Challenges with Studying Islamist Groups in American Political Science

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Abstract

In this paper, I will explain why the lack of debate between political theory and comparative politics has led to an inadequate understanding of the politics of traditional Islamic scholars and Islamists in American political science. In the first section, I analyze the impact of the text-based approach of political theory; in the second, of the liberal frameworks of comparative politics; and in the third, a promising new development: the interdisciplinary field of Islamic legal studies, which has the potential to bridge the division between political science, law, and area studies approaches to the study of Muslim societies. I argue that

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Khan, Tabinda M. 2022. "Challenges with Studying Islamist Groups in American Political Science." *American Journal of Islam and Society* 39, nos. 3-4: 112–141 • doi: 10.35632/ajis.v39i3-4.3085

the reliance of political theorists on seminal Islamist texts, rather than on the interpretations of texts during legal and political processes, limits their ability to represent the evolution of pragmatic Islamist theory in countries such as Pakistan. Moreover, whereas political theorists, such as Lucas Swaine, have demonstrated the futility of applying liberal assumptions to theocrats, comparativists continue to predominantly rely on liberal categories and frameworks, which produces a distorted view of Islamists. The division of labor between political theory and comparative politics, and the lack of conversation that results from it, makes it difficult—if not impossible—to fairly represent or analyze contemporary Islamist groups in American political science.

Introduction

In many Muslim-majority states today, there is a tension between Islamist demands for sharia compliance and secular conceptions of individual rights. Now, more than ever, rigorous analyses of political institutions in Muslim societies are needed to develop the intellectual resources for toleration, democracy, and pluralism. However, the rich and nuanced knowledge about Islam that is developed in history, religion, and anthropology departments is rarely transferred to political science.[1] This is partly because the institutional matrix in which the discipline is embedded—poised as it is between the United States government, public policy think-tanks, and mainstream media—imposes a framework of debate rooted in U.S. foreign policy interests. However, it is also partly due to the methodological peculiarities of the discipline of political science itself.

American political science has historically regarded itself as a social science, rather than as a humanistic discipline, but in recent decades, it has increasingly become dominated by rational choice models, game theory, and statistics. From 2000 on, the "Perestroika movement" criticized the American Political Science Association (APSA) and its journal, the *American Political Science Review* (APSR), for privileging such methods over qualitative research—a criticism that remains relevant for the discipline today.[2] This trend in political science has relegated historical studies

of religion to the margins of the discipline or excluded them altogether. Moreover, while comparativists strive to construct models using systematic comparisons and empirical evidence, the assumptions of these models are rarely formulated in conversation with political theorists who study moral and political philosophy. The conjunction of these two factors makes it difficult to study Islam through a comparative politics lens without superimposing liberal frameworks and assumptions, an activity that invariably devolves into a measurement of to what extent a Muslim voice is "liberal" and therefore "good." At the same time, political theorists tend to analyze seminal texts written by Islamist thinkers, such as Mawdudi, rather than tracing the evolution of their ideas in the context of political practice or examining the ongoing interpretation and reinterpretation of these ideas inside contemporary political and legal institutions.

Due to the text-based approach of political theory, Islamist thinkers appear static and dogmatic, and due to the liberal framework undergirding comparative politics, it is impossible to represent their moral reasoning in their own words. Even though political theorists, such as Lucas Swaine, have questioned the efficacy of using liberal reasoning to persuade theocrats, such critiques have had little impact on the dominant methodological frameworks used by comparativists—as theorists mostly talk to theorists, and comparativists to comparativists (with some exceptions).[3] The problem, then, is not so much that all Islamists are "static" and "bad" but that American political science's methodological lenses are "text-based" and "liberal". This is not an argument for moral relativism, as there are good reasons for regarding liberalism, particularly constitutional liberalism, as more ethical than illiberalism. However, it is to say that unreflective categorizations of groups as liberal or illiberal eclipse the moral and political critiques of liberalism by non-liberal groups, which have much to teach us about how liberal arguments were historically received in Muslim societies, refracted through the prisms of class, religion, and western imperialism and colonialism.

When the ulama (traditional Islamic scholars) and Islamists in Pakistan rail against liberalism, for example, they are not reacting to *constitutional* liberalism per se but either to "a democracy without [ethical or religious] limits" (which I discuss in the third section below) or to what Jennifer Pitts

has described as the *imperial* liberalism of the 19th century, through which the civilizing narrative was used to classify colonized subjects as morally inferior and therefore incapable of self-governance.[4] This authoritarian impulse of liberalism was displayed by state, legal, and intellectual elites in Pakistan—as well as by allied Muslim modernist reformers—whenever they argued that it was justified to coercively "modernize" Islam through the state because the Islamic tradition was "stagnant" and its scholars "obscurantist".[5] According to this line of thinking, which was articulated by individuals who often called themselves liberal or allied with human and women's rights groups, traditional Islamic scholars could be ignored because they were "obscurantists".[6]

To understand why the word "liberal" carries such a negative valence in Pakistan, as well as in many other Muslim-majority contexts, we need to understand how liberalism was interwoven with imperialism and the colonial episteme, through which knowledge traditions, such as sharia, were in Kugle's words, "framed, blamed, and renamed".[7] So long as liberalism remains the hegemonic methodological lens through which political scientists look at other contexts—and so long as critiques of liberalism developed by political theorists are not absorbed into comparative politics—the discipline of political science can neither adequately represent this problem, nor devise institutional solutions for it.

In this paper, I will explain why the lack of debate between political theory and comparative politics has led to an inadequate understanding of the politics of traditional Islamic scholars and Islamists in American political science. In the first section, I analyze the impact of the text-based approach of political theory; in the second, of the liberal frameworks of comparative politics; and in the third, a promising new development: the interdisciplinary field of Islamic legal studies, which has the potential to bridge the division between political science, law, and area studies approaches to the study of Muslim societies.

1. Text-based Approach of Political Theory

While most debates in political theory are centered on the philosophy of liberalism, it is the subfield of American political science that is most

open to engagement with rival philosophical perspectives. However, even when political theorists take a comparative approach, they tend to analyze seminal texts rather than practical reasoning within institutions. For instance, Mawdudi's political theory is studied through his early essays and the Muslim juristic tradition (fiqh) through juristic texts, rather than through speeches, essays, or interviews in which thinkers explain the principles underlying their decisions, in the context of political struggles, or through case judgments in which juristic texts are interpreted alongside other sources of law.[8] The unstated assumption that the ulama and Islamists can be understood through texts—rather than being actors for whom text and context are co-determined and co-evolving—can also be seen in the work of comparativists such as Vali Nasr. For Nasr, the Jamaat-e-Islami's advocacy for the restoration of democracy in Pakistan, in opposition to authoritarian Islamization, was a "pragmatic" choice made in resistance to the "constant lure of ideology".[9] This same choice could, however, be interpreted as an ongoing adaptation of moral and political theory to practical needs—or as praxis—if we accept the possibility that "interests" and "ideology" are not a binary choice for Islamists, as for other groups, but mutually constituted.[10]

When it comes to the study of Islam, the division of labor between subfields in American political science (which requires comparativists to focus on action and political theorists to focus on texts) is not only counter-productive but dangerous. It runs the risk of perpetuating the Orientalist assumption that society can be understood through texts and that texts can be understood apart from social practices of interpretation.[11] As I show later in this paper, Mawdudi developed a principled justification for adapting his theory to the needs of Pakistan's political context. This was not an abandonment of ideology, as Nasr may have argued, but an *evolution* of ideology, as the application of principles to practice was continually debated and reworked during political struggle.

In *Political Liberalism,* Rawls argued that an ideal liberal political conception would result from an "overlapping consensus" between adherents of different "comprehensive doctrines of the good", who would give normative allegiance to the constitutional order for reasons "internal" to their own doctrine. In a pluralistic society, this conception

had to be "free-standing" from any particular comprehensive doctrine of the good—such as religion—because if it were embedded in any one doctrine, there would be an interminable exchange of mutually unacceptable reasons between citizens: public deliberation would break down and become impossible.[12] Several moral and political theorists have disagreed with Rawls about whether the proper units of analysis are individuals or ways of life,[13] whether reason is "free-standing" from notions of the good or embedded in moral traditions,[14] and whether individuals can be said to choose freely among beliefs or if they are socialized into worldviews and ways of thinking that constrain their horizon of options.[15] The comparativist Alfred Stepan, too, resisted the idea that religion must be taken "off the political agenda" in public debates and insisted on the "twin tolerations" of religion and democracy.[16] Many such critiques of Rawlsian liberalism, however, were structured as a defense of religion in public deliberation rather than as a considered analysis of how religious debates actually worked in Muslim politics (Nathan Brown's *Arguing Islam* is a welcome exception to this trend).[17]

A notable dissenting work in political theory is Lucas Swaine's *The Liberal Conscience*, in which he argues that the only plausible way to persuade theocrats—that is, groups that regard the enforcement of religious law as obligatory—of the merits of liberal institutions is to construct an argument based on the freedom of conscience.[18] Swaine argues that liberals, to be true to the liberal principle of non-coercion, must formulate arguments in favor of liberal political institutions that theocrats could accept from the perspective of their own moral framework. An implication of his argument, which is broadly situated within the tradition of deliberative democracy, is that liberals must give theocrats reasons *internal* to their moral framework during lawmaking and, in some conditions, allow them territorial or legal autonomy within liberal states where they constitute a minority. However, even Swaine's book is intended to justify why religion should even be allowed "on the political agenda" in liberal polities—a premise that is not readily accepted in mainstream western political theory. This makes it difficult to study the politics of Islamic debates, which are often nuanced, complex, and fine-grained, within the academic tradition of western political theory.

Since the late 1990s, a new field of comparative western and Islamic political thought has emerged in north American political science. Exemplified by Roxanne Euben's *Enemy in the Mirror: Islamic Fundamentalism and the Limits of Modern Rationalism*, it remains at the margins of political theory and, like the rest of the sub-field, is confined to the study of texts, rather than to the analysis of their interpretation inside contemporary Muslim legal and political institutions.[19] Comparative political theory puts western political theory in conversation with non-western traditions. Lucas Swaine, in effect, provides a justification for why liberal philosophers in the center ought to embrace this kind of in-depth study of non-western moral traditions. However, by focusing primarily on the seminal texts of Islamist thinkers, such as Mawdudi, comparative political theorists can inadvertently divert attention from the fact that he modified his original theory during Pakistan's early constitutional negotiations and during his later struggles against opponents. For instance, Euben and Zaman have criticized Mawdudi's early vision of an Islamic state for neglecting institutional checks on a ruler's power, the absence of which could lead to absolutism:

> Mawdudi showed little interest in the institutions and mechanisms through which the ruler's power might be kept in check. But then, to Mawdudi, there was no real danger that the ruler would misuse the authority and power vested in him, for his virtue and piety—to which he owed his position in the first place—would keep him perennially mindful of his accountability to God…It is, however, a short step to despotism in the name of religion…[20]

I agree with Euben and Zaman's interpretation of Mawdudi's early utopia, as it certainly has the potential for despotism and totalitarianism. However, it was a utopia. From 1948, as Mawdudi became active in Pakistan's constitutional struggle, he developed a theoretical justification for why parliamentary democracy and individual rights were acceptable from an Islamic perspective—so long as the constitution guaranteed sharia compliance through courts.

While Euben and Zaman consulted a wide range of texts by Mawdudi that span his entire career and lifetime, the text chosen for inclusion in their edited reader of Islamic political thought is Mawdudi's "The Islamic Law", which is a theoretical justification rather than a commentary on the specific features of institutional design.[21] Classes on Islamic political thought are a welcome addition to the north American political science curriculum, to be sure, but given the general preoccupation of political theory with texts rather than arguments during the course of political struggle, only studying seminal Islamist texts by Mawdudi and Qutb could lead people to draw dangerous conclusions about Islamist participation in democracy.[22] I will briefly explain how Mawdudi's ideas changed, in reaction to his political environment and to debates with the ulama and others, in order to illustrate how a focus on texts (as opposed to action, or to texts-interpreted-during-action) can be misleading.

After Mawdudi first outlined the contours of his Islamist utopia, he spent years participating in politics, explaining his ideas to modern-educated Muslims, and suffering from the excesses of a predatory state. From the early 1950s, the Jamaat-e-Islami developed a body of praxis-oriented theory that was a meditation on Islamic constitutionalism in Pakistan—a hybrid of sharia, democracy, and individual rights—and far from his original utopia. Mawdudi experienced firsthand the dangers of unrestrained executive power when he spent 20 months in jail, from 1948-50, due to the Punjab Public Safety Act, which in Khurshid Ahmad's words was "a law where the imprisonment of a person is ordered by the Provincial Executive without even letting him know the charge against him."[23] By May 1952, Mawdudi had expanded his 4-point formula for a sharia-compliant constitution to 8 points, including the following demands: "(5) That none of the basic civic rights of the people—security of life and property, freedom of speech and expression, and freedom of association and movement—shall be forfeited except when a crime has been proved in an open court of law after affording due opportunity of defence; (6) That the people shall have the rights to resort to a court of law against transgressions on the part of the legislative or the executive machinery of the State; (7) That the Judiciary shall be immune from all interference from the Executive; (8) That it shall be the responsibility

of the State to see that no citizen remains unprovided for in respect of the basic necessities of life, viz, food, clothing, shelter, medical aid and education."[24] Experiences with executive excess, particularly with military authoritarianism, continued to shape Mawdudi and his associates.

Since as early as February 1948, Mawdudi had insisted that the constitution of Pakistan recognize sharia as "the inviolable basic code for all legislation" and that the government's powers be "derived from, circumscribed by and exercised within the limits of Islamic Shariʿah alone."[25] Constitution-drafters at first insisted on the sovereignty of parliament but conceded that perhaps a state council of ulama, later converted to the Council of Islamic Ideology (CII), could be created to advise parliament on how to make laws Islamic. Mawdudi then developed an institutional demand that was midway between what Islamists wanted and what politicians were willing to concede. From May 1952, he had abandoned the claim, mentioned in his political theory of an Islamic state, that the Head of State have the right to interpret sharia (rather than the ulama or people), and had adopted the argument, first suggested by Muhammad Asad, that the Supreme Court have the authority to review legislation for its repugnancy to sharia. (He had already accepted elections and limited legislation by parliament).[26]

Not only did Mawdudi's ideas about institutional arrangements evolve but he also emphasized the need for an independent judiciary and reform in the law of preventive detention. In 1953, after the eruption of riots targeting the Ahmadi community, Mawdudi, who had written the pamphlet *The Qadiani Problem*, was given a death sentence by a military court.[27] The judges appointed to inquire into the cause of riots released a report in 1954 that did not offer the ulama and Islamists reasons internal to the Islamic tradition for why Ahmadis should not be declared non-Muslim in the constitution.[28] This report had caricatured the ulama and bypassed their tradition entirely, relying on citations from the Quran to support arguments. Rather than countering the arguments of Mawdudi and the ulama with counter arguments that could be accepted by traditional Islamic institutions, state elites relied on repression. Ultimately, Mawdudi's death sentence was commuted, and he was released in 1955.

In his comments on the 1956 draft constitution, however, he now emphasized the need to reform the law of preventive detention, which he argued was even worse than that found in India. He said that "in our Islamic republic, which should have been more liberal and just than a non-Islamic state", a person could be detained without trial and the chance to defend himself, which "is the very negation of justice."[29] He contrasted the 1956 draft constitution of Pakistan, which allowed "any restrictions" on civil liberties, including the freedoms of speech, assembly, and association, with the Indian constitution, which allowed only "reasonable restrictions."[30] Moreover, he also criticized the clauses that gave the President, elected indirectly by the national assembly and senate, the authority to dissolve the national assembly and dismiss the Prime Minister. He wrote:

> This is obviously the way of dictatorship and not of democracy… Any scheme which gives so much power in the hands of a single individual is absolutely unjustifiable and cannot be tolerated even for a single moment…an ambitious President with the support of a few ambitious highups in the services of the country can at any time turn the Cabinets and the Assemblies into mere playthings.[31]

Similarly, he opposed the exemption of military courts from Supreme Court jurisdiction, as well as the authority given to the President to impose an emergency, suspend fundamental rights, and prevent redress through the Supreme Court. Mawdudi pleaded with representatives for restraints on executive power—a point that was a complete about-turn from his original political theory of an "amir" who would be responsible for enforcing sharia (with potentially dictatorial powers):

> Have the Hon'ble Members of the Constituent Assembly presumed that angels alone will be elected to the Presidentship of the country and that none throughout the country excepting the President—not even the Central Ministers, nor any of the 300 members of the National Assembly, nor the Judges of the Supreme Court—can be trusted in times of emergency?

> If the Hon'ble Members of the Constituent Assembly really hold this opinion about themselves and their nation what is the necessity of staging this show of democracy? The best thing in this case would be to just elect some angel as President and entrust to him with full confidence all the judicial, executive and legislative powers for life and then beseech him to nominate another angel to succeed him after his death.[32]

From this background, we can see why it can be dangerous to teach American students only seminal Islamist texts, without juxtaposing them with other texts written during political struggles, texts that reflect the reconsideration of ideas in light of changing circumstances and personal experience. The core principle to which Mawdudi, and many other Islamists, remained committed was sharia compliance—not dictatorship. Therefore, a change in their ideas on how best to attain sharia compliance, given the institutional contours and history of a particular state, need not be a deviation from, or a moderation in, their ideology. It can signal an ongoing commitment to interpret and apply principles, in light of experience, rather than to rigidly adhere to a predetermined interpretation of texts heedless of changes in society and politics. The latter is a premise imposed on the study of Islamist thought by the methodological peculiarities of our discipline. It needs to be rigorously examined and contested.

2. Liberal Frameworks of Comparative Politics

On one hand, political theorists focus on the texts of Muslim thinkers to understand their values; whereas on the other hand, comparativists study the political processes of Muslim societies but through the lens of liberal values. The current division of labor in political science neither allows comparativists to generate political theory that can be used as a methodological lens to analyze the experience of Muslim societies nor to use insights from the field to contribute to debates in political theory. With the notable exception of Mona El-Ghobashy's work on the evolution of the Muslim Brothers in Egypt, many comparative politics analyses

of Islamists have a tendency to devolve into an exercise in measuring how far Islamists are from a liberal benchmark, rather than showing the complexity of who they are in a way that does justice to their experience.[33] After 9/11, a considerable literature on Islam and democracy was generated in comparative politics, of which Alfred Stepan's argument for the "twin tolerations" of religion and democracy was particularly influential.[34]

As mentioned earlier, Stepan disagreed with Rawls that in a liberal democracy it was necessary to "take the truths of religion off the political agenda."[35] To support his argument, he pointed to the experience of consolidated democracies in the west where "democratic bargaining" between religious and political actors, rather than "liberal arguing", was crucial in crafting the "twin tolerations" of religion and democracy. Using the case of leading Islamist parties in Indonesia, Stepan argued that "public theological debate" could help generate public commitment to democracy. He cited the argument made by leaders of one of the most influential Islamist parties in Indonesia, the Nahdatul Ulama, that the concepts of "ijma" (consensus) and "ijithad" (independent reasoning) in the Muslim juristic tradition could be realized through modern parliamentary institutions. Neither of the two parties in Indonesia that Stepan cited, NU or Muhammadiyah, was demanding a sharia-based state.

As there are a few crucial differences between Indonesia and other cases such as Pakistan and Afghanistan, Stepan's optimism can be unfounded. First, in Indonesia, modernist scholars have organized a grassroots movement (NU). When they make arguments linking concepts drawn from the Muslim juristic tradition (fiqh) such as "ijma" and "ijtihad" to modern parliamentary institutions, they are able to generate tangible social and electoral support for these ideas. Similarly, in Turkey, the authoritarian regime of Mustafa Kemal inherited a centralized bureaucracy that controlled religious institutions and was able to impose a modernist interpretation of Islam (which entailed the idea that that the "essence" of Islam were its ethical teachings while the juristic tradition was non-binding).[36] A survey of the attitudes of Turkish citizens towards sharia revealed that they viewed Islam as a source of ethics and regarded sharia-based laws as a non-essential or optional feature of the religion.[37]

Contrary to Indonesia, modernist scholars in Pakistan have not organized a grassroots movement; so when they make a theological argument that goes against the consensus interpretation of Deobandi or Barelvi madrasa-educated scholars, it is the latter group that prevails due to its institutional power. Unlike Mustafa Kemal in Turkey, military rulers in Pakistan in the 1960s and 2000s were unable to impose a modernist interpretation of Islam on grassroots Islamic institutions, even though they appointed modernist scholars to the Council of Islamic Ideology. The Mughal Empire did not have as strong and centralized a religious bureaucracy as the Ottoman Empire and legal reforms by the British Indian colonial state in the mid-19th century further broke the links between the state and Islamic institutions. To this day, mosques and madrasas remain autonomous from the state. Moreover, madrasa-educated ulama participate in the democratic process through ulama-led parties. This constrains the ability of rulers in Pakistan to coercively impose a modernist interpretation of Islam, as was done by Mustafa Kemal in Turkey. Stepan focuses on modernist arguments in Indonesia, perhaps because doing away with the demand for state-enforced sharia seems a straightforward way to reconcile Islam with liberalism. However, his assumption that modernist arguments would be as acceptable a basis for institutional design in Pakistan, as they are in Indonesia, is unwarranted.

Second, in their volume *Democracy and Islam in Indonesia* (2013), Kunkler and Stepan contrast the NU and Muhammadiyah (which they believe generated "a consensus supportive of democracy" before Indonesia's transition) with the Egyptian Muslim Brothers (which in their opinion "ha[d] not undergone a comparable change"). Among the evidence they cite is a "suggestion" on the Muslim Brothers' website that "Parliament have all of its laws reviewed by a court of Islamic judges, thus limiting parliamentary power".[38] This is precisely the institution of Islamic judicial review that the ulama and Jamaat-e-Islami in Pakistan proposed, negotiated, and adapted during its early constitutional struggle. While Kunkler and Stepan's analysis may explain the situation in Indonesia, it is a mistake to regard Islamic judicial review as inherently irreconcilable with democracy or to define "modernism" as the "moderate" Islam, as the Turkish writer Mustafa Akyol did in his book *Islam*

without Extremes. As Akyol's book was featured in the CNN program GPS with Fareed Zakaria, it was widely disseminated in the American public sphere—further spreading the idea of a "good" Islam compatible with liberalism and a "bad" Islam hostile to it.[39] Pakistan's Jamaat-e-Islami is far closer to the Egyptian Muslim Brothers in its ideology than to the Indonesian parties that Stepan has analyzed. Jamaat-e-Islami has been unrelenting in its demand for a sharia-based state because it, and the ulama parties that are affiliated with grassroots Islamic institutions, regard the enforcement of sharia as a religious obligation—not a choice. They are traditionalist Muslims, not modernists.

In Pakistan, Islamist and ulama parties view sharia as a core feature of Islam. They understand sharia through the Muslim juristic tradition (fiqh), which modernists, such as Akyol and 19th century reformers before him, such as Chiragh Ali in India, dismiss as "medieval" scholarship colored by Arab customs that is no longer applicable or binding for contemporary Muslims. Leaving aside the question of whether the idea of a modern sharia-based state is itself a contradiction in terms (as Hallaq argues in *The Impossible State*), a study of their practical role in Pakistani politics shows that even if groups demand sharia-based laws – even if they demand a sharia-based state and are unrelenting in their struggle for it – this does not mean that they are "immoderate" or "anti-democratic." Rather than being inherently anti-democratic, the mechanism of Islamic judicial review can potentially help achieve a *modus vivendi* or settlement between Islamism and liberalism in a democracy by allowing for "authentic deliberation" i.e., the exchange of "reciprocal reasons" with civility and respect.[40]

Moreover, it is dangerous to assume that modernist Muslim scholars, who can more easily justify assimilation to liberal and western values due to their willingness to overturn the consensus opinions of Muslim jurists, are the only kind of "moderate" or "democratic" Muslim group. This conflation is frequent in North American policy discussions and is difficult for lay audiences to detect. It is perpetuated in comparative politics because comparativists do not possess the methodological framework to represent non-liberal Muslim thinkers and groups on a fair footing—frameworks that don't pathologize them as deviants. If

a Muslim group can be more readily represented in liberal language or measured along a liberal yardstick, it is more likely to be categorized as good. This is not always the case, as Muslim modernist scholars in Pakistan, such as Fazlur Rahman and Javed Ghamidi, have advised military regimes who diverted attention from their subversion of democracy and violations of human rights by decreeing Islamic legal reforms presented as "progressive" and "pro-women".[41] General Musharraf, in particular, seized the banner of "Enlightened Moderation"—playing on the perception in U.S. policy circles that traditionalist Muslims were extremists and obscurantists—to justify his regime and gain the support of Pakistani women's rights groups and the liberal intelligentsia.

Vali Nasr, who has written books on Mawdudi and the Jamaat-e-Islami, and is active in policy circles in Washington, repeated this pattern when he drew a distinction between Pakistan's center-right Muslim League, describing it as a symbol of "Muslim democracy," and the Islamist Jamaat-e-Islami, which wants a sharia-based Islamic state. He argued that the Muslim League's diffuse Islamic populism was a better model for the co-existence of Islam and democracy than a principled commitment to sharia.[42] Nasr neglected to mention that the Muslim League, led by Nawaz Sharif, sponsored the Sharia Bill in 1998, a constitutional amendment that declared the Quran and Sunnah the supreme law and gave the federal government the authority to issue directives in this regard. This amendment was initially criticized by members of the Islamist Jamaat-e-Islami as well as the Jamiat-e-Ulama-e-Islam (F), the largest party of Deobandi ulama, because it could lead to the abuse of power. Mawlana Sheerani railed against the Bill in the National Assembly:

> …the purpose of amending Article 239 will be that the constitution will become an ordinary law and you will not have an effective document in light of which there can be public oversight of the government. And the government will be all in all. This means that you superimpose the administration on both the parliament and the judiciary that however the administration wants, it can trample the parliament, trample the judiciary, and in this way this country be destroyed.

> Sir Speaker! It is said that we are doing this for the supremacy of the Quran and Sunnat. Isn't the Quran above this constitution? Isn't it sacred? But…this constitution of yours, this is a treaty with the four units…If you remove this treaty from the middle then you will be unable to save the country. Therefore, do not misguide people in this way that taking the name of the Quran and Sunnat you achieve your interests from them…Let me clarify that the Jamiat-e-Ulema Islam will not accept the Fifteenth Amendment in this form and will decide against it.[43]

Similarly, in the Jamaat publication *Weekly Asia*, a writer argued that Sharif's Bill was a pretext for establishing a dictatorship:

> When in the name of shariat enforcement all the authority is given in the hands of the Federal Government, then this will open the way for the establishment of dictatorship and personal supremacy. It is true that shariat is the same for the federation and the provinces, but it is better to adopt the method of division of powers, according to the Federal Constitution, for the steps, guidance, and powers related to its enforcement, rather than giving the leader of the Federal Government the sword which he can keep using wherever and whenever he wants. These days rulers have become accustomed to the politics of revenge and interests and are generally lacking in honesty and integrity. If power is concentrated in their hands, then this will prove to be a source of brutality instead of justice, and dictatorship instead of Shariat.[44]

The contrasting categories with which the author closes the passage, "dictatorship instead of Shariat", are instructive. In this context, we can see that the danger that Mawdudi's utopia would lead to a religious dictatorship, which political theorists still highlight when they analyze seminal Islamist texts, was no longer coming from his party, as it had evolved in its thinking and also lacked the necessary electoral and social power. The danger was posed by a mainstream center-right party, whose

"Islamic populism" comparativists such as Vali Nasr extolled based on the assumption that a party that does not demand sharia can be more easily assimilated to a liberal democratic framework. Once again, the gap between the study of political theory and that of Muslim political institutions, coupled with the insulation of comparative politics from political theory, leads to conclusions that are misleading.

As I recounted earlier, since the 1950s, the Jamaat-e-Islami has demanded sharia-based laws but also a division of powers, democracy, an independent judiciary, and the reversal of colonial laws of preventive detention. In the 1980s, the party benefited from General Zia's Islamization campaign and its student wing entrenched itself in public universities, acting both as a moral police and as a check on leftist groups that resisted martial law. However, women's rights groups and modernist scholars also collaborated with the military ruler Ayub Khan in the 1960s and Musharraf in the 2000s to have their own interpretations of state Islamic laws decreed. Nearly every Pakistani political party has at one point or another negotiated power-sharing with the military; Islamist and ulama parties are not an exception to this rule. However, unlike the Muslim League, the Islamist Jamaat-e-Islami has a well-developed body of theory about why sharia-based laws were necessary, a record of how leaders such as Mawdudi adapted this demand to fit the constitutional and legal framework that Pakistan inherited from the British,[45] and an institutionalized party structure, requiring turnover in leadership. It is a mistake to label the "Islamic populism" of the Muslim League as "moderate," as Vali Nasr does, merely because it does not entail the demand for sharia enforcement.

The case of Pakistan shows that traditionalist Muslim groups, whether Islamist or ulama-led, can participate in democracy, and indeed develop a strong commitment to it—conditional on the institutional accommodation of their demand for sharia and their form of moral argumentation—within the constitutional democratic framework. That is, even in tough cases, it is possible for Islamism and liberalism to co-exist in a constitutional democracy (particularly, as there is the potential for an "overlapping consensus" between fiqh and liberal citizenship, as Andrew March argues). Therefore, Pakistan, rather than Indonesia, can give us

important insights about accommodating groups that are unrelenting in their demand for a sharia-based state within a democratic framework in which secular individual rights are also protected. Pakistan is perhaps one of the toughest cases for this argument because of the Pakistan Army's role in organizing the Afghan mujahideen against Soviet forces, using covert CIA funding, which significantly increased the power of Deobandi ulama both in Pakistan and Afghanistan.

Since the mid- to late-1990s, mainstream ulama and Islamist parties in Pakistan pursuing their demands within the constitutional framework have been accompanied by militant groups calling for an overthrow of the constitutional order and the enforcement of sharia by force. These calls for violence only intensified during the U.S. occupation of Afghanistan and the War on Terror. Electoral religious parties were able to counter the arguments of militants precisely due to the modus vivendi arrangements that had taken shape by the 1980s: (a) Islamic judicial review by the Federal Shariat Court and the Supreme Court Shariat Appellate Bench, (b) a good faith effort by judges to engage with the juristic tradition (fiqh) when exercising Islamic judicial review, and (c) the constitutional right to pass sharia-based laws through parliament. It is impossible to understand the role of the ulama and Islamists in Pakistani politics, or in the politics of Muslim societies in general, without examining legal scholarship on contemporary applications of sharia. The field of Islamic legal studies in American universities is not only necessary for political scientists studying Islam to be acquainted with but also has the potential to bridge the divide between political theory and comparative politics, poised as it is between political theory, religion, and law. It is centered on studying the interpretation of texts within institutions, which is precisely the frame needed to understand the ulama and Islamists.

3. The Field of Islamic Legal Studies as a Bridge

The Deobandi ulama and Islamists tend to associate the term "liberal" with a *madar pidar aazad jamhooriyat* ("a democracy free of mother and father"), which roughly translates to "a democracy without limits" or a live-and-let-live, laissez-faire, free-for-all attitude towards politics,

and in turn, collective ethics. This is anathema to them. Their disdain for this brand of liberalism, however, is accompanied by a commitment to Islamic constitutionalism. According to several legal scholars who have studied Pakistan, such as Martin Lau and Karin Yefet, the constitutional provisions related to Islam and individual rights have not only co-existed but worked in a mutually reinforcing way.[46] In an article on Justice Cornelius's growing support for legal Islamization, as a means to strengthen liberal constitutionalism, Clark Lombardi explains why this combination is not as paradoxical or unexpected as it would seem.[47]

It is important for political scientists to consider the possibility that deep-rooted support for constitutional democracy among religious parties in Pakistan has been possible precisely because its constitution recognizes sharia compliance as an obligation—in addition to democracy, individual rights, and non-discrimination on the basis of sex alone. In this case, the liberal-Islamist conflict would be less a clash of irreconcilable ideas or civilizations than a practical question of the kinds of institutions that could accommodate the disparate touchstones for political legitimacy found in the Muslim juristic tradition (fiqh), on one hand, and liberalism, on the other: i.e., "sharia compliance" versus "the consent of the governed."[48]

The case of Pakistan confirms Lucas Swaine's argument that a plausible defense of liberal institutions to theocrats could be an argument based on the freedom of conscience.[49] Common law judges and ulama judges were able to achieve an accommodation between fiqh-based and rights-based demands through "internal" or "reciprocal" reasoning and mutual respect.[50] The liberal principle that political legitimacy derives from the "consent of the governed" and the ulama's belief that enforcing sharia is an obligation on rulers can be bridged by a principle shared by both traditions: freedom of conscience, which in the Deobandi ulama's tradition is expressed in the principle of toleration between Muslim sects. Mawlana Thanwi's maxim, "don't leave your maslak and don't interfere with the maslak of others" (*apna maslak choro nahiN, doosray ka maslak chero nahiN*), is frequently cited by influential ulama. It is what allowed the ulama of different sects—Deobandis, Barelvis, Shia, and Ahl-e-Hadith—to make a joint demand for an Islamic constitution.[51] They agreed that each sect was entitled to live by its own interpretation of sharia.[52]

Current methods in mainstream political science do not allow us to see these institutional pathways to toleration and democracy because of the separation of political theory from comparative politics, as well as political science, as a whole, from Islamic and area studies departments. A promising new development is the emergence of Islamic Legal Studies programs at American universities, which are encouraging interdisciplinary collaboration between scholars of Islam and the Islamic legal tradition, on one hand, and lawyers and political scientists, on the other. Legal scholars such as Asifa Quraishi-Landes, Intisar Rabb, Clark Lombardi, and Noah Feldman are prominent in this emerging field, although it does not yet have much integration with, or traction in, mainstream political science.[53] Within the niche of comparative political theory, however, Andrew March is notable for his engagement with Islamic legal scholars, both through his study of Muslim juristic texts and through professional conferences and workshops.[54] Whereas March explores the potential for an "overlapping consensus" between the Muslim juristic tradition (fiqh) and Rawls' conditions for liberal citizenship, Intisar Rabb studies the institutions through which fiqh is accommodated in a legal system and the relationship between the state and jurists.[55] These two parallel literatures may still be speaking to political theorists and lawyers respectively, bound as they are by the conventions of professional publications in their disciplines. However, these scholars have been in conversation in inter-disciplinary spaces—a conversation in which the text-based approach of political theory is counter-balanced and complemented by the institutional focus of the law. This is the combination that is needed to adequately represent the moral-epistemic concerns of Muslim jurists (*fuquha'*) and Islamists when analyzing their political role in Muslim societies.

For instance, when contributing to debates on Islamic constitutionalism—and to comparative constitutional law more broadly—Rabb takes an approach that meets the rigor of comparative politics yet avoids the pitfall of uncritically reproducing liberal paradigms as benchmarks. In her study of Iraq, Rabb divides Islamic constitutionalism into three types, based on the relationship between the state and jurists:

> *dominant constitutionalization*—where a constitution explicitly incorporates Islamic law as the supreme law of the land; *delegate constitutionalization*—where a constitution incorporates Islamic law but delegates its articulation to the jurists; and *coordinate constitutionalization*—where a constitution incorporates Islamic law, laws of democratic processes, and liberal norms, placing them all on equal footing. Iran is an example of the first, where jurists effectively control the government and all interpretive legal decisions; Gulf Arab states are an example of the second, where interpretive authority over Islamic family law in particular is vested in the juristic classes; and Egypt and Morocco are examples of the third, where the government and interpretive decision makers have devised schemes of differing relationships with the jurists.[56]

She sees the juristic class as a "Fourth Branch" with which the other branches have a relationship ranging from exclusion (Turkey) to dominance (Iran).[57] This kind of typology allows us to move beyond the study of seminal Islamist texts, by thinkers such as Mawdudi and Qutb, so that we can study the impact of sharia-based arguments in terms of varied institutional configurations across countries and legal and constitutional evolution over time. Moreover, unlike most studies of Islamic law in Pakistan that focus on outcomes (Lombardi being an exception), Rabb considers how the *process* of judicial deliberation influences the legitimacy of decisions. She argues that the Egyptian judiciary's past engagement with Islamic law demonstrated that "more judicial deliberation of Islamic law may better ensure stability and legitimacy through processes of dynamic interpretation in ways that affirm the… constitutional pre-commitments to Islamic law and that aid democratic, rights-regarding, rule-of-law values."[58] Her attention to deliberation—and to the impact of Islamic constitutionalism on democracy—places her work close to debates in political theory.

These two branches of scholarship—comparative constitutional law and political theory—have not yet been integrated in a meaningful way, which is essential for developing a deeper understanding of sharia and

democracy that could better inform policy and institutional design. In Ran Hirschl's words, existing scholarship on courts and religious tribunals in "constitutional theocracies" is "[a]kin to early maps of the world where tracts of emptiness cover much of the non-Western world… a terra incognita of sorts, almost completely uncharted, let alone theorized."[59] There is a need to develop theory on this "jurisprudential landscape," as he argues, but even more so to link scholarship in the field of Islamic Legal Studies with works in comparative political theory and comparative politics. It is particularly important to not restrict ourselves to an analysis of legal systems but to analyze political and social institutions as well. The question of sharia is not simply a legal question that can be settled in courts. It is a question that is argued in the public sphere—in political rallies, television talk shows, and parliament. Nathan Brown rightly draws attention to this process in *Arguing Islam after the Revival of Arab Politics* (2017), as does Tamir Moustafa in *Constituting Religion* (2018).[60] Intisar Rabb's work on judicial deliberation shows that arguments about Islam can take on different colors in different institutional spaces. Therefore, Brown's "view from the public sphere" and Rabb's "view from the courts" are complementary perspectives that, when integrated, significantly enrich debates on Islamic argumentation.

Clark Lombardi's work, too, has much to contribute to political science debates on Islam. Rather than focusing on theoretical texts written by Islamists or on case judgments, he traces the evolution of Justice Cornelius's ideas, from 1960 until 1991, to consider the potential compatibility of liberal constitutionalism and Islamization in Pakistan.[61] With the context-sensitivity of a historian and the rigor of a legal and political theorist, he tells the story of a complex man. In Pakistan's early years, the Catholic, Cambridge-educated Cornelius, like many others in the legal elite, considered talk of an Islamic state "repellent."[62] However, the onset of secular authoritarianism convinced him that the best way to hold the executive accountable was to "re-sanctif[y]" fundamental rights "in the eyes of Pakistan's Muslim rulers and masses" by "connecting them to the religion not of the departed colonial master but of their own indigenous Islamic beliefs."[63] Lombardi explains that this conviction was rooted in his understanding of British legal history. Cornelius believed that Pakistani

judges could learn from the experience of British judges who "had convinced Britons and the British king to recognize the supra-constitutional power of fundamental rights" when they "convincingly described" them as "norms that reflected the command of Christian law."[64] In his article, Lombardi analyzes how political events in Pakistan, as well as the Sanhuri code in the Middle East, led Cornelius to reconsider his position on the role of Islam in Pakistan's legal system.

By tracing the evolution of Cornelius's thought, in the context of Pakistan's political and legal history, Lombardi is able to show the malleability of liberal constitutionalist and Islamist positions and the potential for an "overlapping consensus" in practice. He is only able to do so because he considers ideas about Islamic law in the context of evolving legal interpretations and executive-judicial struggles. As a legal scholar, he takes interpretation seriously and therefore highlights Cornelius's view that lawyers ought to be trained in the Islamic tradition so they could "dispute credibly with madrasa-trained Islamic scholars" and "win support…for liberal lay interpretations of Islam".[65] Although Lombardi regards the liberal rule of law as a desirable goal, he gives readers a view of *Cornelius's* understanding of liberal constitutionalism, which was in harmony with—rather than defined in opposition to—the judicial accommodation of the Islamic legal tradition.

As a legal practitioner, Cornelius knew that arguing in terms of the Islamic legal tradition was necessary for communicating with madrasa-trained scholars and that this communication could yield support for a range of opinions, from liberal to illiberal. That is the kind of flexibility and change that we can only observe once we see texts-in-motion and liberalism-as-articulated-by-local-actors. Such a fine-grained analysis is, unfortunately, difficult to encapsulate in the models that currently dominate comparative politics.[66] Intisar Rabb's argument on the legitimacy of judicial deliberation intersects with debates in deliberative democracy, while Lombardi's work on liberal constitutionalism and legal Islamization intersects with Andrew March's work on fiqh and liberal citizenship, as well as with Lucas Swaine's argument in *The Liberal Conscience* (2005). Even if it remains a challenge to represent non-liberal voices through comparative politics models, a deeper conversation between political

and constitutional theorists focusing on Muslim contexts would prove fruitful.

Conclusion

Studying Islam within mainstream political science entails at least two pitfalls: first, the danger of studying Islamist texts separate from contemporary legal and political practice, which is the dominant method in political theory; second, studying Islamist groups without seriously considering the fact that for many of them, sharia compliance is a moral imperative not an individual choice, which makes it counter-productive to view them through a liberal lens and measure them against a liberal benchmark. Scholars of comparative politics often take the latter approach because they are not in conversation with political theorists and therefore do not update the premises of their empirical models to reflect the latest debates in political theory.

Therefore, a methodological peculiarity of American political science—the conception of "political theory" and "comparative politics" as two separate sub-fields that are not integrated—can have grave consequences for the study of Muslim legal and political institutions. The misguided beliefs that Islamists are unyielding adherents of canonical texts, or that "modernism" is the only kind of "moderate" Islam that can be reconciled with democracy, are a result of these sub-fields not speaking to one another, as well as being separated from humanities departments studying Islam and Muslim societies. Interdisciplinary programs that integrate the study of the Islamic legal tradition with western political science and law, such as emerging Islamic Legal Studies programs, would greatly improve the quality of political science scholarship on Muslim societies.

Endnotes

1 For instance, Saba Mahmood's *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton: Princeton University Press, 2005) was a seminal work that shifted the study of Islam in anthropology. In political science, Steven Fish's article, "Islam and Authoritarianism" (*World Politics 55, no. 1 (October 2002):* 4-37), which contained a statistical analysis of the link between Islam and democracy was heavily cited. His book, *Are Muslims Distinctive? A Look at the Evidence* (Oxford: Oxford University Press, 2011), continued this theme and was among *Choice*'s Top 25 Academic Titles for 2012. Yet Fish didn't cite, let alone incorporate, Mahmood's analysis.

2 For an overview of this movement, which began with an anonymous email from "Mr. Perestroika", see Kristen Renwick Monroe, *Perestroika!: The Raucous Rebellion in Political Science* (New Haven: Yale University Press, 2005). For an early criticism of the movement, see David D. Laitin, "The Perestroikan Challenge to Social Science." *Politics & Society* 31, no. 1 (March 2003): 163–84. Laitin focuses his criticism on the arguments in Bent Flyvbjerg, *Making Social Science Matter: Why Social Inquiry Fails and How It Can Succeed Again* (Cambridge, UK: Cambridge University Press, 2001). For a retrospective review of the movement, see Timothy W. Luke and Patrick J. McGovern, "The Rebels' Yell: Mr. Perestroika and the Causes of This Rebellion in Context," *PS: Political Science and Politics* 43, no. 4 (2010): 729–31.

3 Lucas Swaine, *The Liberal Conscience: Politics and Principle in a World of Religious Pluralism* (New York: Columbia University Press, 2005). In political theory, see also John Gray, *The Two Faces of Liberalism* (New York: New Press, 2000). The comparativist Steven Fish cited neither theorist in his 2011 book, *Are Muslims Distinctive? A Look at the Evidence* (Oxford: Oxford University Press, 2011).

4 Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2006). When I refer to the ulama, I am referring primarily to the Deobandi ulama who influenced the struggle for an "Islamic constitution" in Pakistan, and when I refer to Islamists, I am referring primarily to the Jamaat-e-Islami that was allied with the ulama in this effort. I have analyzed their Urdu writings at length in Tabinda M. Khan, "Institutions Not Intentions: Rethinking Islamist Participation in Muslim Democracies," PhD dissertation, Columbia University, 2015.

5 For an analysis of this process in Pakistan, see Tabinda M. Khan, "Women's Rights between Modernity and Tradition," in Avishek Ray and Ishita Banerjee-Dube eds., *Nation, Nationalism and the Public Sphere: Religious Politics in India* (New Delhi: Sage, 2020).

6 See Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harv. Int'l LJ* 42 (2001): 201 for an analysis of this cultural phenomenon in the field of international human rights, in general.

7 Scott Alan Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35, no. 2 (May 2001): 257-313.

8 See Roxanne L. Euben and Muhammad Qasim Zaman, *Princeton Readings in Islamic Thought: Texts and Context from al-Banna to Bin Laden* (Princeton: Princeton University Press, 2009) and Andrew March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009).

9 Seyyed Vali Reza Nasr, "Islamic Opposition to the Islamic State: The Jamaat-i Islami, 1977-88," *International Journal of Middle East Studies* 25, no. 2 (May 1993): 261-283; at 262.

10 For instance, in considering why some "hacks" to Islamic law are accepted while others are ignored, Rumee Ahmed writes: "The answer is simple: power. A hack is adopted only when it advances the interests of the powerful". See Rumee Ahmed, *Sharia Compliant: A User's Guide to Hacking Islamic Law* (Stanford, CA: Stanford University Press, 2018), 159.

11 Bernard S. Cohn, "Notes on the History of Indian Society and Culture," in *Structure and Change in Indian Society*, ed. Milton Singer and Bernard S. Cohn (Chicago: Aldine, 1968), 8.

12 See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993) and John Rawls, "The Idea of Public Reason Revisited," *The University of Chicago Law Review* 64, no. 3 (1997): 765–807.

13 John Gray, *The Two Faces of Liberalism* (New York: New Press, 2000).

14 Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1998), Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame: University of Notre Dame Press, 2007) and Elaine Hadley, *Living Liberalism: Practical Citizenship in Mid-Victorian Britain* (Chicago: University of Chicago Press, 2010).

15 Saba Mahmood's critique in "Feminism, Democracy, and Empire: Islam and the War on Terror," in *Gendering Religion and Politics: Untangling Modernities*, ed. Hanna Herzog and Ann Braude (New York: Palgrave Macmillan, 2009). See also her book, *Politics of Piety*.

16 Alfred Stepan, "Religion, Democracy, and the 'Twin Tolerations,'" *Journal of Democracy* 11, no. 4 (2000): 37-57, at 45; and in Alfred Stepan, *Arguing Comparative Politics* (Oxford: Oxford University Press, 2001).

17 Nathan Brown, *Arguing Islam after the Revival of Arab Politics* (New York: Oxford University Press, 2017).

18 Lucas Swaine, *The Liberal Conscience: Politics and Principle in a World of Religious Pluralism* (New York: Columbia University Press, 2005).

19 Roxanne Euben, *Enemy in the Mirror: Islamic Fundamentalism and the Limits of Modern Rationalism: A Work of Comparative Political Theory* (Princeton: Princeton University Press, 1999). See also Andrew March, "What Is Comparative Political Theory?," *The Review of Politics* 71 (2009): 531–65 and Fred Dallmayr, ed., *Border Crossings: Toward a Comparative Political Theory* (Lanham, MD: Lexington Books, 1999).

20 Roxanne L. Euben and Muhammad Qasim Zaman, *Princeton Readings in Islamic Thought: Texts and Context from al-Banna to Bin Laden* (Princeton: Princeton University Press, 2009), 82.

21 Reprinted from Sayyid Abul A'la Maududi, *The Islamic Law and Constitution*, translated and edited by Khurshid Ahmad, 2nd ed. (Lahore: Islamic Publications,1960).

22 For instance, in addition to Mawdudi's text included in the Princeton volume cited above, another text that receives a great deal of attention is Sayyid Qutb, *Milestones* with a Foreword by Ahmad Zaki Hammad (Indianapolis: American Trust, 1990).

23 Khurshid Ahmad, "Introduction," [dated 1960] in *The Islamic Law and Constitution* (translated and edited by Khurshid Ahmad) (Lahore: Islamic Publications Ltd., 1980 [October 1955]), 28.

24 Ibid., 29-30.

25 Ibid., 27.

26 Leonard Binder, *Religion and Politics in Pakistan* (Berkeley: University of California Press, 1961), 105. Binder mentions that the idea for Islamic judicial review by the Supreme Court had first appeared in an article by Muhammad Asad (Leopold Weiss), who was the Director of Islamic Reconstruction in Punjab. This article was published and analyzed in a Jamaat-e-Islami periodical in October 1948, which termed the idea un-Islamic because it was against the practice of the rightly guided Caliphs.

27 Ibid., 302.

28 *Report of the Court of Inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab Disturbances of 1953* (Lahore: Punjab Govt., 1954).

29 Sayyid Abul A'la Mawdudi, "Comments on the Draft Constitution of 1956," Appendix III in *The Islamic Law and Constitution* (translated and edited by Khurshid Ahmad) (Lahore: Islamic Publications Ltd., 1980 [October 1955]), 366.

30 Ibid., 367.

31 Ibid. 369-370.

32 Ibid., 372 and 374.

33 Mona El-Ghobashy, "The Metamorphosis of the Egyptian Muslim Brothers," *International Journal of Middle East Studies* 37, no. 3 (2005): 373–95. Chatterjee discusses the colonial origins of this comparative practice in Partha Chatterjee, *Lineages of Political Society: Studies in Postcolonial Democracy* (New York: Columbia University Press, 2011).

34 Alfred Stepan, "Religion, Democracy, and the 'Twin Tolerations,'" *Journal of Democracy* 11, no. 4 (2000): 37-57.

35 Ibid., 45.

36 M. Sukru Hanioglu, "The Historical Roots of Kemalism," in *Democracy, Islam, and Secularism in Turkey*, ed. Ahmet T. Kuru and Alfred Stepan (New York: Columbia University Press, 2012).

37 M. Hakan Yavuz, "Turkey: Islam without Shari'a?" in *Shari'a Politics: Islamic Law and Society in the Modern World*, ed. Robert Hefner (Bloomington: Indiana University Press, 2011).

38 See Chapter 1, "Indonesian Democratization in Theoretical Perspective", in Mirjam Kunkler and Alfred Stepan eds., *Democracy and Islam in Indonesia* (New York: Columbia University Press, 2013).

39 Mustafa Akyol, *Islam Without Extremes: A Muslim Case for Liberty* (New York: W.W. Norton, 2011).

40 For a discussion of "reciprocal reasoning", see Amy Gutmann and Dennis Thompson, "The Moral Foundations of Truth Commissions," in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 36.

41 I have analyzed this process in Khan, "Women's Rights between Modernity and Tradition".

42 Seyyed Vali Raza Nasr, "The Rise of 'Muslim Democracy,'" *Journal of Democracy* 16, no. 2 (April 2005), 13-27.

43 *The National Assembly of Pakistan Debates*, Official Report, Thursday, the 17th Sep., 1998 (Volume IV: No. 15), 1552.

44 Mawlana Gauhar Khan, "Nifaz-e-Shariat aur 15 tarmeemi bill: Jamaat-e-Islami haqeeqi iqdam tak tehreek jari rakhay gee," *Weekly Asia*, 8th October 1998, p. 8. He also warned workers that secular parties were criticizing the Shariat Bill because they believed in parliamentary sovereignty and did not support the principle of court-interpreted shariat as a check on parliament. So, he advised them to carefully frame their criticism of Sharif's Bill on grounds of its institutional design, and on how it would not achieve the benefits of shariat, and to not inadvertently strengthen the arguments of secular critics about the very idea of a Shariat amendment.

45 See Seyyed Abul A'la Mawdudi, "Comments on 1956 Constitution," Appendix IV in *The Islamic Law and Constitution*, translated and Edited by Khurshid Ahmad (Lahore: Islamic Publications, 1960).

46 See Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Boston: Leiden, 2006) and Karin Carmit Yefet, "The Constitution and Female-Initiated Divorce in Pakistan: Western Liberalism in Islamic Garb," *Harvard Journal of Law and Gender* 34 (2011): 553-615. See also Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan* (Cambridge: Cambridge University Press, 2002).

47 Clark B. Lombardi, "Can Islamizing a Legal System Ever Help Promote Liberal Democracy?: A View from Pakistan," *University of St. Thomas Law Journal* 7, no. 3 (2010).

48 For a review of classical and medieval Islamic political theory, see Peter Hardy, *The Muslims of British India* (Cambridge: Cambridge University Press, 1972), 23-26 and 107-114. See also Muzaffar Alam, *Languages of Political Islam in India 1200-1800* (New

Delhi: Orient Blackswan, 2004) for the different understandings of sharia found in the adab and akhlaq genres in Mughal India. The latter tradition, in Alam's view, stretched the meaning of sharia beyond a juristic understanding. Therefore, the juristic tradition was not central to all genres of political theory found in Muslim empires.

49 Lucas Swaine, *The Liberal Conscience: Politics and Principle in a World of Religious Pluralism* (New York: Columbia University Press, 2005).

50 For a discussion of the importance of "authentic deliberation" in deeply divided societies, see Amy Gutmann and Dennis Thompson, "The Moral Foundations of Truth Commissions," in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press 2000).

51 Mawlana Mufti Rafi Usmani, "Deeni Siyasi JamatoN ki Khidmat main," *Al-Balagh* 31, no. 4 (September 1996): 3-18, at 9; and Mawlana Samiul Haq (Speech), "Nifaz-e-qawaneen maiN Shia Sunni tafreeq tabah kun hai: qazi adaltoN ko kitab o sunnat ka paband karana ho ga," *Al-Haqq* 18 (February 1983): 5-11, at 6.

52 This toleration breaks down when it comes to groups not recognized as Muslim sects by the broader Muslim community, such as Ahmadis. See Jeremy Menchik, *Islam and Democracy in Indonesia: Tolerance without Liberalism* (New York: Cambridge University Press, 2016) for an analysis of this problem in Indonesia.

53 See Asifa Quraishi-Landes, "Islamic Constitutionalism: Not Secular, Not Theocratic, Not Impossible," *Rutgers Journal of Law and Religion* 16 (2014): 553; Intisar A. Rabb, "We the Jurists: Islamic Constitutionalism in Iraq," *U. Pa. J. Const. L.* 10 (2007): 527; Clark Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Sharīʿa into Egyptian Constitutional Law* (Leiden: Brill, 2006); Noah Feldman and Roman Martinez, "Constitutional Politics and Text in the New Iraq: An Experiment in Islamic Democracy," *Fordham Law Review* 75 (2006): 883.

54 For instance, on 24-25 March 2017, a conference on "Religion and the State" was held in Tunis that was co-sponsored by the Arab Association of Constitutional Law, the Tunisian Association of Constitutional Law, and Harvard Law School's Islamic Legal Studies Program. This conference brought together political scientists, scholars of Islam and Islamic law, and lawyers from universities in the U.S. and U.K. as well as from Muslim-majority countries in the Middle East and South Asia.

55 Andrew March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009) and Intisar A. Rabb. "'We the Jurists': Islamic Constitutionalism in Iraq," *University of Pennsylvania Journal of Constitutional Law* 10, no. 3 (2008): 527-579.

56 Intisar Rabb, "We the Jurists", 531.

57 Ibid., 555. See also Intisar Rabb, "The Least Religious Branch? Judicial Review and the New Islamic Constitutionalism," *UCLA Journal of International Law and Foreign Affairs* 17, no. 1/2 (2013): 75–132.

58 Rabb, "The Least Religious Branch?", 85.

59 Ran Hirschl, "Constitutionalism in a Theocratic World" in *The Limits of Constitutional Democracy*, ed. Jeffrey K. Tulis and Stephen Macedo (Princeton: Princeton University Press, 2010), 256-279, at 259.

60 Nathan Brown, *Arguing Islam after the Revival of Arab Politics* (New York: Oxford University Press, 2017); Tamir Moustafa, *Constituting Religion: Islam, Liberal Rights, and the Malaysian State* (Cambridge: Cambridge University Press, 2018).

61 Clark B Lombardi, "Can Islamizing a Legal System Ever Help Promote Liberal Democracy: A View from Pakistan," *U. St. Thomas LJ* 7 (2009): 649.

62 Ibid., 656.

63 Ibid., 668.

64 Ibid., 667.

65 Ibid., 681-82.

66 For a more recent essay by Lombardi, see Michael W. Dowdle and Michael A. Wilkinson, eds., *Constitutionalism beyond Liberalism* (Cambridge University Press, 2017).