Sharia Law in the Twentieth-First Century

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Contents

Chapter 11

God as Sovereign; Sovereign as God: An Archeology of the Iranian Constitution

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> The Sovereign is the representative of history. He holds the course of history in his hand like a specter. This view is by no means peculiar to the dramatists. It is based on certain constitutional notions.
>
> Benjamin, *Trauerspiel*, p. 65.

Introduction

Iranian Revolution of 1979 was a turning point that supposed to bring about more equality and freedom for the Iranian People. However, this did not happen. The failure seems to be partially rooted in the post-revolutionary developments, particularly the 1979 Constitution, which is concerned with consolidation of power and sovereignty rather than securing the rights of their This Constitution is also a socio-political history, in which aspirations, ideals, national imaginations, power relations, and historical trends have been articulated. For instance, whereas revolutionary ideals are enshrined in the preamble of the 1979 Constitution, they are gradually eroded in the main document. How was it possible that a Constituent Assembly elected by people rejected the ideals of equality and justice? More surprisingly, ten years after the ratification of the Constitution, an (un)constitutional assembly whose members were no longer elected, modified the Constitution in 1989. As a result of this manipulation, people have lost many rights, while the absolute sovereignty of the vali-e faqih (the guardian jurist), became lawful.

The replacement of Right (*haq*) by Judgment (*hukm*) shattered the weak republicanism of the earlier version of the Iranian Constitution. As a result of this modification, the initial redemptive features of the Iranian revolution were rejected. In recent years, even the manipulated version has been put aside quietly to be replaced by the Islamic Penalty Code, which in many aspects contrast the Constitution.

Significantly, this trend is by no means exclusive to Iran. More recently, Egypt experienced similar developments, though in different form. There, the new Constitution was quickly drafted by the Constituent Assembly following the January Revolution of 2011. Despite massive opposition to

Egypt's state of emergency that lasted for almost half a century (1967-1980 and 1981-2011), article 148 of the 2012 Constitution, re-legitimized the state of emergency by according unfettered power to the president, who can suspend the law to his discretion. Similarly, in Turkey, the secular Constitution paved the way for the Islamist AKP to take power through the democratic machinery legitimated by the Constitution itself. However, the parliamentary system was recently replaced by the presidential system through a constitutional referendum, which intensely increases the power of the president and his control over governmental institutions. Indeed, the phenomenon of constitutional authoritarianism is on the rise in both Iran and the Middle East.

All these cases reveal the appropriation of constitutionalism by sovereign oriented forces. In traditional analyses, authoritarianism has been attributed to the religious constellation of Islam; in the case of Iran mainly to Shi'ism mostly. In this narrative, it followed, therefore, that in order to have a more democratic and inclusive polity, constitutional law needs to be secularized. However, as the Turkish and Egypt examples demonstrate, secularization alone is unable to prevent the rise of authoritarianism, because arguably, the notion of decisionist sovereignty is also deeply rooted in secular modernity. As Mohammad Fadel pointed out, "the battle that is currently playing out in Egypt is not only between those who would like to see a secular Egypt in contrast to a more religious one, but it is also, and maybe even primarily, a battle between different conceptions of the relationship of religion to the state: a battle between a "republican" form of Islam and a "traditionalist" form of Islam that is sympathetic to authoritarian politics." [2]

The situation is not unprecedented though. It has been recognized and even legitimized by Clinton Rossiter as the historian of the constitutional thought in his classical book, *Constitutional Dictatorship* (1948) as shall be seen.

This paper will explore the limits of constitutionalism in universal scale, although the main focus will be on Iran as a symptomatic case. It will argue that the Iranian Constitution is plagued by sovereignty, which by nature restricts the citizenship rights. Nevertheless, sovereignty seems to

[2] Mohammad Fadel, "Islamic Law and Constitution-Making: The Authoritarian Temptation and the Arb Spring", *Osgoode Legal Studies Research Paper*, No. 24, Vol. 12, Issue. 5, 2016, p.2

be rooted both in orthodox religious and secular concepts. Therefore, the problem would not be to strengthen of constitutionalism/ the rule of law against the backdrop of authoritarianism. The issue is that we are dealing with two opposite types of constitutions and constitutionalism: sovereignty oriented and subaltern constitutionalism. Whereas the first kind tends to be a law making and law preserving violence, subaltern constitutionalism considers constitution as a platform for citizenship rights. According to Narain and Baxi, [3] in subaltern constitutionalism, constitution is not a fixed ideological text, but first and foremost a bottom up democratic dialogical process with great potential for equality and inclusion. In order to challenge constitutional crisis, the redemptive potential of subaltern constitutionalism, which is in fact a sovereign-less constitution based on equality and a more inclusive understanding of right, must be revived and emphasized.

Dissociating the Iranian Constitution of 1979 from the revolutionary event, this paper investigates the constitutional thought from the perspective of sovereignty as a universal modern and pre-modern structure of the polity. It argues that the guardianship of the jurist rather than particularity of shi'ism, is to be put in the context of universal framework of sovereignty in both pre-modern and modern thoughts including the Asharite theology, the Roman legacy, and the modern political thought since Jean Bodin all the way down to Carl Schmitt. As shall be argued in the Iranian Constitution God as sovereign quickly transforms to Sovereign as god, which is exemplified in the Guardianship of the jurist. Nevertheless, this has not so much to do with Shi'ism or religion as it has with the hardship of getting away from sovereignty. As famously formulated by Schmitt, "All vital concepts of the modern theory of the state are secularized theological Concepts."[4]

Tracking this transformation in the Iranian Constitution, this paper looks for the sacred and profane *arches* upon which such Constitution could be created. In doing this, it also reveals the significant limits of the sacred/secular dichotomy to grasp how deeply violence is embedded in

[3] Vrinda Narain, "Postcolonial constitutionalism in India", *Southern California interdisciplinary law journal*, January 2016, pp. 107-133; see also Upendra Baxi, "Postcolonial Legality: A Postscript from India", ***Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America***, Vol. 45, No. 2 (2012), pp. 178-194.

[4] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, The MIT Press, 1985, p. 43.

both orthodox sharia and secular Constitutional law. It argues, therefore, that the sacred and the secular do not seem mutually exclusive as it is believed. Thus, the ethical task is not to choose between secularism/atheism and religion. Since they are complementary. Rather, a critical engagement in theology is required, which questions the notion of God as a sovereign ruler and the ultimate source of emulation.

From archaeological perspective, Constitution would not appear only as a piece of law, but first and foremost a history of how redemptive potentiality of revolutionary events are repeatedly and constantly slayed being subjugated by law making and law preserving violence apparatus. Similar to sharia, which transformed a redemptive theology of justice and equality to command (*hukm*), the Constitution empties revolutionary movement from its initial redemptive aspirations. In fact, in modern Muslim contexts, Constitutions play the very role that sharia played in pre-modern times; the consolidation of power by all means and in every aspects of life.

Sovereignty is by definition the supreme authority with the particular ability of issuing decisions, which are to be observed as law. As Foucault indicated, the essence of the sovereign power is "the right of life and death"; "the [absolute] right to kill."[5] For Walter Benjamin, sovereignty is an indisputable mythical authority and his absolute right to kill.[6] Through the notion of sovereignty, the opposition of law and lawlessness disappear, since the law is in fact the arbitrary yet law abiding decisions of the sovereign power with the absolute authority over life and death. Therefore, the problem is not the promotion of rule of law against lawlessness. The problem is with the sovereign law of exception and the permanent negation of the oppressed. Therefore, "the law's concern with justice is only apparent, whereas in truth the law is concerned with self-preservation. In particular, with defending its existence against its own guilt."[7]

This paper will argue that since sovereignty is political idolatry, instead of God as sovereign and Sovereign as god, we need to think of a new theology viewing God as promise/ *bishara* for the

[5] Michel Foucault, "Society Must be Defended"*, Lectures at the Collège de France, 1975–1976*, ed. Mauro Bertani and Alessandro Fontana, trans. David Macey, London: Allen Lane, 2003, p. 240.
[6] Walter Benjamin, "Critique of Violence", in *Reflections: Essays, Aphorisms, Autobiographical Writings*, Schocken Books, 1986, p. 300.
[7] Walter Benjamin, "The Right to Use Force", in *Selected Writings 1: 1913-1926*, Belknap Press, 2004, p. 232.

oppressed. In James Mortal words, "given that the staying power of sovereignty comes from a potent mix of political and theological legacies, as I see it, a political theology that tackles such a legacy head-on is required."[8]

The Constitution of 1979

The Iranian Constitution of 1979 has been criticized particularly for the notorious concept of the velayat-e faqih (the Guardianship of the Jurist) which has been highly contested now and then. Seen as appendix to the revolution, it also has been presumably criticized for being ideological,[9] authoritarian, reactionary, deforming sharia and so forth. It seems that the Constitution is intrinsically a schizophrenic document, in which authoritarian forces are in constant war against republican ones. Whereas the velayat-e faqih has been sufficiently investigated as being responsible for this condition, it has been hardly inspected in relation to sovereignty.

In recent years, alternative constitutions were drafted by the Iranian oppositional groups, in which the notion of the velayat-e faqih is removed from constitutional draft. Apart from being undemocratically drafted mainly by a handful of people, who are not the representative of the people, they equally suffer from not taking the issue of sovereignty into account adequately. This means that even the traumatic experiences of the recent decades are not necessarily sufficient to avoid them in the future.

In the majority of critical assessments on the Iranian Constitution, a particularistic emphasis is put on the Shia notion of the imamate and the steady development of the theory of the velayat-e faqih since 19th century to Khomeini's era or simply both. [10] Therefore, the Constitution is seen

[8] James R. Martel, *Divine Violence: Walter Benjamin and the Eschatology of Sovereignty*, Routledge, 2012, p. 7.
[9] Said Amir Arjomand, *Constitutionalism and Political Reconstruction*, Brill, 2007, p. 8.
[10] Notables among them include: Masha'allah Adjoudani, *Mashrouteh Irani*, Tehran: Aktaran, 1382; Abbas Amanat, *Apocalyptic Islam and Iranian Shiism*, I.B.Tauris, 2009; Mohsen Kadivar, *Hokumat-e Velayi*, Tehran: Ney, 2008, fifth edition; Ali Rahnema, "Ayatollah Khomeini's Rule of the Guardian Jurist: From Theory to Practice*", in Arshin Adib- Moghaddam* (ed.)*, A Critical Introduction to Khomeini, Cambridge University press,* 2014, pp. 88-114; Amr GE Sabet, "Wilayat al-Faqih and the Meaning of Islamic Government", in Adib-Moghaddam (ed.), ibid., 2014, pp. 69-87; Said Amir Arjomand and Nathan Brown (eds.), *The Rule of Law, Islam and Constitutional Politics in Egypt and Iran*, State University of New York Press, 2013; Farideh Farhi, "Constitutionalism and Parliamentary Struggle for Relevance and Independence in Post-Khomeini Iran", in Amir Arjomand and Brown, Ibid., *The Rule of Law: Islam and constitutional politics in Egypt and Iran*, State university of New York Press, 2013, pp. 123-152; Asghar Schirazi, *The Constitution of Iran: Politics and the State in Islamic Republic*, I.B.Tauris, 1997.

along the Islamic resurgence and the demand for a Muslim nation state in the post-colonial post-caliphate era. As Said Amirarjomand indicated,

> In the decades intervening between Iran's two revolutions, a new approach to the reception of constitutionalism in the Muslim world had appeared, when the Muslims of India decided to have their own modern state and created Pakistan. It stemmed from the idea of the "Islamic state" as a distinctive type, and was elaborated by pouring the Qurʾān and *hadith* into the framework of a systematic total ideology such as Marxism. The Islamic state was conceived as an ideological state, inevitably making its constitution an "ideological constitution," as I have defined it elsewhere. The confusion of categories entailed by this new approach began with the juxtaposition of the modern constitutional notion of national sovereignty to Islamic scriptural texts to prove the superiority of God over the nation, which produced the declaration of God's sovereignty in the 1956 Constitution of Pakistan, the first state in history to be designated "Islamic Republic." Although the declaration had very limited impact on the content of that constitution at first, it generated a new and ideologically powerful idea that the state should be an "Islamic state" and its constitution should be based on the scriptural sources of Islam. This idea of the embodiment of an Islamist ideology in a *sharīʿa*-based constitution, which had no precedent in the making of Iran's first Fundamental Law and its Supplement, became a major goal of the ideologues of the Islamic revolution in 1979.[11]

It has to be mentioned though that the Iranian Constitution is not the only document, into which sharia has incorporated. The modern law of Iran crafted during the first Pahlavi government (1925-1941) was similarly incorporated the sharia into legislative processes. [12] Furthermore, if pouring the Qurʾān and hadith into the framework of a systematic total ideology such as Marxism

[11] Said Amir Arjomand and Nathan Brown, note 10 above, p. 31.

[12] See Baqer Aqeli, *Davar va Adlieh*, Tehran: Elmi, 1990, pp. 164-167; 185;187; 188 passim. Interestingly, Arjomand himself referred to this incorporation of the sharia into law somewhere else: "The six Majles (1926-28), the last one to be elected relatively freely under Reza Shah, gave Davar extraordinary powers for three months to set up a uniform modernized national judiciary by executive decrees. When the new judiciary was inaugurated in April 1927, a significant number of the clerics (at least six) were among the first appointed judiciary cadre of some forty judges and prosecutors. (Said Amir Arjomand and Nathan Brown (eds.) 2013, *The Rule of Law, Islam and Constitutional Politics in Egypt and Iran*, State University of New York Press, p. 26).

was possible, as suggested by Arjomand to be the case, then pouring it into every other secular ideology is equally possible. Indeed, all Constitutions whether Middle Eastern or not, carry certain ideological element. Even the concept of the velayat-e faqih is not that novel, if we consider that vali is in fact equivalent to wāli as guardian, custodian, protector, helper, governor, and friend, all of which has history in Muslim societies. Khomeini only adds that this governor should be a faqih/ jurist. Thus, the explanation such as the above seems inadequate to take into consideration the universalistic context in which this principal has become possible. Such analysis seems to reinforce the particularity of this document.

I, rather, suggest an archeological approach to identify the constitutional crisis as the problem of sovereignty and of commandment. The question is to find the arche upon which the sovereign-oriented law grounded. In another words, this is to demonstrate that the Constitutional law does not recognizes the Revolution as the arche, from which the law originates. It is the commandment that makes law. As Agamben indicates, "In the commandment was the word; not in the beginning". It is in the commandment that law begins. The beginning is also the principal that commands and rules." [13]

From this perspective, the problematic would not be the fight between ideological, obscure, religious and lawless forces against the enlightened, secular, and law abiding ones. They are rather between egalitarian democratic forces against non-egalitarian undemocratic ones, whether secular or religious.

Drawing on this approach the question this paper seeks to answer is: To what extent the introduction and incorporation of the principle of the velayat-e faqih into the Constitution is indebted to sovereignty as legitimated by both modern and pre-modern political thought?

[13] Georgio Agamben, *The Archaeology of the Commandment*, 2012, available at: https://www.youtube.com/watch?v=JVV94Fi5ChI

Velayat-e Faqih and its Discontents

In the Iranian Constitution, the vali-e faqih (wāli-e faqih) possesses all the authorities and forces. He is in fact equivalent with Schmitt's sovereign, who decides on the exception. Article 5 of the Constitution formulates this idea as such:

> During the Occultation of the vali al-Asr (may God hasten his reappearance), the wilayah and leadership of the Ummah devolve upon the just ('adil] and pious [muttaqi] faqih, who is fully aware of the circumstances of his age; courageous, resourceful, and possessed of administrative ability, and who is elected and accepted by the majority of people, and in case of the absence of such a person, a leader or a leadership council involving faqih with the previous conditions will take the responsibilities of this office in accordance with Article 107.

The subject of the velayat-e faqih caused a massive dispute and fractions among the members of the constituent assembly. Perhaps more than any other aspect of the Constitution this concept has been analyzed, explained, assessed, and criticized now and then. It is also partly responsible for the failure of the revolution and its ideals.

In an apparently semi-organized action among the proponents, the issue was unexpectedly raised in the third session by an obscure member of the assembly. The action was followed by other pro-Khomeini members. The subject completely poisoned the atmosphere of the constituent assembly causing prolonged feuds among the members both during and after its suspicious ratification. However, only some discussions around the concept have been published so far, while others are still unknown to the public. Many of the debates and discussions were simply undertaken behind closed doors, as pointed out by Yadollah Sahabi.[14] Due to the dissatisfaction of the majority of the members, the assembly decided to assign a commission to investigate the issue before final ratification in public assembly. Therefore, disputes took place for months among the members of the commission. The commission, however, proved unable

[14] *Sourat-e Mshrouh-e Mozakerat-e Majles-e Barrasiy-e Nahayi-e Qanun-e Asasiy-e Jomhouriy-e Eslamiy-e Iran*, Tehran: Majles-e Shoray-e Eslami, vol.1, p. 383 (henceforth Negotiations).

to settle the issue and in fact intensified the disagreements further. Thus, when the subject was brought back to the public assembly, the disputes reached to an uncontrollable level, so that in an undemocratic action, Beheshti, the vice president of the assembly forcefully silenced the opponents including Bani Sadr, Moghaddam Maraghyi, Makarem Shirazi, and Sahabi by giving a long rhetorical lecture in defense of this article. The gesture was followed rapidly by a premature voting to ratify the article. Nevertheless, discontents spread outside the assembly among various strata of the society, for whom the principle was a hallmark of clerical authoritarianism. Finally, Khomeini himself decided to intervene to silence the critics and opponents. In several occasions, he took the privilege of public sermons to aggressively attack the critics by calling them unaware of Islam and averse to religion and people. [15]

The strong oppositions were partially successful in that the final version of this article accepts that the vali-e faqih must be "elected" and "accepted" by the majority of people. Nevertheless, the two key phrases have been omitted from the amendment crafted by another assembly which had been established in 1989 under the direct and unconstitutional command of Khomeini. Expectedly, the assembly changed the article by omitting people altogether granting an absolute power to the vali-e faqih:

> During the Occultation of the vali al-Asr (may God hasten his reappearance), the vilayah and leadership of the Ummah devolve upon the just ('adil] and pious [muttaqi]faqih, who is fully aware of the circumstances of his age; courageous, resourceful, and possessed of administrative ability, will assume the responsibilities of this office in accordance with Article 107.

The omission of people and their acceptance was a decisive change, though this was by no means exclusive to this article. Parallel manipulations took place in other articles with the aim of systematic reduction of people's role.

[15] Rohollah Khomeini, *Sahife-ye Emam Khomeini*, Tehran: Mo'assey-e Tanzim va Nashr-e Asaar-e Emam Khomeini, 1999, 22 vol.

Negotiations around the concept and its final formulation demonstrate little reference to sharia. In fact the final formulation was the realization of a dream that once articulated by a member of the assembly a few months before the ratification of the article: "the velayat-e faqih renders the commands of the government the commands of Allah."[16]

Silence as History: Article 2

The discontents to the velayat-e faqih were unsuccessful to invalidate it. Such failure can be attributed to the popularity of Khomeini or the organized action of its proponents among the assembly members. This is true. However, the trend was not unprecedented as mentioned before.

Contrary to the velayat-e faqih, the constituent assembly is strikingly silent on the contradictory notions of the sovereignty as well as its fiction with the revolutionary constituent power. It seems that one of the most challengeable and determining concept was taken for granted without being sufficiently discussed and criticized. As James Martel pointed out, "sovereignty is so much a part of the fabric of ordinary political life (or what passes for that life, anyway) that we rarely, if ever, question what it is or what it means for us."[17] The question is to what extent this silence has contributed to the historically established authoritarian rule. According to the Iranian Constitution sovereignty belongs exclusively to God. As shall be seen, such perception seems crucial for the treatment of the Sovereign as god.

In the 1979 Constitution, sovereignty was mentioned six times, three times at the preamble and three times at the main text of the Constitution. In the two of the three occasions at the preamble, it is used to blame authoritarian and despotic rule. In the third one, "the spread of the sovereignty of the God's law", is mentioned among the goals of the army.

In other three times, the term is used within the text of the Constitution: in article 2, in article 56, and finally in article 176. The usage of the term in all of these cases is significant, though

[16] Qorashi, *Negotiations*, note 14 above, vol.1, p. 73.
[17] Martel, note 8 above, p. 2.

probably the most significant of all is article 2, which involves the substance of the Islamic Republic and the description of its nature. This article was ratified after heated debates and negotiations among the assembly members. In its ultimate sobriety, the article 2 strongly restricts sovereignty to God. It reads:

> The Islamic Republic is a system based on belief in:
> 1. The single God (as stated in the phrase "There is no god except Allah"), His exclusive sovereignty and the right to legislate, and the necessity of submission to His commands;
> 2. Divine revelation and its fundamental role in setting forth the laws;
> 3. the return to God in the Hereafter, and the constructive role of this belief in the course of man's ascent towards God;
> 4. the justice of God in creation and legislation;
> 5. Continuous leadership (imamate) and perpetual guidance, and its fundamental role in ensuring the uninterrupted process of the revolution of Islam;
> 6. The exalted dignity and value of man, and his freedom coupled with responsibility before God; in which equity, justice, political, economic, social, and cultural independence, and national solidarity are secured by recourse to:
> a. Continuous ijtihad of the fuqaha' possessing necessary qualifications, exercised on the basis of the Qur'an and the Sunnah of the impeccables (Ma'sumin), upon all of whom be peace; b. Sciences and arts and the most advanced results of human experience, together with the effort to advance them further; c. Negation of all forms of oppression, both the infliction of and the submission to it, and of dominance, both its imposition and its acceptance.

Discussions around this article are limited compared to what is expected. Montazeri was reportedly said that by this article the members of the assembly intend to exclude sovereignty to God, which means to succumb[18] to God and to recognize no other sovereignty than him, meaning him as the only sovereign. He also purportedly has added that for the sake of clarification, it is incumbent upon the members to discuss this. Years later he expressed his critical assessment

[18] "Taslim" is equivalent to Islam with similar connotations.

about the Constitutional assembly headed by him.[19] Nevertheless, in this occasion he was equally silent about the authoritarian theology of sovereignty.

However, the issue of sovereignty has been raised in other occasions that are not directly related to this article. They partially represent not only the contradictory positions of the assembly around the issue of sovereignty, but also their inadequacy. In one occasion the discussion is raised and discussed as such:

> According to the Islamic principles, we assign sovereignty and command to God and God has granted this sovereignty to the human being. For this reason, people elect us or a group of people with the representative of the Imam or God directly or the *faqih*, following the popular guardianship and as executive force. I have a note on the separation of forces that is accepted also by all the Europeans. It is not seen clearly in Islam. However, the tradition of the Prophet shows their interest in it… Therefore, we grant the legislative sovereignty to the hand of the people, while the Imam [Khomeini] has kept the executive sovereignty for himself, which is the same as the guardianship of the jurist and the jurist in this law is among the most important articles, in which we follow the Prophet and the *ulu l-amr* (the possessors of the rule), that is, the guardianship of the jurist, and we have to follow the guardianship in two practical types, otherwise with a slight deviation a great deviation takes place from the Islamic principles, which would endanger the ummah's interests. First, at the top of the executive force is Imam, but he is not dictator, because a dictator rules according to his personal interests, while one who represents God, does not. So, it is not a problem. And it this is not a practical problem, the second type [of the guardianship] is that with the clear supervision of them and their sovereignty right in primary issues, first the election of the President and the Prime Minister should be directly based on law and with the consideration of the vali. Second, this must be particularly elucidated given the circumstances and conditions, since every country has a special condition and considering that condition granting too much power and authority to one single person clearly has the risk of dictatorship. For us fourteen centuries experience of

[19] Hossein Ali Montazeri, *Enteqad az khud*, online, 2008, pp. 24-31.

> Islam is sufficient [to conclude] that whenever the principles are violated, the dictatorship took over. Later, there must be principles to proportionately divide the revolution [sic], meaning the president with lesser power and the Prime Minister with more power so that the people's interests are guaranteed. [20]

In response, another member of the assembly warns against the consolidation of power by recalling the tradition of the Prophet and his distribution of power amongst his people. [21] Nevertheless, the opposition remained ineffective. Instead the warning was immediately rejected by another member, who believed that the vali-e faqih as hakim[22] (sovereign) should have full control over the government's forces.[23]

Further investigation of this article exhibits the deadlock that the opponents of the velayat-e faqih faced. According to the article 2, since God created the world, he commands it. He is, in fact, the law maker. Put differently, law originates neither from people nor from the constituent assembly; it is God's will. One can, therefore, reasonably ask, if God is the sovereign of the world and if he has exclusively the right to legislate, then from where the authority of the constituent assembly to law making or even the articulation of this sentence comes. In fact, by the ratification of this article, the constituent assembly invalidates itself. If the opponents of the vali-e faqih should first and foremost challenge the sovereignty of God, which would lead to the Godly sovereign. They did not do that, apparently because for them the notion did not seem changeable.

More grotesque in this article is perhaps that this article by announcing the commandment as the source of law in fact discredits the popular event of the revolution and the subsequent processes including the election as the constituent power. Thus, the question is, if the constituted power was legitimized by the constituent power, how the former can dissolve the latter.

[20] Mohammad Khamenei, in *Negotiations*, note 14 above, vol.1, p.54.
[21] Ali Akbar Parvaresh, in *Negotiations*, note 14 above, vol. 1, p. 56.
[22] حاکم
[23] Monir al-Din Hashemi, *Negotiations*, note 14 above, pp. 59-60.

Finally, according to this article, law is not the origin of power. Rather, this is the (primordial) power (arche) that constitutes law and makes it possible.

It seems that the introduction of this article is the beginning of the procedure, which in the end resulted in the absolute sovereignty of the vali-e faqih and the metamorphosis of popular demand for justice and equality to empty words.

Ten years later when Khomeini unconstitutionally appointed a group to revise the Constitution, similar unscrupulous silence repeated. Interestingly he had pre-assigned even the framework of the discussions of the members of this group. Some of the members of this group become political dissidents in the post-Khomeini era, though they at the time have not criticized the undemocratic and unlawful procedure of the revision.

Popular Sovereignty

Whereas article 2 attributes absolute sovereignty to God, article 56 grants it to the people:

> Absolute sovereignty over the world and man belongs to God, and it is He who has made man master of his own social destiny. No one can deprive man of this divine right, nor subordinate it to the vested interests of a particular individual or group. The people [millet] are to exercise this divine right in the manner specified in the following articles.

Similar to article 2, article 56 was ratified by the majority of the assembly members without any further discussion.[24] It does not elucidate the processes by which popular sovereignty is to be exercised.

The article might seem contradictory in that it attributes sovereignty to God on the one hand and grants it to the people on the other hand. However, it is not. In fact, such a formulation is classical. Machiavelli declared at the dawn of the modern age that the voice of the people is the voice of God, both to be represented by the Prince. Moreover, popular sovereignty was the motto of the

[24] *Negotiations*, note 14 above, vol.1, p. 835.

monarchomachs, who at the end of the 16th century opposed the monarchists and kings' divine right.[25]

The notion of popular sovereignty was finally formulated in article 3 of the Declaration of Human and Citizen's Rights of 1789, which announces: "Sovereignty is one, and cannot be divided, alienated, or extinguished. It belongs to the Nation, and no section of the people, nor any individual, may claim its exercise". The notion also incorporated into the French Constitution of 1791, which asserts, "the nation from which all powers stem, may only exercise them by delegation."

National Sovereignty

And the final occasion, where sovereignty is mentioned, is in article 176 of the Constitution. Here, sovereignty implies "national sovereignty:

> In order to safeguarding the national interests and preserving the Islamic Revolution, the territorial integrity and national sovereignty, a Supreme Council for National Security presided over by the President shall be constituted to fulfill the following responsibilities:
> 1. Determining the defense and national security policies within the framework of general policies determined by the Leader.
> 2. Coordination of activities in the areas relating to politics, intelligence, social, cultural and economic fields in regard to general defense and security policies.
> 3. Exploitation of materialistic and intellectual resources of the country for facing the internal and external threats.

Drawing on these cases, one can draw the conclusion that in the 1979 Constitution sovereignty was portrayed in intertwined three types: God's sovereignty (article 2), popular sovereignty (article 56) and national sovereignty (article 176). All three notions are based on the idea of

[25] See Quintin Skinner and Ricard Burke (eds.), *Popular Sovereignty in Historical Perspective*, Cambridge University Press, 2016.

representation, which is ultimately done by the sovereign ruler. The sovereign not only represents God, but also people and the nation simultaneously.

The more theatrical of all, however, seems article2, which attributes both sovereignty and legislation to God and by doing that it not only dispossesses the constituent power of the people but also debunks the constituent assembly. This, however, remained unnoticed for the most part. It seems the concern for consolidation of power and instant interests left no room at the time for thinking about the consequences of such actions.

These cases demonstrate that we do not encounter the dichotomy of secular and religious forces, but the perfect fusion of sharia and secular sovereignty.

Moreover, according to the members, sovereignty was taken for granted as a normal situation. As Hent Kalmo and Quintin Skinner indicates, sovereignty does not have a history; it is a history.[26]

The Divine Command Theory

Sovereignty has been historically developed before becoming itself history. In early Muslim community, "Hakim" and "sultan" as synonyms for sovereign had pejorative meanings. In fact, it was a time, when in early Muslim community, emir, imam and later on God's caliph were the common words to refer to the principal of the society in early centuries of Islam. Contrary to sultan and hakim, imam initially had some spiritual and moral connotations, whereas emir implied both spiritual/moral and profane leadership of the umma/ community.

The replacement of the spiritual leadership with absolute sovereignty did not take place overnight. It has a long history during which the expansion of the Muslim territories required a profound development in Muslim's morality, power relations, authority and government. The transformation from earlier to later attitudes is perhaps best exemplified in a story narrated by Ibn Khaldun:

[26] Hent Kalmo and Quintin Skinner (eds.), *Sovereignty in Fragments: The Past, Present and the Future of a Contested Concept*, Cambridge University Press, 2010, p. 11.

> Then Mughirah b. Shu'ba [the messenger of the Muslim army] arrived. When he reached them [Persian army], they [Persian elites] were in their own particular suits, while their seat was set below the seat of Rostam [i.e., Rostam Farrukhzad, the commander of the Persian army]. He approached Rostam and sat on the throne. They took him away from the throne. He said: "I haven't seen people more imprudent than us Arabs. Yet, we do not worship our fellows. I thought you're the same. You had better inform me that some of you are the slaves of others, I wouldn't have come to you then, although you have invited me. Now, I am sure that you will be defeated. No kingdom will sustain this way." The subordinates said, "By God, this Arab tells the truth." The superiors said, "By God, he said things that please our servants."[27]

The story might be a fabricated one. Yet, it demonstrates that the idea of sovereignty was not widespread in early Islamic community as it prevailed in later periods. In fact, the early eschatological egalitarian message of Islam successfully contested the Persian and Roman notions of Sovereign as god. [28]

The steady yet decisive replacement of the Prophet's caliph by emir, sovereign/ hakim and sultan was partly caused by the imperialist tendency of the Muslim community, which increasingly inclined towards conquering lands, slaves, and wealth. Whereas in earlier times, the Prophet's caliph was used to refer to the head of the society, gradually it was replaced by emir, which discloses Sasanian and Roman influence. As Kristó-Nagy remarks, emir seems to be the Arabic equivalent of the Latin *imperium*: both words are linked to the idea of command. "The term *amr* (or its derivative imāra) was not used to describe a territory either, but to indicate the power of a commander (*amīr*). Thus the Arabic term *amīr* and the Latin term imperator (emperor) both mean 'commander', and the term used for the supreme leader of the Muslim community after the death of Muḥammad was amīr almuslimīn ('the commander of the Muslims'). The Latin

[27] Ibn Khaldun, *Al-Ibar fi Mobtada'e va al-Khabar* (The Book of Allusions), Tehran, Pajouheshgah-e Olum-e Ensani, 1994, vol. 2., p. 530.
[28] Fred Donner, *Narratives of Islamic Origins: The Beginnings of Islamic Historical Writings*, Darwin Press, 1998.

imperium also designated power vested in a person, and only by extension the territory over which he had this power."[29] I shall return to the roman effect later.

The development of emir to hakim/sovereign seems to be largely rooted in the Asharite kalam as the imperial theology of the Muslim caliphate. This development has had huge impacts both on Sunni and Shai Islam with certain moral, political and legal outcomes.

To begin with, it is worth mentioning that according to the Asharite theology, God is the author of the moral law, but he himself is not subject to it. [30] God stands outside of his own rules beyond the sphere of morality. Whereas Mutazilites believe that the good is good, hence he commands it, for the Asharites what God commands is good regardless of being good in itself. The outcome is that it is not wrong for God to do evil. The idea was contested by John of Damascus:

> If you say that both good and evil are from God, you would make him unjust, which He is not. And if you were to say that God had ordained the adulterer to commit adultery, the thief to steal, and the murderer to kill, they would in that case be worthy of respect for doing God's will. You would thus belie your lawgivers and pervert your Books, since they command that the adulterer and the thief be flogged, and the murderer killed, who should rather be honoured for having done God's will.[31]

The Asharite assault on Mutazilite ethics had been the preservation of divine sovereignty, that is, the idea that God is beyond all restrictions; that God's own activity does not fall to the scope of all such decrees.[32] God's exceptionality seemed simply the translation of the voluntarist approach in moral sphere and vice versa. As Sherman indicates, "The destruction of Mutazilite objectivism would bring a number of significant byproducts in its train, among the most important of which being the removal of ethics from the realm of reason and the endorsement of the unreflexive

[29] István T. Kristó-Nagy, Conflict and cooperation between Arab rulers and Persian administrators in the formative period of Islamdom, c.600–c.950 CE, in Crooks P, Parsons T (eds.) *Empires and Bureaucracy in World History: from Late Antiquity to the Twentieth Century*, Cambridge, etc.: Cambridge University Press, 2016, p. 60. See also: https://socialsciences.exeter.ac.uk/iais/staff/kristo-nagy/#pMYitXrmvgzZwdgX.99

[30] G. Legenhausen, "Notes towards an Ash'arite Theodicy", *Religious Studies*, Vol. 24, No. 2 (Jun., 1988), pp. 257-266, p. 259.

[31] Cited in Legenhausen, note 30 above, p. 260.

[32] Legenhausen, note 30, above, p. 259.

view of the self, according to which reason was propelled in every first instance by desire. Meanwhile, the establishment of scripture as the only legitimate source of value necessitated the adoption of the view that the scope of revelation was infinitely expandable."[33]

Muslim jurisprudence heavily indebted to the Asharite theoreticians methodologically and doctrinally.[34] In defense of the principle of *maslahah* (convenience), al-Qarafi, the famous Asharite theologian, for instance, points out that everyone who practices *qiyas* (syllogism) "inevitably indulges subjective judgments based on what is perceived to promote personal or group interest.[35] "The only difference between one preference and another was the degree to which its advocates had mastered the art of expressing themselves in scriptural terms." [36] Other Asharite theologians such as Fakhruddin Razi similarly denied the free will and the good and evil in the actions; a position that effectively negates moral responsibility of human beings. According to Razi, "while we as humans are legally responsible in that our actions entail sharia consequences in the form of reward or punishment, we are not morally responsible, because we are not really the authors of our acts." [37]

Obviously there is a difference between God and a sovereign ruler as a human being. Whereas God is the lord of all creatures, the sovereign is not. Nevertheless, the Asharite God as the arbitrator creature is a source of inspiration for a decisionist sovereign. As the possessor of all creatures, God supposedly governs them the way he wills. If, the Asharites suggested, all the creatures are taken to heaven or to hell, he is right, simply because he is the absolute possessor. This is quite the opposite of the Mutazilite Kalam, in which God is rational and makes his promises.

The Asharite kalam with its approach towards a decisionist God whose commands are the only measure of good and evil and who decides on good and evil voluntarily, was partly a natural

[33] Legenhausen, note 30 above, P. 197.
[34] Sherman A. Jackson, "The Alchemy of Domination? Some Asharite Responses to Mutazilite Ethics", *International Journal of Middle East Studies*, Vol. 31, No. 2 (May, 1999), pp. 185-201, p. 187.
[35] Jackson, note 34 above, p. 198.
[36] Jackson, note 34 above, p. 187.
[37] Jackson, note 34 above, P. 191.

response to the tyrannical immoral context in which it grew. This age is characterized by terror, torture, violence, tyranny and chaos that spread out increasingly since the rule of Mutawakkil, the Abbasid Caliph (822-861 AD) who was famous for encouraging irrationality, violence and immorality. As Tabari reports, Mutawakkil's rule was contested from the beginning. [38] Ultimately, he was chopped into pieces by his son's order, Muntasir, who claimed caliph. The chaotic era[39], when God and sovereign rulers governed the world arbitrarily was remote from the previous notions of moral and just ruler as the ideals of early Islamic community.

The Asharite kalam has had a significant impact on the formation of the Muslim perception of God and mundane sovereignty. As Bielik-Robson pointed out, "the voluntaristic God of the Asharite and then nominalistic teaching constitutes the farthest possible development of the logic of power: he does what he pleases and there is no other explanation for what he does apart from what 'He pleases' (quod libet), or the famous Ockhamian quia voluit [because He wanted it that way]."[40]

Via the triumph of the Asharite theology over Mutazilite, the decisive dissociation of morality from justice completed. Morality was no more the origin of law; the origin of law is the arbitrary decisions. This split of morality and law has had decisive impacts on Muslim theology and polity.

According to Bielik-Robson, the Asharite kalam affected the secularized notion of sovereignty. Quoting Hans Blumenberg, she indicates, "all modern political concepts were indeed secularised theological notions (which Blumenberg in fact does not endorse), there is no reason to suggest that the most 'vital' or 'significant' of them derive from this particular strain of the theology of sovereignty, which, according to Blumenberg, develops from the late-medieval nominalistic school, itself deeply influenced by the Asharite version of the Islamic kalam."[41]

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[38] Mohammad Ibn Jarir Tabari, *Tarikh ar-Russul va al-Molouk*, Tehran: Tus, vol. 14, p. 5998.

[39] Michael Bonner, "The Waning Empire", in Chase Robinson (ed.), *New Cambridge History of Islam*, Cambridge University Press, vol. 1, 2011, pp. 305-359.

[40] Bielik-Robson, "Beyond Sovereignty: Overcoming Modern Nominalistic Cryptotheology", *Journal of Cultural Research*, 2016, p. 4.

[41] Bielik-Robson, note 40 above, p. 2. She adds, "The Asharite structure, which took the Aristotelian notion of potentiality but transformed it radically, by attributing it not to the passivity of matter but to the highest activity of God as his infinitely willful potency/potentiality, maintains itself through the whole modern philosophy as this or another form of a master superstructure: the Real, Life, Nature, Capital. Potentiality opposed to actuality – as power opposed to passivity, subject opposed to object,

The Roman Effect: The Prince Is Not Bound by the Laws

The glossators of the Roman law are divided on whether it is the origin of western constitutionalism or the origin of the state of exception and absolute sovereignty. Both groups, however, share mainly in praising mighty Rome and his significance for the modern world. For instance, Clinton Rossiter, who also coined "constitutional dictatorship" to refer to a certain category of government rooted in the Roman law, while admiring Rome, observed that "only in the republican Rome, was the constitutional dictatorship recognized as a regular instrument of government."[42] According to him, "the dictatorship could be used as an instrument of class warfare." [43] Rossiter pointed out that the roman dictatorship "was primarily a military office, instituted to save the state from the threat of foreign or rebellious arms, but the power of the dictator extended out from the army and its camp and embraced the entire state. The resort to the dictatorship converted the Roman Republic and its complex constitution into the simplest and most absolute of all governments an armed camp governed by an independent and irresponsible general."[44] Moreover, "in addition to the general powers which attach everywhere to absolutism, the dictator had other and peculiarly Roman functions. He could convoke any of the assemblies and preside over them, and this power extended to the Senate. In the realm of judicial power his jurisdiction extended to all criminal cases affecting the safety of the state. To this end he possessed the power to execute summarily and without appeal, as well as to fix fines. His power of arrest overrode the intercession of the sacrosanct tribune. He could coin money, take the highest auspices, and freely dispose of booty and honors. According to Roman constitutional law the dictator could not legislate, that is, initiate and promulgate a lex; but he had the *ius edicendi*, and his decrees were, for the duration of his power, as good as laws and were published as such."[45]

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energy opposed to matter – creates a powerful organising scheme in which the former is granted the advantage of infinity and originality against the finite, derivative, and merely relative status of the latter. With this one revolutionary move, potentiality, so far characteristic of the lowest forms of existence, got translated into an infinite power/potency" (Ibid., p. 7).

[42] Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies*, Princeton University Press, 1948, p. 15.

[43] Rossiter, note 42 above, p. 22.

[44] Rossiter, note 42 above, p. 25.

[45] Rossiter, note 42 above, p. 25.

Against this somewhat healthy picture, recent studies depict a deeply violent picture of this era. As Welborn points out, "the sole sovereignty of the successors of Augustus was an ongoing "state of exception" in which politics perished, a new structure of power constituted and reconstituted by the imposition of various degrees of dependent subjecthood and, in the last instance, by terror. The wealth of the emperor and his syndicate depended upon the vigorous exploitation of the resources of the provinces and upon the enslavement of a significant portion of the population-the latter institution maintained by the cruelty of crucifixion. By the age of Nero, spectacle had become an all-encompassing feature of social experience, which not only blurred the boundary between the real and the representational, but threatened the expropriation of human sociality itself. The mass burials uncovered by archaeological excavations outside the gates of Rome are a grisly testimonial to the dehumanization of precisely that segment of the population from which Paul [the Apostle] and other evangelists recruited the members of their messianic assemblies." Furthermore, the state of exception was not provisional or coincidental; "the phenomenon was structural: terror was the means by which sole sovereignty was constituted and reconstituted in the Roman Empire." [46] Emperor's power was of divine origin [47] entailing certain rituals such as the extremely violent gladiatorial shows that were closely associated with the worship of the sovereign emperor.[48]

Modern Sovereignty

"*Sovereignty is that absolute and perpetual power vested in a commonwealth which in Latin is termed majestas*."[49]

[46] L.L. Welborn, *Paul's Summons to Messianic Life: Political Theology and the Coming Awakening*, Columbia University Press, 2015, p. 26.

[47] Brian Tierney, "The Prince is not Bound by the Laws: Accursius and the Origins of the Modern State", *Comparative Studies in Society and History*, vol. 5, issue 4, July 1963, p. 386.

[48] Welborn, note 46 above, p. 27. Cf., Govert Buijs, "Que les latins appellant maiestatem: An Explanation into the Theological Background of the Concept of Sovereignty", in Neil Walker (ed.), *Sovereignty in Transition*, Hart Publishing, 2003, p. 242: "Shortly after his assassination on March 15, 44 BC Julius Caesar was already declared to have been divine. Augustus quickly arranged to be called 'son of the divine Caesar' and actually established a cult of worship centered around his own *genius*, which spread rapidly throughout the empire.30 However, as *pontifex maximus* the emperor, notwithstanding his own divinity, still had the sacred duty to ensure the proper worship of all the traditional deities. Later on, emperor worship more and more functioned as the one overriding public cult for the entire empire (while at the same time allowing ample room for local and private cults). This development was enhanced strongly by the growing influence of the East in the empire: the city of Rome experienced an influx of Eastern religions and simultaneously the gravitation point of the empire moved toward the Eastern regions."

[49] Jean Bodin, *Six Books of the Commonwealth*, Basil Blackwell, 1955, chapter 3.

These are the Bodin's words at the beginning of his famous *Six Books of the Commonwealth*. Bodin pioneered the modern concept of sovereignty, when the sovereign king and prince replaces the emperor. However, his definition of sovereignty is more or less the replication of the Roman and the Asharite traditions. The main common feature is that the sovereign is not bound by the law, whether the previous laws or his own:

> If the prince is not bound by the laws of his predecessors, still less can he be bound by his own laws. One may be subject to laws made by another, but it is impossible to bind oneself in any matter which is the subject of one's own free exercise of will. As the law says, 'there can be no obligation in any matter which proceeds from the free will of the undertaker'. It follows of necessity that the king cannot be subject to his own laws. Just as, according to the canonists, the Pope can never tie his own hands, so the sovereign prince cannot bind himself, even if he wishes. For this reason edicts and ordinances conclude with the formula 'for such is our good pleasure', thus intimating that the laws of a sovereign prince, even when founded on truth and right reason, proceed simply from his own free will.[50]

Also, similar to both the Asharite and the Roman traditions, Bodin's sovereign is decisionist and decides on what is and what is not law:

> On the other hand it is the distinguishing mark of the sovereign that he cannot in any way be subject to the commands of another, for it is he who makes law for the subject, abrogates law already made, and amends obsolete law. No one who is subject either to the law or to some other person can do this. That is why it is laid down in the civil law that the prince is above the law, for the word law in Latin implies the command of him who is invested with sovereign power.[51]

Finally, his sovereign is godly:

[50] Bodin, note 49 above, chapter 8.
[51] Bodin, note 49, above, chapter 8.

> Because there are none on earth, after God, greater than sovereign princes, whom God establishes as His lieutenants to command the rest of mankind, we must enquire carefully into their estate, that we may respect and revere their majesty in all due obedience, speak and think of them with all due honour. He who contemns his sovereign prince, contemns God whose image he is.[52]

Carl Schmitt, who praises the decisionist attitude as the most prominent juristic thinking, summarizes the idea as such:

> Not only in Calvin's absolutist concept of God, but also in his teaching of predestination, theological notions make their appearance whose inherent decisionism has also exercised an influence on sixteenth century notions of state sovereignty, particularly those of Bodin[...] The classic case of decisionist thinking first appears in the seventeenth century with Hobbes. All Recht, all norms and statutes, all interpretations of laws, and all orders are for him essentially decisions of the sovereign, and the sovereign is not the legitimate monarch or established authority, but merely the one who decides in a sovereign manner. Recht is the statutes and statutes is the deciding command in the conflict over Recht […] The sovereign decision is, therefore, juristically explained neither from a norm nor from a concrete order, not incorporated into a sphere of a concrete order, because for a decisionist, it is on the contrary, the decision which first establishes the norm as well as the order. The sovereign decision is the absolute beginning, and the beginning (also in the sense of Arche), is nothing but sovereign decision. [53]

In these words, Schmitt not only summarizes decisionism, but also the pre-modern and modern history of sovereignty.

The Asharite, Roman and the modern attitudes are different in weltanschauung. However, they share the treatment of human beings as impotent creatures unable to reach salvation. They also portray human nature as sinful and violent similar to the wolfy picture of human being depicted

[52] Bodin, note 49 above, chapter 10.
[53] Carl Schmitt, *On the Three Types of Juristic Thought*, translated by Joseph Bendersky, Praeger, 2004, pp. 61-2.

by Hobbes in Leviathan. Thus, sin and violation become the origin of law, which are to be avoided only via the absolute will of the sovereign. Whereas the modern theories of sovereignty treat the sovereign ruler as the origin of law, the pre-modern legal systems such as sharia also see the sovereign God as the originator of law. The latter substitute theology with theocracy. If theology is considered as an unending endeavor, in which God is not to be defined as a brutal sovereign, but as a promise stimulating hope for possible salvation of human beings as they approach their God, theocracy on the other hand is the fixation of God, impossibility of justice and futility of any such endeavor. It is in fact the closure of the door of salvation by portraying God as a violent sovereign, whose only promise is to punish the violators of the canon. Furthermore, such picture results in the inalterability of human creatures as those who should only be ruled violently by means of authoritarian governments. Obviously this is not congruent with the universal message of Islam and the messenger of God.

Theocracy in fact imposes nature over history, standing in deep contrast with the political endeavors of people to improve their satiation throughout the history of human being.

Conclusion

Demands for equality and inclusion had a vital role in Middle Eastern revolutionary movements including the 1979 Iranian revolution. These demands have been systematically slayed by the post-revolutionary Constitutions as the case of the Iranian Constitution clearly demonstrate. In the Iranian Constitution, vali-e faqih as the sovereign ruler is bestowed an absolute authority.

In the Iranian Constitution sovereignty belongs exclusively to God. A sovereign oriented law including sharia and constitutions is a paradox being unable to function as law, simply because it does not represent the subjects that are expected to obey the law. The introduction of the principle of the velayat-e faqih best represent this paradox. As a result, the Constitution became itself a conflict zone, where sovereignty is in constant war with counter-sovereign republican forces. The Iranian Constitution provides a basis for rethinking the legal constellation in which sovereignty is an unquestionable authority abiding by no law except arbitrary decisions. This notion had been legitimized by both sharia and secular attitudes.

Sovereign oriented constitution and constitutionalism are in constant conflict with subaltern constitutionalism considering law not as the solid commandments of a sovereign, but first and foremost a collective constitute in a bottom up multilogical open process with potentiality of inclusion.[54] Here, to constitute is rather a verb than a noun. Whereas as an unending process the constitution is open to becoming, as a codex it implies solidity and fixation. Subaltern constitutionalism is an attempt to go beyond sovereignty as the commandments of God or human beings.

It is strongly believed that in order to democratize the Constitution the concept needs to be wiped out altogether and the Constitution should be secularized. [55] However, as has been argued in this paper, the problem of sovereignty could not be solved by secularization alone.[56] I attempted to argue that in order to have a more democratic society, instead of desperately accepting sharia and its commanding apparatus or simply relinquishing the notion of God altogether and becoming atheist, questioning God seems inevitable. This means critical involvement in theology, problematizing the notion of God as sovereign, and questioning theocracy. This position is not only necessary but ethical. The problem is in fact with sovereignty and commandment; a demonology that is rooted as much in the legacy of the Muslim theocratic thought perceiving God as a voluptuous sovereign of the world as in the Roman and modern notions of sovereignty. In other words, the very demonology is to be problematized.

Theocratic notion of Sovereignty depicts God as a masculine sovereign. This personified patriarchal theocracy can be effectively questioned by a theology, in which God is neither masculine nor sovereign, rather a vision, which promises the capacity of human beings to constitute a more equal and freer community.

[54] Narain, note 3 above.
[55] In recent years, different forms of constitutions were drafted by the Iranian oppositional groups, in which the notion of the velayat-e faqih is removed. Yet, they equally have not taken the issue of sovereignty into account.
[56] As for Wael Hallaq's inclination towards sharia in his *Impossible State: Islam, Politics and Modernity's Moral Predicament*, Columbia University Press, 2012.