

ISSUE BRIEF

Islam and Sharia Law

Historical, Constitutional, and Political Context in Egypt

MAY 2016 YUSSEF AUF

The outbreak of Arab uprisings across the Middle East in early 2011 coincided with a marked rise of Islamic political movements in the Arab world. The electoral successes of Islamic political groups, particularly in Egypt, Tunisia, Libya, and Morocco, reflect this rise. These successes were, in part, an expression of the desire shared by a large portion of Arab populations to put Islamic political powers in the forefront of the political scene, in preparation for a long-awaited dream: the implementation of Islamic Sharia. The supporters of these Islamic political movements share a conviction that Sharia has been excluded and marginalized since the early twentieth century. Some supporters argue that foreign colonization followed by national Arab ruling regimes, which were created after state independence, intentionally marginalized Islam, consequently preventing implementation of the Sharia jurisdiction.

Brief Historical Overview

A persistent political, social, and legal debate regarding the role of Islam in public life arose in the mid-nineteenth century. Major socio-political transformations in Egyptian society, as well as most Arab societies, triggered this debate. The Western colonization of Arab countries introduced drastic changes to the cultural and social features of authentically Arab and Islamic societies, with political, social, and economic theories that were new to the Arab-Islamic reality. Chief among these theories was the concept of the “nation-state.” This concept defined citizenship as a correlation between an individual and a state, based on specific geographical borders. This concept differed dramatically from that in previous centuries, when the Caliphate (whether Ottoman, Mamlouki, or Abbasi) served as an Islamic identifier for all Arab and Islamic nations. In fact, the decay and eventual collapse of the last Islamic empire (the Ottomans), which had dominated and united the majority of Arab countries for the previous five centuries, contributed

The Atlantic Council's **Rafik Hariri Center for the Middle East** studies political and economic dynamics in the Middle East and recommends US, European, and regional policies to encourage effective governance, political legitimacy, and stability.

to the major transformations of the nineteenth century. With the collapse of the Caliphate, the concept of an Arab citizen vis-à-vis an Islamic nation-state prevailed.

The role of Islam in public life was not debated for twelve centuries. During this era, starting with the revelation of Islam in the sixth century A.D.,¹ Islam dominated not only the religious, but also the political, economic, social, and legal aspects of life.

However, towards the end of the nineteenth century, with the introduction of western influence from colonization and the weakening of the Ottoman Empire, questions emerged regarding the role of religion in public life. Such questions spurred an intellectual dilemma that still persists today regarding “*Sharia*,” or Islamic law. Debates surrounding the specific definition of Sharia law, as well as its role in the state, continue to influence legal and political discourse in Egypt.

Sharia Law

Sharia law is the body of Islamic rules and teachings that governs Muslims’ relationships with their families, society, and nation. Sharia law derives from eleven Islamic references, primarily the Holy Quran, the holy Muslim scripture revealed to the Prophet Mohamed, and the prophetic tradition, i.e., the recorded words and actions of Prophet Muhammad that mainly illustrate and explain the Quran.

Aspects of Sharia Law

Sharia law regulates public life, namely interactions between individuals. These interactions can be categorized into three domains: Islamic political governance of the state, the Islamic legal system, and the economic system. These three categories have been the subject of extensive debate since the late nineteenth century, when western influence sparked transformations in Egypt and across the Arab world.

¹ John L. Esposito, *Islam: The Straight Path* (New York: Oxford University Press) 1988, pp. 37-67.

The Islamic Political System

Politics and systems of government in Islamic theory were actively debated early in the nineteenth century. The vast majority of Islamic scholars believed Islam to be a religion and a state, meaning that Islam should regulate government and public life, while also serving as a religion. However, some voices began to argue that Islam serves only as a religion and should not be involved in governing; such ideas were unprecedented in Islamic history. Most prominent in this respect was the 1925 publication of the renowned book *Islam and Fundamentals of Political Power* by Ali Abdel Razek, a Sharia law judge and graduate of Al-Azhar University, who studied briefly at the University of Oxford.² Abdel Razek argued that the Caliphate is not a fundamental of Islam and is, instead, a mundane and political issue,³ a view that served as the foundation for calls to separate state and religion. The publication of Abdel Razek’s book stirred a tsunami of objections and criticism by most Islamic scholars, who believed that Islam could not be separated from politics.

The publication of Abdel Razek’s book stirred a tsunami of objections and criticism by most Islamic scholars, who believed that Islam could not be separated from politics.

The Muslim Brotherhood (MB) emerged in Egypt in 1928 amidst this growing debate over the role of Islam in politics.⁴ The founding of the MB helped to fill a vacuum that followed the collapse of the Ottoman Empire. The MB opposed the way in which colonialism limited the application of Sharia law to issues of personal status only, and the MB adopted unwavering slogans, focused on the need to reinforce Sharia law in all aspects of life. The emergence of the MB in Egypt as a politicized and inherently religious organization was, therefore, a significant development for the issue of Sharia law.

² Souad T. Ali, *A Religion, Not a State: Ali ‘Abd al-Raziq’s Islamic Justification of Political Secularism* (Salt Lake City: University of Utah Press, 2009).

³ Ali Abdel Razek, *Islam and The Foundations of Political Power*, ed. Abdou Filali-Ansary, trans. Maryam Loutfi (Edinburgh: Edinburgh University Press, 2013 (1925)).

⁴ Carrie Rosefsky Wickham, *The Muslim Brotherhood: Evolution of an Islamist Movement* (Princeton: Princeton University Press, 2015), p. 20.



Al-Azhar Mosque in Cairo, Egypt. Photo credit: Romel Jacinto/Flickr.

Islamic Legal System and Codification

The Islamic legal system provides detailed provisions on civil and commercial interactions, as well as criminal and personal status issues. The introduction of colonialism initiated legal changes, along with political and social transformations; the arrival of European laws to Egypt and many other Arab countries reduced the applicability of Islamic law to personal status (family) issues or disputes, while civil, commercial, and criminal issues increasingly came under the purview of European-style laws.

Exposure to Western culture led to the codification of legal rules and norms enforced by judges through the court system. The Roman-based Napoleonic Code established in France in the early nineteenth century influenced the Ottoman Empire and its affiliate states to enact similar laws. The *Mecelle* (or *Majallato Al-Alahkam Aladleya*, the official gazette of the Ottoman Empire during the nineteenth century used to issue official state documents and legislation), exemplified

this phenomenon.⁵ Through the journal, the Ottoman Empire sought to merge the Islamic legal system with modern life, enacting regulations for civil and commercial interactions in a contemporary and technical style alongside concepts from Islamic law. For twelve centuries prior to the promulgation of the *Mecelle*, the “understanding” (*ijtihad*) of judges or sheikhs alone interpreted and applied Islamic Sharia.

Islamic Economic System

The rules of financial transactions and economic activity in Sharia law are subject to debate. The collection of Zakat, an obligation of all Muslims to pay an annual charitable religious tax distributed among the poor or spent by the state on welfare for the needy, is meant to discourage greed and purify one’s wealth. Its collection, however, is controversial in modern

⁵ *Mecelle*: Archives of Duke University Library, “Text of *Mecelle* (in Turkish),” 1884, <https://archive.org/details/mecelleiahkmiad-10001ah>.

economies. Also, according to Sharia law and many fatwas, interest rates levied by banks violate Sharia law. Similarly, some types of commercial transactions at the local level are viewed as unacceptable according to Sharia law.

Whereas some scholars argue that Islamic law should govern the economy based on Islamic theory, the introduction of modern market-based, capitalist economies challenged this belief. Such systems do not welcome the insertion of religious economic theory into modern life, and this mode of doing business became particularly influential in the Arab world during the period of colonization.

Islamic Sharia in the Egyptian Constitutional System

The 1866 establishment of the Advisory Council of Representatives, Egypt's first representative parliament, marked Egypt's first contemporary constitutional experience.⁶ The Council's Standing Order established candidate eligibility, the country's electoral system, and the Council's procedures. Contemporary European parliamentary systems heavily influenced the Standing Order, demonstrating the impact of Western colonization on Egypt's parliamentary and constitutional experience. Over the course of a century and a half, right up until the 2011 uprising, seven constitutions were passed in Egypt (in 1866, 1882, 1923, 1930, 1956, 1964, and 1971).⁷

The first constitutional reference to Islam was in Egypt's 1923 Constitution: Article 149 ordained that "Islam is the religion of the State and Arabic is its official language," a provision included in all of Egypt's subsequent constitutions. Nonetheless, the political, cultural, and legal debate around this article persists today. The wording of the article spurs questions of whether the state has a religion; and if so, why is that religion specified in the constitution, and what are the legal consequences of such specification? Further, does the constitutional identification of an official state religion infringe on the rights of followers of other religions?

The origin of this article in the 1923 Constitution remains unclear. The article did not manifest legal or

constitutional implications regarding the enforcement of aspects of Sharia law. The provision did not affect Egyptians culturally, intellectually, or socially, as a number of practices of public life existed that contradict Sharia. Some of these contradictory practices were even regulated by the state (such as the sale of alcohol), with little consideration for the state religion. Rather, Article 149 served as a way to express identification with Islam in the face of the then four-decade-long British occupation, which had a noticeably Westernizing influence on Egyptian cultural and social identity. Enshrining Islam as the state religion in the constitution was a way in which to emphasize Egypt's Islamic identity.

1971 Constitution

The 1971 Constitution amended the assertions of the 1923 Constitution's Article 149. Article 2 of the 1971 Constitution stated that Islam is the state religion, and Arabic is its official language, but also adds that "principles of Islamic Sharia are a reference to legislation." For the first time in Egyptian constitutional history, Sharia was explicitly stated—although with abundant ambiguity regarding the term "principles." Nonetheless, this addition did not have a significant impact on the enforcement of Sharia, as it did not oblige the legislature to draft laws guided by, or directly based on, the provisions of Sharia. The key was that Article 2 rendered Sharia as only "a" reference for legislation, rather than the main, or only, source of law. Additionally, the vagueness of the term "principles" hindered the implementation of the provision.

In May 1980, the 1971 Constitution was amended again. Regarding Article 2, the principles of Sharia law became the "main" reference for legislation. Proponents of the amendment saw it as the first step toward the enforcement of Sharia. Based on that amendment, the parliament had to refer directly to Sharia when drafting new laws.

Supreme Constitutional Court Interpretation of Article 2 of the Constitution⁸

Article 2 of the 1971 Constitution was the subject of excessive social, legal, and political debate, which led to the contestation of the provision before the Supreme Constitutional Court (SCC) in 1980. A dispute

6 Alaa Al Aswany, *On the State of Egypt: What Made the Revolution Inevitable* (New York: Vintage Books, 2011), p. 9.

7 Amos J. Peaslee, *Constitutions of Nations: Volume I: Afghanistan to Finland* (The Hague, Netherlands: Martinus Nijhoff, 1956), p. 811.

8 Baber Johansen, "The Relationship between the Constitution, The Shari'a and the Fiqh; The Jurisprudence of Egypt's Supreme Constitutional Court" 2004 (881-896), http://www.zaoerv.de/64_2004/64_2004_4_a_881_896.pdf.

between Al-Azhar University and a trade organization over a financial transaction triggered the case: The trade organization demanded that the University make the financial payments it owed with interest, as per the provision of Article 226 of Egyptian Civil Law.⁹ Al-Azhar University rejected the claim on the basis that interest rates are prohibited under Sharia law and called on the SCC to challenge the constitutionality of Article 226 of the Civil Law. The University invoked Article 2 of the 1971 Constitution as a guarantee to enforce Sharia law in litigation, and automatically annul any contradictory legal provision. The SCC passed a decision¹⁰ on the Al-Azhar versus the trade organization case in May 4, 1985, which set a number of stipulations for the enforcement of Article 2 of the constitution. In its decision, the SCC said that the Article mandates that the legislature abide by Sharia principles when drafting laws, and that those laws are unconstitutional if they contradict Sharia. In this vein, the decision ordains that the provision of Article 2 does not supersede the constitution, nor may it be invoked by default in judicial rulings; rather, it obligates only the parliament. The SCC also decided that Article 2 only applies to laws enacted after the 1980 amendments to the Constitution, and is therefore not applicable to any passed before 1980.

The SCC further defined the “principles” of Sharia law as decisive religious edicts. In order for a provision to be a Sharia principle, it must be definite, without being prone to interpretation or debate. The SCC’s definition served as a judicial innovation because it set a legal benchmark for the term “principles,” addressing one of the key challenges in enforcing Sharia law provisions: previously, the provisions were unclearly defined and based on a historical body of literature, fashioned over fourteen centuries through different interpretations and views, under varying circumstances.

Involving Al-Azhar—
through the Grand
Scholars Authority—
in legislative
decisions afforded
the body religious
hegemony over
government, even
if in an advisory
capacity.

The Two Constitutions of the Egyptian Uprising

Two new constitutions were passed in Egypt in less than three years, following the ouster of Hosni Mubarak in 2011. The 2012 and 2014 constitutions took different stances on Sharia law, nonetheless they both included Article 2. The difference between the two constitutions is evident based on the context in which they were drafted: the 2012 Constitution was drafted under the rule of MB and Islamists, while the 2014 Constitution was passed under the anti-MB pro-military camp.

The 2012 Constitution introduced two new articles, Article 4 and Article 219, which both sought to limit the SCC’s ability to interpret Sharia law.

Article 4 stipulated that the “Grand Scholars Authority”—the Supreme Advisory Board of Al-Azhar—should be consulted on matters related to Sharia law. The constitution also stipulated that the legislature must refer to the Authority when deliberating new laws, in order to verify conformity to Sharia law.¹¹ Many considered this an encroachment by Al-Azhar on the legislative powers of the parliament. Furthermore, involving Al-Azhar—through the Grand Scholars Authority—in legislative decisions afforded the body religious hegemony over government, even if in an advisory capacity.

Article 219 of the 2012 Constitution caused wider controversy. The article departed from the 1980 interpretation of “principles” of Sharia by the SCC, and instead loosely defined the term. Article 219 stated that “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.” This article reflected what the MB understood as the definition of Sharia law. Article 219 was primarily a manifestation of the political Islamists’ tendency to overrule the definition set by the SCC, asserting that the provision in Article 2 had not been enforced over the last three decades.

9 Article 226 of the Egyptian Civil Code stipulates that there should be a 5 percent as interest rate to be paid in case of delayed payment of debts.

10 Supreme Constitutional Court of Egypt: Case No. 20 of Judicial year no. 1, on May 4, 1985.

11 Carnegie Endowment for International Peace, “Comparing Egypt’s Constitutions,” December 1, 2013, <http://carnegieendowment.org/files/Comparing-Egypt-s-Constitutions.pdf>.

The new 2014 Constitution maintained Article 2 and deleted Articles 4 and 219, thereby reviving the supremacy of the SCC's precedents in this regard. The Constitution stated in the preamble that in defining the principles of Sharia law, "the reference in the interpretation of such principles lies in the body of relevant SCC Rulings." This reconfirmed the authority of the SCC regarding the definition of Sharia law.

Conclusion

The collapse of the Ottoman Empire and the emergence of the concept of the nation-state gave birth to the first, and oldest, political Islamic movement—the Muslim Brotherhood. The MB, directly or indirectly, paved the way for other religious political movements with varying degrees of conservatism. Despite their ideological differences, the sole, consistent demand of each of these groups over the last nine decades was the comprehensive enforcement of Sharia law—legally, politically, and economically. The common thread in these demands was the purposeful ambiguity in their definition of Sharia and how it would manifest in the contemporary world. The MB's decades-long slogan, "Islam is the solution," is an example of this ambiguity. Rivals of the MB always questioned to which definition of Islam the MB was referring, how to enforce this definition, and what issues Islam can solve. Observing the long history of political Islamist movements indicates that the use of such an opaque slogan was a deliberate choice to minimize the divisions that a more defined slogan could potentially engender among followers. The problem with this intentional ambiguity was a lack of planning for an opportunity to actually enforce Sharia law. This became evident in 2012, following the electoral victories of the MB, when they would not be able to rely on just their usual rhetorical demand for enforcement.

The 2011 uprising in Egypt provided an opportunity for the Islamists to rule. The MB, as well as Salafists, who had recently turned to politics, had landslide victories in the 2011-12 parliamentary elections and the 2012 presidential election. However, the experience in Egypt proved that political Islamists were not ready to move from the opposition, in which they called for the enforcement of Sharia law, to power, where they had to develop policies and provide plans outlining how they would, in fact, enforce Sharia.

The fact that the MB was unprepared to enforce Sharia law was especially evident in the legal and economic spheres, although less so in the political sphere. While Islamic politics do not dictate a specific form of government to which Muslims must adhere, Sharia sets a general framework for an Islamic government that enforces the principles of justice, freedom, and equality. The form of political system can be adjusted according to each state, as long as it adheres to these principles. This gave Islamists, particularly the MB and Salafists, the flexibility to play by the rules of modern politics following the 2011 uprising, and even before, without fearing that they might be in conflict with Sharia law. The MB and Salafists accepted the belief, which is now shared by a majority of Islamic scholars, that democracy is acceptable to Sharia. This belief allowed them to participate in elections and politics in the aftermath of the 2011 revolution.

However, the real challenge remained within the legal and economic spheres, for which Sharia law provides more comprehensive rules compared to the political sphere. A detailed proposal by the MB was expected to offer the organization's views on how to enforce Sharia in the modern, complex legal and financial contexts. However, the MB assumed power in Egypt without a clear agenda on how to enforce Sharia law. Instead, the MB used Sharia as political propaganda.

The failure of the MB government, presidency, and even the two chambers of the parliament, was that it lacked any genuine (Islamic) reform agenda. This flaw, among other factors, led to the rise of an opposition to, and the eventual overthrow of, President Mohamed Morsi in 2013.

In its attempts to regain its cultural identity and its influence over the Arab and Islamic world, Egypt is faced with the most pressing dilemma in its contemporary history: defining the relationship between state and religion. In defining this relationship, the Arab uprisings offered an opportunity to rethink how to use the lessons of the past to build a new future.

Yussef Auf is a Nonresident Fellow at the Atlantic Council's Rafik Hariri Center for the Middle East.

Atlantic Council Board of Directors

CHAIRMAN

*Jon M. Huntsman, Jr.

CHAIRMAN EMERITUS, INTERNATIONAL ADVISORY BOARD

Brent Scowcroft

PRESIDENT AND CEO

*Frederick Kempe

EXECUTIVE VICE CHAIRS

*Adrienne Arsht

*Stephen J. Hadley

VICE CHAIRS

*Robert J. Abernethy

*Richard Edelman

*C. Boyden Gray

*George Lund

*Virginia A. Mulberger

*W. DeVier Pierson

*John Studzinski

TREASURER

*Brian C. McK. Henderson

SECRETARY

*Walter B. Slocombe

DIRECTORS

Stéphane Abrial

Odeh Aburdene

Peter Ackerman

Timothy D. Adams

Bertrand-Marc Allen

John R. Allen

Michael Andersson

Michael S. Ansari

Richard L. Armitage

David D. Aufhauser

Elizabeth F. Bagley

Peter Bass

*Rafic A. Bizri

Dennis C. Blair

*Thomas L. Blair

Myron Brilliant

Esther Brimmer

*R. Nicholas Burns

William J. Burns

*Richard R. Burt

Michael Calvey

James E. Cartwright

John E. Chapoton

Ahmed Charai

Sandra Charles

Melanie Chen

George Chopivsky

Wesley K. Clark

David W. Craig

*Ralph D. Crosby, Jr.

Nelson W. Cunningham

Ivo H. Daalder

*Paula J. Dobriansky

Christopher J. Dodd

Conrado Dornier

Thomas J. Egan, Jr.

*Stuart E. Eizenstat

Thomas R. Eldridge

Julie Finley

Lawrence P. Fisher, II

Alan H. Fleischmann

*Ronald M. Freeman

Laurie S. Fulton

Courtney Geduldig

*Robert S. Gelbard

Thomas H. Glocer

*Sherri W. Goodman

Mikael Hagström

Ian Hague

Amir A. Handjani

John D. Harris, II

Frank Haun

Michael V. Hayden

Annette Heuser

*Karl V. Hopkins

Robert D. Hormats

Miroslav Hornak

*Mary L. Howell

Wolfgang F. Ischinger

Reuben Jeffery, III

*James L. Jones, Jr.

George A. Joulwan

Lawrence S. Kanarek

Stephen R. Kappes

Maria Pica Karp

Sean Kevelighan

Zalmay M. Khalilzad

Robert M. Kimmitt

Henry A. Kissinger

Franklin D. Kramer

Philip Lader

*Richard L. Lawson

*Jan M. Lodal

Jane Holl Lute

William J. Lynn

Izzat Majeed

Wendy W. Makins

Mian M. Mansha

Gerardo Mato

William E. Mayer

T. Allan McArtor

Eric D.K. Melby

Franklin C. Miller

James N. Miller

*Judith A. Miller

*Alexander V. Mirtchev

Karl Moor

Michael J. Morell

Georgette Mosbacher

Steve C. Nicandros

Thomas R. Nides

Franco Nuschese

Joseph S. Nye

Hilda Ochoa-Brillembourg

Sean C. O'Keefe

Ahmet M. Oren

*Ana I. Palacio

Carlos Pascual

Alan Pellegrini

David H. Petraeus

Thomas R. Pickering

Daniel B. Poneman

Daniel M. Price

Arnold L. Punaro

Robert Rangel

Thomas J. Ridge

Charles O. Rossotti

Robert O. Rowland

Harry Sachinis

John P. Schmitz

Brent Scowcroft

Rajiv Shah

Alan J. Spence

James G. Stavridis

Richard J.A. Steele

*Paula Stern

Robert J. Stevens

John S. Tanner

*Ellen O. Tauscher

Karen Tramontano

Clyde C. Tuggle

Paul Twomey

Melanne Vermeer

Enzo Viscusi

Charles F. Wald

Jay S. Walker

Michael F. Walsh

Mark R. Warner

Maciej Witucki

Neal S. Wolin

Mary C. Yates

Dov S. Zakheim

HONORARY DIRECTORS

David C. Acheson

Madeleine K. Albright

James A. Baker, III

Harold Brown

Frank C. Carlucci, III

Robert M. Gates

Michael G. Mullen

Leon E. Panetta

William J. Perry

Colin L. Powell

Condoleezza Rice

Edward L. Rowny

George P. Shultz

John W. Warner

William H. Webster

*Executive Committee Members

List as of May 3, 2016



The Atlantic Council is a nonpartisan organization that promotes constructive US leadership and engagement in international affairs based on the central role of the Atlantic community in meeting today's global challenges.

© 2016 The Atlantic Council of the United States. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Atlantic Council, except in the case of brief quotations in news articles, critical articles, or reviews. Please direct inquiries to:

Atlantic Council

1030 15th Street, NW, 12th Floor,
Washington, DC 20005

(202) 463-7226, www.AtlanticCouncil.org