

The Priority of Politics: Is it possible to have an Islamic democracy that does not impose shariah?

Based on an essay by M.A. Muqtedar Khan

SIS: There are several ongoing debates on the compatibility of Islam and democracy. There are several prominent Muslims who believe Islam is entirely compatible with democracy but such a democracy must not violate the precepts of the shariah. What do you think are the limitations of such an approach?

MK: The extraordinary influence of the idea of "Islam as shariah" has made law prior to the state and political life. Instead of thinking of law as serving the changing needs of the political community, the polity is said to be legitimate only if it properly implements shariah. Certain discussions of the compatibility of Islam and democracy inadvertently reflect this mistaken view of law and politics. Thus, instead of concluding with a sketch of an Islamic democracy, these arguments instead impose shariah-based limitations on democracy. They make claims that a case for democracy from within Islam should not substitute popular sovereignty for divine sovereignty and should recognise that democratic lawmaking respects the priority of shariah. These discussions of Islam and democracy invariably end with an unmistakable edict – you can have democracy but only as long as people are not sovereign and shariah is not violated.

SIS: But where does this idea that equates Islam with shariah come from?

MK: One of the most prominent Islamic theologians, Sheikh Ibn Taymiyyah (1263-1328) – a great source of inspiration to conservative Muslims who advocate authoritarianism – argued for an Islamic leviathan that would defend the Islamic world from external military threats and Islamic doctrines from internal heresies. He claimed that the objective of an Islamic state was to impose the shariah.

SIS: But surely it is reasonable for Muslims to assert the centrality of shariah in their lives?

MK: There are certain things to bear in mind, especially when we are talking about how this influences the formulation of policies that affect the lives of ordinary citizens. For example, let's look at this claim that an Islamic democracy should recognise the centrality of shariah in Muslim life. This claim is scary and prompts several questions: Who gets to articulate what constitutes the shariah? Islamic jurists? Who determines who an Islamic jurist is? Who determines which schools can provide the education that will produce jurists? Who determines when a specific democratically passed law is in violation of the shariah? Who determines the issues on which people will have freedom of thought and action and the issues on which the so-called shariah will be unquestionable? The answer to all of these

questions is the same – the Muslim jurist. If this is to be the definition of an "Islamic democracy," then it is an "Islamic democracy" that is essentially a dictatorship by Muslim jurists. It is much, like contemporary Iranian democracy, which is often held hostage by the clerics.

SIS: Then it appears that the prospects for an Islamic democracy are quite bleak. Do you see any possibility for an Islamic democracy that does not descend into this "dictatorship of Muslim jurists"?

MK: There will be no Islamic democracy unless jurists permit the democratisation of interpretation. Let every citizen be a jurist and let her interpret Islam and shariah when she votes. In a democracy the vote/opinion/fatwa of every individual must be considered equal since ontologically all humans are equals. Insisting on the centrality of a fixed shariah is a recipe for authoritarianism. It does not matter if some jurists are interpretively more liberal than their traditional colleagues and their vision of the shariah is more inclusive but as long as the commanding authority of jurists remains in place and the jurists retain a monopoly on interpretation (ijtihad), there can be no Islamic democracy.

To be sure, the moral quality of this Islamic democracy will depend on the extent of Islamic knowledge and commitment of the citizens. But attempts to guarantee "Islamic outcomes" by requiring that, for example, "the essential shariah must be applied," **will** inevitably subvert democracy by handing authority over to jurists. Also, the Prophet of Islam (peace be upon him) reportedly said that "My ummah will not unite upon error." But no comparable claim is made about the infallibility of the opinions of the jurists. We are left, then, with the democratic idea that only public opinion should be trusted.

In short, the content of law in an Islamic democracy should be a democratically negotiated conclusion emerging in a democratic society. In the absence of this free and open negotiation, Islamic democracy will be a procedural sham that confines voting mechanisms to secondary matters.

SIS: It is interesting that you talk about the "moral quality" of an Islamic democracy depending on the "Islamic knowledge and commitment" of its citizens. There seems to be a contradiction here, though. On the one hand, we can safely say that the intellectual tradition that developed throughout the history of Islam is extremely rich and full of profound ideas. However, the debate on Islam and democracy so often stagnates at the most rigid discussions on shariah. How do you explain this?

MK: It is true, the Islamic intellectual tradition – which includes Islamic legal thought (usul al-fiqh and fiqh), theology (kalam), mysticism (tasawwuf) and philosophy (falsafa) – is one of the most developed and profound traditions of human knowledge. In the area of political philosophy, however, this intellectual heritage remains strikingly underdeveloped. One of the reasons for this lacuna is the "colonial" tendency of Islamic legal thought. Many Islamic jurists simply equate Islam with Islamic law (shariah) and privilege the study of the latter. As a result we have only episodic exploration of the idea of a polity in Islam. Hundreds of Islamic schools and universities now produce hundreds of thousands of Islamic legal scholars, but hardly any produce political theorists or philosophers. With some rare exceptions, this intellectual poverty has reduced Islamic thought to the status of a medieval legal tradition.

SIS: Let's go back to your assertion that an "Islamic democracy should be a democratically negotiated conclusion emerging in a democratic society." This is consonant with so-called 'secular' notions of democracy, too. Many Muslims, however, argue that in an Islamic state, human beings do not have the agency to create laws, they only implement laws that originate from God – the ultimate lawgiver in an Islamic state. How would you suggest a "democratically negotiated conclusion emerge" in this context?

MK: The idea that God is the lawgiver in an Islamic state, whereas human agents are the source of law in a democracy, originates with Maulana Maududi. He coined the term Al-Hakimiyah (sovereignty) and argued that in Islamic states only God was sovereign whereas in a democracy the will or whim of the majority ruled. This misunderstanding of both sovereignty and democracy has become a slogan for Islamists opposed to democracy.

Democracy implies more than mere majority rule. Constitutional democracies have guarantees that protect individuals from majority tyranny. The articulation of human rights as inviolable – as rights that cannot be taken away even by the will of the majority – is a clear example that democracy is not just mob rule.

Moreover, Islamists who talk of God's sovereignty have a narrow conception of sovereignty. Muslims must understand that while sovereignty belongs to God it has already been delegated in the form of human agency (Qur'an 2:30).

The political task at the moment is to reflect on how this God-given agency can be best employed in creating

a society that will bring about a good life for the people in the here and now and in the hereafter.

Muslims as individuals and as a community cannot be held accountable for what they do, unless they have some freedom, agency or sovereignty to act on their own judgments and preferences. The Day of Judgment is the natural consequence of human sovereignty; there cannot be one without the other.

Although God is sovereign in all affairs, He has exercised His sovereignty by delegating some of it in the form of human agency.

SIS: Can you elaborate on your point? How does this address the claims made by advocates of the Islamic state that only God has the right to legislate?

MK: As I said, God has exercised His sovereignty by delegating some of it in the form of human agency. To appreciate the nature of this delegation, one has to recognise the difference between sovereignty in principle (de jure) and sovereignty in fact (de facto). De facto sovereignty is always human, whether in a democracy or in an Islamic State.

The effect of claiming simply that God is sovereign and has the sole right to legislate is to give privilege to the few who will act in God's name. In what I would propose to be an Islamic democracy, every individual is a vicegerent of God (Qur'an 2:30) and therefore has the legitimate authority to act in God's name. Thus every citizen has the right to interpret and claim what is law (divine or otherwise). Though sovereignty is always God's in principle, human agency is what matters in practice. So we must assume that sovereignty is essentially human agency that must be both channelled and limited to establish just polities.

Ideas such as the primacy of shariah and God's sovereignty – which make states accountable to God alone and free them from accountability to the people – give power to a social elite. These are age-old canards that undermine freedom and encourage authoritarian states and totalitarian ulama. To establish an Islamic democracy we must first create a free society where all Muslims can debate what constitutes the shariah. Critics will say that God's will is not up for negotiation. But the imposition of law is against the spirit of Islam. God wants free submission. He wants his believers to worship him and obey out of free faith, not from fear of some state. Freedom comes first, and only faith that is found in freedom has any meaning. Practice of religion under duress violates the Qur'an, which is against compulsion (2:256), and religion under duress is manifestly worthless.

SIS: What then is the difference between your vision of an "Islamic democracy" and the shariah-based "Islamic democracy" advocated by some other Muslims?

MK: I share in the conviction that Islam and democracy are fundamentally compatible. To me, democracy is essentially intimidation-free political space which accepts the necessary evil of government and allows for a limited state that rules through consent, consultation and accountability while recognising the inalienability of certain principles and values (rights and duties). But a proper appreciation of these political-theoretical issues requires that the Muslim mind free itself from its legalistic tendencies and stop privileging shariah as a given. We must first seek to establish a polity that is Islamic/democratic and then negotiate what its laws will be.

SIS: But can you give us an example of how this Islamic democracy would actually work in real life?

MK: You see, if we bypass the legalistic tradition and return to the original sources of Islam, we will find in Prophet Muhammad's example an excellent model for an Islamic democracy. After he migrated from Makkah to Yathrib in 622 CE, he established the first Islamic state. For ten years he was not only the leader of the emerging Muslim ummah in Arabia but also the political head of Madinah. As the leader of Madinah, Prophet Muhammad exercised jurisdiction over Muslims as well as non-Muslims within the city. The legitimacy of his rule over Madinah was based on his status as the Prophet of Islam as well as on the Compact of Madinah.

As a Prophet of God he had authority over all Muslims by divine decree (64:12, 47:33). He ruled over the non-Muslims of Madinah by virtue of the tripartite Compact that was signed by the Muhajirun (Muslim immigrants from Makkah), the Ansar (indigenous Muslims of Madinah) and the Yahudi (Jews). This compact was the basis of the polity of Madinah. It established a federation of communities that were equal in rights as well as duties. Thus the Jews of Madinah were constitutional partners in the making of the first Islamic state.

SIS: So you are locating your framework for an Islamic democracy within the compact of Madinah?

MK: In a way, yes. The Compact of Madinah provides an excellent historical example of two theoretical constructs that have shaped contemporary democratic theory – constitutions and social contracts – and should therefore be of great value to theoretical reflection on the Islamic state. In the state of nature people are free and not obliged to follow any rules or laws. They are essentially sovereign individuals. Through social contracts they surrender their sovereignty to the collective and create states.

The state then acts as an agent of the people, exercising the sovereignty that has been delegated to it through the social contract. The state is accountable to the people who constitute it and derives both legitimacy and power from the

contract. Constitutions are the explicit articulations of the social contract and act as the legal basis of the polity.

On the basis of the Compact, Prophet Muhammad ruled Medina by the consent of its citizens and in consultation with them. The Compact, which served the dual function of a social contract and a constitution, legitimised his authority over the city. The Prophet in his great wisdom demonstrated a democratic spirit quite unlike the authoritarian tendencies of many of those who claim to imitate him today. He chose to draw up a historically-specific constitution based on the eternal and transcendent principles revealed to him and he sought the consent of all who would be affected by its implementation.

SIS: Perhaps you can elaborate more on how this view differs from views that advocate a shariah-based Islamic state? After all, couldn't we interpret the Compact of Madinah as a starting point for the development of an Islamic state based on the implementation of shariah?

MK: Not really, because the Compact of Madinah did not impose the shariah on anyone and no laws were understood as given prior to the Compact. Neither Prophet Muhammad's divine mission nor the divine message of the Qur'an in any way undermined the principles of the Compact, though of course the values enshrined in it echo Islamic values of equality, consultation and consent in governance. As long as Islamic jurists focus on the post-Muhammad development in the discipline of Islamic legal thought and privilege it over his own practice, authoritarianism will always trump democracy in the Muslim milieu.

SIS: It is indeed powerful that you see no contradiction between the ideals of democracy and the Islamic values of equality, consultation and consent in governance. But how does this translate into democracy in practice across Muslim societies? What are the challenges that Muslims face in trying to realise this practice of democracy?

MK: Democracy must triumph in theory before it can be realised in practice. Muslims must widely and unambiguously accept that Islam and democracy are compatible and that meaningful faith requires freedom. Once we accept these principles we can address the political issues more easily. But before Muslims can accept democracy as an Islamic principle, Islamic political philosophy must accomplish the following tasks:

1. Link political legitimacy not to the application of a legal code that is prior to politics but to the

binding character of shura (consultation).

2. Reject the idea of a fixed shariah in favour of keeping shariah open and dependent on negotiated understanding.

3. Explain how talk of divine sovereignty works to free rulers from accountability to the ruled.

4. Acknowledge the limits of the Islamic legal tradition and eschew it in favour of the Compact of Madinah as a basis for Islamic democracy.

5. Treat Islam as a fountain of values that guide conduct, rather than a system of ready-made solutions to problems.

6. Past legal opinions must not subvert contemporary political reflections. We will be free only when we can freely determine for ourselves what is the shariah. There is no mediation in Islam and the Islamic jurists must step aside. As long as the colonial tendencies of Islamic jurisprudence persist there will be no Islamic democracy.

Acknowledgements

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