Constitutional Amendments and the Place of Shari’a

In the first few weeks after the victory of the Egyptian revolution, voices were heard demanding that Article 2 of the Constitution, which states that “Islamic Shari’a Law is the main source of legislation”, should be removed and replaced by an article affirming that the proper sources of legislation are the revealed religions, international agreements and statutory regulations. Political Islam – in all its varieties – issued a clear and forceful reply to these demands. Dr. Essam al-Aryan, leader of the Muslim Brotherhood, forbade any discussion of the Article, claiming that it was “above the Constitution”, while Abboud al-Zumar, an Islamic Jihadist jailed for planning the assassination of President Sadat who has only recently been released from prison, issued a Fatwa ruling that the full canon of Islamic Shari’a Law should be applied, so for example punishments such as limb amputations for those found guilty of theft should be implemented. Other Islamic apologists and ideologists expressed similar views.

The exchange of views on Article 2 could have turned into a debate if the more extensive, urgent and compelling debate of the referendum covering constitutional amendments had not taken precedence.

The committee that formulated these amendments was chaired by Tariq al-Bishri, a gentleman of Islamit inclinations; other members of the committee included Subhi as-Saleh, a former Member of Parliament representing the Muslim Brotherhood. The amendments dealt with a number of issues, and included reducing the number and length of the periods for which a President of the Republic is permitted to remain in office to just two terms of four years each. The amendments also placed limits on the President’s authority to dissolve Parliament or declare a state of emergency, while opening the door for anybody to seek nomination as a candidate for the Presidency of the Republic, provided they succeed in obtaining the signatures of at least 30,000 citizens or 30 Members of Parliament.

Those who voted in favor of these amendments publicly announced that their reasons for doing so were procedural. They stated that the amendments should result in parliamentary and presidential elections in a few months’ time, thereby shortening the current transitional phase and paving the way for economic stability and prosperity. Those who rejected the amendments did so on the grounds that they were too patchy and granted the President wide-ranging powers. In their view, adoption of the amendments would mean that parliamentary elections were held too soon, making it too easy for the Muslim Brotherhood and their allies to win the elections with the support of the army.
A New Islamist Bloc: Preserving the Constitution

A new Islamist bloc emerged from the campaign to secure the success of the amendments in the referendum. This bloc was primarily comprised of the Muslim Brotherhood and their allies, the Salafists (followers of the traditional-fundamentalist trend in Islamic political thought), jihadists, the remnants of the Islamic group Gama’a and activists of the Islamic Labour Party and the Centre Party, which had been permitted to return to the political arena after the revolution. One of the factors which united them was their belief that support for the amendments in the referendum constituted a religious obligation under Shari’a Law, and that those who rejected them oppose the Shari’a and wish to curtail its influence on the Constitution. Mohammed Hussein Yaaqub, a spokesman for the Salafists, stated that victory in the referendum represented a “conquest of the ballot boxes”, and a sign that Article 2 of the Constitution should remain in place. He also asserted that the issue of Article 2 is “a matter of life and death for the Salafists”. In short, the campaign supporting the constitutional amendments effectively urged people to vote for Article 2 of the Constitution.

The Eastern Centre for Regional and Strategic Studies analyzed the breakdown of votes by province: the turnout for the referendum represented 19.41% of the 45 million Egyptians entitled to vote, and of this turnout 92.77% voted in favor of the amendments, while 8.22% voted against.

On closer analysis, the results show that the highest percentages of those who voted in favor came from remote and rural provinces, while large cities such as Cairo and Alexandria appeared at the bottom of the list of those voting in favor of the amendments. The Eastern Centre for Regional and Strategic Studies considers that the reason these two blocs voted so powerfully against the amendments is because they represent the largest urban demographic in Egypt, with clearly defined middle and upper classes and high economic, educational and cultural standards.

Thus two broad trends are gradually becoming apparent: the first trend represents a majority who wish to preserve the Constitution, albeit with some minor amendments, and who are doing all they can to preserve a constitutionally Islamic state by operating behind the scenes, possibly in collusion with the remnants of the ousted regime. It is becoming increasingly clear that this trend is aligned with the inclinations of the army. Mixed into the broad base of this trend is a conservative rural tendency largely consisting of poor, illiterate, uneducated people whose rights and development have largely been ignored in the past.

The Minority Stance

Various reasons separate the organized majority from the less-organized minority which rejects the amendments and yearns for a secular state. The main reasons are sectarian – for example a Coptic Christian may be unhappy about the fact that the new regime marginalizes his citizenship even more than the previous regime – and cultural: liberals, left-wingers, democrats, Nasserists and secularists all disapprove of government by religion (and are in their turn branded as “infidels” by Islamists). The battle between the two camps intensified after the referendum, because the result caused the religious groups to believe they were on the brink of taking power, despite modest claims by the Muslim Brotherhood that they only expected to win some 30% of the seats in Parliament. Each new day in Egypt, however, brings with it signs that contradict the – purely tactical – electoral humility shown by the Muslim Brotherhood and the Salafists.
The Muslim Brotherhood and the Salafists will both benefit, of course, from the legacy of the Mubarak era – in the form of a society which has become islamicized both because of the beatings to which the Muslim Brotherhood was subjected by Mubarak's regime, and because this oppression was followed or accompanied by highly publicized, cultural support for a religious way of life. Egyptian rulers from President Sadat to President Mubarak – and indeed many other Arab rulers – have frequently used the threat of Islamic rule as a reason for refusing to relinquish power, while at the same time taking every opportunity to islamicize their people. The most oppressive aspect of this legacy is the level of illiteracy, which according to official statistics stands at 45% in Egypt, while unofficial figures suggest it is closer to 65%.

In this situation, the minority does not have an easy task. Either it allows the revolution of 25 January to take its natural course, or else it embarks on a new revolution. On that historic day, the minority launched its quest for freedom. Religious manifestations during the revolution were open-minded and tolerant, unlike the religious stance of the Muslim Brotherhood and the Salafists, which has become stricter and more intolerant as they become steadily more confident of their impending accession to power.

But while it is not easy, the task is not impossible. The old regime lost its legitimacy, and attempted to recover some kind of validity by encouraging Islamism. Today, this legitimacy has – at least in principle – been transferred into the hands of the people. Those who seek a swift victory in the elections will play the Islamist card as best they can, but at the same time, they must operate within the constraints of the legitimacy conferred upon them by the people, who ultimately will remain responsible for the islamicization of Egyptian society.

**A Historical Power Struggle**

At heart, it was an old power struggle between the “Free Officers,” headed by Gamal Abdel Nasser, and the historic organization of Al-Ikhwan al-Muslimin (the Muslim Brotherhood), led by Hasan al-Banna – in other words, between the predecessors of the national party which ruled until the revolution of January 25 this year, and the current Brotherhood organization under the leadership of Mohamad Badee’.

What at first was a competition between allies – the Free Officers and the Ikhwan – became the race of two opposition movements against the régime of King Farouq. This contributed to the collapse of the monarchy and the evacuation of the British from Egypt. It was a clear victory for the Free Officers, the strongest party at the time. When the Free Officers seized power, they pursued members of the Ikhwan and put them behind bars. This took place in 1952, twenty-four years after the founding of the Muslim Brotherhood, twenty-four years spent in preparation: holding tactical training camps, giving lessons, organizing themselves, and participating in parliamentary elections, in the hopes of acceding to power. The Officers’ success thwarted their plan. And so occurred the first divisions within the Brotherhood’s ranks: some cadres who opposed the leadership’s hostility towards Nasser, joined his camp and subsequently occupied influential positions in political and security establishments.

In 1956, shortly after the first wave of arrests of Ikhwan, Sayyid Qutb, a theologian of the Muslim Brotherhood, published a book entitled Ma’alim fi alTariq (Milestones). After reading it, Nasser decided to put the author to...
death: he felt two ideas greatly threatened his non-religious rule. The first involved “society’s thought”: Qutb described it as jahili1 (un-Islamic) and called for actively fighting and combating it. The second idea, closely linked to the first, involved “God’s sovereignty” and advocated that the only true and worthy society was the one that derived its laws from the Qur’an, the Hadith and the Sunna2.

Sayyid Qutb espoused an extreme radicalism in Islam. Nasser’s decision to execute him strongly affected the Muslim Brotherhood, who suffered the consequences of the theologian’s radicalism: another split occurred, with some avowed Qutbiyin (followers of Qutb thought) abandoning the organization, while other Qutbiyin remained in its midst.

Integration vs. Radicalization
The division was instigated by the more radical members of the Ikhwan. It was the first instance of an event that would recur throughout the Brotherhood’s political life: members would complain about a “failure” or “laxness” of the mother organization in facing the ruling party’s hostility towards them. They would break away from the organization, establish new Islamist groups, brandish their weapons in the face of the government, always in a hurry to undertake jihad. Besides forming Qutbiyin organizations, some members also joined more aggressive Islamist jihadist groups.

This radical Islamist movement, from within the organization towards the outside, would mark the later stages of the Brotherhood’s struggles with authority. A familiar scenario would replay itself: A group would disapprove of the Brotherhood and the weakness it demonstrated in its campaign against the government, they would decide to break away, championing an extremist jihadi perspective premised on armed combat and takfir4. The Muslim Brotherhood was the root from which all the more Islamist jihadist groups emerged.

Nasser’s integration of some Ikhwan members into his fold was accepted: Nasser was greatly loved by his people. Even after the unexpected defeat of his army in the 1967 war against Israel, the Egyptian people refused his resignation.

Two years later marked the beginning of the following stage: In 1969, the Virgin Mary miraculously appeared in Zaytun Church. The official newspaper Al-Ahram described the apparition as a “heavenly promise of victory”, and used other such religious expressions. Nasser’s era ended soon after, with his death in 1970. His deputy Anwar al-Sadat took over as president, in a climate where religiosity had slowly begun to infiltrate itself into most aspects of daily life.

The Surge of Religiosity
Sadat’s genius lay in his firm grasp of the religious climate. He presented himself as “the believer president,” and offered all manifestations of his religiousness to the camera, which showed him praying, and focused on the zbeiba (mark) on his forehead as proof of his regular praying (it was later revealed that the mark was a surgical scar)... Furthermore, the “believer president” also demonstrated his faith by releasing incarcerated Ikhwan members from prison, and granting them and their sheikhs podiums, freedom of movement, and freedom of assembly.

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1 The expression Jahiliyya or the “era of ignorance” is usually used to describe pagan times preceding the advent of Islam.
2 Hadith means talk or conversation, in Islam: narrations surrounding the words and deeds of the Prophet Muhammad, considered important tools in Islamic jurisprudence.
3 Sunna means habit or usual practice, in Islam: sayings, habits and practices of the Prophet, significant as they illuminate aspects of Islamic spirituality and law.
4 Takfir: excommunication, declaring one an unbeliever, a kafir.
Within that context, Sadat’s most important “accomplishment” was his amendment of the second article of the Egyptian constitution in 1971. During the Nasserite era that article stated: “Islamic Shari’a is one of many sources of legislation.” Thanks to Sadat, it became: “Islamic Shari’a is the principal source of legislation.” Since then, Egypt has witnessed an increasing overlap of religion, politics and public interest, which has greatly affected its political and cultural fates.

However, Sadat also committed the gravest of sins, in the eyes of his new allies. He approached Israel with a surprise initiative, and signed the peace treaty known as the Camp David accords in 1978. This marked the rupture between Sadat and the Muslim Brotherhood, along with its Islamist offshoot groups, sheikhs and preachers. Among these was the “Jihad”, the group that planned and eventually executed Sadat’s assassination in October 1981, during festivities commemorating the October war of 1973. Abboud al-Zumur, a lieutenant colonel in military intelligence and a member of the Jihad, masterminded the operation, and Colonel Khalid al-Islambuli executed it. The first was sentenced to life imprisonment, but was released shortly after the revolution. The latter received capital punishment and became, at his death, a symbolic icon for armed jihadist groups that thrived after Sadat’s death when Mohamad Hosni Mubarak took over. Mubarak’s reign lasted from 1981 until the present year, when he was ousted by the January 25 revolution.

He was a pilot, it’s true, but he was never a fighter pilot, rather a bomber pilot – imprecise in his aim, rigid, sluggish, but crushing.

The combination of religious overbidding, standstill and paralysis confined the relationship between the ruling party and the Ikhwan to an unhealthy cyclical fight-or-flight pattern, which lasted for three decades - a period long enough to strain any relationship...

Mubarak fought fierce battles against internal terrorist organizations such as the Jama’a al-Islamiya, the Jihad, and other Qutb-inspired groups in the 1990s, and it shaped his relationship with the Muslim Brotherhood.

The combination of religious overbidding, standstill and paralysis confined the relationship between the ruling party and the Ikhwan to an unhealthy cyclical fight-or-flight pattern.

He restrained the Ikhwan on a security level, while he bolstered their intellectual control over society, by unleashing Islamist rhetoric to a degree of utter chaos: sheikhs, preachers, muftis, platforms, screens, media… All means were good to propagate a heightened religious state among the people – until it became virtually impossible to differentiate between a citizen who was an actual member of the Ikhwan, and a citizen who was Islamized by state apparatuses in their fight against the Brotherhood.

The other facet of the official stance towards the Muslim Brotherhood consisted of keeping them under control: the regime officially designated them as “banned”, forbade offshoot groups (15 years spent trying to obtain a license for the Wasat (Middle) party remained fruitless), deprived them from growth and dialogue, perpetuated their intellectual dogmatism, allowed their members to run as “independents” in elections (in 2005, for

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An Old Couple

The relationship between the new Mubarak rule, and the Muslim Brotherhood was marked by the continuation of Sadat’s “faith constants”, and was further nurtured by increased religiosity, which reached new grounds and expressions. A new rule was added to the list of unique Mubarak precepts, namely the standstill. The standstill suited Mubarak’s cautious and lazy character.

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Shari’a: Islamic canonical law based on the teachings of the Qur’an and the traditions of the Prophet (Hadith and Sunna)
example) then rescinded that right in the last elections (2010) through a series of procedures which made for an unprecedented degree of electoral fraud.

But the relationship was long-lived, and engendered a degree of fusion. Like an old couple, always at odds, but needing each other to survive, the regime needed the Muslim Brotherhood to be a player in public life, so that it would not be acting alone. It also held the *Ikhwan* up as a scarecrow, a reminder of the threat the Brotherhood would represent should the regime fall. The regime alternately loosened and tightened its grip, as it saw fit, maintaining a certain balance that suited the general atmosphere. It allowed the *Ikhwan* a chance to get to parliament, after many crushing battles, to later deprive them from it, by arresting its active members. The regime then promulgated an overtly religious atmosphere, conservative and Salafi-like, in its refusal of politics… The regime needed these religious bids in order to confirm its legitimacy – especially after it had lost its military legitimacy with the Camp David accords, and its credibility with the prolongation of Mubarak’s rule without consulting the electorate, through falsified referendums.

On the other hand, the Muslim Brotherhood also needed the regime: first and foremost, because the organization had been occupied, since its inception, in a struggle against the ruling authority. While this brought on many divisions and offshoots, none were strong enough to dissolve or scatter the Brotherhood, perhaps due to the government’s insistence on their unity, as it tried to control them. The Brotherhood also depended on the regime for its survival. Mubarak’s security apparatus had wide reaching control across most of the country, and would be able to eliminate the *Ikhwan* at a moment’s notice should it choose to, as it had done with other armed Islamic organizations, in the 1990s.

**Effects on Regime, Ikhwan and Society**

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First, and with regards to the regime: The regime’s original founding text was non-religious. With the gradual accumulation of failures, and the absence of elections or real alternatives, the text randomly fused politics and religion. Here are two eloquent examples indicative of the consequences of that haphazard amalgamation on the regime: During the 2005 legislative elections, which allowed members of the *Ikhwan* to run, albeit with great difficulty, posters appeared on walls and streets of the capital bearing the Brotherhood’s familiar slogan “Islam is the solution”. Soon after, some candidates from the ruling national party, who felt that the *Ikhwan* posed a threat in their districts, decided to produce “more Muslim” posters of their own appealing to the heightened religiosity of their constituents which claimed “The *Qur’an* is the solution”…

Another example: Farouq Hosni, Minister of Culture, unofficially declared to a reporter that his mother and grandmother were beautiful women who did not wear the hijab (veil), and that he disliked the veil which he did not find attractive. The reaction was quick: the comment caused widespread disapproval. However, the most salient reaction did not come from the Muslim Brotherhood, or other religious parties, but from members of the regime itself. While parliament was in session, one member stood and shouted at the minister that his comment was an insult, to his daughter, his wife and his mother… he became so emotional, that he fainted… and in a somewhat farcical extension of the scene, the unconscious member of
parliament was carried out of the room on the shoulders of his colleagues from the national democratic party… all of this, of course, under the watchful eye of the media.

We could say that the regime was often as theatrical as a magician with his hat. At times the magician would pull out the Islamist rabbit from his hat, wave it to the public and then hide it. At others times, the magician would pull out the enlightened, progressive rabbit of the thinkers and the intellectuals.

Secondly, for the Muslim Brotherhood itself, this embattled coexistence with the regime had an effect. The Ikhwan, whose internal relations were built on the premise of “hear and obey,” found internal divisions difficult to assimilate. They did not enjoy real freedom, which would allow them to interact constructively with some of their members who advocated dialogue or openness. They were deprived of fresh air, despite the important parallel society they had built, which offered its members education, friendship, marriage, and work opportunities in an integrated Islamic space.

Their literature which championed the “hear and obey” precept, treated any public opposition to the organization’s official dogma as a sin. Of course this tendency was enhanced by Mubarak’s suppression, which strengthened the Ikhwan’s sense of unity and coherence. The cohesion in reaction to persecution, and the precept of obedience eradicated democracy within their organization. Their slogans during elections were understood only as means to attain power. Democracy was an (instrumental) abstract concept.

In 2008, the Ikhwan had published the agenda of the party that they sought to establish. It included the re-marginalization of women and Copts. It was based on the Iranian model of authority: “A body of eminent theologians” “directly elected by clerics” would stand in complete autonomy from the executive branch of power. This assembly of theologians would impress its views upon the parliament, and its opinion would be sought in all matters regarding Islamic law, which would then be obeyed to the letter. In other words it was a “Supreme Leader democracy”.

The third area which bore the brunt of the close yet hostile relationship between the regime and the Ikhwan was Egyptian society itself. As a result of that abnormal relationship, society slowly proceeded to Islamize itself, and plunged into a world of interpretations, sermons, and fatwas, which grew more constricting and intolerant with time. Some community and government members even displayed a tendency to break the law, and violate the country’s institutions in an effort to establish a haram/hala system. These growing trends did not necessarily stem from the core of the Ikhwan, or the regime, but were the logical outcome of the chemical interaction between them. It is safe to say that the degree of Islamization of Egyptian society went beyond the Ikhwan’s power of framing and organizing. Indeed, a majority of Islamic manifestations in Egypt, women’s veils for example, did not automatically imply loyalty to the Brotherhood.

The Ikhwan in the January 25 Revolution

On the eve of the January 25 revolution, the Ikhwan were forbidden from electing their men. They were the hardest hit by the regime’s

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new procedures, as they had won 88 seats in parliament in the previous elections. However, the Ikhwan were not the ones who started the revolution, nor did they quickly determine their position on it. The reservation shown by the Brotherhood’s leadership did not prevent the organization’s youth from participating in the revolution from day one – if only in their individual capacity. The leadership held back until the third successful day of the revolution, the Friday of Rage, after which it decided to join the movement, hold its own demonstrations and events, and slowly but surely integrate itself into the uprising.

The revolution did not only terminate 30 years of Mubarak rule, but also erased 58 years of legitimacy of the Free Officers. Mubarak was the scion of that legitimacy.

hatred and distress, with sheikhs spewing out expressions of militant takfir as if they were ordering non-practitioners to disappear. During the revolution, we saw Muslims praying alongside Christians, and surrounding them were young men and women, who were not praying. The mixing of the sexes occurred in a similar manner. We read time and again about “a young man, wearing a short jilbab (Salafi costume) sharing a bottle of water with a pretty unveiled young woman who was also smoking”, or about the lack of sexual harassment incidents despite, crowds of both sexes.

Will the Ikhwan Change?
All these manifestations inevitably react with the collective consciousness, mix intellectual trends, and bring on a reassessment of political beliefs. But until now, the Ikhwan still teeter between the old and the new. In a recent talk conducted by the promoters of the amendment of the second article of the constitution (Islamic Shari’a is the principal source of legislation), the Ikhwan defended their position, which regarded the second article as an “Islamic gain”. Issam al-Erian, a leader of the Ikhwan, participated in that discussion and summarized his party’s stance by saying: The constitution’s second article was “above the constitution”. Another similar example: the Ikhwan welcomed the “civil state,” playing on the word’s double meaning: unrelated to the military or to religion. But they enthusiastically support it because it resembles “the state at the time of the Prophet, which was a civil state with Islamic authority”…

“Mubarak and the Muslim Brotherhood are twins”, say many Egyptian commentators. Now that Mubarak has stepped down, will the Ikhwan change? Will they overcome their initial reactions? Will they take advantage of the new environment of freedom, and open up their organization to fresh air? Will they hold workshops and interact with the figures of the revolution? Or will they stick to the partisanship that Mubarak confined them to? It’s likely that those who are most threatened by the positive influence of the revolution, are
It’s likely that those who are most threatened by the positive influence of the revolution, are the Ikhwan leaders themselves. They rise through the ranks. The leaders will surely resist that impulse, in the same way dictators oppose regime change.

And the battle that the Muslim Brotherhood were fighting today to defend constitutional amendments is but a first indication of their anticipation of reaping the fruits of a 70-year-old struggle.

For the minority this raises the question whether it will succeed in defending its threatened interests. Does it need to embark upon a second revolution to defend those interests? Will a second revolution be similar to the first one, displaying the same pace and the same kinds of behavior? Or does it need a new breath of life, new forms of expression and change?

Translation from Arabic by Joumana Seikaly.