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Abstracting

THE NARRATIVE OF POLITICAL ISLAM: CONSTITUTIONALISM AND HUMAN RIGHTS

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Abstract

One of the essential postulates of political orientation and determination for the building of stable societies and a functioning political system in its content recognizes and imposes the need to examine the relation of relevant political actors to constitutionalism and human rights as concepts and preoccupations for any modern society. Also, constitutionalism and human rights and freedoms as its inseparable category manifest the political values and the corpus of essential and common political goals and commitments of a particular political community. Political Islam as an ideological political subject has its own sources and a valuable orientation framework through which prisms and perceptions can be interpreted or extracted by individual axiological determinants to certain issues. This paper analyzes exactly the relations of political Islam with constitutionalism and human rights, and similarly to the so-called framework it draws attention to the concepts of power, the mechanisms of control and compliance with the Sharia regulations. At the same time, the importance of human rights and freedoms in the Islamic narrative, their nature and scope, as well as the differences with the western established documents in this area are emphasized and analyzed.

Keywords: Political Islam, Constitutionalism, Sharia law, Human rights, Islamic government

INTRODUCTION

Constitutionalism has significant dimension for Western political and legal thought above all in terms of guaranteeing human rights and freedoms and limitation of power. Certain principles expressed through the state constitution, understood as a social contract, are emphasized by western thinkers as an essential necessity for developing a stable and democratic society. On the other hand, often Muslim societies and political Islam as an entity are referred to as a zone in which human rights and freedoms are massively violated, and existing constitutions are only the decor of authoritarian regimes. Nathan Brown rightly notes that in the Arab and Muslim world constituent assemblies have been elected and constitutions written, often growing more fulsome in their espousal of ideological principles even as they have increasingly failed to provide for genuine accountability. This pattern led to an increase cynicism about constitutions generally, leading most scholars and political analysts away from constitutional analysis for many years (Brown 2007, 47-48).

In this paper, at the theoretical level, will be set out some essential parameters that should captures the positions of political Islam in terms of constitutionalism and human rights review. First, what constitutes constitutionalism in contemporary Muslim societies and how is it experienced by Islamic political subjects? Similarly, how are Islamic perspectives identified in terms of power and the principle of separation of powers, as well as mutual checks and balances. More important is the nature of the legislative power and its correlation with Sharia law as an initial form of social and political behavior in the Islamic discourse. Also, logically and contextually the question arises as to what is the attitude of the Islamic political value corpus to the concept of human rights and freedoms? Where are the sources of human rights and freedoms in the Islamic narrative determined and whether exist adequate codification internationally and what kind of character are they?

Before we start with the theoretical and empirical elaboration of these questions, it must be put in place a methodological note. First of all, will be take into account the views of the Islamic scholars (Ulama) in contemporary Islamic political thought, since they are basically the largest articulators of Islamic political doctrine; Second, strategic documents related to such postures will be exposed as credible in terms of understanding the concepts that are the subject of this section; Thirdly, we will not go into extensive elaborations and historiography of the concept of constitutionalism and human rights and freedoms as well as their development, because our intention here is to see only the Islamic political positions on this issue; And finally, it will be contextually consider some of the Islamic political activists with their view of such issues.

CONSTITUTIONALISM THROUGH THE PRISM OF POLITICAL ISLAM

Constitutionalism in the narrow sense of the word is a practice of limited power secured by the existence of a constitution. Heywood argues that in that sense it can be said that there is constitutionalism when the institutions of government and political processes are successfully constrained by constitutional rules. While constitutionalism is broadly meaningful, it is a set of political values and aspirations that reflects the desire to protect freedom by establishing internal and external checks of power over government (Heywood, 2009, 339). As a working paradigm here we will accept the definition, i.e. the description of Jan - Erik Lane, who notes that for ideas of constitutionalism two ideas are basic: a) Restriction of the state against society in the form of respect for the set of human rights and freedoms, which contain not only civil, but also political and economic; and b) Implementation of the separation of power in the state (Lane 1996, 25).

The Authority Issue

There is a necessity to focus on the debates about authority, or power, but we should first mention one essential predisposition. Bejtula Demiri rightfully observes and laconically affirms these positions, saying that there are two kinds of perceptions about the relationship between Islam and the state, and consequently the state constitution: the first is traditionalistic, which implies rooted in the desire to restore the Islamic past, that is, the restoration of the city - Medina, as an ideal form in Islam, and the second, is a reformist one that calls for the reconstruction of the state constitution through the reform of Islamic thought, but its advocates are against uncritical acceptance of Western values in the state order. But what is a determining remark to Demiri's claims is his position that the state constitution in Islam does not have a unique form, because it is acceptable to claim that the ideal form of arrangement was achieved during the Four "Rightly Guided" caliphs (Rashidun Caliphate) (Demiri 2009, 67-68). Such a conclusion would be acceptable if we exempt the Shia Islamic subjects, but the intention of our work is to present a comprehensive approach to this issue, and hence we would notice that the idealized momentum is required during the Prophet, as well as the Sunni and Ali's caliphs for the Sunni and the rest of Ali imams in the Shiites.

Though initially circulated the thesis that the ruler is a kind of "Goddess of the earth" (of course, the ulema has flown through different eras with the rulers), the modern discourse takes a completely different dimension. As Gudrun Kramer notes, it is generally accepted that the "ruler" (Imam, Caliph or President) is nothing more than a representative of the "ummah" (Islamic community), from whom his authority arises. In contemporary context, it is stated that all of his power stems from the Islamic

community (ummah), which represents a radical departure from medieval political thought. Modern Sunnis engraved a different picture: Like every human being, the Islamic head of state is accountable to God, but he also responds to the community (which is modernly called a peoples or nation, allowing the possibility that both the Muslims and the "unbelievers" will be involved in such processes) (Kramer 2011, 91). The most prominent evidence of such conditions today can also be found in the statement of the representatives of the Egyptian "Muslim Brotherhood" who oppose the then-regime of Mubarak, consider the ummah as a source of power, and request for a new constitution that protects human rights and freedoms compliance with the Islamic Declaration, free and fair elections, limited presidential mandate, and the rotation of power through the "plurality of parties in the Muslim society" (The Muslim Brotherhood Statement 1998, 101).

Sharia Framework and Limitation of Power

Islamic constitutionalism is undoubtedly based on Sharia, as well as the obligation of the Islamic government is to respect Sharia laws and norms, to ensure their full implementation and codification in the existing orders of Muslim societies. Islamic political activists such as Hassan Al-Turabi and Syed Abul A'la Maududi see Sharia as an Islamic constitution, or an entire system that contains constitutive norms for the Islamic artist. For example, Maududi believes that "unwritten Islamic constitution" already exists and its codification is expected on the basis of relevant sources identical to Sharia (Maududi 1975, 35), while Hassan Al-Turabi believes that Sharia is a higher law, just like the constitution, except that he is a detailed Constitution (Turabi 1993, 4). Islamic expert Muhammad Asad, in his work "Principles of State and Government in Islam," proceeds to systematize the elemental forms of the Islamic constitution: a) There is no specific form of an Islamic state; b) The main task of the Islamic state is the implementation of Sharia; c) No law should be in a collision with Sharia; d) The authority which rests on consent is the most important precondition for the Islamic state; e) An Islamic state can not exist without distinction between Muslims and non-Muslims; f) The principle of shura (counseling) means the widest possible electorate; g) The majority model is most suitable for solving differences in opinion; h) The decisions of the Majlis-Shura (parliament for counseling) are legally binding for the citizens and the executive; i) It is not unislamic to create political parties that will compete with each other, bearing in mind that the differences in the mind's thinking may be God's blessing; j) A presidential system like the United States would be more interconnected to the needs of an Islamic political society than British parliamentarism; (i) The Supreme Court and the judges (qadi) shall be the protectors of Sharia (Asad 1961, 56-66).

The principle of power-sharing creates serious confusion for Islamic political thought and Islamic political activism. There is almost no significant notification in the sources of Islamic political thought that would confirm this principle, so the issue of reinterpretation and *ijtihad* would be primarily present in the narrative on this issue. Also, as Kramer notes, in the political institutions and procedures, western model influence is also evident, which includes the representativeness and power of the majority, the separation of powers and the independent judiciary. The adoption and adapting of such principles are justified and "Islamized" in the context of the Qur'an and the Sunnah (Kramer 2011, 91).

Primarily, the question here is about the role of the legislature and the relationship with the executive, as well as their nature. Islamic theorist Azizah al-Hibri perceived the constitutional construction through the principle of a) popular will as a basis for power; and b) the principle of power sharing, argues several essential features: The first principle in itself contains two aspects: First, the people's choice of the ruler, according to Al-Hibri, happened to the Bay'ah (the covenant) that was sent to the Prophet, through which he was "chosen" as the leader of the Muslims, as well as to other Rashidun Caliphs. Second, the people's election or confirmation of the Constitution, which in the present case is the Qur'an. As a set of common values systematized in a thorough document (such as the US Constitution or the *Magna Carta Libertatum* in the UK) they have been updated or reinterpreted over time, but for decades their essence remains almost unchanged.

So, as in the case of the United States, the Muslim subject's consent to the act of the Qur'an was expressed at the very beginning, in the era when the Islamic state of Medina originated (Al-Hibri 1992, 11-13). The second principle, in turn, expresses the separation of power through the question of the Islamic principle of *shura* (counseling), elaborating its functional dimensions (for extremely important questions, military or all except the imperative Qur'an norms), as well as the logical consequence of control and oversight through several forms: Firstly, the caliph and the state are subordinated to the Qur'an and the Sunnah (the rule of law), the interpretation of which is entrusted to the *mujtechids* (Islamic experts), secondly, every Muslim can take part in power and has the right to decide and conquer Islamic law has superior status and is applied even when it is used by an ordinary citizen against the ruler (Al-Hibri 1992, 13-17).

It is evident that there are no strong mechanisms for control of the executive, as well as guarantees for an independent judiciary, which may be a crucial aporia and enthronement of Islamic political thought. But even more significant is that Islamic political constituents do not pay much attention to this issue. More important is the discussion about the nature of the legislative power and its powers, that is, the danger that the legislation will make a regulation that is not in accordance with the Sharia. Therefore, Raja Bahlul rightly notes that even affirmatively to answer the question of the

executive as subject to authorization by the legislative branch, the subject of the discussion goes in the direction of its limits, and the biggest phobia that the Islamic constitutionalists derive from the possibility to pass a law that would be contrary to the Islamic Sharia, so for these reasons many reject the term "unqualified people's sovereignty," as well as the eminent Islamic acts the same Rached Ghannouchi and Hassan Al-Turabi, that the legitimate scope of this power does not violate the "law of God" found in the Qur'an and the Sunnah (Ghannouchi), and that democracy in Islam does not mean absolute popular power but a popular power in accordance with Sharia (Al-Turabi) (Bahlul, 2005).

And finally, a certain solution for such dilemmas through the Islamic perspective is most adequately offered by the Constitution of the Islamic Republic of Iran, that is Articles 4 and 72, which contains imperative provisions that all laws and regulations of civil, penal, financial, administrative, cultural, military and political nature to be based on Islamic principles, and that principle prevails over all constitutional and law principles. Every verdict and decisions on these issues is carried out by the "clerical" Council of Guardians (that is, experts in Islamic law). The Consultative Islamic Assembly cannot pass laws contrary to Usul Fikh (the foundations of Islamic law) and Akham (judgments) of the official religion of the country, and the Guardian Council has the duty to determine whether such a violation occurred (Constitution of Islamic Republic of Iran, Article 4 and 72). Hence, we can conclude that Islamic experts have the role of constitutional judges with extremely strong powers in protecting the official religious composition of the political system in the Islamic state.

HUMAN RIGHTS AND FREEDOMS IN THE ISLAMIC POLITICAL NARRATIVE

The concept of human rights knows one linear trajectory of progress in the Western discourse, and after the Arab spring and the revolution "Jasmine" significant shifts in their articulation and in the Islamic world. What should be noted here is that the first internationally established document, from a Western prism, is the Universal Declaration of Human Rights of 1948, as well as the two international agreements: Covenant on Civil and Political and Economic and Covenant on Economic, Social and Cultural Rights of 1966. The same international documents provided a basis for further action in the direction of promoting human rights and freedoms, their protection and promotion. But the documents also represented the cornerstone of the discord in the political narrative during the Cold War, because each camp emphasized and prioritized one of the two segments (civil and political, or economic and social) as essential and primary for the realization of human rights and dignity.

Islamic Remarks

The Islamic world, that is, the majority of Muslim states, although accepting these documents (with reserve or integral), and especially the Ulama as originally transmitted by Mudatir Abd al-Rahim, had deep reservations in the text of the document, and referred to three essential categories of remarks from all religious delegations including, of course, the Islamic. The first one refers to the tendentious marginalization of religions, although through history they have penetrated and developed one of the "fundamental determinants" of human rights as human dignity, justice, social solidarity, along with the spiritual and ethical views of life. Consequently, the call of God in the first article (at the proposal of the Brazilian delegation) is consciously omitted from the declaration itself. The second essential reason for the skepticism towards this document is expressed through the intention of the authors of religions to be given a secondary dimension through the prism of this document, which, according to the interpretation of religious authorities, expresses the stereotypical and often time-consuming premise that religions are not bona fide sources human rights, but actually an obstacle to their protection and promotion. And the third, crucial remark is the fact that the Declaration is essentially a reflection and embodiment of enlightenment, neo-enlightenment, liberalistic and secularist values (Al-Rahim 2013, 35-36). A similar tendency is also noticeable if they determine the factors that contribute to the absence of consensus in the Islamic Ulama, as well as in Islamic political subjects on this issue. The first factor is rooted in the already established and highly sophisticated tradition of human rights in Islam, which basically implies that they are guaranteed by Allah in His Revelation (Quran), so modern western, enlightening, secular and humanistic concepts are irreconcilable at least on the philosophical level. The second moment is the traditional socio-cultural differentiation that influences the interpretation of Islamic regulations in the Ulama, and which have quite often "evolved" in an inadequate manner with the basic provisions in the international human rights documents themselves (for example, women's rights, freedom of change religion, etc.), so it is quite often delicate to model which principles are Islamic and which are not. And finally, the processes of colonialism and the adequate ruining of existing Islamic institutions, the neocolonial exploitation and discrediting of the Islamic world, the question of Palestine, the torture of the infamous military camps against Muslims, gave some contribution in the resistance to the understanding of human rights and freedoms or ultimately towards proclaiming the hypocrisy of the vaccine concept of a Westerner discourse (Al-Rahim 2013, 42-43).

Universal Islamic Declaration of Human Rights

However, the Islamic political narrative opposed the international documents of a secularist and neo-liberal nature through its own autochthonous international documents. The first, the Universal Islamic Declaration of Human Rights, adopted on September 19, 1981 at the UNESCO Paris meeting, contains 23 articles, and each of it is backed by clear quotations from the Quran and Hadith in the famous Sunni collectors (Al-Bukhari and Muslim, Abu Dawood, Al-Tirdmidhi, Ann – Nasa'i and Ibn Majah, as well as Musnad – Ahmad Ibn Hnbal). The preamble text notes the reasons for its adoption, that is, the determination of human aspiration for a righteous world order, without fear, oppression, exploitation that remains unfulfilled, the affirmation that the economic resources with which God has honored the earth are spent unfairly and unfairly, that Allah gave to mankind through his Revelation in the Honorable Quran and the Sunnah of His Blessed Prophet Muhammad is a permanent legal and moral framework in which human relations and institutes should be established and regulated. In that way, human rights are aimed at providing people with dignity and honor and being intended to eliminate injustice and oppression, that with the power of the Divine source and sanction these rights cannot be restricted, abolished, or neglected by the authorities, the congregations or other institutions, nor can they be alienated or transferred (Universal Islamic Declaration of Human Rights, 1981).

Hence, the Muslim Ummah believes in: a) God, the devout, and merciful, the Creator, the Keeper, the Sovereign, the sole leader of mankind and the Source of the whole law; b) The Vicegerency (Caliphate) of the man who was created to fulfill the will of God on earth; c) In the wisdom of God's guidance brought by prophets and culmination with the "seal of prophecies", Muhammad a.s. to all mankind, d) That rationality without the light of God's revelation cannot be a sure leader or provide a spiritual diet to the human soul; e) Calling all mankind in the message of Islam; f) According to the provisions of the righteous covenant with God, the duties and obligations have priority over the rights, as well as the obligation to spread the teachings of Islam; e) Establishment of an Islamic order whose characteristics are: Equality in the rights without discrimination on grounds of origin, race, gender, color of skin, language or religion and protection against exploitation, tyranny and slavery; Authority as confirmed good and beneficial, not privilege, and the ruler and the subject are equal before the law; Equal opportunities; Family as the basis of such a society (Universal Islamic Declaration of Human Rights, 1981).

Guided by these principled determinations, the "Universal Islamic Declaration of Human Rights" incorporates the following rights which are binding on all Muslim governments and bodies that are also obliged to implement in their spirit and framework in the domestic order : 1) The right to life; 2) The right to liberty; 3) The right

to equality and prohibition of illicit discrimination; 4) Right to fairness; 5) the right to a fair trial; 6) Right to protection against abuse of power; 7) Right to protection against torture; 8) The right to protection of honor and reputation; 9) Right to asylum; 10) The right to minorities (religious); 11) The right and obligation to participate in the management of public affairs; 12) The right to freedom of thought, conviction and speech; 13) The right to freedom of religion; 14) Right to free association 15) Economic rights (earnings, use of natural resources, right to share in wealth, prohibition of monopoly and deprivation, economic activities that do not conflict with the Sharia); 16) Right to protection of property; 17) Right to protection of the dignity of workers; 18) The right to social security; 19) The right to establish a family and related rights; 20) The rights of the married woman (life in the house with the husband, disposal of funds and in Iddah – waiting period for divorce, Request for divorce – *Khul'a*, as well as confidentiality); 21) Right to education; 22) Right to privacy; and 23) The right to freedom of movement and settlement (Universal Islamic Declaration of Human Rights, 1981).

Although often subject to criticism even by the secularist and liberalist West and East, with an Islamophobic attribute, qualifying it as "a latent attempt by Islamic militants to redraw their own model that consciously abandons those rights that are in collision with Sharia"(The St. Petersburg Declaration of Secular Islam, 2007), however famous Islamic expert Muhammad Aqron apologizes in this way to the Islamic Declaration of Human Rights:

The enormous value of this declaration consists in the understanding, the way of thinking and the demands that the modern Muslim world accepts. Historians could contemptuously look at the anachronistic way of designing modern concepts and concepts at the time of their establishment, the mythical period of Islam. Lawyers again can emphasize ethical idealism in the articles which are dead word on paper. However, such frustrations and actions are too frivolous (Karic 1996, 160).

Cairo Declaration on Human Rights in Islam

Another very important document that follows the appropriate Islamic rhetoric in the context of human rights should be emphasized here. It is about the "Cairo Declaration of Human Rights", adopted at the 19th meeting of the Organization of the Islamic Conference (OIC), dedicated to peace, interdependence and development in 1990. As such, it contains 25 Articles that regulate rights of a different nature that recognizes and guarantees Sharia. In the preamble itself, the declaration expresses the hope that it will serve as a general reference point for member states in the field of human rights (Cairo Declaration on Human Rights in Islam, 1990). In addition, the


historical role of the Islamic community (ummah) is emphasized and idealized as the only entity capable of solving the problems of materialistic civilization. In this regard, human rights and freedoms are an integral part of Islam, God's announcement and their disobedience and breaking are an expression of unbelief and sin. Although the Qur'an and the Sunnah provisions are not cited, as in the case of the Universal Islamic Declaration of Human Rights and Freedoms, the Quran narrative is apparent and explicit. For example, Article 1 reads: "All human beings form a family whose members are united in submission to God and the origins of Adam", as well as in the rest of the text where there is an allusion of 13 Ayat of 49 Surah - Al-Hujurat (The Chambers) of the Quran, where it is emphasized that no one has an advantage over another, except in piety and good deeds (Cairo Declaration on Human Rights in Islam, 1990).

The Declaration stipulates almost the same rights from the previous document (life, property, honor and dignity, social security, opinion and expression of opinion in accordance with Sharia, etc.) with some progression in the following areas: a) Women's rights are equal to the rights of the husband, with the husband having an obligation to support him and is in charge of the well-being of the family; b) The right of peoples suffering from colonial slavery or occupation of self-determination; c) Prohibition of any form of coercion or exploitation of poverty or ignorance for the purpose of conversion to another religion or atheism. Finally, it is emphasized that all the rights contained in the declaration are an integral part of Sharia, and the accent that Islamic Sharia is the sole source of explication and interpretation of any article of that Declaration (Cairo Declaration on Human Rights in Islam, 1990). In this context, it is undoubtedly that even the biggest skeptics, such as militant Islamic activists, have no problem with such concepts. For example, Abu Al-Ala Mwadudi argues that the Western world is hypocritical in this discourse, and Islam knows human rights and freedoms much earlier than the west in a more substantial way, designated by God that cannot be derogated by any government or parliament (An-Na'im, 2010).

CONCLUSION

The phenomenon of the re-emphasized role of the studies on constitutionalism and its connection with human rights and freedoms does not circumvent the contemporary Muslim world. The issues about the nature and origins of power, its legitimacy, the separation of power, as well as the position of the citizen are an integral part of Islamic political discourse and narrative. Such issues that in the past had a strong momentum now have a unified form of all system subjects on the political scene in Muslim societies, and even a unified stance in political Islam. In this sense, for political Islam as the subject of such a political system, the situation is striking for several reasons: *Firstly*, as we noted in our paper, the concept of human rights and freedoms is

founded in religious texts, so the Islamic political discourse is irrelevant to the issue of their revision. The systematization exhibited as an international document has been established and any further discussion would be ephemeral, although often Islamic movements such as Ennahdha in Tunisia, Front of Islamic Salvation (FIS) in Algeria or Muslim Brotherhood in Egypt complained for their violation by authoritarian regimes. *Secondly*, the original Islamic texts after the consensus of the almost all Ulama do not contain a unique model of an Islamic order that would establish itself in a certain territory. The Quran notices caliph (ruler) and shapes its obligations, and not the composition and its form. *Thirdly*, it is already evident despite the theocratic postulates of sovereignty, the legitimacy of power is required from the citizens and they are involved in the decision-making process. *Fourthly*, it is undoubtedly that for political Islam, Sharia establishes the framework for the functioning of the legislative power, which must not exceed its limits, that is, to pass laws that would be collisions with sacred texts. *Fifth*, perhaps the essential drawback is the absence of strong and visible mechanisms of control and balance of the authorities, and these questions should be given more solid and more purposeful responses in the future. It is also evident that the issue for now does not take a central place in Islamic political discussions.

On the other hand, the relationship of political Islam to human rights and freedoms suggests several essential conclusions. *First*, there is a visible Islamic narrative in its content; *Secondly*, they are an integral part of the Sharia as the fundamental value paradigm of political Islam. *Thirdly*, their interpretation and elaboration stems solely from the Qur'an and the Sunnah as its references and sources of political Islam, and no interpretation is permitted beyond the given framework of sacred texts; and *Finally*, through codification at the international level, although of non-binding character, the progressive line of political Islam and Islamic societies with the contemporary world order regarding human rights and freedoms is emphasized, but with a special emphasis on problems concerning the Muslim world, such as (neo) colonialism, the question of Palestine, secularism and westernism, inter-Islamic social and political solidarity, international assistance for victims of war area etc. 

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