

The Struggle on Egypt's New Constitution - The Danger of an Islamic Sharia State

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The rise of the "Muslim Brotherhood" to power in Egypt in the January 25th 2013 revolution in free and democratic elections, and the discussions surrounding a new constitution approved in a referendum in December 2012, were among the most difficult and dangerous issues in the dispute which eventually led to the counterrevolution, and the ousting of Morsi from the presidency by the liberal movement led by the Egyptian army.

Upon his rise to power, Morsi promised to act as everyone's president, but in practice many of his moves showed that he had an Islamist sectorial outlook and intended to change the prevailing order in Egypt to a "Sharia" state. Jobs in the ruling elite were awarded to individuals affiliated with the Islamic movement and the constitution was formulated by a controversial committee, and with the President's intervention it threatened to promote a fanatic Islamist and anti-democratic agenda in Egypt.

A survey conducted by the Gallup Institute in April 2011 in Egypt found that 69% of the 1000 respondents across Egypt wanted religious leaders to have only an advisory role in the new administration, and most did not wish for the establishment of a government based on the principles of religion and theocratic regime. Only 15% of respondents said that they supported the "Muslim Brotherhood", while 60% said they had no political preference.

After the draft of the constitution was approved in the referenda held on December 15th and 22nd 2012, it became apparent that there was a deep rift in Egypt.

President Morsi's opponents, a group comprised of leftists, liberals, secularists and Christians took to the streets to prevent the enforcement of the constitution, dangerously mixing politics with religion. The constitution prepared by President Mohamed Morsi's allies (those advocating the doctrine of the Muslim Brotherhood) received support from 63.8% of citizens, meaning that the Islamists won their third consecutive victory at the polls since the ousting of Hosni Mubarak in the 2011 revolution. The final voting turnout was 32.9%.

After approval of the constitution, the opposing voices grew and the claim that the President was acting for the Islamization of the Egyptian state and that his plans for the rehabilitation of the state of security and economy had failed miserably, took root in the public discourse. In addition, his steps were perceived to be anti-democratic and were construed as him turning his back on the original goals of the revolution.

As an inevitable step to stop the erosion and prevent Egypt from moving quickly down a slippery theocratic Islamist fanatic slope, the army had to lead a dramatic counter-move and intervene in the political-civilian process and make a course correction towards the original goals of the revolution which led to the ousting of President Morsi's rule. The counter-revolution was probably inevitable and sealed the fate of the Muslim Brotherhood and of President Morsi, from whom the reins of government were taken and was placed in custody.

A joint civilian-military leadership with a Western liberal orientation is seeking to maintain Egypt's Muslim identity without abandoning Western values and collaborating with it. This leadership has claimed responsibility for managing the country's affairs and released a plan for extracting the country from the crisis. According to them, within a few months the constitution will be amended, elections for parliament and the presidency will be held, and power will be transferred to the elected civilian leadership.

The debate over Article 2: The status of the Islamic Sharia

One of the main points of contention among the Egyptian public on the proposed new constitution is the status of Islamic law (Sharia) in state law. This controversy goes back to 1971, when Article 2 of the new Egyptian constitution stated that **"The principles of Islamic Sharia are the main source of legislation."**¹ President Sadat's consent to include such a clause in the Egyptian constitution for the first time was interpreted in light of the political alliance he entered into with the Islamist groups as a way to deal with the Nasserist opposition threatening his rule in its early stages. In 1980, Sadat took another step towards the Islamists by approving an amendment to Article 2, stating that **"The principles of Islamic Sharia are the main source of legislation."**

Article 2 of the suggested in the new proposed constitution draft, as discussed by the Constitution Committee, is considered to be the main article defining the status of religion in Egypt, and remained unchanged in comparison with the previous constitution: "Islam is the state religion, Arabic is the official language and the **principles of Islamic Sharia** are the main source of legislation." The debate on this article shook the Constitution Committee, and the decision to keep it as is, and not omit the word "principles" as demanded by the Salafists, is the result of the Muslim Brotherhood's desire to reassure many, in Egypt and the West, in light of the Islamization of their country. This debate has highlighted the differences in the approach to the status of religion in the state between the liberal-secular movements and the Islamic factions in Egypt.

¹ Egypt's draft constitution <http://www.egyptindependent.com/news/egypt-s-draft-constitution-translated>

The rise of the “Muslim Brotherhood” to power in Egypt in the January 25th 2013 revolution, and the discussions on a new constitution, brought Article 2 to the forefront of the discussion, which at the time was a “red rag” in the eyes of the liberal elements in Egypt in general, and the Christian Coptic minority in particular, but was deemed as the lesser evil. The draft of the new constitution promoted by the deposed President Morsi and his people, left Article 2 in its previous version (according to the 1980 amendment), but an **extremely significant article was added (Article 219) to the constitution’s General Laws Chapter**. This article, whose phrasing caused a debate in the Committee up to the last minute, is an interpretation of Article 2 stating that **“The principles of Islamic Sharia include its general evidence, its theoretical and religious principles and its reputable (authoritative) origins amongst the Sunni religious schools.”**

Article 219 – An Opening for the Implementation of the Sharia

Article 219 was added to the constitution draft as an interpretation of Article 2 to satisfy the Salafists, and it states: “[the term] ‘the principles’ [of the Sharia] includes the methods of the religious argument and the fundamentals of Muslim jurisprudence and its sources in the religious schools of thought accepted by the Sunni.”²

Article (219) provides Article (2) with a broader interpretation that would allow the implementation of a larger part of the Sharia based on the principles of Sunni jurisprudence. This article is designed to allow the Muslim Brotherhood to repel the accusations hurled against them by the Salafists, as if the Muslim Brotherhood has given up on the implementation of the Sharia when opposing the amendment of Article (2), as Article (219) provides an opening for the codification of the Sharia. **However, in order to reassure the liberals as well, this article was deliberately placed at the end of the constitution and not next to Article (2) as a way to suggest its lesser importance.** Article (219) also provoked criticism from liberals, Copts and Shiites, who view this article as an opening for discrimination against anyone who is not a Sunni Muslim.

For example, the Coptic Patriarch, Theodoros the Second said that while he accepted Article (2), Article (219) is “a catastrophic article turning Egypt from a civil state to the exact opposite.”

Article 219, whose wording is probably not unintentionally quite vague, was designed to significantly promote the Islamists’ agenda. This article states that the principles of Islamic Sharia are not merely unequivocal texts in the religious sources, but also include additional components: theoretical principles, namely the theory of the roots of Islamic

² Ibid.

law; principles found in the science of religion; and finally, authoritative textual sources in the literature of the Sunni schools of law.³ It seems that Article 219 was a response to the Islamists' demands that Egyptian legislation should be guided not only by general and abstract principles found in the Sharia, but also by the Sharia law as developed by generations of religious scholars in the different schools of thought in Sunni Islam.

Was Article 219 deliberately separated from Article 2, its natural place, and placed towards the end of the constitution, to play it down and mitigate the opposition of the liberal elements and the non-Muslim citizens?

Will the fact that the drafters of Article 219 address all Sunni schools of thought, and do not specify one binding school of thought whose laws should be applied, bring chaos to the country?

Who will be the ultimate interpretive authority regarding the constitutional validity of laws – the Al-Azhar or the Supreme Constitutional Court?

These questions are not theoretical but rather are issues pertaining to the core of the emerging political character of Egypt after the rise of the Muslim Brotherhood to power. These issues were part of the foundations which motivated the decision to carry out the counterrevolution and eliminate the threat of the Muslim Brotherhood in power, despite the fact they were elected democratically.

Egypt – A Democratic State or a "Shura" State?

The Muslim Brotherhood's regime which gained power in Egypt on January 25th 2013, acted in a practical and ideological manner to change the existing order and replace it with a fundamental Islamic regime. This regime applied the principles of the Sharia, and the "Shura" (consultation) based on the teachings of Sayyid Al-Qutb, the philosopher and leader of the Muslim Brotherhood in Egypt, who described Western civilization as a declining materialistic civilization and defined those Arab regimes who were not completely faithful to Islamic law and not applying the principle of the "Shura", as heretic regimes that were to be fought violently until overthrown.

The concept of "Shura" is based on two verses from the Quran⁴ where Allah ordered the leadership of the Islamic nation to consult the public before making decisions, obligating the Islamic rulers to hold consultations before making a decision; however, the principle left the sovereignty in the hands of Allah and his representative on earth, the Islamic ruler, who was not obliged to follow the advice he received.

In actuality, the institution of the Shura was always a consultative institution without authority, not representative and not elected, rooted in Muslim tradition. There is no

³ Ibid.

⁴ **Surah Al-Imran** (The Family of Amran), verse 159 and **Surah Ash-Shura** (Counsel), verse 38.

parallel between the Shura and democracy or western parliamentary democratic institutions where there is real public participation in making political decisions.⁵

The use and connection Islamists speakers make in paralleling the concepts of “Shura” and “Democracy”, is misleading and is intended for the Western listener who envisages the U.S. Congress or the British Parliament or the French National Assembly.

The first part of Article (6) in the constitution draft states: “The political regime based on the principles of **democracy and Shura** and on citizenship, equating all citizens in terms of general rights and obligations, as well as on political and partisan pluralism, and on partisan change through peaceful means, separation of powers and the balancing between them, the rule of law, respect for human rights, securing the rights and liberties, all in the manner specified in the Constitution.”

The wording of this article reflects an attempt to placate - the Salafists were pressing that the term “democratic regime” was avoided, and was replaced with a regime based on the Shura – an Islamic principle which requires the ruler to consult during the decision-making process, an obligation on the basis of which Muslims claim that the institution of modern parliament originated in Islam. On the other hand, the article’s intention is to take into consideration the liberal voices who opposed it. To the Salafists, adding the “Shura principle” next to “the democratic regime” is meant to distinguish the democracy in Egypt, which is subject to observance of Islamic customs, from the permissive Western democracy.

One can say that if it were not for the counter-revolution, and if the Islamic parties’ government had survived and approved the proposed constitution, Egypt would have taken a sure step towards becoming an Islamic Sharia state, much like other countries such as Sudan, Iran, and Pakistan.

⁵ Uriya Shavit, *The Wars of Democracy – The West and the Arabs from the Fall of Communism to the War in Iraq*, Dayan Center, Tel Aviv University, 2008, p.23.

Appendix

Excerpts from Egypt's draft constitution (translated)

<http://www.egyptindependent.com/news/egypt-s-draft-constitution-translated>

(Egypt Independent is the sister English-language publication of Al-Masry Al-Youm daily).

Chapter One: Political principles

Article 2

Islam is the religion of the state and Arabic its official language. Principles of Islamic Sharia are the principal source of legislation.

Article 4

Al-Azhar is an encompassing independent Islamic institution with exclusive autonomy over its own affairs, responsible for preaching Islam, theology and the Arabic language in Egypt and the world. Al-Azhar Senior Scholars are consulted in matters pertaining to Islamic law.

Section 4: The Supreme Constitutional Court

Article 175

The Supreme Constitutional Court is an independent judicial body, seated in Cairo, which exclusively undertakes the judicial control of the constitutionality of the laws and regulations.

Article 176

The Supreme Constitutional Court is made up of a president and ten members. The law determines judicial or other bodies that shall nominate them, and regulates the manner of their appointment and requirements to be satisfied by them. Appointments take place by a decree from the President of the Republic.

Chapter Two: General Provisions

Article 219

The principles of Islamic Sharia include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community.