

Islamic Law as Political Law:  
An Assessment of Recent Developments in Pakistan and Iran

In both Pakistan and Iran intense debates are raging over the merits of government-imposed versions of Islamic law. Being democracies, albeit seriously flawed ones, both countries allow some space for dissent, so critics of official policies regarding Islamic law can register their highly negative opinions – as long as they are prepared to incur the wrath of government authorities. In both countries official sponsorship of Islamization measures is linked to policies inimical to the rule of law at a time when popular anger over the evils attributable to the absence of the rule of law is growing. Both countries have economies that are seriously malfunctioning, creating anger and resentment among the mass of have-nots. Faced with the affluence of the ruling cliques, those suffering from acute poverty and lack of employment opportunities are tending to accept the widespread rumors about their rulers' indulgence in corruption and graft at the expense of the national interest. The end result of the combination of misgovernment and economic crisis is an association of Islamic law with political law and a consequent diminution in the prestige of Islamic law in both countries. A comparison with developments in Malaysia and Egypt, where proponents of Islamization have allied themselves with forces calling for the rule of law, joining in opposition to oppressive secular regimes, shows how Islamization can have very different connotations in a different political context.

Ugo Mattei's categories set a framework for making these comparisons.( Mattei 1997) The legal universe is typically divided into categories like civil law, common law, Islamic law, and socialist law, divisions that correlate with geography or culture. In contrast, Mattei's taxonomy emphasizes systemic characteristics relating to different

phases of historical evolution. At any given time a legal system can combine elements of all of the systems, with one or the other predominating in any given area of law. The kind of law that predominates overall in a system should be the basis for classifying it.

Only a crude, truncated summary of the categories can be offered here. Mattei's rule of traditional law can include systems where the predominant element is religion and where changing social conditions cannot be absorbed without importing Western models. Both Pakistan and Iran have moved well beyond this stage, having long since imported Western-style legal systems and having relegated Islamic law to a marginal role – notwithstanding official rhetoric about upholding Islamic law. Mattei's rule of political law is characteristic of transitional phases of legal systems. Political and legal processes cannot be sealed off from one another and law and the courts are weak before political power. The outcome of the legal process is often determined by political relationships and personal connections. Mattei's rule of professional law – here referred to simply as the rule of law -- is characteristic of the present legal systems in the liberal democracies of the North Atlantic. The legal arena and the political arena are differentiated, the law is largely secularized, high-level political decision-making is itself subject to the restraints of the law, and rulers are constrained by the law.

Using Mattei's scheme, we appreciate that Islamic law may retain some influence in parts of the Iranian and Pakistani legal systems but does not warrant classifying these as Islamic/traditional. In both Iran and Pakistan the rule of political law currently predominates. Of course, they are mixed systems. Thus, at one and the same time, they can employ medieval religious law in some areas, exhibit the abuses and politicized justice typical of political law, and possess some laws and institutions indicative of their

aspirations to belong to the rule of law. Juggling these disparate types of law within a single system leads to tensions and incongruities.

Naturally, regardless of how dependent it is on the rule of political law, no government wants to advertise that it imposes political law, meaning that there will be a tendency to seek some ideological rationale to give legitimacy to legal systems afflicted by the vices of political law. Iran's clerical hardliners and Nawaz Sharif are currently seeking to identify their legal policies with a law that many Muslims still venerate and consider pre-political, Islamic law. Apparently, they hope that this will shore up their tattered legitimacy and distract people from the deficiencies of their legal systems. However, they face problems when their official Islamization programs are dismissed as just one more facet of the rule of political law – as they increasingly are. The vocal contempt with which government-sponsored versions of Islamic law are being treated in both Iran and Pakistan suggests that Islamization is now widely scorned as a gimmick wielded by corrupt and oppressive ruling cliques. Critics now pointedly attack official Islamization measures like rule by an unelected faqih that have the consequences of giving the government extra-constitutional prerogatives. Government attempts to monopolize the authority to command what is right and prohibit what is wrong according to vague Islamic criteria are seen as roadblocks in the way of achieving the rule of law. In these circumstances, the leaders who call for adherence to an official Islamic ideology are increasingly placed on the defensive and feel compelled to answer their critics' charges that they are politicizing Islam. Their defensiveness constitutes a departure from the approaches of the leaders who inaugurated Islamization in both countries -- Ayatollah

Khomeini and General Zia, both of whom unapologetically stressed the power that they wielded as leaders imposing Islamization.

Khomeini in his famous January 1988 statement brazenly proclaimed that the Islamic state, which he dominated as the supreme faqih, enjoyed absolute power and was entitled to adopt any measures dictated by its interests – regardless of whether they violated fundamental principles of Islamic law. That is, he was ready to trumpet that his decisions were effectively unconstrained by any laws, since in his hierarchy Islamic law ranked far above other laws and even that was not binding on the state. General Zia made a more modest claim in 1983 in analogizing his status as Pakistan’s ruler under martial law to that of a traditional amir whose commands had to be obeyed by his subjects regardless of their wishes – as long as he respected the Qur’an and sunna. Since in practice Zia interpreted these sources as approving everything he did, this was tantamount to proclaiming that his will was law. (Mayer 1999, pp. 33-34) Zia’s incongruous assertion in the same speech that his government was a constitutional one – as if his ruling the country as military dictator under martial law and claiming the obeisance owing to a traditional amir conformed to the requisites of constitutionalism -- anticipated the kind of double talk about the rule of law that one was later to see on the part of those promoting Islamization in contemporary Iran and Pakistan.

Bearing in mind that ruling elites depending on the rule of political law now feel obligated to pretend to follow the rule of law, we can account for some of the peculiarities in official discourse. The rule of professional law and the rule of political law are mutually exclusive, so referring to the terms of the rule of law while maintaining a system of political law entails self-contradictions, tortured logic, and attempted

coverups. Increasingly, both regimes are lashing out at the press and at dissidents, who have embarrassed them by exposing these inconsistencies and by decrying abuses like corruption and repression that are attributable to the rule of political law.

### Pakistan

The role to be allotted to Islam has been a contentious issue since the founding of Pakistan. An unstable country, Pakistan has lurched back and forth between democratic governments and military dictatorships. Once endowed with a relatively independent and competent judiciary, Pakistan has seen the caliber and the efficiency of its system of justice decline. The rule of law suffered many setbacks during the tenure of the last military dictator, General Zia ul Haq, who until his death in 1988 cynically used Islamization to justify amassing all power in his own hands, imposing martial law, and trampling upon democracy and human rights. Zia set in motion a trend, which has persisted since his death, of subordinating the constitution to fuzzy, supposedly Islamic criteria.

The leadership of the current Prime Minister, Nawaz Sharif, is under siege due to his manifest inability to solve Pakistan's staggering social and economic problems. As of 1998, Pakistan was nearing bankruptcy. Furthermore, the law and order situation had seriously deteriorated, with repeated violent confrontations breaking out between rival political factions and different religious and ethnic groups, and a burgeoning crime wave plaguing Karachi. Corruption is rife: Pakistan has been ranked with Nigeria by the anti-corruption NGO Transparency International in terms of its pervasive corruption. Sharif himself is beset by charges of corruption. In 1993 he was removed from office by the president during a previous term in office for corruption and misrule. His family, like

that of Benazir Bhutto, his main rival, are generally understood to have vastly enriched themselves at the public expense. The Observer of London reported that Pakistan's Federal Investigation Agency had concluded that Sharif had siphoned off more than \$70 million into offshore bank accounts and London property. It alleged that a variety of corrupt actions were behind the stunning growth of his companies during his term in power in 1990-93. The probe had proceeded in a period when he was out of power but was stifled as soon as he regained office in February 1997. Sharif redirected the corruption investigations, targeting Benazir Bhutto and her husband. (Observer News Service, Sept. 28, 1998)

Nawaz Sharif in the period 1998-99 moved to concentrate all power in his own hands. (Bokhari, April 27, 1999.) Sharif got rid of the chief justice of the Supreme Court, Sajjad Ali Shah, after a confrontation; he forced out President Leghari after stripping his office of its extraordinary power; and he compelled army chief Jehangir Karamat to take premature retirement. Sharif tried to force the regular courts to serve his political agendas – or, where possible, to displace them by a system of military courts that he inaugurated in November 1998. Asma Jahangir, one of Pakistan's leading human rights lawyers, warned that the shift to military justice marked a dangerous reversion to the logic of former military dictators. (Alam, February 1, 1999)

Sharif's attempt to monopolize power coincided with the inauguration of an Islamization campaign. Sharif proposed the Shariat Bill, also known as the Fifteenth Constitutional Amendment, on August 28, 1998. The Qur'an and sunna were to become the supreme law of the land and the federal government was to be allowed to "prescribe what is right and forbid what is wrong," issuing directives to enforce Islamic tenets. The

bill initially provided that parliament could amend the constitution by a simple majority for the same purpose, a provision that had to be dropped due to the condemnation that it provoked. The bill said it would have effect notwithstanding anything contained in the Constitution, any law or judgement of any court, thereby aiming to subordinate the constitution to whatever the executive branch decided was warranted by the Qur'an and sunna. On October 9, 1998, the bill passed in the lower house of parliament, which was dominated by Sharif's party, but was stalled in the Senate. Sharif's critics predict that he will rig the elections in 2000 to obtain a Senate that will pass the bill with to get the needed two thirds majority.

Pakistanis have tended to greet Sharif's sudden commitment to Islamization with outspoken cynicism. Pakistan's energetic opposition groups, NGOs, and journalists have denounced the proposed Fifteenth Amendment, complaining that it would destroy the rule of law and would give Sharif's regime discretion to do whatever it pleased under the guise of applying Islamic law.

Significantly, even adherents of the Jamaat-e-Islami, formerly ardent proponents of Islamization, attacked Sharif's proposed amendment, not wanting to see Islamization associated with Sharif's inept and corrupt regime. The Jamaat-e-Islami lambasted Sharif's bill as a ploy to draw attention away from his "miserable failure" to solve Pakistan's problems, which at base were the result of "corrupt, incompetent and insincere leadership." (Pakistan Islamic party, October 4, 1998) Farooq Haidar, son of the eminent fundamentalist leader Mawlana Mawdudi, asserted that the proposed amendment had nothing to do with Islam or shari`a law. (Sarwar, Oct. 15, 1998).

The political motives behind the bill were emphasized by critics. For example, sixteen NGOs in Islamabad complained that Sharif was engaged in “the most blatant and shameful attempt to date to exploit religion for petty political gain,” that the bill proceeded “from a subjective and distorted interpretation of Islam,” and that the aim was “to destroy the constitutional basis of the state and divert the people from a democratic creed.” (Sarwar, Sept. 2, 1998). Opposition parties, NGOs, and rights groups denounced the Shariat Bill as a threat to the Constitution. It was recognized that by placing control over what was deemed “Islamic” in the hands of the government, the bill allowed the government to employ the Islamic rubric to suit its own designs. The Aurat Foundation, one of the NGOs condemning the bill on these grounds: “Since concepts and definitions of Islamic rights and wrongs are subjective and vague, it will give the government absolute power to interpret Islam according to their own dictates and permit them to further erode the status of women and non-Muslim citizens of Pakistan.” (Rizvi, Mar. 25, 1999).

Placed on the defensive by the harsh denunciations of his Shariat Bill, Sharif struggled to associate Islamization with a constructive agenda. He tried repeatedly to defend himself against the charges that he was exploiting Islam for political ends, pleading that the planned amendment would eliminate oppression and injustice, lawlessness, corruption and mismanagement. That is, the bill was advertised not so much as a way of implementing a divine mandate but in terms of its supposed utilitarian benefits. Islamization was presented as a panacea, a cure-all for Pakistan’s pervasive, corrosive ills.



Of particular interest for this discussion, Sharif undertook the impossible task of squaring his Islamization campaign with respect for the rule of law. Facing the highly negative reaction to the Shariat Bill, he protested that it would bring about human rights, social justice, and the rule of law, insisting:

Islam does not mean absurd reasoning and quarrels between sects or flogging of the people. Islam does not allow undue interference in the people's individual and personal affairs or preach eliminating the people's personal freedom and their freedom of thought. . . When I talk about Shariat, I envision a future in which the society is rid of crime, exploitation and oppression are eliminated, justice is provided to all, every individual is respected and honored, no one is afraid of remaining hungry, no excess is committed against anyone, all are equal in the eyes of law, nobody is able to abuse the law, every child is able to go to school, every sick person is able to get medicine, every home's oven is lighted, all get equal opportunities, and monopolies are eliminated. . . we want to present to the world the model of a modern Islamic, democratic, and welfare state where minorities can lead their lives freely; where rights of women are respected, and women are free to build their world of their choice; where doors of material progress are opening and the people are crossing stages of spirituality; where the youth are able to acquire modern education and scrupulously observe moral values. (Prime Minister, October 13, 1998)

Skeptics observed that at no point did Sharif offer any specific indications as to how the Shariat Bill would advance any of the goals he mentioned. Moreover, his very insistence that Islamization would *not* mean tyranny, reactionary policies, injustice, and discrimination showed how aware Sharif was that Islamization had come to be associated with precisely these same abuses. Furthermore, his own record in the same period when he was professing his commitment to progressive ideals and the rule of law hardly supported these professions.

Sharif's regime occasionally manifested qualms about the Islamization campaign becoming associated with the policies of the neighboring Taliban. Appreciating that it was undesirable to appear to be sponsoring fundamentalism, Information Minister Mushahid Hussain insisted that "We are a liberal Muslim government. We are not

fundamentalist.” (Filkins, Oct. 10, 1998) However, such public relations exercises clashed with other measures and statements. Sharif’s government is known as the main backer of the Taliban regime, not being deterred by the Taliban’s savagery, their reactionary version of Islamic law, and their severe mistreatment of women and minorities. Undermining the credibility of Sharif’s protestations of respect for human rights and his efforts to make his proposals for Islamization appear enlightened, Sharif proclaimed that he regarded the Taliban’s kind of justice as a model. (Thomas, The Times, Sept. 30, 1998). He later said that he wanted a system of Taliban-style criminal justice in Pakistan (Bokhari, Dec. 5, 1999).

Anxious to end embarrassing denunciations of injustice, persecution, and measures aimed at degrading the rule of law, Sharif and his allies began to attack NGOs for supposed misappropriation of funds, charging them with being anti-Islamic and agents of foreign powers. By associating NGOs with corrupt practices and an anti-Islamic agenda, Sharif was obviously trying to tarnish the image of NGOs and to turn popular sentiment against them. Punjab Minister Shahbaz Sharif, the Prime Minister’s brother, called for auditing of NGOs’ budgets, especially those that were foreign-funded and involved in what he chose to label “anti-state,” “anti-religion,” and “anti-social” activities. In May 1999 when the regime announced a new law that aimed to subjugate NGOs to government control, it became obvious that the regime aspired to crush all independent NGOs, especially prominent ones like the influential Human Rights Commission of Pakistan and Shirkat Gah that were working to advance human rights and women’s welfare. Thousands of organizations were threatened with dissolution.(Galpin, May 15, 1999; Sarwar, May 24, 1999) The threatened NGOs charged that the crackdown

aimed to intimidate groups that raised human rights issues and questioned the Shariat Bill. (Rizvi, May 27, 1999)

In his assault on NGOs, Sharif was mimicking the contemporaneous policies of Hosni Mubarak's secular regime in Egypt. Threatened by the proliferation of vigorous Egyptian NGOs agitating for democratization and human rights, Mubarak had a law enacted that would place private groups under government control and bar them from any political activity. (Carmichael, June 2, 1999) Given Mubarak's allergy to criticism, it was predictable that the law would be used to stifle all independent groups, especially human rights NGOs, that were critical of his repressive policies. Because Mubarak had already taken measures in 1996 to place the Bar Association under government control after Islamists came to dominate it, Egyptians could conclude that proponents of Islamization were the ones supporting the rule of law and the institution of civil society. Unlike in Pakistan, in Egypt, it was secular governmental policies that were associated with the rule of political law.

Until 1999, Pakistan had a relatively free press for a society at its stage of development. Through 1998, journalists of the influential Jang Group, Pakistan's largest newspaper group, had continued to publish sharp criticisms of the government and of its Shariat Bill, notwithstanding government threats and pressures. As of 1999, the government inaugurated a tough crackdown that gave reason to wonder whether independent journalism was about to become as dangerous as dangerous in Pakistan as it had been in Iran.

In January 1999, the Jang Group accused the government of demanding the sacking of many of its journalists for criticizing the government, as well as taking other

measures designed to throttle the press. The government's ire seemed to have been provoked by attacks on the Shariat Bill and the reproduction of stories originally published in the London Sunday Times and Observer that were indicative of Sharif's involvement in corruption. The government tried to get the dismissal of Maeeha Lodhi, one of the country's leading journalists, who was put under surveillance and her phone lines tapped. (Hussain, January 28, 1999) When the government protested that it was being wrongly accused of efforts to censor the press, the owner of the Jang Group, Mir Shakeel played tapes of conversations with the head of the Accountability Office, Senator Saifur Rahman, in which the latter bullied him, demanding the dismissal of sixteen senior journalists perceived as being anti-government. (Sarwar, Feb. 2, 1999) Police attacked hundreds of journalists and press workers protesting against the crackdown on the press, resulting in several injuries. (Hussain, Feb. 3, 1999)

In a rare instance of judicial independence and resistance to the wishes of the Prime Minister, in February 1999 the Supreme Court ruled that the special military courts that Sharif had set up in 1998 were unconstitutional and set aside sentences that had already been issued by military courts. (Pakistan Says Courts, Feb. 18, 1999) Asma Jahangir described this ruling as a victory of the constitution and the "defeat of those who pleaded expediency above the rule of law." (Zubeiri, Feb. 17, 1999). Sharif acquiesced, saying that "the constitution tells us to respect the courts, their decisions. The upholding of the constitution is our obligation and we will do it." (Pakistan Prime Minister announces, Feb. 19, 1999). Of course, Sharif's pretending to be committed to upholding constitutionalism was directly at odds with his efforts to secure the passage of the Shariat Bill, which had been designed to undermine the constitution. Like some of Iran's ruling

clerics, Sharif felt obliged to engage in doubletalk, pretending to adhere to values of constitutionalism and the rule of law.

A new low in terms of the rule of law was reached in the May 1999 arrest of Najam Sethi, a former government minister and one of Pakistan's best known journalists, who was hauled out of bed, beaten, and dragged away in the middle of the night and then held incommunicado and without formal charges being filed, although the regime darkly insinuated that Sethi had committed treason. Sethi's arrest prompted strong protests in Pakistan as well as an international outcry, especially since it was suspected that he had been taken into custody solely because of his cooperation with a BBC investigation into persistent allegations of government corruption. (Bokhari, May 12, 1999) Prospects for the survival of press freedom dimmed, as indications mounted of government involvement in schemes to terrorize other independent journalists. (Sarwar, May 10, 1999; West, May 16, 1999) Even after the government bowed to international pressure and released Sethi after a month in detention, journalists who challenged the government realized that they were thereby exposing themselves to harsh repression.

Fear of public discussion of Sharif's riches may have prompted the clampdown. Having just succeeded in April 1999 in having his arch-rival Benazir Bhutto convicted of graft, the last thing Sharif wanted was an examination of how he had managed to amass his own vast fortune over a short period. He resisted opposition demands that the anti-corruption probes had to be expanded to encompass Sharif's government. (Goldenberg, May 14, 1999) Frustrated over Benazir Bhutto's refusal to return from a stay abroad to serve the five year sentence that had been issued in her absence, the regime seems to have chosen to lash out at her husband Asif Zardari, who was already imprisoned. Attempting

to explain how Zardari had wound up hospitalized with neck injuries, the police asserted that Zardari had attempted suicide. Zardari and his relations charged that he had been abused by police torturers.(Goldenberg, May 19, 1999) Given the prevalence of police abuse and torture of prisoners in Pakistani jails, Zardari's charges sounded entirely plausible.

### Iran

I have examined post-revolutionary Iran's difficulties with combining its official Islam with human rights policy elsewhere.(Mayer 1996). What is critical for the present assessment is that, after almost two full decades of being ruled by a reactionary clerical elite that used Islamic law as the rationale for its repression and its monopoly of power, Iranian voters were suddenly offered a liberal reformist alternative in the 1997 presidential elections. They demonstrated their dissatisfaction with the entrenched rule of political law by electing President Mohammed Khatami in a landslide. With his victory, the presidency, a relatively weak office in the Iranian system, was occupied by a cleric who had advertised his commitment to protecting human rights and establishing the rule of law. Naturally, this put Khatami at odds with the clerical hardliners, who still dominate many parts of the government. Khatami is thus in the unusual position of being the president of his country and at the same time the leader of the reformist opposition camp. Khatami is himself a cleric and a descendant of the Prophet, so that in opposing the hardliners, he undermines their attempts to identify their policies with Islam. The hardliners have naturally fought to discredit him and his team while trying to do whatever they can to shore up their own power and credibility. When on February 26, 1999, in the municipal council elections an overwhelming victory was won by liberal candidates

identified with Khatami's campaign for the rule of law, the hardliners had reason to fear that they were losing ground.

Given his tenuous hold on power and the hostility of the clerical establishment to his reform agenda, Khatami has to be circumspect in his public statements. He cannot afford to denounce the official Islamic ideology as an instrument of those committed to the rule of political law. However, he can make his points indirectly by insisting on the importance of constitutionalism, the rule of law, and the need to respect human rights, Khatami has repeatedly proclaimed his support for judicial independence and equality before the law. His clerical foes try to counter him in various ways, sometimes by invoking Islam and at other times by trying to steal his thunder and pretending that they themselves respect the rule of law. The comments of Ayatollah Mohammed Yazdi, head of Iran's judiciary and a representative of the hardline faction, have been particularly revealing in this regard.

Only a few samples of Khatami's statements on the rule of law can be offered here. Khatami on the occasion of the anniversary of his May 23, 1997, electoral victory promised that he would not be deflected from creating a freer society with an accountable government and warned: "A lot of people are out for themselves and hiding behind religion." (Gardner, May 25, 98) Khatami's accusation that people were using religion as a cover for pursuing selfish agendas was a rare instance where he indicated that his opponents were manipulating religion for their own ends -- although he prudently omitted the names of the accused. A speech in Tehran in May 1998 was noteworthy for the paucity of its Islamic references and its perfunctory deference to Khamene'i's authority.

Instead, Khatami emphasized the need to build on the constitution, asserting that it was his wish to turn:

the law and the rule of law into a value in our country . . .the rule of law does not merely mean that we should ask the people to submit to the law. In the first place, those who have the means and the power -- in particular the country's three branches -- must be pioneers of the rule of law . . .the law without freedom means one-sided domination over society. . . the facts show that in our country freedom should certainly respect Islamic principles. . . It is a requirement of political freedom that we should recognize the sovereignty of the people over their fate which we have recognized in the constitution. (President Khatami calls, May 26, 1998)

In a televised speech, Khatami stressed the need to give the greatest possible attention to the constitution. Basing himself on the constitution, Khatami said that people had rights and there were limits to government powers. He specifically identified *his* office with defense of the constitution. Significantly, Art 113 assigns the implementation of the constitution to the President, not to the faqih. According to Khatami: "Just as he is a defender of Islam, the system of the Islamic republic and the country's official religion, the president is the executor and guardian of the constitution and the people's rights and liberties; in this respect, his position is different from the system's other leaders and officials. . . ." (Khatami addresses gathering, December 2, 1998) In another speech Khatami extolled the idea of an independent judiciary, saying that a judge must be impartial in all ways and must not side with any specific group and tendency. His ideas included: No superior official can tell a judge what to do. No power is authorized to force a judge to issue a certain verdict. Judges should function in total freedom. The government should take its power from laws. The judiciary is to treat all people equally. Further steps should be taken to strengthen the judiciary. (President says judges, June 29, 1998). In commemorating the twentieth anniversary of the Islamic Revolution, Khatami



said: “The basic slogan of this government is, therefore, abiding by the law, the institutionalization of law and order and the institutionalization of all the components of government within the framework of the constitution.” (Khatami urges adherence, Feb. 13, 1999)

From the tenor of these typical statements one appreciates that Khatami has been conveying to Iran’s restive populace that he is fighting the rule of political law. Seeing the popularity of such appeals to the rule of law, hardliners have sometimes reacted with appeals to Khomeini’s Islamic ideology, insisting that the existing system of clerical rule is mandated by Islam, so that any attacks on principles like rule by the faqih are in fact attacks on Islam itself. In so doing they seek to discredit critiques of clerical domination and repression by allies of Khatami, such as the professor Abdol Karim Soroush or clerics like Hojjatol Eslam Mohsen Kadivar and Ayatollah Montazeri. For example, in June 1998, Nateq-Nuri, Khatami’s defeated rival, asserted that belief in limiting the powers of velayate-e faqih was tantamount to dealing a blow to Islam and the state. (Majlis Speaker says, June 30, 1998) Such warnings, in which challenging clerical domination is equated with irreligion and treason, have not stopped Iranians from calling for democratization and insisting that religion and state should be separated, condemning the misrule that Iran’s Islamic ideology has engendered.

Not only do they appeal to Islam, but sometimes the hardliners try to coopt Khatami’s own slogans, posing as enlightened defenders of the rule of law and attendant values, like respect for human rights. For example, Ayatollah Yazdi, in comments on the Garaudy trial in France, in which the controversial convert to Islam was being prosecuted for Holocaust denial, posed as an authority on the rule of law, asserting: “Since I am

acquainted with judicial matters, I have told those who are connected with judicial issues in the world on many occasions that they should be careful not to mix politics with judicial affairs. Judgment and justice are too holy and pure to become tools in the hands of politics and politicians.”(Ayatollah, Yazdi comments, February 2, 1998) Yazdi responded on the Voice of the IRI to the spring 1998 UN report on Iran’s human rights record, complaining that the report falsely condemned Iran for failing to conform to international standards, asserting: “No, that is not true, it does conform.” Ignoring the actual focus of the critical assessments, he spoke as if the condemnations related to Iran’s respect for sanctities and the fact that it was not feasible to abandon divinely-mandated criminal laws. (Judiciary head criticizes US, May 4 1998)

While asserting that Iran’s legal system adheres to the rule of law, hardliners have wielded Iran’s courts as instruments of political vendettas. A notorious example was the highly political 1998 trial of Tehran’s dynamic and popular mayor, Karbaschi, the mastermind of Khatami’s stunning 1997 electoral victory, which led to the humiliating defeat of the hardliners’ candidate, Nateq Nuri. To try to discredit the progressive Karbaschi, and through him to harm Khatami, Karbaschi was criminally prosecuted.

Apparently, at least some hardliners had been able to grasp that continuing their habit of disappearing and murdering opponents would be politically unwise, and that another secret trial on the by now overly-familiar range of charges usually hurled at dissidents – spying for Israel, adultery and sodomy, drug trafficking, spreading corruption on the earth, etc. – would exacerbate public outrage. So, Karbaschi was charged with despotic and dictatorial behavior, embezzlement, and mismanagement -- the very kinds of offenses that the population commonly attributed to Iran’s ruling clerics.

Unaware of what trials conducted according to the rule of law entailed, the hardliners decided that broadcasting the proceedings would serve to discredit Karbaschi. The trial might have seemed relatively fair by the abysmal standards prevailing in the IRI, but the proceedings clashed sharply with the standards of procedural fairness observed in systems adhering to the rule of law. Among other things, the presiding cleric, who acted both as both prosecutor and judge, was clearly not playing the role of a neutral decision-maker. He acted openly antagonistic to the defendant, behaving like an agent of the forces aiming at Karbaschi's conviction. Before he was convicted on July 23, 1998, television viewers witnessed heated exchanges as Karbaschi quarreled with the judge about the unfairness of the procedures, complained about the judge's bias and lack of qualifications, and outspokenly denounced the tortures to which witnesses complained that they had been subjected in the course of obtaining the "confessions" relied on by the prosecution. (Tehran mayor clashes, July 16, 1998) Iranians seem to have widely seconded Karbaschi's complaints. The counterproductive televising of Karbaschi's blatantly unfair trial illustrates how far Iran's dominant clerics are from grasping even the rudiments of the rule of law. Trying to negate charges that Iranian justice was politicized and to persuade people that the rule of law was respected, they allowed viewers to witness a trial that inadvertently confirmed that Karbaschi was the victim of a political witchhunt. The trial reinforced the impression that, as long as Iran's clerical hardliners held sway, the rule of political law would persist.

As Karbaschi's status as a martyr of the reform movement grew, the hardliners became defensive. Besieged by critics, the cleric who acted as judge felt obliged to make a statement denying that the court was political and complaining that the defendant and

the lawyers had insulted the court. (Seventh and closing session, July 13, 1998) The judiciary felt obliged to deny that any political motivation had prompted the prosecution and insisted that the proceedings were perfectly legal. (Second round of controversial trial, June 11, 1998) But, some associated with the government conceded that damage had been done. In the wake of the allegations of torture in the Karbaschi trial, even the relatively tame quasi-governmental Islamic Human Rights Commission complained about illegal detention centers maintained by the police and the intelligence ministry, accusing them of practicing torture to extract confessions. Faced with negative reactions to the Karbaschi trial, the Justice Minister Esmail Shushtari conceded that the present court system had “a number of shortcomings.” A Majles member stated that many faults had come to light during the trial and that giving the judge several functions caused serious problems.(Iranian governmentt to push, July 15, 1998) Karbaschi’s appeals and efforts by his friends in government to obtain a pardon were unsuccessful, and in May 1999 he began serving his two year prison term in Tehran’s notorious Evin Prison.

One can contrast the impact of the Karbaschi trial, which encouraged Iranians to identify official Islam with the rule of political law, with the very different impact of the blatantly political prosecution of former Deputy Prime Minister Anwar Ibrahim by the basically secular government of Malaysia, where the local Islamist faction won popular support in consequence of the bad impression created by the trial. Increasingly nervous about his own authority in the wake of the collapse of the nearby Indonesian dictatorship and facing allegations of corruption and mismanagement of the economy, long-time Prime Minister Mahathir Mohamad seems to have fixed on Anwar, his presumptive successor, as the prime threat to his hold on power. He apparently hoped to have Anwar

discredited through a rigged judicial proceeding that included lurid accusations of sexual misdeeds. The charges of sex crimes were designed to humiliate Anwar but struck onlookers as implausible. Popular sentiment was mobilized against the government in the wake of news about how Anwar had been abused while in custody and by his conviction after unfair proceedings in April 1999. (Muzaffar 1999, p.13) In Malaysia, opposition forces like the PAS, the main Islamist party, increased their political clout as a result of popular indignation over how Mahathir's regime used the rule of political law to engineer Anwar's conviction. Eager to profit from the widespread alienation caused by the Anwar trial, Malaysia's Islamists have worked to convince the populace that they are the supporters of good government, justice, accountability, and transparency – and that these are the goals of the Islamic state that they aim to establish. Malaysia and Singapore. (Aiming to Avoid, Mar. 20, 1999; McNulty, Feb.19,1999; Tan, Feb. 28, 1999). That is, the Malaysian example clearly illustrates how in the battles over the rule of political law being waged in Muslim countries, local context determines whether Islamization is associated with achieving the rule of law or resistance to it.

Unable to tolerate journalists' criticisms and exposes of the regime's corruption, repression, and violence, Iran's hardliners lashed out at the liberal and reformist press, which had increasingly focused on the abuses associated with the rule of political law. Hundreds of lawsuits were filed against publications in 1998-99, with dozens of publications being temporarily or permanently shut down. One of the reformist papers, Jameah, was closed down on June 10, 1998, after publishing an all too revealing speech by the commander of the Revolutionary Guards. General Yahya Rahim-Safavi was quoted as saying that liberalization had gone too far and that "heads need to roll, tongues

need to be cut off, and pens need to be broken.” (Cohn, Nov. 15, 1998) Of course, hardliners deemed this report to be dangerous precisely because it exposed their thuggish mentality. Aware that their repressive tactics had exacerbated their unpopularity, they were desperate to conceal their savage philosophy of repression from public view.

Exasperated by media criticism, in a speech in March 1999, Ayatollah Yazdi explicitly associated constraints on freedom of expression with upholding Islamic principles as articulated by the clerical establishment. He incautiously rejected the principle of freedom of expression and displayed a truculent disregard for normal standards of legality, asserting:

There is no freedom in this country for some people to say and write whatever they want. We . . . do not want this type of freedom where everyone is allowed to say whatever they want even if it is against the principles of Islam. . . . If necessary, the ruling and the supervisory establishments in the country will supervise and will take action. They will not remain indifferent and they will not listen to anyone . . . the judicial establishment does not involve itself in politics, and it will not take note of anything except God, religion, and revolution . . . If we arrest someone you should not cry and ask why. This is the rule of law. (Judiciary head says no, Mar. 29, 1999)

Moreover, in the same speech he emphatically proclaimed that what Islamic principles consisted of was to be decided by theological seminaries, sources of religious emulation, ayatollahs and prominent scholars. That is, Yazdi indicated that the criteria that would be used to define the limits on Iranians’ freedom would be decreed by a clerical elite, an elite that would neither be elected by nor be accountable to the electorate. The notion that the populace had a right to complain about arrests or demand an explanation for these was scoffed at (“you should not cry or ask why”). Without intending to do so, Yazdi had just given an object lesson as to why Iranians had become profoundly estranged from the official Islamic ideology.

Ayatollah Yazdi found that not all Iranians were intimidated by him. In April 1999 conservatives shut down Zan, the newspaper of one of Iran's most outspoken liberal feminists, Faezeh Hashemi, the daughter of former President Hashemi Rafsanjani. Undeterred by his menacing attitude, she publicly lashed out at Yazdi and mocked what she called "the pompous title of the representative of the supreme jurisconsult." She asked rhetorically: "Does the country not have laws? So why do you try to establish justice through demagoguery? Are there no limits to what one does to acquire power and hang on to one's position?" After these jabs at the rule of political law, she protested against the closure of her paper, scolding: "Mr. Yazdi, as the head of the judiciary, you will not do badly if you take the law seriously at least once in your life. You can at least go over it. Take a look at Article 168 of the constitution . . . Do you not know what legal procedure should be followed?" (Managing editor of banned daily, April 14, 1999)

Speaking for the other side, an editorial in a pro-government newspaper justified the closure on grounds that Zan had published a new year's message from the former Empress and had continued to bring religious laws into question, as well as ridiculing them. (Publication of Shah's widow's message, April 13, 1999) By the end of May 1999 it seemed that a new war to silence the liberal press was being launched. (Motahari, May 30, 1999)

The Helmut Hofer case might ordinarily be dismissed as relatively marginal, but it deserves consideration because it illustrates how Iran's Islamic justice becomes entangled with the character of Iran's political law. By 1997 Iran's ruling clerics had become worried about their reputation for carrying out international terrorist missions and sending assassination squads around the globe to murder their enemies. They were

shaken by the Mykonos affair, in which a German court identified three top officials – Rafsanjani, Khamenei, and Ali Falahean – as being among those who had arranged the killing of several Kurdish dissidents in the Mykonos restaurant in Berlin. When in April 1997 the German court found the Iranian agent Kazem Darabi guilty of the killings, Iranian officials raged about what they said was a grave insult and launched harsh attacks on the German court for an irrational and invalid ruling that, according to them, violated international norms.

Although it was already on the defensive, the regime imprudently reverted to its old, hostage-taking ways, seizing Helmut Hofer, a German businessman and placing him on trial for an alleged infraction of Iran’s Islamic rules on sexual conduct. On the basis of flimsy evidence, the hapless Hofer was charged with having had an illicit sexual relationship with an Iranian Muslim woman. Hofer was sentenced to death in January 1998 for committing zina, a capital crime under Iran’s version of Qur’anic criminal law. Faced with allegations that Hofer’s conviction was engineered to give Iran a bargaining chip to trade with the Germans for Darabi’s release, Iranian officials felt compelled to deny repeatedly that the case was political or that it had any connection to the Mykonos affair. In discussions with the German Ambassador, Ayatollah Yazdi spoke as though the basis of Iran’s system being “Islamic” thereby immunized it from political influence, saying: “Iran’s legal system is based on Islam and the judiciary is independent and prohibits any interference.” (Iranian chief judge, Feb. 1, 1999) He also denied that the Hofer case had any political overtones, claiming: “The judiciary power in Iran is independent and in no way politically oriented.” (German businessman, Feb. 16, 1998)



However, the protracted delay in carrying out the order for Hofer's execution was naturally seen as a way keeping the issue of his potential release alive and of pressuring Germany to agree to exchange Darabi for Hofer's release.

The Hofer case became an acute political embarrassment in the wake of the murder of a prominent German banker, Heinrich Heimes, in February 1999. Although it is unclear whether Heimes' murder was also politically motivated, against the background of the recent string of murders of prominent Iranian dissidents and the Hofer case, Heimes' murder was seen as political and was ascribed to machinations by the regime. Embarrassed by the swirling murder charges, the hardliners apparently doubted the value of holding Hofer. Iran's Supreme Court suddenly announced that it saw problems in the basis for Hofer's conviction, quashed the death sentence that had been issued a year previously, and sent the case back for retrial. (Iranian Supreme Court, Feb. 20, 1999) This chain of events and the sudden about-face regarding Hofer's conviction of a Qur'anic crime proved that Iran's administration of its Islamic criminal justice was as politically-tinged as other aspects of the legal system.

As noted, the new twist in the Hofer case came after a series of murders, eliminating a number of prominent dissidents and secular writers, all killed at the end of 1998. Their killings provided a fitting capstone to a year in which Iran's hardliners had twisted and turned, trying simultaneously to terrorize and eliminate critics while at the same time pretending to appreciate the requirements of the rule of law. With what seemed to have symbolic significance, one of the murdered writers, Mohammed Jafar Puyandeh, was killed on December 9, 1998, the publication day of his Persian translation of a book on the history of the Universal Declaration of Human Rights. (Dinszweski,

Mar. 26, 1999) After elements in Iran's security apparatus were implicated in the murders, embarrassed hardliners tried to deflect culpability by insisting that the killings had resulted from a rogue operation that was severable from the regime and, in particular, that the murders had nothing to do with the regime's official Islamic ideology. Thus, Mohammad Niazi, the prosecutor of military court, claimed that those arrested in the recent murders had no links with any political faction and had not claimed to have acted upon a religious decree in carrying out the murders.(Iran claims no party, Jan. 20, 1999) Ludicrous attempts were made to pin the blame for the murders on liberal reformers via a broadcast of a program that portrayed Khatami's close aides and allies as the perpetrators. Ultimately, the killing of the dissidents proved to be another miscalculation. The head of the intelligence ministry was compelled to resign after his ministry was implicated in the murders, despite the ministry's efforts to blame the murders on rogue agents.(Allen, Feb. 10, 1999)

In another move that could only highlight the prevalence of the rule of political law, hardliners arranged the arrest in February 1999 of Hojjatoleslam Mohsen Kadivar after he called for Ayatollah Khamenei to stay out of politics. Kadivar was a pro-Khatami cleric and friend of dissident Ayatollah Montazeri. He was tried and convicted in April by the special clerical court, the secretive tribunal established after the Islamic revolution to try clerics for acts contrary to religious law or harmful to public security. Kadivar's arrest and prosecution were widely viewed as political, and attacks on the special clerical court mounted in consequence. This special tribunal embodies the rule of political law as imposed by Iran's theocracy. It has been condemned by UN envoy Maurice Copithorne as arbitrary and secretive. (UN envoy, Feb. 26, 1999) Even Iran's tame Islamic Human

Rights Commission felt obliged to take a public position on behalf of the rule of law, appealing to the constitution, calling for observance of the legal rights of citizens, a fair and public trial with the defendant having the lawyer of his choice, and a right to appeal. (Human rights commission, March 2, 1999)

As Iran's clerical hardliners tried to respond to the growing impatience with the rule of political law, which had become identified with their official Islamic ideology, they became caught in a web of contradictions. Their efforts to disguise their antipathy towards the rule of law were largely failures and the record of their abuses and manipulation of Islamic law for political ends very damaging to their image.

### Conclusion

Mattei's taxonomy scheme helps us focus on the nature of the struggles going on over developments in the Pakistani and Iranian legal systems. Despite the pretensions of the governments involved to be engaged in applying Islamic law, Islamic law is not central to either system but is widely used as a device to camouflage the pervasive rule of political law. The governments have been placed on the defensive by demands for respect for the rule of law, the rule of law being the standard against which both governments and legal systems are being measured. Although committed to the rule of political law, increasingly the Pakistani and Iranian regimes try to convince those they rule that they are respectful of the rule of law. They are starting to learn that the association of Islamic law with the rule of political law is damaging, alienating people from the very Islamic ideologies that they want to use for legitimation. Meanwhile, government-sponsored versions of Islamic law are being viewed with increasing skepticism by citizens of both

countries, and the credibility and prestige of government-sponsored Islamization measures has been severely damaged in consequence.

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