

Popular Sovereignty, Islam, and Democracy (2003)*

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Abstract

This article examines the idea that Islam’s rejection of popular sovereignty makes it incompatible with democracy. I show instead that sovereignty (“absolute despotic power,” popular or otherwise) is a sterile, pedantic, abstruse, formalistic, and legalistic concept, and that democracy should be seen as involving “popular control” rather than “popular sovereignty.” Divine sovereignty would be inconsistent with democracy only if that meant unlike in Islam rule by persons claiming to be God or His infallible representatives. A body of divine law that humans cannot change would be incompatible with democracy only if it were so comprehensive as to leave no room for political decisions.

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Various observers, mostly with little knowledge either of Islam or of Muslim countries, have jumped to the conclusion that the paucity of democracy in today's Islamic world is the result of Islam. Some of the most prominent examples of this include Samuel P. Huntington,¹ although the same author has been somewhat wishy-washy on this issue, demonstrating an open mind in a later work² and then reverting to blaming Islam.³ Actually, there are numerous cases of democratization to various degrees in the Islamic world.

Nevertheless, the paucity arguably is real during the era to which Huntington⁴ gives the label "Third Wave" (starting in 1974) and particularly since the end of the cold war, even in comparison with other parts of the Third World. One should keep in mind that the democratization taking place in many countries (Muslim and non-Muslim alike) is superficial and of "low intensity,"⁵ and that various commentators were labeling the Islamic world, notably the Middle East, as particularly authoritarian even at a time when one could have made a better case for awarding this distinction to some non-Islamic parts of the Third World.

The hasty conclusion that Islam is to blame constitutes an egregious example of a basic methodological error: confusing correlation with cause.⁶ While cultural and religious prejudice must be distinguished from blatant racism, this is analogous to concluding, without examining other explanations, that, for example, the high rates of poverty, crime, or whatever among African-Americans must be a result of their racial characteristics. In short, not only is there some sound basis for arguing that such doctrines as *shura* (consultation) and the elective caliphate in fact make Islam particularly conducive to democracy, but there are many reasons, notably (but not exclusively) international factors, to explain the democracy deficit in the Islamic world that do not put the onus on Islam.

If Islam has anything to do with the absence of democracy, it may be in the indirect sense that the world's dominant power, the United States, often supports authoritarian regimes, secular or otherwise, in the face of popular and at least sometimes more democratic Islamist movements that oppose American hegemony. In other cases, Washington rationalizes its backing of authoritarian client regimes on the grounds that one cannot expect Muslim countries to be more democratic. While I believe

that this international factor may go far to explain today's gap between the levels of democratization in the Middle East and the rest of the Third World, my main purpose here is to respond to a particular argument about the relationship between Islam and democracy.

The Argument about Popular Sovereignty

The argument that concerns us here is that the Islamic concept of divine sovereignty is inconsistent with what is assumed to be a fundamental pillar of democracy, namely, popular sovereignty. It is true, of course, that the existence of a body of divine law, as in the case of the Shari`ah, contradicts the modern western doctrine of human sovereignty, popular or otherwise, which asserts that there is no limit on the laws that humanity can legislate. Much discussion, although hardly any serious examination of the matter, recently has revolved around such questions,⁷ making the need for clarifying murky concepts more compelling than ever. This idea, also noted recently by Muqtedar Khan,⁸ persistently comes from two opposite directions: western and secularist Muslim advocates of democracy who denigrate Islam, particularly its sociopolitical concepts, and blame the idea of divine sovereignty for democracy's failure in predominantly Muslim countries; and some Islamists who reject the idea of democracy on the grounds that it is the antithesis of the Islamic doctrine of divine sovereignty.

However, as I argue below, some proposed Islamic alternatives to western secular democracy, such as Sayyid Abul A`la Mawdudi's "theo-democracy," hardly lie outside the boundaries of a broadly defined theory of democracy. Perhaps we should list a third direction from which the insistence on divine sovereignty's incompatibility with democracy comes: that of American and other western supporters of client regimes who use this idea to rationalize a kind of Muslim world "exceptionalism" in which the norms of democracy do not apply.

Those who have brought up the question under discussion here unfortunately compel us to deal with some of the most sterile and pedantic matters imaginable, matters that otherwise one might prefer to leave between the molding covers of works published in the Victorian

age. In his classic work on international organization, Inis L. Claude, Jr.⁹ characterizes the concept of sovereignty as having evoked “a great deal of hair-splitting, who’s-got-the-thimble, how-many-angels-on-the-point-of-a-needle type of analysis,” and as involving “authority without accountability,” reminiscent of medieval Christian scholastic theology, regardless of whether it is vested, as originally envisaged, in monarchs or collectively in the people.

Popular sovereignty is, of course, one form of sovereignty, that of the sovereignty of the people as a whole as opposed to the sovereignty of a monarch, a particular category of the people, some outside entity or larger whole, or, as in the case of Islamic doctrine, of God. Perhaps it also implies what often are listed as separate tenets of democracy (e.g., political equality [or “one person one vote”] and the “majority principle,” for popular sovereignty in which a few could prevail over the many either through weighted votes or through letting a few veto the decisions of the many) would seem to be a contradiction. However, such issues take us beyond our present concern.

Whether this mysterious legalistic, formalistic concept is vested in the people or someone or something else, sovereignty means the right to govern without any limitations. In particular, the idea of sovereignty, which has dominated western thinking about the state since Jean Bodin emphasized it in the late sixteenth century, is “the right to make or unmake any law whatever” and the absence of anyone else’s “right to override” such law.¹⁰ Such a principle obviously contradicts the Islamic concept of divine law, which cannot be abrogated by any state. This is essentially only a technicality, a “legal fiction,” as opposed to what is sometimes more loosely referred to as “political sovereignty.”¹¹

In the strict sense of the word, a state is said to be sovereign if it is not subject to any outside lawmaking authority. However, within each state the idea of sovereignty that evolved in the West during the past 4 centuries is that somewhere there is a final authority whose domestic lawmaking authority is without limits. In keeping with the logic of this concept, and perhaps inspiring the comparison with medieval scholastic theology, jurists have even argued that a sovereign body, in this case the British Parliament, has by definition an unlimited authority to the extent

that it lacks the authority to limit its own subsequent authority on any matter.¹² Indeed, according to this abstruse theory, this authority is the source of all law, for even rules that emerged otherwise (e.g., perhaps even before the doctrine of a sovereign lawmaking power emerged, as in the cases of the English common law and the Shari'ah) are law only by virtue of the fact that those who possess sovereignty in the state have opted, tacitly or otherwise, to make or keep them binding.

Classical writers on the English Constitution illustrate what is meant by sovereignty, popular or otherwise. In that case, sovereignty is said to be vested in the Parliament or, to be more precise, the Queen/King in Parliament. The monarch enacts law with the advice of the two houses of Parliament, that is, a favorable vote by each. One of these chambers may be bypassed under certain conditions today, because the Queen in Parliament enacted such a rule during the twentieth century and could theoretically undo the exception at any time, thus further illustrating the nature of sovereignty. Notice that this is not technically "popular sovereignty," a detail that thus disqualifies the United Kingdom from any claim to being a democracy (if this phantom is deemed essential).

But we all know that we are talking about a set of fictions. Real authority is vested in the popularly elected chamber, or at least with the leaders of the political party that has gained a majority of the seats, although not necessarily of the popular vote. Only someone obsessed with our phantom to the exclusion of political reality would press the argument that by a majority vote, the two houses of Parliament, with the Queen's assent, could exercise its sovereign power to call off future elections and thus perpetuate the present leadership indefinitely.

Keep in mind that legislation enacted in the United Kingdom in 2000 makes the European Convention on Human Rights superior to legislation enacted by Parliament. British courts can strike down acts of Parliament as *ultra vires*. This would seem to contradict the traditional principle of parliamentary sovereignty, although anyone who understands and takes the theory of sovereignty seriously will tell us that a sovereign act of Parliament limiting its authority can be annulled by another sovereign act. Indeed, Parliament specifically perpetuated its own sovereignty by providing for the possibility of derogations from the otherwise superior

rules in the European Convention. Disregard for such international norms may or may not constitute political reality, but the phantom we are dealing with, whether vested in Parliament or collectively in the people, cannot be expected to coincide with reality.

What is this phantom that is vested in the Queen/King in Parliament?

According to Blackstone, it is an “absolutely despotic power” that “must in all governments reside somewhere.” He specified that “what the Parliament doth, no authority *on earth* [italics added] can undo,”¹³ a wording that admittedly seems to allow for a kind of human supremacy only within the scope of a higher, divine law not unlike the doctrine of *khilafah* espoused by Maududi and other Muslim writers. As used by John Bodin, who is credited with inventing the concept, sovereignty lacked the absolute quality and actually was meant to describe the ruler’s supremacy only within the limits of certain fundamental laws. Interestingly, this is analogous to the Islamic idea of the Shari`ah’s supremacy.

However, as the concept came to be understood, a body possessing sovereignty would have the legal right, to repeat the example that one used to hear, to decree that all blue-eyed babies be killed. The British Parliament, for example, was said to have such authority. Even in the United States, whose constitution deprives Congress of this kind of unlimited authority, the idea of sovereignty necessarily being vested somewhere means that a constitutional amendment could bring into existence the hypothetical repugnant law referred to above, although the “natural rights” doctrine, analogous to (though discoverable through reason rather than revelation) the Islamic idea of divine law, would deny such an exercise of sovereignty, popular or otherwise.

By contrast, in Islam no human or humans have such unlimited authority. According to Islamic doctrines, unlimited authority (sovereignty) belongs to God alone. For Muslims, the true law is the Shari`ah, which is legislated by God and cannot be rescinded by any human authority, although it is left to the learned jurists (*fuqaha*) to discover its rules. The argument that divine sovereignty and popular sovereignty are opposite principles thus becomes the basis for arguing that Islam and democracy are fundamentally at odds, even if the analysis of this topic remains undeveloped.¹⁴

Perhaps we have by now concluded that sovereignty is more conducive to tyranny than to democracy, and that popular sovereignty in particular provides a path to the tyranny of the majority. Of course, popular sovereignty may be no more than a harmless phantom sitting alongside quite different political realities. We probably do not have to worry about our blue-eyed babies, and hopefully not even about something so extreme in the case of the brown-eyed ones that make it no more than an amusing spectacle. However, it is hard to see it as an asset to democracy. On a purely legal level, popular sovereignty is a green light for the tyranny of the majority, and its compatibility with democracy depends on the unlikelihood that anyone would ever actually follow this route. It depends on other principles as well, such as checks and balances, that negate such a pernicious idea.

The Context of the Argument

The idea of popular sovereignty as a fundamental pillar of democracy results from the genesis of modern democracy in the West. That is where the idea of human sovereignty originated and came to be taken as a fundamental attribute of all states. As originally understood, sovereignty was the same as, or rather a legalistic shadow of, monarchical absolutism. After all, the very word *sovereignty* related to centralizing power in the hands of the sovereign or monarch.

In such a situation, the logical way to democratize was simply to transfer that sovereignty, contrary to the word's original meaning, to the people, although that entailed the above-mentioned danger of another kind of tyranny. Even there, democratization sometimes occurred without the formal acceptance of popular sovereignty, as we saw in the case of Great Britain, while in the United States the constitutional amending process, the only truly sovereign act, is so complex and involves so many possible alternatives that it is hard to see how sovereignty can be said to be vested anywhere in particular. To say that the people are sovereign in the United States, the phrase's rhetorical appearance in the preamble to the Constitution notwithstanding, is to ignore the concept's inherently legalistic nature.

In short, the popular nature of sovereignty provides one road to democracy, though one along which lurks the danger of a tyranny of the majority. This is particularly true in the absence of placing checks and balances and limits on legislative authority, which effectively undermine the whole concept, around the basically authoritarian barrier that is sovereignty itself. If the problem of sovereignty does not exist, as in the Islamic theory of the state, there is no similar reason to invent such a makeshift doctrine. In short, giving the people as a whole absolute, and potentially arbitrary, control over their government does not require solving a problem that does not exist.

Popular Sovereignty versus Popular Control

Writers on democracy have repeatedly treated popular sovereignty as one of its basic tenets. In other words, democracy is said to be a governmental system in which sovereignty is vested in the people as a whole. Sovereignty is the unlimited authority to rule, particularly to make law, and thus popular sovereignty is the final, unlimited authority of the people to make any law of any kind. It is the absence of any kind of law other than what comes from the sovereign people. But pointing to the “interminable and inconclusive” problems with such a term, the political theorist Henry B. Mayo proposed to avoid this “briarpatch” altogether and to speak instead in a less metaphysical manner about the making of public policies.¹⁵ Thus a test of democracy would be whether public policies or, more realistically, the choice of those who make such policies, are in the hands of the people.

With this more practical, down-to-earth definition of democracy in mind, it is hard to see how accepting a divine law that puts limits on what humans can decide constitutes a barrier to democracy. The absence of limits on legislative authority (i.e., sovereignty) is no more than a juridical concept in any case, one that always required strained arguments to show how it was not inconsistent with the existence of international law.¹⁶ Moreover, there are always practical limits on what the highest authorities in any state can do in practice. The international system, defined as a pattern in which even makers of domestic policy have to

be concerned about the reactions of foreign states, always reduces the scope of domestic democratic choice,¹⁷ while, on the other hand, even countries under formal colonial rule have sometimes experienced a modicum of democracy.¹⁸

Democracy occurs on a local or regional level as well, that is, in entities such as Indiana or Michigan, which also lack sovereignty. This leaves open the possibility that some of the divine law's specific rules may constitute barriers to democracy. However, pursuing that matter further would take us outside the scope of our present inquiry. From one point of view, any limits put on the popular will diminishes the degree or scope of democracy. But it is also important to realize that democracy is never a matter of "either ... or," a point on which I elaborate below.

Which Kind of Divine Sovereignty?

Whether the principle of divine sovereignty is inconsistent with democracy depends on the kind of divine sovereignty we are discussing. There are at least two versions of such a principle, neither of which are found in Islam, that would go against the grain of democracy: one in which a person(s) is believed to be God Incarnate, accepted either as having access to the divine will, and therefore infallible, or believed to have been authorized by God to exercise absolute rule (as in the early modern European theory of the divine right of kings); and one in which the rules believed to have been revealed are so comprehensive as to leave nothing for the people or their representatives to decide.

Only the most careless thinking would apply the first of these notions with anything in Islam. The Islamic concept of God as having created the universe and ultimately ruling over it, and of having enacted a body of law that people cannot change, allows for people living after the end of revelation to govern themselves within the scope of that law. Considering that for Muslims Muhammad is the Seal of the Prophets, Islam forbids anyone to present himself as a new Messenger of God whose alleged new "message" might arbitrarily cancel existing law. Furthermore, the Islamic concept of the sovereignty of God is the antithesis of the notion that a person (e.g., a Pharaoh, a Roman emperor or, before 1945, a Japanese

emperor) is a god, and therefore has unlimited authority that he exercises directly or legitimates those who do. Neither is there any room for the “divine right” of a monarch to rule without any limitations.

If one person or an exclusive group of persons were regarded as infallible interpreters of the divine will, that too would be inconsistent with the idea of democracy. Such infallibility in matters of faith is claimed by the Pope in Rome. And, according to the doctrines of the Mormon sect, the Apostles of the Mormon Church, for example, have such authority to determine God’s will, thus perhaps standing in the way of democracy in a state (Utah) in which Mormonism might be the official religion.

In Islam, on the other hand, there is no such infallible authority. The Shi’i doctrine of the Imam’s infallibility would seem to constitute an exception, but not during the centuries of his *ghaybah* (absence). The *ulama’* and the *fuqaha’* only interpret the Shari`ah, as do jurists in any legal system. Furthermore, no body of Muslim jurists has such interpretative authority that it might be subjected to the accusation sometimes made against the United States Supreme Court: that it arbitrarily makes law in the guise of interpretation. In fact, another accusation often made against Islam, and which I mention here only because it is the opposite of the one we are analyzing, is precisely that it is too rigid and stands in the way of modernization.

As for the second aspect of divine sovereignty, it is sometimes oddly implied that this applies to Islam. Thus one student of political thought concluded, in an article that generally stressed the incompatibility of Islam and democracy (and dealt with much more than the technical issue of sovereignty), that in the classical Islamic “scheme of things, human legislation becomes unnecessary and superfluous,” as “the state was restricted to administration.”¹⁹ Maintaining that “the absolute sovereignty of God cannot be reconciled with the sovereignty of man, unless politics and religion are recognized as matters falling into different spheres,” he went on to cite the abolition of the Shari`ah in connection with Kemal Ataturk’s “transform[ation of] Turkey into a modern secular democracy.”²⁰ It would seem to be more accurate to label Ataturk’s regime a “secular dictatorship,” but that is not the issue here.

The claim is that there is no room for the people to control their government if God is recognized as having the ultimate sovereignty. In

effect, it would seem to follow from such simplistic ideas that the Islamic concept of divine sovereignty would bar human politics altogether, dictatorship as well as democracy, to the extent that God's law provides a ready-made answer to all questions. Najjar is correct in insisting on the inconsistency of divine sovereignty and human sovereignty, but the alleged inconsistency of the former with democracy or, more broadly, with the right of human beings to make decisions within the limits of the divine law is what concerns us here.

In an article on the alleged peril posed by radical Islam, and citing an article by Martin Kramer in *The Atlantic Monthly*, Judith Miller similarly stressed the divine, unchangeable nature of Islamic law (i.e., the absence of any right of the sovereign people to modify it) as a hindrance to democracy.²¹ Actually, she mixed up two issues: the content of the law (which lies outside the scope of our analysis here) and the role of people in changing it. While admitting that there is some leeway for interpretation, she failed to notice that there is always room for political decisions within the limits of the law; in other words, how the state is to be organized (for the Islamic theory of the caliphate was never rigid with regard to all details), who is to lead, what policies are to be adopted, and whether the final say is in the hands of an autocrat or of the people, regardless of whether certain basic rules are above politics. Miller demonstrates utter inconsistency by accusing today's Islamists of stressing majority rule, implied by the concept of popular sovereignty, as opposed to minority rights.²²

A moment's reflection will demonstrate the absurdity of such an argument. For God to be recognized as the ultimate legislator and for the rules He revealed long ago not to be subject to abrogation by human beings hardly means that political decisions do not have to be made. The idea implied by those who say that divine sovereignty is incompatible with controlling the government through popular elections is that the divine legislation is so detailed that the governing process is no more than a purely mechanical process of applying the law. The issue is not whether the people have the unrestricted right to make or unmake any law (i.e., popular sovereignty), but whether they have some control, through periodic elections, over those who exercise authority within whatever limits are accepted.

Sayyid Abul A`la Maududi spelled this point out very well in relation to the misconception that “there is no room for human legislation in an Islamic state.”²³ Not only does he show that an Islamic representative body would have a role (presumably shared with the judiciary) in interpreting, drawing analogies, and inferring other rules from the Shari`ah, but he also demonstrates that “there is yet another vast range of human affairs about which the Shari`ah is totally silent,” thereby exposing “the fact that the Supreme Law-giver has left it to human beings to decide such matters in their own discretion and judgement.”²⁴

Thus, what Maududi calls “theo-democracy” is a governing system in which “the Muslims have been given a limited popular sovereignty under the suzerainty of God,”²⁵ but not the unlimited authority to enact any law, as indicated by the western theory of popular sovereignty. The term *limited popular sovereignty* is of course questionable, as sovereignty that is limited is not sovereignty at all (again to allude to the trickiness of this modern western concept), but he goes on to specify that in Islam the correct term is *khilafah* (vicegerency), with “every believer [being] a Caliph of God *in his individual capacity*.”²⁶ This is government by the people but “within the limits prescribed by the Divine Code.”²⁷

In addition to enacting legislation, defined as general rules applicable to broad categories of people, any government, whether democratic or not, has to make decisions on a great variety of matters. Whether the issues relate to breaking off diplomatic relations with a given state, building a network of roads *in* the western or eastern part of the country, developing nuclear weapons, or starting a crash campaign to eradicate illiteracy or tuberculosis, there is never a shortage of questions to be resolved. There would be no shortage of such issues to be settled by a government representing the *demos* (populous), even if the divine code left no room for human decision regarding, say, the laws of marriage and divorce, punishment for specific crimes, or commercial activity.

In Light of Watered-down Western Concepts of Democracy

What came to be called democracy in the West from the twentieth century on, and the value of which I do not wish to deny, provides even

less difficulty for anyone who wants to reconcile it with something less than popular sovereignty. Democracy used to mean rule by the people, at least indirectly. Joseph Schumpeter called this the “classical doctrine of democracy,” which he summarized as “that institutionalized arrangement for arriving at political decisions which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will.”²⁸

Since he considered this concept infeasible, Schumpeter proposed that democracy instead should be understood as something less than what the classical theory envisaged, namely, as merely “that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.”²⁹ Or, as Mayo put the matter, democracy involves “effective popular control at periodic elections.”³⁰ According to Huntington, there was a post-1945 debate between the proponents of the classical concept and of the “procedural concept of democracy in the Schumpeterian mode. By the 1970s the debate was over, and Schumpeter had won.”³¹ It has been suggested that democracy has come to be widely accepted in “respectable” circles during the past century or two only by virtue of changing its definition.

The Either-Or Fallacy

The notion that the absence of placing unlimited authority to make law in the hands of the people as a whole (that is, popular sovereignty) makes democracy impossible carries with it a certain logic. Insofar as the people or their representatives have less than full control, it would seem that democracy is correspondingly diminished. In such a situation, there may be “rule by all,” but within limits that could be described in terms of “partial democracy.”

However, such an insistence on all or nothing ignores the fact that no country considered a “democracy” today completely corresponds to anyone’s criteria for democracy. In other words, the degree as well as the scope of democracy is always relative. In the case of the United States, in particular, one does not even have to examine such deeper issues as

the role of money in political campaigns for a superficial look at the Constitution itself, especially its provisions of the equal representation of states in the Senate regardless of population or, of course, the way the president is chosen by an Electoral College, reveals that this country is democratic only in contrast with some others that are less so.

The concept of democracy is perhaps uniquely unsuited for such an absolutist kind of thinking. For analytical purposes, we might agree that democracy exists to the degree that the people as a whole, at least the majority, have control. Constitutionalism, which involves a body of rules that limits what the majority can do, is another principle. But in reality, democracy and constitutionalism are part of one whole for which the appellation *democracy* applies in practice, and it is the balance between them that is crucial. Constitutionalism, a principle for which the Islamic concept of government limited by law rather than having sovereign authority would seem, in principle, to provide an example, is what prevents democracy from being self-destructive and turning into a tyranny of the majority.

Conclusion

I have argued that while popular sovereignty, defined as the unlimited authority to make law vested in the people as a whole, has traditionally been treated as a basic tenet of democracy, this does not have to be the case. In the West, the doctrine of popular sovereignty arose as an alternative to the sovereignty of monarchs. And even in the West, democracy has coexisted with legal situations that do not involve the formal sovereignty of the people as a whole. Insofar as popular sovereignty reflected reality, it would threaten to transform democracy into a tyranny of the majority to the extent that it is not muzzled by restrictions (e.g., the separation of powers and constitutional restrictions on legislative authority) that leave it as no more than a legal fiction. In an age when the idea of sovereignty, popular or otherwise, is making way for limitations on what states can do to their people, the absence of such a dangerous concept in Islam deserves to be seen in a positive light.

The confusion may result in part from the fact that some doctrines of divine sovereignty clearly represent the antithesis of democracy. That

would be the case only with a religion that, unlike Islam, believes in a living human being who is divine or that accepts the infallible authority of an individual or body of individuals to convey the divine will. The confusion may also represent the simplistic idea that the existence of the Shari`ah leaves no leeway for people to make decisions.

In reality, a body of immutable law hardly means an absence of policy questions. Popular sovereignty is a requirement of democracy only in the loose sense. In fact, it actually is a misnomer, considering the technical nature of the word *sovereignty*. It is not necessarily inconsistent with Islam that whatever issues are to be decided are left to the people as a whole or to their representatives. Thus the key to democracy is effective popular control within various limits (e.g., the existence of certain immutable divine rules), not the abstruse doctrine of popular sovereignty (a form of absolutism), which indeed clashes with the Islamic notion of divine sovereignty, just as any form of human sovereignty, including the “popular” variety, today is increasingly coming to be viewed as a dangerous “ghost” that needs to be exorcised.³²

Endnotes

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