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Part 1
What is Liberal Islam?

THE SILENCED MAJORITY

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Liberal Islam is a branch, or school, of Islam that emphasizes human liberty and freedom within Islam. Liberal Muslims believe that human beings are created free—a concept that is so important to highlight in the Muslim world today—and that if you take away or diminish freedom, you are in fact contradicting human nature as well as divine will. While some people want to impose their views on others, liberal Muslims insist that people—both men and women—must be free to choose how to practice their faith. This is in accordance with the basic teaching of the Koran that “there can be no compulsion in religion.” Forcing religion on people contradicts a basic requirement of religion: that human beings are supposed to come to God of their own free will.

Unlike the rather starkly opposed “liberalisms” of the United States and Europe, respectively, Islamic liberalism emphasizes both the liberty of the community (ummah) from occupation and oppression, and at the same time the liberty of the individual within the community. Nor does it conflate the latter with the former: Like classical libertarians such as Frédéric Bastiat, Ludwig von Mises, or Friedrich von Hayek, Islamic liberalism places explicit emphasis on limited government, individual liberty, human dignity, and human rights. “Moderate Islam” is another description often used for the ideas and representative figures that I have in mind. But “moderate” does not precisely capture the pervasive ideological orientation suggested here. The main pillars of Islamic liberalism are:

Hurriya (liberty)—Human beings are created free and must remain free; freedom of thought, freedom of religion, and freedom of movement are essential to life as envisaged by our creator. Without freedom, life and religion have no meaning and no flavor. God, in his unlimited wisdom, intended human beings to be free; free to believe or disbelieve and free to practice or not practice. It is wrong and counterproductive to impose religion on people, and it is also against the will of God.

Adl (justice)—Equality before God must translate into equality on earth. Only God can be the judge of who is best among us. Justice must be upheld for everyone—man or woman, Muslim or non-Muslim, friend or foe, Arab or non-Arab. Justice means that every human being is treated fairly and equally by society and by the government. Injustice toward a single human being is an injustice toward all and an affront to the Almighty God.
Shura (consultation)—God is against oppression and dislikes oppressors. The affairs of the community and the society must be decided through mutual consultation and consent. Consultation must include all members of the community and must be binding on the rulers or officeholders. Prophet Mohammed, who died without designating a ruler, indicated to his companions that they must elect the ruler themselves and that the ruler must be held accountable to them.

Ijtihad (rational interpretation)—God has prescribed important goals for believers to achieve on earth (such as shura, justice, freedom, dignity, and peace). However, the way to achieve these objectives is mostly left up to Muslims themselves, who must decide using reason, knowledge, and faith what is best for them and for their community. Islam has no clergy and no hierarchy, and therefore all Muslims must voice their opinion, in light of the teachings of Islam and the changing needs and priorities of society. It is vital for the Muslim ummah today that the doors of Ijtihad—closed for some 500 years—be reopened.

There are many scholars and leaders for this growing movement in the Muslim world, although they are not well known in the West. They include Tarek al-Bichri and Saleem al-Awwa (Egypt), Mohamed Talbi (Tunisia), Anwar Ibrahim (Malaysia), Fathi Osman, Aziza al-Hibri, and Abdulaziz Sachedina (United States), Shafeeq Ghabra (Kuwait), Abdelwahab El-Affendi (Sudan), Nurcholish Madjid (Indonesia), Ibrahim al-Wazir (Yemen), and Abdul Karim Soroush (Iran).

Why is it Silent?

The good news is that liberal Islam represents the overwhelming majority within the Muslim world today. The bad news is that it is a silent majority—or perhaps more accurately, a silenced one. There are two minority groups in the Muslim world that are fighting, literally, over political control: secular extremists and religious extremists. For the most part, secular extremists are in power, as they have been for the last 50 years, but they have lost legitimacy largely because of their unabashed and relentless efforts to impose their views on society. The religious extremists also want to impose their views, but many of them are in jail, or in hiding. They are not in power, except in two or three countries. They have also lost legitimacy because they advocate violence. Between these two extremes, we find the majority of the people, who want to practice their religion faithfully, but who also want to live in the modern age; that is, they want a modern, moderate, and appropriate interpretation of Islam.

Is Liberal Islam Likely to Grow?

In the long run, yes, because it is the only alternative that combines faith and reason. In the short run, it depends: Liberal Muslims are caught between a rock and a hard place. The rock is the state (and its internal police forces, or mukhabarat) in the oppressive form it predominantly takes in the Muslim world, which is constantly pounding society in general. These states do not like liberal Islam because it threatens the corrupt status quo that they sustain. Because these states often do not distinguish between liberal and fundamentalist Islam, they tend to perceive religion itself as a threat. In the Muslim world, the state has often taken the stand that you are “with us or against us,” and if you try to criticize it in any way, you are automatically seen as a threat and silenced. The hard place is the aggregation of fundamentalist groups who want to monopolize Islam. These groups accuse anyone talking of moderation, patience, legitimacy, reason, and pragmatic thinking of being un-Islamic or anti-Islam. The religious authorities in most Muslim countries have little credibility because they so often accede to the enormous pressure they are under either to side with the state or to side with the fundamentalists.

The key to the success of liberal Islam is more freedom. Lack of freedom in Muslim countries is stifling society, preventing any debate on what is wrong with the Muslim world today. You add to
the lack of freedom a loss of dignity, a sense of hopelessness and despair, and you have a fertile ground for all kinds of extremism and violence. Hence, the solution is to allow liberal Islam to grow, which means radically expanding freedom of the press, freedom of religion, freedom of thought, and freedom to form independent organizations. This is, of course, the essence of democracy.

Some claim that the Muslim world needs the rule of law, but not necessarily democracy. It is impossible to separate the two; ultimately, you cannot have rule of law without democracy. When the law comes from an illegitimate government, it is illegitimate, and its enforcement—in the absence of independent branches of government—leads to dictatorship.

The transition to democracy may take a few years. But it must be real, it must be sustained, and it must be irreversible. Governments in the Muslim world have become adept at promising democratic reforms while delivering more oppression. And this has created an environment of great disappointment and frustration.

The international community needs to exert sustained pressure on the existing governments to allow more freedom, because it is in their own interest and in that of their societies, as well as in the interest of peace and stability in the world. Of course, they will scream and complain of interference and demand that their “sovereignty” be respected. But we must insist, because this is the only way out of the terrible situation that we all find ourselves in.

Moderate and liberal Muslims should be allowed to have a voice. Repressive regimes must not be allowed to use the war on terrorism to silence all opposition or to lump all Islamists together. Those who advocate extremism and violence are the enemies of mankind and of Islam and must be stopped before they bring havoc and mayhem to their own countries and to the world. Real and genuine reforms are needed, and liberal and moderate voices cannot be heard in an environment of fear and repression.

The international community should make democratic reforms in the Muslim world a priority. As a start, the United States and European countries must stop supporting dictators in the name of stability. We all know that the stability provided by dictators is an illusion that only breeds violence and extremism. To promote peace and strengthen the voices of liberal Islam, Muslim countries must gain experience with democratic institutions and practices. Experience with democracy will allow Islamic movements to become more moderate and adapt their visions, thoughts, and strategies to the needs of their societies and the requirements of the twenty-first century. The contrasting examples of Turkey and Algeria are very telling in this regard. Staunchly secular Turkey allowed Islamists to participate in the political process and thus is on the road to becoming a model democratic state in the Muslim world. Algeria, however, chose to crack down harshly on its Islamist party in 1992 and is still recovering from a ten-year-old civil war, which has resulted in the deaths of more than 150,000 people and the radicalization of Islamist groups around the world.
A Glimmer of Hope

Liberal Islam is thriving and well in the United States and in Europe. Many free-thinking Muslims who could not tolerate the repressive environments of their own countries have escaped to the West, where they now live in freedom. They represent significant groups that can, and I believe will, play a major role in modernizing Islam and in promoting liberal and moderate views of Islam in the Muslim world. The reformation of Islam will require freedom and democracy, and right now, the only place where we have them is in the West. It is for this reason that I believe reformation will begin in the West. Muslims who live in the West are an important asset for liberal Islam, for all those who share its goals of peace, freedom, and democracy, and ultimately for the Muslim world itself.

It is imperative that U.S. Muslims play a leading role in reforming the Islamic world, principally by spreading understanding among Muslims generally, and their leaders in particular, of the values and merits of democracy. Friends of Islam and, indeed, everyone who hopes for peace and interfaith harmony should do all they can to support liberal Islam, the nascent voice of the Muslim world’s silenced majority.
History can help to show how ideas emerge and how they relate to each other. The idea of liberty is examined historically and conceptually to show how libertarian thought presents a coherent understanding of the world and how humans should treat each other.

Although elements of libertarian thought can be found throughout human history, libertarianism as a political philosophy appeared with the modern age. It is the modern philosophy of individual freedom, rather than serfdom or subservience; of legal systems based on the enjoyment of rights, rather than the exercise of arbitrary power; of mutual prosperity through free labor, voluntary cooperation, and exchange, rather than forced labor, compulsion, and the exploitation of the plundered by their conquerors; and of toleration and mutual co-existence of religions, lifestyles, ethnic groups, and other forms of human existence, rather than religious, tribal, or ethnic warfare. It is the philosophy of the modern world and it is rapidly spreading among young people around the globe.

To understand the growing worldwide libertarian movement, one needs to understand the ideas that constitute the political philosophy of libertarianism. One can understand political philosophies in a variety of ways. One can study them historically to see how they came together as a response to a set of problems or issues. Ideas are in some ways like tools—mental tools that help us interact with each other and the world. To understand such tools better, it helps to know the problems to which they are presented as solutions. Historical study helps us to understand ideas. One can also understand their logical relations, that is, the ways in which the various concepts or ideas—such as justice, rights, law, freedom, and order—interact and give meaning to each other. This short essay offers a short introduction to both ways of understanding libertarianism.

Libertarianism Understood Historically

Looked at historically, libertarianism is the modern form of a movement that was once known as liberalism. That term, “liberalism,” especially in the United States, has lost some of its earlier meaning. As the famous economist Joseph Schumpeter noted, “as a supreme, if unintended, compliment, the enemies of the system of private enterprise have thought it wise to appropriate its label.” The term liberalism or its variants are still used in much of the rest of the world, however, for what is now called libertarianism or “classical liberalism” in the US. Because of the confusion of terms in the US, many people have adopted the term libertarianism, which shares the common Latin root for liberty, to distinguish their views from what is typically called “liberalism” in the US. The term is sometimes also used to distinguish more thoroughly consistent forms of liberalism from more pragmatic or flexible forms of liberalism. (In other languages the same word is used to translate both liberalism and libertarianism; Hungarian, for example, uses both szabadelség and liberalizmus for liberalism/libertarianism.)

So where did liberalism come from? Liberalism emerged in Europe and other regions of the world as a defense of a new way of living together on the basis of peace, toleration, and mutually
beneficial voluntary exchange and cooperation. Liberalism offered a defense of such peaceful forms of life against the doctrines of the absolute and all-powerful state, known as “absolutism.” In the course of debates over the proper extent and scope of power, the ideas of liberalism became sharper, more radical, and mutually reinforcing.

Trade and commerce began to increase in Europe following the Dark Ages, especially due to the growth of independent “communes,” or self-governing cities, often protected from pirates, raiders, and warlords by thick walls. New cities—places of production and trade—were being founded throughout Europe. The new cities and their “civil societies” were known as places of personal freedom, as expressed in the old German slogan “Stadtluft macht frei” (“City air makes one free”), and peace.

As one historian noted, “Without liberty, that is to say, without the power to come and go, to do business, to sell goods, a power not enjoyed by serfdom, trade was impossible.” Civil (from civitas, city) society refers to the societies that emerged in such cities. Very importantly, the term also came to denote a way of treating each other: civil behavior. Being civil means being polite to strangers, being honest in one’s dealings, and respecting the rights of others. Such new cities and associations were characterized by various kinds of representative or popular assemblies that deliberated about laws and public policies. Associated with civil society was the new idea of “civil rights,” meaning the rights necessary for a civil society.

As trade grew and more wealth was accumulated, kings began to create modern military systems, which they used to extend their power over both the feudal aristocracy, whose power generally had the same roots in violent conquest as the power of kings, and over the cities, which were rooted in voluntary association. The “military revolution” concentrated more and more power in what was to become known later as “the state,” typically in the person and powers of the king. Such centralized and monarchical political systems displaced, conquered, and assimilated most of the other political systems that had characterized Europe, including independent “city-states,” the Hanseatic League of merchant cities, the Holy Roman Empire, and other forms of political association. As such “sovereigns” grew in power, they claimed to be “above the law” and to exercise absolute power over all other forms of human association. Increasingly, kings asserted that they had the “divine right” to exercise absolute power. The secular powers and the religious hierarchies formed alliances, often with the secular powers dominating the religious, but sometimes the other way around, with the latter known as theocratic rule.

The doctrine of absolutism held that the ruler was above the law, which was a major break with the prior tradition that the law, not personal power, was supreme. King James VI and I, as he was known (King James VI of Scotland who became also King James I of England in 1603), stated in 1598, “the King is over-Lord of the whole land; so he is Master over every person that inhabiteth the same, having power over the life and death of every one of them. For although a just Prince will not take the life of any of his subjects without a cleare law, yet the same lawes whereby he taketh them, are made by himselfe, or his predecessours, and so the power flowes always from him selfe . . . I have at length proved, that the King is above the law, as both the author and giver of strength thereto.”

Absolutism had an economic theory to accompany it: mercantilism, the idea that the king and his bureaucracies should direct industry, forbid this enterprise and subsidize that one, grant monopolies to favored companies (a practice now referred to as cronyism), “protect” the owners of local industries against competition from lower priced imported goods, and generally manage trade to the benefit of the ruling powers of the state, with the aim of bringing money into the state’s treasury.

Liberalism emerged as a defense of the freedom of civil society against the claims of absolute power, against monopolies and privileges, mercantilism, protectionism, war, and public debt, and in favor of civil rights and the rule of law. That movement drew on many sources. Prominent among them were the ideas of individual rights articulated by the Spanish Scholastic thinkers of Salamanca, who defended both the market economy and the rights of the conquered Indians against their rapacious
Spanish overlords, as well as the doctrines of natural law and natural rights articulated by Dutch and German thinkers, but arguably the first fully libertarian movement emerged during the civil wars in England: the Levellers. The Levellers fought on the parliamentary side in the English Civil War (1642–1651) for limited, constitutional government, for freedom of religion, for freedom of trade, for protection of property, for the right to earn a living, for equal rights for all. They were radicals, abolitionists, and human rights and peace advocates. They were libertarians.

Those ideas—of individual rights, of limited government, of freedom of thought, religion, speech, trade, production, and travel—opened minds, shattered ancient bonds, generated unprecedented wealth for the average person, and brought down one empire after another. Slavery was brought to an end in Europe, in North America, and in South America, culminating in abolition of slavery in Brazil on May 13, 1888. Feudalism was eliminated. The serfs of Europe were liberated, sometimes all at once, sometimes in stages: Austria in 1781 and 1848; Denmark in 1788; Serbia in 1804 and 1830; Bavaria in 1808; Hungary and Croatia in 1848; Russia in 1861 and 1866; and Bosnia and Herzegovina in 1918.

The movement for liberty grew not only throughout Europe and Europe’s colonies, but spread through the Islamic world, China, and elsewhere, drawing on local traditions of liberty. For libertarian ideas are not the product of only one culture; every culture and every tradition has a narrative of liberty, as well as a narrative of power. Europe produced Voltaire and Adam Smith, but also later Mussolini, Lenin, and Hitler. Marx, whose doctrines dominated China for decades, was not Chinese, but German. Libertarian sages and voices can be found in every culture, as can the advocates of absolute power. Libertarianism is taking root worldwide, connecting with local libertarian traditions, especially in Africa and in Asia, as well as rediscovering connections in Europe, Latin America, and North America.

The contemporary libertarian movement builds not only on the experience of earlier liberals in combating absolutism, but also on the experience of the horrors of an even more malignant threat to liberty and civilization: collectivist totalitarianism. In the nineteenth century the tide of libertarian thought started to crest. New political ideologies, drawing on the older traditions of power, emerged to challenge liberalism. Imperialism, racism, socialism, nationalism, communism, fascism, and all their combinations, all rested on the fundamental premises of collectivism. The individual was not seen as the repository of rights; what mattered, they asserted, was the rights and interests of the nation, the class, or the race, all expressed through the power of the state.

By 1900 the libertarian editor of The Nation, E. L. Godkin, wrote in a depressing editorial, “Only a remnant, old men for the most part, still uphold the Liberal doctrine, and when they are gone, it will have no champions.” More chillingly, he predicted the horrifying collectivist oppression and war that would cost hundreds of millions their lives in the coming century: “We hear no more of natural rights, but of inferior races, whose part it is to submit to the government of those whom God has made their superiors. The old fallacy of divine right has once more asserted its ruinous power, and before it is again repudiated there must be international struggles on a terrific scale.” And so it turned out to be. The consequence was mass murder on a scale never seen before, systems of mass enslavement on a new scale, and world wars that ravaged Europe, Eurasia, Asia, and which had terrible spillovers in South America, Africa, and the Middle East.

The challenge posed to liberty, to civilization, to life itself by collectivism dramatically shaped the libertarian response. That included a renewed emphasis on the following elements of libertarian thought, all of which had been denied by collectivist ideologies such as socialism, communism, National Socialism, and fascism:

- The primacy of the individual human being as the fundamental moral unit, rather than the collective, whether state, class, race, or nation;
- Individualism and the right of every human being to pursue his or her own happiness in his or her own way;
• Property rights and the market economy as a decentralized and peaceful means of decision making and coordination that effectively utilizes the knowledge of millions or billions of people;
• The importance of the voluntary associations of civil society, including family, religious community, neighborhood association, business firm, labor union, friendly society, professional association, and myriad others that provide meaning and substance to life and help individuals to achieve their unique identities through their multiple affiliations, and which are displaced by expansions of state power;
• A fear of the state and of concentrations of power in the military and in the executive organs of state power.

Many persons contributed to the revival of libertarian thought, especially after World War II was winding to a close. In 1943 three books were published in the United States that returned libertarian ideas to popular discussion: Rose Wilder Lane’s *The Discovery of Freedom*, Isabel Paterson’s *The God of the Machine*, and Ayn Rand’s runaway bestseller *The Fountainhead*. In 1944 in the United States Ludwig von Mises issued his book *Omnipotent Government: The Rise of the Total State and Total War*, and in the United Kingdom F. A. Hayek issued his bestselling challenge to collectivist economic planning, *The Road to Serfdom*. Hayek’s book was then released in other countries to great acclaim. Hayek also organized the Mont Pelerin Society, an international society of classical liberal scholars which held its first meeting in 1947 in Switzerland. More books appeared, as did societies, associations, publishing houses, think tanks, student clubs, political parties, and far more.

Think tanks to promote classical liberal ideas were started. The first wave was in the 1940s and 1950s, with such still vigorous organizations as the Institute for Public Affairs in Australia (1943), the Foundation for Economic Education in the US (1946), and the Institute of Economic Affairs in the UK (1955). The Cato Institute was founded in the US in 1977 and Timbro was founded in Sweden in 1978, as a part of a second wave of libertarian think tanks that has changed discussions about public policy. (Hundreds have since followed and most are affiliated with the Atlas Network, which was founded by Sir Antony Fisher, also the founder of the Institute of Economic Affairs.) Eminent intellectuals followed in the footsteps of Paterson, Lane, Rand, Mises, and Hayek, such as philosophers Robert Nozick, H. B. Acton, and Antony Flew, and Nobel Prize–winning economists James Buchanan, Milton Friedman, Ronald Coase, George Stigler, Robert Mundell, Elinor Ostrom, and Vernon Smith, to name a few, who advanced libertarian arguments and applied libertarian ideas to a wide array of social, economic, legal, and political problems.

As libertarian ideas gain more adherents and champions throughout the Middle East, Africa, Asia, Latin America, and the countries of the former Soviet Union, libertarianism is again adapting to new problems, notably the need to build and strengthen the institutions of civil society and to do so on the basis of traditions indigenous to those societies. Suchneeded institutions include habits of peaceful discussion, rather than violence; mutual respect for persons regardless of gender, race, religion, sexuality, or language; independent judicial systems to adjudicate disputes peacefully; systems of property rights that are well defined, legally secure, and easily transferable, to facilitate wealth creating exchanges; freedom of the press and public discussion; and traditions and institutions to check the exercise of power.

So much for a brief summation of the history of libertarianism. Let’s turn now to another way to understand libertarianism.
Libertarianism Understood Conceptually: The Libertarian Tripod

A chair with just one leg will fall over. Add another and it’s marginally more stable, but it will still fall over. Add a third to make a tripod and each will reinforce the others. Ideas can be like that, too. Ideas—about rights, justice, social order, law—don’t just stand on their own. They fill out each other’s meaning. Like the legs of a tripod, they lend support to each other.

Libertarianism is based on the fundamental ideal of liberty; libertarians hold liberty to be the highest political value. That doesn’t mean that liberty must be the highest value in life; after all, people fall in love, pursue truth and beauty, and have ideas on religion and many other important matters, and politics is certainly not the only thing that matters in life. But for libertarians, the primary value to be realized in politics is liberty. Political life is about securing justice and peace and shared prosperity, and libertarians draw on a long tradition of classical liberal thought that sees those principles and values as mutually reinforcing.

The libertarian tripod is made up of three pillars:

Individual Rights: individuals have rights that are prior to political association; those rights are not dispensations from power, but can be exerted even against power; as Nozick began his libertarian classic Anarchy, State, and Utopia, “Individuals have rights, and there are things no person or group may do to them (without violating their rights).”

Spontaneous Order: it is common for people to assume that all order must be the product of an ordering mind, but the most important kinds of order in society are not the results of conscious planning or design, but emerge from the voluntary interaction and mutual adjustments of plans of free persons acting on the basis of their rights;

Constitutionally Limited Government: rights require protection by institutions that are empowered to use force in their defense, but those same institutions often represent the greatest and most dangerous threat to rights, meaning that they must be strictly limited through constitutional mechanisms, including divisions of and competition among sources of power, legal systems that are independent of executive power, and widely shared insistence on the supremacy of law over power.

Each of the above pillars gives support to the others. Rights must be clearly defined and protected by institutions of law; when rights are well defined and legally secure, order will emerge spontaneously; when social order and harmony emerge without planned direction, people are more likely to respect the rights of others; when people are accustomed to exercising their rights and respecting the rights of others, they are more likely to insist on constitutional restraints on legal institutions.

Individual Rights

Libertarian ideas about rights were forged largely in the struggle for religious freedom and for the freedom of the weak who suffered oppression from the strong. The Spanish thinker Francisco de Vitoria, in his famous book of 1539 on the American Indians, defended the indigenous people of the Americas against the brutality and oppression brought by the Spanish Empire. He argued that the Indians had moral responsibility for their actions (“dominium”) and concluded that,

the barbarians [the term used at the time for non-European and non-Christian peoples] undoubtedly possessed as true dominion, both public and private as any Christian. That is to say, they could not be
robbed of their property, either as private citizens or as princes, on the grounds that they were not true masters (*ueri domini*).

The Indians, argued Vitoria and his followers, were as entitled to respect for their lives, their property, and their countries as any Spaniard. They had rights and to violate them was an injustice that should be resisted. The ideas of moral responsibility and rights had an enormous impact on thinking generally about human beings; it was not the accident of birth that mattered, but whether one was a moral agent, a being who could be held responsible for his or her choices and actions.

At about the same time, the defenders of freedom of religion insisted, and often paid with their lives for doing so, that because human beings were responsible beings capable of thought, deliberation, and choice, conscience must be free and that religion should be a matter of choice, and not of compulsion. The right to freedom of religion was a right, not a privilege conferred by those with power. The theologian John Calvin had defended the murder in Geneva of his critic Servetus for preaching a different understanding of the gospel, on the grounds that the rulers were obliged to defend the true faith. The great sixteenth-century champion of religious liberty Sebastian Castellio responded directly to Calvin: “To kill a man is not to defend a doctrine, it is to kill a man. When the Genevans killed Servetus, they did not defend a doctrine, they killed a man.” A doctrine should be defended with words to change the mind and heart, not weapons and fire to break and burn the body of the one who disagrees. As the English poet John Milton noted in his path-breaking argument for freedom of the press, *Areopagitica*, “here the great art lies to discern in what the law is to bid restraint and punishment, and in what things persuasion only is to work.”

Those early pioneers of liberty who insisted on respect for equal rights, regardless of religion, race, gender, or other accidental features of persons were met with a powerful challenge from the advocates of absolutist or theocratic rule, who responded that if each person had the right to manage his or her own life, there would be no overall plan for society, and thus chaos and disorder would ensue. There has to be a boss, the absolutists and theocrats said, someone with the power to envision and then impose order on a disorderly mass. Otherwise, you wouldn’t know what to produce, or what to do with it, or how to worship God, or what to wear, or how much to spend or save.

**Spontaneous Order**

By itself, the moral principle of respect for persons was unable to meet that challenge, until social scientists began to unlock the secrets of complex orders. Just as modern entomologists have discovered that the complex order of a bee hive is not “ruled” by a queen exercising absolute power and issuing commands to the other bees, as was widely believed for millennia, even earlier social scientists discovered that complex human societies are not “ruled” by any humans with such powers, telling dairy farmers when to milk the cows and how much to charge for the milk, setting the value of money, and authoritatively issuing orders to realize the order of society generally. Instead, as they learned, if you want an orderly and prosperous society, one should rely on the maxim “*Laissez faire et laissez passer, le monde va de lui même!*” as it was phrased by the early libertarian intellectual Jacques Claude Marie Vincent de Gournay in the eighteenth century.

Complex orders cannot simply be commanded. Language, the market economy, common law, and many other complex forms of coordination among persons unknown to each other emerge, not through coercive imposition of a plan that emerges from the mind of a great leader (or the minds of a committee of them), but as byproducts of the interaction of people following relatively simple rules, much as flocks of birds, schools of fish, and hives of bees exhibit complex forms of order without a directing mind.
It’s not an easy thing to grasp. When we see an ordered set of things, we tend to look around for the order-er. If I see a well-arranged row of chairs, I would probably ask, “Who put all the chairs in order?” But most order, including the order of the market economy, is, as the Nobel Laureate in Economics James Buchanan argued, defined in the process of its emergence: “the ‘order’ of the market emerges only from the process of voluntary exchange among the participating individuals. The ‘order’ is, itself, defined as the outcome of the process that generates it. The ‘it,’ the allocation-distribution result, does not, and cannot, exist independently of the trading process. Absent this process, there is and can be no ‘order’.” That’s not easy for the human mind to grasp, because we seem predisposed to look for creators of order whenever we observe order. But when we look, what we find is complex orders emerging from relatively simple principles. That’s also the case in the emergence of complex orders of human cooperation.

Once one understands how well-defined and legally secure rights make possible far more complex forms of order and human cooperation, the idea of rights becomes far more plausible. But how do we protect them? That’s where the third leg of the libertarian tripod is needed.

Constitutionally Limited Government

Rights are realized and protected in a wide variety of ways. People who use their own fists to fight back against aggression or their own feet to flee from it are defending their rights to life, liberty, and estate. We also protect our rights by investing in locks for our doors and keyed ignition systems for our vehicles, both of which keep potential rights violators out of what is ours. But a world in which we had to rely only on our own force to defend ourselves or solely on locks and keys would most likely be one in which the powerful would dominate the weak. That’s why people form associations, of infinite variety, for their own defense. In modern free societies, we rarely resort to immediate violence to defend ourselves (although it is occasionally necessary); for one thing, violence generally has subsided as the potential gains from violence have diminished in comparison to the losses aggressors are likely to incur from their aggression. Violence is, for most people, a gradually diminishing feature of their interaction with each other (except, that is, for the violence of the state, which sometimes results in hundreds of thousands or millions of deaths). We rely on specialized agencies to help us adjudicate disputes (courts and arbitration) and to defend our rights (security agencies and police). The danger is that, when we authorize people to use force, even if merely to defend rights, we may be victimized by those we have authorized to defend us. The problem is often phrased as in the words of the Roman poet Juvenal, “Quis custodiet ipsos custodes?”—who watches the watchmen?

That is one of the most important questions of political science and has always been emphasized by libertarians, who have been at the forefront of movements to limit power. Among the traditional institutions and practices of limiting power are: constitutions that both establish the powers of law enforcement and at the same time subject those who exercise such powers to the law; creation of competing systems of “checks and balances” among different branches of government; insistence on the right of exit from unjust or disagreeable political and legal arrangements; written bills of rights, including the right to freedom of speech, the right to keep and bear arms, the right to trial by jury, the right to be secure in the enjoyment of one’s property; and other mechanisms that varied by country, culture, and time.

Those traditions may reach back to ancient pacts to limit the powers of kings, such as Magna Carta in England and the Golden Bull of Hungary, or to more recent forms of federalism, as in Switzerland, Australia, the United States, and in post-war Germany and Austria. The latter two implemented federal states as a means to avoid another catastrophe such as the national socialism of the “Third Reich,” which plunged Europe into horrific war. Implementation can never be perfect and
varies widely according to the history of a country, the strength of various institutions, and other factors, but constitutional restraints on power are the important third pillar of libertarianism.

**Liberty, Order, Justice, Peace, and Prosperity**

When governments are limited to protecting well-defined individual rights and providing and enforcing the rules of just conduct, individuals will enjoy freedom to order their own affairs and to seek happiness in their own ways, and society will be characterized by greater degrees of complex order and coordination than would have been possible had government sought directly to create such orders by means of coercion. The libertarian tripod is built out of elements—individual rights, spontaneous order, and constitutionally limited government—that have long histories.

A free world is, of course, an imperfect world, for it will be filled with imperfect people, none of whom may be trusted with coercive powers, for even the best will succumb to the temptation to exercise power arbitrarily, to victimize others, to be unjust. That is why constitutional mechanisms are necessary to restrain power.

But libertarianism is not only a vision of constraint. It is also a vision of social, scientific, and artistic progress; of peaceful co-existence and mutual respect among a myriad different way of life and culture; of industry, commerce, and technology eradicating poverty and pushing back the frontiers of ignorance; of free, independent, and dignified individuals secure in the enjoyment of their rights.

Libertarianism offers both an intellectual project, a way to understand and relate important ideas to each other, and a practical project, the realization of a world of freedom, justice, and peace. For those with the courage to take it up, the project of liberty is inspiring, indeed.
Is Islam an Obstacle to Democratization in the Muslim World?

THE DEBATE OF THE COMPATIBILITY OF ISLAM AND DEMOCRACY REVISITED

Dr. Bican Şahin*

Abstract: The purpose of this article is to make a critical presentation of the arguments about the compatibility of Islam and democracy, and discuss whether or not Islam is an obstacle to reach institutionalized democracies in the Muslim world. Firstly, the arguments of those who think that Islam and democracy are incompatible are presented. Then, the empirical and theoretical arguments that indicate that Islam and democracy are compatible are put forward. In the Conclusion, as pointed out by the empirical and theoretical arguments, it is emphasized that Islam is not an obstacle in establishing democracy in the Muslim world. However, the attention is also drawn to the fact that this compatibility alone is not enough for democracy to emerge and institutionalize. In this regard, it is argued that what must be done is both to strengthen the interpretation of Islam, which argues for the compatibility of Islam and democracy, and to make an effort in the direction of eliminating the obstacles to democracy in socio-economic, institutional and international realms.

Key Words: Islam, democracy, liberal Islam, socio-economic development, culture

Introduction**

In a 1996 article, Bernard Lewis (53-54) comments that of the 53 member states of the Organization of the Islamic Conference (OIC), only Turkey can pass Huntington’s criterion of democracy. This criterion states that a country is democratic when it has made two consecutive, peaceful changes of government via free elections. And he adds that even Turkey’s democracy is in many ways a troubled one.

In a more recent study that examines the findings of the 2001 Freedom House Survey, Adrian Karatnycky (2002: 103) indicates that, “the democracy gap between the Islamic countries and the rest of the world is dramatic. In the 47 countries with an Islamic majority, only 11 (23 percent) have democratically elected governments, while 110 of the 145 non-Islamic states (76 percent) are electoral democracies.” Since the publication of these two articles—in 1996 and 2002, respectively—not much has changed in the Islamic world. To be fair, we must mention some of the recent developments such as Saudi Arabia’s experiment with democracy at the local level, Iraq’s parliamentary elections in January 2005 and constitutional referendum in October 2005, and President Hosni Mubarak’s reelection in a multi-candidate presidential election in September 2005.

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Although these are welcomed developments in the direction of democracy, they are not enough yet to qualify these countries as democratic even by Huntington’s rather modest “criterion”.

This state of the affairs with respect to the development of democracy in the Muslim world makes one ask if the root cause of the problem is “Islam” itself. At a time when the single superpower of the world embarked upon establishing democracies by force in Muslim-majority countries such as Iraq and Afghanistan, the question of whether Islam and democracy are compatible with one another gains vital importance. The answer to this question also has very important implications for the Turkic states of central Asia such as Kyrgyzstan, Uzbekistan, Azerbaijan and others. With the collapse of the Eastern Bloc, it had been hoped that these states would join the third wave of democratization that had started in 1974 according to Samuel P. Huntington (1993). However, to this day, this hope has not been fulfilled.

There may be several reasons behind this failure, such as the legacy of communism, the low level of social and economic development, and cultural factors, in which Islam has a significant place. However, the fact that the European satellites of Soviet Union made successful transitions to democracy after the collapse of the Eastern Bloc lessens the significance of totalitarian legacy as a factor in explaining the lack of democracy in the Turkic states of central Asia. On the other hand, with regards to social and economic development, although it cannot be dismissed as an important factor in explaining the lack of democracy among the Turkic states, again the fact that there are democratic countries, such as India, that have similar economic conditions to these states reduces the explanatory power of this variable. Also, material conditions of a country can change in time for the better, easing the transition to and consolidation of democracy-if they are the obstacle to democratization. However, the religion of a country, which has an important place in shaping its culture, cannot be changed so easily. Of course, the religion is also subject to interpretation, and change in a sense. But, the core of the religion- the Koran and the hadith in the case of Islam- is not subject to change. Therefore, if the core of Islam is not compatible with democracy, then Islam may be one of the most important factors that explain the lack of democracy in the Turkic states of central Asia as well.

As a matter of fact, within the Islamic tradition there are scholars such as Sayyid Abu’l-A’la Maududi (1903-79) from the Indian subcontinent and Sayyid Qutb (1906-66) from Egypt, who think that Islam is irreconcilable with the main assumptions of democratic government, and therefore, Islam and democracy are incompatible. If this pessimistic approach with regards to the compatibility of Islam and democracy is right, then the supporters of democracy in the Muslim world are struggling in vain. However, against this pessimistic view, it is possible to put forward both empirical evidence and theoretical arguments that support the view that Islam and democracy are compatible. Accordingly, there are also those who believe that Islam and democracy are not only compatible but also their association is inevitable within the Islamic world. The examples of this optimistic view about the compatibility between Islam and democracy are Abdul Karim Soroush, a Shi’ite Muslim and a Persian from Iran and Sheikh Rachid al-Ghannaouchi, a Sunni Muslim and a Tunisian Arab.

Against this background the purpose of this article becomes clear: To give a critical overview of the arguments about the compatibility of Islam and democracy, and to see if Islam stands as an obstacle in the way of having institutionalized democracies in the Muslim world.
Islam and Democracy: An Impossible Association?

The twentieth century has witnessed the rise of a number of Muslim scholars who rejected democracy in favor of Islamic models such as the model of shura (consultation). Among those scholars come Sayyid Abu’l-A’la Maududi (1903-79) from the Indian subcontinent and Sayyid Qutb (1906-66) from Egypt. The basic argument of these scholars is that with its notion of popular sovereignty, democracy clashes with the Islamic notion of the sovereignty of God (Tripp 1994: 162; El-Affendi 2003: 37). As Maududi (1985) puts it, “Islam has no trace of Western democracy. . . . Islam, . . . , altogether repudiates the philosophy of popular sovereignty and rears its polity on the foundations of the sovereignty of God and the vicegerency (khilafah) of man” (Maududi 1985: 21). Similarly, Qutb (1988) states that “[s]etting up the kingdom of God on earth, and eliminating the kingdom of man, means taking power from the hands of its usurpers and restoring it to God alone ... and [establishing] the supremacy of the Shari’a alone and the repeal of all man-made laws.” (in Tripp 1994: 171)

From the liberal democratic perspective, the rules of a political system are legitimate only because they are enacted either by the people themselves or by their representatives to whom they granted their consent. Hence, freedom is not infringed by the necessity of political obligation. On the other hand, it is argued that in Islam, sovereignty belongs to God and individuals obey the rules of the political system not because they gave their consent to them but because God ordered it. As Hamdi (1996: 84) points out, “...no Islamic state can be legitimate in the eyes of its subjects without obeying the main teachings of the shari’a. A secular government might coerce obedience, but Muslims will not abandon their belief that state affairs should be supervised by the just teachings of the holy law.” According to this understanding, in addition to providing the norms of individual behavior, shari’a presents the sole source of law that binds both the individual faithful and the sovereign (Roy 1996: 13). On this basis, Qutb believes that the authority of the ruler does not derive from the consent of the people, but from the fact that he enforces the divine commands of the God. Should he fail in this respect, the Muslim community has a right to depose him (Tripp 1994: 168). In Qutb’s (1953: 94) words,

The ruler in Islamic law is not to be obedient because of his own person; he is to be obeyed only by virtue of holding his position through the law of Allah and his Messenger; his right to obedience is derived from his observance of that law, and from no other thing. If he departs from the law, he is no longer entitled to obedience, and his orders need no longer be obeyed.

In addition to their rejection of the concept of popular sovereignty of democracy, these scholars also share an attitude of anticolonialism and anti-imperialism. As Roy (1996: 4) indicates, this attitude today has assumed the form of anti-Westernism. For these scholars, “Islam is the divinely mandated alternative to the materialism and secularism of Western capitalism and communism” (Esposito 1998: 317). While rejecting political, economic and social arrangements, and mores of the West, this anti-Western outlook recognizes the scientific and technological advances in the west and, sees no contradiction in appropriating them. Thus, Qutb (1953: 251) states that “[i]n the case of pure sciences ad their applied results of all kinds, we must not hesitate to utilize all things in the sphere of material life; our use of them should be unhampered and unconditional, unhesitating and unimpeded.”
This line of thought can be depicted as Islamist view or ideology. As Nasr (2005: 16) argues, “Islamist ideology . . . calls for the creation of an utopian Islamic state that notionally vests all sovereignty in God. This call is based on a narrow interpretation of Islamic law, and promotes an illiberal, authoritarian politics that leaves little room for civil liberties, cultural pluralism, the rights of women and minorities, and democracy.” In this understanding, there is no room for personal choice and its political equivalent in the political sphere, i.e. democracy: “In [Islamic] state no one can regard any field of his affairs as personal and private” (Maududi 1985: 30). As Qutb (1988) puts it, “[I]f it is asked ‘Should not the interest of individuals shape their existence?’, then we must refer once again to the question and answer at the heart of Islam: ‘Do you know or does God know?’ ‘God knows and you do not know’ ” (in Tripp 1994: 169). In this sense, Islamism is seen as a comprehensive ideology, and the state, which is based on this ideology, covers every aspect of life (Qutb 1953: 8; Maududi 1985: 30). To the extent that Islamist scholars such as Maududi and Qutb extinguish the division between the public and private and makes personal subordinate to the common, Islamism can even be seen as a form of totalitarianism2 (Esposito 1998: 153).

Sanford Lakoff (2004: 136) states that “[t]he general bias of Muslim thinking . . . is in principle against the individualism, pluralism, and secularism characteristic of modern democracies.” Thus, he believes that Islamist line of thought is dominant in the Muslim world. As a result, one may be tempted to conclude that Islam does not provide democracy with a fertile ground on which it can grow. However, this pessimistic view about the compatibility of Islam and democracy does not go unchallenged. There are both theoretical and empirical arguments that can be extended against it. Let’s begin with the theoretical ones.

Some Theoretical Arguments in Favor of the Compatibility of Islam and Democracy

In the theoretical front, we can take Binder’s (1988: 243-244) distinction between the two sorts of Islamic liberalism or liberal Islam as our starting point. According to both of these interpretations, although for different reasons, Islam and democracy are compatible. For the first branch of Islamic liberalism, it is possible to have a democratic political system in a Muslim society for two reasons. First, such a system is in accordance with the spirit of Islam, which is tolerant of diversity as suggested by the Prophet Mohamed’s statement, “[d]ifference of opinion within my community is a sign of God’s mercy.” Secondly, Islam has few or no specific prescriptions regarding the political institutional arrangements of an Islamic society. Thus, in the absence of any specific rules, except for the institution of shura regarding political matters, this first group of Islamic liberals argue, Muslims are free to adopt democratic political arrangements.3

However, the second branch of Islamic liberalism aims at justifying liberal democratic arrangements through specific references to Islam. Those who employ this line of justification refer to “explicit legislation such as the qur’anic provision for taking counsel, or the denial of the sovereign authority of man over man, or the shar’i provisions for ‘electing’ the caliph, or the hadith concerning the equality of believers” (Binder 1988: 244). In the words of one of the representatives of this second approach, “[l]iberal Islam is a branch, or school, of Islam that emphasizes human liberty and freedom within Islam” (Masmoudi 2003: 40). Hence, one of their starting points is one of the basic teachings of Islam: “there can be no compulsion in religion.” The main pillars of this second version of Islamic liberalism are: Hurriya (liberty), Adl (justice), Shura (consultation), and Ijtihad (rational interpretation) (Masmoudi 2003: 40-1).
As examples of this approach, we can refer to Abdul Karim Soroush, a Shi’ite Muslim and a Persian from Iran and Sheikh Rachid al-Ghannaouchi, a Sunni Muslim and a Tunisian Arab. As Wright indicates, these reformers aim to modernize and democratize economic and political systems in an Islamic context. They believe that “human understanding of Islam is flexible, and that Islam’s tenets can be interpreted to accommodate and even encourage pluralism.” (Wright 1996: 67)

Unlike Maududi or Qutb, Soroush (1995) thinks that there is no incompatibility between Islam and the freedoms that are the basis of democracy: “Islam and democracy are not only compatible, their association is inevitable. In a Muslim society, one without the other is not perfect” (in Wright 1996: 68). Soroush’s advocacy of democracy for the Islamic world depends on two pillars: First, Soroush (2000: 140-141) believes that,

“[f]aith is a matter of exclusively personal and private experience. We embrace a faith individually just as we confront our death individually. … Faith and love are of the same grain. … There is no such thing as collective adoration, love, and testimony, just as there is no such thing as forced adoration, love, and testimony. True faith is contingent upon individuality and liberty.”

As Wright (1996: 68) rightly suggests, “This freedom is the basis of democracy.” Furthermore, for Soroush, the ideal Islamic state must be based on the beliefs and the will of the majority: An Islamic democracy cannot be dictated from the top; it would not be legitimate unless it has been chosen by the majority, including nonbelievers as well as believers (Wright 1996: 68). In this respect, for Soroush (2000: 129), observing the freedoms and rights that are the bases of democracy makes a government not only democratic, but also religious, i.e. Islamic. Secondly, according to Soroush, our understanding of religion has not reached a point where it is fixed and immutable. Rather it is evolving. Although the sacred texts are immutable, their interpretation is always subject to change because understanding is influenced by the time and place in which believers live (Wright 1996: 68-70).

Ghannouchi (1995) defends an Islamic system with majority rule, free elections, a free press, protection of minorities, equality of all secular and religious parties, and full women’s rights. In this respect, Islam’s function is limited to provide the system with moral values (Wright 1996:73). According to Gannouchi, individual believers are entitled to interpret the Koran for themselves—the right of *ijtihad*. In Islam there is no one particular authority with the exclusive right of interpretation of the Koran. Also, decisions in an Islamic society must be based on the views of majority and this is secured through the process of *shura*. In his own words,

“While on the one hand Islam recognizes the right of its adherents to *ijtihad* in interpreting the Koranic text, it does not recognize a church or an institution or a person as a sole authority speaking in its name or claiming to represent it. Decision making, through the process of *shura*, belongs to the community as a whole. Thus the democratic values of political pluralism and tolerance are perfectly compatible with Islam.” (in Wright 1996: 72)

Liberal Islam in general makes a distinction between the core of the religion and the historical baggage that has been built up around it over the centuries. As Lewis (1996: 54) points out, when
we speak about Islam as a religion, significant distinctions must be drawn: “First, there is what Muslims themselves would call the original, pristine, pure Islam of the Koran and the hadith (the traditions of the Prophet Mohamed) ... Second, there is the Islam of the doctors of the holy law, of the magnificent intellectual structure of classical Islamic jurisprudence and theology.” Liberal Muslims tend to base their thinking rather on the original, pristine, pure Islam of the Koran and hadith. As Kubba (2003: 46) puts it “[w]hile there are profound sources of Islamic inspiration beyond the Koran—. . .Islamic authority is the Koran’s alone.”

Regarding the status of the holy law, i.e. shari’a, these liberal Muslims think that we need not be bound by the tradition that is obstructive of development and modernization in the way of democratization. As Lewis (1996: 56) puts it “Muslims believe the holy law to be divinely inspired and guided, yet there are four significantly different school of thought regarding this law.” Given that the authority from which these different traditions are deriving their approaches is one and the same, namely, the Koran, the plurality of these interpretations can be attributed to a great extent to differences of places and times in which these traditions have been developed. Thus, shari’a is, to a great extent, historical. In fact, in order to account for differences in law that were caused by personal interpretation and preferences as well as different social and historical conditions, the doctrine of diversity (ikhtilaf) was developed (Esposito 1998: 321). Kubba (2003: 48-49) draws our attention to this point by stating,

“Take, for example, the role of women—or to be more precise the segregation of men and women that has been practiced so ubiquitously throughout Muslim history. There is no justification at all for this in our religion’s original message. It has come from extra-Islamic cultural sources, been transposed into an Islamic idiom, and labeled with the name of Islam. Again, if we refer to the Koran, I can have one copy and nobody worldwide will disagree with what that copy says. But if we refer to shari’a law there is no holy book called Shari’a.”

In this respect, Muslims should not feel obliged to follow those traditions that hinder them from adapting to both coping with difficulties and ceasing the opportunities of the modern world. Unfortunately, there is not much in the past experiences of Islamic societies that Muslims today can benefit from in this quest. Likewise, as Kubba (2000: 90) points out, “[t]he original texts that define Islam provide general principles on governance and the penal code but do not provide laws for modern societies and states.” It is up to individuals in their roles as citizens to form these rules in a modern world. For example, “[t]hinking about the Medina of old helps us to grasp the political concepts and principles at work during the seedtime of Islam, but in no way can that hygone city provide-nor was it ever meant to provide-a method of running the complex cities, states, and societies in which we live today” (Kubba 2003: 49). Democracy provides the Muslim world with a profound way of running its political affairs. However, in the face of traditions that run against democracy, Muslims should be ready to make necessary changes in these traditions by modernizing them, adapting them, stretching them with a spirit of liberty (Kubba 2003).

On the empirical front, the first evidence for the compatibility of Islam and democracy is the existence of democracy in countries with Muslim majority populations. As indicated at the beginning of this article with a reference to Karatnycky (2002: 103), in the 47 countries with an Islamic majority, there are 11 (23 percent) countries that have democratically elected governments. Though it is troubled in some respects, Turkey’s experience with democracy can be an example of this phenomenon. In Turkey, the political power was transferred to an opposition party (Democrat
Party) as a result of democratic elections for the first time on 14 May 1950. Since then, Turkey has witnessed three military interventions in 1960, in 1971 and in 1980. However, direct military rule has been an exception rather than the rule in Turkish politics since 1950.

However, there may be those who argue against this by stating that democracy took root in Turkey only after Islam was excluded from the public realm. For example, this line of thought can be found in Sanford Lakoff (2004:134-135):

“...it is misleading to identify Turkey simply as a ‘Muslim-majority country’ if the aim is to show that Islamic belief is compatible with democracy. Turkey’s republican constitution was adopted as part of a secularist revolution in the early 1920s that decreed an end to the traditional religiopolitical offices of sultan and caliph, along with religious courts and schools. Since then, Islamist parties have found themselves forcibly suppressed or compelled to respect secularism. Surely the more relevant implication of the Turkish experience is that Islamic beliefs may have to be overridden or be denied embodiment in social and political institutions if democracy is to rise in Muslim-majority countries . . .

Luckily, we do not need to accept Lakoff’s idea readily. Accordingly, Turkey’s experience with democracy did not start with the establishment of the Republic but goes back to Ottoman Empire. First, between December 1876-February 1878, and second, between July 1908-January 1913, Turkey experienced a constitutional parliamentary regime (Zurcher 1997; Erdoğan 1999a: 31). Thus, it was possible to introduce democracy in Turkey even before the secularist revolution of the early 1920s.

Additional empirical evidence in favor of the argument that Islam is not an obstacle to democracy can be found in the emergence of what Vali Nasr (2005: 12) calls “in a conscience evocation of the political tradition associated with the Christian Democratic parties of Europe- ‘Muslim Democracy’”. To the extent that Muslim democracy does not rest on “an abstract, carefully thought-out theological and ideological accommodation between Islam and democracy”, the Muslim democrats reconcile themselves with the requisites of democracy in a pragmatic way (Nasr 2005: 15). This trend has been evident since the early 1990s in the countries such as Turkey, Bangladesh, Indonesia, and Malaysia where Islamic-oriented but not Islamist parties have had electoral successes. The Justice and Development Party in Turkey, the Bangladesh Nationalist Party in Bangladesh, and the United Malays National Organization in Malaysia are examples of this phenomenon.

A peculiar fact about the democratically elected governments in the Muslim world is that none of them exists in the Arab world. As Karatnycky (2002: 104) stated: “Of the 31 non-Arab Islamic countries, 11 are electoral democracies, while none of the 16 majority-Arab countries has a democratically elected government.” In parallel to Karatnycky, Alfred Stepan and Graeme B. Robertson (2004: 141) show that

“[a] non-Arab Muslim majority country was almost twenty times more likely to be ‘electorally competitive’ than an Arab Muslim majority country.” They reached this conclusion by analyzing the data covering the period between 1973 and 2002 from the standpoint of the presence of electoral competitiveness. These findings bring up the following question: “Can it be possible that the lack of democracy is not related with being a Muslim state, but rather with being an Arab
Indeed, Stepan and Robertson titled their 2003 article “An Arab More Than ‘Muslim’ Electoral Gap” and 2004 article “Arab, Not Muslim, Exceptionalism”.

This peculiar fact makes one think that in addition to the pessimistic interpretation of Islam, which rejects democracy, socio-economic, international, and cultural factors, which are not directly related with Islam, might be responsible for the lack of democracy in the Arab world. To the extent that other Muslim countries that lack democratically elected governments also share some of these factors, the Arab experience may be worth to considering more closely. With this idea in mind, let us now examine the Arab exceptionalism.

Explaining The Arab Exceptionalism

Various explanations can be offered for this empirical discrepancy of democratic credentials in the Arab world. One line of explanation is concerned with socio-economic development. In fact, most of the Muslim majority countries are in less developed parts of the world. As a part of this larger Muslim world, many Arab countries have a bad record of socio-economic development. Going back to Seymour Martin Lipset’s 1959 article, “Some Social Requisites of Democracy: Economic Development and Political Legitimacy”, it can be argued that in most of the Arab countries the level of socio-economic development is not high enough to sustain a democratic form of government. As will be remembered, Lipset argued that socio-economic development, i.e. modernization, creates a middle class that is at peace with the main institutions of the political system. Furthermore, modernization makes the working class less authoritarian by giving it a stake in the system such as a stable income and the hope of climbing the ladder of social standing. Thus, he concluded that although socio-economic development does not guarantee democratic government, it helps sustain it.

Indeed, as Kubba (2000) indicates, after they gained their independence from the Ottoman Empire with the help of European colonialists, Arab states experimented with democracy for the first time in their history. At that time, governments followed constitutional and legal procedures but failed to address the needs of the worse off sections in their societies. Despite the fact that a political system that is open to all citizens existed, high illiteracy rates hindered masses from taking part in politics. A combination of this lack of participation and the slow pace of social and economic development caused democracy to remain an urban phenomenon that mostly served the interests of the elite and thus to lose its legitimacy in the eyes of the poor.

The events that took place in the aftermath of World War II gave a further impetus to the collapse of democracy in the Arab world. First, the establishment of the state of Israel had caused nationalism and political radicalism to rise. Second, competing superpowers did not care about democracy rather about their vital interests in the region and thus gave a blank check to the military officers. Confident with the encouragement given by the competing superpowers, military officers benefited from this climate of low legitimacy of democratic government and rampant nationalism, and put an end to democratic governments. Thus, bureaucratic-authoritarian governments were introduced first into Egypt, Iraq, and Syria, and then to most of the Arab world through popularly supported military coups (Kubba 2000: 85-86).
At this point, one can think of economically well-to-do Arab states, such as Saudi Arabia and other Gulf sheikhdoms. Despite the fact that they are doing very well economically these states have not experienced any democratic government. What explains this? As pointed out above, Lipset did not argue that social and economic development lead to political democracy. Likewise, Phillips Cutright and James Wiley (1969) can give us theoretical insight about this puzzle. In their study covering 40 nations within the time period from 1927 to 1966, Cutright and Wiley confirmed the positive correlation between economic development and democracy that was advanced by Lipset earlier. The originality of their study was the finding that those countries with a high level of economic development and high social security services could continue without democracy if they wanted to. In other words, as long as the state could satisfy the economic demands of the citizens such as jobs, health care, housing, etc., citizens did not feel a strong need to have a say in decision making. Thus when one thinks about the fact that oil-rich countries of the Arab peninsula provide most of these services and plus do not need taxes to finance them, then, the proverb ‘No taxation, no representation’ makes clear sense. As Karatnycky (2002: 105) indicates “oil-rich Muslim states have used oil revenues to provide large subventions to their populations, creating a unique form of public welfare that reinforces idleness and suppresses initiative.”

A second negative impact of the riches that are generated through oil on democratization among the Arab states is that it prevents the emergence of entrepreneurial and working classes respectively. As shown by numerous scholars such as Barrington Moore (1993) and Rueschemeyer et al. (1992), the emergence of democracy depends on the existence of social classes that demand it. Stated differently, the Arab states that are rich achieved prosperity without capitalist development. Additionally, the lack of a vibrant market economy causes the absence of a lively civil society. The simple reason for this is that in the absence of a developed market economy, civil society groups cannot gain easily economic independence from the state. Where the main income source for individuals and groups is the state, the state can be criticized only to the extent that it allows.

Another factor that is related to the collapse of democracy and the entrenchment of authoritarian governments in the Arab world is concerned with cultural dimension. The crux of the argument that sees a direct relationship between a given country’s culture and its democratic prospects is that in order for democracy to work properly in a given society, there must be a cultural background that is suitable for democracy in that particular country. Thus, in The Civic Culture, 1963, Almond and Verba argue that a political culture with a mixture of both participative and deferential components would have a more suitable climate for democracy (in Peters 1998: 45). In contrast, solely participative or subject-oriented cultures would be less suitable for democracy. However, as Kubba (2000: 86) points out, “[p]atriarchal Arab societies, accustomed to strong chiefs, had little appreciation for the slow process and competing authorities of democratic rule.” Using Almond and Verba’s classification, we can conclude that when democracy collapsed in the Arab world, Arab societies had a rather subject-oriented political culture.5
In addition to the social-economic and cultural factors, a third factor has its roots outside the region, i.e., in the capitals of the major powers of the world. As suggested with reference to the emergence of bureaucratic-authoritarian regimes in the aftermath of World War II, the superpowers openly supported military officers in staging military coups in the Arab countries. During and even after the Cold War those major powers continued to support authoritarian regimes for the sake of maintaining stability in the region that is indispensable for their national interests. Thus, Radwan Masmoudi (2003: 43) states that, “the United States and European countries must stop supporting the dictators in the name of stability. We all know that the stability provided by dictators is an illusion that only breeds violence and extremism.” Indeed, the unfolding of events following September 11, 2001 caused the only superpower of the world to change its policy towards the Middle East. Accordingly, the US government and its main ally, the UK, embarked on a project called Greater Middle East Initiative, the primary purpose of which is to promote democracy in the region.

In conjunction with the factor of stability, authoritarian regimes of the Arab world have been playing the card of Islamic fundamentalism and terror, especially since the end of the Cold War. These regimes have used the threat of Islamic fundamentalism as a justification for their heavy-handed rule in the eye of the international community. They argue that if they loosen the harnesses a little bit, the Islamists will take the power and this, in turn, will destroy the stability and peace in the region (Kubba 2000: 89; El-Affendi 2003: 37). One of the instruments that these regimes have employed in justifying their undemocratic measures has been the press. As Kubba (2000: 89) reports, “[t]he official press gives maximum publicity to radical and violent groups, portraying political Islam as a bogeyman that justifies undemocratic measures . . . .” Thanks to this manipulated propaganda, these regimes were able to lump all Islamic groups in the category of fundamentalist Islam and to exclude them from social and political participation (Kubba 2000; Masmoudi 2003). As Masmoudi (2003: 42) points out, “these states often do not distinguish between the liberal and fundamentalist Islam, they tend to perceive religion itself as a threat.”

Thus, in combination with a pessimistic interpretation of the relationship between Islam and democracy, there are factors that can be grouped as social and economic, cultural, and international factors that can be employed to explain the lack of democratic government in the Arab world. Of course, there may be some other factors that have not been accounted for in this limited space, yet none that have been discussed here are related to the essence of Islam. Stated differently, these are all secular, temporal factors. In this respect, they are not immutable. In fact, a long way has been traveled in the direction of modernization in the past few decades in the Arab world. There has been important progress in social, economic, and educational fronts (Kubba 2000: 88). Hence, it would not be misleading to conclude that Arab countries are overcoming all the barriers that stand in the way of democratization one by one. It can be reasonably expected that in the near future, transitions to democracy will be achieved in this part of the world as well.

Conclusion

This article raised one particular question: Is Islam an obstacle to democratization in the Muslim world? At the very beginning, it was pointed out that there are those who think that Islam rejects democracy with its notion of popular sovereignty. For them, the sovereignty belongs to God. Therefore, one can think, the lack of democracy in the Islamic world can be explained by the absence of any notion of democratic government in Islam. However, this pessimistic view for the fortunes of democracy in the Muslim world does not go unchallenged. It is possible to advance both empirical evidence that there are democratic countries with majority-Muslim populations and theoretical
arguments that Islam and democracy are not only compatible, but their association is inevitable. The optimistic view about the compatibility of Islam and democracy makes a distinction between the core of the religion and historical baggage that has been built around it over the centuries. On the basis of this distinction, it claims that those who argue against democracy in the name of Islam are depending on the historical baggage rather than the core of Islam. There is nothing in the core of Islam that hinders the establishment of democracy.

In fact, as it was shown in explaining the lack of democracy in the Arab world, in combination with a pessimistic interpretation of the relationship between Islam and democracy, social, economic and cultural factors that are not related to Islam can be identified as the factors that hinder the development of democracy. However, this also shows that in order to establish democracy in the Muslim world, it is not enough to show that Islam is compatible with democracy, rather, there must be a social, economic, and cultural environment that is fit for democracy. In this direction, if democracy is going to take root in Islamic soil, both the interpretation that emphasizes the compatibility of Islam and democracy, and the social, economic, and cultural conditions must be advanced.

Notes

1 As a matter of fact, the issue of the sovereignty in Islam is a disputed matter. In opposition to the Islamist view that vests all sovereignty in God, there is also the argument that makes a distinction between two sorts of sovereignty: ontological and temporal. According to this distinction, although God is the creator of the universe and thus ontologically sovereign over all of it, God is not in charge of the political affairs directly. That is to say, God did not spell out the political rules specifically by which human beings will order their relationships in this world. Thus, political sovereignty is left to human beings (Erdogan 1999b: 33-34).

2 Even Maududi himself accepts the fact that the Islamic state he defends resembles the Fascist and Communist states in this respect. However, he believes that even though the Islamic state is an all-inclusive state, it is completely different from the modern totalitarian and authoritarian states (Maududi 1985: 30). For Maududi, what makes Islamic totalitarianism a good form of totalitarianism, and totally different from the modern totalitarianisms, is the fact that it is based on God’s orders (Esposito 1998: 153).


4 It must be noted that Stepan and Robertson do not equate ‘electoral competitiveness’ with democracy as such. They are of the opinion that ‘electoral competitiveness’ is a necessary but not a sufficient condition for democracy to take root in a country. They think that competitiveness is present when “1) the government springs from reasonably fair elections; and 2) the elected government—and not some other power center—is able to fill the most important political offices.” (2004: 141)

5 Yet, it must be noted that, by stating that, “[t]hroughout history, the overwhelmingly most common type of regime in the Islamic world has been autocracy—which is not to be confused with despotism. The dominant political tradition has long been that of command and obedience, and far from weakening it, modern times have actually witnessed its intensification.” Bernard Lewis thinks that this is true not only for the Arab world but for the Islamic world in general (Lewis 1996: 54-55).

6 It can be argued that at least cultural factors may be directly linked with the religion. However, to this argument it can be responded by stating that the cultural feature that is pointed in this paper with regards to the Arab exceptionalism, namely, tribalism and its associated behavioral attitudes within the Arab world were there even before the emergence of Islam.
References


WHAT IS FREEDOM OF SPEECH

Alan Charles Kors
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The emergence of freedom of speech as an essential value of Western civilization is inseparable from the emergence of individual religious liberty in the 17th and 18th centuries. For generations following the Reformation of the 16th century, religious war, mutual fratricide, torture, hatred, and repression had rent the fabric of European society. The needs of civil and political society increasingly seemed incompatible with the attempt to coerce inward belief and outward expression. Further, the consciences of a growing number of Europeans were moved by the seeming contrast between the violence of such coercion and repression, on the one hand, and the claims of religion to be a source of peace and love, on the other. For reasons of practice and conviction, then, the call for liberty of belief and expression grew steadily more compelling for those who saw such spectacle as inconsistent with religion itself, creating a growing desire to find ways to live in societies of more mutual forbearance. The arguments on behalf of that mutual forbearance, however, led logically and in practice to freedom of speech being recognized both as both a necessity of our living peacefully together and a moral end in itself.

Many of the calls for religious freedom initially were meant to apply only within limited but increasingly variegated communities of belief: to Protestants in general, for example; or, an extreme latitude at the time, to those who simply believed in God. As usually occurs with claims for liberty, however, the spirit of the arguments overflowed the initial boundaries envisaged. In societies that believed religion to be mankind’s highest calling and whose members’ greatest pain was occasioned by what they saw as heretical or impious expressions, winning the debate on behalf of liberty in religion—the area where restrictions on speech seemed the most reasonable—carried with it a victory on behalf of freedom of speech in general.

In the midst of the English Civil War, the Parliamentary party attempted to censor the book trade by means of the Licensing Order of 1643. In his Areopagitica (1644), John Milton, although an ardent supporter of the Parliamentary cause, argued passionately on behalf of allowing the full force of free debate to sustain both liberty and truth. Although his opposition to censorship was intended for good Protestants alone, Milton’s soaring defense of freedom of expression established more universal themes. One can choose truth and goodness, he wrote, only where there is “knowledge of evil”: “I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary.” Confrontation with error, he wrote, is essential “to the confirmation of truth,” and that confrontation depends upon “hearing all manner of reason.” Further, what men possibly could be trusted to regulate human discourse? When God gave man reason, Milton urged, “He gave him freedom to choose,” which made human beings morally responsible. To “know” truth because of coercion was without merit, and Parliament would err grievously if it sought, even on behalf of the good, “to suppress all this flowery crop of knowledge and new light sprung up and yet springing daily in this city…to bring a famine upon our minds again.” Any “free and humane government” favored “free writing and free speaking.” Liberty, he wrote, raises the human mind to rare heights: “Give me the liberty to know, to utter, and to argue freely according to conscience; above all liberties.” We need not worry about the strength of truth: “Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?” England, he urged, should be “the mansion house of liberty.”
On the continent, generations of religious warfare and persecution led many thinkers to believe that coerced uniformity and suppression of difference of belief were far more threatening to both the individual human soul and the stability and peace of society than diversity of opinion and freedom of expression. In many of his writings, the great critic, polemicist, and philosopher Pierre Bayle, a Huguenot living in exile in Holland after the revocation of even limited toleration of Protestants in France, argued that suppression of the outward expression of sincere belief, however false, corrupted the human spirit, leading men to a damnable cruelty and hypocrisy. Holland, finely balanced between Catholics and Protestants, permitted the most freedom of speech of any nation in Europe by the late 17th century, out of a prudential concern for what would follow if various claimants to truth had to fight for control of the state in order to have liberty of expression. In his *Tractatus Theologico-Politicus* (1670), Baruch Spinoza devoted his final chapter to the proposition that “in a free commonwealth, every man may think as he pleases and say what he thinks.” Because belief was a matter of “individual right…no man may surrender it even if he wishes to do so,” and governments that sought to compel belief were “tyrannical” and therefore unstable and subject to violent overthrow. At the heart of such compulsion was the effort to control expression, and “the most tyrannical government will be that in which the individual is denied the freedom to express and to communicate to others what he thinks.” The function of the state was not “to transform human beings from rational creatures into beasts or automatons,” but, to the contrary, “to enable them to develop their mental and physical faculties in security,” so long as they did not harm others in their liberty and security. In short, “the purpose of the state is, in actuality, freedom.”

Shortly after his return to England from exile in Holland, the philosopher John Locke published a *Letter Concerning Toleration* (1689), in which he argued that “It is one thing to persuade, another to command,” and “It is only light and evidence that can work a change in men’s opinions.” Locke did not intend for his arguments on behalf of toleration to apply in particular to atheists and Catholics, both of whom, he believed, represented a danger to the state and to society, but, as with Jefferson in the Declaration of Independence, whose “all men are created equal” and whose “life, liberty, and the pursuit of happiness” were far from inclusive claims in the author’s mind, Locke had articulated a principle that had a power to shape the future on behalf of human freedom in general.

The inseparability of the campaign for religious toleration from the emergence of claims on behalf of freedom of speech is seen clearly in the American experience, where the First Amendment of the Bill of Rights (ratified in 1791) first established freedom of religion as an essential right and only then established freedom of speech as such. Arguing in 1776 on behalf of religious liberty in the Commonwealth of Virginia, James Madison urged that “the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men.” Madison’s own bill declared that “all men shall be free to profess, and by argument to maintain, their opinion in matters of religion.” With religion considered to be the most important set of truths, freedom there meant freedom of expression on virtually all matters of conscience and importance. Such freedom was, in Madison’s view, among “the natural rights of mankind,” and, thus, beyond the reach of any government.
Writing in support of the fullest possible freedom of belief and expression (absent direct harm to others), the English philosopher John Stuart Mill wrote, in *On Liberty* (1859), that in order to establish freedom of expression, he would take the most difficult case of all, the right of those who dissented fundamentally in matters of religion, because if he could win the issue there, he had won it for all lesser instances. In making his plea for freedom of belief and expression, Mill essentially established the pole toward which both public opinion and jurisprudence gradually, fitfully, but powerfully would move.

Most people believe that they favor free speech, Mill argued, but in fact, almost everyone sets limits at what they believe to be without value, or dangerous, or just obviously wrong. Why should we favor freedom of expression even to what we consider beyond the pale? For Mill, there were four ultimately compelling reasons, confirmed by history, for supporting “freedom of opinion, and freedom of the expression of opinion.” First, the opinion might indeed be true, and “to deny this is to assume our own infallibility.” Second, the opinion, although largely or almost wholly in error, most probably would “contain a portion of truth,” and censorship would deny us the possible “remainder of the truth” that only could be gained by “the collision of adverse opinions.” Third, even if prevailing opinion were the whole truth, if that truth were not “vigorously and earnestly contested,” it would be believed by most not on “its rational grounds,” but only “in the manner of a prejudice.” Only freedom of expression would permit truth to be embraced by conviction, not by memorization. Fourth, if people were not obliged, by liberty of opinion, to defend their beliefs, truth would be “in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct,” becoming merely a formula repeated by rote, “inefficacious for good…and preventing the growth of any real and heartfelt conviction, from reason or personal conviction.” The negative consequences of the suppression of freedom of speech would fall upon both the individual and the society deprived of strong and daring individuals. In Mill’s celebrated formulation: “If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”

It was not until the 20th century that the U.S. Supreme Court, in a set of quite dramatic decisions, brought the interpretation of the First Amendment’s speech clause—“Congress shall make no law...abridging the freedom of speech, or of the press”—closer to Mill’s sense of such liberty. Originating in cases (and often in minority dissents) involving the rights of protestors opposed to American participation in World War I, a line of Supreme Court jurisprudence vastly broadened the meaning of protected free speech. In *Terminiello v. Chicago* (1949), writing for the Court, Justice William Douglas noted that the “function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” In *Cohen v. Connecticut* (1971), the Court held that emotively powerful and offensive speech was constitutionally protected because outrage or anger “may often be the more important element of the overall message sought to be communicated.” “One man’s vulgarity,” Justice Marshall Harlan opined, “is another’s lyric.” In *United States v. Eichman* (1990), the Court struck down the Flag Protection Act of 1989, ruling that while “desecration of the flag is deeply offensive to many...the same might be said...of virulent ethnic and religious epithet...and scurrilous caricatures.” In a free society, citizens were free, absent direct harm, to be offensive and scurrilous in each other’s eyes. In *R.A.V. v. City of St. Paul* (1992), the Court invalidated a city ordinance that sought to protect individuals from expression that “arouses anger, alarm or resentment on others on the basis of race, color, creed, religion or gender.” Writing for the Court, Justice Antonin Scalia stated, “St. Paul has no such authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensbury rules.”
The Court, however, never has taken the “no law” provision of the First Amendment literally. Obscenity, speech posing “a clear and present danger” of imminent violence, and disclosures of information (such as troop or naval movements) deemed threatening to national security all remain unprotected. Nonetheless, the Court has brought the law closer and closer to the spirit of John Stuart Mill’s observation about not only freedom of speech, but also the freedom to act on the beliefs we hold and express: “The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental or spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.” The lessons learned during generations of religious fratricide have found a welcoming though always threatened home.

Further Readings


Part 2
TURKEY’S RENAISSANCE: 
FROM BANKING CRISIS TO ECONOMIC REVIVAL

Hugh Bredenkamp, Mats Josefsson, and Carl-Johan Lindgren

On the morning of February 19, 2001, Turkish Prime Minister Bülent Ecevit stormed out of a routine meeting of the National Security Council and declared to the news media ‘a crisis at the very top of the state.’ The Prime Minister’s spat with President Ahmet Necdet Sezer at that meeting had nothing to do with economic policy. Nevertheless, it triggered a meltdown in Turkish financial markets. Investors had been on edge since the previous November, when increasing concerns about policy slippages had combined with fears for the creditworthiness of some local banks to spark a run on the crawling-peg exchange rate regime. That mini-crisis was contained, but market confidence remained fragile in the weeks that followed. Consequently, a spike in political tensions – hardly exceptional in the Turkish context – was sufficient to incite a rush for the exits by investors. For three days, the Central Bank (CBT) battled to defend the lira, as overnight interest rates soared to 4,500 percent. But, on February 22, the authorities conceded defeat and the lira was allowed to float, depreciating immediately by some 40 percent. The collapse in confidence, as banks began to default in the market for short-term funds, brought on the worst economic recession in the history of the republic, and required a comprehensive rescue package for the Turkish banking system, at a cost of some $47 billion – one-third of Turkey’s national income.

Fast forward to April 2007. President Sezer’s term had ended, a new government was in office, and their candidate to replace him was the foreign minister, Abdullah Gül. Secularists, including the military high command, feared that a Gül presidency would herald a rollback in Turkey’s strict regulation of religious activity. Late on the night of April 27, the military issued a statement that was interpreted as threatening intervention if needed to protect the secular state. In view of Turkey’s history with military coups, a political storm ensued. Although Mr Gül subsequently took office unimpeded, this was, by common consent, a far more serious political shock than Mr Ecevit’s outburst six years earlier. Yet the markets took it in their stride. The stock market and the lira dipped briefly the following Monday, but quickly stabilized.

Why did market confidence collapse in 2001 but not in 2007? What had happened in the intervening six years to make the economy, and investor sentiment, so much more robust? The answer is: a radical and wide-ranging transformation in Turkey’s economic policies and institutions. This turnaround was launched by one government, sustained and broadened by its successor, and underpinned throughout by extensive IMF support, both financial and technical.

In this chapter, we outline briefly the origins of Turkey’s economic weakness in the run-up to the 2001 crisis. We go on to describe the key elements of the post-crisis transformation, with a particular focus on the rescue and rehabilitation of the banking system. The latter was a critical component of the recovery program, and an area where IMF staff provided direct, hands-on support to their Turkish counterparts. We conclude with some observations on why the post-2001 reform effort, more than any of its predecessors, has succeeded and apparently taken root.

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The Legacy of the 1980s and 1990s

In the decades following World War II, the Turkish economy, like many of its peers in the developing world, was characterized by heavy regulation, protection from foreign competition, and extensive state involvement in commercial activity. Turkey’s relatively poor growth performance and high inflation during this period convinced many that a new paradigm was needed, and a comprehensive reform program was launched under the government of Turgut Özal in the early 1980s.

Growth responded strongly to the liberalization and opening up of the economy. But the impact of the reforms was ultimately undermined by poor financial discipline. The fractious political environment played an important role. During the 1980s and 90s, Turkey had 15 governments, 10 of which were coalitions or minority governments. Agreeing on and sticking with the difficult policy choices that were needed, especially on the budget, proved to be impossible in this setting. The result was chronic budget deficits, financed in part by printing money, leading in turn to inflation in the 30–50 percent range throughout the 1980s, rising to an average of over 75 percent during the 1990s.

At the end of the 1990s, a steep recession and the trauma of the 1998 earthquake appeared to create a political opening for a more serious stabilization effort. Ecevit’s coalition government put together a bold program, which the IMF backed under a StandBy Arrangement approved in December 1999. The government of the day put great emphasis on the corrosive effects of inflation – both on equity and growth. High inflation had deterred long-term investment and stunted the development of Turkey’s financial sector. The poor suffered most, especially those on fixed incomes and without access to inflation hedges. Since fiscal profligacy was clearly at the root of the inflation, strong up-front fiscal adjustment was the program’s central element. A raft of structural reforms – covering pensions, agricultural subsidies, and privatization – was included to put the budget on a sound footing. To convince financial markets and the public that the value of their liras would no longer be inflated away, the central bank committed to a target path for the exchange rate. This would allow interest rates to come down quickly, which was seen as essential to facilitate the fiscal adjustment and support growth. Banking reforms completed the package: these were slated to reduce borrowing costs and revive the economy, and they included plans to establish an independent bank regulator, tighten prudential regulations, and rehabilitate state-owned banks.

The 2000 program had a positive start: interest rates fell sharply and growth took off, exceeding expectations. But the recovery was unbalanced. Though inflation dropped, interest rates fell even faster. Demand surged, sucking in imports. Together with a 60 percent hike in world oil prices, this pushed the current account from nearbalance to a deficit of almost 5 percent of GNP in 2000. Rapid credit expansion aggravated risks in the banking system, as short-term funds (some borrowed in foreign currency) were used to lend at longer maturities in lira.

The IMF urged the government to take budget measures to rein in demand, but the government hesitated, not wanting to stall the recovery. This inaction, together with widespread delays in the implementation of the structural reform agenda, growing concerns about bank soundness, and political uncertainties, created a ‘perfect storm’ that subverted market confidence. With the collapse of the lira peg in February 2001, the economic program had to be recast.

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3 Caroline Van Rijckeghem and Murat Üçer, Chronicle of the Turkish Financial Crises of 2000–2001, Istanbul: Boğaziçi University Press, 2005. Intensifying market worries about problems in the private banks played a particularly important role in the run-up to the November 2000 crisis. The media highlighted lurid stories of corruption and malpractice in several private banks during the fall of 2000. At the same time, analysts and bank creditors became increasingly nervous about banks’ foreign currency exposures. Rumors regarding potential funding difficulties for one bank with large debts in the overnight market were regarded by many as the trigger for the market panic on ‘Black Wednesday’ (November 22).
Sowing the Seeds of Recovery: the Design of the 2001 Program

The immediate challenge in the aftermath of the February 2001 crisis was how to restore confidence. The government’s first step was to create a new economic team, under Kemal Derviş, a senior World Bank staffer. Its task was to design a new economic program that would repair the wreckage in the banking system, stabilize the budget in the face of the huge costs of those repairs, and provide a new anchor for inflation to replace the exchange rate peg. The key elements were:

- Radical financial and operational restructuring of the state-owned and failed private banks, with capital infusions from the private sector into weak private banks and a further tightening of bank supervision.
- More ambitious budgetary targets, underpinned by new fiscal measures and improvements in the transparency of the budget accounts.
- A revitalized privatization program, covering the telecommunications, electricity, natural gas, sugar, and tobacco sectors.
- Statutory independence for the CBT, with a mandate to move toward formal inflation targeting.
- Incomes policies, including tight control of public sector pay and a more active role for government in influencing private pay settlements.

The program was to be underpinned by a beefed-up financial support package that would combine a restoration of credit lines from international banks with augmented official financing, notably from the IMF (which increased its $11 billion credit line by $8 billion), so as to begin rebuilding the CBT’s depleted reserves.4

The reform of the banking system was at the heart of this program and is worth recounting in more depth.

The Outbreak of the Banking Crisis

The week of February 19, 2001 was devastating to Turkey’s state banks. During that week, losses in the two largest state banks amounted to a massive $2.5 billion, or about 2 percent of GNP. This was the result of overnight interbank borrowing at stratospheric interest rates as banks sought to avoid default in the daily clearing. Some private banks also incurred losses, while others benefited from the rates the state banks were paying on overnight funds.

How did the state banks end up in this situation? For many years, the politicians had abused these banks, which had been ‘allocated’ to different political parties to provide subsidized credits to their political constituencies. The banks were not compensated for the losses from such lending but were instead forced to book them as claims on the government, as so called ‘duty’ losses. These claims generated little income and no cash flow, which meant that the banks had to fund themselves increasingly short term in the interbank market. As the liabilities grew they became more vulnerable to liquidity and interest rate risk. By the end of 2000, the state banks’ duty losses had grown to some $19 billion, their short-term liabilities to some $22 billion and their foreign exchange exposure to $18

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4 IMF financing under the 1999–2000 program was initially set at a relatively modest $4 billion over three years. This had been boosted in December 2000 by an additional $7.5 billion in support of the government’s efforts to contain the fallout from the November 2000 crisis.
billion. Even a small shock could have toppled them—the massive shock that hit them in mid-February was truly catastrophic.\footnote{Although the 1999–2000 program included measures to address the duty losses problem, it assumed that the broader vulnerabilities in the banking system (state and private) could be tackled over time by tightening the regulatory framework. This was one of several areas where policy implementation slipped during 2000, and in the event, time was not on Turkey’s side. When the crisis hit, the Central Bank of Turkey (CBT) had very limited room to maneuver, as any monetary tightening to limit the fall of the lira was bound to cause the state banks additional losses.}

Furthermore, the state banks did not have to provide reserves for bad loans, did not have to comply with prudential regulations applicable to private banks, and were not subject to any serious supervision. This allowed massive distortion in the banking system and became the subject of bitter complaints by private banks. Many private banks got their revenge in the crisis, however, as the huge losses of the state banks were mirrored in huge windfall profits for banks with excess liquidity. But such positive effects were not evenly distributed—many private banks were also severely hurt by the shocks of mid-February.

The calamity in the banking system was a rude wake-up call for the government, which realized that current bank practices could no longer continue. There was a need for fundamental financial and operational restructuring of the state banks and a strengthening of the regulatory and supervisory framework under which all banks had operated.

Throughout the 1990s, banking supervision had been light and weak rules on asset valuation allowed banks to overstate their financial positions. Most private banks were owned by families, which used their banks as treasuries to companies owned by them. This was possible as connected lending rules were unusually lax. Most banks borrowed short-term in international markets and invested the funds long-term in loans to related parties or in government securities\footnote{Connected lending or lending to related parties occurs when a bank lends to its own shareholders or managers, including entities controlled by them or their family members.} This made them extremely vulnerable to liquidity and market risks. By the late 1990s, eight banks had failed and been taken over by the Savings Deposit Insurance Fund (SDIF), which continued to operate them without corrective actions despite growing losses and distortions. There were no bank runs, however, as depositors and bank creditors were fully protected under a blanket state guarantee in effect since 1994.\footnote{Contrary to the IMF-backed program, this guarantee was lifted by the government in June 2000 but was reintroduced in December 2000 after the failure of Demir Bank, when some smaller banks faced liquidity withdrawals.}

In mid-1999, a legal amendment called for the establishment of a new independent supervisory authority, the Banking Regulation and Supervision Agency (BRSA). Until then banking supervision had been split between the CBT (off-site) and the Treasury (on-site). The start-up of the new agency was much delayed, however, owing to political disputes over the appointments of the board and Chairman, and it did not become operational until September 2000, following intense pressure from the IMF and World Bank. During this period, banks were without effective supervision and there were no efforts to resolve the ‘intervened’ banks (that is, banks that had failed and been taken under SDIF stewardship).

**IMF Involvement in Turkey’s Banking Reforms**

Since 1999, there had been several missions from the IMF’s Monetary and Exchange Affairs Department (MAE) to provide technical assistance to the authorities on how to deal with the state-owned and intervened banks, and strengthen the regulatory and supervisory framework. In late 2000, market analysts perceived the reform process to be lagging, as BRSA struggled to identify its role and responsibilities.
Most of the issues to be addressed in the banking sector were not new to IMF staff members, who had dealt with a number of banking crises in the late 1990s in Asia and elsewhere. Since the mid-1990s, MAE had systematically built up its knowledge of such crises and their resolution by drawing on banking-crisis experiences in Latin America and the Nordic countries. A number of experienced senior supervisors were hired, and several policy papers on banking crises and bank restructuring were prepared for the IMF Executive Board during this period.8

Prior to the crisis, the Turkish authorities had been reluctant to acknowledge the extent of reforms that were needed. Their policies at this time were also poorly communicated, and with various agencies involved, accountability was unclear. When the new government team took charge after the crisis, the dynamics changed – the restructuring process picked up speed and was implemented with determination and skill.9

On February 24, a few days after the crisis had erupted, an MAE mission arrived in Ankara to work closely with the Turkish authorities and IMF European Department colleagues in developing the banking sector reforms that would form part of a new IMF-backed program. The mission stayed in Turkey for almost a month. Their stay coincided with a major religious holiday, and Ankara was more or less closed down for several days, during which the mission members were the sole guests at the Sheraton hotel. The senior Treasury, Central Bank, and BRSA staff stayed at their posts, however, and the work proceeded with a spirit of great cooperation and determination. A central role was played by the new BRSA Chairman, Engin Akçakoca, and his deputy, Teoman Kerman.10 By late March, agreement was reached on almost all aspects of the banking sector reform program.11

The Bank Restructuring Strategy

Restoring confidence in the banking system and credibility to economic management was the top priority. It was clear that financial stability, monetary control and a lowering of interest rates would not be possible unless the banking problems were credibly addressed. The banking sector reforms, therefore, became the central focus of the program. Turkey learned the hard way that macroeconomic stability and economic growth requires a sound banking system. The immediate focus was on the restructuring of state banks, starting the resolution of the intervened banks and putting pressure on private bank owners to recapitalize their banks. Measures to strengthen the legal and regulatory environment were also included. Policies in support of corporate debt restructuring and asset recovery were to be addressed at a later stage.

Reform of the state banks had become the highest priority.12 A massive recapitalization was called for. The only credible option was to use transferable government securities issued on market

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9 In addition to Kemal Derviş as State Minister for Economic Affairs, the team appointed in the aftermath of the crisis comprised Sureyya Serdengeçti as Governor of the Central Bank of Turkey, Faik Öztrak as Secretary of the Treasury and Engin Akçakoca as Chairman of the BRSA.

10 Before his appointment, Engin Akçakoca had been the General Manager of a medium-sized private bank owned by one of Turkey’s most prominent business groups.

11 The mission had also closely coordinated its work with a financial sector mission from the World Bank.

12 There were four state banks: the large Ziraat and Halk and the smaller Vakif and Emlik. Emlik was merged into Ziraat. Vakif, whose legal owners were various foundations (but de facto state-controlled) was supposed to be quickly privatized but as of mid-2008 only 25 percent of its shares have been sold to private investors.
terms, so that the banks would not face renewed losses and liquidity problems. In total, the government injected $19 billion in floating rate notes (in lira and foreign currency) thus making it possible for the state banks to fully eliminate their exposures in foreign currency and to repay their overnight money market debt. This meant that the rollover problem was shifted to the CBT, which was in a position to provide liquidity to the banks through more traditional monetary policy instruments. Based on an aggressive valuation of the banks’ assets, the government injected an additional $2.9 billion in government securities to raise the capital adequacy ratios of the two large state banks, Ziraat and Halk, above the required minimum of 8 percent. In addition, the state banks became subject to all BRSA regulations applicable to private banks.

In the operational restructuring, the banks’ links to line ministers were cut. Instead, an independent and highly professional joint board was appointed for Ziraat and Halk. It would set uniform deposit rates for the state banks, in consultation with the CBT, and these rates were to be kept below market rates for treasury securities to ensure profitability. Moreover, the staffing and organizational structure of Ziraat and Halk were to be streamlined to reduce operating costs. In less than two years, one-third (829) of all branches were closed and the number of employees was reduced by one-half (30,000).

The resolution of intervened banks was tricky, given conditions in the banking market. It was difficult to liquidate good assets, let alone problematic ones. Up to that point, SDIF had taken over 13 banks and the expectation was that three of them could be sold, while the rest would have to be closed and liquidated. The key question was how to build up managerial skills within SDIF to maximize loan recoveries and minimize the fiscal cost.

While the financial condition of some of the larger private banks had strengthened during the crisis, many other private banks had experienced substantial losses from the high interest rates and the depreciation of the lira. With strict application of loan classification and provisioning rules introduced one year earlier, the level of nonperforming loans was expected to increase sharply for all banks. BRSA agreed to hold individual meetings with all banks to discuss their capital positions with the understanding that banks judged to be undercapitalized would be required to present time-bound plans to raise additional capital. All banks had to suspend dividend payments.

In the legal area, the discussion focused on a strengthening of prudential regulations, especially for connected lending and lending to related parties. Agreement was reached on a regulation that would gradually reduce the limits from 70 percent to the EU-compatible level of 25 percent of own funds by 2006. Accounting standards would be brought in line with international standards from the beginning of 2002 and the legal framework to facilitate corporate restructuring was to be reviewed.

**Public Support Scheme**

As part of the initial strategy, all undercapitalized banks were required to submit detailed and time-bound plans on how they would raise additional capital by end-2001. The fact that many bank owners had unlimited personal liability under the law for losses in their banks resulting from connected lending was a strong incentive for them to inject needed capital. In total about $1.1 billion was raised. Six banks failed to raise capital and were taken over by SDIF. The persistently high interest rates continued to cause concerns about the financial conditions of banks, however, and there were market rumors that banks still overvalued their assets and would not be able to raise more capital, if faced with additional losses. To remove damaging uncertainties and protect the core banking system, agreement was reached on a support scheme that would make public funds available to help banks that could not raise new capital on their own. This type of scheme had been used successfully in Thailand in 1998.

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13 Ziraat, for instance, which was created with a mandate to finance the agricultural sector, had previously been under the authority of the Minister of Agriculture.
No effort was spared to make sure that banks’ capital needs were assessed correctly. This required a methodology that would spell out in great detail how asset values should be determined and potential losses identified. The assessment had to be fair, equally applied to all banks and transparent. Introduction of the scheme required a special law that took weeks to develop, given its complexity. Considerable effort was made to explain the exercise to the banking industry, public, and politicians. On the advice of the MAE mission, a team of experienced outside consultants, headed by Mark Carawan – partner in a major consulting firm and with experience from Asia and Sweden – was hired to develop the asset valuation methodology in close cooperation with BRSA staff. The team produced a detailed reporting system (some 100 pages long). Banks’ external auditors were required to confirm in writing that the data reported by the bank was correct. This was followed up by a second team of independent auditors, who were to confirm that the bank had followed the methodology prescribed by BRSA. Finally, BRSA’s examiners were to sign off on the assessment. This process was essential to help BRSA face powerful bankers with close political connections. The exercise was initiated in June 2002 and completed two months later.

Under the scheme, banks that could not raise capital on their own would have access to public funds if several stringent conditions were met, including: (i) such support should be viewed as a last resort; (ii) existing shareholders or new private investors had to match the public contribution; (iii) there would be no bail-out of existing shareholders; (iv) the bank had to have a positive net worth; (v) the government had the right to appoint at least one board member; and (vi) existing shareholders were required to pledge as collateral to the government shares held in the bank equal to the government’s contribution. As it turned out no private bank needed capital assistance from SDIF. The owners of one large bank, Pamuk, could not raise the $2 billion needed to enter the scheme and that bank was intervened. The incentives built into the scheme for shareholders to invest their own resources rather than to give the SDIF a role in managing their bank had the desired effect. The exercise was a great success and very professionally managed by BRSA.

Confidence in the private banking system was restored and there have been no further bank failures – with one major exception. There was a highly embarrassing bank failure in 2003, when a relatively small family owned bank, Imar, became illiquid owing to massive deposit withdrawals. When BRSA examiners went into the bank they found that most accounting records had disappeared and that deposit liabilities were ten times higher than officially reported due to an elaborate parallel banking operation. For over 10 years, data had been manipulated through a sophisticated computer program. There had been suspicions surrounding the bank – prompting external audits, regular supervisory inspections by the sworn bank auditors, and investigations by the Treasury and even by a parliamentary committee – but no wrongdoing had been found. The episode illustrated how a truly sophisticated fraud can escape detection for years. Once it was discovered, it was felt that depositors had to be paid in full, at an initial cost to SDIF of more than $6 billion. The happy ending to the story is that the SDIF was able to recover the full amount by confiscating and liquidating assets of the bank’s owning family.

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14 Immediate technical assistance was crucial for the success of the scheme. BRSA faced rigid procurement procedures, and so MAE agreed to finance it. Later, a cost sharing formula was worked out with BRSA.

15 Only the foundation-owned Vakif required a $137 million capital injection under the scheme.

16 A similar scheme had been used in Thailand with the same outcome, that is, shareholders preferred to invest their own money rather than to have the government participating in running their bank.

17 At the time, the law gave sworn bank auditors exclusive right to conduct on-site inspection of banks. This right was later removed, giving the BRSA more flexibility in the composition of on-site inspection teams.
A Successful Outcome

Following their recapitalization and downsizing under new professional management, the state banks immediately became highly profitable, which allowed them to pay hefty dividends to the Treasury. Ziraat accumulated so much surplus capital that it was able to pay the government a special dividend of $2 billion. The intervened Pamuk was successfully merged into Halk, 25 percent of which was privatized in 2007 for $1.8 billion, indicating a total market value close to $10 billion. Market analysts believe Ziraat's market value to be substantially higher. There is thus a realistic prospect that, once these banks are fully privatized, the government may more than recoup the funds it has had to inject to rehabilitate them. Considering that, in early 2001, the value of these banks was close to zero, this is a measure of the reform’s success.

The private banking system’s profitability also improved significantly following completion of their restructuring and recapitalization. Further mergers and consolidation followed, including the absorption of some of the banks taken over by SDIF. The passage of a new banking law has brought regulations and supervisory practices fully in line with international best practice. A sign of the confidence shown in the banks is that foreign investors have increased their stake in the Turkish banking system from 6 percent in 2001 to nearly 50 percent today.

The Economic Recovery

The economy turned around remarkably quickly as the program restored confidence. Industrial production began rising in late 2001, and the first half of 2002 saw the recovery in output gathering strength, combined with a 30 percentage point drop in inflation. Business confidence surged into positive territory, and – after a sharp drop in the wake of the September 11 events – the stock market took off.

Six years on, no-one familiar with the history of the preceding decades could fail to be impressed by the fundamental transformation that has been achieved:

- The public finances have been put on a sound footing for the long term: The cumulative impact of fiscal profligacy during the 1990s, together with the massive financial costs of the ensuing crisis and the devaluation of the lira, pushed total government debt to over 100 percent of GNP in 2001. Since then, sustained fiscal adjustment has brought the budget into approximate balance and, with some help from an appreciating real exchange rate, has slashed the debt burden by almost half. Turkey’s government is justifiably proud that its fiscal position now meets the European Union’s Maastricht criteria, a distinction not yet shared by some EU member states. The funding of its debt has also improved: the government can now borrow on longer maturities and lower spreads, and has reduced its reliance on riskier foreign currency debt. As the cost of debt servicing continues to decline in coming years, this will make room for much needed tax cuts and infrastructure investments. The recent passage of social security reform legislation, which was essential to address widening deficits in the health and pension systems, will give additional support to the long-run fiscal consolidation effort.

- Inflation has been tamed: In the 20 years leading up to the 2001 crisis, the lira had on average lost half of its US dollar value every nine months. Inflation had been in the double or even triple digits for 35 years. This erosion of the currency stunted the growth of Turkey’s financial sector and held back economic development more generally. It also hit hardest the poorest members of society, such as pensioners on fixed incomes and those less able to use foreign currency or other inflation-proof assets to protect their savings. Not surprisingly, therefore, Turks generally acknowledge the success in bringing inflation down – it has been in the single digits since 2004 – as one of the government’s foremost achievements.18 The newly independent central bank was instrumental in delivering this

18 A telling indicator of this restored confidence has been a marked shift by depositors since 2002 from foreign currency back into lira bank deposits.
outcome. They quite quickly built a reputation for competence and strong inflation-fighting credentials, meeting every one of their inflation targets from 2002–05. In so doing, they had to stand fast against considerable public pressure, playing an important advocacy role in favor of monetary discipline, and adherence to the stabilization program more broadly. But their efforts would not have paid off without a strongly supportive fiscal policy, and hence they and the government have shared the credit for defeating inflation.

The banking system is now helping propel development and broaden access to credit: During the 1980s and 90s, the government’s voracious borrowing had absorbed the lion’s share of available credit in the economy, leaving little for the private sector. High and unstable inflation, combined with restrictions on making floating rate loans to consumers, also discouraged banks from lending except on very short maturities. This picture has changed dramatically over the past five years. The decline in government borrowing, inflation, and real interest rates, together with wholesale reforms and capital infusions in the banking system, had allowed banks to double their lending to the private sector as a share of (rapidly growing) national income, compared to the 1990s. Lending to households, whose access to credit was almost non-existent in the early 1990s, has expanded at an even faster pace. The stock of housing loans, which stood at a mere 0.2 percent of GNP as recently as 2003, grew by a factor of 20 in real terms in the three years that followed. Such a rapid transformation entails risks that need to be carefully managed, but the changes were long overdue and a necessary step in Turkey’s economic development.

The modernization of the economy has accelerated: At the end of the 1980s, almost half Turkey’s workforce was still employed in agriculture, while the services sector accounted for less than one-third of total employment. By 2006, these ratios had been reversed. The exodus from the rural economy to the more dynamic industrial and services sectors has gathered pace in the present decade, contributing to a surge in economy-wide productivity. Real per capita incomes increased by more than one third in the five years following the crisis, and continue to grow. The factors driving this structural transformation are many and complex, but the creation of a more market-friendly environment, with stable financial conditions, has undoubtedly played an important part. The declining involvement of the state in commercial activity is another hallmark of a modernizing economy, reflecting the hugely successful privatization program of recent years. These reforms helped draw in more than $50 billion in foreign direct investment during 2004–07, more than double the total inflows of the preceding 20 years.

Notwithstanding the enormous strides that have been made, Turkey still faces significant economic challenges. These will need to be handled adroitly if the economic resurgence is to be sustained. In particular, among emerging market economies, Turkey’s exposure to global financial shocks remains relatively high. It relies on foreign investors to finance its large current account deficit, its foreign exchange reserve position is less strong than many of its peers, and its public debt burden is still comparatively large. Fiscal and financial consolidation will therefore need to continue in the years ahead. Persistently high unemployment is another vulnerability, albeit of a different kind. While its causes are unquestionably structural in nature, structural remedies to facilitate faster job creation may prove politically difficult, and governments will need to resist pressures to resort to expansionary fiscal measures as a palliative.
Conclusion

Turkey had launched numerous reform efforts prior to 2001, many of them backed by the IMF, but all eventually foundered. What was different this time that allowed the reforms to be sustained? Two factors, in combination, appear to have been decisive: political determination and a favorable global environment.

The Ecevit government’s options were limited in 2001, but the government nevertheless deserves credit for taking courageous decisions, for which it paid a price in the 2002 elections. Those elections then brought to power a new party with a market friendly philosophy and a pragmatic bent. The AK (or Justice and Development) Party derives part of its core support from the small-business sector in Turkey’s heartland and came viscerally predisposed to budget discipline, low inflation, and privatization. The party therefore had little difficulty in embracing and building upon the reforms that were underway. Moreover, it was in a strong position to follow through: it was the first government in more than a decade to rule as a single party, with a strong majority in parliament. Its dominance proved to be less complete than it initially appeared, as the opposition found ways to delay reforms through presidential vetoes and court challenges. But the party’s parliamentary majority contributed to greater policy coherence and consistency than Turkey had seen in many years.

Investor confidence received a further boost as the new government declared its intent to push ahead with the long-delayed EU membership process. Though the government’s motives were as much political as economic, investors viewed the EU accession process as helping to anchor economic reforms for the medium term – including beyond the life of the IMF-backed program. This not only underpinned the continued inflows of foreign capital that were needed to sustain the recovery but also helped shift the composition of those flows toward longer-term strategic investments.

Positive economic and political changes in Turkey coincided fortuitously with an increasingly favorable global investment climate. Having slumped following the Asian and Russian financial crises, net private capital flows to emerging market and developing countries took off in 2002; by 2005, they were running at almost 2 ½ times the level seen during the 1990s. As a result, borrowing costs dropped for emerging markets in general, including Turkey, and equity markets boomed. The sizeable current account deficits that came along with the growth resurgence, and which might have threatened the sustainability of the recovery, thus proved to be readily financed.

The IMF’s contribution to the successful outcome is widely acknowledged in Turkey, and by international investors. Are there lessons we can draw from the experience? We would highlight three main ones.

First, the health of the banking system is vitally important. Transparent recognition of losses is essential, followed up if necessary by substantial fiscal support to restore solvency and confidence. Financial and operational weaknesses in banks have to be addressed up front and quickly: gradualism is very risky. Properly designed reforms minimize economic and financial losses and help restore momentum for economic growth.

Second, while fiscal retrenchment in the midst of a crisis may not be optimal in all cases, if there is a need to restore government solvency, bold measures – far from being contractionary – can actually help speed economic recovery by boosting confidence.

Third, like an increasing number of its peers, Turkey has found that central-bank independence, coupled with explicit inflation targets and a coherent fiscal policy, can be very effective in overcoming entrenched expectations of high inflation.

Important as these technical aspects are, however, good policy design counts for nothing without the strong political will to implement it. In this respect, Turkey has been fortunate in recent years in having leaders who recognized what needed to be done and who acted accordingly. Thanks to their efforts, the country now faces a brighter economic future than at any previous time in its modern history.
Turkey’s Renaissance: From Banking Crisis to Economic Revival

Comment by Süreyya Serdengeçti

This paper describes how an economy finally awakened from a coma that resulted from a chronic illness that lasted 30 years. Given the obvious difficulty of telling the whole story in less than twenty pages, the authors chose to concentrate on the banking reform, while mentioning rather briefly other areas such as fiscal policy, monetary policy, or institutional reforms such as central bank independence. In the following comment, I will look at the story from the perspective of a career central banker.

The year 2001 was the turning point when a financial crisis, the last and the deepest of the many crises that had occurred previously, turned into a big opportunity. The Central Bank of Turkey was given its independence from political influence after 30 years of chronic inflation, and of denial of dismal economic reality or hesitation to confront it on the part of successive Turkish parliaments and governments. This marked the end of a long period in which the political system had tried to finance chronic fiscal imbalances through inflation and, when that was not bad enough, through incurring excessive public debt and misusing public sector banks. Throughout this period, the widespread – if mistaken – belief in Turkish political and business circles was that, however bad inflation might be, it was the reason the economy was able to grow.

Economic instability brought political instability, which led to more economic instability. All elections were held early and the governments that called the elections lost votes, if not the elections. The electorate, given election year promises that were soon forgotten by policymakers or proved unrealistic, was tired of the economic instability and simply responded on every occasion by voting for the opposition.

All the efforts to stop this vicious circle of instability were unsuccessful. I remember the Central Bank’s insistence in the early 1990s on the importance of controlling the growth of monetary aggregates in order to reduce inflation, or the warnings by Treasury officials of the growing unsustainability of public debt.

Similarly, in the case of the banking system, numerous mistakes were made and warnings disregarded:

- Turkey had the worst possible model of banking supervision and regulation; the Central Bank’s off-site authority and the Treasury’s on-site supervisory authority were weakened by the real authority on the banking system, which was the minister in charge of the Treasury. Virtually all decisions, whether they were implemented or not, were politically motivated. One example was the practice of granting licenses to newcomers, which increased the number of banks to more than eighty. This was at a time when many analysts complained that the balance sheets of all these banks combined did not add up to the balance sheet of one large German bank.

- The efforts to transform this outmoded supervisory and regulatory framework into a modern one went back to 1997. Unfortunately, the establishment of an independent authority had been delayed not only by disagreements over personnel appointments, but more importantly by the lack of political will to delegate authority to an independent professional institution.

- The privatization of public sector banks was constantly delayed. This issue was publicly discussed in the early 1980s. At the time, no country behind the Iron Curtain had considered privatization. Ironically, today almost no public sector banks are left in Eastern European countries, whereas Turkey has yet to privatize its public sector banks.

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19 Mr Serdengeçti is a former Governor of the Central Bank of Turkey. He is currently a senior lecturer at TOBB Economics and Technology University in Ankara and Director of the Stability Institute at TEPAV, Ankara.
The untimely opening up of the capital account and lifting of exchange controls in 1989, despite the opposition of the bureaucracy, led the Turkish banking system to simply borrow from abroad and invest in high-yielding public debt, without adequate regard to exchange and interest rate risks, or to maturity mismatches.

Last but not least, a ‘clever’ decision, which had been taken in April 1994 during one of the financial crises, proved to be fatal. The decision was to grant full government guarantees to all bank deposits without upper limit in order to stop a run on bank deposits. The decision was successful in ending a panic, yet it was not sustainable. Unfortunately, in September 1994, the government rejected, it seems, a proposal that deposit guarantees should return to normal and more limited levels, as the maintenance of unlimited guarantees would lead to deepening moral hazard. Not adopting this proposal became a fatal weakness and helped pave the way to the 2001 crisis.

Turning to the economy in general before 2001, an important development took place in 1999. Economic growth was falling due to the negative effects on the Turkish economy from the Russian and Brazilian financial crises, due to political instability after a banking scandal, and due to the effects of the devastating earthquake of August that year.

Politicians were finally persuaded that they had to agree to stabilize the economy. Otherwise they would suffer the consequences not only of even lower growth but also of risking default on the public debt.

This led to the 2000 economic stabilization program supported by the IMF. The program diagnosed price and financial instabilities and fiscal imbalances as the three main issues. It attempted to address them through an exchange-rate-based stabilization approach that would enable two developments. First, incentives for capital inflows and a low-interest-rate environment would be created, which would be crucial for improving the sustainability of public debt; and, second, disinflation would be encouraged, given the strong exchange rate passthrough effect and inflation inertia that had become the primary determinants of inflation in Turkey in the 1990s.

At the start, foreign capital flew in and interest rates came down to levels that had not been seen for almost 15 years. By the end of August 2000, however, a variety of problems developed and intensified. Interest rates, no longer under the control of the Central Bank – itself under the ‘quasi currency board’ rule – started to increase, albeit slowly. Much publicized debates on structural reforms between the IMF and the government took place in September concerning the reform of public sector banks and incomes policy and created uncertainty. The government was reluctant to tighten fiscal policy despite a deteriorating external current account and the increasingly cloudy environment in international capital markets as Argentina seemed to be heading towards a financial crisis. Many banks were overleveraged and had large open positions in foreign exchange, while the newly independent supervisory authority, after years of delay, had only just become operational. These developments coincided with a political crisis and led to two rounds of speculative attacks on the currency and on weaker banks, in November 2000 and February 2001.

The stabilization program failed, and the currency was devalued and left to float.

As the country found itself in its worst economic crisis, the opportunity for an independent central bank finally emerged. In a floating exchange rate environment, the Central Bank immediately declared that there was nowhere else to go but to adopt a monetary policy of inflation targeting, which would be effective in time as conditions allowed. The Central Bank also adopted a very transparent communications policy to honestly show its determination to fight inflation and affect inflationary expectations, as the only way to reduce inflation.

The new stabilization program – the 2001 program – was announced in May 2001, together with the independence of the Central Bank that had been granted by the parliament. The aims of the 2001
program again were price stability, financial stability, and the restoration of fiscal balances so as to ensure debt sustainability.

The tremendous efforts to revitalize and reform the banking system have been explained in detail in the paper. But two important points must be highlighted, since they mark the beginning of the painful process of banking reform:

- First, the operations of the public sector banks, under which the Treasury issued government debt securities to cover the public banks’ losses and also intervened in the banks’ negative capital balances, were followed by the Central Bank making an outright purchase of the debt securities issued by the Treasury, amounting to 14 billion New Turkish Liras (TRY). Moreover, the Central Bank provided these banks with a TRY 7 billion repo facility with short maturities. So, the amount of liquidity provided to these banks by the Central Bank reached TRY 21 billion which is roughly the equivalent of $18.5 billion at April 2001 exchange rates. The Central Bank avoided hyperinflation by mopping up a substantial amount of liquidity from this bank restructuring operation in a record time.

- Second, the debt-swap operations of the Treasury, which were aimed at reducing the rollover risk of government debt and facilitate a decline in interest rates on the one hand, and helping banks close their large open foreign exchange position on the other. This operation involved the exchange of TRY 9.3 billion worth of domestic T-bills and longer-dated fixed and floating rate T-bonds for a package of US dollar-indexed bonds and shorter T-bonds. The swap reduced the banks’ foreign-exchange open position significantly.

From the very beginning, the 2001 program was under constant fire from some political and business circles and also from the media. Those in charge of it, from the Minister for Economic Affairs, Kemal Derviş, to institutions like the Central Bank and the Treasury, as well as the IMF and the World Bank, were under growing political and market pressure as it became evident that this time the stabilization program was determined to reach its aims. In fact, the program started to deliver positive results as early as 2002 and in the years that followed went on to become a most successful one.

Inflation came down to single digits in 2004 after 34 years of high inflation. Inflation targets were reached for four consecutive years; the public debt to GDP ratio was more than halved between 2001 and 2007; and expected real interest rates, as high as 30 percent in early 2002, came down to 8 percent by early 2006. A currency reform – dropping six zeros off currency denominations – was successfully carried out in 2004 and 2005.

Despite the appreciation of the lira, Turkey improved its international competitiveness and the share of the country’s exports in total world exports rose sharply. Meanwhile, the deterioration of trade and current account balances was accompanied by a change in the composition of the capital inflows, from one dominated by hot money inflows from 1989 to 2004, to one dominated by medium- and long-term inflows and foreign direct investment inflows thereafter.

As for the banking system, capital adequacy improved considerably, while the number of banks diminished to about half of their number in 2001. An injection of foreign capital was instrumental in the system’s improving health.

The program’s biggest success has been in the area of economic growth. From a 4 percent annual average growth rate during the chronic inflation period of 1970–2001, a level lower than in many other emerging market countries, the growth rate rose to an annual average of 7.2 percent from 2002 to 2006.

It’s no wonder, as the paper’s authors say, that adverse political developments in 2007 didn’t have the same devastating effect on the economy as was the case in 2001.
I wish to conclude my comment by saying that the IMF played a vital role in the recovery of the Turkish economy by collaborating with and supporting the stabilization efforts of successive governments, the Treasury, the Central Bank, and other institutions. This collaboration and support came not only from teams in charge of the stabilization program, but also from special teams that worked with the authorities in diverse areas such as helping to implement the inflation-targeting policy of the Central Bank and the currency reform.
The Ups and Downs of Turkish Growth, 2002-2015:

POLITICAL DYNAMICS, THE EUROPEAN UNION
AND THE INSTITUTIONAL SLIDE

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Murat Ucer (Koc University and Global Source)

Abstract
We document a change in the character and quality of Turkish economic growth with a turning point around 2007 and link this change to the reversal in the nature of economic institutions, which eat underwent a series of growth-enhancing reforms following Turkey's financial crisis in 2001, but then started moving in the opposite direction in the second half of 2000s. This institutional reversal, we argue, is itself a consequence of a turnaround in political factors. The first phase coincided with a deepening in Turkish democracy under the prodding and the guidance of the European Union, and witnessed the waning of the military's influence and the broadening of effective political participation. As Turkey-EU relations collapsed and internal political dynamics removed the checks against the domination of the governing party, in power since 2002, these political dynamics went into reverse and paved the way for the institutional slide that is largely responsible for the lower-paced and lower-quality growth Turkey has been experiencing since about 2007.

Keywords: economic growth, emerging markets, institutions, institutional reversal, low-quality growth, Turkey.

JEL Classification: E65, O52.

Though EU-Turkey relations are multifaceted, in this essay we focus on one specific aspect: the role of the EU in the improved institutional structure of Turkey during the early 2000s and the rapid growth that this engendered, and its subsequent more ominous contribution to the unraveling of these political and economic improvements.

There is a seldom-addressed macroeconomic puzzle of Turkish growth.

Following its severe financial crisis in 2001, Turkey enjoyed five years of rapid economic growth, driven in large part by structural changes, productivity growth and a broadening base of economic activity both geographically and socially. This process stopped and reversed itself, however, even as the foreign and the Turkish media were touting a new Turkish model immune to the “stop-go cycles” so characteristic of its economy in the 20th century.

From about 2007 onwards, economic growth slowed significantly, as government spending became the mainstay of the economy, and productivity growth almost fully stagnated. Underpinning the sea change was likely the reversal of the productivity-enhancing structural changes that had played a pivotal role in the previous five years.

1 We thank Izak, Atyas, Ilker Domac, Soli Ozel, Martin Raiser, Dani Rodrik and Sinan Ulgen for very useful comments on an earlier draft. The usual caveat applies.
Although one could label this just another example of the stop-go cycles, our essay starts by noting that it has an arguably different character. Rather than the typical stop-go cycle whereby the growth phase is itself unsustainable and heralds the inexorable contraction phase, because it is playing out in a given weak institutional environment, we argue that we are witnessing a first phase of growth underpinned by institutional changes and reforms, and a second phase driven by a reversal in the same institutions.

Why did Turkey undergo unusually rapid institutional improvements starting in 2001? Our answer emphasizes a confluence of factors, partly external and partly internal. First, the 2001 crisis forced Turkey’s lethargic and conservative political system to accept a slew of fairly radical structural reforms imposed by the International Monetary Fund (IMF) and the World Bank, which not only brought under control the persistently high inflation but also imposed discipline on the budgetary process, shifted decision-making and regulatory authority towards autonomous agencies in an effort to cultivate rule-based policy-making, and introduced transparency in the notoriously corrupt government procurement procedures.

Second, these economic reforms, after their introduction by a care-taking government, were overseen by the popularly elected AK party (the Justice and Development Party) that, for all practical purposes, ended the tutelage of the Turkish military over politics, which had characterized the Republic's entire history.

Third, and most relevant for this essay, both the economic reforms and the political changes undergirding them received a substantial boost from the general warming of EU-Turkey relations and the blossoming hopes in Turkey that accession to the EU was a real possibility — only if economic and political reforms continued.

We are of course aware that it is impossible to conclude with any certainty whether a five-year growth spell reflects the flourishing of an economy under new economic institutions and reforms, or the first phase of yet another stop-go cycle. Nevertheless, not only were the changes in economic institutions we have just described potentially far-reaching, but several pieces of evidence we describe below bolster the case that, absent the institutional about-face, economic growth in Turkey could have continued without morphing into the low-quality growth observed in the post-2007 period.

Why then did these institutional changes that spurred high-quality growth in the first half of 2000s come to an end thereafter, also bringing down both the rate and quality of economic growth in Turkey? Once again, several factors played a role. First, the reforms initiated by the IMF and the World Bank gradually came to be reversed, with Turkey’s recently-institutionalized rule-based policy framework increasingly shifting back toward discretion. The procurement law tells the story most sharply: more and more industries and items were declared exempt from the law by the ruling AK party, removing this fairly substantial barrier against corruption.

Second and even more importantly, the AK party government that had earlier supported the economic opening, made an about-face once it became sufficiently powerful. Gradually the de jure and the de facto control of the ruling cadre of the AK party intensified, amplifying corruption and arbitrary, unpredictable decisionmaking.

Finally, the collapse of EU-accession talks played an arguably oversized role, both removing a powerful anchor tying the AK party to the reform process and undermining the support that had built up for institutional change within a fairly broad segment of Turkish population. The turnaround in economic and political reforms were reflected very closely in the macroeconomic picture, impacting the pace and nature of economic growth from about 2007 onwards.

This causal story from a variety of internal and external factors, including centrally the EU, to institutional changes and from institutional changes to macroeconomic outcomes, is far from widely
accepted. Though parts of it have been emphasized in other writings, we are not aware of other works that have formulated it in this fashion. We do not pretend that our arguments conclusively establish these causal links, nor do we expect that this story will convince those skeptical of the critical role of institutional factors in the macro economy or the experts viewing this episode of Turkish macroeconomic history just as another example of unsustainable stop-go cycles of a structurally unhealthy, emerging economy. We do nevertheless hope that this perspective will invite further work on this fascinating and rather unusual episode of Turkish macroeconomic history and on the role of various external and internal factors in triggering rapid institutional reform in emerging economies suffering from a myriad of institutional ills.

The speculative nature of our story notwithstanding, we would like to emphasize the potential lessons it contains. First, it is a hopeful story on the ability of emerging economies with weak institutions to reform rapidly and enjoy the fruits thereof. This hopeful reading is counterbalanced, however, by two considerations: first, this process of rapid institutional change was triggered by Turkey's deep financial crisis in 2001, which left few other choices to the political elites, and second, it didn't last. All the same, it does suggest that other countries, and Turkey in particular, have an option to restart structural change and productivity growth if they can overcome their admittedly gargantuan political problems.

Second, it does suggest that, the current stalemate notwithstanding, EU can again play a transformative role in Turkish institutional and economic developments at some point in the near future if its priorities change once more towards enlargement or if another formula for closer engagement with Turkey can be found. We also argue in closing that this type of re-engagement would be not only hugely beneficial for Turkey but also for Europe.

The rest of this essay is organized as follows. In the next section, we provide a more detailed description of the ups and downs of the Turkish economy since 2002 from a macro perspective. The following section provides the institutional background for Turkey in the early 2000s and how this changed first in a positive direction and then slid towards a worse institutional equilibrium. This section also provides a brief overview of the EU-Turkey relations and how these played an essential role in both the positive and negative institutional dynamics of the last decade. The last section concludes with a further discussion of the future of EU-Turkey relations.

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2 See, for instance, World Bank (2014).
3 For a recent statement of this view, see Rodrik (2015).
Section I — The Ups and Downs of the Turkish Economy Since 2002

In this section, we contrast the 2002-2006 period — the five years that followed Turkey’s devastating financial crisis of 2001 — with the subsequent macro developments in the Turkish economy. Our key point is that this was a period of solid, inclusive, and reasonably high-quality growth from which, there is much to learn.

Basic statistics tell the story rather well. Figure 1 shows that the Turkish economy grew at almost 6% per capita (per annum), its fastest per capita growth since the 1960s. Turkey’s growth performance during this period was notable not only because it was above the rates experienced by most peers, barring some exceptional cases like China and India, but also because it came with relatively high productivity growth. In sharp contrast to the earlier periods of paltry total factor productivity (TFP) growth, about half of the growth in per capita GDP during this period stemmed from TFP growth, which increased by about 3% per annum between 2002 and 2006.

Figure 1

![GDP Per Capita Growth](image)

Source: TURKSTAT; Development Ministry; Turkey Data Monitor.

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4 See, for instance, Table 1 in Kutlay (2015) or the broader discussion in Akat and Yazgan (2012).
5 In addition, using a “synthetic Turkey” approach, Meyerson (2015) finds that Turkey’s GDP per capita increased at a faster rate after the AK Party came to power than before.
6 See, for instance, Ungor (2014). In their analysis of decadal TFP trends, Atiyas and Bakis (2014) find that 2002-2011 not only outperforms all other decades in terms of TFP growth, but it also does very well in international comparisons, with Turkey ranking seventh among 98 countries. While much of this TFP growth was driven by the “structural” shift in employment from agriculture to industry and service sectors, this shift has probably reflected broader improvements in the economy and the institutional environment, as we will turn to below.
Figure 2 further shows that during this five-year interval, private investment rebounded sharply from a post-crisis low of 12% of GDP, to around 22%. The rebound was driven largely by investment in machinery and equipment; construction investment also picked up, but by no means dominated investment during this period. Contrary to a common misperception, manufacturing sector also did reasonably well during this period. Thanks to very strong productivity growth at around 7% per annum, the share of manufacturing in GDP in constant prices increased from around 22% in 2001 to almost 24% in 2007.7

These developments reflected a host of structural changes. Inflation, which had averaged around 80% in the 1990s, swiftly fell to single digits, while public sector debt also declined sharply from a post-2001 crisis peak of 75% of GDP to about 35%. These improvements helped to pave the way for the private-sector led boom that would follow.

Importantly for our story, there was also a major broadening of the economic base in two senses. Economic growth through most of the Republic’s history had been driven by growth in the major industrial cities in the Western part of the country and spearheaded by large conglomerates in these same cities. This began to change during the first half of the 2000s, resulting in a convergence of living standards between the more advanced West and the so-called “Anatolian Tiger” cities (e.g., Konya, Kayseri, Gaziantep). This was in turn driven by firm level productivity catch-up, thanks to investments in physical and social infrastructure as well as improvements in the quality of public services in the inland regions.8

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7 In current prices (nominal terms) the share of manufacturing declined from 19% to 17% during the same period, as service deflator outpaced manufacturing deflator. But importantly, as noted, real growth in the manufacturing sector kept up with broader growth in GDP. Rodrik (2009) notes that in addition the composition of investment moved toward tradables (i.e., manufacturing) during this period.

8 Chapter 4 of World Bank (2014) documents the regional as well as firm-level convergence story comprehensively. See also Hakura (2013), which includes a brief and useful discussion on the Anatolian Tigers.
The second dimension of the broadening of the economic base may be even more important. The extreme levels of inequality of income and inequality in access to public services started declining, with some signs of “shared” prosperity previously unseen in Turkey. As comprehensively detailed in a recent World Bank report, examples of this transformation are many, but they all point to the same conclusion: poverty rates declined, the middle class expanded, and income inequality contracted. For example, the headline Gini coefficient measuring income inequality dropped from a very high 42% in 2003 to about 38% in 2008. This contraction in inequality was in part driven by labor income growth at the bottom of the distribution, resulting from both wage growth and employment expansion.

Figure 3

Many public services underpinning the future productivity of the Turkish workforce, such as education, health and infrastructure, have expanded and become more equally distributed. There was also a sharp improvement in basic social services, narrowing the gap between Turkey and the rest of the OECD. This was achieved through a combination of reforms in public service delivery, significant increases in budget allocations, and changing priorities towards service delivery in less-advantaged areas. Figure 3 shows a rapid catch-up of infant mortality and life expectancy with OECD averages, with particularly

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9 See Annex 1 as well as Chapter 7 in World Bank (2014). See also Raiser (2014) for a brief discussion on the “inclusive” nature of Turkish growth, based on the World Bank study. See World Bank Development Indicators.

10 World Bank staff observes that Turkey’s experience in this sense is more akin to East Asia and Eastern Europe than Latin America.
striking gains in rural areas and among poorer households. The gains in education are no less noteworthy. Figure 4 shows Turkey recording the largest improvements within the OECD in the quality of education as measured by OECD’s Program for International Student Assessment (PISA) scores, with gains once again disproportionately concentrated among poorer households and in rural areas.\textsuperscript{11}

**Figure 4**

The budget allocations that have centrally contributed to these trends have been made possible by the greater fiscal space that lower interest expenditures created. This has enabled the share of health expenditures in total government expenditure to increase by about 6 percentage points from 11\% in 2002 to 17\% in 2007 and that of education, from about 10\% to almost 14\%.\textsuperscript{12}

\textsuperscript{11} The World Economic Forum's Competitiveness Index also shows significant improvements in Turkey's infrastructure quality, at least after its first year of availability, 2006.

\textsuperscript{12} Our estimates, based on Ministry of Development data.
Equally important were the changing priorities in public service spending and delivery, which largely reflected the AK party’s political objectives and payback to its base, comprising the less advantaged segments of the population living either in provincial towns or poorer neighborhoods of the major cities.

Figure 5, for example, shows a striking reallocation of education spending away from the more prosperous areas in the major cities towards rural areas in the East.

All of this did not go unnoticed by the population and particularly by AK party’s base. As reported by Gurkaynak and Sayek-Boke (2012), in a poll conducted in 2008, approximately 85% of the respondents that had voted for AK Party said they did so “because of the economy,” largely accounting for the ongoing support for the AK party from these less advantaged, more rural and conservative demographics.

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Many aspects of this story began to change sharply around 2007. Notable is the fact that this reversal in the character of macroeconomic growth predated the global economic crisis. As Figure 1 shows, average per capita income growth decelerated to little over 3% from 2007 through 2014, markedly lower than the above-mentioned 6% growth during 2002-06. The figure also makes it clear that the loss in momentum started earlier than the deepening of the global economic crisis in late 2008; the economy grew by a less impressive 4.7% in 2007, with the slowdown continuing throughout 2008, even before the global crisis hit. Corroborating this timing, Figure 2 shows a deceleration in private investment around 2007 which, except during the short-lived post-2009 rebound, has been at levels lower than those reached in 2006-2007.
In this sense, the global economic crisis may have helped mask the growing weaknesses in Turkey’s growth dynamics. After a sharp contraction in 2009 (by about 5%), growth rebounded during 2010-11 to an unsustainable near-9% per annum pace, fanned by massive monetary and fiscal stimulus. The Central Bank’s policy rate was reduced by over 10 percentage points, with the real interest rate declining to zero-to-negative territory from the pre-crisis 7%-8% levels. Fiscal stimulus was also substantive, increasing government spending relative to GDP from 13% around 2006 to near 16%, almost completely eroding Turkey’s hitherto impressive public sector primary surplus. As a consequence, the contribution of government spending to GDP growth rose from about 10% in 2002-2006 to 25% in the later period.

Though monetary and fiscal stimulus did bring growth back briefly during 2010-11, growth in the post-2007 period as a whole has been markedly low-quality.

Productivity growth has almost fully stalled, while TFP growth has also come down from its highs during 2002-2006, and by some estimates, is hovering in negative territory. Manufacturing productivity, growing at about 1% per annum since 2007, has been lackluster as well. There has also been no repeat of the broadening of the economic base witnessed in the early 2000s. The Gini coefficient of inequality, for example, has edged up to 40% in 2011 from 38% in 2008.

Figure 6

![GDP Growth, Capital Inflows and Savings](image)

Source: TURKSTAT, CBRT, Turkey Data Monitor and the authors’ calculations.

Perhaps one of the most important manifestations of this low-quality growth has been the changing nature of the current account-growth relationship. While high growth was accompanied by a relatively moderate current account deficit, mostly financing the rebound in domestic investment in the 2002-06 period (as depicted in Figure 2 above), Figure 6 indicates that the post-2007 pattern is quite different in nature: it combines lower growth with higher current account deficits and a sharply lower saving

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13 The government spending over GDP figures are computed from national income accounts data.
14 This contribution is calculated as the change in government consumption and investment spending as percent of change in GDP.
15 See Conference Board Total Economy Database.
rate -- and no higher investment rate as shown in Figure 2 -- suggesting that the higher inflows have been largely financing higher consumption. The way the current account deficit has been financed during these two periods also bolsters this interpretation, with fairly long-term financing and foreign direct investment in the first period, and shorter-term flows in the second.

Section II – Turkey’s Institutional Backdrop and the EU Relations

Though causality is much harder to establish, it is noteworthy that Turkey’s high growth episode overlapped with a period of major institutional and political changes. During this brief period of five years, Turkey’s broader institutional setting has taken a conspicuous break from the past, moving from extreme discretion towards a rule-based environment, accompanied by major structural reforms. The deepening of Turkish democracy at the time appeared potentially epochal. The relations with the EU also experienced a hopeful turn with the decision to start the accession negotiations on October 2005. In what follows, we provide the broad contours of the ebb and flow of Turkish economic institutions, then turning to political factors and the political institutional dynamics undergirding the economic changes.

The consensus view among Turkey experts is that there has been a significant break in the 2000s in terms of “delegation of the decision-making power to relatively independent agencies, and the establishment of rules that constrain the discretion of the executive” (Atiyas, 2012). This institutional shift from unchecked discretion of the 1990s to a more rule-based framework has had significant effect on the implementation of monetary and fiscal policies, the regulatory environment and privatization practices.

The key reform on the monetary policy front was undoubtedly the greater independence granted to the Central Bank, implemented as early as 2001. The new law defined the sole objective of the Central Bank as achieving and maintaining price stability in a context of first implicit and then formal inflation targeting, and prohibited direct lending to the government.

On the fiscal front, institutional overhaul was substantial as well. The important steps here were the passing of two crucial laws — the Public Finance and Debt Management (PFDM) Law of 2002 and the Public Financial Management and Control Law (PFMCL) of 2003 — targeted at breaking with the destructive fiscal legacy of the 1990s with runaway off-budgetary expenditures, non-transparent borrowing practices, and lack of fiscal accountability. The objective of the PFDM was to bring all central government borrowing and guarantees under strict rules, and to impose reporting requirements on all debts and guarantees. The PFMCL, on the other hand, set the main framework of the fiscal management system, by establishing “principles and merits, multi-year budgeting, budget scope, budget execution, performance management and strategic planning, internal control, accounting, monitoring and reporting.”

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16 See Akcay and Ucer (2008) for a discussion of these dynamics.
17 Though some of the foreign direct investment in the early phase was linked to privatization, much of it was driven by mergers and acquisitions in the private sector
18 Prominent examples of these independent, autonomous agencies that were established in the early 2000s include Public Procurement Authority (established in 2002), Banking Regulatory and Supervision Agency (established in 1999 but commenced operations in late 2000); Energy Market Regulatory Authority (established in 2001), the Telecommunications Authority (established in 2000 and recently renamed to ICTA), and Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Authority (established in 2002). The Competition Authority (established in 1994 and commenced operations in 1997) and the Capital Markets Board (established in 1981) were affected by these changes as well.
19 See Kaya and Yilar (2011) for details, which also provide a comprehensive assessment of the evolution of Turkey’s fiscal structure over the past two decades.
Finally, a Procurement Law, enacted under pressure and guidance of the World Bank in 2002, sought to ensure effectiveness, transparency and competitiveness in the public procurement system. The Law replaced the notoriously politicized and corrupted State Procurement Law, which had been in place since the 1980s.

The changes on the regulatory front were similar and also relied on the establishment of a number of independent autonomous agencies (sometimes dubbed the “European Model”) in order to strengthen rule-based decision-making and insulate the regulators from political influence.

The bottom line is that thanks to the enactment of these comprehensive and best-practice laws, governmental control over public expenditures was enhanced and Turkey’s out-of-control off-budget expenditures (including so-called “duty losses”) were greatly restricted.20

The early 2000s also witnessed improvements in Turkey’s broader institutional environment as can be gauged from the World Bank governance and doing business indicators depicted in Figure 7, where Turkey shows solid progress in all key areas.

Figure 7

The corruption perception index compiled by Transparency International, depicted in Figure 8, tells a similar story: there are tangible signs of lower corruption starting from 2003 (corresponding to higher values of the index), and Turkey’s rank improves from around high 70s among 175 countries in 2003 to low 50s in the late 2000s.21

20 Nonetheless, these reforms were highly incomplete, and potential reforms aimed at increasing overall efficiency in public administration and accountability in public expenditure were shelved (Atiyas, 2012), and many inconsistencies and loopholes remained in fiscal transparency and reporting (OECD, 2014).

21 We interpret the fact that there is continued, albeit slight, improvement in Turkey’s score and rank in the late 2000s as a consequence of the backward-looking nature of this corruption perception index.
Then things began to change for the worse at around the time of the global crisis, with the pace of deterioration accelerating during AK Party’s third term that began in June 2011. This has taken the form of a virtual stalling of the structural reform efforts as well as a marked weakening in the institutional environment.

Figure 8

![Corruption Perceptions Index](image)

* * CPI scores range between 10 (highly clean) and 0 (highly corrupt)

Source: Transparency International Corruption Index, authors’ calculations.

The gutting of the aforementioned procurement law is indicative of the de facto and de jure changes in economic institutions during this period. In some sense, AK Party was never at ease with the new law, seeing it from the very beginning as a major constraint on its grandiose investment projects (such as “15,000 kilometers of double-lane highways”) and the funneling of state resources toward its own constituencies. As the party gained confidence and control, the procurement law began to be altered dramatically via various mechanisms, including a continuously expanding set of “exceptions”, changes in the tender rules (open vs. restricted), various advantages for domestic bidders, and the introduction of rather high minimum monetary limits, below which procurement of goods and services would be exempted from the law.22

As documented by Gurakar and Gunduz (2015) in their very comprehensive account, both the number and the value-share of public procurement contracts that were left outside the transparent public procurement practices increased substantially during the period from 2005 onwards, reaching 44% in 2011.23

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22 EU’s 2014 Accession Report complained about both the state of the procurement law and its implementation, writing: “Turkey’s public procurement legislation remains not in line with the acquis in a number of aspects. This includes numerous derogations and exemptions from the scope of the law. Both the classical and utilities sectors are formally subject to the same law and procedures, thus making the legislation for the utilities sector more restrictive than envisaged by the EU Utilities Directive. ... There have been various allegations of political influence on public tenders.”

23 They report that “the number of contracts awarded via open auctions fell from 100,820 in 2005 to 77,151 in 2011, the number of contracts covered by exclusions rose from 41,157 to 59,680. The share of the latter in total number of public procurement contracts rose from 29% to 44%. Similarly, contracts covered by exclusions and
One giant entity that was fully left outside the purview of the procurement law, alongside public-private partnerships and defense spending, was the State Housing Development Administration, TOKI, which is directly attached to the Prime Minister’s Office. As reported in Atiyas (2012), although TOKI’s exemptions were originally limited to procurement for public housing projects, in 2011 these were extended to all construction undertaken by TOKI. Given that TOKI is now also exempted from PFMCL or any other budgetary rules, this meant that the organization has wielded tremendous power over and a completely free hand in the redistribution of urban land throughout the country.

Perhaps unsurprisingly in the light of these changes, Figure 8 shows declines both in the corruption perception index and Turkey’s rank, with the latter sliding 11 notches to 64 in 2014 (again out of 175 countries). It is probably also not a coincidence that land and construction deals were at the very heart of the Turkey’s largest corruption scandal, which broke out in December 2013, and the then-Minister of Environment and Urban Planning was one of the four ministers implicated in the scandal.24

Setbacks can also be seen in crucial reform proposals that fully stalled. Two proposals that had been floated during the IMF program negotiations, which were held throughout 2009 during the apex of the global crisis, were first resisted and then shelved for good by the AK party leadership. One of these was about creating an independent tax authority, which was greatly needed not only to insulate tax collection activities from political influence but also to alter Turkey’s tax structure, which heavily relies on indirect consumption taxes, towards direct taxes. The other proposal was about adopting a “Fiscal Rule”, which would consolidate Turkey’s fiscal adjustment and contain the deterioration experienced during the crisis. Though early on promoted by Ali Babacan, the Deputy Prime Minister and the Treasury Minister in charge of economic coordination, this also never got off the ground.

Arguably more ominous was the aggressive attacks by the government on autonomous agencies. As explained in Ozel (2015), after some de facto meddling in the affairs of these agencies (e.g., in the form of influencing the election of board members or the hiring and firing of staff), the government took the formal steps by signing two decrees to law in 2011 that paved the way for more explicit intrusion from respective ministries. Of these, one (Decree No.649) explicitly stated that the respective minister would have “the authority to inspect all transactions and activities of the related, attached and affiliated agencies” (which included the autonomous regulatory agencies), thus giving the ministers and their staff the ability to restrict the independence of these agencies. At around that time, the idea of independent regulatory institutions has been dealt another blow, with Mr. Babacan, the main reform advocate within the government, stating that “it was time for some independent agencies to redelegate their authority” (Ozel, 2015).25

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24 For a timeline of the investigation and government’s response, see Muller (2014).
25 Another episode that showed AK party’s growing intolerance toward independent scrutiny was witnessed around Turkey’s Court of Audits (TCA). After adopting a best-practice law with some 5-year delay in 2010, the government attempted to curb the Court’s powers and the Parliament’s access to proper financial reporting by way of passing new legislation in 2012. After a repeal of the Law by the Constitutional Court, the government pressed ahead with another draft law, which could, as stated in EU’s Progress Report of 2013, “…result in a distortion of the TCA’s mandate and its ability to carry out independent and effective audit”. The Law is now on hold, having been withdrawn because of objections from both within and outside the Parliament.
Meanwhile, the Central Bank, already eager to accommodate the excessively low interest rate policies pushed by the then-Prime Minister Recep Tayyib Erdogan, came even under heavier pressure for not reducing interest rates quickly enough to support growth. The whole episode was damaging not just because of its implications for macroeconomic policy, but because it demonstrated the unwillingness of the government to be restrained even by the most pliable organizations.

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We have argued that the turnaround in Turkey’s economic performance is a reflection of the turnaround in economic policies and institutions, including the stalling or reversals in the process of much-needed structural reforms. But this only provides a proximate answer to the deeper question of why economic policies and institutions improved in the first phase and then went into a reversal. We argue that both the initial improvements in economic institutions and their subsequence slide are related to political factors.26

To put it simply, during its first five years of rule the AK party became, partly unwittingly and perhaps even unwillingly, an instrument of deep-rooted political reform. This period witnessed the broadening of the political base as the military tutelage in Turkish politics, probably the most important factor holding back Turkish democracy and civil society, ended. A confluence of factors came together to make the early 2000s a propitious time for such a fundamental transformation in Turkish politics. Four deserve to be emphasized in particular.

First, as already noted, the AK party came to power after a basic structure of economic reforms had been put in place following the 2001 financial crisis. This, and the inexperience of their top echelon, limited what they could do.

Second, the AK party came to power as a representative of an increasingly disenfranchised (or at least feeling disenfranchised) segment of Turkish society: provincial, conservative businessmen; urban poor (who were often recent migrants); and rural population except Kurds and Alevi (who were always viewed suspiciously by the almost entirely Sunni AK party leadership). These social groups, which were less Western, more religious and more conservative, were never welcomed by the rulers of Turkey in the 20th century, the so-called “Kemalist elites” (named after their ideological commitment to the principles of the Republic’s founder, Mustafa Kemal Ataturk; often defined to include the military, the bureaucracy and big, urban-based conglomerates; and argued to be represented by the state’s party, the Republican People’s Party). This is not to deny that the conservative ideology of these groups has all too often influenced school curricula or formed the foundational rhetoric of several military regimes, most notably the one catapulted to power by the 1980 coup.

But both traditionally, and specifically during the 1990s, these groups both felt increasingly excluded and were at one end of a culture war, with seemingly stronger forces on the other side — a culture war summarized, even if bombastically, by Prime Minister Recep Tayyip Erdogan’s famous statement: “In this country there is a segregation of Black Turks and White Turks. Your brother Tayyip belongs to the Black Turks.”27 The AK party’s rise to power thus came to be seen as the enfranchisement of this previously-excluded group. During their early rule, they had to defend democracy (which they interpreted as respecting the electoral results rather than succumbing to a military intervention against them) as a survival strategy.

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26 This emphasis on the role of political institutions in shaping economic policies and institutions builds on Acemoglu and Robinson (2012).

27 While the exact timing of this statement is a matter of debate, it first rose to prominence when quoted in a New York Times interview with the newly-elected Erdogan by Deborah Sontag in May 2003.
Third, the AK party came to power in 2002 with a limited mandate, receiving only 34% of the national vote. They had little choice but rule inclusively, especially given the suspicious and almost hostile attitude of the military towards it from the get-go.

**Figure 9**

![Graph](source: Authors' calculations based on GMF Transatlantic Trends)

*Diffusion Index = Good thing + (Neutral + Undecided) / 2

Fourth, the AK party came on the scene when EU-Turkey relations were undergoing perhaps their most constructive period and presented itself as a staunch supporter of EU accession. To be sure, the process leading up to the accession negotiations, launched on October 2005, was anything but smooth. Yet, the process started reasonably earnestly and with significant momentum in 2006, and had the strong backing of the Turkish public, as illustrated by Figure 9.28

The view at the time was that Turkish accession to EU could proceed relatively rapidly, as summarized by a high-profile report:

“Our starting assumption is that it is likely that accession negotiations would start during 2005, but that they would last for quite some time, with membership materialising only around 2012-15. We therefore take a long-term perspective and explore particular areas in which the EU and Turkey could cooperate during the long interim negotiating period.” (The European Transformation of Turkey, Dervis et al (2004))

The EU accession process had at least two sorts of effects on Turkish institutions. First, on the political side the EU shouldered a role similar to the one that the IMF and the World Bank played on the economic side in the aftermath of the 2001 financial crisis, providing both pressure for reform and a template for best-practice legislation in the areas of civil and political rights, civilian-military relations and judicial reform. As part of the engagement process with the EU, a number of far-reaching and

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28 As detailed in Morelli (2013), while the EU Council agreed to a “Negotiating Framework” and opened the negotiations, language of the Framework was kept deliberately loose (meaning no guarantee of eventual membership was extended). Cyprus was a thorny issue from day one, exacerbated by Turkey’s refusal to extend Customs Union to Greek Cyprus. This has subsequently led to EU Council blocking 8 chapters. See the annex table for a time line of EUTurkey relations since 2005.
difficult reforms were thus set in motion, even if many of these were finally enacted in the late 2000s. A non-exhaustive list includes improved property rights for non-Muslim religious foundations; the lifting of draconian penalties against speech construed as criticizing Turkish identity; the introduction of the ability of civilian courts to try military personnel and the banning the trials of civilians and military courts; laws protecting children; improved trade union rights, including permission for workers to become members of more than one union simultaneously; permission for public service workers to sign collective labor agreements, removing previous bans on political and solidarity strikes; and permission for individuals to apply to the Constitutional Court in cases where their freedoms of fundamental rights are violated.29

In addition, the lifting of bans against Kurdish protests and legislation allowing state-run Turkish radio and television to broadcast in Turkish; the ending of the emergency rule over the last two of the 13-Kurdish-majority provinces; the introduction of broad civilian supervision over defense expenditures; and the removal of National Security Council presence in the oversight of cinema, video, musical works and radio and television as well as a shift in the government’s willingness to generally respect rulings by the European Court of Human Rights were also steps long-advocated by the EU and are generally interpreted as being a direct result of EU-Turkey engagement.30

Second, as already noted, the prospect of EU accession acted as an anchor and a carrot to the ruling party — there were major economic gains from closer ties with Europe. It wasn’t just the economic benefits of EU accession that motivated the AK party, however. Since the AK leaders viewed themselves under constant threat from the military, closer ties to EU appeared as an attractive bulwark against a military coup. For Turks were increasingly keen on becoming part of Europe, the cards were stacked against any moves that would alienate Turkey’s European partners.

All of these factors would disappear or change their character by the middle of the 2000s. The effect of the economic institutional framework put in place after the 2001 crisis ceased to have much of a determining role as the AK party elites and mayors found ways of circumventing the regulations and laws or changing them, as we recounted in the case of the procurement law, to benefit themselves or their party.

The 2002 election brought the beginnings of the end of the two major center-right parties, with their votes going almost in block to the AK party in the next 2007 elections, making it a much more formidable force in electoral politics. By 2011, the AK party commanded almost 50 percent of the vote.

More importantly, the balance between the AK party (and its base) and the Kemalist forces changed significantly. Because these events are important both for understanding how the center of gravity of Turkish politics shifted, and how the AK party came to define itself and understand its power, it is useful to recount them in some detail.

The backdrop is the political history of Turkey in the 20th century, which was dominated by the military and state bureaucracy. The one-party rule Ataturk imposed came to an end in the first semi-democratic elections of 1950,31 which brought the Democratic Party, fashioning itself as a representative of the same provincial business interests and conservative cultural values that the AK party later came to speak for. In 1960, the military moved against the Democratic Party and proceeded to hang its leader, Adnan Menderes. The military then engineered two more coups, in 1971 and 1980, and also brought down another Islamist party in 1997 with the threat of a coup (and subsequent action by the Constitutional Court closed the party). The generals were already unhappy about both the AK party’s rise to power

30 See Kirisci (2011) and Gursoy (2011).
31 The first multi-party election in 1946 was not only called early by the ruling Republican People’s Party before the opposition could organize itself, but was also marred by widespread vote-rigging (Zurcher (2004)).
and their increasingly marginalized role in the 2000s, when the AK party nominated its number two, Abdullah Gul, for the presidency. The military, and their civilian allies, were alarmed by the fact that Gul’s wife wore a headscarf, and would represent Turkey in international forums and inhabit Atatürk’s presidential palace.

This, combined with their general unease about the political direction of the country, made the military top brass move to threaten another coup with a web memorandum in April 2007, following the confirmation that Gul would be the next president of Turkey. Ominously, the Constitutional Court started proceedings to close the AK party for anti-secular activities. But the situation was different in 2007 than in 1960 or 1997. The AK party had already organized deeper social networks within modern Turkish society, and had taken control of large parts of the bureaucracy and the increasingly heavily militarized police, while the status of the military within Turkish society was at an all-time low. The military's threat this time came to nothing.32

This episode not only sidelined perhaps the most powerful opponent of the AK party, the Kemalist generals, but also further radicalized the AK leadership. According to some insider accounts, leading AK figures are reported to have packed their bags during the events of April 2007, fully expecting the military to come to power and put them in jail. Their David and Goliath reading of Turkish history — where the victimized “Black Turks” are stamped out by the conspiracy of Kemalist “White Turks” — was both confirmed and embellished. They may have concluded that they had to destroy not only the anti-AK party military elites, but also tear down the institutional structures that they saw as supporting these hostile groups. It is therefore natural to see the roots of the sham Ergenekon and Sledgehammer trials that the AK party and their allies organized against journalists, former mid-ranking soldiers and generals in their increasingly urgent need to weaken and remove their enemies.33

And finally, the EU’s anchor for Turkish institutional reforms and leverage over Turkish politicians came to an abrupt end at around 2010 as the accession process almost completely stalled. Several factors played a role in this. The first stumbling block was Cyprus. The collapse of the UN-sponsored talks on a comprehensive settlement and Turkey’s unwillingness to extend the Customs Union to Cyprus brought relations to a standstill and caused the suspension of eight ongoing chapters in 2006. Second, the government, and to a degree certain segments of the population, were also resistant to many of the legal and human rights reforms. Third, there was a backlash against Turkey in some of the key European countries, most notably in France’s referendum and the rise of Nicholas Sarkozy, with an explicitly anti-Turkish accession platform. Finally, these developments also started changing support for EU within the Turkish population. As disillusionment set in, support for EU took a tumble, falling from above 70% in 2004 to a low of 40% in 2007 as detailed in Figure 9.

As enthusiasm and support for EU accession among Turks waned, and as the AK party turned East (a process that had many causes), Turkish institutions became increasingly unanchored, further damaging Turkey-EU relations. Recent remarks by Jean-Claude Juncker, President of the European Commission, summarize what has become a common stance among many European policymakers and bureaucrats:

“...under my Presidency of the Commission ... no further enlargement will take place over the next five years. As regards Turkey, the country is clearly far away from EU membership. A

32 This dynamic was greatly assisted by a symbiotic alliance between the ruling AK party and the so-called “Gulen Movement” (named after the self-exiled preacher Fetullah Gulen in the Unites States), which soured in the course of various power struggles and then acrimoniously broke up over Turkey’s historic corruption investigations in December 2013.

government that blocks twitter is certainly not ready for accession." (The Official Website of the EC President, *My Foreign Policy Objectives*, April 2014)

Though these comments emphasize the Turkish bans on social media, they are a reaction to a culmination of increasingly authoritarian policies and institutional changes adopted by the AK party as a result of the turnaround in all of these factors that were previously pushing it to adopt pro-democratic, pro-civil society reforms. EU’s 2014 Accession Report, for example, was alarmed by the government and the judiciary's response to the December 2013 corruption scandal, concluding:

“The response of the government following allegations of corruption in December 2013 has given rise to serious concerns regarding the independence of the judiciary and separation of powers. The widespread reassignments and dismissals of police officers, judges and prosecutors, despite the government’s claim that these were not linked to the anticorruption case, have impacted on the effective functioning of the relevant institutions, and raise questions as to the way procedures were used to formalise these.”

The implications of all of these trends for the Turkish political institutions and freedoms are striking. The World Justice Project, a comprehensive snapshot index of a country’s legal environment, ranked Turkey 80th among 100 countries (down from 59th previously). In press freedoms, Turkey was labeled “not free” by the Freedom House, and was ranked 149th place among 180 countries by another independent watchdog, Reporters Without Borders. Figure 7 above further indicates that Turkey’s progress in terms of broader governance and reform indices has come to a complete halt.

It is of course natural to ask why Turkish political institutions and civil society organizations failed to defend the advances and the freedoms gained in early 2000s. The most likely answer is that these institutions were not as strong as one might have hoped and civil society organizations did not wake up to the slide until it was too late. The weakness of the institutions that were supposed to guard society against the usurpation of power probably lie in the fact that the judiciary and state bureaucracy in Turkey have never been independent, and their allegiance, which firmly lay with the military before 2000, shifted quickly to the AK party, which exploited its power to make appointments and promotions.

The AK party also came to have a heavy, almost stifling influence on print media and TV — not unlike the influence of the Kemalist elites in earlier periods — as indicated by the above-mentioned deterioration in Turkey’s standing in press freedoms. It also took time both for civil society organizations, which were just finding their voice during this period, and foreign media to recognize how the political balance was shifting in Turkey, partly because they were still celebrating the eclipse of the military.

**Section III – Concluding Remarks and the Way Forward**

We have advanced in this brief essay several key arguments:

The Turkish economy’s most recent ups and downs, with a turning point around 2007, are not an exemplar of the typical stop-go cycle experienced by many emerging economies (including Turkey itself in the past), but the consequence of a first phase of structural reforms and unprecedented (by Turkish standards) improvements in economic institutions, and then a total about-face in a second phase during which all of these improvements were reversed.

The roots of the ups and downs of economic institutions is to be found in the political dynamics of Turkey, which created a propitious environment for a major political opening in 2002, with the governing AK party as its unwitting agent but then enabled the AK party to become too powerful for the always-weak checks and balances presented by Turkish civil society, judicial institutions and parliamentary opposition.

Though several other factors, including the waning effect of World Bank/IMF reforms and the ending of the fight between the AK party leaders and the military decisively in favor of the former, set in motion the slide in Turkish political and economic institutions, EU-Turkey relations arguably played
the critical role. Even though both the reforms adopted in the process of EU accession and the anchoring role of the relations with the EU facilitated the difficult economic and political reforms of the first phase, as relations with the EU soured subsequently, these dynamics played in reverse.

In concluding, we draw several lessons for the future of the Turkish institutions, Turkey-EU relations and more broadly.

The most important lesson, which applies both to Turkey and other emerging economies in our view, is that even starting with weak institutions and political imbalances, rapid and high-quality growth appears feasible if the political opening for deep structural reforms and improvements in economic institutions can be found. We are fully aware that such a political opening is far from trivial, and in the Turkish case it may have been made feasible only because the bastions of the old order, the military and other parts of the Kemalist elites, were particularly weakened, many of the traditional politicians were blemished because of incompetence and widespread corruption during the 1990s, and a deep financial crisis left no choice to a caretaker government and its successor, the AK party, but to work with the IMF and the World Bank. All the same, the rapidity with which these reforms bore fruit is a surprise to many commentators who view them as either ineffective or only slow-acting.34

Second, this episode also underscores the closely linked nature of political and economic reforms. In our account, what enabled the structural and economic reforms of the first phase were the favorable political winds of change that strengthened democracy and representation in Turkey. But these political factors went in sharp reverse in the second phase, and as a result, so did economic institutions. The slide of political institutions reflected the unrestrained domination of the AK party, enabled partly because of the inherent weakness of Turkish civil society and judicial institutions, and partly because the AK party elites were able to come to establish their unrivaled control over the judiciary and media via appointments and intimidation.

Finally, we believe there are also important lessons from this episode for the future of EU-Turkey relations. Though these appear to have hit bottom at the moment, there are plenty of grounds for future engagement. To start with, closer trade ties that were initiated by the Customs Union are ongoing, and “upgrading” these ties, which seem inevitable given the developments in the global economy over the past two decades, could be one such vehicle. 35 More importantly perhaps, once the current European economic crisis and the mounting refugee crisis are brought under control in the next several years, EU’s priorities may shift once again towards enlargement. Even without a full-scale turnaround of this sort, European leadership might find different formulas for closer engagement with Turkey. 36 An important reason for such engagement for the EU is highlighted by our account: under the right type of engagement, the EU might have significant power over Turkish institutions, capable of moving them in the direction of deeper and stronger democracy under the EU’s pressure and anchor. Although this power most likely requires a willing, or at the very least pliable, partner at the helm on the Turkish side, internal political dynamics may yet nudge Turkish leaders towards such a position in the not-too-distant future. Our essay also suggests that such re-engagement can generate sizable economic gains for Turkey.

But the gains are not all one-sided. This institutional power is an argument for EU engagement precisely because the EU can reap two types of major gains from closer relations with Turkey and improvements in Turkish institutions. The first one, though almost trite because of the frequent emphasis put on it in many debates, is still important: Turkey can play a stabilizing role in the Middle

34 Though they are consistent with other findings, such as Acemoglu, Naidu, Restrepo and Robinson (2014) showing fairly rapid improvements in economic growth following democratization.
36 For a concise and effective articulation of this point see Ahtisaari et. al. (2015).
East (especially contrasting with its current complicating role in the Syrian crisis). With European nations, large and small, increasingly drawn into conflicts in the broader region and feeling its aftershocks, there is arguably a greater need for a holistic engagement with the Middle East and North Africa, a strategy for which a democratic Turkey, engaged with the EU, could be an invaluable asset, not only as a partner in foreign policy but also as an exemplar of a successful Muslim democracy for the rest of the region.

The second pertains to demographic benefits to the EU from Turkish membership, though the short-term economic costs, and perhaps the mediumterm social costs of Turkish membership are not to be downplayed. As Figure 10 shows, Turkey has a much younger population than Europe. As Europe keeps getting older, the gains from integrating Turkey’s younger population into the European economy could be substantial — both for the labor market and for the sustainability of the ever-evolving set of social welfare programs that are so important for Europe’s population — even if the demographic window of opportunity presented by possible Turkish accession will inevitably get narrower over time.

**Figure 10**

![Figure 10](image)

Source: Authors’ calculations based on Eurostat

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37 For an assessment of Turkey’s Syria policy, see Hope (2013). Stein (2015) looks at the more recent developments.

38 Ahtisaari et. al. (2015).
References


German Marshall Fund: Country Profiles, Turkey, German Marshall Fund of the United States (various issues).


_________. “The Turkish Economy After The Global Financial Crisis” (2012).


Zurcher, Erik J. *Turkey A Modern History*, I.B. Tauris, 2005

### Annex - Timeline of Turkey-EU Relations: 2005-Present

<table>
<thead>
<tr>
<th>Year</th>
<th>Chapters</th>
<th>Other Developments</th>
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<tbody>
<tr>
<td>2005</td>
<td>Council adopts negotiating framework, and negotiations are formally opened.</td>
<td>Chapter on Science &amp; Research (25) opened and provisionally closed</td>
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<tr>
<td>2006</td>
<td>Five chapters are opened. Enterprise &amp; Industrial Policy (20), Consumer &amp; Health Protection (28), Trans-European Networks (21), statistics (18) and Financial Control (32) are opened</td>
<td>Due to the Cyprus conflict, EU decided that negotiations on 8 chapters cannot be opened and no chapters can be provisionally closed. These were: Free Movement of Goods (1), Right of Establishment &amp; Freedom To Provide Services (3), Financial Services (9), Agriculture &amp; Rural Development (11), Fisheries (13), Transport Policy (14), Customs Union (29), External Relations (30)</td>
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<tr>
<td>2007</td>
<td>France declared it will not allow opening of negotiations on 5 chapters because these chapters are directly related to the membership. These were: Agriculture and Rural Development (11), Economic and Monetary Policy (17), Regional Policy and Coordination of Structural Instruments (22), Financial and Budgetary Provisions (33), Institutions (34)</td>
<td>Four chapters are opened. Free Movement of Capital (4), Company Law (6), Intellectual Property Law (7) and Information Society &amp; Media (10) are opened</td>
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<tr>
<td>2008</td>
<td>Council adopts a revised Accession Partnership framework for Turkey.</td>
<td>Two chapters on Taxation (16), Environment and Climate Change (27) are opened</td>
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<td>2009</td>
<td>Cyprus unilaterally declares that it would block the opening of 6 chapters: Freedom of Movement for Workers (2), Energy (15),</td>
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<td>Year</td>
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<td>2010</td>
<td>Chapter on Food Safety, Veterinary &amp; Phytosanitary Policy (12) was opened</td>
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<td>2011</td>
<td>No Activity</td>
<td></td>
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<tr>
<td>2012</td>
<td>Positive Agenda launched, intended to bring fresh dynamics into the EU-Turkey relations.</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>Chapter on Regional Policy &amp; Coordination of Structural Instruments (22) is opened</td>
<td>France lifted its blockage on Chapter 22, Regional Policy &amp; Coordination of Structural Instruments</td>
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MALAYSIA: THE STATE OF LIBERAL DEMOCRACY

Andrew James Harding,* Jaclyn L. Neo,** Dian A. H. Shah,† and Wilson Tay Tze Vern‡

1. Introduction

Malaysia approaches its fourteenth general election, which must be held by August 24, 2018, at the latest. This election will determine whether the ruling BN (Barisan Nasional) coalition returns to power despite the corruption scandal surrounding 1Malaysia Development Berhad that has attracted worldwide attention,1 and recaptures the two-thirds majority in the federal parliament which will enable it to amend the Federal Constitution. No party has enjoyed such a majority since 2008; hence no constitutional amendment has taken place since then. Against this backdrop, the constituency-redelineation exercise of the Election Commission of Malaysia (EC), which started in September 2016, has been particularly contentious. Opposition parties and their supporters have alleged, claiming extensive gerrymandering, that this redelineation gives further advantages to the ruling coalition (which the EC strenuously denies), and the exercise itself has been held up by extensive litigation across the country stretching throughout 2017.

Legal and political developments with a religious aspect continued to be particularly emotive in this country where Islam is constitutionally enshrined as “the religion of the Federation”2 but which is also home to a sizable non-Muslim minority of around 39 percent of the population.3 These developments continue to test the dividing line between the two legal systems that co-exist in Malaysia’s pluralist legal sphere—one centered around the regular or “civil” courts and the other around the religious or Syariah courts which exercise jurisdiction over Muslims in Malaysia. As exemplified by the bin Abdullah case discussed further below, also at issue is the extent to which Islamic religious precepts and institutions can influence secular administrative bodies wielding governmental power in Malaysia.

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1 See Jaclyn L. C. Neo et al., Malaysia: Developments in Malaysian Constitutional Law, in I·CONNeCt–ClOugh CeNter 2016 glObal revIew Of CONstItutIONal law 125, 125–126 (Richard Albert et al. eds., 2016).
2 FED. CONST. MALAYSIA art. 3(1).
2. Liberal Democracy on the Rise or Decline?
Liberal democracy could be said to remain in a relatively precarious position in Malaysia. While opposition politicians, civil society leaders, and the alternative media have generally been able to continue highlighting scandals such as that of state investment vehicle 1Malaysia Development Berhad (1MDB), and to organize public rallies such as the “Love Malaysia, End Kleptocracy” event on October 14, 2017, criminal charges have been pressed against several prominent opposition leaders that could disqualify them from politics. This year, a Committee of the Inter-Parliamentary Union adopted a Decision expressing concern over the use of criminal investigations and legal action against nineteen opposition parliamentarians in Malaysia.¹

The abolition of the mandatory death penalty for drug trafficking, passed by parliament in December represents a tentative step forward for the cause of liberal democracy. Amendments to the Dangerous Drugs Act 1952 now enable courts to impose a sentence of life imprisonment plus whipping for that offense in lieu of the mandatory death penalty if it finds that the accused “has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.”²

It is encouraging that the government, in response to public pressure, removed a provision in the original bill that would have given Malaysia’s Attorney-General, as the Public Prosecutor, the sole discretion to certify whether or not the accused person had rendered such assistance to an enforcement agency. In the amendment’s final version, that discretion now rests with the courts. Thus the reform—originally modeled on Singapore’s 2013 amendment to its penalty for drug trafficking—has gone one step further and achieved an even more complete separation of powers by giving to the judicial branch, rather than the public prosecutor, full control over the decision whether a death sentence should be imposed.³ This reform enhances the content and significance of the constitutional guarantee in article 5(1) that no person shall be deprived of life or personal liberty, save in accordance with law.

On the other hand, speech and activity with religious aspects have come under increasing control and suppression in Malaysia. Many publications touching upon Islam have been banned on the basis that they could cause “confusion,” “anxiety,” “anger,” or even “division” among the Muslim community, which the government considers to be public order concerns.⁴ When faced with challenges to such bans, the courts have tended to adopt a deferential approach, affirming the government’s decisions.

Furthermore, religious freedom—especially for Muslims—continues to be highly restricted in Malaysia. In several cases that came up for consideration in 2017, the courts affirmed existing doctrine that the question of whether a person was a Muslim or not is a matter under the exclusive jurisdiction of the Syariah Court. This means that even where a person had publicly renounced Islam (e.g., by way of a statutory declaration), he or she is still bound by Islamic law, particularly its rules on conversion out of Islam. A person can only convert out of Islam if the Syariah courts “certify” his or her conversion, which in the current constitutional context remains highly unlikely.⁵

These developments could be seen as lack of due regard for the freedom of speech as well as freedom of religion, which is enshrined in articles 10(1) and 11 of the Federal Constitution, respectively.

² Dangerous Drugs (Amendment) Act 2017, § 2. The Act was passed by both Houses of Parliament on December 14, 2017.
3. Major constitutional developments

3.1. Constituency boundaries litigation

The Malaysian courts continued to be the main avenue for opposition parties and concerned citizens to mount challenges against the EC’s redelineation exercise. The EC had, in September 2016, published notice of its proposed recommendations for the redelineation of federal and state constituencies in Peninsular Malaysia, as is mandated every eight years or more under article 113(2) of the Federal Constitution. These recommendations are thereafter to be reported to the Prime Minister, who then tables it before the House of Representatives (the lower house of parliament) alongside a draft order giving effect to the recommendations, with or without modifications. Upon the draft order being approved by not less than one-half of the total members of the House, it is submitted to the Yang di-Pertuan Agong (the King) who makes an order in terms of the draft, completing the redelineation. However, at the notice stage, any state government or local authority whose area is affected by the recommendation, or any body of 100 or more persons in an affected constituency, may object, whereupon the EC shall hold local enquiries in respect of these constituencies and may modify its recommendations if necessary.

The Selangor State Government—controlled by political parties in opposition at the federal level—sought judicial review against the EC recommendations in Selangor, highlighting that they resulted in malapportioned, gerrymandered constituencies, were based on incomplete and defective electoral rolls, and lacked particulars necessary for voters to make meaningful representations in response. After a prolonged hearing, the High Court declined to intervene on the basis that the EC’s recommendations and its discretion to take into account the principles governing redelineation as provided for in the Thirteenth Schedule of the Federal Constitution were non-justiciable since the final decision on the redelineation is reserved for Parliament. The state government nonetheless secured a stay, pending an appeal, preventing the EC proceeding further with the redelineation; but the Court of Appeal swiftly overturned that stay. Other court challenges to various EC recommendations were also mounted, unsuccessfully, by groups of voters in other states. The deluge of litigation, however, appears to have significantly delayed the completion of the redelineation exercise which, under Article 113(2)(iii) of the Federal Constitution, must conclude by September 2018.

The redelineation exercise is a serious matter due to the persistent problem of electoral malapportionment and gerrymandering in Malaysia. Coupled with Malaysia’s first-past-the-post electoral system, the absence of concrete rules and ratios governing the apportionment of electors to constituencies in Part I of the Thirteenth Schedule (which sets out the so-called Principles Relating to the Delimitation of Constituencies) has already produced a situation where, in the previous general election, the ruling coalition polled 47 percent of the votes in an essentially two-party contest, yet secured 60 percent of the parliamentary seats. The latest redelineation exercise will allegedly exacerbate the problem even further; to cite but one example, one of the new constituencies it would produce will contain approximately ten times more electors than another. There are also serious allegations of ethnic discrimination in the redrawing of constituency boundaries. Since the exercise directly affects not only the question of who forms the government post-election but also whether a

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government emerges with the two-thirds majority needed to amend the Federal Constitution, this is a debate of momentous significance.

3.2. Two landmark cases on separation of powers

In *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Anor*, the Federal Court re-examined a 1988 constitutional amendment that deleted “the judicial power of the Federation” from the provision in the Federal Constitution establishing the courts of first instance (article 121(1)). Departing from precedents interpreting this amendment as having drastically curbed the jurisdiction and powers of the Malaysian courts vis-à-vis parliament, the Federal Court stridently affirmed that judicial power, judicial independence, and the separation of powers “are as critical as they are sacrosanct in our constitutional framework.” Therefore, article 121(1) was interpreted as continuing to enshrine the separation of powers and the independence of the judiciary as basic features of the Federal Constitution. Judicial power to adjudicate matters brought to court is vested only in the courts, and “any alterations made in the judicial functions would be tantamount to a grave and deliberate incursion into the judicial sphere.” Thus, the Federal Court struck down a statutory provision restricting the courts’ ability to determine whether owners of land compulsorily acquired by the government had been adequately compensated in accordance with the rights to property protected under article 13 of the Federal Constitution. This reassertion of judicial power augurs well for the role of the courts in safeguarding the supremacy of the Federal Constitution and the rule of law.

*Semenyih Jaya* also revived discussion of the “basic structure doctrine,” under which a legislature cannot amend the written constitution in ways that would destroy its basic structure, even if the stipulated amendment procedure is followed. The Federal Court’s explicit assertion that parliament does not have the power to amend the Federal Constitution to the effect of undermining the separation of powers and the independence of the judiciary enshrined therein is a landmark development that departs significantly from previous rulings on the issue and brings Malaysia in line with some other Commonwealth jurisdictions.

In *Teng Chang Khim (appealing as Speaker of Selangor State Legislative Assembly) v. Badrul Hisham bin Abdullah & Anor*, the Federal Court clarified the limits of judicial intervention into legislative proceedings, given the concept of parliamentary privilege. The Speaker’s act of declaring a member of the state Legislative Assembly seats vacant upon the latter’s prolonged absence without leave—as the Speaker is empowered to do under the Selangor State Constitution—was held to be “inevitably connected with the essential business of the Legislative Assembly,” such that it was protected by parliamentary privilege under article 72(1) of the Federal Constitution, even though the declaration itself was made at a press conference and not in formal Assembly proceedings. The Federal Court clarified that the court could only intervene if the Legislative Assembly, or a committee or officer thereof, was acting *ultra vires* its legal powers. Otherwise, it would be non-justiciable due to parliamentary privilege.

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11 *Semenyih Jaya*, 3 M.L.J. at 593.
12 Id. at 590.
13 Id. ¶¶ 67, 84.
14 Id. ¶ 76.
3.3. Religion and administrative power

In *A Child & Others v. Jabatan Pendaftaran Negara & Others*, the Court of Appeal examined the proper exercise of administrative power in matters implicating religious identification. In this case, a child was born out of wedlock under *Syariah* law to Muslim parents. When the National Registration Department (NRD) issued the birth certificate, the child’s name bore the patronymic surname bin Abdullah instead of his father’s name. This was done against the wishes of the parents, who proceeded to make an application to correct the surname to reflect the name of the father. The NRD rejected the application and justified the decision on religious grounds, asserting that under *Syariah* law—which governs Muslims in Malaysia—an illegitimate Muslim child could not bear the name of his father but must be ascribed with the surname bin Abdullah. The director-general of the NRD relied on two *fatwas* from the National *Fatwa* Committee in 1981 and 2003 in preference to the statutory provisions governing his exercise of power, i.e., the Births and Deaths Registration Act 1957 (BDRA).

The Court of Appeal judgment, in favor of the appellants, is significant for three reasons. The first concerns the reach of religious authorities and injunctions in civil or “secular” matters. Unlike the High Court decision that approved the NRD’s reliance on Islamic law in deciding an illegitimate child’s surname, the Court of Appeal insisted that this issue is governed only by the BDRA. From this perspective, the NRD had acted irrationally and exceeded the scope of its power, as it only needed to consider whether the appellant had met the statutory registration requirements. The Court stressed that the BDRA does not sanction the application of Islamic law or principles in the registration process and that *fatwas* are irrelevant to the exercise of statutory duties under the BDRA.

Second, the Court’s reasoning has implications for the country’s federal arrangement in matters involving Islam. National registration is a “civil” matter under the federal list of powers and any attempt to allow *fatwas*—which do not have binding or legislative force in this particular instance—to dictate the administration of civil law would be unconstitutional. The case also raises a question about a federal body encroaching on state authority in Islamic law matters. The *fatwas* in question, having been issued by the federal-level National *Fatwa* Committee, could not have applied to the appellants, who were residents of the state of Johor. By deciding the way it did, the Court of Appeal keeps intact the constitutionally demarcated federal and state division of powers—powers that have recently been increasingly blurred by fervent exercises of power by federal-level religious bodies.

Finally, the judgment displayed great sensitivity to extra-legal considerations, i.e., as the Court aptly expressed, “whether an innocent child should be subjected to humiliation, embarrassment and public scorn for the rest of his life.” This of course does not dilute the significance of the legal reasoning offered by the Court, but when considered together with the astute legal analysis, overall the decision is a welcome approach to deciding important questions involving religion and constitutional law.

3.4. Religion and freedom of expression

One of the most prominent cases this year was the ban on a book by a Canadian lesbian author titled *Allah, Liberty & Love: The Courage to Reconcile Faith and Freedom* and its translated Malay version. The stated ground for the ban was that the book was prejudicial to morality and public order. Following the ban, the enforcement division of the Selangor state religious department raided the offices of the publisher of the translated book and sought to charge the director of the publishing house before the *Syariah* Court under the *Syariah* Criminal Offences (Selangor) Enactment 1995. Under section 16 of the Enactment, a person who publishes or has in his possession religious publications contrary to

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17 *Id.* at 455.
18 *Id.* at 453.
19 *Id.* at 445.
Islamic law is liable on conviction to a fine not exceeding RM3000 and/or imprisonment not exceeding two years. The publisher and the director challenged the provision in the Enactment and the actions of the religious department officers on constitutional and administrative law grounds. The High Court dismissed the application on a preliminary objection, but on appeal, the Court of Appeal held that the dismissal was erroneous and remitted the matter to the High Court for a substantive hearing of the judicial review application.

Another case to monitor concerns the constitutionality of a fatwa by the Selangor Fatwa Committee against a prominent women’s rights group, Sisters In Islam, designating the group “deviant.” The group’s challenge was also initially dismissed by the High Court on the basis that only Syariah courts have the power to deal with a religious decree. However, the Court of Appeal reversed the ruling and remitted the case back to the Kuala Lumpur High Court. This will be another important case as it implicates the scope of a religious fatwa committee’s powers and the extent to which it is subject to the Federal Constitution’s guarantees of fundamental liberties, which include the freedom of association and assembly as enshrined in article 10.

3.5. Child conversions and Law Reform (Marriage and Divorce) Act 1976

In November 2016, a bill was tabled in parliament to amend the Law Reform (Marriage and Divorce) Act 1976, which included provisions requiring both parents in a civil marriage to consent to a minor’s conversion into Islam and providing that a child will remain in the religion of his or her parents at the time the marriage was registered. This offered the best hope for an end to lingering problems brought about, in part, by civil–Syariah jurisdictional battles in matters concerning conversions. However, when parliament passed the bill in August 2017, section 88A, which would have invalidated unilateral conversions of children, was conspicuously missing. The government claimed that it withdrew the provision as it would conflict with existing Federal Court decisions on the unilateral conversion of children.

Even though the final amendment contained positive developments—for instance, it cemented the position that disputes relating to custody, maintenance, and matrimonial assets that arise from the dissolution of a civil marriage must be resolved in the civil courts rather than the Syariah courts (despite the conversion of one spouse to Islam), as well as inserting a provision that both the converted and non-converting spouse could petition for divorce before the civil courts—critics argue that the main objective behind efforts to amend the law had always been the issue of unilateral conversion. The fact that section 88A fell through demonstrates how the government and the political process could cave in to majoritarian pressures surrounding the question of conversion. The passing of the bill may well have ended any legislative initiative to resolve the long-standing controversy surrounding unilateral conversions of underage children. It also raises a crucial question—if the judicial and political processes do not protect fundamental rights and minorities, what recourse would citizens then have?

23 Law Reform (Marriage and Divorce) (Amendment) Bill 2016, § 88A.
25 In Subashini a/p Rajasingam v. Saravanan a/l Thangathoray and Other Appeals, 2 M.L.J. 147 (2008), the Federal Court held that the conversion of a child by either parent is valid, i.e. it does not require the consent of both parents. This decision was affirmed in Pathmanathan Krishnan v. Indira Gandhi Mutho and Other Appeals, 1 C.L.J. 911 (2016). See Dian A. H. Shah, Religion, Conversions and Custody: Battles in the Malaysian Appellate Courts, in law and society in Malaysia: Pluralism, Religion, and Ethnicity 145, 130–152 (Andrew Harding & Dian A. H. Shah eds., 2018). * See generally Shah, supra note 29.
3.6. Controversial extension of Chief Justice’s tenure

In July, the government announced that Tun Raus Sharif’s term as Chief Justice (CJ) of the Federal Court (the highest judicial appointment in Malaysia) would be extended for three years from August 4, 2017, while Tan Sri Zulkifli Ahmad Makinudin would continue as President of the Court of Appeal (PCA) for two years from September 28, 2017. Both senior judges were to have retired on these dates upon reaching the constitutional age limit for judges of the Federal Court. This unprecedented extension of the CJ’s and PCA’s tenure beyond retirement age was purportedly done under Article 122(1A) of the Federal Constitution, which allows the appointment of ‘additional judges’ of the Federal Court beyond the age limit. However, it remains highly questionable whether that provision allows for a judge’s tenure qua CJ and PCA (as opposed to an ordinary membership of the Federal Court) to be extended in that manner.

Several parties subsequently attempted to challenge these appointments by way of judicial review. In November, former Prime Minister Tun Dr Mahathir Mohamad’s application for judicial review was dismissed by the High Court on the basis that there could be no statutory duty for the Prime Minister to advise the King to revoke the allegedly unconstitutional appointments.26 In December, another application for judicial review, by opposition party Amanah, was also dismissed due to lack of locus standi.27

The Malaysian Bar took a strong stand on the matter, convening an Extraordinary General Meeting on August 3, at which it resolved that these extensions were “unconstitutional, null and void.”28 The Bar also resolved that it would “no longer have confidence” in these two judges continuing to hold office as CJ and PCA, and mandated the Bar Council to institute legal proceedings challenging the constitutionality of the extensions. This duly took place and on December 19, 2017, and the Bar was granted leave by the High Court to refer six questions regarding the constitutionality of these appointments for determination by the Federal Court in 2018. A singular difficulty arising in this litigation is how the case will be heard and disposed of, given that the persons who are the subject of the challenge are currently occupying the top two positions in the very same court hearing the case.

4. Looking ahead to 2018

The main event in 2018 is undoubtedly the upcoming fourteenth general election, in which all seats in the Lower House of the federal parliament, as well as every state legislature except Sarawak’s, will be up for election. This election will test whether the incumbent BN can head off the main opposition Coalition of Hope (PH) and even possibly recapture a two-thirds majority in parliament, which would enable it to amend the Federal Constitution at will once again.

If 93-year-old former Prime Minister Mahathir Mohamad—the one-time strongman of Malaysia turned government arch-critic—remains at the helm of PH, this election will demonstrate how far he can sway popular support against scandal-hit incumbent Prime Minister Najib Razak, particularly among the latter’s core constituency of Malay and indigenous voters. This election will also determine—at least for the duration of the next parliament—the ability of the Islamic Party of Malaysia (PAS) to continue pushing its Islamist agenda for Malaysia since PAS has chosen to align itself with neither the BN nor PH.29

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The Malaysian Bar’s challenge to the constitutionality of the reappointment of the Chief Justice and the President of the Court of Appeal—presently before the Federal Court—is a case to watch in 2018. This scenario, unprecedented in Malaysian constitutional history, will test the ability of the apex court to deliver a convincing and wellreasoned resolution capable of sustaining current efforts to rebuild public confidence in the Malaysian judiciary.

Cases on religious issues, as highlighted above, will also, as ever, be notable in 2018. Three such cases—the government’s appeal against the \textit{A Child & Others} decision at the Federal Court, and the substantive judicial review applications involving Canadian author Irshad Manji and Sisters in Islam—will be particularly important to watch.
‘NEW’ MALAYSIA: FOUR KEY CHALLENGES IN THE NEAR TERM

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The Lowy Institute is an independent policy think tank. Its mandate ranges across all the dimensions of international policy debate in Australia — economic, political and strategic — and it is not limited to a particular geographic region. Its two core tasks are to:

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Executive Summary

In May 2018 Malaysia underwent its first regime change in its political history. This saw the return of Mahathir Mohamad as prime minister, 15 years after his first tenure as prime minister from 1981 to 2003. As the country heads towards the first anniversary of the Pakatan Harapan (Alliance of Hope) government, it is imperative that the momentum for political change is not stalled. This Analysis identifies four key areas that the new administration must deal with in the next 12 months: the Malay Agenda/Bumiputra Policy; the 1963 Malaysia Agreement (MA63); political Islam; and a clear timetable for transition of power. These issues are not only crucial to the stability of the PH administration, but also for long-term institutional reforms. The first three issues are not new — they went on unresolved under the previous regime, leading to an increasingly dysfunctional political system and culminating in the change of government. The PH government has an opportunity to change

Malaysia’s political trajectory if it takes steps to resolve these issues. The more immediate issue at the highest level of government is the promised transition of power to Anwar Ibrahim. If not handled properly, PH may turn out to be a one-term government and the country could revert to the old regime.
Prior to Malaysia’s 14th General Election (GE14) in 2018, the country was a seemingly stable semi-democracy where the ruling party, United Malays National Organisation (UMNO), was widely regarded as unbeatable. UMNO and the ruling coalition, Barisan Nasional (BN), had won every general election for the past six decades. Yet on 9 May 2018 it was defeated by Pakatan Harapan (PH or Alliance of Hope), a newly constituted coalition led by former Prime Minister Mahathir Mohamad. PH’s victory came in the wake of the corruption scandal engulfing former Prime Minister Najib Razak, and was accompanied by Mahathir’s switch to the opposition from his former (and ruling) party, the newly discredited UMNO. Until his resignation in 2003, Mahathir had led UNMO in government for more than two decades.

The first regime change in Malaysia’s political history brings unprecedented political challenges for the PH administration. It is not easy to impose a new set of political norms after six decades of one-party rule. Key reform areas are related to issues of good governance, including the independence of state institutions which have been undermined by 60 years of one-party dominance in Malaysia. The new Mahathir administration faces many political challenges.

However, there are four key issues that the administration must address before the next general election in 2023. These are the Malay Agenda/Bumiputra Policy; the 1963 Malaysia Agreement (MA63) and the status of the former British colonies of Sabah and Sarawak on the island of Borneo; political Islam; and the timeline for transition of power from Mahathir to Anwar Ibrahim. The first three issues remained unresolved for many years under the BN regime. The resolution of these issues is crucial to Malaysia’s political stability in the near term and to laying the foundation for long-term reforms.

Many seasoned Malaysian observers may regard these issues as ‘common sense’, but they need to be treated as priorities given the number and scale of reforms necessary to bring the country out of its persistent political system driven by ethnic and religious tensions.

The Malay Agenda/Bumiputra Policy

In response to racial riots in Malaysia in May 1969, attributed at the time to the wealth imbalance between indigenous Malays (bumiputra) and non-Malays, the Malaysian Government sought to re-engineer Malaysian society through the New Economic Policy (NEP). The NEP had two aims. The first was the eradication of poverty, irrespective of race. The second was “restructuring society to eliminate the identification of race with economic function”. In 1970, Malays comprised nearly 50 per cent of the population and held less than country’s wealth. This inequity rendered Malaysian society inherently unstable, with its principal ethnic group holding an insignificant share of the economy. The restructuring sought to give the Malay community a minimum of a 30 per cent share across all economic and social spheres and ensure that the Malay community was represented in all occupation groups.

Since the introduction of the NEP in 1971, the Malaysian Government has injected billions of dollars in direct subsidies into the Malay community. The aim was to create a competitive Malay community — officially termed the Bumiputera Commercial and Industrial Community (BCIC). In addition to subsidies, the Malay community were granted other advantages including quotas in university intakes and scholarships, government contracts and procurement, business licences and loans, employment in the civil service and government-related entities, and even discounts on new houses and dwellings. The entire preferential system is often referred to as the Malay Agenda or Bumiputra Policy. While many see this as a blatant form of racial discrimination against non-Malays, the policies have become so entrenched in the Malaysian system that they are considered political ‘sacred cows’, leading some to refer to the NEP as the “Never Ending Policy”.
For policymakers in Malaysia, the NEP is seen from two distinct perspectives. First, there are those who see positives in the policy. They believe that direct government intervention in education has helped to create a prosperous Malay professional middle class, as evidenced by the large number of bumiputra professionals in fields such as accounting, law, and engineering.8 This was mainly accomplished by a strict quota system imposed on all public tertiary institutions and scholarships. Public universities in Malaysia, for example, generally reserved a minimum of 55 per cent of their intake for bumiputra students. For ‘critical’ courses such as engineering and medicine, the percentage was much higher. In addition, special bumiputra-only tertiary institutions were created to dramatically increase the number of places for bumiputra students.9 Government-funded scholarships were another means of greatly increasing the number of Malay graduates. More than 80 per cent of all government scholarships for studies outside Malaysia were awarded to Malay students.10

Compared to the pre-NEP period, the number of Malay professionals created by the NEP affirmative action policies is impressive, with the contemporary Malay community well-represented across all professions: for example, more than 40 per cent of lawyers and almost 50 per cent of medical doctors are ethnic Malay compared to less than 10 per cent pre-NEP.11 In terms of the second aim of the NEP (that of “restructuring society to eliminate the identification of race with economic function”), therefore, the results appear to justify the massive government intervention in creating a large and prosperous Malay professional middle class.

The second perspective on the NEP is more negative, primarily on the basis of the NEP’s push to empower the Malay community economically through the creation of the BCIC. Many scholars have argued that the project has had limited success.12 The government initially relied on simplistic ways to expand the Malay share of the economy, imposing a strict permit and licence system on large sections of the economy. Many of these permits and licences were only available to Malay business people or Malay-majority businesses. Until the mid-1990s, large Malaysian-owned companies that wished to list on the stock exchange were required to sell 30 per cent of their shareholdings to government-approved Malay shareholders. This policy increased the Malay share of the equity market to beyond 30 per cent.13 However, the system of permits, licences, and compulsory shareholdings did not help create an economically competitive commercial and industrial Malay community. There was much abuse; many Malay business people who were ‘approved’ by the government promptly sold their permits and licences to non-Malays for instant profit, defeating the purpose of the scheme. During the privatisation phase of the first Mahathir administration (1981–2003), the most profitable public utilities were sold to a select group of Malay businessmen close to UMNO. While the privatisation process created instant millionaires in the Malay community, it also produced some negative consequences.

First, many Malay business people who had been awarded government contracts continued to rely on government patronage as their business model. Rather than building viable businesses, they simply on-sold the government contracts and permits to non-Malays. In other cases, they created joint ventures with non-Malay businesses, reaping the benefits as nominal ‘Malay’ partners, rather than building acumen and business experience in their own right. To keep their ‘businesses’ going, they sought more bumiputra contracts from government. In this Malay business ecosystem, business people do not learn the most important lesson in business: competition.

Second, the political parties in the (then) ruling coalition, Barisan Nasional, used the permit and licence system, the privatisation process, and government contracts to create a powerful network of individual business people who owed their business success solely to their political connections.14 This was especially true of UMNO, the predominant party in the coalition. These UMNO-connected business people were expected to support other parties and politicians in the ruling coalition with large sums of cash during general elections and internal party competitions. It became a win-win situation for the political patron and the business client.

As a result of the NEP, the majority of these Malay business people became ‘rent-seekers’, using their Malay-status to get government contracts. They had no valid claims to entrepreneurship but rather
excelled at exploiting government contracts. Using political pressure to extract further government contracts, they infected the political system in the broad. Powerbrokers in government accessed vast wealth to maintain their positions via proxies in the business sector. In turn, these business people collected ‘rent’ on behalf of their political sponsors in private, while publicly claiming to be acting in the interests of the bumiputra community and the BCIC.¹⁵

The implementation of the NEP and creation of the BCIC had two profound consequences. It created deep resentment among the non-Malay community, particularly the Chinese and Indian minorities. The non-Malay community were especially resentful that their children were denied the right to university education and business opportunities.¹⁶ It led to unnecessary ethnic tensions between the Malays and non-Malays. Had the government modified the affirmative action policies from a bumiputra-only program to a needs-based program, the Malay community’s needs would still have been served. That community constituted the single largest bloc among the lowest socio-economic group and would have been the main beneficiary of the affirmative action program regardless. By using a racial criteria, UMNO created an artificial ethnic barrier for political reasons but the price the country paid was a permanent breakdown in inter-ethnic relations among Malays and non-Malays, making national unity impossible.¹⁷

The expansion of the BCIC also created an elite layer of politically connected Malay business people who depended solely on government contracts to survive. This group added another wedge to the Malay/ non-Malay divide by persistently arguing that Malay businesses needed special government protection and expansion of the bumiputra-only contracts in order to realise the Malay Agenda. If the government were to pursue a competitive, free-market approach, this group argued, predatory Chinese businesses would seek to monopolise the Malaysian economy. Some might call the BCIC expansion ‘crony capitalism’ — Malaysia ranked second on The Economist’s crony-capitalism index in 2016.¹⁸ However, in Malaysia this form of crony capitalism had an explicit ethnic dimension.¹⁹

The new PH administration has acknowledged that the Malay Agenda/Bumiputera Policy needs reform. Mahathir’s own Council of Eminent Persons (CEP) suggested that reforms to the affirmative action policies are necessary to bring Malaysia to the next economic level.²⁰ However, having garnered only about a quarter of the Malay votes in GE14, the Mahathir government recently announced that the Malay Agenda will continue,²¹ with some changes. He has not offered specifics. In all probability, there is no political appetite to make real changes to the Malay Agenda until PH has won the Malay vote at the next general election, due in 2023. The overriding fear is that if changes are made now, PH will lose Malay support and may even lose government at the next election.²²

The 1963 Malaysia Agreement (MA63) and Sabah and Sarawak

For the first time since the 1980s, the state governments in both Sabah and Sarawak, located on Borneo island in East Malaysia, are controlled by a political party that is not a full member of the federal governing coalition based in Peninsula or West Malaysia. In Sarawak, the governing party has stated clearly that it is only interested in ‘Sarawak First’ policies, while in neighbouring Sabah, the state government is only an ally of the PH government and has refused to join as a full coalition member.²³ Historical grievances have fuelled a rising state nationalism, and have contributed to the contemporary tensions between East and West Malaysia.

The starting point for understanding these contemporary tensions is the Malaysia Agreement 1963 (MA63), which created the Federation of Malaysia. It was signed by the United Kingdom, Malaya, Singapore, North Borneo, and Sarawak and grants the states of North Borneo (as Sabah was then called) and Sarawak a high degree of autonomy in the proposed federation. The origins of this autonomy lie in the so-called “Twenty Point” agreement — 20 areas in which the political leaders of North Borneo and
Sarawak sought autonomy in return for supporting the formation of the new Malaysian Federation. Their principal targets were:

- Religion: Islam’s status as the national religion of Malaysia should not be applicable to Sarawak and Sabah.
- Immigration: Immigration control should be vested in the state governments of Sabah and Sarawak.
- “Borneanisation”: Positions in the civil service should be filled by local residents whenever possible.
- Constitutional safeguards: No amendments or modification to the Twenty Points should be made without the agreement of the Sabah and Sarawak state governments.
- Right of secession: No secession from the federation should be permitted.
- Indigenous races: The indigenous peoples of both Sarawak and Sabah should enjoy a ‘special position’ commensurate with that of the Malay community.
- Tariffs and finance: Sabah and Sarawak should be given a high degree of autonomy over their financial affairs, such as control of their own finance, development expenditure, and tariffs.
- Language: English should continue as the official language.

Many of these aims were considered by an Inter-Government Committee (IGC), which comprised representatives from all sides. Where there was agreement, it was incorporated into the new Malaysian Constitution, which was based on the Malayan Constitution.

For Sabah and Sarawak leaders, then and now, there was a fear of being taken over by those on the peninsula if they did not retain a high degree of autonomy. After half a century of the federation, many feel that these supposedly autonomous matters have been effectively taken over by the federal government through bureaucratic regulations as well as constitutional amendments contrary to MA63. State nationalists argue that Sabah and Sarawak contribute more in economic terms to the federation than they get out of it, especially in oil and gas, and that political neglect has resulted in the underdevelopment of Sabah and Sarawak compared to the peninsula. For example, they point out that many parts of the interior in Sabah and Sarawak do not have access to electricity or piped water.

In Sabah and Sarawak, the political ideologies of Ketuanan Melayu (Malay supremacy) and Ketuanan Islam (Islamic supremacy), both strongly maintained by the ruling UMNO party for more than 50 years, are controversial. The main indigenous peoples in Sabah and Sarawak, the Kadazandusun Murut (KDM) and the Dayaks, respectively, are largely non-Muslims and non-Malays for whom such concepts are anathema.

More importantly, the version of Islam practised in both states is far more liberal and tolerant compared to that in West Malaysia. This is largely due to the population structure. Unlike West Malaysia, where Malays constitute more than half the population, Sabah and Sarawak are plural states with no single ethnic group making up more than 40 per cent of the population. In Sarawak, around 40 per cent of the state’s population is Christian. In Sabah, a major grievance is the rapid dilution of the indigenous community through a covert state-sponsored migration program to increase the Muslim population. Prior to the 1980s, Sabah was a non-Muslim state. By the late 1990s, the Muslim population in Sabah had increased to about half and, more importantly, the Muslims became a voting majority, thus altering the power balance in the state significantly. Today, roughly one-third of Sabah’s population are migrants, almost all of them Muslims from Southern Philippines and Indonesia. There is consensus that it was the federal government under the first Mahathir administration that initiated this covert program to gain control of Sabah under a Muslim government.
One of the most important outcomes of GE14 is that the ruling coalition in both Sabah and Sarawak are not formal members of the federal PH alliance. In Sabah, the ruling coalition consists of Party Warisan Sabah (PWS or Sabah Heritage Party) and PH Sabah. An electoral alliance between the two contributed to their success in the 2018 general elections. The federal PH had invited PWS into a coalition prior to the election, but PWS refused on the basis that Sabahans would not tolerate a party that was not locally based. This strategy of state nationalism worked, and the electoral pact allowed PWS–PH Sabah to capture power. In neighbouring Sarawak, the Sarawak BN discarded the federal BN on election night and rebranded themselves as Gabungan Parti Sarawak (GPS or Alliance of Sarawak parties). Both PWS and GPS have proclaimed themselves to be state nationalists who want to secure ‘rights’ under MA63. Both claim to be actively seeking ‘autonomy’ from Malaysia’s administrative capital, Putrajaya.

These political machinations reveal historical grievances in Sabah and Sarawak that are real and deep, and if not dealt with properly at the political level could provide the impetus for a secession push. Small secessionist movements are already active in both states. These could easily gain momentum if Putrajaya continues to ignore historical grievances. While there is no constitutional provision for secession, there is a compelling precedent: in 1965, Singapore separated from the Malaysian federation through a special act of parliament.

Putrajaya so far has responded to the discontent by establishing a special cabinet-level committee on MA63 and the status of Sabah and Sarawak led by Mahathir himself. He has promised to grant autonomy to both states via a process of decentralisation. However, this process has invited suspicion. First, Sabah and Sarawak lost significant autonomy during the first Mahathir administration. Second, the special cabinet committee is evenly divided between the peninsula and Sabah/Sarawak with the prime minister holding the casting vote. The opposition GPS-led Sarawak state government has already announced that certain issues are non-negotiable even before the committee starts its work. The (PWS) Sabah government’s position is more positive, given its alliance with PH Sabah. Nevertheless, PWS is unlikely to back down on its core demands of greater autonomy for Sabah and Sarawak, higher oil royalties, and more development funding.

**Political Islam**

The question of the role that Islam should play in Malaysian politics is not new. In 1951, a breakaway group of Muslim clerics seeking to establish an Islamic state formed Parti Islam Se-Malaysia (PAS or Islamic Party of Malaysia). For the first three decades of independence, PAS was the mainstay of political Islam in Malaysia. Since then, PAS has steadfastly called for the establishment of an Islamic state in Malaysia.

In the 2000s, however, new groups began to emerge to challenge PAS’s version of Malaysia as an Islamic state. Many of these groups, including Malaysian Muslim Solidarity, Jemaah Islah Malaysia, the Association of Malaysian Scholars, and the Islamic Welfare and Missionary Association of Malaysia, as well as sections of PAS, openly called not only for the creation of an Islamic state but, more contentiously, that the entire non-Muslim population be disenfranchised. In their version of an Islamic state, the most extreme of these groups seek to strip the non-Muslim population in Malaysia (currently about 35 per cent of the population), of their political rights, reducing them to the status of dhimmi — a protected minority with restricted rights. The ultimate aim of these groups is to create a Malay-Islamic state where Sunni Islam’s supremacy is fused with Malay ethnicity and identity. In this unique Islamic state, Islam and the Malays would form one, Muslim, people.

There is nothing accidental about the rise of political Islam in Malaysia, which came about primarily through three factors. The first derived from the fierce political competition between UMNO and PAS for the Malay vote. The two parties found Islam to be the most effective political tool to get electoral support and mobilise the Malay polity — the ‘Malay vote’ became the ‘Islamic vote’. Both sides vied to be the most ‘Islamic’, creating more hard-line positions on Islam, despite Malaysia’s multiracial and
multi-religious society. A key reason why the ‘Islamic vote’ was so potent was the constitutional requirement that all ethnic Malays are Muslim. Thus by the 1990s, the only political game in the Malay community was Ketuanan Islam (Islamic supremacy), which coupled with the already prevalent Ketuanan Melayu (Malay Supremacy) meant it became increasingly impossible to separate the two.

The second factor was UMNO’s bureaucratisation of Islam. To demonstrate its true championship of Islam, UMNO’s Mahathir established the Malaysian Islamic Development Department (JAKIM) within the prime minister’s office. A key consequence of JAKIM was a gradual revolution in the teaching of Islamic theology in government schools. That teaching espouses a theology derived from the Middle East, particularly Saudi Arabia. Rather than teaching inclusiveness and tolerance of other faiths, this Saudi Arabia-centric curriculum promotes an exclusivist view of Islam, Islamic supremacist attitudes, disdain for Islamic theologians who disagree with this doctrine, contempt for minorities, and hatred for Islamic groups such as the Shias.

Third, after the Iranian Revolution in 1979, Malaysia, like the rest of the Islamic world, underwent a revival of Islam. Saudi Arabia tapped into this global interest by giving money to numerous institutions and charities in the developing Muslim world and generous scholarships for thousands of Muslim students to study in Saudi Arabia. Its aim was to counter Iran and promote ultraconservative Islam — Wahhabism and/or Salafism. Thousands of young Malaysians went to Saudi Arabia and other parts of the Middle East to study Wahhabism/Salafism and its intolerant and exclusivist way of thinking. A sizeable number became religious teachers or ustaz, established their own Tahfiz schools and propagated their ideas to young Malaysian Muslims inside Malaysia.

Together, these factors produced a brand of intolerant Islam that promoted the narrative of Muslims vs non-Muslims in Malaysia over the past three decades. The non-Muslim population, especially the Christian community in Malaysia, feel they are under siege by Islamists who are suspicious of anything they deem to be Christian. For example, attempts were made to stamp serial numbers on every Bahasa Indonesia bible imported into Malaysia because of a fear that exposing Malays to Indonesian-language bibles may lead them to apostasy.

Transition of Power from Mahathir to Anwar

Malaysia underwent its first change of government in six decades in 2018. While there is a lot of political goodwill towards Mahathir and the new government, increasingly there is a sense that a big political crisis is looming. In 2020, Mahathir is expected to retire and Anwar Ibrahim, leader of Parti Keadilan Rakyat (PKR or People’s Justice Party), to take over as prime minister under an explicit agreement made between the coalition parties prior to the election. According to that agreement, Mahathir would serve for the first two years of the new government and hand over the prime ministership to Anwar in 2020. The reasons for such an arrangement are clear: Mahathir’s advanced age — he will be 95 years old in 2020; and a change of leadership around that time would provide a sufficient period for settling into office before the next general election, due in 2023.

Mahathir himself has confirmed several times that Anwar Ibrahim will replace him. However, among the political class there are persistent rumours to the contrary. Anwar’s ability to lead PH to victory in the next election is in question, particularly after leading the opposition to defeat in 2004, 2008, and 2013. It was only in the 2018 election, under Mahathir, that the opposition finally succeeded.

While Anwar Ibrahim has been resilient politically, his skills in government are untested. There is also persistent talk that Mahathir would prefer Mohamed Azmin Ali, the Minister of Economic Affairs, as prime minister. With Azmin Ali the deputy president of Anwar’s party, PKR, this scenario would be politically convenient: PKR gets the prime ministership, with Anwar compensated in other ways. Mahathir also saves face under such an arrangement, having kept his word on the transfer of power.
Persistent chatter about Anwar Ibrahim’s ability to ascend to the top job is having a destabilising impact on Malaysian politics. In a government in which power is highly centralised in the office of the prime minister, the Similarly, the Malaysian economy and financial markets do not like political uncertainty, particularly after such an unprecedented regime change. Malaysia has thrived economically in the past, in part because of the political certainty produced by UMNO’s long reign.

Conclusion
In May 2018, the majority of the Malaysian polity voted for a substantial break from the past, and meaningful political reform. If that process is stalled, PH may well be a one-term government. This Analysis has outlined four key challenges facing the new Malaysian Government in the near term. As the country heads towards the first anniversary of regime change in May 2019, it is becoming increasingly important for the PH administration to deal urgently with these challenges. Failure to address them is not just politically reckless; more importantly, it retards the process of reform on a range of issues that were promised in the 2018 election.

As a highly emotive issue for the Malay community, and after half a century of affirmative action policies, the Bumiputra Policy cannot be reformed peremptorily. Other countries and their governments have faced similar problems when trying to restructure affirmative action programs. Nevertheless, the key warning from such experiences is clear: if no reforms take place, there may be a rapid expansion of the affirmative action policies, far beyond what was originally envisaged.48

The grievances of Sabah and Sarawak following MA63 and the federation it created are real and deep. The PH administration must acknowledge that these two states cannot be treated in the same way as the 11 other states on the peninsula. The federal government’s promised decentralisation process should start at the earliest opportunity. The aim should be to return as much of the bureaucratic power to the state governments of Sabah and Sarawak as envisaged in the 1962 IGC report.49 Much has changed since the report was published and a new set of rules should be put in place for future federal–Sabah/Sarawak relations. The special cabinet committee on MA63 established in December 2018 is a step in the right direction.

The question of political Islam is perhaps the hardest to deal with in policy terms. There are no clear successful examples elsewhere. What is really needed in the ‘new’ Malaysia is a complete mindset change when it comes to the position of Islam and the politicisation of Islam. The current practice (in which JAKIM and other government Islamic bodies refuse to get involved in inter-faith issues on the basis that Islam is constitutionally ‘higher’ than other religions) is not sustainable and inflames religious tensions between Islam and other faiths. Giving the non-Islamic faiths an official platform, such as a dedicated ministry,50 would provide a forum for rational discussion of inter-faith issues.

Finally, the centralisation of power in the prime minister’s office means that political certainty, both within Malaysia and in Malaysia’s international relations, is critical. As quickly as practical, Mahathir should appoint Anwar as deputy prime minister and the official number two in the administration, sending a powerful signal to the world that the succession is on track. A clear timetable for the transition should be agreed as soon as possible, including a specific date for the transfer of power. Collectively, these two actions would eliminate much of the persistent chatter and political gossip in relation to Anwar’s political future, and contribute to political stability.

In the immediate aftermath of a momentous regime change, implementing a wholesale political reform agenda is challenging, but modest changes are achievable. They would lay the foundation for much deeper reforms in the future years of the administration. More importantly, they would establish the new government’s credibility as a ‘change and reform’ government, living up to the expectations of voters.
Acknowledgements
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NOTES


2 Mahathir was previously prime minister from 1981 to 2003.

3 The Malays are officially defined as bumiputra, literally ‘sons of the soil’ or indigenous. Strictly speaking, bumiputra includes the tribal groups found in East Malaysia; however, in normal usage, when Malaysians refer to bumiputra, they are referring to the Malays. In this Analysis, the Malays and bumiputra are used interchangeably.


9 The most prominent of these bumiputra-only institutions is Universiti Teknologi MARA (UiTM). It is the largest publicly funded university in Malaysia with over 170,000 students enrolled and campuses in every state: “UiTM Current Statistics”, updated January 2019, https://cspi.uitm.edu.my/v2/index.php/home/facts-figure.


22 At the time of publication, PH had lost two by-elections (Cameron Highlands in January 2019 and Semenyih in March 2019), primarily due to a swing by Malay voters. In an upcoming by-election on 13 April 2019 in Ranau constituency, Malay voters are again in the majority. If PH were to lose three consecutive by-elections, it will send a clear signal to the PH administration that they are losing steam among Malay voters. If that persists, there is a likelihood that PH will be a one-term government.


31 In Sabah, a covert program called “Project IC” (referring to Malaysian Identity Cards), also known as “Project M” (referring to Mahathir), granted Muslim migrants citizenship that enabled them to vote. For more, see Kamal Sadiq, Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries (Oxford; New York: Oxford University Press, 2008). An Inquiry into immigrants in Sabah established in 2013 stated “we can only conclude that it was more likely than not, that ‘Project IC’ did exist”: Royal Commission of Inquiry, Report of the Commission of Enquiry on Immigrants in Sabah (Government of Malaysia 2014), 300.

32 Goh Pei Pei, “MA63 Committee Line-up Ready, to be Submitted to Cabinet on Wednesday”, New Straits Times, 8 October 2018.

33 Aside from the Chair, there are 16 members of the Malaysia Agreement 1963 (MA63) Special Cabinet Committee — eight each from Malaya and Sabah/Sarawak: Allison Lai, “Liew Reveals Composition of Steering Committee of Special Cabinet Committee on MA63”, The Star, 10 October 2018.

34 “S’wak Govt Raises Four non-Negotiable Issues During MA63 Special Committee Meeting”, Borneo Post, 3 January 2019.
In this Analysis, political Islam is simply defined as any group/individual who uses Islam as their primary ideology to mobilise political support.


*Dhimmi* is the term used to describe non-Muslims who live in societies governed by Muslim rulers and law. They have limited political rights and are subject to a specific tax higher than the tax on Muslims.


One example of such an attitude is the Islamic authority’s insistence that the word ‘Allah’ is a reserved word that can only be used by Muslims in Malaysia to refer to the Islamic God. This is despite clear evidence that the word ‘Allah’ was widely used by all faiths throughout the Middle East.


Ludicrous examples of such behaviour include attempts by a laundromat in Muar to ban non-Muslims from using its washing machines arguing that their clothing will contaminate Muslim washing (“Muslim-only Laundromat puts Malaysia in a Spin”, *Today* (Singapore), 27 September 2017), and complaints that a housing project was promoting Christianity because the rooftop air vents resembled crosses (“Stir over Langkawi Housing Project’s Cross-shaped Air Wells Prompts Developer to Repaint Them”, *The Straits Times* (Singapore), 29 December 2015).


“PM Mahathir Says He Will Honour Agreement to Hand Power to Anwar after Two Years”, *The Straits Times*, 3 September 2018; “Mahathir Says He’ll be Malaysian PM for 2 Years at Most if Pakatan Wins”, *The Straits Times*, 4 February 2018.


This idea is not new. It has been implemented at state level with few repercussions. In Sarawak, non-Islamic religious groups have responded positively to the Unit For Other Religions (Unifor), which was set up in the Chief Minister’s Office to regulate policies to promote religious harmony: “Unifor Receives Good Response from non-Islamic Religious Groups — Uggah”, *Borneo Post*, 28 October 2018.
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Malaysia’s economic freedom score is 74.0, making its economy the 22nd freest in the 2019 Index. Its overall score has decreased by 0.5 point, with declines in scores for monetary freedom and trade freedom exceeding improvements in judicial effectiveness, government spending, and fiscal health. Malaysia is ranked 6th among 43 countries in the Asia–Pacific region, and its overall score is above the regional and world averages.

The trade regime is relatively open. There is no mandated minimum wage, and labor regulations are not rigid. The judicial system’s vulnerability to political influence is a significant challenge to the rule of law. Government priorities in 2019 include consolidating high public debt and attracting additional investments in the production of high-technology and knowledge-based goods and services that have made Malaysia an upper-middle-income country. To enhance competitiveness, the government plans further liberalization of some services subsectors, tax reform, and subsidy reductions.
BACKGROUND: In 2018 elections, the opposition Alliance for Hope stunned the long-ruling National Front, bringing 93-year-old Prime Minister Mahathir Bin Mohamad back to office for a second time. During his 1981–2003 tenure, Mahathir diversified the economy away from dependence on exports of raw materials and expanded manufacturing, services, and tourism. Running on his economic record, he was able to craft a winning political coalition in the wake of a massive scandal involving the state-run development board. Mahathir has already announced his intent to transfer power to Anwar Ibrahim, a previously imprisoned former deputy prime minister and opposition leader. Malaysia’s top exports include electronics, petroleum, chemicals, and palm oil.

Malaysian courts protect real property ownership rights, but protection of intellectual property rights is weaker. The judiciary is nominally independent but strongly influenced by the executive. Arbitrary or politically motivated verdicts are common. Favoritism and blurred distinctions between public and private enterprises create conditions conducive to corruption. Journalists and opposition politicians have been harassed or prosecuted.

The top individual income tax rate is 25 percent; the top corporate tax rate is also 25 percent. Other taxes include a capital gains tax. The overall tax burden equals 13.8 percent of total domestic income. Over the past three years, government spending has amounted to 23.7 percent of the country’s output (GDP) and budget deficits have averaged 2.7 percent of GDP. Public debt is equivalent to 54.2 percent of GDP.
Steps to introduce greater regulatory efficiency have been implemented in recent years, but the pace of business reform has slowed. With no minimum capital required, it takes fewer than 10 procedures to start a business. There is no national minimum wage, and restrictions on work hours are relatively flexible. The government has allocated $760 million to subsidize gasoline and diesel prices through the end of 2018.

The combined value of exports and imports is equal to 135.9 percent of GDP. The average applied tariff rate is 4.0 percent. As of June 30, 2018, according to the WTO, Malaysia had 69 nontariff measures in force. Domestic equity requirements that restricted foreign investment have been eliminated. The financial sector has undergone regulatory adjustments that include the easing of limits on foreign ownership in financial subsectors.
POST-ISLAMIST INTELLECTUAL TRENDS IN PAKISTAN: JAVED AHMAD GHAMIDI AND HIS DISCOURSE ON ISLAM AND DEMOCRACY

Husnul Amin

Abstract

Eurocentric and essentialist approaches are applied to make sense of the complex Muslim societies. These approaches reduce complex social processes to certain immutable, fixed and unchanging traits. With such reductive theoretical lens, such readings of Islam, presuppose an inherent rigidity in the nature of Islamic text. When Muslim societies and its social trajectories are understood in the light of such immutable texts, as a logical conclusion, Islam turns out to be incompatible with modern values of liberty and democracy. Islam and Muslim societies are constructed as entities essentially distinct from Europe and the West. Even if a transition from authoritarian form of political order to a more democratic one is intended, it will have to be a secularized form of Islamic democracy wherein the separation of religion and state is ensured. However, in the recent past, a growing number of academic enquiries have challenged the validity of such reductive and essentialist approaches toward understanding Muslim societies and its societal trajectories. Multiple intellectual voices and social trends have been identified that construct harmonious relationship between Islam and democracy, and in more general terms, between Islam and modernity. Some scholars argue that reformation of religious thought followed by the articulation of an “Islamic Theory of Secularism” may pave the way for democratization in Muslim societies. As intermediaries, between the Divine text and the general public, the role of scholars, institutions and social movements is thus crucial in creating bonds of complicity (or otherwise) between Islam and democracy. As an empirical example, this research explores and highlights the emergence of an intellectual community in Pakistan led by a religious scholar Javed Ahmad Ghamidi. The genesis, intellectual biography and unprecedented popularity gained by Ghamidi and his close associates, also reveal mutation, discontinuity and change from their previous religious position. The present paper aims to achieve two humble purposes: to discuss the emergence of a post-Islamist intellectual trend with specific focus on Ghamidi, and to provide a descriptive analysis of Ghamidi’s post-Islamist turn, and the way he and his interpretive community construct a harmonious relationship between Islam and Western-liberal democracy. Whereas the recent scholarship focuses on the actual workings of Islamic social forces in different Muslim societies, intellectual discourses and interpretative communities and their methods of interpretation receive marginal attention. The paper attempts to bridge this visible academic gap as well.

Introduction

In the contemporary neo-liberal era, Muslim world is understood to have taken a post-Islamist turn. “Post-Islamism” is a new socio-political trend that characterizes itself with a retreat from the idea of creating an Islamic state. It seeks greater accommodation for the rights of women, youth and non-Muslims. The scope of its influence is not uniform across the Muslim world, and its popularity as socio-political project depends on numerous contextual conditions. Post-Islamism as a major social trend was initially observed in Iran, Egypt and Turkey and has now spread out across the Middle East. The rapid flow of information, through the newly liberated electronic and social media, has further facilitated the public outreach of post-Islamist ideas and politics. The main proponents of the post-Islamist framework of analysis argue that, the Islamists’ failure to establish an Islamic state has given birth to an emergent intellectual and social trend, which translates into post-Islamism.¹

[... ] post-Islamism is also a project, a conscious attempt to conceptualize and strategize the rationale and modalities of transcending Islamism in social, political, and intellectual domains. Yet, post-Islamism is neither anti-Islamic nor un-Islamic or secular. Rather it represents an endeavour to fuse religiosity and rights, faith and freedom, Islam and liberty. It is an attempt to turn the underlying principles of Islamism on its head by emphasizing rights instead of duties, plurality in place of singular authoritative voice, historicity rather than fixed scriptures, and the future instead of the past. It wants to marry Islam with individual choice and freedom, with democracy and modernity, to achieve what some have called an “alternative modernity”... In short, whereas Islamism is defined by the fusion of religion and responsibility, post-Islamism emphasizes religiosity and rights.2

The emergent trend of post-Islamism as an embedded aspect of the process of contemporaneous change in Muslim societies is informed by colonial history, post-colonial socio-economic conditions, new interpretations of Islam and worldviews, and experiences of Islamic revivalist movements at different geographical locations.3 The 1990s mark the beginning of a new awakening. In many respects, the resurgent voices raised by the intellectuals and learned elite, closely resemble the late nineteenth century modernist responses, aptly called “classical modernism”4 by Fazlur Rahman (1919–1988). Scholars have indicated that these diverse and multifaceted voices and avenues of reform encompass competing understandings of the sacred text, new interpreters vis-à-vis traditional authorities, the new media, mutations and transformations within Islamic social movements and the emerging new societal forces vigilant to youth, gender and non-Muslims’ concerns. In the wake of globalization, marketization and neoliberal era, Pakistani society is also experiencing a larger trend of post-Islamism. The contours of this trend are enmeshed within the society, enjoying institutional support and popular sentiments in some cases. Elsewhere, they exist only in intellectual discourses and discursive communities. This trend can be characterized mainly by an informed consciousness for reconciling Islam with aspects of pluralism, democratization, civil society and global human rights discourse. Consequently, the emphasis on creating an Islamic state and implementation of Islamic law has given way to fostering socio-economic development and an improved standard of living. However, it can be safely argued that post-Islamism is neither secular nor anti-Islamic.5

Depending on the context, the post-Islamist movement can be a stand-in project for Modernism or a historical category announcing the death of political and militant Islam. This paper focuses on yet another empirical example of post-Islamism largely neglected by the recent scholarship: that is, the revival of methods of interpretation of the religious text that can open up new spaces for discussion on gender equality, rights of non-Muslims, democracy and pluralism. Specifically, how this specific interpretive community/category of post-Islamism deals with the issue of Islam and democracy. Methodologically, researchers have focused more on actual practice of Islamic movements and neglected their epistemological debates. This research attempts to bridge this gap by elucidating how a hermeneutic shift can create new theological resources that may address ambiguities and complications about Islam and democracy.

2 Batay, Making Islam, 11.
Theoretical Perspectives

For the “essentialists,” Islam is an anachronistic religion lost in the time and age of its revelation. As a result, something has gone “wrong with Islam” which defines its inability to be congruent with requirements of modern age — democratic norms, liberal values, industriousness, fine arts and modern cultural codes. The Orientalists, the conventional authorities on Islam, are blamed for the essentialist reading of Islam. They “have been accused of being essentialist and insensitive to the change, negotiation, development, and diversity that characterizes lived Islam.” Orientalism, according to Said, “is a body of theory about the ‘Orient’ and about Islam based on power differentials between the European scholars and their subjects.” Bernard Lewis wrote in *The Political Language of Islam*, “Among Muslim theologians there is as yet no such liberal or modernist approach to the Qur’an, and all Muslims, in their attitude to the text of the Qur’an are, in principle at least fundamentalists.” In addition,

their aim is nothing less than to abrogate all the imported and modernized legal codes and social norms, and in their place to install and enforce the full panoply of the *shari’a* — its rules and penalties, its jurisdiction, and its prescribed form of government.

The other problem of essentialist scholars like Lewis, Tibi, Pipes and Sivan is that they have assumed a monolithic and immutable unchanging Islam articulated in the writings of a few renowned scholars. In other words, there is a shared Islamist *weltanschauung* (world view) narrated and discussed. This paper demonstrates that, unlike the essentialist and orientalist approaches, new meanings are instilled and competing vision derived from the same immutable text by new emerging intellectuals — post-Islamists for instance in Pakistan. “Contexualists” came forward to fill in the vacuum left by the essentialists’ omissions. It was an improvement on the textual/essentialist reading of Islam. The essentialists had detached Islam from the socio-cultural specificities of Muslim societies within which the revealed text is put to practice. For his ethnological account, anthropologist Clifford Geertz’s pioneering study *Islam Observed* is revered for breaking from the Orientalist’ long-held alienating trend. Geertz studied Islam “as it was actually lived” and not as a “single Islam in scriptures and texts.” Sayyid problematises scholars’ treatment of diverse fundamentalist movements as a homogeneous analytical category. From a survey of representative literature, Irfan Ahmad enumerated five nonverifiable basic ubiquitous assumptions in studies that problematically take the Islamism as: 1) a revolt against modernity, secularism and democracy, where both Islamism and modernity are inherently mutually exclusive and parallel categories with no possible point of intersection; 2) representing a pure and indigenous culture vis-à-vis an impure (Western) modernity; 3) ossified, still, and immutable; 4) in antagonism and in conflict with modernity, and 5) comprised of disturbed/agitated/angry and irrational actors. Such studies have rejected the compartmentalization of human life into secular/religious and modern/traditional opposites and also the belief of early modernization theorists that traditions will disappear at the advanced stage of societal evolution towards modernization and development. Asad has aptly described this notion: “… when one talks about tradition, one should be talking about, in a

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7 Ovamir Anjum, “Islam as a Discursive Tradition: Talal Asad and His Interlocutors,” *Comparative Studies of South Asia, Africa and the Middle East* 27: 3 (2007), 656–672.
11 Irfan Ahmad, “From Islamism to Post-Islamism: the Transformation of the Jama’at-e-Islami in North India” (PhD diss., Department of Anthropology, University of Amsterdam, 2005), 14.
sense, a dimension of social life and not a stage of social development.”

This understanding shows that tradition and modernity are not two “mutually exclusive states of a culture or society but different aspects of historicity.”

The nature of relationship between Islam and democracy (defined as a principle of popular sovereignty, freedom, and equality) is widely discussed. Is Islam compatible with modern democracy? How to show that it is compatible and what arguments are there for the claim that it is not? Such intriguing questions around Islam-democracy relationship have attracted researchers’ attention since long. Islam is portrayed as a religion not compatible with modern democracy. These and such questions are asked in the background of unstated assumptions that Islam (and Muslims) has failed to develop its own indigenous process of secularization and thus succumbed to the “stratified and centralized power paradigm.” On the contrary “Christianity and Judaism . . . were effectively secularized and toned down during the century of the European Enlightenment.”

Political sociologist and scholar of Middle Eastern studies, Professor Bayat criticizes the very nature of such questions and argues that the doctrinal text is subject to multiple interpretations, and thus questions regarding Islam and democracy, Islam and pluralism depend on the ways individuals define them and the social movements erecting institutions for them. For Bayat, doctrinal injunctions are avenues of multiple contestations wherein people explore and define their “truths” Keeping Bayat’s advice in the current context, this research does not ask whether Islam recommends or abhors democracy but seeks an understanding of the relationship as a construction in two competing intellectual discourses: Mawdudi’s Islamism and Ghamidi’s [Javaid Ahmad Ghamidi] post-Islamism.

The assertive shift from Mawdudi’s political Islam (read ‘Islamism’) to a post-Mawdudi understanding of Islam (read ‘post-Islamism’) provided Ghamidi an opportunity to revise his previous position on democracy-Islam nexus and to come up with an entirely transformed position on the subject. This transformation, as I discuss in this paper, has largely been the outcome of a unique hermeneutic approach and line of ijtihad. The attribute “unique” by no means implies that other reformers in the Muslim world have ignored hermeneutics. On the contrary, most of them begin with introducing one or other form of hermeneutics to facilitate and justify their ideas and world views derived from the Divine text. The features that make the aforementioned Pakistani scholarship unique in its interpretative approach include: their articulation and application of nazm theory and the overall treatment of foundational sources — distinguishing Hadith from Sunnah. Furthermore, their approach, they claim, enables them to internalize the context to Qur’an instead of historicizing it. Using their interpretative

14 Ibid.
16 Ibid.
18 Bayat, Islam and Democracy.
19 Ibid.
20 Here the main reference point is Rahman’s “double movement theory approach.” In Rahman’s double movement approach, in determination of understanding of the divine intentionality, the historical conditions attain central location. For his approach see, Fazlur Rahman, Islam and Modernity.
approach and re-reading of the Qur’anic text, Ghamidi and his interpretive community assert to have created a room where liberal democracy is comfortably compatible with Islamic theological sources. In this struggle, these scholars have retreated from the controversy of Islamic versus secular state in favor of a “democratic” state, and have also abandoned the Islamist notions of Islamization of state and adopted the idea of re-Islamization of individual and society.

The Coming of Post-Islamist Intellectual Trajectory

A detailed account of the larger post-Islamist trend in Pakistan is beyond the scope of this paper. It concerns only the emergence and proliferation of an intellectual trajectory led by Javed Ahmad Ghamidi (b. 1951) that gained unprecedented momentum during the military regime of President General Pervez Musharraf (r. 1999–2008) and specifically his top-down project of “Enlightened Moderation.” Ghamidi and his close associates received disproportionate media coverage on the newly liberated private television channels. He became member of the Council of Islamic Ideology in 2006 and remained on this position for two consecutive years. Despite overwhelming emphasis on the status of democracy in their religious discourse, Ghamidi has hardly directly questioned the legitimacy of the system in place in which he gained the opportunity to flourish. The external and domestic conditions provided ample opportunity spaces to Ghamidi and his close circle during Musharraf’s regime. In their view, though these favorable conditions have facilitated their public outreach, they are not responsible for shaping their fundamental discourse on jihad and other controversial subjects in the Pakistani context.22

Ghamidi, an ex-member of the mainstream Islamist party Jama’at-i Islami Pakistan and a student of prominent theologian-exegete Amin Ahsan Islahi (1904–1997).23 In the early 1970s, he remained close to Mawdudi (1903–1979) and benefited from his scholarly insights. He is founder of the Al-Mawrid (Institute of Islamic Sciences) and founder-editor of two monthly journals Ishraq and Renaissance. Recently, Ghamidi has emerged as a leading religious figure in the public and private media. He arrived with an alternative worldview and approach to understanding Islam and social change. Unlike the Jama’at and traditional ‘ulama’, who engage mostly with the secular and liberal forces, Ghamidi and his fellows are mostly in debate with the Islamists and ‘ulama’. On the contemporary pattern of religious scholarship, Ghamidi never graduated from a traditional Islamic seminary and thus relied on his selfreading as well as personal contact with ‘ulama’ including Islahi and Mawdudi. In his biography, Ghamidi discusses at length how introduction to Islahi and through him to major works of Hamid al-Din Farahi, opened up for him the gates of new knowledge and deliberation on the true meanings of Qur’an.24 This discovery proved transformative for Ghamidi’s religio-social career. He wholeheartedly accepted the Farahi-Islahi’s theory of thematic-structural coherence (discussed below) which later became not only the main instrument of his intellectual production but also a mark distinguishing him from Islamists and the traditional ‘ulama’.

The corporate media projects the iconic figure of Ghamidi who essentially belongs to the genre of religious intellectuals. His interpretive community consists of his students and activists mostly active

22 Personal interview with Javed Ahmad Ghamidi, July 2009.
23 Amin Ahsan Islahi (1904–1997) is known for his Urdu exegesis of the Qur’an, Tadabbur-i Qur’an. Islahi was student of Hamid al-Din Farahi (1863–1930) and close friend of Sayyid Abu ‘l-A’la Mawdudi. He was founder member of the Jama’at-i Islami Pakistan and remained there for seventeen years (from 1941–1958).
24 For Ghamidi’s intellectual biography, see, Javed Ahmad Ghamidi, Maqamat (Lahore: AlMawrid, 2008).
on private TV channels and internet. Ghamidi’s main framework of analysis is applied while answering to questions asked by the community. Most of the fellows in this interpretive community were once ardent believers in Mawdudi’s political Islam. The articulation of post-Islamist discourse in Pakistan manifests through the written and verbal words, including books, journals, articles, columns, websites, audio-video lectures, TV talk shows and question-answer sessions. The immediate constituency of this discourse is middle and uppermiddle classes mostly but not entirely in the urban environment.

As Ghamidi does not subscribe to any of the major religious schools in the sub-continent (i.e., Deobandi Barailvi, Ahl-i Hadith), he deliberately places himself in his self-constructed category Dabistan-i Shibli. The luminaries grouped under this label include people as diverse as Shibli Nu’mani (1857–1914), Abu ’l-A’la Mawdudi, Hamid al-Din Farahi, Amin Ahsan Islahi, Abu ’l-Kalam (1888–1958) and Muhammad Iqbal (1877–1938). This “imagined” school of sub-continental scholarship serves Ghamidi and his fellows in multiple ways: it helps in their identity construction as discourse community of Shibli Nu’mani; it enables them to place themselves in the “middle” of the two popularly known opposite poles namely Deoband’s conservativism and Sir Sayyid’s (1817–1898) rationalism; and it enables them to borrow ideas from multiple and diverse sources. Being “middle,” in the age of polar oppositions and specifically when in the post September 11 context the global powers are searching and promoting “moderate” Islam, is something deeply political. Likewise, the construction and articulation of the category — Dabistan-i Shibli — by Ghamidi in his speeches and written works, has largely escaped the critical lens of academic scholarship. A number of questions regarding the usage, constitution and history of this label could be raised. The term was first coined by Aftab Ahmad in his printed dissertation titled Shibli aik Dabistan. Ghamidi deploys this construct to distance himself from sub-continental trends of modernism and traditionalism. Yet this conscious struggle of disentanglement from both trends may be problematic, especially when one is aware of the fact that some of the key scholars within this category (like Shibli and Farahi) had been in close contact with or were the product of Sir Sayyid’s rationalist movement. Sir Sayyid’s exclusion seems more strategic than factual. A number of traces in Ghamidi’s reformist discourse could be discerned illustrating the influence of Sir Sayyid’s plea for reason and modernism. The former’s treatment of Hadith literature, his plea for reason both in worldly affairs and as main instrument of interpretation of doctrinal text, and recourse to modernity are some instances of the latter’s implicit or explicit influence. Although Ghamidi has been successful in introducing himself and his main religious discourse at the national level and among the contemporary scholarship, yet this trajectory is still far from becoming a popular social force like the Turkish Hizmet movement and Tablighi Jama’at.

In the section that follows, I will discuss the issue of new hermeneutics as a conscious project pursued by Ghamidi in his early religious career.

The Quest for New Hermeneutics

In this paper, the following definition of Hermeneutics is accepted: “the theory of interpretation applied to written monuments whether religious or secular.” As an art of interpretation of the Qur’anic text, for the scholarship in question, the articulation of new hermeneutics had been a conscious project in their transitory phase from Islamic political activism. External conditions, internal discontent and

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25 Ghamidi, Maqamat.
breakdown of the traditional framework propelled the initial quest for a new hermeneutics. Later it turned into a serious academic pursuit. The exploration of new hermeneutics soon turned out to be an important scholarly assignment. This task demanded to be pursued in a reasoned and methodical manner." The initial questions in such hermeneutical debates included: is every aspect of human life religious? Do all dimensions of our temporal life need Divine intervention? Does everything belong to, as the Islamists normally make claims, the province of Islamic jurisdiction or do limits on the sacred exist? If metaphysical intervention is limited and restricted to some key issue areas, then what are the limits of this intervention? How do we know that one thing belongs to the province of Islam and another does not? Finally, how are these questions addressed by these scholars’ unique epistemology and hermeneutics? These and other such questions have always been central to the reformist discourses. In dealing with these questions, the role of religious intellectuals, in their given social and cultural context, is always of prime importance. In response to these questions, a clearly different position from Islamism, this paper submits, has evolved in post-Islamist intellectual discourse in Pakistan.

The particular view on the limits of sacred intervention within a Muslim society can either hamper and/or facilitate reform efforts and processes in social practice. Specific interpretative approaches to Islamic sources determine the opening and closing of intellectual space in which social reform can appear. With regard to reform, two issues are important in epistemological debates: what are the authentic sources of Islamic law and what are the principles of deriving injunctions from these sources. As evident from his major works, Ghamidi has taken radically different position on traditionally established fundamental sources of Islamic law and methods of interpretation. In the traditional approach, the sources are identified and ordered: Qur’an, Hadith, Ijma’ (consensus) and finally Qiyas (analogical reasoning). Post-Islamists consider Qur’an and Sunnah as the only valid authentic sources of Islamic injunctions where Sunnah and Hadith is not the same thing. Unlike Hadith, the Sunnah is referred to “those religious traditions of the Abrahamic faith, which Muhammad, after their revival and reform and after some additions to them, established as religion in the community of his followers.” The Sunnah was transferred to us from generation to generation through perpetual adherence as opposed to Qur’an, which we found through oral perpetuation.

A brief discussion on the hermeneutical shift is needed because of its significance in Ghamidi’s reformist perspective. Debate on the need for reform in religious thought has endured since long. In more general terms, the reform in question is called for making democracy both acceptable and workable in Muslim societies. This discussion goes on to suggest “an indigenous theory of Islamic secularism” which will enhance “the prospects for liberal democracy in Muslim societies.” However, the post-Islamist community argues that reformulation of the key terms around Islam and democracy could reveal a new space within the doctrinal text, given that the text is interpreted according to their hermeneutic approach. The space thus obtained by re-reading of the Doctrinal text, makes a perfect fit between Islam and democracy and does not require formulation of an indigenous theory of Islamic secularism. Although, this hermeneutic approach enables Ghamidi to demonstrate a perfect fit between

29 The expression is borrowed from Kamrava’s book which he used for reformist intellectuals in Iran, see, Mehran Kamrava, Iran’s Intellectual Revolution (New York: Cambridge University Press, 2008), 144.
Islam and democracy, yet, there are serious critical questions that arise about the linguistic certitude as well as the resultant interpretative absolutism.

According to this theory, Qur’an is not a collection of disjointed and unconnected verses but a thematically and structurally coherent book called nizam: “. . . the whole Qur’an is a single discourse with perfect correspondence between and proper arrangement of its parts, from the beginning to the end.”\(^{34}\) The original message of the Qur’an can be delineated by unfolding its inherent thematic coherence. The hermeneutic approach before exposition of this nizm theory was dominated by interpreting the text of the Qur’an through tradition. In the traditional exegetical work on the Qur’an, “they show a pronounced preference for authority over rationality and tradition over originality.”\(^{35}\) Moreover, the earlier exegetical work also lacked “textual coherence” and thus fell prey to a “fragmentarian approach.”\(^{36}\) Farahi argues that the Qur’anic text reveals “univocal meaning,” the delineation of which depends on the degree of expertise in the classical Arabic which is key to understanding the latent meaning of the Qur’an. Once the exegete sets aside his or her personal biases and attains mastery in the linguistic skills of the Qur’an, it becomes possible to get to the theme of the Qur’an in a holistic manner, and to the central idea of each surah.

For Ghamidi, Qur’an is the primary source and it communicates its message with perfect certitude.

The signification of its [Qur’an] words to its meaning is perfectly definite. Whatever the Qur’an intends to say, it says with consummate certitude, and does not remain deficient in expressing its intention on any matter at all. Its meaning is only the one that its words accept, the meaning is neither different from the words nor at variation with them. Its words are the only gateway to access its world of meanings. Its words express their meanings with perfect certitude, and there does not remain any room for any doubt at all.\(^{37}\)

However, a former fellow of Ghamidi has criticized this prevalence of perfect certitude and termed it as “the tyrannical rule of literalism.”\(^{38}\)

There is no comparative academic inquiry dealing with the analysis of post-Islamists’ hermeneutics in light of Western scholarship such as Schleiermacher (1768–1834), Dilthey (1833–1911), Gadamer (1900–2002), Husserl (1859–1938), Ricoeur (1913–2005) and Habermas (1929– ). Iftikhar while commenting on the need of such comparative examination also observes that such a comparison could not be a simple one because both “do not have sufficiently similar parallels.”\(^{39}\) In his essay, Afaki made a strong case whereby post-Islamists’ exegetical approach can be compared to Schleiermacher.\(^{40}\) Schleiermacher’s general hermeneutics, according to Afaki, is based on two-

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\(^{35}\) Ibid.

\(^{36}\) Ibid., 2–3.


\(^{38}\) On the issue of *Qat’i/’l-Dalalah*, a difference of opinion emerged, within Ghamidi’s interpretive community. The community split between two camps: those who supported Ghamidi and those who challenged him. The opponents were led by Nadir Aqil Ansari, former fellow of Ghamidi. He challenged the latter’s position on perfect certitude of the Qur’anic language and equated it with authoritarianism and tyrannical order that might end up in literalism. See, Ansari, *Synchronicity*, 2; Personal interview with Nadir Aqil Ansari, June, 2013.

\(^{39}\) Iftikhar, *Jihad and the Establishment of Islamic Global Order*, 74.

Another comparison could be made with Fazlur Rahman’s double movement approach where in determination of understanding of the divine intentionality, the historical conditions attain central location. The first movement involves studying “both the micro and macro context in which the Qur’an was first revealed. This would establish the original meaning of revelation within the moral-social context of the prophetic society as well as the broader picture of the world at large at that time.” Then the second movement engages an “attempt to apply those general and systematic values and principles to the context of the contemporary reader of the Qur’an.” Another comparison reveals that Rahman’s and Ghamidi’s approaches are not the same. Ghamidi gives “primacy to the language and the text of the Qur’an . . . that permit extension or application of a directive to situations other than the historical instance of the directive’s origin and applicability.” Moreover, the underlying assumptions in both approaches are different: the central goal of Qur’an is not to establish a just socio-economic order in Ghamidi’s view as opposed to Rahman.

In what follows, the contested issue of Islam and democracy is taken up as dealt by Ghamidi and his followers. Occasional reference would be made to Mawdudi and political Islamists, the “other” of post-Islamism in their main religious discourse in Pakistan.

Islam and Democracy: The Central Problem

Democracy is a contested term. To delimit its scope, I employ Hadenius’ definition: “a general principle of popular sovereignty, a principle of freedom, and a principle of equality.” The three principles respectively reveal that the explicit preferences of the people as the basis of legitimate “political decision making;” the free and unimpeded will of the people to be expressed in political decision making; and that all individuals’ opinions and preferences should be treated alike and considered as equal. Larry Diamond et al., mention seven features common to any democracy: individual freedoms and civil liberties; rule of the law; sovereignty resting upon the people; equality of all citizens before the law; vertical and horizontal accountability for government officials; transparency of the ruling systems to the demands of the citizens; and equality of opportunity for citizens.

In the context of Islam and democracy, the problematic part pertains to “sovereignty.” To a Western mind, metaphysical basis of sovereignty, as outlined by Mawdudi, disturbs an entire network

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41 Ibid.
42 Ibid.
46 Ibid.
of relationships. In his seminal study, Nader Hashemi modeled this tension elegantly as illustrated in the figure.48

![Diagram](image)

**Figure**

_Demonstration of Tension between Religion and Democracy_

Theoretical “tension” between democracy and religion, according to Hashemi, can be outlined along horizontal and vertical axes. The vertical axis shows the relationship between human and God. Democracy is “a system of political organization that fundamentally implies a horizontal relationship among individuals in society.”49 The tension emanates from a point where the vertical relationship interferes to regulate the social organization of society by reference to Divine supremacy undermining popular sovereignty. “Theologically, it posits a cosmic or heavenly hierarchy with absolute authority in God, angels in go-between positions, and a fallen humanity in need of salvation at the base of the pyramidal power structure.”50 This tension leads political theorists to the conclusion that a liberal democratic polity requires separation of state and religion. The danger in religious politics and social engineering in the light of religious values and norms is human rights’ abuse, that is, rights and concerns of women and minorities. Hashemi challenges this understanding of “structural incompatibility between religious politics and liberal-democratic development” and its underlying assumptions with three key arguments: 1) given that secularism is needed for liberal democracy to take root, and that theological resources are inherently not pro-democratic and pro-secularism; these ideas must be “socially constructed” 2) in the given historical and socio-political context of Muslim societies, the “road to liberal democracy … must pass through the gates of religious politics,” and 3) neither rejection nor privatization of religion is a requirement for liberal democratic development. On the other hand, what is required is the “reinterpretation of religious ideas” specifically those related to “political authority” and individual rights.51 He further argues that “liberal democracy requires a form of secularism to sustain itself, yet simultaneously the main political, cultural, and intellectual resources at the disposal of Muslim democrats today are theological. A paradox thus confronts the democratic theorist.”52

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49 Ibid., 10.
51 Hashemi, _Islam, secularism, and Liberal Democracy_, 11-12.
52 Ibid., 1.
For the Islamists, Divine authority is the ultimate fountain of legitimate law. The following is a brief description of how post-Islamist scholarship approaches this issue in their re-interpretation of the sacred text, and as counter-worldview to Mawdudi’s theo-democratic approach.

Ghamidi on (Theo) Democracy: Reformulation?

In Mawdudi’s political discourse, an Islamic state is supposed to accept the supremacy of Shari’ah over all aspects of social, political and religious life. This formulation, if accepted, is criticized for the following issues: 1) since Islamic law is thought to discriminate between Muslims and non-Muslims and deny gender equality, it does not provide equality, and 2) it denies the basic right of the governed to make their laws, and is thus against the basic principles of democracy. The very notion of an Islamic democracy thus becomes a “self-contradiction.” Thus the whole discussion on religion-democracy tension hinges on one key issue: who is sovereign in political sense (God, parliament or head of the state?). If we take it for granted that, the metaphysical basis of the political system is an integral part of Muslims’ social reality, then how Ghamidi deals with the issue of popular sovereignty versus Divine sovereignty? And does this deviate from Islamist notions of sovereignty and Islamic state?

In his essay Political Theory of Islam, Mawdudi wrote that sovereignty in Islam belongs to God as opposed to Western democracy where it belongs to the people. This interpretation led him to accuse modern democracy of falling into polytheism. Mawdudi’s articulation of Divine sovereignty came from his intellectual endeavor to invoke new meanings and relationships in four Qur’anic terms. He claimed that human beings must surrender to God all “rights of over-lordship, legislation and exercising of authority over others.” This conceptualization still occupies central stage in academic discussion on the issue of Divine sovereignty versus popular sovereignty. Modernist scholar Fazlur Rahman endorses a critique on Mawdudi’s notion of sovereignty. For Rahman, the Qur’anic verses on which Mawdudi based his notion of Divine sovereignty, in reality, refer to the “rule of Allah in the heavens and the earth.

55 To understand Mawdudi’s state-centric vision and political reading of Islam, the four conceptual bases of his ideology Ilah, Rabb, ‘Ibadah and Din are discussed. An understanding of these concepts, says Mawdudi, is important because the central theme of the Qur’an is constructed around them. Over time, parameters of the true meaning of these terms narrowed and became obscure. The true essence of ilah, argues Mawdudi, is that the attribute of ilah (ilahiyyat) and authority are inextricably interconnected. God enjoins an indivisible and all-encompassing authority over the universe. If someone registers his claim to power and authority in the political meaning of the term, then it is like a claim to godhood in the metaphysical sense. The second key term is rabb, which according to Mawdudi means to bring up. Citing a number of Qur’anic verses and examples of a number of Prophets, Mawdudi builds his case for sovereignty as the essence of the term. Arab pagans had brought this comprehensive all-encompassing notion into a variety of connotations that fall into two categories: 1) inclusion of other beings as angels and jinn into the definition of a transcendental authority; and, 2) exclusion of Allah from political authority or including Him but nominally. ‘Ibadah means humility and readiness to complete surrender in favour of a supreme authority. The word carries meanings of submission, servitude, worship and obedience. Din carries four themes in Qur’-‘ an according to Mawdudi: dominance on the part of the ultimate authority; servitude and obedience on the part of the one who is submitting; law, rules and regulations; and, reward and retribution meted out on the Day of Judgment. Qur’an fixed its meaning and used it for a comprehensive “system” constituting: 1) sovereignty and supreme authority; 2) obedience and submission to such authority; 3) the system of thought and practice designed under the influence of this supreme authority, and 4) the reward and punishment meted out by the authority because of loyalty or rebellion against this system. When Qur’an uses “the din” (al-din), then it encompasses all of the four ingredients. This implies that various forms of submissions and servitudes must bow down before the one supreme authority. Mawdudi proffers a new meaning to these terms. He argues that the comprehensive nature of din is unparalleled in meaning by any other term but the contemporary notion of “state.” To summarise, by din he refers to a comprehensive system of life in which an individual surrenders his will to an ultimate authority, obeys its rules and regulations, expects reward for his obedience of the system and fears punishment for transgression and disobedience. Islam is thus the “true din” (din-I haqq) and comprehensive way of life, and the central aim of the Prophetic career was to triumph/establish/enforce it over all other orders/systems. A more systematic organisation and politicisation of these terms can be seen in Mawdudi’s speech Process of Islamic Revolution (for further details see, Husnul Amin, “From Islamism to Post-Islamism: A Study of a New Intellectual Discourse on Islam and Modernity in Pakistan” (PhD diss., the Hague: ISS, 2010).
56 Maudoodi, The Islamic Law, 156–46.
Such verses convey the meaning of God’s general power over the entire creation as creator, sustainer, guide and judge, but have nothing to do with the specific concept of political sovereignty which is, indeed, a modern growth. The evolution of political sovereignty, in Rahman’s view, refers to a “coercive power to ensure obedience to its laws.” Since God, either does not have such coercive power or does not exercise it so, He cannot be named as sovereign in the political sense of the term, Rahman suggests that this confusion should be dispelled by clearly deciding which of the three “powers in the modern political structure” (namely parliament, community or head of the state), has the final political power. On the basis of textual analysis of the relevant Qur’anic verses (which were quoted by Mawdudi in his support), Ghamidi shares Rahman’s critique that the reported verses by Mawdudi pertain to sovereignty of God over the universe and have no relationship with political sovereignty. Mawdudi coined two terms: 

**Hakimiyyat** (Divine sovereignty) and **Khilafat** (vicegerency of man).

In Mawdudi’s view, a number of points follow from the term *Khilafat*. In the status of vicegerency, man is not successor to any other creature. This vicegerency is a sacred trust, and as vicegerent, man exercises delegated powers. These premises naturally imply, in the Islamists’ discourse, the articulation of “popular vicegerency” as opposed to “popular sovereignty” in the Western political thought. Ghamidi’s reformulation of these premises converges on the notion of popular sovereignty. For Ghamidi, such political conceptualization of the Qur’anic words *Hakimiyyat* and *Khilafat* is based on misunderstanding of the proper context of these terms within the Qur’an. If examined in its proper context, Ghamidi asserts, that various occurrences of the term, *Hakimiyyat* in Qur’an refers to God’s sovereignty over the universe as creator and owner, and it in no way refers to political/legislative sovereignty of God. Likewise, Ghamidi argues that the term *Khalifah* in Arabic has two meanings: 1) “a person who succeeds someone by assuming his position of power and authority,” 2) “a person vested with power and authority.” The second meaning of the word developed from the first, which is a common feature of language (that words develop new meanings), according to Ghamidi. He opted for the second meaning instead of the first (unlike the Islamists).

Linguistically, it is not possible to adopt the first meaning. Grammatical principles dictate that the word *Khaleefah* which actually occurs as a common noun in the verse should have either been defined by the article alif laam or by a determining noun (mudhaaf ‘ilaih) if the first meaning were to be attributed to it.

Thus through the analysis of the two key terms in the political theory of Mawdudi, post-Islamists have developed an alternative explanation. The entire discussion on the sovereignty of God in Islamist discourse loses its relevance in post-Islamism. This re-conceptualization of Divine sovereignty by post-Islamists should be read in the light of their explanation of the second term. In their analysis of the term, vicegerency of man means that he is vested and not delegated with power and authority. In sum, man is endowed with free will and vested with power; he is instructed to run his political affairs based on consultation, which is a compulsory obligation in political affairs and not merely a moral injunction. The institutional arrangements of political parties, elections, parliament and legislation contribute and work towards institutionalization of consultation. The following section further develops this argument.

58 Ibid., 298.
59 Maudoodi, *The Islamic Law*, 147.
Reformulation of “Shura”

As stated earlier, Ghamidi’s method is a text-based approach rather than an historical or sociological one. In his view, Islam’s political vision is based purely on a democratic principle (in the modern sense) and not a theodemocratic one. To substantiate his claim, Ghamidi offers two pieces of evidence: one from the doctrinal text and the other from the practice of the guided Caliphs. This reformulation is claimed to be essentially textual and backed by empirical evidence of how the guided Caliphs were elected to their power position based on democratic majority principle of the then prevalent tribal method. Ghamidi develops a linguistic analysis of the Qur’anic verse (42:38) on which he bases his entire argument. His textual analysis leads to a number of conclusions.

(1) The political system envisioned by Islam is based essentially on “democratic” (shura) principle. In Ghamidi’s view, this verse categorically denies Mawdudi’s proposition of theo-democracy, Israr’s (1932–2010) style Khilafat, Iran’s style theocracy, Taliban’s style emirate or Saudi style monarchy. On the contrary, this verse implies a pure democratic principle that closely corresponds to the institutional forms of modern democracy. While the entire emphasis lays on a democratic principle, the form belongs to the category of temporal and spatial dynamics and not eternal Shari’ah.

(2) Using his interpretative method, when he explains the Qur’anic verse “wa Amruhum shura baynahum” (their system is based on their consultation) following conclusions are derived: a) the word amr means system in this verse. Due to the general nature of the word, it encompasses all systemic aspects such as: union council’s affairs; national and provincial issues; social and political injunctions; legislative procedures; the right to exercise or abandon authority; interpretation of religion for collective affairs; b) in Ghamidi’s view, the verse declines to accept the impression that it is an instruction in a situation where the society is already divided between the ruler and the ruled, whether despotic or monarchic, and they are advised to consult in state affairs. If that were the case, then only consultation for the rulers would be required irrespective of whether the ruler is a monarch or a theocrat. On the contrary, this principle encompasses all three phases of governance (the process of coming into power, running of state affairs and dissolution of government). Ghamidi endorses Mawdudi’s later interpretation of the verse, which recommends that the ruler’s nomination be conditioned on consultation; the entire political system is itself based on consultation; all citizens enjoy equal rights in consultation; the government could be dissolved if the majority turns against it; everyone opinion should become part of the process for which consultation is sought, and in case of disagreement, the majority principle should play the decisive role.

For post-Islamists, adherence to democratic principle in political system belongs to the category of binding law and is thus not merely a moral persuasion. Islam’s insistence on upholding democratic principle, argues Ghamidi, does not imply a specific form of government. The latter is a function of spatial and temporal variations. Ghamidi asserts his claim by showing that, from Islamic history the nomination of all four guided Caliphs was based on this democratic principle, except the last one where the application of the consultative principle could not be properly applied. Likewise, the guided Caliphs adhered to this principle in their reign and sought consultation in all official matters. To Ghamidi, democracy should be the principal means and primary end of all social and political struggles. Freedom

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62 Personal interview with Javed Ahmad Ghamidi, conducted on December 1, 2009.
64 Ibid.
65 Ghamidi, Mizan, 494.
of speech and expression, the manners to respect difference of opinion, rule of law, sanctity of the constitution as a social contract, as a “sacred document” and the mass awareness of this reality are some of the issues demanding attention of intellectuals, writers and scholars.69

In compliance with the Qur’anic injunction [Qur’an 42: 38] (their system is based on their consultation), the Sunnah decreed by the Prophet (sws) is based on two principles: First, Muslims shall be consulted in the affairs of state through their leaders in whom they profess confidence. Second, among the various parties or groups present in an Islamic State, only that party shall assume its political authority, which enjoys the confidence of the majority.70

In their broader perspective, the exact match with Islam’s political ideals is the notion of a pure democratic state rather than an Islamic or secular state. Democracy offers the best alternative to all other available options (autocracy, theocracy, dictatorship). It is the best instrument in protection, promotion and preservation of free will, the basis of God’s scheme in this life. Islam does not offer any comprehensive system of life as expounded by Mawdudi and other Islamists. The scope of religious rules pertaining to collective affairs is essentially in the nature of basic parameters. These are restricted to a very limited set of issues. Yet Ghamidi identifies some avenues of the state where Islam intervenes.

What will be the institutional mechanism for legislation in the post-Islamist state? Ghamidi argues, [it] is consultation that should also be the basis for interpretation and application of any religious directive pertaining to the state affairs. Experts of Islamic sciences may proffer their opinions . . . legally binding on people only when the majority of the elected representatives of people accept them. In the present-day state, the institution of the parliament is constituted for this very purpose [. . .] If this status of the parliament is accepted, the discussion on an “Islamic state” vis-à-vis a “secular state” also becomes irrelevant . . . Once this state is truly formed, Islam will manifest itself in the system in proportion to the degree of people’s commitment to this faith. This is the natural way. Any deviation from it will lead only to hypocrisy, which we have been witnessing for the past half-century in Pakistan.71 Secularism like Islamism is an ideology, and so is an Islamic state vis-à-vis a secular state . . . but my recommendation is not of an ideological state but a democratic state . . . the labelling of the city state of Madīnah as Islamic state is an innovation of our age . . . about the religious identity of the state of Madīnah, at the most one can claim is that Islamic moral ideals appeared in the form of an organized community and that’s all, no more, no less.72

For post-Islamists, the demand for Pakistan was neither a conscious effort to establish an Islamic state nor a secular state. On the contrary, it was a struggle for the rights of Indian Muslims, which gradually evolved into the demand for Pakistan.73 The emerging nation states in Europe, the crisis of trust between Hindus and Muslims, and consequently, the run for rights between them helped Islam to appear as the most dominant agent of identity construction against Hindus.74 Ghamidi makes a distinction between the movement elite’s perspective and the masses perspective pertaining to whether Pakistan should be an Islamic or secular state. Over the course of Pakistan movement, as the demand for a separate

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69 Ibid.
72 Personal interview with Javed Ahmad Ghamidi, conducted on November 30, 2009.
74 Ibid.
homeland and the Muslim identity appeared to emerge, the masses accepted it at face value. Revisiting the history of Pakistan movement, Ghamidi asserts that the founder, Jinnah, envisioned a “democratic state” instead of a “theocratic” or “monarchic” one. In that way, he imagined that in Muslim majority areas, if a democratic state is created, then majority of the members of parliament will be Muslims and thus it will not be possible to legislate against Shari‘ah. Scholars promoting Pakistan as secular state locate their argument in Jinnah’s famous 11 August 1947 speech. The content of Jinnah’s speech offers an excellent view of where the post-Islamist scholars and writers engage in debate with both the Islamists and the secularists. In their reformulation, Jinnah’s speech is the true reflection of the Medinan Treaty (Mithaq-i Madinah), a treaty signed by the Prophet and the tribes of Madinah after his migration to the city-state. This is how historical Islam is deployed in social construction of their views in Pakistan.

Pakistan should be a “Muslim” state not an “Islamic” or “secular” one; a state where you should produce good Muslims. It never happens that constitutions and governmental structures create identities and then nations spring from those identities. Rather, the process of nation building is prior to the identity construction . . . We should look into the background history of the secularism in the West where the authority was in the hands of the Church. People agitated against the Church and not the religion. This discussion is irrelevant in the context of Pakistan. Here, where is the Church? From whom’s clutches you want to liberate yourselves? . . . But in our religious thought there is no Church . . . the nature of the state depends upon the Muslims’ living in this country. Therefore, I move a step forward and say that Pakistan should be a democratic state with a vibrant democratic culture and democratic society.

Post-Islamists discourse on democratic state is consistent with a number of Modernist voices in the Muslim world.

Ganji distinguishes between “the religious State” (dowlat e dini) and a “State related religion” (dine e dowlati) in which Islam cannot answer all the social and political questions and the popular vote has to decide these issues. The religious government imposes Islamic precepts independently of the people, in the name of the Sacred. The State-related religion supposes the autonomy of the citizens in their sovereign decisions concerning the government of the country. In this way, according to Ganji, there are three different types of discourses about the velayat faqih. Monarchist discourse stipulates the same rights for the Islamic leader as for the shah; fascist discourse assumes the unity of society under the leadership of a religious jurist; and democratic discourse subordinates the rule of the Islamic jurist to the sovereign will of the citizens. He defends the third alternative.

While debating hurdles in smooth functioning and consolidation of democracy in the Muslim world, the emphasis is laid on reforming Islam from within. The job of Islamic modernists and reformists is to seek new ways of interpreting the doctrinal text such that Islam (and Muslims) could accommodate modern democracy in its fold. Ghamidi and his discursive community are also confronted with this uphill task. Yet, what escapes modernists’ attention is to critically reflect on the problems of democracy, as an imperialist project and instrument of hegemony. Even in the West, democratic consolidation has never been a smooth and easy process. In Nicholas Provencher’s suggestion, instead of upholding an “inflexible view of how an ideal democracy should function must be shed for an understanding that

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76 Nadim, Islam aur Pakistan, 11–16.

77 Ghamidi’s panel interview with Saleem Safi on Religious and Political Problems of Pakistan, can be accessed at http://www.tv-almawrid.org.

democracy must: 1) adjust to shifting paradigms of modernity; 2) utilize existing cultural values and norms to create a more legitimate government; and, most importantly, 3) be amendable by the people.”

Although, by locating themselves in their self-constructed category (Dabistan-i Shibli), Ghamidi’s interpretive community seeks to avoid being labeled as Modernists, they can be categorized as modernists. In their exclusive emphasis on reforming religious thought, their treatment of Western democracy is that of an uncritical admiration and approval. The issue, that how democracy should adjust itself to the changing socio-political, economic and cultural conditions of Muslim societies, is grossly overlooked.

Conclusion

The debate on compatibility of Islam and democracy has long been central to Western academia. A study of representative literature reveals three possible scholarly positions: 1) those who believe in possible compatibility hold that an Islamic theory of secularism evolves first; 2) those who think of incompatibility; and 3) those who project Islam as an opposition to Western form of democracy and thus advocate varied forms of theo-democracy or shura-cracy. It has also been subject of internal debate and contestation within Islam. Masud has aptly reviewed three contrasting scholars’ views on Islam and democracy. Due to problematic relationships between Islam, secularism and liberal democracy in Muslim societies, scholars have been insistent on the issues of reform in religious ideas and the social construction of these ideas to accommodate democracy. The underlying tension behind Islam’s incompatibility with modern democracy emanates from the belief and practice of Divine intervention in social organization. These come mainly from three avenues: enactment of religious laws by the state; government of the religious class, and active politics by religious groups. Whereas, scholars concentrate on the sociology of religion in practice, this paper develops an empirical example of religious ideas of an intellectual school in its own terms and categories. It reveals the strength and power of ideas that redefine relationships between theological resources and social categories, and thus qualify for sociological implications.

Islamism studies normally neglect the various hermeneutical approaches. I have shown through an example, how post-Islamist new hermeneutical approach relate with this pressing social issues of the day. Given this line of Ijtihad, even text-based interpretation can bring about a new space in which Islam and modernity can be reconciled. This approach might pose itself as alternative to the one insisting on creating an Islamic theory of secularism for strengthening democracy in Muslim societies. The reading discussed in this paper suggests that the text itself appropriates new space for accommodation of western democracy.

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81 These include Khalifa Abdul Hakim (Modernist), Qari Mohammed Tayyib (Deoband) and Amin Ahsan Islahi (then Islamist); see, Muhammad K. Masud, “Defining Democracy in Islamic Polity,” paper presented at “The Future of Islam, Democracy, and Authoritarianism in the Era of Globalization,” conference organized by the International Centre for Islam and Pluralism, on 5–6 December, 2004.