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**ISLAM AND DEMOCRACY:
APPRECIATING THE NUANCE AND COMPLEXITY
OF LEGAL SYSTEMS WITH A BASIS IN RELIGION**

*Massimo Campanini[†] & Mohamed 'Arafa**

A Note from the Author

My friend and co-author, Massimo Campanini, passed away on October 9th, 2020, while this article was being prepared for publication. He left behind a lovely wife, Donatella, a son, Emmanuelle, and more than forty books that defined the modern study of Islam. His death made national headlines in Italy and was a great blow to me. I first knew Massimo through his brilliant work. Then I came to know him personally. I was surprised when an author of his stature suggested that we write a book of political theory together and felt honored when he spoke of my insights as “fine and precise.” The fruit of that collaboration ultimately became the work you see here.

Campanini was an aristocrat who walked with academic Kings, but he never lost the common touch. His allure, charisma, and sense of humor were delightful. His soul was generous and compassionate; he was a supreme speaker of many languages; an inspiring teacher; an extraordinary storyteller; and a man of encyclopedic knowledge. Farewell, my friend! Grazie, a presto!

-Mo

Introduction

It is tempting to look at Muslim-majority countries today and conclude that Islam impedes democracy, yet few people seriously consider what (if any) aspect of Islam could cause such a phenomenon. Even those who do ask assume that something about Islam itself is the problem.¹ Granted, the data does not inspire one to think otherwise. Out of 42 Muslim-majority countries ranked in the Economist Intelligence Unit (EIU), only five are classified as democracies. Another

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¹ Mohammed Fadel, *Political Legitimacy, Democracy and Islamic Law: The Place of Self-Government in Islamic Political Thought*, 2 J. ISLAMIC ETHICS 59, 59 (2018) (“Contemporary Political Islam, or Islamism, is commonly defined as a movement that seeks to apply the *Shari‘a* as the basic law of Muslim states. This suggests that political legitimacy in Islamic thought can be reduced to the conformity of a polity’s actions to a pre-determined body of rules that are supplied by revelation, as supplemented by the interpretations of jurists. Such a demand is reasonably understood to be non-democratic because it includes no room for self-government by making it either redundant, if it produces results that are in conformity with the norms of the *Shari‘a*, or contradictory to self-government, if the results of self-government differ from revealed norms.”).

14 are “hybrid regimes,” and the remaining 24 “authoritarian.”² When the correlation between the religion of a country and its democracy is so low, it can be difficult not to infer causation.³ But, is Islam truly a deterrent to democracy, or is something else at play? This article argues that, while Islam is not incompatible with democracy, the picture is complex in practice. Rather than focusing on how countries apply Shari’a (Islamic law)⁴ in democratic contexts, this article examines how the *theory* of democracy interacts with the Muslim world.⁵ Focusing narrowly on arguments and observations from legal and political scholars, we seek a different perspective on why democracy faces challenges in Muslim-majority countries.⁶

For all the optimistic scholarship asserting that Islam is indeed compatible with democracy, only Tunisia has managed to survive the Arab Spring.⁷ Other scholars have written extensively on the successes and failures of the Arab Spring, and we do not re-litigate those arguments.⁸ Rather, we start with the assumption that this is not the case at all.⁹ If anything, the relationship is one of indifference. Additionally, instead of hypothesizing how Islamic institutions will have to adapt to democracy—which we will assume they do not—it is crucial to put democracy into its proper context, as one among many forms of government, none being more compatible with Islam than the other. Islam and *ijtihad* (individual reasoning) developed for compatibility with the Caliphate (leadership), which is as much an anti-government as it is a government.¹⁰ In a religion that is theoretically opposed to any government where people create law, government is an inconvenient fact of life rather than an affirmative concern.¹¹ The only just government in Islam is one that

² It should be noted that EIU does not rank Western Sahara, Maldives, Comoros, Mayotte, Kosovo, Cocos, or Brunei. See, e.g., THE ECONOMIST INTELLIGENCE UNIT, DEMOCRACY INDEX 2019: A YEAR OF DEMOCRATIC SETBACKS AND POPULAR PROTESTS at 10-14 (2019), <https://www.eiu.com/topic/democracy-index> [<http://perma.cc/34DC-U27G>].

³ Fadel, *supra* note 1, at 63 (“The egalitarian and inclusive theological positions of Sunnism, however, generated certain problems for the legitimacy of political ordering. If all persons were substantially equal, morally and intellectually, *Sunnī* religious doctrine could not provide an obvious answer to the question of who should assume the mantle of political leadership.”).

⁴ Properly, however, *shari’a* (meaning “way,” “road to . . .”) is only the revealed base of Islamic law which is the *fiqh*.

⁵ See generally Mohammed Fadel, *Islamic Law Reform: Between Reinterpretation and Democracy*, 18 Y. B. ISLAMIC & MIDDLE E. L. 44 (2013-2015).

⁶ See generally ADAM R. GAISER, *MUSLIMS, SCHOLARS, SOLDIERS: THE ORIGIN AND ELABORATION OF THE IBADI IMAMATE TRADITIONS* (2010).

⁷ JOHN L. ESPOSITO, TAMARA SONN & JOHN O. VOLL, *ISLAM AND DEMOCRACY AFTER THE ARAB SPRING* 3 (2016).

⁸ See *Id.* at 1-4 (discussing successes and failures of the Arab Spring generally).

⁹ It should be noted that it is not easy to deal comparatively a religious item (Islam) with a political item (democracy). Nobody asks whether Judaism or Christianity are compatible with democracy, whilst the question “Is Islam compatible with democracy?” is biased insofar as the answer is expected to be “No.” See generally M.A. MUQTEDAR KHAN ET. AL., *ISLAMIC DEMOCRATIC DISCOURSE: THEORY, DEBATES, AND PHILOSOPHICAL PERSPECTIVES* (M.A. Muqtedar Khan ed. 2006).

¹⁰ See generally ESPOSITO ET AL., *supra* note 7 (examining the state of democracy in Muslim-majority societies today. Applying a twenty-first century perspective to the question of whether Islam is “compatible” with democracy, they redirect the conversation toward a new politics of democracy that transcends both secular authoritarianism and Political Islam. [Also, they] raised questions regarding equality, economic justice, democratic participation, and the relationship between Islam and democracy in their respective countries. Does democracy require a secular political regime? Are religious movements the most effective opponents of authoritarian secularist regimes? [And on] how these opposition movements reflect the new global realities of media communication and sources of influence and power.).

¹¹ *Id.* But see PATRICIA CRONE, *MEDIEVAL ISLAMIC POLITICAL THOUGHT* (Carole Hillenbrand ed. 2004) (arguing that in Islam power is a benefit of God, not the outcome of sin and of the “Fall” as in the so-called “Political Augustinism” in Christian Middle Ages); see also MASSIMO CAMPANINI, *LA POLITICA NELL’ISLAM, UN’INTERPRETAZIONE [POLITICAL ISLAM AND ITS INTERPRETATION]* (2019).

carries out Islamic law, which is the only truly reliable source of justice.¹² Thus, the core argument is whether that government is a democracy or not is of secondary importance. Democracy requires a commitment to it, and if people believe that their current government carries out Islamic justice, then the commitment to democracy will not justify the actions necessary to institute it.

Today, religions are in a position perhaps not encountered ever in their existence.¹³ In the United States, as well as other areas of the world, there is a sharp decline in the belief in a Creator, or at the very least, a decline in the participation in organized religion.¹⁴ This has led to a decrease in religious education and, in the opinion of the authors, a decrease in the understanding of thousands of years of religious doctrine. In the eyes of the general populace, without the many years of in-depth studying, complex legal systems developed over hundreds or thousands of years, are reduced to backward systems of governance, reliant on an outdated concept of divine communication.¹⁵ This lack of understanding is perpetuated by numerous statements by high-ranking officials, policymakers, and lawmakers throughout recent history who frequently share this ill-informed view of Islam's legal framework.¹⁶ The reality is indeed something very different. Rather, religions like Islam and Judaism, for instance, even by secular standards, have created incredibly intricate and complex legal systems over many hundreds of years.¹⁷ But with this complexity, as well as the variety of scholars studying these works, comes many different opinions about how to interpret these ancient words and concepts, as what means one thing to one person could mean something entirely different to another.

At the heart of this debate is a comparison between Judaism and Islam, and how similarities can be drawn between the two theologies in order to better understand the “true” Islam. How should the text of the Qur'an—and the *Sunnah* (Prophet Mohammed's) teachings—and Jewish Bible (“*Torah*”) be viewed and interpreted? While there is a trend, certainly among secularists, to

¹² See generally John L. Esposito & James P. Piscatori, *Democratization and Islam*, 45 MIDDLE EAST J. 427 (1991).

¹³ See generally GABRIEL A. ALMOND, R. SCOTT APPLEBY & EMMANUEL SIVAN, STRONG RELIGION: THE RISE OF FUNDAMENTALISMS AROUND THE WORLD (2003); see also GILLES KEPPEL, LA RÉVANCHE DE DIEU, CHRÉTIENS, JUIFS AND MUSULMANS À LA CONQUÊTE DU MONDE [THE RESURGENCE OF ISLAM, CHRISTIANITY AND JUDAISM IN THE MODERN WORLD] (Fr. 1991).

¹⁴ Maurits S. Berger, *Understanding Sharia in the West*, 6 J. L. RELIGION & ST. 236 (2018) (“The main challenge of understanding *Sharia* in the West is its undefined nature. This contradicts the ease with which the term is used in public and political discourse, but also in the legal domain, which prides itself on its precision in terminology . . . [It] addresses the question: What is the *Sharia* that Muslims in the West practice? To this end, a model is presented that provides tools to describe the complex interaction between *Sharia*, as practiced by Western Muslims, and their Western environment, and elucidates the ongoing dialectic of this interaction. The model further shows how Western Muslims adopt and adapt *Sharia* by maneuvering between their specific needs in the Western context and the conditions set by that context. From a Western perspective, the model shows that issues of *Sharia* are usually discussed in legal terms, while most controversies are not legal but cultural in nature.”).

¹⁵ *Id.* at 240-43. It should be noted that people in the Middle East often have a greater depth of understanding of Christianity and Judaism because it is part of the history and culture, but in the United States, comparatively little is known about any of these three *Abrahamic* religions by many today.

¹⁶ *Id.* at 245-53 (“[T]he notion of *Sharia* in the West as (a) a set of Islam-motivated rules (b) practiced by Muslim social-legal entities (individuals, communities, organizations) in the West, whereby (c) these Muslims are both the defining and the enforcing agency of these rules. The most important conclusion that we can draw from this definition is that *Sharia* is not something “out there;” it is defined by people through their words and actions. Note that this definition is not intended to elucidate *why* Muslims do certain things; it merely determines *what* they do and *how* they do it.”).

¹⁷ *Id.*

view texts in a simple and more literal way, this may be only one part of the picture.¹⁸ What is really required instead is a deep and nuanced understanding of these ancient texts, using the expertise provided by hundreds of years of study and extrapolation by religious and legal scholars from around the world.¹⁹

Accordingly, in section two, this article will discuss the history and overall facts around religious interpretation, specifically regarding Islam and Judaism. It will then compare the two religions and see where they are similar and where they are dissimilar, by studying a specific example of religious interpretation (compare and contrast it with Judaism, another ancient and closely related religion). Also, it will discuss the public outlook on such texts and suggest how people can better understand the true complexity of these religious tomes.²⁰ Section three will cover three arguments. First, there are certain prerequisites to democracy in any country. Putting these prerequisites in the context of Islam is important in understanding how Muslim societies view the institution of government in the first place. Second, Islam *per se* is not a bar to democracy, but Muslim majority societies prefer a government that the people believe protects the principles of Islamic law, namely rule of law and justice. The ideal is the Caliphate, but the alternative in any Islamic government is one that the body politic of a country views as promoting those ends. Finally, it will conclude that democracy has trouble taking hold in Muslim countries because it is a very fragile system, and it is not one that is necessarily compelling to Muslim majority societies over an Islamization of what already exists. In short, this paper will delve more deeply into an analysis of Islam and its historical evolution through juridical science to conclude that the religion is not incompatible with democracy.

II. Religious and Divine Interpretation: Islam and Judaism

A. Historical background

The history of interpretation is one that is difficult to describe succinctly, since there were indeed many scholars and religious authorities at various times who each played a part in the goal of understanding the texts of the Hebrew Bible and Qur'an.²¹ What is clear is that throughout

¹⁸ John L. Esposito, Tamara Sonn & John O. Voll, *In the Middle East, Islamists Are Not the Enemies of Democracy*, HUFFINGTON POST (June 22, 2015, 2:16 PM), https://www.huffpost.com/entry/middle-east-islamists-democracy_b_7623660?guccounter= [<https://perma.cc/B4KQ-4M4B>] (“Islamic activists include both strong advocates of democracy and supporters of authoritarian rule. However, that spectrum is similar to the spectrum of advocates of secularism. Some of the most brutal authoritarian dictatorships in the Muslim world and elsewhere have been secularist in their political ideology The relationships between Islam and democracy after the Arab Spring are complex and changing in important ways. In the late 20th century, much attention was given to the question of whether or not Islam and democracy are compatible.”).

¹⁹ *Id.* (“For the majority of Muslims in the world, the issue is settled. They see no real contradiction between Islam and democracy. The major debates are about what forms Muslim democracy can take, with a growing recognition that a democratic Muslim state may take many different forms. The real battles and civil conflicts are not between advocates of a ‘religious’ state and advocates of a ‘secular’ state.”).

²⁰ *See generally* SILVIO FERRARI, *LO SPIRITO DEI DIRITTI RELIGIOSI [THE SPIRIT OF THE RELIGIOUS/DIVINE LAW]* (2001).

²¹ Keith Kahn-Harris, *How Should We Read Religious Texts? Britain’s Former Chief Rabbi Jonathan Sacks Advocates a More Complex Reading. But do his Ideas Fit with the Modern World?*, NEW HUMANIST (Oct. 20, 2015), <https://newhumanist.org.uk/articles/4943/how-should-we-read-religious-texts> (“Is Islam a ‘religion of peace’? Or is Islam irredeemably committed to violence? And at the heart of this debate is the status of the *Qur’an* and other Islamic texts: do they really justify the brutality of Al Qaeda, ISIS and other regimes and factions? Is their interpretation of Islamic law the authentic one? Ironically, there is a commonality of interest between Islam’s fiercest opponents and its fiercest advocates in upholding a vision of the religion that is implacably opposed to everything outside itself.”). It

history, it has been understood that there is not simply just the literal interpretation of a passage, but rather, multiple different methods of exegesis.²² In Judaism, the *Talmudic* period made up the time when the *Mishna* (200 CE) and the *Gemara* (500 CE) were created, which are essentially the compilation of the opinions of the major rabbis and Jewish philosophers of the time.²³ Among many interpretation tools at their disposal, there are primarily four broad categories. First, was the “*peshat*” understanding, essentially the “plain, literal meaning of the words within their literary context”; the second was “*remez*” understanding, which indicates a more in-depth and deeper comprehension of the text; then the “*derash*” understanding, which means a legal or “*aggadic*” exposition is necessary; and finally the “*sod*,” which is the more *Kabbalist* or mystical understanding.²⁴ Utilizing these broad concepts, all with their own sub-categories, Jewish thinkers were able to bring clarity to religious scripture.²⁵

Perhaps one of the most famous cases of religious interpretation (or rather, misinterpretation) begins with the phrase first found in Hammurabi’s ancient Babylonian legal code, but featured prominently in the Hebrew Bible, “an eye for an eye”²⁶ This is a famously well-known law and is sometimes used to be a representation of the violent, retributive theme of the Old Testament.²⁷ Read literally, it certainly seems to indicate the allowance for physical violence in order to “get even,” but hundreds of years of oral and written tradition show this not to be the case.²⁸ The rabbis of the *Talmudic* era understood the many layers and levels of interpretation and, through years of legal discourse, decided against the “*peshat*” here.²⁹

In the Shari’a, such methods have similarly been utilized, as Dr. Bulent Senay, professor of Comparative Religion at Uludag University, explains, “[D]iscussion on the interpretation and understanding of religion has a long history in the Islamic sciences.”³⁰ He further writes that “at the heart of hermeneutics lies a set of systematic, coherent, well-developed set of principles and procedures governing textual interpretation of scriptures”³¹ Qur’anic Hermeneutics is the field

goes without saying that the same questions could be put forward about Judaism: Biblical books like Deuteronomy, for example, are replete with very violent expression, but this does not involve the rhetorical question whether Judaism is a religion of peace. All religions are peaceful or warlike in accordance with the political use men make and made of them.

²² ISAAC KALIMI & PETER J. HAAS, BIBLICAL INTERPRETATION IN JUDAISM AND CHRISTIANITY 17-18 (2006).

²³ See generally ISAAC KALIMI, THE RETELLING OF CHRONICLES IN JEWISH TRADITION AND LITERATURE: A HISTORICAL JOURNEY (2009).

²⁴ KALIMI & HASS, *supra* note 22, at 13.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 14.

²⁸ Joe M. Sprinkle, *How Should the Old Testament Civil Laws Apply Today*, 2 LIBERTY U. L. REV. 909, 917 (2008) (“Theonomy means literally, ‘law of God’ Theonomy represents a modification of the traditional Reformed approach to the law. Theonomists agree with the advocates of the Reformed approach that the ceremonial law is superseded under the new covenant but disagree with them over the continued applicability of the civil law.”).

²⁹ KALIMI & HASS, *supra* note 22, at 13-15. It should be noted that while Kalimi takes a more cynical view regarding the rabbinical interpretation’s emphasis on things other than the *peshat* literal reading of the text, he does not dispute the fact that the rabbis did indeed diverge strictly from the literal reading.

³⁰ Bulent Senay, *Hermeneutics in Islam in the Midst of Text and Context*, EUR MUSLIM NETWORK (Sept. 10, 2008), <https://eumuslim.net/?s=hermeneutics> [<https://perma.cc/R7HZ-YK7E>] (“Islamic tradition of ‘humanities’ has had the discipline of ‘understanding’ for centuries under the name of *usool at-tafseer* [Islamic Interpretation Principles] and *usool al-fiqh* [Islamic Jurisprudence] far long before biblical hermeneutics emerged in the west as discipline. Although today the subject of different interpretations of religion has largely been taken from modern philosophical hermeneutics, it should be noted that the discussion on the interpretation and understanding of religion has a long history in the Islamic sciences.”) (emphasis added).

³¹ *Id.*

of Islamic legal interpretation and has helped construct the rules by which an Islamic *mujtahid* (thinker) may interpret the text.³² The three dimensions one pays attention to are the ‘*illah*’ (rational), the *matn* (text), and the *maqсад* (purpose); and just like with the Judaic legal thinkers, there are many ways to understand a text either through a literal reading or deeper understanding.³³

Further comparisons shed light on the care and thought that went into understanding the religious text, specifically regarding hierarchy of authority.³⁴ In both religions there is a main source of divine origin, the Hebrew Bible and the Qur’an. Next, Islam has the *Sunnah* (prophet’s teachings) while Judaism has the *Mishnah*, the compiled teachings of the early Judaic legal rabbis during the first half of the *Talmudic* era (200–500 CE).³⁵ Importantly, both the *Sunnah* and *Mishnah* are intent on providing elaborations to the original text.³⁶ Ultimately, while not necessarily following in exactly the same tradition, the substantial similarities are indicative of the foresight and intelligence of the original scholars who developed these hierarchies akin to judicial courts (i.e. District courts being the lowest and the Supreme Court of the United States being the highest authority—court in the land—to overrule decisions).³⁷ In the same vein, the similarities in the way the legal doctrine develops through interpretation have continued to remain similar to this very day.

Both religions have been challenged by younger, more skeptical generations, and the carefully established traditions, such as the hierarchy of sources and respect for certain books, have eroded somewhat.³⁸ This has come about through the reformation movement’s intent on taking an approach that looks to emphasize modern egalitarian values over some of the older traditions, with Islam particularly facing significantly more pressure due to extremist interpretations and radical understandings that have sullied the name of Islam to many in Western nations.³⁹

Indeed, a significant amount of Islamic law is subject to legal reasoning and is dependent thereon. The foundations for this rests upon restrictions to legal rulings stated in the Qur’anic texts and the *Sunnah* having a definitive nature, and the rest of the legal body of the Shari’a is contingent upon the jurists’ *ijtihad* (legal reasoning).⁴⁰ This is not at all a shortcoming in the law since the lawmaker who set out conclusive legal rulings was certainly able to enforce an exclusively definitive law, the application of its legal rulings is not subject to any *qiyas* (analogical

³² See generally M. Cherif Bassiouni & Gamal M. Badr, *The Shari’ah: Sources, Interpretation, and Rule-making*, 1 UCLA J. ISLAMIC & NEAR E. L. 135 (2002).

³³ See generally Nazeem M. Goolam, *Ijtihad and Its Significance for Islamic Legal Interpretation*, MICH. ST. L. REV. 1443 (2006).

³⁴ Gianluca De Donno, et al., *The Role of Shari’a as a Source of Law: Looking for a Pragmatic Approach*, 4 JUSONLINE 375, 389-91 (Sassari Univ. 2018) (on file with author).

³⁵ There are also a series of books relating the experiences of prophets during the era of the early Judean Kingdoms, but they are not necessarily utilized for legal understanding or textual extrapolation and so are not necessarily an exact comparison to the *Sunnah*.

³⁶ For example, the *Qur’an* sets out the requirement to fast by stating “oh you who have believed, decreed upon you is fasting” but doesn’t necessarily give many details for how or when this should be accomplished. That is left to the prophet, who provide “the means” by which to follow the *Qur’an*’s teachings. Similarly, the Hebrew Bible commands that “*Tzitzit*” be worn on every four-cornered garment, but it does not necessarily explain for what parts of the days, the reason for it, or even what “*Tzitzit*” are. That is for the oral tradition and discussions of the Rabbis in the *Mishnah*, *Gemara*, and later commentaries by well-known figures such as *Rashi* and *Rambam* (Maimonides), though all are always careful to adhere to the hierarchy of authority and not to contradict the earlier sources.

³⁷ KALIMI, *supra* note 23.

³⁸ BBC One, *A Cut Too Far?*, YOUTUBE (July 19, 2019), <https://youtu.be/AM5hqiV25XA> [<http://perma.cc/4BD3-RD5X>] (circumcision documentary).

³⁹ De Donno, *supra* note 34, at 381.

⁴⁰ Bassiouni & Badr, *supra* note 32.

deduction).⁴¹ However, there have been significant reasons behind this flexible nature of Islamic law, as this very nature of Islamic norms has made the law flexible and adjustable to all societies and regions (at any given time and place).⁴² Furthermore, the law has become susceptible to developing and adopting different means and methods of change; its development can be shown through selecting certain legal interpretations that are more proper than others in addressing the legal cases concerned.⁴³

Progress can be made by generating evolving legal views as novel legal cases arise. This aspect explicitly endorses Islamic law legally valid for all legal cases irrespective of time and place.⁴⁴ The importance of the interpretation of the Shari'a does not lie in the different legal views held by several scholars concerning a particular legal case; rather it primarily resides in the way in which the jurist interprets the law.⁴⁵ When interpreting a specific Qur'anic verse, for example, the *mujtahid* (jurist thinker) cannot interpret it in isolation. He or she should, nevertheless, consider the verse, its legal, contextual, and linguistic frameworks, its occasion of revelation, and all the events that surround the revelation thereof (the philosophes beyond the text).⁴⁶

In this domain, *istihsān* (juristic preference) is a special legal practice exercised by Islamic legal jurists—especially by the *Hānāfi* school of thought—which falls within the scope of legal reasoning.⁴⁷ It is considered an interpretation made based on a revealed text, though giving rise to a different legal outcome from that emerged via *qiyas* (analogical deduction).⁴⁸ The key difference between analogy and preference lies in the fact that while the analogical reasoning falls predominantly within the large body of the law with no exemption permitted, the reasoning behind preference is to find a precise exception through the jurist's choice of a revealed text that allows this very exception.⁴⁹ It is worth noting in this respect that reasoning by preference is based on a valid authentic *hadith* (prophetic tradition) and hence replacing the reasoning by analogy.⁵⁰ Not all preference exceptions are created on revealed texts, some of which are based on *ijma'a* (consensus of the scholars), while others are based on the *darourah* (principle of necessity).⁵¹ On the other hand, *istiślāh* (public interest) is another legal practice—adopted mainly by the *Mālki* jurisprudence—which is controlled within legal reasoning. The reasoning of public interest does not seem to be founded on the Qur'an. Public interest (common benefit), yet, plays an irrefutably critical role in the determination of the ratio's appropriateness peculiar to analogy.⁵² Accordingly,

⁴¹ Goolam, *supra* note 33.

⁴² *Id.*

⁴³ De Donno, *supra* note 34.

⁴⁴ See generally Khizr Muazzam Khan, *Juristic Classification of Islamic Law*, 6 HOUS. J. INT'L L. 23 (1983) (defining the primary and the secondary sources of Islamic law).

⁴⁵ Irshad Abdal-Haqq, *Islamic Law: An Overview of its Origin and Elements*, 7 J. ISLAMIC L. & CULTURE 27, 57 (2002) (noting the different sources of Islamic law and the meaning of the public interest's interpretation).

⁴⁶ *Id.* In other words, a legal text never stands on its own according to Islamic legal system, but it is—with no doubt— Influenced by a various of events that support the jurist to infer the most suitable legal ruling for the legal case in question. Consequently, elements of coherence and intertextuality are of chief significance and should always be in the jurist's mind during the interpretation process of the legal provisions.

⁴⁷ Khan, *supra* note 44.

⁴⁸ *Id.* Thus, “*allstihsan*” (equality, in the West) is the idea that more importance must be placed on modern concepts of justice and “goodness,” rather than the strict adherence to previous generation's interpretations.

⁴⁹ Goolam, *supra* note 33.

⁵⁰ Bassiouni & Badr, *supra* note 32.

⁵¹ *Id.*

⁵² Abdal-Haqq, *supra* note 45.

if the feature of public interest in a case is in line with these general principles, the reasoning is to be in accordance with the public's interest and must be exercised in this manner.⁵³

B. Interpretation: Stoning as the Death Penalty

Much of the frustration with the traditional interpretations of religious capital punishments is the lack of necessary understanding of the text. According to polling released in October 2018, public opinion of the death penalty in the United States has fallen to a 45-year low.⁵⁴ Many of the theories for the death penalty, such as retributive and deterrence effects, have been challenged by social scientists, who make the claim that the death penalty does not sufficiently accomplish these goals to justify continued executions.⁵⁵ Therefore, when the casual reader finds quotes in the Qur'an or the Hebrew Bible, and they read it with the *peshat* or literal interpretation with little to no context, they understandably grow concerned.⁵⁶ In some cases, this is even perpetrated by the extremist groups who act on these less nuanced interpretations and create animosity worldwide.⁵⁷ An obvious example in that regard is *riddāā* (apostasy), which is by no means sanctioned in the Qur'an, but subsequently developed through distorted jurisprudence. Capital punishment is indeed one of the more complex legal issues in Judaism and Islam, and it requires an in-depth understanding as to why it exists and under what circumstances one can move forward with the punishment.⁵⁸ For the most part, Judaism and Islam appear to treat the requirements similarly, insofar as the punishment of stoning is for the most part, a symbolic punishment.⁵⁹ First, the origin of stoning in Islam does not come from the Qur'an, but rather, from the *Hadiths*.⁶⁰ Second, as Dr. Jonathan Brown, Chair of Islamic Civilization at Georgetown University, explains, jurists at the time created significant boundaries in order to ensure that capital

⁵³ *Id.* This robust connection between the ratio and suitability has caused in considering public interest by some jurists an extension to analogy. There are certain common principles on which the *Sharī'e* is generally based. These reside in the protection of one's life, his/her mind, offspring, religion as well as property. It should be noted that the element of universality is of dominant importance as the law intends to serve interests of Muslims at large. Islamic law, like any other law, is full of a set of legal terms with concepts which may not exist in other legislations, notwithstanding the fact that such legal notions endure conceptual progresses across different legal systems. Thus, even though concepts peculiar to legal terms go through certain processes of development across miscellaneous sets of laws, they, yet, have different legal existence in various laws.

⁵⁴ JEFF JONES & LYNDIA SAAD, GALLUP POLL SOCIAL SERIES: CRIME, GALLOP NEWS SERV. (Oct. 2018); see also Robert Weisberg, *The Death Penalty Meets Social Science: Deterrence and Jury Behavior under New Scrutiny*, 1 ANN. REV. L. & SOC. SCI. 151 (2005) ("Social science has long played a role in examining the efficacy and fairness of the death penalty. Empirical studies of the deterrent effect of capital punishment were cited by the Supreme Court in its landmark cases in the 1970s; most notable was the 1975 Isaac Ehrlich study, which used multivariate regression analysis and purported to show a significant marginal deterrent effect over life imprisonment, but which was soon roundly criticized for methodological flaws.").

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See Patrick McDonnell, *Death by Stoning: Battered Syrian City Offers a Window into Life under the Thumb of Islamic State Militants*, L.A. TIMES (May 21, 2017, 3:00 AM), <https://www.latimes.com/world/middleeast/la-fg-syria-palmyra-town-20170521-story.html>.

⁵⁸ See generally Mohamed A. 'Arafa & Jonathan G. Burns, *Judicial Corporal Punishment in the United States?: Lessons from Islamic Criminal Law for Curing the Ills of Mass Incarceration*, 25 IND. INT'L & COMP. L. REV. 385 (2015).

⁵⁹ *Id.* at 390-91 ("The first of these offenses, *Al-Zena*, relates to fornication or adultery. The crime may be proven by confession or the testimony of four eyewitnesses and is sanctioned by flogging with a hundred lashes.").

⁶⁰ See generally MUHAMMAD ABU ZAHRAH, CRIME AND PUNISHMENT IN ISLAMIC JURISPRUDENCE (1974); Rod Nordland, *ISIS Militants Stone an Iraqi Couple Accused of Adultery*, N.Y. TIMES (Mar. 24, 2015), <https://www.nytimes.com/2015/03/25/world/middleeast/isis-stones-couple-accused-of-adultery-in-mosul-iraq.html> [<http://perma.cc/J6K5-QWYD>].

punishment was used only in the most serious of cases, and only when there was almost irrefutable evidence.⁶¹ Four witnesses would be required to actually see the act of adultery, an unlikely event, and should they be shown to be offering false testimony, they themselves would receive the punishment of 80 lashings each.⁶²

Judaism, unlike the Qur'an, actually introduces stoning in its source text, as well as mentions other terrifying punishments like *serefah* (burning) and *chenek* (strangulation).⁶³ Similar to Islamic law, the scholars who interpreted the Hebrew Bible explained that in order for judgment of death to be passed, there needed to be (a) two witnesses who saw the criminal act, (b) the witnesses must have warned the perpetrator of the criminality of the act either right before or within seconds of him committing the act, and (c) the perpetrator needed to have acknowledged the warning and continued with his criminal action regardless.⁶⁴ Furthermore, there is even a famous proclamation made in *tractate Sanhedrin* (judges) stating that if the high court made a unanimous verdict of guilt against a person, that person was immediately released and not punished, with the lesson being that if none of the judges could find a reason to exonerate the accused, then it was indicative of something wrong with the court.⁶⁵ In essence, requirements for capital punishment are so extensive that those studying the field deem it a largely symbolic punishment.⁶⁶

In fact, Dr. Brown recounts the fact that in the “roughly five hundred years that the Ottoman Empire ruled Constantinople, records show that only one instance of stoning for adultery took place”⁶⁷ For context, Brown adds the fact that in colonial America, a haven for enlightened Western ideology, from only 1608-1785, over 50 people were executed for various sexual crimes.⁶⁸ From the perspective of Judaism, this is similar to a famous teaching imparted by Rabbi Eleazar ben Azariah in the *Mishnah*, who stated that a Jewish court that executed even one person in seventy years was considered a bloodthirsty court.⁶⁹ The philosopher Maimonides further stated in the 12th century that “It is better . . . to acquit a thousand guilty persons than to put a single innocent one to death.”⁷⁰

Essentially, both Judaism and Islam use these capital crimes as potential threats to the citizens of their nations, as they understood clearly the concept of a deterrence from performing

⁶¹ See generally NASSER A. AL-KHOLAIFY, MITIGATING AND AGGRAVATING CIRCUMSTANCES FOR PENALTY OF TA'AZIR IN ISLAMIC JURISPRUDENCE (1992); Jonathon Brown, *Stoning and Hand Cutting: Understanding the Hudud and the Shariah in Islam*, YAQEEEN INST. 7 (Jan. 12, 2017), <https://yaqeeninstitute.org/jonathan-brown/stoning-and-hand-cutting-understanding-the-hudud-and-the-shariah-in-islam/#.XZt3LkZKiUk> [http://perma.cc/BCY9-DDSX] (“The concept of *hudud* in Islamic criminal law is not found in the *Qur'an*, though it is referred to in *hadiths* considered authentic by Muslims. *Hudūd* in Arabic is the plural of *hadd*, meaning limit or boundary. The *Qur'an* mentions the ‘limits of God’ several times, warning Muslims of the sin of transgressing them and that they should not even approach them.”).

⁶² Brown, *supra* note 61, at 9.

⁶³ Kalimi, *supra* note 23.

⁶⁴ See generally Sanaz Alasti, *Comparative Study of Stoning Punishment in the Religions of Islam and Judaism*, 4 JUST. POL'Y J. 1, 2 (2007) (“In Islam, there are no clear instructions about stoning in *Qur'an*, but there are some implications in *Hadiths* (saying and stories about Prophet Mohammad’s behaviors told by his close followers), but it has been mentioned in *Torah*.”).

⁶⁵ See Sanhedrin 17a:17 (William Davidson ed.).

⁶⁶ RABBI ARYEH KAPLAN, 2 HANDBOOK OF JEWISH THOUGHT, at 170-71 (1992).

⁶⁷ Brown, *supra* note 61, at 18.

⁶⁸ *Id.*

⁶⁹ See Mishnah Makkot 1:10, at 2 (Sefaria Cmty. trans.).

⁷⁰ WARREN GOLDSTEIN, DEFENDING THE HUMAN SPIRIT: JEWISH LAW’S VISION FOR A MORAL SOCIETY 269 (2006).

other crimes.⁷¹ Their interpretation worked seamlessly into an already complex legal system. The intention of this example is to demonstrate the deep thought that went into these interpretations and the following traditions dating back hundreds, to thousands of years.⁷² One who flips casually through the pages of both the Hebrew Bible and the Qur'an, will find themselves at a loss to appreciate the text and, if using a literal interpretation method, will likely come away with a negative view.⁷³

But perhaps most importantly, it is critical that these interpretations are linked to actual logical thought and process, rather than simply changing the meaning of text in order to more aptly fit a new generation's understanding of morality.⁷⁴ While there is indeed an oral tradition handed down throughout the generations to compliment and explain the written Hebrew Bible, such rabbinical rulings must still be based on logic and the exact teachings of the previous generation.⁷⁵ Specifically, we go back to the example of an "eye for an eye" quote—introduced earlier—which has been interpreted to mean pecuniary payment rather than actual physical harm to a person who has wronged you.⁷⁶ The sources in the *Talmud* argued that if this did indeed mean that in the event of a tortious action, for example one person accidentally or purposefully knocks out somebody's eyes, then the punishment could not apply to somebody who is blind.⁷⁷ A person who lacks sight could commit certain crimes with no danger of punishment, and this obviously goes against a plethora of other sources that explain that justice must be dealt "universally" and not just to a specific class of people.⁷⁸

C. Public Outlook: Will Things Change?

What does this mean going forward? As explained, there appears to be a disconnect between the casual reader and the knowledgeable one, regarding the ability to understand more than merely the surface-level translation. Furthermore, while there are indeed many similarities between Judaism and Islam, there is also a vastly different public perception of the religions's legal systems.⁷⁹ In non-Islamic cultures, Islam and its legal structure are largely viewed as medieval and outdated, while the *Talmud* is somewhat more well-respected as a work of legal fascination, even in places like South Korea, where an entire sub-culture of *Talmud* study has emerged.⁸⁰ Young-sam Ma, the South Korean Ambassador to Israel, even went as far to say, "Each Korean family has at least one copy of the *Talmud*."⁸¹

So, what causes this imbalance in criticism and how can the Islamic legal structure gain more respect in the West? First, the imbalance is likely caused by the vast discrepancy in

⁷¹ Alasti, *supra* note 64.

⁷² *Id.*

⁷³ Brown, *supra* note 61.

⁷⁴ 'Arafa & Burns, *supra* note 58, at 389-90.

⁷⁵ KALIMI, *supra* note 23.

⁷⁶ See Bava Kamma 83b:8, 84a:1 (William Davidson ed.).

⁷⁷ KAPLAN, *supra* note 66.

⁷⁸ *Id.* It is important to stress—at least for Islam—that the *Qur'anic* punishment are much lighter than the following juridical (and *Sunnah*) provisions.

⁷⁹ De Donno, *supra* note 34, at 383-84.

⁸⁰ Ross Arbes, *How The Talmud Became A Best-Seller in South Korea*, NEW YORKER (June 23, 2015), <https://www.newyorker.com/books/page-turner/how-the-talmud-became-a-best-seller-in-south-korea> [<http://perma.cc/9L27-ZF2H>]. It should be noted that the craze began with a Japanese translation and was then translated to Korean.

⁸¹ *Id.* This is not to say that the *Talmud* does not receive its fair share of criticism for many of its own verses, some of which may not comport necessarily with today's ideas of woman and human rights. But evidently, this criticism does not seem to be as loud as it is with the *Qur'an* and/or *Sunnah*.

population as well as what occurs in practice versus in study.⁸² Followers of Islam outnumber followers of Judaism significantly, with estimates of Jewish populations in the world floating around 14.5 million, while estimates adherents to Islam are at about 1.8 billion, or roughly 24% of the world's total human population.⁸³ While Judaism receives significant focus in discussion, attention is more easily turned to the Islamic system considering the impact to daily life just based on their numbers.⁸⁴ Additionally, and perhaps most importantly, Islam indeed has a very real problem with a radical minority who have used their interpretations to violently act out on innocent civilians and governments. While a minority, these extremist groups still endanger many lives, moreover, claiming to do so in the name of their religion.⁸⁵ While it is a minority, that still leaves radical Muslim people committing horrific acts, and all claiming to be doing it in the name of their religion.⁸⁶ This has, unfairly but perhaps somewhat understandably, turned many people in western and far eastern countries against the religion of Islam.⁸⁷ To promote better understanding, acts of violence and terrorism need to be stopped, or in the meantime roundly condemned by the larger Islamic moderate community (which already occurs often).⁸⁸ In addition though, it is important that schools and institutions of education emphasize a more in-depth understanding of religion. Sometimes what is worse than receiving no education is receiving just a little bit, usually enough to introduce some statistics out of context and maybe a brief history, before moving onto the next subject.⁸⁹

III. Guarding the Guardians and Islamic Democracy: Does it Exist?

Decades before globalization turned the world's attention to the democracy, or the lack thereof, in the Muslim and Middle Eastern world, Western scholars began tracking the spread of democracy around the world and sought to understand what societies need in order to support democracy. Before the relationship between Islam and democracy became of particular interest—and without getting bogged down in unnecessary theories—to Western scholars, a framework for understanding the interaction between democracy and society had been established.

⁸² See, e.g., WORLD JEWISH POPULATION, BERMAN JEWISH DATABANK (2018), <https://www.jewishdatabank.org/databank/search-results/study/1060> [http://perma.cc/UU36-ENFE].

⁸³ Michael Lipka, *Muslims and Islam: Key findings in the U.S. and around the World*, PEW RES. CTR. (Aug. 9, 2017), <https://www.pewresearch.org/fact-tank/2017/08/09/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/> [http://perma.cc/MR43-B532] (“Our 2017 survey of U.S. Muslims finds that Muslims in the United States perceive a lot of discrimination against their religious group. Moreover, a solid majority of U.S. Muslims are leery of President Donald Trump and think their fellow Americans do not see Islam as part of mainstream U.S. society. At the same time, however, Muslim Americans overwhelmingly say they are proud to be Americans, believe that hard work generally brings success in this country and are satisfied with the way things are going in their own lives.”).

⁸⁴ *Id.*; see, e.g., Dawood I. Ahmed & Tom Ginsburg, *Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions*, 54 VA. J. INT'L L. 615 (2014) (providing an empirical review of all Islamic law constitutional clauses); Intisar A. Rabb, *We the Jurists: Islamic Constitutionalism in Iraq*, 10 U. PA. J. CONST. L. 527 (2008) (providing a qualitative review of one such clause in the context of three common types of Islamic constitutionalization).

⁸⁵ Nordland, *supra* note 60. Paying lip service to current *Islamophobia* is politically correct, especially in the United States and Europe, but not paying lip service to popular prejudices.

⁸⁶ *Id.*

⁸⁷ See generally Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787 (2005).

⁸⁸ See generally NOAH FELDMAN, *THE FALL AND RISE OF THE ISLAMIC STATE* (2008) (analyzing the increasing popularity of calls for *Shari'a* as a basis for state law in Middle Eastern contexts); RAN HIRSCHL, *CONSTITUTIONAL THEOCRACY* (2010) (surveying the increasing role of Islamic and other religious laws as modern state laws).

⁸⁹ It is incumbent on educators to provide fuller context and history regarding the religion of Islam.

A. The Prerequisites of Democracy

In this regard, Philippe Schmitter and Terry Karl, in parsing out “What Democracy is . . . and is Not,” note a few key characteristics that democratic societies have that make them democratic.⁹⁰ They assert that “democracy’s freedoms should . . . encourage citizens to deliberate among themselves, to discover their common needs, and to resolve their differences without relying on some supreme central authority.”⁹¹ They describe civil society at its best as providing “an intermediate layer of governance between the individual and the state that is capable of resolving conflicts and controlling the behavior of members without public coercion.”⁹² They cite Alexis de Tocqueville’s “Democracy in America” in support of these propositions.⁹³ The importance to a discussion of Islam and Democracy is that what Schmitter and Karl fail to mention is the “intermediate layer of governance” that they describe was, in de Tocqueville’s time, very religious in nature, and specifically Protestant Christian; i.e., it was a religiously-homogenous society, relative to American society today.⁹⁴ Though the intermediate layer need not be Protestant, nor Christian, nor religious at all; it could be any of those, including Muslim.⁹⁵

Schmitter and Karl also explain two more prerequisites of democracy, “implicit prior conditions” which they append to Robert Dahl’s “procedural minimal” conditions for modern democracy.⁹⁶ The first condition is that “[p]opularly elected officials must be able to exercise their constitutional powers without being subjected to overriding opposition . . . from unelected officials.”⁹⁷ Democracy is in jeopardy if military officers or religious clergy retain the capacity to act independently of elected civilians or even veto, officially or unofficially, decisions made by the people’s representatives.⁹⁸ As concerns religious clergy, this gets at a crucial defining characteristic of separation between church and state, or rather, mosque and state, as democracy and Islam cannot work together if one seeks to govern the other.

In the same vein, Schmitter and Karl’s second implicit prior definition is that the polity must be self-governing; it must be able to act independently of constraints imposed by some other overarching political system.⁹⁹ Schmitter and Karl were referring to neocolonial arrangements, arguing that a country is not truly democratic if the decisions of its elected officials are subject to the approval of actors outside their territorial domain.¹⁰⁰ The principle is, however, equally applicable in the domestic religion-state context. For a democracy to function in a Muslim country, the decisions of its elected officials cannot be subject to the approval of the religious

⁹⁰ Philippe C. Schmitter & Terry Lynn Karl, *What Democracy Is . . . And Is Not?*, 3 J. DEMOCRACY 2, 7 (1991).

⁹¹ *Id.*

⁹² *Id.* at 7-8.

⁹³ *Id.*

⁹⁴ See generally Aurelian Craiutu & Jeremy Jennings, *The Third Democracy: Tocqueville’s Views of America After 1840*, 98 AM. POL. SCI. REV. 391 (2004) (“Democracy in America (1835, 1840) offered the image of an accomplished and successful American democracy based on the equality of conditions and the sovereignty of the people. American democracy combined administrative decentralization and political centralization, allowed for self-government, and provided for a judicious separation of powers and a genuine system of checks and balances.”).

⁹⁵ See generally ABRAHAM S. EISENSTADT, RECONSIDERING TOCQUEVILLE’S DEMOCRACY IN AMERICA (1988).

⁹⁶ Schmitter & Karl, *supra* note 90, at 9.

⁹⁷ *Id.* at 9.

⁹⁸ *Id.*

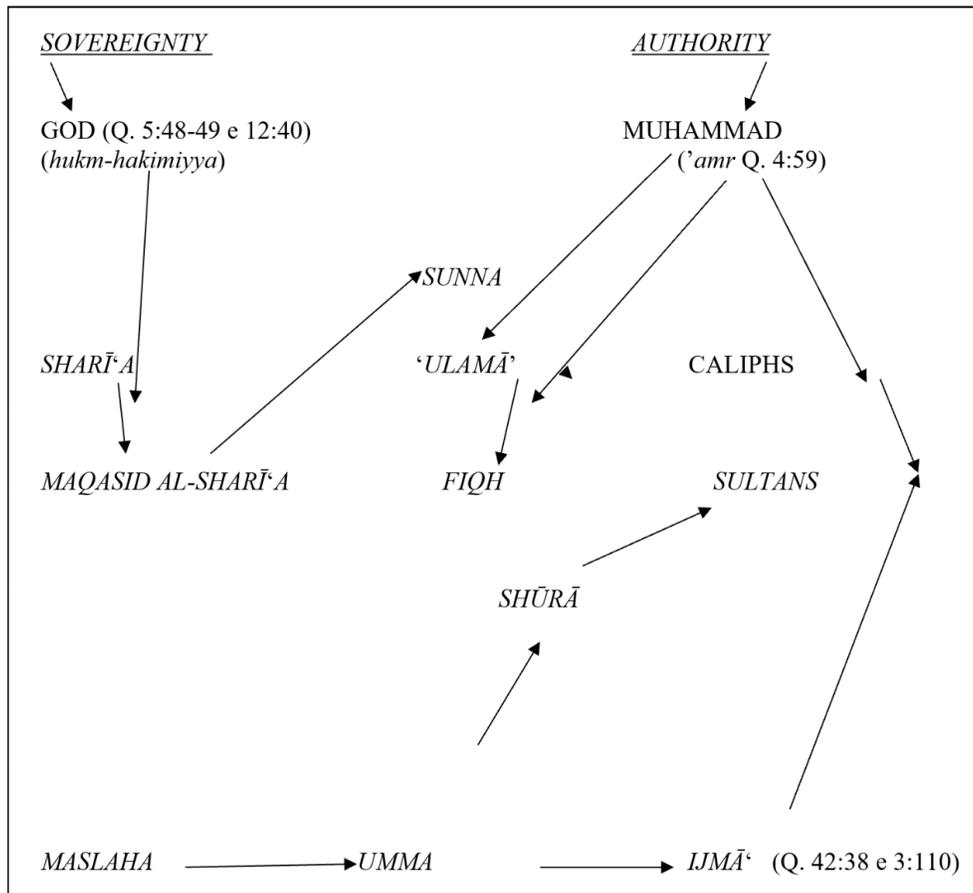
⁹⁹ *Id.*

¹⁰⁰ *Id.*

establishment.¹⁰¹ Taken together, Schmitter and Karl’s two implicit prior definitions inform a crucial precondition of democracy in Muslim countries: where the religious establishment is more powerful than the government, democracy will not succeed, as where the government tries to exert power over or independently of the Muslim establishment, the government may not succeed.¹⁰²

B. Prerequisites of the Islamic Government

It is impossible to simply talk about Islam and democracy in a vacuum. To do so would lead one to mistakenly assert that Islam necessitates a particular form of governance. This could not be further from the truth. In fact, “[T]he Qur’an itself did not specify a particular form of government [whereas] it did identify a set of social and political values that are central to a Muslim polity.”¹⁰³



¹⁰¹ Azizah Y. al-Hibri, *Islamic Constitutionalism and the Concept of Democracy*, 24 CASE W. RES. J. INT’L. L. 1, 2 (1992) (“[T]he most significant debates taking place in the region today are not about secularization versus promotion of Islamic forms of government. Rather, they are about the democratization of existing governments in a manner consistent with Islamic law, a process which, though informed by Western democratic experiences, is viewed as neither Western nor secular.”).

¹⁰² See generally Melanie D. Reed, *Western Democracy and Islamic Tradition: The Application of Shari’a in a Modern World*, 19 AM. U. INT’L. L. REV. 485 (2003) (“One difficulty in marrying Islamic ideals with Western notions of democracy is that Western and Islamic societies possess somewhat differing notions of what constitutes core human rights.”). Probably, that’s the case in the religious (theocratic) monarchies like Iran, Morocco or Saudi Arabia, but this is not the case in Algeria, Libya, Egypt, Turkey, and Iraq among others, as nor the paradigm worked in the past, at least until the failure of post-colonial states.

¹⁰³ KHALED ABOU EL FADL, ET. AL., ISLAM AND THE CHALLENGE OF DEMOCRACY (2004) <http://bostonreview.net/archives/BR28.2/abou.html> [<https://perma.cc/WP3C-ZMJD>].

This diagram assists in allowing one to visualize the complex relation between the main concepts of Islamic polity. It says that sovereignty pertains to God, while authority pertains to people. God's care for His community (*māslāhā*) is bestowed to *ummāh* (community) through legal and political devices (*shārī'a*, *shurā*, etc.) whose performers are the Caliphs and the *Sultans*, on the one hand, and the '*ulāmā*' on the other hand. '*Ulāmā*' and other *ulu'l-āmr* (holders of power) get their legitimacy from the Prophet's political authority, being vice-regents of the Prophet in his political functions. The system looks strictly and functionally intertwined and in theory works perfectly, although the practice has been obviously different and absolute rulership (*mulk*) has been the common feature in Islamic polity over the centuries. The concept of the state is one of the most controversial in Islamic political thought and has been widely debated. Approaching the question, in the first place it could be useful to solve the problem of definition: *what is the Islamic state?* The most obvious answer, to use Patricia Crone's expression, is that the Islamic state is the state where religion regulates temporal affairs.¹⁰⁴ In more precise and refined terms, it is the state where *hākimiyya* (God's sovereignty) is in force, expressed through the Shari'a (religious law). Scholarly research has questioned when and how the Qur'an and the *sunna*, the elements making up the Shari'a, were established. Naturally, opinions differ, and some Orientalists have maintained that the Qur'an and the *sunna* were not formed in the time of the Prophet Muhammad, but in later periods of varying lengths.¹⁰⁵ If this is true, it is clear that an Islamic state where the Shari'a ruled has never existed. The fact that the Shari'a is merely a historical product minimizes the very concept of the Islamic state and projects it into an evolutionary dimension, irrespective of the discourse concerning the formation of the Shari'a.¹⁰⁶ Beyond their historical importance, what is really significant and decisive is that, from the Muslims' point of view, the Qur'an and the *sunna* are the direct constituents of the prophetic and human experience of Muhammad, so that, from the very beginning, they formed the basis of the Islamic state.¹⁰⁷

Then the next question will be, When did the exceptional circumstance of the implementation of the shari'a begin and therefore of the sovereignty of God? The most obvious—and objective—response is that in the time of the Prophet, when he was a statesman and the bearer of the revelation in Medina (622–632), but did this exceptional condition survive him? Sunni Muslims will answer yes, as they consider the time of the four “Rightly Guided” (*rāshidūn*) Caliphs, Abū Bakr (632–634), 'Omar (634–644), 'Othmān (644–656), and 'Alī (656–661)—also blessed by God. The four Caliphs are believed to have followed the example of the Prophet and applied the Shari'a.¹⁰⁸ Some doubts could arise in light of the fact that three out of the first four Caliphs, all of them except Abū Bakr, were murdered, as the situation was therefore far from being idyllic. In any case, Shi'ite Muslims refuse to recognize the exceptional nature of the “Rightly Guided” Caliphs and only recognize the superiority of 'Alī. Consequently, there is no agreement within the Muslim community itself. Thus, it is highly debatable whether the period of the Rightly Guided Caliphs can be considered a phase enlightened by God during which an Islamic state was established.¹⁰⁹

¹⁰⁴ CRONE, *supra* note 11. For further discussion, see generally MASSIMO CAMPANINI & KARIM MEZRAM, TRADIZIONE, RIFORMA E MILITANZA IN ETÀ CONTEMPORANEA [TRADITIONS, REFORM, AND RADICALISM IN THE CONTEMPORARY STATE] [ARCHIPELAGO ISLAM: INTRODUCTION] (Laterza 2007).

¹⁰⁵ *Id.*

¹⁰⁶ CRONE, *supra* note 11.

¹⁰⁷ *Id.*

¹⁰⁸ CAMPANINI & MEZRAM, *supra* note 104.

¹⁰⁹ *Id.*

In our view, after the *rāshidūn* Caliphs, the Omayyad (661–750) and ‘Abbasid (750–1258) dynasties can certainly no longer be considered as having created an Islamic state. It is difficult to argue that Shari’a ruled the state, while different ways of political administration and management, which can probably be summarized under the label of *qānūn* (law), gradually became established, limiting the role of the Shari’a. It goes without saying that the dynasties of *Sultans* like the Buyid, the Seljuqs, and later the Ayyubids or the Mamluks formed even less an Islamic state than the Caliphates.¹¹⁰ However, it is obvious that the idea of an Islamic state implies the discussion of the relationship between religion and politics in Islam. An Islamic state plainly seems to involve the integration of religion and politics by definition.¹¹¹ This may indeed have been the case in the time of the Prophet Muhammad in Medina, as he received inspiration and the revelation from God and in light of this, ruled the political community of Medina like a Bedouin *shaykh*.¹¹²

Ibn Khaldūn’s argument supports the now widely held historiographical claim of many scholars, the present authors included, that the early separation of political authority and religious function was one of the main characteristics of Islamic theory and praxis.¹¹³ In the Islamic history, the absence of an institutional Church ensured that religion could not monopolize or control the public sphere. Rather, religion or the representatives of Shari’a law were always forced to compete to influence the public sphere in a variety of ways.¹¹⁴ Importantly, throughout the Islamic history, there has never been a single voice representing the Shari’a law or the canons of religion. Historically, the Islamic faith and Shari’a law have been represented by several competing schools of theological and jurisprudential thought, the most powerful and notable of these organized into privately run professional guilds. Although the state often claimed to rule in God’s name, the legitimacy of such claims was challenged by these professional guilds.¹¹⁵

Pluralism of voices, as a natural characteristic of the Islamic pattern of thought, impedes the strict cross-referentiality of religion and public power. On the other hand, the state claimed to be supported by religious law but failed in depriving the ‘*ulamā*’ (Muslim scholars) of their religious authority or silencing civil society. Obviously, the same could be said of religion: it failed in impeding the autonomous rule of political power nor in silencing civil society.¹¹⁶

When the ‘Abbasid Caliph Al-Ma’mūn (813–833) tried to impose Caliphal control over religious authority through the imposition of the *Mu’tazili* doctrine of the created Qur’an and organizing the *mihna*, he tried to realize a form of Caesarism-papism which had to submit religious authority to the Caliph’s *mulk*. It is well known that such an endeavour was defeated by the converging opposition of the conservative and traditionalist ‘*ulamā*’ and of the populace itself.¹¹⁷ When *al-Mutawakkil* (847–861) gave up *mihna* and *Mu’tazilism*, the ‘*ulamā*’ were able to assert

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² If this is true for the period of Muhammad and, at least according to Sunni Muslims, for the four “Rightly Guided” Caliphs, this is no longer the case with the Omayyads and the ‘Abbasids, when, as even Ibn Khaldūn maintained, the *caliphate* was translated into the *mulk*; therefore power legitimized by religion was translated into power legitimized by force, by the capitalization of resources and by tyranny.

¹¹³ See generally SHAHRAM AKBARZADEH & ABDULLAH SAEED, *ISLAM AND POLITICAL LEGITIMACY* (2003).

¹¹⁴ See generally MASSIMO CAMPANINI, *IDEOLOGIA E POLITICA NELL’ISLAM [IDEOLOGY AND POLITICS IN ISLAM]* (2007).

¹¹⁵ KHALED ABOU EL FADL, *THE GREAT THEFT: WRESTLING ISLAM FROM THE EXTREMISTS* 22 (2005).

¹¹⁶ CAMPANINI, *supra* note 114.

¹¹⁷ See generally Nimrod Hurvitz, *Al-Ma’mūn and the Mihna*, *OXFORD HANDBOOK OF ISLAMIC THEOLOGY* 649 (Sabine Schmidtke ed. 2016). Hurvitz’s interpretation is questionable, however, insofar as it belittles the theological-political meaning of the *caliph*’s action: actually *al-Ma’mūn* aimed to impose his own (secular) authority over the religious establishment.

their autonomy in respect of the central power, and that does not mean that the ‘*ulamā*’ claimed to control the *mulk* similarly to how the Catholic Church claimed to control the temporal sword against the German Holy Roman emperor.¹¹⁸ The two powers in the Muslim world co-existed in parallel, although the sovereigns claimed to govern in the name of the religion and the ‘*ulamā*’ to autonomously control legislative power.¹¹⁹ In his book *Iqtisād fī’l-i-‘tiqād*, Abū Hāmid al-Ghazālī (1058–1111) contends that “*din* (religion) and *sultan* (power) are twins (*sinwān*)”; thus, he does not mean that there is a single holder of religious authority and of political authority (as the Pope and the Emperor in the Medieval Christian world claimed, opposing one another).¹²⁰ Rather, he means that power defends religion, and religion supports power. Thus, a clear joint presence of the two authorities emerge and this parallelism is characteristic throughout the history of the classic Muslim world.¹²¹

On the other hand, Noah Feldman’s contention that all the “medieval” experience of governance was, on the whole, the outcome of the practical realization of the Islamic state must be discussed and refuted; also, because when Ibn Khaldūn describes the transformation of the Islamic state from Caliphate to *mulk*, he describes the separation between religion and the state: the Caliphate was a religious state founded on ‘*asabiyya*’; the *mulk* was a secular state founded on force and tyranny. Feldman argued that the entire “medieval” Islamic experience of governance was, on the whole, the outcome of the practical realization of the Islamic state, as the Islamic state is founded on the Shari’a and is the state of the law.¹²² In the Middle Ages, the Shari’a was protected and defended by the ‘*ulamā*,’ and the rulers were subservient to the Shari’a.¹²³ Their rule was legitimized by the ‘*ulamā*.’¹²⁴ Through the Shari’a and the law, the ‘*ulamā*’ succeeded in creating the ruler and the government, and the classical and traditional Islamic constitution was a legal state, meaning that the system was justified by law and administered through law; hence, the Islamic state was fully implemented, being a kind of theocracy.¹²⁵

In this regard, Feldman’s paradigm is subject to a sort of discourse of disagreement. First, an Islamic theocracy has never existed, as Islam is not a theocracy because no church exists in Islam.¹²⁶ Moreover, if it is true that, after the failure of al-Ma’mūn’s project, there is very little evidence of Caliphal control over religious authorities or of Caliphal dominance over jurists and jurisprudence, nor did the ‘*ulamā*’ usurp Caliphs and *sultans* of their power of rule; and if it is true that *sharī’a* was submitted to overall human elaboration by *fiqh* and *qānūn*, consequently, God ceased to reign over Earth because the *sharī’a* was only the ideal reference by which legitimizing the secular control of power by Caliphs and *sultans*.¹²⁷ The Islamic state continued to be a perspective of the past. When Ibn Khaldūn describes the transformation of the Islamic state from Caliphate to *mulk*, he describes the separation between religion and the state: the Caliphate was a religious state founded on the ‘*asabiyya*’; the *mulk* was a secular state founded on force and the capitalization of power.¹²⁸ This is the reason why, in Ibn Khaldūn’s view, the Caliphate is merely

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ ABU HAMID AL-GHAZALI, *AL-IQTISĀD FĪ’L-I-‘TIQĀD* [MODERATION IN BELIEF] 231 (Aladdin M. Yaqub ed. 2013).

¹²¹ *Id.*

¹²² See FELDMAN, *supra* note 88.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Hurvitz, *supra* note 117.

¹²⁸ *Id.*

a teleological pattern, as when, in the 8th and 14th centuries, the Caliphate was dead and the *sultanate* was dominant, the former model of the Rightly Guided Caliphs could be considered as the best state ever realized on Earth—a true Islamic state.¹²⁹ It cannot be reproduced at present, but it must, however, direct the political action of the current holders of power from the viewpoint of the Islamic principles of justice, equity, religious support for political authority, and the refusal of capitalization.

Moreover, if Feldman’s argument that the Islamic state was rendered Islamic by the ‘*ulamā*’ is accurate, it would be complicated to explain and understand why sophisticated political thinkers like al-Ghazālī and Ibn Jamā’a recognized the supremacy of the *sultans* over the Caliphs by way of their monopoly of force.¹³⁰ The *sultans* ruled not through law or the scholars, but through force, arms, and secular power; exploiting religion for their political ends. An Islamic model of state in place of the Islamic state was theorized.¹³¹ Al-Mawardī (d. 1058) tried to recreate the Caliphate being aware of its weakness; the Caliphate was the Islamic state but had to be re-established in the 5th–11th centuries because it had lost real control over the Islamic empire and society.¹³² Ibn Taymiyya formulated the *siyāsa shar‘iyya* because he was aware that the rulers were no longer applying the Law of God; thus, it was necessary to formulate *siyāsa* (politics) based on religious law because the Shari’a was no longer working. Ibn Khaldūn was convinced that the Caliphate—the Islamic state—had become a *mulk*—a patrimonial and tyrannical power, that the new rulers had forgotten the Shari’a of the first rightly guided Caliphs and were governing in their own interests. The perfect situation of the past was no more than a dream, while tyranny, force, and injustice prevailed in the Muslim world.¹³³

There is a wide debate regarding Islam’s compatibility with democracy. Many scholars argued that the question of a democratic Islam has no meaning at all, because the two terms are completely at odds.¹³⁴ Surely, the question is highly controversial for two reasons. First, it is significant to avoid the so-called “essentialist” interpretation of Islam, as essentialist approaches (like Bernard Lewis’s) “tend to obscure the diversity of realities and representations in the Islamic world in order to reinforce the idea of an eternal, monolithic Islam, without history and outside of history,” whereas “the meaning [of the religion] will always be determined more by the demands of context than the logic of text and more by the needs and desires of actors than the intentions of a founding genius.”¹³⁵ When discussing the correlation between Islam and democracy it is critical not to forget the historical environment where these dialectics took place. On the other hand, the locution “*Islam and democracy*” could not make sense insofar as Islam is a religion while

¹²⁹ *Id.*

¹³⁰ See generally RICHARD JOSEPH MCCARTHY, FREEDOM AND FULFILLMENT: AN ANNOTATED TRANSLATION OF AL-GHAZĀLĪ’S AL-MUNQIDH MIN AL-DALĀL AND OTHER RELEVANT WORKS OF AL-GHAZĀLĪ (Ilse Lichtenstadter ed. 1980).

¹³¹ *Id.*

¹³² *Id.*

¹³³ See generally FAROUK MITHA, AL-GHAZĀLĪ AND THE ISMA‘ILIS: A DEBATE ON REASON AND AUTHORITY IN MEDIEVAL ISLAM (Farhad Daftary ed. 2001).

¹³⁴ See Alvaro Hasani, *Compatibility of Democracy and Islam . . . or the Lack Thereof: A Closer Look at Whether the “Arab Spring” was Ever Capable of Culminating into a Viable Democracy in the Arab World*, 15 ST. MARY’S L. REV. RACE & SOC. JUST. 715, 734 (2013).

¹³⁵ See generally MOHAMED-CHERIF FERJANI, LE POLITIQUE ET LE RELIGIEUX DANS LE CHAMP ISLAMIQUE [Politics and Religion in Islamic Thought] (Fr. 2005) (“[T]endent à occulter la diversité des réalités et des représentations relevant de le champ islamique, afin de conforter l’idée d’un Islam éternel, monolithique, sans histoire et en dehors de l’histoire», whereas «le sens [de la religion] sera toujours déterminé par les exigences du contexte plus que par la logique du texte, par les besoin et les désires des acteurs plus que par les intentions d’un génie fondateur.”).

democracy is a political system and we ought to clearly mark the conceptual boundaries of both, far besides the respective field of inquiry.

Historically, democracy is certainly a foreign idea for the Islamic outlook however. It was imported with other Western ideals and political practices, such as “liberalism,” between the 19th and the 20th centuries. The foreign nature of these categories is proved by the fact that the Arabic language resorted to neologisms in order to express them: *libirāliyya* and *dīmuqrāiyya* are nouns reproducing the Western political lexicon and do not have any equivalents in classical Islamic political thought, neither of al-Māwardī nor of Ibn Taymiyya or of Ibn Khaldūn.¹³⁶ In this regard, it should be noted that the reception of the concept of democracy was paralleled by the reception of the concept of nationalism. National ideas in the Arab and Islamic countries developed during the liberation struggle against colonialism and, in a sense, meant the recovery of the concept of identity after the alienation produced by colonial submission.¹³⁷ On the other hand, democracy does mean—or at least it could mean—the successful adaptation to the contemporary world’s requirements, the world of globalization where democracy became progressively the uniquely suitable political system, but this adaptation has been the aim pursued by states and civil societies at large after the attainment of independence. Nationalism represented the first step in the long path towards the full acknowledgment of modernity; democracy could represent, and perhaps actually is, the eventual union with modernity.¹³⁸

Democracy is identified with Western civilization, but the contradictory politics of the great powers in the Middle East—for instance in the two recent Gulf wars and with respect to the Islamic resurgence—encourage many people to oppose the West and democracy at the same time. Laura Guazzone and others argued recently that in the Arab world, the Gulf War of 1991 provoked a widespread reinforcement of anti-Western feelings and a break in the already weak inter-Arab solidarity, although it undoubtedly led to an acceleration of internal political transformations.¹³⁹ The same reaction was triggered by the second Gulf war of 2003 against Saddam Hussein.¹⁴⁰ Economic decline and social upheaval stimulated political renewal and change in the 1980s and later in many Arab countries, but the Islamic way of expression became paramount throughout.¹⁴¹ The hostility of Arab and Islamic public opinion of the 1991 war against Iraq was widespread among the Arab masses, and the Islamic opposition was able to take advantage of the

¹³⁶ Although the Greek word *demokratia* has been transliterated in *dīmuqrāiyyah* in the Arabic translation of Aristotle’s *Rhetoric*, see ARISTŪ ʔĀLĪS, *AL-AʔLĀQ* 293-94 (A. Badawi. ed. Kuwait 1979).

¹³⁷ The idea of nationalism brought with itself political fragmentation, Islamic religious universalism remained unshaken and this universal religious consciousness is probably still working throughout the whole Islamic world. As Ibrahim Abu Rabi’ put it, in the Arab world “nationalism resurrected Islam as an Arab religion and Muhammad as an Arab prophet. Both Nationalism and Islamism invented their own versions of the past, and both anchored their ideal in a highly unstable present.” See generally IBRAHIM ABU RABI’, *CONTEMPORARY ARAB THOUGHT* (2004). It is a case; but even after the failure of secular Arab Nationalism (from Nasser onward), Islam remained the castanet universal value in the mass consciousness.

¹³⁸ See generally AHMAD MOUSSALLI, *THE ISLAMIC QUEST FOR DEMOCRACY: PLURALISM AND HUMAN RIGHTS* (2001).

¹³⁹ See, e.g., LAURA GUAZZONE, FEDERICA BICCHI, & DANIELA PIOPPI, *LA QUESTIONE DELLA DEMOCRAZIA NEL MONDO ARABO (ISLAMICA) [THE QUESTION OF DEMOCRACY IN THE ARAB AND MUSLIM WORLD]* (2004).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

circumstances, as this opposition was made much stronger by this struggle until it represented a serious threat for actual regimes, for instance in Algeria and Egypt.¹⁴²

Democracy is a difficult concept in relation to Islam, as it is necessary to understand what the word “democracy” means. The most salient features of democracy—in the Western perspective—are that democracy is a procedure involving free political elections and granting universal suffrage; the highest governmental form of democracy is a parliamentary system with a multi-party choice; and democracy provides protection for human rights, liberty of expression, of dissent and of political organization.¹⁴³ Undoubtedly, most of these requirements are not present in the Arab and Islamic world today.¹⁴⁴ Some pivotal concepts of classical Islamic political thought point to the same direction of democracy; however, a covenant among rulers and ‘*ahd* (ruled), *ijma‘a* (consensus of the representatives of the community), legitimization of public power through preference and *ihktiyār* (free will), ‘*adalah* (justice), *maslah* (common welfare), and *musawatt* (equality).¹⁴⁵ These are universal and commonly shared concepts. Moreover, Islam is a Universalist ideology encompassing all humanity to which revelation was addressed and is a cosmopolitan reality where all peoples are located on the same horizontal level.¹⁴⁶ There is no difference of race in Islam; differences of religion are sometimes emphasized, but not of race. If universalism and cosmopolitanism are presuppositions of democracy, the Islamic way to democracy must be grounded in this past universalism and cosmopolitanism.¹⁴⁷

The main concept that seems to be irreducible to democracy is that of the *ummah*, the community of believers bound together by faith and religious profession. For if one is not a believer, he or she cannot be a full part of the community, whereas modern democracy is above any religious affiliation.¹⁴⁸ The notion of *ša‘b* (people) has been connected in Western political outlook with the idea of *watan* (nation), but both of these did not exist in classical Islamic political thought and were substituted by the concepts of *ummah* and Caliphate. No doubt “people” and “nation” are ideas constitutive of the history of Western democracy, but *ummah* is not completely in contradiction with the idea of democracy, insofar as it involves collective ethics and the necessity of a common welfare overcoming individual interests and selfishness.¹⁴⁹

A very controversial issue regarding democracy is secularism. Are democracy and secularism so intertwined that we cannot think of one without the other? Does secularism impose a democratic political system, and does democracy have secularism as its founding principle? The answer seems to be positive in Western political thought whose development in modern times, from Machiavelli to Locke to John Stuart Mill, developed the concepts of democracy and freedom on the basis of a clear distinction between the religious and the political sphere; the former is private, and the latter is public.¹⁵⁰ As for Islam, the idea of secularism has broadened also in the Islamic world during the last decades, especially in the daily behavior of people (How many young

¹⁴² The same perception has been obviously strengthened by the 2003 war against the Iraq of Saddām Hussein, a war Arabs and Muslims judged in blatant contrast to international right. See generally Massimo Campanini, *Democracy in the Islamic Political Concept*, 2/3 ORIENTE MODERNO 343 (2005).

¹⁴³ MOUSSALLI, *supra* note 138.

¹⁴⁴ See BERNARD LEWIS, *THE POLITICAL LANGUAGE OF ISLAM* (1988).

¹⁴⁵ For further details regarding the Islamic political thought, see Bernard Lewis, *The Political Language of Islam*, (1988); CRONE, *supra* note 11; see also ANTONY BLACK, *THE HISTORY OF ISLAMIC POLITICAL THOUGHT* (2d ed. 2001).

¹⁴⁶ CRONE, *supra* note 11.

¹⁴⁷ See generally MASSIMO CAMPANINI, *ISLAM E POLITICA [ISLAM AND POLITICS]* (It. 2003).

¹⁴⁸ MOUSSALLI, *supra* note 138.

¹⁴⁹ *Id.*

¹⁵⁰ FERJANI, *supra* note 135.

individuals attend the mosques, in particular when they live abroad?); and secularism was coupled with scientific rationalism, the vindication of human rights and democracy.¹⁵¹ This represented a serious challenge to traditional and conservative Islam. For the ideas of secularism, natural rights and democracy could be at odds with a traditional Islamic outlook.¹⁵² For instance, secularism can be opposed to theocracy and most observers maintain that Islam is theocratic.¹⁵³ Natural rights seem to conflict with the subjective ethics of Islam where God and not nature decided what is good and what is bad.¹⁵⁴ Democracy as a government of the people (where the people is the origin and source of legitimacy and power) contradicts the more widespread Islamic idea that God is the origin and source of the power.¹⁵⁵

Regarding theocracy, in the evolution of the Islamic political thought, especially in the classical period of Islamic civilization, the so-called Middle Ages, three theoretical presuppositions can be distilled in this domain:

- (a) Religion is an extension of politics.
- (b) Politics is a dimension of religion.
- (c) Religion is a dimension of politics.

The first proposition points to theocentrism, the second to theocracy, and the third to secularism. Only the first one—according to the authors—is appropriately Islamic. For Islam, as *din wa dunyah* (religion and worldly existence), must have a political extension considering that the *mu'amalat* (social actions and behaviors) is the other face of the spiritual (religious) observances (*'ibadat*) coin.¹⁵⁶ The second proposition involving theocracy has been denied by history, as right from the beginning of Islamic history a wedge separated the factual management of power from the religious establishment.¹⁵⁷ Caliphs and *Sultans* ruled out of the Shari'a norms, legitimizing their power more on the basis of force and the army than on religion and justice, although they looked for a religious acknowledgment of their authority.¹⁵⁸ On the other hand, the *'ulama'* never claimed political power for themselves in the name of their religious status, and this is the reason why neither the *plenitudo potestatis papae* nor the so-called "two swords" doctrine arose in the Muslim world, where there was no conflict between an "Empire" and a "Papacy."¹⁵⁹ The third proposition conveys properly the idea of secularism insofar as religion is viewed as a mere appendage or instrument of political practice and governance.

Those values, if anything, are quite compatible with democracy; "classical Muslim scholars embraced core elements of modern democratic practice" such as "rule of law and limited

¹⁵¹ On the implications of contemporary Islamic thought, see generally MASSIMO CAMPANINI, *IL PENSIERO ISLAMICO CONTEMPORANEO* [THE CONTEMPORARY ISLAMIC THINKING] (It. 2005).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ See generally Ira M. Lapidus, *The Separation of State and Religion in the Development of Early Islamic Society*, 6 INT'L. J. MIDDLE E. STUD. 363 (1975).

¹⁵⁸ See generally PATRICIA CRONE & MARTIN HINDS, *GOD'S CALIPH: RELIGIOUS AUTHORITY IN THE FIRST CENTURIES OF ISLAM* (2003).

¹⁵⁹ *Id.*

government.”¹⁶⁰ At the same time, however, those values were not seen by those Muslim scholars as promoting a government by the people, or anyone else for that matter.¹⁶¹ Professor Khaled Abou elFadl gets at the core of the issue in *Islam and the Challenge of Democracy*, where he notes that “[i]n Islam, God is the only sovereign and ultimate source of legitimate law.”¹⁶² Thus, any law made by a sovereign “is illegitimate because it substitutes human authority for God’s sovereignty.”¹⁶³ The exertion of power by a state is automatically suspect, as a government by the people, therefore, is understandably not ideal either.¹⁶⁴

In this respect, Noah Feldman points out that “[h]istorically, what made Islamic government distinctive was a constitutional order in which the implementation of the Shari’a was the nominal *raison d’être* of the state and the prime way of legitimating its use of force. Islamic law, understood to comprehend both the classical constitutional order and the legal order that obtained under it, structured private legal relations as well as relations between state and citizen.”¹⁶⁵ The best government for a Muslim country, therefore, is the one people view as upholding Islamic law on the citizen-citizen level.¹⁶⁶ In other words, an ideal Muslim government is one that gives the impression of enforcing God’s sovereignty rather than being a product of human authority.¹⁶⁷ If God’s law regulates primarily person-person interactions and community relations, then for the government to go beyond that would be inherently suspect.

Bernard Lewis notes that “Muslim law has never conceded absolute power to the sovereign, nor, with few exceptions, have Muslim sovereigns ever been able to exercise such power for any length of time.”¹⁶⁸ This does not mean, however, that Islam views monarchy or dictatorship negatively, or democracy positively, or vice versa; however, the idea of *mulk* is generally negative. That is, the best government for a Muslim society would not be a government that imposes its own will on the people, but neither would it be a government that imposes the peoples’ will on the people. Rather, the best government is one that places primacy of authority in Muslim law.¹⁶⁹ That is the theoretical ideal anyway, and the ideal finds its truest form in the form

¹⁶⁰ABOU EL FADL, *supra* note 103, at 4 (“For Islam, democracy poses a formidable challenge. Muslim jurists 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 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?”).

¹⁶¹*Id.*

¹⁶²*Id.*

¹⁶³*Id.* at 19 (“An essential characteristic of a legitimate Islamic government is that it is subject to and limited by *Shari’ah* law. Although this concept does offer support for the rule of law, we must distinguish between the supremacy of law and the supremacy of a set of legal rules.”).

¹⁶⁴*Id.* at 12 (“The two are quite distinct, and both are suggested in the Islamic legal tradition. Once again, Islamic political thought contains a range of interpretive possibilities. [...], some of those possibilities resonate more strongly with democratic principles.”).

¹⁶⁵FELDMAN, *supra* note 88, at 116.

¹⁶⁶H.A. Hellyer & Nathan J. Brown, *Leading from Everywhere: The History of Centralized Islamic Religious Authority*, FOREIGN AFF. (June 15, 2015), <https://www.foreignaffairs.com/articles/2015-06-15/leading-everywhere> [<https://perma.cc/687J-WH5U>] (“It is well-known that there is no overarching state or non-state body, such as a church or set of religious figures, that interprets and imposes one set of Islamic teachings. That is, there is also no formal institution like the Vatican or other ecclesiastical body for Muslims.”).

¹⁶⁷ABOU EL FADL, *supra* note 103.

¹⁶⁸BERNARD LEWIS, *THE POLITICAL LANGUAGE OF ISLAM* 31 (1988).

¹⁶⁹See Donna E. Arzt, *Heroes or Heretics: Religious Dissidents under Islamic Law*, 14 WIS. INT’LL. J. 349, 371 (1996) (discussing the difference between the importance of individualism in Western culture and the emphasis on community welfare in Islamic societies).

of the Caliphate. Understanding what a Caliphate is, as a form of government, is informative in understanding the relationship between Islam and democracy. The defining characteristic is not, as many may believe, government based on a radical application of the Shari'a legal system.¹⁷⁰

What distinguishes a Caliphate is its particular model of limited governance. "To be Caliph in reality means acting as substitute for the Lawgiver ([Prophet] Mohammed) with regard to the preservation of the religion and the political leadership of the world."¹⁷¹ To be clear, the Caliph was not a lawgiver in the simple sense, "his legislative authority was limited [or almost denied entirely, as his role was executive]. . . . The [C]aliph's main responsibilities (as the institution developed, at any rate) lay in the enforcement of Islamic law."¹⁷² The Caliph "was concerned . . . with religion in his capacity as the person commanded to transmit the duties imposed by the religious laws to the people and to cause them to act in accordance with them, and with worldly political leadership in his capacity as the person in charge of the (public) interests of human civilization."¹⁷³

Trying to conform the idea of the Caliphate into a modern system of government presents challenges. The Caliphate does not seem to fit into the traditional models of executive, legislature, and judiciary.¹⁷⁴ The Caliph seems to have the powers of all three, but wields none of them from a metaphysical perspective.¹⁷⁵ That is, the Caliph is meant to enforce the law, not make it. It is unclear that a particular characteristic of any system of modern governance is inherently incompatible with the Caliphate ideal.¹⁷⁶ While metaphysically the Caliph carries out none of the traditional functions of government, in the physical reality, the Caliph ultimately combines the three governmental functions into one.¹⁷⁷ This is something that modern governments of Muslim countries can and often do use to their advantage, and, if true, it is a compelling explanation for the politics of the Muslim world over the past few decades.¹⁷⁸

If, in theory, the ideal Muslim government is a Caliphate with a Caliph whose role is limited to enforcing Islamic law, then in practice, any government will find success that can successfully convince its people that it is, in fact, so limited.¹⁷⁹ This means that no system of government, whether dictatorship or democracy, is more compatible to a Muslim society than any other. At the same time, neither autocracy nor democracy are favorable systems of government if either of them

¹⁷⁰ See Sherman A. Jackson, *Shari'ah, Democracy, and the Modern Nation State: Some Reflections on Islam, Popular Rule, and Pluralism*, 27 FORDHAM INT'L L. J. 88, 94-95 (2003) (discussing the role of Islamic jurists' interpretive authority when deciding issues under Islamic law and asserting that Islamic law is not necessarily at odds with notions of democratic governance).

¹⁷¹ Robert J. Delahunty, *An Epitaph for ISIS? The Idea of a Caliphate and the Westphalian Order*, 35 ARIZ. J. INTL. & COMP. L. 1, 46-47 (2018) (quoting Ibn Khaldun, *THE MUQADIMMAH: AN INTRODUCTION TO HISTORY* 171 (Franz Rosenthal trans., N.J. Dawood abr. ed. 1967)).

¹⁷² *Id.* at 47-48.

¹⁷³ *Id.*

¹⁷⁴ Khaled Abou El Fadl, *Islam and the Challenge of Democratic Commitment*, 27 FORDHAM INT'L L. J. 4, 7 (2003) ("Today, the system of government that has the strongest and most compelling claim to legitimacy, and moral virtue, is a democracy. The mere fact that, with very few exceptions, every despotic regime in the world today claims to be more democratic, and less authoritarian, is powerful evidence of the challenge democracies pose to the world.").

¹⁷⁵ *Id.*

¹⁷⁶ See generally Anver M. Emon, *Reflections on the 'Constitution of Medina': An Essay on Methodology and Ideology in Islamic Legal History*, 1 UCLA J. ISLAMIC & NEAR E. L. 103 (2001).

¹⁷⁷ *Id.*

¹⁷⁸ See generally Frederick Denny, *Ummah in the Constitution of Medina*, 36 J. NEAR E. STUD. 39 (1977); Moshe Gil, *The Constitution of Medina: A Reconsideration*, 4 ISR ORIENTAL STUD. 44 (1974).

¹⁷⁹ Bernard Botiveau, *Contemporary Reinterpretations of Islamic Law: The Case of Egypt*, in ISLAM AND PUBLIC: CLASSIC AND CONTEMPORARY STUDIES 261, 263 (Chibli Mallat ed. 1993).

are viewed as being in opposition to Islamic law.¹⁸⁰ It should be noted that “[a]bsent an institutionalized understanding of what Islamic law stands for,” rulers in countries like Egypt have found that generic “calls for ‘codification of Islamic law’ . . . easily gain public support.”¹⁸¹

None of these answer the question of why monarchies and dictatorships rule the majority of the Muslim world. If indeed the Caliph’s role was as an enforcer of the law, then one would think that the clearest manifestation of that ideal would be not in the strong executives we see in the Muslim world today, but in strong judiciaries.¹⁸² This likely motivates the hypothesis that in Egypt, for instance, the best chance at bringing Islamic law into the age of democracy lies with the country’s judicial branch “because of the classical portrayal in Muslim literature of the judge as a person who has knowledge and practices *Ijtihad*.”¹⁸³ It should be noted, however, that even the judiciary is limited by the government it is associated with: “Egyptian judges are restricted by the limited intellectual proposals and unlimited public skepticism towards governmental interference into the judiciary. Overall, without enough public support, one may question the future applicability of these choices.”¹⁸⁴ Muslim societies may indeed be more favorable to judges than executives and legislatures, but association with the state can tarnish the entire system’s legitimacy.

In short, theoretical compatibility does not mean practical favorability. The culprit is that some legal scholars astonishingly gloss over in their discussion of Egypt: Not just Egypt, but across the Muslim and Middle Eastern world, there is “*no institutionalized understanding of what Islamic law stands for*.”¹⁸⁵ Going back to the above discussion of Schmitter and Karl, it becomes clear why Muslim countries have, for decades, been marred by dictatorships, violence, and religious radicalism, all to the detriment of democracy.¹⁸⁶ Without an institutionalized understanding of what Islamic law stands for, anyone is free to assert their own understanding. Despots like Nasser or Al-Sadat, among others in the region, were free to attack places and call it a *jihad*, and ISIS was free to attempt a total overthrow of Syria and Iraq and declare a Caliphate, regardless of whether the dictators were really just trying to consolidate power or whether ISIS represented “rule of law and limited government.”¹⁸⁷

C. The Paradox (?) of Islam and Democracy

Democracy requires the society to understand precisely what Islamic law stands for. Really, a common understanding on this point reflects a strong civil society, which is the real prerequisite for democracy. The primary reason for this is that democracy, especially in its early days, is an inherently weak institution. A strong civil society is one that is “able to act

¹⁸⁰ See Timothy D. Sisk, ISLAM AND DEMOCRACY: RELIGION, POLITICS, AND POWER IN THE MIDDLE EAST 38-39 (1992) (summarizing specifically the numerous perspectives in Algeria and emphasizing the diversity of opinion among Islamist movement groups).

¹⁸¹ Adham A. Hashish, *Ijtihad Institutions: The Key to Islamic Democracy: Bridging and Balancing Political and Intellectual Islam*, 9 RICH. J. GLOBAL L. & BUS. 61, 83 (2010) (quoting SAMI ZUBAIDA, LAW AND POWER IN THE ISLAMIC WORLD 166-70 (2003)). This follows whether Egypt is ruled by a democratically elected despot or a military-backed despot.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ SCHMITTER & KARL, *supra* note 87.

¹⁸⁷ ABOU EL FADL, *supra* note 98.

independently of constraints imposed by some other overarching political system.”¹⁸⁸ Only in a strong civil society can “elected officials . . . exercise their constitutional powers without being subjected to overriding opposition from unelected officials.”¹⁸⁹ Unfortunately, as noted, Arab countries today “all share one critical deficit to any democracy—a fragile civil society.”¹⁹⁰ How could this be?

Paradoxically, the culprit may be the very thing legal scholars insist is “key to Islamic Democracy.”¹⁹¹ Legal thinkers note, “[t]he structure and goals of *Ijtihad* institutions in general gave rise to a growing civil society that ‘does not depend on the presence of sovereign and free individuals, but on groups or communities and their institutions enjoying a significant degree of autonomy from the state.’”¹⁹² Such a civil society is not necessarily one that would promote democracy. Democracy, perhaps, is a promising system for structuring and protecting the civil liberties needed to allow for autonomy from the state, but democracy also requires active engagement and participation, which necessarily entails a limitation in just how much autonomy communities can enjoy over the long term.¹⁹³ Moreover, the participatory aspect of democracy necessarily means that the body politic is the source both of law and of the legitimacy of law.¹⁹⁴

It should be noted that “limited government” does not flow naturally from “autonomy from the state.”¹⁹⁵ To conflate the two would be to confuse government whose “jurisdiction is limited to certain enumerated objects, which concern all [citizens]” and government whose jurisdiction is ultimately subordinate to some other entity.¹⁹⁶ An Islamic culture descendent from *Ijtihad* institutions that promote autonomy from the state will naturally yield a weak civil society because the body politic will be adverse to national politics.¹⁹⁷ The reason for this is simple. “[T]he structure and goals of *Ijtihad* institutions in general gave rise to a growing civil society that ‘does not depend on the presence of sovereign and free individuals, but on groups or communities and their institutions enjoying a significant degree of autonomy from the state.’”¹⁹⁸ Bear in mind that this describes local religious authorities.¹⁹⁹ As explained, Schmitter and Karl’s conditions for democracy require that the religious establishment cannot wield independent power over the state. Separating mosque and state is one aspect of this, but ultimately if people listen to their religious leaders over the government, then formal separation by itself is meaningless.²⁰⁰

¹⁸⁸ SCHMITTER & KARL, *supra* note 87, at 9.

¹⁸⁹ *Id.*

¹⁹⁰ Hashish, *supra* note 181, at 80.

¹⁹¹ *Id.* at 61.

¹⁹² *Id.* at 79.

¹⁹³ MASOUD KAMALI, *MULTIPLE MODERNITIES, CIVIL SOCIETY AND ISLAM: THE CASE OF IRAN AND TURKEY* 40 (2006).

¹⁹⁴ *Id.*

¹⁹⁵ ABOU EL FADL, *supra* note 103.

¹⁹⁶ THE FEDERALIST NO. 14 (James Madison).

¹⁹⁷ Hashish, *supra* note 181, at 79.

¹⁹⁸ Hashish, *supra* note 181, at 79.

¹⁹⁹ *Id.* at 66.

²⁰⁰ SCHMITTER & KARL, *supra* note 90.

IV. Conclusion: The Islamic Paradox and the History of Our Time: Is It the Fear of The Modern World?

Must Islam, or its clerics, be repressed for democracy to thrive? Not at all. Muslims already “separate law and government.” In theory, democracy can find success in Muslim countries if the government can convince the people, or at least the clergy, that it is the best form of government for reliably carrying out Shari’a. But then, what is the relationship between Islam and democracy, if not one of adversity? Perhaps, it is one of relative indifference. Perhaps, Islam is most compatible with whatever form of government the body politic believes upholds the principles of Islam. At the moment, democracy is affiliated with Western, non-Muslim countries.

Even worse, those Western countries are increasingly being seen as anti-Muslim. As long as Middle East populations view democracy in this way, its popularity will never rise to the level necessary for a successful future Arab Spring. Unfortunately, the fact that Morsi’s blunder was enough to end democracy in Egypt says more about the Egyptian people than its military. Likewise, the fact that the Syrian revolution was derailed by the rise of *da’esh* (ISIS) unfortunately means that democracy must answer to the politics of the broader Middle East, rather than of individual countries. If the events of the past decade are any indication of the future of democracy in the Muslim world, that future is bright, but the end is not near. Democracy will come slowly where it does come. Where monarchy and dictatorship currently have a strong foothold, that foothold will remain strong so long as autocratic leaders can continue to convince their faithful citizens that they are enforcers of the Shari’a, rather than autocrats making their own law.

Starting from within the Islamic political thought, in sum, our argument rests upon the fact that *shūrā* and *ijmā’* could be understood not as representative but as participatory democracy. First, the experience of the Prophet’s Medinese state must be reconsidered. In that society, *shūrā* was tantamount democracy as far as the Prophet was neither a king nor a pope.²⁰¹ Decisional processes were debated between the Prophet and the companions. The former suggested solutions; the latter paid their allegiance on the basis of a shared strategy.²⁰² This is commonly viewed in the battles and the wars of the Prophet (Badr; the Trench but also the “pact of *Hudaybiyya*”) when Muhammad was eager to hear the companions’ counsels, and is coherent with the famous *hadith*:

“O Messenger of Allah! What should we do if, after your demise, we are confronted with a problem about which we find anything neither in the Qur’an nor have anything from you?” He replied: “Get together amongst my followers and place the matter before them for consultation. Do not make decisions on the opinions of any single person.”²⁰³

Thus, *shūrā* is not “consultation” but participation into the decisional process—a sort of direct democracy.²⁰⁴ Furthermore, it is compelling to verify whether the concept of *shūrā* can pave the way to the realization of a democratic hegemony within the Arab-Islamic societies through the action of active political subjects. Being that Muslim civil society is weak and often oppressed by autocratical regimes, the directive role must be bestowed upon a renewed party which represents—

²⁰¹ CAMPANINI, *supra* note 114.

²⁰² *Id.*

²⁰³ SAYED KHATAB & GARY D. BOUMA, *DEMOCRACY IN ISLAM*, 35 (2007).

²⁰⁴ See generally MASSIMO CAMPANINI, *AN INTRODUCTION TO ISLAMIC PHILOSOPHY* (Caroline Higgitt trans., Edinburgh Univ. Press 2008).

in Gramsci's terminology—a hegemonic force.²⁰⁵ The Modern Prince ought to realize the “intellectual and moral direction” of society as participation in collective decisional processes, is a token of democracy.²⁰⁶ Accordingly, *ijmā'* is not “consensus”—which can be extorted by force, for example through the mass-media or the control of political institutions—but collective will as in Gramsci's attitude.²⁰⁷ This assertion assumes that the party is better than the movement and that Islamic movements ought to try to transform themselves into political parties. Islamization must be a process from below and not from above, and a party that practices hegemony is the best tool for realizing this aim.²⁰⁸

Eventually, it would be possible to grant a positive character to the Islamic state. The concept of *shūrā* and *ijmā'* as a participative democracy is useful as far as the ethics of Islam couples with the rationality of the state. In doing so, we go beyond the dichotomy of Ibn Khaldūn between the *mulk* and the *khilāfa*—the rational but oppressive power and the ethical state of revelation.²⁰⁹ *Shūrā* as a participative democracy fosters the “multitude” as synthesis—on the footsteps of Antonio Negri and Michel Foucault—of conflicting subjectivities.²¹⁰ *Shūrā* in this domain could represent an *absolute democracy* performing “the government of everybody for everybody but through all individuals.”²¹¹

Given the new functionality and political operability of the concept of the Islamic state—which involves not only radical movements but to a great extent the theoretical political elaboration of moderate Muslim intellectuals—it is opportune to consider some of its general features. In this regard, there comes to mind the thought of Antonio Gramsci, who pitched the diriment problem of *hegemony*. The political-social bloc between rulers and the ruled in the state implies a hegemonic discourse of ruling society.²¹² If to date this hegemonic discourse has seen the domination of one class over another (the bourgeoisie over the proletariat), it is now a question of identifying its articulations in a condition of (a) the collapse of ideologies and (b) the nonexistence of the opposition in classes.²¹³ Although it is no longer sovereignty but governmentality (as shown by Foucault) that dominates, the hegemonic problem of the moral (intellectual) and political leadership of society is nevertheless still extant.²¹⁴

The Islamic state could be featured according to Gramsci's analysis—in a negative sense—as follows: (a) that the state, even in the broadest meaning of integral state (political state combined with civil society) remains an instrument of class domination; (b) that the ruling groups have to exercise a certain degree of hegemony within civil society so that the subordinate groups consent to their subordinate position; (c) the dominant and ruling groups produce, organize, and protect consensus, exercising their hegemony; and (d) that law is fundamentally a coercive instrument aimed at directing civil society towards social conformism.²¹⁵ Foucault said, “[P]ower produces knowledge and through this knowledge governmentality is produced. i.e. the homogenization and

²⁰⁵ *Id.*

²⁰⁶ Thomas J. Butko, *Revelation or Revolution: A Gramscian Approach to the Rise of Political Islam*, 31 BRIT. J. OF MIDDLE E. STUD. 41, 59 (2004).

²⁰⁷ See generally Butko, *supra* note 206.

²⁰⁸ *Id.* at 59.

²⁰⁹ See generally Butko, *supra* note 206.

²¹⁰ ANTONIO NEGRI, *FABBRICA DI PORCELLANA: PER UNA NUOVA GRAMMATICA POLITICA* 117 (2008).

²¹¹ *Id.*

²¹² See Joseph Femia, *Hegemony and Consciousness in the Thought of Antonio Gramsci*, 23 POL. STUD. J. 29, 32 (1975).

²¹³ NEGRI, *supra* note 210.

²¹⁴ *Id.*

²¹⁵ See generally PETER D. THOMAS, *THE GRAMSCIAN MOMENT: PHILOSOPHY, HEGEMONY AND MARXISM* (2009).

consensus of all the social actors in the system of power in force.”²¹⁶ Thus, the issue of the state, as is essential in Gramsci, appears ingrained with that of civil society. The problem is to find an alternative. Gramsci spoke of the need by the subordinate class to produce counter-hegemony, i.e. to produce a historical bloc between popular intellectuals and the masses in order to produce a “hegemony of the proletariat.”²¹⁷ Accordingly, how is the concept of the Islamic state situated within this categorization? In this respect, Sayed Khatab mentioned:

As an Islamic state is not an end in itself but only a means that facilitates the ordinances of the law [*sharīʿa*] and manages the affairs of the people, [it is obvious that] the political ordinances of the *sharīʿa* do not prescribe a specific form to which an Islamic state must conform. Thus, there is not only one form of the Islamic state, but many, and it is for the Muslims of every period to discover the form most suitable to their needs. . . . As for the manner or the method of consultation [*shūrā*], no particular system or model has been specified, so its application is left to existing circumstances and needs. This consultation did not follow any established or formally defined system but left it to the Muslims to devise the best method or system of their age.²¹⁸

In this sense, the concept of class is replaced by the ecumenical concept of the *ummaḥ* (community of believers) understood today as citizenship.²¹⁹ The equality of all the believers is guaranteed by their being horizontally placed in front of God, who is the guarantor of justice and equity.²²⁰ Hegemony is reserved for the ‘*ulamā*’. This position is, however, full of danger as far as the people could be expropriated by the ‘*ulamā*’ of their rights of sovereignty.²²¹ Another risk is that of the charismatic rule of society; the emergence of a populist or demagogic leader. Consensus is delivered through the *shūrā* or consultation and can take either the form of a parliamentary government or the form of direct democracy through the annulment of the intermediate superstructures. (In a certain sense, this is the meaning of Gheddafi’s political experiment). Two Gramscian categories should be resumed and re-evaluated in relation to the *shūrā*: collective will (embodied in the party) and participatory democracy (in Gramsci the factory councils hegemonized by the workers’ organizations and the trade-unions).²²²

A central role is reserved for the Shari’a. However, what is important is to decide which law is in question and how to articulate it.²²³ In the more discerning elaborations, such as by the well-known ‘Abdullahi al-Na’im, or Khaled Abou el-Fadl, or even Tariq Ramadan, the Shari’a keeps its etymological value of “way” (i.e. of a founding reference of the normative system) but

²¹⁶ NEGRI, *supra* note 210.

²¹⁷ THOMAS, *supra* note 215 (The historical bloc would then have obtained its practical realization in the modern principle, i.e. in the political party.).

²¹⁸ SAYED KHATAB & GARY D. BOUMA, DEMOCRACY IN ISLAM 17, 35-36 (2007).

²¹⁹ See generally TARIQ RAMADAN, ISLAM, LA RÉFORME RADICAL [THE REFORM OF RADICAL ISLAM] (Fr. 2015).

²²⁰ CAMPANINI, *supra* note 114.

²²¹ CAMPANINI & HIGGITT, *supra* note 204.

²²² FEMIA, *supra* note 212, at 39.

²²³ David Shariatmadari, *Tariq Ramadan: ‘Muslims Need to Reform their Minds’*, GUARDIAN (Feb. 28, 2017), <https://www.theguardian.com/world/2017/feb/28/tariq-ramadan-muslims-need-to-reform-their-minds> [<http://perma.cc/994J-4RU6>] (“The academic believes Islam and the west shouldn’t be at odds, but was banned from the US and slated in the Sun. ISIS hates him, too – so why is he still dogged by controversy?”).

loses its regulatory nature, as laws are elaborated by humans to meet contingent human needs.²²⁴ The Shari'a is the cornerstone upon which the state is built, but it must be understood as a way and a path not as a normative system; Shari'a is the ideal foundation, not the practical realization.²²⁵ Rather, the normative system is the outcome of human activity, not of divine intervention, although revelation, the Qur'an and *sunna*, are the compulsory references of the legal, social, and political praxis.²²⁶

Going back to the initial question posed in the introduction of this piece, What is the most "true" Islam? The important point is not to pick a specific version and declare it representative of the entire religion, but rather to simply make sure it is coming from a place of knowledge and understanding of the complexity behind the legal history. The answer is that the "true" Islam is one that is similar to Judaism; it is a complex legal code developed over hundreds of years in order to provide individuals with a structured way to justly live life.

Why hasn't democracy had an easier time in the Muslim world? This question, posed at the start of this article, has a disappointing answer. Democracy is no more favorable than anything else that is not a Caliphate. In other words, democracy has not had an easier time because it is not necessarily more compelling to religious Muslims than the current system, so long as that system preserves local autonomy and communities that otherwise govern themselves according to the principles of Shari'a. Those content with the government they have will not fight for something else. Moreover, with the Caliphate being the ideal system in theory, those most likely to fight (i.e. young energetic men or youth) do not necessarily view democracy as the system worth fighting for, if the fight is for a system more friendly to Islam. Finally, and we suspect this will occur on its own, we think the increasing population of moderate Muslims in Western countries should be encouraged because it will breed understanding. Many times, it is easier to hate or dislike a religion or a group of people from afar, but harder to do when you are friends or co-workers with those same people.

²²⁴ See generally TARIQ RAMADAN, *LES MUSULMANS D'OCCIDENT ET L'AVENIR DE l'Islam* [WESTERN MUSLIMS AND THE FUTURE OF ISLAM] (2004).

²²⁵ *Id.*

²²⁶ See generally ABDULLAHI A. AN-NA'IM, *ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A* (2008).