الشورى

SHURACRACY
AS ISLAMIC DEMOCRACY:
The Failure of the Bahraini Constitution

Caterina Aiena

SHURACRACY AS ISLAMIC DEMOCRACY:
The Failure of the Bahraini Constitution

Caterina Aiena

Contents

"When parliaments were introduced in some Islamic lands early in the last century, it was soon clear that instead of free participation of people, the new parliaments became a means of manipulation by the foreign powers. As a result, this failed experience, coming with the failure of the preceding consultative bodies of the Ottoman Empire, left a legacy of mistrust in the democratic process. Now, in the wake of the legal reforms invoked in throughout the MENA countries, it is vital that democracy comes to Muslims not as a cultural import, but as "… rooted in and supported by the ideas and ideals embedded in their own Islamic heritage".

Sadek Jawad Sulayman, "The Shura Principle in Islam"

1. Introduction

At present, the need of a newly tuned idea of consultation is paramount due to its instrumental role in accommodating the crisis of identity of Islamic constitutionalism as a key item in the democratisation agenda. In the Western world, the most prevalent idea is that the democratic deficit in this part of the human community is somehow rooted in Islam for its inherent recalcitrance to democratic values.[1] So, at this point some questions arise: is Islam essentially antithetical to democracy? And if it is not, how and by whom could Islamic democracy be implemented?

The aim of this paper is to demonstrate that Islam not only can be the impetus for the initiation of democratisation in the Middle East, but, further, it *per se* presents significant concepts in tune with democratic principles, through the Islamic principle of consultation, known also as *shura*.

2. About Shura

S*hūra* is the consultative principle present in Islām since the time of the Prophet, authenticated by the Qur'ān and the Prophetic *Sūnna*[2]. Even if not systematically organised, originally the concept of *shūra* ranked high in the activities of the first four caliphs of the "Rasheedun" Caliphate, and represented a key element in the decision-making process[3].

As a rule, the consultative body, *majlis al-shūra, was* conducted collectively by the caliph and its members on the basis of free and public discussions. Further, the decisions undertaken were unquestionable and of binding force upon the Islamic community.

Nevertheless, under the Ummayyad caliphate, the institution of *shura* progressively was distorted and intentionally misled. Partially due to the new exigencies of continuous wars in demanding urgent military decisions, from then on *shura* was confined to perform exclusively administrative tasks, turned into an informal affair by which the caliph consulted a clique of individuals near to his court, and supporting the caliph's rule[4]. Then, from a deafening means of sharing in decision-making *shura* was distorted to a wordless body, yielding to the wishes of the rulers. In the meantime, its use and continuous mentioning in the political institutions was instrumental to legitimise the corrupted and sometimes questionable politics in terms of adherence to the Islamic values of the ruling clan.

2.1. The Four Pillars of the Principle of Shura

According to the scholars' contributions, it is possible to trace four founding pillars of the principles of shura, the *arkan al shura.*

2.1.1 Obligatoriness of the Institution

Although already existent in pre-Islamic times, successively the Qur'ān and the *Hadīth*s of the Prophet embedded the concept of *shūra* in the Muslim mind, either theoretically by qualifying it as a very act of faith, or practically through the examples of the Prophet who made a large use of it. The Quran expressly mentions the principle of *shūra* in two verses: the Median verse 3:159 and 42:38, which respectively say:

(3:159) *Consult with them about matters, then, when you have decided on a course of action, put your trust in God (...)* [5]

(42:38) *Respond to their Lord; keep up the prayer; conduct their affairs by mutual consultation; give to others out of what We have provided for them*

In the first verse, the command of *shūra* is introduced by an imperative form, *shuwar*. According to the *usulī* scholars[6], an order introduced by an imperative refers to an obligatory *(wājib)* or forbidden (*harām*) act[7]. Also the Tradition of the Prophet, the *Hadīth al-Nabawi,* seems to confirm the qualification of *shūra* as an act of faith.

2.1.2 Mandatory Rule

Shūra means "a serious and effective participation in decision-making, not merely a ceremonial procedure."[8] Many examples come to prove that: for example, in the event of the battle of *Uhūd*, when the Prophet consulted with his companions as to whether he would fight the *Qurāysh* outside Medina or in it. Despite of being in disagreement with the majority of his companions, he followed their decision of facing the enemies outside of Medina; decision that proved wrong and caused the defeat of the Median community.

Also the *Sūnna* of the Prophet seems to endorse the compulsory nature of *shūra*, as it is confirmed by a *hadīth* of Alī Ibn Abī Tālib who reported that the Prophet expressively prevented individuals from taking any decision without consultation. According to the *hadīth*, when Alī asked him what he should do if there were no consistent Islamic legislation on a given issue, then the Prophet said: "You should consult with jurists and worshippers and do not decree a private decision without consultation."

2.1.3. Shura's Membership

The Prophetic *Sūnna* is unclear on this point. If some scholars pointed out that the Prophet turned to a chosen council, elected by himself and including *al-Ansār* and *al-Muhājirūn*, others seem to disagree with them and assert that, instead of a fixed council there was a council varying according to the circumstances or the competencies needed, called the *Ahl al-Shūra*, "the People of *Shūra*". [9]

2.1.4. Majority Rule

Caliph Omar said: "When the caliphs consulted six persons, and they were divided between a group of 2 and of 4, they followed the latter".[10] The *hadīth* is clear on what the caliph Omar should have done if case of not-unanimous opinion. But, although many other *hadith* seem to agree with this position, the question on whether unanimous opinion is the only way to reach a decision is still an unsolved question.

Generally speaking, *shūra* must be limited in all those subjects uncovered by the legal texts: when a text has definitive legal force and represent a clear command or prohibition, the principle of *shūra* is not applicable; but when a legal text is tied to some conditions, *shūra* is applicable as long as such conditions are maintained

3. *Shuracracy:* Toward an idea of Islamic Democracy

In revisiting the corpus of the Islamic sources and the exegesis of the Quran, both so-called reformists and so-called conservatives seem to recognise two foundational postulates, on which the entire institution of *shura* is built up: *shura is a compulsory institution*, and the scope of the legislation by shūra is limited by the Islamic law, which is the ultimate law of the Islamic government. That both foundational postulates gain an undisputable consensus among 'reformists' is testified by pronouncements of contemporary scholars such as shaykh al-Ghazali and Imara, who clearly equate democracy in Western countries as the "*shura* there", or *shura* as "Islam's democracy and a Muslim obligation".[11]

The Qur'an does not prescribe particular methods on how the consultation should be conducted, the decisions taken, neither any other concrete aspect thereof. Consequently, wide rooms are left to all speculative efforts by contemporary scholars, in figuring the best solutions to the needs of the leaders of every age and every country. In this regards, unlike the 'conservatives', who vested *shura* only with a passive role in giving discretionary, non-binding decisions upon consultations, contemporary reformist scholars went beyond the two foundational postulates and added three corollaries to the *shura* principle: firstly, *shura is a mandatory rule*. Secondly, *shura refers to the community wholly* and not a section thereof; then, women and other religious communities must be included. Thirdly, *shura reposes on the majority rule* since it is evident that under the Prophet and the Right-guided caliphs the decisions were based on the opinions of "the overwhelming majority" *(al-sawād al-azam)*.[12] As pointed out by Osman, in the event of the overwhelming majority, the risk of error is far less than that of an individual or minority opinion, in accordance with the *hadīth* that authoritatively substantiates: "The Umma will not be agreed on an error".

By endorsing the idea of an Islamic democratisation process that starts from "within", sheikh Imara described *shūra* as God-ordained system. It follows that the process of *shūra* can apply only to issues where there are no explicit injunctions in the Qur'ān and the Sūnna, and it can legislate only to the extent that it does not legalise the prohibited or prohibit the legal.

As to the caliphate, Abd al-Qādir Auda clearly recognises that the Caliph's government is not complete unless chosen by the community, not only because the choice is a logical or social necessity, but because the Qur'ān imposed on the Muslims to manage their affairs by consultation. Hence, *shūra* is a central pillar: it is obligatory for the rulers and ruled alike, and whenever the ruler rejects it, he ought to be removed from office. The corollary of his thesis rests on the idea *shūra* is the power of the people themselves for it speaks for the people, and it is the repository of the nation's will. As a consequence, rulers are committed to executing what is "yielded by *shūra* and to upholding it in the manner approved by the representatives of the nation".[14]

Not surprisingly, none of such contributes by scholars finds its application in those countries where the principle of *shura* is mentioned in their constitutions. In this regard, the case of Bahrain is a clear example of what must not be done.

4. The failure of the Bahraini Constitutional Experience

In order to end the popular 1990's uprising in Bahrain, which demanded public reforms in the government, Shaykh Hamad established a Supreme National Committee to draft the National Action Charter, the aim of which was the general idea of reformulating the future structure of the government, accompanying the country into a constitutional monarchy, and not on the constitution itself. Following the approval of the National Action Charter in a national referendum, in 2002 the final constitution was approved and warmly hailed as a milestone in constitutional reform.

Both documents mention the principle of *shura*, and confirm the obligatory requirement of the institution according to the Islamic precepts. In this regard, the national Action Charter, in the Chapter V, clearly states that the principle of *Shura* is a "basic Islamic principle of the government system of Bahrain". [15] Similarly, the constitution of 2002, in the Preamble, states that "constitutional monarchy is founded on counsel [*shura*], which in Islam is the highest model for governance". [16] Nonetheless, the consultative process suffers some structural deficiencies in relation to the ideal model of the *shūra* as set out in the previous chapters, as well as its functional role of providing effective legislative power and checking the executive.

In terms of effectiveness of legislative power, the deceit is hidden through a clever game of mirrors. If, in fact at first the mandatory rule of the *shura council* might seem preserved only apparently, for it is vested with legislative and not only consultative powers in full compliance with the principle of shura, at a later stage the legislative scope of the chamber has been promptly stultified in practice by two main factors. Firstly, the *Majlis al-Shura* is appointed by the King, and

the 40 appointed members are drawn from the ruling family, former cabinet ministers and retired military officers. Secondly, the President of *Majlis Al-Shura*, who is also appointed by the King, has a casting vote in the event of deadlock during the chamber work. [17] So that, not only are the numbers of elected and appointed members made equal, but the president of the *Majlis al-Shura* is given voting rights in case of a tie, thus providing a 51% majority for appointed representatives. [18]

In terms of separation of powers, the boundaries of competences with the executive are not clearly defined. Indeed, under the amended constitution, the government can suspend the parliament for four months without elections, and the King also has full discretion to postpone elections without any time limit. As a result, although theoretically *shūra* should be invasive in controlling the executive, in the case of Bahrain not only is the position of the *Majlis* put severely in jeopardy, but also the relation between the consultative council and the council of ministers is competitive and confrontational. In this regard, one more consideration is needed. In order to restrrain the head of state from picking only his own yes-people for the consultative body, it is not inconsistent with the principle of *shura* for the establishment of an independent electoral commission that can set laws of eligibility and competency for the candidates. In this way, the Bahrain constituencies and the function of watchdog of the legislative might be both safeguarded.

In the light of such considerations, we can largely assume that the real consultative assembly represented by the Baharini case did not reflect the ideal of *Majlis* as enounced by the Islamic political theory.

Conclusion

Aside from Turkey, which follows the secular democracy pattern, countries such as Morocco, Oman, Egypt, Bahrain, Pakistan, Saudi Arabia, Tunisia, are all ruled according to different forms of government, some of them being monarchies while others representative democracies, and by different version of *shura*. But, all of them have a common denominator in providing for a *majlis al-shura* vested only with a consultative power or poor legislative function, on which the head of government, or the sultan or the king, benefits from the ultimate power of veto or any other means of control.

The embedding of the principle of *shura* in their constitutions, then, pose one more consideration. One reason why all these countries deliberately included the principle of *shura* might lie in that they, even if coming from different constitutional experiences, intended to give an Islamic aura to their government, and thereby make their rule more acceptable to the public. This is what is currently occurring in Bahrain, with the constitution neatly championing the principle of *shura* as a democratic tool in the political activity, but without providing any consistency with the Islamic theory. Once again, the hypocritical exploitation of the principle of shura by the political forces to show their commitment to democracy has been confirmed.

In this regard, the salience of a transparent and courageous debate among contemporary Islamic scholars is desirable for two considerations. Firstly, there is no coherent, harmonious and well-structured theory on Islamic constitutionalism. For that reason, the intelligentsia should be encouraged to revisit Islam, to re-examine its core intellectual and moral ideas, and to justify demands for emancipatory change by indigenous Islamic criteria according to the principle of *shura*. [19] Secondly, Islamist reformers might formulate a sort of "nomenclature of *shura*", and implement their progressive ideas into concrete "action plans", with the ultimate purpose of giving practical and concrete solutions to new constitutional experiments. This is of topical interest at the present time where more, and more often, countries are demanding legal reforms and experiencing new constitutional challenges.

Bibliography

Al-Solh, R., "Islamist Attitudes towards Democracy: a Review of the Ideas of al-Ghazali, Al-Turabi and Imara", *British Journal of Middle Eastern Studies*, Vol. 20, N. 1, (1993)

Al-Sulamy, M. F., *Comparing Western Liberal Democracy and the Concept of Shura in Moderate Islamist Movements.* PhD Thesis, University of Exeter, 2002.

Al-Sulamy*, The West and the Islam, Western Liberal Democracy Versus the System of Shura*

Asad M., *The Principles of State and Government in Islam*, Islamic Public Trust: Kuala Lumpur 1999.

Azizah Y. Al-Hibri, "Islamic Constitutionalism and the Concept of Democracy", Case Western Reserve Journal of International Law, Vol. 24, No. 1, 1992

Bukay D., "Can be an Islamic Democracy", Middle East Quarterly, vol. 14, No. 2 (spring 2007).

Dorraj M, "*Islam Democracy and Governance"* in Magnarella P., *Middle East and North Africa: Governance, "Democratization, Human Rights*, Aldershot: Ashgate, 1999

Fazlur, R., "The Principle of Shura and the Role of the Umma in Islam*"*, *American Journal of Islamic Studies*, vol. 1, n. 1, (1984)

Fazlur, R. , "A recent controversy over the interpretation of Shura", *History of Religion*, Vol. 20, n. 4, 1981.

Fazlur, R, "Ïslam and the State", *The Quranic Horizons*, vol. 4, no. 4, Oct-Dec 1999.

Fehmi J., "Notion of the State in the Contemporary Arab-Islamic Writings", *The International Spectator,* 20, 2, 33

Haidar Hamid, *A Theory of Religious Democracy*, London: ICAS Press, 2006

Hoffman M., "Democracy and Shuracracy", in Donohue J.J, Esposito J. L., *Islam in Transition, Muslim Perpsectives*, Oxoford: Oxford University Press, 2007

Mahomed, I. S., *Majlis al-Shūrā: Past and Present Application of the Principle of Shūrā in Islamic Governance*, University of Johannesburg 2005

Osman F., *Islam in a Modern State: Democracy and the Concept of Shura*, Occasional Paper Series Washington, D.C.: The Center for Muslim-Christian Understanding of Georgetown University, 2001

Osman F., "Shura and Democracy", in Donohue J.J, Esposito J. L., *Islam in Transition, Muslim Perpsectives*, Oxoford: Oxford University Press, 2007

Shavit, U. "Is Shura a Muslim Form of Democracy? Roots and Systematization of a Polemic", *Middle Eastern Studies*, 46:3

Sinanovic, E., "The Majority Principle in Islamic Legal and Political Though", *Islam and Christian-Muslim Relations*, vol. 15, No. 2, (2004 April)

Vaezi Ahmad, *Shia Political Thought*, London: Islamic Centre of England, 2004.

Arabic Sources

Abd al-Khāliq, ʿAbd al-Raḥmān. al-Shūrà fī ẓill: Niẓām al-Hukm al-Islāmī. Kuwayt : al-Dār al-Salafīyah, 1975.

Al-Ansari, Abd al-Hamid, Al-Shura wa Athraha wa al-Dimuqratiyya,

Al-Ghazālī, M., Azmat al-Shura fi al-Mujtama al-Arabiyya w al-Islamiyyat, Dar al-Sharq al-Awsat lil-Dirasa: 1990.

Al-Ghazālī, M., Huna Na'lam, Nahda Masr: Cairo 2005.

Al-Khalid. S., "'Araḍ al-Aḥādīṯ al-Nabuwiyya al-Mutaʿalaqa" in Al-Shūra fil-Islām, vol. 1, published by al Majma' al-Malakī li-Buhūth wa al-Hadārah. Amman: Mu'sasah Al-Bayat,1989.

Al-Turabi, H., Qadiyyat al-Hurriyyat wal-Wahda, Al-Shura wal Dimuqratiyya, Al-Din wal-Fann.

Al-Asalī, K., "Al-Šhūrā fil-Urf al Qabalī", Al-Shūra fil-Islām, vol. 1, published by al Majma' al-Malakī li-Buhūth wa al-Hadārah. Amman: Mu'sasah Al-Bayat, 1989.

Atwān Ḥ., "Malāmiḥ min al-Šhūra fi al-ʿAṣr al-Ūmmuī", Al-Shūra fil-Islām, vol. 1, published by al Majma' al-Malakī li-Buhūth wa al-Hadārah. Amman: Mu'sasah Al-Bayat, 1989.

Awda Abdel Qadir, Al-Islam w Awdana al-Siyasiyya, Muassasa al-Risala: Beirut, 1981.

Imārah, M.,Al-ʿAmāl al-Kāmila li-Imām Muḥammad Abdu, Beirut: al-Mu'assasa al-Arabiyya li al-Dirasāt w al-Našr, 1972-1973.

Imara, M., Al-Islam wa Huquq al-Insan, Alim Al-Marifa: Cairo.

Itr, Ḥasan Ḍiyāʾ, Al-Dīn al-Shūrá fī ḍawʾ al-Qurʾān wa-al-Sunnah, Dubayy : Dār al-Buḥūth lil-Dirāsāt al-Islāmīyah wa-Iḥyāʾ al-Turāth, 2001.

Endnotes

[1] The crisis of democracy in the West, and its own democratic deficit are not discussed here.

[2] The Sunna is the collection of the words and deeds of the Prophet. After the Quran, it is the secondary legal source.

[3] Mahomed, I. S., Majlis al-Shūrā: Past and Present Application of the Principle of Shūrā in Islamic Governance, University of Johannesburg 2005, chapter 3 and 4; Al-Sulami, M. F., Comparing Western Liberal Democracy and the Concept of Šūrah in Moderate Islamist Movements. PhD Thesis, University of Exeter, 2002, ch. 3. Al-Khalid. S., "Araḍ al-Aḥādīt al-Nabuwiyya al-Muta'alaqa" in Al-Shūra fil-Islām, vol. 1, published by al Majma' al-Malakī li-Buhūth wa al-Hadārah. Amman: Mu'sasah Al-Bayat,1989. See also Al-Awa M., On the political system of the Islamic State, Indianapolis: American Trust Publications, 1980.

[4] Fazlur R., "Ïslam and the State", *The Quranic Horizons*, vol. 4, no. 4, Oct-Dec 1999, p. 16; Al-Sulami, *op. cit.*, supra note 1, p. 55.

[5] Haleem A., *The Qur'an, A New Translation,* available on Oxford Islamic Studies website at http://www.oxfordislamicstudies.com/article/book/islam9780192831934?sura=4 &astart=59&x=0&y=0

[6] Usūl al Fiqh is a branch of Islamic Jurisprudence based on the sources of law. Scholars of the Usul al-Fiqh are called Usulī

[7] Hasan O., The Principles of Islamic Jurisprudence: the Command of the Sharia and the Juridical Norms, Islamic Research Institute: Islamabad 2007, pp. 44-45. Iṭr, Ḥ. Ḍ., Al-Shūrá fī Daw' al-Qurʾān wa-al-Sunnah, Dubay: Dār al-Buḥūth lil-Dirāsāt al-Islāmīyah wa-Iḥyāʾ al-Turāt, 2001, p. 35. See also Ossama Arabi, Studies in Modern Islamic Law and Jurisprudence, The Hague: London : Kluwer Law International, 2001.

[8] See generally: Osman F., *Islām in a Modern State: Democracy and the Concept of Shura*, Occasional Paper Series Washington, D.C: The Centre for Muslim-Christian Understanding of Georgetown University, 2001, p. 10. Osman F., "Shura and Democracy", in Donohue J.J, Esposito J. L., *Islām in Transition, Muslim Perpsectives*, Oxoford: Oxford University Press, 2007.

[9] Al-Sulamy, M. F., *op. cit*, p 65. Al-Ansār, 'the helpers', is the usual designation of those men of Medina who supported Muhammad, in distinction from the Muhājirūn or 'emigrants' i.e. his Meccan followers.Watt, W. Montgomery. "al-Ansār." *Encyclopaedia of Islam, Second Edition*. Edited by: P. Bearman; , Th. Bianquis; , C.E. Bosworth; , E. van Donzel; and W.P. Heinrichs. Brill, 2011. Brill Online. School of Oriental and African Studies (SOAS). 29

September 2011 <http://www.brillonline.nl/subscriber/entry?entry=islam_SIM-0678>

[10] Hadith quoted in Mutawalli, A. H., Azmat el-Fikr el-Siyasī al-Islāmī fi el-ʿAṣr el-Ḥadīt̲, Al-Aleskandriyya, 1979. In Arabic the original text is: عندما

جعل الخلافة شورى بين ستة ان انقسموا اثنين وأربعة فكونوا مع الاربعة

[11] *Al-Ghazālī M., Azmat al-Šūra fi al-Mujtamaʿat al-ʿarabiyya w al-Islāmiyya,* 1990, p. 69

[12] Itr, *op.cit.,* p. 102. Fazlur R., *op.cit.,* p. 300. Osman, F., *Islam in a Modern State: Democracy and the Concept of Shura*, p. 11. As to Shia Muslim scholars, Haidar Hamid, *A Theory of Religious Democracy*, ICAS Press: 2006, London. Vaezi Ahmad, *Shia Political Thought*, London: Islamic Centre of England, 2004.

[13] Al-Solh, R., "Islamist Attitudes towards Democracy: a Review of the Ideas of al-Ghazali, Al-Turabi and Imara", *British Journal of Middle Eastern Studies*, Vol. 20, N. 1, (1993), p 37-40.

[14] Awdah A.Q, *Al-Islām wa Audaʿuna el-Siyāsiya*, pp. 55,

[15] National Action Charter, Chapter II, first article.

[16] See Bahrain Constitution, Section III, art. 51-60.

[17] Steven Wright, "Fixing the Kingdom:Political Evolution and Socio-Economic Challenges in Bahrain", *Center for International and Regionalo Studies*, Geogetown University:2008, Qatar., p.5.

[18] Peterson, J.E., "The promise and Reality of Bahraini Reforms", p. 13.

[19] Sadek Jawad Sulaiman, "The shura Principle in Islam", p.4. See also Haudar Hamad, *op.cit*, pp.1-20.

Caterina Aiena reviews the possibility for representative government in Bahrain based on Islamic theories of governance. She argues that the project for democracy in the MENA region has been seen to be (with justification) an external intervention laden with colonial notions of supremacy. Instead she presents existing and developing theories of governance that use Islamic texts and arguments and challenges the existing status quo's usurpation of the term shura.

This paper is a starting point for discussions on wya of governance that break the stranglehold of meaning and power that currently exist in the MENA region.

About the Author: Caterina Aiena's field of research is Islamic Reformism as to Family Law, Constitutional Law, and Human Rights. She graduated from the University of Naples "L'Orientale", with a Bachelors Degree in Islamic Studies and afterwards earned a Masters degree in Law and Governance in Middle East at SOAS University in London.