Theocratically bounded communal self-governance: a pre-modern solution for the modern world?

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Shadi Hamid proposes "democratic minimalism" as a system and means of governing and rotating power with no prejudice to substantive ideological outcomes. Democratic minimalism is meant to decouple the question of actualizing an ideal society, even a liberal one that provides maximum freedom for the maximum groups of people, from the mechanism of transferring power between groups with opposing beliefs. I sympathize with Hamid's arguments. Hamid, I believe, correctly identifies the tension between liberal democracy and Islam in the Muslim world in that Muslims if given the choice may not support liberal policies. He also, I think, rightly concludes that the way to live with this dilemma consists of preserving plurality and the possibility of change through persuasion and thoughtful contestation, and not autocratic leadership. However, I argue, he does not sufficiently problematize the nation-state in his analysis. Drawing on the Islamic tradition, I argue we can make progress in this regard by deconstructing the nation-state to make room for communal self-governance and moral heterodoxies.

KEYWORDS

Islamic governance, modernity, nation-state, democracy, plurality

1 Introduction

Shadi Hamid proposes "democratic minimalism" as *a system and means of governing and rotating power with no prejudice to substantive ideological outcomes* (Hamid, 2022a, p. 55). Democratic minimalism is meant to decouple the question of actualizing an ideal society, even a liberal one that provides maximum freedom for the maximum groups of people, from the mechanism of transferring power between groups with opposing beliefs.

Democratic minimalism aims to reduce the risk of *tyranny of the majority*, the kind that ideologically driven Islamist politics may produce, by requiring the opposition be allowed to organize, proselytize, and compete. Assuming it is adopted as the new orientation of the American foreign policy, and democracy and liberal value propositions are significant drivers of that policy, democratic minimalism promises to curb the tyranny of foreign-backed liberal elites, the kind that a globally interventionist liberal politics may support, by getting the United States to prioritize political contestation over specific outcomes for women and minority groups.

This last point is at the heart of democratic minimalism. It is an attempt to save democracy by unburdening it from having to do more than it can which is enabling orderly rotation of power. One should not give up on democracy, Hamid argues, if a democratically elected

government advances Islamizing policies, at a cost to minority and women's rights, as long as it does not close avenues of public participation, so the opposition has a chance to convince the voters to switch sides (Hamid, 2022a, pp. 81–82). This in the long run, Hamid suggests, leads to better societal outcomes.

I sympathize with Hamid's arguments. Hamid, I believe, correctly identifies the tension between liberal democracy and Islam in the Muslim world in that Muslims if given the choice may not support liberal policies. He also, I think, rightly concludes that the way to live with this dilemma consists of preserving plurality and the possibility of change through persuasion and thoughtful contestation, and not autocratic leadership. However, I argue, that he does not sufficiently problematize the nation-state in his analysis.[1] Hamid, at times, seems aware of the problems that the nation-state presents in allowing people with radically divergent conceptions of a good society to live together without imposing one set of beliefs on all (Hamid, 2022a,b, p. 215). However, Hamid chooses not to focus his analysis on the nation-state because he concludes the nation-state is an irreversible fact of the modern world. I believe we must problematize the nation-state.

But is it at all possible to go beyond the nation-state? Are nation-state and modernity inextricably linked? Is it possible to envision a modernity different than Western modernity to which individualism, capitalism, and the nation-state are so central?

These are the questions that come to mind about the premise of my approach, i.e., the need to problematize the nation-state. I am not first to observe that the nation-state has not worked well for the non-Europeans who have been violently forced to re-organize their lives and polities into the European paradigm of nation-state. Dabashi has teased out the colonial roots of the nation-state, arguing that it can never be legitimized in non-European nations and that its demise is inevitable (Dabashi, 2020). Anjum has similarly called out the pathologies of the nation-state in the Muslim world presenting the reestablishment of the caliphate as an overarching framework within which the locally varied, communal self-governance can be practiced (Anjum, 2019).

On the broader question of modernity in the Muslim world, there is also a growing awareness that Western modernity, which came after religious reform in Christian Europe, may not have relevance or traction in the Muslim world. Asad and many others have been writing about this for a while (e.g., Asad, 2003). Hamid has commented on this discourse as well (Hamid, 2022b). Given these mature discourses around the problem of the nation-state (and modernity) more broadly in the Islamic world, I contend that we need to problematize the nation-state and investigate Islamic history for alternative ways to imagine the state is fairly uncontroversial.

I submit that it is not possible to decouple the question of morality from politics. Nor is it possible to individualize morality. People engage in politics not just to solve practical problems of living together but also to shape and reshape the world outside of themselves following their preferred moral exegesis. I also submit that all moral exegesis—including universalist notions of human rights—is underpinned by faith-based beliefs limiting the possibility of resolving moral disagreements based on empiricism and rational debate.

Therefore, if these two submissions are true (and I believe Hamid would concede to these submissions) then the question becomes how to organize a polity to preserve the individual's freedom of conscience and thought. Drawing on the Islamic tradition, I argue we can make progress in this regard by deconstructing the nation-state to make room for communal self-governance and moral heterodoxies. This is a seemingly simple yet radical idea. It would require reversing the process of state building. The state-building project would not be used to engender a new subjectivity (citizenship) and a new society (the nation) both of which are co-constituted with the modern nation-state.

2 Nation-state vs. communal self-governance

The mostly forgotten violent history of the emergence of the nation-state has been one of deconstructing communal bonds to rebind the individual to the state through the disintermediated construct of the nation (Scott, 1998; Anderson, 1983). This is often presented as an individualizing and liberating project, communal binds rooted in collectivity and tradition were limiting individuality and freedom the argument goes, but it has also been a homogenizing and assimilating process, often a violent one.

By community I mean a level of social organization where intra-communal moral cohesion, if not consensus, is feasible. By self-governance, I mean varied institutions and processes of governance that due to their communal embeddedness do not easily lend themselves to capture by the insulated elites nor require a discourse of governance abstracted away from exegeses of daily life to function.[2] In addition to producing good governance outcomes, these two features allow for a politic of a good life to be practiced without becoming overly oppressive. The first feature allows for moral consensus building and the second feature allows that consensus to contain a multitude and to evolve as the communal consensus evolves through the lived experiences of its members.

The displacement of communal self-governance through state building has admittedly progressed unevenly in different contexts. Not all states are equally centralizing and assimilating. In the United States, for example, communal self-governance, the type that de Tocqueville described in early America, has been more robust compared to many other countries (de Tocqueville, 2002). However, the trend has been towards increasing centralization and nationalization commonly justified by reference to the need to protect individual rights against oppressive communal norms. This has been the case in both federal and unitary states. The states with the most robust federal system like the United States have found it increasingly difficult to accommodate pluralistic conceptions of a good life and moral heterodoxies as the national state is increasingly relied on by various groups to override

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1   In his other writings, Hamid does deal with the problem of modernity, Islam, and the nation state. He argues Islamists failed to imagine an alternative to modern state (Hamid, 2022b). How Modernity Swallowed Islamism. First Things. https://www.firstthings.com/article/2022/10/how-modernity-swallowed-islamism

2   In the Afghan context, Jennifer Brick Murtazashvili and Ilia Murtazashvili have written about the ways these institutions have worked in Afghanistan. See Jennifer Brick Murtazashvili and Ilia Murtazashvili, Land, the State, and War: Property Institutions and Political Order in Afghanistan & Jennifer Brick Murtazashvili, Informal Order and the State in Afghanistan.

communal norms that conflict with an ever-expanding set of claims that are considered non-negotiable individual rights.

This transfer of power from local to national has empowered national elites (and demagogues) who are answerable to national discourse and who relate to (and manipulate) the citizenry through an expansive PR industry or social media companies (Herman and Chomsky, 2011). This has been, I submit, one of the most destructive developments when it comes to allowing for collective living with moral disagreements.

3 Communal self-governance in the Islamic tradition

In the Islamic tradition, on the other hand, the paradigmatic operative mode of Shari'ah before modernity was local and communal and not statist (Hallaq, 2009). Shari'ah was produced and reproduced in varied local contexts in a dialogical process with the community that produced and supported the local Uluma (those learned in the discourse of Islamic jurisprudence). Some questions of Shari'ah were undoubtedly justiciable and the ruler sat up courts to handle disputes but the primary function of the courts and Shari'ah as applied in courts was to *manage* conflicts, not to fashion a subjectivity or a nationhood (Hallaq, 2012).

The ruler's temptation to change the way Shari'ah operated in the pre-modern context for a state-led one was fiercely resisted by the Ulema. At times, the Uluma allied with the centrifugal forces to resist the centralization of power. The most dramatic example of this resistance against the expansion of state power was the failed *minha* where the Muslim jurists resisted, at a high cost, the state-sponsor push to adopt the doctrine of createdness of the Quran (Zaman, 1997). Similarly, at the turn of modernity, a common pattern emerged where Uluma from India to Iran resisted the colonial project of state building by allying with native anti-colonial forces.

The theocratic bounds of the ruler's power in the Islamic tradition constrained the ruler by placing the mores of the society out of reach of the state—the ruler does not make the laws in the Islamic tradition—but more importantly, it reduced the stake of rulership (Hallaq, 2012). This latter point allowed the Islamic tradition to survive and even thrive, across locales, even at times when the question of political leadership was hotly, and even violently contested. Those contestations were not as ruinous as they tend to be in the modern context.

The pre-modern Shari'ah, before it was re-envisioned in accordance with modern exegesis as state law by colonizers, modernists, and Islamists, allowed and even facilitated the moral evolution of the community through a customary theory of morality. Brown has offered a compelling articulation of this theory of morality implicit in the operation of Shari'ah in the pre-modern context under the rubric of *'urf* (Brown, 2020). Shari'ah would consider, according to Brown, what is permissible to a significant degree based on what a specific community considers acceptable. If the stance of a community evolved on a particular practice, the practice would be abandoned and the operation of Shari'ah would be reoriented accordingly. In other words, the Islamic jurisprudence of Islam discursively mediated between an evolving extra-jurisprudential sense of morality and the discourse of power without direct state intervention. More importantly, by getting the state and its lawmaking function out of the business of constituting the community—a business that demands homogenizing and uniformity—the moral disagreements could be localized and contain paradoxes and multitudes, something that the formalizing logic of the state, even a liberal one, militates against. That is why to the dismay of Muslim jurists' heterodoxies have persisted and at times thrived throughout the history of Islamic rule (Reinhart, 2020; Ahmed, 2016).

What I have sketched out above describes a mode of governance that is admittedly pre-modern; it existed at a time when the world was ruled by empires, a time when states could not reach into people's lives for both technological and belief reasons. European modernity changed both the technology and beliefs about governance birthing the modern nation state which was then imposed on non-Europeans through colonialism. Muslims cannot go back to the time of empires. The technological clock cannot be turned back, but the Muslim world has not settled the questions of beliefs about governance either. Mimicking the European nation-state has not delivered. Muslims have grown more intolerant of heterodoxies in their encounter with modernity; first in the anti-colonial context where heterodoxies were perceived as a pretext for colonial domination and later in the post-colonial nationalization phase where heterodoxies are perceived as a threat to the fragile national identity. I propose Muslims should be guided and inspired by the pre-modern mode of governance as they envision and enact a new modality of politics, one that does not bypass their history for importing ideas that emerged out of European history.

In the absence of this type of historical thinking, what has been tried by Muslims has not worked even when Uluma, those learned in the Islamic sciences tried it.

4 The Uluma and state building in the modern context

Impressed by the power of the state to shape society, in many Muslim contexts, Uluma came to use the state as a vehicle for the implementation of Shari'ah. These examples of Uluma-driven state-building have been even more problematic. When the Uluma attempted state-building of their own, wielding the jurisprudential discourse of Islam as their tool, they produced the most politically oppressive rendition of Islam. For example, the current Taliban leadership in Afghanistan outrageously disallows teenage girls to attend schools on the ground that it offends the sensibility of most conservative communities of Afghanistan arguing that Islamic jurisprudence demands sensitivity to *'urf*. However, when the group is pushed to allow more supportive communities to educate their girls, the Taliban leadership resists this demand because it would undermine its state-building project—the desire to subject Afghans to uniformly centralized rule (Jackson, 2022). In another example from the Taliban rule, Abdul Hakim Haqqani, the Taliban's acting chief justice has critiqued the Ottomans for accommodating jurisprudential diversity instead of instrumentalizing Hanafi jurisprudence as a tool for building a unified nation (Butt, 2023). In no uncertain terms, Haqqani has argued that building a unified nation requires suspending jurisprudential diversity. He then goes on to make the absurd claim that Afghans are all Hanafis and therefore the suspension of jurisprudential diversity is not problematic even though Afghanistan has a sizable population of Shi'a Muslims. What the example of the

Taliban demonstrates is that it is the state-building logic that disallows a differentiated and localized approach to contested questions of morality rendering even the application of classical Islamic jurisprudence far more oppressive than it would have been in the pre-modern context.

Another common pattern that emerges when the Uluma attempt state building is the nationalization and unification of Islamic education and contested jurisprudential discourse. Both in Iran and Afghanistan, the Uluma-dominated political leadership in its attempt to build an Islamic *state* has tried to increase the state control over the education of Muslim jurists and muftis and limit the range of disagreements that Muslim jurists and muftis can engage in. The Taliban's emir has argued that Afghan Uluma should refrain from publicly discussing jurisprudential points of disagreement because it undermined the authority of the Islamic state (Watkins and Rahimi, 2024). Iran has set up official courts that try the Uluma who may deviate from the state-sponsored orthodoxy (Künkler, 2010). These measures are taken in the name of preserving the Islamic state, emphasizing the state part.

5 Could the pre-modern mode of governance inspire new political modalities in the Muslim world?

I believe so. The historical example of Shari'ah governance inspires a radical form of political decentralization. The questions whose answers depend on people's deep moral convictions and beliefs should be localized as much as possible. In the Muslim context, these would be questions about gender norms, proper education, and freedom of thought and speech. In this kind of system, contrary to the democratic minimalism of Hamid, neither the Taliban nor the Islamic Republic of Iran should be allowed to make state laws about what proper Muslim behavior is and then bring the coercive power of the state to enforce its conception of good Muslim conduct. These questions ought to be negotiated amongst the local jurists in the local communities. States should only intervene to prevent communal conflicts from turning violent by establishing courts that enable people to settle their disputes when needed.

If decentralization is the answer, one may ask, why should we stop at the communal level? Isn't leaving the choice to the individual the ultimate form of decentralization (as the American pro-choice camp would quibble with pro-lifers who wish to push down the question of abortion to the states citing the virtues of decentralization)? I submit there is a difference. Morality is enacted in an interpersonal context. We need to work out our deep moral issues with others. A large part of the moral discourse is concerned with the question of what kind of society we would like to create. Individual choice is not a substitute for communal mores. Localizing questions that touch on our deep beliefs to the level of a community where an evolving moral consensus is achievable may be the best option to constitute a moral community that then would produce moral individuals.

In response to my proposal, one might argue that a state that enforces absolute individual rights only prohibits enforcement of evolving communal mores against the individual with legally legitimized violence. Free people engaging in voluntary association with each other can engage in moral discourse with one another and shape social norms with one another. Mores could still give rise to

patterns of social stigma, criticism, voluntary association, disassociation, etc. This argument contains a standard defense of a liberal state. It says that we have what we need to protect a pluralistic society and that is liberalism. The liberal state is neutral regarding the conception of good life, the argument goes. It can be neutral because it merely guarantees the individual right to form and choose their preferred conception of good life, individually or in association with others. Why do we need to come up with something different if we already have liberalism, the critics may ask?

There is a robust literature responding to the argument that liberalism is the preferred way if not the only way to constitute a pluralistic society. The main insight from this critical literature is that liberal states are not neutral about conceptions of a good life. Their commitment to individual rights is buttressed by certain beliefs about what individual flourishing entails and what makes it possible. The beliefs that underpin liberalism are not universally held and the argument that they are universally good is debatable (the ills of modern liberal societies, chief among them the ecological destruction of the planet, are offered in this debate).

In the Muslim world particularly, liberal beliefs are only held by a small minority. Some apologists have hoped that this could change, and the Muslims eventually are going to undergo a European-style religious reform and will arrive at the summit of liberalism. In the meantime, the apologists would settle for my proposed approach. I am not sympathetic to this apologetic line of reasoning. It has the same flaw as the original argument stated above; it assumes the universality of liberalism and its core beliefs. It closes the door to alternative ways human beings can conceive of a good life and pursue flourishing. Muslims, I believe, have the intellectual and historical resources to envision a different way of living beyond liberalism.

6 Should there be limits on what communities could do to protect individual rights?

This is the question of whether some fundamental rights for everyone regardless of their community membership should be guaranteed in a constitutional document and enforced through judicial review.

I submit that Shari'ah played that role in the pre-modern Islam. For example, women would invoke the Islamic ideals and diverse set of opinions that made up the Islamic jurisprudence before the Shari'ah courts and in interpersonal contexts to resist the communal demands that restrict their freedom (Coşgel et al., 2024). Shari'ah was different than a modern constitution. It contained a multitude and could be responsive to the evolving sense of morality. The closest analog may be the United Kingdom constitutional tradition where certain principles and texts have gained constitutional status but there is no fixed document allowing for a slow but ongoing process of evolution of core mores in the society. The UK has drifted away from this tradition as the idea of judicial review to protect individual rights has grown powerful, but the Muslim world may still find use for this model. The Muslim world has before it the rich and dynamic discourse of Islamic jurisprudence, which exists in and above the community, that it can draw upon as people negotiate their relationship with their respective communities. This is something akin to the British tradition

of rights and its many documents and thinkers, if one wishes to continue with the imperfect analogy.

This flexible constitutional model would also mitigate the problem of inter-communal conflicts by affording access to a discourse of rights above a specific community. One might object here by pointing out an obvious issue. What about non-Muslims living in the Muslim land? How could Shari'ah act as a constitutional discourse for them? I would argue that Shari'ah contains a robust discourse about the protection of non-Muslim communities living in Muslim land (i.e., polities committed to Shari'ah as a constitutional discourse). It is a historical fact that non-Muslim religious communities faired immensely better under Muslim rule than they did under Christian rule in the pre-modern world. But the *pre-modern* is the key word here, critics would argue. The individual rights discourse of liberalism is far superior to the pre-modern Shari'ah-based protection of religious minorities. I concede this is an important challenge. I do not think it is as fatal to my thesis as it may appear. First, I contend that religious minorities living in the Muslim world may not subscribe to liberal values either. They may have more in common in terms of ideas of good life with the Muslims amongst whom they have lived than the European liberals. Second, the Shari'ah discourse is dynamic and adaptive. It is always evolving. It can evolve organically towards more inclusion of non-Muslims in the modern context where societies are not constituted religiously like they were in pre-modern times.

7 What would stop the centralizing efforts of rulers who would wish to maximize their power?

The answer would have to be theocratically rooted communal resistance. This would require Uluma to think about the Islamic jurisprudential discourse not as a state-building enterprise but in its proper historical context as a mechanism of managing communal conflicts in the context of evolving moral equilibriums. I believe the false equivalency was made between Shari'ah and state law when Muslim societies violently encountered modernity and tried defensively to Islamize modernity which led them to uncritically accept the nation-state and forgoing alternative ways of envisioning political life. The pre-modern historical precedent of Islamic political experience needs to be recovered if we are to untangle the mess of Islam and modernity. Education would be key to this historicizing effort.

The education model should be radically transformed. The current system is geared towards producing a citizenry most loyal to the nationalistic discourse who can staff the government and supply workers for a globalized economy. The education system should be decentralized and intellectually reoriented towards the community

in which it is embedded rather than those who control and exploit those communities (markets and governments).

8 Conclusion

The problem of democracy for Muslims is a problem of modernity. Modernity for Muslims raises the existential question of how Muslims should relate to their past. I believe we can make progress in dealing with this problem if we think *with* the Islamic political tradition. Doing so would lead us to problematize the modern state and its coercive and homogenizing nature. In place of modern states, Muslims have before them the rich tradition of theocratic bounded communal self-governance, what Hallaq has called theocratic democracy (Hallaq, 2019). Contrary to Hamid, I do not think we can help Muslim societies live with plurality only if the ruling group subjects its power to electoral contestation. Muslim pluralistic societies can be protected if Muslims deconstruct the nation-state and give the power back to the morally cohesive communities where difficult questions of morality can be negotiated with less coercive capacity. State minimalism, I argue, is a more powerful idea than democratic minimalism.

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Conflict of interest

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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