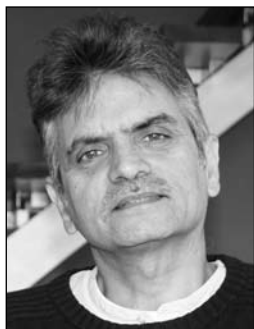# Islam and Democracy in South Africa

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During the debate on the Civil Union Bill in 2006, a prominent Mufti (Muslim jurisprudent) in Kwazulu Natal said that he rejected homosexuality, but he had no objection to Parliament granting gays and lesbians the right to a union:

> … we would, you know abhor, those kind of things. But at the same time, we have to understand that we have a democratic dispensation … [that] would have to dispense the needs of all its citizens. So if certain citizens have made their claim, and if they have a right of staying in the country, we would expect that, the democratic dispensation facilitates for them as well …[1]

Mufti Ebrahim Desai could not condone homosexuality, as such, but asserted that unions between homosexuals deserved the protection of the Constitution. *Mufti* Desai is a leading teacher who heads a seminary outside Pietermaritzburg and dispenses guidance on the Internet to thousands of Muslims within and outside the borders of South Africa (www.askimam.org).

Over the last few years, in contrast, security specialists have raised concerns about the probability of strong anti-democratic currents within Muslim communities in South Africa. The vigilante group People Against Gangsterism and Drugs (PAGAD) in 1990s was described as an Islamist movement that rejected the authority of the Constitution and the rule of law. Religious law, in its view, would never stand under a man-made law.[2]

South African Muslim convictions and practices oscillate between these two poles. In spite of constituting only 1.46% of the population, Muslim political views are diverse and reflect the diversity of trends in South Africa. On the one hand, ardent democrats support the Constitution without question; on the other hand, certain individuals and groups regard the Constitution as a rival authority to Islamic Law.

Utopia and Heterotopia

Michel Foucault's concepts of utopia and heterotopia are helpful in revealing this complex relationship between South Africa's constitution and public expressions of Islam. In a short article written in 1967, Foucault reflected on various attempts by the modern nation-state to inscribe a new public space to replace the cosmologically defined space of the *ancien régime*. Such a new secularized space was to be infused with new ideals and values. Foucault went on to argue that such ideal spaces of the nation did not really exist, and were thus were more correctly regarded as utopian. Apart from this imaginary category of utopian space, however, there was another kind of space in the modern nation. Such spaces, Foucault argued, were "real places – places that do exist and that are formed in the very founding of society – which are something like counter-sites, a kind of effectively enacted utopia in which the real sites, all the other real sites that can be found within the culture, are simultaneously represented, contested, and inverted." Foucault called these other sites heterotopias,

which were not pure representations of the nation, but could not be detached from them. Sometimes they seemed to represent the nation, but could just as easily contest and invert it. Unreal utopias reflected the imaginary places of the new nation, but heterotopias acted as real but imperfect mirrors of the nation.[3]

Foucault wrote about spaces in relation to the nation. We can justifiably argue that in South Africa, the Constitution rather than the nation would more accurately capture the play between utopia and heterotopia. While the idea of a nation has no doubted permeated South African public life since 1994, the Constitution represents a more widely shared set of values. Its values take shape in official spaces like the parliaments, schools and courts that have been transformed and rebuilt, but also public spaces and monuments like Freedom Park and the many museums that have mushroomed around the country since 1994. Utopia and heterotopia provide a useful framework for thinking about religions and South Africa's constitutional democracy. In this article, I would like to apply this framework to the public expressions of Islam since 1994 which reflect both perfectly and imperfectly the values of the constitution.

Muslims, Politics and Law

Muslims are deeply involved in national politics, and are fully represented in different levels of government. Their representation at this level, in fact, far outweighs their proportion in the general population. In 2007, for example, 18 out of 490 members of parliament from both houses were Muslim (3.7%); 2 out of 26 ministers (7.6%); 2 out of 22 deputy ministers (9%); 15 out of 210 Cape Town city councillors (7%); 4 out of 173 councillors in Johannesburg (2.3%). Muslims

… the South African Constitution represented shared universal values in the light of which Muslim Marriage law may be re-interpreted. The majority of Muslims believed, however, that a compromise with the Constitution was inherently impossible.

are also well represented among prominent and outspoken public leaders and cabinet ministers. These range from Ahmad Kathrada, who spent 27 years with Nelson Mandela on Robben Island, to the recently deceased Professor Kader Asmal who became very critical of the African National Congress in the last few years of his life. Another prominent ANC leader, Ebrahim Rasool, stands out among these national leaders. During his tenure as Premier of the Western Cape, Rasool articulated a religious approach to democratic politics. Emerging from the small, but vocal Muslim anti-apartheid activist groups in the 1980s, Rasool regularly espoused an Islamic justification for democracy and a *national* Muslim identity that did not contradict Islam.[4]

Moving from politics to law, a more heterotopic picture emerges of Muslim response to the Constitution. The Constitution of South Africa (Article 15 of Chapter 2) recognises "marriages concluded under any tradition, or a system of religious, personal or family law." The particular application of this principle to Islam has been highly controversial among Muslims since 1994. Human rights activists have argued that Islamic law was a product of human history, subject to continued interpretation and adjustment. In their view, the South African Constitution represented shared universal values in the light of which Muslim Marriage law may be re-interpreted.[5] The majority of Muslims believed, however, that a compromise with the Constitution was inherently impossible. In contrast with the human construction of the Constitution, they argued that Muslim Personal Law (MPL) was divine in origin and intent, which implied that its provisions should not be subject to compromise and historical conditioning.[6]

A closer examination of some prominent arguments against the re-interpretation of Islamic Law reveals a more complex picture. Their initial religiously formulated rejection also harbours a political and even constitutional position. The *Majlis* (lit. the gathering), a newspaper published in Port Elizabeth in the Eastern Cape which has a wide coverage and also an Internet site, has consistently rejected attempts to formulate a law that would balance the demands of Islamic Law and the Constitution. It associated the various Bills presented for public debate with *kufr* (disbelief), suggesting heresy for any Muslim associated with it. Interestingly, however, the newspaper also advised Muslims how to deal with the supreme law of the land:

> … there is ample room to work within and round the country's Constitution to ensure that Muslims regulate their lives in accordance with the Shariah while this is not possible with MPL legislation because such legislation is *kufr* legislation presented in the name of Islam.[7]

… this increased devotion has led to a variety of trends and schools, including a fair share of conflicts between puritan, text-centred trends and cultural practices inherited from the past. The result may be described as a veritable Islamic market that vies for clients as it continuously produces new offerings.

The author recognised a space created within and by the Constitution for the practice of religion. He argued that the relevant clause (Chapter 2, clause 15 cited above) did not compel Muslims to approach the state to recognize their marriages. It only provided the possibility of how the state might recognize Muslim Personal Law. Muslims in South Africa could comfortably get along without the intervention and interference of the Constitution in the practice of the Sharīah. Others, including the *Mufti* quoted in the opening paragraph of this article, have added their weight to this position. They found support in the secularity of the Constitution, and declared that any Muslim Marriage Bill presented to parliament amounted to direct interference in the affairs of Islam.[8] Supporting the secularity of the state, they wanted no interference in the religious affairs of Muslims.

Religious Observance and the Constitution

So far, I have particularly referred to political and legal relations between Muslims and South Africa's constitutional democracy. We should not ignore general religious developments that affect such relations. In the last few decades, Muslims in South Africa have been turning in significant ways to greater religious observance. A greater number of men and women attend prayers on a daily and weekly basis, fast in Ramadan, organize charities, and go on pilgrimage to Mecca. Whilst seminaries have been founded in the country since the 1970s, students still go to the Indian subcontinent and the Middle East to pursue higher education or for more authentic religious guidance. New religious movements like the Indian Tablighi Jamaat have found fertile ground within Muslim societies since the 1960s and now draw thousands to their gatherings at Easter time. As expected, this increased devotion has led to a variety of trends and schools, including a fair share of conflicts between puritan, text-centred trends and cultural practices inherited from the past. The result may be described as a veritable Islamic market that vies for clients as it continuously produces new offerings.[9]

In the context of the South African Constitution, this general religious trend suggests two very divergent interpretations. Firstly, we may look at it as a product of the freedoms of the Constitution and the rule of law. Since 1994, the South

African democratic context has directly and indirectly supported religious practices and movements in the country. All religious groups have experienced some revival. Islamic religious practices have increased noticeably. Moreover, new global movements from England and elsewhere in Africa have found South Africa a more secure place to practise Islam, escaping increasing oversight of Islamic groups in the West and repressive and unstable political climates in Muslim-majority countries. Somali refugees have established religious networks alongside existing established mosques and groups, but so too has a British *Murabitun* movement established itself in the heart of the city of Cape Town. On the other hand, radical Islamic ideologies have also found receptive ears. Apart from the controversial PAGAD movement mentioned already, individuals and small groups have turned to radical theologies.[10] Each in their own way has found support in the South African constitution and its legal framework. Radicals have demanded greater evidence in the courts of law in a high level extradition case, and conflicts over ancient burial sites around Cape Town have been debated in Muslim media and national newspapers. Some concerns have been raised about radicalism, but the open and vigorous civic space has mitigated its most dangerous effects. In general, the South African constitutional order has clearly supported the proliferation of religious observances and trends.

Alternatively, greater religious observance among Muslims might be interpreted as a general trend away from engagement in the national public sphere. Each of the groups offers religious goals and objectives that clearly derive support from the Constitution and the rule of law, but ironically turn individuals away from fully embracing the same. Whilst the Constitution guarantees freedom of religion, it does not necessarily spell out the substance of that freedom. There is clearly a tension between religious objectives and commitments on the one hand, and the objectives of South African Constitution on the other. The example of Muslim Personal Law discussed above suggests how the goals of equality in the Constitution may be compromised. Muslim consumption patterns provide a benign example of this tension in another form. The *Halal* symbol on foods permitted for Muslims has become ubiquitous in governmental institutions, supermarkets and fast-food chain stores. On the one hand, the symbol represents the place of Muslims in the rainbow nation of South Africa. On the other hand, it also points to the erection of much stronger boundaries between Muslims and other religious and cultural groups in the country. This is a good illustration of a heterotopic space of religious consumption, reflecting the nation but also inverting and subverting it. Beyond consumption, this kind of space is also evident in religious groups who pursue the ultimate search for God (Sufis) or a global Islamic conformity to religious devotion (puritan movements) or tiny cells that pursue a dream of an Islamic state. In each case, there is a fine line between religious practices justified and permitted by the Constitution, and the ultimate goals and outcomes pursued.

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Conclusion

There is no easy way of representing the public expressions of Islam in South Africa's constitutional democracy. Foucault's concepts of utopian and heterotopic spaces capture the complexity of these expressions – sometimes reflecting the goals of the Constitution but also inverting, subverting and often going beyond them.

A small number of people have clearly worked to reflect constitutional values in religious terms. I would certainly include herein former premier Ebrahim Rassool's theology for democracy and human rights, and human rights activists who have fought for a greater rights-based interpretation of Islam. But *Majlis'* attempt to work "within and around" the constitution is not too far behind this attempt to reconcile Islam and the Constitution. Such interpretative gestures, though, mask a much larger canvas of Muslims thriving in democratic South Africa. Turning to these larger trends of greater religious devotion among Muslims, heterotopia seems to fit the liberties enjoyed under the Constitution, while pursuing divergent and opposing goals. Most of these goals are very much part of the fabric of religious life in any country, which makes heterotopia a most apt concept for the diversity and fragility of South Africa's democracy.

NOTES

1　Ebrahim Desai, "Interview," Camperdown with Abdulkader Tayob, 2006.

2　Anneli Botha, "Pagad: A Case Study of Radical Islam in South Africa," *Terrorism Monitor* 3(7), no. 7, 2005, accessed at http://www.jamestown.org/terrorism/news/article.php?articleid=2369781.

3　Michel Foucault, "Of Other Spaces," *Architecture /Mouvement/ Continuité*, 1984, accessed at http://foucault.info/documents/heteroTopia/foucault.heteroTopia.en.html.

4　Ebrahim Rasool, "Speech Delivered by Western Cape Premier, His Excellency Ebrahim Rasool At the Official Launch of the International Symposium on Islamic Civilisation in Southern Africa," 2006, accessed at http://www.awqafsa.org.za/Library%20&%20Resources/Symposium%202006/Premier%20Ebrahim%20Rasool%20Speech%20Leewenhof%2028062006.doc.

5　Ebrahim Moosa, "Muslim Family Law in South Africa: Paradoxes and Ironies," in *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, ed. S. Jeppie, et al. (Amsterdam University Press, 2010).

6　Muslim responses have been extensive, but a sample of such views are captured in the South African Law Commission Report of 2003 (Project 59: Islamic marriages and related matters, retrieved 24 August 2007, at wwwserver.law.wits.ac.za/salc/salc.html). See particularly for a well-articulated rejectionist argument in A. K. Toffar, "The Quranic Constitution and Its Expression in Law - a Legal Dilemma in a Non-Muslim State," *Occasional Journal of ICOSA* 2, 1422, 1-20.

7　The Majlis. "Miscellaneous Fatwas." http://www.themajlis.net/modules.php (accessed August 18, 2007).

8　Ziyad Motala, "The Draft Bill on the Recognition of Muslim Marriages: An Unwise, Improvident and Questionable Constitutional Exercise," 2002 (accessed July, 4, 2006 at http://www.alinaam.org.za/misc/mplziyaadone.htm).

9　Goolam Vahed, and Shamil Jeppie, "Multiple Communities: Muslims in Post-Apartheid South Africa," in *State of the Nation: South Africa 2004-2005*, ed. John Daniel, et al. (HSRC Press, 2005).

10　Khadija Abdul Qahaar, "Mustafa Jonker: "Ours is a Blessed Terror"," http://www.jihadunspun.com/intheatre_internal.php?article=1002617&list=/index.php (accessed May 25, 2008).