Post-Revolutionary Islamism and the Future of Democracy and Human Rights in Egypt

Abadir M. Ibrahim

Abstract

From the backwaters of stagnation in democratization, the Arab Spring countries carried the day and became trailblazers to be replicated by activists all over the world. A couple of seasons after the initial revolution/revolt, Egyptians had transformed their political system, written themselves a constitution, and apparently destroyed the same constitution. While all sectors of society played a role in shaping the revolution, the latter has also affected society. Egypt's 2012 constitution, one of the outcomes of the revolution, captures a moment in the process and also reflects an attempt to install an Islamist ideology in a constitutional democratic form. The constitution's attempt to negotiate between Shari'ah and democracy and its outline of a human rights regime make the future of democracy and human rights ambiguous, as the Islamist stance promulgated has yet to be tested in the real world of politics. As it stands today, the constitution is too ambiguous to allow one to draw a clear picture of the future of constitutional practice. What is clear, however, is that the revolution and subsequent constitution have affected the Islamist discourse about democracy and human rights.

Introduction

The Middle East's experience of democracy has been much like a mirage in the great Sahara. Studies of democratization have attempted to explain why democracy in the Sahara has not been real and what factors in the respective

Abadir M. Ibrahim is a J.S.D. candidate at St. Thomas University School of Law L.L.M./J.S.D. Program in Intercultural Human Rights.

countries account for the lag in democratization.[1] It was amidst such skepticism that what has come to be described as the "Arab Spring" was ignited, taking many by surprise. Tunisia's "Jasmine Revolution" and the wave it unleashed, rapidly changed the political landscape of the Middle East and North Africa (MENA) region, and its effects spilled far beyond. Suddenly, the North African revolutionaries became the standard bearers of the struggle for democracy and inspired democratic anticipations all over Africa and the Middle East. It is, however, too early to be overly optimistic about the eventual results of these revolutions. The stalk of history bears witness to the fact that regression from initial democratic gains is a real threat, even if there has been an overall steady global increase in democratization.[2]

This region is unique in that it is currently permeated by different Islamic and Islamist groups and movements that are seeking to take upon themselves the duty not only of achieving democracy, but also of doing so in a unique and unprecedented way. The uniqueness comes from their effort to reach an Islamic understanding of anything social and political, including that of human rights and democracy. This article studies how the mix between Islamic theology and democratic aspirations has affected the nature of Egypt's new constitution, especially the regime of democracy and human rights, and attempts to predict the future trajectory of democracy based on the constitutional framework and emerging political dynamics within the Islamic groups vying for political power. It should be underlined from the outset that the analysis presented below is not meant to be generalizable to other situations in the region, as each country offers different dynamics, including the dynamics of Islamist politics.

Pre-Revolution Egypt

In its long recorded history, Egypt has devised multiple forms of political rule, all of which represented one or another form of dictatorial rule. The last link in the chain of the republican-pharaonic system of rule began in 1952 when the "Free Officers," led by Gamal Abdel Nasser, took power promising to introduce democracy in the place of the monarchy they overthrew.[3] The first post-revolution measure they took, however, was to ban all political parties that had for some time competed for seats in the parliament.[4] The next presidential soldier, Anwar Sadat, also came with a hefty promise of democratization that he did not honor.[5] The last pharaoh (hopefully) also made promises of "gradual democratization" that history showed he did not intend to keep either.[6] Rather than transitioning to a democracy, Hosni Mubarak was transitioning a military dictatorship into an oligarchic and/or a gerontocratic one.[7]

The Mubarak regime, like its predecessors, was known for brutally suppressing both peaceful and violent resistance. Ruling under a forty-five year-long state of emergency and with a notorious system of military courts, the regime regularly met political opposition with detention, prosecution, and torture.[8] Torture, rape, and "virginity tests" were so rampant that they were used against anyone who landed in government custody, including for civil disputes.[9] Torture and other forms of inhuman and degrading treatment were especially serious against political prisoners.[10] The regime was generally effective in paralyzing political parties with the support of an extensive security and administrative apparatus.[11] Although political parties faced tight control and marginalization from politics, opposition parties were also generally internally undemocratic and displayed an oligarchic and gerontocratic bent.[12] A combination of these factors led to a shift of political opposition from political to civil society.[13]

Although the history of civil society organizations goes back to Ottoman-ruled Egypt, their role in fighting for democratization or liberalization only goes as far back as the British colonial period, when an elite class of mostly educated Egyptians began to form civil society and political organizations working for the end of colonialism.[14] After colonialism ended, trade unions, cooperatives, chambers of commerce, professional associations (professional syndicates), and feminist organizations played a notable role in pushing for reform and liberalization under the Farouk regime.[15] Before it took power, even Nasser's Free Officers was an association of nationalist soldiers.[16] His regime seriously curtailed the growth of civil society organizations by, so to say, "nationalizing" all aspects of life, including most civil society organizations.[17] Civil society remained in the margins until Mubarak, when civil society organizations reemerged and a new breed of organization was established: non-governmental organizations (NGOs).[18]

The Tahrir Movement and the Role of Civil Society Groups

Civil society played an indispensable role in resisting authoritarianism and bringing about the country's first transitional elections despite facing immense state violence.[19] Before the 2011 revolution was within reach, an array of judges' associations, judges' clubs, and lawyers' syndicates around the country posed a serious threat to the Mubarak regime's legitimacy by questioning its pretense of being based on popular representation and the rule of law.[20] At the same time, numerous human rights NGOs were engaging in various forms of activism, such as publicizing government abuses.[21]

One of the more crucial and effective moves taken by civil society was establishing the Egyptian Movement for Change (also known as the "Kefaya" or "Enough" movement), a loose umbrella of activist organizations from all spectra of Egyptian society: Nasserites, Islamists, liberals and leftists, and other independent activists.[22] Between this event and the January 25 revolution (2004-11), the protest movement gained experience in peaceful resistance methods by participating in a number of highly visible campaigns in addition to reaching out to East European activists for training and advice.[23] This activism, grassroots organizing, and collective effort over several decades led to the final push to oust the last pharaoh. Following Mubarak's ouster, however, this unity and common sense of purpose was – and remains – nowhere to be seen. Out of the groups with distinct interests, we now turn our attention to the Islamic groups to see how they affected the revolution. For this purpose we categorize Islamic groups along three conceptual lines: the mainstream religious establishment, the Salafis, and the Muslim Brotherhood (hereinafter "Brotherhood").[24]

The role of the mainstream religious establishment, namely, the interconnected al-Azhar establishment and various Sufi orders, is not very clear. Except for the sporadic protests by al-Azhar students and scholars, Cairo spent a lot of political capital in controlling the institution and appointing its leaders.[25] During the revolution many members of the al-Azhar establishment joined the Tahrir protests, while at the same time its mufti made declarations discouraging demonstrations and informing demonstrators that Islam prohibits revolt against a Muslim ruler.[26]

The regime did not leave anything to chance with the Sufi orders either. For example, it incorporated Sufi orders when coordinating public holidays and, in a bid to control them, appointed a ruling party member as the leader of Supreme Council of Sufi Orders. In the end, not only did the leaders of some Sufi orders leave the council to form a competing organization, the Front for Sufi Reform, but they also joined the Tahrir protests.[27]

Salafi views were not monolithic with regard to political engagement and violence in relation to Mubarak's regime. Bernard Haykel and Quintan Wiktorowicz distinguish among the Salafi Jihadis who eschew violent destruction of the contemporary international and domestic political system, the Politico Salafis ("Haraki" or "Sururi") who focus on teaching/proselytization for gradual Islamization rather than violence, and the Purists ("Scholastic Salafis") who focus on theological and ritualistic puritanism while prohibiting political activism and violence in countries led by one who fulfills their definition of a Muslim.[28] The violent history of the Jihadi Salafis in Egypt, especially during the 1990s, led the government to brutally crack down on this trend.[29] At the

same time, the regime supported and fostered the Purist trends since they posed no threat to it and could be used to minimize the influence of politically active Islamist groups. The Scholastic-oriented Salafis, for their part, worked against the Tahrir movement by portraying it as a rebellion against a Muslim ruler and made public statements, including on regime-controlled media, condemning the protestors, who apparently would not go to heaven if they died in the process.[30] After the revolution's success, the Politico-oriented view took center stage and, while there are internal differences, the vast majority are now active in politics either in the electoral process or through direct action.[31]

Despite its similarities with the Salafi groups as an Islamist and modernist movement, the Brotherhood is distinguished from them because it does not follow a puritan-textualist approach to religion; rejects political violence including terrorism; tolerates sectarian, religious, and political diversity; accepts democracy, constitutionalism, separation of powers, and the rule of law; and, specifically, rejects theocracy.[32] More importantly, the Brotherhood is an all-rounded organization best described by its founder as a "Salafiyya message, a Sunni way, a Sufi truth, a political organization, an athletic group, a cultural-education union, an economic company, and a social idea."[33]

The Brotherhood managed to be a formidable political movement for more than eight decades and a very important opposition political movement during the last three or four decades.[34] Despite the systematic electoral rigging by Mubarak's National Democratic Party, it was able to win 58 seats in 1984 in an alliance with the Wafd Party and 56 seats in 1987 in an alliance with the Labor Party (out of 448 contested seats).[35] Despite a more serious wave of arrests, intimidation, and rigging, the Brotherhood ran its members as independents and won 17 and 88 seats in the 2000 and 2005 elections, respectively.[36] After eighty-five years of living under the shadow of state persecution, the Brotherhood won 47.2 percent of parliamentary seats and its candidate was elected in the presidential runoffs in the first free and fair elections in the country's history.[37]

Because of the persecution it faced by subsequent governments, like its liberal political counterparts, the Brotherhood's activism had been channeled away from political society and into civil society, where it firmly established itself in the decades preceding the 2011 revolution. In addition to its share of the vast number of Islamic philanthropic organizations,[38] the Brotherhood has been able to control the professional syndicates that were instrumental in resisting authoritarianism. Due to the level of support it enjoyed and its organizational prowess, the Brotherhood has come to control the country's professional associations of lawyers, scientists, engineers, doctors, pharma-

cists, and most of the university student associations nationwide.[39] Given its prominence in civil and political society, and assuming that it will retain control of a state that already dominates civil society, its actions could decide the future of democratization in Egypt.

The 2012 Constitution

The text of the 2012 constitution tells us little about the trajectory of Egypt's future, especially in relation to where the country is headed as compared to the past. This conclusion is supported by three observations about the constitution and Islamism. First, the new constitution is not very different, as compared to the 1971 constitution, when it comes to its Islamist orientation. In fact, most of the country's existing positive laws could remain in force despite the change of constitution.[40]

Second, the fact that the constitution was passed marginally in a referendum in which only 25 percent of the eligible population turned out to vote[41] makes it unclear whether the Islamist intentions behind it had or will continue to have complete support. In the years to come, the laws that will be passed to give specific meaning to the constitution can go in any direction based on the makeup of the House of Representatives and the Shura Council; or, they can remain as they were before the constitution.

Third, the constitution has been drafted in such a way that it does little to show us the direction in which the country will go. The presence of so many vague or equivocal provisions, as well as many contradicting prescriptions, means that it says little in so many words. Probably the biggest contribution of the constitution, being the establishment of a representative or possibly a democratic system, is the composition of the parliament and realpolitik that will give life and meaning to this broad and vague document. Thanks to the lack of vision on all sides of the political spectrum at such a turning point, the constitutional debate and bickering will carry on, although it looks like a constitution has been formally approved. The following sections will examine the constitution's provisions to see what kind of picture they paint in relation to the role of democracy, human rights, and Islam in the future.

An Islamist Democracy?

One of the new constitution's peculiar features is its mixing of notions of democratic constitutionalism with an Islamic one. The mainstay of democratic theories, whether of the participatory, deliberative, consociational, or process-procedure oriented type, is that citizens make the most important public policy

decisions through periodic elections and other forms of democratic and civic participation. The constitution clearly assents to this notion by vesting sovereignty and ultimate authority in the people[42] and setting out procedures through which citizens exercise this authority.[43]

In institutionalizing democracy, however, the constitution also provides that "the principles of Islamic Shari'ah are the principal source of legislation."[44] While one can see this provision as suggesting that the Shari'ah is a source of inspiration for legislation, one can also reasonably interpret it as a constitutional constraint on the people's power to legislate. If the jurisprudence of Egypt's Supreme Constitutional Court is of any help, the *verbatim* replica of the same provision in the previous constitution was interpreted as limiting democratic legislation by the principles of the Shari'ah.[45] That the Islamists drafted and supported this document's passage lends support to the conclusion that the underlying legislative intent of this provision it to draw the contours and limitations on democratic lawmaking.

Article 4 provides that "al-Azhar senior scholars are to be consulted in matters pertaining to Islamic law." While its phrasing does not make the ensuing opinions legally binding, one could reasonably conclude that the constitution recognizes their opinion as an authoritative rendition of the substance of the Shari'ah's principles. This may result in their reigning in of the Supreme Constitutional Court's hitherto liberal and pro-human rights interpretations of those very principles.[46] Additionally, Article 219 vaguely defines the subject areas to which these principles will apply.[47] Given these trends, it looks as if the democratic expression of public choice will come to be qualified by God's sovereignty as viewed through the interests of whoever is going to control al-Azhar in the future. This provision is clearly intended to realize the Islamist political motif in the constitution and possibly attack any potential future liberal moves to pass legislation that has an uncomfortable relationship with the Shari'ah. One could just as easily see how this provision could become a battleground among Islamists if different strands were to control the legislature and al-Azhar, respectively.

It looks as though the battle on whether the "principles of the Shari'ah" will be seen in the future as constituting "principles" per se or whether the corpus of substantive Shari'ah law will be fought in the Parliament, the courts, and the streets. The chances that Egypt's Islamist democracy will be a true democracy of an Islamic variant will increase significantly if these principles are seen as a source of inspiration for democratic legislation as opposed to a set of positive rules. Such a position is not unforeseeable within the Islamic theological paradigm, as such scholars as Khaled Abou El Fadl,

Amina Wadud, and Abdullahi A. An-Naʿim, distinguish a priori religio-moral norms based on which positive law is derived from legislation inspired by religious ideals.[48] In other words, the idea that positive law is by definition secular, although it could be derived from Shariʿah principles through human agency, is not new and can constitute a valid Islamic understanding of the relation between law and morality. However, given Egypt's current politico-religious dynamics, it is very likely that the principles of the Shariʿah are going to be seen expansively as positive law and will thereby limit the power of the legislature.

The Shariʿah and Islamist Human Rights

On top of the constitutional constraint imposed by the principles of the Shariʿah, the constitution also envisages that the legislature's power is going to be limited by basic human rights. While this tripartite relationship between democracy, the Shariʿah, and human rights might have been an exciting and new subject of constitutional law, it looks like the constitution has already skewed the ideas of humanness, citizenship, and human rights into a Shariʿah mold. The idea of human rights expressed in the constitution is one that has evolved in modern times due to the conservative Islamic scholars and Islamists' reaction to the ascendance of human rights at the global level. Rather than a tripartite convergence of the three subjects, the Egyptian experiment will probably lead to subjugating human rights to the Shariʿah, thereby resulting in the retreat of at least some rights.

Although Islamic theories of natural rights that had the potential to evolve into modern human rights theories did exist in the medieval world,[49] mainstream Islamic scholarship has produced no theory of human rights worthy of the name. The contemporary interest of Islamic thought in human rights began in colonial and post-colonial times. The interpretation of Islam through the lens of modern reality, and vice versa, began in the middle of the eighteenth century in the Indian Subcontinent and in the late nineteenth century in the Middle East; it continues today.[50] Part of this reinterpretation includes dealing with human rights ideas and norms begotten by the same modern context that give birth to human rights in the West and in which Muslims found and still find themselves. In this period, Egypt was home to such influential exegetists and leaders as Jamal al-Din al-Afghani, Muhammad Abduh, Hasan al-Banna, and Rashid Rida.[51]

This movement has led to an uneasy consensus within Islamic scholarship that Islam and human rights are compatible. However, the conservative main-

stream that grew out of the modernist trend was unable to reconcile human rights with some traditional aspects of the Shari'ah. Rather than rejecting human rights, this generally led to a tendency of reinterpreting human rights in order to fit them into the conservative worldview. While scholarship on this topic is diverse, one could say that the main bones of contention that the conservative pro-rights trend finds with human rights are the following: the freedom of/from religion, the rights of religious minorities, women's rights, the freedom of expression, LGBTI rights, slavery, the right to property and free enterprise (in relation to earning interest), and some due process rights.[52] Although almost all of these issues will likely come up while implementing the constitution, we will focus on those that are apparent in the document's text.

Egypt's constitution bears most of the hallmarks of this simultaneous shrinking and reinterpretation of human rights (let's call this process the "Islamist-ization" of human rights). Articles 34 and 81 declare that individual rights are non-violable, and add that subsidiary legislation should not limit rights in ways that nullify their essence.[53] However, three reasons weigh toward the conclusion that the constitution shows a legislative intent of Islamist-izing rights. First, Article 81 makes rights subject to "principles of state and society" contained in the constitution's first part. In the relevant part, these principles include the implied supremacy of the Shari'ah as interpreted by al-Azhar, the segregation of Jews and Christians for legislative purposes, the preservation of the family's "true nature," and the protection of public morals and public order. Due to the constitution's equivocality, one could argue that these limitation clauses may not necessarily be interpreted as curtailing rights. Even if that were granted, however, the general list of exceptions would still remain comparatively unique due to their expansiveness and Islamist-ization.

Second, in addition to the principles of state and society, the way in which the constitution contains numerous instances of Islamist-ized human rights makes the same point. Along with the formulation of rights discussed below, the constitution takes an unambiguous Islamist stance when it declares the "rights and duties" every time it declares the principle of human rights.[54] The notion that this is a declaration of intent and allegiance to a certain theological view of human rights is confirmed by the fact that, except where it declares a civic duty to perform forced labor and the duty of women toward the family,[55] nowhere does it have a list of duties paralleling its list of rights.[56] The fact that it does not state what those duties are is a clear sign of it underlining that the drafters' understanding differs from the mainstream or international understanding of rights. One can suspect and speculate that these duties are those owed to God and listed in the Shari'ah. The constitution does

not tell us much on this point. What is clear, however, is that a combination of "principles of state and society" and "human duties" can justify future repressive laws that cannot now be foreseen due to the document's generality and equivocality.

Third, the vague way in which human rights have been formulated can be reasonably attributed to a specific intent to ensure that they do not have connections to how substantive rights have come to be understood in international and constitutional phrasing or jurisprudence. At first reading of the human rights provisions, one is left with the impression that they might be victims of drafting ineptitude. However, one can reasonably foresee how they were intentionally made to leave out important elements of common human rights formulations and made vague enough to allow the political system to go in any direction. The constitution also puts international human rights treaties on the same level as domestic legislation and lower than the constitutionally Islamist-ized constitutional provisions and those of the Shariʻah. This, in positivist terms, means that human rights jurisprudence will have minimal or no influence in constitutional litigation and in the law-making process.

RIGHTS OF NON-MUSLIMS AND RELIGIOUS MINORITIES.[57] One of the surest signs of how the constitution Islamist-izes human rights is shown in how it conceives of Egyptian society and of the inter-religious relations within it. The constitution stops short of revitalizing the centuries-old theocratic system in which *dhimmī*s (Christians and Jews) are tolerated as inferior members of society and other non-Muslims are given the opportunity to convert, become slaves, or die.[58] Although it does not institute *dhimmah*, a cumulative reading of articles 2, 3, and 43 shows that the constitution's basic understanding of Egyptian society is one based on this specific model. Having proclaimed Islam as the state religion, the constitution neatly divides Egypt's citizens into Muslims on one end and Christians and Jews on the other. Parliament takes the role of the legislator of (non-Christian/non-Jewish) law and is also given the religious mandate to organize the religious hierarchy,[59] educate the public on the proper religion,[60] and even to proselytize.[61] As for Christians and Jews, it imposes their own religious laws on them to govern personal status.[62] It looks as though no other legitimate categories are recognized.

When it comes to non-Jewish and non-Christian religious minorities, the constitution seems to lack the idea that any such categories are possible or allowable. Its explicit mention of Jews, while very considerate, is a clear indication of how it is looking into history and theology books rather than the country's current reality. How else can one understand how the constitution

recognizes the religious rights of literally only 100 senior citizens of the Jewish faith compared to the probably thousands of followers of "non-divine religions."[63] Article 43 only recognizes the "divine religions" as subjects having the freedom to practice religion. The Baha'is and non-theists, for example, would not qualify for such protection, and it would seem that they may not be able to benefit from the divine religions' civil status laws and marriage laws or even be able to hold parliamentary seats or public office.[64] While it is not clear whether the Quranists, Shi'ah, and Ahmadiya will be allowed to practice their own versions of Islam or contract marriages, it looks like the al-Azhar scholars will have to decide such matters.[65] Precedent, unfortunately, has it that they may not.[66]

FREEDOM OF EXPRESSION AND RELIGION. In an intentionally ambiguous if not playful manner, Article 45 declares the freedom of expression without including a limitation clause. It complements this ambiguity by other absolute provisions that limit free expression by default. Articles 31 and 44, respectively, provide for absolute limitations on insults to individuals and prophets. Press freedom in Article 48, unlike the previous insincere absolute declaration, provides for limitations more like the drafting style common in most constitutions, all human rights treaties, and throughout the Egyptian constitution with regards to other rights. However, the limitations of press freedoms can also be based on principles of state and society, including the Shari'ah and the preservation of the "true nature" of the Egyptian family.

Closely related with this freedom is the freedom of religious expression, which may suffer because of the limitations placed on both religion and expression. While granting the free exercise of religion to Muslims, Christians, and Jews, the constitution fails to include the right to change one's religion. This only creates problems for converts and people who leave Islam, for any expression connected with religion can easily be prosecuted as apostasy or blasphemy. Since Sunni Islam and its version of the Shari'ah is already recognized as the official religion, such persecution may extend to Qur'anists, Shi'ah, Ahmadiya, or any similar or new sect that may be deemed illegal, apostate, or blasphemous according to the al-Azhar establishment. Egypt already criminalizes and sanctions the prosecution/inquisition of intellectuals, academics, poets, theologians, feminists, rights activists, media personnel, and bloggers for blasphemy and apostasy.[67] Using state institutions to persecute religious minorities and individuals whose ideas are offensive to the religious establishment is probably going to continue unabated under the new constitution.[68]

WOMEN'S RIGHTS. The constitution does not contain provisions that directly discriminate against women or prohibit such discrimination. While human rights groups have criticized Article 33 for not explicitly prohibiting gender discrimination,[69] the constitution is consistent in providing for equality and equal opportunity.[70] Although not in its positive prescriptions, the constitution recognizes equality between men and women in very vague terms in the fifth paragraph of its preamble. In fact, the document seems to contain provisions that might provide better protections for women in terms of socioeconomic rights. Article 10 provides that the state has a constitutional obligation to "*provide free motherhood and childhood services and shall balance between a woman's obligations toward the family and public work. The state shall provide for special care and protection for single mothers, divorced women and widows.*" If interpreted through a human rights lens, this provision effectively translates into a generous regime of maternal leave, social security benefits, loans and credit, and education for women.

Whereas the constitution can be interpreted and applied in ways that enhance women's rights, it nevertheless contains evidence of an Islamist bent that may, in the end, mean that its potential for protecting women's rights will not be realized. The constitution, which clearly depicts an Islamist and at least certainly a conservative picture of women's role, hits every note of male-centric, if not sexist, Islamic ideas about the softer-weaker sex. For example, the premable's third paragraph depicts them as men's sisters and partners and notes that "no dignity is there for a nation if women are not appreciated." Article 10 draws a picture of the Egyptian family's "true nature" at the foundation of which stand "religion, morality, and patriotism" and women. Article 10 not only reminds women of their duty toward the family, but emanates from and reinforces a view that they are somehow helpless weaklings in the absence of a father or a husband. Although women are allowed to work, they are supposed to be at home taking care of the family; if their caretaker is not there, the state will take care of them.

In addition to this narrative, the practical problems that women's rights are going to face under this constitutional system come from Shari'ah law. The single most important right that mainstream Islamic scholarship has been unable to accommodate is the contemporary understanding of women's rights. Those principles and norms of the Shari'ah that discriminate against women and even legalize domestic violence and marital rape are based on strong and widely accepted jurisprudential positions, and the concomitant values are deeply rooted in Muslim communities. Egypt happens to be one of those countries that have riddled the 1979 UN Convention on the Elimination of All

Forms of Discrimination against Women (CEDAW) with Shari'ah reservations that specifically reject that men and women are equal.[71]

While it is not our purpose here to discuss the details of how the Shari'ah will violate women's rights, it will suffice to note that Article 219 provides that the Shari'ah will be applied beyond personal status and family laws, thereby creating the potential for discrimination in criminal and procedural laws. By accepting the Shari'ah in personal law, the constitution indirectly mandates its rules of inequality in relation to marriage and family matters, marital abuse and rape, discrimination in intestate inheritance, diminished civil capacity (including in regards to being a witness at court), and possibly a limited capacity to travel.[72] Again, given the constitution's vagueness, one is left wondering whether its declaration of equality is specifically meant to leave enough room for future discriminatory laws. The constitution declares that "*[a]ll citizens are equal before the law. They have equal public rights and duties without discrimination.*" While the second part can be seen as emphasizing that discrimination in the public sphere is especially reprehensible, it could be unscrupulously interpreted as a qualifier of the first paragraph. That is, it could be read to mean that discrimination in the private sphere is either allowed or is less reprehensible.

Post-Revolution Dynamics in Islamist Movements

The Muslim Brotherhood

The Muslim Brotherhood was the movement least affected by the transition in terms of its political ideology. Having already internalized democratic ideals, it did not make any shifts in theological or ideological positions. However, we need to take such a conclusion with a grain of salt. Although the Brotherhood's democratic impulse predates the 2011 revolution, its ideological and political support for democracy is not fixed and may shift, just as it has in the past.[73] Despite the fact that the movement's organizational discipline suggests that it will not succumb too easily, the Salafi coalition's success may make it reconsider its pro-democracy and human rights positions if being more conservative becomes a central criteria for success in Egyptian public opinion.

The Brotherhood's recent play in realpolitik included tactics used by the Mubarak regime, such as granting unchecked powers to the president, using thugs (the "rank and file," as they are called) and the police to crush opposition protests, prosecuting dissenters and activists, using military courts to try opponents and journalists, and blaming political dissent on "foreign agents."[74] If the Brotherhood decides to increasingly rely on such tactics to retain polit-

ical dominance, the risk of Egypt becoming stuck in its democratic transition or even regressing to another form of dictatorship becomes higher. While these concerns need to be taken seriously, given current circumstances and trends the Brotherhood is unlikely to backtrack from its commitment to democracy.

The Mainstream Religious Establishments

It is currently difficult to gauge the future relevance of the Sufi parties now aligned with liberal organizations.[75] If Sufi groups are to have any role in democratization or in politics in general, it will be as a short-term counterweight to the Islamists, since their political interest is primarily concerned with self-preservation rather than democratization per se. Historically apolitical, Egypt's Sufi orders have recently shown greater interest in politics due to their fear that the Islamist control of government might lead to the use of state power to attack their religious practices and rites, which the Salafis consider heretical.[76] Although there is no historical precedent that makes Sufi parties any more democratic than Islamist ones, their recent effort to find inspiration from Turkey's Sufi-based ruling party could possibly lead to their positive role in the development of democratic social capital.[77]

The al-Azhar establishment is poised to have a central role due to its recognition in the new constitutional system. In addition to its role in constitutional adjudication, al-Azhar is recognized as a "mainstay of national identity" and is given a mandate to teach and preach Islam in Egypt and abroad with state funding.[78] Six months before the constitution was passed, the institute's leaders released the "al-Azhar Document," which sets out its vision of Egypt's future. Among the theologically significant announcements are its argument that democracy, based on free and fair elections, is but the modern expression of the Qur'anic concept of consultation (*shūrā*).[79] The document also recognizes human rights *and duties*, the rights of women, the freedom of expression (including artistic and literary expression), socioeconomic and environmental rights, the diversity of opinion within Islam, the tolerance of "heavenly" religions, and a commitment to Egypt's international treaty obligations (including those related to world peace). As a relatively moderate Islamist declaration, the document has found support among many Egyptian political organizations; however, Salafi organizations have condemned it.[80]

The constitution and the al-Azhar document depict al-Azhar as an autonomous institution that is above mundane politics. It remains to be seen, however, if it will continue to be so since the new centers of power are most certainly going to jostle to control who runs and speaks for the institution that

has the power to limit democratic lawmaking. Since Mubarak's fall, the Brotherhood and Salafi groups are already jostling for control over the different student leadership and faculty positions; currently, the former have the upper hand.[81] Despite its increasing collusion with the Brotherhood, especially in ideology, the fatwa-giving segment of al-Azhar has condemned Morsi's controversial constitutional declaration and called on all sides to begin dialogue.[82] Although al-Azhar's independence might be a good thing for the country, it needs to be underscored that even if it manages to be autonomous it will continue to hold Islamist views about democracy and human rights for the foreseeable future.

The Salafis

The Salafi groups, who currently wield significant influence due to their winning 24 percent of the seats in the last parliamentary elections, are clearly set to play a significant role in Egypt's political future.[83] Although their view is not monolithic with regard to political engagement and violence,[84] the movement's violent history and theology in Egypt would have suggested that they cannot but push Egypt further away from democratic consolidation and the protection of human rights. The revolution, however, seems to have shifted the center of gravity toward the Politico Salafi orientation and breathed a new sense of vitality into Egyptian Salafism.

Despite their inclination toward establishing a utopian Islamic state,[85] the post-revolution Salafi coalition has made several leaps that are unprecedented in Salafi political ideology, among them setting up political parties, running female candidates (even allowing them to put their photos on election posters), accepting the principles of separation of state powers and human rights, reprimanding Salafi rings who attack Sufi shrines and Coptic churches, and even positing the establishment of a "civil state with an Islamic background" as a political objective.[86]

But given their ideology, it is difficult to imagine how they would sustainably participate in democracy unless it were to somehow lead to the enforcement of their version of Shari'ah law.[87] According to Salafi political leaders, their theological support for democracy equivocates from *bid'ah*[88] to a necessary evil to an expression of *shūrā*.[89] For example, while explaining the theological basis upon which his party participates in democracy, an al-Asala (Authentic) Party leader justified democracy on the Islamic principle that supposedly allows cannibalism for Muslims who are hopelessly stranded in a desert.[90] These views support the conclusion that the overnight

transformation of time-tested Salafis may not be sincere or last long enough to support democratic consolidation or even an Islamist-representative type of government.

In addition, some evidence suggests that there might be a divide in the Salafi coalition with regards to Salafi views on sustaining democratic participation where the imposition of a Saudi-style Shari'ah is not immediate and unconditional.[91] After it became clear that the transition to post-revolution Egypt and their democratic participation did not result in the imposition of a Shari'ah state, Salafi groups may be divided on whether democracy is the best way to go. Although the most powerful of them seem to be willing to continue their participation in the democratic process, others have not been affected by the opening up of the political system. In fact, these groups are calling for reclosing the political space and replacing democracy with an Islamic theocracy in which the law is decreed by God's self-appointed proxies.[92] Those who are not patient enough to wait until they control power through the current political system have already started to engage in Shari'ah vigilantism in a spree of street justice that has resulted in violence.[93]

Conclusion

Everything in Egypt is up for grabs. However, things are clear enough that we can see what is going on. Egypt has successfully landed itself in a new constitutional experiment. The constitution born out of the Egyptian revolution is an Islamist document with democratic hallmarks or vice versa. The constitution follows the western model by setting up a legislature limited by the principle of constitutional supremacy. Furthermore, much like in western democracies, it limits the legislator's power to make laws that violate human rights. However, and unlike western democratic constitutions, it also limits the legislator's power to make laws that violate the basic principles of the Shari'ah. The constitution's provisions on human rights are also uniquely shaped by these principles, so that it can be seen as uniquely Islamist. As it stands now, however, the constitution is too vague to allow any determination of what exactly this constitutional model is. Observing the system at work will, over time, shed light on whether it is a truly democratic or a non-democratic representative system with a limited praxis of human rights.

If we used a minimalist process-oriented understanding of democracy,[94] the novel and, one must admit, bold Islamist experiment with constitutional democracy might actually work. As it stands now, however, several features

in the constitution militate toward pulling the system below process-oriented standards of democracy. Putting the military above democratic control is probably one of the largest of these features. But this is not due to any Islamist influences, and we have not focused on that for our current purposes. Islamist influences that are points of concern include:

The Shariʻah Element. The Shariʻah limitation on democratic law and policymaking, the major Islamist element of the constitution, does not necessarily prevent Egypt from becoming a democracy. However, there is a risk that the Shariʻah will be interpreted so widely that it can, in effect, nullify the element of "democracy" in an Islamist democracy and thus render the word meaningless. It is not without reason that Islamists describe the Shariʻah as a complete world system that covers all aspects of life. The more such an expansive understanding is followed, the less will be left for democratic lawmaking and for democracy itself. This poses a potent risk of turning the constitutional system into some new type of participatory political system that is not a democracy.

The Freedom of Political Expression. In relation to democratic politics, this freedom is limited by Article 31's prohibition of "insulting or showing contempt toward any human being." Moreover, Article 81 makes the exercise of this right subject to the vague principles of state and society, as defined by part 1 of the constitution.[95] It is difficult to imagine how these limitation clauses can be enforced without proscribing political speech, especially since politicians and political activists should be able to criticize each other and show their contempt for each other. Whether such criticism was fair play should be left to the audience, who can punish indecent politicking with their votes. If anything, "insult" and "showing contempt" to politicians are already practiced in Egypt in relation to Mubarak's system; thus there is no reason why future politicians should be spared. One can also imagine how the prohibition of "insult or abuse of all religious messengers" can inhibit political expression, where such expression is made in the criticism of religion or in support of secularism. Unless the applicability of these articles is not narrowed under subsidiary law as sentimental provisions, they are sure to hamper democratic expression and contestation.

Eligibility for Public Office. Issues with eligibility for public office do not feature too prominently in the constitution, as it does not explicitly prohibit minorities, especially Copts, from holding public office. However,

based on how it conceives of Egyptian society and how it requires all public office holders to take an oath in the name of "Almighty God," it is conceivable that minorities from "non-divine religions" may face structural hindrances. Especially given that such minorities may be criminalized and prosecuted for blasphemy and apostasy, they are likely to be directly or indirectly disenfranchised. Although doing so would not disenfranchise a significant proportion of the population at this point in time, it is nevertheless a valid concern over the participatory nature of the constitution's version of democracy.

The provisions on human rights give mixed signals as to what kind of practice the constitution will pursue. Compared to the institution of democracy, though, human rights stand at the pessimistic end. There is no immediate risk of a Taliban-style Shariʻah being imposed in the near future. However, the constitution will most certainly end up limiting the freedom of religion, the rights of religious minorities, women's rights, the freedom of expression, LGBTI rights, the right to property and free enterprise, and possibly some due process rights. We have seen that in the context of the rights of religious minorities, the freedom of expression, and women's rights, the constitution already shows signs of what is to come.

The post-revolutionary and post-constitutional dynamics of the religious movements suggests that Islamic movements and groups have reached some kind of general consensus on the new constitutional order. For this reason, going forward, special attention should be given to this dynamic. The al-Azhar establishment, the Sufi movements, and the Brotherhood have received the new constitutional order positively and are likely to constitute the mainstream in the new order, although they will not necessarily agree on all smaller everyday political issues. The Salafi movement had an important role in shaping the new order due to its participation in the constitution-making process. However, it is not clear whether frustrations over the non-puritanical nature of the new order will place them together with the other groups in the new mainstream. It is clear that this particular political movement has yet to accept democracy as reasonably Islamic and will continue to treat the system as an incomplete transformation. However, given the fact that an Islamic democracy is a theological-ideological possibility that has already been formulated, the Salafis may come to terms with the idea. More than the constitution's phraseology, it is going to be the political dynamic among these groups that will shape the future of Egyptian democracy and its protection of human rights.

Endnotes

1. See generally, Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman and London: University of Oklahoma Press, 1991), 300-14; Samuel P. Huntington, "Will More Countries Become Democratic?" *Political Science Quarterly* 99 (1984): 193, 207-08; Larry Diamond, "Why Are There no Arab Democracies?" *Journal of Democracy* 21 (2010): 93, 101-03.

2. See Huntington, *Third Wave*, 13-26, naming the democratic regression a "reverse wave" as counter-imposed to his "wave of democratization." This phenomenon has also been popularly called a "global democratic recession." See Thomas L. Friedman, "The Democratic Recession," *The New York Times*, 7 May 2008; also Larry Diamond, "The Democratic Rollback: The Resurgence of the Predatory State," *Foreign Affairs* (March/April 2008).

3. Credit for the rhetorical expression goes to Aladdin Elaasar, *The Last Pharaoh: Mubarak and the Uncertain Future of Egypt in the Obama Age* (Chicago: Beacon Press 2009); also Hamdy A. Hassan, "Civil Society in Egypt under the Mubarak Regime," *Afro Asian Journal of Social Sciences* 2 (2011), where he described the Egyptian system as a "Pharaonic political system" and "political pharonism".

4. They initially did not ban the Muslim Brotherhood, although it would face the same fate two years later. Peter Johnson, "Egypt under Nasser," *MERIP Reports* 10 (1972): 3, 4. Also see Peter Johnson, "Retreat of the Revolution in Egypt," *MERIP Reports* 17 (1973): 3, 3. On the king's Parliament, its structure and functioning, see Marina Ottaway, *Democracy Challenged: The Challenge of Semi-Authoritarianism* (Washington, DC: Carnegie Endowment for International Peace, 2003), 33-35.

5. Ottaway, *Democracy Challenged*, 37-41.

6. Although he did hold several multiparty elections after 1984 and even allowed the first multi-candidate presidential elections in 2005, none of these were free or fair and his victory was always a foregone conclusion. See Ottaway, *Democracy Challenged*, 42-43; Alaa Al-Din Arafat, *The Mubarak Leadership and Future of Democracy in Egypt* (New York: Palgrave Macmillan 2009), 18-19. See Erika Post, "Egypt's Elections," *MERIP Middle East Report* 147 (1987): 17 on the 1987 parliamentary elections.

7. Mohamed A. 'Arafa, "Towards a Culture for Accountability: A New Dawn for Egypt," *Phoenix Law Review* 5, no. 1 (2011): 8, which states that "just 200 families, all enabled and protected by the government, hold approximately 90% of all Egypt's wealth"; Ottaway, *Democracy Challenged*, 48; Juliet Sorensen, "Ideals without Illusions: Corruption and the Future of a Democratic North Africa," *Northwestern University Journal of International Human Rights* 10, no. 4 (2012), on how the oligarchy's corruption was a driving force of the revolution.

8. Ahmed Abdalla, "Human Rights and Illusive Democracy," 174 *Middle East Report* 6, 7; also see Ottaway, *Democracy Challenged*, 42.

9.   Seif El-Dawla "Torture: A State Policy," in *Egypt: The Moment of Change*, ed. Rabab El-Mahdi and Philip Marfleet (London: Zed Books Ltd., 2009), 124-26.

10. Ibid.

11. The government's tactics included prohibiting the forming of parties either by outlawing them or refusing to grant them recognition by the Political Parties Committee, closing down or outlawing viable political parties, cracking down on their members through arrests and convictions, freezing assets through ad- ministrative and judicial procedures, co-opting some opposition members through financial incentives and a system of patronage, promoting and utilizing divisions and in-fighting among parties, using local patrimonial power brokers to undermine the parties' relevance, and supporting or establishing subsidiary or sham parties. Joshua A. Stacher, "Parties Over: The Demise of Egypt's Op- position Parties," *British Journal of Middle Eastern Studies* 31, no. 2 (2004): 215, 220-223. Also see the references in note 7.

12. Ottaway, *Democracy Challenged*, 37-41; Joshua A. Stacher, "Democracy with Its Fangs and Claws and Its Effects on Egyptian Political Culture," *Arab Studies Quarterly* 23, no. 3 (summer 2001): 83, 88-89, concluding that the opposition parties are the same as the ruling NDP, except that they are not in power.

13. For example, see Vickie Langohr, "Too Much Civil Society, Too Little Politics: Egypt and Liberalizing Arab Regimes," *Comparative Politics* 36, no. 2 (Jan. 2004): 181, 187, 192.

14. Pre-British charities (*awqāf*) were mainly controlled by the royal circle and had little or no significance as regards liberalization or democratization. See, gener- ally, James G. McGann, "Pushback against NGOs in Egypt," *International Jour- nal of Not-for-Profit Law.* 10, no. 4 (Aug. 2008): 29, 34; Amy Hawthorne, "Middle Eastern Democracy: Is Civil Society the Answer?" *Middle East Series: Democracy and Rule of Law Project* 44 (Mar. 2004): 6; Donald M. Reid, "The Rise of Professions and Professional Organization in Modern Egypt," *Compar- ative Studies in Society and History* 16 (1974): 24, 24, 28, 37, on the history of syndicates in Egypt and almost every syndicate created until 1974.

15. Ottaway, *Democracy Challenged*, 34; Hassan, "Civil Society in Egypt," 3; also M. K. Harby and M. El-Hadi Affifi, "Education in Modern Egypt," *International Review of Education* 4 (1958): 423, 426, commenting on the role of a "trained middle class" in the 1919 and 1952 revolutions.

16. Johnson, "Egypt under Nasser," 4.

17. McGann, "Pushback against NGOs in Egypt," 34; Hassan, "Civil Society in Egypt"; Mohamed Agati, "Undermining Standards of Good Governance: Egypt's NGO Law and its Impact on the Transparency and Accountability of CSOs," *International Journal of Not-for-Profit Law* 9, no. 2 (Apr. 2007): 56.

18. McGann, "Pushback against NGOs in Egypt," 34; Agati, "Undermining Stan- dards of Good Governance," 59-60; Hamdy Abdel Rahman Hassan, "The State and Civil Society in Africa: A North African Perspective," *African Journal of Political Science and International Relations* 3, no. 2 (Feb. 2009): 70-72, on the history of Egypt's civil society organizations.

19. For the different abuses of civil society organizations and their members, see McGann, "Pushback against NGOs in Egypt," 34; Agati, "Undermining Standards of Good Governance," 63-67; Human Rights Watch, "Egypt: Margins of Repression: State Limits on Nongovernmental Organization Activism," *Human Rights Watch* 17, no .8(E) (July 2005); Sami Zubaida, "Islam, the State, and Democracy: Contrasting Conceptions of Society in Egypt," *Middle East Report* 179 (Nov.-Dec. 1992): 2, 5-9; Denis Joseph Sullivan and Sana Abed-Kotob, *Islam in Contemporary Egypt: Civil Society Vs. the State* (Boulder: Lynne Rienner Pub. Inc., 1999), 25-26, 99, 126-27; Nicola Pratt, "Hegemony and Counter-hegemony in Egypt: Advocacy NGOs, Civil Society, and the State" in *NGOs and Governance in The Arab World*, ed. Sarah Ben Nefissa et al. (Cairo American University in Cairo Press, 2005), 123.

20. Tamir Moustafa, "Law versus the State: The Judicialization of Politics in Egypt," *Law & Social Inquiry* 28, no. 4 (autumn 2003): 883, 898; Zubaida, "Islam, the State, and Democracy," 3-5; Kristen A. Stilt, "Constitutional Authority and Subversion: Egypt's New Presidential Election System," *Indiana International and Comparative Law Review* 16, no. 2 (2006): 335, 343-44; Nabil Abdel Fattah, "The Political Role of the Egyptian Judiciary" and Atef Shabat Said, "The Role of the Judges' Club in Enhancing the Independence of the Judiciary and Spurring Political Reform," in *Judges and Political Reform in Egypt*, ed. Nathalie Bernard-Maugiron (Cairo: American University in Cairo Press, 2008), 79, 111; Mona El-Ghobashy, "Egypt's Paradoxical Elections," *Middle East Report* 238 (2006): 20, 21, 23.

21. Moustafa, "Law versus the State," 898-902.

22. See Emad El-Din Shahin, "Democratic Transformation in Egypt: Controlled Reforms ... Frustrated Hopes," in *The Struggle for Democracy in the Middle East: Regional Politics and External Policies*, ed. Nathan J. Brown and Emad El-Din Shahin (New York: Routledge, 2010), 106-08. For the role of social media in the revolution generally, see Sarah Joseph, "Social Media, Political Change, and Human Rights," *Boston College Interntional and Comparative Law Review* 35, no. 1 (winter 2012): 145; Douglas Rutzen and Jacob Zenn, "Association and Assembly in the Digital Age," *International Journal of Not-for-Profit Law* 13, n. 4 (Dec. 2011): 53.

23. Noha Bakar, "The Egyptian Revolution," in *Change and Opportunities in the Emerging Mediterranean*, ed. Stephen Calleya and Monika Wohlfeld (Malta: Mediterranean Academy of Diplomatic Studies, 2012), 69-70; Ali Sarıhan, "Is the Arab Spring in the Third Wave of Democratization? The Case of Syria and Egypt," *Turkish Journal of Politics* 3, no. 1 (summer 2012): 67, 70-71.

24. Ottaway categorizes them into "radicalism," "state-aligned religious establishment," and "the Muslim Brotherhood." See Ottaway, *Democracy Challenged*, 45-47.

25. Nathan J. Brown, "Post-Revolutionary al-Azhar," *The Carnegie Papers: Middle East* (Washington, DC: Carnegie Endowment for International Peace, 2011);

Rania Salah Seddik, "Policy Brief on Raising Religious Tolerance in Egypt" (M.A. diss., Central European University, 2010).

26. Malika Zeghal, "What Were the Ulama Doing in Tahrir Square? Al-Azhar and the Narrative of Resistance to Oppression," *Sightings*: Martin Marty Center for the Advanced Study of Religion, 17 Feb. 2011, http://divinity.uchicago.edu/martycenter/publications/sightings/archive_2011/0217.shtml.

27. This move, however, was resisted by some orders that established the Front for Sufi Reform. See Brown, "Post-Revolutionary al-Azhar," 12; Ammar Ali Hassan, "Political Role of Sufi Orders in Egypt after the January 25 Revolution," AlJazeera Network, 13 Aug. 2011.

28. See, for example, Bernard Haykel, "On the Nature of Salafi Thought and Action," in *Global Salafism: Islam's New Religious Movement*, ed. Roel Meijer (New York: Columbia University Press 2009), 48-51; Quintan Wiktorowicz, "Anatomy of the Salafi Movement," *Studies in Conflict and Terrorism* 29 (2005): 207.

29. Salafi groups have been responsible much of the unrest in Egypt, including attacks on government officials, tourists, Copts, liberal politicians and academicians, banks, and cinemas/theaters/video stores. They have also attacked Muslims and Islamic scholars who did not support them from the time they assassinated Anwar Sadat, who had made a name for himself as the "Believer President." Generally, see Zubaida, "Islam, the State, and Democracy," 10; Charles Robert Davidson, "Reform and Repression in Mubarak's Egypt," *Fletcher Forum of World Affairs* 24 (fall 2000): 75, 88-92; Stanley Reed, "The Battle for Egypt," *Foreign Affairs* 72 (Sept.-Oct. 1993): 94, 97-102; John L. Esposito, *Islam and Politics*, 4th ed. (New York: Syracuse University. Press, 1998), 236-37, 239, 255-57.

30. Jonathan Brown, "Salafis and Sufis in Egypt," *The Carnegie Papers: Middle East* (Washington, DC: Carnegie Endowment for International Peace, 2011), 9-10.

31. See Daniel A. Boehmer and James P. Murphy, "The Politicization of the Egyptian Salafiyya: Principled Participation and Islamist Competition in the Post-Mubarak Era," *IMES Capstone Paper Series* (May 2012): 10-13.

32. Generally, see Robert S. Leiken and Steven Brooke, "The Moderate Muslim Brotherhood," *Foreign Affairs* 86 (2007): 107; Kristen Stilt, "Islam is the Solution": Constitutional Visions of the Egyptian Muslim Brotherhood," *Texas International Law Journal* 46 (2010-11): 73, 83-104; Nathan Field and Ahmed Hamam, "Salafi Satellite TV in Egypt," *Arab Media & Society* 8 (spring 2009): 1-4 ; 'Arafa, "Towards a Culture for Accountability," 16 ; Ulrika Martensson, "How God's Power Becomes the People's Power: Faith as the Root of Pragmatism in the Muslim Brotherhood," BRISMES Annual Conference 2012: Revolution and Revolt: Understanding the Forms and Causes of Change (26-28 Mar. 2012), 12 ; Najib Ghadbian, *Democratization and the Islamist Challenge in the Arab World* (Boulder: Westview Press 1997), 76-80.

But see Emmanuel Sivan, "Why Radical Muslims Aren't Taking over Governments," *Middle East Quarterly* 4, no. 4, (1997): 7-8. In this article, he reports on the views of Munir Shafiq, a prominent radical scholar who warns that simply claiming that traditional Islam is democratic or that *shūrā* is democracy, as many Islamist do, is apologetically giving Islam a facelift or window dressing without making any significant reform. Also see Abu 'Ila Madi Abu 'Ila, Rafiq Habib, and Karim al-Gawhary, "'We are a Civil Party with an Islamic Identity': An Interview with Abu 'Ila Madi Abu 'Ila and Rafiq Habib," *Middle East Report* 199 (Apr.-June 1996): 30.

33. Quoted by Richard P. Mitchell, *The Society of the Muslim Brothers* (New York: Oxford University Press 1993), 14.

34. For the Brotherhood's recruitment methods, organization, and structure, see Eric Trager, "The Unbreakable Muslim Brotherhood: Grim Prospects for a Liberal Egypt," *Foreign Affairs* 90 (Sept.-Oct. 2011): 114.

35. Mona El-Ghobashy, "The Metamorphosis of the Egyptian Muslim Brothers," *International Journal of Middle East Studies* 37, no. 3 (Aug. 2005): 373, 378-79.

36. Samer Shebata and Joshua Stacher, "The Brotherhood Goes to Parliament," *Middle East Report* 240 (2006): 32.

37. BBC, "Egypt's Islamist Parties Win Elections to Parliament," 21 Jan. 2012, www.bbc.co.uk/news/world-middle-east-16665748; BBC, "Muslim Brotherhood's Mursi Declared Egypt President," 24 Jun. 2012, www.bbc.co.uk/news/world-18571580.

38. For example, Maha M. Abdelrahman reports in her *Civil Society Exposed: The Politics of NGOs in Egypt* (New York: Tauris Academic Studies 2004), 7, that Islamic NGOs constituted 43 percent of NGOs in Egypt in the early nineties); Soheir A. Morsy, in her "Islamic Clinics in Egypt: The Cultural Elaboration of Biomedical Hegemony," *Medical Anthropology Quarterly* 2, no. 4 (Dec. 1988): 355, 356, reports that in the late eighties 80 percent of charitable organizations were Islamic organizations; Hassan, in "Civil Society in Egypt," reports that 35 percent of Egyptian associations are Islamic organizations.

39. Generally, see Sheri Berman, "Islamism, Revolution, and Civil Society," *Perspectives on Politics* 1, no. 2 (Jun. 2003): 257, 26 ; Carrie Rosefsky Wickham, "Islamic Mobilization and Political Change: The Islamic Trend in Egypt's Professional Associations," in *Political Islam: Essays from Middle East Report*, ed. Joel Beinin and Joe Stork (Berkeley: University of California Press, 1997), 120. Also see Saad Eddin Ibrahim, "Reform and Frustration in Egypt," *Journal of Democracy* 7, no. 4 (Oct. 1996): 125.

40. Other than introducing the inviolability of the prophets and individual honor/reputation, as well as al-Azhar into the constitutional system, it makes no significant changes in relation to human rights.

41. See Aljazeera, "Egypt Approves Disputed Draft Constitution," 25 Dec. 2012, http://www.aljazeera.com/news/middleeast/2012/12/201212251825337958.html; Kareem Fahim and Mayy El Sheikh, "First Round of Voting Spurs Dispute in

Egypt," *New York Times,* 16 Dec. 2012, http://www.nytimes.com/2012/12/17/world/middleeast/egypt-constitution-vote-results.html.

42.   See Preamble Paras. 1 and 2 and Arts. 5 and 6.

43.   See Part III.

44.   Art. 2.

45.   "Rector of the Azhar Univ. v. President of the Republic, Case No. 20 of Judicial Year 1 (Sup. Const. Ct. 1985)," translated in 1 *Arab Law Quarterly* 100 (Saba Habachy trans., 1986) cited in Clark B. Lombardi & Nathan J. Brown, "Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law," 21 *American University International Law Review* 379 (2006): fn. 31.

46.   See Ibid., 424-25.

47.   "The principles of Islamic Shari'ah include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community."

48.   Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990), 19-20; Abdullahi Ahmed An-Na'im, "Religion, the State, and Constitutionalism in Islamic and Comparative Perspectives," *Drake Law Review* 57 (2009): 829, 838; Abdullahi A. An-Na'im, "Globalization and Jurisprudence: An Islamic Law Perspective," *Emory Law Journal* 54 (2005): 25, 42, 46-48; Abdullahi A. An-Na'im, "Islam and Human Rights: Beyond the Universality Debate," *American Societyy of International Law Proceedings* 94 (2000): 95, 97; Khaled Abou El Fadl, "The Human Rights Commitment in Modern Islam," in *Human Rights and Responsibilities in the World Religions* (London: Oneworld Publications, 2002), 140 ; Amina Wadud, "Shari'ah is Not the Law," *Religion Dispatches Magazine,* 30 Oct. 2010, www.religiondispatches.org/dispatches/guest_bloggers/3648/shari'ah_ is_not_the_law__/.

49.   See, for example, Oussama Arabi, "The Interdiction of the Spendthrift (al-Safīh): A Human Rights Debate in Classical Fiqh," *Islamic Law and Society* 7, no. 3 (2000), comparing Imam Abu Hanifa's theory of rights to that of John Stuart Mill; Recep Senturk, "Human Rights in Islamic Jurisprudence: Why Should All Human Beings be Inviolable?" in *The Future of Religious Freedom: Global Challenges*, ed. Allen D. Hertzke (New York: Oxford University Press, 2013), discussing pre-modern natural rights theories in Islamic scholarship; Recep Senturk, "Sociology of Rights: 'I Am Therefore I Have Rights': Human Rights in Islam between Universalistic and Communalistic Perspectives," *Muslim World Journal of Human Rights* 2n no. 1 (2005), discussing how, in addition the notion that human beings have universal rights by virtue of being human, the specific rights developed by Imam Abu Hanifa [and later his school of thought] include the rights to life, property, religion, mind, honor, and family that are protected against the state, the community and other individuals.

50. Abdullah Saeed, *Interpreting the Qur'an: Towards a Contemporary Approach* (Oxon, UK: Routledge 2006), 10-11, 20-21. Abduh argues: "[No doubt] God addressed the Qur'an to those who were living during [its] revelation. However God did not address them because of some special personal qualities they had ... It is a must for every person to understand the verses of the Book according to their capacity. There is no difference [in this regard] between a learned and a lay person." Saeed, *Interpreting the Qur'an,* 12; Daniel W. Brown, *Rethinking Tradition in Modern Islamic Thought* (Cambridge, UK: Cambridge University Press, 1996), 22, also citing mid-eighteenth-century reformists from the Indian Subcontinent and Yemen.

51. Brown, *Rethinking Tradition*, 32-33; also see Abdelwahab El-Affendi, "The Long March from Lahore to Khartoum: Beyond the 'Muslim Reformation,'" *Bulletin (British Society for Middle Eastern Studies)* 17, no. 2 (1990): 137; David Johnston, "A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl al-Fiqh," *Islamic Law and Society* 11, no. 2 (2004): 233, 254-80, arguing that the modern interpretations are similar to the Mutazili theology, although officially claiming to be within Ashari discourse. However, see Khaled El-Rouayheb, "Sunni Muslim Scholars on the Status of Logic, 1500-1800," *Islamic Law and Society* 11 (2004): 213, 230-31, arguing that the use of logic as a method in theology and jurisprudence has declined in the modern age since the growth of the Wahhabi and Salafi movements.

52. Generally, see Ann E. Mayer, *Islam and Human Rights: Tradition and Politics* (Oxford: Westview Press, 1991), contains a detailed analysis of most of these issues; An-Na'im, *Toward an Islamic Reformation,* chap. 7; Abdullah al-Ahsan, "Law, Religion and Human Dignity in the Muslim World Today: An Examination of OIC's Cairo Declaration of Human Rights," *Journal of Law and Religion* 24 (2008-09): 569, 592-97, on the Declaration's implementation; Jack Donnelly, "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights," *American Political Science Review* 76, no. 2 (1982), although conflating all Muslims and Islamic literature with the conservative view, he makes a good summary of that view. Also see Katerina Dalacoura, *Islam, Liberalism, and Human Rights*, 3d ed. (New York: I.B. Tauris , 2007), 42-49.

53. See Zaid Al-Ali, "The New Egyptian Constitution: An Initial Assessment of Its Merits and Flaws," *Open Democracy,* 26 Dec. 2012, http://www.open-democracy.net/author/zaid-al-ali, comparing this provision to constitutions that provide limitation clauses which prevent "legislation to so restrict the exercise of that right that it may as well not have been granted in the first place."

54. See Preamble Para. 5, Arts. 6, 33, 48.

55. See Arts. 10 and 63. Its use of duties of citizens to participate in democracy in Arts. 55 and 56 seems to be rhetorical, as it does not impose specific duties or suggest such an imposition.

56. For other such Islamist views and trends, see Eva Brems, *Human Rights: Universality and Diversity* 206-208 (The Hague: Martinus Nijhoff Pub. 2001); also generally see Mayer, *Islam and Human Rights*.

57. Another problem is that the constitution accords equality not to all human beings but to citizens (Arts. 33, 81) and accords some non-citizen-based rights (e.g., privacy, arbitrary detention, expression [creativity], assembly, and association) only to citizens (Arts. 38, 42, 50, 51). This study does not consider these issues, however, for it is focused on the Islamist-ization aspects of the constitution.

58. See Donna E. Arzt, "The Role of Compulsion in Islamic Conversion: Jihad, Dhimma, and Ridda," *Buffalo Human Rights Law Review* 8 (2002):15, 25-29; Donna E. Arzt, "Heroes or Heretics: Religious Dissidents under Islamic Law," 14 *Wisconsin International Law Journal* 14 (1996): 349, 378-85, 410-19 .

59. See Arts 4 & 43.

60. Arts. 10, 11, 60 & 71.

61. Art. 4.

62. Art. 3.

63. In general, Bureau of Democracy, Human Rights, and Labor, "International Religious Freedom Report for 2011: Egypt," U.S. Department of State, http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper.

64. According to Art. 86, 137, and 157, at least non-theists cannot take the oath of office, and it is unclear whether one could hold office by waiving this duty.

65. Art. 219: The principles of Islamic Shari'ah include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community.

66. See Maurits Berger, "Apostasy and Public Policy in Contemporary Egypt: An Evaluation of Recent Cases from Egypt's Highest Courts," *Human Rights Quarterly* 25 (2003): 720; Freedom House, "Policing Belief: The Impact of Blasphemy Laws on Human Rights: Egypt," 21 Oct. 2010, available at: http://www.unhcr.org/refworld/docid/4d5a700b2d.html (accessed 16 Mar. 2013).

67. Ibid.

68. This has already started with the arrest and possible prosecution of the Brotherhood's comedian critic for "insulting Islam and the country's president." Aljazeera, "Egypt Issues Arrest Warrant for Satirist," 30 Mar. 2013, http://www.aljazeera.com/news/middleeast/2013/03/201333016161826740.html.

69. Human Rights Watch, "Egypt: New Constitution Mixed on Support of Rights," 30 Nov. 2012, http://www.hrw.org/news/2012/11/29/egypt-new-constitution-mixed-support-rights; Amnesty International, "Egypt's New Constitution Limits Fundamental Freedoms and Ignores the Rights of Women," 30 Nov. 2012, http://www.amnesty.org/en/news/egypt-s-new-constitution-limits-fundamental-freedoms-and-ignores-rights-women-2012-11-30.

70. See Arts. 6, 9, 33, and 63.

71. For an analysis of matters pertaining to such reservations, see Nisrine Abiad, *Shari'ah, Muslim States, and International Human Rights Treaty Obligations: A Comprehensive Study* (London: British Institute of International and Comparative Law 2008), 59-100; Bharathi Anandhi Venkatraman, "Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimina-

tion against Women: Are the Shari'a and the Convention Compatible?" *American University Law Review* 44 (1995): 1949, 1959-64.

72. Abdillah Ahmed an-Na'im, "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives – A Preliminary Inquiry," *Harvard Human Rights Journal* 3 (spring 1990):13; Urfan Khaliq, "Beyond the Veil?: An Analysis of the Provisions of the Women's Convention in the Law as Stipulated in Shari'ah," *Buffalo Journal of International Law* 2, no. 1 (1995).

73. Wickham, for example, reports that there were signs of tension between the liberal and conservative trends within the Brotherhood before the 2011 revolution (in 1996) in two respects: (1) the division between the new and old guard with regard to leadership and policy and (2) the exit of the newer generation to form the Wasat Party that, in addition to standing for "pluralism and alternation of power," was cofounded with Coptic Christians. See Carrie Rosefsky Wickham, *Mobilizing Islam: Religion, Activism, and Political Change in Egypt* (New York: Columbia University Press, 2002), 217-20. On the same point also El-Ghobashy, "The Metamorphosis,"385-88. For skeptics' views of the Brotherhood's democratic credentials, see Armed Movements and Marina Ottaway, "When Islamists Go into Politics," *Fletcher Forum of World Affairs* 33, no. 2 (fall 2009): 37, 43; James Feuille, "Reforming Egypt's Constitution: Hope for Egyptian Democracy?" *Texas International Law Journal* 47 (2011): 237, 257.

74. For example, see Associated Press, "Egypt's Prosecutor Orders Probe against Opposition," *Time World*, 27 Dec. 2012; Al Arabiya and AFP, "Mursi Branded Egypt's New 'Pharaoh' after Granting Himself Sweeping Powers," Al Arabiya, 23 Nov. 2012; Dallia Moniem, "The Return of Military Trials in Egypt," *Africa Review*, 9 Jan. 2013.

75. Brown, "Post-Revolutionary al-Azhar," 11-13; Osama el-Mahdy, "Sufi Protest to Demand Constitution before Elections," *Egypt Independent,* 26 Jun. 2011, www.egyptindependent.com/news/sufi-protest-demand-constitution-elections; H. A. Hellyer, "The Battle for al-Azhar," *Foreign Policy,* 2 Aug. 2012, mideast. foreignpolicy. com/posts/2012/08/02/the_battle_for_the_azhar; Larbi Sadiki, "Egypt: On Sufis and 'Political Dervishes,' "Al-Jazeera, 29 Aug. 2011, www. aljazeera.com/indepth/opinion/2011/08/20118228945711612.html.

76. Hassan, "Political Role of Sufi Orders," 5.

77. Ibid. Also generally see Kristin Deasy, "The Sufis' Choice: Egypt's Political Wild Card," *World Affairs Journal,* Sept./Oct. 2012, http://www.worldaffairs journal.org/article/sufis%E2%80%99-choice-egypt%E2%80%99s-political-wild-card; Matt Bradley, "Parties in Egypt Seek New Weapon: Secularists Aim to Mobilize Sufi Masses to Combat Islamist Clout in Elections," *The Wall Street Journal*, 27 Oct. 2011, http://online.wsj.com/article/SB10001424053111-903374004576582850351152880.html.

78. See Preamble Para. 11 and Art. 4.

79. Declaration 2, available at http://www.sis.gov.eg/en/Story.aspx?sid=56424); also see Q. 42:38 and 3:159, from which the concept is derived.

80. Brown, "Post-Revolutionary al-Azhar," 13; Ahmed Morsy, *An Independent Voice for Egypt's al-Azhar? Sada: Carnegie Endowment for International Peace* 13 Jul. 2011, https://www. carnegieendowment.org/sada/2011/07/13/independent-voice-for-egypt-s-al-azhar/6b7k.

81. Brown, 10; H.A. Hellyer, "The Battle for Al-Azhar," *POMEPS Briefings: Arab Uprisings: The New Salafi Politics* 14 (16 Oct. 2012): 28-29 .

82. Noha El-Hennawy, "Al-Azhar body calls on Morsy to freeze constitutional declaration," *Egypt Independent*, 6 Dec. 2012, http://www.egyptindependent.com/news/al-azhar-body-calls-morsy-freeze-constitutional-declaration; Press TV, "Al-Azhar University urges Morsi to suspend constitutional declaration," 6 Dec. 2012, http://www.presstv.ir/detail/2012/12/06/276521/alazhar-urges-morsi-to-shelve-decree/.

83. BBC, "Egypt's Islamist Parties Win Elections to Parliament"; Aya Batrawy, "Egypt Elections 2012: Islamists Secure 75 Percent of Parliament, *Huffington Post*, 22 Mar. 2012, www.huffingtonpost.com/2012/01/21/egypt-elections-2012-islamists_n_1220801.html; Omar Ashour, 'The Unexpected Rise of the Salafists has Complicated Egyptian Politics," *Daily Star*, 6 Jan. 2012; Batt Bradley, "Islamic Parties Dominate Egypt Parliamentary Elections," *Wall Street Journal*, 21 Jan. 2012, online.wsj.com/article/SB10001424052970204301404577174832117262816.html.

84. See, for eacmple, Bernard Haykel "On the Nature of Salafi Thought and Action," in *Global Salafism: Islam's New Religious Movement*, ed. Roel Meijer (New York: Columbia University Press, 2009), 48-51, distinguishing among (1) the "Salafi Jihadis" who eschew violent destruction of the contemporary international and domestic political system to be replaced by an Islamic order following the line of Salafi interpretation; (2) the "Haraki," Shawi," or "Sururi" (referring to activism or awakening), who resemble the Brotherhood in their focus on teaching/proselytization rather than violence; and (3) the Scholastic Salafis (officially recognized as Saudi Arabia's creed) focus or theological and ritualistic puritanism while prohibiting political activism and violence in countries led one who fulfills their definition of a Muslim).

85. Generally, see David Zeidan, "Radical Islam in Egypt: A Comparison of Two Groups," *Middle East Review of International Affairs* 3, no. 3 (1999): 1, comparing Jama'at al-Muslimin and Jama'at al-Jihad.

86. Brown, "Post-Revolutionary al-Azhar," 9-10; Ahram Online, "Al-Nour Party," 4 Dec. 2011, english.ahram.org.eg/NewsContent/33/104/26693/Elections-/Political-Parties/AlNour-Party.aspx; Sarah A. Topol, "Egypt's Salafi Surge," *Foreign Policy*, 4 Jan. 2012, www.foreignpolicy.com/articles/2012/01/04/egypt_s_salafi _surge?page=full.

87. Boehmer and Murphy, "The Politicization of the Egyptian Salafiyya," 56-57.

88. Literally meaning "innovation," this is a concept at the center of Salafi ideology, as they believe that all the evils of Muslim society come from the fact that Muslims have contaminated the pure form of Islam after the Prophet. The Salafis

seek to bring Muslims back to the pure form so that the latter regain their pre-
vious glory.

89. Boehmer and Murphy, "The Politicization of the Egyptian Salafiyya," 9, 14-15,
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90. Ibid., 32.

91. Ben Wedeman, "Salafis Call for Islamic Law in Egypt protest," CNN, 9 Nov.
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92. Jeffrey Fleishman, "Al Qaeda Chief's Kin, Other Salafis Push for a Puritanical
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94. I am using the process-oriented model introduced by Dahl, which is now widely
     adopted in comparative, transitional, and empirical strands of democratic liter-
     ature. For this definition see, Robert Dahl, *Polyarchy: Participation and Oppo-
     sition* (New Haven: Yale University Press, 1971), 2-4, 8-9 .

95. These include the implied supremacy of the Shari'ah as interpreted by al-Azhar,
     the segregation of Jews and Christians for legislative purposes, the preservation
     of the family's "true nature," and the protection of public morals and public
     order.