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Khayr al-Din Basha

Nouh El Harmouzi

There can be no doubt that the hostile action against property cuts off hopes, and with the severance of hope comes the severance of activities, until finally destitution becomes so pervasive that leads to annihilation. ... Among the most important things the Europeans have gathered from the lofty tree of liberty are the improvements in communications ... with these societies the circulation of capital is expanded, profits increases accordingly, and wealth is put into the hands of the most proficient who can cause it to increase. ... We have seen that the countries which have progressed to the highest ranks of prosperity are those having established the roots of liberty and the constitution, synonymous with political Tanzimat. Their people have reaped its benefits by directing their efforts to the interests of the world in which they live. One of the benefits of liberty is complete control over the conduct of commerce. If people lose the assurance that their property will be protected, they are compelled to hide it. Then it becomes impossible for them to put it into circulation. In general, if liberty is lost in the kingdom, then comfort and wealth will disappear, and poverty and high prices will overwhelm its peoples. Their perceptiveness and zeal will weaken, as both logic and experience reveal.¹

Khayr al-Din (1820–90) was prime minister of Tunisia and grand vizier of the Ottoman Empire. He was the author of Tunisia's 1861 constitution, the first written constitution of a Muslim-majority country, and of the book entitled *The Surest Path* (1867). Nevertheless, Khayr al-Din is an often overlooked figure, despite his influence on Muslim constitutional movements in the Ottoman Empire. Born in the Caucasus region, probably between 1820 and 1830, in his youth he was taken as a Mameluke slave to Istanbul. After thorough training in various fields such as martial arts, court etiquette and Islamic studies, Mamelukes

were freed. However, they were still expected to remain loyal to their master and serve his household. Khayr al-Din was later resold to an agent of Ahmad Bey of Tunis. He was given a modern as well as religious education by Ahmad Bey. In addition to Arabic, he learned French and spent four years in Paris. His world view was based on an education which was formed both by his Islamic culture and his Western experience.

From Mameluke slave to Grand Vizier, the life of Khayr al-Din was an exceptional example of meritocracy. He rose through the ranks of the Tunisian government and became prime minister and a key promoter of reforms, including a more transparent and lighter system of taxation, the insertion of secular subjects in the education offered by the country's key teaching mosques and acceptance of the need for a ruling council with real powers to advise and legislate on behalf of the ruler, the Bey. Threatened by Khayr al-Din's attempts to limit his power and wishing to preserve his authority, the Bey ended up dismissing Khayr al-Din in 1877.²

Khayr al-Din's success in putting Tunisia on firmer financial footing, staving off colonial advances by the British and French consuls, and his advocacy of limited liberalization and representation came to the attention of the Ottoman sultan Abd al-Hamid, who promoted him to Grand Vizier of the Ottoman Empire in 1878. Khayr al-Din's attempt to advance a programme of reforms was short-lived, however, and he was dismissed in 1879. Remaining in Istanbul, he dedicated the last years of his life to writing *The Surest Path*. He died in 1890. As an author, Khayr al-Din was inspired by and often quoted the book of the well-known fourteenth-century Muslim historian and thinker Ibn Khaldun.³ Both Khayr al-Din and Ibn Khaldun wrote their books after renouncing political life. The two books analyse the problem of the rise and decline of states, and each consists of an introduction, presenting general principles, and several parts. The difference is that Ibn Khaldun's book deals with the history of Muslim dynasties, while most of Khayr al-Din's analyses the history, political structure and military strength of European states. The importance of the work of Khayr al-Din lies in the introduction to his book. At the beginning, he explains the two aims of his work:

First, to persuade and urge those who are fervent and determined among statesmen and Oulamas (religious scholars) to adopt, as far as they can, whatever is favorable to the welfare of the Islamic community and the development of its civilization, such as the expansion of the boundaries of science and learning and the preparation of the pathways which lead to wealth and are the basis of everything.⁴

His second aim was to warn members of the Muslim community against closing their eyes to what is laudable and in conformity with their own religious law in the practices of believers of other religions, simply because they have the belief engraved on their minds that all acts and institutions of those who are not Muslims should be avoided. Inspired by what he saw during the four years he spent in the strongest and most advanced modern countries, Khayr al-Din wanted to show the roots of civilizations' strength. He argued that, in his time, the surest way to strengthen Muslim states was by borrowing ideas and institutions from Europe. He wanted to convince orthodox Muslims that to do so was not contrary to the Sharia, that is, to Islamic religious law, but in harmony with its spirit.⁵

Khayr al-Din posed the question of the separation and limitation of powers, based on both Western experience and Islamic tradition, and he can be considered the first Middle Eastern constitutionalist. He aimed to depersonalize power and substitute the rule of law for the arbitrary rule of an individual. In his book, he explained that justice is the only rigorous basis for the state, and that in normal situations the only guarantee of justice is the limitation of the power of the rulers.⁶ There may be a ruler who acts rightly due to his innate goodness and the knowledge given him by reason, but such men are rare, and there is no assurance that they will continue in the paths they have chosen.

In addition to being inspired by the experience of the European nations of his time, Khayr al-Din also understood the importance of limiting powers from a religious perspective, according to which checks and balances on power are needed for humanity to thrive. According to Khayr al-Din, the power of the ruler should be limited in two ways: first by law, either revealed or natural (Sharia law or *Al Qanun al Aqli* natural law), and secondly by consultation. There are two classes whom the ruler should consult, the Oulama and the notables or businessmen (*a'yan*). They must be able to speak freely, ensure that he is following the right path and prevent him from doing evil. With the exception of a ruler with innate rectitude, the best state is that in which both types of limitations exist, and stable laws are guarded by those qualified to interpret them. The Islamic community in its original form and during the golden age of Islam was such a state, and as long as it respected these rules, it had been prosperous, strong and highly civilized.⁷

Khayr al-Din believed that the Islamic community could only recover its strength if it learned the lessons of Europe and adopted those that were not contrary to the Sharia. But what exactly were those lessons? As a soldier and statesman, he was concerned with both military and economic strength. But

he was convinced that strength was a product of something else: material power depended on education, and education in its turn depended on political institutions. The basis of Europe's strength and prosperity was political institutions based on justice and freedom, in other words, responsible ministries and parliaments. Liberty, Khayr al-Din claimed, needs to be understood in three senses: 'One is called "personal liberty"; this is the individual's complete freedom of action over himself and his property, and the protection of his person, his honour and his wealth. He is equal to others before the law so that no individual need fear encroachment upon his person or any of his other rights.'⁸ While Ibn Khaldun viewed injustice as the root cause of the empire's decline, Khayr al-Din pointed to lack of freedom as the source of social, economic and political problems. He asserted that the absence of liberty would lead to poverty and rising prices.

The second meaning of freedom is political. Political liberty reflects 'the demand of subjects to participate in the politics of the kingdom and to discuss the best course of action.'⁹ Alongside these liberties, 'there remains to the public something else which is called freedom of the press, that is people cannot be prevented from writing what seems to them to be in the public interest, in books or newspapers Or they can present their views to the state or the chambers, even if this includes opposition to the state's policy.'¹⁰

In short, Khayr al-Din's contention is that welfare and material prosperity are not possible without freedom of the person, of the press and of participation in government. Freedom stimulates men to work by giving them the assurance that they will collect the fruits of their labour. Additionally, economic prosperity is not possible without the free movement of goods and people, and the free economic association to which the Islamic Golden Age and modern Europe owed its material achievements. He also stressed that if Muslim countries attempted to adopt the objective reasons behind European progress, they would not be adopting Christianity. They would simply be adopting the modern equivalent of the early institutions of the Islamic community. He is at pains indeed to make the parallel clear. What are the characteristic institutions of modern Europe? They are responsible ministers, parliaments, freedom of the press. But the modern idea of the responsible minister is not very different from the Islamic idea of the good vizier, who gives counsel without fear or favour, and parliaments and press are equivalent to 'consultation' in Islam. Members of parliament are what the religious scholars and notables were in the Islamic State, 'those who bind and loose.'¹¹

In confronting the most sceptical and recalcitrant clerics of his time, Khayr al-Din referred to the need of reinterpreting religious texts in the light of social and economic changes, while never denying the divine origins of those same texts. Khayr al-Din stressed a well-known Islamic doctrine, which emphasized the importance and the necessity of pursuing whatever benefits the majority of people as long as it is not in contradiction with the spirit of religion. He also emphasized the need to contextualize judgements according to time and place. In light of this, a rule which made sense at certain point in time in a specific place may become obsolete and irrelevant as humanity advances. Khayr al-Din was well aware that he needed to argue in favour of his positions from a religious perspective in order to be heard and to deliver a message that would resonate with the ruling elites of his time.

By asserting that the success of European nations was mainly due to strong institutions, and that the decline of previous civilizations was caused by the decay of such institutions, Khayr al-Din argued for the need to reform and replace the Ottoman institutions of his time. He must have been aware that such reforms had to be realized in an incremental way and that they would collide with the interests of a certain elite. Nevertheless, he deemed those reforms necessary for the Ottoman Empire and continued to preach them, even at the high cost of his own dismissal.

Khayr al-Din focused on the objective conditions for the success of liberal reforms, including, among others, education, respect for the rule of law and greater government accountability. Unfortunately, the reforms actually undertaken in the majority of postcolonial North African and Middle Eastern countries overlooked those preconditions. Today, the work of Khayr al-Din on the importance of strong institutions is still relevant. In Tunisia, the long-entrenched authoritarian regime was forced to give way to popular pressure for change. However, this change carries no guarantee that a democratically accountable system will emerge, as the removal of a dictator represents only the beginning of the end of authoritarian governance. Profound reforms are indeed needed, and high expectations for quick change may lead to a great deal of disappointment.

On 2 August 2012, not too far from the town of Borj Ali Raiis in Tunisia, after relentless efforts, Professor Abdeljelil Témimi was able to find the grave of Khayr al-Din. In 1968, the Turkish authorities had agreed to return the remains of the grand vizier to Tunisia with the condition that an honourable mausoleum be built for him as a tribute. Despite the agreement with Turkey, the remains of

Khayr al-Din were placed in a vacant government office before being discreetly buried. In a long article published by Al Maghreb newspapers, Professor Témimi condemned this marginalization of a national Tunisian figure, which he attributed to the oversized ego of former Tunisian president Habib Bourguiba. This story may also indicate a desire to erase the legacy of early liberal reformers in the region, thus making it easy to allege that liberal ideas are inspired by outside forces and have no home-grown roots. Khayr al-Din's life and work may serve as an appropriate refutation of this claim.