

“ISLAMIC REPUBLICS”: THE PLACE OF ISLAM IN REPUBLICAN ARAB CONSTITUTIONS

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ABSTRACT

This article discusses the calling of Arab republics as Islamic state by examining their constitutions. Also the article assumes that a ‘holistic approach’ which calls all republican Arab states as ‘Islamic state’ is wrong. This holistic approach which is mainly developed by the Orientalist tradition is problematic because it establishes the Islamic order/state as an absolute other of the pluralist system of the West. Therefore, the article aims to problematize this holistic approach by showing that visibility degrees of Islam in their constitutions are different in all Arab republics.

Keywords: Sharia, Constitution, Islamic state, Religion.

İSLAM CUMHURİYETLERİ: ARAP CUMHURİYETLERİ ANAYASALARINDA İSLAM’IN YERİ

ÖZET

Bu yazı Arap cumhuriyetlerinin anayasalarını inceleyerek bu devletlerin İslam devleti olarak adlandırılmalarını tartışmaktadır. Yine yazı, tüm Arap Cumhuriyetlerinin İslam devleti olarak adlandıran holistik yaklaşımın yanlış olduğunu ileri sürmektedir. Bu özellikle Oryantalist gelenek tarafından kullanıma sokulan bu holistik yaklaşım İslam devletini batının çoğulcu sisteminin mutlak ötekisi şeklinde kurması nedeniyle problemlidir. Bu bağlamda yazı Arap Cumhuriyetleri’nin anayasal bağlamda İslam’a yönelik referanslarının farklılığını ortaya koyarak bu holistik yaklaşımı problemleştirmeyi amaçlamaktadır.

Anahtar kelimeler: Şeriat, Anayasa, İslam devleti, Din.

Introduction

So far, however, there has been little discussion about differences between the roles of Islam in Arab republics which are relatively a recent phenomenon. In this paper, it will be discussed that how far Arab republics are ‘Islamic republic’ or ‘Islamic state’ by focusing specifically on their own constitutions. Before examining these constitutions, I will attempt to analyze the terms such as ‘Islamic state’ (dawla Islamiyya) and ‘Islamic republic’. Later, it

will be examined what determines the visibility degree of Islam in any state. The factors such as *the Sharia*, the official religion of the state, the religion of the president, the freedom of conscience, and oath-taking ceremony of rulers will be taken as independent variable in determining the Islamic visibility degree of the states which are under examination. Of them, the Sharia will be discussed broadly because it is presented the main factor which makes a state Islamic by many prominent scholars. Lastly, I will try to classify Arab republics in accordance with the visibility degree of Islam by using Islamic references in their own constitutions.

The states under examination are Egypt, Syria, Tunisia, Iraq, Algeria, Sudan, Yemen, Lebanon, Libya and Mauritania. Their characteristic feature is that all of them called officially themselves as “republic”. On the other hand, one can easily realize that these states have many references to Islam and Islamic rules in their constitutions. Given the fact that a republic is a secular form of government, adopting Islamic references in a constitution seems controversial or vice versa. In this study, I will try to illustrate to what extent those countries have Islamic references in their constitutions. To this end, I will examine the following constitutions: The Constitution of the Arab Republic of Egypt (1980), The Constitution of Syria (1973), The Constitution of Tunisia (1988), Interim Constitution of Iraq (2005), The Constitution of Algeria (1989), Constitution of The Republic Of Sudan (1998), The Constitution of Yemen (1991), The Constitution of Mauritania (1991), The Constitution of Lebanon (1926), and The Constitution of Libya (1992).

‘Islamic State’ and ‘Islamic Republic’

The ‘Islamic state’ itself is an historical construct since there is no such a concept of the state in the Qur’an (Engineer, 2006: 339; Na’im, 2008: 45).¹ The structure of the ‘Islamic state’ evolved over a period of time and there is no single Islamic model for state. In the philosophical context, the characteristic features of an Islamic state were not same as well. For example, Al-Farabi had an ‘ideal Islamic state’² in his mind although he did not use the term ‘Islamic state’. For him, ‘perfect state’ must be ruled by the prophet-imam as in the city-state of Medina governed by the prophet Muhammad who had direct communion with Allah. However, because the cit-state of Medina or ideal Islamic state is unique to that time span, the democracy (or republic) is the closest regime to the ideal state (al-Farabi, 1998). In Al-Farabi’s writings, characteristic feature of an Islamic state is democracy. Like Al-Farabi, many other Islamic philosophers counted the characteristic features of an ideal ‘Islamic state’. To this end, the values such as freedom (*al-hurriya*), justice (*al-‘adl*), accountability of the

head of the state (*musa'alat ra'is al-dawla*) and equality (*aş-musawah*) were presented as the main characters of an 'ideal Islamic state' in different time spans of the history. One of them was highlighted by Islamic philosophers according to the spirit of philosopher's time.

The concept of so-called 'Islamic state' in its current usage is "itself novel and a product of modernity" (Ayoob, 2007: 67). The concept was propounded by Abul A'la Mawdudi and increasingly accepted by prominent Islamic scholars. According to Mawdudi, characteristic feature of an Islamic state is its acceptance of the Sharia as the main source of law. However, the "Islamic state" is highly modern concept in Mawdudi's understanding because he claimed that Islam is a "political ideology" that requires "its adherents to bend all energies toward realizing the Islamist utopia of setting up an Islamic state" (Ayoob, *Ibid*, 67).³ On the other hand, many Orientalist scholars take Islam as a political ideology and depict the Sharia as "the cornerstone of any Islamic state" in parallel with Mawdudi (Roy, 2004: 87).

Despite it is an ideologically-driven concept, 'Islamic state' has been commonly used to describe 'Muslim states' in the Western literature. This usage of the concept is of course a reductionist and total approach, which denies the differences among the Muslim states all over the world. On the other hand, Islam has never been a 'state religion'. But Islam is visible in the state apparatus and texts such as constitution and procedures because "Islamic discourse has influenced and has been influenced by politics of the state" (Na'im, 2008: 257). Hereby, when we talk about 'so-called' Islamic state, we imply the visibility of Islamic rules and rituals in official documents of any state. This study will try to illustrate the visibility degree of Islam in Arab republics' constitutions not whether these states are really Islamic or not.

As for the term 'Islamic republic', it is a compromise between a purely theocratic and secular since republic is a secular form of government. Because a republic is the composition of the Athenian example of equal rule by law and the Roman practice of the citizen rule, it can be simply defined as "a form of government where the rule of law, resting on the power of the people, would put an end to the rule of man over man" (Arendt, 1999: 5). As a form of government, republic is an invention of secular Athenian and Roman. As for Islamic world, the term republic as a form of government was an invention of late nineteenth century and it was legitimized by calling the 7th century Caliphate (four Caliphates period) a republic because an elected head of state and the rule of law were main characteristic features of the period (Lewis, 1955: 1, 5 and 9). In practical term, Pakistan became the first 'Islamic republic' with the Constituent Assembly's decision to change the country's name as 'Islamic Republic of Pakistan' on 2nd November 1953 (Lewis, *Ibid*, 1 and 4).

At first sight, the combination of theocratic and secular terms in calling a state may seem to be a contradiction. However, there are many Muslim states which use the term ‘Islamic republic’ in their official names: Islamic Republics of Pakistan, Islamic Republics of Iran, Islamic Republics of Afghanistan and Islamic Republics of Mauritania. Also, there are many Muslim states which use the term republic in their official names: Arab Republic of Egypt, Republic of Iraq, Tunisian Republic, People’s Democratic Republic of Algeria, Syrian Arab Republic, Republic of Sudan, Lebanese Republic, and Republic of Yemen.⁴ Because these states in the second category have many references to Islam and Islamic rules in their constitutions, they are called as ‘Islamic state’.

Sharia: A Condition of the “Islamic State”?

‘Sharia’ literally means ‘the path or the road’ and it is used as “religious values to direct man’s life” in Islamic tradition. In short, “Shari’a is the ordaining of the Way”. On the other hand, Din (religion) literally means ‘submission’, ‘following’ and thereby it is used as “the following of that Way” ordained by Sharia. The terms Din and Sharia are used interchangeably in the Qur’an because “Sharia and Din are identical as far as the ‘Way’ and its content are concerned”. They are identical because both of them reference the ‘Way’ which Muslim people have to follow (Rahman, 2004: 161). As the Qur’an says, “God have ordained for you a Way-to-be-followed” and “Do they, then, have any partners of God who have ordained for them the path-to-be-followed?”⁵ The Qur’an used Sharia and Din respectively in these both verses as “Way” or “path”. The early generations of Islam used these words as in the Qur’an. However, the later generations of Islam separated “theology from law” and this “produced a sharp distinction between the Shari’a and Din which in the beginning were identical” (Rahman, Ibid: 167). This separation emerged at theological level not political for the first time.

Retrospectively, the isolation of the Sharia from religion (Din) is a critical point because it determines the definition of an “Islamic state” in the eyes of some philosophers. This point is clear in the thoughts of Ghazali and Ibn Taymiyyah who claimed that the goal of the state is to realize the Sharia (Rahman, Ibid: 179). For them, Islamic state is a body which realizes the Sharia on the earth and the placement of Islam as a state religion is not enough to claim that this state is an Islamic one. On the other hand, there emerged the “Islamic” states which adopted ‘secular law’ although they called Islam as the official religion of the state because of this separation. Of course, these states are not ‘Islamic states’ when the thoughts of Ghazali and Ibn Taymiyyah are concerned. The thoughts of these two philosophers were

reinvigorated by modern Islamic scholars and activists in the context of struggle against the Western influence on the Islamic world. The Islamic state in the writing of modern scholars such as Rashid Riza, Sayyid Qutb, Mawdudi, Qardawi, al-Banna and others is basically a 'Sharia state' which is committed to the enforcement of Sharia (Kamali, 2005: 281; Ayoob, 2007: 66).

Because the Muslim scholars who developed the Sharia during the eighth and ninth centuries and their followers in modern times "did so in accordance with their personal understanding and comprehension of the word of God", the Sharia as an Islamic law is not clear and definite code and it is "in fact no more than the understanding of early Muslims of the sources of Islam" (Rehman, 2003: 16).⁶ As Bernard Weiss argued, "although the law [Sharia] is of divine provenance, the actual construction of the law is a human activity, and its results represent the law of God as *humanly understood*" (Weiss, 1998: 116). Then, calling a state which adopts the Sharia in its constitution as an Islamic state is a value-laden comment. In reality, a clear examination of the conditions in which the republican constitutions of Arab states emerged shows that "Arab constitutional texts have been written primarily to enable, organize, and justify political authority" not to establish an 'Islamic state' or republic (Brown, 2001: 161). On the other hand, the adoption of the Sharia in a constitution is of course not vain and it shows the degree of the visibility of Islam in an Arab republic.

While some scholars or activists argue that Islamic identity of any state relies upon "the question of whether Sharia is enforced in a state", the others "acknowledge Islamic identity simply through hortatory statements in constitutional" provisions (Rahman, 2004: 27). These hortatory statements are official religion, the religion of the president, freedom of conscience, oath-taking ceremony of rulers and etc. However, there are wide-ranging differences about these hortatory statements in Arab republics' constitutions and thereby these statements determine the Islamic degree of states which are under examination. It is necessary to underline that these statements are inferior to the adoption of the Sharia in a constitution. For example, although Islam was declared as 'the state religion' in Pakistan in 1948, Ziyaul Haq declared Pakistan to be an Islamic state in the late 1970s by enforcing the Sharia laws in the country. "If a country declares 'Islam as its religion'", it means that Islam "enjoys more privileges than other religions in the country" (Engineer, 2006: 338). When Sharia is compared with state religion, it can be argued the latter has lesser influence on the degree of Islamic character of any state.

State and Islam in Arab Constitutions

All Arab republics underline ‘the rule of law’ and ‘the power of the people’ in their constitutions, which makes them republic. Democracy or ‘the power of the people’ is the main characteristic feature of these republican regimes.⁷ ‘The sovereignty of law’ or ‘the rule of law’ is also apparent in Arab republic’s constitutions.⁸ Then, one can argue that all Arab republics provide skeleton conditions for a republic despite they have many problems with an ideal republican form of government. However, analyzing that to what extent they are republican is the topic for another survey. By accepting these states are republican as they claimed officially, let us turn to analyze what degree these republics are Islamic.

All Arab republics except Syria and Lebanon accept Islam as the official religion of the state. Article 2 of Egyptian Constitution says; “Islam is the religion of the state.” Article 1 of Tunisian Constitution says: Tunisia’s “religion is the Islam.” Article 2 of Iraqi Constitution says; “Islam is the official religion of the State.” Article 2 of Algerian Constitution says; “Islam is the religion of the State.” Article 178 of Algerian Constitution prohibits “any constitutional revision” on this article. Article 2 of Yemeni Constitution says; “Islam is the religion of the state.” Article 5 of Mauritanian Constitution says; “Islam shall be the religion of the people and of the State.” Article 2 of Libyan Constitution says; “Islam is the religion of the State.” Although Article 1 of Sudanese Constitution says “Islam is the religion of the majority of the population”, it does not mention of Islam as official religion.

Only accepting Islam as official religion is a minor indicator for Islamic character of any state. If a constitution, which accepts a religion as official one, does not guarantee other religions in the constitutional context, the Islamic character of the state become more visible. It is better to consider state religion article with the articles regulating the rights of other religions together. However, this argument does not mean that there is a discrimination against other religious minorities in an ‘ideal Islamic state’. It means that the constitution which gives no right to other believer increases the privileges of Islam and Muslim population. While there are a few instances where the constitutions of Muslim countries expressly sanction discrimination against particular religious denominations (Na’im, 1987), nearly all republican Arab constitutions which are under examination include the articles which protect the rights of other believers.

Despite wide-ranging differences about the kind of statement, all republican Arab constitutions reference to ‘the freedom of belief’. Article 46 of Egyptian Constitution says; “the State shall guarantee the freedom of belief and the freedom of practice of religious rites”. Article 35 of Syrian Constitution says; “The freedom of faith is guaranteed. The state respects

all religions”. Article 5 of Tunisian Constitution says; “The Tunisian Republic... protects the free exercise of beliefs”. Article 2 of Iraqi Constitution says; the law “guarantees the full religious rights of all individuals to freedom of religious belief and practice”. Articles 14, 35, 39 and 41 of Iraqi Constitution are about freedom of belief. Article 24 of Sudanese Constitution says; “everyone has the right to freedom of conscience and religion”. Article 27 of Yemeni Constitution says; “there shall be no discrimination between [citizens] based on... religion”. Article 9 of Lebanon Constitution says; “the state... shall respect all religions and creeds and guarantees, under its protection, the free exercise of all religious rites”. Article 2 of Libya Constitution says; “the state protects religious freedom in accordance with established customs”.

In this context, Mauritania and Algeria may be presented as an exception because their constitutions do not openly reference to ‘the freedom of belief’ or ‘religion’. However, “the freedom of opinion and of thought” in the article 10 of Mauritania Constitution and protecting “the principle of the people’s free choice” in the preamble of Algerian Constitution can be interpreted as a ‘freedom of belief’. These wide-ranging differences among the articles about ‘the freedom of belief’ make possible to locate these countries in the scale which shows that to what extent those republic give privileges to the Islam. Egyptian, Syrian, Iraqi, and Lebanon constitutions include strong guaranties for the freedom of belief, while Algeria, Mauritania, and Libya constitutions include relatively weak guaranties for the freedom of belief. Arguing that the weaker guarantee for religious minorities the stronger Islamic character causes a dilemma: is a state in which the visibility of Islam is strong in constitutional terms less democratic? Because the power makes Islam dominant to use it in oppressing those who are in opposition, the dilemma is about political power not Islamic character of the state. But, on the other hand, Islam is more visible in these countries because it is imposed upon all citizens by the force of power.

The religion of the president can be taken another indicator for the visibility of Islam in Arab republics’ constitutions. While most of Arab republics do not determine the religion of the president in constitutional base, some states counts being Muslim as a condition of presidency. Article 3 of Syrian Constitution says; “The religion of the President of the Republic has to be Islam”. Article(s) 38 (and 40) of Tunisia Constitution say(s); “The President of the Republic is the Head of the State. His religion is Islam”. Article 73 of Algerian Constitution says; “To be eligible to the Presidency of the Republic, the candidate should... be a Muslim”. Article 23 of Mauritania Constitution says; “The President of the Republic shall be the Head of State. He shall be a Muslim”. Because the religion of the

president affects the role of Islam in a country, these statements increases the visibility of Islam in the state affairs.

Table 1: State and Islam in the Arab Republic's Constitutions

| Country | Islam as Official Religion | Freedom of Belief | Religion of President |
|-------------------|--|--|-------------------------|
| Egypt | "the religion of the state" | "the State shall guarantee" | --- |
| Syria | ---- | "the freedom of faith is guaranteed" | "has to be Islam" |
| Iraq | "the official religion" | "guarantees the full religious rights" | --- |
| Algeria | "the religion of the State" | "the principle of the people's free choice" (<i>no religion</i>) | "should... be a Muslim" |
| Mauritania | "the religion of the people" | "the freedom of opinion and of thought" (<i>no religion</i>) | "shall be a Muslim" |
| Sudan | "the religion of the majority of the population" | "everyone has the right to freedom of conscience and religion" | --- |
| Libya | "the religion of the State" | "the state protects religious freedom" | --- |
| Lebanon | --- | "guarantees... the free exercise of all religious" | -- |
| Tunisia | "religion is the Islam" | "protects the free exercise of beliefs" | "His religion is Islam" |
| Yemen | "the religion of the state" | "no... discrimination based on... religion" | --- |

Sharia and other Islamic References in the Constitutions

Because the states which adopt Islamic law are not identical, it is possible to make a comparison among those states which are under examination. The degree of the implementation of Sharia determines the visibility degree of Islam in these states because "it appears that the constitutional position of Sharia can vary widely, namely from 'the', 'the most important', 'an important' to 'a' source of legislation" (WRR, 2006: 116; Abiad, 2008: 47; Lane and Redissi, 2004: 150). For example, in the current world, eight Muslim countries give the Sharia positions such as 'the' and 'the most important' source of legislation, nine countries counts Sharia in their constitutions as an important or a source of legislation, and 17 countr

ies give Sharia a lesser role (WRR, 2006: 117). Because of these various references to the Sharia in the constitutions, it is needless to say that visibility degrees of Islam are different in all Arab republics.

Of all Arab republics' constitutions, Egyptian, Mauritanian, and Yemeni constitutions give the Sharia the most important role in the context of law-making process. Article 2 of Egyptian Constitution says; "Islamic jurisprudence is *the principal source* of legislation". The article means that all legislations have to be consistent with the Shaira principles and it determines the law-making process. When this article is compared with the 1971 Constitution which took the Sharia "*a principle source* of legislation", it can be argued that the role of Shaira is absolute in the Egyptian law. As the Supreme Constitutional Court of Egypt reported in its 1985-Decision, "this amendment means that it is no longer possible in the future to enact any legislation which contradicts the rulings of Islamic law. It also means that it is imperative to review the laws which were in effect before the application of the Constitution of 1971 and to amend these laws in such a manner as to make them conform to the principles of Islamic law".⁹ As in Egyptian constitution, Article 3 of Yemeni Constitution says; "Islamic jurisprudence is *the main source* of legislation". The Preamble of Mauritanian Constitution says; "the precepts of Islam, the sole source of law."

Syrian, Iraqi and Sudanese Constitutions elevate the Sharia as a source of the law. Article 3 of Syrian Constitution says; "Islamic jurisprudence is *a main source* of legislation". Article 7 of Iraqi Constitution says; "Islam is... to be considered *a fundamental source* of legislation". Article 65 of Sudanese Constitution says; "The Islamic Sharia and the national consent through voting, the Constitution and custom are the source of law". Libyan Constitution is not clear weather Sharia is a (or the) source of legislation. While Article 8 of Libyan Constitution says that "inheritance is a right which will be governed by the Islamic Sharia", there is no other references to the Sharia. On the other hand, Article 6 of the Constitution says; Libya's "inspiration is its Arabic and Islamic heritage, humanitarian values and the specific conditions of the Libyan society". While the Sharia is the sole source about inheritance law, one can argue that Islamic jurisprudence is one of the sources of law in the Constitution of Libya when these two articles are considered together.¹⁰

Table 2: Sharia and Other Islamic References in the Arab Republic's Constitutions

| Country | Sharia as a source of legislation | Islamic Shura | Others |
|-------------------|--|------------------------------------|--|
| Egypt | “the principal source of legislation” | --- | women rights does not contradict with the Sharia |
| Syria | “a main source of legislation” | --- | --- |
| Iraq | “a fundamental source of legislation” | “experts in Islamic jurisprudence” | --- |
| Algeria | --- | “A High Islamic Council” | no institutional practice contrary to Islamic ethic / “a land of Islam” / oath |
| Mauritania | “the sole source of law” | “A High Islamic Council” | “attachment to Islam” |
| Sudan | one of the sources of law | --- | rules for Muslim people in their religious practices |
| Libya | “Inheritance... governed by the Islamic Shari’a” | --- | --- |
| Lebanon | --- | --- | the equal representation of Muslims and Christians |
| Tunisia | --- | --- | “faithful to the teaching of Islam” |
| Yemen | “the main source of legislation” | --- | “Islamic social justice” |

Other important Islamic references in Arab republics' constitutions are *shura* (consultation), which comes from the term *shawara*, “to consult it”, and oath-taking ceremony in the parliament. Of course, these two references are inferior to the the adoption of the Sharia in a constitution. Article 171 and 172 of Algerian Constitution issue “A High Islamic Council” which encourages and promotes “Ijtihad” and expresses “its views in comparison with religious precepts on matters submitted to it”. Article 94 of Mauritania Constitution issues a “High Islamic Council” which “formulates opinions concerning the questions about which it has been consulted by the President of the Republic”. On the other hand, Iraqi constitution does not issue consultation body but it allocates seats for experts in Islamic jurisprudence in the Federal Supreme Court. Article 89 of Iraqi Constitution says; “The Federal Supreme Court shall be made up of number of judges, and experts in Islamic jurisprudence and law experts”.

In addition to these references, some constitutions include Islamic references which are specific to a country. Article 11 of Egyptian Constitution guaranties women opportunities in “the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence”. For Article 9 of Egyptian Constitution, religion is one of bases on which the society founded. Preamble of Mauritanian Constitution has many references to Islam such as the fact that constitution “solemnly proclaims its attachment to Islam” and “trusting in the omnipotence of Allah” which will “guarantee the integrity of its territory, its independence, and its national unity and to take upon itself its free political economic and social development.” Preamble of Tunisian Constitution counts “remaining faithful to the teaching of Islam” as one of the aims of independence. Article 6 of Yemeni Constitution counts “Islamic social justice in both production and social relations” as one of the national economy’s principles.

Preamble of Algerian Constitution counts Islam as one of the country’s values and fundamental identity components and depicts Algeria as “a land of Islam”. Article 9 of Algerian Constitution also prohibits the “practices that are contrary to the Islamic ethics” for institutions. While all constitutions except Mauritania and Libya include the text of oath for the president and all elected representatives, only Algerian Constitution includes Islamic references with the phrase; “I will respect and glorify the Islamic religion.” Article 16 of Sudanese Constitution says; “The State will seek by laws and directive policies to purge society from... consumption of alcohol by Muslims”. Article 18 of Sudanese Constitution also says; “those working for the state and those in public life should worship God in their daily lives, for Muslims this is through observing the Holy Quran and the ways of the Prophet.”

Conclusion

There is no ideal or “pure” Islamic state or republic but there are states which can be classified in accordance with the visibility degree of Islam in their constitutions. A close examination of Arab republican constitutions shows that there is no similarity among these states and a ‘*holistic approach*’ which calls all republican state as ‘Islamic state’ is wrong. There are many differences in Arab republicans’ constitutions in the context of the visibility degree of Islam or references to Islam. While some constitutions such as Egyptian and Yemeni have strong references to Islam, some other constitutions like Lebanon include Islamic tones. There are contradictions even in a single constitution because it guaranties the

freedom of belief and at the same time takes the Sharia as the main source of legislation (Na'im, 1987: 9).

The concept of Islamic state does not come from fundamental sources of Islam such as Qur'an and Sunna but monarchy-typed regimes and Orientalist texts. Since the tenth century, the idea of monarchy has been fully integrated into Islam and the legal order based on Sharia has been used to legitimize those regimes. Orientalist texts have also established a strong link between monarchy and Islam and argued that the function of state is "essentially to act as the executive of the Law" (Gibb, 1970: 11). By doing so, Orientalist texts put "the Islamic order... as the imperative total alternative to [the] pluralist system" of the West (Vatikiotis, 1987: 94). To combat this kind of Orientalist cliché and monarchies' power politics, it is necessary to point out differences among applications of Sharia in republican Arab states and the relations state power and the role of Sharia in constitutions.

END NOTES

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¹ For an argument against the idea “din wa dawla” (the unity of religion and state), see, (Tibi, 1998: 165).

² For the term ‘ideal Islamic state’ in the context of A-Farabi, see, (Rosenthal, 1994: 114-116).

³ For a comprehensive analysis of Mawdudi’s political thoughts, see, (Moten, 2006: 175-194).

⁴ Libya is also a republic because its constitution says; “Libya is an Arab, democratic, and free republic in which sovereignty is vested in the people”.

⁵ Qur’an, XLVIII, 13 and 21.

⁶ On the origins and development of that historical understanding of the Sharia, see, (Na’im, 1990: Chapter 2; Na’im, 2000).

⁷ A brief review of these republics’ constitutions shows that democracy is integral part of them. Egypt (Article 1), Syria (Article 1), Tunisia (Preamble of the Constitution), Iraq (Article 4), Algeria (Article 14), Sudan (Article 36, “The Republic of Sudan shall have a President *elected by the people*”), Yemen (Article 4, “The people shall exercise its power directly through referenda and *general elections*”), Lebanon (Preamble of the Constitution, “Lebanon is a parliamentary democratic republic”), Libya (article 1), and Mauritania (Article 1 and 11).

⁸ Egypt (Preamble of the Constitution, Article 6 and many articles), Syria (Article 25, “The supremacy of law is a fundamental principle in the society and the state”), Tunisia (Article 6 and 7), Iraq (Article 2), Algeria (Preamble of the Constitution), Sudan (Article 2), Yemen (Article 26 and many others), Mauritania (Article 10), Lebanon (Preamble of the Constitution), Libya (Article 5).

⁹ “Supreme Constitutional Court (Egypt): Shari’a and Riba: Decision in Case no. 20 of Judicial Year no. 1”, *Arab Law Quarterly*, Vol. 1, No. 1, November 1985, p. 105.

¹⁰ For a different argument, see, (Abiad, 2008: 47-48).

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