

It seems that this view is extreme for these reasons:-

- a. The theory of sovereignty is still in force , and most - if not all - of the constitutions in the contemporary world identify the holder of the sovereignty. Moreover Article 2 in the Charter of the United Nations States , "The organization is based on the principle of the sovereign equality of all its members ,, (41) .
- b. Sovereignty in Islam does not encourage tyranny ; because if we regard God as sovereign we cannot imagine that God will be a tyrant . The orders of God are embodied in the Qur'an . So , in practice , the sovereign is the Qur'an which is available to all for study. If some scholars tried to use the Qur'an to support tyranny , the responsibility of this misuse should lie on them and not on the sovereignty of Qur'an. We can regard this sovereignty as a great limitation on the will of governors , because they have no right to legislate according to their wishes and in defiance of Qur'an (42) .

In practice , it is undeniable that most of the Muslim governors did not bind themselves strictly by the Qur'anic rules . But in these cases , they alone were responsible for their behaviour and not the sovereignty of the Qur'an

If we consider the nation's sovereignty in Islam, the result will be the same , because the Muslim nation must respect the orders of God which are embodied in the Qur'an and is not allowed to act against them (43) .

41. Dolivet L., *The United Nations, Britain, 1946*, p. 92 ; *al - Jurf, nazariyat al-daulah*, p. 151.

42. Schacht, *Islamic law in contemporary states*, *The American Journal of Comparative Law* , 1959, vol. 8, p. 144; Coulson and Anderson, *The Muslim ruler*, *New York Un., Law Review*, Nov. 1958, vol. 33, pp. 920-929.

43. Zaydan, A, *al-fard wa al -daulah fi al-shari' ah al-Islamiyyah*, Baghdad 1965 , p.16 .

3. Opponents of the concept of sovereignty :-

Like other human concepts , the concept of sovereignty did not escape criticism . The strongest critics of this theory were Duguit (1859 - 1928) and Georges Sale (1884 - 1960) in France (38) . The main criticisms which they made were :-

- a. This theory is based on the fiction that the sovereign is absolute , while he is in fact limited by several factors .
- b. The sovereignty of the state is illegal and not only contradicts itself, but contradicts the idea of international law , because the state cannot enjoy absolute sovereignty and submit to the law at the same time.
- c. The sovereignty of the state would represent a threat to international law because the individual sovereign state might tend to regard submission to international law as a threat to its sovereignty (39).

These views could be criticised in the following way :-

- a. The absolute sovereignty of the state is relative ; because nothing in this world is perfectly absolute .
- b. There is no contradiction between the sovereignty of the state and its voluntary submission to the rule of law because it creates the law and submits to it of its own free will .
- c. International law is still in force although the states are now considered the bases of their separate sovereignties .

To this same view of the opponents of the theory of sovereignty, Dr . Abd al - Hamid Mutwali opposes the idea of sovereignty in Islam , because he thinks that the circumstances which gave rise to this theory in Europe have changed , and the theory has become reactionary . Besides this, the theory of sovereignty is harmful because it encourages the sovereign to act as a tyrant (40).

38. Ghali and Isa , *Mabadi-al-'ulum al-siyasiyyah* P.210.

39. *Ibid.*, pp . 210 - 211 ; *alJurf , nazariyat al-daulah*, PP.146-151.

40. Mutwali , A ., *Mabadi' nizam al - hukm fi al - Islam* , pp . 564 ; 565
567 - 576 - 588 .

the Everlasting Refuge, who has not begotten, and has not been begotten, and equal to Him is not anyone (33).

3. Permanent :- God is eternal, while man is mortal. No one is immortal except Him, because He is the first and original truth as the Qur'an maintained, "He is the All-mighty, the All-wise. To Him belongs the Kingdom of the heavens and the earth; He gives life, and He makes to die, and He is powerful over everything. He is the First and the Last, the Outward and the Inward. He has knowledge of everything (34).
4. Indivisible :- The sovereignty of God is indivisible because God in Islamic faith has no son, or partner, and no one is able to share His sovereignty with Him as the Qur'an argued; "They say: 'The Allmerciful has taken to Him a son, Glory be to Him! Nay, but they are honoured servants that outstrip Him not in speech, and perform as He commands. He knows what is before them and behind them, and they intercede not save for him with whom He is well - pleased, and they tremble in awe of Him. If any of them says, I am a god apart from Him, such a one we recompense with Gehenna; even so we recompense the evildoers (35).
5. Inalienable :- It is impossible to transfer the sovereignty of God to another power, because no one is able to enjoy His prerogative. Moreover, as God is eternal, there is no reason to transfer His sovereignty to anyone else (36) But through revelations God chooses some persons as His messengers on earth to deliver His orders to the people as we shall explain (37).

33. Sura, CXII: 1-4; Arberry, *The Koran interpreted*, p. 667; Alyas, *Sovereignty in Islam*, p. 288.

34. Sura, LVII.1; Arberry, *The Koran...*, p. 504.

35. Sura XXI: 26 - 29 Arberry, *The Koran interpreted*, p. 325; See also Suras, CXII: 1-4; XXI: 22; XXIII: 91.

36. See for instance Sura, CXII: 1-4; XXI: 26 - 29; Ilyas, *Sovereignty in Islam*, p. 248.

37. Maududi, *Islamic law and constitution*, pp. 184 - 185.

The characteristics of the sovereignty of God :-

The characteristics of sovereignty which were mentioned before, can be found in the sovereignty of God typified as follows :-

1. Universal :- The sovereignty of God as the Qur'an maintained is comprehensive and universal over all the universe because God is the creator of all things, "He unto Whom belongeth the sovereignty of the heavens and the earth, He hath chosen no son nor hath He any partner in the sovereignty. He hath created every thing and hath meted out for it a measure (30)"

The sovereignty of God is not limited to religious matters alone, but extends over political matters as over all aspects of life, as the Qur'an emphasised "Say: 'O God ! Lord of Power (and Rule), Thou givest Power to Whom Thou plearest, And Thou strippest off Power from whom Thou plearest : Thou enduest with honour whom Thou plearest, and Thou bringest low whom Thou plearest: In Thy hand is all Good . Verily , over all things Thou hast power (31)".

2. Absolute:- The sovereignty of God over His creatures is unlimited; His authority is over and above the authority of governors and kings. If He wants to do anything, He will do it, because He is omnipotent and as the Qur'an mentioned, "The only words we say to a thing, when we desire it, is that we say to it 'Be, and it is(32). There is no power in the Universe equal to His power, all powers submit to His absolute power because as the Qur'an emphasised "Say: 'He is God, One, God,

30. Our'an XXV :1; Pickthall, M., *The meaning of the glorious Koran*, London, ed., II th, p. 259 ; Maududi, *Islamic law and constitution*, Karachi, 1960 . p. 177 .

31. Our'an III: 26, Ali, *The holy Qur'an*, vol. I, p. 129; See also suras XX- XIX :43; XXXV :10; 11 : 247

32. Sura, XVI:40; Arberry, *The Koran interpreted* p. 262 ; Alyas, A., *Sovereignty in Islam*, Pakistan Horizon, vol., 11, 1958 , p. 247 .

6. The meaning of 'Islam is submission to the orders of God, and a Muslim is one who submits to the orders embodied in the Qur'an, the words of God, and the sunna, the traditions and works of His Messenger' (24).

7. Therefore in Islam God is the ultimate source of law (25).

Because of the above views, Muslims regarded their army as 'the army of God,' and their public treasury as 'the treasury of God,' "even the public functionaries are 'the (employees of Allah)'" (26).

The "sovereignty of God" doctrine is more convincing than the "sovereignty of the nation" doctrine for these reasons:

1. The Prophet's tradition, "My community will never agree upon an error" did not refer to the nation as sovereign, but to its actions in the context of defining right and wrong which are both defined in Islam as according to God's order (27).

2. Consultation is a basis for good behaviour and smooth government, but is not a characteristic of sovereignty.

3. The contract, *al-bay'ah*, between Caliph and people was just away of choosing governors after the time of the Prophet, and thus does not provide an adequate proof of the sovereignty of the nation (28).

Moreover, the pledges of the Madinans at Aqabah to submit to the order of God and the authority of His Messenger could be regarded as evidence to prove that the sovereignty in Islam belongs to God only (29).

24. *Op. cit.*, pp. 151-152.

25. Anderson, J., and Coulson, N. J., *The Muslim ruler and contractual obligations*, *New York University Law Review*, vol 33, Nov., 1958, pp. 920 - 929.

26. De Santillana, *Law and society*, edited by Arnold and Guillaume in *The Legacy of Islam*, p. 286.

27. Schacht J., *An introduction to Islamic law*, Oxford, 1964 .p.1; Khadduri *War and Peace in the law of Islam*, pp. 22-23.

28. Mutwali, *Mabadi' nizam al-hukm fi al-Islam*, pp. 579-580.

29. Ibn Hisham, *al-Sirah*, Egypt 1955, vol. I, pp. 268-269.

belong to the nation ,to a governor ,a family ,or a class, but only to God,for these reasons (21) :-

1. God is the creator of the Universe .
2. All the powers of man are bestowed by God .
3. Everything which man uses belongs to God, the real owner.
4. In order to bring about harmony between the creatures of God, they must submit to the one supreme power, which is God (22) .
5. No one deserves to be sovereign in the world except God, because "He is living, self-existent, selfsufficient, oternal, omniscient, omnipotent, and exalted above all flaw, defect or weakness, (23) .

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21. Maududi ,*Political teachings* ,edited by Sharif in *A history of Muslim philosophy*, vol. I; Germany, 1963, p. 191; Hamidullah, *The Muslim conduct* , p.6; Sherwani , *Studies in Muslim political thought and administration*, Lahore, 1968 p. 23 , Hashimi, Y., *Sovereignty in Muslim theory and practice* , *The Proceedings of Pakistan history conference*, 2nd ,session 1952 ,P.91 : Siddiqi,A., *Conception of sovereignty in Islamic state*, *The proceedings of Pakistan conference* , 2nd session 1952 , p.62 Ilyas,A., *Sovereignty in Islam* , *Pakistan Horizon* ,Karachi,1958 P.244, Al-Ali, S.,*al - tanzimat al-ijtima' iyyah wa al-iqtisadiyyah fi al-Basrah*, Baghdad 1953 ,p.87 , Uthman ,F., *daulat al-fikrah*, Cairo ,n.d ., P. 72, Khadduri ' *War and peace in the law of Islam* , Baltimore 1962 ,p.10; De Santillana,*Law and society* edited by Arnold and Guillaume in *The legacy of Islam* , p. 288; Gibb,*Law and religion in Islam*, edited by E.J. Rosenthal , in *Judaism and Christianity* ,vol 3, . p.147; Von Grunebaum , *Medieval Islam* ,, Chicago , 1953 , p. 142 ; Bluntschli, *The theory of the state* , P.286 ; Levy , R. , *The social structure of Islam* , Cambridge , 1957 .p. 242 .
 22. Al-Maududi, *Nazariyat al-Islam wa hadiyhi fi al-siyasah wa al-qanun wa al -dustur*, Damascus, 1964, pp. 150 - 151 .
 23. Maududi, *Political teachings*, edited by Sharif in *A history of Muslim philosophy*, vol. 1, p. 191 .

to mean "the sovereign power or the power delegated by the sovereign, the office of governor (a wali) and implies arrangement power and action(16). But the Muslim scholars did not elaborate the idea of sovereignty in special theories as some western scholars did later(17). Therefore some contemporary Muslim writers try to deal with this topic under the guidance of western theories of sovereignty and under the title of *al-siyadah* or *al-hakimiyyah* (18) . There are two main theories in this field :-

a . The sovereignty of the nation :-

Some modern Muslim writers suggest that the holder of sovereignty in Islam is the nation for these reasons :-

1. The Prophet said , "My community will never agree upon error."(19).
2. The assertion that the government in Islam is based on consultation between the governors and governed .
3. The basis from which the Caliphate took its legality is the contract, (*al-hay, ah*) between the Caliph and his nation (20) .

b. The sovereignty of God :..

The majority of the writers suggest that sovereignty in Islam does ont

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16. *al-Adhami ,The role of the Arab provincial governor in early Islam (11-132/632-750) , Thesis presented to St Andrews University ,July 1963,P.25.*
 17. *Mutwali ,mabadi' nizam al-hukm fi al-Islam,pp. 576-586 .*
 18. *Ibid ., PP. 551.-552 .*
 19. *al- Shaybani 'taysir al-wusul, Egypt, 1934, vol .3, p. 264 ,Hamidullah, The Muslim conduct of state ,Lahor ,n.d. 4th,ed..pp.23-24 .*
 20. *Op . cit ., pp. 557-558; Khalil, uthman ,al-dimuqratiyyah al-Islamiyyah, Cairo ,1958 ., p.29 ; al -Aqqad , al-dimuqratiyyah fi al-Islam ,Cairo, 1964, p. 65 .*

obligations and expressing the will of the nation and the government . Therefore they suggested that the state is the holder of sovereignty (9) .

d. Divine right and sovereignty: Some writers suggested that God alone is the source of all rights and sovereignty because He is as the "Creator, the only power from whom authority could be legitimately derived" (10) . The aim of these theories was to prove that the final authority of the king was derived directly from God . But this theory in itself can be interpreted in favour of the people as well as of kings , because each-side can claim that his sovereign right derived from God (11) .

2 Sovereignty in Islam :..

The idea of sovereignty is found in the Qur'an , which declared that the holder of sovereignty in Islam is God, and that the Prophet Muhammad is His creature and Messenger to the people. (12) The main duties of the Prophet Muhammad were to deliver the divine law and apply it to his people. Consequently, the Prophet based his authority on the idea of the sovereignty of God (13) .

The Muslim scholars dealt with this subject under the headings of the faith matters, *al-'aqa'id wa ilm al-Kalam*, (14) and the governmental conduct, *al-ahkam al-sultaniyyah* (15). And they used the technical term of *al-wilayah*

9 . *al-Jurf, nazariyat al-daulah* , p.137.

10. Merriam, *History of the theory of sovereignty* , p. 57

11. *Ibid* ., p. 62 .

12. *Qur'an*, XI:1-5, LI.56-60.

13. *Ibid* .

14. See for instance, *al- Shahrastani ,nihayat al-iqdam fi'ilm al-Kalam*.

15. See for instance ,*al-Mawardi, al-ahkam al- Sultaniyyah*.

d. Indivisible:— In a state the sovereignty is not shared .There is but one single authority (3) .

e. Inalienable(4):—The nature of sovereignty does not allow it to be transferred from its holder to another .

The idea of sovereignty is found in Aristotle's Politics, and the classical body of Roman law (5).But it was not the basis of political theories and it was not a great concern of writers until the sixteenth century when Jean Bodin made the first systematic study of the nature of sovereignty(6) .

The main theories of sovereignty were :

a. The king as a sovereign: In order to strengthen the position of the king in his struggle against the power of feudatory lords and the authority of the Church , Bodin outlined his theory that the king was the only holder of sovereignty (7) .

b. The nation as a sovereign : This theory derived its basis from the theories of the social contract which were advocated by such writers as Locke and Rousseau. These theories prevailed after the French revolution of 1789,which adopted these ideas, and transferred the right of sovereignty from the king to the nation(8) .

c. The state as sovereign: This theory was advocated by the German writers who regarded the state as a legal person,enjoying rights and bearing

3. Burgess, *Political science ...*, vol I, pp. 52-56,; *al-Jurf, nazariyat al-daulah* ,Cairo, 1964 ,pp.143-145.

4. Ghali and ' Isa ,*mabadi al - ulum al-siyasiyyah*, Egypt ,1962,p.203

5 . Merriam , C.E., *History of the theory of sovereignty since Rousseau*, New York , 1900, P 11

6 . *Ibid* ., p.13 .

7 . Mutwali , *Mabadi' nizam al -hukm fi al- Islam*,Egypt, 1966 pp. 560-561

8 . *Ibid* ., pp. 562-563 .

SOVEREIGNTY IN ISLAM*

"A Comparative Study "

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1. The concept of sovereignty :-

Sovereignty is the supreme power of the state; and as Bluntschli said it is, "Every authority which gives a final decision "(1); and as Burgess explained it is an " original, absolute, unlimited ,universal power over the individual subject and over all associations of subjects." (2)

The main characteristics of sovereignty as determined by scholars of constitutional law and political science are :

- a. It is universal :- The authority of the sovereign power extends over all its subjects and all foreigners who live in the state :
- b. Absolute:- The power of the sovereign is absolute and not challenged by any other authority from within or from outside the state .
- c. Permanent :- The sovereign power does not depend on the life of governors ,but it is attached to the life of the state and the nation .

* This article is taken from my Ph .D., thesis :*The Governmental system of the Prophet Muhammad (University of St.Andrews 1971 ,p.p89-102)*

1. *Bluntschli, The theory of the state ,Oxford 1885 ,p.463.*
2. *Burgess,J.W.,Political science and comparative constitutional law.Boston 1890 ,vol.I,p.52 .*