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Khaled Abou El Fadl: Islam and the Challenge of Democracy

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☒ A Muslim jurist writing a few centuries ago on the subject of Islam and government would have commenced his treatise by distinguishing three types of political systems. The first he would have described as a natural system—like a primitive state of nature, an uncivilized, anarchic world where the most powerful tyrannize the rest. Instead of law there would be custom; instead of government there would be tribal elders who would be obeyed only so long as they remained the strongest.

The jurist would then describe a second system, ruled by a prince or king whose word is the law. Because the law would be fixed by the arbitrary will of the ruler and the people would obey out of necessity or compulsion, this system, too, would be tyrannical and illegitimate.

The third and best system would be the caliphate, based on Shari‘ah law—the body of Muslim religious law founded on the Qur’an and the conduct and statements of the Prophet. According to Muslim jurists, Shari‘ah law fulfills the criteria of justice and legitimacy and binds the governed and governor alike. Because it is based on the rule of law and thus deprives human beings of arbitrary authority over each other, the caliphate system was considered superior to any other.¹

In espousing the rule of law and limited government, classical Muslim scholars embraced core elements of modern democratic practice. Limited government and the rule of law, however, are only two elements in the system of government with the most

compelling claim to legitimacy today. Democracy's moral power lies in the idea that the citizens of a nation are sovereign, and—in modern representative democracies—they express their sovereign will by electing representatives. In a democracy, the people are the source of the law, and the law in turn ensures the fundamental rights that protect the well-being and interests of the individual members of the sovereignty.

For Islam, democracy poses a formidable challenge. Muslim jurists have argued that law made by a sovereign monarch is illegitimate because it substitutes human authority for God's sovereignty. But law made by sovereign citizens faces the same problem of legitimacy. In Islam, God is the only sovereign and the ultimate source of legitimate law. How, then, can a democratic conception of the people's authority be reconciled with an Islamic understanding of God's authority?

Answering this question is extraordinarily important but also extraordinarily difficult, for both political and conceptual reasons. On the political side, democracy faces a number of practical hurdles in Islamic countries—authoritarian political traditions, a history of colonial and imperial rule, and state domination of the economy and society. But philosophical and doctrinal questions are important too, and I propose to focus on them here as the beginning of a discussion of the possibilities for democracy in the Islamic world.

A central conceptual problem is that modern democracy evolved over centuries within the distinctive context of a post-Reformation, market-oriented Christian Europe. Does it make sense to look for points of contact in a remarkably different context? My answer begins from the premise that democracy and Islam are defined in the first instance by their underlying moral values and the attitudinal commitments of their adherents—not

by the ways that those values and commitments have been applied. If we focus on those fundamental moral values, we will see that the tradition of Islamic political thought contains both interpretive and practical possibilities that can be developed into a democratic system. To be sure, these doctrinal potentialities may remain unrealized: without willpower, an inspired vision, and a moral commitment there can be no democracy in Islam. But Muslims, for whom Islam is the authoritative frame of reference, can arrive at the conviction that democracy is an ethical good, and that the pursuit of this good does not require abandoning Islam.

DEMOCRACY AND DIVINE SOVEREIGNTY

Although Muslim jurists debated political systems, the Qur'an itself does not specify a particular form of government. But it does identify a set of social and political values that are central to a Muslim polity. Three values are of particular importance: pursuing justice through social cooperation and mutual assistance (49:13, 11:119); establishing a nonautocratic, consultative method of governance; and institutionalizing mercy and compassion in social interactions (6:12, 6:54, 21:107, 27:77, 29:51, 45:20). So, all else being equal, Muslims today ought to endorse the form of government that is most effective in helping them promote these values.

The Case for Democracy

Several considerations suggest that democracy—and especially a constitutional democracy that protects basic individual rights—is that form. My central argument (others will emerge later) is that democracy—by assigning equal rights of speech, association, and suffrage to all—offers the greatest potential for promoting justice

and protecting human dignity, without making God responsible for injustice or the degradation of human beings. A fundamental Qur'anic idea is that God vested all of humanity with a kind of divinity by making every person the viceroy of God on this earth: "Remember, when your Lord said to the angels: 'I have to place a vicegerent on earth,' they said: 'Will you place one there who will create disorder and shed blood, while we intone Your litanies and sanctify Your name?' And God said: 'I know what you do not know'" (2:30). In particular, human beings, as God's vicegerents, are responsible for making the world more just. By assigning equal political rights to all adults, democracy expresses that special status of human beings in God's creation and enables them to discharge that responsibility.

Of course, God's vicegerent does not share God's perfection of judgment and will. A constitutional democracy, then, acknowledges the errors of judgment, temptations, and vices associated with human fallibility by enshrining some basic moral standards in a constitutional document—moral standards that express the dignity of individuals. To be sure, democracy does not ensure justice. But it does establish a basis for pursuing justice and thus for fulfilling a fundamental responsibility assigned by God to each one of us.

In a representative democracy some individuals have greater authority than others. But a democratic system makes those authorities accountable to all and thus resists the tendency of the powerful to render themselves immune from judgment. This requirement of accountability is consistent with the imperative of justice in Islam. If a political system has no institutional mechanisms to call the unjust to account, then the system itself is unjust, regardless of whether injustice has actually been committed. If criminal law does not assign punishment for rape, then it is un-

just, quite apart from whether that crime was ever committed. It is a moral good in and of itself that a democracy, through the institutions of the vote, the separation and division of power, and the guarantee of pluralism at least offers the possibility of redress.

We have a provisional case for democracy, then, founded on a fundamental Islamic idea about the special status of human beings in God's creation. It is provisional because we have not yet considered the great challenge to that case: how can the higher law of Shari'ah, founded on God's sovereignty, be reconciled with the democratic idea that the people, as the sovereign, can be free to flout Shari'ah law?

God as the Sovereign

Early in Islamic history the issue of God's political dominion (*bakimiyyat Allah*) was raised by a group known as the Haruriyya (later known as the Khawarij) when they rebelled against the fourth Rightly Guided Caliph 'Ali Ibn Abi Talib. Initially the supporters of 'Ali, the Haruriyya turned against him when he agreed to arbitrate his political dispute with a competing political faction, which was led by a man named Mu'awiya.

'Ali himself had agreed to the arbitration on the condition that the arbitrators be bound by the Qur'an and give full consideration to the supremacy of the Shari'ah. But the Khawarij—pious, puritanical, and fanatical—believed that God's law clearly supported 'Ali. So they rejected arbitration as inherently unlawful and, in effect, a challenge to God's sovereignty. According to the Khawarij, 'Ali's behavior showed that he was willing to compromise God's supremacy by transferring decision making to human agency. They declared 'Ali a traitor to God, and after efforts to reach a peaceful resolution failed, they assassinated him. After 'Ali's death,

Mu‘awiya seized power and established himself as the first caliph of the Umayyad Dynasty.

Anecdotal reports about the debates between ‘Ali and the Khawarij reflect unmistakable tension about the meaning of legality and the implications of the rule of law. In one such report members of the Khawarij accused ‘Ali of accepting the judgment and dominion (*bakimiyya*) of human beings instead of abiding by the dominion of God’s law. Upon hearing of this accusation, ‘Ali called on the people to gather around him and brought out a large copy of the Qur’an. ‘Ali touched the Qur’an while instructing it to speak to the people and inform them about God’s law. Surprised, the people who had gathered around ‘Ali exclaimed, “What are you doing? The Qur’an cannot speak, for it is not a human being!” Upon hearing this, ‘Ali exclaimed that this was exactly his point. The Qur’an, ‘Ali explained, is but ink and paper, and it does not speak for itself. Instead, it is human beings who give effect to it according to their limited personal judgments and opinions.²

Such stories are subject to multiple interpretations, but this one points most importantly to the dogmatic superficiality of proclamations of God’s sovereignty that sanctify human determinations. Notably, the Khawarij’s rallying cry of “Dominion belongs to God” or “The Qur’an is the judge” (*la hukma illa li’llah* or *al-bukmu li’l-Qur’an*) is nearly identical to the slogans invoked by contemporary fundamentalist groups.³ But considering the historical context, the Khawarij’s sloganeering was initially a call for the symbolism of legality and the supremacy of law that later descended into an unequivocal radicalized demand for fixed lines of demarcation between what is lawful and unlawful.

To a believer, God is all-powerful and the ultimate owner of the heavens and earth. But when it comes to the laws in a political sys-

tem, arguments claiming that God is the sole legislator endorse a fatal fiction that is indefensible from the point of view of Islamic theology. Such arguments pretend that some human agents have perfect access to God's will, and that human beings could become the perfect executors of the divine will without inserting their own human judgments and inclinations in the process.

Moreover, claims about God's sovereignty assume that the divine legislative will seeks to regulate all human interactions, that Shari'ah is a complete moral code that prescribes for every eventuality. But perhaps God does not seek to regulate all human affairs, and instead leaves human beings considerable latitude in regulating their own affairs as long as they observe certain minimal standards of moral conduct, including the preservation and promotion of human dignity and well-being. In the Qur'anic discourse, God commanded creation to honor human beings because of the miracle of the human intellect—an expression of the abilities of the divine. Arguably, the fact that God honored the miracle of the human intellect and the human being as a symbol of divinity is sufficient to justify a moral commitment to protecting and preserving the integrity and dignity of that symbol of divinity. But—and this is 'Ali's central point—God's sovereignty provides no escape from the burdens of human agency.⁴

When human beings search for ways to approximate God's beauty and justice, then, they do not deny God's sovereignty; they honor it. They also honor it in the attempt to safeguard the moral values that reflect the attributes of the divine. If we say that the only legitimate source of law is the divine text and that human experience and intellect are irrelevant to the pursuit of the divine will, then divine sovereignty will always stand as an instrument of authoritarianism and an obstacle to democracy.⁵ But that authoritarian view denigrates God's sovereignty.

I develop this argument later, but to make the case more compelling and accessible, I first lay a broader foundation for Islamic political and legal doctrines.

GOVERNMENT AND LAW

If, as many Muslim fundamentalists and Western Orientalists contend, God's dominion or sovereignty means that God is the sole legislator, then one would expect a caliph or Muslim ruler to be treated as God's agent or representative. If within a political system God is the only sovereign, then the ruler ought to be appointed by the divine sovereign, serve at His pleasure, and implement His will. But just as the meaning and implications of God's sovereignty were the subject of an intense debate in premodern Islam, so were the powers of the ruler and the place of law in circumscribing those powers. And some lines of argument in the debate resonate with modern democratic ideas.

Ruler and Ruled

It is well established, at least in Sunni Islam, that the Prophet died without naming a successor to lead the Muslim community. The Prophet intentionally left the choice of leadership to the Muslim nation as a whole.⁶ A statement attributed to the Rightly Guided Caliph Abu Bakr asserts, "God has left people to manage their own affairs so that they will choose a leader who will serve their interests."⁷

The word *khalifa* (caliph), the title given to the Muslim leader, literally means successor or deputy. Early on Muslims debated whether it was appropriate to name the leader the Caliph of God (*khalifat Allah*), but most scholars preferred the designation Caliph

of the Prophet of God (*khalifat rasul Allah*). But the Caliph—whether the Prophet’s successor or God’s deputy—did not enjoy the authority of either the Prophet or God, whose powers of legislation, revelation, absolution, and punishment cannot be delegated to any other. But how much of the Prophet’s authority does the Caliph enjoy? And to whom does the Caliph answer?

If the Caliph’s primary obligation is to implement divine law, then arguably the Caliph answers only to God. So long as the Caliph’s actions are plausible interpretations of God’s mandates, such interpretations must be accepted and the Caliph has fulfilled his duties to the people. Only God can assess the Caliph’s intentions, and—most Sunni jurists argued—a ruler is not removable from power unless he commits a clear, visible, and major infraction against God (that is, a major sin).

Muslim jurists did not, however, completely sever the connection between the ruler and the people. In Sunni theory the caliphate must be based on an *‘aqd* (a contract) between the Caliph and *ahl al-hall wa al-‘aqd* (the people who have the power of contract), who give their *bay‘a* (allegiance or consent to the Caliph): the Caliph is to receive the *bay‘a* in return for his promise to discharge the terms of the contract. The terms of the contract were not extensively discussed in Islamic sources. Typically, jurists would include the obligation to apply God’s law and to protect Muslims and the territory of Islam; in return, the ruler was promised the people’s support and obedience. The assumption was that Shari‘ah law defines the terms of the contract.

Who are the people that have the power to choose and remove the ruler? The Mu‘tazili scholar⁸ Abu Bakr al-Asam (d. A.H. 200 / A.D. 816) argued that the public at large must have this power: there must be a general consensus over the ruler, and each person must individually give his consent.⁹ The vast majority of Muslim jurists