

GOD'S OWN COUNTRIES?

In the debate about Islamism it's often forgotten
that most Middle Eastern regimes claim a special relationship with God

Brian Whitaker

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The constitution of Iraq, approved in a national referendum after the country's "liberation" by the Americans, states that no law must contradict "the principles of democracy" or "the rights and basic freedoms stipulated in this constitution". It also specifies Islam as "a fundamental source of legislation" and says that "no law that contradicts the established provisions of Islam may be established".

The Iraqi constitution is one case among many in the Middle East of trying to have it both ways. You cannot have freedom and a flourishing democracy if, at some point, the sovereign will of the people can be overridden by those who claim to speak in the name of God. This is the greatest political dilemma Muslims face at the start of the 21st century.

Last week I highlighted, in a mainly British context, the important distinction between Muslims who are politically active and the Islamists – those who view their religion as the basis for a political system.

Although the idea of an "Islamic state" is commonly associated with Islamist opposition movements, its opposite – the idea that state and religion should be kept separate – has very little currency in the Muslim world. The number of out-and-out secularists – certainly those who publicly identify themselves as secularists – is extremely small and some degree of linkage between religion and the state is accepted, for example, in virtually every Arab country, even those with relatively secular regimes such as Syria. In the Middle East, the argument between governments and Islamists is usually about how much linkage there should be and what form it should take – not whether there should be any at all.

In the most extreme case – Saudi Arabia – "God's book and the Sunnah of His prophet (God's prayers and peace be upon him) are its constitution". Among the other Arab countries, Islam is "the religion of the state" in Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Libya, Mauritania, Morocco, Oman, Qatar, Tunisia and Yemen.

In Yemen, sharia law is "the source of all legislation"; it is "the principal source of legislation" in Egypt and "the basis of legislation" in Oman. In Bahrain, Kuwait, Syria and Qatar sharia is "a main source of legislation". The draft Palestinian constitution says "the principles of Islamic sharia are a major source for legislation" and the constitution of Sudan specifies "the Islamic sharia" as the

source of law, along with "national consent through voting, the constitution and custom", adding that "no law shall be enacted contrary to these sources".

The constitutions of Algeria, Mauritania, Syria, Tunisia and Yemen also stipulate that the president must be a Muslim (a practising Muslim in the case of Yemen) – thus enshrining the principle of religious discrimination in law. Among the monarchies, the accession of a Muslim ruler might be assumed but Jordan, Kuwait, Oman and Qatar, just to make sure, specify it in their constitutions too.

Why should any of this be deemed necessary? The answer, mainly, lies in the regimes' lack of popular legitimacy – so they try to claim legitimacy by hitching themselves to God's coat-tails. The Saudi flag, for instance, combines the symbols of temporal and religious authority: a sword and the words of the Islamic shahada: "There is no god but God, Muhammad is the messenger of God". Thus, if you burn the Saudi flag, you're not only insulting the Saudi state but committing heresy too. Saddam Hussein applied the same idea, adding the takbir ("God is greatest") – in his own handwriting – to the Iraqi flag in 1991 at the start of the war to drive his forces out of Kuwait.

Besides providing undemocratic regimes with a claim to legitimacy, making Islam the official religion also has some practical effects: it establishes a legal pretext for the government to interfere in religious affairs – for example, by controlling what may be said in sermons and employing clerics and scholars whose views are accommodating towards the regime.

Historically, this linkage between state and religion has served authoritarian regimes well. Today, though, it is becoming more of a liability than an asset. At the time when most Arab constitutions were drafted, governments did not have to contend with well-organised Islamist opposition movements. But the growth of Islamism since then has left them exposed: presenting themselves as defenders of Islam establishes a yardstick by which their performance can be judged – unfavourably – by Islamists.

The rampant corruption that plagues most Arab regimes is one example. So, too, is the extravagant lifestyle of many of their leaders which strikes many ordinary Muslims as distinctly un-Islamic.

This is a theme that Osama bin Laden has capitalised on. In a taped message a few years ago, he accused the Saudi regime of "violating God's rules". "The sins the regime committed are great ... it practised injustices against the people, violating their rights, humiliating their pride," he said, blaming the royal family for wasting public money while "millions of people are suffering from poverty and deprivation". For many in the kingdom – and beyond – the truth of his words was all too obvious.

Of course, the problem in the eyes of bin Laden and other Islamists is that these regimes are not "Muslim" enough. But the Islamists are chasing an impossible dream. As Abdullahi an-Na'im points out in his book, *Islam and the Secular State*, no Muslim regime since the death of the Prophet has managed to achieve a complete blending of state and religion – and he explains in some detail why this is both a practical and theoretical impossibility. He also adds that Muslim rulers have "tended to assert religious legitimacy most strongly when their claims were least likely to be valid".

At a day-to-day level, establishing Islam as the official religion creates further problems. From declaring the state to be a "defender of Islam", it requires only a few small steps of logic to argue, firstly, that the state should do nothing that conflicts with "Islamic principles" and, secondly, that it has a duty to enforce "correct" Islamic behaviour among its citizens. This in turn provides a basis for the state to become embroiled in issues of personal "morality" that many would regard as private matters, such as sexual behaviour.

Thus regimes that may have set out with the hope of basking in the glow of religion and shaping religious doctrine to their own advantage find themselves instead falling under its control.

One of the more ludicrous effects of this can be seen in Saudi Arabia, where the government feels obliged to formally acknowledge the power of magic and witchcraft (with the accompanying obligation to execute anyone convicted of being a witch).

In Egypt, where Islam is "the religion of the state", courts and government officials often interpret this as a licence to act in the name of Islam (pdf) and refuse to do anything that would amount to government approval of "sin". Among other things, this includes refusing to amend identity cards when someone converts from Islam to Christianity. Since conversion away from Islam is generally regarded as apostasy, they argue that a Muslim state cannot officially acknowledge or endorse it.

Separating religion from the state is an essential requirement if these countries are to move forward and allow their citizens genuine liberty and, contrary to what many Muslims imagine, it would actually serve their own interests better. Unfortunately, amid all the attention paid to Islamism and terrorism, this issue tends to get lost in international debates. Meanwhile, in the Muslim countries themselves, it is still largely a taboo subject.

Fierce Contest: Constitutional Islam and the Arab Spring

By [Clark Lombardi](#), on 08 Oct 2013

Over the past 25 years, the Muslim world has witnessed constant struggle between liberals and conservative Islamists. Liberals want a state that will generally be democratic, but will not permit majorities to discriminate against less powerful groups in society or violate basic human rights; liberal Muslims among them are able to reconcile twin commitments to both liberalism and Islam. Conservative Islamists generally want a state that is democratic but is constitutionally barred from adopting policies inconsistent with their understanding of Islam, which they interpret in a manner that is irreconcilable with liberal principles. The state advocated by conservative Islamists must intrude into areas of life that even liberal Muslims think of as “private.” It must provide Muslims and non-Muslims with different levels of religious freedom. More broadly, it must subject men and women to different rules in a wide range of areas.

The struggle between liberals and conservative Islamists often intensifies when constitutions are being drafted or amended. The Arab Spring has thus ushered in an era of fierce contest. In the West, many are interested in predicting the outcome of constitutional debates between religious conservatives and liberals. Some also wish to influence the outcomes. To understand these debates and to engage intelligently with the participants, outsiders must understand the debates’ nuances. They must keep in mind that in different types of countries, the same constitutional provisions have radically different effects. Finally, they also need to understand that in some countries today, the provisions that most affect the lives of citizens may not be the ones that explicitly mention Islamic law.

Islam and Constitutions in the Modern World: Historical Background

According to classical Islamic political theory, government exists to serve Islam: The Islamic religion urges Muslims to struggle as best they can to draw the rules of God’s moral law from scripture and life experience, and to live up to their understanding of God’s law; a ruler’s legitimacy depends upon his facilitating his subjects’ efforts to do this. This does not necessarily mean that a government should develop an official interpretation of Islam and force citizens to follow it. At the very least, however, governments must encourage the study of Islam, and they must never enact laws that prevent Muslims from carrying out religious obligations that the leading scholars believe are unequivocally spelled out in scripture. On the eve of the modern era, the rulers of powerful Muslim empires like the Ottoman Empire based their legitimacy on the claim that they were acting in accordance with classical Islamic political theory.

In the modern era, Muslim kingdoms were replaced by colonial states and then, after World War II, by independent nation-states. In the postwar period, many of these new majority-Muslim states abandoned traditional Islamic approaches to governance. They opted instead to embrace modern secular ideologies, such as nationalism or communism. If one looked around the Muslim world in 1965, one would see countries whose constitutions reflected very different attitudes toward Islam. For example, one group of countries, which included Afghanistan, had constitutions that explicitly embraced traditional Islamic principles of governance. These explicitly Islamic states declared that

the citizen's duty to respect the state was contingent on the ruler being Muslim, and that the state would govern in accordance with all clear principles of Shariah, or Islamic law. Some of their constitutions stated explicitly that state law must respect Islam. Others required rulers or government officials to swear in their oaths of office that they would always protect and respect Islam.

At the other extreme, a small number of countries such as Turkey explicitly embraced nationalist ideologies that disparaged commitments to religion as selfish and socially divisive. In such countries, governmental claims to legitimacy did not rest in any way upon a claim that government officials advanced God's will or even that they governed in a manner consistent with God's law.

Between these two extremes, a large number of states adopted equivocal positions. As they consolidated their independence, countries such as Pakistan, Malaysia and Egypt embraced constitutions that made Islam the official religion of the state without clarifying what that provision meant. Secular liberals argued that it did not mean much. They noted that for some liberal democracies, such as Britain, the state was officially Christian. In practice, however, this only meant that the state would provide some financial support to religious institutions and that state functions would include references to the official religion. By contrast, conservative Islamists argued that a recognition of Islam as the official religion of the state implied that the state must respect Islamic principles of governance. Similarly, in many Arab states one found constitutions that ambiguously declared Shariah to be "a chief source" or "the chief source" of all state law. Secular liberals argued that this simply created room for the state to adopt family laws that were drawn from traditional Islamic law. Conservative Islamists argued that it meant much more—it constitutionalized the Islamic tradition that Shariah was a set of principles against which all state law had to be measured.

Islamization, Democratization and Constitutional Change in Muslim Nation-States

During the 19th and 20th centuries, Islam's appeal began both to broaden and to deepen in the Muslim world, and a growing number of Muslims looked to Islam as a major source of political identity. As an ever larger and more diverse group of Muslims took part in serious discourse about Islam, Muslims disagreed ever more deeply about how to interpret the religion.

Some Muslims embraced very liberal interpretations. By their account, Islam described itself as a religion of fairness, compassion and justice, and thus scriptures should be interpreted in as liberal a manner as possible. Many other Muslims, however, adopted conservative interpretations of Islam, which tended to be illiberal—more illiberal, in fact, than the interpretations of classical scholars. They argued that the state had a duty to develop and impose a similarly illiberal official interpretation of Islam that would govern issues liberals viewed as "private" and would require the state to treat citizens differently depending on their gender or religion. In most countries, political Islam was built upon constellations of organizations whose understanding of Islam could diverge on important issues.

As debate raged over Islamic interpretation during the last quarter of the 20th century, a democratization movement was also growing in the Muslim world. While the movement was at first associated primarily with secular liberals, Islamists became involved in the late-20th century. Islamic liberals shared many of the same values as secular liberals. More interestingly, they found that their

interests also overlapped with those of illiberal conservative Islamists. Conservative Islamists supported liberals' calls for political opening out of the belief that Islamists could leverage their own considerable popular support into power to shape policy. Illiberal Islamists also supported liberal calls for judicial independence and empowerment and, in particular, for the establishment of judicial review. Here, too, the calculations were largely pragmatic. Islamists knew that if they were ever able to leverage their growing political power to effect Islamic constitutional and political reform, they would want to make use of the judicial apparatus to validate their Islamic vision on the state. Liberals were thus united with illiberal conservative Islamists insofar as they all demanded electoral democracy and an independent judiciary that would apply some form of rule of law. Nonetheless, they wanted—and expected—to see very different types of states, applying different types of law.

In many countries, the combined power of liberals and conservative Islamists succeeded in forcing limited democratization. Where it did, the newly opened political sphere erupted with debates about what sorts of laws the state should enact and what sorts of laws its judges should permit. All sides demanded that the government clarify whether it was committed to governing in accordance with Islamic principles, and, if so, what version of Islam it favored. Forced to commit, a growing number of governments reinterpreted or amended their countries' constitutions explicitly to require the state to respect Islam. Conservative Islamists were often disappointed with the policies that the constitutionally Islamic states adopted.

The Diversity of Contemporary Islamic States

Because many countries with Islamic constitutions gave courts the power of judicial review, the decision to amend the constitution left judges with the power to decide what types of laws the state could enact. To the delight of conservatives, judges in some countries, such as post-revolutionary Iran and Saudi Arabia, adopted illiberal, conservative positions. Notably, however, the judiciary in some Islamized countries instead favored liberal ones. In other countries, such as Pakistan, Egypt, Indonesia and Malaysia, for instance, the higher judiciary was made up primarily of Westernized liberals who insisted that the constitution required the state to apply a version of Islam that was largely consistent with the principles of Western liberalism. Indeed, the rulings of judges in some of these countries could be dramatically liberal.

For example, Egypt's Supreme Constitutional Court in 1996 upheld a government regulation that prohibited schoolgirls from wearing veils over their faces. Embracing a controversial and highly liberal reading of scripture, the judges concluded that veiling was not, in fact, required by scripture and had negative effects on women's self-esteem and their ability to compete with men in society. Moreover the judges ruled that not only was veiling unnecessary, but it violated the Islamic principle that the government should treat all people with dignity. Malaysian courts a few years ago similarly upheld school regulations that expelled from grade school any boy wearing a traditional Islamic turban.

Even more striking were cases in which judges struck down as un-Islamic laws that conservative Islamist parties not only had strongly supported in parliament but also believed were necessary in an Islamic state. From 1980 to the present, the Pakistani courts on several different occasions struck

down laws imposing traditional Islamic punishments for such offenses as fornication and drinking wine. To the fury of conservative Pakistani Islamists, the courts have drawn upon the writings of liberal modernist scholars and held that contrary to the views of conservatives, the scriptural provisions that were used to justify these punishments were ambiguous. Furthermore, they found that the severity of the punishments was inconsistent with the compassionate spirit of Islam.

In short, constitutionalizing Islam did not, by itself, lead to the adoption of conservative Islamic policies. Even more striking, it turned out that in some nations where the constitution had not been amended to require state respect for Islamic law, the state did, in fact, adopt conservative Islamist policies. In many democratizing countries, Islamists found they could win elections, and the legal system did not protect liberal rights. In such countries, conservative Islamist political factions were able to convince the government voluntarily to enact laws or regulations that reflected conservative interpretations of Islam. For example, neither Indonesia nor Malaysia has a constitution that requires the state to respect Islamic law. However, both delegate certain legislative powers to sub-national units—states or regions and, in Indonesia’s case, small regions equivalent to counties. In many of these units, conservative Islamist political parties are powerful, and they have developed illiberal legislation and enforcement policies.

The history of the late-20th century and early 21st century thus tells us that we cannot predict government policies simply by whether a state’s constitution demands respect for Islam. To accurately predict whether government policies will impose upon citizens an illiberal version of Islam, one needs to consider contextual factors. For example, if the constitution requires the state to respect Islam, who does the constitution vest with the power to interpret Islam? Do these institutions or figures tend to favor a liberal or illiberal interpretation of the religion? Irrespective of whether the constitution requires respect for Islam, does the constitution contain rights clauses that will prevent a state from enforcing illiberal laws?

Recent Debates about Islam in Arab Spring Countries

The history given above should help observers understand many of the complexities of the debates about Islam and national constitutions in Arab Spring countries. It helps to explain why in some countries the most hotly debated constitutional issue is not whether the state is explicitly required to respect Islam, but where the state will vest the power to interpret Islam’s requirements, or what extra-Islamic constraints it will place on the government’s ability to impose an illiberal vision of Islam. It helps explain too why in some countries, political groups have been taking positions that seem to outsiders to be counterintuitive. Liberals sometimes support constitutions that formally require the state to respect Islamic law. Conservative Islamists sometimes rally behind a constitution that does not require this.

At the risk of oversimplification, we can create a typology of Muslim countries that divides them into four groups. In the first, conservative Islamists are not likely to be competitive in national elections and do not have significant support on the judiciary. In such countries, there is little chance for conservatives to impose their view of Islam, whether through constitutional or political means.

In the second group, conservative Islamists are likely to be competitive in national elections and can

be confident that their project will be supported by the judiciary. In such a situation, conservative Islamists will tend to support constitutional language that both strongly protects political participation and strongly embraces Islam, including a provision that explicitly requires all state law to respect Islam.

In a third group, conservative Islamists are not confident that they will be competitive in freely contested elections. They are confident, however, that the judiciary supports a fairly conservative vision of Islam and a fairly weak vision of rights. In such countries, Islamists are uninterested in ensuring a strongly democratic political process. Instead, they are eager to have strong constitutional language requiring state law to respect Islamic principles—language that, in theory, empowers constitutional court judges to strike down laws that do not conform to such principles. Liberals tend to oppose such language, preferring to have the political process determine what sorts of laws to enact.

Finally, in a fourth and surprisingly common type of country, conservative Islamic political factions are confident that they can win free elections. They do not, however, control the current judiciary, and they are unlikely to do so in the foreseeable future. It turns out that this situation is common in countries with long histories of secular authoritarianism. In such countries, Islamists were prevented from taking power, and thus from appointing judges. Within the judiciary, those who over time revealed Islamist sympathies could be passed over for promotion. In such an environment, savvy parties with the power to win elections have been willing to support constitutions that make Islam the official religion of the state but do not explicitly require that all state law respect Islam. By their reasoning, such provisions are ineffective for bringing about the type of society they want, because constitutional judges are unlikely to support their conservative vision of Islam by striking down laws that are inconsistent with it. Instead, they find it makes sense to prioritize constitutional provisions that guarantee Islamists the right to freely contest elections and, if possible, to weaken constitutional rights protections that could be used by judges to strike down illiberal laws that an Islamist legislature chooses to enact.

Obviously these four categories represent what Weberians call “ideal types.” Few countries fall neatly into any one of them. The relative strength of conservative Islamist parties tends to wax and wane. Judiciaries do not always speak with a single voice. Nonetheless, we can see how countries at particular times can be characterized as being of one type rather than another. A number of countries in Central Asia can be characterized as countries of the first type. Afghanistan, Yemen and Saudi Arabia seem to fall into group two. Today, Iran probably falls into category three. Quite a number of post-Arab Spring countries seem to fall into category four.

The constitutional preferences of Islamists and liberals can only be understood if we think about what type of country they are operating in. For example, in Tunisia, the Islamist Ennahda party seems to have calculated that for the short term at least, Tunisia is a country of the fourth type. The party thus supported the adoption of a constitution that did not explicitly require the constitution to respect Islam—preferring to ensure that the constitution left room for Islamists to take power and impose laws that reflected their understanding of Islam. Ennahda appears, in fact, to favor a fairly liberal understanding of Islam, but one could imagine a more conservative group taking a similar path.

Egypt also shows dramatically how groups' constitutional preferences are shaped by the nature of the state in which they are operating. In the immediate post-Mubarak period, Egypt was clearly in the fourth category, which has been shaping the responses of almost all political factions during the subsequent phases of the transition. During its short, ill-fated stint as the de jure governing party in Egypt, the Muslim Brotherhood seems to have recognized that it could win elections, but was viewed with deep ambivalence by both the judiciary and another powerful, unelected institution, the army. There are many indications that the Muslim Brotherhood was initially inclined, at least in the short to medium term, to pursue quite pragmatic methods of entrenching itself through politics and over time trying to shape the judiciary into an institution that would allow it to move more aggressively.

As it supervised the drafting of a new, post-Mubarak constitution, however, more-ideological and less-patient Islamist parties on the right, among them the Salafis, pushed the Brotherhood relentlessly to focus considerable attention on strengthening Islamic provisions in the constitution. Recognizing that the judiciary was ambivalent toward conservative Islamist positions, however, Salafis insisted that the constitution also include provisions that seemed to interfere with the judiciary's ability freely to interpret constitutional provisions involving Islam. Having included these provisions, the Brotherhood found that it had fewer political skills than it realized and could not manage the backlash. It was ousted by a military coup that replaced the elected Brotherhood president with an appointed interim president who was none other than the chief justice of the country's constitutional court.

Interestingly, the new regime's actions to date suggest that it too is trying to manage the fact that Egypt is a type four country. It is supervising the drafting of a new constitution that, although it has not been finalized, will likely retain provisions explicitly requiring that all state law respect Shariah. However, the new constitution also includes strong rights guarantees and leaves the job of reconciling these entirely in the hands of the constitutional court. It also appears that it will impose, or at least permit the current government to impose by law, restrictions on Islamist political speech and participation.

Conclusion

As we watch the debates about Islam and constitutions in Arab Spring countries, it is important to bear a few points in mind. In the modern world, there are an almost infinite number of ways in which a constitution can try to clarify and regulate the state's relationship to Islam. One of the most prominent is simply to require constitutionally that the state must not enact laws or policies inconsistent with Islam. Whether this is attractive to a party will depend on whether that party controls the judicial bodies that will establish the state's official interpretation of Islam, and, if not, whether it controls some other branch of the government that it can use to impose Islamic law on the citizenry. For a liberal Muslim who is confident that the judiciary shares his views, it may make sense to push for a constitutional provision enshrining Islamic law into the constitution. For a conservative Islamist who thinks that his arguments will play better with the public than with the judiciary, the top priority may be simply to ensure that the constitution contains no provisions that

would impede the government from voluntarily adopting laws that reflect conservative understandings of Islam.

Secular liberals and liberal Muslims understand all this, and it shapes their bargaining positions. Accordingly, in some countries they try to ensure that the constitution does not mandate respect for Islamic law. In others, they are concerned less about this issue and more about whether the constitution contains liberal provisions that preclude the government from legislating in accordance with certain types of Islam.

Outside observers would do well to understand this too. In different types of countries, the same constitutional provisions have radically different effects, and at times, the most important provisions will be those that do not explicitly mention Islamic law. Understanding this will help outsiders think in a more nuanced and effective way about how to influence outcomes in the Muslim countries that are currently going through constitutional transitions.

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The Constitutions of Islamic Countries: A Critical analysis

Sunday, 28 August 2011 16:36 Ibn Kammuna

Islamic Constitution and equality of all citizens are a term in contradiction...

Introduction

In this article, I show a problematic contradiction in the constitutions of Islamic countries. This stems from the fact that Islamic countries adopt, in their state constitutions, Islam as a religion of the state, and, at the same time, establish, or try to establish, equality under the state's law amongst all its citizens.

What Islamic constitutions claim

The newly written Libyan constitution establishes Islam as the religion of the state in its first article, and establishes equality amongst the state's citizens in its 6th article.

This inclusion of Islam as a religion of the state and that all citizens in an Islamic country are equal under the law is not a recent phenomena that came with the newly designed constitutions of Iraq and Libya. It is an old phenomenon that appeared and took hold in all countries that had Muslim-majority populations. Here are two articles from the Jordanian constitution:

Article 2: Islam is the religion of the State and Arabic is its official language.

Article 6: (i) Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion. (ii) The Government shall ensure work and education within the limits of its possibilities, and it shall ensure a state of tranquillity and equal opportunities to all Jordanians.

Critical Analysis

A constitution that establishes a specific religion (Islam in our case) and the equality of its citizens at the same time is establishing a contradiction that cannot be resolved (it can only be resolved by dropping Islam out of the constitution altogether). First, establishing Islam as a religion of the state is no more than affirmative discrimination against all other religions. Why can't other religions enjoy the same status as Islam and be religions of the state also? After all such states claim establishing the equality of all citizens of the state. If this is the case, then why their religions (any other than Islam) are not considered the religions of the state too? Are not such constitutions establishing affirmative discrimination against all other belief systems that are considered "a religion" by one group of people or another in that state?

Second, such constitutions of Islamic countries are not discriminating in a "theoretical" fashion against other religions. They are, in fact, discriminating against the adherents of all other religions. For example, the Sunni form of Islam is taught in all levels of schools in Jordan (Elementary, Middle, and High Schools). Teachers who teach "Sunni Islam" are state employees. They are paid by

the state like other teachers, who teach Mathematics or Science. No other religion is taught in those same schools. For instance, no teacher of the Christian religion is employed by the state to teach the Bible and the Christian teachings in state schools. Isn't such a behavior by the state an affirmative discrimination against the Christian community in Jordan? The reader can generalize this example of Jordan to other venues of practice in Jordan, and to other practices in other Islamic countries.

The above contradiction in the Constitutions of Islamic countries translates into numerous practices of discrimination against non-Muslims. For example, in Egypt, those who leave Islam and become Christians cannot change their names, IDs or passports to reflect this change. They are also hunted down by Muslims in an attempt to kill since apostasy in Islam carry death penalty. The same does not apply when someone, say a Christian, becomes a Muslim. No one is allowed to harm him/her. They can change their names and IDs to reflect the change in their religion.

Islamic constitutions, thus, establish state-directed legal discrimination its non-Muslim citizens, and speaking of equality of all citizens in such states is not only a contradiction, but also a shameless farce.

Islamic Constitutionalism and Constitutional Politics in Post-Revolutionary Tunisia

by Pietro Longo

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Pietro Longo

ISLAMIC CONSTITUTIONALISM AND CONSTITUTIONAL POLITICS
IN POST-REVOLUTIONARY TUNISIA

Pietro Longo

INTRODUCTION

The aim of this paper is to discuss the concept of Islamic constitutionalism and analyze some aspects of the Constitutional politics adopted in Tunisia since

the fall of the former President, Ben 'Ali.

While the definition of

“Constitutional politics”

is defined as «those practices that aim to frame a set of ideas, values and institutions into national or collective identities», the notion of Islamic Constitutional law will be employed to indicate all the provisions derived from the sources of Islamic law related to the organization of the Islamic polity (sometimes called the Islamic State).

More problematic is how to define the so-

called “Islamic constitutionalism”. Some scholars referred to it

as meaning the modern constitutional history of the Muslim world that started with the adoption of the first Constitutions, during the XIX century, imitating the West.

This constitutionalism is “Islamic” because, even

though based on foreign models, it showed certain original elements, such as the fact of proclaiming Islam as the official religion. Moreover this approach fails to consider

Shari'a

as a system of law and does not consider the constitutional norms and principles that collectively referred to as Islamic Constitutional law. Sometimes the notion of Islamic constitutionalism is employed to indicate the doctrine produced by Muslim jurists in relation to the political environment of the community. Before the adoption of the first Charters and the transition of the Islamic system of law from jurists' law to statutory law, the State was termed (Italy). He is also a

For the definition of “Constitutional Politics”

Nation-Building, and Constitutional Politics in Post-Conflict Situations: Conceptual Clarifications and an Appraisal of Different Approaches, Max Planck Yearbook of United Nations Law, Vol. 9, Brill, Leiden 2005, p. 597; J. Habermas,

Caliphate. After its decline and fragmentation, it was replaced by the (Islamic)State(s).

Islamic constitutionalism, in other words, groups all the provisions extracted from the sources of Islamic law, the jurisprudence and the doctrines elaborated by the scholars, connected to the public sphere. At the same time, this notion identifies the methodological approach adopted in the modern world by institutions, such as the Supreme Constitutional Court of Egypt, to apply the Shari'a, making it justiciable. This circumstance is possible only in those Muslim countries whose Constitutions refer to the Islamic law as source of legislation. The Tunisian Constitution adopted in 1959 did not contain such provisions, although it sanctioned Islam as official religion. Under that Charter, Tunisia was a confessional State but, as Shari'a was neither enforced nor codified, it did not respect the idea of Islamic State. The current debate on the new institutional framework is dominated by two opposite visions: secularism vs Islam. The fear that the Islamic parties apply the Shari'a is felt even if the moderate Islamists promised, for example, to maintain the laws that regulate personal status. Accounting the Islamic constitutional provisions, I will try to establish a relation between the debates that occurred in the Tunisian National Constituent Assembly, to show a potential role that Islamic constitutionalism could play in the process of Constitution-drafting. In the first part of the study, I describe briefly the substantive rules of Islamic Constitutional law, stressing the fact that the prominent sources of the Islamic law (Quran and sunna) do not contain a huge number of provisions. Thus Islamic Constitutional law was the result of the scholars employment of third sources of Islamic law: the consensus. Accounting for the substance of Islamic Constitutional law allows us to define a framework of principles upon which the Islamic polity is supposed to be based upon.

A. Layish, "The Transformation of the Shari'a from Jurists' Law to Statutory Law in the Contemporary Muslim World", in

In the second part of this study, the still on-going process of Constitutional drafting that took place in Tunisia after the Ben 'Ali's overthrow is outlined. The Islamic moderate party al-Nahda gained the majority of seats in National Constituent Assembly. Its deputies are debating with the opposition to define the nature of the new State, setting out also its religious nature. Some debates provoked harsh criticism, such as the one related to the status of women or the one connected to the criminalization of blasphemy. At the very top stands the problem of whether Islamic sources of law should be considered general sources of the Constitution. Starting from assumptions fixed in the first part, the paper aims to figure out the role of Islamic Constitutionalism in the Tunisian constitutionalization process.

THE ISLAMIC CONSTITUTIONAL LAW: A SHORT ACCOUNT

Islamic Constitutional law is composed by those norms and regulations extracted from the sources of law: the Quran, the sunna, the consensus of the jurists and the analogical reasoning, related to the administration of the State, hence qualified as Islamic. As Ann Elizabeth Mayer points out «Islamic constitutionalism is constitutionalism that is, in some form, based on Islamic principles, as opposed to the constitutionalism developed in countries that happen to be Muslim but which has not been informed by distinctively Islamic principles».

To the opposite of its Western counterpart, supposed to be secular, Islamic Constitutional law has a religious nature. The notion of Islamic constitutionalism is nevertheless modern. It indicates a philosophy that emerged in the late nineteenth century whose first aim was to set-up the State on Islamic grounds.

While, from the Western perspective, the term constitutionalism defines a theoretical doctrine whose aim is to limit the

A.E. Mayer is quoted in: N. Hosen, "In Search of Islamic Constitutionalism", in

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Annual Review of Law and Social Sciences

Why Islam Should NOT Be Protected Under the US Constitution!

By Kevin A. Lehmann on in Christian Theology, Politics, Radical Islam

Contrary to conventional *stupidity*, Islam should **NOT** be protected under the First Amendment of the Constitution of the United States of America. Is there anyone left in the three branches of government today that can interpret our most sacred document (the Declaration of Independence not withstanding) correctly?

Like in Christendom, where the exegesis and hermeneutics of certain passages of scripture are often skewed to conform to a particular ideology, agenda, or belief system, so too has the clear and concise language of the Constitution and the 27 Amendments progressively undergone exegetical attacks over the decades—depending on which party is in power—to conform to a particular political ideology.

But this is one hermeneutical battle America can ill afford to lose. Our founding principles, i.e. *Life, Liberty* and the *Pursuit of Happiness* hang in the balance. In short—our country's very survival depends on it.

America faces a grave threat from Islam. Muslims are infiltrating our country in droves and they're doing it under the guise of "Constitutional Protection." And like England, if we don't stand our ground now, it will be too late. Muslims are cunning, crafty and clever. They're using our ignorance of the understanding of our own Constitution against us, and they are clandestinely and methodically spreading their freedom-snatching tentacles in a quiet and unassuming manner.

Federal, state, and local governments on the other hand won't acknowledge the imminent threat. They incorrectly claim that Muslims have "Constitutional Rights" to come here, proselytize people, build mosques, and implement Shariah Law in their communities and in the public square. They're dead wrong! And by and large, Islam is getting away with it just like they have in Europe. Only unlike in Europe and Great Britain in particular, where many local non-Muslim citizens now live in perpetual fear and oppression, it's not too late to stem the tide, but we have to act now. Time is not on our side. In fact, this may come as a shock, but there are more mosques being built on American soil than Christian churches. We are already well under way to being Islamized.

To understand Islam is to understand Sharia. The *religion* of Islam is nothing short of a totalitarian political, economic, military, social and legal system that's camouflaged in religious garb. Their *mandate* (not objective) is to incorporate our country into a global Islamic caliphate.

Sadly, they are making serious inroads towards their tyrannical mandate because America is asleep at the wheel. We are all that stands between freedom and a worldwide Islamic caliphate. The United States of America is the world's last bastion of hope.

Yet, the dreadful message we get from ignorant and incompetent lawmakers is that our Constitution renders us powerless to do anything about it. On the contrary, the Constitution and Declaration of Independence—properly interpreted—actually give our federal, state and local governments justification and authority to stop Islam dead in its tracks!

Here's How . . .

Islam is NOT a religion. Islam—which stands for “submission” or “surrender”—is a totalitarian form of government that seeks **COMPLETE DOMINANCE**. It is hellbent on controlling every aspect of the lives of its adherents—a primitive life at that. It masquerades as a monotheistic religion rooted in Old Testament principles, but more appropriately follows the murderous thuggery of its founder, Muhammad, a descendent of Ishmael, born 600 years after Christ. Only their modern day tactics now include recruiting mentally ill teenagers and naive and gullible idiots who falsely believe they will be rewarded with 75 virgins if they become suicide bombers. And Western countries indoctrinated with the lies of multiculturalism and political correctness—to their demise—have reluctantly turned a blind eye. But like Communism, Marxism and Socialism, the Constitution of the United States of America *empowers* us to defeat it.

As lawyer, philosopher and Constitutional constructionist, Publius Huldah, succinctly points out in her paper, “God’s Gift of Unalienable Rights & Article VI of the Constitution: The Sword & Shield to Stop the Islamization of America, “We must understand Our Founding Principles – these are our Sword & Shield – that (1) Rights come from God alone, (2) Muslims do not have the right to divest us of our Rights, and (3) the purpose of civil government is to secure the Rights God gave us.”

What are our Rights, and where do they come from? The Constitution? The Bill of Rights? No! The Declaration of Independence says:

“We hold these truths to be self-evident, that all men are created equal, *that they are endowed by their Creator with certain unalienable rights*, that among these are life, liberty and the pursuit of happiness. —that to secure these rights, Governments are instituted among Men . . .”

So, where do our Rights come from? *God*. And what are those Rights? *Life* , *Liberty* and the *Pursuit of Happiness*.

Inscribed on the Liberty Bell is Leviticus 25:10 - “**Proclaim LIBERTY throughout all the land unto all the inhabitants thereof.**”

Do Muslims respect the Rights God gave us? Of course not! Sharia stands in stark contrast to *Life*, *Liberty*, and the *Pursuit of Happiness*. Here’s why . . .

- 1. Life:** Islam is a culture of oppression and death, e.g., primitive and oppressive regulations for women, murder and honor killings. The Koran instructs its adherents under no uncertain terms to torture and kill non-believers as set out in Sura 4:56, 4:89, and 9:5 for example.
- 2. Liberty:** Islam is a culture of slavery and submission. Women are forced to cover their faces and frequently raped with no recourse. Children are often molested, and defection and conversion to another belief system often ends in brutal death.
- 3. Pursuit of Happiness:** Does living in fear for a lot of Muslim women sound like the pursuit of happiness? Or being told when to pray, how to pray, and how many times to pray per day? For many Muslims, Islam is a culture of torture and sadism. How many times have we already heard of young Muslim girls in America who, after dating non-Muslim boys, were shot to death or run over by their father for allegedly bringing shame to their family? Public wife beating is commonplace. Women

who don't cover their hair are beaten on the spot. They're often gang raped (needing multiple witnesses to testify against their male aggressors), mutilated, and left with maimed faces.

4. Freedom of Speech: Try criticizing Islam in Saudi Arabia—one of our Arab allies. See how swiftly justice is met with your head as the ornament of of an Opec member's Mercedes.

For every Right *God* gave us—not the Constitution or its Amendments—the Muslims seek to eradicate.

Lawmakers tell us Muslims have a First Amendment "Right" to build mosques, proselytize, and implement Sharia here. But that's not what the First Amendment says.

It says . . .

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Now consider the verbiage very carefully. A lot of lawmakers and most Americans make the exegetical error that the First Amendment grants us rights. The First Amendment doesn't grant any rights to anybody. All it does is prohibit Congress from making laws about religion, speech, the press, or assembly.

Therefore, Muslims do not have a First Amendment "Right" to build mosques, proselytize, and implement Sharia in our country.

As Publius Huldah correctly points out, "Not only do Muslims claim the "right" to impose Shariah in the Muslim communities springing up throughout our Country, they also claim the "right" to impose Sharia law in the public square: They demand Sharia compliant financial institutions, foot baths in public places, that wine, sausages, and the like be banned from their presence, that they be allowed to shut down public streets for "prayers", etc."

So it begs the question: Do Americans have any Constitutional protection against the invasion of a foreign law being foisted upon us? Absolutely!

Article VI, Clause 2 of our Constitution states . . .

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the *Supreme Law of the Land*; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Did you get that? Our Constitution and Laws are authorized by the *Supreme Law of this Land*.

The practice of Sharia in the United States, at any level directly violates our Constitution. Muslims who therefore seek to overthrow our Constitution or otherwise usurp or circumvent it with Sharia law are guilty of *Criminal Seditio*n. The federal government has the duty to prosecute them for sedition, or otherwise repatriate or deport them.

However, as evidenced in a ruling by a New Jersey judge last year which was later overturned by the New Jersey Appellate Court, and more recently a Tampa judge thanks to the growing influence of CAIR (Council on American Islamic Relations)—a pro-Sharia lobbyist—the very opposite is happening.

In November, 2010, an overwhelming majority of Oklahomans voted to amend their State Constitution to ban Sharia law and international law from the state's courtrooms. But a federal judge overturned the will of the people within weeks, claiming that such an exclusion of Sharia law interfered with the religious liberties of Muslims. Now, legislators in Wyoming, Missouri, Alabama, Florida and Texas are considering adopting a similar Constitutional Amendment to that of Oklahoma's.

Brigitte Gabriel, founder of Act! for America, an advocacy group established "to promote America's national security and the defense of American democratic values against the assault of radical Islam," emphasizes that voters must establish that the U.S. Constitution is the controlling law of the land. "We are trying to warn Americans to look at what's happening in Europe. If Europe is any preview, we need to make sure we put up the barriers right now," she stresses.

The Declaration of Independence says the purpose of civil government is to secure the Rights God gave us. Islam seeks to take away our God-given Rights. Civil government is supposed to protect us from enemies, foreign and domestic, who seek to divest us of our Rights. Therefore it's incumbent on every American citizen to insist that our federal, state, and local governments immediately STOP the Islamization of OUR COUNTRY—starting with an immediate cease and desist on the construction of all mosques! The purpose of our civil government is to protect our GOD-given Rights, not circumvent them in favor of an Islamic caliphate.

Contrary to revisionist historians and secular progressive's claims, the United States of America was founded on Christian principles. Jesus Christ is recognized not only as the Supreme Being of The Declaration of Independence, but also as the God of Article VII of our Constitution. . .

"Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of *Our Lord* One Thousand Seven Hundred and Eighty Seven . . . "

In Summary:

- 1.** Our Rights come from God. They predate and preexist the Constitution. Our Constitution doesn't give "Rights" to anybody. So Muslims don't have "Constitutional Rights" to come to our Christian established country and build mosques, proselytize, and impose Shariah.
- 2.** Islam and Sharia seeks to take away from people the rights God gave them. Since our Declaration of Independence acknowledges that the purpose of civil governments is to secure our God-given Rights, it is the duty and responsibility of civil governments at all levels to protect us from Islamization.
- 3.** Article VI, Clause 2 of the U.S. Constitution—the "Supremacy Clause"—is the silver bullet that makes it unconstitutional for Muslims to practice Sharia Law anywhere in our Country.

To speak against First Amendment protection of an Islamic theocracy that is antithetical to the underlying principles of the US Constitution—Life, Liberty, and the Pursuit of Happiness—does not make one a prejudiced bigot or racist. Most Muslims, like Christians, are moderate law abiding citizens. However, the percentage who follow the literal commands of the Koran (the militant and radical muslims) and because of the 2 to 1 worldwide population growth of Muslims, the jihadist terrorists are multiplying at an alarming rate.

Let me be perfectly clear. Traditional Islam is not a friend of America. It is our enemy. The very notion of “Chrislam”—a syncretistic fusion of Christianity and Islam—being promoted by such notable Christian celebrities as Rick Warren, author of the best selling book, *The Purpose Driven Life*, is an abomination. It’s anti-American, and antithetical to the Christian principles upon which our great nation was founded. It is imperative that you understand the inherent danger of multiculturalism, and the amalgamation of polarizing religions. It eventually leads to civil unrest and anarchy.

Most, but not all of our State Senators and Congressmen are completely oblivious to the imminent threat that Islam and Sharia pose to the sovereignty of our nation. It’s imperative that they get informed very quickly and embrace the fight to stop the spread of mosques and Sharia at the local level. The Center for Security Policy issued a report last year entitled: “Shariah: The Threat to America”. Demand that your local and state reps read it and take immediate action to defend your community from Islamization. A few proactive notables who do recognize it are representatives Rex Duncan, Don Wells, and Larry Metz of Oklahoma, Missouri, and Florida, respectively.

If you’re wondering what life will be like when your community is saturated with Sharia Muslims, listen to my radio show of March 21st with Tommy Robinson, the leader of the EDL (English Defence League) in England. Since that time, he was nearly murdered and has multiple death threats against him, his wife and children for having the guts to exercise his God-given unalienable Rights.

Europe, in the interest of multiculturalism and political correctness, made a grave error. And now they are hopeless to reverse it, especially in England, without a civil and very bloody religious war. An entire country, even with it’s parliamentary government in tact, is now at the mercy of Muhammad and his warriors of death or submission.

Recently exonerated Dutch Member of Parliament, Geert Wilders, listed ten steps Western countries must take to stop the Islamization of their countries.

Perhaps this short video clip of Florida Congressman Allen West sums up Islam and Sharia Law best.

In closing, we are at war with a very evil and cunning enemy. An enemy that seeks to destroy everything that is good about the United States of America; Everything we value; Everything we cherish, Everything our forefathers and successive generations fought and died for so that we could receive the torch of freedom and pass it on to our children and grandchildren. This is our moment. It is our time to boldly stand up for our God, our Declaration of Independence, our Constitution, and our beloved Freedom! Let us exercise our God-given unalienable Rights and say “Yes to Freedom!” and “No to Oppression!” We owe it to our children, our grandchildren, and our grandparents.

Until next time . . . *Wake Up America!*

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