

Islamic Shura, Democracy, and Online Fatwas

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Abstract:

Publications on the Islamic shura concept – Arabic and English – usually include a comparison with present-day liberal democracy. This paper addresses the issue of shura and democracy from the perspective of Muslim communities residing in non-Islamic countries. How do muftis in their online fatwas respond to questions whether Islam and democracy can be reconciled? How do they address the issue of shura? This paper argues that one might well expect the shura concept to serve as a justification for the reconciliation of Islam and democracy or at least find the shura concept to be a distinctly Islamic understanding of democracy. The online fatwas considered for this survey (from AskImam.org, IslamiCity.com, IslamOnline.net, and IslamQA.com) reveal a number of distinct understandings of shura, which are nevertheless linked with each other – be they elections as an expression of shura, shura as a constitutional principle and perfect form of government, or shura in cases of hardship or the political participation of women. While muftis from all websites are unanimous in their defense of shura, their conclusions regarding the centrality and implications of this concept reflect the different streams of thought and currents they represent.

Keywords:

study of religion, democracy, legal science, Islam and civil society, Islam and politics, Islamic law, websites, fatwas

Islam and Democracy in the 21st Century

Whether “Islam” and “democracy” are actually compatible is an issue that has been raised for several decades now (McElroy 1938). The question is not only much older than conflicts between so-called Islamophobic trends and advocates of a public Muslim presence in minority contexts suggest, but usually also posed as a challenge to choose one of the two. Thus the alleged dichotomy denies any distinction between different streams of thought and currents in both Islam and democracy. Islam is not a monolith, nor is democracy. Therefore it is quite possible to subsume different understandings under both terms according to different circumstances, times, and places.

The decision in favor of one or the other is not one to be made in this paper. Rather, as the question has been asked time and again, it is tak-

en at face-value because people are obviously insecure believing that there must be a difference or even an antagonism. Perhaps they have heard others claiming so and are eager to find out more. Islam and democracy have often been labeled as two opposites even by Muslims themselves.

One path especially chosen by Muslims is to turn to Muslim scholars for guidance. Are Islam and democracy compatible, these scholars are asked? A comparison with present-day western liberal democracy is usually included in publications on the Islamic *shura* (consultation) concept - Arabic and English alike. According to one online *fatwa* (Islamic legal opinion)

[o]ne of [the most] important values of democracy is people's right to choose their leader and not to be ruled by force or tyranny. This is also an Islamic value, which we call *shura* or mutual consultation. (El-Shinqiti 2006)[1]

Research Question

This paper addresses the question from the perspective of Muslim communities residing in non-Islamic states. Hence this very fundamental query is also at the core of whether Muslims see a future in a European Union member state, in Canada, or in the United States, all of which shall be termed Western liberal democracies in the context of this paper. The case of Islam and democracy serves as an illustration of the political culture model which deals with the general commitment to democratic values. This cultural or systemic level relates to regime persistence where "regime" refers to the institutional structure of the given political community (Fuchs 2007:165). One of the major goals or principles of the regimes in the European Union and in North America is liberal democracy.

What is the general attitude toward democracy by Muslim scholars? How do muftis respond to questions whether Islam and democracy can be reconciled? Do they support or reject this idea? In this sense it is helpful to know that Islam and *shura* are very often used interchangeably (Krämer 1999:121).[2] Recourse to *shura* then serves to justify democracy as genuinely, if not originally Islamic as suggested, for instance, by the prominent online mufti Yusuf al-Qaradawi (Wenzel-Teuber 2005:199, Janāhī 2007).

How then do the scholars address the issue of *shura*? Is the Islamic notion of *shura* a viable expression of and/or alternative to the idea of democracy?

What is the relationship between the two concepts according to the muftis? This paper argues that one might well expect the *shura* concept to serve as a justification for the reconciliation of Islam and democracy. At least the *shura* concept can be seen as a distinctly Islamic understanding of democracy, which in its literal translation as “rule of the people” cannot occur in an understanding of Islam where sovereignty belongs to God. This is the view of 20th century Muslim thinkers like Sayyid Qutb (Shepard 1996:110, Hoffmann 2007:297) and Abu al-Ala al-Mawdudi (1969:215). They base their argument on the Quranic verses 6:57, 12:40, and 12:67, all of which contain the phrase “*in al-hukm illā li-llāh*” meaning that the decision or power is God’s alone.[3] This view can also be found in online fatwas. For example, the Saudi scholar Muhammad Salih al-Munajjid states in one of his online fatwas that legislative systems which rule on matters already decided by divine intervention - such as abolishing polygamy or outlawing capital punishment - “go against the laws of the Creator” and this “constitutes disbelief (*kufṛ*)”. [4]

A Brief Note on Methodology

All of the fatwas considered for this survey are part of a database of the following four large web services: AskImam.org (formerly Islam.tc), IslamiCity.com, IslamOnline.net,[5] and IslamQA.com (Islam Question & Answer).[6] This database contains roughly 24,000 fatwas, all of which were published and saved to the database in English, and covers the period from January 1, 1995 through September 16, 2006. The fact that these online fatwas are available in English is particularly helpful with regard to Muslims who live in Europe or North America and thus outside the Arab and Muslim world. English may well be considered as the lingua franca of the Internet and is thus more easily accessible to Muslims of diverse backgrounds in Muslim minority contexts than, for example, Arabic, Turkish, or Urdu. This is not to say, however, that the mentioned websites do not publish fatwas in these non-European languages. While the South African website AskImam.org and the California-based website IslamiCity.com publish fatwas in English only, the Egyptian-Qatari service of IslamOnline.net used to have an English as well as an Arabic fatwa section. Today OnIslam.net follows in these footsteps. Finally, many (albeit not all) fatwas on the Saudi website IslamQA.com are even available in twelve foreign languages. In contrast to IslamOnline.net, where the Arabic and English

fatwa sections were independent from each other, the fatwas on IslamQA.com are more or less literally translated from Arabic into the available foreign languages.

In addition, given this setting it would be useful to see whether opinions expressed in the fatwas have changed since September 11, 2001 - a date after which Muslims have attracted greater public attention especially in the West - or whether the scholars remain faithful to an interpretation arrived at previously. In any case, the question remains: What did they think of *shura* during those eleven years?

As this survey focuses on the concept of *shura*, only fatwas which mention this term have been examined and analyzed. The following distribution of relevant search terms can be found: Searching for the common anglicized term * shura * yields a total of 27 fatwas whereas alternative spellings like * choura * and * shoura * find no results. There are three fatwas for * shoora *, which, however, do not deal with the relevant context of politics and democracy. In addition, there are 51 fatwas including the synonymous term * mashwara * and 49 including the term * consultation * although, again, most of them do not mention the concept in a political culture context. Rather, the majority of those fatwas deal with questions on family and marriage. [7] Obviously, these fields can also be subject to “consultation”. In the same vein, the Libyan scholar Ali al-Sallabi describes *shura* as a comprehensive method at all levels of society.[8] Many of the fatwas overlap as they mention “shura”, “mashwara”, and/or “consultation” in the same text. Finally, the word “shura” is no guarantee that the concept is at the core of the fatwa text. On the contrary, several of those fatwas deal instead with the Quranic *sura al-Shūrā* (sura 42)[9] or with an institution or body called *Shura* like, for instance, the *Shura Council of North America*. [10] The mere mention of the word does not explain or define *shura*. So four types of *shura* can be distinguished in the online fatwas: (1) *shura* as a term of political culture, (2) *shura* in family affairs and outside the political culture context, (3) *shura* as title of sura 42, and (4) *shura* as part of a proper name. Only the first point is of interest in this article.

As it turns out, none of the search conditions are met by fatwas at IslamQA.com. However, there is one suitable question in its Arabic web archive which is not part of the aforementioned database. Its title translates as “The

understanding of democracy in Islam” and the mufti, Muhammad Salih al-Munajjid, refers to the conception and misconception of *shura* in the latter part of his fatwa (see below 4.1 and 4.2).[11] This is included in the present analysis to complete the survey of all four websites and contribute to the broad understanding of *shura*. Besides, the fact that al-Munajjid makes no further reference to *shura* may be telling in itself.

“Shura” and “consultation” are indeed often used synonymously by the muftis. Ebrahim Desai, who is the head mufti at AskImam.org, a website registered in South Africa, usually uses Arabic words to describe an issue, but translates them in parentheses. For instance, to “make Mashwara (consult)” is immediately explained by him.[12] To a lesser extent one can find the same approach at IslamOnline.net when “Shura (Mutual Consultation)” is explained (Idris 2004). Therefore, even if the word *shura* is not explicitly mentioned it is safe to assume that by “consultation” the muftis refer to this very idea.

Finally, it is assumed that the online fatwas are doctrinal in nature thus reaching out beyond their particular contexts (Eickelman and Anderson 2003:13). As they are increasingly available to a global audience especially in the highly Internet penetrated countries in Europe and North America and as they can easily be dissociated from the specific contexts for which they were issued, they may well serve as guidance in comparable cases - even if the muftis would sometimes caution Muslims against this unlimited use. [13]

Shura and Democracy

In order to understand the relationship between *shura* and democracy it is necessary to take a closer look at the two concepts from a Muslim perspective. This sort of comparison has, of course, been made by Muslim scholars - online and offline. Suffice it therefore to summarize some of their findings relevant to the following survey. It will quickly become clear that the scholars share similar perceptions regardless of the medium. It is generally agreed that *shura* is based on several verses in the Quran. Most prevalent among these are verses 3:159 (sura *Āl 'Imrān*, “Take counsel with them in the conduct of affairs”)[14] and 42:38 (sura *al-Shūrā*, “and conduct their affairs by mutual consent”), which include direct reference to *shura*. [15] In addi-

tion to these, the Sudanese-born mufti Ja'far Sheikh Idris (2004)[16] in his lengthy conceptual fatwa on IslamOnline.net identifies verse 27:32 (sura al-naml, "Nobles, let me hear your counsel") to be of importance. Interestingly, this is also one of the few Quranic verses mentioning the concept of fatwa counseling. Hence the idea of counsel - or consultation - becomes clear. By tracing the linguistic roots of the word "shura," Idris (2004) reveals that its original meaning "is to extract honey from hives". Similarly, "consultation and deliberation [i.e. *shura*] bring forth ideas and opinions from peoples' minds".

Differences between *Shura* and Democracy

Muslim scholars have identified a set of at least four differences between *shura* and democracy. Additional support comes from the creation of the neologism "shuracracy" (Kausar 2008, Badry 1998:577), which suggests that *shura* and democracy are actually something different from one another that can be merged to form something new.

First, the popular basis of *shura* is the global Muslim community (*umma*) and not some territorially, linguistically, or racially restricted demos. Sometimes the *umma* is envisioned and idealized as all-encompassing and unified (al-Sālih 1999:140, al-Sallābi 2011:145).[17] In the first part of his online fatwa Idris(2004) concludes from this that "[o]n the face of it, then, democracy has nothing to do with Shura."

Second, the most significant difference is that, while democracy (al-Sallābi 2011:145) is considered to be non-religious ("lā dīniyya"), *shura* - as has been mentioned above[18] - is subject to divine sovereignty and legislation. In this regard human participation is bound by the sharia (the normative guideline for Muslims in matters of worship as well as social relationships). Consequently, manmade legislation under *shura* is limited to matters for which there is no (unambiguous) textual evidence in the normative sources of Islam (the Quran, *hadiths* (the collected sayings and actions of the Prophet and his companions)) (al-Sālih 1999:141). In the words of Ali al-Sallabi (2011:146) the difference between *shura* and democracy is equivalent to one between the sovereignty of God ("al-hākimiyya lahu subhānahu") and the power of the people ("sulta al-sha'b").

Idris distinguishes two types of democracy: (A) limitless democracy, where the people can vote on any subject with absolute majority, is incompatible

with Islam; (B) where democracy is limited by “a higher law to which human law is subordinate”, which therefore is inviolable, a possible overlapping consensus can be discerned.

A true Muslim never makes, or freely accepts, or believes that anyone has the right to make, or accept, legislation contravening the Divine law. [...] A Shura without restriction or a liberal Shura would, however, be as un-Islamic as a liberal or an unconstrained democracy. The problem is with secularism or liberalism, not with democracy, and will not therefore disappear by adoption of Shura instead of democracy. (Idris 2004)

The greatest problem and perhaps even the greatest threat Muslim scholars perceive is the compulsion of majority votes. How fearful and biased some of them are is clear from the pictures they evoke. Democracy is set on equal terms with arbitrariness and the dictatorship of the majority (al-Sālih 1999:143) or with utilitarianism according to majority rule, Machiavellism, or even the path leading straight to the National Socialist dictatorship in Germany (al-Sallabi 2011:147). On more practical terms majority votes in a democratic political system may well lead to the legalization of abortion, adultery, drinking alcohol, gambling, homosexual marriages, and usury and banking interests. Consequently, in order to make a call for the compatibility of the two concepts, Idris concedes in his fatwa that in the type B democracy unconditional rule of the majority would not be possible (Idris 2004).[19]

Third and closely connected to this issue, *shura* in contrast to democracy comprises religious-moral values which cannot be changed by majority vote (al-Sālih 1999:142). For example, al-Munajjid in his exceptional Arabic online fatwa at IslamQA.com emphasizes the claim of many that democracy is erroneously made equal to freedom (*hurriyya*). According to him this is problematic because freedom entails the freedom to express one's opinion even it were insulting the Prophet or the Quran. Besides, where the people become the absolute sovereign - and thus the source of legislation - corruption (*fasād*), a loss of morality, and the decay of society are the results.[20] It seems that al-Munajjid is not in favor of democratic rule as he emphasizes its negative (*harām*) implications, which would be in line with more general findings regarding his political attitudes revealed in his online fatwas (Kutscher 2008:6f).

Finally, as part of the sharia, *shura* deals with both material and spiritual interests and goals of the *umma* (al-Sālih 2011:145). Democracy is very much restricted to political (material) matters although its outreach can be and is expanded (Idris 2004).

Similarities of *Shura* and Democracy

Equally, Muslim scholars have categorized *shura* and democracy according to at least three shared criteria. First and foremost among these is a set of inalienable individual rights and fundamental freedoms. Both *shura* and democracy promote the right to life, equality before the law and social justice, as well as the freedoms of belief and of conscience (al-Sālih 1999:139, al-Sallābī 2011:148). According to Idris's (2004) online fatwa "[t]here is thus no contradiction between the concept of democracy or Shura and the idea of inalienable rights that sets limits on majority rule".

Second, political participation is granted to and expected from the respective constituencies of the political system. In case of *shura* this constituency is made up of the *umma*; in case of democracy (al-Sallābī 2011:149) it is the people (*al-sha'b*). Political participation explicitly refers to free and fair elections of the ruler, but goes beyond this procedural aspect. It entails furthermore the accountability of the ruler towards the *umma* or the people and the rejection of arbitrary rule as well as the encouragement of and engagement in public debate which leads to (al-Sālih 1999:139) "government of the people by the people for the people" (*hukm al-sha'b bi-wasāta al-sha'b min ajl al-sha'b*).

Choosing the rulers is one of the noblest rights of the people. In his conceptual fatwa Idris cites a hadith in support of this argument. According to al-Bukhari the second caliph Omar excluded a man from becoming the ruler if he was given allegiance without consulting the Muslims.[21]

This was understood from the fact that the Prophet chose not to appoint his successor, but left it to the Muslims to do so [...] As far as my knowledge goes, the manner in which this public right is to be exercised, is not specified in any authoritative statements or practice. (Idris 2004)

The multiple possibilities of choosing the ruler are, for instance, related by the medieval jurist al-Mawardi in the chapter "On the Appointment of the

Sovereign (*Imām*)” in his treatise on *The Ordinances of Government*. The broad spectrum of succession has thus entered the canon of Islamic constitutional law; this goes from the selection by the plenum of the electors (Al-Mawardi 2006:5) to the election by a quorum of at least three electors (Al-Mawardi 2006:5) to the nomination by the predecessor (Al-Mawardi 2006:9). At least in the former two cases some sort of consultation is required.

One common aspect against this background is the creation of a representative body, a council akin to a parliamentary assembly. Under both *shura* and democracy, al-Sallabi maintains, membership of such a body requires a minimum age, the absence of having committed crimes, and a good demeanor and way of life (al-Sallābī 2011:151). Yet al-Munajjid in his online fatwa disagrees in that also stupid people (*ahmaq*) or disbelievers (*kāfir*) could be elected to a democratic parliament whereas the *shura* council should be composed of jurists (*fuqahā*’), scholars (*‘ulamā*’), and other morally sound people.[22]

Third, as surprising as it may sound given the aforementioned differences, *shura* like democracy envisages majority rule. In fact, *shura* would not be conceivable without this, provided that it is mandatory on the ruler. According to al-Mawardi - quoted by al-Sallabi - the members of a mosque community may choose their *imam* (prayer leader) by majority vote if they do not agree on one candidate unanimously. However, in Islam majority votes are restricted to issues of the public interest (*maslaha ‘amma*). This means that voting on the norms of the sharia is prohibited. With this qualification in mind the protection of opposition and minority groups would still be possible (al-Sallābī 2011:150, al-Sālih 1999:140). The support of majority decisions is also expressed by the editor Tarek M. T. Ezzat at OnIslam.net, a website which is generally particularly sympathetic to Muslims living in minority contexts and helps propagate what has been termed the jurisprudence of Muslim minorities (*fiqh al-aqalliyyāt al-muslima*). OnIslam.net is one of the two websites that followed the dissolution of IslamOnline.net in early 2010 (the other being a re-launch of IslamOnline.net). OnIslam.net most closely resembles IslamOnline.net as it used to be (Ezzat 2010b). Quoting Idris’s fatwa the similarities come full circle:

In liberal democracy not even the majority of the whole population has the right to deprive a minority, even if it be one individual, of what is believed to be their inalienable human rights. (Idris 2004)

The Mandatory Character of *Shura*

The question remains whether *shura* is mandatory (*wājib*) in the course of establishing government or whether it is simply commendable or recommended (*mandūb, mustahabb*) for the ruler and the ruled to exercise. Muftis in their online fatwas by and large maintain the former. Ebrahim Desai states that installing the caliph “has to be decided by Shura”. [23] Dani Doueiri and his team “describe Islamic government as consultative by nature.” [24] And the editorial staff of IslamOnline.net call on Muslims to “establish the principles of consultation and choosing the leaders, as Almighty Allah has ordered” (Mawlawi 2006). Gudrun Krämer’s (1999:124) analysis reveals that scholars have maintained a consensus regarding *shura* as being compulsory for a long time (Ahmad 2009:52). Hence the online muftis and their opinions are in line with the offline discourse on the mandatory character of *shura*.

The Binding Character of *Shura*

Whether the result of *shura* is actually binding (*mulzim*) is disputed among Muslim scholars. Either way, it is a question which is not discussed in the analyzed online fatwas. However, all of them hint at supporting the view that decisions arrived at through *shura* are indeed binding. Some additional support stems from a series of articles on OnIslam.net. Here Tarek M. T. Ezzat (2010b) argues in an editorial piece that a *shura* decision becomes binding even if arrived at through majority vote instead of the preferred consensus because it “allows the community to reach a win-win situation”. And he asks what would be “the point of joining a Shura process and spending time and effort if people know that the majority opinion won’t be binding?” As will be seen below, his argument mirrors the general attitude of the muftis at IslamOnline.net until early 2010.

The German scholar of Islamic studies Gudrun Krämer (1999:124) attributes the general acceptance of *shura* decisions as binding to the fact that the idea of democracy has spread all over the world in the course of the 20th century. Scholars thus feel a need to react to these changing circumstances. Even though there are no fatwas by Muhammad Salim al-’Awwa, Yusuf al-Qaradawi (2001:196), and Taha Jabir al-’Alwani among those analyzed in this paper, the three prominent scholars are also in support of binding *shura* (El-Awa 1980:96, Ahmad 2009:95). All three of them were frequent

guest muftis at IslamOnline.net, which makes their offline opinions relevant in this context. Al-Qaradawi and al-'Alwani are furthermore proponents of *fiqh al-aqalliyāt*, which tries to find solutions for problems faced by Muslims in minority contexts who wish to adhere to sharia norms (Albrecht 2012).

Shura in Online *Fatwas*

The following analysis of fatwas about Islam and shura and of the positions which muftis on the websites in question take should provide some evidence for the opposing poles of the spectrum of online ifta' (fatwa counseling).

Elections as an Expression of *Shura*

Elections are a particularly noteworthy aspect with regard to muftis and their perception and categorization of *shura*. It is important for Muslims in minority contexts to know whether it is permissible (halāl) to participate in the elections in their countries of residence - provided that they wish to abide by the sharia. Hence they rely on the interpretations and justifications brought forth by trusted scholars.

In an apparently fabricated fatwa, whose topic is "Elections, voting, and Muslims - an Islamic Perspective", Ebrahim Desai from South Africa enumerates eight conditions for participating in elections. Point 8 states that voting is one of the expressions of *shura*. By casting his vote the voter gives advice on which candidate he sees fit to represent him. This fatwa can be found three times at AskImam.org with identical wording in its eight points, albeit different questions each time. The earliest version was published before September 11, 2001 and does not reveal a questioner or even a concrete question, thus hinting at its doctrinal nature.[25] It is the two later fatwas which provide some context to the answer. The first one of these deals with elections in the United Kingdom, the permissibility of which the questioner doubts on well-known grounds: "Legislation is [a] right of Allah and is not to be delegated to anyone other than a Caliph in [the] Islamic State." Consequently, because voting would mean to choose someone other than God or the caliph to govern, it would necessarily constitute an act of dissociation from God (*shirk*).[26] The second fatwa is elicited by a questioner from South Africa who fears the permission of abortion, alcohol, and prostitution and the implementation of "un-Islamic laws" if he participates

in the elections.[27] This is indicative of why some scholars consider *shura* and democracy to be different. The least that can be deduced from the AskImam.org fatwas is the fact that some of the previously noted theoretical arguments have a basis in real life. But it is also true from other material that Desai on AskImam.org is a proponent of a more literal interpretation of Islam, which is skeptical of peaceful coexistence with non-Muslims who, in turn, are frequently called “disbelievers” (*kuffār*) - even more so in a non-Islamic state (Kutscher 2009:151).

Muftis at IslamOnline.net tend to be more open-minded. And indeed, for example, Mohamed El-Moctar El-Shinqiti (2006) maintains that democracy and Islam share certain values. One of them is *shura*, that is, the people’s right to elect their rulers. Another regular guest mufti at IslamOnline.net, the Guinea-born professor of Comparative Jurisprudence and Islamic Finance at the International Islamic University of Malaysia (IIUM) Sano Koutoub Moustapha (2004),[28] describes *shura* as the step preceding the election of a ruler and encourages Muslims to participate in it. They should get involved regardless of the place they live in and the candidates standing for election. Moustapha makes it clear that Muslims and non-Muslims alike would be eligible, which is particularly important when looking at predominantly non-Muslim countries in Europe and North America. He elaborates on his argument elsewhere when he states that “majority” in western liberal democracies means “consensus” (*ijmā’*) in Muslim political thought. Consequently, consensus is tantamount to the approval of the majority. This equivalence is presented as a shared characteristic feature of all those who think that *shura* and democracy can be reconciled (Ahmad 2009:186).

Finally, the then-vice chairman of the European Council for Fatwa and Research (ECFR) Faysal Mawlawi(2006)[29] sheds light on the selection of the caliphs in accordance with Sunni Islamic tradition. They “are to be chosen after consulting the Muslims in that regard.” Providing historical evidence for the establishment of *shura* during the period of the four rightly-guided caliphs (632-661), he concludes that afterwards “choosing the caliphs democratically came to an end.” His fatwa - like those of the other IslamOnline.net muftis - implies that he would have liked to see this democratic mechanism restored and that it is a small step from there to political participation in a Western liberal democracy.

Dani Doueiri and his team, which is not identified more closely, run the fatwa section at the California-based website IslamiCity.com. They, too, recognize *shura* as the basis for the election of leaders who “should be respected and obeyed” as long as they do not cross the bounds of the sharia.[30] Furthermore, they argue that the establishment of an Islamic government rests on any conceivable type of *shura*. This includes choosing “its overall leader by elections or by a referendum”. Democracy could thus “be accommodated within an Islamic government.”[31] In other words, at least on the surface the democratic regimes of Europe and North America conform to the sharia.

In conclusion, *shura* is closely associated with elections and democracy by muftis at IslamOnline.net and IslamiCity.com. Unfortunately, Ebrahim Desai of AskImam.org does not provide a more detailed context to his perception of *shura* as an expression of voting.

Shura as a Constitutional Principle and Perfect Form of Government

The importance of *shura* as a constitutional principle is reflected in fatwas from all the websites under scrutiny. A clear line between different approaches - as in the case of elections - cannot be drawn, though. Nevertheless, the acceptance of *shura* as a constitutional principle may pave the way for Muslims - scholars and laymen alike - to reconcile Western liberal democratic political regimes with the sharia and accept the need of elections as being in accordance with the sharia.

Ebrahim Desai and his students readily accept *shura* as a historical precedent. Consultation (*mashwara*) is described as one of the prophetic traditions (*sunna*) on which contemporary issues for consultation should also be based. Consultation here is contextualized as meaning the absence of revelation and thus the need for human decision-making. In Desai’s opinion members of a *shura* body should be jurists (*fuqahā’*), religious scholars (*‘ulamā’*), and pious people (*‘ābidīn*). His answer specifically addresses Muslims in North America and, by extension, in the European Union, in short, wherever they and Islam are discriminated against or attacked - no matter if physically or verbally. By following the prescribed path of *shura* they would

be able to reach a conclusion as to their “best course of action” under the given inhospitable circumstances. Desai does not urge Muslims to migrate (*hijra*) to a predominantly Muslim country even though the questioner asks him about just that.[32]

Furthermore Desai highlights the institution of the caliphate (*khilāfa*) as one aspect which has to be agreed upon through consultation.[33] His students Muhammad Kadwa and Moulana Imraan Vawda support this view when they claim that “the ideal system of appointment of the Ameer is that of Shura (consultation) with the Ulama.” “Ulama” here may also refer to members of the social elites. What is important regardless of the procedures is that government acts in accordance with the precepts of the sharia. Elections or voting would thus not be a necessary precondition for a legitimate state leadership.[34] On the whole, the muftis at AskImam.org mention shura as a constitutional principle in a historical context. Thus they might aim at establishing the historical relationship and continuity of early Islamic *shura* and contemporary *shura*.

The Indo-Canadian scholar Ahmad Kutty,[35] who is another recurrent contributor to IslamOnline.net, also emphasizes the importance of shura as a pillar of Islamic institutions. When it comes to building a strong Muslim community he (Kutty 2005) adds another important element known in Western liberal democracies: that of accountability. Both accountability and shura are summarized by him to mean self-examination (*muhāsaba al-nafs*) individually and collectively.

His colleague Muzammil Siddiqi[36] counts *shura* among the basic objectives or values (*maqāsid*) of the sharia, thus answering a query on the relationship between the sharia and man-made laws. In addition to the five purposes of the sharia - the protection of religion (*dīn*), life (*nafs*), offspring (*nasl*), property (*māl*), and mind (*‘aql*) - he lists justice and equality (*‘adl, qist*), rights and obligations (*huqūq*), the common interest (*maslaha ‘amma*), and success (*falāh*) as well as consultation (al-Shātībī 2006:266, Siddiqi 2006). These elements also form part of Western liberal political thought. Another mufti seconds these reflections when stating that *shura* is an Islamic value and thus democracy is, too. As a result, non-Islamic states may “adopt an Islamic political system, but they also lack other aspects of Islam such as belief, manners, and social conduct.” (El-Shinqīti 2006)

To perceive *shura* as one of the *maqâsid* is an argument that is likely made in favor of a not too literal interpretation of the normative sources of Islam and a flexible application of the sharia under changing circumstances depending on time and place. This is an approach particularly chosen by muftis at IslamOnline.net and, in this sense, very characteristic.

Finally, in response to the question whether Islam and democracy are compatible Dani Doueiri and his team - as has been mentioned in the context of elections - emphasize the importance and the obligation of “consultative government” as basis of a state conforming to the sharia. They do so in order to defy absolutist rule. How exactly the principle of *shura* is brought to life remains a matter of choice and preference. The Muslim community at a given place or time decides on the establishment of institutions to properly represent the *shura* requirement.[37]

Further Aspects of *Shura*

Among the many other references to *shura* three issues seem to be particularly noteworthy in the context of this article. Ebrahim Desai stresses the establishment of *shura* in cases of hardship - where hardship implies living among a majority of non-Muslims in a non-Islamic state. In an unusually lengthy fatwa about the Mohammed cartoon controversy at the beginning of 2006 his first suggestion to Muslims for the resolution of this crisis is to consult with the scholars (‘ulamā’) and “responsible people”. Other reactions may, for example, include law-abiding peaceful protest against the cartoons in particular and against Islamophobic tendencies in general as well as the boycott of Danish products.[38] The idea of staging demonstrations had already been formulated in 2002. Asked about the permissibility of rallies, Desai states that *shura* could be instituted in the form of an organizing committee and discussion forum guided by the scholars (‘ulamā’).[39] In all of his fatwas he underlines the importance of the scholars as natural leaders of the Muslim community and of *shura* as the proper organizational setup when facing difficulties in minority contexts.

Sometimes the muftis also make reference to the participation of women in *shura*. The equality of men and women before the law is one of the most important stipulations of Western liberal democratic constitutions. It can therefore serve as an indicator of the scholars’ readiness to accept these con-

stitutions. In one instance, Ebrahim Desai points to the fact that the sharia would not hinder female students from participating in the Muslim Student Association of a university in the United States. They could still abide by the prescription to wear the veil (*hijāb*) and to refrain from mingling with men.[40] Ahmad Kutty is more outspoken and actively encourages female participation and initiatives when addressing the ways of how to establish a strong and vibrant Muslim community. In his opinion, *shura* is one of several means to build that community and includes all people. He envisions *shura* to be some sort of “Islamic think tank” consisting of scholars, leaders, and experts. Women form “an integral part of all decision making processes”. In addition, his comprehensive understanding embraces also the youth who should get involved in these processes. Furthermore, he identifies among others education, constructive criticism, and negotiating skills as necessary to advance the community - all of which fit neatly as potential elements of *shura*. Kutty’s fatwa (2005) reflects once more the close connection with the general attitude toward Muslim minority contexts at IslamOnline.net before its crisis and OnIslam.net. In his series of articles Tarek M. T. Ezzat (2010a) calls for *shura* training on all levels, that is, in families, at school and university, in small communities and in whole nations.

Finally, the muftis at IslamOnline.net address the scope of political parties and of peaceful coexistence in Islam. Ja’far Sheikh Idris (2004) argues that *shura* and democracy are very well compatible when democracy delegates decision-making to a smaller group of people, i.e. a political party. In another fatwa the well-known scholar Taha Jabir al-’Alwani states that

[i]n order for Muslims to gain their rights in this country [i.e. the United States], and their positive interaction with the native people of this country, it requires from us consultation [*shura*] and agreement on the main principles of Islam, and we should excuse each other on the minor differences. The righteous Companions of the Prophet, peace and blessings be upon him, set up an example hundreds of years ago when they met to consult each other [sic!] on the best response to the critical situation during their migration to Abyssinia. (IOL Shari’a Researchers 2004)

By establishing *shura* against the background of a historical precedent - the early Muslims’ migration (*hijra*) to Ethiopia - al-’Alwani lends additional support to his argument. This makes his fatwa particularly relevant to Mus-

lim minority contexts because the Muslim refugees in Ethiopia at the time were also a minority group among majority Christians. With this analogy he even establishes a historically friendly relationship between Christians and Muslims - the way he might imagine it to come to pass in the United States today.

Conclusion

The normative sources of Islam and early Islamic precedents pave the way for the establishment of *shura* in contemporary Muslim majority and minority contexts. However, the conclusions which muftis of different backgrounds draw from these sources and events differ. While all muftis are unanimous in their defense of *shura* as an integral part of Islam and remarkably committed to upholding *shura*, they disagree on the centrality and the implications of this concept. In many instances *shura* serves as a historical precedent for contemporary action in analogous affairs and as a form of mutual consultation.

There are notable differences between the online fatwas. On the one hand, Ebrahim Desai at AskImam.org is more reserved when addressing such issues as elections or women rights. He tends to focus on the hardships Muslims suffer in Europe and North America and on the historical aspect of *shura* as a constitutional principle, for example, in the form of the caliphate. On the other hand, the muftis at IslamOnline.net and IslamiCity.com envision political parties and encourage gender equality. Moreover, they make real efforts at reconciling terminology from western political thought and Islamic political thought as in the case of elections and constitutional principles. Consequently, they are able to encourage Muslim political participation and engagement in the EU and North America on the basis of Islamic norms thus rendering it not only permissible (*halāl*), but recommended (*mustahabb*) and mandatory (*wājib*). The comparison between these various approaches to *shura* and democracy provides an invaluable understanding of how Muslim scholars interpret vague norms and then address their audiences for guidance.

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Notes

[1] Note that fatwa links are not provided in the works cited. Except for IslamOnline.net, whose fatwas are referenced with detailed URLs, all other online fatwas can be searched for with their given numbers.

[2] Fatwa no. 98134 (n.d.) at IslamQA.com.

[3] Fatwa no. 98134 (n.d.) at IslamQA.com.

[4] Fatwa no. 22239 (n.d.) at IslamQA.com.

[5] IslamOnline.net as operative between its foundation in 1997 and 2006 - and then on until early 2010 - is the predecessor website of the post-2010 IslamOnline.net and its derivative OnIslam.net. Cf. Abdel-Fadil 2011.

[6] For a more thorough discussion of these websites see Kutscher 2009:138.

[7] Fatwa no. 4925 (January 1, 1995) at IslamiCity.com, where it is stated that “*the Prophet has encouraged mutual consultation in family affairs.*”

[8] See al-Sallābī 2011. al-Sallabi is a proponent of political Islam in Libya after the fall of Gaddafi (OnIslam 2011).

[9] Fatwa no. 7886 (February 6, 2003) at AskImam.org.

[10] Fatwa no. 5054 (November 24, 2000) at IslamiCity.com/qa.

[11] Fatwa no. 98134 (n.d.) at IslamQA.com.

[12] See fatwa no. 4648 (January 14, 2002) and fatwa no. 4080 (November 7, 2001) at AskImam.org.

[13] Fatwa no. 3062 (n.d.) at IslamQA.com.

[14] All quotes from the Quran are taken from Dawood 2006.

[15] See al-Sālih 1999:24. Cf. also the German convert to Islam and retired senior diplomat Murad Hofmann(2007:298), who identifies the two verses as the “Qur’anic foundation for an Islamic parliament.”

[16] For biographical notes on Idris see his homepage at <http://www.jaafaridris.com/English/Biography.htm>, accessed November 7 2011.

[17] Fatwa no. 5054 (November 24, 2000) at IslamiCity.com/qa.

[18] See chapter 2.

[19] Fatwa no. 98134 (n.d.) at IslamQA.com.

[20] Fatwa no. 98134 (n.d.) at IslamQA.com.

[21] See al-Bukhārī 2000:1379, where it says at the end of *bāb rajm al-hublā min al-zinā idhā ahsanat in kitāb al-muhāribīn min ahl al-kufr wa-l-ridda* that whosoever gave allegiance to a man without consultation of the Muslims would not be followed (“*fa-man bāya’a rajul ‘alā ghayr mashwara min al-muslimīn fa-lā yutā-ba’u*”).

[22] Fatwa no. 98134 (n.d.) at IslamQA.com.

[23] Fatwa no. 1992 (January 19, 2001) at AskImam.org.

[24] Fatwa no. 4535 (January 1, 1995) at IslamiCity.com/qa.

[25] Fatwa no. 1498 (November 3, 2000) at AskImam.org.

[26] Fatwa no. 5571 (May 7, 2002) at AskImam.org.

[27] Fatwa no. 10206 (December 11, 2003) at AskImam.org.

[28] For biographical notes on Moustapha see his homepage at <http://www.drsono.net/modules.php?dat=13&&version=1>, accessed November 7, 2011.

[29] For biographical notes on Mawlawi see the obituary by Al-Khateeb, Mostafa : “Faysal Mawlawi: A Moderate Practicing Scholar! OnIslam (May 18, 2011). <http://www.onislam.net/english/shariah/shariah-and-humanity/torchbearers/452303-faysal-mawlawi-a-moderate-practicing-scholar.html>, accessed November 7, 2011.

- [30] Fatwa no. 2959 (April 24, 1998) at IslamiCity.com/qa.
- [31] Fatwa no. 4535 (January 1, 1995) at IslamiCity.com/qa.
- [32] Fatwa no. 3768 (March 20, 2002) at AskImam.org. Cf. also fatwa no. 4080 (November 7, 2001) at AskImam.org.
- [33] Fatwa no. 1992 (January 19, 2001) at AskImam.org.
- [34] Fatwa no. 5115 (March 5, 2002) at AskImam.org.
- [35] For biographical information on Kutty see his homepage at <http://askthescholar.com/1-7-scholar-profile.aspx>, accessed November 7, 2011.
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- [37] Fatwa no. 4535 (January 1, 1995) at IslamiCity.com/qa.
- [38] Fatwa no. 17247 (March 22, 2006) at AskImam.org.
- [39] Fatwa no. 5507 (June 4, 2002) at AskImam.org.
- [40] Fatwa no. 3635 (September 25, 2001) at AskImam.org.