

Part II

Reinforcing Freedom and Establishing Good Governance

Section 1: Analytical Framework: Freedom, Good Governance and Human Development

This section presents the analytical framework for Part II of the report, devoted to freedom and governance. The section starts with a brief survey of the intellectual basis of the topic that ends in the report's definition of freedom and good governance, and then turns to a discussion of some of the problematic issues of freedom and governance in Arab countries at present.



The Intellectual Basis and Concept of Freedom and Good Governance

Introduction

This chapter presents the analytical framework underpinning the Report's analysis of freedom and good governance.

The chapter starts by summarizing key postulates of freedom in Western thought. It traces how thinking shifted from stressing the primacy of individual freedom to underlining the harmonization of individual freedom with collective societal arrangements in order to reconcile individual freedom with other higher human goals. The latter formulation is close to the Report's concept of human development. The chapter next examines the place of freedom in Arabic culture, indicating its presence in various schools of thought. Drawing on the features of freedom in both Arabic and Western thinking, the chapter sets out the concept of freedom adopted in the Report and the elements of good governance guaranteeing its realization. This exposition frames the main discussion.

FREEDOM IN WESTERN LIBERAL THOUGHT: FROM INDIVIDUAL FREEDOM TO HUMAN DEVELOPMENT

THE PRIMACY OF INDIVIDUAL LIBERTIES

In Western thought, the Utilitarian philosophers, in particular, searched for a form of government capable of ensuring that those who hold power would not crush or endanger the liberty of those they governed. The solution upon which James Mill settled was "representative government," in which the interests of government and people would be-

BOX 1-1

Natural Human Rights

"The end in view of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression."

Article II, French Declaration of the Rights of Man and The Citizen, August, 1789 (in French).

come congruent through a mechanism of representation by proxy: representatives would be accountable to the people through elections. Thus, the government would be an instrument for securing liberty rather than a source of oppression.

Accordingly, principles of "democracy" were developed, as a means to safeguard the freedom of the majority from oppression by any dominant minority, whether the latter's source of power was might or wealth. The fundamental principle at issue here is "democratic legitimacy," which denotes that the source of societal authority is the will of the majority.

For John Stuart Mill, the goal of freedom is "pursuing our own good in our own way," and this is the most important component of "happiness or human well-being." On this basis, he believed that happiness would accrue only to "someone who was capable of choosing an independent path and who had the public sphere available in which to exercise that capacity," through possessing "faculties of critical judgment and free choice." And thus the democracy that ensures liberty is the most fertile soil for social progress, and also for pursuing the aim of individual happiness.

However, Mill was not confident that democratic society would of its own accord safeguard the freedom of individuals and minorities. Moreover, fearful that the democratic process would subject all aspects of life to control by the ruling authority, thereby instituting "tyranny of the majority," he inquired

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into what properties were common to activities that would qualify for exemption from government control. His fears were not confined to the regulatory actions of government. They extended to “the government of popular opinion,” or unofficial forms of coercion to which those who hold unpopular beliefs or practice unorthodox actions are subjected.

According to Mill, we have the right to discuss, to disagree, to attack, to reject, or even to forcefully condemn an opinion. But we have absolutely no right to obstruct or suppress that opinion, because to do so will destroy “the thin along with the fat” in equal measure. Indeed, to do so constitutes nothing less than collective suicide, both intellectual and moral. For without the right and ability to protest, there can be no justice and no end worth striving for. Without complete freedom of opinion and debate, the truth cannot emerge.

BOX 1-2

Freedom of opinion as a sacred right

If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind.

Source: Mill, 1978, 16

Issues of liberty must be presented anew to humanity whenever human conditions change.

And so, in his view, even if we find ourselves facing no actual opposition, we should devise arguments against ourselves simply in order to remain in a state of “intellectual fitness.”

Thus Mill poses a very strong connection between freedom, especially freedom of thought and debate, creative expression, innovation, and human progress. For him the primary engine of progress is the coupling of “freedom and variety,” which leads in turn to individuality and originality. This combination forestalls the mediocrity that necessarily arises when people remain in a state of conformity and compliance. And he made no exception for the issue of freedom itself. In the introduction to *On Liberty*, he proposes that issues of liberty must be presented anew to humanity whenever human conditions change.

Thus it is that we present here our recon-

sideration of freedom with regard to the Arab world at the start of the third millennium.

Mill considered only two justifications for restricting individual liberty valid: to prevent the individual from harming others, and to prevent the individual from violating an obligation toward others, whether by a certain act or through inaction. In relation to the individual, her/his independence is absolute, since “over himself, over his own body and mind, the individual is sovereign” and “the individual is not accountable to society for his actions in so far as these concern the interests of no person but himself”. The only exception would be a case of verified, and not merely possible, danger.

INDIVIDUAL FREEDOM AND SOCIETAL REGULATION

Safeguarding liberty, however, does not mean opposing societal organization per se; after all, such organization constitutes one of humankind’s most important means of progress. But it certainly implies taking a determined stance against all forms of elite, monopolistic or coercive organization, all of which inhibit new discoveries and innovation. Thus, as long as it is based on voluntary participation in an atmosphere of freedom, the social order remains beneficial and effective (Hayek, 1978, 37).

Moreover, democratic rule is able to establish institutional guarantees to forestall flawed decisions arising from a democratic majority. A theoretical position evolved that some institutional arrangements can actively enable individuals to use their capabilities for the sake of progress, while minimizing any harm resulting from organizational restrictions. That position entails imposing restrictions on the decisions of the majority to prevent legislation that is unacceptable in principle.¹ Equally, it allows for courts and ombudsmen who have the authority to criticize or rectify such decisions.

The Essence of Democracy and Democratic Transition

Democracy, in essence, is a system for managing conflict that allows free competition over

¹For example, the US Constitution includes a ‘Bill of Rights’ that defines activities that the government or Congress must not regulate. The First Amendment stipulates that Congress will not pass any legislation that restricts freedom of expression, at the federal level.

the values and goals that citizens care to preserve. On this basis, as long as there is a group that does not resort to violence, and does not transgress the rights of other citizens, it is accorded freedom to work to promote its interests in both civil and political society. This, in brief, constitutes the core of democratic institutional arrangements (Stepan, 2001, 216).

In the theory of democratic transition, elections - free and competitive - occupy a central position. In large societies, there are additional institutional arrangements charged with formulating preferences, expressing them, and making sure that they are taken into account in suitable fashion in the governance process (Dahl, 1971).

The recommended institutional guarantees (*ibid*) include the following seven elements:

- Freedom of expression
- The right to vote
- Freedom to establish and join organizations
- Eligibility for public office
- The right of political leaders to compete for support and votes
- Availability of alternative sources of information
- Policy-making institutions based on voting in free and fair elections and other means by which the people express their preferences.

Other theorists find these guarantees, if necessary, not sufficient (Linz and Stepan, 1996). In their view, political society must be protected in the form of a democratic constitution that respects fundamental freedoms including the rights of minorities. They also stipulate that the elected government govern democratically according to the constitution; that it adheres to the law and to a system composed of institutions, both horizontal and vertical, that guarantee accountability.

Implicit in the guarantees mentioned above is a strong and viable civil society, able to be critical, to check the State and to generate alternative policies. In order for these alternatives to be formulated properly and be viable, the relationships between political society, especially political parties, and with civil society must be absolutely free from control.

PROBLEMATIC ISSUES OF FREEDOM: LIBERALISM AND DEMOCRACY, ATTRIBUTES OF MAJORITY RULE

It is often acknowledged in Western liberal ideology that democracy can harbour flaws. If democracy can restrict liberty, then society cannot be considered free unless two related conditions are simultaneously present:

First, there can be no absolute powers, such that everyone has the right to reject inhuman behaviour.

Second, there must be a firmly established sphere of rights and freedoms within which a person's humanity cannot be violated. (Berlin 1969, 165)

In principle, therefore, democracy is an instrument and not an end in itself. It is judged by what it succeeds in realizing, the goal that it was instituted to accomplish, and which is summed up in "liberty, and the courage and industry which liberty begets" (17th century commentator John Culpepper, quoted in Hayek, 1978, 107).

The danger of tyranny of the majority

Those who give first and absolute priority to democracy, as a formal structure and as a value, have argued that the greatest possible number of issues must be decided according to majority opinion. For them, popular sovereignty signifies the unlimited authority of the majority, an authority that need not be subject to control in any way.

However, purist supporters of liberty believe it is essential to set limits on matters decided by majority rule. Indeed, they consider that the authority of any temporary majority should be restricted as regards principles that will prevail over the longer term. That is, the decisions of the majority express the wishes of the people -- as the majority -- at a particular time, but cannot determine what would be in their best interest if they had more knowledge at their disposal (as generally happens with the passage of time). Furthermore the decisions of the majority do not in fact come from absolute wisdom. They are usually the outcome of negotiations and compromises that might not sat-

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isfy anyone completely. In fact, such decisions might well be of less value than one taken by the wisest members of society after canvassing all opinions.

What is certain is that there is no moral justification for granting privileges to members of any majority that will distinguish them from, and give them advantages over, those not belonging to that majority. Indeed, progress may be epitomized by the majority’s persuasion to a minority view.

And so the success of society in guaranteeing and protecting liberty —including safeguarding it from the tyranny of the majority — depends on the existence of a public sphere that is both extensive and independent of the control of the majority, in which individuals’ opinions are formed and expressed. Hence there is an organic link between freedom, in its comprehensive sense, and the key freedoms of opinion, expression, and association. Freedom of opinion guarantees that a person can form a position on societal issues, while freedom of expression permits that person to express those positions and thereby stimulate and inform discussion. Finally, freedom of association guarantees that people can organize themselves through, and in, institutions that adopt positions on issues and actively promote them in society’s public sphere.

What is undeniable, in any case, is that the benefits of democracy — indeed, of freedom itself — can be confirmed only in the long term.

Tension between Freedom and Democracy? Or Democracy without Freedom?

As noted, liberal democracy harbours potential flaws. Perhaps the most important of these, from the perspective of freedom, is that “democratic” arrangements can coexist with basic violations of freedom in its comprehensive sense. It is possible, for example, for poverty (however it is understood) to spread in a context of political democracy and without violation of property rights. Even as Sen insists that no widespread famine has occurred under democratic rule, he observes that considerable famines have indeed occurred in contexts where civil and political rights, including prop-

erty rights, were respected (Sen, 1999, 16, 66).

What is more serious is a situation where democratic regulation coexists with extensive violation of freedom in the narrow sense, that is, civil and political rights. In the contemporary world, moreover, this disjunction exists not only in developing countries where freedom and democracy are newcomers (and where elected governments may impose restrictions on the freedom of other sectors of society such as the judiciary, local communities the media, civil society organizations) but even in countries with a long tradition of freedom and democracy, as in the industrialized West. Some contemporary writers even argue the necessity of distinguishing between freedom and democracy. If we compare the two, they argue, we may find an excess of the second — democracy — and a deficit in the first — freedom. Indeed, “democracy” can be used to legislate restrictions on freedom (Zakaria, 2003). In other words, freedom leads to democracy (as in the case of the UK and the US where the enjoyment of freedom preceded the establishment of democracy in the 19th century), but the opposite is not necessarily true.

FREEDOM AND THE OTHER ULTIMATE HUMAN GOALS

Freedom is not the only supreme human goal. Freedom is not justice, equality or beauty, for example. Freedom might even be in conflict with other supreme human goals: some thinkers argue that it is a contradiction in terms to speak of perfect or complete human achievement. This means that a superior and enriching human existence might sometimes require preferring one value over another, or reconciling freedom with other ultimate human goals.

This possible clash among ultimate goals is one of the basic reasons for the insistence on the high value of the freedom to choose. If it were possible in a good society to realize all the ultimate human goals in concert, the agony of choosing between alternatives would vanish.

Freedom is not a blessing that comes without costs: freedom and responsibility go together. Freedom does not only imply the individual’s enjoyment of opportunities, nor does it require simply that the individual

shoulder the burden of choice. It also implies bearing the consequences of one's decisions; thus, to withdraw from responsibility means, in reality, to surrender freedom.

Equality before the law and with regard to prevailing norms of conduct is the sole type of equality to be guaranteed for preserving freedom. For freedom may ultimately entail the negation of equality in numerous spheres. While justice demands certain conditions or opportunities for people, which the government defines for all equally, it is possible that conditions of freedom will produce a minimum of equality in terms of results. Equality before the law and equality of opportunity can coexist with various forms of human hardship, such as hunger, disease, or poverty.

FREEDOM AS HUMAN DEVELOPMENT: RECONCILING INDIVIDUAL FREEDOM WITH INSTITUTIONAL ARRANGEMENTS

The notion of integrating individual liberty with societal organization in the service of human progress attains maturity in Amartya Sen's writings on human development, culminating in *Development as Freedom* (1999). For Sen, development consists of the "removal of unfreedom," or expansion of the scope of human freedom.

Sen observes that societal institutions play an essential role in securing or delimiting the liberty of individuals, considering them as active agents and not as passive recipients of benefits (*ibid.*, Introduction).

Many kinds of societal institutions play significant roles in this respect: (free) markets, government administration, legislatures, political parties, the justice system, nongovernmental organizations, and mass media. All of these share in the process of development precisely through their impact in strengthening and safeguarding individual freedom.

Sen outlines five types of instrumental freedoms: political freedoms, economic facilities, social opportunities, transparency guarantees, and protective security. These complement each other, in addition to making it possible for people to build human capabilities and to utilize them to realize the kind of

BOX 1-3

Ahmed Kamal Aboulmagd: The principle of equality

The principle of equality is one of those principles that hardly need to be explicitly mentioned in a contemporary constitution. Constitutional courts and administrative courts have deemed it to be one of a number of "general legal principles" which, in the words of the Council of State, "are firmly established in the general conscience and do not need to be spelled out".

When the principle first appeared in law and judicial practice in Europe, equality had to do with two fundamental matters, both of them related to the history of conflict between kings and peoples since the Middle Ages:

- (1) Equality as it applied to financial burdens (taxes);
- (2) Equality as it applied to judicial practice.

Most modern constitutions use the expression "citizens are equal before the law" or "equal under the law". Both phrases encompass all forms of equality, and are never restricted to the concept of equality as it applies to judicial practice.

Most constitutions, after stating that citizens are equal before (or under) the law, add one or both of the two following clauses:

- A clause specifying that citizens "are not subject to any discrimination based on colour, race or creed";
- A clause enunciating another principle that supplements the concept of equality, namely the principle of equality of opportunity.

The meaning of all these provisions is that the legislative power is debarred from enacting any law containing anything in its substantive text that is inconsistent with the principle of equality in terms of discrimination based on colour, creed or sex (gender).

In this framework, regardless of the wording of these various legal formulations in constitutional texts, legal theory and judicial practice have unanimously agreed that equality means the uniform

application of the law in dealing with persons in comparable legal situations, and that differential treatment of such persons constitutes unlawful discrimination that is prohibited under the constitution. On the other hand, where differential treatment is based on objective or real factors reflecting differences in the legal situations of the persons concerned, it does not constitute unlawful discrimination, but rather a legitimate recognition of different categories or divisions.

There is a very fine line between unlawful discrimination and legitimate recognition of differences, and the task of determining where that line should be drawn is one of the most delicate issues arising in judicial practice. The standard that has come to be applied, especially by constitutional courts, is that differential treatment is deemed to be discrimination and unlawful under the constitution where there is no logical causal link between the discrimination and the result to which it leads, as in the case of a law prescribing lower wages for a woman worker than for a male worker doing exactly the same kind of work. In contrast, where there is a causal link between the differential treatment and the result, the law is not discriminating, but making a legitimate distinction. For example, the Civil Service Law may provide that every year worked by an employee assigned to a remote area shall count as two years for seniority purposes.

There is another important and equally delicate question, and that is the distinction in judicial practice between what are sometimes referred to as "positive discrimination" and "negative discrimination". Positive discrimination is acceptable as an interim measure, where the goal is to correct the cumulative effects of past negative discrimination, as, for example, in hiring quotas for women or black persons (as in the United States).

life they desire. While Sen emphasizes that civil and political freedoms are desirable for their own sake, he stresses that when it comes to economic facilities, income and wealth are not to be sought for their own sake but for the extent to which they make possible the freedom to live our lives according to our desires. People who enjoy economic facilities but are deprived

Development consists of the "removal of unfreedom".

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Corporate governance is a key dimension of responsible economic management.

of civil and political freedoms are being denied the essential freedom to choose the kind of life they want, to participate in shaping crucial societal decisions that impact on their well-being now and in the future (*ibid*, 16).

The ability to exercise basic political rights also secures respect for social and economic rights, and so the construction and strengthening of a democratic system of governance is considered a linchpin of the development process. The availability of social opportunities, especially in education and health care, has a direct role in strengthening human capabilities and enhancing the quality of life.

Sen distinguishes between the opportunities that freedom affords and the processes that allow freedom. Both, however, constitute legitimate subjects in studying freedom and working to promote it. To him, to understand development as freedom, means recognizing the importance of the processes and procedures that should be respected, and not restricting one's attention to ends and goals.

Thus, in concert with the numerous and interrelated freedoms there is a need for many societal institutions that intersect with the processes of supporting and strengthening freedom, such as those for democratic regulation, legal mechanisms, provision of educational services and health care, and means of communication between people and institutions.

Ultimately, Sen finds that the organizing principle for development - as freedom - is the indefatigable attempt to enhance individual freedoms and the social commitment to preserve them. These take form in, and develop through, societal institutions and processes that lead to and nurture these freedoms (Sen, 1999, 298).

It is precisely in the area of economics that this connection between individual freedom and institutional arrangements for serving the public interest carries us from the level of micro-economic analysis to that of political economy. The former concerns economic conduct at the level of the economic unit (the individual or the enterprise). The latter focuses on collective conduct in such areas as the allocation of resources, the distribution of economic

surpluses among different social groups and the use of wealth at the level of society, particularly in consumption and investment. This underscores the need for economically rational societal institutions that protect freedom in the sense adopted here, in addition to guarantees of property rights and free economic activity at the individual level. Rational economic activity on this level is achieved by mobilizing resources, by encouraging investment in productive fields and by systematically enhancing productivity. The latter in turn necessitates efficiency to protect competitiveness, combat monopoly and ensure justice in the distribution of the economic surplus among societal groups.

Corporate governance and human development

In the context of enhancing the private sector's contribution to human development, corporate governance is a key dimension of responsible economic management. One broad definition of corporate governance refers to "the private and public institutions, including laws, regulations and accepted business practices, which together govern the relationship, in a market economy, between corporate managers and entrepreneurs ("corporate insiders") on one hand, and those who invest resources in corporations, on the other. Investors can include suppliers of equity finance (shareholders), suppliers of debt finance (creditors), suppliers of relatively firm-specific human capital (employers) and suppliers of other tangible and intangible assets that corporations may use to operate and grow"².

Good corporate governance ensures that the operations of firms, businesses and markets are transparent, accountable and inclusively responsive to the interests of all stakeholders. These principles matter for development because they can contribute greatly to achieving sustained productivity growth in developing countries, in addition to improving the efficiency of economic performance. Moreover, by increasing corporate social responsibility, corporate governance treats stakeholders within and outside firms and businesses in an

² C. Oman, "Corporate Governance and National Development", OECD Development Centre, Technical papers No.180, September 2001

equitable and socially responsive way. Applying corporate governance principles empowers stakeholders and enables them to understand and take part in business management decisions as a result of their increased access to information and the greater transparency and accountability of owners and managers.

In order for societies to experience these benefits, sound frameworks and institutions need to be in place to provide guidelines, checks and balances within the system and ensure that firms, businesses and markets observe the principles of good corporate governance. In particular, a regulatory framework for the efficient, accountable and inclusive management of resources is necessary for spurring development of the Arab region.

FREEDOM IN ARAB CULTURE

FREEDOM IN ARAB HISTORY

Arab Islamic history provides both actual and practical experience of particular significance in the matter of freedom and its opposite, coercion. The fields of jurisprudence, ethics, logic and scholastic theology (kalam), the philosophy of Sufism and the open social space claimed by nomads and tribes, strongly indicate the presence of the concept of freedom in the Arab Islamic historical experience. Jurisprudence links the validity of acts to freedom. Ethics and theology link legal obligation to responsibility, to individual free will and to human choice with regard to divine will. There were however, differences in how this relation was perceived, as demonstrated by the dialectics of the 'Jabriya', the 'Qadariyya', the Mu'tazila and the Asha'ira. The nomadic way of life was a symbol of "breaking free from all contrived fetters", of "unimpeded life", of "space for living" and "space for action". Sufism is a personal, spiritual experience where the Sufi breaks away from external constraints and pressures – nature, society, the State and legislation - and experiences absolute freedom outside the realm of natural and man-made laws, away from oppression and slavery (Abdullah al-Arawy, in Arabic, 1993, 15-22).

Where political freedom is concerned,

early Arab history witnessed the upsurge of the "Umayyad coercive ideology" that attempted to exploit religion for overt political purposes. The Umayyad caliphs encouraged the pre-destination doctrine view that human actions are pre-ordained in order to claim that the many injustices for which they were responsible were fated acts ordained by God under their rule in the name of God. This ideology gave rise to the contrary position espoused by Hassan al-Basri and his school and the new enlightenment discourse. They advocated a discourse, supported by both text and reason, affirming that people do have a choice and are responsible for their actions. The Mu'tazila bolstered that current of enlightenment by giving the ontological concept of freedom an open political dimension. By so doing they greatly contributed to refuting the claims of the ideology of coercion and helped to place political freedom in Arab religious political thought on solid foundations (al-Habib al-Jenhani, background paper for this Report).

In general, expressions of freedom surface visibly across Arab history in all core domains: religion, politics, society and economics. These expressions were sometimes peaceful and sometimes not.

Religious Freedom

The religious "text" itself stresses that "there is no compulsion in religion" (Al-Baqara: 256), that "You have your religion and I have mine" (Al-Kafiroun: 6), thus allowing the free practice of religion and belief in the land of Revelation, particularly among the Jews, Christians and Sabians. If certain practices in jurisprudence and the political arena have not always followed such guidance, that is only one illustration of the difference between original 'thinking' and principle, i.e. the Revelation, and actual historical practice. Yet the scope of "religious freedom" developed considerably under both the Umayyads and the Abbasids. In literary and cultural circles, debate on religion and articles of faith between Muslims and Christians was free and rich, and it extended to other creeds and schools of thought. It is difficult to speak of persecution on the basis of religion or articles of faith, as such, since such

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cases³ generally concealed a political element. However, members of some sects did not hesitate to accuse those of others, or sometimes their own kind, of heresy if they disagreed with them. Such attitudes undoubtedly cast their shadow on the state and fate of freedom.

Opponents of the status quo exercised a form of political freedom by rejecting the principle of "obedience" to those in charge.

Political Freedom

Opponents of the status quo exercised a form of political freedom by rejecting the principle of "obedience" to those in charge. Instead, they championed the text: "No obedience is owed to any creature if it means disobedience of the Creator", a position which can be enforced by several means: counselling, criticism, secret action, concealment of one's true creed, disobedience, struggle, and rebellion. The examples are many: The revolt of Al Qura' (the Readers), al-Fitna al-Kubra (the Great Sedition), the Khawarij movement, the movements of Al Zinj and of the Qaramita, the secret activities of Ikhwan al- Safa and the Abbasid coup d'état. Thanks to early proponents of freedom, tyrants and totalitarians who established themselves as "the shadow of God and His rule on earth" did not entirely succeed in forcing people to subscribe to the school of thought of the "Sultan's jurists" who claimed that "a century of injustice is better than one hour of chaos".

Social Freedom

The historic period of the great Arab renaissance witnessed obvious manifestations of moral, social and cultural freedom notwithstanding the stipulations of Islamic law regulating both moral and social conduct in Arab-Islamic regions and constraints imposed by Arab custom and tradition. In fact the 3rd and 4th Hijra centuries (9th and 10th centuries AD) represent 'the age of liberalism' of the time, evidenced by the cultural content and daily moral practices where "freedom often expressed itself in forms incompatible with 'traditional' rules".

Freedom in the modern sense of the word was introduced into Arab culture after contact developed between modern Arabs and Europe.

Economic Freedom

Freedom in the economic realm manifested itself through the recognition of property rights, free trade and profit-making, sometimes on the basis of a "text", and sometimes driven by the very logic of economic and daily activities. Economic activities in Arab Islamic history reflect a "capitalist" economic pattern, i.e. a pattern of freedom despite certain challenges and constraints. This was solidified by the expansion of the Islamic state to include vast territories whose prosperous economic relations were firmly based on the rule of freedom. This rule was evident in the Islamic jurisprudence's perception of the legal organization of economic transaction which is built on free consent and free acceptance and also on putting a condition that the contractual will should not be affected by any of the drawbacks of an unfree will.

FREEDOM IN THE MODERN CONTEXT

Freedom in the modern sense of the word was introduced into Arab culture after contact developed between modern Arabs and Europe, particularly France. The Egyptian scholar Riffaa al-Tahtawi (1801-1873) was the first to refer to the idea of freedom (Liberté) and to connect it with "justice and equity" in the Islamic heritage. He considered freedom a condition sine qua non for the progress and civilization of the nation (Riffaa al-Tahtawi, in Arabic, 1840, 73, 74, 80; Riffaa al-Tahtawi, in Arabic, 1872, 8, 127). His Moroccan contemporary, Ahmed bin Khalid al-Nasseri (1835-1897), however, declared that "the notion of freedom invented by the ferinja (foreigners or French) is, undoubtedly, the work of heretics. It requires disregard of the rights of God, the rights of parents and even the rights of humanity" (Ahmed bin Khalid al-Nasseri, in Arabic, 1956, 9, 114). Khayr al-Din al-Tounsi (1825-1889), associated freedom with a number of related rights and referred to personal freedom, political freedom and citizens' participation in managing the affairs of the State as well as freedom of the press. Thus he upheld freedom of

³ E.g. Al Jahm Bin Safwan, Mebed al-Jahny, Ghilan al-Dimashqi, Al Hallaj, Malik bin Anas, Ahmed bin Nasr al-Khuzra'i, "testing of belief in the Revelation of the Qur'an" and Sahrawardy, who was killed.

opinion and expression, which he considered the equivalent of the Islamic principle of “enjoining what is right and forbidding wrong”.

All these thinkers echoed the call for freedom in different contexts: whether in connection with Ottoman tyranny, and in its aftermath, the European colonization of Arab countries; or with the pressures of a history of prejudices and traditions. Elsewhere, freedom is related to its determining role in achieving European progress. The tyrannical nature of the Ottoman regime and the desire for freedom prompted Abdel Rahman al-Kawakibi’s masterpiece: *Tabai al-Istibdad* (The Nature of Tyranny). The European “liberal example” inspired the pioneers of free social thinking, as reflected in Qassim Amin’s great work, *Tahrir al Mar’a* (The Emancipation of Women), as well as in other works which followed in his footsteps. These include the writings of Bahet-hat al-Badiya (1886-1918), Tahir al-Haddad (1899-1935) and Nazira Zein al-Din. This same example gave birth to the liberal trend articulated by the Egyptian pioneer, Ahmed Lutfi al-Sayyid, who became the acknowledged leader of all liberals. The following sentence is a clear expression of his ideas: “Our spirits were created free, God having imbued them with the nature of freedom. Indeed our freedom is us, our very selves and the essence of our selves, it is what gives significance to a human being as being human. Our freedom is our very being and our being is our freedom” (*Mabadi fi a- Siyasa wa a- Adab wa al-Ijtima* [Principles in Politics, Literature and Sociology], in Arabic, 138; also Youssef Salama, *Ishkaliyet al-Hurriya* [Problematics of Freedom] in Arabic, 661).

Throughout the 20th century, freedom in Arab culture represents a strong desire, a vital need, a major demand and a powerful slogan promoted, most notably, by the proponents of “free thought” as well those of “national independence”. The call for freedom seemed to represent a break with the past among the individuals, groups and parties that sought it; it was an aim to be pursued for the sake of life itself and for the future.

BOX 1-4

Al Kawakibi: Freedom and Dignity

If you know that you were created free to die with dignity, strive to live a pleasant life every single day, a life in which every one of you can be an independent sultan ruling his own affairs, subject to no authority but the law, his people’s faithful associate, he sharing with them and they with him both in good fortune and in adversity; a devoted son of his country, begrudging it neither thought nor time nor money; loving humanity, working to ensure that the best of the people is the one who is most beneficial

Source: Abdel Rahman al Kawakibi, 1984, 126).

to them; knowing that life is toil, and that the disease of toil is despair; and that life is hope, and that the disease of hope is doubt; having understood that, to God, judgement and fate are what He knows and what He does, while to man they are effort and toil; knowing with certainty that every footprint on the face of the earth has been placed there by one of his fellow men; not imagining within himself any incapacity, and expecting nothing but good; and the ultimate good is for him to live free or die.

FROM FREEDOM TO EMANCIPATION

In the middle of the last century an overwhelming wave of interest in the philosophy of freedom inspired by existentialism swept the Arab cultural scene. The matter went beyond the mere study and emulation of existentialism for some Arab intellectuals, like Abdul Rahman Badawi, Zakariya Ibrahim and Muta’ Safdi. This does not mean that there were no other remarkable works, nor does it underestimate the impact on the young generation of the translation into Arabic of Jean-Paul Sartre’s plays and Simone de Beauvoir’s works. However, one of the most important works that have appeared was the book by the Moroccan philosopher Mohammed Aziz al-Habbabi, entitled “Liberté ou Libération”. The innovation introduced by al-Habbabi was what he termed ‘realistic personalism’, which he later described in an outstanding work first published in French in 1967: “Le Personnalisme Musulman” (Muslim Personalism) translated into Arabic under the same title in 1969.

Comparing philosophies inspired by existentialism with those by ‘realistic personalism’ reveals a progression in the concept of freedom that can be summed up in the phrase “from freedom to emancipation”. This was a move from freedom as a psychological, spiritual, metaphysical experience and total independence of the self, to a “militant, practical and social experience which, in the outside world, in society, is embodied in emancipation from natural constraints and from all kinds of op-

Throughout the 20th century, freedom in Arab culture represents a strong desire, a vital need, a major demand and a powerful slogan.

Freedom of opinion ...features prominently in the debate between Islamists and their adversaries who question how far the latter tolerate such freedom among those who disagree with them.

Islamists stressed that "freedom of opinion" or "freedom of the mind", recognized by Islam and guaranteed by the Qu'ran, is subject to one limitation: commitment to Islamic law.

pression, deprivation and exploitation. It is embodied in "real freedoms", social, economic and political (Mohammed Aziz al-Habbabi, in Arabic, 1972, 68, 90-91, 185-186). This development gave rise to related societal and civilizational orientations, such as are expressed by the nationalist thinker, Constantine Zurreq, and a group of social-minded intellectuals inspired by Marxism, the most outstanding of whom are Mahmoud Amin al-Alam, Samir Amin, Abdallah al-Arawy, Mahdi Aamil, Elias Murqus and Al-Tayyib Tizini.

Constantine Zurreq linked the question of freedom to that of "civilizational potential" or "civilization", which, he believed, distinguishes nations in terms of their progress or backwardness. He thought that the backwardness suffered by the Arabs in modern times was due to their weak and unbalanced standards of civilization. To overcome both the imbalance and the weakness, basic conditions for civilization must be guaranteed, for they alone can ensure progress. Zurreq believes that the eight most important yardsticks for determining the degree of civilization in a given society are: technical know-how, accumulated scientific knowledge, moral values, artistic and literary creativity, freedom of thought, the extent to which skills and values are to be found throughout society, the prevailing systems, institutions and traditions with the freedoms and rights they contain, and the persons whose lives and activities reflect those skills and values (Constantine Zurreq, in Arabic, 1981, 278). He gathered his arguments under two main headings: creativity and emancipation. Freedom of thought was the condition sine qua non for creativity and all else depended on it. Emancipation was the other facet of civilization and embodied the degree of a person's liberation from nature; from the illusions and desires of the self; and from other people, be they exploiting groups or classes or the hegemony of other societies (*ibid.* 279-281).

Emancipation also figures in the Marxist view of the freedom question. In their view, in the final analysis, the aim is to be liberated from man's arbitrariness, from the domination of nature, from exploitation by capitalism, from the power of private property, from poverty and conflict. This view postpones the reali-

zation of freedom until such time that both the individual and society are socially, economically and politically liberated. For them "full individual freedom can only be realized when all its objective conditions become a reality in a free society" (Abdullah al-Arawy, in Arabic, 1993, 76). This can only be achieved through a comprehensive Arab liberation movement distant from the Arab bourgeoisie and prevalent colonial conditions (Mahdi Aamil).

FREEDOM FROM AN ISLAMIC PERSPECTIVE

At first glance, it would appear that contemporary Islamic thought is not particularly concerned with the question of freedom in its practical sense, concentrating, essentially, on the old question of whether human actions are the doing of God or man. However, Islamists do have a clear-cut theory and the old question of freedom, i.e. metaphysical or ontological freedom – is not their only concern. Freedom of opinion – one of "the external, societal freedoms" – features prominently in the debate between Islamists and their adversaries, who question how far the latter tolerate such freedom among those who disagree with them and how far Islam guarantees freedom of opinion and belief for non-Muslims.

This challenge led to intensive efforts by Islamic thinkers to "defend" and "justify" their thesis that Islam guarantees freedom of opinion. They asserted that "freedom is instinctive" and that the "life of all the prophets" is an affirmation of the freedom of opinion. They insisted that both the Qur'an and the Sunna "recognize freedom of opinion" and that "political freedom is but a branch of a bigger, more general origin", namely "the freedom of man that stems from the fact that he is a man, as recognized in unequivocal texts of the Book and the Sunna (Mohammed Selim al-Awwa, in Arabic, 1989, 211-216; Hassan al-Turabi, in Arabic, 2003, 162-174). At the same time, Islamists also stressed that "this freedom of the mind or freedom of opinion", recognized by Islam and guaranteed by the Qur'an, is subject to one limitation: commitment to Islamic law. An opinion expressed by a Muslim, in exercising this freedom, must not

cast doubt on Islam or break its rules. That was considered as contrary to public order in the Islamic State, for which a person was liable to be declared incompetent and for which, in certain circumstances, he could be subjected to punishment (Mohammed Selim al-Awwa, in Arabic, 1989, 216). Such a position, which is held by the majority in Islamic literature, does not offer an Islamic theory concerning freedom; it would more fittingly come under “rights of freedom”. This does not, however, mean that contemporary Islamic writings are devoid of any profound theory “defining freedom”. Prominent representatives of the Islamic movement have indeed formulated such a theory despite their differences, such as Youssef al-Qaradawi, Allal al-Fasi, Hassan Saab, Hassan al-Turabi, Hassan Hanafi and Rashed al-Ghanoushi. “Emancipated Slavery” may well reflect their theory which signifies “slavery to God alone” and emancipation from slavery to any other but God (Radwan al-Sayyid, in Arabic, 2002, 565).

For these thinkers, the theory of Islamic freedom stems from their critique of the liberal concept of freedom. According to Youssef al-Qaradawi, this concept is based on a number of “extraneous” elements, such as secularism, the nationalist movement, capitalist economics and personal freedom as defined in the West, including women’s freedom to wear practical modern clothing and mix with men, the implementation of foreign laws and a parliamentary system. Its major defect, in their view, is that it contains no “spiritual” element, which it deliberately neglects by “turning away from God and refusing to follow His guidance” (Youssef al-Qaradawi, in Arabic, 1977, 121).

Allal al-Fasi, an independent Moroccan political thinker, seems to be both more precise and profound, and more adept at developing theory on the question of freedom, than any other Islamic thinker. The concept of freedom, for Allal al-Fasi, starts with the will for the total liberation of the national personality from all constraints, whether external, such as colonialism, or internal such as social relations that negate freedom or certain remaining traditions that hamper people’s freedom. The substance of his theory is political and aims at liberating humankind from all kinds and levels of aliena-

tion (Muhammad Waqidi, in Arabic, 1990, 146-148; Mostafa Hanafi, in Arabic, 2002, 336-337). The more restricted framework within which al-Fasi raises the problem of freedom remains, however, a religious Islamic one governed by the concepts of absolute divine freedom, and God’s injunctions to human beings, His heirs on Earth, responsible for populating it and for ensuring justice and freedom. For him, freedom is part of humankind’s personal nature, since human beings were not created free but were created to *become* free; freedom not being just a right but also an obligation that comes second to the interest of the society (Allal al-Fasi, in Arabic, 1997, 2-14; Muhammad Waqidi, in Arabic, 1990, 149-161). The essence of Al-Fasi’s perception of freedom is that belief in God is the path to freedom, for God is absolute freedom or “true freedom” the belief in whom is the path towards the freedom of humankind.

The writings of the Lebanese intellectual, Hassan Saab, reflect precisely the same perception. He argues that the monotheistic Islamic creed is “synonymous with the process of liberation” (Hassan Saab, in Arabic, 1981, 28). Monotheism is “slavery to God alone”. Such ‘slavery’ is humankind’s emancipation from natural, historical and political constraints. It is emancipation from everything that is not God, it is what releases a person from the universe of necessity into the realm of freedom, away from all modern ideologies which are only new forms of slavery: economic liberalism, materialistic communism, natural scientism, Nietzsche’s nihilism, Freudian sexualism, etc. (*ibid*, 10-11).

That is also the school of thought adopted by the leading Islamists, Hassan al-Turabi and Rashed al-Ghanoushi, who believe freedom to be a breaking free from mortal constraints, emancipation and slavery to God. Al-Ghanoushi quotes from a lecture by Al-Turabi on ‘freedom and unity’ to the effect that “Freedom is humankind’s destiny, that which differentiates human beings from all other creatures, so he knelt to God voluntarily since God when He created mortals did not include any element that would force them to believe. Freedom is not an end but a means to worship God ... If freedom in its legal manifestation is

(For Allal al-Fasi), freedom is part of humankind’s personal nature, since human beings were not created free: they were created to become free.

The essence of this perception... is that belief in God is the path to freedom.

Islamic writings promote and consecrate the concept of freedom as being a voluntary human action, but also an emancipatory one.

licence, in its religious manifestation it is the path towards the worship of God. It is mankind's duty to emancipate itself for God and to be faithful in forming opinions and positions. From the Islamic viewpoint, such a freedom is absolute because it is an endless striving for the Absolute. The more faithful people are in their slavery to God, the greater will be their emancipation from all other creations in nature ... and the higher will be the levels of their achievement of human perfection" (Rashed al-Ghanoushi, in Arabic, 1993, 38).

This is how Islamic writings promote and consecrate the concept of freedom as being a voluntary human action, but also an emancipatory action, thus reconciling Islam with the "emancipation" movement and, ultimately, considering it to be synonymous with "slavery to God", i.e. removing it from human to divine space.

FREEDOM AND LIBERATION

In the 1950s the notion of Arab nationalism came to be embodied in political movements and regimes, as in Ba'thism in Syria and several neighbouring countries, and Nasserism in Egypt. These movements made freedom one of their basic tenets. In fact, it is one of the three cornerstones of the Ba'thist credo (unity, socialism, freedom), and a major element of democracy in Nasserism. Yet, the "revolutionary" nature of these movements and the surrounding conditions of international, regional and local struggle and conflict made the leaders of those movements postpone implementing the principle of freedom in favour of other principles: Arab unity in the party's ideology (Ba'thism) and socialism in Nasserism. They even justified certain formulations that curtailed freedom throughout "the revolutionary stage". This view was, however, linked to their concept of "liberation" and to defending the idea that the liberation of the Arab human being or individual was a pre-requisite for the establishment of complete freedom. All seemed to agree that "liberation" meant the liberation of the Arab individual from all kinds of exploitation, oppression, poverty, need, sickness, capitalism, feudalism, and everything that represents a "constraint" limiting man's

actions, and obstacles to the individual's real freedom. In other words, economic, political and social liberation were basic conditions for the real freedom of the people and citizens. (Munif al-Razzaz, in Arabic, 1985, 491, 583, 594).

One cannot approach the issues of freedom, emancipation and liberation without reference to what has, since the early 1950s, been termed "the Arab liberation movement". This was the name given to "progressive" political organizations and parties in the Arab arena, the organizations that were struggling for freedom, unity, development and progress. Despite the lofty aims, slogans and values espoused by the movement to justify its existence – liberation, unity, justice and development – in reality it was in a state of crisis and bitter failure. The explanation given by Kamal Abdel Latif and others is salient: "The historical awareness behind the Arab liberation movement, that reached the threshold of power, was unable to come to terms with the liberal gains achieved in the Mashriq between the two wars. All the intellectual and political values that arose in the first quarter of the 20th century were ignored, hence civil society was not established, and the State was unable to acquire legal, secular legitimacy. It donned the cape of charismatic power and resorted to masked tyranny" (Kamal Abdel Latif, in Arabic, 75).

From the foregoing analysis of the concepts of freedom, emancipation and liberation it would seem that ontological freedom was not considered to be a gateway to emancipation and liberation. Indeed, intellectuals concerned with emancipation openly criticized the old definition of freedom in terms of personal will, individual awareness and independence from external factors. While many realized that the attainment of freedom requires relentless struggle and effort, most of their ideas of emancipation and liberation revolved around issues of economic and social exploitation as well as political tyranny.

The experience of the Palestinian struggle, however, offered the Palestinian intellectual Sari Nusaiba an unusual philosophical opportunity, which enabled him to combine freedom in its ontological sense and liberation in its political sense. What is freedom? Freedom is

The state was unable to acquire legal, secular legitimacy. It donned the cape of charismatic power and resorted to masked tyranny.

the absence of bonds or the removal of bonds or the emancipation from bonds (Sari Nusaiba, in Arabic, 1995, 33 onwards). Freedom means “the capacity for growth and development towards the better” and “the breaking of the fetters preventing such growth and development” (*ibid.*, 85). Such a capacity is achieved at the level of the “self” or at the level of the “will”, i.e. at the level of the inner interaction within the self that engenders the victory of the positive over the negative by the determination to undertake a certain action, or the refusal to submit to undertaking it”. This interaction “includes elements such as self-awareness, awareness of the reality outside the self and, most important, the clash or interconnection of the first and the second, leading to the domination of the self over the action so that a human being’s action is in harmony with what he believes in” (*ibid.*, 117). Sari Nusaiba illustrates his interpretation with the case of an imprisoned Palestinian militant subjected to questioning and torture. The militant’s absolute determination, awareness of his personal identity, capacity to overcome inner bonds and unwavering resolve which embodies the collective resolve, enables him to overcome the external enemy’s will that binds him, and to achieve freedom and independence for himself and for his people (*ibid.*, 118-127).

THE RIGHTS OF FREEDOM

Ever since “freedom” acquired its right of citizenship as one of the values within the modern Arab cultural cluster, its proponents’ main intention was not to adopt an abstract, absolute concept of freedom, but rather a concept that has practical, intellectual, political, social, religious and economic facets. It is true that those facets were considered forms of freedom, but in reality they were also the “rights” of every free human being. Freedom did not only mean freedom of action and behaviour, the lifting of constraints within the boundaries of law and of Islamic law; it also meant the free citizen’s entitlement to enjoy a number of rights originally linked to freedom. Rifaa al-Tahtawy recognized this when he considered that freedoms - natural, behavioural, religious, political and

economic - were in fact the rights of citizenship (Wajih Kawtharany, in Arabic, 2002, 427-430). Khayr al-Din al-Tounsi stressed a person’s right to free disposal of himself and his belongings - that is personal freedom - and the right of the constituency to “intervene in royal policies and to debate what is for the best”. He also referred to the right to freedom of expression or what he termed “freedom of the printing press” (*ibid.*, 433).

The leading thinkers of the Arab age of renaissance followed suit. Throughout the 20th century, all political and social movements came to agree on the “necessity of freedom” as a slogan, a claim, a supreme value and a right. While they focused on different forms of freedom - national, political, social, economic and intellectual “freedom of opinion” - they were all in agreement that these were human rights for the citizen and for society (Muhammad Waqidi, in Arabic, 1990, 164-165). The fact remains, however, as Burhan Ghalioun notes, that such clear recognition of the rights and freedoms of the individual has been linked to the call for democracy which has become a concrete reality at more than one level, as well as “the uppermost value among political values and the first among Arab social claims” (Burhan Ghalioun, in Arabic, 1994, 109). More recently, this recognition also became linked to the claims of those seeking to promote respect for human rights and to encourage backward societies along the path of democracy. As long as the task of the democratic political regime is to guarantee freedoms and as long as such freedoms represent vital demands for citizens, they end up by becoming rights, not to say obligations, to quote Allal al-Fasi.

In Arab culture, fundamental freedoms have in recent times become linked inextricably to the question of human rights and to an acute awareness of the oppressive nature of political regimes, particularly where political freedoms are concerned. Prominent Arab human rights advocates stressed the importance of human rights and fundamental freedoms. Munther Anabtawy, one of the foremost pioneering human rights activists, said that all the Arab military and political catastrophes, cataclysms and defeats were due to “the continuing deprivation of the Arab citizen

Throughout the 20th century, all political and social movements came to agree on the “necessity of freedom” as a slogan, a claim, a supreme value and a right.

In Arab culture, fundamental freedoms have become linked inextricably to the question of human rights and to an acute awareness of the oppressive nature of political regimes.

No Arab thinker today doubts that freedom is a vital and necessary condition for a new Arab renaissance.

of his fundamental rights and freedoms". He believed that it had become imperative for intellectual élites to contribute to promoting the human rights of Arabs, that being one of the necessary conditions for the revival of the Arab national project and for overcoming the social, political and economic problems confronting Arab citizens and Arab countries today (Burhan Ghalioun, *ibid.*, 395-397).

The general call to respect human rights and to guarantee the fundamental freedoms of the Arab citizen is no longer voiced for its own sake in Arab intellectual circles; these principles have become the two vital conditions for an Arab renaissance. Arab nationalists, liberals, Islamists, Marxists and independents, unanimously proclaim the call. Not all agree on the limits of such freedoms and rights or on their scope and particular manifestations: some speak of personal freedom and freedom of belief, others speak of economic, social, political and other freedoms. There are differences, sometimes fundamental, in how the various

groups perceive these issues.

For example, the liberal and the Islamist are unlikely to agree on the scope of personal and moral freedom, though they may be in agreement over freedom of ownership and work. The liberal, the nationalist and the Islamist want to see freedom implemented, while the Marxist's priorities are revolution, the struggle against capitalism and the victory of socialism before true freedom can be attained. Many criticize bourgeois liberalism for its superficiality, insignificance and lack of authenticity. Yet they also question whether the Islamists, if they ever came to power, would respect the human rights and freedoms of those with whom they disagree. Most remain sceptical about this despite the Islamists' assurances and reassurances to the contrary, and the recent efforts made by some to justify the right to differ (Fahmy Jadaan, in Arabic, 2002) and despite the guarantees provided in Islamic human rights declarations and charters elaborated over the past two decades.

BOX 1-5

Naseef Nassar: The Reconstruction of Liberalism

The power of liberalism is not only that it raises the banner of individual freedom and counteracts the tendency to dissolve the individual within the group, but also that it claims freedom for all human beings without exception, men and women alike. History, however, teaches us that to organize social life in a practical, liberal manner is far from the mere application of a ready-made and final view, or a pleasant walk in a rose garden. It is an open process of struggle, one that requires an ever-developing awareness of the dimensions of freedom and of its problems, in the light of direct experience and in all the areas freedom touches. It also requires an associated theoretical understanding of the liberal orientation itself and a critical review of its achievements.

As a result of the principle of freedom of thought and belief, the liberal society does not lean towards a comprehensive and complete unity of thought, but rather towards a plurality of beliefs, or towards variety within one single belief. Taken to extremes, such a tendency leads to the exact opposite of dogmatic

Source: Naseef Nassar, in Arabic, 2004, 77-78 and 107.

unity of belief, i.e. to a kind of chaos that is no less dangerous than its opposite where human relations, understanding and development are concerned. That is why for a liberal society to remain viable and to progress, it needs to organize the processes of intellectual understanding among its members.

It also needs to set up mechanisms for sifting, comparing and selecting in order to make room for truths to surface, to agree on common truths and their link to the right institutions for them.

It goes without saying that the truths in question are not the ones related to the absolute and the eternal alone, but rather the social, the cultural, political, economic and moral truths on which hang the history of individuals as well as their destiny in this fleeting world. Despite its individualistic premises, the liberal society in the West has never ceased to try developing a response to this need, yet the challenge now imposes itself in new forms amid the rising tide of globalisation which requires a reconstruction of liberalism.

THE ARAB RENAISSANCE AND THE CHALLENGE OF FREEDOM

No Arab thinker today doubts that freedom is a vital and necessary condition for a new Arab renaissance, nor that the Arab world's capacity to face up to the problems and risks of globalization depends on ending tyranny and securing fundamental rights and freedoms.

Freedom is not the only, nor is it a sufficient, condition for this renaissance to take place, but it is a condition sine qua non. It is counterproductive to debate the prioritisation of values needed for such a renaissance: freedom, or development or justice. All are essential; the renaissance cannot work in the absence of any one of them; they are an interconnected and interrelated whole.

With the prevailing situation in the Arab world and with recent global developments, it is vital to think about freedom and the form it can take to embody the specificities of Arab societies, and the fundamental social and political aspirations of their people.

Reflecting on this subject, Naseef Nassar turns to liberalism as a social system based on the principle of individual freedom, noting

that liberalism is not limited to the forms it has taken in Western societies up to the present day; and that other countries – among them Arab countries – can seek “the form they deem best to promote freedom depending on their position on the map of civilization and without excluding the experiences of Western countries” (*ibid.*, 150-155).

Nassar believes that liberalism should be reconstructed, which requires “the assimilation of the principle of individual freedom within a new concept of the sociability of man”, one that links reason to justice and to authority. Along the same lines, individualistic globalized liberalism should be excluded – since it neglects freedom of will in favour of unbridled capitalistic power. A new philosophy must be devised, based on a “social liberalism” which can be called “the liberalism of social solidarity”, a liberalism founded on social reason, social justice and a political authority that establishes the frameworks and organizations conducive to protecting and safeguarding freedom (*ibid.* 158-159). Starting with this “liberalism of social solidarity” and within its space, the issues of unity, pluralism, stability, labour, social wealth, political system, knowledge, faith and education can all be reconstructed, along with the institutions and organizations they require, in a manner no less flexible or efficient than that followed by European states in their transition from the Europe we know to a new Europe that will give a new face to globalization (*ibid.* 167). The great freedom we seek resides in this system based on “the liberalism of social solidarity” and not in “neo-liberalism”.

The majority of Arab thinkers today are moving in the direction of a renaissance which combines the principles of freedom and justice with the additional principle of social and economic development, although they may differ as to which principle should come first. This trend should be entirely compatible with an Arab order of good governance of a humane nature, based on freedom, creativity, justice, welfare, dignity, fairness and the public good.

THE CONCEPT OF FREEDOM AND GOOD GOVERNANCE IN THIS REPORT

Freedom is one of the principal human goals and highest human values. It is cherished in itself and sought for its own sake.

BOX 1-6

Freedom for its own sake

A person’s freedom can be seen as being valuable in addition to his or her achievements. A person’s options and opportunities can be seen as counting in a normative evaluation, in addition to what the person ends up achieving or securing. Freedom may be valued not merely because it assists achievement, but also because of its own importance, going beyond the value of the state of existence

actually achieved. If, for example, all the alternatives other than the one actually chosen were to be eliminated, this need not affect achievement (since the chosen alternative can be still chosen), but the person clearly has less freedom, and this may be seen as a loss of some importance.

Amartya Sen, 1988, 60

The concept of freedom accommodates two senses, negative and positive. The first concerns the domain in which an individual (or group) is able to exist and to act as s/he (or it) wishes without interference by others; it entails lifting any restrictions placed on the individual. The second, positive sense has to do with the source of interference or control over the being or action of the individual (or group), or the manners in which individual freedom is regulated for the purpose of avoiding chaos, (Berlin, 1969).

The importance of the second sense of freedom is that some freedoms can be incompatible with higher human goals. An oft-cited example is the “liberty” of someone to inflict pain on another by committing the crime of torture. Moreover, the natural, unimpeded spread of total freedom may on the one hand block the satisfaction of the basic needs of people at large; and, on the other, allow the strong to tyrannize the weak.

However, the individual’s consent to the principle that freedom must be subject to control raises the possibility of oppression by a ruling individual or majority. Hence, the inseparability of freedom and good governance, defined in a specific societal context, constitutes the ideal position between absolute freedom (chaos) and oppression. For this reason, the present Report takes a broad purview that encompasses the negative and the positive dimensions of freedom.

Freedom is one of the principal human goals and highest human values. It is cherished in itself and sought for its own sake.

Freedom is an ideal and persistently broadening goal.

The scope of the concept of freedom ranges between two extremes. The first is a narrow one that restricts freedom to civil and political rights and freedoms, linking it to citizenship and democracy, and to the emergence of liberalism in Western thought since the 17th century. The second is comprehensive, and has been adopted in this Report. This comprehensive scope incorporates not only civil and political freedoms (in other words, liberation from oppression) but also the liberation of the individual from all factors that are inconsistent with human dignity, such as hunger, disease, ignorance, poverty, and fear. In human rights terms, the understanding of freedom in the

present Report covers all realms of human rights, that is, economic, social, cultural and environmental rights as well as civil and political rights.

In this comprehensive definition, freedom is an ideal and persistently broadening goal. It is thus true to say that freedom is a goal ever sought but never reached.

As is the case with civil and political freedoms, the other freedoms are valued in themselves as human aspirations. A citizen who enjoys civil and political freedoms will still seek to avoid hunger or disease. While some may think that adversity or insecurity may distract people from such issues as, for example, freedom of expression and association, lack of these other freedoms may often spur demand for freedom and good governance. Ultimately, these other freedoms complement and complete civil and political freedoms, to form the core of human well-being. This core constitutes true freedom: the absence of even one of these other freedoms detracts from the value of civil and political freedoms. What, for instance, is the point of a person having the legal right to buy basic commodities, i.e. the right to economic transactions, if poverty precludes the effective exercise of that right?

In this comprehensive sense, freedom is considered both the ultimate goal of human development and its foundation.

Freedom, however, is one of those superior human culmination outcomes that must be guaranteed, sustained and promoted by effective societal structures and processes. These societal guarantees are summed up in the order of good governance embodied in synergy between the state, civil society, and the private sector as depicted in the first Report in our series. Such an order:

- Safeguards freedom to ensure the expansion of people's choices (the core of human development)
- Rests upon effective popular participation and full representation of the public at large.
- Is buttressed by first-rate institutions (in contrast to the tyranny of the individual),

BOX 1-7

The Charter of Medina

One of the most important acts with which the Messenger of God (the Prophet Muhammad) began his life in Medina was the writing of a missive in which he formally set out the relationship between Muslims and others in Median society. He referred to the groups collectively as "the people of this document [lit., page, sahfah]," that is, the missive he had written. This document is considered the equivalent to the constitution of the emergent Islamic state in Medina, and indeed many modern scholars refer to it as the "Constitution of Medina" or "Charter of Medina". Nearly a millennium and a half ago, this document articulated and established the principles of citizenship, equality and justice (combating oppression), and of freedom of belief, in a written pact.

This is possibly one of the earliest documents in history to appraise the relationship between governance and people on the basis of citizenship, rather than on any discriminatory basis (religion in this case)

Ibn Ishaq reported: The Messenger of God drew up a written document among the Emigrants⁴ and the Medinans (Ansar) in which he made a pact with the Jews [in Medina], establishing their right to practice their religion and retain their property, and in which he made and ac-

cepted conditions of mutual co-existence in the city.

From the Text of the Charter:

"In the name of God the Beneficent and Merciful, this is a document from Muhammad the Prophet [to govern the relations] between the believers and Muslims of Quraysh and Yathrib⁵ and those who followed and joined and strove with them. They are one community (umma), exclusive of all other people....

"The pious believers will stand against rebellious elements or those who promote oppression or injustice, enmity or sin and corruption, among believers. Every person's hand will be against such a one even if that one is the offspring of any one of him or her....

"The Jews have their religion, and the Muslims have theirs, and this applies to their freedmen as well as to themselves, except for the one who acts wrongly or unjustly. That person hurts none but himself and his family. The Jews of Bani Najjar will have the same rights as the Jews of Bani Awf, and the Jews of Bani Harth will be as the Jews of Bani Awf....

The Jews of al-Aws, both their freedmen and themselves, will have the same standing as the people of this document, in good and pure loyalty from the people of this document."

Sources: Abi Muhammad Abdulmalik ibn Hashim al-Mu'afari, in Arabic, 1998; Abd al-Rahman Ahmad Salim, in Arabic, 1999; Muhammad Salim al-'Awa, in Arabic, 1989

⁴Emigrants: those who had emigrated with the Messenger of Gods from Mecca to Medina to found a community of Muslims. The Ansar ("supporters," "helpers") were the Muslims of Medina who invited the Messenger of Gods to settle there.

⁵Quraysh: The Meccan clan from which Muhammad, the Messenger of God, came. Yathrib: the name of Medina before it became Medinat al-Nabi, "City of the Prophet," shortened form, Medina.

which operate efficiently and with complete transparency. These institutions are subject to effective accountability among themselves, protected by the government's separation of powers, and by a balance among those powers; they are also directly accountable to the populace through popular selection processes that are regular, free, and scrupulously fair.

- Upholds the rule of law; and ensures that the law itself is fair, protective of freedom, and applies equally to all;
- Ensures that an efficient, fair and independent judiciary applies the law impartially and that the executive branch duly implements judicial rulings.

A society distinguished by freedom and good governance requires an institutional architecture based on the synergy of three social sectors:

- The State, incorporating government, representative bodies, and the judiciary;
- Civil society, in the broadest sense, which embraces non-governmental organizations, professional associations and syndicates, mass media, and political parties;
- The (profit-seeking) private sector.

Good governance requires each sector to possess the following two characteristics:

- Respect for freedom and human rights, and adherence to the legal architecture that protects them.
- Observance of the principles of rational public administration. This calls for stable institutional structures in place of supreme individual authorities, and adherence to key principles: efficiency, separation of powers, transparency, disclosure, and accountability.

Beyond these general criteria for the institutional structure in a society of freedom and good governance, there are particular requisites for each of the three sectors, in the following respects:

- Judiciary: impartiality
- Representational bodies: efficacy of legislation and oversight
- Government: leadership directly selected by, and accountable to the people
- Private sector: creativity, efficiency and social responsibility
- Civil society: effectiveness, self-sustainability and social responsibility.

BOX 1-8

Setting the deviant ruler straight

Omar Ibn al-Khattab: Should a person see in me a deviation [from that which is right], let him make it straight.

Man: If we saw in you a deviation, we would make it straight by the blade of our swords.

Omar Ibn al-Khattab: Praise be to God that in the community of Omar exist those who would straighten Omar's deviation with the sword.

BOX 1-9

Al-Kawakibi: Importance of holding the ruling authority accountable

In sum, we have said that government, of any sort, is not absolved of being described as oppressive as long as it escapes rigorous oversight and is not made to answer for its actions without fail.

It is a well established fact that there is no just government that feels safe from responsibility and blame because in some

Source: Abdul Rahman al-Kawakibi, in Arabic, 8-9

way the nation's people are inattentive or negligent, or simply disregard it, but that it hastens to clothe itself in the attribute of tyranny; and, once this is achieved, it will not abandon it as long as it is served by a modicum of those two enormous and dreadful powers, the ignorance of the people and organized troops.

Undoubtedly, the institutional architecture, especially the legal and political architecture, occupies the pre-eminent position, as this is the foundation on which all else must build. Thus, the present Report puts the spotlight on these two cornerstones.

Similarly, the concept emphasises civil society, as characterized above, because the latter has a pivotal role to play in achieving a deep political alternation in society as countries make the transition from a status quo inimical to freedom, to the regime of good governance described here.

Economic and social freedoms are underpinned by efficient and sustainable economic growth in which corporate governance plays a major role.

BOX 1-10

Corporate governance

Economic and social freedoms are underpinned by efficient and sustainable economic growth in which corporate governance plays a major role.

Three major principles of corporate governance are underscored: transparency, accountability and inclusiveness. It is not only important to uphold each of these principles in its own right; since they are mutually reinforcing, it is even more important to adhere to them as a whole so that none of them is compromised. As such, transparency in corporate governance is critical not only in terms of providing quality disclosure of information so that investors may make informed financial decisions, but also

because it helps ensure the accountability of corporate institutions, which rests on public knowledge and information. Furthermore, individual investors' basic right to be included in decision-making may deliberately be poorly defined and weakly protected when corporate accountability is lacking and no deterrents or recourse are available for those whose rights are breached.

Particular attention needs to be paid to stock markets, one of the most important drivers of economic growth. It is crucial to implement corporate governance within them to enhance their efficiency and to harness their developmental potential.

Taha Hussein(1938): Freedom and Independence

We live in an era among whose more special attributes is the fact that freedom and independence are not so much a goal towards which peoples look and to which nations strive, as they are a means to achieve higher and more lasting goals, beyond freedom and independence in themselves—ends that are more broadly beneficial and more widely advantageous.

Many groups of people in many parts of the world once lived free and independent. Yet freedom availed them of nothing, and they found no further benefit in independence. Their own freedom and independence did not protect them from encroachment by other peoples who had freedom and independence but were not content to make these alone

suffice and did not regard them as their only long-term goal, but instead supplemented them with the civilization that is based on culture and knowledge, the strength that emerges from culture and knowledge, and the wealth that is produced out of culture and knowledge.

We want to be free people in our country, free of foreigners such that they cannot oppress us or treat us unjustly; and free with respect to ourselves, such that no one of us can oppress or treat another unjustly.

We want internal domestic freedom, and its foundation, the democratic order. We also want external freedom, and what it is based on, true independence and the strength that surrounds this independence.

Source: Taha Hussein, in Arabic, 1996, 15, 41

the increasing foreign military presence and other external influences in many Arab countries.

Governance in Arab countries is undergoing a process of reform. We hope that these Reports will help to plant the seeds of good governance in the region by inspiring a society-wide process of creative thinking, innovation and collective work in which all dynamic societal forces in Arab countries will take part. And this includes, of course, governments of the day.

The pivotal question is: can the present Arab society accommodate this concept of freedom and good governance?. An answer is attempted in Chapter 2. The concept adopted raises another question of a historical nature: can the future unfold along a trajectory that will lead the Arab world to a society of freedom and good governance?.

Under such a system of good governance, it is virtually impossible to destroy freedom. On the other hand, freedom remains at risk, and the mode of government can become oppressive, where any of these cornerstones of good governance are absent or deficient.

It needs to be underlined, however, that the individual is free only in a free society within a free nation. Distinguishing between society and nation allows for an analysis of the freedoms of different groups in that social space between the individual and the nation. It thus facilitates consideration of minorities, whether ethnic or religious, and the important question of respect for their rights.

The paradigm of “good governance” discussed here and the collective societal process for its advancement are especially relevant because they enable different societies to represent their own particularities. This provides Arab countries with an opportunity to think creatively about how to achieve the best and most representative system of good governance in their respective contexts.

In the Arab region, national liberation is of particular importance because of the Israeli occupation of Palestinian Arab territories, which impedes human development in the area, and threatens peace and security in the region. There is also the more recent dimension posed by the US-led occupation of Iraq, along with

The individual is free only in a free society within a free nation.