The Problem of Sovereignty in Modern Islamic Thought
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“Behold, thy Lord said to the angels: ‘I will create a vicegerent [khalīfa (caliph)] on earth.’ They said: ‘Wilt Thou place therein one who will make mischief therein and shed blood?—whilst we do celebrate Thy praises and glorify Thy holy (name)?’ He said: ‘I know what ye know not.’”

Qur’ān 2:30

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Introduction: 2013 and the Still-Birth of Islamist Democracy

The events of July and August 2013 have almost guaranteed that 2011 will come to stand not for a wave of democratization throughout the Arab world but for a cruel joke—much like the original “springtime of nations,” 1848, or like Prague 1968, which gave us the modern tendency to brand uprisings against authoritarian regimes as “springs.” With Egypt’s violent counter-revolution of July 3 and August 14, 2013, that country has tragically been returned to the anti-political military dictatorship that appeared to have been overthrown in February 2011. Only in Tunisia (and Turkey) does the initial hope for a post-authoritarian democratic politics involving political cooperation as well as competition between Islamist and non-Islamist parties still endure.

It may be that the age of “democratic-” or “constitutional Islamism” is over, or, rather, stillborn. The post-coup, 2013 Egyptian constitution includes a new article (54) proscribing political parties established on a “religious basis” (asās dīnī),[1] notably while preserving those provisions of the constitution that codify the state’s own religious pretensions. Insofar as it is true that many parties within the Islamic movement were sincerely committed to the hybrid theo-democratic theories of legitimate governance that they had elaborated since the 1960s (the primary subject of this paper), those parties may

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* This paper draws on some material from my article “Genealogies of Sovereignty in Islamic Political Theology,” Social Research (Special Issue on Political Theology) (Vol. 80 No.2 (Spring 2013), pp. 293-320.). It is also part of an on-going book project, The Caliphate of Man: Visions of Sovereignty in Islamic Political Theology (Harvard University Press, under contract; date: inshā’Allāh).

be once again coercively and legally prevented from competing for the chance to institutionalize their visions. At the same time, state repression in Egypt, Jordan and the Gulf may either radicalize Islamists who looked to democratic processes as an at least pragmatically acceptable way of conducting politics or (depending on your view of Islamists’ sincerity in the 2011-3 period) force them to reveal their actual preferences for anti-democratic politics. All of which is to say: Fall 2015 is not exactly the most obvious time to be discussing high Islamic theories of sovereignty, legitimacy and regime-types.

Having said that, part of what many found inspiring and hopeful in the events of early 2011 was the way the likelihood of an extended constitutive moment seemed to reopen the question of what it means for a Muslim society to be ruled legitimately and to force Islamist parties to account for their visions of sovereignty and authority in the public sphere. The longer the revolutionary and constitutive moment seemed to last without a single entity seizing absolute power (as in Iran in 1979-81 and Egypt in July-August 2013), the more the ubiquitous and vague idea of the “civil state” spoken of by both Islamists and others would have to be given concrete religious and political content. In this sense, the Arab Spring promised to bring the political back into political Islam and Islamic political thought back into history. That hope about the effect of process on Islamist politics is a large part of what has been destroyed in Egypt since July 2013.

More substantively, there was a hope (again, still alive in Tunisia), that the rhetorical and doctrinal affirmations of constitutionalism and democracy issued by Islamist parties while out in power in the previous decades would be revealed as authentic commitments in post-revolutionary constitutions and party politics. In both Egypt and Tunisia, the pre-revolutionary constitutional order appeared to be the most important factor in determining the content of the (transitory) post-revolutionary order, rather than the ideal ideological aspirations of the dominant parties. Even in Egypt the defunct 2012 constitution drafted by the Islamist-dominated constituent assembly was most notable for its relatively minor departure from the pre-revolutionary text. The constitutive assemblies in both countries were formed as relatively inclusive, representative bodies, and the dominant (non-Salafi) Islamist parties in both Egypt and Tunisia have unfailingly insisted that their objective is a “civil state” (dawla madaniyya). This is roughly in keeping with the pre-2011 rhetoric of the Muslim Brotherhood and al-Nahda (Ennahda), which gave evidence of tempering the traditional Islamist emphasis on divine sovereignty and the authority of sharī‘a in favor of a hybrid Islamism that

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2 On this phrase as an alternative to “secular state” in Egyptian public discourse, see Talal Asad, “Fear and the Ruptured State: Reflections on Egypt after Mubarak,” Social Research (suppl. Special Issue: Egypt in Transition) 79.2 (Summer 2012), pp. 271-298, at pp. 289-91. Although, the use of the term “civil” (madani) to characterize Islamic governance long predates the Arab Spring and the anxiety about preserving secular freedoms. One of the texts I discuss below, Rashid Rida’s al-Khilafa already in 1922 sought to respond to early Arab Christian secularists by claiming that “the government of the Islamic caliphate is civil [madani], standing on the basis of justice and equality.” (Muhammad Rashid Rida, Al-Khilafa aw al-Imama al-‘Uzma, (Cairo: al-Zahrā’ li‘l-i‘lam al-‘arabi, 1988 [1922]), p. 118.)

downplayed any radical conflict with constitutionalism, democracy and political pluralism. The rhetorical ambiguities and ambivalences of recent Muslim Brotherhood and “moderate Islamist” political thought, and now their mixed record while in power, are often taken as signs of duplicity and tactical double-speak. But they are also just that—signs of ambiguities and ambivalences inherent to a political theology that proclaims both monism and pluralism, both divine and popular sovereignty. Consider the defunct 2012 Egyptian constitution. The Preamble stated as its first principle that “the people is the source of all [political] authorities; authorities are established by, derive their legitimacy from, and are subject to the will of the people; their responsibilities and prerogatives are a trust they bear, not privileges they hide behind.” Article 5 reinforced this principle: “Sovereignty [al-siyāda] belongs to the people alone and it shall exercise and protect this sovereignty, and safeguard national unity, as the source of all authorities; this shall be done in the manner specified in the Constitution.”

Longtime Muslim Brotherhood activist and FJP vice-chair ʿIṣṣām al-ʿĀryān was thus on firm ground when he pleaded that “the new constitution has delegated sovereignty [siyāda] to the people [despite] the existence of those who place God in opposition to the people.”6 The latter can be read as a reference perhaps to both some secularists as well as some radical Salafis. On cue, Muḥammad al-Zawāhirī (brother of) denounced elections under the authority of the new constitution as putting “sovereignty in the hands of the people and not God.” This was despite the remnants and fragments of nods to ideals of divine sovereignty found in the 2012 document. Most important was Article 2, a holdover from the 1971 (1980) constitution that remained unaltered in the 2012 version (as well as in the 2013 replacement): “the principles of the Islamic sharīʿa are the main source of legislation.” As is well known, the phrase “principles of Islamic sharīʿa” leaves plenty to the jurisprudential imagination and the sharīʿa-friendliness of legislation depends thoroughly on the theory developed by the judges charged with adjudicating this.7 While it is a mistake to view constitutional courts as inherently prone to adopt secularizing theories of compatibility between religious and secular law,8 the 1971 Egyptian constitution left that determination entirely in the hands of judges appointed by the autocratic head of state.

The 2012 constitution included two new articles that seemed to expand the commitment to a pre-political sacred law. Article 4 created a role for al-Azhar that did not exist in the prior constitution: “Al-Azhar is an encompassing independent Islamic

7 See, e.g., Clark Lombardi, State Law as Islamic Law in Modern Egypt: The Incorporation of the Shariʿa into Egyptian Constitutional Law (Leiden: Brill, 2006).
institution, with exclusive autonomy over its own affairs, responsible for preaching Islam, theology and the Arabic language in Egypt and the world. Al-Azhar Senior Scholars are to be consulted in matters pertaining to Islamic law.” Similar language remains in Article 7 of the 2013 constitution, but with no reference to consulting Al-Azhar in legal matters. More controversially, Article 219 (widely seen as drafted by the Salafi parties participating in the 2012 constitutive assembly) clarified that the “principles of the Islamic sharī‘a include general evidence, foundational rules, legal maxims, and credible sources accepted by the Sunni legal schools.” (It is not clear to me whether the verb “includes” means that all of these cannot be excluded from judicial consideration, or that the definition of the “principles of the Islamic sharī‘a” must be narrowed to these sources and that the Supreme Constitutional Court must draw from them.) This article was removed entirely from the August 2013 draft.

There was obviously not enough time from the adoption of the new constitution to the July 3 coup to assess the effect it would have had on legislation and judicial review in any systematic way. (The debate over the Islamic bonds (ṣukūk) law, and the role of al-Azhar in amending it, was the sole instance of a debate at the legislative stage involving sharī‘a-compatibility issues.9) However, even with the reversion to pre-2011 politics in Egypt, my interest in this paper is less in tracking post-revolutionary contributions to the important practice of Islamic judicial review and more in the background theory, even theology, behind the kind of hybrid conception of political and legislative sovereignty represented (perhaps in a relatively moderate way) in the 2012 Egyptian constitution. This paper aims to treat one facet of the present political moment through a discussion of the concept of sovereignty in Islamic political theology, with a special focus on the modern doctrine in Islamic thought that mankind-at-large has been appointed God’s deputy on Earth (His caliph, or vicegerent), and that this involves being entrusted with a limited measure of God’s sovereignty.10

What does it mean to hold that both God and the people can be said to be “sovereign” and what unresolved paradoxes remain at the level of theory (with all due respect for the way in which such tensions are negotiated in the legislative and judicial spheres)? My aim at this stage is to put this doctrine of a “caliphate of man” into the context of modern attempts to grapple with the question of sovereignty and to identify the core ambiguities this doctrine raises both for the idea of rule by divine law (sharī‘a) and for post-revolutionary expectations of democracy within a “civil state”. I draw on a range of modern and contemporary Islamist thinkers, but pay special attention to the pre-2011 doctrines of Tunisian Islamist leader, Râshid al-Ghannâshi, particularly his attempt to

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10 The idea of mankind as God’s vicegerent is a standard theological doctrine in Islam that has been given a variety of moral and political interpretations historically. However, it was not (to my knowledge) used as a basis for justifying the Muslim community’s derivative political sovereignty over its worldly rulers. In addition to serving as an explanation for mankind’s general dominion over the earth (cf. Gen. 1:26) and inherent dignity, the vicegerency of God (khilâfat Allâh) was also treated in some Islamic ethical treatises as an aspiration, something individual humans might lay claim to at the end of their struggle for self-purification and virtue. (See, for example, al-Râghib al-Isfahânî (d. 502/1108 or 9), Kitâb al-dharî‘a ilâ makârîm al-sharî‘a, ed. Maḥmûd Bîjû (Damascus: Dar al-Iqrā’, 2001), pp. 35-7.) David L. Johnston, Earth, Empire, and Sacred Text: Muslims and Christians as Trustees of Creation (2010) contains a comprehensive overview of the uses of this doctrine in Islamic and Christian theology.
reconcile visions of divine and popular sovereignty precisely through the doctrine of a universal covenant of vicegerency (istikhlāf).

While my research is indebted to many of the rich recent debates about sovereignty in political and legal theory, my project is not an application of a particular account of how we should theorize sovereignty and where we should look for its effects. Rather, I submit that the problem of sovereignty in Islamic thought is not only unique in still preserving an active and alive theocratic impulse, but in the particular forms that this impulse does, and doesn’t, take: namely, in referring to a concrete, existing, pre-political revealed law and in not having an institution that speaks authoritatively in the name of that law. In this project, I am less interested in defining sovereignty narrowly and looking for the site where it is ultimately revealed than in exploring the Islamic dimensions of many of the concepts and relationships that have been seen as expressing the idea of sovereignty. On my reading of modern debates, the tension between divine and/or popular sovereignty emerges in modern Islamic political theory most saliently around the following problems: (1) the ultimate origins of governance, (2) the source of legitimate political authority (or constituent power), (3) the limits of legitimate political authority and the right to resistance and rebellion, (4) the right to represent and execute God’s law (sharīʿa) in political life, (5) the boundary between law as the enactment of sharīʿa and law as the sphere of temporal democratic judgment, and (6) the right to decide on the boundary between the divine law and temporal policy enactments. The last is, I believe, one of the least theorized aspects of the problem of sovereignty in Islam: how it consists not only in the authority to decide when a matter is covered by the pre-political divine law and when it falls within the sphere of legitimate human discretionary authority, but also when that very question—the problem of sharīʿa-compatibility—is suspended or transcended.

A further dimension of sovereignty that I do not get to here, but which I believe to be a very important area for comparative treatment, is (7) the right to represent and enact divine sovereignty in the use of violence against enemies and traitors (apostates), that is, the right to enforce through violence the boundary between the sphere of law and civil society and the sphere of war and enmity.  

11 In contrast with what Paul Kahn claims about dimension of the sacred in Western political culture: “We are well past the era in which theology could draw upon reason to support the sacred. Indeed, the separation of reason from revelation may be a more important ‘great separation’ than that of which Lilla writes. We will not be convinced by any logical arguments for the existence of God, whether the God of politics or that of religion. Theological inquiry today can only be a practice of phenomenology: to identify and describe the presence of the sacred, wherever it appears.” (Paul Kahn, Political Theology: Four New Chapters on Sovereignty (New York: Columbia University Press, 2011), p. 25.)
12 Briefly: the question of vigilantism (and pardon) in enforcing divine punishments is very complex in Islamic thought. Naturally, there are attempts to contain this authority by ascribing it exclusively to official public authorities who can act on it only after due legal process. (That the divine punishments require enactment by the Imām or Caliph is one of the traditional arguments for the necessity of the office.) However, I intend to argue (elsewhere) that attempts to contain this aspect of divine sovereignty frequently fail, and that these failures reveal some fascinating aspects of the understanding of sovereignty in Islamic thought. My suggestion is that Islam’s relatively egalitarian and popular understanding of religious authority extends also to the use of violence, and that a certain surplus of divine sovereignty exceeds or evades attempts to contain and monopolize it within official bodies. As with constituent authority and the right to articulate the meaning of God’s law, God’s sovereignty has devolved collectively to the body of Muslims (the umma), and often to every individual Muslim. The fact that the restrictions one finds in the juridical literature on the right to disobey, the right to rebel and the right to “command the right and forbid
Before exploring tensions inherent to late-20th century Islamic democratic theories, the tensions that I find to be amongst the most interesting sites of modern Islamic political thought and on which my book mostly focuses, I would like to provide some very brief intellectual-historical context.

The Crisis of the Caliphate and the Birth of Modern Islamic Political Theory

There are multiple plausible candidates for the beginning of modern Islamic political thought. The shift in power between the Ottoman Empire and its European rivals in the 18th and 19th centuries resulted in a preoccupation with scientific and technological modernization that might be identified as giving birth to modern Islamic thought. Ottoman efforts to modernize their army on European lines can be seen as early as the 1730s and emerge in earnest with the ascension of Sultan Selim III in 1798. By the mid-19th century a recognizable class of “reformers” familiar with European languages and sciences had emerged in Ottoman society, as well as in North African countries like Egypt and Tunisia that had established their independence from direct Ottoman authority. The ideological competition underpinning the complex history of 19th and early-20th century efforts to reform, modernize and restructure Ottoman state and educational institutions (beginning with the 1839 Gülhane Decree that inaugurated the “Tanzimat” reforms) is, for obvious reasons, one popular site for the emergence of Islamic modernity.

A number of important intellectuals are associated with this period, who wrote notable works of political and social thought that remain of crucial importance for understanding early modern Islamic political thought. In addition to the reformers associated with the Young Ottomans movement (particularly Namık Kemal (1840–1888), İbrahim Şinasi (1826–1871) and Ziya Pasha (1825–1880)), I mention in passing here Rifâ’î al-Ṭâhtâwî, Khayr al-Dîn Pasha and ‘Abd al-Rahmân al-Kawâkibî, who
deserve mention alongside the better known Jamāl al-Dīn al-Afghānī (1838/9–1897) and Muḥammad ʿAbduh (1849-1905).

In the realm of constitutional and legal thought, this period is also associated with the first efforts to draw up constitutions in traditional Muslim monarchies. These include the 1857 Tunisian “Pact of Security” (ʿAhd al-Amān) followed by the 1861 constitution, the 1876 Ottoman constitution and the 1906-1911 Iranian Constitutional Revolution. In the case of Tunisia, the document sought to bind reigning monarchs to the rule of law without any explicit mention of Islam or shariʿa, except for the creation of a “Sharʾī Council,” the powers of which were not discussed in the text itself. The 1876 Ottoman constitution (the fruit of pressure by the Young Ottoman movement and the statesman Ahmed Şefik Midhat Pasha), by contrast, is replete with enunciations of the

(Prime Minister) of the Beylik of Tunis and, briefly, Grand Vizier of the Ottoman Empire (1878-9). He wrote a work entitled Aqwām al-masāliḥ fī maʿ rīfāt aḥwāl al-mamālīk [The Surest Path in Knowing the Conditions of States] (1867), which is mostly concerned with providing an account of history, structure and strength of European states, although his introduction makes clear that his purpose was to persuade fellow Muslims of the need and permissibility of learning from non-Muslims. (Khayr al-Dīn al-Tūnisī, Aqwām al-masāliḥ fī maʿ rīfāt aḥwāl al-mamālīk (Cairo: Dār al-Kītāb al-Miṣrī, 2012). English translation of the introduction to this text: Khayr al-Dīn Tunisī, The Surest Path: The Political Treatise of a Nineteenth-Century Muslim Statesman, trans. Leon Carl Brown, Harvard Middle Eastern monographs, 16 (Cambridge, MA: Center for Middle Eastern Studies of Harvard University, 1967.)

17 Kawākībī (1855–1902), a Kurd from Aleppo, was a bureaucrat and journalist who eventually moved to Cairo and studied and wrote in the circle of Muḥammad ‘Abduh and Rashīd Riḍā. He is known for his books Tābāʾ aţ-ʿal-istibdād wa mušārīʾ al-istībād [The Natures of Despotism and the Destruction of Enslavement] (Beirut: Dār al-Nafāʾ is, 2006) and Umm al-Qurā [The Mother of Villages] (Damascus: Dār al-ʿAwwāl, 2002), an account of the first Conference of the Islamic Renaissance (Nahḍa).


19 This document was in effect imposed on the Tunisian ruler, Muḥammad Bey, by European powers after the execution of a Tunisian Jew for blasphemy. An English translation of this text can be found in Ahmad ibn Abī Diyāf, Consult Them in the Matter: A Nineteenth-Century Islamic Argument for Constitutional Government, trans. L. Carl Brown (Fayetteville: The University of Arkansas Press, 2005). This is the translation of the introduction to a multivolume history of Tunisia by an important 19th-century Tunisian bureaucrat and court advisor, styled after Ibn Khaldaḥ’s Kitāb al-ʿibār, the introduction being a theoretical statement on the purposes of government and the justification for constitutional constraints on the Tunisian monarch. (See Ahmad Ibn Abī al-Diyāf, Ḥaṭḥ aḥt al-zamān bi-akhbār mulūk Tūnis waʾahr al-amān (Tūnis: al-Dār al-Tūnisiyyya, 1976), vol. 1.)

20 Notable sections of this document include: Art. 9: “Each king, on his assumption of power, must take an oath in God’s name, not to violate any of the principles of the pact of security” or any of the laws following from it. He must deliver this oath in the presence of the ‘people who loose and bind’ [ahl al-ḥall wa l-ʿaqd], who are the members of the Supreme Council and the members of the Sharʾī Council. Only after the oath does he receive the bayt a and if he violates the law intentionally after his assumption of power [wilāyā] then the contract of loyalty to him [ʿaqd bayt ʿithr] is withdrawn.” Art. 11: “The king is responsible for his actions to the Supreme Council, should he violate the law.” Art. 12: “The king must conduct all of his political acts and policies through his ministers.” Art. 15: “The king has the right to pardon whom he wishes, if the offense does not pertain to the rights of another.” Art. 60: “The Supreme Council is the guardian of the pacts and laws and is the defender of the rights of all inhabitants. It opposes/prevents the adoption of acts that oppose the principles of the laws or that would result in any inequality of persons before the government.” Art. 62: “The Supreme Council may propose acts that appear to be in the interest [maslahā] of the state and the kingdom and propose them to the king. If it is adopted by the king in his Council of Ministers, it becomes law.” (1861 Tunisian Constitution, on file.)
Islamic character of authority in this regime. However, it was not until the Iranian experience of 1906-1911 that we find the first serious constitutional debates about Islam and constitutionalism and the first explicit notion of “shari’a-based constitutionalism” [mashruṭa mashruʿa].

Apart from (largely unsuccessful) efforts to constitutionalize state authority during this period, it is important to note the much more successful and impactful process of both codifying Islamic legal norms (traditionally applied as uncodified jurists’ law) as well as importing foreign legal codes. The best-known case of Islamic legal codification is that of the Ottoman Mecelle (Digest), a codification of Islamic civil law, promulgated in 1868 and completed in 1876. At roughly the same time, the Ottoman state adopted new legal codes in the areas of commerce (1850), criminal law (1858), commercial procedure (1861), maritime commerce (1863) and criminal procedure (1879). While some of these codes incorporated rules from Islamic law, they were largely translations of the respective codes of a number of European countries, mostly France, but also Belgium and Prussia. This dual process of transplanting foreign legal codes and codifying Islamic law is one of the primary hallmarks of the accelerated, compressed process of state modernization in the Middle East.

It would not be wrong to begin a study of modern Islamic political thought and the problem of sovereignty with these sources. A chapter of my book project focuses on 19th century Islamic constitutional theory and argues that the primary themes visible in 19th-century Islamic constitutional thought, on my reading, are a primarily “descending” conception of sovereign constituent power with a strong emphasis on the pre-political existence of a divine law that is both binding and guiding, but not necessarily the exclusive source of lawmaking. So-called “descending” tropes of political authority are in evidence in two primary forms: first, specific offices (most notably the Caliphate) are seen as ordained by God and obligatory on the Muslim community, which does not create them; second, power is frequently spoken of as being bestowed on rulers directly, without any mediation or authorization by the people. Where the ruler is said to derive his authority from human appointment, authorization or acclamation, this is usually done by the “people who lose and bind” (scholars or other social notables) on their own authority (whether grounded epistemically or in social recognition) without election by the people they are meant to represent. Finally, while the authority of God’s law is uniformly asserted, the texts in question—from constitutions to scholarly treatises—do not tend to

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21 See, for example, Art. 3: “The Ottoman sovereignty, which includes in the person of the Sovereign the Supreme Caliphate of Islam, belongs to the eldest Prince of the House of Osman.” Art. 4: “His Majesty the Sultan, under the title of ‘Supreme Caliph,’ is the protector of the Muslim religion. He is the sovereign and padishah (emperor) of all the Ottomans.” Art. 5: “His Majesty the Sultan is irresponsible; his person is sacred.” Art. 7: “Among the sovereign rights of His Majesty the Sultan are the following prerogatives: - … his name is pronounced in the mosques during public prayer; he concludes treaties with the powers; he declares war and makes peace; … he carries out the provisions of the Shari’a, and of the other laws; he sees to the administration of public measures; he respites or commutes sentences pronounced by the criminal courts…” (English translation: http://www.anayasa.gen.tr/1876constitution.htm) This constitution was suspended by the Sultan in 1878 and restored during the 1908 Young Turk revolution.

22 It is in this document that we get the first instance of a “Shari’a Guarantee Clause” in Art. 2: “At no time must any legal enactments of the National Consultative Assembly … be at variance with the sacred principles of Islam.” A committee of no fewer than five religious jurists (mujtahids) was given the power to “reject, repudiate, wholly or in part, any proposal that is at variance with the sacred laws of Islam” while parliamentary legislation was restricted to secular, or ʿurfi (conventional, customary), matters.
be preoccupied with the concept of “sovereignty” and its precise location. As 19th-century constitutionalist movements were largely elite driven affairs that pursued limited, legally-constrained governance as a path to political and economic modernization, they did not yet face opposition from mass movements using the language of Islam as a mobilizing ideology. Rather, their opposition came from entrenched elites (including traditional Islamic religious authorities) who had not yet formulated a coherent counter-revolutionary language.

For present purposes, I propose beginning slightly later, specifically with the intellectual reaction to two important events, one political and one intellectual. The political event is the abolition of the caliphate by the Turkish National Assembly on March 3, 1924 (although the Sultanate had been abolished and the last Sultan, Mehmet VI, had departed, in November 1922). The intellectual event is the publication of al-Azhar-trained scholar ‘Ali ‘Abd al-Rāziq’s al-Islām wa ʿusūl al-ḥukm: Bāḥth fī ʿl-khilāfa wa ʿl-ḥukuma fī ʿl-Islām (Islam and the Foundations of Governance: A Study of the Caliphate and Government in Islam), which claimed that the Prophet Muḥammad had only sent as a religious messenger to the world and did not reveal a political doctrine, and thus called for a strict removal of religious claims from political life.23

It is, thus, in the 1920s that we begin to see the first emergence of works forced to defend Islam’s claim to priority over the political sphere and to begin to elaborate the balance between divine and popular sovereignty. Of particular interest here are Rashīd Riḍā’s al-Khilāfa,24 the critiques of ‘Abd al-Rāziq’s treatise by al-Ahzar scholars Muḥammad al-Khiḍr Huṣayn25 and Muḥammad Bakhīṭ al-Muṭṭī,26 and the treatise by the great Egyptian jurist ‘Abd al-Razzāq al-Sanhūrī on the jurisprudence of the caliphate.27 At present I can only make a few points about this early discourse on the concept of the caliphate from the 1920s and will limit myself to what will underline the significance of the ideas and doctrines that emerged later in the 20th century.28

These texts are primarily engaged with the task of refuting ‘Abd al-Rāziq and, thus, proving the basic point that the Islamic religious message is necessarily a political one. More specifically, they are concerned to defend the obligatoriness of the specific

24 While published already in 1922, the impending abolition of the caliphate is the specter handing over this text and the “Caliphate Conference” that occasioned it.
25 Naqūd Kitāb al-Islām wa ʿusūl al-ḥukm [A Critique of the Book Islam and the Foundations of Governance], edited and reprinted in Muḥammad ʿImāra, Maʿrakat al-Islām wa ʿusūl al-ḥukm (Cairo: Dār al-Shurūq, 1989). This volume contains a number of primary source texts related to the controversy surrounding the publication of ‘Aḥmad al-Rāziq’s manifesto, including an extract from al-Islām wa ʿusūl al-ḥukm and other articles by ‘Aḥmad al-Rāziq defending his views, proceedings from the hearing held by the Committee of Senior Scholars (Hayʾa kibār al-ʿilmāʾ) and their verdict condemning the book and stripping him of his title of “Islamic scholar.”
28 Ultimately, there will be a chapter on this material in my book.
institution of the caliphate, according to the traditional understanding of it as an office occupied by a single person. Thus, while these texts do give evidence of certain popular elements in their theory of Islamic governance, they are not particularly complex sources for studying either the rich tensions and ambiguities that emerge once Islamic thinkers try harder to mix theocratic and popular themes or the popular-political appropriation of the Qurʾānic verses on the human vicegerency of God.

Where thinkers like Riḍā affirm the popular elements of the Islamic political doctrine, this tends to take the form of dogmatic introductory statements, rather than investigations. A representative such statement comes at the beginning of Riḍā’s al-Khilāfa:

As far as civil and social governance is concerned, Islam laid down its foundation and principles, and prescribed for the umma that it employ judgment and discretion in this area, because it changes along with time and place and it advances along with civilization and knowledge. Among its basic principles is that authority over and command of the umma belongs to it itself [ṣuṭāt al-umma laha] and that its affairs are a matter of consultation within it. Its government is a type of republic within which the successor of the Prophet [khalīfah al-rasūl] is not superior under its rules to the weakest individuals from amongst the governed, but is only the executor of the revealed law and the opinion of the umma, preserving religion and worldly interests, joining ethical virtues and material benefits, and thus leading to the universalization of human brotherhood by unifying the basic moral principles of nations.29

Later, he stresses that in certain extreme cases, the umma is authorized to remove the caliph, for “the umma, or the representative of the umma, is the one that installs him. So the umma is the right-holder [ṣāhibat al-haq] in controlling him and the one who creates him when it sees its own benefit in that, and so he is a civil ruler in all aspects.”30

While the primary emphasis is on the umma’s constituent authority, he does consider its potential legislative powers. In a discussion about the distinction between the pre-political, revealed divine law (sharīʿa) and the kind of policy-oriented legislating permitted in the political realm (which he refers to as ishtirāʿ, from the same root as sharīʿa), Riḍā goes on to say that “authority in truth belongs to the umma, and if it were possible to ask them collectively about a matter and they all agreed about it, then there would be no alternative to it. The Caliph, never mind any lesser ruler, would not have any right to veto their consensus, to oppose it or even to oppose their deputies and representatives appointed as the ‘people who loose and bind’. ”31

However, this text is by and large preoccupied with stressing the status of the unitary (if not fully sovereign) executive authority—the caliph, or Imam—and with restoring its legal foundation after centuries of usurpation. In fact, the one place where Riḍā refers to the notion of “popular sovereignty” he does so in order to distinguish the condition of Muslim peoples from that of Europeans. He objects to the Turkish path underway at this time under Mustafa Kemal, claiming that when the Turks decided to modernize and get rid of tyranny, they assumed that the only way to achieve this was by imitating the Europeans in separating religion from the state and establishing “ḥākimiyat

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29 Riḍā, al-Khilāfa, p. 9.
30 Ibid., p. 141.
31 Ibid., p. 104.
“al-milla”—the sovereignty of the nation. His entire book is an effort to preempt this conclusion by proving that since the correct interpretation of the Islamic caliphate is as an anti-despotic, legally instituted, civil office ultimately dependent on and accountable to the authority of the Muslim umma, Muslims do not need to secularize their political life in order to achieve justice, equality and accountability.

And, yet, that the emphasis at this stage is primarily on the traditional understanding of the caliphate is noteworthy, if only to appreciate later developments. Riḍā devotes his core chapters to proving the necessity of the caliphate and then recapitulating the classical juridical rules for electing, controlling and removing the Caliph. While Riḍā stresses (what, as a Sunnī Muslim he must) that the caliph derives his authority from the umma and is its agent, he is less interested in deriving from this the need for broad popular participation in politics than the authority of the umma’s traditional representatives, the “people who loose and bind” (ahl al-ḥall wa’l-‘aqd). It is they—particularly classically trained religious scholars—whom Riḍā imagines restoring the rule of law and virtue in a renewed Islamic caliphate. Where he mentions the authority of the umma in the Islamic polity, it is as much to ground its obligation to choose a ruler, bind one another to him and the community, and commit themselves to religious virtue.

More interesting still, while Riḍā never fails to stress that the caliph is the mere executive of a law given to him and thus the agent of the people charged with enacting this law, he is insistent that the figure of the caliph is necessary for the unity of the umma as a political body. In discussing the classical juridical question of whether there may be two caliphs at a single time, he sides with the traditional uncompromising view “if two caliphs are given the bayʿa then kill the second one,” since the whole purpose of the office of the caliphate is to “unify the word of the people of Islam and ward off division and sedition [fitna].” The umma exists without a caliph, but is in a state of sin, or pagan ignorance, when he is not instituted. Such statements might be read as implying that wherever sovereignty is ultimately located (God, the law, the scholars, the caliph, the umma), the unity of this sovereignty is necessarily represented in the singularity of the office of the caliph.

And yet, Riḍā’s views on constituent power (if that is what at stake here) are complex and unclear. For obvious reasons, Riḍā cannot ascribe to a Hobbesian view whereby the people only come to be a body politic that can be represented when the sovereign is formed. The umma—not just as a body of the faithful but as a political community—always predates the formation of a particular pact of governance. There is no paradox of founding that threatens the Islamic social contract because it is not essentially democratic. Riḍā says as much shortly after his statement about the necessity of the caliphate: if the caliphate is the effective cause of the umma’s actual political unity,

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32 Ibid., p. 153.
33 On the classical juridical theory of the caliphate see, for example, my “Constitutional Authority,” Ashgate Research Companion to Islamic Law, Ruud Peters and Peri Bearman, eds. (2014), pp. 179-192. Riḍā here draws directly on classical jurists like Māwardī (d. 1058) and Taftāzānī (d. 1390) to discuss such issues as the meaning of the caliphate, the knowledge of its necessity, the reasons for its necessity, the method of electing the caliph, the legal qualifications for the caliph, the rights and obligations of the caliph, and the rights and obligations of the umma, leading to the conditions for deposing a siting caliph.
34 Riḍā, al-Khilāfa, p. 56.
35 Ibid., p. 66.
the prior religious, creedal and moral unity of the umma is the material, formal and final cause of the unity of the caliphate. 36

At the same time he calls for the restoration of the mediating, representative body—the people who loose and bind—as those who can bring about the reconstitution of the umma and its unity through legalizing the election of the caliph. 37 In fact, the right of the “people who loose and bind” to represent the umma in restoring the rule of the shari’a and the legal office of the caliph precedes any actual, political designation of them by the umma. They—whoever they are in practice—simply have this right and obligation. In Riḍā’s words: “So we ask here: do any people who loose and bind exist today in Islamic lands who can resurrect this matter? And if there is not, then who has this power and influence in actuality, or does there not exist anyone with this power? Then is it not possible for Muslims to create a system to make coercive power into actual authority?” 38 Might must transform itself into right through the subsequent legality of its actions, but right also must reveal itself through the initiative taken to represent the umma in restoring the caliphate.

Thus, while there is no deep paradox of democratic founding in operation here, there is a paradox of legal self-constitution. Riḍā is against force and usurpation with regard to the caliphate, but who can lawfully constitute the electoral body that appoints the caliph, particularly amongst Sunnis? 39 They must appoint themselves in an act of will that cannot itself be fully legal. We will see that this question is answered by later more “democratic” Islamists, for whom the umma is always already sovereign, by their insistence that the people who loose and bind must derive their authority from direct appointment by the umma. (Although, of course, this merely pushes the question back to the identification of the participants in the umma.)

Moreover, when it comes to discussing the reform and adaptation of Islamic law for modern conditions, he is adamant that this is to be performed largely through a process of extrapolation or policy-making [istinbāṭ; ishtirā’] that has always been permitted to the leaders of the Muslims. He clearly regards the kind of discretionary, political semi-sovereignty as restricted to the “holders of power” (ūlū al-amr), not the umma-at-large, even if the umma is somehow ultimately the source of authority (sulṭa). His view that Islamic law is inherently flexible in its rules for social life (muʿāmalāt) is partially an argument that Muslims have no need to borrow or import foreign laws, because Islamic legal principles already allow for changing certain areas of the law, and yet without losing any of the benefits or virtues of “shari’a”. His way of guaranteeing

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36 Ibid., p. 60.
37 Ibid., p. 65.
38 Ibid., p. 69. See also “The cure to the illness [of disagreement about the caliphate and the most legitimate form of government], and the illnesses connected with this epidemic, is the revival of the position of the Imamate, through the return of the authority of the people who lose and bind speaking for the umma by a majority voice, which is the ideal government for reforming the situation of the Muslims, indeed all of humanity, by combining justice and equality” (p. 77).
39 This question has re-emerged in recent times, of course, in the controversy around the declaration of the Caliphate around the figure of Abū Bakr al-Baghdaḍī. It is a central topic in the public statement by a “Salafi-Jihadi” thinker, but opponent of the declaration of the Baghdāḍī CaliphateL Dr. Iyāḍ Qunaybī, “Taṣḥīḥ maḥāfīm ‘an al-khilāfā” [Correction of the Concepts about the Caliphate] <http://twitmail.com/email/532700952/381/%D8%AA%D8%B5%D8%AD%D9%8A%D8%AD-%D9%85%D9%81%D8%A7%D9%87%D9%8A%D9%85-%D8%B9%D9%86-%D8%A7%D9%84%D8%AE%D9%84%D8%A7%D9%81%D8%A9>. 
this trick is that reform of the law through methods of extrapolation or policy-making
[istīnbaṭ; ishtīrā'] is to be performed by the acceptable people, the “people of
consultation” (ahl al-shūrā) or the people who loose and bind.

This is also an example of what I argued in my introduction is an important aspect
of what it means to speak about sovereignty in Islam: it is not just about deciding when
this or that shari‘a rule is to be suspended in the name of necessity, but deciding when
the question of shari‘a-compatibility is suspended or what that question means. Riḍā here
still represents the largely elitist conception of Islamic governance whereby certain
people (Imam/Caliph and his coterie) can make these kinds of decisions on both
epistocratic and aristocratic (in the original sense) grounds.

Two final points about Riḍā. First, while the elements of thinking in terms of
either divine or popular sovereignty are there, he is strikingly uninterested in speaking in
these terms. “Sovereignty” (whether ḥākimiyya or siyāda) as a concept to be defined and
assigned does not figure as an independent theme. He does write that “Islam does not
permit humans to legislate,”40 but this is because he adopts a very specific usage of the
term “to legislate” (tashrīh) that is restricted to God (al-sharī‘a; the Lawgiver) and that
does not exclude human practices of legislation that go by a different name (ishtīrā‘, siyāsa), and because he asserts that “sharī‘a is derived from the Qur‘ān, in which civil
and political rulings are few and limited, and the sunna, the little of which found there
being appropriate for the state of the Muslims at the beginning of Islam and not the rest
of time, especially ours today.”41 At this point in the modern Islamic awakening, the
ideological complex around the commitment to a particular notion of sovereignty had not
yet taken center stage.

Second, while Riḍā does draw on some of the Qur‘ānic verses that refer to a
general or universal vicegerency of God, this theme is not yet connected to the umma’s
possession of authority over the political institutions that govern it. Riḍā in fact opens his
book by quoting two of the primary Qur‘ānic verses that refer to God deputizing mankind
as His vicegerent: Q. 24:5542 and 6:16543. The opening lines of the book follow these
epigraphs:

The Book of Truth and human history both direct us to consider the succession [khilāfa]
of peoples, one after the other, in sovereignty and rulership [siyāda wa ḥukm] on the
earth, and the succession [khilāfa] of individuals and families within peoples, and what
they demonstrate in terms of ordained right [haqq mashrū‘] or usurped traditions. And
they have guided us to what belongs to God Most-High in this by way of governance and

40 Ibid., p. 102.
41 Ibid. Emphasis added.
42 “God has promised those of you who have attained to faith and do righteous deeds that, of a certainty, He
will [surely] cause them to accede to power on earth [layastakhlfannahum fi ‘l-ard], even as He caused
[some of] those who lived before them to accede to it; and that, of a certainty, He will firmly establish for
them the religion which He has been pleased to bestow on them; and that, of a certainty, He will cause their
erstwhile state of fear to be replaced by a sense of security [seeing that] they worship Me [alone], not
ascribing divine powers to aught beside Me. But all who, after [having understood] this, choose to deny the
truth - it is they, they who are truly iniquitous!” (Muhammad Asad trans.)
43 “For, He it is who has made you inherit the earth [ja ‘alakum khalā‘ if al-ard'], and has raised some of you
by degrees above others, so that He might try you by means of what He has bestowed upon you. Verily, thy
Sustainer is swift in retribution: yet, behold, He is indeed much-forgiving, a dispenser of grace.”
(Muhammad Asad trans.)
social laws, as well as revealed rules and laws \([al-ahkām wa’sunan al-sharʿiyya]\), to the contract of general rulership given to certain apostles, and to the promise to deputize and donate the earth to those righteous servants \([istikhtilāf wa irth al-ard li-’ibād al-sāliḥīn]\). Amongst these social rules is the setting of some peoples against others in a test to reveal which of them is most upright and closest to justice and truth.\(^{44}\)

It appears that Riḍā wants to draw two conclusions from the Qur’ānic verses on the human vicegerency of God: that it is ordained that some peoples (often constituted by their following of certain apostles of God) are called upon to take up the obligation of governance and power in God’s name, and that the deputized people in question are those who have distinguished themselves as righteous and pious, rather than all mankind.

**Political Islam and the Claim of Divine Sovereignty: Mawdūdī, Quṭb**

Riḍā stood at the boundary between the fall of the old world represented by the model of the Ottoman caliphate and the birth of mass politics in the Muslim world, including the Islamist movement. (Riḍā died in 1935, seven years after the founding of the Muslim Brotherhood in 1928.) As is well-known, the central rallying cry of the Sunni Islamist movement during the middle of the 20\(^{th}\) century was the proclamation of God’s exclusive sovereignty \((hākimīyya)\) over the world and human legislation. As formulated most popularly by the Pakistani Abū’l Aʿlā al-Mawdūdī (1903-1979) and the Egyptian Sayyid Quṭb (1906-1966), what we might call “high utopian Islamism” was skeptical of (if not outright contemptuous toward) any form of comparison with modern Western ideals of governance.

More germanely, writings of the main Islamist thinkers of this period are characterized by a much more explicit concern with discussing the concept of sovereignty in Islam. What I am concerned to note here, first, is the establishment of something called “divine sovereignty” (which I suggested was merely tacit in the thought of Riḍā) as the arch-standard of legitimacy for all political, legislative and more action. The statements of Sayyid Quṭb on the rigorous demands of a commitment to divine sovereignty remain among the most influential:

> If we look at the sources and foundations of modern modes of living, it becomes clear that the whole world is steeped in jāhilīyya [pagan ignorance] … based on rebellion against the sovereignty of God on earth. It attempts to transfer to man one of the greatest attributes of God, namely sovereignty, by making some men lords over others … in the more subtle form of claiming that the right to create values, to legislate rules of collective behavior, and to choose a way of life rests with men, without regard to what God has prescribed.\(^{45}\)

In short, the common Abrahamic belief in God’s cosmic, creative sovereignty—what we might call divine sovereignty as fact—leads to an uncompromising insistence on God’s exclusive legislative and moral sovereignty, or divine sovereignty as norm. This is seen clearly in Mawdūdī’s important work of political theory in Islam, *Caliphate and*

\(^{44}\) Ibid., p. 7.

This book opens by calling for studying the Islamic conception of the universe through the eye of political philosophy, which leads to an awareness of God’s creative and governing sovereignty over all that exists in the universe. This statement of God’s effective sovereignty over everything that occurs in the world leads in quick succession to affirmations of “divine sovereignty” (al-hākimiyya al-ilahiyya) over humans. This sovereignty is now defined less as a fact about why things occur in the way they do than as a right that God possess, on one that He exercises not through compulsion but through speech and address. Ultimately, the full expression of this right is “God’s legal sovereignty” (ḥākimīyat Allāh al-qānūniyya), which Mawdūdī explains in the following way:

The Qurʾān establishes that obedience must be rendered to God alone and that only His law [qānūn] must be followed. It is forbidden for man to neglect or abandon this law and follow the laws of others, or his own law [shirʿa] or whims. (Citing 10 Qurʾānic verses in support.) … Similarly, the Qurʾān says that every rule or judgment [ḥukm] that opposes the law of God is not only a mistake or a sin, but is unbelief, error, injustice and depravity. Any such law is the law of pagan ignorance [jāhilīyya].

God’s creative, causal, moral and legal sovereignty obviously lead to a principle of political legitimacy based on this sovereignty: “The correct form for human governance in the view of the Qurʾān is that the state believes in the legal sovereignty of God and the Prophet and renounces its own sovereignty in favor of them. It must also believe that the caliphate is the deputy [nāʾib] of the true Ruler and that its powers must be limited in accordance with what was stated earlier, whether those powers be legislative, judicial or executive.”

Many more such categorical statements could be introduced. (Ok, one more: “A system of government that turns its face from God and becomes a free system governing itself by itself is not a caliphate but an insurrection against and a usurpation of the true authority.”) But at present I am not concerned with fully elaborating or exploring the contours of the concept of divine sovereignty in writers like Quṭb and Mawdūdī. My purpose here is just to mark the fact that an explicit, self-conscious commitment to divine sovereignty as a normative standard of legitimacy hovers over all Islamist political theory after the authoritative formulations of thinkers like Mawdūdī and Quṭb. But I also want to introduce one further move found in Mawdūdī’s theorization of sovereignty.

That move is the explicit reference to the status of mankind-at-large as God’s vicegerents (caliphs) as a core element in the Islamic vision of political sovereignty. As noted above, this doctrine is raised by Riḍā, only to be shunted aside in the rest of his book, where it plays no role in his later elaborations of the political authority of the

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46 Originally written in Urdu in 1966, it is translated into Arabic as Abū’l Aʾlā al-Mawdūdī, al-Khilāf wa’l-mulk (Kuwait: Dār al-Qalam, 1978).
49 For some reason, Mawdūdī does not use the expression one would expect for “legislative”: tashrīʿiyya.
50 Ibid., pp. 16-7.
51 Ibid., p. 19.
52 Ibid., p. 20.
53 Again, this will be a chapter in the book ultimately.
people. In Mawdūdī’s work, this theological claim takes on much greater importance, and a key aspect of the dialectic between divine and popular sovereignty enters the intellectual bloodstream of modern Islamic political thought.54

Mawdūdī begins by introducing a common “stewardship” claim about mankind’s inheritance of authority from God: “everything mankind has on the earth by way of powers and capacities are nothing other than gifts from God. God has put man in a position to make use of them in accordance with his wishes. In this, mankind is not the ruling authority [al-sultān al-mālīk]55 himself but is the deputy [caliph] of the original sovereign [mālik].”56 This sounds like a mere recapitulation of the doctrine of divine sovereignty as norm. But Mawdūdī uses it to introduce the notion of a “collective caliphate” (al-khilāfa al-jamāʿiyya). Without rejecting the notion that there may an office of the caliphate occupied by a single man, Mawdūdī stresses that the true, immediate vicegerency of God is inherited by the entire community, with all its members, that believe in the previously mentioned principles and base its state on it them. Every individual is a participant in this caliphate and no one can usurp it. This is why the Islamic caliphate for Mawdūdī is not a monarchy, an aristocracy, or even a theocracy (kahnātiyya—rule of priests). He regards it most like democracy, with the difference that in Western democracy the principle is full popular sovereignty, whereas in the Islamic democratic caliphate the people freely submits to the sovereignty of God and limits its own power according to God’s law.57 Thus, he declares the Islamic state to be a kind of contract (ahd) with a free people that enjoys the status of “God’s caliph” as the principal. God preserves sovereignty-as-hākimīyya but no class of priests can usurp the effective sovereignty of the entirety of believers (“those who have entered into a covenant with God consciously, emanating from their own will, to submit to God’s rule”). Thus, unlike in Riḍā, where scholars acting as “those who loose and bind” can appoint themselves the representatives of the umma, for Mawdūdī all powers of loosing and binding are in the umma’s hands collectively.58

Islamic Democracy: Universal Caliphate?

Divine sovereignty is obviously the background frame of reference against which all contemporary Islamist political thinkers operate. Calling into question God’s cosmic

54 At this point in my research I am not entirely sure when this move emerges and becomes common, if I am indeed right that it is not present (in the later formulation) in the generation of scholars like Riḍā writing in the 1920s in response to ‘Abd al-Rāziq and the abolition of the Ottoman Caliphate. I have found the claim that mankind’s vicegerency of God implies mankind’s universal inheritance of political authority from God in the works of such temporal contemporaries of Mawdūdī as the mid-century Islamic scholar and Moroccan independence leader, ‘Allāl al-Fāṣī (Mağāṣid al-sharīʿa wa makarimuha (al-Rabāṭ: Maṭba‘at al-Risāla, 1979 [1963], 2nd), pp. 41-2; and Dīfāʾ an al-sharīʿa (al-Rabāṭ: Fāṭih Uktūbar, 1966), p. 124). (See my “Naturalizing Sharīʿa: Foundationalist Ambiguities in Modern Islamic Apologetics,” Islamic Law and Society, 22:1-2 (February 2015, forthcoming.) However, both Mawdūdī and Fāṣī take the claim for granted and do not refer to any authority other than the Qurʾān, certainly not any 20th century contemporary.

55 Here “mālik” can expressed a sense of ownership as well as a sense of ruling or command. The idea is that God is the only one with original possession of authority.

56 Mawdūdī, al-Khilāfa wa ‘l-mulk, p. 20.

57 Ibid., p. 21.

58 Ibid., p. 34. I am unaware of any English translation of al-Khilāfa wa ‘l-mulk, but t
and legislative sovereignty is, of course, unthinkable. And yet, since the 1970s, many thinkers in the orbit of the Muslim Brotherhood and ideologically similar organizations have refined Islamist thought on the relationship between divine and human authority. This trend is my main concern for the rest of this paper.

Much of this thought is quite formulaic and repetitious. While virtually all of the thinkers in question stress the non-identity of Islamic governance and modern Western democracy, there is an eagerness to emphasize the full presence in Islamic constitutional theory of whatever might be regarded as positive in secular democratic theory. The most common points of doctrine can be quickly summarized. From the time of the Prophet the relationship between rulers and ruled was based on a charismatic self-assertion. Rulers are agents (wukalā’, sing: wakil) of the people (umma), entrusted with very specific tasks. As such, the source of their authority is always the umma, although this can be bestowed in a number of ways, following the exemplary precedence of the early Muslims: election on a large scale, election by a small council of electors (people who loose and bind) or nomination by a sitting caliph. Rulers are owed obedience, but only to the extent that they fulfill the terms of their appointment, and can be removed. The terms of their contract are reducible to roughly three points: (1) apply the sharī’a (which, of course, is articulated by the scholars, not the ruler himself), (2) make all discretionary public policies only with the welfare (maṣlaḥa) of the umma in mind, and (3) to strictly observe the obligation to consult (shūrā) the umma, particularly its elite representatives.

The Islamic state thus unites “religion” and “politics,” in that its basic purpose is to enforce the sharī’a and safeguard the next-worldly interests of Muslims, but it is thoroughly a civil entity. The ruler is just an ordinary Muslim, despite any praiseworthy religious knowledge he may possess, and there is no sacral or infallible character to the institutions of state, other than what already resides in the body of the umma. The people is the source of political authority (and thus said to posses “siyāda,” more commonly than “ṭākīmiyya”) but the Islamic state is based on the rule of law. All of this—the contractual foundation, the accountability of the ruler up to and including his removability, and the rule of a pre-political law—points to an appropriation of the positive claims of modern constitutionalism (if not democracy). But, of course, the law applied is the divine law. Thus, the Islamic order has all of the accountability, predictability and representativeness of democracy, but applies a superior law for our this-worldly interests, and attempts to assist in the securing of our next-worldly ones as well.

59 Egyptian thinkers influential within this intellectual trend over the past decades include Ahmad Kamāl Abū al-Majd (Naṣūrī ḥawla al-fiqh al-dustūrī fī l-İslām; Ruya’ al-İslāmiyya mu ʾāṣīra), Yusuf al-Qaradawī (Fiqh al-dawla fī l-İslām), Muḥammad Imāra (al-İslām wa l-siyāsah; al-İslām wa falsafat al-ḥukm), Faḥmī Huwaydī (al-İslām wa l-îmmārīyya), Muḥammad Salīm al- ʿAwā (Fī l-nizām al-siyāsī li l-dawla al-İslāmiyya), Faṭḥī ʿUthmān (Mīn ʾussūl al-ī ḻīr al-siyāsī l-İslāmī) and Ṭāriq al-Bishrī (al-Wādʾ al-qaʾīmiyya al-muʿāṣir bayna al-sharīʿa al-İslāmiyya wa l-ʾāṣīrī n al-wādʾī).

60 All of these points are fairly uncontroversial within Islamist discourses and do not represent any particular reformist move in a democratic direction. All of these were affirmed, for example, in the writings of the founder of the Muslim Brotherhood, Ḥasan al-Bannā. See his “Nizām al-ḥukm” (“The System of Governance”) in Ḥasan al-Bannā, Majmūʿ rasāʿ il al-Imām al-shahīd Ḥasan al-Bannā (Cairo: al-Maktaba al-Tawfiqiyya, n.d.), pp. 245-261.
So much, so familiar. Does the dialectic of divine and popular sovereignty get any more interesting than this, even at the level of theory? In some writers it does. I think that there are two important factors pushing some contemporary Islamist thinkers into a deeper and more complex engagement with questions of sovereignty and political agency. The first is a certain moral and political sensibility. We might call it “reformist” or “moderate” or “democratic,” or whatever. Wherever it comes from, the notion that Islamic political thought must be responsive to the aspirations, values, tastes and sensibilities of a wider range of Muslims than just a pious and committed vanguard is obviously one that is going to occur to a movement that views itself as pragmatic, mainstream and “centrist” (wasaṭī). The second factor is the crucial historical and sociological fact, taken for granted in almost all of this literature, of the modern, centralized, hierarchical state. I have not encountered a text that calls for an undoing of the process (whether inaugurated by European colonial powers or local reformers and modernizers) of centralizing the state and codifying the positive law. While these writers often draw from the siyāsah shari‘īya tradition, and refer to their own works as contributions to it, the classical dualism of the pre-modern Islamic polity, arguably preserved in Saudi Arabia, does not figure as an ideal. The preoccupation, rather, is with the religious legitimacy of the law applied as such. On my reading, the combination of these two factors can result in some creative and intricate thinking on questions of sovereignty, law and legitimacy.

In this final section, I single out Tunisian Islamist leader Rāshid al-Ghannūshī as a theorist of a complex vision that seeks to reconcile both divine and popular ideals of

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61 In addition to the above-cited writers whom I associate with the Islamic movement (broadly speaking), there are many who have written on the “caliphate” and the principles of government (usūl al-ḥukm) in recent decades. All of these texts have their own idiosyncrasies and preoccupations, but the script outlined in the preceding two paragraphs is quite consistent. Works I have consulted that fit this pattern include: ʿAbd al-Karīm al-Khaṭṭīb, al-Khilāfā wa l-imāmā: diyānātān ... wa-siyāsātān: dirāsā muqārāna li l-ḥukm wa l-ḥukmā (Cairo: Dār al-Fikr al-ʿArabī, [1963]), Muḥammad Diyar al-Dīn al-Rayyis, Naẓāriyyāt al-siyāsiyya al-ʿIslāmiyya (Cairo: Dār al-Turāth, 1979 [1966]), Ṣālah al-Dīn Dabbūs, al-Khalīfa: tawḥīyatuḥu wa ʿazlīh, ishām fī l-naẓariyya al-dustūrīyya al-ʿIslāmiyya; dirāsā muqārāna bi l-muẓūm al-gharbīyya (Alexandria: Muʿassasat al-Thaqāfa al-Ǧāmīʿiya, [1972]), Ṣuḥbī ʿAbduḥ Saʿīd, al-Ḥākim wa usūl al-ḥukm fī l-niẓām al-ʿIslāmī (al-siyāsī wa l-ʾiqtiṣādī wa l-ʾiṭīmāhī wa l-fikrī) (Cairo: Dār al-Fikr al-ʿArabī, 1985), ʿAbd al-Ḥādī Bū Ṭalīb, al-Ḥukm wa l-sulṭa wa l-dawla fī l-ʿIslam (1988), Sādiq Shāyīf Nuʿmān, al-Khilāfā al-ʿIslāmiyya wa qādiyyat al-ḥukm bi-mā anzala Allāh (Cairo: Dār al-Salām, 2004), and Muḥammad Yūsūf Ibrāhīm, al-Mushārakāt al-siyāsiyya al-muʿāṣira fī ḍawʾ al-siyāsā al-ṣhirīya (Cairo: Dar al-Yusr, 2011).

62 The central argument of Wael Hallaq in The Impossible State (New York: Columbia University Press, 2012) is that the modern state is essentially, by definition and without the slightest qualification, incompatible with the only possible meaning of sharīʿa (God’s sovereign law as interpreted by the jurists) and thus modern Muslims cannot have both. Most seem to disagree. (I have critiqued Hallaq’s claims in “What Can the Islamic Past Teach Us About Secular Modernity?” Political Theory (forthcoming, 2015).) Briefly: a popular pre-modern genre of writing about God, sovereignty and politics, known as siyāsah sharīʿiya (roughly: “religiously-legitimate governance”), stipulated a sort of condominium of authority whereby scholars apply their understanding of God’s law in the civil realm fully independently from the secular rulers, and the secular rulers in turn enjoy a certain space to exercise temporally bound powers of command beyond the strict letter of the law. Key figures here include the Syrian Ibn Taymiyya (1263–1328 C.E./661–728 A.H.) and his student, Ibn Qayyim al-Jawzīyya. (On this tradition, and the comparison to modern Saudi Arabia, see my “Genealogies of Sovereignty in Islamic Political Theology.”)
sovereignty. Like the classical and modern siyāsa sharʿiyya theorists, Ghannūshī begins with the premise that there is no designated representative of God or man; mankind’s collective authority cannot be merely usurped on epistemic grounds. Actual, practical, effective political authority originates entirely with the people, which holds this authority on loan from God. Ghannūshī does not treat the idea of popular sovereignty merely as a point of theology in order to distinguish the Sunnī view from the Shiʿite one, or as a legal fiction enacted only through the ritual of the bayʿa (the oath of loyalty through which the ruler comes to be legitimate). For him, all political authority is a strict contract of agency between the people (the principal) and the rulers. While the terms of this contract involve the delegation of the responsibility to enforce the sharʿa, Ghannūshī makes clear that executive authority is entirely civil (madani). Ghannūshī’s slogan for this conception of shared divine and popular sovereignty is: Text and Consultation (shūrā), which he equates with “the sharʿa of God and consultation amongst the people, reason and revelation, constraint and freedom.” (97-8)

However, Ghannūshī’s project is not just a reassertion of the traditional right of the scholars, as custodians of the law, to represent the people and constrain the rulers. He promises an incorporation of democratic institutions and practices into Islamic political thought. (88) Predictably, he finds precedent for democratic institutions in Qurʿānic and early Islamic practices of consultation (shūrā), popular ratification of rulers (bayʿa), communal consensus about religious practices and points of law (ijmāʿ) and the collective scope of the injunction to “command the right and forbid the wrong.”

But the more radical aspect of his theory is the universalization and popularization of political sovereignty through the doctrine of man’s vicegerency of God (istikhlāf) that we saw introduced above by Mawdūdī. Pointing to prominent Qurʿānic verses in which God refers to mankind as a whole as his deputy or vicegerent (khulfa; caliph), particularly Q. 2:30, Ghannūshī writes that the Islamic conception of politics is based on a metaphysical account of the totality of existence, premised on the beliefs “that God is the creator and master of all existence, more knowledgeable than His creatures and the

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64 In what follows I draw on Rāshid al-Ghannūshī, al-Ḫurriyyāt al-ʿāmma fiʾl-dawla al-Islāmiyya [Public Freedoms in the Islamic State] (Beirut: Center for Arab Unity Studies, 1994). This is Ghannūshī’s most important and most elaborate work of political theory, and here I will restrict my focus to this text. My discussion here does not assume that the doctrines elaborated in Public Freedoms represent his most current views, and still less his immediate political and constitutional objectives as the head of the al-Nahda (Ennahda) party. I focus on this text merely as an elaboration of an important moment in Islamist political thought. Subsequent page citations are in the body of the text.

65 “And lo! Thy Sustainer said unto the angels: ‘Behold, I am about to establish upon the earth one who shall inherit it [khalīfa].’ They said: ‘Wilt Thou place on it such as will spread corruption thereon and shed blood -whereas it is we who extol Thy limitless glory, and praise Thee, and hallow Thy name?’ [God] answered: ‘Verily, I know that which you do not know.’” (Muhammad Asad translation. The other verses are 6:165, 7:69, 7:74, 7:129, 10:14, 24:55, 27:62 and 35:39. A further verse, 38:26, refers to King David as God’s deputy.) Asad’s commentary is instructive: “The term khalīfa—derived from the verb khalafa, ‘he succeeded [another]’—is used in this allegory to denote man’s rightful supremacy on earth, which is most suitably rendered by the expression ‘he shall inherit the earth’ (in the sense of being given possession of it).” Man’s rightful supremacy on earth over other creatures and its resources does not necessarily imply a political community’s political sovereignty—particularly of a participatory kind—over its own designated rules, as the common conjunction of this theme with God’s appointment of prophets and particular deputies shows. Thus, I take this as some evidence that when modern thinkers like Mawdūdī, Fāsī and Ghannūshī draw on this theme to provide a deeper theological grounding to the umma’s control over its governors and governing institutions they are indeed doing something novel and distinctly modern.
highest legislator and commander, and that man has been distinguished from the rest of God’s creatures by his designation as God’s deputy [istikhlāf], through which with he has been entrusted with reason, will, freedom, responsibility and the divinely ordered path for his life.” (37) Ghannūshī centralizes and foregrounds this doctrine throughout his entire work.66

Ghannūshī identifies the covenant of vicegerency (ʿaqd al-istikhlāf) as the central idea of Islamic civilization and the basic principle of Islamic political philosophy. Contiguous with, but not quite identical to, the idea of a primordial covenant of belief and submission to God,67 man’s vicegerency is the precondition of individual agency as well as of collective political life. God’s master legislation for mankind (the shariʿa) presupposes a human agent that can receive this law as a moral charge, has the moral capacity to either fulfill it or neglect it and can accept collective responsibility for its enactment.68 The right of any human to command and coerce another is derived from the authority of God’s law, but that sovereign authority is held by mankind-at-large as a collective trust bestowed by God: “If original sovereignty in the Islamic state is only God’s will, represented by the shariʿa, then the authority of the Muslim society is as agent or representative of God, and God is the one who bestowed [khawwala: transferred, conferred, vested] this sovereignty and authority on the umma, within the framework of His shariʿa, and made the umma his deputy [astakhlaftahā fi ʿl-ard].” (165)

This basic metaphysical foundation is used by Ghannūshī to distinguish Islamic approaches to freedom, human rights, public justification and the state from “Western” conceptions, which he tends to see in a reductive way as all based on a kind of arbitrary, foundationless human will and purposeless philosophical anthropology. However, Ghannūshī’s critique of modern Western political philosophy is not an absolute one and his approach is far from the sheer antagonism infusing many Islamist writings. He acknowledges that Western representative democracy is based on human values and can protect human dignity, referring to it as the “second-best system.” He sees its radical assertion of popular sovereignty, however, as a parochial response to the traditional struggle between a corrupt Church and absolute monarchs (as we saw in Riḍā). For modern Europeans, the only path to the rule of law was through a radical rejection of any source of sovereignty apart from the people. Islam’s traditional location of divine

66 Other contemporary writings on the political meaning of the “caliphate” that stress the universal caliphate of man include Huwaydī, al-Islām waʾl-dimuqrāṭiya (p. 27) and Ahmad Hasan Farahāt, al-Khilāfa fi ʿl-ard: baḥth Qurʿānī wa layn min al-tafsīr al-mawḍūʿ (Anman: Dār ʿAmmār, 2003).
67 Following Q. 7:172-3: “And whenever thy Sustainer brings forth their offspring from the loins of the children of Adam, He [thus] calls upon them to bear witness about themselves: ‘Am I not your Sustainer?’ - to which they answer: ‘Yea, indeed, we do bear witness thereto!’ [Of this We remind you,] lest you say on the Day of Resurrection, ‘Verily, we were unaware of this’; or lest you say, ‘Verily, it was but our forefathers who, in times gone by, began to ascribe divinity to other beings beside God; and we were but their late offspring: wilt Thou, then, destroy us for the doings of those inventors of falsehoods?’" (Muhammad Asad translation.)
68 As noted above, one of the classical interpretations of the doctrine that mankind is God’s vicegerent is as a statement about the spiritual and moral capacities of individual humans. This does not disappear in the thought of modern thinkers who also extend the doctrine to include political authority. In another text, for example, Mawdūdī right that the meaning of mankind as the “God’s caliph” is man’s “capacity to make moral choices and to shoulder moral responsibility.” (Sayyid Abul Aʿla Mawdūdī, The Islamic Movement: Dynamics of Value, Power and Change, trans. Khurram Murad (Leicester, UK: The Islamic Foundation) p. 94.)
sovereignty in the law means for Ghannūshī that Muslims do not have to go through a similar process of alienating themselves from God in order to liberate themselves from popes and kings.

Ghannūshī’s story about the founding of the state and the source of its legitimacy is representative of his complex relationship to Western democratic theory. He distinguishes the ideal Islamic account from two others: forceful acquisition and the myth of the social contract. Ghannūshī explicitly rejects the realism of late-medieval Islamic political thought, represented, for example, in the famous statement by Ibn ʿAbd al-Wahhāb (1703–1792) that until today grounds the legitimacy of the Saudi monarchy: “whoever gains power by force over a city or country has the legal status of the imām in all things.”69 However, while he sees the Islamic state in contractual terms, he also rejects the Western social contract account of the state’s legitimacy as originating in the free act of self-binding by persons in a state of nature.

Ghannūshī’s account depends on a distinction between the origins of governance as such (ḥukm: rule) and the origins of a regime or ruler (ḥākim). Governance as such—the state, including its constitutional framework—preexists all human capacities to make worldly contracts, because it is both natural and divinely ordained. “The contract is what establishes the state in Rousseau. However, in Islam, the contract of bayʿa does not found the state, because the Text already has, and Muslims are not free as long as they remain Muslims to apply the rules of sharīʿa or to invalidate them. ... The state is an original need in human society, not an exceptional or emergency manifestation.” (146) While the idea of “divine sovereignty” might strike the critical secular reader as vague or nonsensical, here we see one clear implication of the belief in it: that the state is always already justified, requiring no further philosophical or theological grounding, and that the umma has no moral option of doing away with it.

But if human freedom and will do not extend all the way down to the authority to originate civil society, the authorization of all actual political power within that religiously mandatory social organization flows entirely from the people. Ghannūshī declares unambiguously that the contract established by the people is the source of any ruler’s or imam’s authority: “the authority of the caliph is derived from the umma.” (140) In contrast with the perfunctory, ex post facto ritual of the bayʿa as described in modern Islamic monarchies,70 Ghannūshī argues that the early caliphs both made extraordinary efforts to collect the bayʿa from the umma-at-large and declared their own authority to be contingent on their fiduciary obligation to rule within the limits of God’s law. “What can be concluded from this is that the umma is the source of all authorities and powers and has supreme sovereignty, all within the framework of the constitution (the sharīʿa).” (141) The ruler (including the entire executive apparatus) is thus an agent (wakil) or employee (ajīr) of the umma, contracted with the sole purpose of helping the umma discharge its own covenantal obligation to obey God’s law.

This is not a theological justification for de facto absolutism, along the lines of Hobbes’ account of the popular origins of absolute monarchy. Ghannūshī rejects the mere

70 For example, Article 6 of the Saudi basic law simply states that the citizens “give allegiance” to the King on the basis of the Qur’ān and the Sunna. The Arabic uses the present tense (as translated above), while the official English language translation of the Basic Law uses the future tense: “citizens shall give the pledge of allegiance.”
ex post facto ratification of appointed rulers and the restriction of suffrage to a small electoral college of elites (like what Riḍā endorsed in calling for the restoration of the “people who loose and bind”). Even if select, elite bodies of representatives are formed and exercise a mediating fiduciary role (as with the scholars in the traditional sīyāsā sharʿīyya conception), their own limited representative authority is derived exclusively from popular ratification and not their own epistemic claims. Popular sovereignty in this conception also includes the right to remove an errant ruler who violates the terms of the contract. “The basic rule is that the one who possesses the right to appoint (tawliya) also possess the right to remove, so if it is the people who loose and bind who appointed him, then they are called up to remove their confidence from him, announce this and appoint another. But if the people who loose and bind only have the authority to nominate candidate(s) to be directly elected by the umma, then it is upon the people to declare their lack of confidence and appoint new candidates for the imamate.” (185)

To this point, much of what Ghannūshī endorses could be found in most modern Islamist texts. However, in Ghannūshī’s account, the people is also given substantial legislative authority. Ghannūshī refers to the umma as “the source of legislation [maṣdar al-tashrī"] and notes that while God is the primary and original source of legislation, the umma participates in divine will through its public practice of mutual consultation (shīrā). Moreover, for all the binding and constraining quality of God’s eternal law, “the goal of the eternity of this final, sealing law required restricting and limiting the text of revelation to a determination of general principles and a few select particulars for organizing human relations and economics.” The revealed law leaves the “filling out of the details of that framework to the legislative efforts of the umma, developing with time,” a practice that Ghannūshī equates with the idea of universal communal consensus (ijmā’) as a source of divine law alongside revelation. This fact induces Ghannūshī to proclaim that when deliberating about political matters “the umma is guided by God and acquires from His light protection against collective error.” (119)

Nonetheless, the constrained nature of popular sovereignty in Ghannūshī’s political theology should not be downplayed. Just as the covenant of vicegerency is not just a theological story that results in authoritarian guardianship, neither is the insistence on the primacy of God’s sovereignty in an Islamic democracy rhetorical cover for a kind of Lockean vision of popular sovereignty endowed with God’s imprimatur and hedged in only by a loose conception of natural right. “Man is not the possessor of original right [ṣāhib haqq aşîl] over himself or others but is only a deputy [mustakhlaf] or agent. [He] is not the possessor of supreme sovereignty but is only the possessor of a right to an ordained authority [sulta maḥkūma] by the supreme legislative authority emanating from God. His only choices are to worship God in accordance with the covenant of vicegerency or to reject it and be ranked amongst the unjust, corrupt infidels.” (99)

Indeed, Ghannūshī asserts starkly the ontological priority and normative supremacy of sharī‘a to any human political authority, autarkic or democratic:

If the justification for the existence of an Islamic government is the implementation of sharī‘a, putting God into the context of history, uniting the divine with the human, coloring life with God’s hue, then it does not deserve the obedience of its citizens to its commands except to the extent that they flow from submission and adherence to sharī‘a and are in accord with the Legislator, or at least not in conflict with him. The Islamic state has no right, whether it is conceived as a political community that has bound itself
in a covenant of loyalty and obedience to God or as the collection of executive, legislative and judicial authorities, to depart from the *sharīʿa*, because the *sharīʿa*, in the language of constitutional jurisprudence, is the original, foundational authority for the community and the government. (105)

Is the people then the author in any way of the law that precedes the political and constrains its will? Ghannūshī regards the divine constraint on the exercise of popular will as “a *self-limitation* after this umma has approved of and consented to God as its Lord and Islam as its religion, voluntarily and freely.” (169) The people freely adopts divine sovereignty through the *sharīʿa* then in an *immanent* sense—it is the only will the people can have consonant with its awareness of its primordial covenant of vicegerency with God.71 Apart from the fact that Ghannūshī does not authorize any single clerical ruler, or a class thereof, to claim any kind of “donation” of authority, is there an important difference between his attempt to reconcile the rhetoric of divine and popular sovereignty and the anti-democratic conceptions of sovereignty encountered in both the Saudi and Iranian models (albeit in different ways)?

If there is a deep difference, and a genuinely radical shift in the direction of popular sovereignty, I would submit that it lies less in the insistence on popular control over rulers (again, this is common, at least in Sunnī discourses) than in popular participation in the determination of what in the “*sharīʿa*” is timeless, fixed and specific and what is a matter of general ethical principles and open to reinterpretation and application in time. In all political imaginaries that posit a “rule of law” that precedes and constrains political outcomes, sovereignty is not only a matter of who decides when the law is suspended in the name of law, but also of who decides on the boundary between ethics and politics. This is the abiding tension in hybrid theories of sovereignty like Ghannūshī’s. But it is quite clear that theories like this lay the groundwork for the people at large to not only exercise an extensive guardian function over its human guardians but also to be the decider of how God’s sovereignty is imagined.

In his extensive and forceful defense of the “Text” as the first pillar of Islamic political order and the originating and supreme authority within it, Ghannūshī writes that the reference to “Text” and “*sharīʿa*” as supreme authority and source of all other powers is not a reference to “positive jurisprudence [*fiqh*] and expert reasoning as to the details [of the law]. Rather, perfection—which is a description of the *sharīʿa*—is not in the particulars but only in the generalities.” (101) The entire dilemma, and essential ambiguity in Ghannūshī’s hybrid conception of sovereignty, is expressed a few pages later at the end of his core exposition of the meaning of divine sovereignty:

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71 Incidentally, this bears some comparison to the idea found in the thought of Khomeini and in the Constitution of the Islamic Republic of Iran that the people has already implicitly consented to the entire system of rule-by-jurists. Khomeini: “‘The body of Islamic laws that exist in the Qur’an and the Sunna has been accepted by the Muslims and recognized by them as worthy of obedience. This consent and acceptance facilitates the task of government and makes it truly belong to the people.’” (Ruhollah al-Khomeini, “Islamic Government,” in *Islam and Revolution: Writings and Declarations of Imam Khomeini*, edited and translated by Hamid Algar (Berkeley, CA: Mizan Press, 1981), p. 56.) The Iranian Constitution declares that “during the Occultation of the Lord of the Time [the Shi’ite Imām], the guardianship and leadership of the umma devolve upon the just and pious jurist” (Art. 5). The people is not declared to be the actual source of the regime’s legitimacy; rather, the regime itself was only “endorsed by the people of Iran on the basis of their long-standing belief in the sovereignty of truth and Qur’anic justice” (Art. 1).
The foundations of this [just, divine] law are not posited by a majority of society, or a dominant class, or even a people preoccupied with its own partial interest, but only by God, the Lord of all. It is enforced, explained and applied to new realities through new specific acts of legislation by a human body chosen and supervised by the people. The people thus has sovereignty over this body, involving appointment, supervision and removal. This is the authority of the people [sulṭat al-umma], or consultation.

It is banal to note that divine sovereignty is always the sovereignty of some human agent—sacral monarch, Pope, class of scholars, Guardian-Jurist. There is always an inert or potential crisis of legitimacy in systems that appeal to divine sovereignty even where there is no claim that such sovereignty is shared with the people. Charismatic claims can break down, however, and the people can find themselves no longer recognizing their rulers as divine representatives, without sovereignty thus reverting to the people. The ambiguous premise of Ghannushi’s doctrine of vicegerency—his caliphate of man—is that the sovereign decision to bind oneself and others, to speak in God’s name, to authorize agents both to enact one’s own will and discharge one’s obligations has devolved upon the people collectively.

But there is something else crucial to note here. While Ghannushi draws heavily from siyāsā sharʿyya theorists, and points carefully to distinctions between the status enjoyed by rules expertly extracted from revelatory texts and commands issued in the civil ream of statecraft, his theory does not exactly observe the traditional boundary between the pre-political realm of religious law (fiqh) and the political realm of discretionary, temporally-binding public policy (siyāsā). In defining the living sharīʿa as that which the people “enforce, explain and apply to new realities through new specific acts of legislation,” the people is not only authorized to act politically in the world, but its political acts are seen to represent the sharīʿa. The people’s political action is not observing or abiding by the boundary between religious law and political action but creating it.

Insofar as Ghannushi stresses the idea of the universal caliphate and the description of politics as the umma’s discharging of its half of the contract of vicegerency, there appears a kind of sacralization of politics. However, I would suggest that this sacralization of politics is precisely one source of the legitimation crisis a theocracy like post-revolutionary Iran—the dissolving the pre-political rule of “sharīʿa” into the regime-protecting will of the Jurist. 72 We see that Ghannushi’s assignment to the

72 I argue for this in “Genealogies of Sovereignty” (pp. 307-8) and in my draft chapter for the present book “‘Even Prayer, Fasting and the Pilgrimage to Mecca’: Theorizing the Sovereignty of the Guardian-Jurist.” Briefly: I argue that in collapsing the traditional distinction between “fiqh” (the sacred law of the jurists traditionally enforced in sharīʿa courts) and “siyāsā” (the discretionary policy-making of the sultans or kings), the Islamic Republic creates a kind of legitimation crisis for itself. For, in fusing all kinds of social and political law making into the same kind of sacred nomos, the political is not so much reclaimed for the sacred as the sacred is reduced to the political. It is a short step from the pre-revolutionary ideological claim that “the state must be run by the sacred law” to “whatever the state requires for its defense, preservation and welfare is what the sacred law is.” There is a revolution in this shift from the claim that the political is authorized by the religious and the worldly rulers must be obeyed as a religious obligation to the claim that “obedience to the [state] law is like the daily prayer and fasting, and disobeying it is like disobeying the Islamic Sacred Law” or Khomeini’s notorious edict that “Islamic government takes precedence over all else, even prayer, fasting and the pilgrimage to Mecca” (i.e., the most basic personal religious obligations). There is a Hobbesian effect of secularizing religious law by sacralizing the political that eliminates the
unma of the sovereign right not only to control secular rulers but also to determine what it means to “apply the sharīʿa,” what is timeless and binding in God’s law and what is always a matter of collective judgment and discretion, suggests the possibility of a popularized version of the Khomeinist collapsing of fiqh and siyāsa.

The gambit, though, is to avoid the legitimation crisis that the unification of religious law and political action creates in a regime like Iran. For if it is “the people” unifying these spheres and sacralizing the political in this way, rather than a class of jurists with a single primus inter pares at the head representing this unification, the ideal of the rule of God’s law is not sacrificed at the alter of regime self-preservation. Rather, in appropriating “sharīʿa” for its own political action, the people vanquishes the specter of an alternative, more legitimate law haunting politics and challenging its legitimacy.

While this preceding analysis suggests a democratizing, or even liberalizing, form of the sacralization of politics, it is doubtful that this kind of theorizing explains a great deal about how figures like Ghanūshī will use political power. It is important to resist the temptation to see Islamist political thinkers and actors as either democrats or theocrats, as either “liberal Islamists” who find an Islamic language for post-1948 human rights schemes or as “radical Islamists” who speak instrumentally about moderation until they are in power. Approaching the questions of law, politics and revelation through the problem of sovereignty allows us not only to make finer distinctions between various Islamic political theologies, but also to appreciate that the tension between visions of divine and popular sovereignty is authentic. For Ghanūshī, the doctrine of man’s universal vicegerency (istikhlāf) is primarily a move internal to Islamism that is certainly in a democratizing direction but not with European parliamentary democracy as its unambivalent aim.

I will conclude, however, with one nod to current events, as this is where I began. It is far from surprising that post-revolutionary politics has been fraught with tension, and recent violence cannot be laid only at the door of authoritarian secular actors. Did the attitudes and behavior of the Muslim Brotherhood during their short year in power reveal the superficial or insincere nature of Islamist parties’ rhetorical support for democracy and the “civil state”? Would the preceding analysis of the “people” as the bearer of effective sovereignty predict a more enthusiastic commitment to the widest possible popular basis for post-revolutionary constitutive politics?

Even if we restrict ourselves to “high doctrine,”73 the move from thinking about the theological bases of political sovereignty to thinking about coalitions and commitments in specific, bounded countries is not a direct one. The doctrine of the

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73 I note here, without developing, the point that the sphere of formal political and constitutional theory may not overlap very well with the sphere of political culture within Islamist movements. It could very well be true that even conservatives or “hardliners” within, for example, the Egyptian Muslim Brotherhood are not unreconstructed Qutbists in their political doctrine and are sincere in their call for constitutional democracy (as they understand it), while at the same time inhabiting and practicing a political culture of insularity, hierarchy and authoritarianism. Moreover, the partisan ambition to influence or dominate as many social and political institutions as possible (one very prevalent complaint about Morsi’s one year in power), while politically authoritarian, need not amount to a fully theocratic constitutional ambition.
universal caliphate—the caliphate of man—is ambiguous with regard to its universalism both globally and locally. It is mankind, the children of Adam, referred to in Q. 2:30: “I will create a vicegerent on earth.” Yet, this covenant is one that mankind assumes the benefits and burdens of upon acknowledgment of the truth of Islam and the obligatoriness of sharī’a. Thus, the sovereign community in this scheme is not “the people” as such—any people that might find themselves contracting amongst themselves or founding a new polis—but rather the umma. This is made clearer in the writings of thinkers less interested than Ghannūshī in stressing their democratic and pluralist commitments. Recall Mawdūdī: “This sound, legitimate caliphate is represented not by an individual, family or class, but only by the community [jamā’a] (including all of its individuals) that believes in these basic principles and establishes its state on the basis of them. . . . Every individual in the community of believers is a participant in the caliphate and no one has the right to usurp the believers’ claim to the caliphate and concentrate it in his own hands.”

Are secular co-citizens of countries like Tunisia and Egypt, in the sense of co-citizens who do not begin with the covenant of vicegerency and the obligation to execute the sharī’a however this is understood as the source of all political meaning, participants in this universal caliphate? It is easy to exaggerate statements on the part of Islamist actors to the effect that the sovereign, constitutive community is limited to those who accept the sovereignty of God and the authority of the sharī’a, but it nonetheless appears true that the Islamists’ version of the “paradox of popular sovereignty”75 (democratic Islamists’ acceptance of the institutions and practices of constitutional, parliamentary democracy for the sovereign umma while operating politically bounded national communities contain radically divided citizenries) is not solved by the political theology of the universal caliphate alone.

Post-Script: al-Khilāfa ‘alā minhāj al-nubūwwa? The Baghdadī Caliphate

Of course, at this time of writing, not only does the promise of the Arab Spring seem like a cruel joke in the face of regime restoration in Egypt, but it has been eclipsed by the story of the rise of a very different kind of caliphate than the one I believe theorized by Ghannūshī. That caliphate, declared in Mosul on June 29, 2014 (almost a year to the day after protestors filled Tahrir Square in Egypt to oust Muhammad Mursi), is regarded by its adherents as nothing other than a restoration of the earliest model of the caliphate. Banners throughout the lands ruled by the “Islamic State” proclaim it the

74 Mawdūdī, al-Khilāfa wa’l-mulk, p. 21. Emphasis added. Later: “in the Islamic state the entirety of the believers are God’s caliph collectively (namely, those who have entered into a covenant with God consciously, emanating from their own will, to submit to God’s rule) and all powers of loosing and binding are in their hands collectively.”

“khiľaľa `alā minhāj al-nubuwwa”—the “caliphate in the prophetic method.” This was, according to various ḥadīth-reports, both the Prophet’s own description of the caliphate that followed him and his prediction of a caliphate that was to return after an indeterminate period of kingship and then tyranny. Thus, those loyal to the Islamic State regard themselves as living under not only a just and necessary form of government, but in the specific instantiation of the caliphate announced 1400 years ago by the prophet, possibly heralding the beginning of the apocalypse.

Only a few things can be said here to connect the IS phenomenon with my preceding discussion. First is to note the range of texts that IS-affiliated scholars or propagandists have produced in defense of the caliphate’s legalconstitutional foundation. These include a number of texts produced up to a year before the public declaration of the caliphate: “Madd al-ayādī li-bay’ at al-Baghdādī” (“Extending the Hands to Give Allegiance to Baghdadi”), by Shaykh Abū Humām Bakr b. ‘Abd al-‘ Azīz al-Athrī, July 22, 2013; 27 pages); “Mukhtasar al-bay’a wa wujūbihā wa aḥkāmihā wa al-dawla al-Islāmiyya fī’l-‘Irāq wa’l-Shām” (“A Summary of the Necessity of and Rules for Giving Allegiance to the Islamic State of Iraq and the Levant,” August 9, 2013, Abū Yūṣuf al-Baṣḥīr; 13 pp.); and “Hal tuwafarat fi’l-Shaykh Abī Bakr al-Baghdādī shurūṭ al-Imāma?” (“Have the Conditions of the Imamate Been Fulfilled in Shaykh Abu Bakr al-Baghdadi?” November 5, 2013). Since the declaration of June 29, 2014, the following texts have appeared: “Hādhā wa’d Allāh” (“This is the Promise of God,” by the official IS spokesman Abū Muḥammad al-‘Adnānī, June 29, 2014) and “Imām al-Juwaynī yubāyi’ al-khalīja al-Baghdādī” (“Imam Juwayni Gives Allegiance to the Caliph Baghdadi,” by Abū Khubāb al-‘Irāqī, July 15, 2014). Many of the texts issued by groups upon giving their allegiance to the Islamic State have also been published, as have IS’s own guidelines for pledging allegiance.

These texts aim at establishing scrupulous legality. I will have to confine myself for present purposes to noting three points. First, the restoration of the specific office of the caliphate is regarded as a pre-condition for the full legality of the Muslim community, and thus an absolute necessity. The document released with the declaration of the caliphate asserts that “without the condition of the caliphate being realized, all power is simply worldly kingship, domination and governance, accompanied by destruction, corruption, injustice, coercion and fear, and the degradation and decline of humans to the level of animals. This is the truth of the succession to God, for which God has created us. It is not simply worldly kingship, domination and governance, but rather makes use of all of these for the purpose of compelling the masses to what the divine law requires for the sake of their worldly and eternal interests. This is not realized except by carrying out God’s command, upholding His religion and ruling by His law. This succession of God, along with this reality, is the purpose for which God sent prophets and revealed His books to mankind, and for which the swords of jihād were unsheathed.”

Second, the legality of Baghdādī’s own personal assumption of the office is scrupulously justified. The groundwork for this was laid at least a year in advance, for example in the above-cited document “Madd al-ayādī li-bay’ at al-Baghdādī,” in which the classical conditions (shurūṭ) of eligibility for the office, as canonically treated by

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76 “Hādhā wa’d Allāh”, p. 2.
jurists such as Ibn Jamāʿa, Māwardī and Juwaynī, are outlined and Baghdaḍī’s personal fulfillment of them through his genealogy and personal accomplishments are attested to. Moreover, the tricky question of who can constitute the electoral body of the “people who loose and bind” is addressed, and concerns about the un-representative nature of the top scholars and commanders of the (then) Islamic State of Iraq and the Levant are dismissed.

Finally, and perhaps most interestingly, the governance of the Islamic State appears bent of avoiding problematic features of Islamic law making. I mean by this the ubiquitous tendency in modern Islam, at least since the 19th century, of issuing codes of law, and often formal constitutions. Their commitment to replicating at least the forms of the earliest post-Muḥammad caliphate extends to a refusal to formally codify any but the most widely-known Islamic legal rules. This is in contrast to some Islamic rebel groups in Syria that attempted to announce their legitimacy by the public adoption of the “Unified Arab Civil Law Code” when they controlled large parts of Aleppo. The Islamic State engages in a wide range of law enforcement without issuing massive codifications of sharīʿa rules. Largely following the classic “siyāsa sharʿiyya” model, the Islamic State has established both sharīʿa courts that implement normal, un-exceptional Islamic rulings over civil and some criminal matters as well as other kinds of courts that deal with military discipline or handling complaints and grievances from the subject population, including grievances against IS fighters (many of whom have been punished after such complaints). The normal sharīʿa courts appear to function without codified sharīʿa law, or even without extensive reference to the legal schools. Instead they appear to function on the basis of “qāḍī ijtihād” (that is, according to the judge’s own reading of revelation and prophetic example, along with the facts and context), enhanced by occasional “declarations” (bayānāt) of the Islamic rulings and punishments that people can now expect to find themselves subject to. Caliphal “sovereignty” is thus not seen as absolute, but rather as custodial over the social application of the divine law. However, there is evidence of the application of “Caliphal law,” in the form of edicts and decisions over non-routine matters that cannot be resolved by the application of a prior rule.

It is too early to tell how long the present “caliphate” will last, but the radicalism of its efforts to base its forms of governance and distribution of sovereign authority on what it thinks the “prophetic method” is can almost certainly be sustained only in the conditions of warfare and emergency. But for now this imaginary has certainly rushed in to fill the gap left by the extermination of the electoral option for Islamists in virtually every Muslim-majority country.

77 For example, justice or probity (ʿadala), knowledge conducive to good judgment in statecraft, soundness of hearing, speech and vision, physical fitness and freedom from handicaps, prudence in moral and practical judgment, courage in defense of the umma against its enemies, and Qurayshi descent from any branch. A suitable Imam should possess significant religious legal knowledge, ideally at the ijtihad level so as to be able to adjudicate between senior scholars.

78 This paragraph is based on a substantial dataset of court rulings and decisions from lands ruled by the Islamic State that has been gathered by a doctoral student of mine (Mara Revkin), who is working with me on a study of the legal foundations and practice of the Islamic state.