid liberal political principles and often allow space for them.

Fundamentalist Debates in Islam: A Reader. (New York: St. Martin's Press, New York, 2000), 95-101.

¹⁹ See Tamimi, Azzam S.. *Rachid Ghannouchi: A Democrat within Islamism (Religion and Global Politics)*. (New York: Oxford University Press, USA, 2001).

²⁰ See Feldman, Noah. *After Jihad: America and the Struggle for Islamic Democracy*. (New York: Farrar, Straus and Giroux, 2004), 1-12.

²¹ Ali, Gomaa. "Islam and Modernity: A Speech Given by the Grand Mufti of Egypt Dr. Ali Gomaa ." Ali Gomaa - Grand Mufti of Egypt. <http://www.aligomaa.net/speeches.html> (accessed March 14, 2009).

ISLAMIC GOVERNMENT IN THE QUR'AN AND SUNNAH

The two sources of Islamic scripture are the Qur'an, defined by Sunni Islam as the uncreated Word of God as revealed to his Prophet Muhammad, and the *hadith*, or more wholly the *sunnah*, which contain both the spoken teachings of the Prophet Muhammad and his character attributes and example. The Qur'an does not contain one reference to the Arabic word for politics, *siyāsah*, which literally means administration of worldly affairs²². The Arabic *siyāsah* moreover bears little similarity to the classical notion of politics stemming from the Greek root *politēs* meaning citizenship²³, with the Arabic word emphasizing the management of the community, and the latter emphasizing membership in it. In fact, Arab philosophers translated Aristotle's notion of *zōōn politikan* as *haywān madani* substituting the word “political” for the word communal, originating with the Arabic root *m-d-n* meaning city, citizenship, civilization, and community, a word which expresses a greater congruence with the essence of the Aristotelian concept of citizenship or membership with the community²⁴. Hence, any search for politics in the Qur'an must first set aside preconceived notions of foreign and alien conceptions of politics in other traditions and concentrate on the socio-religious context of the Qur'anic text.

While the word *siyāsah* does not appear in the Qur'an, references to politics and governance do appear. The Qur'anic form of political discourse occurs under a different vocabulary. The Qur'an references *hukm* or rulership and governance, stemming from the Arabic

²² عربي عربي قاموس: العربي الباحث." عربي عربي قاموس: العربي الباحث. <http://www.baheth.info/all.jsp?term=%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9> (accessed April 18, 2009).

²³ Cohen, Edward. *The Athenian Nation*. (Princeton: Princeton University Press, 2002), 53. Cohen writes that Aristotle defines *politēs* as one who participates in the polis.

²⁴ عربي عربي قاموس: العربي الباحث." عربي عربي قاموس: العربي الباحث. <http://www.baheth.info/all.jsp?term=%D9%85%D8%AF%D9%86> (accessed April 18, 2009).

root *h-k-m* meaning to rule, to judge, to arbitrate, and to exercise wisdom²⁵. God refers to Himself as *al-Hakim* and *al-Hakīm* in the Qur'an, two of the Islamic ninety nine names of God, which mean “the Governor” and the “the Wise” respectively. The Qur'an also references the word *Malik*, another of God's names along with *Malik al-Muluk* meaning “the King” and “the King of Kings” respectively which come from the root *m-l-k* and relates to greatness, ownership, and lordship²⁶. The Qur'an furthermore employs the term *Sultan* a synonym of *Malik* which comes from the root *s-l-t* referring to power, proof, protection, and permission²⁷. Finally, three main political terms the Qur'an employs is *wali'* meaning protector, and close friend, *ulil amr* meaning those who are in authority or who issue commands²⁸, and *khalifah* or caliph meaning vicegerent or representative of God²⁹. Hence the Qur'anic discourse on politics must be seen in the framework of a different shade of meanings and terminology than other contexts such as classical Greece or post-Enlightenment America.

The Qur'an, like the Old and New Testaments, refers to God as the King of Kings, the ultimate authority, the owner of all of creation, and the protector of the believers. In terms of worldly governance, the Qur'an exhorts believers not towards any specific and detailed political system or state but mostly to general principles³⁰

²⁵ عربي عربي قاموس: العربي الباحث "عربي عربي قاموس: العربي الباحث". <http://www.baheth.info/all.jsp?term=%D8%AD%D9%83%D9%85> (accessed April 18, 2009).

²⁶ عربي عربي قاموس: العربي الباحث "عربي عربي قاموس: العربي الباحث". <http://www.baheth.info/all.jsp?term=%D9%85%D9%84%D9%83> (accessed April 18, 2009).

²⁷ عربي عربي قاموس: العربي الباحث "عربي عربي قاموس: العربي الباحث". <http://www.baheth.info/all.jsp?term=%D8%B3%D9%84%D8%B7> (accessed April 18, 2009).

²⁸ عربي عربي قاموس: العربي الباحث "عربي عربي قاموس: العربي الباحث". <http://www.baheth.info/all.jsp?term=%D9%88%D9%84%D9%8A> (accessed April 18, 2009).

²⁹ عربي عربي قاموس: العربي الباحث "عربي عربي قاموس: العربي الباحث". <http://www.baheth.info/all.jsp?term=%D8%AE%D9%84%D9%8A%D9%81%D8%A9> (accessed April 18, 2009).

³⁰ See Hamid, Eltigani Abdelgadir. *The Qur'an & Politics*. (Herndon, VA: International Institute of Islamic Thought, 2004) for an explanation of the political concepts of the Qur'an.

kingship of King David³¹. The first principle of the Qur'an's political themes is the importance of trusts (*amanat*) being guarded, it states that political authority is a trust given by God which must not be betrayed and must be executed with justice: "Surely God commands you to make over trusts to those worthy of them, and that when you judge between people, you judge with justice." (4:58)³² and "O you who believe, be not unfaithful to God and to the Messenger, nor be unfaithful to your trusts" (8:27)³³.

Muslims are called to "Obey God, obey the Prophet, and obey those who are in authority amongst you" (4:59)³⁴ hence it is a sacred duty to obey even secular authority. This duty is conditioned by the command to "Fear God and Obey Me, and follow not the bidding of those that are extravagant, who make mischief in the land, and who do not mend their ways" (26:150-152)³⁵. Bernard Lewis remarks that this notion of conditional obedience is more radical than the Enlightenment ideal of the right of revolution, for disobedience to injustice is a right in liberalism, while it is a duty in the Qur'an. The Qur'an also commands that secular laws cannot contradict divine laws, "And rule them by that which God has revealed to you" (5:48)³⁶, and "And he who does not rule by what God has revealed, it is they who are the disbelievers, and he

. The Qur'an describes man as the *khalifah*,

literally the representative of God on earth, a term it also specifically employs to describe the

³² "The Holy Qur'an: The Women." University of Virginia Library. <http://etext.virginia.edu/etcbin/toccer-new2?id=HolKora.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&division=div1> (accessed April 18, 2009).

³³ "The Holy Qur'an: The Accessions." University of Virginia Library. <http://etext.virginia.edu/etcbin/toccer-new2?id=HolKora.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&division=div1> (accessed April 18, 2009).

³⁴ "The Holy Qur'an: The Women." University of Virginia Library. <http://etext.virginia.edu/etcbin/toccer-new2?id=HolKora.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&division=div1> (accessed April 18, 2009).

³⁵ "The Holy Qur'an: The Poets." University of Virginia Library. <http://etext.virginia.edu/etcbin/toccer-new2?id=HolKora.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&division=div1> (accessed April 18, 2009).

³⁶ "The Holy Qur'an: The Dinner Table." University of Virginia Library. <http://etext.virginia.edu/etcbin/toccer-new2?id=HolKora.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&division=div1> (accessed April 18, 2009).

who does not rule by what God has revealed they are oppressors” (5:44-45)³⁷. The Qur'an also extols rule by consultation or *shura* in the verse “and consult them (the people) in their affairs, then when you take a decision trust in God” (42:38)³⁸.

Although the Qur'an states that divine laws must be enforced in the worldly state, it does not always specify exactly how. For instance, although the divine law must apply to Muslim believers, the question arises whether the “people of the book” the Qur'anic term for the Jews and Christians, must be subject to the Islamic *sharia*. Moreover, only certain punishments for certain sins are mentioned as requiring worldly punishment by the worldly state, known as *al-hudud* or the limits akin to the secular concept of crimes. Punishing such crimes by use of the coercive powers of the state are considered an act of worship and they include specifically drinking alcohol, theft, highway robbery, fornication, adultery, falsely defaming the honor of a chaste woman, and finally unmentioned by the Qur'an but supported by the majority of classical jurists, apostasy. Other than the *hudud*, the Qur'an gives the state, specifically the Prophet Muhammad as the ruler of the original Muslim community, the responsibility of collecting the various forms of obligatory taxes such as the poor-due (*zakat*) or the spoils of war (*khums*), and of conducting international relations in a manner consistent with the divine law³⁹.

Political aspects appear not only in the Qur'an but in the Sunnah as well. The Prophet Muhammad, like David and Salomon before him, was both a religious and political leader. The

³⁷ Ibid.

³⁸ "The Holy Qur'an: The Counsel." University of Virginia Library. <http://etext.virginia.edu/etcbin/toccer-new2?id=HolKora.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&div1=div1> (accessed April 18, 2009).

³⁹ See Khan, M. A. Muqtedar. *Islamic Democratic Discourse: Theory, Debates, and Philosophical Perspectives (Global Encounters)*. (New York: Lexington Books, 2006), 27-28 for a discussion on the obligations of political authority according to the Qur'an; moreover see Vikor, Knut S.. *Between God and the Sultan: A History of Islamic Law*. (London: C Hurst & Co Publishers Ltd, 2005), 282-298 for the best discussion on the *hudud* laws in English.

Prophet was the final arbiter and the ruler of the Muslim nation or *ummah* which originated in the city-state of Madinah, but then expanded during the Prophet's lifetime to the entire region of *hijaz* on the Arabian Peninsula⁴⁰. Hence, the words and actions of Muhammad are an extremely important source of understanding Islamic political theology.

Justice is a major theme of Muhammad's political teachings, such as his statements that “One day of a just ruler in office is better than sixty years of worship” and “the most beloved in the eyes of God is the just ruler, and the most hateful in His eyes is the unjust ruler.” In an almost Burkean sense, anarchy and revolution are condemned by the Prophet, and it is emphasized that bad rule is better than no rule. The Prophet forbade withdrawing allegiance to authority, even unjust authority, with the sole exception of a ruler who apostasies. A famous hadith of Muhammad regarding this is “Sixty years of a despotic ruler are better than one single night without a ruler⁴¹.” This is also reminiscent of the teachings of St. Thomas Aquinas who notes that oftentimes slaying tyrants simply leads to greater evils⁴². Although the Prophet emphasizes the need for Muslims to obey authority, he also reminds believers that the ultimate authority is with God, and commands his followers to disobey authority if it commands injustice or sinfulness, he says:

Leaders shall rule you after me, the god-fearing of them ruling you with god-fearingness and the profligate ruling you with wickedness. So listen to them and obey them in

⁴⁰ See Lings, Martin. *Muhammad: His Life Based on the Earliest Sources*. (New York: HarperCollins Publishers Ltd, 1983) for a comprehensive biography of the Prophet Muhammad.

⁴¹ Ibid.

⁴² Islahi, Abdul Aziz. "Ibn Taymiyyah on the Need for a State." Hoor al-Ayn. www.hoor-al-ayn.com/articles/Jihad%20&%20Politics/Need%20for%20State%20-%20Ibn%20Taymiyyah.pdf (accessed April 18, 2009).

everything that is right; for if they do well, it will count for you and for them, and if they do badly, it will count for you and against them⁴³.

The apparent ambiguity which resulted from both the conservative principle that believers should not rebel against unjust political authority due to the feared dangers of anarchy – and the radical principle that believers should disobey rulers who command disobedience to God resulted in much contention in both Islamic history and political thought. The standard Sunni position for generations was that Muslims should not rebel against unjust rulers, simply peacefully disobey them, while the position of the Kharijite and Shiite sects was that Muslims are obligated to both rebel and disobey unjust rulers.

THE MEDINA CONSTITUTION

No discussion of Islamic political theory can be complete without discussing the Medina Constitution of the Prophet Muhammad. Because the central argument of this paper is that the classical Sunni Islamic polity and liberalism are compatible, it is important to return to the very first Islamic polity which in many respects – at least for its time – was very liberal, specifically so for its adoption of the central premise of liberalism: limited government. The Prophet Muhammad first exercised his authority as the political leader of the city of Medina. The genesis of the first Islamic state is rooted in what modern day Muslim scholars label the “constitution of Medina” in 622 A.D. which consisted in a covenant – in the full sense of the term – between the various communities of Medina, specifically the Jews and the Muslims, into one whole *ummah* or polity and nation. The constitution of Medina was covenantal in that it was a sacred bond

⁴³ "SAHIH MUSLIM, BOOK 20: The Book On Government (Kitab Al-Imara) ." IIUM Official Website. http://www.iiu.edu.my/deed/hadith/muslim/020_smt.html (accessed April 18, 2009).

carried out by a Messenger of God, in full obligation to the Divine, between two peoples⁴⁴. Although the constitution of Medina did not specify organs of governance in the same manner as contemporary constitutions, it laid the basis for a covenantal community. The Medina covenant was truly a constitution in the sense defined by Daniel Elazar a scholar of Jewish political theory and the politics of Biblical Israel. The covenant was a constitution in Elazar's sense because it was proclaimed by Muhammad on behalf of God and agreed to by Medina's Jewish residents – it fulfils his criteria of being “grounded in moral commitment” before God, is constitutional and public unlike a simple contract, and its “moral dimension precedes its legal one” in that ultimately it was based in communal duty, justice, and virtue as the Medina constitution strongly condemns injustice and vice corresponding to Elazar's conception of the scope of morality in a covenant being “how people should live.” As a constitution it was hence an agreement and bond between two distinct communities recognizing one political⁴⁵. Ali Khan argues similarly that unlike other polities the birth of the Islamic state took place with an actual and quite literal, not a theoretical, social contract, which is what the constitution of Medina essentially was. This is what makes the Medina Constitution so unique and so central to Islamic political thought and constitutional law. Furthermore, the Prophet's contract included the Muslim community along with each and every Jewish community by name, which Khan argues is illustrative of its pluralism⁴⁶.

Muhammad Hamidullah argues that the Medina constitution was the first modern constitution in history – preceding the *Magna Carta* as a document establishing rights and

⁴⁴ Sentürk, Recep. "The 'Constitution of Medina': Muhammad's First Legal Document." *Journal of Islamic Studies* 10 (2008): 251-253.

⁴⁵ Elazar, Daniel. *Covenant and Polity in Biblical Israel: Biblical Foundations and Jewish Expressions (Covenant Tradition in Politics, Volume 1)*. (New Brunswick: Transaction Publishers, 1998), 29, 31.

⁴⁶ Khan, Ali. "The Constitution of Medina." In *Understanding Islamic Law: From Classical to Contemporary (Contemporary Issues in Islam)*, Ed. Ramadan, Hisham M. Walnut Creek, CA: (AltaMira Press, 2006), 205-213.

freedoms⁴⁷. While others such as Daniel Elazar argue that a covenantal constitution is a perennial concept in the Jewish political tradition dating back to Biblical Israel⁴⁸. Perhaps the two views can be reconciled in that Muslims believe Muhammad to be the ultimate successor to the Jewish line of Prophets and Messengers and would hence thereby accept constitutionalism as ultimately a sacred and Divine injunction. However, the fact of the matter is that the very essence of liberalism – that is, limited government – *is* constitutionalism which whether written or unwritten thereby place actual boundaries on government through the recognition of a higher law.

Erwin Rosenthal argues that it is no exaggeration to state that the constitution of Medina was the basis of all future Islamic political thought. Indeed, al-Farabi only four centuries later would remark after studying Plato's *Republic* that the Philosopher-King and the *al-Medina al-Fadila* or "the Ideal City," was actualized in the rule of Muhammad in Medina, and the early Muslim Caliphate. All other states, al-Farabi argued concurring with Plato, were in its shadow. In the charter or constitution of Medina, the Prophet defined the rights and obligations of both Muslim and non-Muslim. The charter stated that the Muslim nation was one nation who supported each other and protected each other, yet more fundamentally granted full citizenship to nonbelievers as well in one state on the geographical territory of Yathrib, the pre-Islamic name for Medina. Rosenthal states that the importance of the constitution of Medina itself as the foundation of all future Islamic political thought is due to the incorporation of two concepts: *dhimma* and *jihad*. *Dhimma* means security or protection in Arabic and relates essentially to the question of citizenship – the *dhimma* were considered nonbeliever residents of the Islamic state and their place in society would be a central inquiry of the constitutional law of every future

⁴⁷ Ibid.

⁴⁸ Elazar, *Covenant and Polity in Biblical Israel*, 29.

Islamic state. Khan states concerning the covenant with nonbelievers that “this expansive concept of the community is most significant because an Islamic Free State is no longer conceived as an exclusively Muslim nation.” Jihad, in the sense used by Rosenthal and the Medina Charter, refers to the second essential question of international relations – specifically the just war – and its relationship with the public policy of the state. The Medina Constitution answered both questions of *dhimma* and *jihad* by granting the Jewish nation full citizenship in the city-state of Medina and requiring the civil obligation of Jewish participation in defense of Medina should it ever come under attack. Yet the constitution of Medina did not stop there. It created a judicial system whereby disputes would be resolved, a tax system to fund warfare, specific rights even for women, and freedom of religion.

CLASSICAL LIBERALISM

The birth of classical liberalism – specifically the American and British model of liberal democracy – can be traced back to the European Enlightenment specifically the sixteenth century Glorious Revolution of England and the writings of philosopher John Locke which would establish the fundamental political worldview of the constitutional drafters and founding fathers of the American republic. Classical liberalism, or liberal democracy, is defined as the political doctrine which finds that individual liberty and curbing the abuses of power– in political, civil, and economic aspects – as the highest end of government⁴⁹. Locke argued – in an age of absolute monarchy, feudalism, and rule by the Church – that governments were instituted among

⁴⁹ See Danziger, James N.. *Understanding the Political World: A Comparative Introduction to Political Science (9th Edition)*. (New York: Longman, 2008), There are many other definitions of liberal democracy. For instance, David Conway argues that classical liberalism posits that the solution to the central inquiry of political philosophy lies in “the system of natural liberty,” and that the best societal order is one which guarantees the largest degree of liberty for its sane adult members. Richard Epstein defines classical liberalism as respecting the autonomy of the individual as well as property rights through the means of a minimal state, and the proper balance between government and markets. See Conway, David. *Classical Liberalism: The Unvanquished Ideal*. (New York: Palgrave Macmillan, 1998) and Epstein, Richard A.. *Skepticism and Freedom: A Modern Case for Classical Liberalism (Studies in Law and Economics)*. Chicago: University Of Chicago Press, 2004.

men to secure property rights which could be inferred self-evidently from reason to have been endowed by the Creator.

The relationship of Islam to liberalism is not much different from the relationship of any religious faith to liberalism. Christianity and Judaism also hold that ultimate sovereignty is God's alone, and yet both religions have – at least in their mainstream denominations – come to terms with liberal democracy as a legitimate form of government. In fact, as Michael J. Perry argues, many religious believers give a religious justification for their liberalism – they claim that every human life has intrinsic dignity and value and the essence of natural political obligations – and their inverse political rights – from their very religious faith. Alexis De'Touqueville observed this very fact in his famous journey to America – where he remarked that America's religious institutions actually nurture the very foundations of its liberal democracy. Of course, the very basis of classical liberalism and its moral foundations in Locke grew from a religious-based yet ecumenical natural law which ultimately rooted its basis in the transcendent Divine Creator. Although consequently many political theorists would fundamentally disagree with Locke's argument, and base their faith in liberalism on other foundations, the Lockean argument for liberal democracy and its vision of human rights remains a phenomenally religious and theistic one.

The American *Declaration of Independence*, penned principally by Thomas Jefferson, was influenced directly by Lockean thought. Indeed, when mentioning the naturally God-given rights of man in the only difference between Locke's human rights based in life, liberty, and property were Jefferson's substitution of property with the pursuit of happiness. The essential argumentation of the *Declaration*, the bedrock of American political thought and the liberal foundations of the American regime, is identical to the reasoning of Locke in the *Second Treatise*

on Government. It is in this sense that Locke has been named as the “founder founding father,” while Jefferson – his disciple the “founder of the natural rights republic⁵⁰.” The Declaration of Independence is an important document to examine for the foundations of Lockean liberalism for this very reason – it translates into the transformation and actualization of Lockean ideals into a reality, and is considered one of the core bedrocks of the American Republic as well as classical liberalism generally.

The natural law argument for classical liberalism found in John Locke and Thomas Jefferson is a useful place to establish that the so-called “morality of liberal democracy” in the words of American constitutional law scholar Michael Perry, is compatible with ecumenical religious premises, not only Islamic ones. Christians have found much common ground with the morality of liberal democracy through analyzing the natural law argument, for instance constitutional law scholars, such as devout Catholic Douglas Kmiec, refer to the “natural law presuppositions in the Declaration of Independence⁵¹,” claiming that “The Declaration of Independence... proclaims us to have natural rights from a creator, puts them in a transcendent source so that they're off limits to any political body⁵²,” while Pope Benedict has praised America's “democratic institutions” which are “supplied their foundation” by “the fact that a basic moral conviction was alive in America, one which nourished by Protestant Christianity⁵³.”

⁵⁰ Zuckert, Michael P. *Thomas Jefferson and the Politics of Nature (Loyola Topics in Political Philosophy)*. (Notre Dame: University of Notre Dame Press, 2000): 11.

⁵¹ Kmiec, Douglas. "Doug Kmiec Reaffirms Endorsing Sen. Barack Obama - Catholic Online." Catholic Online - Breaking News, World, U.S., Catholic, Diocese & Video News. <http://www.catholic.org/politics/story.php?id=27820> (accessed November 16, 2008).

⁵² Kmiec, Douglas, and Gary Wills. "Hoover Institution - Uncommon Knowledge with Peter Robinson - ANOTHER BRICK IN THE WALL: The Separation of Church and State." Hoover Institution. <http://www.hoover.org/multimedia/uk/2993426.html> (accessed November 16, 2008).

⁵³ Chafuen, Alejandro. "Benedict XVI and Freedom - The Acton Institute." The Acton Institute for the Study of Religion and Liberty. http://www.acton.org/commentary/commentary_262.php (accessed November 16, 2008).

The natural law basis of the American founding claims that the foundations of all rights are an inalienable gift from the Creator. Locke gave, Christopher Wolfe states, a "theistic foundation to the law of nature;" this reality could be a bridge between liberalism in an Islamic polity especially concerning general Muslim antipathies towards rigid *laïcité* secularism⁵⁴. Michael Perry's claim that liberal democracy consists of in many ways of its own system of moral presuppositions provide a starting point in which one can begin to examine the ethical philosophy behind natural law liberalism, and the liberal natural law theories of Locke and Jefferson are an opportunity to dissect the basic moral arguments of liberalism. It is not difficult to illustrate the compatibility and similarity of traditional Christian natural law theory, particularly St. Thomas Aquinas' Thomism to the "morality of liberal democracy" because according to many scholars Aquinas influenced Lockean conceptions of natural law⁵⁵. Some Muslims such as Hamid Abdelgadir argue that Lockean natural law is "positivist religion," and reject the Lockean argument outright, moreover he argues that all secular political ideology is in reaction to religion⁵⁶, however this does not have to be the case – Locke never claimed to found a new religion and was a devout Christian⁵⁷, and his philosophy of natural rights is ecumenical enough to be compatible with both Christian and Islamic theories of rights as I will argue.

Michael Perry grapples with the question of the relation of the place of devout religious believers – specifically Christianity and more specifically Catholic Christianity – in the "ethics of liberal democracy" in many of his works. In essence, the inquiry is not new; it is simply the

⁵⁴ Wolfe, Christopher. *Natural Law Liberalism*. (New York: Cambridge University Press, 2006), 136.

⁵⁵ See Hoppe, Hans-Hermann, and Murray N. Rothbard. *The Ethics of Liberty*. (London: NYU Press, 2003), 7-16 for an argument that Locke's natural rights theory had its roots in Thomist and scholastic natural law. Moreover see Finnis, John. "Is Natural Law Theory Compatible with Limited Government?" in *Natural Law, Liberalism, and Morality* Ed. George, Robert P. (New York: Oxford University Press USA, 2001) 1-26 .

⁵⁶ Hamid, Eltigani Abdelgadir. *The Qur'an & Politics*. (Herndon, VA: IIIT, 2004), 172-174.

⁵⁷ See Locke, John. *The Reasonableness Of Christianity As Delivered In The Scriptures (1824)*. New York: Kessinger Publishing, Llc, 2008.

rebirth of an age old question – the relation between rational and revealed ethics – which has been discussed by philosophers and theologians in all faith traditions. Political theory, being a branch of moral and ethical philosophy, is only another aspect of the same question. In the Muslim tradition, Averroes wrote in the twelfth century of the compatibility of Aristotelian and Islamic ethics while Al-Ghazali wrote in the eleventh of their ultimate incompatibility, just as Thomas Aquinas would deal with the same question in the Christian world centuries later.

Perry ultimately arrives at four arguments for compatibilities between Catholic social teaching in specific and the ethics of liberal democracy – first he argues for religious participation in policymaking and legislative deliberation even in a democratic state⁵⁸, secondly he argues that the search for truth to alleviate human suffering results in moral convictions and a sort of natural law (although the term is not precisely used) which the “morality of liberal democracy” arrives at and which religious believers share⁵⁹, thirdly, he argues utilitarian justifications occasionally such as when the state should not act or use coercion even against something found scripturally immoral – such as homosexuality, or even abortion⁶⁰ – and finally, he ultimately concludes that no theory of human rights – of which liberalism is – can be complete without a Divine grounding which almost always must be supplied by religion⁶¹.

The logic of the Declaration of Independence is remarkably concise. The two principle conclusions of the Declaration – that governments are instituted to secure natural human rights,

⁵⁸ Michael J. *Under God?: Religious Faith and Liberal Democracy*. (New York: Cambridge University Press, 2003) 20-35.

⁵⁹ Perry. *Under God?* 81-83.

⁶⁰ See Perry. *Under God?* 81-85 for the utilitarian argument for liberalism for those with religious faith. Specifically, Perry quotes John Stuart Mill, and stresses that suffering which is often the result of coercive imposing of beliefs, is uncompassionate which is essentially sinful or immoral and against faith. Moreover, oftentimes the state using its coercive power to enforce morality leads to *worse consequences* and greater sin and tolerating the sin and using private means to deal with it.

⁶¹ See Perry, Michael J.. *Toward a Theory of Human Rights: Religion, Law, Courts*. New York: Cambridge University Press, 2008.

and that governments derive their power from the consent of the governed are supported by two major premises which are found to be logical postulates – that all men are created equal, and that they are endowed by their Creator with certain inalienable rights. Fundamentally, the Declaration declares a higher power than government, and limits the sphere in which government can act⁶².

The Bill of Rights would further define such rights with legal positive law as the essentially Lockean rights of life, liberty, and property in the Fifth Amendment and later the American constitution would extend this protection even further in the Fourteenth Amendment⁶³. Michael P. Zuckert summarizes the political philosophy of the *Declaration of Independence* in the following table⁶⁴:

Prepolitical	All men are created equal	And endowed with certain inalienable rights (natural human rights)
Political	Governments are instituted to secure these rights	Deriving their just powers from the consent of the governed (popular sovereignty)
Postpolitical	If government becomes destructive towards those ends it is the right of the people to alter or abolish it	And institute a new government. (the right of revolution)

Source: Adopted with additions from Zuckert, Michael P. *Thomas Jefferson and the Politics of Nature (Loyola Topics in Political Philosophy)*. (Notre Dame: University of Notre Dame Press, 2000): 13.

⁶² Zuckert, Michael P. *Thomas Jefferson and the Politics of Nature (Loyola Topics in Political Philosophy)*. (Notre Dame: University of Notre Dame Press, 2000): 8-13.

⁶³ See *The Constitution of the United States of America with the Declaration of Independence and the Articles of Confederation*. New York: Barnes & Noble, 2005.

⁶⁴ Adopted with additions from Ibid, 13.

Due to the essentially Lockean nature of the *Declaration of Independence* and the foundations of American liberalism, it is important to examine Locke's argument and search for Islamic parallels if a compromise of liberalism and Islam is to be found. Locke's first premise is that in the state of nature – a state prior to government and prior to experimental knowledge, what Locke called the blank slate of *tabula rasa* in his *Treatise on Human Understanding* – it is self-evident that man possesses temporary ownership of his individual self and labor⁶⁵. C.B. Macpherson thus gives Locke's theory the name of "possessive individualism," for every logical conclusion of Locke's political theory stems from this very premise⁶⁶. Since man owns his self, and his own labor, he by corollary – Locke argues – owns anything his labor mixes with which becomes property. Each man's individual self and property are hence inviolable and worthy of human dignity – it is the principle of possessive individualism which provides the bedrock of Locke's natural law and the core of Locke's political theory. Due to possessive individualism, the natural law contains an ultimate duty of not murdering, not harming, and not stealing or harming the property of another human being. A. John Simmons and Richard Ashcroft remark that in Locke's conception of the natural law, duties precede rights which a principle which is evident in the fact that rights are nonexistent in Lockean natural law without duties^{67,68}. The following figure outlines Simmons' summary of the Lockean theory of rights and morality which he claims proceeds from the following specific duties inherent in the natural law:

Table 2

⁶⁵ Macpherson, C. B.. *The Political Theory of Possessive Individualism*. (New York: Oxford University Press, 1970), 195, 197-199

⁶⁶ *Ibid.*, 197-199, 201-204.

⁶⁷ Simmons, A. John. *The Lockean Theory of Rights (Studies in Moral, Political, and Legal Philosophy)*. (Princeton: Princeton University Press, 1994), 60. Simmons in essence traces the Lockean theory of rights and morality to specific duties inherent in the natural law.

⁶⁸ Ashcraft, Richard. *Revolutionary Politics & Locke's Two Treatises of Government*. Princeton: Princeton University Press, 1986, 58.

Simmons on the Lockean Natural Duties
(1) The duty to preserve oneself (not to kill or endanger oneself).
(2) The duty to preserve others (when this does not conflict with the duty of self-preservation).
(3) The duty not to “take away the life” of another .
(4) Duties not to do what “tends to destroy” others (by e.g. interfering with or impairing their liberty, health, limb, or goods) . ⁶⁹

An important aspect of Locke’s natural law arguments is that he was ultimately a proponent of voluntarism – or the belief that ultimately good and bad were defined as obedience or disobedience to the will of God – according to the majority of scholars of his work and implied strongly by the preponderance of his statements. Locke derives his voluntarism from the fact that God exercises ownership over his creation and hence ultimately good and bad are defined in relation to His will. For Locke this natural law discoverable by human reason to all created the moral foundations of obligations and rights even to those who disbelieved in his religion of Christianity. It is for this reason that many scholars of Locke and his argument claim that Lockean classical liberalism is ultimately rooted in Christianity specifically Christian natural law theory. The natural law was composed of enduring moral principles which were naturally obvious. Hence no government could excuse disobeying such principles – the radical assertion of

⁶⁹ Simmons, A. John. *The Lockean Theory of Rights (Studies in Moral, Political, and Legal Philosophy)*. 60.

Locke established a paradigm shift – no longer were citizens owned absolutely by their government. Although Locke’s proposition in the Second Treatise established a modern defense of limited government it must be noted that the medieval Church which claimed to rule based in Biblical guidance limited the rule of secular European governments, and the English Commonwealth had limited itself through granting rights to the populace as early as the Magna Carta of 1215. Moreover, John Finnis states that the first political theorist to propose that reason demanded limiting government through legal authority was the medieval Christian philosopher St. Thomas Aquinas⁷⁰. Locke is especially notable for his clear defense of a particular list of rights which transgressing against would be manifest tyranny. Christopher Wolfe explains the difference between the limits the Church placed on government and the novel liberal theory of limited government begun by Locke:

"While no one in medieval times - after the inception of Christianity - argued that government power was unlimited, *there was no sharp demarcation between public and private that put whole areas of human concerns simply "off limits" to government.*

Liberalism was born with an insistence that certain questions were in principle beyond the scope of government⁷¹."

Locke’s most radical assertion was a corollary to the aforementioned premises and conclusions stemming from possessive individualism. Due to man’s self-ownership of his self and property, man was essentially naturally free in his person and possessions. Christopher Wolfe argues that in essence the Lockean argument by natural law is that the rights to liberty and. Simmons’ aforementioned list of Lockean duties also stem ultimately from the right to life

⁷⁰ Finnis, John. "Is Natural Law Theory Compatible with Limited Government?" in *Natural Law, Liberalism, and Morality* Ed. George, Robert P. (New York: Oxford University Press USA, 2001) 1.

⁷¹ Wolfe, Christopher. *Natural Law Liberalism*, 135.

and duty of self-preservation⁷². Hence, for Locke, the scope of government is not only limited to protecting life and property but also liberty as well. Liberty, in Locke's natural law theory, is the natural and logical consequence of the affirmation and protection of private property; thus for Locke the ultimate aim of the state is to protect private property, for in protecting private property is liberty ultimately preserved. Pierre Manent argues that "after Locke's time and in large part thanks to him, the right to property was recognized as *the* fundamental natural right⁷³." The pith of the Lockean sentiment can be understood by the words of Arthur Lee, a delegate to the American constitutional convention "the right of property is the guardian of every other right and to deprive people of this is to deprive them of their liberty⁷⁴." Finally, James W. Ely states that "hence, the protection of property ownership was an integral part of the American effort to fashion constitutional limits on government authority⁷⁵."

The Lockean Argument for Liberalism via Natural Law

Premise	First Conclusion	Second Conclusion	Final Conclusion
The natural temporary possessive individualism of self and labor granted by the Creator.	The natural obligation not to harm another's self and possessions – and by corollary the natural right to life and private property.	The natural right to liberty intrinsic in the property right.	The social contract of the people to a limited government to preserve such rights.

The aforementioned is the summation of Locke's argument for liberalism – in essence the theory that the end of government is the protection of liberty – through natural law. Locke also

⁷² Ibid, 135.

⁷³ Manent, Pierre. *An Intellectual History of Liberalism*. (Princeton: Princeton University Press, 1996), 45-46.

⁷⁴ Ely, James W. *The Guardian of Every Other Right: A Constitutional History of Property Rights (Bicentennial Essays on the Bill of Rights)*. (New York: Oxford University Press, USA, 2007), 26.

⁷⁵ Ibid, 26.

uses utilitarian arguments to advocate liberalism in his *Letter on Religious Toleration* appealing for religious freedom for the ultimate benefits it provides society; as well as the argument through social contract which is an extension of his natural law argument. Due to the fact that man's ultimate freedom in the state of nature is unprotected without the restraining force of government, men naturally will only cede enough of their natural and intrinsic God-given freedom to establish government to the degree that it protects natural rights. Thus Locke justifies the liberal state which is characterized in protecting civil liberties as well as property and hence market capitalism⁷⁶. The property right intrinsically maintains the natural law obligation not to fraud another and hence fraud is a violation of the rights of others, and contracts would be enforced by the state. Locke did not directly advocate popular rule or democracy in his *Second Treatise* as the form of regime embodying the social contract – it is possible to have a liberal state which is a monarchy or an aristocracy for instance, however later classical liberals such as the American founding fathers and John Stuart Mill would openly advocate representative government, in effect political liberty, as inseparable from liberalism⁷⁷.

The argument of Locke through natural law as explicated through the *Second Treatise* like the Declaration of Independence ultimately places the basis of natural law – the higher law which government is limited to – and hence natural rights in the Creator as well. The American Republic was an example of the establishment of a government which attempted to limit government through a higher law while balanced by democratic institutions⁷⁸. Unlike the United Kingdom of Great Britain – essentially a liberal state although monarchic at the time of the

⁷⁶ Simmons, *The Lockean Theory of Rights*, 171-176. Simmons summarizes the Lockean theory of contract in general, with its first premise of being *consensual* to be legitimate, and in particular the form of contract theory he arrives at by examining the marriage contract in particular in relation to the state.

⁷⁷ See Hamilton, Alexander, John Jay, and James Madison. *The Federalist Papers*. (Garden City: Dolphin Books, 2008) and Mill, John Stuart. *The Basic Writings of John Stuart Mill: On Liberty, the Subjection of Women and Utilitarianism (Modern Library Classics)*. (New York: Modern Library, 2002).

⁷⁸ Zuckert, Michael P. *Thomas Jefferson and the Politics of Nature*, 6-9, 15-16.

American founding – and the democracies of the Greek city-states which were essentially pure democracies – the American experiment combined both forms of government. It is hence important to make a distinction between liberalism and democracy – for although liberal democracy is the most prevalent form of the liberal regime in contemporary times, democracy essentially entails the rule of majorities or rule by the people, while liberalism entails limited government and the ultimate political aim of liberty – it is the purpose of this paper to examine the congruence of Islam with the latter⁷⁹.

An Islamic examination of Locke's argument for liberalism is interesting for many reasons, primary of which is the important Muslim influence on Locke's philosophy. Locke himself was educated in many of the works of medieval Arabic and Muslim philosophy including the *Hayy ibn Yaqzan* also known in Latin as the *Philosophus Autodidactus* of Abu Bakr Muhammad Ibn Tufayl – known as Abubacer Aben Tofail in Latin, and the *Sira al-Nabawi al-Kamil* or the *Theologus Autodidactus* of Ibn Nafis⁸⁰. Both works are notable in their influence upon Locke's epistemology which ultimately underlies his natural law theory in the *Second Treatise*. Ibn Tufail was a twelfth century Islamic philosopher and physician in Muslim Spain who is famous for appointing the famous Islamic philosopher and theologian Ibn Rushd – Averroes in Latin – as his successor. Ibn Tufail wrote *Hayy ibn Yaqzan*, the work which inspired Locke, as a refutation of the theological orthodoxy of Abul Hamid al-Ghazali – Algazel in Latin

⁷⁹ Ibid., 6-10.

⁸⁰ There are a plethora of sources to confirm this – notably see *The 'Arabick' Interest of the Natural Philosophers in Seventeenth-Century England (Brill's Studies in Intellectual History) (Brill's Studies in Intellectual History)*. (Koninklijke Brill NV, Leiden, The Netherlands: Brill Academic Publishers, 1994). Also see the section on Pockoe in Toomer, G. J.. *Eastern Wisdom and Learning: The Study of Arabic in Seventeenth-Century England*. (New York: Oxford University Press, USA, 1996), 212-226. Also see Attar, Samar. *The Vital Roots of European Enlightenment: Ibn Tufayl's Influence on Modern Western Thought*. New York: Lexington Books, 2007. Also see Nasrallah, Nawal Muhammad Hassan. *Hayy bin Yaqzan and Robinson Crusoe: A study of an early Arabic impact on English literature (Studies series / Republic of Iraq, Ministry of Culture & Information)*. (Michigan: Al-Rashid House, 1980).

– a champion of the Sunni Ash'ari School of theology which was one of the two main orthodox schools of Sunni Islam – the other being the Maturidi School of theology⁸¹.

Ibn Tufail's *Hayy ibn Yaqzan* was a philosophical novel and allegory concerning the story of an autodidactic feral child on an island and the nature of human knowledge. The work was translated in 1660 and published by the British orientalist Edward Pococke in 1671, and was in Locke's possession. In Ibn Tufail's novel Hayy – meaning literally wakeful – was the son of Yaqzan – literally the awoken – and was raised on an uninhabited island by a gazelle. Hayy slowly reflects upon the world moving from sense to sense in understanding the nature of existence. Ibn Tufail was an Avicennian empiricist who completely believed in *tabula rasa* as Locke would centuries later, and *Hayy ibn Yaqzan*'s influence on Locke's epistemology are evident. Eventually Hayy progresses through each sense to eventually affirm faith the Creator – and then through his reason reflects upon man's obligations towards God which lead him to a very rough outline of the Lockean natural law – notably the fundamental duty not to murder, steal, or maim human beings. In the end of *Hayy ibn Yaqzan*, Hayy learns of religion and people which eventually confirm his reason⁸².

Ibn Tufail's empiricism and similar epistemology to Locke still do not establish a fundamental link between Islam and liberalism. For although Tufail as a Muslim philosopher posited the existence of a natural law known through reason to even a feral child, he both opposed Sunni orthodoxy in doing so and did not come to the same Lockean conclusions regarding the fundamental link between the property right and the logical necessity of the right to

⁸¹ See Taher, Mohamed. *Encyclopaedic Survey of Islamic Culture*. (New Delhi: Anmol Publications, 2002), 185-198.

⁸² See Hawi, Sami S.. *Islamic Naturalism and Mysticism - A Philosophic Study of Ibn Tufayl's Hayy Bin Yaqzan: A Philosophic Study of Ibn Tufayl's Hayy Bin Yaqzan*. New York: Brill Academic Pub, 1997) 157-192. Hawi includes a very detailed summary of Ibn Tufail's original ideas, his epistemology, ontology, and theory of natural law.

liberty. Nor does Ibn Tufail ever mention government or its role in protecting such natural rights. However Ibn Nafis' *al-Sira al-Nabawi al-Kamila* fills a void in this regard.

Ibn Nafis' *al-Sira al-Nabawi al-Kamila* was written as a refutation of the *Hayy ibn Yaqzan* of Ibn Tufail. Although written as a refutation, Ibn al-Nafis' work was also an allegorical philosophical novel concerning the epistemology of an autodidactic feral child, and Ibn al-Nafis agrees with many of the propositions brought forth by Ibn Tufail in *Hayy ibn Yaqzan*. Most notable however is that Ibn al-Nafis, best known in the West for discovering pulmonary circulation, was an ardent member of the Ash'ari school of Islamic theology – the school most notable for its consistent voluntarism and denial of the possibility of any moral knowledge prior to the acquisition of a revealed moral law. Ibn al-Nafis denies the predominant Ash'ari position in his *al-Sira al-Nabawi al-Kamila* claiming instead that one could in fact understand both the major sins and major obligations in a rough outline of the revealed law through pure reason. In Ibn al-Nafis' novel, the autodidactic feral child Kamil is brought to existence spontaneously in a cave and passes through the different levels of knowledge, as Hayy in Ibn Tufail's work. Like Ibn Tufail's novel, in the *al-Sira al-Nabawi al-Kamila* Kamil reflects upon the world using his reason and coming to conclusions affirming the existence of God, the natural laws of the universe, and the existence of prophets. However, unlike Ibn Tufail's novel, ultimately the protagonist Kamil comes into contact with Muslims and realizes that his reason has confirmed many of the ultimate principles of revelation prior to receiving them, yet has not fully grasped revelation entirely. Ibn al-Nafis argued that while the human mind could grasp many essential

truths through reason, ultimately revelation was necessary to provide the absolute and complete truth *in toto*⁸³.

Both Ibn Tufail and Ibn Nafis' work ultimately reached John Locke and clearly influenced both his epistemology and his political theory – especially the pith of his argument which posited the existence of a natural law known through human reason. Ultimately, Locke, as a Christian, also affirmed that the entirety of natural law could not be known through unaided human reason, but also required revelation confirmed by reason⁸⁴. Yet the basis of Locke's political theory and argument for limited government relies on the conclusion that human rights exist – as the corollary of obligations – and that their existence is both naturally and rationally evident. Ibn Tufail and Ibn Nafis provide an Islamic framework for natural human rights, moreover their advocacy by Ibn Nafis as an orthodox Ash'ari theologian gives their existence further legitimacy. In this there is no contradiction between Locke's first premise and Sunni Islamic theology, as long as Islamic principles acknowledge a concept of rights which are congruent to the Lockean natural rights. Furthermore, the compatibility of Locke's argument for liberalism on natural law is also conditioned on his second premise and conclusion – that the property right entails a natural liberty right and that governments hence must be established (in a social contract) for the sole reason of protecting such rights.

Ibn Tufail and Ibn Nafis, while influencing Locke, were not the only Muslim philosophers and theologians which affirmed the existence of the natural law. All theological

⁸³ See Mahdi, Muhsin. "Remarks on the "Theologus Autodidactus" of Ibn Al-Nafis." *Studia Islamica* 31 (1970): 197-209. <http://www.jstor.org.lib-proxy.radford.edu/stable/1595073> (accessed November 17, 2008) for an excellent exposition of Ibn Nafis' philosophy by a late contemporary Arab American political theorist.

⁸⁴ See Simmons, A John. *The Lockean Theory of Rights*, 15-21 for an explanation of Locke's distinction between moral law, Divine law, and natural law. Simmons examines the entirety of Locke's work, including *The Reasonableness of Christianity*, and many of Locke's personal notes to give context to the *Second Treatise on Government*.

schools and sects of Islam accepted the existence of the natural laws of God which the Qur'an itself terms *sunan Allah* or God's traditional way of doing things⁸⁵. Moreover, Sunni Islam in both the Ash'ari and Maturidi schools accepted the metaphysics of occasionalism which amongst other things firmly maintained that ultimately all causation was subject to the natural law of God⁸⁶. However, the question of *al-tahsin wal-taqbih 'aqliyan* or whether or not the unaided intellect could arrive at moral truths – in essence natural *moral* or *ethical* laws – was a disputed point in classical Islamic theology⁸⁷. Ultimately, the dominant position of Ash'arism was a denial of the possibility of the attainment of moral truth by unaided reason and a pure and consistent voluntarism while Maturidism concurred on voluntarism while accepting that the unaided human intellect could indeed arrive at the knowledge of moral truths – specifically the Sunni Islamic major sins namely the evil of murder, theft, fornication, and intoxicants. Both schools of Sunnism ultimately held that belief in One Creator could be established rationally and both were considered wholly orthodox although disputing important theological tenets⁸⁸. Notable

⁸⁵ See “The Social Construction of Orthodoxy” in Winter, Timothy ed. *The Cambridge Companion to Classical Islamic Theology (Cambridge Companions to Religion)* (New York: Cambridge University Press, 2008), 7-9, 97-121. Classical Sunni Islam explicitly defined Sunni orthodoxy as only the Ash'arite and Maturidi schools of theology, and the four mainstream schools of jurisprudence – Hanafite, Shafite, Malikite, and Hanbalite.

⁸⁶ Ibid. Both Ash'arism and Maturidism accepted occasionalism, although one could argue that the Ash'arite occasionalism was much more strict.

⁸⁷ See Al-Raysuni, Ahmad. *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*. (U.S.A: International Institute Of Islamic Thought, 2005), 231-236 – specifically “identifying interests through human reason,” for the best scholarly discussion by far on the subject in English.

⁸⁸ See Winter, Timothy ed. *The Cambridge Companion to Classical Islamic Theology*, 166-167. For instance, al-Ghazali attempts to refute the Mu'tazilites by saying it is irrational to say that one's reason can realize that God *must* be thanked, or that it is *good* to thank God, because ethical or legal necessity only makes sense in terms of whether or not God wills it to be necessary and good. Al-Ghazali argues that if God had willed for human beings to lie, cheat, steal, and kill, such actions would be hence good. Yet, God out of his mercy has made following his will beneficial for human beings and the ingredients to good order and human happiness. Hence, God does not (even though he can) order anything harmful to the human person or dignity in his law. Also see *Scholasticism: Cross-Cultural and Comparative Perspectives (Sunny Series, Toward a Comparative Philosophy of Religions)*. (Albany, New York: State University Of New York Press, 1998), 55-58 on *al-tahsin wal-taqbih* and the law. Moreover, on a key Ash'arite who would reject the pure voluntarism of the Ash'ari school for a rational based ethics see the excellent work Shihadeh, Ayman. *The Teleological Ethics of Fakhr al-Din al-Razi (Islamic Philosophy, Theology and Science. Texts and Studies, 64) (Islamic Philosophy, Theology, and Science)*. (Koninklijke Brill NV, Leiden, The Netherlands: Brill Academic Publishers, 2006). For the best discussion on the differences amongst Islamic ethical systems please see Makdisi, George. *Religion, Law & Learning in Classical*

Ash'aris which arrived at the affirmation of *al-tahsin wal-taqbih 'aqliyan* were al-Juwayni, Najm al-Din al-Nasafi, Ibn al-Nafis, and Abu Ishaq Muhammad al-Shatibi while other philosophers such as Ibn Tufail and Ibn Rushd joined them⁸⁹.

As far back as the ninth century one of the greatest theologians in the history of Islam, Imam Abu Mansur al-Maturidi of Samarqand in what is modern day Azerbaijan, known as Imam al-Huda or “the Imam of Guidance,” and whose theology along with Ash'arism defines Islamic orthodoxy for Sunni Muslims, maintained that it was a tenet of sound Islamic creed to uphold the belief in the possibility of knowing moral laws and truths through unaided human reason. Al-Maturidi confronted the question of the ultimate fate of a human being which lived in a remote and uncivilized region which had not been reached by Islamic revelation. He argued in solution of this problem that there were certain self evident moral absolutes known by all rational human beings, even those who did not live in civilized areas, and that among these were the natural rights of others to life and property. Al-Maturidi argued for instance in his *Kitab al-Tawhid* that murder and aggression on other human beings were self-evidently wrong in an almost Lockean argument that “one is transgressing on another human being’s person,” and that stealing was wrong because “one is stealing another’s property which he tired to attain by his own labor.” Even amongst those Muslim theologians who did not maintain that moral absolutes and natural rights were rationally axiomatic – most notably the great Muslim theologians Imam Abu Hasan al-Ashari and Imam Abdul Hamid al-Ghazali – they remained to maintain that human beings had certain inalienable rights from God, and that rejecting these natural rights entailed blasphemy which excommunicated one from the Muslim community⁹⁰. Islamic law or *sharia* typify all sins

Islam. (London: Variorum, 1991), 30-81 – specifically on “Ethics in Islamic and Rationalist Doctrine.”

⁸⁹ Al-Raysuni. *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, 231-236.

⁹⁰ Ibid.

as violations against either the rights of God – *huquq Allah* – or the rights of human beings – *huquq al-‘ibad* – the servants of God⁹¹. Classical liberal political and legal theory often classifies this as the difference between sins or un-virtuous actions and crimes or transgressions against the rights of others – or as John Stuart Mill maintained “self-regarding actions” which harm one’s own self and “other regarding actions” which harm others⁹².

The two realms of rights – God’s rights and man’s rights – overlap a key concept of Islamic jurisprudence, that of the *maqasid* or higher objectives and intents of Islamic law. The concept of *maqasid* finds its roots early in Islamic history – being discussed by such authors as far back as the first Islamic century – with the most well known expositions of their centrality to Islamic law being by the great Persian theologian Imam al-Ghazali in his *al-Mostafa* in the eleventh century and the great Andalusian jurist Imam al-Shatibi in his *Muwafaqat* in the fourteenth century⁹³.

The *maqasid* then provide a standard of comparison with the Lockean natural law based in possessive individualism. The *maqasid* were generally divided into three types – necessities, supplements, and luxuries – with the necessary *maqasid* being numbered at five: the protection of (1) faith, (2) life, (3) property, (4) offspring or lineage, (5) intellect, while some added (6) honor⁹⁴. Islamic legal theory holds that all Islamic laws are aimed at the preservation of these necessities – and that their relative importance ranks in the aforementioned order. Thus the protection of both life and property as natural rights are strongly protected by traditionalist and

⁹¹ *Islamic Political Ethics: Civil Society, Pluralism, and Conflict (Ethikon Series in Comparative Ethics)*. (Princeton: Princeton University Press, 2002), 163-164.

⁹² Halliday, R J. *John Stuart Mill (Political Thinkers)*. (New York: Routledge, 2007), 118-120.

⁹³ See Al-Raysuni. *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, 1-64 for an excellent treatment of an explanation of the theory of *maqasid* especially before Shatibi.

⁹⁴ *Ibid.*, 137-147.

orthodox Islamic law⁹⁵. When discussing the *maqasid* in his *Treatise on Justice and War*, Andalusian and devout Muslim philosopher Averroes noted that the right to life and property were not only protected by Islamic law but could also be inferred self-evidently by the human intellect⁹⁶. Averroes and others argued that the essence of the natural rights of human beings were described succinctly in Islamic scripture by the Prophet Muhammad who said mirroring the Lockean principle of non-aggression against life or property, “There shall be no harm, and there shall be no reciprocating harm with harm,” which made the life and property of others sacrosanct and established them as of the most important *maqasid*⁹⁷. A comparison between Lockean and Sunni Islamic theories of natural law are provided in the table below:

Sunni Islamic <i>maqasid</i>	Lockean purpose of law
Protection of human:	Protection of human:
1. Religion	1. Life
2. Life	2. Property
3. Property	3. Liberty
4. Offspring	
5. Intellect	
6. Honor	

Sources: Al-Raysuni, Ahmad. *Iman Al-Shatibi's Theory of the Higher Objectives and Intent of Islamic Law*. U.S.A: International Institute Of Islamic Thought, 2005. Simmons, A. John. *The Lockean Theory of Rights (Studies in Moral, Political, and Legal Philosophy)*. Princeton: Princeton University Press, 1994.

As apparent in the table above, the centrality of life and property lie at the crux of both natural law theories – although they obviously differ widely. Hence there does exist compatibility between the fundamental Lockean premises of liberalism in the Sunni Islamic natural law tradition. However, the existence of two congruent natural law theories does not in and of itself establish a compatibility of Islam and liberalism. The question is whether or not the

⁹⁵ Ibid.

⁹⁶ See Averroes. *Averroes on Plato's "Republic"*. (Ithaca: Cornell University Press, 2005) 73, 94. Averroes does not speak specifically about the *maqasid*, but instead about the spirit of the Islamic *nomos* and takes the Aristotelian position on the matter harshly criticizing the orthodox Ash'arite school as “absurd” on this point.

⁹⁷ Quoted in "fortyhadith.com : hadith 32." fortyhadith.com. <http://fortyhadith.iiu.edu.my/hadith32.htm> (accessed March 15, 2009).

Islamic premises lead to the same Lockean conclusion – whether the state must be limited and preserve liberty. Ultimately, this inquiry is in fact of the most fundamental questions of political theory – when should the coercive powers of the state be used – in other words what should the government do or not do? While the traditional Sunni Islamic view did not go as far as Locke in deriving a right to natural liberty from the property right, classical Islamic political theory did conceive that the existence of natural human rights did indeed limit the state, and placed an important emphasis on property in particular.

The political theory of Ibn Khaldun, a fourteenth century historian, sociologist, and economist stresses the importance of property rights in both the maintenance of civilization and as Aristotle did in his *Politics*, that human social organization and cooperation were absolutely necessary for their survival as a species. Through trade, commerce, and the division of labor, Ibn Khaldun argued, human beings can achieve their necessities and luxuries and develop civilization. Ibn Khaldun was deeply suspicious of government involvement in the private sector, strongly censuring the corrupt business dealings of government officials⁹⁸. Skepticism for government power, as mentioned previously, was shared by the Prophet himself who noted that government officials would be severely accounted for in front of God and advised his followers not to seek government office unless asked due to its corrupting power.

Government infringement upon economic freedom and property rights was inevitable in Ibn Khaldun's view, and eventually all civilizations would decline and fall from such ruinous injustice. In a perpetual cycle, governments would levy excessive taxes on their citizens which would yield less revenues and lead to even more taxes. In fact, Ibn Khaldun defined injustice as

⁹⁸ See Khaldun, Ibn. *The Muqaddimah: An Introduction to History. (Abridged Edition) (Bollingen Series (General))*. (Princeton: Princeton University Press, 2004), 40, 119, 121 for a discussion on the absolute centrality of property with Ibn Khaldun's theory of justice and the state.

precisely government transgressions of property rights and paints a horrific picture of civilizational decline when the state violates property rights⁹⁹. Similar to Locke, Ibn Khaldun emphasizes the role of property in developing the earth and establishing prosperity, in the introduction to one of the most oft-quoted chapters of his magnum opus *al-Muqaddimah*, Ibn Khaldun discusses the connection between transgressions against property rights and injustice:

It should be known that attacks on people's property remove the incentive to acquire and gain property. People, then, become of the opinion that the purpose and ultimate destiny of (acquiring property) is to have it taken away from them. When the incentive to acquire and obtain property is gone, people no longer make efforts to acquire any. The extent and degree to which property rights are infringed upon determines the extent and degree to which the efforts of the subjects to acquire property slacken. When attacks (on property) are extensive and general, extending to all means of making a livelihood, business inactivity, too, becomes (general), because the general extent of (such attacks upon property) means a general destruction of the incentive (to do business). If the attacks upon property are but light, the stoppage of gainful activity is correspondingly slight. Civilization and its well-being as well as business prosperity depend on productivity and people's efforts in all directions in their own interest and profit. When people no longer do business in order to make a living, and when they cease all gainful activity, the business of civilization slumps, and everything decays. People scatter everywhere in search of sustenance, to places outside the jurisdiction of their present government. The population of the particular region becomes light. The settlements there become empty. The cities lie in ruins. The disintegration of (civilization) causes the disintegration of the

⁹⁹ Ibid., 119-122.

status of dynasty and ruler, because (their peculiar status) constitutes the form of civilization and the form necessarily decays when its matter (in this case, civilization) decays¹⁰⁰.

Eventually, according to Ibn Khaldun, society would experience what the great nineteenth century classical liberal French political theorist Frederic Bastiat called “the plunder of the many by the few¹⁰¹,” and government injustice would lead to its fall. Bettina Koch notes that had Ibn Khaldun seen the development of liberalism – most notably limited constitutional governments with the separation of powers such as that of the United States, his view of the inevitable decline of civilizations may not have been so grim¹⁰².

Although using Locke’s argument for liberalism through natural law it is apparent that there is no complete compatibility between his final conclusions of liberalism and those of the Sunni Islamic natural law tradition, there is at the very least a strong correlation between Lockean and classical Sunni notions of natural law in affirming the importance of the property right and in limiting government’s interference with the property right.

The second main argument for liberalism consists of a utilitarian defense of liberalism devised by Jeremy Bentham, and later John Stuart Mill, in nineteenth century England, as the idea of natural law and rights based liberalism began to lose legitimacy as an adequate defense of liberalism. Bentham famously argued that natural rights were, in his words, “nonsense on stilts”

¹⁰⁰ Ibid., 121.

¹⁰¹ Bastiat, M. Frederic. *The Law: Power, Liberty, and the Proper Role of Government*. (New York, NY: Waking Lion Press, 2006), 8.

¹⁰² Koch, Bettina. "On Ibn Khaldun's Theory of Political Decline and Its Implications for Western Concepts of Democracy." *Paper presented at the annual meeting of the American Political Science Association, Marriott Wardman Park, Omni Shoreham, Washington Hilton, Washington, DC* (2005).
http://www.allacademic.com/meta/p39741_index.html (accessed March 15, 2009).

and meaningless¹⁰³. The only defense of the liberal state devised by Locke to protect his conception of natural rights was the principle of utility or the most happiness for the most number¹⁰⁴. The state should maintain liberty and not use its coercive powers against “self-regarding actions” – or actions which although bad, evil, or even sinful, John Stuart Mill would argue in his *On Liberty and Utilitarianism*, because doing so did not provide the most happiness for the most number, and indeed led often to greater evil¹⁰⁵. In the end the state should be minimal and only interfere with its coercive powers to restrain people from “other-regarding actions” which may harm other human beings. Hence, for utilitarianism, the basis of the liberal human rights begins with a essential desire to restrain harm in following the principle of utility¹⁰⁶.

Mill’s arguments mirror those of the Christian theologian St. Thomas Aquinas centuries before him who argued in his *Treatise on Law* that not everything immoral should be illegal. This is because oftentimes punishing a sinful action using the coercive powers of the state leads to even worse consequences in the end, or even greater sin. Moreover, Aquinas argues, it is impossible to eradicate evil completely, and the illusion of the eradication of evil using the coercive powers of the state is for the most part a Utopian fantasy¹⁰⁷.

How do the arguments of Mill and Aquinas fit into a Sunni Islamic framework? There is much greater congruence between their arguments and Sunni Islamic legal theory than there is from the Lockean theory of natural rights. Although Sunni Islam does recognize natural human rights (*huquq al-‘ibad*), and rejects Bentham’s painting of them as nonsense on stilts, it also

¹⁰³ Ross, Harrison. *Bentham*. (New York: Routledge, 1983), 77-105.

¹⁰⁴ For an excellent summary of the school of utility and its premises see Sutch, Peri, and Peter Roberts. *Introduction to Political Thought, An: A Conceptual Toolkit*. (Edinburgh: Edinburgh University Press, 2004), 154-169.

¹⁰⁵ Ibid. 154-169; moreover, see Mill, John Stuart. *On Liberty and Utilitarianism*. New York: Bantam Classics, 2008.

¹⁰⁶ Ibid.

¹⁰⁷ Aquinas, Thomas. *Treatise on Law*. (Washington, D.C.: Gateway Editions, 1996), 87-104.

recognizes the importance of the principle of utility as a legal principle¹⁰⁸. This is especially the case in the Maliki school of jurisprudence. Imam Muhammad Abu Zahra, an Egyptian jurist of the nineteenth century, defends John Stuart Mill for expounding upon the principle of utility and discusses its importance in classical Islam as a principle of legal jurisprudence entitled *al-Maslaha al-Mursaha* or public interest. Zahra argues that Europeans rejected and criticized Mill's notion of utility due to the ascetic nature of Christianity; and that because in Islam asceticism was not an intrinsically good action – but only good for the consequentialist ethical reason that it is a “positive action for the benefit of others¹⁰⁹.”

Zahra argues that Islamic legal principles define those actions with positive benefits as good, and those actions with negative benefits as bad, and that actions take the rulings of their ends. Zahra argues that those among both Muslim scholars, and Europeans, who criticized the school of utility by misunderstanding its premises because they misinterpreted the meaning of good and bad, or benefit and harm. The criterion of what good and evil, benefit and harm, should be based in, argues Zahra, must ultimately be the *maqasid* or higher objectives of the Islamic *sharia* which are themselves divided into three aspects: necessities, needs, and recommendations. The necessities are the aforementioned principles of the protection of religion, life, property, offspring, intellect, and honor. They are considered necessities, according to Zahra, because “when they are lacking, the benefits of the deen [the religion] are not in order resulting in disorder and loss of life. The preservation of these necessities is by establishing them, making their rules firm, and by averting disorder, actual or probable.” Hence, they include the establishment of laws and the punishment and deterrence of criminals who may harm others.

¹⁰⁸ See Hallaq, Wael B.. *A History of Islamic Legal Theories: An Introduction to Sunni usul al-fiqh*. (New York: Cambridge University Press, 1999), 89-91.

¹⁰⁹ Abu Zahra, Muhammad, and Aisha Bewley. "The Ninth Source: The Principle of al-Masalih al-Mursala (Considerations of Public Interest) ." Aisha Bewley's Islamic Home Page. <http://ourworld.compuserve.com/homepages/aBewley/usul10.html> (accessed April 17, 2009).

Notice the inherent connection between the conception of the necessary *maqasid*, and the notion of the absolutely necessary human rights and natural law in liberal theory – both establish the absolutely rational nature, and even natural law, of preventing human aggression and harm of another. Necessities, argues Zahra, are those principles which should be protected and without being protected cause some mild hardship such as hunting game, and enjoying good things. Finally, recommendations, are those good things which when absent do not establish harm, yet when present establish embellishment of virtue such as good manners, good clothing, and good customs. Thus, the necessities, needs, and recommendations are the criteria of good and evil, or harm and benefit, which the principle of utility must itself be subjugated to¹¹⁰.

Zahra argues that Islamic law establishes judgments in two types of spheres of action – acts of worship (*‘ibadah*), and acts of “social transactions of the human race with one another” (*mu’amalat*). It is a principle of Islamic law that the law can only recommend that which establishes human benefit. Sherman Jackson notes that the *hudud* punishments which must be instituted by the state in classical Sunni Islamic law, for the most part consist of the sphere of *mu’amalat* and the *huquq al-‘ibad* or the rights of men. Moreover, Zahra notes, that the *maqasid* or the higher objectives of Islamic law do include all of the *hudud* which involve the rights of others – such as the importance of the state to punish the thief and the murderer¹¹¹. Furthermore, as previously noted, both the tradition of Islamic political philosophy (*al-Siyasah al-Madaniyah*) and the tradition of theology and jurisprudence, has noted that the state is necessary for worldly purposes at the very least as a restraining force to establish order. Hence, the natural law and utilitarian defenses for the state are inherent in the tradition of Sunni Islam, yet, Muslim jurists and philosophers from Al-Farabi, to Al-Mawardi and Ibn Khaldun have noted that the Islamic

¹¹⁰ Ibid.

¹¹¹ Ibid.

state exists for an even higher purpose – the purpose of leading people to the just and virtuous religious life, and heavenly paradise in the afterlife. This principle seems at most variance with the principles of John Locke, and especially those of John Stuart Mill. The minimal state which protects human life, and property, and legislates according to worldly interests and public policy – according to most Sunni political theorists – may be a just worldly state, yet is ultimately a lesser evil, a state which is not a tyranny yet does not live up to the greater purpose of religious life that the Islamic state aspires to. Ibn Abi Diyaf for instance, an early nineteenth century Islamic historian and jurist argues that the American Republic, which must be recounted is firmly based in the theories of liberalism, is indeed blessed for its principle of democracy which is similar to the Islamic principle of *shura* or consultation, and its justice in protecting and establishing worldly human interests; however such blessing does not discount the fact, Ibn Abi Diyaf argues, that it ignores next worldly interests and hence can only ever be the second best type of state¹¹².

Although the Islamic state was to push people towards benefit in the afterlife, the utilitarian argument can be made for the state to not use its coercive powers to punish certain sins or vices. The argument can be simply made using Mill's utilitarian framework, and mirroring Aquinas' *Treatise on Law*: using coercive force to stop people from doing a certain evil, sin, or harm which is, in Mill's typology, "self-regarding," is likely to lead to greater sin or greater harm and vice. Michael J. Perry makes this same argument in his work *Love and Power* – stating that the usage of the coercive powers of the state to punish certain sins may involve immense suffering. Moreover, using the punishment of the state against a certain sin may lead to open

¹¹² Al-Diyaf, Ahmad Ibn Abi, L. Carl Brown, and Ahmad Ibn Abi Diyaf. *Consult Them in the Matter: A Nineteenth-Century Islamic Argument for Constitutional Government*. (Fayetteville: University of Arkansas Press, 2005), 69. Ibn Abi Diyaf notes that while republican rule is the second best rule and "prevails in the lands of America and others, it is not right for the Muslims."

revolt against the state, and even hatred towards what Muslims may see as true virtue. Instead of quelling the sin, the usage of force may lead to an equal and opposite reaction¹¹³. Moral teachers from Confucius to Aristotle have argued that the best way to teach virtue is through example, habit, and reason, and not force¹¹⁴. Furthermore, Christian and Jewish political theorists have justified liberalism using a utilitarian framework by noting that the true benefits of virtue can only be witnessed by those who commit virtuous acts through their own volition and freedom, for virtue undergone solely due to slavery to the state is not worship of God, but in many cases, worship to the state¹¹⁵.

Under this framework could there exist a Sunni Islamic state which accepted the civil liberties enjoyed by modern liberal democracy – such as the freedoms of speech, expression, press, assembly, thought, and the basic way to live one’s life. While the *hudud* laws would have to be instituted and hence there would be a prohibition of certain self-regarding actions against Islamic law namely as alcohol consumption, falsely accusing a chaste woman of adultery, fornication, attacking the Islamic religion with malice, and adultery – the Islamic state could decide not to punish all other sins using the state’s coercive powers except within the scope of valid and purposeful public policy. Not punishing certain sins through the coercive powers of the state could possibly in fact be more efficient in actually promoting virtue and preventing vice and allowing the worship of God to be more sincere and volitional.

THE NATURE OF THE CALIPHATE IN SUNNI POLITICAL THEORY

¹¹³ Perry, Michael J.. *Love and Power: The Role of Religion and Morality in American Politics*. (New York: Oxford University Press, USA, 1993), 128-139.

¹¹⁴ See Aristotle, and Hugh Tredennick. *The Nicomachean Ethics (Penguin Classics)*. (London: Penguin Classics, 2004); and Confucius. *The Analects (Oxford World's Classics)*. (New York: Oxford University Press, USA, 2000).

¹¹⁵ See See Hoppe, Hans-Hermann, and Murray N. Rothbard. *The Ethics of Liberty*. (London: NYU Press, 2003), 7-16 wherein the argument is made that coerced virtue is not truly virtue and hence a minimal state is in fact more ethically legitimate than the coercive theocracy because it allows the possibility of true virtue.

The principles of Sunni Islamic political thought were formulated by both jurists and philosophers throughout Muslim history, however a scope of their views and arguments is outside of the purpose of this discussion. However, in establishing that the Caliphate is not incompatible with the principles of classical liberalism, it is important to highlight a very brief summary of the views of a few Sunni jurists in describing the nature of the Caliphate. Imam Qadi Abu Bakr al-Baqillani died at the beginning of the ninth century, more than three hundred years after the death of the Prophet Muhammad¹¹⁶. Al-Baqillani writes a strictly jurisprudential and religious theory of the institution of Caliphate – and in doing so gives an analysis of the Muslim perfect state – the rightly guided Caliphate which consisted in the leadership of Abu Bakr, Umar, Uthman, and Ali¹¹⁷.

Al-Baqillani wrote of the functions and institutions of the Caliphate mostly in relation to the refutation of the Shiite concept of divinely appointed or *nass* Imams. Al-Baqillani states that the Caliph is not established in office through designation of *nass*, but through *ikhtiyar*: choice, or election. Election is established and valid when contracted even by one single person who fits the qualification of *ahl al-hal wal aqd* or those who loosen and tie (contracts). Hence, like the Medina constitution, early Islamic political theory and constitutional law consisted of a quite literal social contract¹¹⁸.

Al-Baqillani specifies that electors must be those who are fitted for the Caliphate, and election takes place by a single man who fits this qualification, to a single candidate who fits the qualification. The number of electors is not limited by the *sharia* and therefore it can be validly contracted by one or more electors. It is not humanly possible to gather all the fitted electors of

¹¹⁶ Ibish, Yusuf. *The political doctrine of al-Baqillani* (American University of Beirut. Publication of the Faculty of Arts and Sciences : Oriental series ; no. 44). (Beirut: American University of Beirut Press, 1966), xxii. Ibish's work is the only summary of al-Baqillani's political treatises in English, of which no translation exists.

¹¹⁷ Ibid., 2-30.

¹¹⁸ Ibid., 34-41.

the Caliph into one place; and hence it is not required. Abu Bakr was a single elector who elected Umar, while Uthman was elected by six valid electors. Thus, there is no fixed number of qualified electors for the Caliph¹¹⁹.

A group of Muslims must be present at the time of making the contract of the Caliphate for *bay'ah* or the contract of allegiance. Al-Baqillani states that there is disagreement on the number of people who must be present. Some jurists held that their number should be at least six, which is the equivalent to the number of those present at the counsel of Umar. But, al-Baqillani maintains, this is not binding because Umar brought together the best men available around him, and they happened to be six in number. Nevertheless, al-Baqillani insists on the presence of an unlimited number of Muslims to witness the *bay'ah* and to make it publicly known¹²⁰.

Al-Baqillani lists a number of qualities which the Caliph must have which are the exact same qualities which an elector must have. The first quality is descent from the tribe of Qureish, the tribe of Muhammad. Knowledge is the second necessary quality of a Caliph and must be sufficient enough that it entitles the Caliph to be a *qadi* or judge in an Islamic court. This knowledge is required because the Caliph is the chief justice and ultimate judicial authority in the Islamic state and hence is required to judge righteously among. The Caliph is also required to appoint judges and therefore must know in al-Baqillani's words "as much as they do if not more." The Caliph must possess good judgment in matters of warfare and management of armies because he is to protect the Muslim nation (*ummah*) from its enemies. He must possess good judgment in matters of administration because he is to manage the affairs of the state. He must possess courage in war and resoluteness in the administration of the affairs of his subjects. In selecting an Caliph the Muslim nation should look for the best possible candidate although it is

¹¹⁹ Ibid., 41-45., 62.

¹²⁰ Ibid., 43-45.

lawfully contracted to the best available candidate if there is disagreement on the best candidate and danger of civil strife and chaos¹²¹.

The Caliph does not have to be sinless because his office does not require such a condition. The Caliph is established to enforce the *sharia* which precedes him in terms of time and to which he is subject. Also, Al-Baqillani argues, since *sharia* is known to the *ummah* there is no need for a sinless Caliph because he does not embody the *sharia* nor does he poses an occult meaning of it which others are ignorant of – the *sharia* is absolutely clear¹²². Al-Baqillani says that although the Muslim nation possesses the right to contract the Caliphate to a fit man, it does not possess the right to invalidate that contract for no cause that calls for his deposition. He maintains that breaking the contract of the Caliphate is inadmissible. Subjects cannot rise against a Caliph and remove him from office for no reason or cause that calls for his deposition. If they do so they are rebels and should be dealt with as such. The Caliphate of multiple Caliphs at the same time is not valid. He disagrees with the jurist al-Baghdadi on this point who maintains that two Caliphs are valid if separated by a sea or long distance¹²³.

The Caliph only acts on behalf of the Muslim nation similar to the way a legal representative does – he is its *wakil* or gerent¹²⁴. Consequently, the Muslim nation supports him as long as his behavior remains in accordance with the Divine law. Should he deviate, the Muslim nation will turn him from his error by reminding him of the right behavior. But when he commits acts that call for his deposition, he is deposed and allegiance is given to another. Therefore, al-Baqillani concludes, the Caliph does not need to be sinless nor do his officers, judges, tax collectors, consultants, assistants, or guards. Abu Bakr, Umar, and the early Muslims

¹²¹ Ibid., 72-80.

¹²² Ibid.

¹²³ Ibid., 41-45, 52-54.

¹²⁴ Ibid.

did not claim infallibility¹²⁵.

Al-Baqillani outlines what he believes the purpose of Islamic governance is, he believes the Caliphate is necessary to defend the Islamic state against its enemies, restrain the oppressors amongst the populace, to redress the grievance of the oppressed, enforce and maintain law and the *hudud* or specified punishments of the Divine Law, distribute the revenues of conquest or *fay*' among the Muslims, secure the pilgrimage and to dispatch troops against the enemies of Muslims¹²⁶. Since the ultimate dividing line between Shiite and Sunni Islam was always theopolitical, it is important to note the direct mention of such political theology was mentioned even in very basic theological treatises. Al-Nasafi, a Maturidi Sunni theologian, unlike Al-Baqillani who was an Ash'arite, summarizes the entire agreed upon medieval Sunni theory of the Islamic state in the following short paragraph for instance:

The Caliphate was for thirty years, thereafter came kingship and emirate¹²⁷. It is indispensable for the Muslims to have a leader (*imam*), who stands for the enforcements of their commands, maintaining their borders, guarding their ports, equipping their armies, receiving their obligatory charity (*zakat*), vanquishing the overwhelming, the thief and the brigands, the maintaining of the Friday services and the festivals, the elimination of disputes between creatures, the admittance of evidences produced for [legal] rights, the marrying off of minors and minors are those who have no [legal] guardians – and the

¹²⁵ Ibid., 62-73.

¹²⁶ Ibid., 73-75.

¹²⁷ This is a hadith of Muhammad, its meaning is disputed. The most common Sunni view was that the perfect Caliphate was for thirty years, thereafter came imperfect Caliphate. This is certainly al-Taftazani's view in the *Sharh al-'Aqaid al-Nasafiyah* – see Taftāzānī, Mas'ūd ibn 'Umar, Sa' d al-Dīn Mas'ūd ibn 'Umar, and Earl Edgar Elder. *A Commentary on the Creed of Islam: Sa' d Al-Dīn Al-Taftāzānī on the Creed of Najm Al-Dīn Al-Nasafī*. (Columbia: Columbia University Press, 1950), 143-145 for al-Taftazani's medieval commentary on this excerpt of the Nasafi creed, however modern jurists such as Ali Abdel al-Raziq argued in 1920 that the Caliphate is not required by revelation, irrational, empirically a disaster, and without consensus of the Muslim jurists, as mentioned previously.

distribution of spoils [of war]. Thereafter, it is required that the leader be visible, not hidden or awaited upon, and that he be from the [tribe of] Quraysh– it is not permitted from other than them—and he is not specified from the Banu Hashim. It is not stipulated that he be infallible and nor that he be the most excellent of those of his time, but it is stipulated that he be of those with complete unrestricted authority, a statesman with the ability to the enforcement of decrees, the safe guarding of the boundaries of the Muslim state and execute justice of the oppressed against the oppressor. The leader is not removed from office on account of immorality or tyranny¹²⁸.

Al-Baqillani believes that the Caliph may be deposed for loss of probity. Probity may be lost by reason of heresy or because of evil conduct, such as abandoning prayer and not urging for it. It may also be lost by reason of injustice and corruption or *fisq*. He may also be deposed for physical and mental infirmities that affect his capacity to carry out the responsibilities and duties of his office such as madness, loss of mental faculties, deafness, muteness, or decapitating old age, or from loss of liberty through captivity or being taken prisoner by enemies¹²⁹.

Al-Baqillani maintains that finding a better Caliph is not a legitimate reason leading to the forfeiture of the Caliphate. If there is no compelling cause that calls for his deposition, the Caliph remains in office. Al-Baqillani deprecated the right of rebellion against an unjust Caliph yet he did not deny the right of Muslims to refuse obedience to an impious Caliph. Al-Baqillani also did not lay down any rules of procedure by means of which an Caliph may be deposed¹³⁰.

While al-Baqillani as a theologian gave the rules of the Caliphate to refute Shiites, there were no works written specifically for the purpose of outlining the laws of administration and the

¹²⁸ al-Nasafi, Muhammad ibn Ahmad, and Tahir Mahmoud Kiani. "The Nasafi Creed." Marifah.net. 15 Mar. 2009 <www.marifah.net/articles/matnalnasafiyya.pdf>.

¹²⁹ Ibish, Yusuf. *The political doctrine of al-Baqillani*, 91-94.

¹³⁰ Ibid.

political theory of the jurists written until Abul Hasan al-Mawardi, a few decades later. al-Mawardi wrote *al-Ahkam al-Sultaniyah* or the Laws of Governance to write a jurisprudential theory of the Islamic Caliphate. Al-Mawardi's work largely includes much of Imam al-Baqillani, and previous jurists, rules of Caliphate. He defines the Caliphate, its functions, its purposes, and how Caliphs come to office. He writes, like Baqillani, of the illegality of revolting against unjust authority, and the necessity of the Caliph ruling with justice. Al-Mawardi, as a jurist, does not speak as a philosopher, however he was no mere codifier of Islamic jurisprudence and his writings reveal that he was a shrewd statesman¹³¹.

Al-Mawardi writes that the Caliph must rule with justice and not follow his desires; he must apply himself wholly to the affairs of the state; discussing the purpose behind the Caliphate, al-Mawardi contrasts the arguments of the jurists who disagreed whether the Caliphate was required by reason – this would become a central point of dispute in Islamic political thought, with some believing that government was required by reason alone, and others disagreeing placing its requirement wholly in revelation. The view of the Ash'arite orthodoxy was that while reason may point to the necessity of government, ultimately, the necessity of just government by the Divine law can only be inferred through revelation confirmed by reason¹³².

Al-Mawardi argues that the reason the office of supreme leadership has been established in the Divine Law is to fulfill the necessity of a successor to prophethood in preserving the religion and managing worldly affairs. Al-Mawardi adds that the investiture of someone from the Muslim nation able to fulfill the duties of the caliphate is obligatory by scholarly consensus

¹³¹ Al-Sayed, 67.

¹³² Al-Mawardi. *The Ordinances of Government*. (Reading: Garnet Publishing, Ltd., 2000), 3-7. Anyone wanting to start with a basis on Islamic constitutional law must start at Mawardi who for the first time collects a holistic codification in one work of the Sunni jurisprudential theory of the state, specifically the defense of the Abbasid regime.

though scholars differ as to whether its obligatory character is established through reason or through Revealed Law. Those who claim it is obligatory by human reason base their argument on the inevitable agreement of rational individuals to have a leader to prevent them from wronging one another and to judge between them when problems arise¹³³. This is almost the Lockean, or even the Hobessian, social contract. Al-Mawardi argues that the position of those who find governments necessary by reason also add that without authorities, there would be chaos and a disorderly mob¹³⁴.

The second group of people, al-Mawardi states hold that it is obligatory not through reason, but rather through Divine law, because the Caliph performs functions that human reason might not otherwise deem ethically imperative, and which are not entailed by human reason alone since reason merely requires that rational beings refrain from reciprocal oppression and strife, and that each individual conform with the demands of fairness in behaving towards others with justice and social cohesion, whereas the Divine law stipulates that human concerns be consigned to the person religiously responsible for them¹³⁵.

Al-Mawardi also develops the concept of delegating authority to those under the Caliph. He says that there are two types of governmental ministers or *wazirs* – those with full independent authority, and those with limited authority. Those with full independent authority must fulfill all of the qualifications of the Caliphate except for lineage from Qureish – hence the Caliphate may, as was done nominally in Abbasid times, claim authority over de facto Sultans which possess de jure absolute power, and still be a valid Caliphate. *Wazirs* with independent authority may make their own decisions and carry out their tasks independently. Those with

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

limited authority however must simply carry out the tasks the Caliph commands them to perform¹³⁶. They are simply, al-Mawardi states, “intermediaries between the caliph, his subjects, and their appointed rulers¹³⁷.”

Al-Mawardi writes of governors who are responsible for ruling provinces of the Caliph’s territory. He says that there are two ways a governor is installed, by being freely appointed by the Caliph, or by the governor seizing power¹³⁸. Noah Feldman argues that this point in Al-Mawardi’s theory of constitutional law was directly influenced by a hardheaded view of reality – the Abbasid regime had many rivals seize power and rule autonomous regions of the Caliphate as monarchic sultanates – Al-Mawardi legitimized the takeovers, even if from illegitimate means, as long as the rulers would *de facto* enforce the Islamic law¹³⁹. Al-Mawardi argues that “authority in view of seizure of power is invested out of necessity,” saying that the Caliph will recognize those governors who have seized power for the sake of preventing bloodshed¹⁴⁰. Ultimately – in Sunni Islamic political thought – almost anything permissible which lessens the possibility of anarchy, sedition, and chaos is the preferred policy.

Liberalism and the Caliphate?

There can be no discussion of the Islamic state and political theory without mentioning the Caliphate. The Caliphate was the absolute political and spiritual leader of the Muslim world from the time of the passing of Muhammad until its abolishment in 1924 by Mustafa Kemal Attaturk, founder of the Republic of Turkey. The word Caliph is an anglicized form of the word

¹³⁶ Al-Mawardi. *The Ordinances of Government*, 32-35.

¹³⁷ *Ibid.*, 35.

¹³⁸ *Ibid.*, 34, 35.

¹³⁹ Feldman, Noah. *The Fall and Rise of the Islamic State*. (Princeton: Princeton University Press, 2008), 37-38.

¹⁴⁰ See Al-Mawardi, *The Ordinances of Government*, 36-37 for more details on governors taking authority through usurpation.

Khalifah which means representative. The word *Khalifah* referred to the first Muslim Caliph, Abu Bakr al-Siddiq, due to the fact that he represented the Messenger of God in temporal political matters; hence his title was *Khalifat Rausl Allah* or the representative of the Messenger of God¹⁴¹. The final Islamic Caliphate which ruled the Middle East was the Ottoman Empire – which did not claim Caliphate status until well into its reign – preceded with various Muslim dynasties such as the Abbasid and Umayyad Caliphates¹⁴². However, even this fact is in dispute. The Kingdom of Morocco still refers to its monarch as the *Ameer al-Mu'mineen* or the commander of the faithful the title of the Caliphate since the second Muslim Caliph Umar ibn al-Khattab who found it much more concise than *Khalifat Khalifat Rasul Allah* or the representative of the representative of the Messenger of God¹⁴³. Although the primary Muslim scriptures – the Qur'an and Hadith – do establish jurisprudential principles relating to governance and political authority – there is a difference of opinion among Muslim scholars whether the Caliphate is a requirement, although its sole legitimacy was held almost unanimously by medieval Islamic jurists¹⁴⁴. The fact is that the Muslim world for the vast majority of its history has never been ruled by one single Caliph, and that the wide variety of historical Islamic states has seen a variety of power-relationships amongst Caliphs from mere symbolism to absolute power. Furthermore, many historical and modern self-labeled Islamic states have titled their supreme executive the Sultan, the Imam, the King or other names although there exists no example of an Islamic

¹⁴¹ Crone, Patricia, and Martin Hinds. *God's Caliph: Religious Authority in the First Centuries of Islam* (University of Cambridge Oriental Publications), (New York: Cambridge University Press, 2003), 4-8.

¹⁴² *Ibid.*, 100.

¹⁴³ See Blankinship, Khalid. "Lamp Post Productions." The History of the Caliphate. lamppostproductions.com/files/articles/caliphate.pdf (accessed April 18, 2009). Historian Khalid Blankinship argues that the Ottoman claims to Caliphate were never recognized in the Muslim west, and that of the Caliphate, "King Muhammad IV of Morocco, who certainly holds that claim and does so through an ancient and venerable lineage that goes back much earlier than the Ottoman claim and is much more authentic."

¹⁴⁴ See Kurzman, Charles. *Liberal Islam: A Sourcebook*. (New York: Oxford University Press, USA, 1998) for Muslim jurisprudential opinions on the Caliphate in the 20th century.

republic prior to the twentieth century¹⁴⁵.

Although popular narrative places the end of the Caliphate in the 1924 abolishment of the Ottoman Caliphate by Mustafa Kemal Attaturk, the founder of the Republic of Turkey, such a fact is disputed. North West Africa never accepted the legitimacy of the Ottoman Caliphate during its entire lifespan, citing Muslim scripture which dictates that the Caliph must be from the tribe of Quraysh. In fact, the Kingdom of Morocco according to many has the most legitimate claim on the Caliphate than any other decent line due to its unbroken lineage which spans back farther than the Ottoman Caliphate. The fact remains that any discussion of the Islamic Caliphate involves extremely complex realities¹⁴⁶.

In the past few decades during the religious revival of the Islamic world there have been many calls to reestablish the Caliphate which Mustafa Kemal Attaturk abolished in 1924. The *Economist* magazine remarked in 1924 that the fall of the Caliphate represented the triumph of Western values and ideals over the Islamic world, yet a crisis of legitimacy awaited the Islamic world for which battles of Islamic political theory are currently being fought¹⁴⁷. Much debate and discussion accompanied the demise of the Caliphate with traditionalist voices arguing for its reestablishment and liberal theologians arguing for its discontinuation. In *al-Islam wa Usul al-Hukm*, published in 1920, liberal Egyptian theologian Ali Abdel al-Raziq argued that Islamic law itself was against the institution of the Caliphate which was unnecessary. Al-Raziq argued for his position using three arguments¹⁴⁸ – first, he claimed, there existed no strong evidence from

¹⁴⁵ See Blankinship, Khalid. "Lamp Post Productions." The History of the Caliphate. lamppostproductions.com/files/articles/caliphate.pdf (accessed April 18, 2009).

¹⁴⁶ Ibid.

¹⁴⁷ "The abolition of the Caliphate | The Economist." Economist.com. http://www.economist.com/world/europe/displaystory.cfm?story_id=11829711 (accessed April 18, 2009).

¹⁴⁸ These arguments were based in the sources of Islamic legal theory, the four cardinal sources agreed upon by every jurisprudential school in Sunni Islam are – (1) the Qur'an, (2) the Sunnah, (3) *qiyas* or analogous reasoning, and (4) *ijm'a* or the consensus of the jurists. Different schools added other principles including *maslaha al-mursaha* or the public interest.

Muslim scripture which proved that the institution of the Caliphate was a religious obligation, secondly, he argued, there was never a consensus of the scholars concerning the necessity of the Caliphate, and thirdly he argued, by reason and in accordance with the Islamic legal principle of the public interest, it has been proven through history that the Caliphate was a disaster for the Islamic nation and an impetus for Muslim decline¹⁴⁹.

When the institution of the Caliphate was abolished in 1924 Attaturk encountered protests and dismay from Muslims as far as India yet Arab nations in the lands which would ultimately replace the Ottoman Empire eventually would not attempt to reclaim the Caliphate title with very few exceptions. However, the importance of the Caliphate has not faded in the eyes of many – in 1954 Hizb al-Tahrir, or the liberation party, was founded by a Palestinian Islamic scholar named Taqi al-Din al-Nabahani, which calls for the reestablishment of the former Islamic Caliphate. The Caliphate to such a group is seen as an absolute religious obligation, and hence no government, not even a nominally Islamic government, can be regarded as legitimate without a Caliphate to Hizb al-Tahrir adherents. The cry for a Caliphate is not limited to Hizb al-Tahrir but is rooted in other Islamic movements, most notably the global terrorist organization al-Qaeda led by Osama bin Laden. Hence a Caliphate is an important symbol for legitimacy in any eventual Islamic government which begs the question – even if Islamic governance is compatible with liberalism, is liberalism compatible with a Caliphate¹⁵⁰.

My answer to this inquiry is yes – the Caliphate can be compatible with liberalism in its basic and essential meaning of limited government and hence constitutionalism. Furthermore, we

¹⁴⁹ See his translated “Message not Government, Religion not State.” In Kurzman, Charles. *Liberal Islam: A Sourcebook*. (New York: Oxford University Press, USA, 1998), 29-37. Also see his translated “The Problem of the Caliphate.” In Moaddel, Moaddel, and Kamran Talattof. *Modernist and Fundamentalist Debates in Islam: A Reader*. (New York: St. Martin's Press, New York, 2000), 95-101.

¹⁵⁰ Hanif, Noman. "Hizb-ut-Tahrir and Its Influence on the Revival of a Caliphate in the Islamic World." *Paper presented at the annual meeting of the ISA's 49th ANNUAL CONVENTION, BRIDGING MULTIPLE DIVIDES 0* (2008). http://www.allacademic.com/meta/p253844_index.html (accessed April 18, 2009).

can even imagine a theoretically legitimate Sunni Islamic Caliphate which is also democratic. My argument proceeds relying upon many central aspects of classical Sunni Islamic political theory as expounded by the jurists and theologians prior to the nineteenth century and the liberal reforms of Muhammad Abduh, Jamal ad-Din al-Afghani, Ali Abdel al-Raziq, Syed Qutb, and contemporary Islamic political jurisprudence. Classical Sunni political jurisprudence is essential in establishing a foundation for a liberal Caliphate due to the fact that contemporary Sunni political jurisprudence in many respects has denied the necessity of the Caliphate and is hence *in toto* rejected by many of those who call for the Caliphate's reestablishment.

Returning to the political theory of medieval Islam we recount the central importance of the populace's political obligation to obedience after the *bay'ah* or the contract had been administered to the Caliph by the electors – *ahl al-hal wal 'aqd* or “those who bind and tie.” We also note that in Al-Mawardi's theory of the Caliphate, if land was ever usurped from the Caliphate, the ruler was de facto considered legitimate and not fought unless he deviated from the Islamic law. The Caliph both in theory or practice possessed absolute power to reign over the Islamic state as long as he did not commit injustice – that is violate the principles of the *sharia*. Although there was no restraining force or separation of powers to restrict the Caliph and enforce the *sharia* in both the classical Sunni polity, Noah Feldman, amongst other scholars, argues that there did exist a sort of decentralized balance of power in medieval Islam which continued well into the nineteenth century Ottoman Empire wherein the private religious jurists – the *ullema* – acted collectively as a check upon Caliphal power using their popular influence due to the fact that they solely held the responsibility of exposition and explanation of the Divine Law. Feldman argues that the Ottoman Empire hastened its decline and deeply centralized its power by integrating jurists and scholars into the public sector on the state payroll with a complex religious

bureaucracy deeply embedded in government¹⁵¹. Hence in principle the historical Islamic Caliphate had been limited in theory and not strictly speaking an absolute despotism. Indeed, in 1913 one American scholar Albert Howe Lybyer defined the form and character of the Ottoman state as a “limited despotism supported by the Mohammeden law¹⁵².” Lybyer states that the Ottoman Empire was in fact bounded by an “unchangeable constitution” which consisted in three strong limits: (1) the *sharia* as aforementioned, along with (2) long-standing institutions which no Ottoman Caliph could easily depose of and (3) custom which he claims no people has clung to stronger than the Ottomans. Hence, the power of the Ottoman Caliph was not absolute, and could only be wielded in a limited fashion. Noah Feldman adds that although constitutions of Islamic Caliphates were – with extremely few exceptions – unwritten, there was indeed an Islamic tradition of constitutional law as the very existence of limits on governance implies constitutionalism even if unwritten or codified¹⁵³. Although Feldman describes great variance between the differing constitutional laws of different Islamic states, the fact that government was indeed limited by norms and rules is an important bridge connecting Islam with liberalism.

The presence of an unwritten constitution, a monarch, or an official religion does not detract from liberalism in the slightest. Many liberal regimes have currently, or in the past, had unwritten constitutions or official religions. For instance, the United Kingdom of Great Britain, is until this day the United Kingdom has no written constitution, and by law (*de jure*) is an officially Anglican state, and the Queen of England, the *de jure* head of state, is given the title of Supreme Governor of the Church of England. Yet, since the Glorious Revolution during the

¹⁵¹ Feldman, *The Fall and Rise of the Islamic State*, 23-34.

¹⁵² Lybyer, Albert Howe. *The Government of the Ottoman Empire in the Time of Suleiman the Magnificent*. (Cambridge: Harvard University Press, 1913), 25. Although written almost a century ago, Lybyer’s work is an excellent description of the political institutions of the Ottoman state, and is available digitally online its entirety at http://books.google.com/books?id=UROM1ZZyxAMC&pg=PR3&source=gbs_selected_pages&cad=0_1

¹⁵³ Feldman, *The Fall and Rise of the Islamic State*, 29-34.

lifetime of John Locke, the United Kingdom has remained a liberal state. Furthermore, the United Kingdom is not the only modern nation-state wherein this is the case: New Zealand and Israel possess an unwritten constitution and Canada and Australia both have possessed unwritten constitutions during their history, none would deny however that any of the aforementioned were liberal states¹⁵⁴ – and all of these countries are ranked as free by Freedom House¹⁵⁵. In the case of Israel, there exists an official religion – Judaism – as well as a Chief Rabbinate responsible for exegesis of Jewish religious law (*halacha*). Moreover, in Israel, many religious laws are indeed enforced by the coercive powers of the state – for instance the State of Israel does not even recognize civil marriage unless it is performed outside of Israel¹⁵⁶.

The British unwritten constitution is based primarily in both the statute law of parliament as well as customs or conventions which are unwritten and uncodified understandings which are still considered legally binding. For instance, codified British jurisprudence nowhere states that the monarch is regarded solely as a symbol. Instead, *de jure*, the British monarch does possess almost absolute power and indeed almost all government actions are carried out in her name – such as the Speech from the Throne written by the Prime Minister to argue his policy agenda for the next year, the signing of bills, and the forming of a government from parliament. Yet although the Monarch reigns *supreme de jure*, conventions and customs cause it to be the case *de facto* that parliament and the government, that is the Prime Minister and his cabinet, reign *supreme*¹⁵⁷.

The British government evolved from absolute monarchy into liberalism through several

¹⁵⁴ Norton, Philip. *The British Polity (4th Edition)*. (New York: Longman, 2000), 61-75.

¹⁵⁵ "freedomhouse.org: Country Report." freedomhouse.org: Home.
<http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7514> (accessed April 18, 2009).

¹⁵⁶ See Don-Yehiya, Eliezer, and Charles S. Liebman. *Civil Religion in Israel: Traditional Judaism and Political Culture in the Jewish State*. (Berkeley: University of California Press, 1983) for a detailed account of the role of religion and state in Israeli society.

¹⁵⁷ Norton, Philip. *The British Polity (4th Edition)*, 61-75.

centuries. It could be argued that the Islamic Caliphate did not do the same; instead, the current states which make up the former Ottoman Caliphate are almost all autocracies with the notable exception of the Republic of Turkey, which was founded in revolution and revolt from the Ottoman state, instead of proceeding from its evolution. However, this argument ignores essential aspects of Islamic history. There are at least two Sunni Caliphates in the history of Islam which although brief in their existence have accepted some sort of constitutional and parliamentary governance: the late Ottoman Caliphate, and the current Kingdom of Morocco.

The last one hundred years of the late Ottoman Caliphate was characterized by the *tanzimat* or the public reforms, which gave minority and non-Muslim groups greater rights, and federalist governance. The main two reforms of the *tanzimat* period are the *millet* system, which allowed each religious community its own self-governance in accordance with its religious laws, and the written and codified Ottoman constitution – the *kanun el-essasi* of 1896 which subjected the caliph, through his own will and consent, to a constitution which established such institutions as a parliament and the rough outline of a separation of powers. Although the Ottoman Caliph would suspend the constitution during the constitutional crisis of the late 1910s, in 1922 a new drafting of the *kanun el-essasi* subjected the Ottoman Caliph to parliamentary sovereignty, by his own will. Although this was short lived, it does establish that there has existed a parliamentary constitutionalism based in liberal notions of rights within an Islamic Caliphate¹⁵⁸.

The idea that the Caliphate could be subjected to constitutionalism does not even originate in the *kanun el-essasi*, although Noah Feldman argues that all Islamic states were based in some sort of constitutionalism, it must be noted that in the mid-nineteenth century Ibn Abi Diyaf, an Islamic jurist in Tunis, and historian, argued that constitutionalism which limited

¹⁵⁸ Buntun, Martin, and William L Cleveland. *A History of the Modern Middle East: Fourth Edition*. (Oxford: Westview Press, 2009), 85-89.

tyranny and other major sins was a “good innovation” which blocked the means to evil. Ibn Abi Diyaf even commented on the American Republic stating that it was a polity blessed in its employment of consultation and rational governance instead of tyranny, although Abi Diyaf agreed with Ibn Khaldun that such states were only the “second best” to the Islamic polity which looked out for the higher principles of religious interests¹⁵⁹.

Many modern states with Islam as their official religion do indeed follow a model of what we may call Islamic liberalism. For instance, as mentioned earlier the Kingdom of Morocco, which still refers to its leader as the *Amir al-Mu'mineen* or the commander of the believers, and which claim a longer and more legitimate line for the Caliphate than the Ottomans do, exists with a constitution and is slowly undergoing liberal reforms. Moreover, Malaysia, which is an Islamic monarchy and calls its head of state the head of Islam, also recognizes the principles of liberal democracy. It is hence apparent that an Islamic Caliphate based in the evolutionary model of the United Kingdom which still recognizes the Queen as the head of the Church of England de jure, but de facto is a liberal democracy, is not only possible but tried before¹⁶⁰.

Conclusion

In conclusion, the fundamental principles of both liberalism and Sunni Islamic political thought are not wholly divergent, but in many ways overlap especially in their conceptions of natural law theory, specifically the natural rights of life and property, as well as the legal emphasis on the principle of utility. Moreover, it is evident than many Western conceptions of liberalism specifically natural rights liberalism and natural law liberal conceptions of human

¹⁵⁹ See Brown, L. Carl, and Ahmad Ibn Abi Diyaf. *Consult Them in the Matter: A Nineteenth-Century Islamic Argument for Constitutional Government*, (Fayetteville: University of Arkansas Press, 2005), 69. Ibn Abi Diyaf says that while “republican rule” is the second best regime “like that of America,” it is not right for Muslims.

¹⁶⁰ Noah Feldman makes a very similar argument for a liberal Caliphate in Feldman, Noah. *After Jihad*, 59-61.

rights, were influenced by Sunni Islamic philosophy, specifically the epistemological views of Averroes, Ibn Tufail and Ibn Nafis. In the 21st century there does exist the possibility of an classical liberalism in a Sunni Islamic polity, which may not completely correspond to modern Western conceptions of liberalism, but at the very least may pass the test of legitimacy in the eyes of both the classical Sunni legal and jurisprudential theory, and the framework of classical liberal natural human rights.

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