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THE ARAB SPRING AND ISLAMIC LEGAL THOUGHT

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At the end of 2010 there was series of political crises in the Arab world and this period came to be known as "the Arab Spring". Islam has played a significant role in these events. In certain countries overthrowing the existing regimes resulted in Islamic governments coming to power. A number of aspects of the Arab Spring attracted the attention of contemporary Islamic legal thought. Its different schools diverge in the assessment of the mass protests. Islamic jurisprudence explains the "fiqh of revolution" which justifies the demonstrations and protests against the regime from a Sharia-based point of view.

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Introduction

Since the end of 2010 many Arab countries have been suffering an acute political crisis. The Arab Spring resulted in regime change in such countries as Tunisia, Egypt, Yemen and Libya. Antigovernment rallies in Syria which started in the spring of 2011 have grown into an armed conflict between the opposition and the government. Insurgencies in Bahrain, demonstrations in Kuwait, Oman and even Saudi Arabia, growing political tension in Morocco, Algeria and Jordan all testify to the fact that the characterization as a revolution does not seem exaggerated.

Taking into consideration the special place Islam occupies in all political processes in the Arab world, the role of Islam can be seen as a factor that prepared the Arab Spring and can be traced in the attitude of contemporary Islamic legal thought to some of its important aspects.

Arab Spring Causes and Islam

The Islamic factor was not one of the basic reasons for the events in Arab countries. The major challenges for the governments were not radical Islamic political movements or organizations but problems of political and social-economic nature [Melyantsev V.A. 2011]. Restricted political reforms that were carried out in a series of Arab countries (See [Reform in the Documents 2004] in the period 2004-2005 did not turn out to be sufficient to prevent critical situations in those countries.

Nevertheless Islam did influence the development of the crisis that led to the overthrow of power in Tunisia and Egypt. Particularly, Ben Ali's regime in Tunisia before the overthrow tried to strictly control Islam and restrict its impact on the social life of the country. There was a series of local conflicts in Tunisia caused by the restriction of the rights of Moslem women (in particular, employment chances and wearing a hijab). Tunisia was turning into a secular state which was pressing for subduing Islam completely to its interests. This policy caused certain discontent not only in Islamic organizations but also among the population at large, which provoked tension in the country. It is no coincidence that there were civic movements, initially not very powerful, unions and associations which raised the issue of the democratic reform of the country. It is quite interesting that their activity involved Islamic organizations like the Islamic Renaissance Movement (Harakat al-Nahda al-Islamya), which turned into the leading political power after the revolution in Tunisia.

 In Egypt under Hosni Mubarak there were a number of issues related to Islam. The central problem was the participation of Islamic organizations in the political life of Egypt and their combative relations with the government. Moreover, the aggravation of this confrontation

was caused by the both parties. Over time the Islamic radical forces emphasized the fact that power in Egypt had betrayed Islam and, therefore, strong-arm methods and violence were options directly dictated by the *Sharia* Law.

After the terrorist attacks on September 11, 2001 and the expansion of an anti-Islamic campaign in the West, the Islamic radical opposition lost faith in the practical feasibility of American plans related to democratic reformation of the Middle East and the overthrow of regimes with the aid of external forces – the only options left were armed revolts and terror. Although, that did not cover the whole range of Islamic organizations, for instance, by that time the Muslim Brotherhood had made significant adjustments to their methods of political struggle. This organization was characterized as moderate though it was not officially recognized. Nevertheless, through parliament under the guise of legal parties they made attempts to place pressure upon the government.

The Egyptian regime in its turn was doing its best to cut Islamic political forces out of direct participation in elections under their own names. That effected practically all opposition Islamic forces – from the Muslim Brotherhood to jihadist and *salafi* groups. Simultaneously the Egyptian authorities were consciously increasing the degree of tension frightening and threatening the people and the West with the advent of Islamic radicals coming to power if there were qualitative changes in the political system. As a result, based on this argument democratic reforms were postponed *sine die*. The Islamic factor turns out, though indirectly, to have been an accelerator of the crisis that ended the regime.

The authorities did not have the slightest desire or ability to convert Islam to their ally. Even such Islamic centers and state institutions as "*Al-Azhar*" and the Fatwa Authority (Dār al-Iftā) headed by the *mufti* of the country were put within narrow bounds which enabled them to deal with political issues. The regime itself made limited changes to the political system ignoring their political legal rationale.

Under such conditions *Sharia* became the exclusive policy tool of the Islamic radical forces. And the authorities facing many social and economic problems were challenged by the Islamic opposition who used Islamic political and legal arguments.

However, these factors were not decisive in their impact on the political crisis in Egypt. It emerged that mass dissatisfaction with the regime and the determination of the broader layers of the society to overthrow it, exaggerated the claims of the Islamic forces and the expectations of the outside world. The protests made American democracy-related plans in the region irrelevant (which although out if date, were likely to include Islamic forces in politics), as well as the political program of Islamists who aimed at forceful regime change. The discrediting of this unilateral project, making the overthrow of the existing government the cornerstone, was to a

certain extent explained by the fact that instead of the regime Islamic forces did not offer a detailed and positive plan aimed at the democratic reformation of the region, - their slogan was "Islam IS The Solution".

At the same time that it was clear that Islam was not going to sit on the sidelines.

Islamic Forces Take Office

Islamic forces showed themselves on March 19, 2011 at the referendum on the constitutional amendment. The Muslim Brotherhood's support of the amendments, submitted to the vote, explicitly testified to the fact that they were eager to take advantage of the opportunity for their own benefit. It was clear that the adoption of a completely new Constitution would be fraught with the loss of their positions. For this reason instead of the promotion of substantial democratic reforms the Muslim Brotherhood preferred to support the legalization of restricted reforms which paved their way to the power. It is symbolic that in the period of universal suffrage on the constitutional amendment there was a slogan "Participation in the referendum is the *Sharia* duty" put forward by the Muslim Brotherhood. It is obvious that by "participation" they meant people's support of the constitutional amendments suitable for the Islamic forces.

It is interesting that the military authorities who had always been the backbone of the Egyptian regime to resist the Islamic forces then initiated the restricted constitutional amendments and obtained a powerful ally in the form of the Muslim Brotherhood. Due to the unpreparedness (probably, also unwillingness) to pursue deep political reforms the interests of military and the Muslim Brotherhood temporarily coincided. While analyzing their positions in respect of the referendum mass media revealingly used the formula "Army IS the Solution" deliberately setting it in opposition to the traditionally associated with the Muslim Brotherhood slogan "Islam IS the solution".

The alliance of the military leadership and the Islamic organizations expressed in the approval of the amendments to the Constitution (and further in proclaiming the constitutional Declaration which served as the fundamental law before the new Constitution was adopted), that put an end to the Egyptian revolution and blocked the democratization of the political system. The readiness of the Islamic forces to support steps in the direction of reforming the political landscape is explained not through their genuine faith in the ideals of democracy but through the fact that toleration of certain liberal standards could aid them in fulfilling their political ambitions.

The Muslim Brotherhood had substantial grounds for this plan. In the circumstances they, together with the *Salafis,* gained major advantages compared to other political forces, both

liberal and moderate because of their better organization, discipline and experience working with the potential electorate.

The Islamic ideological factor also helped the Islamic forces; in this the liberals were unable to compete with them. The conceptual grounding and orientation to the original basics of *Sharia* of moderate, enlightened, "civilized" Islam did not automatically turn into political capital at the election. Against this movement the Islamists possessed greater political experience and relied on their extensive structural network and it had managed to accumulate experience working in parliament where they had got through the legal party lists. The moderate Islamic groups lacked those advantages remaining a restricted and pure intellectual movement and consequently objectively could not claim to be a political force ready to compete for power.

The Islamic forces in the name of the Muslim Brotherhood and *Salafis* long before the Egyptian government was overthrown had been dealing with social issues, focusing on the disadvantaged population of Egypt. They were basing their activities on the Islamic postulates which were clear and close to common believers and doing what the state was unable or unwilling to do. The followers of the contemporary moderate interpretation of Islam had not done anything like this. Their were also unable to exploit Islamic argumentation to attract voters.

People who are familiar with the Islamic intellectual heritage understand the concept of moderation and the preference given to the general principles of *Sharia* before its specific orders were formulated in the Middle Ages. The people who concern themselves with politics in the street are less likely to accept such approaches. While the Muslim Brotherhood, having experience with these people, used simple and understandable Islamic provisions and *Sharia* orders. They represented the implementation of their social programs as the implementation of Islamic law.

In contrast the followers of so called "moderate" Islam who espoused general principles broadly matching contemporary democratic institutions, did not count on the fact that the views of the Muslim Brotherhood would be shared not only amongst educated, cultured and elitist parts of the population but also common Egyptians. It is clear that under the circumstances the Islamic postulates as a tool for the political struggle became an ally to the Muslim Brotherhood not the representatives of moderate and enlightened Islam.

We should not forget that the financial capacities of the Muslim Brotherhood were greater than those of their political opponents. Moreover, a group of representatives of moderate Islam were to a certain extent discredited because of their relations with Hosni Mubarak's regime.

All these factors explain the success of the Muslim Brotherhood together with some other Islamic parties in the parliamentary election at the end of 2011. Thereafter, their followers carried the majority in the People's Assembly and were delegated the task of preparing the new

Constitution. After the Muslim Brotherhood occupied the key positions nobody was surprised at the results of the presidential election which Mohamed Morsi, who came from that organization, won. Even the cancellation of the results of the parliamentary election could not seriously weaken the power of the Islamic forces in Egypt. The most important was that the new Constitution was written under their control.

To a certain extent the situation turned out to be similar in Tunisia where, after the overthrow of Ben Ali a simple majority was won by the moderate Islamic party *Al-Nahda*.

Islamic Legal Understanding of the Arab Spring:
A Variety of Trends and Policy

Having gained power the Islamic forces did not discard the Islamic slogans they had proclaimed and still based their policy on Islamic legal theory - the role of Islamic ideology in the politics increased. Numerous arguments related to the political future are becoming discussions about Islamic political and legal principles, concepts and institutions.

Several trends in contemporary Islamic political and legal thought on the topic of political reformation in the Arab countries can be identified. They differ in their strategy, attitude to power and, consequently, the choice of the *Sharia* argumentation of their conclusions and assessments.

One of these trends is conservative and aims to prevent drastic political changes. This line is most obvious, for example, in the countries of the Persian Gulf, where the governments still have to resist the opposition and maintain political control. Here Islamic doctrine is an extremely influential ally.

Another trend is seen in the views of the Islamic radicals. They often form the core of the non-system opposition speaking out against any existing power including conservative regimes.

One more trend also opposes the legal powers. It criticises the existing regimes, in some countries justifying the protest marches from the *Sharia* point of view. For instance, this line of the Islamic thought played a significant role in changing the regimes in Egypt and Yemen and encouraging the opposition in Syria. It is not directly lined up with the Islamic radicals although it shares a common language with them regarding certain issues.

Sometimes the opposition engages in dialogue, and even exploits the principles of moderate Islam which has recently become an independent part of Islamic political and legal thought. Its distinctive feature is not obediently following medieval Islamic doctrine but following the basic general principles and values of *Sharia* in search of solutions to the problems

of the present-day world on the basis of dialogue, tolerance and interaction of cultures and civilizations [Sykiainen, Leonid R. 2006].

These positions in the Islamic ideology diverge concerning certain issues, first and foremost, in the importance of *Sharia* law. The choice of methodological guidelines is explained by the mode of the relations of certain Muslim figures or centers of the Islamic legal thought with the authorities. This political dependence is clear when opinions are expressed by the official Islamic authority representing the state or, at least, Muslim legal experts loyal to it. Their opinion contradicts the conclusions expressed by the Muslim ideologists representing the opposition who support protest marches and demonstrations against the regime or just criticism of it. On certain issues each thread of contemporary Islamic political and legal thought proceeds from its own assessment of the political situation in a country.

Closely interrelated conceptual and theoretical guidelines are clear in the approach of contemporary Islamic legal thought to the problems which are the focus of the political events of the Arab Spring and those Islamic ideological legal disputes. There are a number of similar issues but the following two issues are central – the *Sharia* perspective of the protest demonstrations, and the *Sharia* assessment of the anti-government actions generally.

Demonstrations – Unacceptable Innovation

One of the most fundamental subjects under discussion amongst Islamic legal experts and political scientists is the *Sharia* assessment of mass demonstrations and protest marches. That is quite understandable since the insurgencies at the end of 2010 and the beginning of 2011 began a season of political convulsion leading to a coup in some countries and ongoing events in others.

There is a whole spectrum of thought on this issue ranging from condemnation of any protest marches to an acknowledgement of them according to *Sharia* principles. There are other views that there can be no *a priori* assessment of demonstrations and their legality depends on other *Sharia* criteria. Based on this some protests are acceptable others are not.

The centers of Islamic legal thought and thinkers whose attitude towards anti-governmental demonstrations are strongly negative are most active. It is no surprise that the governments in the Arab countries of the Gulf which have avoided coups and survived the protests follow this idea. Saudi Arabia holds a unique position amongst them.

The declaration made by the Council of Senior *Ulema* (the learned) of Saudi Arabia in 6th, March 2011 is important (See [Council of Senoir Ulema 2011]). It is a *Sharia* assessment of the insurgencies and unrest taking hold of many parts of the Muslim world, which emphasizes one of the basic principles of Islam: the necessity of retaining the unity of all Muslims. In support of

this conclusion the following stipulation from the Quran is given: "And hold firmly to the rope of Allah all together and do not become divided. And remember the favor of Allah upon you - when you were enemies and He brought your hearts together and you became, by His favor, brothers. And you were on the edge of a pit of the Fire, and He saved you from it. Thus does Allah make clear to you His verses that you may be guided" (3:103, 105).

Taking into account these principles, the Council declared that reformation is to be based on certain *Sharia* principles ensuring goodness while preventing harm. Moreover, such methods do not allow any manifestation of appeals and distribution of other materials disseminating terror and unrest. The reforms are not to be carried out by means of demonstrations or other methods leading to chaos and wrecking the unity of Muslims. Thus the declaration confirms the prohibition of demonstrations and draws attention to the fact that appealing to the ruler with advice is the sole *Sharia* method to express any requirements and demands.

This position was taken up by the judicial power of the country: less than a week after this document was adopted, the Court of Appeal of Mecca said that participants of demonstrations would bear responsibility in accordance with the principles of *ta'azir*, i.e. corporal punishment and imprisonment. Moreover, this penalty is applicable for sedition spread through electronic means (See ["Al Jareeda»", 13.03.2011]).

It is notable that the conclusion regarding the illegality of the demonstrations had been long proponed by some conservative and orthodox scholars who represented the official position of the Kingdom. For instance, Abdul Aziz bin Abdullah bin Baz, former Saudi Grand Mufti said: "I do not see the solution to any problem in demonstrations involving men or women; I only note that they are the cause of evil and arbitrary decisions of certain people and also the illicit infringement on people" ["Al Watan", 10.01.2013].

Another leading scholar Saleh Al-Fawzan answering the question whether demonstrations and revolutions could be assessed differently in various countries brought into focus the following: "No country has benefited from revolutions which shed blood, destroy houses, annihilate property and trench upon dignity; they are inadmissible since they are the evil" ["Al Watan", 30.12.2012].

The announcement by the clerical office of the Grand Mufti of the Sultanate Oman published in March 2011 (See [Declaration of Iftaa Office 2011]) was similar in tone. It emphasized the idea that reformation and changes, the attainment of political objectives are permissible only on the basis of the fear of God and appealing to the Quran and the *Sunnah* of the Prophet.

However, compared to the declaration of the Saudi Council this document draws attention to the fact that mass demonstrations and protest marches are permitted by objective problems

which need to be solved. In particular, fighting any forms of corruption, misapplication of public funds, misuse of power at the cost of the national interests is the *Sharia* duty, but the elimination of these failures is admissible only in forms that do not contradict Islam. Only those methods which do not hinder the functioning of public and private services, that do not destroy public and private property and do not cause damage to manufacturing and development, are admissible. As for demonstrations paralyzing public life, negatively affecting the functioning of valid government or undermining security - *Sharia* does not permit that.

Following these rules does not mean condoning corruption or supporting what is wrong. Moreover, the clerical office of the Grand Mufti again confirmed the importance of following what is ordered by *Sharia* and avoiding what is forbidden. That means monitoring all governmental activities, which must be carried out in compliance with *Sharia*. At the same time *Sharia* acknowledges the right for everyone to demand satisfaction of all legal interests only in accordance with the principles of Islam and within the framework of public order. Every Muslim is supposed to observe the principles of Islam, be just and honest in relation to not only friends and relatives but also to enemies and strangers.

At present a similar position is shared in the Arab world by almost all Muslim legal experts. In order to confirm the prohibition, in addition to the above mentioned arguments they bring forward a series of other arguments from *Sharia* law.

Demonstrations are regarded as *bid'ah*, i.e. innovations deviating from Islam, innovation of the sort which means wrong belief. The Prophet's fellow-soldiers are not considered to have taken part in such activities. Modern protest marches and protests borrow the traditions of disbelievers and blindly copy the occidental experience. It is no coincidence that they are mostly initiated by secular political forces. The outside influence becomes apparent, for instance, in the fact that protestors do not demand the establishment of the Islamic state and *Sharia* law but, as a rule, put forward democratic slogans alien to Islamic traditions. Most of them are unfamiliar with the basic principles of Islam.

The negative attitude towards protest marches and protests are explained by the fact that they often cause material and physical damage, infringing on the lives and wellbeing of people – what *Sharia* interprets as "spreading mischief in the land". Such actions are crimes which are subject to severe penalty. Even if demonstrators do not directly commit these crimes, the protests may lead to that. Mass protests therefore are forbidden according to the principle of *Sadd Az-Zara'i* which means setting obstacles to what *Sharia* forbids.

Other grounds for a negative assessment of the demonstrations are the armed conflicts which resulted in coreligionist fatalities: the Prophet said: "Abusing a Muslim is an act of wickedness; and killing him is an act of unbelief".

Banning demonstrations is grounded on certain principles of *fiqh*. For instance, they violate the ban on direct communication between men and women who are not closely related to each other by blood or marriage. Very often those demonstrations last so long that participant missed prayer, which is referred to as one of the basic principles of faith. So, in religious terms mass demonstrations did more harm than good.

Demonstrations turn out to be the source and the cause of such phenomenon as *fitna* – an Arabic word with connotations of secession, upheaval, and chaos or attempting to create a chaotic situation that tests one's faith. *Sharia* expects its followers to avoid what may mislead, confuse, entice with delusive benefit denied by Islam and turn against Allah (See, for instance [Al Umar, Umar bin Abdel Rahman 2013]).

One of the most important arguments is that the demonstrations express opposition to governments. The participants, from the *Sharia*-based point of view, deny the oath of fidelity made to the ruler. This obligation stipulates subordination to the authorities in all aspects which are not a sin in the eyes of Allah. Thereby, Muslim legal experts highlight the fact that the monarchies of the Persian Gulf and the Arabian Peninsula serve Islam and pursue a policy meeting the requirements and orders of *Sharia*. Here the sovereigns do not fall into sin even if they make mistakes or fail in regard to certain issues (See ["As Sabah", 09.03.2011]).

Sharia Arguments Supporting Demonstrations

Not all Muslim legal experts and thinkers share the unconditionally negative *Sharia* assessment of protest marches and demonstrations. Even conservative and orthodox religious authorities are not unanimous on this issue. In particular, in the International Union of Muslim Scholars the view predominates that protest marches are admissible as political action according to *Sharia*. The Chairman, an outstanding contemporary Muslim theologian and legal expert, Yusuf al-Qaradawi puts forward, perhaps, the most serious arguments supporting demonstrations (See [Al Qaradawi, Yusuf 2011]).

He clearly affirms that Muslims are entitled to march in protest expressing their legal demands and announcing their aspirations to their heads of state, and those who are in charge of taking decisions. The voice of the populace will be heard more clearly than the voice of a single person. The more protesters there are, the more chances to find influential people among them, and the more efficient the demonstrations are. The Qur'an says: "And cooperate in righteousness and piety, but do not cooperate in sin and aggression" (5:2).

 From Al-Qaradawi's perspective the main *Sharia* argument in support of the legality of demonstrations is the fact that demonstrations refer to temporal affairs, civic issues which are

solved on the basis of the presumption of consent. This idea explains that all worldly rules are made by people themselves and develop through interaction between people. With his revelation Allah made adjustments and restrictions in order to protect people against harm and malice. The following words of Allah testify to this: "He has explained in detail to you what He has forbidden you" (6:119).

This approach to the assessment of temporal reality drastically differs from the regulation of religious issues as such. Indeed, everything related to worshiping Allah was sent by him. On the basis of distinction of these two sides of human life the following *Sharia* principle appeared: "The rule is not set any other way but by Allah, as for temporal affairs they are not rejected other than by Allah's ban". This norm forms the basis of the famous maxim of Islam: "Presumption in regard to religious issues is a strict observance of what Allah directly ordered and in respect of temporal affairs – innovation". Alternatively speaking, all that is forbidden in temporal life is directly banned by the exact and unambiguous writing in the Quran or the provision of the Prophet's *Sunnah*. Provided that *Sharia* does not explicitly forbid some worldly practice, it is considered permissible.

Since *Sharia* does not contain any orders related to mass demonstrations, according to Al-Qaradawi, they are permitted. In confirmation of his conclusion he brings forward a few historical examples of appearance in the Muslim world of rules and institutions (including offices of state, taxes, prisons) which were borrowed from other cultures and civilizations.

This argument serves as a denial of the reproaches from those who consider protest marches and demonstrations as borrowed from non-Muslims and consequently refer to them as unacceptable innovations. He also refers to the contemporary practice in Muslim countries to borrow occidental achievements in the field of education, information technology, economics, and politics. Particularly, such phenomena as the constitution, elections, the separation of powers, the mass media and the Internet, which are used to express opinion and address to the authorities, were introduced in these countries. These borrowed practices are implemented within temporal affairs and do not violate the imperative provisions of *Sharia* and serve the interests of Muslims without doing them any harm. In other words that means borrowing tools, mechanisms and forms, which are subject to modification but do not contradict the objectives and principles of Islam, are permanent and constant in Islam.

Al-Qaradawi considers all the arguments given in support of demonstrations to be the substantiation of two key *Sharia* principles. The first one is represented by the concept of "excluded interests". The idea is that any practice alien to the Muslim world earlier and not directly stipulated in the *Sharia* Law may become admissible under certain circumstances. Particularly, it must not touch upon religious issues, where all innovations are denied. New

forms are destined to serve the objectives set in *Sharia* which comprise religion, life, reasoning power, human dignity and property. Any temporal innovations must be rationally acceptable and not contradict the specific and general provisions of *Sharia* law.

The second principle lies in the *Sharia* rule: "Means and objectives are equally estimated". This also means temporal affairs. If the objective is legal, then the means towards that end are to be assessed to see if they are not explicitly forbidden. In other words any means having no precedent, framed in advance assessment. The attitude towards them depends on what they are applied to. Thus, provided that demonstrations pursue legal aims (for example, make a call for enforcement of *Sharia* or advocate human and civil rights and freedoms), then their legitimacy is clear. When they put forward demands contradicting the imperative orders of *Sharia*, mass demonstrations are to be banned.

Concerning the arguments of those who support prohibition of any demonstrations in general put forward, the idea that protesters may cause damage to property and injure people, Al-Qaradawi presumes that the above mentioned rule of *Sadd Az-Zara'i* should not be interpreted broadly. Otherwise, it can be in the way of the interests recognized by *Sharia*. For permission of demonstrations protesters are required to avoid vandalism, to be disciplined, observe safety regulations and bear responsibility for any violation of a right or a law.

A similar approach to protest marches and demonstrations is shared by some other Muslim public figures and organizations. Thus, in the midst of "the Arab Spring" the *Salafi* movement of Kuwait made a declaration which almost literally reproduced the argumentation offered by Al-Qaradawi. Moreover, it says that the establishment of a just state and resisting despotism is the most important objective of *Sharia* and the inviolable duty of the Muslim community. The authors of the declaration claim that the entire malady is the result of the decay of the rulers. The truth, in their opinion, lies in the reverse relation: disease of society originates from disorders of power. Besides, if the community dissembles the arbitrary rule and supports tyranny, then the community itself is to bear responsibility. That is why protest marches and demonstrations as a political tool are quite admissible and sometimes even necessary since they serve the interests not forbidden by *Sharia*, especially if that goal means the enforcement of *Sharia* (See ["Al Anbaa", 10.03.2011]).

Supporters of demonstrations insist that peaceful mass demonstrations in favor of the defense of rights, carried out without weapons, bloodshed, murders and offence against property have nothing to do with anti-government demonstrations. Indeed, armed manifestations, as a rule, do more harm than the evil done by the tyrannical ruler. And peaceful demonstrations are ensured by the constitution to which the ruler swears an oath of loyalty and which is treaty between the ruler and the citizens. Mass demonstrations are a contemporary way to affect power

to make the latter *vox populi.* So, if protesters make fair demands, then their actions are allowed by the *Sharia* Law on condition that they do not cause any damage, the scale of which is more than the benefit pursued.

Within the framework of this approach some authoritative *Sharia* experts lay down the terms and requirements peaceful demonstrations are to meet. In particular, protesters' claims and requirements are to be fair and legal. They are not permitted if they are harmful or include actions that are forbidden. At the same time participation in demonstrations does not allow the termination of duties (e.g. devotion) or forbidden communication between men and women. And finally, no harm to health or property offence is admissible. On the whole, mass protest marches and demonstrations without arms, bloodshed or property offence and infringement on life are permitted by the *Sharia* Law (See ["Al Qabas", 11.03.2011]).

A unique support to the admissibility of demonstrations is given by Hakim al-Mutairi, a Muslim theologian and legal expert, who closely collaborates with the International Union of Muslim Scholars. He emphasizes that protest marches and demonstrations are a novelty that has appeared recently in the lives of Muslim people. In accordance with the *Sharia* methodology phenomena of this nature are to be treated depending on their general sense and orientation. Taking this into account the scientist draws an analogy between demonstrations and jihad which means in Islam any effort aimed at the adoption of godly commandments and their fulfillment.

What the scientist highlights is that Allah permitted the faithful to use the methods enabling the pursuit of this objective. The initial principle here is the legality of the application of any means except those directly prohibited by *Sharia*. Among different forms of jihad there stands out the so called "jihad by the tongue" (sometimes referred to as homiletical jihad) which is an open agitation, active verbal impact on people for the purpose of inducing them to follow Allah's course. This is exactly what the Prophet meant saying: "A most excellent Jihad is when one speaks a word of truth in the presence of a tyrannical ruler". If this word becomes one of the ways of jihad, then speaking it becomes a duty for everyone who is able to do that.

In modern life, the mass media, agitation, propaganda warfare or a campaign in support of victims of aggression can described as "jihad by the tongue". These forms of jihad also comprise demonstrations which are held in defense of the right and against breaches of justice.

Manifestations represent collective or group action. As it is, this collaboration cannot be unambiguously assessed without taking into consideration the aims pursued as the Quran says: "And cooperate in righteousness and piety, but do not cooperate in sin and aggression" (5:2). Mutual assistance means consolidation of efforts, which happens during demonstrations. But the attitude towards them depends on their character. If mass demonstrations put forward righteous

claims, they are worth supporting and in cases when they contradict the interests stipulated in *Sharia*, they are forbidden.

The following words said by the Prophet and considered as one more argument in favour of demonstrations is "Help your brother, whether he is an oppressor or he is an oppressed one. People asked, "O Allah's Apostle! It is all right to help him if he is oppressed, but how should we help him if he is an oppressor?" The Prophet said, "By preventing him from oppressing others." It is clear that it does not mean a direct physical action but efforts aimed at prevention of evil and despotism. If this order of the Prophet correlates with what the Quran says about collaboration, rightful causes and piety, the conclusion is that demonstrations are a practically perfect way to resist the errors of the power. Moreover, this is the way not only permitted by *Sharia* but even ordered.

The issue is that the means become mandatory if the ends can be achieved with the aid of them. Nowadays mass protest marches are very often most efficient way to eliminate deviations from *Sharia*. In fact, demonstrations under the circumstances are admissible and sometimes even represent a form of jihad or invocation to follow Allah's course (See [Al Mutairi, Hakim 2012]).

'Abdul-Rahman bin Nasir al-Barrak, a Saudi theologian, has made an attempt to summarize the discussions and disputes related to the assessment of demonstrations. In his opinion there is no unanimity in contemporary Islamic legal thought concerning the relatively peaceful demonstrations and mass protest marches. Riotous disturbances and anarchy are denied by all Muslim lawyers (See ["Al Anbaa", 08.03.2011]). However, as has been demonstrated, points of view in regard to this issue also vary.

Apparently, the unavailability of a consistent approach reflects not only dissidence traditionally typical for Islamic legal doctrine. This is also related to the fact that the Arab Spring is a new subject for this area and which in terms of *Sharia* requires a discussion of complicated and ever-changing realities. So the dispute in this regard in contemporary Islamic legal jurisprudence is far from conclusive.

Insurgency against the Rulers: *Sharia* arguments for and against

The analysis of the demonstrations involves discussions which revolve around the traditional issue, for the Islamic legal thought, of the attitude towards power, the forms and permissibility to speak out against the ruler, and the *Sharia* assessment of this.

Similar to the discussion about demonstrations in contemporary Islamic jurisprudence, there is a dispute concerning the principles of the attitudes to the rulers, the basic principles of interaction between the ruler and the citizens. Its participants have split into two opposing camps. The opponents of demonstrations as a tool of a political action outlaw any infringement

on the power of the ruler and disobedience of his orders. Their opponents grounding the admissibility of demonstrations discuss the possibility in principle for such protest acts. Of course, both parties of this dispute refer to the *Sharia* to substantiate of their positions.

The loudest voices are of those Muslim legal experts and political scientists who most radically disclaim the actions directed against the ruling powers. Most of them maintain the orthodox position considering obedience and subordination to the leaders not only as the duty of all Muslims but also one of the doctrinal principles of Islam. Only in this way will religious and secular values be manifest. And, therefore, infringement against the ruler in word and in deed is one of the most serious causes of decay and deviation.

According to the opinion of the scientists who share this approach "There is no religion except for that one exercised by the community, there is no community except for that one united by the power, there is no power except the power resting on obedience and subordination" ["Al Watan", 05.01.2011]. The conservative doctrine this principle refers to are those truths adopted together with the faith by all Muslims since they constitute the faith. In an indirect form that means that anyone who does not share this postulate may be accused of apostasy.

In support of this conclusion the following stipulation from the Quran is given: "O you who have believed, obey Allah and obey the Messenger and those in authority among you" (4:59). This commandment is given by the words of the Prophet: "Whoever obeys me obeys Allah; whoever rebels against me rebels against Allah; whoever obeys my emir obeys me; whoever rebels against my emir rebels against me".

Prophet Muhammad's words add to this common obligation to be submissive to the ruler as stipulated in the Quran: "Obedience and submission are laid upon a Muslim in all things, in what he likes and what he criticizes only if he is not ordered something sinful to do; if he is ordered to commit something sinful, then he is not obliged to obey and submit". Other words familiar to practically all Muslims are the words of Allah's Messenger: "Submission to a creature (i.e. a human being) is excluded in what is the sin in the eyes of the Creator".

It would seem that these words generally mean that if the ruler orders citizens to commit sinful acts a Muslim need not render obedience. However, the Islamic tradition interprets the Prophet's voicing against the background of the above mentioned provision from the Quran concerning the submission to the emir in the way to exclude any contradiction between them. The following words of the Prophet conclude this interpretation: "He who sees in his emir something worth criticizing must forbear; indeed, he who veers out of submission to his emir, he will die as a pagan (sinner)".

In other words the Islamic legal doctrine derives from the idea that the sinful ruler forfeits the right to claim any submission to his orders deviating from *Sharia* which, in the principle, can

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be neglected. Nevertheless, the citizen does not have the right to speak out against the power even if the latter transgresses. Islamic legal thought clarifies this general conclusion.

It promotes the idea that the Muslim ruler is not infallible. Even deviating from *Sharia* his power is worth submission to the extent he serves the Muslims and the faith. In this respect the Prophet said about the emirs appealing to his coreligionists: "They pray for you and if they do something wrong, they do it for you and themselves, if they commit errors, they do it for you and against themselves". The words of caliph Uthman about the rulers are also apt: "Prayer is the best that people do, thus if they act rightly, act rightly together with them and if they commit something wrong, stay away from their ill acts". The leading Muslim conservative theologians conclude that as long as the ruler ensures the possibility to profess Islam, no errors of his can justify recusancy ["Al Watan", 05.01.2011].

Discoursing upon a possible breach of justice or even tyranny on the part of the ruler the supporters of this position point out that even under these circumstances it is necessary to remain true to the them. Their errors cannot be the reason for mass demonstrations. Recusancy entails harm and miseries which significantly surpass loss resulting from his misrule. It is symbolical that in the midst of the armed conflicts in Libya between Muammar Gaddafi's army and rebel fighters in the spring of 2011 some Muslim theologians stated that the massacre caused more damage to the protesters than the regime (See ["As Sabah", 09.03.2011]). It is the anti-governmental demonstrations that cause disturbance, chaos and fill the hearts with exasperation and consequently derogate the significance of *Sharia*. That just plays into hands of the enemies of *Sharia*. Benefit does not lie in revolutions and provocations – it lies in wisdom.

Moreover, in their opinion, Allah gave such rulers the power over the Muslims in response to their own faults. Probably, the unlimited power of the tyrant is punishment for the Muslim community for their sins. The following verse from the Quran substantiates this: "What comes to you of good is from Allah, but what comes to you of evil, [O man], is from yourself" (4:79), "And thus will We make some of the wrongdoers allies of others for what they used to earn" (6:129).

Relying on such arguments Muslim religious figures allegiant to their rulers highlight the fact that the cohesiveness of society around the potencies is *Sharia* duty since the interests of the Muslim community come into fruition only if that is the case. Following this idea they affirm that recusancy in the countries of the Gulf and Arabia that keep the Islamic religion and thereby serving the people is absolutely impossible (See ["As Sabah", 09.03.2011]).

What are we supposed to do when the powers are unjust, deviate from *Sharia* and rule badly? The answer to this question, according to the orthodox Islamic legal thought, is to exhort the ruler and appeal to him with advice. This idea is developed in the above mentioned

declaration made by the Council of Senior *Ulema* (the learned) of Saudi Arabia in which Prophet Muhammad's words are given: "Allah's hand is with Muslims constituting the community. He who veers out of the submission to Him, on the Day of Atonement will meet Allah having no arguments in his vindication. He who will meet doom not being under the vow of fidelity to his ruler, will die as a pagan."

The *Sharia* principles as stated in the document require the ruler and the people to interact on the basis of reciprocity, mutual understanding, and collaboration in godliness and mutual rejection of sin and enmity. These initial postulates suggest the inadmissibility of speaking out against the legal power.

The leading Saudi Muslim scientists hold the special position of the consulting or advising principle in Islam but only within the limits set by *Sharia*. In support of this they cite the Prophet: "Religion is advice". When he was asked to whom it was directed Muhammad replied: "To Allah and His Book and His messenger, to the leader of the Muslims and their common folk." The declaration cites the Prophet's words concerning how to address the ruler: "Indeed, Allah shows you three desires: worship Him and not betray Him, believe in Allah together and not to disunite and also to offer advice to those on whom Allah laid handling of your affairs". As the followers of traditional thought emphasize, advice is to be submitted orally or in writing directly to the ruler or his representative. Using mas media to give the rulers advice, or making written petitions with signatures collected in support of some claim are absolutely inadmissible (See ["Al Watan", 05.01.2011]).

However, the view of the demonstrations as forbidden by the *Sharia* law is not shared by all streams of contemporary Islamic legal thought. For instance, it is unsurprising that the supporters of the demonstrations hold another position and see insubordination possible under certain circumstances. Thus, Bassam al-Shatti, a Kuwaiti scientist, says that resisting suppression and despotism is a *Sharia* obligation. It is stipulated in the Quran to obey what *Sharia* prescribes and not what is forbidden. This order is substantiated by Muhammad's words: "Whoever of you sees something deserving condemnation, change it with your hand; if unable, - then with your word; and if you are not considered worthy of doing that, do it with your heart; and this will be the weakest outpouring of the faith". Refusing to discharge lawful duties and to resist evil leads to deterioration, for which Allah will punish. The Egyptian revolution, he thinks, testifies to this conclusion (See ["Al Anbaa", 11.03.2011]).

Yusuf Al-Qaradawi openly supported speaking out against the rulers. The contemporary Muslim theologian and legal expert, in particular, stated that the war against Gaddafi in Libya was not a crusading military campaign as some people thought; it was a legal protest against a

tyrant. Eagerness to forcefully overthrow the regime was justified by the *Sharia* principle: "Necessity allows what *Sharia* forbids" (See [«Alam Al Yawn», 22.03.11]).

He addressed the Yemeni military men with an appeal not to fire at protesters speaking out against the regime referring to the words of the Prophet about there being no duty to be subordinate to the rulers if their actions are sinful in the eyes of Allah (See ["Alam Al Yawn", 15.03.11]).

Al-Qaradawi established, under the World Council of Muslim Scientists, a group of researchers to work on a charter which would confirm the rights of the governing and the governed, and the principles of their interaction. This document discussed the basic *Sharia* principles on which fair power must rest. Clarifying the idea of his initiative he stressed the necessity to overcome the entrenched ideas according to which an Islamic state must be a religious state. As a matter of fact, religion is just one of the five *Sharia* values. It is only a constituent part of *Sharia,* not the whole of it.

Islamic legal thought, as Al-Qaradawi highlighted, is not familiar with the institution of theocracy. An Islamic state is a "civil" state and all its activity emanates from *Sharia*. Islam should not be interpreted as a fossilized dogma but a broad system based on justice, goodness and sense. Such basic principles comprise the institutions of democracy as opposed to personal power. Thus, the ruler is obliged follow the same set of rules and restrictions since, as the Prophet said, the community does not labour under misapprehension if it is an integral unit. People are entitled to have their own opinion and express it in the form of opposition.

Summing up the arguments the scientist reached a conclusion unique for traditional Islamic legal thought: "Manifestation of liberty goes ahead of the enforcement of *Sharia*" ["Al Qabas", 11.03.2011].

"*Fiqh* of Revolution" – New Trend of the Islamic Legal Doctrine

The disagreement of the positions of Muslim thinkers in respect of anti-government protests confirms that contemporary Islamic legal thought offers a wide range of views sometimes opposing ones, on all the key issues of the Arab Spring. Such discrepancies are explained not only by external political factors but by its own the internal logic.

The variety of views on the legal aspects of "the Arab Spring" resemble the dialogue and competition between two major lines that have always determined the content of *fiqh*. The matter concerns the position of the so called people of *Sunnah*, i.e. strict devotees of Islamic orthodoxy who prefer to seek all solutions in the text of the Quran and *Sunnah* as opposed to the

views of "the people of the rational opinion" who more often use rational ways of framing the norms without casting doubt on the authority of these Divine sources.

No doubt that the conservative trend which predominated can prevail now too. This science has been developing for ages, absorbing various traditions which helped it to serve the rulers. At one point in history it started neglecting the analysis of the realities and became formalistic. As a result, over the course of history *fiqh* has accumulated many formal speculative constructions logically perfect but detached from the realities of life.

This tradition nowadays predetermines the approach of those Muslim thinkers who, referring to the *Sharia* arguments, refuse to permit demonstrations and deny any protest against the rulers.

Another trend in Islamic legal thought is the position of the supporters of a more flexible, creative and rational approach to the realities of life although it has always been in the shadow of orthodox *fiqh*. In the previous century this line was drawn only in the works of some muslim lawyers and political scientists quite liberally orientated. But a few decades ago a new trend of the legal thought asserted itself; it represented not the liberal ideas but the ideas of traditionalists who were no longer satisfied with the views of those who directly served power. Theories opposed to the Arab regimes and calling for radical political actions appeared. The followers of this approach are currently elaborating the *Sharia* grounding of admissibility and even necessity for mass demonstrations and on this basis they justify anti-governmental protests.

Al-Qaradawi and likeminded people certainly can hardly be called "the people of the rational opinion" but they are using the rational argumentation typical for this stream of Islamic legal thought much more actively than lawyers of the orthodox school. As the Arab Spring ripens and advances, this position becomes more and more conspicuous. Its supporters are actively involved in the discussions and disputes on political issues, carrying out energetic homiletic work, and even becoming directly involved in politics.

The intellectual and creative activity of representatives of this neo-orthodox interpretation of the Islamic ideological heritage paved the way for the formation of the new trend of the Islamic legal doctrine called "*fiqh* of revolution". This notion has been developed by Al-Qaradawi since the Arab Spring began. In the summer of 2012 his first book on this topic came off the press (See [Ar Raisouni, Ahmad 2012].

This discusses the theoretical apprehension within the frames of *fiqh* of different aspects of the political convulsion in the Arab countries in the form of formalization of both - the methodology of the approach to these happenings and certain *Sharia* norms and principles which can be applied to the problems that appeared in the course of political changes.

This trend does not reflect the whole spectrum of ideas which are elaborated by Muslim legal thinkers in connection with the political events in the Arab countries. This refers to the *Sharia* grounding of the revolutions as they occur, and methods of political activitism used by the participants. Moreover, "*fiqh* of revolution" is not restricted by justifying and even consecrating, with the authority of their leaders, the actions of those who protest against the existing regimes. Simultaneously with that it frames the goals of such movements and offers possible tools for their achievement, i.e. makes a road-map for an Arab Spring sequel.

Taking into account the social changes including the process of political reformation will predetermine the situation in the Muslim world for a long time "*Fiqh* of revolution" as it dynamically unwinds may easily turn into a significant part of the contemporary Islamic legal doctrine the relevance of which can only increase.

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