



Written by [Joe Wolverton, II, J.D.](#) on August 26, 2011

Sharia Enshrined in Libyan Draft Constitution

With the pen of power placed in their hands by the armed forces of the United States, the members of the Libyan Transitional National Council (TNC) has released a [draft](#) of a proposed new constitution that enumerates Islamic Sharia law as its foundation.



Sharia, which means “path” in Arabic, is the sacred law of Islam. The precepts of Sharia have two sources: the Koran and the writings of Mohammed. Sharia is the code that is responsible for the stoning of adulteresses; the caning of rape victims; and the restrictions on dress, rights of inheritance, and marital status of women.

A document released by the TNC explicitly establishes Islam as the state religion and specifies that the principal source of all laws lawfully promulgated under the proposed constitution will be the precepts of Sharia.

The relevant declaration is made in Part 1, Article 1 of the constitution authored by the TNC:

Libya is an independent democratic state wherein the people are the source of authorities. The city of Tripoli shall be the capital of the state. Islam is the religion of the state and the principal source of legislation is Islamic jurisprudence (sharia). Arabic is its official language while preserving the linguistic and cultural rights of all components of the Libyan society. The state shall guarantee for non-Muslims the freedom of practicing religious rights and shall guarantee respect for their systems of personal status.

Curiously, despite the official establishment of Islam as the state religion, another clause of the same article of the constitution guarantees the right to worship freely. The section reads in relevant part: “The State shall guarantee for non-Moslems [sic] the freedom of practising religious rights [sic] and shall guarantee respect for their systems of personal status.”

There are other equally unsettling articles and clauses in the draft constitution submitted by the TNC. Below are a few examples of provisions in that document that should give pause to constitutionalists.

Article 4: “The State shall seek to establish a political democratic regime to be based upon the political multitude and multi-party system in a view of achieving peaceful and democratic circulation of power.”

The Founding Fathers of the United States universally agreed that there is no lasting peace to be found in democracy. As James Madison observed and warned: “Hence it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have, in general, been as short in their lives as they have been violent in their deaths.” The Founding Fathers instead [established a Republic](#), a government of law that defines and limits and power of government and protects basic rights.

Article 5 of the draft constitution promises that “the family is the basis of society and shall be entitled to protection by the State.” While the notion of protection of the family is certainly noble, there is



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something more ominous lurking in the penumbras of those words when they are read in light of the enshrinement of Sharia as the source of all laws.

Social equality is proclaimed as a goal of the new ruling party in Libya. Article 8 guarantees that the State will “provide an appropriate standard of living” to all Libyans. Setting aside the vagueness of the terms of that clause and the confusion that will undoubtedly cause, the most disquieting aspect of this socialist scheme is that such programs and policies have the tacit imprimatur of the United States of America.

International criminals (terrorists?) will be high-fiving each other upon reading Article 10 of the new constitution: “The extradition of political refugees shall be prohibited. The State shall guarantee the right of asylum.”

The statement quoted above wherein James Madison described democracy as incompatible with the right of property is certainly proven in Article 11 of the new Libyan charter. It reads: “Homes shall have their sanctity and they may not be entered or inspected except in cases prescribed by the law and according to the manner set forth therein.”

Again, while this may comfort some, there is always the specter of Sharia lurking behind every seemingly civil right protected by the proposed constitution. That is to say, every clause of this constitution must be read in the light of Sharia and its precepts and not simply as plain principles of freedom as understood according to Western tradition.

Much of the rest of the Constitution strikes a very Lockean tone with protections of free speech, the rule of law, and fair and open elections. For all of this Western sounding language, however, the constitution’s open paean to Islam and its traditions as set forth in the corpus of Sharia law is unarguably an open affront to the principles of liberty held inviolate in the United States.

It is this contrast that is the most disturbing aspect of the potential political system being set up by former rebels in Tripoli. The plain, uncomfortable, and irrefutable fact is that there would be no transitional authority, indeed there would be neither a transition nor any authority were it not for the demolishing power of the arsenal of the American military. While NATO is given credit for “liberating” Libya, there are American hands guiding armed drones and flying American fighter planes dropping American bombs on the forces loyal to Gaddafi.

In fairness, the constitution penned and proffered by the Transitional National Council is only a draft, and it is too soon to know if all of the clauses contained therein will find their way into the final, functional version of that document. What is known, however, is that in the two other countries recently released from the shackles of Muslim extremists, Sharia is the standard against which all laws are measured. And, furthermore, these constitutions were co-authored by American occupational forces.

While such levels of intervention are nowhere provided for in the Constitution, sadly, even among the most well-educated conservatives in America there are those who see a legitimate role for the United States in helping to lay the metes and bounds of the new Libyan regime. James Phillips of The Heritage Foundation made such a [claim](#) earlier this year:

While the Obama Administration should minimize its military involvement, Washington should assume a leadership role in supporting a credible opposition—one free of terrorist taint and committed to the interests of the Libyan people. The Administration has offered to provide non-lethal aid to the Libyan rebels and should consider giving them access to the regime’s frozen assets and help with facilitating oil exports. But Washington should consider providing further



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assistance only when it can ensure that such aid will not benefit Islamist extremists, who form a small portion of the loose opposition coalition.

Tragically, as has been the case in the other countries “set free” by the overwhelming might of the U.S. military, neither the drafting nor passing of a new constitutional order, despite the American influence thereon, will bring the peace and stability that some sincerely hope for. Witness this statement from Chinese Radio International:

However, as Ben Leung, CRI's special correspondent in Cairo notes, Libya is divided along tribal lines, and the violence committed by the Gaddafi regime over the past decades is very hard for people to shrug off or forget. So there is every chance that the desire for retribution could be a potential problem which could blight the transitional period in the next year or so.

And, as has now become the custom throughout the world, when the blight begins, it is the blood and treasure of the United States and the men and women of our military that will be called upon to restore order and remove the blight.

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