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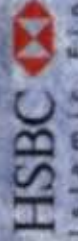
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Theories and Principles of Good Governance in the *Shari'ah* and the Civil Law: Its Constitutional Framework in the United States and Egypt

By

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Abstract

Some countries have been criticized in a number of ways for their perceived lack of healthy governance, political injustice and undemocratic system of government. This paper is an attempt to discover theories and principles of good governance in the Shariah and Civil Law. Also it's an attempt to cover some of the important principles which are relevant to a discourse on Islamic politics and how these principles can be used to establish good governance in the Islamic states. Moreover it is an attempt to answer whether the Islamic legal system has known theories and principles of good governance. This paper also attempt to observe the incorporation of theories and principles of good governance in the Egyptian and American constitutional framework.

1.0 Introduction

There is no single definition of Good Governance, as well as there are differences of opinion as to the norms and criteria for its measurement.¹ Yet values such as accountability, transparency, participation, and equality are to some degree or another common in literature and writings in the subject.² According to the World Bank good governance is 'exercising that authority in ways that respect the integrity, rights, and needs of everyone within the state'.³ The values of good governance are common to the Shari'ah. In Islam the authority or government must follow principles that which are pre requisites for establishment of just government. It is believed that good governance as propounded by the West and in Islam have more similarities than differences. Although the sources, origin and jurisprudence of the principles in Islam and the West may not be totally the same in most respect the theory and principles of good governance

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¹ Mahmoud Gebril, *Good Governance in Egypt: Suggested areas for Improvement*, Napoli May 17-21/2004.

² Source: World Bank, "Better Governance for Development in the Middle East and North Africa", Overview, File/govoverview-eng.pdf, September 2003, p. 3.

³ Source: World Bank, "Better Governance for Development in the Middle East and North Africa", Overview, File/govoverview-eng.pdf, September 2003, p. 3.

from both perspectives are mostly mutually compatible. This can be observed in the first part of the paper.

The second part of the paper makes brief observation of the incorporation of the principles of good governance in two countries namely the United States of America and Egypt. This attempt is to show that Muslim and non-Muslim countries not only share the idea of good governance, the countries also employ mechanism or institutions which are similar in order to achieve good governance. Thus to a certain extent there is already exist harmonization between civil law and the Shari'ah in the area of public law in relation to constitutional law. Furthermore it would like to emphasize that existence of constitutional legal framework for good governance does not guarantee that the authority practices the principles.

2.0 Good Governance and Its Principles

Good Governance, as defined by the UN Economic and Social Commission for Asia and the Pacific refers to 'the process of decision-making and the process by which decisions are implemented (or not implemented).'⁴ Governance is a process whereby societies or organizations make their important decisions, determine whom they involve in the process and how they render account. It should be noted that governance is not synonymous with government. Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance.

In this paper the discussion on good governance is done within the context of a nation or governance in a national space. The focus our attention is on the governance system or legal framework and the guiding principles upon which the process at the national level rests - that is the legal constitutional framework that define who gets power, how decisions are taken and how accountability is rendered.

The United Nations Development Program (UNDP "Governance and Sustainable Human Development, 1997") enunciates a set of principles of good governance that seems to have universal recognition. The Five Good Governance Principles are legitimacy, direction, performance, accountability and fairness which are deliberated below.

2.1. Legitimacy and Voice

Participation – all men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their intention. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.

Consensus orientation – good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures.

⁴ www.unescap.org/pdd and 'Good Governance' by Tan Sri Ramon Navaratnam, President of Transparency International Malaysia, a paper presented at 'Persidangan Ketua-Ketua Perwakilan Malaysia di Seberang Laut' on 4th April 2007 at Hotel Istana, Kuala Lumpur.

2.2. Direction

Strategic vision – leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.

2.3. Performance

Responsiveness – institutions and processes try to serve all stakeholders.

Effectiveness and efficiency – processes and institutions produce results that meet needs while making the best use of resources.

2.4. Accountability

Accountability – decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organizations and whether the decision is internal or external.

Transparency – transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

2.5. Fairness

Equity – all men and women have opportunities to improve or maintain their wellbeing.

Rule of Law – legal frameworks should be fair and enforced impartially, particularly the laws on human rights.⁵

Some of the principles of good governance above are related to the United Nations Universal Declaration of Human Rights. Firstly participation, which relates to “Everyone has the right to freedom of opinion and expression...” (Article 19); “Everyone has the right to freedom of peaceful assembly and association” (Article 20); “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives” (Article 21), and “Everyone has duties to the community...” (Article 29).

Secondly the Consensus Orientation which is relevant to “The will of the people shall be the basis of the authority of government: this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage...” (Article 21); and “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (Article 29).

Thirdly Equity which is in line with “All human beings are born free and equal in dignity and rights...” (Article 1); “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2), and “Whereas the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (Preamble).

⁵ Principles for Good Governance in the 21st Century. Policy Brief No.15. August 2003
By John Graham, Bruce Amos, Tim Plumptre. Institute on Governance, Ottawa, Canada.

Lastly Rule of Law which is closely connected to “Whereas it is essential ...that human rights should be protected by the rule of law” (Preamble); “All are equal before the law” (Article 7); “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal...” (Article 10); “No one shall be subjected to arbitrary arrest, detention or exile” (Article 5), and “No one shall be arbitrarily deprived of his property” (Article 17).⁶

Among the aims of Good Governance are to promote culture of zero corruption, to curb corruption through national and international coalitions, to enhance accountability in the administration of public procurement, to strengthen public support for anti-corruption programs, to create awareness on the costs of corruption, to be committed to the achievement of a socially just and equitable society within a sustainable, plural democracy that is free of corruption.⁷ Corruption, which is an element of bad governance, could be understood as “the abuse of entrusted power for private gain”.⁸

3.0 Good Governance in Islam

Shari'ah covers wide issues such as ritual, social interaction, criminal law, and political law.⁹ There is no separation between religion and state. Islam is a religion and a state (*din wa dawlah*).¹⁰ From Islamic perspective the principles of administration and qualities of an administrator suggest that man's personal character is the key to good governance. Therefore, leaders must be just, energetic and must possess qualities of head and heart. In addition, they should have the qualities of refinement, experience, alertness, power of comprehending problems, secrecy, freedom from greed and lust.¹¹

⁶ Principles for Good Governance in the 21st Century. Policy Brief No.15. August 2003

By John Graham, Bruce Amos, Tim Plumptre. Institute on Governance, Ottawa, Canada.

⁷ 'Good Governance' by Tan Sri Ramon Navaratnam, President of Transparency International Malaysia, a paper presented at 'Persidangan Ketua-Ketua Perwakilan Malaysia di Seberang Laut' on 4th April 2007 at Hotel Istana, Kuala Lumpur.

⁸ 'Good Governance' by Tan Sri Ramon Navaratnam, President of Transparency International Malaysia, a paper presented at 'Persidangan Ketua-Ketua Perwakilan Malaysia di Seberang Laut' on 4th April 2007 at Hotel Istana, Kuala Lumpur.

¹⁰ Abd al-Hamid Mitwalli. (1990) *al-Shari'ah al-Islamiyah ka-Masder 'Sasi lil Dustur, Munsha'at al- Ma'arf at*, 189-206 See 'Abd al-Jalil Muhammad'Ali: (1984), *Mabad' al-Mashru'ah fi al-Nizam al-Islamu wa al-'Anzimah al-Qanuniyah al-Mu'asirah: Dirasah Muqaranah*. Cairo: 'Alam al-Kutub. at, 203-207. See also 'Abd al-Hamid Mutawalli: (1978), *Mabad' Nizam al-Hukm fi al-Islami wa al-'Anzimah al-Qanuniyah al-Mu'asirah: Dirasah Muqaranah*, al-iskandariyah: Munsha'at al-ma'arf, at 579. See also Farooq Hassan: (1981), *the Concept of State and Law in Islam*, New York.University Press of America, at, 46-47.

¹¹ *Mohammad Abbas, Good Governance in Islam 1988-2009* irfi.org. All Rights Reserved. See also Riaz a. Siddiqui, Islamic laws guarantee good governance (the World of Islam) 30 July 2004. Dato' Shahran Laili Haji Abdul Munid, (2007), *Corporate governance in Islamic perspectives 5th international Islamic finance conference: "thirty five years on – the future of Islamic finance"* 3 &4 September 2007 the Ritz Carlton, Kuala Lumpur organized by ; Monash University Malaysia institute of bankers Malaysia. Mammad Ibn al-Hasayn al-Sharif al-Radi, (1980), *Nahj al-Balaghah wa hawa majmu' maiktarah al-sharif al-Rada min kalam Sayyidna Amir al-mu'minin 'Ali ibn Abi Talib Dar 'Ihy' al-Kutub al-'Arabiyah, al-Qahirah, p, 83-111.*

3.1. Majors Principles of Good Governance in the Islamic System

The *Qur'an* and *Sunnah* have given some majors principles in the field of constitutional affairs which cannot be omitted from any sound system of the government. The *Qur'an* does not mention details and particulars which have been left for Muslims *Ummah* to formulate according to the needs of time and place.¹² With respect to the application of these constitutional principles or Islamic guideline concerning the political system, these general rules or basic principles are considered to be the Supreme Values and have a great effect upon the formulation of the Islamic concept of the state, its functions and characteristics of its system government. The basic principles, concept and rules are discussed below.

3.1.1-The Concept of Sovereignty in the Islamic System

The sovereignty in Islam belongs to God. The *Qur'an* tells us that Allah (s.w.t) is the Creator and Lord of the whole universe including humankind and all that is associated with them. Thus, Allah (s.w.t) who possesses all the powers and attributes of sovereignty and none else whatever possesses any of these. Therefore, the sovereignty of the entire universe only belongs to Allah (s.w.t) alone and none other than Him has a share in it.¹³

The Command is for none but Allah. He has commanded you not to surrender to anyone save Him. This is the Right Way of life, but most men understand not (Yusuf, 12:40).

3.1.2. The Rule of Law in Islamic System

The principle of the rule of law in the Islamic system was considered as the basis or cornerstone which Islam was founded on as Creed and *Shari'ah*, because Islam came to remove injustice and fighting tyranny and to demolish the pillars of absolutist authority. Therefore, that principle found its basis in the *Qur'an*, *Sunnah* and the consensus (*ijma'*) even during the centuries that people grappled with despotism.¹⁴

Allah (S.W.T.) says:

“O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer to Allah and His Messenger, if ye do believe in Allah and the last Day: that is best, and most suitable for final determination.”

In another verse Allah (s.t.w.) says:

¹² Muhammad S. El-Awa',(1980), *On the Political System of the Islamic State*, American Trust Publications Indiana at, 85-87. .,

¹³ Riaz Ul-Hasan Gilani, *the Reconstruction of Legal Thought in Islam*, (2000) Markazi Maktaba Islam, Delhi, at 204-2-6. See also Muhammad S. El-Awa',(1980), *On the Political System of the Islamic State*, American Trust Publications Indiana at, 85.

¹⁴ Yasin 'Umar Yusuf. (1995). *Istiqlal al-Sultah al-Qada'iyyah*, at 298. See also Al-Ma'had al-'Alami li al-Fikr al-Islami. (1981). *Al-Dawlah: Al-Fikrah wa al-Arkān wa al-Mu'assasat*. U.S.A: Grove Street Herndon, at 66-67. See also diy' al-Din Muhammad al-Rayyis. (1976). *Al-Nadariyyit al-Siyisiyyah al-Islamiyyah*. Cairo: Maktabat Dar al-Turath, at 365-375.

"O ye who believe! Obey Allah. And obey the Messenger, and make not vain your deeds!"¹⁵¹⁶

Therefore, the Muslim judge must implement *Qur'an* and *Sunnah* in every dispute brought before him, but if he does not implement that, his conduct

The *Sunnah* came to support, emphasise and clarify these *Quranic* Verses.

The Prophet Muhammad (p.b.u.h.) said:

"Obedience of a human being is disallowed, if it is considered disobedience to the creator (Allah)."

Prophet Muhammad (p.b.u.h.) also said:

"مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ فِيهِ فَهُوَ رَدٌّ"

"Every act that does not conform to our order is rejected."¹⁷

In the Islamic system, everyone, head of state, government and masses, is subject to the law. The Prophet (p.b.u.h.) himself was subject to it, and was the most obedient person to the *Qur'an*. He was "*Abd Allah wa rasuluh*," the servant of God and his messenger. The head of state and the head of government cannot invoke any immunity from impeachment. The principle, "Be you ever so high, the law is above you" has always been there in Islamic law, to include the Prophet (p.b.u.h.) himself.

Just before he died, the Prophet (p.b.u.h.) made the following short speech:

"I swear by God that I have made lawful only those things that the *Qur'an* made lawful and I have made unlawful only those things that the *Qur'an* made unlawful. If I have taken the money of any of you, here is my money, let him come and take it, and if I have lashed the body of any, here is my body, let him take back his right'.¹⁸

In the same way, Abu Bakr, the first successor and caliph of the Muslim state, in his acceptance speech said:

'O people! I have been appointed over you, but I am not the best of you. Support me if I did good and remove me if I did badly... a weak person of you is strong before me as long as I maintain his right for him. And a strong one of you is weak before me until I take back a right from him... Obey me as long as I obeyed Allah and his Messenger. If I disobeyed them there is no obedience of me upon you.'¹⁹

The past Verses supported with these *ahidith* indicate that every dispute that happens in Islamic society between individuals, between groups of people, or between people and the government,

¹⁵Tirmidhi, *al-Jami' al-Sahih*, Vol 1, at 319. See also 'Liy' al-Din Muhammad al-Rayyis. (1976). *Al-Nadariyyit al-Siyisiyyah al-Islamiyyah*. Cairo: Maktabat Dar al-Turath, at 340.

¹⁶ Ibid, at 4, 59. See also al-Sabuni, 'Abd al-Rahman. *Mukhtasar Ibn Kathir li al-Sabui*, Vol. 1, at 520.

¹⁷ Muhammad Muhsin Khan. (trans.). (1970). *Sahih al-Bukhari*. Vol. 3, at 535-536.

¹⁸ *Hadith* no. 15119, in al-Tibrani, Abi al-Qasim Sulayman ibn Ahmad, *Al-Mu'jam al-Kabir*, Vol. 13, Al-'Iraq: Ihya' al-Turath al-Islami, 1984.

¹⁹ Ibn Hisham, Abi Muhammad 'Abd al-Malik. (1980). *Sirat al-Nabi Muhammad*. Vol. 3. Cairo: Maktabat Dar al-Turath, at 340-341.

or among parts of the government and its people, must be judged by the fundamental law which we received from Allah (s.t.w.) and His Messenger. According to this principle, the country must have an institution that judge among people by the *Quran* and *Sunnah*, and that institution is the judicial authorities.²⁰

3.1.3. The Doctrine of Separation of Powers and Independence of the Judiciary

Having separate branches of government exercising different functions is not an idea which is against the Shariah. No detail prescription the form of government in the Quran. What obvious is the objectives of the state and principles that must be follow by the government. Thus the idea that will promote good governance, which is enjoined by the Shariah, is compatible with Islam. In addition the doctrine of independence of the judiciary is constitutionally principle in Islamic constitution. Judges are independent and subject to no other authority but the law.

In Islam there are a few recognized institutions which may have similarities to the democratic form of government. For instance the *amir* could be equated with the Prime Minister or the President which is the office of the head of government or executive body; the legislative assembly, which is recognized both in Islam and Democracy and last but not least the judiciary. Thus in Islam the principle of check and balance as practiced under the Doctrine of Separation of Powers could be implemented. Furthermore it has been claimed that the Doctrine of Separation of Powers had applied during the prophet period in the City State.²¹

3.1.4. As Shura

As Shura is one of the most important constitutional principles in the Islamic constitution. The proofs importance of *Shura* are to be found in the *Qur'an* and *Sunnah*. In one of the two clear verses on it in the *Qur'an*, *Shura* is mentioned as mandatory and in the other verse those who practice it are praised.²² The whole system of Islamic State from its inception to the selection of the head of the state and all those in positions power as well as its dealings must be conducted by *Shura*, whether it is carried out directly or indirectly through selected or elected representatives.

The *Qur'an* says

“Those who hearken to their Lord, and establish regular Prayer; who (conduct) their affairs by mutual Consultation; who spend out of what We bestow on them for Sustenance”. (*Surt al-Shura*: 42:38).

Even the Prophet (s) although he was the recipient of direct guidance from the Supreme Allah, was commanded: Allah says

²⁰Waki', Muhammad ibn Khalaf' ibn Hayyin. (2001). *Akhbar al-Qudat*. (1st ed.). Beirut: 'Alam al-Kutub, at 357. See also, Yasin 'Umar Yusuf. (1995). *Istiqlal al-Sultah al-Qada'iyyah, fi al-Nidamayn al-Wad'i wa al-Islama*, at 300.

²¹Muhammad S. El-Awa',(1980), *On the Political System of the Islamic State*, American Trust Publications Indiana at, 30-35.

²² Muhammad S. El-Awa',(1980), *On the Political System of the Islamic State*, American Trust Publications Indiana at, 86-96. See also Riaz Ul-Hasan Gilani, *the Reconstruction of Legal Thought in Islam*, (2000) Markazi Maktaba Islam, Delhi, at 230-234.

"Consult them in affairs (of moment). Then, when thou hast taken a decision put thy trust in Allah. For Allah loves those who put their trust (in Him). (Sura ale-Imran, 3:159).

Following this advice and lead, caliph Omar admonished:

*"There is no khilafah without consultation."*²³

Thus the practice of *Shura* was the mechanism followed at all levels in the selection of political leadership by Muhammad (s) and his followers. It was the Islamic community that selected the first four rightly guided *khulafah*, although the method of selection and the process of approval differed. The essential principle was consent and confidence of the community and the accountability of those selected before the community. Even afterwards when the heredity rule crept in that violated this community right, a facade of *bay'ah*, or community's acceptance of rulers was still maintained.

3.1.5. Justice

Islam has accorded to justice a position so eminent its legislation as perhaps no previous system of law, old or new, has ever given to it.²⁴ There are many verses of the *Qur'an* which argue and enjoying justice in a general, universal order encompassing all human affairs.

In one the verse of the *Qur'an* in which enjoying justice has been generally and unqualifiedly order, Allah says

"Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition". :(Surt al-Nahl, 16:90)

In on another verse of the *Qur'an*

"Allah doth command you to render back your Trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice: Verily how excellent is the teaching which He giveth you! For Allah is He Who heareth and seeth all things". (Surt, al-Nis', 4: 58)

Justice in Islamic political system includes social justice, which means the Government must manage to meet and fulfill the needs and requirements of all citizens because they have rightful share in State resources and bona fide citizens of the country. This includes provision of job, means of subsistence and economic justice. This further implies that it is the responsibility of the State to provide food, shelter and clothing to all the citizens of the State. Economic justice is amid at equitable distribution of means of living and check concentration of wealth in a few hands. That is why the second Caliph Umar refused to divide land among the Muslim soldiers and commanders in areas conquered by Muslims in Iraq, Iran and Syria.

Only just can create discipline in life of the people. Also essential is administrative justice, which means that all State functionaries are also subject to accountability and do not consider and treat

²³ Ali ibn 'Abd al-Malik Muttaqi, (1985), *Kanz al ammal fi Sunan al-aqwal wa al-af'al*, Mu'assat al-Risalah, al-Riyd vol. 5, and Hadith number 2354.

²⁴ Muhammad S. El-Awa', (1980), *On the Political System of the Islamic State*, American Trust Publications Indiana at,, 97-101.

people as "slaves" or personal servants" They should not insult the people in any manner. They should be honest and efficiently administer public affairs. It should be ensured that the concentration of wealth in one class or in a few hands does not occur. There is absolutely no doubt that principles of administration in Islam are by far the most science and comprehensive set of principles for efficient administration.

3.1.6. Freedom

Contemporary Jurists of modern constitutional law divide freedom into several branches: freedom of thought and belief, right to education and property, and personal freedom.²⁵ There is no question that Islamic constitution gives so great a consideration and respect to this freedom as has seldom been accorded to it in any other political doctrine in positive constitution .Man has continued to use the right of choice ever since he has been on the earth.

On this point the *Qur'an* says:

Seest thou not that to Allah bow down in worship all things that are in the heavens and on earth,- the sun, the moon, the stars; the hills, the trees, the animals; and a great number among mankind? But a great number are (also) such as are fit for Punishment: and such as Allah shall disgrace,- None can raise to honour: for Allah carries out all that He wills. (Surt al-Hajj, 22:18)

3.1.7. Equality

The principle of equality is one of the most important constitutional principles upon which contemporary system rest. This principle of equality means that individuals comprised in a society are equal in rights, responsibilities and public duties which are to be enjoyed by all without discriminations of race, origin, language or creed. The principle of equality was instituted by *Qur'an* and *Sunnah* during and expansion of Islam several as a precedent in Islamic law and its own time and place, this precedent constituted a fundamental revolution in the conceptual bases of Arab ideas notions of concerning the source of pride as held by some tribes but not by others. Islamic Law based on the *Qur'an* and *Sunnah* is equally accessible to all and equally applicable on members of the society from the lowest to the highest, without any distinction or discrimination.

The Prophet (s) was asked to declare that:

"I have been commanded to maintain justice between you" (*al Shura*, 42:15).

The Prophet (s) admonished:

"The nations before you were destroyed because they would punish the lower class criminals according to the law but would let go those from the higher class."

Then laying further emphasis, he continued:

"I swear by the Authority in whose control is Mohammad's life, if Mohammad's daughter is guilty of stealing, I would cut her hand off"²⁶

²⁵ Muhammad S. El-Awa',(1980), *On the Political System of the Islamic State*, American Trust Publications Indiana at, 102-112.

Riaz Ul-Hasan Gilani, *the Reconstruction of Legal Thought in Islam*, (2000) Markazi Maktaba Islam, Delhi, at, 252.

²⁶ Bukhari, Kitab al Hudud, Chapter 11-12.

Therefore, all the personal, civil, political, social, cultural and economic rights of an individual are guaranteed under Islamic law. All people have equal rights and each and everyone is equally responsible before the law. It is the obligation of the rulers to ensure that each member of the society particularly the weak, is given his due rights.

3.1.8. Accountability

It is permissible to make the Head of State and Head of Government to be responsible for their acts. The statute on the question of permissibility of calling the Head of State to Account vary from state to state in modern systems of government.²⁷ The constitutions of some states provide that head of state is not subject to blame for his acts and behavior even though he violates the laws. Whereas, according to Islamic constitution, there is no distinction between the head of state and other individuals in the matter of accountability for violation of law.

3.1.9. *Al-Amr bil Maruf wa Nahi an al-Munkar*

This literally means 'commanding what is right and forbidding what is wrong and encompasses a whole gambit of duties and responsibilities'.

The Qur'an makes it the mission of the believers:

"You are the best of Peoples evolved for humankind, enjoining what is right and forbidding what is wrong and believing in Allah" (*al Imran*, 3:110).

It means that every individual of the society has the right, nay the duty, to tell the truth and stand for it, to further all that is good and virtuous and do his utmost to remove the wrongs and vices wherever he finds them.

The Prophet (s) tells us:

"Whoever among you sees a vice (or wrong), he should change it with his hands; if he is not able to do that, then he should check it with his tongue; and if he cannot do that, then he should consider it bad in his heart (and wish for its removal) and this is the sign of weakest in faith"²⁸

Another famous *hadith* says;

"The best Jihad is to say what is just (or truth) in the face of a tyrant"²⁹

Still another one says;

"When people see a tyrant and do not hold his hands, it is not far that Allah (s.w.t) sends a common punishment on them"³⁰

Thue above ahadith categorically emphasizing its importance.

²⁷ Muhammad S. El-Awa',(1980), *On the Political System of the Islamic State*, American Trust Publications Indiana at.,113-116.

²⁸ Muslim, Tirmidhi, Abu Daud and Ibn Majah.

²⁹ Abu Daud, Tirmidhi, Nisai and Ibn Majah.

³⁰ Abu Daud and Tirmidhi,

4.0 Good Governance in the U.S.A: The Constitutional Framework

The framers of the American constitution believed that good government liberated human beings from the control of smaller communities, respected their individual rights, and refereed conflicts between competing interests. Progress and direction were best left to the lawful pursuit of self-interest by private individuals.³¹ According to Peter Wool the American political system may be accurately described as a constitutional democracy. The term implies a system in which the government regulated by laws that control and limit the exercise of political power. The power of the government is limited by the constitutional rules. Powers of the government are curtailed and procedures are defined in a constitution. Therefore, constitutional government is also called limited government. In a constitutional democracy people participate in government on a limited basis.³²

The constitution imposes restrictions upon the legislative authority from passing laws upon certain subjects or in certain ways or with certain effects. For instance the constitution forbids legislative authority to act any *ex post facto* law, that is, a law made after the occurrence action or situation which it seeks to regulate-a tape of the law which can render a man guilty of an offence through an action which when he committed it, was innocent.³³

The Constitution of United States of American further limits governmental authority in two ways, namely by specifying procedures and prohibitions that the government must observe, and by providing for a system of divided and balanced political authority. The constitution requires government to follow prescribed procedures, prohibits altogether certain governmental decisions and actions, and allocates authority among the major government offices and institutions so as to ensure maintenance of a balance of political power among them. In other words the constitution of United States of American does not only limit the power of the government through constitutional provisions and the Bill of the rights, but also through the celebrated "checks and balances" between the three branches of government.³⁴ The Legislative, composed of the House and Senate, is set up in Article 1. The Executive, composed of the President, Vice-President, and the Departments, is set up in Article 2. The Judicial, composed of the federal courts and the Supreme Court, is set up in Article 3. Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch. In brief the checks and balances between the three organs of government are as stated in the table below.

³¹ Ross K. Baker, and others, (1983), *American Government*, Collier Macmillan Publishers, London, p, 55. See also Paul E. Johnson and others, (1990), *American government: People, Institutions, and Policies*, p, 11-14. See also *American politics: Core Argument/ Current Controversy*, (2002), edited by Peter J. Woolly and Albert R. Papa Upper saddle River, New Jersey, p 3-6.

³² Peter Wool, (1984), *American Government: Readings and cases*, Little Brown and Company, Boston, p, 40.

³³ *Liberty Under Law, American Constitutionalism, Yesterday, today and tomorrow*, (1998) Edited by Kenneth L. Grosse and Cecilia Rodriguez Castillo, University Press of America, New York, at ix-xi. See also James Tully. (1995), *Strange Multiplicity Constitutionalism in Age of Diversity*, Cambridge University Press Cambridge, at, 34-40..

³⁴ David A. J. Richards, (1989) *Foundations of American constitutionalism*, Oxford University Press New York, at 78-82 and 85-88. See also M. J. C. Vile, (1969), *Constitutionalism and the Separation of powers*, Clarendon Press, Oxford, at, 315-320.

Checks and Balances by the Three Main Organs of Government in the USA³⁵

Legislative Branch	Executive Branch	Judicial Branch
<p>Checks on the Executive</p> <ul style="list-style-type: none"> • Impeachment power (House) • Trial of impeachments (Senate) • Selection of the President (House) and Vice President (Senate) in the case of no majority of electoral votes • May override Presidential vetoes • Senate approves departmental appointments • Senate approves treaties and ambassadors • Approval of replacement Vice President • Power to declare war • Power to enact taxes and allocate funds • President must, from time-to-time, deliver a State of the Union address <p>Checks on the Judiciary</p> <ul style="list-style-type: none"> • Senate approves federal judges • Impeachment power (House) • Trial of impeachments (Senate) • Power to initiate constitutional amendments • Power to set courts inferior to the Supreme Court • Power to set jurisdiction of courts • Power to alter the size of the Supreme Court 	<p>Checks on the Legislature</p> <ul style="list-style-type: none"> • Veto power • Vice President is President of the Senate • Commander in chief of the military • Recess appointments • Emergency calling into session of one or both houses of Congress • May force adjournment when both houses cannot agree on adjournment • Compensation cannot be diminished <p>Checks on the Judiciary</p> <ul style="list-style-type: none"> • Power to appoint judges • Pardon power 	<p>Checks on the Legislature</p> <ul style="list-style-type: none"> ○ Judicial review ○ Seats are held on good behavior ○ Compensation cannot be diminished <p>Checks on the Executive</p> <ul style="list-style-type: none"> ○ Judicial review ○ Chief Justice sits as President of the Senate during presidential impeachment

³⁵ http://www.usconstitution.net/constop_cnb.html.

The judiciary acts as a restrictive force because the Supreme Court of United States of America has traditionally seen itself as the ultimate discipline upon Government power, and champion of the citizens against government excesses.³⁶ Power of Judicial Review, which is a very important aspect of checks and balances, refers to power of the courts of a country to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the constitution. Actions judged inconsistent are declared unconstitutional and, therefore, null and void. Judicial review is usually considered to have begun with the assertion by John Marshall, Chief Justice of the United States in *Marbury v. Madison* (1803), that the Supreme Court of the United States had the power to invalidate legislation enacted by Congress. There was, however, no express warrant for Marshall's assertion of the power of judicial review in the actual text of the Constitution of the United States; its success rested ultimately on the Supreme Court's own ruling, plus the absence of effective political challenge to it.³⁷

In principle the American Administration must lead a government driven by transparency, inclusiveness and accountability in decision-making. In order to succeed, the executive authority needs to respond with a combination of strong leadership, participatory democracy and informed decision-making that reflects principles of good governance and respect for the rule of law. It seems this to be in practice in the country. According to Hamilton, it seems to have been reserved to the people of this country, to decide by their conduct and example, the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice or whether they are forever destined to depend for their political constitutions, an accident and force.³⁸ Even presidential orders, according to Richard Neustadt, are generally not self-executing because to be successful a president must persuade those with whom he interacts that what he desires of them is, fundamentally, in their own interest as they perceive.³⁹ In addition to that, even among people who are in essential agreement the president bargaining task continues unabated. People participating in governance all have personal stakes in their activities, and although they may share goals, they can differ greatly over preferred means.⁴⁰

5.0 Good Governance in Egyptian System: The Constitutional Framework

The Constitution of Egypt, as can shown below, have incorporated main elements of good governance such as the principle of separation of powers, doctrine of the rule of law, democratic

³⁶ David A. J. Richards, (1989) *Foundations of American constitutionalism*, Oxford University Press New York, at 78-82 and 85-88. See also M. J. C. Vile, (1969), *Constitutionalism and the Separation of powers*, Clarendon Press, Oxford, at, 315-320.

³⁷ Good Governance program, www. Trade. Gov/good governance, Promotion rule of law for business

³⁸ Peter Wool, (1984), *American Government: Readings and cases*, Little Brown and Company, Boston, p, 41.

³⁹ Randall B. Ripley and Elliot E. Slot nick, (1993), *Readings in American Government and Policies*, Wadsworth Publishing company California, p, 300.

⁴⁰ Randall B. Ripley and Elliot E. Slot nick, (1993), *Readings in American Government and Policies*, Wadsworth Publishing company California, p, 310.

system, constitutional supremacy and placed the Constitution above all state powers and individuals.⁴¹

The Constitution establishes a democratic system of government for the whole country. The feature of a democratic system of government is evident in various provisions. For example, Article 3 recognizes that the sovereignty belongs to the people who are the source of all powers. Article 5, as amended in 1980, establishes the principle of a multi-party system, which Article 62 considers citizens participation in public life a national duty and guarantees all citizens the right to vote, to run for election and to express their opinion in referendum.⁴²

In relation to overall economic and social planning the Constitution adopted an economic philosophy of a democratic nature. This policy requires the system of government to be based on sufficiency and justice, with the aim of achieving a balance of income, of protecting legitimate earnings and realizing an equitable sharing of public expenses and responsibilities. That is why the people's Assembly approves the public economic and social development plan, while the opinion of the Consultative Council, the *Shura* Council, concerning this plan is also required.⁴³

The principle of the separation of powers is quite obviously been adopted. The Constitution recognizes the separation of powers and defines the mandate of the legislative, executive and judicial powers. It prevents one power from interfering with the acts of the others. Yet the separation of powers is not comprehensive, but rather one that strikes a balance among them and ensures their mutual co-operation in the interest of the people.⁴⁴

The guarantee of fundamental rights and freedoms: most basic human rights and freedoms are explicitly guaranteed throughout the Egyptian Constitution. In fact, one of the noticeable characteristics of this constitution is its devotion of one of its parts (part Three) to public rights and freedoms wherein a clear emphasis is given to these rights.⁴⁵

⁴¹ Srur, Ahmad Fathi. (1999). *Al-Himayah al-Dusturiyyah li al-Huquq wa al-Hurriyyat*. (1st ed.). Cairo: Dar al-Shuruq. At 21.

⁴² Ahmad Kamal Abu al-Majd, (1960). *Al-Raqabah 'ala Dusturiyyat al-Qqawanin fi al-Wilayat al-Muttahidah al-Amrikiyyah wa al-Iqlim al-Misri*. Cairo: Dar al-Nahdah al-'Arabiyyah, at 12-25. See also 'Adil 'Umar Sharif. (1988). *Qada' al-dusturiyyah*. Cairo: Ph.D. dissertation- Jami'at al-Qahirah, at 50-60. See also Isma'al al-Ghazal, (1993), *al-Qanun al-Dusturi wa-al-Nuzum al-Siyasiyah* Bayrut: al-Mu'sisah al- Jami'yyah at,40-46. See also 'Ali Farraj Shams Mirghani, (1985), *al-Waiz fi al-Qanun al-Qusturi, wa'Usus al-Nizam al-Dusturi fi al-Imarat al-'Arabiyyah al-Muttahidah*, at 11-142.

According to Article 3 of the Egyptian constitution "*Sovereignty is for the people alone they are the source of authority. The people shall exercise and protect this sovereignty, and safeguard national unity in the manner specified in the Constitution*".

According to Article 5 of Egyptian constitution "*The political system of the Arab Republic of Egypt is a multiparty one, within the framework of the basic elements and principles of the Egyptian society as stipulated in the Constitution (Political parties are regulated by law)*".

According to Article 62 "*Citizens shall have the right to vote, nominate and express their opinions in referendums according to the provisions of the law. Their participation in public life is a national duty*".

⁴³ Chapter two of the Egyptian Constitution of 1971.

⁴⁴ Ahmad Fathi Srur, (1999). *Al-Himayah al-Dusturiyyah li al-Huquq wa al-Hurriyyat*. (1st ed.). Cairo: Dar al-Shuruq.at, 28-30.

⁴⁵ Ahmad Fathi Srur, (1999). *Al-Himayah al-Dusturiyyah li al-Huquq wa al-Hurriyyat*. (1st ed.). Cairo: Dar al-Shuruq.at, 21-23. See also. Part three of Egyptian Constitution.

The principles of the rule of law, of the submission of the state to the law and of the independence of the judiciary: all of these principles are enshrined in, and guaranteed by, the constitution. The preamble to the constitution clearly stipulates that the sovereignty of law is not only a necessary guarantee for the freedom of individual, but is also the sole basis for the legitimacy of power. The constitution states that the sovereignty of the law is the basis for the government and that the independence and immunity of the judiciary affirmed in several sections of the constitution- are basic guarantees to protect individual rights and freedoms. Moreover, the constitution subjects the state itself to the law.⁴⁶ Therefore, there are two important implications for this. First, the laws should be very transparent and clearly worded so that all mature citizens would clearly understand what are strictly prohibited and the penalties associated with violating the laws. Second, the laws and prohibitions should be as few as possible. Both citizens and law enforcers can easily remember them and people can grow in freedom, in an environment of very few restrictions and prohibitions.

5.1. Good Governance in Egyptian System: Brief Assessment

Although the values of accountability and equality in treatment under law are not alien to the culture and heritage of the people of middle-eastern countries including Egypt, it is found that those countries are noticeably poor in that regard and lie at the tail of the list (rating countries of the world on good governance).⁴⁷ Furthermore despite the recognition of human rights and the right of the people to participate in the election as stated in the Constitution, there are many aspects and goals of good governance which have not been achieved. Accountability mechanisms are missing in Egyptian government performance. Consequently there exist multiples of modes of corruption such as misuse of public funds, bribes, tax fraud, misuse of power and authority, favoritism and ascription in selecting government leaders and in providing government services.⁴⁸ The bureaucratic establishment suffers from massiveness and rigidity that frequently hinders attempts of modernization and improvement, moreover the executive authority is severely centralized. There is also lack of reliable statistical data, fuzziness of information and hiding it from society. Civil society organizations are still inactive in political and developmental activities.⁴⁹

In response to the need for adapting to global changes towards knowledge-based societies, in attempt to bridge the digital gap, and due to international pressure calling for democracy, participatory, and good governance, the Egyptian government started its project of delivering its

⁴⁶ Ibid, at 25-30. See also 'Abd al-Ghani Basyuni' Abd Allah, (1985), *al-Mabadi' al-'Ammah lil-Qanun al-Dusturi* Bayrut :Dar al-Jami'iyah, at179-186. See also Tharwat Badawi, (1973), *Mujaz al-Qanun al-Dusturi* Qahirah: Dar al-Nahdah al-'Arabiah, at 62-66 and at, 100-122. Part four of Egyptian Constitution.

⁴⁷ Mahmoud Gebriel, *Good Governance in Egypt: Suggested areas for Improvement*, Napoli May 17-21/2004.

⁴⁷ Source: World Bank, "Better Governance for Development in the Middle East and North Africa", Overview, File/govoverview-eng.pdf, September 2003, p. 3.

⁴⁸ Mahmoud Gebriel, *Good Governance in Egypt: Suggested areas for Improvement* Napoli May 17-21/2004.

⁴⁹ Source: World Bank, "Better Governance for Development in the Middle East and North Africa", Overview, File/govoverview-eng.pdf, September 2003, p. 3.

services to individual citizens, business persons and investors through the internet.⁵⁰ However there are much to be done to improve the condition.

It has been viewed that good governance can not be realized in Egypt unless a comprehensive solution is sought when the socio cultural characteristics of the society are taken into consideration.⁵¹ Among the measures is the introduction of accountability mechanisms. Government officials should develop the feeling of being accountable to the society. There should be criteria for good governance that are in line with the culture.

In addition transparency and quality of data must also exist because without these virtues, accountability shall be difficult to apply since weaknesses and deficiencies can not be exposed and corrective actions cannot be taken. Major changes must be introduced in the bureaucratic machine to facilitate the improvement efforts. The establishment of non-governmental organizations must be facilitated and the obstacles facing their effective participation in social and economic developmental initiatives and in preparing the individuals for political participation must also be removed. In addition continuous education and training should become an approved mechanism supported by the government for continual development of individuals for active participation in a knowledge-based society.⁵²

Conclusion

It is quite obvious that the main objectives and purpose of good governance understood by the West and in the Civil Law and Islamic principles of state and government have many similarities. The idea of justice, equality, consultation, transparency, accountability and freedom are parallels that could be found in both systems. Although a more detail study may reveal differences or event conflicts between the western idea of human rights and Islamic principles freedom, it is believed the common ground may overcome the minute detail differences. In the end both ideas are meant for the good and well-being of the community. The main elements or

⁵⁰ Source: World Bank, "Better Governance for Development in the Middle East and North Africa", Overview, File/govoverview-eng.pdf, September 2003, p.6. See also Transparency International, "Global Corruption Report 2004" <http://www.globalcorruptionreport.org/>. Source: World Bank, "Better Governance for Development in the Middle East and North Africa", Overview, File/GOVoverview-eng.pdf, September 2003. World Bank, "Governance Research Indicator Country Snapshot (GRICS): 1996-2002", World Economic Forum, "The Arab World Competitiveness Report 2002-2003", Geneva, 2003. See also Good Governance for Development in Arab Countries Initiative Working Group II on E Government and Administrative Simplification 1st High level Seminar on E-Procurement Naples, 30-31 January. See also Nevine Gamal, PMP, Projects Manager Ministry of State for Administrative Development e-mail : ngamal@ad.gov.eg

⁵¹Source: World Bank, "Governance Research Indicator Country Snapshot (GRICS): 1996-2002", <http://info.worldbank.org/governance/kkz2002/>

⁵²Kofi A. Annan, Secretary-General of the United Nations, *Promoting good governance in the Arab states* "Good governance is perhaps the single most important factor in eradicating poverty and promoting development." . See also Transparency International, "Global Corruption Report 2004" <http://www.globalcorruptionreport.org/>. See also World Bank, "Better Governance for Development in the Middle East and North Africa", Overview, File/GOVoverview-eng.pdf, September 2003. World Bank, "Governance Research Indicator Country Snapshot (GRICS): 1996-2002", World Economic Forum, "The Arab World Competitiveness Report 2002-2003", Geneva, 2003.

principles of good governance as declared by the United Nation are embedded in Islam and therefore an integral part of the governance framework of the Islamic political institutions. The Islamic system and principles of state and government that in the Qur'an and Sunnah to the Muslims need to be developed in accordance with the dictates of contemporary epoch, customs and needs. The sources of the Shariah provide few basic but flexible and democratic divine rules. The ideas was never really fully developed and adjusted to suit current situations. The failure to reinvigorate the relevant *Shariah* principles and guidance led the Muslims to utilize older and sometimes outdated forms of political institutions for their system of governments. Muslim thinkers have to restudy the structure of the Islamic state, the objectives Islamic state and government so that the modern theoretical framework and form of Islamic state and government is not out of touch with reality. Let us conclude with reference to the saying of the Prophet:

"Each one of you is a guardian, and each guardian is accountable to everything under his care".