

Arguing Islam after the Revival of Arab Politics. By Nathan J. Brown. Oxford: Oxford University Press, 2016. Pp. 296. \$29.95 (cloth). ISBN: 9780190619428.

In his latest book, *Arguing Islam after the Revival of Arab Politics*, Nathan Brown gives us the benefit of his broad experience and deep wisdom respecting the manner in which Islam is argued within and among Arab publics in contemporary times and the extent to which these arguments have an effect on public policy. Brown, who is justifiably well recognized as a leading authority on Arab law and politics based on his many decades studying the subject, insists that his book is not a reaction to the famed and largely ill-fated Arab Spring (1). Nevertheless, the most valuable contribution he makes in this book is the insight he provides into debates and controversies roiling the Arab world since the Arab Spring over that most sensitive and dangerous of topics—the role of Islam in the public order. While offering important historical perspective, Brown focuses mostly on Egypt, with some consideration of Sunni states such as Jordan, Tunisia, Palestine, and Morocco, and the rise of a “republic of arguments” (49) in the Arab world since the heady days of 2011, when one regime after another was threatened with massive civil unrest from a population fed up with authoritarianism (or, Brown would argue, “semi-authoritarianism” (13)), and the stagnant economic and stifled civic life that accompanied it.

In this work, Brown makes three important points. First, there is far more open and public debate about Islam’s role in the society and the state than is frequently acknowledged. Second, much of this debate is not actual engagement among diverse actors with different views so much as it is various social elements and movements talking past each other to advance their own favored position. Finally, the effect on public policy of all of these very open debates and very public arguments is often oblique, and at times nonexistent. Ironically, in fact, competing elements more often manage to reach a compromise to advance some sort of consensus public policy when they are not arguing with each other, but negotiating their positions privately through a trusted intermediary. Brown’s most salient example of this sort of private mediation leading to a compromise solution concerns revisions to personal status in Jordan, which were effectively managed by the chief justice of the shari’a courts through separate, private engagement with various factions that had proved implacable in public debate (208–9). Brown ends on a hopeful note, albeit a guarded and contingent one, that the durable “republic of arguments” that began with the Arab spring might serve as a basis for sustained engagement on what Islam is and what its public role should be. More significantly, the argumentation might help to limit Arab authoritarianism over time.

The book is important and valuable, so much so, in fact, that it is hard to take seriously any subsequent work on political science or law in the post-Arab Spring if it does not grapple with the positions Brown advances. The most significant is Brown’s argument that the role of Islam in the social order and the state’s legal infrastructure is very much a matter of active debate. To demonstrate this, Brown points to the diversity of actors making arguments about Islam. First, there are the religious specialists from traditional institutions of religious learning like the Azhar. There are also the preacher men, media personalities to whom Brown devotes attention (185–90), and whose knowledge of Islamic law is perhaps not quite as deep, but who command a substantial following. Lawmakers and judges similarly feel no compunction about invoking Islamic law, nor do civic organizations with varying, conflicting agendas. As Brown indicates,

It is not that everyone can make an authoritative shari'a-based argument. But it is true that anyone can grab one and deploy it in a realm different from that of the original author. (98)

Adding to the complexity is the fact that the arguments about Islam are not necessarily traditional, nor are such arguments necessarily textual. Some might justify their positions on a matter of Islamic law through an explicit reference to Prophetic practice. Others, however, will invoke what are known as the *maqasid*, or purposes, of the shari'a to claim that there is a spirit that overrules both specific, Prophetic textual commands and centuries of received jurisprudence derived from them (99). Others invoke context to soften the effects of mandatory criminal punishments (98–99) or make rather blunt use of a historic, limited, and technical source of Islamic jurisprudence known as *maslaha*, or “public interest,” to argue in favor of various policies as Islamic for no reason other than that they are good policy (135).

In describing contemporary debates about Islam and Islamic law in this way, Brown offers a response of sorts to political philosophers who are suspicious of religious argument as being inaccessible to nonbelievers or heterodox adherents. The general view among political philosophers, Brown points out, is that religious argument is inappropriate as a basis to make claims of public policy because citizens who do not share the truth claims of the religion in question will not find the argument accessible, much less persuasive. Thus, for example, an argument respecting the social and physical dangers of alcohol might very well persuade a Christian, or a nonobservant Muslim, to seek its prohibition. Neither would find persuasive the argument that alcohol should be banned because God forbids its consumption, and both might well feel alienated in a society that made law on this basis. Thus, liberal political theory has generally favored advancing arguments in the public sphere on the basis of what Rawls describes as “public reason,” where arguments proceed on presumptions that would be shared by all.¹

There have been recent correctives to this categorical approach, with notable figures like Jeremy Waldron pointing out that religious arguments in the public sphere are not necessarily as antithetical or threatening to the liberal order as might at times be claimed.² Nevertheless, the presumption against religious argument is a fairly strong one, and one that Brown seeks to challenge. However, importantly, Brown engages this rich debate not in theoretical terms, but rather empirical ones. That is, he points out that as a matter of fact Islamic arguments are being made, and the role of Islam itself is being argued, and that none of this has shut off or significantly constrained debate. The insight he offers into discussions of Islam in Arab society in this context is useful and long overdue. There are none better equipped to deliver it than Brown.

Still, one wonders whether or not Brown is attempting to prove too much by describing Islamic argumentation in Arab society in such broad and ecumenical terms. Even if religious arguments are not monolithic in the Arab world, they are homogenous enough to limit the boundaries of legitimate debate. To begin with, Arab society is downright hostile to any argument that smacks of secularism. In the experience of this reviewer, one cannot so much as introduce a capital markets law in the Arab world without offering some justification, no matter how gauzy or abstract, that the law conforms somehow with some Islamic principle or ruling. This is a fact that Brown himself acknowledges, indicating that a secularist who believes that shari'a has no role to play would

1 See John Rawls, “The Idea of Public Reason Revisited,” *University of Chicago Law Review* 64, no. 3 (1997): 765–807, at 766.

2 Jeremy Waldron, “Two-Way Translation: The Ethics of Engaging with Religious Contributions in Public Deliberation,” *Mercer Law Review* 63, no. 3 (2012): 845–68.

never actually voice such a position in public, and that on the rare occasions when they do, the position is disregarded (121, 133).

The consequences of this are more problematic than Brown seems to acknowledge. Suppose, for example, a secularist wishes to engage in a debate respecting constitutional qualifications for the office of the presidency, where an Islamist group has insisted that the president be male. The argument presented by the Islamist group is that the Prophet Muhammad indicated that a community that entrusts its affairs to a woman will not prosper. The secularist cannot reflect her true view, which is that what the Prophet said is completely irrelevant to her in deciding who is qualified to serve as president of Egypt. Rather, she must find some Islamic basis to contend with the position—perhaps that a president is but a single office in a constitutional system, and a community does not entrust its affairs to him or her in the manner that it would, say, to a caliph. Or perhaps she will argue that the true goals of the shari'a are more important than a singular textual command. There are of course other approaches, many of which Brown discusses. The point is that one way or another, she will disguise her actual commitments and pretend to care about Islamic ones to advance her position.

Even more problematically, Brown seems unwilling to engage at much length the deleterious effect that these limits on religious argument impose on religious minorities such as Egyptian Coptic Christians or Iraqi Yazidis. In a world where it is a given that the shari'a must play a significant role in ordering society, such minorities are effectively proscribed from public debate almost entirely. After all, any policy position that a non-Muslim makes on the basis of secular argumentation will be disregarded, for the reasons already described, and any argument the same non-Muslim makes on the basis of what the shari'a does or does not require would seem so obviously disingenuous that it would be unlikely to persuade a committed Muslim.

Brown largely sidesteps the issue by assuring us that non-Muslims do not seek secularism but rather “state recognition of and protection for their communally based structures” (136). In other words, the religious minorities are not interested in arguing against the shari'a playing a significant role in state and society, and thereby ensuring for themselves an equal place in setting public policy and governing social norms on the basis of public reason accessible to all. Instead, they wish to carve out for themselves some sort of safe space where they are free to impose their own forms of orthodoxy on their own respective constituencies.

The problem with this position that Brown advances is that, once we leave public reason behind and argue on the basis of shari'a in setting general public policy, the limits of the respect to be afforded to the communally based structures of the religious minorities are not particularly well defined. When a heterodox Yazidi girl is stoned to death in Kirkuk for falling in love with a Muslim boy, are we, as the Iraqi police did in fact, to turn a blind eye to the murder, out of respect for “communally based structures”?³ If not (and I assume not), what are the public policy limits in this illiberal society where the Grundnorms are not secularism and individual autonomy, but instead communal structures and the premier role of the shari'a in establishing the rules of state and society? It seems inevitable in this state of affairs that the extent of the minority safe space will be determined in large part by contemporary arguments respecting tolerance in the shari'a, leaving the minority community profoundly vulnerable to religious arguments that the shari'a grants no autonomous rights to particular minority communities such as the Yazidis. This is not

3 See “Four Arrested in Iraq ‘Honor Killing,’” CNN, May 21, 2007, <http://www.cnn.com/2007/WORLD/meast/05/18/iraq.honorkilling/>.

purely a theoretical problem, as the massacre of Yazidi men and the enslavement of Yazidi women by the so-called Islamic state demonstrate.⁴

Brown's protestations respecting the desire for autonomy to the contrary, it seems unlikely, on this basis, that a minority community actually wants to keep itself this isolated from the public sphere, and thus this vulnerable. It seems far more likely that they would prefer a more liberal state where the Grundnorm is that arguments are derived from public reason, and not from a religious tradition with which they are unaffiliated. The demand for autonomy seems more a resignation of what they are prepared to accept, rather than that which they actively seek.

So the secularist and the non-Muslim find no congenial home in the "republic of arguments." But they are not alone. The Islamic *reformist* treads on very dangerous ground as well. A liberal Muslim inclined to advance an unorthodox view of Islam might well question whether or not the Prophet Muhammad actually said that a community will not prosper that had a woman lead it. The circumstances of the report were indeed suspicious—the famed Abu Bakra seems to have recalled it only *after* the Prophet's son in law had defeated the Prophet's wife in battle at the end of Islam's first civil war. At least one Muslim feminist has pointed this out and has cast doubt on the authenticity of the Prophetic statement as a result.⁵

Alas, the Muslim liberal cannot safely make this argument without risking social marginalization and quite possibly prison. The Prophetic statement appears in the compilation of Muhammad al-Bukhari, and is therefore part of the Sunni canon. To deny the canon is blasphemy, which can result in criminal prosecution, as Brown himself points out (67) and as is pointed out elsewhere in media reports.⁶ The same fate awaits Shi'i Egyptians, who would never regard Bukhari as canonical and who are imprisoned with frequency in Egypt for their supposed blasphemies.⁷

Brown is seemingly unwilling to engage with these astonishing acts of religious persecution and the very clear limits they impose on acceptable discourse about Islam in the "republic of arguments." In fact, even when discussing this repression, he mostly does so by insisting that when it comes to Islam, there are "yellow zones" rather than "red lines." This is because of the permeability of acceptable speech and the haphazard and inconsistent manner in which prosecution takes place (54–55). This apologia of sorts from Brown is not entirely coherent, as no state anywhere is capable of enforcing restrictions on speech with perfect precision, and this problem is made worse in developing states with less resources—human and material—to devote to law enforcement. More problematically, it seems to ignore the dramatic chilling effect that a "yellow zone" has. Obviously it is true that not every public statement in every blog, newspaper, and media outlet that some of the Prophetic reports in Bukhari are falsified is prosecuted. Yet it must also be true that enough are prosecuted that significant numbers of people are hesitant to say anything heterodox or reformist, or in any way challenge traditional understandings of the faith, out of fear of potential persecution. The possibility in any event deserves more attention than Brown gives to it.

Brown's second point, that social actors talk past rather than to each other in this "republic of arguments," seems to me almost self-evident in light of the above. Of course they do. The

4 See Skye Wheeler, "UN Panel Reports on ISIS Crimes on Yazidis," *Human Rights Watch*, June 21, 2016, <https://www.hrw.org/news/2016/06/21/un-panel-reports-isis-crimes-yezidis>.

5 Fatima Mernissi, *The Veil and the Male Elite*, trans. Mary Jo Lakeland (Reading: Perseus Books, 1991), 49–60.

6 Hatim Khatib, "Egypt's Controversial Blasphemy Law Strikes Down Free Islamic Thought," *Your Middle East*, January 7, 2016, http://www.yourmiddleeast.com/culture/the-controversy-of-blasphemy-in-egypt_37886.

7 Marwa al-Asar, "Egyptian Religious Leader to Stand Trial for Promoting Shia Islam," *Middle East Eye*, May 22, 2015, <http://www.middleeasteye.net/news/egyptian-religious-leader-stand-trial-promoting-shia-islam-948128803>.

dissembling is deeply rooted, the tendency to delegitimize and stigmatize is almost reflexive, and the rhetorical exercises in cant are so self-serving and demagogic that they would make Elmer Gantry blush. Such an environment does not lend itself to sustained engagement.

In this context, it is somewhat curious that Brown finds the essential problem in meaningful accommodation and engagement across the “republic of arguments” to be the lack of any sort of institution with the capacity to moderate and mediate the different positions. This seems inevitable. Brown’s unwillingness to deeply engage with the consequences of the harsh limits on what may be said about Islam in the public sphere leaves him seemingly unwilling to acknowledge that it would be impossible for any consensual, mediating institution to develop, given those limits. There is no room to navigate, no common space within which to operate, and the prohibited areas of discussion are too broad.

Thus, in the end, Brown’s corrective is useful and important in challenging the lazy assumption that debates over Islam in the Arab world are inherently impossible to have. But, despite Brown’s fervent, eloquent, and quite learned insistence to the contrary, this reviewer remains convinced that they are far more tightly constrained than Brown wishes to acknowledge. What Brown describes as “Habermasian disgust” (244) may well be the appropriate response to what passes for discourse over Islam in the Arab world today.

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