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Visions of the Islamic State: Fazlur Rahman and Islamic Nomocracy

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Abstract

Proponents of reform in Islamic political thought and practice frequently describe the work of Fazlur Rahman, the twentieth-century modernist scholar of Islam, and his method of Qur'ānic interpretation as a source of intellectual and political rejuvenation for contemporary Muslims. This article describes the ethicist underpinnings and content of Fazlur Rahman's democratic vision of the Islamic state, as expressed in his major writings of the 1960s, and contrasts that vision with other proposals for establishing an Islamic nomocracy in contemporary Pakistan. The context of state building fundamentally shaped Fazlur Rahman's constitutional theory, and his arguments expressly repudiate the traditional, independent position of the religious elites or 'ulamā' and aim at absorbing them into the state apparatus. This article contributes to the literature by explicating in a systematic way Fazlur Rahman's constitutional theory, clearly drawing the connection between the ethicist content of his double-movement hermeneutic with the statism of his vision of Islamic democracy. Fazlur Rahman's theory fails to establish a framework for an Islamic nomocracy, posing a significant challenge for advocates of intellectual and constitutional reform who champion the ethicist approach.

Keywords

Fazlur Rahman, nomocracy, *sharī'ah*, Islamic state, Abū 'l-A'īlā Maudūdī.

Introduction

Proponents of reform in Islamic political thought and practice frequently describe the work of Fazlur Rahman (d. 1988), the twentieth-century modernist scholar of Islam, and his method of Qur'ānic

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interpretation, the “double-movement theory,” as a source of intellectual and political rejuvenation for contemporary Muslims.¹ Several contemporary scholars draw from and build on Fazlur Rahman’s work as exemplary of necessary reform.² Scholars working to extract and build on a tradition of Islamic constitutionalism and self-government have also described the Islamic political system as a “nomocracy,”³ as opposed to a theocracy.⁴ In the classical tradition of *sharīah*, as envisioned by contemporary scholars, jurists served as independent guardians of the law. This arrangement, with Islamic law, institutionalized as a jurists’ law, was essential to the project of Islamic nomocracy. Yet, Fazlur Rahman explicitly rejected the classical arrangement in favour of a state-based system of law.

In terms of substantive content, Fazlur Rahman promoted what I call an *ethicist* approach to Islamic reform, focused on discerning the underlying principles of the core sources of Islam, as opposed to stultified traditions and legal interpretations that have congealed over the centuries. His understanding of Islam as a progressive and dynamic force is appealing to Muslims promoting liberal reform and outsiders who wish to advance such reform, but it runs directly counter to the classical approach to institutionalizing nomocracy.

¹ Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago: Chicago University Press, 2017), 9; Mustafa Akyol, *Islam without Extremes: A Muslim Case for Liberty* (New York: W. W. Norton, 2011); Akyol, “Islam, Blasphemy, and the East-West Divide,” *Law and Liberty*, February 1, 2019, <https://lawliberty.org/forum/islam-blasphemy-and-the-east-west-divide/>; Akyol and Marvi Sirmed, “Mustafa Akyol Discusses Blasphemy Laws on Democracy Matters with Marvi Sirmed,” Cato Institute, February 2, 2021, video, 33:27, <https://www.cato.org/multimedia/media-highlights-tv/mustafa-akyol-discusses-blasphemy-laws-democracy-matters-marvi>; Nader Hashemi, “A Clash of the Sacred and the Secular,” *Law and Liberty*, February 13, 2019, <https://lawliberty.org/forum/a-clash-of-the-sacred-and-the-secular/>.

² Abdullahi A. An-Na’im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 1990); An-Na’im, *Islam and the Secular State* (Cambridge: Harvard University Press, 2008); Khaled Abou El Fadl, *Speaking in God’s Name: Islamic Law, Authority, and Women* (Oxford: Oneworld Publications, 2001); Abdullah Saeed, *Interpreting the Qur’an: Towards a Contemporary Approach* (New York: Routledge, 2005); Asma Afsaruddin, *Contemporary Issues in Islam* (Edinburgh: Edinburgh University Press, 2015).

³ Majid Khadduri, *The Islamic Conception of Justice* (Baltimore: Johns Hopkins University Press, 1984), 4; Akyol, *Islam without Extremes*, 249.

⁴ Mohammad H. Kamali, “Constitutionalism in Islamic Countries: A Contemporary Perspective of Islamic Law,” in *Constitutionalism in Islamic Countries: Between Upheaval and Continuity*, ed. Rainer Grote and Tillman J. Röder (Oxford: Oxford University Press, 2012), 27.

This article contributes to the literature by explicating in a systematic way Fazlur Rahman's constitutional theory, clearly drawing the connection between the *ethicist* content of his double-movement hermeneutic with the statism of his vision of Islamic democracy. After reviewing prior literature on Fazlur Rahman's work, Islamic modernism, and the classical theory of Islamic constitutionalism, this article offers a clear explication of Fazlur Rahman's constitutional theory, explaining the ethicist underpinnings and content, along with the institutional implications of Fazlur Rahman's democratic vision of the Islamic state, as expressed in his major writings of the 1960s. To situate his constitutional theory and the degree to which it departs from other visions of the Islamic state, I contrast his theory with two other prominent visions for establishing an Islamic nomocracy in contemporary Pakistan.

Fazlur Rahman's constitutional theory would deconstruct the classical nomocratic arrangement, but not install a new one securing the supremacy of the law. The context of state building fundamentally shaped Fazlur Rahman's constitutional theory, and his arguments expressly repudiate the traditional, independent position of the religious elites or '*ulamā*' and aim at absorbing them into the state apparatus. The statist aspect of Fazlur Rahman's thought, to the extent it is integral to the ethicist approach, poses a significant challenge for advocates of intellectual and constitutional reform who champion the ethicist approach because it fails to establish a basis for Islamic nomocracy.

Islamic Modernism, the *Ethicist* Approach, and the Modern State

O'Sullivan provides a general introduction to Fazlur Rahman's thinking, along with a comparison and contrast of Sayyid Qutb's (d. 1966), Maudūdī's, and Fazlur Rahman's thought with a focus on Qur'ānic interpretation, social activism, and education.⁵ Berry and Armajani each likewise compare and contrast Fazlur Rahman's and Maudūdī's thought with a focus on their approaches to democracy.⁶ Berry's treatment is fairly in-depth and introduces key concerns about the relationship between theology, hermeneutics, and political thought. Armajani notes Fazlur Rahman's argument that equality, justice and consultative

⁵ P. O'Sullivan, "The Comparison and Contrast of the Islamic Philosophy, Ideology and Paradigms of Sayyid Qutb, Mawlana Abul A'la Mawdudi, and Fazlur Rahman," *Islamic Quarterly* 42, no. 2 (1998): 99-124.

⁶ Donald Berry, *Islam and Modernity through the Writings of Islamic Modernist Fazlur Rahman* (Lewiston, NY: Edwin Mellen Press, 2003); Jon Armajani, "Islam and Democracy in the Thought of Fazlur Rahman and Sayyid Abu'l-A'la Mawdudi," in *Religion and Representation: Islam and Democracy*, ed. Ingrid Mattson, Paul Nesbitt-Larking, and Nawaz Tahir (Newcastle upon Tyne: Cambridge Scholars Publishing, 2015), 37-49.

governance are the underlying ethical norms that the Qur'ān and the Prophet Muḥammad's life communicate, and he describes Fazlur Rahman's idea that the 'ulamā' should play a leadership role but not a legislative role in society. He also argues that Fazlur Rahman's argument for democratic institutions contains both Qur'ānic and "Lockean" elements.⁷ Armajani's treatment is relatively brief.

Esposito captures the key elements of the modernist approach to Islam and its implications for society and politics.⁸ Contemporary reformers follow a tradition of reform that many argue is rooted in the early period of Islam, and that especially relates to efforts to respond to European colonial domination in the nineteenth century. Now, as then, advocates of reform attempt to update interpretations of Islam so that it serves the needs of the current day. A core element of the Islamic modernist framework is making the important distinction between unchanging, divinely revealed principles and values (*sharī'ah*) and historically conditioned human interpretations (*fiqh*), or man-made laws. These man-made laws must be able to respond to changing circumstances and new problems arising in modernity.⁹

Esposito describes how modernist reformers tend to reject traditional interpretations and rulings based on Islamic sources and advocate a return to the sources, especially the Qur'ān, with the aim of producing "fresh interpretations of the Quran" that meet contemporary needs.¹⁰ Common arguments for religious freedom and democratic pluralism draw directly from Qur'ānic verses that emphasize the spiritual nature of the Islamic message, the Qur'ānic roots of religious freedom,¹¹ and democratic forms of governance. Wadud's advocacy for "gender jihad"¹² is a good example of Fazlur Rahman's "double movement"¹³ hermeneutic in action.¹⁴ As Esposito describes it,

To get at "the spirit of the Quran," a reader must first understand the implications of the passage for the particular time and context in which it was first revealed and then derive universal principles from that meaning.

⁷ Armajani, "Islam and Democracy," 41.

⁸ John L. Esposito, *The Future of Islam* (Oxford: Oxford University Press, 2010), 88-141.

⁹ Esposito, *Future of Islam*, 92-93.

¹⁰ *Ibid.*, 96.

¹¹ Qur'ān 3:85; 18:29.

¹² Esposito, *Future of Islam*, 122.

¹³ The term "double movement" refers to "the process of interpretation . . . consists of a double movement, from the present situation to Qu'rānic times, then back to the present." Fazlur Rahman, *Islam and Modernity*, 5.

¹⁴ *Ibid.*

. . . Texts must also be interpreted within the context of the Quran's worldview and in light of overriding Quranic principles.¹⁵

A particular method of interpretation and application of Islam and its social implications—the ethicist approach—underlies many modernist arguments for self-government and individual rights.

Afsaruddin's works provide descriptions and analyses of ethicist approaches to Qur'ānic interpretation, *sharī'ah*, and Islamic history.¹⁶ She also helpfully contrasts these views with those of the Islamists.¹⁷ She positions Fazlur Rahman's work as the "culmination" of a tradition of reform beginning in the late nineteenth century with Jamāl al-Dīn al-Afghānī (d. 1897) and Muḥammad 'Abduh (d. 1905), "the founders of Islamic modernism."¹⁸ Afsaruddin describes Fazlur Rahman's work as a call for a "return to the Qur'anic text as a corrective to the legal and exegetical accretions" of the last several centuries and a new theology based on an interpretation that recognizes the underlying worldview of the Qur'ān.¹⁹ That worldview, Fazlur Rahman argued, had been "obfuscated by the rise of Sunni orthodoxy, especially in its Ash'ari form."²⁰ She also makes the case that Fazlur Rahman's influence and approach remain relevant to contemporary issues including "Muslim re-engagement with the *Sharia* which entails . . . the development of a modern Qur'anic hermeneutics and hadith criticism, democracy and democratization, war and peace, and gendered identities, among others."²¹ In addition to al-Afghānī and 'Abduh, the works of the Indian-born poet and theorist Muhammad Iqbal serve as an important source of Fazlur Rahman's thinking.²²

¹⁵ Esposito, *Future of Islam*, 122.

¹⁶ Asma Afsaruddin, *The First Muslims: History and Memory* (Oxford: Oneworld Publications, 2008); Afsaruddin, *Contemporary Issues in Islam* (Edinburgh: Edinburgh University Press, 2015).

¹⁷ Afsaruddin defines Islamists as "activist individuals and groups in various contemporary Muslim-majority societies whose primary wish is to govern and be governed politically only by Islamic principles, understood by them to be immutably enshrined in the *Sharia* or religious law." Afsaruddin, *Contemporary Issues*, 18.

¹⁸ *Ibid.*, 15-16.

¹⁹ *Ibid.*, 41.

²⁰ *Ibid.*

²¹ *Ibid.*, 21.

²² Fazlur Rahman writes, "Besides a constructive will and an acute mind the philosopher must feed himself thoroughly upon the rich legacy of Islam in the past—the last great link in this chain being Iqbal—as well as on the fruits of the efforts of the social sciences of the present. He must not weave a vacant web of pure speculation but feed his speculation on these materials."

In his later academic career based at the University of Chicago, Fazlur Rahman taught the prominent Indonesian scholars and activists Nurcholish Madjid (d. 2005) and Ahmad Syafii Maarif (d. 2022), who built on his neo-modernist paradigm.²³ Mustafa Cerić (b. 1952), former Grand Mufti of Bosnia-Herzegovina and current president of the World Bosniak Congress, also studied under Fazlur Rahman at the University of Chicago.²⁴ As mentioned above, theorists continue to cite Fazlur Rahman's work and advance his methodological innovations as they make arguments for liberal institutions. Tibi includes Fazlur Rahman "among the basic authorities of enlightened Muslim thought," following the Moroccan scholar Abdou Filali-Ansary.²⁵

Scholars such as Sachedina and Saeed root arguments for individual rights, with a focus on acceptance of pluralism and religious liberty, in Qur'ānic anthropology, following Fazlur Rahman's hermeneutic. For Sachedina, this means jettisoning traditional interpretations of *sharī'ah* that undermined this deeper ethical vision: "Buried under the traditional interpretations of Islamic revelation, there lies the Koranic vision of individual dignity, personal liberty, and freedom from arbitrary coercion."²⁶ Another strategy of promoting an Islam-rooted conception of human rights is based on the notion of the *maqāṣid al-sharī'ah* (the purposes or objectives of *sharī'ah*). The key purpose is *maṣlaḥah* (public benefit). Masud, a prominent Pakistani legal theorist and Islamic modernist, has especially championed this notion, which can be discerned as an important principle in Fazlur Rahman's thinking.²⁷

This is what I understand to be the legacy of Iqbāl. If this lives Iqbal lives; if it does not, neither Iqbāl nor Islam nor Muslims have much chance to live, let alone to fulfil the role assigned to them by the Qur'ān." Fazlur Rahman, "Iqbāl's Idea of the Muslim," *Islamic Studies* 2, no. 4 (1963): 445.

²³ Ahmad N. Burhani, "Transmission of Islamic Reform from the United States to Indonesia: Studying Fazlur Rahman's Legacy through the Works of Ahmad Syafii Maarif," *Indonesia and the Malay World* 41, no. 119 (2013): 29-47; Safet Bektovik, "Towards a Neo-Modernist Islam: Fazlur Rahman and the Rethinking of Islamic Tradition and Modernity," *Studia Theologica-Nordic Journal of Theology* 70, no. 2 (2016): 160-78.

²⁴ Esposito, *Future of Islam*, 108.

²⁵ Bassam Tibi, *The Shari'a State: Arab Spring and Democratization* (London: Routledge, 2013), 32; Abdou Filali-Ansary, "What Is Liberal Islam? The Sources of Enlightened Muslim Thought," *Journal of Democracy* 14, no. 2 (2003): 19-33.

²⁶ Abdulaziz Sachedina, "Guidance or Governance? A Muslim Conception of 'Two Cities'," *George Washington Law Review* 68, nos. 5-6 (2000): 1088.

²⁷ Muhammad K. Masud, "Islamic Modernism," in *Islam and Modernity: Key Issues and Debates*, ed. Muhammad K. Masud, Armando Salvatore, and Martin van Bruinessen (Edinburgh: Edinburgh University Press, 2009), 237-60. Also see Halim Rane, "The

Fazlur Rahman's argument for re-centring the Qur'ān and a worldview derived from it in matters of law and ethics is also central to many contemporary forms of Islamic feminism—and indeed “subversive of parts of the classical tradition and legal status quo,” emphasizing “foundational principles of equality, justice, and compassion.”²⁸ As Afsaruddin notes, Islamic feminist scholar Wadud, the author of *Qur'an and Woman* (1999), modelled a progressive reading of the Qur'ān, which draws on Fazlur Rahman's double-movement hermeneutical approach.²⁹ Wadud co-founded Sisters of Islam, a Malaysia-based civil society organization dedicated to “promoting an understanding of Islam that recognises the principles of justice, equality, freedom, and dignity within a democratic nation state.”³⁰ El-Nagar and Tønnessen argue that progressive readings of the Qur'ān, employing a modernist hermeneutic, have been crucial to successful family law reforms in several Muslim-majority nations.³¹ These changes in law relate to another relevant line of scholarship on the *sharī'ah* and the transformation of Islamic law in the twentieth century.

From Jurists' Law to State-Based Law

As Khadduri points out and a number of contemporary writers echo, the system of government Islam envisions is a “nomocracy,” as opposed to a theocracy.³² Scholars of Islamic law including Hallaq, Layish, Feldman, and Quraishi-Landes have advanced the argument that the system of government in classical Islam, roughly from the seventh to the nineteenth century, constituted a form of the rule of law.³³ On this

Relevance of a *Maqasid* Approach for Political Islam Post Arab Revolutions,” *Journal of Law and Religion* 28, no. 2 (2013): 489-520.

²⁸ Afsaruddin, *Contemporary Issues*, 41.

²⁹ *Ibid.*, 102-5.

³⁰ <https://www.sistersinislam.org.my/>.

³¹ Samia El Nagar and Liv Tønnessen, “Family Law Reform in Sudan: Competing Claims for Gender Justice between *Sharia* and Women's Human Rights,” CMI Report Number 5, Chr. Michelson Institute, December 2017, <https://www.cmi.no/publications/file/6401-family-law-reform-in>.

³² Khadduri, *Islamic Conception of Justice*, 4.

³³ Wael B. Hallaq, “Juristic Authority vs. State Power: The Legal Crises of Modern Islam,” *Journal of Law and Religion* 19, no. 2 (2004): 243-58; Hallaq, *The Origins and Evolution of Islamic Law*, vol. 1 (Cambridge: Cambridge University Press, 2005); Hallaq, *Sharī'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009); Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013); Hallaq, “Quranic Magna Carta: On the Origins of the Rule of Law in Islamdom,” in *Magna Carta, Religion and the Rule of Law*, ed. Robin Griffith-Jones and Mark Hill (Cambridge: Cambridge University Press), 157-76; Aharon Layish, “The Contribution of the Modernists to the Secularization of Islamic Law,” *Middle Eastern*

account, *sharīah* was a jurists' law. The jurists operated independently of the governing authorities, holding them accountable for upholding *sharīah*.³⁴

The crucial point is that the state largely did not make law. Rather, the jurists, considered the legitimate interpreters of the law, served in theory—and at least to some extent in practice—as a check on the state's executive power. March provides a slight corrective to this claim, noting that pre-modern Islamic states in fact exercised legislative power in a realm of the public good for which specific *sharīah*-based mandates were unavailable.³⁵ The transition to the modern state represents “the collapse of traditional legal and political dualism into monism.”³⁶ The transition from classical *sharīah* governance to the monist system of state-based legislation, both as a result of internal reforms in the late Ottoman Empire and of colonial imposition, fundamentally transformed the system and brought about new points of conflict regarding legitimacy and authority in the Muslim world. Indeed, some have argued that modern, state-based legislation is not and cannot be *sharīah*; as Hallaq puts it, *sharīah* is “institutionally defunct”:

Beginning in the nineteenth century, and at the hands of colonialist Europe, the socioeconomic and political system regulated by the Sharī'a was structurally dismantled, which is to say that the Sharī'a itself was eviscerated, reduced to providing no more than the raw materials for the legislation of personal status by the modern state. Even in this relatively limited sphere, the Sharī'a lost its autonomy and social agency in favor of the modern state; Sharī'a was henceforth needed only to the extent that deriving certain provisions from it—provisions that were reworked and *re-created* according to modern expediency—legitimized the state's legislative ventures.³⁷

Studies 14, no. 3 (1978): 263-77; Layish, “The Transformation of the Sharī'a from Jurists' Law to Statutory Law in the Contemporary Muslim World,” *Die Welt des Islams* 44, no. 1 (2004): 85-113; Noah Feldman, “Rule of Law and Balance of Power in Classical Islam,” *The Review of Faith & International Affairs* 6, no. 4 (2008): 3-12; Feldman, *The Fall and Rise of the Islamic State* (Princeton: Princeton University Press, 2008); Asifa Quraishi-Landes, “Islamic Constitutionalism: Not Secular, Not Theocratic, Not Impossible,” *Rutgers Journal of Law and Religion*, 16, no. 3 (2015): 553-79.

³⁴ Bernard G. Weiss, “The Spirit of Islamic Law,” in *The Spirit of the Laws*, ed. A. Watson (Athens, GA: University of Georgia Press, 2006 [1998]).

³⁵ Andrew F. March, “Modern Islamic Conceptions of Sovereignty in Comparative Perspective,” in *The Oxford Handbook of Comparative Political Theory*, ed. Leigh K. Jenko, Murad Idris, and Megan C. Thomas (Oxford: Oxford University Press, 2019), 546-64.

³⁶ *Ibid.*, 561.

³⁷ Hallaq, *Impossible State*, ix, 13.

While Hallaq emphasizes the role of European colonial powers, Layish points out that Islamic modernists also played a key role in this transition.

In arguing for the prerogative of state authorities to promulgate legislation, modernists including Fazlur Rahman arguably undermined the core element of the Islamic version of the rule of law: the independent prerogative of jurists to determine the law in an Islamic polity. Further, state elites used modernist interpretations and arguments to advance goals such as the liberation of women which provoked strong resistance and reaction from both traditional scholars and Islamists. Longo, who provides a useful review of relevant literature on Islamic constitutionalism, argues that it must incorporate a renewed role for the jurists in order to truly be Islamic in nature.³⁸ The role of the jurists in the modern state remains a central question of Islamic constitutionalism.

Fazlur Rahman and the Ayub Khan Administration

In his *Islam in Pakistan: A History*, Zaman foregrounds the modernist project and its influence, particularly during the formative stages of Pakistan's attempt to establish an Islamic state. Before 1973, when the current constitution was adopted, the modernists held the upper hand in terms of influence. Zaman argues that the Objectives Resolution and the initial 1956 Constitution that followed a long period of negotiation were highly ambiguous, but ultimately favoured the modernists' view of Islam. Zaman also argues that the modernist project, and Fazlur Rahman's expression of it in particular, was in some respects inherently authoritarian and statist.³⁹

Fazlur Rahman was involved in Pakistan's constitutional politics from 1961 to 1968, during the military regime of Ayub Khan. After consolidating power following Iskander Mirza's abrogation of the 1956 Constitution and subsequent resignation as president, Ayub Khan initiated major constitutional changes, including the promulgation of Pakistan's second constitution in 1962. Ayub Khan was expressly

³⁸ Pietro Longo, *Theory and Practice in Islamic Constitutionalism: From Classical Fiqh to Modern Systems* (Piscataway, NJ: Georgias Press, 2019).

³⁹ Muhammad Qasim Zaman, *Islam in Pakistan: A History* (Princeton: Princeton University Press, 2018); Zaman, "Islamic Modernism and the Shari'a in Pakistan," The Dallah Albaraka Lectures on Islamic Law and Civilization, March 4, 2014, <https://core.ac.uk/download/pdf/72835438.pdf>. For discussion of the authoritarian and statist elements of Islamic modernism, also see Leonard Binder, *Islamic Liberalism: A Critique of Development Ideologies* (Chicago: University of Chicago Press, 1988), 156-57.

committed to a liberal version of Islamic constitutionalism. He appointed Fazlur Rahman to direct the Central Institute of Islamic Research, tasked with developing a “liberal and rational” interpretation of Islam to support these efforts.⁴⁰ Fazlur Rahman was also involved in the Council of Islamic Ideology, a constitutionally mandated body tasked with making recommendations to legislative and executive bodies and determining whether legislation was consonant with Islam, during this period.⁴¹

The Ayub Khan administration, even as it Islamized the country, did so in a manner geared toward modernization, promoting modernist ideas.⁴² In a speech at a Deobandi *madrrasah* in May 1959, Ayub Khan directly urged the ‘*ulamā*’ to recapture the progressive spirit of Islam and abandon the dogmatic, outdated approach that, he argued, had stifled the true spirit of Islam.⁴³ Historians have widely discussed Fazlur Rahman’s support for allowing certain forms of interest in commerce, family planning, the 1961 Muslim Family Law Ordinance, and his progressive stances on a number of controversies.⁴⁴ This study connects Fazlur Rahman’s hermeneutic with his statist approach, offering a systematic account of the underpinnings and institutional implications of his ethicist approach.

Competing Visions of Legislation in an Islamic State

Theorists and religious scholars propounded a number of visions of the Islamic state amidst the constitutional debates in the 1940s, 50s, and 60s in Pakistan. One major theoretical problem Pakistan’s founders faced relates to the relationship between Islamic law and the form of constitutional democracy. The major parties in the early constitutional debates agreed with the idea of Pakistan as both an Islamic state and a democracy, or republic. They also agreed with the idea of legislation limited by the *sharī‘ah*. Different visions of the Islamic republic related to

⁴⁰ Official notification from the Federal Ministry of Education, quoted in Muhammad K. Mas‘ud, “Islamic Research Institute—An Historical Analysis,” trans. Ziaul Haque, *Islamic Studies* 15 (1976): 37.

⁴¹ Faqir Khan, “The Council of Islamic Ideology (CII) in the 1973 Constitution: Background, Structure and Performance,” *Peshawar Islamicus* 11, no. 1 (2020): 55-61; Ali U. Qasmi, “God’s Kingdom on Earth? Politics of Islam in Pakistan, 1947–1969,” *Modern Asian Studies* 44, no. 6 (2010): 1236-38.

⁴² Qasmi, “God’s Kingdom.”

⁴³ Zaman, *Islam in Pakistan*.

⁴⁴ Qasmi, “God’s Kingdom”; Megan Brankley Abbas, “Between Western Academia and Pakistan: Fazlur Rahman and the Fight for Fusionism,” *Modern Asian Studies* 51, no. 3 (2017): 736-68; Zaman, *Islam in Pakistan*.

the content and scope of *sharīah* and the method for determining its application—the specific institutional form the constitutional order would take and the role of classically trained jurists. Maudūdī developed his vision of the *sharīah* state, which writers such as Sayyid Quṭb, still widely read by jihadists and more broadly among Muslims, adopted, in this context. The constitutional theory of Islamic modernism, such as that Fazlur Rahman promoted, also developed within this context. One key issue throughout these debates relates to the role of the ‘*ulamā*’ in determining the law.

The founders of Pakistan enshrined both the principle of the sovereignty of God and the principles of “democracy, freedom, equality, tolerance and social justice as enunciated by Islam” in the Objectives Resolution of 1949, a statement of principles that should govern the constitution.⁴⁵ The resolution by no means settled the question of how to incorporate the higher law of Islam, the *sharīah*, into the constitutional order. While paying lip service to divine sovereignty and *sharīah*, the modernist vision essentially prevailed in the 1956 and 1962 constitutions, while Islamist and traditionalist visions made some gains during the Zia-ul-Huq regime (1978-1988).⁴⁶ The problem is still debated in Pakistan and other Muslim-majority polities today.

Theorists and politicians advanced several solutions to the problem of establishing *sharīah* as a higher law in the context of constitutional democracy. Fazlur Rahman’s constitutional theory was one among several distinct visions of the relationship between constitutional democracy and Islamic law that theorists and politicians proposed, though scholars of Islamic political thought occasionally lump these visions together.⁴⁷ To distinguish Fazlur Rahman’s version of the Islamic state and how the law is to be determined from other versions propounded during Pakistan’s early constitutional history, I outline two other major visions offered in the 1950s and early 1960s before turning to a systematic account of Fazlur Rahman’s constitutional theory. I focus on how these visions conceived the method for determining law and their different applications of key terms including *sharīah*, *ijtihād*, and *shūrā*.

⁴⁵ The Constitution of Pakistan, 1973, <http://www.pakistani.org/pakistan/constitution/annex.html>.

⁴⁶ Charles H. Kennedy, “Repugnancy to Islam—Who Decides? Islam and Legal Reform in Pakistan,” *International & Comparative Law Quarterly* 41, no. 4 (1992): 769-87; Zaman, *Islam in Pakistan*.

⁴⁷ Said A. Arjomand, “Islamic Constitutionalism,” *Annual Review of Law and Social Science* 3 (2007): 115-40; Kamali, “Constitutionalism in Islamic Countries.”

Maudūdī's Theo-Democracy

For Abū 'l-A'lā Maudūdī, the basis of Islamic law is the sovereignty of God: Muslims are simply people who have submitted to the sovereignty of God and agreed to a contract to follow his Law. Therefore, "It is God and not Man whose Will is the Source of Law in a Muslim Society."⁴⁸ Maudūdī understands *sharī'ah* to contain both unalterable elements and "flexible" components that Muslims must determine in light of core principles.⁴⁹ The three "unalterable" components consist of clear injunctions, "directive principles," and limits on human behaviour found in the Qur'ān or the *sunnah*.⁵⁰ The flexible elements are determined through *ta'wīl* (interpretation of injunctions), *qiyās* (reasoning by analogy), *ijtihād* (an independent effort to determine rules of conduct by jurists in matters for which no clear injunctions or precedents exist), and *istiḥsān* (juristic framing of rules for unclear matters in conformity with the general spirit of Islamic law).

Maudūdī's understanding of divine sovereignty does allow for human legislation.⁵¹ Yet, even where independent interpretation and legislation may be employed, he emphasizes that jurists' independence is quite limited. In a paper entitled "Role of Ijtihad and Scope of Legislation," delivered in Lahore in 1958, he explains that "the real law of Islam is the Qur'ān and the Sunnah. The legislation that human beings may undertake must essentially be derived from this Fundamental Law or it should be within the limits prescribed by it for the use of one's discretion or the exercise of one's opinion."⁵²

Human discretion is critical for interpretation, reasoning by analogy and making inferences based on the principles of *sharī'ah* and independent legislation—within the bounds described above. Even as he describes the province of independent legislation or matters for which there are no clear Qur'ānic or *sunnah*-based injunctions or sources for analogy, as encompassing a "vast range of human affairs," his emphasis is on the claim that the *sharī'ah* provides clear guidance and limitations relevant to the reconstruction of society on Islamic terms.⁵³ Despite all

⁴⁸ Sayyid Abul A'la Maududi, *The Islamic Law and Constitution*, trans. and ed. Khurshid Ahmad (Lahore: Islamic Publications, 1960), 51.

⁴⁹ *Ibid.*, 59.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, 74.

⁵² *Ibid.*, 79.

⁵³ *Ibid.*, 78.

these limitations on the scope of the legislation, Maudūdī characterizes the form of the Islamic state and constitution as democratic. Here, Maudūdī emphasizes the difference between the Islamic state and secular democracy, founded upon the sovereignty of the people.⁵⁴ Maudūdī’s Islamic democracy, or “theo-democracy” is based on the idea that all members of the political community are equally commissioned as “repositories of the Caliphate.”⁵⁵ The limits derived from the sources of Islamic law serve as a check on popular sovereignty, serving as the lines of demarcation between secular democracy and Islamic “theo-democracy.”

Maudūdī argues that the selection of the head of state must take account of the Muslim masses and that no restrictions to any particular tribe, class, or clan are permissible. Maudūdī also envisions a “Consultative Assembly” that advises the head of state, which Maudūdī conceives of as a legislative function.⁵⁶ Finding no Qur’ānic or *ḥadīth*-based discussion of the actual role of this consultative body, Maudūdī turns to the conventions of the early caliphs and rulings of jurists for guidance, concluding that the Islamic system of government gives ultimate “veto” power to the caliph as head of state, although he is bound to consult with the representatives of the people. He later reversed his position on this point, treating the results of the consultative process as binding on the head of state.⁵⁷

Maudūdī derives a democratic principle from the early examples of consultation: “From the conventions of the Caliphs, nay, even from the conduct of the Prophet himself, the inferred rule is that the Consultative Assembly is not to consist of his hand-picked men but only of those persons who enjoy the confidence of the masses.”⁵⁸ During Islam’s founding, a “natural process of selection” based on merit determined the composition of the consultative assembly, but since caliphs and consultants of such high moral calibre cannot be guaranteed, an elective process should be instituted.

For Maudūdī, the majority of jurists in a polity have to agree for a valid law to be enacted. This becomes clear as Maudūdī explains that a jurist’s *fatwā* is not law but simply an opinion or research conclusion; a legislative council composed of “the men of authority and learning,” or

⁵⁴ Ibid., 155.

⁵⁵ Ibid., 147.

⁵⁶ Ibid., 357.

⁵⁷ Ibid., 245-46; Junaid Hassan, *Reconstruction of Political Thought in Islam: An Exposition of Ghamidi’s Understanding of Political Sharīah* (Lahore: Al-Mawrid, 2022), 59.

⁵⁸ Maududi, *Islamic Law and Constitution*, 257.

jurists, makes law.⁵⁹ A judicial branch also plays a role in “enforcing the Divine Code,” but Maudūdī is less specific about how such a body is to be constituted and operates.⁶⁰ The system of courts seems to be primarily concerned with deciding particular cases rather than judicial review of legislation. Another means of institutionalizing the nomocratic principle appears to be through civil disobedience, which Maudūdī endorses in cases where legislation, administrative policy, or court rulings contravene the *sharīah*.⁶¹

For Maudūdī, the Islamic sources, the Qur’ān and the *sunnah*, provide a good deal of guidance on both the structure and the law of the state. The challenge is to codify a law that is uncodified, but accessible based on the study of the Qur’ān and the *sunnah*. The primary manner in which Maudūdī proposes to institutionalize the nomocratic principle, the limits on law derived from divine sovereignty, is rather straightforward: direct, front-end involvement on the part of jurists in the process of legislation. In other words, the majority of jurists in a polity have to agree for a valid law to be enacted. *Ijtihād* may be used, but only in matters where the Islamic sources are silent or equivocal. Likewise, many prominent ‘*ulamā*’ shared a vision for the Islamic state that included a central role for religious scholars in legislation. Mainstream ‘*ulamā*’ tended to agree with Maudūdī’s claim that the Qur’ān and *sunnah* provide extensive guidance, but they also agreed with the notion that additional legislation was needed to conduct affairs in the republic. They argued for a “Committee of Experts on Sharī‘at” to play an advisory and veto role with regard to such legislation, to ensure all legislation would be compatible with the letter and spirit of *sharīah*.⁶²

Muhammad Asad and the Principles of Islamic Constitutionalism

Muhammad Asad advanced a second, similar but distinct vision based on divine sovereignty and *sharīah* legitimacy.⁶³ The difference is that he

⁵⁹ Maududi, *Islamic Law and Constitution*, 88, 222; Andrew March, *The Caliphate of Man: Popular Sovereignty in Modern Islamic Political Thought* (Cambridge MA: Harvard University Press, 2019), 93-97.

⁶⁰ Maududi, *Islamic Law and Constitution*, 225.

⁶¹ *Ibid.*, 265.

⁶² Zaman, *Islam in Pakistan*, 98. We should note that, as Zaman writes, the views of classically-trained ‘*ulamā*’ were and are more diverse than I can fully treat here.

⁶³ Muhammad Asad was an Austro-Hungarian born, Jewish convert to Islam, one of the most prominent twentieth-century Muslim thinkers. He wrote *The Road to Mecca* (1954) and *The Message of the Qur’ān* (1980), a widely-read translation and commentary on the Qur’ān. Ismail Ibrahim Nawwab, “Berlin to Makkah: Muhammad Asad’s Journey into Islam,” *Saudi Aramco World* 52, no. 1 (2002): 6-32. He also produced a work entitled

emphasized that the Islamic sources provide only minimal, basic guidelines in terms of constitutional order and policy. Asad did propose a commission to determine key provisions of the constitution that derive directly from Islamic sources.

Asad's vision, outlined in a 1961 publication entitled *Principles of State and Government in Islam*, is similar to Maudūdī's, but it diverges in important ways. Like Maudūdī, Asad emphasizes that the divine law is the basis of the Islamic state and that the Islamic sources provide adequate guidance for the basic constitutional structure of a modern state. Institutionalizing *sharī'ah* is essential to the legitimacy of the state. While arguing that the Qur'ān and reliable *ḥadīths* provide clear principles and mandates for the constitutional structure of an Islamic state, Asad emphasizes that such clear injunctions are quite limited and that "the true *sharī'ah* is far more concise and very much smaller in volume than the legal structure evolved through the *fiqh* of various schools of thought."⁶⁴ Asad thus emphasizes the role of *ijtihād* saying, "The Law-Giver meant us Muslims to provide for the necessary, additional legislation through the exercise of our *ijtihad* (independent reasoning) in consonance with the spirit of Islam."⁶⁵ Beyond merely serving as an advisory body for the head of state, Asad puts the principle of *shūrā* (consultation), drawn from the Qur'ān 42:38, in the category of *naṣṣ* or a fixed injunction that cannot be altered. As in Fazlur Rahman's vision, the entire community, via elected representatives for pragmatic purposes, participates in determining legislation for "the many problems of administration not touched upon by the *sharī'ah* at all, as well as the problems with regard to which the *sharī'ah* has provided general principles but no detailed laws."⁶⁶ He argues that the majority principle applies to the legislative assembly, the "*majlis ash-shūrā*" as he calls it, because no better solution is available.⁶⁷

While he treats *ijtihād* and *ijmā'* (consensus) as related to the whole community of Muslims and not just to scholars, Asad envisions an important role for the scholars at the outset: codifying *sharī'ah*. Like Maudūdī, he sees the problem at least partly as related to the need to codify the divine law, currently available only as embedded in the Qur'ān and the *sunnah* via reliable *ḥadīths*. For Asad, the scholars will play an

Islamic Constitution-Making (1948). See Muhammad Asad, *The Principles of State and Government in Islam* (Kuala Lumpur: Islamic Book Trust, 1980).

⁶⁴ Asad, *Principles of State and Government*, 12.

⁶⁵ *Ibid.*, 16.

⁶⁶ *Ibid.*, 43.

⁶⁷ *Ibid.*, 45.

important role in this process, which will provide the basic framework for those laws that are unalterable components of the *sharīah*.

Fazlur Rahman's Constitutional Theory

I now offer a systematic account of Fazlur Rahman's constitutional theory, contrasting it with Maudūdī's and Asad's. According to the ethicist approach, *sharīah* and its underlying ethical message justify legislation on the part of the state, even legislation contravening express provisions in the Qur'ān and existing *fiqh*. As an example, the Qur'ān (4:3, 129) appears to allow men to marry up to four wives in certain circumstances. The Qur'ān also includes, however, what Fazlur Rahman calls a "moral rider" to the effect that a man with more than one wife must treat each wife equally—an impossible injunction.⁶⁸ Classical jurists "took the permission clause to be absolute and construed the riders to be a matter for the private judgment of every individual husband."⁶⁹ The *fiqh* (jurisprudence) of all the major schools of Islamic law allowed polygamy. On the other hand, modernists, "wanting to abolish polygamy, gave legal import to the riders and dismissed the permission clause as being without primary import."⁷⁰ Fazlur Rahman illustrates a core feature of the ethicist approach to interpreting the Qur'ān: "The Qur'ān is talking on two levels: a legal level where limited polygamy was allowed, and a moral level toward which the Qur'ān had apparently hoped the society would move in the course of time."⁷¹ The Qur'ān contains an underlying message normative for all times and contexts. The message is transmitted, though, through a literary vehicle shaped by a particular time and place, components of which are contextually bound. On this view, Islamic jurisprudence in its traditional form is inordinately rigid, patriarchal, and illiberal. Instead, the rationalist tradition of the Mutazilites has to be recovered.

A major implication of Fazlur Rahman's constitutional theory is that the authority to determine Islamic law should be removed from the monopoly of the '*ulamā*' and broadened to incorporate a more diverse array of voices. In this view, control over the content of divine law by classically trained scholars and religious elites is an obstruction to modernization, development, and realization of *sharīah*'s progressiveness and adaptability to modern conditions. Fazlur Rahman

⁶⁸ Fazlur Rahman, "A Survey of Modernization of Muslim Family Law," *International Journal of Middle East Studies* 11, no. 4 (1980): 451.

⁶⁹ *Ibid.*, 451.

⁷⁰ *Ibid.*, 452.

⁷¹ *Ibid.*

explicitly rejects the notion that the ‘*ulamā*’ should own the authoritative interpretation of Islamic law, arguing that in a Muslim polity, the community as a whole possesses sovereign power to legislate, select or determine Islamic law.

Underpinnings of Fazlur Rahman’s Ethicist Approach

In the early 1960s, Fazlur Rahman laid out the key planks of his ethicist framework in a series of highly technical essays in the Islamic Research Institute’s journal *Islamic Studies* that eventually formed a book entitled *Islamic Methodology in History* (1965). These essays together mount a direct challenge to the orthodox Sunni understanding of the role of *ḥadīth* in determining normative rules for community life—and of the ‘*ulamā*’ themselves. In Fazlur Rahman’s view, reliance on *ḥadīth*, interpreted as literal examples and injunctions, infelicitously replaced what he calls the “living Sunnah,” or example of the Prophet, which the community had continuously, rather than once-for-all, determined through the processes of *ijtihād* and *ijmā’* in response to changing circumstances.⁷² As discussed below, each plays a specified, limited role in the traditional understanding of Islamic jurisprudence, where clear guidance is not available in the Qur’ān or the *ḥadīth*. Fazlur Rahman’s view is that an organic “Sunnah-Ijtihad-Ijma” process historically determined community norms, not a rigid set of procedures or specific injunctions.⁷³

Fazlur Rahman described the *sunnah* as a “behavioral concept” denoting “exemplary conduct.”⁷⁴ This code of exemplary conduct consisted of practices derived from the Prophetic *sunnah*, or the general sense of ethical behaviour the Prophet modelled. These practices and others derived from them gained normative status in the Muslim community by being accepted by the community over a period of time. Fazlur Rahman emphasizes that living *sunnah* was not a restrictive, limiting restraint on norms, but a dynamic and progressive attempt to respond to changing circumstances. Critically, the whole Muslim community participated in the process of determining and accepting behavioural norms that were appropriate for the times but also held onto the core moral teachings of the Prophet.

In Fazlur Rahman’s view, the Sunni tradition emerged out of an impulse toward uniformity that, in contrast to the early jurists and practice of the community, rigidified the process of determining norms

⁷² Fazlur Rahman, *Islamic Methodology in History* (Islamabad: Islamic Research Institute, 1965), 30.

⁷³ *Ibid.*, 23.

⁷⁴ *Ibid.*, 1, 3.

for the Muslim community. The jurist al-Shāfi‘ī, who founded one of the four Sunni *madhhabs*, or schools of law, in the ninth century CE, established the hierarchy of sources for jurisprudence that is still dominant in the orthodox Sunni legal tradition: the Qur’ān, *sunnah*, *ijmā‘*, and *qiyās*. This is the hierarchy Maudūdī insists on. According to Fazlur Rahman, al-Shāfi‘ī inappropriately underplayed the “democratic” process of the living *sunnah*’s emergence.⁷⁵ For al-Shāfi‘ī, the only legitimate vehicle of the *sunnah* was *ḥadīth*, or reports from and about the Prophet. The imperative was to establish uniform practice throughout the Muslim domains. While al-Shāfi‘ī’s efforts did generate uniformity, they also extinguished the dynamic processes of *ijtihād* and *ijmā‘*. The rigid interpretation of Islamic norms and behavioural rules came to dominate the Islamic legal tradition, undermining its true character as a progressive force for liberating humanity.

Fazlur Rahman did not deny the importance of the *sunnah*, but he argued that the orthodox legal tradition was based on contextually bound judgements about Islamic norms that emerged in response to particular needs, not necessarily reflecting norms valid for all times. The living *sunnah*, in contrast, is based on core ethical principles the Prophet had imparted, relevant to all times but applied differently depending on the circumstances. The Prophet himself was not a “pan-legist” and often made decisions based on community input.⁷⁶ Further, some elements of the Qur’ānic revelation were also given in response to the needs of the time at which they were given. To serve as the basis for cohesion and development in the context of a newly independent country, Islam must recapture the living *sunnah* of the Prophet.

The underpinnings of Fazlur Rahman’s constitutional and political theory were thus rooted in a distinctive interpretation of the manner in which norms for an Islamic community can be extracted from Islamic sources. Necessarily, his idiosyncratic approach would diminish the epistemic and social authority of the ‘*ulamā*’, which is derived from the special knowledge of the legal tradition in its various forms—a tradition he denounced as fundamentally misguided in its understanding of the early history of Islam and the process by which community norms were determined. According to Fazlur Rahman, the early history and true history of Islam show that it was in important ways democratic. He argued that Ayub Khan’s Basic Democracies plan was the most important constitutional innovation of the era.

⁷⁵ *Ibid.*, 21.

⁷⁶ *Ibid.*, 10.

An Islamic Ideology for the Islamic Republic

In 1967, the Ayub Khan administration convened a secret “Meeting of the Committee on the Fundamental Conflict,” in which Fazlur Rahman participated as the Director of the Islamic Research Institute.⁷⁷ Cabinet records of this remarkable event provide important context for Fazlur Rahman’s work and its role in the Ayub Khan administration’s efforts to co-opt religious leaders in the 1960s.⁷⁸

The committee addresses the “conflict between the Mullah and the intelligentsia.”⁷⁹ After lamenting that the people of Pakistan have no real understanding of the true teachings of Islam as found in the Qur’ān, the chairman of the meeting, the Minister of Information and Broadcasting, lambasts the “Mullah” as propagating a rigid, traditionalist interpretation of Islam that is false and self-serving, and obstructive to the government and Islam.⁸⁰ As a result, the influence of religious leaders has to be reduced. In the course of the discussion that follows, the modernist viewpoint is dominant. The religious leaders are described as a priesthood that ignores the “spirit of the message” conveyed by the Prophet Muḥammad. Interestingly, another point is raised that the government has inadvertently enhanced the position of the religious leaders by promoting the idea of Pakistan as an Islamic republic. They have used their influence to propagate a rigid and outdated form of Islam, trying quixotically to turn back time to the early days of Islam. There is a need for the emergence of a “new class of enlightened and learned people” to replace the current class of mullahs. The process of obviating the need for the mullahs will be long-term; in the meantime, those that are not fundamentally anti-government should be co-opted. Finally, an interpretation of Islamic history is advanced, entirely consistent with the modernist viewpoint:

When Kingship was first established in the Muslim world the Kings announced their intention to run their Governments in accordance with Islam and so appointed ulema to advise them in the matter and to interpret Islam in all types of situations. Thus the monopoly to interpret Islam passed to a group of people. The Mulla derives its powers from this

⁷⁷ Qasmi, “God’s Kingdom”; Zaman, *Islam in Pakistan*; Farhat Haq, *Shari’a and the State in Pakistan: Blasphemy Politics* (Abingdon: Routledge, 2019).

⁷⁸ “Meeting of the Committee on the Fundamental Conflict,” National Documentation Wing (NDW), Cabinet Division, Government of Pakistan, File No. 95/CF/67. The author wishes to thank Farhat Haq for graciously sharing a photocopy of the file, which she obtained during a visit to the NDW.

⁷⁹ Ibid.

⁸⁰ Ibid.

historical position. Islam was at its zenith at the time of Renaissance in Europe and as such the leaders of the Islamic thought in those days ignored the development in Europe. That was the beginning of our failure. We did not look forward anymore and remained static in our ideas.⁸¹

As Haq notes, there was some disagreement within the committee on how fundamentally opposed the mullahs and the intelligentsia were, or whether conflict is the appropriate term to describe the situation. Nevertheless, one of the outcomes of the meeting was to task Fazlur Rahman with a paper that would deal with (a) a definition of the ideology of Islam; (b) ways and means to make the Mullah useful in the process of nation-building; and (c) organization of mosques and integration of mullah in the social life.

No such paper or report is included in the file, and the project was scrapped due to internal division.⁸² Nevertheless, Fazlur Rahman's articles for *Islamic Studies* in 1967 address the topics described in this meeting and could be seen as carrying out his assignment.

Fazlur Rahman produced a series of articles and writings in 1967 on the nature of the Islamic state and its application in Pakistan. Moving from the Qur'ānic view of God and man to key principles including social justice, democracy, and human rights, along with practical issues related to the functioning of an Islamic government, these articles all express concern with the needs of a developing country. He continually challenges the visions put forward by 'ulamā' and Maudūdī of the role of religious leaders and state organization, and advocates a role for the religious leaders that supports national cooperation and cohesion.

In these writings, Fazlur Rahman makes frequent references to Ayub Khan's system of Basic Democracies. The system of Basic Democracies was a tiered system of governance that attempted to integrate representative local institutions into a national bureaucracy. In a review of Ayub Khan's political memoir *Friends Not Masters: A Political Autobiography* (1967), Fazlur Rahman described the system as the leader's most salutary reform and a key plank of the leader's applied "political philosophy" for the Third World and the Muslim world. Fazlur Rahman praised the system for implementing development from the "grassroots" and creating cohesion in a country with a growing divide between the rural areas and urban centres.⁸³ Such praise peppers his writings this year and is intimately connected to his outline of an Islamic state.

⁸¹ Ibid.

⁸² Haq, *Shari'a and the State*; Qasmi, "God's Kingdom."

⁸³ Fazlur Rahman, review of *Friends Not Masters, A Political Autobiography* by Mohammad Ayub Khan, *Islamic Studies* 6, no. 2 (1967): 198.

Fazlur Rahman's vision of Islam and its primary sources is essentially practical, as expressed in "The Qur'ānic Concept of God, the Universe, and Man."⁸⁴ Even in this more theological piece, his concern is with human responsibility for the creative moral effort to construct a divinely ordained social order. His practical concerns come to the fore in the subsequent article, "Some Reflections on the Reconstruction of Muslim Society," the first of two that together constitute the clearest presentation of his vision of the Islamic society and Islamic state: "In a nutshell, inconsequential Islam is no Islam at all."⁸⁵

Fazlur Rahman described a society characterized by social justice, human equality, and social cooperation as the essential goal of Islam. Islam is a "social reform movement" geared toward both moral and material progress.⁸⁶ The basic principles of Islam carry several implications related to self-government and human rights. Fazlur Rahman here mentioned political equality and active involvement as central to the Qur'ānic social and political vision, which is neither autocratic nor characterized by party politics. He hinted at the importance of the equal involvement of religious minorities, the limits of religious leaders' authority, the equality of women, the dignity of labour, the centrality of social welfare provision, and other issues. But he especially emphasized the role of government and the importance of social obligation, saying, "Islam is a charter for interference in society and this charter gives to the collective institution of the society, i.e. the Government, the right and duty to constantly watch, give direction to, and actually mould the social fabric."⁸⁷ The executive power plays a major role, responsible for "overall administrative control of the entire collective life of the community."⁸⁸ Fazlur Rahman praised the Basic Democracies system and advocated further incorporation of local religious and civic leaders into the system: "The Mosque should develop into a Community Centre, with a Primary School or a Maktab attached to it. In the evening, this Centre should provide constructive lectures, documentary films, etc., for the instruction and healthy entertainment of the young."⁸⁹ The leaders of mosques should be employees of the

⁸⁴ Fazlur Rahman, "The Qur'ānic Concept of God, the Universe and Man," *Islamic Studies* 6, no. 1 (1967): 1-19.

⁸⁵ Fazlur Rahman, "Some Reflections on the Reconstruction of Muslim Society in Pakistan," *Islamic Studies* 6, no. 2 (1967): 107.

⁸⁶ *Ibid.*, 106.

⁸⁷ *Ibid.*, 107.

⁸⁸ *Ibid.*, 115.

⁸⁹ *Ibid.*, 118.

central or local government, and the central government should support and supervise all activities related to defence, development, and welfare.

In a subsequent article, Fazlur Rahman fleshes out the institutional structure he introduces in “Some Reflections.” In “Implementation of the Islamic Concept of State in the Pakistani Milieu,” Fazlur Rahman argues that the Basic Democracies system was the only “direct method of giving participation to the people in the running of their own affairs” because the uneducated masses were vulnerable to an educated minority.⁹⁰ In this article, Fazlur Rahman directly makes the case that an Islamic state is based on democratic institutions involving self-government. Yet again, he is emphatic about development as a primary aim of the Islamic state and includes a thinly veiled endorsement of a strong central government and executive power, i.e., the Ayub Khan administration:

The all-important objectives of an Islamic State are to safeguard the safety and integrity of the State, to maintain law and order and to develop the country so that every individual in it may be able to realise his full potentialities and contribute to the well-being of the whole. This requires a strong central authority. . . . It is requisite that at the helm of affairs there be a strong leader with vision, capability and power of decision, as the executive head. He is to be elected by the people and must command their general confidence.⁹¹

Fazlur Rahman’s concern with cohesion, law, and purposive leadership is clear.

He turns to *shūrā* as the manner in which “the affairs of the Muslims” are to be conducted. While distinguishing the legislative assembly, which he describes as an aid to the head of state, from Western multi-party democracy, he is emphatic that “legislation in Islam is the business of the Community *as a whole*.”⁹² Fazlur Rahman describes a Muslim community, an *ummah*—an interesting move since it suggests the possibility of more than one *ummah*—as a community of people who have committed themselves “to implement the will of God as revealed in the Qur’ān and whose model in history was created by the Prophet.” The Islamic state is “the organization to which this *ummah* entrusts the task of executing its will.” The Islamic state “obtains its warrant from the people.”⁹³ In two footnotes, he makes the case for Medina as a model of

⁹⁰ Fazlur Rahman, “Implementation of the Islamic Concept of State in the Pakistani Milieu,” *Islamic Studies* 6, no. 3 (1967): 205.

⁹¹ *Ibid.*, 205-06.

⁹² *Ibid.*, 206.

⁹³ *Ibid.*, 205.

democracy. In one, he writes, “In the Medina City State all the Muslims participated in the affairs of government.”⁹⁴ In the second, he refers again to the Basic Democracies system, arguing that it allows for the restoration of a principle present in Medina and meant for the broader Islamic community, lost amidst the expansion of the empire.⁹⁵

In another appeal to early Muslim history, Fazlur Rahman argues that the administrators, not the *fuqahā'*, or scholars of jurisprudence, determined the law. In Fazlur Rahman's vision of how law is determined in an Islamic community, the religious leaders propose ideas and formulations for norms and laws (*ijtihād*), then the community discusses and debates these proposals and ideas and forms a consensus in public opinion (*ijmā'*)—not just among the religious leaders—and the representative body codifies the results of this consensus into law. According to Fazlur Rahman, “Such law will be perfectly Islamic law.”⁹⁶ He goes further to describe the legislative body as the “supreme law-maker” and to argue that “the only force which conditions it and which contains it absolutely, is the will of the Community which is the only sovereign power so far as the legislation is concerned.”⁹⁷ Here, we find Fazlur Rahman's argument for Islamic popular sovereignty.

Fazlur Rahman dismisses the argument that the *'ulamā'* have a direct role to play in legislating for the community, leaning again on the early history of the Muslim community:

Legislation in Islam is the business of the Community as a whole. It is, therefore, the function of the representatives of the people who sit in the Legislative Assembly to make laws. The claims of many *'ulamā'* that Islamic legislation is a function properly belonging to the *'ulamā'*, is not only patently wrong but is equally falsified by the formative phase of the development of Muslim law in history. The fact is that it is the administrators who created Muslim laws and not the *fuqahā'*. It is also a fact that the *Ijmā'* was regarded as the *Ijmā'* of the Community and not of the *'ulamā'* alone until well after the second century of the Hijrah when the concept of the *Ijmā'* of the *'ulamā'* replaced that of the Community. However, it is to be admitted that expert advice will be needed on some technical aspects of legislation, religious, administration, and legal.⁹⁸

In Fazlur Rahman's view, there is no special religious knowledge. Anyone can perform *ijtihād*. There is a need for an “enlightened class of religious leadership,” but contemporary *'ulamā'* are wholly unsuited to the task

⁹⁴ Ibid., 221n5.

⁹⁵ Ibid., 222n22.

⁹⁶ Ibid., 206-07.

⁹⁷ Ibid., 217-18.

⁹⁸ Ibid., 206.

because of stale and outdated curricula and ways of thinking.⁹⁹ In a later article, Fazlur Rahman argues for a radical revision of the *madrasah* system.¹⁰⁰

In “Implementation,” Fazlur Rahman discusses institutional features that differentiate his version of the Islamic state from Maudūdī’s. He repeats the claim that the executive plays a powerful administrative role, both in civil and religious affairs. He disagrees with Maudūdī about the issue of public campaigning for office, arguing that campaigning is not an unIslamic activity. Also in contrast to Maudūdī, except for national emergencies—which he does not precisely define—Fazlur Rahman argues that the head of state must abide by the results of the consultative, democratic lawmaking process. The results of the legislative process, as the will of the *ummah*, are considered binding law.

Just as Fazlur Rahman challenged claims that the ‘*ulamā*’ should play a significant role in legislation, he challenged Maudūdī’s view of the implications of divine sovereignty, which he described as “comic.”¹⁰¹ According to Fazlur Rahman, Maudūdī’s approach treated God as the only legitimate legislator for the community, treating divine sovereignty as a limit on legislation and a key distinguishing mark between Western democracy and the Islamic state. In Fazlur Rahman’s alternative view, which distinguishes between ultimate sovereignty and political sovereignty, only the people can be sovereign in the sense of legitimately exercising coercive force. The true, practical meaning of divine sovereignty is that certain principles derived from the Qur’ān and *sunnah* guide the Islamic community in matters of legislation and state building: “The principles enunciated in the Qur’ān are justice and fair play. This is precisely the meaning of accepting the ‘Sovereignty of God,’ since the standards of justice are objective and do not depend on or even necessarily conform to, the subjective wishes of a people.”¹⁰² Fazlur Rahman argued that these Qur’ānic principles are liberating and progressive. This notion is the core of the ethicist approach Fazlur Rahman crafted in the context of nation-building in a newly independent and developing country, in which an Islamic ideology would serve as the source of cohesion and a guiding set of norms. The process of determining Islamic law itself is essentially dynamic, democratic, and progressive.

⁹⁹ *Ibid.*, 217.

¹⁰⁰ Fazlur Rahman, “The Qur’ānic Solution of Pakistan’s Educational Problems,” *Islamic Studies* 6, no. 4 (1967): 315-26.

¹⁰¹ Fazlur Rahman, “Islamic Modernism,” 277.

¹⁰² Fazlur Rahman, “Implementation of the Islamic Concept,” 209.

While Fazlur Rahman acknowledges individual rights, his emphasis is much more on social cohesion and development. His arguments against a strict interpretation of *ribā* (usury) and thus allowing transactions that involve interest and for the reformist legislation in family law and democratic participation of the whole community are all based not primarily on individual rights but on the need for national cohesion and cooperation.

Fazlur Rahman reiterated his challenge to the intellectual, legal, and political trends in traditional Sunni Islam in his book *Islam* (1966). *Islamic Studies* published portions of this work, which most directly precipitated his resignation. In *Islam*, he attacked the intellectual and political teachings of the ‘*ulamā*’ as outdated and insufficiently dynamic. Indeed, he told a story of stagnation and decline based on these intellectual and political weaknesses.¹⁰³ While his argument that the Prophet Muḥammad played an active role in the reception of Qur’ānic revelation provoked charges that Fazlur Rahman was a Qur’ān-denier, the protests that the work sparked and that led to his resignation also relate to his more general attack on the ‘*ulamā*’s authority and his connection to the Ayub Khan regime’s designs.

Fazlur Rahman thought that the modernists had conceded too much by enshrining the idea of the sovereignty of God in the Objectives Resolution and the first constitution.¹⁰⁴ The ‘*ulamā*’ essentially sought veto power regarding legislation, or the power to declare it repugnant to Islam. Fazlur Rahman rejected a direct role for the ‘*ulamā*’ in legislation, instead declaring, “The state organization in Islam receives its mandate from the people, i.e., the Muslim community, and is, therefore necessarily democratic.”¹⁰⁵ According to Fazlur Rahman, the function of the ‘*ulamā*’ is to exercise broad religious leadership, not participate in legislation. He appealed to the early history of Islam, arguing that administrative leaders, not religious leaders, made laws for the polity.

Discussion

In some ways, Fazlur Rahman’s solution to the relationship between Islamic law and the form of constitutionalism is the most radical. In terms of the content of the law, he was consistently more permissive or progressive in his interpretation of Islamic sources than any of the other groups. The state, or rather the community as represented by a

¹⁰³ Abbas, “Between Western Academia and Pakistan.”

¹⁰⁴ Fazlur Rahman, “Islamic Modernism: Its Scope, Method, and Alternatives,” *International Journal of Middle East Studies* 1, no. 4 (1970): 317-33.

¹⁰⁵ Fazlur Rahman, “Implementation of the Islamic Concept of State,” 205.

representative legislature, would determine the content of the law. The distinguishing mark of Fazlur Rahman's vision is not that it would include a strong executive, a legislative assembly, or a role for legislation in an Islamic state. Indeed, even Maudūdī and groups like the self-proclaimed caliphate of the Islamic State of Iraq and Syria (ISIS) recognize that certain issues not covered in the Qur'ān, the *sunnah*, or the works of prior jurists require legislation.¹⁰⁶ The distinction is that, for Fazlur Rahman, even the Qur'ān does not contain any fixed legislative injunctions. Rather, the Qur'ān, the *sunnah*, and the early practice of the Muslims convey general ethical principles that constitute the essence of divine law. The Muslim community as a whole discovers these principles, and so all law, in any sphere, passed by an assembly that is representative of the community is legitimate. The *sharīah* itself is democratically determined, not a limit on democracy.

Even though his theory is democratic in nature, Fazlur Rahman argues that an Islamic *ummah* would be guided by supraconstitutional norms, an Islamic ideology. Fazlur Rahman attacks both Maudūdī's and the 'ulamā's visions of the Islamic state and champions his own, unabashedly democratic version. However, his own vision of the Islamic state still requires an authoritative interpretation of the ethical teaching of the Qur'ān and the *sunnah*. He thus runs into the same problems facing Maudūdī's theory of divine sovereignty. Yet, whereas Maudūdī and Asad appeal to a plain reading of the Qur'ān, where it gives clear guidance, as a limit on legislation, Fazlur Rahman claims that portions of the Qur'ān are abrogated in favour of the true spirit or ethical norms the Qur'ān teaches.

Fazlur Rahman's idiosyncratic approach to Islamic sources introduces the concept of a hierarchy of values within these sources, including the Qur'ān. This creates problems because it leads to divergent interpretations, even among different reformist thinkers. For example, reformist intellectual An-Na'im uses the principle of *naskh* or abrogation of certain Qur'ānic verses, to place the Meccan *sūrah*s in a higher normative position than the Medinan verses—in direct opposition to the mainstream view that later verses abrogate earlier verses.¹⁰⁷ Yet, as we have seen, Fazlur Rahman uses the experience of the Muslim community

¹⁰⁶ Mara Revkin, "The Legal Foundations of the Islamic State," The Brookings Project on U.S. Relations with the Islamic World, Analysis Paper No. 23, July 2016, https://www.brookings.edu/wp-content/uploads/2016/07/Brookings-Analysis-Paper-Mara-Revkin_Web.pdf.

¹⁰⁷ An-Na'im, *Toward an Islamic Reformation*, 56; An-Na'im, *Islam and the Secular State*, 135-36.

in Medina to argue that the Islamic community was essentially and distinctively democratic. Treating different components of the source material as differently weighted opens the door for a great degree of interpretive license, leading to indeterminate outcomes, which may be detrimental to a nomocratic government.

The prominent scholar of the Deobandi *masklak* Mufti Muhammad Taqi Usmani contends that Fazlur Rahman and the modernists approach the Islamic sources with predetermined “concepts” or principles, then interpret the sources in a manner fitting those concepts, ignoring established rules of jurisprudence.¹⁰⁸ This is a direct challenge to the ethicist approach, a challenge echoing Maudūdī’s earlier claims.¹⁰⁹

More consequentially in terms of politics, Fazlur Rahman’s interpretation of Islam and correlative constitutional theory would absorb the religious leaders into the state. Fazlur Rahman’s vision runs directly against an alternative vision of Islamic nomocracy, one in which the traditional role of the ‘*ulamā*’ as those responsible for determining the law in an Islamic polity is restored. As we saw, ‘*ulamā*’ who called for a greater role in ensuring that legislation did not contravene the *sharī‘ah* were not, at first, demanding a return to the pre-state form of legislation; however, Kennedy suggests that this vision gained increasing traction in subsequent decades:

To many Islamic activists the most unambiguous path to achieve such an agenda is perceived to involve a revision of Pakistan’s constitutional structure so that the Sharī‘ah (the corpus of Islamic law) is made superordinate to the constitution, thereby transferring “law-making” authority from the National Assembly to the courts or *ulema* in their role as interpreters of the Sharī‘ah.¹¹⁰

It may be that the early modernist successes led to increased demands on the part of Islamists and traditionalists. Debates about how to institutionalize nomocracy and the rule of *sharī‘ah* continue to be relevant in twenty-first-century politics, and influential ‘*ulamā*’ continue to play an important role.¹¹¹ It is not hard to see why some ‘*ulamā*’ would resist this teaching and instead side with Maudūdī and the Islamists against Ayub Khan’s attempt to harness the spiritual and moral energy

¹⁰⁸ Muhammad Taqi Usmani, *Islam and Modernism*, trans. M. S. Siddiqui, 44-45, https://ia600504.us.archive.org/19/items/IslamAndModernismByMuftiTaqiUsmani/42345132-Islam-and-Modernism_text.pdf.

¹⁰⁹ Maududi, *Islamic Law and Constitution*, 19-20.

¹¹⁰ Kennedy, “Repugnancy to Islam,” 771.

¹¹¹ Mashal Saif, “The ‘*Ulama*’ and the State: Negotiating Tradition, Authority and Sovereignty in Contemporary Pakistan” (PhD diss., Duke University, 2014), <https://dukespace.lib.duke.edu/dspace/handle/10161/9093>.

of Islam to serve an agenda of economic growth and state-building. But this absorption also raises a problem for the principle of the supremacy of the law, which would seem essential for a nomocracy, even one based on progressive, liberal principles.

Conclusion

This article has provided a systematic account of Fazlur Rahman's constitutional theory, including its ethicist underpinnings, set in the context of his association with the Ayub Khan administration's state-building project in Pakistan. The study highlights the problem of establishing the rule of a higher law, in this case, the divine law of Islam, in the context of constitutional democracy. The problem of constitutionalizing *sharīah* is an Islamic variant of the more general problem of nomocracy or the rule of a higher law.¹¹² If a higher law is to establish the role of government and set limits on its behaviour, there must be a means of discerning and interpreting the higher law. Critically, the principle of supremacy of the law requires that the state also be under the law; yet, the state cannot be under the law if it is also the final arbiter of law. In the classical period, the independence of the jurists provided, arguably, a constitutional arrangement for establishing the supremacy of the law. Fazlur Rahman's constitutional theory would remove this arrangement, but not install a new one that secures the supremacy of the law. Future research may consider the potential of "reform through tradition," an approach Fazlur Rahman viewed with suspicion but which may be a means of promoting reform while preserving nomocracy.¹¹³

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¹¹² One indicator of the continuing relevance of the problem of nomocracy in Islamic societies, increasingly common in Muslim-majority polities since the 1980s, is the establishment of *sharīah* as the source of legislation, a limit on legislation, or both. Dawood I. Ahmed and To Ginsburg, "Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions," *Virginia Journal of International Law* 54, no. 3 (2013): 1-82; Arjomand, "Islamic Constitutionalism." Such provisions do not really constitute a solution to the problem; rather, they serve only as a restatement of it. If legislation is to be based on *sharīah*, or limited by it, relevant actors must know what *sharīah* is and who will determine its content in cases of disagreement.

¹¹³ Fazlur Rahman, "Islamic Modernism," 324.